LAW SUMMARY

9 Years DIGEST
(2008 to 2016)

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FOREWORD

Date : 29 It JUNE 2017

This publication of 9 years Digest of Law Summary Reports cover the judgments rendered in the period 2008 to 2016 and runs into 1218 pages. The index of cases contained in this Digest runs into more than 50 pages and, taking into account that each of page of index covers about 28 cases, the number of cases digested comes to nearly 1040 cases or more. This is a massive exercise involving great industry.

The decisions which are covered are those of the High Court Andhra Pradesh and also of the High Court of Judicature at Hyderabad for the States of Telangana, and also the Supreme Court of India. The decisions are tabulated with reference to the sections under several Central and State statutes and also under other general headings.

I would take this opportunity to briefly refer to the history of law reporting and publication of Digests in England and in India for the benefit of the readers.

The Year Books of English Law started in the 16th Century containing decisions from the year to 1268 to 1535, covering the reigns of King Edward I to Henry VIII. Pollock and Maitland said "They should be our glory, for no other country has anything like them". The original manuscripts and editions were either in Latin or Law French. They were compiled mostly by law students. Subsequent volumes came up in 1678 and 1680. The first Abridgment was printed in 1470. After 1535 AD, the printed Law Reports came into being in England. It is said that humour and passion often manifest themselves beneath the formalities of procedure. To the lawyer, they reveal the material out of which, and the foundation of writs, the structure of common law, came to be developed.

M J Rao

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The old law reports were also printed in the ER (English Reports) series and contain not only the decision of the Courts but also the summary in the arguments of the lawyers who argued the cases. The English and Empire Digest series contains the short notes of earliest cases in common law. It was first published in 1919 and several new versions have been published since then.

Much earlier, the Digest in Roman Law was published in the 6th Century (CE 530-533) divided into 50 volumes. It was discovered in 1135 AD.

In India too, several law journals started reporting cases, in the first phase, of the cases from 1813-1861 and the second stage from 1862 containing the judgments of the Presidency High Courts. The judgments of the Privy Council were reports by Knapp and Moore, called the Moore's Indian Appeals. Reports of the Calcutta Supreme Court were published in 1831. Morley, and later Morton, Fulton, Montriou published several collection of decisions of the Calcutta Supreme Court. Strange, CJ published judgments of the Madras Supreme Court from 1816. Judgments of the Bombay Supreme Court published Morley and Perrey, CJ. Reports of the Courts established by East India Company were also published in 1827. (The history of law reporting in India can be read from the article of J K Mittal, LLM, Lecturer in Law, University of Allahabad (www.allahabadhighcourt.in/event/HistoryOfLawReportinginIndia JKMittal.pdf). That completes a brief history of law reporting.

The Law Summary had published the Digest of cases of 1976 to 1998 covering a period of 22 years and later a Supplement covering the period up to 2000. I think that there was a subsequent publication of a Digest of cases from 2001 to 2007. The present volume consists of summary of case law from 2008 to 2016.

The legal fraternity and the Judiciary has given enormous support to the publishers of Law Summary in the last more than 4 decades and the Journal has

M J Rao

moved from strength to strength, thanks to the herculean efforts of Mr.A.Radhakrishna Murthy and his son Mr. Vivekananda and other family members. One of the important features of the Journal is that a number of articles written by lawyers and Judicial officers are regularly published which enlighten the readers.

I am sure that the Journal will move forward higher up in its service to the lawyers and the Judges at all levels and even for the Government Departments.

As repeatedly stated by several Chief Justices and Judges of our High Court, the uniqueness of the Journal is that it is published not from the seat of the High Court at Hyderabad but is published from Ongole and one can understand the hard work and zeal with which Mr.Radhakrishna Murthy and his family members have been working untiringly.

I am sure that this Digest of 1218 pages covering the period 2008 to 2016 will be immense help to the lawyers and the Judges.

29th June 2017

M. Jagannadha Rao

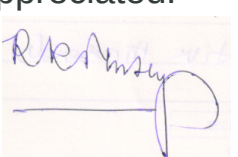
(Justice M.Jagannadha Rao (Retd.)

PREFACE

This 9 years Digest covering period (2008-2016) supplemental to 22 years digest (1976-1997), 3 years digest (1998- 2000), 6 years digest (2001-2006) and one year digest covering period of 2007, produced with same standard.

I wish to place on record my appreciation to Smt.M.Gargeyi, Advocate who assisted in compiling this digest.

I hope that this supplemental Law Summary 9 years digest will be of immense use to the Bench and Bar as a day to day reference book and also will be well appreciated.



A.R.K. Murthy,
Advocate,
Editor, Law Summary

LAW SUMMARY 9 Years DIGEST (2008 to 2016)

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LAW SUMMARY

9 Years DIGEST

(2008 to 2016)

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—Secs.2(d), 3 and 4(1) - "Inamdar" - Defined - Litigation between legal representatives of original inamdar - 2nd respondent granting Occupancy Right Certificate (ORC) in favour of 3rd respondent who is grand son of inamdar - 1st respondent/Joint Collector rejected appeal filed by petitioner another grand-son of original inamdar - Hence present, writ petition - Petitioner contends that 1st respondent having found that 3rd respondent and others constitute a joint family committed a serious error in not incorporating all coparceners' names of joint family and that he has completely ignored definition of inamdar u/Sec.2 (d) of Act - 1st respondent/Joint Collector also further observed in his order that u/Sec.4(1) of Act every inamdar has to be registered as an occupant of all inam lands which were under his personal cultivation on crucial date i.e, 1-11-73, and that 3rd respondent alone applied for ORC over lands in question and that petitioner has neither approached authorities nor filed any application for grant of ORC and therefore respondent No.2 has issued ORC in name of 3rd respondent and that it is open to petitioner and other coparceners to file civil suit for redressal of their grievances - In this case, while petitioner has contended before Joint Collector that property in question is joint family property, respondent No.3 has maintained that there was an oral partition by virtue of which he was in exclusive and personal occupation of same under unregistered partition deed - Fact however remains that Pahanies for 1973 which is relevant year, mentioned names of both branches namely, names of respondents 3 & 10, petitioner and his father in column no.11 - Further in possession column, names of respondent no.3 and his father are mentioned - However finding has been given by 1st respondent/Joint Collector that suit lands were jointly held by both parties, but however as respondent no.3 and his father were found to be in personal cultivation of land, 2nd respondent was justified in grant ORC in favour of R3 - CONSTRUCTIVE POSSESSION - In law as to constructive possession in case of Hindu coparcenery Supreme Court held "*that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possess on behalf of other co-sharers unless there has been a clear ouster by denying title by co-sharers and mutation in revenue records in name of one co-sharer would not amount to ouster, unless there is a clear declaration that title of other co-sharers was denied"* - Where an inamdar is a joint Hindu family, such joint Hindu family shall be inamdar - Granting of ORC in favour of respondent No.3 alone on ground that in possession column he was found in personal cultivation cannot be sustained in law - Merely because a manager or coparcener was found in actual possession

of property, rights of coparceners cannot be defeated under law of succession - Orders of respondents 1 & 2, unsustainable - Hence, quashed - 2nd respondent directed to issue fresh ORC incorporating names of petitioner and respondent nos.4 to 10 - Writ petition, allowed. **Govind Rao Vs. The Joint Collector, Adilabad 2010(3) Law Summary (A.P.) 89 = 2010(5) ALD 650 = 2010(6) ALT 248.**

—-Secs.24(1) and 28 - A learned Judge referred this case to a Division Bench for an authoritative pronouncement as to whether a revision is maintainable u/Sec.28 of the A.P. (T.A.) Abolition of Inams Act, 1955, against an order passed u/Sec.24(1) thereof and as to whether a revision filed u/Sec.28 of Act of 1955 can be converted into one under Article 227 of Constitution, after an application filed for such conversion is withdrawn - This reference arose mainly due to difference of opinion on first issue separately expressed by two learned Judges.

Held, appellate order passed u/Sec.24(1) by prescribed authority, District Collector, as well as reference order passed by prescribed authority, Special Tribunal, u/Sec.24(2) is revisable by High Court in exercise of power conferred by Sec.28 of Act of 1955, on limited grounds prescribed there under - Beyond scope of such revision, these orders are conferred with finality on purely factual aspects.

Notwithstanding act of a party in withdrawing application filed by it seeking conversion of a statutory revision into one u/Art.227 of Constitution, it would always be open to Court, either suo motu or upon an application of party, to consider whether it should exercise its plenary power and permit conversion of a statutory revision into one u/Art.227 of Constitution of India. **K.Chandra Sekhara Rao Vs. District Collector, R.R. District 2016(3) Law Summary (A.P.) 135 = 2016(6) ALT 360 = 2016(6) ALD 272.**

A.P (A.A) ABOLITION OF INAM AND CONVERSION INTO RYOTWARI ACT, 1956

—A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971 - A.P. LAND REFORMS (CEALING ON AGRICULTURAL HOLDINGS) ACTS, 1973 - CONSTITUTION OF INDIA: —Art.226 - Govt., took certain extent of surplus land from Maharaja of Vijayanagaram and subsequently lands in said village were held not to form part of Estate but to an inam village - MRO passed orders holding that petitioners are entitled for Ryotwari pattas inrespect of lands and all petitioners were issued ryotwari pattas in Form-VIII, but however they were not put in possession of lands as possession was taken over by State on premise that it formed part of surplus land of erstwhile Maharaja under provisions of Land Reforms Act - 2nd respondent RDO passed order afresh confirming exclusion of petitioners patta lands from declaration of erstwhile Maharaja and against said order Govt., did not prefer any appeal - MRO regularized unregistered sale transaction and had issued Certificate in their favour u/Sec.5-A(4)

of Act, r/w Rule 22(5) - Consequently MRO had issued pattadar passed books and title deeds to petitioners - Apprehending encroachment over said lands a direction is sought by petitioners that possession of lands, for which they were hitherto granted ryotwari pattas be delivered to them - Respondent/Govt., contends that agreement of sale or unregistered sale document, said to have been executed in favour of petitioners is not bindings on Govt. since sale itself is not genuine - It is not in dispute that petitioners never in possession of lands pattadar pass books and title deeds, if any issued in their favour is contrary to provisions of A.P. Rights in lands Act, 1971 - Eighty two ryots have impleaded themselves as respondents in writ petition and it is their case that they are absolute owners and are in possession of agricultural lands in said village and they have been cultivating lands from time of their forefathers and that so called ryotwari pattas alleged to have been issued in favour petitioners 1to 17 are *ex facie* illegal - Petitioners have been issued ryotwari pattas, pattadar pass books and title deeds and as possession of lands was taken on its being declared surplus Govt., was duty bound to deliver possession of said land to petitioners herein as they are owners thereof - Govt., contends petitioners have surpressed and misrepresented material facts before this High Court only with view to grab vast extents of precious agricultural lands in Vijayanagaram District; documents were created only to grab huge tracks of land - High Court in exercise of its jurisdiction under Art.226 of Constitution would not adjudicate disputed questions of fact, more so as serious allegation of fraud and misrepresentation are made and relief of delivery of possession can only be sought by way of suit before competent civil Court and not in summary proceedings under Art.226 of Constitution - In proceedings under Art.226 of constitution High Court would not ordinarily, determine title of any individual over immovable property nor would it put him in possession thereof - Since genuineness of alleged sale deed of 1967 is put in doubt by State Govt., and unofficial respondents terming it as a concocted document it becomes necessary for Court to decide factual controversy as to whether said document is real or has been concocted by petitioners for clandestine purpose - As said controversy is purely factual, it is not proper for High Court to take up investigation of such disputed facts and record its finding thereupon - In this case, relief sought for in writ petition, of delivery of possession, when examined in light of submissions land was in occupation of other ryots for past 100 years, would necessarily means that petitioners seek their eviction from lands in question - Such a relief has neither been sought for nor can any such relief be granted in proceedings under Art.226 of Constitution - Petitioner did not choose to array ryots, who would be effected by any such order being passed as respondent in writ petition and it is they who have impleaded themselves as respondents in proceedings - No reason to exercise discretion under Art.226 of Constitution to grant relief sought for that is of delivery of possession of lands which petitioners claim to be owners of - Writ petition, dismissed. ***M*.S.N.Raju**

Vs. M.R.O., Jami Mandal, Vizianagaram, 2011(2) Law Summary (A.P.) 113 = 2011(4) ALD 90 = 2011(3) ALT 118.

A.P. ADMINISTRATIVE TRIBUNAL ACT, 1985:

—Sec.19 - Appointment on compassionate grounds - Deceased Group-D Mazdoor working in Air Force Academy expired on account of suicide due to mental illness, leaving widow one son and one daughter - Application submitted seeking appointment to son of deceased on compassionate grounds - 1st respondent/Director General refused to take up matter with Ministry of Defence for obtaining necessary sanction on ground that it is contrary to policy guidelines in view of obnormal delay - Tribunal dismissed order of 1st respondent - Petitioner/Director General contends that family members of deceased were not vigilant and they ought to have made an Application so as to seek immediate relief and instead of doing so they approached Tribunal and Tribual ought not to have undertaken exercise of condoning delay - Respondent contends that she is not aware of Scheme and it is duty of Authority to inform grief family regarding said scheme so as to take necessary steps but that was not done therefore, respondent did not send any application within time stipulated - It is also no doubt true that because of her illteracy respondent has not taken any steps seeking compassionate appointment of her son by making application to authorities - But it is bounden duty of Authorities to act fairly and honestly so as to provide benefits to deceased's children - As per para-12(b) of scheme Welfare Officer in each Ministry/Department/Office should meet members of family of Govt., servant in question immediately after death to advise and assist them in getting appointment on compassionate grounds and applicant should be called in person at very first stage and advised in person about requirement and formailities to be completed by them - But that has not been done in present case - Respondent deprived benefit because of delay in submitting representation - However Tribunal ought not to have undertaken exercise of condoning delay and should have remitted back matter so as to enable Department to process application of applicant respondent and forward same for considering request relating to compassionate appointment of her son - Order of Tribunal modified directing petitioner to forward papers of respondent/applicant to Ministry of Defence to examine and consider case of respondent for appointment of her son on compassionate grounds including aspect of delay as per para 12 (b) of Scheme framed by Govt. **Director General MilitaryEngineer Service Vs. Smt.B.Indira 2010(1) Law Summary (A.P.) 397 = 2010(3) ALD 115 = 2010(3) ALT 207.**

A.P. AGRICULTURAL LAND (CONVERSION FOR NON AGRICULTURAL PURPOSE) ACT, 2006

—And LAND ACQUISITION ACT,,Secs.4(1), 5-A, 9(1), 9(3) and 10 - Petitioner's land proposed to be acquired without conversion of agricultural land for non-agricultural

use and that respondents cannot acquire petitioner's land and that respondents have kept petitioner in dark by initiating acquisition proceedings behind her back without publishing her name in notification issued u/Sec.4(1) of Act and without issuing any notice in enquiry purportedly held u/Sec.5-A of Act and that even notices issued u/Secs.9 and 10 of Act do not contain her name - Respondents/Collector and RDO have not disputed fact that while petitioner is true owner of subject land, which was notified for acquisition along with other lands, name of one MPR was shown as its owner in notification published under Sec.4(1) of Act and in Form-6 u/Secs.9(1) and 10 also again name of MPR was shown as owner - Respondents also attempted to impute knowledge to petitioner about proposed acquisition and was given sufficient opportunity to oppose such proposal - Even though State has power of eminent domain, by which it can forcibly acquire land contrary to will of owner, Supreme Court has time and again held that such power has to be exercised in a fair, transparent and proper manner - "Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use..." - In this case, petitioner was denied proper and sufficient opportunity to put forth her objections to proposed acquisition of land and therefore, respondents are liable to afford such opportunity to her before seeking to proceed therewith - Declaration issued u/Sec.6 of Act, quashed - Petitioner permitted to file her objections - Writ petition,allowed. **Manivisetty Parvathi Vs. Collector, East Godavari Dt., Kakinada 2011(3) Law Summary (A.P.) 25 = 2011(5) ALD 453.**

A.P. (AGRICULTURAL PRODUCE AND LIVESTOCK) MARKETS ACT, 1966,

—Secs.2(v),2(x),2(xv),2(xvi),3(1), 3(3),3(4), 4(3), 4(4),7(1),12,14 & 15, G.O.Ms.No.286, dt.5-7-1994 - "Ghee", produce of livestock - Govt. of A.P issued Notifi-cation vide their Order in G.O.Ms.No.286, dt.5-7-94 in supersession of all earlier G.Os under which Ghee deleted from notified products, treating Ghee is product of livestock and insisting for taking licence and payment of fee - Petitioners contend that a reading of definition of 'livestock' and 'products of livestock' in Sec.2(v) and 2(xv) respectively would show that Ghee is not a product of livestock as it is not directly extracted from livestock but it is extracted from products of livestock i.e., butter or cream - Though cows, buffaloes, goats and sheep are defined as livestock, unless and until a product is directly derived from livestock, it cannot be treated as product of livestock - G.O. issued without mentioning any reasons and without following due procedure prescribed under provisions of Act - Govt. contends that Notification issued under these provisions is a one-time exercise of declaring notified areas or notified market area and every time market products are varied, there is no neessity to invite objections and that power conferred u/Sec.4(4) of Act includes power to include or exclude from list of products for purpose of regulating without resorting to procedure contemplated u/Sec.4 (3) of

Act and that levy of market fee on a notified market product is not subject to *quid pro quo* and therefore petitioners cannot press for invalidating impugned Govt. order.
Majority view:
JUSTICE V.V.S. RAO (JUSTICE N.V. RAMANA CONCURRING) Held: "Ghee" is a product of livestock and subject to observations made above with regard to daily farmer or small time agriculturist, every trader in Ghee, (other than daily farmer or small time agriculturist who keeps cows and buffaloes) is required to obtain licence under Sec.7(1) of Act - Impugned notification vide G.O.Ms.No.286, dt.5-7-1994 does not suffer from any illegality and infirmity and same is valid - Writ petition, dismissed. **Sri Kommisetty Nammalwar & Co.Vs. Agrl.Market Committee,Guntur 2009(2) Law Summary (A.P.) 258 = 2009(4) ALD 369 = 2009(4) ALT 431 = 2009(3) APLJ 10(SN).**

—Secs. 4,7,12(1),17(c),23 & 23(5) (i) - TOBACCO BOARD ACT, 1975 (Central Act), Secs.13, 13-A, 14-A - G.O.Ms.No.2095 dt.29-10-1968 - "Payment of Market fees on sale of Tobacco" - CONSTITUTION OF INDIA, Art.141 - Petitioner, Company ITC is to buy/process/sell and export Tobacco in various States in Country such as A.P. & Karnataka - Respondent, AMC lauched prosuction in Court of Magistrate which has registered the case as STC - Hence, present writ petition - Petitioner contends that in view of provisions of Secs.13,13-A of Central Act, no Market Committee in Date of A.P. including respondent is competent to insist on Tobacco Companies to take out licence and levy and demand market fee - SCOPE AND AMBIT OF PROVISIONS OF CENTRAL ACT - Stated - Parliament did not intend to invalidate any provision of Market Act and it has created space for State Legislation by consciously clarifying Sec.31 of Central Act to effect that Central Act shall be in addition to not in derogation of any other law - Thus while making an authoritative pronouncement that power of State Legislature in making legislation for collecting marketing fee on raw materials is not in any manner whittled down by Central Act - Contentions of petitioner that judgment has laid down that in States in which Secs.13,13-A, 14-A of Central Act are brought in to operation, Tobacco Boards, are not liable for payment of market fee, cannot be accepted - Launching of prosecution against petitioner - Not illegal - W.P, Dismissed. **ITC Ltd., Vs. The Secy., Grade- 1, AMC, Jangareddygudem, 2010(3) Law Summary (A.P.) 287 = 2011(1) ALD 59 = 2010(6) ALT 760.**

—Sec.12 – A.P. (Agricultural Produce and Livestock) MARKETS RULES, 1969, Rule 74(1) - All such items like Paddy, Rice, Wheat, Maize, Bajra, Cotton seed, Sunflower, Jowar etc., which are specified in the Schedule-II appended to the Act sold within the precincts of notified market area/market yard, are eligible to the levy of market fee - SeeIVIL ds like Tomato, Castor, which are derivatives of the main produce, but are sold separately and which are not specified in the Schedule-II annexed to Act, cannot be made liable to the levy and collection of market fee - Such items specified

in Schedule-II referred to above which suffered the payment of market fee in an agricultural market committee, shall not again be subjected to payment of market fee in any other Agricultural Market Committee within the state of Andhra Pradesh, if the proof of such payment is furnished to the authority concerned - Agricultural produce, livestock and products of livestock which are carried by any means and entering into the area of a Market Committee, cannot be subject to pay the market fees for the second time if proof is produced before the Officers of the Market Committee of the market fees having been paid in another Market Committee - Even at the check posts, the same procedure has to be followed - Writ Petition is allowed and accordingly disposed of. **Sree Ramanjaneya Rice Mill Vs. Govt. of A.P. 2015(1) Law Summary (A.P.) 161 = 2015(2) ALD 705 = AIR 2015 AP 13 = 2015(2) ALT 456.**

A.P. ANCIENT AND HISTORICAL MONUMENTS AND ARCHEOLOGICAL SITES AND REMAINS ACT, 1960:

—Ancient Monuments and Archeological Sites and Remains Act, 1958 - Questioning the action of the respondents in proceeding against the petitioners on the ground that the residential apartments are constructed within the prohibited area thereby violating the provisions of A.P. Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 and the Rules framed there under and the provisions of the Ancient Monuments and Archeological Sites and Remains Act, 1958, as illegal and arbitrary, the present Writ Petition came to be filed.

Held, a reading of Rules 28 and 29 clearly show that two notifications are necessary for initiating the proceedings - First one is under Rule 28 giving a month's notice of its intention to declare a particular area as a prohibited or regulated area and second one is by Government after considering the objections received under Rule 28 specifying area to be prohibited or regulated area for purpose of mining or construction as per Rule 29 - As stated earlier, averments in counter and material on record does not anywhere indicate issuance of any Gazette notifications till date - On other hand averments in counter filed by respondents clearly show that such a notification was never issued and negotiations are going on even as on today between one department and another department for purpose of making such declaration - In absence of any such notification being issued till date, objections which are now raised by respondents with regard to construction of Flats in area are totally illegal and contrary to provisions of Act and Rules - Further, material on record would also show that Municipal Corporation granted permission for construction of residential complex in said premises, pursuant to which, first petitioner constructed two Blocks, each comprising 20 flats - Petitioners 2 to 11 have purchased Flats in one Block by way of registered documents after obtaining loans from Nationalized Banks.

In absence of issuance of any notification in Gazette, as required under Rule 28 and Rule 29, contention of respondents that constructions raised by the

petitioners fall in a regulated or prohibited area, cannot be accepted and hence, the Writ Petition is liable to be allowed - Accordingly, Writ Petition is allowed. **Shivani Builders Vs. State of Telangana 2016(1) Law Summary (A.P.) 457 = 2016(2) ALD 743.**

A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFER) ACT, 1977:

—Secs.3,4 & 6 - E.P filed for attachment and sale of schedule property assigned to petitioners - Executing Court passing order holding that objection raised by petitioners that property being house property built in assigned house site cannot be sold in execution is untenable and order to proceed further in execution proceedings - Respondent/DHR contends that under patta issued to 2nd respondent transfer is prohibited only for a period of 10 years from date of issuance of patta, and 2nd respondent also mortgaged property to Khadi Industry which is a Govt. organization and he therefore is owner of property having self interest and as such it can be sold in execution of decree passed by civil Court for realization of decretal amount - By virtue of Secs.3,4 & 9 of Act, despite fact that conditions attached to patta enable assignee to alienate property 10 years after assignment, assigned property cannot be sold in execution of decree - Assigned land shall not be transferred and shall be deemed never to have been transferred and accordingly no right or title in such assigned land shall vest in any person acquiring land by such transfer - Assigned property is only heritable but not transferable and assignee can mortgage land to bodies under control of Govt. for purpose of securing loan - As such there is a specific bar against execution of decree of order of civil Court in respect of assigned land and therefore any such execution is impermissible - In view of specific restrictions imposed in Sec.3(4) of Act, respondent is precluded from bringing E.P. schedule property for attachment and sale in execution of decree passed in his favour by civil Court - Order passed by trial Court is not only erroneous and also illegal - Order, set aside - Revision, allowed. **M.Anumakka Vs. Turpu Gopal Reddy 2009(2) Law Summary (A.P.) 129 = 2009(4) ALD 473 = 2009(4) ALT 401.**

—Secs.3(1)(2) & (3) & 5, 4-A & 4-B - A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) RULES, 2007, Rule 4 - REGISTRATION ACT, Sec.22 - Resumption of assigned lands - Petitioners purchased assigned lands from various assignees under various registered sale deeds and have grown mango and cashew gardens in said lands - MRO passing resumption order exercising power u/Sec.4(1) of Act, stating that petitioners are not landless poor and that protection u/Sec.35 (1) is not available to them - Appellate authority as well as revisional Authority confirmed resumption orders - Hence, writ petition - When there is a prohibition of transfer of assigned lands, any acquisition of such lands even by way of registration of sale deeds shall be deemed null and void as no registering authority shall accept the registration of any document for transfer or

A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFER) ACT, 1977

creation of any interest in assigned lands - There is a total prohibition to transfer assigned lands except mortgage in favour of State or Central Govt., or Co-operative Bank - If such lands are mortgaged, it is not open for authorities to resume lands as mortgage shall not be treated as a transfer - In this case, petitioner purchased assigned lands in violation of Sec.3(1) & (2) and therefore resumption orders have been passed in accordance with law - Impugned order - Justified - Writ petition, dismissed. **Beeraka Bharamari Vs. Joint Collector, Visakhapatnam 2008(1) Law Summary (A.P.) 156 = 2008(2) ALD 45 = 2008(3) ALT 261.**

—Secs. 3(1), 3(3), 3(5), and 4 - Tahsildar, issued order stating that a representation came with regard to the pathway and enquiries made by Village Revenue Officer and Additional Revenue Inspector, revealed that original assignee has violated the conditions of patta by alienating part of assigned land in favour of third parties - It is averred that said land was not under cultivation and is also vacant with erected stone fencing - A notice is said to have been issued to petitioners and also to original assignees, but petitioners failed to attend enquiry - Having regard to material collected, D.K.T. patta granted in favour of original assignee was cancelled and land was resumed to Government - Challenging said action on ground of jurisdiction present writ petition is filed - Respondents disputed averments made in affidavit filed in support of writ petition - It is stated that under Board Standing Orders, Tahsildar alone is competent to cancel pattas if there is a violation of condition of patta and Collector gets jurisdiction to cancel patta only when there is a suppression of material facts and misrepresentation of facts - In any event, it is stated that petitioners have a remedy of appeal under provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, which petitioners should have availed before approaching this Court.

Held, in a case where there is a violation of Section 3 (1) of the Act, 1977, and in case of any action is being initiated by an officer not below rank of Mandal Revenue Officer, for violating provisions of sub-section (1) of Section 3 of the Act, 1977, an appeal would lie before Revenue Divisional Officer under Section 4-A of Act, 1977, and any person aggrieved by order passed by Revenue Divisional Officer may within ninety days file another appeal before the District Collector - If argument of petitioners, namely, that it is only the District Collector alone who is competent to cancel patta irrespective of reason is to be accepted, then paragraph (12) and (15) of Board Standing Order 15 will be nugatory and provisions of appeals and revisions which are there in statute book will be of no use - Definitely that would not have been the intention of legislatures - From analysis made, it is clear that Collector will get jurisdiction to cancel patta only if it is found that it was grossly inequitable or was passed under a mistake of fact or owing to misrepresentation or fraud or in excess of limits of authority delegated to assigning officer under Board Standing Order 15 or that there was an irregularity in procedure - In all other circumstances,

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Mandal Revenue Officer alone is the appropriate authority to cancel patta and resume land - Therefore, argument of petitioners that Tahsildar has no jurisdiction to cancel patta for violation of conditions of patta cannot be accepted - For foregoing, no merits in writ petition and same is liable to be rejected, giving liberty to petitioners to avail remedies available under law - Accordingly, writ petition is dismissed. **B.Jayaprada Vs. State of A.P. 2016(1) Law Summary (A.P.) 513 = 2016(4) ALD 656.**

—-Sec.3(2),and 2 (2) and 4 - CONSTITUTION OF INDIA, Art.226 - Petitioner purchased land in name of her minor children from two persons alleged to be pattadars - MRO issued notice alleging that said land originally assigned to Co-operative Society and that consequent on liquidation of Society said land assigned in favour of three persons - After considering explanation, MRO issued proceedings ordering eviction of petitioner - Respondent/MRO contends that since petitioner had acquired assigned land in contravention of Sec.3(3) of Act, notice issued for resumption of land and that petitioner gave a vague reply by taking stand that land is a patta land and not assigned land - Petitioner contends that in order to initiate proceedings u/Sec.3 of Act and resume land, it is necessary to show that original assignees sold assigned land and on MRO's own showing purported assignees have not sold property to petitioner - DOCTRINE OF ALTERNATIVE REMEDY - By applying this doctrine ordinarily High Courts decline to entertain writ petitions, which are filed bypassing effective alternative remedy - Supreme Court in catena of judgments, however, held that this is only a rule of procedure and not a rule of law and that in appropriate cases High Court, can entertain a writ petition despite availability of such alternative remedy - From statutory provisions of Act 1977, it is clear that Act was made with objective of prohibiting transfers of assignments and for punishing purchasers, subject to only exception u/Sec.3 (5) - Irrespective of whether purchaser purchasers assigned land from original assignee or anybody else, transfer of assigned land is prohibited - Prohibition of transfer contained in Sec.3 is not confined either to transfer by assignee or his transferee alone - If contention of petitioner that provisions of Act are not attracted is accepted, purpose and object for which Act is made will be rendered otiose - In instant case, allegation is that vendors of petitioner manipulated record by substituting their names in survey and Sub-Divison record for names of original assignees and sold assigned land to petitioner - If land purchased by petitioner is found to be assigned land, sale of such land by whosoever attracts prohibition contained in Sec.3(1) and is liable for action u/Sec.4 - Impugned order of MRO traced history of land in holding that it is an assigned land - MRO referred to incorportation of changes by way of Sub-Divisions in FMBs in year 1982 - Respondent/MRO discharged initial burden of proving that land in question is assigned land - Onus has shifted to petitioner to prove that land in question is not assigned land - Neither in her reply to show cause notice nor in her affidavit, petitioner, except making a denial of allegation

that land is an assigned land, has explained as to how land is not assigned land, but is a patta land - It could not have been difficult at all for petitioner to rely on documents of title of her predecessors-in-interest and relevant revenue records - Hence contention of petitioner that land in question is not an assigned land - Not acceptable - Impugned order of MRO, in resuming land - Justified - Writ petition, dismissed. **Kusampudi Sarada Vs. MRO, Bapatla, Guntur 2008(3) Law Summary (A.P.) 12 = 2008(5) ALD 522 = 2008(3) APLJ 157 = 2008(6) ALT 85.**

—Secs.3(2) and (3) & 3(5) – Petitioners purchased property *bona fide* for consideration – 2nd respondent, restored land to respondents Nos.3 to 6 as per directions of 1st respondent/Joint Collector, holding that petitioner and his family members are financially sound and they are having Ac.8.38 cents jointly apart three members of family being salaried employees working in Central Govt., and that sale transactions in favour of petitioner are contrary to provisions of Sec.3 (2) & (3) – RDO dismissed Appeal and Joint Collector dismissed Revision filed by petitioner - Petitioner contends that all three Authorities committed serious error in not considering explanation offered by petitioner and that on admitted facts of case, petitioner was entitled to benefit of Sec.3 (5) of Act which provided exception to general Rule in favour of persons who purchased assigned lands being landless poor person in good faith and for valuable consideration from original assignee or his transferee prior to commencement of Act and is in possession of such person - While determining status of landless poor person, shares of all major members of joint family have to be computed on basis of notional partition - EXERCISE OF *SUO MOTU* REVISIONAL POWERS – REASONABLE TIME – STATED – Absence of prescription of any limitation period for exercise *suo motu* power does not authorize authority vested it power to invoke it after a lapse of any length of time, since exercise of an administrative or quasi judicial power is necessarily linked to concept of rule of law and exercise of power after long lapse of time is *prima facie*, arbitrary - If there were lack of *bona fides* on part of petitioner in purchasing property, respondent nos.3 to 6 would not have kept quiet for than 25 years allowing petitioner to enjoy property without any demur – 2nd respondent without applying his mind to these hard realities, exercise his power u/Sec.4 merely 28 and 24 years after two sale transactions taken place – During this time lag, undisputedly petitioner dug a well and developed land by spending considerable money and also raised mango garden – Act does not certainly give a license to revenue authorities by ignoring ground reality that by efflux of time person, who purchased property developed deep interest and expectation therein - While intendment of Act was certainly to prevent transfer of assigned lands from gullible assignees, at same time process of presumption on basis stale claims shall not leave at trial of disaster for *bona fide* purchases after passage of decades – Authorities cannot harm interest of another section by subjecting them to long process of litigation many years after land is purchased - A legislation, which is a boon for one section of society shall not become a

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bane for others, in its purported implementation - Unless there are proper and sufficient reasons such as blatant fraud played by purchaser of assigned lands and same which despite give diligence did not come to light, authorities cannot initiate proceedings beyond reasonable period after assigned land is sold – Lest remedy will become worse than decease - Case of petitioner squarely falls within provisions of Sec.3 (5) of Act as he is a landless poor person and *bona fide* purchaser of property for valuable consideration – Respondent ought not to have initiated action on stale representation of respondents Nos. 3 to 6 after long lapse of time – Orders of Joint Collector, RDO and 2nd respondent – Quashed - Writ petition, allowed. **Madamaneni Chinnaswamy Vs. Joint Collector,Chittoor, Chittoor Dt. 2008(3) Law Summary (A.P.) 245 = 2009(1) ALD(NOC) 5 = 2009(1) ALT 424 = 2008(4) APLJ 156.**

—Sec.3(5) - Petitioner purchased land in various survey numbers from respondents 4 to 6 under registered sale deed - Almost two decades later respondent 4 to 6 approached 3rd respondent/MRO, to resume lands and restore same to them on ground that alienations made by them in favour of petitioner is in violation of provisions of Act, 1977 - 3rd respondent initiated proceedings and after enquiry he resumed lands and restored same to respondents 4 to 6 holding that alienation made in favour petitioner is in contravention of provisions of Act and that there are no bona fides on part of petitioner in purchasing lands as every one in village is expected to know whether land is assigned land or not, and that petitioner possessed total extent of Ac.23.69 cents and not entitled to benefit u/Sec.3(5)of Act - RDO dismissed Appeal and Joint Collector dismissed Revision preferred by petitioner - In this case, 1st respondent/Joint Collector made perfunctory approach - Conclusions arrived at by 3rd respondent that petitioner owned an extent of 23.69 cents at time of purchase of assigned land was his imagination and that he did not owned such land at all and he specifically pleaded that he was owning only Ac.4.13 cents of land apart from pleading that his joint family consisted of his father, himself and his brother - It is obligation of respondents 1 and 2/Joint Collect and RDO, who act as quasi-judicial bodies to adjudicate disputes on basis of facts available on record and not on surmises or report submitted by subordinate Officers - 1st respondent not decided revision in manner in which he ought to have decided - As regards findings of 3rd respondent that petitioner was not a bona fide purchaser, said finding is rendered on a surmise that everybody in village right from shepherd to big land lord is expected to know which are assigned lands and which are not - There can be no such presumption unless there is material to show that petitioner is aware of fact that lands are assigned lands - Order of 1st respondent - Quashed - Matter remitted for fresh consideration - Writ petition, allowed. **Golla Narasappa Vs. Joint Collector, Ananthapur, Ananthapur Dt. 2008(3) Law Summary (A.P.) 125 = 2008(6) ALD 194.**

—Secs.3 (5) & 4 - BOARD STANDING ORDERS, 15, Paragraph 18 - Petitioner's father was assigned Ac.1.25 cents of land and was issued DKT Patta and made

said land fit for cultivation and continued in possession till his death and thereafter petitioner continued in possession and enjoyment of same - 3rd respondent encroached said land and obtained pattadar pass books and title deeds in his favour - 2nd respondent failed to take any action petitioner made, repre-sentation before District Collector to direct 2nd respondent to take action as per provisions Act 9 of 77 - 2nd respondent issued notice calling upon petitioner to showcause as to why D-Form patta granted to him should not be cancelled - Hence present writ petition, contending that impugned show cause notice is without jurisdiction and contrary to order of 1st respondent/District Collector - 3rd respondent contends that land in question sold by petitioner's father to her husband under sale deed and 2nd respondent issued pattadar pass books and title deeds in favour of 3rd respondent and filed suit for permanent injunction against petitioner since interfering with possession and enjoyment of lands in question - As a matter of fact, petitioner's father alienated assigned land long back prior to enactment of Act 9 of 1977 and therefore 3 respondent is entitled to benefit of Sec.3(5) of Act as her husband was landless poor person and purchased assigned lands for valid consideration in good faith - Having made necessary enquiry, it is found by 1st respondent/Collector, though land in question was assigned to petitioner's father same alienated in favour of 3rd respondent's husband and that purchasers are in possession and enjoyment of same for past 30 years - As per Sec.3(5), prohibition shall not apply to assigned land which was purchased by landless poor person in good faith and for valuable consideration from original assignee - Power to cancel power under Paragraph 18 of Board Standing Order 15 has to be exercised by District Collector on grand of suppression of material facts and misrepresentation of facts and that MRO has no power to cancel patta for breach of conditions of D-Form Patta - 2nd respondent is expected to conduct necessary enquiry as contemplated u/ Secs.3 & 4 of Act following procedure prescribed in Rules - However, strangely, 2nd respondent issued notice for cancellation of patta which is beyond scope of Act 9 of 1977 - Impugned notice issued by 2nd respondent is not in terms of directions issued by 1st respondent/Collector - Hence, liable to be set aside - Since admittedly petitioner is not in possession and enjoyment of land in question and that respondents 3 & 4 are in possession of land in question, their possession should not be disturbed except in accordance with law. **B.Mani, Chittoor Vs. Govt., of A.P. 2010(3) Law Summary (A.P.) 361 = 2011(2) ALD 298 = 2011(1) ALT 334.**

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—BSO No.31- REGISTRATION ACT AND STAMP ACT - Petitioner, possessor of certain land, holding pattadar pass book and title deeds, when sought to present a sale deed for registration in respect of said land, same was not entertain on ground that in list of prohibited lands communicated by respondents 2 & 3 to respondent 4 and entire land was shown as assigned land - Respondent having admitted in a counter that pattadar pass books and title deeds were issued in favour of petitioner, averred that petitioner has obtained same by misleading revenue authorities - 3rd respondent maintained that land in that Survey No. is classified as "Govt. AW" and pattadar column was kept blank with dots - Except stating that R.S.R. has described land "Govt. AW", no other revenue record has been referred in counter affidavit nor has been produced by respondents at time of hearing - Mere entry in R.S.R. will not constitute proof of title and in absence of any other revenue record showing land as Govt. land, it cannot be said that there is dispute regarding title - At any rate mere registration of conveyance deed does not create title in transferee - If Govt. feels that property belongs to it, it can always avail appropriate remedy to assert its title and claim property - Mere registration of sale deed would not come in way of Govt. in asserting its right and availing appropriate remedy - 4th respondent directed to entertain sale deed and register same in accordance with provisions of Registration Act and Indian Stamp Act - Writ petition, allowed. **Madiga Papanna Vs. State of A.P. 2011(1) Law Summary (A.P.) 53 = 2011(2) ALD 487 = 2011(2) ALT 2.**

— and CONSTITUTION OF INDIA, Arts.14,19,21 & 300-A – Petitioners purchased land in the years 1989 and 1993 under Registered sale deed and eking out their livelihood by raising Neem, Mango and Teak trees in said lands – Respondent, Government resumed land for purpose to lay Ring Road along with other lands – Respondents contend since petitioners purchased assigned lands which is forbidden under Act, they are not entitled for any compensation - Petitioners contend that subject lands are private lands and not assigned lands - In this case R.S.R., produced before Court, at Cloum no.4 "G" is mentioned and at Cloum no. 16 "dots" are given and as per ratio laid down in Judgment of High Court, same cannot be basis for holding that it is Government assignment land – Admittedly petitioners are given title deed and Pattadar Pass Books to the subject lands under provisions of A.P Records of Rights Act - Having regard to various entries in Revenue Records and various Transactions in respect of subject lands, Writ Petition is allowed - Respondents are directed to initiate appropriate proceeding for acquisition of lands of petitioners and for payment of compensation in respect of lands of petitioners.**Chapati Ramachandra Reddy Vs. The Government of A.P. 2014(2) Law Summary (A.P.) 6 = 2014(3) ALD 776 = 2014(3) ALT 740.**

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A.P. BOARD STATING ORDERS:

—12(3) (iii), 15 (18)G.O.Ms.No.1019, Revenue, (ASN.I), dt:5-10-1994 - Petitioners were assigned house site pattas - 4th respondent/Tahsildar issued show cause notice calling upon petitioners as to why assignment in their favour should not be cancelled, alleging that house site pattas were obtained by four persons belonging to same family - Petitioner contends that Tahsildar is not competent to initiate proceedings for cancellation of assignments and therefore impugned show cause notice is liable to be set aside and that impugned notice is contrary to G.O.Ms.No.1019 and that allegation that assignments were granted to members of same family is unfounded - 4th respondent/ Tahsildar contends that as per A.P Board Standing Orders 12(3) (iii) Tahsildar and Deputy Tahsildar being assigning authorities are competent to order resuumption in case of breach of conditions of grant and that said G.O.Ms.No.1019 not applicable to present case since petitioners had draudulently obtained pattas - Writ petition at stage of show- casue notice is premature unless it is found that such notice was issued without power or authority to initiate proceedings - Therefore only question that requires considration is whether Tahsildar is competent to initiate proceedings for cancellation of assignment granted to petitioner - In this case, admittedly pattas are sought to be cancelled on ground that petitioners had suppressed fact that all four asignees belong to same family and thus they have fraudulently obtained pattas - It is relevant to note that pattas to petitioners did not contain a clause that pattas liable to be cancelled if it is found that pattas are obtained on misrepresentation or by playing fraud - Only condition prescribed in pattas is to effect that land will be resumed in event of violation of any of conditions of patta - It is further contended by petitioner that patta can be cancelled only under conditions mentioned in paragraphs (a) to (d) of B.S.O. 15 12(3) and if for any other reason patta is to be cancelled, it shall be by Collector under B.S.O. 15 (18) - Hence, power of cancellation on ground of fraud or misrepresentation only by Collector - Action proposed is cancellation of patta, but not resumption - District Collector alone is competent to initiate proceedings - Impugned notice issued by Tahsildsar is without jurisdiction - Hence, set aside - Writ petitions, allowed. **B.Suvarna Vs. Govt. of A.P., , 2012(1) Law Summary 298 = 2012(3) ALD 389 = 2012(3) ALT 654.**

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—Petitioner/Landlady filed eviction petition on plea that she requires premises for proposed business of her second son, stating that her son is unemployed and has gained experience in shop of her first son and therefore he requires suit premises to commence his own business in said premises for running general stores and that tenant is not regular in paying rents - Respondent/tenant contends that he is running Clinic in said suit premises since 35 years and also paying rents regularly and not troubled landlady and that land lady and her sons have several non-residential properties

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- During trial first son of landlady was examined her first son as P.W.1 - Trial Court allowed eviction petition on ground of bona fide requirement pleaded by land lady - Appeal filed by tenant against order of Rent Controller, allowed - Hence present Revision Petition filed by landlady - Petitioner/landlady contends that Rent Controller after considering pleadings and oral and documentary evidence, rightly allowed eviction petition, but appellate Court set aside same only on ground that landlady and second son of lady were not examined and just because there is delay in filing eviction petition after issuing notice to tenant, it cannot be said that requirement of suit premises for second son of landlady is not bona fide and that appellate Court erroneously set aside well considered order of trial Court - Respondent/tenant contends that except examining P.W.1, elder son of landlady, no evidence is adduced on behalf of landlady to show that premises was required for running business of second son of landlady and that appellate Court appreciated evidence and arrived at finding which cannot be disturbed in Revision - In this case, respondent/tenant is unable to show that landlady is having other non-residential premises and same is vacant - When P.W.1 deposed himself that he already started business in rice and STD booth, his younger brother wants to start general stores business and that aspect not considered in proper perspective and that appellate Court by taking erroneous view only on ground that landlady and her second son were not examined set aside well considered order of eviction passed by Rent controller - It is not necessary that landlady should be examined when her elder son, who is looking after affairs of family, is examined and that trial Court believed P.W.1 and just because different view is possible, appellate Court cannot reverse well considered judgment of trial Court - Order passed by Rent Controller and view taken by it is reasonable - Appellate Court has taken different view, even though view taken by trial Court is not erroneous - Hence order of appellate Court, set aside - CRP, allowed. **G.Venkatamma Vs. Dr. Vijay Chandra Mathur 2013(3) Law Summary (A.P.) 230 = 2014(1) ALD 347 = 2014(1) ALT 648.**

—Secs. 4 & 22 - CIVIL PROCEDURE CODE, Sec. 151-Revision Petition filed against order lower appellate court upholding rent fixed by trial Court without enhancing rent as prayed for by petitioners - Held, rent legislations were enacted at a time when there is acute dearth of accommodation and owners of premises were exploiting tenants and the situation has changed drastically and plenty of accommodation is available - Rent can be enhanced - Accordingly, CRP is allowed. **G.S.Ashok Vs. Dhirajlal Maganlal Shah (died) Per LRs, 2014(3) Law Summary (A.P.) 100 = 2014(5) ALD 763**

—Sec.4 and 32(c) - "Fixation of fair rent" - "Eviction for willful default" - Land lady filing rent control case for fixation of fair rent after amendment of Sec.32(c) claiming rent of Rs.2,72,610/- per month @ Rs.5/- per sq. feet - Tenant opposed petition filed

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by landlady for enhancement of rent contending that landlady to construct godown with RCC structure and agreed to charge rent at Rs.1/- per sq. feet, but went back on promise and filed petition for fixation of fair rent to harass it and that tenant also took plea that it has been paying monthly tax to a tune of Rs.86,000 per year - FIXATION OF FAIR RENT - Rent controller accepted version of landlady and fixed fair rent of schedule premises at Rs.2,72,610/- per month by enhancing same from Rs.2750/- per month - Appellate authority fixed fair rent Rs.82,000/- per month by partly allowing appeal - Landlady contends that fixation of fair rent by Rent Controller is reasonable and tenant contends that even enhancing rent of schedule premises to Rs.82,000/- is unreasonable and that rent has been abnormal increase from Rs.2750/- per month to Rs.82,000/- - In this case, in fact premises situated in a commercial locality and is leased out by land lady for business purpose is not in dispute and lease was entered into in year 1965 on agreed rent of Rs.1700/- - Appellate authority while dealing with appeal relating to fixation of fair rent u/Sec.4 of Act, kept in mind principles laid down by Apex Court and High Court, such as, locality in which premises is situate and steep increase in rents of Urban properties in these said lands which Apex Court remained that judicial notice of said fact can be taken - Fixing fair rent at Rs.82,000/- per month by appellate authority by partly allowing appeal filed by appellant is based on evidence and reasoning and by following principles governing fixation of fair rent u/Sec.4 of Rent Control Act - No valid grounds to interfere with judgment passed by appellate authority - EVICTION FOR WILLFUL DEFAULT - Rent Controller considering entire evidence on record arrived at finding that tenant committed willful default in payment of complete rent for period alleged in eviction petition and accordingly ordered its eviction - Appellate authority reversed finding of Rent Controller - In this case, Rent Controller was clearly of view that tenant is liable to pay rent as well as municipal tax and other taxes which was agreed to be paid under lease agreement and that even after dates stipulated in lease agreement, tenant shall continue to pay rent as well as taxes under lease agreement and having failed to do so, committed willful default in payment of rent and is therefore liable for eviction - In this case, appellate authority is clearly in error in holding that since there was no separate agreement between landlady and tenant to pay taxes apart from agreed rent after expiry of lease, it is not possible to hold that tenant committed willful default in payment of rent - Questionm, whether there was any separate agreement between landlady and tenant about payment of taxes from actual rent which was agreed does not arise because land lady never consented to continue tenancy after expiry of lease - Conduct of tenant clearly amounts to committing willful default and payment of rent has rightly held by Rent Controller, it is liable for eviction on said ground - Finding of appellate authority being contrary to settled legal principles governing subject is liable to be set aside - Tenant directed to vacate schedule property within two months. **Shakuntala**

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Devi Darak Vs. M/s.Transport Corpn., of India Ltd. Sec'bad 2011(3) Law Summary (A.P.) 46 = 2011(5) ALD 386 = 2011(6) ALT 471.

—Sec.7(a) (i), 7(1), 7(2) & 7(3), 10 (3) (a) (iii) - "Willful default" and "*bona fide* requirement" - Petitioner landlord seeking eviction of respondent/tenant on grounds of willful default and bona fide requirement - Respondent/tenant contends that he deposited Rs.40,000/- with petitioner towards security deposit at time of inception of tenancy, and also sent cheque towards rent for months of February to March 1999, hence contention of petitioner that he is due for rent from March 1999 onwards after adjustment is not correct and that grand son of petitioner not qualified Dentist by date of filing eviction petition and there are no bonafides in claim of petitioner - Rent Controller on issue of willful default came to conclusion since an amount of Rs.40,000/- was deposited landlord, even if respondent fell due in payment of rent same has to be adjusted and therefore, landlord failed to prove that respondent/tenant has committed willful default - On point of bona fide requirement Rent Controller came to conclusion landlord is best judge to decide which ever premises is required by him, and accordingly upheld contention of landlord and ordered eviction - Appellate authority recalled witnesses and further examined them and came to conclusion that landlord have constructed big commercial complex and also obtained vacant possession of other adjacent mulgies and grand son of petitioner may shift his dental clinic in one of premises available with landlords - Thus held landlords have failed to prove that they *bona fidely* require premise and accordingly allowed appeal - Hence present revision by landlord - Petitioner/Landlords contend that mulgies 1 to 4 are in occupation of tenants and mulgi no.5 & 6 are not suitable and useful to grand son of petitioner and that it is for landlord to choose which mulgi is suitable to him to start his own business and that tenant cannot dictate terms to landlord with regard to selection of mulgies and that there is no prior understanding between landlord and tenant that deposited amount should be adjusted towards dues of rents as and when tenant fails to pay rent and that even if tenant paid security deposit he cannot stop paying rents or commit default in payment of rents and plead adjustment of same and that view taken by Court below on this aspect is erroneous and same is liable to be set aside - In this case, admittedly landlords have taken deposit amount of Rs.40,000 and even if one month premium is deducted towards advance, landlord is deemed to be holding a deposit of Rs.39,050/- which is clearly contravention of Sec.7(2) of Act - Therefore amount already in deposit with landlord was rightly adjusted towards arrears of due rents by both Courts below and no interference is called for therewith - BONA FIDE REQUIREMENT - Crucial date for deciding as to *bona fides* of requirement of landlord is date of his application for eviction - Admittedly eviction petition filed in 1997 - As seen from evidence of P.W.2 for whose benefit eviction of tenant is sought he has admitted that he completed his House Surgeon in 1998 and that

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first floor of petition schedule premises was constructed in year 1997 and P.W.2 further admitted that as he was not experienced in profession he did not start private practice in 1998 itself - Thus it is clear P.W.2 had no intention to start his private clinic as on date of filing evection petition - Landlord has to specifically plead and establish factors such as size, quality, suitability and convenience and in this landlord has not pleaded about availability of other non residential premises in his original pleadings - In fact not whispering about other residential premises by landlord amounts to suppression of fact - Provision of Sec.10(3) (a) (iii) of Act is very clear even if bona fide requirement is given liberal meaning, landlord who is owner of more than one non-residential premises should specifically plead and prove as to how other non-residential premises owned by him are not suitable for his own business or expansion of business - Admittedly on date of filing of eviction petition P.W.2 was not prepared to start his own Clinic - It is therefore clear claim of petitioner/landlord is not *bona fide* - Appellate Authority passed well reasoned order and no interference is called for by High Court - CRP, dismissed. **Rayapuraju Venkatarama Rao (Died per LRs) Vs.GangadharanNair 2011(3) Law Summary (A.P.) 302 = 2012(1) ALD 564 = 2012(1) ALT 384.**

—Secs.8, 11, & 10(2) (i) - A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL RULES, 1961, Rule 5(4) and (6) - Tenant contends that Rule 5 (4) is merely directory and any non-compliance, *per se*, cannot be considered as wilful default, in light of Sec.10(2) (i) - Land lord contends that said Rule is mandatory and once tenant opted for taking recourse to Sec.8 of Act and any non-compliance with statutorily prescribed procedure will, *ex facie*, make tenant a wilful defaulter and that Sec.10(2)(i) and Rule 5 governed different situations and are not mutually conflicted - Sec.8 provides a right to tenant paying rent or advance to a duly signed receipt from landlord or his authorised agent - If land lord refused to accept or evades receipt of any rent, tenant can require landlord by notice to specify a bank for deposit of rent and can deposit rent in such bank and relative challan has to be delivered in office of Controller or appellate authority - SECS.8, 11 AND RULE 5 - SCOPE OBJECT AND EFFECT - STATED - Object and effect of Sec.11 and Rule 5 (6) are different from Sec.8 and Rules 5 (1) to (5), former being for protection of landlord during pendency of eviction proceedings and latter being for protection of tenant to avoid any liability for eviction on ground of wilful default - While respective fields in which Secs.8,9 and 10 (2)(i) proviso and Sec.11 operate are distinct and different without transgressing in to each other's limits though capable of creating an illusion of overlapping at times, there is no conflict between provisions of Act *inter se* or with any Rule, more particularly Rule 5 - Where tenant obtains order to deposit rent, same shall be deposited at least by last day of month following that for which rent is payable and rent challan shall be delivered in office of Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit

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under Rule 5(4) within seven days of such delivery - In absence of compliance in so depositing rent and delivering challan in office of Controller, tenant shall be deemed to have committed wilful default. **Mohammed Izhar Ali Vs.Olive Founseca (died) L.Rs. 2008(2) Law Summary (A.P.) 268 = 2008(4) ALD 254 = 2008(4) ALT 147 = AIR 2008 AP 196 = 2008 AIHC 3168.**

—-Secs.10(1), 10 (3) (a) (iii) and 11(iii) - Petitioner, landlord filed petition for eviction of respondent/tenant from petition schedule premises on ground of *bona fide* requirement for purpose of providing passage to entire Complex constructed by him - Respondent contends that petitioner does not require petition schedule property as there is passage on rear side of building - If business premises shifted, he will loose his customers and there is already four feet passage on southern side towards main road and therefore no inconvenience is caused to users of entire premises - Rent Controller on appreciation of entire oral and documentary evidence dismissed RC observing that petitioner is not maintainable u/Sec.10 (3) (iii) (b) of Act as requirement of premises for purpose of passage cannot be treated as for purpose of his business - Appellate authority allowed appeal holding that three feet passage on rear side of premises is not sufficient to pass through a four wheeler and widening of passage by landlord also has to be treated as a *bona fide* requirement - Even in a case where landlord requires additional accommodation for residential purpose or for purpose of business which he is carrying on as case may be he may seek eviction of tenant - "Business" - Meaning of - Business means man engaged in trade or commerce - Thus business includes things dealing with - Merely because landlord constructed Complex for getting more rental income cannot be said that petitioner is not entitled to make further constructions and get more rents - In this case, petitioner is prepared to give alternative accommodation in same complex on rear side and if respondent agrees for same he is prepared to construct required premises within one month - Petition can be allowed on such condition to enable tenant to continue his business - It is duty of Court to do justice to parties - Though in some cases there may be a specific prayer or not, but where Court feels that in interest of justice and interest of both parties if certain directions are required, Court is empowered to give such direction - Order of appellate Court, set aside order passed by Rent Controller is restored with certain modifications - Revision petition, allowed - Petitioner shall provide alternative accommodation to respondent towards main road within one month from date of receipt of order and on providing such alternative accommodation, respondent/tenant shall vacate premises within one month thereafter. **Syed Abdul Wahab Vs. Dr.Wilfred D'Souza 2010(3) Law Summary (A.P.) 254 = 2011(1) ALD 93 = 2011(1) ALT 60.**

—Secs.10(2) (i), 10(2) (iii) - Respondent/landlord filed petition for eviction of petitioner/ tenant seeking vacant possession of premises for self occupation - Rent Controller

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ordered eviction on sole ground of bona fide requirement - Appellate Court confirmed order of eviction - Petitioner/tenant contends that 1st respondent required premises for starting business after his retirement, but died during pendency of RCC and his wife and children who were brought on record have not filed any amendment saying that premises required for running business and that lower Courts erred in coming to conclusion that petitioner is liable to be evicted - Respondents contend that even after death of 1st respondent petition is maintainable as person includes family unit of 1st respondent and as children expressed their intention to carry on business in suit premises under self employment scheme - Requirement of premises by any of family members is certainly requirement of landlord, therefore eviction petition cannot be rejected on that ground - Respondents herein required premises for *bona fide* requirement of doing business under self employment scheme and as there is no alternative premises, Rent Controller came to conclusion that demised premises is required for conducting business of family - Orders passed by Courts below - Justified - Revision petition, dismissed.
Madhyahannapu Narasimharao Vs.Sunkara Srirama Hanumantha Rao(died)
2008(1) Law Summary (A.P.) 399 = 2008(3) ALD 340 = 2008(4)ALT 38.

—Secs.10(2) (i), proviso to Sec.10 (2) and 10(3) (a) (iii) - A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL RULES, 1961, Rule 5 (4) - EVIDENCE ACT, Sec.58 - 'Willful default' - 'Bona fide requirement' - Petitioners/landlords filed petition for eviction of respondents/tenants from non-residential premises on grounds of willful default in payment of rent and bona fide requirement for personal occupation for commencement of business - Rent Controller ordered eviction holding that requirement is genuine and *bona fide*, but negatived allegation of willful default - Appellate Court reversed order of trial Court and dismissed Appeal - Petitioners contend that notice of deposit under Rule 5(4) of Control Rules was never given by tenants and therefore impugned order of appellate authority in reversing finding of learned Rent Controller is irregular - Since admittedly petitioners received copies of challans showing deposit of rents regularly, question of non-compliance with Rule 5(4) does not arise - One should not forget that supine indifference or wanton negligence in payment of rent can only be a ground u/ Sec.10(2)(i) and that proviso to Sec.10(2) mandates that it is only when Rent Controller is satisfied that default in payment of rent was willful, eviction can be ordered - BONA FIDE REQUIREMENT - Though petitioners/landlords took possession of two rooms in building, those rooms are not suitable for commencing proposed business and that it is always choice of landlord to choose suitable building - For purpose of Sec.10(3) (a) (iii) of Act, it is sufficient for tenant to show that landlord own a non-residential building, which is his own and/or to possession of which he is entitled to - Even when in opinion of Rent Controller, landlord proves *bona fide* purpose to commence new business and also owns another non-residential premises which according to him not suitable, still eviction cannot be ordered as it would amount to reading suitability, sufficiency and

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convenience factor into provision, which are very conpicuous by absence - Even while examining bona fide purpose, Controller has to keep in mind conduct of parties, intention of parties motive behind eviction petition and efforts made by landlord to secure tenanted premises - In this case, petitioners/landlord, suppressed factum of owning mulgis and that prior to filing petition, landlords made demand for enhancement of rent - Petitioners not only suppressed facts from Court, but also demanded enhancement of rent - As such inference has to be drawn that plea of requirement for personal occupation for commencement of business is not *bona fide* - CRP, dismissed. **Mohammed Abdul Rahman Vs. Smt.B. Manorama 2008(2) Law Summary (A.P.) 227 = 2008(4) ALD 586 = 2008(4) ALT 702.**

—Secs.10(2)(i) and 2(vi) - EVIDENCE ACT, Sec.32 - Willful default - Denial of title by tenant - Rent Controller on appreciation of oral and documentary evidence, held that jural relationship is proved between parties and that tenants are liable to be evicted - Appellate authority confirmed same - Hence present revision - DENIAL OF TITLE - Wherever there is denial of title by tenant, Rent Controller has to examine whether said denial of title is *bona fide* or not - If it appears that there are no reasonable grounds to believe that dispute raised by tenant is bona fide and if that appears that landlord has *prima facie* title to property or that he can be treated as a landlord within definition of landlord under Act then Rent Controller has jurisdiction to entertain petition - If facts and circumstances reveal that landlord has no title to property or that he cannot be treated as landlord within definition of landlord or denial of title by tenant has some reasonable basis and in view of controversy a declaration is necessary by civil Court to decide dispute of title of landlord, then Rent Controller has to direct landlord to seek declaration from civil Court or direct parties to approach civil Court for appropriate relief - When tenant denies title of landlord, documentary evidence assumes importance - In this case, all receipts signed by tenant - Perusal of receipts makes it clear that rents were collected on behalf of Dharmasaala - Petitioner was collecting rents as Trustee of Dharmasala - When tenant was paying rents to Dharmasala his admission that he was a tenant of petitioner falls to ground - In this case, petitioner who is examined as P.W.1 has categorically admitted that he has not filed any title deeds in respect of petition schedule property to show he is owner and landlord - Therefore, in Rent Control proceedings it cannot be declared that petitioner is owner of property or he is entitled to receive rents - Thus, it is clear that denial of title of petitioner by respondent cannot be said to be baseless or not *boa fide* - Rent Controller need not make a roaring enquiry with regard to title of landlord - However where title of landlord is in dispute, Rent Controller must verify whether such denial of title of landlord by tenant is bona fide or not - Present matter requires a detail consideration by competent civil Court - Lower Courts have mainly relied on deposition of dead person and also failed that rents were collected on behalf of Dharmasala and not

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considered admission of petitioner that there are no documents to establish his title to petition schedule premises - Impugned orders are liable to be set aside - CRP, allowed. **M.Sarojini Devi Vs. Jugal Kishore Sanghi 2011(3) Law Summary (A.P.) 219 = 2011(6) ALD 680.**

—Secs.10(2)(i) and 10(c) - Landlord filed eviction petition on ground of willful default and *bona fide* requirement - Tenant contends that he purchsed schedule premises from landlord on oral sale and he is not tenant under respondent landlord and he is absolute owner of premises - Rent Controller ordered eviction of petitioner/ tenant on ground of denial of title of respondent is not bona fide he also did not pay rent since 2003 and thereby committed default - Order of eviction confirmed by appellate Authority - Executing Court rejecting contention of revision petitioner and issued warrant directing delivery of property - Revision petitioner contends that Courts below ought to have directed parties to pursue there remedies before civil Court before which suit for specific performance of oral contract is pending - Question of reference to civil Court for adjudication of disputes relating to title would arise only if Rent Controller or Appellate Court, as case may be comes to conclusion that denial of title by a tenant is a bona fide one - In this case, only after filing counter by revision petitioner it was revealed that revision petitioner has set up ownership in himself and thereby denied relationship of landlord and tenant between him and respondent - Therefore, it is not necessary on part of respondent/landlord to amend eviction petition adding ground of denying his title by revision petitioner without any *bona fides* - Since revision petitioner disputed very existence of landlord and tenant relationship and set up title in himself under a oral contract of sale, rent Court can order eviction u/Sec.10(2)(i) and 10(3)(a)(i) of Act - Rent Controller as well as appellate Authority have recorded a specific finding that there is no convincing evidence placed by revision petitioner in proof of his acquiring title suit schedule property under oral contract of sale from respondent and thus concurrently held that denial of title by respondent/revision petitioner is not bona fide - Rent Controller and appellate authority have jurisdiction under Act to go into question of title for limited purpose of ascertaining whether their existed any landlord and tenant relationship and also to find out whether denial of title of landlord if any pleaded by tenant is *bona fide* - Suit pending before Civil Court is not an impediment for Rent Courts to order eviction having recorded a positive and definite finding that denial of title by tenant is not *bona fide* - Order impugned in revision petition - Justified - Revision petitions, dismissed. **Umakanth Padhi Vs. Poornachandra Padhi 2011(2) Law Summary (A.P.) 140 = 2011(4) ALD 4 = 2011(4) ALT 271.**

—Secs.10(2)(i) and 10(3) (a)(iii) (b) - Wilful default - Petitioners acquired suit property under registered Will - Tenant occupied ground floor of suit property and doing business in Garments - After death of original owner tenant did not pay rents and committed

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default of payment of three months rent - Hence petition filed for eviction of tenant for wilfull default and bona fide requirement that 2nd petitioner's son needs premises to start his business of his own having experience and knowledge in garments business - Respondent/tenant contends that petition not maintainable since it is filed within three month from date of death of original owner and that he remitted monthly month in name of eldest son of deceased original owner and that 2nd petitioner's son was minor on date of filing of eviction petition and undergoing studies and he has no experience and knowlege in garments business and that there is no bona fide requirement as claimed by petitioners - Rent Controller dismissed petition that tenant not committed any willful default and that 2nd petitioner's son only a student and has no experience in doing business and there is no bona fide requirement for petitioners - Appellate Court upheld findings of rent controller - In this case, suit property situated in heart of city and having business potentiality and therefore findings of Courts below that past experience is pre-condition and that P.W.2 has no past experience appears to be perverse - Evidence of P.Ws.1 and 2 proves that they require suit premises for starting business by P.W.2 and their claim is bona fide one and that findings of Court below are not based on proper appreciation of evidence on this point - What is required to be seen is whether bona fide requirement is genuine or not and whether facts and circumstances of case show that claim is just and reasonable and whether it is made with sole mala fide intention to evict tenant - In this case, reasons given by P.W.2 are genuine - As far as comparative hardship that may be caused to parties circumstances appear to be in favour of landladies - If eviction is not ordered landladies would be put to great hardship when compared to hardship that may be caused to tenant - Courts below ought to have allowed petition on ground of *bona fide* requirement - CRP, allowed. **Yashoda Devi Sarada Vs. Poornima Dresses, 2011(1) Law Summary (A.P.) 234 = 2011(2) ALD 734 = 2011(3) ALT 570.**

—Secs.10(2) (i) and 10(3) (iii) & 32(c) - CIVIL PROCEDURE CODE, Or.14, Rule 12 - Petitioners filed RC seeking eviction - Respondent/tenant raised objection on maintainability of eviction petition on ground that since rent of building is Rs.3500/- p.m. as per amended provision of Sec.32(c) of Act if rent exceeds Rs.2000/- in areas other than Municipal Corporation areas, rent Controller will cease to have jurisdiction to entertain Application for eviction - Admittedly demised premises is situated in Secunderabad Contonment area and therefore it does not form part of Hyderabad Municipal Corporation area and consequently within expression in other areas u/ Sec.32(c) of Act - Rent Controller rejected preliminary objection of respondent - Appellate Court allowed Appeal filed by respondent - In view of undisputed position as rent is shown to have been in excess of Rs.2000 and demised premises falls in "other areas" as per Sec.32(c), of Act, has no application and consequently Rent Controller is denuded of jurisdiction to entertain eviction petition filed by petitioners

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- While ordinarily Rent Controller will not entertain preliminary objections where it was thought fit to entertain such objection and decision is taken, party who did not raise any demur on Rent Controllers power has succeeded before Principle Rent Controller and lost before lower appellate Court cannot be permitted to resile and plead that Principal Rent Controller ought not to have entertained preliminary objection - Perhaps, it is too late in day for petitioners to raise such contention in this revision petition - Order passed by lower appellate Court, justified - Revision, dismissed. **T.M.Nagarani Vs. M/s.Andhra Tiles, 2012(1) Law Summary 254 = 2012(4) ALD 584 = 2012(4) ALT 551.**

—Secs.10(2) (i)(e), 10(2) (v) and 10(3)(iii) and Sec.9(3) - Respondent/land lady filed RCC for eviction of original tenant, who died during pendency of RCC - RCC dismissed by negativing all pleas of willful default, tenant securing alternative accommodation and landlady having *bona fide* requirement - In appellate Court landlady pleaded that original tenant has denied title of landlady and he was liable for eviction only on that ground u/Sec.10(2) (6) of Act - Appellate Court remanded case to Rent Controller for consideration of pleas of landlady - After remand Rent Controller allowed RCC only on ground that original tenant denied title of landlady and same is not *bona fide* - In this case, original tenant received notice from Executive Officer of Ranganadhaswamy Temple Nellore claiming that said T emple is owner of premises in occupation of original tenant and he was, thereby, called upon to pay rents to him instead of respondent landlady - On receipt of said notice, original tenant addressed a letter to respondent landlady informing her that he has received notice from temple thereunder he was asked to pay rents to its E.O and that he is going to pay rents accordingly to Temple and requested landlady to send her comments in that regard - Obviously, caught in this cross fire, original tenant filed Application before Rent Controller u/ Sec.9(3) of Act seeking permission to deposit rents and that after receiving permission original tenant started depositing rents into Court - In this case, finding of both Courts below suffer from serious infirmity - As a conscientious person, original tenant has promptly address letter to respondent by bringing said fact to her notice and inviting her comments on his proposal to pay rents to Temple - Stretching this notice to an extent, same cannot be construed as original tenant denying title of landlady and even after issuing notice, original tenant has not paid rent to Temple - In fact as soon as he has received reply from respondent/landlady he has approached Rent Controller by filing RCC u/Sec.9(3) of Act - This, by itself would indicate that original tenant who was drawn into a deep state of dilemma caught between devil and deep sea, has taken recourse to approaching Rent Controller as he was unable to decide as to who was real owner of subject premises - It is really incomprehensible that both Courts below have treated this act of original tenant as denial of title of respondent - In order to constitute act of denial of title, it must be established that tenant has through

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his express acts conveyed to landlord that he is not owner of property or that he is disputing his title either setting up title in himself or some one else and no such act was committed by original tenant in issuing notice to respondent - Conclusions drawn by both Fora below are based on perverse appreciation of facts and therefore both orders are set aside. **Immadisetty Nagaratnamma (died) Vs. Gostu Prameelamma, 2012(3) Law Summary (A.P.) 231 = 2013(1) ALD 140 = 2013(1) ALT 272.**

—Secs.10(2)(iii), 10(2)(iv) and 12 – Eviction was sought by land lord on grounds that respondent-tenant was committing acts of waste causing nuisance and disturbance to inhabitants of other mulgies and also buildings in vicinity have much demand for demolition and petitioner-landlord intended to develop property by constructing complex in place of existing mulgies – Learned Rent Controller arrived at conclusion that the land lord failed to prove that the respondent has been committing acts of waste and has been causing inconvenience and disturbing neighbouring tenants, but taking into consideration of undertaking submitted by landlord as required u/Sec.12(2) of Act, that on completion of reconstruction of building, schedule premises will be offered to tenant for occupation.

Appellate Court reversed finding on ground that land lord failed to prove that premises is in a dilapidated condition requiring reconstruction.

Held, if landlord satisfies Court that she has financial capacity to reconstruct building and her requirement is bona fide, then Court can pass an order of eviction against tenant u/Sec.12(2) of Act and land lord need not prove that building is in a dilapidated condition and therefore it requires reconstruction.

Accordingly judgment passed by appellate Court is set aside and order passed by Rent Controller is restored. **Meer Mustafa Ali (Died) Vs. Syed Afsar Ali Khan 2016(1) Law Summary (A.P.) 315 = 2016(2) ALD 421.**

—-Sec.10(2)(v) and 10(2)(iii) - “Committing acts of waste” - Landlords’ father given premises leased out premises to father of tenant for carrying on business of petrol bunk - Tenant continued same business after death of his father - Landlords filing petition for eviction on two grounds, one is cease to occupy building for continuous period of four months without reasonable cause u/Sec.10(2)(v) of Act and other ground is committing acts of waste u/Sec.10(2)(iii) alleging that tenant has not been carrying on business since more than 1 1/2 years prior to date of filing of eviction petition since IOC cancelled licence granted to tenant and taken away pump and other equipment and that premises lying vacant without utilization - Since decree obtained in suit by father of landlords on unexecutable landlords filed R.C seeking eviction of tenant - It is also alleged that some rooms in premises have been demolished after filing eviction petition resulting impairment of value and utility of premises as per provisions of

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10(2)(iii) and that tenant is liable to be evicted - Rent Controller having considered oral and documentary evidence came to conclusion tenant has ceased to occupy premises without any reasonable cause - Appellate Court passed order accepting contentions of tenant on both grounds - Hence present revision filed by landlord - SEC.10(2)(v) - Landlord can seek eviction of his tenant wherein a tenant ceases to occupy building for continuous period of four months without reasonable cause - In this case, merely because dispute with IOC and tenant was pending on date of filing of eviction petition, it does not mean that tenant has shown reasonable cause for ceasing to occupy - "Reasonable cause means sufficient cause" - When tenant' licence seems to have been cancelled in 2002 and she could not get renewal or fresh licence in year 2005 i.e. on date of filing of eviction petition and when there is no scope of getting licence and when tenant has suppressed genesis of dispute it cannot be said that tenant has shown reasonable cause for ceasing to occupy - COMMITTING ACTS OF WASTE - Impairment of value or utility of building has to be considered from point of view of landlord and not of tenant or any one else - A tenant may construct a room or a garage for parking car or may make some alterations with consent of landlords or without consent of landlords, but without consent of landlord tenant cannot demolish any structure - Even if a construction is made solely at expenses of tenant, he is not expected to remove same unless without consent of landlord - In this case appellate Court failed to consider that tenant has suppressed genuineness of her dispute with IOC and thereby failed to show sufficient cause for ceasing to occupy building for a continuous period of more than four months before filing eviction petition - Courts below also have failed to take into consideration that certain constructions made by tenant were demolished during pendency of proceedings and that demolition of construction amounts to acts of waste as or likely to impair material value or utility of building - Findings of appellate Court are perverse resulting miscarriage of justice and same liable to be set aside - Eviction petition filed by landlords stands allowed - Accordingly Revision, allowed. **Pradeep Lohade (died) per L.Rs. Vs. Radhika Agarwal 2011(3) Law Summary (A.P.) 248 = 2012(1) ALD 177 = 2012(1) ALT 294.**

—Sec.10(3)(a)(iii) & Sec.4 - "Bona fide requirement" - "Fixation of fare rent" - Landlord/ 1st respondent filed petition for eviction of petitioners from premises on ground of bona fide requirement for his son who is unemployed - Rent Controller allowed eviction petition on ground of bona fide requirement - Rent Controller also disposed of petition filed by landlord for fixation of fare rent - Tenants have filed appeals against orders of eviction and fixation of fare rents - Appellate Court confirmed order of eviction and also confirmed fare rent fixed by Rent Controller - Hence present Cr.Ps - Tenants contend that plea of *bona fide* requirement of landlord in Ex.P.1, notice issued by landlord is completely silent about bona fide requirements and that eviction petition is merely a cloak for extracting higher rents - In fact there is no reference in notice

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to proposed business of landlords, son and that whole emphasis was on enhancement of rent - However in Rent Control petition it is specialty averred that landlord was proposing to commence business for his son - In this case, landlord is examined as P.W.1 and his son was examined as P.W.2 and it is noteworthy that tenants have failed to put suggestions to P.W.1 and P.W.2 in their cross-examination suggesting that plea of bona fide requirement is false - As rightly concluded by both Courts below, by merely failure of landlord to mention about bona fide requirement in Ex.P.1 notice, his plea of bona fide requirement cannot be disbelieved - On careful consideration of reasons assigned by lower appellate Court same do not warrant any interference of High Court in exercise of its revisional jurisdiction - Therefore market rate of rent fixed by Courts below does not call for any interference - Having considered long standing possession of tenants and further fact that they need reasonable time for securing alternative premises, tenants are given six months time for vacating demised premises - Both Cr.Ps are dismissed. **Kiron's Partnership Firm Vs. Mangalagiri Mohammed Ibrahim, 2012(2) Law Summary (A.P.) 248 = 2012(3) ALD 519 = 2012(4) ALT 481.**

—Secs.10(3)(a)(iii), 22- Learned Rent Controller and Additional Chief Judge had recorded concurrent findings of fact that landlord had established requirement of the schedule premises for the bonafide purpose of commencement of business, and that the tenant had failed to establish any of the contentions raised in defence to show the disentitlement of landlord to evict the tenant - Tenant could not point out that said findings suffered from any factual or legal infirmity - Therefore, on careful examination of the facts and evidence, this Court is satisfied that it is not open to this Court in exercise of revisional jurisdiction to interfere with the concurrent findings of the Courts below, more particularly, when such findings are based on proper appreciation of the facts and evidence and are also found to be legally sustainable - Points are accordingly answered in favour of landlord and against tenant - For aforesaid reasons, the Revision is devoid of merit and is unsustainable and is liable to be dismissed - In result, Civil Revision Petition is dismissed. **Syed Ahmed Ali Vs.Shaik Mohd. Bin AbdulBin Ali Ramazan, 2014(3) Law Summary (A.P.) 284 = 2014(6) ALD 296.**

—Secs.10(3)(a)(iii)(a) r/w 10(c) & 20(3) - - A.P. BUILDINGS (LEASE, RENT, EVICTION) CONTROL RULES, 1960, Rule 11(2) - CIVIL PROCEDURE CODE, Or.41, Rule 27(1) - Respondent filed R.C before Rent Controller seeking eviction of petitioner on ground of bona fide requirement - Petitioner/tenant denied title of respondent and consequently, pleaded that there is no jural relationship of tenant and landlord - Rent Controller dismissed R.C upholding objection of petitioner - Aggrieved by said order respondent filed Appeal and pending appeal respondent filed Application u/Sec.23 of Act r/w Or.41,

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Rule 27 of CPC for receiving certain documents by way of additional evidence - Appellate Court allowed not only application but also appeal filed by respondent - Hence present, CRP - In this case, lower appellate Court, not followed proper procedure before considering additional evidence and granting relief in favour of respondent - U/Sec.20(3) of Act, appellate Court shall send for records of case, from Rent Controller and give parties opportunity of being heard and if necessary after making such further enquiry as he thinks fit either personally or through Rent Controller and decide appeal - Rule 11(2) envisages that if appellate Court decides to make further enquiry it may take additional evidence or require such evidence to be taken by Rent Controller - Order of appellate Court cannot be sustained as petitioner was not given opportunity of leading rebuttal evidence with reference to documents filed by respondent and admitted additional evidence at stage of appeal - Order of appellate Court, set aside and case remanded to lower appellate Court for fresh consideration directing to record further evidence either by itself or by directing Rent Controller to record evidence and forward same to it with reference to additional evidence produced by respondents - CRP, allowed. **Agarwal Brothers Vs. Savithri Bai, 2012(1) Law Summary 305 = 2012(3) ALD 3 = 2012(3) ALT 460.**

—Secs.10(3)(c) – Landlady filing RC for eviction of tenant on ground of requirement for additional accommodation to her son and daughter-in-law, are both Doctors – Tenant contends that existing accommodation is sufficient for them and present requirement is neither bona- fide nor genuine – Rent Controller ordered eviction – Lower appellate Court allowed appeal filed by tenant - Petitioners contend that interpretation of Sec.10(3)(c)by lower appellate Court is erroneous and that landlady herself alone can ask for additional accommodation for her requirement and not for requirement for her son or daughter-in-law and that under proviso to Sec.10(3) (c) "relative hardship" must be construed even if requirement is accepted and eviction petition lacks any pleadings in regard to relative hardship and that Rent Controller in his order not focused on hardship to tenant but considered advantage to lady - PARAMETERS OF CONSI-DERING REQUIREMENT U/SEC.10(3) (c) – Stated – Contention of respondent/tenant that lower appellate Court has correctly interpreted provisions of Sec.10(3) (c) of Act and that requirement of any other member of family of landlady would not fall within requirement of landlady as envisaged u/Sec.10(3) (c) is liable to be rejected - In this case, requirement pleaded by petitioners was duly established by evidence adduced on behalf of landlady - 6th petitioner and his wife being doctors it cannot be disputed that they need consultation and treatment to male and female patients separately and are justified in seeking that they should separate consulting clinics so that privacy to patients would be ensured - RELATIVE HARDSHIP – Question with regard to "relative hardship" is required to be considered whenever requirement u/Sec.10(3) (c) of Act is pleaded – It is no doubt true that Rent Controller has used word "inconvenience" as synonymous is that of "hardship",

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and that mere use of word "inconvenience" would not vitiate finding of Rent Controller in his order – Evidence on record fully justifies hardship of petitioners in event of there being denied requirement - Stand taken by tenant is highly abstinent and as such disallowing genuine requirement of petitioners would negate very purpose of Sec.10(3) (c) of Act - Order of lower appellate Court, set aside – Order of Rent Controller in directing eviction of tenant, restored - Revision petition, allowed. **B.Rukmaiah Vs. M.A. Samad 2009(1) Law Summary (A.P.) 43 = 2009(2) ALD 264 = 2009(2) ALT 271 = 2008(4) APLJ 39 (SN).**

—Sec.10(3)(c) - Petitioner/land lord filed RCC for eviction of respondent contending that he bona fidely required RCC schedule shop for doing business in fancy and general stores and that respondent is regular willful defaulter in payment of monthly rents and is liable to be evicted - Respondent filed counter that he is doing business of Cigars in Schedule shop and petitioner really do not have bonafidely need or intention to start business and that he is not willful defaulter in payments of rents and that he would suffer great hardship and lose his livelihood if eviction is ordered - Rent Controller dismissed RCC on ground that petitioner failed to prove his avocation prior to filing of petition for eviction and that he had experience in doing fancy business and that he required to do his business to maintain his family - Appellate Authority dismissed appeal filed by petitioner - In revision High Court remitted back matter to Appellate Authority to consider petitioner need for RCC Schedule shop in occupation of respondent is one for "additional accommodation" by observing that Appellate Authority should give opportunity to both parties to let in further evidence on aspect of bonafide requirement for additional accommodation - Thereafter petitioner amended RCC petition and added paras contending that the other rooms are small in area and one shop is not sufficient and that unless petitioner is put to vacant physical position other rooms including RCC Schedule shop it is not possible for petitioner to start fancy and general store business and that petitioner having no avacation at that time and he is well experienced in business as he was previously managing his brothers fancy stores and therefore he bonafidely require RCC Schedule shop for his personal requirements and for starting fancy and general stores - Appellate Authority again dismissed said Appeal on ground that proviso relevant to Sec.10(3) (c) dealing with additional accommodation enjoins Rent Controller to examine issue of hardship which may be caused to tenant if eviction were to be ordered as against advantage to landlord and that no evidence is adduced in that regard by petitioner landlord and that as per evidence of petitioner he was already having a shop after getting vacated one tenant and that he is not using that shop and that again he is asking eviction of respondent for additional accommodation by way of bona fide requirement and that it is duty of landlord to produce evidence that there is hardship to tenant in order to get him evicted - Petitioner contends that appellate authority erroneously placed burden of proving

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that there is no hardship to tenant on petitioner seeking additional accommodation and that it is for tenant to prove said fact and that tenant failed to adduce any evidence in regard thereto and that land-lord cannot be compelled to resize nature of business which he intends to start - In this case, it is clear that only after order of remand by High Court in CRP, issue of additional accommodation came in to focus and thereafter petitioner amended RCC and included pleadings that respondent tenant filed counter simply stating that he will suffer great hardship and will lose his livelihood and therefore petition should be dismissed and in counter filed by respondent there is no mention whether respondent had made any attempt to secure alternative accommodation in neighborhood or any other facts which would indicate that he would suffer great hardship - In view of categorical admission in his evidence that he did not attempt to secure other premises for his business or to vacate subject premises as rent for neighborhood shops are very high - Appellate authority also erred in holding that it is duty of landlord to produce evidence that there is hardship to tenant if he is evicted from subject premises - In fact burden is clearly on tenant to prove his hardship - In this case, tenant had failed to establish hardship which will be caused to him would outweigh advantage to landlord - Appellate authority has failed to correctly apply principles of law as to burden of proof and also failed to appreciate evidence on record in deciding question whether petitioner has bona fide requirement for additional accommodation and that advantage which would ensure to his benefit is not outweighed by hardship which may be cause to tenant - Tenant directed to vacate premies on particular date - CRP, allowed. **Danduboina Madhava Rao Vs. Kandi Atchiraju (died), 2013(1) Law Summary (A.P.) 185 = 2013(3) ALD 23 = 2013(2) ALT 626.**

—Secs.10(3)(c) & 22 - Petitioners/appellants filed petition u/Sec.10(3)(c) to evict first respondent contending that petitioners require additional accommodation which requirement is bona fide and that hardship to petitioners outweighs requirements of 1st respondent - 1st respondent contends that petitioners have no right to seek eviction u/Sec.10(3)(c) of Act and that 1st respondent has been allotted an independent separate Municipal number and is not part of any other building as such, provisions of 10(3)(c) are not attracted and that requirement of petitioners is not bona fide and business of 1st respondent in schedule premises is only source of income for him and for his family members and that hardship that would be caused to him would outweigh advantage to petitioners - Rent Controller dismissed petition for eviction holding that premises in occupation of petitioners and RC schedule premises are not two separate buildings but are part of same building and that petition for eviction is maintainable to seek eviction of respondent from RC schedule premises under Sec.10(3)(c) of Act; however that it is not possible for 1st respondent to get similar accommodation for business in same locality and therefore hardship which may be

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caused to 1st respondent would outweigh advantage to petitioner, if petition for eviction is allowed - Chief Judge dismissed appeal filed by petitioners land while setting aside the findings of Rent Controller holding that RC schedule premises is a separate building within definition of Sec.2(iii) of Act for all practical purposes and petitioners are not entitled to invoke Sec.10(iii)(c) of Act and that requirement of RC schedule premises as additional accommodation is not genuine and bona fide and 1st respondent is not liable to be evicted from R.C. Schedule premises - Hence, present CRP by 1st and 2nd petitioners - In this case, 1st respondent in his counter merely pleaded that if he is evicted he and his family members will be deprived of their source of income and therefore hardship would be caused to him in event of his eviction will outweigh advantage to petitioners - In his deposition 1st respondent did not say what attempts he made to secure other accommodation in area but merely stated that his family consists of 8 members and their source of income of livelihood from business in RC premises only and in event of eviction he will be put to great hardship - In fact, some hardship is bound to be caused if 1st respondent is disturbed from premises where he had been carrying on business but if he had made no attempt to find out whether alternative accommodation for his purpose is available in same or any other locality it has to be held that hardship caused to him would not outweigh advantage of landlord - Land lord cannot be compelled to live in an inconvenient position merely because he had tolarated it for some time - Advantage to landlord in facts and circumstances of case would clearly outweigh hardship which tenant is likely to suffer because of his eviction - Petitioners have established their need for additional accommodation u/Sec.10(iii)(c) and their need is bona fide and that hardship which would be caused to 1st respondent is outweighved by advantage to petitioners - Order of appellate Authority and order passed by Rent Controller are set aside - 1st respondent, is directed to deliver vacate possession of RC premises to 1st petitioner - CRP, allowed. **Sri Srinivasa Enterprises Vs. Sri Narayanadas 2013(1) Law Summary (A.P.) 324 = 2013(3) ALD 777 = 2013(4) ALT 353.**

—-Secs.11 and 20 - This Civil Revision Petition under Article 227 of Constitution of India by tenant/petitioner/appellant in unregistered RASR is directed against orders of City Small Causes Court, passed in aforementioned unregistered Appeal.

The landlord brought the Rent Control Case in RC.no.13 of 2013 on the file of the Court of the learned II Additional Rent Controller, City Small Cause's Court, Hyderabad for eviction of the tenant. After full fledged trial and on merits, the said Rent Control Case was allowed on 03.06.2014 directing the tenant to vacate and handover physical possession of the petition schedule property to the landlord. Aggrieved of the said orders, the tenant had filed the aforementioned unregistered appeal before the learned Chief Judge, City Small Causes Court, Hyderabad. However, since rents are not deposited while instituting the said unregistered appeal, the Office of the Court

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of the learned Chief Judge has taken an objection for numbering the said appeal. A contention was raised that there is no finding in the judgment of the learned Rent Controller in regard to the period of default and that the tenant is disputing the jural relationship. However, since an order of eviction was also granted to the landlord on the ground of willful default, the learned Chief Judge had refused to register the appeal and had directed the tenant to deposit the rents from August, 2010 onwards to have the Appeal numbered. Aggrieved of the said orders, the tenant had preferred this Revision Petition.

Held, there is an order of the learned II Additional Rent Controller against the petitioner/tenant. Though the said order is being sought to be assailed in the unregistered Rent Appeal, the law ordains that such appeal shall not be entertained unless the rental arrears are deposited. The deposit of rental arrears is a condition precedent for entertaining and proceeding with the hearing of the rent appeal (RA). In the case on hand, the petitioner had not paid to the respondent herein or deposited the arrears of rents at the time of institution of the proposed appeal. The law is clear that Section 11 applies to cases where the jural relationship and the arrears of rent are disputed, but, on enquiry, it is found by the learned Rent Controller that the relationship of landlord and tenant exists between the parties and that the tenant is a wilful defaulter in payment of rents. As held in the cited decision, the purpose of Section 11 is to minimize the hardship to the landlord; by inserting Section 11 in the Act, the legislature clearly intended to give protection to the tenants provided they paid the rent due to the landlord, and continue to pay till the disputes are settled; no tenant can prefer an appeal under Section 20 of the Act unless he has paid the landlord or has deposited in Court, the entire arrears of rent; payment of rent is a condition precedent for entertaining an appeal.

In view of the facts of the case and the settled legal position, this Court is of the well-considered view that the order impugned does not call for any interference. 8. In the result, the Civil Revision Petition is dismissed. **Mohd. Taufeeq Vs. Ahmadi Begum 2016(2) Law Summary (A.P.) 326 = 2016(5) ALD 268 = 2016(5) ALT 680.**

—Sec.11(1), 20 and 22 - Inspite of clear language in Sec.11 of the Act, appellate authority granted stay without imposing any conditions - Respondents should have shown sufficient cause to satisfy appellate authority to pass an appropriate order or should have shown mitigating circumstances for non-deposit of rents - No such attempt was made - Appellate authority observed in a single sentence that payment of defaulted rents cannot be asked to be paid by petitioners/appellants without assigning any reason for such finding - Though decree directs appellants to deposit a sum of Rs.5,500/- towards costs and was noticed by appellate authority, same was also not directed to be deposited - In view of above circumstances, order passed by appellate authority

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is not in accordance with law and remains suspended. **Ameda Nityanandam Vs. Gettu Babu 2015(1) Law Summary (A.P.) 19 = 2015(3) ALD 645 = 2015(2) ALT 414.**

—Secs.11(4) & 10 (2) (a) - CIVIL PROCEDURE CODE, Or.6, Rule 17 - "Subsequent events" - 1st respondent/owner of premises filed petition for eviction against petitioner/ tenant on ground of wilful default in payment of rent - Since 1st respondent died during pendency of R.C, his Lrs, 2 to 6 brought on record - 7th respondent who became owner of premises by virtue of gift settlement deed filed I.A with prayer to permit him to add paragraph to petition, pleading, ground of wilful default, subsequent to transfer in his favour - I.A opposed on ground that 7th respondent came to be impleaded after evidence is completed and arguments heard and amendment not permissible in law - Rent Controller allowed I.A. - Hence present Revision - Petitioner contends that I.A is untenable in law, and if there is an any default in payment of rent, subsequent to filing of R.C, only course open for respondents was to file Application u/Sec.11 (4) of Act - 7th respondent contends that it is always permissible to plead subsequent events in petition u/sec.10 of Act, and that default committed during pendency of proceedings, can also be treated as one of grounds for eviction and that filing of Application u/Sec.11(4) of Act is one of options and is not step to exclusion of plea of eviction, on ground of wilful default - If default in payment of rent is committed during pendency of proceedings not only it can be urged as basis for consequences provided for u/Sec11(4) of Act that is, directing tenant to put landlord in possession of premises, but also can be pressed into service as an additional ground referable to Sec.10 (2) (i) of Act - Since Application u/Sec.11 was already filed, amendment is permissible - In this case, in I.A no oral evidence was recorded and still reference was made to oral testimony - Proper attention ought to have been paid in framing sentences to connote definite idea - Even while moulding relief, proper care not exhibited - Question of directing petitioner to amend prayer does not arise - CRP, dismissed - OBSERVATIONS OF HIS LORDSHIP: "....*That learned Presiding Officer and others, if any, writing orders in similar fashion would note that adjudication of disputes is a respectable function assigned by Society to a Judge and failure to maintain proper quality thereof, would not at all be appreciated by society at large".* **Shankarlal Loya Vs. Ramdev Rathi 2010(3) Law Summary (A.P.) 60 = 2010(5) ALD 800 = 2010(6) ALT 1.**

—Secs.12 , 10 (2) (1), 8 (5) & 22 & RULES 5 (4) & 16 - Rent Controller ordered eviction on ground that tenant secured alternative accommodation and bonafide personal requirement and negatived ground of wilful default - Appellate authority came to conclusion that ground of wilful default has been made out for period of 70 months and accordingly ordered eviction - Appellant/landlord contends that in light of clear evidence available on record, apart from wilful default eviction should have been ordered on grounds

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of bona fide personal requirement and also on ground of securing alternative accommodation - Since it is choice of landlord to choose his own building findings recorded, unsustainable - Respondent/tenant contends that as building was old, respondent-tenant reconstructed same and let out same to tenant as per provisions of Sec.12 of Act and therefore respondent-tenant is not liable to be evicted - Burden is on tenant, when eviction had been prayed for u/Sec.10 (2) (1) of Act to establish that he had not committed any default, much less, wilful default in payment of rent - In this case, specific stand taken by landlords is that no notice of deposit of rent had been given to them after obtaining order u/Sec.8(5) of Act in compliance of Rule 5(4) of Rules - Since tendering of rent was not communicated by way of notice in terms of Rule 5(4) & 16 of Rules, appellate Court is right in coming to conclusion that it was a wilful default - When a tenant takes recourse to section 8 of the Act for deposit of rents into the Court, he has to follow the procedure prescribed therein. If he fails to deposit challans into Court and give notice of deposit or fails to deposit process fee to enable the Court to cause service of notice of deposit on landlord for a considerably long time, it cannot but be held that he becomes a wilful defaulter, thereby creating a right in the landlord seeking his eviction from the demised premises on ground of wilful default - Finding of appellate authority in ordering eviction of tenant on ground of wilful default for about 70 months - Justified - Findings recorded by appellate authority, confirmed - CRPs, dismissed. **Omkar Tele Vs. Mohd. Abdul Rahman 2010(2) Law Summary (A.P.) 248 = 2010(4) ALD 550 = 2010(5) ALT 571.**

—Secs.12 and 10(3)(a)(iii)(b) - A plain reading of the facts and ratios in the cited cases would clearly indicate that eviction petition seeking eviction of tenant from a non-residential building for purpose of intended business of landlord is maintainable and that landlord who requires bona fide building in occupation of tenant which is in a dilapidated condition may simultaneously plead and prove requirement of building for demolition and reconstruction and also his bona fide personal requirement on such demolition and reconstruction - In the case on hand, both requirements are satisfied and are held proved - Accordingly, the points are answered holding that eviction petition is maintainable and revision is devoid of merits - In the result, the civil revision petition is dismissed. **Kesar Bai Vs. D.Kamal Kumar 2015(1) Law Summary (A.P.)** ***255 = 2015(4) ALD 69 = 2015(3) ALT 203.***

—Secs.16 & 22 - Landlady let out some portion of premises to tenant for business purpose and remaining portion of building is used by landlady to maintain in lodge - Landlady filed RCC seeking eviction of tenant on ground of personal requirement - RCC was dismissed on merits and subsequently CMA and CRP also were dismissed and SLP also dismissed by Supreme Court - Thereafter Rent Controller dismissed another RCC filed by landlady on ground that she suppressed material fact of earlier

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litigation which she lost upto Supreme Court and on premise that her claim is barred by res judicata - Requirement sought by landlady in subsequent RC is held to be different one i.e. for expanding her lodge business, whereas initial requirement was to start business in name and style of Gemini Tape Centre and according appellate authority itis not hit by Sec.16 of Rent Control Act - In this case, since landlady disclosed about earlier litigation between her and tenant, it cannot be said that she is guilty of suppression of any material fact and thereby played fraud on Court with a view to have any advantage - Requirement of landlady in earlier RCC is different one in instant case and decision in earlier case does not attract bar u/Sec.16 of Act or principles of Res judicata, since issues arose for determination in both cases are not substantially same - Tenant is directed to vacate premises - CRP, dismissed. **Sri Pydeti Raja Rama Mohana Gandhi Vs. Smt Katreddi Janaki Murthy, 2011(1) Law Summary (A.P.) 313 = 2011(2) ALD 760 = 2011(5) ALT 185.**

—Sec.22 - General rule that High Court will not interfere with concurrent findings of the courts below, is not an absolute rule - Some of well recognized exceptions are where i) courts below have ignored material evidence or have acted on no evidence; ii) the courts have drawn wrong inferences from proved facts applying law erroneously; or iii) the courts have wrongly cast burden of proof - Orders passed by both Courts below, do not fall under any of exceptions referred to herein above - Concurrent findings of fact, reached on an overall consideration of material and relevant facts, by courts below do not, therefore, necessitate interference in revision proceedings under Sec. 22 of Act - Transfer of Property Act, Sec.107 - Mere fact that petitioner did not produce a registered lease deed, to show that she had let out subject premises to respondent, is of no consequence - Lease of immovable property can be established by other evidence, even in absence of a registered lease deed - If there is other uncontroverted evidence available on record to support the claim of grant of lease, that would be sufficient to uphold the decree - De hors instrument, parties can create a lease as envisaged in second paragraph of S. 107 of the T.P. Act - Indian Evidence Act - Admission is best piece of evidence against persons making admission - While evi-dentiary admissions are not conclusive proof of facts admitted, and may be explained or shown to be wrong, they do raise an estoppels and shift burden of proof placing it on person making admission or his representative-in-interest - Unless shown or explained to be wrong, they are efficacious proof of facts admitted (per Avadh Kishore Das v. Ram Gopal (1979) 4 SCC 790) - Rent Control Act- In instant case, it is not as if additional evidence was required by Court to enable it to pronounce judgment - Documents sought to be brought on record are not documents which were discovered later - Documents could have been produced before Rent Controller - Nothing has been averred as to how these documents have any bearing on any of the issues involved in the present case - Even

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in application there is no averment as to relevancy and necessity of document to be brought on record by way of additional evidence, and for it to be read in evidence - It is, therefore, not in interest of justice to allow such an application - CRP fails and is accordingly dismissed. **K.Chengalraya Chetty (died) and Ors. Vs. Gomatheeswari, 2014(3) Law Summary (A.P.) 192 = 2014(6) ALD 236.**

—Sec.22 - CIVIL PROCEDURE CODE, Sec.115 - Petitioners, College Committee filed RCC for eviction of respondent/tenant contending that it is absolute owner of properties belong to Institution and respondent took on lease a small room for running soda shop on monthly rent and paid rent only upto 1994 and thereafter did not pay rents and committed wilful default of payments of rents and that petitioners require RCC schedule shop for their personal use and occupation - Respondent initially filed counter admitting that he was paying rents and that his father served petitioner Institution without any remuneration and expired later; that as gesture of goodwill for services of father of respondent has rendered, Management of petitioner permitted him to run soda shop in premises and also denied that he is in arrears of rent and committed any wilful default in payment of rent - Respondent thereafter changed his Counsel and filed IA before Rent Controller seeking to amend his counter by raising plea that there was no relationship of landlord and tenant between respondent and petitioners and that only vacant site was allotted to father of respondent for services faithfully rendered by him to petitioners without any remuneration and that constructions over said site were made by father of respondent at his own cost - Rent Controller passed orders permitting amendment of respondent's counter and withdrawing admissions made by him in earlier counter and basing on such amended counter Rent Controller dismissed RCC and Appellate Court confirmed order in RCC - In this case, amendment petition destroys admissions made in earlier counter filed by respondent wherein he had admitted that he was a tenant and he was paying rents upto end of 1997 and that there was no default in payment of rent - It is settled law that admission in a pleading cannot be allowed to be withdrawn by way of amendment - In this case, both of Rent Controller and Appellate Authority acted upon said amended counter of respondent and came to conclusion that there is no jural relationship of landlord and tenant and that there is no wilful default in payment of rent by respondent and that petitioners failed to prove that there is bona fide requirement of RCC schedule premises - Both Rent Controller and Appellate Authority have misdirected themselves by taking to account amended counter of respondent raising plea of absence of jural relationship of landlord and tenant and have erroneously came to conclusion that there is no wilful default in payment of rent - Findings of Rent Controller and Appellate Authority cannot be sustained in light of pleadings of respondent in original counter about existence of landlord and tenant relationship between petitioners and respondent - In this case, respondent failed to adduce any evidence in support of his pleading that he had

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paid rents upto 1997 and on other hand, stated in his evidence that no rent is fixed at all for shop in his occupation - Petitioners have made out case for eviction of respondent on ground of wilful default in payment of rent since 1994 - Orders of Appellate Authority and Rent Controller are set aside - CRP, allowed - Respondent directed to vacate RCC schedule premises and deliver vacant possession to petitioners within four months. **Hindu College Committee Vs. Shaik Subhani 2013(2) Law Summary (A.P.) 7 = 2013(4) ALD 361 = 2013(4) ALT 307.**

—-Secs.22 and 10 - Petitioners-landlords filed R.C. u/Secs.10(2)(ii)(a) and 10(3)(a)(iii)(b) of Rent Control Act, seeking a direction to respondent-tenant, and all others claiming under or through him, to vacate and deliver vacant, peaceful, physical and legal possession of petition schedule premises to them - Subject property was let out by their grandmother to grandfather of tenant and after his death, his son carried on business in said property by paying a monthly rent - Petitioners-landlords became absolute owners of property by virtue of a Will made by their grandmother - Respondent owned several commercial properties in same locality - The first petitioner needed entire premises for his personal requirement for commencing some business - Petitioners do not have any other non-residential premises, except petition schedule property - Respondent-tenant had illegally sublet a major portion of ground floor of subject mulgi to a third party who was carrying on business under the name and style of "Saheli Suits"; respondent had also allowed several petty vendors to carry on business in front of premises by collecting a hefty license fee per day - Petitioners came to know of this through reliable sources - Respondent-tenant denied allegations contending that petitioners were not his landlords and neither had he ever paid rent to them nor had they claimed rent at any time as owners of subject property - In his order, Rent Controller held that petitioners, who were the sons of C.Sriramulu and the grandsons of C.Kanakalakshmi, were legally entitled to receive rents from petition schedule property in view Sec.2(vi) of Act - Respondent-tenant was directed to vacate premises within sixty days from date of order, failing which petitioners-landlords were given liberty to evict him from subject property in accordance with law - When respondent-tenant appealed, Additional Chief Judge, City Small Causes Court, held that respondent, who was only a tenant in subject property, had no right to question validity of Will and dismissed appeal confirming eviction order passed - Aggrieved by that order, respondent-tenant filed this revision before this Court.

Held, as has been held by Appellate Court, respondent-tenant has taken contradictory stands - On one hand, he contended that "Saheli Suits" was a shop run by him as its owner, and on other he stated that C.Kanakalakshmi and C.Sriramulu had consented in writing that he could sublet subject property, and consent was given on a stamp paper - He denied suggestion that there was no such document, hence he did not file it before Court, and he was deposing falsely about document

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- In his evidence affidavit, respondent-tenant stated that he was permitted to let out subject property by entering into a partnership with "Saheli Suits" - Fact, however, remains that it is not even his case that he was authorized to sublet premises to a third party - Concurrent findings of fact recorded by both Courts below, that respondent-tenant had sublet premises to "Saheli Suits" without permission of petitioners-landlords, is based on evidence on record, and does not necessitate interference in revision proceedings u/Sec. 22 of Act.

Both on ground of bona fide requirement, and on ground that respondent-tenant had sublet premises without permission of petitioners-landlords, both Courts below were justified in directing his eviction from the subject premises - Order under revision does not necessitate interference - Civil Revision Petition fails and is, accordingly, dismissed. **R.Ajay Kumar Vs. Cheela Narayana Rao 2016(3) Law Summary (A.P.) 158 = 2016(6) ALD 150.**

—Secs.32(B) - G.O.Ms.No.636m Dt.27-10-1983 - TRANSFER OF PROPERTY ACT, Secs.106 & 116 - Suit filed for recovery of possession of suit property, Cinema Hall - While rent control proceedings are pending, notice given to 1st defendant terminating lease and reply notice was given by 1st defendant contending that notice of termination is not valid and not in accordance with Sec.106 of T.P Act since it is not given by all owners - Trial Court dismissed suit on ground that there is no valid notice of termination of tenancy, since it was not given by all lessors - Single Judge allowed appeal observing that it is not necessary to go into correctness of notice as there is no applicability of Sec.106 of T.P Act - Hence present LPA - Appellants/defendants contend that in plaint 1st defendant is described as tenant-holding-over and thereby u/Sec.116 of T.P. Act he is entitled for a valid notice u/Sec.106 of Act and inasmuch as notice not given on behalf of all lessors, appeal should have been dismissed and that single Judge has not considered case of appellants as tenants holding over - Respondents contend that description of appellants as tenant-holding over is by mistake of parties and by applying requirements of Sec.116 of Act appellant does not fit in with status of tenant-holding over - A tenancy is created by consent of parties or conduct of parties - When tenant himself denies status as tenant- holding over and payment of rents only long after lease period expired by efflux of time, it clearly goes to show that he is not a contracting party for continuation of tenancy - Therefore if tenant is claiming benefit u/Sec.116 of Act, he has to show that by conduct or otherwise he was willing to be tenant and landlord had assented to him to continue possession of property and he was paying rent after period of tenancy - In this case, basic requirements of benefit u/Sec.116 of Act are wanting - When all landlords have not assented for continuation of lease after efflux of time, no fresh lease is created u/Sec.116 of Act - Evidently, even before institution of suit, rent control proceedings were instituted and landlord was not interested in continuation of possession of property

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by defendants and there was no acceptance of rents and thereby there is not status of tenant holding over - Appellant cannot take shelter for a notice u/Sec.106 of Act or for a protection as statutory tenant, since rent Act is not applicable - Appellants are only tenants by sufferance and consequently judgment under appeal - Justified - LPA, dismissed. **Bandaru Giribabu Vs. N.V.Satayanarayana Murthy, 2011(1) Law Summary (A.P.) 108 = 2011(2) ALD 623 = 2011(2) ALT 546.**

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—Rule 23(7) - 1st respondent filed RCC against 2nd respondent for eviction from petition schedule premises and same was allowed and in pursuance thereof 1st respondent filed E.P. - Revision petitioner filed claim petition (E.A) in E.P under Rule 23(7) of Act seeking enquiry into matter and dismissed E.P, on ground that order passed in RCC not binding on her and unenforceable against her and that 1st respondent is not landlord and owner of petition schedule premises and that she purchased property under Ex.A.1 registered sale deed and put in possession of property and she is enjoying same by paying taxes and got mutated property in official records of Municipal Corporation - 1st respondent filed counter contending that petitioner's alleged vendor is no other than his mother and that she executed registered settlement deed in his favour during her life time - Petitioner contends that basing on Ex.A.1 registered sale deed, she filed suit for declaration and permanent injunction and same was decreed and as such Claim Petition filed by petitioner should have been allowed by Rent Controller as injunction is operating on 1st respondent - 1st respondent contends that 2nd respondent who is no other than husband of revision petitioner was inducted by 1st respondent as tenant and 2nd respondent paid rents to 1st respondent, as such, landlord and tenant relationship is existing and order of eviction passed by Rent Controller and same has to be executed and that order of eviction passed against tenant can be executed against a person claiming to be a transferee of tenancy rights - After considering evidence of both oral and documentary, Rent Controller dismissed Claim petition filed by revision petitioner - In this case, when civil Court had declared title of revision petitioner and granted injunction in her favour and against 1st respondent, Rent Controller cannot dismiss Claim petition filed by revision petitioner and proceed with execution of eviction order passed on RCC - Rent Controller cannot decide question of title to immovable property - When title of landlord is in dispute, Rent Controller has no jurisdiction to decide title - In this case, when 1st respondent has already filed a comprehensive suit for possession and other reliefs in respect of petition schedule premises against revision petitioner and others it is appropriate that rights of revision petitioner and 1st respondent are decided in that suit instead of deciding issue in E.P herein which is summary in nature - Order of Rent Controller in dismissing claim petition filed by revision petitioner - Erroneous - Impugned order, set aside - CRP, allowed - However 1st respondent is at liberty to seek for eviction

of revision petitioner, after suit filed by him is decreed. **Eedi Anjali Devi Vs. Chagantipati Lakshminarayana @ Srinu 2013(3) Law Summary (A.P.) 52 = 2014(4) ALD 447 = 2013(5) ALT 644.**

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987:

—Secs.2(13), 2 (29), 8, 29(2) (3) (5) & (6), 35, 36,37 and 39 - Powers of Commissioner, Deputy Commissioner and Asst. Commissioner of Endowments Department to suspend temple employee discharging functions of Executive Officer [person-in-management (PMI)] and Liability of Religious Institution of temple to pay salary of PIM who on transfer works in other temple – Stated - (a)Officer holders and servants of any charitable religious institution or endowment authorized to perform functions and discharge duties of EOs of an institution cannot be treated or considered as EOs appointed under Section 29(2) and (3) of the Act read with Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Subordinate Service (Non-Gazetted) Rules, 2002; (b)Officers and holders authorized to perform functions and discharge duties of EOs cannot be treated as Government servants under Section 29(6) of Act, and therefore, they cannot be paid salary, allowances, pension or other remuneration out of Consolidated Fund of State; (c)Andhra Pradesh Civil Services (Classification, Conduct and Appeal) Rules, 1991 have no application to EOs appointed under Section 29(2) of the Act. As a corollary, these Rules are not applicable to office holders and servants of temple who are authorised to discharge functions of EOs; (d)The Commissioner and/or Assistant Commissioner of Endowments are not competent to suspend a temple employee performing functions and discharging duties of EO as authorised by Commissioner under Section 29(5)(d) of Act; and (e)It is competent to trustee/board of trustee or EO, as case may be, to take disciplinary action against temple employees and temple employees discharging functions of EO in accordance with Office Holders and Servants Punishment Rules, 1987 - If trustee or board of trustee or EO fails to take such action including action to suspend a temple employee pending enquiry, then alone Commissioner and/or department officers can take action - Impugned orders of suspension, qushed - Writ petition No. 241815 of 2005 and Writ appeal No.150 of 2006, allowed. **N.Ravindra Murthy Vs.Shri Veerabhadra Swamy Temple,Bonthupally, Medak 2008(2) Law Summary (A.P.) 20 = 2008(3) ALD 372 = 2008(3) ALT 287 = 2008(2) APLJ 33 (SN).**

—Secs.6, 15, 18, 19 and 29 and A.P.Charitable and Hindu Religious Institutions and Endowments, appointment of Trustee Rules, 1987 - By proceedings of the Deputy Commissioner, Endowments, petitioner was appointed as single trustee - There has never been a complaint of mismanagement of affairs or misuse of funds of the subject temple - While so, by proceedings of the Deputy Commissioner, Executive Officer Temple, is appointed as single trustee - The said proceedings are challenged in this

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writ petition - Held, admittedly, the procedure as envisaged in the Act read with Rules 1987 is not followed before appointing the 6th respondent as single trustee - Such appointment is ex facie illegal as no such power is vested in the Deputy Commissioner to appoint a single trustee without following due procedure - Furthermore, there is merit in the contention urged by the learned counsel for the petitioner that in accordance with the provision contained in section 18(d), person appointed as a trustee, more so if he is a single trustee, should have sufficient time and interest to attend to the affairs of the institution - Admittedly, the 6th respondent is an Executive Officer of big temple, which is located far away from the subject temple - Therefore, it cannot be expected that 6th respondent would be able to spare sufficient time and interest to attend to the affairs of the subject temple - The clause in Section 18(d) has to be given due weight - It is in the interest of proper administration of the temple - The very purpose to appoint a single trustee is defeated if a person so appointed is unable to spare his time to the temple - Thus, in terms of the provision contained in section 18(d), the 6th respondent is not qualified to be appointed as single trustee - For all the reasons stated above, the order impugned is not sustainable - Accordingly, the writ petition is allowed. **Guduru Ramalingeswara Vs.The State of Andhra Pradesh 2015(3) Law Summary(A.P.) 101.**

—Sec.6(c)(ii), 9,12 & 28 - G.O.Ms.No.81, Revenue Dt.25-1-1989 - Basing on complaint, 1st respondent/Regional Joint Director, Endowment issued Memo no.A/650/2009, dt.18-8-2009 dispensing with operation of Bank account jointly by petitioner/one of the founder trustees of Temple and Executive Officer - Petitioner contends that 1st respondent/Joint Commissioner is not appointing authority and has no competence or jurisdiction to take action against Trustee u/Sec.28 of Act - Respondent contends that as petitioner holding joint cheque power to operate Bank account which was being misused, joint cheque power was dispensed with pending enquiry and that impugned order was not disciplinary action as contemplated u/Sec.28 of Act, it is only as administrative measure to prevent illegal activities of petitioner - Admittedly Temple was registered as institution falling under provisions of Sec.6(c) of Act and Asst. Commissioner is administrative authority for same subject to administrative control of R1/Regional Joint Commissioner and in view of complaints received and to ensure better administration and to avoid to mis-management and misuse of funds impugned memo issued dispensing with operation of Bank account jointly by petitioner and Executive Officer - It is to be noted that it is not a case of suspension or removal or dismissal of a Trustee - Impugned order merely as effect of withdrawing joint cheque powers from petitioner - It is therefore not a case of 1st respondent usurping powers u/Sec.28 of Act - There is nothing on record to show that impugned order is visited with civil consequences and does not suffer from any illegality - On other hand petitioner is not entitled to assail impugned order as no legal right is vested in or conferred

on petitioner to operate Bank account jointly along with Executive Officer - Executive Officer alone is competent authority to operate and maintain bank account of Temple in view of Sec.29 (5) (b) (iv) of Act - Petitioner who is founder Trustee cannot claim that he is entitled to operate Bank account jointly along with Executive Officer - W.P. dismissed. **K.Shankar Reddy Vs. Regional Joint Commissioner, Endowments Dept., 2010(1) Law Summary (A.P.) 275 = 2010(3) ALD 239 = 2010(3) ALT 702 = AIR 2010 (NOC) 655 (AP).**

—Sec.77 and Sec.85,82 & 83 of Act 30 of 1987 – A.P (A.A) INAMS (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1956 – CIVIL PROCEDURE CODE, Or.39, Rules 1 and 2 - Petitioners contend that land to an extent of about Ac.400 endowed by Nawabs to CHALIVENDRAM, is under their possession and enjoyment and are paying revenue to Govt. – Said Chalivendram, Institution brought under provisions of Endowment Act and that Deputy Commissioner of Endowments issued proceedings dt.2-8-2007 directing eviction of encroachers over land belonging to Institution - Suits and appeals against taking over of land by Endowment Department, were dismissed - Petitioners contend that valuable rights have accrued to them on account of long standing possession and respondents have no right to interfere with their possession and that at no point of time they were put on notice bringing Institution under purview of Endowment Department or for trying to evict them and that procedure prescribed u/Sec.83 of Act not followed and that with abolition of Inams, ryots are entitled to ryotwari pattas – Respondent contend that petitioner did not derive any right over land in question and all of them are liable to be evicted - In recent past, properties held by religious endowments particularly agricultural lands have become very soft targets of encroachments by organized groups vested interests and in some cases by agencies of Govt. itself - Very object of public spirited and nobale indi-viduals in endowing valuable properties for effective maintenance of endowments and institutions is being defeated - It is not as if persons, who are said to be in enjoyment of property, owned by endowment or institution are without remedies – They could have approached authorities under Act, concerned enactment or a civil Court, for adjudication of their rights – Petitioners do not claim to have approached any authorities to seek enforcement of their rights – Hence, no relief can be granted to petitioners – Order passed by Deputy Commissioner of Endowment, dt.2-8-2007 shall be enforced and land resumed to Institution shall be dealt with, strictly in accordance with provisions of Act 30 of 1987 – Writ petitions, dismissed. **Mandala Penchalaiah Vs. S.P. of Police, Nellore 2008(3) Law Summary (A.P.) 209 = 2009(1) ALD 218 = 2009(1) ALT 664.**

—Secs.83,84 & 143 - Petitioners have perfected their title of subject land by way of adverse possession and it was contention of petitioners that 3rd respondent-Mutt has no manner of right, title or interest to claim whatsoever in respect of subject

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land in which petitioners' houses are situated - That subject land does not come within purview of Section 83 of Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 - That being so, 2nd respondent upon an erroneous view and contrary to provisions of Section 83 of Act of 1987, forwarded eviction proposals submitted by 3rd respondent and in that regard, notices were issued to petitioners and that 1st respondent registered same as O.A - Petitioners, who are respondents in above OAs filed counters and basing on same, without considering pleas of petitioners herein, 1st respondent passed impugned Common Order declaring petitioners as encroachers over OA schedule premises as same belongs to 3rd respondent Mutt and directed petitioners to vacate OA schedule premises under their possession and to handover vacant physical possession of same to Mahant of 3rd respondent Mutt, within 15 days from date of receipt of order, failing which, action as contemplated under Section 84 of Act of 1987 shall be initiated against them - Aggrieved by same, present writ petitions are filed.

Held, in view of Secs.143 of Act, plea of adverse possession is not tenable as it has no application to lands belong(ing) to 3rd respondent Mutt - Even otherwise, petitioners have not adduced any evidence to show that they are in continuous possession - It is pertinent to note that when Govt., acquire(d) subject property and granted pattas to petitioners, 3rd respondent Mutt filed writ, wherein plea relating to title of 3rd respondent-Mutt was recognized and upheld by Government and so called pattas granted in favour of petitioners were cancelled, by virtue of which, C.C.No.1138 of 1996 filed by 3rd respondent was closed by this Court - Therefore, petitioners miserably failed to prove that they are owners of subject property - Even otherwise, a presumption can be drawn in favour of 3rd respondent Mutt as per Section 87 (4) of Act of 1987 and it is for person claiming property to prove otherwise - In this case, petitioners could not prove same, as such, presumption is also attracted in favour of 3rd respondent Mutt.

First respondent rightly considered all aspects in proper perspective and came to conclusion that petitioners are encroachers and liable to be evicted - When conclusions of authority are based on evidence, same cannot be re-appreciated by this Court in exercise of its powers of judicial review - It is only in cases where either findings recorded by administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on basis of material available that Court would be justified to interfere in decision - Scope of judicial review is limited to decision making process and not to decision itself, even if same appears to be erroneous.

In view of above discussion and also having regard to facts and circumstances of case, Court do not find any error in award passed by 1st respondent - Writ petitions are devoid of merits - Accordingly, writ petitions are dismissed.

K.Satyanarayana Vs. The Depy. Commissioner Endowment Dept., Hyderabad
2016(1) Law Summary (A.P.) 29 = 2016(2) ALT 589 = 2016(1) ALD 533.

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\—Secs.83, 84 & 151 - Deputy Commissioner Endowments passing order declaring 1st respondent as encroacher and directing him to handover vacant land to temple and in case of default initiate action u/Sec.84 - Single Judge of High Court dismissing writ petition filed by respondent with liberty to file suit u/Sec.84(2) of Act - Appellant/temple contends that 1st respondent was declared as encroacher u/Sec.83 of Act by Deputy Commissioner and that order of single Judge again giving liberty to 1st respondent to institute suit u/Sec.84(2), is unsustainable since he is not claiming any title and furthermore competent Courts have already declared temple as absolute owner - A person who is permitted to be in possession of land of religious institution or endowment by way of lease, license or mortgage, is barred from instituting a civil suit - In present case, 1st respondent, admittedly not disputing title of appellant-temple and as such is barred from instituting civil suit - Observation of single Judge that 1st respondent has an alternative remedy under Sec.84(2) of Act and further giving him liberty to file a suit - Unsustainable. **Sri Sanjeeva Anjaneya Swamy Vari Devasthnam Vs. T. Dasaradharamayya 2009(1) Law Summary (A.P.) 400 = 2009(2) ALD 356 = 2009(2) ALT 431.**

—Secs.83, 84(2) & 143 - SPECIFIC RELIEF ACT, Sec.34 - Trustee of a Temple, 1st respondent filed O.A for eviction of appellant contending that temple is situated in 632 sq.mts in T.S.No.60 and that appellant had encroached in an extent of 133.3 sq.yds with structures thereon - Appellant contends that premises under his occupation are those with house Number and they have been purchased by his wife through a sale deed - Deputy Commissioner, Endowment allowed O.A and order of eviction became final - Appellant filed suit u/Sec.84(2) for declaration, contending that 1st respondent has no right, title or possession over plaintiff schedule premises and that property was purchased by his wife - Trial Court dismissed suit - G.P contends that petitioner suffered an order of eviction and that suit was filed only to resist eviction - A suit u/Sec.84(2) can be filed only by those who possess title and not being a registered owner and that appellant lacked competence to file suit and failed to discharge his burden - Normally, law provides for relief of declaration as to right that exist in plaintiff - Declaratory relief is claimed as a prelude to assert rights of either category such as recovery of possession or injunction - Suit contemplated u/Sec.84(2) of Act is not one for declaration of rights in respect of property in plaintiff - It is for declaration to effect that defendant in this does not hold title of property - In ordinary course, plaintiff in a suit has to prove his right or title pleaded by him - However in a suit filed u/Sec.84(2) of Act, nature of burden to be discharged by a plaintiff is totally different - For all practical purposes he has to prove a negative fact, viz., absence of title in defendant therein - It is not even necessary that plaintiff must prove his title as a necessary concomitant - Once it emerges that appellant did not claim title himself, nor he alleges that he is in possession and enjoyment of premises bearing No. suit filed by him was totally untenable - As a matter of fact a suit u/Sec.84(2)

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of Act can be filed only in relation to property which is subject matter of proceedings u/Sec.83 of Act - At any rate alleged rightful owner is wife of petitioner and he did not implead her as a party - In clear and categorical terms, 1st respondent asserted its title over property - Appeal, dismissed. **S.Mohan Singh Vs. Bhairavi Matha Temple 2009(3) Law Summary (A.P.) 121 = 2009(6) ALD 235.**

——Sec.83(1) - CIVIL PROCEDURE CODE, Order 7 Rule 11 - Petitioners herein filed their counters to said applications and also filed interlocutory applications under Order 7 Rule 11 CPC praying Tribunal to reject Original Applications for their eviction from petition schedule premises - In support of their applications they have stated that they are not encroachers but tenants for more than 60 years and no cause of action arose between them and respondents - A counter was filed by the original applicants stating that the Original Applications were filed indicating proper cause of action and petitioners herein come under definition of 'encroachers' as defined under explanation to Sec.83(1) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Tribunal considered applications, counter filed by parties and held that in view of details given in Original Applications, present applications filed by tenants cannot be entertained - Accordingly it dismissed applications by separate orders - Challenging said orders, present Civil Revision Petitions are filed.

In light of issue raised by petitioners in present applications filed before Tribunal, it has to be seen whether provisions of Code of Civil Procedure in toto are applicable to Original Applications filed before Tribunal or not and whether applications filed by tenants can be entertained by Tribunal.

Held, thus, it is clear that procedure prescribed in Rules made by Government alone are applicable and other provisions of CPC cannot be invoked while dealing with petitions filed before Tribunal - Rules are self-contained and does not give any scope for application of provisions of CPC - In view of above clear position of law, rules framed by Government in year 2010 alone govern procedure before Tribunals and provisions of CPC are not applicable - Accordingly, both Civil Revision Petitions are dismissed. **Ghanshyam Jaju Vs. Asst. Commissioner, Endowments Dept.,Nizamabad 2016(2) Law Summary (A.P.) 135 = 2016(5) ALT 331 = 2016(4) ALD 330.**

—Sec.84 - **CIVIL PROCEDURE CODE,** Or.39, Rules 1 & 2 - CRIMINAL PROCEDURE CODE, Secs.197,198,156 and 482 - 2nd respondent/tenant of a shop belonging to Temple committed default in payment of rents - Disputes pending in civil Court regarding arrears of rent - Deputy Commissioner Endowment passed order directing petitioner/tenant to vacate shop - Tenant obtained order of *status quo* from civil Court against petitioners/accused and thereafter petitioners accused 1 to 3 high handedly entered into shop and caused damage to property in shop - Hence, 2nd respondent filed

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987:

complaint against petitioners - Magistrate took cognizance of offence u/Secs.166,447,448 and 428 IPC against accused - Hence present petition filed to quash entire proceedings in CC contending that even if allegations pursuant to orders passed by Deputy Commissioner, Endowments and that Magistrate ought not to have taken cognizance of case in absence of required sanction against petitioners who are public servants discharging their legitimate duties and remedy if any of 2nd respondent is only civil remedy for violation of orders passed under Or.39, Rules 1 & 2 - In this case, taking steps for physically evicting 2nd respondent is not an offence since it is in accordance with provisions of Endowments Act and there is a reasonable nexus between official duty and act allegedly committed by petitioners in discharge of their duties - Amended Endowments Act authorizes petitioners to remove encroachment even with help of police as provided u/Sec.84 of Act when encroacher even after passing of eviction order by Deputy Commissioner, Endowments failed to vacate premises involving petitioners in a criminal case therefore, is misconceived and it nothing but abuse of process of law - Proceedings in CC quashed - Criminal petition, allowed. **P.Guruprasad Vs. State of A.P. 2011(1) Law Summary (A.P.) 203 = 2011(1) ALD(Crl) 731 = 2011(1) ALT (Crl) 310.**

—Sec.87, 87(c),87(1)(c),87(5),83, 84(2), 85 & 91 - CIVIL PROCEDURE CODE, Sec.115 - Deputy Commissioner passed orders dismissing petition filed u/Sec.87 for declaration of particular Mutt as private temple intended for worship - District Judge passed order against order of Deputy Commissioner - Hence present revision filed by E.O seeking to assail orders of District Judge in present CMA - Petitioner/E.O raised preli-minary objection as to very maintainability of Appeal filed before District Judge and that having regard to provisions as contained under Act, appeal lies only to High Court, but not District Court - Respondent contends as against any orders passed by Deputy Commissioner, necessarily appeal has to be filed only before District Court, since as contemplated under very same provision no Tribunal has been constituted and therefore, it is procedure under repealed Act, which has come into action - Admittedly/Tribunal is not constituted at relevant point of time and as regards Sec.87(5) of Act, in absence of Endowments Tribunal being constituted, Deputy Commissioner having jurisdiction can entertain appeal and enquire into all such matters and therefore since there was no Tribunal, respondent approached Deputy Commissioner and set up claim and same ultimately dismissed - However, fact remains Sec.88 of Act contemplates right of appeal against decision of Endowments Tribunal u/Sec.87 of Act "that any person aggrieved by decision of Endowment Tribunal u/Sec.87 and Sec.119 may, within 90 days from date of receipt of decision prefer an appeal to High Court" - Admittedly in this case, responent has not approached High Court against said order - Admittedly, under earlier ligislation, appeals were provided only to District Court, but not straight to High Court - Having regard to said contraversy it cannot be said that they have intended to take

A.P. CHIT FUNDS RULES, 2008:

away statutory power of right of appeal to High Court - A right of appeal necessarily has to be provided by statute and cannot be implied under any circumstances - Even u/Sec.91 of Act, High Court is conferred with powers of revision only against orders, where no appeal is provided, but not otherwise - Order on CMA passed by District Judge, set aside - District Judge directed to return original papers of appeal to respondent - CRP, allowed. **E.O. Group Temples, Srikakulam Vs. Sri Sakhiya Matt 2010(3) Law Summary (A.P.) 80 = 2010(5) ALD 739 = 2010(6) ALT 16.**

—Secs.155, 83, 87, 17(1), Explanation - I - At the instance of petitioner/sole hereditary Trustee of Temple, eviction proceedings initiated against 2nd respondent/encroacher of property belonging to temple - Deputy Commissioner passed order declaring 2nd respondent as encroacher, directed removal of encroachment and deliver vacant possession of property to petitioner - Since 2nd respondent failed to deliver possession of property in his occupation, 4th respondent/Asst. Commissioner requested Police to provide Police assistance for removal of encroachment and handover physical possession to 5th respondent-E.O of Temple - Petitioner contends that impugned letter addressed by Asst. Commissioner to Police is quite contrary to order passed by Deputy Commissioner and that Asst. Commissioner has no power to alter order passed by Deputy Commissioner - E.O. contends that petitioner has not been acting in interest of Temple and high-handedly utilizing services of temple employees and interfering with affairs of temple - In this case, Board of Trustees as provided u/Sec.15 of Act 1987 has not been constituted to temple in question so far, and that unless and until Board of Trustees is constituted, petitioner cannot claim any right to administer affairs and manage properties of temple and that as petitioner has not been appointed as a Trustee, property in question was rightly directed to be delivered over to E.O - In this case, charges were framed against petitioner relating to several grave irregularities such as mis-management, maladministration and misappropriation of Temple Funds - Mere fact that 4th respondent/Asst. Commissioner initially directed delivery of vacant possession to founder family member does not confer any legally enforceable right on petitioner to take possession of property in question, since he is not entitled under law to manage temple properties - Writ petition, dismissed. **Anant Prasad Ganerwal Vs. Government of A.P. 2010(3) Law Summary (A.P.) 108 = 2010(6) ALD 268.**

A.P. CHIT FUNDS RULES, 2008:

—Rule 17(3) - A.P. CHIT FUNDS ACT, Sec.89 - Petitioner challenges that Rule 17(3) as arbitrary and discriminatory and violative of Arts.14, 19 (1) (g) and 21 of Constitution of India - Subscribers are not denuded or deprived of assistance of an agent, absolutely - What all impugned provision is, employment of foreman or a member of his family to act as an agent or subscriber for purpose of participating in a chit auction - Impugned provision is clearly structured to ensure that there is no conflict

A.P. CINEMAS (REGULATION) RULES, 1970:

of interest, which is potentially situation if foreman acts not only for chit fund company but also for subscriber - Impugned provision is enacted to ensure public morality and suffers from no infirmity warranting its invalidation - Writ petition is misconceived - Hence, dismissed. **M.Purijagannadh Vs. State of A.P., 2010(2) Law Summary (A.P.) 419 = 2010(5) ALD 436 = 2010(5) ALT 410.**

A.P. CINEMAS (REGULATION) RULES, 1970:

—Rules 8 (b) (2) and 9 (a) - Cancellation of "No Objection Certificate" - Petitioner/Firm was granted "No Objection Certificate" by licensing authority-Joint Collector for construction of 70 MM permanent theatre - When construction was almost completed order passed cancelling "No Objection Certificate" as well as construction permission on complaint that a Mosque is situated within prohibited distance of 182 metres - Contention that having failed to get injunction order in civil suit, Mosque brought influence on licensing authority and authority erroneously cancelled "No Objection Certificate" as well as construction permission - It is stated that on complaint Joint Collector alongwith RDO and MRO inspected site and found that there is a Mosque and other educational institutions and a temple are existing within 182 metres from Theatre which would lead to communal disturbances and therefore "No Objection Certificate" and construction permission cancelled - It is stated as on date of inspection and grant of NOC and also permission to construct Theatre, there was no any educational institutions, hospitals and place of worship and after satisfying that proposed construction of theatre was in accordance with Rules and therefore all concerned authorities recommended for NOC - Once building permission was granted, that NOC cannot be cancelled and so also building permission, unless particulars furnished by petitioner are found incorrect or any fraud has been played in obtaining NOC as well as building construct permission - Subsequent existence of so called Mosque itself is illegal and it is not there either on date of application or at time of grant of NOC as well as grant of construct permission and therefore impugned cancellation of NOC and constructions permission by Joint Collector is illegal and unsustainable - In this case, undisputedly Mosque not at all constructed by obtaining any permission - Under Municipal Laws a place of worship cannot be constructed without prior permission of District Collector and so called Mosque itself was brought into existence without having any permission to construct building and it is situated within residential area, whereas cinema Theatre is in Central Commercial Zone - It is duty of Government to maintain law and order problem, but authorities cannot allow such things to exist unlawfully objecting lawful persons who were proceeding construction of cinema Theatre after getting NOC and permission to construct same in accordance with law - In this case, petitioner proceeded with construction and even if any educational institutions, place of worship comes into existence at a later point of time, same cannot operate as violation of such grant of NOC and construct permission

A.P. CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1991:

- Action of Joint Collector in cancelling NOC and construction permission is illegal, unsustainable and contrary to Rules - Impugned order, set aside - Writ petition allowed. **Marri Pushpal Reddy Vs. Joint Collector & Licensing Authority, Medak 2008(2) Law Summary (A.P.) 207 = 2008(4) ALD 336 = 2008(4) ALT 517.**

A.P. CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS, 1980,

—And CIVIL PROCEDURE CODE, Or.VII Rule. 14 r/w Or. XIII Rules 1to 3 and 7- Petitioner is defendant in the suit - Suit was filed for possession over the suit plot of an extent of 2281.5 square feet out of Survey No. 122 - Issues in the suit were framed on 27-01-2014 - Plaintiff filed an affidavit in lieu of chief examination on 19-03-2014 - Plaintiff filed the documents on 30-04-2013 - Out of said documents, during course of evidence of P.W 1, Exs. A6 to A10 were already marked - When the plaintiff sought to mark the memorandum of understanding dated 21-10-1980, which was shown at serial No. 6 of the list of documents filed on 30-04-2013, defendant raised an objection for marking the document stating that the same was not mentioned by the plaintiff in his plaint and he should not be permitted to mark the document without pleading the same in his plaint - Trial court overruled the objection - This Civil Revision Petition is directed against that order - Since, in instant case, order of trial court speaks of receiving of document only without passing a judicial order on its admissibility, the defendant can as well raise his objection as to its admissibility at a later stage, and the trial court shall consider the same and pass appropriate order thereon - Objection relating to relevancy of document need not be decided at time of marking the document - It relates to admissibility and can be raised by the time of pronouncement of judgments - Though plaintiff has not sought leave of court while filing list of cocument on 30-04-2013, subsequent to filing of the plaint, this court considers the said defect as an irregularity and not an illegality. Since Exs. A6 to A10 were already marked from out of list of documents, it is assumed that trial court has permitted such filing of documents. However, the trial court, hereafter, should scrupulously follow the provisions of CPC while receiving and marking the documents - C.R.P disposed of accordingly. **G.Sukender Reddy Vs. M.Pullaiah, 2015(2) Law Summary (A.P.) 1 = 2015(4) ALD 194 = 2015(3) ALT 575.**

A.P. CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1991:

—Government, dismissing petitioners/employees from service under G.O.Ms.No.91 invoking Rule 25(1) since convicted on criminal charge and same upheld by Administrative Tribunal - Another Division Bench of High Court allowed writ petitions filed by petitioners, employees holding that in view of pendency of criminal appeal as well as suspension of sentence imposed by ACB Court has not become final and in view of pendency of criminal appeal and suspension of sentence, order of dismissal is not sustainable,

A.P. CO-OPERATIVE SOCIETIES ACT, 1964:

consequently setting aside said dismissal order of Tribunal directed State to reinduct applicants forthwith - Hence State questioned said order in present batch of writ petitions - Respondents contend that disciplinary authority must apply its mind to facts and circumstances of each case, and should not mechanically pass orders of dismissal or removal merely based on conviction - Gravity of charge and punishment imposed must satisfy test of proportionality - In view of several pronoun-cements of Supreme Court and High Court of A.P, there is no room for doubt as to how State disciplinary authority must act in a situation where Govt., employee is convicted of a serious offence - Power of dismissal or removal exercised by State/disciplinary authority in such cases has been held to be in public interest - It has also been held that continuing such officer in service could not only be against public interest but would also demoralize other honest officers - Impugned orders of Tribunal are set aside and A.Os filed by respondents are dismissed - Writ petitions, allowed. **State of A.P. Vs. P.Rajasekhar 2010(1) Law Summary (A.P.) 36 = 2010(1) ALD 595 = 2010(1) ALT 468.**

A.P. CO-OPERATIVE SOCIETIES ACT, 1964:

---Secs.2(n), 3, 60, 83(3) -Writ petition filed for a Mandamus to set aside Proceedings of respondent No.1 whereby he has authorized respondent No.2 to file a criminal complaint against petitioner - Proceedings u/Sec.60 were initiated for alleged misappropriation of a certain amount by petitioner - Initially a surcharge order was passed by Joint Registrar/District Cooperative Officer - Said order was questioned by petitioner by way of an appeal - Appeal was allowed and case was remanded to original authority - After remand, Deputy Registrar of Cooperative Societies, has passed a fresh order wherein petitioner was found guilty of misappropriating a part of amount belonging to Cooperative Society, along with the then Paid Secretary - Petitioner, stated, instead of questioning said order has paid entire amount of Rs.85,735/- payable under the surcharge order - Following surcharge order passed against petitioner, respondent No.2 has approached respondent No.1 for sanction of petitioner's prosecution - Impugned proceedings respondent No.1 has granted sanction - It is this order which is questioned in this writ petition - Held, Mere absence of such a provision u/Sec.83(3), does not denude an appointee u/Sen.3(1) of Act of exercise of specific power conferred on him by Government - Therefore, it is not correct to contend that persons other than the Registrar appointed u/Sec.3(1) of the Act can exercise powers only if a particular statutory provision under the Act permits such exercise - Hence, submission of petitioner that respondent No.1 has no jurisdiction to sanction prosecution of petitioner is without any merit - At best it could be said that where in respect of any power that is exercisable by persons appointed under sub-section (1) of Sec.3 of Act as Registrars, the Registrar of Cooperative Societies may issue general directions and in such a case such Registrars shall not act in violation of such directions - In instant case, it is not the pleaded case of petitioner that

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impugned sanction of prosecution granted by respondent No.1 against petitioner is contrary to any of such general directions issued in exercise of his powers of general superintendence by the Registrar of Cooperative Societies - Writ petition is therefore dismissed. **Thota Tata Rao Vs. The District Collector Krishna Dt.at Machilipatnam 2015(2) Law Summary (A.P.) 352 = 2015(5) ALD 482 = AIR 2015 (NOC) 1196 (Hyd.)**

—-Secs.21-B, 23-B & 61 - Petitioner is a director of Managing Committee of The Dharmavaram Co-operative Town Bank Limited - A show-cause notice was issued by bank on petitioner that he had deliberately not attended meetings on three occasions in spite of issuing notices to him to attend the meetings - It was also alleged that on 20.09.2013 after a General Body meeting was held, he had given a statement to Mee TV news channel in the premises of Bank that Bank will become bankrupt and depositors should take back their deposits - It was further alleged that this was telecast was made not only on 29.09.2013 but also on 30.09.2013 and thereby acted detrimental to interests of Bank - It was also alleged that on 26.09.2013 itself petitioner had withdrawn a sum of Rs.12,63,913/- which he had deposited in Bank by closing his deposit and crediting it to his Savings account - Petitioner was asked to show-cause why he should not be removed as a Director of Bank for these acts within fifteen (15) days from date of receipt of notice - Allegations were denied by petitioner through a reply registered post - It was rejected by resolution of Managing Committee of Bank - It was approved by General Body.

The Deputy Registrar under Sec.61 of the Act held that notice was not properly served and resolution by Managing Committer were not proper as required quorum was not there - This order was questioned by the Bank in O.A.No.70 of 2014 before the Andhra Pradesh Co-operative Tribunal at Vijayawada under Section 76(1) of Act - Tribunal dismissed appeal confirming findings of the Deputy Registrar.

Challenging the order passed by the Tribunal, W.P.No.2785 of 2015 has been filed by the Bank. The petitioner in W.P.No.33312 of 2014 however filed the said W.P.No.33312 of 2014 to implement the order passed by the Deputy Registrar on 26.07.2014 in A.R.C.No.1 of 2013.

Held, having regard to above findings that notice of three meetings was not served on petitioner in accordance with procedure prescribed under Act, and there was no quorum for atleast two of those meetings, disqualification of petitioner under Section 21-B by Managing Committee of Bank or its ratification by General Body are void ab initio - Consequently, Court not find any merit in W.P.No.2785 of 2015, and it is accordingly dismissed - So Bank has no choice but to implement order passed by the Deputy Registrar as confirmed in Andhra Pradesh Co-operative Tribunal - Therefore, W.P.No.33312 of 2014 is allowed, and the Bank which is impleaded as 5th respondent therein is forthwith directed to give effect to said orders. **Addagiri Gopal Vs. State of A.P. 2016(1) Law Summary (A.P.) 520 = 2016(3) ALT 714 = 2016(5) ALD 513.**

A.P. CO-OPERATIVE SOCIETIES ACT, 1964:

--Secs.34(a) and 76 - Petitioner is President of Primary Agricultural Cooperative Society Limited - On requisition dated made by some of the members of Society to take up motion of no confidence against petitioner, Deputy Registrar of Cooperative Societies-respondent No.3, by notice dated 07.06.2016, decided to convene meeting of no confidence motion against petitioner on 24.06.2016 - Against said order, petitioner moved Telangana Cooperative Tribunal, by filing an appeal u/Sec.76 of the Cooperative Societies Act, 1964 - Tribunal adjourned matter to 24.06.2016, day on which no confidence motion was to be taken up - Along with appeal, petitioner filed I.A. to stay motion of no confidence against petitioner - The impugned memo dated 22.06.2016 was issued by respondent No.1 staying motion of no confidence scheduled to be held on 24.06.2016 - Petitioner, having strength of members to face no confidence motion, withdrew I.A. filed before Tribunal - Writ Petition is filed questioning impugned memo dated 22.06.2016 on ground that respondent No.1 did not have jurisdiction in matters relating to no confidence motion as same is governed by provisions of Cooperative Societies Act, and, in particular, Sec.34(a) of Act.

Held, arguments of learned Special Government Pleader that passing of orders by Minister are on account of ignorance or wrong guidance cannot be accepted and countenanced as Minister holding a cabinet rank either deemed to be aware of or to be made aware of settled legal principles, more so with respect to jurisdiction and scope of power which he can exercise - Even assuming that Minister is not aware of, respondent No.1, being Principal Secretary, ought to be aware of and is duty bound to educate public representative of scope of power which he exercises and ought to exercise - There cannot be any ignorance especially by administrative officers who are manning State and, in whose hands, entire affairs of Sate and lives of people are placed by entrusting governance - Impugned memo dated 22.06.2016 is ultra vires as it is passed without authority and conduct of petitioner, by no stretch of imagination, can be said to be blameworthy for reason that what all he has done is, admittedly, he exercised right of appeal u/Sec.76 of Act - Merely because, an individual aggrieved by an act approaches forum constituted under statute which has jurisdiction to redress grievance, such conduct cannot be said to be blameworthy - On other hand, blameworthy conduct is of respondent No.1 or one who has directed to pass such an order without jurisdiction - Writ petition is allowed with costs. **B.Vijay Kumar Reddy Vs. State of Telangana 2016(3) Law Summary (A.P.) 115**

—Secs.61 & 51 - Appellant, widow of Ex-Secretary of Co-operative Rural Bank, who is 3rd respondent in writ petition, in which single Judge directed fresh proceedings against her for alleged misappropriation of Bank's funds by her deceased husband and others - Enquiry initiated u/Sec.51 against all persons including husband of appellant who died during pendency of enquiry, and orders passed u/Sec.60 against appellant's husband - Tribunal set aside order passed against appellant's husband - Single judge

A.P. CO-OPERATIVE SOCIETIES ACT, 1964:

issued directions to proceed against appellant and other legal repre-sentatives of deceased, Ex-Secretary - Appellant contends that as her husband died during pendency of enquiry u/Sec.51 of Act, cause has automatically ceased to survive and therefore direction given by Single Judge that proceedings u/Sec.61 of Act shall be initiated against appellant and other legal representatives cannot be sustained - Bank contends that u/Sec.61(1)(c) of Act any dispute, inter alia between Society and heir or legal representatives of any deceased Officer or deceased employee can be referred to Registrar for a decision - In view of said provision directions given by single Judge referring dispute to Registrar for decision - Justified - Expression 'dispute' referred to in Sec.61 does not comprehend a dispute of nature, which is now sought to be referred, viz., whether deceased Ex-Secretary has committed misappro-priation or not - Admittedly appellant's husband was involved in management and business of Bank and appellant being wife, is undoubtedly heir or legal representatives of deceased Ex-Secretary of Bank - Therefore, no reason to restrict scope of Sec.61 to exclude dispute of nature which has arisen in instant case, viz., whether husband of appellant has misappropriated Bank's funds - Sec.61(c) of Act clearly enables Bank to refer dispute to arbitration to decide as to whether husband of appellant has misappropriated Bank's funds - Order of single Judge - Justified - Writ petition, dismissed. **A.S.N. Aravinda Vs.Mallidi Tirupayyagiri Venkata Reddy 2010(2) Law Summary (A.P.) 326 = 2010(4) ALD 522 = 2010(4) ALT 806.**

—Secs.61, 62(4) & 128 & Rule 49 (4) of Rules - 1st respondent, member of Army Housing Co-operative Society, who was allotted flat, entered into agreement to sell flat and received substantial amount - 4th respondent, Arbitrator /Divisional Cooperative Officer passed order directing petitioner to pay balance amount with interest - Co-operative Tribunal set aside award in toto, holding that Arbitrator has no jurisdiction to entertain disputes relating to specific performance of contract in respect of immovable property - Petitioner contends that relief sought by petitioner before arbitrator for a direction to 1st respondent to execute register sale deed was part and parcel of affairs of 2nd respondent, Society and therefore, arbitration proceedings maintainable and that Tribunal committed grave error in setting aside award in toto on erroneous assumption that Arbitrator had no jurisdiction - A plain reading of Sec.61 shows that certain classes or types of disputes arising between certain classes of persons alone can be referred to Registrar - A dispute regarding disciplinary action taken by Society or its committee against paid employee of Society has been expressly excluded from purview of Sec.61 - Admittedly it is not complaint of petitioner that there was any irregularity in allotment of plot or any other activity/ business of 2nd respondent Society - In this case dispute raised by writ petitioner cannot be termed as a dispute calling within purview of Sec.61 of Act - Conclusions of Tribunal that Arbitrator had no jurisdiction to entertain dispute relating to specific performance of agreement of sale cannot be

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found fault with -Contentions of petitioners rejected - Writ petition dismissed. **V.Shravan Kumar Vs. Lt.Col.S.B. Sharma 2010(3) Law Summary (A.P.) 281 = 2011(1) ALD 385 = 2011(1) ALT 1.**

—Secs.61 (1) (b), 62 (1) and 121 - Govt., assigned certain extent of land to N.G.Os Cooperative Building Society for alloting house sites to members and said Society got prepared layout marking house sites for allocation and for some specific public purpose, that is parks, play ground, school, religious places etc. - Layout plan was also approved by Director Town planning - Defendant Society sold certain vacant sites meant for parking under registered sale deeds, contrary to byelaws of Society and in violation of approved lay out plan of Society - Arbitration Application filed before District Cooperative Officer seeking declaration that sale deeds executed by 1st defendant in favour of other defendants are null and void and for cancellation of allotment of disputed site to 2nd defendant - Defendants contend that arbitration Application filed u/Sec.61 (1) (b) not maintainable as Welfare Association is not member of Society and other plaintiffs are also not members - Arbitrator took cognizance of dispute in view of dismissal of suit on file of Senior Civil Judge, where in, it is held that Civil Court has no jurisdiction to entertain case - Arbitrator held that sale covered by sale deed is null and void and therefore cancelled - Suit filed by Welfare Association - Decreed - Appellant Tribunal dismissed appeals confirming award passed by arbitrator - Petitioner contends that Divisional Cooperative Officer has no authority or jurisdiction to decide dispute of this nature or grant relief prayed for declaring sale deeds as null and void - Sec.61(1) - Perusal of provision would show that any dispute touching constitution, management or business of Society other than a dispute regarding disciplinary action taken by Society or its committee against a paid employee of society can be referred to Registrar - Before a dispute can be referred to arbitration u/Sec.61 (1), it must be shown that said dispute is one touching constitution, management or business of Society - Admittedly present dispute regarding alienation of certain extents are not disputes touching constitution or management of society - In present case, disputes pertains to alleged alienations of vacant site by society to petitioners who are non-members and such alienations does not form part of business of Society nor is one to nature of promoting objectives of society - 2nd respondent/arbitrator appears to have decided dispute usurping jurisdiction of civil Court - Impugned order passed by 2nd respondent as confirmed by 1st respondent Tribunal suffers from lack of inherent jurisdiction to entertain or adjudicate upon dispute, which is found to be not a dispute touching business of Society - Impugned award of 2nd respondent/ arbitrator as confirmed by 1st respondent/Tribunal held vitiated for want of jurisdiction and are set aside - Writ petitions, allowed. **M.Venkataramana Vs.The A.P. Cooperative Tribunal, 2010(2) Law Summary (A.P.) 122 = 2010(4) ALD 500 = 2010(4) ALT 34.**

A.P. COURT FEE AND SUIT VALUATIONS ACT, 1956:

A.P. COURT FEE AND SUIT VALUATIONS ACT, 1956:

—Secs.6,34, 50,29, 21 and 22 - Pecuniary jurisdiction - Junior Civil Judge passing order holding that he did not have jurisdiction to entertain suit as its value was in excess of Rs.1 lakh and directed to return plaint - District Judge reversed order holding that suit had been properly valued at less than Rs.1 lakh and same was within pecuniary jurisdiction of Junior Civil Judge - Hence revision by defendants - As per Sec.6(1) of Act plaint in such a case is chargeable with a fee on aggregate value of all reliefs claimed - However, proviso thereto clarifies that if a relief sought is only ancillary to main relief, plaint shall be chargeable only on value of main relief - In this case, plaintiffs claimed partition and separate possession of both A and B schedule lands - However, as they were not in joint possession of plaint schedule land, they separately sought recovery of possession in so far as this land was concerned - Other prayers in suit are for injunction restraining defendants from interfering with possession and enjoyment of plaintiffs over plaint schedule land and for cancellation of Form-13(B) certificate issued by MRO under provisions of ROR Act - Case of defendants is that plaintiffs would have valued suit for partition of A and B schedule lands and as a distinct and independent relief was sought with regard to delivery of plaint B schedule land, it has to be separately included in such valuation which would then be in excess of Rs.1 lakh and take suit out of pecuniary jurisdiction of Junior Civil Judge - Case of plaintiff is that they sought partition of A and B schedule lands out of which plaint A schedule land was in their joint possession along with defendants but plaint B schedule land was not in their possession and therefore they separately sought in recovery of possession in respect thereof - These reliefs were accordingly valued u/ Sec.34 of CF Act which put valuation of suit at less than Rs.1 lakh and that recovery of possession prayed for by them was incidental to relief of partition and therefore same could not be treated as independent and distinct relief to be valued separately - In so far as prayer for partition and separate possession of plaint A schedule land is concerned, it would fall u/Sec.34(2) of Act and as fixed Court fees is fixed thereunder, valuation of this relief for purpose of jurisdiction would have to be dealt with u/Sec. 50(2) - In this case aggregate value of reliefs for purpose of jurisdiction comes to Rs.93,257/- - Valuation of suit for purpose of jurisdiction as per Sec.50(1) of Act is therefore less than Rs.1 lakh and Junior Civil Judge had pecuniary jurisdiction to entertain same - Order of appellate Court - Justified - CRP, dismissed. **Venpati Sridevi Vs. Atla Narsimha Reddy 2011(3) Law Summary (A.P.) 5 = 2011(5) ALD 787 = 2011(6) ALT 154.**

—Sec.11(2) - This Revision Petition is filed under Article 227 of Constitution of India challenging the order of District Court - Petitioners valued relief of perpetual injunction notionally at Rs.18.00 lakhs and relief of declaration to declare above documents as null and void also at Rs.18.00 lakhs and paid court fee thereon which was contended

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by respondents - Court below allowed said I.A. and directed the petitioners to value the suit insofar as relief of "declaration declaring 107 sale deeds as null and void and not binding on plaintiffs" as per valuation certificate Ex.A-1 issued by Sub Registrar, filed by respondent Nos.1 to 7 valuing suit schedule property at Rs.47,52,27,500/-, and pay the Court Fee thereon before 14-08-2012 failing which it directed that plaint would be rejected - After referring to case laws cited by both sides, Court observed that there is no prayer for declaration of title sought by petitioners in plaint and they had sought only injunction simplicitor; that without seeking relief for declaration that petitioners are absolute owners and possessors of the suit schedule property, petitioners want to declare all the 107 documents executed by some of defendants as null and void and not binding on them; the relief of injunction simplicitor, which is shown as main relief in plaint, cannot be treated as a main relief when the relief of declaration of whatever nature is added to it, and at best it can be treated as a consequential/ancillary relief - It held that whenever a declaration is sought for, it is incumbent on the part of petitioners to value suit as per Sec.24(d) of Act and for that purpose, they should take the total value of suit property into consideration - Held, the Court below also erred in observing that relief of injunction simplicitor cannot be treated as main relief since relief of declaration is also prayed for by petitioners in the plaint - In the facts and circumstances of present case, relief of injunction sought by petitioners has to be held to be a main relief and cannot be said to be an ancillary relief - Reliance on Sec.24 by Court below in this regard also cannot be sustained since provisions therein would be attracted only if petitioners have sought a declaration of their title and sought relief of possession/injunction or if they sought for a declaration that documents to which they are parties are null and void or a declaration of any nature other than one sought for in the plaint - Said provision would have no application in a situation where petitioners are not parties to documents which they wish to be declared as null and void and not binding on them - For above reasons, the Court of opinion that the impugned order cannot be sustained - It is accordingly set aside and C.R.P. is allowed. **Nade Ali Mirza Vs. Khalida Mohammed Salim Dawawala 2015(3) Law Summary (A.P.) 341.**

—Secs.20, 49,50 & 6 – Petitioner/appellant/defendant preferred appeal before District Court against decree and judgment of Senior Civil Judge – Office took objection relating to payment of Court fee – District Judge upheld office objections - Petitioner contends that objection raised by office cannot be sustained and that merely because plaintiff in suit wrongly calculated and paid excess Court fee, defendant also cannot be directed to pay said Court fee and that appellant has to pay Court fee that would be payable on decretal amount on subject matter of appeal, but not on same amount paid by plaintiff in suit - In this case, respondent/plaintiff in suit before trial Court filed suit based on four promissory notes and Court fee was paid on different causes of action – For each of

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such promissory notes valuing every claim separately u/Sec.20 r/w Sec.6 of Act, but appellant did not pay court fee on respective promissory notes amounts covered by four individual causes of action of suit, but however, appeal was valued on entire decree amount with subsequent interest till date of presenting appeal – Office raised objection and matter called on bench – District Judge referring sections 20, 49 & 50 and 6 of Act recorded reasons and upheld objections of office in directing petitioner/appellant to value Court fee by separately showing each of pronotes amounts decreed with subsequent interest till date of appeal on respective sums separately and not on lump sum amount - When parties are common for purpose of convenience even on strength of more than one promissory note, one suit would be instituted, but on that ground itself it cannot be said that inasmuch as cause of action is one, court fee to be paid in lump sum computing all amounts due on all promissory notes – Separate Court fee need to be paid and respondent, plaintiff had correctly valued suit by paying separate Court fee – Objection raised by office, upheld by District Judge – Justified – Petitioner/appellant directed to comply with objections of office relating to DCF – CRP, dismissed. **Ranga Parameswari Vs. Ranga Ramadevi 2008(3) Law Summary (A.P.) 185 = 2008(6) ALD 334.**

—-Secs.24(b), 24(d), and 43 - **A.P. RIGHTS IN LAND & PATTADAR PASS BOOKS ACT, 1971 – CIVIL PROCEDURE CODE,** Order 7, Rule 11(b) – Lower Court held that plaintiffs have undervalued relief of claim to pay court fee in plaint, that plaintiffs have to pay court fee u/Sec.24(b) of AP CF & SV Act, but not under Section 24(d) of the said Act and consequently directed plaintiffs to pay the court fee on one-half of market value of property i.e., on Rs.33,09,60,000/-, as per Section 24(b) of the APCF & SV Act, as market value of suit property as per Ex.A.1 was Rs.66,19,20,000/-, and they have to pay the court fee after deducting the court fee which has already been paid, within a period of 30 days and it was also held that in event of not paying the court fee as directed, plaint shall be rejected as per Order 7, rule 11(b) of CPC.

Held, relief sought for by appellants is for a declaration of title basing on their long possession over and above 12 years - Such a relief has to be asked specifically and directly but not by an indirect method by twisting facts for sole purpose of avoiding court fee - As already said, for correction of entries in the record of rights on ground that they were not properly made cannot be instituted against government or its officials - Such a relief cannot be granted by court in view of specific bar enacted in Section 8 of the A.P. Rights in Land & Pattadar Pass Books Act, 1971.

The learned trial court thus considering material averments in plaint, rightly held that plaintiffs have to pay court fee u/Sec.24(b) of the AP CF & SV Act and they cannot value the suit separately u/Sec.43 and 24(d) of the AP CF & SV Act.

In view of facts and circumstances of case, order of learned trial court does not require any interference of this court in present appeal - Consequently, appeal is dismissed. **Mohan Singh Vs. K.Suryanarayana 2016(1) Law Summary (A.P.) 388 =2016(3) ALD 653 =2016(2) ALT 626.**

A.P. COURT FEE AND SUIT VALUATIONS ACT, 1956:

—-Sec.34(1) - Original suit was filed for partition and separate possession of suit property claiming that it was ancestral property and remained still a joint property - According to petitioners/plaintiffs, the 1st, 2nd and 3rd defendants had alienated agricultural land in favour of 4th, 5th and 6th defendants with a dishonest and malafide intention and said alienation, being a sham and collusive one, was not binding on them - Trial Court recorded that as possession was delivered, question of petitioners/plaintiffs claiming joint possession did not arise and directed petitioners/plaintiffs to pay ad valorem court fee u/Sec.34(1) of Act of 1956 - Plaintiffs filed this revision petition against order.

Held, when petitioners/plaintiffs specifically averred that alienation effected under the sale deeds was a sham and nominal one and that it was not binding upon them, trial Court could not have gone by contents of said documents to exclusion of plaint averments, which read to effect that property in question was a joint family property and that without prior partition, share falling to lot of petitioners/plaintiffs had been alienated unlawfully - As to what would be impact of such alienation on joint possession claimed by petitioners/plaintiffs was a matter which essentially fell for consideration during trial - The finding of Court at threshold, while dealing with valuation of suit for purpose of court fee, that petitioners/plaintiffs could not claim joint possession therefore effectively decided one of crucial issues arising for consideration in main suit - This approach on part of trial Court was completely unsustainable in law.

Going by plaint averments, petitioners/plaintiffs were entitled to pay court fee u/Sec.34(2) of the Act of 1956 - However, as observed by this Court in judgments cited power u/Sec.11 of Act of 1956 would be available to trial Court and in event issue of valuation of suit and payment of proper court fee thereon arises at a subsequent stage, trial Court would always be at liberty to take recourse to use of such power - Civil revision petition is allowed - Trial Court is directed to accept court fee on subject suit u/Sec.34(2) of Act of 1956 and proceed in matter accordingly. **N.Savithri Vs. N.Hanmappa 2016(3) Law Summary (A.P.) 422.**

—Secs.34(1), 34(2) and Sec.11(1) (a), 11(1) (b), and 11(2) - CIVIL PROCEDURE CODE, Or.18 - Petitioner/plaintiff filed suit for partition of suit properties and allot 1/4th share to her - Defendants filed written statement denyning plea of plaintiff that suit property is joint family property and that joint possession and enjoyment claimed by plaintiff has also been specifically denied contending that defendants are in possession and enjoyment as evidenced by revenue records - On basis of pleading in written statement, defendants filed Application seeking direction to plaintiff to pay Court fee under Sec.34(1) of Court Fee Act contending that plaintiff who is not joint in possession of suit property cannot maintain suit for partition on payment of fixed Court fee u/Sec.34(2) of Act - Trial Court allowed Application and directed plaintiff to pay Court

A.P. COURT FEE AND SUIT VALUATIONS ACT, 1956:

fee u/Sec.34(1)on market value of property claimed by plaintiff to her share - A plain reading of Sec.34 shows that in a suit for partition Court fee shall be computed on market value of plaintiff's share if plaintiff has been excluded from possession of joint family property in terms of sub-sec.(1) of Sec.34 - However if plaintiff is in joint possession of joint family property sub-Sec.(2) of Sec.34 is attracted and a fixed Court fee has to be paid at rates specified therein - In present case, plaintiff while pleading that she has been in joint possession and enjoyment of plaint schedule properties paid Court fee of Rs.200 u/Sec.34(2) of Act - However defendants disputed plea of joint possession and enjoyment and contended that entire suit properties were already partitioned among defendants and they are in exclusive possession and enjoyment of their respective shares and that claim of plaintiff that she has been in joint possession and enjoyment is false - On consideration of rival claims trial Court while disbelieving plaintiff's plea of joint possession along with defendants, held that plaintiff is liable to pay Court fee u/Sec.34(1) - Court has to decide fee payable on basis of material disclosed in plaint as provided u/Sec.11(1) (a) of Act - However it is clear from Sec.11(1) (b) that decision of Court under Cl. (a) regarding proper fee shall be subject to review from time to time as occasion requires - As per Sec.11(2) of Act defendant may plead that subject matter of suit has not been properly valued or that fee paid is not sufficient and in case it is decided that subject matter of suit has not been properly valued Court shall fix a date before which deficit fee shall be paid - Reference to Or.18 CPC in sub-sec(2) of Sec.11 is only with regard to hearing of suit but not with regard to decision on question as to sufficiency of Court fee - There is no other provision which either expressly or by necessary implication supports contention that it is mandatory to record evidence for deciding question under Sec.11(2) of Act as to sufficiency of Court fee paid - In this case, even according to petitioner/ plaintiff, defendants are in possession of suit properties - However it is pleaded that plaintiff was being paid her share out of profits from suit properties - Thus it is clear from recitals of plaint itself that plaintiff has been excluded from possession of suit properties - Therefore order of trial Court, directing plaintiff to pay Court fee u/Sec.34(1) of Act on share claimed by her in suit property - Justified - Revision petition, dismissed. **Veena Challa Vs. A.Pandu Ranga Reddy 2011(3) Law Summary (A.P.) 331 = 2012(1) ALD 302 = 2011(6) ALT 609 = AIR 2012 AP 47.**

—Sec.34(2) - CIVIL PROCEDURE CODE, Or.X - Petitioner/plaintiff filed suit for partition and separate possession by paying court fees of Rs.200 - During cross-examination, P.W.1 confronted with document said to be partition deed and marked as Ex.B.1 - Taking admission of petitioner as to execution of Ex.B.1 between himself and respondents, trial Court arrived at conclusion that jointness of family is disrupted and it cannot be said that petitioner is in joint possession of suit property and on that premise trial Court required petitioner to pay ad valorem Court fee of Rs.44,952/

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- - Respondents contend that trial Court took note of important aspect touching upon Court fee and it is always competent for a Court, to insist on plaintiff in a suit to pay deficit Court fee - It is not at all safe for a Court to form a final opinion on an important issue, in middle of proceedings - Parties have to be given full opportunity to present their point of view on any controversy, even if it relates to alleged admission - In this case, trial Court proceeded on presumption that admission by P.W.1 as to execution of Ex.B.1 would clinchingly prove prior partition of suit property - Petitioner given opportunity to explain purport of alleged admission - He is entitled not only to lead further evidence, but also to elicit necessary admission in cross examination of witnesses to be examined by respondents - Impugned order, unsustainable - CRP, allowed. **Palla Krishna Murthy Vs. Palla Subrahmanyam 2009(2) Law Summary (A.P.) 32 = 2009(6) ALD 134 = 2009(3) ALT 644.**

—Secs. 34(1) & 11(2) - CIVIL PROCEDURE CODE, Or.14, Rules 1 & 2 & Or.18 - Suit for partition - Defendants denying plea of plaintiff that suit properties were joint family properties and that 3rd defendant is absolute owner of items 2 to 4 of suit property and that Court fees ought to have paid u/Sec.34(1) of A.P. Court Fees Act - Trial Court allowed application filed by 2nd defendant u/Sec.11(2) C.P.C to try additional issue relating to correctness of Court Fees as preliminary issue holding that there was a triable point regarding controversy - Or.14, Rule 2 shows that an issue may be tried as a preliminary issue only where it is an issue of law relating to jurisdiction of Court or a bar to suit created by any law for time being in force and where case or any part thereof may be disposed of on such issue - In this case issues were already settled under Or.14, Rule 1 and admittedly there is a specific issue with regard to sufficiency of Court fee paid by plaintiffs - Contention of defendants that Court fee paid by plaintiffs is not sufficient is based on ground that 3rd defendant is absolute owner of items 2 to 4 of suit property - Thus it is apparent that issue relating to sufficiency of Court fee is not mere issue of law - Contention of 2nd defendant that issue relating to payment of Court fee shall be decided as preliminary issue - Unsustainable - Impugned order, set aside - Additional issue relating to sufficiency of court fee shall be heard and decided in accordance with law along with other issues - CRP, allowed. **Moola Vijaya Bhaskar Vs. Moola S.S. Ravi Prakash 2009(2) Law Summary (A.P.) 35 = 2009(3) ALD 363 = 2009(2) APLJ 43 = 2009(3) ALT 663 = AIR 2009 AP 150.**

—Sec.37 - Cancellation of sale deed - "Payment of Court fee" - In this case, value of suit for purpose of Court fee and jurisdiction are shown as value of deed to be cancelled Rs.1 lakhs and Court fee was paid u/Sec.37 - Single Judge passed order that Court fee has to be calculated as per market value on date of registration of plaint and not as per

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value shown in document and consequently they held that Court has no pecuniary jurisdiction to entertain suit and plaint returned under Or.7, Rule 10 CPC - Appellate Court dismissed Appeal holding that Court below has no jurisdiction to entertain suit and plaint was correctly returned for presentation before appropriate Court holding that Court fee has to be calculated as per market value of property as on date of presentation of plaint and not value shown in registered sale deed - Single Judge of High Court took view that u/Sec.37 of Court fees Act cancellation of sale deed suit has to be valued on basis of market value on property governed by sale deed on date of presentation of plaint for purpose of Court fees and jurisdiction and not on basis of sale consideration mentioned in sale deed and review petition also dismissed - Sec.37 COURT FEES ACT - Interpretation of - Apex Court in Satheedevi case, gave its approval to judgment of Single Judge of A.P. High Court in A.V. Reddy wherein single Judge took view in a suit for cancellation of deed which was executed for specific amount the Court fee has to be paid on that amount and not on the basis of market value of property at presentation of plaint - Appeals is allowed. **Polamrasetti Manikyam Vs. Teegala Venkata Ramayya 2014(1) Law Summary (S.C.) 61 = 2014(3) ALD 79(SC) = 2014 AIR SCW 1345 = AIR 2014 SC 1286.**

A.P. EDUCATION ACT, 1982:

—-Sec. 53 - Petitioners filed this Writ Petition challenging the action of Municipal Corporation, Kurnool in granting approval for a layout in Sy. Nos.123 (P), 125 (P), 126 (P) and 127 (P) forming part of property of above school on 27-02-2003 and consequential action of respondent Nos.5 to 7 and 22 to 96 in making constructions therein - They contended that basing on approval granted by 1 st respondent, respondent Nos.5 to 7 demolished part of compound wall of school, commenced construction therein and even though staff of school approached respondent Nos.1 and 2 and asked them to stop construction, no action was taken - They contend that area which is sold to respondent Nos.5 to 7 is part of play ground of school and it could not have been sold without obtaining permission of Government under Section 53 of the Act - Petitioners filed Writ to stop construction activity in above land which is part of the School property pending disposal of Writ Petition - Writ Petition was admitted and an interim direction was granted that any construction made by respondent Nos.5 to 7 in land in possession would be subject to further orders in application.

Respondents contended that since they are absolute owners of property, which was purchased under different registered sale deeds and since they were in possession and enjoyment of the land, relief prayed by petitioners is opposed to principle that there cannot be any restraint on true owner - They contend that contention of petitioners that there has been a violation of provision of the AP Education Act, 1982 is baseless and misconceived.

Held, it has to be held that sanction of layout by 1st respondent in subject land belonging to the High School, is clearly contrary to law and unsustainable and

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consequently no constructions should have been made by any of private respondents on basis of said sanction - Therefore all structures erected by private respondents are liable to be demolished by 1 st respondent after notice to private respondents or other persons interested therein and land of the High School is liable to be restored to 3rd respondent by evicting all private respondents.

Consequently 1st respondent is directed to demolish structures erected by private respondents in above property and private respondents are directed to restore possession of vacant land of High School to 3rd respondent within three months from date of receipt of a copy of this order .

The Writ Petition is allowed as above and respondent Nos.5, 6 and 16 to 96 are directed to pay costs of Rs.5,000/- to petitioners. **A.Devasahayam Vs. Commissioner, Municipal Corporation Kurnool 2016(3) Law Summary (A.P.) 23 = 2016(6) ALD 542 = 2016(5) ALT 253.**

—Sec.84-A - A.P. EDUCATIONAL INSTITUTIONS (INSPECTION & VISITS) RULES, 1988, Rule 15 - CRIMINAL PROCEDURE CODE, Sec.482 - Since salaries denied to complainant/Telugu Pandit by Management for certain period, he filed writ petition and obtained directions against authorities concerned for taking action against management - Inspite of directions of RJD of School Education in pursuance of directions in writ petition, to DEO, to see that order is implemented, claim not settled - Hence complaint filed before Magistrate for offence u/Sec.84-A - Petitioners/accused contend that proper person to launch prosecution for offence u/Sec.84-A is competent Authority mentioned in Rule 15 - 1st respondent/complainant contends that Rule 15 clearly enunciates that Authorities who can initiate action for violating provisions of not only Act but also Rules made thereunder, are prescribed Authorities therein - In case Rule 15 prescribed only with regard to academic matters and not financial matters, which are out side Rules, then, wording of Rule 15 should have been confined to violation of Rules only - Instead, Rule 15 speaks about not only violation of Rules but also violation of provisions of Act - It follows that prosecution u/Sec.84-A of Act has to be initiated by competent Authorities mentioned in Rule-15 and not by aggrieved party himself - 1st respondent, complainant being victim has to approach competent authorities mentioned in Rule-15 for initiating prosecution against management for offence u/Sec.84-A of Act and he cannot shoulder task of filing private complaint by himself - Proceedings in CC before Magistrate, quashed - Criminal petition, allowed. **T.Nathanial Vs. D.Satyanarayana Murthy 2009(3) Law Summary (A.P.) 271 = 2009(2) ALD (Crl) 990 (AP).**

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—-Sec.3(2), 3(5),3(10),3(11) & 3(16) - MADRAS ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948**,** Secs.11, 12,13,14 r/w 15 - Suit instituted

A.P. (ANDHRA AREA) ESTATES LAND ACT 1908:

on file of District Munsif's Court for recovery of possession of suit land contending that property is private property - Suit dismissed holding that land is private land but is forming part of Estate - Sub-Court held in Appeal that suit land is zirayathi land and confirmed same would part of Estate which vested in Govt., in terms of Sec.3 of Abolition Act - Settlement Officer claiming patta in terms of Sec.15 of Act - Original claim petitioner filed claim petition for grant of ryotwari patta u/Sec.11 of Act - Settlement Officer granted patta in favour of original claimant - High Court allowed writ petition filed by original petitioner and set aside orders passed by Estate Abolition Tribunal - On remand Tribunal held that judgments rendered by civil Court operates as *res judicata* in as much as civil Court held suit land as forming part of Estate but not private land of original claimant - Expressions estate "land holder - "Private land" - Defined - Sec.3(10) of Act defined expression "private land" as meaning domain or home-form land holder which is proved to have been cultivated as private land by landholder himself by his own servants or by hired labour, with his own or hired stock, for continuous period of 12 years immediately before commencement of said Act - Sec.181 of Estate Land Act recognizes that land holder has liberty to convert his private land into ryoti land and conferred occupancy right in land so converted, therefore Estate land Act is one of foremost legislation which recognizes rights for permanent occupancy of ryots over land in their possesssion as also right of landholder over his private land - U/Sec.11 of Estated Abolition Act every ryot in Estate shall with effect on and from notified date was entitled to ryotwari patta in respect of ryoti lands which immediately before notified date were included or ought to have been included in his holding - Settlement Offier is required to take into account and consideration nature and history of land only in case he is satisfied that land is private land held by landholder, so recognized in terms of Estate Land Act, then alone ryotwari patta can be granted in favour of lad holder - If on other hand land is ryotwari land and not private land, then landholder cannot be granted patta, but it is ryot in possession of such land who should be granted patta in respect of such a ryotwari land - Tribunal is Appellate authority over decision of Settlement Officer, therefore it has to be satified that Settlement Officer had arrived at correct finding of fact that land in question is private land - What is relevant is not mere title or ownership of land but it's status as private land determine as such in accordance with Estates Land Act - Ryotwari patta is liable to be conferred upon a ryot in terms of Sec.11 of Abolition Act - Even though he may not hold title or ownership over land in his possession - In this case, Estate Abolition Tribunal not correctly appreciated relevant facts and circumstances of case and hence its decision is unsustainable - Orders passed by Estate Abolition Tribunal are set aside - Matter remanded for fresh consideration and disposal. **Tirumareddy Tirupati, died Vs. The Estates Abolition Tribunal, 2011(3) Law Summary (A.P.) 266 = 2011(6) ALD 787.**

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

—Sec. 11(a) - Settlement Officer, rejected certain applications filed u/Sec.11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 on ground that they were not filed within 30 days from date of introduction of settlement rates, as prescribed under Rule 2(4) of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 - Orders of Settlement Officer were confirmed in revision by the Director of Settlements, Andhra Pradesh, Hyderabad, by common order- Said common order was subjected to further revision before the Commissioner, Appeals, Office of the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, and was again confirmed under the common order - Aggrieved thereby, the petitioners are before this Court seeking Writs of Certiorari to call for the records relating to the three orders and to quash same along with a consequential direction to the Settlement Officer, to entertain their applications for issuance of pattas under Sec.11(a) of the Act of 1948 - Held, in the totality of the above circumstances, as the authorities concerned stood vested with the power available u/Sec. 5 of the Limitation Act by virtue of notification dated 17-10-1950, which remained untouched all through, their ignorance of same and their bald refusal to consider condonation of the delay, on short ground that the Rules framed u/Sec. 67 (2)(d) of the Act of 1948 denied them such power, cannot be countenanced - Lack of clarity on the part of the authorities in this regard finds resonance in their counter affidavits, filed before this Court in these cases- As valuable property rights of petitioners are at stake and as the legal position, as set out supra, was ignored by the authorities in so far as the extant rule u/Sec. 67 (2) (e) of the Act of 1948 is concerned, this Court has no hesitation in holding that the summary rejection of applications filed by petitioners and/or their predecessors-in-title u/Sec. 11(a) of the Act of 1948 on short ground that they were time barred, applying the rules framed u/Sec. 67(2)(d) of the Act of 1948, cannot be sustained - Orders impugned in these writ petitions are accordingly set aside and the matter is remitted to the Settlement Officer, for re-consideration on the issue of delay in the filing of the applications u/Sec. 11(a) of the Act of 1948, on merits. **Gadde Krishna Murthy Vs. MRO, Sitanagaram 2015(1) Law Summary (A.P.) 372 = 2015(3) ALD 316 = 2015(2) ALT 534 = AIR 2015 AP 33.**

—- Sec.11(a) - LAND ACQUISITION ACT, Secs.4(1) & 6 - REGULATION ACT, Sec.22-A (Introduced to A.P. Act, 19 of 2007) - Petitioners purchased land from vendor who purchased land from original owner to whom ryotwari patta was granted - Petitioner approached 4th respondent-Sub-Registrar with a request to furnish market value, stamp duty and registered charges in respect of plots held by them - 4th respondent refused to furnish information on ground that land in Survey No.119/2 figured in list

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

of Govt.,lands furnished by revenue authorities - When petitioners approached Tahsildar, Tirupathi with a request to issue NOC, he issued endorsement to effect that land is classified as "pagullastalam" and request for issuance of NOC cannot be considered - Petitioners assert that patta in respect of land in S.No.119/2 was issued under Sec.11(a) of A.P. Estate Abolition Act, in year 1979 in favour of one Vadivelu and District Collector, Chittoor issued Notification u/Sec.4(1) and 6 of L.A, Act in year 1997 proposing to acquire land for purpose of construction of railway station etc and that only shows that Govt.. and particularly revenue Department recognized ownership of Vadivelu over said land - Original owner i.e. vadivalu sold land in favour of one G.R and from him petitioners purchased plots - Basis for 4th respondent to refuse registration is list furnished by 3rd respondent in which land in S.No.119/2 was included - So called description viz., "pagulla stalam" does not by itself bring about land under preview of Govt., - Action of respondents cannot be countenanced - 4th respondent/ Sub-Registrar is directed to furnish necessary information in relation to documents that may be presented by petitioners without applying Sec.22-A Registration Act - Writ petition, allowed. **M.Sunanda Vs. The District Collector, Chittoor District, 2012(1) Law Summary 326 = 2012(3) ALD 381 = 2012(4) ALT 3.**

—- Secs.11(a),3(a),3(d) - ESTATE LAND ACT, Sec.3(15) & 3(16) - Plaintiff's father filed petition u/Sec.11 (a) for issue of ryotwari patta - Asst. Settlement Officer posted matter for hearing on 6-5-1966 and subsequently matter not getting posted for hearing - Govt not entitled to disposses plaintiff who is ryot, from suit land which is ryoti land - Plaintiff filed suit for declaration of right and title as pattadars since Tahsildar taking steps to assign suit land in favour of certain persons - Defendant contends that as plaintiff did not attend enquiry he was set ex parte and that civil Court has no jurisdiction to try suit and that suit lands are classified as "adavi mitta poramboke" and they are vested in Govt. - Trial Court held that suit lands are not ryoti lands and plaintiff not entitled for relief of declaration or injunction and that civil Court has got jurisdiction to decide real nature and character of land and dismissed suit - District Judge dismissed appeal and further held that civil Court has no jurisdiction to interfere with order passed by revenue authorities - Appellant/plaintiff contends that suit lands are ryoti lands within meaning of Sec.3(16) of Estate Land Act and plaintiff is ryot within meaning of Sec.3(15) and that no communication of order is received from Settlement Authorities rejecting claim of plaintiff's father for issue of ryotwari patta u/Sec.11(a) - Classification of land as "Adavi mitta poramboke" not binding on plaintiff, as suit lands are ryoti lands as seen from pre-abolition records also - Admittedly claim of petitioners father for ryotwari patta not disposed of on merits by Settlement Officer and that patta was granted to some other person in respect of certain other land covered by same R.S.No holding that it was ryoti land - A statutory duty is certainly cast on Settlement Authorities to decide on merits as to whether plaintiff's father was entitled for grant of ryotiwari

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

patta or not in respect of lands claimed by him and it is certainly a matter to be enquired into on merits by settlement authorities concerned - Observation of first appellate Court that appellant did not file any appeal or revision before Asst. Settlement Officer against orders passed u/Sec.11 setting him ex parte by Asst. Settlement Officer and even if any such order is passed same is *non est* as it was not an order passed on merits and pending such a decision, a ryot is not to be dispossessed by Govt. by virtue of protection - Admittedly suit land is cultivable land situate in an Estate and same is not a private land - Findings of Courts below to contra that it is not a ryoti land because same is classified as "Adavi mitta poroboke" is erroneous - Hence findings of Courts below that suit land is not ryoti land is liable to be set aside - As no material is placed to show that Application filed by plaintiff's father u/Sec.11-A was decided on merits and any order was communicated to plaintiff's father or to plaintiff, it must be deemed that said Application is still pending - Impugned judgment and decree of courts below are set aside - Suit land is ryoti land within meaning of Sec.3(16) Estate Land Act - It is left open to settlement authorities concerned to decide matter on merits as to whether are not plaintiff is entitled for ryotiwari patta inrespect of suit land. **M.Bojji Raju Vs. State of A.P. 2009(2) Law Summary (A.P.) 418 = 2009(6) ALD 100 = 2009(3) APLJ 179 = 2009(4) ALT 635.**

—Sec.11(a) & 5 - Memo No.486/J2/84-6, Date:25-4-1984 issued by Govt., of A.P. - Writ petitioners claim to have been granted ryotwari patta by Settlement Officer, Nellore on 10-1-1983 - Settlement Officer issued notice seeking to conduct de nova enquiry relating to said ryotwari patta - High Court allowed writ petition holding that it is Director of settlement who has power and not Settlement Officer to conduct de nova enquiry - Writ appeal filed by Settlement Officer and MRO was dismissed confirming orders to implement patta - Appellant in present writ Appeal claims that she is landless poor and patta granted in favour of writ petititioners was bogus and fraudulent and requested Director of Settlement to initiate suo moto enquiry - Director of Settlement, Nellore initiated suo moto Revision against order dt:10-1-1993 of then Settlement Officer, Nellore whereunder patta granted in favour of writ petitioner and till disposal there of status quo as to possession ordered - Writ petitioner again filed writ petition seeking direction to implement patta irrespective of pendency of suo moto proceedings - Single Judge allowed writ petition - Hence present writ appeals - Respondents contend that no original patta u/Sec.11-A was granted at any time in favour of petitioner and order produced by petitioner is not genuine and bogus one and that order dated 10-1-1993 signed by A.D.V. Reddy then Settlement Officer was a forged one as he issued numerous bogus pattas before and after his retirement for which Govt., has initiated action against him - In this case, suo motu enquiry initiated after 25 years of granting patta in favour of petitioner and single Judge came to conclusion that though no period of limitation is prescribed for exercise of suo motu

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

power of revision same must be exercised within reasonable time and accordingly came to conclusion that in view of lapse of 25 years from date of order of grant of patta there is abnormal delay in exercise of suo moto power of revision, which cannot be sustained and accordingly order of Director of Settlement quashed and directions issued to implement patta in favour of petitioner - Fraud vitiates every proceeding and merely because of lapse of time since date of grant of patta is no ground to reject claim of Authorities to revise such fraudulent orders - Courts have inherent power to set aside an order obtained by fraud - Memo of Govt., date:28-4-1984, which declares pattas granted by then Settlement Officer as bogus, includes and applies to present settlement patta granted to writ petitioner as well - Contentions of respondent/petitioners that patta granted in their favour in this case is not bogus in view of general nature of said Govt., Memo referred, not acceptable - Single Judge committed error in allowing writ petitions - Hence impugned order, set aside and directed Commissioner and Director of Settlement to take up suo moto revision by giving notice and opportunity of hearing to writ petitioners as well as appellants and after due examination of records dispose of revision by appropriate reasoned order - Writ appeals, allowed. **Md.Qhairunnisa Begum Vs. Shaik Kusheed Begum, 2013(1) Law Summary (A.P.) 193 = 2013(3) ALD 254 = 2013(2) ALT 540 = AIR 2013 AP 51.**

——AND A.P.RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971, Secs.9 & 12 - 4th respondent/Tahsildar issued Patta Land Certificate to petitioner to an extent of Acs.25 to effect that they are dry lands as per Fair Adangal Register - In view of technical opinion given by Executive Engineer, 2nd respondent/Joint Collector issued impugned Endorsement giving various directions rejecting request of petitioners to issue patta land certificate, cancelled NOCs issued by 4th respondent and Pattadar Pass Books issued to petitioner in respect of above lands u/Sec.9 & 12 of Pattadar Pass Books Act, and further directed that all submerged lands as per details furnished by Tahsildar will remain as water bodies and these lands are restored with original classification of "tank" with their respective tanks and also directed to see that possession of lands is taken immediately and are protected - Respondent/Joint Collector failed to realize that rights, if any, vested in person cannot be taken away without following process of law and before taking any action which is likely to adversely affect interest of party, is taken, he shall be put on notice and informed of grounds, on which such action is proposed to be taken - If this fair procedure is not followed, such action falls foul of principles of natural justice and constitutes patent arbitrariness - In this case, in impugned Endorsement, Joint Collector cannot exercise such powers unless he follows procedure prescribed by law and conforms principles of natural justice - No prior notice is given and even in counter affidavit also respondents have not asserted that any such notice and opportunity were given to petitioners - Impugned

A.P. EXCISE ACT, 1968:

Endorsement issued by Joint Collector is unsustainable as it is in flagrant violation of principles of natural justice and hence, set aside - Writ petition, allowed. **L.Ramesh Vs. Govt. of A.P. , 2011(1) Law Summary (A.P.) 50 = 2011(3) ALD 181 = 2011(3) ALT 664.**

A.P. EXCISE ACT, 1968:

—Sec.31(3) - A.P. EXCISE (INDIAN AND FOREIGN LIQUOR RETAIL SALE CONDITIONS OF LICENCES), RULES: —Rule 33 - A.P. (INDIAN LIQUOR AND FOREIGN LIQUOR) RULES, 1970, Rule 25(9) - Petitioner's shop sealed by Excise Superintendent for breach of conditions of licence and eventually suspended licence - Subsequently on perusal of Report of Excise Inspector and explanation of petitioner, 3rd respondent/Superin-tendent revoked suspension and released stocks - Commissioner rejecting representation of petitioner for remission of licence fees for 45 days during which period his shop was wrongly closed - Respondent contends that it was a case of liquor tragedy but it is only under interim directions given by High Court, suspension order was revoked - If a shop is closed by an order of competent authority and licence granted earlier is withdrawn no demand for rental shall be made for period of closer - In instant case, licence was suspended for breach of conditions enjoined under licence and therefore, action of Commissioner is just and proper - Full bench of A.P High Court considered Rule 25(9) of Rules 1970 was of view that grant of licence was a matter of contract between Govt., and party and no public law was involved and therefore Rule 25(9) not *ultra virs* and no writ of mandamus could be issued directing authorities to grant remission for period during which no business was carried on - In view of authoritative pronouncement by co-equal Bench of this Court, no writ of mandamus can be issued directing State Govt., to grant remission - Petitioner is not entitled to any remission as claimed by him. **S.L.V. Wines Mydukur Vs. The State of A.P. 2009(2) Law Summary (A.P.) 396 = 2009(5) ALD 170 = 2009(5) ALT 24 = AIR 2009 AP 199.**

—Sec.34(e) r/w 3(b) and 4(1) (iii) of the GUR (REGULATION OF EXCISE) ORDER, 1968 - Petitions by the Petitioners seeking release of black jaggery, Alum, Navasaram seized by Prohibition and Excise Police were dismissed and they filed these Criminal Petitions - Held, black jaggery had no legitimate purpose except for manufacture of 'intoxicant' and so it comes within the meaning of expression 'material' in Section 13(f) and consequently under Section 34 of Excise Act - It was observed that till the State Government prescribe by an appropriate instrument, the description, character and composition of black jaggery that would have no other use except for the manufacture of an intoxicant and prescribe procedures for prompt and speedy analysis of black jaggery seized, the satisfaction of Regulatory Authority that a specific material is black jaggery within the meaning of the Excise Act would justify the seizure for the purpose of further proceedings and of course subject to the result on analysis - Therefore,

A.P. EXCISE ACT, 1968:

the Excise Police on reasonable belief that black jaggery was intended for manufacture of ID Liquor can seize it and same principle can be applied to other two materials also - This Court in successive judgments held in terms of Section 46 of Excise Act that the party has to approach the Deputy Commissioner of Prohibition and Excise for interim custody of property seized - In view of the authoritative procedural jurisprudence upholding the power of Deputy Commissioner of Prohibition and Excise, petitioners cannot by-pass the said authority and file petitions before the concerned Judicial Magistrate of First Class or before the High Court without exhausting remedy before the statutory authority - In the result, this Court find no merits in the above petitions and accordingly these Criminal Petitions are dismissed. **Akbar Vs. State of Telangana 2015(1) Law Summary (A.P.) 347.**

—Secs.47-A & 38 - Certain quantity of Beer seized belonging to petitioner while transporting same and registered criminal case - 1st respondent released seized stock subject to condition of petitioner paying compounding fee and also payment of value of seized stock - Petitioner accordingly deposited Rs.50,000/- towads compounding fees and also Rs.78953/- representing value of seized stock through Bank challan - Subsequently petitioner approached for return of Bank challan amount on ground that once compounding fee levied and collected he is not liable to pay value of seized stock - Since said amount not refunded petitioner filed present writ petition - Sec.47-A of Excise Act confers special powers on Commissioner to compound offence falling u/Sec.38-A and that once compounding fees collected, owners of goods shall not be called upon to pay full value of stock seized after payment of such compounding fees or compensation - In present case, seized Beer suffered duty and only ground on which Beer was seized is that stock was not handedover at petitioner's shop premises but same was being transported to different place - Sec.47(2) vests discretion in Commissioner to permit composition of offence either by collecting compounding fee or value of stock or both- It is therefore not obligatory on part of Commissioner to impose condition of payment of value of seized stock - Where commissioner is satisfied that offence is not grave in nature, he can either levy compounding fee or collect value of seized stock - In this case, there is no allegation against petitioner that stock was intended to be diverted or sold in unlawful manner - 1st respondent/ Commissioner has not exercised discretion vested in him in sound and rational manner by directing payment of value of seized stock, having already levied compounding fees - Mere existence of discretionary power shall not entitle authority to exercise such power in a mechanical manner without being conscious of gravity of offence - Petitioner having already paid value of seized stock, it would be wholly iniquitous to collect same once again from him and no specific reasons have been assigned by Commissioner to subject petitioner to such harsh penalty - Condition directing payment of value of seized duty paid liquor, wholly irrirational and unreasonable -

A.P. FOREST ACT, 1967:

Impugned order to extent of stipulating condition of payment of value of seized stock, set aside - Respondents are directed to refund sum representing value of seized stock to petitioner - Writ petition allowed accordingly. **Siddivinayaka Wines Vs. Commissioner of Prohibition & Excise 2011(3) Law Summary (A.P.) 343 = 2012(1) ALD 350 = 2011(6) ALT 788.**

A.P. EXCISE (LEASE OF RIGHT OF SELLING BY SHOP AND CONDITIONS OF LICENCES) RULES, 2005:

—Rules 27(1) & 5 - Petitioner/Association filed writ petition seeking direction to implement Rule 27(1) and also to seek to have action of respondents in granting licences to respondents 7 & 8 for sale of Liquor locating at their shops within 100 mts from Educational Institutions, as illegal and arbitrary - Petitioner contend that members of their Association, whose children were prosecuting studies in these Educational Institutions were undergoing mental agony with regards their children's welfare as consumption of liquor had become a fashion and they were concerned that their children may also get attracted thereto - Respondents 7 & 8 contend that concerned Educational Institutions were not recognized by Govt. and distance between shops and Class rooms of Institutions was more than 100 mts and that 1st respondent, without conducting necessary enquiry, without measuring and without notice had passed impugned order yielding to pressure of petitioner/Association - Undisputedly distance between college and licenced premises of respondents 7 & 8, is less than 100 mts and that location of licence premises of respondents 7 & 8 is contrary to Rule 27 (1) of Excise Rules - PRINCIPLES OF NATURAL JUSTICE - It is not necessary to quash order merely because of violation of principles of natural justice - Quashing impugned proceedings would result in revival of licences granted to respondents 7 & 8 to sell liquor at their shops in present location and on this ground also impugned proceedings should be set aside - Larger public interest would require adhering to mandate of Rule 27(1) of Excise Rules in ensuring that no liquor shops are established within a proximity of 100 mts from Educational Institutions - Writ petitions, dismissed. **Heeranagar Welfare Association, Hyd., Vs. Govt., of A.P. 2009(1) Law Summary (A.P.) 317 = 2009(3) ALD 321.**

A.P. FOREST ACT, 1967:

—Secs.44, 20 & 29 - A.P. SANDAL WOOD AND RED SANDERS PERMIT RULES, 1970, Rules 2 & 3 - Petitioner's Mini Van seized fortransportation of Red Sanders logs and ultimately after considering explanation of petitioner 2nd respondent passed order confiscating vehicle - District Judge dismissed CMA and confirmed confiscation order - Petitioner contends that Enquiry Officer has not given any opportunity to examine witnesses before issuing show cause notice and seizure of Red Sander has not been proved at time of enquiry as Seizing Officials not present and were not examined and

A.P. FOREST ACT, 1967:

that vehicle seized without knowledge of petitioner and alleged seizure itself not established and same is illegal and he has no knowledge of transportation of red Sander - Respondent contends that during course of investigation by Forest Section Officer, it was found that owner himself was driver at time of scene of offence and he has absconded from scene of offence and that owner -cum-driver committed offence and that with knowledge of owner alone vehicle involved in transportation of Red Sanders and owner has got full knowledge and he himself is responsible for transportation and therefore confiscation of vehicle is legal and valid - In this case, petitioner not established by any evidence before Authorized Officer either about his ignorance or about knowledge to his driver - Even knowledge to driver is knowledge to owner, but however petitioner failed to produce driver - Panchanama goes to show that owner-cum-driver was driving vehicle and absconded - Conclusions of 2nd respondent Authorized Officer that owner had knowledge about involvement of vehicle and passing confiscation order - Justified - Writ petition, dismissed. **R.Muthukrishnan Vs. Forest Range Officer, Srikalahasti 2008(2) Law Summary (A.P.) 164 = 2008(4) ALD 56 = 2008(3) ALT 589.**

—Sec.44 (2-A) - Authorised Officer of Forest Department passed order directing confiscation of lorry used in smuggling red sander logs - District Judge allowed appeal and directed release of lorry - Petitioner/Forest Ranger contends that lower appellate Court proceeded on totally improper lines of adjudication and directed release of lorry, pointing out certain alleged defects in panchanama and that respondents failed to prove that they did not have knowledge of use of vehicle or that they have taken precautions to ensure that lorry is not utilized in smuggling of red sanders - In this case, no where in proceedings, respondents have denied involvement of lorry in smuggling red sanders and their plea was only that vehicle was utilized without their knowledge - Once lorry is found to be utilized in smuggling red sanders, presumption is that owner had knowledge about it and accorded permission to driver also - If vehicle was utilized without such permission he has to plead and prove relevant facts - Though it is some what difficult to prove a negative fact, at least necessary ingredients have to be placed before Court - Nature of steps taken by owner immediately on coming to know seizure of lorry for such offences would also become relevant - In this case appellate Court found fault with order of authorised Officer mostly on alleged defect in conducting panchanama and it is not even pointed out as to how that would have a bearing upon knowledge or otherwise of owner of lorry - Only area appellate Court was to verify was as to whether respondents have pleaded and proved their innocence or lack of knowledge about occurrence which does not find place in order of appellate Court - Order, set aside - Writ petition, allowed. **Forest Range Officer Vs. P. Krishnaiah Naidu 2009(1) Law Summary (A.P.) 146 = 2009(3) ALD 139 = 2009(1) APLJ 57(SN).**

A.P. GAMING ACT, 1974:

—Sec.59(2) - A.P. FOREST PRODUCE TRANSIT RULES, 1970, Rules 3 & 4 - A.P. SAW MILL (REGULATION) RULES, 1969 - Petitioner, Proprietor of Saw Mill granted licence under A.P. Saw Mills Rules - 1st respondent/Divisional Forest Officer cancelled petitioners' licence for offence of violation of A.P. Forest Rules for illegal storage of timber in petitioner's mill - 2nd respondent, Conservator of Forest dismissed appeal preferred by petitioner - Petitioner contends that he is only owner of Saw Mill and that timber was brought by one local carpenter for conversion and that stock did not belong to him and that alleged offence was already compounded by collecting of certain amount as compounding fee and hence licence cannot be cancelled on basis of same allegation - From reading of Sec.59(2) it emerges that once offence is compounded and compounding amount is paid, no further proceedings can be taken against person or his property and that offence gets obliterated and no further action can eminate thereafter on same allegation and that no action would lie for cancellation of licence after compounding offence - Impugned order, set aside - Writ petition, allowed**. Ch.Muthaiah Vs. The Divisional Forest Officer,Khammam 2012(3) Law Summary (A.P.) 111 = 2012(5) ALD 414 = 2012(6) ALT 230.**

A.P. GAMING ACT, 1974:

—Secs.8 & 9(1) - CRIMINAL PROCEDURE CODE, Sec.452 - Writ petition filed against the order of the learned Judicial Magistrate of First Class who dismissed application seeking release of a motor cycle seized in a raid by police u/Sec.8 of A.P. Gaming Act which was earlier ordered to be forfeited - Held, so long as no charge is laid that this motor vehicle is used as a security for money, it could not have been ordered to be forfeited by the Magistrate, u/Sec.8 of the Act - Admittedly, the motor cycle and the four cell phone instruments are not attracted to the definition of instruments of gaming - Hence, so long as the articles are not used as securities for money, clause (iii) of Sec.8 does not get attracted - Assuming for the sake of argument that after conclusion of trial, as per Sec.452 Cr. P.C, the court may make such order for the disposal, by destruction or confiscation of any property which is produced before it, but then such property should have been used for commission of any offence - Thus, so long as property produced before court is not alleged to have been used for commission of any offence, as is also required, incidentally by Sec.8 of Act, such property is liable to be delivered to person entitled to possession thereof - Order passed by learned Judicial Magistrate of First Class in ordering forfeiture of motor vehicle and four cell phones went beyond his jurisdiction and hence unsustainable and accordingly is set aside - Second respondent/Police is directed to restore them to their original owners immediately. **Pendam narender Vs. The State of Telangana, 2014(3) Law Summary (A.P.) 313 = 2015(1) ALD(Crl) 567 = 2015 Cri.LJ(NOC) 135.**

A.P. (A.A) INAMS (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1956:

A.P. (A.A) INAMS (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1956:

—Sec.2-A, 11(a), 14-A - ESTATES ACT, 1908, Secs.2(1) & 3(16) - BSO, 15 & 15(4) - Respondent/petitioners claim that their grand father purchased certain extent of land from original inamdar and it is in their possession where they were raising crops and are entitled for grant of patta - Special Deputy Tahsildar (SDT) granted patta to certain extent and denied patta to waste land - RDO dismissed appeal and subsequently said waste land was assigned to persons belonging to weaker section - Commissioner dismissed revision filed by respondents - In writ petition filed by respondent single Judge allowed writ petition setting aside order of Commissioner and declared that petitioners are entitled for grant of ryotwari patta in respect of entire extent of land - Govt., contends that original authority, appellate authority and revisional authority consistently came to conclusion that lands claimed by petitioner being waste lands vest in Govt., and therefore patta cannot be granted to petitioner and this finding of fact based on evidence - Single Judge therefore was in error in interfering with finding of fact ignoring evidence of record and that interpretation of term “waste land” by single Judge is not sound and that single Judge erred in coming to conclusion that title of petitioner leads to presumption that they are in possession and occupation of land - Respondents/petitioners contend that object of Inams Act was never to take land of Inamdars or purchasers who are also entitled for ryotwari patta u/Sec.10-B of Act and term “waste land” should be understood as lands which are forever desolate and unfit for cultivation - If lands could be brought to cultivation by incurring expenditure, same cannot be treated as waste land u/Sec.2-A of Inams Act - “Inam land” - “Ryoti land” - “Waste land” - Meaning of - Stated - Sec.316 of Estate Act, defined ryoti land as to mean cultivable land in an estate other than specified common lands - Sec.2(c) of Inams Abolition Act defined “Inam” lands to mean any land inrespect of which grant of Inam had been made confirmed or recognized by Govt., but does not include “Inam” constituting an estate under Estates Act - Even if lands are cultivable in future, if they are waste lands they stand transferred and vested in Govt., and ryotwari patta cannot be granted - Respondents contend with reference to assignment made by revenue authorities subsequent to order of authorities rejecting ryotwari patta for waste lands, even if waste land, was assigned to landless poor persons, same does not have any effect in so far as proceedings under Inams Act and proceedings u/Sec.7 for grant of ryotwari patta - BSO 15 permits assignment of waste lands for purpose of cultivation unless they fall under BSO 15(4) - If principle canvassed by respondents is accepted, it has very adverse conse-quences on implimentation of objects behind Inams Act - Therefore contentions of respondents unsustainable - Single Judge recorded a finding that respondents were in possession of waste lands for which patta was denied and for coming to this conclusion single Judge applied principle “possession follows title” - SDT, Appellate authority and Revisional authority

A.P. (A.A) INAMS (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1956:

recorded finding that respondents were not in possession of waste lands for which patta was denied - It is question of fact which cannot be gone into - Contentions of respondents is founded on admitted facts that lands are waste lands for which patta was denied and that even if they are waste lands grant of patta is not prohibited under Inams Act, is not acceptable - Order of single Judge, set aside - Writ appeal, allowed. **Commissioner, Survey Vs. Indupuru Raghava Reddy 2011(3) Law Summary (A.P.) 358 = 2012(2) ALD 164 = 2012(1) ALT 451.**

—-**Secs.3(7), 14, 1(2) (c) - LAND ACQUISITION ACT,** Sec.4(1) - EVIDENCE ACT, Sec.44 - Suit filed for declaration of title and for recovery of possession contending that plaintiff's father purchased land from LRs of one TVC on 2-4-1911 under unregistered document Ex.A.1, - Subsequently obtained Ex.A2 ryotwari patta on 30-12-1957 under Inams Act from that date continued in possession and thereby perfected his title to suit land even by prescription - Subsequently D1/TTD occupied plaint A schedule land and D.2/Tirupathi Municipality B- Schedule land without any manner of right - Trial Court dismissed suit - Defendants contend that entire extent acquired by Govt. in 1937 under L.A Act for public purpose and therefore Ex.A2 ryotwari patta his void as Tahsildar has no jurisdiction and consequently it is nullity - Defendants further contend that land was granted to TVC family for singing hyms for diety of TTD temple and not personal grant and consequently transferor has no right or power to transfer under Ex.A.1 and therefore it cannot give any valid title to plaintiff's father - Appellant/ plaintiffs contends that once Tashildar exercised and granted ryotwari patta in favour of plaintiff's father it becomes final u/Sec.3(7) of Act and trial Court or High Court cannot go into its validity and suit ought to be decreed and since revenue records support plaintiff's case in all respects including possession and therefore he must be held to have acquire title by prescription and trial Court erroneously ignored same - Admittedly land is described in Ex.B.1 award as Inam land and it was acquired under Ex.B.1 award of 1937 and plaintiff's father's name not found as occupant - Act came into force in 1956 and award is of 1937 and suit land did not exists as Inam land for Tahsildar to exercise jurisdiction under Act to grant patta - Once award is passed. lands stands vested in Govt. free from all encumbrances and owner or occupant of land can only to claim compensation and they have no other right in it - In this case, it is clear that Tahsildar ignored acquisition of land by Govt., and he has acted total lack of inherent jurisdiction under Act as it has no application to land - Ex.A2 ryotwari patta cannot be treated as valid document and it has to be treated as void document just like civil Court granting decree against dead person in respect of non-existing property - Appellant/plaintiff further contends that grant of Ex.A.2 patta can be treated as irregular and it can be said to be an irregular exercise of jurisdiction which can be corrected only in statutory remedies under Act and cannot be said to be void - Despite Secs.3(7), and 14 of Act, if Tahsildar acting under Act has decided

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jurisdictional facts wrongly and applied Act to a land to which it has no application, he assumes jurisdiction which he would not otherwise have - If it is shown that there is some material before Tahsildar from which he could reasonably infer or he can be made to believe that a third person is also interested in land and when there is such material, he ought to give individual notice to such third person before taking a decision about nature of inam and grant of patta and it cannot be said to be a case where there is no reasonable material before Tahsildar to ignore issuing notice to Authorities of temple managed by TTD and that Tahsildar failed to give notice to Temple - Circumstance in this case, shows that plaintiff's case regarding obtaining of suit land by his father under Ex.A1 is highly improbable - Plaintiffs claim regarding possession and adverse possession has to be rejected as unconvincing and not proved - View of trial Court which held against plaintiff - Justified - Appeal, dismissed. **Duggandla Rami Reddy Vs.T.T.D., 2012(2) Law Summary (A.P.) 1 = 2013(1) ALD 521 = 2012(4) ALT 16.**

—Secs 4(4), 43 - **INDIAN REGISTRATION ACT,** Sec.22-A(1) (c) – **A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987,** Secs. 43, 46(3), 75, 83 - In the instant case, no earlier alienation of the property in issue is brought on record - Ryotwari patta claimed to have been granted in favour of the petitioner is not filed - Claim of the petitioner rests only on the fact that the property was given to the ancestors of the petitioner for the services rendered to the temple and it vested permanently in the family of the petitioner and thus, petitioner is entitled to deal with the property as his private patta land - Stand of the respondent temple that the property is shown in the statutory register as belonging to the temple and as per Resettlement Register of the village, the property is classified as 'temple Adyapaka Service' is not controverted - Held, as per Resettlement Register of the village, the land is classified as 'temple adyapaka service' and as per the provision of S. 4(4) of the Act, 1956, no ryotwari patta can be granted and even if it is already granted, it is null and void and property continues to be vested in the institution - Thus, as per the material on record, the property continues to vest in the 6th respondent temple - Therefore, petitioner cannot claim, merely on the factum of his possession or the earlier inam granted to his ancestors for the service rendered by them, to contend that he is the owner and entitled to alienate - Thus, in the facts of this case, the petitioner is not entitled to relief prayed by him and writ petition is liable to be dismissed and it is accordingly dismissed - However, it is left open to the petitioner to ascertain his title by due process of law and any observations made in the writ petition do not come in the way in adjudicating the claim of the petitioner on the title to the property in issue. **Vinjamuri Rajagopala Chary, Vs. Govt.,of A.P. 2015(1) Law Summary (A.P.)366 = 2015(3) ALD 625 = 2015(3) ALT 96.**

A.P. LAND ENCROACHMENT ACT, 1905:

A.P. LAND ENCROACHMENT ACT, 1905:

—Sec.2(1) "Gramakantam" Petitioners are owners and purchaser of properties in town Survey Numbers, presented deed of convenyance for registration – Sub Registrar refused to receive deed on ground that properties are described in Revenue Records as Poramboke and prohibited Registration - Hence present Writ Petition - Petitioner contends that it is illegal to classify land in Town Survey as Poramboke land and refusing registration – High Court allowed several Writ Petitions overruling objections of Respondents but respondents, continue to raise same objection causing untold agony and suffering - Government contends that Revenue Records show that status of land as Poramboke - Sub-Registrar in his Endorsement described land as "Gramakantam" – "GramaKantam" is not Government land and there is no prohibition to undertake transaction on said lands – Infact "Gramakantam" describes area identified for purpose of construction of residential houses and incidental structures in village – It is neither a Government Land nor land vested in Village Panchayat - This particular Village has now grown into a town and is governed by Municipality - In this case no statutory provision is brought to notice of Court which prohibits sale of property standing in name of a particular person, which is classified in Revenue Record as "Gramakantam" – Government admits in G.O.Ms.No.100 dated 22-2-2014 that no Records are available showing that lands classified as "Gramakantam" are the Government Lands - Writ Petitions disposed of directing Sub-Registrar to furnish market value of concerned land and receive dees of conveyance as and when same are presented by parties and complete registration if documents are in order and release same.**Voonna Bangaraju Vs. Govt., of A.P. , 2014(1) Law Summary (A.P.) 341 = 2014(3) ALD 443 = 2014(4) ALT 238.**

—Sec.6.7,10(2) - G.O.Ms.No.1062, dt.23-10-1992 and G.O.Ms.No.72, dt.7-10-1999 - SPECIFIC RELIEF ACT, Sec.34 - Respondents granted land for construction of rice Mill - Tahsildar (MRO) initiated eviction proceedings under land encroachment Act and evicted respondents u/Sec.6 of Act - Respondents/petitioners filed appeal u/Sec.10(2) contending that original allottees raised structures six decades ago and after their death successors have been in continuous occupation of land which was also leased out to third parties and that land is not Govt., land - Sub-Collector dismissed appeal - Revision filed before Joint Collector urging that notice u/Sec.7 not served on respondents/ petitioners and due to long occupation have perfected title to land by adverse possession - Joint Collector dismissed Revision - Revision to Commissioner (CLR) also dismissed and hence Revision filed before Govt. - Govt.., allowed Revision and directed regularisation in favour of petitioners on payment of market value directing petitioners to pay market value as fixed by Collector and issued order in G.O.Ms.No.1062 - Petitioner at that stage filed writ petition seeking declaration that said G.O. is arbitrary and illegal and for consequential direction to quash order as well as orders passed

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by other authorities - Pending writ petitions petitioner filed revision before Govt., to set aside notice advising petitioners to pay market value - Govt., dismissed same - Hence filed another writ petition - Single Judge heard writ petitions and allowed them setting aside two G.Os - Hence writ appeals filed by Collector and Subordinate officials - In this case declaration given by Govt., in G.O.Ms.No.1062 to effect that there is a force in contention of petitioners that they have perfected title by adverse possession is wholly misplaced and not warranted - Govt., appears to have accepted petitioners, plea of adverse possession and regularised petitioners, occupation on payment of market value, "to meet ends of natural justice" - When Govt., itself has no power to declare title of petitioners, petitioners cannot claim any such right based on order which appears to be *ultra vires* - Presumably because of this legal position Govt., came forward to regularize possession on payment of market value - Jagir is a grant of tenure for agricultural land or Estate by Sovereign to be enjoyed till life time of grantee, viz., Jagirdar - It is heritable but if Jagiradar leaves no legal heirs Estate would revert to Sovereign - Even where legal heirs survive original Jagirdar, there ought to be grant of succession which is a fresh grant - When a person asks for regularisation, it certainly indicates that such occupant accepts land to be Govt. property - In this case, having sought for regularisation on payment of market value, petitioners are estopped from taking a different stand before High Court to challenge said two G.Os - Record shows that petitioners themselves sought regularisation on payment of market value - As such submission of petitioners cannot be countenanced - Order of Single Judge set aside and writ petitions dismissed - Writ appeals, allowed. **District Collector, Mahaboobnagar Vs. R.Venkataswamy Goud 2011(3) Law Summary (A.P.) 277 = 2012(1) ALD 683 = 2012(1) ALT 212.**

—AND A.P. MUNICIPAL CORPORATION ACT, 1965 - Respondent- Municipal Corporation issued notice to petitioner to remove constructions made by him in Sy.No.129 of Village on the ground that structures are unauthorized - Writ petitioner challenged the proceedings of Corporation contending that said notice is contrary to decree of Civil Court - Single Judge dismissed Writ petition considering that Civil Court's decree restraining Municipal Authority from initiating action under provisions of Land Encroachment Act is bad and contrary to law and upheld notice issued by Corporation - Appellant contends when decree has rightly or wrongly allowed respondent to file Civil Suit for removal of structures which amounts to eviction, it is not open for respondent Corporation to initiate action under Municipal Corporation Act - Respondent while supporting judgment and order of Single judge contends that restraint order is applicable in respect of proceeding under provisions of Land Encroachment Act, and more over, after declaration of Civil Court that writ petitioner is a trespasser, he can be evicted in due process of law and proceedings sought to be initiated under provisions Municipal Corporations Act is one of such due process of law and there is no illegality or infirmity

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in order of Single Judge - In this case Civil Court has rightly or wrongly allowed respondent to approach Civil Court meaning thereby, they cannot initiate any action under any provision of law except by approaching Civil Court - It is true that this order may be right or wrong, but decree is not a nullity on ground of inherent lack of jurisdiction in order to ignore same - Single Judge not correct in ignoring aforesaid direction of Civil Court - If any order is passed without jurisdiction the same can be ignored even in collateral proceedings - Order of single Judge set aside - It is open for Respondent, Authority either to have a clarification from Civil Judge or to appellate Forum in accordance with law under provisions of Municipal Corporation Act – Writ Petition allowed. **Dr.M.Krishna Prasad Vs. Amadalavalasa Municipal Corpn.,Amadalavalasa, 2014(1) Law Summary (A.P.) 293 = 2014(3) ALD 589 = 2014(5) ALT 594.**

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—Write Petitioner in Lower Court filed I.As for seeking amendment of counter, for granting of leave to file document; and for recalling R.W.1 for marking said document – Lower Court, by aforesaid common order, dismissed all three I.As - Hence, instant writ petitions seeking relief of writ of certiorari or any other appropriate order or direction and quash said order and prohibit Special Court from proceeding with any further enquiry in the aforesaid L.G.C.

Held, when order of Hon'ble Supreme Court expresses that petitioner would be at liberty to agitate all questions of law available to him in law including question of maintainability before the Special Court, with respect Court opine that it would have to oblige same, and, therefore, Court not inclined to express anything on submissions touching order passed in review petition by Special Court, which replaces original order in L.G.C. by supersession and decisions relied on main issue as well as ancillary issue touching stages in review petition - It is no doubt true, Special Court has considered submission of writ petitioner as respondent before it, touching said issue and made an observation referred to herein before, but that would not, in any way, preclude Special Court in deciding the maintainability after the counter is amended by addition of paragraph Nos.15 and 16 and in light of authorities submitted by writ petitioner herein and the learned Advocate General for the respondent State on being agitated before it (Special Court).

Turning to question as to whether orders can be maintained or liable to be set aside, Court of view, that amendment sought to be introduced is on account of changed events subsequent to passing of original order in L.G.C. and more particularly, when Hon'ble Supreme Court has given liberty to agitate questions of law including the maintainability available to petitioner herein, Special Court ought not to have refused to accede to said amendment and dismissed petition - Therefore, Court inclined to set aside order passed by Special Court, and to allow said petitions for

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introducing the amendment by addition of paragraph Nos.15 and 16 in counter filed in the L.G.C.

Adverting to other two petitions, in which relief of receiving document and marking it by recalling R.W.1, are concerned, it is no doubt true, said document was available when L.G.C. was originally pending, but still, in view of liberty granted by Hon'ble Supreme Court, the Court are of view that it would be just and reasonable to allow both applications by setting aside orders passed by Special Court.

Accordingly, all these three writ petitions are allowed granting the reliefs in setting aside common order under challenge passed by Special Court in I.As, and consequently, allowing all the three interlocutory applications. **Dundoo Ravi Kumar Vs. The Spl.Court under the A.P.L.G. (Prohibition) Act 2016(1) Law Summary (A.P.) *279* = 2016(3) ALD 390 = 2016(2) ALT 330.**

—Secs.2(d) & 2(e) - CIVIL PROCEDURE CODE, Or.26, Rule 9 - Respondent filed Application before Special Court seeking eviction of petitioner/respondent from Application land contending that he purchased it under registered sale deed and respondent grabbed portion of land basing on fraudulently obtained pattadar pass books - Trial Court allowed LGC directing petitioner to vacate and deliver vacant possession, after considering reports filed by Advocate Commissioner - All questions concernungs civil nature of disputes are to be decided by Special Court set up by Act and civil Court has no jurisdiction - Special Court is competent to try and determine issue of title, right to or possession of land alleged to have been grabbed - Jurisdiction of civil Court is attracted when once it is discernible from application that there has been an act of land grabbing committed by respondent therein - When once jurisdiction of Special Court is attracted, question as regards title, right to or possession of land shall have to be decided only by it - Visualizing a situation wherein wake of an allegation of committing an act of land grabbing, which attracts jurisdiction of Special Court and if issue of title over such land shall have to be determined only by civil Court, a party shall have to approach Special Court in respect of a part of cause of action and civil Court in respect of other part - A party cannot be driven to approach Special Court as well as civil Court simultaneously when he complains of grabbing of his land - Special Court also equally competent to determine question when there is plea of title by means of prescription - Writ petition, dismissed. **M. Yadagiri Reddy Vs. V.C.Brahmanna 2009(1) Law Summary (A.P.) 137 = 2009(6) ALD 160 = 2009(3) ALT 796.**

—Secs.2(d) & (e), 7, and 8(1) - A.P. LAND GRABBING (PROHIBITION) RULES, 1988, Rule 6 - "Land grabbing" - Respondent filed LGC against petitioner alleging that he had illegally occupied Application Schedule property - Special Court passed orders taking cognizance of LGC u/Sec.8(1) of Act - Hence present writ petition to quash said order - Petitioner contends that allegations in LGC being absolutely vague and

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did not attract ingredients of "land grabbing" as required u/Sec.2(d) and (e) of Act and that Special Court ought not to have taken cognizance of case u/Sec.8(1) of Act and that unless ingredients of land grabbing are made out to satisfaction of Special Court, mere having prima facie title by Applicant does not render case cognizable so as to proceed under Provisions of Act - "Land Grabber" and "Land Grabbing" - Defined - For purpose of taking cognizance of case under Act, existence of allegation of any act of land grabbing is sine qua non and not truth or otherwise of such obligation -To make out a case that a person is "Land Grabber" Applicant must aver and prove both ingredients-factum as well as intention and that unless a person unauthorizedly and without any lawful entitlement thereto enters or intrudes into a land forcibly or otherwise he cannot be held to be land grabber and that emphasis was on taking possession without any lawful entitlement - Taking cognizance of a case is not matter of course and not automatic and it was explained that registering a case and assigning number to it is a ministerial act which cannot be equated to that of taking cognizance by Court of competent jurisdiction which requires intence application of mind to facts - Though for purpose of taking cognizance it is not necessary for Special Court to go into truth or otherwise of allegation of land grabbing made in LGC, on application of mind to allegations in Application and verification report, Special Court is required to satisfy itself that allegations made in Application attracted ingredients of land grabbing - Special Court is bound to record its satisfaction about compliance with ingredients of land grabbing also - Since impugned order does not reveal such satisfaction matter requires consideration by Special Court - Impugned order set aside and matter remanded to Special Court for consideration afresh and pass appropriate orders in accordance with law - Writ petition, allowed. **Syed Mohammed Fazalullah Vs. Mrs.Sameena Zahra Katoon 2013(1) Law Summary (A.P.) 111 = 2013(2) ALD 490 = 2013(2) ALT 1.**

—Secs.2(e),7,7-A & 10 - CIVIL PROCEDURE CODE, Or.41, Rules 23,23-A & 25 - Respondents filed L.G O.P contending that petition schedule property was allotted to them by Govt. on usual market value and possession delivered and that petitioners forcibly occupied same and constructed new house therein - Petitioners contend that patta granted to them by Tahsildar and as such they are not land grabbers - Special Tribunal allowed case holding that petitioners are land grabbers - Petitioners contend that Tribunal failed to consider documents marked as Exs.B.1 & B.3 and that ingredients of land grabbing not satisfied and as petitioners are in authorized possession of property in pursuance of patta granted by Govt. and as such they cannot to be held to be land grabbers. "Land grabbing" - Defined - In this case, no material before Tribunal to show that petitioners had any acceptable right to property - Respondents (applicants) clearly established their prima facie title - Once applicants before LGC established prima facie title, burden of proof u/Sec.10 of Act, shifts on respondents

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in land grabbing case and in absence of any rebuttal evidence on part of petitioners title of respondents, rightly accepted - Documents, Exs.B.1 & B.2 which were marked in previous civil suit, were sent for in LGOP, but they were not marked before Tribunal - Merely filing documents or merely calling for documents by itself is not sufficient unless such documents are tendered in evidence and proved in accordance with law - As such, it cannot be said non consideration of said documents has vitiated finding of Tribunal as well as Special Court - C.P.C. OR.41, RULE 23 - Remand of case by appellate Court - An appellate Court should be circumspecpt in ordering a remand when case is not covered either by Rule 23 or Rule 23-A or Rule 25 - Power of remand is not automatic and not merely for asking - Writ petition, dismissed. **Ketha Sujathamma Vs. B. Ramamurthy 2009(2) Law Summary (A.P.) 186 = 2009(3) ALD 804 = 2009(2) APLJ 14 = 2009(3) ALT 747.**

—-Sec.7(1) - **A.P. INAMS ABOLITION AND CONVERT INTO RYOTTWARI ACT, 1956 - A.P. ENDOWMENTS ACT, 1987,** Secs.80 and 81 Writ of Mandamus was sought filed to declare the action of respondent not receiving the amounts as directed by the Special Tribunal for Land Grabbing, as illegal, arbitrary and consequently to direct the respondent (Executive Officer of the Temple) to receive the amounts as passed judgment - Writ Petition was filed with a prayer to declare the direction issued by the 1 st respondentTribunal in allowing the respondents in permitting to continue in occupation of the site measuring 1536 Square Yards on payment of compensation as wholly illegal and without jurisdiction and declaring the said direction as void ab initio.

Held, In fact, provision from its reading clearly indicates it is not power of Tribunal when once found by it of person is a land grabber to ask him to retain land by payment of compensation, apart from there is no criterion given in determining compensation as to what is market rate - Further, Andhra Pradesh Endowments Act, 1987, Sections 80 and 81 clearly speak on invalidation of same without prior sanction of Commissioner or Government and person in possession shall get no right or title pursuant therewith and such person shall be deemed to be an encroacher and provisions of Sections 84 and 85 of Act to evict him are applicable - Even for Commissioner or Government to accord prior sanction it must be after publishing in State Gazette particulars relating to proposed transaction by calling for and notifying objections and suggestions including from trustee or other persons having interest in temple or other institution for any gift or sale or exchange or mortgage of its property and that too every such sale etc., even sanctioned by Commissioner, shall be undertaken by tender-cum-public auction in prescribed manner, though Government may for reasons to be recorded and in interest of institution or endowment and that too in writing permit sale of such immovable property otherwise than by public auction.

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From reading of Sections 2, 7, 7A, 8 and 12-B of the Land Grabbing (Prohibition) Act, no way those empower Land Grabbing Tribunal to alienate property of temple in favour of land grabber either directly or indirectly by awarding compensation to temple - In three Judge bench expression of Apex Court in Y.Satyanarayana Reddy in this regard it is held in categorical terms that Tribunal or Special Court has no power even in moulding of a relief in claim for eviction of land grabber, to allow land grabber to continue on land by awarding compensation to land owner as neither Tribunal nor Special Court can hold that land grabber could remain in possession of land on payment of its market value as compensation even as it would defeat whole purpose and object of Act - Interpretation of words 'compensation' from land grabber for his wrongful possession of land grabbed does not mean compensation is for future continuation of possession of land already grabbed by him.

From above, so far as L.G.C respondents in possession of land concerned what they claimed of they are in possession for nearly 12 years apart from as rightly concluded by Tribunal of nothing could be proved but for shown from residential houses constructed and house tax with electricity charges paid only for past five years or so and thereby they could not make out any case of animus possessendi to acquire title by adverse possession of required period of 12 years.

As per Sec.76(1) of the Act,1926 (Act,2/1927) permission was also mandatorily required to be obtained by Trustees from competent authority by showing necessity and without which there could be no exchange, sale or mortgage and no lease for a term exceeding 5 years of any immovable property belonging to any Mutt, Temple or Specific endowment - Nothing shall be valid or operate unless it is shown necessary and beneficial to Mutt, Temple or Specific endowment and same in recognition of such necessity or benefit is sanctioned by the Board.

Thus, it is not either proof of possession for 12 years with animus possessandi or even 12 years before to date of Act,19/1951 came into force, for proof of adverse possession but for proof of perfecting title by adverse possession even by the year 1874 as per section 44-B of the Act,2/1927(amended by Act,11/1934). Therefore, Respondents to Land Grabbing eviction case cannot claim any adverse possession over subject property of temple - Even from any possession of property governed by Endowments Act by persons unconnected with temple (endowment) with animus possessendi for any claim on ground that such persons acquired an indefeasible title by adverse possession, such possession should have held for 60 years prior to the coming into force of Madras HRE (Amendment) Act 11/1934 by which Sec.44(b) that was introduced by amendment to Madras HRE Act,1926 (Act 2/1927) which mean no adverse possession can be held by persons unconnected with the services of the temple-vide decisions.

Having regard to above, when Land Grabbing Tribunal having no right to ask respondents-land grabbers to land grabbing case to retain possession and pay

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compensation at market value, said direction by Tribunal to pay at Rs.80/- per Square yard is beyond its jurisdiction for not conferred by Act and thereby, it is unsustainable and illegal and is liable to be set aside.

Accordingly and in the result, the writ petition No.5847 of 2002 is allowed by setting aside the direction of tribunal to respondents-land grabbers therein to retain temple land in encroachment subject to payment at Rs.80/- per square yard to the petitioner-temple, owner of land and by dismissing the writ petition No. 22256 of 2001 for no such direction to temple authorities can be given to receive amount and to permit to retain land as per said unsustainable direction of Tribunal. **Tutta Chinnayya Vs. E.O., Sri Varaha Lakshmi Narasimha Devasthanam 2016(3) Law Summary (A.P.) 10 = 2016(6) ALD 63.**

—Secs.8(1), 8(6), 8(3), and Rule 7 of the Rules - CIVIL PROCEDURE CODE, Or.6, Rule 17 as amended CPC Amendment Act, 2002, Sec.16(2) - CONSTITUTION OF INDIA, Art.226 - "Amendment of pleadings" - *"Certiorari jurisdiction"* - Application filed by Petitioner/Govt. for amendment of pleadings in LGC - Special Court passed order rejecting permission for amendment of pleadings - In this case, respondents, originally Govt., filed suit alleging that it acquired lands from late J who was pattadar of land and therefore petitioner now cannot be allowed to amend pleadings belatedly taking contradictory pleas and if amendment is allowed after period of 25 years matter has to be reopened and respondents have to file their additional counters and documents and lead evidence and this would further delay matter - Proposed amendment is barred by limitation and that amendment sought is not additional plea as alleged and will change cause of action and nature of suit - Petitioner contends that amendment application is bona fide and it is necessary for proper adjudication of all issues and to decide real question in controversy and that amendment does not cause any prejudice to contesting respondents and that prejudice, if any, can be compensated in terms of money and it does not result in change of cause of action and refusal of amendment would lead to multiplicity of proceedings - "CERTIORARI JURISDICTION" - Court of judicial review would not ordinarily interfere with finding of facts however grave they may be - It is only concerned with grave error of law which is apparent on face of record - Error of law may arise when a Tribunal wrongfully rejects admissible evidence or considers inadmissible evidence - AMENDMENT OF PLEADINGS - Law with regard to amendment of pleadings is well settled - It is axiomatic that a party to suit can always seek amendment of pleadings at any time during trial or during pendency before appellate Court - It is also well settled that Court should bestow liberal approach in dealing with amendment applications - Grant of applications for amendment would, however, be subject to three limitation viz., i) when nature of suit is changed by permitting amendment ; (ii) when amendment would result in introducing new cause of action which tends to prejudice other party; iii) when allowing amendment

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application defeats law of limitation - In such situations, amendments, cannot be allowed - Accepted Rule had been that all amendments may be allowed which satisfies two conditions i) that they do not work injusice to other side, and ii) that they are necessary for purpose of determining real question in controversy - In this case, there is no grave error apparent on face of record in impugned order passed by Special Court and there is no necessity to interfere with such well considered order - Writ petition as well as miscellaneous petitions, stand dismissed. **State of A.P.Vs. Spl. Court under A.P.L.G.(Prohibition) Act, Hyd., 2012(3) Law Summary (A.P.) 23 = 2012(5) ALD 484.**

—Secs.8 (1), 9, 3, 4 and 5 - INDIAN PENAL CODE, Secs.420 & 447- Respondents 1 and 2 purchased two plots from 3rd respondent/Society, registered under A.P. Co-operative Societies Act - Society fraudulently and in collusion with writ petitioner executed registered sale deed in favour of writ petitioner who encroached plots purchased by Respondents 1 & 2 - When respondent 1 & 2 wanted to occupy said plots writ petitioner objected by putting up her claim and grabbed said plots - Hence respondents 1 & 2 filed LGC before Special Court to declare 3rd respondent/Society and writ petitioner as land grabbers; to punish them u/Secs.3 & 4 of Act and put applicants into vacant possession of schedule property - Special Court by impugned order took cognizance of case u/Sec.
8 (1) of Act and directed Office to place papers before Chairman for entrustment of criminal trial against writ petitioner and 3rd respondent - Pursuant to order of Chairman Special Court took cognizance of case u/Sec.3 & 4 of Act and Secs.420 and 447 IPC and issued summons to writ petitioner and 3rd respondent - Hence writ petitions filed questioning same - Petitioner contends that it is a total non application of mind by Special Court while taking cognizance of case u/Sec.8(1) Act as single Application not maintainable and that Special Court lacks territorial jurisdiction to take cognizance of case and that Special Court erred in taking cognizance of case, and to determining criminal liability - Respondents 1 and 2 contends that after taking cognizance, notice of taking cognizance as contemplated under proviso to sub-section (6) of Sec.8 of Act has been issued, for which writ petitioner filed her counter and having submitted to jurisdiction, writ petitioner cannot question orders of Special Court taking cognizance of case and same has to be decided on merits - In this case, in view of specific averments, matter requires to be adjudicated by Special Court on said allegations alone but not on defence put forth by writ petitioner in her counter to LGC - Contention advanced by petitioner that Special Court has not at all applied its mind while taking cognizance of case, unsustainable - U/sec.9 of Act, Special Court shall be deemed to be a civil Court and a Court of Session and shall have all powers of civil Court and Court of Session - Since Sec.5 contemplates penalty for offences in connection with land grabbing as enumerated under sub-secs.(a) to (d) of Sec.5, taking cognizance

A.P. LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973:

of offence u/sec.420 and 447 IPC by Special Court is beyond its jurisdiction - Sec.9 of Act will only authorise Special Court to exercise powers of Court of Session while dealing with offence under Act, but it had no jurisdiction to try offences u/Sec.420 and 447 IPC which are exclusively triable by Magistrate - Therefore, taking cognizance of offence u/Sec.420 and 447 IPC by Special Court is beyond its jurisdiction - Hence order passed by Special Court to extent of taking cognizance of offence u/Sec.420, 447 IPC, liable to be set aside - Writ petition, partly allowed quashing impugned order to extent of taking cognizance of offence u/Secs.420 & 447 IPC. **K.Sruti Vs. P.R. Rajeswari, 2011(1) Law Summary (A.P.) 77 = 2011(1) ALD 244.**

—Sec.8(7) - Special Court allowed Appellant's appeal holding that appellant is entitled to continue possession over Govt., land under his unauthorised occupation on payment of Rs.15,15,000/- - High Court held that Tribunal or Special Court constituted under provisions of Act except having competency of determining compensation to be paid to land owner by land 'grabber' for wrongful possession, has no power or authority to determine market value of grabbed land and direct land owner to receive such maket value from land grabber in lieu of grabbed land to be retained by land grabber - Special Court also has no power to go into question as to whether a particula land is required for public purpose or not which domain is exclusively vested with the competent Govt - In view of objects and reasons of Act, to contend that it should be open to Tribunal or Special Court to allow a land grabber to to continue in possession over Govt.,land on payment of market value as compensation would amount to breaking open an escape-hatch to denude Act of its very object and purpose - Judgment and view taken by High Court fully Justified - Appeal, dismissed. **Y.Satyanarayan Reddy Vs. The Mandal Revenue Offier, A.P. 2009(3) Law Summary (S.C.) 91 = 2009(6) ALD 102(SC) = 2009(6) Supreme 363.**

A.P. LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973:

—Trial court had dismissed suit with costs and also granted exemplary costs/ compensation under Sec. 35-A of CPC to the defendant and had observed that the same is recoverable from PW1 - Court of First Appeal while allowing the appeal of the sole plaintiff had reversed the decree and judgment of the trial court and decreed the suit of the plaintiff as prayed for and granted two months time to the defendant to vacate and deliver the possession of the plaint schedule property to the sole plaintiff - Held, therefore, the evidence on record when harmoniously considered would show that the father of the sole plaintiff by name Mattaiah having purchased the suit land and other lands under exhibit A29 styled as sale deed and having paid earnest money under it and the balance of sale consideration under A31 receipt and having continued in possession for over statutory period and having enjoyed the property as a person

A.P. LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973:

in possession in assumed character of owner and having exercised peaceably the ordinary rights of ownership had acquired by prescription a perfectly good title against the whole world - The fact remains that the real owners/the vendors of Mattaiah had accepted and recognized his rightful ownership. - They are not even disputing the ownership of the plaintiff and her sister - Therefore, it can be safely held that he had acquired title by prescription - A careful and analytical examination of evidence would show that the plaintiff had established her title to the suit schedule property as required under facts and in law and is therefore, entitled to the relief of declaration of title - In the result the second appeal is dismissed. **Durgampudi Padmamma Vs. Kallutla Kottamma (died) 2015(1) Law Summary (A.P.) 469 = 2015(3) ALD 490.**

—Sec.24 r/w Rule 18 - INDIAN PENAL CODE, Secs.193, 199 & 200 - Crime registered against petitioner for alleged tampering of village records as result of which he was declared as non-surplus holder - Petitioner contends that Tribunal declared him as non-surplus holder after holding enquiry and said order had obtained finality and it is not open to 1st respondent/District Collector to direct 2nd respondent/RDO to file criminal case for alleged offences under IPC and that Land Reforms Act is self-contained Code and that Sec.24 provides for prosecution of person for wilfully furnishing false declaration - In this case, admittedly petitioner has not been issued a notice to show-cause why sanction should not be accorded for his prosecution nor has he been given opportunity of making representation thereto - Complaint lodged relates to offences under IPC and not those under Act - Bar u/Sec.24(4) for taking cognizance, is only in relation to offences under Act and since offences alleged are not those under Act, bar u/Sec.24(4) has no application - Sanction for prosecuting offender is required to be accorded only before cognizance is taken by Court and not anterior thereto, when complaint is lodged with SHO - Therefore Sec.24 (4) does not bar a complaint filed before SHO - Principle of "finality of litigation" cannot be stretched to extent of an absurdity that it can be utilized as engine of oppression by dishonest and fraudulent litigants - In present case, FIR would reveal that petitioner is alleged to have committed serious offence under provisions of IPC relating to fabrication of false evidence, giving false statements and use of false declaration and hence it cannot be said that said allegations do not attract ingredients of Sec.193, 199 & 200 IPC - While sanction for prosecution is a pre-requisite for Court to take cognizance, it is not a condition precedent for filing complaint before SHO - Allegations levelled against petitioner are fraud and deceipt - Fraud vitiates all acts and renderers orders passed as a result of such fraud a nullity - Writ petition, dismissed. **G.Vidyasagar Rao Vs. District Collector, Nalgonda 2008(3) Law Summary (A.P.) 52 = 2008(2) ALD (Crl) 857.**

A.P. (TELANGANA AREA) LAND REVENUE ACT:

A.P. (TELANGANA AREA) LAND REVENUE ACT:

—Sec.54 - A.P. BOARD STANDING ORDER, No.90 (32) - A.P. URBAN AREAS (DEVELOPMENT) ACT, Sec.19(2) - CONSTITUTION OF INDIA, Arts.14, 19 (1) (g) & 300-A - LAND ACQUISITION ACT, Sec.48-B - Land acquired for establishment of BHEL - After utilization of major portion of land 1st respondent/Govt., granting permission to Housing Society of BDL and BHEL in respect of unutilized land - Petitioners contend that out of said acquired land some extent of land was acquired from their father and as such, said transfer was in violation of provisions of A.P. Telangana Area Land Revenue Act and Urban Areas Development and also violation of Articles of 14,19,300-A of Constitution of India - Respondent contends that petitioners do not have any manner of right or claim over land which was acquired long back; that once land was acquired from father of petitioners and compensation was paid, title vests with Govt., and that owners of land are not entitled for reconveyance of lands - When once a land is acquired for public purpose, it vests in Govt., and original owner of land loses all his rights over land, and therefore, question of reconveyance of land on ground that a part of land was not utilized for purpose for which it was acquired, does not arise and that allotment of part of unutilized land for housing purpose of employees of a public sector undertaking is a public purpose - Upon acquisition of land title therein vests absolutely in State or agency on whose behalf land is acquired; if land acquired for public purpose is not utilized for purpose of which same was acquired, it can be utilized for any other public purpose; and that original owners, from whom land was acquired, are not entitled for recovneyance on ground that land was not utilized for purpose for which it was acquired - Allotment of land for Housing Co-operative Society, comprising employees of public sector undertaking, is certainly for public purpose - Petitioners not entitled for reconveyance of land - Writ petition, dismissed. **M.Jaganath Reddy Vs. State of A.P., 2010(2) Law Summary (A.P.) 395 = 2010(5) ALD 255 = 2010(5) ALT 213.**

—Secs.166 (B) - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, Sec.9 - *Suo moto* revisional power - Joint Collector passed order exercising *suo moto* powers u/Sec.9 of 1971 Act, declaring certain lands described in revenue records as belonging to Govt., directing MRO to rectify entries accordingly - Petitioners claim uninterrupted title, ownership and transparant possession of said lands for over 60 years - Contention that Joint Collector not competent to exercise power u/Sec.9 of Act when lands belongs to Govt., since Provisions of Act, 1971 inapplicable to Govt., lands *qua* Sec.12 of said Act and that impugned order of Joint Collector is invalid - In this case, since initiation of proceedings u/Sec.9 of 1971 Act is on basis of an assumption by 2nd respondent/MRO that lands are Govt., lands, power u/Sec.9 of Act could not have been invoked and 1st respondent/Joint Collector had no power, authority or jurisdiction to have passed order u/Sec.9 of 1971 Act - *SUO MOTO* REVISIONAL POWER U/SEC.166(B) APLR, ACT -

A.P. (TELANGANA AREA) LAND REVENUE ACT:

If power is conferred on authority to exercise *suo moto* revisional power, without setting out a time limit within which power is to be exercised, jurisdiction is of necessity required to be invoked within reasonable time, though such reasonable time may vary according to facts of case - Absence of precription of any limitation period for exercise of *suo moto* powers does not authorise authority vested with power to invoke it after lapse of any length of time, since exercise of an administrative or quasi judicial power is linked to concept of rule of law and exercise of power after long lapse of time *prima facie* arbitrary - Sktchy and *ipse dixit* Impugned order illustrates in apporpriateness of exercise of revisional jurisdiction by Joint Collector - Hence, impugned order, quashed - Writ petitions, allowed. **M/s.Prathap Jungle Resorts Pvt.,Ltd. Vs.Joint Collector, RangaReddy 2008(2) Law Summary (A.P.) 367 = 2009(1) ALD 401 = 2008(4) ALT 794.**

—Sec.166-B - Board Standing Order,15 (BSO-15), Para 3 (2) (ii) - Petitioner's son who was working helper in BHEL was assigned two acres of land and since assignee died, MRO granted succession certificate in favour of petitioner - Subsequently, successor of MRO, submitted Report to 3rd respondent/Joint Collector for cancellation of succession certificate issued in favour of petitioner - Thereupon 3rd respondent initiated proceedings u/Sec.166-B of A.P (T.A) Land Revenue Act, 1317 Fasli and cancelled assignment made to petitioner's son as well as succession certificate issued in favour of petitioner on three reasons viz., (i) that father cannot succeed to his son's property (ii) succession certificate was given three years after death of assignee (iii) that assignee was not a landless poor person - As far as first reason is concerned that u/Sec.8 of Hindu Succession Act, that if deceased left class-I heirs behind him they will succeed to his property and if no such heir was left, heirs in class-II, will succeed to property in order of priority - Therefore, petitioner, being father and enumerated at top of list in class-II heirs mentioned in Schedule is entitled to succeed to estate of deceased - Hence reasonings of 3rd respondent that petitioner being father cannot succeed to his son's estate is contrary to provision of Act and same unsustainable - As regards second reason there is no statutory provision which prescribed time limit for claiming succession in respect of assigned land held by deceased - As regards third reason deceased assignee was not a landless poor person, 3rd respondent has himself given a finding that petitioner was helper in BHEL - Para 3(2) (ii) of BSO - 15 defines "landless poor person" as one who owns not more than two and half acres of wet or Ac.5 dry land and it is not case of respondents that deceased assignee had any land at time of assignment - At any rate, assignment granted to petitioner's son not cancelled at any point of time and therefore, succession cannot be denied to petitioner - Impugned order passed by 3rd respondent, set aside - 4th respondent/ Tahsildar directed to mutate name of petitioner in record of rights in respect of land

in question - Writ petition, allowed. **Dandu Lakshmi Narayana Vs. The Govt., of A.P, 2013(3) Law Summary (A.P.) 29 = 2013(5) ALD 591.**

A.P. LAW OFFICERS (APPOINTMENT CONDITIONS OF SERVICE) INSTRUCTIONS 2000:

—Conditions 7 & 8 - G.O.Ms.No.187, Dt.6-12-2000 - Selection of Law Officers - Guidelines - Stated - Petitioner/applicant for post of Law Officer in High Court, assailing appointments of respondents 2 to 11 as Govt. Pleaders on ground that their term extended until further orders and that they were appointed for third term under impugned G.O., and that private respondents do not fall under category of "exceptional cases" and that as they are politically highly influential, they managed to get appointed for third term by trampling over rights of other eligible and more meritorious Advocates - Govt., contends that it is not correct to state that private respondents were engaged for a third term, because extension of their term beyond initial tenure for three years under G.O. dt.5-7-2007 until further orders does not amount to their appointment for second term and for a tenure of three years within meaning of Cl.8 of Instructions and allegation that private respondents are political highly influential and their appointment trampled over rights of other eligible are denied and that further allegation that engagements are made purely on personal or political considerations is denied as untenable and without substance - While no formal procedure was followed to assess efficiency, performance and merit of private respondents, Law Secretary and Advocate General examined all those aspects and recommended to Govt. on basis of which appointments of private respondents were made - In this case petitioner as not made any allegations of inefficiency or lack of integrity against any of Govt. Pleaders, who are impleaded as respondents 2 to 11 and his contention is that they ought not to have been appointed for purported third term without being satisfied about their exceptional efficiency, success and performance - However in view of over-whelming importance of Officers in question, Chief Secretary, Govt., of A.P., directed to constitute Committee headed by Advocate General and submit Report about methodology to be evoloved for constant monitoring of functioning of Law Officers and to suggest mesures to improve their performance, to suggest criterion for assessing suitability of Law Officers with reference to Cl.8 of instructions and to assess volume of work each Govt., pleader is handling and number of Asst. Govt. Pleaders required to assist and after examining Report Committee Govt. shall consider same and issue appropriate proceedings to give effect to those recommendations. **T.Kumar Babu Vs. The Govt., of A.P. 2009(3) Law Summary (A.P.) 95 = 2009(5) ALD 474 = 2009(4) ALT 707.**

A.P. MINIOR MINERAL CONCESSION RULES, 1966:

A.P. LOKAYUKTA ACT, 1983:

—Sec.7 - Jurisdiction of Lokayukta - The following questions were referred to the Full Bench vide order dated 14.6.2013.

a) Whether A.P. Lokayukta has jurisdiction to entertain a complaint, which does not involve an allegation, or a complaint regarding non-implementation of an order of a Magistrate in a matrimonial dispute between a wife and husband, or any other dispute inter se private individuals, and pass consequential orders?

b) Whether the A.P. Lokayukta can issue directions or pass an order directly against the persons mentioned in clauses (i) to (iv) of Section 7(i) of the Act ?

c) Whether A.P. Lokayukta can take action suo motu under the Act?

Held, this Court answer question No.1 in negative and hold that Lokayukta has no jurisdiction to entertain a complaint, which neither involves an allegation nor involves any action or inaction connected with such allegation - This Court also held that inter se private disputes between parties including matrimoial disputes does not fall with in perview of jurisdiction of Lokayukta under Act and that only such acts, which are actuated by allegation against public servants and authorities as named u/Sec.7 of Act alone fall with in domain of Lokayukta or Upa-Lokayukta, as case may be and discussion, as above also answers question no.2 in negative - Question no.3 however does not arise on facts and circumstances of case and would amount to adjudication on hypothetical question and hence, said question is left open - Reference is answered accordingly. **Dr.R.G.Sunil Reddy Vs. The A.P. Lok Ayuktha Hyd., 2015(3) Law Summary (A.P.) 307.**

—Sec. 7- Petitioner contended that Hon'ble Lokayukta has no jurisdiction to grant interim relief except enquiring into matter and recommending - Held, Hon'ble Lokayukta has no power to issue any mandate either interim or final-Impugned Order of Lokayukta set aside - Writ Petition, Allowed. **Rajkumar Bharatlal Vs. The Government of A.P. 2014(2) Law Summary (A.P.) 383.**

A.P. MINIOR MINERAL CONCESSION RULES, 1966:

—- "Determining lease" - "Non speaking order" of State Govt. - Petitioner filed Revision against order of 2nd respondent, Director of Mines determining mining lease for black galaxy granite to writ petitioner - 1st respondent/Govt., dismissed Revision filed by petitioner without giving opportunity and assigning reasons - Writ petition filed for a Mandamus to set aside order of 1st respondent - 1st respondent/Govt., seems to be oblivious of fact that being Quasi- judicial functionary vested with revisional jurisdiction to decide valuable rights of citizens it has duty and obligation to support order with reasons - Duty to give reasons is a facet of principles of natural justice and no order whether administrative or quasi-judicial in nature, determining rights of parties can be sustained unless same is supported by reasons - As impugned order, is a thoroughly non-speaking order, same is quashed and case is remanded to 1st respondent/Govt., for rehearing and passing detailed speaking order - Writ petition according allowed.

A.P. MUNICIPALITIES ACT:

A.Ramanaiah Vs. The Govt. of A.P., 2013(3) Law Summary (A.P.) 254 = 2014(1) ALD 773 = 2014(3) ALT 619.

A.P. MUNICIPALITIES ACT:

—Secs.6, 228 & 2 (3) - Petition filed seeking direction to respondents to restore compound wall and structures demolished by respondents - 1st respondent/ Commissioner Municipality contends that petitioner constructed unauthorised structures and compound wall without obtaining prior permission, in an area where there is no approved layout - As per Sec.6 of Act, it is Municipal Council that has to sue and be sued - Writ petition filed not against Municipality but against Commissioner Municipality and as Municipality is not made party, no relief can be granted against Municipality - Municipality cannot demolish even unauthorised structures without issuing notice - When respondents want to demolish structures raised by petitioner on any ground they should follow procedure prescribed by Act and give notice - Nothing is placed on record by any of respondents to show that procedure contemplated by Act was followed or show-cause notice was issued to petitioner - Merely because authorities constituted under Act are vested with powers to do some acts, they cannot, without following procedure by enactment to perform that act - As petitioner did not produce any document to show that he has an approved layout or obtained permission for raising constructions, which were demolished, respondents directed to pay damages to petitioner - Writ petition, allowed. **M.Ramarao Vs. Commissioner Serilingampally Municipality, R.R. Dt., 2008(1) Law Summary (A.P.) 413 = 2008(3) ALD 344 = 2008(3) 659.**

—Secs.16(1) (k) & 59(1) - Petitioner and 4th respondent are elected members of Municipal Council - Municipal Council resolved in its resolution that 4th respondent who did not attend three consecutive meetings of Council, ceased to hold office u/ Sec.16(1) (k) of Act - Govt., of A.P., cancelled resolution of Municipal Council in exercise of powers conferred u/Sec.59(2) of Act - Petitioner contends that as per first proviso of Sec.59(1) of Act, 1st respondent/Govt., is bound to give opportunity to Municipal Council to explain its stand before suspending resolution and that since no such showcause notice was issued, order of 1st respondent is liable to be set aside - Respondents contend that Sec.16(1) (k) did not attract at all as 4th respondent had absented for only one ordinary meeting and that disqualification u/Sec.16(1) (k) is attracted only where member absented himself consecutively for three ordinary meetings and that resolution passed by Municipal Council was contrary to law - In present case, impugned order was not passed u/Sec.59(1) of Act, but it is order of suspension purportedly made in exercise of powers conferred under Sec.59 (2) of Act - Impugned order of suspension passed by Govt., is without jurisdiction and unsustainable - Hence, set aside. **Munagala Malleswara Rao.Guntur Vs.The Govt., of A.P. 2010(3) Law Summary (A.P.) 103 = 2010(6) ALD 137 = 2010(6) ALT 507.**

A.P. PANCHAYAT RAJ ACT, 1994:

—Sec.46(2) - A.P. PANCHAYAT RAJ ACT, 1994, Sec.245(2) - "Want of confidence" - District Collector addressed notice in Proforma-II to petitioner/Chairperson of Municipal Council that he was communicated a notice of intention to move a motion expressing want of confidence in petitioner - Said Notice of Collector is impeached on sole ground that notice of intention to move motion received by Collector is in transgression of provisions of Act as separate copy of proposed motion is not enclosed to Proforma-II, which was signed by 19 representationists and addressed to Collector and this failure to enclose a copy of proposed motion of 'no confidence' is basis for petitioner's challenge - There is no provision which enjoins expressly or by any compelling implication requirement to furnish a copy of notice addressed to District Collector or a copy of proposed motion for expressing "no confidence", to person against whom motion is proposed - Statutory provision may be directory or mandatory - In case of directory provisions substantial compliance is adequate unless it is established that violation of a directory provision results in loss or prejudice to a party - In this case, from text and context of Sec.46(1) there appears no pejorative impact either to interests of petitioner nor public arising out of failure to enclose a copy of motion expressing "want of confidence" - Writ petition, dismissed. **Dr.Nallamothu Ruthrani Vs. State of A.P. 2009(3) Law Summary (A.P.) 65 = 2009(6) ALD 92 = 2009(5) ALT 689.**

A.P. MUNICIPALITIES (DECISION OF ELECTION DISPUTES) RULES 1967,

--Rule 4 (1) & (2) & Sub Section 1 of Section 326 of the A.P. Municipalities Act, 1965 - Rules in question being framed for achieving a special objective, ought to have specified mode of that deposit of security for costs, to put matters beyond any pale of doubt - When Rule itself has left some room for speculation, mode of compliance attempted by 1st respondent/election petitioner cannot be construed as lacking in any bonafides - When a substantial and faithful compliance has been attempted and even thereafter by impugned order, once again a sum of Rs.100/- is directed to be deposited, which 1st respondent/election petitioner has complied with and, particularly, when this revision is preferred under Article 227 of Constitution of India, which is essentially intended to ensure that Tribunals do not over step their limits of jurisdiction - Court opinion that matter does not call for any interference at the hands of this Court - Accordingly, this civil revision petition is dismissed. **Mohd Mukhtar Ahemed Vs. Syed Habeed 2016(2) Law Summary (A.P.) 157 = 2016(4) ALD 212 = 2016(4) ALT 461.**

A.P. PANCHAYAT RAJ ACT, 1994:

—Secs.2(3),99 & 121 - 1st and 2nd respondents proposed to install a Cell Tower on northern vacant site of petitioner's house - Petitioner contends that respondents 1 & 2 proposed to install a Cell Tower without obtaining permission from Gram Panchayat and that already a Cell Tower of Airtel Company is inexistence within a distane of 20 mts of proposed site and that in view of close proxmity of proposed Cell Tower, he may be exposed to health hazards like headache, sleep disorders, poor memory,

A.P. PANCHAYAT RAJ ACT, 1994:

mental excitation etc. - Metallic structure, which does not have any characterstic of house, out house, shops, stable etc., does not fall within definition of building - Contention of petitioner rejected - Petitioner has not filed any material which authoritatively established that operation of Cell towers causes such health hazards - Plea of petitioner is merely based on apprehension than on established fact - Writ petition, dismissed. **M.Balaram Vs. Bharat Sanchar Nigam Ltd., 2010(3) Law Summary (A.P.) 113 = 2010(6) ALD 34.**

—Sec.19 – Returning Officer rejecting nomination filed by 1st respondent for ward of Gram Panchayat on ground that he was convicted for offences u/Secs.147, 148 and 324 r/w Sec.149 of IPC and sentenced to pay fine of Rs.600/- - Junior Civil Judge allowing O.P filed by 1st respondent and set aside election of petitioner - A person would incur disqualification from being elected or holding an elected post, if he was convicted for an offence involving "moral delinquency" – Sentence become immaterial in such cases – Disqualification also occur if a person is sentenced to undergo imprisonment for two years - In this case, 1st respondent convicted for offences u/Secs.147, 148 and 324 r/w Sec.149 of IPC and that was in relation to quarrel among neighbours – No question of moral delinquency is involved in it – Further, sentence was not imprisonment for two years and it was only fine of Rs.600/- - Rejection of nomination of 1st respondent - Unsustainable – Order of Junior Civil Judge – Justified – Writ petition, dismissed. **Samala Janaki Ramulu Vs. Munigadapa Kanakaiah 2008(3) Law Summary (A.P.) 290 = 2009(1) ALD 584 = 2009(1) ALT 529.**

—Sec.19 - Petitioner and respondents 5 & 6 contested for office of Sarpanch and since petitioner secured more votes he was declared as elected - 5th respondent filed O.P contending that petitioner had four children by date of election and thereby incurred disqualification u/Sec. 19 - Petitioner opposed O.P. contending that her husband was married to another woman and begot two children and thereafter he married her and through their wedlock two children were born, but all four children of her husband are being treated as though all of them were born to her - Tribunal allowed O.P and set aside election of petitioner and 5th respondent was declared as elected - Petitioner contends that findings recorded by Tribunal without any basis that though petitioner took specific plea that she had only two children and other two children were born out of wedlock of her husband with his first wife and same not at all taken into account - 5th respondent contends when prima facie material is placed before Tribunal that petitioner had four children, burden rested upon her - In this case, petitioner is not mother of four children - When this plea was taken Tribunal repelled it by placing reliance upon judgment which is not applicable to facts of this case - Petitioner flatly denied and she stuck to plea that she had only two children - Still Tribunal had set aside election - Order passed by Tribunal contrary to principles of evidence - Hence order in O.P, set aside. **Chowdary Kamala Bai Vs. The District Election Authority 2010(1) Law Summary (A.P.) 309 = 2010(3) ALD 276 = 210(3) ALT 185 = AIR 2010 (NOC) 623 (AP).**

A.P. PANCHAYAT RAJ ACT, 1994:

—Secs.19(3) & 22 (2) - Petitioner was elected as Sarpanch of village - District Panchayat Officer after conducting enquiry on complaint, passed order holding that petitioner incurred disqualification u/Sec.19(3) as he was having more than two children at time of his election - Pursuant to directions of High Court petitioner approached District Court and filed O.P along with Application seeking direction to respondents 1 & 2 to continue him as Sarpanch - District Court dismissed Application -Hence present revision - Once a dispute is raised before District Court by elected member of Gram Panchayat, he is entitled to continue as such as if he has not incurred any disqualification, till dispute is adjudicated by District Court - Unfortunately, District Court failed to consider order of High Court or provisions of Sec.22 from proper perspective - Instead, it has embarked on merits of petition and declined relief - Order of District Court, unsustainable - Hence, set aside - C.R.P. allowed. **G.Janaki Ramudu Vs. State of A.P., 2010(2) Law Summary (A.P.) 456 = 2010(5) ALD 589.**

—-Secs.104, 105 and 106 - **A.P. (AGRICULTURAL PRODUCE AND LIVESTOCK) MARKETS ACT, 1966** - Question referred to Bench is 'whether provisions contained in Sections 104, 105 and 106 of the A.P. Panchayat Raj Act, 1994, have an overriding effect on provisions of A.P. (Agricultural Produce and Livestock) Markets Act, 1966, irrespective of non obstante clause contained in Sec.30 thereof in view of provisions of Article 243-G of the Constitution of India? The question was referred by the Division Bench presided over by the then Chief Justice - Agricultural Marketing Committee, established an Agricultural Market Yard branch at the outskirts of the village 15 years before - However, for want of accommodation and godown facility they could not and did not start trading activity in the market yard - For the first time, in February, 2001, the Assistant Director, Agricultural Marketing Department, Government of Andhra Pradesh, Guntur District, and Agricultural Market Committee, Repalle, decided to shift marketing activity in the village from its present location and also to take over control of the market in purported exercise of the powers under the provisions of the Markets Act - Gram Panchayat was, accordingly, served with a letter dated 17.02.2001 to which they submitted objections reiterating their right of control over public markets - Despite objection, on 16.11.2001, few commission agents/shops dealing with sale of some of agricultural produce were forcibly shifted - It is alleged that they were also constantly interfering with business of vendors and farmers, who were marketing their produce in market of Gram Panchayat - This action of Assistant Director, Agricultural Marketing Department, and Agricultural Marketing Committee was challenged in Writ petition being arbitrary, illegal and contrary to the provisions of the P.R. Act.

Held, from bare perusal of this provision, it is clear that it would override all other laws providing for establishment, maintenance or regulation of a market or levy of fees therein shall apply to any market established under the Markets Act or affect in any way the powers of a market committee, in respect of such market - Provisions of Sec.30 operate notwithstanding anything to the contrary contained in any other law for time being in force - As a matter of fact, a bear reading of this provision, it is

A.P. PANCHAYAT RAJ ACT, 1994:

clear that it would prevail over provisions of the P.R. Act - It is well settled that in the event two conflicting provisions are operating in same field, doctrine of 'generalia specialibus non derogant' shall apply.

It may be true that Gram Panchayat had provided a public market in Village for sale of vegetables and fruits and various other agricultural produces including livestock to cater needs of Villagers and other surrounding areas - Further, it may be true that the Gram Panchayat had taken various measures to improve the conditions of market from time to time and also to provide space for use as public market and they were levying one or more fees as contemplated by Sec.104 of P.R. Act - It is equally true that once a market area has been declared, provisions of Markets Act will bring within its sweep even such markets, as established by local authority - In the result, Court hold that provisions contained in Secs.104, 105 and 106 of the P.R. Act shall not have an overriding effect on provisions of Market Act in view of language employed in Sec.30 thereof.

In other words, question as framed in first paragraph of judgment is answered in negative - The registry is directed to place this judgment before the Court dealing with appeal and Writ petitions for their disposal in the light of this judgment. **Bhattiprolu Gram Panchayat Vs.The District Collector (Panchayat Wing) Guntur 2016(1) Law Summary (A.P.) 342 = 2016(2) ALD 214 = 2016(2) ALT 294.**

—Sec.115 , Rules 1,2 & 4, G.O.Ms.No.67, dt.7-2-1986 - Public Parking places – Cart stands – Grampanchayat conducted auction for awarding contract of collecting fees on vehicles – Grampanchayat and Contractor levying fee on vehicles that reach business establishment – District Panchayat Officer granting stay - Grampanchayat is empowered to levy fee only on vehicles that are parked in places specifically earmarked, in accordance with Rules - Sec.115 of Act and Rules do not confer power on Grampanchayat to levy fee on loading and unloading of vehicles - Writ petitions disposed of directing that power of Grampanchayat is limited to levy fee only on those vehicles, which are parked in an area notified and earmarked by Grampanchayat and Grampanchayat shall not be entitled to levy any fee on vehicles that are loaded and unloaded in village, are parked in any other places and If Grampanchayat intends to notify any portion of public road also as parking place, it shall be open to approach competent authority to seek approval in accordance with relevant provisions of law. **Ganapavaram Gram Panchayat Vs. Govt., of A.P. 2008(3) Law Summary (A.P.) 241 = 2009(1) ALD(NOC) 10 = 2009(1) ALT 211.**

—Secs.120 & 214 - "Cell Tower" - District Panchayat Officer not allowing petitioner to complete erection of Cell tower on ground that permission of Gram Panchayat concerned is required - "Building" - "Factory" - Defined - Cell Tower will not fall within definition of 'factory' as in precincts where tower is located it cannot be said that any industrial or trade process is carried on - Writ petition, allowed. **GTL Infrastructure Ltd., Vs. Gram Panchayat, Nandakuduru, E.G. District 2011(1) Law Summary (A.P.) 96 = 2011(2) ALD 464 = 2011(1) ALT 661.**

A.P. PANCHAYAT RAJ ACT, 1994:

—Secs.127 & 128 - CONSTITUTION OF INDIA, Art.226 - EVIDENCE ACT, Sec.52 - TRANSFER OF PROPERTY ACT, Sec.105 - Gram Panchayat - "Auction of leasehold right of parking place" - Pursuant to Notification issued by Gram Panchayat, auction conducted to collect parking fee from vehicles and petitioner declared as highest bidder - As petitioner failed to pay balance bid amount within time stipulated, lease granted in his favour is terminated and amount paid by him is forfeited - Secretary Gram Panchayat issued another Notification proposing to re-auction - Hence writ petition challenging said action of Secretary - Contention that writ petition itself is not maintainable as same is filed without exhausting remedy of appeal provided for u/Sec.128 of Act - Petitioner contends that only orders with regard to licences and permissions are appealable and that petitioner is not questioning order of revocation but questioning very source of order and hence petition is maintainable without exhausting alternative remedy of appeal - In this case, from condition 4 of earlier Notification jointly issued by Sarpanch and Panchayat Secretary, it is clear that Panchayat Secretary shall have absolute authority either to postpone or to reject or to reconduct auction without assigning any reason whatsoever - Hence, Panchayat Secretary is competent to cancel lease granted in favour of petitioner as well as to issue re-auction Notification - "Lease" and "licence" - Defined - By virtue of Notification, only a right to collect parking fee from owners of certain vehicles parked at places mentioned in Notification, was given to petitioner, but not to enjoy places mentioned in Notification - Therefore contention of petitioner that transaction between petitioner and Gram Panchayat is only a lease, but not a licence or permission, unsustainable - As against impugned order passed by Executive Authority, only appeal lies u/Sec.128 of Act - Since transaction between petitioner and Gram Panchayat is licence, Panchayat Secretary is competent to pass impugned order and to issue re-auction Notification - Petitioner has to approach competent authority as provided for u/Sec.128 of Act by way of filing appeal - Writ petition, dismissed. **G.Krishna Murthy Vs. Govt., of A.P. 2008(2) Law Summary (A.P.) 339 = 2008(4) ALT 287 = 2008(3) APLJ 5.**

—Sec.249(7) - CONSTITUTION OF INDIA, Arts.14 & 21 - 4th respondent was elected as Sarpanch of village - On account of some alleged misappropriation of certain amount 2nd respondent/District Collector, passing order removing Sarpanch and directing Upa-Sarpanch to take charge to conduct functions of Sarpanch - Pursuant to interim stay granted by 1st respondent in appeal Collector issued directions to handover charge to Sarpanch - Petitioner, Upa-Sarpanch contends that as even by date of granting stay in as much as he had taken charge of Sarpanch, consequential order cannot be sustained and stay became infructuous - In this case, order of removal passed by Collector was stayed until further orders and 1st respondent/Govt., passed stay order by exercising discretionary power as provided u/Sec.249 (7) of Panchayat Raj Act and that validity of order could be decided in statutory appeal - Though Upa-Sarpanch was directed to take charge of Sarpanch that does not give any vested right to Upa-Sarpanch to continue in post of Sarpanch - When an order of stay had been made, same has to be implemented - In this case, course adopted by Upa-Sarpanch is impermissible and same cannot be sustained - Present Sarpanch who

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had obtained order of stay from Govt., be given charge till statutory appeal is disposed of on merits. **A.Jagan Reddy Vs.Govt. of A.P. 2009(3) Law Summary (A.P.) 53.**

—Secs.153 and 153-A – Elections of Member (Co-opted) and President/Vice President of Mandal Parishad and Member(Co-opted) and Chairperson and Vice Chairperson of Zilla Praja Parishad, G.O. Ms.No.173, Rule 11(5) - Reasons given by Presiding Officer in her orders are identical with those contained in legal opinion of Government Pleader - Thus, it is clear that Presiding Officer did not independently apply her mind to issue and was clearly influenced by legal opinion obtained by her from Government Pleader - A reading of Rule 11(5) of Act indicates that it is Presiding Officer alone who should consider explanation given by a Member who is alleged to have disobeyed whip and it does not empower him (her) to outsource his (her) decision making responsibility or abdicate the same in favour of a third party or act under the dictation of a third party - Such conduct amounts to acting in defiance of fundamental principles of judicial procedure - In the context of these facts, the existence of alternative remedy u/Sec.153-A of the Act to challenge order of this nature passed by Presiding Officer would not be a bar to entertaining the present writ petition – Presiding Officer/R3 abdicated it's responsibility conferred on Presiding Officer under Act, impugned orders deserve to be set aside and are accordingly set aside – Directions issued to District Collector & District Election Authority , in exercise of power conferred under sub-Rule(1) of Rule 3 of Act, shall authorize any other responsible Gazetted Officer of Government to decide issue of alleged violation of whip by the petitioners. **Muni Krishna Vs. The State Election Commission 2015(1) Law Summary (A.P.) 11 = 2015(1) ALD 485 = 2015(2) ALT 500.**

—Secs.265(1) & 265 - Petitioner's term as Sarpanch expired in 2000 - 5th respondent elected as Sarpanch and he lodged complaint against various irregularities committed by Grampanchayat during tenure of petitioner - Collector issued show cause notice to petitioner basing on report of Sub-Collector for proceeding against petitioner for alleged misuse of certain amount - Inspite of explanation submitted by petitioner Collector passed impugned order directing recovery duly surcharging petitioner - Court while admitting writ petition stayed impugned order on condition of deposit of certain amount - 1st respondent/Collector filed counter affidavit after lapse of 8 years opposing writ petition relying on Sec.265 of Act which provided for an alternative remedy by filing appeal to Govt., against orders of 1st respondent/Collector - A plain reading of Sec.265 would show that competent authority can exercise power u/Sec.265 and order recovery of amounts only when two conditionalities exist - When there is a loss, waste or misapplication of any money or property of Grampanchayat and such a thing is direct consequence of misconduct or gross neglect on part of Sarpanch, Collector can initiate action u/Sec.265(1) of Act - It is abundantly clear that unless and until decision maker after compliance with rule of *audi alteram partem* arrives at a conclusion that loss, waste or misapplication of Grampanchayat funds is a direct consequence

of misconduct or gross neglect of Sarpanch, there cannot be any order of recovery of amount u/Sec.265(1) of Act - In this case, without giving any reason, in one go District Collector came to conclusion that petitioner misappropriated certain amount - Such method and manner of considering allegations is not contemplated u/sec.265(1) of Act - As very exercise of power is not in accordance with Sec.265 (1) of Act it must be held that order suffers from malic in law- Writ petition, allowed - Petitioner entitled to recover amount deposited by her. **Adduri Surya Subhadrayamma Vs. The Collector, E.G.District, 2010(2) Law Summary (A.P.) 300 = 2010(4) ALD 486 = 2010(5) ALT 481.**

A.P. PETROLEUM PRODUCTS (LICENSING AND REGULATION OF SUPPLY) ORDER, 1980:

—-"Hawker" - Petitioner/Hawker's Kerosene Licence was cancelled by 2nd respondent - Special Commissioner, Civil Supplies granted interim stay against order of 2nd respondent - Not withstanding said order 1st respondent/Tahsildar not supplying kerosene to petitioner for sale - It is bounden duty of 1st respondent to respect order passed by superior authorities, more so when such orders were passed in exercise of their quasi-judicial powers - If such orders are defied by implementing agencies, Authority, whenp assed order, cannot remain a silent spectator driving citizens to avail remedies like filing writ petition - Conduct of respondent/Tahsildar in ignoring order passed by competent Authority does not augur well in a society governed by rule of law - Special Commissioner will take note of conduct of 1st respondent/Tahsildar in ignoring his order and do needful in redressing grievance of petitioner. **Marapu Subba Rao Vs. The Tahsildar, Mandavalli, 2011(1) Law Summary (A.P.) 59 = 2011(2) ALD 309 = 2011(3) ALT 21.**

—Cl.7 - A.P. PETROLEUM RULES, 2000, Rule 152 (1)(iii) - Rejection of Application for renewal of Form-B license - Petitioner/Firm running petroleum retail outlet - 4th respondent/Joint Collector rejecting petitioner's Application for renewal as it has failed to submit valid lease agreement over land - Disputes arose between legal heirs of original lessor, as result of which fresh lease deed was not executed by them in favour of petitioner-firm - Petitioner however applied for renewal of licence - No statutory provision prescribed production of lease deed by existing licensee before licensing Authority, as a condition precedent for renewal of its licence - In law, a Partnership Firm is compendium of partners, as it has no separate legal existence - 5th respondent who is partner of petitioner/ Firm is admittedly one of sons of original lessor, his right to be in possession of subject property cannot be disputed unless a competent Court of law in properly constituted proceedings declares that he has no rights over said property - Right of 5th respondent and other co-owners is inchoate as of now - In absence of provision stipulating production of lease deed as a condition precedent for renewal of licence, action of 1st respondent in declining to renew licence is unsustainable in law - Impugned proceedings of 4th respondent, set aside - 1st

respondent/IOC is directed to consider petitioner's application for renewal without insisting on production of lease deed - Petitioner shall be permitted to run retail outlet till disposal of renewal Application. **Sri VenkataNarayana Filling Station, Vs. I.O.C. 2012(3) Law Summary (A.P.) 92 = 2012(6) ALD 56.**

—Cl.8 - ESSENTIAL COMMODITIES ACT, Sec.6-A - Petitioner LPG Distributor while transporting 300 LPG cylinders through his truck, Authorities of Vigilance Department intercepted and seized truck along with cylinders on ground that truck not registered as per Form-F, with Collector, Civil Supplies - District Collector passed orders directing petitioners to furnish security for Rs.5 lakhs for release of seized stock - Petitioners contend that in respect of truck attached to Corporation for transportation of LPG gas, Registration with licensing Authority and obtaining licence in Form-F is not necessary and that Clause 8 of Petroleum Products Order itself exempts trucks attached to Oil Companies for transportation of packed cylinders from Corporation's Plant to Distributors godown - In this case, petitioners' truck is being operated under transport agreement entered by petitioners with Corporation for transport of packed cyliners from Corporation's plant - Collector insisting petitioner to furnish cash security of Rs.5 lakhs, not justified - Order of Collector to extent of directing petitioners to furnish cash security, set aside - Writ petition, allowed. **Sri Padma Srinivas Gas Agency Vs.The District Collector,Kakinada 2013(2) Law Summary (A.P.) 43 = 2013(4)ALD 243 = 2013(5) ALT 22.**

—Cl.28, 1 & 2 AND 12 (i)(ii)(iii) - LPG (REGULATION OF SUPPLY AND DISTRIBUTION), ORDER, 2000 - Cl.3((4), SCHEDULE (1), Condition 5, Cl.4(2), 7(1) (b) and 10 - Petitioner's licence suspended for alleged contravention of provision of LPG order - In this case, petitioner approached High Court at interlocutory stage of proceedings suspending licence by Joint Collector who is licensing authority, pending enquiry and no conclusive findings are recorded against petitioner as yet - Petitioner contends that Joint Collector/licensing authority is under obligation to issue notice and provide opportunity to petitioner to defend his case and since opportunity being mandatory cannot be dispensed with even in case where licence is suspended pending enquiry - It is true that licensing authority under Control Order cannot pass interim orders or suspending licence on ground of mere pendency of enquiry under 6-A of Essential Commodities Act - In instant case. facts are different - Respondent/Joint Collector considered report of inspecting team with reference to Control Order and conditions of licence and passed impugned order and in said impugned order has clearly stated that suspension of licence has been ordered pending enquiry - Considering inspection report and gravity of allegations respondent has suspended licence of petitioner, complying requirements of Cl.28(2) - Impugned order - Justified - Writ petition, dismissed. **M/s. Sri Sai Baba Agencies Vs. State of A.P., 2011(3) Law Summary (A.P.) 244 = 2011(6) ALD 802.**

—AND CONSTITUTION OF INDIA: —Arts.12 & 19 (1) - Petitioner, Firm wholesale dealer in kerosene entered into dealership agreement with HPCL in 1975/1976 and obtained licence under Petroleum Control Order - HPCL allotting kerosene to petitioner's, Firm as per orders of Joint Collector - Since all partners of Firm died stock withheld by impugned Memo issued by 1st respondent, Collector (Civil Supplies) - Admittedly dealership agreement terminated by HPCL on death of partners and dealership agreement expired on 17-11-2006 - Unless and until dealer has a valid dealership agreement, grant/renewal of licence under Petroleum Product Control Order does not arise - As dealership agreement expired on 17-11-2006 and as per Cl.33 thereof, and even if Firm survived death of three partners, in absence of any dealership agreement, District Collector cannot be directed to continue to unllocate kerosene oil to petitioner - Writ petition, dismissed. **Kotha Sudheer Vs. The Collector (Civil Supplies) Karimnagar 2010(2) Law Summary (A.P.) 19 = 2010(3) ALD 492 = 2010(4) ALT 213 = AIR 2010 (NOC) 887 (AP).**

A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:

—Sec 2(a), 3 & 9 – Detaining Authority after considering material formed opinion that Detenu was engaged in preparation sale of illicitly distilled liquor which would have adverse effect in maintenance of public order and also is a source for grave and wide spread danger to public health and consequently passed detention order - State Government accorded approval to said detention order in terms of Sec.3(3) of Act - Subsequently Advisory Board tendered opinion that there is sufficient cause for preventive detention of detenu - Petitioner, wife of Detenu filed present Writ Petition challenging said detention order - In view of principles enunciated by Apex Court in Rekha's case etc., it emerges that so long as the ordinary criminal law is adequate to deal with the offences said to have been indulged in by a detenu, then, using the power of preventive detention without subjecting the detenu, to procedure of free and fair trail does not fit into the constitutional scheme of guaranteed liberty - Periodical involvement of the detenu in various excise offences at regular interval, which have been chronicled in the Detention Order do not lend support for the Detaining Authority to pass a Preventive Detention Order against husband of the petitioner – Writ Petition allowed at admission stage. **Sheela Bai Vs. The State of A.P. 2014(1) Law Summary (A.P.) 347 = 2014(1) ALD (Crl) 1005 AP = 2014(4) ALT 22.**

—-Sec. 2 (g) - This writ petition is preferred by the wife of the detenu challenging the correctness and legality of the detention order passed by the Commissioner of City Police, which order of detention is confirmed by the State Government through their orders.

Held, however, as this Court have noticed the 9 instances which the Commissioner of Police has based his satisfaction upon are the events that took place in a span of 6 to 7 months - Thereafter, the detenu was apprehended, and he was

remanded to judicial custody and by several orders passed by the competent criminal courts, he was granted bail - It is not the case of the Commissioner of Police that the detenue was not complying with the conditions of grant of such bail or that he was misusing such liberty - Detention order was passed nearly 6 ½ months away from the last of the events reported - Therefore, there was a loss of continuity in between the events and the order of detention - Instances relied upon for arriving at the subjective satisfaction must be proximately close to the order of detention and they cannot be far remote and removed (See Union of India Vs. Paul Manickam (2003 (8) SCC 342) - In instant case, the events are all far remote and removed to the order of detention – This Court, therefore, satisfied that this is a case where the order of detention should be set aside for this reason only - Accordingly, the writ petition is allowed setting aside the detention order passed by the Commissioner of Police. **G.Neeraja Vs. State of Telangana 2016(1) Law Summary (A.P.) 123 = 2016(1) ALT 362 = 2016(1) ALT (Crl) 313 (AP) = 2016(1) ALD (Crl) 141.**

—Secs.2(g) and 3(2) - Writ petition is instituted by wife of detune challenging validity of the orders passed by the Commissioner of Police preventively detaining her husband - Commissioner of Police, Hyderabad City, in exercise of power available to him u/ Sub-Sec.2 of Sec.3 of Act, passed the order on 28.05.2015 for preventively detaining petitioner's husband - In grounds of detention passed on same day, Commissioner of Police has referred to 6 different instances of involvement of accused in one crime or the other, for purpose of recording his subjective satisfaction that detenu answers description of 'goonda' as defined by Sec.2(g) of the Act and that he deserves to be detained to prevent him from indulging in similar acts any further - Held, it is true that detenue has been indulging in one serious crime or other at regular intervals - It could also be true, as is reflected in file, that detenue may have been subjected to externment twice for his brazen law breaking activities - But those are all various infractions of law indulged in routinely by detenue - May be, Stat is not able to secure conviction as witnesses cited by them are turning hostile and consequently the detenue must be escaping from clutches of law - But those factors cannot be bundled and proje-cted as affecting public order - As was already noticed by us, every infraction of law is liable to be perceived as a disturbance to law and order and it may lead to disorder - That might itself is not a sufficient ground for invoking extraordinary power of preventive detention - Constitutional aim and guarantee of liberty of the individual has got to be protected carefully - In our view, four out of six grounds which have been narrated as creating panic and insecurity in minds of even police personnel have vitiated subjective satis-faction arrived at by Commissioner of Police – This Court, therefore, of opinion that order of preventive detention cannot be sustained and accordingly, the detenue be set free immediately - Writ petition stands allowed. **Hameeda Begum Vs. State of Telangana 2015(3) Law Summary (A.P.) 356.**

A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:

—Secs.3(1) & (2), r/w Sec.2(a)&2(b) - **A.P.** EXCISE ACT - A.P. PROHIBITION ACT **-** Petitioner's husband detained by order passed by District Collector for repeated contraventions of AP. Excise and A.P. Prohibition Acts, which was approved by Govt. - Subsequently, basing on Report of Advisory Board, Govt., confirmed order directing that detention be continued for period of 12 months - In the grounds of communication three instances of alleged acts constituting offences under A.P. Excise Act and A.P. Prohibition Act are narrated and detenu found to be illicitly distilled liquor, unfit for human consumption and injurious to health and matter is still pending under investigation - In all three cases detenu is said to have been granted bail - Petitioner contends that order of detention passed by Collector is vitiated for non-application of mind - Grant of bail for detenu in all three cases is vital factor to be taken into consideration before his detention could be ordered, but same was ignored and copies of bail applications and bail orders were not served on detenu alongwith grounds of detention - Repeated indulgence in crime offending public health taking advantage of grant of bail is gravamen of charge made against detenu - Therefore it cannot be said that there was non-application of mind on part of 1st respondent, Collector to factum of grant of bail to detenu in three cases - Order of detention passed by District Collector as confirmed by Govt., - Justified - Writ petition, dismissed. **Sathupathi Amaravathi Vs. District Collector & Kadapa 2010(1) Law Summary (A.P.) 369 = 2010(1) ALD (Crl) 605 (AP) = 2010(2) ALT 625 = 2010 Crl. LJ (NOC) 846 (AP).**

—Secs.3(1) & (2), r/w 2(a) & (b) - CONSTITUTION OF INDIA, Art.22 - Order of detention passed, alleging that petitioner's son detenue indulging in activities of boot legging and manufacture and supply of illicit liquor - Petitioner contends that though six cases referred to in order only three cases constituted basis of grounds and that order of detention is clear case of non-application of mind and also discloses that irrelevant considerations were taken into account - Act empowers Authority, to pass an order of preventive detention with reference to several activities such as boot legging, decoity, goondaism, immoral traffic, land grabbing etc - In this case order of detention is passed by invoking power u/ Sec.3(1) & (2) of Act that detenue is acting in a manner prejudicial to maintenance of public order by resorting to acts of boot legging - Therefore, proper basis must exist with reference to those activities, in order of detention - Second respondent based his opinion or subject to satisfaction only on three cases, which constituted subject matter of grounds and he states that other three cases were mentioned in order of detention, only to state historical background of detenue - If an order of detention is passed on basis of certain number of events and one or some of them are found to be irrelevant or not taken into account, by detaining Authority, whole order becomes vitiated ".....even if one of grounds or reasons which led to subjective satisfaction of detaining Authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and ..." - Impugned order of detention passed by 2nd respondent and approved by 1st respondent, set aside - Writ petition, allowed. **Pamula Pitchaiah Vs. Govt., of A.P. 2008(1) Law Summary (A.P.) 431 = 2008(1) ALD (Crl) 793 AP = 2008(3) ALT 243 = 2008(2) ALT(Crl) 361 AP.**

A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:

—Sec.3(1) & (2) r/w Sec.2 (a) & (b) - CONSTITUTION OF INDIA, Art.32 - "Writ of Habeas Corpus" - Petitioner filing petition seeking production of his grand-son who is detained in Central jail pursuant to impugned orders of District Collector as confirmed by Chief Secretary Govt. of A.P for alleged frequent involvement in trafficking of illicit liquor - Petitioner contends that conduct of previous history relating to conduct or involvement of detenu in such offences ought not have been relied on at all and in all three cases, which were actually relied on for passing impugned order of detention, detenu was recently acquitted and that in order of detention, Competent Authority ought not have made remarks about conduct of detenu and that conduct on part of Competent Authority is prejudicial to interest of detenu and that comments passed by competent authority against detenu are absolutely not relevant or essential and hence impugned order of detention, liable to be set aside - Govt., contends that remarks passed by competent authority are only passing remarks and they are not capable of vitiating order of detention and that mentioning of previous history of detenu, even though not relevant, cannot be treated as totally irrelevant - "Power of preventive detention is qualitatively different from punitive detention - An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal - Pendency of prosecution is no bar to an order of preventive detention - An order of preventive detention is also not a bar to prosecution" - Some times competent authority, while recording his satisfaction and assigning reasons, may have to make certain passing remarks or cite certain instances - So long as they are not made basis for passing order of detention, have to be treated only as passing remarks and such remarks cannot vitiate proceedings of competent authority nor can be taken advantage of by detenu - These types of hyper technicalities shall not defeat object of prevention of illegal activities under Act - Impugned order of detention -Neither illegal nor irregular - Writ petition, dismissed. **E.Ratnam Vs. State of A.P. 2009(3) Law Summary (A.P.) 390 = 2010(1) ALD(Crl) 104(AP) = 2010(1) ALT 160 = 2010(1) ALT(Crl) 319 (AP).**

—Sec.3(1) & (2) - A.P. FOREST ACT, Secs.20, 29 & 44 - A.P. SANDLE WOOD AND RED SANDOR WOOD TRANSIT RULES, Rule 3 - INDIAN PENAL CODE, Secs.378 & 379 - Cases are pending trial, considering illegal activities of Detenu resulting in willful destriction of red sanders trees which is an endangered spices damage to public property resulting in green cover and loss of national wealth prejudicial to maintenance to public order disturbing peace tranquility and social harmony in Society and as Forest Laws and ordinary law under which detenu is being prosecuted are not sufficient to deal with him firmly, Detainning Authority ordered detention of detenu in prison Govt., confirmed order of detention passed by Collector/Respondent No.1, petitioner filed Petition questioning order of detention - Petitioner contends that 8 cases registered against detenu for offences punishable under Forest Act and IPC which formed basis for order of detention, are false and that out of said 8 cases he was arrested and released on bail in 5 cases, while in 3 cases he has not been

arrested and that detaining Authority in order of detention except stating that detenu was arrested and released on bail in 5 cases, has not considered bail application filed by detenu and effect of bail orders passed therein because they are not placed before him by Sponsoring Authority and therefore order of detention suffers from subjective satisfaction and non application of mind by Detaining Authority and that if one of grounds of detention is found to be irrelevant, then order of detention is liable to be set aside - Preventive detention is not punitive but only preventive and therefore before passing order of detention against a person which takes away is liberty Detaining Authority has to satisfy for itself whether there is sufficient material placed before him to prevent person from acting in a manner prejudicial to public order or like, in near future and that if any of grounds of detention is found to be irrelevant which formed basis for passing order of detention, then order of detention is liable to be quashed - Apex Court held bail application and bail order were vital materials for consideration and if those were not considered satisfaction of Detaining Authority itself would have been impaired - In this case, there is no doubt offences inwhich detenu is said to be involved are serious in nature, but it is unfortunate to note that Sponsoring Authority has not placed relevant materials particularly bail applications moved by detenu and bail orders granted and conditions on which bail was granted, before Detaining Authority to enable him to arrive at subjective satisfaction - In as much as bail applications and bail orders which are vital documents were not placed by Sponsoring Authority before detaining authority to arrive at subjective satisfaction - Having regard to settled law if one of grounds of detention which formed basis for passing order of detention is found to be bad, order of detention is liable to set aside - Order passed by 1st respondent/Detaining Authority as confirmed by 2nd respondent/Govt., cannot be sustained and is liable to be set aside - Writ petition, allowed. **V. Muragesh Vs. The Collector & District Magistrate, Chittoor, 2012(3) Law Summary (A.P.) 282 = 2013(1) ALD (Crl) 408(AP) = 2013(1) ALT 176 = 2013 Crl.LJ 585 (AP).**

—Secs.3(1) and (2) read with Sec.2(g) - This Writ of Habeas Corpus is filed under Article 226 of the Constitution of India, seeking to direct the respondents to produce Bathini Tirumala, presently detained in Central Prison, before this Court and to set him at liberty forthwith by ordering his release by declaring the order of detention dated 20.12.2014, passed by the 2nd respondent-District Collector, Chittoor, in Roc.No.C2/7269/2014, as confirmed in G.O.Rt.No.543, General Administration (Law and Order) Department, dated 23.02.2015, issued by the 1st respondent-State, as illegal and arbitrary - Impugned order of detention passed by the 2nd respondent, as confirmed by the 1st respondent, is mainly questioned on ground that detaining Authority has arrived at subjective satisfaction basing on five crimes registered against detenu on the ground that his activities are prejudicial to the maintenance of public peace and law and order - It is case of petitioner that Sec.3 of the Act empowers the detaining authority to pass an order of detention only in cases where such authority

arrives at subjective satisfaction that the activities of detenu are prejudicial to the maintenance of public order only and that law and order cannot be the subject matter of said Act - Thus, it is the case of petitioner that the detaining authority has travelled beyond the scope of the Act and passed order of detention referring to the material that is not relevant for detention under the Act - Held, though the instances of several crimes registered against the detenu are made basis for passing an order of detention, the non-supply of material which is relied on for passing such order, is fatal and this Court of the view that by not supplying such material, the detenu is deprived of his right to make an effective representation, guaranteed under Article 22(5) of the Constitution - Order of detention is passed traversing beyond the powers conferred under Section 3(1) and (2) of the Act, on premise that activities of detenu are prejudicial to the maintenance of law and order, and further, as the petitioner is deprived of his right to make an effective representation by not supplying the translated copies of material relied on for passing the order of detention in Tamil, which is the language known to the detenu, the said order is fit to be declared as illegal - Accordingly, this Court allowed writ petition by quashing the order of detention dated 20.12.2014, and direct the respondents to release the detenu forthwith. **V.Muthuvelu Vs. State of A.P. 2015(3) Law Summary (A.P.) 272.**

—Sec.3(1) (2), r/w 2(a) (g) AND 7- A.P. FOREST ACT, Secs.20,27,29 & 59 - INDIAN PENAL CODE, Secs.34, 107,120-B and 379 - A.P. SANDERS WOOD AND RED SANDERS WOOD TRANSIT RULES, 1970, Rule 3 - CRIMINAL PROCEDURE CODE, Sec.82 to 86 - Collector & District Magistrate passed order of detention against one Anantha Kishore, S/o Srinivasulu, on ground that detenu was habitually involved in commission of forest offences and it was approved by Govt. - Petitioner, wife of detenu filed writ petition directing respondents to release her husband namely Durgam Subrahmanyam, S/o Gangisetty contending that person named in order of detention is not her husband and her husband's name is Durgam Subrahmanyam, S/o Gangisetty and not Anantha Kishore, S/o Srinivasulu as mentioned in order of detention and that her husband has no aliases and that pressure from higher authorities made her husband a scapegoat and by tying aliases to name of her husband and lodging her husband in Central Prison is illegal and arbitrary and that order of detention passed by Collector is without application of mind and that order of detention lacks subjective satisfaction of detaining Authority - Collector & District Magistrate contends that detention order would not be executed for nearly 5 and half years because detenu was absconding or concealing his presence to avoid his detention by changing name and address frequently and that detenu who is taken into custody and detained in prison is very same person against whom order of detention is passed and that there is no mistake in identity of detenu who is husband of petitioner - District Collector further contends that order of detention as approved by Govt., upon satisfying for himself that his activities were causing dangerous alarm and insecurity, and there by causing loss of national wealth to endangered and endemic species of red sandard

wood and thereby affecting public order, and therefore it cannot be said that order of detention is not based on his subjective satisfaction - From contents of counter filed by Forest Range Officer, it is clear that alleged detenu who is involved in forest offences was also being called by name "Takku Subrahmanyam" - Collector in his counter admitted that during investigation of above said crime it came to light that detenu was also called by name Takku Subrahmanyam - Contention of petitioner that there is a mistaken identity of detenu and that her husband namely Durgam Subrahmanyam, S/o Gangisetty, who is detained in prison in execution of order of detention passed by Collector as approved by Govt., is not person against whom order of detention has been passed cannot be accepted - Hence that husband of petitioner, Durgam Subrahmanyam, S/o Gangisetty who is detained in prison in execution of order of detention is very same person against whom impugned order of detention is passed by Collector - DELAY IN EXECUTING ORDER OF DETENTION - Order of detention has to be executed forthwith, else it would have effect of vitiating not only order of detention, but also subjective satisfaction of authority which has passed that order - However if delay in execution of order of detention has been caused or occasioned due to recalcitrant or refractory conduct part of detenu in evading arrest, then order of detention would not be vitiated - In this case, it is clear that except constituting such teems and sending remainders, Collector has not taken any steps what soever muchless u/Sec.7 of Act to declare detenu as proclaimed offender or attach his properties so as to secure his arrest - Collector failed to explain delay in executing order of detention adequately much less satisfactorily - In this case delay in executing order of detention as occasioned not on account of refractory or recalcitrant conduct of detenu, because of inaction of Forest Officials in executing order of detention - Considering fact that long delay of 5 and half years in execution of order of detention has occasioned on account of callous attitude of respondents and not because recalcitrant and refractory conduct of detenu in evading arrest and delay having not been explained adequately, order of detention not only vitiated, but also reflected upon subjective satisfaction of detaining authority, giving rise to a legitimate inference that detaining authority was not really and genuinely satisfied about necessity of detaining of detenu, preventing him from acting in a prejudicial manner - Hence order of detention cannot be sustained and in liable to be set aside - Writ petition, allowed. **M.Nirmala Vs. Govt., of A.P., 2012(2) Law Summary (A.P.) 79 = 2012(2) ALD(Crl) 9(AP) = 2012(5) ALT 178.**

—Secs.3(1), r/w 3(2) & 6 - FOREST ACT - INDIAN PENAL CODE - CONSTITUTION OF INDIA, Arts.14,21 & 22(5) - District Collector ordering detention of petitioner under Sec.3(1) r/w 3(2) - 3rd respondent/Divisional Forest Officer submitted proposals to District Collector reporting that petitioner identified as one of kin pins who was responsible for financing process of felling trees and also smuggling same to other places and about 11 cases are registered against petitioner for various offences under Forest Act and also under Penal Code - Petitioner is shown as accused in all cases

and an earlier order of detention is also passed in year 2006 - Petitioner contends that there is no application of mind by detaining authority as all relevant material not placed before detaining authority at time of passing detention order and that petitioner was granted conditional Anticipatory bail in all offences in month of May 2012, and said orders not placed before detaining authority at time of passing detention order i.e. on 25-6-2012 and that activities of the petitioner does not fall within meaning of "Goonda" as defined under Act and that since order of detention emphatically says that petitioner was involved in serious forest offences such activities do not fall within meaning of "Goonda" and with a view to wreck vengence against petitioner as Hon'ble High Court allowing writ of Habeas Corpus made remarks against officials who are responsible for delay in execution of order of detention - If a person against whom a preventive detention has been passed comes to Court at pre-execution stage and satisfies Court that detention order is clearly illegal there is no reason why Court stood stay its hands and compel petitioner to go to jail event though he is bound to be released subsequently - In this case, sponsoring authority did not place conditional orders granting Anticipatory bail before detaining authority - Which is vital material and which would have weighed with detaining Authority at time of passing detention order and relevant material was suppressed by not placing same before detaining authority - Order of detention, set aside - Writ petition, allowed. **Durgam Subrahmanyam Vs. Govt., of A.P. 2013(1) Law Summary (A.P.) 100 = 2013(2) ALD (Crl) 554 (AP) = 2013(4) ALT 243.**

—-Secs.3(1) & 2 - A.P. FOREST ACT, 1967, Secs.20,29 & 44 - A.P. SANDEL WOOD AND RED SANDEL WOOD TRANSIT RULES, 1969, Rule 3 - INDIAN PENAL CODE, Secs.378 and 379 - District Collector/1st respondent passed order of detention of detenu in prison for offences punishable under A.P. Forest Act and Indian Penal Code - Advisory Board/2nd respondent confirmed order of detention - Petitioner wife of detenu contends that case registered against detenu for offences punishable under Forest Act and Penal Code which formed basis for 1st respondent/Detaining Authority to pass order of detention are false and that when order of detention passed, detenu was in judicial custody and bail applications moved by him were dismissed and that detenu has not even been arrested - As detenu was arrested and remand to judicial custody in two cases and bail application moved by him having been dismissed possibility of his coming out of jail in near future and indulging in activities that are prejudicial to maintenance of public order, disturbing peace, tranquility and social harmony in society does not arise - Respondent/Detaining Authority/Collector submits that detenu has committed as many as five offences over a period of 3 years and as forest laws and ordinary penal laws under which he is prosecuted are unable to curb his illegal activities, respondent /Detaining Authority to prevent detenu from commission of such offences has passed order of detention - In this case, it is alleged that detenu is involved in 5 forest offences which are alleged to have been committed by him - No doubt forest offences alleged to have been committed by detenu cover,

loss of national wealth and his activities are prejudicial to maintenance of public order, disturbing peace tranquility and social harmony in society - Since before passing order of detention 1st respondent/Detaining Authority has not even bothered to verify as to in how many cases, detenu was arrested and in how many cases he moved bail application and in how many cases he was released on bail and in howmany cases bail applications moved by him were dismissed and same suffers from his lack of SUBJECTIVE OF SACTIFACTION - As 1st respondent Detaining Authority without applying his mind to this aspect of matter has passed order of detention while detenu is in judicial custody and hence same cannot be sustained and is liable to be set aside - While dealing this matter High Court noticed that Detaining Authority for passing order of detention against detenu, inter alia took into consideration following ground: The penal laws have failed to curb his illegal activities; certainly, "he is able to manage bails and relief from the courts through his ill-gotten money" and will continue indulging in prejudicial activity, which is required to be prevented by a detention order - A plain reading of the italicized portion of sentence conveys negative meaning and it conveys meaning that detenu in securing bails by managing courts with his ill-gotten money - By employing such sentence in order of detention 1st respondent/Detaining Authority inteded to attribute motives to Courts - As said sentence imputed motives to judiciary, sought to undermine and scandalize judicial institution, AGP directed to bring fact to notice of Advocate general and ask to appear in matter and instruct officers concerned to appear before Court along with record - While accepting unconditional apology tendered by Detaining Authority and is directed that he should be very careful while orders of detention and in filing affidavits before Courts of law. **V.Rani Vs. The Collector & District Magistrate,Y.S.R.Dt., 2013(1) Law Summary (A.P.) 286 = 2013(2) ALD (Crl) 65 (AP) = 2013 Crl. LJ 1583 (AP) = 2013(3) ALT 665.**

—Secs.3 (1) &(2) and 9 - A.P. PROHIBITION ACT, Secs.7-A r/w 8 (e) - CONSTITUTION OF INDIA, Art.22 & 226 - Preventive detention - District Collector/Competent Authority passing order for alleged involvement of detenu, father of petitioner - Advisory Board passed final order confirming order passed by competent authority, as result of which detenu is directed to be detained for period of 12 months - Petitioner contends that in preamble of impugned order of detention it has been categorically find out by competent authority that alleged detenu is constantly indulging in boot legging activities and he is habitual offender in committing offences under A.P. Prohibition Act and in very same order it is stated that previously he was also arrested in 11 cases and thus he can be called as "boot legger" as defined u/Sec.2(b) and when those 11 cases have been taken into consideration competent authority is under obligation to supply material pertaining to those 11 cases, in which detenu allegedly involved but same not supplied to make effective representation to Advisory Body or Govt. - Advocate General contends that Competent Authority had taken into consideration only 4 cases and other 11 cases cited in impugned order of detention related to past and competent authority had referred it only in a casual manner and since 11 cases were not taken in consideration for purpose of passing impugned order of detention, Competent Authority is not under obligation to

supply any material pertaining to those 11 cases - In this case, competent authority relied upon only on four cases that had taken place in year 2007 and other 11 cases that had allegedly taken place from 2002 to 2005 though reference was made, does not have any bearing on impugned order or same are not capable of vitiating impugned order - Competent authority had expressed its satisfaction for passing impugned order of detention basing on 4 cases only - Mere mentioning of certain cases does not necessarily constitute, at all circumstances a reference or reliance - Impugned order of detention and consequential order - Justified - Writ petition, dismissed. **Pamarthi lakshman Rao Vs.Collector & District Magistrate, Eluru 2008(3) Law Summary (A.P.) 96 = 2008(2) ALD(Crl) 538(AP) = 2008(5) ALT 303.**

—Secs.3(1)(2) & Sec.9 and 12 r/w 13 - G.O.RT.NO.1134, Dt.15-3-2011 - Collector passed detention order against detenu for alleged possession of F.J. Wash and possession of I.D liquor basing on three crimes filed against detenu - detenu's father filed writ of "Habeas Corpus" to release his son challenging order of detention - In this case, Govt., referred matter to Advisory Board which opined after investigation and perusing records that there are sufficient grounds for detention of detenu - Govt., considering Report of Advisory Board confirmed order of detention through G.O.R.T.No.1134 and directed detention of detenu for period of 12 months - It is contended that material supplied to detenu does not contain portion of order which imposed conditions and in grounds of detention substance alleged to have been seized is F.J Wash and that there is no material which is unfit for human consumption nor injurious to health and that there was no material to show that detenu was manufacturing I.D liquor - Govt. contends as detenu was caught while he was in possession of F.J Wash which is useful for distillation of I.D liquor and also in possession of I.D liquor, it cannot be said that he is not involved in boot legging activities - Any person who distills, manufacturers stores, transports, imports exports, sells or distributes any liquor intoxicating drug or other intoxicant in contravention of provisions of A.P. Excise Act and Rules made thereunder by himself, or through any other person or who abets in any other manner for doing any such thing, is termed as boot legger and his activities are prejudicial to maintenance of public order - From plain reading of provisions of Act 1 of 1986, object of detention u/Sec.3 is not to punish but to prevent commission of offence - Sub-sec.(1) of Sec.3 allows detention of person only if appropriate detaining authority is satisfied with a view to prevent such person from carrying on of offensive activities enumerated therein, it is necessary to detain such person - Ordinary laws are meant to punish for infraction of law, which has already taken place, Preventive detention is meant not to be by way of punishment, but is intended to prevent person from violating law in future - In this case, all three crimes registered, detenu surrendered before Court on 20-8-2010 and was released on bail and thereafter no incident took place till 7-2-2011, day on which detention order was passed - There is no proximity in detention of detenu and order of detention - In view of delay from date of last crime and date of detention order and in absence of any explanation offered by District Collector for delay occurred in passing detention order and since live connection

with last incident; date of detention order; and vital link with offending activity is snapped due to delay in passing impugned detention order - Collector failed to apply his mind in arriving at real and genuine subjective satisfaction necessitating detention of detenu with a view to preventing him acting in manner prejudicial to public order - Detention order liable to be quashed - Writ petition, allowed. **Kattuboina Siva Vs. Collector & District Magistrate E.G. District Kakinada 2011(3) Law Summary (A.P.) 234 = 2012(1) ALD(Crl) 79(AP) = 2012(1) ALT(Crl) 70(AP).**

—Sec.3(2) - This Writ petition for Habeas Corpus was moved by wife of detenue challenging correctness of orders passed by Collector and District Magistrate, for the preventive detention of Chittikesi Sadashivudu - This order has been passed by the Collector and District Magistrate, exercising power available to her under Sub Section (2) of Section 3 of Act - District Magistrate for arriving at subjective satisfaction has relied upon seven grounds.

Held, there cannot be hard and fast rule or a set standard by which remoteness of events to detention order can be gauged - But, however, statute itself offers some guidance in this respect, when it provided for maximum period of detention to be 12 months under Section 13 of the Act - Therefore, if a person can at best be detained for a maximum period of 12 months, so as to achieve objective of preventing him from taking to dangerous activity, if an event had happened fairly sometime back, say, by a substantive length of this tenure, then such an event cannot be considered as a proximate one at all - As was noticed supra, incidents last of which has been referred to had occasioned 8 months before order of preventive detention passed - Eight months of duration, when compared to tenure of 12 months, one would find that it necessarily amounts to a substantive length of time back - Consequently, we are of opinion that when Court reckon from last of incidents, detention order, lost connectivity because of lack of proximity - It is a settled principle that stale and sterile factors cannot be taken into account and consideration for preventively detaining a person, as was held in Rishikesh Tanaji Vs. State of Maharashtra - In this view of matter, Court find that order of detention passed by Collector is based upon remote events and hence, it is not liable to be justified and as a natural corollary further continuance of detention of detenue is illegal.

For reasons aforementioned, Court in opinion that the further detention of the detenue, pursuant to order passed by Collector and District Magistrate, is unsustainable - Therefore, he shall be set at liberty forthwith, if not required in connection with any other matter. Writ petition accordingly, stands allowed. **Chitikesi Shoba Rani Vs. State of Telangana 2016(1) Law Summary (A.P.) 355 = 2016(1) ALD (Crl) 1003 = 2016(3) ALT (Crl) 363 (AP).**

—Sec.3(2), r/w Sec.2(a)&(b) - District Collector passed order of detention of petitioners husband recording his satisfaction based upon grounds set out therein - State Govt., confirmed order of detention considering report submitted by advisory Board for period

A.P. PROHIBITION ACT:

of 12 months - Petitioner contends that order of detention for a period of 12 months passed by State Govt., while confirming order of detention passed by Collector is vitiated, for reason that period which has not been in fact specified by District Collector, has been specified by State Govt., without any application of mind, straightaway proceeded to order for detention for maximum period of detention for 12 months - Proviso to sub-sec.2 of sub-sec.3 of Act must be understood as limiting periods for which State Govt., can consider delegating its power on to District Magistrate or Commissioner of Police as case may be - State Govt., while exercising its power u/Sec.1 of sub-sec (3) of Act, can order for detention, but however in no case it shall exceed 12 months period - Since, same power can also be delegated under sub-(2) of Sec.3, it follows that even delegate can order for detention for period of 12 months - Writ petition not maintainable - Hence, dismissed. **Chalamala Rajyalakshmi Vs. The Govt. of A.P., 2010(1) Law Summary (A.P.) 383 = 2010(1) ALD(Crl) 726 (AP) = 2010(2) ALT (Crl) 124 (AP).**

— and CONSTITUTION OF IINIA, Art. 226 - Question referred to this Full Bench is "whether a petition for a writ in nature of Habeas Corpus, under Article 226 of Constitution of India, can be entertained against order of preventive detention passed under provisions of A.P. Prevention of Dangerous Activities of Bootleggers etc., Act or any other enactment authorizing preventive detention?" **-** Held, object of writ of Habeas Corpus is to secure release of a person who is illegally restrained of his liberty - Where detenu is not in detention, he may pray for a writ in nature of certiorari to quash impugned detention and/or writ in nature of mandamus for restraining authorities from arresting him but once he is arrested a writ of Habeas Corpus is only remedy available against illegal detention - Liberty of a citizen is a precious right, which cannot be transgressed by anyone, including detaining authorities - A person in detention by virtue of order of detention under any enactment authorizing preventive detention or is in illegal detention of any private individual has a right to approach High Court under Art. 226 of Constitution of India in a Habeas Corpus petition and such a petition under Rule 14 (a) of Rules is required to be heard by a Bench of Two Judges. **G.Archana Vs. State of A.P., 2015(2) Law Summary (A.P.) 401 = 2015(2) ALD(Crl) 325 = 2015(1) ALT 1 = 2015 Crl. LJ 3946.**

A.P. PROHIBITION ACT:

—-Secs.7-A r/w 8(e), 12 & 13 - Present petitioner claiming himself as owner of motorcycle filed petition unnumbered Crl.M.P. u/Sec.451 Cr.P.C. before Additional Judicial First Class Magistrate, seeking interim custody of vehicle, seized by Excise Officials - Said Court returned petition with endorsement that property was not produced before it and hence, petition is not maintainable - Hence present petition.

Held, when scheme of Act with reference to Secs.12 &13 is perused, it is clear that the Deputy Commissioner and Appellate Authority exercise jurisdiction

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in matter of confiscation of things/ property subject to confiscation u/Sec.12 of Act and to that extent, jurisdiction of Court under Criminal Procedure Code, 1973 is barred - In that view of matter, order passed by learned Additional Judicial First Class Magistrate, in unnumbered Crl.M.P. is impeccable - In result, this petition is dismissed with a direction to petitioner to seek his remedy before Deputy Commissioner of Prohibition and Excise. **K.Sasi Kumar Vs. State of A.P. 2016(1) Law Summary (A.P.) 103.**

—Sec.13 - CIVIL PROCEDURE CODE, Sec.144 - CONSTITUTION OF INDIA, Art.226 - EXCISE ACT, Sec.34 to 50-A - Excise Officials seized Goods vehicle financed by petitioner, for its involvement of Commission of offence under Prohibition Act - Pursuant to directions of High Court vehicle released on furnishing Bank guarantee for value of vehicle - 2nd respondent passed order of confiscation - 1st respondent/Commissioner Prohibition & Excise dismissed appeal filed by petitioner - Petitioner was given possession of vehicle since hirer did not pay loan instalment as per agreement - After dismissal of writ petition, petitioner surrendered vehicle to 2nd respondent and submitted Application for release of Bank guarantee - Vehicle not released on ground that petitioner should pay Bank guarantee amount because vehicle produced by petitioner does not fetch such amount and Excise Officials intended to auction vehicle and adjust short fall if any from out of Bank guarantee amount - Hence writ petition seeking direction to respondents for release of Bank guarantee - RESTITUTIONERY JURIS-DICTION OF COURTS - Restitutionery law has many branches - When restitutionery claims are to be found in equity as well as in law in many situations in many areas, an attempt to trace power of restitution only to Sec.144 of CPC is to ignore inherent power of Court to do complete justice between parties - This power can be exercised even in interlocutory matters - CONFISCATION - Defined - When a thing is made confiscable or power is conferred to confiscate goods/things involved in offence, it only means confiscating money value of such goods - Money value of goods is realized by competent authority by selling goods/ things/vehicles confiscated in accordance with power conferred on such authority - Excise Act and Prohibition Act confer power on authorized Officer to confiscate money value of excise contraband or vehicle involved in excise offence, it becomes clear by some provisions in these two enactments - In this case, vehicle involved in excise offence which was financed by petitioner was seized - Subsequently vehicle released on furnishing Bank guarantee for value as estimated by RTO - When order of confiscation was passed such order was to confiscate money value of vehicle as estimated when vehicle was seized - As directed by High Court, money value of vehicle was estimated at Rs.1.75 lakhs and therefore petitioner's vehicle is liable for confiscation of said amount - As vehicle has already been surrendered it has to be auctioned by Excise Department - Any short fall by Rs.1.75 lakhs has to be adjusted and recovered out of Bank guarantee amount - Petitioner not entitled to seek Mandamus for release of Bank guarantee - Writ petition is misconceived and accordingly dismissed. **Shri Ram Transport Co., Ltd., Vs. Commissioner Prohibition & Excise, Hyd., 2009(1) Law Summary (A.P.) 148 = 2009(3) ALD 90 = 2009(2) ALT 710.**

A.P. (REGULATION OF APPOINTMENTS TO PUBLIC SERVICES AND RATIONALISATION OF STAFF PATTERN AND PAY STRUCTURE) ACT, 1994:

A.P. PROTECTION OF DEPOSITORS OF FINANCIAL ESTABLISHMENTS ACT, 1999:

— Sec.11 - Complaints were received by Commissioner of Police, Hyderabad city against accused Nos. 4 and 5, directors in A-1 Company that they had collected deposits in name of A.1, M/s Garnet Marketing (P) Ltd., Hyderabad and other company and had not refunded their deposits amounting to Rs. 66.71 lakhs and interest theron as agreed and they have committed an offence under said Act and IPC - A Crime number was registered, chargesheet was filed and the government was requested to issue order for attachement of their properties - Likewise, Government issued G.O. Ms. No. 98 under S. 3 of the Act - Commissioner of Police, Hyderabad city, filed application before Metropolitan Sessions Judge, to make ad interim order of attachment as absolute - By an order, the Court below partly allowed that application raising the attachment of the immoveable properties pertaining to M/s. Garnet Marketing Private Ltd., Tarnaka Hyderabad (A-2), but it made absolute attachment pertaining to other properties in Annexure Nos. 1 and 2 - Present appeal is filed against that order - Held, since only material available before the government was opinion of competent authority, i.e., respondent and nothing else, it is clear that the government had acted mechanically on his dictation without independently satisfying itself about accused being unlikely to return the deposits in cash or kind after maturity, or in any other manner agreed upon, and that it was necessary in order to protect the investors that an order of ad interim attachment of the properties of the accused, is warranted - Therefore, it has to be held that there was no independent application of mind by the government as required by Sec. 3 of the Act - View of the court below that the accused did not suffer any prejudice, and therefore, even if sub-section (4) of Section 4 is not complied with, it would only be a procedural irregularity and would not affect the entire case of the prosecution, cannot therefore be accepted - Therefore, this Court of opinion, that non-filing of affidavit of competent authority along with application under sub-section (4) of Section 4 before court below renders the said application a defective application and therefore, in such an application, court below could not have made an order of attachment of properties of the accused absolute - Therefore, for all the above reasons, the Criminal Appeal is allowed and the order of the Court below as well as G.O. Ms. No. 98 Home (General-B) Department dt. 14-05-2007 are set aside. **Garnet Finance Limited Vs. The Commissioner of Police, Hyd.,City, 2015(2) Law Summary (A.P.) 24 = 2015(2) ALD (Crl) 170 = 2015(2) ALT (Crl) 169 (AP).**

A.P. (REGULATION OF APPOINTMENTS TO PUBLIC SERVICES AND RATIONALISATION OF STAFF PATTERN AND PAY STRUCTURE) ACT, 1994:

—G.O.Ms.No.36,dt.5-9-2001 - 'Bread Winner Scheme' - Compassionate appointment - Respondents/dependents of deceased employees of appellants/Corporation filed writ petition seeking direction to Corporation to appoint them as Conductors on compassionate grounds - Appellants contend that by virtue of new scheme, dependents of an employee

A.P. REVENUE RECOVERY ACT:

who dies in harness are entitled to a lump sum amount as ex-gratia - Single Judge directed appellants to appoint respondents as Conductors - Appellant/Corporation contends that because of weak financial condition of Corporation, it is decided to abandon policy with regard to compassionate appointment in pursuance of instructions received from Govt, of A.P., under G.O.Ms.No.36 and request of Corporation also to continue policy with regard to giving appointment to dependents of deceased employees under Bread Winner Scheme turned down by Govt., of A.P. - Hon'ble Supreme Court held that employer cannot be directed to give appointment in contravention to regulation and instructions which govern appointment on compassionate grounds and Court should not be over-sympathetic and should not have other considerations - In instant case, there is no policy with regard to giving appointment on compassionate ground at all and said policy has been dispensed with and now it has been decided to make some ex-gratia payment in lieu of giving compassionate appointment because appellant/Corporation is not financially sound - Order of Single Judge, set aside - Appellant/Corporation directed to make payment of compensation as per its policy - Appeal, allowed. **A.P.S.R.T.C. Vs. Valluri Venkata Narayana 2008(1) Law Summary (A.P.) 427.**

A.P. REVENUE RECOVERY ACT:

—-Secs.2 & 14 - **SECURITISATION AND RECONS-TRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002** - After obtaining Order, in Crl.M.P., respondent No.5 filed WP. - Meanwhile, respondent No.5 approached Chief Judicial Magistrate, by filing Crl.M.P. under Section 14 of the 2002 Act - By order, the learned Chief Judicial Magistrate, has allowed the said Crl.M.P. directing that posse-ssion of property shall be delivered by Advocate-Commissioner with help of Police - This order has been challenged in WP- After obtaining Order, in Crl.M.P., respondent No.5 filed WP.

Held, After an elaborate discussion of entire legal position, Supreme Court answered said question in negative and upheld view taken by Kerala High Court to effect that State's first charge over dues has primacy over dues of the Banks, Financial Institutions and Secured Creditors.

In light of afore-noted authoritative pronouncement, this Court have no hesitation to hold that dues claimed by respondent No.1 against respondent No.5 are subject to statutory charge under Section 2 of RR Act and therefore, they have precedence over dues claimed by petitioner from respondent No.5 - It is only after satisfaction of dues of respondent No.1 that petitioner can recover its dues from out of balance sale proceeds - In event respondent No.1 is unable to recover dues to full extent, from out of sale of balance paddy seized by it from respondent No.5- Mill, respondent No.1 is entitled to sell immovable properties such as factory, building etc - It is only after debt of respondent No.1 is satisfied that petitioner is entitled to recover its dues from out of left over properties or balance sale proceeds.

In light of above discussion, Order, in Crl.M.P.No.132 of 2015 on the file of the Chief Judicial Magistrate, Karimnagar, is set aside. **Karur Vyshya Bank Ltd., Warangal Vs. Telangana State Civil Supplies2016(3) Law Summary (A.P.) 293.**

A.P. REVENUE RECOVERY ACT:

—Sec.52-A - LIMITATION ACT, Art.137 - STATE FINANCIAL CORPORATION ACT, Sec.29 - "Liability of guarantor" - Company in which petitioner is one of Directors availed loan from respondent, A.P. I.D.Corporation and failed to discharge loans, consequently Corporation issued Demand letters for payment of loan and steps were being taken for recovery of loan amount by way of sale of unit u/Sec.29 of S.F.C Act - For first time letter of demand addressed to petitioner for payment of loan amount with interest - Petitioner denied his liability stating that Corporation not taken action pursuant to notice dated 28-3-1998 and therefore action taken to invoke provisions of Revenue Recovery Act is time barred and unenforceable - MRO initiated proceedings under R.R Act and issued destraint order as per the instructions of District Collector - Petitioner contends that he has resigned from Company and guarantee bonds executed by him are co-terminus with directorship of petitioner and moment he had resigned as Director on 16-10-1989 and guarantee bonds shall be deemed to have been revoked and that no proceedings were initiated against petitioner subsequent to demand notice dt:28-3-1990 which was denied by petitioner and destraint order dt:15-7-1996 is without jurisdiction and claim of Corporation is time barred by limitation and it cannot be permitted to take recourse to Provisions of R.R Act - Petitioner further contends as amount due was not determined 2nd respondent/Tahsildar has no jurisdiction to issue notice under R.R. Act - In this case, liability of guarantor having been crystallized on 28-3-1990 proceedings under R.R Act ought to have been commenced within period of three years - Therefore finding of Single Judge that proceedings for realization of debt having been commenced for realization of dues by sale of mortgaged properties within limitation further proceedings for realization of balance amount by taking recourse to R.R. Act is continuation of process of recovery proceedings initiated earlier, is not correct - Corporation is not prevented from proceeding against petitioner/guarantor simultaneously or independently by initiating proceedings under R.R. Act or by filing civil suit within period of limitation - Having failed to do so Corporation cannot proceed under R.R Act for recovery of time barred debt which is legally unenfor-ceable debt - Contention of Corporation that no period of limitation has been prescribed for recovery of dues of Corporation for instituting proceedings under R.R Act has no merit - Since Sec.52-A of R.R. Act only equates debts of Banks, Govt., Corporations as akin to land revenue and are recoverable on par with land revenue - Thus recovery of land revenue as well as dues falling u/Sec.52-A of RR Act stand on same footing and can be recovered only in accordance with provisions of Limitation Act - Limitation against guarantor/petitioner start to run from 28-3-1990 and would expire by 28-3-1993 and hence proceedings sought to be initiated under R.R Act by letter dt.22-3-1996 of respondent is without jurisdiction - In this case, there is no proper determination of liability of petitioner to Corporation and he was deprived of opportunity to rebut his liability - Contention of petitioner that since guarantee was furnished by him as guarantor same is co-terminus with directorship has also no merit - Guarantee being personal in nature, his liability to pay amount continues notwithstanding with termination of Directorship with Company - Further there is nothing in deed of guarantee that

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though it was executed in personal capacity of petitioner same would stand terminated on termination or resignation of petitioner as Director of Company - However in this case, there is no proper determination of liability of petitioner to Corporation and he was deprived of opportunity to rebut his liability in full - Though petitioner is not relieved of his liability to Corporation, in view of finding that there is no legally enforceable debt which can be recovered from petitioner as on date of notice issued to petitioner on 22-3-1996 or even on 4-6-1996 when proceedings were initiated by Dist. Collector under RR Act and that there was no proper determination of liability of petitioner to Corporation - Writ petition liable to be allowed and proceedings initiated under RR Act are liable to be set aside as without jurisdiction - Order of Single Judge, set aside - Writ appeal, allowed. **K.Raja Rao Vs. A.P. Industrial Deve., Corp., Limited Hyd., 2013(1) Law Summary (A.P.) 55 = 2013(3) ALD 77 = 2013(2) ALT 366.**

A.P. REVISED PENSION RULES, 1980:

—Rules 8 (1) (b), 9(vii), (4) & 52 - Petitioner, UDC in Ministerial Service of Judiciary was charged for tampering of records - Basing on report of enquiry officer after considering written representation, Disciplinary authority imposed punishment of compulsory retirement from service against petitioner and withheld pensionary benefits pending enquiries - Petitioner contends that provisional pension cannot be deferred even on ground of pendency of any enquiry as per Rule 52 and inasmuch as petitioner has accepted punishment of compulsory retirement imposed by impugned proceedings, he is aggrieved only in not settling retirement benefits for which, he is entitled under law - Respondents contend since charges were held proved in enquiry, which are serious in nature, impugned order withholding of pension of petitioner till disposal of those matters is justified - Pension sanctioning authority may, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if petitioner is convicted of a serious crime or is found guilty of grave misconduct - Pension is not a charity or bounty nor is it a conditional payment solely dependant on sweet will of employer, and that it is earned for rendering a long service and is often described as deferred portion of payment for past services and it is, in fact, in nature of social security plan provided for superannuated Govt. Servant - Once petitioner was allowed to retire compulsorily from service, provisional pension shall be sanctioned in favour of petitioner as provided under Rule 52 of Rules - Respondent/pension sanctioning authority directed to fix and pay provisional pension to petitioner forthwith as per Rule 52 - Writ petition, allowed. **M.Tirupathi Rao Vs. The Prl. District Judge, E.G. District, Rajamundry 2010(1) Law Summary (A.P.) 8 = 2010(1) ALD 590 = 2010 (1) ALT 749.**

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—-Writ of Mandamus is sought in this writ petition to declare the proceeding issued by the 2nd respondent cancelling the pattadar passbooks relating to the property of the petitioner on the application of the 4th respondent as illegal, arbitrary and without

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jurisdiction and contrary to the provisions of A.P. Rights in Land and Pattadar Passbooks Act, 1971 and direct the respondents 2 and 3 not to take any steps to make entries in Revenue Records including Passbooks of the Petitioner.

Subject land in the writ petition i.e., Ac. 6.79 cents originally owned by the husband of the 4th respondent -Even according to the counter affidavit filed by the 3rd respondent, the pattadar passbook and title deeds were issued to the 4th respondent during the year 1993 after the death of her husband by the then MRO and RDO - When the 4th respondent proposed to sell the remaining land after gifting a part, the Petitioner objected for the same - 4th respondent filed a complaint before 1st and 2nd respondents and basing on same, 2nd respondent issued notice to petitioner as well as 4th respondent - Petitioner filed photostat copy of unregistered sale deed and promised to submit original record, but never attended enquiry thereafter - The petitioner has not even produced original Will, alleged to have been executed in favour of his father by husband of the 4th respondent - Contents of counter affidavit filed by 3rd respondent were not even contradicted by filing any reply, which goes to show that petitioner's name was entered in revenue records without any basis - No notice was issued to 4th respondent while granting pattadar passbook and title deed to petitioner.

Held, no doubt, basing on application, though not in form of appeal, filed by 4th respondent, impugned order was passed by 2nd respondent - If impugned order is set aside, illegal order, recording name of petitioner and granting of pattadar passbook and title deeds in respect of subject land in writ petition, which is passed without notice to 4th respondent will survive, which will amount to reviving illegal order passed in favour of petitioner, as such, this court is not inclined to interfere with impugned order exercising jurisdiction u/Art. 226 of the Constitution of India - In view of above facts and circumstances, writ petition is liable to be dismissed - Accordingly, this writ petition is dismissed. **Vellanki Venkata Subrahmanyam Vs. Government of A.P. 2016(2) Law Summary (A.P.) 408 = 2016(5) ALT 485 = 2016(6) ALD 324.**

—Secs.2(2), 3,4, 5 & 9 –"SUOMOTO POWERS OF COLLECTOR" - Petitioner purchased land through registered sale deed and was put in possession of property by vendors and mutation proceedings also have been carried on - While things stood thus petitioner received notice from R3/Deputy Collector, to appear for enquiry basing on proceeding issued by R2/District Collector - Petitioner contends that Collector is not authorised under A.P. Rights in Land and Pattadar Pass Books Act to direct R3 to take up proceedings suo moto and after mutation proceedings earlier carried out and R2/ Collector himself is not authorised under law to issue any such direction - It may be open for him to exercise power under Sec. 9 of Act with respect to any of proceedings, but he is not empowered to issue any such direction conferring sub-ordinate authority suo moto powers de hors Act and since petitioner is a bonafide purchaser for consideration his rights cannot be interfered with - Government contends that Collector being supervisory authority is entitled to direct Sub-ordinate authority to take action - Perusal of Act

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could leave no manner of doubt, while Collector under Sec. 9 of Act is entitled to suo moto to call for record and take appropriate action in Act, no such suo moto power is conferred on Tahsildar – Allowing such direction to be implemented would amount to conferring of suo moto power by Collector, which otherwise, not available and not given to Collector by statute - Order of R2/Collector, directing 3rd respondent cannot be sustained – Notice issued by 3rd respondent, being in obedience of orders of Collector, same also cannot stand – Writ Petition allowed. **M/s.Satya Sai Builders & Developers Vs. The State of Telangan 2015(1) Law Summary (A.P.) 409 = 2015(4) ALD 20 = 2015(2) ALT 581.**

—Sec.2(7), 4, 5-A & 6 - LAND ACQUISITION ACT,Secs.4(1) &(6) - Petitioner's land admeasuring Ac.4.52 for the benefit of 3rd respondent A.P. Genco - An extent of Ac.15.19 cents of land was notified for acquisition for development of Environmental Belt to Power Station under provisions of Land Acquisition Act - Petitioner's land did not find place in Notification, thus it was out side purview of acquisition proceedings - However, petitioner's land was also taken possession along with notified lands and possession was handedover to respondent A.P. Genco - When petitioner approached R.D.O to pay compensation, Tahsildar was directed to enquire into claim of petitioner and Tahsildar submitted Report confirming that petitioner is rightful owner and pattadar - Despite same, compensation not paid to petitioner - Hence present writ petition seeking direction to initiate proceedings under Land Acquisition Act and pay compensation to him - 1st respondent/District Collector opposed claim of petitioner stating that subject land is Govt., land and petitioner was only occupant and that name of petitioner was entered as pattadar and enjoyer in Revenue Records and also in ROR 1-B Register and Pattadar Pass Books and Title Deeds were also issued in favour of petitioner - However land was classified as AW - Wet land is register and same is treated as Govt., land since dots (.....) are put against subject land in certain columns of record and therefore petitioner not entitled for compensation under provisions of Act and as such compensation not paid to him - In this case admittedly petitioner was given PPB and TDs identifying as pattadar under ROR Act and his name is mutated in Revenue Records and also ROR 1-B Register - There is statutory presumption in favour of entry is conferred u/Sec.6 of ROR Act until contrary is proved or until it is otherwise amended in accordance with provisions of Act - In the instance case admittedly claim of petitioner was enquired into by Tahsildar and Pattadar Pass Books and Title Deeds were issued to petitioner duly recording his name as Pattadar - Said documents have not been withdrawn nor entries made there in or altered - Determination of petitioner as pattadar has become final - In this case, only material which respondents seek to relay against petitioner is that in Revenue Register land was classified as AW - wet land and in column against it dots (...) are marked - It is difficult to accept contention of respondents that on basis of such entry land should be treated as Govt., land on more than one occasion it has been held by High Court that mere entries in Revenue Records would not constitute proof of Govts., title - Therefore,

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claim of respondents 1 & 2 Collector and RDO that land in question is Govt., land shall fail - Petitioner is entitled for compensation for land resumed from him - Directions issued to respondents to initiate process of acquisition and pay compensation to petitioner as per provisions of Land Acquisition Act - Writ petition, allowed. **Epuru Seshadri Reddy Vs. The State of A.P. 2013(2) Law Summary (A.P.) 241 = 2013(5) ALD 328 = 2013(5) ALT 450.**

—Secs.3,4,5,6-A, 8 & 9 - Petitioner got property in question from one G.A who brought up him from age of 10 years and after his demise name of petitioner was entered in records of rights by respondent No.2/RDO - Subsequently in family partition said properties given to him - Respondents 3 & 4 filed revision against correction of entries in revenue records and issuance of PPB and TD in favour of petitioner contending that 2nd respondent corrected revenue records without making enquiry and on basis of wrong entries PPB and TD issued in favour of petitioner - 1st respondent/Joint Collector allowed revision petition inspite of objection taken by petitioners regarding maintainability of revision - Petitioner contend that respondent No.1 Joint Collector has exceeded his jurisdiction in entertaining revision petition filed by respondent No.3 & 4 without availing remedy of appeal and Sec.5 (5) of Act and further contended that neither report of MRO was furnished to petitioner nor opportunity in this regard was given to him to meet findings contained therein - Ordinarily aggrieved person shall not be allowed to bypass appeal remedy and is certainly bound to observe hierarchical discipline in availing remedies as provided in Statutes, this principle is not inviolable - If facts of case, justify an aggrieved party can be allowed to bypass appellate remedy and seek intervention of revisional authority that such power is consecrated in revisional authority is clearly evident from language of Sec.9 which not only confers *suo muto* revisional power in authority, but also empowers authority to entertain an application from aggrieved party and to call for and examine record of any office subordinate authorities viz., recording authority, MRO or RDO - Provision does not impose any pre-condition that revisional authority shall not exercise his powers until aggrieved party exhausts appellate remedy - Where party has not exhausted its appellate remedy shall be sued sparingly to prevent grave miscarriage of justice and shall not be exercised any regular and routine manner by revisional authority - Petitioner directed to avail remedy of filing a civil suit u/Sec.8(2) of Act - Petitioner can seek amendment of entries in revenue records if he obtains a decree from civil Court - Order of status quo as on today shall be maintained - Writ petition is disposed of accordingly. **Kola Satya Rao Vs. The Joint Collector, Vizianagaram 2010(2) Law Summary (A.P.) 165 = 2010(3) ALD 439 = 2010(3) ALT 281.**

—Secs.3(3),4(1),5(3) & 5(5) – Writ petitioner challenges order passed by Joint Collector, who remanded matter to R.D.O. - Petitioner made an Application to Tahsildar, seeking certain information for applying P.P.B. – Petitioner filed writ, since Tahsildar not furnished information – High Court directed petitioner, to pursue remedy of Appeal u/Sec.5(5)

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of Act - R.D.O., dismissed Appeal, observing that subject land in Appeal are patta lands and civil dispute is pending before Civil Courts, prayer of petitioner would be considered after disposal of civil disputes - Joint Collector, remanded revision to R.D.O., to pursue matter/re-enquire and dispose of after outcome of civil suit judgment, if petitioner succeeds in civil suit, may approach R.D.O., or Revenue Authorities for taking up correction of entry in revenue records of rights - Both R.D.O., and Joint Collector, not mentioned in their orders about particulars of civil cases particulars or parties at whose instance cases are pending – According to petitioner no civil cases are pending with regard to property in question – Inspite of repeated request of petitioner, authorities are not furnishing details of pending civil cases – Since no other alternative, petitioner filed present writ petition - High Court observed that once again it cannot solve problem of petitioner – Directed, petitioner to approach Tahsildar, who is primary authority under the Act, seeking information in violation to each survey number vise and to take necessary steps depending upon information that may be furnished – Petitioner also is required to make an application in prescribed format invoking Sec.4(1) of Act, seek mutation of her name in revenue records for issuance of P.P.B. and T.D. – So far as lands, with which petitioner claims right but some one else's name in records, petitioner is required to seek correction of those entries by approaching Tahsildar or Revisional Authority i.e., Collector – Accordingly, writ petition is disposed. **T. Rajeswari Vs. The Joint Collector, SPSP Nellore District 2015(3) Law Summary (A.P.) 225 = 2015(5) ALD 601 = 2015(6) ALT 339.**

—Secs.3, 5(3), 5(5), 8(2) & 9 - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS RULES, 1989, Rules 4 to 9 - Certain Property devolved upon petitioner's husband after death of testator and legatee and since then petitioner has been in possession and enjoyment of property and 3rd respondent/Tahsildar also issued Pattadar Pass Books and Title Deeds in her favour - 4th respondent filed Application before 3rd respondent/Tahsildar for rectification of entries in records of rights and later filed Revision petition before 1st respondent/Joint Collector u/Sec.9 of ROR Act - Joint Collector entertained Revision and passed orders partly allowing Revision filed by 4th respondent holding that a title dispute arises between parties and therefore he is not competent to settle same and having so held Joint Collector has however, set aside pattadar pass book and title deed issued to petitioner on ground that no recorded evidence was produced by petitioner before 3rd respondent/Tahsildar - Petitioner contends that approach of 1st respondent/Joint Collector is wholly illegal and improper that having held that there is serious dispute and relegated parties to civil suit for adjudication of such dispute, Joint Collector ought not to have set aside pattadar pass book issued to petitioner - Pattadar Pass Books and Title Deeds having been issued in 2001, 4th respondent has not challenged same by preferring appeal under Sec.5(5) of Act - Joint Collector ought not to have entertained Revision petition more than 8 years after issuance of Pattadar Pass Books and Title Deeds in favour of petitioner - Provisions of Act laid down procedure for making entries and amendments of such

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entries in record of rights - After making entries in record of rights following procedure u/Sec.3 of Act, by recording authority, if any person acquires right over any agricultural land through succession survivorship inheritance partition etc. is entitled to approach recording authority intimating acquisition of such right - Thereupon recording authority shall amend/upto date record of rights by following procedure under relevant Provisions of Act - If any person aggrieved by such amendment and updating of record of rights is entitled to question same by filing appeal u/Sec.5(5) of Act and person aggrieved by order passed in appeal has a remedy of Revision u/Sec.9 of Act - In this case, 1st respondent/Joint Collector has committed grave impropriety and serious jurisdictional error in interfering with Pattadar Pass Books and Title Deeds, stated to have been issued to petitioner as far back as year 2001, having related parties to civil Court - U/Sec.8(2) of Act, a person aggrieved by entries in records of rights is entitled to file a civil suit and under Specific Relief Act - If he succeeds in suit, is entitled to amendment of entries in record of rights in accountancy with decree obtained by him in suit - Impugned order of 1st respondent/Joint Collector cancelling pattadar pass books and title deeds issued in favour of petitioner, set aside - Writ petition, accordingly allowed. **Basireddy Rukminamma Vs. The Joint Collector, Kadapa, Kadapa 2013(3) Law Summary (A.P.) 186.**

—Secs.3(3) 2(6-a), 2(6-b), 2(7) and 3 - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT AND RULES, 1971, Rules 15 to 17 - CONSTITUTION OF INDIA, Art.300 (a) - MRO issuing Memo to incorporate name of one Y.P in possession column of pahani - Present writ petitioner filed questioning Memo issued by MRO - Petitioner contends that he is owner of said land and same is his ancestral property and that he filed suits and obtained decrees and respondents/defendants produced present Memo of Pahani for year 1999-2000, showing name of YP in possession column and that even certified copies of Pahani petitioner's name appears as possessor and pattadar pass book was also issued in favour of petitioner - Respondents contend that petitioner has got his name incorporated by playing fraud under possessor column and issuance of pattadar pass book denied and that late PY's name has been entered into revenue records after conducting enquiry by RI, MRO has issued impugned Memo incorporating name of YP and writ petition is not maintainable as there is alternative remedy of filing appeal before appellate authority available to petitioner - In this case, it is specific contention of petitioner that for year 1999-2000 petitioner's name was recorded as possessor and pattadar in Pahani and before issuance of impugned Memo, there was no notice issued to him, there was no enquiry conducted by 1st respondent/ MRO - Further issuance of Memo like impugned Memo is alien to provisions of Act - If at all for whatever reason, changes are to be effected in revenue records, provisions governing same are set out in provisions of Act and Rules made there under - Admittedly for year 1999-2000 petitioner's name was appearing as pattadar as well as occupant in revenue records - If any person is affected by an entry in record of right, he is required to apply for rectification to prescribed Officer and such application

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should be made within a period of one year from date of notification - Further Secs.4 & 5 of Act deals with acquisition of new rights and procedure for intimation and effecting necessary changes in record of rights - Procedure for making application and manner of same are set out in Rules 15 to 17 of Rules which contemplated holding of enquiry, after giving notice to any person referred in application as having right or interest and also to any person whose name has been entered in record as having interest in land and such notice shall be in Form No.5 as prescribed under Rules - After enquiry final orders would be passed which orders would be subject to appeal and revision under Act - If entries in revenue records are altered in manner as set out in Memo, same would create havoc in Society and leaving citizen's property rights to mercy of revenue Authorities depriving them of their valuable propertie's rights guaranteed under Art.300(a) of Constitution of India - This case is a classic example inasmuch as an innocuous memo of nature which has no backing in official records and which cannot be tried to any statutory provision or Rule alleged to have been issued based on a Revenue Inspector's enquiry by Mandal Revenue Officer has caused and created litigation by way of suits and various Interlocutory Applications, Revisions and Civil Miscellaneous Appeals - Petitioner passionately urges basing on judgment of Supreme Court, to initiate appropriate action against Officers responsible for issuance of impugned Memo in utter disregard and flaggerent violation of prescribed procedures putting petitioner to agony and expenditure of fighting litigation to protect his valuable rights - Directed to initiate disciplinary action against MRO and other connected Officers who are responsible for issuance of impugned Memo without following due procedure - Impugned Memo, set aside - Writ petition, allowed. **Kallem Penta Reddy Vs. Mandal Revenue Officer,Saroornagar Mdl.,R.R.Dist. 2013(3) Law Summary (A.P.) 8 = 2013(5) ALD 471.**

—Sec.4 - REGISTRATION ACT, Sec.17(2) (vii) and Sec.17(1) (b) & (c) - Present writ petition filed to declare inaction of 3rd respondent/Tahsildar in amending Record of Rights (ROR) by incorporating name of petitioner - Trust as pattadar of certain extent of land - Petitioner is a Joint Venture constituted for purpose of establishment of Medical college - State Govt. issued G.O.Ms.No.1404 thereunder it has agreed for alienation of certain land - Petitioner also remitted amount under challan towards cost of land to Govt., - For starting Medical College one of requirements for grant of permission by Medical Counsel of India(MCI) is filing of document of title of land on which College is proposed to be constructed - In order to establish right of petitioner over land, petitioner has applied to 3rd respondent/Tahsildar for entering its name in ROR in respect of said land - As no action was taken on said application, filed present writ petition - High Court directed respondent/Tahsildar to consider petitioner's request for making necessary entries in ROR and pass order according to law within two weeks - Instead of respondent no.3 passing appropriate order, he, along with other respondents, has filed WVMP seeking vacation of said order - Govt., contends that transfer deeds requires registration and that as petitioner's whole claim of title

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is based on said transfer same required registration u/Sec.17 of Registration Act and that on facts of this case, Sec.4 of ROR Act which deals with acquisition of rights to be intimated - It is further contended that composition of petitioner/Trust was changed unilaterally by trustees by including family members of Managing Trustree, petitioner is not entitled to mutation of subject land in its favour - Petitioner contends that alienation or allotment of land by Govt. is exempted from registration u/Sec.17(2)(vii) of Act - As petitioner acquired right over property through Govt's., orders, Sec.4 of ROR Act is attracted and that reconstitution of petitioner-Trust is not a relevant factor in considering an application for mutation under ROR Act - By virtue of G.O.Ms.No.116 State Govt., has given a grant of such extent of land in various survey Nos mention there in to petitioner/Trust on strength of this grant, petitioner/Trust is entitled to claim mutation of its name in ROR - Contention of Govt., that petitioner/Trust is not entitled for mutation of land on ground of alteration of its composition cannot be countenanced - So long as Trust deed under which petitioner-Trust was constituted, remains in force and allotment made in its favour subsists, respondent No.3/Tahsildar cannot refuse to incorporate name of petitioner/Trust in ROR - As an authority vested with power to effect change in ROR Tahsildar is no way concerned with change of composition of petitioner/Trust - Contention of Govt., that State Govt., has decided to cancel MOU and that letter was addressed to that effect to EO, TTD and 2nd respondent, are only subsequent events and that subsequent event has no bearing on issue raised in present writ petition - So long as MOU and allotment of land are not cancelled, 3rd respondent/Tahsildar cannot refused mutation in favour of petitioner - Tahsildar is directed to forthwith mutate name of petitioner-Trust in ROR in respect of various extents of lands in different survey Nos. mentioned in prayer of Writ Petition and communicate same to petitioner-Trust within a period of one week - Writ petition, allowed. **Sri Kanchi Kamakoti Peetam Chittoor Vs. Stae of A.P. 2013(2) Law Summary (A.P.) 246 = 2013(5) ALD 244 = 2013(5) ALT 436.**

—Secs. 4 & 5(3) - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS RULES, 1989, Rules 19(1) r/w Form VIII and Rule 27 (4) - Petitioners purchased land under registered sale deeds and got mutated their names in Revenue Records and also obtained Pattadar Pass Books and Title Deeds (PPBs & TDs) - 2nd respondent/daughter of petitioners' vendor filed suit against petitioners and obtained decree - Pursuant said judgment 1st respondent, Tahsildar sanctioned partition in favour of 2nd respondent and directed petitioners to surrender their PPBs/TDs for rectification - Petitioners contend that impugned order of Tahsildar is non *est* and cannot be enforced as Tahsildar did not issue statutory notice to petitioners - Respondent and Govt. contend that when competent revenue Official alters/modifies records of rights under Rule 27 (4) of Rules in pursuance of a Court decree procedure contemplated u/Sec.5(3) of Act r/w Rules 19 & 22 of Rules is not necessary - If Application is made for amendment of existing entries in Records of Rights, person whose name already exists in such record is entitled to contest proposed amendment - Order passed against person whose name already exists in Records of Rights without giving him notice of proposed amendment and effective opportunity of

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hearing is liable to be declared, nullity on ground of violation of rule of *audi alteram partem* - Language of Form IV in which notice is required to be published cannot control interpretation of substantive provision contained in Sec.5 (3), which casts a duty on recording authority to issue notice in writing to all persons whose names are entered in Records of Rights and who are interested in or affected by proposed amendment - In this case, having regard to fact that no notice was issued to petitioners, who were issued PPBs in 2004 and who are enjoying land, order is liable to be set aside - Hence order set aside - Writ petition, allowed. **Veeramachaneni Ramchander Rao Vs.Tahsildar, Chityal 2009(1) Law Summary (A.P.) 392 = 2009(2) ALD 432 = 2009(3) ALT 92.**

—Secs.5-A, 5-A(4), 5-B and 9 - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS RULES, 1989, Rule 22-A - Petitioners are purchasers of certain extents of land under registered and unregistered sale deeds - 2nd respondent/MRO, validated all unregistered sale deeds in his proceedings dated 23-9-1994 - One RS claimed to be adopted son of vendor filed appeal u/Sec.5-A of Act before RDO, pleading that petitioners fabricated unregistered sale deeds and got alienations regularized by playing fraud and that he came to know of regulation of proceedings on 20-7-1995 - RDO entertained Appeal and issued notice to petitioners - Petitioners appeared before appellate authority and placed on record their objections for maintaining appeal after delay of 10 years of order passed u/Sec.5-A of Act - Appellate authority considering material brought on record came to conclusion that Tahsildar committed error in regularizing alienations without there being any validation of sale deeds and thereby proceeded to remand matter back to Tahsildar with direction to conduct detailed enquiry after issuing notice to all concerned and dispose of same on merits - Order of RDO and consequential notice issued by Tahsildar are under challenge in these writ petitions - Petitioners contend that no evidence produced before RDO, to prove that R.S is adopted son of vendor and therefore he is not entitled to question validation proceedings issued by MRO and that appeal filed by R.S before R.D.O is barred by limitation and that R.S had not offered any plausible reasons to entertain appeal after 10 years of proceedings under which alienatins have been regularized by MRO and that RDO, despite plea taken by petitioners with regard to maintainability of appeal filed by R.S did not adjudicate issue as to maintainability and thereby erred in entertaining appeal - In this case, indisputably, alienations basing on sale deeds have been regularized in year 1994, and that appeal u/Sec.5-B of Act shall lie to RDO, against order passed by MRO, validating unregistered sale deeds under sub-clause (4) of Sec.5-A of Act by following procedure laid down under Rule 22-A of APPPB Rules - A plain reading of Sec.5(b) and Rule 22-A of Rules indicates that aggrieved person has to file appeal before RDO within stipulated time and that RDO has not dealt with issue as to maintainability of appeal after 10 long years and he has committed a serious error apparent on face of records in not adjudicating issue as to maintainability of appeal which is crucial one in facts and circumstances of present case - Where there is an error apparent on face of records, existence of alternative remedy of revision u/sec.9 of Act, to question order impugned in writ petitions is not a bar to grant relief

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under Art.226 of Constitution of India - Hence impugned order in writ petitions is liable to be set aside and matter remanded to RDO for adjudication afresh on maintainability of appeal and thereafter on merits - Three Writ Petitions are allowed. **Erroju Brahmachary Vs.The R.D.O., Mancherial 2012(3) Law Summary (A.P.) 274 = 2013(1) ALD 535 = 2013(1) ALT 248.**

—Secs.5-A, 5-A(1), 5-A(2), 5(5) & 9 - REGISTRATION ACT, Secs.50 & 17 - EVIDENCE ACT, Sec.67 - Petitioner claims that himself and respondent 4 & 5 jointly purchased certain extent of land in particular suvery number from owner and possessor under registered document - Respondents 4 to 6 claim that they purchased entire land in that survey number - 3rd respondent/MRO passed order recording finding that petitioner failed to produce any documentary evidence in support of his claim - Appellate authority also dismissed appeal filed by petitioner recording finding that original owner who appears before MRO, has denied execution of registered sale deed and confirmed simple sale deed in favour of 4 to 6 - 1st respondent/Joint Collector also rejected revision filed by petitioner on ground that records disclosed that original owner has denied selling of land in favour of petitioner and admitted document executed in favour of respondents 4 to 6 - Petitioner contends that he has purchased land along with respondents 4 to 5 by register sale deed and that inspite of documentary evidence i.e., certified copies of registered sale deed and final decrees of civil Courts, appellate and revisional authorities without considering matter in proper perspective, refused to accept documents merely basing on statement made by original owner who has colluded with respondents 4 to 6 - Petitioner claiming title to portion of land by virtue of registered sale deeds and final decrees passed by civil Court, it is not open for authority constituted u/Sec.5-A of Act, to decide such questions, and therefore, findings recorded are beyond scope of enquiry u/Sec.5-A of Act - Govt. Pleader contends that when original owner himself has denied execution of any registered sale deeds, petitioner cannot make any claim based on such documents - In absence of any documentary evidence to show possession of petitioner, there is no any illegality in orders passed by authorities and that every order under Sec.5-A of ROR Act is intended to regularize such alienations and in absence of any evidence in support of claim of petitioner, there is no illegality committed by authorities in ordering regularization of alienation in favour of respondents 4 to 6 and that when execution of sale deeds is denied, it is for petitioner to prove such alienation in terms of Sec.67 of Evidence Act - In this case, as much as petitioner has put up an independent claim by virtue of registered sale deeds, respondent authorities ought not to have considered claim of respondents 4 to 6 for regularisation of alienation - In view of claim of petitioner, as there was dispute with regard to title itself, MRO is not empowered u/Sec.5-A of Act to record any finding on such complicated questions with regard to title, possession of land in question - MRO, in exercise of powers u/Sec.5-A of Act, is not empowered at all to adjudicate such kind of disputes and such questions are to be decided only by civil Courts but not by authorities under Act - Respondent-authorities have ignored

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valid registered sale deeds and final decree proceedings of competent civil Court while passing impugned orders and as such they are liable to be set aside - Writ petition, allowed. **Pureli Chandraiah Vs. The Joint Collector, Karimnagar, 2011(2) Law Summary (A.P.) 239 = 2011(3) ALD 197 = 2011(4) ALT 387.**

—Secs.5-A, 5(5),8 (2) and 9 - MRO validating 'unregistered partition' deed and declaring 1st respondent as rightful owner of concerned land, simply issuing notice to petitioners - RDO, dismissed Appeal and Joint Collector rejecting Revision, preferred by petitioner against orders of MRO - Contention that order passed by MRO, validating unregistered partition deed and declaring 1st respondent as rightful owner of property, is without jurisdiction and contrary to Sec.5-A of Act and Rules made thereunder and that Sec.5-A cannot be invoked to validate a deed of partition, since no transfer as such, takes place under it - A perusal of order passed by MRO, discloses that he did not go through full facts of case and service of notice virtually was treated as a formality and contentions advanced on behalf of petitioner were not taken into account, at all - When very genuinety of document was disputed, MRO, ought not have taken upon himself, functions of adjudication, into merits of matter - MRO did not have power to entertain Application for validation of 'unregistered partition' deed - Apart from validating document, MRO proceeded to declare that 1st respondent as absolute owner of land - Even where MRO had power to validate a document, his functions cease with validation and question of granting any declaratory relief does not arise and it is purely in realm of civil Courts - MRO committed illegality in declaring that 1st respondent is absolute owner of land - Impugned proceedings - Quashed - Writ petition, allowed. **A.Sarojamma Vs. A. Parvath Reddy (died) rep. by LRs 2008(2) Law Summary (A.P.) 243 = 2008(4) ALD 658 = 2008(4) ALT 431.**

—Secs.5-A, 5-B, 9 & 8(2) - MRO/3rd respondent issuing Certificate regularizing unregistered agreement of sale executed by 5th and 6th respondents in favour of petitioner/Society - Appeal filed before RDO, after seven years of order passed by MRO u/Sec.5-A - Appellate authority quashed order of MRO exercising powers u/Sec.5 (5) - Joint Collector dismissed Revision filed by petitioner u/Sec.9 of Act - Petitioner contends that MRO after conducting enquiry regularized agreement of sale and thereafter mutation was effected in revenue records entering name of petitioner and therefore order of revisional authority is illegal and unsustainable - 4th respondent contends that questioned property is joint family property and he was a minor at time of alleged agreement of sale and no notice issued to him during course of enquiry u/Sec.5-A and that agreement of sale cannot be regularized u/Sec.5-A - Prior to Sec.5-B of Act came in to force providing remedy of appeal before RDO against order passed u/Sec.5-A, only remedy available for an aggrieved party was right of revision u/Sec.9 of Act against order of regularization u/Sec.5-A - Power of revision was always available prior to amendment and even after amendment, to go into question of legality and validity of regularization of alienations, or other transfer of lands, regularized u/Sec.5-A, by revisional authority u/Sec.9 of Act - Agreement of sale is not an 'alienation' or 'transfer' of property, and there was no mechanism provided for u/Sec.5-A to deal with agreement of sales, and that Sec.5-A

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provides for regularization of unregistered sale deeds of alienations, but not agreement of sales - Only remedy available to petitioner to resolve dispute before appropriate forum, either by way of filing a civil suit for specific performance, or any other recourse u/ Sec.8(2) of Act - Writ petition, dismissed. **Sri Bhavana Rushi Co-operative Housing Building Society Ltd.,Vs.J.C. R.R.Dt. 2008(2) Law Summary (A.P.) 259 = 2008(3) ALD 629 = 2008(4) ALT 126.**

—Secs.5(1),6-A and 9 - ESTATE ABOLITION ACT, 1948, Sec.11(a) - Asst. Settlement Officer granted Ryotwari Patta in favour of petitioner's father - When Panchayat Raj Department sought to grant lease of said land to third party, petitioner filed civil suit and obtained decree - 1st appeal and 2nd appeal filed by District Collector against said judgments were dismissed - When petitioner filed representation before MRO/ Tahsildar for mutation of his name in revenue records and grant pattadar pass books and title deeds in his favour that 2nd respondent has insisted that unless 1st respondent/ District Collector accords permission for implementation of Ryotiwari Patta granted by Asst. Settlement Officer, he cannot carry out mutation of his name in revenue records - Petitioner contends that u/Sec.5(1) of Act, 1971, 2nd respondent MRO/Tahsildar is competent Authority to entertain mutation of names in record of rights u/Sec.6-A of Act, is entitled to grant pattadar pass books and title deeds following decision taken by him u/Sec.5(1) of Act - Under scheme of Act, it is only 2nd respondent who is Authority vested with power to consider request for mutation of names in record of rights and for issuance of pattadar pass books and title deeds - District Collector is a functionary in hierarchy who is vested with revisional power u/Sec.9 of Act - 2nd respondent directed to consider Application of petitioner for mutation and grant of pattadar pass books and title deeds without expecting any instructions or directions from District Collector. **A.Ranga Bhashyam Vs.State of A.P, 2011(1) Law Summary (A.P.) 1 = 2011(1) ALD 694 = 2011(1) ALT 491.**

—Sec. 5(5) - **ADMINISTRATION OF EVACUEE PROPERTY ACT, 1950** - DISPLACED PERSONS (COMPENSATION & REHABILITATION) ACT 1954, Secs. 5 and 12 to 24 of LIMITATION ACT, 1963, - This Writ Petition is filed for a certiorari to call for records relating to order dated 23-6-2014 of respondent No.2 in Case No.D1/1388/ 2014, whereby he has confirmed order of respondent No.3 in Case No.C/1488/2014, dated 23-6-2014 and to quash said orders - It is case of petitioner that 17 years after mutation of said land in favour of his vendors and nine years after mutation of his name in revenue records in respect of said property, Smt. Jangamma and other legal heirs of late Vadde Jangaiah - respondent Nos.5 to 8, filed an appeal u/Sec.5(5) of A.P. Rights in Land and Pattadar Passbooks Act 1971, questioning order of mutation dated 6-9-2005 in his favour, on ground that late Vadde Jangaiah was the owner and possessor of entire extent of Ac.4-00 - Petitioner averred that after death of Vadde Jangaiah, his wife i.e., respondent No.5, got her name mutated in respect of Ac.2-00 vide proceedings No.B/3617/2002, dated 4-9-2002 and also surrendered passbook and title deed (Patta No.386 and Title deed No.352488) of

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her husband - That respondent Nos.5 to 8 failed to question mutation effected in favour of Vadde Sathaiah as pattadar; and that they have questioned consequential orders of mutation of names of respondent Nos.9 to 11 in File No.D/6205/2004 in place of late Vadde Sathaiah - That subject land was clearly recorded in name of late Vadde Sathaiah in Form-I Register, but subsequently records were tampered and extent of Ac.4-00 was interpolated against the name of late Vadde Jangaiah in revenue records; and that respondent Nos.5 to 8 suppressed the fact that in sale deed executed by them in favour of third parties they have shown subject land as neighbour's land - That respondent No.3/appellate authority, without supplying a copy of remarks of respondent No.4 to petitioner and without giving any opportunity to contradict the same, has placed undue reliance on said remarks, wherein a finding was recorded that mutation in respect of subject land in favour of late Vadde Sathaiah was effected fraudulently - That respondent No.3/appellate authority hurriedly and without giving opportunity to petitioner disposed of said appeal on 30-5-2014 and set-aside mutation both in his and his vendors' favour in spite of there being no explanation offered by respondent Nos.5 to 8 for the delay of 17 years by way of filing an application for condoning said delay; and that though he was transferred on 3-6-2014, respondent No.3 passed the order by antedating the same - That questioning the said order, petitioner filed Revision Petition under Section 9 of Act before respondent No.2 on 7-6-2014 along with an application seeking suspension of order of respondent No.3; that respondent No.2 passed an order of status quo on said application; and that in W.P.No.16199 of 2014 filed by respondent Nos.5 to 8, this Court by order dated 16-6-2014 directed respondent No.2 to dispose of interim application, but by impugned order, respondent No.2 without considering the material on record dismissed Revision Petition itself - Held, main ground on which respondent No.3 has concluded that incorporation of name of Vadde Sathaiah and mutation in favour of petitioner was fraudulent and irregular was that same were in violation of procedure and that this was obviously done in collusion between Village Administrative Officer and Vadde Sathaiah - Respondent No.3 has virtually equated alleged procedural illegality with fraud - In my opinion, every illegality, either procedural or substantive, does not constitute an act of fraud - Even if available record does not support incorporation of name of Vadde Sathaiah, at best, same constitutes an illegality - In order to term same as fraud, respondent Nos.5 to 8 have not only to allege but also to prove mens rea or bad faith on part of Vadde Sathaiah and also revenue functionaries concerned - No evidence has been produced by respondent Nos.5 to 8 to establish such bad faith on part of Vadde Sathaiah - On contrary, as discussed herein before, conduct of respondent Nos.5 to 8 clearly suggested that they were very much in knowledge of fact that Vadde Jangaiah had only Ac.2-00 of land in Poppalaguda village and that was obvious reason why they did not raise issue of incorporation of name of Vadde Sathaiah in the revenue records and subsequent mutation proceedings in favour of petitioner, for a long period of about 17 years - Therefore, finding rendered by respondent No.3 that Vadde Sathaiah played fraud

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and got his name incorporated in revenue record is not supported by sufficient material, and is wholly without any basis - Under sub-clause (i) of proviso to Section 17 of Limitation Act, a transaction affecting any property cannot be setaside on ground of fraud if property has been purchased for valuable consideration by a party who was not a party to fraud and did not at time of purchase know or has reason to believe that any fraud has been committed - In other words, person who entered into a fraudulent transaction must also be imputed knowledge of as well as commission of fraud - Appeal filed by respondent Nos.5 to 8 before respondent No.3 was hopelessly time barred and that respondent No.3 had no power or jurisdiction to entertain such appeal unless an application for condonation of delay was made by respondent Nos.5 to 8 and such delay was condoned by respondent No.3 for valid reasons - On analysis as above, impugned order is quashed - Writ Petition is allowed. **Kosaraju Balaji Vs. The State of Telangana 2015(3) Law Summary (A.P.) 439.**

—Sec.5(5) - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS RULES, 1989 Rule 21 – Tahsildar issued Pattadar Pass Books and Title Deeds to Writ Petitioner – Respondents 4 to 6 filed objections before Tahsildar that PPBs were issued to petitioner for more extent than what is actually possessed by petitioner – Tahsildar forwarded the objections of Respondents with report to RDO – RDO treating the report of Tahsildar as Appeal and directed change of extents in PPBs - RDO to entertain a case, there should be a properly presented appeal by aggrieved party – Appellate authority gets jurisdiction to correct an entry made either on amendment or updating in records of rights - No procedure to receive objection petition by Tahsildar after issuing PPBs/TDs and such communication cannot be treated as an appeal by RDO – Appeal should be filed in procedure as per Act, but RDO has entertained the report of Tahsildar as appeal and issued notices to petitioner – Manner of entertaining appeal to decide grievance between parties by RDO amounts to suffer prejudice to petitioner and the order of RDO is patently illegal - Held, setting aside orders is not going to resolve grievance between parties and clarified objection petition filed by Respondents 4 to 6 before Tahsildar shall be treated as an appeal presented for consideration and appropriate orders be passed – Matter is remitted to RDO for disposal, with proper notice to petitioner. **Krishtappa Vs. Joint Collector & Addl.District Magistrate, Ananthapur 2014(2) Law Summary (A.P.) 201= 2014(4) ALD 8 = 2014(4) ALT 767.**

—Secs.5(5), 6-A & 6 - Issue for consideration in writ petition or in reference order relates to maintainability of an appeal against issuance of PPB/TD under Sec.6-A of the Act - Whether an appeal to Revenue Divisional Officer under Sec.5(5) of Act is maintainable against issuance of PPB/TD u/Sec.6-A of Act? is point for consideration - Held, it is well settled that right of appeal must find its source in legislative authority - Right of appeal accrues to litigant when it is expressly provided for in statute and axiomatic that right of appeal is a substantive right and must be conferred by a statute - As already held, appeal is provided for against the original proceedings or substantive

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determination u/Secs.4, 5 and 5-A of the Act - Legislature in its wisdom and noticing purpose of issuing PPB/TD did not provide right of appeal against mere issuance of PPB/TD under Section 6-A of the Act - Therefore, on the literal construction of Secs.3 to 6-A of the Act, it can be held that remedy of appeal u/Sec.5(5) of the Act is not provided against the issuance of PPB/TD u/Sec.6-A of the Act - By treating the action u/Secs.5 and 6-A of the Act as single or mutually dependent, in our considered view, the remedy of appeal against mere issuance of PPB/TD u/Sec.6-A of the Act is not available - For above reasons, we are not in agreement with the view expressed in N.BAL REDDY'S case and is overruled - Writ petition is allowed. **Ratnamma Vs. R.D.O.Anantapur Dt. 2015(3) Law Summary (A.P.) 1 = 2015(6) ALD 609 = 2015(5) ALT 228.**

— Secs.5 (5) & 8 - CIVIL PROCEDURE CODE, Sec.92 - Petitioner/Choultry was endowed land under Will by a philanthropist in year 1884 - 1st respondent/RDO issued patta to such land in favour of respondents 2 to 7 on basis of purchase made by them and subsequently cancelled patta in view of Report submitted by MRO, stating that petitioner had title over land and same was determined by civil Court - When matter remanded from High Court for fresh consideration, RDO upheld patta granted in favour of respondents 2 to 7 - Petitioner contends that RDO, travelled beyond scope of his powers and he had even unsettled findings recorded by civil Court and that Scheme framed by civil Court cannot be meddled with, by any one, and any aggrieved party has to approach very Court that framed it, and none else - For all practical purposes, RDO was exercising powers under Secs.5(5) of Act, against issuance of pattadar pass books to respondents 2 to 7 - Respondents did not raise any objection as to jurisdiction of RDO, to take up matter, at least after matter was remanded to him by High Court - If ownership over land is claimed on basis of inheritance, verification of records maintained by Revenue Department would serve purpose - On other hand if request for issuance of pattadar pass books and title deeds is made on basis of purchase, it has to be verified as to whether vendor had title to do so - Sec.8 of Act itself mandates that disputed questions of title must be decided by Civil Court - Decree of civil Court has become final half-a-century ago - Ignoring his limits, 1st respondent/RDO went on commenting about accrual of properties to petitioner, choultry and certain other aspects and that various findings recorded by him in impugned order are totally outside his jurisdiction - Impugned order - Unsustainable - Writ petition, allowed. **Sri Neelayamma Choultry Vs. The RDO, Vizianagaram 2009(2) Law Summary (A.P.) 118 = 2009(4) ALD 497 = 2009(2) APLJ 387 = 2009(4) ALT 756.**

—Secs.5(5) & 9 - A.P. (TELANGANA AREA) LAND REVENUE ACT, 1317 Fasli, Sec.166-B - District Revenue Officer/3rd respondent passed order in revision filed by 5th respondent, directing rectification of entries in revenue records in respect of land stands in name of petitioner - Petitioner contends that revision u/Sec.166-B of Act is not remedy for rectification of entries in revenue records and A.P. ROR Act

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is a comprehensive enactment for this purpose - R.O.R Act and Rules made thereunder is a self contained Code dealing with making an amendment of entries in revenue records as well as issuance of pattadar pass books and title deeds - MRO is conferred with power to discharge said functions - A remedy of appeal is provided u/Secs.5(5) to RDO and revision lies u/Sec.9 to Joint Collector - Sec.166-B of Act is general provision which confers powers of revision upon District Collector to call for records of his subordinates and to rectify same - Once subject matter is covered by provisions of R.O.R Act, Sec.166-B of Act has no application to such proceedings - Remedies provided under R.O.R Act along would be available to aggrieved individual - Impugned order, set aside - Writ petition, allowed. **G.Ranga Reddy Vs. District Collector, Warangal 2009(2) Law Summary (A.P.) 183 =2009(3) ALD 678 = 2009(2)APLJ 45(SN) = 2009(4) ALT 425.**

—-Secs.6-A(5) & 6-A(1) - A.P.LAND GRA-BBING (PROHIBITION) ACT, 1982 - Revenue Department issued proceedings for assignment of land in favour of petitioners as "Louni Khas" recognising their possession - District Judge dismissed O.P filed by M.R.O under Land Grabbing Act holding that petitioners cannot be treated as land grabbers in view of proceedings issued for assignment - 2nd respondent/District Collector refusing to issue Pattadar Pass Books and title deeds to petitioners on ground that there is no valid transfer of land in their favour by Govt. - Petitioners contend that issuance of pass books and title deeds u/Sec.6-A of Act is nothing but a formality of recognition of ownership, and once petitioners have fulfilled facets and trappings of owners *vis-a-vis,* land, there is no justification on part of respondents to, withhold same - Govt., contends that petitioners have not acquired ownership in respect of land, and in absence of same, pass books cannot be issued and that Sec.6-A(5) of Act declares that a pass book and title deed issued under sub-sec(1) is equivalent to any instrument, for which title is acquired and unless a valid transfer takes place, pass books cannot be issued - View taken by 2nd respondent/District Collector that regular transfer of land has not taken place from Govt. cannot be accepted as he did not state as to why "Louni Khas" issued in favour of petitioners cannot be treated as transfer from Govt. - Whatever may be requirement in law for transfer of title between two private individuals, manner in which a Govt. property can accrue to a private individual, and in particular a landless poor, cannot be expected to be in a particular mode - Govt. itself recognised its obligation under Directive Principles of State Policy, enshrined in Consti-tution, to ensure that property at its disposal is distributed to deserving poor - SEC.6-A OF ROR ACT - Under 1st proviso to sub-sec(1), even an occupant of an inam land can be issued pass book, though he is not owner, nor any transfer has taken place in his favour and main purpose of issuance of pass books and title deeds is mentioned in sub-sec(5) of Act and it is, principally, to enable holder thereof, to create mortgage, which happens to be one of important facets of exercise of rights over immovable property - In this case. possession of petitioners over land assumed characteristics of ownership - For effective exercise thereof, it is essential that they

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are issued pass books and title deeds - Once effort made by Govt., to evict petitioners did not fructify, possession of petitioners metamorpho-sises into that of ownership - Therefore it is not a grace that respondents would be exhibiting by issuing pass books and title deeds - It would only be an instance of performance of their duty - 4th Respondent/MRO directed to issue pattadar pass books and title deeds in favour of petitioners - Writ petition, allowed. **G.Sarvaiah Goud Vs. Govt. of A.P. 2009(2) Law Summary (A.P.)155 = 2009(4) ALD 461 = 2009(2) APLJ 436 = 2009(4) ALT 141.**

—Secs.6-D, Sub-secs.(1) & (2) - REGISTRATION ACT, Sec.32 and Rule 26 framed there under - CONSTITUTION OF INDIA, Arts.14,251, 254(2), & 366 - Govt. Memo No.18549/RGN.1/A1/2012-1, dt.8-5-2012 - Petitioner is owner of agricultrual land in particular Survey nos . and is in possession and enjoyment and also obtained Pattadar Pass Books - Petitioner wanted to sell away his agricultural property for the purpose of maintaining his family and also to arrange marriage of his daughter - Because of non-obstinate clause in Sec.6-D of Act, petitioner could not execute sale deed in order to sell to third parties - 3rd respondent/Sub-Registrar insisting on production of Pattadar Pass Books and Title Deeds for entertaining document for registration of sale of his land - Hence, petitioner filed writ petition challenging Sec.6-D, alleging that registration of deeds and documents falls under Entry-6 of list III of Schedule VII of Constitution of India and in exercise of same Govt. of India as enacted Registration Act u/Sec.32 of Act deals with provisions of Registration Act and Rules framed thereunder and that none of provisions of Registration Act and Rules made thereunder casts any obligation on parties to document to produce any other documents like Pattadar Pass Books, Title Deeds along with document sought to be registered for purpose of registration, thus there is no obligation on part of parties to produce Title Deeds and Pattadar Pass Books at time registration of Agricultural land nor registering Authority can insist on such production at time of registration - It is alleged that Sec.6-D of Act runs counter to law made by Parliament and hence it is hit by Art.254(2) of Constitution of India - There is repugnancy since State law clearly over ride Central Law because of imposition of restriction on implementation of Central Law by requiring production of Pattadar Pass Books and Title Deeds at time of registration of sale deed as such a thing is not required under Registration Act - Imposibility of compliance with Sec.6-D(2) of Act is manifest on its face as it requires both parties to transaction to produce Title Deeds and Pattadar Pass Books at time of registration - Under no circumstances, can both parties produce said document since vendor only will be in possession of those documents, not vendee - Registration Act is not an existing law within meaning of Art.366 of Constitution of India and in Registration Act there is no Provision for production of title deed as it has been mandated by impugned section - Production of Title Deed by vendee as required by Sec.6-D with a non-obstante clause, is absolutely absurd and irrerational Provision and same cannot stand to scrutiny of Art.254 of Constitution - Registration Act is completely silent about compulsory production of document relating to Title by vendor and vendee, where as impugned

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section obliges vendor and vendee to produce same - Silence does not necessarily mean implied dispensation - Field occupied by Registration Act is completely different from field occupied by State legislation - Requirement of production of document as mentioned in impugned Section by transferor or vendor is not unconstitutional as it is not repugnant to and inconsistant with any Provisions of Registration Act, in any manner what- soever and same is upheld - However, requirement of production of document relating to title by vendee as mentioned in Sub-section of impugned section, is absolutely absurd and irrerational as vendee or transferee cannot produce any document relating to title of land in question, because after acquisiton of interest only he will get document relating to title but not before that - Art.14 of Constitution cannot at all stand irrationality and absurdity of any piece of legislation, and on that ground this portion is struck down accordingly - Declaring impugned Section except this portion is constitutionally valid - Writ petition, partly allowed. **K.Anantha Rao Vs. State of A.P. 2013(3) Law Summary (A.P.) 202 = 2013(6) ALD 556.**

—Sec.8(2) - 4th respondent/Tahsildar granted Pattadar Pass Books and Title Deeds in favour of petitioner no.1 in year 2005 - Subsequently application filed by 5th respondent to issue Pattadar Pass Books and Ttitle Deeds after mutation basing on registered gift deed - 4th respondent/Tahsildar rejected Application filed by 6th respondent - 3rd respondent/RDO allowed appeal filed by 5th respondent and set aside Pattadar Pass Books and Title Deeds issued in favour of 1st petitioner - 2nd respondent/Joint Collector dismissed revision petition filed by petitioner - Hence petitioner filed present writ petition - 3rd respondent/RDO in his proceedings opined that there are claims and counter-claims with regard to property in question and that cases of such nature raising civil disputes cannot be resolved by Revenue functionaries and parties are accordingly directed to approach civil Court of competent jurisdiction for getting their rights declared and having held surprisingly 3rd respondent/RDO set aside Pattadar Pass Books and Title Deeds issued in favour of 1st petitioner - U/Sec.8(2) of ROR Act, 1971, a person is entitled to seek declaration of his rights if he is aggrieved by any entry made in record of rights in respect of property in his possession - If he succeeds in suit, he is entitled to get his name entered in record of rights through appropriate amendment in pursuance of such decree - As respondent No.5 has questioned entry in records of rights made in favour of petitioner no.1 it is she who has to file a civil suit - Till she succeeds in suit and gets declaration of her right over property in question, entries already made in record of rights, following which Pattadar Pass Books and Title Deeds have been issued to petitioner no.1 cannot be altered - Order of 3rd respondent/RDO as confirmed by 2nd respondent/Joint Collector, set aside, leaving 5th respondent free to avail remedy of civil suit and approach 4th respondent Tahsildar u/Sec.8(2) of ROR Act in event of her success in such civil suit - Writ petition, allowed accordingly. **Nadiminti Varalakshmi Vs. The State of AP 2013(3) Law Summary (A.P.) 108 = 2014(1) ALD 677 = 2013(6) ALT 160.**

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—Sec.8(2) - A.P. RYOTS IN LAND AND PATTADAR PASS BOOKS RULES, 1989, Rules 8(c), 11(2),16(1), 17(1) and 20(1) - A.P. SURVEY AND BOUNDARIES ACT, 1923, Secs.3(ii), 5, 6 & 7 - Petitioner purchased land under registered sale deed and is in absolute possession and enjoyment of said land and has been raising crops and also dug a bore well - Petitioner also filed a suit seeking perpetuactual injunction against adjacent owner and proved his exclusive possession and enjoyment over said land - With a view to resolve disputes with adjacent owners petitioner submitted Application to Tahsildar remitting required fee for conducting survey of said land and obtained directions to conduct survey and fix boundaries stone, but no survey was conducted - Hence present writ petition to declare action of respondents in not conducting survey of his land and not fixing boundaries stones as illegal, arbitrary and in violations of natural justice - Petitioner contends that duty, obligation is cast on respondents to conduct survey and fix boundaries stones on subject lands in accordance with law and petitioner is entitled to question failure of respondents to survey land in writ proceedings under Art.226 of Constitution - No one can seek a mandamus without a legal right and there must be a judicially enforceable right as well as a legally protected right before one, suffering a legal grievance can ask for mandamus - A person can be said to be aggrieved only when he is denied a legal right by some one who has a legal duty to do something or to abstain from doing something - Writ of mandamus can be granted only in a case, where there is a statutory duty imposed upon Officer, concerned, and there is a failure on part of that Officer to discharge statutory obligation - If there is no statutory basis for claim and there is no provision in statute imposing an obligation it would not furnish a ground for issuance of writ of mandam - Remedy of individual seeking survey of lands, except in limited circumstances, is to invoke jurisdiction of competent civil Court and seek declaration of title and in case, there is any disputge regarding boundaries, to file application seeking to have subject lands surveyed and demarcated - In this case, while petitioner filed a suit seeking for perpetual injunction he does not appear to have sought for lands to be surveyed and demarcated and even in present writ petition he has not even choosen to array person against whom he obtained decree in suit, as respondent - Petitioner has no statutory right to claim relief sought for - Writ petition, dismissed. **Rachakonda Nagaiah Vs. The Govt. of A.P. 2013(2) Law Summary (A.P.) 73 = 2013(3) ALD 156 = 2013(3) ALT 377.**

— Sec. 9 - Writ petition is filed questioning order dated 23.08.2014 passed by the 2nd respondent under Section 9 of A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'the ROR Act'), setting aside order dated 20.01.2012 passed by appellate authority confirming the orders of the Revenue Divisional Officer passed under Section 5(3) of the ROR Act - Held, While there can be no dispute that law with respect to burden of proof, i.e., legal burden in cases of allegations of fabrication and forgery of document lies on person who alleges so, crucial aspect on this issue is also well settled that there lies an initial onus on party who relies on the document

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to prove its truth, validity and binding nature - Only after discharge of such onus, onus shifts to other party who alleges fabrication and forgery to prove his stand - In present case that initial burden of existence of a document and its true nature has not been discharged by respondents 5, 6 and 7 and respondents 5, 6 and 7 had also failed to follow procedure prescribed for asserting their right based on the unregistered Exchange Deed. The law is also well settled that he who asserts title must prove - In impugned order, burden is wrongly cast on writ petitioners, whose father's name admittedly finds place in the records as registered holder - In that view of matter, only legal ground on which the order of Tahsildar, passed in exercise of powers conferred under Section 5(3) of the ROR Act, and confirmed by Revenue Divisional Officer is set aside, is unsustainable - Revisional authority's order is contrary to the law declared by this Court in Basireddy Rukminamma v. The Joint Collector, Kadapa [8] wherein this Court had held that the revisional authority having come to the conclusion that there is a serious dispute between the parties, requiring them to settle the same before the Civil Court could not have interfered with pattadar passbooks and title deeds issued in favour of the petitioners therein - In result, writ petition is allowed. **Bommaku Narsinga Rao Vs. The State of Telangana 2015(2) Law Summary (A.P.) 241 = 2015(6) ALD 336 = 2015(4) ALT 285.**

—-Sec.9 - **A.P. (TELANGANA AREA) LAND REVENUE ACT, 1317 F,** Sec.166-B - **A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) ACT, 1977 -** Whether the Government can exercise their powers after long lapse of time? - It was held no - Since substantial rights on account of continuous possession and enjoyment of the subject property has been accrued to the respondents and the exercise of suo-motu revisional power after long lapse of time is arbitrary and summary remedy of enquiry and correction of records cannot be invoked when there is bonafide dispute of title - Further held that the suo-motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law. **Joint Collector, Ranga Reddy Vs. D.Narsing Rao 2015(1) Law Summary (S.C.) 13 = 2015(3) ALD 1 (SC) = 2015 AIR SCW 622 = AIR 2015 SC 1021.**

—Secs.9, 4 and 8(2) - Private respondents filed Revision basing on a preliminary decree obtained from civil Court invoking Sec.9 of Act for mutation of their names in records of rights in respect of land in particular survey no - Petitioners though not made parties to Revision, filed their objections as to maintainability of revision - Joint Collector passed impugned order holding that private respondents are entitled for mutation of their names in records of rights as pattadars for land in that survey no. and accordingly directed Dy. Collector & Tahsildar to take necessary action on claim of private respondents - Petitioners contend that very revision petition is not tmaintainable as private respondents have not approached primary authority i.e., Tahsildar u/Sec.4 of Act and that even on merits no rights of parties have been finally adjudicated in

A.P. RIGHTS IN LAND AND PATTADAR PASSBOOKS ACT 1971:

civil suit as basis for claim of private respondents for mutation of their names in revenue records - Sec.4 of Act enisages that if any person acquires any right as owner by succession, survivorship, inheritance, partition, Govt., patta, decree of Court or otherwise, he shall intimate in writing fact of his acquisition of such right to Tahsildar within 90 days from date of such acquisition and said Officer shall give or send a written acknowledgment of such intimation to person making it - Sec.5 of Act has laiddown procedure for considering such situation - U/Sec.9 of Act Collector is conferred with suo motu revisional power and he is also empowered to exercise his revisional powers at instance of aggrieved party - If any party is aggrieved by decision taken by primary Authority, he is entitled to file an appeal - Revision is final remedy under Act besides right of aggrieved party to file suit u/Sec.8(2) of Act after exhausting all these remedies - In this case, surprisingly Joint Collector has not given any reasons what so ever for extraordinary step he has taken step in straightaway entertaining revision petition filed by private respondents without relegating them to primary authority under Sec.4 of Act - Evidently Joint Collector had no proper comprehension of statutory scheme under which he was functioning as revisional authority - In instant case, only reason for private respondents in approaching Joint Collector was purported acquisition of their right under preliminary decree in partition suit and they claimed for mutation in terms of such decree - Joint collector has no jurisdiction to entertain such application in purported exercise of his revisional jurisdiction in absence of any decision taken or order passed or proceedings made in that record by his subordinate Officers - Impugned order passed by Joint Collector, set aside - Writ petitions, allowed, subject to certain observations and directions. **P.Anjaneyulu Gupta Vs. Mohd Abdul Basith Khan 2013(3) Law Summary (A.P.) 311 = 2014(2) ALD 77 = 2014(3) ALT 140.**

—Secs.9,5-A,5-B & 8(2) - A.P. RIGHTS IN LAND PATTADAR PASS BOOKS RULES, 1989,Rule 23(1) - Petitioner purchased land under unregistered sale deed and applied for regularisation and issuance of Pattadar Pass Book - MRO issued Pattadar Pass Book - Respondent contends that land purchased by their father and petitioner forged unregistered sale deed and MRO without issuing notice to them who are interested parties and real owners effected mutation in revenue records in contravention of provisions of Act and Rules - RDO cancelled order passed by MRO issuing mutation certificate in favour of petitioner - Joint Collector concurred with findings of RDO observing that MRO issued orders relaying upon unregistered sale deed without verification and without following procedure laid down under ROR Act - From Scheme of ROR Act it is obvious that entry in pattadar pass books does not confer any title on person but it is a prima facie evidence that person in whose name entry is made is in possession of land and also has some right or interest in land and that every entry in record of rights shall be presumed to be true until contrary is proved and that only remedy open for any party aggrieved by an entry made in record of rights regarding his rights is only to file a civil suit to declare such right and get entry amended in accordance with decree passed by civil Court in his favour - In present case, obviously

A.P. RIGHTS IN LAND AND PATTADAR PASSBOOKS ACT 1971:

there is serious dispute between parties with regard to title of property in question - Only course having regard to facts and circumstances of case open to revision petitioner therefore is only to get his title declared to property by decree of competent civil Court and then approach revenue authorities to register his name in records of rights - ROR Act provides a complete mechanism in respect of making entries in revenue records - When once order in respect of entry made in revenue records became final, after confirmation by Collector, only remedy left open to party aggrieved is to obtain a decree getting his rights declared by competent civil Court, as provided u/Sec.8(2) of Act - Impugned order passed by Joint Collector - Justified - Revision petition, dismissed. **Airabelli Prabhakar Rao Vs. Emmadi Koteshwar 2009(2) Law Summary (A.P.) 404 = 2009(5) ALD 97 = 2009(3) APLJ 126 = 2009(6) ALT 35.**

—Secs.9 & 5(5) - A.P. RIGHTS IN LAND PATTADAR PASS BOOK RULES, 1989, Rules 21 & 13(2) - 1st petitioner's husband holding pattadar pass books and title deeds to an extent of Ac.0.88 cents of land - After his death 4th respondent/Tahsildar issued pattadar pass books and title deeds in favour of 1st petitioner - Subsequently when 5th respondent approached 4th respondent/Tahsildar claiming that said property belongs to him and issuance of pattadar pass books and title deeds to 1st petitioner was illegal - Basing on Report submitted by Tahsildar, 3rd respondent/RDO initiated suo motu proceedings by treating said Report of Tahildar as an Appeal and after giving notice to both parties RDO allowed purported Appeal and set aside pattadar pass books and title deeds issued to 1st petitioner and further directed to issue pattadar pass books and title deeds in favour of 5th respondent - 2nd respondent/Joint Collector confirmed order of RDO in Revision petition filed by petitioners u/Sec.9 of Act - Petitioners mainly contend on procedural illegality committed by RDO in treating Report of Tahsildar as an Appeal and setting aside pattadar pass books and title deeds issued to 1st petitioner - Under Rules 21 and Sec.5(5) of Act, evidently RDO is constituted an appellate authority who is confired with power of entertaining Appeals filed by aggrieved parties by follwing procedure prescribed under Rule 21 of Rules - From order passed by RDO, it is clear that 5th respondent not filed any Appeal and instead of filing such an Appeal, 5th respondent has approached respondent no.4/Tahsildar who in turn submitted a Report which was taken as ROR Appeal by RDO and this procedure is patently contrary to procedure prescribed under Act and Rules - Since Rule 13(2) of Rules comes into conflict with statutory provisions of Sec.5(5) and 9, same cannot be construed as conferring suo moto appellate or revisional powers on RDO and substantative source of power is conferred on RDO under Sec.5(5) of Act only - Therefore in negletion of such power, RDO cannot act by taking shelter under Rule 13(2) of Rules - 5th Respondent contends that petitioners failed to raise objection on exercise of suo moto appellate powers by RDO either before him or before 2nd respondent/Joint Collector - Jurisdiction of RDO to pass order does not depend upon on raising or not raising of objection by a party - Issue pertaining to very jurisdiction

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of an Authority can be raised at any stage - There can be no question of a party acquieseing in raising such objection because by conduct of parties, an Authority cannot exercise jurisdiction which does not vest in it or contrary to prescribed procedure - Order of RDO confirmed in Revision by Joint Collector cannot be sustained and both orders are accordingly set aside - Writ petition, allowed. **Peddi Sailaja Vs. The State 2013(3) Law Summary (A.P.) 285 = 2014(2) ALD 246 = 2014(3) ALT 181.**

—Rules 9(1)(a)(i) and 5 & 19 & Secs.4 & 5(1) - 2nd respondent/Tahsildar rejected petitioner's Application for mutation of her name and names of her minor children basing on Will executed in favour of petitioner in respect of half share of various extents in certain survey nos. and issued Memo stating that petitioner not submitted Legal Heirs Certificate for grant of succession and that Will is not registered one - Petitioner contends that on admitted facts of case where there is no dispute about petitioner's succession, there is no need for her for obtaining Legal Heirs certificate and that under law Will is not required to be registered and that petitioner's husband himself has filed notarized affidavit conveying his no objection for mutation of properties in name of petitioner and her sons and that Tahsildar committed serious illegality in rejecting petitioner's Application - U/Sec.4 of 1971 Act, if any person acquires any right over an immovable property by way of succession, survivorship, inheritance, partition, Govt., patta, decree of a Court or otherwise any right as owner, pattadar mortgagee etc., he/she is entitled to approach Recording authority (Tahsildar) within 90 days from date of such acquisition - A careful analysis of Rule 9 of Rules would reveal that a fair amount of discretion is vested in Recording authority to examine claim for mutation made on strength of succession or survivorship, in case of non-tesmentary disposal of properties - In case of acquisition of rights by way of deeds of transfer by sale, gift, etc; an obligation is caste on Recording authority to hold a summary enquiry as to persons who had succeeded to property of deceased registered holder by applying principles of law of succession governing case - However, if any person has approached civil Court by way of suit and gives an intimation in this regard within 90 days time as prescribed under sub-clause(ii) of Clause (c) of Rule-9(1) of Rules, Recording authority shall wait decision of civil Court - In this case, as regards first reason assigned by Tahsildar that neither in Act nor under Rules it is laiddown that obtaining Legal Heirs certificate is sine qua non for mutation and on contrary, under sub-clause(ii) of clause (c) of Rule 9(1) of Rules Mandal Revenue Officer himself is entitled to examine right of succession to property of deceased registered holder - In instant case, necessity for Tahsildar even to decide right of succession is obviated for simple reason that petitioner is relying upon a Will albit unregistered and in absence of any statutory requirement request of petitioner for mutation on ground of her not obtaining legal heirs certificate cannot be rejected - As regards reason assigned by Tahsildar that Will is not registered, same is equally unsustainable - Sub-clause (ii) of Cl.(1)(a) of Rule 9 of Rules does not refer to a Will while stipulating that registered document must be produced - In this case,

A.P.(SCHEDULED AREAS RYOTWARI SETTLEMENT) REGULATION, 1970:

as very registered owner himself conceded right of petitioner and her minor children for mutation with respect of half share in property, attitude of Tahsildar in rejecting petitioner's application on flmysy and jejune grounds, is wholly reprehensible, which has driven petitioner to this needless litigation - Tahsildar is directed to mutate names of petitioner and her minor children in respect of half of properties which stand in name of petitioner's/husband - Writ petition, allowed. **B.Neeraja Vs. Revenue DivisionalOfficer,Ranga Reddy 2013(3) Law Summary (A.P.) 65 = 2013(5) ALD 579.**

A.P. SCHEDULED AREAS LAND TRANSFER REGULATIONS, 1959:

—CONSTITUTION OF INDIA: —PARA-5(2)(a) of 5th Schedule - Circular Memo No.889/RH1/99, dated 8-7-1999 issued by Housing(RH) Dept., of Govt. of A.P - Petitioners belong to Koya Dora Tribe contend that Circular Memo No.889 makes serious enroots into substantive and vested rights of Scheduled Tribes - Circular aims at providing an enabling provision for purpose of giving security to loan given by A.P. State Housing Corporation Ltd., to non-triable beneficiaries residing in schedule areas on par with other beneficiaries residing in plains area - Govt. sought to justify Circular stating that safe guard is only in regard to sale of lands in scheduled area but not against any non-triable residing in scheduled area who can mortgage land under his possession to any financial institutions approved by Govt., for said purpose - Said circular is to facilitate non-triable beneficiaries residing in schedule areas to raise loans from said Corporation for construction of houses by mortgaging superstructure to be constructed - It is not back door regularization of land possessing by non-triables in scheduled areas - Move by Govt., through circular is certainly a way out which they could not have done directly - Aforesaid provisions of Constitution and provisions of A.P. Scheduled areas land Transfer Regulations there is no question of any semblance of right title and interest whatsoever in nature in respect of any person other than triable in scheduled area - In such event creation of any such enforceable right in a prohibited area which is amply protected under Constitution, is not only illegal, but also *ultra vires* Constitution - Impugned circular is totally vitiated and liable to be set aside - Writ petition, allowed. **Tellam Venkata Rao Vs. Govt. of A.P. 2011(2) Law Summary (A.P.) 157.**

A.P.(SCHEDULED AREAS RYOTWARI SETTLEMENT) REGULATION, 1970:

—Secs. 7(1), 16(f) - A.P. Regulation II/1970 - G.O.Ms.No.392/J2/79, Dt.10-7-1981 - Petitioners are permanent tenants of Freehold land which are heritable and transferable - Settlement Officer rejected claim of petitioners for Ryotwari patta on ground that they are not entitled for Ryotwari patta - Director of settlements dismissed Appeal filed by petitioners - Commissioner also dismissed second Appeal holding that petitioners who are tenants are not entitled for grant of Ryotwari patta under provisions of A.P. Regulation II/1970 - On dismissal of review petition by Commissioner present writ petition filed contending that finding of 1st respondent that under A.P. Regulation II/1970, tenant is not entitled to ryotwari patta is an error on fact of record and there

A.P. (SCHEDULED CASTES, SCHEDULED TRIBES AND BACKWARD CLASSES) ISSUE OF COMMUNITY, NATIVITY AND DATE OF BIRTH CERTIFICATES ACT, 1993:

is no such provision in A.P. Regulation II/1970 -Admittedly, petitioners have not challenged order passed by Commissioner dismissing appeals by reasoned order, but review has been filed which was dismissed - In review petition filed before Court petitioners have not filed any additional documentary evidence to support their claim - 4th respondent/ MRO contends that as per proviso to Sec.7(1) of Regulation II/1970, petitioners who are claiming Ryotwari patta must prove their continuous lawful possession not less than eight years immediately before commencement of regulation II/1970 - Petitioners are only tenants, not entitled to Ryotwari patta - As per second proviso to Sec.7 which is applicable to Free hold village, a person who is in possession or in occupation of land for continuous period of eight years immediately before commencement of regulation and such possession or occupation shall not be void or illegal under A.P. Scheduled Areas Land Regulation 1959 as amended by A.P. Regulation 1/1970 or any other law for time being in force shall be entitled to ryotwari patta in respect of cultivable land - In this case, permanent lease amounts to transfer u/Sec.2(g) of A.P. Scheduled Areas Land Transfer Regulation, 1959 and such transfer of immovable property is prohibited - In absence of petitioners filing any documents to substantiate that they are entitled for grant of Ryotwari patta and not satisfying conditions imposed in second proviso to Sec.7(1) of Regulation II/1970, dismissal of review by first respondent do not suffer from any illegality - Writ petition, dismissed. **Thota Saidaiah Vs. Commissioner of Appeals 2011(2) Law Summary (A.P.) 7 = 2011(3) ALD 501 = 2011(3) ALT 240.**

—Secs.9 & 4(3) - *"Suo motu* powers of revision" 3rd respondent/Settlement Officer granted patta to petitioner u/Sec.9 of Regulation - 2nd respondent issued show cause notice in exercise of his *Suo motu* powers of revision u/Sec.4(3) and cancelled pattas granted to petitioner - Contention that it is not at all competent for 2nd respondent/ Director of Settlement to exercise *Suo motu* powers of revision, once proceedings are subject matter of appeal before him u/Sec.9(3) of Regulation - *Suo motu* powers of revision even where it is otherwise permissible, must be exercised within reasonable time and 3 to 5 years was considered to be reasonable - In this case, patta granted way back in 1979 is reopened, almost after a decade - Sec.9 of Regulation exclusively dealt with grant of pattas - A perusal of order passed by 2nd respondent discloses that reasons that prompted him to exercise *Suo motu* powers of revision were different from those stated in show cause notice - Very fact that 2nd respondent straightaway suspended pattas granted in favour of petitioner in year 1979 itself discloses not only lack of bonafides in matter, but also, high-handed and arbitrary - Writ petition, allowed. **Amaravadi SrinivasaCharyulu Vs. CommissionerofSurvey andSettlements 2008(1) Law Summary (A.P.) 110 = 2008(3) ALD 155 = 2008(4) ALT 169.**

A.P. (SCHEDULED CASTES, SCHEDULED TRIBES AND BACKWARD CLASSES) ISSUE OF COMMUNITY, NATIVITY AND DATE OF BIRTH CERTIFICATES ACT, 1993:

—Secs.6 - A.P. (SCHEDULED CASTES, SCHEDULED TRIBES AND BACKWARD CLASSES) ISSUE OF COMMUNITY, NATIVITY AND DATE OF BIRTH CERTIFICATES

A.P. (SCHEDULED CASTES, SCHEDULED TRIBES AND BACKWARD CLASSES) ISSUE OF COMMUNITY, NATIVITY AND DATE OF BIRTH CERTIFICATES ACT, 1993:

RULE, 1997, Rules 6 & 8 - "Caste certificate" - Certificate obtained by father of Petitioner that he belonged to Konda Kapu was cancelled by 2nd respondent/District Collector considering that father of petition not Kondakapu by Community and subsequently petitioner's father was declared by Court to be belonging to Konda Kapu Community - Petitioner joined as LDC and was directed to produce latest certificate - MRO refused to pass orders on Representation of petitioner for issuance of caste certificate -thereafter District Collector also rejected to issue caste certificate - Hence present writ petition - Petitioner contends that when father of petitioner belongs to Konda Kapu Community petitioner automatically belongs to Konda Kapu Community and that he is entitled to caste certificate and that District Collector passed orders without applying his mind, blindly accepting Report of MRO - Govt., contends that it is only District Collector who can issue a declaration that a person belongs to Schedule Caste, Schedule Tribe or Backward Classes by virtue of powers vested through A.P., (S.C,. S.T. & B.C.) Regulation Act and that Court has no authority to pronounce such declaration - Division Bench of A.P High Court held that offspring of Tribal man and non Tribal woman takes social status of Tribal Community as Community of father - Thus child taking Community of father is normal rule - Supreme Court never considered that taking Community of father is not rule and it merely observed that caste of offspring is essentially a question of fact - In present case, there is absolutely no evidence to show that petitioner was brought up as Telaga child nor is there any evidence to show that total status of child is Telaga, which is non Tribal Community - Where admittedly father of petitioner belongs to Schedule Tribe as Kona Kapu Community, Govt., cannot cancel Caste Certificate - Petitioner is entitled to Caste Certificate by virtue of Community of his father per se unless there are other circumstances showing that petitioner did not belong to Community of father - Such evidence has not been produced by any body - Petitioner produced common judgment of High Court where Court held that father of petitioner belongs to Konda Kapu Community - Contrary evidence has not been produced by State - Therefore, claim of petitioner that he belongs to Konda Kapu Community, accepted - Order of MRO as well as District Collector are set aside - Petitioner found to be belonging to Konda Kapu Community - Writ petition, allowed. **Bonda Seetharama Rao Vs. Govt., of A.P. , 2014(1) Law Summary (A.P.) 1 = 2014(2) ALD 370 = 2014(1) ALT 373.**

—and relevant Rules of 1997 - MRO issuing Migration-cum-Caste Certificates to petitioners, employees and students, certifying them as S.Ts -District Collector cancelled certificates and directed initiation of criminal action against petitioners - Petitioners contend that they belong to 'Lingadhari koya' community a Schedule Tribe and in their educational records they are described as belonging to Koya community S.Ts and they are advised to obtain Migration Certificates to consolidate their social status and MRO issued Migration Certificates after due enquiry - 1st respondent/District Collector contends that petitioners are residents of Hyderabad and they manipulated and contrived representations and obtained fraudulent Migration-cum-Caste Certificates to buttress incompetent Caste Certificates issued by MROs of other District **-** Issuance of Community certificates certifying individuals as S.Ts without a legitimate entitlement to such certification constitutes a constitutional fraud, detrimental to interest of genuine S.T.

candidates - Genuine members of S.C, S.T. and B.C. Communities would be deprived *pro-tanto* of public employment and educational opportunities if fraudulent certificates issued to undeserving individuals - Grant of Community Certificates is therefore a critical administrative process and cannot be depend upon whims and caprice of MRO - Migration-cum-Caste Certificates issued by MRO to petitioners are without any basis - Impugned order of 1st respondent/District Collector cancelling Migration Certificates issued in favour of petitioners certifying them as belonging to S.Ts is impeccable and warrants no interference - Writ petition, dismissed. **Kallem Chendraiah Vs. The District Collector, Khammam 2009(1) Law Summary (A.P.) 423 = 2009(3) ALD 817 = 2009(3) ALT 414.**

—AND RULES MADE THEREUNDER - Respondent got selected under S.T quota by A.P.P.S.C for post of Deputy Registrar - Govt. of A.P refusing to issue appointment order on ground that social status certificate produced by respondent is fraudulent and incorrect - Tribunal allowed O.A filed by respondent directing State to issue appointment order to respondent - District Collector passed final order cancelling Social Status Certificate granted by respondent by MRO - As against said order of District Collector respondent filed writ petition - State contends that there is no evidence of social acceptance of respondent or her father in Kondakapu community in as much as father of respondent having married a lady belonging Yadava community - No evidence is forthcoming regarding linkage of respondents family - Action of District Collector in cancelling caste certificate is justified - Respondent contends that it is not in controversy that respondent's grandfather and great grandfather belong to Araku village of Visakhapatnam District and as such their nativity from tribal area by itself establishes their tribal status - Social Status Certificate claimed by respondent being inter linked with status of her grand father siblings of father and brother of respondent; while acceptance and continuance of social status of all above relatives having been accepted and continued, denial of same as far as respondent is concerned, is highly unjustified and arbitrary - Order of Tribunal confirmed - Writ petition filed by State, dismissed and writ petition filed by respondent, allowed. **Govt. of A.P. Vs. Pagadala Khail Kanthi, 2010(1) Law Summary (A.P.) 179 = 2010(2) 333 = 2010(3) ALT 663.**

—Sec.5 - A.P.(S.C, S.T. & B.Cs) ISSUE OF COMMUNITY, NATIVITY AND DATE OF BIRTH CERTIFICATES, Rules 1997, (as amended in G.O.Ms.No.79), Social Welfare, Rule 10 - Petitioner, belonging to Bagata Community of S.T. appeared for Engineering and Medical Entrance Test and got allotted seat in Kurnool Medical College - Pursuant to Memo of 2nd respondent, 1st respondent kept seat allotted to petitioner in abeyance and refused admission - In this case, 2nd respondent doubts claim of petitioner to S.T. status on ground that her surname is uncommon amongst "Bagata" tribe - it is not case of either of respondents that community certificate tendered by petitioner in support of her claim to belong "Bagata" community, is fraudulent per se - No power what-so-ever inheres in 2nd respondent to suspend trajectory of certificate - It is tragic that 1st respondent never enquired as to authority of 2nd respondent to issue such a directive

A.P. SCHEDULED COMMODITIES DEALERS (LICENSING AND DISTRIBUTION) ORDER, 1982:

and instead considered it to appropriate to subscribe to and follow an unlawful order by an incompetent authority - Memo issued by 2nd respondent quashed pro tanto - As respondents have interdicted pursuit of academic course by petitioner without any lawful authority or even a scintilla of jurisdiction, writ petitions allowed with costs. **Madi Sri Vaishnavi, Chittoor Vs. Dr.N.T.R. University of Health Sciences 2008(1) Law Summary (A.P.) 1 = 2008(3) ALD 8 = 2008(3) ALT 463.**

A.P. SCHEDULED COMMODITIES DEALERS (LICENSING AND DISTRIBUTION) ORDER, 1982:

——Conditions 8 & 10 of Licence issued under the Order - AP EXHIBITION OF PRICE LISTS OF GOODS ORDER, 1966, Clause 3 - ESSENTIAL COMMODITIES ACT, Secs.6-A & 6-B - CONSTITUTION OF INDIA, Art.226 - Vigilence authorities inspected petitioner's shop in her absence seized the stock and initiated proceedings u/Sec.6-A of E.C Act for alleged contraventions of conditions of licence - 1st respondent/ Joint Collector considering explanation submitted by petitioner confiscated 20% of seized stock - District & Sessions Judge dismissed Appeal filed by petitioner u/Sec.6-C of E.C Act - Hence, present writ petitioner - Petitioner contends that confiscation of 20% is excessive as charges are trivial in nature - Respondents contend that writ petition not maintainable against orders passed by inferior criminal Court viz. District & Sessions Judge - Weighty Judicial authority leads to irresistible conclusion that even where special Statue r/w provisions of Cr.P.C provide for remedy of a revision against inferior criminal Court acting either as judicial authority or *persona designata,* a petition for writ of certiorari is not absolutely barred - Assumption of jurisdiction cannot be doubted u/Sec.226 of Constitution of India even though remedy of revision u/Sec.397 & 401 is an effective remedy - Against an order passed by District & Sessions Judge u/Sec.6-C of E.C Act, a writ petition under Art.226 of Constitution is not barred - In this case, order of Joint Collector does not contain any reasons as to how charges are proved - There is more subjectivity in order than objective consideration - 2nd petitioner licensee was submitting C-Returns regularly and it is never case of respondent that she was a chronic defaulter - Non-maintenance of price lists and alleged contraventions of A.P. Exhibition of Price Lists Order are trivial contraventions - But other contravention however trivial must be meted as deterrent action permissible under law - Order of confiscation 5% of seized stock would meet ends of justice - Writ petition, partly allowed. **V.Venugopal Vs. The Joint Collector,Chittoor,Chittoor Dt. 2010(2) Law Summary (A.P.) 93 = 2010(2) ALD (Crl) 102(AP) = 2010(3) ALT 803.**

- AND A.P. SCHEDULED COMMODITIES (REGULATION OF DISTRIBUTION BY CARD SYSTEM) ORDER, 1973 - ESSENTIAL COMMODITIES ACT **-** MRO received information that two DCM Vans diverting rice sanctioned under FFW Scheme and after verification seized vans along with rice including sugar and K. oil belon-ging to first respondent, F.P. shop dealer for alleged violation of provisions of control Orders of 1982 and 1973 - Subsequently Joint Collector passed orders confiscating entire

A.P. SCHEDULE COMMODITIES (DEALERS, LICENSING, STORAGE AND REGULATION) ORDER, 2008:

seized stock and also directed payment of Rs.20,000 per lorry towards cost of lorries - In appeal sessions judge found respondent not guilty and set aside order of Joint Collector - Hence present revision by State - State contends that there was no variation in respect of PDS rice and other rice and kerosene and that there was a variation of 79% in respect of sugar - However Joint Collector considered that sugar not covered by Control Orders and consequently held there was not violation of Control Orders by 1st respondent in respect of sugar and also kerosene and that difference and confusion were only inrespect of varieties of rice items - Admittedly rice found to have been assessed belong to FFW Scheme and it was not PDS rice that was supplied to 1st respondent - 1st respondent also contends that she did not have space in her premises and consequently she had to store rice received under FFW programme in house of one KK and that while stock received by her was being shifted to house of one IS, lorries were intercepted by seized by Revenue authorities - In this case, there is no dispute that lorries were carrying goods relating to FFW Scheme - Control orders were of year 1973 and 1982 - FFW programme commenced in late 1990s or in beginning of this century - Rice covered by FFW Programme is not part of either of Control Orders and that prosecution is not able to show if any of Control Orders is applicable to rice is applicable to FFW programme - In this case, goods were not received by her qua FP shop dealer, but dealer was received same under FFW Programme, Controls Orders have no applications - There is no Rule that 1st respondent, dealer should store same in her licence premises and she cannot be found fault with if she had kept stock at place other than licence premises and could be found fault with for transporting same through lorries of R2 & R3 - There was no violation of Control Orders by 1st respondent - Order of Sessions Judge, justified - Revision, dismissed. **Collector (CS), Medakat Sangareddy Vs. Smt. Y.Chandrakala 2011(3) Law Summary (A.P.) 141 = 2012(1) ALD (Crl) 175(AP) = 2012(1) ALT (Crl) 43(AP).**

A.P. SCHEDULE COMMODITIES (DEALERS, LICENSING, STORAGE AND REGULATION) ORDER, 2008:

—- Clauses 2D and 2K and 7(1) - ESSENTIAL COMMODITIES ACT, Secs.3 & 5 - “Suspension of licence” - CONSTITUTION OF INDIA, Art.226 - Tahsildar and Revenue Inspector inspected petitioner’s rice Mill and having found some quantity of rice was being unloaded is meant for public distribution, seized the entire available rice in Mill worth some lakhs - Basing on Report from Tahsildar, District Supply Officer passed impugned order suspending Form-B licence issued in favour of petitioner, with immediate effect - From perusal of Cl.7(1), it becomes eminently clear that if a holder of licence issued under said Order contravenes any terms or conditions of licence, his licence may be cancelled or suspended by an order passed, in writing, by licensing Authority - However, most importantly, exercise of power of cancellation or suspension is hedged by condition that no such order shall be passed unless licensee has been given reasonable opportunity of stating his case and being heard in person

A.P. SCHEDULED COMMODITIES (REGULATION OF DISTRIBUTION BY CARD SYSTEM) ORDER, 1973:

against cancellation or suspension - It is thus manifestly clear that regulation-making Authority has ensure that principles of natural justice are adequately complied with by Licensing Authority before he undertakes action of either suspension or cancellation of licence accorded under said Order - In this case, it is pity that impugned order has been passed by District Supply Officer has not chosen to put petitioner on notice nor did he consider it appropriate to hear petitioner before impugned order passed - But DSO would not be knowing this basic and elementary requirement before he considered it to appropriate to exercise power - Impugned order has been purposefully passed in gross violation of requirement of Cl.7 of Order are bound to be challenged by offender and Courts are bound to declare any such proceedings as illegal - Every public servant who has been entrusted with job of performing duties, which are quasi-judicial in nature, had to be accountable for what all he has done or he has not done and strict adherence to legal principles is only way that desired result of statute or rule or regulation can be attained - District Collector and Commissioner of Civil Supplies must take appropriate action against District Supply Officer - Impugned order, set aside for sheer violation of principles of natural justice as enshrined in first proviso to sub-clause (1) of Cl.7 of Order - Writ petition, allowed. **M/s.Sangameswhwara Binny Modern Rice Mill Vs. DSO,Sangareddy at Medak, 2012(1) Law Summary 185 = 2012(3) ALD 314 = 2012(3) ALT 284.**

—Cl.17 - Petitioners while transporting rice, broken rice etc. through lorry, 2nd respondent Head Constable of Police Station intercepted lorry and seized stocks along with lorry on mere suspicion that rice appears to be PDS rice - Petitioners contend that seizure itself is without jurisdiction and is illegal as 2nd respondent, Head Constable has no power to seize stocks and under Cl.17(1) of Control Order 2008, certain Officers of different Departments are empowered inter alia to seize stocks and as regards Police Department, it is Officer not below rank of Sub-Inspector within their respective jurisdiction, who are authorized to exercise this power - Therefore, ex facie, seizure is without jurisdiction and petitioners are entitled to release of seized stocks and lorry - In absence of any incriminating aspects, on mere suspicion that it may be meant for Public Distribution System, cannot be sustained on any account - In guise of such suspicion, genuine traders and owners of vehicles cannot be put to undue hardship apart from causing huge financial losses - Such irresponsible conduct on part of public servants is reprehensible - Respondents 1 & 2 Circle Inspector of Police and Head Constable are directed to forthwith release seized stock along with lorry to petitioners - 1st respondent C.I is also saddled with costs of Rs.10,000/- payable to petitioners from his personal pocket only - Writ petition, allowed. **Sri Vigneswara Traders Vs. The Circle Inspector of Police, Porumamilla 2013(1) Law Summary (A.P.) 367 = 2013(4) ALD 241 = 2013(5) ALT 9.**

A.P. SCHEDULED COMMODITIES (REGULATION OF DISTRIBUTION BY CARD SYSTEM) ORDER, 1973:

- G.O.Ms.No.35, dt.17-9-2007, paragraphs 5 & 6(iv) - "Bifurcation of F.P. Shop" - Pursuant to orders of District Collector directing bifurcation of F.P shop, RDO issued

A.P. SOCIETY REGISTRATION ACT, 2001:-

Notification inviting applications for appointment of dealers - Petitioner filing writ petitions challenging that their shops were bifurcated without notice to them and in violation of norms prescribed by Govt. in G.O.Ms.No.35 - R.D.O. contends that Govt. issued G.O.Ms.No.35, for creation of new F.P.S by bifurcation of existing shops keeping norm of 400 BPL cards and 50 AL cards and in case there are more number of cards in excess of norms in village, there can be two F.P shops provided total number of BPL cards in that village is not less than 600 and F.P shops should be attached equal number of cards - It is always permissible for District Collector to bifurcate F.P.S so that in village of 600 cards into two shops attaching BPL, APL cards equally - G.O.Ms.No.35, dt.17-9-2007 was issued by Govt., for rationalization of existing F.P.Ss in State by attaching required number of cards to each shop for convenience of cardholders in locality and keeping in view economic viability of F.P.S - NON-RENEWAL OF AUTHO-RISATION - Plea of Govt., that petitioner was appointed as temporary dealer is supported by documentary evidence -Mere renewal of licence of temporary authorisation from time to time does not confer any right on petitioner - W.P.No.1715, dismissed. **N.Nagamani Vs. State of A.P., 2010(1() Law Summary 429 = 2010(3) ALD 733 = 2010(3) ALT 532.**

A.P. SOCIETY REGISTRATION ACT, 2001:

— AND Bye law 24 - Respondent No.3/Bar Association, Nellore registered under provisions of Society Registration Act - 2nd respondent is appointed by 3rd respondent as Election Officer - Basing on complaint sent by certain Members of Bar Association, against 2nd respondent/Election Officer alleging irregularities in process of elections, Executive Committee of 1st respondent/Bar Council has resolved to inform Secretary of Bar Association to stop further directions to Bar Association and to appoint ad hoc committee to conduct elections to Bar Association - Accordingly Secretary of Bar Association was asked to stop all further proceedings, while informing that Bar Council will constitute adhec committee for holding elections and particulars thereof will be intimated in short time - Aggrieved by said communiation petitioners/Members of Bar Association filed present writ petition - 1st respondent/Bar Council fairly conceded that except Bye law No.24 there is no other Bye law under which Bar Council an exercise its jurisdition or control over affairs of Bar Association - As per Bye law, only situation in which Bar Council can interfere is where elections are not held within in stipulated time for any reason what so ever, either on intimation given by General Secretary or any complaint or suo motu Executive Committee of Bar Council shall appoint an ad hoc Committee from senior Members of Asscoation to manage affairs of Association and to conduct elections as per schedule fixed by Bar Council and in such event, out going Board will duly handover charge to ad hoc Committee - In this case, 1st respondent/Bar Council intervened in election process was alleged illegalities committed by 2nd respondent/Election Officer in process of holding election and such a ground completely falls out side scope of Bye law No.22 - Interference of election process of 3rd respondent/Bar Association by Bar Council is wholly without

A.P.STATE ELECTRCITY BOARD EMPLOYEES DISCIPLINE AND APPEAL REGULATIONS, REGULATION:

jurisdiction - Impugned proceedigns are set aside - 2nd respondent/Election Officer is directed to resume election process from stage where it was stopped - Writ petition, accordingly allowed. **G.Bala Subrahmanyam Vs. Bar Council of A.P., 2013(3) Law Summary (A.P.) 274 = 2014(2) ALD 101 = 2014(1) ALT 264 = AIR 2014 (NOC) 223 (AP).**

A.P. SPORTS AUTHORITIES ACT, 1988:

—-Sec.23 - A.P. SPORTS AUTHORITIES RULES, Rule 25 - G.O.Ms.No.171, amending Rule 25 of Rules - 1st respondent/M.D of Sports Authority informed petitioner/Asst. Director that he would attain age of superannuation 58 years in April 2003, and he would retire from service on

30-4-2003, stating that he is entitled to remain in service till he attains age of 60 years in terms of Rule 25 - Petitioner continuing in service on basis of interim orders passed in writ petition filed by him - During pendency of writ petition 2nd respondent/ Govt. issued G.O.Ms.No.171 amending Rule 25 prescribing uniform age of 58 years for all employees of Authority - Writ petition filed by petitioner allowed by setting aside order of 1st respondent - On same day 1st respondent issued order directing retirement of petitioner forthwith on attaining age of 58 years - Petitioner challenges G.O.Ms.No.171 and consequential order contending that Rule 25 of Rules, as it stood before amendment protected rights of employees who were absorbed from Council and therefore there is absolutely no justification for 2nd respondent/Govt. in amending Rule taking away protection - Petitioner also contends that Rule 25 of Rules, before it was amended maintained clear distinction between persons that were employed before amendment comprising of those, who were in service of Sports Council and those that are appointed subsequent amendment - Protection given to employees who were made over to Authority Council and such right could not have been taken away by amending Rule - 1st respondent contends that Sec.23 of Act empower 2nd respondent/Govt. to frame Rules, but also to amend them - Once Rule is amended, there is no other option, except to retire petitioner, who admittedly crossed 58 years - In this case, no doubt petitioner attained age of superannuation during pendency of writ petition - However, High Court, while vacating interim order passed in his favour, specifically observed that if he is successful in writ petition, he would be entitled to consequential benefits - Hence, impugned order, set aside - Writ petition, allowed - 1st respondent directed to extend pay and other allowances applicable to post of Deputy Director held by petitioner till he attained age of 60 years from date of his retirement. **K.Venkata Rao Vs. The Sports Authority of A.P. 2010(3) Law Summary (A.P.) 304 = 2010(6) ALD 675.**

A.P.STATE ELECTRCITY BOARD EMPLOYEES DISCIPLINE AND APPEAL REGULATIONS, REGULATION:

—REGULATION 10(2)(a) - Enquiry Officer CGM of Company framed charges for alleged irregularities against petitioner and others - Thereafter respondent issued proceedings

A.P.STATE ELECTRCITY BOARD EMPLOYEES DISCIPLINE AND APPEAL REGULATIONS, REGULATION:

appointing retired District Judge in place of CGM and subsequently anothr order passed appointing other retired District Judge in the place of previous District Judge - Petitioner submitted explanation to show cause notice not only denying charges but also raising objection as to competence of respondent to appoint non-employee of Company as Enquiry Officer - Respondent passing order imposing punishment of cut in pension to extent of 100% and directing recovery of certain amount against petitioner - Petitioner contends that though specific objection was raised regarding replacement of Enquiry Officer or failure of subsequent Officers to frame charges, same was not taken into account - Once petitioner retired from service Enquiry ought not to have been continued particularly when charge sheet issued by first Enquiry Officer was cancelled by respondent - Respondent contends that though Regulation stipulates that an Officer who is superior in rank to delinquent employee shall be appointed as an Enquiry Officer, there is no prohibition against appointing an outsider as Enquiry Officer - Regulation 10 of Regulations clearly shows that it is only an Officer of respondent Company who is superior in rank to delinquent that can be appointed as Enquiry Officer - In this case, respondent appointed retired District Judge, who in turn, was replaced by another District Judge - This action of respondent is contrary to specific requirement and Regulation 10(2) (a) of Regulation - Hence, evidently, material irregularity has taken place in matter of appointment of Eqnuiry Officer - In fact disciplinary proceedings commence only with service of charge sheet - Admittedly, subsequent Enquiry Officer did not frame any charge and he proceeded on basis of charges framed by first one and same is untenable - Despite detailed explanation submitted by petitioner, respondent inflicted punishment on petitioner based on report submitted by Enquiry Officer - Writ petition, allowed. **A.Lakshmaiah Chetty Vs. Central Power Distribution Co., of A.P. Ltd. 2008(3)Law Summary (A.P.) 67 = 2009(3) ALD (NOC) 33.**

—10(2)(a) - Case registered against petitioner/LDC in E.R.O of 1st respondent, S.P.D.C, u/Secs.143,406,468, 420 & 120-B IPC for alleged misappropriation of Company's revenue - Basing on report of Enquiry Officer in Departmental enquiry 2nd respondent issued proceedings dismissing petitioner from service - 1st respondent/S.P.D.C confirmed order of dismissal - Hence, present writ petition - Petitioner contends that initiation of disciplinary proceedings simultaneously with criminal proceedings was impermissible under law and that procedure adopted by 2nd respondent in appointing Enquiry Officer even before giving opportunity to petitioners to explain alleged irregularities is contrary to procedure prescribed and Regulation 10(2) (a) of A.P.S.E.B Regulations and that impugned orders are liable to be set aside - Respondents contend that since no prejudice is caused to petitioner on account of alleged non-compliance with Regulation 10(2)(a) petitioner cannot be granted any relief - SCOPE AND OBJECT OF REGULATION 10(2)(a) - Stated - It mandates that appointing authority shall appoint an Enquiry Officer when he proposes to impose a major penalty and such a proposal can emerge only after ascertaining reviews or obtaining explanation from employee concerned - Procedure prescribed in regulation 10(2)(a) is of fundamental character and its violation by itself invalidates entire proceedings since need to appoint Enquiry Officer would arise only

A.P. STATE FINANCIAL CORPORATION ACT,1951:

where disciplinary authority is not satisfied with explanation offered by delinquent and proposes to inflict a major penalty - Such a decision can be arrived at only when show cause notice or charge-sheet is given by disciplinary authority himself - In this case, except narrating events and extracting contents of explanation offered by petitioner, 2nd respondent did not assign any reasons in support of his decision to confirm punishment proposed - Impugned orders being *ex facie* arbitrary and illegal are liable to be set aside - Writ petitions, allowed. **K.Sambasiva Rao Vs. S.P.D.C. of A.P. Ltd., Tirupathi 2010(1) Law Summary (A.P.) 69 = 2010(1) ALD 776 = 2010(1) ALT 820.**

A.P. STATE FINANCIAL CORPORATION ACT,1951:

—Sec.29 - Right of Corporation to sell property of borrower - Interpretation and application of Sec.29 of Act - Stated - Right of Corporation in case of default on part of borrower is a statutory power - For purpose of invoking Sec.29 of Act borrower must have a liability to Corporation under agreement and it must make a default in repayment of any loan or advance - Corporation has right to take over management or possession or both of industrial concerns - This power is in addition to power of right to transfer by way of lease or sale and realize property pledged, mortigaged, hypothecated or assigned to Corporation - Only in case of default such right can be exercised - But when power is conferred to sell property unilaterally, sale must have a nexus with mortgaged property - Right to sell property by Corporation must be exercised only in respect of mortgaged property and not one which is not subject matter thereof. **M/s. Ormi Textiles Vs. State of U.P. 2008(3) Law Summary (S.C.) 52.**

—Sec.29 - Petitioner availed financial assistance from 1st respondent/Corporation for rice Mill - 1st respondent seized mill exercising power u/Sec.29 of Act on ground of default in payment of instalments and issued advertisement to sell Mill and ultimately sale deed executed in favour of 3rd respondent since he is lone bidder - Petitioner contends that very exercise of power u/Sec.29 is mala fide in asmuch as Mill was seized without making any formal demand for payment of arrears - Extraordinary powers are conferred upon State Financial Corporation to straightaway proceed to sell units bypassing regular procedure of approaching Courts - Time and again Hon'ble Supreme Court held that such an extraordinary power is coupled with duty to ensure that sale of unit u/ Sec.29 fetches maximum price - In this case, acts and omissions on part of respondents 1 and 4 that lead to sale of Mill at a price less than assessed value of property, particularly when others were prepared to purchase it for higher price is nothing but mala fide and result of a capricious and unreasonable exercise of power - Exercise of power u/Sec.29 can be said to be reasonable only when its dominant consideration is to secure best price - Efforts of respondents 1 and 4 were exactly in opposite direction - There action is not only unfair and unreasonable but also mala fide - Sale of Mill of petitioner in favour of 3rd respondent, set aside - Writ petition, allowed. **Sri Venkateswara Rice Mill Vs. APSFC 2009(1) Law Summary (A.P.) 109 = 2009(2) ALD 530 = 2009(3) ALT 552.**

—Sec.29 – 2nd petitioner, partner of 1st petitioner's Firm availed loan from Corporation to construct Commercial Complex by mortgaging land and proposed constructions through deposit of title deeds – Since petitioner committed default in payment of loan,

A.P. STATE FINANCIAL CORPORATION ACT,1951:

mortgaged property brought to sale and sale confirmed in favour of 4th respondent, since petitioner did not pay amount - Petitioner contends that extraordinary power u/Sec.29 must be utilized by Corporation to ensure that mortgaged property fetches maximum price and in this case, efforts were made only in reverse direction - Corporation is vested with extraordinary power u/Sec.29 of Act and it is relieved of necessity to approach civil Court either for decree for amount due or execution of decree, if passed – It is not only assigned rolls of trial Court and executing Court but is also relieved of ordeal of trial and enquiry and with a stroke of pen, it can bring about sale of property offered as security - In this case, value of property assessed at 27.37 lakhs and reserve bid ought to have been for that amount - Only two tenders were received before last date and tender received after last date was fairly higher price and that itself is a clear indication that if adequate publicity was given, many more offers would have been received for higher amounts – Corporation and 4th respondent dragged matter for one year and by that time there was further escalation of prices - District register certified that property would have fetched Rs.37.47 lakhs – No justification for Corporation in not going for fresh tender - Sale effected by Corporation in favour of 4th respondent is contrary to law laid down by Supreme Court – Sale in favour of 4th respondent, set aside – Writ petition, allowed. **Padmavathi Commercial Complex Vs. A.P.S.F.C. 2009(1) Law Summary (A.P.) 1 = 2009(1) ALD 653.**

—Sec.29 - LIMITATION ACT - Petitioner, Fertilizer Company availed loan in 1967 from respondent/Corporation and failed to clear loan amount under OTS Scheme - Hence, respondent/Corporation took steps to invoke provisions of Sec.29 of Act for sale of petitioner's factory - Contention that admittedly petitioners not made any payment from 1967 to 1992, for period of 25 years and that having slept over for nearly 33 years, Corporation not entitled to invoke provisions of A.P. Revenue Recovery Act or 1951 Act - Statute of Limitation only bars remedy but does not extinguish debt - " The general rule, at least with respect to debts or money demands, is that a statute of limitation bars, or runs against, the remedy and does not discharge a debt or extinguish or impair the right, obligation, or cause of action" - A time barred debt can be recovered by creditor by enforcing lien for obtaining satisfaction of debt even though an action thereon would be time barred - Provisions of Limitation Act do not bar respondents from invoking provisions of Sec.29 of 1951 Act to recover a time barred loan - Writ petition, dismissed. **Kumar Chemicals & Fertilizers (P) Ltd.,Hyd., Vs. A.P.I.D. Corpn.,Ltd., Hyderabd 2008(1) Law Summary (A.P.) 127 = 2008(2) Law Summary (A.P.) 76 = 2008(3) ALD 168 = 2008(2) ALT 484 = AIR 2008 AP 101.**

—Secs.29 & 31 - Appellant/Corporation granted loan to respondent's Company to an extent of Rs.100 lakhs - Property of guarantors/appellants was mortgaged as collateral security - Corporation in exercise of its powers u/Sec.29 took possession of property of guarantors - Respondent contend that appellant Corporation could not have proceeded against guarantors u/Sec.29 of Act - High Court quashed orders passed by Corporation and directed not to proceed against property of surety mortgaged u/Sec.29 of Act - Appellant contends that High Court committed serious error in passing judgment and

A.P. STATE FINANCIAL CORPORATION ACT,1951:

failed to take into consideration that it is within jurisdiction of Corporation to take possession of said property also, irrespective of fact as to same belonged to industrial concern or not - Sec.29 of Act nowhere stated that Corporation can proceed against surety even if some properties are mortgaged or hypothecated by it - Right of Corporation must be exercised on defaulting party - There cannot be any default as is envisaged in Sec.29 by a surety or a guarantor - Sec.29 (4) lays down appropriation of sale proceeds only refers to industrial concern and not a surety or a guarantor - Rights and liabilities of a surety and principal borrower are different and distinct - INTERPRETATION OF SEC.29 AND 31 - Interpretation of statute would not depend upon a contingency - It has to be interpreted on its own - It is a trite law that Court would ordinarily take recourse to golden rule of literal interpretation - Object of Act would be a relevant factor for interpretation only when language is not clear and when two meanings are possible and not in a case where plain language leads to only one conclusion - Intention of Parliament in enacting Secs.29 & 31 not similar - Sec.31 takes within its sweep both property of industrial concern and as that of surety - None of provisions control each other - Parliament intended to provide additional remedy for recovery of amount in favour of Corporation by proceedings against surety only in terms of Sec.31 of Act and not u/Sec.29 - When more than one remedy is provided for an option is given to a suiter to opt for one or other remedy - Such provision is not ultra vires - Appeals, dismissed. **Karnataka State Financial Corpn., Vs. N. Narasimhaiah2008(2) Law Summary (S.C.) 228.**

—Secs.32G, 29,31,32, r/w A.P. REVENUE RECOVERY ACT, 1864 - Petitioners offered their agricultural lands as collateral securities for loan borrowed by one AKR, proprietor of Textile Industry - Since principal borrower failed to repay loan amount, demand notice issued prior to attachments of immovable properties of petitioners - 2nd petitioner approached 2nd respondent/Branch Manager with an undertaking letter to discharge entire amounts by a particular date and not to proceed further in pursuance of demand notice - Thereafter properties of petitioner were attached - Hence present writ petition filed apprehending that respondents will proceed with sale of attached properties - Respondent-Corporation contends that in response to demand notice prior to attachment petitioners approached respondent with an offer to make payment on a particular date and having not honoured commitment petitioners once again approached respondents with fresh offer of payment of certain amount and therefore no prejudice caused to petitioner due to non issue of notice prior to issuance of recovery certificate - Sec.32G is envisaged as one more remedy other than provisions of Secs.29,31,32 of Act for recovery of outstanding dues and that Sec.32G contemplates that where an amount is due an Officer will make an application to State Govt., and that State Govt., after following procedure shall proceed to recover that amount as arrears of land revenue and that till recovery of outstanding amounts, attachment order shall continue to be in operation - Writ petition, dismissed. **Naripeddi Nagavalli Devi Vs. A.P.S.F.C.,Ltd.Hyderabad 2011(3) Law Summary (A.P.) 324 = 2012(1) ALD 439 = 2012(2) ALT 354.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001:

A.P. STATE HIGHER JUDICIAL SERVICES SPECIAL RULES FOR AD HOC APPOINTMENTS 2001:

— Appointment of District and Sessions Judge - Petitioners and each of them were successful in test conducted for ad hoc appointment of District & Sessions Judge (Entry Level) to preside over Fast Track Courts on 14-10-2003, in terms of Rules of Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001 - According to them they are entitled to be absorbed permanently as District & Sessions Judge (Entry Level) in view of the length of service - All four petitioners, in response to notification dated 13-08-2012, along with other candidates applied for taking the test in order to be absorbed - All Writ Petitioners duly secured minimum qualifying marks in the written test, as such they were invited to take viva voce test - According to them, in spite of securing qualifying marks in written test, and taking viva voce test they were not selected for appointment - No reason has been disclosed as to why they were not selected - It was contended by the respondents 3 and 4 that Selection Committee found the Petitioners and each of them could not secure 40% qualifying marks in viva voce and also the consolidated qualifying marks both in written and viva voce tests - Hon'ble Committee laid down 40% of qualifying marks in viva voce also - Therefore, there is nothing wrong in decision of excluding petitioners as they did not qualify in viva voce test nor they did secure aggregate qualifying marks of 40% - Held, therefore, it emerges after reading of authoritative pronouncements of the Supreme Court that if rules do not permit to adopt any different criteria, Selection Committee cannot fix of its own - Minimum qualifying marks in viva voce test cannot be laid down after written test is over - However, it is possible before commencement of selection committee process, provided it conforms to rule - In view of aforesaid discussion, this Court hold that decision of Selection Committee declaring that petitioners and each of them are not eligible to be absorbed for not securing minimum qualifying marks in viva voce or aggregate qualifying marks in written and viva voce is illegal and arbitrary - Therefore, Court direct respondents to appoint petitioners and each of them as they have qualified in the written test and have also taken viva voce test - This appointment shall be made within a period of one month from date of communication of this order, subject to compliance with other formalities as required under law - Both the writ petitions are accordingly allowed. **P.Murali Mohana Reddy Vs. The State of Andhra Pradesh, 2015(2) Law Summary (A.P.) 123 = 2015(4) ALD 156 = 2015(3) ALT 628.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001:

—Authorisation issued under Order, Conditions 1 & 9 - ESSENTIAL COMMODITIES ACT, Sec.6-A - 3rd respondent/RDO and Vigilance Officials seized FFW rice for alleged contravention of Conditions of Authorisation and temporarily cancelled Authorisation of petitioner on ground that he stored huge quantity of FFW rice in unauthorised premises with intention to divert said stock into block market - Petitioner contends that he is running FP shop in a small tin shed and since he found it to be unsafe to store huge quantity of

A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001:

FFW rice in said shop which may be damaged due to rain or vagaries of nature, he shifted shop to his house - Since concerned Contractors and Engineers did not issue Muster Rolls and Coupons, FFW rice could not be distributed to labourers and that action of respondents for seizure of essential commodities u/Sec.6-A of Act cannot be a ground to suspend or cancel his Authorisation and that respondents had not initiated separate proceedings for cancellation or suspension of Authorisation - Nature of proceedings u/Sec.6-A of E.C Act and proceedings for cancellation or suspension of Authorisation under provisions of Control Orders are different and distinct - Authorities under E.C Act and Control Orders for initiating proceedings are also different and distinct - Appointing Authority under Control Order cannot pass interim orders of suspension of Authorisation on ground of mere pendency of enquiry u/Sec.6-A of E.C Act - Impugned order of cancellation of petitioner's Authorisation, unsustainable - Writ petition, allowed. **Azmeera Boopathi Nayak Vs. District Collector (Civil Supplies) Karimnagar 2008(1) Law Summary (A.P.) 5 = 2008(4) ALD 513.**

—Cl.5 - G.O.Ms.No.53, dt.6-10-2003 - Appointment of F.P. shop dealer - Petitioner appeared for interview alongwith 6 other candidates - While conducting interview 4th respondent/RDO gave question paper and asked for written examination and subsequently selected 5th respondent as F.P. shop dealer - Petitioner contends that when rules governing field do not contemplate conducting written examination, very selection process is vitiated and impugned selection of 5th respondent is unsustainable and liable to be quashed - Respondents contend that petitioner participated and also taken up written examination and after completion of selection process, being unsuccessful, he is now questioning the procedure adopted by Appointing Authority is bad in law and violative of Articles 14, 16 & 21 of Constitution of India - It is no doubt true that G.O.Ms.No.53, does not contemplate conducting written examination as such, however 4th respondent/RDO appears to have adopted a simple procedure of giving certain questions inviting certain answers - Though writ petitioner says that he had lodged protest at time of written examination, it is not in controversy that petitioner also participated in selection process till logical end and having been unsuccessful, thought of approaching Court by filing present writ petition - Though procedure adopted by appointing Authority, in conducting examination may not be in consonance with G.O.Ms.No.53, in light of factual situation in this case, Court is not inclined to disturb appointment - Writ petition, dismissed. **Ch.Shankar Rao Vs. Govt. of A.P. 2008(1) Law Summary (A.P.) 343 = 2008(4) ALD (NOC) 56.**

—Cl.5(4) and 17 - Conditions 11 and 13 of Authorisation issued under said Control Order, 2001 - Memo No.26776/91 - Basing on report submitted by Special Deputy Tahsildar complaining that petitioner/dealer diverted certain quantity of rice meant for distribution under Food For Work (FFW) Programme - 1st respondent/Sub-Collecot or issued show cause notice to which petitioner submitted explanation **-** 1st respondent/ original authority passed order cancelling Authorisation of petitioner without considering explanation and same confirmed by 2nd respondent/Joint Collector/appellate authority and 3rd respondent/District Collector revisional authority - Hence present writ petition

A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001:

- 1st respondent is competent original authority to initiate disciplinary proceedings regarding alleged irregularities committed by FP shop dealers and he has to discharge his duties as a quasi-judicial authority and should act in conformity with principles of natural justice - Under provisions of Control Order concerned, reasons for passing orders of suspension or cancellation to be recorded in writing - When Statute contemplates that reasons should be recorded in writing, competent authority is expected to consider explanation of delinquent and when such explanation is not acceptable, it should record reasons as to why such explanation is not acceptable - Giving reasons is *sine qua non* for exercise of quasi judicial power - If reasons are not assigned, order, however laudable in its result,cannot be commended - In this case, perusal of orders passed by respondents-original, appellate and revisional authorities as well, would show that said orders do not comply with principles of natural justice - In this case, 1st respondent/ original authority in his order did not deal with explanation offered by petitioner, except stating that explanation is not convincing and he has not assigned any reasons as to why explanation of petitioner is not convincing - 2nd respondent, who is appellate authority while dismissing appeal through his order merely repeated ultimate result stating that there is no reason to interfere with orders of cancellation - Even 3rd respondent who is revisional authority though sought to justify order passed by original authority as well as appellate authority - At primary stage, a duty is cast on competent authority to pass a speaking order in accordance with law and defects if any committed at primary stage is not liable to be cured at appellate stage or at revisional stage to detriment and interest of party - Order impugned cannot stand scrutiny of law and hence liable to quashed - Writ petition, allowed - Matter remanded to 1st respondent/ Sub-Collector with direction to consider matter afresh and pass orders in accordance with law. **Kamala Kumari Vs. The Sub-Collector, Vijayawada, 2011(1) Law Summary (A.P.) 228 = 2011(3) ALD 73 = 2011(3) ALT 606.**

Cl.21 - LIMITATION ACT, Secs.5 & 29(2) - Condonation of delay in filing revision - It is clear from sub-section(i) of Sec.21 of Control Order that revision Application has to be made within 30days from date of communication to person aggrieved - In this case, revision Appli-cation was made indisputably beyond 30 days from communication of order - It is clear from aforesaid Cl.21 that thre is no express power of condonation of delay nor there is provision at same time to exclude applicability of Secs.4 to 24 of Limitation Ac, by virture of sub-sec(2) of Sec.29 of Act - Upon reading of sub-section (2) of Sec.2 of Sec.29 of Limitation Act it is manifest that Sec.5 of Limitation Act will be applicable consequetly enforceable of thre is no express exclusion of applicability of same, as indisputably the said control order is local law if not special one - This Court hold that reading of both provisions, Sec.5 will have application and consequently the revising authority is empowered to condone delay - By virtue of Sec.29 of Limitation Act revising authority has power to condone delay u/Sec.5 of Limitation Act in filing Revision - Appeals dismissed. **Santhammatalli Mahilasakthi Sangam (DWCRA),E.G.Dist. Vs. Govt., of A.P. 2015(2) Law Summary (A.P.) 523 = 2015(1) ALD 508 = 2014(6) ALT 785.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001:

—Cl.21(i) - F.P. Shop Authorisation of 5th respondent cancelled in 2007 on ground of her not residing in village - Eventually she succeeded before 3rd respondent/Joint Collector who allowed appeal filed by her - Petitioner filed revision before 2nd respondent/ District Collector along with Application for condonation of delay - 2nd respondent/ District dismissed Application for condonation of delay holding that it is not civil Court and Sec.5 of Limitation has no application - Petitioner contends that while it is not in dispute that 2nd respondent/Collector is not a civil Court, still he is entitled to condone delay in filing revision petition in same way as respondent No.3/Joint Collector has entertained appeal filed by 5th respondent beyond prescribed period of limitation - Admittedly 2nd respondent is not civil Court and therefore provisions of Sec.5 of Limitation Act have no application and that provisions of Control order do not empower District Collector to entertain revision petition beyond prescribed period of limitation - Impugned order whereby petitioner's application of condonation of delay has been rejected does not suffer from any illegality or infirmity - Order of District Collector - Justified - Writ petition, dismissed. **Akula Veeraiah Vs. The Commissioner of Civil Supplies, Hyd., 2011(1) Law Summary (A.P.) 245 = 2011(4) ALD 294= 2011(4) ALT 51 = AIR 2011 AP 87.**

—Cl.22 - Conditions 7,17,22 of Authorisation - Petitioner-FP shop dealer preferred Appeal before 1st respondent/JC against orders of 2nd respondent/RDO suspending her authorisation for alleged violation of provisions of Control Order, 2001 - Pursuance of orders of Joint Collector, RDO, taken up case and cancelled petitioner's Authorisation - Petitioner contends that order passed by RDO, does not contain any reasons and same is a nullity and that RDO simply came to conclusion that charges framed against FP shop dealer are grave in nature and it is not just and proper to allow dealer to deal with essential commodities - From leading of order of RDO it is clear that order is absolutely a non-speaking one bereft of any reasons whatsoever and that RDO, having framed charges against petitioner, primary burden is on RDO to prove petitioner is guilty of those charge and if she fails to discharge onus shifted on her, it will then be permissible for RDO to hold that charges are proved against her - In this case, RDO thrown the burden completely on petitioner, to prove in negative that she has not committed any irregularities - Every judicial and quasi-judicial authority has duty to give reasons - Duty to give reasons constitutes an integral part of natural justice and absence of reasons violates principles of natural justice - Impugned order passed by 2nd respondent/RDO, suffers from serious infraction of principles ofnatural justice and hence, quashed - Writ petition, allowed. **Katamreddi Vasundhara Vs. Joint Collector, Anantapur 2008(2) Law Summary (A.P.) 204 = 2008(4) ALD 539 = 2008(4) ALT 475.**

— and CONSTITUTION OF INDIA, Art.21 - Appointment of F.P. Shop dealer - Pursuant to notification issued by 3rd respondent-RDO, petitioner, graduate, belonging to S.C submitted his application and attended for interview alongwith 4th respondent - RDO, appointed 4th respondent belonging to Reddy community under General category and an unemployee - 2nd respondent-Joint Collector dismissed Appeal with finding that

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appellant is no doubt, graduate and S.C candidate, he has got chances of employment while 4th respondent is having knowledge in Civil Supplies and his financial position is satisfactory - 1st respondent-District Collector dismissed Revision, holding that appointing authority followed procedure and there is no rule that highest qualified person to be considered for appointment of F.P. Shop dealer - In this case, petitioner takes specific stand that though he is graduate, he comes from a poor family and that too belonging to S.C and that original Authority, Appellate Authority and Revisional Authority made orders in a mechanical way without considering merits and demerits of candidates in proper perspective - On careful scrutiny of orders, it is clear that order of primary appointing Authority in a way had been mechanically confirmed by appellate authority and also by revisional authority and no convincing reasons as such had been recorded - In a case of appointment to be made even as F.P. Shop dealers, procedure as specified by Rules and Regulations, Guidelines and relevant Control Orders may have to be followed - While considering merits and demerits of matter, reasons may have to be recorded and in this case orders made by authorities cannot be said to be just and proper - When original order made by appointing authority itself is bad, order of appellate authority and also revisional authority need not be seriously considered - Since orders are passed without application of mind and without any acceptable or convincing reasons all these orders are quashed - Writ petition, allowed. **B.Hanmanthu Vs. The Collector, Mahabubnagar Dt. 2008(1) Law Summary (A.P.) 260 = 2008(6) ALD (NOC) 95.**

—G.O.Ms.No.8 of 2006 - 3rd respondent/RDO cancelled F.P. Shop dealership of petitioner basing on Report submitted by 4th respondent for alleged irregularities, without giving oppor-tunity - Pursuant to directions of High Court 2nd respondent/Joint Collector on erroneous view of law and fact dismissed appeal and confirmed order of RDO - 1st respondent/District Collector in routine and mechanical manner dismissed Revision by confirming orders passed by RDO and Joint Collector - Petitioner contends that impugned orders suffer from basic infirmities and that order passed by RDO, is not substantiated with any corroborative material evidence except political pressures exerted on him and that appellate authority as well as revisional authority merely confirmed same without application of mind - When show cause notice was issued for purpose of calling for explanation relating to suspension pending enquiry, cancellation made by RDO, is bad in law - In instant case, prima facie, evidently, show cause notice issued to petitioner was one proposing suspension of authorisation, whereas Joint Collector cancelled authorisation on strength of such notice and such a course of action is imper-missible - Proceedings quashed. **S.Subhashini Vs. District Collector (Civil Supplies) Anantapur 2008(1) Law Summary (A.P.) 48.**

—Rules issued under G.O.Ms.No.53, Rule 9 (1) - Appointment of F.P. Shop dealership - Pursuant to notification, petitioner, one MRB and 4 others applied - 3rd respondent/ RDO appointed MRB as F.P. Shop dealer on ground that he is post graduate, ignoring Rule 9 (1) of G.O. Ms.No.53 - 2nd respondent/Joint Collector allowed appeal, setting aside appointment of MRB who obtained interim suspension of order of 2nd respondent/ Joint Collector, by filing writ petition - Since MRB resigned on some allegations, writ

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petition dismissed and 3rd respondent made alternative arrangements for distribution of commodities - Inspite of several represen-tations by petitioner to implement orders of 2nd respondent and appoint him as FP shop dealer of village in view of dismissal of writ petition, 3rd respondent issued fresh Notification calling for applications to fill up vacancy caused due to resignation of MRB - In this case, 2nd respondent/Joint Collector in his order specifically observed that petitioner fulfils all conditions required for appointment as F.P. Shop dealer and his plea for appointment can be considered by appointing authority as per merit - 3rd respondent is bound to follow order of Joint Collector, but without considering case of petitioner, Notification issued for fresh appointment - When order had been made by Appellate Authority, Joint Collector said order to be implemented by 3rd respondent/RDO - Action of respondents in issuing fresh Notification for appointment of dealer in respect of concerned village totally ignoring order of Joint Collector is illegal and arbitrary - Hence, Notification quashed - Writ petition, allowed. **P.Pullaiah Vs. District Collector (CS), Krishna 2008(1) Law Summary (A.P.) 280 = 2008(6)ALD (NOC) 96 = 2008(1) APLJ 128.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008:

—RDO cancelled FP shop authorization of petitioner for alleged irregularities of not supplying commodities to card holders properly and committing irregularities in maintaining the FP shop - Without considering the explanation 3rd Respondent Joint Collector dismissed Appeal filed by the petitioner while confirming orders of RDO - District Collector dismissed Revision filed by the petitioner while confirming orders of RDO and Joint collector.

Petitioner contends that District collector posted case for hearing on a particular date on particular time at his Chamber at Chittor – When petitioner went there along with her Counsel but on the same day District Collector went to Tirupathi for official work directing petitioner to attend Office of RDO at Tirupathi – Counsel appearing before revisional authority collector refused to proceed to Tirupathi as he had to attend other cases at Chittoor - Having no other alternative petitioner rushed to Tirupathi attended hearing and made request for adjournment of the hearing of case on ground that her counsel is not present – However her request not acceded to and ultimately she submitted that she was not involved in any irregularities – Thereafter the collector reserved case and passed impugned order dismissing revision without giving an opportunity of hearing.

Contention of petitioner in the present case is that no meaningful opportunity of hearing was given to her, thus violating principles of natural justice and that principle ground urged by the petitioner is with regard to violation of principles of natural justice, as petitioner was informed at the last minute as to the change of venue and thereby she was deprived of opportunity of hearing - In these circumstances impugned order is liable to be set aside - Writ petition, allowed. **N.Bhaskaramma Vs. State of A.P. 2016(2) Law Summary (A.P.) 67 = 2016(3) ALT 474 = 2016(3) ALD 566.**

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—3rd respondent/RDO passed order suspending FP shop Authorisation of petitioner and same confirmed by 2nd respondent/JC and 1st respondent/District Collector in Appeal and Revision - In this case, though explanation of petitioner and report from Tahsildar also received, impugned order passed without indicating as to whether said impugned order substantive in nature or pending further enquiry - If suspension is by way of substantive penalty same should be for a limited period, but no such limitation period indicated - 3rd respondent/RDO filed counter affidavit stating that having regard to bad history of petitioner, he has suspended authorisation after giving show cause notice and opportunity to petitioner to submit his objections - It is axiomatic that an order of suspension can be either interim or final in nature - In constrast to an order of cancellation, an order of suspension can be for limited period irrespective of whether such order is interim or final in nature - Impugned order passed by RDO can be construed as final in nature **-** Curiously 3rd respondent/RDO failed to indicate period for which petitioner's authorisation is suspended, even if same was intended to be a measure of penalty - Impugned order thus suffers from a serious flaw rendering itself illegal and unenforceable - Impugned order, quashed - Writ petition, allowed. **Palle Peeraiah Vs. The District Collector at Warangal, 2011(1) Law Summary (A.P.) 87 = 2011(2) ALD 483 = 2011(2) ALT 30.**

—As against order of suspension of authorisation on certain allegations, passed by 1st respondent/RDO, petitioner filed writ petition and obtained certain directions to RDO to pass final orders after considering petitioner's explanation - RDO passing final orders cancelling petitioner's authorisation, observing that petitioner has not attended hearing on date fixed for that purpose, he did not attend at schedule time - In impugned order of cancellation of petitioner's authorisation 1st respondent/RDO neither referred to charges nor contents of explanation submitted by petitioner and by a cryptic observation, RDO stated that petitioner's explanation is not convincing and that charges framed against him are proved - In this case, RDO has indulged in serious violation of principles of natural justice and therefore impugned order cannot be sustained in law and liable to be quashed - Writ petition, allowed. **Kondamudi Benerjee Vs. R.D.O, Ongole, Prakasam 2011(1) Law Summary (A.P.) 6 = 2011(2) ALD 477 = 2011(4) ALT 119.**

—Petitioner's F.P. shop Authorisation cancelled by Tahsildar basing on report of MRI after considering explanation filed by petitioner to all charges for alleged irregularities, observing that petitioner being temporary dealer committed irregularities and said order confirmed by RDO and Joint Collector in appeal and revision - Order passed by 3rd respondent suffers from total non-application of mind and reasons assigned by him are not germane - Whether dealer is permanent or temporary will not make any difference in deciding these questions - Even if dealer is a temporary dealer, he is entitled to continue till he is removed - In this case, no part of petitioner's explanation offered in respect of charges has been examined by respondent no.3 except mechanically

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extracting parts of explanation offered by petitioner in respect of each charge and in conclusion, 3rd respondent made a cryptic observation that explanation of petitioner is not convincing Respondents have not cited any regulation, which prevents a dealer from studying Distance Education Course of MBA - Similarly minor variation of stock of rice to extent of 22kgs as against stock of 6.22 Qts, petitioner gave satisfactory explanation - Other charges against petitioners are too trivial - Impugned orders passed by respondents 1 to 3 suffer from serious and patent illegality - Authorisation of petitioner shall stand restored forthwith and he shall be continued as temporary dealer till vacancy is filled up on permanent basis. **K.Bharath Vs. The Collector (Civil Supplies), Chittoor , 2011(1) Law Summary (A.P.) 47 = 2011(2) ALD 520 = 2011(1) ALT 655.**

— "Registration of criminal case against dealer" - "Disqualification" - Criminal case registered against petitioner/dealer for forgery of pahani - Respondent seized shop and handedover stock to some other F.P shop dealer for distribution - Petitioner, after being unsuccessful to convince respondents to restore distribution of essential commodities, he filed present writ petition contending that alleged forgery of pahani on basis of which criminal case has been registered against him has nothing to do with discharge of duties as F.P shop dealer and that there is no provision under Control order empowers respondents to take Departmental action on mere registration of criminal case, unless F.P shop dealer is convicted for offence - In this case, except registration of a case, no allegations are pending against petitioner in connection with running of F.P. Shop and that unless petitioner is convicted for any offence, he does not incur any disqualification for continuing as F.P. shop dealer - In absence of any provision bringing about automatic termination of authorisation on account of pendency of criminal case, petitioner cannot be deprived of his right to run F.P shop on mere allegation of registration of criminal case, that too unconnected with running of F.P shop - So long as petitioner's authorisation subsists, he is entitled to function as F.P shop dealer - Respondents are directed to permit petitioner to function as FP shop dealer as long as his authorisation continues to remain in force - W.P, allowed. **Banoth Ramesh Vs. State of A.P. , 2011(1) Law Summary (A.P.) 4 = 2011(2) ALD 474 =2011(1) ALT 485.**

——"Suspension of FP shop authorisation" - Basing on inspection of 2nd respondent/ Tahsildar, supply of essential commodities stopped to petitioner's shop and entrusted shop to neighbouring dealer - High Court passed order in W.P. directing respondent to permit petitioner to function as FP shop dealer so long as his Authorisation has not been suspended by passing specific order - In mean time, 1st respondent RDO, issued show cause notice and passed impugned order suspending authorisation after considering petitioner's explanation - In this case, perusal of impugned order does not indicate as to whether said suspension was substantive in nature or made pending further enquiry if any - If suspension is by way of a substantive penalty, same should

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be for limited period - No such period is indicated - Therefore, impugned order, which is styled as suspension, cannot be sustained and same is quashed - Writ petition, allowed. **R.Venkat Goud Vs. RDO, Kamareddy 2011(1) Law Summary (A.P.) 200 = 2011(3) ALD 52 = 2011(3) ALT 605.**

—- 2nd redspondent/RDO passed order suspending the FP shop Authorization of petitioner on ground that petitioner has allowed a benami to run FP shop - In impugned order it is clearly mentioned that in Report of Deputy Tahsildar Civil Supplies he has mentioned that there was no variation in stocks in FP shop - While exercising power of suspension appointing Authority needs to use a proper sense of proportion and power of suspension cannot be exercised as a matter of course - Main purpose of keeping dealership under suspension pending enquiry is to prevent dealer from tampering of record - Only when serious allegations of commissions and omissions in distribution of essential commodities is made out and prima facie case is established against dealer, power of suspension of authorization has to exercised - In this case, considering fact that petitioner's FP shop is run without any variations between stock register and ground stock and without their being any complaint from any card holders, of improper distribution of commodities and in absence of any allegation that petitioner or person who is allegedly running FP shop as benami is indulging in acts such as diversion of essemtial commodities into block market, hasty action of 2nd respondent/ RDO suspending petitioner authorization, unsustainable - Impugned order passed by RDO, set aside - Writ petition, allowed. **Thyrumala Setty Phanindra Vs. District Collector (CS), Guntur, 2013(2) Law Summary (A.P.) 46 = 2013(4) ALD 540 = 2013(5) ALT 237.**

—— RDO passed orders suspending FP shop authorization of petitioner for alleged imputations of non display of price and stock list, details of license and timings of FP shop, non-maintenance of register and improper distribution of essential commodities to card holders - Admittedly there are no variations between stock register and ground balance - High Court has been time and again cautioning licensing and disciplinary authorities not to indulge in extreme action of suspending F.P. Shop authorization on trivial, frivolous and jejune grounds - However, said order of RDO, does not deserve to exist, even momentarily, pending disposal of appeal before 2nd respondent/Joint Collector - Order passed by RDO is suspended till disposal of appeal - Writ petition, allowed accordingly. **D.V.Ramanamma Vs. The Govt. of A.P., 2014(3) Law Summary (A.P.) 295 = 2015(1) ALD 683.**

—R2/RDO issued impugned show cause notices cum suspension orders to petitioners based on report of Tahsildar for alleged imputations against petitioners that they have not distributing commodities on all 30 days, not treating card holders respectfully, not maintaining registers properly , distributing commodities under weighing and over pricing, not displaying stock board-cum-price lists and allowing some persons as

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benami - Respondents specifically pleaded that RDO suspended their authorizations at the instance of local MLA – In this case, there is no specific allegations of misfeasance and malfeasance in running Shops such as diversion of commodities into block market/ nor R2 found any variations in stock and all these allegations are absolutely Generic in nature without reference to any particular instance with regard to commodities distributed by the petitioners - Family member of FP Shop of dealer is entitled to assist him/her in running shop - Despite pronouncement of High Court's view in no uncertain terms in judgments, there is a spate of suspension of authorizations of FP Shop dealers in State of AP in recent times – High Court has been noticing that such suspension orders are being passed at will - In absence of specific instances pertaining to allegations mentioned in impugned orders, action of RDO in resorting to suspension of authorizations wholly uncalled for – Allegations made by RDO remained unsubstantiated in orders and they do not warrant a drastic action of suspension of authorization pending enquiry - Impugned orders to extent of suspending FP shop authorizations of all petitioners are set aside, leaving petitioners free to submit their explanations to show cause notices – Writ petitions allowed accordingly. **S.Babjan Vs. Government of A.P. 2014(3) Law Summary (A.P.) 297 = 2015(3) ALD 659 = AIR 2015 (NOC) 783 (Hyd).**

—Ordinarily no fair price shop dealer would like to quit his assignment - If such extraordinary desire is expressed by any dealer, it is incumbent upon the appointing authority to put the dealer on notice before accepting the resignation as, foul play by vested interests cannot be ruled out - Therefore, this Court cannot appreciate the action of respondent No. 3 (Revenue Divisional Officer) in purporting to ratify the hasty and unauthorised action of respondent No. 4 (Tahsildar) without even trying to get the confirmation from the petitioner as to whether he has sent his resignation out of his free will or the same is secured by any vested interests by force - Failure of respondent No. 3 to make an enquiry in this regard by issuing notice to petitioner vitiates the entire action of respondent Nos. 3 and 4 in easing out the petitioner from the fair price shop dealership - As respondent No.3 has not properly exercised his jurisdiction in acting on the purported resignation of the petitioner, his action culminating in acceptance/ratification of resignation of the petitioner is declared as illegal and the impugned order is, accordingly, set aside - Writ petition is accordingly allowed. **Chinnareddigari Sambasiva Reddy Vs. The State of AP 2015(1) Law Summary (A.P.) 77= 2015(1) ALD 645 = 2015(1) ALT 472 = AIR 2015 (NOC) 290.**

—-R2/RDO suspending authorisation of petitioner while issuing show cause notice for alleged charges of not distributing Kherson even after lapse of one month by keeping Kerosene in community building instead of his Shop premises and issuing EC's 3 or 4 days only in a month with less weighments and also for alleged variations in Rice and Sugar - Petitioner submitted expla-nation categorically stating that he was awaiting release orders for distribution of Kerosene which was deliberately not issued

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by Revenue Inspector in order to put him in problem and further clearly explained that he has been distributing Kerosene form Community building for long time and that alleged variation are false and Inspecting Officer has deliberately mentioned that variation exist - Order of suspension of FP shop Authorisation being punitive in nature cannot be resorted to on trivial and flimsy grounds - In this case nature of allegation on which R2/R.D.O has suspended the petitioner's FP shop Authorisation does not warrant such suspension – Each one of allegation made against petitioner needs detailed verification in enquiry and without holding such enquiry R.D.O., was unjustified in suspending petitioner's authorisation – Impugned order, set-side - W.P. allowed. **K.Bhaskar Naik Vs. The State of A.P. 2015(1) Law Summary (A.P.) 103 = 2015(3) ALD 104 = 2015(1) ALT 168.**

—"Purported resignation letter of petitioner, F.P. Shop dealer" - Petitioner contends that R5/Revenue Inspector has forced him to send his resignation letter on the purported ground of his ill health and therefore, superior officials ought not to have acted upon such resignation letter - Basing on that letter Tahsildar, has issued proceedings appointing neighbouring F.P. Shop dealer as in charge of petitioner's F.P. Shop - In this case very resignation letter itself contains statement of petitioner that he has been sending same on pressure exerted by respondent No.5/Revenue Inspector and therefore, this Court has no hesitation to hold that purported resignation letter is involuntary and same was evidently orchestrated by respondent No.5 - Writ petition allowed, with a direction to respondent No.4/R.D.O. to treat the petitioner as having never resigned from post of F.P. Shop dealer - Respondent No.2/Joint Collector, is directed to examine conduct of Respondent No.5 and consider initiation of disciplinary proceedings against him for forcibly obtaining resignation letter from petitioner. **Machepalli Hanumantha Rao Vs. State of A.P. 2015(1) Law Summary (A.P.) 272 = 2015(3) ALD 413 = 2015(4) ALT 684 = AIR 2015 AP 20.**

—NON PASSING OF ORDER ON STAY APPLICATIONS BY APPELLATE AND REVISIONAL AUTHORITIES - R4/SUB-COLLECTOR/R.D.O. Cancelled the petitioners F.P. Shop Authorisation on two allegations viz., that a person by name PS was found running petitioner's F.P. Shop and that there was variation of Q 4-80 of rice - Petitioner has clearly explained that said PS is no other than his father's own brother and without proper verification of Sales and Stock Registers it was alleged that there was variation of Q 4-80 of rice - Aggrieved by the said order petitioner filed appeal before R3/Joint Collector, along with Stay petition - During pendency of appeal petitioner filed writ petition with grievance that R3/Joint Collector, has not passed any order on Stay Application - High Court, disposed of Writ Petition filed by petitioner with a direction to R3/ Joint Collector to dispose of appeal and that till such disposal petitioner shall be continued as F.P. Shop Dealer – Subsequently R3/ Joint Collector dismissed Appeal – Petitioner filed Revision before R2/ Collector along with Stay Application - Since R2/Collector, has not passed any order on Stay Application, Petitioner filed present

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Writ Petition - In present case when High Court itself has passed an order directing continuance of petitioner as F.P. Shop dealer till disposal of Appeal, R2/ Collector, ought to have taken a cue from same and granted interim order in favour of petitioner and more so, when R4/R.D.O. has not held even a semblance of enquiry before cancelling the petitioner's F.P. Shop authorisation - In the light of these allegations, an obligation was caste on R4/R.D.O. to make a detailed enquiry with reference to entries in Sales and Stock Register and by giving Petitioner an opportunity of personal hearing - In this case a reading of order passed by R4/R.D.O. does not suggest that he has undertaken any such exercise - However, High Court finds a strong case in favour of petitioner for grant of interim orders to enable her to continue as F.P. Shop dealer till disposal of Revision Petition by R2/ Collector and R2/ Collector is also further directed to carefully examine and pass a Speaking Order - Accordingly Writ petition disposed of. **Pidikiti Sailaja Vs. Sate of A.P. 2015(1) Law Summary (A.P.) 344.**

—Joint Collector not completing enquiry despite lapse of nearly one year from date of Suspension of petitioner's FP Shop authorisation - Petitioner contend that if enquiry is not concluded by licensing authority within 90 days, suspension has to be revoked or set aside - In this case there are no reasons what so ever to prolong enquiry nearly for one year, when allegation on which impugned order of suspension was passed do not consume substantial time for completion of enquiry and passing final order - There is absolutely no justification for R-3/Joint Collector, to keep petitioner's authorisation under suspension for more than one year – Impugned order set aside – Authorisation restored, Writ petition allowed. **Sandraboyina Guravaiah Vs. The State of A.P. 2015(1) Law Summary (A.P.) 184 = 2015(3) ALD 102 = 2015(2) ALT 465.**

—Respondents 2 to 4 Collector/Sub Collector/Tahsildar not permitting petitioner as FP Shop dealer allowing his purported resignation to be withdrawn - In this case petitioner is acting as FP Shop dealer without any complainant and he is specifically pleaded that R5/Enforcement DT has forcibly made him to address letter to R3/Sub Collector expressing his unwillingness to continue as FP Shop dealer purportedly on ground of his ill health and that in realty he did not have any intention to discontinue as FP Shop dealer – As petitioner is Permanent FP Shop dealer R3/Sub Collector, who is competent authority is bound to consider request of dealer and issue a proceeding accepting such request – Unless order in express terms accepting such request is passed, FP Shop authorisation of petitioner will not get terminated and vacancy arises - Surprisingly without issuing any such proceedings that FP Shop has fallen vacant as informed by R4/Tahsildar, R3/Sub Collector has recommended one RS for appointment as FP Shop temporary dealer - Very premise on which Sub Collector has proceeded namely, that FP Shop of Village has fallen vacant is factually incorrect and same is misconceived – Appointment of temporary dealer on such fundamentally erroneous assumption itself, is not sustainable - In this case petitioner also addressed a latter

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to District Collector/Joint Collector informing that because of strong political reasons he was forced to be discontinued as FP Shop dealer and that unfortunately no action has been taken either by District Collector or Joint Collector - Petitioner is entitled to be continued as permanent FP Shop dealer of Village – Writ Petition allowed. **Cherukuri Srinivas Rao, Vs. The State of A.P. 2015(1) Law Summary (A.P.) 192 = 2015(1) ALD 621 = 2015(2) ALT 448.**

—Paragraph No.12(5) of Annexure II, G.O.Ms.No.4, Consumer affairs, Food and Civil Supplies (CS1) Dept., Dt:19-2-2011 - G.O.Ms.No.38, Dt:17-9-2012 - Tahsildar suspending authorizations of petitioners unaware of amendment to Control Order by deleting second proviso to sub-clause (7) of Cl.5 thereof - Power of suspension or cancellation of authorization or forfeiture of security deposit cannot be exercised by any Officer other than appointing authority - Ex-Officio Secretary to Govt., Civil Supplies Dept., directed to issue Circular informing Tahsildars in State of amendment made to Control order vide G.O.Ms.No.38, Dt:17-9-2012 with direction to them not to exercise power of suspension of FP shop authorizations, to avoid passing of such orders by Tahsildar in future - Writ petitions, allowed. **Y.Gopal Vs. The Joint Collector, Anantapur 2013(2) Law Summary (A.P.) 158 = 2013(5) ALD 128 = 2013(4) ALT 664.**

—G.O.Ms.No.4, Consumer Affairs, Food and Civil Supplies (CS.1) Department, Dt:19-2011 - Appointment of F.P. Shop Dealer - Guidelines - "Written test" - "Interview" - It is now made obligatory for appointing authority to conduct a written examination for 50 marks and qualifying marks are specified that all candidates should secure 20 marks out of 50 marks for being declared to have qualified in written test - In effect, 40% of marks now prescribed as qualifying in written test - For purpose of conducting viva voce test/interview and to secure finalization of dealership in quick time, a ratio of 1:5 is prescribed - Such of those candidates, who have secured 20 or more numbers of makes in order of merit position will be called for interview - Selections are required to be finalized on basis of merit ranking and that merit will be assessed based upon marks secured at interview also - For interview test, as many as 50 marks are set apart - All writ petitioners are making a grievance for setting apart 50 marks for interview test - Petitioners contend since 20 marks must be secured by respective candidates at written examination, while allocating 50 marks to viva voce test, good performance of candidates at written test can be very easily and effectively neutralized by awarding very liberal marks in favour of certain candidates while awarding relatively far lesser marks to some other candidates and this will impact final merit position of candidate - Therefore the suggest that reasonable number of marks alone should have been allocated for interview component - Selection of F.P. Shop Dealer does not require allocation of huge percentage of marks for interview component - While one cannot discount completely acceptability of oral interview test, but at same time principle that it must bare a reasonable proportion to assessment made at written test should not be lost out - Therefore allocating 50 marks to oral

interview test appears to be on a very higher side - It is therefore, appropriate that State Govt., should consider fixing marks for interview as 20 or at best 25 when written test is conducted for 50 marks - It is therefore appropriate to direct State Govt., to review policy guide lines formulated by it in particular paragraph 2 of Annexure to G.O.Ms.No.4, Dt: 19-2-2011 by appropriately fixing maximum marks for oral interview test and communicate said decision to all appointing authorities within period of 4 weeks. **Jinka Chinna Tirupelaiah Vs. Government of A.P. 2012(2) Law Summary (A.P.) 121 = 2012(5) ALD 48 = 2012(4) ALT 189.**

——G.O.Ms.No.35, Consumer Affairs Food and Civil Supplies (CS-I) Dept., Dt:17-9-2007 - "Bifurcation of shop" - Petitioner, F.P. Shop Dealers challenge Notification issued by respondents seeking to bifurcate their shops - State Govt., considered it appropriate to direct authorities to scrupulously follow rationalisation norm for F.P. Shops and dealing with F.P Shops at rural areas, it has been specified that number of iris based ration cards to be attached to each F.P shop is 400 to 450 BPL and 50 pink cards - Shopkeepers get remunerated only by way of margin money/commission, which they earn depending upon quantum of essential commodities distributed by them during month - Therefore, F.P shops should also become a viable proposition so that there will be adequate insentive for shopkeeper to be honest in distributing essential commodities - Further, insentive should be such that, shopkeepers shall not get tempted in any manner to indulge in unscrupulous and unethical practices of under-weightment while supplying essential commodities - Therefore, State has struck a reasonable balance between interest of card holders as well as F.P Shop dealers in rationalising norms as announced through G.O.Ms.No.35, dated:17-9-2007 - In any event, so long as petitioners continue to be authorized F.P shop dealers in concerned villages, a minimum of 400 BPL cards and preferably 50 pink cards if available, should be ensured to be attached to their respective shops. **K.Anand Kumar Vs. State of A.P. 2012(1) Law Summary 296 = 2012(3) ALD 10 = 2012(3) ALT 626.**

—G.O.Ms.No.52, date 18-12-2008 - G.O.Ms.No.53 - Consumer Affairs, Food and Civil Supplies (CS-I) Dept. Date:6-10-2003, - Guide lines, Cl.12(3) - G.O.Ms.No.4 - Consumer Affairs, Food and Civil Supplies (CS-I) Dept. Date:19-2-2011 - Petitioner belonging to S.T, wife of Govt. teacher appointed as F.P. Shop dealer at regular selections - Basing on representation of villagers R.D.O conducted enquiry passed order declaring petitioner as ineligible since her husband is working as Govt. teacher - Joint Collector rejected appeal filed by petitioner and District Collector affirmed orders passed by Joint Collector and R.D.O - In paragraph 12(3) it is noted close relatives of "Govt. employees specially those working in civil supplies Department or Revenue Department or Civil Supplies Corporation or Village Administrative Officers of village shall not be appointed as F.P. Shop Dealers" - It is discernable clearly that Govt. wanted to ensure that close relatives are those who are working in Civil Supplies Department or Revenue Department etc., shall not be appointed as F.P. Shop dealers - Perhaps, close relatives

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of Govt. employees other than above referred categories are not intended to be prevented from being appointed - Relatives of not all Govt. servants are prevented from being appointed as F.P. Shop dealer - It is quite possible that one close relative or other of certain individuals may have been appointed in various other Departments of State Governments like firebrigade, Forest Department etc. - In this case, petitioner's husband is employed as a Teacher with Z.P. High School cannot be treated as an absolute bar for her selection or bar for her appointment as F.P. Shop Dealer - By using expression "Specifically" in Cl.12(3) of Guide lines,bar contemplated is not an absolute one but is only preferable one - As petitioner was selected at regular selections it is obvious that she has been picked up as most meritrious and deserving and above all petitioner claimed to be a member belong to S.T.and that State Govt., on top priority is endeavoring its very best to improve upon lot of Schedule Tribes - Appointment of petitioner as F.P Shop dealer should not be interdicted - Orders of R.D.O,Joint Collector and District Collector, set aside - Writ petition, allowed. **J.Prameela Vs. The District Collector, Adilabad District, 2012(2) Law Summary (A.P.) 262 = 2012(3) ALD 528 = 2012(5) ALT 669.**

—G.O.Ms.No.52, dt.18-12-2008, G.O.Ms.No. 53, dt.6-10-2003 - Batch of writ petitions filed questioning selection process followed by appointing authorities - Petitioners contend that procedure prescribed for selection and appointment of F.P. shops dealers does not envisages written test and that appointing authorities failed to follow proper method in fixing reservation, leading to arbitrariness in picking and choosing shops for reservation - Selection and appointments of contesting respondents are set aside with following directions:

1) The appointing authorities shall issue a common notification for all the vacancies pertaining to the shops, which are subject matter of these Writ Petitions;

2) The method of selection laid down in the Annexure to G.O.Ms.No.52, dated 18-12-2008, shall be scrupulously followed;

3) The State Government is directed to issue appropriate directions to all the Collectors (Civil Supplies) in the State to get a hundred point roster in each District prepared fixing reservations similar to Rule 22 (2) (E) (e) of the A.P. State and Subordinate Service Rules, 1996;

4) The appointing authorities, in consultation with the Collector, (Civil Supplies), of the District concerned, shall, after preparation of the roster, identify the shops for the reserved categories on the basis of such a roster;

5) The above exercise shall be completed within a period of three months from the date of receipt of this judgment; and

6) Till completion of process of fresh selections and appointments, status quo as on today shall be maintained in respect of running of the fair price shops in question. Writ petitions, allowed. **Vikram Simha Reddy Vs. Government of A.P. 2012(1) Law Summary 340.**

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—G.O.Ms.No.4 - CONSUMER AFFAIRS FOOD AND CIVIL SUPPLIES (CS-1) DEPARTMENT, Dt:19-2-2011, Cl.12(iii) - Close Relatives of "Government employees" of low cadre are eligible to be appointed as F.P. Shop dealers. **Davuluru Prasad Vs. R.D.O. Kavali, SPSR Nellore District 2015(3) Law Summary (A.P.) 339 = 2015(6) ALD 68 = 2015(6) ALT 509.**

—G.O.Ms.No.4, dt:28-2-2014 - Legal heirs of deceased F.P. Shop dealers are eligible to be appointed on compassionate grounds provided if death of dealer was not earlier than year 2009. **K.Sunitha, Nellore Vs. Prl.Secy.Cons.Affairs,Food & Civil Supplies 2015(3) Law Summary (A.P.) 422.**

— G.O.MS.NO.52, CLAUSES (4) & (5) - CONSUMER AFFAIRS, FOOD AND CIVIL SUPPLIES (CS.1) DEPARTMENT DT. 18-12-2008 - "Appointment of F.P. Shop dealer, Eligibility Criteria and Minimum General Educational Qualifications" - Petitioner after going through selection process was appointed as permanent F.P. Shop. Dealer – R4/R.D.O. disqualified petitioner from continuing as F.P. Shop dealer for alleged sin of pursuing higher studies after appointment - R.D.O. issued show cause notice to petitioner for cancellation of her F.P. Shop Authorisation with a solitary charge that petitioner F.P. Shop dealer has deceived administration and worked as F.P. Shop dealer while studying as regular student of Degree at college and on same day R4/R.D.O. suspended petitioner's authorisation by passing a separate order - Petitioner contends that she belongs to S.C. and is very poor and discontinued her degree and her parents maintaining family by attending to cooli work and that by making hard efforts she could secure F.P. Shop dealership which is only source of income for entire family and at instance of certain politicians R5/Tahsildar, sent adverse report against her to R4/R.D.O , in order to see that she is replaced by a person of their choice - It is evident from clause (4) & (5) that unemployment is made main criteria for eligibility - There is no allegation that petitioner is employed somewhere else – Sate cannot place embargo on further studies of person who is appointed as F.P. Shop dealer by merely branding him/her as a student and such a treatment would kill aptitude of persons, who pursue higher studies. It is not case of R4/R.D.O. that pursuing higher studies is coming in way of petitioner, in proper and effective running of F.P. Shop and if that be so, there would have been justification for R4/R.D.O. to initiate proceedings against petitioner and there is no whisper against petitioner that she has not been maintaining timings of F.P. Shop or has been neglecting distribution of commodities to card holders due to her studies - Indeed petitioner has gone to extent of stating that she has discontinued her studies - In this case charge is not to the effect that at time of her appointment petitioner was pursuing her studies – On contrary, specific allegation is that petitioner joined Degree, much after her appointment as F.P. Shop dealer – There is nothing in the above mentioned G.O., which says that if a person who was treated as unemployed, is found studying after, his/her appointment as such, he/she incurs disqualification to continue as F.P. Shop dealer – Even assuming that

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petitioner had joined Degree course after her appointment as F.P. shop dealer, that by no means could disqualify her to continue as such - Entire proceedings initiated against petitioner are misconceived besides same being wholly irrational and unreasonable – Therefore, both impugned show cause notice and consequential order of suspension are quashed - Writ Petition allowed. **G.Dorasanamma Vs. State of A.P. 2015(1) Law Summary (A.P.) 341 = 2015(3) ALD 79 = 2015(2) ALT 678.**

—Clauses 2(d)(e)(g)(h)(i) and 2 (x), 5, 6, 17 & 17(b) - G.O.Ms.No.47 dt.6-10-2007 - Allegation of contraventions of conditions of Authorization and Cl.17 (b) & (c) of Order - Tahsildar temporarily suspending petitioner's F.P. Shop Authorization basing on report of Deputy Tahsildar for alleged irregularities in maintaining F.P Shop - Hence writ petition filed assailing same - Tahsildar can exercise power of suspending erring F.P Shop dealer for a period of 90 days -Impugned order does not suffer from lack of jurisdiction - Writ petition, dismissed. **Chintagunta Appa Rao Vs. Joint Collector, Srikakulam 2010(1) Law Summary (A.P.) 358 = 2010(5) ALD 120 = 2010(5) ALT 526.**

—Cls.2(x) and 5(5)(6)(10) - "Disciplinary authority" - "Appointing authority" - Asst. Supply Officer/Tahsildar have limited power of suspension of F.P shop dealers for period of 90 days and with no power vested in them to cancel their authorisation as it is only appointing-cum-disciplinary authority, RDO/Sub-Collector/DSO who are vested with power of suspension and also cancelling authorisation - Following directions issued to Asst. Supply Officer/Tahsildar while dealing with F.P shop dealers under Control Order:

1)They may exercise the power of suspension where the nature of illegalities detected warrants an immediate action and such action will not broke the delay that may take place in the appointing-cum-disciplinary authority passing an order of suspension.

2)It is desirable that they shall refrain from framing charges and calling for explanation in every case, unless the appointing-cum-disciplinary authority directs him to do so. Whenever an order of suspension is passed, the period for which such order is passed not exceeding 90 days shall be indicated therein besides specifying that the suspension is made pending further action by the appointing-cum-disciplinary authority.

3)The disciplinary authority shall place all the material before the appointing-cum-disciplinary authority as soon as possible without waiting for the outer limit of 90 days to enable the appointing-cum-disciplinary authority to initiate immediate action for holding enquiry and passing a final order as early as possible.

In this case impugned order shows that time limit is not stipulated in order - Moreover suspension order was passed pending "disposal of case" without reference to enquiry to be conducted and final order to be passed by appointing-cum-disciplinary authority who is RDO - Impugned order unsustainable and same accordingly quashed-Writ petition, allowed. **A.Sankar Narayana Vs. Tahsildar, Atmakur Mandal, Ananthapur 2011(2) Law Summary (A.P.) 33 = 2011(3) ALD 761 = 2011(3) ALT 236.**

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—Cl.4(i) & 5(5) and 20(2) - Petitioner's FP shop Authorisation has been suspended by RDO basing on adverse report filed by Tahsildar, complaining certain irregularities in matter of distribution of essential commodities - As against order of suspension petitioner preferred Appeal before 1st respondent/Joint Collector along with stay petition - Since no orders are passed thereon petitioner instituted writ petition which was disposed of with direction to Joint Collector to dispose of Appeal expeditiously after giving opportunity to petitioner - Pursuant to directions of High Court, Joint Collector directed RDO, to conduct enquiry into matter - RDO after issuing show cause notice on framing three charges and called for explanation - RDO passed final orders cancelling petitioner's authorisation - Again petitioner preferred appeal before Joint Collector together with stay petition - Since no orders are passed by Joint Collector, present writ petition filed - Clause 5(5) of 2008 Order requires appointing/disciplinary authority to conduct enquiry before passing any orders of suspension/cancellation of authorisation as a measure of punishment - In this case, RDO has drawn a charge sheet comprising of three charges for alleged failure of petitioner to maintain accounts, found absent from village and distributing commodities through some other person and failure to distribute essential commodities as per entitlement to card-holders - All charges are as vague as vaguness and not specific - Orders passed by RDO, discloses a mechanical attitude exhibited by him and it is for him to, first of all produce such material which can adequately and reasonably bring home charges against FP shop dealer - Attempt of RDO, as is discernible from record appears to be that he alleges charges and it is for FP dealer to disprove same - It is elimentary that initial burden of establishing charges would lie on appointing/disciplinary authority and by producing such evidence either in form of records or registers or by examining witnesses who are relevant and concerned with charges initial burden gets discharged and thereafter it shifts on to FP shop dealer to disprove allegation convincingly - Approach of RDO as is visible from impugned order, is therefore, contrary to established of principles of law - Every public functionary when entrusted with task of determining rights of parties, will be discharging quasi-judicial functions and a quasi-judicial authority is required to assign reasons and those reasons must be germane to material on record - In this case, inspite of clear direction contained in Clause 5(5) of 2008 Order, RDO has failed to conduct enquiry in matter - - In is opinion, it appears conducting of enquiry means calling for explanation and recording a mere statrement that explanation is found not satisfactory - It is all the more regrettable as to why explanation was found not satisfactory, has not been set out - Appellate authority is directed to fix responsibility and accountability for lapses committed by RDO, in passing impugned order and deal with him in appropriate manner - Writ petition disposed of with direction to dispose of appeal on merits as expeditiously as possible within period of six months and in meantime operation of proceedings passed by RDO, cancelling Authorisation shall stand suspended, so as to enable writ petitioner to continue to lift and personally distribute commodities to card holders attached to her FP shop. **D.Varalakshmi Vs. Joint Collector, Civil Supplies, Kurnool 2012(2) Law Summary (A.P.) 36 = 2012(4) ALD 444 = 2012(4) ALT 161.**

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—Clause 5 G.O.M.S.No.35 Consumer Affairs, Food and Civil Supplies (CS-1) Dt. 17.09.2007- F.P.Shop-Bifurcation - District Collector issued proceedings Bifurcating petitioner's F.P.Shop on ground that card holders of two villages have to travel 3 to 5 km to bring their commodities - As per G.O. in Rural Areas each Gram Panchayat(v) should have at least one F.P.Shop with a minimum of 400 B.P.L. and 50 A.P.L. cards- In case there are more number of cards in excess of minimum in village there can be two shops - In this case, after Bifurcation petitioner is left with only 199 cards in all and falls nearly four times below minimum number of cards leaving it completely unviable - If F.P. shops are not viable, it would inevitably lead to dealers indulging in malpractices to sustain themselves - R2/RDO is at liberty to arrange distribution of commodities through petitioner's shop in two villages on one day each in a month subject to payment of transportation expenses to petitioner -Impugned order of collector, set aside – W.P., allowed. **D.Vijaya Lakshmi Vs. District Collector, Kadapa District, 2015(2) Law Summary (A.P.) 576 =2015(5) ALD 486.**

—Cl.5(1)(B) - **CONTEMPT OF COURTS ACT, 1971** - The complaint of the petitioner in this Contempt Case is that having resumed the supplies to his shop in the month of November 2014 in pursuance of the order of this Court dt.10-10-2014, the respondents have abruptly stopped the supplies from March 2015 - Petitioner pleaded that on 6-4-2015, he has made a representation to respondent No.1/RDO informing him that though he has been obtaining Demand Drafts (D.Ds.) and Challans in time and distributing the commodities to the cardholders properly, respondent No.2/Tahsildar has not given him Challan for the month of March 2015 - Petitioner has accordingly requested respondent No.1 to allow him to obtain challan for the month of April 2015 as his authorization is valid till March 2016 - As the supplies were not resumed to the petitioner even for the month of April 2015, he has filed the present Contempt Case - Held, with a view to ensure that their stand passes muster of this Court and to escape their liability under the provisions of the Contempt of Courts Act, 1971 (for short "the Act"), respondent No.2 has gone to the extent of bringing into existence the two notices dated 7-3-2015 and 11-3-2015, which were never served on petitioner - The aforementioned uncontroverted facts would clearly reveal without any cavil of doubt that the respondents have consciously and out of ill-motive discontinued the supply of Essential Commodities to the petitioner's Fair Price Shop with a view to over-reach the order of this Court - These acts of the respondents not only constitute willful violation of the order of this Court, but also attract the offence of perjury u/ Sec.191 of the Indian Penal Code, punishable u/Sec.193 thereof, as they tried to hoodwink this Court by coming out with a blatantly false version - Creation of false documents by public servants is a heinous crime which warrants stringent action, so that it would not only be punitive, but also preventive - Therefore, respondent No.2 is liable for prosecution u/Sec.167 of IPC - Though respondent No.1 has not created these documents, he has not only sworn by these documents, but also extended his all-out support to respondent No.2 clearly suggesting his complicity in the commission

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of the offences by respondent No.2 - Therefore the Court of opinion that the respondents are guilty of contempt of court u/Sec.2(b) of the Act for their willful and deliberate violation of orders of this Court dt.10-10-2014, and are also liable to be prosecuted u/Secs.167, 191 and 193 of IPC r/w. Sec.120-B. **G.Koteswara Rao Vs. E. Murali, Revenue Divisional Officer,Gurajala, Guntur 2015(3) Law Summary (A.P.) 82 = 2015(6) ALD 730 = 2015(6) ALT 397.**

—Clauses 5(4)(5),20 & 21 - Cancellation of F.P shop authorization – Enquiry - Petitioner is permanent F.P. shop dealer - Basing on report submitted by Tahsildar/R4 Revenue Divisional Officer/R3 cancelled petitioner's F.P. Shop authorization for alleged irregularities - Petitioner contends that RDO committed serious irregularity in cancelling his authorization without their being any evidence what so ever proving irregularities alleged against him and that procedure followed by RDO is in flagrant violation of principles of natural justice as relied upon purported statements of certain card holders made against him without supplying such statements and giving him opportunity of confronting them with statements and that Joint Collector/R2 and 1st respondent/District Collector have mechanically confirmed order of RDO without independent application of mind - In this case, RDO in his order has not rendered any specific finding with regard to charges and not referred certain purported statement allegedly made by some card holders and arrived at conclusion that petitioner not properly distributed essential commodities and neither any semblance of enquiry is held by RDO nor any iota of evidence was discussed by him to hold that charge no.3 with regard to statements of card holders that petitioner has not distributed certain quantity of PDS rice - In case of false entries, burden lies on RDO to prove based on proper evidence that petitioner is guilty of making such entries - Mere ipsi dixit of some of card holders whose thumb impressions appeared to have been obtained do not constitue proper evidence to prove charge - LEGAL REQUIREMENTS FOR VALID ENQUIRY - STATED - As per Oxford dictionary meaning of word "enquiry" includes probe, examine, explore, delve into - Word "enquiry" fell for judicial interpretation by Apex Court in context of service law jurisprudence - In state of Uttranchal Vs. Khrak Singh 2008 (8) SCC 236, Supreme Court inter alia, held that enquiries must be conducted bona fide and care must be taken to see that they do not become empty formalities - In this case, RDO has failed to take into consideration detailed explanation submitted by petitioner - Petitioner's request for furnishing statements of card holders fell on deaf ears - Principles of natural justice reqauire that before relying upon statements made adverse to charged person, copies thereof must be supplied to him and he must be given an opportunity of explaining statements and also confronting authors of statements if so desired of charged person and this requirement of principles of natural justice is thrown to winds by RDO - Therefore this Court has no hesitation to hold that findings rendered by RDO based on his fertile imaginations unsupported by any evidence what so ever and procedure followed by RDO is in utter violations of principles of natural justice, besides same mocking at fair play - As regards orders passed by Joint

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Collector/R2 and District Collector/R1 in Appeal and Revision respectively would show that they have mechanically confirmed order of RDO without independent application of mind and without assigning reasons - Impugned orders are not sustainable in law and are accordingly set aside - RDO/R3 is directed to forthwith restore authorization of petitioner and permit him to function as dealer - Writ petition allowed with costs of Rs.10,000/-. **Darnasi Peraiah Vs. District Collector, Prakasam District, Ongole 2015(3) Law Summary (A.P.) 66 = 2015(6) ALD 409.**

—Clause 5 (5) - "Cancellation of F.P. Shop Authorization" - Petitioner's Authorization was suspended by R.D.O on allegation that petitioner has been circulating 13 nos. of white bogus cards and misappropriating rice quota under said cards - Appeal filed by petitioner allowed by 2nd respondent/Joint Collector and set aside orders of suspension - In the Revision filed by respondents 5 & 6 District Collector, while declining to interfere with order of appellate authority, however directed R.D.O to make thorough enquiry into all allegations made by respondents 5 & 6 and pass appropriate orders within three months - 3rd respondent/Sub-Collector, passed impugned order of cancellation of Autorisation of petitioner - In this case, a perusal of impugned order would show that it is bereft of any reasons and that under Cl.5(5) of Control Order, 2008 it is incumbent upon respondent No.3 to hold an enquiry before order of cancellation is passed - But he has merely stated that notice was issued to all concerned with request to attend enquiry on particular date and observed that allegations levelled against petitioner have been proved - In this case, approach of Sub-Collector/ R.3 is thoroughly unsatisfactory and he failed to discuss merits of allegations and evidence, if any, in support thereof against petitioner - Cryptic and laconic order passed by Sub-Collector/3rd respondent cannot pass judicial muster, if because by cancelling authorization petitioner, Sub-Collector/3rd respondent is visiting petitioner with penalty of cancellation of her F.P Shop authorization - Therefore any order which results in adverse civil consequences to a person is passed he shall be given proper opportunity of footing forth his case and a speaking order shall be passed by authority concerned - As 3rd respondent has miserably failed to follow this procedure, which is bedrock of principles of natural justice, impugned order cannot be sustained and same is set aside - Petitioner shall be permitted to continue as F.P Shop dealer till, full-fledged enquiry is held by Sub-Collector/3rd respondent and detailed speaking order is passed in event he finds allegations against petitioner proved in enquiry - Writ petition, allowed. **Shaheen Parveen Vs. State of A.P. 2012(3) Law Summary (A.P.) 1.**

—-Cl.5(5) - "Temporary F.P. Shop dealer" - "Cancellation of authorisation" - 1st Respondent/Sub-Collector issued proceedings cancelling petitioner's temporary Authorization - Writ petition filed by petitioner allowed on ground that order of cancellation not preceded by any notice, observing that it is incumbent upon appointing authority to issue notice and hold enquiry before cancelling Authorization - After disposal of writ petition 1st respondent/Sub-Collector issued proceedings , styled as

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"Notice" - However 1st respondent straightaway cancelled petitioner's Authorisation once again calling for explanation from petitioner and this action of R1/Sub-Collector betrays complete lack of knowledge on his part regarding distinction between, "notice" and " order" and he failed to see that while a notice is issued with a view to give opportunity to party likely to be affected by adverse order proposed to be passed after considering objections, if any, received from such person to notice so given - In this case, only distinction between two orders passed by R1/Sub-Collector that earlier proceeding was termed as "order" and present impugned "order" termed as "notice" and barring same contents of both proceedings are almost same - Such approach of respondent/Sub-Collector is not expected from him and especially when High Court has corrected his action once in earlier writ petition - 1st Respondent/ Sub-Collector committed a blatant error in once again terminating dealership of petitioner without opportunity of being heard - Impugned order unsustainable and same set aside - Writ petition, allowed. **R.Sandhya Reddy Vs. Sub-Collector, Mulugu, Warangal District 2012(3) Law Summary (A.P.) 236 = 2013(2) ALD 77 = 2013(2) ALT 787.**

—Cl.5(5) - Suspension of F.P shop Authorization - 1st respondent/RDO framed charges and called for petitioner's explanation - Purporting to consider petitioner's explanation, R1/RDO passed order suspending petitioner Authorization and directing 2nd respondent/Tahsildar to make alternative arrangements for distribution of commodities to card-holders - Whenever serious allegations of omissions or commissions are brought to notice of appointing authority, is entitled to exercise power of suspending Authorization pro tempore pending finalization of disciplinary proceedings and passing final order - Ordinarily power of interim suspension of Authorization pending enquiry is invoked before calling for explanation holding an enquiry - In such cases, appointing Authority should specify that such power is exercised pending enquiry - After receiving explanation and holding enquiry, appointing Authority shall pass final order either exonerating dealer or imposing on him appropriate penalty of substantative nature either cancelling or suspending Authorization depending upon gravity of allegations - Present case does not fall in either of above mentioned categories - Having invited explanation from petitioner, R1/RDO, has rendered conclusive findings without holding enquiry - Instead of passing final order after enquiry RDO has suspended petitioner's Authorization even without indicating as to said order was passed pending further enquiry - In case, RDO intended to pass order of suspension as a substantative penalty, he should have done so only after holding enquiry and specifying in order time limit for which suspension is made - As R1/RDO failed to follow this procedure impugned order is unsustainable and accordingly set aside - Petitioner shall be permitted to continue as dealer till such time as enquiry into charges framed against him is held and final order is passed - Writ petition, allowed. **Boya Chennappa Vs. R.D.O. Adoni, Kurnool District 2012(3) Law Summary (A.P.) 310 = 2013(2) ALD 79 = 2013(1) ALT 265.**

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—Clause 5(5) - "Cancellation of FP shop authorization" - Revenue Divisional Officer passed orders cancelling petitioner F.P Shop Authorization basing on Report of Mandal Revenue Inspector for alleged charges of "(1) distributing commodities only two days from month (2) not observing timings as prescribed by Govt., and (3) not distributing PDS rice as for entitlement of card holders" - Petitioner contends that he is not expected to defend himself against charge which is non-specific and vauge and that he is not aware of purported enquiry of MRI and he is not supplied with Report which has constituted sole basis for finding rendered by RDO and show cause notice issued by RDO does not contain any reference to said part of MRI - Law is well settled that Authorities cannot relay upon any material behind back of person who is likely to be affected, if order is based on such material - In this case, from nature of charges framed against petitioner, none of charges are substantial enough calling for imposition of extreme penalty of "cancellation" of FP shop Authorization - Charge nos.1 & 2 are too flimsy and charge no.3 is too vauge and not substantiated in any manner on basis of acceptable evidence - Therefore, impugned order of RDO, based on such charges, cannot be sustained - Impugned order, set aside - Writ petition, allowed. **M.Anand Vs. Revenue Divisional Officer, Adoni, Kurnool 2013(2) Law Summary (A.P.) 66 = 2013(4) ALD 80 = 2013(4) ALT 456.**

—Cl.5(5) - "POWER OF IMPOSING PENALTIES" - R3/R.D.O. cancelled petitioner's authorisation while not accepting explanation of petitioner – Respondents 1 & 2/ Collector and Joint Collector, confirmed order of R3/R.D.O - Petitioner F.P. Shop dealer filed explanation to sow cause notice for alleged charges of variation in Rice etc. - Appointing authority to follow two mandatory conditions before imposing any penalty as envisaged u/Cl.5(5) of Control Order - First, it shall make "enquiry" as deemed necessary and second it shall "record reasons in writing" - "Enquiry", pre supposes an opportunity of personal hearing to dealer to explain his/her case based on records such as sales and stock registers – If need be, such "enquiry" must also include recording sworn statement of dealer and witnesses, if any from his/her side – In case where either card holders, other persons sent any complaint, they must also be examined in presence of dealer or his/her lawyer and dealer shall be given an opportunity of cross-examining such persons – Licensing/disciplinary authority shall also supply to dealer all reports on which he is likely to place reliance on detriment of dealer – Unless dealer has no explanation at all to offer licensing, disciplinary authority is bound to hold a detailed enquiry - Experience of High Court reveals that appointing authorities of F.P. Shop dealers are dispensing with the requirement of making personal enquiry by summoning dealers, they are merely relying upon reports sent by heir sub-ordinates i.e., Deputy Tahsildars, and Tahsildars, behind back of dealers and resting their decisions solely upon those reports and this procedure is anathema to the concept of "enquiry" which otherwise means affording the dealer an opportunity of a fair hearing - As regards second mandatory requirement under sub Cl.5(5), namely "reasons to be recorded in writing", reasons constitute heart and

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soul of a decision - Unfortunately, in this case a perusal of impugned order shows that respondent No.3/RDO has not even attempted to hold an enquiry and he has allowed himself to be swayed away by report of Tahsildar without trying to test veracity of explanation offered by petitioner/ dealer - Unless petitioner is given an opportunity of substantiating her explanation, it would be a grave travesty of justice to reject her explanation without holding enquiry – As respondent No.3 has not followed this procedure impugned order cannot be sustained and same is accordingly set aside - F.P. Shop of the petitioner stands restored and she shall be permitted to function as F.P. Shop dealer - W.P. allowed. **B.Manjula Vs. District Collector, Civil Supplies, Kurnool 2015(1) Law Summary (A.P.) 209 = 2015(3) ALD 617 = 2015(4) ALT 572.**

—-Cl.5(5) and 3(4) Annexure - G.O.Ms.No.53, Cl.12(iii) - A.P.S.C Order, 1973 - A.P. ROAD TRANSPORT CORPORATION ACT, 1950, Secs.2 to 5 and 34 - Sub-Collector suspending petitioner's F.P Shop authorization on ground that her husband is working as driver in APSRTC which is State Govt. undertaking by invoking Cl.12 (iii) of G.O.Ms.No.53 - As per said Cl.12(iii) it is indisputable that prohibition of appointment of F.P shop authorisation applies to close relatives of Govt. employees, more emphatically to those working in Civil Supplies Department or Revenue Department or Civil Supplies Corporation or Village Administrative Officer of village - A plain reading of said Cl.12(iii) unequivocally shows that it applies to categories named therein alone and not to other employees of other organisations - In this case, petitioner's husband is neither Govt. employee nor employee in Civil Supplies Department or Revenue Department - Although a Road Transport Corporation is established by State Govt. powers to manage affairs of Corporation vests in Board of Directors, but not in State Govt. - Evidently that APSRTC can neither be considered as Govt., nor as a Department of Govt., and by no stretch of imagination an employee working in APSRTC can be treated as Govt. Employee - Admittedly, petitioner was appointed in year 1995 as F.P shop dealer under 1973 Control Order and there is no provision under 1973 Control Order prohibiting relatives of Govt. employee or other employees for granting F.P. shop authorisation - Guide- lines in G.O.Ms.No.53 do not provide for any retrospective application - Impugned order is wholly without jurisdiction and liable to be set aside - W.P. allowed. **R.Varalakshmi Vs. Sub Collector, Vijayawada, 2011(1) Law Summary (A.P.) 8 = 2011(1) ALD 804 = 2011(2) ALT 164.**

—Clauses 5(5), 20, and 21 - ESSENTIAL COMMODITIES ACT, Sec.3 - INDIAN PENAL CODE, Sec.148, 307, 324, r/w sec.34 and 143,341 & 506 - Writ petitioner appointed as F.P shop dealer of village and his authorization was renewed from time to time and has been distributing commodities strictly in accordance with provisions of Control Order - Criminal cases booked against petitioner at instance of Sarpanch - Respondent initially suspended petitioner's authorization - Subse-quently RDO, passed order cancelling authorization of petitioner - Joint Collector dismissed Appeal and ultimately District Collector also dismissed revision - Hence this present writ petition - In this

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case, authorities are concerned with gravity of charges laid against petitioner in criminal Courts - They have failed to apply their mind as to whether writ petitioner has been acquitted of such charges on merits or not - If allegations behind criminal cases were still to play a part in entire exercise, fact that petitioner has been acquitted of such charges ultimately before criminal Court loses its importance - Failure to bring home charges laid against individual by State not only secures acquittal but one is entitled to feel free that no further penal action to follow there from - Impugned orders unsustainable and they are accordingly set aside, - Writ petition, allowed. **Boya Ayyanna Vs. District Collector, Kurnool, 2012(1) Law Summary 257 = 2012(4) ALD 262 = 2012(4) ALT 670.**

—Clause 5(7) - ESSENTIAL COMMODITIES ACT, Clause 2(d) - Appointing authority - "Disciplinary authority" - Meaning of - Whenever disciplinary authority passes an order suspending authorization of F.P shop dealer, it has to be construed as one valid for period of 90 days as it is passed in terms of Clause 5(7) 2008 Order - But at same time suspension of authorization of F.P shop dealer ordered by disciplinary authority cannot be continued beyond 90 days - Appointing authorities are occupying superior status than disciplinary authorities - Therefore, as against judgment of superior authority i.e., appointing authority, no period of suspension need not be prolonged beyond 90 days, judgment of disciplinary authority to prolong it would be incongruous and does not fit in to principles of good governance - Expression "as well as the disciplinary authority" found a mention in later half of 2nd proviso of Cl.5(7) of 208 Order - It is an expression without any meaning - In absence of any order passed by appointing authority extending period of suspension of writ petitioner's authorization beyond 90 days, a case is made out to allow him to lift and distribute essential commodities. **M.Abraham Vs. Tahsildar, Kanaganapalli Mandal, 2012(1) Law Summary 261 = 2012(4) ALD 369 = 2012(4) ALT 690.**

—Cl.5(7)&(5) - A.P. STATE PUBLIC DISTRIBUTION SYSTEM, CONTROL ORDER, 2001, (5)(4)Cl.17 and conditions of Authorizations, conditions 4,6 to 8, 11 and 13 - ESSENTIAL OF COMMODITIES ACT, 1955 - Resumption of F.P. Shop authorization - Authorisation of 4th respondent, F.P. Shop dealer was cancelled by 2nd respondent/ RDO, for alleged irregularities and contravention of Cl.17 of A.P.S.P.D.S. (Control) Order, 2001 and conditions of Authorizations and said order became final as 4th respondent as not appealed to Appellate Authority - 4th respondent also was prosecuted under Provisions of E.C Act in C.C on file of 1st class Magistrate - On his acquittal in Criminal case 2nd respondent/RDO, passed impugned order resuming FP shop authorization held by 4th respondent on ground that there is acquittal recorded by criminal Court - In mean while, after cancellation of F.P. Shop Authorisation held by 4th respondent Notification was issued and petitioner was selected as F.P. Shop dealer in place of 4th respondent and therefore petitioner filed present writ petition questioning that restoration of Authorisation in favour of 4th respondent is illegal and

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contrary to Cl.5(4) of A.P.S.P.D.S. Control Order, 2001 - 4th respondent contends that petitioner has no locus standi to question impugned order as his appointment is stayed by appellate authority and further such appeal is an alternative remedy as provided under Cl.20 of Control Order, 2008 - Under sub-clause(5) of Cl.5 of said order appointing authority is empowered to add to, amend, vary, suspend or cancel Authorization by recording reasons either on *suo moto* after making enquiry, if necessary, or on Application - Correspondingly under sub-clause (7) of Clause (5) of Control Order 2008, notwithstanding anything contained in sub-clause 4 to 6, power is conferred on appointing Authority to cancel Authorization in event of conviction under Provisions of E.C Act and as per proviso to sub-clause (7) of Cl.(5), appointing Authority is empowered to restore Authorization in cases where conviction is set aside on Appeal or Revision by aggrieved person - In this case, impugned order is not passed in exercise of power under sub-clause(7) of clause (5) of Control Order, 2008, as such question of re-issue of Authorization does not arise as much as order of cancellation against 4th respondent is in exercise of power under sub-clause (4) of clause (5) of Control Order, 2001 - Re-issue/restoration/resumption of Authorization as contemplated under proviso (2) sub-cause (7) of clause (5) is limited only for cases where cancellation orders are passed in exercise of power under sub-clause (7) of clause (5) of Control Order 2008 - When order of cancellation is passed under sub-clause(4) of clause (5) of Control Order, 2001, independently by recording finding that 4th respondent had indulged in clandestine business by diverting commodities, merely on ground that acquittal is recorded in respect of 4th respondent in Criminal Proceedings is not entitled to seek for restoration of such Authorization - Admittedly as petitioner is appointed in vanancy, which arose in view of cancellation of F.P. Shop Authorization of 4th respondent, it cannot be said that petitioner is not having locus standi to question impugned order - Resumption order, set aside - Writ petition, allowed. **Moka Subramanyam Vs. District Collector, WestGodavari, 2013(1) Law Summary (A.P.) 166 = 2013(2) ALD 427 = 2013(3) ALT 139.**

—Clause 8 & 7 – "Scheme of Aadaar seeding to ration cards" - RDO suspended authorization of petitioners basing on report of 4th respondent/Tahsildar on ground that petitioners indulged in malpractice of seeding bogus/inactive ration cards with Aadhaar Cards, while implementing scheme of Aadhaar seeding of Ration Cards - Petitioners contend that they never indulged in such malpractice as they are not associated with the Scheme of Aaadhaar seeding of ration cards and that the entire scheme was implemented by Revenue Officials themselves and F.P. shop dealers have no role to play in said Scheme, they only distribute essential commodities to card holders as per ration cards issued by Revenue Authorities – As per Scheme that Aadhaar Card has to be linked up to the name of person and job is that of Revenue Officials and not that of F.P. Shop Dealers - Respondents contend that petitioners who are F.P. Shop dealers gained access to secret digital code with connivance of Deputy Tahsildar (Civil Supplies), F.I. and Computer Operators, working in Tahsildars

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Office and got bogus ration cards Aadhaar seeded in private net centers and that suspension of petitioners pending enquiry is perfectly legal and shall not be interfered with present Writ Petitions - This Court thoroughly convinced that no prima facie case is made out against petitioners warranting suspension of their Authorizations as they have no role to play with Scheme of Aadhaar seeding to ration cards – Suspension orders passed by RDO against petitioners are exfacie illegal and they are liable to be set aside – Suspension orders passed against petitioners are revoked – Writ petitions, allowed. **K.Balqees Banu Vs. The State of A.P. 2015(1) Law Summary (A.P.) 518 = 2015(5) ALD 81 = 2015(3) ALT 809.**

—-Clause 17 of Form of Authorization - RIGHT TO INFORMATION ACT, 2005 - - As seen from facts, it does not obviously appear that petitioner - F.P. Shop Dealer tendered any resignation - Further, resignation has to be submitted to Revenue Divisional Officer, who is competent authority - In instant case, it is stated that petitioner submitted resignation to Tahsildar - Statement of petitioner as well as resignation letter submitted by him are in handwriting of Revenue Inspector - For the foregoing reasons, this court is thoroughly convinced that petitioner did not, in fact, submit any resignation voluntarily and therefore, he is entitled to continue as dealer of fair price shop during subsistence of his authorization - Suspension of authorization of petitioner in aforesaid circumstances is arbitrary and illegal and the same is set aside and respondents are directed to allot essential commodities to petitioner's fair price shop as long as his authorization is in force - Writ petition is accordingly allowed. **Nakka Krishna Rao Vs. State of A.P. 2015(2) Law Summary (A.P.) 320 = 2015(5) ALD 75 = 2015(6) ALT 149.**

—Cl 17 - "Bogus ration cards" - The petitioner is Fair Price Shop Dealer - On a complaint given by a person alleging that petitioner was in possession of 20 bogus ration cards; drawn essential commodities on those 20 bogus ration Cards; and diverted same into black Market to illegal gain, Revenue Divisional Officer, third respondent, issued suspension proceedings - Aggrieved by orders of third respondent, petitioner preferred an appeal before the Collector (Civil Supplies) - Thereby, Collector (Civil Supplies) holding that survey conducted by special team formed for detecting bogus cards reveal that out of 22 cards, which are in possession of petitioner, 20 cards were found bogus and essential commodities were also drawn for said cards; that all records and reports clearly show that third respondent has rightly suspended authorisation of petitioner; and instructed third respondent to take further necessary action against petitioner as per provisions laid down in AP State PDS (Control) Order, 2008 - Thereby, third respondent issued a show cause notice to petitioner calling his explanation, for which petitioner has submitted his explanation - On perusal of explanation submitted by petitioner and as per Rule 17 of the Order, third respondent holding that the reports and records clearly show that the petitioner has drawn Essential Commodities on 20 bogus ration cards, which were shown in statement, and diverted

A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008:

same to black market for illegal gain and that violated Rule 17(a) & (c) of the AP State PDS (Control) Order, 2008 and Condition (f) of condition 2 of Annexure-I of Order, cancelled authorization of petitioner.

Aggrieved by order of third respondent, petitioner has filed an appeal before the Joint Collector - Joint Collector after perusal of the records dismissed the appeal with a direction to Revenue Divisional Officer, to take appropriate steps for collecting amount from appellant under Rule 17(c) of Order - It was further held that irregularities committed by Dealer is very serious and grave in nature and that petitioner has cheated the Government and diverted essential commodities to black market for illegal gain - It was further directed that Tahsildar shall file criminal case against petitioner - The Assistant Supply Officer is directed to assist the Tahsildar in filing criminal case against petitioner.

Held, A perusal of entire record reveals that only allegation against petitioner is in relation to 20 cards, which are termed as bogus cards - This Court in judgments referred to by learned counsel for petitioner, more particularly judgment reported in K.BALQUEES BANU'S case, after analyizing method and manner in which cards are issued to beneficiaries had categorically held a dealer has no role to place in issuance of cards - The role of a fair price shop dealer is limited to delivering schedule commodities to cardholders and so far as dealer is concerned he has nothing to do with the genuinety or otherwise of cards or card holders - Merely because a dealer supplies schedule commodities to card holders, it cannot be said that a dealer has to verify whether a particular person is genuine or not and whether he is not entitled to issue a particular card to avail the benefits under Public Distribution System - As a matter of fact cardholders are entitled for issuance of schedule commodities as long as respective cards stand in their names - The only ground on which a dealer can refuse delivering schedule commodities to a particular card holder would be that while in process of issuance of schedule commodities when thumb impression taken on the biometric system does not tally with one recorded in system - Then alone dealer can refuse issuance of schedule commodities - In the case on hand, there is no such finding - As a matter of fact, second respondent has drawn a presumption that cards are retained by dealer merely on account of fact that petitioner did not produce cardholders' for enquiry - It may be born in mind that it is the authority who have alleged that with respect to 20 cards there were no persons existing - If that is case, it is for authorities to explain how such 20 cards came to be issued in first place - In given case at best if authorities find that 20 cards seeking bogus cards were issued, it may be a case of cancellation of such cards and intimation to dealer so that to that extent commodities could not issued - The authorities having not done so, responsibility with respect to bogus cards cannot be thrust upon dealer.

In these circumstances, orders of third respondent as confirmed by second respondent in cancelling authorization of petitioner on the ground of bogus cards being not sustainable, same is liable to be set aside. - The Writ Petition is accordingly allowed. **Boggarapu Subramanyam Vs. The State 2016(3) Law Summary (A.P.) 280.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008:

—Clause 17(c) and Conditions of Authorization - Petitioner's F.P. Shop Authorization suspended by 1st respondent/RDO on purported ground that he has contravened provisions of Controller Order 2008 and to avoid inconvenience to cardholders - In this case, nature of contraventions has not been indicated in impugned Order - As Order of suspension visits dealer with serious adverse consequences it is incumbent upon 1st respondent RDO to indicate at least in brief nature of contraventions on which he found it necessary to suspend Authorization and that failure on part of 1st respondent to refer alleged contraventions in impugned order vitiates said Order - Impugned order set aside - 1st respondent/RDO directed to allow petitioner to function as F.P. Shop dealer pending enquiry - Writ petition, allowed. **Puli Sailu Vs. RDO, Kamareddy 2013(1) Law Summary (A.P.) 354.**

—Cl.21 (v)&(vi) (as amended by G.O.Ms.No.11, Dt:25-1-2012 - ESSENTIAL COMMODITIES ACT - Petitioner was issued FP shop authorization under provisions of A.P. Public Distribution System (Control Order) 2001 in year 2003 and her authorization was suspended by issuing suspension-cum-show-cause notice in year 2010 - Subsequently 4th respondent/RDO cancelled Authorization without considering explanation, in year 2011 - 3rd respondent/Joint Collector allowed Appeal filed by petitioner in year 2012 - Thereafter petitioner has been distributing commodities as usual - Meanwhile, 6th respondent Card-holder filed Revision before District Collector and obtained stay of operation of order passed by 3rd respondent/Joint Collector and ultimately Revision filed by 6th respondent dismissed in year 2013 - Thereafter 6th respondent filed revision before 1st respondent Govt. under Cl.21 (ii) of Control order 2001 where in 1st respondent/Govt., granted stay of operation of order passed by 2nd respondent/ District Collector - Hence present writ petition assailing Govt., Memo - Petitioner contends that Cl.25 of Control Order 2001 was repealed by Cl.25 of Control Order 2008 as such revision under Cl.21 of Control Order 2001 is incompetent and not maintainable and that before passing impugned order no notice was issued to petitioner as contemplated under clauses 21 of Control Order and that 6th respondent is not a Card holder and has no locus stndi to challenge order passed by 2nd respondent and that no second Revision is maintainable inasmuch as 2nd respondent has already entertained Revision and dismissed same - Govt., contends that Cl.21 of 2008 is amended vide G.O.Ms.No.11, dt.25-1-2012, according to which sub-clauses (v)& (vi) are added after sub-clause (iv) of Cl.21 of Control Order 2008 and as per such sub-clause (v) of Cl.21, second revision is maintainable before Govt. - In this case, revision filed under Clause 21(ii) of Control Order 2001, which is repealed by Cl.25 of Or.2008, but, sub-clause(v) of Cl.20(i) of Control Order 2008 as amended by G.O.Ms.No. 11, provides for a Revision petition against order passed by 2nd respondent, District Collector and Cl.21 also provides issuance of notice only in case of final orders to be passed in Revision - No doubt Revision petition was filed under repealed Control Order 2001, but Control order 2008 provides second revision before Govt., as such it cannot be said that revision is ineffective because of quoting wrong provision of law - Therefore revision is maintainable before 1st respondent/Govt., against orders passed by 2nd respondent/District Collector - Even

A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008:

if order passed by 2nd respondent is stayed by 1st respondent through impugned Memo, it does not prohibit supply of stock to petitioner so long as Authorization of petitioner is subsisting and it does not disentitle petitioner for receiving essential commodities and supplying same to card holders as she succeeded in Revision before District Colletor - Respondent 4 & 5 are directed to supply stock to petitioner, having due regad to fact that Appeal filed by petitioner is allowed restoring her Authorization and also fact that revision filed by 6th respondent is dismissed by 2nd respondent - Writ petition disposed of accordingly. **M.Yasodamma Vs. Govt. of A.P. Consumer Affairs (Civil Supplies) 2014(1) Law Summary (A.P.) 17 = 2014(2) ALD 390 = 2014(1) ALT 307.**

—Cl.24 - **"VARIATIONS IN STOCK"** - MRI inspected petitioner's FP Shop on 5-5-2014, and submitted report u/Sec.6-A of E.C. Act on 11-8-2014 - R2/R.D.O. issued show cause notice, to petitioner and on same day, he has also suspended petitioner's authorisation on ground that an excess of 44 Kgs. of PDS was found at the time of inspection - High Court set aside order of suspension on 16-09-2004, rendering a finding that petitioner's authorisation was suspended on vague grounds - Petitioner not allowed to distribute commodities till 5-12-2014 - Subsequently, petitioner was permitted to resume his functions as F.P. Shop dealer following order dated 16-9-2014 passed by High Court - Within 7 days thereafter, administration has again felt necessity of making another inspection and this time by vigilance and Revenue Officials together - They have prepared a Panchanama, a reading of which would show that sock of 51.98 Quintals of rice and sugar of 86 Kgs., along with records were seized only on ground that a quantity of 93 Kgs., of PDS Rice was found in excess and no other allegations have been made in panchanama – Evidently based on this action respondent Nos.2 & 3, R.D.O & M.R.O, have stopped supplies to petitioner - Under Cl.24 of A.P. Control Order, variation up to 1.5% of total stock is permissible and as per this clause there could be variation up to 78 Kgs of PDS Rice - Even if allegations contained in panchanama are taken in their face value, variation is excess of permissible limits is only 15 Kgs and for this reason, official machinery has thought it worth to seize entire Rice and Sugar - In this case this court has no hesitation to hold that executive apparatus has abused its powers evidently for extraneous reasons, as specifically alleged by petitioner that all this is done due to political vengeance and respondents have acted with oblique motive and mala fide intention - On careful consideration of facts this court has no hesitation to hold that very act of seizure of Essential Commodities only on allegation that there was excess stock of 93 KGS of PDS Rice out of Q 51.98 PDS rice, in absence of any other allegation of omissions and commissions by petitioner, constitutes patent arbitrariness and abuse of power on part of respondents - Panchanama dated 12-12-2014 Quashed – Respondents are directed to forthwith return seized stocks to petitioner to enable him to continue as F.P. Shop Dealer - Writ Petition allowed, accordingly. **Tanneeru Rama Kotaiah Vs. State of A.P. 2015(1) Law Summary (A.P.) 275 = 2015(5) ALD 105 = 2015(3) ALT 76.**

A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008:

—Cl.24 – ESSENTIAL COMMODITIES ACT, Sec.6-A - Inspector of Police and Mandal Revenue Inspector inspected shop of petitioner and seized stock by preparing panchanama and sent report u/Sec.6-A of E.C. Act – Report did not refer to nature of violations except containing a vague statement that petitioner has violated provisions of Act - Panchanama shows that a shortage of Q 1.09 of PDS Rice out of Q 30-48 – Under Cl.24 of Control Order variation of 1.5% of total stock is permissible and if said percentage is taken into consideration shortfall of Rice is about 70 Kgs. - Petitioner specifically alleged that all is done due to political vengence – Entire official machinery is misused and power of officials is abused, evidently for extraneous reasons - Respondents have acted with oblique motive and mala fide intention - Energies and resources of official machinery cannot be allowed to be misused for targeting individuals in name of prevention of malpractices - In this case very act of seizure of Essential Commodities only on allegation that there was shortage of 70 Kgs of PDS rice beyond permissible limits and in absence of any other allegation of omissions and commissions by petitioner, constitutes patent arbitrariness and abuse of power on part of respondents - Therefore impugned order is liable to be set aside - Collectors should apply their mind before initiating proceedings u/Sec.6-A of Act, instead of mechanically following the report under Sec. 6-A of Act sent by their subordinates - Initiation of proceedings in a mechanical manner without any proper application of mind would not only waste precious time of Collectors, but it also results in serious harassment of Fair Price Shop dealers - Impugned proceedings are set aside, Writ petition allowed. **Dubba Ramakrishna Reddy Vs.The State of A.P. 2015(1) Law Summary (A.P.) 230 = 2015(3) ALD 558.**

and —— CONDITIONS OF AUTHORISATION 4(1) & 4(11) - "Cancellation of FP shop authorisation" - Tahsildar suspended authorisation of writ petitioner basing on adverse report of alleged variations in stock of rice and sugar - RDO confirmed order of suspension passed by Tahsildar and framed two charges against petitioner through show cause notice directing petitioner to attend hearing on particular date - Accordingly petitioner attended and filed detailed explanation to two charges of alleged variations in rice and sugar and non-maintenance of records - RDO, recorded his findings holding petitioner guilty of both allegations based on report submitted by Vigilance and Enforcement Officers - Petitioner challenged correctness of proceedings of RDO on two reasons - One, RDO, not conducted any enquiry and no witnesses have been examined in his presence and merely based on report of Vigilance and Enforcement Officials and secondly no reasons are assigned as to why petitioner can be said to be guilty of charges - In this case, petitioner's FP shop was suspended on 4-9-2011 basing on adverse report against petitioner by Enforcement Officials - RDO issued a show cause notice on 29-11-2011 calling for explanation of petitioner - RDO finalized proceedings and passed impugned order dt.8-1-2012 holding petitioner guilty of both charges - In this case, RDO has noticed clearly that on 4-9-2011 itself authorisation

A.P. SUGAR CANE (REGULATION OF SUPPLY AND PURCHASE) ACT, 1961:

of petitioner's FP shop has been suspended by Tahsildar - RDO rejected appeal on 10-10-2011 - As such writ petitioner could not have distributed any essential commodities from 4-9-2011 onwards, whereas show cause notice alleges that writ petitioner has been supplied with essential commodities for months of September and October - If authorisation of petitioner is suspended on 3-9-2011 why would MLs point would supply stock of essential commodities in month of September and more particularly in month of October, to a FP shop whose authorisation is suspended? unless there is gross negligence on part of Tahsildar in discharge of his functions by allowing authorisation orders in favour of writ petitioner during months of September and October - Evidently RDO has not even applied his mind while issuing his show cause notice on 29-11-2011 when he made an allegation against petitioner that there was variation noticed between stock lifted by petitioner during months of September and October 2011 and upon physical verification carried on 3-9-2011 - Show cause notice is therefore clearly result of non application of mind on part of RDO - Without going through any of his motions, authorisation of FP shop dealer could not have been cancelled - PRINCIPLES OF NATURAL JUSTICE - Principles of natural justice require no person to be condemned without providing a fair and reasonable opportunity to such a person to defend himself adequately and properly - As a part of this concept one is required to apply once mind to defense set up - Non-application of mind is also worst visiable form of abuse or misuse of power - Reasons are required to be assigned why explanation is not found satisfactory - Statement "explanation offered by dealer is not satisfactory", is a conclusion by itself - As to why said explanation was not found satisfactory is to be essential end result of process of reasoning - Presence of reasons on record discloses lines on which mind has been applied by adjudicating authority - In instant case, Order passed by RDO is clearly and demonstrably without any application of mind on his part - Order of RDO cancelling authorisation of writ petitioner, set aside - Writ petition, allowed. **P.Nagaraju Vs. R.D.O. Dharmavaram 2012(2) Law Summary (A.P.) 40 = 2012 (3) ALD 503 = 2012(4) 399.**

A.P. SUGAR CANE (REGULATION OF SUPPLY AND PURCHASE) ACT, 1961:

—Secs.15 & 17 - CONSTITUTION OF INDIA, Art.226 - "Alternative remedy" - Petitioners running sugar factory within allotted Zone comprising number of villages and made Application to 1st respondent for declaring Factory Zone to their new Unit - 1st respondent declared Factory zone on same day to 3rd respondent rejecting Application of the petitioner - Hence present writ petition assailing proceedings of first respondent - 1st respondent/Commissioner contends that petitioners are already having by Sugar Factory and that 3rd respondent being a new entrepreneur and with a view to encourage new promoter, request of 3rd respondent considered and further raising objection to maintainability of writ petition in view of availability of alternative remedy u/Sec.17 of Act - In this case, it is not in dispute that Application of petitioners is earlier in point of time than Application of 3rd respondent - In absence of specific guide lines or criterion prescribed by competent Authority, 1st respondent shall adopt a reasonable approach

A.P. SURVEY AND BOUDARIES ACT, 1923:

in disposing of applications - Admittedly when factory zone declared in favour of 3rd respondent petitioners' Application was pending and surprisingly there is no reference to Application of petitioners in proceedings by which Application of 3rd respondent was accepted and factory zone was declared - Respondent committed serious procedural error in not considering Applications of petitioners and respondent No.3 together when both of them have applied for same areas for declaration as factory zone - "ALTERNATIVE REMEDY" - Doctrine of alternative remedy is only a rule of procedure devised by superior Courts as a measure of self imposed restrictions - Where manifest injustice is done to a party, High Court would always entertain a writ petition ignoring availability of alternative remedy - As impugned action of 1st respondent is patently arbitrary which resulted in gross injustice to petitioners, writ petition cannot be thrown out on ground of 'alternative remedy' - Impugned proceedings of 1st respondent, set aside - 1st respondent directed to consider Applications of petitioners and respondent No.3 together and take fresh decision in accordance with law - W.P. allowed. **Ganpati Sugar Industries Ltd. Vs. Commissioner & Director of Sugar, Hyd 2010(3) Law Summary (A.P.) 312 = 2011(2) ALD 242 = 2011(1) ALT 173.**

A.P. SURVEY AND BOUDARIES ACT, 1923:

–Suit for declaration of title and recovery of possession - The appellants having failed to obtain a decree declaring their ownership over the suit schedule land and recovery of possession filed the appeal against the judgment holding that the said land was government land and thereby refused the relief of declaration and also recovery of possession - Held, the government without properly conducting survey after due notice cannot arbitrarily say that the land which is lying vacant and which is part of the registrered sale deed in favour of the plaintiffs is no man's land and hence it is Government land. It is not denied that the government has fenced the land in Sy.No. 44/2 only after the suit was filed. In view of the above, the plaintiffs are entitled to the relief as prayed for. The judgment and decree under appeal partly granting the relief to the plaintiffs in respect of Ac. 44/1 and denying the same in respect of 44/2 cannot be sustained. Even at the cost of repetition, it may be stated that as per the decree, the trial court has recognized the right of plaintiffs only to an extent of 5696 Sq.Mtrs., in Sy.No. 44/1 and denied the right of plaintiffs over an extent of about 3264 Sq. Mtrs. In Sy No. 44/2. This is clearly contrary to the original title of the plaintiffs emanating from Ex.A.1 - In the result, the appeal is allowed and the suit of the plaintiffs is decreed as prayed for. **K.Mangamma Vs. Government of A.P. 2015(3) Law Summary (A.P.)164.**

—Secs. 3 (i), 3 (ii), A.P. Land Encroachment Act, 1905, Sec.2 -Case of petitioner is that subject property was and is private property of individuals and same is covered by sale agreement dated 08.03.2015 - Petitioner intends to purchase property - Sub-Registrar/2 nd respondent has refused to entertain document for registration on ground that Survey No.162/2(part) is recorded as Gramakantam - Further objection of 2 nd

A.P. (A.A.) TENANCY ACT, 1956:

respondent in this behalf is Gramakantam is Government property and property is included in the prohibitory list maintained under Section 22-A of the Act - Inclusion of Gramakantam lands in prohibitory list is in terms of G.O.Ms.No.100 Revenue (Assn.I) Department dated 22.02.2014 - Through G.O.Ms.No.56 Revenue (Assn.I) Department dated 16.02.2015, the orders issued in G.O.Ms.No.100 Revenue (Assn.I) dated 22.02.2014 are cancelled - Effect of cancellation is that either the Tahsildar or Sub-Registrar, on ground that a particular survey number is classified as Gramakantam, shall not refuse to receive a document for registration - Held, therefore, occupied Gramakantam by its nature or classification does not belong to the Government to include Gramakantam in prohibitory list - Either under the Madras Estates Land Act or in Estates (Abolition and Conversion into Ryotwari) Act exceptions have been carved out and Gramakantam is one of categories of land which is not included in the Government lands - This Court is of opinion that refusing to entertain document for registration on ground that subject property is classified as Gramakantam amounts to illegal refusal and consequently writ petition is ordered by directing Sub-registrar/ 2nd respondent to receive document presented by petitioner for registration of subject property without reference to classification of petition land as Gramakantam, consider same and pass orders for registration, if document is otherwise compliant. **Sagadapu Vijaya Vs. The State of Andhra Pradesh2015(2) Law Summary (A.P.) 226**.

—Sec.11 - In this Writ Petition, petitioner is aggrieved by action of respondents for not conducting survey in demarcating petitioner's land and in not considering petitioner's representations.

Held, as held in Khaja Naseeruddin Vs. Commissioner, Survey, Settlement and Land Records, if survey is sought by a person, after issuing notice on parties interested and in particular the registered holders of land, concerned official should conduct survey and demarcation in their presence - Above principles are to be kept in mind and above circulars are to be followed by respondents while conducting survey of private lands under Act - In this view of matter, Writ Petition is allowed and 5th respondent is directed to cause a survey for demarcating lands of petitioners by considering representations. **Muramalla Padmavathi Vs. State of Andhra Pradesh 2016(2) Law Summary (A.P.) 47 = 2016(3) ALD 650 = 2016(3) ALT 653.**

A.P. (A.A.) TENANCY ACT, 1956:

—Sec.2-C - Tenant filed ATC for declaration that he is statutory tenant over schedule property, contending that since 30 years he has been cultivating land by raising green gross and selling same and paying rent towards lease amount - Respondents contend that they were personally cultivating land by raising green gross through drainage water and were selling same for particular amount from time to time by giving right to cut and carry gross from land and therefore petitioner does not come within definition of cultivating tenant and not entitled for declaration as prayed for - Special Court dismissed Application holding that petitioner not cultivating tenant - Appellate Tribunal allowed appeal holding

A.P. (A.A.) TENANCY ACT, 1956:

that tenant is entitled for declaration as prayed for - "CULTIVATING TENANT" - Defined - Person claiming tenancy will be recognised only when he cultivates land by his own labour or by any other member of his family or by hiring labour under his supervision and control in respect of land belonging to another person under tenancy agreement express or implied - Trees and shrubs cut and remove as wood for sale from land shall be treated as movable property - But if transfer includes right to fell trees for a term of years, transferee derives a benefit from further growth and such transfer is treated as one of immovable property - Order of appellate Tribunal, set aside - Order of Special Officer, confirmed - Revision petition, allowed. **Muthakamalli Sitaravamma Vs. Soma Venkateswarlu 2008(1) Law Summary (A.P.) 19 = 2008(3) ALD 164.**

—Secs.8 & 16 and Rules framed thereunder - CIVIL PROCEDURE CODE, Or.22, Rule 9 - LIMITATION ACT, Sec.5 & 29 (2) - Petitioners filed ATC seeking remission of makta relating to petition schedule land - Since original petitioner died during pendency of ATC, Application filed together with Application u/Sec.5 of Limitation Act and Or.22, Rule 9(ii) of CPC requesting Munsif/Special Officer to condone delay of 171 days in filing Application to bring on record LRs and to set aside abatment - Petitioners contend that Special Officer has chosen to follow decision of single Judge of A.P High Court which holds that provisions of Act and particularly Sec.5 thereof is not applicable with respect to Special Officer under Act - Since view of single Judge is not sustainable in view of decision of Supreme Court the judgment of Single Judge followed by Special Officer is not sustainable - It is clear from reading of provisions of Act that there is no express exclusion anywhere in Act taking out the applicability of Sec.5 of Limitation Act to appeals filed before appellate Authority u/Sec.16 of Act - Consequently all requirements for applicability of Sec.5 of Limitation Act can be stated to have been satisfied - A regular District Munsif and District Judge are constituted as original and appellate authorities under Act and they are so constituted as a class and it cannot be said that they are persona designate - Consequently when once they function as District Munsif and District Judge respectively while administering present Act in view of Rule 18, all proceedings before Special Officer or District Judge under Act are governed by CPC - Provisions of CPC are therefore, applicable to extent there is no contrary provision either under Act or Rules - Scheme of Act also shows that there is no express or implied exclusion of applicability of Limitation Act - U/Sec.29 (2) of Limitation Act therefore, Sec.4 to 24 of Limitation Act per force apply to proceedings under Act - Impugned order dismissing ATC filed by original petitioner as abated and consequential rejection of I.A and accompanied applications, set aside. **Penumatsa Narsimha Raju Vs. Andhra Jatiya Vidya Parishad, 2010(1) Law Summary (A.P.) 245 = 2010(2) ALD 462 = AIR 2010 AP 90.**

—Secs.10, 15 & 16 & Rule 19 of Rules - Respondent/tenant contends that he is cultivating tenant of petition schedule property and therefore prayed for relief of declaration and also perpetual injunction - Petitioner flatly denied that existence of tenancy between himself and respondent stating that one VSR was tenant - Trial Court

A.P. (A.A.) TENANCY ACT, 1956:

dismissed ATC holding that respondent failed to prove that he was tenant of petitioner - District Judge allowed appeal - Hence present revision - Petitioner contends that lower appellate Court proceeded to decide matter on surmises and assumptions without there being any legal or factual support for same - Finding recorded by lower appellate Court is totally without any basis and it is contrary to basic tenets of evidence - In this case, respondents did not even make an effort to provide any link in process of proof - Strangely enough, lower appellate Court made an attempt to supply all possible links, little releasing that such links do not form a chain at all - Petitioner states that land is in possession and enjoyment of X in capacity of a lessee and thereafter, holder of agreement of sale - He was immediately affected person - Respondent did not take step to implead that individual - ATC is bad for non- joinder of parties - CRP, allowed. **Kopparapu Seetharamanjaneyulu (died) per LRs Vs.Male Krishna Reddy (died) per LRs 2011(3) Law Summary (A.P.) 69 = 2011(6) ALD 1 = 2011(6) ALT 781.**

—Secs.10(1), 15 & 16(1) - A.P. CIVIL COURTS ACT, Secs.10 & 11 - CONSTITUTION OF INDIA, Art.227 - CIVIL PROCEDURE CODE, Secs.2(4) & 2(8) -GENERAL CLAUSES ACT, Sec.2(17) - Petitioner filed a petition for declaration that he is a statutory protected tenant and for permanent injunction restraining respondents from interfering with possession, contending that he is tenant since 2003 and he became owner and also claimed premptive right u/sec.15 of Tenancy Act - In Application filed by petitioner for *ad interim* injunction defendants remained ex parte and 2nd respondent alone filed counter stating that he purchased property from 3rd respondent under registered sale deed and also denied that 1st respondent is owner of schedule property and petitioner in collusion with 1st respondent filed ATC setting up false lease - Special Officer-cum-Principal Junior Civil Judge dismissed Application observing that petitioner failed to produce any evidence that he took property on lease and therefore is not entitled for injunction - Petitioner preferred appeal u/Sec.16(2) of Act and same was dismissed by 3rd Additional District Judge - Hence, present Revision - Tenancy Act does not define “District Judge” u/Sec.2 (4) of CPC - It is clear that for purpose of Sec.16(2) of Tenancy Act “District Judge” means only “principal District Judge” and an additional District Judge, therefore cannot exercise appellate jurisdiction under Act - A plain reading of Secs.10 & 11 of Civil Courts Act would show that where ever statute uses terms “District Judge” means, it is a Principal District Court - All Addl. District Judges are appointed to District Court only when there is such requirement due to pendency of cases in District Court - u/Sec.11(2) of Civil Courts Act all Addl. District Judges shall perform all or any of functions of District Judge under Act - When Sec.16(2) of Tenancy Act confers appellate jurisdiction on District Judge having jurisdiction over matter, power cannot be delegated by District Judge to Addl. District Judge - Impugned order on file of 3rd Addl. District Judge, set aside and is directed to return papers to petitioner for presentation to proper Court i.e. Court of Pincipal District Judge - CRP, accordingly, allowed. **Kunche Sathiraju Vs. Vasamsetti Raja Gopal, 2012(1) Law Summary 138 = 2012(2) ALD 61 = 2012(3) ALT 618.**

A.P. (A.A.) TENANCY ACT, 1956:

—Sec.13 - District Munsif-Special Officer dismissed Application filed by petitioner/landlord for eviction of respondent-tenant - District Judge (Appellate Tribunal) confirmed order of Special Officer - Petitioner contends that respondent obtained interim injunction by playing fraud and misrepresentation basing on forged agreement and squatting over disputed land under guise of injunction and also committed wilful default of payment of rent - Respondent contends that he is continuing as cultivating tenant on basis of agreement and not committed any default in payment of rent, and rents were being deposited into Court when petitioner failed to receive same and that petition is liable to be dismissed - It is specific case of petitioners that no rent was paid upto filing of ATC and that respondent is claiming that he is regularly paying rent without default - Tribunals below by taking into consideration, evidence placed by both parties rightly came to conclusion that petitioners failed to establish that lease deed is a forged one and there was wilful default in payment of rent - Conclusion of Tribunals that there are no grounds to grant relief of eviction in favour of petitioners - Justified - CRP, dismissed. **C.K.Pounamma Vs. K. Chinnaswami 2008(1) Law Summary (A.P.) 210 = 2008(2) ALD 300 = 2008(2) ALT 31.**

—Sec. 13 - TRANSFER OF PROPERTY ACT, Sec. 53-A - Held, It is relevant to note conduct of appellant in this context - He has set up an alleged oral agreement of sale said to have taken place as far back as October 1979 - He has not taken any steps by calling upon plaintiff during his life time or respondents herein who are his legal heirs thereafter calling upon them to execute the sale deed or filed a specific performance suit for nearly six years after so-called oral agreement of sale - At least after present suit was filed against him, appellant has failed to file specific performance suit - Agreement set up by appellant being oral, he cannot even claim benefit of doctrine of part performance under Section 53-A of Transfer of Property Act 1882 as held by Supreme Court in Mool Chand Bakhru and another Vs. Rohan and others and by this Court in Narasayya - Appellant has not even set up plea of adverse possession - On one hand he is denying tenancy and on other hand he has failed to prove plea of oral agreement of sale (The finding rendered on this aspect by the trial court has not even been contested in his appeal as no submissions in this regard are made by the learned Counsel for appellant) - On these indisputable facts, continued possession of appellant is indenfensible irrespective of which ever forum decides case - In fact, the appellant is only seeking to prolong litigation by nonsuiting respondents on plea of lack of jurisdiction in the civil court - If his plea is accepted and respondents are relegated to Tenancy Court, consistent with his stand taken in the suit, appellant will plead absence of tenancy and that consequently Tenancy Court has no jurisdiction to order his eviction in absence of landlord-tenant relationship - In other words, appellant is seeking to use respondents who are admittedly the owners of property and who are denied possession as well as rents for 35 years, as a foot ball - Even if respondents have approached Tenancy court, its finding not being conclusive on plea of agreement of sale set up by the appellant,

either party would have approached civil court by way of a civil suit - Therefore, on pleadings of parties, no prejudice was caused to appellant on account of the lower court entertaining the suit - Indeed, lower court has conducted a full-fledged trial and made a threadbare discussion on the merits of case, including plea of oral agreement of sale propounded by appellant - Therefore, on facts of the present case, it would be a grave travesty of justice to non-suit the respondents on ground of lack of jurisdiction in civil court - On analysis as above, this Court hold that lower court has jurisdiction to entertain suit and it has rightly done so - For above mentioned reasons, appeal fails and same is accordingly dismissed. **Badde Ganiraju Vs. Polisetti Andala Tayaru, 2015(2) Law Summary (A.P.) 262 = 2015(5) ALD 168 = 2015(4) ALT 186.**

—-Sec.15 - Plaintiff instituted suit for specific performance of an agreement to sell, said to have been executed by the defendants 1 and 2 in respect of schedule property of an extent of Ac.08.94 cents - 3rd and 4th defendants got themselves impleaded in suit claiming to be tenants of schedule property - But, version of the defendants 3 and 4 is that 3rd defendant is the cultivating tenant of an extent of Ac.7.00 cents and the remaining extent of Ac.1.94 cents belongs to 4th defendant - They contended that since tenancy was subsisting, defendants 1 and 2 have no right to sell away property to third parties in contravention of their rights under Section 15 of the A.P. Tenancy (Andhra Area) Act.

Sole question which requires to be determined in present appeal is whether trial Court is justified in granting relief of specific performance in respect of Ac.3.54 cents of scheduled mentioned property having regard to aforementioned facts and circumstances of case on ground that third defendant did not exercise his option to purchase land as provided for under Section 15 of the A.P. Tenancy Act.

Held, in considered opinion of this Court, there is no substance finding recorded by trial Court that third defendant did not exercise his right to purchase land which was leased out to him - Finding recorded by learned trial Court on this aspect is totally misconceived since Section 15 of the A.P. Tenancy Act mandates that landlord intending to sell land leased out to a cultivating tenant shall first give notice to such cultivating tenant of his intention to sell such land.

In instant case, trial Court noticed that prior to filing of suit relating to present appeal, plaintiff and the defendants 1 and 2 are very much aware of fact that petitioner is cultivating tenant of schedule mentioned land of Ac.7.54 cents and he was declared so by the Special Officer in ATC No.15 of 1988 in which plaintiff and the defendants 1 and 2 were respondents - Trial Court also recorded a finding that on date of alleged agreement to sell, third defendant was in possession of land leased out to him and thereafter, he is continuing in possession - Noticing said fact trial Court observed that recital in agreement of sale that plaintiff was put in possession of schedule mentioned property is absolutely false - Moreover, pending suit, plaintiff obtained sale deed from first defendant for an extent of Ac.5.44 cents of plaint schedule

A.P. (TELANGANA AREA) TENANCY AND AGRICULTURAL LANDS ACT, 1950:

property - Having noticed all these facts, trial Court ought not to have granted relief of specific performance to plaintiff - Finding recorded by trial Court are totally misconceived and contrary to provisions of A.P. Tenancy Act and they are liable to be set aside in appeal - Consequently, judgment and decree passed by the Principal Senior Civil Judge, is set aside - Appeal suit is allowed. **Yellina Venkateswra Rao Vs. Bollina Venata Ramana 2016(2) Law Summary (A.P.) 256 = 2016(5) ALD 321.**

A.P. (TELANGANA AREA) TENANCY AND AGRICULTURAL LANDS ACT, 1950:

—Sec.38-E - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971, Secs.8 & 3-A - Ancestors of respondents 1 to 12 declared as protected tenants in respect of certain Survey No. and were also issued Certificate u/Sec.38-E of Act - One BB claiming ownership over said land executed sale deed in favour of petitioners - R-13/MRO effected mutation in revenue records and issued Pattadar Pass Books and subsequently issued Memo stating that dispute is in civil nature - Joint Collector allowing Revision filed by respondents 1 to 12 - Petitioner contends that entries in revenue records were made after due verification, and in case respondents have any claim they have to establish it before civil Court as provided u/Sec.8 of Act 1971 and that petitioners are bona fide purchasers from pattadar of land - Sec.3-A of Act confers precedent on provisions of Tenancy Act and directs that no steps under 1971 Act shall be inconsistent with provisions of Tenancy Act - It is a matter of record that ancestors of respondents were declared as protected tenants in respect of said lands and that certificate u/Sec.38-E of Tenancy Act was also issued in their favour - Any entry in revenue records, that is made contrary to certificate issued u/Sec.38-E, per se, is illegal and untenable, even if one goes by Sec.3-A of 1971 Act - MRO committed a blatant illegality in making entries contrary to certificate issued in favour of ancestors of respondents and when objection raised he required respondents to approach civil Court - There cannot be any greater instance of misuse of power, than this - Petitioners are only purchasers from BB and they have to stand or fall on strength of rights possessed by their transferor - Writ petition, dismissed. **Boddupalli Sathaiah Vs. Koppula Pedda Linga Reddy 2008(3) Law Summary (A.P.) 7 = 2008(5) ALD 311.**

—Secs.38-E & 50-B - In instant case, vendor of petitioners was granted Section 50-B certificate on 21-03-1972 - When father of third respondent applied for certificate under Section 38-E, he was conscious that his father was protected tenant for Ac. 19.13 cents - When competent authority restricted issuance of certificate under Section 38-E to Ac. 10.00 guntas, he did not protest and even after issuance of Section 38-E certificate, he kept quiet - Held, Section 90 read with Section 93 of Act prescribes time of 60 days to file appeal - Third respondent has not filed appeal against order under Section 50-B certificate, dated 24-07-1973 - Assuming that third respondent had no knowledge of issuance of Section 50-B certificate, he should have been alarmed when in Section 38-E certificate extent of land mentioned was only Ac. 10.00 guntas and more so, only Ac. 4.12 guntas was covering survey No. 202 leaving other Ac. 8.00 guntas - He never protested when third parties were cultivating the land even

A.P. URBAN AREAS (DEVELOPMENT) ACT, 1975:

assuming that he was not aware of the sale made by one MS to the petitioners in the year 1984 - For first time, he filed an application on 24-07-1993 for restoration of possession - Thus third respondent is acquiesced of transactions made earlier, acquiesced of purchase made by petitioners and their possession and enjoyment of the said land - Therefore he is stopped from filing an application for restoration of possession under Section 32 of the Act, more particularly, after long lapse of time - In facts of the case, it cannot be said that application for restoration of possession under Section 32 of Act was filed within a reasonable time - Thus, order of Joint Collector restoring possession is not sustainable - Order is also not sustainable for reason that the Joint Collector has not assigned reasons for entertaining such application after long lapse of time - Having regard to the above discussion and findings, the order impugned in the writ petition is set aside - Accordingly, the writ petition is allowed. **Ithagani Lachaiah Vs. Joint Collector & Additional District Magistrate, Nalgonda 2015(2) Law Summary (A.P.) 150 = 2015(4) ALD 490 = AIR 2015 (NOC) 914 (Hyd).**

—Secs.38-E, 90 & 91 - Jurisdiction of Commissioner of Land Administration - Against orders passed by Joint Collector any Appeal or Revision lies only to High Court and no such revision or appeal lies to Chief Commissioner of Land administration - 1st Respondent/Chief Commissioner cannot entertain any revision - Writ petition, allowed. **Ch.Shivudu Vs. Chief Commissioner of Land Administration 2010(2) Law Summary (A.P.) 12 = 2010(3) ALD 720 = 2010(3) ALT 279.**

A.P. URBAN AREAS (DEVELOPMENT) ACT, 1975:

—Secs. 3(1), 5(1), 11,12,15 - PUBLIC INTEREST LITIGATION - Land in question earmarked for parks - 1st respondent/Development Authority accorded permission to respondent no.3 for construction of Temple on land earmarked for parks - High Court dismissed PIL challenging said permission - Hence, present Appeal - Protection of environment, open spaces, for recreation and fresh air, play grounds for children, promenade for residents and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in development scheme - "....Public interest in reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such site to private persons for conversion to some other use - Any such act would be contrary to legislative intent and inconsistent with statutory requirements - Further more it would be in direct conflict with constitutional mandate to ensure that any State action is inspired by basis values of individual freedom and dignity and addressed to attainment of quality of life which makes the guaranteed rights a reality for all the citizens" - In this case, surprisingly that even though respondent no.3 not owner of site, it made an application for grant of permission to construct Temple and functionaries of respondent No.1 accepted same without making any enquiry about title of respondent no.3 - Thus illegality committed by 1st respondent in issuing order granting permission to respondent no.3 to construct Temple - Order issued by 1st respondent, quashed. **Machavarapu Srinivasa Rao Vs. Vijayawada, Urban Development Authority 2011(3) Law Summary (S.C.) 93 = 2012(1) ALD 41 (SC) = 2011 AIR SCW 5424.**

A.P. WATER, LAND AND TREES ACT, 2002:

A.P. URBAN LAND CEILING AND REGULATION (REPEAL) ACT, 1999:

—Sec.20(1) (a) and 20(2) - Memo No.9609/UC/III/1/2009-11 - "Change of land use" - Exemption granted earlier with conditions - Govt., passing order declaring that change of land use amounts to violations of conditions granted earlier - Govt., rejecting claim of petitioner seeking permission to construct Multiplex Theatre-cum-Shopping Complex in place existing cinema theatre - Petitioner contends, by virtue of Urban Land Repeal Act in absence of any provision saving sub-sec.2 of Sec.20 of Principal Act, it cannot be said that petitioners have been used land only for purpose of cinema theatre and in absence of saving provision with regard to Sec. 20(2) Principal Act conditions are unenforceable and they are non-est in law - Govt., contends that in view of saving clause under Repeal Act of 1999, saving provision u/Sec.20(1) (a) of Principal Act conditions imposed in order granting exemption in favour of petitioner shall continue to operate as such petitioners are not entitled to construct a Multiplex Theatre-cum-Shoping Complex - In absence of initiation of proceedings or withdrawal of exemption granted u/Sec.20(1) of Principal Act before enforcement of Urban Land Repeal Act, land, which is exempted will become a free-hold land and hence stand of respondents that even after coming into force of Repealing Act, conditions imposed in order granting exemption u/Sec.20(1) of Principal Act shall continue to operate cannot be accepted - Memo No.9609 issued by Govt., quashed, by directing respondents to permit petitioners to use their property covered by exemption proceedings, for purpose of constructing a Multiplex Cinema Theatre-cum-Shopping Complex in place of existing cinema theatre - Writ petition, allowed. **Surender Raj Jaiswal Vs. Principal Secretary to Govt., 2011(3) Law Summary (A.P.) 55 = 2011(6) ALD 198 = 2011(6) ALT 327.**

A.P. WATER, LAND AND TREES ACT, 2002:

—Secs.10,14,27 and 35(2), Rules 27 of Rules 2004 - Complaint of petitioners was that goods vehicles in which they were transporting sand were seized and they were directed to pay penalty - In some cases, such penalty was levied as a measure of compounding an offence while in others, it was imposed as a penalty per se - Imposition of penalties in all cases was under provisions of A.P. Water, Land and Trees Act, 2002 - No mention was made in impugned notices in these cases as to under which provision of the Act of 2002 the penalty was imposed - Petitioners in all aforestated cases allege that no prior notice was issued and no opportunity was given to them before imposition of the penalty - Held, in cases on hand, question before this Court is not whether transportation of sand by petitioners in their goods vehicles was legal - Petitioners assert so while respondent authorities allege otherwise - However, if respondent authorities found such transportation to be illegal, they necessarily had to follow due procedure laid down by law for taking action against petitioners - Therefore, only issue that falls for consideration before this Court is whether authorities exercised such power in these cases as per due procedure - Rules of 2004 were framed in exercise of powers conferred by Section 45(1) of Act of 2002 - Rule

A.P. WATER, LAND AND TREES ACT, 2002:

27 deals with compounding of offence and Sub-Rule (1) thereof provides that Authority or designated officer or any officer authorized by Government in this regard, as case may be, may accept from any person who committed or who is reasonably suspected of having committed an offence in relation to contravention of Sec.10, 14 and Sec.27, being other than an offence punishable under sub-section (2) of Section 35 of Act of 2002, a sum not less than Rs.One Lakh, by way of compounding - Rule 27 deals with compounding of offence and Sub-Rule (1) thereof provides that Authority or designated officer or any officer authorized by Government in this regard, as case may be, may accept from any person who committed or who is reasonably suspected of having committed an offence in relation to contravention of Secs.10, 14 and Sec.27, being other than an offence punishable under sub-section (2) of Sec.35 of the Act of 2002, a sum not less than Rs.One Lakh, by way of compounding - Further, very concept of compounding requires that person who is alleged to have committed offence, or who is reasonably suspected of having done so, must voluntarily come forward to pay a sum of money so as to compound offence - In all cases on hand, except one, there is no whisper of petitioners having come forward to compound offences alleged against them - On other hand, all of them unanimously contend that they had never offered to pay any penalty as they had not committed any offence - Further, what is more distressing to note is that the State authorities are only interested in making money out of alleged illegal transportation of sand, which is counter-productive to the very objective sought to be achieved by promulgating laws to arrest unauthorized mining of sand - State authorities would therefore have to introspect on their motives and objectives while implementing laws of this nature - On aforestated analysis, this Court finds that the impugned proceedings/notices in these cases were not legally well founded as the provisions of Sec.37 of the Act of 2002 and Rule 27 of the Rules of 2004 had no application whatsoever - Seizure of vehicles and consequent imposition of fine/penalty, be it by way of compounding or otherwise, are therefore found to be without legal basis - Impugned proceedings/notices are accordingly set aside - Writ petitions are allowed. **R.Biksham Vs. The District Collector, Mahabubnagar, 2015(3) Law Summary (A.P.) 386.**

—Sec.28(5) - CONSTITUTION OF INDIA, Art.21 - ANDHRA PRADESH MUNICIPALITIES ACT, 1965, Secs.56,133,134(2)& 382 -Respondents 5 and 6 removed 120 babul trees more than 30 years old located near a tank and petitioner alleged that cutting of trees destroyed healthy atmosphere in village and there was no necessity to cut them since they were not causing any hindrance to anybody - Respondent No. 5 contended that he sought permission from Respondent No. 3 to cut trees but there was no necessity to obtain anybody's permission and he can cut trees under Secs.133,134 read with Sec.56 of A.P. Municipalities Act, 1965 - Held, Sec.28(5) of A.P. Water, Land and Trees Act, 2002 mandates obtaining of permission from a designated Officer before cutting trees and if really provisions of said Act have no application as contended by Respondents 5 and 6, there is no reason why they would seek

A.P. WAKF ACT, 1995:

permission from Respondent No. 3 to clear bushes and allegedly unwanted vegetation in tank and hence cannot be accepted - Respondents 5 and 6 have acted in an illegal and arbitrary manner by cutting fully grown babul trees by misleading the Collector (respondent 3) that they are only clearing bushes and vegetation - Prosecution against writ petitioner by Respondents 5 or 6, u/Sec.382 of A.P. Municipalities Act, 1965 does not arise - Writ Petition, allowed. **Chimme John Barnabas Vs. Govt., of A.P. 2014(3) Law Summary (A.P.) 47 = 2015(1) ALD 95 = 2014(6) ALT 778.**

A.P. WAKF ACT, 1995:

—Sec.89 - CIVIL PROCEDURE CODE, Sec.80 - SPECIFIC RELIEF ACT, Sec.34 - Respondent initially approached High Court by way of writ petition to declare Notification issued u/Sec.4(3) of Wakf Act, 1954, as null and void - Pursuant to direction of High Court respondent filed suit challenging said Notification - Tribunal dismissed suit, hence present revision under Art.227 of Constitution of India - Petitioner contends that very institution of suit before Tribunal by respondents is untenable and judgment of Tribunal suffers from several infirmities viz., a)suit untenable, since it was not preceded by notice contemplated u/Sec.89 of Wakf Act, 1995; b) barred by limitation; c) Court fee paid inadequate; d) description of property is defective and e) relief claimed in suit does not accord with Sec.34 of Specific Relief Act - Respondent contends that requirement to issue notice u/Sec.89 is obviated,on account of institution of writ petition and permission accorded, in order passed therein to respondent to file sui within time stipulated therein - Question of limitation becomes irrelevant, once Court permitted respondents to file a suit and that proviso to Sec.34 of Specific Relief Act does not apply - Two principle contentions urged on behalf of petitioner are that suit is defective in as much as it was not preceded by notice, contemplated u/Sec.89 of new Act, and that it is barred by limitation besides three subsidiary contentions regarding Court fee and Sec.34 of Specific Relief Act - Plea that there was failure to issue notice would not render suit not maintainable and at most plaintiff would be required to comply with provisions and come back to Court, thereafter - Once suit has been adjudicated on merits, without defendant in it, raising any objection, as to failure to issue notice, acceptance of plea at a later stage would render entire exercise futile - Even if a plea was not raised, petitioner could have insisted on framing of an issue touching it and no such effort was made - Limitation for filing suit u/Sec.6 of new Act is stipulated under proviso thereto - It mandates that no suit raising any dispute regarding Wakfs shall be entertained by Tribunal after one year from date of application of list of Wakfs - If that provision is to be applied to facts of this case, suit is obviously by limitation - However, limitation prescribed under proviso to Sec.6 was held to be applicable only when suit is filed by Wakf or anybody claiming rights in Wakf - Limitation prescribed under that provision would apply to suits filed by Wakf Board or Muthavalli of Wakf or any person interested in Wakf - Petitioner did not raise any plea as to limitation in suit much less any issue was framed on it - Hence it cannot be accepted - Sec.34 of Specific Relief Act has no application to suits which are filed under provisions

ADVOCATES ACT, 1961:

of Wakf Act without claiming relief of recovery of possession - When notification as such is challenged, any ambiguity on such aspects, cannot adversely affect suit - Court fee is a matter between Court and plaintiff in a suit and defendant does not have much to say in this matter - However no issues are framed and petitioner did not raise any objection when Tribunal framed only one issue regarding Notification - Judgment of Tribunal justified - CRP, dismissed. **A.P. State Wakf Board Vs. Smt. Sabita Jashi 2010(3) Law Summary (A.P.)237 = 2010(6) ALD 651.**

ADVOCATES ACT, 1961:

—Secs.2(a), 3(a), 17, 29 to 34 and 45 - CIVIL PROCEDURE CODE, Sec.2(15) & Or.3, Rules 2 & 4 - CIVIL RULES OF PRACTICE, Rules 30 & 33 - CONSTITUTION OF INDIA, Arts.32 & 226 - Appellant filed suit for specific performance - District Judge dismissed suit - Division Bench of High Court confirmed judgment of District Judge and thereafter dismissed review petition - Appellant represented by a duly instructed Counsel, an Advocate enrolled on rolls of State Bar Council - Although appeal to High Court and Supreme Court were dismissed he filed writ petition before Supreme Court and same was lodged under Or.18 Rule 5 of Supreme Court Rules and IAs filed by way of appeals against Registrar's Order were dismissed - In Supreme Court T.D. Dayal represented appellant as his GPA holder - Thereafter appellant through GPA filed writ petition with his affidavit criticising judgment of trial Court, District Court, and cast unfounded and unsubstantiated aspersions as well as on Supreme Court on High Court - In affidavit of GPA though he was never in picture till disposal of SLPs, petitioner narrates factual background (makes allegations) as if he is personally aware even without mentioning that he is deposing to affidavit based on record - GPA'S RIGHT OF COURT AUDIENCE - Stated - Any person approaching Court seeking some legal redressal scrupulously, and without exception follow procedure Rules and regulations framed by High Court - A party to proceedings may authorize another by giving power of attorney (PoA) to appear in case, file affidavits instruct lawyers and act on his behalf - Therefore T.D. Dayal cannot derive any authority under GPA allegedly executed by appellant - GAP holder cannot plead and /or argue for his principal - If a person other than Advocate enrolled on rolls of Bar Council, appears in Court it is offence punishable under law - Vakalath and verification of pleadings can be signed either by a party or a PoA - As per Rule 33 of Civil Rules of Practice when pleadings are verified and signed by person under written authority (PoA) such document shall be filed with an affidavit by (PoA) holder to effect that such person is recognized agent as defined in Or.3, Rule 2 CPC - PoA cannot given evidence on behalf of party to proceedings who has given PoA - Therefore PoA in favour of person to act for another person in Court proceedings cannot be construed as authorizing holder of PoA to argue case in Court - ADVOCATE - Defined - A conspects of Rules 1 & 2 of Or.3 of CPC, Sec.2(a) and Secs.29, 30,33,34 of Advocates Act would show that all pleadings in proceedings shall be by party in person or by his recognized agent - Secs.29 & 30 of Advocates Act make it clear that Advocates

ADVOCATES ACT, 1961:

only recognized class of persons entitled to practise law - It is an offence for non-Advocate to practise under provisions of Advocates Act, Sec.45 prescribes sentence of six month imprisonment - VEXATIOUS AND FRIVOLOUS LITIGATION - - A concocted, fabricated, false and spurious case by one party against other using Court as a forum would cause immense damage to judicial institution besides damaging reputation of person dragged to Court - Court has to be on constant vigal to reject such cases - Common Law loathes frivolous and vexation cases and persons who file such cases - Nature of cases filed by T.D. Dayal. either as a party in person or as holder of GPA for third parties would show that all cases are frivolous - He attained notoriety in corridors of High Court of A.P., and was punished for contempt of Court - It is very much necessary, therefore, to prevent him from filing cases in Court as GPA - Therefore by using bad and intemperate language attributing prejudice to Hon'ble Judges of High Court by addressing a letter to Registry attributing bias, T.D Dayal has committed contempt scandalizing Court besides interfering with course of justice - Writ appeal, dismissed with directions to Registry; a) Not to accept any case filed by Dayal b) Security staff incharge of High Court not to allow Dayal to enter High Court premises c) To communicate copy of order to Secretary Bar Council d) Registry to suo moto register contempt case against Dayal and appellant and GPA directed to pay Rs.25,000 as costs. **Madupu Harinarayana @Maribabu Vs. Learned 1st Addl. District Judge, Kadapa, 2011(1) Law Summary (A.P.) 252 = 2011(4) ALD 61 = 2011(2) ALT 405 = AIR 2011 (NOC) 223 (AP).**

—Secs.35 & 38 - "Professional misconduct" - Appellant/Jaipur Development Authority engaged 1st respondent in Land Acquisition Reference matter - R1 neither appeared in Court nor filed written statement on behalf of appellant and consequently Court closed opportunity for filing written statement on behalf of appellant - Respondent did not inform about said order and also even result of final order - Hence appellant sought indulgence of State Bar Council and filed complaint - Since Disciplinary Committee of State Bar Council could not conclude proceedings within stipulated time same was transferred to Bar Council of India and ultimately complaint was dismissed by Bar Council of India - Hence present appeal u/Sec.38 of Advocates Act - In this case, in view of alleged lapses and willful default on part of 1st respondent complaint was filed by appellant u/Sec.35 of Advocates Act alleging misconduct, against 1st respondent - Factual narration which has been given and conduct of 1st respondent in conducting case clearly proves and establishes his misdemanor and misconduct and therefore respondent no.1 found guilty of professional misconduct - 1st respondent suspended as an Advocate from practice for period of six months. **Jaipur Vikas Pradhikaran Vs. Ashok Kumar Chowdary, 2011(3) Law Summary (S.C.) 47.**

—Sec.38 - "Professional misconduct" - Respondent/Advocate filed forged and fabricated Vakalathnamas as well as compromises in divorce proceedings by forging and fabricating documents without knowledge of parties and obtained orders - Complaint filed before

ALLOPATHIC PRIVATE MEDICAL CARE ESTABLISHMENTS (REGISTRATION AND REGULATION) ACT, 2002:

Bar Council against respondent/advocate alleging his involvement in number of false cases by forging and fabricating documents - Disciplinary Committee of Bar Council of U.P. passed orders debarring respondent/advocate from practising for period of 7 years - On appeal Disciplinary Committee BCI modified order of punishment and reprimanded respondent/Advocate and imposed cost of Rs.1,000/- - Hence present appeal filed against order of BCI - Consideration of matter by Disciplinary Committee, BCI is clearly flawed - It overlooked most vital aspect that witnesses have clearly and unequivocally stated that respondent/advocate had filed forged and fabricated valakathnamas on their behalf and they have not filed any compromise in Court and that respondent/advocate not at all cross-examined these witnesses on above aspect - Disciplinary Committee accepted oral submission of respondent/advocate and as matter of fact he did not tender any evidence what so ever in rebuttal - Findings recorded by Disciplinary Committee of Bar Counsel of U.P that respondent/Advocate was involved in very serious professional misconduct by filing vakalathama without any authority and later on filing fictitious compromises which adversely affected interest of parties concerned - Hence findings of Disciplinary Committee Bar Counsel of U.P., restored - In this case, respondent/Advocate involved in very serious professional misconduct by filing vakalathnamas without any authority and later on filing fictitious compromises - Professional misconduct committed by respondent/Advocate is extremely grave and serious and he has indulged in mischeif making - Fraudulent conduct of lawyer cannot be viewed leniently lest interest of administration of justice and highest tradition of Bar may became causality - By showing undue sympathy and leniency in matter such as this while advocate has been found guilty of grave and serious professional misconduct, purity and dignity of legal profession will be compromised - Any compromise with purity dignity and nobility of legal profession is surely bound to affect faith and respect of people in rule of law - Respondent/advocate also previously found to be involved on professional misconduct and he was repremanded - Respondent/advocate is suspended from practice for period of 3 years. **Narain Pandey Vs. Pannalal Pandey, 2013(1) Law Summary (S.C.) 32 = 2014(3) ALD 94 (SC) = 2014 AIR SCW 590 = AIR 2014 SC 944.**

ALLOPATHIC PRIVATE MEDICAL CARE ESTABLISHMENTS (REGISTRATION AND REGULATION) ACT, 2002:

—and Rules 2007 - "Medical negligence" - Suit filed by respondents against appellants, Medical practitioners of Maternity and General Hospital claiming damages for alleged acts of medical negligence in conducting operation to wife of 1st respondent and as result she died - Trial Court decreed suit awarding sum of Rs.2.5 lakhs towards compensation as against claim of Rs.5 lakhs - Appellants filed appeal A.S.No.38 of 2007 in District Judges Court against decree - Respondents filed A.S.No.40/2007 not satisfied with amount awarded by trial Court - Lower appellate Court, dismissed A.S.No.38 and allowed A.S.No.40 enhancing compensation to Rs.4 lakhs - Hence, present two second appeals - In this case, expert's opinion revealed that there was

ARBITRATION ACT, 1940:

no negligence on part of Doctors but cause of death could be side effects of drug administered for anesthesia - Appellants filed written statement admitting fact of treatment of deceased and that every possible care was taken, while conducting operation, but suddenly patient suffered heart attack, few hours after she was shifted to ward and they denied their liability to pay compensation - Trial Court has simply referred to factum of death of deceased, steps that caused in form of registration of case and conducting of postmortem and held that though appellants are negligent personally they are vicariously liable - Since they availed services of one doctor, DS, anesthetist even while taking view that there was fault on part of anesthetist, neither any experts opinion was take into account, nor said doctor DS was made a party to suit, much less he was examined as witness - Further it was not case of respondents that death occurred on account of negligence on part of anesthetist - Trial Court did nothing more than applying parameters that are referable to M.V Act in determination on motor accidents claims and awarded amount - When suit is filed for damages amount to be awarded must be commensurate with negligence, if any, found on behalf of defendants, but not to with reference to income of patient and as such, whole approach was untenable - Lower appellate Court has imported its personal knowledge and made several observations and has gone to extent of observing that 1st appellant not authorized person to conduct Sonography and that appellants ought to have arranged for ventilator and resuscitation equipment - In this case, since trial Court and lower appellate Court held that appellants are not negligent by themselves by holding that negligence was that of anesthetist, who is not made a party or was examined as witness but simply adopted principles underlying in MV Act in determining compensation - Second appeals deserved to be allowed - Since deceased wife of 1st respondent died soon after operation leaving as many as six children of relatively tender age, a sum of Rs.2 lakshs can be awarded as compensation, though not on account of negligence on part of appellant, but on humanitarian grounds - Since there exists a valid insurance coverage for them, 8th respondent/Insurance Company shall be liable to pay said amount - Second Appeals, allowed. **Dr.Madan Mohan Vs. Md.Abdul Khadir, 2012(1) Law Summary 199 = 2012(2) ALD 706 = 2012(3) ALT 763.**

ARBITRATION ACT, 1940:

- "Partition" – "Adverse possession" – "Limitation" - Defendants 1, 9, 10 & 12 filed this Appeal against Decree and Judgment passed by the Subordinate Judge, whereby suit was decreed for partition of schedule property into five equal shares declaring that plaintiffs are entitled to 1/5TH share each in schedule property - Defendants denied the contention of plaintiffs that the property of Sangappa devolved upon plaintiffs and D1 and D2 and late Chandramma and asserted that they were never in joint possession and enjoyment of the property - Aggrieved by Decree and Judgment passed by the trial Court, defendant Nos. 1, 9, 10 and 12 preferred present appeal on various grounds, mainly on ground that the trial Court did not appreciate pleadings

ARBITRATION ACT, 1940:

and evidence on record and totally ignored Will in favour of Sukhabhasini daughter of D1 and D12, the trial Court also did not consider evidentiary value of Ex-B1 award and disbelieved the partition of the property - Held, apart from inherent defect of non registration of Ex.B.1 award, still award is not made as a rule of Court under the provisions of Arbitration Act, 1940 and unless and until it is made as a rule of Court, award is not enforceable under law and it would not create any right in immovable property - On this ground also, claim of defendant basing on the award marked as Ex.B.1 cannot be sustained - Hence, this Court hold that the award marked as Ex.B.1 would not confer or create any right in immovable property and it is inadmissible in evidence, and thereby the partition pleaded by defendants cannot be accepted - In view of law declared by Apex Court and Privy Council, Court find no sufficient pleading and evidence to establish requirements to claim perfection of title by adverse possession and therefore, trial court rightly rejected claim of defendants on ground of perfection of title by adverse possession - Similarly, bar of limitation will arise only when plaintiffs were excluded from enjoying property under Article 110 of Limitation Act - In absence of any pleading and evidence about exclusion of plaintiffs from enjoying property, plea of limitation would not arise - Hence, this Court find no substance in contention of Counsel for the defendants - In result, appeal is dismissed, confirming the decree and judgment passed by Subordinate Judge Court. **Sham Rao Vs. Mahadevi, 2015(3) Law Summary (A.P.) 394**

—Secs.20,17 & 39 - ARBITRATION AND CONCILIATION ACT, 1996, Secs.36 & 85 - CIVIL PROCEDURE CODE, Or.21, Rule 46 - Respondent filed suit u/Sec.20 in year 1994 against A.P.S.R.T.C to file agreement in to Court and make an order of reference to arbitrator appointed by Court for decision of his claim against Corporation - Arbitrator appointed and arbitral award passed on 8-12-2008 directing to pay certain amount to respondent - Executing Court ordered attachment of amount lying in account of Corporation - Petitioner/Corporation contends that as award passed under Arbitration Act, 1940 unless same is made rule of Court as provided u/Sec.17, no execution proceedings can be maintained and that executing committed grave error in entertaining E.P and passing impugned order of attachment - Respondent contends that since arbitral proceedings had actually commenced on 1-8-2006 provisions of Arbitration and Conciliation Act, 1996, are applicable and as per Sec.36 of said Act award dt.8-12-2008 is enforceable in same manner as if it were decree of Court - Award of arbitrator is executable only after decree is passed in terms of Sec.17 of repealed Act 1940 - In other words, award is incapable of execution unless it is made a rule of Court u/Sec.17 of repealed Act - However under new Act of 1996 there is no provision which requires reference to arbitrator by intervention of Court - That apart as per Sec.36 arbitral award is enforceable under CPC in same manner as if it were a decree of Court - From Sec.85(2) (a) of 1996 Act that not withstanding repeal of old Act 1940, provisions of said Act shall apply in relation to arbitral proceedings which commenced before new Act of 1996 came into force unless otherwise agreed by parties - In this

ARBITRATION AND CONCILIATION ACT, 1996:

case, arbitral procee-dings had commenced at least in year 1994 on date of presentation of Application u/Sec.20 of repealed Act 1940 - Consequently as per Sec.85(2) (a) of Act 1996 provisions of repealed Act alone shall apply - In this case, there is nothing to show on record that Corporation as ever agreed to abide by provisions of new Act, 1996 - It also relevant to note that Corporation did not appear before arbitrator and did not file its statement of defence - Hence merely because award dated 8-12-2008 was passed purportedly under provisions of new Act it cannot be inferred that Corporation had agreed to be governed by new Act - Provisions of repealed Arbitration Act, 1940 shall apply and consequently award dt.8-12-2008 cannot be enforced unless it is made rule of Court - Impugned order of attachment, set aside - CRP, allowed. **Managing Director, APSRTC, Hyd., Vs. S.Annaiah, Contractor, Hindupur 2009(3) Law Summary (A.P.) 196 = 2010(1)ALD 351 =2010(1) ALT 37 = 2009(4) APLJ 82.**

ARBITRATION AND CONCILIATION ACT, 1996:

—Secs.2 (1) (e), 36 & 89 - CIVIL PROCEDURE CODE, Sec.89 & Or.21 - A.P. CIVIL COURTS ACT, 1972 - 1st respondent filed suit against petitioner and other JDRs for recovery of certain amount - Arbitrator appointed by Court passed award in favour of petitioner/DHR - E.P filed for recovery of award amount u/Sec.36 of Act, r/w Or.21, Rule 11 CPC - Petitioner contends that award cannot be enforced by Senior Civil Judge as it is not properly stamped and not signed by JDRs and DHR and therefore not binding on them - Senior Civil Judge rejected pleas of JDRs holding that petition to set aside award not filed and therefore it has become final u/Sec.35 and that award passed in presence of both parties and same was not challenged even after lapse of three months before competent Court and therefore same can be enforced u/Sec.36 - Respondent contends, that enforcement of arbitral award u/Sec.36 of Act in accordance with provisions of CPC has nothing to do with Sec.2(1) (e) of Arbitration Act and that any arbitral award has to be executed in accordance with provisions of CPC. - ENFORCEMENT OF ARBITRAL AWARD - Principles - Stated - (i) If an arbitral award is passed, an application for enforcement by way of execution petition need not always be filed under Section 36 of Arbitration Act before District Court;(ii) Depending on the amount awarded in the arbitral award, subject to territorial jurisdiction, an application for enforcement under Section 36 of Arbitration Act can be filed if the value of the award is less than Rs.1,00,000/- before the Court of Junior Civil Judge; if the value of the award is more than Rs.1,00,000/- but does not exceed Rs.10,00,000/- before the Court of Senior Civil Judge; and if the value of the award is more than Rs.10,00,000/- before the Court of District Judge or Additional District Judge if it is assigned to such Additional District Judge;(iii) Every arbitral award can be enforced "as if it is a decree of Civil Court" following relevant provisions in Part II and Order XXI of CPC; and (iv) An application for enforcement of foreign award either under Section 49 or 58 of Arbitration Act shall have to be made only before the District Court and can also be decided by Additional District Court if the case is assigned

ARBITRATION AND CONCILIATION ACT, 1996:

to such Court - CRP, dismissed. **Bhoomatha Para Boiled Rice and Oil Mill Vs. Maheswari Trading Co., 2010(1) Law Summary (A.P.) 14 = 2010(1) ALD 522 = 2010(1) ALT 808 = AIR 2010 AP 137.**

—Secs.7& 8 - Petitioner, defendant in original suit, being unsuccessful before trial court, preferred this revision under Art. 227 of Constitution of India, raising several contentions, mainly contending that the trial court did not interpret arbitration clause in proper perspective and courts are supposed to interpret the terms of contract basing on intention of parties and inadvertent drafting of clause itself is not sufficient to decline the relief and prayed to allow revision and refer the matter to arbitrator for settlement of dispute in the suit - Held, recourse open to Court is to advert to language used in document to determine whether clause embraces any question which may arise between the parties or not - In present case, clause (viii) of para 3 of plaint covered reference of agreement to arbitrator P.Subba Rao only for limited purpose of 'interpretation' of agreement, not dispute regarding recovery of possession and mesne profits - Therefore, dispute in suit is outside purview of arbitration clause contained in agreement as referred in para-3 of plaint - In such a case, civil Courts cannot refer dispute by exercising power under Sec.8 of Act to Arbitrator, named therein - Therefore, on strict construction of condition relating to reference to arbitration, trial Court rightly declined to grant relief to petitioner - In view of the foregoing discussion, this Court find no ground or legal infirmity which calls for interference of this Court, devoid of merits and deserves to be dismissed - Accordingly, Civil Revision Petition is dismissed confirming order of Senior Civil Judge Court. **P.Madhusudhan Rao Vs. Lt.Col.Ravi, 2015(2) Law Summary (A.P.) 137 = 2015(4) ALD 409 = 2015(4) 108.**

—Sec.8 - Leave and Licence agreement had ended and had not been renewed subsequently, and therefore the petitioner cannot rely on the terms and conditions of said agreement which had worked itself out, and was no longer in force - Challenging the same, present Revision is filed - Held, The decision in Penumalli Sulochana covers present case on all fours and that a suit for eviction of the petitioner who had entered into possession of the property under a leave and license deed, after the expiry of the period of leave and license cannot be subject matter of arbitration under the arbitration clause contained in the leave and license deed and the plea of the petitioner that its application under Section 8 of the Act should be allowed and the suit filed by the respondent cannot be proceeded with the plaint should be rejected raised in I.A.No.850 of 2013, is not tenable and is liable to be rejected - In this view of the matter, this Court do not find any error of jurisdiction in the order passed by the Court below, dismissing I.A.No.850 of 2013 - Hence Civil Revision Petition is without any merit and is accordingly dismissed.**Viom Networks Ltd., Vs. M.Veeramani 2015(3) Law Summary (A.P.) 75 = 2015(6) ALD 218 = 2015(6) ALT 433.**

ARBITRATION AND CONCILIATION ACT, 1996:

—Sec.8 AND **CIVIL PROCEDURE CODE,** Or.38, Rules 1 & 2 - Govt. of A.P. initiated development of Kakinada Port and constructed godowns and granted long lease about 30 years to traders - Govt., issuing notices requiring lessees to vacate property on ground that Clause providing for revision of rent for every 3 years as contemplated under various G.Os was missing due to inadvertence, a cluase providing for rent only 30 years was included - Lessees filed suits in batch for declaration to effect that respective notices issued to them are illegal and untenable and contrary to terms of agreement - Lesees also filed Applications under Or.39, Rule 1 & 2 if CPC for temporary injunction to restrain defendants/Govt., officials from interfering with their possession over property - Trial Court passed orders of ad interim injunction - Defenaant/Govt., filed Applications with a prayer to stay further proceedings in suit and to refer dispute to arbitration in terms of clauses in lease deed - Trial Court allowed Applications filed by defendants u/Sec.8 of Arbitration Act and dismissed Applications filed by petitioners plaintiffs under Or.39, Rules 1 & 2 - Hence present Revisions assailing orders passed in Applications filed u/Sec.8 of Act - Petitioners/plaintiffs contend that suits were filed for relief of declaration that notice of termination issued by defendants/ respondents are not tenable and such notices were totally out side scope of agreement themselves and that occasion to seek reference of dispute to arbitration would have arisen, if only respondents have taken any steps under terms of agreement and that there was no justification for trial Court in referring matter to arbitration and thereby indirectly terminating suits - Govt contends that lease deeds contain a Clause for arbitration and Sec.8 of Act mandates that whereever relationship between parties is born out by any contract containing a clause providing for arbitration, filing of suit is barred and that petitioners,plaintiffs cannot maintain any distinction between action that are referable to any specific clause on lease deeds or any other external factor as long as matter pertains to lease and that trial Court has taken correct view of matter - Evidently in this case, lease amount is liable to be revised on expiry of 30 years - However defendants felt that clause providing for revision of rent on expiry of term of every three years ought to have been incorporated basing on some G.O.s. - Law is fairly well settled to effect that if agreement governing relationship of parties contains a clause providing for arbitration, a suit for seeking redressal in relation to any dispute covered by agreement cannot be maintained and stands barred by Sec.8 of Act - However a keen observation of clause in agreement reveals that it is only when dispute or question of difference arises out of, or in respect of those presents or as to construction, meaning or subject matter of lease presents or as to any act done or committed to be done under lease or rights duties and liabilities of respective parties referable to agreement, that matter shall be referred to arbitration - In this case, plaintiffs did not seek adjudication of any dispute, which is preferable to clause in lease deeds - On other hand they very much wanted to abide by it - It is defendants who felt that agreements are some what defective, inasmuch as they did not provide for escalation of rents once in every three years - Once defendants have exhibited their disrespect to clauses of lease deeds including one, which provides

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for arbitration they cannot fall back upon same clause and oppose suits filed for enforcing lease deed - No application was filed by defendants under Or.7, Rule 11, CPC for rejection of plaints and they did not make any counter claim in suit nor did they filed any suit for reference of matter to arbitration - Therefore order passed by trial Court, referring matter to arbitration cannot be sustained in law - Orders under revisions are set aside - CRPs, allowed - CMAs are also allowed and orders passed by trial Court dismissing Applications filed under Or.39, Rules 1 & 2 CPC are set aside. **Ashok International Vs. State of A.P. 2013(1) Law Summary (A.P.) 373 = 2013(4) ALD368 = 2013(5) ALT 88 = AIR 2013 (NOC) 264 (AP).**

—-Secs.8, 37 AND **INDIAN PARTNERSHIP ACT, 1932,** Secs.63, 69(1) AND **CIVIL PROCEDURE CODE,** Or.7, Rl.11 - Plaintiff in suit, a registered partnership firm-established hospital to serve needy at reasonable charges ran into some financial difficulties - Defendant came forward to invest monies and he was made a partner in firm with 30% share - After retirement cum reconstitution deed, defendant did not live up to his promise - Even Deed was not registered - Defendant started visiting hospital with anti-social elements, threatening hospital staff - Plaintiff lodged a complaint with police station and later filed suit for perpetual injunction against defendant - Defendant asserted that due to arbitration clause included in Deed, Civil Court has no jurisdiction - But Trial Court brushed aside arguments of Defendant and dismissed his I.A.s - Defendant has filed this appeal against those orders.

Held, neither a specific form nor registration is mandated to give effect to an arbitration clause as long as it falls within ambit of afore-stated statutory provision - That is reason why arbitration clauses even in compulsorily registrable documents have been given effect to and acted upon.

Suit prayer was thus in direct contrast to rights created in favour of defendant under reconstitution deed - Dispute therefore fell squarely within four corners of said reconstitution deed - Justification for suit prayer against defendant was plaintiff firm's assertion that he had failed to pay promised amount of Rs.1,50,00,000/- - However, that was not core dispute in suit but only plaintiff firm's justification - Unfortunately, trial Court understood this in wrong perspective and opined that suit dispute was about alleged fraud in non-payment of this amount and presentation of reconstitution deed before Registrar of Firms.

Factum of defendant not having been entered as a partner of plaintiff firm in Register of Firms maintained by Registrar of Firms only had effect of attracting Sec.69(1) of Act of 1932 and did not have any impact upon maintainability of petition filed by him u/Sec.8 of Act of 1996.

Trial Court therefore ought to have accepted petition filed u/Sec.8 of Act of 1996 and referred parties to arbitration - The order in suit is holding to contrary is accordingly set aside and trial Court is directed to take steps accordingly.

Once right of defendant to take recourse to Sec.8 of Act of 1996 is upheld, law mandates that judicial authority, before which a proceeding has been brought by

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one of parties to arbitration agreement, must necessarily non-suit such party and refer case to arbitration - Therefore, order passed by trial Court in I.A. is also set aside - Trial Court shall take steps accordingly. **Syed Irfan Sulaiman Vs. New Amma Hospitals 2016(3) Law Summary (A.P.) 388.**

—Sec.8, r/w Sec.151 of **CIVIL PROCEDURE CODE** - **TRANSFER OF PROPERTY ACT,** Sec.106 - Petitioner/plaintiff owner of premises filed suit against respondent/ defendant to vacate premises after issuing notice u/Sec.106 of T.P Act - On receipt of suit summons respondent/defendant filed I.A u/Sec.8 of Arbitration Act, with prayer to dismiss suit contending that lease deed contains a clause providing for arbitration of dispute, if any, between parties and in that view of matter, suit not maintainable - Petitioner contends that when relief claimed in suit is covered by provisions of Act, matter cannot be subject matter of arbitration - Respondent contends that clause contains in lease deed is comprehensive in nature and even disputes that arise subsequent to expiry of lease, or required to be resolved through arbitration - In this case, petitioner got issued notice u/Sec.106 of T.P Act, requiring respondent/ defendant to deliver vacant possession of property and since that was not done, suit was filed for eviction and recovery of arrears of rent and damages for use and occupation of premises - Subsistence of lease under lease deed can be upto specific period mentioned in it - Once lease deed became redundant, any clause contained in it also ceases to be any relevance to parties - In this case, trial Court made an attempt to distinguish facts of case, which, is incorrect - There is no subsequent contract between petitioner and respondent - Contract covered by lease deed came to an end with effect from a particular date and suit was preceded by a notice u/ Sec.106 of T.P Act - Arbitrator cannot deal with matters of in this nature - Order passed by trial Court cannot be sustained and therefore set aside - CRP, allowed. **Penumalli Sulochana Vs. Harish Rawtani 2013(3) Law Summary (A.P.) 121 = 2013(5) ALD 573 = 2013(5) ALT 515.**

—Secs.8 & 8(2) - Appellant, partner of Firm after giving notice to respondents, partners calling upon them to settle amount and make arrangements for his retirement alleging that respondents have colluded themselves in order to siphon of money of Firm for their personal gain, and subsequently filed suit - Trial Court rejected Application filed by appellant u/Sec.8 of Arbitration Act - High Court affirmed order of trial Court and dismissed Revision petition - Hence, present SLP - In this case, appellant had raised various issues relating to misappropriation of funds and malpractices on part of respondents and allegations to that effect have been made in notice sent to respondents and subsequently in written statement filed before civil Court - Respondents contend that when a case involves substantial questions relating to facts where detailed material evidence needed to be produced by either parties, and serious allegations pertaining to fraud and malpractices were raised, then matter must be tried in Court and arbitrator would not be competent to deal with such matters which involved an elaborate production

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of evidence to establish claims relating to fraud and criminal misappropriation - In present, dispute, appellant had made serious allegations against respondents alleging him to commit malpracticies in account books and manipulate finances of partnership firm, which, cannot be properly dealt with by Arbitrator - Order of High Court in dismissing petition of appellant to refer matter to Artbitrator - Justified - Appeal dismissed. **N.Radhakrishnan Vs. Maestro Engineers & Co., 2010(1) Law Summary (S.C.) 9.**

—Sec.11 (5) r/w 15(2), 12, 13, 14 & 15 - Arbitral proceedings - Appointment of substitute arbitrator - Respondent-Company was awarded work of widening of existing 2 lane road to a 4/6 lane by NHA of India - Applicant/Company was engaged as sub-contractor of respondent-Company for execution of 50% of said road work - Disputes arose between applicant and respondent - Ultimately, civil Court directed both parties to settle their disputes before arbitrator as per Cl.21 of arbitration agreement - 1st arbitrator appointed by MD of respondent's-Company resigned on account of ill health - 2nd respondent appointed by MD in accordance with Cl.21 of agreement also resigned though rejecting objections of applicant - However, respondent Company appointed 3rd arbitrator duly informing applicant - Applicant filing present Application seeking appointment of judge of A.P High Court or technically qualified impartial and independent person as substitute arbitrator, contending that respondent was deliberately appointing arbitrators who would act according to its whims and fancies and that such arbitrators may not be independent and impartial as is required of them under Act and that, even arbitrator appointed now would favour respondent and would not act impartially and independently which would defeat very purpose of arbitration putting applicant to grave and irreparable loss - A party who has, with his eye open, entered into arbitration agreement with another should not, ordinarily, be permitted to resile therefrom Courts must stick to policy of minimum intervention in arbitral proceedings - Mere suspicion cannot be made a ground for concluding that arbitrator would not act fairly and impartially - Only a well founded and justifiable doubt about arbitrator covered by Secs.12 to 14 of Act can be made a ground for terminating mandate of an arbitrator - In present case, 3rd arbitrator has already been appointed and that he has neither recused himself nor has his mandate be terminated either by agreement of parties or by an order of civil Court - Neither Sec.13 nor 14 confirm any power on Chief Justice, or his designate, to terminate mandate of an arbitrator - Once arbitrator has assumed charge, continues to function and arbitration has commenced in Arbitral Tribunal, Chief Justice or his designate would not interfere - In this case, arbitration agreement specifically provides that MD of respondent-Company shall appoint arbitrator - Even if mandate of arbitrator were to be terminated, appointment of an arbitrator has necessarily to be made in accordance with arbitration clause of agreement - Unless MD of respondent Company has failed to exercise jurisdiction to appoint a substitute arbitrator, designate of Chief Justice cannot assume jurisdiction under Sec.11(6) of Act - On harmonious construction of Secs.11(6) and 15(2) it must be held that, on mandate of arbitrator being terminated and only if MD of respondent Company, in accordance with arbitration agreement, fails to appoint a substitute arbitrator,

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can jurisdiction of Chief Justice or his designate, be invoked u/Sec.11(6) of Act - Present Application, whereby a request is made for appointment of Judge of High Court or technically qualified person to be arbitrator, u/Sec.11(6) of Act, not maintainable - Arbitration Application - Dismissed. **Yashwitha Constructions (P) Ltd. Vs. Simplex Concrete Piles India Ltd. Kolkata 2008(2) Law Summary (A.P.) 167.**

—Sec.31(7) - Award passed by the Arbitrator – Powers of Arbitrator to award interest u/ Sec.37(1) of New Act by using words "unless otherwise agreed by parties" categorically clarifies that Arbitrator is bound by terms of contract in so far as award of interest from date of cause of action to date of award - Therefore, where parties had agreed that no interest shall be payable, Arbitral Tribunal cannot award interest between date when cause of action arose to date of award - In this case respondents shall not be entitled to any interest on amount which was recovered by appellant – Appeals are allowed. **Union of India Vs. Concrete Products & Const. Co. Etc. 2014(1) Law Summary (S.C.) 134 = 2014(3) ALD 174(SC) = 2014 AIR SCW 1690 = AIR 2014 SC 1914.**

—Secs.11(4), 20,34,37, 42 & 2(e) - "Territorial jurisdiction" - Salarjung Museum (SJM) entered into agreement with DTCPL to construct extension buildings for its museum and signed agreement at Delhi - Since disputes arose in regard to payment of consultation fee, DTCPL moved application before Delhi High Court as per Cl.12 of agreement - Sole arbitrator appointed by High Court passed award holding that petitioners have to pay certain amounts to DTCPL, under different heads within three months - Chief Judge City Civil Court Hyderabad returned petition filed by SJM seeking to set aside arbitral award for presenting before appropriate Court having territorial jurisdiction - Petitioners contend that mere signing of agreement at New Delhi, does not confer jurisdiction of Delhi Courts and application filed u/Sec.11(5) of Act before Delhi High Court for appointment of arbitrator was itself not maintainable as contract related to Hyderabad and Sec.34 r/w Sec.2(e) of Act confers jurisdiction on Chief Judge Civil Court, Hyderabad alone and therefore impugned order is erroneous - When parties in exercise of their right u/Sec.20 of Act, agree on particular city as place of arbitration, it is a key to decide "the Court" for purpose of Sec.9 & 34 of Act - In this case, SJM and DTCPL by Cl.14 accepted that arbitrator will have its seat at Delhi or at such place in India as decided by arbitrator and therefore, arbitral award can only be challenged in principal Civil Court at Delhi - Order of Chief Judge City Civil Court Hyderabad in directing return of O.P u/Sec.34 for want of jurisdiction - Justified - CRP, dismissed. **Salarjung Museum Vs. Design Team Consultants Pvt. Ltd., 2009(3) Law Summary (A.P.) 365 = 2010(1) ALD 409 = 2010(1) ALT 435.**

—Sec.34 - **CIVIL PROCEDURE CODE,** Sec.2(2),47 & 36 - A.P. CIVIL COURTS ACT, Secs.10 & 11(2) - "Territorial jurisdiction of Addl. District Judge" - Petitioner availed loan from respondent's Company for purchase of bus committed default in payment of instalments - Respondent invoked arbitration clause and obtained "arbitral award" - Petitioner filed E.A in E.P filed by respondent for enforcing award and to drop

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proceedings on ground that E.P is barred by limitation and same not maintainable in view of pendency of petition u/Sec.34 of Arbitration Act and that "Principal Civil Court" for purpose of enforcing award is "Principal District Court" and therefore Addl. District Judge has no jurisdiction to entertain E.P - Addl. District Judge rejected contention of petitioner and dismissed E.A. - DECREE - Defined - U/Sec.2(2) though arbitral award as defined u/Sec.2(c) of Arbitration Act is not a "decree" within meaning of Sec.2(2) of CPC r/w Sec.36 of CPC, but for enforcement, award shall be treated as a decree of Court - Impugned order passed by Addl.District Judge is neither vulnerable nor susceptible and hence same is approved - As rightly held by lower Court, Addl. District Judge exercises jurisdiction over entire District, and therefore, even if property is attached is situated in Kakinada, same is not a bar to exercise jurisdiction of Addl. District Judge, Rajahmundry - CRP, dismissed. **Lakhamraju Sujatha Vs. M/s. Yuvaraj Finance Pvt. Ltd., 2009(3) Law Summary (A.P.) 311 = 2010(1) ALD 153 = 2010(1) ALT 173 = AIR 2010(NOC) 276 (AP).**

—Secs.34 & 21 AND **LIMITATION ACT,** Sec.3 - Limitation for filing counter claims - Appellant and respondent entered into civil construction contract for construction of two buildings - On account of certain disputes, respondent terminated contract - High Court appointed sole Arbitrator - Appellants/Respondents filed their claims and counter claims - Arbitrator rejecting counter claim of respondent - Application filed by respondent u/Sec.34 of Act for setting aside decision of Arbitrator in rejecting counter claim on ground of limitation - Single Judge held that opinion expressed by Arbitrator not perverse as they are based on correct appreciation of documents - Division Bench allowed Appeal holding that counter claim is within limitation - Secs.21 & 43 of Act and Sec.3 of Limitation Act as opined, regard being had to language employed in Sec.21, that an exception has to be carved out, it saves limitation for filing counter claim if respondent against whom a claim has been made satisfies twin test, viz., he had made claim against claimant and sought arbitration by serving a notice to claimant - Said exception squarely applies to to present case as appellant had raised counter claim and sought arbitration by expressing its intention on number of occasion and that apart it is also perceptible that appellant had assured for appointment of Arbitrator - Thus counter claim instituted within limitation - In present case, when it is absolutely clear that counter claim in respect of enhanced sum is totally barred by limitation and is not saved by exception carved out by principles stated submissions made on behalf of Appellant that award passed by Arbitrator did not call for any interference and unhesitatingly repelled - Both appeals are allowed in part - Judgment of Division Bench modified accordingly - Arbitrator is directed to proceed to deal with counter claims. **Voltas Limited Vs. Rolta India Limited 2014(1) Law Summary (S.C.) 83 = 2014(3) ALD 14 (SC) = 2014 AIR SCW 1503 = AIR 2014 SC 1772.**

—-Sec.36 – **A.P. CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS, 1980,** Rule 32 - **CIVIL PROCEDURE CODE,** Secs.122 and 126 - Two judgment-debtors are the petitioners in this Revision, which was directed against order passed Family Court-cum-Additional District Judge, in E.A's has been instituted for executing the

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Award passed in Arbitration Case - Award, it is not disputed before Court, has attained finality - Therefore, no objection could have been maintained for the Execution Petition taken out for execution of said Award - In fact, no such objection was raised either - But however, during course of inquiry, on behalf of petitioner in the Execution Petition, Branch Manager of petitioner Society has filed an affidavit in lieu of his chief examination - An objection was raised as to how a Branch Manager can maintain Petition without necessary authorization granted in his favour by the Managing Director of Society - Then, affidavit in lieu of chief-examination filed by Branch Manager has been withdrawn and an Application, has been taken out in the E.P. under Rule 32 of Civil Rules of Practice seeking permission of Court to represent petitioner in Execution Petition - Permission sought for was accorded by allowing E.A. by Court - It is this order, which is challenged in this Revision.

Held, Rule 32 thereof has provided for an agent to appear on behalf of a party and before so appearing, he is required to seek permission of Court for so appearing as an agent - Sub-rule (2) thereof empowered judge to record, in writing, that agent is permitted to appear and act on behalf of party - In instant case, that is what exactly has been done by civil Court - Therefore, no exception can be taken thereto and exercise of jurisdiction carried out by civil Court in ordering E.A. is in accord with legal principles on subject - Hence, Civil Revision Petition stands dismissed. **S.Sudharshan Rao Vs. Citizen Co-operative Society Ltd. 2016(2) Law Summary (A.P.) 61 = 2016(4) ALD 206 = 2016(3) ALT 455.**

—Sec.37(1)(a) - This appeal is preferred by ICICI Bank Limited u/Sec.37(1)(a) of the Arbitration and Conciliation Act, 1996, aggrieved by the order passed by the Chief Judge, City Civil Court, Hyderabad - The appellant herein is the 2nd respondent - The said O.P. was filed by the 1st respondent herein u/Sec.9 of the Act requesting the Court below to grant an injunction restraining the Nepal Electricity authority (2nd respondent herein) from invoking the bank guarantees issued by the appellant through Laxmi Bank Limited, Nepal and Nepal Investment Bank Limited, Nepal (respondents 3 and 4 herein); and to restrain the appellant and respondents 3 and 4 from honouring or encashing the bank guarantees - Held, It is evident, from the contractual clauses referred to hereinabove, that the laws of Nepal govern the contract (clause 1.4 of the general conditions read with clause 1.1.6.2 of Part-II of the contract document) - The contractual disputes are to be settled under the UNCITRAL Rules (clause 20.6.A of the agreement), and the juridical seat of arbitration (ie the place where the arbitration is to be held) is Kathmandu, Nepal - These provisions, when examined in the light of the fact that the contract between respondents 1 and 2 was entered into in Nepal for works to be executed in Nepal, clearly show that the parties to the contract (respondents 1 and 2) had ruled out, applicability of Part-I of the Act, by a conscious decision; and the provisions of Part-I of the Act, being wholly inconsistent with the arbitration agreement, is excluded by necessary implication in the arbitration agreement – Sec.9, which is in Part I of the Act, could therefore not be invoked by the first

respondent; and, consequently, the Court below lacked jurisdiction to entertain the application filed by the first respondent u/Sec.9 of the Act - Fraud, which vitiates the contract must have a nexus to the acts of the parties prior to entering into the contract - No such allegation is made by the first respondent in the petition filed by them u/Sec.9 of the Act - The first respondent has not even stated that the bank-guarantees were obtained by fraud - Fraud alleged against the second respondent is under the contract between respondents 1 and 2 - The irretrievable injury test, necessary to injunct invocation of the bank guarantee, is also not satisfied - The irretrievable injury caused to the first respondent must be of a kind which would make it impossible for them to reimburse themselves later - It is not even the case of the first respondent, in the petition filed by them u/Sec.9 of the Act, that they are likely to suffer any such injury or that it is impossible for them to reimburse themselves, if they were succeed later, either from the appellant or from the respondents - It is evident that, in granting the ex-parte order of ad-interim injunction and in restraining invocation/encashment of the bank guarantees issued by respondents 3 and 4 or the counter-guarantee issued by the appellant, the Court below exceeded its jurisdiction - It is evident that the first respondent has suppressed material facts, and has indulged in forum shopping by filing the petition before the Court below u/Sec.9 of the Act - The Court below has also failed to assign any reasons for granting an ex parte order of ad-interim injunction restraining invocation of the bank-guarantees/counter-guarantee - A cryptic order, that it had perused the records, the documents filed by the first respondent showed that they had a prima-facie case, the balance of convenience was in their favour and, if the bank-guarantees were encashed, they would suffer irreparable loss, would not suffice - The Court below has exceeded its jurisdiction in granting an ex parte order of ad interim injunction without adhering to the requirements of Order 39 Rule 3 CPC - For the reasons aforementioned the order of the Court below, in Arbitration OP No.1031 of 2015 dated 22.06.2015, is set aside and the C.M.A. is allowed with exemplary costs of Rs.25000/-. **ICICI Bank Limited Vs. M/s. IVRCL Ltd 2015(3) Law Summary (A.P.) 138.**

——and TRUST ACT, 1882 - Disputes relating to Trust, trustees and beneficiaries arising out of the Trust Deed and the Trust Act are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. **Vimal Kishor Shah Vs. Jayesh Dinesh Shah 2016(2) Law Summary (S.C.) 49 = AIR 2016 SC 3889 = 2016(5) ALD 152 (SC).**

ARMS ACT, 1959:

—-Secs.13 to 18 - Petitioner herein filed application before the Commissioner of Police, for grant of Arms License - Called for a report from Station House Officer, and after receipt of report, issued a Memo, rejecting request of petitioner - As against said rejection, petitioner preferred appeal before State Government - State Government rejected appeal and consequently request made therein - In above backdrop, while

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pleading that rejection of request of petitioner is arbitrary, unwarranted and violative of Articles 14 and 21 of Constitution of India, present writ petition came to be filed - The learned Government Pleader sought to justify impugned action by contending emphatically that there is no illegality nor there exists any infirmity in impugned action and that in absence of same, present writ petition is not maintainable and petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India - The learned Government Pleader further vehemently contends that impugned rejection order is in accordance with provisions of Arms Act, 1959 and only after calling for necessary reports from police authorities and only after meticulously and thoroughly considering same, respondents rejected request of petitioner, as such, impugned order does not warrant any interference of this Court and petitioner is not entitled for any indulgence of this Court by way of judicial review under Article 226 of Constitution of India - It is further submission of Government Pleader that there is no threat perception to petitioner and that there is a threat of misusing license.

Held, a perusal of impugned Governmental order makes it manifest that State Government did neither advert nor consider documents filed by petitioner including above judgment of this Court - It is significant to note that even according to respondent authorities, there is no involvement of petitioner in any criminal cases and there is no denial by respondents of cases filed by petitioner before this Court.

In the instant case, first respondent State Government did not consider properly relevant provisions of the legislation and the material available on record and principles laid down in above referred judgment of this Court.

For aforesaid reasons, this writ petition is allowed, setting aside order of State Government issued G.O. and consequently appeal filed by petitioner stands restored to file and State Government is directed to reconsider appeal of petitioner in light of findings recorded supra and pass appropriate orders afresh, within a period of two months from date of receipt of a copy of this order, after giving notice and opportunity of hearing to petitioner herein. **Kolan Narasimha Reddy Vs. State of A.P. 2016(2) Law Summary (A.P.) 427 = 2016(2) ALD (Crl) 1004 = 2016(5) ALT 555.**

ASSIGNMENT LAWS:

—- G.O.Ms.No.1142, dt.18-6-1954 - CIVIL PROCEDURE CODE, Secs.35, 35-A & 95 - Petitioners filed writ petition seeking direction that action of respondents, District Collector and Tahsildar in finalising list of beneficiaries for assignment of agricultural lands as illegal and arbitrary and obtained stay - PROCEDURE TO BE ADOPTED FOR IDENTIFYING BENEFICIARIES - STATED-In this case, Tahsildar consti-tuted three Committees who announced notice by tom-tom, enquired in villages and prepared list of eligible persons and published same in village inviting objections and none of villagers raised objections and list of beneficiaries was also submitted to MLA - At that stage petitioners filed present writ petition alleging that though they are landless persons their names are not included in list of beneficiaries but names of those persons who own

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lands exceeding ceiling limit have been included - Allegations of petitioners found to be totally incorrect - Procedure adopted by 3rd respondent/Tahsilder is fair and transparent - Writ petition, dismissed - His lordship made following observations: When a party obtains interim orders having effect of staying entire welfare measures taken by Govt, and while passing order Court was guided only by affidavit accompanying writ petition, such a party has to be mulcted with exemplary costs if ultimately found that affidavit on oath was filed making all incorrect allegations. If frivolous cases are filed making all false allegations, it would ruin the system. Why party approaching this Court get away by making all such false allegations? **-** CPC,Secs.35, 35-A & 95 - Statements made by petitioners in their affidavit are false even to knowledge of petitioners - If only petitioners had not made allegations that they are landless poor persons in all probability High Court would not have granted orders of stay - By reason of stay, Distribution of agricultural land to eligible persons was stalled and petitioners must bare responsibility for this - Petitioners are directed to pay Rs.5,000/- each as exemplary costs. **M. Venkataramudu Vs. District Collector, Ananthapur 2009(1) Law Summary (A.P.) 167 = 2009(3) ALD 13 = 2009(2) ALT 768.**

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——AND **CIVIL PROCEDURE CODE,** Sec.65 - Respondents availed loan of Rs.15,000 from appellant/Bank by creating equitable mortgage by depositing title deeds in respect of property - Since respondents committed default in payment of instalments loan became irregular - Suit filed by Bank for recovery of amount of Rs.19,500/-, decreed - Property put to auction in execution petition filed by Bank - As none came forward, Bank bid for property in auction and obtained Sale Certificate - Subsequently bank sold said property for Rs.10,00,000/-.

Bank did not respond to the petition filed by respondents for return of excess amount secured by Bank by way of sale and also for payment of rent earned by Bank by letting out property - Hence respondent filed Writ Petition which was dismissed and Writ Appeal finally allowed directing Bank refund of Rs.6.5 lakhs - Hence present Appeal filed by Bank assailing legality and validity of judgment.

Bank relied upon Sec.65 CPC to plead that it had perfected its right title interest and possession over property covered by Sale Certificate.

Bank contends that High Court erred in allowing Writ Appeal after recording a finding that Bank did not indulge in any illegality - In any event respondent cannot assert any legal right to claim share in proceeds of sale of property by Bank.

From facts of case, it is clear that Bank has not indulged in any illegality either in purchasing property in auction conducted by Court in 1992 or in sale of property in year 2007.

Respondent have no right in claiming any share in sale proceeds of property after Bank became owner of property in 1992.

Division Bench should not have made scathing remarks about conduct of Bank and that adverse comments made by Division Bench against Bank are unwarranted and deserve to be expunged. **State Bank of Travancore Vs. R.Sobhana 2016(3) Law Summary (S.C.) 41.**

BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

BANKING REGULATION ACT:

—- Secs.24 & 22 - CONSTITUTION OF INDIA, Art.12 - Petitioners are having accounts in 2nd respondent/Indusind Bank - One GVJR, Managing Director and Managing Partner of petitioners is authorized signatory of accounts and he met with a major accident and has gone into coma on account of multiple injuries - After recovery GVJR visited 2nd respondent Bank and found huge amounts have been withdrawn from his accounts, though he did not issue any cheques or letters of authorizations - Inspite of repeated letters respondent/Bank did not take any action - Hence, present writ petition - In this case, respondents do not dispute that such withdrawals were made - It is, however, sought to be justified by stating that withdrawals are made on basis of instruction issued on behalf of account holder, but these withdrawals are not supported by cheques or withdrawal slips - Let alone a Banking Company, even an ordinary trader cannot deal with money entrusted to them by another in this fashion - Sub-standard practice, which is known to every one who has acquaintance with banking operations, is that a Bank can permit withdrawals of money from account of a customer, only through a negotiable instrument and here again, there are restrictions imposed by Reserve Bank from time to time - In case, amount exceeds a particular figure it cannot be paid to bearer - If payee under a cheque is a Company or other registered organisation, requirement is that it must be “crossed” - Further while clearing cheque, concerned authority has to be satisfied about genuinity of signature of accunt-holder - When such is stringency of procedure in matter of withdrawl of money from an account, it is just un understandable has to how respondents Bank have withdrawn such huge amounts from accounts of petitioners, without there being any cheque or specific order for this purpose - In this case, an attempt is made to justify payment of amount to various authorities stating that petitioners have knowledge of such payment - This is too specious plea to be accepted - When complaint is about very withdrawal from accounts, manner in which money came to be dealt with, after withdrawl hardly becomes of any relevance - Matter needs to be examined strictly from point of view of operations in Bank, than manner in which amount, which is other wise illegally withdrawn, has been spent - Respondents-Banks are directed to make good, which have been withdrawn from accounts of petitioners otherwise than through cheques or withdrawl slips or letters of authorization of authorized signatory - However, it is left open to respondents Bank to recover amounts from agencies to which they are said to have been paid - Writ petitions, allowed. **M/s.Gopal Chemical Industries Pvtl.Ltd.,Vs. The Indusind Bank Ltd. 2013(2) Law Summary (A.P.) 220 = 2013(5) ALD 12 = 2013(6) ALT 479.**

BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

—Sec.3 - Explanation - Property though purchased from the funds of husband really for the benefit of his widow- she was the real owner of the property - Burden of proving that a particular sale is benami and the ostensible purchaser is not the real owner, always

rests on the person asserting it to be so. **Om Prakash Sharma @ O.P.Joshi vs Rajendra Prasad Shewda 2015(3) Law Summary (S.C.) 68.**

—Sec.4 - EVIDENCE ACT, Sec.114 - 1st appellant purchased property and obtained registered sale deed in favour of her son and brother herself paid money by two bank drafts - Son and brother stealthily removed sale deed from her possession and sold half share of property to 1st respondent without her knowledge, despite letter to 1st respondent informing him that she is real owner of property - Hene 1st respondent filed suit for declaration that she was real owner in possession of suit property and for permanent injunction restraining defendants from alienating any part of suit property - 1st defendant admitted claim of appellant and 2nd defendant denied that it was benami transaction - Trial Court dismissed suit holding that delivery of notice not proved and therefore 3rd defendant was a bona fide purchaser for valuable consideration without notice and that provisions of Benami Transaction Act, 1988 were retroactive and that prohibition under Sec.4 of Act to recover benami property applicable to suits, claims or action pending on date of commencement of Act - 1st appellate Court decreed suit holding that notice will have to be presumed to have been served and on 1st respondent got sale deed executed and therefore he could not be held to be a bona fide purchaser without any notice of rights of appellant in suit property - Single Judge of High Court allowed 2nd appeal and set aside judgment and decree of District Judge - Once High Court held that appellant had purchased suit house out of her funds, it ought to have held that it follows that 2nd defendant had no right to deal within or to sell his halfshare merely because his name was shown as purchaser alongwith appellant No.2 - Consequently purchase of share of 2nd defendant by 1st respondent without consent of 1st appellant gave him no rights what so ever - Therefore High Court ought to have held that suit of appellant No.1 for declaration of her ownership to be valid and maintainable - In this case, appellant had produced to copy of notice along with postal certificate in evidence and there was no allegation that postal certificate was procured and it could certainly be presumed that notice was duly served on 1st respondent - High Court, therefore erred in interfering in finding rendered by District Judge that 1st respondent did receive notice and therefore not a bona fide purchaser for value without notice - Judgment of High Court, set aside - Appeal, allowed. **Samittri Devi Vs.Sampuran Singh 2011(1) Law Summary (S.C.) 103 = 2011(4) ALD 6 (SC) = 2011 AIR SCW 680 = AIR 2011 SC 773.**

BOARD STANDING ORDERS

—15, Para 18 & 3 and Paragraph 11 Para (ii) (a) - Petitioner's father granted patta in year 1982 – 1st respondent/Joint Collector set aside assignment granted in favour of petitioner's father – High Court quashed order of Joint Collector as confirmed by Commissioner - After nine years, pursuant to directions of Commissioner, Joint Collector passing order on 15-11-2005 by cancelling Pattadar Pass Books and title deeds issued in favour of petitioner, holding that petitioner's father not eligible for grant of assignment as he sold away his own lands to third parties and obtained assignment by misrepresenting authorities basing on alleged report of MRO which is a self conflicting Report - Neither in report of MRO, contents of which have been referred to by 1st respondent/Joint Collector in his order, nor respondent No.1 in his order mentioned date on which petitioner's father

sold property and persons to whom property was sold - Joint Collector blindly followed report of MRO, which ex facie is not only self conflicting but also failed to consider ground realities – In this case, respondents have chased and persecuted petitioner and his father for decades and at every stage they were subjected to litigation at instance of one or other person – BSO 15, Para 18 is abused to hilt - SUO MOTU REVISIONAL POWERS - Purpose behind initiation of suo motu revisional powers under provisions of BSO, is not meant to harass hapless citizens who were assigned some marginal extents by dragging them into litigation and continuing it for years, while leaving real culprits who go on land grabbing spree and facilitating to legalize their encroachments by coming out with regularization schemes - Impugned order passed by 1st respondent/Joint Collector quashed – WP, allowed. **Chepuri Venkateswarlu Vs. The Joint Collector, Ongole 2008(3) Law Summary (A.P.) 178 = 2008(6) ALD 343 = 2008(6) ALT 555.**

—15 (2), 15 (10), 15(18) – Assignment of land – *Suo motu* revisional powers – "Landless poor" - 'Wife of Attender in Govt., office' whether landless poor person - Petitioner's mother wife of Attender in Govt. office drawing salary of Rs.407 p.m was assigned land admeasuring Ac. 1.24 - After eight years of assignment respondent 4 & 5 filed revision accusing assignee that she obtained assignment by misrepre-sentation though her husband was working as Attender – 2nd respondent/Collector passing order that assignment was made due to mistake of fact or by concealment of information to authorities who granted patta - While term "landless poor" is defined as one who does not own more than 2 ½ of acres of wet land or 5 acres of dry land, word "poor" is not defined and BSO 15(2) left discretion to assigning authorities to decide question whether persons is poor or not – By no stretch of imagination, can one conclude that a person with a family of 5 persons drawing total salary of Rs.407 p.m was not poor – Therefore it would be unreasonable to treat family of petitioners as ineligible for grant of assignment, merely on ground that husband of assignee was working as Attender - *SUO MOTU* REVISIONAL POWERS – If at any time Collector or Commissioner is satisfied that there has been material irregularity in procedure or decision was grossly inequitable or it exceeded powers of Officer who passed it was passed under mistake of fact or owing to fraud or misrepresentation, he may in case of an order passed by an Officer subordinate to him, set aside, cancel or in any way modify decision - In this case, 2nd respondent/ Collector not exercised his *suo motu* powers contained in BSO, 15 (18) – Therefore he ought not to have entertained revision filed by respondents 4 & 5 after period of eight years – Assuming that exercise of power by 2nd respondent could be traced to his *suo motu* jurisdiction under BSO 15(18), no foundation is laid for finding that assignment made in favour of mother of petitioners was either due to mistake of fact or by concealment of information – 1st respondent/Commissioner had merely reiterated what 2nd respondent had held in his order – Impugned orders of respondents 1 & 2, quashed – Writ petition, allowed. **G.Shyamala Raju Vs. The Commissioner, Appeals, Hyd., 2008(3) Law Summary (A.P.) 236 = 2008(6) ALD 577.**

—No.21 and in Form Appendix -18 and BSO 21, Cl.14-A and paragraphs 15 to 20 - Petitioners were issued house site pattas in respect of plots in a particular Survey

BURMAH SHELL (ACQUISITION OF UNDERTAKINGS IN INDIA)ACT, 1976:

No. imposing condition that houses must be constructed within period of 12 months from date of allotment - When 4th respondent/Tahsildar sought to cancel pattas on ground that houses were not constructed within stipulated time petitioners filed writ petition and obtained interim orders - However during pendency of interim order Tahsildar issued notices proposing cancellation of allotment on same ground - After considering explanation filed by petitioners, pursuant to directions of High Court in another writ petition, Tahsildar passed orders cancelling pattas issued to petitioners - RDO allowed appeals filed by petitioners and orders of cancellation were set aside directing Tahsildar to fix market value of plots within one month since house sites were assigned on payment of market value - Tahsildar/4th respondent filed Revision before Joint Collector/2nd respondent against orders passed by 3rd respondent/RDO after lapse of seven years - Petitioners again filed writ petition challenging very filing of Revision by Tahsildar and passing interim orders of Joint Collector - High Court set aside orders passed by 2nd respondent/Joint Collector directing him to take into account all contentions advanced by petitioners and decide matter - Thereafter Joint Collector passed impugned order dismissing Revision filed by Tahsildar and confirming order passed by RDO and however directed that market value prevailing on date of his order shall be ascertained with reference to lands within vicinity and same must be submitted to Govt. for confirmation - Petitioners contend that 4th respondent/ Tahsildar has no basis or competent to file a Revision against an order passed by superior and that 2nd respondent/Joint Collector ought not to have entertained said Revision and that even while confirming order passed by RDO, Joint Collector has placed heavy burden on petitioners and that due to unprecedented growth in market value they cannot afford to pay huge amounts - Petitioners further contend that impugned order passed by Joint Collector in so far as it directs payment of current market value for land, cannot be sustained in law and that Revision filed by Tahsildar not maintainable at all, and he ought not to have played role of adversary in litigation - Once assignment is made under BSO No.21, only Authority competent to cancel it, if at all, is RDO - Tahsildar exercised power of resumption and orders passed by him were patently without jurisdiction - Occasion to direct payment of market value at current rates would have arisen, if there was any default, or refusal on part of petitioners to pay costs of plots - Strictly speaking, consideration is to be paid according to rates that were prevailed in 1979, when plots were assigned - As matter of fact RDO/3rd respondent did not indicate any date with reference to which market value must be fixed - In this case petitioners were ready to comply with direction and default was on part of Tahsildar/4th respondent - Order passed by 2nd respondent/Joint Collector in so far as it directed payment of market value at prevailing rates, set aside - Writ petition, allowed. **P.V.Satyanarayana Murthy Vs. The State of A.P. 2012(3) Law Summary (A.P.) 169 = 2013(1) ALD 245 = 2013(2) ALT 141.**

BURMAH SHELL (ACQUISITION OF UNDERTAKINGS IN INDIA)ACT, 1976:

—Secs.5(2) & 7 - Respondents/Bharat Petroleum Corporation Ltd., (Burmah-Shell) took land for lease in 1964 for period of 30 years from “R” who gifted said land to

BURMAH SHELL (ACQUISITION OF UNDERTAKINGS IN INDIA)ACT, 1976:

his grand daughter "N" - Since "N" expressed unwillingness to renew lease respondent filed suit against "N" seeking direction to renew lease for further period of 30 years in same terms and conditions as contained in lease deed - Pending disposal of suit "N" sold said property to "S" who in turn gifted said property to petitioner - Hence writ petition seeking declaration that respondent has no power to exercise option of renewal of lease and consequently direct respondent to handover vacant possession of premises - Respondents contends that option as provided for u/Sec.5(2) of Act was exercised and by operation of that provision, lease stands automatically renewed and that they are entitled to remain in possession on strength of such renewal - Petitioner contends that actual desire in terms of Sec.5(2) of Act, for renewal of lease not expressed by respondent and only a request was made for discussion in that regard and that respondent ceased to have any right to insist on renewal, much less to continue in possession of property - In this case, except reply of respondent to transferee no other correspondence ensued, much less any desire to extend lease was expressed and suit filed by respondent for relief of direction to "N" to renew lease dismissed and no appeal preferred against it - Once suit, for specific relief of direction to renew lease was dismissed, respondent cannot fall back option u/Sec.5(2) of Act, and claim that they have a right to insist on renewal - State under Art.12 of Constitution of India is required to be reasonable, fair, bona fide, and not arbitrary even while acting as a tenant or landlord - Even a property is compulsorily acquired, owner thereof is given opportunity at various level be it, as regards his willingness, to part with it, or adequacy of compensation - Law also provides for solatium for compulsory acquisition - In this case, respondent felt that lessor or his transferee is a non-entity; and at their will they can squat on property, even by earning profits of hundreds and thousands of crores of rupees in their business - Hardly any act of sovereignty is involved in activities of respondent and their activities is pure and simple, commercial in nature - Still respondents have arrogated to themselves, power which even a sovereign State could not have claimed - Respondent directed to vacate premises within three months - Writ petition, allowed. **O.Hima Bindu Vs. Bharat Petroleum Corpn., Ltd., 2009(2) Law Summary (A.P.) 11 = 2009(4) ALD 161 = 2009(3) ALT 655 = 2009(2) APLJ 60 (SN).**

—Sec.5(2) & 7(3) - TRANSFER OF PROPERTY ACT - Appellant/plaintiff owner of suit schedule premises leased out to Burma Shell Company for period of 20 years with an understanding to renew for further period of 10 years, in year 1962 - Since respondent/defendant did not vacate premises, suit filed for eviction on ground that after expiry of period of lease, lease is terminable since tenancy is only a month to month tenancy - Respondent/defendant contends that under provisions of Burma Shell Act after expiry of said lease they are entitled for renewal of lease for further period of 20 years from 1982 - Trial Court dismissed suit refusing to evict defendant holding that appellant/plaintiff is only challenging finding of trial Court relating to refusal to evict respondent from schedule premises on ground that there is no cause of action

to file suit and that suit filed by appellant is premature - Appellant contends that since suit was pending before trial Court and even if it is accepted that respondent is entitled for renewal of lease for further period of 20 years from initial lease granted by appellant, it is erroneous on part of trial Court to hold that suit is premature and no cause of action had accrued to appellant to file suit against respondent - Respondent contends that lease in question is not governed by provisions of T.P Act but only Sec.5 of Acquisition Act and as such respondent is entitled to renew lease as per provisions of Acquisition Act and trial Court rightly dismissed suit as premature **-** CERTAIN INSTANCES WHERE COURT SHALL NOT EXERCISE ITS DISCRETION IN FAVOUR OF DECREEING A PREMATURE SUIT - STATED; (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose;(iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. One more category of suits which may be added to where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained - Whenever a Court is vested with discretion, it has to be exercised properly and judiciously - If finding of trial Court is based on improper exercise of discretion, appellate Court certainly interfere with said finding and can set aside same in appeal - In this case, trial Court has fallen into error in refusing relief of eviction sought by appellant against respondent on account of improper exercise of discretion vested in it - View taken by trial Court that appellant had no cause of action against respondent to file suit, unsustainable - Decree and judgment passed by trial Court in so far as it relates to relief of evicting respondent is concerned, set aside - Appeal, allowed. **Md.Ali Khan Vs. M/s.Bharat Petroleum Corpn., Ltd., 2009(3) Law Summary (A.P.) 305 = 2010(1) ALD 301 = 2009(6) ALT 528.**

CAST CERTIFICATE

—On basis of Scheduled caste (Mala) certificate issued by Tahsildar, petitioner applied for admission to undergraduate medical course, after appearing in EAMCET-2016 - She was invited for certificate verification - But, during certificate verification, 2ND respondent-University, as per advice given by officials of Social Welfare Department present therein, came to conclusion that petitioner should be treated as belonging to forward community, in view of fact that her father belonged to Reddy community - Therefore, petitioner has come up with above writ petition - Stand taken by 2nd respondent -University is that since father of petitioner belonged to a forward community, she was not entitled to be treated as belonging to Scheduled Caste.

CANCELATION OF CASTE CERTIFICATE:

Held, once the authority competent to conduct a detailed enquiry , has come to conclusion that petitioner belongs to Scheduled Castes and, consequently, issued a certificate to her, it is not open to any other authority, to question validity of same, except in accordance with law - Neither 2nd respondent-University nor officials of Social Welfare Department are entitled to disregard community certificate a dead letter - So long as community certificate issued by competent authority is not cancelled and so long as community certificate has not been referred for re-verification to any Scrutiny Committee constituted, in accordance with judgment of the Supreme Court in Kumari Madhuri Patel Vs. Additional Commissioner, Tribal Development, AIR 1995 SC 94, 2nd respondent-University cannot ignore community certificate.

Therefore, writ petition is allowed, directing 2nd respondent-University to treat petitioner as belonging to Scheduled Castes (Mala community), on basis of certificate that she holds, so long as certificate is valid and in force. **Sabbella Siri Manjoosha Reddy Vs. State of A.P. 2016(3) Law Summary (A.P.) 60 = 2016(6) ALD 427 = 2016(5) ALT 290.**

CANCELATION OF CASTE CERTIFICATE:

- Petitioner says she belong to Valmiki caste which has been classified as Scheduled Tribe Community and the Tahsildar, issued Caste Certificate dated 03.06.1974, on the basis of which, she joined in the respondent Bank as clerk on 23.04.1977 and rendered service without any blemish - On a reference made by the Respondent Bank to the District Collector, Collector vide proceedings Rc.C6/2026/M/2000, dated 06.07.2001 has confirmed that the Caste Certificate issued to the petitioner on the date of appointment as genuine, but it has also been mentioned in the above proceedings that the said Valmiki caste has been subsequently deleted from the reserved category - While so, the respondent Bank addressed letter dated 20.06.2000 to the District Collector, to verify the social status of the petitioner - A show-cause notice dated 10.10.2000 was served on the petitioner by the District Collector, directing her to appear before the Joint Collector and Chairman of the Scrutiny Committee, on 22.10.2000 for personal hearing and for production of documentary evidence in support of her caste - Accordingly, she appeared before the authorities on 22.10.2000 and produced Caste Certificate dated 03.06.1974 issued by the Tahsildar and first page of her father's service register - But thereafter, the District Collector, came to the conclusion that the petitioner belong to Boya Caste under BC 'A' Group and cancelled the Caste Certificate issued to the petitioner vide proceedings D.Dis.(C8)2036/M/2000, dated 26.11.2001 - Basing on the said proceedings, the respondent Bank resorted to terminate the appointment of the petitioner vide proceedings 81/ZOH PS (AS)/IF 230445, dated 09.01.2002 - Aggrieved by the same, the present writ petition is filed - Held, in a judgment, the Hon'ble Supreme Court negatived the contention of the learned counsel for the appellant wherein the appellant therein obtained appointment for the post meant for Schedule Caste thus depriving the genuine Scheduled Caste person, by playing fraud and that he does not deserve any sympathy or indulgence

CENTRAL RESERVE POLICE FORCE ACT:

of this Court - But in the instant case on hand, the facts are otherwise - The District Collector, in his proceedings Rc.C6/2026/M/2000, dated 06.07.2001 clearly held that as on the date of the appointment, the Caste Certificate produced by the petitioner is genuine, however, subsequently, it was deleted from the list of reserved category - In view of the same, the petitioner is entitled for relief as held in Kavita Solunke v. State of Maharashtra and others - In view of above facts and circumstances, impugned proceeding No.81/ZOH PS (AS)/IF 230445, dated 09.01.2002 is set aside and the petitioner is entitled for the pensionary benefits arising out of employment, since she has already retired from service - Accordingly, the writ petition is allowed to the extent indicated above. **M.Saroja Devi Vs. Syndicate Bank rep.by its Chairman Manipal 2015(3) Law Summary (A.P.) 112**

CENTRAL MOTOR VEHICLES RULES, 1989

—Rule 128(9) AND CONSTITUTION OF INDIA, Art.19(1) (g) "Tourist vehicle" - "Carrying luggage on roof of vehicle" - High Court held that transporters could only provide luggage space at rear or sides of tourist vehicle and no luggage could be carried on roof of vehicle - When Rules specifically make a provision in regard to place where luggage holds shall be provided by necessary implication, it goes to exclude all other places of tourist vehicle for being used as luggage holds - Since luggage of Rule is clear and unambiguous, no other construction need be resorted to under stand plain language of sub-Rule (a) of Rule 128 of Rules - Rule 128 is a special prevision for tourist vehicles which excluded General Rule 93 to extent of conflict between farmer and later - Contention of appellants that Rule 128 (9) does not place a prohibition on carrying of luggage on roof of tourist vehicle – Unsustainable - Restriction imposed by Rule is a reasonable restriction keeping in view safety of passengers in tourist vehicle and therefore not violative of Art.19(1) (g) of Constitution - Appeals and writ petitions are dismissed. **Sharma Transports Vs. The State of Maharashtra 2012(1) Law Summary (S.C.) 30**

CENTRAL RESERVE POLICE FORCE ACT:

— Sec.11(1) - CRPF RULES,1959, Rule 14-B - Suppression of involvement in criminal case - Respondent/Constable in CRPF involved in criminal case u/Secs.323 & 504 and subsequently acquitted of criminal charges two years prior to his enlisting in CRPF and his involvement in criminal case came to light when CRPF undertook a verification of his character and antecedents - Dy.G.P. CRPF passing order confirming punishment of removal from service imposed upon respondent - Respondent contends that suppression of involvement in criminal case was a mistake borne out of ignorance and he did not know that said information was relevant in view of fact that he had been acquitted in criminal case - Single Judge allowed writ petition holding that as respondent was acquitted must be deemed that there was no case pending against him in eye of law and accordingly there was no necessity for him to furnish such information and directed reinstatement in service of respondent with all consequential

benefits - Once punishment imposed upon respondent was supported by due and proper Departmental enquiry, single Judge ought not to have substituted his view in matter of punishment and ought not to have interfered by way of judicial review and that it was erroneous on part of single Judge to have ventured into realm of disciplinary proceedings - Respondent having aspired to recruitment in a disciplined uniformed service such as CRPF ought to have exercised more care and caution in disclosing particulars solicited in verification roll - His lack of forthrightness, be it for whatever reason, inevitably reflects on his character and antecedents - It is not for High Court to sit in Appeal over disciplinary proceedings or substitute its own version of a fitting punishment in place of that imposed by disciplinary authorities - Single Judge erred in interfering matter and modifying punishment - Writ appeal, allowed. **Addl. Dy.Inspector General of Police Vs. No.015140942 Constable 2009(2) Law Summary (A.P.) 110 = 2009(4) ALD 600 = 2009(2) APLJ 408 = 2009(4) ALT 234.**

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—-Amendment of the Pleadings cannot be allowed after the defence counsel has completed his arguments - No separate prejudice need be demonstrated when an attempt is made to get the pleadings amended after the opposite party has concluded his arguments also - Revision Allowed. **Chappidi Satyanarayanamma Vs. Chappidi Dhanalakshmi, 2014(2) Law Summary (A.P.) 424 = 2014(5) ALD 761 = 2014(5) ALT 774.**

—-Appellants in both appeals are defendants in one suit and plaintiffs in other suit - They were unsuccessful before trial Court in both suits and accordingly filed these two appeals - As plaintiff allegedly sold away properties to respondents 2 and 3, they were brought on record as party-respondents in A.S.No.2312 of 1996 - Since contentions urged by both parties are one and same in both cases, trial Court disposed of suits by a common judgment.

Madapati Chittemma, plaintiff, is sister of Velagala Venkata Reddy, who is no other than father of defendants - Plaintiff purchased schedule land which is an extent of Ac.1-00 cts. out of Ac.4-16 cts. from defendants and their father under a sale deed dated 25-6-1976 - Plaintiff has been residing, whereas suit schedule property is situate in village of defendants - After purchase of property by plaintiff, her brother assured her that he would look after cultivation and give produce to plaintiff - Accordingly, he cultivated suit land till his death on behalf of plaintiff and was paying her net produce after deducting expenses and land revenue - After his death, defendants assumed possession of property on behalf of plaintiff and started cultivating same - But they stopped paying produce to plaintiff - When plaintiff demanded for delivery of produce, defendants made a proposal to plaintiff to sell away land to them at prevailing market value - Plaintiff did not agree for said proposal - On that, relations between parties became strained - Defendants did not pay produce from 1982-83 to 1984-85 in spite of repeated demands from plaintiff - Moreover, they filed

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O.S.No.496 of 1984 for a permanent injunction - On that, plaintiff filed O.S.No.19 of 1985 for ejection of defendants from schedule property and to direct them to deliver plaint schedule property and for profits with aforementioned averments - Whereas, defendants filed O.S.No.118 of 1991 for a declaration that the plaint schedule land of an extent of Ac.1-90 cts. their joint family property and for consequential injunction restraining the plaintiff from interfering with their possession and enjoyment - Both parties filed suits and they came to be disposed of on merits by learned trial Court - Trial Court decreed the suit filed by the plaintiff i.e. O.S.No.19 of 1985 and dismissed the suit filed by the defendants i.e. O.S.No.118 of 1991.

Held, any right in relation to immoveable property must be relinquished by executing a registered document - The learned trial Court, in fact, ought not to have admitted Ex.B-3 in evidence as it relates to a relinquishment of right in immoveable property - In any event, plaintiff denied to have executed said document and defendants failed to establish that same was really executed by plaintiff - When defendants executed Ex.B-1 sale deed in favour of plaintiff under genuine belief that she would, in turn, execute a reconveyance deed and when she refused to execute a reconveyance deed in 1976 itself, natural course of conduct of defendants would be to immediately take some legal action against plaintiff by issuing a lawyer's notice and filing a suit against her - But they have not taken any such action till 1984 - All these circumstances would create any doubt regarding genuineness of Ex.B-3 letter - Moreover, as Ex.B-3 letter is with regard to relinquishment of immoveable property of Ac.1-00 cts. of land, learned trial Court ought not to have admitted said document in evidence and therefore, in considered view of this Court, Ex.B-3 cannot be taken into consideration at all - The learned trial Court rightly examined all these aspects and repelled contentions urged by defendants and answered this point in favour of plaintiff, which do not require any interference in appeals.

Defendants, who executed sale deed, filed present suit to declare that suit property is their joint family property - Such a declaration, in considered view of this Court, cannot be granted to defendants without there being a relief asked for setting aside Ex.B-1 sale deed - Having regard to facts and circumstances stated hereinabove, defendants are deemed to be in permissive possession of schedule property as they continued in possession of property with consent of plaintiff and refused to vacate land at a later point of time in spite of demands made by plaintiff to deliver possession to her, therefore, they are not entitled for any injunction against plaintiff - For foregoing reasons, learned trial Court on a proper appraisal of evidence with reference to facts and circumstances of case, rightly answered issues in favour of plaintiff and against defendants - Findings recorded by trial Court do not call for any interference in present appeals - Appeals, therefore, fail and are dismissed. **Velagala Satyanarayana Reddy Vs. Madapati Chittemma 2016(2) Law Summary (A.P.) 279 = 2016(5) ALD 65.**

—-Plaintiff filed suit against defendant for a perpetual injunction to restrain defendant and it's men, servants, employees etcetera from ever interfering with plaintiff's peaceful

possession and enjoyment of properties, i.e., dry lands, more fully described in Plots 1 to 6 of schedule annexed to plaint - Plaintiff had also sought a mandatory injunction directing defendant to restore Plot No.1 to its original shape and height and other consequential reliefs on failure of defendant to comply with the mandatory directions. Defendant company had filed a written statement and is resisting the suit - Plaintiff had also filed I.A. for temporary injunction to restrain defendant company and its men from interfering with plaintiff's peaceful possession and enjoyment of plaint schedule properties - Trial Court had dismissed application of plaintiff - However, District Judge had partly allowed the Civil Miscellaneous Appeal and had directed both parties to maintain status quo pending disposal of suit - Aggrieved of said orders, defendant had preferred instant Civil Revision Petition.

Held, when plaintiff came to Court and sought temporary injunction in this application and had failed to prove his lawful possession in respect of plaint schedule property and when trial Court had dismissed application for temporary injunction filed by plaintiff, appellate Court ought not to have granted status quo having found that defendant is in possession of Ac.1.83 cents having purchased same under exhibit B2 and that defendant had also obtained permission for conversion of land - Therefore, this Court finds that order of Court below brooks interference and is liable to be set aside - The impugned order is accordingly set aside and order of trial Court is restored - In the result, Civil Revision Petition is allowed without costs. **My Home Industries Ltd., Vs. Gonnabattula Ramana 2016(1) Law Summary (A.P.) 538 = 2016(4) ALD 291.**

—-Sec.2(2) - Decree - Rejection of a plaint - Deemed to be a decree - An order dismissing suit on ground of res judicata cannot be appealable because it conclusively determines controversy regarding res judicata - Order dismissing suit on ground of res judicata does not cease to be a decree on account of a procedural irregularity of non framing of an issue - What is to be seen is effect and not the process - It is appealable u/Sec.96 and revision does not lie u/Sec.115 - A composite order passed on a rejection of a plaint for lack of cause of action and dismissal of a suit as not maintainable on ground of res judicata constitute on the ground of res judicata constitute a decree u/Sec.2(2) - Remedy is only appeal u/Sec.96 read with Or.XLI and not revision u/Sec.115. **Rishabh Chand Jain Vs. Ginesh Chandra Jain 2016(2) Law Summary (S.C.) 17 = AIR 2016 SC 2143 = 2016(6) SCC 675 = 2016(4) ALD 71 (SC).**

—Secs.2(2) & 47 - Petitioner secured decree in suit - Following decree petitioner filed E.P and attached property was brought to sale - Delivery of property effected - E.A closed - Thereafter, respondent filed E.A in E.P u/Sec.47 CPC for setting aside sale - Trial Court dismissed Application - Senior Civil Judge entertained CMA and allowed same - Petitioner contends that appellate Court had no jurisdiction to entertain CMA in view of amendment to Sec.2(2) which omitted words "Sec.47" and that therefore

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no CMA against order passed in an exeution proceedings would lie under Or.43 and that lower Court committed serious jurisdictional error in entertaining and allowing CMA - Amended definition of decree which deleted words "Sec.47" from definition and held that intention of legislature in passing Amendment Act is to render decisions u/Sec.47 as non- decrees so that there may not be any second round of litigation by way of appeals and that whole object behind this amendment is to shorten litigation and protract course of action of execution proceedings to enable decree holders to enjoy fruits of decree and that parties should not have a second round of litigation - Lower appellate Court has committed a serious jurisdictional error in entertaining CMA eventhough no such appeal was maintainable before it - Order and decree of Senior Civil Judge, set aside - CRP, allowed. **Dubba Jaya Rami Reddy Vs. K.Jaithun Bee 2013(2) Law Summary (A.P.) 273 = 2013(5) ALD 539.**

—Secs.2(2), 51 & 47 and Or.23, Rule 3 - INDIAN CONTRACT ACT, Sec.74 - "Consent decree" - Suit filed for declaration and injunction - Parties settled their disputes and differences and compromise decree passed - Since payment not made in terms of consent decree, appellants filed Application for execution - Executing Court rejected objection filed by respondents u/Sec.47 CPC - Respondents contends that they are not liable to pay interest @ 18% per annum - High Court rejected objections that consent decree was beyond subject matter of suit and partly allowed Revision and case remitted back to executing Court to decide whether stipulation about interest @ 18% per annum is in nature of penalty and further whether it is unreasonable within meaning of Sec.74 of India Contract Act - High Court while exercising revisional jurisdiction also had no jurisdiction to invoke provisions of Sec.74 of Contract Act which for all intent and purport amounts to modification of a valid decree passed by competent Court of law - Decision of High Court is wholly without jurisdiction - Impugned judgment, set aside - Executing Court directed to proceed to execute decree as it is - Appeals, allowed. **Deepa Bhargava Vs. Mahesh Bhargava 2009(1) Law Summary (S.C.) 64 = 2009(2) ALD 61(SC) = 2009(1) Supreme 472.**

—Sec.2(2), Or.9 - "Preliminary decree" - Suit for partition and separate possession - Trial Court dismissed suit - High Court allowed appeal and passed preliminary decree directing R1/plaintiff is entitled for half share in suit schedule property - When enquiry in final decree is in progress plaintiff filed IA for mesne profits - Petitioner/defendant raised objections contending that neither preliminary decree nor final decree provided for grant of mesne profits and that once final decree was passed, it is not competent for Court to determine or award mesne profits - Trial Court allowed IA - Hence present revision - 1st respondent/plaintiff contends that in absence of specific direction in preliminary decree, there is no basis for R1/plaintiff to file an Application for mesne profits - 1st respondent/plaintiff contends that it is not necessary in a suit for partition that a prayer for mesne profits must be made nor is it essential that relief on those lines must find place in decree - Unlike in most of other suits a preliminary decree is passed as to availability of property for partition and determination of shares and

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that in turn is followed by final decree proceedings - A decree in ordinary suits and a final decree whereever required to be passed, would normally terminate respective suits - However in a case of partition suits there can be more preliminary decrees than one - Claim for mesne profits is treated almost as an inseparable part of plea of partition - Courts went to extent of holding that even in absence of prayer for ascertainment of future mesne profits and though preliminary decree does not contain any direction to ascertainment of profits such an exercise can be undertaken at the stage of final decree proceedings - Hence plea that application for mesne profits not maintainable since preliminary decree was silent on this aspect, cannot be accepted - In present case, final decree no doubt was passed, but it cannot be deemed to have covered relief claimed in application that was pending before it was passed - To that extent final decree must be deed to be partial not covering relief of mesne profits, which is very much pending adjudication before Court - CRP, dismissed. **Bandlamoori Venkata Lakshmamma Vs. Nayineni Janakamma, 2011(1) Law Summary (A.P.) 306 = 2011(3) ALD 78 = 2011(3) ALT 514.**

—-Secs.2(9), 3, 4, 5 & 10 - Order 8, Rules 9 & 10 - Appeal suit is directed against the judgment rendered by the Senior Civil Judge in O.S - It appears that none of the defendants in the suit entered appearance and as a result, thereof, the Court below, after placing the defendants ex parte, passed the judgment - Held, in present case, this Court has no hesitation in observing that the learned judge while pronouncing the judgment did not follow the procedure contemplated by the aforementioned Rules of Order 8, and he has blindly pronounced the judgment merely because written statement had not been filed by the defendants traversing the facts set out in the plaint - That apart, as observed earlier, by no stretch of imagination, the impugned judgment in present case could be treated as a 'judgment', as defined by Section 2(9) of the CPC - In the circumstances, this Court dismised A.S.MP. No. 2957 of 2013 and allowed appeal - Impugned judgment is set aside - The suit is restored to file. **S.Guruvaiah Vs. S.Ramesh 2015(1) Law Summary (A.P.) 446 = 2015(4) ALD 434 = 2015(3) ALT 362 = AIR 2015 (NOC) 958 (Hyd).**

—Sec.2 (11) & Or.22, Rule 5 - Impleadment of legal representatives - Plaintiff filed suit for eviction and recovery of arrears of rent - During pendency of suit plaintiff expires - 1st respondent widow of deceased filed Application for substitution as an heir and legal representative of deceased in pending suit - Appellant, brother of deceased also filed Application for impleadment as heir and L.R of deceased/plaintiff claiming suit premises basing on Will executed in his favour by his deceased brother - Trial Court allowed Application of widow and rejected Application of appellant on ground that Will of deceased plaintiff did not seem to have been executed by him and therefore appellant not entitled to be impleaded in suit for eviction as he is not LR of deceased/ plaintiff - In eviction proceeding, when legatee under a Will intends to represent interest of estate of deceased testator, he will be a legal representative within meaning

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of Sec.2(11) of CPC, for which it is not necessary in eviction suit to decide whether Will on basis of which substitution is sought for is a suspicious one or that parties must send case back to probate Court for decision whether Will was genuine or not - High Court as well as trial Court had acted illegally and with material irregularity in exercise of their jurisdiction in not impleading not only natural heirs and LRs of deceased plaintiff but also appellant who is claiming his impleadment on basis of an alleged Will of deceased plaintiff - Impugned order of High Court, set aside - Application for impleadment filed by appellant, allowed. **Suresh Kumar Bansal Vs. Krishna Bansal 2010(1) Law Summary (S.C.) 78 = 2010(1) ALD 146(SC) = 2009(8) Supreme 305 = AIR 2010 SC 344.**

—Sec.10 - Both suits are now on file of the same court and both suits are for perpetual injunction - One party i.e., the plaintiff in previously instituted suit, who is also first defendant in subsequent suit, is contending that the schedule of property in three items in subsequent suit is a part and parcel of the schedule of property in previously instituted suit, which was filed by him - On the other hand, the plaintiffs in the subsequent suit contend that the properties are different - Both the suits are sufficiently old as on today - Therefore, it is considered just and proper to direct disposal of both the suits together/simultaneously by conducting parallel trials so that all the issues can be finally thrashed out and further protaction of the litigation can be avoided and a quietus can be given to the lis once and for all at least at the stage of the trial court - Civil Revision Petition is allowed and the impugned order is set aside with a direction to the trial court to take up the subsequent suit also for trial simultaneously and together with the previously instituted suit and conduct parallel trials and dispose of both suits together by following the procedure established by law. **Palli Rajulamma Vs. Pirla Seetharam 2015(1) Law Summary (A.P.) 126 = 2015(1) ALD 591 = 2015(2) ALT 41.**

—Sec.10 - "Stay of suit" - Petitioner contends that subject matter of both suits is not identical and since requirement of Sec.10 is not fulfilled, Court below ought not to have exercised power u/Sec.10 CPC to stay proceedings in O.S.No.7 of 2002 pending disposal of O.S.2287/99 on file of District Judge, Delhi - It is further contended that for invoking jurisdiction u/Sec.10 for stay of subsequent suit, it is not enough if certain issues are found and that it is necessary that subject matter must be same and identical - Respondent contends that test for applicability of Sec.10 CPC is whether on a final decision being reached in the previously instituted suit, would such decision operate as res judicate in subsequent suit - Object of Sec,10 is to avoid recording of conflict of findings on issues which are directly and substantially in issue in previously instituted suit and fundamental test to attract Sec.10 is whether on final decision being reach in the previous suit such decision would operate as res judicata in subsequent suit and Sec.10 applies only in cases where whole of subject matter in both suits is identical - In this case, only some matters are common to both suits and whole of subject matter in both suits is not identical - Thus a final decision in O.S.No.2287/99 would not operate as

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res judicata in O.S.No.7/2002 - Court below erred in holding that cause of action in both suits is same and in staying proceedings in O.S.No.7/2002 invoking Sec.10 - Order of District Nizamabad, set aside - CRP, allowed. **Amrutlal & Co., Nizamabad Vs. Rankids Impex Private Limited, New Delhi 2014(1) Law Summary (A.P.) 229 = 2014(4) ALD 129.**

—Sec.10 - Petitioner/plaintiff filed suit seeking decree for recovery of possession of suit property and for damages basing on a Will executed by his father - Defendant who has been in permissive possession of suit property had earlier filed suit claiming that plaintiffs had executed agreements of sale to sell suit property and received full sale consideration and said suit decreed and plaintiff petitioner preferred appeal and same allowed by setting aside decree for specific performance granted by trial Court on ground that suit barred by limitation - Hence 1st respondent filed I.A u/Sec.10 of CPC seeking stay of proceedings in suit till disposal of second appeal - Said application allowed by trial Court and granted stay of proceedings till disposal of second appeal - Revision petitioner contends that merely because suit property is same in both suits it cannot be said that there is any possibility of contradictory decisions in respect of same cause of action and therefore Sec.10 of CPC is not at all attracted - Subsequent suit is filed for recovery of possession of suit property where as earlier suit filed by defendant was for specific performance of agreement of sale - However suit property of both suits is common and parties to both suits are also common - One of tests for determining applicability of Sec.10 is whether final decision in previously instituted suit operates as res judicata in subsequent suit - Both trial Court and lower appellate Court recorded finding in earlier suit filed for specific performance that agreement on basis of which specific performance was sought was true and valid - However decree for specific performance granted by lower Court was set aside on ground that suit barred by limitation and correctness of said finding is subject matter of second appeal pending before High Court - Thus final decision in second appeal would undoubtedly operate as res judicata in subsequent suit for recovery of possession - Therefore as rightly held by Court below Sec.10 CPC is attracted and proceedings in later suit shall be stayed - Order under revision - Justified - Revision petition dismissed. **Khandrika Jagadeeshwara Sharma Vs. Khandrika Chayanatha Sharma, 2011(3) Law Summary (A.P.) 327 = 2012(1) ALD 355 = 2012(1) ALT 710.**

—Sec.10 and **A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS (ROR) ACT**, Sec.5-A - **CONSTITUTION OF INDIA**. Art.227 - Respondent/plaintiff filed suit for injunction against defendant Revision petitioner - While evidence is in progress defendant filed Application u/Sec.10 of CPC seeking stay of trial on ground that writ petition relating to same subject matter is pending on file of High Court - Trial Court dismissed Application - In this case, defendant/revision petitioner filed written statement claiming title over suit property on basis of order passed by MRO under ROR Act - Challenging order of Joint Collector defendant filed writ petition in which High Court

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directed *status quo* with regard to possession of land in question and therefore defendant contends that trial Court ought to have allowed petition filed by defendant u/Sec.10 CPC for stay of proceedings in suit till disposal of writ - In this case, suit is filed for mere injunction restraining defendant/revision petition from interfering with suit property - Cause of action for suit arose when defendant attempted to interferer with suit property, where as validity and legality, of order of validation made u/Sec.5-A of ROR, Act is subject matter of writ petition - Thus it is apparent that matter in issue in suit is entirely different from matter in issue in writ - May be that, Schedule property of suit and writ petition is common, however, proceedings are founded on different cause of action and questions for decision in suit and writ petition are entirely different - Hence suit and writ petition under no circumstances can be regarded as parallel litigation and there is no possibility of contradictory decision in respect of same cause of action therefore proceedings in suit cannot be held to be barred u/Sec.10 of CPC - Finding of trial Court that Sec.10 of CPC has no Application - Justified - CRP, dismissed. **Kolan Balwanth Reddy Vs. Reddy Janga Reddy 2011(3) Law Summary (A.P.) 171 = 2011(6) ALD 105 = 2011(6) ALT 594.**

—Sec.10, r/w Sec.151 - Stay of suit - Petitioner, one of defendant in O.S.No.49/2005 filed by respondents 1 to 3 while suit is pending filed O.S.29/2008 in same Court for permanent injunction against respondents - Respondents filed I.A., u/Sec.10, r/w Sec.151 of C.P.C for stay of O.S.29/2008 on ground that issues raised therein are directly and substantially in issue in suit filed by them - Trial Court allowed application and stayed suit along with I.As filed therein - Hence petitioner filed present Revision - Petitioner contends that while order of trial Court to extent of staying suit may be inconsonance with provisions of Sec.10 CPC, stay of I.As filed in O.S.No.29 is contrary to provisions of Sec.10 of CPC - Trial Court committed serious legal error in staying I.As in O.S.No.29 instead of limiting stay only to trial of suit - Order set aside to extent of staying I.As and rest of order stands confirmed - CRP, allowed to extent indicated above. **G.K.Reddy Vs. G.Aswatha Reddy, 2012(1) Law Summary 331 = 2012(3) ALD 361 = 2012(3) ALT 755.**

—Sec.10 & Or.23 - Petitioner/plaintiff filed suit contending that he is absolute owner of property seeking reliefs of declaration, possession and for arrears of rent and damages etc - 2nd respondent/2nd defendant filed I.A u/sec.10 of CPC to stay all further proceedings pending disposal of CCCA on file of High Court - Thereafter petitioner filed Memo categorically stating that he abandons/withdraws 1st relief sought by him relating to 'declaration' of his title in respect of suit property - 2nd respondent filed counter stating that plaintiff is barred from seeking such relief as sought by him in Memo except under Order 23 - Trial Court held that merely filing a Memo, plaintiff cannot withdraw or abandon part of relief claimed for by him in suit, that under Civil Rules of Practice for every relief under provisions mentioned in CPC a party has to file interlocutory Application and that plaintiff not filed such Application but only filed Memo and therefore Memo is not

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maintainable - Petitioner/plaintiff contends that as per law plaintiff can abandon suit or part of claim in suit as a matter of right without permission of Court and Court cannot refuse such permission - There is no form necessary to be followed by plaintiff if he intends to withdraw/abandon suit or part of suit claim either against defendant or some other defendant - Trial Court is not correct in stating that unless an interlocutory Application is filed by plaintiff he cannot be permitted abandon relief of declaration of title as to suit property - Therefore trial Court ought to have accepted Memo filed by plaintiff and treated said relief to have been abandoned/withdrawn - Basic purpose and underlying object of Sec.10 of Code is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action/matter in issue so as to avoid possibility of contradictory verdicts by two courts in respect of same relief - CRP No.3033 is allowed and order in I.A in O.S.No.972, set aside. **Dr.M.Srinivas Rao, Vs. Madhura Centre/Tiffin, 2014(1) Law Summary (A.P.) 7 = 2014(2) ALD 160 = 2014(2) ALT 487.**

—Sec.11 - Principles of *res judicata* - 1st respondent filed suit for permanent injunction basing on oral agreement of sale - Trial Court decreed suit holding that 1st respondent was in possession of land on date of institution of suit - Appellant thereafter filed suit for declaration of title and for recovery of possession and first respondent also filed suit for specific performance of contract against appellant and 2nd respondent, vendor of land - Trial Court in consolidated judgment, decreed suit filed by appellant and dismissed suit filed by respondent for specific performance - District Judge dismissed appeals preferred by 1st respondent on ground of *res judicata* - *RES JUDICATA* AND ITS LIMITATIONS AND APPLICABILITY - Stated - "Where title to property is the basis of right of possession, a decision on question of possession is *res judicata* on question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title" - Hence principles of *res judicata* not attracted to facts of present case - Appeal, allowed. **Williams Vs. Lourdusamy 2008(2) Law Summary (S.C.) 39.**

—Sec.11 - Res judicata - Revision petitioner/DHR filed Application for appointment of Advocate-Commissioner to partition suit schedule properties - Petitioener originally filed suit and obtained preliminary decree - Appeal dismissed for default and finally disposed of on merits - Respondent contends that while appeal was pending no stay was obtained and I.A was filed and it was dismissed as barred by limitation and that has become final and therefore present application not maintainable - Senior Civil Judge accepted contention of revision petitioner that there is no period of limitation prescribed for filing application for execution of decree for partition, but however, dismissed application on ground that dismissal of earlier application I.A operates as "res judicata" - When once decree passed by appellate Court which is a decree of dismissal of appeal is set aside, no decre exists and therefore any order passed by a Court taking into consideration such a decree is not valid and consequently principles of res judicata have no application - Merely because stay is not there, it

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does not mean that right of decree holder to proceed from date of decree of appellate court is prohibited - Order of lower Court, set aside - CRP, allowed. **Rapally Siddhamma Vs. Kokkula Gangubai (Died), Kokkula Bhaskar 2011(2) Law Summary (A.P.) 133 = 2011(4) ALD 552 = 2011(4) ALT 24.**

"Res Judicata" – Where decision is on pure question of law then a court cannot be precluded from deciding such question of law differently - Such bar cannot be invoked either on principle of equity and estoppel

Previous proceedings would operate as ''res judicata'' only in respect of issues of fact and on issues of pure questions of law - When subsequent suit or proceeding is based on a different cause of action and in respect of different property though between same parties - Views of High court are justified - It is sufficient to indicate that once a judgment in a former suit or proceeding acquires penalty, it binds the parties totally and completely on all issues relating to subject matter of suit or proceedings - Principles of ''res judicata'' are not applicable to the facts of this case - Therefore appeals are dismissed. **Satyendra Kumar Vs. Raj Nath Dubey 2016(2) Law Summary (S.C.) 21 = AIR 2016 SC 2231 = 2016(4) ALD 52 (SC).**

—Sec.11 - Explanation VIII - Res judicata - Plaintiff/appellant filed suit for declaration of ownership in plaint schedule property and delivery of possession - Trial Court decreed suit - Lower appellate Court allowed Appeal filed by defendant - Hence plaintiff filed Second Appeal - Originally plaintiff filed suit on ground that he is owner of plaint schedule property and when he wanted to construct room in appurtenant open site defendant raised objection and threatened plaintiff to stop construction and therefore plaintiff filed suit - After suit was dismissed plaintiff filed present suit in comprehensive maner - Defendant contends that previous suit was dismissed as plaintiff failed to prove his title to and possession of suit property and that plaintiff and previous decision in original suit operates as res judicata - Previous suit was a simple suit for permanent injunction restraining defendant from obstructing his construction in appurtenant site and previous suit is also relating to self same property which is subject matter of present suit - Lower appellate Court held that judgment in previous suit operates as res judicata - Appellant contends that in judgment of previous suit there was neither an issue framed on title nor any finding given by that Court on title for suit property and that therefore previous judgment does not operate as res judi cata - Entire discussion in previous judgment was on possession of suit house and ultimate finding therein was also on possession only and said finding resulted in negativing permanent injunction to plaintiff therein - Thus, there is no definite finding as to plaintiff's title to suit property in previous suit and there was neither an issue on title in previous suit nor finding on title of plaintiff in previous suit and therefore it cannot be said that judgment in previous suit operates as res judicata in present suit filed by plaintiff for reliefs of declaration of his title to suit property and possession of same - Previous judgment in permanent injunction suit will not be a bar for declaration of title and

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recovery of possession and that lower appellate Court is not justified in reversing judgment and decree of trial Court on ground that judgment in earlier suit operates as res judicata - Judgment of lower appellate Court cannot stand - Second Appeal, allowed. **C.Ramulu Vs. C.Anjaneyulu 2013(2) Law Summary (A.P.) 83 = 2013(5) ALD 273 = 2013(4) ALT 459.**

—Sec.11 – Res judicata – Jurisdictions -Suit for declaration and eviction – Dismissed for default - High Court set aside order passed by Executing Court in connection with E.A. holding, that decree passed by Civil Court was without any jurisdiction and thereby it is nullity and accordingly dismissed said execution proceedings - High Court held that issues tried by Trail Court cannot be said to be within Jurisdiction of Authorities under Mundkar Act – High Court correctly held that Trail Court had Jurisdiction to entertain suit - Executing Court is totally wrong in holding that Civil Court lacked inherent jurisdiction - When suit dismissed for default, it cannot operate as Res judicata – Reasons given by High Court – Justified - Appeal dismissed. **Jacinta De Silva Vs. Rosarinho Costa 2014(1) Law Summary (S.C.) 155.**

—- Sec.11 - COMPANIES ACT, Sec.446(1) - "Res judicata" - Grant of leave of Court is not a condition precedent for initiation of civil action or legal proceedings against Company - Court may grant leave if it felt that Company should not enter into unnecessary litigation and incur avoidable expenditure - CPC, Sec.11 - "Doctrine of Res judicata" - To attract doctrine of res judicata it must be manifest that there has been conscious adjudication of an issue - A plea of resjudicata cannot be taken aid of unless there is an expression of opinion on merits - Principle of res judicata is applicable between two stages of same litigation but question or issue involved must have been decided at earlir stage of same litigation - In this case, single Judge had not dealt with Application for grant of lease on merits and that application was disposed of on basis of submissions made by 3rd respondent that if application for amendment is filed in pending suit he would not oppose same - High Court had pronounced judgment and as matter of practice as stated "liberty to mention" and in that context, Supreme Court stated that did not confer jurisdiction on High Court to dwell upon a definite issue in disposed of case - When Supreme Court said "liberty was granted to get the matter adjudicated", it ment that it was open to petitioner in SLP to raise all contentions before High Court as High Court itself had granted liberty in order which was subject-matter of challenge and matter was sub-judice - On seemly reading of order, no shadow of doubt that same could have been treated to have operated as res judicata as has been held by Division Bench - Therefore, irresistible conclusion is that Division Bench has fallen into serious error in dislodging order granting leave by Company Judge to file fresh suit - Order passed by Division Bench, set aside and order of Company judge restored - Appeal, allowed. **Erach Boman Khavar Vs. Tukaram Shridhar Bhat 2014(1) Law Summary (S.C.) 18.**

—Sec.11 - HINDU SUCCESSION ACT, Sec. 14 (1) - SPECIFIC RELIEF ACT, 1963, Secs. 4, 5 & 34 - To apply principle of res judicata, questions involved in latter suit and in earlier suit must be identical and parties must be same and issues

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in latter suit must be directly and substantially in issue in earlier suit - If any finding is recorded on issues involved in earlier suit which are directly and substantially in issue in latter suit, such findings would operate as res judicata u/Sec.11 of C.P.C - If above test is applied to present facts of the case, based on law declared by Apex Court and this Court, findings recorded by appellate Court which attained finality on point Nos.1 and 2 therein would operate as res judicata - Hence, finding recorded by trial Court about right of PW.2 and her competency to execute Exs.A-1 and A-2 and its genuineness has become final and defendants are precluded to raise same plea questioning the rights of PW.2, and genuineness of Exs.A- 1 and A-2 by applying the principles of res judicata u/Sec.11 of C.P.C. - Hence, point is held in favour of the plaintiff-respondent and against the defendants-appellants - Thus, intention of the legislature in incorporating Section 14 of Hindu Succession Act is to protect women from destitution and for their alleviation to higher pedestal on par with men on principle of equality removing disqualification on basis of sex to hold the property - Admittedly, husband of PW.2, died prior to commencement of Hindu Succession Act and she continued in possession and enjoyment of the property by the date of commencement of the Hindu Succession Act - Therefore, the property vested on her continuous possession by the date of commencement of Hindu Succession Act, she became absolute owner of the property - In absence of any agreement, restricting right of adopted mother as contemplated u/Sec.13 of the Hindu Adoptions and Maintenance Act, widow of deceased, P.W.2, is competent to deal with property as an absolute owner and thereby she executed Exs.A-1 and A-2 in favour of plaintiff and, consequently, the plaintiff became absolute owner of property - Therefore, the widow of deceased, PW.2, is competent to execute registered sale deeds and bar under Section 13 of the Hindu Succession Act, has no application to the present facts of case - General principle is that in a suit for declaration of title, the plaintiff has to establish his or her case, independently, and cannot be allowed to take advantage of weakness in case of adversary - If person who is claiming right or interest in property established title or right to property, Court may exercise discretion to grant the relief of declaration of title and such discretion must be exercised judiciously - In result, Appeal Suit is dismissed confirming the decree and judgment dated 30.07.1993, passed in Original Suit No.4 of 1989 by the Subordinate Judge. **K.Satyamma (died) Vs. Smt. Bhoodevi 2015(1) Law Summary (A.P.) 384.**

—Secs.11 & 12 & Or.11, Rule 2 - Specific Relief Act, Sec.5 - Principles of *res judicata* - Suit filed relating to disputes regarding succession and management of Gaddi of Trust - Trial Court dismissed suit - Judgment and order of 1st appellate Court restored by Supreme Court and findings arrived at by it attained finality and hence issue determined therein binding on parties - Judgment of Court should not be interpreted as statute - Court while passing judgment cannot take away right of successful party indirectly which it cannot do directly - Observations made by superior Court is not binding - What would be binding is ratio of decision - Such a decision must be arrived at upon entering into

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merit of issues in case - Provisions of Or.2, Rule 2 bars jurisdiction of Court in entertaining a second suit where plaintiff could have but failed to claim entire relief in first one - Issue in earlier suit indisputably was claim of entitlement to Gaddi by first respondent and a plea contra thereto raised by appellant - Once issue of entitlement stood determined, same would operate as *res judicata* - Distinction between "issue estoppel" and "res judicata" - "....Res judicata debars a Court from exercising its jurisdiction to determine *lis* if it has attained finality between parties whereas the doctrine issue estoppel is invoked against party. If such an issue is decided against him, he would be estopped from raising the same in the later proceeding. The doctrine of res judicata creates a different kind of estoppel viz., estoppel by accord" - Suit for possession must be filed having regard to provisions of CPC - If statute provides for applicability of CPC, there cannot be any doubt whatsoever that all relevant provisions thereof shall apply. **Dadu Dayalu Mahasabha,Jaipur (Trust) Vs.Mahant Ram Niwas 2008(2) Law Summary (S.C.) 165.**

—Secs.11, 96,100 & 2 & Or.14 - "Res judicata" - "Framing of issues and pronouncing judgments on issues" - "Findings" - Three suits O.S.Nos.274/83, O.S.276/83 and O.S.141/83 filed relating to land in Sy.No.9/13 seeking relief of declaration of title and injunction - State of A.P. represented by District Collector and other Officials arrayed as defendants - Three suits are tried together and common judgment has been delivered; however three separate decrees and judgments have been passed - Main question in all three suits is whether disputed land forms part of Sy.No.9/13 as claimed by plaintiffs in O.S.No.274 & 276 or forms part of Sy.No.49 & 50 as claimed by plaintiffs in O.S.No.141 or in Sy.No.43 as claimed by State of A.P - Issue No.1 in O.S.No.274 relates to whether suit property is part of Sy.No.9/13 on this issue trial Court gave finding that plaintiffs failed to establish suit property form part of 9/13 and Govt. also failed to establish that suit land forms part of Sy.No.43, but held defendants 1 to 4 clearly established that suit land forms part of Sy.No.49 & 50 - Similar finding was given in O.S.No.141/84 - As far as findings in O.S.No.274 & 276 are concerned Govt.,/ defendants have not preferred any appeal and therefore respondents contend that findings on issue no.1 became final and therefore those findings operate as res judicata between co-defendants - Plaintiffs in O.S.No.274 & 276 preferred appeal and Govt., defendants in O.S.141 preferred appeal - Main contentions of respondent is as far as Govt., is concerned findings against Govt., in O.S.Nos.274 and 276 became final and operate as Res judicata - Thus appeals filed by Govt., are not maintainable since findings have become final and hit by principles of res judicata - Govt., contends that plea of Res judicata may not deserve any consideration stating that no decree is passed against Govt., in O.S.No.274 and 276 and when Govt., have not suffered any decree question of filing appeal against such decree does not arise and there is no possibility to prefer an appeal and further that no appeal lie against mere finding and therefore even if there is some finding against Govt., there is no need to file appeal and that Govt., have disputed boundaries and location of suit property and suits filed by plaintiffs in those two suits have been dismissed - RES JUDICATA - To attract principle of res judicata it is necessary that issue in present suit and in

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former suit must be directly and substantially same issue and Court must be competent Court - It is settled principle that Res judicata debaras Court from exercising jurisdiction to determine lis if it has attained finality - DECREE - Defined - An appeal shall lie from a decree - A plain reading of definition of "decree" reveals that decree means formal expression of adjudication whereby Court conclusively determines right of parties with regard to all or any of matters in contraversy in suit - Thus it is clear that decree does not mean only operative portion and common understanding of decree "it is only an operative portion of judgment appears to be not correct" - A combinding reading of definition of decree, Or.14, Rule 1 of CPC makes it clear that decision on issues on any matter in controversy shall be deemed to be a "decree" - "Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and (3) that the Court actually decided the question" - In this case, findings on issue no.1 which went against Govt., appears to be a finding was on main controversy and it cannot be said that such finding do not make any material difference or unnecessary operate as res judicata - Filing of appeal destroys finality of judgment under appeal - In this instant case,Govt., have not filed any appeal or counter claim challenging findings of lower Court with regard to claim of Govt. - FINDINGS - Findings are of two kinds - Finding may be decision on an issue framed in a suit and will only cover material questions which arise in a particular case for decision - Court may give final decision on issue, that is, upon a controversy between parties - There may be a findings which may not necessary or called for while deciding main controversy between parties - Where a finding, if on materia issue, which declares rights of parties comes within definition of decree, has been given, such finding has to be challenged, though there may not be any executable decree against party - But where it appears that a finding which effects right of parties or declares right or title of party and if not challenged would become final and may operate as res judicata and such findings is to be treated as a decree though not an executable decree and has to be challenged in appeal - In this case, since claim of Govt., has been negatived and Govt., did not prefer any appeal, findings of trial Court on said issue became final and since judgment passed by lower Court in above referred two suits operate as Res judicata, present appeal filed by Govt., is not maintainable and therefore objections raised by respondent are sustainable - Findings of trial Court in O.S.No.274 & 276 that suit land is not part of Sy.No.43 operates as Res judicata against Govt. since they have not preferred any appeal against said findings - Therefore appeal filed by Govt., is not maintainable. **State of A.P. Vs. B. Ranga Reddy 2012(3) Law Summary (A.P.) 198 = 2013(2) ALD 544 = 2013(1) ALT 556.**

—Secs.11 & 100 - HYDERBAD MUNICIPAL CORPORATION ACT, 1955, Sec.685 - Respondent/plaintiff filed suit seeking relief of mandatory injunction for removal of

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certain constructions made by appellant/1st defendant, adjacent land owner while constructing her house deviated from plan approved by Municipal Corporation - 1st defendant also filed cross-suit against respondent/plaintiff contending that her construction is by and large as per prescribed plan approved by Municipal Corporation and she did not infringe any right of plaintiff and some minor deviations from approved plan were made as per advice given by technical and Vasthu experts - Trial Court dismissed suit filed by appellant/1st defendant and decreed suit filed by respondent/plaintiiff granting temporary injunction directing removal of illegal and unauthorized construction made by appellant/1st defendant - 1st appellate Court by its common judgment in A.S.No.388/99 and A.S.No.389/99 confirmed decree and judgment passed by trial Court in all respects - Feeling aggrieved, LRs of 1st defendant filed present second appeal against decree and judgment passed by 1st appellate Court in A.S.No.388/99 and no second appeal is filed in so far as decree and judgment passed in A.S.No.389/99 by 1st appellate Court - In this case, during pendency of litigation Municipal Corporation regularized constructions made by 1st defendant - Both Courts below categorically held that there were deviation and said deviations not minor as contended by 1st defendant and they are major deviations which affect ownership and enjoyment right of respondent/plaintiff - Appellants, LRs of 1st defendant contend that notice required u/Sec.685 of Municipal Corporation Act not issued by respondent/plaintiff to Municipal Corporation before instituting suit and Municipal Corporation being 2nd defenant in suit, said suit not maintainable and that 1st appellate Court erroneously recorded findings that for want of notice u/Sec.685 of Corporation Act cross suit filed by 1st defendant not maintainable where as suit filed by respondent/plaintiff is maintainable and said finding is illgal and liable to be set aside in present second appeal - Respondent/plaintiff contends that only when relief is claimed against Municipal Corporation or action of Corporation is challenged requirement of issuing notice u/Sec.685 becomes mandatory - Otherwise it is not necessary to issue notice before instituting suit merely because Corporation is one of defendants and suit filed by respondent/plaintiff corporation is only proper party but not a necessary party, as no relief is claimed against Corporation and no positive action of Corporation taken against plaintiff therein is challenged in suit - Held, that in suit filed by respondent/plaintiff notice u/Sec.685 of Act is not mandatory where as suit filed by 1st defendant notice u/Sec.685 Act is mandatory and there is no illegality in order passed by 1st appellate Court - Municipal Corporation apart from regularizing illegal constructions or deviations is under duty to protect the rights of neighbours and while doing so it has to exercise powers of regularization without offending rights of neighbouring house owners - Under guise of regularization of illegal construction if Corporation allowes 1st defendant to invade into rights of respondent/plaintiff it can be certainly said that it is in excess of powers of regularizations conferred on it by statute - In this case, both suits were disposed of by trial Court by common judgment against which two appeals A.S.No.388 and A.S.No.389 were filed by 1st defendant/appellant and in both appeals a common judgment was rendered but legal representatives of 1st defenant preferred 2nd appeal only against A.S.NO,388

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and for not filing second appeal against A.No.389 in which decree and judgment passed by trial Court is confirmed by 1st appellate Court and became final - Present 2nd appeal is therefore barred by res judiacata - Second Appeal filed by LRs of 1st defendant is barred by res judicate u/Sec.11 of CPC, since no appeal has been preferred against decree and judgment passed by 1st appellate Court in A.S.No.389 cofirming judgment and decree passed by trial Court which became final - Therefore present second appeal itself is not maintainable - Hence, dismissed. **Sunanda Devi (died) Per LRs 2 to 4 Vs. Parvathi Bai, 2012(1) Law Summary 170 = 2012(3) ALD 449 = 2013(3) ALT 104.**

—Sec.11 and Or.II, Rule 2 - Appellants/defendants availed loan from respondent/ plaintiff bank for poultry business by executing registered mortgage deed - As defendants failed to pay amount plaintiff filed suit and obtained preliminary decree - Trial Court dismissed petition filed by plaintiff with delay condonation petition for passing final decree holding that petition not maintainable - Since there is no final decree, relationship between mortgagor and mortgagee subsists and therefore plaintiff is entitled to institute suit - Appellant/defendants contend that when earlier application was dismissed it amounts to a finality of rights of parties, suit is barred by time under Or.2, Rule 2 and in view of order on I.A which was dismissed on merits, plaintiff/bank is debarred from instituting suit and that as there is no cause of action earlier dismissal of final decree petition operates *res judicata*, suit debt is abated - Rights of mortgagor and mortgagee are co-extensive with regard to redemption or for foreclosure and principles does not differ - SCOPE OF SEC.11 AND OR.II, RULE 2 CPC - Stated - Where liability under mortgage deed has not been discharged, fact that an earlier decree was obtained would not preclude mortgagee/mortgagor from instituting a second suit for relief - If right of redemption is not extinguished, successive suits for enforcing that right can be filed - Contention raised by appellant cannot be accepted and suit is not barred either on principles of res judicata or under Or.II, Rule 2 since rights under mortgage are not extinguished and suit is within time - Appeal, dismissed. **Gummuluru Sansyasinaidu Vs. State Bank of India, 2011(2) Law Summary (A.P.) 220.**

–Sec.11, Order 7, Rule 11(d) – Rejection of plaint on the plea of res judicata – Suit was filed for cancellation of decree in earlier suit on the ground of fraud and collusion by third party to the earlier suit - Plaintiff filed objections to EP in earlier suit unsuccessfully – High Court applied principle of res judicata considering the allegations of written statement – Plea of res judicata requires full pledge trial - Not correct to reject the plaint without trial - Apex court allowed the appeal. **Vaish Aggarwal Panchayat Vs. Inder Kumar 2015(3) Law Summary (S.C.) 15 = 2015(6) ALD 1 (SC) = 2015 AIR SCW 5079 = AIR 2015 SC 3357.**

—Sec.11 & Or.9, Rule 9 - “Dismissal of suit for default” - “Res judicata” - Trial Court dismissed suit for default on technical ground in which State was not a party - Another

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suit where State was a party and amendments were made, was dismissed for non-prosecution, but same was not dismissed under Or.8, Rule 9 - Dismissal of suit for non prosecution is not a decision on merit and consequently said order cannot operate as Res judicata. **State of U.P. Vs. Jagdish Saran Agrawal 2009(1) Law Summary (S.C.) 29 = 2009(4) ALD 123(SC) = 2009(1) Supreme 28.**

—Secs.16 to 21- "Pecuniary and territorial jurisdiction of Court" - Appellant/plaintiff entered into contract with D1 at Mumbai for errection of Mill at Murbad, State of Maharashtra - Plaintiff gave Bank Guarantee, through D2, Bank towards mobilisation advance paid by D1 - Since work allegedly abandoned before completion contract stood terminated - Plaintiff filed suit before Civil Court, Hyderabad for declaration and injunction restraining D1 from invoking B.G contending that delay caused by D1 in not giving site and drawings in time and not supplying power as per terms of contract - D1 opposed suit contending that contract executed at Bombay and Court at Hyderabad has no jurisdiction and that cause of action or part of cause of action did not arise at Hyderabad and that as per Cl.66 of contract, only Courts at Bombay have jurisdiction - Trial Court ordered to return plaint to be presented to proper territorial Court - Indisputably that contract was signed at Bombay and work is to be executed at Murabad - Sec.20(a) & (b) of CPC would oust jurisdiction of Courts at Hyderabad - *Any agreement between parties to contract cannot validly take away* jurisdiction possessed by Court, though ouster clause can operate as estoppel against parties to contract - But if more than one Court has jurisdiction under statute it is always open to parties to agree to jurisdiction of one Court to exclusion of other - Where two courts are more have under CPC jurisdiction to try a suit or proceeding an agreement between parties that dispute between them shall be tried in one of such Courts is not contrary to public policy - Such an agreement does not contravene Sec.28 of Contract - In view of Cl.66 of contract r/w relevant Appendix to Tender, parties agreed to oust jurisdiction of Hyderabad Courts and submit only to Bombay Courts - Even if BG is distinct and independent contract among plaintiff and D1 & D2, it is only Bombay Courts which have jurisdiction as agreed by parties - CMA, dismissed. **I.V.R.Constructions Ltd. Vs. Technocraft Industries India Ltd., 2010(1) Law Summary (A.P.) 61 = 2010(1) ALD 630 = 2010(2) ALT 239.**

—-Sec.20 - According to petitioner, as acceptance of contract made by respondents was received by him at Malkajgiri, Court at Malkajgiri has territorial jurisdiction - Lower Court while returning plaint has observed that ingredients of Section 20 of Civil Procedure Code are not satisfied as place of work or business of respondents does not fall within its jurisdiction or that property in respect of which contract has been executed is also not situated within its jurisdiction.

Held, Suit is filed for recovery of money under a contract entered into by the petitioner with respondent - Thus, cause of action pertains to making of a contract - As noted above, though, an after thought, it is pleaded case of petitioner that

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contract accepted by respondent was received by him at Malkajgiri - Settled legal position is that if filing of suit is based on making of a contract, cause of action arises at place where offer is accepted and if suit is based on termination of a contract, cause of action arises at place where such termination order is received - Admittedly, suit is based on making of a contract and not on termination of the contract - Offer of petitioner was accepted at Pargi and contract was made at Pargi - It is also not in dispute that contract work is executed within jurisdiction of Court at Pargi - Consequently, it is only Court at Pargi which has jurisdiction.

As no part of cause of action had arisen within jurisdiction of Court at Malkajgiri, the said Court has no jurisdiction to entertain the suit filed by petitioner - For above mentioned reasons, this Court do not find any merit in this Civil Revision Petition and same is, accordingly, dismissed. **K.Jitender Das Vs. Executive Engineer, RWS & S Division, Pargi 2016(1) Law Summary (A.P.) 129.**

—Sec.20 and Or.7, Rule 10 - "Cause of action" - "Territorial jurisdiction" - Appellant/plaintiff filed suit for maintenance and for recovery of arrears of maintenance against respondent/defendant at place where cause of action arose, since marriage had been celebrated at said place - Trial Judge returning plaint for presentation to appropriate Court - Court within jurisdiction of which part of cause of action arises can entertain a suit and convenience of defendants is not a matter to decide Court's jurisdiction - In this case, since part of cause of action arose at a place where marriage was celebrated, it can be said that said suit can be instituted at that place - Impugned order unsustainable - CMA, allowed. **Dr.Kollipara Bhargavi Vs. Dr.Lt. Col. Kollipara Ravi Kanth 2009(2) Law Summary (A.P.) 71 = 2009(4) ALD 212.**

—Sec.20 and Or.14, Rule (ii) (a) - "Territorial jurisdiction" - Respondent filed suit against petitioner/T.T.D to recover certain amount towards supply of Art Paper Material - Petitioner/T.T.D filed written-statement, apart denying its liability to pay amount and also filed application raising objection as to territorial jurisdiction - Trial Court dismissed said application - Petitioner/T.T.D contends that tender notice was issued from office of Tirumala Tirupati Devastanms and its administrative office exists at that place and that there was absolutely no basis for respondent to file suit in a Court at Hyderabad and that contract was also concluded at Tirupati and material was supplied to that place - Respondent/plaintiffs contend that, in order of acceptance, petitioner/Devastanams themselves have mentioned that dispute shall be subject to Hyderabad jurisdiction, and it is not at all open to them to raise objection as to territorial jurisdiction when suit filed at Hyderabad - According to petitioner, no part of cause of action has arisen within limits of trial Court at Hyderabad - Admittedly tender notice was issued from Tirupati and material was supplied to that place and payments for supply of material were made by office at Tirupati - It is only when contract itself provides that material must be supplied from particular place that cause of action can be said to have arisen there - In absence of such stipulation place of origination of material

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does not become relevant, to decide forum, for institution of proceedings - Jurisdiction of Courts is to be decided by relevant provisions of law and not by agreement between parties - Parties cannot by their mutual consent, confer jurisdiction on a Court, which otherwise does not have it - Similarly, they cannot take away jurisdiction of a Court by their mutual consent - Their freedom to contract is only to agree upon one of Courts, where more Courts, than one, have jurisdiction - Clause contained in correspondence between parties providing for adjudication of disputes in Courts at Hyderabad, would have become valid, if only Court at that place also had jurisdiction u/Sec.20 CPC - Unless one mentioned in contract was one of courts, in which suit could otherwise have been instituted, ouster clause, by itself, does not confer jurisdiction on such Court - Impugned order, set aside - Trial Court directed to return plaint for presenting before Court, having territorial jurisdiction - C.R.P., allowed. **T.T.D. Tirupati rep. by its E.O.,Vs. M/s.Shree Distributors 2010(3) Law Summary (A.P.) 201.**

—-Sec.20(c) - Suit filed by plaintiff against defendants is to pass a decree in favour of plaintiff for Rs.3,50,00,000/-towards damages, together with interest thereon @ 18% per annum from date of suit till realization with costs and to grant such other just reliefs - Defendants having been served in suit after plaint was numbered and summons ordered by trial Court-cum-Principal District Judge, - The 2nd defendant filed two applications, amongst one is under Order VII Rule 11-A CPC to reject plaint in so far as against the 2nd defendant with exemplary costs alleging there is no cause of action from reading of plaint, besides suit claim is with ulterior motive and malafide intention to have wrongful gain and with false allegations in approaching Court also with unclean hands to the prejudice of 2nd defendant, in particular, to cause monitory loss if any and to tarnish reputation - Other application is filed under Order I Rule 9 CPC to strike out or delete name of 2nd defendant from array of plaint supra in saying it is outcome of mis-joinder of 2nd defendant with no privity of contract between petitioner and 2nd defendant and suit claim is of speculative effort to cause monitory loss and ill-reputation to 2nd defendant - It is pursuant to the said contest, both petitions by impugned common order were dismissed by trial Court.

Held, revision petitioners in their applications for rejection of plaint are alleged misjoinder and seeking to delete 2nd defendant from array did not explain what made them to have email correspondence with plaintiff and other team members by 2nd defendant on behalf of 1st defendant.

No doubt they can set out their defence by filing written statement and so far as rejection of plaint concerned, as law is very clear where there is no existence of cause of action, plaint is liable to be rejected from reading of plaint averments - When above averments show link between defendant Nos.1 to 3 and averments made in plaint show cause of action at least in part so far as 2nd defendant, it cannot be said plaint is liable to be rejected at threshold in particular against the 2nd defendant or even not entitled to say 2nd defendant is without any basis, wrongly impleaded or there is mis-joinder and requires deletion of 2nd defendant from array

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of defendants in suit - Thus, it all depends upon facts of case and it is for defendant Nos.1 & 2 to explain their inter se relation and without which what made to have been correspondence with plaintiff and other team members.

It clearly indicates from plaint averments prima facie of 1st defendant is practically a branch of 2nd defendant and both are not independent companies and once such is the case, there is cause of action against 2nd defendant also from plaint averments - It is in fact if at all defendants dispute and demonstrate their status is not like a branch office or head office and both are independent and one is not responsible for acts and business of other, they have to demonstrate same as part of their contest by filing written statement for considering disputed claims by adjudication and it is premature to go into that when plaint averments show inter-link between defendant Nos.1 & 2.

Thus, it all depends upon facts that it requires to be demonstrated as part of defence of defendants to decide and it is not a case for rejection of plaint or to delete array of 2nd defendant thereby - Accordingly, though lower Court orders is not with such details, for this Court while sitting in revision against order, there is nothing to interfere for same otherwise sustain on its result conclusion.

Accordingly and in result, both revision petitions are dismissed - However, it is made clear that dismissal of revision petitions no way influence mind of trial Court in deciding lis before it nor takes away any defence of defendants by filing written statement to plaintiff's suit claim to hear and formulate issues pursuant to same to decide lis and if necessary to seek for deciding any issue as a preliminary issue. **Convergys Corporation Vs. Sreenivasulu Ruttala 2016(3) Law Summary (A.P.) 148 = 2016(5) ALD 628.**

—-Sec.21 - **A.P. COURT FEE AND SUIT VALUATION ACT,** Secs.4 and 5 - Plaintiff filed this Petition, under Article 227 of Constitution of India, against order of Senior Civil Judge passed in I.A. filed by defendants/respondents herein under Section 21 of Code of Civil Procedure requesting to decide pecuniary limits of suit claim and jurisdiction of Court to entertain suit after considering market value certificates issued by the Sub-Registrar in respect of suit schedule property.

As per plaintiff, plaint schedule property was classified as dry land and defendants had obtained valuation certificates, showing property as residential property - Further, they have sought for value of property on Square Yard basis - Plaintiff had obtained valuation certificate in respect of property on basis of acreage as property was classified as a dry land and defendants are not having any tenable defence.

Defendants' alleged that suppressing real value of properties, plaintiff had played fraud on Court - In view of real value of property as mentioned in certificates issued by competent authority, Court is not having jurisdiction to entertain and try suit.

On merits, trial Court had allowed petition of defendants and had observed in operative portion of its order that plaintiff has to file suit before proper Court on payment of required Court fee - Aggrieved of said orders, plaintiff is before this Court.

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Held, therefore, issues in regard to correctness of valuation of properties and reliefs claimed and correctness of Court fee paid on reliefs claimed, which are complex issues of fact and law, cannot be prejudged unless core questions which are adverted to supra are decided on merits after full-fledged trial - Therefore, question of ignoring certificates produced by plaintiff and accepting contents of certificates produced by defendants at this interlocutory stage does not arise for consideration, in light of findings supra - Further, provisions of Sections 4 and 5 of the A.P. Court Fee and Suit Valuation Act, which are complementary and which are not in conflict with Order VII Rule 11 of Code of Civil Procedure, empower Court to examine at any time correctness of valuation of reliefs claimed and sufficiency or otherwise of court fee paid and further empower Court to demand deficiency in Court fee at any stage - Therefore, said questions raised by defendants in this interlocutory application have to be necessarily adjudged only after full-fledged trial and not in the instant interlocutory application filed by the defendants.

Hence, this Court is of considered view that it would be appropriate to direct trial Court to frame an issue in regard to correctness of valuation of reliefs claimed and Court fee paid thereon and decide it at appropriate stage in case defendants raise such a defence in their written statement to be filed by them - Viewed thus, this Court finds that order passed at a preliminary stage without giving opportunity to parties to enter trial is unsustainable and warrants interference.

In result, Civil Revision Petition is allowed and order impugned in revision is set aside giving liberty to defendants to raise issue in regard to correctness of valuation of reliefs claimed in suit and sufficiency or otherwise of Court fee in written statement to be filed before trial Court, **Vemula Chinnamma @ Chinnammai Vs. Battula China Kannaiah 2016(2) Law Summary (A.P.) 319 = 2016(5) ALD 221 = 2016(4) ALT 592.**

—Sec.24 - Title of the property in a suit for injunction should be decided for a limited purpose of consideration of granting decree, whereas the title in a suit for declaration should be decided finally based on evidence - Reliefs in both the suits cannot be held to be identical - Lower Court erred in ordering to transfer one suit and to be tried along with other suit - Accordingly, the order of lower court is set aside and both the suits shall be tried independently and can be disposed of by respective courts where they are pending. **Muthe Rajesham Vs. Bakam Lingaiah 2015(1) Law Summary (A.P.) 6 = 2015(1) ALD 448 = 2015(3) ALT 322.**

—Secs.24,24(3) (a) & 2(4) - A.P. CIVIL COURTS ACT, 1972, Secs.3,2,4,4(1),5,10 and 11(2) - “Power of transfer and withdrawal of suit” - Principal District Judge passed order transferring suit from VIIth Addl. District Judge to II Addl. District Judge - Petitioner contends that general power of transfer and withdrawal u/Sec.24 of CPC vested in District Court can be exercised in respect of any suit, appeal, or other proceedings pending in any Court subordinate to it and not in respect of a matter pending in

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Court of Addl. District Judge which is not a subordinate Court to District Court - On combined reading of Secs.10 & 11, it follows that there is only one District Judge for each District and there may be one or more Addl. District Judges functioning in same District and that both District Judge as well as the Addl. District Judges perform same functions and that Addl. District Judges exercise same powers of District Judge in respect of matters that may be assigned to Addl District Judge, by District Judge - In context of occurrence of phrase "Addl. District Judges" in Sec.24(3)(a) CPC, said phrase cannot be interpreted as "Addl. District Judges" - Sec.24(3)(a) of CPC speaks about Assistant Judges also alongwith Addl. District Judges - It can be no body's case that there are any judges termed as Asst. District Judges - Additional Judges and Assistant Judges referred in Sec.24(3)(a) are those Judges who worked with said nomenclature in City Civil Court Unit - When neither Addl. Judge nor Assistant Judge is having status of District Judge and when Addl. Judge and Assistant Judge are in fact inferior to District Judge who is named as Chief Judge in City Civil Court Unit prior to Act 29 of 1997, question of further deeming as Addl. Judge and Asst. Judge subordinate to District Court may not arise - Phrase "Addl. District Judge" contained in Sec.24(3)(a) CPC cannot be construed as "Addl. District Judge" - In all propriety, application u/Sec.24 CPC should have been filed before High Court and not before District Court for transfer of a suit pending in Addl. District Court to another Addl. District Court, as Principal District Judge working in a District has no jurisdiction to entertain such transfer petition u/Sec.24 CPC - Order passed by Prl. District Judge, set aside - Revision petition, allowed. **Manchukonda Venkata Jagannadham Vs. Chettipalli Bullamma, 2011(1) Law Summary (A.P.) 317 = 2011(3) ALD 354 = AIR 2011 AP 104.**

—Sec.24, and 24(3)(a) - A.P. CIVIL COURT ACT, 1972, Sec.11 and Sec.2(4), (3) - "Power" of transfer and withdrawal of cases - Petitioner filed Application before High Court for transfer of suit on file of 2nd Addl.Chief Judge, City Civil Court, Hyderabad to Court of Chief Judge, City Civil Court as connected two suits are pending on file of Chief Judge - When High Court questioned as to why application is filed before High Court, when remedy u/sec.24 of CPC, can be availed before Chief Judge, petitioner contends that in view of decision of High Court in Manchukonda VENKATA JAGANNADHAM'S case, said transfer Application is not being entertained and consequently it has become a bar **-** Purpose of procedural law is for convenience of parties and Court and it is always aimed at speedy and less expensive remedy to parties and that any effort to interpret procedural law should be necessarily with object of interest of parties unless there is any mandatory prohibition for exercise of any power and that more importance has to be given to provisions of CPC rather than provisions of Act, if they are not in conflict or in exclusion - Sec.3 of CPC unambiguously shows that every civil Court which is inferior in grade is subordinate to District Court, thereby Sr.Civil Judges, Jr.Civil Judges, who are inferior in grade to Court of District Judge or subordinate and it is mentioned u/Sec.24(3)(a) of CPC

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that additional and Asst.Judges are subordinate to District Judge - U/Sec.24(1)(a) CPC, District Court at any stage can transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of same or (b) with draw any suit, appeal or other proceeding in any Court subordinate to it - Therefore power that can be exercised by District Judge, includes power of transfer from his Court and power of withdrawal to his Court - Evidently, suits or appeals which are triable by District Judge cannot be transferred to inferior Court like Sr.Civil Judge or Jr.Civil Judge - Legislature has purposefully stated u/sec.24(3)(a) of CPC that Additional and Asst. Judges are subordinate to District Judge, and it is evidently for purpose of including Addl.District Judges or Addl.Judges of any cadre and if such a power is not from District Judge, then purpose of Sec.24(1)(a) and 24(c) will be lost - Under A.P. Civil Courts Act, it is power of District Judge, to allot work and thereafter only Addl. District Judge can dispose of case, with all powers as District Judge, and in fact, appointment of Addl., District Judges or any Addl. Judges is only in cases where requirement of parties pending in District Court is taken into consideration u/sec.11 of A.P. Civil Courts Act - If District Judge has no power to entertain transfer Application, difficulties of litigants will be many - Therefore purpose of power u/Sec.24 CPC. conferred on District Judge, is for benefit of litigants and this power is consistent with power to distribute work by District Judge and even if Application is not filed, District Judge, can suo motu exercises this power and it is evidently meant for cause of justice and not for delays or difficulties to litigants - Sec.24 clearly shows that by fact, power of transfer inherent with power of assignment of work - Therefore power of transfer vested in District Judge cannot be curtailed by restricted meaning when intention and purpose of same is for convenience of all - Application for transfer has to be moved before District Judge, who is competent to entertain and petitioner is at liberty to file Application before Chief Judge, City Civil Court and Chief Judge shall dispose of same according to law. **T.Niranjan Vs. Ch.Ramesh Chander Reddy, 2012(3) Law Summary (A.P.) 267 = 2013(2) ALD 350 = 2013(3) ALT 150.**

——Sec.24(1) - Regarding Transfer petitions, there was a conflict of opinion between two benches of co-ordinate jurisdiction and hence learned single Judge before whom the present transfer petitions came up for hearing has referred the matter to the Division Bench.

Held, an order of transfer being not a judgment, it must also be noted that in a petition for transfer of a case from one court to another, no order or decision of the subordinate court is called in question - It is only when decision or order of a court is called in question before another court, former should be subordinate to latter, in terms of judicial hierarchy - This is why Sec.3 of code carefully uses the expression "of a grade inferior" - Therefore, in the light of the foregoing discussion, this Court of the considered view that the Principal District Judge would have power to withdraw a suit, appeal or other proceeding pending on file of one Additional District

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Judge and transfer same to file of another District Judge – This Court may also clarify that general power of withdrawal and transfer is available to High Court as well as District Court concurrently as indicated by the Supreme Court in Kuluvinder Kaur V. Kandi Friends Education Trust - Therefore, availability of power for Principal District Court to another, does not operate as a bar for the High Court to exercise jurisdiction - Only ground on which petitioners seek transfer is that Additional Fast Track Court Judge had dismissed 45 appeals in a span of three days - This cannot be a ground for an apprehension, much less a reasonable apprehension, that petitioners may not get justice - When Courts, which move at a snail's pace are ridiculed, this Court do not know how Courts that proceed on fast track could also be condemned - These petitions are completely devoid of merits - Therefore, they are dismissed. **Tadikonda Surya Venkata Satyanarayana Murthy Vs. T.Seethamahalakshmi 2016(2) Law Summary (A.P.) 417 = 2016(5) ALD 482.**

—Sec.31 r/w Sec.151 - "Summons to witness" - Respondent filed suit for recovery of certain amount - Trial of suit commenced and plaintiffs evidence recorded - Petitioner/ defendant deposed as D.W.1 and filed affidavit in lieu of chief examination of D.W.2 was filed - Trial Court dismissed I.A filed by petitioner u/Sec.31 to issue summons to D.W.2. - Petitioner contends that though D.W.2 agree to depose as witness, he refused to cooperative after filing affidavit in lieu of chief examination and that trial Court has ample power to summon such witness - Where a party, whether plaintiff or defendant, has secured presence of a witness by himself but is not able to ensure his presence subsequently, Sec.31 of C.P.C has no application - Taking out summons to such witnesses would amount almost to a hybrid exercise, since presence of witness is partly procured by party himself and for remaining part he seeks assistance of Court - Same is impermissible in law - View taken by trial Court - Justified - CRP, dismissed. **Chukka Ramaiah Vs. Chejuru Bujjaiah 2010(3) Law Summary (A.P.) 53 = 2010(5) ALD 72 = 2010(5) ALT 95.**

—Secs.33 & 47 - Respondents/employees of, Electricity Board filed suit for recovery of their higher scale and obtained decree which attained finality - Hence filed execution petition - Appellants, Board filed objections contending that mere declaratory relief having been passed in favour of decree-holder they were not entitled to arrears of pay - Said objection was dismissed - A decree as is well known, should ordinarily be confined to prayer made in plaint - Respondents herein not only prayed for declaration in regard to their entitlement to receive a higher scale of pay but also for decree of mandatory injunction in their favour directing them to release/pay said higher scales of pay - It is incumbent upon JDR to show that decree was *ex facie* nullity - For that purpose Court is precluded from making an indepth scrutiny as regards entitlement of plaintiff with reference to not only his claim made in plaint but also defence set up by JDR - It is also well-known that Executing Court cannot go behind decree - It has no jurisdiction to modify decree - Executing Court shall execute decree as

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it is - Appeal, dismissed. **Haryana Vidyut, Parsaran Nigam Ltd., Vs. Gulshan Lal 2009(2) Law Summary (S.C.) 185 = 2009(5) ALD 52(SC) = 2009(5) Supreme 401 = 2009 AIR SCW 5739.**

—Sec.34 - Appellant/Bank instituted suit for recovery of certain amount together with interest at 14% per annum with quarterly rests - While suit pending trial respondent/ defendant paid major portion of loan amount - Trial Court passed preliminary decree for balance amount with proportionate costs granting interest at 6% per annum simple from date of suit till date of realization - Hence present appeal filed by Bank questioning granting of interest at 6% per annum simple onbalance amount from date of suit till date of realization - Appellant Bank filed present appeal questioning only granting of interest at 6%per annum and according to appellant/Bank trial Court ought to have granted subsequent interest at 14% per annum which is contractual rate - A bare reading of proviso to Sec.34 does not indicate that it is mandatory for Court to award interest at contract rate in each and every liability arising out of commercial transaction - Therefore grant of further interest even in relation to commercial transactions is left to discretion of Court but discretion has to be properly exercised - In this case, respondents are petty business men and sustained loss in business and inspite of same they repaid major part of loan amount during pendency of suit and subsequently remaining amount also as per preliminary decree passed by trial Court - Hence granting of further interest on balance amount at 6% per annum by trial Court is perfectly justified - Decree and judgment of trial Court confirmed - Appeal, dismissed.**State Bank of India, Bazarghat Branch Vs. S.H. Associates 2011(2) Law Summary (A.P.) 146 = 2011(4) ALD 299 = 2011(4) ALT 230.**

—Sec.34 - INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDER-TAKINGS ACT, Secs.1,3,4,5 & 10 - Respondent/plaintiff filed suit for recovery of certain amount with interest @ 24% - Suit decreed with interest @ 18% per annum - 1st appellate Court dismissed appeal filed by appellant/ defendant and allowed Cross-objections filed by respondent/plaintiff, modifying decree, enhancing interest @ 23%with monthly rest - In second appeal, single Judge of High Court modified decree of trial Court to extent that respondent/plaintiff would be entitled to recover interest @ 18% per annum with monthly rest - In this case, in plaint interest claimed @ 18% per annum but later on trial Court allowed amendment sought, in view of Act came into force w.e.f 23-9-1992 - Trial Court should not have been allowed amendment. as said provisions of Act are not applicable to facts and circumstances of present case and appellant is entitled to interest in accordance with provisions of Sec.34 of CPC and not in accordance with provisions of Act and interest is to be awarded at reasonable rate on principal amount - Interest can be awarded in terms of an agreement on statutory provisions and it can also be awarded by reason of usage or trade having force of law on equitable considerations but same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor for which a written demand is mandatory - High Court not justified in granting interest @

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18%per annum with monthly interest - In present case, pendente lite and future interest @9% shall be paid. **Rampur Fertiliser Ltd. Vs. M/s. Vigyan Chemicals Industries 2009(1) Law Summary (S.C.) 113 = 2009(3) ALD 99 (SC) = 2009(2) Supreme 295.**

—Sec.34 - **NEGOTIABLE INSTRUMENTS ACT,** Sec.79 - Suit filed for recovery of money - Trial Court decreed suit along with specified interest @ 24% per annum - Appellate Court having concurred with judgment of trial Court only modified to extent of reducing rate of interest from 24% to 12% per annum - Appellant contends that as per Sec.79 of N.I Act rate of interest shall be as originally prescribed in suit promissory note and Courts cannot interfere with terms of contract - Wide powers have been conferred on Courts to vary rate of interest from time to time from date of institution of suit - Court has no jurisdiction to vary rate of interest originally prescribed for period before institution of suit but has discretion after institution of suit - In fact Sec.79 of N.I Act does not run in conflict with Sec.34 of C.P.C, in as much as, even u/Sec.79 of N.I Act, power has been conferred on Court to vary rate of interest as pointed out from date of institution of suit - When legal position is clear, only on ground that reasons are not accorded, judgment and decree passed by lower appellate Court with modification of judgment and decree of trial Court need not be set aside - Second appeal, dismissed. **Cheedey Vamsi Priya Vs. Paritala Babu2010(3) Law Summary (A.P.) 39 = 2010(5) ALD 569 = 2010(6) ALT 89.**

—Sec.35-B and Or.17, Rule 1 - "Costs for causing delay" - Appellant/plaintiff filed suit for damages against his employer - Trial Court dismissed suit for failure to pay costs inspite of several opportunities - High Court dismissed Appeal and upheld decision of trial Court, holding that provisions of Sec.35B were mandatory and if costs levied are not paid "the only course open to Court is to disallow the prosecution of the suit" and, that meant dismissal of suit - Appellant contends that having regard to provisions of Sec.35B CPC, if costs levied on plaintiff are not paid Court can only stop further prosecution of suit by plaintiff and that Sec.35B does not confer power to dismiss suit for non- payment of costs - Judgments of High Court and trial Court, set aside, restore suit to its file - Appeals, allowed. **Manohar Singh Vs. D.S. Sharma 2009(3) Law Summary (S.C.) 200 = 2010(1) Law Summary (S.C.) 72 = 2009(6) ALD 152 (SC) = 2009(7) Supreme 357 = 2009 AIR SCW 7065.**

—Sec.39 (1) (2) & (4) & Or.21, R.48 - 'Transfer of decree' - Attachment of salary of Govt., servant - DHR filing EP in same Court which passed decree for realization of decretal amount by way of attachment of salary of J.Dr - Court ordered attachment of salary - Petitioner/J.Dr contends that EP is not maintainable as he is working in some other District and that execution proceedings ought to have been taken only after transfer of decree - Respondent/D.Hr contends that there is no need for transfer of decree to District in which J.Dr is working for purpose of attachment of salary - Or.21, Rule 48 (1) is very clear that so far as attachment of salary is concerned, Court which passed decree may also order attachment of salary of J.Dr who is working outside jurisdiction of that Court also and Court can order attachment where J.Dr or Disbursing Officer is or is not

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within local limits of jurisdiction - ".....Sec.39 does not authorise Court to execute decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance of conditions stipulated in those provisions. Thus, the provisions, such as Or.21, R.3 or Or.21, R.48 which provide differently, would not be effected by Sec.34 of the Code" - No need to transfer decree to local jurisdiction of Court in which J.Dr is working for purpose of attachment of salary - CRP, dismissed. **Janapati Jaipal Reddy Vs. Sannihita Chit Funds Pvt. Ltd., 2008(2) Law Summary (A.P.) 315 = 2008(4) ALD 735 = 2008(5) ALT 17.**

—Sec.47 - 1st respondent filed suit for recovery of certain amount against respondents 1 to 4 and petitioner - 2nd respondent is prized subscriber of chit transaction - Respondents 3 to 5 are sureties - Suit decreed - 1st respondent filed E.P for grant of attachment against immovable properties of petitioner/4th JDR - Petitioner filed E.A u/Sec.47 CPC with a prayer to decide as to whether it is competent for 1st respondent to claim relief against petitioner alone, without claiming any relief against principal debtor and other JDRs - Executing Court dismissed EA - Hence present revision **-** Petitioner contends that decree holder is required to proceed against all JDRs and that occasion for 1st respondent to proceed against sureties would arise, if only, steps taken by it against 2nd respondent did not fructify - View taken by trial Court, unsustainable - 1st respondent contends that he is entitled in law to maintain EP and that once decree is joint and several, in nature, 1st respondent has every right to proceed against any of judgment debtors - In this case, basic obligation to pay decretal amount is with prized subscriber - In case, 1st respondent finds any difficulty in recovering amount from 2nd respondent, it can certainly take steps against other judgment debtors - An effort such as such must be made against principal debtor - Proceedings against one of guarantors, keeping aside principal debtor and other sureties, would certainly gives scope for collusion between DHR on one hand and some of JDRs on other - Only legal consequences of liability being joint and several that discharge by one of them, would enure to benefit of others - Determination in this behalf, however, must take place in presence of all - If other JDRs are omitted from array of parties in EP one who is singled out and proceeded against would face handicap in context of pleading satisfaction of decree by others or collusion among other parties - Steps taken by 1st respondent/plaintiff/DHR to proceed against petitioner alone cannot be sustained - If it is otherwise permissible in law, he has to either file a fresh EP, against all JDRs or to take steps to ensure that EP is directed against all JDRs - CRP, allowed. **Jaichand T.Gangwal Vs. Sriram Chits Pvt. Ltd. 2013(2) Law Summary (A.P.) 260 = 2013(5) ALD 425.**

—Secs.47 and Explanations 5 & 7 of Sec.11 and Or.2, Rule 2 - Petitioner/JDR filed suit for specific performance of agreement of sale and subsequently got plaint amended by including prayer for recovery of possession as well - Trial Court passed decree in favour of respondedent for specific perfrmance of agreement of sale without

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reference to prayer for recovery of possession - Executing Court allowed execution petition and executed sale deed as petitioner failed to come forward to execute same - Petitioner contends that in absence of passing of decree for delivery of possession though such a prayer was specifically sought for, claim of respondent for delivery of possession is hit by provisions of Explanations V & VII to Sec.11 and also Or.2, Rule 2 - Respondent contends that petitioner failed to raise pleas in his E.A which is substantative in nature - Petitioner having suffered decree which received affirmation by High Court and Supreme Court is not entitled to raise pleas in civil revision petition filed against order, having not raised such plea his in substantative petition filed to dismiss execution petition - Any relief claimed under Explanation V to Sec.11 in plaint, which is not expressly granted by decree, for purpose of Sec.11 shall be deemed to have been refused - Explanation VII extended provisions of Sec.11 to a proceeding for execution of decre as well - Admittedly, respondent's prayer for granting decree for recovery of possession has not been specifically granted - Ordinarily therefore provisions of Expanation V r/w Explanation VII would have been attracted to case on hand - Equitable jurisdiction cannot be extended to petitioner, more so, when he has failed to raise above grounds in a substantative petition filed for dismissing execution petition - Further, where law is one side, and equity and justice on other, Court which exercises discretionary jurisdiction always leans in favour of latter, lest injustice will be perpetrated on those in whose favour equity and justice lie - Revisions petitions, dismissed. **Kalivarapu Lakshmi Kumari Vs. Burada Appalanaidu, 2011(2) Law Summary (A.P.) 136 = 2011(1) Law Summary (A.P.) 310 = 2011(3) ALD 577 = 2011(3) ALT 517.**

—Secs.47 & 152 - It is unexceptionable that a Court executing a decree cannot go behind a decree; it must take decree according to its tenor; has no jurisdiction to widen its scope and is required to execute decree as made - However when specific issue regarding identity of JDR has been raised and entertained by High Court in Revision and remitted matter to executing Court directing enquiry, executing Court had no option but to determiner question of identity of JDR because of direction of High Court - No objection to jurisdiction of Executing Court to determine issue could or was raised - Sec.152 CPC - Power of Court under said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission - There cannot be re consideration of merits of matter - Judicial propriety and decorum requires that if a single Judge hearing a matter, feels that earlier decision of a single Judge needs reconsideration, he should not embark upon enquiry, sitting as Single Judge, but should refer matter to a larger Bench - Regrettably, in present case, Single Judge departed from said healthy principle and chose to re-examine same question himself - Impugned judgment of High Court, set aside - Appeal, allowed. **Century Textiles Industries Ltd., Vs. Deepak Jain 2009(2) Law Summary (S.C.) 23 = 2009(3) ALD 43(SC) = 2009(3) Supreme 93.**

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—Sec.47 & Or.21, Rules 22 & 32(5) - SPECIFIC RELIEF ACT, Sec.28 - Powers of executing Court - Stated - 1st respondent filed suit for specific performance of agreement of sale - Suit decreed directing petitioners to execute sale deed in favour of 1st respondent in respect of plaint schedule property within three months and if failed to do so, 1st respondent was given liberty to get sale deed executed through due process of law - Admittedly 1st respondent paid part of sale consideration by date institution of suit and balance sale consideration amount remained outstanding - Since 1st respondent died after filing E.P seeking execution of decree his Lrs, 2 to 6 brought on record - Trial Court dismissed Application filed in suit u/Sec.28 of Act seeking rescission of agreement of sale on ground that decree holder failed to deposit balance sale consideration and obtain sale deed within three months period stipulated in decree and that trial Court dismissed said Application and that High Court dismissed CRP, confirming order of trial Court - Petitioner contends that DHR should have deposited balance sale consideration alongwith interest, which was no done and deposited only certain amount which fell far short of actual balance consideration along with interest payable by that date - Executing Court allowed EP itself while passing order in E.A, holding that present DHrs are entitled to get regular sale deed after depositing sale consideration with interest and on such deposit if petitioners failed to execute sale deeds DHrs are given liberty to obtain sale deeds as per law - Hence present revision - In this case, admittedly sale consideration not paid fully by date of institution of suit and that it was only upon direction of Court certain amount deposited in execution proceedings and admittedly balance amount was yet to be paid - U/sec.28 of Act, it is open to DHR to seek enlargement of time for paying purchase money - However no such steps were taken and it was only in 2000, six years after decree, DHR straightaway initiated execution proceedings - Though Sec.28(3) of Act provides for application being made in same suit by purchaser for obtaining specific performance pursuant to decree, Or.21, Rule 32(5) continues to remain on statute book - Therefore E.P for obtaining specific performance pursuant to decree cannot said to be not maintainable - Facts of present case, demonstrate that DHR being bound by a time frame of three months stipulated in decree, failed to pay balance sale consideration and obtain execution of sale deed - When law stipulates a three year limitation for seeking specific performance of agreement of sale it can hardly be accepted that a party who obtained decree for such specific performance can enlarge time for such performance without performing his side of bargain, by merely filing an E.P any time within 12 years from date of such decree - Permitting same would be nothing short of abusing this equitable remedy - POWERS OF EXECUTING COURT - No doubt true that Application filed by petitioners seeking rescission of agreement of sale stood dismissed and was confirmed by High Court in revision - However, same does not bar executing Court from examining all questions relating to execution of decree u/Sec.47 of CPC. - Even if no application is filed seeking rescission of agreement owing failure of DHR, DHR still has to apply by way of an E.P or an Application u/Sec.28(3) of Act for execution of sale deed and it is for executing

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Court to consider whether any relief would be granted in such petition notwithstanding filing of and result in Application, if any, seeking rescission of agreement - In this case, decree in O.S was rendered incapable of execution in light of facts obtaining and application filed by petitioners u/Sec.47 CPC rightly beseeched acceptance - Order passed by executing Court in E.A holding to contrary is liable to be set aside - E.P seeking execution of decree not maintainable - Hence, dismissed - CRP, allowed. **Suggula Venkata Subrahmanyam Vs. Desu Venkata Rama Rao 2010(3) Law Summary (A.P.) 65 = 2010(5) ALD 807 = 2010(5) ALT 791.**

—Sec.47, Or.21, Rules 58,97 & 101 - First respondent filed suit for relief of declaration of title and recovery of possession of suit property - Suit decreed - After decree became final R1 filed EP - Petitioner, daughter of third respondent claiming rights under Will executed by original owner filed suit against respondents with prayer to declare decree obtained by respondent as null and void and not binding on her - Said suit filed by petitioner, dismissed and CMA filed against order in EA also dismissed by District Judge - E.A filed by petitioner in E.P filed by first respondent under Rule 97 of Or.22, with prayer to declare rights vis-a-vis property and to record her objection rejected by executing Court without numbering it - Petitioner contends that a third party to decree has every right to raise objection by filing application under Rule 58, 97 or 99 of Or.21 and executing Court was not justified in numbering application - CPC provides for adjudication of rights of third parties also in same execution proceedings - Necessity to file separate suits for this purpose is obviated - In fact Sec.47 and Rules 58 and 101 of Or.21, CPC prohibit filing of separate suit for this purpose - Under these circumstances entertaining application under Rule 97 of Or.21, would amount scuttling further progress in decree which relief two superior Courts in hierarchy have specifically refused - Having filed a separate suit in a superior Forum petitioner cannot file an application in E.P - A person cannot be permitted to do indirectly what is prohibited from doing directly - Order of executing Court in rejecting application - Justified - CRP, dismissed. **Amkumalla Subhashini Vs. S.Kota Bramaramba, 2011(3) Law Summary (A.P.) 300 = 2012(1) ALD 353 = 2012(1) ALT 117.**

—Sec.47, Or.21, Rule 90 r/w Sec.151, Rule 92 - Executing Court conducting auction of attached property and sale confirmed in favour of auction purchaser by issuing sale certificate - JDR filing EAs seeking to set aside sale on ground of fraud and cancel sale certificate issued in favour of auction purchaser - Executing Court by common order allowed EAs with exemplary costs payable by decree holder to JDR directing for fresh sale - DHR contends since entire sale has been confirmed by issuance of sale certificate which has become final, same cannot be reopened - Auction purchaser contends that once sale certificate was issued by time of filig Application by JDR no proceedings are pending before executing Court and sale has become absolute - Once sale has become absolute, remedy of JDR if any, is only to file an Appeal or Revision - CPC, Sec.47 - Executing Court can go into all questions between

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parties relating to execution, discharge or satisfaction of decree and such a question is a question falling u/Sec.47 - Insertion of this provision is to avoid multiplicity of proceedings by way of separate suit questioning irregularity in sale, issuance of sale certificate and delivery of possession pursuant to sale certificate can be decided by executing Court - All question relating to execution, discharge or satisfaction of decree should be determined by executing Court alone - It is duty of Court to set aside sale on failure to comply mandatory provisions - Since there is an irregularity in conducting sale Or.21, Rule 90 CPC would come into play - Irregularity committed by executing Court extending period for conducting sale, will definitely cause substantial injury to JDR - Order of lower Court in allowing EA setting aside auction and cancelling sale certificate - Justified - Appeals and Revision, dismissed. **J.Malla Reddy Vs. Smt.I.Shantamma 2009(2) Law Summary (A.P.) 349 = 2009(5) ALD 379 = 2009(5) ALT 493.**

—Sec.50 (2) - Execution proceedings against legal representatives of deceased JDR - DHR obtained decree against JDR during his life time - EP filed for attachment of salary of legal representative of deceased JDR - Trial Court ordered attachment of salary of 4th JDR, legal representative of 3rd JDR holding that since 4th JDR inherited job of his father on compassionate grounds, it was treated as property of his father and therefore property is liable to be attachment - In view of Sec.50(2) of CPC, 4th respondent is liable to pay amount to extent of property of deceased/3rd JDR - When attachment of salary of legal representatives is sought for, initial burden is on DHR to prove that he inherited to any property of his father - In absence of that, attachment cannot be ordered - Order of attachment, set aside - CRP, allowed - However, DHR is at liberty to file another EP, if there is sufficient material to show that 4th JDR inherited property of his father. **Bandaru Srinivasa Rao Vs. Sreyobhilashi Chit Funts, Wyra, Khammam 2008(1) Law Summary (A.P.) 189 = 2008(1) ALD 392 = AIR 2008 AP 97.**

—Secs.51 & 60(1) & Or.21, Rules 37 & 38 - DHR filed EP for arrest and detention of JDR in civil prison for realization of decretal amount - Executing Court allowing petition directing petitioner/JDR to pay EP amount within one month failing which warrant of arrest shall be issued - In this case Court gave finding that JDR has sufficient means to pay decretal amount solely basing on Ex.P1, house tax demand extract produced by DHR in support of his plea that JDR owned house - To exercise jurisdiction under Or.21, Rule 37 CPC satisfaction of Court that JDR having means to pay decretal amount, refused or neglected to pay is mandatory - Simple default to discharge decree is not enough, but there must be some element of bad faith beyond mere indifference to pay - It is necessary for Courts to enquire whether property possessed by JDR is income yielding so as to hold that he has sufficient means to pay decretal amount at relevant point of time - In case immovable property possessed by JDR is not yielding income to pay decretal amount, it is for DHR to take recourse to other modes of recovery in execution of decree instead of insisting on arrest of JDR - In absence of such enquiry, it cannot be concluded that JDR has sufficient means to pay decretal amount - Courts are expected to be cautious while making order of arrest in execution of decree since it involves

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personal liberty and it is necessary for Courts whether other modes of recovery are available to DHR and whether it is absolutely necessary to order arrest for recovery of decretal amount - In this case, Court presume that JDR has sufficient means only on basis of house tax demand extract without conducting any enquiry - As such, impugned order of arrest not in conformity with requirements contemplated u/Sec.51, r/w Or.21, R.37 of CPC and hence, set aside - CRP, allowed. **Pandugayala Subbarayadu Vs. Kattamuri Sri Krishna 2008(2) Law Summary (A.P.) 212 = 2008(4) ALD 454 = 2008(4) ALT 417 = 2008(2) APLJ 129.**

—Sec.57 and Or. XXI, Rules. 32 & 37 - Suit file by respondent was dismissed and the respondent preferred appeal and the same was allowed by Additional District Judge - Respondent filed E.P. before trial court seeking arrest of the petitioner herein under Order XXI Rule 37 of the Civil Procedure Code - Petitioner herein remained ex parte - After examining the respondent herein as P.W.1, docket order was passed by the trial court on 10-07-2013, inter alia, to send the J.Dr., to prison for six months for violating the decree granted by 1st Additional District Judge, in A.S. - Present Civil Revision Petition is filed against this order - Held, Rules 30 to 36 of Order XXI come under the heading 'mode of execution' and a reading of them make it clear that civil prison is one of modes of execution of decree for injunction - Hence, contention raised by counsel for the petitioner has no substance - Detention of a party to the civil litigation has a serious consequence and has to be resorted very rarely since it violates human rights - This cannot be done in the absence of any finding as to the violation made by that person - Though provisions exist for detention of a person for violating the decree of injunction, that power has to be exercised cautiously and in rarest of rare cases and only after recording a finding - Trial court had not taken into consideration the provisions of the Code, more particularly Rule 11A of Order XXI and the binding decisions of this court, while passing the impugned order - Trial court had not even recorded a finding justifying the order of arrest - In circumstances, impugned order passed by the learned junior civil judge, is set aside and Civil Revision Petition is allowed. **Kunkuntla Narsimha Vs. Syed Zainulabuddin, 2015(2) Law Summary (A.P.) 18 = 2015(3) ALD 700 = 2015(3) ALT 659.**

—Sec.60 - Petitioner is decree holder of money suit O.S.No.111 of 2013 on file of Junior Civil Judge, filed against respondent-judgment debtor, who is a retired railway Gangman, and petitioner filed EP No.1 of 2014 to recover decretal debt and for attachment under Order 21 Rule 52 of C.P.C. and also to recover amount lying with Andhra Bank, Branch in account of judgment debtor - Learned Junior Civil Judge by order dated 09.07.2015 dismissed application of decree holder saying amount lying in bank account sought for attachment comprising of retirement benefits of judgment debtor including provident fund, gratuity and commutation which are exempted u/Sec.60 (g) and (k) of C.P.C. and thereby cannot be attached much less to withhold and sent for - Now said order is impugned by decree holder by present revision petition with contentions on ground that judgment debtor reached super annuation

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two years back and still he cannot proclaim to get any protection u/Sec.60 (g) and (k) of C.P.C., as funds are merged in common pool in bank account and lost identity and cannot be said therefrom any amount as gratuity or pension or alike and explanation 1 to Section 60 made clear of money payable in relation to matters mentioned in Clauses g, h, i, i(A), j and o are exempt from attachment or sale, either before or after they are actually payable, while they were in the custody of the employer and once funds paid and deposited in bank, they merge in common pool and lost their immunity and thereby the dismissal order of the Execution Petition of the amount not attachable is unsustainable and is liable to be set aside - Held, here it is important to note that, as per order XXI rule 52, under which attachment sought and made covered by impugned order of lower Court and dismissed application ultimately of not entitled, speaks of attachment of any property in custody of Court or before other officer - Bank where amount of judgment debtor is lying is neither in Court nor before officer - It is to say order XXI rule 52 has no application at all but for at best order XXI rule 51 speaks of attachment of negotiable instrument etc., in its wording whether property is negotiable instrument is not disputed in Court nor in the custody of the public officer, attachment shall be made by actual seizure, and instrument shall be brought into Court and held subject to further order of Court - Prayer to be sought is for seizure of FDR - At best invoking order XXI Rule 51 otherwise attachment of order XXI Rule 46 of attachment of debt, share and other property not in possession of judgment debtor it can be said the FDR only lying with judgment debtor and money is invested in bank so far as savings bank account is concerned, S.B.Account with cheque power to withdraw lies with judgment debtor, apart from right of withdrawal by using debit card from an ATM and the amount lying with bank is thereby otherwise to resort under order XXI rule 46 that is applicable if not Rule 51 and not at all Rule 52 - Having regard to above, though impugned order of lower Court of amount is not liable for attachment is unsustainable as not covered by exemptions u/Sec.60 of CPC for what is discussed above, application filed under order XXI Rule 52 is however unsustainable - Subject to above observations revision is disposed of giving liberty to petitioner/decree holder to file fresh application for attachment and recovery of said amount as case may be. **Balavenkatagari Rama Muni Reddy, Vs. K.Fakruddin 2015(3) Law Summary (A.P.) 488.**

—Sec.60 (1)(g)(k)(k-a)& Or.21, Rules 46 & 52 - GRATUITY ACT, 1972, Secs.4 & 13 - Petitioner filed suit for recovery of certain amount and obtained decree - As decretal amount could not be realized, E.P filed for attachment of GPS, LIC and other deposits of late “V” laying in credit of some other suit - Executing Court dismissed E.P holding that said amount is exempted from attachment and unless it reaches hands of JDRs, LRs of late “V” for enjoyment, it cannot be attached - Petitioner contends that as said amount is deposited to credit of a suit, it will not represent retiral benefits of deceased “V” and hence liable for attachment - Gratuities and Provident Fund cannot be attached and they are exempted from attachment - From perusal of explanation 2-A of Sec.60 of CPC it is

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clear that where any sum payable to a Govt. servant is exempt from attachment under provisions of Clauses (kk) & (kkk), such sum shall remain exempt from attachment notwithstanding fact that owing to death of Govt. servant, it is payable to some other person - PAYMENT OF GRATUITY ACT, SECS.4(1) & 13 - A combined reading of Sections, makes it clear that Gratuity which will be paid to an employee on his retirement or resignation; and in case of his death or disablement, due to accident or decease to his nominees, is totally exempted from attachment in execution of any decree of order of any civil, revenue or criminal Courts - Amounts representing Provident Fund and other compulsory deposits, which a Govt. servant is entitled to, are exempted from attachment until they are actually paid to Govt. servant who is entitled to on retirement or otherwise and natures of dues, is not altered - Hence said amount representing gratuity, Provident Fund, Insurance and other deposits of deceased "V" cannot be attached unless same is actually received by judgment debtors - Revision petition, dismissed. **Gudapati Hanumaiah Vs. Y.Lakshminarasamma 2009(1) Law Summary (A.P.) 338 = 2009(3) ALD 330 = 2009(1) APLJ 81 (SN) = 2009(3) ALT 281 = AIR 2009 AP 129.**

—Sec.60 & Or.21, Rule 48(3), r/w Sec.151 CPC - Petitioner/DHR obtained decree against 1st respondent employee of BSNL - Petitioner filed EA for recovery entire EP amount - Executing Court dismissed E.A holding that salary is not debt and executing Court has no power to direct to attach salary of 1st respondent/JDR and recover same through 2nd respondent/garnishee and also held in view of explanation 1 & 2 to Or.21, Rule 48(3), DHR is at liberty to proceed against appropriate Govt., and not against 2nd respondent for recovery of EP amount - Executing Court has completely ignored provisions of Sec.60 CPC and Sub-clause (a) of Cl.(1) of Rule 48 while holding that salary is not a debt and therefore Court has no power to direct its attachment - Cl.1 of Rule 48 of Or.21 is squarely attracted and respondent no.2 being disbursing Officer falls under sub-claue(a) of Cl.1 of Rule 48 - Executing Court completely failed to notice distinction between Govt., company and appropriate Govt., and rejected relief claimed by petitioner obviously on ground that such relief can be claimed only against appropriate Govt., and not against respondent no.2 and this approach is wholly unsustainable and betryas complete non-application of mind - Executing Court is directed to reconsider E.A in light of provisions of Or.21, Rule 48, r/w Sec.60 of CPC and pass appropriate order - CRP, allowed. **Nanduri Satyanarayana Raju Vs. Golla Subba Rao 2011(3) Law Summary (A.P.) 383 = 2012(1) ALD 436 = 2012(2) ALT 260.**

—Sec.73 - "Rateable distribution" - Scope and ambit - Stated - Suit for recovery of certain amount - Senior Civil Judge decreed suit - An item of immovable property got attached before judgment under Or.38, Rule 5 was brought to sale - 1st respondent filed petition at that stage u/Sec.73 stating that he obtained decree against second respondent in Court of Junior Civil Judge and said decrees transmitted from Junior Civil Judge to Senior Civil Judge of that place and thereafter filed E.P and wanted rateable distribution of sale proceeds - Petitioner contends that Application is not

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maintainable on ground that decrees are of different Courts and EP was not filed by time property was sold by executing Court by virtue of attachment - Normally, one comes across instances of decrees being transferred from one place to another place, for effective enforcement of decree - Even where such transfer is made, it would be to Court of same equivalent jurisdiction - Transferring of a decree from Court to another, at same place is some what unknown - In instance case decree passed by Junior Civil Judge at Vizianagaram is said to have been transferred to Court of Senior Civil Judge of same place - Request of "rateable distribution" can be acceded to only when applications are made to same Court for execution of decree for payment of money and that decrees were not satisfied by time assets held by Court are put to sale - It is only after encumbrance is discharged, that remainder of sale proceeds can be distributed among others - There would have been justification for ordering distribution of any amount out of sale proceeds, after decree in favour petitioner is satisfied - Impugned order, set aside - CRP, allowed. **P.Bangaruthalli Vs. Piratla Suryanarayana & Sons 2009(3) Law Summary (A.P.) 49 = 2009(6) ALD 49 = 2009(5) ALT 639.**

—-Sec.73 - "Rateable distribution" - The original suits were filed by the petitioners against respondent No. 2 for recovery of certain amounts - They were decreed in 2001 and in 2002 - E.Ps were filed for execution of decrees by sale of property of respondent No.2-judgement debtor - Respondent No.1 in these revisions filed O.S. against respondent No.2 - These suits were also decreed - The decree holders filed EPs - They filed these applications under Sec.73 of the CPC for rateable distribution of amounts available with the execution Court in all the above mentioned suits - The petitioners have opposed these applications on ground that respondent No.1 in both cases have not complied with fundamental requirement of provisions of S. 73 of CPC., viz., filing of execution petitions for execution of decrees obtained in their favour and that, therefore, they are not entitled for rateable distribution - Execution court, however, rejected this objection and allowed four EAs. - The sole basis for allowing the EAs by execution Court was ratio in judgment of a learned single judge of this Court in Jagadish Vaishnav V. Farpos Leading Cateror and others - Assailing these orders, petitioners filed all these revision petitions.

Held, obvious purpose behind stipulation of filing execution petitions, as a sine qua non for maintaining an application for rateable distribution under Sec.73 of CPC., is to enable only such of those decree holders who are vigilant and diligent in enforcing their decrees by filing execution petitions rather than allowing decree holders who sleep over their right of benefit of ratebale distribution in the executive petitions filed by others - Any other interpretation of S. 73 of CPC would do violence to its plain language and render the words "made application to the Court for the execution of decrees for the payment of money passed against the same judgment debtor and have not obtained satisfaction thereof" wholly redundant and suplusage.

Having regard to obvious purpose with which above requirement is incorporated in Sec.73 of CPC., as explained above, condition that decree holder must have

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filed execution petition and have not obtained satisfaction thereof cannot be construed as an empty formality - Thus, in Court view, a decree-holder, who seeks rateable distribution, has to necessarily comply with the said provision in its form but also in its content.

In light of above discussion, Court of the view that the judgment in Jadadish Vaishnav supra, has not laid down correct law - Court opinion, in order to be entitled for rateable distribution, a decree holder must not only show that he has filed an execution petition before the assets held by a Court were received but also he must satisfy the Court that he has not obtained satisfaction of decree - As respondent No.1-decree holders in all these cases did not file execution petitions, they are not entitled to ratebale distribution under Sec.73 of CPC. and lower court has erroneously allowed their applications - For above mentioned reasons, orders under revision are set aside and civil revision petitions are allowed. **Achuri Narayana (Died) Vs. Mamidi Eshwaraiah 2016(3) Law Summary (A.P.) 297.**

——Sec.75, Or.26, Rules 1 and 9 - Feeling aggrieved by the order under challenge, respondent Nos. 1 to 3 filed the present revision petition raising several contentions mainly contending that unless the petitioner established his right and title to the property during trial, he is not entitled to claim the relief of appointment of advocate commissioner to fix boundaries of the land of the respondents, it amounts to granting pre-trial decree and, if such relief is granted, nothing remains to be tried by the trial Court - Therefore, the relief granted by the trial Court is against the settled principles of law and prayed to allow the revision petition, exercising power under Article 227 of the Constitution of India, setting aside the impugned order passed by the trial Court.

Held, the trial Court appointed advocate commissioner for fixing boundaries to the property of the respondents only though the petitioner sought for appointment of advocate commissioner to demarcate schedule property and fix boundary stones to his property and the property of the respondents - Apart from that, the relief under clause (b) in the plaint is only to confirm the boundaries since the property was already demarcated twice - As such, appointment of advocate commissioner for the same purpose does not arise - If the suit is filed for fixing boundaries by the Court, then appointment of advocate commissioner would serve purpose to decide the real controversy between the parties but it is not even the case of the petitioner that schedule property is not demarcated - In such case, appointment of advocate commissioner is wholly unnecessary and it is beyond the scope of the suit - Trial Court did not look into the reliefs claimed in the suit; plea of the petitioner regarding survey of land and fixation of boundary stones; and the purpose for which commissioner is sought to be appointed - In those circumstances, the order passed by the trial Court cannot be sustained as it amounts to granting pre-trial decree and it is, therefore, liable to be set aside - Accordingly, the point is answered in favour of the respondents and against the petitioner.

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In the result, the civil revision petition is allowed setting aside the order dated 23-11-2015 passed in I.A.No. 1390 of 2012 in O.S.No. 322 of 2012 on the file of the Court of Principal Junior Civil Judge. **Sarala Jain Vs. Sangu Gangadhar 2016(1) Law Summary (A.P.) 546 = 2016(3) ALD 197.**

—Sec.80 & Or.47, Rule 27 - A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987, Secs.87 & 151 - EVIDENCE ACT, Sec.65 - LIMITATION ACT, Sec.65 - A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971, Sec.6 - SPECIFIC RELIEF ACT, Sec.34 - Respondent filed suit for declaration of title and ownership and suit land and for consequential perpetual injunction basing on registered sale deeds executed by their vendors, claiming that they have been granted ROR also - Appellants/defendants contend that civil court has no jurisdiction to entertain suit in view of Sec.151 of A.P. Endowments Act, 1987 and that suit not maintainable for non-compliance of Sec.80 of CPC - Trial Court came to conclusion that entries in records of rights are statutorily required to be presumed as true and that title deeds and pattadar pass books show possession of respondent/plaintiff and their predecessors and they have perfected title by adverse possession also - Consequently suit decreed as prayed for - Respondents/plaintiffs originally instituted suits without issuing any notice u/Sec.80 against Joint Collector and others and later E.O of appellants/temple was impleaded subsequently as defendants - Though suit being one against Govt., and authority and Endowments Act compliance with Sec.80 CPC is necessary - Though notice u/Sec.80 is mandatory, same could be waived which amounts to abandonment of right and it may be express or implied through conduct - In this case, contention as to non-compliance was waived by appellants - Objection as to admissibility of certified copies of documents not raised as secondary evidence - Appellants have by their own conduct allowed reception of such additional evidence without raising any objection at any time and as such said contention cannot be permitted before appellate Court - Since it is suit for declaration, same would not fall within purview of authorities u/Secs.87 of Endowment Act - As suit for declaration of title is not falling within parameters of Sec.151 of Endowment Act, contention of appellants is liable to be rejected - In this case, entries in revenue records clinchingly establishes that suit lands are endowed in favour of plaintiff diety Mallikarjunaswami temple - It cannot therefore be said that plaintiff vendors had title to said property and consequently title claimed by plaintiff is liable to be rejected - Main contention of plaintiffs, respondents that their title is established by adverse possession on ground that their vendors were in possession of suit lands for over 30 years - But revenue records including pahanis do not support continuous possession for over 30 years and as such finding of trial Court that plaintiffs have perfected title by adverse possession is clearly unsustainable and liable to be set aside - Plaintiffs also contend that there is presumption in their favour in view of registered documents - Said presumption clearly unsustainable and liable to be rejected as mere holding of registered documents would not entitle plaintiffs to relief of declaration of title u/Sec.34 of Specific Relief

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Act - Mere holding of registered documents would give raise to a rebuttable presumption that appellants are registered owners of lands, however that by itself is not sufficient to decree a suit for declaration of title - Respondents/plaintiffs also contend that there is a presumption of title u/Sec.6 of A.P. ROR Act, 1971, in view of fact that plaintiffs have been issued pattadar pass books and title deeds - But said pass books and title deeds are issued by revenue authorities based on documents produced by plaintiffs - Even if a presumption raises in favour of plaintiffs based on documents, said presumption is always rebuttable in a suit for declaration of title - Title of plaintiffs as well as that of their vendors vis-a-vis rival title claim by defendants have to be examined by civil court - Hence said contention also is without any substance - In this case, merely because Renovation Committee has recorded in minutes that there are no other lands attached to temple does not mean that suit lands do not belong to appellant temple, when there is evidence to contrary - In this case, since writ petition is primarily linked with and based on findings in appeal, impugned order of Joint Collector directing correction of entries by showing name of appellant Mallikarjunaswamy as pattadar suit lands has to be sustained - Appeals allowed and writ petition, dismissed. **E.O., Sri Bramarambha Mallikarjuna Swamy Temple Vs. Sai Krupa Homes, Karimnagar 2010(3) Law Summary (A.P.) 325 = 2010(6) ALD 207 = 2010(6) ALT 699.**

—Secs.80(1) & (2) and Sec.151 - Suit filed against State Authorities claiming huge amount of damages without giving statutory notice u/Sec.80 of C.P. C in accordance with law - 1st respondent being conscious of defects in suit filed by him, had filed two Interlocutory Application along with plaint seeking leave of Court to file suit without serving a notice u/Sec.80(1) of CPC - Trial Court rejected Applications filed under Or.7, Rule 11 of CPC praying for rejection of plaint - Admittedly in this case, that no order had been passed on Application filed uSec.80(2) of CPC whereby leave of Court had been sought for filing suit without complying with Provisions of Sec.80(1) of CPC - Suit filed without compliance of Sec.,80(1) cannot be regularized simply by filing Application u/Sec.80(2) of CPC - Till Application u/Sec.80(2) of CPC is finally heard and decided it cannot be known whether suit filed without issuance of notice u/Sec.80(1) of CPC was justifiable - According to Provisions of Sec.80(2) CPC Court has to be satisfied after hearing parties that there was some grave urgency which required some urgent relief and therefore plaintiff was constrained to file a suit without issuance of notice u/Sec.80(1) of CPC - Till arguments were advanced on behalf of plaintiff with regard to urgency in matter and till trial Court is satisfied with regard to urgency or requirement of immediate relief in suit Court normally would not grant Application u/Sec.80(2) of CPC - Therefore mere filing of Application u//Sec.80(2) of CPC would not mean that said Application was granted by Court - Impugned judgment of High Court confirming order of trial Court, is quashed and set aside - Order of trial Court rejecting Application filed under Or.7, Rule 11 is also quashed and set aside - It is directed that trial Court shall first of all decide Application filed

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by respondent no.1/plaintiff u/Sec.80(2) of CPC and only after disposal of said Application, Application filed by appellants under Or.7, Rule 11 shall be decided - Appeal, allowed. **Government of Kerala Vs. Sudhir Kumar Sharma, 2013(3) Law Summary (S.C.) 167.**

—Secs.94(e) & 151 & Or.39, Rule 2A and Or.21, Rule 32 - Suit for permanent injunction - Decreed - DHR filed E.A in execution proceedings u/Sec.151 C.P.C praying Court to direct Station House Officer to ensure due obedience of decree passed by Court against respondent and his family members - Since JDR remained *ex parte* Court dismissed E.A - Hence, DHR filed present Revision - When allegations are made by party obtaining an order of injunction, that said order has been violated, application seeking Police Protection would not lie - Aggrieved party has to necessarily file execution petition under Or.21, Rule 32 or Application under Or.39, Rule 2A seeking attachment and/or arrest of violator - Inherent power of Civil Court recognized by Sec.151 C.P.C would not available when Code has specifically provided necessary procedure and modalities to do a particular thing - Part II of CPC contains Sec.36 to 74 dealing with execution of decrees and Or.21 contains elaborate procedure for execution of decree passed by civil Court - It will be altogether different matter to direct Police to take JDR into custody for violation of decree of perpetual injunction and direct authorities of civil prison to detain JDR in prison - Power of arrest and detention may not include power to direct Police to ensure due obedience of decree of perpetual injunction - When execution petition filed under Or.21, Rule 32 of CPC for execution of decree for perpetual injunction by arrest and detention of JDR to civil prison or by attachment of property or both, pending consideration of such petition, in exercise of powers u/Sec.151 C.P.C executing Court cannot direct Police to ensure obedience to decree - After decree has become final or long thereafter, if there is violation of injunction, by JDR, Court which passed decree can order detention and attachment of property - Execution petition under Or.21, Rule 32 of CPC for executing a decree for perpetual injunction cannot be disposed of by directing Police to ensure obedience to decree. **D.Tulja Devi Vs. Margam Shankar 2010(1) Law Summary (A.P.) 263 = 2010(2) ALD 732 = 2010(3) ALT 20 = AIR 2010 (NOC) 574 (AP).**

—Sec.94(e), Or.21, Rules 89 & 90 and Or.21, Rule 66 & Or.21, Rule 54 - 1st respondent/DHR filed suit for recovery of certain amount and obtained decree and brought properties of JDR for sale - Initially Amin fixed value of petition schedule property at Rs.20 lakhs and subsequently on E.A. filed by DHR, amount reduced to Rs.2 lakhs - Auction conducted and knocked down in favour of appellant - I.A filed by JDR to cancel auction on ground that he had no notice before reducing value of petition schedule property and thereby great injustice and irreparable loss caused to him - Executing Court allowed I.A and set aside, sale holding that R1/DHR did not choose to examine any other persons to prove that value fixed by them is true and correct and that Amin assessed value of E.P schedule mentioned property as per rates prevailing in that

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area - Appellant contends that under Or.21, Rule 90 three conditions need to be satisfied viz., 1) there shall be material irregularity or fraud in procedure for conducting auction, 2) said material irregularity or fraud should result in substantial injury to JDR and 2) any such objection has to be taken at earliest point of time - All these requirements are absent in this case - Attachment of schedule property made during pendency of suit and therefore no notice is required under Or.21, Rule 54 - In this case, while reducing value to Rs.2 lakhs no notice of any kind was issued to JDR - Straightaway auction was conducted showing upset price at Rs.2 lakhs and auction purchaser is setup by DHR to knock away property at a cheaper rate - Very reduction from Rs.20 lakhs to Rs.2 lakhs is prejudicial to interest of JDR - In this case, initially when Amin tested and fixed value of property at Rs.20 lakhs DHR was present - Thereafter, he filed E.A seeking re-test and re-fixation of value of fixed by Amin which was allowed and time of re-test and re-fixation of value JDR was not present and no notice was given to him - It cannot be said that reducing value of property from Rs.20 lakhs to Rs.2 lakhs is justified - Executing Court not committed any error or illegality in setting aside sale - Appeal, dismissed. **Vemula Venkateswarlu Vs. Vakati Prabhakara Reddy 2010(3) Law Summary (A.P.) 245 = 2010(6) ALD 689.**

—-Sec. 96 - Held, thus recitals found in these documents clearly bring out that vendors have declared themselves as absolute owners and they could not have done so, but for partition that took place amongst the brothers in Feb 1980 - Plaintiffs could not render any effective answer to this objection raised by appellants - For these reasons, Ex.A-31 and Ex.B-6 not speaking about partition amongst the 3 brothers in February, 1980 is liable to be treated as self serving convenient position, from which no firm conclusion that there was no partition has taken place in February, 1980 cannot be drawn - Hence, Ex.A-31 and Ex.B-6 are not conclusive proof of 'no partition' theory set up by the plaintiffs.

Therefore, Court opinion that trial court committed an error in its finding that parties are still members of an undivided Joint Family and consequently, it had arrived at an unsustainable conclusion that suit is liable to be decreed - In view of our findings that there was partition amongst three brothers namely M.M.R, J.R, and B.R. (Junior) and Ex.B12 is only a document evidencing family arrangement but not a deed of partition and in view of legal principle enunciated by Supreme Court in Kale's case, Nani Bai's case and Zile Singh's case, Court opinion that suit must be dismissed - Accordingly, suit is dismissed allowing this Appeal Suit. **M.Vidyasagar Reddy Vs. M.Padmamma 2016(2) Law Summary (A.P.) 169 = 2016(4) ALD 775 = 2016(4) ALT 95.**

--Sec.96 - First appeal dismissed by High Court in limine - In this case, trial Court dismissing suit on two grounds holding that suit is barred by limitation and that plaintiff/ appellant failed to prove their title over suit land for want of adequate evidence whereas defendants/respondents were able to prove their title over suit land.

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High Court should not have dismissed appeal in limine but in first instance should have admitted Appeal and then decided finally after serving notice of appeal on respondents - In this case, record shows that trial Court observed that the appeal has "absolutely no arguable point"and on other hand to support these observations, trial Judge devoted 50 pages and this itself indicated that appeal involved arguable points.

It is settled principle of law that a right to file first appeal against decree u/Sec.96 of CPC is a valuable legal right of litigant - Jurisdiction of first appellate Court while hearing first appeal is very wide like that of Trial Court and it is open to appellant to attack all findings of fact or/and of law in first appeal - It is duty of first appellate Court to appreciate entire evidence and may come to conclusion different from that of trial Court.

Impugned Judgment and also decree passed by trial Court i.e., District & Sessions Judge are set aside - Appeal, allowed - Civil suit is now restored to its file - Trial Court i.e., District & Sessions Judge is directed to retry civil suit on merits. **Union of India Vs. K.V.Lakshman 2016(3) Law Summary (S.C.) 23 = AIR 2016 SC 3139 = 2016(5) ALD 38 (SC).**

—Sec.96 – LIMITATION ACT, Sec.5 - Suit by Respondent against Applicant for recovery of money based on a promissory note - Applicant denied her liability- Issues framed and evidence let-in by respondent recorded - Counsel for applicant did not cross-examine the witnesses due to absence of instructions from Applicant - Evidence closed and ex parte decree was passed on 09-12-2008 - Applicant filed I.A. for condonation of delay of 488 days in filing an application to set aside ex parte decree - Application dismissed by the trial court - Aggrieved, the Applicant filed C.R.P. before the High Court of Andhra Pradesh, it too was dismissed – SLP (civil) filed by the Applicant before the Supreme Court was also dismissed - Thereafter, Applicant filed an appeal before this court questioning ex parte decree - Along with the said appeal, Applicant filed the present application for condonation of delay - Held, No doubt, an appeal under S. 96 CPC is a statutory right - However, that right is also subject to law of limitation - In considering an application for condonation of delay, same considerations which weigh in an application filed for setting aside ex parte decree would equally weigh in consideration of an application filed for condonation of delay in filing an appeal under S. 96 CPC, for reasonable cause is common in both the situations - If present application of applicant is allowed, that would amount to ignoring the findings of this court in CRP (filed by applicant earlier which was dismissed) - By seeking condonation of huge delay of 1315 days, applicant is seeking to revive the stale claim - Undisputably, decree was executed and petitioner's property was sold - Condonation of delay and restoration of suit would unsettle things which have already been settled - Purporting to take a lenient approach, this court cannot allow such a result to ensue - Facts and circumstances of the case do not call for condonation of huge delay - Application fails and same is accordingly dismissed.

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Challagulla Ratna Manikyam Vs. Boppana Seetharama Raju, 2014(3) Law Summary (A.P.) 230 = 2015(3) ALD 142.

—Sec.96 & Or.9, Rule 13 – Respondent's father filed suit before Junior Civil Judge against petitioner's father – As suit not contested ex parte decree passed – Subsequently petitioners filed suit before Senior Civil Judge when there was threat of dispossession by respondents - On coming to know of ex parte decree passed against their father petitioners filed appeal u/Sec.96 CPC - District Judge refusing to entertain appeal taking objection as to how appellants are 3rd parties when they are legal representatives of defendant's father in suit before Junior Civil Judge and petitioners/appellants have to state as to why steps are not taken to set aside ex parte decree and as to how appeal is maintainable when suit is pending before Senior Civil Judge in respect of same schedule property - Respondents contend that Court is perfectly justified in rejecting appeal as same filed beyond period of limitation and not supported by application for condonation of delay - Sec.96 CPC prescribes that an appeal shall lie from every decree and said provision does not prescribe as to at whose instance such appeal shall lie - However, it is fundamental in view of very nature of things that an appeal should lie only at instance of person who may be aggrieved by judgment sought to be appealed against - In this case, District Judge did not even number appeal and simply rejected same stating that it cannot be entertained for reason that it is not supported by application to condone delay as provided for under Rule 3A of Or.41 CPC – As appeal preferred by petitioners was simply rejected, and that appeal can as well be represented by petitioners with an application under Or.41, Rule 3A – CRP, allowed. **Saddula Narasimha Vs. Sadula Tulasi Das 2009(1) Law Summary (A.P.) 35 = 2009(1) ALD 616 = 2009(2) ALT 119.**

—Sec.96 & Or.39 – Plaintiff filed suit for injunction to restrain defendants from interfering with peaceful possession and enjoyment of suit property – Appellant/defendant contends that first defendant is in possession of property – Trial Court dismissed suit, High Court allowed appeal holding that plaintiff No.1 proved her case in respect of suit property - High Court allowed appeal holding that respondent/plaintiff proved her case in respect of suit property – Appellant/defendant contends though many point were urged, primary stand was that in a suit for permanent injunction foundational fact which had to be established was possession and that plaintiff failed to prove his possession – No finding recorded by High Court regarding possession - High Court did not consider vital aspect of possession and did not record any finding regarding possession – Impugned judgment of High Court, set aside and matter remitted to High Court to formulate definite point relating to possession – Appeal, allowed. **Sri Thimmaiah Vs. Shabira 2008(1) Law Summary (S.C.) 182.**

—Sec.100 -Second appeal - Appellant's-Taluq level stockist for Palmolein oil, premises was inspected and entire quantity of 186 barrels of Palmolein oil seized suspecting that he sold some quantity of oil to a trader and entrusted seized oil to 3rd party for safe custody - Sub-Collector decided to sell seized stock through PDS and having found shortage of 5,163 kgs, referred matter to District Collector who in turn passed orders

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directing recovery of Rs.55,458/- from appellant towards shortage - MRO issued order of attachment under Ex.A8. - Appellant filed suit challenging proceedings of MRO, contending that samples were drawn from seized stock and nothing incriminating found against him and that he cannot be held responsible for discrepancy - Trial Court decreed suit holding that shortage of stock if any had taken place when goods were in custody of respondents - Lower appellate Court reversed judgment and decree of trial Court - In this case, suit filed within few months from date of receipt of Ex.A8 and therefore plea of limitation raised by respondents is without any basis - It is not in dispute that no shortage of Palmolein oil noticed when 186 barrels seized from appellant - If any shortage is noticed, while stock is in hands of Department or any third party, dealer cannot be held responsible - Judgment and decree passed by lower appellate Court, set aside - Decree passed by trial Court shall hold good - Second appeal, allowed. **S.Subramanyam Vs. A.P. State E.C. Corpn., Ltd. 2008(1) Law Summary (A.P.) 138 = 2008(2) ALD 770.**

—Sec.100 - Second appeal - Deceased/1st plaintiff filed suit against defendant seeking decree of permanent injunction restraining him from interfering with suit property - Defendant resisted on ground, description of property mentioned by plaintiffs in schedule attached to plaint is not correct, they do not have any right or interest in said property and hence they are not entitled for permanent injunction - Trial Court on careful analysis of evidence rejected contention urged by defendant that plaintiffs are unable to establish identity of schedule site, compared boundaries recited in documents relied upon by both parties such as Exs. A1, A2 and B1, B2 and held that for not mentioning survey number well established claim made by plaintiffs cannot be rejected and accordingly decreed suit granting permanent injunction against defendants following settled principle that boundaries would prevail over extent or survey numbers - Appellate Court being led by certain misconceived notions ignoring well settled principles relating to proof of certain facts in civil cases, unjustly reversed judgment rendered by trial Court - Though essential requirement for entertaining second appeal is involvement of substantial question of law, High Court while exercising its jurisdiction under Sec.100 CPC can interfere with findings of fact, if such findings recorded by trial Court are either not based on evidence on record or based on no evidence or perverse - Reasons assigned by 1st appellate Court for reversing judgment of trial Court must be adequate and they should be in accordance with settled principles of law - if such findings are totally misconceived and not in accordance with law they can be said to be perverse and required interference of High Court in second appeal - Trial Court rightly held that although town Survey registers are relevant they are not records of right and no title can be

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inferred on entries in said registers - 1st appellate Court took a contrary view on ground that very fact that name of D.K was not mentioned as owner of property and despite assertion made by plaintiff that mutation had been effected names of plaintiffs are not found in relevant registers, it cannot be said that DK purchased land under Ex.A.2 - Approach of 1st appellate Court brushing aside entire evidence adduced by plaintiffs in proof of their title and possession on ground that document does not indicate mutation of property in names of plaintiffs or their vendor is totally misconceived and it shows failure on part of 1st appellate Court to consider evidence as a whole for purpose of recording finding as to factum of possession and title - In instant case, there is highly reliable and convincing evidence adduced by plaintiffs in proof of their title in respect of schedule mention site - Law is well settled that if there is any inconsistency between boundaries on one side and survey numbers or extent on other, boundaries will prevail - 1st appellate Court reversed well considered judgment of trial Court in utter disregard of above said principle and took an erroneous view that plaintiff could not be able to establish identity of subject matter of suit - 1st appellate Court failed to assign any convincing reasons for reversing judgment of trial Court and when such reversal of findings is based on misconceived notions and contrary to well established principles, said findings arrived at by 1st appellate Court, can be considered as perverse and High Court can interfere with said findings in second appeal even though some of findings relating to fact - Decree and judgment passed by 1st appellate Court, set aside and decree and judgment of trial Court are confirmed - Second appeal, allowed. **Rukmini Bai Alias Laxmi Bai Vs. K.Mohanlal 2011(2) Law Summary (A.P.) 261 = 2011(4) ALD 537 = 2011(4) ALT 219.**

—Sec. 100 - According to averments in original plaint, plaintiff is pattedar, owner and possessor of land bearing Sy.Nos.334/A/1 and 334/A/2 totally admeasuring Ac.3.26 guntas situated at Munipally village - Plaintiff's name is recorded as pattedar and possessor of said land in all revenue records and he is presently cultivating said land from year 1998 and is enjoying the said plaint schedule land - Originally, one PKR was the pattedar of said plaint schedule land - Said land fell to his share during family settlement prior to 1998 and property was mutated in his name in all revenue records - In year 1998, said PKR had offered to sell said suit land to plaintiff on account of his family and personal necessities - On 6.02.1998, plaintiff had purchased Ac.1.33 guntas for a consideration of Rs.37,500/- under a registered sale deed - Again, plaintiff had purchased remaining extent of Ac.1.33 guntas for a

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consideration of Rs.42,000/- under a registered sale deed dated 12.03.1999 - From dates of said purchases, plaintiff is in peaceful possession and enjoyment of said respective extents of plaint schedule property - Plaintiff is having pattadar passbook, title deed book and also title deed of original pattedar with him - Same are filed into Court - Copies of pahanies for years 1998-99, 2000-01, 2001-02 and 2002-03, copy of chowfasla for years 2000-01 to 2002-03 and encumbrance certificate also support the case of plaintiff in regard to title and possession over plaint schedule lands - 1st defendant is brother of the said PKR, original pattedar - 1 st defendant came to suit land with support of 2 nd defendant on 12.10.2003 and had tried to damage standing chilli and red gram crops in the plaint schedule land and had further tried to interfere with peaceful possession and enjoyment of plaintiff over said lands - Plaintiff had managed to resist acts of defendants and managed to send them away with help of his well wishers - Defendants while going away had openly declared that they will come again in future with full force - Therefore, plaintiff apprehends danger to his possession over suit land - Defendants are strangers and they have no right or interest whatsoever in plaint schedule lands - 1 st defendant, in fact, had executed a declaration that he is in no way concerned with suit land as it fell to share of his brother PKR - Hence, suit is filed for perpetual injunction - On merits, trial Court had dismissed suit of plaintiff - As already noted, Court below, while reversing the decree and judgment of trial Court and allowing the first appeal of plaintiff had decreed suit of plaintiff - Therefore, aggrieved 2nd defendant had preferred this appeal - Held, when there is no whisper in pleadings that 1 st defendant had relinquished his rights in his half share in favour of his brother PKR and when said PKR (PW4) does not speak about any such relinquishment in his favour, the plaintiff is liable to be non-suited as evidence brought on record would lay bare that PKR had no right to execute any sale deed in respect of the half share of his brother in plaint schedule property - Law is well settled that when the findings of the court below are manifestly unreasonable or unjust in the context of the facts and evidence on record, this court is obliged under law to set aside such erroneous findings to remedy the injustice - Law is also well settled that he who comes to equity must do equity and that he who comes to Court with unclean hands and suppresses material facts and takes inconsistent stands and prevaricates and fails to establish pleaded case and lawful possession, which is a sine qua non, is not entitled to equitable relief of perpetual injunction - Having regard to reasons, this Court finds that there is merit in second appeal - Accordingly, substantial questions of law are answered holding that Court below had committed a grave error in reversing well considered decree and judgment of trial court and in decreeing suit of plaintiff - Viewed thus, this Court finds decree and judgment of court below brook interference and that therefore, this second appeal deserves to be allowed - In result, Second Appeal is allowed and decree and judgment of court below are set aside and decree and judgment of trial Court dismissing suit of plaintiff are restored. **Akula Sangappa Vs. Bandam Siddappa 2015(3) Law Summary (A.P.) 427.**

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—Sec.100 - Based on oral and documentary evidence, both the Courts below have recorded concurrent findings of fact that plaintiffs have established their rights in 'A' schedule property – In light of concurrent findings of facts, no substantial question of law arose in High Court, and there was no substantial ground for re-appreciation of evidence – High Court proceeded to observe that 1st plaintiff has earmarked 'A' schedule property for road and that she could not have full fledged right and on that premises proceeded to hold that declaration to plaintiff's rights cannot be granted - In exercise of jurisdiction u/Sec.100 of C.P.C. concurrent finding of fact cannot be upset by High Court unless the findings so recorded are shown to be perverse – This court considered that High Court did not keep in view that concurrent findings recorded by Courts below, are based on oral and documentary evidence and the Judgment of High Court cannot be sustained - Hence, appeal is allowed, impugned Judgment of High Court is set aside, and Judgments and Decree passed by Courts below restored. **Laxmidevamma Vs. Ranganath 2015(1) Law Summary (S.C.) 26 = 2015(3) ALD 122 (SC) = 2015 AIR SCW 1030.**

—Sec.100 and **CONSTITUTION OF INDIA,** Art.12 - "Second appeal" - Respondent and her minor son /Plaintiffs filed suit stating that first plaintiff's husband and father of second plaintiff purchased Indira Vikaspatras (IVPs) for certain amount with a maturity value of certain amount – After 5 years from date of purchase and first plaintiff came to know from the dairy left by deceased husband, details of IVPs purchased by him – When IVPs found missing she sent reports appellants/ defendants and filed suit against appellants for obtaining necessary declaration about ownership of subject IVPs as directed by second defendant - Appellants/Defendants filed written statement stating that there is ambiguity with regard to purchase of IVPs by first plaintiffs husband and that IVPs will not contain names and particulars of purchaser except stamp of issued post office and the Department has no right to issue duplicate IVPS in any case and as per IVP rules amount will be paid only to presentee of original IVPS and that mere furnishing of serial numbers of IVPs at their value will not entitle plaintiffs to encash IVPs without presentation of same – Trial court decreed suit – Lower Appellate court confirmed the judgment and the decree of Trial court observing that instead of refusing to pay proceeds to plaintiffs, Defendants could have paid same by obtaining indemnity bond from them as a precautionary measure – Hence present appeal filed by the defendants - In this matter, only defence put forth by appellants in suit was that unless the original IVPs produced, scheme does not permit payment of money to plaintiff - A genuine Subscriber to scheme cannot be made to suffer on account of ambiguity in scheme – Scheme must provide for alternative in regard to payment in event subscriber or persons claiming through him are unable to produce the original IVPs – Generally in such exigencies indemnity bonds are executed by the claimants if there is – Genuine apprehension that finder of document under which claim is made, may make a claim for payment at a later date and nothing prevents Department from issuing public notice inviting objections or claims made by persons

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such as Plaintiffs - If Scheme does not envisage such procedure such a scheme has to be necessarily termed as wholly 'Arbitary' or 'Irrational' – Central Government cannot be allowed to make wrongful gain of money subscribed by private persons by floating equivocal and ambiguous such as present one – Stand taken by appellants militates against doctrine of fairness in action by state - There is no illegality in judgment and decree passed by trial Court and as confirmed by lower appellate Court – Second Appeal dismissed. **Post Master, Chirala Head Post Office Vs.V.Satya Phani Vardhini 2014(2) Law Summary (A.P.) 133 = 2014(4) ALD 488 = 2014(4) ALT 309.**

—Sec.100 and **EVIDENCE ACT**, Sec.112 - **HINDU MARRIAGE ACT**, Secs.5 & 16 - Second appeal - Presumption of legitimacy - Trial Court as well as first appellate Court recorded categorical finding of fact that 1st defendant married to AR who was alive on date of institution of suit, and therefore, question of marriage by presumption between 1st defendant and another MR would not arise - High Court can interfere with finding of fact while deciding appeal provided findings are recorded by Courts below are perverse - PRESUMPTION OF LEGITIMACY - Sec.16 of Hindu Marriage Act is not *ultra vires* of constitution of India - Illegitimate children, for all practical purposes, including succession to properties of their parents, have to be treated as legitimate - They cannot however, succeed to properties of any other relation on basis of this role, which in its operation, is limited to properties of parents - Children of void marriage are legitimate - Children of deceased Hindu employee born out of void marriage are entitled to share in family pension, death-cum-retrial benefits and gratuity - In this case, evidently deceased MR did not partition his joint family properties and died issueless and intestate - Therefore, question of inheritance of coparcenary property by illegitimate children, who were born out of live-in-relationship, could not arise - Judgment of High Court liable to be set aside only on this sole ground - Appeal, allowed. **Bharatha Matha Vs. R.Vijay Renganathan 2010(3) Law Summary (S.C.) 15 = 2010(4) ALD 152 (SC) = 2010 AIR SCW 3503 = AIR 2010 SC 2685.**

—Sec.100 - **LAND ACQUISITION ACT,** Sec.18 - Determination of compensation - It is not an absolute rule that when acqired land is a large tract of land, sale instances relating to smaller pieces of land cannot be considered - There are certain circumstances when sale deeds of small pieces of land can be used to determine value of acquired land which are comparetely large in area. **Special Land Acquisition Officer Vs. M.K. Rafiq Saheb, 2011(3) Law Summary (S.C.) 15**

—- Sec.100 - **LIMITATION ACT,** Sec.65 - Appellant/plaintiff filed suit for declaration and for recovery of possession basing on registered sale deed, purchased from hereditary trustee of temple - Defendant resisted suit on ground that one "X" occupied property, in 1960 and sold him under agreement of sale and that his predecessor-in-interest was in open, continuous and uninterrupted possession since 1960 and that after his purchase he also continued in possession till filing of suit and has perfected his

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title by adverse possession - On all issues Trial Court held in favour of defendant and against plaintiff - Judgment of trial Court affirmed in appeal by lower appellate Court - Appellant contends that both Court below have committed serious error of law in holding that defendant has perfected title by adverse possession - Since plea of adverse possession lacks morality, defendant not entitled to any indulgence - ADVERSE POSSESSION - Aspect of adverse possession is a mixed question of fact and law because when owner establishes his title, his claim is defeated on plea of adverse possession set up by defendant under Art.65 of Limitation Act - Law is well settled that a party claiming adverse possession must prove that his possession is "*necvi, nec clam, nec pracario"* i.e., peaceful, open and continuous - Apex Court observed that a person pleading adverse possession has no equities in his favour since he is trying to defeat rights of true owner - In this case, defendant on basis of evidence failed to discharge burden placed on him by law that he had perfected his title by adverse possession - Both Courts below have committed a serious error of law in dismissing suit - Suit decreed as prayed for with costs - Judgments under appeal, set aside - Second appeal, allowed. **Gundu Parvathamma Vs. Penubarthi Sreenivasulu, 2010(1) Law Summary (A.P.) 451.**

—Secs.100 & 96, Or.1, Rule 1 and 13 - "Mis-joinder" and "non-joinder of necessary party" - Suit for partition filed by plaintiff who is son of defendants 1 & 7 and brother of defendants 2 to 6 claiming that they constituted joint Hindu family of which 1st defendant was Kartha and that plaint schedule properties have been purchased in name of D1 and entire family was enjoying properties - Defendants contend that plaintiff was never in joint possession of any property and that plaintiff not entitled to any share - Trial Court dismissed suit holding suit is bad for non-joinder of necessary parties, daughters of D1 - 1st appellate Court, set aside judgment and decree of trial Court and passed preliminary decree and for partition of suit properties into 8 equal shares and allot one share to plaintiff - Second appeals were admitted by High Court on substantial question of law "whether LRs of of 7th defendant can be impleaded at appellate stage who died pending suit and whether it will cure defect or not and whether order impleading them as LRs without there being any finding as to delay condonation at appellate stage is proper or not" - Substantial question of law framed by High Court, while admitting second appeals, is concerning impact of impleading daughters of defendants 1 and 7 at appellate stage on curing any defect in institution of suit - Following decisions of Privy Council and Supreme Court apart from decision of Full Bench of High Court defect of non-joinder of necessary parties cannot be cured by impleading them in appeal and is fatal to suit for partition - Therefore substantial question of law formulated at time of admission of second appeals is answered that impleading daughters of defendants 1 & 7 as legal representatives as 7th defendant, mother, in first appeal will not cure fatal defect in suit - Second appeal No. 888 of 2004 has to be allowed. **Jahangiji Vs. K.Kumar, 2012(1) Law Summary 125 = 2012(2) ALD 406 = 2012(4) ALT 253.**

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—-Sec.100 and Sec.96 r/w Or.41, Rules 30,31 & 33 - **SPECIFIC RELIEF ACT**, Sec.41(h) - **TRANSFER OF PROPERTY ACT**, Sec.53-A – "Adverse possession" - Plaintiff filed the suit initially for perpetual injunction restraining the defendants and their men from ever interfering with his possession and enjoyment of the schedule property and later he converted the suit into a declaratory suit claiming declaration of title over suit schedule property - Plaintiff contended that he purchased land admeasuring Ac.3.09 cents S.B. for consideration of Rs.4,000/- and since then plaintiff is in continuous possession and enjoyment of suit schedule property - Plaintiff mortgaged property in favour of Cooperative Agricultural Development Bank and obtained agricultural loan and he has been paying land revenue to department since date of purchase - Unregistered Sale Deed is not traced despite exercising due diligence and efforts of plaintiff became invain to trace document and therefore, plaintiff relied on secondary evidence to substantiate his contention - It is contended that plaintiff also perfected his title by adverse possession.

Defendant No.1 remained ex- parte. Defendant No.2 filed Written Statement contending that the alleged purchase by the plaintiff under unregistered Sale Deed is neither true nor valid and it was never executed by late S.B. during his life time and that the plaintiff was never in possession and enjoyment of the suit schedule property and that the claim of the plaintiff is barred by limitation.

When Defendant No.2 approached the bank for loan, the Agricultural Development Bank advised him to obtain a registered Sale Deed, accordingly, he obtained Sale deed No.1083/93, dt. 29.07.1993 from D.1, the pattadar of the land - Thus, D.2 perfected his title by adverse possession as he is in continuous possession and enjoyment of the schedule property without any interruption to the knowledge of the plaintiff and therefore, the plaintiff is not entitled to claim any right in the schedule property and finally prayed for dismissal of the suit.

Upon hearing argument of both counsels, the trial Court dismissed the suit holding that the plaintiff is not entitled to claim declaratory relief as well as permanent injunction restraining the defendants from ever interfering with the peaceful possession and enjoyment of the schedule property - The plaintiff being aggrieved by the decree and judgment of the trial Court, preferred first appeal before Senior Civil Judge and the same was allowed by the Appellate Court, reversing the findings of the trial Court by its decree and judgment dt. 31.10.2003 and thereby declared that the plaintiff is the owner of the schedule property of an extent of Ac.3.09 guntas.

Aggrieved by the decree and judgment of the appellate Court, the present Second Appeal is filed raising several contentions by the defendants being unsuccessful before the appellate Court - The appellants/defendants formulated several substantial question of law and this Court by decree and judgment allowed the appeal setting aside the decree and judgment of the appellate Court restoring the decree passed by the trial Court in - Later, the matter was carried to Supreme Court by the unsuccessful plaintiff before this Court, but the Apex Court set aside the decree and judgment of this Court in the second appeal.

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Held, In the present case, there is absolutely no pleading and evidence as to when the adverse possession commenced and the possession is ripened into adverse possession - Therefore, the trial Court after appraising entire evidence concluded that the plaintiff is not entitled to claim hostile title by adverse possession - But, the appellate Court reversed the finding of the trial Court without assigning specific reasons to disagree with the findings recorded by the trial Court and even without looking into the requirements to constitute adverse possession, referred to supra, while exercising power under Section 96 of CPC by the Appellate Court - The Appellate Court has to re-appraise entire evidence with reference to law since the first appellate Court is a final Court of fact and record an independent conclusion assigning specific reasons as to why the appellate Court is disagreeing with the findings recorded by the trial Court, but the judgment of first Appellate Court is bereft of any reasoning and thereby, the findings of the appellate Court stands to any legal scrutiny as it is in contravention of Section 96 r/w Order 41 Rules 30, 31 and 33 CPC - Therefore, the findings of first appellate Court are perverse on the face of the record since its findings are not based on pleadings and evidence in support of it and it is contrary to the law laid down by the Apex Court in various judgments referred supra - Hence, trial Court that the judgment of the Appellate Court is perverse and the same is liable to be set aside - Accordingly, the substantial question of law is answered against the plaintiff and in favour of the defendants.

The plaintiff also claimed permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property - Undisputedly, father of the 1st defendant is the owner of the property, after his death the 1st defendant became the owner, from whom the other defendants purchased the property - Plaintiff did not seek relief of Specific performance, though he allegedly purchased the same under unregistered sale deed, but he filed the suit for declaration based on alleged unregistered sale deed and permanent injunction.

According to Section 41 (h) of the Specific Relief Act, when equally efficacious remedy is available to the plaintiff, the plaintiff is disentitled to claim permanent injunction - In the present facts of the case, equally efficacious remedy available to the plaintiff is to seek specific performance, in such case he is not entitled to claim permanent injunction, apart from Section 41 (h), when the plaintiff has no personal interest in the property in view of the bar under Section 41 (j) of Specific Relief Act the plaintiff is not entitled to equitable relief of injunction.

Yet the other contention of the plaintiff is that he is in continuous possession and enjoyment of the property and thereby entitled to protection under Section 53-A of Transfer of Property Act - No doubt, if the plaintiff is in possession and enjoyment of the property being the purchaser under a written agreement of sale subject to satisfying the other conditions to claim benefit under Section 53-A of Transfer of Property Act, he is entitled to protect his possession by invoking Section 53-A of the Transfer of Property Act, but it cannot be used to claim permanent injunction. Moreover, the unregistered sale deed (in writing) was not produced by the plaintiff to invoke protection under Section 53-A of Transfer of Property Act.

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Therefore, the plaintiff is not entitled to claim permanent injunction against the defendants in view of the bar under Section 41 (h) and (j) of the Specific Relief Act, so also in view of the principle laid down by the Apex Court in the judgment referred supra. Accordingly, the substantial question of law is answered. **Meenugu Mallaiah Vs. Ananthula Mallaiah 2016(3) Law Summary (A.P.) 438.**

—Secs.100,114 & Or.47 - Second Appeal - "Non-formulation of substantial question of law" - Review - Suit for permanent injunction - Trial Court decreed suit - 1st appellate Court by overlooking established principles governing burden of proof in civil cases and also construction of documents, reversed well considered judgment passed by trial Court without any basis - High Court held in second appeal that judgment rendered by 1st appellate Court is contrary to evidence on record and also contrary to settled legal principles and also emphatically held by going through entire evidence on record that approach adopted by 1st appellate Court is misconceived and its findings are contrary to evidence on record and its judgment is totally perverse - Hence petitioner defendant filed present review - Review petitioner/defendant contends that no substantial question of law has been formulated by High Court and without formulating substantial question of law, arguments were heard in second appeal and this amounts to error apparent on face of record attracting provisions of Sec.114 and Or.47 of CPC - Respondents/plaintiffs contend in their counter affidavit that review petition filed by defendant u/Sec.114 and Or.47 of CPC is not maintainable, since High Court had already given a specific finding in its judgment in second appeal on issues raised in grounds of review and they cannot be re-agitated - Sec.100 of CPC laysdown that 2nd appeal is maintainable only when substantial question of law is involved for consideration in second appeal - Therefore existence of substantial question of law for consideration is *sine qua non* for maintaining second appeal - Review petitioner further contends that even grounds raised in second appeal consists substantial question of law unless substantial question of law as required u/Sec.100 is formulated by High Court before hearing parties it is an error apparent on face of record and judgment rendered by High Court without specifically formulating substantial question of law is liable to be set aside under review jurisdiction - Respondent/plaintiff contends that grounds raised in second appeal which are part of memorandum of grounds of appeal clearly demonstrate existence of substantial question of law which are to effect judgment rendered by 1st appellate Court is in utter ignorance of evidence on record, settled legal principles of governing appreciation of evidence and burden of proof and they are in substance nothing but holding judgment rendered by 1st appellate Court is perverse which requires interference in second appeal - Unless non-framing of substantial question of law specifically amounts to error apparent on face of record and unless judgment of High Court results in prejudice to review petitioner, or if judgment of High Court, if allowed to stand will lead to failure of justice, review of judgment need not be under taken by High Court - Power of review is different from that of appellate power - Under appellate power appellate Court can correct all errors of subordinate

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Court - But under review jurisdiction, only if error or mistake is apparent on face of record and only it causes prejudice to opposite party then only Court would undertake review of judgment - Even if judgment is rendered by Court is erroneous or incorrect, matter cannot be re-heard under guise of review jurisdiction - Therefore party is not permitted to contend in a review petition that order or judgment requires review since it is erroneous - Object of review is not to make Court to write a second judgment, but only to correct a mistake or error which is apparent on face of record - If review petitioner thinks that judgment of High Court is incorrect, he can only file an appeal against judgment of High Court, but cannot seek review of judgment and ask Court to re-write judgment - FORMULATION OF SUBSTANTIAL QUESTION OF LAW - Idea underlying requirement of formulating substantial question of law before hearing second appeal is aimed to curtail protraction of litigation on unnecessary, flimsy and vexatious grounds - It is also object of law that litigant shall not be allowed to agitate on same issue again and again in different forums - It is therefore obvious that on mere technical ground that a substantial question of law had not been specifically formulated by High Court before hearing second appeal, judgment rendered by High Court shall not be necessarily set aside on that count alone - Party can urge to set aside said judgment only if he is able to show that non-formulating substantial question of law occasioned in prejudice to him - Non-formulating substantial question of law does not invariably result injustice to party - In this case, absolutely no prejudice has been caused to review petitioner - Review petition, dismissed. **K.Mohan Lal Vs. Rukmini Bai Alias Laxmi Bai, 2012(2) Law Summary (A.P.) 175 = 2012(4) ALD 587 = 2012(4) ALT 539.**

—Sec.100 & Or.17, Rule 1 - "Second appeal" - Adjournments - 1st respondent/plaintiff filed suit for declaration, mandatory injunction and other reliefs - Trial Court dismissed suit - District Judge dismissed appeal - Being not satisfied with concurrent judgments of two Court below, plaintiff preferred second appeal before High Court which has been allowed by single Judge and suit has been remanded to trial Court for fresh decision in accordance with law - Unfortunately High Court failed to keep in view constrainsts of 2nd appeal and over looked requirement of 2nd appellate jurisdiction as provided in Sec.100 and that vitiates its decision - High Court upset concurrent judgment and decree of two Court on misplaced sympathy and non-existent justification - High Court was clearly in error in giving plaintiff an opportunity to produce evidence when no justification for that course existend - ADJOURNMENTS - No litigant has right to abuse procedure provided in CPC - Adjournments have grown like cancer corroding entire body of justice delivery system - It is true that cap on adjournments to a party during hearing of suit provided in proviso to Or.17, Rule 1 CPC is not mandatory and in a suitable case on justifiable cause, Court may grant more than three adjournments to a party for its evidence but ordinarily cap provided in proviso to Or.17, Rule 1 should be maintained - "Sufficient cause" as contemplated in sub-Rule 1 of Or.17, CPC, but a cause which makes the request for adjournment by a

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party during hearing of suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of litigant or witness or lawyer; death in family of any one of them; natural calamity like floods, earthquakes etc. - However absence of lawyer or his non-availability because of professional work in other Court or elsewhere or on ground of strike call or change of lawyer or continuous illness of lawyer or similar grounds will not justify more than three adjournments to a party during hearing of suit - If despite three opportunities no evidence was let in by plaintiff, it deserved no sympathy in second appeal in exercise of power u/Sec.100 CPC - High Court was clearly in error in giving plaintiff an opportunity to produce evidence when no justification for that Course existed - Judgment and order of High Court, set aside - Appeal, allowed. **M/s. Shiv Coltex Vs. Tirgun Auto Plast P. Ltd., 2011(3) Law Summary (S.C.) 192 = 2012(1) ALD8 (SC) = 2011 AIR SCW 5789.**

—Sec.100 and Or.39, Rules 1 & 2 - Plaintiff filed suit for injunction contending that suit properties are his self acquired properties and he alone is in possession and enjoyment of same - 1st defendant contends that suit properties are joint family properties of plaintiff, himself and other family members - Trial Court decreed suit - Lower appellate Court reversed judgment and decree of trial Court and dismissed suit, holding that suit properties were acquired by plaintiff from out of ancestral nucleus and thus they became ancestral properties as well as joint family properties and that plaintiff and 1st defendant constitute, coparceners - Appellants/plaintiffs contend that burden is on 1st defendant to prove that there is sufficient nucleus from out of which suit properties were purchased and only after discharge of said burden it shifts on plaintiffs to prove that properties are self acquired properties and that lower appellate Court erroneously placed burden on plaintiff and as 1st defendant failed to discharge his burden in showing that there was sufficient nucleus, it has to be held that property is self acquired property - In present case, no evidence is forthcoming to show that plaintiff had any independent and separate income and evidence clinchingly establishes that there was sufficient joint family nucleus and it can safely be presumed that properties acquired by plaintiff in his name, were with income from joint family properties - Since trial Court not considered overwhelming evidence available on record and recorded a perverse finding, lower appellate Court rightly set aside same and recorded finding of fact in this regard - Hence, finding of lower appellate Court – Justified - Plaintiff failed to produce any evidence to show that he is in possession of suit properties - Hence lower appellate Court reversed judgment of trial Court, and rightly dismissed suit for injunction - Since these being findings of fact based on evidence, cannot be interfered with in second appeal - Second appeal, dismissed. **Ravada Yerranna Vs. Ravada Thammunaidu(Died) per L.Rs 2008(2) Law Summary (A.P.) 117 = 2008(4) ALD 59 = 2008(3) ALT 468.**

—Sec.100 and Or.39, Rules 1 & 2 - Appellant/plaintiff filed suit for permanent injunction restraining defendants from interfering with her peaceful possession and enjoyment of suit land, contending that late P.S bequeathed suit property to plaintiff under Ex.A.1 unregistered Will, dt:20-2-1991 - Defendants resisted contending that late P.S. executed

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Ex.X11 Will dated: 27-7-1987 bequeathing suit property in favour of D1 and deposited said Will in sealed cover with registration Authorities to be opened after her death - Trial Court decreed suit granting permanent injunction in favour of plaintiff - On Appeal by defendants lower Appellate Court came to conclusion that plaintiff should have filed a suit for declaration of title and disposed of appeal by giving three months time to plaintiff to file comprehensive suit for declaration of title and permanent injunction and while disposing of appeal, lower appellate Court limited injunction in favour of plaintiff for period of three months - Questioning same, some legal representatives of deceased plaintiff filed present second Appeal - Appellants contend that finding as to genuineness of Wills is not disturbed by lower appellate Court is not correct because lower appellate Court did not consider evidence relating to genuineness of respective Wills and as to title to suit property and lower Appellate Court left that question to be open for being determined in comprehensive suit to be filed by plaintiff for declaration of his title for suit property and for consequential permanent injunction in his favour - Therefore even without determining as to who out of two parties is true owner of suit land, appeal was disposed of by lower appellate Court - Therefore this is not a decree by lower appellate Court of granting permanent injunction for only limited period - Even protection of possession of plaintiff of suit land for period of three months by lower appellate Court is by way of grace and not as a matter of right of plaintiff and it will not clothe plaintiff with right to continue to have permanent injunction in her favour for ever, without determination of respective titles of both parties for suit land - Respondents contend that there cannot be any dispute as to genuineness of Ex.X-11 in favour of 1st defendant - Since it was a Will deposited by deceased herself with registering authorities during her life time and since said Will Ex.X-11 was referred to in Ex.A.1 unregistrered Will being relied upon by plaintiff - When there is no definite finding as to title on basis of respective Will relied upon by both parties, it cannot be said that plaintiff is entitled for permanent injunction as against defendants - Where a plaintiff is in lawful or peaceful possession of property and such possession is interfered or threatened by defendant, a suit for an injunction simpliciter will lie - A person has right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction - But a person in wrongful possession is not entitled to an injunction against rightful owner - Where title of plaintiff is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily plaintiff will have to file a suit for declaration, possession and injunction - In light of pronouncement of Supreme Court and in light of facts of this case, which caste cloud on plaintiff's title to suit property, it is all more necessary for plaintiff to have filed suit for declaration of title - Apart from casting of cloud on plaintiff's title, in this case, there are respective claims for title for suit property by both parties resulting in scramble for title as possession of suit land - Lower Appellate Court is justified in law in directing plaintiff to file suit for declaration of title before claiming relief of permanent injunction, inspite of plaintiff being in possession of suit property by date of filing suit in trial Court - Second Appeal, dismissed. **Vegendla Vijayalakshmi Vs. Gaddipati Naga Himabindu 2013(2) Law Summary (A.P.) 128.**

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—Sec.100 & Or.39, Rules 1 & 2 - A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987, Sec.151 & 84(2) - Plaintiffs/appellants instituted suit for injunction simplicitor against defendants claiming that they are owners of suit schedule land - Defendants contend that suit schedule property belongs to Devasthanam and 1st defendant Trustee and Archaka of temple is in possession of property and cultivating it by engaging hired labour and derived income being used for Deity - Trial Court considering entire evidence allowed suit and granted a decree for simple injunction - 1st appellate Court reversed fining of trial Court and dismissed suit filed by plaintiffs - Hence present second appeal - In this case, main contention of respondents/defendants from beginning is that 1st appellant/plaintiff was village munsiff and subsequently he became EAO and manipulated entire record and documents filed by plaintiffs are fabricated documents and no reliance can be placed on them - From evidence adduced by both parties it is clear that suit lands in fact belong to Deity of village - Though both Courts below after appreciating evidence on record found that plaintiffs are in possession of suit lands, 1st appellate Court reversed decree and judgment of trial Court on ground that plaintiffs suppressed material fact that suit lands belong to temple and that plaintiffs set up title in themselves but failed to prove same and that 1st appellate Court also expressed view that without seeking relief of declaration of title appellants/plaintiffs cannot maintain suit for simple injunction - Appellant/plaintiff contends where allegation of plaintiff is that he is in lawful possession of properties and his possession is threatened to be interfered with by defendants he is entitled to file suit for mere injunction without adding prayer for declaration of his rights and that it is not necessary for person claiming injunction to prove his title to suit land and it would suffice if he proves that he was in lawful possession of same and his possession was invaded or threatened to be invaded by person who had no title whatever.In this case, plaintiffs case is not specific as to cause of intervention of defendants over their possession in suit land and plaintiffs conveniently pleaded that property is their ancestral property and respondents are interfering with their possession and enjoyment - Plaintiffs purposefully suppressed material fact namely that suit land belongs to Deity and therefore plaintiffs are not entitled for equitable relief of injunction on account of suppression of material facts and they cannot file suit for bare injunction without relief of declaration of title - In strict sense, no substantial question of law is involved in second appeal which is *sine qua non* for maintaining second appeal u/Sec.100 CPC - Decree and judgment of first appellate Court - Justified - Second appeal, dismissed. **Attada Gangu Naidu Vs. Deepala Chandra Mouli 2011(3) Law Summary (A.P.) 33 = 2011(5) ALD 770 = 2011(6) ALT 585.**

—Sec.100(5), proviso - SECOND APPEAL - SUBSTANTIAL QUESTION OF LAW - In this case, it appears from the judgment that no substantial question of law was formulated at time of admission of appeal and as such question was understood to be regarding correctness of judgments of lower courts – If any such lapse is adhering to procedure existed at second appellate stage, counsel for parties should have pointed

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out same at that stage only but they never did so and moreover it is clear that High Court basically framed substantial question of law and answered it – Appellants are given opportunity to answer same - As such no prejudices caused to appellants – Substantial question of law can be formulated even at time of argument stage - Appeals dismissed. **Arsad Sk. Vs.Bani Prosanna Kundu, 2014(2) Law Summary (S.C.) 23 = 2014(5) ALD 80 (SC) = 2014 AIR SCW 2631.**

—Sec.114 - Review - Contention of counsel for respondents in Review petitions that Review petitioner had prayed for the dismissal of the suit O.S. No. 4 of 1999 filed by plaintiff therein and therefore she stopped by conduct from now filing the Review petition is equally untenable - It is a matter of record that Review petitioner, who is 2nd defendant in O.S.No.4 of 1999, remained ex parte and had not filed any written statement praying for dismissal of suit filed by plaintiff - Therefore, there is no question of estoppels of the Review petitioner for filing these Review petitions.

Non-consideration of conse-quences of the death of plaintiff by this court at time when it delivered judgment in appeals, even though said point was admittedly raised at time of hearing of arguments in appeals by counsel for the Review petitioner, was on account of oversight by this court; and since it is a failure to deal with an important issue as to devolution of the share of plaintiff on parties to the appeals under a misconception that he was still alive, it is clearly an error apparent on the face of record warranting Review of common judgment rendered in the appeals - Therefore, Review applications both deserve to be allowed. **Agina Varamma Vs. Agina Chandramouli (died) 2015(2) Law Summary (A.P.) 40 = 2015(5) ALD 108 = 2015(3) ALT 610.**

—Secs.114 & 151 & Or.7, Rule 7 and Or.41, Rules 1 & 33 - SPECIFIC RELIEF ACT, Sec.16(c) - "Jurisdiction Court to review its own order" - Suit filed for specific performance - District Court passed decree - High Court allowed appeals, and set aside judgment of trial Court - On remand, Single Judge while allowing review petitions recalled its earlier judgment and order and directed appeal to be listed for re-hearing - Review Court does not sit in appeal over its own order - A re-hearing of matter is impermissible in law - It constitutes an exception to general rule that once a judgment is signed or pronounced it should not be altered - It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order - Power of review can be exercised for correction of mistake and not to substitute a view - Such powers can be exercised within limits of statute dealing with exercise of power - Review cannot be treated an appeal in disguise - Discretionary relief of specific performance of contract can be granted only in event of plaintiff not only makes necessary pleadings but also establishes that he had all along been ready and willing to perform his part of contract - Such readiness and willingness on part of plaintiff is not confined only to stage of filing of plaint but also at subsequent stage, viz., at hearing - An appeal is continuation

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of suit and any decision taken by appellate Court would relate back unless a contrary intention is shown to date of institution of suit - Appellate Court while exercising its appellate jurisdiction would be entitled to taken into consideration subsequent events for purpose of moulding relief as envisaged under Or.7, Rule 7 r/w Or.41, Rule 33 of CPC - Or.47, Rule 1 of CPC does not preclude High Court or a Court to take into consideration any subsequent event - If importing of justice in a given situation is goal of judiciary, Court may take into consideration subsequent events - Impugned judgments - Unsustainable - Appeal, allowed. **Inder Chand Jain (D)through L.Rs Vs.Motila(D)through L.Rs. 2010(1) Law Summary (S.C.) 16.**

—Sec.114, Or.47, Rule 1 - "Review" - Govt. filed writ petition against order of Administrative Tribunal in O.A filed by petitioner - Petitioner filed review of order in writ petition - Normal principle of law is that once judgment is pronounced or order is made, Court ceases to have control over matter - But in certain circumstances Court may reopen its judgment if a manifest wrong is done and it is necessary to pass an order to do full and effective justice - REVIEW; Following principles culled out for review:

1. On the discovery of new and important matter or evidence which, after the exercise of due diligence is not within the knowledge or could not be produced by the petitioner at the time when the order was made. (2). It can be exercised on account of some mistake or error apparent on the face of record. (3). To correct the patent error of law or fact which stares in the face. (4). The expression "any other sufficient reason" appearing in order XLVII Rule 1 CPC has to be interpreted in the light of other specified grounds. (5). An erroneous order/judgment can not be corrected in the guise of exercise of power of review. (6). There is a clear distinction between an erroneous decision and an error apparent on the face of record. While the former can be corrected by the higher forum, the latter only can be corrected under Order XLVII Rule 1 CPC. (7). While exercising the power of review, the court cannot sit in appeal over its judgment. (8). The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts of the legal position - While exercising powers under Or.42, Rule 1 CPC Court has to see whether there is any error apparent on face of record or not - There is no need to give any further direction - In this case there is no error on face of record so as to review judgment - Review WPMP, dismissed.**Tadipathi Laxma Reddy Vs. Govt. of A.P. 2009(3) Law Summary (A.P.) 191.**

—Sec.114 - Or.47, Rule 1 and Or.7, Rule 7 and Or.41, Rules 1 & 33 - SPECIFIC RELIEF ACT, Sec.16(c) - Agreement entered into by between parties - Suit for specific performance filed by respondent,decreed - High Court allowed appeal and set aside order of trial Court - Petitions filed by both parties seeking review of judgment, allowed by High Court - CPC, SEC.114 & OR.47, RULE 1 - JURISDICTION AND POWER OF CIVIL COURT TO REVIEW ITS JUDGMENT/DECISION - Application for review would lie *inter alia*

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when order suffers from an error apparent on face of record and permitting same to continue would lead to failure of justice - Power of review can be exercised for correction of a mistake and not substitute a view - Such powers can be exercised within limits of statute dealing with exercise of power - Review cannot be treated an appeal in disguise - SPECIFIC RELIEF ACT, Sec.16(c) - Provision mandates that discretionary relief of specific performance of contract can be granted only in event plaintiff not only makes necessary pleadings but also establishes that he had all along been ready and willing to perform his part of contract - Such readiness and willingness on part of plaintiff is not confined only to stage of filing of plaint but also at subsequent stage viz., at hearing - SUBSEQUENT EVENTS - There cannot be any doubt that appellate Court while exercising its appellate jurisdiction would be entitled to take into consideration subsequent events for purpose of moulding relief was envisaged under Or.7, Rule 7 r/w Or.41, Rule 33 CPC - Or.41, Rule 1 CPC stipulates that filing of appeal would not amount to automatic stay of execution of decree - Law acknowledges that during pendency of appeal it is possible for decree holder to get decree executed - Execution of decree during pendency of appeal would, thus, be subject to restitution of property in event appeal is allowed and decree is set aside - Procedure does not preclude High Court or a Court to take into consideration any subsequent event - If imparting of justice in a given situation is goal of judiciary, Court may take into consideration (of course on rare occasions) subsequent events - Impugned judgment, set aside - Appeal, allowed.**Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs. 2009(3) Law Summary (S.C.) 24.**

—Sec.115 - Respondent herein instituted O.S.No.15 of 2008, on file of Court of District Judge, against petitioner herein for specific performance of agreement of sale, dated 05-03-2007 in respect of lands, admeasuring Ac.2-16 gts., in Sy.No.115/A and Ac.4-00 gts., in Sy.No.161/B - Learned Judge decreed said suit on 31-03-2010 - Thereafter, decree holder filed E.P.No.2 of 2011 for enforcement of decree on 09-11-2010. A.S.No.2 of 2011 filed by defendants/ petitioners herein against decree in O.S.No.15 of 2008 before this Court was dismissed on 15-04- 2013 - Decree holder/ respondent herein filed E.A.No.62 of 2013 under Order 26 Rule 9 of Code of Civil Procedure for appointment of an Advocate Commissioner to identify land under E.P. with survey numbers and village map in consonance with boundary map of E.P. Schedule with assistance of Mandal Surveyor - By way of an order, dated 31-12-2013 Commissioner was appointed and same is the subject matter of challenge in C.R.P.(SR) No.23826 of 2014 - Commissioner so appointed filed a report on 10-06-2014 and by way of an order, dated 13-08-2014 learned Prl. District Judge accepted said report and said order is under challenge in C.R.P.No.2982 of 2014 - Held, contentions sought to be pressed into service by learned counsel for petitioner are liable to be rejected as being devoid of any merit - Fact remains that decree holder is seeking specific performance of contract in respect of property within boundaries as mentioned in suit agreement of sale and decree only and in name of misdescription of one of survey numbers, legitimate right of decree holder cannot be permitted to be frustrated - Therefore, this Court is of considered opinion that Court below

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correctly exercised its jurisdiction to enable the decree holder to get the fruits of the decree. In the instant case the entire effort of the judgment debtor is obviously to get suit claim frustrated, which cannot be permitted - For aforesaid reasons and having regard to principles laid down in above-referred judgments and taking into consideration totality of circumstances these revisions are dismissed. **Gurram Anantha Reddy Vs. Katla Sayanna, 2015(2) Law Summary (A.P.) 195 = 2015(4) ALD 716 = 2015(4) ALT 302.**

—Sec. 115 and **ARBITRATION AND CONCILIATION ACT, 1996,** Sec. 2(1) (e) - **ANDHRA PRADESH CIVIL COURTS ACT, 1972** - **ANDHRA PRADESH ARBITRATION RULES 2000** - Aggrieved of orders passed by learned Senior Civil Judge of Mangalagiri, Peddapuram, Gajuwaka and Chittoor, respectively, these Civil Revision Petitions are filed by respective judgmentdebtor(s) in C.F.R. No.2546 of 2014 in E.P. No.50 of 2014, C.F.R. No.2548 of 2014 in E.P. No.42 of 2014, E.P. No.31 of 2013, E.P. No.115 of 2013 and E.P. No.61 of 2012, under Section 115 of Code of Civil Procedure, 1908,, mainly, on ground of lack of inherent jurisdiction in view of definition of 'Court' as envisaged under Section 2(1)(e) of Arbitration and Conciliation Act, 1996 - Held, in the decisions relied on by learned counsel for respondent No.1, attention of Courts as to existence of Rule 10 of Andhra Pradesh Arbitration Rules 2000, was not drawn, which, perhaps, lead to rendering judgments with the meaning of word "Court" occurring in Sections 34 and 36 of Act, something different from word "Court" as defined under Section 2(1)(e) of the Act by interpreting pecuniary and territorial jurisdiction of the "Courts" as classified in the Andhra Pradesh Civil Courts Act, 1972 - For aforesaid reasons, it is obvious that learned Senior Civil Judges Courts of Mangalagiri, Peddapuram, Gajuwaka and Chittoor have no inherent jurisdiction to deal with applications filed under Section 36 of Act and consequently entertaining EPs by those Courts is without authority and, therefore, orders impugned are hereby set aside by giving liberty to respondent No.1 to invoke the jurisdiction of proper Court - With above direction, these Civil Revision Petitions are allowed. **Potlabathuni Srikanth Vs. Shriram City UnionFinance Limited 2015(3) Law Summary (A.P.) 467.**

—-Sec.115 - **LIMITATION ACT,** Sec.5 - This petition under Section 115 of the Code of Civil Procedure, by the petitioner/defendant is directed against the orders of lower Court passed in I.A. filed under Section 5 of the Limitation Act requesting to condone the delay of 239 days in presenting the application filed under Order IX Rule 13 to set aside the ex parte decree passed in the suit.

Held, when defendant had raised a plea that suit summons were not served in suit, before ex parte decree was passed, trial Court ought to have examined said aspect and ought to have recorded a finding as to whether suit summons were served on defendant or not; but, trial Court had failed to examine said aspect and dismissed petition purely on ground that delay from 25.07.2013 to 16.04.2014 is not properly explained and that defendant had failed to show sufficient cause for condonation of delay - In well considered view of this Court, trial Court, which had

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failed to examine core issue, was in error in dismissing petition on extraneous considerations and for non explanation of delay - It is to be noted that in all fairness trial Court ought to have examined vital aspect as to whether summons were served or not, as law is well settled that any decree passed without service of summons on defendant would be a nullity and non est in eye of law - Had said question been examined and answered by trial Court, this Court would have been in a position to go into merits of matter and further aspect as to whether delay deserves to be condoned or not - For trial Court not adverting to core issue involved in matter, this Court is of well considered view that order impugned is unsustainable - In result, Civil Revision Petition is allowed and order impugned is set aside. **Yarlagadda Venkata Krishna Rao Vs. Manne Vishnu 2016(2) Law Summary (A.P.) 287.**

—Secs.115, 2(2), 96 and 105 and Or.7, 14, Rule 11 & 2 - Application filed to decide issue of limitation as preliminary issue and dismissing suit as barred by limitation - Trial Court allowed application deciding preliminary issue against plaintiff/petitioner and dismissed suit as barred by limitation - Hence present revision u/Sec.115 CPC - Dismissing suit as barred by limitation is final as adjudication on ground of limitation will have effect of finally disposing of suit, against which as appeal lies u/Sec.96 of CPC - Whether I.A can be tried as a preliminary issue as result of which, it was tried as a preliminary issue and dismiss suit also can be agitated in appeal u/Sec.105(1) CPC - Hence present revision not maintainable u/Sec.115 CPC - Revision rejected - Registry directed to return originals for enabling petitioner to file appeal. **Meka Venkateswara Rao Vs. Tutaram Venkata Jaya Rama Krishna Vara Prasad, 2011(3) Law Summary (A.P.) 15 = 2011(6) ALD 446 = 2011(6) ALT 354.**

—Secs.115, 12 & 102 - "Powers of revisional Court" - Stated - Plaintiff filed a suit against D1 for recovery of Rs.11,500 towards cost of paddy entrusted to D1 - Trial Court granted decree for Rs.8,500 - 1st appellate Court allowed appeal and dismissed suit - As valuation of property is less than Rs.25000, present Revision filed - In this case, plaintiff entrusted crop to D1 with request to thrash same and handover realized paddy to rice mill - Defendant contends that Sec.115 CPC has no application as second appeal is prohibited u/Sec.102 CPC plaintiff was not to be entitled to lay either an appeal or revision from judgment of decree in appeal - Evidently in this case plaintiff entrusted crop to 1st defendant for thrashing and making over same to rice mill - Appellate Judge is totally erroneous in concluding that plaintiff failed to establish his title and entrustment - Errors of appellate Court are not mere actual patent to errors on face of record, they are errors which fall within ambit of perverse findings and deserve to be rectified - Revisional Court is entitled to interfere with finding of subordinate Court, if findings of subordinate court is perverse on a question of fact - It is accordingly found in this case, that findings of appellate Court that plaintiff failed to establish his title to property and plaintiff failed to establish entrustment of paddy crop to 1st defendant are perverse and deserve to be rectified - In view of maximum *ubi jus ib remedium*, plaintiff who laid suit and established his title and entrustment cannot be shut off from questioning findings of appellate Court - Present revision is found to be meritorious

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- Judgment of appellate Court, set aside - Judgment of trial Court restored - Plaintiff is granted a decree against 1st defendant - Revision, allowed. **Masina Sriramulu Vs. Pasagadagula Pydaiah, 2011(2) Law Summary (A.P.) 20 = 2011(3) ALD 342 = 2011(3) ALT 244 = AIR 2011 (NOC) 347 (AP).**

—Secs.115, 151 &144 and Or.21, Rule 22 - CONSTITUTION OF INDIA, Art.227 - Appellate Court dismissed appeal for default, thereby confirmed decree of trial Court - Revision filed u/Sec.115 CPC - Petitioner is defendant/JDR and respondents are DHRs/plaintiffs and are wife and husband - Respondents filed suit for eviction, recovery of rent and mesne profits - Junior Civil Judge decreed suit granting three months time to vacate premises - Appeal filed by JDR was dismissed for default and consequently DHRs filed E.P and execution Court order notice under Or.21, Rule 22 - JDR did not receive notice and however possession was delivered to DHR - JDR claims that he has come to know of execution proceedings and consequently filed E.A u/Sec.144 and 151 CPC for restitution - Execution Court dismissed E.A - Hence present revision - DHR raised preliminary objections contending that only appeal would apply from an order u/Sec.144 CPC and not a revision or in alternative after amendment of CPC in 2002 a revision u/Sec.115 CPC would not be maintainable and revision at best would be under Art.227 of Constitution and that Sec.144 CPC could be invoked on original side and not before execution Court - Distinction between Sec.115 CPC and Art.227 of Indian Constitution - Discussed - *Inter alia* contend that order u/Sec.144 CPC can be invoked in original side and not on execution side and that an order u/Sec.144 is a decree and consequently is appealable and therefore a revision would not lie from an appealable order in view of Sec.115(2) - Revision petitioner/JDR contends that impugned order is an order indeed and consequently provisions u/Sec.144 would apply to present case and that in view of language deployed by Sec.144 CPC principles of restitution would apply not only to decrees pass in suit but to order including orders passed in execution proceedings - Very beginning of Sec.144 CPC is that principles of restitution would be applicable in respect of decrees and orders and obviously proceedings in execution is an order - Needless to point out that an Order u/Sec.144 CPC is decree in view of definition of decree u/Sec.2(2) CPC - Sec.96 CPC envisages that an appeal would lie from every decree with certain exceptions and Sec.144 CPC does not fall within exception u/Sec.96 and consequently an order in petition u/Sec.144 CPC is appealable order - Evidently in this case, petitioner seeks for restitution under this petition and therefore that E.A is a petition u/Sec.144 CPC or is a primarily is petition u/Sec.144 CPC - Once E.A is a petition u/Sec.144 CPC appeal would lie there- from - Sec.115 CPC provides for a revision where an appeal does not lie - Impugned orders in E.A are appealable orders and consequently revision u/sec.115 CPC does not lie and it is also not appropriate to entertain present petition under Art.227 of constitution, where petitioner has a chance of making exhaustive submission before appellate Court - Hence present revision is misconceived and is liable to be dismissed - Revision petitioner is directed to approach concerned appellate Court and period of prosecution of revision shall be condoned for computing limitation for appeal from impugned order before appellate Court. **Mohammed Abdul Sattar Vs.Mrs.Shahzad Tahera, 2012(1) Law Summary 64 = 2012(2) ALD 393 = 2012(2) ALT 230.**

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—Sec.115 & Or.9,R.9 - Suit by plaintiff/revision petitioner for recovery of money against respondent - On day of cross examination, plaintiff was absent and suit was dismissed for default - I.A. filed by plaintiff to restore suit along with affidavit by his counsel - After a certain period it too was dismissed on ground that there was no representation on behalf of the Plaintiff - One more I.A. was filed by Plaintiff to condone delay of 465 days on ground that he was suffering from severe ill-health and was unable to move and there was no wilful default on his part - Court below held that petitioner had attended before court in some other case filed by him against some other parties and he had not filed any medical evidence to show that he suffered from ill-health preventing him from filing application for duration of 465 days - It also found that petitioner was hale and healthy when he appeared before court at the time of arguments by his counsel and that he did not explain day to day delay - Challenging the same this Revision Petition was filed with a delay of 792 days - Held, petitioner has evinced a very casual approach to the conduct of his suit and has been extremely negligent in prosecuting it and his explanation for condonation of delay that he was suffering from severe ill-health has not been substantiated - Trial Court did not commit any error in refusing to condone inordinately long delay of 465 days in filing application to restore the I.A. filed in 2007 - Thus trial court did not accept his plea of being ill-healthy bona fide - There is no error in the said view as the Apex Court has clearly held that while considering whether to condone delay guiding principle is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter - Therefore, Revision Petition fails and it is dismissed. **M.Rajamannar Vs. B.Fakruddin, 2014(3) Law Summary (A.P.) 225 = 2015(1) ALD 669 = 2014(6) ALT 802.**

—Sec.115 & Or.21 - Execution proceedings - Right of third party - 1st respondent filed suit and obtained decree against 2nd respondent - Petitioner, 3rd party to suit and E.P filed E.As for summoning Manager of Bank and for calling three documents viz., authorization letter issued to petitioner by JDR, payment slip of loan account of JDR and mortgage documents, claiming that he is purchaser of E.P schedule property after passing decree and that he is bonafide purchaser - Senior Civil Judge dismissed both E.As. - Petitioner contends that he is bona fides purchaser of E.P. schedule property for valuable consideration and summoning of Bank Manager and documents is necessary to establish petitioner's plea - In this case, sale deed executed in favour of petitioner did not contain any recital pertaining to discharge of loan by petitioner to Bank on behalf of JDR - This is a case, where petitioner who is third party to suit and E.P proceedings, seeks to defeat rights of DHR - A party cannot be allowed by Courts to indulge in speculative litigation by summoning persons unconnected with litigation or documents in custody of such person on his mere request without his laying a strong foundation and assigning convincing reasons therefor - Allowing such applications, especially by Executing Courts, would not only delay proceedings, thereby legitimate rights of opposite parties but also giving room of parties

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to indulge in vaxatious litigation, frustrating efforts of decree holder to execute decrees - It is therefore, imperative for Executing Courts to make an endeavour to use their skills to separate chaff from grain by weeding out vaxatious petitions aimed at stalling execution proceedings - Order of Executing Court - Justified - CRP, dismissed. **P.Ganganna Vs. K. Surendranath 2010(3) Law Summary (A.P.) 36 = 2010(6) ALT 139 = 2010(5) ALD 581.**

—Sec.115, Or.21, Rules 37 and 38 - The admissions are the best form of proof on which the Decree Holder can rely to show that the Judgment Debtor is a person having substantial properties and that he is having means and capacity to pay at least a substantial portion of the decree debt - The fact that the Judgment Debtor, after having stated in his counter that he is not liable for arrest, had made the above admissions about the ownership of valuable immovable properties is by itself sufficient to hold that he is wilfully not paying the decree debt with the object of delaying and defeating just debt of the Decree Holder - Further, it is necessary to mention that learned District Judge did not appreciate facts and evidence on record in right perspective and had held against Decree Holder - In the result, Civil Revision Petition is allowed and the impugned order dismissing the E.P. in O.S. is hereby set aside holding that it is fit case to order arrest and detention of the Judgment Debtor in a civil prison - However, considering facts and circumstances of case, the Judgment debtor is granted eight weeks' time from today to deposit and entire balance amount due under decree along with costs of execution to credit of the EP before the court below - And, on failure of the Judgment Debtor to comply with the said direction, court of execution shall issue a warrant of arrest against the Judgment Debtor in accordance with procedure established by law and further proceed with execution proceedings - Execution petition stands allowed accordingly. **V.Balachandra Naidu Vs. Dr.V.Gurubhashana Naidu 2015(1) Law Summary (A.P.) 266 = 2015(2) ALD 742.**

—Sec.115 and Or.34, Rule 5 - Transfer of Property Act, Secs.60 and 100 - **AGRICULTURAL DEBT RELIEF SCHEME -** Petitioner herein is Judgment Debtor No.1. - Counter affidavit was filed by petitioner contending that preliminary decree in the above suit, which was a suit on basis of a mortgage, is not executable and that it is only the final decree which is executable - Petitioner pointed out that 1st respondent had suppressed the fact that I.A.No.157 of 1999 filed by it for passing of final decree had been dismissed on 14-08-2003 and that the said order operates as res judicata and bars the E.P. - Contended that as per clause 7 of the preliminary decree dt.16-12-1994, the 1st respondent had to obtain final decree for sale of the mortgaged properties and since no final decree was passed in the case, preliminary decree cannot be executed and mortgaged property cannot be brought to sale - Contended that 1st respondent is not entitled to seek attachment of movable properties or arrest and detention of petitioner in civil prison, in absence of a personal decree against petitioner - It was also lastly contended that as per a recent Agricultural

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Debt Relief Scheme announced by the Government of India, entire decree debt must be deemed to have been waived and petitioner is not liable to pay any amount to the 1st respondent bank - Held, observation that decree which would be executable would be final decree was not taken note of by Division Bench and it only took note of later observation that finality of decree does not necessarily depend upon its being executable - Therefore view expressed by the Division Bench, in my considered opinion, goes against consistent view of Supreme Court that right of mortgagor to redeem mortgage property subsists till appeals against orders refusing to set aside sale are passed finally - It therefore does not represent correct position of law - LAW DECLARED IN DEVAVATHINA PARADESAIAH (DIED) that a preliminary decree in a mortgage suit can be executed even if an application for final decree had been dismissed, does not represent the correct legal position - Since application for final decree I.A.No.157 of 1999 filed by the 1st respondent-Bank had been admittedly rejected on 14-08- 2003 - This order had attained finality - There is therefore no question of the 1st respondent-Bank obtaining a final decree as mandated by clause (7) of the Preliminary decree or by Order 34 Rule 5 C.P.C - In absence of a final decree, there is no question of 1st respondent Bank executing preliminary decree - Therefore, the order of Senior Civil Judge, holding that E.P. is maintainable, and preliminary decree can be executed, is unsustainable - Civil Revision Petition is accordingly allowed and order of Senior Civil Judge, is set aside and the said E.P. is dismissed. **Lanka Babu Surendra Mohana Benarji Vs.Canara Bank,Unguturu 2015(3) Law Summary (A.P.) 250 = 2015(6) ALD 562 = 2015(6) ALT 473.**

—Sec.115, Or.XXXIX, Rules 1 & 2 and Scope of Art. 226 & 227 of Constitution of India -This revision petition is sought to be filed under Article 227 of Constitution of India by Plaintiff/respondent questioning reversing order passed by the lower appellate Court dated 27.11.2013 in C.M.A. No.3 of 2013 setting aside temporary injunction granted in I.A. No.438 of 2011 in O.S. No.93 of 2011 (suit for bare injunction) dated 31.01.2013 on the file of Principal Junior Civil Judge's Court, in favour of the revision petitioner herein pending disposal of the suit in the application under Order XXXIX Rules 1 and 2 C.P.C. - Held, from the above expression more particularly from the reading of the conclusion (in Saran V. Civil Judge AIR 1991 All. 114(FB)) at para 38, (4) to (9) it is indicating that mere error in exercise of jurisdiction by the lower appellate Court is not sufficient to interfere in the absence of showing of failure of justice resulted therefrom; without which the jurisdiction under Article 227 to invoke is out of availability - Thus, Section 115 C.P.C amendment by 1999 amended Act does not and cannot cut down the ambit of the High Court's power under Article 227 of the Constitution of India and at the same time, by the amendment, it is not even expand the Courts jurisdiction of superintendence - It has to be exercised on equitable principle and only in appropriate cases to ensure that the real justice does not come to a halt and this reserve and exceptional power of judicial intervention should be directed in the larger public interest and subject to high degree of judicial discipline

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- This Court thus could not venture to interfere with the impugned order of the lower appellate Court, but for giving the following directions viz., there is an ex parte injunction in favour of the plaintiff at the time of filing of the suit obtained that continued by making it absolute and even after the lower appellate Court's reversal order setting aside the injunction order by filing the petition under Article 227 of the Constitution of India before this Court there is suspension of the order of the Additional District Judge in C.M.A. No.3 of 2013 - Accordingly and in the result, the revision is disposed. **Dasari Laxmi Vs. Bejjenki Sathi Reddy, 2015(2) Law Summary (A.P.) 371 = 2015(3) ALD 372 = 2015(1) ALT 209.**

—Secs.144 &151- Principles laid down in the referred judgments are patently to the effect that restoration can be ordered by the Courts in exercise of inherent powers conferred under Sec.151 of CPC also - In the instant case, the learned Judge instead of adjudicating the issue basing on the material available before the Court under Sec.151 of CPC, directed the petitioner herein to approach the Court once again by way of civil suit for redressal of his grievance - There is absolutely no justification on the part of the Court below in dismissing the application filed by the petitioner and this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned order is unsustainable and untenable - For the above said reasons and having regard to the principles, this Civil Revision Petition is allowed, setting aside the order passed by the learned Junior Civil Judge. **N.Panduranga Rao Vs. V. Venkateshwar Rao 2015(1) Law Summary (A.P.)** ***136.***

—Sec.148, r/w 151 - Executing Court dismissing Application filed by JDR for grant of one month time for payment of second instalment, holding that sufficient material not placed before Court to establish convincing reasons warranting extension of time - It is not case of either of parties that decree itself was an instalment decree or at appropriate stage any order permitting payment of decretal amount in instalments had been made by Court in original suit - It may be by volition of parties they came to an understanding and in a way at a particular point of time Court had put its seal of approval, but however, the same was not carried to its logical end, since the revision petitioner committed default - Executing Court has no power to grant instalments merely because of volition of parties certain amounts had been paid and received and this may not seriously alter situation - Order of dismissal of Application praying for extension of time - Justified - CRP, dismissed. **Khadar Baba Fancy Stores Vs. GPG, Chit Funds 2008(3) Law Summary (A.P.) 77 = 2008(5) ALD 711.**

—-Sec.148 and Or.6, Rule 18 - This Civil Revision Petition is filed challenging order in I.A. in Court of Senior Civil Judge - Petitioner herein is 2nd respondent in above suit - Said suit was filed for declaration of title and recovery of possession - In year 2008, 1st respondent/plaintiff filed I.A. to implead two parties as defendant Nos.6 and 7 - That Application was allowed - But after Application was allowed, consequential amendments in plaint were not carried within time of 14 days fixed under Order

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VI Rule 18 C.P.C - 1st respondent then filed I.A. - 3 years and 7 months after I.A. was allowed stating that on account of oversight, he could not file fair copy of plaint in time and the said mistake being unintentional, time be granted for amendment of plaint and for filing fair copy of plaint.

This Application was opposed by other side pointing out that case is at stage of arguments, that 1st respondent had already been put on notice of fact of non-filing of fair copy of plaint after the amendment itself when he was cross-examined, but he had done nothing to rectify it - By order Court below allowed said Application on payment of costs of Rs.200/- on ground that it is just and necessary as per law to allow the 1st respondent to amend plaint by filing fair copy of the plaint - Challenging the same, this Revision is filed.

Held, time limits fixed in Code of Civil Procedure as amended by Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) cannot be totally ignored altogether even if they are construed as not mandatory - This is a classic case where, having been obtained an order from the Court below for amendment of plaint, fair copy of plaint is not filed for a period of 3 years and 7 months - By no stretch of imagination, can this sort of delay be condoned by invoking Sect.148 C.P.C. - In Court considered opinion, it is not open to 1st respondent to blame his counsel for his own negligence and he has to suffer the consequences of same - Therefore, Civil Revision Petition is allowed and order in I.A. of Senior Civil Judge is set aside. **Yella Reddy Vs. Bheemreddy Narasimha Reddy 2016(1) Law Summary (A.P.) 77.**

—Sec.148-A - Lodging of "caveat" - Trial Court passing interim orders without effecting notice to Caveator - Senior Civil Judge dismissing CMA filed by Caveator - Respondents contend that inasmuch as it is only an interim order to safeguard interest of both parties present revision petitioner as well could have moved Court praying for vacation of said interim order instead of preferring CMA or a further CRP - When once a Caveat is filed it is a condition precedent for passing interim order to serve notice of application on caveator who is going to be affected by interim order and unless that condition precedent is satisfied it is impossible for Court to pass an interim order affecting Caveator - In this case, impugned order cannot be sustained since Court of first instance having specifically recorded about pendency of caveat, had failed to see that provisions of Sec.148-A of Code were complied with - Interim order set aside - Matter remitted to Court of first instance to give opportunity to both parties to advance submissions and pass appropriate orders in accordance with law. **Addanki Hanumantha Rao Vs. Addanki Srinivasa Rao 2009(1) Law Summary (A.P.) 260 = 2009(2) ALD 743 = 2009(2) ALT 415 = 2009(1) APLJ 315.**

—Sec.148-A - CONSTITUTION OF INDIA, Art.136 - Appellant/plaintiff, helpless widow who has become prey of greed of her own elder brother-in-law and deprived her properties in fraudulent manner, filed suit for declaration that she is owner in possession of suit properties and so called decree, shown to have been suffered by her in favour

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of respondents/defendants is illegal - Respondents/defendants claim that decree in question was legal and there was no question of fraud and that in fact that decree was as per family settlement and the suit is barred by limitation - Trial Court accepted evidence of appellant/plaintiff and disbelieved witnesses examined on behalf of respondent/defendants and returned a finding that decree was result of fraud - Appellate Court came to conclusion that there was no fraud played and consent decree was good and valid decree and that suit filed by appellant was barred by time - Appellant contends that plaint dated 26-3-1985 filed on 26-3-1985 - Written statement filed by appellant is also dt.26-3-1985 - Appellant was examined on 26-3-1985 and decree was also passed on 26-3-1985 - How all this could have happened on one and same day - Further, an Application was filed u/Sec.148-A CPC, on 13-9-1985 with signature of advocate who had appeared on behalf of appellant in earlier proceedings and filed written statement of consent - A notice was issued by Court to appellant and was served through a bailiff and in pursuance of notice, she came and gave statement before Court on 23-11-1985 - That she did not intend to file suit challenging consent decree - There was no question of any proceedings being instituted on basis of a so called caveat u/Sec.148-A of C.P.C nor was there any question of Court issuing any Notice on basis of a Caveat - In pursuance of so-called summons served on her through bailiff in proceedings u/Sec.148-A of CPC and her statement was also got recorded - It is not known as to how a Caveat Application was got registered and a summons were sent on basis of a Caveat Application, treating it to be an independent proceedings - Such is not scope of a Caveat u/Sec.148 of C.P.C - This was nothing, but a towering fraud played upon an illiterate and helpless widow, whose whole inheretent property was tried to be grabbed by respondents herein - Whole suit and Caveat proceedings and subsequent Caveat proceedings were nothing but a systematic fraud - Fraud puts an end to every thing that such decree is nothing but a nullity - Judgment of High Court as well as Appellate Court, set aside - Judgment of trial Court, restored - Appeal, allowed. **Santosh Vs. Jagatram 2010(2) Law Summary (S.C.) 46 = 2011(2) ALD 42(SC) = 2010 AIR SCW 6540.**

—Sec.151 - "Consolidation of suits" - Two suits filed by husband and wife basing on different promissory notes - Trial Court dismissed Application filed by defendant for clubbing and consolidation of both suits in view of commonality of defence and evidence - Petitioner/defendant contends that trial Judge dismissed petition without appreciating facts and circumstances in proper perspective and that even if consolidation of both suits to be permitted, no prejudice would be caused to plaintiffs in these suits - Inherent power u/Sec.151 of CPC can be exercised for purpose of consolidation of suits - However in light of facts and circumstances, if clubbing or consolidation of suits be permitted no serious prejudice would be caused to either of parties in light of nature of defence which had been taken and also in view of fact that plaintiffs in both suits being wife and husband - Impugned order, set aside - CRP, allowed. **Badineni Munenna Vs. Veeramareddy Narayana Reddy 2009(3) Law Summary (A.P.) 69 = 2009(6) ALD 122 = 2009(5) ALT 731.**

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—Sec.151 - "Condonation of delay in representation of plaint" - Respondent filed suit for recovery of amount basing on promissory note - Plaint returned on ground that adequate Court fee not paid - Respondent represented plaint after 4½ years with I.A to condone delay - Trial Court ordered notice to petitioner/defendant and allowed I.A. - Petitioner contends that though Court would adopt a liberal approach in condonation of delay in representation of proceedings, it cannot be to extent of defeating very concept of limitation - Plea of respondent that he lost communication with his counsel is unbelievable and that once he has entrusted matter to his counsel he was under obligation to be in touch with him from time to time, at least once in six months or one year and it is highly improbable that respondent did not have communication with his counsel for a period of 1687 days - Facility created by law for rectification of procedural defects, cannot be stretched to such an extent as to defeat very concept of limitation - If a plaint is presented by paying a paltry sum as Court fee and no steps are taken for rectification of same within a reasonable time, it would be difficult to stop limitation from running - If respondent has chosen not contact his advocate for 4½ years or if his counsel has just forgotten about matter, once plaint was returned, Court cannot condone delay of such magnitude just for asking of it - Condonation of delay in representation cannot be converted in to a device to defeat very vigour of law of limitation - CRP, allowed. **G.Hanumantha Rao Vs. L.V.Subbaiah 2011(2) Law Summary (A.P.) 68 = 2011(4) ALD 246 = 2011(4) ALT 327.**

—Sec.151 - "Re-opening of matter" - Respondent/plaintiff filed suit against petitioner/defendant for recovery of certain amount basing on Ex.A.1, promissory note executed by petitioner - Petitioner contends that she neither borrowed any amount from respondent/laintiff nor executed Ex.A1, alleged promissory note - Earlier, she filed Application to send disputed signature and thumb impressions on promissory note along with admitted signatures for comparison to Hand Writing Expert and same was allowed - Thereafter, petitioner did not turn up for one year and matter had undergone several adjournments and therefore closed - Subsequently Application filed to reopen matter and issue summons to Branch Manager of Bank to produce original opening Application form and specimen signatures of S.B. Account to send document to Expert for opinion - Trial Court after enquiry dismissed Applications holding that there are no bona fides to allow same - Petitioner contends that present Application dismissed though there are no counter affidavit filed by respondent/plaintiff and trial Court ought to have allowed applications to re-open and summon Officials of Bank to produce above referred documents - In this case, in view of contention of revision petitioner that she neither borrowed any amount from respondent/plaintiff nor she executed promissory note that ends of justice would be met if matter reopens and to issue summons to above referred Officials to produce above referred documents - Trial Court directed to send disputed signatures and thumb impressions on Ex.A.1, promissory note along with above referred documents which contain signatures of petitioner related to period of Ex.A.1 for comparison to Hand Writing Expert - CRPs, allowed. **Katta Anitha Kumar Vs. Sri Gorli Srinivasa Rao, 2012(3) Law Summary (A.P.) 307 = 2013(1) ALD 291 = 2013(3) ALT 296.**

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—Sec.151 - Plaintiff/respondent instituted the suits, seeking specific performance of contracts of sale said to have executed by the defendants/petitioners - The defendants/ petitioners filed written statements, denying the plaint averments - In the said suits, defendants/petitioners filed the instant IA's, respectively, u/Sec.151 of the Code of Civil Procedure to club all the four suits and to record evidence in any one of the suit - Resisting the said interlocutory applications, the plaintiff/respondent herein in all the revisions filed counters - The learned First Additional District Judge, dismissed the said IA's, respectively - Calling in question, the validity and the legal sustainability of the said orders passed by the learned First Additional District Judge, the present revisions have been filed - Held, in the instant case, since the causes of action for filing these present suits are distinct and separate and as the agreements of sale are also different and distinct and the properties covered by the same are also different with distinct boundaries and as the defendants are also different, the learned First Additional District Judge is perfectly justified in dismissing the applications filed by the petitioners herein - The Hon'ble Apex Court held that unless the orders impugned are patently perverse and vitiated by fundamental infirmities, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible - In the instant revisions, the said contingency is conspicuously absent - In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that there are no merits in the present revisions and the revisions are liable to be dismissed - For the aforesaid reasons and having regard to the principles laid down in the judgments referred to supra, the Civil Revision Petitions are dismissed. **Arka Lakshmi Manohari Vs. Pillamogolla Ranga Rao 2015(3) Law Summary (A.P.) 92.**

—Sec.151 - Application for clarification - Suit filed by respondent was decreed for certain amount - High Court in appeal stayed decree of Lower Court subject to payment of 50% of decretal amount and subsequently dismissed appeal for default for non compliance of order - High court allowed applicaton fled by applicant to set aside order subject to applicant paying costs of Rs.500/- and since applicant failed to pay said amount of Rs.500/- order stood vacated and order dismissing appeal stood restored, therefore applicant filed applications for restoration of appeal with application for condonation of delay of 997 days – Divisional Bench of High Court allowed both applications and Appeal restored to file - Applicant contends that inspite of restoration of appeal, lower Court is seeking to proceed with execution proceedings on ground that no specific order was passed by High Court restoring interlocutory applications and interim orders passed therein – Applicant also further contends that even in absence of a specific order of restoration of interlocutory applications and interim orders passed therein, with restoration of Appeal they stand automatically restored - High Court of opinion that in light of legal position as reflected in judgment of Apex Court in VAREED JACOB V. SOSAMMA GEEVARGHES (2004) 6 SCC 378 that even in absence of specific order of restoration of interlocutory applications they stand revived

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with restoration of main case unless an express order was passed declining to restore such applications – With restoration of interlocutory applications interim orders which were at force at time of dismissal of appeal automatically got restored – With this clarification, Application disposed of accordingly. **Sri Sanjeevi Mechanical Works Pvt.Ltd., Vs. Amberlite Resins Pvt.Ltd. 2015(3) Law Summary (A.P.) 304 = 2015(4) ALD 429 = 2015(4) ALT 57.**

—Sec.151 - **INDUSTRIAL DISPUTES ACT** - Domestic enquiries especially in cases pertaining to non-issuance of tickets by conductor cannot be subjected to strict and sophisticated Rules of evidence - Sufficiency of evidence in proof of finding by a domestic Tribunal is beyond scrutiny by Court, while absence of any evidence in support of finding is an error of law apparent on face of the record - An enquiry does not get vitiated on account of failure to examine the passengers from whom tickets were recovered or have travelled without tickets even after fare was paid by them (per Apex Court) - Held, Single Judge while examining writ petition was mostly impressed by the fact that passengers from whom incriminating tickets were recovered, were not examined - Hence, Writ Appeal was allowed and judgment of Single Judge was set aside. **A.P.S.R.T.C. Vs. K.Rama Rao, 2014(3) Law Summary (A.P.)92 = 2014(6) ALD 612 = 2014(5) ALT 762.**

—Sec.151 - **INDIAN STAMP ACT**, Sec.36, Explanation-1 to Art.47-A of Schedule 1-A - 1st respondent/plaintiff filed suit for specific performance of agreement of sale - During trial plaintiff filed certain documents along with affidavit including agreement of sale which was marked as Ex.A.1 on behalf of plaintiff - Petitioners/defendants filed application u/Sec.151 CPC with prayer to reject agreement of sale on ground that said agreement was inadmissible in evidence since it was insufficiently stamped and that since said agreement was marked in evidence in absence of counsel for defendants/revision petitioners, objection as to admissibility could not be taken earlier - Trial Court dismissed application relying upon Sec.36 of Indian Stamp Act - Hence present revision - Admittedly document in question was already marked in evidence as Ex.A.1 - As per Sec.36 of Stamp Act, once document has been admitted in evidence same cannot be called in question - In this case, document in question was marked without any objection regarding sufficiency of stamp duty payable - Having a failing to raise an objection at time of marking document, it is not open to petitioners/ defendants to raise objection with regard to admissibility of document at a later stage - Order of trial Court, justified - CRP, dismissed. **C.Prithvi Raj Reddy Vs. M/s.GPH Housing Pvt., Ltd. 2011(3) Law Summary (A.P.) 17 = 2011(6) ALD 128 = 2011(6) ALT 671.**

—Sec.151 & Or.1 - "Impleadment of parties" - Civil Revision Petition is directed against the order dated 09.07.2014 in I.A.No.11 of 2014 in O.S.No.36 of 2008 passed by learned V Additional District Judge (for short, trial Court). 3. I.A.No.11 of 2014 was

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filed by Petitioners herein seeking to implead them as defendant Nos.10 to 13 in the said suit - Suit was filed by first respondent herein for specific performance of agreement of sale dated 28.10.2006 against defendant Nos.1 to 9 in respect of land admeasuring Acs.20-20 guntas in Survey No.314/A - Petitioners claim that they have purchased an extent of Acs.11-15 guntas from out of said suit schedule property from defendant Nos.5 to 9 under an agreement of sale dated 03.02.2006, which was later on registered on 25.07.2008 - They also claim that they are in possession of the property - They state that they thus got substantial interest in suit schedule property and suit was filed wrongly without impleading them as parties to the suit - All defendants, except defendant No.9, remained ex parte in the suit in January, 2012 - Held, It is well settled in law that in case of impleadment of parties, it is not jurisdiction of the Court, but judicial discretion which has to be exercised keeping in mind all the facts and circumstances of a particular case - In present case, application is filed by persons, who claimed to have purchased a part of property under a registered sale deed pending the suit - Though they ought to have been aware of paper publication taken by Plaintiff prior to institution of suit and pendency of suit, as the vendors were made parties to proceedings, their legal rights in property would be affected by proposed decree, if it is passed in favour of the plaintiff - Petitioners did not explain reason for filing application belatedly after five years - Almost all defendants in suit have not contested - Though defendant No.9 filed a written statement, he did not participate in subsequent proceedings - In circumstances, justice would demand application of petitioners be permitted subject to payment of costs of Rs.5,000/- to plaintiff with a condition that they cannot be permitted to take defences which are not available to their vendors as held by the Supreme Court - Subject to above observations, Civil Revision Petition is allowed. **Pelimelly Ramesh Vs. E.Sravan Kumar, 2015(2) Law Summary (A.P.) 232 = 2015(4) ALD 284.**

—Sec.151 & Or.6, R.17 - Amendment of Plaint - In a suit for partition of property, petitioner sought amendment of paragraph 8 in the plaint by substituting words 'prevail over' with words 'are in continuation of' which was resisted by contesting respondents by stating that proposed amendment will change entire proceedings and the same is inconsistent with original plea - By accepting plea of contesting respondents trial court rejected application by observing that in support of his plea that the later document was entered into in continuation of previous document, petitioner has not placed any piece of evidence or any single reason as to why and for what purpose the said amendment has to be carried out and that petitioner cannot be permitted to raise inconsistent pleas -Present revision petition arose against that order - Held, it is trite that plaintiff who raises his pleadings needs to prove the same - By merely permitting an amendment, Court will not be readily accepting what he says as correct - Even if proposed amendment has effect of raising a conflicting plea, that by itself would not constitute ground to reject amendment, for it is for plaintiff to ultimately justify his pleadings and prove same with reference to evidence - After all, procedure

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is handmaid of justice and a party cannot be deprived of his right to raise pleadings by way of amendment, unless the proposed amendment results in failure of justice - No doubt, as pointed out by learned counsel for respondents 1 to 8, petitioner failed to plead that despite due diligence, he could not seek amendment before the commencement of trial - However, that is not ground on which lower court has rejected application for amendment - It is stated, at hearing, that trial has not been effectively commenced except that an affidavit in lieu of chief-examination is filed - In above facts and circumstances, this Court is of the opinion that in interests of justice, petitioner can be permitted to amend the plaint-Accordingly, the order of the lower court is set aside and the petitioner is permitted to amend the plaint - Civil Revision Petition is Allowed. **A.Krishna Rao Vs. Sri A.Narahari Rao, 2014(3) Law Summary (A.P.) 221 = 2014(6) ALD 258.**

---Sec.151 & Or.18, Rule 17 - "Recall" and "Reopen" - Petitioner/plaintiff filed suit against respondent/defendant for specifc performance of agreement of sale - Defendant filed written statement - Evidence closed and matter posted for arguments - At that stage I.A filed by petitioner/plaintiff to reopen suit - Trial Court after considering respective submissions, dismissed I.A.

Petitioner contends that at any stage, even at stage of arguments, it is always open for Court to exercise jurisdiction u/Sec.151 or under Or.18, Rule 17 CPC to do justice.

In this case, petitioner/plaintiff was aware or ought to have been aware with regard to nature of evidence, which is required to be brought on record to succeed in suit - It is only after closure of evidence on behalf of defendant, plaintiff had realized that certain evidence further have improve his case - That hardly can be a reason for petitioner seeking to reopen suit, especially at stage of arguments.

In present case, trial Court had come to conclusion that petitioner has not assigned any reasons for his failure to produce documents before Court while he was adducig evidece on his behalf and petitioner has not come to Court with clean hands with request to reopen suit at this belated stage to allow him to adduce further evidence and there are no such circumsrtances warranting to allow reopening petition - Order passed by trial Court - Justified - CRP, dismissed. **Sanagala Srinivasulu Vs. Ponnapoola Seetharamaiah 2016(3) Law Summary (A.P.) 189 = 2016(5) ALD 656.**

—Sec.151 & Or.39, Rules 1 & 2 - Suit for partition among co-owners - Admittedly parties entered into development agreement - Properties which were in possession of owners were shown in "A" schedule, where as properties which were subject matter of development were described in "B" schedule in plaint filed by appellants - Contention that parties being co-owners and a final decree in suit having not yet been passed, it is impermissible in law to pass an order of mandatory injunction and that too without arriving at a definite conclusion that respondent was in exclusive possession of a particular flat - There cannot be any doubt or dispute as a general proposition of law that possession

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of one co-owner would be treated to be possession of all - However in a case of this nature would not mean that where three flats have been allotted jointly to parties, each one of them cannot be in occupation of one co-owner separately - Or.39, Rule 1 is not sole repository of power of Court to grant injunction - Sec.151 of Code confers power upon Court to grant injunction if matter is not covered by Rules 1 & 2 of Or.39 - If parties by mutual agreement entered into possession of separate flats, no co-sharer should be a permitted act in breach thereof - It is not law that a party to a suit during pendency thereof shall take law into his hands and dispossess other co-sharer - If a party takes recourse to any contrivance to dispossess another, during pendency of suit either in violation of order of injunction or otherwise, Court indisputably will have jurisdiction to restore parties back to same position - A co-owner being in exclusive possession of a joint property would be entitled to injunction - If a person is entitled to a prohibitory injunction, a' fortiori he shall also be entitled to mandatory injunction - Appeal, dismissed. **Tanusree Basu Vs. Ishani Prasad Basu 2008(1) Law Summary (S.C.) 226.**

—Sec.151 and Or.47, Rule 1 - "Recall" and "Review" - Petition filed seeking recall of order passed by High Court, refusing to grant leave to prefer revision against order that documents obtained by respondent by tampering revenue records and by playing fraud upon Authority in obtaining orders - Remedy of review of orders passed by Courts is provided to a party under Or.47, Rule 1 CPC - Party who does not resort to that remedy, cannot invoke inherent powers of Court to recall and review its own order - Question of exercising power to recall would arise only when opposite party had obtained order by playing fraud upon Court, but an Application u/Sec.151 CPC, seeking to recall order based on fraud alleged to have been committed by other party on him, certainly cannot be a ground to recall order - In case of fraud on a party to suit or proceedings, Court may direct affected party to file a separate suit or proceedings for setting aside decree obtained by fraud - Courts have been held to have inherent power to set aside order obtained by fraud practiced upon that Court - There is a clear distinction between fraud practiced upon Court and fraud committed by party to suit or proceedings - It is specific case of petitioner that respondents had played fraud upon him before Authority and as such question of exercising power u/Sec.151 CPC to recall order does not arise - Application not maintainable. **P. Vijaya Laxmi Vs. The Joint Collector, Rangareddy 2009(2) Law Summary (A.P.) 215 = 2009(4) ALD 629 = 2009(4) ALT 767.**

—Sec.152 - Scope and object - Stated - Sec.152 CPC is ment for correcting clerical or arthmetical mistakes in judgments, decree or order or errors arising therein from any accidental slip or omission - Corrections contemplated u/Sec.152 are of correcting only accidental omissions or mistakes and not all omissions and mistakes - Section can be invoked for limited purpose of correcting clerical errors or arthmetical mistakes in judgments or accidental omissions. **Srihari (Dead) through L.R. Ch.Niveditha Reddy Vs. Syed Maqdoom Shah 2014(3) Law Summary (S.C.) 47 = 2015(1) ALD 70 (SC) = 2014 AIR SCW 6068.**

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——Sec.152 - Revision petitioners contended that decree holder himself could not identify schedule property as per decree, as such, Court below should not have allowed decree holder to amend plaint schedule property in execution proceedings - Decree holder has changed boundaries of schedule property from time to time and boundaries mentioned in decree, advocate commissioner's report and EP proceedings are totally different - It was further contended that unless judgment of Court below is suitably corrected, decree holder cannot alter decree and that decree holder has to approach Court which passed decree with a petition to make appropriate corrections in judgment as also in decree to enable him to realize fruits of decree passed in his favour - Respondent-decree holder contended that Court below has rightly directed delivery of possession of property as boundaries mentioned in warrant in E.A. are tallying with boundaries mentioned in Commissioner's report, he would further contend that decree holder has not changed boundaries of schedule property.

Held, In view of law laid down by this Court as well as Apex Court in the above decisions, executing Court cannot travel beyond decree passed in original suit - Even according to respondents also, boundaries are not tallying and for any mistake crept in decree in original suit, it is for decree-holder to file a petition under Section 152 of CPC for amendment of decree and judgment and also plaint, which passed decree - But without filing same, executing court cannot order delivery of possession of property with boundaries other than mentioned in decree in original suit - No doubt, decree holder cannot be denied fruits of decree in his favour, but at same time, executing Court cannot go beyond decree in original suit and grant relief to decree holder by delivering property with different boundaries other than boundaries mentioned in decree as well as in execution petition - Executing Court instead of allowing application, should have directed decree-holder to approach original court for amendment of boundaries in decree - For the reasons aforementioned, impugned order of executing Court cannot be sustained and same is set aside accordingly.

However, it is open for respondent/decree-holder to file necessary application before Court, which passed decree and judgment, for amending boundaries in schedule of property in plaint as well as in decree - Since suit is of year 1992, as and when application is filed by respondent/decree holder, same shall be disposed of in accordance with law, as expeditiously as possible preferably within a period of three months from the date of application - Accordingly, this Civil Revision Petition is allowed. **Fathima Bi Vs. Julekha Bi (Died) by her L.Rs. 2016(2) Law Summary (A.P.) 365 = 2016(5) ALD 468 = 2016(5) ALT 595.**

—Secs.152 and 153-A - Land Acquisition Officer passed an Award on 25-10-1991 granting an amount of Rs.11,000/- per acre and not satisfied with award of Land Acquisition Officer, petitioner made a request to refer matter to Civil Court and accordingly, it was referred to Senior Civil Judge, u/Sec.18 of Land Acquisition Act - Senior Civil Judge, after due enquiry, enhanced market value of land from Rs.11,000/- per acre to Rs.40,000/- per acre and also awarded Rs.51,330/- as solatium and

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a sum of Rs.1,51,416/- towards additional market value and held that claimant is not entitled for any interest on the solatium and on the additional market value - Claimant having not satisfied with the market value fixed by reference court, preferred appeal to this Court for enhancement and this Court dismissed the appeal by confirming the award of the reference Court - According to petitioner, this Court, while adjudicating appeal, has not considered the interest aspect on solatium and additional market value, it is a statutory benefit and he is entitled for same as per provisions of Land Acquisition Act - According to claimant, this Court has not taken into consideration his statutory entitlement while dismissing appeal and that decree has to be amended by adding payment of interest on solatium and additional market value - Held, Section 152 CPC has to be applied only when the intention of Court is not translated into a decree or order, due to accidental slip or omission, but not to reconsider matter and grant a relief which Court has not granted originally - Relief claimed by applicant in this petition would amount to adding certain clauses to judgment in A.S.No. 1884/2001 - Therefore, considering facts of case with reference to legal position indicated above, we are of considered view that there is no accidental slip or omission in judgment to be corrected u/Sec.152 CPC - In result, petition is dismissed. **Girreddy Suryanarayana Reddy Vs.The L.A.O Peddapuram, E.G. 2015(3) Law Summary (A.P.) 25.**

—Sec.152 & 153-A & Or.23, Rule 3-A - REGISTRATION ACT, Sec.17 & 17(1) (f) - "Amendment of compromise decree" - Suit for partition - Application filed for passing final decree with comprise memo along with plan signed by all parties - Final decree passed - IDPL House Building Society and respondents filed applications seeking amendment of corrections in A-schedule and B-schedule lands - Meanwhile third party Durga Matha Society filed Application to implead them as party stating that wrong measurements have been shown in plan attached to compromise - IDPL Society contends that all parties have signed compromise memo and also plan annexed to it after due verification and mistakenly another plan was attached and since it is only a mistake, same has to be corrected to bring final decree in conformity with plan and memorandum of compromise - Respondents contend that Application seeking corrections in final decree and map annexed thereto cannot be accepted and that terms of compromise cannot be altered without consent of all parties - COMPROMISE DECREE - A compromise can be enforced only against parties to compromise - Rule 3-A of Or.23 prohibits a party to compromise to file a suit to set aside a decree on ground that compromise on which decree is passed is not lawful - In this case compromise decree has been passed basing on compromise memo and there is no allegation that compromise memo is out come of fraud or misrepresentation - Durga Matha Society is not party to compromise and plan annex there to and they are not bound by decree passed on basis of such compromise memo - When they are not bound by consent decree, they can resist execution proceedings, if any filed in pursuance of decree obtained on basis of compromise memo - Where a compromise decree

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has been passed, same is binding upon parties - A clerical mistake can be corrected even after passing of final decree at stage of execution proceedings, where amendment does not cause injustice to other side - Compromise decree may be voided only on grounds like fraud, undue influence, coherent or opposed to public policy or when it is violative of any statutory Rule - When parties entered into a compromise and filed written compromise signed by all parties and confirm same before Court, Court is bound to pass judgment in terms of compromise - Even if some mistake occurred in mentioning survey numbers or boundaries or extents, same cannot be treated as clerical mistake - Consent decree made by consent can only be varied by consent of parties - Court is not empowered to make any variation alteration or amendment to terms of compromise - Petition filed by respondents has to be rejected since Court is not empowered to amend a compromise decree without consent of other parties to compromise - In this case, case of IDPL Society is that while enclosing a plan to Application for passing final decree they had mistakenly enclosed another plan with incorrect measurements and now they want to replace said plan with correct plan - Since it appears to be a clerical mistake and to bring compromise decree and plan annex there to totally in conformity with compromise memo and plan annexed thereto, it becomes necessary to allow application filed by IDPL Society - Court has no power u/Secs.152 to 153-A of CPC to amend compromise decree even it appears that there is clerical mistake in compromise decree without consent of parties to compromise - Application filed by IDPL Society, allowed and Application filed by respondents and Durga Matha Housing Society, dismissed. **IDPL Employees Cooperative Ltd. Vs. Cyrus Investments Ltd., Mumbai 2009(3) Law Summary (A.P.) 1 = 2009(6) ALD 216 = 2009(6) ALT 43.**

—Or.1, Rule 8 - Appellant/plaintiff filed suit against respondents for declaration that suit schedule property is public rastha and for mandatory injunction for removal of existing structures and for consequential injunction to restrain respondents from interfering with use of same, contending that suit lane is an access for residents of locality to bus stand and that though she alone figured as plaintiff, suit filed for and on behalf of residents of locality - Respondents filed written statement raising objection, as to maintainability of suit on ground that though it is filed in representative capacity, permission of Court not obtained and that suit schedule property exclusively belongs to them and it is not at all public lane - Appellant contends that though relief is claimed in interest of all persons of locality, being one of users of lane, appellant is entitled to file suit in her individual capacity and that respondents failed to establish that suit schedule property exclusively belongs to them and that was sufficient ground for suit being decreed - Respondents contend that appellant clearly and categorically stated that she filed suit for herself and on behalf of residents of locality and that in view of matter it was obligatory on her part to obtain permission under Rule 8 of Or.1 CPC and admittedly no such permission was obtained - Relief claimed by appellant was not personal in nature and it was for benefit of herself and others - It is not a case

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where relief in respect of usage of public lane was claimed by appellant alone - In plaint itself, she stated that she filed suit for herself and on behalf of residents of locality and therefore it became necessary for appellant to comply with Rule 8 - Once plaintiff stated that suit is filed for benefit of entire community, she alone cannot champion cause and make respondents to defend themselves - Lower appellate Court has taken correct view of matter - A serious error was committed by trial Court - Keeping aside procedural defect in suit, it may be noted that relief claimed in it was to effect that suit lane is public rasta - Observation of trial Court totally untenable and clearly outside scope of suit - Claim based on easementary right stands on a different footing and altogether different connotations arise - Whole approach was untenable - Lower appellate Court has rectified serious mistakes committed by trial Court - 2nd appeal, dismissed. **Shaik Shamiunnisa Vs. Narravula Obulamma 2010(3) Law Summary (A.P.) 264 = 2010(6) ALD 663.**

—Or.1, Rules 8 & 10 - CONSTITUTION OF INDIA, Art.136 - Appellant/plaintiff filed suit for declaration and possession of suit property with prayer for restraining respondents/ defendants 3 to 5 from interfering with his right to enjoy suit property by entering upon it or using it as pathway as if it is public pathway - As respondents did not appear, suit decreed ex-parte - Executing Court allowing Application filed by respondents 1 and 2 impleading them as defendants 5 and 7 in suit - Single Judge of High Court dismissing Revision filed by appellant - Contention that, a suit where notice under Or.1, Rule 8 has been issued, could not have been reopened at instance of respondents 1 and 2 without allowing their Application for condonation of delay and for setting aside ex-parte decree - If a village pathway is subject matter of suit on premise that it is personal property of plaintiff, those who use said pathway or at least have lands adjacent thereto should ordinarily be impleaded as parties - A decree which has been obtained by suppression of fact or collusively would not be executable against those who are not parties to suit - In any event, whether service of notice was proper would also be subject matter of enquiry by trial Court - It has also to be seen as to whether notice in terms of Or.1, R.10 was published in news paper having a wide circulation in locality - Executing Court has allowed Application for impleadment of respondents 1 & 3 as defendants 4 & 5, so as to enable them to press their application for setting aside ex-parte decree upon condonation of delay - Impugned Orders, justified - Application, dismissed. **V.J. Thomas Vs. Shri Pathrose Abraham 2008(1) Law Summary (S.C.) 142**

—Or.1, Rule 10 - Impleadment of necessary parties - General rule in regard to impleadment of parties is that plaintiff in a suit, being *dominus litis*, may choose persons against whom he wishes to litigate and cannot be compelled to see a person against whom he does not seek any relief - Consequently a person who is not a party has no right to be impleaded against wishes of plaintiff - But this general rule is subject to provisions of Or.1, Rule 10(2) CPC - Court has discrtion to either to allow or reject an application of a person claiming to be a proper party, depending upon facts and circumstances and no person has right to insist that he should be impleaded as a

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party merely because he is a proper party - In this case, on careful examination of facts, appellant is neither a necessary party nor a proper party - As noticed, appellant is neither a purchaser nor a lessee of suit property and he has no right, title or interest therein - 1st respondent/plaintiff in suit has not sought any relief against appellant - Presence of appellant is not necessary for passing an effective decree in suit for specific performance - Nor its presence is necessary for complete and effective adjudication of matter in issue in suit for specific performance filed by 1st respondent/ plaintiff - A person who expects to get a lease from defendant in suit for specific performance in event of suit being dismissed, cannot be said to be a person, having some semblance of title, in property in dispute - When appellant is neither claiming any right or remedy against 1st responent and when 1st responent is not claiming any right or remedy against appellant, in a suit for specific performance by 1st respondent, appellant cannot be a party - Appeal, dismissed. **Mumbai International Airport Pvt., Vs. Regency Convention Centre & Hostels Pvt.,Ltd. 2010(3) Law Summary (S.C.) 62 = 2010(5) ALD 24(SC) = 2010 AIR SCW 4222 = AIR 2010 SC 3109.**

—Or.1**,** Rule 10 - 1st respondent filed suit against respondents 2 & 3 for relief of specific performance of agreement of sale, in respect of suit property, rice Mill - Petitioners' children and wife of 2nd respondent filed application to implead them as defendants, contending that 2nd respondent colluded with 1st respondent who is none other than his brother-in-law and got filed suit to knock away joint family property and that decree also passed by Senior Civil Judge for partition between themselves and respondents 2 & 3 in respect of various items including suit schedule property - 1st respondent contends that petitioners are neither proper nor necessary parties and that application is filed only with an object of protracting proceedings - Trial Court dismissed application - Basically, it is plaintiff in a suit, to identify parties against whom he has any grievance and to implead them as defendants in suit filed for necessary relief - He cannot be compelled to face litigation with persons against whom he has no grievance - Where, however, any third party is likely to suffer griegvance on account of out come of suit, he shall be entitled to get himself impleaded - In this case, petitioners contended that mill is property of joint family headed by 2nd respondent i.e. 1st defendant in suit and that preliminary decree was obtained by them in respect of properties held by joint family - 2nd defendant did not file any counter disputing claim made by petitioners - In this case, it is matter of record that there exists a preliminary decree to which petitioners, on one hand and respondents 2 & 3 on other hand are parties and subject matter of present suit is one of items therein - Therefore petitioners are proper and necessary parties to I.A - CRP, allowed. **Pallapu Mohanarao (died) per LRs Vs. Thammisetty Subba Rao 2011(3) Law Summary (A.P.) 42 = 2011(6) ALD 324.**

—Or.1, Rule 10 - "Impleadment of defendants" - Respondents filed suit for partition - Preliminary decree passed - Petitioners filing Application for their impleadment in final decree proceedings contending that they have purchased part of suit schedule

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property from 4th respondent - Trial Court allowed Application - Petitioners also filed similar Application for their impleadment as defendant in suit contending that property purchased from 4th respondent in year 1979 itself and suit was filed in year 1980 and they have not impleaded as defendants and that preliminary decree was obtained by fraud and collusion among respondents Nos.1 to 4 - Trial Court dismissed Application filed by petitioners - Petitioners contend that having already allowed petitioners to come on record as respondents in final decree proceedings, lower Court ought to have allowed them to come on record as defendant in suit, as they have substantial interest in subject matter of suit - Power of Court to implead a person as party is discretionary - However, Court will have to exercise its discretion having regard to nature of claim and facts and circumstances of case and where presence of a person is necessary for effective education of disputes arising in suit, Court has to necessarily to implead person to come on record - In this case, it is not in dispute that petitioners have been claiming their substantial rights over properties which are subject matter of preliminary decree and in recognition there of, they were already allowed to come on record as respondents in final decree proceedings - In this case, petitioners have pleaded before trial Court that preliminary decree was obtained by collusion - Whether said decree was collusive or not needs to be examined in final decree proceedings and it was premature for lower Court to embark upon that question at stage of considering implead applications of petitioners in final decree proceedings as that it would triable issue in final decree proceedings - Where a person shows that he has deep and substantive interest in subject matter of suit and that final decree that may be passed would seriously affect his interest, Court should not throw away application for impleadment - Refusal to allow petitioners to come on record as defendants in suit will result in serious miscarriage of justice - Orders of lower Court are set aside - CRPs allowed. **Tai Nagaratnam Vs. M. Sulochanadevi, 2012(2) Law Summary (A.P.) 141 = 2012(5) ALD 264 = 2012(5) ALT 228.**

—Or.1, Rule 10 - 1st petitioner acquired property and got property registered in name of 2nd respondent one of sons of 1st petitioner and subseqeuntly house constructed therein said to be by joint family - When there was some resistance by two sons of petitioner he filed a suit in which a compromise decree was obtained thereunder it was agreed that second son of petitioner shall be owner of property, but 1st petitioner shall have right to enjoy property during his life time and 2nd respondent is to be paid Rs.23 lakhs - 1st respondent filed suit for sale of property pleading that 2nd respondent mortgaged property and obtained an ex parte preliminary decree for an amount of Rs.1.22 crores - On coming to know, petitioners filed I.A under Or.1, Rule 10 to implead them as defendants in suit and another I.A under Or.9, Rule 13 to set aside ex parte preliminary decree contending that 2nd respondent created a fictitious so-called mortgage ad that 2nd respondent did not make mention of it when compromise decree was passed - Trial Court dismissed I.As. - Petitioners contend that 2nd respondent has been troubling petitioners and and rest of family for past

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several decades and even after receiving substantial amount op Rs. 23 lakhs and he created a fictitious mortage in collusion with 1st respondent and very fact that 2nd respondent remained ex parte in suit even after receiving summons discloses that he determined to cause trouble to petitioners who are in possession and enjoyment of property - 1st respondent contends that trial Court satisfied to existence of mortgage and genuinity thereof and preliminary decree was passed in suit and that sole basis for right cliamed by petitioners is compromise decree and since said decree not registered u/Sec.17(f) of Registration Act cannot be acted upon - Application filed under Or.1, Rule 10 need not depend upon existence of absolute rights - It would be sufficient if parties have some interest in property, which is subject matter of suit and that petitioners can certainly fall back not only upon decree in suit but also on relationship in family and that contention of respondents that third parties cannot be impleaded in a suit, after a preliminary decree is pass, cannot be countenanced, since in any suit in which final decree is contemplated is deemed to be pending till final decree is passed - Therefore petitioners deserve to be impleaded in suit as defendants and as respondents in final decree proceedings - Orders passed by lower Court in IAs, set aside - CRP, allowed. **I.Aga Reddy Vs. S.Dharneet Singh, 2013(1) Law Summary (A.P.) 350 = 2013(4) ALD 138 = 2013(3) ALT 637.**

—-Or. I Rule 10 - Impleading of Parties - Learned court below has thought that unless the 1st respondent/proposed parties are added as parties to final decree proceedings, there cannot be any complete and effective adjudication of the disputes between parties and rights of proposed parties would be jeopardized and hence allowed impleadment petitions - Revision Petitions filed against the impleadment - Held, Court may at any stage of the proceedings, on its own or on application made by a party, direct a third party to be impleaded in suit or proceeding for complete and effective adjudication of issue involved in the suit - Therefore, no interference with discretion exercised by the learned court below - Three Revision Petitions fail and are accordingly dismissed. **T.Chandrasekhar Vs. Sunchu Rajamallu, 2014(3) Law Summary (A.P.) 120 = 2014(6) ALD 58.**

—Or.1, Rule 10 - Suit filed by the Petitioners for declaration of their title in respect of a property, for ejection of respondent no.1 from suit schedule property, for putting petitioners in possession of suit schedule property and for grant of perpetual injunction restraining respondent no.1 from interfering with their possession of suit schedule property - Lower Court granted ad interim injunction restraining respondent no.1 from alienating suit schedule property - Petitioners filed I.A. under Or.1 Rule 10 of CPC with allegation that despite subsistence of the said order of injunction, respondent no.1 has executed a registered sale deed in favour of respondent no.2 represented by respondent no.3, conveying certain extent of land which includes suit schedule property - Therefore, petitioners have sought for impleadment of respondent nos.2 and 3 in the suit - Respondent no.1 filed a counter-affidavit stating that said property

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was in no way concerned with suit schedule property and therefore, question of impleading respondent nos.2 and 3 in the suit would not arise - Respondent nos.2 and 3 did not enter their appearance nor filed their counter-affidavits - I.A. filed by Petitioners for impleadment of respondent nos.2 and 3 in suit remained uncontested by latter - Lower court has dismissed said application, on following grounds, among others:

1) That as per the recent amendment, no court can permit impleadment of a party under Or.1 Rule 10 CPC after commencement of the trial.

2) That there is variation in the names of the respondent nos. 2 and 3 given by the petitioners in the affidavit filed in support of the I.A.

Petitioners filed the present revision against that order - Held, the aforesaid provision does not anywhere bar impleadment of any party after the commencement of the trial - On the contrary, sub-Rule (2) of Or.X, Rule 10 CPC empowers the Court to strike out or add any party at any stage of the proceedings, if it feels it just and that the presence of such party is necessary to enable itself to effectually and completely adjudicate upon and settle all the questions involved in the suit - Thus, reasoning of lower court that addition of party after commencement of the trial is barred reflects a complete non-application of mind on its part - With regard to reason pertaining to variation in names, the fact, however, remains that there is no dispute relating to their identity - In prayer in the said application, petitioner has correctly described names of respondent nos. 2 and 3 and same match with names mentioned in sale deed executed by respondent no.1 in favour of respondent nos.2 and 3 - This being position, reliance on purported variation in the description of names of respondent nos.2 and 3 in different paragraphs of affidavit filed in support of implead application is wholly misplaced and court is not expected to rely upon such inconsequential mistakes - A perusal of plaint schedule vis a vis the schedule contained in sale deed would show that while former has described boundaries in terms of plot numbers, latter has described boundaries in terms of survey numbers - It will be a matter for evidence to be adduced by parties as to whether respondent no.1 has sold suit schedule property to respondent nos.2 and 3 or not - The fact, however, remains that the survey number remains common both in the plaint schedule and also in the schedule shown in the sale deed - Respondent nos.2 and 3 are proper and necessary parties to suit, for, if they are not impleaded as defendants, the petitioners may be forced to institute another substantive proceedings for invalidation of sale deed executed by respondent no. 1 and recovery of possession from respondent nos. 2 and 3 - Such a course would only result in multiplicity of proceedings - The lower court, by dismissing present application on jejune grounds, has given rook for multiplicity of proceedings - For the above reasons, this court is of opinion that lower court has committed a serious jurisdictional error in dismissing application filed by petitioners for impleadment of respondent nos. 2 and 3 in the suit - Accordingly order under revision is set aside - Lower court is directed to reopen entire case, allow all the parties to amend their pleadings and adduce additional evidence, if necessary, and dispose of suit

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thereafter. **K.Yogender Reddy Vs. K.Usha Rani, 2014(3) Law Summary (A.P.) 308 = 2015(1) ALD 173 = 2015(3) ALT 31.**

—Or.1 Rule 10 - Suit for Specific Performance- To implead the petitioner in the suit as bona fide purchaser of portion of suit schedule property and therefore he is necessary party to suit and he may be impleaded so that he can protect his right, title and interest in suit property - Court below allowed said application - Challenging same present revision is filed - Held, although learned counsel for 1st respondent also sought to contend that Kallaiah is owner of property, this Court afraid that said question cannot be gone into in suit O.S.No.181 of 2014 filed by respondent Nos.2 to 5 for specific performance against petitioner and 6th respondent by allowing the 1st respondent to get impleaded - If said issue is allowed to be raised, it would result in converting the suit for specific performance filed by respondent Nos.2 to 5 against petitioner and 6th respondent into a suit for declaration of title of suit schedule property and alter very nature of suit - In this view of matter, trial Court of opinion that Court below was not correct in allowing I.A.No.188 of 2013 - Therefore, its order dt.16-07-2013 in I.A.No.188 of 2013 in O.S.No.140 of 2009 (O.S.No.181 of 2014) is set aside - Civil Revision Petition is allowed, and I.A.No.188 of 2013 is dismissed. **Patturu Vishnu Kumar Vs. Rudraraju Satyanarayana Raju 2015(3) Law Summary (A.P.) 12.**

—Or.1, Rule 10 - Respondent Nos. 1 to 24 filed suit for declaration of title alleging that they have purchased suit schedule property from respondents Nos. 27 to 29 - Respondent No. 25, 1st defendant in suit has set up its own title through respondent No. 26, who is no more – Petitioners who are related to respondent No.26 filed I.A. for their impleadment under Order 1 Rule 10 on ground that property sold by respondent No. 26 to respondent No. 25 is “mathruka” property and that they have also share in said property – Lower Court has dismissed I.A. Hence, petitioners filed present Revision Petition - Lower Court has assigned a very strange reason for rejecting petitioners’ Application – It has not rendered any finding that petitioners, have no interest in subject matter of suit – It has predicted outcome of suit and consequently held that as suit in any event is going to be dismissed, no purpose will be served in impleading petitioners - This court of opinion such reasoning falls foul of rationality and objectivity – Under Order 1 Rule 10, Court is empowered to strike out or add parties and such power has to be exercised in a Judicious manner – Irrespective of merits of claim of petitioners, their impleadment would avoid multiplicity of proceedings in that, necessity for them to file a separate suit can be obviated, if present suit is decided in their presence - Lower Court has failed to consider Application of petitioners from proper perspective and adopted a lopsided reasoning in dismissing application of petitioner – Order of Lower Court, set aside - CRP, allowed accordingly. **Khadirunnisa Begum Vs.D.S.N.Raju 2015(2) Law Summary (A.P.) 75 = 2015(4) ALD 518 = 2015(3) ALT 608.**

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—Or.1, Rule 10 and **A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) ACT, 1977,** Secs.8 & 9 -Petitioners/plaintiffs filed suit against 3rd respondent for injunction - While LRs of 3rd respondent contesting suit, Govt., of A.P. represented by District Collector & Tahsildar filed Application under Or.1, Rule 10 to add them as defendnts in suit on ground that they are necessary and proper parties and without their presence no complete and effective decision cannot be taken - Petitioner opposed petition on ground that suit is bare injunction and Govt., is not necessary party for disposal of suit - In this case, question whether assignment of land made in favour of revision petitioners by State Govt. is valid is pending adjudication in writ petition - When said question is pending adjudication before High Court, Junior civil Judge before whom civil suit is pending, cannot proceed to decide very same question in suit before him when suit is for bare injunction by assignees against 3rd parties - A civil suit is barred in respect of question as to validity of assignment made under Act - Since Junior Civil Judge before whom suit is pending is not competent to examine validity of assignment made in favour of revision petitioners, it is absolutely necessary to add respondent 1 & 2 District Collector and Tahsildar as defendants in suit - Order passed by Junior civil Judge, is erroneous - Revision, allowed. **Mendi Mahalakshmi Vs. State of A.P. 2011(1) Law Summary (A.P.) 339 = 2011(3) ALD 660 = 2011(4) ALT 295.**

—Or.1, Rule 10 – **CIVIL RULES OF PRACTICE,** Rule 32 & 33 - **STAMP ACT, 1899,** Sec.35 – **REGISTRATION ACT, 1908,** Sec.17 **– TRANSFER OF PROPERTY ACT, 1882,** Sec.54 - In lower Court, the petitioner filed petition under Rule 32 of Civil Rules of Practice, requesting the Court to permit him to appear on behalf of petitioner and same was dismissed on ground that irrevocable General Power of Attorney not only requires registration but it is also insufficient by stamped as per provisions of Stamp Act.

In present revision, petitioner contends that Rule 32 of Civil Rules of Practice only requires that if a party is represented by an agent, such agent should seek leave of the Court to represent party and it is sufficient if Court is satisfied that agent was authorized to sign pleadings and question of non registration and insufficiency of stamp duty of instrument containing authorization cannot be gone into by Court below while deciding whether or not to permit party to be represented by an agent under Rule 32 of Civil Rules of Practice and that those issues should be decided only if document is sought to be adduced in evidence.

Respondent contends that insufficiently stamped document is inadmissible in evidence for any purpose and cannot be admitted even for a collateral purpose.

Held, since irrevocable General Power of Attorney admittedly authorized agent to sell properties comprised therein including plaint schedule properties and contains recitals which transfer the rights of executants in favour of power of attorney holder, it is clearly insufficiently stamped since it is typed on Rs.100/- stamp paper – Court below was correct in refusing to act upon such General Power of Attorney for purpose

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of permitting petitioner to be represented by their agent and to implead them on basis of said irrevocable General Power of Attorney.

Hence, Revision Petition dismissed – However, Court observed that it is made clear that this will not preclude petitioners from paying adequate stamp duty and penalty on General Power of Attorney or filing another authorization authorizing agent to represent them and at on their behalf in suits and filing such Applications again under Rule 32 of Civil Rules of Practice and Or.1, Rule 10 of CPC and if either of steps or taken by petitioner, Court below shall consider Applications under Rule 32 of Civil Rules of Practice and under Or.1, Rule 10 of CPC in accordance with law. **Aruna Sagar Vs. Shrushti Infrastructure Corporation 2016(1) Law Summary (A.P.) 302 = 2016(2) ALD 403.**

—Or.1, Rule 10 - **TRANSFER OF PROPERTY ACT,** Sec.52 - "Impleadment of party" - "Doctrine of lis pendens" - Suit for partition - Petitioner, proposed party filed Application under Or.1, Rule 10, seeking impleadment in suit as one of defendants - Trial Court rejected Application on ground that transaction in his favour is hit by lis pendens and his interest is already covered by stand taken by vendor, hence he is not necessary party to suit - Petitioner contends that, firstly assessment of trial Court that vendor of petitioner is on record is factually incorrect and secondly, reasoning of Court that merely because petitioner's transfer is hit by lis pendens, he is not entitled to be impleaded is also erroneous - Respondents contend that very claim of petitioner in any part of Sy.No.itself is doubtful in view of lack of title of A.A through whom petitioner traces title and that impleadment of unconcerned parties, at this stage, would unnecessarily protact and delay disposal of suit and that petitioner's Application in final decree proceedings may be considered at later stage - DOCTRINE OF LIS PENDENS AND ITS STATUTORY INTERPRETATION U/SEC.52 OF T.P ACT - STATED - In light of settled principles of law on doctrine of lis pendens Or.1, Rule 10 which empowers Court to add any person as party at any stage of proceedings if person whose presence before Court is necessary or proper for effective adjudication of issue involved in suit - Sub-Rule (2) of Rule 10 gives wider discretion to Court to meet every case defect of a party and to proceed with a person who is a either necessary party or a proper party whose presence in Court is essential for effective determination of issues involved in suit - Impugned order of trial Court, set aside - Petitioner shall stand appro-priately impleaded in suit and thereafter shall be given opportunity to file written statement and thereafter trial Court shall proceed with suit in accordance with law - CRP, allowed. **Lebaka Vijaya Bhaskar Reddy Vs. Ambavaram Narayanamma 2013(3) Law Summary (A.P.) 42 = 2013(6) ALD 184 = 2013(6) ALT 516.**

—Or.1, Rule 10 - **TRANSFER OF PROPERTY ACT,** Sec.52 - **DOCTRINE OF LIS PENDENS** - Petitioner/appellant/plaintiff filed suit for specific performance of agreement of sale in respect of certain extent of land - 1st respondent/defendant admitted execution of agreement, but opposed grant of relief of specific performance - Trial Court dismissed

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suit - Hence present appeal - Since 1st respondent sold schedule property pending disposal of appeal appellant filed petition to implead purchasers as respondents in appeal for effective adjudication of questions/issues in appeal - Inspite of service of notice, on proposed respondents nos.2 to 6, no representation on their behalf - 1st respondent only filed counter affidavit contending inter alia that petition is not maintainable and the petitioner appellant has no locus stndi to file it and that any sales made by respondents would be subject to doctrine of lis pendens enunciated in Sec.52 of Transfer of property Act and that transferee pendete lit is not entitled to come on record as a matter of right and that if respondents nos.2 to 6 are impleaded it would complicate issues in appeal and might lead to prolong of litigation - Admittedly, proposed parties have acquired interest in entire property which is subject matter of appeal and in such a situation it is possible that first respondent may not properly defend appeal or he may collide with appellant - Although appellant was under no obligation to make respondent nos.2 to 6 as parties to appeal, Court has discretion to do by invoking Or.22, Rule 10 of CPC. - Contention of 1st respondent that appellant has no locus standi to implead respondent nos.2 to 6 in view of Sec.52 of T.P Act, rejected - Respondents 2 to 6 herein are impleaded as respondents in appeal - Application, allowed. **K.Srinivasalu Vs. Jaldu Subramanyam Chetty, 2013(3) Law Summary (A.P.) 81 = 2013(6) ALD 784.**

—Or.1, Rule 10. Or.6, Rule 17 & Or.22, Rule 10 - TRANSFER OF PROPERTY ACT, Sec.52 - "*pendente lite* transferee" - Respondents 1 and 2 filed suit for granting permanent injunction restraining defendants from entering into any contract in respect of plaint schedule property and restraining defendants from interfering with plaintiffs management control of be schedule propertyPetitioner purchased plaint schedule property from respondents 3 to 6/defendants 1 to 4, pendenti lite - Respondents 1 & 2 filed Application under Or.1, Rule 10 and Or.6, Rule 17 of CPC, seeking impleadment of petitioner as one of defendants to suit - Trial Court allowed Application - Hence present CRP - Admittedly petitioner is pendenti lite trassferee of plaint B schedule property - If respondents 1 & 2/plaintiffs succeeding in suit whole transfer in favour of petitioner stands invalidated in view of Sec.52 of T.P Act - Therefore it cannot be said, that petitioner is not necessary or proper party for proper and effective adjudication of suit - It cannot be disputed a pendente lite transferee is a proper, though not a necessary party - Impleadment of petitioner would enable it to putforth its defence against any of reliefs claimed by plaintiffs, if it wishes to do so - Order of lower Court, justified - CRP, dismissed. **Chandana Brothers Shopping Mall Vs. M/s. Urvasi Enterprises, 2012(1) Law Summary 308 = 2012(3) ALD 12 = 2012(3) ALT 455.**

—Or.1, Rule 10(2) - "Principles governing disposal of Application for impleadment of parties" - Stated"

1.The Court can, at any stage of the proceedings, either on an Application made by the parties or otherwise, direct impleadment of any person

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as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2.A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3.A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4.If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6.However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

For their contumacious conduct of suppressing facts from High Court and thereby prolonging litigation, appellants and Developers are saddled with costs of Rs.5 lakhs each - Appeals, dismissed. **Vidhur Impex And Traders Pvt.Ltd., Vs. Tash ApartmentsPvt.l Ltd., 2012(3) Law Summary (S.C.) 64.**

—Or.1, Rule 10(2) - 1st respondent/plaintiff filed suit for permanent injunction restraining respondents 2 to 5 from interfering with her peaceful possession and enjoyment - Petitioners/3rd Parties filed Application in said suit with plea that their vendors have purchased suit schedule property under registered sale deeds and that they have in turn sold properties to petitioners and filed application for their impediment in suit - Trial Court dismissed application filed by 3rd parties - On ground that 3rd parties/ petitioners failed to specifically point out as to whether their plots fall in particular survey nos. and that no relief has been claimed against petitioners by 1st respondent/ plaintiff and they are neither necessary nor proper parties for adjudication of suit - NECESSARY AND PROPER PARTY - DISTINCTION - Supreme Court in its judgment has drawn a subtle distinction as under - " … A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding." - In ultimate analysis, Court is required to see whether persons who claim to be impleaded have direct interest in subject matter of dispute and whether their presence would help Court to finally and completely adjudicate dispute - In this case, as to what extent petitioners have interested and whether respondent/plaintiff no.1 is entitled to grant of injunctions or, are not need to be examined in suit - Even if petitioners are necessary parties, surely, they are

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proper parties - On careful analysis of facts and circumstance of case, petitioners deserved to be impleaded as defendants in suit - Order of trial Court, set aside - Application filed by Third parties, allowed - CRP, allowed. **Racharla Thirupathi Vs. Gundala Shobha Rani 2013(3) Law Summary (A.P.) 105 = 2013(5) ALD 566 = 2013(5) ALT 209.**

—-Or.1, Rule 10(2) - Petitioners, third parties in suit filed IA seeking permission to add themselves as defendants 4 and 5 which resulted in dismissal - Present Revision is filed questioning the validity and legal validity of impugned order - Held, petitioner No.1 is claiming a right adverse to plaintiff in suit and as such petitioners cannot be said to be proper and necessary parties in present suit in accordance to principles and parameters laid down by Apex Court and other past judgments given by this High Court - Revision Dismissed - Civil Procedure Code, Or.1, Rule 10(2) - A third party or a stranger to contract cannot be added so as to convert a suit of one character into a suit of different character - Proposed parties would be at liberty either to obstruct execution in order to protect their possession by taking recourse to relevant provisions of Code, if they are available to them, or to file an independent suit (per Apex Court). **Matta @ Palina Bhavani Vs. Matta Tulasi Rao 2014(2) Law Summary (A.P.) 356 = 2014(5) ALD 733 = 2014(5) ALT 360.**

—-Or.1, Rule 10(2) - Petitioners/proposed defendants 6 to 8/third parties to the suit filed this petition against the orders of trial Court passed in I.A. filed under Order I, Rule 10(2) of the Code of Civil Procedure, for their impleadment as defendants 6 to 8 in the suit.

The case of proposed defendants is that they had purchased item no.1 of suit schedule property from the 3rd defendant for a valuable consideration under a regular registered sale deed and that 3rd defendant had delivered possession of same to them and that they are in possession of property - The 3rd proposed party has in fact purchased a part of property in item no.3, that is, an extent of Ac.0.02 cents and 431 Square links - The 1st proposed party and 2nd proposed party had purchased Ac.0.02 cents and 397 Square links - All the three proposed parties are in joint possession and enjoyment of entire item no.3 of suit schedule property - Prior to said purchases, they and other person had entered into an agreement of sale for a consideration of Rs.11,60,000/- per cent with 3rd defendant - The 3rd defendant had executed an agreement of sale in favour of a person on 10-2-2012 - On 3-3-2012, the proposed defendants had verified all the documents of the 3rd defendant and also of 2nd defendant and had entered into an agreement of sale; and on 31-7-2012 and 30-7-2012 the 3rd defendant had directly executed registered sale deeds in favour of the proposed defendants 6 to 8 - The 3rd defendant and the said person had not given them any information about the filing of the suit by the plaintiff - A week prior to the filing of present petition, 8th proposed defendant had come to know of suit proceedings, when he wanted to sell away property -

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Since proposed defendants have purchased 3rd item of suit schedule property for valuable consideration and are in possession and enjoyment of said item of plaint schedule property they are entitled to agitate their claims and plead before Court in suit - Hence petition is filed for their impleadment.

Case of plaintiff in counter is that alienation made during pendency of suit is hit by the Rule enshrined in doctrine of lis pendens in view of provision of Section 52 of Transfer of Property Act - Alienees are bound by outcome of suit - Therefore, there is no need to permit them to come on record - Petitioners are not entitled to be impleaded as defendants 6 to 8 in suit. Suit can be effectively and conclusively adjudicated even without presence of said proposed defendants and petition may be dismissed - Trial Court, by order impugned, had dismissed petition of plaintiff.

Held, from facts and ratios in it appears that pendente lite alienations/transfers that are made in violation of restraint orders or injunction orders do not confer any rights on pendente lite purchasers and that such alienations are to be treated as non est and that such pendente lite purchasers are not entitled to seek their impleadment in a pending suit and that Courts would be fully justified in declining prayer for impleadment made by such applicants who are guilty of contumacious conduct or are beneficiaries of clandestine transactions made in violation of restraint orders.

Having regard to the legal position and in view of the precedential guidance and the ratio in latest decision in Thomson Press (India) Ltd., V. Nanak Builders & Investors P. Ltd., 2013(3) ALD 111 (SC), this Court is of considered view that proposed defendants' request for their impleadment has to be considered in facts and circumstances of case and also for ends of justice - Viewed thus, this Court finds that order impugned brooks interference - In result, Civil Revision Petition is allowed and order impugned is set aside. **Yeddula Satheesh Kumar Reddy Vs. State of A.P. 2016(2) Law Summary (A.P.) 331 = 2016(5) ALD 228.**

—Or,1, Rule 10(2) - CIVIL RULES OF PRACTICE, Rule 28 - Impleadment of 3rd parties to suit - Senior Civil Judge dismissing Application filed by petitioner/Association to add them as 2nd respondent in appeal - Petitioner contends that where 3rd party rights are affected and also to avoid multiplicity of proceedings Court is under obligation to implead such parties - Or.1, Rule 10 (2) - Scope and object - Stated - Object of provision is to bring before Court all persons interested in dispute so that all such controversies involved in suit may be determined once for all in presence of all parties without delay and inconvenience - In this case, ground on which revision petitioner-proposed party intends to come on record is that Association intends to protect interests of members of said Association or Society and inasmuch as proposed party is in a way expousing cause of public to safeguard interest of public to see that litigation is effectually adjudicated and that presence of such party before Court would be essential - It is not case of proposed party that proposed party is having any direct interest in subject matter of litigation - Order of lower Court in dismissing Application - Justified - CRP, dismissed. **Rajendranagar Residents Welfare Assn.,Vs.Visakhapatnam Municipal Corpn., 2009(1) Law Summary (A.P.) 239 = 2009(2) ALD 655 = 2009(1) APLJ 267 = 2009(2) ALT 669.**

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—Or.1, Rule 10(2) & Or.22, Rule 10 - Impleadment of party - Suit for injunction - 1st respondent originally filed suit for perpetual injunction against defendant/2nd respondent - Petitioner purchased suit property from 1st respondent under registered sale deeds and became owner of suit property - Since 1st respondent not interested in prosecuting suit against defendant, petitioner filed Application seeking permission to implead him as 2nd plaintiff in suit, else he will be put to irreperable loss - Trial Court dismissed Application holding that petitioner who is a subsequent purchaser cannot be treated as necessary or proper party in a suit for injunction - CPC, OR.1, RULE 10 (2) - OBJECT AND SCOPE - Stated - Provision confers wide discretion upon Court - Provision is expressly provided in CPC so as to meet situation and ensure that rendering of justice to parties is not hampered - If Court is satisfied that party sought to be impleaded is proper and necessary party for adjudication of issues and such party has a direct interest in subject matter of litigation, invariably it is required to implead such a person as a party to proceedings - Normally, plaintiff would proceed against a person against whom he wishes to proceed, but, however, by virtue of Or.1, Rule 10 (2) of CPC at any stage of proceedings, Court may order addition of parties, even though plaintiff is not interested to implead such person as a party to proceedings - In this case, petitioner is said to have purchased suit property from plaintiff/1st respondent during pendency of suit and since plaintiff/respondent having sold suit property to petitioner, is said to have indicated of non-pursuing suit and petitioner being subsequent purchaser and having acquired interest in suit property, he should be permitted to get himself impleaded as plaintiff No.2 in present suit for injunction filed by plaintiff/1st respondent against defendant/2nd respondent to defend his interest therein, which would not only be in interest of justice but would also avoid multiplicity of proceedings between parties - Trial Court directed to implead petitioner as plaintiff No.2 in suit - Impugned order of trial Court, set aside - CRP, allowed. **V. Narayana Reddy Vs. Smt. Rani Narayan 2009(1) Law Summary (A.P.) 444 = 2009(4) ALD 13 = 2009(4) ALT 9 = AIR 2009 AP 124.**

—Or.2, Rule2 and Or.8, Rule 6(A) - Counter claim dismissed - Wether a bar under Order 2 Rule 2 - Court held that a counter claim preferred by the defendant in a suit is in the nature of a cross suit and by a statutory command - Even if the suit is dismissed, counter claim shall remain alive for adjudication - Plaintiff is obliged to file a written statement and in case there is default the court can pronounce the Judgment against the plaintiff in relation to the counter claim put forth by the defendant as it has an independent status - Purpose of the scheme relating to counter claim is to avoid multiplicity of the proceedings - When a counter claim is dismissed on being adjudicated on merits it forecloses the rights of defendant. **Rajni Rani Vs. Khairati Lal 2014(3) Law Summary (S.C.) 64 = 2015(1) ALD 13(SC) = 2014 AIR SCW 6187.**

—Or.2, Rules 2(2) & (3) - Respondents initially filed two suits in High Court as plaintiffs, seeking decree of permanent injunction restraining appellants/defendants from alienating, encumbering or dealing with plaint schedule properties to any other third party other

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than plaintiffs and also sought leave of Court to omit to claim relief of specific performance with liberty to suit for said relief at later point of time if necessary - Thereafter two suits filed by plaintiffs in District Judge's Court seeking decree against defendants/appellants for execution and registration of sale deeds in respect of same property for delivery of possession - In this case, according to High Court it is only after filing of suits and on failure of defendants to execute sale deeds and that cause of action to seek aforasaid relief of specific performance had accrued - Accordingly High Court took view that provisions of Or.2, Rule 2(3) of CPC were not attracted to render subsequent suits filed by plaintiffs in District Court not maintainable - High Court also took view that provisions of Or.2, Rule 2(3) of CPC would render subsequent suit not maintainable only if earlier suit has been decreed and said provisions of CPC will not apply if first suit remains pending - Or.2, Rule (1) requires every suit to include whole of claim to which plaintiff is entitled in respect of any particular cause of action - However plaintiff has an option to relinquish any part of his claim if he chooses to do so - Or.2, Rule 2 contemplates a situation where plaintiff omits to sue or intentionally relinquishes any portion of claim which he entitle to make - If plaintiffs so acts, Or.2, Rule 2 makes it clear that he shall not afterwords, sue for part or portion of claim that has been omitted or relinquished - In such situation, plaintiff is precluded from bringing a subsequent suit to claim relief earlier omitted except in situation where leave of Court had been obtained - APPLICABILITY OF OR.2, RULE 2 CPC - Stated - Cordial requirement for application of provisions contained in Or.2,Rule 2(2) &(3), is that cause of action in later suit must be same as in first suit - In instant case, though leave for relief of specific performance at a later stage was claimed by plaintiff in suits filed in High Court, admittedly no such leave was granted by High Court - As in present case, second set of suits were filed during pendency of earlier suits, it was held that provisions of Or.2, Rule 2(3) will not be attracted - In view of object behind enactment of provisions of Or.2, Rule 2 of CPC which seeks to avoid multiplicity of litigations on same cause of action - If that is true object of law, same would not stand fully subserved by holding that provisions of Or.2, Rule 2 CPC will apply only if first suit is disposed of and not in a situation where second suit has been filed during pendency of first suit - Rather order 2, Rule 2 CPC will apply to both aforesaid situations - Judgments and order of High Court, set aside - Appeals, allowed. **Virgo Industries (Eng.) P.Ltd. Vs. Venturetech Solutions P.Ltd. 2012(3) Law Summary (S.C.) 120.**

—Or.2, Rule 2(3) - **LIMITATION ACT,** Art.113 - **TRANSFER OF PROPERTY ACT,** Sec.108(q) - **CONSTITUTION OF INDIA,** Art.299 - Appellant/Telecom took suit property for lease from respondent for running Telephone Exchange on monthly rent of Rs.4000/- under registered lease agreement - On expiry of period of lease respondent demanded appellant to enhance rent to Rs.8000/- per month and issued notice u/Sec.80 of CPC and subsequently filed suit to vacate property - Suit decreed - Respondent initiated proceedings for obtaining delivery of possession - Appeal filed before District Court

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- Petition and revision against dismissal in C.R.P dismissed by High Court granting time for appellants to vacate premises - Since appellants did not pay enhanced rent and did not vacate premises, respondent issued another notice u/Sec.80 of CPC demanding to pay rent at Rs.8000/- per month and also damages due to damage to building and mental agony caused to respondent and thereafter filed suit for recovery of difference rent and for damages and also for mental agony - Trial Court restricted relief, granted difference of rent at Rs.2000 per month and dismissed rest of suit claim, observing that damages to building not proved and respondent did not state in her evidence in chief-examination about mental agony suffered by her - Appellant contends that suit is barred by time in respect of cause of action and also in light of Or.2, Rule 2(3) - Respondent contends that defendant could not be vexed twice for same cause of action - That rule was stated to be directed against split of claims and split of remedies and to be applicable only when both suits arise out of same cause of action between parties and that cause of action for recovery of possession is not necessarily identical with cause of action for recovery of mesne profits - Earlier suits for recovery of possession cannot be construed as barring present suit for recovery of difference in rent and for damages for building and mental agony and present suit may not be capable of being negative on ground of bar of limitation, when right of respondent to recovery of possession was specific issue in earlier suit which ended in favour of respondent only - CLAIM FOR ENHANCED RENT AND DAMAGES - If a tenant continues in possession of demised premises after determination of lease without consent of landlord either expressly or by necessary implication, he is called a tenant by sufferene - A tenant at sufference is bound to pay reasonable rate of damages for use and occupation which cannot exceed enhanced rate of claim by landlord and Court has power and discretion to fix fair and equitable rent in such cases on strength of evidence placed before it - In this case, officials of Telecom Department themselves were conscious of need to enhance rent if lease is to be renewed, is evidenced from correspondence and trial Court in considering enhancement of Rs.2000/- per month to be reasonable - Art.229 of Constitution is sought to be pressed in to service against suit claim as there was no contract in writing between parties for suit period concerning subject property - But effect of non-compliance with mandate requirement of Art.299 cannot deprive a party from obtaining relief against Govt. on basis of benefit or service received by Govt, which relief can be founded on equitable principles of restitution or compensation - Since appellants continued in possession after expiry of lease inspite of being put on notice about claim for enhanced rent, cannot non-suit respondent on any technical considerations from claiming a fair and reasonable sum in suit and sum awarded by trial Court is just and reasonable - Appeal and Cross-Objections, dismissed. **Union of India Vs. Nallapaneni Lakshmi Kumari 2010(3) Law Summary (A.P.) 369 = 2011(1) ALD 329.**

—Or.2, Rules 3 & 4 and Or.6, R.17 - Amendment of plaint - Suit filed for foreclosure - Trial Court dismissing Application filed by plaintiff seeking relief to amend plaint by adding relief of possession on premise that Application filed at belated stage and proposed

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amendment would change entire nature of suit - Obviously relief of foreclosure and relief of possession arise on two different causes of action - Nonetheless such different causes of action can be joined together in a multifarious suit - In a suit for foreclosure relief of possession can be sought for and no leave of Court need be obtained and Rules 3 & 4 of Or.2 makes legal position clear - Trial Court is totally oblivious of provisions of Or.2, of Code, having been of view that proposed amendment changes nature of suit, refused to grant relief - Merely because plaintiff is permitted to amend plaint by adding relief he will not be automatically granted relief and it all depends upon type of evidence adduced in support of plea by either of parties - In this case, amendment will prevent multiplicity of proceedings as otherwise once suit is disposed of for foreclosure in favour of plaintiff, he will be driven to file fresh suit seeking relief of possession - Impugned order is quite unsustainable and liable to be set aside - I.A for amendment stands allowed - Revision petition, allowed. **Namala Govindu Vs. B.Lakshmana 2008(1) Law Summary 269 = 2008(2) ALD 472 = 2008(2) ALT 570 = 2008(1) APLJ 179.**

—Order 3, Rule 1 & 2 and Order 26, Rule 4(1)(a)(c) - **ADVOCATES ACT**, Sec.32 - Suit filed for Recovery of amount - Trail Court accorded permission to petitioner/defendant to cross-examine hand-writing Expert by another hand writing Expert - If special circumstances exist in a particular case Court has power to permit any person not enrolled as an Advocate to appear before in that case - In this case that defendants have not made out valid and sufficient grounds and that they are no special circumstances to accord permission to defendants to have Expert witness cross examined by another Expert witness - Advocate for Defendant is at liberty to take assistance and instructions from Expert and can examine Expert witness with such aid and assistance if necessary at time of cross examining Expert - Impugned order of Trail Court allowing petition, set aside. **Kovvuri Kanaka Reddy Vs. N.Yedukondalu , 2014(1) Law Summary (A.P.) 261 = 2014(3) ALD 305 = 2014(3) ALT 578.**

—Or.3, Rule 4 - "Termination of vakalat of Advocate" - "Recovery of remuneration due from his client" - Plaintiff filed petition under Or.3, Rule 4 for discharging 4th respondent as plaintiff's advocate - Trial Court while allowing petition imposed a rider that plaintiff should pay 4th respondent's remuneration at rate of Rs.80, 000 per month from a particular date till date of his discharge - 4th respondent in person contends that lower Court is within its legal jurisdiction to direct plaintiff to pay remuneration payable to him while discharging him as plaintiff's Advocate - In view of decisions of Supreme Court and other High Courts that remedy of an Advocate who is discharged or whose vakalat is terminated under Or.3, Rule 4 CPC is that he may approach any Court by way of legal proceedings or suit for recovery of remuneration due from his or her client and Court while terminating Vakalat of Advocate under Or.3, Rule 4 should not entertain claim of Advocate for remuneration or fees or professional charges and should not sanction or award same as a condition precedent for termination of Vakalat in suit itself - Therefore that part of orders passed by lower Court sanctioning remuneration or fees to 4th respondent is outside scope of jurisdiction of Court - Revisions Petitions are allowed, setting aside conditions imposed

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by lower Court sanctioning remuneration to 4th respondent - This order will not however prevent 4th respondent from taking up appropriate legal proceedings before appropriate Court for recovery of his remuneration, if any payable by his client, Revision petitioner/ plaintiff. **Gayatri Projects Ltd. Vs. State of A.P. 2013(2) Law Summary (A.P.) 252 = 2013 (6) ALD 10 = 2013(5) ALT 434.**

—- Or.3, Rule 4 & Or.23, Rule 3 - "Rights of an Advocate to represent his client" - Once counsel gets power of attorney/authorization by his client to appear in matter, he gets a right to represent his client in Court and conduct case - Though Or.23, Rule 3 CPC requires compromise to be in writing and signed by parties, signature of Advocate/Counsel is valid for that purpose - In this case, Govt., pleader is legally entitled to enter into a compromise with appellant and his written endorsement Memo filed by appellant can be deemed as a valid consent of respondent itself - Hence counsel appearing for party is fully competent to put his signature to terms of any compromise upon which a decree can be passed in proper compliance with provisions of Or.23, Rule 3 and such decree is perfectly valid. **Y.Sleebachen Vs. Superintending Engineer WRO/PWD 2014(3) Law Summary (S.C.) 31 = 2014(6) ALD 157(SC) = 2014 AIR SCW 4898.**

—Or.6, Rule 2(1) & Or.7, Rule 14(3) - "Re-open evidence" - "Re-call witness" - Suit for partition and separate possession - Trial Court dismissed petition filed by plaintiff to recall and receive two documents by condoning delay in filing said documents, observing that plaintiff had these documents in their possession for last eleven months prior to filing of petition and suit underwent 23 adjournments and that plaintiffs cross-examined D.Ws on different dates and yet plaintiff did not assign reasons for not filing documents at earliest opportunity - Hence present revision petitions -Defendants contend that there is no reference to present documents in pleadings of plaintiffs and hence documents cannot be received at these belated stage and that there are no valid and sufficient reasons assigned by plaintiffs in support of their request - In this case, since plaintiff denied are required to prove pleaded relationship which was denied by defendants, present document is crucial and relevant document and opportunity to file such document cannot be denied to plaintiff merely on ground of delay - Law is well settled that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred - There are no circumstances to hold that delay was deliberate and was on account of culpable negligence and malafides on part of plaintiffs - Action of counsel in filing documents furnished to him by plaintiffs after completion of evidence of defendants cannot be termed malafide and for said act of counsel, plaintiffs cannot be penalized - Provisions of law under Or.7, Rule 14(3) CPC confers discretionary powers on Court to grant leave and receive documents at hearing of suit - "SUFFICIENT CAUSE" - In case sufficient cause is shown at hearing of suit and/or at end of trial, such cause shown should receive a liberal construction so as to advance cause of substantial justice, more particularly when documents sought to be filed in opinion of Court, are relevant and may have bearing on aspects to be taken into consideration for determination of real controversy and principal issues involved in suit

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- What constitutes a sufficient cause always depends and facts and circumstances of particular case - Hence Applications need not be rejected merely on ground of delay/ long delay, but test shall be whether sufficient cause is made out for delay - Impugned orders of trial Court are liable to be set aside - Plaintiffs made out valid and sufficient grounds to accord leave to file documents/to recall P.W.1 for reopening evidence - Impugned common order of trial Court, set aside - Revision petitions, allowed. **John Santiyago & Vs. Clement Dass, 2014(1) Law Summary (A.P.) 53 = 2014(2) ALD 184 = 2014(3) ALT 83.**

—Or.6, Rule 16 - **CONSTITUTION OF INDIA,** Arts.226 & 227 - Respondents 1 & 2 filed suit as declaring them as lawful tenants of suit premises - Appellant filed additional written statemet - 1st and 2nd respondent did not object to taking of additional written statement - 1st and 2nd respondent did not object to taking of additional written statement or framing of issues - Trial Court dismissed Application filed by 1st and 2nd respondent for striking of additional written statement holding that 1st and 2nd respondent have not been able to make out a case for striking of written statement - Single Judge allowed writ petition filed by 1st and 2nd respondents holding that legal representative of deceased/defendant not entitled to take a plea derogaroty to plea already taken - Trial Court was not justified in dismissing Application on ground of delay, which could have been compensated by imposing costs - Court can strike off pleadings only if it is satisfied that same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay fair trial of suit or Court is satisfied that suit is an abuse of process of Court - Since striking off pleadings has serious adverse impact on rights of concerned party, power to do so has to be exercised with great care and circumspection - In any case, once additional written statement filed by appellants was taken on record without any objection by respondents 1 & 2, who also led their evidence keeping in view pleading of additional written statement, High Court not justified in allowing Application filed for striking off additional written statement and that too without even adverting to Or.6, Rule 16 C.P.C - Appeal, allowed. **Abdul Razak(D)Through LRs. Vs. Mangesh Rajaram Wagle 2010(2) Law Summary (S.C.) 34 = 2010(2) ALD 136 (SC) = 2010 AIR SCW 1414.**

—Or.6, Rules 16 & 17 and Or.8, Rule 9 - "Amendment of written statement" - Respondent/plaintiff filed suit against defendants/appellants for declaration of title and for perpetual injunction - After filing written statement admitting claim of plaintiff, filed petition under Or.6, Rule 16 seeking leave of Court to strike out pleadings in written statement and also another petition under Or.8, Rule 9, seeking leave of Court to permit them to file detailed written statement - Trial Court after hearing parties dismissed both petitions - High Court also dismissed CRPs filed by defendant - In appeal supreme Court also dismissed. civil appeals - Thereafter defendant filed fresh petition under Or.6, Rule 17 seeking leave of Court to amend written statement - Trial Court allowed petition permitting defendants to amend written statement - High Court allowed revision filed by plaintiff and set aside order of trial Court allowing amendment of written

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statement - Hence present appeal by defendant/appellant - Appellant contends order passed on petition under Or.6, Rule 16 and Or.8, Rule 9 will not operate as res judicata on subsequent application filed under Or.6, Rule 17 of CPC and that High Court has not correctly appreciated settled principle of law and passed impugned order - Respondents contends that application for amendment is liable to be rejected on sole ground that it is filed 13 years after institution of suit and that too when trial of suit had begun and plaintiffs, witness was cross examined and that disruptive plea cannot be allowed to be taken by way of amendment in written statement and that grounds taken by defendant for amending written statement has already been discussed in earlier petitions filed under Or.6, Rule 16 and Or.8, Rule 9 and trial Court rejected said applications and said order was affirmed by Supreme Court - In this case, in revision filed by the defendants/appellants, High Court considered all decisions referred by defendants on issue whether defendants can withdraw admission made in written statement and finally came to conclusion that defendant-appellants cannot be allowed to resile from admission made in written statement while taking recourse to Or.8, Rule 9, or Or.6, Rule 16 by seeking to file a fresh written statement - High Court in impugned order has rightly held that filing of subsequent Application for same relief is an abuse of process of Court and that relief sought by defendant in a subsequent petition under Or.6, Rule 17 was elaborately dealt with on two earlier petitions filed by defendant appellants under Or.6, Rule 17 and Or.8, Rule 9 and therefore subsequent petition filed by defendants labelling petition under Or.6, Rule 17 is wholly misconceived and not entertainable - Appeals, dismissed. **S.Malla Reddy Vs. Future Builders Co-operative Housing Socy. 2013(2) Law Summary (S.C.) 147 = 2013(4) ALD 40 (SC) = 2013 AIR SCW 2405.**

—-Order VI, Rule 17 - It is the case of the plaintiff that the 2 sale deeds in question have been executed on 12.12.2003 with a view to defeat the rights and interests of the plaintiff-petitioner - In those set of circumstances, the plaintiff instituted suit seeking partition of joint family properties and for allotment of one share to plaintiff and for delivery of such a share by metes and bounds to her - She also sought for cancellation of 2 sale deeds executed on 12.12.2003 - Defendant Nos.4 and 6, in whose favour they stand, have been impleaded for that very reason to suit - But however, she has realized that cancellation of sale deeds is not appropriate relief that can be sought for by plaintiff as she is not one of the parties to the aforementioned 2 sale deeds and on the other hand, she ought to have claimed the relief of declaration that such sale deeds are null and void and not binding on plaintiff - Hence, I.A. has been filed, seeking declaration, by way of amendment - This application was resisted mainly on the ground that trial of present suit has already commenced and P.W.1 and P.W.2 were examined and suit is posted for further evidence of plaintiff - At that stage, present application is moved - Hence, it is moved at a belated stage - It was also urged that on merits that plaintiff has no case whatsoever and present application is only an attempt to somehow drag proceedings instead of bringing them to a quick end.

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This revision is preferred by defendant Nos.1, 3 and 4 in suit, who are respondents as such in I.A.- 1st respondent herein is plaintiff, while remaining 3 respondents are defendant Nos.2, 5 and 6.

Held, consistent policy of Courts in this Country was not to adopt a hypertechnical approach while dealing with applications for amendment of pleadings which would result in defeating ends of justice - Thus, paramount consideration that should be shown to an application for amendment is whether ends of justice would be served better or not by allowing such an amendment instead of denying the same.

It is apt to note that a plea relating to limitation is a mixed question of law and fact - A specific issue has got to be framed in respect thereof - So that both t parties can lead evidence considered appropriate and suitable in support of their rival contentions - That is precisely what has now been done by Court below by allowing petitioners herein to file additional written statement - At any rate to cut down pendency time of case, in this revision direct to Court below to frame following issue:

"As to whether suit for declaration that sale deeds bearing document Nos. 3103 of 2003 and 3104 of 2003 dated 12.12.2003 are null and void and not binding on the plaintiff, is barred by limitation or not?"

Accordingly, such an additional issue be framed - If such a question is now framed as an additional issue, both parties will be at liberty to lead appropriate evidence and that can be examined by Court below while deciding suit itself finally - This apart, inconvenience caused to defendants can be compensated by way of awarding costs - Accordingly, Civil Revision Petion disposed of. **J.Yadagiri Reddy Vs. J.Hemalatha 2016(1) Law Summary (A.P.) 531 = 2016(3) ALD 52.**

---Order VI Rule 17 - This Civil Revision Petition under Article 227 of the Constitution of India by the legal representatives of deceased/sole plaintiff is directed against orders of lower Court.

In a suit that was brought by sole plaintiff, on his death, his legal heirs/ representatives had filed an application for their impleadment as plaintiffs 2 to 6 - On merits, trial Court had allowed said application by its orders and, the suit is coming for carrying out amendment in the cause title of the plaint in regard to addition of the plaintiffs 2 to 6, who are permitted to come on record as legal representatives of the deceased sole plaintiff - While so, on the failure of the plaintiffs to carry out the necessary amendments in the cause titles of the plaint, the order impugned in this revision has come to be passed by the trial Court.

Held, the application of the revision petitioners for permission to come on record as plaintiffs 2 to 6, they being the legal representatives of deceased sole plaintiff, is allowed by Court below - Since said application had already been allowed, revision petitioners cannot be declined to amend cause titles and prosecute suit merely on ground of delay; and, merely for infraction of a rule of procedure, their substantive rights cannot be allowed to be defeated - In the result, the Civil Revision Petition is allowed and the order impugned is set aside. **Muddada Appa Rao (Died) Vs. M.Nagendra Prasada Rao 2016(2) Law Summary (A.P.) 306 = 2016(5) ALD 14 = 2016(5) ALT 213.**

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—-Or.6, Rule 17 - **CPC (AMENDMENT ACT, 1999),** Amendment of pleadings - Before enforcement of Amendment Act, original Rule was substituted and restored with an additional proviso which limits power to allow amendment after commencement of trial but grants discretion to Court to allow amendment if it feels that party would not have raised matter before commencement of trial inspite of diligence - Liberal principles which guide exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter character of an action should be granted, while care should be taken to see that justice and prejudice of irremediable character are not inflicted upon opposite party under pretence of amendment - After commencement of trial, no Application for amendment shall be allowed - However, if it is established that inspite of "due deligence" party could not have raised matter before commencement of trial depending on circumstances, Court is free to order such application - Inspite of long delay if acceptable material placed before Court show that delay was beyond their control or deligence, it would be possible for Court to consider same by compensating other side by awarding costs - In this case defendant failed to substantiate inordinate delay in filing application that too after closing of evidence and arguments - Order of High Court - Justified - Appeal,dismissed. **Chander Kanta Bansal Vs. Rajinder Singh Anand 2008(3) Law Summary (S.C.) 63.**

—Or.6, R.17 – Amendment of pleadings – Suit filed for dissolution of partnership Firm - Appellant/defendant filed written statement disputing existence of partnership and taking plea that by way of family arrangement appellant allowed to carry on business – Trial Court and High Court rejecting Application for amendment of written statement on ground that Application filed after long lapse of time is clearly *ex-facie* barred by law of limitation - Court must be extremely liberal in granting prayer for amendment, if Court is of view that if such amendment is not allowed, a party, who has prayed for such amendment, shall suffer irreparable loss and injury - Courts generally, as a rule, decline to allow amendments, if a fresh suit on amendment claim would be barred by limitation on date of filing of Application - In this case, it is clear that by way of amendment, appellants are now completely making out a new case by alleging that appellants are incurring damages on continuous basis, which is contrary to pleadings made in written statement and counter claim - In Application for amendment, appellants had not given by explanation whatsoever for such delay - Hence Courts below are perfectly justified in rejecting prayer for amendment of written statement and counter claim - Appeal, disissed. **South Konkan Distilleries Vs. Prabhakar Gajanan Naik 2008(3) Law Summary (S.C.) 106 = 2009(1) ALD 1 (SC) = 2008(6) Supreme 714 = AIR 2009 SC 1177.**

—Or.6, Rule 17 - amendment of pleadings - Appellant/plaintiff filed suit seeking permanent injunction restraining respondents/defendants from inter-fering with her rights for suit property - Trial Court rejecting petition filed by appellant for amendment of suit property as described in Schedule to plaint - High Court dismissed writ petition and affirmed orders of trial Court - Appellant contends that proviso to Rule 17 would come to play only after commencement of trial and that trial Court is in error in rejecting appellant's prayer invoking due diligence clause in proviso and that prayer for amendment is made at pre-trial stage and hence, prayer would have been allowed without difficulty

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as was position under amended Rule 17 - Respondents submit that plaintiff-appellant had obtained interim injunction against defendants in regard to property as described in plaint and now proposed amendment made it manifest that defendants were made to suffer injunction for a long time with regard to their own property - It is true that plaintiff-appellant ought to have been diligent in promptly seeking amendment in plaint at an early stage of suit, more so when error on part of plaintiff was pointed out by defendant in written statement itself - Still, proposed amendment is necessary for purpose of brining to fore real question in controversy between parties and refusal to permit amendment would create needless complications at stage of execution in event of plaintiff/appellant succeeding in suit - Proposed amendment allowed with costs - Appeal, allowed. **Usha Devi Vs. Rijwan Ahamd 2008(1) Law Summary (S.C.) 87 = 2008(3) ALD 1 (SC) = AIR 2008 SC 1147 = 2008 AIR SCW 1061 = 2008(1) Supreme 391.**

—Or.6, Rule 17 - Amendment of written statement - Landlord/respondent filed ejectment proceeding before Rent Controller - During pendency of proceeding appellant filed Application under Or.6, Rule 17 praying for amendment of written statement stating that proposed amendment is necessary for adjudication of real matter in controversy - Rent Controller rejected Application holding that if such amendment was allowed, appellant would be permitted to withdraw his admissions made in original written statement which is not permissible in law - High Court affirmed order of Rent Controller - An amendment of a plaint and amendment of written statement are not necessarily governed by exactly same principle - Adding new ground of defence or substituting or altering a defence does not arise same problem as adding, altering, substituting a new cause of action - In case of amendment of written statement, Courts would be more liberal in allowing than that of a plaint as question of prejudice would be far less in former than in latter and addition of new ground of defence or substituting or altering a defence or taking inconsistent pleas in written statement can also be allowed - High Court as well as Rent Controller acted illegally and with material irregularity in exercise of its jurisdiction in not allowing Application for amendment of written statement of appellant - In this case, trial not yet commenced and admittedly that not even issues have yet been framed and proviso to Or.6, R.17 of CPC has no manner of application as trial not yet commenced - Impugned order of High Court as well as Rent Controller, set aside - Application for amendment, allowed - Appeal, allowed. **Sushil Kumar Jain Vs. Manoj Kumar 2009(3) Law Summary (S.C.) 99.**

—Or.6, Rule 17 - Amendment of plaint - Petitioner/daughter filed suit against respondent/father for recovery of Rs.2 lakhs towards expenses for her marriage - Marriage performed - During pendency of suit trial Court dismissed application filed by petitioner to amend to extent of quantum of amount by substituting Rs.2 lakhs originally claimed with Rs.2.5 lakhs - In this case, reasons on which petitioner's application has been rejected are not sound in law - In view of subsequent events of marriage of petitioner, he has filed application for amendment - Law does not prohibit such amendment based on a fresh cause of action - Observation of trial Court that no material was placed in support of petitioner's averment, absence of material at stage of application for

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amendment is wholly irrelevant as petitioner fails or succeeds on basis of evidence that may be adduced by her during trial after amendment is ordered - With regard to reason that amendment will change nature of suit, same is equally unsound because by raising plea pertaining to subsequent events and enhancing claim, nature of suit will not undergo any change as relief of recovery of money being nature of suit, same remains notwithstanding amendment - Impugned order under revision, set aside - CRP, allowed. **Arasavalli Tejaswari Vs. Arasavalli Gopala Rao, 2011(1) Law Summary (A.P.) 337 = 2011(3) ALD 580 = 2011(3) ALT 598.**

—Or.6, Rule 17 - 1st respondent filed suit for recovery of certain amount and same was decreed - After decree, 1st respondent filed E.P. for sale of an item of property in Sy.No.529 of particular village - 2nd respondent became successful bidder and sale certificate and delivery warrant and delivery receipt issued in his favour - Respondent filed E.A u/Sec.153, r/w Or.6, Rule 17 CPC to amend schedule in sale certificate, delivery warrant and receipt contending that due to inadvertence name of village was wrongly mentioned - 3rd respondent filed verified petition opposing E.A. - Petitioners contend that closure of E.P execution Court becomes functus officio and it has no jurisdiction to entertain E.A for correction of important particulars of property and it is totally impermissible for him to change particulars to enable 2nd respondent to lay claim for an item of property in different village - There may be cases where typographical or clerical error has crept into judgment or order necessity to seek correction thereof by filing application u/Sec.153 CPC arises, mostly after proceedings terminated - In name of seeking correction of clerical or typographical errors a party cannot seek substitution of new facts and figures therefore though relief u/Sec.153 CPC was available to respondents, even after closure of E.P nature of relief claimed by them does not fit in to that provision - Once 2nd respondent purchased a particular item of property, that too in a Court auction, it is not open to him to claim rights vis-a-vis land in different item of property in different village - Order passed by trial Court, unsustainable - CRP, allowed. **Nagaraju Vs. K. Rami Reddy 2011(2) Law Summary (A.P.) 64 = 2011(3) ALD 825 = 2011(4) ALT 75.**

—Or.6, Rule 17 - "Amendment of plaint" - Suit filed for permanent injunction - Subsequently petitioner/plaintiff filed Application seeking amendment of plaint by adding alternative relief of recovery of possession - Trial Court dismissed said Application on ground that as petitioner has been allowing through pleading that he was in possession of property, Application for amendment if allowed will change nature of suit - Hence this revision petition - Petitioner contends that trial Court committed serious jurisdictional error in dismissing Application and totally misconceived premise that Application for amendment in a suit for permanent injunction claiming alternative possession is not maintainable - Unless prayer sought to be made by way of amendment is barred by law, Courts shall make a liberal approach in allowing application for amendment in order to avoid multiplicity of proceedings - In this case, it is not pleaded case of

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respondents/defendants that amendment is barred by law of limitation, or that any right vested in respondents will be taken away by allowing such amendment - Trial Court committed serious jurisdictional error in rejecting petitioner's application for amendment - Order of trial Court, set aside - Revision petition allowed. **Chinnapareddy Subba Reddy Vs. Chinnapareddy Srinu 2012(3) Law Summary (A.P.) 302 = 2013(1) ALD 388 = 2013(4) ALT 319.**

—Or.6, Rule 17 - "Amendment of plaint" - Petitioner filed suit for declaration and also sought for delivery of vacant possession of schedule land and after completion of trial at stage of arguments petitioner/plaintiff filed IA under Or.6, Rule 7 for amendment of plaint for incorporating relief of future profits - Trial Court dismissed said Application - Hence present CRP - Under Or.6, Rule 17 CPC Court is vested with discretion to allow either party to alter or amend pleadings for purpose of determining real questions in controversy between parties - However under proviso thereto, application for amendment shall not be allowed after trial has commenced, unless Court comes to conclusion that inspite of diligence party could not have raised matter before commencement of trial - Proviso is added with a view to cut-down on delays and not to encourage litigants who are either not diligent or who want to indulge in vexatious litigation for prolonging suit proceedings - Concept of due diligence in cases of this nature cannot be made applicable against a party if lawyer has not properly advised to claim appropriate relief - In such a case, length of delay is hardly relevant - In this case, in event petitioner succeeds in suit in getting his title to suit property declared, relief of mesne profits is purely consequential - A party cannot be denied such a relief unless same is barred by limitation - At any rate ordinarily mesne profits are ascertained at stage of execution proceedings during which both parties will be permitted to adduce evidence - Order of trial Court, set aside - However, for delay in filing application of amendment of plaint, petitioner shall deposit costs of Rs.5000/- payable to respondents - On such deposit , petitioner shall be permitted to amend plaint. **Kovvuri Ramakrishna Reddy Vs.Padala Satyanarayana Reddy, 2012(2) Law Summary (A.P.) 20 = 2012(5) ALD 56 = 2012(4) ALT 1.**

—Or.6, Rule 17 - "Amendment of cause of action" - Suit filed by petitioner/plaintiff basing on promissory note - Written statement filed, issues frame and trial commenced plaintiff's evidence completed by examining P.W.1 to 3 - At that point plaintiff filed petition under Or.6, Rule 17, for amendment of cause of action - Trial Court allowed petition - In this case in view of cross examination of P.Ws. wherein said witness gave evidence as if borrowing was at a different village, though request for borrowing was at a particular village and this is what was sought to be prohibited under proviso to Or.6, Rule 17 - General Rules of civil procedure is that evidence has to be let in by parties in accordance with their respective pleadings - In this case, petitioner/ plaintiff wants to adopt a reverse method to effect that he wants to amend plaint in accordance with evidence/cross-examination of P.Ws. - This would be nothing but putting court before horse and that situation in this case, is contrary to rigor of prohibition

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contained in first part of proviso to Or.6, Rule 17 and that second part of proviso which attempted to ease out rigor contained in first part of proviso, has no application herein - Order passed by trial Court is contrary to law and liable to be set aside - CRP, allowed. **Rodda Narasaiah Vs. Adla Raju @ Rajaiah 2013(2) Law Summary (A.P.) 271 = 2013(5) ALD 37 = 2013(6) ALT 279.**

—Or.6, Rule 17, Proviso - "Amendment of plaint" - Originally suit filed by petitioner/ plaintiff for permanent injunction - Trial commenced evidence of P.W. over - At that stage petitioner/plaintiff filed petition for amendment of plaint for cancellation of document executed by defendants 1 & 2 - Trial Court refusing amendment of plaint - Petitioner contends that she is old lady of 87 years not well versed in law and therefore could not file petition expeditiously - Respondents contend that present petition for amendment hit by Proviso to Or.6, Rule 17 - On plain reading of Proviso reveals that initial prohibition for a party to approach Court for amendment of pleadings after commencement of trial is not a rigid prohibition - In a matter relating to seeking additional prayer in plaint, usually party has no much role - It is for Advocate of party to decide as to claim of suit and as to amendment to be sought by way of inclusion additional prayer in suit - Party instructs Advocate only on factual aspects of case and not on legal aspects which are within exclusive domain of legal Counsel - In this case, proposed amendment if allowed will only enlarge procedure of suit by way of giving permission to defendants to file additional written statement and framing additional issues before proceeding with further trial - Trial Court did not exercise its description properly and it resulted in dismissal of petition refusing to give permission for amendment of plaint - Impugned order of trial Court, set aside - Petitioner/plaintiff permitted to amend plaint as prayed for - CRP, allowed. **Vallala Yasodha Vs. Vallala Naga Venkata Laxmi 2013(2) Law Summary (A.P.) 41 = 2013(5) ALD 166 = 2013(5) ALT 743.**

—Or.6, Rule 17 - Suit was filed by the petitioner for specific performance of agreement of sale - Petitioner filed I.A. under Or VI, Rule 17 of CPC for amendment of plaint by adding paragraphs 2(a) and 2(b) to the plaint - Court rejected application on ground that if the proposed amendment is permitted, valuable defence already vested in respondent will be lost - Feeling aggrieved by order, petitioner filed present Civil Revision Petition - Held, permission to amend pleadings does not mean that court has accepted correctness of contents of pleadings - Ultimately, it is for party which sought amendment of pleadings to prove same with reference to evidence - If what petitioner proposed to plead is not correct, he will not be able to prove proposed pleadings - Therefore, that the question of any prejudice being caused to respondent if proposed amendment is allowed in present case would not arise - For above reasons, order of lower court which suffers from serious jurisdictional error is set aside and IA is allowed - However, respondent is permitted to file additional written statement to extent of amended pleadings before witnesses are examined - Civil Revision Petition

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is accordingly allowed. **G.S.Prakash Vs. Posala Hanumanlu, 2014(3) Law Summary (A.P.) 410 = 2015(1) ALD 270 = 2015(2) ALT 594.**

—Or.6, Rule 17 - Petitioners/plaintiffs filed for injunction in respect of certain lands – Before commencement of trail, petitioners filed I.A. seeking amendment of Northern and Southern boundaries in plaint as well as petition schedules, Trail Court dismissed petition holding that if proposed amendment is allowed it would introduce a new cause of action and cause prejudice to defendants - Admittedly in this case plaintiffs gives boundaries which are mentioned in sale deed under which they became entitled to suit property – Version of petitioners is that of Northern and Southern boundaries mentioned in sale deed it self are incorrect, noticing said fact they obtained registered rectification deed from their vendors correcting Northern and Sothern boundaries and there after filed application seeking amendment of boundaries in plaint schedule - In instant case, amendment is sought for by petitioners/plaintiffs before commencement of trail – After noticing mis-description of Northern and Southern boundaries petitioners/ plaintiffs got registered rectification deed executed through their vendors and then made application seeking amendment of boundaries - At stage of dealing with applications seeking amendment, Court is not expected to deeply indulge in evaluating respective cases of parties and Court is not supposed to reject amendment of petition with a foregone conclusion as to merits of case – Such a course is not permissible with in frame of Order 6 Rule 17 - Impugned order of Trail Court set aide - C.R.P. Allowed. **Allam Nagaraju Vs. Katta Jagan Mohan Reddy, 2014(2) Law Summary (A.P.) 128 = 2014(3) 438 = 2014(4) ALT 206.**

—Or.6, Rule 17 - When the delay itself is not a ground to reject the amendment, trial Court ought to have allowed amendment, when it no way causes withdrawal of any inconsistent admission in pleadings or grave prejudice to other side or changes cause of action or nature of suit, but for said delay to compensate - Lower Court's order dismissing amendment application now sought to be intervened in revision within its limited scope for saying is improper exercise of jurisdiction vested and when it causes prejudice to revision petitioners/plaintiffs, this Court has to interfere to set aside the order impugned, in the order - Accordingly, and in result, revision is allowed by setting aside dismissal order of amendment by trial Court by allowing amendment subject to payment of costs by petitioners/plaintiffs to defendant in that suit within 15 days from the date of receipt of this order. **P.Durga Reddy Vs. B.Yadi Reddy 2015(1) Law Summary (A.P.) 201 = 2015 (4) ALD 420.**

—Or.6 RULE 17 – "AMENDMENT OF WRITTEN STATEMENT" - Respondent filed suit for perpetual injunction - Petitioner filed written statement and subsequently filed I.A. for amendment of Written Statement with averments that written statement was drafted by their Counsel in absence of deponent on telephonic instructions given by him from USA ad also based on information furnished by his GPA holder and that

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certain mistakes have crept in written statement which are noticed by him at the time of signing written statement on his return from USA - Respondent/plaintiff opposed application - Lower court dismissed application on grounds Viz., 1) that application filed for incorporating omissions cannot be permitted under Or.6 Rule 17 C.P.C. and 2) that petitioners are seeking to raise inconsistent pleas which is also not permissible - Or.6 Rule 17 C.P.C. empowers Court to permit amendment of pleadings at any stage of proceedings, where it finds such amendment is just and necessary for purpose of determining real questions and controversies between parties - Order 6 Rule 17 - Scope and object - Stated – Instances where amendments have to be refused are as follows:

(i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the Court;

(v) where a fresh suit, if instituted on the proposed amendments, will be barred by law.

In this case suit is pre-trial stage and hence, Court has very wide discretion to allow amendment - Lower court has completely failed to understand scope and purport of order 6 Rule 17 C.P.C. in dismissing application by assigning unsound reasons - CRP allowed accordingly. **G.Ravinder Rao Vs. Wonderla Holidays (Pvt) Ltd. 2015(1) Law Summary (A.P.)512 = 2015(3) ALD 638 = 2015(3) ALT 806.**

—Or.6, Rulre 17 - “Amendment of plaint” - Petitioners/plaintiffs filed suit for declaration of title and perpetual injunction in respect of suit schedule property - When suit comming up for evidence of respondents/defendants, plaintiffs filed I.A under Or.6, Rule 17 seeking for amendment of plaint - Respondents/defendants contend that allegations made in impugned I.A are false and at any rate trial of suit had commenced and evidence on behalf of plaintiffs was closed and suit posted for evidence of defendants and defendants had also filed chief affidavit of 4th defendant - Trial Court dismissed impugned I.A., as belated - Supreme Court categorically stated that amendment of plaint shall not normally be allowed once trial of case commences except in exceptional circumstances - In this case, denial of possession of petitioners/plaintiffs was as far as back as in year 2007 and there was no due deligence on part of petitioners/plaintiffs in seeking amendment of plaint and thus Application made by petitioers/plaintiffs after

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completion of process and adducing evidence on their part and at the stage of defendants'evidence is not bonafide and belated one - CRP, dismissed. **Polishetty Lurdamma (died).Vs. Kunday Mallaiah (died) 2015(3) Law Summary (A.P.) 423 = 2015(6) ALD 452.**

—Or.6 Rule 17 –Amendment of pleading at the stage of second appeal – It is well settled that rules of procedure are intended to be a handmaid to the administration of justice - Amendment is permissible to do complete justice to the parties. **Mahila Ramkali Devi Vs. Nandram Thr. Lrs. & Ors. 2015(2) Law Summary (SC) 29 = 2015(4) ALD 108 (SC) = 2015 AIR SCW 3187 = AIR 2015 SC 2270.**

—Or.6, Rule, 17 - **HINDU SUCCESSION ACT, 1956**, Sec.6 'as amended through Act 39 of 2005' - CONSTITUTION OF INDIA, Art.227 - The original Suit was filed claiming that plaint schedule properties are self-acquired properties of Late K.G., the defendants had set up a plea that they were not self-acquired properties of Late K.G., - In the application for amendment filed by petitioners, they sought to raise an alternative plea which was disallowed by the Court below - Point for consideration is whether a plaintiff is permitted to take such alternative and inconsistent pleas - Held, even though the plaintiffs had originally taken a plea in the plaint that the plaint schedule properties are the selfacquired properties of Late K.G., since they wish to take an alternative plea (that even if the properties are treated as joint family properties of Late K.G they would be entitled to a relief in the suit) they can be allowed to do so for the reason that such an alternative and inconsistent plea would not cause any prejudice to respondents who themselves have pleaded that the plaint 'A' and 'B' schedule properties are not self-acquired properties of Late K.G - Therefore, the Court below, in my considered opinion, had erred in refusing to allow petitioners to take the alternative plea that the plaint 'A' and 'B' schedule properties are joint family properties of themselves and Late K.G., and seek relief by invoking the Hindu Succession Act, 1956 as alternative basis for suit claim - Moreover, while deciding whether or not to allow the Application for amendment, it was not open to the Court below to go into the correctness of the pleas set up by plaintiff in the application for amendment and express an opinion thereon. This is clearly impermissible in law. Therefore the observations made by Court below as to the actual nature of the 'A' and 'B' schedule properties are not warranted - In this view of the matter, the Civil Revision Petition is allowed. **Vasa Soma Sundara Andal Sampoorja Saraswathi Vs. K.L.V.N.Ranga Venu Bhaskararao 2015(3) Law Summary (A.P.) 229 = 2015(6) ALD 536.**

—-Or.6 Rule 17 - SPECIFIC RELIEF ACT, Sec.26 – "Amendment of schedule" – Respondent / Plaintiff filed suit for specific performance of agreement of sale, alleged to have been executed by petitioner defendant – Plaintiff filed Application under Or.6, Rule 17 CPC seeking amendment of description of plaint scheduled property by way of insertion of Survey number and Patta number – Trial court allowed the amendment

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– Hence the present Revision – Petitioner defendant contends that impugned order is erroneous contrary to law and opposed to very spirit and the object of provisions of Order 6 Rule 17 and that in view of prohibition contained under proviso of Or.6 rule 17 and present application is not maintainable after commencement of trial.

In the present case, amendment was sought only with regard to description of schedule of property with plaint but not description of property in suit agreement of sale - In light of provisions of section 26 of Specific Relief Act - Trial court grossly erred in applying principles laid down by Hon'ble Apex court in Judgment referred above – Therefore the order of trial court cannot be sustained in the eye of law – Hence impugned order set aside – CRP, allowed. **Molli Eswara Rao Vs. Kurcha Chandra Rao 2016(2) Law Summary (A.P.) 70 = 2016(3) ALD 510 = 2016(3) ALT 655.**

—Or. 6 Rule 17 – **LIMITATION ACT** –Suit for injunction –Amendment as to declaration of title - Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs. **Vasant Balu Patil Vs. Mohan Harachand Shah 2015(3) Law Summary (S.C.) 48.**

—Or.6, Rule 17 Proviso – **LIMITATION ACT,** Article 58 - Suit filed for bare injunction in respect of plaint scheduled property restraining defendant from interfering with his peaceful possession and enjoyment of said property, stating that his mother purchased property under registered sale deed when he was minor - Defendant contends that his father purchased property in court auction in year 1976 and ever since, property has been in his continuous and uninterrupted possession and made categorical denial of title of the plaintiff and his mother - Trial Court dismissed suit of plaintiff – Plaintiff filed Application under Order 6 rule 17 seeking amendment of plaint, permitting to pray for relief of declaration of right and title to plaint property – Appellate Court allowed Application - In this case plaintiff has to seek declaration of his title and cancellation of sale deed obtained by father of defendant within three years as provided in Art.58 of Limitation Act, and it cannot be said that inspite of due diligence, plaintiff could not have sought for amendment before commencement of trial - In view of proviso to Rule 17 of Order 6, Appellate Court ought not to have allowed amendment Application – Unless order passed allowing amendment is set aside, it would cause any amount of prejudice to defendant and also it would take away right of defendant accrued to him under law of Limitation - Order passed by lower appellate court, set aside – C.R.P. allowed. **Desai Krishnamurthy Vs. Pinjari Moula Ali Sab 2014(2) Law Summary (A.P.) 35 = 2014(3) ALD 639 = 2014(5) ALT 147.**

—Or.6, Rule 17 - **LIMITATION ACT,** Art.65 - Plaintiff filed suit for permanent injunction - Trial Court dismissing Application filed by plaintiff seeking amendment of plaint for relief of declaration vested remainder rights etc - 1st defendant disputing status of petitione/ plaintiff as vested remained - Trial Court dismissed Application observing

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that petitioner having kept quite for long period, filed impugned Application seeking amendment of pleading for insertion of relief of declaration for declaring himself to be vested remainder holder of suit schedule property - It is not disputed that Art.65 of Limitation Act prescribes 12 years period of limitation for instituting suit by vested remainder for declaration - As such suit for relief claimed by plaintiff is not barred by limitation since Art.65 of Limitation Act governs such suits filed by vested remainder - Even petitioner can now institute a fresh suit against defendants for relief claimed - But to avoid multiplicity of proceedings lower Court ought to have exercised discretion in favour of petitioner by allowing amendment sought for on certain terms - Impugned of lower Court, set aside - Application for amendment allowed on payment of costs - Revision, allowed. **T.Veera Venkata Rao Vs. Tikkana Venkata Ramana 2010(1) Law Summary (A.P.) 193 = 2010(2) ALD 423 = 2010(2) ALT 631 = AIR 2010 AP 88.**

—Or.6, Rule 17 Proviso - **LIMITATION ACT,** Art.113 - **LAND ACQUISITION ACT,** Secs. 9 & 12 - Petitioners filed suit for partition and separate possession - Applications filed for amendment of plaint Schedule and also door nos and boundaries, are allowed by trial Court - Part of petitioners land was acquired under provisions of Land Acquisition Act and award passed by competent Authority - Another amendment petition filed to amend the plaint by inserting certain paragraphs in body of plaint claiming share in the above compensation and also share in mesne profits contending that award was passed subsequent to filing of suit in respect of property covered by plaint schedule in suit and that they are entitled to amend relief portion of plaint by claiming share in compensation - Respondents contend petitions have nothing to do with the plaint property and suit is a luxury litigation filed only to usurp some of compensation awarded to respondents on account of acquisition proceedings and that Application for amendment is barred by limitation as limitation for filing of suit for partition is three years from date of accrual of cause of action - Trial Court dismissed IA. - Petitioners contend that respondents had not able to establish that petitioners are given any notice u/Sec.9 & 12 of Land Acquisition Act and that amendment is not barred by limitation and it is only one of the factors to be taken by Court to be allowed or refused and did not power of Court to allow amendment if amendment is required in interest of justice and it is always open to Court to allow amendment to serve ultimate cause of justice and to avoid further litigation - Purpose of Proviso to Or.6, Rule 17 CPC - Supreme Court held that no Application for amendment shall be allowed after trial has been commenced unless Court has come to conclusion that inspite of deligence the party could not raise matter before commencement of trial - It also held that due deligence is a critical factor to be considered in determining whether or not an amendment sought after commencement of trial is to be allowed - In this case, it is not case of respondents that in notification issued u/Sec.4 of L.A Act names of petitioners mentioned and it is also not their case that notice u/Sec.9 & 12 has been issued to petitioners - Respondents also categorically stated in their counter that initially possession was taken without any proceedings under L.A. Act - Considering facts in this case, it is fully satisfied that petitioners had established that inspite of due deligence

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they could not have raised these matters before commencement of trial and therefore the bar of Proviso to Or.6, Rule 17 is not applicable - Held that Application for amendment of plaint claiming further relief as to share in rents and mesne profits can be allowed. **Waheeda Begum Vs. Md.Yakub, 2014(1) Law Summary (A.P.) 169 = 2014(3) ALD 361 = 2014(2) ALT 640.**

—Or.6, R.17 - **SPECIFIC RELIEF ACT,** Secs.15 (a) & 19 - Suit for specific performance of agreement - High Court allowed 1st respondent/plaintiff to amend plaint - Contention that allowing plaintiff for amendment of plaint to completely change nature and character of his suit from one for specific performance of agreement to one for declaration of title against third party to agreement for which specific performance had been claimed, erroneous since that suit as amended not maintainable u/Sec.19 of Act - Sec.15(a) entitles any party to contract to seek specific performance of such contract - Admittedly appellant is 3rd party to agreement and does not therefore, fall within category of "parties to agreement" and also does not come within ambit of Sec.19 of Act, which provides for relief against parties and persons claiming under them by subsequent title - Scope of suit for specific performance could not be enlarged to convert same into a suit for title and possession - A third party or a stranger to contract could not be added so as to convert a suit of one character into a suit of different character - Impugned order of Division Bench of High Court, set aside - Appeal, allowed. **Bharat Karsondas Thakkar Vs. M/s.Kiran Constructions Co., 2008(2) Law Summary (S.C.) 1.**

—Or.6, Rule 17 - **SPECIFIC RELIEF ACT,** Sec.16(c) - "Amendment of plaint" - Suit filed for specific performance of agreement of sale - Trial concluded and matter posted for judgment - At that stage, plaintiff filed Application seeking amendment of plaint under Or.6, Rule 17 CPC, stating that as result of typographical error, plea, "that they have been and are ready and willing to perform their part of agreement of sale, dt.27-9-1985 and that they are ready with balance amount as per the agreement" - Defendant contends that proposed amendment will take suit back to stage of filing of written statement and it would also cause prejudice and harassment - Trial Court dismissed Application holding that present amendment sought is not typographical error and by proposed amendment, plaintiffs are seeking to add a separate paragraph and if said amendment is allowed it amounts to permitting a new plea and further, plaintiffs have filed present petition for amendment, when defendant have taken a specific ground that plaint is not in compliance of provisions of Sec.16(c) of Specific Relief Act - When amendment sought u/Sec.16(c) of Act, will not change cause of action then, such amendment can be allowed - As per proviso to Rule 17 of Or.6, whether party has acted with due diligence or not would depend upon facts and circumstances of each case and though proviso would limit scope of amendments to pleadings after commencement of trial, still enough power is vested with Court to deal with unforeseen situation whenever they arise - Further that no straightjacket formula can be laid and mere delay cannot be a ground for refusing a prayer for amendment and that Court has to satisfy when amendment sought would change nature of suit, introduce a new cause of action and prejudices other party and if amendment allowed, would defeat

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law of limitation - Since there is change in cause of action or introduction of any new case and as there is no prejudice to respondents since they are aware of case of plaintiffs and there was evidence to that effect and there was also cross-examination of P.W.1 on this aspect - Hence proposed amendment needs to be allowed - Impugned order, set aside - Application, allowed. **Jagath Swapna & Co., Jagital Vs. Church of South of India Trust Ass. 2011(1) Law Summary (A.P.) 187 = 2011(3) ALD 159 = 2011(2) ALT 605 = AIR 2011 AP 81.**

—Or.6, Rule 17 - **SPECIFIC RELIEF ACT,** Sec.16(c) - "Amendment of plaint" - Respondent filed suit for specific performance of contract of sale and perpetual injunction - During pendency of suit written statement filed pointing out inherent defects viz., absent of mandatory requirement of Sec.16(c) of Specific Relief Act and Form 47 Appendix-"A" of CPC - District Judge dismissed Application filed under Or.6, Rule 17seeking amendment of plaint - High Court allowed Application filed under Or.6, Rule 17 for amendment after conclusion of trial and reserving matter for orders - In this case, there is a clear lack of "due "diligence" and mistake committed certainly does not come within preview of typographical error - Term typographical is defined a mistake made in printed/typed material during printing/ typing process - Term includes errors due to mechanical failure or slips of hand or finger but usually exclude errors of ignorance - Therefore act of neglecting to perform an action which one has obligation to do cannot be called as typographical error - Consequently plea of typographical error cannot be entertained in this regard since situation is lack of due diligence wherein such amendment is impliedly bar under Code - OR.6, RULE 17 - OBJECT AND SCOPE - Stated - Filing of application for amendment of pleading subsequent to commencement of trial, to avoid surprises and that parties had sufficient knowledge of others case and it also helps checking delays in filing applications - Claim of typographical error/mistake is baseless and cannot be accepted - In fact had person who prepared plaint signed and verified plaint showed some attention, this omission could have been noticed and rectified there itself - In such circumstances it cannot be construed that "due diligence" was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by plaintiffs - High Court committed error in accepting explanation that it was typographical error to mention and it was an accidental slip - Reasoning of High Court cannot be accepted - Conclusion arrived at by trial Court - Justified - Civil Appeal, allowed. **J.Samuel Vs. Gattu Mahesh 2012(1) Law Summary (S.C.) 128.**

—Or.6, R.17 Proviso r/w Sec.151 - Amendment of pleadings - Trial Court dismissed Application filed by petitioner-defendant seeking amendment of written statement - Petitioner-defendant contends that view expressed by trial Judge, that effect of allowing proposed amendment would amount to withdrawal of admission, cannot be sustained - Respondent-plaintiff contends that as can be seen from paras which are sought to be

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introduced by way of amendment in written statement, two important admissions are being withdrawn - If proposed pleas sought to be raised by way of amendment to be allowed it will have effect of certain complications, like even question of non-pleading of some parties - On a careful analysis of respective stands taken by parties, it is clear that at least two admissions which had been made in written statement are being withdrawn by virtue of proposed amendments - Hence, effect of allowing proposed amendment would be permitting withdrawal of admissions already made in original written statement and also in as much as, no acceptable grounds as such had been placed to get over rigour of proviso - Dismissal of Application by trial Judge - Justified - CRP, dismissed. **Ram Agarwal Vs. B.Jagannath Rao 2008(3) Law Summary (A.P.) 129 = 2008(5) ALD 294 = 2008(6) ALT 96.**

—Or.6, Rule 17 & Sec.151 - Amendment of plaint - 1st respondent filed suit for partition - During pendency of suit appellants purchased right, title and interest of defendants under registered sale deeds - Suit decreed ex parte - Trial Court dismissed Application filed by appellants for impleading them as parties in suit - High Court allowed appellants to participate in final decree proceedings stating that when preliminary decree is passed, purchaser of shares of defendants are entitled to participate in final decree proceedings to work out equities - Subsequently, trial Court allowed Application filed by plaintiff for amendment of mistake in decree relating to Town Survey Number - High Court dismissed revision filed by 4th defendant holding that mistake is a clerical one - Application filed by appellants u/Sec.151 CPC to set aside said order also dismissed by High Court - Appellants being purchasers of undevided share in a joint family property, are not entitled to possession of land what they have purchased and they have in law merely acquired a right to sue for partition - In this case, identity of suit land has not been changed and that Town Survey Number is a joint family property is not in dispute - Appellants have not been able to show as to how and in what manner they have been prejudiced - Appeal, dismissed. **Peethani Suryanarayana Vs. Repaka Venkata Ramana Kishore 2009(1) Law Summary (S.C.) 180.**

—-Order VI Rule 17 and Section 151 - This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders of the Junior Civil Judge in I.A. filed under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, for permission to amend plaint by substituting word 'promissory note' wherever it occurred with word 'agreement.'

Plaintiff brought suit for recovery of Rs.30,000/- on foot of a document referred to in plaint as a 'promissory note' - Defendant having filed written statement is resisting suit - When suit is at fag end of trial, plaintiff had filed aforementioned application for amendment of plaint - It was resisted by defendant on ground that once trial had commenced, plaintiff was debarred from seeking amendment of plaint - Lower Court dismissed plaintiff's application for amendment of plaint.

Held, merely because document is described in plaint as a promissory note, that does not preclude either plaintiff or parties to suit from contending in a given

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case that document is not a promissory note but a document of a different character or nature and nomenclature - Therefore, in well considered view of this Court, trial Court need not be faulted for dismissing petition filed by plaintiff for amendment of plaint, as there is no necessity for plaintiff to seek amendment or for Court below to allow it - Nonetheless, for reasons aforementioned, it is apposite to observe that dismissal of application of plaintiff for amendment of plaint shall not preclude plaintiff from raising appropriate contentions in regard to real nature of document based on recitals and true nature of transaction contained therein - Viewed thus, this court finds that revision petition is devoid of merit and that order impugned needs no interference - Accordingly, Civil Revision Petition is dismissed. **M.Pentamma Vs. B.Seshagiri Rao 2016(2) Law Summary (A.P.) 290 = 2016(5) ALD 348 = 2016(5) ALT 580.**

—Or.6, Rule 17 and Sec.152 - In a suit filed by the petitioner for mandatory injunction it was decreed as prayed for - Lower court has stipulated one month time from date of decree to respondents to vacate plaint B schedule property - Petitioner filed E.P for execution of decree qua plaint B schedule property - Lower court has issued warrant for delivery of possession of plaint B schedule property to petitioner/plaintiff - However, the bailiff has returned warrant on ground that boundaries mentioned in the schedule annexed to decree do not tally with those found on physical inspection - Thereafter, petitioner has filed I.A. u/Or. VI, Rule 17 and Sec.152 of CPC for amendment of the western boundary in the plaint B schedule and also for consequential amendment of decree - Lower court has dismissed application - Held, this court is thoroughly convinced that a typographical mistake has crept-in in describing western boundary of schedule B property as road instead of plot No.42 - Unfortunately lower court has failed to apply its mind to these facts and made a perfunctory approach in dismissing application - Lower court has not assigned any plausible reasons except observing that the petitioner has not explained reasons for filing the petition after lapse of a decade from date of decree - Lower court has failed to notice that occasion for petitioner to file application for amendment had arisen consequent to return of the warrant by the bailiff towards the end of 2011 on the ground that the boundaries mentioned in the decree do not tally with those found on physical inspection of the suit schedule property - It is settled legal position that an application for amendment of plaint, even after passing of a decree, is maintainable u/Sec.152 of CPC - Hence it is satisfied that petitioner's case squarely falls under provisions of Sec.152 CPC - As a bona fide error has crept in description of schedule in plaint, same can be corrected by the court in exercise of its power under Sec.152 CPC - For above mentioned reasons, the order under revision is set aside and I.A. on the file of the Court of the learned Principal Junior Civil Judge,is allowed. **K.Rani Vs. Hanumaiah Goud, 2014(3) Law Summary (A.P.) 323 = 2014(6) ALD 387.**

—Or.6, Rule 17 and Or.6, Rule 7 - **"Amendment of written statement"** - Petitioner/ plaintiff filed suit for recovery of certain amount basing on agreement - 1st respondent/

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1st defendant filed written statement denying execution of suit agreement contending that she did not receive any consideration from plaintiff - Subsequently respondents/ defendants filed application seeking amendment of written statement by deletion of certain paragraphs therein and substitution of same with other paragraphs - Plaintiff resisting amendment of written statement - Trial Judge on considering material brought on record allowed petition holding that defendants cannot be penalized for mistake committed by their counsel - General principle is that Court at any stage of proceedings may allow either party to alter or amend pleadings in such manner on such terms as may be just and all those amendments must be allowed which are imperative for determining real question in controversy between parties - Basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be a correct statement of law and our Courts have been following basic principles laid down in those cases - Courts have very wide discretion in matter of amendment of pleadings - But Court's power must be exercised judiciously and with great care - Courts must not refuse *bona fide*, legitimate, honest and necessary amendments and should never permit *mala fide*, worthless and or dishonest amendments - First condition which must be satisfied before amendment can be allowed by Court is whether such amendment is necessary to determination of real question in controversy - If that condition is not satisfied, amendment cannot be allowed - This is basic test, which governs Court's discretion in grant or refusal of amendment - In this case, trial Court considered material brought on record in right perspective and exercised discretionary power properly - Order of trial Court, justified - Revision, dismissed. **Chapidi Venkata Subba Reddy Vs. Konduru Indravathamma 2011(3) Law Summary (A.P.) 20 = 2011(5) ALD 415 = 2011(5) ALT 659.**

—Or.6, R.17 & Or.8, R.9 and 5 - Amendment of written statement - Petitioner/plaintiff/ Society filed suit for declaration of title and for perpetual injunction - Defendants filing Applications seeking leave of Court to strike out pleadings in written statement filed by their Advocate earlier in collusion with plaintiff contrary to instructions given by them and also to permit to file detailed written statement - Trial Court dismissed Applications and High Court dismissed Revisions and confirmed orders of trial Court and Apex Court also dismissed appeals - Later, trial Court allowed Applications filed by defendants under Or.6, R.17 permitting them to amend written statement filed by them as prayed for - Petitioner/plaintiff contends that having rightly held that in view of specific finding given against them earlier on plea relating to fraud as a ground for seeking relief of amendment, was in error in permitting defendants to amend common statement seeking leave to take almost same pleas which were not permitted to be taken by them by dismissing Applications seeking leave to file additional written statement by overlooking proviso to R. 17 of Or.6, without keeping in view fact that earlier order operates *as resjudicata* and no amendment to a written statement withdrawing earlier admissions made can be permitted - Respondents/defendants contend that principles that are to be applied to petitions for amendment of plaint and written statement would be different and that addition of a new ground of defence, or substituting or altering a defence, or taking of

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inconsistent pleas in written statement can be allowed as long as they do not cause prejudice to plaintiff and that proviso to Or.6, R.17 introduced by way of 2002 Amendment to CPC, that petitions for amendment should not be allowed in suits in which trial has already began, does not apply to this case because that amendment came into force long subsequent to filing of suit - As substantial relief sought in these petitions is to re-introduce very same pleas that were sought to be taken and rejected by trial Court, High Court and Apex Court on an earlier occasion, trial Court erred in allowing petitions seeking to amend written statement - How a common written statement filed by defendants is amenable to three different types of amendments is beyond one's comprehension - Three petitions for amendment of written statement are filed by defendants, probably is an attempt to show that they have no common interest and that their contentions are different - Axiomatic principle of law is that what cannot be done directly cannot be permitted to be achieved in an indirect fashion - Procedure, a hand maiden to justice, should never be made a tool to carry justice or perpetuate injustice by any oppressive or punitive use - Trial Court without keeping in view fact, defendants cannot repeatedly file petitions for same relief which was negatived earlier, in a different form by quoting different provisions of law, thought it fit to allow petitions and thereby virtually set at naught order of dismissal of Applications passed by it earlier which order was confirmed by High Court and Apex Court also - Petitions filed by defendants, dismissed - Revisions, allowed. **Future Builders Co-operative Housing Society Vs. S.Malla Reddy 2008(1) Law Summary (A.P.) 351 = 2008(3) ALD 231 = 2008(2) ALT 520.**

—Or.6, Rule 17 and Or.39, Rules 1 & 2 - "Amendment of plaint" - Plaintiff filed suit for injunction simpliciter basing on a gift deed, contending that they are in absolute possession and enjoyment of suit land - Defendants filed written statement denying allegations in plaint - Trial Court allowed Application filed by plaintiffs along with suit for interim injunction against defendants - On appeal in CMA, Sr.Civil Judge set aside injunction order - After full-fledged trial Court dismissed suit as not maintainable on ground that it was filed without seeking relief of declaration of title - During pendency of appeal 1st plaintiff filed I.A under Or.6, Rule 17 to amend plaint and to make consequential amendments in plaint - Appellate Court after hearing dismissed Application on ground that plaintiffs got knowledge about relevant facts long prior to filing of suit and they cannot seek amendment now - Plaintiffs contends that as event of occupation of property by defendant took place during proceedings of suit and necessity arose to seek for possession of property following which declaration of title of property also should be sought accordingly application filed under Or.6, Rule 17 before appellate Court but appellate Court dismissed plea observing that it was filed at belated stage which therefore is not tenable and that no evidence will be recorded for plaintiffs consequently - Defendants contend that plaintiff got knowledge about possession of defendant over property long prior from filing of suit and that once trial is commence question of amending plaint would not arise at all - In this case, mainly trial Court dismissed suit on ground that in circumstances of case suit not maintainable without seeking relief of declaration of title of property - Trial Court did not make any discretion

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with regard to genuineness of gift deed and another important fact is that as appeal has been pending, judgment and decree passed by trial Court have not become final - Or.6, Rule 17 CPC enjoins - Court may at any stage of proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and also such amendment shall be made as may be necessary for determining real question in controversy between parties, provided that no application for amendment shall be allowed after trial has commenced, unless, Court comes to conclusion that inspite of diligence party could not have raised matter before commencement of trial - By virtue of taking place of subsequent events can be carried out inspite of terminology used in proviso to Or.6, Rule 17 - Question as to whether plaintiffs got knowledge about possession of defendants over property is a question to be decided on basis of evidence to be recorded - Under these circumstances, it is advisable to carryout amendment as prayed for in the interest of justice - Order of trial Court, unsustainable and accordingtly order set aside - CRP, allowed. **Boya Pikkili Pedda Venkataswamy Vs. Boya Ramakrishnudu, 2013(1) Law Summary (A.P.) 36 = 2013(2) ALD 96 = 2013(2) ALT 214.**

—Or.6, Rule 17, r/w Rule 28 of Civil Rules of Practice - "Amendment of written statement" - Respondent/plaintiff filed suit against petitioner/accused for eviction, for recovery of possession and for arrears of rent - Petitioner/defendant resisting claim of respondent/plaintiff - Plaintiff commenced trial and closed his evidence - While case coming up for adducing evidence on behalf of petitioner/defendant he filed application under Or.6, Rule 17 CPC r/w Rule 28 of Civil Rules of Practice for amendment of written statement - Trial Court dismissed application filed by defendant - In this case, once proposed amendment is allowed it amounts to permitting petitioner defendant to withdraw admission made by him in para 7 & 11 of written statement - If amendment sought for is allowed, great prejudice would be caused to respondent/plaintiff in advancing his case - Amendment of written statement sought for by petitioner/defendant cannot be permitted - CRP, dismissed. **Jai Bharat Plywood & Hardware Vs. Vinod 2010(2) Law Summary (A.P.) 33 = 2010(2) ALD 702 = 2010(3) ALT 634 = AIR 2010 (NOC) 572 (AP).**

—Or.6, Rule 17 & Or.41 - Suit originally filed for perpetual injunction against appellant - During pendency of suit Application filed for amendment of plaint to incorporate relief of recovery of possession - Trial Court dismissed suit - During pendency of Appeal, since appellant died legal representatives were brought on record - Lower appellate Court dismissed Application filed under Or.6, Rule 17 holding that said relief is barred by limitation - Appellate Court finally remanded matter to trial Court with specific direction to permit respondent to file Application to amend plaint to incorporate for declaration of title - Appellant contends that once prayer for amendment of plaint to incorporate plea of declaration to title was found to be barred by limitation by lower appellate Court, there was absolutely no basis to remand matter to trial Court, that

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too, by according permission to file an Application of that very nature - After remand trial Court dismissed suit taking view that in absence of prayer for declaration of title, recovery of possession cannot be granted to respondents - In this case, there is total inconsistency between order passed in Application and judgment in appeal - On one hand it dismissed Application for amendment and on other hand, suggested that identical Application to be entertained by trial Court - Reasons mentioned by lower appellate Court for remanding matter do not fit into any of those circumstances mentioned in different Rules of Or.41 CPC - Judgment of lower appellate Court in so far as remanding matter to trial Court, set aside - CMA, allowed. **Karumanchi Janakamma Vs. Bodapati Punnaiah 2009(3) Law Summary (A.P.) 140 = 2010(1) ALD 251 = 2009(6) ALT 72.**

—Or.6, Rule 17 & Or.41, Rules 2 & 3 - **ARBITRATION AND CONCILIATION ACT,** Secs.34 & 37 - "Amendment of pleadings" - "Amendment of arbitration petition" - Pleadings and particulars are required to enable Court to decide true rights of parties in trial - Amendment in pleadings is a matter of procedure - Grant or refusal thereof is in discretion of Court - But like any other discretion, such discretion has to be exercised consistent with settled legal principles - Or.41, Rule 3 provides that where memorandum of appeal is not drawn up as prescribed, it may be rejected, or be returned to appellant for purpose of being amended - These provisions leave no manner of doubt that appellate Court has power to grant leave to amend memorandum of appeal - Every amendment in Application for setting aside an arbitral award cannot be taken as fresh application - In this case, grounds sought to be added in memorandum of arbitration apppeal by way of amendment are absolutely new grounds for which there is no foundation in application for setting aside award - Grounds of appeal which are now sought to be advanced were not originally raised in arbitration petition and that amendment that is sought to be effected is not even to grounds contained in application u/Sec.34 but two memo of appeal - Discretion exercised by sigle Judge in refusing to grant leave to appellant to amend memorandum of arbitration appeal - Not illegal - Appeal dismissed. **State of Maharashtra Vs. Hindustan Construction Co., Ltd. 2010(2) Law Summary (S.C.) 1.**

—Or.6, Rule 18 & Or.7, Rule 11 and Or.8, Rules 3,4 5 - **HINDU MINORITY AND GUARDIANSHIP ACT,** Sec.8 - "Pleadings of Mufossil Court" - Appellants and respondents filed suits for injunction relating to same property and both of them obtained temporary injunctions against each other - First appellate Court reversed judgment - Appellants contend that in respondents, suit for possession there was no consequential averments in plaint in support of even basic claim of respondents that they have lost possession on particular day pending suit nor there is any cause of action set out in plaint except substitution of relief sought for, rest of body of plaint continued to show as it is a suit for injunction therefore dismissal of suit by trial Court on ground that plaintiffs failed to disclose cause of action seeking relief for

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possession was fully justified - PLEADINGS IN MUFFOSSIL COURTS - PRINCIPLES - STATED - In this case, appellants expressly aware of respondents' averment that they lost possession during pendency of suit and were seeking relief of possession - This aspect coupled with finding referred to above, that title claimed by appellants is on face of it not valid leads to only conclusion that possession of appellants over suit schedule property is wholly unauthorised in law - Respondents who are original title holders, admittedly, by survivorship cannot be denied relief of possession merely on ground of technical pleas raised by appellants - In this case, effect of respondents not carrying out amendments in body of plaint, consequent upon amendment relief sought, in circumstances is not such a fatal defect, as appellants' suit for injunction claiming possession was jointly tried and disposed of along with respondents' suit as mentioned above, appellants had express notice of claim for possession made by respondents - Both appeals are liable to be dismissed - Second appeals are dismissed - Appellants granted time to vacate and handover possession of suit premises to respondents. **Battio Yadavarao Vs. Kandi Paparao 2011(3) Law Summary (A.P.) 110 = 2011(6) ALD 658.**

——Order VII, Rule 1(b) & (c) and Order VI, Rule 14-A - The 4th defendant as petitioner in one I.A.No.364 and other defendants supra as petitioners in another I.A. maintained two applications against the two plaintiffs by name K.Janardhan Reddy and Kolanu Rama Swamy Reddy Memorial Trust and by showing other defendants out of 102 defendants in a suit as co-respondents, to set aside exparte decree passed against them respectively and permit them to contest suit by filing written statement - Plaintiffs filed suit against 102 defendants for the reliefs of declaration of 1st plaintiff is absolute owner of plaint schedule property with consequential permanent injunction restraining defendants from interfering with so called possession of plaintiff over plaint schedule property - In array of plaint as also can be seen from copy of plaint and trial Court's decree dated 20.09.2012 in question, there is nothing to show any of 102 defendants are represented by any of power of attorney holders or agents - There is no separate address given to any of 102 defendants in plaint long cause title as contemplated by Order VII Rule 1(b) & (c) of CPC, but for showing as if all are C/o.S.Sudhakar Reddy (6th defendant)

Held, Once necessary facts brought to notice of trial Court, which clearly proves fraud played by plaintiffs, for no Court to perpetrate same, trial Court should have been set aside decree passed without service of summons against defendants, that too when they sought for by invoking inherent power which inheres in every Court from its very constitution with all its elasticity to necessity to sub serve ends of justice and to prevent abuse of process - Trial Court instead of doing so, committed further wrong in saying as if filing a criminal complaint or mentioning about filing a suit constitutes knowledge about suit proceedings and as if there from duty caste on alleged accused of criminal complaint to appear before any civil Court by making an enquiry from suit number even furnished and to appear and participate - Same

is not contemplated by law as an obligation or a duty by any stretch of imagination for trial court to went to such a conclusion from such a baseless contention raised in counter of plaintiffs in opposing applications to set aside the ex parte decree.

As held by this Court in Maganti Kanaka Durga Vs. Maganti Anil Kumar, decree passed by trial Court is nothing but an ex parte decree for all defendants other than 6th defendant who colluded with plaintiffs by colourable contest conceding suit claim including in his evidence participated to show as if it is a contested decree and it is not contemplation of law to consider decree as a contested decree and thereby it is nothing but practically an exparte decree and trial Court totally ignored this aspect also in dismissing applications - Further, when Order IX Rule 13 of CPC says within 30 days from date of knowledge decree can be sought to set aside exparte, it is unknown how trial Court could come to conclusion of applications are filed beyond 30 days of knowledge from nothing proved from record to attribute knowledge before - Thereby finding of applications are barred by limitation is also unsustainable for absence of any material and in absence of such showing even by respondents/plaintiffs.

Having regard to above, exparte decree passed by trial Court in suit not only against respective defendants applicants but also against all other defendants is liable to be set aside in toto for no service of summons other than against 6th defendant.

Accordingly and in the result, the C.M.A. are allowed by setting aside the dismissal orders of the trial court in I.A.Nos.364 & 538 of 2014 and by allowing the petitions I.A.Nos.364 & 538 of 2014 - Trial Court is directed consequently to restore suit and treat evidence recorded behind back of defendants with no value to use in future - The trial Court has to proceed further according to law after recording appearance of respective petitioners/defendants herein and by ordering summons to all other defendants to their correct addresses to be furnished by plaintiffs. **Bhargavi Real Estates Pvt., Ltd., Vs. K.Janardhan Reddy 2016(3) Law Summary (A.P.) 118 = 2016(6) ALD 10 = 2016(5) ALT 585.**

—Or.7, Rule 10 - **A.P. COURT FEES AND SUITS VALUATION ACT,** Secs.7,11,30,31 & 37 (1) - Appellant/Housing Welfare Association filed suit for cancellation of registered sale deed and for permanent injunction - Trial Court allowed petition filed by defendants, under Or.7, Rule 10 of CPC to return plaint for presentation before jurisdictional Court and also directed plaintiff/appellant to pay proper Court fee as per market value of schedule property - In this case, if market value of suit schedule property in both suits is basis, Court of Senior Civil Judge has no jurisdiction to entertain suits and they have to be filed before Court of District Judge - Sec.37 deals with three categories of suits which are; Category A, Suits for cancellation of decree for money; Category – B, Suits for cancellation of decree for (in relation to) movable or immovable property, and Category – C, Suits for cancellation of documents, which create, declare, assign, limit or extinguish the right or title or interest in presentee or in future - PRECEDENT

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- High Court of judicature, A.P is a Court established by merger of Andhra High Court and Hyderabad High Court - Andhra High Court being one carved out of Madras High Court which is a Court of Record, all its decisions prior to establishment of Andhra High Court, are binding on High Court of A.P., subject of course to other rules of doctrine of precedent - As per principle of stare decisis, Full Bench decision of High Court is binding on Division Bench as well as single Bench and that law deciding or declared by Full Bench is law of State and any subsequent decision by co-ordinate Bench or a Division Bench or Single Bench in ignorance of Full Bench Decision is a decision rendered *per incuriam* and cannot be considered - Therefore, if Madras High Court in KUTAMBA SASTRI has taken a view with regard to computation of Court fee in a suit for cancellation of document, Court fee shall have to be computed on market value of immovable property as on date of filing of suit, and same law will apply in State of A.P., till Madras view is overruled - In this case, Full Bench view of Madras High Court in KUTAMBA SASTRI is a binding precedent, which governs position - Order of Senior Civil Judge in returning plaint to appellant/plaintiff with direction to pay Court fee as per market value of suit schedule property as on date of presentation of plaint and present it before proper Court - Justified - CMA, dismissed. **Lakshminagar Housing Welfare Assn. Vs. Syed Sami 2010(2) Law Summary (A.P.) 289 = 2010(4) ALD 389 = 2010(5) ALT 96 = AIR 2010 AP 178.**

—Or.7, Rule 10 - **ARBITRATION ACT,** Sec.8 - Suit for dissolution of partnership Firm and for renditon of accounts and a final decree after settlement of accounts determining profits - Respondent filed written statement taking plea that Cl.7 in partnership deed provides resolution of disputes through arbitration and in that view of matter suit not maintainable - Trial Court returned plaint holding that it has no jurisdiction to decide matter and left it open to appellants to approach concerned forum for arbitration - Purport of Cl.7 is very limited in sense that arbitration is provided only as regards interpretation of contents of partnership deed and by no stretch of imagination, it covers disputes in relation to functioning of partnership firm and that trial Court ought to have decided matter on merits since there is voluminous oral and documentary evidence on record - Clause 6 in partnership deed makes its clear that partnership is at will primarily - Cl.7 provides for arbitration in manner stipulated in it - There is no ambiguity as regards purport of this clause - This Clause does not at all take in its fold disputes that arise during course of functioning of Firm or business activity - When in clear and unam-biguous terms clause provides for arbitration only as regards disputes in relation to contents of Ex.A.4, it cannot be said that matter in relation to dissolution of Firm would constitute subject matter of such arbitration - Trial Court did not evince required amount of interest on this aspect - Trial Court directed to proceed and decide matter on merits on basis of evidence on record - Appeals, allowed. **Ramakrishna Ahuja Vs. Sri Tjprakash Maheswari 2009(3) Law Summary (A.P.) 136 = 2009(6) ALD 254.**

--Order VII, Rule 10 and 10-A r/w Sec.151 - order passed by District Judge, rejecting prayer of petitioner-1st defendant, filed under Order VII Rule 10 and 10A of CPC r/w Sec.151 C.P.C. seeking returning of plaint, is challenged before High Court.

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Held, in present case, application has not been made under Order VII Rule 11 of CPC - Same is made under Order VII Rule 10 and 10A of C.P.C. which provides only in one contingency return of plaint i.e., only on the Court coming to conclusion that suit is not initiated in proper Court or Court does not have either pecuniary or territorial jurisdiction - Same is clear on a conjoint reading of Order VII Rule 10 and Rule 10A (iii) of C.P.C - District Judge, had taken all these aspects into consideration and rightly refused to return plaint - In facts of present case, impugned order does not warrant any interference of this Court and as such this Civil Revision Petition is liable to be dismissed - Accordingly, Civil Revision Petition is dismissed. **Anireddy Amrutha Devi @ Amruthamma Vs. Anireddy Vasudha 2016(2) Law Summary (A.P.) 57 = 2016(3) ALD 494 = 2016(4) ALT 61.**

—Or.7, Rule 10-A(I) - Respondent/petitioner initially filed suit in Junior Civil Judge's Court for permanent injunction against petitioner/defendant - Trial Court granted *ad interim* injunction - After defendants filed written statements respondent/plaintiff filed Application for amendment of plaint by incorporating relief of declaration of title - Consequently, suit exceeded pecuniary jurisdiction of Court of Junior Civil Judge and therefore respondent/plaintiff filed Application under Or.7, Rule 10-A(I) of CPC for return of plaint - Trial Court returned plaint for being presented in Court of Senior Civil Judge who accepted valuation and numbered suit and called for remaining record from Court of Junior Civil Judge - Senior Civil Judge passed docket order directing renumbering of IA and posting of case for enquiry - Petitioner/defendant filed present CRP aggrieved by order of Senior Civil Judge to extent of his calling for remaining record from Court of Junior Civil Judge and continuing Injunction Application from stage at which it was returned by Junior Civil Judge - Petitioner contends that when once plaint is returned for presentation in proper Court, proceedings in Court, which returned plaint, end and order if any passed by Court returning plaint will not enure to benefit of plaintiff and that as representation of plaint in proper Court constitutes filing of fresh suit, Senior Judge, committed serious jurisdictional error in treating injunction Application as continuation of proceedings from Court of Junior Civil Judge and calling for remaining record from said Court - Injunction granted by Junior Civil Judge in favour of respondent plaintiff ceased to be in force from time said Court has returned plaint - Proceedings before Senior Civil Judge, should, therefore, commence *de novo* as if it is fresh suit - Senior Civil Judge directed to proceed with IA and suit treating same as fresh proceedings - CRP, allowed. **Gudur Seetharam(died) Per LR Gudur Venu Vs. Pathipaka Sudharshan 2012(3) Law Summary (A.P.) 127 = 2012(6) ALD 809.**

—Or,7, Rule 11 - "Rejection of plaint" - Respondent filed suit for declaration that he is absolute owner of suit building and sale deed in favour of petitioner/defendant, wife is sham, nominal and invalid and for consequential injunction - Petitioner/defendant filed Application even before filing written statement seeking rejection of plaint contending

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that since plaintiff did not seek for cancellation of sale deed not entitled for relief prayed for - Trial Judge dismissed Application observing that truth or otherwise of said plea and allegation of fraud cannot be ascertained at stage as it is necessarily a matter to be considered only after evidence is adduced on both sides during course of trial - It is for plaintiff to choose relief he wants - If relief sought does not serve intended purpose it is for plaintiff to suffer consequences and that defendant cannot seek rejection of plaint on ground that in addition to relief sought, plaintiff ought to have prayed for some other relief also when plaint in fact discloses cause of action inrespect of relief that is actually prayed for - LIMITATION - Limitation being a mixed question of law and fact, same cannot be considered at this threshold - If ultimately suit is found to be barred by limitation, it would entitle dismissal of suit - "Scope of enquiry in Appli-cation filed under Or.7, Rule 11 of Code seeking rejecting of plaint is indeed limited - Court cannot go beyond the four corners of plaint and the documents, if any, annexed therewith" - Suit for declaration and injunction alleging that sale deed executed in favour of defendant is sham and bogus is maintainable even without seeking relief of cancellation of sale deed - Impugned order of trial Court dismissing Application for rejection of plaint, justified - CRP, dismissed. **Sala Shiny Kiran Vs. Sala Uday Kiran 2009(3) Law Summary (A.P.) 215 = 2009(6) ALD 764.**

—Or.7, Rule 11 - Petitioner/plaintiff filed suit for specific performance of agreement of sale - When suit presented, objection regarding court fee was initially raised and plaint returned - After compliance of said objection plaint represented - Trial Court rejecting plaint on ground that there is material discrepancy regarding survey numbers between agreement of sale and plaint - At stage of presentation of suit, Court can only insist on strict compliance of provisions of Code and reject plaint only if it is satisfied that one or more of grounds mentioned in Or.7, Rule 11 of Code are present - It is not function of Court to involve itself in examination of purported discrepancy in a minute manner and reject plaint on such a ground at threshold - Such a procedure not sanctioned by law - Trial Court made a perverse approach in rejecting plaint - Trial Court directed to register suit without raising further objections and issue process to defendants - Impugned order of trial Court, set aside - CRP, allowed. **Dantala Praveen Vs. Bairaboina Veeramma 2011(2) Law Summary (A.P.) 301 = 2011(4) ALD 775 = 2011(5) ALT 626.**

—Or.7, Rule 11 - "Rejection of plaint" - Plaintiff/appellants filed suit for relief of perpetual injunction to restrain respondents from interfering with suit schedule property as well as to restrain them from alienating same - Respondents being defendants filed Application under Or.7, Rule 11 with a prayer to reject plaint stating that they are pattadars and enjoyers of land in question and that they have also been issued pattadar pass books and title deeds and that suit is barred under law and same cannot be entertained - Trial Court allowed Application and rejected plaint - In this case, grounds pleaded by respondents/defendants for rejection of plaint is not referable to any provision

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of law and their endeavour is to convencing Court that there was no merits in claim of plaintiff - Even if facts pleaded by respondents/defendants can be taken as true, they cannot constitute basis to reject plaint, it is only when filing of suit is barred under any provision of law or when contents of plaint, even if taken as true do not disclose cause of action, that a plaint can be rejected under Rule 11 of Or.7, and other grounds mentioned therein are about payment of Court fee - Respondents/ defendants did not cite any reasons, that can be traced to Rule 11 of Or.7 - However, in this case, there are several defects in case, and if same are brought notice of trial Court, it can be a case, for return of plaint, than for rejection thereof - Judgment and decree passed by trial Court. rejecting plaint, set aside - Appeal, allowed - However, trial Court directed to return plaint and require plaintiffs to comply with requirements. **Shankar Hills Plot Purchasers Vs. Ch. Anantha Reddy 2013(3) Law Summary (A.P.) 71 = 2013(6) ALD 355 = 2013(5) ALT 688.**

—Or.7, R.11 - First Respondent herein instituted O.S. No. 740 of 2004 on the file of the Court of Principal Junior Civil Judge for perpetual injunction - In said suit, second defendant filed I.A. No. 1827 of 2012 u/O. VII, R. 11 of the Code, seeking rejection of the plaint on the ground of absence of cause of action - Plaintiff/respondent herein filed a counter, resisting the said application - Learned Principal Junior Civil Judge, by virtue of an order, dated. 24-04-2014, dismissed the said application - This revision challenges the said order - Suit was instituted in the year 2004, the petitioner filed I.A. for amendment in the year 2007 and the same was dismissed in 2008 and C.R.P. No. 3913 of 2008 was dismissed on 20-10-2008 and the present application was filed on 23-11-2012 and there is absolutely no plausible explanation forthcoming from the petitioner for such a delay - The said delay is certainly one of the grounds which disentitles the petitioner from claiming this extraordinary relief under O. VII Rule 11 of the Code - Another significant aspect, which needs mention at this juncture, is that unless the order impugned suffers from fundamental infirmity and jurisdictional error, the invocation of the jurisdiction of this Court u/Art. 227 of the Constitution of India is impermissible - In the facts and circumstances of the case, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order under challenge does not suffer from any such jurisdictional error which warrants interference of this Court under Article 227 of the Constitution of India - In the result, the Civil Revision Petition is dismissed. **Emundla Lingaiah. Vs. Kokkula @ Burra Narsavva 2015(1) Law Summary (A.P.) 457 = 2015(3) ALD 520 = 2015(4) ALT 123.**

——Or.7, Rule 11 - Rejection of plaint - Once application is filed under Or.7, Rule 11, of CPC, Court has to dispose of same before proceeding with trial - There is no point or sense in proceeding with trial of case, in case, plaint (Election petition in present case) is only to be rejected at threshold - Therefore defendant is entitled to file Application for rejection before filing his written statement - In case, application is rejected defendant is entitled to file his written statement thereafter. **R.K.Roja Vs. U.S.Rayudu 2016(3) Law Summary (S.C.) 14 = AIR 2016 SC 3282 = 2016(5) ALD 18 (SC).**

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—Or.7, Rule 11, r/w Sec.151 and Or.7, Rule 1 and Sec.26 - Respondent/plaintiff filed suit seeking reliefs, directing defendants to execute register sale deed basing on agreement of sale and in alternative if defendant failed to register sale deed, Court may be pleased to execute register sale deed and direction to deliver physical possession of suit property - Defendant/petitioner filed Application under provisions of Or.7, Rule 11 seeking rejection of plaint contending that agreement of sale does not contain proper schedule with specific boundaries and is not having specific location or jurisdiction for its identification and that respondents/plaintiffs utterly failed to comply with Or.7, Rule 1 and Sec.26 of CPC and that property mentioned in alleged agreement of sale is not property mentioned in suit schedule and that property covered by alleged agreement of sale and suit schedule property is not one and same - Plaintiffs/respondents filed counter affidavit contending that parawise denial of averments in plaint is not ground for rejection of plaint and case is coming up for trial and only after full pledged trial Court will decide issue and present Application is only an attempt to drag on case and Court has pecuniary and territorial jurisdiction and suit is within time - District Judge dismissed I.A, - Hence present CRP filed on ground that order of Court below is complete illegal against law and much against to precedents of High Court and Supreme Court - Defendant/petitioners contend that order of Court below is opposed to very spirit and object of provisions of Or.7, Rule 11 CPC and District Judge did not construe language of Or.7, Rule 11 proper perspective and that issues raised by petitioner/defendant are required to be considered after full fledged trial by Court below - While dealing with provisions of Or.7, Rule 11 of Code Court has to take pleadings in plaint on their face value and plaint cannot be rejected on basis of allegations made by defendant in his written statement or in Application for rejection of plaint - Court has to read entire plaint as a whole to find out whether it discloses cause of action and if it does, then plaint cannot be rejected by invoking provisions of Or.7, Rule 11 of Code and that disclosed cause of action is a question of fact which needs to be gathered on basis of averments made in plaint in its entirety.

" ..... it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code".

In this case, District Judge meticulously and thoroughly considered all contentions raised by defendant/petitioner and rightly observed that schedule of property annexed to plaint manifestly indicates extent and location of property and also dealt with aspect of cause of action raised by petitioner herein - There is no any infirmity nor any perversity in impugned order - CRP, dismissed. **Kasani Narasimhulu Vs. Sathagowni Srinivas Goud, 2014(1) Law Summary (A.P.)97 = 2014(2) ALD 149 = 2014(3) ALT 93.**

—Or.7, Rule 11 & Or.4, Rule 1 and Or.6, Rule 17 and Or.1, Rule 10 - LIMITATION ACT, Sec.3 - "Rejection of plaint" - Plaintiffs filed suits for specific performance of agreements of sale in respect of various items of immovable property - Plaints initially presented on day, on which Courts reopened after summer vacation and were returned

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with certain objections - By time plaints were re-presented transactions in respect of suit properties have taken place and therefore subsequent purchasers were included in array of parties, while re-presenting of plaints by mentioning subsequent developments in detail - Appellant/Defendant filed petitions under Or.7, Rule 11, seeking rejection of plaints, contending that suits are not maintainable in law or on facts and all of them are barred by limitation - Trial Court dismissed all Applications - Hence present revision petitions - Petitioner/defendant contends that once plaints were not numbered and returned on last date of limitation, subsequent steps do not have effect of bringing suits within limitation and that it is totally impermissible for plaintiffs to add defendants, except by filing Applications under Or.1, Rule 10, much less to add paragraphs to returned plaints, otherwise than by filing Applications under Rule 17 of Or.6 CPC - Respondents/plaintiff submit that it is always permissible for a plaintiff in a suit, to add parties and to incorporate further details, before suit is numbered, without filing applications under relevant provisions of law and that steps taken by plaintiffs subsequent to relturn of plaints were only to avoid multiplicity of proceedings and for a total and effective adjudication of disputes between parties - In this case, defendants are not able to point out as to which plea in plaint presented by plaintiffs is inconsistent with other - Rejection of plaint is an extraordinary step that entails in denial of access to Court, for plaintiff and that is reason why Rule 11 of Or.7 CPC enlists limited grounds, on which a plaint can be rejected - Party that seeks rejection of a plaint must bring application strictly within such grounds and they cannot be expanded through interpretative process - Trial Court has taken correct view of matter in instant cases - Revisions, dismissed. **V.V.Balasubramanyam Vs. B.Markaneyulu, 2011(1) Law Summary (A.P.) 40.**

—Or.7, Rule 11, Or.6 & 7 & Or.4, Rule 1 and Or.1, Rule 10 and Or.6, Rule 17 - LIMITATION ACT, Sec.3 - "Rejection of plaint" - Suits filed by different plaintiffs against common defendants for specific performance of agreements of sale - Plaints presented on 2-6-2007 returned with certain objections - Since transactions have taken place in respect of suit schedule properties by time plaints represented, subsequent purchasers were included in array of parties by mentioning subsequent developments in detail while re-presenting plaints - Suits ultimately numbered in September 2007 - Defendants filed Applications under Rule 11 of Or.7 CPC to reject plaints contending that suits are not maintainable in law or on facts and all of them barred by limitation and that plaints presented on 2-6-2007 on one hand, and those which ultimately came to be numbered on other hand, are totally different in purport and content - Defendants contend that plaints filed on 2-6-2007 do not comply with requirement of pleadings under Or.6, Rule 7 and in that view of matter there was no effective presentation of suits in on that date as contemplated under Rule 1 of Or.4 and that it is totally impermissible for plaintiffs to add defendants in each suit except by filing Applications under Or.1, Rule 10, much less to add paragraphs to returned plaints, otherwise than by filing Applications under Rule 17, Or.6 - Sec.3 of Limitation Act placed an embargo

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on filing of suits and other proceedings, after expiry of period of limitation prescribed therefor - Word "presentation" mentioned in Sec.3 assumes significance particularly when it is read in conjunction with Rule 1 of Or.4, CPC - A suit can be said to have been instituted, if only plaint accords with Orders VI & VII CPC - Except stating that plaints were not properly presented or that suits are not properly instituted, defendants are not able to point out specific non-compliance, if any, with Orders VI & VII CPC - A plaintiff has full liberty to include or exclude parties and alter contents of plaint after presentation, till it is numbered - He does not have to file an Application, either for inclusion or exclusion of parties or for alteration of contents of plaint - Rejection of plaint is an extraordinary step, that entails in denial of access to Court for plaintiff - That is reason why Rule 11 of Or.7, CPC enlists limited grounds, on which a plaint can be rejected - Party that seeks rejection of plaint must bring application strictly with in such grounds and they cannot be expanded through interpretative process - View taken by trial Court - Justified - Revisions, dismissed. **K.V.V. Balasubramanyam Vs. B.Markandeyulu 2010(3) Law Summary (A.P.) 274 = 2011(1) ALD 481.**

—-Or.7 Rl. 11 and Rl.11 (a) and Or.39, Rl.4 - Plaintiffs in the unnumbered suit, aggrieved by order of trial Court running in 13 pages rejecting plaint under Order VII Rule 11(a) and (f) CPC on grounds of no cause of action and no compliance with filing of process with plaint copies to defendants, impugning same maintained present revision under Article 227 of Constitution of India.

Held, expression in Dantala Praveen Case speaks that when plaintiffs explained variance in survey number of suit agreements in plaint, it is not duty of Court at numbering stage to involve itself in examination of purported discrepancy in a minute manner and reject plaint on such a ground at threshold and such a procedure is not sanctioned by law and Court below has made a perverse approach in rejecting plaint presented by plaintiff.

Having regard to above and in result, revision petition is disposed of by setting aside impugned order of trial Court rejecting plaint. **Kavitha Balaji Vs. State of Telangana 2016(3) Law Summary (A.P.) 235 = 2016(6) ALD 493.**

—Or.7, Rules 11, 14(1)(2)(3) AND ORDER 12 RULE 1 - **A.P.CIVIL RULES OF PRACTICE** RULE 22 AND **CIRCULAR ORDER 1980** - Plaintiff filed suit for recovery of certain huge amounts basing on alleged agreement of sale and cheque allegedly issued by 2nd defendant, by filing photocopies of agreement, and cheque - District Judge, passed order in S.R. in unregistered O.S., directing plaintiff to file original cheque along with authenticated copy of agreement for further scrutiny, failing which plaint stood rejected – Hence, Plaintiff filed present Revision - It is clear from order of trial court that it did not treat case on hand as one relating to rejection of plaint under order 7 Rule 11 C.P.C. – Trial Court was however of opinion that failure to comply with office objection would still entail rejection of plaint placing reliance on Rule 22 of A.P. Civil Rules of Practice and Circular Orders 1980 - However, Civil Rules of

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Practice would always be subject to Code of Civil Procedure – Order 7 Rule 14 (3) C.P.C. makes it clear that when plaintiff fails to produce a document which ought to have been produced by him along with plaint or he fails to enter such document in list annexed to plaint it shall not be permitted to adduce such document in evidence without leave of court – O.13 Rule 1 manifests that production of documents in original, when photocopies thereof have been filed along with plaint, would be necessary only at or before settlement of issues – Significantly in present case, plaintiff had filed photocopies of both document in question - There is no requirement prescribed in Rule 22 of Civil Rules of Practice that all original documents relied upon must invariably be produced along with plaint and in fact no such requirement could have been prescribed in said Rule as it would run contra to provisions of Civil Procedure Code, Order 7 Rule 14 and Order 13 Rule 1 and in view of legal position, approach of trial court in examining merits of suit claim on strength of photocopies placed before it and requiring plaintiff to produce original thereof as a condition precedent for registration of suit was erroneous in law - Order of trial court unsustainable in law and accordingly set aside. – Trial Court directed to entertain suit and register same – CRP, allowed. **Pujari Narsaiah Vs. Modem Sudhaker, Hasanparthy Mandal, Warangal, 2015(2) Law Summary (A.P.) 77 = 2015(3) ALD 641 = 2015(3) ALT 649.**

—Or.7, Rule 11(a) and Sec.151 - **"Rejection of plaint"** - "Cause of action" - Respondent/plaintiff filed suit for declaration of title and permanent injunction - Petitioners/defendants filed application seeking rejection of plaint on ground that same does not disclose cause of action - Trial Court rejected application - Petitioner contends, that in plaint respondents have not disclosed which are ancestral properties and which are self-acquired properties and in absence of such details, plaint has not satisfied requirement of Or.7, Rule 1 (e) and also sub-rule 11(a) of Act - In order to attract Or.7, Rule 11(a) of Code for rejection of plaint, defendants shall satisfy Court that plaint does not disclose cause of action at all - In this case, respondent/plaintiff sought for both declaration of title and perpetual injunction - Even though paragraph-8 of plaint relating to cause of action has not included averment relating to title, said paragraph contains sufficient pleadings in respect of permanent injunction - Respondent/plaintiff contends that to know whether plaint discloses cause of action or not same needs to be read as a whole - Respondent referred to tile in more than one paragraph - Mere absence of detailed particulars relating to nature of properties cannot be treated as plaint not disclosing cause of action - If plaintiff lays foundation relating to title he can always substantiate same by adducing oral and documentary evidence and such exercise will be undertaken only during trial - Except in cases where it fails to disclose any cause of action plaint cannot be rejected - Therefore plaint cannot be rejected without suit being tried - CRP, dismissed. **R.Raghunatha Reddy Vs. R.Ramakrishna Reddy, 2012(1) Law Summary 310 = 2012(3) ALD 1 = 2012(3) ALT 656.**

—Or.7, Rules 11 (a) & 13 - **SPECIFIC RELIEF ACT,** Sec.31 - **TRANSFER OF PROPERTY ACT,** Sec.3 - Suit filed for declaration that sale deeds in favour of defendants

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are null and void - Trial Court dismissed Application filed by defendants for rejection of plaint, holding that there are no grounds to reject plaint - Petitioner/ contends that on face of it, plaint did not disclose any cause of action and suit also barred by limitation - Respondent contends that since rejection of plaint is a matter between Court and plaintiff, defendants in suit cannot interject in it - CAUSE OF ACTION - Cause of action is a bundle of facts, which are required to be pleaded and proved for purpose of obtaining relief claimed in suit - Expression cause of action means every fact, which it would be necessary for plaintiff to prove if traversed in order to support his right to judgment of Court - However so far as Or.7, R.11(a) is concerned, test is whether plaint discloses such cause of action on meaningful reading of averments therein - In this case, plaintiffs are not parties to sale deeds, which are sought to be declared as void and suit is not for declaration of title, but it is only for declaration of sale deeds, to which they were not parties, as void - Admittedly plaintiffs are not parties to documents in question - U/ Sec.31 of Specific Relief Act a suit for declaration of written instrument as void can be filed only by person against whom instrument is void or voidable - Since plaint does not disclose as to how sale deeds in question are void or voidable against plaintiffs who have no subsisting right or interest in suit property and who are not parties to document, even if plaint averments are taken to be true in their entirety, it cannot be said that plaintiffs have made out any right to sue - There is no cause of action for plaintiffs to file and maintain suit for declaration that sale deeds in favour of defendants are null and void - Since clear case is made out to show that Or.7, R.11 (a) is attracted, plaint is liable to be rejected - Suit also barred by limitation since sale deeds registered in year 2000 and suit filed in 2004 - Impugned order, set aside - CRP, allowed. **K.L.V. Prasada Rao Vs. K. Venkateswara Goud 2008(1) Law Summary (A.P.) 323 = 2008(2) ALD 669 = 2008(2) ALT 455 = 2008(1) APLJ 135.**

—Or.7, Rule 11 (a) and (d) & Sec.115 - **CONSTITUTION OF INDIA,** Art.227 - "Rejection of plaint" - "Non disclosure of cause of action" - Respondent/plaintiff filed suit seeking reliefs of specific performance and for injunction and for direction to petitioner/1st defendant to renew lease for further period - Application filed by 1st defendant seeking rejection of plaint as there is no concluded contract and suit is without any cause of action - Trial Court dismissed Application holding that plaint not liable for rejection at threshold and various contentions raised by parties have to be decided in trial of suit - In order to ascertain whether plaint discloses a cause of action or not, averments in plaint have to be read as a whole and also in meaningful manner - Court has to maintain distinction between plea that there was no cause of action for suit and plea that plaint does not disclose cause of action - Hence present case, cannot be considered to be manifestly vxatious or frivolous one in sense that it does not disclose a clear right to sue, warranting exercise of power of rejection of plaint under Or.7, Rule 11 - Onus is on petitioner/1st defendant to establish that plaint does not disclose a cause of action and therefore it is liable for rejection - Petitioner failed to establish that plaint does not disclose a cause of action and as such he is not entitled to seek rejection of plaint under Or.7, Rule 11(a) - Bar contemplated in Cl.(d) of Rule 11 of Or.7 is a statutory Bar which prevents

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entry and very institution of suit and not a legal objection which may subsequently be upheld rendering suit not maintainable - In this case, question as to whether plaintiff is entitled for renewal of lease as claimed by him and whether defendant is justified in refusing renewal do arise for consideration as triable issues and they cannot be disposed of at threshold stage under Or.7, Rule 11, especially when from averments in plaint, it does not appear that suit is barred by any law - It is only defendant's contention that suit for specific performance is bad because, there is no concluded contract of renewal and said contention has to be considered only at a subsequent stage, but not at threshold under Or.7, Rule 11 - Ingredients of either Clause (a) or Clause (d) of Or.7, Rule 11 are not attracted to present case so as to render plaint liable for rejection - CRP, dismissed. **M.A.E. Kumar Krishna Varma Vs. Sri Ramoji Rao 2009(1) Law Summary (A.P.) 114.**

—Or.7, Rule 11 (a) & (d), r/w Secs.3, 29(1) and 30 of A.P. Agricultural Produce and (Live Stock) Market Act - INDIAN CONTRACT ACT, Sec.23 - Municipality filed suit for recovery of amount under agreement - Trial Court allowed Application filed by respondent/ defendant for rejection of suit holding that jurisdiction of civil Court is barred to try suit - Petitioner/plaintiff contends that trial Court should have appreciated whether ingredients of Or.7, R.11 (a) or (d) were satisfied or not at this stage but however trial Court entered upon merits and demerits of matter since such facts are to be decided and findings are to be recorded after parties adduced evidence and not at stage of considering Application praying for rejection of plaint - Specific stand taken in Application is that plaintiff/Municipality has no right to collect market rentals from defendant in suit as per provisions of Act - It is needless to say that question whether in fact plaintiff is entitled to reliefs prayed for or not, these aspects may have to be decided at appropriate stage on appreciation of evidence which may be let in by parties - For rejecting plaint, ingredients of Or.7, Rule 11 (a) or (d) to be satisfied and unless said ingredients are satisfied, order of rejection cannot be made - Several of factual controversies which may have to be gone into at appropriate stage cannot be taken as operating as a bar for maintainability of suit - Impugned order, set aside - Revision petition, allowed. **Bobbili Municipality Vs. K.Sugunamma 2008(3) Law Summary (A.P.) 33 = 2008(5) ALD 409.**

—Or.7, Rule 11(a) & (b), r/w Sec.151 & Or.7, R.10 - **A.P. COURT FEES ACT,** Secs.37 & 37-A and 11 - **A.P. COURT FEE AND SUITS VALUATION RULES, 1987** - Rule 3 - "Return of plaint" and "rejection of plaint" - Petitioner/plaintiff filed suit for declaration that decree in a suit is null and void and consequential relief of cancellation of same - Respondent/defendant filed Application to reject plaint on ground that sale deeds relied upon by plaintiff amounting to Rs.4,53,000/- out of which 1/4th amount is beyond pecuniary jurisdiction of Court concerned - Trial Court passing order directing plaintiff to file Application for amendment of plaint showing present market value of suit lands as Rs.4,53,000 and pay deficit Court fee thereon and after amendment of plaint and payment of deficit Court fee, plaint will be returned to plaintiff for its presentation before proper Court having pecuniary terrotorial jurisdiction - Petitioner contends that when Application filed under Or.7, Rule 11 only question that should have been decided by trial Judge is whether on any one of grounds plaint is liable to be rejected or not and not beyond

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thereto and that method and procedure adopted by trial Judge in recording certain findings that valuation given by plaintiff cannot be accepted and further recording a finding that in light of sale deeds since quantum would exceed peculiary limits of Court concerned and issuing further directions for presentation of plaint before proper Court, cannot be sustained - Respondent contends that order in substance is perfectly well justified order in pecular fact and circumstances and further in as much as such power can be exercised even *suo moto* and such orders not to be interfered with in revision under Art.227 of Constitution - OR.7, RULE 7 AND OR.7, RULE 10 - Object, scope and ambit - Analysed - Court can reject plaint only when conditions specified under any of clauses of Or.7, R.11 of Code are satisfied and not otherwise - It is needless to say that averments made in plaint alone would be germane in deciding Application made under Or.7, R.11 - Impugned order made by trial Judge is one made exceeding jurisdiction - Hence, order, set aside. **Suryalaxmi Cotton Mills Ltd., Vs. Sabhavath Badyas 2008(2) Law Summary (A.P.) 393 = 2008(5) ALD 82 = 2008(5) ALT 520.**

—Or.7, Rule 11 (c) and (d) - Suit filed basing on promissory note - Trial Court dismissed Application filed by petitioner/defendant praying for rejection of plaint - Petitioner/defendant contends that promissory note is barred by limitation and that trial Court could have rejected plaint instead of dismissing Application and that criminal proceedings pending against petitioner may not seriously alter situation as far as Application for rejection of plaint is concerned - Petitioner/defendant had taken specific stand that suit was instituted against her for recovery of suit amount based on promissory note after lapse of period of limitation and respondent/plaintiff and his counsel, by misleading and misrepresenting Court had got suit numbered and there is no cause of action to file suit on basis of promissory note since same barred by limitation - In this case, specific stand taken in counter that suit is not based on strength of cheque, which had been dishonoured for recovery of amount covered by cheque transaction - It may be true that originally promissory note might have been executed and subsequent thereto cheque might have been issued - Plea of bar of limitation always cannot be said to be a pure question of law it may be a mixed question of fact and law as well - "Where suit appears from statement in plaint to be barred by any law" - It is need less to say that these questions also may have to be decided on appreciation of evidence which may be adduced by parties - Impugned order, justified - CRP, dismissed. **K.Nagarathnamma Vs. Sree Sreenivasa Financial Services, Kurnool 2009(2) Law Summary (A.P.) 247 = 2009(5) ALD 41 = 2009(5) ALT 167.**

—Or.7, R.11(d) - Rejection of plaint - Pinciples of *res judicata* - Suit for partition - Final decree passed and Commissioner appointed to demarcate land falling to share of plaintiff - Parties had taken possession of properties fallen in their respective shares and had been enjoying and even alienating them to 3rd parties - Appellant denying and disputing same - Appellant filing fresh suit claiming partition in some items appended to plaint in earlier suit - Trial Court allowing application filed by respondents for rejection of plaint which was confirmed by High Court - REJECTION OF PLAINT - Or.7, Rule 11 (d) of

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Code has limited application - It must be shown that suit is barred under any law - Such a conclusion must be drawn from averments made in plaint - There cannot be any addition or subtraction - For purpose of invoking Or.7, Rule 11(d), no amount of evidence can be looked into - At that stage Court would not consider any evidence or enter into a disputed question of fact of law - Effect of a partition suit which has not been taken to its logical conclusion by getting properties partitioned by metes and bounds is a question which, cannot be gone into in proceedings under Or.7, Rule 11(d) - Identity of properties which were subject matter of earlier suit vis - vis properties which are subsequently acquired and effect thereof is beyond purview of Or.7, Rule 11(d) of code - "Application for rejection of plaint can be filed if allegations made in plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. For said purpose only, averments in plaint are relevant. At this stage Court would not be entitled to consider case of defence" - Impugned order - Unsustainable - Appeal, allowed. **Kamala Vs. K.T. Eshwara Sa 2008(2) Law Summary (S.C.) 133 = 2008(4) ALD 24(SC) = 2008(4) Supreme 204.**

—Or.7, RULE 11(d) - **A.P. APARTMENTS (PROMOTION OF CONSTRUCTION AND OWNERSHIP) ACT,1987**, Sec.24. - Respondent filed suit for perpetual injunction restraining petitioner/defendant from parking car in stilt area of Complex - Petitioner filed written statement raising plea that suit is not maintainable as it is against provisions of A.P. Apartments Act and filed application under Or.7 Rule 11(d) for rejection of plaint - Lower Court dismissed Application observing that the issue whether common area in Apartment premises could be sold or not being a mixed question of fact and law needs to be adjudicated only after trial - Petitioner contends that suit is wholly misconceived and relief claimed therein is barred by provisions of A.P. Apartment Act and therefore lower court ought to have rejected plaint and that when plaint does not disclose clear right to sue, court of 1st instance should exercise its power under Or.7 rule 11 C.P.C. to prevent bogus and vexatious litigation - Dispute raised in suit is governed by provisions of Act and no provision is brought to notice of this court whereby it has barred by Civil court's jurisdiction to entertain suit of any nature – Unless Court is satisfied that filing of suit is barred by statutory enactment either expressly or impliedly and further continuance of proceedings causes grave prejudice to defendants, it will not generally proceed further and examine whether plaintiff has made out a prima facie case for further continuance of suit proceedings - In the absence of any provision Under Act, expressly barring suit, lower court has rightly dismissed Application field by petitioner for rejection of plaint - CRP dismissed accordingly. **Y.Sri Ramulu Vs. K.Venkatesham 2015(1) Law Summary (A.P.) 521 = 2015(3) ALD 635 = 2015(3) ALT 812.**

—Or.7, Rule 11(d) - **LIMITATION ACT,** Arts.58 & 65 - Rejection of plaint - Limitation - Appellant filed suit for declaration of title and for injunction and alternatively for recovery of vacant possession - Respondents contend that plaintiff lost his right long before to

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rectify alleged mistake - Trial Court dismissed Application filed by respondent/defendant for rejction of plaintiff holding that pleas raised in written statement are irrelevant such stage and they can be considered during trial by casting issue suitably - Division Bench of High Court reversed judgment of trial Court - Application for rejection of plaint can be filed if allegations made in plaint even if given face value and taken to be correct in their entirety appear to be barred by any law - Question as to whether suit is barred by limitation or not would, therefore, depend upon facts and circumstannces of each case - For said purpose, only averments made in plaint are relevant, - At this stage, Court would not be entitled to consider case of defence - LIMITATION ACT VIS-A-VIS OR.7, R.11 OF CODE - CONSIDERED - Law of Limitation relating to suit for possession has undergone a drastic change - If plaintiff has filed suit claiming title over suit property in terms of Arts.64 & 65 of Limitation Act, burden would be on defendant to prove that he has acquired title by adverse possession - In this case, Defendant did not accept that plaintiff was in possession - Therefore an issue in this behalf is required to be framed and the said question is therefore required to be gone into - Limitation would not commence unless there has been a clear and unequivocal threat to rights claimed by plaintiff - In instant case, Application under Or.7, R.11(d) not maintainable - Contentions raised by respondent may have to be gone into at a proper stage - Impugned judgment, unsustainable - Appeal, allowed. **C.Natarajan Vs. Ashim Bai 2008(1) Law Summary (S.C.) 93.**

—Or.7, Rule 11(d) and Sec.11 - "Rejection of plaint" and "Res judicata" - Earlier suit filed by petitioner against 1st respondent for recovery of money, decreed - Pursuant thereto petitioner filed E.P for sale of schedule property - 2nd respondent filed E.A under Or.21, Rule 58 claiming title under registered settlement deed executed by 1st respondent in his favour - E.A. allowed by Court inspite of petitioner contending that settlement deed is collusive, nominal and fraudulent document brought into existence to defeat legal claim - Hence petitioner filed appeal and same is pending - While so petitioner filed O.S (S.R.) seeking declaration that settlement deed is not valid under law and said rejection of plaint at threshold exercising power under Or.7, Rule 11(d) observing that order in E.A operates as res judicata u/Sec.11 of CPC - Hence, present revision petition filed - Petitioner contends, that question whether suit is barred by res judicata being mixed question of fact and law cannot be decided at that stage - Court below committed grave error in rejecting plaint at threshold even without notice to defendant - Admittedly no notice was issued to defendants in present case and no enquiry was conducted on question whether order passed by lower Court operates as res judicata and no such conclusion is possible from averments in plaint - Court below committed an error in concluding at that stage that order in I.A operates as res judicata - Impugned order of lower Court, unsustainable - Revision disposed of with direction to number suit and may frame an issue with regard to resjudicata and pass appropriate orders after hearing both parties. G**anesula Uma Parvathi,Hyderabad Vs. Ayitam Rama Swamy 2011(2) Law Summary (A.P.) 90 = 2011(4) ALD 1 = 2011(5) ALT 275.**

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—-Order VII Sub-rule (3) of Rule 14, Sec.151 and Order XVIII Rule 3 and Order XVIII Rule 17 – Suit was filed by M/s.Ramalingam Mills Ltd., seeking recovery of money against the defendants and another suit was filed by one Velu Yarn Traders seeking recovery of money against same defendants - When suits were coming up for arguments, plaintiffs filed two sets of four interlocutory applications in both suits for reopening suits, for receiving certain documents, and for recalling P.W.1 and D.W.1 - All applications were allowed by learned District Judge, by two common orders, challenging which, defendants filed this Civil Revision Petitions.

Held, it is clear that documents, which were sought to be filed now, were available with plaintiffs and there was no foundation made in plaint with regard to those documents - Plaintiffs earlier availed opportunity to file additional documents and on that occasion also they did not choose to file present documents - Even sub-rule (3) of Rule 14 of Order VII of CPC provides for production of documents with leave of Court at hearing of suit - But, when evidence of parties was completed and suit is coming up for arguments, though technically speaking, hearing of suit can be called as not completed, it is not intendment of sub-rule to grant leave to a party to file documents before commencement of arguments - Further, affidavits filed in support of applications do not indicate any justifiable reason for accepting said documents and recalling witnesses after conclusion of trial - Amendments to the Code of Civil Procedure were made in order to speed up process of disposal of cases and if this type of applications are allowed, it would go against spirit of scheme of Code of Civil Procedure - A perusal of orders of trial Court shows that it travelled much beyond case pleaded by petitioners in their petitions - In circumstances, this Court is constrained to set aside impugned orders of District Judge, and the Civil Revision Petitions are, accordingly, allowed. **Lakshmi Priya Exports (India) Pvt. Ltd. Vs. Ramalingam Mills Ltd. 2016(1) Law Summary (A.P.) 450 = 2016(3) ALD 658 = 2016(2) ALT 537.**

—-Or.7 Rule 14(3), Or.18 Rule 17 - Filing of IAs after abnormal delay without any reasons - Senior Civil Judge allowed the Applications on the ground that in the event of allowing said applications no prejudice would be caused to defendant/petitioner - Civil Revision Petition filed against the order - Held, reason assigned by senior civil Judge cannot be a ground for allowing Applications unless party applying for satisfies ingredients of relevant provisions of law - Or.18 Rule 17 of CPC is not intended to be used routinely and for mere asking and if said provisions are used for mere asking and in routine manner, same would defeat the very intention behind amendments brought in to expedite trials - Orders passed by Court below suffers from fundamental infirmity, as such the same are unsustainable and untenable in eye of law - CRPs are allowed and orders passed by the court below are set aside. **Guduru Nirmala Vs. Guduru Ashok Kumar, 2014(3) Law Summary (A.P.) 177.**

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—Or.8, Rule 1 - Suit for partition - Trial Court rejecting Application for accepting written statement on condonation of delay - High Court dismissed writ petition filed by appellant/ defendant for condoning delay of 35 days in filing written statement - Appellant contends that provisions for filing written statement under Or.8, R.1 are directory in nature and therefore it is open to Court to condone delay in filing written statement and such written statement could be accepted - It would be open to Court to permit appellant to file his written statement if exceptional circumstances have been made out - It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied opportunity of participating in process of justice dispensation - In this case, facts stated would constitute sufficient cause for condoning delay in filing written statement and that non-availability of records prevented appellant in filing written statement within period of limitation which is an exceptional case constituting sufficient cause for condoning delay in filing written statement - Rejection of application for condoning delay in filing written statement by High Court as well as trial Court - Erroneous - Order of trial Court in rejecting application, set aside - Appeal, allowed. **Zolba Vs. Keshao 2008(2) Law Summary (S.C.) 75.**

—-Or.8, Rl.1- Petitioners herein are defendants in the suit - Petitioners received summons on 05.12.2013 - On 31.12.2013, counsel for petitioners filed vakalat and requested time to file written statement - Case was adjourned to 03.01.2014 and from that date to 03.02.2014 and lastly to 06.03.2014, i.e., the 90th day for filing the written statement - On 90th day also, defendants did not file written statement, but their counsel sought further time - Court below, without acceding to request of counsel for defendants, forfeited the right of the defendants to file written statement - Then defendants filed a petition to set aside the order dated 06.03.2014 and to permit them to file the written statement, which has been dismissed vide impugned order - Held, if parties, in spite of granting short adjournment and imposing costs, do not comply with procedure or the directions of Court, then Courts have to use their discretion and pass appropriate and reasonable orders - There is no hard and fast rule on this aspect and it all depends upon the facts and circumstances of each particular case. In the circumstances, it appears that there are laches on part of defendants - But merely because there are laches on part of defendants, their right to file the written statement should not be forfeited and reasonable costs should be imposed - Accordingly, on payment of costs of Rs.5,000/- by petitioners herein to the respondents herein within a period of ten days from today, the CRP stands allowed and the impugned order stands set aside. **Chelimilla Chinna Venkataswamy Vs.Billapuram Gopala Krishna 2015(2) Law Summary (A.P.) 357 = 2015(1) ALD 43 = 2015(3) ALT 736 = AIR 2015 (NOC) 660(Hyd).**

—Or.8, Rule 1 and Sec.151 - Respondent filed suit for perpetual injunction - Even though suit summons were served on petitioners/defendants, they have failed to file written statement within stipulated time of 90 days and as such their right to file written

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statement was forfeited - Trial Court rejected application filed by petitioners/defendants to receive written statement - Petitioners contend that Or.8, Rule 1 is procedural and not sub-stantiative in nature and that stipulation of filing written statement within 90 days contained in said provision only works as constrained on defendant and said provision would not limit or curtail power of civil Court to extend time - Respondent/ plaintiff contends that trial Court has given categorical finding that petitioners failed to offer a satisfactory explanation for accepting written statement beyond prescribed period - Forfeiture of petitioners' right to file written statement would be too harshed which works serious hardship to their interest - After all intendment of law is to adjudicate dispute on merits rather than by default - Trial Court directed to receive written statement subject to petitioners paying Rs.5000 to respondent - CRP, allowed. **Dugge Venkataiah Vs. Bellamkonda Meri Dhanamma 2011(2) Law Summary (A.P.) 297 = 2011(5) ALD 100 = 2011(5) ALT 649.**

—Or.8, Rule 1 and Or.9, Rule 7 - Filing writen statement - 30 days from date of receipt of summons, which shall not exceed 90 days - May not be mandatory but only directory - Time can not be granted in a routine manner, except in exceptionally hard cases. **J.Sydulu Goud Vs. Syed Ashraf Hussain 2015(2) Law Summary (A.P.) 350**

—Or.8, Rule 1(3), Sec. 151 - Suit filed by respondents for declaration of title and perpetual injunction was alleged by petitioners in an I.A. as devoid of cause of action and barred by limitation - Trial Court dismissed the I.A filed by petitioners on ground that documents mentioned in petition, though were referred to in plaint, were not filed into trial court and a perusal of same was essential to decide question of limitation or rejection of the plaint giving rise to this Revision - Held, while dealing with an application filed for rejection of plaint, Court has to take contents of plaint on its face value, and it cannot be permitted to look into any external material - A perusal of the plaint discloses that extensive reference was made to the orders passed and judgments rendered by this court in writ petitions and writ appeals etc. - Heavy reliance was placed upon them to plead that the suit is filed within limitation and there exists a cause of action for it - For one reason or other, copies of those orders were not annexed to plaint - Appellants intended to place same before Court, may be, for limited purpose of examining the question of cause of action and limitation - Since documents were very much mentioned in paragraph pertaining to cause of action, they ought to have been received - Therefore CRP is allowed and order under revision set aside. **G.Venkata Swamy Vs. State of Andhra Pradesh, 2014(3) Law Summary (A.P.) 175 = 2014(5) ALD 766.**

—Or.8, Rule 1-A(3) - Petitioner/plaintiff filed suit for recovery of suit amount from respondents/ defendants on base of promissory note - After closure of evidence on plaintiff's side 3rd defendant filed affidavit in view of chief- examination and respondents filed application for receiving 7 pronotes in to evidence - Petitioner contends that respondents have created and brought into existence pronotes and that they failed

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to show any valid and sufficient reasons for not filing them earlier - Trial Court allowed application by holding that respondents have mentioned adequate reasons for not filing them earlier - Petitioner contends that even though under Or.8, Rule 1-A (3) of Code discretion is vested in Court to permit defendant produce any document beyond time stipulated other than at time of filing written statement, such discretion can be exercised only if defendant comes out with proper explanation for not filing them along with written statement - Rule 1-A and 1-A(3) of Or.8, CPC were substituted by Act 46 of 1999 - Object with which though Rules were amended was to curb phenomenal delays in procedural aspects leading to procrastination of proceedings before civil Court - This being avowed object with which above noted provisions are amended, Rule 1-A(3) of Or.8 which on a literal interpretation appears to vest unlimited discretion with Court, requires to be interpreted so as to advance intendement of legislation - Unless reasons assigned by defendant discloses sufficient cause for his failure to produce documents within time stipulated in Rule 1-A of Or.8, Court shall not permit defendant to file such documents later - In this case, admittedly respondents failed to furnish proper and sufficient reasons for receiving documents at a far too belated stage - Trial Court committed serious error in failing to notice these glaring short coming in case of respondents and holding that reasons given by respondents for belated production of documents are adequate - Order under revision, set aside - CRP, allowed. **Voruganti Narayana Rao Vs. Bodla Rammurthy 2011(3) Law Summary (A.P.) 12 = 2011(6) ALD 142 = 2011(6) ALT 299.**

—Or.8, Rule 1A(3) - Respondent filed suit against petitioner for recovery of certain amount - When case was coming up for cross-examination of respondent/plaintiff, petitioner filed IA for permitting him to file registered sale deed and registered notice - Trial Court dismissed Application on sole ground that petitioner has not come forth with proper reasons for permitting him to file proposed documents - Hence present CRP - Petitioner contends that suit property originally belonged to SS and petitioner purchased said property under registered sale deed and that due to oversite said document could not be filed earlier and that petitioner also received notice from respondent's counsel without advocate signature and that both these documents are essential for effectively defending suit - Cl.(3) of Or.8, Rule 1A was incorporated by Act22 of 2002 with a view to discourage practice of parties filing documents at a belated stage of proceedings - Procedure is handmaid of justice - While procedural laws need to be adhered to in order to avoid long delays in disposal of cases, at same time, Courts will have to make a delicate balance between strict adherence to these procedural laws and substantial justice that needs to be ensured for parties - In anxiety to curb delays, stopping parties from adducing relevant evidence would lead to failure of justice - However, fair amount discretion is vested by Or.8, Rule 1A (3) in Courts to permit filing of documents - No hard and fast principles can be laid down for Courts as to how discretion has to be exercised - While exercising such discretion, Court will have to consider relevant aspects such as conduct of parties, nature of documents,

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that are sought to be filed and whether by permitting filing such document, same will help Court to adjudicate suit in a more effective manner - Court should also consider stage at which documents are sought to be filed - Lower Court ought to have permitted petitioner to produce document in question - Order of lower Court, set aside - CRP, allowed. **M.R.Anjaneyulu Vs. R.Subrahmanyam Achary, 2012(1) Law Summary 251 = 2012(5) ALD 243.**

—Or.8, Rule 1(3) - REGISTRATION ACT, Sec.17 - 1st respondent filed suit for specific performance of agreement of sale - 1st respondent/plaintiff opposed Appli-cation filed by petitioner to receive document raising objection as to its admissibility - Trial Court passing order that since document not properly stamped it cannot be received - Hence, present Revision - Petitioner contends that document does not confer any independent right on any party, and as such, it is not required to be registered in law and document has only reflected existing state of affairs and no independent transaction, has taken place through it - Respondent contends that since it relates to an item of immovable property, it was required to be registered and duly stamped - In deciding admissibility of document, recitals therein have to be taken on their face value - It is ultimately for parties to prove contents thereof by adducing oral and documentary evidence - It is neither agreement of sale nor sale deed - And on the other hand it is preceded by an agreement of sale as well as a deed - With execution of sale deed, trasnsaction takes place and becomes complete - So it is case with applicability of Sec.17of Registration Act - Neither Stamp Act, nor Registration Act require that acknowledgment of rights of individual to avail legal remedies by another, needs any stamp duty or registration - Strictly speaking an individual does not need consent of approval of another, to enforce his legal rights - Therefore, document cannot be treated as inadmissible in evidence - Trial Court directed to receive document in question in evidence - Revision petition, allowed. **M.Nagabhushanam Vs. V.Suresh Kumar 2010(1) Law Summary (A.P.) 73 = 2010(1) ALD 772 = 2010(2) ALT 222.**

—Or.8, Rules 3 & 9 and 6-A - **EVIDENCE ACT,** Sec.58 - **TRANSFER OF PROPERTY ACT,** Sec.53(a) - Respondent/plaintiff is owner of building issued quit notice to appellant/ tenant terminating tenancy and calling upon him to vacate premises and handover vacant possession - Since appellant/defendant failed to vacate premises plaintiff filed suit for eviction - Plaintiff also averred that premises under occupation of defendant would fetch rent of Rs.5,000 and therefore defendant is liable to pay Rs.5,000/- per month towards mesne profits/damages for use and occupation of property from date of suit till date of delivery of possession - Appellant/defendant contends that he had been to pilgrimage during relevant period and that he did not receive notice sent by plaintiff and that after his return he had contacted plaintiff and that there was fresh agreement of lease extending lease by period of 20 years and when he met plaintiff he was not even informed that he filed suit for eviction and he received summons in suit and when he filed suit for specific performance, plaintiff stopped

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receiving rents - When defendant had taken a specific plea about fresh lease agreement and when plaintiff has not denied same by filing rejoinder, it amounts to admission and as per provisions of Sec.58 of Evidence Act an admitted fact need not be proved and that an unregistered agreement of lease is admissible in evidence u/Sec.49 of Registration Act as evidence of part performance - Plaintiff contends that in his notice had categorically mentioned that defendant is liable to pay damages at Rs.5,000/- per month till vacant possession of premises was delivered to him and any amount paid by defendant after termination of tenancy would be accepted under protest without prejudice to his contentions - Admittedly plaintiff has not filed any rejoinder - Rule 2 of Or.8 envisages that new facts such as that suit is not maintainable or that transaction is either void or voidable in law and also such grounds of defence such as fraud limitation, release, payment of performance, or facts showing illegality must be specifically raised - Rule 6-A deals with counter claim by defendant and counter claim has to be treated as a plaint and governed by Rules applicable plaints under sub-rule (4) of Rule 6-A and plaintiff shall be at liberty to file a written statement in answer to counter claim of defendant within such period as may be fixed by Court under sub-rule (3) of 6-A - What law envisages is that as far as defendant is concerned, he has to denay specific averments or allegations made by plaintiff and when defendant makes specific plea of set- off or counter claim, then only plaintiff is required to file an answer to counter claim or set-off pleaded by defendant - As far as other averments made by defendant, which do not come within definition of set-off or counter claim, plaintiff is not required toanswer same - Admittedly in this case, no evidence has been adduced in support of fresh lease - Only circumstance relied upon by defendant/ appellant is that respondent/plaintiff has accepted rent at Rs.2,000/- per month and that could be only in pursuance of fresh lease - But plaintiff with abundant caution had specifically mentioned that he will be receiving what ever amounts paid towards lease without prejudice to his contentions - However receiving of rent after issuing quit notice cannot be said to be a conduct of signifying “assent” to continuance of lease even after expiry of lease period - Second appeal, dismissed. **K.Sajjan Raj Vs. Gopisetty Chandramouli 2011(2) Law Summary (A.P.) 71 = 2011(4) ALD 96 = 2011(5) ALT 329 = AIR 2011(NOC) 411 (AP).**

—Or.8, Rule 4(1) - **A.P. STAMP ACT,** Schedule-1 of Article 49 (9) (iii) - Revision petitioner/plaintiff filed suit basing on document - Trial Court passed docket order refusing to mark document in evidence on ground that same is insufficiently stamped promissory note and hence not admissible even after payment of required stamp duty and penalty - In this case, when plaintiff has filed affidavit in view of examination-in-chief filed said document along with affidavit - Trial Court made endorsement that required stamp duty and penalty impounded has been collected through lodgement and said document was accordingly impounded - Subsequently when petitioner entered witness box for marking documents, objection was taken by respondent/defendant that promissory note is not admissible in evidence even after it was impounded -

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Petitioner contends that document is not promissory note, but same is only a receipt which can be admitted by evidence - Trial Court by its docket order declined to admit document on ground that as nature of document was already determined by endorsement which has become final petitioner cannot be allowed to plead that same is a receipt and not promissory note - As per amended provisions of Or.8, C.P.C. examination-in-chief of witness shall be by way of affidavit on proviso to sub-rule(1) of Rule 4 of Or.8 which was substituted by amendment envisages that while documents are filed along with chief affidavit and parties relay upon same, proof and admissibility of such documents shall be subjected to orders of Court - Unless both parties are put on notice and Court hears them on admissibility of document, mere unilateral conclusion arrived at by Court at time of presentation of document along with chief affidavit will not bind parties - Trial Court ought to have given opportunity to parties to substantiate their pleas with reference to nature of document instead of relying upon earlier endorsement made when document was presented along with affidavit evidence without hearing parties - Trial Court directed to determine nature of document in question after hearing both parties before proceeding further with case - C.R.P. allowed. **Gaddam Varalaxmi Vs. Surakanti Gangu 2012(2) Law Summary (A.P.) 268 = 2012(5) ALD 241 = 2012(5) ALT 628.**

—Or.8, Rule 6C and Rule 6-A - Petitioner plaintiff filed suit for specific performance of agreement of sale allegedly executed by 1st defendant/1st respondent - D1 filed written statement denying agreement of sale and that suit property sold to one BVD under registered sale deed and possession also delivered to said vendee - Petitioner/ plaintiff got imple-aded BVD as defendant no.2 and thereafter D2 filed written statement with counter claim under Or.8, Rule 6-A seeking delivery of vacant and peaceful possession of suit property to her and to direct plaintiff to pay damages apart from arrears - Thereafter plaintiff filed Application under Or.8, Rule 6C to exclude counter claim made by D2, contending that said claim was beyond scope of relief sought in main suit - After hearing both parties trial Court dismissed Application - Plaintiff/ petitioner contends that since no relief was sought by plaintiff against D2, question of making a counter claim by D2 did not arise and therefore on that ground alone trial Court ought to have excluded counter claim and that if D2 aggrieved it was for her to file a separate suit seeking relief, but she cannot maintain a counter claim against plaintiff - Or.8, Rule 6-A of CPC entitles defendant to set up any right or claim against claim of plaintiff in respect of cause of action accrued to defendant against plaintiff either before or after filing suit - Sub-Rule(2) of 6-A further made it clear that such counter-claim shall have same effect as cross-suit so as to enable Court to pronounce a final judgment in same suit, both on original claim and on counter claim - Language of Sub-Rule (1) of Rule 6-A of CPC makes it clear that it is open to defendant to make a counter claim in respect of a cause of action accruing to him against plaintiff either before or after filing suit - In this case, cause of action arose against plaintiff after filing suit, therefore D2 is certainly entitled to set up a counter-

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claim against plaintiff's claim to suit notwithstanding fact that plaintiff did not seek any relief against D2 - Suit claim and counter-claim ought to be regarded as constituting a unified proceeding - Therefore a counter-claim can be excluded only where Court finds that filing of counter-claim is not fair to plaintiff or where it is likely to create complications and prolong trial - No such case could be made out by plaintiff in present case - 2nd defendant is entitled to set up counter-claim and trial Court rightly declined to exclude same - Order of trial Court - Justified - CRP, dismissed. **G.Pullaiah Vs. P.Vijay Kumar 2011(3) Law Summary (A.P.) 176 = 2011(6) ALD 459 = 2011(6) ALT 274.**

—Or.8, Rule 9, r/w Sec.151 - Petitioner/plaintiff filed suit for recovery of certain amount basing on promissory note - Defendant filed written statement contending that amount due under suit promissory note and five other promissory notes has been discharged by executing a registered sale deed in favour of plaintiff in respect of residential house - Elders handedover six promissory notes including suit promissory note - Petitioner/ plaintiff filed Appli-cation under Or.8, Rule 9 seeking permission of Court to file additional pleadings in form of rejoinder for effective disposal of matter - Trial Court dismissed Application on ground that plaintiff cannot be permitted to raise inconsistent pleas so as to alter his original cause of action - Petitioner/plaintiff contends that additional pleadings on his behalf became eminent because of plea taken by respondent/defendant in written statement with regard to execution of sale deed towards discharge of amounts due under various promissory notes - Primary object of subsequent pleading is to supply what has been omitted inadvertently or unintentionally or to deny or clarify facts stated in pleadings of opposite party - In rejoinder plaintiff can be permitted to explain additional facts which have been incorporated in written statement - Application under Or.8, Rule 9 CPC cannot be treated as one under Or.6, Rule 17 as both are contextually different - It is well settled that plaintiff can be permitted to file rejoinder to explain additional facts which have been incoporated in statement - Therefore this is a fit case where leave has to be accorded to plaintiff to place on record additional facts by way of rejoinder - Order passed by trial Court - Justified - CRP, allowed. **Mlgireddy Venkata Ramana Vs. Thippanna Narsi Reddy 2010(1) Law Summary (A.P.) 365.**

—Or.8 RULE 9, R/W Sec.151 - CIVIL RULES OF PRACTICE, RULE 45 - Petitioner filed Suit for perpetual Injunction, restraining respondents from interfering with his peaceful possession and enjoyment of suit property – Petitioner also filed I.A. for temporary injunction and respondents have filed counter-affidavit – Petitioner sought to file reply to said counter-affidavit in the name of rejoinder and therefore, filed I.A. purportedly under Order 8 Rule 9 for permission to file rejoinder - Lower Court dismissed Application on ground that provisions of Order 8 Rule 9 C.P.C. are not attracted to Interlocutory Application - Rule 45 of Civil Rules of Practice permits filing of reply affidavit in Inter- locutory Applications – Lower Court, is unmindful of this basic procedural aspect and dismissed Application purportedly on ground that wrong provision of law

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is quoted - Procedure is handmaid of justice and that substantive rights of parties cannot be defeated by making hyper technical approach – Mere quoting of wrong provision, obviously out of ignorance on part of counsel appearing for parties, cannot constitute a ground for rejection of Application, if same is otherwise, permissible under any other provision of law - Petitioner has right to file reply- affidavit under Rule 45 of Civil Rules of Practice albeit, with permission of court – I.A. Allowed - Lower court directed to treat rejoinder as reply affidavit – CRP, allowed accordingly. **Payala Gopi Vs. Tiebeam Technologies India Pvt. Ltd. 2015(1) Law Summary (A.P.) 516 = 2015(3) ALD 608 = 2015(4) ALT 153.**

—Or.8, Rule 9 & Or.6, Rule 17 - "Rejoinder" - Petitioner filed suit for declaration of exclusive right over suit wall - 1st respondent filed written statement claiming exclusive right over said suit wall - Trial Court dismissed Application filed by petitioner seeking leave of Court to file rejoinder on ground that petitioner failed to indicate in petition as to what are facts that have come to light through pleadings of 1st respondent and that leave of Court cannot be obtained for rejoinder without his coming out with specific pleading as to necessity for filing such rejoinder - Hence present CRP - Petitioner contends that approach of lower Court is grossly erroneous and that in affidavit in support of petitioner's Application he has clearly stated that certain facts pertaining to some other suit came to his knowledge recently and facts pleaded in said case are very much relevant to present case and that recitals of two documents referred in written statement need to be explained in rejoinder - Primary object of subsequent pleading is to supply what has been omitted inadvertently or unintentionally or to deny or clarify facts stated in pleadings of opposite party, that in rejoinder plaintiff can be permitted to explain additional facts, which have been incorporated in written statement and that application under Or.8, Rule 9 cannot be treated as one under Or.6, Rule 17 as both are contextually different - Unless Court forms an opinion that Application for leave is filed for reasons such as procrastinating suit proceedings or to widen scope of suit or change nature and character of suit proceedings, Applications shall ordinarily be allowed - By permitting subsequent pleadings Court can avoid multiciplity of proceedings - In this case, respondents have not pleaded any prejudice on account of granting of leave to petitioners to file rejoinder - CRP, allowed. **Aloor Subrahmanyam Vs. Suthram Prabhakar, 2012(1) Law Summary 241 = 2012(3) ALD 202 = 2012(2) ALT 580.**

—Or.8, Rule 9 and proviso to Rule 17 of Or.6 - "Permission to file additional written statement" - Suit originally filed by 1st respondent for relief of specific performance of agreement of sale against sole defendant - After death of sole defendant his legal representatives, petitioner and her mother came on record and also filed additional written statement - At that stage petitioner filed I.A under Or.8, Rule 9 seeking permission to file additional written statement - Application opposed by 1st respondent - Trial Court dismissed Application - Hence present Revision - In this case, through proposed

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additional written statement petitioner proposes to raise plea pertaining to very character of suit schedule property, particularly in light of recent legislatively changes and an attempt is also sought to be made to find fault with text of written statement filed by original defendant - Parliament has inserted proviso to Rule 17 of Or.6, CPC with an objective of discouraging indiscriminate amendments to pleadings - Strong and acceptable reasons are needed to enable a party to file additional written statement 10 years after suit was filed, that too when it is sought to be presented in absence of any amendment to plaint - Trial Court has taken correct view of matter - Since suit is pending for past 13 years it cannot be kept pending any longer - CRP, dismissed. **Jayanthi Vs. K.L.Narayana 2013(1) Law Summary (A.P.) 364 = 2013(4) ALD 273 = 2013(4) ALT 439.**

—Or.8, Rule 10- Plaintiff/appellant filed suit for partition and separate possession contending that defendants/respondents failed to arrange partition and separate position of plaintiff's half share in suit property and that defendants/respondents had partitioned property amongst themselves without giving any share to plaintiff/appellant - In this case, plaintiff/appellant sent legal notice to defendants/respondents which was duly served on them in response to which defendants appeared through their advocate and sent reply denying claim of plaintiff - Defendants/respondents served with notice in suit and valakathnama was filed by their advocate - However inspite of numerous opportunities, no written statement filed by defendants/respondents - Since defendants failed to file written statement trial Court directed plaintiff to lead evidence - Plaintiff filed his evidence by way of affidavit alongwith certain documents marked as exhibits - However, plaintiff was not cross- examined by defendants - Trial Court decreed suit and directing plaintiff/appellant shall be entitled to half share in property - High Court set aside judgment and decree passed by trial Court and matter remanded to trial Court for its retrial and for consideration of matter afresh - Hence SLP filed - It is well acknowledged legal dictum that assertion is no proof and hence, burden lay on plaintiff to prove that property had not been partitioned in past even if there was no written statement to contrary or any evidence of rebuttal - Trial Court clearly adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, plaintiff's case could be held to have been proved - Trial Court decreed suit without assigning any reason how plaintiff is entitled for half share in property and same is absolutely cryptic in nature wherein trial Court has not critically examined as to how affidavit filed by plaintiff in support of his plea of jointness of family was proved on relying upon documents filed by plaintiff without even discussing nature of document indicating that suit property was a joint property - Order of High Court directing retrial justified - Appeal stands dismissed subject to payment of costs of Rs.25000/- to plaintiff/appellant. **C.N. Ramappa Gowda Vs. C.C.Chandragowda (dead) by Lrs., 2012(2) Law Summary (S.C.) 1 = 2012(5) ALD 1 (SC) = 2012 AIR SCW 2510 = AIR 2012 SC 2528.**

—Or.8, Rule 17 - MOTOR VEHICLES ACT, Sec.169 - Petitioners/claimants filed O.P claiming compensation for death of son of claimants 1 and 2 - Tribunal dismissed petition since petitioners did not attend for marking documents and for cross-examination - Tribunal passed following orders in main petition and I.As:-

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"Heard, petition is dismissed since filed after closure of petitioners evidence"
"I.A.No.1077/09 to reopen OP is dismissed, this petition is also dismissed."
"Respondent No.1 and his counsel called absent. No further evidence. Evidence on both sides closed. Call on 11-6-2009 for arguments".

In this case Tribunal closed evidence on 29-4-2009 and posted matter for evidence of respondents on 8-5-2009 - OR.18, RULE 17 - Even after closure of evidence of plaintiff or defendants, or both parties, parties may approach Court to reopen case for further evidence and it is discretion of Court to allow any Application filed under Or.18, Rule 17 - However discretion has to be exercised having regard to facts and circumstances of case - Sec.169 of M.V Act makes it clear that Tribunal may follow such summary procedure as it thinks fit - For purpose of enforcing attendance of witnesses and for compelling discovery and production of documents, Tribunal has all powers of Civil Court - While dealing with claim petitions filed under M.V Act Tribunal shall not apply strict rules of procedure as contemplated under CPC and that is not purport of Sec.169, which makes it clear that Tribunal has to follow only summary procedure - When petitioners have filed an application to reopen matter and recall P.W.1 for marking certain documents and further cross-examination, Tribunal ought to have allowed those applications and ought to have given an opportunity to petitioners - Very purpose of relevant provision and constitution of Tribunal for awarding just and reasonable compensation to claimants who approached Tribunal either for death of their near and dear or for injuries caused to them would be defeated if reasonable opportunity is not given to parties to adduce evidence - Impugned orders, set aside - C.R.Ps, allowed. **Mohd.Hussain Khan Vs. National Insurance Co., Ltd., , 2011(1) Law Summary (A.P.) 164 = 2011(3) ALD 174 = 2011(3) ALT 233.**

—Or.9, Rule 7 - Suit filed for partition and separate possession of plaintiffs share in suit properties - Admittedly suit summons served and appearance was entered on behalf of petitioners/defendants and however they failed to file written statements and hence they were set exparte - Trial Court dismissed Application filed by petitioners/ defendants to set aside ex parte order and permit them to file written statement - Hence present CRP filed by defendants - In this case, trial Court dismissed Application observing that there was no bonafides on part of defendants and application filed at belated stage only to protract litigation - Having regard to facts and circumstances of case on careful consideration of material available on record, there are not justifiable reasons to interfere with findings recorded by trial Court and that application filed at belated stage not bona fide - However defendants cannot be stopped from participating in proceedings from stage at which they put in appearance - Revision petitioners are granted liberty to participate in proceedings from stage at which suit stands as on to day - Written statement of revision petitioners/defendants cannot be received and witnesses already examined cannot be recalled for further cross-examination on behalf of revision petitioners/defendants - Order of trial Court modified to extent indicated above. **N.Bayyapu Reddy Vs. M.Surya Prakash, 2012(1) Law Summary 15 = 2012(1) ALD 593 = 2012(1) ALT 417.**

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—Or.9, R.9 - **LIMITATION ACT,** Sec.5 - Suit filed for recovery of certain amount - Dismissed for default - Trial Court allowing Application filed u/Sec.5 of Limitation Act on condition that petitioner pays costs on or before particular date and files affidavit in lieu of chief-examination - Subsequently trial Court dismissed Application on ground that affidavit, in lieu of chief-examination of P.W.1 not filed - Petitioner contends that though trial Court imposed condition, while allowing I.A that affidavit in lieu of chief-examination must be filed, occasion to file same arises, only when suit is restored to file and that while specific date was stipulated for payment of costs, no such date fixed for filing affidavit and that trial Court ought not to have dismissed Application filed u/Sec.5 of Limitation Act - From perusal of order it is clear that trial Court did not feel necessity to fix any time limit for filing for affidavit, obviously because occasion would arise, if only suit is restored to file - As long as suit is not formally restored to file, there does not exist any occasion for petitioner to file affidavit, in lieu of chief-examination - It must not be forgotten that filing of affidavit, in lieu of chief-examination, is nothing but a substitute for examining witness, in Court - If suit itself is in a condition of dismissal, it is ununderstandable as to how a witness can be examined, at this stage - Impugned order, set aside and I.A shall stand allowed - Trial Court directed to take up application filed under Or.9, R.9 CPC, forthwith. **P.Ranjith Kumar Reddy Vs. S. Satyanarayana Raju 2008(1) Law Summary (A.P.) 267 = 2008(2) ALD 468 = 2008(2) ALT 565 = 2008(1) APLJ 37(SN).**

—Or.9. Rule 9 - **LIMITATION ACT,** Sec.5 - Respondent/plaintiff filed suit for specific performance of agreement of sale - Suit underwent innumerable adjournments for nearly two and half decades and ultimately dismissed for default - Respondents/ plaintiffs filed Applications for restoration of suit by setting aside default order along with Application for condonation of delay of of 2792 days in filing restoration petition - Trial Court allowed applications and condoned delay on cost of Rs.5,000/- and suit restored to file - Hence petitioners/defendants filed present revision petitions - Petitioners/ defendants contend that trial Court exceeded its jurisdiction in condoning enormous delay and it has committed serious error of jurisdiction in setting aside default order without therebeing any reasonable and sufficient cause - Even though discretion is vested in Court to condone delay, such discretion has to be exercised in sound and rational manner and that grounds on which condonation of delay was sought and ex parte order was sought to be set aside are wholly inadequate to condone such huge delay and set aside ex parte order - Respondent/plaintiff contends that revision petition is not maintainable as petitioners/defendants have waived their right, if any, to question order in applications by receiving costs awarded by lower Court for condonation of delay and deposited by respondents and that as condonation of delay falls exclusively within jurisdiction of trial Court, such an order passed by it, even found erroneous falls within its discretion and that High Court cannot set aside such an order by exercising revisional jurisdiction u/Sec.115 of CPC - In this case, plea of respondent that as Advocate to whom case was entrusted did not evince interest properly and they having suspected his bonafides they have changed their Advocate,

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where upon they came to know that suit was not prosecuted by Advocate and accordingly it was dismissed for default on 28-1-2002 and that fact of dismissal of suit came to their knowledge only on 20-10-2009 when they went to their present Advocate with no objection Valakath and they did not file adjournment petition on 28-1-2002 - Pleas raised by respondents/plaintiffs are self contradictory - Trial Court ought not to have given credence to cobbled-up version of respondents designed only to get suit restored - Lethergic and laidback approach of respondents is further evidence from fact that after dismissal of suit they have kept quite for 7½ years before filing applications in questions - Respondents failed to prove their case that there was reasonable cause for their absence on 28-1-2002 before trial Court - Even though finding of lower Court falls in realm of appreciation of facts, it has failed to take into consideration material aspects while accepting plea of respondents - In this case, respondents/plaintiffs engaged petitioners/defendants in civil litigation for more than 14 years before they allowed suit to be dismissed for default and have gone in do deep slumber for 7½ before they have filed application for condonation of delay in filing application for restoration of suit - By their default, valuable right came to be vested in petitioners and such right cannot be taken away in light-hearted manner by accepting specious plea put-forth by respondents which is a mere subterfuge - Trail Court wrongly exercised discretion vested in restoring suit nearly 8 years after its dismissal - Order of lower Court, set aside - CRP, allowed. **Manemma Vs. V.Anantha Reddy (died) per L.Rs. 2013(1) Law Summary (A.P.) 1.**

—Or.9, Rules 9 and 13 and Or.22, Rule 4(4) - Condonation of delay in filing Application to set aside ex parte decree - Respondent filed suit for specific performance of agreement of sale - Appellants after filing written statement stopped appearing and they are not represented by Advocate - Subsequently appellant died - Trial Court allowed application filed by respondents for ex parte proceedings and decreed suit - IAs filed by LRs for recall of ex parte decree and condonation of delay in filing IAs Single Judge of High Court did not accept factual assertion made by applicants for explaining delay in I.As observing that applicants were aware of proceedings even during earlier rounds of litigation involving the deceased plaintiff to which they were also parties and therefore reasons given for delay in approaching Court are not satisfactory - Appellant contends that it is imperative for a Court to exempt plaintiff from necessity of substituting LRs of defendant before proceedings with matter - In absence of any such express exemption granted by Court no benefit can be drawn by plaintiff who has obtained a finding in his favour without impleading LRs in place of deceased defendant - Trial Court can proceed with a suit under provisions of Or.22, Rule 4(4) without impleading LRs of defendant who have filed written statement have failed to appear and contest suit - If Court considers it fit to do so - All ingredients of Or.22, Rule 4(4) of CPC stood fully satisfied in facts and circumstances of present case - Therefore Single Judge has not committed any error what so ever in proceedings with matter in suit as against sole defendant without impleading his LRs in his

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place - Hence determination of Single Judge with reference to Or.21, Rule 4(4) of CPC, upheld - Appeals, dismissed. **Sushil K.Chakravarty (D) & LRs. Vs. Tej Properties Pvt. Ltd. 2013(2) Law Summary (S.C.) 46 = 2013(4) ALD 89 (SC) = 2013 AIR SCW 1942 = AIR 2013 SC 1732.**

—Or.9, Rule 13 - Respondent filed suit for relief of specific performance of agreement of sale against petitioners 1 to 4 - Deceased 1st petitioner father of petitioners 2 to 4 filed written statement and same was adopted by other petitioners - 1st petitioner died - However without taking any formal steps to bring legal representatives of deceased petitioners on record trial Court proceeded and passed ex parte decree - Respondent/DHR filed EP for execution of decree and at that stage petitioners 2 to 4 filed Application under Or.9, Rule 13 to set aside ex parte decree - Trial Court dismissed said Application - In this case decree passed as though 1st defendant was alive without brining his LRs on record - Though version of the petitioners was contradicted by respondent in his counter, Court was under obligation to bestow its attention to relevant facts - However, with one sentence, viz., "the petition is misconceived and also an attempt to mislead the Court", I.A is dismissed - If trial Court was not satisfied with contention of petitioners, be it as to extent of delay or reasons mentioned therefor, minimum expected of Court to record its reasons in support of his conclusions - Order passed in such a hasty and shabby manner cannot at all be countenanced - Application filed under Or.9, Rule 13 CPC by petitioners, shall stand allowed and ex parte decree set aside - CRP, allowed. **B.Jagganna Dora Vs. Somi Estates & Housing (PV) Ltd. 2013(3) Law Summary (A.P.) 102.**

—Or.9, Rule 13 - Appeals filed aggrieved by conditional order to condone the delay....Sufficient Cause....is to receive liberal construction so as to advance substantial justice - COSTS.... should be so assessed as would reasonably compensate the Plaintiff for the loss of time and inconvenience caused by relegating back the proceedings to an earlier stage. **GMG Engineering Industries Vs. ISSA Green Power Solution 2015(2) Law Summary (S.C.) 6**

—Or.9, Rule 13 - **CONSUMER PROTECTION ACT,** Secs.15 & 17 (1) (b) - CONSTITUTION OF INDIA, Art.227 - Complaint lodged by 1st respondent/complaint before District Consumer Forum - Ex parte order passed for non appearance of petitioner and also opposite party No.1 - District Forum returning I.As filed under Or.9, Rule 13 of CPC to set aside ex parte order stating that order passed by Forum is final order on merits and remedy of petitioner is to file appeal before State Commission - Hence present revision under Art.227 - Petitioner contends procedure contemplated under CPC is made applicable to Forum while deciding consumer dispute cases, applications filed under Or.9, Rule 13 CPC should have been entertained and order returning applications so filed is not appealable u/Sec.15 of Act - High Court can exercise judicial review in exercise of *certio rari* jurisdiction under Art.226 of Constitution

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against final orders passed by statutory Tribunal or quasi judicial authority, but not against interlocutory order which will have effect of finally adjudicating lis before them - Admittedly in case on hand, if petitioner is aggrieved by order passed by District Forum against final order namely, *ex parte* order passed in C.Cs, remedy is to file an appeal before State Commission or if he is so aggrieved by order in not entertaining I.As filed under Or.9, Rule 13 for setting aside *ex parte*, remedy if any is only to file revision u/Sec.17(1)(b) of Act - A specific alternative remedy is provided by way of revision to State Commission to party aggrieved against any order passed by District Forum either pending consumer case or decided finally - An effective alternative remedy is available under special enactment, High Court will not exercise its extraordinary power under Art.227 - In view of alternative remedy available to petitioner, present revision cannot be entertained and same liable to be dismissed - Petitioner is at liberty to avail alternative remedy available under Sec.17 (1) (b) of Act. **Koganti Atchutha Rao Vs. Koganti Vineeth 2011(3) Law Summary (A.P.) 1 = 2011(6) ALD 90 = 2011(5) ALT 797.**

—Or.9, Rule 13 - **INDIAN PENAL CODE,** Sec.498-A - Respondent filed OP filed for divorce against petitioner/wife - Family Court Vizag., decreed OP ex parte - Petitioner/ wife filed petition to set aside ex parte decree with delay of 153 days stating that her parents are from State of Chattisgarh and when she was subjected to harassment for additional dowry, she filed complaint in Mahila Police Station, Raipur, Chattisgarh u/Sec.498-A IPC against respondent/husband and also filed MJC in Family Court at Raipur - Petitioner contends that she was not served with notice in OP filed by respondent and she came to know when respondent appeared before trial Court and stated about ex parte decree - Application opposed by respondent - Trial Court dismissed Application to set aside ex parte decree - Delay of 153 days in filing Application by woman spouse to set aside ex parte decree passed against her, deserved to be condoned by any standard particularly, when she pleaded that she did not receive notice OP and when she is residing in another State- Only reason that weighed with trial Court in refusing to condone delay was that respondent had married another women and that hardly constitutes any basis to defeat rights of petitioner - In this case, that proceedings are pending in Courts at Raipur and Vizag, discloses that relationship not cardial and acts resorted to respondent in obtaining ex pate decree and immediately contacting second marriage cannot at all countenanced, much less Court can put a seal of approval upon it - Though status of second marriage contracted by respondent may be at a stake, it cannot outwit gross injustice done to petitioner - Delay of 153 days in filing application to set aside ex parte decree, condoned - CRP, allowed. **Rachokonda Parvathi Vs. Rachakonda Venkata Subrahmanyam 2013(2) Law Summary (A.P.) 48 = 2013(4) ALD 3 = 2013(4) ALT 589.**

—Or.9, R.13 - **LIMITATION ACT,** Sec.5 - Suit for recovery of Rs.66 lakhs - Decreed *ex parte* - Trial Court dismissed Application filed by 1st defendant along with Application to

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condone delay of 190 days in filing petition under Or.9, R.13 to set aside ex parte decree soon after receipt of E.P, notices - CRP also dismissed by High Court - Hence present appeal filed by 1st defendant with delay of 1189 days - In this case, in application filed seeking to condone delay, 1st defendant categorically mentioned that after receipt of suit summons, standing counsel was instructed to make his appearance and defend suit - But ground for condonation of delay in filing application under Or.9, R.13 was that suit summons not received, therefore, 1st defendant had no knowledge about filing of suit - Therefore there is any amount of divergence in statement made by 1st defendant and this variation in stand taken by 1st defendant, obviously nullifies and cuts across its very contention that suit summons not received - Surprisingly again same stand of non-service of suit summon, was taken as ground for filing appeal in time with additional ground of death of Chairman of 1st defendant, Bank - Original delay of 190 days on ground of non-service of suit summons rejected by Court below and same confirmed by single Judge in CRP - 1st defendant cannot be permitted to take same ground in order to maintain present appeal with inordinate delay of 1189 days - What it could not achieve before Court below and in revision before High Court on a particular ground, same cannot be achieved by way of first appeal along with application to condone delay on same ground - Death of Chairman of first defendant, Bank cannot be a ground to prosecute proceedings with diligence - As death of Chairman had taken place during pendency of suit itself same cannot be considered as a valid reason for filing present appeal with inordinate delay - It is for 1st defendant to contest suit with due diligence - Application to condone delay is liable to be dismissed - Appeal also dismissed. **Charminar Co-operative Urban Bank Ltd. Vs. S.B.H. 2008(2) Law Summary (A.P.) 65 = 2008(3) ALD 320 = 2008(3) ALT 9.**

—Or.9 R.13 – **LIMITATION ACT,** Sec.5 - Delay of 850 days - Trial Court allowed Application to condone delay of 850 days in filing petition to set aside exparte Judgment and decree - Petitioner/Plaintiff contends that Respondent / Defendant preferred appeal challenging exparte Judgment and Decree and subsequently not pressed said Appeal and therefore cannot invoke Provisions of Order 9 Rule 13 C.P.C. as it is bar under Explanation to said provision - Respondent / Defendant contends that Trial Court rightly negatived objection of plaintiff, because Appeal not decided on merits and it was dismissed as not pressed, which will not amount to withdrawal - In this case Appeal not dismissed on merits and it was dismissed as not pressed - withdrawing Appeal or not pressing Appeal is one and same because in both cases there will be no order on merits - If it was not pressed on any ground which prohibits party from availing any other remedy available under law then Plaintiff may be correct in objecting, but when Explanation provides that withdrawal of Appeal enables party to invoke Provision of order 9 Rule 13 C.P.C., not pressing Appeal would also come under purview of withdrawal and Trial Court has rightly considered this aspects – Order of Trial Court, justified – Revision, dismissed. **S.Davender Reddy Vs. S.Ravinder Reddy 2015(2) Law Summary (A.P.) 578 = 2015(4) ALD 392.**

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—Or.9, Rule 13 - **LIMITATION ACT,** Sec.5 - Suit for specific performance of agreement of sale - Suit decreed ex parte - Petitioner/defendants filed Application under Or.9, Rule 13 to set aside ex parte decree along with I.A u/Sec.5 of Limitation Act to condone delay of 502 days - Trial Court allowed Application holding that valuable rights of defendants involved in matter and they cannot be condemned unheard - Hence present revision filed by plaintiffs - Petitioner contends that defendants are negligent in contesting suit and they did not explain day to day delay in filing Application under Or.9, Rule 13 and that defendants failed to avail opportunity of contesting suit and therefore no indulgence can be shown to them.

"It is axiomatic that condonation of delay is a matter of discretion of Court . Sec.5 of Limitation Act does not say that such discretion can be exercised only if delay is within certain limits - Lengthof delay is not a matter, acceptability of explanation is only criterion.".

In this case, defendants had engaged Counsel by paying him fee and through him written statement also filed in 2007 - Proceedings in suit admittedly dragged on and on 17-2-2010 defendants were set exparte due to non appearance of their Counsel - Though their Counsel told them that he would call them as and when their presence is required but unfortunately he did not appear to have contacted defendants and informed them about proceedings in suit after filing of written statement and there is no reason to disbelieve plea of defendants that they have waited bonafidely believing that Counsel would inform them about proceedings in suit - As rightly observed by Supreme Court length of time is not matter, but acceptability of explanation is only criterion - In this case, defendants had made out sufficient cause for condonation of delay in filing Application to set aside ex parte decree and that they deserve a chance to contest suit on merits - Impugned order of lower Court, justified - CRP, dismissed. **R.Krishna alias Kistaiah Vs. R.Bala Narasaiah 2014(1) Law Summary (A.P.) 147 = 2014(2) ALD 297 = 2014(2) ALT 634.**

—Or.9, R.13 - **LIMITATION ACT,** Sec.5 & Art.123 - Suit for specific performance of agreement of sale - Decreed ex parte - Trial Court dismissed Application filed by defendant to set aside ex parte decree - Appellate Court confirmed order of trial Court - Petitioner/defendant contends that suit agreement of sale is rank forgery and plaintiff deliberately taken suit summons to wrong address and that suit decreed ex parte without service of summons to him - Respondent/plaintiff contends that defendant failed to contest even execution petition and possession of suit property also delivered to him through Court and therefore petition filed under Or.9, Rule 13 at belated stage was not *bona fide* apart from being barred by limitation -In this case, as finding has been recorded that summons were not served on defendant, later part of Art.123 is attracted and consequently period of limitation begins to run when defendant had knowledge of decree - It is also relevant to note that defendant in his affidavit in I.A as well as in his evidence categorically stated that he never resided at Chennai at

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address shown in casue title - In absence of any evidence on behalf of plaintiff contradicting version of defendant, lower appellate Court not justified in holding that deendant can be imputed knowledge on date of delivery of possession -Both Courts below had misdirected themselves in law in holding that I.A was barred by limitation on mere assumption that defendant had knowledge of ex parte decree more than 30 days before application under Or.9, Rule 13 - Such a conclusion without recording a clear finding as to date of knowledge of defendant about ex parte decree is erroneous and unsustainable - Order of trial Court as confirmed by lower appellate Court, set aside. **K.Naveen Kumar Vs. M. Suresh Babu 2009(2) Law Summary (A.P.) 197 = 2009(5) ALT 187.**

—Or.9, Rule 13, Sec.13(1)(b) and Or.23 - Appellants filed suit for declaration on basis of oral partition in family and obtained ex-parte decree - One year thereafter respondents filed suit against appellant with prayer to cancel said decree contending that summons in suit were not served in accordance with procedure prescribed under Rule 5 and that process server endorsed that summons were served and taking same into account trial Court set defendants ex-parte and passed ex-parte decree and therefore allegation of fraud on part of appellant herein was made - Trial Court dismissed said suit - Appellate Court allowed appeal filed by respondents - Hence, present second appeal - Appellants contend that in case respondents were of view that summons were not served in accordance with law, they could have filed application under Rule 13 of Or.9 or preferred an appeal and even on merits trial Court recorded finding to effect that summons were properly served - Respondents submit that appellant obtained ex parte decree by playing fraud and that there is no bar in law for institution of separate suit for cancellation of decree obtained by fraud - Filing of separate suit for cancellation of ex parte decree by persons, who are parties to that very decee, is unknown to law and it is not only opposed to provisions of CPC, but also to public policy - If such course is permitted, an independent suit can be filed for setting aside decree which acquired finality after exhaustion of remedies of appeals, simply by raising plea of fraud - Therefore, very institution of suit by respondents for setting aside decree to which they were parties was untenable - Second appeal, deserved to be allowed on that count alone - Accordingly second appeal allowed. **Nannuri Sathi Reddy Vs. Nannuri Narsi Reddy, 2012(1) Law Summary 60 = 2012(2) ALD 563 = 2012(2) ALT 113.**

—Or.9, Rule 13 r/w Sec.151 - **HINDU MARRIAGE ACT,** Sec.28 & 21 - Trial Court allowed petition to set aside ex parte decree passed under Hindu Marriage Act - Objection taken about inapplicability of Sec.5 of Limitation Act and Or.9 of C.P.C to proceedings under Hindu Marriage Act - Trial Court overruled objection and passed orders - Or.9, Rule 9 of CPC applicable to proceedings under Hindu Marriage Act - Application under Or.9, Rule 13 of CPC after condoning delay in filing same, obviously in recognition of maintainability of such application in proceedings under Hindu Marriage

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Act - Impugned order - Justified - CRP, dismissed. **Eluru Sreenivasa Rao Vs. Eluru Sri Lakshmi Padmavathi @Padmavathi 2010(3) Law Summary (A.P.) 95.**

—Or.9, Rule 13 r/w Sec.151 - **LIMITATION ACT,** Sec.5 and Art.123 - Respondents filed suit for declaration of title, possession and permanent injunction against appellants/ defendants in respect of house property and obtained ex parte decree - Trial Court dismissed Application filed for setting aside ex parte decree holding same as barred by time - Appellate Court allowed appeal - High Court held that Application filed by appellants/defendants barred by time and appellate Court had not recorded any finding on question as to whether filing of Application u/Sec.5 of Limitation Act was necessary or not and that appellate Court exceeded its jurisdiction in allowing Application without condoning delay - In this case, High Court took view that application ought to have been filed within 30 days from passing of decree and since it was not so filed atleast a condonation of delay Application should have been made u/Sec.5 of Limitation Act - Therefore in absence of prayer for condonation of delay, appellate Court could not have allowed application under Or.9, Rule 13 - In this case, appellate Court rightly considered question of filing Application under Or.9, Rule 13 on merits and appellate Court is absolutely right in coming to conclusion that appellant defendants are fully justified in filing application under Or.9, Rule 13 at time when they actually filed it and delay in filing Application was also fully explained on account of fact that they never knew about decree and orders starting ex parte proceedings against them - High Court should not have taken hyper- technical view that no separate Application was filed u/Sec.5 - Application under Or.9, Rule 13 itself have all ingredients of Application for condonation of delay in making that Application - Procedure is after all handmaid of justice - Judgment of High Court, set aside and restore that of appellate Court - Appeal, allowed. **Bhagmal Vs. Kunwar Lal 2010(3) Law Summary (S.C.) 23.**

—Or.9, Rule 13 & Or.5, Rule 9(5) - **General Clauses Act,** Sec.27 - Petitioner/Company filed suit for recovery of certain amount from respondent/Industry and obtained ex parte decree on 29-1-2009 - After receipt of E.P notice respondent filed Application under Or.9, Rule 13 for setting aside ex parte decree, along with Application to condone delay of 30 days in filing said Application - Petitioner filed a detailed counter/affidavit denying allegations of respondent that it has not received suit notice and that therefore it has no knowledge passing of ex parte decree and that for first time respondent came to know about passing of decree after receipt of E.P notice and also specifically averred that petitioner has got legal notice served on respondent on 24-3-2008 and that suit notice was served on 1-12-2008 and inspite of said notice, respondent did not appear before Court due to which suit decreed ex parte on 29-1-2009 - In this case, even though acknowledgment of notice, issued by Court in suit, is not marked trial Court, nevertheless, considered same, on which petitioner placed reliance - Trial Court observed that acknowledgment contains signature of receiver but neither name

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of receiver nor stamp of respondent/Industry have been scene therein - On this premise trial Court has refused to rely upon this acknolwedgment - Hence petitioner filed present CRP - Under Or.5 Rule 9(5) CPC when acknolwedgment or any other receipt purported to be signed by defendant or his agent or postal artical containing summons is received by Court with an endorsement purported to have been made by postal employees or any other person authorised by courier service to effect that defendant or his agent had refused to take delivery of postal article containing summons or has refused to accept summons by other means specified under sub-rule (3) when tendered or transmitted to him, Court issuing summons shall declare that summons have been duly served by defendant - Since petitioner was able to prove that acknowledgment was received by Court showing that suit summons were served on 1-12-2008, lower Court committed serious error in holding that there is no proper proof of service of notice on respondent - Therefore respondent cannot plead to ignore delay till service of notice in E.P - There is nearly two years delay in respondent filing application for setting aside ex parte decree - Trial Court has miserably failed to make a proper and correct approach in appreciating these glaring facts borne by record - Order of trial Court, set aside and I.A stands dismissed. **Raghunath Agrotech Pvt. Ltd., Vs. M/s.Ajanta Agro Industries, 2012(2) Law Summary (A.P.) 259** = **2012(1) Law Summary 248 = 2012(4) ALD 429 = 2012(4) ALT 560.**

—Or.9, Rule 13 and Or.9, Rule 6(1)(c) and Or.5, Rule 15 - **LIMITATION ACT,** Sec.5 - Petitioner/plaintiff filed suit for specific performance of agreement of sale - Respondents/ defendants set ex parte basing on report of Process Sever - Trial conducted and ex parte decree passed by trial Court - Subsequently EP also filed - Respondents/ defendants filed Application under Or.9, Rule 13 to set aside ex parte decree along with Application u/Sec.5 of Limitation Act to condone delay of 1521 days in filing application to set aside ex parte decree - Respondents/defendants contend that refusal of summons by some unconcerned persons cannot be taken as refusal by parties to suit and that summons were not properly served on defendants/respondents and that petitioner who is an Advocate misrepresented to Court and obtained ex parte decree by playing fraud on Court on basis of forged and materially altered documents - Respondents contend that there is no sufficient cause for condonation of extraordinarily long period of 1521 days in filing Application to set aside ex parte decree and therefore both Application ought to be rejected - Trial Court allowed Applications holding that respondents/defendants not able to establish that they have changed their address and did not file any document acceptable proof of address to show that they are residing only at a particular place and that petitioner being a pacticing advocate ought to have followed proper procedure and taken a contested decree rather than taking a decree behind back of respondents, particularly when there are serious allegations of fraud and alteration of documents and that there is no negligence and latches on part of respondents in filing application to set aside ex parte decree and there are sufficient grounds to condone delay in filing said application and for setting aside ex

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parte decree - Petitioner/plaintiff contends that orders passed by trial Court are unsustainable and reasoning of Court is perverse - Respondents contend that trial Court rightly considered evidence on record and condoned delay in filing application to set aside ex parte decree and has set aside said ex parte decree - In this case, trial Court erred in clacin reliance on oral evidence of P.Ws 1 & 4 and accepting plea of respondents that they had shifted to from one place to another place - Observations of trial Court regarding refusal of summons by ladies and affix same to door which are purely based on conjectures and surmises and it should have refrained from making them - It appears to have not notice Rule 15 of Or.5 CPC which permits a Process Server to seek to serve summons on any adult male or female member of family of defendants - When such service was refused by ladies who are adult female members of family of respondents, only conclusion to be given is one of service of summons and this is also a glaring error in order passed by trial Court and it ought to have given due weight to consideration of record of Process Server by Senior Civil Judge before he set respondents ex parte as admittedly record of Process Server would have been available before that Court - Hence it cannot be presumed that Court set respondents ex parte without looking into said record - In this case, one should also take note of second proviso to Or.9, Rule 13 CPC - In facts and circumstances of present case that a presumption of service of notice of summons on defendants respondents is inevitable on account of refusal to receive summons by female members of family of respondents at a particular address and rejection of their plea that they were not residing there at that time - Summons would have been attempted to be served giving sufficient time to defendants to appear at hearing and therefore in view of second proviso to Or.9, Rule 13 CPC, ex parte decree could not have been set aside by trial Court on an assumed irregularity in service of summons - Trial Court acted perversely in allowing Applications to set aside ex parte decree by condoning delay - Revision petitions, allowed. **N.Hanmanth Reddy Vs. Smt.Razia Begum 2013(2) Law Summary (A.P.) 228 = 2013(6) ALD 214 = 2013(5) ALT 417.**

—Or.9, Rule 13, Or.17, Rule 2 & Sec.96 - Plaintiff filed suit for specific performance of suit agreement - Defendant denied execution of suit agreement - While plaintiff examined P.Ws. 1 to 3 and marked Exs, and that defendants did not adduce any evidence and their Counsel reported no instructions when P.W.3 was being examined - Suit therefore decreed on basis of evidence adduced by plaintiff - According to appellants/defendants, it is an exparte decree - However, instead of approaching trial Court with an Application under Or.9, Rule 13 CPC regular appeal filed under Sec.96 CPC seeking condonation of delay - In affidavit filed in support of Application for condonation of delay it is stated that though P.W.1 and 2 were cross-examined by their Counsel, Counsel straightaway reported no instructions when P.W.3 was being examined and thereafter there was hardly any opportunity for defendants and that defendants/appellants had knowledge of said ex parte decree when they received

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notice in execution petition - Respondent/plaintiff contends that Counsel for petitioners in trial Court, cross examined P.Ws.1 & 2, but at time of examination of P.W.3 counsel reported no instructions - Thereafter lower Court heard arguments on behalf of respondent/plaintiff and pronounced judgment and decreed suit - Petitioners being parties to suit are under obligation to attend Court on each date of hearing particularly during trial and as such petitioners cannot make lame excuse of lack of knowledge of proceedings of suit and decree passed by trial Court - Appellants submit that they had engaged counsel and they had depend on him and it now turned out that without knowledge of defendants, he reported no instructions and thereby suit came to be decreed without further contest by defendants. Evidently in this case, on 8-10-2012 trial Court has set appellants/defendants ex parte, but also closed evidence on part of defendants and after hearing arguments posted suit for judgment and pronounced judgment on 11-10-2012 - Whole procedure adopted by trial Court on said two crucial dates, extracted above, clearly shows that trial Court has violated mandate of Or.17, Rule 2 and without posting suit for defendants evidence, trial Court straightaway heard arguments and pronounced judgment - Moreover Counsel for defendants has not cross-examined P.W.3 but reported no instructions - In law, therefore defendants were not represented and any order passed was clearly an ex parte order against defendants - In this case, it is clearly evident that decree passed by trial Court is ex parte decree which is also vitiated on account of non-application of mind and not consideration of issues - Hence impugned judgment suffers from procedural as well as jurisdictional errors and warrants interference u/Sec.96 CPC - Decree and judgment passed by trial Court, set aside - Appellants/defendants are required to be granted opportunity to contest suit by participating in suit from stage of evidence of P.W.3 onwards - Appeal, allowed. **Mailwar Narsappa Vs. B.Sangamma 2013(3) Law Summary (A.P.) 178 = 2013(6) ALD 499.**

—Or.9, Rule 13 and Or.20, Rule 11 and Or.34, Rule 2 - "Preliminary decree" - Respondent filed suit against appellant for foreclosure of mortgage - Trial Court passed *ex parte* preliminary decree - Trial Court allowed I.A filed by appellant under Or.9, Rule 13 to set aside ex parte decree on condition that appellant shall deposit half of decretal amount - Since condition not complied with, application dismissed - Appellant contends that trial Court not sure as to amount covered by decree and what was taken into account was, amount claimed in suit - Once High Court granted time for payment of amount and appellant paid same according to his caliculation, trial Court ought not have dismissed I.A - In case, trial Court entertained any doubt as to compliance with order passed by High Court, it ought to have left it to parties to seek necessary clarification from High Court - PRELIMINARY DECREE IN A SUIT FOR FORECLOSURE OF MORTGAGE - Defendant in such suit has six months time to pay amount after preliminary decree is prepared - A final decree would follow in event of failure on part of defendant to comply with preliminary decree - In present case, no preliminary decree appears to have been drawn by time trial Court allowed I.A. to set aside ex parte decree - Approach of trial Court cannot be countenanced -

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First of all, it failed to prepare a preliminary decree as contemplated under Or.36, Rule 2 and there was absolutely no basis for it to indicate any amount - In that view of matter, very condition requiring opposite to appellant to deposit half of decretal amount was not at all a meaningful exercise - In a mortgage suit a preliminary decree can be passed only after undertaking some exercise, such as ascertaining costs,component of interest, as indicated under Rule 2 of Or.34 - A two-line pronouncement, viz., that "the suit as prayed for is decreed" cannot by itself become a preliminary decree and obligated JDR to comply with it - Trial Court ought to have bestowed its attention to relevant provisions of law, that govern suit for mortgage and ensured that lapses pointed out against it, are complied with - CMA, allowed. **Mandapalli Chenchu Rama Rao Vs. State Bank of India, Addanki 2011(2) Law Summary (A.P.) 324 = 2011(5) ALD 49.**

—Or.9, Rule 13 and Or.43, Rule 1(d) - **LIMITATION ACT,** Sec.5 - Sui decreed ex parte - Defendant could not file counter even in EP - IA filed to condone delay of 252 days in filing petition to set aside ex parte decree stating that she could not file petition due to jaundice and severe fever and since her counsel was suffering from cancer - Trial Court dismiised petition holding that Court has no power to extend period of limitation on equitable grounds, if no suffcient grounds were made out to condone delay - Respondet contends that there was no explanation for delay of 252 days and that an appeal lies under Or.43, Rule 1(d) of CPC against an order under Or.9, Rule 13 CPC rejecting to set aside an ex parte decree - Or.43, Rule 1(d) CPC specifically provides for an appeal against order of rejection of Application under Or.9, Rule 13 and not on petition u/Sec.5 of Limitation Act, which is a prelude or precondition for entertaining an Application under Or.9, Rule 13 CPC - Therefore contention that revision does not lie against impugned order, negative - It is true that delay of more than 252 days in approaching to have ex parte decree set aside, is substantial but it is well settled that Rules of procedure are intended to advance cause of substantial justice, but not to punish parties for their technical lapses - Order, set aside and I.A will be allowed on deposit of Rs.35,000/- to credit of matter. **Nagulapu Raju Vs. Tirupathi 2009(2) Law Summary (A.P.) 380.**

—Or.10, Rules 1 & 2 and Or.12, Rule 3-A - **CRIMINAL PROCEDURE CODE,** Secs.340, 195 (1)(b) r/w Sec.195 IPC - "Ascertainment whether allegations in pleadings are admitted or denied" - "Power of Court to record admission" - Rule 2 of Or.10 CPC - Scope and object and correctness of invoking Sec.340 of Cr.P.C in regard to answers given by party in an examination under Or.10, Rule 2 of CPC – Stated - Rule 1 of Or.10 enables Court to ascertain from each of parties (or his pleaders), at first hearing whether he admits or denies such of those allegations of facts made in pleadings of other party, which were not expressly or by necessary implication admitted or denied by him - Resort to Rule 1 is necessary only in cases where Court finds that plaintiff or defendant has failed to expressly or impliedly admit or deny any of allegations made against him by other party - On other hand Rule 2 enables

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Court to examine not only any party but also any person accompanying either party or his pleader to obtain answer to any material question relating to suit, either at first hearing or subsequent hearings - Object of oral examination under Rule 2 is to ascertain matters in controversy in suit, and not to record evidence or to secure admissions - Power of Court to call upon a party to admit any document and record whether party admits or refuses or neglects to admit such document is traceable to Or.12, Rule 3-A rather than Or.10, Rule 2-A of CPC - Nothing however comes in way of Court combining power under Or.12, Rule 3-A with its power under Or.10, Rule 2 calling upon a party to admit any document when a party is being examined under Or.10, Rule 2 - But Court can call upon a party to admit any document and cannot cross-examine a party with reference to a document - Scope of Or.10, Rule 2 is limited identifying matters in controversy and not adjudicated upon matters in controversy - Object of examination under Or.10, Rule 2 is to identify matters in controversy and not to prove or disprove matters in controversy, nor to seek admissions, nor to decide rights or obligation of parties - Cr.P.C. Sec.340, r/w Sec.195 IPC - Sec.195 Cr.P.C provides that whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards shall be punished as a person convicted of that a offence would be liable to be punished - Sec.340 of Cr.P.C provides that when upon an application made to it in that behalf or otherwise any Court is of opinion that it is expedient in interest of justice that an enquiry should be made in any offence refer to in Sec. 195 (1) (b) which appears to have been committed in or in relation to a proceedings in that Court, or as case may be, in respect of document produced or given in evidence in proceedings in that Court - Power u/Sec.340 Cr.P.C r/w Sec.195 I.P.C can be exercised only where some one fabricates false evidence or gives false evidence - By know stretch of imagination a party giving an answer to question put under Or.10, Rule 2 of Code when not under oath and when not being examined as a witness, can attract Sec.195 IPC, and consequently cannot attract Sec.195 (1) (b) and Sec.340 of Cr.P.C - Decision of Court to consider initiationof proceedings u/Sec.340 Cr.P.C r/w Sec.195 IPC in regard to an answer to a question put under Or.10, Rule 2 of Code is ill-conceived and wholly without jurisdiction - Appeal, allowed. **Kapil Corepacks Pvt. Ltd., Vs. Shri Harbans Lal through Lrs, 2010(3) Law Summary (S.C.) 29 = 2011(1) ALD 1 (SC) = 2010 AIR SCW 4593 = AIR 2010 SC 2809 = 2010(3) SCC(Crl) 924.**

—Or.11, Rule 1 - **"Interrogatories"** - Suit filed for declaration and for recovery of possession - Respondent/defendant filed written statement denying claim of petition - Trial Court dismissed Application seeking to grant leave to deliver Interrogatories to respondents on certain aspects - Petitioner contends that parties to a suit have every right to deliver Interrogatories to other party and latter is under obligation to answer same and that interrogatories can even touch core issues in suit and answer to such questions would minimise scope of controversy - Provisions under Or.11 CPC

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cannot be invoked to make or compel other party to reveal details of his defence or to state something contrary what has been pleaded by it - However nature of Interrogatories to be delivered on party and which need to be answered by other, must be such that, it does not result in shifting burden or onus of proof on respect issues - Procedure under Or.11, CPC cannot be treated as a substitute for discharge of burden of proof in a suit by concerned party - View taken by trial Court, justified - CRP, dismissed. **Mudimela Konda Reddy Vs. Gona Nagi Reddy 2010(3) Law Summary (A.P.) 33.**

—Or.11, Rules 1 & 2- **CONSTITUTION OF INDIA,** Art.227 - Interrogatories - Plaintiff transferee of actionable claim filed suit for recovery of certain amount on ground that actionable claim executed by a Company registered in U.S.A - Defendants after filing written statement filed Application along with interrogatories on plaintiff seeking direction to plaintiff to answer same - Plaintiff resisted petition by filing counter stating that interrogatories annexed to Application or a nature of enlightening defendants themselves about transaction and they are not relevant - Trial Court dismissed petition holding that all interrogatories are in nature of fishing enquiry and these questions to be permitted to be asked at time of cross-examination - INTERROGATORIES - Scope - PURPOSE AND OBJECT - STATED - After settlement of issues, a party to suit may require information from his adversary as to facts or as to documents in possession or power of such party relevant to issue in suit, and where information as to facts is required, party is allowed to put a series of questions to his adversary - These questions are called *interrogatories* - interrogatory means to ask questions or to make enquiry closely or thoroughly - Function of interrogatories is to enable a party to obtain from opposite party admissions or evidence of material facts to be adduced at a trial to appraise strength or weakness of case before trial and thereby to assist in fair disposal of proceedings at or before trial or in saving costs - Power to serve interrogatories should not be confined within narrow technical limits, but it must be exercised liberally so as to shorten litigation and serve ends of justice - Interrogatories must be directed to facts relevant any matters in issue - In this case answering interrogatories which are now sought to be served on plaintiff by defendants is not by itself a substantiative evidence - Even if plaintiff answers interrogatories still burden is on plaintiff to establish those interrogatories that may be answered by him, during trial of case - Defendants are entitled to know before hand, facts in issue constituting plaintiffs case - Interrogatories now sought to be served on plaintiff by defendants or in nature of facts in issue relevant for purpose of deciding suit - In this case, entire claim of plaintiff is transfer of actionable claim by a particular limited Company, they have to be answered by plaintiff - But defendants denied about availing loan from said Limited Company - Therefore in these circumstances trial Court not justified in dismissing Application - Interrogatories now sought to be served on plaintiff are matters relevant for purpose of deciding facts in issue to be decided during trial - Impugned order set aside and Application is allowed directing plaintiff to answer Interrogatories annexed to Application - CRP, allowed. **M.Kishan Rao Vs.R.Subramanyam 2010(2) Law Summary (A.P.) 63.**

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—Or.11, Rules 8 & 11, r/w Sec.151 - Interrogatories - Trial Court passed order dismissing Application filed by petitioner/plaintiff praying for relief to direct respondents/defendants to report Court particulars of property under their occupation to claim mesne profits, holding that application made is not in accordance with law - PROCEDURE TO ADMINISTER INTERROGATORIES ON OPPONENTS - STATED - Party is entitled to administer interrogatories to his opponents to obtain admission from him with object of facilitating proof of his case as also to save costs which may otherwise be incurred in adducing evidence to prove necessary facts - Petitioner/plaintiff is expected to follow procedure as contemplated under provisions of Or.11 of Code - Impugned order of trial Judge - Justified - Revision petition, dismissed. **Mudimela Konda Reddy Vs. Gona Nagi Reddy 2008(1) Law Summary (A.P.) 82 = 2008(2) ALD 66 = 2008(2) ALT 17.**

——Or.XII, Rl.6 - Revision grounds are that lower Court gravely erred in not taking into consideration pleadings of plaint and admissions of defendants in their written statement and arrived at erroneous conclusions which are prima facie contrary to material on record - If lower Court had gone through pleadings of plaint and pleadings of defendants in written statement, it would have seen that suit claim was admitted by defendants/respondents herein categorically in their written statement and as such, plaintiffs are entitled for a decree under Order XII Rule 6 CPC - Lower Court gravely erred in arriving at various conclusions on basis of some other transactions which have nothing to do with suit claim - It was contented by respondents/defendants that order of lower Court holds good and for this Court within limited scope of revision, there is nothing to interfere hence to dismiss revision.

Held, admission is since clear and subsequent version is absurd and principal amount of Rs.35,00,000/- with interest of Rs.5,18,000/- is suit claim and what is admitted is only for Rs.40,00,000/ and Rs.40,18,000/- includes subsequent interest, trial Court should have been passed decree on admission for recovery of it by kept open remaining issues regarding entitlement of interest and rate of interest on said Rs.35,00,000/-, either from sale agreement terms dated 19.11.2010 and in absence from date of legal notice and its service till date of suit for preliti interest, besides pendentilite interest, discretion of Court as per Sec.34 CPC equally of postliti interest apart from costs of suit if any.

Accordingly and in result, revision is allowed by setting aside dismissal order of lower Court and by allowing application and by passing decree on admission for Rs.40,00,000/- for rest of suit claim to be determined on other disputed aspects on merits from pleadings of parties.**K.Srinivasa Rao Vs. Aasra Archiventures Pvt. Ltd 2016(3) Law Summary (A.P.) 399.**

—Or.12, Rule 6 and Secs.2(2) & 96 - **CONSTITUTION OF INDIA,** Art.227 - Respondent filed suit for recovery of money due from defendant /revision petitioner - Defendant filed written statement contesting suit claim - Plaintiff filed Application under Or.12, Rule 6, contending that there was clear admission in written statement to extent of Rs.45 lakhs out of suit claim and accordingly praying Court to grant decree to extent

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of admitted amount of Rs.45 lakhs - Trial Court negatived contention of defendant and granted a decree in favour of respondent/plaintiff for sum of Rs.45 lakhs - Hence present Revision under Art.227 of Constitution - As against judgment and decree in respect of suit amount passed under Or.12, Rule 6 of CPC on basis of admissions made in written statement, an Appeal lies u/Sec.96 of CPC and not Revision under Art.227 of Constitution of India - When an efficacious alternative remedy by way of appeal is available, jurisdiction under Art.227 cannot be invoked - Revision petition, dismissed as not maintainable - Petitioner is at liberty to prefer appeal u/Sec.96 CPC. **B.Kesav Rao Vs. P.Sivannarayana 2013(3) Law Summary (A.P.) 320 = 2014(1) ALD 306 = 2014(5) ALT 91.**

—Or.12, Rule 6 & Or.23, Rule 3 and Sec.96(3) - Respondent/Plaintiff was entrusted with works of execution for excavation and formation Embankment relating to Sriram Sagar Project - Respondent/plaintiff filed suit for recovery of excess amount paid relating to above works - Trial Court decreed suit - Appellant/Govt. contends that judgment and decree of trial Court not considered several crucial aspects as to jurisdiction, limitation and lack of cause of action - Respondent/plaintiff raised preliminary objection with regard to maintainability of appeal by placing reliance on Sec.96(3) CPC, contending that decree in question being a decree of consent, appeal not maintainable and that trial Court passed decree only when Govt. pleader agreed for reasonable rate of interest and it is not open for State to turn round and file present appeal against said decree and consent of Govt. pleader was recorded by trial Court and as such appeal is not maintainable - In this case, respondents had admittedly incurred huge expenditure on interest and when bank guarantees were unjustly invoked, even after far excess amount was recovered than what is due to State, there is no reason as to why State is not liable to pay interest over said amount - Liability, therefore, being purely contractual and easily established by facts of case there are no merits in Appeal and as such same deserves to be dismissed - Impugned judgment records that "*during the course of arguments council for plaintiff and learned Govt. pleader have agreed that reasonable interest may be awarded*" which shows that on rate of interest Govt. pleader agreed that reasonable rate of interest may be allowed - Trial Court therefore recorded that it is passing an agreed judgment - Admission referred to in Or.12, Rule 6, is that of an admission of any party to suit which is very basis of Or.12 - Consent or admission of Counsel, therefore, is not contemplated under Or.12 CPC - In this case, appellant is not private party but is a State represented by G.P - It is alleged that G.P had no such authority and is inconsistent with stand of appellant throughout suit and as such contention of respondents that binds appellant State cannot be accepted - Decree filed alongwith appeal does not show that it is a decree on consent - Therefore, bar u/Sec.96(3) does not apply and appeal is maintainable - Judgment therefore cannot be said to be judgment as envisaged under Or.12 CPC - Judgment and decree, set aside - Appeal, allowed. **Govt.of A.P. Vs. M. Pratima Reddy 2009(3) Law Summary (A.P.) 287 = 2009(6) ALD 396 = 2009(4) APLJ 23.**

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—Or.13, Rule 3, r/w Sec.151 - **REGISTRATION ACT**, Sec.17 - **STAMP ACT, 1989,** Secs.35 & 36 - Respondents 1 & 2/plaintiffs filed suit against petitioner/2nd defendant and 3rd respondent/1st defendant for return of advance amount with interest - Trial Court dismissed Application filed by petitioner/2nd defendant under Or.13, Rule 3 requesting to de mark and reject Ex.A.1 original agreement of sale and to cschew evidence of P.W.1 in regard Ex.A./1 - Petitioner/2nd defendant contends that suit is not for specific performance of said agreement of sale as suit is filed for return of advance amount with interest - Objection raised by 2nd defendant for exhibiting said unregistered agreement of sale on ground that agreement which is required under law to be registered is hit by Sec.17 of Registration Act - Inspite of said objection trial Court allowed document to be exhibited as Ex.A.1 - Hence petitioner filed said petition for demarking and rejecting document - Trial Court erroneously dismissed Application - In written statement no objection was raised in regard to its admissibility and no objection also raised when document was exhibited on behalf of plaintiff - When once document is marked as Ex.A.1 without any objection it cannot be de marked and evidence regard to said document cannot be eschewed - Ordinarily objection to admissibility of evidence should be taken when it is tendered and not subsequently - In this case, trial Court failed to take note of binding ratios in decisions of Hon'ble Supreme Court and Full Bench decision of High Court and had arrived at an incorrect conclusion to effect that document is exhibited without any objection, aggrieved party is precluded from raising an objection as to admissibility of document though matter relates to substantive law such as Registration Act or Stamp Act or other specific provision - Merely because document has been marked as "an exhibit" an objection as to its admissibility is not excluded in case on hand and is available to be raised even at a later stage or even in appeal or revision - Therefore, impugned order liable to be set aside - Revision Petition, allowed - Defendants are at liberty to raise before trial Court as to inadmissibility of exhibit A.1 for want of registration as required u/Sec.17 of Registration Act. **Boggavarapu Narasimhulu Vs. Sri Sriram Ramanaiah, 2014(1) Law Summary (A.P.) 35 = 2014(2) ALD 426 = 2014(1) ALT 577.**

—Or.13 Rule 4 - **INDIAN STAMP ACT,** Sec.36 - Respondent/plaintiff filed suit in Junior Civil Judge's Court seeking decree for perpetual injunction stating that he is absolute owner of suit property and is in exclusion possession of said property and his name is reflected in revenue records including Pattadar Pass Books - Second petitioner-second defendant filed written statement stating that respondent/plaintiff entered into agrement of sale of suit land with 1st petitioner/defendant who is her husband and on payment of total sale consideration possession was delivered to 1st petitioner/defendant and thereupon he constructed house after obtaining permission from Gram Panchayat - After evidence of respondent/plaintiff 1st petitioner/1st defendant was examined as D.W.1 and Exs.B-1 to B-3 which are agreements of sale, were marked through him '- During course of examination of 2nd defendant, objection was taken regarding admissibility of documents on ground that they were deficiently stamped - Trial Court found said documents are deficiently stamped and accordingly passed impugned order with direction to take steps for impounding documents either before Court or before concerned Authorities - Petitioner/defendants contend that impugned

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order is without jurisdiction and documents in question were marked through D.W.1 without any objection from respondent/plaintiff and that when once documents were so marked, it is not permissible for same Court to impound said document as per provisions of Sec.36 of Stamp Act and that only course left open to aggrieved party is to raise said dispute, if appeal is preferred against said order - Respondent/ plaintiff contends that documents in question, been admitted in evidence and hence provisions of Sec.36 of Act have no application to facts of present case and documents in question were only marked and mere marking of documents does not amount to admission of same unless that fact is judicially determined by Court in terms of Or.13, Rule 4 CPC and trial Court is competent to impugned documents and that impugned order is unassailable - One of essential requirements under Or.13, Rule 4 is that document should contain a specific statement that it has been admitted in evidence and endorsement shall be signed or initialled by Judge - A bare perusal of endorsement of Judge in instant case, does not show any statement to effect that documents have been admitted in evidence - In this case, though documents were marked, it cannot be said that Court had applied judicial mind and admitted documents in evidence and further, even before conclusion of evidence on behalf of petitioners defendants, objection as to admissibility of documents was taken by respondent/ plaintiff and in facts and circumstances of case, it must be held that matter had not reached stage for invoking provisions of Sec.36 of Stamp Act - Trial Court has rightly held that documents are liable to be impounded - Impugned order of trial Court, justified - CRP, dismissed. **Athapuram Raghuramaiah Vs. Dyava Ramaiah 2012(3) Law Summary (A.P.) 238 = 2012(6) ALD 505 = 2012(6) ALT 271.**

—Or.13, Rule 10 - **A.P. (TELANGANA AREA) TENANCY AND AGRICULTURAL LANDS ACT, 1950,** Sec. 50-B, - This Revision is filed challenging order in I.A. in O.S. of Family Court - Court below rejected said Application - It held that petitioners had failed to mention interlocutory Application number in which they sought to take return of said document from Court of Senior Civil Judge, and no document is filed to show that they even filed an Application for return of said document before the said Court, or that the Revenue Divisional Officer refused to issue certified copy thereof - It was further observed that said document sought for to be summoned from record in O.S is only an unmarked document and no Court would raise an objection to return it to the parties - Challenging the same, the present Revision is filed.

Held, petitioners herein have filed an affidavit of their Counsel explaining their inability to get the said document from Revenue authorities and also stating that their efforts to get the said document from the court where O.S.No.9 of 1992 was pending did not fructify - There is no reason for Court below to doubt these efforts - In this view of the matter and having regard to the decision of the Supreme Court mentioned above, this Court of the opinion that Court below erred in rejecting I.A. on hyper-technical grounds - The said order therefore cannot be sustained.

Therefore, Civil Revision Petition is allowed and order in I.A. on the file of Family Court is set aside; said I.A. is allowed and Court below is directed to send for certified copy of certificate issued under Sec.50-B of the Act pertaining to the suit land bearing Survey No.367 from O.S.No.9 on file of Senior Civil Judge. **G.Suverna Bai Vs. M.Ramesh Chander Rao 2016(1) Law Summary (A.P.) 100 = 2016(1) ALD 77 = 2016(1) ALT 723.**

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—Or.13, R.14 - INDIAN STAMP ACT, Sec.36 - EVIDENCE ACT, Sec.65 - Suit for perpetual injunction - Trial Court refusing to mark xerox copy of sale deed holding that same is not admissible as evidence as secondary evidence since improperly stamped an not registered - Respondent/plaintiff contends that existence of original document itself is in dispute and defendant failed to satisfy ingredients of Sec.65 of Evidence Act to adduce secondary evidence - If document is properly stamped and if original is produced, it can be treated as a document admissible or in absence of a copy prepared simultaneously with original, a registration extract or certified copy can be treated as document admissible in evidence - But in absence of such material lower Court was right in coming to conclusion that document cannot be admitted even as secondary evidence on account of improper stamp duty and non-registration - Order of trial Court, in refusing to mark document - Justified - CRP, dismissed. **Manda Laxmi Rajam Vs. Kanaparthi Laxmi Bai @ Laxmi 2008(3) Law Summary (A.P.) 1 = 2008(5) ALD 279 = 2008(5) ALT 222 = AIR 2008 AP 255.**

—Or.14 - Framing of additional issues - Petitioner/plaintiff filed suit for specific performance of agreement of sale - Family Court allowed Application filed by respondents/ defendants for framing additional issues without assigning reasons whatsoever - Giving of reasons serves three purposes viz., litigant will know reasons for grant or rejection of his prayer; it will help Court disposing of case to arrive at proper conclusion; and superior Court to examine correctness of order.

"The principle of nature justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly the orders so passed by authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of case, vitiate the order itself.....".

Approach of trial Court not only does not satisfy this basic jurisprudential principle but also same does not confirm to judicial discipline - Order, set aside - Family Court directed to pass fresh order in I.A by assigning detailed reasons - C.R.P. allowed. **Salem Venkata Ramana Vs. Mellacheruvu Umamaheswar Rao 2012(2) Law Summary (A.P.) 271.**

—Or.14, Rule 1 - Framing of issues - Petitioner availed loan from respondent/Bank for purchase of tractor by depositing title deeds of his property - Respondent/Bank filed suit since loan not repaid by petitioner - Petitioner filed written statement stating that tractor not delivered to him, due to fraud and he is also not in possession of tractor - Trial Court framed compre-hensive issue "as to whether the plaintiff/Bank is entitled to recover the suit amount together with subsequent interest from the defendant as prayed for" - Trial Court dismissed Application filed by petitioner seeking to frame additional issue, holding that there is no necessity for framing additional issues - Petitioner contends that issue framed by trial Court would not decide as to whether amounts were advanced to petitioner or not and whether there was any fraud or not - Respondent contends that as issue framed is a comprehensive one nothing comes in way of petitioner leading evidence

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as to whether vehicle was delivered to him or not - Very object of framing an issue is to determine exact area of conflict and to enable parties to lead evidence in those lines - In absence of a specific issue it will not be possible for parties to lead evidence with regard to specific controversy and even if any evidence is let in, Court may not take in to consideration - Issue framed in present suit, is only with regard to entitlement of Banker to recover suit amount - As contention of petitioner is that fraud is committed and there is collusion between Banker and dealer, an issue with regard to delivery of vehicle is necessary - Impugned order of trial Court, set aside - CRP, allowed - Trial Court directed to frame following issues and decide suit: (1) Whether the vehicle was delivered to the defendant or not. If not, what is the effect?; (2) Whether the suit is bad for non-joinder of necessary parties. **Siddavarapu Siva Kota Reddy Vs. State Bank of India, Indukurupeta 2008(3) Law Summary (A.P.) 140 = 2008(5) ALD 317.**

—Or.14, Rules 1 & 2. r/w Sec.151 - **WAKF ACT,** Secs.83 & 85 - Respondents filed suit seeking perpetual injunction against petitioners contending that they are absolutely owners and possessors of suit property and they have succeeded suit property after death of their father - Petitioners filed written statement that said property belongs to Wakf Board and that civil Court has no jurisdiction to entertain suit u/Sec.85 of Act - As far as present case is concerned the averments made by respondents in their plaint reveal that they have been claiming property as absolute owners of property and they did not wishper suit property originally belongs to Wakf Board - In this case, petitioner in written statement categorically referred to certificate issued by Sub-Registrar showing that suit property is Wakf property - After constitution of Tribunals, where a dispute arises with regard to title of wakf property, Tribunal alone has jurisdiction to entertain suit - Order passed by lower Court, set aside - I.A filed by petitioner stands allowed - Lower Court directed to return plaint by respondents for purpose of presenting same before Wakf Tribunal - CRP, allowed. **Shameem Sulthana Vs. Syed Ibrahim Quadri, 2011(1) Law Summary (A.P.) 345 = 2011(4) ALD 379 = 2011(4) ALT 30.**

—Or.14, Rules 1 & 2, Or.39 - **ADVERSE POSSESSION** - PLEADINGS - FRAMING OF ISSUES - INJUNCTION - FRIVILOUS LITIGATION - Relationship of principal and agent - Explained - Property belonged to Dharma shala - MN owner of property dedicated property in question for construction of Dhara shala - Appellant was engaged as watch man on monthly salary basis by respondent/Society to look after Dharma shala - Appellant lived in premises with his family - When respondent/Society claiming ownership of suit property and tried to dispossess appellant , he filed a suit for injunction against respondent/Society - Suit dismissed - 1st appellate Court allowed appeal and suit decreed - Respondent/Society preferred 2nd appeal in High Court - During pendency of 2nd appeal respondent/Society filed suit for declaration of title and recovery of possession of suit property - Said suit decreed - Appellant preferred 1st appeal and decision of tril Court reversed suit filed by Society dismissed - Respondent/Society preferred 2nd appeal in High Court - High Court heard both 2nd appeals together and by common judgment set aside well considered judgment of 1st appellate Court

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- Hence appellant preferred these appeals by way of Special Leave - In this case, appellant is guilty of introducing untenable pleas Plea of adverse possession which has no foundation or basis in facts and circumstances was case to introduced to gain undue benefit - Appellant failed to prove adversession possession of suit property - Only by obtaining ration card, house tax receipt, appellant cannot strengthen his claim of adverse possession - High Court fully justified in reversing judgment of 1st appellate Court and restoring judgment of trial Court - PLEADING: Pleadings need to be critically examine by Judicial Officiers or Judges both before issuing ad interim injunction and/or framing issues by giving immense importance and relevance of purety of pleadings - Pleadings must set-forth sufficient factual details to extent that it reduces ability to putforward a false or exaggerated claim of claim or defence and that pleadings must inspire confindence and credibility - It is imperative that judges must have complete grip of facts before they start dealing with case and that would avoide unnecessary delay in disposal of case - FRAMING OF ISSUES - Framing of issues is a very important stage of a civil trial and it is imperative for a judge to critically examine pleadings of parties before framing issues - Rule 2 of Or.10 CPC enables Court in its search for truth to go to core of matter and narrow down or even eliminate controversy - GRANTING OR REFUSAL OF INJUNCTION - Grant or refusal of injunction is a civil suit is most important stage in civil trial - Due care caution, deligence and attention must be bestowed by judicial Officers and judges while granting or refusing injunction - Safe and better course is to give short notice on injunctgion application and pass appropriate order after hearing both sides - In case of gragve urgency if it becomes imperative to grant ex-parte and ad interim injunction, it should be granted for a specific period, such, as for two weeks - Ordinarly, three main principles govern grant or refusal of injunction - a) prima facie case; b) balance of convenience; and c) irreperable injury, which guide Court in this regard - Frivolous litigations - Unless wrong doers are denied profit or undue benefit from frivolous litigations, it would difficult to control frivolous and uncalled for litigations - When a litigant is compelled to spend Rs.1 lac. on a frivolous litigation there is hardly any justification in awarding Rs.1000/- as costs unless there are special circumstance of that case - Uncrupulous litigant is not permitted to derive any benefit by absuing judicial process - ON FACTS OF THIS CASE, FOLLOWING PRINCIPLES EMERGE - It is bounden duty of Court, to uphold truth and do justice - Dishonest and uncrupulous litigants have no place in law courts - It is imperative that pleadings and all other presentations before court should be truthful - Court must ensure that there is no incentive for wrong doers in temple of justice - According to principles of justice, equity and good conscience, Courts are not justified in protecting possession of watchman, caretaker or servant who was only allowed to live into premies to look after same - Watchman, caretaker or agent holds property of principal only on behalf of principal - He acquires no right or interest what soever in such property irrespective of his long stay or possession - Protection of Court can be granted or extended to person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour - Since appellant is a Watchman

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and may not be able to bear financial burden appeals are dismissed with very nominal costs of Rs.25000 - Appellant directed to vacate suit property within two months and handover peaceful possession to respondent/Society - Appeals, dismissed. **A.Shanmugam Vs. Ariya Kshatriya Rajakula V.M.N. Paripalanai Sangam 2012(2) Law Summary (S.C.) 125 = 2012(5) ALD 41(SC) = 2012 AIR SCW 3017 = AIR 2012 SC 2010.**

—-Or.14, Rules 1 to 3 - Trial court in a suit instituted by respondent/plaintiff for recovery of money, did not frame issues that arose in suit and decreed the suit - Appeal is directed against judgment - Held, a bare look at provisions contained in Rules 1 to 3 in particular of Order 14 of Code would show that a duty/responsibility is cast on trial court, at first hearing of suit, after reading plaint and written statements, if any, and after examination under Rule 2 of Order 10 and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record issues on which right decision of case appears to depend - It is also mandatory for trial court to assess evidence of parties and consider relevant issues which arise for adjudication and bearing of the evidence on those issues - In present case, trial court has framed only one issue for consideration i.e., "whether the plaintiff is entitled for recovery of suit amount as prayed for" - This practice/procedure adopted by learned judge was wrong and it was inadequate requirement of provisions contained in Order 14 of the Code - It is apparent that the learned judge even did not refer to the material evidence on record and relevant clauses thereof, in particular - Appeal is allowed - Impugned judgment and decree is set aside and suit is restored to file and remanded to trial court - Trial Court shall frame proper issues and deal with same on merits in accordance with law - Trial court shall decide the suit, from stage of arguments, afresh as expeditiously as possible. **Apollo Health and Lifestyle Limited Vs. Anupam Saraogi 2015(1) Law Summary (A.P.) 380 = 2015(3) ALD 681 = 2015(2) ALT 550.**

—Or.14, Rule 2 and Or.6, Rule 17 - "Territorial jurisdiction" - "Preliminary" "issue" - Trial Court framing issues as to territorial jurisdiction to maintain suit and refusing to decide issue relating to territorial jurisdiction as preliminary issue - Respondent contends that issue relating to want of territorial jurisdiction being mixed question of fact and law trial Court arrived at correct conclusion in dismissing Application - Impugned order of trial Court justified - CRP, dismissed. **T.Sarath Chandra Reddy Vs. Margadarsi Chit Funds Ltd., 2009(2) Law Summary (A.P.) 213 = 2009(5) ALD 305 = 2009(2) APLJ 405 = 2009(5) ALT 37.**

—Or.14, R.5 - Framing of additional issues - Petitioner/plaintiff filed suit for declaration that she is entitled to retirement benefits of X stating that she married him and had three sons and that first respondent who is subordinate of X in Office developed illicit relations with him and made claim for benefits of property left by X as though she is legally

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wedded wife - First respondent filed written statement that marriage between petitioner and X was dissolved and therefore she married him and respondents 2 & 3 born out of their wedlock - After framing necessary issues and when trial commenced first respondent filed certain documents relating to dissolution of marriage of petitioner with X and her marriage with X and Will executed by X - Trial Court dismissed Applications filed by petitioner to frame additional issues touching upon documents and to adduce evidence in respect of additional issues and to send Will for expert opinion - Petitioner contends that necessity to file Applications arose on account of documents filed by 1st respondent, touching upon material status and relation of late X and Will said to have been executed by him and that controversy mentioned in additional issues, would go root of matter and trial Court ought to have acceded to request of petitioner - Respondent contends that she does not intend to claim any benefit under Will and additional issues sought to be framed are irrelevant and out of context - In fact, additional issues proposed to be framed arise out of documents filed by first respondent and implication of these documents naturally assumes significance - While refusing to frame additional issues trial Court had unwittingly answered same - Trial Court is expected to be cautious and careful, particularly when controversy touched upon matrimonial relationship of women and legal consequence thereof - There exists a clear necessity for framing of two additional issues and petitioner shall be entitled to adduce evidence in relation to said additional issues - Impugned order, set aside. **Juvva Seetha Punyeswari Vs. Sanadi Muni Ratnam 2008(1) Law Summary (A.P.) 121 = 2008(2) ALD 151 = 2008(1) ALT 314.**

—-Or.14, Rule 5, r/w Sec.151 - **A.P. COURT FEES ACT,** Sec.34(1) - "Framing of additional issues" - Respondents nos.1 to 7 filed suit for partition - Petitioners 1 & 2/defendants 1& 2 filed Application requesting Court to frame additional issues relating to non-payment of sufficient Court fee and non maintainbility of suit under Or.2, Rule 2 on ground that plaintiff already filed previous suit for partition and separate possession - Trial Court dismissed Application - Hence petitioners/plaintiffs filed present Revision - Trial Court dismissed application - Averments in written statement filed by petitioners show that admittedly plaintiffs and defendants are not in possession of suit land and as such plaintiffs cannot pay fixed court fee u/Sec.34(2) of A.P. Court Fee Act and plaintiffs have grossly under valued reliefs and thereby paid most insufficient Court fee under improper provisions of law - It is duty of Court to frame issues on basis of material propositions within meaning of Order 14 of Code - Suit cannot be comprehensively adjudicated unless all material propositions of fact and law are deduced inform of issues and evidence is let in by both parties - From contents of written statement filed by petitioners/defendants it cannot be denied that at earliest point of time they have taken specific plea of payment of insufficient Court fee by pleading that respondents 1 to 7/plaintiffs are not in physical possession of property and this certainly constitutes a material proposition of fact which requires framing of issue - As in case of limitation, it is duty of Court to frame appropriate issues with respect to payment of Court fee as well - Instead of framing such an issue, lower Court has readily accepted plea of respondents/plaintiffs that they are in constructive

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possession of suit schedule property and sucha perfunctory approach on part of trial Court cannot be appreciated - Order of trial Court, set aside - CRP, allowed - Trial Court directed to frame additional issues as proposed by petitioners/defendants. **Tadishetty Padma Rao Vs. Tadi Shetty Jaihind, 2012(2) Law Summary (A.P.) 29 = 2012(3) ALD 756 = 2012(4) ALT 6.**

—Or.14, Rule 5, Or.41, Rule 33 and Sec.107(2) - Framing of issues - Jurisdictions of appellate Court - 1st respondent filed suit for declaration - Suit dismissed - District Judge allowed appeal filed by 1st respondent - Second appeal filed by Petitioner/ 1st defendant was allowed and matter remanded to lower appellate Court for fresh consideration and disposal - After remand 1st respondent filed I.A under Or.14, Rule 5 with a prayer to frame issue as to whether plaintiff has succeeded to office of deceased "S" and is entitled for decree as prayed for and inspite of petitioner opposed application by filing counter, lower appellate Court allowed Application - Framing of issues under Or.14 constitutes an important step in suits - Issues are to be framed on basis of pleadings before trial Court and it is with reference to issues that parties are required to adduce evidence and address arguments - Once suit is disposed of and matter lands before appellate Court, nature of consideration is slightly different, not withstanding fact that appeal is to be treated as continuation of suit - Once decree is passed the very concept of framing of issues ceases to exist - Only circumstance under which an appellate Court can frame issues is, when it decides to remand matter to trial Court, by framing issue, which it feels is relevant, for adjudication of suit - In instant case, appeal is pending before appellate Court after remand made by High Court - Occasion to frame issue does not arise and very invocation of Or.14, Rule 5 by 1st respondent in appeal is untenable - Impugned order of 1st appellate Court, set aside - CRP, allowed. **Syed Ali Murtuza Quadri Vs. Syed Abdul Raoof Quadri, 2012(3) Law Summary (A.P.) 251 = 2013(2) ALD 81 = 2013(2) ALT 239.**

—Or.15-A - Respondent/owner of premises filed suit for relief of recovery of arrears of rents covering various periods and also filed I.A under Or.15-A with a prayer to direct petitioner to pay arrears of rent and continue to deposit rent every month and in default, to strike off defence - Trial Court allowed I.A - Hence present revision - Petitioner contends that trial Court virtually decreed suit through its order in I.A and that it is only undisputed arrears of rent that can be required to be deposited through an order in application filed under Or.15-A of C.P.C and that whatever be justification for directing that arrears of rents be paid from date of filing of suit, it was not at all competent for trial Court to direct deposit of rents, for period earlier thereto - Or.15-A CPC came in to force from 2005 and purpose underlaying provision is to ensure that owner of premises leased to defendant in a suit pays rents regularly together with arrears if any - Word "undisputed" occurring before word "arrears" assumes significance - If there is a dispute as to quantum Court has decide same, duly taking into account versions put forward by parties - If defendant opposes claim in

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suit, as to arrears, adjudication there of must take place after trial - Application under Or.15-A is not proper mechanism to recover suit amount, if seriously disputed by defendant - If arrears existed from date of filing of suit a direction can certainly be issued for deposit thereof in application filed under Or.15-A of CPC - Any direction for deposit of arrears prior to date of filing of suit can be issued only when there is no dispute - In this case, petition pleaded that he incurred expenditure for constructing first floor and dispute in this behalf can be resolved after trial - Therefore directions issued by trial Court for payment of entire amount of arrears which is claimed in suit is untenable - There is no dispute that rents are not being paid from date of filing of suit - Both parties represent that undisputed rents would come roughly to certain amount and same can be directed to be deposited in addition to monthly rents from time to time - CRP, partly allowed. **K.Zakria Shaik Vs. K.Saleem Basha, 2011(2) Law Summary (A.P.) 308 = 2011(4) ALD 757 = 2011(6) ALT 288.**

——Or.XV-A - Plaintiff was a lessee of the land belonging to the APSRTC and under an agreement with it was permitted to construct a commercial complex and sub-lease same to third parties - Plaintiff entered into a sub-license agreement for a period of 10 years from 1-4-2009 with defendant for running hotel and hospitality services business - Defendant committed default in payment of rents and sought time for payment of arrears of rent directed by trial Court by four months agreeing to strike out defence in case of default before Hon'ble Supreme Court - Defendant did not pay arrears of rent within time specified by Hon'ble Supreme Court - Consequently defence is struck off - Now right of defendant in pending suit has to be decided in light of striking off defence - Though plaintiff referred dispute to an Arbitrator through a letter on 18-10-2012 requesting him to act as an Arbitrator between plaintiff and defendant and Arbitrator though expressed his consent on 20-10-2012, defendant did not accept - There were exchange of notices between plaintiff and defendant, which ultimately lead to filing of above suit - A detailed written statement was filed by defendant denying plaint averments - As a matter of fact, arrears were not deposited within said time, but he filed various applications were dismissed by District Judge - Aggrieved by said and similar orders, above Civil Revision Petitions were filed.

Held, In the instant case defendant himself accepted before Hon'ble Supreme Court that his defence can be struck off in case of failure to deposit arrears of rent within extended time granted by Hon'ble Supreme Court - Hence, there is no occasion for trial Court to pass any order striking off defence by applying its mind independently - Assuming for a moment that under deeming order of Hon'ble Supreme Court, if trial Court passed an order striking off defence after applying its mind to facts of case, even then it is held that such an order is a discretionary order - In view of striking off defence, dismissal of applications filed by defaulted defendant are also discretionary orders passed by trial Court and this Court can straight away dismiss CRPs challenging such orders - Neither trial Court nor this Court can go into merits of such applications filed by defaulted defendant after his defence was struck off.

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Accordingly, this Court holds that orders passed by trial Court dismissing applications filed by defaulted tenant are not erroneous warranting interference of this Court - All Civil Revision Petitions are, accordingly, dismissed. **SRR Hospitalities Pvt. Ltd. Vs. Balina Srimannarayana2016(3) Law Summary (A.P.) 69 = 2016(5) ALD 423 = 2016(5) ALT 308.**

——Or. XV-A - A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, Sec.11 - Contention of the petitioner in the original suit was that the lease got expired and first respondent continued in occupation of property and running educational society on month to month basis and rent agreed to be paid was on first day of each month - The rent was enhanced to Rs.90,000/- with effect from 01.04.2008 for said property and it continued till 31.03.2011 - Thereafter, rent was enhanced @ 5%, it comes to Rs.94,500/- during financial year 2011-2012 and Rs.99,225/- during financial year 2012-2013 and thereafter, rent was enhanced to Rs.1,50,000/- per month for financial year 2013-2014 - The first respondent failed to pay rent for several months and rent arrears due as on July, 2014 was Rs.20,18,200/-, after adjusting Rs.81,800/- towards part payment made in month of June, 2013 - Despite issuing a legal notice dated 21.07.2014, demanding to vacate schedule premises, first respondent failed to vacate premises and got issued a reply making false and untenable allegations - The arrears of rent as on date of filing petition was Rs.26,18,200/- after adjusting amount paid whatever from months of July, 2013 to November, 2014 - Thus, first respondent continued in possession and enjoyment of property without depositing or paying the admitted arrears of rent, which is mandatory requirement under Order XV-A of C.P.C and prayed for issuing aforesaid direction against the first respondent.

The first respondent filed counter denying material allegations while admitting execution of lease deed dated 27.03.2003 and contended that on date of lease agreement, petitioner handed over total plinth area of 7000 sft in ground and second floor - The first floor and terrace of building was not handed over to first respondent and petitioner was collecting rent of Rs.31,000/- per month since the first floor and terrace of the building were not handed over - The first floor of building was handed over in month of December, 2014 - The terrace of building was constructed and roofed with iron sheets and handed over to respondents on 02.04.2003 - The deposit of Rs.1,93,750/- was for entire building - An understanding was made in agreement that lease was to be continued as long as respondents run educational institution in schedule premises - It is further stated in counter that, as building is an old one, petitioner did not care to attend repairs of building - The respondents have been paying rent @ Rs.66,276/- per month and same was being accepted by petitioner without any protest - Further, it is stated in counter affidavit that respondents were never in arrears of payment of rent to a tune of Rs.26,18,200/- and denied last enhancement of rent from time to time and therefore, no order can be passed against respondents and prayed for dismissal of the petition.

Upon hearing argument of both counsel, Trial Court issued a direction referred in paragraph 9 of order, undertaking an exercise to fix rent and directed respondents

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to pay a sum of Rs.20,98,825/- as arrears of rent by end of April, 2015 within one month and continue to pay monthly rent of Rs.99,225/- on or before 1st of every succeeding month commencing from 01.06.2015.

Aggrieved by order and decreetal order passed by Trial Court, present civil revision petition is filed raising several contentions, mainly contending that issuance of such direction fixing monthly rent is beyond scope of Order XV-A and in absence of satisfying requirements envisaged under Order XV-A of CPC and passing such an order under challenge is erroneous - Further, it is contended that Trial Court ought not to have conducted a summary enquiry to decide undisputed arrears of rent, ignoring the word 'undisputed' used in Order XV-A of CPC - Therefore, it is contended that order under challenge is erroneous on face of record.

Held, while interpreting Order XV-A Rule 2, basing on principle of ejusdem generis, a summary enquiry under Rule 2 of Order XV-A is mandatory and without making such an enquiry, if any order is passed, it is illegal and liable to be set-aside in view of the judgment in Yeshoda's case AIR 1996 SC 140 - For instance, unscrupulous tenants in occupation of building may set up a frivolous or vexatious pleas, sometimes totally denying rent payable for premises and sometimes low rent for a palacious building, admitting liability to pay megre amount of rent which leads to depriving genuine landlord to enjoy the fruits of tenancy and due to continuation of litigation for decades together to avoid such undue hardship to the landlord, Order XV-A is incorporated by A.P. Amendment to C.P.C, which is similar to Section 11 of A.P. Rent Control Act.

Thus, in view of limited powers of this Court under Article 227 and all more when Trial Court rightly exercised its power, under Order XV-A Rule 2, this Court cannot interfere with findings recorded by Trial Court in order under challenge - Hence, Court find no error in order passed by lower Court.

In view of foregoing discussions, this Court hold that Court is competent to make summary enquiry under Order XV-A Rule 2 when tenant pleaded no errors or disputed quantum of rent, decided error of rent payable and rent payable, issue directions, postponing same to final decision by Court and direct to decide arrears, as required under Rule 2 and continue to deposit at the same rate during pendency of the suit or proceedings before competent Court - Otherwise, it amounts to encouraging unscrupulous tenants who intent to avoid payment of rent for premises in their occupation for decades together which would certainly result in substantial loss to the landlord during pendency of the eviction suit or proceedings based on account of abortive pleas raised by unscrupulous tenants - In result, civil revision petition is dismissed. **M.B.Chander Vs. Balakrishna Rao Charitable Trust 2016(3) Law Summary (A.P.) 250.**

—Or.15-A and Secs.144 & 89 - 1st respondent owner of commercial premises leased out to appellants under registered sale deed for a period of 9 years - 1st respondent filed suit with prayer to direct appellants to vacate premises and handover possession and also application with prayer to direct appellants to deposit rents - While Application

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was pending 1st respondent filed another Application under Or.15-A CPC with prayer to direct appellants to deposit arrears of rent and forfeit defence in default - Trial Court passed order directing appellants to deposit arrears of rent and that in default of payment of amount as directed, defence shall stand struck off - Subsequently trial Court decreed suit ex parte stipulating 30 days time for eviction - Appeal filed against said judgment and decree - 1st respondent filed EP basing on decree and executing Court issued warrant of delivery - Appellants contend that trial Court committed serious error at every stage and orders were passed contrary to specific provisions and settled principles of law contending that in lease deed there is specific clause providing for arbitration in event of there being any disputes between parties, and still suit was entertained without any demur - Appellants further contend that Or.15-A CPC places specific obligation upon Court to record a finding as to existence of arrears, after giving opportunity to both parties - But in instant case, virtually an ex parte decree was passed straight away ignoring fact that appellants were before Court from beginning by filing caveat - Respondent owner of premises contends that lease between appellants and respondent stood terminated on account of non-payment of rent and Or.15-A CPC directing payment of rents and it is only when order was not complied with trial Court passed decree when appellants remained ex parte and that decree was executed strictly in accordance with procedure prescribed by law and after possession was recovered premises were given on lease to 2nd respondent - C.P.C.OR.15-A - SCOPE AND OBJECT - STATED - An exercise contemplated under Or.15-A is totally inadequate and unsuited for final determination of arrears of rent for period anterior to date of filing of suit and order passed by trial Court does not accord with this - Striking of defence as consequence of non-compliance of order passed under Or.15-A by CPC by itself did not relieve Court of its obligation to examine merits of suit and in this case, very entertaining suit was untenable in view of existence of arbitration clause - EXECUTION OF DECREE - In instant case, premises involved is a jewelry shop - When EP is filed with jet speed for recovery of possessio on basis of ex parte decree, adequate care ought to have been exhibited - Executing Court ought to have verified whether there was any prayer for removal of obstruction - Whenever EP is filed for recovery of possession of immovable property, notice is required to be served on both parties and if there is obstruction, delivery of possession can be effected - If there is obstruction by parties, matter has to be reported to Court and specific orders in this regard are to be obtained - CPC, SEC.144 - Principles underlaying Sec.144 CPC applies to facts of present case - It becomes duty of Court to set at naught injustice and wrong caused to a party on account of order or decree which is found to be untenable - When very delivery of possession was illegal and contrary to procedure prescribed under CPC and warrant is set aside by High Court, necessity to file Application u/Sec.144 does not arise - Decrees passed by trial Court, set aside - Appeal, allowed - Delivery warrant issued by trial Court and all other consequential proceedings, are set aside - Respondents 1 and 2 are directed to put appellant in possession of suit schedule property - CRP, allowed. **Tanmai Jewels Pvt.Ltd., Vs. Ch.Sreesaila Kumari 2013(2) Law Summary (A.P.) 55 = 2013(6) ALD 359 = 2013(5) ALT 105.**

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—Order 15-A and Order 9, Rule 13 - Respondents filed suit for eviction from suit schedule premises along with I.A under Or.XV-A CPC with prayer to direct petitioner to deposit rents - Court passed exparte order in I.A, directing petitioner to deposit arrears of rent from particular month on or before particular date and since order not complied with, defence of petitioner was struck off - At that stage petitioner filed Application with prayer to set aside ex parte order and said Application also was dismissed - CMA filed as against said order is also dismissed - Thereafter trial Court decreed suit solely on ground that defence of petitioner was struck off - Trial Court also dismissed Application filed under Or.9, Rule 13 to set aside ex parte decree - Hence present Revision - When serious dispute exists as to rights of parties, vis-a-vis a valuable item of property, trial Court ought to have given an opportunity to petitioner to put forward his contention - In this case, right from inspection, petitioner was denied opportunity, on sole ground that an exparte order was passed under Or.XV-A CPC - No trial has taken place and only basis for decreeing suit is non-compliance with order passed in Application directing petitioner to deposit rents - Almost everything was taken for granted, simply on ground that defence of petitioner was struck off - Such an approach cannot be countenanced - Impugned order, set aside - CRP, allowed. **P.Krishna Yadav Vs. M.S.Jayalingam 2013(2) Law Summary (A.P.) 217 = 2013(4) ALD 812.**

—Or.16, Rule 1 - Production of documents by witness - Respondent filed suit for possession and for recovery of certain amount - After closure of his examination and cross-examination P.W.3 sought permission of Court to file certain documents - Trial Court not allowed on ground that witness could not be allowed to produce documents under Or.16, Rule 1 and since document in question not produced by respondent/plaintiff either along with plaint or at time of framing of issues, such document at that stage could not be taken on record - High Court allowed production of document and directed that said document be taken on record - Or.6, Rule 1 and Rule 1-A of CPC permits Court to pass order directing witnesses to take document on record - Only, while dealing with Application for production of document under Or.6, Rule1, r/w Rule 1-A of Code, what is required was that, leave of Court would be necessary - In this case, High Court allowed documents to be taken on record to prove date of completion of construction of suit premises within area of society and that date of construction of suit premises, which is located within area of society, cannot be proved except by production of document of Society which could only be produced by Society - Impugned order of High Court - Justified - Appeal, dismissed. **Ashok Sharma Vs. Ram Adhar Sharma 2009(1) Law Summary (S.C.) 186.**

—Or.16, Rule 1 - Or.8, Rule 9 & Secs.151 & 105 - Suit filed on strength of promissory note - Defendant filed written statement denying averments in plaint in toto and that plaintiff obtained decree by playing fraud upon dependant since defendant obtained decree for specific performance of agreement of sale against plaintiff's wife - Trial Court dismissed Application filed by defendant under Or.16, Rule 1 to issue summons

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to proposed witness to be examined as Court witness since suggestion made by plaintiff that Ex.B4 is forged denied by defendant and also on ground that petitioner/ defendant did not refer said document in written statement - Trial Court also dismissed another Application filed by defendant under Or.8, Rule 9 and Sec.151 C.P.C, seeking to receive additional written statement and wanted to introduce theory of compromise entered into between himself and son of plaintiff and that present promissory note was executed as collateral security - Hence, petitioner filed present Revisions - Petitioner contends that prayer for amendment of plaint and prayer for amendment of written statement stand on different footings and further that addition of new ground of defence or substituting or altering in defence or taking inconsistent pleas in written statement would not be objectionable while adding, altering or substituting new cause of action in plaint may be objectionable and that application for amendment of written statement could not be a ground for rejection of same when no serious prejudice is shown to have been caused to plaintiff - AMENDMENT OF PLAINT AND WRITTEN STATEMENT - INGREDIENTS - Stated - In this case, it is borne out from record that a simple suit for recovery of money on strength of promissory note was filed and same was denied in all aspects - Though divergent pleas are permitted to be taken by defendant, it shall not be to extent of absolute divergent, which may result in keeping plaintiff, after completion of his part of evidence, in cross roads - This virtually amounts to taking new stand which is altogether different to stand that was already taken by defendant in original written statement - Though Courts are expected to be liberal in entertaining different and divergent defence, reasonable care is to be taken by defendant and reins of trial shall not be given to hands of defendant - Trial case and establishing case of plaintiff should not be guided only by, such grave and inconsistent pleas, though otherwise permissible is to be taken - When very object of such liberal approach of Courts is to avoid multiplicity of litigation and if, on facts it is found by Court below that it would only cause injustice to other side and would result in multiplicity of litigation, discretion exercised by Court below in rejecting such application seeking amendment of plaint or written statement need not necessarily be interfered with - Litigant shall not be given to understand that they have every liberty to take inconsistent pleas at any time as per their will and pleasure - Prejudice to other side, valuable time of Court, conduct and *bona fides* of parties are also something, which deserve attention by Court - In this case, defendant obviously attempted to dilate scope of litigation, further obviously only to procrastinate litigation and that conduct of defendant is so conspicuous that some how or other, by hook or crook he wanted to elongate litigation by filing applications one after other - Impugned orders passed by Court below dismissing Applications filed by defendant – Justified - No illegality or irrationality in impugned orders passed by trial Court - Civil Revision Petitions, dismissed. **Viswnadhuni Anjaneyulu Vs. Kothammasu Venkata Pitchaiah 2011(1) Law Summary (A.P.) 68 = 2010(6) ALD 373.**

—Or.16, Rules 1,2,5 - NEGOTIABLE INSTRUMENTS ACT, Sec.118 - Respondent/ plaintiff filed suit for recovery of certain amount basing on promissory note - Petitioner

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filed written statement taking plea that suit pronote is rank forgery - Trial Court allowed application filed by petitioner/defendant to send pronote to Handwriting Expert for comparison of signature on pronote with specimen signatures taken in open Court - Expert submitted report opining that signatures taken in open Court not tallying with signature on pronote - Trial Court passing order rejecting contention of petitioner for summoning Expert observing that report of Expert or opinion of Expert is part of record and that can be relied upon and taken to consideration basing on other circumstances and material on record - Unless general presumptions available u/ Sec.118 of N.I Act in favour of plaintiff are rebutted by adducing appropriate evidence as to whether pronote was executed or not for consideration on date and place it may not be just and proper to send pronote for comparison of signature on pronote with that of signatures taken in open Court - Respondent/plaintiff has rightly taken plea that signatures taken in open Court on 30-10-2001 and signature on pronote dt.3-12-1995 are not contemporaneous and it cannot be said that signature taken in open Court of petitioner is his admitted signatures by respondent - Therefore, when earlier order itself is illegal and untenable though there is justification on part of petitioner in seeking to summon Expert and if I.A is allowed, it amounts to restoring an illegal order - CRP, dismissed. **M.Satyanarayana Vs. P.Indira Devi 2011(1) Law Summary (A.P.) 143 = 2011(2) ALD 310.**

--Or.16, Rules 1(2) & 6 - **CIVIL RULES OF PRCTICE AND CIRCULAR ORDERS, 1980,** Sub Rule (2) of Rule 129 - Summoning Commissioner of Municipality to produce documents submitted by plaintiff/R1 in connection with his application made for permission for construction of building and sanctioned plain issued by Commissioner and to give evidence.

Under Sub Rule (3) no Court shall issue summons unless it considers production of original document is necessary or is satisfied that Application for certified copy has been duly made and has not been granted.

In instant case, as petitioners failed to satisfy mandatory conditions of sub rule (2), they are not entitled to seek summoning of public officer for protection of such documents - CRP, dismissed. **Vooda Venkat Rao Vs. Vooda Surya Ramu 2016(3) Law Summary (A.P.) 79 = 2016(6) ALD 59.**

---Or.18, R.17 & Or.17, Rules 1 & 2 - Respondent/defendant filed suit for recovery of possession and damages - Defendant filing mischievous or friviolus applications one after other seeking adjournment for protracting litigation - INSTITUTIONAL RESPONSIBILITY OF ADVOCATE - Stated.

In this case, defendant sought adjournment after adjournment for cross-examination on some pretext or other which are really not entertainable in law - Trial Court dismissing Application filed by appellant/defendant seeking further cross examination of plaintiff with costs - High Court dismissed W.P. filed by appellant/ defendant - Hence present Speal Leave Petition.

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It is desirable that reording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time and that Courts should constantly endeavour to follow such a time schedule so that purpose of amendment brought in Civil Procedure Code are not defeated.

Counsel appearing for a litigant has to have institutional responsibility and Code of Civil Procedure so command - Applications are not to be filed on grounds which are referred in this case and that too in such a brazen and obtrusive manner - It is wholly reprehensible - Law does not counten-ance it, and professional ethics decries such practice - It is because such acts are against majesty of law.

In this case, it can indubitably be stated that defendant-petitioner has acted in a manner to cause colossal insult to justice and to concept of speedy disposal of civil litigation - Special Leave Petition is dismissed with cost of Rs.50,000/-. **Gayathri Vs. M.Girish 2016(3) Law Summary (S.C.) 17 = AIR 2016 SC 3559 = 2016(5) ALD 113 (SC).**

—Order 16 Rule 6 - **CIVIL RULES OF PRACTICE AND CIRCULAR ORDES IN A.P.**, Rule129 - **CONSTITUTION OF IDNIA,** Art.227 – Claimants in L.A.O.Ps filed Applications seeking for re-opening of matter for examination of proposed witnesses praying, to issue summons to Tahsildar to produce documents, Reports passed by then Tasildar to give evidence – Senior Civil Judge dismissed Applications - Reading of impugned Order in clear and unequivable terms, disclosed that none of contentions advanced by petitioners are appreciated by Court below, except referring to same - Therefore it is appropriate to set aside impugned orders and remand IAs for fresh disposal after giving opportunity to all parties to litigation - Orders passed by Court below are set aside – Civil Revision Petitions are allowed. **Duvvada Parasuram Choudary Vs. Santha Dalayya 2014(1) Law Summary (A.P.) 353.**

—Or.16, Rules 6,7 & 14 and Or.16, Rules 1 and 1-A & Or.7, Rule 11 and Sec.152 - Petitioner filed suit for declaration of title and perpetual injunction in respect of suit property - Trial Court dismissed Application filed by petitioner under Or.16, Rule 14 to summon Chief Engineer as a witness to produce records and to speak about them, observing that Rule 14 of Or.16, does not confer right upon a party to require Court to summon or examine a person as a Court witness - Hence present revision - Petitioner contends that though Rules 6 & 7 of Or.16 may not strictly apply to facts of case, it is competent if not obligatory for trial Court to summon a witness on application made by party to suit, in case, necessity to summon witness is established - Power under Rule 14, Or.16 CPC, is to be exercised by Court on its own accord and not on insistence by party to suit - Though a party to a suit can place any information, which may impress upon or convince Court to exercise its powers under that provision, an independent application for that very purpose does not lie - If parties are permitted to make independent application for summoning of an individual as Court witness and are conferred with right to insist Court to accede their request, it may lead to several complications - It can be used as device to over come their inability

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or failure to summon witness and in certain cases, to fill up lacuna in evidence which is already on record, - That was never intention of Parliament - If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 1 & 1-A of Or.16 - Revision petition, dismissed. **Shaik Abdul Rasool, Kadapa Vs. G.Lakshmi Reddy, Kadapa 2011(1) Law Summary (A.P.) 60 = 2011(3) ALD 138 = 2011(3) ALT 627.**

—Or.16, Rule 10(2)&(3) and Sec.151 CPC - Suit for declaration of title - Respondent/ defendant filed written statement preferring counter claim - Petitioners/plaintiffs cited one KG as P.W.4 and filed his affidavit in liue of chief examination - Petitioner filed Application for arrest of P.W.4 stating that inspite of summons being issued by Court on four occasions, and personally on one occasion, same could not be served on P.W.4 as he is deliberately evading summons and that he is material witness, it is necessary to examine him - Respondent resisted Application filed by petitioner/plaintiff - Trial Court dismissed said Application on reason that as petitioners have filed chief examination affidavit of P.W.4, Court ought not to have issued summons and that it has committed a serious mistake in issuing summons to P.W.4 - If a party would secure affidavit from a cited witness who at a later point of time made scarce of himself, nothing prevents party from taking help of Court to issue summons to him and also warrant if provisions of Or.16, Rule 10 are satisfied - In the present case, trial Court has issued summons on as many as four occasions and permitted party to serve summons on one occasion - P.W.4 has been deliberately evading summons and appearance before Court - Therefore, there is nothing wrong in party approaching Court for issuance of warrant subject to compliance with procedure under Rule 10 of Or.16 - Trial Court has failed to understand scope of provision from proper perspective - Trial Court directed to dispose of Application afresh by following procedure envisaged u/ Or.16, Rule 10 - CRP, allowed. **M.Dhana Lakshmi Vs. M.Chinna Ganganna 2013(2) Law Summary (A.P.) 225 = 2013(5) ALD 20 = 2013(5) ALT 448.**

—Or.16, Rule 14 r/w Sec.151 - Suit for declaration and injunction - Contested by 2nd defendant and 1st defendant remained ex parte - Trial Court allowing Application filed by 2nd defendant to summon 1st defendant as Court witness inspite of objection raised by plaintiff - Court may examine party to suit and person who is not party to suit and who has not cited as a witness by a party to suit, subject to satisfaction that examination of such person is necessary - Merely because order contains that 2nd defendant can call 1st defendant has his witness, it cannot be said that 1st defendant is not a Court witness and that Court has not satisfied to summon him as a Court witness - As per Or.16, Rule 14 CPC civil Court is conferred with jurisdiction and empowered to examine any person including a party to suit and not called as a witness by a party to suit earlier, and this can be done on its own motion - Impugned order of trial Court - Justified - CRP, dismissed. **T.Narayana Reddy Vs. Patan Razak Khan 2008(3) Law Summary (A.P.) 60 = 2009(1) ALD 839 = 2009(1) ALT 471.**

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—Or.16, Rule 14, r/w Sec.151 - Suit for recovery of certain amount - Evidence closed and matter was coming for arguments - Trial Court dismissed Applications filed by petitioner/defendant for reopening matter and for purpose of summoning one Sainath as Court witness - Petitioner contends that entire transactions was between petitioner and partner of plaintiff/Firm run by one Sainath who is none other than father of P.W.1 and in light of evasive stand taken, it may be essential to summon Sainath as Court witness - "It is clear from Or.16, Rule 14, suit and person, who is not party to the suit and who has not cite as witness by a party to the suit, subject to the satisfaction that examination of such a person is necessary" - Civil Court is conferred with jurisdiction and empower to examine any person including a party to suit, and not called as a witness by a party to suit earlier and this can be done on its own motion - Under Or.16, Rule 14 CPC that Court is expected to exercise its discretion judiciously - Such discretion exercised by trial Court after recording convincing reasons - CRPs are liable to be dismissed. **Kavari Agencies, Adoni Vs. Pawan Financiers, Adoni 2009(3) Law Summary (A.P.) 116 = 2009(6) ALD 494.**

—Or.16, R.14 & Or.19, R.10 and Or.21, R.32 - **EVIDENCE ACT,** Sec.138 - Suit for perpetual injunction - Decreed - 1st respondent/DHR filed E.P to commit JDR to civil prison, alleging that he is preventing him from cultivating land in violation of decree - Executing Court allowing EA filed by DHR to summon JDR for subjecting himself to cross-examination - Contention that since there was no evidence in chief on behalf of JDR, he cannot be compelled to subject himself to cross-examination and that impugned order directing JDR to face cross-examination is beyond scope of Or.16, R.14 - Or.16, R.14 empowers Court to summon on its own any person to give evidence or to produce any document in his possession if Court is satisfied that evidence of such witness is necessary to arrive at a just conclusion - Said power includes to summon even a party to proceedings and that such power can be exercised even on an Application made by party to proceedings - In this case, defendant/respondent opposed E.P and filed counter alleging that no land was in existence as described in suit schedule and therefore decree cannot be executed - In view of specific stand taken by defendant/JDR lower Court having recorded its satisfaction that cross-examination of JDR is necessary, allowed Application filed by DHR under Or.16, R.14 - Since veracity of stand taken by JDR in counter requires to be tested to elicit true facts, executing Court, in exercise of its discretion rightly directed respondent/JDR to subject himself to cross-examination - Disretion exercised by executing Court - Justified - CRP, dismissed. **Somisetti Venkata Rama Krishna Rao Vs. Kandiboyina Kondaiah 2008(1) Law Summary (A.P.) 363 = 2008(1) ALD 786 = 2008(2) ALT 304 = 2008(1) APLJ 20.**

—Rule 17 and Sec.151 - "Re-opening of case for adducing evidence" - Petitioner/plaintiff filed suit and after defendants' evidence was closed petitioner filed I.A for reopening to adduce further evidence on behalf of plaintiff and issue summons to plaintiff in respect of Ex.A.1 contending that she thought that evidence of attestor of Ex.A.1 is sufficient, as such she could not produce executant of Ex.A.1 and as

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per legal advise, as other side may take advantage of non-production of executant, it is just and essential to re-open case and to issue summons to executant of Ex.A.1 - Respondent/defendants filed counter contending that suit is filed for perpetual injunction on 5-9-2007 and written statement filed on 13-12-2007 denying plaint averments and specifically pleaded that executant has got no right title or interest over suit property and that said executant cannot transfer better right or title to petitioner in respect of suit property - Trial Court dismissed Application by order holding that petitioner has filed petitioner at belated stage to fill up lacunae which were pointed out during arguments - Against said order, present CRP, filed - Petitioner contends that opportunity to party to recall witness for examination, cross-examination or re-examination cannot be said to be governed by Or.18, Rule 17, if circumstances warrant, Court can grant such opportunity u/Sec.151 CPC and that there is no embargo to recall a witness after closure of evidence and it is discretion of Court to allow Application having regard to facts and circumstances of case and that at any stage, Court can recall witness for examining or cross-examining - Respondent contends that Application filed after completion of arguments of both sides and suit is coming up for reply arguments on behalf of plaintiff only to fill up lacunae and that too at belated stage and at this stage matter cannot be re-opened and that trial Court rightly dismissed Application and that power under provisions of Or.18, Rule 17 is to be sparingly exercised - In this case, it appears from record that petitioner is not diligent enough in filing petition to summon said executant at earliest point of time, though suggestions were put to other witnesses and P.W.1 herself - Trial Court considering material available on record came to conclusion that petition has been filed at belated stage in order to fillup lacunae - C.P.C. OR.18, RULE 17 - Supreme Court held that power to recall any witness under Or.18, Rue 17 can be exercised by Court either on its own motion or on Application filed by any parties to suit and that such power is to be invoked not to fill up lacunae in evidence of witness which has already been recorded but to clear any ambiguity that may have arisen during course of his examination and same should be sparingly used in appropriate cases - Order of trial Court, justified - CRP, dismissed. **Shaik Gousiya Begum Vs. Shaik Hussan 2013(3) Law Summary (A.P.) 268 = 2014(1) ALD 240 = 2014(1) ALT 268.**

—Or.18, Rule 17, r/w Sec.151 and Sec.148 - Petitioner/plaintiff filed suit against respondents/defendants claiming Rs.20 lakhs as damages for defamation and defendants were set ex parte - I.A filed by defendants for setting aside ex parte order, allowed on condition of payment of costs - Another IA filed by defendants seeking extension of time for filing written statement dismissed - Plaintiff filed his examination-in-chief and marked documents and case posted for judgment - Trial Court allowed IAs filed by defendants to reopen case and permit them to cross-examine P.W.1- Hence, present CRPs filed by petitioner/plaintiff - Petitioner contends that request of defendants to open suit and permit them to cross-examine plaintiff under Or.18, Rule 17 is not maintainable and that Court alone is competent to recall witness and put questions

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to him under that provision and defendants are not entitled for discretionary relief - Respondents contend that though they are not permitted to file written statement they are entitled to participate in suit atleast from left over stage and that defendants should have fair opportunity to meet case of plaintiff in view of huge claim being made against them - There is no specific provision in CPC which enables parties to reopen evidence for purpose of further examination of parties - However, Sec.151 CPC provides that nothing in Code shall be deemed to limit inherent powers of Court to make such orders as may be necessary for ends of justice or to prevent abuse of process of Court - In this case, defendants have not filed written statement and in absence of their own pleadings it is not permissible for them to lead their own evidence - Though they are entitled to participate in further proceedings without written statement, their participation would be restricted by several limitations and they will be competent to cross-examine plaintiff or his witnesses only to demolish case of plaintiff - Impugned order to extent it has permitted defendants to adduce their evidence is not legal and unsustainable - Order in so far as recalling plaintiff for cross-examination by defendants is confirmed and order in so far as permitting defendants to adduce evidence is set aside - CRPs partly, allowed. **P.Bhaskara Rao Vs. Wolfgang Ormeloh, 2012(3) Law Summary (A.P.) 121 = 2013(1) ALD 154 = 2013(2) ALT 110.**

—Or.18, Rule 17 & Sec.151 - "Recall witness" - 1st respondent filed suit for partition and separate possession - Petitioner as D6 contested suit - After conclusion of evidence of R1/plaintiff, petitioner/D6 filed affidavit in lieu of chief- examination - In absence of petitioner's Advocate trial Court treated that chief- examination on his part is over, and subjected petitioner for cross- examination as D.W.1 and some documents which were filed in written statement, were not marked through him - Some selective documents filed alongwith written-statement, were marked in "A" series, at instance of counsel for 1st respondent - Trial Court allowed I.A. filed by petitioner/D6 only to extent of enabling him to speak about documents that were already filed and marked through P.W.1 - Having noticed limited scope of application, petitioner filed applications with a prayer to reopen his evidence, to enable him to mark documents and to recall him - Trial Court dismissed both application by observing that petitioner not diligent at relevant point of time - In this case, petitioner filed his affidavits, in lieu of chief-examination, and wanted documents, filed by him along with written-statement to be brought on record, in continuation of chief-examination in Court - It may be a fact that Advocate of petitioner not present in Court on stipulated date - However, Court has chosen to subject petitioner for cross examination in absence of his counsel and without verifying steps that were required to be taken by witness about documents filed on his behalf - Majority of document filed by petitioner along with written-statement were marked through P.W.1, and some of them were left unmarked - Court remained as a silent spectator for all these anomalies - Confining recalling of D.W.1 only to extent referring to documents, that were wrongly marked through P.W.1 and dismissal of applications for recalling D.W.1 - Unsustainable - This is one case, where petitioner

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was made to suffer for wrong step taken by trial Court in directing that D.W.1 be cross- examined even before his chief-examination was formally concluded - Applications filed by petitioner to reopen and recall are allowed - Impugned orders, set aside - C.R.Ps, allowed. **P.Vital Reddy Vs. K.Sharath Babu 2010(3) Law Summary (A.P.) 198.**

——Or.19, Rl.2 - Petitioner/4th respondent in main suit filed an application under Or.19, Rule 2 of CPC to direct 1st respondent/1st defendant to appear before court to cross-examine her to elicit truth in contents of her affidavit filed in I.A. - Court below dismissed application on ground that Order 19, Rule 2 of CPC has no application to present case and it is only applicable when third party affidavits are filed.

Held, Court below by relying on judgment Shetty Chandra Shekar v. Neeti Ramulu dismissed application filed by petitioner on ground that deponents of third party affidavits filed in support of plaintiff or defendant can be called for cross-examination but not affidavit filed by either plaintiff or defendant to proceedings - Court below also relied on judgment of Sudha v. Manmohan, wherein it is held that request for cross examination of defendant cannot be allowed if such request could be to protract and delay proceedings under main suit - Court below has rightly relied on judgment in Shetty Chandra Sheker's case and came to conclusion that application under Order XIX Rule 2 CPC is not maintainable in respect of affidavits filed by parties to proceedings and it will apply to affidavits filed by third parties - In view of above facts and circumstances, this Court do not see any reason to interfere with order of Court below - Accordingly, this Civil Revision Petition is dismissed. **Pathange Mohan Krishna Rao Vs. Navale Sreevani 2016(2) Law Summary (A.P.) 361 = 2016(5) ALD 465.**

—Or.19, R.2 and Or.39, R.1 - **EVIDENCE ACT,** Sec.3 - Petitioners/plaintiffs filed I.A seeking temporary injunction accompanied by affidavit of petitioner/1st plaintiff - Trial Court allowed Application filed by respondents-defendants to summon petitioner plaintiff deponent of affidavit filed in support of I.A filed for grant of temporary injunction for cross-examination - AMBIT AND SCOPE OF OR.19, R.2 - Stated - It is not uncommon that in proceedings under Or.39, R.1, CPC parties file affidavits in support of their respective cases - When affidavits are filed, in case Court entertains a doubt with regard to identity of person or persons who gave affidavit, then it has power and discretion to order attendance of deponent of affidavit, for cross-examination so as to come to a just conclusion to determine such petition - In present case, respondents-defendants filed petition under Or.19, R.2 to direct petitioner-1st plaintiff to come to Court for purpose of cross-examination - Question of applicability of provisions of Or.19, R.2 would arise only in cases where an affidavit was filed in support of cases of respective parties by way of evidence, but certainly not an affidavit filed in support of petition - Since affidavit filed in support of a petition cannot be treated as evidence, the present petition filed by respondents-defendants seeking to summon deponent not maintainable - Application filed by respondents-defendants under Or.19, R.2 not maintainable - Order of trial Court that respondents-defendants counsel is entitled to cross-examine petitioner-plaintiff No.1

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who swore affidavit - Not justified - Impugned order, set aside - CRP, allowed. **Shetty Chandra Shekar Vs. Neeti Ramulu 2008(1) Law Summary (A.P.) 253 = 2008(2) ALD 709 = 2008(2) ALT 463 = 2008(1) APLJ 183.**

—OR.20, R.11 - Instalment decree - Appellant/plaintiff/Bank filed suit for recovery of certain amount - Trial Court decreed suit directing defendants to pay suit sum in monthly instalments and in case of default, Bank is at liberty to recover entire sum due in lumpsum - In commercial transactions by Public Financial Institutions where money is advanced on security including personal guarantees, granting of instalments, for payment of decretal amount is ruled out because that would frustrate very purpose of taking security - Courts must record reasons and for arriving at a conclusion whether to grant a decree for instalments or not, there should be some acceptable evidence placed before Court and on mere request made by Counsel in absence of any acceptable evidence, Court will not be justified in making such decree - Trial Court granting of decree permitting respondents/defendants to pay decretal amount by way of instalments - Unsustainable - Suit decreed with interest and costs - Appeal, allowed. **Indian Bank, Secunderabad, Branch Vs. K.T. Abraham 2008(1) Law Summary (A.P.) 181 = 2008(1) ALD 64.**

—Or.20, R.11 & Or.21, Rules 37 and 38 - **LIMITATION ACT, 1963,** Art.126 - Petitioner/DHR having obtained money decree filed EP for execution of decree by arrest and detention of respondent/JDR - Executing Court allowed EA filed by JDR allowing to pay decree amount in monthly instalments - Petitioner/DHR contends that since executing Court has no jurisdiction to allow discharge of decree in instalments impugned order is illegal - Respondent/JDR contends that since JDR has no sufficient means to pay decretal amount Court below in exercise of its discretion has rightly ordered payment of decretal amount, instalments instead of directing arrest and detention of JDR in civil prison - In this case, initially Executing Court allowed EP directing arrest and detention of JDR in civil prison - In CRP preferred by JDR, High Court set aside order of lower Court giving liberty to JDR to file Application seeking grant of instalments for paying decretal amount and on filing of such Application, Court below shall consider same and pass appropriate order in accordance with law - Executing Court has no power to grant instalments under provisions of CPC - In this case, admittedly money decree passed in favour of petitioner and it did not provide for payment of amount decreed by instalments - Hence, Court below committed grave error in allowing application permitting JDR to pay decretal amount in instalments - It is always open to Court below to make such an enquiry taking into consideration rival claims and material produced by parties and if Court satisfied, execution petition for arrest may probably be dismissed - However, Executing Court cannot direct payment of decretal amount by instalments since not competent to do so under law - Impugned order, set aside - CRP, allowed. **Seelam Ramadevi Vs. Gadiraju Yanadi Raju 2008(2) Law Summary (A.P.) 195 = 2008(4) ALD 366 = 2008(4) ALT 438 = 2008(2) APLJ 123.**

——Or.XX, Rule 12 read with Sec.151 - Indian Limitation Act, Art.137 - Plaintiffs had obtained a preliminary decree in suit filed for partition of plaint schedule properties

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- An appeal preferred by the defendant was dismissed confirming preliminary decree and judgment - Plaintiffs/preliminary decree holders had filed an application for passing a final decree and sought for appointment of an Advocate Commissioner to conduct an inquiry and determine mesne profits as per terms of preliminary decree - Trial Court, by order impugned had appointed an Advocate Commissioner to conduct an inquiry and determine mesne profits as per terms of preliminary decree - Aggrieved of said orders, defendant had preferred this revision petition - Defendant contended that petition was filed in the year 2010 for ascertainment of mesne profits, pursuant to preliminary decree dated 23.01.2001 - Admittedly, petition is filed after a period of more than eleven years - Therefore, application is not maintainable - Court below ought to have seen that Order XX, Rule 12 of Code clearly debars filing of any application for determination of mesne profits beyond three years from date of the decree - Period of limitation is three years as per Art.137 of Indian Limitation Act.

Held, contention of defendant is devoid of merit as a Division Bench of this Court in decision in Velicheti Audinarayana vs. Union of India, held that Order XX, Rule 12 (1)(c) (iii) of the Code is unconstitutional and ultra vires to Article 14 of Constitution of India - As already noted, in case on hand, preliminary decree was granted in a suit for partition - Therefore, in well considered view of this Court, Order XX, Rule 18 of Code is applicable to case on hand and not Rule 12 - View of this Court gets reinforced from ratio in decision in Kolluri Suseelamma v. Yerramilli Nageswara Rao - Ratio in above case was accepted by this Court in subsequent decisions - It is apt to note that Supreme Court in Gopalakrishna Pillai v. Meenakslri, had approved the view taken by the Madras High Court in Basavayya v. Guravayya - After making a reference to subsequent decisions of this Court, decisions of other High Courts and Supreme Court, this Court, in Kolluri Suseelamma case, had finally summed up legal position.

Therefore, in view of ratio in above decision, which squarely applies to facts of case, this Court finds that Order XX, Rule 18 of Code is only applicable to facts of case - Having regard to aforesaid reasons this Court holds that contention of defendant based on provision of Order XX, Rule 12(1)(c)(iii) of Code that decree holders are entitled to claim mesne profits until expiration of three years from date of appellate Court's decree is untenable and is devoid of merit - Further, in view of finding of this Court that provision of law applicable to facts of instant case is Order XX, Rule 18 of Code, this Court holds that order impugned does not brook interference - Accordingly, Civil Revision Petition is dismissed. **Merla Veera Venkata Satyanarayana Vs. Merla Srivani 2016(2) Law Summary (A.P.) 433 = 2016(5) ALD 476 = 2016(5) ALT 243.**

—Or.20, Rule 18 - Or.22, Rules 10A, 3 & 4 - Petitioner's father, 'S' filed suit for partition and for recovery of possession of half share - 'S' died pending suit and his wife and children were brought on record - Preliminary decree passed - Appeal filed by respondents dismissed by District Judge and second Appeal also dismissed - Petitioners filed I.A

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under Or.22, Rule 18 for appointment of Commissioner for submitting a report so that final decree can be passed in suit - Petitioners also sought for condonation of delay of 1053 days in bringing legal representatives of some deceased respondents on record, to set aside abatement caused by their death and to bring them on record as LRs of deceased respondents - 3rd respondent filed counter contending that Application is vague and vexatious and there is no specific prayer in petition that specific dates of death of deceased were not given and that petitioners are to explain delay in respect of each deceased and they also ought to have file separate petitions in respect of each respondent for condonation of delay in seeking to set aside abatement and to bring LRs on record and that pending second Appeal death of persons not reported and therefore he could not take steps to bring them on record in second Appeal - Trial Court dismissed I.A on ground that petitioner did not add LRs of deceased in Appeal and that petitioner did ot give even date of death of deceased/respondents and that delay is not properly explained and that there were latches on part of petitioner - Hence present Revision - Petitioner contends that under Or.22, Rule 10A CPC it is incumbent on Counsel who appeared for deceased parties in suit to give information about date of death and details of LRs of deceased defendants to petitioners; that petitioners were not aware of these details and therefore, they could not mention specific dates of death of these individuals and that since there is no time limit to file Application to pass final decree in a suit for partition. in Application filed to pass final decree, petitioners are entitled to state that these persons have died and their LRs be brought on record by condoning delay if any in filing Application to set aside abatement and that all procedure is hand-maid of justice and mere fact that separate Applications in respect of each deceased/respondents are not filed it is not open to trial Court to dismiss Application for passing final decre under Or.22, Rule 18.

".....It is well-established proposition of law that a suit cannot be dismissed on ground of abatement after a preliminary decree was passed for thereby rights are accrued to one party and liabilities are incurred by the other"

Or.22, Rules 3 & 4 have no application to present case as preliminary decree in suit was passed in 1984 and death of respondents took place subsequently in 1997, 1999 and 2001 and thus there can be no abatement of suit on account of death of defendants after passing of preliminary decree and so there was no necessity for petitioners to file petitions for condonation of delay seeking to set aside abatement and to set aside abatement - Order of trial Court holding that they should have filed such Applications and explained day to day delay in respect of each of deceased defendant is contray to law and unsustainable - Admittedly in this case all LRs of deceased/respondents were shown as respondents in final decree petition and it would merely suffice if they implead LRs of deceased respondents in it which they did - Trial Court ignored settled legal position and dismissed IA for passing final decree on untenable grounds and in perverse manner and such orders are likely to cause parties to lose faith in Institution of Judiciary itself - Impugned order of Trial Court, set aside - CRP, allowed. **Ausali Siddiramulu Vs. Ausali Dubbaiah, 2014(1) Law Summary (A.P.) 85 = 2014(1) ALD 550 = 2014(2) ALT 413.**

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—Or.21 – Execution of decree – Suit filed for declaration of right of easement and sought direction for restoration of cart track - Defendant denied existence of any Cart track – Trial Court decreed suit – First and Second appeals ended in dismissal – Executing Court passing order directing JDR to restore cart track within one month - Petitioner/ JDR contends that decree is inexecutable in absence of a mandatory injunction for removal of trees standing on suit schedule cart track – In this case, the decree in suit for restoration of suit schedule cart track attained a finality, thus making JDR/petitioner liable for restoration of suit schedule cart track which means and includes removal of trees or any other obstructions and bring it to original shape - As matter of fact, existence of trees existing even by date of suit made it all more clear that decree for restoration for cart track includes removable of trees - Even according to JDR/petitioner trees in question are existing even by date of suit - Hence it is clear that decree for restoration of cart track includes removal of trees existing on said cart track – Judgment of Court below – Justified – CRP, dismissed. **Ch.Ranga Reddy Vs. M. Suryanarayana Reddy 2008(3) Law Summary (A.P.) 293.**

—Or.21, Rules 1 & 4, r/w Sec.34 - **INTEREST ACT,** Sec.3(3)(c) - Execution of arbitration award - Distinction between "award amount" and "interest payable" - Award having become Rule of Court and while making said Rule it is clearly make note that award contained an amount which is payable to respondent quantifying said amount in certain amount - After quantification of said amount, arbitrator dealt with grant of interest independent of said payment and fixed rate of such interest at 12% per annum - When such a clear distinction consciously made by Arbitrator while passing award no one can even attempt to state that award amount and interest mentioned in award should be merged together and state that award amount would comprise of quantified amount and interest worked out thereon became payable when once it is made rule of Court and thereby became decretal amount - Such construction of said award cannot be made having regard to specific terms of decree - While applying Or.21, Rule 1, when payments were made towards satisfaction of decree as provided under Or.21, Rule 1 (a) (b) & (c), what would be implication of sub-rules 4 & 5 of Or.21 - In order to under stand said implication of Or.21, Rule 1 read alongwith sub-Rules 4 & 5, in foremost it will be necessary to understand what is contemplated under Or.21, Rule 1, in particular, opening set of expressions namely, "all money, payable under a decree shall be paid as follows..." - It will be necessary to keep in mind that said provision does not state decretal amount - Expression used is all money payable under a decree - PRINCIPLES OF APPRO-PRIATION:

a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

b) The legislative intent in enacting sub-rules 4 and 5 is clear to the pointer that interest should cease to run on the deposit made by the judgment debtor

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and notice given or on the amount being tendered outside the Court in the manner provided in Order XXI Rule 1 sub-clause (b).

c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree;

d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter;

e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation. **Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh & Co. 2012(3) Law Summary (S.C.) 225 = 2013(1) ALD 44 (SC) = 2012 AIR SCW 5639 = AIR 2013 SC 252.**

—Or.21, Rule 22 and Sec.50 – Maintainability of E.P against LRs of JDR – Suit for perpetual injunction in respect of suit property – Decreed – Respondent/plaintiff filed EP alleging that petitioners, LRs of deceased JDR causing obstruction for construction of compound wall around suit property - Contention that E.P is not maintainable against LRs of JDR straightaway – Executing Court allowed EP directing detention of petitioners in civil prison – It is true that petitioners are not parties to decree and they were not brought on record after death of JDr - Sec.50 of CPC however, permits institution of EP against LRs also, in case, JDR dies, before decree has been satisfied – Only rider is added to effect that liability of LRs shall be limited to estate, succeeded by them – Liability of LRs of JDr in decree for perpetual injunction obviously needs to be limited to extent of interference, which was restrained through such decree – It is only such of LRs, who defy decree, that can be proceeded against - From provision of Or..21, Rule 22, it is difficult to discern either that decree holder is placed under obligation to file an independent application to bring LRs of judgment holder on record or that executing Court must insist on such a step – In this case, executing Court did issue notice to petitioners and they also submit that they do not any more intend to interfere with construction of compound wall and they would abide by decree - However, that any development, that is said to have taken place subsequent to impugned order, cannot constitute subject matter of E.P – If respondent feels that petitioners have resorted to any acts or omissions, giving raise to fresh cause of action to file an E.P or to extend scope of pending E.P, necessary steps are to be taken – High Court cannot discharge functions of executing Court – Impugned order, set aside – CRP, allowed. **Kalpuri Ellamma Vs. Nellutla Venkata Lakshmi 2008(3) Law Summary (A.P.) 224 = 2008(6) ALD 180.**

—Or.21, Rules 22, 37 and Sec.151 - Suit filed by respondent against petitioner, decreed - Initially respondent filed E.P - When petitioner filed E.A raising objection as to

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maintainability of E.P, same dismissed - Respondent filed an other E.P under Rule 37 of Or.21, seeking arrest of petitioner - Petitioner filed E.A u/Sec.151 CPC with prayer to dismiss E.P on ground that notice under Rule 22 of Or.21 not issued - Executing Court dismissed E.A - Hence present Revision - If an execution petition is filed by DHR within 2 years for relief, other than one pertaining to detention in civil prison or sale of property in execution, steps therein can takes place without issuing notice to JDR - Where however E.P is filed after lapse of two years from date of decree, executing Court would be under obligation to issue notice as contemplated under Rule 22 - Rule 1 of Or.21 makes it mandatory for executing Court to issue notice calling upon JDR to appear before Court - Once JDR appears before Court, almost a trial like procedure to be followed - DHR would be under obligation to prove that JDR is in possession of adequate means and still is not paying amount - Therefore Rule 22 of Or.21 cannot be made applicable to any execution petition filed under Rule 37 of Or.21 CPC - Question of issuance of notice under Rule 22 would arise only after E.P is filed - Very filing of E.P cannot be challenged on ground that notice under provision not issued - CRP, dismissed. **B.Gangadharam Vs. D.Sivasankar Reddy, 2011(2) Law Summary (A.P.) 82 = 2011(3) ALD 831 = 2011(4) ALT 127.**

—Or.21, Rule 30 r/w Secs.51 & 58 - **ARBITRATION ACT,** Sec.17 - Respondent secured arbitration award and filed E.P for arrest and detention of petitioners in civil prison for non-payment of decretal amount - District Judge allowed E.P and ordered arrest of petitioners - Hence, present Revision Petition - Petitioners contend that mere possession of property by itself would not be enough for DHR to seek arrest of JDRs that unless mala fide intention to evade payment of decretal amount is pleaded and established, arrest of JDRs cannot be ordered and that Court below having already directed attachment of properties of petitioners, committed an error in ordering arrest and detention in civil prison - Respondent submits that even though petitioners have sufficient means to pay decretal amount as established by respondent before Court below, they have been deliberately evading payment and hence Court below is justified is ordering petitioners' arrest and that DHR has an option to execute decree by any of methods envisaged under provisions of Or.21, Rule 30 and that Court can order attachment of properties and arrest of JDRs, simultaneously - U/Sec.17 of Arbitration Act award itself shall be considered as decree and that no separate decree need be obtained - In this case, admittedly petitioners are owning landed property and u/Sec.58 of CPC, *sine qua non* for ordering arrest and detention of JDRs in civil prison that despite having means to pay amount under decree or some substantial part thereof, they have refused or neglected to pay same - In Sec.51 of CPC, Supreme Court held that there must be some element of bad faith beyond mere indifference to pay, or some deliberate or recusant disposition in past or alternatively, current means to pay decree or substantial part of it and that present needs of JDR are relevant consideration for considering his conduct in not paying decretal amount - In this case, no reasons have been put forth by petitioners as to why they are not

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able to liquidate property and pay decretal amount - Contentions of petitioners that Court below has committed error in ordering petitioners' arrest for non-payment of amount under awards, cannot be accepted - DHR can simultaneously seek execution of decree by delivery of property specifically decreed; by attachment and sale or by sale without attachment of any property; or by arrest and detention in prison for such period not exceeding period specified in Sec.58 where arrest and detention is permissible under that section - Order of lower Court directing both arrest and attachment of property of petitioners - Justified - CRP, dismissed. **K.Ravi Kumar Reddy Vs. I.C.D.S. Limited, 2012(1) Law Summary 181 = 2012(3) ALD 152 = 2012(3) ALT 758.**

—OR.21, R.32 - **SPECIFIC RELIEF ACT,** Sec.28 (1) - E.P filed to execute sale deed pursuant to decree passed for specific performance - JDR objecting that DHR deposited balance sale consideration after lapse of three years and it shows that he has no money or ready to perform his part of contract and therefore not entitled to relief - Executing Court overruled objection and E.P numbered - Sec.28(1) of Act, "RESCISSION OF CONTRACT" - In this case, decree does not contain any positive direction to deposit balance sale consideration on any particular date - If decree holder fails to pay money within period allowed by decree or such further period, as Court may allow, it is open to JDR to apply same suit in which decree is made to have contract rescinded - Power u/ Sec.28 of Act is discretionary and Court cannot ordinarily annul decree once passed by it - Although power to annul decree exists yet Sec.28 of Act provides for complete relief to both parties in terms of decree - Court does not cease to have power to extend time even though trial Court had earlier directed in decree that payment of balance price to be made by certain date and on failure suit to stand dismissed - Power exercisable under this section is discretionary - Decree holder failed to deposit balance sale consideration till 24-2-95 though suit decreed on 12-8-92 - It is not case of JDR that DHR did not offer to pay balance sale consideration and therefore they could not execute sale deed on or before 21-1-92 - JDRs have not filed any Application for rescission of contract and no whisper in counter about relief of rescission - No explanation what so ever forthcoming from DHR as to why he did not deposit balance sale consideration - Court has to see reasonableness of request for extension of time or as to whether it is a fairly a case of rescission of contract - No endeavour on part of executing Court to consider these aspects - A clear and unequivocal finding is needed to be reached by Court - Impugned order, set aside - Matter remitted to executing Court for fresh consideration - Revision petition, allowed. **L.Venkata Krishna Reddy (died) Vs. M.Anjappa(died) per L.R 2008(1) Law Summary (A.P.) 32 = 2008(2) ALD 379 = 2008(1) ALT 260 = 2007(3) APLJ 289.**

—-Or.21, Rule 32(1) - Unless the decree-holder, with cogent and convincing evidence, proves the existence of the ingredients of Rule 32 of Order 21 of CPC, order of arrest cannot be made - Impugned order passed by learned Junior Civil Judge, is neither sustainable nor tenable - Petition allowed - Order of Junior Civil Judge set aside. **Malle Ranga Reddy Vs. Thirunagaru Purushotham 2014(3) Law Summary (A.P.) 140 = 2014(6) ALD 457.**

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—Or.21, Rule 35 and Or.21, Rule 22 (1) & (2) - Lok Adalat passed compromise Award in RCC - Under award both parties *inter alia* agreed for continuance of lease in favour of petitioner for particular period - As petitioner failed to handover possession to respondent he filed E.P - Court issued warrant under Or.21, Rule 35 CPC - Petitioner contends that admittedly award passed by Lok Adalat was more than two years old by time respondent has filed E.P and that Court has committed a serious error in issuing warrant without notice to petitioner as envisaged in Or.21, Rule 22(1) - In this case, it is not in dispute that petitioner has undertaken to vacate possession of property immediately on expiry of agreed lease period - Instead delivering vacant possession, petitioner embarked upon further litigation by setting up oral lease and filing civil suit - In this case, facts make it an eminently fit case for invocation of provisions of Or.21, Rule 22(2) CPC, because petitioner made respondent to await expiry of extended lease period under compromise award and filed suit setting up plea of oral lease obviously with a view to thwart respondent's effort to recover possession of property - Issuance of notice under Cl.1 of Rule 22 would definitely cause unreasonable delay and defeat ends of justice - Therefore, order of lower Court, Justified - CRP, dismissed. **Karumuri Sambasiva Rao Vs. Vysyaraju Suryanarayana Raju, 2011(1) Law Summary (A.P.) 335 = 2011(3) ALD 662 = 2011(4) ALT 47 = AIR 2011 (NOC) 299 (AP).**

—Or.21, Rule 35, Or.21, Rule 97, r/w Sec.151, Or.21, Rules 99, 101,103,105 and 106 - 1st respondent filed suit against 2nd respondent for recovery of possession of suit property claiming that she is owner of suit property and 2nd respondent is tenant - Ex parte decree passed - E.P filed for delivery of possession of suit property under Or.21, Rule 35 - Bailf returned warrnat unexecuted since 3rd parties are in possession of property and they have resisted delivery of possession - Respondent filed E.A under Or.21, Rule 97 for removal of obstruction caused by 3rd parties and subsequently filed Memo to permit to withdraw said E.A - Since 1st respondent remained absent and unrepresented, EA was dismissed, and on same day respondent filed another application u/Sec.151 CPC seeking direction to remove obstruction with police aid - Petitioner, third party took strong objection to maintainability of subsequent application, as earlier application filed by respondent under Or.21, Rule 97 was dismissed for default - Lower Court allowed application of 1st respondent with costs and granted police aid - Petitioner, 3rd party contends that lower Court has committed serious illegality in entertaining second application u/Sec151 CPC having dismissed earlier application filed under Or.21, Rule 97 and that lower Court has failed to consider conduct of 1st respondent in filing Memo seeking withdrawal of earlier application and also took exception to subsequent action of lower Court in closing very EP after suo motu advancing same - Lower Court over ruled objections raised by petitioner on maintainability of subsequent application on reasoning that earlier application was dismissed for default and not on merits and same will not operate as res judicata - Where earlier suit was dismissed by Court for want of jurisdiction or for default of

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plaintiff's appearance etc., decision not being on merits would not be res judicata in a subsequent suit - A party to an application under Or.21, R.97 of CPC has to necessarily file application for setting aside ex parte order within 30 days from date of passing such order or from date of knowledge of order in case of non service of notice - In this case, even though 1st respondent has filed a memo seeking withdrawal of her application, she has allowed application filed under Or.21, Rule 97 of Code to be dismissed for non-representation and failed to follow mandatory procedure under Rule 106 - Even in absence of specific bar as contained in Or.9, Rule 9 of Code for filing fresh application same principles which apply to suit should equally be applied to applications filed under Or.21, Rule 97, as such an application has been same status as a separate suit - Court below being oblivious of this legal position, has brushed aside objection raised by petitioner by assiging a lopsided reasoning that previous order does not operate as *res judicata* - Being executing Court, least that is expected of it is to ascertain from 1st respondent as to reason for her not prosecuting petition filed under substantative provision of Or.21, Rule 97 and filing separate Application invoking Courts inherent power u/Sec.151 of Code for same relief as claimed in previous application with addition of relief of police aid, on same day on which earlier application was dismissed for non-prosecution - Once 1st respondent has allowed her application filed under Or.21, Rule 97 of Code to be dismissed for non representation question of entertaining a subsequent application on same cause of action would not arise as such a course encourages parties to indulge in sheer abuse of process of law and Courts - Hence order under revision cannot be sustained and same is accordingly set aside - Civil Revison petition, allowed. **E.S.Sulochana Vs. P.Yogamba Lakshmi, 2012(1) Law Summary 219 = 2012(3) ALD 211 = 2012(3) ALT 224.**

—Or.21, Rule 37 – **INDIAN CONTRACT ACT,** Secs.43 & 44 & 128, 133,135,136,137,146 and 147 – 2nd respondent is prized subscriber of 1st respondent/Chit Fund Company who obtained surety from petitioner and six others, viz., respondents 3 to 7 for ensuring payment of instalments of chit – 1st respondent/Chit Fund Company filed suit on default committed by 2nd respondent and obtained decree – 1st respondent filed EP against petitioner and Respondents 5 and 7 for arrest - Executing Court ordered arrest of petitioner holding that though petitioner is possessed of sufficient means to pay decretal amount, he did not honour decree - Petitioner contends that liability of sureties is co-extensive with that of principal debtor and unless steps are taken against principal debtor also it would become untenable for executing Court to enforce decree – Chit Fund Company contends that being a surety, petitioner is equally liable to pay entire decretal amount and it is always competent for 1st respondent to choose either principal debtor or all or any of sureties to recover decretal amount - In this case nothing is stated as to why Chit Fund Company has picked up judgment debtors 4,6 & 7 and left aside principal debtor and other sureties - CONTRACT ACT, Secs.43 & 44 – A contract comes into existence when a person promises to do or forbear from doing in favour of another for consideration – While Sec.40 of Act mandates that it shall be obligation of promisor himself, to perform

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contract, implying existence of only one promisor, Sec.44 visualises situation of there being more than one promisor – Provision binds all joint promisors alike – Sec.45 is extension of same principle, in its different dimension – It needs to be seen as to whether or not principle underlying these provisions can be applied to cases of sureties – This would be possible, if only sureties are treated as joint promisors - Unlike in case of joint promisors, there are certain circumstances which relieve sureties, even while obligation of principal debtor towards creditor remains or subsists – U/Sec.133 of Act, a surety would stand discharged, if creditor had varied contract with principal debtor without consent of surety – Secs.43 & 44 make it amply clear that discharge of one joint promisor would not enure to benefit of other joint promisor – Almost opposite results flow, as between principal debtor and surety – Discharge by one would discharge other – Any transaction or deal between creditor and principal debtor without knowledge of surety, to alter terms of contract, would have effect of completely relieving surety - Principle underlying Sec.128 of Act which mandates that liability of surety is co-extensive is that of principal debtor – If for any reason that amount cannot be recovered from principal debtor whole entitlement of creditor collapses – This is in contrast to cases of joint promisors covered by Sec.43 & 44 – In this case 1st respondent/Chit Fund Company did not choose to effectively implead principal debtor and three sureties though mentioned their names in cause title in E.P - Steps were not initiated against principal debtor on account of fact that she was declared as insolvent under provisions of Insolvency Act – If 1st respondent felt that it suffers legal disability from proceeding against principal debtor, by that very reason he suffers incapacity vis-à-vis others also by operation of principle underlying u/Sec.120 of Act - Failure to implead 2nd respondent or to proceed against her would therefore attract Sec.135 of Act - Admittedly there is no contract to contrary and at most, petitioner is liable to share whole debt equally alongwith other 5 sureties – There is absolutely no basis for 1st respondent to proceed only against petitioner for entire amount – Executing Court did not follow procedure prescribed under various Rules of Or.21, CPC – Impugned order passed by executing Court – Unsustainable – CRP, allowed. **M.Venkataramanaiah Vs. Margadarsi Chit Fund Ltd., 2009(1) Law Summary (A.P.) 25 = 2009(4) ALD 300.**

—Or.21, Rules 37 & 38 - Arrest of JDR - Petitioner obtained decree against respondent - Since respondent not complied with decree, petitioner filed E.P for arrest of respondent and detain in civil prison - Executing Court dismissed E.P basing on averments in counter filed respondent stating that he has no mesne discharge decretal amount and he is dependent upon his father - Petitioner contends that respondent admitted in his deposition that his family is owning Ac.3.50 cents of land and their family running a business which yield Rs.700-800 per day and in that in view of matter executing Court ought not to have dismissed E.P - BURDEN OF PROOF - In matters of this nature, initial burden to show that JDR possessed adequate means, rests upon decree holder - It would be sufficient if DHR broadly indicates nature of properties owned or means possessed by JDR - Beyond that he cannot be expected to have perfect and complete knowledge about resources of JDR - In this case, admittedly

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JDRs family deriving income of Rs.700 to 800 per day and is possessed of agricultural income, and as such JDR can certainly make an effort to discharge obligation under decree - JDR granted facility of clearing decretal amount in monthly instalments and if he commits default in payment of instalments for two consecutive months, E.P shall stand allowed and he shall be liable to be detained in civil prison - Impugned order of executing Court, set aside - CRP, allowed. **Bathula Ravi Kumar Reddy Vs. Shaik Masthan Vali 2012(3) Law Summary (A.P.) 177 = 2013(1) ALD 103 = 2013(2) ALT 68.**

—Or.21, Rules 37 & 38 & Or.21, Rules 106 (3) &106(4) and Sec.122 - LIMITATION ACT, Secs.5 & 29 - Petitioner suffered money decree and failed to satisfy decree - Respondent filed E.P and obtained *ex parte* order for arrest - Petitioner filed Application to set aside *ex parte* order contending that he has no means to satisfy decree and hence his arrest cannot be ordered, alongwith Application to condone delay of 26 days in filing Application to set aside *ex parte* order - Executing Court dismissed Application for condonation of delay without considering two decisions of High Court, wherein it was held that Sec.5 of Limitation Act would also be Applicable to an Application filed under Or.21, Rule 106 CPC - Single Judge referring matter to Division Bench and subsequently matter referred to Full Bench for an authoritative pronouncement - Petitioner contends that though Sec.5 of Limitation Act excluded Application under any other provisions of Or.21 CPC by reason of amendment of High Court of A.P. u/Sec.122 CPC adding sub-rule (4) in Rule 106 of Or.21 an Application for condonation of delay u/Sec.5 of Limitation Act in filing such an Application would be maintainable for condonation of delay - Respondent contends that under Or.21, Rule 106(3) of CPC, Application to set aside ex parte order under Or.21, Rule 106(1) has to be filed within 30 days from date of order or within 30 days from date when applicant has knowledge of order - Any application filed beyond 30 days as contemplated therein would not be maintainable and Sec.5 of Limitation Act has no Application - By reason of amendment made by A.P High Court in 1991 sub-rule (4) has been added in Rule 106 of Or.21 CPC - As a result of this, Application to set aside an *ex parte* order passed under Rule 105(2) can be filed even after 30 days by seeking condonation of delay as provided for by Rule 106(4) of Or.21 - A reading of Sec.122 of CPC leaves no doubt that in exercise of that power High Court can even annul, alter or add Rules in First Schedule - At least in field of civil judicial procedure; power conferred on High Court u/Sec.122 of CPC is greater than power to amend provisions of CPC and that even if such a Rule is conflict with previous existing rule, it must be by implication deemed to have been annulled or/and altered by new rule - Therefore, by virtue of Sec.32 of Act 46 of 99 and Sec.16 of Act 22 of 2002 and by necessary implication, inevitable construction should be that amendment made by High Court of A.P through Judicial Notification, already remains unsettled and very much intact - Therefore, that notwithstanding repeal provisions in 1999 and 2002 amendments to CPC, Or.21, Rule 106(4) as inserted by High Court in exercise of power u/Sec.122 of CPC enables

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of a party to proceedings to file Application u/Sec.5 of Limitation Act seeking condonation of delay in filing Application to set aside *ex parte* order passed under Or.21, Rule 106(1) - Order of lower Court, set aside - CRP, allowed. **Ch. Krishnaiah Vs. Ch. Prasada Rao 2009(3) Law Summary (A.P.) 144 = 2009(6) ALD 195 = 2009(4) APLJ 1 = 2009(6) ALT 82.**

—Or.21, Rules 37, 38 and 40 - **CONSTITUTION OF INDIA,** Arts.14,19,21 r/w Sec.151 C.P.C - DHR filed suit and obtained decree and sought for arrest and detention of JDR in civil prison for not honouring money decree - Executing Court passed impugned order holding that DHR failed to show that JDR has means and therefore JDR cannot be committed to civil prison - DHR contends that JDR has means and if he is not willing to honour decree he should be liable to be arrested and sent to civil prison - Executing Court held that DHR failed to establish that JDR has means to honour decree and that if JDR has means, decree holder would be welcome to proceed against properties of JDR - ARREST AND DETENTION OF JDR WHO DOES NOT HAVE MEANS - Stated -

"There must be some element of bad faith beyond mere indifference to pay some deliberate or recusant disposition in the past or alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal as demand verging on dishonest disowning of the obligation under the decree. Here consideration of the debtor's other pressing needs and straitened circumstances will play prominently"

It would not be sufficient if it is shown that JDR has means to honour decree and has failed to do so, there must be element of bad faith beyond mere indifference to pay before it can be held that JDR is liable for detention in civil prison - In this case, evidence of JDR clearly shows that it is not a case of some element of bad faith, but a case of supine indifference and *mala fide* on part of JDR in shade of legal protection that unless DHR establishes means of JDR, he need not honour money decree - In this case, failure of JDR to honour decree is on account of bad faith on his part and consequently is liable to be arrested and detain in civil prison - Execution Court erred in assessing legal position correctly and passed erroneous order - Order of execution Court, set aside - E.P remitted for further proceedings. **Marepally Narasimha Reddy Vs. Kancharla Kumara Swamy, 2011(2) Law Summary (A.P.) 197.**

—Or.21, Rules 37,38, 39,40 & Sec.51 - Respondent/DHR filed E.P to arrest and detain petitioner/JDR in civil prison for non payment of certain amount - Executing Court passed orders issuing warrant of arrest of JDR under Rule 37(2) for conducting means enquiry as he did not appear in person before Court inspite of previous warrant and notice - Petitioner/JDR contends that DHR has to pay subsistence allowance under Rule 39 as declared by presiding Officer of Court to be sufficient and in fact such amount was not paid and it was not proper to issue warrant without notice to be DHR - Respondnt/DHR submits that suit was filed in 2006 and it was decreed but petitioner/

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JDR has been involved in prolonging matter by reason of which DHR has been suffering great hardship - In this case, as seen from records it is clear that matter has been coming up since long time but JDR failed to attend before Court to face means enquiry and therefore it cannot be said that in EP proceedings there was no notice to JDR - Sub-Rules (2) and (3) of Rule 40 CPC are distinct because under first one JDR, can be detained in custody of Officer of Court or released by Court on his furnishing security to satisfaction of Court of his appearance when he is required for enquiry under sub-rule (1) where as sub-rule (3) provides for taking necessary steps after conclusion of enquiry - Rule 40(2) and Rule 37 are to be read inconjunction - However detention should be subject to question of providing necessary subsistance allowance - In present Circumstances it cannot be said that order passed by Court below is wrong - It is for Court below to take necessary steps under sub-rule (2) when once JDR is arrested in view of arrest warrant issued - Impugned order of lower Court - Justified - CRP, dismissed. **Donthy Reddy Atchyutha Reddy Vs. N.Ratnan Babu, 2013(1) Law Summary (A.P.) 157 = 2013(2) ALD 445 = 2013(2) ALT 7.**

—Or.21, Rule 42-A - Suit filed for eviction against 1st respondent - Decreed - E.P filed by petitioner allowed and 1st respondent was evicted and petitioner was put in possession - Since 1st respondent did not remove articles that were present in premises at time of eviction, bailiff of Court removed same and entrusted them to 2nd respondent for safe custody - E.A filed by 1st respondent for redelivery of articles allowed by executing Court and directed to handover articles to 1st respondent - Since order in E.A not complied with 1st respondent filed E.P mentioning that he is entitled decretal amount of Rs.4,20,000/- and interest of Rs.1,87,000 and also prayed for attachment and sale of land and property and house of petitioner - Inspite of objection as to maintainability of E.A executing Court overruled objection and numbered E.P making reference to Or.21, Rule 42-A CPC - Executing Court gave also finding that properties belonging to 1st respondent were misappropriated by petitioners and for realization of value of said goods executing Court directed attachment of properties owned by petitioner and further issued directions for sale of attached properties - Petitioners contend E.P filed by 1st respondent is not at all maintainable in law, since there was no decree in his favour - 1st respondent contends that he was forcibly evicted and articles found in premises were entrusted to custody of 2nd respondent and that Rule 43-A of Or.21 CPC confers right upon him to recover goods owned by him or value thereof - In this case, when Ameen of Court case resistance from 1st respondent he approached Court for Police aid to evict 1st respondent and delivered vacant possession of premises - After eviction had complete 1st respondent filed E.A with prayer to direct 2nd respondent to handover petition schedule properties as many as 116 items were listed - Executing allowed application *ex parte* - it is rather surprising to note that learned Judge did not even issue a notice to 2nd respondent much less made an attempt to verify either list furnished by 1st respondent accords with official records - In this case, 1st respondent has taken resort to an ingenious method of

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filing E.P that too after two years from date of order as though there was a decree in his favour and curiously E.P was filed not for delivery of items mentioned in E.A and it was recovery of principal of Rs.4,20,000/- and interest 1,87,000/- - Though office of executing Court refused to number E.P, presiding officer however exhibited his legal acumen and experience and directed E.P be numbered - Or.21, Rule43-A CPC, would get attracted only when an item of movable property that is under attachment is entrusted to custody of respectable person - Rule does not at all, entrustment of property which is not attached - Even where custodian as mentioned in Rule 43-A fails to restore properties as provided under sub-Rule (2) thereof, it is only an application for necessary directions that can be filed but not an independent E.P - It is settled principle of law that what becomes executable becomes a decree - If no decree is drawn either on basis of judgment or an order, occasion to file E.P does not arise - In this case, petitioners herein were nowhere in picture - Executing Court has proceeded on totally impressible lines and adopted a typical perverse reasoning in ordering attachment and sale of properties of petitioners - This is one case, where Court has penalized persons who approached it for grant of relief though they were successful in suit - Impugned order, set aside - CRP, allowed. **Udayagiri Ramija Begum Vs. Mulla Alli Baig 2010(2) Law Summary (A.P.) 144.**

—Or.21, Rule 46-C r/w Sec.151 & Rule 46 (h) - Suit filed for recovery of certain amount alongiwth Application under Or.38, Rule 5 - Trial Court allowed application attaching amount lying with petitioner/garnishee with direction to deposit amount - Subsequently suit decreed - 1st Respondent/DHR filed E.P requesting Court to send attachment amount from petitioner, garnishee - Executing Court dismissed E.A filed by petitioner stating that they are not liable to pay any amount to first respondent/ DHR - Petitioner contends that garnishee is entitled to prove debt owed to him by JDr for purpose of set off claim, same has to be adjudicated by Court - Respondent contends that Or.21, Rule 46-C application is not maintainable because before making attachment of amount lying with garnishee, notice was issued to him in I.A and after hearing garnishee, amount lying in his hands were attached - E.A was filed much after decree was passed in favour of plaintiff - When debt arises to garnishee after attachment is effected, garnishee has no right to adjustment or set off - In this case, admittedly liability of JDR to petitioner even as per its own admission is only much after attachment order is made absolute - Where debt owing from JDR to garnishee arises after attachment is effected, garnishee has no right to adjustment or set off - Or.21, Rule 46-H says an order made under Rule 46-B, 46-C or Rule 46-E shall be appealable as a decree - When appeal lies against order passed under Rule 46-C, revision under Art.227 of Constitution cannot be entertained - Revision, dismissed. **Marico Ltd.,Mumbai Vs. S.S.Transport, Rajahmundry 2009(2) Law Summary (A.P.) 75 = 2009(4) ALD 209 = 2009(4) ALT 371.**

—Or.21, Rule 47 and Or.6, Rule 17 - A.P. CIVIL RULES OF PRACTICE, Rule 55 - Plaintiff/ respondent filed suit against Revision petitioner/defendant for specific

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performance of agreement of sale - Petitioner agreed to purchase property for certain amount and paid certain amount as advance and agreed to pay remaining amount within two months - Respondent plaintiff subsequently addressed a letter expressing his inability to purchase plaint schedule plot and permitting him to sell away same to third party and pay earnest money back to him - After receiving letter petitioner sold part of suit property to one SR and executed registered sale deed - Subsequently respondent/plaintiff filed suit for specific performance of contract in terms of agreement of sale - After knowing particulars of sale from additional evidence petition filed by Revision petitioner, respondent/plaintiff filed I.A seeking amendment of plaint and impleadment of SR, subsequent purchaser as defendant in suit - Trial Judge allowed petition filed by plaintiff - Hence present revision petition - Petitioner contends, since respondent addressed letter stating that he is not willing to purchase property he sold property to SR and therefore respondent/plaintiff cannot maintain petition either to amend plaint or to implead SR as second defendant and that impleadment of SR as second defendant and that amending plaint and adding relief of cancellation of registered sale deed are two distinct relief and said reliefs cannot be sought in one petition - From facts of case, it seems that inspite of due diligence by respondent he could not file petition seeking amendment as well as impleadment of subsequent purchaser as second defendant and therefore it cannot be said that there are any latches on his part and that proposed amendment are addition of SR as second defendant in suit does not alter cause of action in suit and that subsequent deed executed by revision petitioner in favour of SR was not in knowledge of respondent plaintiff at time of filing suit - Trial Court rightly exercised its jurisdiction in allowing prayer for amendment and impleadment of SR as second defendant - There is no error of jurisdiction and no irregularity or illegality committed by trial Court in passing impugned order - Order of trial Court justified - CRP, dismissed. **Massarath Yasmeen Vs. Mohammed Azeemuddin 2011(3) Law Summary (A.P.) 137 = 2011(6) ALD 598 = 2011(6) ALT 202.**

—Or.21, Rule 58 - 1st respondent filed suit through her mother against deceased 2nd respondent for partition, separate possession and mesne profits - Preliminary decree passed in year 1955 - After attaining majority 1st respondent initiated final decree proceedings - Final decree passed in year 1982 and properties devided by mets and bounds and possession delivered - 1st respondent filed E.P for recovery of mesne profits - 4th respondent/wife of deceased 2nd respondent and her children attached four items of E.P schedule property basing on gift as well as a Will - Executing Court dismissed Applications filed by 4th respondent for raising attachment in respect of four items - Hence present appeal - Appellant contends that items 1 to 4 were gifted by deceased 2nd respondent and they were his absolute property and are not available to be proceeded since they are gifted to appellants - Respondent contends that so-called gifts in favour of appellants were much before final decree was passed and that gift deeds were executed only with a view to defeat claim for mesne profits

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- In this case, undisputedly that by time of gift was made, no partition has taken place and it was only in year 1994 properties came to be partitioned by mets and bounds - Decree suffered by 2nd respondent was not only as regards partition but also one for payment of mesne profits - Every item of property that fell to share burdened with obligation to discharge mesne profits - Law permits a coparcener to transfer his undivided share or to allot transferred item towards share of transfer - Till such time, transferee does not acquire any absolute right not- withstanding legality of transfer - Right of 1st respondent to recover mesne profits was thwarted on one pretext or other - However, delay caused by appellants and respondent No.4 have in fact helped them on account of spurt of prices of land and that a small fraction of property that has gifted or settled upon them would clear liability towards mesne profits - Executing Court directed to conduct fresh auction of item of attached property to extent needed for recovery of amount of mesne profits - Appeals, dismissed. **Kavuru Venkataramanamma Vs. Kavuru Narayanarao 2010(3) Law Summary (A.P.) 402 = 2011(1) ALD 659 = 2011(2) ALT 217.**

—-Order XXI, Rule 58 - **TRANSFER OF PROPERTY ACT,** Sec.52 - Appellant herein is the claim petitioner - He is a third party to the suit as well as execution proceedings - Plaintiff filed suit against defendants for specific performance of an agreement to sell, executed by the defendant in respect of house site admeasuring 350 sq. Yards - During pendency of suit, defendant died - Thereafter, his wife and son were brought on record as his legal representatives and they are defendants 2 and 3 in suit - Thereafter, suit for specific performance was decreed - During pendency of suit, defendants 2 and 3 allegedly sold an extent of 143.40 square yards of house site wherein there is a built up area of 437 square feet, under registered sale deed to claim petitioner - Suit was decreed in favour of plaintiff and against defendant - Subsequently, plaintiff filed execution petition under Order XXI, Rule 34 CPC seeking execution of registered sale deed by defendants 2 and 3 - In said E.P. third party-claim petitioner filed a claim petition claiming that he purchased part of schedule property to an extent of 143.40 square yards with built up area of 437 square feet from defendants 2 and 3 - After making an enquiry into claim petition, executing Court dismissed claim petition as not maintainable on ground that there is no prior attachment of the schedule property - Against said order, third party-claim petitioner filed present appeal.

Held, crucial aspect in instant case is that in suit filed by appellant against first defendant obtained an injunction restraining him or his men or agents from alienating suit schedule property - The same was granted and subsequently it was also made absolute - After his death, defendants 2 and 3 were brought on record - Since defendants 2 and 3 were brought on record as legal representatives of first defendant, order of injunction restraining first defendant from alienating property also operates against defendants 2 and 3 - Therefore, defendants 2 and 3 in violation of order of injunction, sold part of scheduled property to appellant-third party - Thus,

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third party-appellant is purchaser pendente lite but not absolute owner of property in his own right.

Defendants 2 and 3 adopted written statement filed by first defendant but they did not bring it to notice of trial Court that pending suit they sold the property to appellant - Appellant also did not get himself impleaded as a party in suit by making an appropriate application - Even though appellant is not a party to suit, he is bound by decree passed by trial Court by virtue of provisions of Section 52 of Transfer of Property Act - Therefore, he cannot set up an independent right in schedule property and file a claim petition taking objection to execution of registered sale deed in terms of decree and judgment passed by trial Court - Rule 102 of Order XXI of CPC lays down that a purchaser of suit property during pendency of litigation cannot resist possession - Therefore, as rightly held by executing Court, execution application is not maintainable - Consequently, the order passed in E.A. is hereby confirmed and appeal is dismissed without any order as to costs. **Shaik Afzal Vs. Mohd.Amjad Ali 2016(2) Law Summary (A.P.) 295 = 2016(5) ALD 299.**

—Or.21, Rule 58 & Or.38, Rule 10 - DHr brought Schedule properties for sale in execution of decree obtained against JDr/2nd respondent - Executing Court dismissed E.A filed by appellant/purchaser under Or.21, Rule 58 for raising attachment holding that Court gave finding that appellant failed to prove sale transaction and payment of consideration and that sale without consideration is not binding on DHr - District Judge confirmed order of trial Court - Appellant/purchaser contends that Courts below are not justified in going into validity of proceedings in specific performance suit and attachment before judgment of schedule property does not affect rights of purchaser existing prior to such attachment and therefore, schedule property cannot be sold - Or.38, Rule 10 - Rule would show that if person acquires right under a valid document/ transaction prior to attachment before judgment, rights of such person are not affected if such person is not a party to suit - If person having rights under prior transaction obtains in decree, subsequent attachment of property does not bar execution of any decree obtained by such person - In this case, 2nd respondent executed registered agreement of sale in favour of appellant 7 months prior to filing of suit by DHr - Therefore, rights of appellant are not in any way affected by said attachment, that 2nd respondent executed agreement of sale which is a sham and collusive - Admittedly appellant filed specific performance suit and same was decreed and Court also executed sale deed in favour of appellant - Effect of accepting submission of 1st respondent would be to sit in appeal over judgment in suit for specific performance - When 2nd respondent did not come forward to give evidence, it would not be safe to assume or infer that agreement has been accepted by Court in specific performance suit is sham and collusive - Both Court below failed to appreciate law correctly and also failed in applying correct law to admitted facts - 2nd appeal allowed. **Gopisetti Venkata Lakshmi Narasimharao Vs. Sri Satya Financial Services 2010(2) Law Summary (A.P.) 108.**

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—Or.21, Rules 58, 90 and Or.21 Rule 66(2) - Petitioners/JDrs contend that when part of petition schedule property is enough to satisfy decree which was put to execution, executing Court committed material irregularity by not setting apart property for sale to satisfy decretal amount - On said grounds petitioners sought to set aside sale which was acceded to by executing Court as well as 1st appellate Court - In this case, petitioner further contends that 3rd petitioner who is owner of property sustained substantial injury due to fraud played by decree holder in not disclosing actual price of land and therefore both Courts below are justified in setting aside sale as it is vitiated by material irregularity and fraud played by decree holder - While conducting auction sale in execution of decree, Court is under a duty to follow mandatory requirements contained under Or.21, Rules 64 & 66 of CPC - Failure on part of Court renders same void *ab initio* Provisions under Or.21, Rules 64 & 66 do not confer any discretion in Court, they are mandatory, and Court cannot sell more than such extent of property which is enough to satisfy decree - In this case, according to petitioners, value of Ac.1 of land in vicinity of petition schedule land in their village was Rs.50,000 at relevant time and even Ac.1 of land is sufficient to satisfy decree which was put to execution - Admittedly decretal amount as per sale warrant is Rs.27,211/- - But execution Court without setting apart amount of which is sufficient to satisfy decree sold entire extent of Ac.9.72 cents of petition schedule land for a paltry sum of Rs.1,10,000/ and that amount for which entire land was sold is very very low - It is obligatory on part of execution Court to find out as to what extent of petition schedule land is enough to satisfy amount due under decree - But in this case, it does not appear that any such exercise has been done by execution Court - Auction sale conducted by Court is totally vitiated and is liable to be set aside - Latches on part of petitioners/JDRs is inconsequential because execution Court failed to observe its statutory duty - Concurrent findings recorded by Courts below confirmed - Appeals, dismissed. **Akula Veerraju Vs. Karumuru Rukmabai, 2011(1) Law Summary (A.P.) 354 = 2011(3) ALD 581.**

—Or.21, Rule 58F, Sec.47 r/w Sec.151 - Mortgage of Property with Banker - Default of loan amount by mortgagor - Suit filed by Plaintiff/Bank - Plaintiff/Bank has right to foreclose - E.P. filed by Bank against the mortgagor - Subsequent Purchaser of the property filed claim petition - Trial Court dismissed application - Appeal filed by Claim Petitioner allowed by First Appellate Court - Second Appeal by the Plaintiff/ Bank/Mortgagee against the Orders of First Appellate Court - Maintainability of claim petition by the subsequent purchaser in a mortgage suit - Held, no claim petition u/ Sec.47 or u/Order 21, Rule 58 of C.P.C. would lie and be maintainable in an execution taken out in a suit raised on a mortgage - Transfer of Property Act – Mortgage - What mortgagee gets is not the legal ownership of the property but merely an interest in immovable property - Right to redeem remains with the debtor - A mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor can be limited by any contract between parties - C.P.C Sec.47 or u/Order XXI, Rule 58 - Failure to make a person interested in equity of redemption a party to the

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mortgage suit is not fatal. **Indian Bank, Nidadavole Vs. Nallam Veera Swamt 2014(2) Law Summary (A.P.) 266**

—Or.21, Rules 58 & 59 - Revision petitioner being aggrieved by grant of stay of delivery of E.P. schedule property pending in E.A., filed present C.R.P. - Held, executing Court prima facie has committed an illegality in entertaining E.As' is pending for delivery of possession - Order impugned is erroneous and unsustainable - Once claim petition is not maintainable in law, question of granting stay of delivery of possession does not arise - Hence, the order impugned is set aside and C.R.P. allowed - Revision petitioner is given liberty to bring to notice of executing Court observations on maintainability of E.A. and obtain appropriate orders - With above observation, C.R.P. is allowed. **E.Aruna Vs. Vemala Sreenu 2015(3) Law Summary (A.P.) 57 = 2015(5) ALD 676 = 2015(6) ALT 214.**

——Or.21, Rule 64 & Or.21, Rule 89 – **LIMITATION ACT,** Art.127 – Revision petitioners making claim over suit schedule property and seeking stay of further proceedings on E.A – Applications filed by Revision Petitioner are dismissed for default – Applications to restore are pending before lower Court – Thereafter, Revision Petitioner filed another E.A. in lower Court, seeking permission for depositing decretal amount and same was dismissed – Hence present Revision Petition filed challenging the same.

High Court directed petitioners to deposit entire E.P amount and petitioners complied with said directions and deposited entire E.P amount.

Revision filed by petitioners for seeking permission of Court to pay decretal amount and other expenses to decree holder towards full satisfaction of decree and to raise attachment and to set aside sale conducted in E.P.

3rd respondent auction purchaser contends that he is a bona fide purchaser of E.P schedule property and petitioners having knowledge about sale of property, no steps were taken within time by complying with provisions under Or.21, Rules 89 & 92 of C.P.C.

High Court held petitioners while filing earlier petition under Or.21, Rule 89 did not deposit any amount – In view of settled law such Applications are not maintainable – Court further held it does not debar petitioners from filing instant Application seeking permission of the Court to deposit the amount dehors the provisions of Or.21, Rule 89 or 92 – In such Application petitioners can raise invalidity of sale and it is duty of Court to examine that issue under Or.21, Rule 64 – That right is available to the petitioners as sale was not confirmed in favour of auction purchaser and right of auction purchaser to take back his amount is protected.

Impugned order of E.A is set aside and Application is remanded to the lower Court to consider issue relating to Or.21, Rule 64 of C.P.C. **Kamireddy Sumathi Vs. C.Mallikarjuna Reddy 2016(1) Law Summary (A.P.) 205 = 2016(3) ALD 311.**

—-Or.21, Rules 64,89 to 93 - Revision petitioners are third parties to suit filed by plaintiff against defendant for recovery of money - The suit was decreed in favour

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of plaintiff - Thereafter, plaintiff filed E.P. for sale of petition schedule property for realisation of decree amount and property was sold in public auction - Questioning public auction, petitioners/third parties to suit but for claiming as vendees from judgment debtor filed E.A.SR. in E.A. under Order XXI Rule 90 CPC to set aside auction on grounds of irregularity in conducting sale for entire property, instead of sufficient portion therein and said petition since rejected holding not maintainable, present revision is filed impugning same.

Held, right of auction purchaser arises only on confirmation of sale and till then his right is nebulous and has only a right to consider for confirmation of sale as held in DESH BANDU GUPTA by Apex Court - In this case auction purchaser is no other than decree holder and not even a third party purchaser. - Thereby order impugned in revision is unsustainable and revision is accordingly liable to be allowed to remit back matter to lower Court for fresh disposal on merits by treating application only under Order XXI Rule 64 and Order XXI Rule 97 CPC as per decisions and also of the other expressions of the Apex Court in PORAHMDEO CHOWDARY VS. RISHIKESH PRASAD JAISWAL on principle that right of third party to decree can be even before dispossession to raise claims for adjudication from which a decree to be passed and same is appellable by referring to the earlier expressions in BANWAR LAL VS. SATYANARAYANAN AND BABULAL VS. RAJ KUMAR.

Accordingly and in the result, revision petition is allowed by setting aside impugned order of lower Court and by remanding back same to lower Court for fresh disposal on merits under Order XXI Rule 64 & 97 CPC. **Bangaru Krishnarjuna Vs. Dasari Atchutamba 2016(3) Law Summary (A.P.) 265.**

—Or.21, Rules 66, 67, 89 & 90 and Or.34, Rule 5 - 1st respondent filed suit against petitioner for redumption of mortgage - Trial Court passed final decree - Since petitioner failed to pay amount, respondent filed EP for sale of mortgaged property - E.A. filed by petitioener to adjourned sale proceedings was dismissed and property brought to sale and 2nd respondent emerged as highest bidder for Rs.13 lakhs - Executing Court confirmed sale and dismissed petition to set aside sale - Hence present revision - Petitioner contends that material irregularity had crept into sale, since value of property mentioned by petitioner not reflected in proclamation of sale or notification and that stipulation of value furnished by JDR in sale proclamation is mandatory under Rule 66 of Or.21 CPC and it applies to State of A.P and that executing Court has choosen to permit notification to be published in a totally unknown news paper and since JDR deposited decretal amount, in compliance with interim direction issued by Court and same need to be treated as a step under Rule 5, Or.34 CPC and in that view of matter, sale must be set aside - Respondents contend that petitioner did not file Application under Rule 89 of Or.21 and subsequent deposit by him particularly, in revision, cannot be taken into account for setting aside sale and that a revision cannot be said to be continuation of execution proceedings to enable petitioner to claim benefit under relevant rules of Or.34 CPC - It is important to note, second proviso

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to sub-rule (2) of Rule 66 mandates that proclamation shall include estimate, if any, given by either or both parties - Recognizing importance of value that parties furnish for property, High Court of A.P, added a clause after (e) in sub-rule (2) which runs as "*value of property as stated (i) by decree holder and (ii) by the judgment debtor*" - Once Rule make its mandatory that estimate or value furnished by JDR must be reflected in same proclamation, executing Court has no option, but to mention it without any further scrutiny - Executing Court negatived contention of petitioner as to value, namely Rs.25 lakhs through its order and mentioned it as Rs.13 lakhs - This itself is a clear violation of Rule 66(2) of Or.21 - Court did not verify that even estimation of Rs.13 lakhs ordered in its own proceedings as against Rs.25 lakhs furnished by petitioner; not furnished resulting a serious flaw and fatal defect in sale proclamation, at various stages - A sale effected in pursuance of such a proclamation cannot sustained in law - JDR in a suit for mortgage would have facility to seek annulment of sale, which is more liberal in nature, when compared to one available to a DHR in other suits under Rule 89 of Or.21 - In this case, It is true that amount was deposited after dismissal of appeal - Since an appeal can be filed against order passed in E.A, a revision filed against order passed in appeal, can certainly be treated as continuation of proceedings - Order of lower Court, set aside - CRP, allowed. **Patnam Subbalakshmamma Vs. Sunkugari Sreenivasa Redy, 2011(1) Law Summary (A.P.) 127 = 2011(3) ALD 619 = 2011(3) ALT 591 = AIR 2011(NOC) 298 (AP).**

—Or.21, Rules 66 & 72-A and Sec.151 – "Mortgage decree" – Powers of Court to reduce upset price – Stated – Senior Civil Judge allowed Application filed by DHr/Finance Corporation to reduce upset price and reducing sale price to Rs.35 lakhs from Rs.50 lakhs - Petitioner/JDr contends that Court has no power to reduce and fix upset price – In this case, Amin fixed value at Rs.50 lakhs and certificate issued by Sub-Registrar clearly reveals that value of property is Rs.35 lakhs - Procedure contemplated by Or.21, Rule 72-A of Code is mandatory – It is no doubt true that at same time Or.21, Rule 66 may have to be followed – In case of mortgage decrees both provisions of Or.21, Rule 72-A and Or.21, Rule 66 may have to be harmoniously construed - Impugned order, set aside – Matter remitted to Senior Civil Judge to hear both parties again on aspect of valuation and pass appropriate orders. **N.Prabhakara Naidu (Dr) Vs. Nellore Finance Corporation 2008(3) Law Summary (A.P.) 328.**

—Or.21, Rule 66 (2) and Order 21, Rule 64 and Or.26, Rule 19 and Or.43, Rule 1 - JDr filed petition on ground that upset price fixed by Executing Court is far below than market value of schedule property and executing Court not followed very spirit and object of Or. 21, Rule 64 - Application dismissed on ground that when upset price fixed at certain price no bidders have come forward and as such Court has no option except to conduct sale reducing upset price - Appellant/JDr contends that Or.21, Rule 64 was not followed and value of property as per Basic Value Register is not less than Rs.80 lakhs even according to DHr - Fixing upset price at Rs.50 lakhs is very low and subsequently at Rs.45 lakhs is illegal and it is a material

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irregularity so as to set aside sale and that there is an obligation imposed upon Court to follow Rule 64 of Or.21 - DHr contends that mere material irregularity by itself is not a ground to set aside sale, that when upset price was fixed at Rs.50 laksh, no body participated in auction and in those circumstances Court has no option except to reduce upset price - JDr can move an application to set aside sale under Or.21, Rule 90, CPC on two grounds of material irregularity or fraud in publishing or conduct sale - Any person adversely affected may apply to Court for setting aside sale on ground of material irregularity or fraud in publishing or conducting sale - In this case, basis for fixing upset price at Rs.50 lakhs in first instances is not based upon any material on record any material on record- Simply because bidders have not come forward, same cannot and would not be a ground to reduce upset price far below value of Basic Value Registrar - Therefore, in these circumstances,it can be said it is a material irregularity in conducting sale - Even according to valuation given by DHr value of property is Rs.85 lakhs - Where as according to JDr value of property is Rs.95 lakhs - No reasons are assigned for fixing upset price far below value of property - In this case, executing Court has not exercised its discretion judiciously in fixing upset price and secondly procedure as contemplated under Or.21, Rule 64 has not been followed - Sale is set aside - CMA, allowed. **C.Rayam babu Vs. B.K.L. Traders 2010(2) Law Summary (A.P.) 201.**

—Or.21, Rules 84 & 85 and Or.47, Rule 1, r/w Sec.114 - Petitioner/DHR participated in auction sale after securing permission and deposited entire sale consideration and poundage, but did not deposit cost of non-judicial stamp papers within 15 days from date of sale - Executing Court dismissed E.A to enlarge time and also another E.A to review order - Petitioner contends that though rigor of Rule 85 may operate against sale consideration, *executing Court has power to enlarge time for deposit of non-judicial stamps - Rule requires only* deposit of sale consideration before expiry of 15 days from date of sale and admittedly petitioner deposited entire sale consideration on date of sale itself - From Rule 85, it is clear that not only balance of sale consideration but also amount required for general stamp for certificate under Rule 94 or amount required for such stamp shall be deposited before expiry of 15th day - Admittedly that amount was not deposited before stipulated time.In this case, petitioner wanted executing Court to review its order - Scope of review is very limited - It is only when a substantial omission on part of concerned Court in taking note of important question of fact, or a relevant principle of law, is alleged that there should be a possibility for Court to review its earlier order, even if different view is possible in superior Court, on facts of case, it cannot constitute a ground for review - CRP, dismissed. **Dasarla Koteswaramma Vs. Alla Venkayamma 2009(2) Law Summary (A.P.) 346 = 2009(5) ALD 237 = 2009(3) APLJ 122 = AIR 2009 AP 195 = 2009(6) ALT 249.**

—Or.21, Rules 89 & 88 and Secs.148 & 151 - DHR obtained decree against JDRs and brought certain properties for sale - 1st respondent/auction purchaser purchased

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properties being highest bidder, deposited 1/4th of bid amount and subsequently 3/4th amount - Thereafter DHR/JDRs collided together and filed full satisfaction Memo - Auction purchaser filed Application for confirmation of sale and JDRs filed Application to set aside sale and have not deposited 5% of auction money as required for an Application under Or.21, Rule 89 of CPC; but auction purchaser has not deposited registration fees on Non-Judicial stamps and filed EA for extension of time for deposit of Non-Judicial stamps - Respondents 2 to 5 contend that amount was paid to DHR and matter was settled out side Court - There is no need for JDRs to deposit 5% purchase money as matter was settled out side court - In this case, evidently sale was confirmed - If that is to be so, even before required stamps was deposited, sale was confirmed which is not at all valid or proper - It is not known as to under what provision, such Application can be allowed by Court - Further more it is also to be mentioned that when specific mandatory provisions are provided in CPC, invoking all discretionary powers u/Sec.148 or 151 CPC does not arise - It is mandatory to auction purchaser to deposit entire balance of 3/4 sale consideration and also value of non-judicial stamps for engrossing sale certificate - In default of deposit of 3/4th sale consideration or default in deposit of amount required for purchase of stamps for sale certificate within 15 days as per State amendment under Or.21, Rule 85 CPC,sale is nullity and further steps have to be followed by Court - Extension of time is not valid - Failure to file Application for setting aside sale does not arise since it is duty of Court to order re sale - Order of lower Court suffers from infirmity - CRP, allowed. **V.Vedanda Vyasulu Vs. K.Purushotam 2011(1) Law Summary (A.P.) 196 = 2011(2) ALD 616 = 2011(2) ALT 599.**

—Or.21, Rules 89 & 92 - Suit for foreclosure of mortgage - Preliminary decree passed - Auction held in favour of 7th respondent as he emerged as highest bidder - Executing Court dismissing Application filed by Appellants/ purchasers of mortgaged property, under Or.21, Rules 89 & 92 to set aside auction sale, on ground that Clause (a) of Rule 89(1) not complied with - Or.21, Rule 89 - Principles governing mode of payment of decretal amount - Procedure - Culled out - Conditions to be complied with – Stated - If Or.21, Rule 89 is to be understood as one, operating with such stringency and rigor; as regards mode of deposit, no exception can be take to order under appeal - Two aspects become important; first is about mode of payment and second is about power of Court to correct deficiencies if any - Except stating that amounts mentioned in clauses (a) & (b) of Rule 89 (1) of Or.21 CPC; shall be deposited in Court, Rule does not stipulate any particular method of deposit - In instant case, entire amount was deposited - Objection raised by 7th respondent/auction purchaser, was only as to mode of payment - Payment of decretal amount made by appellants through demand draft accords with Rule 1 and thereby satisfies Rule 89 (1)(b) of Or.21 - Though Rule 89 of Or.21 may appear to be an independent provision, a perusal of Rule 92 makes it clear that, both provisions would operate in tandem - In this case, executing Court did not raise any objection when appellants tendered amount covered by Rule 89()

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(b) through demand draft - Had tendering or depositing of amount been defective, application could have been returned, in which event, appellants would have corrected it and represented Application after compliance or filed a fresh one within period of limitation - Executing Court is conferred with power to correct deficiencies, if any, in application filed under Rule 89, particularly as regards method and adequacy of deposit - Impugned order, set aside - Application filed by appellant, allowed - 7th respondent is at liberty to withdraw 5% of amount deposited by appellants and it is open to DHR to withdraw amount paid towards decretal amount. **M.Swarna Vs.State Bank of India 2009(3) Law Summary (A.P.) 24 = 2009(5) ALD 755 = 2009(5) ALT 596.**

—Or.21, Rule 90, r/w Secs.47 and 151 - 1st respondent/plaintiff filed suit against 5th respondent and obtained decree and filed EP and got E.P schedule property sold on28-10-1998 which was confirmed on 10-10-2004 - Petitioner, wife of 1st respondent filed E.A to set aside sale of property and confirmation on ground of committing irregularities in conducting sale - Petitioner contends that 1st respondent suppressed payment of amounts by 5th respondent filed E.P and brought property of 5th respondent for sale by furnishing low price and managed to kncok down property accordingly by virtue of fraud played by 1st respondent and that no publicity was given for sale of property and that there are two storied RCC buildings in E.P schedule but it is described as tiled house and thereby sale of property is to be set aside - Respondents 1,3 & 4 claim that petition was barred by limitation and that number of similar petitions were filed by members of petitioner family which were dismissed by Courts below and that no irregularities were committed in respect of sale of property and that 5th respondent is no other than husband of petitioner filed E.A under Or.21, Rule 90 and Sec.47 to set aside sale and said E.A is filed to drag on proceedings only and further plead to dismiss claim petition - Petitioner contends that by virtue of Sec.47 CPC all questions arising between parties in suit in which decree was passed or their representatives and relating to execution, discharge or satisfaction of decree, shall be determined by Court executing decree and not by separate suit by reason of which petitioner has got every right to question irregularities in conducting sale and that question of actual right of petitioner in property need not be gone into and on other hand by virtue of Or.21, Rule 90, any person who has got some interest in property can also question sale on ground of material irregularity or fraud in publishing or conducting sale of property - Respondents contend that in order to question sale of property petitioner should have right in property but as established she got no right in property by reason of which she got no locus standi to file claim petition – Sec.47 CPC does not deal with question of material irregularity or fraud in conducting sale where as that aspect is to be dealt with under Or.21, Rule 90 CPC only - On other hand if grounds alleged do not lead to matters in publishing or conducting sale but are anterior to, or subsequent to sale corresponding application is out side purview of Or.21, Rule 90 CPC and comes within purview of Sec.47 CPC and for purpose of finding out whether particular application comes under Or.21, Rule 90 or Sec.47

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CPC, substance of Application must be taken into consideration - Or.21, Rule 90(2) CPC clearly postulates that question of sale of property can be raised by a person who got actual interest in property - Hence petition not maintainable - In this case, petitioner is claiming shelter u/Sec.47 CPC and other way is claiming shelter under Or.21, Rule 90 - With regard to question of irregularity or illegality in publishing and conducting sale of property in question clearly comes within purview of Or.21, Rule 90, where as it does not come within purview of other provision - When Sec.47 speaks of execution of decree certainly Or.21, Rule 90 deals with a different aspect as it deals with question of setting aside sale of property on grounds of illegality and irregularity in conducting sale - Therefore question on hand is to be decided on question of Application of Or.21, Rule 90 - In this case, circumstances make it very clear that auction purchaser suffered a lot to enjoy fruits of sale held in 1998 - Family members of petitioner and also petitioner successfully thwarted his endeavour to achieve his object having filed various petitions and thereby placing necessary hurdles - CRP dismissed with exemplary costs of Rs.l lakh payable by petitioner to 3rd respondent/ auction purchaser in pursuing frivolous litigation. **Amalakanti Lakshmi Saroja Vs. Chaluvadhi Raghavamma 2013(1) Law Summary (A.P.) 295 = 2013(3) ALD 554 = 2013(6) ALT 435.**

—Or.21, Rule 90 r/w Sec.47 and Or.21, Rule 67 - 1st Respondent filed suit against appellant Firm for recovery of certain amount and obtained decree - E.P filed and attachment obtained against 'A' to 'E' Schedule properties and 'B' & 'C' properties belonging to Firm brought to sale - Executing Court dismissed E.A filed by appellant/ JDR under Or.21, Rule 90 r/w Sec.47 to set aside sale - Appellant contends that determination of market value of property is an important step in execution proceedings and same was observed in breach and that Rule 67 makes it obligatory on part of executing Court to ensure that sale proclamation is given adequate publicity and insists that publication be made in locality in which property is situated - Respondents contend that appellant did not raise any objection before sale took place and that Rule 90 disables JDR from challenging sale, in case concerned objections were not raised at relevant point of time - Rule 67(2) signifies importance of participation of JDR and DHR in furnishing estimate of value of property - In this case, Executing Court valued property on its own accord - Not even a single step contemplated under Rule 66 was followed - Neither parties were issued notice, nor figures were collected from any authenticated and recognized source - Procedure not complied for fixing value - However, a serious lapse on part of Executing Court in determination of market value cannot be condoned - Rule 90 of Or.21 CPC provides for setting aside sale of immovable properties in execution, if sale is vitiated by any irregularity or fraud - Rule is enacted to protect interests of JDRs, where an immovable property is brought to sale by playing fraud on Court, or where entire proceedings suffer from any irregularity - Plea of waiver, estoppel and other related principles against appellant cannot be applied to cases where grievance is as to manner in which proclamation is drawn

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and about stages subsequent thereto - Sale conducted by Executing Court, set aside - CMA, allowed. **Chirravuri Veerabhadra Rao Vs. State Bank of India, Rajahmundry 2010(1) Law Summary (A.P.) 52.**

—Or.21, Rule 90, r/w Secs.47 & 151 and Or.21, Rule 66 & 64 - Suit filed on basis of promissory note - Junior Civil Judge decreed suit - E.P. filed by 2nd respondent/ DHr to bring schedule properties to sale to recover amount of Rs.18,449/- as per decree - Items 1,2 &3 properties were brought to sale in E.P. - Objections filed by JDR were over- ruled by executing Court and sale papers and E.C in respect of E.P. Schedules were filed and sale notice ordered along with proclanation Schedule - JDR set ex parte as he has not filed any counter - Sale held for item no.1 of E.P schedule and petitioner became highest bidder for amount of Rs.17,700/- out of five bidders - On same day sale of item no.3 also held and 5th respondent became highest bidder for said itme for amount of Rs.24,000/- - JDR/1st respondent filed E.A under Or.21, Rule 90 r/w Sec.47 to set aside sale alleging that there was no attachment of properties brought to sale as contemplated under law and that DHR did not take notice as contempled under Or.21, Rule 66 and there was no publication as contemplate under law and that there was no assessment and fixation of value by Court and at time of sale value of properties was easily around Rs.70,000/- per acre and that properties were sold for meager amount and that all bidders arranged by DHR and bids were collusive – Junior civil Judge dismissed E.A holding that there was no challenge by 1st respondent/JDR to attachment of E.P schedule properties and there is no material irreguarity resulting in substantial injury to JDR - JDR further contends that DHR realized Rs.17,700/- throgh auction sale of item no.1 of E.P schedule property against sale warrant amoun of Rs.18,449.95 paise only a meager amount of Rs.750/- is left to be recovered - 1st respondent/JDR filed CMA relying upon Or.21, Rule 64, before Senior Civil Judge contending that item 1 alone would have been sufficient to satisfy entire decretal amount and there was no necessity to auction entire item 3 and without applying its mind executing Court sold item 1 and 3 in their entirety - Senior Civil Judge passed order holding that when Rs.24,000/ - was realised in auction on sale of itme 3 and only Rs.18,449.95 is E.P amount, trial Court would not have sold item no.1 for 17,700/- and therefore set aside sale of itme no.1 of E.P schedule property - Challenging same petitioner auction, purchaser of item 1 of E.P schedule property filed present revision - When more than one item is mentioned in E.P Schedule for sale how executing Court should go about sale and select priority among items mentioned in Schedule for sale - A common sense approach is to be adopted by executing Court and no universal rule as to sequence to be followed can be laid down - In such cases it is duty of executing Court to arrive at value of each item chronologically and sell them in seriatim, if sale of earlier item is not sufficient to satisfy deceree - In present case, JDR sought Application of Or.21, Rule 64 CPC in regard to sale of item 3 - Executing Court having sold item 1 for Rs.17,700 to petitioner, keeping in view mortgages in respect of items 1,2,3 should have applied

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its mind and then decide whether item 2 should be sold or item 3 should be sold totally in part - This exercise does not appear to have been done by executing Court at all - Judgment of Sr.Civil Judge in CMA and judgment of Jr.Civil Judge in E.A are set aside - Sale of item 1 of E.P schedule to petitioner confirmed - Sale of item 3 to 5th respondent, set aside - Jr.Civil Judge directed to consider in light of Or.21, Rule 64 CPC, whether item 2 or part or whole of item 3 of E.P Shcedule should be sold to recover balance E.P amount of Rs.750/- to satisfy decree. **Malempati Harinarayana Vs. Vankayalapati Subba Rao 2013(1) Law Summary (A.P.) 175 = 2013(3) ALD 525 = 2013(2) ALT 520.**

—Or.21, Rule 90 & Or.21, Rule 85 - **CONSTITUTION OF INDIA,** Art.254 - Irregularity in conducting sale - Executing Court allowed E.A filed under Or.21, Rule 90 r/w Sec.151 to set aside sale on ground that auction purchaser failed to deposit stamp duty amount within stipulated period - High Court allowed revision and remanded matter to executing Court to dispose of EA after giving opportunity to both parties - Executing Court heard both parties afresh and allowed application filed by JDR and set aside sale - Hence revision by auction purchaser - Petitioner/auction purchaser contends that non-deposit of stamp duty does not constitute a material irregularity in conducting sale and therefore, impugned order liable to be set aside and that in view of amendment to CPC 1976, it is not mandatory on part of auction purchaser to deposit amount required for stamp duty amount within 15 days of date of auction and what is required to be deposited within 15 days is only full amount of purchase money - Deposit of stamp amount is subsequent to conduct of sale - Failure to deposit stamp amount does not constitute a material irregularity in conducting sale - Executing Court thoroughly misread Or.21, Rule 90 in recording finding that non-payment of stamp duty constitutes a material irregularity - Application filed by 1st respondent/JDR under Or.21, Rule90, stands dismissed - CRP, allowed. **G.Venkata Reddy Vs. B. Venkata Reddy 2010(3) Law Summary (A.P.) 75.**

—Or.21, Rules 95, 97,98, 99, 101 & 103 - **LIMITATION ACT,** Art.134 - Suit filed by 2nd respondent against 1st respondent for recovery of certain amount - Decreed - In execution proceedings an item of immovable property got attached and brought to sale - Appellant emerged as highest bidder and sale confirmed in his favour - E.A. filed under Rules 95 of Or.21 for delivery of possession of E.P schedule property - 1st respondent/JDR raised objection contending that since E.A filed beyond period of limitation stipulated under Art.134 of Schedule to Limitation Act, same is not maintainable - Executing Court overruled objection and allowed E.A - High Court disposed of Revision, leaving it open to 1st respondent to persue remedy of appeal - Lower appellate Court allowed appeal - Appellant contends that appeal not maintainable at all, since it is presented against order passed in Application filed under Rule 95 Or.21 and in Revision High Court has simply obsered that 1st respondent can persue remedies in accordance with law and said observation cannot be taken as conferring

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jurisdiction upon lower appellate Court and that Application for possession of property sold in execution of decree can be filed within one year from date of sale certificate - 1st respondent contends that limitation for filing Application for delivery of possession has to be reckoned from date on which sale was confirmed and that E.A filed by appellant was clearly barred by limitation - In this case, Order in I.A is nothing but adjudication referrable Rule 98 and thereby it culminates in a decree referable to Rule 100 of Or.21 CPC and that being case, appeal filed by 1st respondent is certainly maintainable and lower appellate Court has taken correct view of matter - Sale in instant case, became absolute on 21-4-2008 E.A for delivery of possesion was filed in 2012 and it is clearly beyond time stipulated under Art.134 - Appellant sought to overcome objection by stating that sale certificate was issued to him only on 3-2-2012 and hardly within 10 days from that date he filed E.A. - However, date of sale certificate becames hardly of any significane in contest of calculating limitation and starting point is date of confirmation of sale and that lower appellate Court has taken note of judgment of Supreme Court - Starting point for limitation is date of confirmation i.e., when sale became absolute - Lower Appellate Court has taken correct view of matter - Second Appeal dismissed accordingly. **Yakkala Mohana Rao Vs Shaik Hussain 2013(3) Law Summary (A.P.) 279 = 2014(2) ALD 105 = 2014(1) ALT 258.**

—Or.21, Rule 97 - Once a suit is numbered by a court of competent jurisdiction, the proceedings therein would terminate only after trial, unless it was dismissed for default or an ex parte decree is passed - Rejection of a plaint is an extraordinary facility, created in favour of a defendant subject to his establishing ingredients of Rule 11 of Order VII CPC - Plaint, or for that matter, a claim petition in an E.P., cannot be rejected on ground that it is devoid of merits - Conclusions on such grounds can be arrived at only after the trial. **T.N.V. Ravi Kumar Vs. Habeeb Aqeel Bin Mohd. Jamal Allail 2014(3) Law Summary (A.P.) 318**

—-Or.21, Rules 99 &101 and Secs. 47 & 151 - “For the purpose of considering an application under Order XXI Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not - A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise” **-** In view of this principle there is no difficulty whatsoever in holding that the application moved by the petitioner herein under Rule 99 Order XXI CPC is certainly maintainable - May be the mentioning of Section 47 CPC by the petitioner herein is inappropriate - The petitioner being a third party, he cannot maintain any application under Section 47 CPC - In this view of the matter, the order passed by the learned Junior Civil Judge, is not sustainable - It is accordingly set aside - The E.A. is restored and now the court shall proceed to consider the same on merits subject to all such objections that might be raised on merits as well as

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the objection that the application is barred by limitation shall be considered independently and uninfluenced in any manner by the observations made herein above - The civil revision petition is accordingly allowed. **Kottu Veera Venkata Satyanarayana Vs. Padala Ramanna Dora 2015(1) Law Summary (A.P.) 295 = 2015(3) ALD 622 = 2015(2) ALT 750.**

—Or.21, Rules 102, 106 & 29 & Or.39, Rules 1 and 2 - Respondent/plaintiff filed suit for declaration of title and for recovery of possession - Suit decreed ex parte after examining plaintiff and his witnesses - Appellant/defendant subsequently filed suit asserting that she purchased suit property and that respondent, wrongfully and illegally filed suit and that decree is illegal inexecutable and null and void and was obtained suppressing real facts - Application filed by appellant/plaintiff for injunction was rejected - Executing Court allowed Application filed by appellant and stayed further proceedings - High Court set aside order of executing Court - Appellant contends that where a substantive suit is filed by JDR against DHR and execution proceedings are pending before Court, till suit is finally decided, execution proceedings should not be allowed to continue further resulting in virtual dismissal of suit - Respondents contend that doctrine of lis pendens applies to said sale and Rule 102 of Or.21 immediately gets attracted and therefore appeal deserves to be dismissed - A transferee from JDR is presumed to be aware of proceedings before Court of law and he should be careful before he purchases property which is subject matter of litigation - If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize fruits of his decree - Fact that purchaser of property during pendency of proceedings had no knowledge about suit, appeal or other proceeding is wholly immaterial and he/she cannot resist execution of decree on that ground - High Court also right in observing that if appellant succeeds in suit and decree is passed in her favour she can take appropriate proceedings in accordance with law and apply for restitution - Order passed by High Court - Justified - Appeal, dismissed. **Usha Sinha Vs. Dina Ram 2008(1) Law Summary (S.C.) 213.**

—Or.21, Rules 103, 106, 95, 96, 98 & 35 & Sec.151 - **LIMITATION ACT,** Sec.5 - Suit for specific performance of agreement of sale - Decreed *ex parte* directing defendant to execute sale deed and put plaintiff in possession - Since defendant failed to execute sale deed E.P filed - E.P also decreed *ex parte* and JDR directed to deliver possession to DHR - At that stage JDR filed I.A to set aside *ex parte* decree and EA and set aside *ex parte* order in E.P - In meanwhile executing Court allowing Application filed by DHR seeking police aid for delivery of possession of suit property - JDR contends that lower Court not justified in allowing E.A and granting police aid for taking delivery of possession while keeping Applications to set aside *ex parte* decree in suit as well as *ex parte* order in E.P pending - Respondent/DHR contends that order passed in exercise of jurisdiction under Or.21, R.98 shall be deemed to be a decree as per Rule 103 of Or.21 and therefore only regular Appeal can be maintained but not Revision - In this case admittedly JDR/ petitioner is in possession and DHR alleged that she obstructed delivery of possession - Court is empowered to direct removal of such obstruction under sub-rule (3) of R.35 of Or.21 and it cannot be confused with power conferred under Rules 95 to 98 - Powers

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conferred on executing Court under R.35 (3) and Rules 95 to 98 of Or.21 are quite different from each other governing two different situations - Hence contention of respondent/DHR untenable - LIMITATION - Contention of DHR that E.A to set aside *ex parte* order in E.P is barred by limitation since same filed beyond 30 days prescribed under Or.21, R.106 (3) - In case of ex parte order where notice not duly served, Application can be made within 30 days from date of knowledge - Whether said plea is sustainable is subject matter of enquiry that may be conducted in EA on basis of evidence that may be produced by parties and at this stage, it cannot be concluded that Application is barred by limitation - Lower Court ought not to have allowed E.A filed by DHR for police aid since said order virtually rendered Applications to set aside *ex parte* decree in suit and *ex parte* order in E.P infructuous - - Impugned order, set aside - Lower Court directed to consider and dispose of Applications filed by petitioner to said the ex parte decree in suit and ex parte order in E.P. **G.Kethamma Vs. Allam Keshava Raju 2008(1) Law Summary (A.P.)115 = 2008(3) ALD 15 = 2007(3) APLJ 266.**

—Or,21, Rules 106(4), 105(3) & Sec.122 - **LIMITATION ACT,** Sec.5 - Suit filed for specific performance of agreement of sale - Decreed - Plaintiff/DHR filed EP for execution of decree - JDR set ex parte since failed to appear - JDR filing petition to set aside ex parte order along with E.A u/Sec.5 of Limitation Act to condone delay of 246 days - Executing Court dismissed petition holding that Sec.5 of Limitation Act not applicable to execution proceeding under Or.21 of CPC - Petitioner/JDR contends that in view of sub-rule (4) of Rule 106 of Or.21 CPC, provisions of Sec.5 of Limitation Act are applicable to execution proceedings - On combined reading of Rule 105 & 106 of Or.21, it is clear that said provisions are applicable to an Application under any of Rules of Or.21 - Though under Rule 106 (3) limitation prescribed for making such Application is 30 days, as per sub-rule(4) of Rule 106 as inserted by amendment made by High Court of A.P provisions of Sec.5 of Limitation Act are made applicable to applications under Rule 106(1) - Having regard to express provisions of sub-rule (4) of Rule 106 as inserted by A.P Amendment, it is clear that executing Court is empowered to entertain Application filed u/Sec.5 of Limitation Act to condone delay in filing application to set aside ex parte orders under Rule 105 of Or.21 CPC - Order of lower Court - Erroneous - Hence set aside. **Habeeba Babu Vs. B.Chowdesh 2009(1) Law Summary (A.P.) 389.**

—-Order 21-A , Rule 84, and Clause 2 of Rule 90, Order XXI - **GENERAL CLAUSES ACT,** Sec.10 - Both these cases arise out of the same execution proceedings between the same parties and hence are heard together - The J.D.R. No.1 is the appellant in this Civil Miscellaneous Appeal, which is preferred aggrieved by the orders passed by the Senior Civil Judge, on 02.06.2015 in EA(SR).No.6238 of 2015 in E.P.No.207 of 2014 - The suit O.S.No.623 of 2012 was instituted for recovery of a sum together with interest at 2.5% per month - That suit was decreed on 22.08.2014 directing the two defendants therein to pay, jointly and severally, a sum of Rs.9,58,650/- with interest - For executing this decree dated 22.08.2014, E.P.No.207 of 2014 was filed on 20.10.2014 before the Principal Senior Civil Judge's Court - It is also appropriate to notice that during the pendency of the civil suit, immovable property of the appellant

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herein a flat located Hyderabad was attached prior to the judgment as per the orders passed in I.A.No.1086 of 2012 on 03.10.2013 - It is that immovable property, which was brought to sale on 02.04.2015 by the executing Court - It is to set aside the said sale that took place on 02.04.2015, the J.D.R. filed petition EA(SR).No.6238 of 2015 - Three objections have been raised mainly in support of the plea that the sale that was conducted on 02.04.2015 is vitiated and consequently it has to be set aside - The 1st objection is that upset price has been fixed at Rs.13,20,000/- for 880 Sq.Feet flat at Saroornagar, Hyderabad wholly based upon the valuation certificate issued by the Sub-Registrar's office, instead of ascertaining its market value in the locality - It is the claim of the J.D.R. that the market value of the flat is anywhere between Rs.22,00,000/- to Rs.25,00,000/- - The next objection was that the Execution Petition has been directly filed before the Principal Senior Civil Judge's Court at Ranga Reddy District without the decree passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad being transferred and finally it was urged that the sale by way of public auction took place on 02.04.2015, whereas the auction purchaser has deposited the 1/4 th of the bid amount not immediately but on 04.04.2015 and hence the sale is liable to be set aside and the property is liable to be resold - Held, it is not every irregularity, which can fetch a satisfaction for the Court to set aside the sale conducted - The irregularity must be of such a grave nature and magnitude that it should result in causing substantial injury to the interest of the Judgment Debtor - In the instant case, no such substantial injury suffered by the J.D.R. was either urged or demonstrated - Hence, this Court not find any merit in the appeal preferred by the Judgment Debtor and hence it deserves to be dismissed - The Civil Revision Petition is preferred against the order passed on 10.02.2015 by the Executing Court in E.P.No.207 of 2014 - The E.P.No.207 of 2014 is filed under Rules 64 and 66, Order XXI CPC. The objection was about the maintainability of the Execution Petition on the ground that the decree was passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad and without transferring the same, no execution petition can be filed directly before the Court at Ranga Reddy District - That objection was rejected as the assertion was factually incorrect - The decree was in fact transferred by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad to Ranga Reddy District and received in the District Court, Ranga Reddy on 18.10.2014, whereas the Execution Petition was filed thereafter on 20.10.2014. The next objection raised by the J.D.R. was that he preferred an appeal in ASSR.No.12082 of 2014 and the same is pending - Except mentioning that an appeal was preferred, the J.D.R. could not furnish either the regular number assigned to such an appeal or as to the fate of any stay application moved therein - Therefore, the Executing Court found no impediment in proceeding with the execution of the decree - Since both the objections raised by the J.D.R. against the maintainability of the Execution Petition are without any merit, rightly, the Executing Court has passed orders on 10.02.2015 rejecting the objections of the J.D.R. and directing the D.H.R. to file the estimated value of the attached immovable property, for proclamation of sale thereof to be drawn - Hence Court do

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not find any merit in the revision either and hence it also deserves to be dismissed - Accordingly, the Civil Miscellaneous Appeal and Civil Revision Petition stand dismissed. **Ch.Mahender Vs. D.Venkat Reddy 2015(3) Law Summary (A.P.) 212**

—Or.22, R.4 - Respondent/plaintiff filed suit for declaration of title - During pendency of suit one of defendants died and among his legal represen-tatives, one daughter not brought on record - Pursuant to directions of High Court daughter is permitted to come on record as D8 and filed her written statement - Trial Court directed defendants to restrict themselves relating to right of newly impleaded LR over suit property for purpose of leading evidence - Contention that after remand and after framing additional issues appellant is entitled to lead fresh evidence - No need to record evidence afresh in respect of all issues and direction was to permit daughter to come on record and file her written statement and decide matter based on her claim as well as other materials which are on record - After remand and after impleadment of daughter as 8th defendant plaintiff confined himself to case as against D8, daughter - In view of same High Court rightly observed that defendants cannot be permitted to lead evidence afresh on other issues - Orders of trial Court and High Court directing first defendant to confine himself to defence taken in written statement of 8th defendant - Justified. **K.S.Krishna Sarma Vs. Kifayat Ali 2008(1) Law Summary (S.C.) 37 = 2008(2) ALD 61(SC) = AIR 2008 SC 1337 = 2008 AIR SCW 754 = 2008(1) Supreme 59.**

—Or.22, Rule 4 - Suit for specific performance of agreement of sale in respect of Cinema Theatre and vacant site - Partly decreed - Defendants, mother of petitioners are directed to return sale consideration with interest - 1st respondent filed EP for execution of decree and attachment of Theatre - EP dismissed for non payment of Batta and service of notice on 4th JDR (mother of petitioners) - Executing Court allowed E.A filed by DHR to bring petitioners as legal representatives of 4th JDR - Petitioner contends that when EP dismissed against 4th JDR, and E.P not pending as against 4th JDR and therefore same having become final petitioners cannot be brought on record as LRs of 4th JDR - Petitioners further contend that E.P abated as against 4th JDR and therefore without therebeing Application to set aside abatement and Application to condone delay, petitioners cannot be brought on record as LRs of deceased 4th JDR - 1st respondent/DHR contends that as per Sec.50, r/w Or.22, Rule 4 of CPC, EP can be proceeded with against legal representatives of deceased - Plain reading ofSec.50 would show that it is always competent to executing Court to execute decree against LRs of deceased either *suo moto* or on application, provided that JDR died before decree has been fully satisfied - Therefore, when JDR dies before decree has been fully satisfied, Court can always proceed against LRs of deceased - As per Sec.50 (2) it shall be duty of LRs to satisfy decree either fully or to effect of property of deceased which has come to his hand - CRP is misconceived and dismissed. **Thota Kodanda Raja Rao Vs.Vardhineedi Bhimeswara Rao, 2010(1) Law Summary (A.P.) 286.**

—Or.22, Rule 4 - Petitioner junior paternal uncle, Kistanna having satisfied his services executed registered Will and registered sale deed in his favour to an extent of

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certain land - LAO acquired certain extent of land got by petitioner under said will - Kistanna died while matter was pending and by virtue of Will executed by Kistanna, petitioner stepped into shoes of said Kistanna and hence he is entitled to receive compensation from LAO - Respondents contend that they are grand children of said Kistanna and that they became title holders of said lands by virtue of principle of succession as their father son of Kistanna died and also denied execution of Will - Respondents further contend that after death of Kistanna respondents made Application to Tahsildar for mutation of their names as legal representatives of Kistanna and Tahsildar ordered mutation of their names in revenue records and that when deceased Kistanna is having legal heirs and property is ancestral one and not his self acquired property and unless and until his share is devided he has no right execute any such deeds - Petitioner contends that RDO as well as Court below failed to consider that after death of Kistanna only Will came into operation and that petitioner looked after welfare of Kistanna in his old age, as respondents have left him to his fate, Kistanna executed Will in favour of petitioner out of gratitude and that there is distinction between legal heir and legal representative and as respondents though they be legal heirs of late Kistanna cannot be termed as legal representatives of late Kistanna - DISTINCTION BETWEEN LEGAL HEIR AND LEGAL REPRESENTATIVE - Respondents left deceased Kistanna to his fate in his old age and petitioner alone look after Kistanna in his old age and out of gratitude only he executed Will and sale deed in favour of petitioner - Respondents also claiming some interest as legal heirs and it is not necessary that in every case a legal heir is entitled to be treated as legal representative - Petitioner is permitted to come on record and contest O.P - Revision, allowed. **Mala Narasimhulu Vs. The LAO-cum-Spl. Dy Collector 2010(2) Law Summary (A.P.) 186.**

—Or.22, Rule 4 - Respondent Nos.1 to 6 have filed above mentioned suit for partition of suit schedule properties - Pending the suit, respondent Nos.4 and 5 have died - This case is concerned with death of respondent No.5 - It is not in dispute that respondent No.5 died as far back as the year 1999 - More than 15 years later, applicants who claimed to be legal heirs of deceased respondent No.5, filed application under Order 1 Rule 10 of Code of Civil Procedure, for their impleadment as plaintiff Nos.7 to 10 in suit in place of their deceased father - Said application was dismissed by lower Court - Feeling aggrieved thereby, the unsuccessful applicants filed present Revision Petition - Held, as could be seen from above noted provisions, Code has prescribed specific procedure for the legal representatives of a deceased plaintiff to come on record - Admittedly, petitioners failed to follow this procedure - Instead, more than 15 years after suit has abated qua plaintiff No.5, petitioners have filed an application under Order I Rule 10 of the Code - For above mentioned reasons, Court do not find any jurisdictional error in order of lower Court - Civil Revision Petition is accordingly dismissed. **Lingala Bhagya Laxmi Vs. Lingala Prabhu Lingam 2015(2) Law Summary (A.P.) 347 = 2015(6) ALD 407 = 2015(4) ALT 652.**

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—Or.22, Rl.5 - I.A. was filed by daughter of first plaintiff in suit under Order 22 Rule 3 CPC - According to her, her father died on 27.12.2013 and she was sole legal representative - She therefore sought to be brought on record as third plaintiff in the suit - 13th defendant in suit, 13th respondent in IA, filed a counter contesting her claim stating that though a death certificate had been procured by her from the Gram Panchayat to the effect that first plaintiff in suit had expired, it was not so - In this context, he alleged that Secretary of Gram Panchayat had committed various irregularities - A complaint was stated to have been made against said Panchayat Secretary, which was pending, and therefore, death certificate issued by said Gram Panchayat could not be acted upon - According to him, first plaintiff suffered from mental imbalance and his whereabouts were unknown - He further stated that first plaintiff also had a son and therefore, daughter could not claim to be sole legal representative - By order under revision, trial Court took note of the contentions of both parties and allowed petition subject to condition that the daughter of first plaintiff should file a legal heir certificate and amend the plaint - Aggrieved by this condition, daughter of first plaintiff is before this Court by way of this civil revision petition.

Held, Order 22 Rule 5 CPC empowers trial Court to determine question as to whether any person is or is not legal representative of a deceased plaintiff - Losing sight of this provision of law, trial Court adopted a novel procedure of asking petitioner to produce a legal heir certificate - It is not explained as to under which law and from whom petitioner was to obtain such a legal heir certificate - Approach of trial Court in this regard is therefore without legal foundation and cannot be sustained - Order under revision is accordingly set aside and matter is remitted to trial Court for undertaking an enquiry under Order 22 Rule 5 CPC, after duly verifying fact as to whether first plaintiff in suit had actually died - Civil Revision Petition is allowed to extent indicated above. **Bale Venkateswarlu (died) Vs. Paralamma Temple 2016(1) Law Summary (A.P.) 136.**

—Or.22, Rule 10 - **INDIAN SUCCESSION ACT,** Sec.74 - BC filed suit against her husband claiming maintenance - Trial Court awarded maintenance - In Appeal, District Judge enhanced maintenance amount - Thereafter BC filed EP for execution of decree seeking arrest of respondent/husband - BC died during pendency of EP. - Petitioner/ LR, filed EA under Or.22, Rule 10 CPC with a prayer to add her as legal representative of BC contending that during her life time BC executed Will bequeathing all her movable and immovable properties to petitioner and she is entitled to come on record - Executing Court dismissed E.A. - Legatee of deceased party to proceedings can come on record and pursue proceedings - Where however in this case, bequest is not clear and doubt arises as to purport thereof, execution proceedings are not proper avenue for adjudication of same - This issue becomes more acute, when legatee is not a lenial descendant or immediate successor - Petitioner contends that u/Sec.74 of Indian Succession Act, it is not necessary that any technical words or terms of art being

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used in Will - Other provisions are to effect that where no specific reference is made any items, bequest can be treated of entire property left by testator - Nature of enquiry that is to be undertaken by a Court to validity or otherwise of a Will in Application filed under Or.22, Rule 10 CPC would be very limited - Such enquiry is required to be made only to enable party to continue proceedings to their logical end - No final pronouncement can be made about rights flow from Will - In this case, petitioner claims rights not only vis-a-vis subject matter of EP but also entire movable and immovable properties left by late BC, it is better that petitioner institutes separate proceedings to seek declaration of her rights under Will - CRP, dismissed - Petitioner is at liberty to file separate suit to claim benefits under Will, duly impleading legal heirs or successors of deceased BC. **Bejawada Chenchuramamma (died) Vs. Bejawada Suryanarayana 2011(3) Law Summary (A.P.) 180 = 2011(6) ALD 112 = 2011(6) ALT 592.**

—Or.22, Rule 10-A - "Abatement of suit" - Suit originally instituted by plaintiff/petitioner against defendants 1 & 2 - When 2nd defendant died petitioner took prompt steps by filing I.A and legal representatives were brought on record as defendants 3 to 9 - 1st defendant is said to have died long before IA filed to bring Lrs of 2nd defendant - Had petitioner/plaintiff been aware of factum of death of 1st defendant he would have certainly taken steps to bring LRs of 1st defendant on record - In this case, defendants 1 & 2 were represented by same Counsel in trial Court - Rule 10-A of Order 22, CPC places an obligation on counsel to inform Court as well as other party, when his client dies, during pendency of proceedings and that limitation to file Application to bring legal representatives of a party to suit, on record would commence from date, on which the other party in suit, receives intimation through Memo filed under Or.10-A of Or.22 CPC - That having not been done in this case, proposed respondents cannot resist attempt made by petitioner to bring LRs on record, or to implead them as defendants - In this case, it is at instance of respondents 3 to 9 trial Court declared suit stood dismissed as abated and decree to that effect was passed - Petitioner was rightly advised to file revision as well as appeal - In both proceedings petitioner was successful as a result suit remained on file of trial Court - It is not a case where sole defendant in suit died - Defendants 3 to 9 were very much on record - Question as to whether death of 1st defendant result in abatement must be examined independently - Now efforts are being made to bring LRs of 1st defendant on record, there should not be any possible objection - In case, such of respondents who are LRs of 1st defendant oppose efforts made by petitioner to implead them in suit, a presumption has to be drawn to effect that they do not have any resistance to offer and decree if any, that may be passed in suit shall bind them also - Trial Court ought to have numbered I.A filed by petitioner/appellant and instead a cryptic order which does not make any sense has been passed - It is only gross negligence or total indifference or lack of basics on part of Officer, that bring about such hopelessly bad order - Impugned order, set aside and IA (C.F) shall stand allowed - CRP, allowed. **N.Sankar Reddy Vs. N.Rami Reddy (died) 2013(1) Law Summary (A.P.) 242 = 2013(3) ALD 72 = 2013(2) ALT 343.**

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—Or.23, Rule 3 & Sec.151 - LIMITATION ACT, Secs.5 & 17 - Suit originally filed by deceased 1st petitioner for partition and separate possession - Petitioners 1 to 3 are represented by Power of Attorney as they are not available in India - Suit dismissed by trial Court with following order - " Counsel for plaintiff endorsed as suit is compromised out of Court, hence to dismiss the suit - Hence the suit dismiss without costs" - When suit is withdrawn by Counsel for plaintiff ostensibly on instructions of a party or representation by Counsel for plaintiff that matter was settled out of Court, but it is proved to satisfaction of Court that such instructions from party were non-existent or there was no such settlement out of Court as represented by Counsel - In such event Court can invoke its inherent powers u/Sec.151 CPC and can set aside order permitting withdrawal of suit - Trial Court rightly entertained Application filed by petitioners under Or.23, Rule 3 r/w Sec.151 CPC to set aside order - Once fraud played by Counsel on petitioners is established and his collusion with one of the respondents is apparent period of limitation be counted from date of discovery of fraud - Petitioners are entitled for calculation of period of limitation from date of knowledge of fraud - Order passed by lower Court in dismissing Application filed by petitioners to set aside order of dismissal of suit is perverse - Petitioners made out sufficient cause to set aside order - Impugned order, set aside - CRP allowed with cost of Rs.5000/-, payable to 6th respondent. **Basheerunnisa Begum Vs. Meer Fazeelath Hussaini 2014(1) Law Summary (A.P.) 201 = 2014(2) ALD 529 = 2014(2) ALT 97.**

—Or.23, Rule 3 & Or.15, Rule 1 - "Consent decree" - Suit filed for permanent injunction - Plaint and written statement filed on same day - Court recorded statements of appellant/defendant and respondent/plaintiff on the date of presentation of plaint - Appellant/defendant filed written statement admitting assertions in plaint to be correct and in fact prayed for decree of suit - Trial Court decreed suit - Consent decree obtained by playing fraud - In this case, defendant/appellant a rustic and illiterate woman is taken to Court by a relation on plea of creation of lease deed and magically in hurried manner, plaint is presented, written statement is drafted and filed, statement is recorded and a decree passed within three days - On a perusal of decree it is manifest that there is total non-application of mind - It only mentions there is consent in written statement and suit has been decreed - In instant case, though decree was passed in 1973, it was alleged that defendant was already in possession - She lived upto 1992 and expired after 19 years - Evidently possession was not taken over by the respondent - Further there was an implied agreement that decree would be given effect to after her death - All these reasons are absolutely non-plausible and common sense does not even remotely give consent to them - It is fraudulent all the way - Whole thing was buttressed on edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay - Decree of High Court in second appeal as well as judgments and decrees of Courts below are set aside - Appeal, allowed. **Badami Vs. Bhall 2012(3) Law Summary (S.C.) 93 = 2012(5) ALD 99(SC) = 2012 AIR SCW 3560 = AIR 2012 SC 2858.**

——Order XV-A(2) - **INDIAN EVIDENCE ACT,** Sec.116 - Petitioner/plaintiff is a lease holder of premises with powers to sub-lease property - While so, respondents/

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defendants had obtained shop no.15 on lease from the plaintiff vide lease deed dated 29.05.2002 for a term of three years, having paid Rs.6,00,000/- as deposit - The defendants had agreed to pay a monthly rent of Rs.4,500/- for running optical trade - However, defendants changed business to Car Accessories without consent of plaintiff - Presently, defendants are running eatables business under name and style 'Vegetable Nation' - At request of defendants, plaintiff had executed an annexure to lease agreement - Defendants under took to sell only bakery items, Tea, Coffee, Lebanese Sweet and confectionary, fruit cocktail, salad bar, sweet corn, pop corn, sugar candy, fruit juices, cool drinks and softy ice creams etcetera but not vegetable chat items and specially Chinese Food - But, defendants are carrying on business contrary to same and are violating terms of Annexure - While doing the business in said shop no.15, defendants had also obtained on lease mulgies bearing nos.15/A and 54 and agreed to pay monthly rents of Rs.1,500/- and Rs.15,000/- respectively - The defendants 1 and 2 had thereafter renewed lease and are paying Rs.24,965/- towards rent in respect of shops nos.15, 15A and 54 and a sum of Rs.3,000/- per month towards use of covered open space on the Western side of front shop no.15 - Thus, total monthly rent payable is Rs.27,965/-. Thus, plaintiff is landlord and defendants are tenants - Monthly rent as enhanced from 01.09.2012 is Rs.33,385/- - The said rent is exclusive of electricity charges, water charges and service tax - The total deposit made by the defendants with plaintiff is Rs.9,75,000/- and it is an interest free deposit refundable to them on their vacating the property - As per the agreed terms of lease, defendants have to pay rent due in advance, i.e., on or before the 5 th day of month - However, defendants are not paying rents in time - They had committed defaults in payment of monthly rents since March 2013 - The arrear of rent for the said period works out to Rs.2,67,080/- and same is payable together with service tax amounting to Rs.33,011/-. The defendants are due to pay arrears of rent from March 2013 till November 2013, which comes to Rs.3,00,465/- together with Service Tax @ 12.36% amounting to Rs.37,137/- - Thus, total amount due and payable by defendants to plaintiff is Rs.3,37,602/- - In spite of receiving legal notice, they did not pay said amount and had also failed to vacate property - Defendants are liable to pay the monthly rents from March 2013 till November 2013 as stated above - Hence, it is necessary to direct them to deposit said sum together with service tax which comes to Rs.3,37,602/- to plaintiff/landlord.

The defendants denied allegations - At time of enquiry before trial Court, no oral and documentary evidence was adduced - On merits, and by order impugned, trial Court had allowed petition of landlord/plaintiff and directed defendants/tenants to pay admitted monthly rent of Rs.27,965/- from March 2013 till 31.07.2015, i.e., for 29 months in a total sum of Rs.8,10,985/- within two months from date of order - In orders, it was further observed that if said amount is not deposited within time stipulated, defence of the defendants will be struck off - In said order it was also ordered that defendants shall continue to pay future rents at said rate to plaintiff on or before 5th of succeeding month till disposal of the suit - The unsuccessful defendants/respondents filed this petition against that order.

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Held, in case on hand eviction suit by original lessor against plaintiff herein is not yet decreed and said suit is pending - The present case is not a case where original owner/original lessor is armed with legal process for eviction, which cannot be resisted by defendants/subtenants who are tenants of plaintiff herein - Therefore, attornment pleaded by defendants/ sub-tenants is not under compulsion - Therefore, neither plea of mere voluntary attornment urged by defendants/sub-tenants nor plea of mere institution of suit for eviction against plaintiff by original owner/original lessor is of any avail to defendants herein - Without discharging their statutory obligations towards their landlord/plaintiff herein, on mere plea of voluntary attornment to original Lessor and on mere fact that a suit for eviction was filed by original lessor against plaintiff/landlord, defendants, who are tenants of plaintiff, cannot justify their theory that landlord and tenant relationship between plaintiff and defendants has come to an end on voluntary attornment to original owner/original lessor.

For reasons aforementioned this Court holds that plaintiff had established prima facie landlord and tenant relationship between plaintiff and defendants herein and made out valid and sufficient grounds to direct defendants to pay monthly rents at the rate as admitted by them i.e., @ Rs.27,965/- per month from 01.03.2013 till 31.07.2015 and future rent - Viewed thus, this Court finds that order of the Court below is justified and it does not brook interference - In the result, the Civil Revision Petition is dismissed. **Sayed Salimuddin Vs. Abdul Kareem 2016(3) Law Summary (A.P.) 43 = 2016(6) ALD 89 = 2016(5) ALT 546.**

—Or.26 - Appointment of second commission - Trial Court rejected Application filed by petitioner/plaintiff to appoint second Advocate-Commissioner to conduct survey and demarcate Sy.Nos. of village - Before appointment of Second Advocate-Commissioner, Court should record its dissatisfaction about report submitted by first commissioner, object being to avoid conflicting reports before Courts - If revision petitioner otherwise seeks to discredit first Advocate Commissioner's Report in total and have a second Advocate Commissioner for local inspection, then invariably he should persuade trial Court to conclude about unacceptability of report of first Advocate Commissioner with reference to objections raised by him against said report or any other relevant considerations that he may bring to notice of trial Court - CRP, dismissed. **P.Upendra Laxmana Rao Vs. Commissioner of Survey & Settlement, Hyd 2010(1) Law Summary (A.P.) 191.**

—Or.26, - "Appointment of Advocate-Commissioner to fix boundary" - Petitioner/plaintiff filed suit for perpetual injunction - 1st defendant filed written statement contending that he is owner of land adjacent to land of petitioner and structures and existing trees on bund belong to him and he is in possession and enjoyment - Petitioner/ plaintiff filed Application seeking appointment of Advocate-Commissioner on ground that 1st defendant disturbed boundary during pendency of suit - Trial Court dismissed Application on ground that Commissioner cannot be appointed to gather evidence with

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regard to possession of land covered by trees - Petitioner contends that trial Court misread material brought on record and thereby erred in observing that Commissioner has been sought for to gather evidence and that purpose of appointment of Commissioner is to demarcate boundary with assistance of Surveyor and note existing features - Respondents contend that commissioner cannot be appointed for demarcating land in injunction suit - Commissioner can be appointed for purpose of demarcating suit land - Order passed by trial Court in dismissing Application for appoint-ment of Advocate-Commissioner - Erroneous - Hence, set aside - CRP, allowed. **Varala Ramachandra Reddy Vs. Mekala Yadi Reddy 2010(2) Law Summary (A.P.) 172.**

——Or.26 Rules – 1,2,3 and 4 - "Appointment of Advocate Commissioner" to mark documents and record evidence - Respondent filed suit for recovery of certain amount from petitioner defendant and court suomoto appointed advocate commissioner to mark documents and record evidence of plaintiffs - Hence challenging said order, present CRP by petitioner defendant.

Perusal of Rule 1 or Rule 4-A of Order 26 C.P.C shows that Court cannot appoint an Advocate Commissioner without assigning any reasons – Perusal of impugned order does not show reason which prompted lower court to appoint advocate commissioner for examination of plaintiff – As per cause title, plaintiff is aged 40 years and is resident of village within jurisdiction of Lower court - In these circumstances impugned order passed by lower court appointing Advocate Commissioner, set aside. **Vemunandana Ramakrishnam Raju Vs. Darla Srinivas 2016(2) Law Summary (A.P.) 80 = 2016(3) ALD 516.**

—Or.26, Rule 1 & 9 - "Appointment of Advocate-Commissioner to record evidence" - Suit filed for specific performance of agreement of sale executed by deceased 1st defendant - Defendants L.Rs of deceased/D1 filed Application for appointment of Commissioner to record evidence of attestors of Will allegedly executed by their deceased mother - Plaintiff contends that Will is fabricated document and it is unenforceable and examination of attestors of said Will is unnecessary and not relevant for adjudication of case - Trial Court appointed Commissioner - Petitioner/plaintiff contends that since suit is based on agreement of sale executed by 1st defendant, validity or otherwise of alleged Will in favour of defendants 2 to 4 cannot be gone into and that since there is no issue with regard to proof of alleged Will, trial Court committed grave error in appointing Commissioner to record evidence of attestors of said will - Merely because plaintiff raised an objection that no medical certificate is produced to substantiate inability of witnesses to attend Court to give evidence, plea of applicants need not be disbelieved and on that ground trial Court cannot be said to have committed any illegality in allowing application- CRP, dismissed. **V.K.Chandrasekhar Vs. V.K. Suseelamma (died) rep. by Lrs. 2010(1) Law Summary (A.P.) 29.**

—Or.26, Rule 9 - "Appointment of Commissioner" - In a suit for permanent injunction petitioner filed Application for appointment of Advocate Commissioner - Trial Judge

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appointed Advocate-Commissioner for inspection, location, measurement of entire extent of suit schedule property with help of Mandal Surveyor with a direction to fix up boundaries, note down physical features - Advocate Commissioner returned his warrant by stating that several efforts made by him for execution of warrant prove futile - Court therefore appointed anothr Advocate-Commissioner who also returned warrant stating that he personally meat Mandal Surveyor who stated that he had already visited petition Schedule properties and taken measurement of same in presence of previous Advocate-Commission and that unless and until District Surveyor assists him, he cannot execute warrant - Considering report of second commissioner trial Court dismissed Application filed by petitioners for appointment of commissioner - Considering reasons given by second Advocate-Commissioner Court is unable to comprehend as to how petitioners are responsible if Mandal Surveyor has expressed his inability to execute warrant without assistance of District Surveyor - Order appointing Advocate Commissioner is a judicially enforceable order - When such order is passed it is not only duty but also obligation of Court which passed it to enforce same - Unless Court is convinced that its order is not enforceable in law for legally sustaiable reasons it cannot allow its order to be vioilated - If Mandal Surveyor has failed to execute warrant without assistance of Distict Surveyor it is incumbent upon trial Court to take appropriate measures by giving direction to District Surveyor to assist Mandal Surveyor in executing warrant - Petitioner cannot be blamed for purported inaction on their part, if Mandal Surveyor has not helped Advocate-Commissionr in carrying out warrant - Order of trial Court, set aside - CRP, allowed. **Gundra Adilakshumma Vs. Uppuluru Yella Reddy, 2012(2) Law Summary (A.P.) 151 = 2012(5) ALD 280 = 2012(5) ALT 264.**

—Or.26 Rule 9 – Appointment of Advocate Commissioner for localizing plaint schedule land – Petitioner/Plaintiff filed suit for bare Injunction basing on registered sale deed – Respondent/ Defendant contend that suit schedule property not properly described land which are in their position – Trial Court dismissed IA filed by petitioners for appointment of commissioner to survey land with assistance of Asst. Director of Survey on ground that already survey was conducted by Inspector of Survey and land records - Petitioner contend that unless survey is conducted under supervision of a commissioner appointed by court, dispute between parties as to identity of subject matter cannot be resolved - A Commission at instance of one of parties to find out as to who is in possession of property cannot be issued as it enables party seeking appointment of commissioner to collect or gather evidence, but where there exists a dispute regarding identity of suit property, Court has to necessarily issue a commission with assistance of surveyor, otherwise it would be highly difficult for court to completely and effectively resolve dispute and issuing such commission would not amount to collection of evidence – Commission for said purpose can be issued prior to or after parties let in their evidence - In this case, Appointment of Commissioner for purpose of localizing suit lands is necessary – Order of Trial Court rejecting request of petitioners for appointment of commissioner, erroneous – Order of Trial Court set aside, and directed to appoint

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commissioner to localize lands with assistance of assistant director – C.R.P. allowed. **Velaga Narayana Vs. B.Srinivas 2014(2) Law Summary (A.P.) 48 = 2014(3) ALD 605 = 2014(4) ALT 152.**

—Or.26, Rl.9 - Suit for permanent Injunction – Appointment of Advocate Commissioner - Even before trial commenced petitioner/plaintiff filed application for appointment of Advocate Commissioner – Trial Court dismissed application observing that petitioner is owner of suit property and that burden was on him to establish his plea by adducing evidence - It is only after both parties adducing their respective evidence if any ambiguity prevails with reference to identity of property, that Court on its own or an application of either party may appoint Advocate Commissioner - Application for appointment of Advocate commissioner at threshold itself cannot be entertained as same will amount to gathering of evidence – C.R.P dismissed. **Arvind Kumar Agarwal Vs. Legend Estates (P) Ltd. 2015(1) Law Summary (A.P.) 199 = 2015(2) ALD 206 = 2015(2) ALT 484.**

—Order 26, Rule 9 - Suit for perpetual injunction from interfering from their alleged peaceful possession and enjoyment of plaint schedule properties - Court below appointed advocate commissioner ex parte and directed him to file a report as to physical features of the suit locality, but in said order, court below not directed advocate commissioner to take assistance of Mandal Surveyor - I.A filed for same advocate commissioner to direct him to inspect the plaint schedule properties with help of Mandal surveyor and to locate it and file a fresh report - Court below dismissed the I.A. - Present revision is filed against that order - Held, in present case, from pleadings of parties it is clear that respondents alleged that it is petitioners who encroached their property while petitioners allege that it is the respondents who have encroached their property - Therefore, it is necessary to localize the suit schedule properties and this can be done with the help of an Advocate-Commissioner, who takes the assistance of the Mandal Surveyor and also with reference to the F.M.B. and other relevant records - Court below erred in holding that when the Advocate-Commissioner went to note down the physical features, no one disputed about the identification of the suit property and after lapse of six months petitioners came up with this petition, because the pleadings of the parties mandate the Court to decide as to who encroached whose land - Having regard to case law mentioned above, this Court is opinion that the Court below is not correct in holding that there is no necessity for a revisit of Court Commissioner and if really there is necessity to appoint a Court Commissioner, it will do so if only when evidence on record leaves something to be explained further - Therefore, the Civil Revision Petition is allowed. **G.L.Purusotham Vs. Y.Nagaraju 2015(3) Law Summary (A.P.) 20 = 2015(5) ALD 460 = 2015(5) ALT 286.**

—-Or.26, Rule 9 - Present revision petition is filed by respondent/defendant assailing order and decree passed by District Judge - Respondent filed suit before trial court

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for declaration and consequential injunction against petitioners and others in respect of an extent of Ac.40.89 cents - First petitioner filed suit for perpetual injunction against respondent in respect of wet land admeasuring Acs.8.70 cents and said suit was transferred to the trial court - Trial court clubbed both suits and recorded evidence in one suit - During pendency of the suits, petitioners filed I.A. for appointment of advocate commissioner to inspect suit schedule property, constructed pucca house and the existing crops therein, and submit the report - After hearing both parties, trial court allowed petition and appointing advocate commissioner - Feeling aggrieved by order and decree of trial Court, respondent filed present revision petition.

Held, Court has to ascertain intention of party from recitals of affidavit - A careful perusal of affidavit filed in I.A. clearly reveals intention of petitioners to file present petition for appointment of advocate commissioner - As rightly pointed out by learned counsel for petitioners, mere delay in filing of petition itself, is not a valid ground to dismiss petition without considering its merits - But, in instant case, conduct of first petitioner in filing petition nearly five years after filing of the suit, that too when matter is coming up for judgment, indicates his intention to drag on matter on one pretext or the other - In a suit for declaration, plaintiff may succeed or fail basing on strength and weakness of his case - Even if advocate commissioner was not appointed, the same may not cause any prejudice to the petitioners - It is a settled principle of law that in a suit for declaration, plaintiff has to establish his case by preponderance of probability - Viewed from that angle also, there is no necessity for appointment of advocate commissioner in this case - Having regard to facts and circumstances of case, this Court considered view that it is not a fit case to appoint an advocate commissioner - If trial court had considered all these aspects, finding of trial court would be otherwise - Moreover, petitioners No.2 and 3 have no locus standi to file petition or join in this petition along with petitioner No.1 - Viewed from that angle also, present petition is not maintainable - Basing on factual or legal aspects, order passed by trial court is not sustainable - If order of trial court is allowed to stand, certainly it would hamper progress of suit - There are valid grounds to set aside order passed by the trial Court - Accordingly, points are answered - In result, the civil revision petition is allowed at admission stage setting aside order passed in I.A. **Chekuri Lavanya, Vizianagaram Vs. K. Ravikumar Varma, Visakhapatnam 2016(1) Law Summary (A.P.) 131.**

——Or.26, Rule 9 - Application filed for appointment of Advocate Commissioner to localize Survey numbers in suit for declaration of title and recovery of possession of plaint schedule property from respondents/defendants - Trial Court dismissed petition filed by petitioner/plaintiff, hence present CRP filed.

Under Or.26, Rule 9 CPC, main purpose of appointing Advocate Commissioner is to elucidate any matter in dispute - In this case, it does not appear from pleadings of parties that identity of property is in dispute and therefore question of localizing property does not arise - CRP, dismissed. **K.Sambasiva Reddy Vs. Chilla Rama Rao Reddy 2016(3) Law Summary (A.P.) 81 = 2016(6) ALD 61.**

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—-Or.26, Rl.9 - Revision Petitioner/Plaintiff sought for appointment of an Advocate Commissioner for measurement and demarcation of lane by measuring property of Plaintiff and defendant respectively - Lower court by impugned order dismissed petition on ground that suit was at stage of arguments – Hence, revision petitioner contends that impugned order was baseless and unsustainable whereas defendant/ revision respondent supported order of lower Court.

Held, where demarcation of disputed property is involved it is a fit case for appointment of Advocate Commissioner, as held by the Apex Court in Haryana Waqf Board supra, and same was followed in Smt. Donadulu Uma Devi and there is no time limit for appointment of Advocate-Commissioner as even an exparte Advocate Commissioner for localization and noting of physical features can be appointed at time of filing suit and delay in filing is otherwise not a ground to negate.

Revision petition is disposed of giving liberty to plaintiff to file fresh petition within one week from date of receipt of this order before lower Court and lower Court is directed therefrom to receive counter, hear and dispose of application on own merits. **Bandi Samuel Vs. Medida Nageswara Rao 2016(3) Law Summary (A.P.) 480.**

—Or.26, Rules 9, 10 to 22 - Petitioner/plaintiff filed suit for permanent injunction - Respondent/defendant also filed another suit against petitioner for grant of permanent injunction - Inspite of interim injunction respondent highhandedly ploughed foot path and raised crop in some portion of suit land - Trial Court dismissed Application filed by petitioner for appointment of Advocate Commissioner holding that in a suit filed for grant of permanent injunction, burden is only on parties to establish their respective possession independently and no Advocate Commissioner shall be appointed to note down possession aspect over schedule property and that appointing of an Advocate Commissioner to measure and demarcate lands as required by petitioner with help of Mandal Surveyor is far fetching relief and it is not within proximate ambit of main suit - Petitioner contends that order of trial Court is illegal and erroneous in holding that in a suit for grant of permanent injunction, no Advocate Commissioner can be appointed - Respondent contends, in a suit for injunction no Advocate Commissioner can be appointed and it is for plaintiff to establish her possession over suit property and therefore under guise of appointment of Advocate Commissioner, there cannot be any gathering of material evidence - Perusal of Or.26, Rule 9 goes to show that there is no distinction of suit in which Advocte Commissioner can be appointed or rejected, but it makes clear that where local investigation is required for purpose of elucidating any mater in dispute Advocate Commissioner can be appointed - It may not be correct in contending that in a suit for perpetual or permanent injunction, Advocate Commissioner cannot be appointed - In this case trial Court not properly appreciated rival contentions in disposing of Application filed for appointment of Advocate Commissioner - It is for Court below to consider scope and ambit of Advocate Commissioner to be appointed for local inspection with help of Surveyor as report filed by Advocte Commissioner in suit filed by respondent is not exhaustive and do not cover aspect of controversy involved in respect of suit schedule property - Impugned order of trial Court, set aside - CRP allowed. **Salla Eswaramma Vs. C. Subba Reddy 2009(1) Law Summary (A.P.) 161 = 2009(2) ALD 160 = 2009(2) ALT 59 = 2009(1) APLJ 13 (SN).**

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—Or.26, Rules 9 & 18 - Appointment of Advocate Commissioner - Respondent/plaintiff filed suit for permanent injunction restraining petitioners/defendants from interfering his peaceful possession and enjoyment of "ABCD" marked vacant site - Pending suit respondent filed I.A under Or.26, Rule 9 CPC, for appointment of Advocate Commissioner to take measurements of property mentioned in registered sale deed under which he has purchased property and to find out whether "ABCD" plan marked vacant site is part and parcel of property mentioned in said register sale deed or not with help of qualified surveyor - Petitioners/defendants opposed said I.A contending that at their instance I.A was filed in year 2004 for local inspection and Advocate Commissioner appointed and executed warrant and filed Report and that respondent/ plaintiff had not filed any objection at that time and now he has filed present petition to appoint Advocate Commissioner again to harass petitioners/defendants - Trial Court, allowed I.A holding that real question in controversy is with regard to localization of ABCD marked site and that it is necessary to localize it with reference to sale deed of respondent and other title deeds if any of both parties and also rejected objection of petitioners that present petition is not maintainable because of earlier order appointing Advocate Commissioner to note down physical features - Hence, present Revision - Petitioners contend that purpose for which I.A was filed by respondent was to collect evidence and that earlier Advocate Commissioner was appointed to note down physical features of property and therefore another Advocate Commissioner cannot be appointed to localize "ABCD" site which is subject matter of dispute between parties - It is no doubt true that previously Advocate Commissioner was appointed at instance of petitioners but he only noted down physical features and it is not case of petitioners that measurements of disputed site and its localization were done by earlier Advocate Commissioner - In Sanjaya & Ors., case cited by petitioners, Court held that an Advocate Commissioner cannot be appointed to submit a Report recording actual possession of disputed property - In present case, however, Advocate Commissioner is appointed to localize disputed "ABCD" portion with reference to title deeds of both parties with assistance of qualified surveyor and not to determine possession of any party and therefore said decision has no application - Order passed by trial Court - Justified - CRP, dismissed. **Bandaru Mutyalu Vs. Palli Appalaraju 2013(3) Law Summary (A.P.) 38.**

—Or.26, Rule 9 and Or.39, Rules 1 & 2 - Petitioner filed suit for relief of perpetual injunction - Trial Court passed orders of status quo - 1st respondent/defendant filed Application to appoint Advocate Commissioner to note existing features viz., a hut and construction of compound wall - Petitioner/plaintiff opposed Application - Trial Court allowed Application - The only question that assumes significance in suit whether plaintiff is in possession and enjoyment of schedule property and burden squarely rests upon petitioner to prove possession - Appointment of Commissioner to note physical features or to undertake other related activities in a suit for injunction is a rarity - Reason is that plaintiff cannot be permitted to gather evidence to prove his

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possession and he has to satisfy Court through oral and docuentary evidence - When that is law on subject, appointment of Commissioner at instance of defendant in such suits is a still rare phenomenon - Admittedly in this case, trial is yet to commence and it is only for petitioner/plaintiff to prove his possession - In case, respondent/ defendant is of view that boundaries mentioned in suit schedule are not correct and that case presented by plaintiff is not true, he can take relevant plea in written statement and not only cross-examine petitioner/plaintiff and other witnesses - Appointment of Commissioner that too for noting physical features at this stage is a pure step aimed at gathering evidence - Order under Revision, set aside - CRP, allowed. **A.Gopal Reddy Vs. R.Subramanyam Reddy, 2013(1) Law Summary (A.P.) 356 = 2013(4) ALD 347 = 2013(3) ALT 623.**

—-Or.26, Rule 10-A - **EVIDENCE ACT,** Sec.45 - Respondent/plaintiff filed suit for recovery of certain amount basing on promissory note - Petitioners/defendants specifically averred in their written statement that plaintiff forged and fabricated alleged pronote - Petitioners/defendants having taken number of adjournments did not cross-examine P.W.1 and cross examination of P.W.1 as marked nil - After filing chief-affidavit of P.W.2, Application filed to send disputed document to Hand Writing Expert for his opinion - Trial Court dismissed Application observing that Application was filed at belated stage and that whenever application for sending particular disputed document to expert is filed that does not mean that necessarily and automatically said petition may have to be allowed - Petitioner contends that Application u/Sec.45 of Evidence Act, r/w u/Or.26, Rule 10-A CPC can be filed at any stage of trial - A cogent reading of Sec.45 of Evidence Act and Or.26, Rule 10-A CPC make it clear that it is discretion of Court to send any disputed document to Handwriting Expert for his opinion as to ascertain whether signature or thumb impression is forged or not - Whether to send a disputed document to Hand writing expert or not depends upon nature of rival contentions of parties and nature of evidence already let in - If there are latches on part of parties in protracting litigation, Court may impose costs or pass conditional orders - But that cannot be a ground to deny relief sought by parties at time of trial - Doors of trial Court should not be closed at this stage denying opportunity to any party to adduce any evidence - When a document is said to be forged and when a party has specifically denied signature or thumb impression on that particular document, such party should certainly have an opportunity to send document to handwriting expert for comparison - At stage of trial of a case, trial court, must give reasonable opportunity to parties to adduce evidence - Where parties are not diligent or intending to protract litigation, Court may pass conditional order imposing suitable conditions - Impugned order, set aside - I.A filed in trial Court, allowed. **Jalagadugula Eswara Rao Vs. Davala Surya, 2011(1) Law Summary (A.P.) 154 = 2011(2) ALD 572 = 2011(1) ALT 652 = AIR 2011 AP 78.**

—Or.26, Rules 10-A, 10(3),9 & 12(2) - **EVIDENCE ACT,** Secs.45,46 & 72 - "Appointment of second Commissioner" - Petitioner/plaintiff filed suit basing on pronote - Respondent/

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defendant contends that suit promissory is rank forgery - Pronote was sent to private expert, at instance of respondent/defendant, who opined that pronote is forged one - Trial court dismissed Application filed by petitioner/plaintiff to send suit pronote to any Govt., handwriting expert for comparison of disputed signature with that of admitted signatures of respondent/defendant - Respondent contends that petitioner cannot seek opinion of second expert and such a course is not permissible in law - Petitioner contends that Sec.45 of Evidence Act is substantive law where as Or.26, Rule 9 CPC is procedural law - Thus there is much difference between Or.26, Rule 9 and Or.26, Rule 10-A, r/w Sec.45 of Evidence Act and that expert had selected admitted signatures in a pick and choose manner and that for arriving at truth and for doing complete justice, opinion of second expert must be obtained and that seeking of opinin of second expert is not for purpose of filling up of any gaps but to establish truth and to rebut false contention of respondent that signature in pronote is a forged one - Respondent contends that trial in lower Court is almost over and at that stage petitioner filed this petition to send pronote to second expert and that if petitioner is not satisfied with report of expert he should have filed objections and requested Court to reject opinion of expert and that without rejecting earlier report of expert, report of second expert cannot be sought for - A combined reading of Rule 10-A and 10(3) and 12(2) gives an impression that report of Commissioner is part of record of Court and if Court is not satisfied with proceedings and report of Commissioner it may direct such further enquiry which include issuing of second Commission for same purpose - Goal of Court should be to find out truth and procedural aspects should not come in way of finding truth - Procedural law should always be subvergent to substantiative law - Therefore seeking opinion of second expert in such cases may be necessary for rendering complete justice- As far as Sec.45 & 46 of Evidence Act are concerned, same is undoubtedly a part of substantiative law and where as provisions under Or.21 of CPC appears to be procedural - Therefore in cases where Court is of opinion that report of expert is not satisfactory, where expert had not followed required procedure where findings of expert appears to be prima facie incorrect where there is a error on face of record, where it appears that Commissioner or expert had acted in partisan manner and where deficiency in report cannot be completed by same Commissioner or expert or where Court feels that referring matter to second Commissioner would be useful for better appreciation of evidence and for better reaching just conclusion, Court may refer matter to second Commissioner or to second expert for his opinion, even without setting aside earlier report or opinion - In this case, admittedly there are certain peculiar circumstances as admitted by expert - Order of lower Court in dismissing petition for appointing second Commission - Erroneous - Order, set aside - Revision allowed. **M.Ramesh Babu Vs. M. Sreedhar 2009(2) Law Summary (A.P.) 360 = 2009(5) ALD 187 = 2009(3) APLJ 134 = 2009(4) ALT 780.**

—Or.32, Rules 1, 2-A and 3 - **CIVIL RULES OF PRACTICE,** Rule 172 - Suit filed by minor daughter through her maternal uncle as “next friend” - Defendant raised

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preliminary objection as to maintainability of suit on ground that minor girl not properly represented, much less any guardian was appointed - Trial Court dismissed suit on ground that no guardian was appointed for appellant/girl - Appellant/girl contends that CPC provides for presentation of plaint on behalf of a minor through a next friend and in instance case maternal uncle was shown as next friend and that Or.32 of CPC provides for various stages and once plaint is presented through next friend, trial Court has to undertake exercise of appointment of guardian for purpose of suit and that trial Court could have at most insisted on filing of application for appointment of guardian or return plaint and that there was no justification for dismissal of suit - Respondents contend that when parents of appellant are very much alive, suit could have been filed through one of them, acting as guardian and that if for any reason natural parents cannot be appointed Application ought to have been made for appointing maternal uncle as guardian and that minor cannot prosecute remedies, unless she is properly represented and that trial Court has taken correct view of matter - What is needed in law is presence of next friend and not guardian - Trial Court failed to maintain distinction between next friend on one hand, and guardian, on other hand - It is only when a minor figures as defendant, that Court would appoint a guardian for him - Concept of "next friend" does not exists, if minor figures as defendant in a suit - Only exercise which Court can undertake in a suit, where it is filed by a minor through a next friend, is that it can insists on furnishing of security by next friend by payment of all costs, incurred or likely to be incurred by defendant in such a suit - It is not necessary that next friend must be a natural guardian or close relation - Rule 172 of Civil Rules of Practice mandates that where plaintiff is minor or under disability, and it is filed by next friend, affidavit shall be filed by a disinterested person to effect that "next friend" has no direct or indirect interest in subject-matter or suit - In this case, suit was presented through next friend and there was compliance with Rule 1 of Or.32 - Lapse if at all, was on part of trial Court in not insisting on security being furnished under Rule 2-A of Or.32 or affidavit under Rule 172 of Civil Rules of Practice - When only consequence that Or.32 provides, in event of suit being filed by a minor without there being next friend; is that plaint be "taken off" file, dismissal of suit filed through next friend cannot even be imagined on account of totally untenable view taken by trial Court interest of minor girl were subjected to jeopardy - Blames squarely rests upon trial Court, on one hand, and respondent on other hand - Appeal, allowed with costs - Appellant is accordeed permission to comply with requirements under Rule 2-A of Or.32 CPC and Rule 172 of Civil Rules of Practice. **Vardhineedi Sivani Vs. Vardhineedi Narasimha Rao 2011(3) Law Summary (A.P.) 96 = 2011(6) ALD 18.**

——Or.36 - **INDIAN STAMP ACT, 1899,** Sec.2(5) and Art.48, Sch.I-A - **INDIAN CONTRACT ACT,** Secs.124 and 126 - This Civil Revision Petition filed with a request to direct office of Court below to put up an appropriate note for collecting stamp duty, if any, payable on the suit documents, as envisaged under Article 48 of Schedule

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I-A of the Indian Stamp Act, 1899 - Plaintiff is not objecting to contents of said office note of court below and is prepared to comply with said directions in office note, as per submissions made at hearing - However, Court below after perusing documents did not agree with note put up by its office and therefore, disapproved office note and had further directed that stamp duty and penalty are collectable as per Article 13 of Schedule 1-A of Act and had accordingly rejected IASR of the plaintiff by order, which is impugned - Hence, plaintiff is before High Court.

Held, a contract of guarantee is precisely a contract to perform promise, of discharge of liability, of a third person in case of his default - Such person who gives guarantee is called surety and person in respect of whose default, guarantee is given is called principal debtor and person for whom guarantee is given is called creditor - A guarantee may be either oral or written - Therefore, Article 13 of Schedule 1-A of the Indian Stamp Act, in the well-considered view of this Court is not applicable to facts of case on hand - But, Article 48, is applicable to document in question in case on hand because bond is a security bond executed by surety or guarantor in view of fact that there are three parties to contract and surety has undertaken to pay debt in case of failure of principal debtor to pay said debt covered by promissory note to creditor - Viewed thus, this Court finds that order impugned of Court below in not accepting office note and further directing plaintiff to pay stamp duty in accordance with Article 13 of Indian Stamp Act, is unsustainable under facts and in law and is, therefore, liable to be set aside - In result, Civil Revision Petition is allowed and impugned order is set aside. **A.Shakunthla Vs. A.Mangamma 2016(2) Law Summary (A.P.) 49 = 2016(3) ALD 541 = 2016(3) ALT 683.**

—-Order 36, Rule 5 - Plaintiff had categorically pleaded that the defendant having borrowed principal sum mentioned in promissory note had executed suit promissory note agreeing to repay debt with interest at 24% per annum simple and that despite oral requests she did not repay debt - He had further pleaded that he reliably came to learn through third parties that defendant is making hectic attempts and serious efforts to alienate her only property, that is, petition schedule property and is further trying to shift her family to some other place to defraud plaintiff and to delay and defeat just claim of plaintiff - It is also his case that in view of said facts and urgency in matter, a legal notice could not be issued before instituting suit - Trial court by an interim order directed defendant to furnish security within 48 hours or appear and show cause as to why such security shall not be furnished - In its order the trial Court had also directed that property shall be attached on failure of defendant to comply with either of above said directions - Defendant while denying claim of plaintiff and inter alia contending that suit promissory note and third party affidavits are created had denied her liability and had pleaded that she has no intention to alienate property or defraud anybody - She had further given an undertaking affidavit stating that she is not going to alienate property and that she undertakes not to alienate her property till disposal of suit - Having given such an undertaking affidavit and filed an undertaking

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memo, she had requested trial Court to accept her undertaking and raise interim order of attachment and dismiss application of plaintiff.

Held, In case of an application filed for attachment before judgment in a suit for recovery of money, property to be attached and which is subject matter of such application is not property involved in suit and it cannot be termed as suit property as suit is one for recovery of money - Thus, in a suit for recovery of money, property, which is subject matter of application filed for attachment before judgment, cannot be said to be suit property being not directly related to main relief, which is only recovery of money - Decree that would eventually be granted in suit for recovery of money would only be a decree for money - Such decree would not affect rights in any immovable property as subject matter of suit is money and not any immovable property; therefore, rule enshrined in doctrine of lis pendens dealing with alienation of suit property during pendency of suit does not apply to a suit for recovery of money as any immovable property is neither directly or specifically involved in suit or the proceeding.

Having regard to discussion coupled with reasons supra, this court finds that request for accepting an undertaking affidavit filed by defendant without offering to furnish security or showing cause as to why security shall not be furnished cannot be countenanced - Therefore, this court finds that order of trial Court raising interim order of attachment after accepting undertaking affidavit filed by the defendant is unsustainable under facts and in law and is liable to be set aside - In result, CRP. is allowed and order of Court below in IA accepting the undertaking of defendant is set aside. **Y.Kesavulu Vs. T.Kalavathi 2016(3) Law Summary (A.P.) 102 = 2016(6) ALD 286 = 2016(5) ALT 363.**

—Or.37, Rules 1 & 2 - **INDIAN PARTNERSHIP ACT,** Sec.69 - Respondent/plaintiff filed summary suit for recovery of certain amount payable under cheque - Revision petitioner/defendant filed I.A under Or.37, Rule 3(5), seeking leave of Court to defend suit - Trial Court allowed application subject to depositing 25% of suit amount - Hence present revision petition filed by defendant - Law is well settled that if defendant raises at triable issue satisfying Court that he has good defence to claim on its merits defendant is entitle to unconditional leave to defend - If defendant has no defence or defence is illusory or sham or practically moonshine then although ordinarily plaintiff is entitled to leave to sign judgment, Court may protect plaintiff by only allowing defence to proceed if amount claimed is paid into Court or otherwise secured and give leave to defendant on such condition and thereby show mercy to defendant by enabling him to try to prove a defence - In light of settled principles of law and having recorded a finding that there are triable issues, Court below ought to have granted unconditional leave. Though power conferred under Rule 5(3) of Or.37 is purely discretionary, however once a finding is recorded that there are triable issues, defendant is entitled to unconditional leave to defend - Impugned order, set aside and IA allowed granting unconditional leave to defendant/revision petitioner to defend suit - CRP, allowed. **Hemanth Industries Vs. Sri Datta Products 2011(3) Law Summary (A.P.) 386 = 2012(1) ALD 412 = 2012(1) ALT 439.**

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—Or.37, Rules 1,2 and 3 r/w Sec.151 - Leave to defend - Respondent filed suit against petitioner for recovery of certain amount - District Judge dismissed Application filed by petitioner for leave to defend suit contending that cheque in question had been handedover by petitioner to respondent/Firm by way of security only and not for presentation and petitioner neither purchased any material nor counter signed bills and that since cheque issued in 2000 claim of respondent also barred by limitation and that District Judge committed an error in rejecting petitioner's application - Courts have consistently held that if affidavit filed by defendant disclosed a triable issue i.e. atleast plausible, leave should be granted, but when defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted - What is required to be examined for grant of leave is whether defence taken in Application under Or.37, Rule 3, CPC makesout a case which if established, would be plausible defence in a regular suit - In this case, defence raised by petitioner does not make out any triable issue - High Court has justifiably rejected petitioner's application - SLP, dismissed. **V.K.Enterprises Vs. Shiva Steels 2010(3) Law Summary (S.C.) 71.**

—Or.37, Rule 35 and Or.38, Rule 5 - Respondents filed suits against petitioner for recovery of amounts basing on promissory notes by invoking summary procedure under Or.37 CPC - Respondents also filed Applications under Or.38, Rule 5 for attachment before Judgment of certain items in which trial Court passed conditional attachment - On receiving summons for judgment petitioner/defendant filed Applications under Or.37, Rule 5 with a prayer to grant leave to defend contending that promissory notes on basis of which suits are fled are fabricated and that orders of attachment before judgment are already in force - Trial Court passed orders granting leave to defend, but imposed condition that petitioner shall furnish security for suit amount - Hence present Revisions - In this case, respondents invoked summary proceedings under Or.37 and normally in such cases, Applications under Or.38, Rule 5 are not filed and however, respondents /plaintiffs have filed such applications and obtained orders of attachment before judgment - Trial Court ought to have simply granted leave to defend suit and however it proceeded to direct petitioner to furnish security for suit amount - In this case, security for suit amount is already existing in form of attachment before judgment and that trial Court expressed view that petitioner has case to defend and that itself is sufficient to grant leave to defend and it cannot be burdened with any other condition - Condition imposed by trial Court for furnishing Security, set aside - CRP, allowed. **Vishnu Das Baheti Vs. Abhishek Kerthan 2013(1) Law Summary (A.P.) 369 = 2013(4) ALD 194 = 2013(5) ALT 63.**

—Or.38, Rule 5 - "Attachment before judgment" - "Priority" - Petitioner filed suit against 1st respondent for recovery of certain amount and got attached property before judgment - When suit was pending attached property brought to sale by Bank from whom 1st respondent obtained loan and after adjustment of loan, Bank kept without balance amount - 2nd respondent filed suit against 1st respondent and attached amount lying

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in Bank - Trial Court dismissed I.A filed by petitioner under Or.38, Rule 8 to raise attachment - Petitioner contends that immovable property owned by 1st respondent was soled by Bank even when attachment before judgment ordered in I.A filed by him was in force, and remainder of sale proceeds were got attached by 2nd respondent in different suit - When immovable property could not have been proceeded against during substance of attachment same prohibition operates, vis-a-vis sale proceeds also - 2nd respondent contends, in case property was sold in contravention of order of attachment, petitioner ought to have initiated steps, in accordance with law - Once property was sold, order of attachment does not operate against sale proceeds - 1st respondent is a debtor, not only to petitioner but also 2nd respondent - Claim of petitioner for said amount could have certainly been accorded priority, vis-a-vis, 2nd respondent, in case that very amount was attach before judgment in suit filed by petitioner - Attachment obtained by petitioner against an item of property - With sale of that item, petitioner virtually gets bereft of her rights under order of attachment unless sale itself is set aside - She did not initiate any steps in that direction - Had petitioner been vigilant she would have obtained attachment against amount, soon after sale was conducted, in case there exists any impediment for her, to prevent or challenge sale - Attachment obtained by 2nd respondent vis-a-vis amount, was first one - Petitioner do not have claim against that amount, and in that view of matter there was no basis for her to insist on raising of attachment - C.R.P, dismissed. **Yadava Kamala Bai Vs. Bijjam Venkata Subbamma 2010(3) Law Summary (A.P.) 196.**

—Or.38, Rule 5 - **CONSTITUTION OF INDIA,** Art.227 - "Order of conditional attachment" - Plaintiff/Sports Company filed suit against petitioner/defendant, Sports Authority for recovery of certain amount - Trial Court passing order of conditional attachment on Application filed by plaintiff under Or.38, Rule 5, directing petitioner to furnish security and if he fails to furnish security there shall be attachment of certain items of schedule after giving 5 hours time - Petitioner contends that none of ingredients to be satisfied under Or.38, Rule 5 CPC has been satisfied and that revision petitioner is a statutory authority functioning under Govt., and hence there is no need to direct petitioner to furnish security - Before making an order of conditional attachment before judgment, Court should have satisfied on material viz., affidavits or otherwise which may be placed before it, and that prima facie to safe guard interests of plaintiff such conditional attachment order need to be made - Unless ingredients of Or.38, Rule 5 are made *prima facie,* order of attachment before judgment by way of conditional attachment or otherwise cannot be made in a mechanical and routine way - In this case, impugned order was made in a mechanical way without proper application of mind, and without exercising discretion in proper perspective and so such order cannot be allowed to stand - Impugned order, set aside - CRP, allowed. **Sports Authority of A.P. Vs. Regal Sports Co. 2008(3) Law Summary (A.P.) 72 = 2008(6) ALD 759.**

—Or.38, Rules 5, 3 & 6 - Or.43, Rule 1 (q) - Petitioners/plaintiffs filed different suits for recovery of loan amount against respective defendants, along with Applications under Or.38, Rule 5 - Ex parte orders of attachments before judgment were passed

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at threshold itself - 1st defendant/Company in respective suits fled counters with request to raise attachment - Trial Court passed orders raising attachment in respective suits - Hence present Revisions - Petitioners contend that orders of attachment before judgment are in force for past five years and that attachments are raised without there being any justification and that on one hand 1st defendant/Company pleads that properties are owned by other individuals arrayed as defendants, and on other hand, it prays for raising of attachment in respective suits - Respondents contend that at initial stage itself, prescribed procedure not followed and taking same into account trial Court has raised attachments and that revisions are not maintainable and that, only appeals would have been filed - As regards maintainability, it is no doubt true that Or.43, Rule 1 (q) provides for an appeal against order passed under Rules 3 or 6 of Or.38 and omission of Rule 5 in that provision, under which order of attachment before judgment can be passed has its own significance - High Court has taken view in some cases that an order through which attachment before judgment is raised, is not appealable and there is no independent provision, which deals with raising attachment and invariably, it must be under Rule 5 of Or.38 - Hence objection as regards to maintainability of revisions, unsustainable - Petitioner/plaintiff in suit has to act upon his apprehension may be that apprehension must be supported by some relevant facts and except that he can gather information from known sources, he cannot have direct access to steps being taken by defendants vis-a-vis property - In this case, besides third-party affidavits apprehension of petitioner that respondents are trying to sell property has been proved to be correct from fact that soon after trial Court has raised orders of attachment, they have executed sale deeds in respect of various items of property - At any rate, respondents can take steps for raising attachment by offering security upto value of suit claim or item of property, as case may be - Orders of attachment before judgment that were in force for past five years cannot be withdrawn at this stage - Instead suits can be taken up for trial - Orders of attachment before judgment passed in suits shall remain in force until disposal of suits - CRPs, allowed. **Velu Yam Traders Vs. Lakshmi Priya Exports (India) Pvt. Ltd. 2013(1) Law Summary (A.P.) 321 = 2013(4) ALD 140 = 2013(3) ALT 663.**

—Or.39, Rules 1 & 2 - Plaintiff filed suit for injunction simpliciter contenting that suit property is gifted by her father under registered gift deed and defendant is threatening to dispossess her - Appellant/defendant filed written statement claiming that suit property is ancestral property and father had no right to execute gift of part thereof and that document of gift, Ex.A.1 is void - Trial Court discussed evidence relating to possession as claimed by plaintiff but on basis of its finding that gift deed is void, dismissed suit, holding that plaintiff ought to have filed a suit for partition but cannot maintain suit for permanent injunction - Said decree of trial Court reversed by lower appellate Court - Appellant contends that gift deed itself is void as father had no right to gift away part of ancestral property and that his admissions are clearly explainable and that itself is not sufficient to decree suit of plaintiff- Respondent contends that suit being

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only for injunction, validity of said gift deed not a germane consideration and Court below ought to have decided suit only on basis of proof of possession by plaintiff on date of suit - In a suit for injunction, Courts should concentrate on aspect of possession rather than issue of title - In this case, inspite of noticing Ex.A.1 gift deed, defendant has not taken any steps to challenge or to cancel said document and that defendant specifically admits that he is not in possession of suit land and that plaintiff establishes possession of property on basis of revenue receipts - In a suit for injunction what is material, is only aspect of possession - Appellant is not entitled to any relief - 2nd appeal, dismissed. **Ramavath Hasala Naik Vs. Sabahavath Gomli Bai, 2011(1) Law Summary (A.P.) 32 = 2011(2) ALD 350 = 2011(2) ALT 690.**

—Or.39, Rules 1 & 2 - Suit for specific performance and permanent injunction - Plaintiff subsequently withdrew relief of specific performance and pressed for relief of permanent injunction - Granting of permanent injunction being equitable relief such relief, cannot be granted to a person whose conduct is suspicious and who failed to prove that he at any point of time had exercised any act of possession over subject matter of dispute - When plaintiff failed to make out prima facie case of possession in his favour, suit filed by them for grant of permanent injunction is liable to be dismissed - In this case, plaintiff failed to adduce convincing evidence saying that under unregistered lease agreement he took possession of property and he is continuing possession of same on date of suit - 1st appellate Court rightly dismissed suit for permanent injunction filed by plaintiff by reversing decree and judgment passed by trial Court - This case, does not involve any substantial question of law for consideration in second appeal which is *sine qua non* for exercising jurisdiction by High Court to entertain 2nd appeal - 2nd Appeal, dismissed. **Borugadda Martin Luther Vs. Andhra Evangelical Lutheran Church, Guntur 2011(2) Law Summary (A.P.) 110 = 2011(4) ALT 113 = 2011(4) ALD 137.**

—Or.39, Rules 1 & 2 - **A.P. (T.A) TENANCY AND AGRICULTURAL LANDS ACT, 1950**, Sec.38-E - Respondent/plaintiff filed I.A to grant temporary injunction restraining petitioner and their men from interfering with peaceful possession and enjoyment over suit schedule land, stating that he is owner and possessor and in occupation of suit land having purchased from one “X”and his name was recorded as owner and possessor in revenue records and that he acquired title by adverse possession - 1st petitioner contends that her husband cultivated suit land on behalf of “Y” and by taking into his long occupation and enjoyment over suit land, RDO issued Sec.38-E certificate and that name of respondent is wrongly recorded as possessor and that he was never in possession and enjoyment of property at any point of time, but in collusion with revenue people, he got entered his name in revenue records - Trial Court granted injunction and same confirmed by appellate Court - CONSTITUTION OF INDIA, Art.227 - Power under Art.227 involves a duty on High Court to keep inferior Courts and Tribunals within bounds of their authority and see that they do

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what their duty requires and that they do in legal manner - C.P.C, Or.39, Rules 1 & 2 - Grant or refusal of injunction is guided by three well established principles viz., (1) if plaintiff has made out a *prima facie* case (2) if balance of convenience is in his favour i.e., it would be grater inconvenience to plaintiff if injunction is not granted than inconvenience which defendant would be put to if temporary injunction is granted and (3) if plaintiff suffers irreparable injury - A person who is in settled possession of property, cannot be evicted forcibly by true owner - But true owner has every right to dispossess or throw out a trespasser, while he is in act or process of trespassing - Once a person is in settled possession, he is not to be dispossessed otherwise than by legal manner - Respondent has no right to get a permanent injunction to prevent his eviction for all times to come, but he cannot be evicted or removed without due process of law - As there is no error of law apparent on face of record power under Art.227 of Constitution cannot be exercised - Concurrent findings of two Courts below are based upon proper appreciation of material on record - Impugned order, justified - CRP, dismissed. **Gone Rajamma Vs. Chennamaneni Mohan Rao 2010(1) Law Summary (A.P.) 438.**

—Or.39, Rules 1 & 2 - **SPECIFIC RELIEF ACT,** Sec.5 - Granting of ad interim injunction - Pursuant to tender Notification issued by Hyderabad Cricket Association inviting tenders for maintenance of Rajiv Gandhi International Stadium for One Day International Match - 1st respondent/plaintiff submitted his tender - Even though price quoted by 1st respondent is less than price quoted by 3rd respondent work not awarded to him - Hence 1st respondent filed suit for declaration - Trial Court granting *ad interim* injunction restraining 3rd respondent from proceeding with arrangements until further orders - Petitioners/defendants contend that since 1st respondent/plaintiff filed suit praying to declare contract awarded in favour of 3rd respondent as null and void, unless and until contract awarded in favour of 3rd respondent is declared as nulla and void, 1st respondent/plaintiff not entitled to grant of any relief, much less *ad interim* injunction order and that trial Court committed grave error in passing impugned interim *ad interim* injunction without issuing notice to parties to be affected - Respondent/ plaintiff submits that since impugned order of interim injunction is an order under Or.39, Rule 1 & 2 CPC remedy of petitioners/defendants is to file regular Appeal, and as such, CRP filed by them invoking jurisdiction of Art.227 of Constitution is not maintainable and CRP be dismissed as not maintainable - PRINCIPLES GOVERNING GRANT OF *AD INTERIM* INJUCTION ORDERS - Stated - Court before granting *ad interim* injunction must satisfy for itself three things viz., 1) *prima facie* case; 2) irreperable injury or loss that would be caused if no interim injunction is granted; 3) balance of convenience - If nature of relief sought for by parties as bearing on public interest or affecting public peace and order, then Courts could not grant them unless opposite party is issued notice and heard - Evidently, from prayer sought by plaintiff in suit he was asking to declare allotment of tender work in favour of 3rd respondent as *null* and *void* and to accept his tender - Court could not have granted any relief

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to plaintiff much less *ad interim* injunction order unless and until allotment of work order granted in favour of 3rd respondent is declared as *null* and *void*, set aside - Admittedly, contract work relates to supply of security staff, chairs and putting up barricades at site and execution of such contract is a time bound programme and has to be executed before commencement of Matches - Court ought to have seen whether 1st respondent/plaintiff had capacity to execute work - In this Case, Trial Court before granting *ad interim* injunction order, apart from failing to look into principles governing grant of injunction orders, also failed to look into provisions of Sec. 5 of Specific Relief Act - As this is one of rarest of rare cases and if *ad interim* injunction order granted by Court is not set aside, then entire proceedings in suit would become academic - Therefore instead of rejecting CRP on technicalities and relegating petitioners/ defendant to avail remedy of appeal, to prevent mis-carriage of justice, it is appropriate to exercise supervisory jurisdiction under Art.227 and allow same by setting aside impugned order of *ad interim* injunction passed by Court below - Hence injunction order granted by Court below, set aside - CRP, allowed. **Hyderabad Cricket Assn., R.R. Dist., Vs. C.Babu Rao 2010(1) Law Summary (A.P.) 160.**

—Or.39, Rules 1 & 2 - **TRANSFER OF PROPERTY ACT, Sec.53-A - EVIDENCE ACT,** Sec.54 - Petitioner/plaintiff filed suit against respondent for perpectual injunction contending that he is in possession and pattadar pass books also issued by competent authority - When petitioner refused to sell property, 1st respondent which is an Industry with colluded with 2nd respondent and brought into existence sale deed and started interfering with property on basis of same - Trial Court granted temporary injunction inspite of respondents 1 & 2 opposing application filed under Or.39, Rules 1 & 2 CPC - District Judge allowed CMAs filed by respondents - Hence present revisions - Petitioner/ plaintiff contends that appellate Court travelled beyond scope of I.A. and allowed appeals and made observation which would have bearing upon merits and maintainability of suit and that petitioner has yet to acquire perfect title over property, he can protect his possession on strength of agreement of sale by relaying upon Sec.53-A of T.P Act - Sec.53-A of Act is intended to protect rights of persons who have entered into an agreement for purchase of an item of immovable property but are facing threat of dispossession from concerned vendors - PURPORT OF SEC.53-A OF T.P ACT - Stated - "Utility of Section or rights conferred thereunder should not be made to depend on maneuvering for positions in a Court of law, otherwise a powerful transferor can always defeat salutary provisions of Section by dispossessing transferee by force and compelling him to go to a Court as plaintiff - Doubtless, right conveyed under Section can be relied upon only as a shield and not as a sword, but protection is available to transferee both as a plaintiff and as a defendant so long as he uses it as a shield" - Petitioner has, prima facie, proved his right in relation to property and balance of conveyance is in his favour - While petitioner intends to put land to agricultural use, 1st respondent proposed to use it as a dumping yard - Balance of conveyance is in favour of petitioner, to enable him to cultivate land - Order of

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temporary injunction shall remain in force till disposal of suit - Revisions, allowed. **Madala Kotaiah Vs. Hamsa Minerals & Exports, 2011(2) Law Summary (A.P.) 303 = 2011(5) ALD 57 = 2011(6) ALT 19.**

—Or.39, Rules 1 and 2 and 2-A r/w Sec.151 – Petitioner/plaintiff filed suit for perpetual injunction against Municipal Corporation – Ad-interim injunction granted with direction not to make unauthorized construction against sanctioned plan – Subsequently after considering affidavits of petitioner and respondent, trial Court modified earlier interim order and ordered that petitioner shall not make any construction in suit premises until further orders - Respondent filed Application under Or.38, Rule 2-A r/w Sec.151 of CPC to punish petitioner for violating orders of injunction passed by Court - Trial Court after making enquiry considering oral and documentary evidence allowed petition in part and directed Office to issue arrest warrant for detaining petitioner in civil prison for term of one week as punishment - Under Order 39, Court is empowered to grant temporary injunction and it can also impose condition on plaintiff to prevent him from violating law under guise of temporary injunction granted by Court - Provisions of Or.39, do not indicate that injunction order is applicable only to defendant, but not plaintiffs - Plaintiff can also be restrained from committing or omitting any act determinntal to interest of opposite party - Petitioner contends that Or.39, Rule 2-A is not applicable since there is disobedience of condition imposed by Court only but not injunction to attract Rule 2-A – Order of lower Court is a clear indication that plaintiffs are also restrained from making any further construction till further orders – Rule 2-A is pumitive in nature, strict compliance of violation of order is essential and unless there is a positive proof that plaintiff is violated orders of Court, he cannot be punished - In this case, there is sufficient evidence to show that petitioner not only violated Building Rules and approved plan, but also proceeded with construction disregarding direction of Court not to make any construction till further orders – If party willfully flouts an order of Court then such a party can expect no equitable relief from Court - Such a party must be made to bear consequences of his action – Otherwise all parties will ignore or flout order of Court – Order of trial Court in imposing civil imprisonment for one week on plaintiff – Justified – CRPs, dismissed. **K.Jawahar Reddy Vs. G. Kamala Rao 2008(3) Law Summary (A.P.) 306 = 2009(1) ALD 442 = 2008(6) ALT 772.**

—Or.39, Rules 1 & 2 and 2-A & Or.21, Rule 46 & 46-B - Respondent availed loan from State Bank of India and constructed godowns and let out to FCI, by depositing title deeds - SBI filed suit for recovery of loan amount, impleading FCI as 7th defendant - Trial Court allowed Application in suit seeking interim direction to FCI to restrain it from paying rent for said godowns to defendants 1 to 3 and further interim direction to FCI to deposit rents relating to godown to loan account of defendants 1 to 3 - In fact SBI/plaintiff not filed petition under Or.39 Rules 1 & 2 - An interim direction to defendant/tenant in a suit by creditor against landlord borrowers to deposit arrears of rent in Court and to continue deposit rents in Court with a condition that tenant will have to pay interest if rent was not so deposited, cannot be considered to be

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an order of "injunction" - A direction to pay money either by way of final or interim order, is not considered to be an injunction as assumed by Courts below - Application under Or.39, Rule 2-A of Code is maintainable only when there is disobedience of any "injunction" granted or other order made under Rule 1 or 2 of Or.39 or breach of any of terms on which injunction was granted or order was made - As impugned order was neither under Rule 1 or Rule 2 of Or.39, Application under Rule 2-A of Or.39 not maintainable - If a garnishee, or a defendant, who is directed to pay any sum of money, does not pay amount, remedy is to levy execution and not in an action for contempt or disobedience/breach under Or.39, Rule 2-A, r/w Rule 11-A of Or.38 of Code - Contempt jurisdiction, either under Contempt of Court Act or under Or.39, Rule 2-A of Code is not intended to be used for enforcement of money decree or directions/orders for payment of money - Power under Rule 2-A should be exercised with great caution and responsibility - It is shocking that trial Court had entertained an Application under Or.39, Rule 2-A from a person who was not entitled to file Application, has accepted an interpretation of Order which does not flow from Order, and has created liability where none existed, resulting in attachments of assets of FCI to an extent of more than crore - Impugned order, unsustainable - Orders of High Court and trial Court, set aside - Application filed by respondent under Or.39, Rule 2-A of Code, dismissed. **Food Corporation of India Vs. Sukh Deo Prasad 2009(2) Law Summary (S.C.) 6 = 2009(4) ALD 68(SC) = 2009(3) Supreme 240 = AIR 2009 SC 2330.**

—Or.39, Rules 1 & 2 and Or.41, Rule 5 – **A.P. PANCHAYAT RAJ ACT, 1994,** Sec.22-A – **A.P. CONDUCT OF ELECTION OF MEMBER (CO-OPTED), PRESIDENT AND VICE PRESIDENT OF MANDALA PARASHID AND MEMBERS (CO-OPTED), CHAIRPERSON AND VICE CHAIRPERSON OF ZILLA PARASHID RULES, 2006,** Rules 21 & 22 – CONSTITUTION OF INDIA, Art.136 - Inherent and statutory powers to stay/restrain the execution of the action impugned in the lis during pendency of the lis - Distinction between grant of injunction and stay and explained effect of both including consequences, after their termination - Show cause notice to appellant as to why action should not be taken against him for violating the decisions issued in the WHIPS and why he should not be disqualified as per G.O.Ms.No.173 of A.P. Panchayat Raj Act - Division Bench not right in observing that so long as the order of disqualification not set aside, it remain operative - Legality of WHIP issued by political party – Question not decided in view of pendency of election petitions before District Court - Appeal against interim orders – If reasoning given by High Court while passing the interim orders is perverse and legally unsustainable being against the settled principle of law laid down by Supreme Court, there interference of Supreme Court in such order is called for regardless of the nature of the order impugned in the Appeal - Reasoning extracted by High Court are wholly unsustainable being against the well settled principle of law, it is necessary for Supreme Court to interfere – Hence, impugned order of High Court, is set aside - Appeals are accordingly allowed. **Edara Haribabu Vs. T.Venkata Narasimham 2015(3) Law Summary (S.C.) 39**

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—-Or.39, Rule 1 and 2A(1)&(2) - "Disobedience of injunction" - "Police aid" - Suit for partition and injunction - Trial Court granted *ad interim injunction* and granted Police aid - Hence present CRP - Petitioner contends that trial Court ought to have considered that no Application was filed under Or.39, Rule 2A CPC and without resorting to procedure prescribed and Or.39, Rule 2A CPC and without considering facts and circumstances of case, - Trial Court straightaway granted Police aid - Admittedly petitioner and respondent are brothers and dispute is with regard to joint family property - In this case rival claims and relationship of parties have to be kept in mind - Question whether petitioner has a share in disputed property or not, whether sale deed is valid or not has to be decided by trial Court after full fledged trial - Main purpose of granting injunction is to see that a party who is in peaceful possession is not dispossessed and to see that property in dispute is not being wasted, damaged or alienated by any party to suit, pending disposal of suit - As far as granting of police aid is concerned, there cannot be any dispute with regard to principles laid down in decisions cited by either side - However Courts have to see facts and circumstances of each case - Where it appears that a person having no right and title wrongfully interferes with possession of any other person who is in lawful owner of property then Court is always justified in granting Police aid to protect possession of such party, but where it appears to Court that a party may have a right by birth for example a party claiming right as coparcener in property or a share in property then Courts must be slow in granting Police aid in such situation - Merely because a person is not in actual possession of property or may be residing at some other place, that does not mean that he has no right in property, but however where party has been in continuous possession of property for considerable period and claims right over such property, Court is justified in protecting his possession temporarily till rights of parties have been crystallized - But this does not mean that a party can alter physical features of any property or make constructions in disputed property particularly where other side party claims a share in property and particularly when a partition suit is pending between parties or between persons claiming under partition suit - In this case, lower Court ignored relationship between parties and rival claims of parties and partition suit filed by petitioner is pending - Normally in civil matters unless and until rights have been crystallized and it is clear to mind of Court that a party without any semblance of right is violating orders of Court, interference of Police should not be called for - Impugned order, set aside - Revision petition, allowed. **Mettu Malyadri Vs. Mettu Sivaiah, 2014(1) Law Summary (A.P.) 59 = 2014(1) ALD 704 = 2014(3) ALT 17.**

—Or.39, Rules 1 & 2, r/w Sec.151 & Or.41, Rule 5, r/w Sec.151 - **CONSTITUTION OF INDIA,** Art.136 - 2nd appellant filed suit to declare him as Mathadipathi of a Math and filed an Application for injunction during pendency of appeal - Trial Court directed to main status quo and subsequently dismissed suit allowing counter claim of 1st respondent by granting mandatory injunction directing 2nd appellant to handover articles of Math to 1st respondent - Appellant filed Application for injunction pending appeals and also filed separate application under Or.41, Rule 5 seeking stay of judgment and decree of trial Court - High Court dismissed applications of appellants and directed that execution of decree grated by trial Court would be subject to final out come of

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appeals filed before it - Hence, present SLPs. - Appellants contend that since an interim order of status quo regarding functioning of Mathadipathi of Math was operative during pendency of suit and triable issues have to be gone into by High Court in first appeals, it was fit and proper for High Court to direct parties to maintain interim order which was granted by trial Court during pendency of suit - Respondents contend that since appellants could not make out any prima facie case to get an interim order of injunction during pendency of appeals, question of continuance of interim order which was grated by trial Court during pendency of suit, cannot arise at all - In this case, trial Court, in its judgment had carefully and in detail, considered material documents as well as oral evidence and then had come to conclusion that 2nd appellant had failed to make a prima facie case in his favour for purpose of obtaining injunction in his favour - 2nd appellant was not entitled to any discretionery remedy of injunction - In order to obtain an order of injunction, party who seeks for grant of injunction has to prove that he has made out a prima facie case to go for trial, balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted - When party fails to prove prima facie case, to go for trial, question of considering balance of convenience or irreparable loss and injury to party concerned would not be material at all - If party fails to prove prima facie case to go for trial it is not open to Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted - High Court directed to dispose of pending appeals within six months - Appeals, dismissed. **Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy 2010(1) Law Summary (S.C.) 1.**

—Or.39, Rules 1 & 2 - Or.40, Rule 1 - Powers to appoint Receiver - In suit for perpetual injunction - Trial Court appointed Receiver to manage suit schedule property - 1st Appellate Court set aside appointment of Receiver - In this case, present Application filed by plaintiff into Trial Court for appointment of Receiver on ground that inspite of granting injunction on earlier occasion, plaintiff is unable to protect its possession and if Receiver is not appointed there would be scramble for possession and defendants would cause structural damages to building and change physical features of property -Therefore appointment of Receiver is imperative so as to safeguard suit schedule property till disposal of suit - Requirements for appointment of Receiver – Stated - In this case, from date of passing ex parte order appointing Receiver till today Receiver is managing properties - Case of plaintiff Baptist Church is that though Church is in possession and enjoyment of suit schedule property, it is unable to safe guard and manage property because of illegal, high-handed and intimidating acts of defendants, several cases are pending between parties including filing of suits by some third parties and also Police initiated action u/Sec.145 Cr.P.C - Therefore in view of long standing disputes between various groups including third parties with regard to same subject matter of property, it would cause public disorder in area of Schedule property, if Receiver is discontinued at this point of time - Purpose and object of appointing

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Receiver is for benefit of those ultimately found to be rightful owners - CRP, allowed. **Trust Association (CBCNC) Vs. J.Malini Tyagaraj 2010(2) Law Summary (A.P.) 73.**

—Or.39, Rules 1 & 3 - Application filed by plaintiff praying for injunction against interference by the defendants and also filed another application for grant of the ad interim injunction order to facilitate construction of the compound wall - Lower Court allowed both the application and granted both reliefs even before notice is served on the defendants without assigning any reason - Held, bad in law - While the former relief could be granted by the Court based on prima facie material by recording reasons for dispensing with notice, in the latter category of cases, the Court should be conscious of the fact that ordering of notice would not defeat the purpose for which the suit is filed, for plaintiffs can wait for a few days or even a few weeks without constructing compound wall as their interests have been firmly secured by way of an ad interim order of injunction to protect their possession-Order passed by the lower Court borders on judicial impropriety and constitutes abuse of judicial discretion - Appellant is permitted to file an application for his impleadment within two weeks from the date of receipt of order - Lower Court to rehear case - Appeal against Lower court's order by third party and not the defendants - Plea to continue order against defendants dismissed - When this Court is interfering with order of the lower Court on ground of impropriety, order in its entirety must be set at naught, irrespective of whether defendants have questioned same or not - Appeal Allowed. **P.Sudershan Reddy Vs. Smt.Geetha Srinivasan 2014(2) Law Summary (A.P.) 301 = 2014(4) ALD 510 = 2014(4) ALT 781.**

—-Or.39, Rules 1 and 3A - Ex parte injunction granted - Court should have made sincere endeavour to dispose of Notice of Motion on merits in light of mandate contained in Order XXXIX Rule 3A of Code, which in clear terms provides that Court shall make an endeavour to finally dispose of application within 30 days from date on which the ex parte injunction was granted - Contempt proceedings stayed till Motion application is decided. **Quantum Securities Pvt Ltd Vs. New Delhi Television Ltd 2015(2) Law Summary (S.C.) 47 = 2015(6) ALD 124 (SC) = 2015 AIR SCW 5330 = AIR 2015 SC 3699.**

—Or.39, Rule 2-A and Or.21, Rule 32 - Police protection - Respondent/plaintiff filed suit for perpetual injunction restraining defendants from interfering which is alleged peaceful possession and enjoyment of plaint schedule property - Ad interim injunction was granted and subsequently it was made absolute - Trial Court allowed Application filed by plaintiffs for "Police help" and directed SHO shall provide necessary Police aid to plaintiff - Hence the present Revision filed by defendants contending that order passed by Court below is erroneous since there is an allegation made by plaintiff that defendants are causing interference with his peaceful possession and enjoyment, plaintiff can only file an

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Application under Or.39, Rule 2-A CPC to punish defendants for violating temporary injunction passed by Court and they cannot seek "Police aid" - Petitioner contend that only remedy available to a party for violation of order of injunction is to file an Application under Or.21, Rule 32 or Application under Or.39, Rule 2-A CPC and respondent/plaintiff cannot file Application for Police protection - Apex Court held that Police protection may be granted in writ jurisdiction when a Court is approached for protection of rights declared by decree or by an order passed by a civil Court granting an injunction in favour of Applicant and same was being deliberately flouted - An order of temporary injunction has to be obeyed by parties to it and when plaintiff complains that defendant is committing breach of said order and seeks Police protection, a Court is under an obligation to accord such protection - Unless this is done, the rule of law will not prevail and judicial orders would not be effectively implemented - Granting of such orders would uphold dignity and effeteness of judiciary - Order of lower Court in granting Police aid to respondents - Justified - Revision, dismissed. **Gampala Anthaiah Vs. Kasarla Venkat Reddy 2014(1) Law Summary (A.P.) 153 = 2014(2) ALD 281 = 2014(2) ALT 661.**

—Or.40 - "Powers of Receiver" - In this appeal question falls for consideration is "whether the Court Receiver stands discharged or whether he continues in his office till an order of discharge is passed by the Court?".....The Apex Court held that the objective of appointment of Receiver is to preserve the property by taking possession or otherwise till case is finaly decided - The Functions of Receivers come to an end with the final deciaions of the case - However, even after the final decision, the Court has power to take further assistance of the Receiver as and when the need arises. **Sherali Khan Mohamed Manekia Vs. State of Maharashtra 2015(1) Law Summary (S.C.) 31 = 2015(3) ALD 182 (SC) = 2015 AIR SCW 1638 = AIR 2015 SC 1394.**

—Or,40, Rule 1 - "Appointment of Receiver" - Suit for partition and separate possession relating to Petrol Pump and Weigh Bridge - Plaintiff filed petition seeking appointment of Receiver to take charge of business of petrol pump and Weigh Bridge and collect daily business amount, profit and deposit same before Court - Trial Court allowed Application and Advocate-Receiver appointed - In this case, there is no whisper that suit property is being misused or mismanaged and there is likelihood of damage being caused to Petrol Pump - APPOINTMENT OF RECEIVER - 5 principles (Panch Sadachar) are as follows: "1. The appointment of a Receiver in a pending suit is a matter vesting in the discretion of the Court; 2. The Court should not appoint a Receiver except upon proof of prima facie that plaintiff has a very excellent chance of succeeding in the suit;3.Apart from conflicting claims to the property, the plaintiff must show some emergency or danger or loss demanding immediate action and therefore the element of danger is an important consideration;4. Where the property is shown to be "in modio" that is to say in enjoyment of none; 5.The conduct of the party who made the application shall be free from blame" - Trial Court on mere conjectures and surmises proceeded to observe that there are some wastage and damage to petition schedule property and that impugned order is solely unsustainable

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and not based on any material - CMA, allowed. **Mohd. Tajuddin Vs. Smt.Muneerunissa Begum 2009(3) Law Summary (A.P.) 335.**

—Or.40, Rule 1 - Appointment of Receiver - Suit property worth more than 1000 crores and second appellant filed suit that her husband is unable to manage affairs of Company and his property and filed suit on his behalf for declaration that Will and certain documents are null and void - Appointment of receiver - Guidelines - Stated -Appointment of a Receiver pending suit is a matter which is within the discretionary jurisdiction of the Court - Ordinarily the Court would not appoint a receiver save and except on a prima facie finding that the plaintiff has an excellent chance of success in the suit - It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding immediate action - Element of danger is an important consideration. Ordinarily, a Receiver would not be appointed unless a case has been made out which may deprive the defendant of a de facto possession - For said purpose, conduct of the parties would also be relevant - It is a fit case where High Court should have appointed a Receiver and/or an administrator with suitable directions leaving matter to High Court relating to imposition of conditions or appointment of Chartered Accountant or others to assist Receiver. **Parmanand Patel (died) by LRS Vs. Sudha A.Chowgule 2009(3) Law Summary (S.C.) 120 = 2009(4) ALD 7 (SC) = 2009(4) Supreme 63 = AIR 2009 SC 1593.**

—Or.41, Rules 1 (3), 2 and 5 & Or.37 - Appellant filed summons suit for recovery of certain amount - Trial Court allowed Application for leave to defend subject to condition of payment of undisputed and admitted amount - Since respondent failed to deposit amount within stipulated time suit decreed - High Court stayed operation of execution of decree in its entirety - Non compliance of direction to deposit decretal amount or part of it or furnish security therefor would result in dismissal of stay Application but not entire Appeal - In this case, High Court failed to notice provisions of sub-rule (3) of Rule 1 of Or.41 - Appellate Court indisputably has discretion to direct deposit of such amount as it may think fit - But while granting stay of execution of decree, it must take in to consideration facts and circumstances of case before it - It is not to act arbitrarily either way - If a stay is granted sufficient cause must be shown, which means that materials on record were required to be perused and reasons are to be assigned and such reasons should be cogent and adequate - Appeals, allowed. **Malwa Strips Pvt. Ltd. Vs. Jyoti Ltd. 2009(1) Law Summary (S.C.) 46.**

—Or.41, Rule 17 - 'Second appeal' dismissed for default of Advocate - Respondent-workman filed suit questioning his termination of service by appellant/ Horticulture Department - Trial Court held that impugned order of termination of service is perfectly valid and legal - Appellate Court set aside decree of trial Court, declaring order of termination as null and void and inoperative - High Court dismissed second appeal on merits for non- appearance of appellants and subsequently Application for recall of order also dismissed - Advocate has no right to remain absent from Court when case of his client comes up for hearing - He is duty bound to attend case in Court or to make

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alternative arrangement - Non appearance in Court cannot be excused - Such absence is not only unfair to client of Advocate but also unfair and discourteous to Court and can never be countenanced - However, when a party engages an Advocate who is expected to appear at time of hearing but fails to so appear, normally, a party should not suffer on account of default or nonappearance of Advocate - In this case, taking into consideration, facts and circumstances in their totality, even though counsel for appellant not present, it would have been appropriate, had High Court granted an opportunity to counsel for appellant to make his submissions by adjourning matter - In instant case, appeal before High Court is not an appeal from Original Decree (1st appeal), but an appeal from Appellate Decree (2nd appeal) - Once an appeal is admitted and is placed for hearing i.e., hearing on merits, it can be dismissed for default but cannot be decided on merits in absence of appellant (or his Advocate) - Order of High Court, set aside and matter remitted to High Court for fresh disposal in accordance with law.**Secretary Department of Horticulture, Chandigarh Vs. Raghu Raj 2009(1) Law Summary (S.C.) 135.**

—Or.41, Rule 23 - "Remanding of case by Appellate Court" - Suit filed by appellant for injunction simplicitor - Decreed - Lower Appellate Court remanded matter to trial Court for fresh consideration and disposal - Appellant contends that very approach of lower appellate Court is defective, as much as a specific point was framed as to whether matter must be remanded and that discretion by lower appellate Court throughout judgment has centered around aspect of remand - Respondent contends that trial Court did not take into account, fact that applications were filed for appointment of Commissioner and for receiving additional evidence and that matter was remanded to provide opportunity to parties to do the needful - In this case, lower appellate Court framed first point as to "whether the suit is remanded to the lower Court?" - It was proceeded as though remand of matter to trial Court is a substantial issue, or a point by itself, little realizing that appeal is continuation of suit and it ought to have been decided on merits - Evidently basis for remanding was filing of application by second respondent for appointment of receiver and another for receiving additional evidence - None of these grounds constitute basis for remanding matter to trial Court - Impugned order, set aside - Lower appellate Court directed to decide matter on merits - CMA, allowed. **Sri Baljaji Chicken Centre,Vijayawada Vs. R.K.Chicken Centre, Vijayawada 2009(3) Law Summary (A.P.) 76 = 2009(6) ALD 188 = 2009(6) ALT 450 = 2009(3) APLJ 47 (SN).**

—Or.41, Rule 23 & Or.43, Rule 1(u) - **EVIDENCE ACT,** Sec.68 - "REMANDING OF MATTER" - 1st respondent/plaintiff filed suit for declaration of title and for injunction against appellants/defendants conducting that he became owner of property under registered Will - Trial Court dismissed suit holding that original of exhibit A.1, Will not filed and no explanation is furnished by plaintiff for not producing original and he did not examine attestors of said Will or its scribe to prove its execution - Lower appellate Court set aside judgment and decree of trial Court and remitted matter back to trial Court, to give opportunity to both parties to adduce further evidence on

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all documents already produced and also documents filed in first appellate Court as additional evidence and dispose of suit afresh, holding that plaintiff did not examine any witness to prove Wills Exs.A1 and A2 as required u/Sec.68 of Evidence Act - In this case, lower appellate Court having held that plaintiff failed to prove Ex.A1 and A2 or his possession of plaint schedule property, and having confirmed findings of trial Court in that regard acted perversely in setting aside judgment and decree of trial Court and remitting matter back to trial Court - Order of remand made without coming to conclusion that decision of trial Court is wrong and that it is necessary to reverse or set aside decree, is illegal, that appellate Court has to consider evidence on record and then has to arive at conclusion whether finding recorded by trial Court cannot be supported by evidence on record and that in considering whether remand is necessary or not, conduct of parties has to be considered, that is whether they have sufficient opportunity to adduce evidence at trial Court or not - There is a clear danger that in such cases a remand order may in effect to be an invitation to perjury; that provisions of Or.41, Rule 23 CPC are not intended to circumvent provisions of Or.41, Rule 27 CPC and that merely using formula "in the interest of justice", an otherwise unjustifable remand cannot be clothed with an air of legality - In this case, by remitting matter to trial Court, lower appellate Court has virtually rewarded plaintiff, who had adequate opportunity to lead evidence in trial Court and who had neglected to lead evidence to prove Ex.A.1 and A.2 Wills or his possession, by giving him another opportunity to cover up lacuna in his evidence - It causes undue hardship to defendants due to prolongation of litigation and also further expenses - Order of lower appellate Court, unsustainable - Judgment and decree of appellate Court setting aside judgment and decree of trial Court and remitting matter back to trial Court, set aside and consequently judgment of trial Court confirmed - CMA, allowed. **Vidya Sagar Cole (Died) Vs. J.Balaji Singh 2013(3) Law Summary (A.P.) 162 = 2013(6) ALD 519.**

—Or.41, R.26-A & Or.9, R.9 - **LIMITATION ACT,** Sec.5 - Suit filed for specific performance of agreement of sale - Decreed - Appeal allowed and matter remanded to trial Court for fresh disposal, observing that purchaser of property during pendency must be impleaded as defendant - Since nothing was forthcoming for years together though appeal disposed of in 2001, Application filed to take up hearing of suit - On information that suit dismissed for default in 2004, Application filed under Or.9, R.9 to set aside order along with Application to condone delay of 1228 days - Trial Court dismissing Application - So far as parameters for condo-nation of delay are concerned, hardly there exists any uniformity or straightjacket formula - However, if satisfactory and valid explanation is not forthcoming, Application for condonation of delay of even few days, is liable to be rejected, where as, delay of fairly large extent also can be condoned if valid explanation is offered - Matter was remanded for fresh adjudication for disposal with specific direction that subsequent purchaser must be impleaded as defendant - Course of action to be adopted, whenever a matter is remanded by appellate Court, is indicated in Rule 26-A of Or.41 CPC - Object of this Rule is to enable parties to appear before Court, to which

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matter is remanded and take further steps - Record does not disclose that any such date was fixed by High Court while remanding matter - Unless parties are informed of any date of hearing, either by appellate Court, which remanded matter or by trial Court, parties cannot be expected to be in indefinite waiting and watching - In this case, mere issuance of notice was treated as sufficient without verifying whether it was served upon sole plaintiff at all - When valuable rights of parties are involved, such casual approach is untenable - Petitioners cannot be penalised for improper handling of matter by trial Court - Impugned order, set aside - CRP, allowed. **Mamidi Rama Krishna Prasad (died) Vs. Upuluru Satyavathi 2008(1) Law Summary (A.P.) 13 = 2008(2) ALT 590 = 2008(1) ALD 807.**

—Or.41, R.27 - 'Receiving additional evidence' - Trial Court dismissed suit filed by petitioner/plaintiff for declaration - Appellate Court dismissing Applications filed by petitioner for summoning certain documents which contain signatures of 11th respondent - Petitioner contends that she is not aware of existence of such documents when trial was conducted in suit and it is only after dismissal of suit on ground that signatures of husband of 11th respondent not proved - Respondent contends that petitioner is not deligent enough in getting admitted signature of husband of 11th respondent marked or send for examination by expert and now asking for summoning of such document, is nothing but to protract litigation - In this case, plea taken by petitioner does not fall in any of grounds provided for under Or.41, R.27 - When it is case of petitioner that her sister who is arrayed as 11th respondent is her tenant and she is residing in demised premises with her husband and husband of 11th respondent has executed lease deed in favour of petitioner, petitioner should have tried to examine husband of 11th respondent - Hence it is clear that petitioner not taken any steps to examine husband of 11th respondent - Petitioner is not deligent enough during course of trial and hence she cannot say that despite her exercising due deligence she could not produce such evidence, cannot be accepted - Order of Court below in dismissing Applications - Justified - Revisions, dismissed. **Balsa Sarada Vs. Talluri Anasuryamma (died) 2008(2) Law Summary (A.P.) 406 =2008(5) ALD 828 = 2008(5) ALT 3.**

—Or.41, R.27 - Production of additional evidence - Suit for partition of suit property - Trial Court decreed suit directing partition of suit property among sharers - During pendency of Appeal defendant/appellant filed praying to permit him to file ROR certificates as additional evidence in Appeal and mark them as exhibits - Appellate Court dismissed Application observing that petitioner not entitled to file documents - Petitioner/defendant contends that documents proposed to be filed are certificates issued under provisions of A.P. Rights in Land and Pattadar Pass Books Act, validating unregistered sale deed and said documents are relevant and crucial and are admissible as additional evidence and that he could not produce those documents in lower Court due to filing of them before MRO and unless said documents are marked and sufficient opportunity is given to prove sale transaction he will suffer great loss - In this case, lower Court considered oral and documentary evidence placed before it and disposed of suit - Though appellate Court can permit additional evidence to be adduced for giving a judgment, documents

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filed by defendant are documents obtained subsequent to filing of suit and no record to show as to how MRO issued said certificates on basis of agreement of sale - Order of lower Court dismissing petition to file additional evidence - Justified - Revision petition, dismissed. **Annam Malla Reddy Vs. Bangi Nagaiah 2008(1) Law Summary (A.P.) 381 = 2008(4) ALD 564 = 2008(3) ALT 626 = 2008(2) APLJ 31.**

—Order 41, Rule 27 - Predecessor-in-interest of 7th respondent, who was arrayed as 1st respondent in appeal, was original plaintiff – Plaintiff filed suit for partition of plaint schedule property into three equal shares and for allotment of 1/9th share to her - Said suit was decreed and against said judgment and decree, defendants 2 to 6, 12 and 13 preferred appeal - They filed three applications, to receive death certificate, to receive certified copy of judgment in O.S.No.615 of 2002 and to receive registration extract of sale deed executed - When said applications were allowed, revision petitioner herein who is successor of plaintiff filed above civil revision petitions challenging said orders - Held, in case before lower appellate court, applications were allowed even before considering evidence before it and coming to conclusion that the additional evidence is required for pronouncing judgment in a more satisfactory manner - Hence the orders are not in accordance with law - In result, orders allowing applications for reasons aforesaid are set aside and applications are posted along with the appeals for consideration of applications along with the appeals and taking the additional evidence, if necessary at time of disposal of appeal on basis of available evidence when it feels that additional evidence is necessary - Civil Revision Petitions are allowed accordingly. **Medidhi Chakra Veni Vs. Kamisetti Venkata Ramanam, 2015(3) Law Summary (A.P.) 519**

---Order 41, Rule 27 - Predecessor-in-interest of 7th respondent, who was arrayed as 1st respondent in appeal, was original plaintiff – Plaintiff filed suit for partition of plaint schedule property into three equal shares and for allotment of 1/9th share to her - Said suit was decreed and against said judgment and decree, defendants 2 to 6, 12 and 13 preferred appeal - They filed three Applications, to receive death certificate, to receive certified copy of judgment and to receive registration extract of sale deed executed - When said Applications were allowed, revision petitioner herein who is successor of plaintiff filed above civil revision petitions challenging said orders.

Held, in case before lower appellate court, Applications were allowed even before considering evidence before it and coming to conclusion that additional evidence is required for pronouncing judgment in a more satisfactory manner - Hence orders are not in accordance with law - In result, orders allowing Applications for reasons aforesaid are set aside and Applications are posted along with appeals for consideration of Applications along with Appeals and taking additional evidence, if necessary at time of disposal of appeal on basis of available evidence when it feels that additional evidence is necessary - Civil Revision Petitions are allowed

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accordingly. **Medidhi Chakra Veni Vs. Kamisetti Venkata Ramanam 2016(1) Law Summary (A.P.) 69 = 2016(2) ALD 155 = 2016(1) ALT 677.**

—Or.41, Rule 27 r/w Sec.151 - "Permission to adduce additional evidence" - Suit filed by respondent against petitioner/defendant for recovery of money basing on promissory notes, dismissed - In appeal/plaintiff filed Applicaion under Or.41, Rule 27, seeking permission to adduce additional evidence by examining his son as additional witness on his behalf, stating that he could not examine him as witness as he was far away in Saudi Arabia and inspite of exercise of diligence, he could not examiNe his son as a witness at time of trial of suit and therefore he should be permitted to examine him in appeal as his witness by way of additional evidence - Petitioner filed counter denying contentions of plaintiff, contending that Application itself is not maintainable, as it does not fulfill conditions set out in Or.41, Rule 27 CPC - Appellate Court, allowed application filed by plaintiff - Hence present revision filed by petitioner - Petitioner/defedant contends that Application for additional evidence should be decided along with appeal and in present case, even though appeal was not taken up for final hearing, appellate Court had taken up application filed by respondent/plaintiff, under Or.41, Rule 27 - Respondent/plaintiff contends that Court had satisfied itself that evidence of son of respondent is essential to prove endorsements on promissory notes and that respondent had satisfied Court that Application should be ordered as respondents case comes within Or.41, Rule 27(1)(aa) and (b) of CPC, therefore order passed by appellate Court allowing application does not warrant in interference by this Court - In this case, reading of impugned order indicates that while considering Application filed under Or.41, Rule 27 CPC, Appellate Court had gone into merits of appeal also to some extent and thereafter it had considered whether application filed by respondent/plaintiff comes within perview of Or.41, Rule 27 CPC - There is nothing on record to show that Court was considering appeal also alongwith application filed under Or.41, Rule 27 CPC - It is not a matter of right for a party to walk into appellate Court and seek grant of permission to produce additional evidence and that an Application for receiving additional evidence at appeal stage would only be allowed, if conditions laiddown in Or.27, Rule 41, CPC have been satisfied - Before a party was allowed to produce additional evidence pleading under Or.41, Rule 27(1)(aa) of CPC, he has to establish that such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at time when decree appealed against was passed - In present case, appellate Court not adheared to above principles and allowed Application, erroneously - Impugned order of appellate Court, set aside - C.R.P., allowed. **Nandam Rama Rao Vs. Battu Rama Rao 2013(2) Law Summary (A.P.) 50 = 2013(6) ALD 754.**

—Or.41, Rule 27 & Or.22 & Sec.100 - **EVIDENCE ACT,** Secs, 55,65,74, 58 & 114(g) - SPECIFIC RELIEF ACT, Sec.34 - "Adverse inference" - "Additional Evidence" - "Admission" - Plaintiff/1st respondent filed suit seeking decree for declaration that he

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is owner of suit property contending that land partitioned between ancestors of plaintiff, being only heir his mother became absolute owner and after death of his mother he became absolute owner - Appellant filed written statement denying owner- ship of plaintiff/respondent no.1, contending that land belong to Ministry of Defence i.e. Unionof od India - Since plaintiff failed to prove partition between his ancestors, suit dismissed - 1st appellate Court allowed application filed by the plaintiff for adducing additional evidence and allowed appeal - High Court dismissed 2nd appeal filed by appellant Union of India - Hence present appeal - Appellant contends that there was no documentary evidence or trustworthy evidence that suit property belongs to plaintiff/respondent no.1 and that first appellate Court had no occasion to decide application under Or.41, Rule 27 prior to hearing of appeal and that High Court framed four substantial questions of law at time of admission of appeal and two additional substantial questions at a later stage, but did not answer either of them nor recorded any finding - In this case, appellant/Union of India did not produce revenue record before trial Court, 1st appellate Court has wrongly drawn adverse inference u/Sec.114(g) of Evidence Act and that appeal deserves to be allowed - Respondent contends that concurring findings recorded by 1st and 2nd appellate Court are not liable to be intefered with in discretionary jurisdiction under Art.136 of Constitution of India - In view of fact that 2nd appeal could be decided on limited issues, High Court is not bound to answer substantial questions of law framed by it - Appeal liable to be dismissed - ADVERSE INFERENCE - Issue of drawing adverse inference is required to be decided by Court taking into consideration pleadings of parties and by deciding whether any document/evidence withheld, has any relevance at all or omission of its production would directly establish case of other side - Court cannot lose sight of fact that burden of proof is on party which makes factual averment - Court has to consider further as to whether other side would file interrogatories or apply for inspection and production of documents etc., as is required under Or.11 CPC - ADMISSION - “Failure to prove defence does not amount to an admission nor does it reverse or discharge burden of proof of plaintiff” - Admission made by party though not conclusive is a decisive factor, in a case, unless other party successfully withdraws same or proves it tobe erroneous - Law requires that an opportunity be given to person who has made admission under cross-examination to tender his explanation and clarify point on question of admissions - Failure of a party to prove his defence does not amount to admission, nor it can reverse or discharge burden of proof of plaintiff - Admissions are governed under Secs.17 to 31 of Evidence Act - While admission for purpose of trial may dispense with proof of particular fact - Admissions are not conclusive proof but may operate as estoppel against its maker - Documents are necessarily either proved by witness or marked on admission - C.P.C. OR.41, RULE 27 - ADDITIONAL EVIDENCE - Application taking for additional evidence at an appellate stage, even if filed during pendency of appeal, is to be heard at time of final hearing of appeal - In case, application for taking additional evidence on record has been considered and allowed prior to hearing of appeal, order being product of total and complete non-application of mind

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as to whether such evidence is required to be taken on record to pronounce judgment or not, remains in conse-quential inexecutable and is liable to be ignored - SPECIFIC RELIEF ACT, Sec.34 - It is not permissible to claim relief of declaration without seeking conse-quential reliefs - In this case, suit for declaration of title of ownership has been filed, though, plaintiff is admittedly not in possession of suit property - Thus suit is barred by provisions of Sec.34 of Specific Relief Act and therefore ought to have been dismissed solely on this ground - High Court though framed substantial question on this point but for unknown reasons did not considered it proper to decide same - Appellate Courts have decided appeals in unwarranted manner in complete derogation of statutory requirements - Provisions of CPC and evidence Act have been flagrantly violated - Judgments and decrees of 1st and 2nd appellate Courts are set aside - Appeal, allowed. **Union of India Vs. Versus Ibrahim Uddin 2012(2) Law Summary (S.C.) 195.**

—Or.41, Rule 27 and Or.47, Rule, 1 - "Review" - High Court passing common judgment without disposing of Applications filed seeking amendment of plaint, amendment of cause of action in appeals, impleadment for impleading respondents in appeal and to receive two more documents as additional evidence in appeal - Petitioner/appellants contend that non-consideration of Applications by High Court while adjudicating and passing common judgment in appeals, is an error apparent on face of record - Respondents contend that notwithstanding non-consideration of applications including for reception of additional evidence, common judgment is not liable to be reviewed and that though non-consideration of applications, in particular applications filed for reception of additional evidence may amount to an error apparent on face of record, every apparent error does not legitimize review unless error has also occasion miscarriage of justice - Non consideration and determination of several miscellaneous applications clearly amounts to an error apparent on face of record - When an application for production of additional evidence under Or.41, Rule 27, it is duty of appellate Court to deal with same on merits; and non-consideration of such application vitiates appellate judgment - Where a review of judgment is sought on ground for instance that relevant material was not considered including an application for production of additional evidence, appropriate procedure is to consider vitality of such Application and analysis of additional evidence, anterior to considering whether review of judgment is warranted - Present application for review of common judgment have to facets; one facet targets judgment for invalidation on ground that miscellaneous applications including applications for production of additional evidence were neither adverted to nor considered - Second and substantial facet of applications for review is that determination/conclusion in common judgment is errorneous on merits and a contrary conclusion is legitimate if additional evidence sought to be produced is considered - It is second facet of review application which requires consideration of analysis of merits of several miscellaneous applications - It is not pragmatic nor conduceive to expeditious and efficient adjudication to consider merits of each of miscellaneous applications prior to considering whether

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common judgment must be set aside on singular ground that several pending miscellaneous applications including those for production of additional evidence were neither adverted to nor determined in passing judgment - On aforesaid analysis present applications for review of common judgment are allowed - Common judgment set aside - Appeals shall be taken up for final adjudication along with ASMPs. **Durga Matha House Building Constructions Vs.Sada Yellaiah, 2012(1) Law Summary 318 = 2012(3) ALD 633.**

—Or.41, Rule 27(a), (aa)(b) - Additional evidence - Respondents/plaintiffs filed suit for partition - Trial Court decreed suit - In first Appellate Court, plaintiff filed Application with prayer to receive Will and Relinquishment deed as additional evidence - Appellate Court received documents treating them as additional evidence under Cl.(b) of Rule 27 of Or.41 - Contention, that appellate Court committed patent legal error in taking on record additional evidence - It could have simply remanded matter by giving necessary directions - However, it has taken on record two documents Will and Relinquishment deed, marked as Exs.A4 & A5, in exercise of power and Cl.(b) of Rule 27 of Or.41 - Even where permission is accorded, one of two courses must be adopted by lower appellate Court; first is that additional evidence must be subjected to same tests, as is done in course of trial - Second is that it must remand matter to trial Court, for limited purpose of recording evidence, and arriving at a finding thereon - In instant case, lower appellate Court, recorded finding to effect that application made by plaintiffs does not fit into clauses (a) and (aa) of Or.41, Rule 27 CPC - Still, it has received evidence and straightaway proceeded as though said two documents were proved - Not a single witness was examined with reference to those two documents - Hence first substantial question of law is answered against plaintiffs, and infavour of appellant - First appellate Court has just chosen to treat document, which are sought to be marked as additional evidence, as though required by Court itself - such a course is totally impermissible in law and lower appellate Court committed error in this regard - Since judgment rendered by trial Court is equally defective, judgments rendered by both Courts, set aside - Matter remanded to trial Court for fresh consideration and disposal - Second appeal, allowed. **Sajja Malleswara Rao Vs. S. Nageswara Rao 2011(3) Law Summary (A.P.) 161 = 2011(6) ALD 636.**

—-Order 41 Rule 33 - Respective sole defendants are the appellants herein and the respective self-same sole plaintiffs in both the matters are the respondents - Both suits are filed by self-same plaintiff against the respective defendants - Trial Court on separate trial decreed both suits for relief of specific performance of contract for sale respectively, to execute and register sale deeds on receiving balance sale consideration and to deliver possession and with costs - Contentions in grounds of appeal common almost in both appeals of respective suits are that decree and judgment respectively of trial Court supra are contrary to law, unlawful and against probabilities of case, perverse and misconceived against canons of justice.

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Held, It is how apart from no truth even for silence of plaintiff without even expressing his readiness and willingness to perform his part of contract to seek specific performance to obtain sale deed by payment of major portion of consideration remained unpaid and from hardship to defendant/s if ordered performance from showing from plaintiff's own evidence from contents of Ex.A17 of value of lands later abnormally increased, plaintiff not entitled to equitable relief of specific performance and for not even pleaded any alternative relief for refund or damages or compensation, not entitled even to order refund though under general law of contract Act from Sections 65 to 70 it could be , from specific legal bar under special law of specific relief Act - Trial Court thereby went wrong totally in ignoring these vital legal and factual aspects which go to root of matter in decreeing suit for specific performance instead of dismissing for specific performance - Thus, trial Court's decrees in both suits covered by common judgement for both suits are liable to be set aside by allowing appeals - Accordingly and in the result, both appeals are allowed by setting aside trial Court's common judgement. **Dhanaraj (Died per LRs) Vs. Salesh 2016(1) Law Summary (A.P.) 475 = 2016(4) ALD 1 = 2016(2) ALT 417.**

—-O.43, Rule 1(r) - Or.39, Rule 3 - This civil miscellaneous appeal filed by Defendants 2, 5, 6 and 7 in O.S on the file of Senior Civil Judge, challenges order passed by said Court in I.A. - According to counsel for appellants/defendants, learned Judge passed impugned order without giving reasonable opportunity and in deviation to mandatory requirements of law and on contrary, counsel for respondent/plaintiff vehemently argued that learned Judge passed impugned order strictly in accordance with law and only after taking into account entire material available on record and said order is not amenable to any correction by this Court under Order 43 Rule 1(r) of CPC.

Held, notice under Order 39 Rule 3 of CPC is not a mere formality and it needs to be adhered to unless same is decided to be dispensed with as per proviso to Rule 3 of Order 39 of CPC - That is not situation in instant case - Having ordered notice under Rule 3, without affording reasonable opportunity, learned Judge on same day of service of notice, passed questioned order - Even as per Rule 58 of Civil Rules of Practice, it is incumbent upon Court to issue 3 days notice in advance of hearing of interlocutory application and in utter deviation and disregard to said mandatory requirement, learned Judge passed impugned order.

In circumstances, this Court does not find any scintilla of hesitation to hold that the learned Senior Civil Judge passed impugned order by totally ignoring mandatory requirements of law, as such, impugned order is liable to be set aside - For aforesaid reasons, Civil Miscellaneous Appeal is allowed. **Raj Kumar Malpani Vs. Durganagar Colony Welfare Association 2016(3) Law Summary (A.P.) 285.**

—Or.43, Rule 1(u) and Sec.100 - **LIMITATION ACT,** Arts.64 & 65 - Suit filed by respondent/ plaintiff for recovery of possession of plaint schedule property from appellants/

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defendants, contending that she is absolute owner and possessor of plaint schedule property and that she is staying with her daughter after demise of her husband and taking advantage of her old age and her absence, defendants illegally occupied plaint schedule property and they are liable to be evicted - Defendants filed written statement contending that mother of 1st defendant purchased plaint schedule property and constructed house in said plot and also a compound wall and residing therein and 1st defendant gifted plaint schedule property to his wife, second defendant and that she perfected title and possession over plaint schedule property from 1970 and therefore suit of plaintiff is barred by limitation and ought to be dismissed - Trial Court dismissed suit, accepting genuineness of documents on ground that they were executed more than 30 years back and also held that it was incumbent on plaintiff to seek relief of declaration of title over plaint schedule property and she could not have filed a suit only for recovery of possession - Lower appellate Court allowed appeal set aside judgment and decree of trial Court and remanded matter back to trial Court to consider issue as to whether plaintiff's suit is barred by limitation as she had not filed within 12 years of her dispossession - Appellants/defendants contend that lower appellate Court ought not to have remitted matter back to trial Court as it had found several errors in judgments of trial Court; that it could have itself framed necessary issues and ought to have decided them instead of remitting matter back to trial Court - Lower appellate Court ought not to have remanded matter back to trial Court and it might as well have itself decided appeal on merits as it has all powers of trial Court to re-appreciate evidence - Supreme Court and High Court of A.P have also deprecated practice of remanding matters to trial Court when lower appellate Court itself could have dealt with and decided issues - Supreme Court held that an appellate Court should have circumspect in ordering a remand when case is not covered by Rule 23 or Rule 23-A or Sec. 25 IPC of Or.41and that an unwarranted order of remand gives litigation an undeserved lease of life and must therefore be avoided - Judgment of lower appellate Court , setting aside judegment and decree of trial Court and remitting matter back to trial Court, set aside - Appeal, allowed - Lower appellate Court directed to decide appeal in accordance with law within two months. **Bayyarapu Narayana Raidu Vs. Pagadala Varalaxmi, 2014(1) Law Summary (A.P.) 66 = 2014(2) ALD 176 = 2014(4) ALT 808 = AIR 2014 (NOC) 98 (AP).**

—Or.44, Rule 1 and Or.33, Rule 1A - Appellants filed suit for recovery of certain amount- Suits decreed - Respondent preferred first appeal before High Court alongwith petition to prosecute appeals as an indigent person under Or.44, Rule 1 CPC - High Court after conducting enquiry into means and financial capacity of respondent permitted respondent to prosecute appeal as indegent person - Hence appellant filed present appeal - Appellant copntends that respondent failed to produce bank accounts and Pass Books which amounts to suppression of fact of receiving substantial amount of money from his son who is employed in foreign country and amount received by him by way of pension from Govt. as retired employee - Therefore amount received by respondent from his son and by way of pension amount to a sufficient means to pay Court fee which disentitled him to be an indegent person under Or.33, Rule 1, and under Or.44, Rule 1 of CPC - Respondent cannot be declared as an indegent

person to prosecute appeals before High Court - Order of High Court, set aside - Appeals, allowed. **Mathai M. Paikeday Vs. C.K. Antony 2011(3) Law Summary (S.C.) 57 = AIR 2011 SC 3221 = 2011 AIR SCW 4416 = 2011(6) ALD 100(SC).**

CENTRAL MOTOR VEHICLES RULES, 1989:

—-Rule 126 - **REGISTRATION OF SOCIETIES ACT, 1860** - Original Petition was filed by three claimants claiming an amount of Rs.1,00,00,000 for the death of one Mohammed Asif in the said accident - Claim petition was filed against owner of bus, insurance company and two others - A written statement was filed by second respondent, insurance company in said O.P. was filed seeking impleadment of proposed respondent Nos.5 to 7 therein, who were stated to be the lessees of the bus, was filed seeking impleadment of proposed respondent Nos.8 to 11 therein i.e., the National Highway Authority of India, M/s.Volvo Buses India Pvt. Ltd., Automotive Research Association of India and the Motor Vehicle Inspector, RTO Bangalore Central, Bangalore - Application in I.A. was supported by an affidavit stating that on the date of the accident, the bus was leased to the proposed respondent Nos.5 to 7 therein, who were in possession of the bus and the driver was under their sole control and hence they are necessary to be impleaded as parties - Aforesaid applications were opposed by claimants as well as by M/s.Volvo Buses India Pvt. Ltd., and the Automotive Research Association of India - Claimants opposed applications in general and the counter of proposed respondent No.9 stated that the vehicle involved was more than four years old and had covered more than 9,00,000 kilometers without any issues.

Held, there is no material to show that proposed parties are joint tort feasors - Even if it is assumed that some of proposed parties are joint tort feasors, in their absence also a finding can be recorded with regard to entitlement of claimants and petitioner herein can recover amount which it was forced to part with due to role of other joint tort feasors by initiating separate proceedings - But, summary proceedings in a claim petition arising out of a motor vehicle accident cannot be enlarged and Tribunal cannot be asked to give a finding with respect to role of other parties in accident - The reliance on United India Insurance Company Limited's case is of no avail as that case arose out of an accident caused by Jayanthi Janatha Express hitting a passenger bus at unmanned level crossing - Decision was rendered on facts of that case only and it cannot be extended to authorities like National Highways Authority of India Limited who undertake laying of roads - The decision of the Supreme Court in Khenyei's case is a complete answer to points raised on behalf of petitioner - Tribunal also relied on said decision - In view of same, these Civil Revision Petitions are liable to be dismissed and are accordingly dismissed. **HDFC ERGO General Insurance Company Ltd. Vs. Khawjabi 2016(2) Law Summary (A.P.) 245 = 2016(4) ALD 721 = 2016(4) ALT 501.**

COMPANIES ACT, 1956

-—AND NEGOTIABLE INSTRUMENTS ACT, Sec. 138 - Six quash petitions besides another one pending before another Bench are between lending party M/s.Kotak Mahindra Bank Ltd., (company) under the Companies Act, 1956, the complainant,

COMPASSIONATE APPOINTMENTS:

respectively in all cases for the offences punishable under Section 138 of the Negotiable Instruments Act for dishonour of respective cheques, maintained against the company M/s. Nusun Genetic Research Limited, under the Companies Act, represented by its Managing Director.

Held, as it is clear from factual matrix supra cheque issued is not for any legally enforceable debt or any other liability but for as security for so called one time settlement under which already borrowed amount covered by two cheques issued and criminal prosecutions pending and those not even withdrawn by virtue of one time settlement apart from there is a stipulation for payment of amounts and not only that cheques also obtained and stipulation is not to dates of post-dated cheques to commence but even prior to date of post dated cheques on its face and apart from it for nonpayment and dishonour of cheques even subsequently presented on date mentioned of post dated cheques remedy provided is to give a go-bye to terms and proceed for original amount when such is case when very settlement is no way in subsistence from not adhering to it and any cheques issued pursuant to it to enforce while going back to settlement that too when earlier prosecution is pending though strictly not within scope of Section 300 Cr.P.C. which is directly within meaning of no legally enforceable debt or other liability for not to apply presumption from undisputed facts for no other independent debt or other liability - Accordingly and in the result, the petitiones are allowed and proceedings, respectively, on the file of Chief Metropolitan Magistrate, are quashed. **Nusun Genetic Research Ltd. Vs. State of Telangana 2016(1) Law Summary (A.P.) 500 = 2016(1) ALD (Crl) 1044 = 2016(2) ALT (Crl) 35 (AP).**

COMPASSIONATE APPOINTMENTS:

— Writ Petition was filed by Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority, aggrieved by order passed by the A.P. Administrative Tribunal in O.A. No.3167 of 2012 dated 28.05.2012 ("Tribunal" for short) - 1st respondent herein invoked jurisdiction of Tribunal to declare action of petitioners herein, in not considering her case for appointment as an NMR (Last Grade Service employee) on compassionate grounds in place of her husband who died while working as NMR (Last Grade Service employee) in office of 1st petitioner, as arbitrary and illegal - Reason why the 1st respondent was denied such a benefit was that scheme of compassionate appointment was not available to persons who died in harness while working as an NMR - O.A. was disposed of directing the petitioners herein to consider case of the 1st respondent for appointment as NMR (LGS employee) on compassionate grounds taking into consideration judgment in W.A. No.1119 of 2010 dated 07.12.2011 - Held, Courts and Tribunals should not fall prey to sympathy syndrome, and issue directions for compassionate appointments, without reference to prescribed norms - Every such act of undue sympathy and compassion, whereby directions are issued for appointment on compassionate grounds dehors prescribed procedure, could deprive a needy family, requiring financial support, of opportunity of seeking employment,

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and thereby pushing into penury a truly indigent, destitute and impoverished family - Discretion is, therefore, ruled out - So are misplaced sympathy and compassion. (Prabhat Singh 15). In absence of any scheme, providing for compassionate appointment for dependants of deceased NMR employees, Tribunal has erred in directing petitioners herein to consider the case of 1 st respondent on compassionate grounds - Order of Tribunal must therefore be and is, accordingly, set aside - Writ Petition is allowed. **Vice Chairman, Vijayawada, Guntur, Tenali, Mangalagiri U.D.A. Vs. V.Padma 2015(2) Law Summary (A.P.) 207 = 2015(6) ALD 175 = 2015(4) ALT 311.**

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—— Writ of Mandamus - Disputes arose between Municipal Corporation of Hyderabd and writ petitioner - Fundamental question in this case is whether premises sought to be occupied by third respondent Hyderabad Metro Water Supply is premises bearing No.3-5-784/1 or is 3-5-784/1/A - In this case, there is considerable amount of confusion as identity of property in dispute and these are questions "Whether petitioner being dispossessed highhandedly by third respondent in respect of property owned by writ petitioner himself" - These are pure questions of fact - Merely because a question of fact whether disputed property bears Municipal No.3-5-784/1 or is 3-5-784/1/A cannot be rejected on ground that it is a question of fact, so long as a decision can be reached on a reasonably plain examination of circumstance of case - High Court would be justified in declaining to exercise its Court special jurisdiction when question of fact involving process of recording evidence is necessary - In present case question of fact is such that it requires recording of evidence - Finding of single Judge that writ petition is not maintainable as it involves question of fact - Justified - Writ appeal, dismissed. **Fazal Ali Vs. State of A.P. 2011(3) Law Summary (A.P.) 62 = 2011(6) ALD 76 = 2011(6) ALT 13.**

—It is settled law that the principles of constructive res judicata are applicable to case arising under Article 226 of the Constitution of India – Court opinion that plea/defence that petitioner's property has been earmarked for recreation and open space (park) in sanctioned master plan prepared by VUDA on 17-11-2005 was available to respondents in two earlier Writ Petitions but was not raised by them there - So principle for constructive res judicata would apply and respondents are precluded from raising said plea in present Writ Petition - Stand in impugned endorsement that as per GVMC, subject land is earmarked for recreation/open space (park) cannot also be accepted because no material is placed on record that 1st respondent GVMC had done so or is empowered to do so - Counter affidavit also does not state that it was 1st respondent GVMC which had done so - So this contention cannot be accepted - In view of above principle of law and having regard to repeated arbitrary refusal of respondents to grant permission to petitioner to make construction in subject property, Writ Petition is allowed and a Writ of Mandamus is issued directing 1st respondent to approve application of petitioner for grant of building permission in respect of

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subject property without reference to objections raised by respondents in Endorsements. **Jupiter Automobiles Vs. Greater Hyderabad Municipal Corporation 2015(1) Law Summary (A.P.) 222**

—Arts.12 & 14 - Petitioner was appointed as Distributor of LPG by HPC Ltd. in year 1985 and there was no complaints as regards its functioning and letters of appreciation were given on several occasions - 2nd respondent/Chief Regional Manager LPG of HPC issued show cause notice alleging complaints received from customers regarding to effect that petitioner not effecting door delivery to customers nor is issuing bills and subsequently second show cause notice also issued to petitioner supplementing some more facts for which petitioner submitted explanation - 2nd respondent/Chief Regional Manager passed order suspending distributorship of petitioner, pending further investigation into matter and initiation of suitable action in terms of agreement and policy guidelines of Corporation - Petitioner contends that impugned order is contrary to terms of Agreement and in particular Cl.28-A thereof according to which suspension of Distributor can be ordered only as a substantial punishment and not as a measure pending investigation and that 2nd respondent has undertaken a roving enquiry with sole objective of disabling petitioner from functioning as Distributor and in process prescribed procedure was completely ignored or violated - Respondent raised objection as to very maintainability of writ petition and that relationship between petitioner and respondents is governed by terms of Agreement and any dispute that arises between them can be resolved by having recourse to arbitration provided under Cl.13 of Agreement and that petitioner was given ample opportunity before order of suspension was passed and that impugned order passed as a measure pending further investigation and enquiry and that no exception can be taken to it - Petitioner further submits that Cl.28-A of Agreement provides for suspension of distributorship that too for a specified period as a measure of penalty on proof of violation and not as a measure pending enquiry - It is not in dispute that 1st respondent, HPC Ltd., is a creature of statute enacted by Parliament and it partakes character of State as defined under Art.12 of Constitution and that nature of activity undertaken by it may be commercial in nature - Being an instrumentality of State, it is required to act in a fair and reasonable manner and its acts and omissions are always liable to be tested on touchstone of tenets referable to Art.14 of Constitution of India - Mere fact that activity entrusted to petitioner is commercial in nature does not keep 1st respondent HPC out side purview of judicial review - Writ petition filed by petitioner challenging order passed by respondents imposing penalty is very much pending before High Court - Therefore objection of respondent as to maintainability of writ petition cannot be sustained - A clear distinction needs to be maintained between suspension pending enquiry on one hand and suspension as a measure of substantial penalty on other - Suspension pending enquiry can be ordered only when rules specifically provided for it and language of provision clearly suggests same - Suspension pending enquiry cannot be treated as a penalty, where as one imposed after conducting enquiry on basis of findings adverse to agency

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or person, is a penalty - In instant case, 2nd respondent issued two show cause notices and extensive enquiry was also undertaken - Had it been a case, where 2nd respondent imposed punishment of suspension of licence for specific period on basis of conclusions arrived by it, not much could have been said about it - Impugned order however discloses that on one hand final opinion was expressed as to nature of violations by petitioner and on other hand, much is left to be investigated at later point of time - Even where suspension is permitted as a substantiative penalty, it is required to be for a specified period - Concept of suspension of licence for any definite period that too in contemplation of enquiry is totally unknown in respect of Agreement of LPG distributorship - When a substantiative punishment on facts itself is for limited period, suspension pending enquiry which is not provided for under Agreement cannot be for an indefinite period - Being a creature under statute is an organization owned by Govt., of India 1st respondent, HPC and its Officer 2nd respondent were supposed to act in a fair, reasonable, and objective manner - In this case, tone and tenor of show cause notice as well as other proceedings do not fit in to one that is expected from a reputed organization like HPC Ltd., - Impugned order, set aside - Writ petition, allowed. **Sri Saibaba Agency Vs. Hindustan Petroleum Corpn., Ltd., 2012(2) Law Summary (A.P.) 153 = 2012(4) ALD 569 = 2012(5) ALT 95.**

—Art. 14 - "Auction of lease, hold rights of Govt., properties" - 2nd respondent/District Collector granting lease, hold right to run canteen in Govt. property in favour of 3rd respondents without calling for tenders - Petitioner contends that failure of District Collector to follow well established methods in awarding lease to 3rd respondent vitiated decision making process and consequently very decision itself - It is trite that properties belonging to State and its instrumentalities shall be duly protected and responsibility is cast on executive functionaries at helm of affairs to ensure that they fetch maximum revenue - 2nd respondent being head of District Administration is trustee of properties situated in District and belonging to State - It is therefore his constitutional obligation to see that they fetch maximum possible revenuefor State - Plea that petitioner has not applied for canteen is wholly without merit because unless proper notification is issued, a person is not expected to approach respondents with application for grant of lease - 2nd respondent/District Collector not acted in transparent manner and has deviated from settled norms of calling for tenders - Lease granted in favour of 3rd respondent, set aside - Writ petition, allowed. **Padma Pawar Vs. Govt., of A.P. 2011(1) Law Summary (A.P.) 93 = AIR 2011 (NOC) 340 (AP) = 2011(3) ALD 452 = 2011(4) ALT 57.**

— Art.14 - "Concept of equality" enshrined in Art.14 is "positive concept" - Regularisation of lease deed - State Govt., rejecting application made by appellant to regularize forged lease deed executed in her favour - Single Judge of High Court held that appellant claim founded on forged document and no directions can be issued under Art.226 for regularization of lease deed merely because in other cases lease had been

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regularized - Division Bench dismissed writ appeal filed by appellant and upheld judgment of Single Judge - In this case, even though appellant had raised plea of discrimination, she did not produce any evidence to prove that other cases are identical to her case - In absence of such evidence High Court could not have relied upon bald statement contained in writ petition filed by appellant and quash well reasoned decision taken by State Govt., not to regularize lease in her favour - Art.14 cannot be invoked for compelling Public Authorities to pass an illegal order or commit an illegality on ground that in other cases similar order has been passed - If order in favour of other person is found to be contrary to law or not warranted in facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made basis of issuing writ compelling respondent, Authority to repeat illegality or to pass another unwarranted order.

Appeal dismissed with following directions:

(i) Within two months from today, the State Government shall take possession of the land and, if necessary, by demolishing the illegal structures which may have been raised by the appellant or any other person.

(ii) Within next four weeks, a report showing compliance of the aforesaid direction be submitted in the Registry of the Andhra Pradesh High Court.

(iii) The Registrar (Judicial) of the High Court shall take orders from the Chief Justice and list the case before an appropriate Bench. If it is found that the State functionaries have failed to comply with the aforesaid direction, then the High Court shall initiate proceedings against the defaulting officers under the Contempt of Courts Act, 1971. **Usha Mehta Vs. Govt. of A.P. , 2013(1) Law Summary (S.C.) 141 = 2013(2) ALD 16 (SC) = 2012 AIR SCW 6107 = AIR 2013 SC 132.**

—-Art.14 - **U.P INDUSTRIAL DEVELOPMENT ACT,** Sec.10 - Notice issued to appellant requiring him to remove unauthorised constructions and bring construction in conformity with sanctioned plan so that interest of general public was not adversely affected - Request of appellant for changed user of ground floor and upper ground floor, rejected - Hence writ petition filed taking stand that he should be permitted to use these floors as was done in cases of lessees of other plots - High Court dismissed the writ petition - Appellant contends that discrimination is being made *vis-a-vis* some others and that change of policy on question of regularization was done and benefit which has been extended to others should be allowed to appellant - In this case, when representation made by appellant there was no policy in question and change of policy came subsequently - Authorities may have acted in any irregular manner in case of some others and that does not confer any legal right on appellant to claim a similar benefit - Art.14 is not meant to perpetuate illegality - It provides positive equality and not negative equality and therefore any Authority cannot be directed to repeat wrong action done by it earlier - A judicial forum cannot be used to perpetuate illegalities - Appeal, dismissed. **Vishal Properties Pvt Ltd. Vs. State of U.P. 2008(1) Law Summary (S.C.) 58.**

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—Arts.14 & 15 - Correction of date of birth - Petitioner got appointed as casual worker in respondent's Company and his date of birth was recorded in all relevant service records - Respondent issued letter directing petitioner to retire from service by 31-9-2009 as he will be completing 60 years age as on 6-1-2009 - Petitioner contends that he was aged 24 years as on 15-1-1975 and his age was incorrectly recorded in service records by respondents and therefore, necessary application was made by petitioner for rectification of same and that action of respondent in not rectifying entries in service register with regard to date of birth is not legal and proper - In this case, entries in service register as well as Form-B Register clearly indicate that petitioner was aged 33 years as on 6-1-1982 and petitioner signed in relevant columns of entries - Petitioner having accepted correctness of entries cannot be permitted to dispute same at fag end of his service - Writ petition, dismissed. **Gundlaboina Yellaiah Vs. M.D., Singareni Collieries Co.,Ltd. 2009(1) Law Summary (A.P.) 281 = 2009(3) ALD 141 = 2009(1) APLJ 242.**

—Arts.14,19,21 & 226 - **CRIMINAL PROCEDURE CODE,** Sec.482 - **INDIAN PENAL CODE,** Secs.353/34 - "Manipulation of FIR" - "General Dairy" - FIR registered against petitioners/accused for offence punishable u/Secs.353/34 IPC - After completing investigation Police filed charge-sheet before Magistrate for above offence - Petitioners/accused seek relief in writ petition as well as in criminal petition to quash proceedings on ground that there was manipulation of FIR by SHO while registering crime and that originally crime registered against five persons and that subsequently said FIR was replaced by another FIR showing petitioners alone as accused persons and that this procedure adopted by SHO is unknown to criminal law and contrary to prescribed criminal procedure and is also unconstitutional - There is lot of manipulation of FIR by S.I of Police in this matter right from stage of registration of crime till filing of charge sheet/final report befrore Magistrate - Such manipulations and manoeuvre cannot be allowed to be perpetrated in a public office particularly in Police Station which is an important organ in administration of criminal justice and this is nothing but subverting criminal justice system and it cannot go scot-free particularly when it has come to notice of High Court and when mischief and manipulation of S.I of Police is caught redhanded - In this case, there is attempt on part of said Sub-Inspector to manipulate entries in General Dairy also by preparing a copy which stated to be a photostat copy, prepared by suppressing relevant entry relating to crime and Sub-Inspector also gave false affidavits in this case, on issuing different FIRs in same crime - Therefore FIR in crime which is vitiated by illegality as well as manipulation coupled with subverting criminal justice system cannot be allowed to stand and it is liable to be quashed under Art.226 of Constitution - When basic document in crime namely FIR is being quashed, edifice built on such manipulated F.I.R by way of final report/Charge-sheet cannot have legs to stand and consequently criminal proceedings before Magistrate are liable to be quashed in exercise of power u/Sec.482 Cr.P.C. - Superintendent of Police directed to keep said S.I under suspension forthwith and launch necessary disciplinary proceedings. **Sunkara Srinivasulu Vs. S.H.O. Owk P.S. Kurnool District 2013(1) Law Summary (A.P.) 10.**

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—Arts.14,19 (1) (g), 300-A & 226 - Petitioner participated in auction held by HUDA and became successful bidder in respect of some plots and present writ petition filed seeking declaration of inaction of respondent-HUDA in handing over possession of plots to petitioners by providing infrastructure facilities - Respondents contend that plots were put to auction on "as is where is condition" and that payment of ID amounts does not depend upon facilities which are undertaken to provide in Cl.16 (m) of Tender and in view of petitioner's failure to make payments as per tender conditions, tender is deemed to have been cancelled and EMD amounts have to be forfeited and that petitioners indulged in misleading Court by coming out with false averments that ID amounts were paid by them and that writ petition is liable to be dismissed for suppression of material facts - Constitution of India, Art.226 - Even under a concluded contract, which is non-statutory, if State or its instrumentalities act arbitrarily and in violation of Art.14 of Constitution, writ petition under Art.226 can be maintained by High Court and adjudicate issues raised therein on merits - In this case, there is deliberate attempt on part of petitioners to mislead Court by making false claim of payments and that petitioners have not controverted specific allegations in reply affidavit and from these uncontroverted averments it is clear that petitioners deliberately tried to mislead Court by claiming in their affidavit that they have paid ID amounts and also by filing copies of demand drafts long after they were got cancelled by them - A party which has misled Court in passing an order in its favour is not entitled to be heard on merits of case - For suppression of material facts and attempting to mislead Court, petitioners are liable to pay cost of Rs.20,000 - Writ petition, dismissed. **G.Bharati Devi Vs. HUDA, rep. by its Chairman 2008(1) Law Summary (A.P.) 191 = 2008(3) ALD 292 = 2008(2) ALT 214.**

—Arts.14 & 162 - G.O.Ms.No.187, dt: 6-12-2000 - G.O.Rt.No.25, dt:8-1-2013 - "Appointment of Asst. Govt. Pleader" - Writ petitioner, Bar Association filed present writ petition questioning the appointment of 5th respondent as AGP and sought relief to declare action of 1st respondent/Govt. in appointing 5th respondent as AGP as arbitrary, illegal discriminatory and is in violation of G.O.Ms.No.187 and Art.14 of Constitution - After 5th respondent assuming charge as AGP in Court of Jr.Civi Judge, President Bar Association informed District Judge that criminal cases were pending against 5th respondent for offences u/Secs.353, 504,506 IPC and that 5th respondent suppressed fact that criminal cases are pending against him and there are several other meritorious candidates eligible for post of AGP having clean record and that 5th respondent suppressed criminal cases pending against him and obtained appointment - 1st respondent/Govt. filed counter stating that District Collector furnished names of 5 Advocates in consultation with District Judge for appointment as AGP and name of 5th respondent was at Serial No.4 in said panel and that Superintendent of Police reported to Collector that ""the empanelled advocates had not come to any adverse notice either politically, criminally, communally or otherwise as per records of local police stations in which jurisdiction the candidates are staying/residing" and that suppression of criminal cases of 5th respondent had come to notice of 1st respondent/Govt. after G.O.Rt.No.25, dt:8-1-2013 was issued and that report has been called for from concerned regarding wrong antecedent report and after receipt thereof suitable steps should be taken as per rules - 5th respondent states that on directions of Jr.Civil Judge, he had submitted his bio-data; since there was no prescription or acquisition

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made for his antecedents, nor was there any query about criminal cases, it would not be a ground for exercise of power by High Court under Art.226 of Constitution; and merely because a criminal case is registered, it does not disentitle a citizen from holding any post either constitutional or contractual, under Govt. before his guilt is proved as it would be in violation of principles of natural justice and fair play - JUDICIAL REVIEW OF APPOINTMENT TO POST OF GOVT. PLEADERS/ASST.GOVT. PLEADERS IN SUBORDINATE COURTS - Its SCOPE - STATED - Judicial review is concerned with whether incumbent possesses qualifications prescribed for appointment, manner in which appointment came to be made, and whether procedure adopted for appointment was fair, just and reasonable - Where Govt., has discretion to appoint an eligible and suitable advocate as AGP in Subordinate Courts, there is no such thing as absolute or untrammelled discretion , nursery of despotic power, in democracy based on rule of law - While Court will not interfere with choice of an individual with reference an appointment made in due exercise of discretion by Govt., without shutting out of consideration claims of others for post, courts will certainly stand guard, against flargant abuse of powers on simple and sound principle and Constitution cannot have intended powers to be abused beyond what may be called inevitable area while opinions may legitimately differ - District Collector is mandated under G.O.Ms.No.187 to satisfy himself that persons, to be included in panel to be forwarded to Govt., are "suitable" for being appointed as G.Ps/AGPs - District Judge may take into consideration, before satisfying himself that an eligible Advocate is "suitable" to be empanelled for being considered for appointment as G.P/A.G.P would include performance of Advocate at Bar, volume and quality of practice, manner in which he conducted him self in Court, his integrity, a blemishless back ground, fairness of approach to cases presented by him before Court etc. - "Pendency of criminal cases" would undoubtedly, be one of relevant factors to be taken into consideration while adjudging "suitability" of Advocate for appointment to said post - It does not stands to reason that a person against whom criminal cases are pending and charge sheets already filed, should be appointed to a post which would require him to conduct cases on behalf of State - Such a person can hardly be said to be "suitable" for appointment as G.P/AGP - Insistance under G.O.Ms.No.187 that District Collector should ascertain views of District & Sessions Judge, clearly spells out policy of Govt., to select best person available for appointment as GP/AGP - Names included in panel must be meritorious persons, who according District Collector are "suitable" for appointment as GP/AGP - In this case, as relevant material, regarding pendency of criminal cases was not taken into consideration by District Collector while examining "suitability" of 5th respondent for being included in panel of Advocates forwarded to Govt, for being appointed as AGP and as this relevant factor, has not only an important bearing on decision making process, but also on integrity of office of G.P/AGP, impugned G.O must be, and is accordingly, set aside - Govt.,is at liberty to consider other names in panel or call for a fresh panel from District Collector for appointment to post of AGP - In case a fresh panel is called for District Collector shall prepare a panel afresh in accordance with law and forward same to Govt. for its consideration - Writ petition, disposed of accordingly. **Bar Association, Junior Civil Judge's Court, Alampur Vs. Govt.of A.P. 2013(1) Law Summary (A.P.) 270 = 2013(4) ALD 106 = 2013(3) ALT 588.**

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—Arts.14 & 226 - Complaint lodged against petitioner Transport Contractor with A.P. State Civil Supplies Corporation and driver of Truck diversion of PDS stock of rice loaded into transport Vehicle belonging to petitioner - Subsequently accused (driver, cleaner and person who purchased stock) were arrested and stocks kept in Court custody - Criminal Court ordered to release of stock and delivered to MLS point and also distributed to beneficiaries - Corporation terminated contract of Corporation forfeited pending bills, security deposit and bank guarantee and block-listed petitioner from participating in any future tenders of 1st respondent/Corporation - Hence present writ petition assailing orders - Pursuant to directions in earlier Writ Petition filed by petitioner explanation was called to show cause as to why transport Contractor did not be terminated as per clause No.3 and 8(iv) of Agreement - Defence taken by petitioner was that he was not aware of diversion of stocks, that illegality was committed by his employee that driver of vehicle was traced and arrested and stocks were also recovered and that Police have informed that petitioner not involved in alleged diversion of stocks - Final orders passed rejecting contention of petitioner in his explanation - Petitioner contends that impugned order passed without conducting any enquiry and without considering explanation filed by petitioner and that Joint Collector seems to have conducted enquiry behind back of petitioner and he did not issue notice to petitioner when he conducted enquiry and report of Joint Collector and record based on which said Report was drawn not furnished to petitioner and that petitioner had no occasion to go through report of Joint of Collector and to respond same and that impugned order is based entirely on said report of Joint Collector and this amounts to gross violation of procedure - Petitioner further contends that no loss is caused to respondent/Corporation and that entire stock was recovered and given to Corporation and that Corporation have utilized stock and that there was no wastage or damage to stock on account of its storage for some time till Court passed orders for release of stocks and that petitioner was also penalized by imposing double cost of rice transported and since stock was already recovered and to utlize it would amount to triple cost - Corporation contends that in view of para 8(v) of agreement failure or diversion of Trucks with stocks or misappropriationof stocks, results in termination of contract forfeiture of security deposit, Bank guarantee and pending bills and contractor can be block-listed along with his representatives - In valid exercise of said power vested in Competent Authority, order impugned is passed and that there is no illegality or irregularity in order passed by competent authority - In this case, Report of Joint Collector not communicated to petitioner and that no semblance of enquiry was conducted though High Court directed to conduct enquiry in earlier writ petition and that order impugned goes beyond show cause notice issued by Joint Collector - Competent Authority would not have relied upon material without supplying same to petitioner and that order impugned visited with severe penal and civil consequences and such order would not have been passed without following due process and without affording due opportunity - No further exercise was undertaken by 1st respondent Managing Director and he straightaway passed order impugned relying on Report of Joint Collector - Hence there was no independent application of mind by MD and his de cision was completely weighed by Report of Joint Collector - Order impugned is vitiated on several counts - Before taking extreme step of block-listing petition, forfeiting his bank guarantee

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and security deposited, petitioner ought to have been afforded fair hearing and not affording opportunity vitiates impugned decision - In this case, there is no allegation of personal involvement of petitioner in diverting stock of rice - On complaint lodged by respondent/Corporation Police investigared and file charge sheet and that Police have not alleged involvement of petitioner and not implicated in criminal case - However subsequent decision of block-listing, forfeiture of bank guarantee, security deposit and pending bills is disproportionate, violative of principles of natural justice, arbitrary and discriminatory has compared to gravity of violations committed by petitioner and when petitioner was already visited with penal consequences - Impugned order, set aside - Amount withheld shall be released to petitioner - Amount recovered from petitioner has double amount of cost of goods diverted from vehicle can be retained by respondent/ Corporation - Writ petition, allowed. **A.Ramalingeswara Reddy Vs. Vice Chairman and M.D., A.P. State Civil Supplies Corporation Ltd., 2014(1) Law Summary (A.P.) 75 = 2014(2) ALD 376 = 2014(1) ALT 299.**

—Arts.14 and 300-A - Permission for Construction of Building - Merely because property has been transferred to petitioners, it is not open to 2nd respondent/Municipal Corporation to refuse to grant building permission to petitioners particularly when 2nd respondent had granted such permission on 16-7-2012 to vendor of petitioners - Therefore, it is not open to 2nd respondent to reject application of petitioners for building permission reiterating its untenable stand that land in question is earmarked as an open space - Such a plea is not available to respondents at all in view of judgment in W.P. No. 362 of 2005 where in this court has categorically held that land in question cannot be said to be reserved open space and said judgment was confirmed in W.A. No. 325 of 1997 and in S.L.P. No. 18460 of 2008 - Judged by the above standards, for reasons stated supra, decision of 2nd respondent in refusing permission to petitioners to construct in subject land is vitiated by arbitrariness and is unreasonable - 2nd respondent, on irrelevant considerations, i.e. that petitioners are different from Smt. N.Sarojini, that land is reserved for open space in layout, has passed the impugned order - Adamant and cantankerous attitude adopted by 2nd respondent practically amounts to open defiance/contempt of Court's earlier orders and deserves to be strongly deprecated - Rule of law depends on obedience by public officials of court orders and repeated disobedience of court orders should be visited with punitive costs to discourage such behaviour - In this view of matter, writ petition is allowed and writ of mandamus is issued declaring Endorsement order of 2nd respondent as arbitrary, illegal, violative of Arts.14 and 300-S of the Constitution of India and a direction is given to respondents to pass orders on application made by petitioners for grant of permission for construction of a building in subject property without treating it as reserved space/open space in accordance with law within a period of four weeks. **D.Anki Reddy Vs. State of Andhra Pradesh, 2014(3) Law Summary (A.P.) 373 = 2015(1) ALD 720 = 2015(5) ALT 136.**

—Art.19 - **CRIMINAL PROCEDURE CODE,** Sec.40(1) - "Probation" - "Termination of Service" - Petitioner applied for post of Asst.(Accounts & Cash) and was successful

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in written test and also subsequent personal interview - Respondent/Bank issued to him appointment letter, 2-1-2009 - Respon-dent /Bank extended probation of petitioner for further period of 3 months i.e., 5-10-2009 by mentioning in letter that FIR was lodged against petitioner and report Verification of Conduct and Antecedents from District Collector is not at received - Subsequently terminated services of petitioner under Order dt.29-9-2009, stating that as per terms of appointment, Bank is entitled to terminate services during period of probation on giving one month notice or paying one month salary in view of notice without assigning any reasons for termination - In this case, FIR lodged against petitioner on 29-3-2009 in Police Station on ground that he was involved in co-operating with banned Maoist party and having considered evidence pertaining to case they declared him not suitable for post and accordingly his probation was not extended resulting terminating of service - Whether a person has been terminated alleging misconduct or alleging that his conduct is not suitable to said post, same amounts to punishment - Respondent/Bank issued proceedings just one day prior to 30-9-2009 ie., 29-9-2009 terminating services of petitioner contending *inter alia* for taking into consideration entire material facts and evidence pertaining to case, it has been decided by appointing authority to dispense with his services from Bank owing to his unsuitability - Merely because a person is related to an extremist (Moist) as a brother, sister or brother-in-law or son, it does not mean that he is sympathiazer or follower of Moist philosophy - If a person is punished merely because he has expressed certain views or if he is in possession of certain literature, same is nothing but violative of Art.19 Constitution of India - If Right of expression is suppressed then democracy would be only on paper and people of this country cannot have true democracy - Termination of services of petitioner appears to be clearly illegal and violative of principles of natural justice - Respondents are directed to reinstate petitioner in service, with continuity of service and all consequential benefits - Writ petition, allowed. **B.Mallikarjuna Reddy Vs. State Bank of India, 2012(2) Law Summary (A.P.) 235 = 2012(4) ALD 204.**

—Arts.19 & 226 - **DRUGS AND COSMETICS ACT, 1940** - **DRUGS AND COSMETICS RULES, 1945,** Rules 105 - Right of Consumer to know ingredients of Cosmetics etc. as to their origin - A citizen has right to expression and receive information under Art.19(1)(a) of Constitution - Right is derived from freedom of speech and expression comprised in Article - Freedom of speech and expression includes right to receive information, but such right can be limited by reasonable restrictions under law made for purpose mentioned in Art.19(2) of Constitution - It is imperative for State to ensure availability of right to citizens to receive information - But such information can be given to extent it is available and possible and without affecting fundamental right of others - In present case, appellant Union of India, taken plea that information relating to ingredients of drug particularly those ingredients of non vegetarian origin should not be given in interest of general public - High Court of Division Bench held that consumer has fundamental right to know whether food products, cosmetics and drugs available for human consumption are of non-vegetarian or vegetarian origin.

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".....Drugs which are not life saving drugs must stand at part with food products and must disclose whether or not they are made of animal, whether in the whole or in part - "In so far as cosmetics are concerned the same must be treated at par with articles/packages of food for purpose of disclosure of their ingredients - Appellant/ Union of India contends that it is not possible to distinguish which drug is a "Life Saving Drug" or otherwise, under given circumstance and condition of patient, a drug which originally may not be treated as a "Life Saving Drugs" can be used in a "Life Saving Drugs" and in some other case it may be general - Thus it is not possible to demarcate drugs as "Life Saving Drugs" or otherwise - Therefore direction issued by High Court to extent it requires Union of India to prepare list of "Life Saving Drugs" would neither be appropriate nor proper, particularly when there is no definition of "Life Saving Drugs" in Pharmacology of modern system of medicines - High Court under Art.226 of Constitution has no jurisdiction to direct executive to exercise power by way of subordinate Legislation pursuant to power deligated by Legislature to enact a law in a particular manner as has been done in present case - For same reason, it is also not open to High Court to suggest any interim arrangement as has been given by impugned judgment - Writ petition filed by respondent being not maintainable for issuance of such direction, High Court ought to have dismissed writ petition, in limine - Order and directions issued by High Court, set aside - Appeals, allowed. **Indian Soaps & Toiletries Makers Association Vs. Ozair Husain 2013(1) Law Summary (S.C.) 211.**

—Preamble AND Art.19(1)(g) - **STEET VENDORS/HAWKERS (PROTECTION LIVELIHOOD AND REGULATION OF STREET VENDING) BILL, 2012 -** "Diginity" - "Street vendors/hawkers" - A street vendor/hawkers is a person who offers goods for sale to public at large without having a permanent structure/place for his activities - Some street vendors/hawkers are stationary in sense that they are occupying space on pavements or other public/private places while others are mobile in sense that they move from place to place carrying their wares on push carts or in baskets on their heads - Unfortunately street vendors/hawkers have received raw treatment from State apparatus before and even after independence - They are a harassed lot and are constantly victimized by Officials of local authorities, Police etc., who regularly target them for extra income and treat them with extreme contempt - Goods and belongings of street vendors/hawkers are thrown to ground and destroyed at regular intervals if they are not able to meet demands of officials - Perhaps, these minions in administration have not understood meaning of term "dignity" enshrined in Preamble of Constitution - Constant threat faced by street vendors/hawkers loosing their source of livelihood has forced them to seek intervention of Courts across Country from time to time - Supreme Court has struggled in last 28 years to find out a workable solution of problems of street vendors/hawkers on one hand and other sections of Society including residents of localities/places where street vendors/hawkers operate and delivered several judgments - Supreme Court placed an embargo in entertaining of

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matters by High Courts - Experience has however shown that it is virtually impossible for Supreme Court to monitor day to day implementation of provisions of different enactments and directions contained in judgments and therefore it will be appropriate to lift embargo placed on entertaining of matters by High Courts and orders passed accordingly - Following directions issued for facilitating implementation of 2009 Policy and they shall remain operative till appropriate legislation is enacted by Parliament or any other competent legislature brought into force:

i) Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/directions to the concerned department(s) to ensure that the Town Vending Committee is constituted at city / town level in accordance with the provisions contained in the 2009 Policy. For the cities and towns having large municipal areas, more than one Town Vending Committee may be constituted.

(ii) Each Town Vending Committee shall consist of representatives of various organizations and street vendors / hawkers. 30% of the representatives from the category of street vendors / hawkers shall be women.

iii) The representatives of various organizations and street vendors / hawkers shall be chosen by the Town Vending Committee by adopting a fair and transparent mechanism.

iv) The task of constituting the Town Vending Committees shall be completed within two months of the issue of instructions by the Chief Secretaries of the State and the Administrators of the Union Territories.

v) The Town Vending Committees shall function strictly in accordance with the 2009 Policy and the decisions taken by it shall be notified in the print and electronic media within next one week.

vi) The Town Vending Committees shall be free to divide the municipal areas in vending / hawking zones and sub-zones and for this purpose they may take assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paragraph 4.2(b) and (c).

vii) All street vendors / hawkers shall be registered in accordance with paragraph 4.5.4 of the 2009 Policy. Once registered, the street vendor / hawker, shall be entitled to operate in the area specified by the Town Vending Committee.

viii) The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories.

ix) The State Governments / Administration of the Union Territories and municipal and local authorities shall take all the steps necessary for achieving the objectives set out in the 2009 Policy.

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x) The Town Vending Committee shall meet every month and ensure implementation of the relevant provisions of the 2009 Policy and, in particular, paragraph 4.5.1 (b) and (c).

xi) Physically challenged who were allowed to operate PCO's in terms of the judgment reported in (2009) 17 SCC 231 shall be allowed to continue to run their stalls and sell other goods because running of PCOs. is no longer viable. Those who were allowed to run Aarey/Sarita shall be allowed to continue to operate their stalls.

xii) The State Governments, the Administration of the Union Territories and municipal authorities shall be free to amend the legislative provisions and/or delegated legislation to bring them in tune with the 2009 Policy. If there remains any conflict between the 2009 Policy and the municipal laws, insofar as they relate to street vendors/hawkers, then the 2009 Policy shall prevail.

xiii) Henceforth, the parties shall be free to approach the jurisdictional High Courts for redressal of their grievance and the direction, if any, given by this Court in the earlier judgments / orders shall not impede disposal of the cases which may be filed by the aggrieved parties.

xiv) The Chief Justices of the High Courts are requested to nominate a Bench to deal with the cases filed for implementation of the 2009 Policy and disputes arising out of its implementation. The concerned Bench shall regularly monitor implementation of the 2009 Policy and the law which may be enacted by the Parliament.

xv) All the existing street vendors / hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending / hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only in accordance with the orders/directions of the concerned Town Vending Committee.

xvi) The provisions of the 2009 Policy and the directions contained hereinabove shall apply to all the municipal areas in the country. **Maharashtra Ekta Hawkers Union Vs. M.C., Greater Mumbai, 2013(3) Law Summary (S.C.) 126.**

—Art.19(1)(g) & 226 - "Proceedings of District Collector in Rc.No.199/9/GR2, Dt:8-5-2010" - Petitioners, owners of Cold storages doing business in Cold Storage for storing Chillies of formers by providing required atmosphere of cooling to deposited stocks of Chillies. so that Chillies do not get damaged - Petitioners also obtained necessary licences for running their business - Petitioners, Association passed resolution for collecting charges @ Rs.90/- for every Chilli bag of 45kgs weight from depositors - Subsequently petitioners' Association passed resolution for not collecting more than Rs.100 for the year 2009 - 1st respondent/District Collector issued show cause notice to all Cold storage owners stating that they have been collecting Rs.100 per bag where as charges fixed by 'District Administration' for season was Rs.90 only and excess collection of Rs.10 per bag was unwarranted and it resulted in collection amount of Rs.6 lakhs due to stock of sixty thousand bags and if amount not paid 1st respondent would see that licence issued

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by concerned Department would be cancelled - Subsequently Joint Collector passed final order without considering reply sent by petitioners directing petitioners to pay amount of Rs.6 lakhs within 7 days failing which amount would be recovered under provisions of R.R Act - Petitioners contend that 1st respondent/Collector has no authority under law to direct petitioners to deposit amount alleged to have been collected in excess of amount fixed by District Administration and that relationship between petitioners and formers are contractual and dictated by market conditions and there is no law which governs relationship enabling 1st respondent/Collector to enforce same - Govt., contends that writ jurisdiction of High Court being discretionary writs cannot be issued as of right or as a matter of course and it should be issued only if substantial injustice is ensued or is likely to ensue and Court should interfere only when it comes to conclusion that over whelming public interest requires interference in matter - Powers of "bureaucracy" in democratic set up in general and that of "District Administration" in particular have to be delineated and explored for purpose of proper decision - "History of Office of District Collector" - Stated - Refund would enable to unjustly enrich itself at cost of State and retain tax collected from purchasers - In instant case, there is no question of unjust enrichment and rates were collected during course of their business - In this cases, petitioners approached High Court challenging action of District Collector and High Court has duty to see whether District Collector has acted within his authority in fixing price for storage of chilli bags by farmers and also in demanding excess amount alleged to have been collected by petitioners for refund to farmers - High Court has duty to protect business rights of petitioners also under Art.19(1)(g) of Constitution of India and cannot order refund of alleged excess amount collected from farmers - Impugned order passed by Joint Collector/1st respondent is clearly without jurisdiction and not sanctioned by any provisions of law - Respondents are directed to refund amount to petitioners deposited by them in pursuance of interim orders passed by High Court - Writ petition, allowed. **Venkateswara Vegetable Fruits Pvt. Ltd. Vs. District Collector, Guntur Dt. 2014(1) Law Summary (A.P.) 130 = 2014(2) ALD 289 = 2014(2) ALT 166.**

—Art.20(3) - **CRIMINAL PROCEDURE CODE,** Sec.161 - **NARCO ANALYSIS TEST** - Magistrate rejecting requisition of Police to send persons for NA Test observing that Court has no jurisdiction to entertain requisition since above persons are neither accused nor suspects and they are not arrested by Police and therefore question of giving those persons to police custody for purpose of NA test does not arise - Prosecution contends that NA Test can be conducted on any persons including witnesses and they need not necessarily be accused or suspects and it is safe test to elicit information relating to crime from above persons, instead of resorting to third degree methods - Field of criminology has expanded rapidly during last few years and demand for supplemental methods of detecting deception and improving efficiency of interrogation has increased concomitantly - Investigating Agency has statutory right to investigate crime and to find out truth and to reach to accused - Narco Test for criminal interrogation is valuable technique, which would profoundly affect both innocent and guilty and thereby hasten cause of action - In accusations made in India, Police are attributed with applying third degree methods in eliciting information and there are instances of culprits or suspects dieing in lockups during course of interrogation on account of application of third degree

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methods, there is a blame that Indian Police are flagrantly violating human rights and fundamental rights guaranteed under Art.21 of Constitution - There is every need to apply scientific test to elicit information to make further investigation in crimes - U/Sec.161 Cr.P.C Police are empowered to examine not only witnesses, but also accused during course of investigation and it is duty of every citizen to assist Police in taking crimes and to bring criminals to justice - In present case since respondents are not accused arrested by Police, there is no need to obtain any permission from Court to undertake NA Test - Police are required to convince Court as to what are circumstances that made Police to gain an impression that persons proposed to be to NA Test, likelihood of knwoing something about commission of offence - Police concerned are required to take all precautions as required under medical jurisprudence to undertake NA Test to be conducted in presence of medical experts to monitor condition of subject to avoid any complications of above test - Criminal Revision Cases, accordingly allowed. **State of A.P. Vs. Inapuri Padma 2008(2) Law Summary (A.P.) 284 = 2008(2) ALD(Crl.) 668(AP) = 2008(3) ALT(Crl.) 26(AP) = 2008 Crl. LJ 3992.**

—Art.21 - Violation of Righ to life and liberty - 'Civil disputes between to private parties' - Petitioner carrying on business of manufacturing bricks in schedule property under oral lease and filed suit for permanent injunction restraining respondent owner of land from evicting petitioner except under due process of law - When suit and I.A filed by petitioner was pending respondents/police took him to police station and fixed dead line to evict plaint schedule property by threatening that if he failed to do so,he will be implicated in false criminal cases - Society governed by rule of law, State or its subordinates cannot be permitted to Act in a manner which would violate constitutional or legal rights of its subjects - It is no part of duty of police to interfere with civil disputes between two private parties unless Court of competent jurisdiction directs granting of aid to comply with orders of Court. **Darapaneni Krishna Murthy Vs. Superintendent of Police, Guntur Dt. 2008(2) Law Summary (A.P.) 266 = 2008(4) ALD 105 = 2008(4) ALT 545 = 2008(2) APLJ 20.**

—Art. 21 - **A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORALTRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986,** Secs.3 (1) & (2), r/w Sec.2 (a) and (f) - Competent authority passing order of detention against petitioner's husband on 11 grounds for offences allegedly committed which was ratified by Govt. and advisory Board - Petitioner contends that there is no proximity between ground No.2 and ground Nos.3 to 11 mentioned in order of detention and that offences mentioned in ground Nos.3 to 9 had taken place in year 2006 whereas offences mentioned in ground No.10 to 11 had taken place in year 2008 and therefore passing order of detention under Act not justifiable and same amounts to taking away right to detenu granted under Art.21 of Constitution of India - While a person is in judicial custody, it is totally inexpedient to pass order of detention under Act and that there must be sufficient material, apparently to satisfaction of competent authority that detenu would act in a prejudicial manner in case of his being not in judicial custody - It is always desirable for competent authority to record reasons, while passing order of detention, under Act even though person is in judicial custody -

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Therefore it is for competent authority to record a finding as regards his absolute satisfaction about passing of order of detention notwithstanding fact that person is in judicial custody or not - In present case, when petitioner is in judicial custody he has every right under law to make an Application seeking bail, in case, any order of bail is passed by competent Court, same would be virtually, nullified because of present order of detention under Act - Similarly even if detenu is tried in any one of cases, which are pending as of now and acquitted therein, he cannot have benefit of said order of acquittal because of present order of detention - Order of detention passed by competent authority is not justifiable and is liable to be set aside - Writ petition, allowed. **Narasama Vs. The Collector & District Magistrate,Visakhapatnam 2009(1) Law Summary (A.P.) 89 = 2009(1) ALD (Crl) 444 (AP) = 2009(1) ALT 31.**

—Art.21 - **EVIDENCE ACT,** Sec.45 - **TELEGRAPHS ACT,** Sec.7 - Petitioner/husband filed O.P before Family Court seeking decree of divorce against respondent/wife - Petitioner moved Application seeking to produce Hard Disk relating to conversation of his wife recorded by him in USA - Family Court passing order directing that admitted voice of the respondent-wife be recorded by an expert on his equipment in presence of both parties and then admitted voice of wife be compared with disputed portion of conversation in Hard Disk (Ex.P-18) - There should be some trust between husband and wife and in any case, right of privacy of wife is infringed by her husband by recording her conversation on telephone to others and if such right is violated, which is fundamental, can such husband who have resorted to illegal means, which are not only unconstitutional, but also immoral, later on relay on evidence gathered by him by such means - Clearly, it must not be permitted - Supreme Court gave directions as to in which circumstances under what conditions telephone can be tapped - It categorically stated that order of telephone tapping can only be passed by Home Secretary and in urgent cases power may be delegated to Officer of Home Department not below rank of Joint Secretary - Therefore, husband does not derive any power whatsoever to record a telephone conversation of his wife without her knowledge - The act of tapping itself by husband of conversation of his wife with others was illegal and infringed right of privacy of wife - Therefore, these tapes, even if true cannot be admissible in evidence - Hence hard disk, (Ex.P-18) not admissible in evidence - Revision petition, allowed. **Rayala M.Bhuvaneswari Vs. Nagaphanender Rayala 2008(1) Law Summary (A.P.) 70 = 2008(2) ALD 311 = 2008(1) ALT 613 = AIR 2008 AP 98.**

—Art.22(5) - Preventive detention - **CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, (COFEPOSA)1994 ACT,** Sec.3(2) - Detaining authority passing order of detention considering nature and gravity of detenu's action over a period of time - Detenu's wife filing Hebeas Corpus petition challenging legality of detention order on ground of non supply of various documents which prevented detenu from making an effective representation - High Court allowed writ petition and quashed detention order - When detention order is passed all material relied upon by Detaining Authority in making such an order, must be supplied to detenu to enable him to make an effective representation against detention order in compliance with Art.22(5) of Constitution, irrespective of whether he had knowledge of same or not - Although

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State is empowered to issue orders of preventive detention, since liberty of an individual is in question such power should be exercised by detaining authority, though against and in favour of individual concerned, to arrive at a just conclusion that his detention is necessary in interest of public and to prevent him from continuing to indulge in activities which are against public interest and interest of State - In instant case, as some vital documents which have a direct bearing on detention order, had not been placed before Detaining Authority, there was sufficient ground for detenu to question such omission - On account of non supply of documents, detenu is prevented from making an effective representation against his detention - Judgment and order of High Court - Justified - Appeal, dismissed. **Union of India Vs. Ranu Bhandari 2008(3) Law Summary (S.C.) 73.**

—Art.32 - Writ of Habeas Corpus - Petitioner, father filing petition praying habeas corpus for protection of his minor son and handing over custody and his passport - In this case, parties got married at A.P according to Hindu rites and child was born at USA - Disputes arose between parties and approached Court - New York Supreme Court dissolved marriage between parties and granted joint custody of child - Pursuant to orders of Court, CBI issued look out notices on India basis through heads of Police of States - Child and mother traced at Chennai after lapse of two years - Order passed directing 6th respondent, wife to act as per consent order passed by Family Court at State of New York - CUSTODY OF CHILD - In cases of custody of child removed by parent from one Country to another in contravention to orders of Court where parties had set up their matrimonial home, Court in country to which child has been removed must first consider question whether Court could conduct an elaborate enquiry on question of custody - Court is bound to consider welfare and happiness of child as paramount consideration and go into all relevant aspects of welfare of child including stability and security, loving understanding care and guidance and full development of child's character, personality and talent - While doing so order of foreign Court as to his custody may be given due weight; weight and pursuasiva effect of foreign judgment must depend on circumstances of each case - Court passed following order: (i) Respondent No.6 shall act as per consent order of Family Court of New York and she will take child of her own to USA within 15 days and report to that Court (ii) petitioner shall bare all travelling expenses of child and mother (iii) petitioner shall not file or pursue any criminal charges for violation by wife of consent order in USA. **Dr.V.Ravi Chandran Vs. Union of India 2009(3) Law Summary (S.C.) 178**.

—Art.32 – **COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005,** Sec.13 – "Surrogacy" – 'Custody of child born to surrogated mother' - Biological parents entered into agreement with surrogated mother – Matrimonial discords between biological parents - SURROGACY – Meaning of – Surrogacy is a well known method of reproduction where by a women agrees to become pregnant for purpose of gestating and giving birth to a child she will not raised but handover to contracted party - Kinds of surrogacy – Stated – If any person has any grievance, same can be ventilated before Commission constituted under Act. **Baby Manji Yamada Vs. Union of India 2008(3) Law Summary (S.C.) 194.**

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—Art.226 – Removal of Encroachment on National Highways – Petitioners occupied land belonging to National Highways and located bunks and running petty businesses – Respondent sought to evict petitioners without issuing notice - Admittedly petitioners are in occupation of land, which either belongs to Gram Panchayat or National Highway Authority of India without any permission from either of Authorities, action of respondents in seeking to evict them is unexceptionable - Even if notice was given to petitioners in face of their admission that they are in unauthorized occupation of land they would not have been in a position to offer any semblance of explanation to justify their continuance on land – Writ petition, dismissed. **Mangali Chinna Rama Subbanna Vs. E.E.,R & B, Dhone 2008(3) Law Summary (A.P.) 296 = 2009(1) ALD 496 = 2008(4) APLJ 38(SN).**

—Arts.32 & 226 and 14 & 21 - "Judicial Activism" - "Public Interest Litigation" (PIL) - **MOTOR VEHICLES ACT, 1988,** Chapter VIII - Petitioner is a Society registered under Societies Registration Act, which claims to be engaged in espousing problems of general public importance, referring to, raising number of road accidents in country, defects in licensing procedure, inadequate infrastructure relating to roads and inadequate provisions of traffic control devices and alleging number of accidents, filed writ petition seeking necessary directions to respondent, Union of India and others and to set up Committee of experts in each State for dealing with various requirements for minimization of accidents on roads - Prayers made by petitioner in petition seeking directions of legislative or executive nature can only be given by legislature or executive - Motor Vehicles Act is a comprehensive enactment on subject, if there is lacuna or defect in Act, it is for legislature to correct it by suitable amendment and not by Court - What petitioner really prays for in this petition is for various directions which would be legislative in nature, as they would amount to amending Act - Judges should not proclaim that they are playing role of a law-maker merely for an exhibition of judicial valour - They have to remember that there is a line, though thin, which separates adjudication from legislation - That line should not be crossed - A Committee can be appointed by Court to gather some information and/or give some suggestions to Court on matter pending before it, but Court cannot arm such Committee to issue orders which only a Court can do - Futile writs should not be issued by Court - JUDICIAL ACTIVISM - When other agencies or wings of State over- step their constitutional limits, aggrieved parties can always approach Courts and seek redress against such transgression - If however Court itself becomes guilty of such transgression, to which forum would aggrieved party appeals - Only check on Courts is its own self restraint - Worst result of "Judicial Activism" is unpredictability - Unless Judges exercis self restraint, each Judge can become a law unto himself and issue directions according to his own personal fancies, which will create chaos - Chapter VIII of Motor Vehicles Act has provisions of control of traffic and obviously provisions are meant for road safety and if further provisions are required for this purpose petitioner may approach legislature or concerned authority for this purpose, but this Court can certainly not amend law - People must also know that judiciary has its limits and cannot solve all their problems, despite its best intentions - Problems facing people of India have to be solved by people themselves by using their creativity and by scientific thinking and not by using judicial crutches like PILs - People also must know that Courts are not remedy for all ills in Society - PUBLIC INTEREST LITIGATION

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(PIL) - PIL is a weapon which is to be used with a great care and circumspection - Unfortunately PILs are being entertained by many Courts as a routine and result is that dockets of most of superior Courts are flooded with PILs, most of which are frivolous or for which judiciary has no remedy - "Public Interest Litigation" has nowadays largely become "publicity interest litigation", "private interest litigation" or "politics interest litigation" or latest trend "paise income litigation" - Much of P.I.L is really blackmail - PIL which was initially created as a useful judicial tool to help poor and weaker section of society who could not afford to come to Court, has, in course of time, largely developed into an uncontrollable Frankenstein and nuisance which is threatening to choke dockets of superior Courts obstructing hearing of genuine and regular cases which has been waiting to be taken up for years together - Writ petition, dismissed. **Common Cause (A Regd. Society) Vs. Union of India 2008(2) Law Summary (S.C.) 9 = 2008(3) ALD 81(SC) = AIR 2008 SC 2116 = 2008(2) Supreme 865 = 2008 AIR SCW 3164.**

—Arts.40 and 243-G - **A.P. PANCHAYAT RAJ ACT, 1994,** Sec.4(2) - This Court of the opinion that the impugned order could not have been issued by 3rd respondent/ District Panchayat Officer, since the 6th respondent Grampanchayat is a body representing the will of the people and an institution of self-governance and all affairs relating to administration of village having been vested in it - Without a resolution by the Grampanchayat agreeing for shifting of its office from the new building to the old building, merely at the instance of the Sarpanch and a Minister in the State Cabinet, and on the basis of certain reports submitted by respondent No. 3 to 5, 3rd respondent could not have passed the impugned order - If such a process is permitted, it would render the 5th respondent Grampanchayat not as an institution of self-government but as a puppet in the hands of respondent Nos. 1 to 5 - Therefore, the impugned order passed by 3rd respondent has to be held contrary to Articles 40 and 243-G of the Constitution of India - So, the Writ Petition is allowed, and the impugned proceedings are set aside - The 3rd respondent as well as 7th respondent shall pay costs of Rs. 2000 each to all the petitioners. **Gollapalli Ganghadhar Rao Vs. State of A.P. 2015(1) Law Summary (A.P.) 287 = 2015(4) ALD 44 = 2015(3) ALT 223.**

—- Art.136 - **INDIAN PENAL CODE,** Sec.302 - **CRIMINAL PROCEDURE CODE,** Sec. 313 - "Murder" - "Circumstantial evidence" - Appellant/accused suspecting his wife of having illicit relations with his neighbour, killed three children and his wife - Trial Court convicting appellant and awarded him death sentence - High Court dismissed appeal - Hence, present appeal - It is not case of direct evidence, but conviction of accused is founded on "circumstantial evidence" - In case, based on circumstantial evidence prosecution must establish chain of events leading to incident and facts forming part of that charge should proved beyond reasonable doubt - They have to be of definite character and cannot be a mere possibility - In this case, circumstantial evidence read with statement of prosecution witnesses and statement of appellant himself prove one fact without doubt, i.e. accused has certainly murdered his wife - On appreciation of evidence on record no hesitation in holding that appellant

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is guilty of offence u/Sec.302 IPC for murdering his wife and three minor children - In this case, prior to commission of crime none of prosecution witnesses including immediate blood relations of deceased, made any complaint about his behaviour or character - On contrary it is admitted that appellant/accused used to prohibit deceased from speaking to neighbor, P.W.10, about which she really did not bother - His conduct, either way at time of commission of crime is unnatural and to some extent even unexpected - Appellant felt great remorse and was sorry for his acts and he informed police correctly what he had done - Another mitigating circum-stance is as a result of commission of crime appellant himself is greatest sufferer - He has lost his children, whom he had brought up for years and also his wife - Besides that it is not a planned crime and also lacked motive - It is a crime which had been committed out of suspicion and frustration -Considering above aspects it is not a case, which falls in category of "rarest of rare" - Cases where imposition of death sentence is imperative - Therefore while partially accepting appeals only with regard to quantum of sentence, commuted death sentence awarded to appellant accused to one of life imprisonment (21 years). **Brajendrasingh Vs. State of Madhya Pradesh 2012(1) Law Summary (S.C.) 158.**

—Art.141 - Service Rules - Seniority - Regarding - Judicial review - Law laid down by Constitution Bench in B.S. Yadava – Stated - Approach of High Court to follow dicta in Paramjit Singh is most appropriate which pertains to same service and same Rules - High Court depart only in a situations where it finds that said judgment has been subsequently over ruled, specially or impliedly or it is per-in-currim - Article 141 - Law declared by Supreme Court is binding on all Courts in country and such law has to be followed unless it is over ruled specifically or impliedly or it is per-in-curium - Judgment in Paramjit Singh specifically taken note in B.S. Yadev but not over-ruled - Approach of High Court in following Dicta laid down in Paramjit singh was perfectly justified - No merit in Appeals - Hence dismissed. **M.S.Sandhu and Anr. Etc Vs. State of Punjab 2014(2) Law Summary (S.C.) 63.**

—Art.142 - **CRIMINAL PROCEDURE CODE,** Sec.482 - **INDIAN PENAL CODE,** Sec.498-A - Appellant/husband and R2/wife both doctors - Allegations that wife started behaving cruelly with her husband and his parents and ultimately deserted husband - Decree of divorce obtained by mutual consent - Trial Court acquitted appellant/husband and other accused in criminal cases filed by respondent/wife - Magistrate convicting appellant and others u/Sec.498-A IPC - When appeal was pending parties sorted out their differences and filed petitions for recording compromise in criminal proceedings - Appellate Court rejecting petitions holding that offence u/sec.498-A not liable of compromise - High Court also declined to interfere in matter - In this case, wife categorically admitted that she does not want to prosecute appellants - In peculiar facts and circumstances of case, continuation of criminal proceedings would be an abuse of process of law - Criminal proceedings pending against appellants – Quashed. **Dr.Arvind Barsaul Vs. State of Madhya Pradesh 2008(2) Law Summary (S.C.) 69.**

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—Art.226 - WPMP dismissed for default - Application filed to restore WPMP along with Affidavit stating that she obtained list from Court for listing WPMP and that Section clerk brought to her notice that WPMP listed on 21-4-2008 and that order passed on said date and that "the circumstances that let to pass such order are highly arbitrary and unjust" and that Court ought to have given chance of posting case for "dismissal for default" on another date - Tenor of contents of Affidavit lacks any modicum of decency and same boarders on arrogance - Such affidavit is not expected from any litigant, more so when she is a practicing Advocate - Evidently WPMP was listed in 22-4-2008 and same dismissed on same day as petitioner not represented by either her counsel or herself - Surprisingly instead of offering explanation for their absence, she termed dismissal of Application by Court has "highly arbitrary and unjust" on a thorough misconception that Court shall not dismiss a case for default at first instance and that it should be posted for "dismissal for default" - Far from offering any semblance of explanation, petitioner has indulged in insinuation not only by seeking to suggest to Court procedure to be followed but also by terming act of dismissal of Application in default as arbitrary and unjust - Though conduct of petitioner calls for stringent action, taken a lenient view by administering caution to petitioner that repetition of such conduct will not be spared in future. **S.Jayashree Vs. The Secretary, A.P. Bar Council, Hyd., 2008(3) Law Summary (A.P.) 10 = 2008(6) ALD 120.**

—Art.226 - "Misappropriation" - Petitioner/Project Implementing Agency was appointed to implement water development programmes (PIA) - Collector passing orders suspending petitioner as PIA on ground of some lapses in implementation of water shed programmes and appointed Enquiry Officer to conduct enquiry into lapses and submit report - 1st respondent/District Collector directed recovery of Rs.7.62 lakhs said to have been misappropriated or mis-utilized from petitioner and cancelled its appointment - Hence writ petition filed questioning impugned order passed by 1st respondent/Collector - Petitioner contends that Report of Enquiry Officer not furnished inspite of its request and as such order impugned is liable to be set aside - Respondents contend that since show-cause notice and final order give all details of irregularities committed by petitioner and as Enquiry Officer relied on account books maintained by petitioner non-furnishing of copy of enquiry report of Enquiry Officer did not cause any prejudice to petitioner and proceedings impugned cannot be said to be vitiated for mere failure to furnish copy of report of Enquiry Officer - In this case, admittedly report of Enquiry Officer not furnished to petitioner - When person accused of misappropriating funds and maintaining false accounts, is subjected to enquiry and Enquiry Officer submits report, penalty cannot be imposed without furnishing copy of enquiry report - Orders passed against petitioner basing on report of Enquiry Officer directing for recovery of amount from petitioner, set aside. **Peddireddy Thimma Reddy Farm Foundation Vs.District Collector, Ranga Reddy 2008(1) Law Summary (A.P.) 423 = 2008(3) ALD 712.**

—Art.226 - IOC Ltd., - Retail outlet - Termination of dealership - After death of dealer of retail outlet, his three sons constituted a partnership firm with consent of IOC - Subsequently one partner retired and another partner died and since respondent

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Company not positively responded to take wife of deceased partner as partner, only one partner running outlet - Basing on some papers to effect that wife of deceased partner entered into agreement with one third party to enable him to run dealership and that GPA was executed in his favour, respondent IOC terminated dealership of petitioner and thereafter possession of entire outlet was taken over by Company and entrusted outlet to 2nd respondent, a dealer who was selected in year 2005 - Hence present writ petition - Petitioner contends that wife of deceased partner did not become partner on account of lack of clearance from 1st respondent/Company and there was absolutely no basis for taking into account any agreement or arrangements said to have been made by her, with third parties - 1st respondent/Company has no basis or justification infer anything from acts and omissions on part of persons who are not in partnership - 1st respondent/IOC contends that Management of dealership was entrusted to certain third parties without any approval of or intimation to and also raised objection maintainability of writ petition - Petitioner contends that a request made by sole surviving partner, to take his sister-in-law as one of partners was not acceded to by respondents Company and in that view of matter, there was no basis for Company to give any credence to so- called arrangements or agreements, said to have been entered by her - Any penal action could have been taken, if only change in dealership or partnership as taken place with participation of sole surviving partner - In this case, in their reply petitioner, categorically stated that a request made to induct wife of deceased partner, as partner, was not accepted by Company, and that any arrangement or agreement on her part is not binding upon him or firm - In this case, admittedly it was an authorized representative of surviving partner, that was on seat of management - In dealership agreement there is a clause that dealer must personally supervise running of outlet - It is different from requiring that a dealer must be physically present on any point of day, throughout - That however is not basis, on which dealership was cancelled - In this case, neither showcause notice nor in any other correspondence, it was alleged that wife of deceased partner entered into agreement with others, keeping Company in dark - In fact, allegation can be only against existing dealer, and anything done by persons other than actual dealer would not bind him - Termination of dealership, untenable - Writ petition, allowed. **E.Satyanarayana & Co., Nalgonda Vs. Indian Oil Corpn., Ltd. 2011(2) Law Summary (A.P.) 162.**

—Art.226 - Writ petition filed seeking a writ of mandamus for striking off false report/ opinion of DNA test - DNA test - Meaning of - Stated - In viewof principle enunciated by Supreme Court collection of blood sample for purpose of DNA finger printing does not amount to a custodial compulsion of self-incrimination - Hence it is perfectly legitimate exercise to have ordered for a DNA finger printing test to be conducted by FSL and its opinion rendered on subject can neither be treated nor termed as a false or improper opinion - Writ petition, dismissed. **V.Prem Sagar Vs. Joint Civil Surgeon, Govt. of A.P. 2011(3) Law Summary (A.P.) 73 = 2012(1) ALD(Crl) 98 (AP) = 2012(3) ALT 50.**

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—Art.226 - Change of date of birth - Petitioner filed present writ petition seeking writ of mandamus declaring proceedings issued by respondent-Singaneri Collieries Company issued proceedings, determining age of petitioner as 25 years as on 12-1-1971 fixing date of superannuation as, 31-1-2006 as illegal, and arbitrary and consequently to direct respondent/Company to rectify same and to incorporate date of birth of petitioner in his service records as 10-2-1950 and permit him to continue in service upto 31-1-2011 - Petitioner contends that in school records his date of birth mentioned as 10-2-1950 and as per said entry he was aged about 21 years on date of joining respondent Company, but respondent Company mentioned his age as 25 years instead of mentioning it as 21 years in his service register and that recruiting officials neither asked him to produce his date of birth nor School Leaving Certificate in proof of age, and they themselves by looking at him made self assessment and incorporated his age as 25 years in his service records, which was not communicated at any point of time - Respondent/Company denied allegations of petitioner stating that petitioner joined in respondent-Company as illiterate and he did not produce any evidence at time of his entering into service as proof of age, as such, as per Rules and practice in vogue, at time of appointment petitioner was examined by Company's Medical Officer and his age was assessed as 25 years as on 12-1-1971 and same was entered in his service book and petitioner also affixed his thumb impre-ssion in service book as token of acceptance - Petitioner further contends that his date of birth is 10-2-1950 and though he submitted all his educational certificates as well as statutory certificates issued by Mines Authorities his age and date of birth as 10-2-1950 but respondent-Company did not correct wrong entries made in service records and that when same date of birth is consistently mentioned in all certificate of petitioner prior to joining in respondent-Company till now, calling petitioner to appear before age determi-nation Committee is bad and illegal - In this case, there cannot be any doubt to say that age of petitioner was shown as 25 years at time of his initial appointment and it may be also a fact that petitioner had affixed his thumb impression on relevant documents at time of his appointment - However, crucial aspect is whether claim of petitioner is genuine and whether his claim has to be thrown out merely because he had affixed his thumb impression on relevant papers at time of appointment - Admittedly, petitioner was appointed as Badli Coal Filler Casual Worker - No educational qualifications required for that post and when person gets an opportunity to join service and where educational qualifications are not required, it is for Officers concerned to ascertain correct age and guide employees properly and they cannot take advantage of illiteracy or semi-literacy of candidates who come forward to join post - In this case, petitioner filed admission certificate issued by Headmaster of Primary School, where his date of birth was shown as 10-2-1950 and this document is dated 5-6-1956 i.e. prior to date of petitioner joining into service and that respondent-Company has not disputed genuiness of this document - Respondent also obtained some other certificates which were signed by Secretary and Chairman of Board of Mining Examination and in which date of birth of petitioner mentioned as 10-2-1950 - When respondent-

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Company receives such statutory certificate,before acting upon those certificates they must verify whether the date of birth mentioned in those certificates is in conformity with date of birth mentioned at time of initial appointment and if there is contradiction they must resolve dispute before acting upon such statutory certificates - When genuiness of those certificates are not in dispute and when those documents have been acted upon by respondent-Company without any dispute, those certificates have to be taken into consideration - Moreover petitioner has also produced his primary school record in support of his claim - Hence, claim of petitioner cannot be denied - Writ petition, allowed as prayed for. **A.Raja Murali Vs. Singareni Collieries Company Limited, 2013(3) Law Summary (A.P.) 19 = 2013(6) ALD 306 = 2013(5) ALT 691.**

—-Art. 226 - Two Writs previously filed by petitioner and both 1st respondent/Union Government and 2nd respondent/State Government have not acted in accordance with the directions issued therein - Present Writ petition is filed challenging the order passed by the 1st Respondent/Union Government rejecting the claim of the petitioner for pension for her late husband who participated in anti-Nizam Government movement in response to a scheme introduced on 15-08-1972 which was later liberalized as Swatantra Samman Pension Scheme, 1980 which came into force on 1-8-1980 - Which clearly stipulates that a person who had suffered a minimum imprisonment of six months or who on account of his participation in freedom struggle remained underground for more than six months on whom an order of detention was issued and award for arrest was announced is entitled for pension and there is absolutely no further need to produce secondary evidence by such persons - Petitioner herein has already produced the proceedings of the Director General of Police, Nizam Government, Hyderabad Dt. 5th Aban 1356 Fasli which clearly shows that arrest warrants were issued against Petitioner's husband and he also went underground for more than six months as per 2nd Respondent's report - But 1st Respondent rejected plea of Petitioner on ground that she has not furnished any secondary evidence - Held, Scheme clearly says there is no need for secondary evidence to avail pension and in wake of principles laid down by Apex Court in many judgments in such cases regarding preponderance of probabilities and also considering laudable object behind the scheme, rejection order of 1st Respondent set aside - Writ Petition Allowed with a direction to 1st Respondent to pay pension along with arrears. **M.Jannamma Vs. Union of India 2014(3) Law Summary (A.P.) 17 = 2014(6) ALD 374.**

—Article 226 **– Correction of Date of Birth –** The date of birth of the petitioner from primary level to class X, having been correctly recorded, mere recording of erroneous date by the SSC Board in its record obviously cannot put the petitioner to a serious prejudice - The judgment of the Division Bench in W.A. No. 1021 of 2010, referred to above, distinguished G.O.Ms. No. 430, dated 31-12-1992, therefore, are not attracted as held by the Division Bench - Therefore, the aforesaid decision is clearly applicable to the facts and circumstances of the present case and as such,

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is required to be followed in this case also - Accordingly, the writ petition is allowed and the impugned order is set aside. **Gogineni Gnana Jyothi Vs. State of A.P. 2015(1) Law Summary (A.P.) 337 = 2015(3) ALD 530 = 2015(2) ALT 663.**

—Art.226 - Power of revenue authorities to provide police protection - Admittedly there are civil disputes pending between petitioners and respondents - R3/Tahsildar directing R4/SHO to provide police protection to respondents to enable them to cultivate their lands - Action of Tahsildar is totally unsustainable and illegal - Revenue authorities cannot direct Police Department to give aid to one party or other except in exceptional cases wherein Court directs implementation of orders of injunction - Proceedings of R3 Tahsildar are set aside - W.P allowed with costs of Rs.2000. **Sake Chandrayudu Vs. State of A.P. 2015(2) Law Summary (A.P.) 522 = 2015(5) ALD 10 = 2015(5) ALT 308.**

—-Art.226 - Judicial Review in awarding compensation in the case of death - Two children of petitioners died as they were victims of snake bite which was corroborated by post mortem report - Special Officer of School filed a complaint in Police Station complaining about death of two children due to snake bite and same was registered as a Crime - In final report, police have shown cause of death as snake bite - This Writ Petition is filed by petitioners claiming compensation for death of their children caused on account of negligence of respondents.

Held, having regard to principle adopted by Supreme Court in Lata Wadhwa and having regard to fact that incident in instant writ petition occurred in year 2006 and for reasons assigned above, Court considered opinion that a consolidated amount of Rs.8,00,000/- to each of petitioners would meet ends of justice, mitigate hardship undergone by parents, and would at least give some kind of solace to parents of children whose lives were taken away even before they could blossom - Writ Petition is allowed accordingly. **Mulukutla Pochaiah Vs.Union of India 2016(3) Law Summary (A.P.) 426.**

—Art.226 - **CIVIL PROCEDURE CODE,** Sec.11, Explanation III - G.O.MS. NOs.522,242,243 & 244 - REVENUE LAWS - PUBLIC INTEREST LITIGATION - Alienation of lands situated within Greater Hyderabad Municipal Corporation to various Societies comprising members of A.P. Legislature and Members of Parliament and A.P. I.A.S, IPS & I.R.S and other VIPs. **-** Petitioners contends that allotment of land to judges of High Court affects independence of judiciary and persons belonging to all India Service constitutes creamy layer and therefore not entitled to affirmative and allotments are violative of "Trust" doctrine - Objections raised pertaining to locus standi ad laches of petitioners, rejected - Doctrine of *res judicata* or constructive *res judicata* or Or.2, Rule 2 C.P.C have no application to present cases - Division Bench held in unequivocal terms that there can be no rationale or justification for allotting land to individuals falling under two categories, viz., (i) those who own properties in their

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own name or in name of their spouse or children (ii) those who may have already been benefited by allotment of land at concessional rate either directly or through Society - Division Bench also held that there is imperative need to ensure that allotment of land in name of providing house cites to needy people does not become a source of profiteering by those who fall in either of above two categories - It could have been perfectly legitimate for previous Division Bench to have quashed G.O.Ms.No.522 in toto, its not doing so and leaving State to reframe its policy in light of findings contained in judgment was only to provide an opportunity to State to take corrective steps, but State cannot be understood as Court leaving State with an option or freedom to repeat same constitutional impropriety that was held to have been committed in G.O.Ms.522 by including one of above stated categories viz., those who have a house or house site, as beneficiaries of allotment of State land - Such an understanding of Division Bench Judgment will render specific and categoric findings contained in its judgment, nugatory - Impugned G.Os., to extent that they did not render ineligible persons, who own a house or house site in their own name or in name of their spouse or children for allotment of house sites by respective Societies of which they are members cannot be sustained in law - All impugned G.Os except G.O.Ms.No.421, dt.25-3-2008, which was rescinded consequently ceased to exist, are quashed. **Dr.Rao V.B.J. Chelikani Vs. Govt. of A.P. 2010(1) Law Summary (A.P.) 312.**

—Article 226 - **CIVIL PROCEDURE CODE**, Sec. 151 – The petitioner/ HPCL obtained injunction order and protection order from competent Civil Court – However, respondents 3 to 6 are interfering with possession of petitioner – Hence, petitioner filed complaint before R2/S.H.O. seeking enforcement of Civil Court Order – R2/S.H.O. not taking any action – Hence, present Writ Petition to compel R1,R2, to perform their public duty - Execution of the lease deeds having been admitted and the sub lease not being questioned by respondent No. 7, prima facie, shows that the right in property created in favour of HPCL is required to be accepted for the purpose of this writ petition unless in the final adjudication in the suits, a finding contrary is recorded - Secondly, the fact that the trial court has considered injunction applications of HPCL as well as respondents 3 to 6 and has confirmed the injunction in favour of HPCL and vacated the injunction in favour of respondents 3 to 6 clearly establishes that HPCL is in possession and its possession was protected by the order of interim injunction - As long as the said orders subsist, it is, therefore, not open to draw an inference of conclusion that notwithstanding the said injunction orders, the HPCL is not in possession of the property - It is, therefore, clear that so far as the writ petition is concerned, HPCL is justified in claiming that its possession is protected by the orders of the Civil Court, as referred to above and as such, respondents 1 and 2 are duty bound to protect and provide aid to HPCL so as to enforce the said orders and ensure that the said orders are not violated - In the circumstances, the writ petition is accordingly allowed. **Hindustan Petroleum Corporation Limited Vs. Govt. of A.P. 2015(1) Law Summary (A.P.) 332 = 2015(3) ALD 30 = 2015(3) ALT 59.**

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—Art.226 - **CRIMINAL PROCEDURE CODE** r/w **INDIAN PENAL CODE** - "Perjury" - Respondents/Corporation rejecting application of petitioner for HPCL Dealership on ground that she filed false affidavit - Writ petition filed seeking direction to respondents to reconsider her application -In this case, petitioner has not only failed to comply with mandatory requirement of filing a personal affidavit regarding change of her name, but also made a blatantly false averment in her affidavit filed in Court and tried to mislead Court by filing copy of purported affidavit with a specific plea that said affidavit was filed before concerned authority of Corporation - By conduct of petitioner in filing deliberately false affidavit supported by copy of purported affidavit to buttress her false statement made in affidavit, petitioner has polluted pure stream of justice - A litigant who attempts to pollute stream of justice or who touches pure fountain of justice with tainted hands, is not entitled to any relief interim or final - Registrar (judicial) is directed to initiate prosecution against petitioner for her conduct in terms of Code of Cr.P.C r/w I.P.C for "Perjury"- Writ petition dismissed with cost of Rs.10,000. **Yalala Swapna Vs. Hindustan Petroleum Corporation Ltd. Mumbai 2010(2) Law Summary (A.P.) 244.**

—Art.226 - **CRIMINAL PROCEDURE CODE,** Sec.41-A, rw/ Sec.161 - Crime registered against petitioner u/sec.406,420 468 and 471 of IPC for duping complainant to a tune of Rs.2 crore and investigation has been taken up - Petitioner contends that while passing order in criminal petition Hingh Court made it clear that petitioner should appear at Central Crime Station, before Investigating Officer on every Saturday at 10 am for three months or until filing of charge sheet - In this case, theree month period is over nerely one year back but still petitioner is being unnecessarily harassed and made to appear before Investigating Officer and inspite of his appearing he is made to unnecessarily wait at Police station for number of hours so that he will not be able to attend to any other activity of his own on said date - If Investigating Officer requires petitioner to appear before him at a particular time, on a particular day, he must try to complete investigation as expeditiously as possible, preferably within two or three hours time - He cannot summon petitioner to appear before him at 10 in morning and start interacting with him at 10 pm thus making him wait at Police Station for number of hous so that he will get fed up and frustrated in process - That is not manner in which investigation can be caried out - Even if recording of statement is taking enoromus time, say beyond 4 to 6 hours if person making statement makes a request for adjourning session by about 2 or 3 hours to enable him to recuperate from fatigue, such a request has to be conceded - After all, one is entitled to an appropriate rest to get recharged - Therefore 3rd respondent/Inspector of Police is directed to finalize investigation as expeditiously as possible and if at all he needs to interact with petitioner he should do so within next two or three hours from time specified by him - If petitioner, inspite appearing before Inspector of Police, has not been interacted with, all due to preoccupation of Investigating Officer, real or pretentious, it shall be open to him to leave premises of Central Crime Station after expiry of

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3 hours time without intimation to 3rd respondent/Inspector of Police and petitioner cannot be faulted on that ground - Police machinery cannot go on investigating in to a crime for such long period, if it is truly interested in bringing out truth of matter - Writ petition stands disposed of accordingly. **Grandhi Madhusudan Rao Vs. Commissioner of Police, Hyd., 2013(3) Law Summary (A.P.) 199 = 2014(1) ALD (Crl) 155 (AP) = 2014(1) ALT (Crl) 259 (AP).**

—Art.226 - **CRIMINAL PROCEDURE CODE,** Secs.482 & 156(3) - **PREVENTION OF CORRUPTION ACT,** Sec.11,12 & 13 - "Quashing of FIR" - Special Judge ACB cases took cognizance of private complaint filed by an Advocate against petitioner/ Company and forwarded same to DG of ACB for investigation and report - Hence, petitioner filed writ petition to quash FIR/Proceedings in CCSR - Petitioner contends that no overt or covert acts much less commission of cognizable offences u/Secs.406 & 409 of IPC not alleged against petitioner in complaint and if there is any breach of agreement, remedy of complainant, is to approach competent civil Court - 3rd respondent/ACB contends that petitioner has an effective alternative remedy u/Sec.482 and writ petition under Art.226 of Constitution is not maintainable - Ordinary power of Court under Art.226 of Constitution and inherent power u/Sec.482 Cr.P.C to quash criminal proceeding should be exercised very sparingly and with circumspection and that too in rarest of rare cases - Extraordinary or inherent powers donot confer an arbitrary jurisdiction on Court to act according to its whim or caprice, - Considering allegations made by 2nd respondent in complaint in their totality, and sworn statement given by him before Court, Principal Special Judge, felt that complaint, *prima facie* disclosed commission of cognizable offence u/Secs.406,409 & 420, r/w 120-B and Secs.11,12 & 13 of Prevention of Corruption Act, by accused and feeling so, took cognizance of same and referred same to ACB for investigation and to file report - When law is well settled that disclosure of a dispute in complaint, which may be civil in nature to some extent, by itself cannot be a ground for High Court to interfere or scuttle investigation into allegations which attract penal provision - Even assuming complainant is a political opponent that by itself cannot be a aground to stall investigation of allegations made in complaint, which prima facie disclose commission of cognizable offence punishable under criminal law - Purpose of investigation is to find out whether there is any substance in allegation made in complaint - In this case, complaint is merely at stage of investigation - Once investigation is over, if complaint and material collected does not disclose commission of any offence as such, then it would result in filing of final report - However even before investigation is taken up or completed, it would not be proper for High Court to interfere with matter and interfere with investigation or scuttle investigation process - Action of special Judge in taking cognizance of complaint - Justified - Writ petition, dismissed. **Emmar Hills Township Pvt., Ltd., Vs. Govt. of A.P. 2010(3) Law Summary (A.P.) 227 = 2011(5) ALT 47 = 2011(3) ALT (Crl.) 74 (AP) = 2011(1) ALD (Crl.) 99 (AP).**

—Art.226 - **LETTERS PATENT,** CL.15 - **CRIMINAL PROCEDURE CODE,** Secs.482 & 154 & 173(8) - Manipulation of FIR and General diary - Single Judge quashing

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criminal proceedings before Magistrate on ground of "manipulation of FIR" and "General Diary" and directing Superintendent of Police concerned to keep SHO under suspension forthwith and launch disciplinary proceedings - Hence writ appeals filed by de facto complainant and SHO - In this case, admittedly, though first complaint lodged by de facto complainant has been registered as FIR by SHO neither copy of FIR registered on online nor complaint has been forwarded to jurisdictional Magistrate, but it is only FIR registered manually on basis of later complaint lodged by complainant together with later complaint has been forwarded to jurisdictional Magistrate and on basis of same a charge sheet has been filed - In such circumstances and since order of single Judge is to be set aside on ground that both complaints discloses commission of offence and keeping in view law laid down by Apex Court, later FIR will stand - U/Sec.173(8) since Officer-in-charge is empowered to forward a further report, he can submit an additional report and Magistrate keeping in view circumstance of case has to take same also on file and to be proceeded with - Therefore prosecution would be at liberty to file further report under Sec.173(8) Cr.P.C bringing out reasons for not registering earliest report, if necessary, by making further investigation as required u/Sec.156 Cr.P.C with permission of Court - Earlier, finding recorded by Single Judge that there was manipuaion of FIR while registering crime upheld - Therefore matter need to be examined on administrative side by Superintendent of Police constituting an enquiry committee to find out where lapse had been occurred and who are persons or person responsible for same - What disciplinary action is required to be taken against erring Officers is with in domain of administrative authority - High Court in exercise of power under Art.226 of Constitution or inherent powers u/Sec.482 of Cr.P.C. cannot direct that particular action should be taken or an Officer be placed under suspension in matter of this nature - Therefore order of Single Judge to said extent is also liable to set asdie - Appeals are partly allowed in terms that order of single Judge set aside and proceedings on file of Magistrate is restored and Superintendent of Police shall cause enquiry as to manipulation occurred while registering crime by officer-in-charge of P.S and initiate appropriate disciplinary proceedings against Officers responsible for manipulation and submit compliance to High Court. **D.Kasaiah Vs. Sunkara Srinivasulu 2013(1) Law Summary (A.P.) 139 = 2013(1) ALD (Crl) 685 (AP) = 2013 Cri. LJ 1186 (AP).**

—Arts.226 & 14 - Hindustan Petroleum Ltd., terminating dealership of petitioner for alleged tampering of Seals and was delivering 1.40 ml. litre short, for every five litres - Petitioner contends that Seals of Unit are in tact and that Unit manufactured by M/s.Larsen & Turbo and seals are put by Legal Metrology Department and that petitioner was unnecessarily penalized for no fault of it - Respondents contends that petitioner tampered with machinery and inserted a spurious gear with an oblic motive and therefore petitioner is guilty of serious misconduct - Petitioner established petroleum outlet about half century ago and it is one of oldest petrol bunks in that area - Periodical inspections were conducted upon unit by officials of company authorities of Civil

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Supplies Department and Legal Metrology Department - Petitioner also contends that previous inspection by Company was made on 14-9-2009 and seals on equipment put by Department of Legal Metrology on 26-3-2009 was found in tact and that no descrepancy as to measurement was pointed on 14-9-2009 and if any difference as arisen even while seal was in tact, petitioner cannot be liable - It is no doubt true that writ petition does not lie for determination of disputed questions of fact particularly when relationship between parties is governed by written contract - Once manufacturer of Unit calibrates equipment ensuring proper delivery of product, relevant part of machinery is sealed by Department of Legal Metrology, after verification of accuracy - In this case, petitioner made an elaborate reference to previous inspection, conditions of seals etc., - In impugned order it is stated that a duplicate gear was implanted by petitioner - Not a word is said about seal being in tact - Therefore, it is a case of non application of mind - Things would have been different had respondent said that petitioner or for that matter any individual, can have access to gear even while seal was intact - It is stated that opinion tendered by manufacturer of unit Larsen & Turbo was not available to petitioner - Failure to supply same results in violation of principles of natural justice - Petitioner cannot be expected to answer certain issues regarding which he has no information - Impugned order - Unsustainable - Writ petition, allowed. **P.Laxmikanth Rao and Sons Vs. Union of India, 2011(2) Law Summary (A.P.) 1 = 2011(3) ALD 505 = 2011(3) ALT 221.**

—Arts.226, 14 & 12 - **INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999,** Sec.14 (2) (b) - Cancellation of Insurance Policy unilaterally - Petitioner-Police Officers' Association obtained Long Term Group Janata Personal Accident Insurance Policy by paying full premium for entire period of 10 years covering risks of death and personal injuries - 2nd respondent-Divisional Manager sent letter dt.12-4-2002 to petitioner, stating, as per Condition No.6 of Terms of policy, policy cancelled with effect from 27-4-2002 - Petitioners contend that cancelling policy unilaterally under pretext of Condition No. 6 is arbitrary and illegal and that cancellation of policy in middle without any basis, purely motivated for commercial reasons, vitiates fundamental rights and that cancellation of policy without notice unilaterally even in teeth of Condition No.6 is arbitrary and illegal - Respondent-Insurance Company contends that contract is in nature of private contract between two private individuals and therefore question of amenability of dispute under Art.226 of Constitution does not arise and petitioner would approach Civil Court and obtain damages for breach of contract and that writ petition is not maintainable and in teeth of Condition No.6, Insurance Company is entitled to cancel policy as and when it was found to be necessary - Insurance Company is instrumentality of State under Art.12 of Constitution and is amenable to writ jurisdiction under Art.226 and contract is a statutory contract and respondent-Company must act fairly and reasonably when dealing with customers - Mere giving a letter cannot be a sufficient notice or a notice furnishing reasons - Contention of respondent -Company that this is a concluded contract and even if it is statutory in nature, Condition No.6 is binding on petitioners and that cancellation cannot be questioned or it cannot be examined on anvil of Art.14 – Unsustainable - High Court under Art.226, can definitely

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go into fact as to whether cancellation of policy, may be even if it is a concluded contract between parties, is correct or not-Impugned letter dt.12-4-2002,set aside - Writ petition, allowed. **Police Officer's Association, Adilabad Vs. United India Insurance Co.,Ltd. 2008(1) Law Summary (A.P.) 301 = 2008(1) ALD 257 = 2008(1) ALT 772.**

—-Art.227 - **CIVIL PROCEDURE CODE,** Or.XV-A - Petitioners do not dispute that they are lessees of the suit schedule premises owned by the respondents, the quantum of rent is admittedly Rs.1,50,000/- per month and it was not even stated by the petitioners that they have paid the rent for period mentioned in the I.A. - Held, the pleas of Senior Counsel for petitioners that issue can be considered only at the stage of trial is bereft of any merit and a tenant or a lessee can adjust the amount payable as rent only when specifically authorised by landlord or lessor, in writing and the investment said to have been made by petitioners towards decoration or renovation being adjusted against rents does not arise as it was for their beneficial use of premises -The trial court has taken correct view of the matter - CRP is dismissed. **Chaitanya Lanka Vs. Suresh Kumar Gupta 2014(3) Law Summary (A.P.) 36 = 2014(5) ALD 744 = 2014(6) ALT 185.**

—-Art. 227 - **CIVIL PROCEDURE CODE,** Sec. 151 - **INDIAN REGISTRATION ACT,** Secs. 49, 77 - INDIAN STAMPS ACT, Sec.35 - Petitioner filed O.S. for relief of specific performance, in form of a direction to respondents to register sale deed, or in alternative for a decree of perpetual injunction, or for delivery of possession of property and a draft sale deed was filed as one of documents, along with suit - In context of receiving and marking documents, the office of trial Court raised an objection - Petitioner filed I.A. under S.151 of CPC with a prayer to mark draft sale deed as Ex.A-4 - It was pleaded that there cannot be any objection to receive document in its present form, without any necessity to pay deficit stamp duty, or registration charges, or penalty - Trial Court dismissed I.A. resulting in revision - Held, document relied upon by petitioner is neither an agreement, or of sale, nor a sale deed - Document, no doubt, registerable, but it was not even executed - It is only on execution of a document that requirement of registration would arise - If document, irrespective of its description is yet to be executed, question of its being subjected to any stamp duty or levying deficit stamp duty much less penalty, does not arise - Therefore, Civil Revision Petition is allowed and order under revision is set aside. **T.Jai Singh Vs. Pyaro Kaur 2014(3) Law Summary (A.P.) 97 = 2014(5) ALD 755.**

—Articles 300 & 79 - **WRIT PROCEEDING RULES, 1977**- C.P.C. Sec.79 - Writ petition has been filed amongst others, against Government of A.P. and order has been passed thereon - Impugned judgment and order has been passed on a proceeding which has not been legally instituted at all – Government of A.P. is not a sui-juris - If any action has to be brought against Central Government or State Government it has to be brought against Union of India and State, not in names of respective Governments

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and in this case, State of Andhra Pradesh or State of Telangana, would have been necessary parties - 1st respondent- Writ petitioner contends that this defect is not an incurable one, it is merely a technical one - When provision of Constitution mandates in a particular way a proceeding is to be instituted, no one can change it and it has to be done in that manner alone – If it is allowed to be done in a different manner, that would amount to re-writing Constitution - No Court of law can afford to change Constitutional Provision by Judicial prescription, particularly, Article 300 of Constitution of India is an original provision of Constitution and it cannot be struck down nor be read down by Court, for there is no ground of such challenge - Sec. 79 of C.P.C. also mandated before Constitution came into force, same way – Court cannot change it – Though it is a curable defect stage of curing is time bound Viz., before final disposal - After matter is disposed of finally with defect, it can't be cured at all – In this case final order has been passed and this order has been passed on an incompetent proceeding and therefore, order is nullity because same has been passed as against a non-existent party – Hence, judgment is set aside and on that ground alone Writ Petition is restored for fresh hearing enabling to remove defect – Writ appeal allowed accordingly. **S.Shyamala Reddy Vs. Hindustan Petroleum Corporation Ltd 2015(1) Law Summary (A.P.) 406 = 2015(4) ALD 380 = 2015(2) ALT 812.**

—-Arts. 350-A, 19(1)(a), 19(1)(g) r/w Arts.21, 21(a), 29(1) and 30(1) - Educational Laws – Interpretation of Statutes and Articles of Constitution of India - "Mother tongue" – The only provision in constitution which contains expression 'Mother tongue' - Art.350A – It means mother tongue or language of Linguistic minority in a particular State and it is parent or guardian of a child who will decide the mother tongue of child and hence it can neither expand power of a State nor restrict a Fundamental right by saying that mother tongue is language which child is comfortable with - Arts.29(1) & 30(1) – Choice of minority community under Art.30(1) need not be limited to imparting Education in language of minority Community – A private unaided non-minority school not enjoying protection of Art.29(1) and 30(1) can choose medium of instruction for imparting education to children in school – As Law developed by Supreme Court it is clear that all schools whether they are aided by Government or not aided by Government require recognition to be granted in accordance with provisions of appropriate Act or Government order – Accordingly Government recognized schools will not only include Government aided schools but also unaided schools which have been granted recognition - "Linguistic minority" under Art.30(1) of Constitution has right to choose medium of instruction in which Education will be imparted in primary stages of school which it has established – Art.350-A therefore cannot be interpreted to empower State to compel a linguistic minority to choose its mother tongue only as a medium of instruction in a primary school established by it in violation of this fundamental right under Art.30(1) – A child and parents have right to choose mothertongue of child – State has no power under Art.350-A of Constitution to compel Linguistic minorities to choose their mother tongue only as a medium of instruction in primary schools.

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State of Karnataka Vs. Associated Management of (Govt. Recognized-Unaide-English Medium) Primary &Secondary Schools 2014(2) Law Summary (S.C.) 38 = 2014(5) ALD 114 (SC) = 2014 AIR SCW 2908 = AIR 2014 SC 2094.

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—Secs.2(1)(e)(c)(o) & 3 - **ELECTRICITY ACT,** Secs.126,12,135 to 140, 173,174 & 175 - "Consumer Forum" - Jurisdiction - "Assessment made for unauthorized use of electricity u/Sec.126" - Maintainability of complaint before Consumer Forum - Appellant/Power Corporation contends that proceedings u/Secs.126,127,135 etc., of Electricity Act, initiated by Service providers are not related to deficiency of service in supply of electricity by service providers under Electricity Act - Complaint against proceedings under above said provisions of Electricity Act not maintainable before Forum constituted under Consumer Protection Act - In absence of any inconsistency between Secs.126,127,135 etc., of Electricity Act and provisions of Consumer Protection Act, Secs.173 & 174 of Electricy Act are not attracted - Respondents, complainants contend that complaint under Consumer Protection against final assessment order passed u/Sec.126 of Electricity Act is maintainable before Consumer Forum - National Commission though held that intention of Parliament is not to bar jurisdiction of Consumer Forum under Consumer Protection Act and have saved provisions of Consumer Protection Act, failed to notice that by virtue of Sec.3 of Consumer Protection Act, or Secs.173,174 & 175 of Electricity Act, Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made u/Sec.126 or offences u/Sec.135 to 140 of Electricity Act, as acts of indulging in "unauth-orized use of electricity" as defined u/Sec.126 or committing offence u/sec. 135 to 140 do not fall within meaning of "complaint" as defined u/Sec.2(1)(c) of Consumer Protection Act - It is therefore held that in case of inconsistency between Electricity Act and Consumer Protection Act, provisions of Consumer Protection Act will prevail, but ipso facto it will not vest Consumer Forum with power to redress any dispute with regard to matters which do not come within meaning of "service" as defined u/Sec.2(1) (o) or "complaint" as defined u/Sec.2(1)(c) of Consumer Protection Act - "Complaint" against assessment made by assessing Officer u/Sec.126 or offences committed u/Sec.135 to 140 of Electricity Act, is not maintainable before Consumer Forum - Electricity Act and Consumer Protection Act runs parallel for giving redressal to any person who falls within meaning of "consumer" u/Sec.2(1) (d) of Consumer Protection Act or Central Govt., or State Govt., or association of consumers but it is limited to dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by service provider" or "if consumer suffers from deficiency in service" or "hazardous service" or "service provider has charged a prize in excess of price fixed by or under any law" - Orders passed by National Commission, set aside - Appeals filed by service provider-licensee, allowed. **U.P. Power Corporation Ltd. Vs. Ans Ahmad 2013(3) Law Summary (S.C.) 36 = 2013(5) ALD 130 (SC) = 2013 AIR SCW 4342 = AIR 2013 SC 2766.**

—- Secs.2(1)(o), 2(1)(g) & 2(1)(r) - Medical education - Deficiency in service - "Service" - In view of specific advertisement "No capitation fees", respondents/Complainants joined

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appellant, "The Buddhist Mission Dental College Hospital" by paying Rs.1 lakh each at time of admission and subsequently paying substantial amounts under various heads and after several months came to know that appellant College neither affiliated to any University nor recognized by Dental Counsel of India - Respondents/complainants also contend that no efforts were being made to improve standard of Institution by appointing regular teaching staff with proper qualification and that respondents deeply frustrated because their entire academic career was ruined - Hence claim petition - National Commission held that there was insufficiency of services on part of appellant and that respondents were legitimately entitled to claims made in petition and directed appellant to refund admission expenses paid at time of admission along with interest and also Rs.20,000/- to each of respondents by way of compensation for loss of two valuable academic years - Appllant contends that in unmistakable terms it was mentioned that "the academic syllabus of college meets a standard as per Dental Counsel of India Rules and as prescribed by Faculty of Dental Science ....Dental Science (BDS Degree)" and that appellant's institute is an industry and service rendered by institute amounts to deficiency in service with in the meaning of Sec.2(1)(g) of CP Act and that allegation of unfair trade practice within meaning of Sec.2(1)(r) of Act against appellant are without any merit - Admittedly appellant institute is neither affiliated with University nor recognized by Dental Counsel of India and in absance of affiliation and recognition, appellant institute would not have started admissions in 4 years degree course of BDS - Imparting of education by an educational institution for consideration falls within ambit of 'service' as defined in Act - Fees are paid for services to be rendered by way of imparting education by educational institutions - Complainants had hired service of respondent for consideration so they are consumers as defined in Consumer Protection Act - In this case, respondents were admitted to BDS course for receiving education for consideration by appellant college which neither affiliated nor recognized for imparting education - This clearly falls within purview of deficiency as defined in Act - Order of Commission that this is a case of total misrepresentation on behalf of institute which tantamounts to unfair trade practice - Justified - Appeal dismissed. **Buddhist Mission Dental College & Hospital Vs. Bhupesh Khurana 2009(1) Law Summary (S.C.) 146 = 2009(2) ALD 38(SC) = 2009(2) Supreme 378.**

--— Secs.2(1)(o) & 21 - **"Medical negligence"** - Deceased, Senior Operation Manager in IOC admitted in hospital for malignamy and surgery was conducted for abdominal tumor twice and discharged from hospital and subsequently died on account of pyogenic 'meningitis' - Appellants, wife and children of deceased filed complaint claiming compensation of Rs.45 laksh attributing deficiency in service and medical negligence in treatment of deceased - National Commission dismissed complaint on ground that complainants failed to make out any case of medical negligence against respondents - Sec.2(1) (o) - SERVICE - Defined - Service rendered to a patient by medical practitioner, by way of consultation, diagnosis and treatment, both medical and surgical, would fall within ambit of service - Deficiency in service has to be judged by applying test of reasonable skill and care which is applicable in action of damages for negligence - DISTINCTION BETWEEN NEGLI-GENCE 'AND CRIMINAL NEGLIGENCE' - STATED

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- While 'negligence' is an omission to do something which is a reasonable man guided upon those considerations which ordinarily regulate, doing something which a prudent and reasonable man would not do - Criminal negligence is gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to public generally or to an individual in particular, which having regard to all circumstances out of which charge has arisen, it was imperative duty of accused person to have adopted - MEDICAL NEGLIGENCE - Principles to constitute medical negligence - Stated - Negligence is breach of duty exercised by omission to do something which reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do, or doing something which a prudent and reasonable man would not do - Negligence to be established by prosecution must be culpable or gross and not negligence merely based upon an error of judgment - Medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care - Medical practitioner would be liable only where his conduct fell below that of standards of reasonably competent practitioner in his field - Just because a professional looking to gravity of illness has taken higher element of risk to redeem patient out of his/her suffering which did not yield desired result may not amount to negligence - Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence - Merely because Doctor chooses one course of action in preference to other one available, he would not be liable if course of action chosen by him was acceptable to medical profession - Medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in interest of patients - Interest and welfare of patients have to be paramount for medical professionals - As long as Doctors have performed their duties and exercises an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence - It is imperative that Doctors must be able to perform their professional duties with free mind - National Commission dismissing complaint of appellants - Justified - Appeal, dismissed. **Kusum Sharma Vs. Batra Hospital & Medical Research Centre 2010(1) Law Summary (S.C.) 120.**

—Secs.2(a),(c) & (d) - **CIVIL PROCEDURE CODE,** Secs.20 &21 - Retrial benefits - Govt., servant - "Consumer" - Defined - Gov., servant does not fall under definition of "consumer" as defined u/Sec.2 (1)(d)(ii) of Act - Such Govt., servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and reticulations or statutory rules framed for that purpose - Appropriate Forum, for redressal of any his grievance may be State Administrative Tribunal, if any or Civil Court, but certainly not a Forum under Consumr Protection Act, 1985 - Govt., servant cannot approach any of Forums under Act for any of retiral benefit. **Dr.Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana, 2013(2) Law Summary (S.C.) 285.**

—-Secs.2(d),2(f),2(d),3,11,12 & 13(1)(c) - **SEEDS ACT, 1966,** Secs.9,19 & 21 - **SEEDS RULES, 1968,** Rules,13(3) & 23(a) - **ARBITRATION AND CONCILIATION ACT, 1996**,

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Secs.8 - Appellant National Seeds Corporation supplied seeds to respondents/farmers/ growers - Complaints filed by respondents claiming compensation alleging that they suffered loss due to failure of crops/less yield because of defective seeds supplied by appellant - District Forum allowed complaints and awarded compensation basing on the Reports submitted by Commissioner, to respondents/farmers - Appeals and Revisions filed by appellant were dismissed by State Commission and Nation Commission - Hence present Appeal filed by appellant questioning orders of National Commission - Appellants contend that District Forum awarded compensation without following procedure u/Sec.13(1)(c) of Act and that growers of seeds are not covered by definition of "consumer" u/Sec.2(d) of Consumer Act, because they purchased seeds for commercial purpose - Appellant further contends that claim of respondents was liable to be dismissed because District Forum was not competent to decide issue relating to quality of seeds and that crop had failed because while sowing seeds respondents did not take precaution - State Commission and National Commission approved conclusions recorded by District Forum that respondents had suffered loss because. seeds sold by appellant were defective - Appellant also further contends that impugned orders are liable to be set aside because District Forum did not have jurisdiction to entertain complaints filed by respondents and State and National Commissions committed grave error by brushing aside appellant's objections to maintainability of complaints - If respondents/growers had any grievance about quality of seeds, then only remedy available to them to either filed an application u/Sec.10 of Seeds Act or to approach concerned Seed Inspector for taking action u/Sec.19, r/w 21 of Seeds Act - Respondents contend that they have used entire quantity of seeds purchased by them for growing and they had not retained samples by anticipating loss of crops or less yield - Commissioners had inspected fields of respondents and recorded categorical findings that formers had suffered losses because seeds supplied by appellant were defective and that appellant would not produce samples of seeds sold/supplied to respondents and get them tested to prove that same were not defective, but no such steps were taken by it - In context of farmers/growers and other consumers of seeds Seed Act is a Special Legislation in so far as provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any person who violates provisions of Act and/or Rules brought before law and punished - However there is no provision in Act and Rules framed thereunder for compensating farmers etc., who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by person authorized to sell seeds - Since farmers/growers pur-chased seeds by paying price from appellant they would certainly fall within ambit of Sec.2(d)(i) of Consumer Act and there is no reason to deny them the remedies which are available to other consumers of goods and services - Therefore so-called remedy available to aggrieved farmer/grower to lodge complaint with concerned Seed Inspector for prosecution of sellar/supplier of seed cannot but be treated as illusory and he cannot be deny relief under Consumer Act on ground of availability of an alternative remedy - Reports of agricultural experts produced before District Forum unmistakably revealed

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that crops had failed because of defective seeds/foundation seeds - After examining reports District Forum felt satisfied that seeds were defective and this is reason why complainants were not called upon to provide samples of seeds for getting same analyzed/tested in appropriate laboratory - Procedure adopted by District Forum was in no way contrary to sec.13(1) (c) of Consumer Act and appellant cannot seek annulment of well-reasoned orders passed by Consumers Forums on specious ground that procedure prescribed u/sec.13(1)(c) of Act not followed - National Commission took cognizance of objections raised by appellant that procedure prescribed u/Sec.13 (1)(c) of Act had not been followed and observed that contention of appellant that respondent complainant should have kept portion of seeds purchased by him to be used for sampling purpose is not only unsustainable in law but to say least, is very unbecoming of a leading Public Sector Company to expect this arrangement - In fact a Senior Officer of Govt., had visited field and inspected crop and given report under his hand and seal, clearly certifying that seeds were defective - Appeals are dismissed and appellant directed to pay costs of Rs.25,000 to each of respondents. **National Seeds Corporation Ltd Vs. M.Madhusudhan Reddy 2012(2) Law Summary (S.C.) 70 = 2012(3) ALD 136(SC) = 2012 AIR SCW 1191 = AIR 2012 SC 1160.**

—Secs.3 & 12 - **ARBITRATION AND CONCILIATION ACT, 1996, Sec.8(1) - ARBITRATION ACT, 1940,** Sec.34 - Petitioner and respondent entered into Development Agreement - Since petitioner failed to carry out contractual obligations under agreement, respondent filed Complaint before District Forum seeking certain reliefs against petitioner - District Forum rejecting Application filed by petitioner for reference of dispute for arbitration holding that under Sec.3 of 1986 Act remedies made available under Act are in addition to and not in derogation of remedies available under other laws - Contention that language of Sec.8 of 1996 Act is couched in mandatory terms leaving no discretion for any judicial authority other than referring dispute brought before it, which is subject matter of arbitration agreement, for arbitration in accordance with arbitration agreement - Consumer Protection Act being special enactment, which created an additional remedy in favour of consumer by raising consumer disputes before Fora constituted under said Act, Sec.8 of 1996 Act does not have effect of taking away such a remedy from consumers as in case of civil suits, which are in nature of common law remedies - Purport of Sec.3 1986 Act is that party chooses to avail remedy other than consumer dispute, he shall be free to do so because remedy under Act is not in derogation of other remedies available to such a party - But, conversely if he chooses to avail remedy before consumer Fora such a right cannot be denied to him on ground of availability of alternative remedy such as arbitration - Sec.3 of Act is intended to provide an additional remedy to a party and same is not meant to deny such a remedy to him - Writ petition, dismissed. **Saipriya Estates Vs. V.V.L.Sujatha 2008(1) Law Summary (A.P.) 375 = 2008(3) ALD 608 = 2008(3) ALT 125 = AIR 2008 AP 166.**

—Secs.11(2)(c) & 12 - **"Territorial jurisdiction"** - Deficiency in service - Petitioner/ Doctor treated 2nd respondent/complainant at Kurnool - District Forum of

CONSUMER PROTECTION ACT, 1986:

Mahaboobnagar District entertained complaint filed by 2nd respondent claiming compensation for deficiency of service on part of petitioner - Petitioner contends that complainant was treated at Kurnool and thereafter at Hyderabad and therefore District Consumer Forum at Mahaboob-nagar has no territorial jurisdiction to entertain complaint - In this case, legal notice was emnated within jurisdiction of District Consumer Forum Mahaboobnagar and reply sent by petitioner was also received by complainant within terrotorial jurisdiction of Mahaoobnagar - Therefore District Consumer Forum at Mahaboobnagar has terrotorial juisdiction to entertain consumer dispute - Writ petition, dismissed. **Dr.B.Mohanlal Naik Vs. District Consumer Forum Mahaboobnagar 2009(2) Law Summary (A.P.) 47 = 2009(4) ALD 559 = 2009(2) APLJ 21 (SN) = 2009(3) ALT 634.**

—Secs.12, 13, 16 & 17 - A Circular issued by Andhra Pradesh State Consumer Redressal Commission to file a certificate, in case against a Firm or a Company, from Registrar of Firms of Registrar of Companies, as case may be, showing names of partners or directors as well as memorandum of association and the articles of association was upheld by the High Court Bench on 09-02-2011 and taking same into account, a detailed order Dt. 05-09-2011 was passed by Bench which heard this case, expressing view that the order in WP. No. 2545 of 2011 requires reconsideration - Since both Benches were of same strength, matter is placed before Full Bench - Held and, circular would place a complainant before a forum, in a more disadvantageous and difficult situation, than a plaintiff in an ordinary suit before a civil court - When intention of Parliament was to provide a speedy and simple remedy in comparison to a suit, step taken by the State Commission making proceedings more stringent cannot be sustained therefore, circular is ultra vires the Act and the same is set aside. Writ Petition Allowed. **P.Saraswathi Devi Vs. A.P. State Consumer Redressal Commission 2014(3) Law Summary (A.P.) 161 = 2014(6) ALD 211 = 2014(6) ALT 1.**

—Secs.12 & 21 - Appellant's father took insurance Policy for Rs.7 lakhs in name of appellant covering death, permanent total disablement, loss of two limbs or two eyes, one limb and one eye caused by accident - While appellant playing outside his house fell down and sustained injuries in right portion of his head and right eye and on account of injury caused to his right eye, appellant suffered total loss of vision and severe loss of hearing in both ears - Appellant filed complaint through his father for award of compensation of Rs.7 lakhs - After receiving Report of Medical Board, State Commission dismissed complaint on ground that there is no total loss of vision in right eye and that loss of vision could have been caused by fall while playing and that there is no definite opinion regarding loss of vision in Report given by Medical Board - In the Appeal filed by appellant National Commission also opined that Statement made by appellant about loss of hearing was falsified by record of maternity hospital which revealed that child was hard of hearing since birth - In this case, unfortunately

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both Consumer fora did not bother to carefully go through report of Medical Board and State Commission and National Commission committed serious error by dismissing complaint of appellant by assuming that his right eye was afflicted which decease of Phisis bulbi and same was cause of loss of vision - Sufficient evidence produced by appellant before State Commission to prove that he had an accidental fall and as result of that right side of his head and right eye was injured - State Commission and National Commission committed serious error by rejecting appellant's claim - Impugned orders passed by State Commission and National Commission are set aside - Respondent/ Insurance Company directed to pay compensation of Rs.7 lakhs to appellant with interest - Appeal, allowed. **Sandeep Kumar Chourasia Vs. D.M. New India Insurance Company Ltd. 2013(2) Law Summary (S.C.) 71.**

—Sec.13(4) - **CIVIL PROCEDURE CODE,** Or.9, Rule 9 & Or.26, Rule 9 - District Forum allowed Application for appointment of Advocate Commissioner to note down physical features with assistance of civil engineer - State Commission dismissed Revision filed by petitioner - Petitioner contends that under provisions of Consumer Protection Act, no such powers, as are exercisable by civil Court, are available to authorities under Act - Or.26, of CPC is not extended to authorities under Act - Except those provisions of CPC mentioned u/Sec.13 (4) of Act, no other provisions of Code can be applied to Consumer Fora under Act - If really legislature intended to provide for applicability of entire Or.26 of Code, it could have said so instead of confining itself to issuance of commission only for purpose of examination of witnesses - Invoking provisions under Or.26, Rule 9 of Code and seeking appointment of Advocate-Commissioner to make local inspection along with civil engineer and submit a report etc as ordered by District Forum and as approved by State Commission - Unsustainable - Writ petition, allowed. **Sivashakthi Builders Vs. A.P.S.C.Disputes Redressal Commission 2009(1) Law Summary (A.P.) 269 = 2009(2) ALD 589 = 2009(3) ALT 266 = AIR 2009 AP 84.**

—Sec.14(1)(f) - **"Unfair trade practice by Ayurvedic Doctor"** - Appellant approached 1st respondent/Doctor on seeing advertisement published in news paper for treatment cure to fits and paid amount towards consultancy charges and costs of medicine for one year - Despite medicines being given regularly condition of appellant's son deteriorating day by day, though appellant administering medicines to her son as per instructions of 1st respondent/Doctor - 1st Respondent advised complainant to bring her son again and continue treatment for three years - Since condition of her son worsned she consulted doctor who originally treated her son and was informed that there was no hope of her child becoming normal - Subsequently on enquiry as nature of medicines prescribed by 1st respondent to her son it is revealed that medicines given by 1st respondent not meant for children and that 1st respondent was passing off Allopathic medicines as Ayurvedic medicines and that 1st respondents is a quack and guilty of medical negligence, criminal negligence and breach of duty as he was playing with lives of innocent people without understanding decease and prescribing Allopathci medicines for which he was not competent to prescribe - Hence

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appellant filed complaint with a prayer to issue direction to respondents to pay Rs.20 lakhs as compensation and Rs.10 lakhs for undergoing termination of pregancy as advised by respondent - Medicines were sent to appropriate laboratory and obtained Report that medicines were Allopathic medicines - After hearing parties and on perusal of Report of Laboratory, National Commission held that 1st respondent having made false representation was guilty of unfair trade practice with a view to curb such false representation and to restore faith in people in Ayurvedic system, National Commission passed direction to pay compensation of Rs.5 lakhs and out of said amount Rs.2.5 lakhs to be deposited in favour of Consumer Legal Aid account of National Commission - Appeal filed by complainant challenging quantum of compensation - Since both appellant and her son suffered physical and mental injury due to misleading advertisement, unfair trade practice and negligence of respondents they are entitled for enhanced compensation of Rs.15 lakhs - Appeal, allowed. **Bhanwarkanwar Vs. R.K. Gupta, 2013(2) Law Summary (S.C.) 40 = 2013(4) ALD 100 (SC) = 2013 AIR SCW 3047.**

—Sec.17 and 19 – **CONTITUTION OF INDIA,** Art.226 – **REGISTRATION ACT, 1908,** Sec.17(1)(b) and 49 – STAMP ACT, 1899, Sec.36 – Admissibility of unregistered and unduly stamped GPA-cum-JDA - State Consumer Disputes Redressal Commission allowed unregistered document as exhibit – Petitioner contended decision of State Commission to allow 2nd respondent to mark the unregistered document is contrary to law laid down by Apex Court - If aggrieved against orders of State Commission, remedy is to approach National Commission and not to invoke the jurisdiction of High Court under Constitution - Held, petition is not maintainable u/Art.226 of Constitution of India, since effective and efficacious remedy available under the Act of 1986. **IVRCL Assets & Holdings Vs. A.P. State Consumer Disputes Redressal Commission 2014(2) Law Summary (A.P.) 207 = 2014(4) ALD 1 = 2014(5) ALT 93.**

—Sec.21(1) & 23 - **"Medical negligence"** - Respondent/complainant, employee in a Bank while going on his bicycle was hit by motorcycle leading to an injury to his leg - Surgery performed by appellant/doctor on injured leg as per choice of surgery chosen by respondent/complainant - Complainant gave lawyer notice to appellant/doctor, alleging negligence and deficiency in service, as simple fracture had got displaced to a more complicated one, on account of mishandling by hospital staff and calling for compensation of Rs.3 lakhs - Appellant/Doctor denied all allegations - State Commission dismissed complaint holding that there had been no negligence or deficiency in service on part of appellant and respondent, complaint not able to prove mishandling by hospital staff - National Commission opined that fact, only a few days after hemiarthroplasty, respondent had developed an infection, clearly showed negligence at hands of attending doctors with result that respondent, complainant had perforce to undergo total hip replacement and therefore total amount of Rs.5.5 lakhs awarded as compensation - In this case, from a reading of order of Commission that it proceeded on basis that whatever had been alleged in complaint by respondent was in fact inviolable

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truth even though it remained unsupported by any evidence - Onus to prove medical negligence lies largery on claimant and that this onus can be discharged by leading cogent evidence - A mere averment in complaint which is denied by other side can, by no stretch of imagination, be said to be evidence by which case of complaint can be said to be proved - It is obligation of complainant to provide *facta probanda* as well as *facta probantia* - Negligence in context of medical profession necessarily calls for a treatment with a difference - To infer rashness or negligence on part of professional, in particular a doctor, additional considerations apply - A case of occupational negligence is different from one of professional negligence - A simple lack of care, an error of judgment or an accident, is not proof of negligence on part of medical professional - So long as a doctor follows a practice acceptable to medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available - Respondent's complaint, dismissed - Appeal, allowed. **Dr.C.P. Sreekumar, M.S. (Ortho) Vs.S. Ramanujam2009(2) Law Summary (S.C.) 138 = 2009(5) ALD 93 (SC) = 2009(4) Supreme 573 = 2009 AIR SCW 3878.**

- Sec.23 - **COMPANIES ACT, 1956** - Settled rule of interpretation that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences - In other words, when a language is plain and unambiguous and admits of only one meaning, no question of construction of a statue arises, for the Act speaks for itself - Equally well-settled rule of interpretation is that whenever the NOTE is appended to the main Section, it is explanatory in nature to the main Section and explains the true meaning of the main Section and has to be read in the context of main Section - This analogy, equally applies while interpreting the words used in any contract. **United India Insurance Company Ltd. Vs. Orient Treasures Pvt. Ltd. 2016(1) Law Summary (S.C.) 10 = AIR 2016 SC 363 = 2016(2) ALD 157 (SC).**

—Sec.23 - **EVIDENCE ACT,** Sec.45 - "Medical negligence" - Expert opinion and evidence - Admissibility - Appellant/complainant, Teacher aged 60 years patient of "Dorsol Cord Compression D4-D6 pott's spine", got operated by 2nd respondent and since problem aggravated 3rd respondent conducted second operation and though third operation provided some relief, but left him handicapped due to his legs being rendered useless and loss of control over his Bladder movement - Hence appellant filed complaint before National Commission claiming that there is gross negligence and carelessness on part of respondents in treating complainant/appellant and therefore respondents be directed to pay Rs.22 lakhs - EXPERT OPINION - Law of evidence is designed to ensure that Court considers only that evidence which will enable it to reach a reliable conclusion - Sec.45 of Evidence Act which makes opinion of experts admissible, lays down, that real function of expert is to put before Court all materials, together with reasons which induce him to come to conclusion, so that Court, although not an expert, may form its own judgment by its own observation of those material - "Mere assertion without mentioning

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data or basis is not evidence, even if it comes from expert - Where experts give no real data in support of their opinion, evidence even though admissible may be excluded from consideration as affording no assistance in arriving at correct value" - In present case, appellant filed all records of statement before Commission - Asst. Registrar due to over sight, did not send original records and X-ray films to expert - Commission while rendering its judgment has failed to appreciate that in such cases expert would not be in a position to form a true opinion if all documents pertaining to matter, on which opinion is desired, or made available to him - Appellant brought to notice of National Commission lack of care shown by Asst. Registrar who had failed to forward records of treatment to expert, by filing Application before Commission and that Application rejected by Commission holding that reconsideration of expert opinion at this stage is not necessary - Registrar of Commission is directed to forward all records of treatment filed by appellant before Commission with a request to give his expert opinion on basis of records of treatment - After receipt of expert opinion Commission is requested to pass fresh orders in accordance with law - Impugned order, set aside - Appeal, allowed. **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. 2009(3) Law Summary (S.C.) 133 = 2009(6) ALD 119 (SC) = 2009(6) Supreme 535.**

—Secs.27 & 24, 25, 27-A, 19 &17 (a) (i) - **"Penalties"** - Respondents/purchasers of residential Apartments filed complaints before State Commission alleging that petitioner/ Company failed to complete Project and seeking direction for refund of amount advanced by them together with interest - Since State Commission allowed complaints petitioner preferred appeals before National Commission which are pending - Respondents filed Application u/Sec.27 of CP Act before State Commission with prayer to punish petitioner's for its failure to comply with orders of State Commission in which State Commission initially directed notice to writ petitioner and subsequently bailable warrants were issued for ensuring personal appearance of petitioner - National Commission allowed Revision petitions filed by Petitioners challenging orders of State Commission - Subsequently writ petitioners filed Applications before State Commission raising objection as to very maintainability of proceedings under Sec.27 of Act and praying to reject all applications filed u/Sec.27 as not maintainable - Respondent raised objection as to maintainability of writ petition on ground that alternative remedy of appeal is available u/Sec.27 of Act and that petitioner cannot invoke jurisdiction of High Court under Article 226 of Constitution of India - Petitioner contends that remedy of appeal u/Sec.27-A of Act is available only against order passed u/Sec.27 and such order has not yet been passed in present case and therefore remedy of appeal u/Sec.27-A of Act cannot be availed by petitioner at this stage - Admittedly in this case, since no final orders passed and as such on petitions filed by respondents u/Sec.27 of Act, question of appeal u/Sec.27-A does not arise at all - Hence preliminary objection raised on behalf of respondents cannot be accepted - Penal proceedings u/Sec.27 of Act cannot be allowed to be taken recourse to even before order of District Forum or State/National Commission attains finality merely on ground that Act provides for speedy and simple redressal to consumer dispute - In fact language of Sec.24 of Act is plain and unambiguous

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and makes it clear that order of District Forum or State/ National Commission shall be final only, if no appeal has been preferred against such order - In light of Sec.24, it can be safely concluded that penal proceedings u/Sec.27 of Act cannot be entertained while appeal is pending before State/National Commission - Petitions filed by respondents u/Sec.27 of Act cannot be entertained in this Stage and that State Commission has no jurisdiction to entertain and proceed with E.As filed by respondents u/Sec.27 of Act - Impugned orders passed by State Commission being without jurisdiction liable to be set aside - Writ petitions, allowed. **Maytas Properties Ltd. Hyd. Vs. A.P. State Consumer Disputes Redressal Commission, 2013(1) Law Summary (A.P.) 234 = 2013(3) ALD 561 = 2013(3) ALT 220 = AIR 2013 AP 93.**

—Secs.27-A, 17 (1) (b) and 21 (b) - **CRIMINAL PROCEDURE CODE,** Secs.397 & 32 - Complainants obtained orders from District Forum against opposite party for payment of maturity value of fixed deposits along with interests and costs - Since petitioners/opposite parties failed to comply with order, penalty petitions filed before Forum u/Sec.27 - Since petitioners/opposites did not attend even after receipt of notices, District Forum issued NBWs and PT Warrants - Petitioner/opposite party filed revision petitions u/Sec.397 for setting aside orders taking cognizance of penalty petitions and issuing summons - When there is right of appeal provided by Statute against any order made by District Forum to State Commission, any order made by State Commission to National Commission and any order made by National Commission to Supreme Court, petitioners/opposite parties cannot circumvent law and approach High Court by way of revision petitions u/Sec.397 Cr.P.C - Sec.27-A of Act takes away remedies under general criminal law against any order passed by either District Forum or State Commission or National Commission - That apart, Sec.27-A (2) of Act specifically debars any other appeal to any Court from any order of District Forum or State Commission or National Commission - Therefore present petitions u/Sec.397 Cr.P.C are not maintainable at all - Sec.27(2), as well as Sec.27A of Act make it more explicit that provisions of Cr.P.C have no applications u/Sec.27 of Act - Criminal revision cases, dismissed. **Venkataraya Enterprises Vs. District Consumer Disputes Redressal Forum 2010(2) Law Summary (A.P.) 375 = 2011(1) ALD (Crl.) 110 (AP) = 2010(3) ALT (Crl.) 120 (AP).**

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—Sec.2(b) - **A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008** - Petitioner is permanent Fair Price Shop dealer - His authorization was suspended by respondent No.1, on several allegations - Petitioner alleged that no inspection of his shop, no enquiry conducted before suspending authorization, and approached this Court by filing W.P.No.37203 of 2014 - Respondent No.1 personally appeared in Court on 15-12-2014 and admitted that he had committed a mistake in issuing said proceedings and requested Court to set-aside the same - This Court has accordingly set-aside said proceedings and allowed the Writ Petition, leaving

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respondent No.1 free to hold a detailed enquiry and pass a final order - Petitioner averred that in pursuance of said order of this Court, respondent No.1, restored his Fair Price Shop authorization and directed respondent No.2 to allot essential commodities to his shop from the month of January 2015 and that when he approached respondent No.2 requesting him to allot essential commodities to his shop, latter bluntly refused to allot stocks citing oral instructions from respondent No.1 not to allot stocks pursuant to proceedings - Petitioner further averred that respondent Nos.1 and 2 have willfully and intentionally disobeyed the order of this Court by refusing to supply essential commodities for the months of January and February 2015 to his shop and allotting same to another Fair Price Shop dealer - Held, in order to get rid of some dealers not to liking of the powers that be, Revenue Officials, such as respondents herein, appear have been acting to a set pattern by raising bogey of non-remittance of value of essential commodities by dealers - This tendency on part of Revenue officials is not only alarming but also distressing - This conduct constitutes official and moral delinquency on their part destroying fabric of rule of law and subverting judicial process - They being the public servants cannot allow themselves to be guided by extraneous reasons defiling the sanctity of the judicial orders - They are showing their ingenuity by adopting abhorrent tactics as a façade to mock at and defeat the judicial orders - The whole conduct they have been exhibiting is a subterfuge and when their bluff is called, they are not hesitating to mislead the Court by coming out with blatantly false versions - Such conduct on the part of the public servants like the respondents is perilous and pernicious to a civilized Society - This Court therefore feels that they do not deserve any leniency under the provisions of the Contempt of Courts Act, 1971 - For aforementioned reasons, the respondents are convicted u/Sec.2(b) of Contempt of Courts Act, 1971 for wilful violation of the order of this Court dated 15-12-2014 and sentenced to imprisonment for one month in civil prison and pay a fine of Rs.2000/- each, and in default, to undergo imprisonment for one week. **Tangirala Ramana Reddy Vs. M.Srinivasa Rao, R.D.O., Narasaraopet 2015(3) Law Summary (A.P.) 368**

—Secs.2 (b),12 & 13(a) - **A.P. MUNICIPALITIES ACT,** Sec.194A(1)(b) - **WRIT PROCEEDINGS RULES,** Rule 21 - Contempt case filed against 1st respondent and 2nd respondent, Principal Secretary and Director of Municipal Administration for willful disobedience of orders of Court - 4th respondent/Commissioner by entering into needless correspondence with 2nd respondent has successfully dragged on matter for nearly a year from when order was passed till contempt case was admitted by High Court - His failure to act with prompatitude, and resorting dilatory tactics as hindered due course of justice - CONTEMPT OF COURT - In contempt proceedings Court is both accuser and judge of accusation - It should act with circumspection making allowances for errors of judgment and difficulties - Punishment under Law of Contempt is called for when lapse is deliberate and in disregard of one's duty and in defiance of authority - Power of contempt is not intended to be exercised as a matter of course

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- Courts should not feel unduly touchy when they are told their orders have not been implements forthwith - Courts are expected to show judicial grace and magnanimity in dealing with action for contempt - APOLOGY - Acceptance and scope - Discussed - In this case, it is no doubt true that respondents/cotemnors have expressed apology and 1st respondent issued circular directing all Municipal Commissioners in State regarding public auction of Municipal property - Respondents 1 and 2 have directed 4th respondent to disobey order of this Court - A mere statement made by contemnor before Court that he apologizes is hardly enough to amount to purging himself of contempt - An apology is not intended to operate as universal panacea, it is not a weapon of defence forged to purge guilty of offence - "Apology" tendered by respondents is neither a product of remorse nor is there any evidence real contrition on their part - It is but lofty expression used only to avoid being committed for contempt - Accepting such an apology, in facts of present case, would result in contemnors going scot free after committing gross contempt of Court - SEC.2(B) "CIVIL CONTEMPT" - CONDITIONS - DISCUSSED - A person can be held to have committed civil contempt there must be a judgment, decree direction, order, writ or other process of a Court (or an undertaking given to a Court) ii) there must be disobedience to such judgment decree direction order writ or other process of Court, or breach of undertaking given to a Court iii) such disobedience of judgment etc., must be willful - Civil contempt arises where power of Court is invoked and exercised to enforce obedience to orders of Court - Mere disobedience is not enough to hold a person guilty of civil contempt - If a party who is fully in know of order of Court, or is conscious and aware of consequences and implications of Court's order ignores it or acts in violation thereof, it must be held that disobedience is wilful - "Willful" means an act or omission which is done voluntarily and with specific intent to do something law forbids or with specific intent to fail to do something law requires to be done, that is to say with purpose of either disobeying or disregarding law - Element of willingness is an indispensable requirement to bring home charge within meaning of act - In purposes of judging "civil contempt" intention or *mens rea* is not relevant - Question is only whether breach was on account of willful disobedience that is whether it was not causal or accidental or intentional - Effective administration of justice would require some penalty for disobedience to order of Court if disobedience is more than causal, accidental or intentional - Respondents 1,2 & 4 are sentenced u/Sec.12(3), r/w 13(a) of Contempt of Courts Act - Respondents shall be detained in civil prison for a period of 15 days and shall pay a fine of Rs.2000 each. **B.Krishna Reddy Vs. Pushpa Subrahmanyam, 2011(2) Law Summary (A.P.) 46 = 2011(3) ALD 1 = 2011(1) ALD (Crl.) 504 (AP) = 2011(6) ALT 73.**

—Sec. 2(c)(i) - Principal District Judge, forwarded to High Court letter dated 25.08.2014 addressed by Additional District Judge, to Superintendent of Police, relating to an incident that occurred on 15.08.2014 involving Sri Bandaru Madhava Naidu, MLA, Narsapur, who was stated to have abused the Additional District Judge, Narsapur, in connection with removal of hawkers from the encroached road side on the western

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side of Court complex - Additional District Judge, addressed a separate letter in this regard on 28.08.2014 to High Court - Bar Association, Narsapur, also submitted a representation to High Court on issue - Thereupon, Hon'ble Chief Justice directed District Judge to enquire into matter and report. Upon due enquiry, Principal District Judge, West Godavari, submitted report dated 19.09.2014 - An Office Note was then placed before the Hon'ble Chief Justice and matter was directed to be placed before this Bench on judicial side - This suo motu contempt case was accordingly registered - Held, this Court would have expected the respondent/contemnor to behave responsibly in keeping with his status as a people's representative and be suitably penitent - However, such is not the case as is clear from his affidavits wherein he approbated and reprobated but also offered an apology - As pointed out by Supreme Court in VISHRAM SINGH RAGHUBANSHI 5 , an apology can be accepted when it is given with a sense of genuine remorse and repentance and not as a calculated strategy to avoid punishment - An apology, as pointed out, should be a regretful acknowledgement for failure but not an explanation that no offence was intended coupled with expression of regret for any that may have been given - As the apology in present case is not bonafide and unequivocally falls in latter category, this Court is compelled to reject the same - This Court therefore hold respondent/contemnor guilty of committing criminal contempt as defined in Section 2(c)(i) of Act of 1971 - Considering totality of circumstances, trial Court impose upon him punishment of paying a fine of Rs.1,000/-(Rupees one thousand only) to Andhra Pradesh State Treasury within one month from date of receipt of a copy of this order. **In Re Sri Bandaru Madhava Naidu, Member of the Legislative Assembly, Narsapur, 2015(2) Law Summary (A.P.) 279 = 2015(4) ALD 453 = 2015(5) ALT 31 = 2015 Cri. LJ (NOC) 418.**

—Secs.10 & 12 – Petitioner filed contempt case against 1st respondent/ IAS Officer and others for not complying with orders of Court in accordance with law within period of three months – Since 1st respondent violated order of Court Notice Form-I issued to present in person and when he failed to present despite notice, bailable warrant issued to secure his presence – 1st respondent passed order after nine months after expiry of stipulated period and only after contempt case was admitted and notice in Form-I was served – WPMP seeking extension of time dismissed as same is filed only to avoid contempt proceedings - "Wilful disobedience" – Meaning - Wilful would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with terms of order – To establish that disobedience was wilful it is not necessary to show that it was contumacious in sense that there was direct intention to disobey order - In this case, failure on part of 1st respondent to comply with orders of this Court cannot be said to be casual, accidental or unintentional or for reasons of genuine inability to comply with terms of order – Hence it is held that disobedience of orders of this Court is willful – 1st respondent expressed his apology both in counter affidavit and in additional counter affidavit – An apology is not intended to operate as universal panacea – Apology tendered by contemnor, to be accepted by Court should be a product of remorse - Apology tendered by 1st respondent is neither a product of remorse nor is there any evidence of real

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contrition on his part – It is but an expression intended to avoid being committed for contempt – No reason to accept such an apology – Hence 1st respondent is guilty of contempt - If guilty are let off and their sentence remitted on grounds of mercy, people would lose faith in administration of justice – Court is duty-bound to award proper punishment to uphold rule of law, how so high person may be - There cannot be any laxity, as otherwise law Courts would render their orders to utter mockery – Law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope - Since 1st respondent is senior IAS Officer of Govt., that any punishment imposed by this Court may mar his career - In light of assurance given by him to appoint Officers to monitor implementation of orders of Court in time, it is wholly unnecessary to penalize him with imposition of fine - While 1st respondent is, undoubtedly guilty of contempt it is appropriate to impose any substantive sentence on him - 1st respondent is let off with severe warning. **B.Suguna Devi Vs. C.B.S. Venkata Ramana, 2008(3) Law Summary (A.P.) 170.**

—Sec.12 - Petitioner/landlady filed suit seeking eviction and for recovery of possession of suit schedule premises - Suit decreed - Appeal filed by respondent/tenant dismissed - In second Appeal filed before High Court Single Judge took Undertaking on record and granted time to vacate premises and to handover to vacant possession of same to petitioner landlord - Subsequently, in suit filed by petitioner/landlady against respondent and another respondent, filed Memo stating that he delivered possession to one Arif - Since respondent/tenant did not vacate premises in terms of Undertaking submitted before High Court, petitioner filed E.P in which respondent filed claim-petition through third party i.e. Arif - Hence petitioner filed present contempt case against tenant/ respondent for punishing him according to law for violating undertaking given to High Court in second Appeal - Respondent contends that as per undertaking given before High Court he vacated suit premises and in view of legal notice issued by Arif, he bonafidely believed sale transaction and memorandum of understanding between Arif and petitioner/landlady and delivered possession to Arif - According to respondent he had no intention to violate order and undertaking given before High Court and has great respect to judicial process and judicial system and submitted unconditional apology with open heart requesting to condone wrong committed by him genuinely believing version of Arif and therefore states that he complied with undertaking given before High Court - Petitioner/landlady contends that respondent did not vacate premises in terms of undertaking and respondent colluded with Arif and fabricated alleged agreement of sale - Since disputes were subsisting between her and respondent for not vacating premises and respondent being in possession, question of her delivering possession of property to third party does not arise and that respondent intentionally and deliberately violated order of High Court pursuant to undertaking given by respondent and therefore he cannot escape punishment under guise of unconditional apology and pleading innocence - Pursuant to undertaking furnished by respondent he has to handover vacant possession of premises to petitioner/landlady only and not to any other person - Merely because some civil proceedings initiated by third party, right

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of petitioner/landlady to file contempt case, cannot be taken away and that mere pendency of civil suit for specific performance filed by Arif does not debar petitioner from pursing her remedy and contempt of Courts case - Version of respondent is not only without basis but also palpably false - Respondent is guilty of contempt of Court punishable u/Sec.12 of Act - Since respondent-tenant is therefore found guilty of contempt of Courts for deliberately and intentionally violating orders passed by High Court and is sentenced to simple imprisonment for a period of six months - Apology is submitted by respondent/tenants rejected - Contempt case, allowed. **Saleemunnisa Begum Vs. Syed Hafeez 2011(3) Law Summary (A.P.) 261.**

—Sec.12 and **CONTEMPT OF COURTS RULES, 1980,** Rule 31 - Having admitted the fact that the enquiry notice was received by the petitioner only on 25-2-2014, respondent No.1 made a false claim that "plenty of opportunity" of personal hearing was given to the petitioner - Defence of respondent No.1 in contempt case is thus a mere subterfuge - What baffles this Court is when respondent No.1 received petitioner's reply on 25-2-2014 stating that he has received enquiry notice much after date fixed for enquiry has expired, respondent No.1 went ahead with passing of order on 3-3-2014 - It passes one's comprehension as to why respondent No.1 did not think it fit to hold an enquiry as directed by this Court, at least after 25-2-2014 - This conduct of respondent No.1 clearly demonstrates that he has shown scant respect for order of this Court and evidently acted at behest of respondent No.4 in Writ Petition with a pre-conceived mind that an order adverse to interests of petitioner must be passed without holding any enquiry - Instead of retracing his steps and taking remedial measures by requesting this Court to give him one more opportunity to comply with order of this Court, he has come out with a blatantly false plea that he has given petitioner "plenty of opportunity" - This conduct of respondent No.1 proves that he is not feeling remorse or penitence - By his conduct, respondent No.1 has seriously undermined majesty of this Court - Hence it is a fit case where he must be sentenced with simple imprisonment for a period of one week, besides a fine of Rs.2000/-. **S.Narsimha Rao Vs. P.Arun Babu 2015(1) Law Summary (A.P.) 233 = 2015(5) ALD 291 = 2015(3) ALT 268 = 2015 Cri. LJ (NOC) 210.**

—Sec.12(3) - **CONTEMPT OF COURT RULES. 1980,** Rule 32 (1) - **CONSTITUTION OF INDIA,** Art.215 - **A.P. S.C. (PUBLIC DISTRIBUTION SYSTEM) CONTROL ORDER, 2008** - Respondent/RDO kept petitioner's F.P. shop authorisation under suspension - High Court allowed writ petition filed by petitioner, quashing suspension order passed by respondent giving liberty to respondent to pass fresh order and in accordance with law - Petitioner approached respondent and submitted copy of the order in writ petition and requested for restoration of authorisation - Petitioner alleged that respondent claimed that he was directed by Minister hailing from their District to cancel authorisation and allot shop to person of Minister's choice and as such respondent issued notice for cancellation of authorisation and failed to restore authorisation before a fresh

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order was passed - Hence present Contempt Case - Petitioner contends that even though order of High Court was brought to knowledge of respondent, he has not restored petitioner's authorisation deliberately and willfully by claiming that District Minister wants replacement of petitioner - Govt. Pleader while conceding that quashing of suspension order entitle petitioner for restoration of authorisation before a fresh order was passed, however, action of respondent in not restoring authorisation of petitioner is not willful and deliberate, but is on account of bona fide mistake and that respondent has passed final order against which appeal was filed by petitioner which is pending before appellate authority - In this case, it appears that respondent is trying to take shelter from fact that petitioner handedover only a photo copy of order of High Court and not a certified copy and that receipt of certified copy, more than one month after his receiving photo copy, he has initiated action, which constituted sufficient compliance of order of High Court - Respondent failed to state whether he had doubted genuineness of photo copy of order of High Court and therefore he has not acted upon said copy and also failed to explain as to why he has not restored petitioner's authorisation, pending passing of fresh order - High Court cannot appreciate implied stand of respondent that he is not under obligation to act on photo copy of order of High Court until he receives a certified copy in due course - Such a stand if accepted, destroys efficacy of judicial orders and brings down dignity and majesty of Court in public esteem - Act of respondent in not restoring petitioner's authorisation constitutes deliberate and willful violation of order of High Court - Apex Court repeatedly held that upholding dignity and majesty of Court is very much essential for maintaining rule of law and preserve faith of people in judicial system - Stream of justice cannot be allowed to be polluted by unscrupulous elements to meet their personal ends - Judiciary being lost resort for vexed citizen, its dignity and decorum should always and at all times be protected - No mitigating circumstances found in favour of respondent to let him off serious act of contempt - Respondent has indulged in deliberate violation of order of High Court - Accordingly Respondent/RDO is held guilty of contempt and he is sentenced u/Sec.12(3) of Act and he shall be detained in civil prison for period of fifteen days besides paying fine. **Chada Ramulamma Vs. Sri Saranga Padmakar, RDO, Nalgonda 2011(2) Law Summary (A.P.) 233 = 2011(4) ALD 648 = 2011(5) ALT 19.**

—**CONTEMPT OF COURTS (Andhra Pradesh High Court)) RULES,1980,** Rule 5 - Exercising power u/Sec.10 of Act - Violation of order of Subordinate judge can be brought to its notice by a prescribed methodology and in case of any criminal contempt application has to be made by person with leave of Advocate General of State - Sec.10 of Contempt of Courts Act, 1971, confers power on High Court and not on any particular judge alone - Power can be exercised by Court only when lawfully instituted proceedings have been brought and not otherwise - Held, lower Court took up matter without any lawful conferment. **Kunam Raghava Reddy Vs. Shah Enterprises 2014(2) Law Summary (A.P.) 197 = 2014(5) ALD 230 = 2014(4) ALT 519.**

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—and **A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT** - "Violation of undertaking given to Court" - Petitioner/land lord owner of premises filed R.C for eviction of Contemnor/tenant - Rent Controller allowed eviction petition and ordered eviction of Contemnor - Chief Judge dismissed appeal filed by Contemnor granting two months time to vacate Schedule premises - High Court passed order permitting Contemnor to remain in possession for four months - Subsequently contemnor filed CRMP for enlargement of time, along with his sworn affidavit stating that as per orders of High Court he has filed his undertaking affidavit in R.C. before Rent Controller - Petitioner contends that except condition relating to deposit of rents, contemnor has violated all other conditions stipulated in order of High Court - Violation of undertaking given to Courts has to be treated as civil contempt - Courts must take serious view of conduct of contemners in committing breach of undertaking in view of growing tendency to trifle with Court's orders based on undertaking with impunity and that it would be travesty of justice if Courts were to allow such gross contempt to go unpunished without an adequate sentence - In present case, contemnor has abused process of Court by taking undue advantage of its benevolence shown, based on his counsel's undertaking that contemnor will vacate premises within period of four months and that contemnor has further abused process of Court by making false statement that he has filed undertaking before Rent Controller and that contemnor is totally remoreless for his contumacious conduct and that far from purging contempt, he continued to show his defiance - Vexed with attitude of contemnor, two counsel have stopped appearing leaving him to his fate therefore contemnor has committed blatant contempt of High Court - Therefore contemnor is committed for contempt and sentencing him to simple imprisonment for four months. **Abdullah, Hyderabad Vs. Mohd. Abdul Raheem, 2013(1) Law Summary (A.P.) 222 = 2013(4) ALD 10 = 2013(3) ALT 635.**

—Principle of Res judicata - Appellant herein is defendant and respondent herein is plaintiff in O.S.No.3459 of 2004 - According to plaintiff, he is the absolute owner of the plaint schedule property having got it from his mother through gift deed which was executed in pursuance of a memo of understanding - On the other hand, it is contention of defendant that this is common passage and there was finding in earlier proceeding about nature of very same suit property and therefore, that finding would operate as res judicata - Held, when executant has no right in property, beneficiary of document cannot get any better right - Existence of common passage was confirmed by mother of both parties and also plaintiff under Ex.A.4 and A.15 documents - When plaintiff claimed relief of declaration, burden is heavy on him to prove his right over suit property with cogent and convincing reasons - When there was an earlier finding in respect of same property, that was given in suits filed by plaintiff himself, his burden is more heavy - In order to get relief of declaration, plaintiff must plead and prove as to how nature of property is converted from jointness to absolute right and then only, he can overcome earlier finding with respect to nature of property - But here,

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plaintiff neither pleaded nor proved as to when this common passage is changed into absolute right to mother of both parties and therefore, plaintiff cannot get relief of declaration - Learned trial judge has rightly applied principle of res judicata to case on hand but lower appellate court on surmises and presumptions reversed such finding which in this Court view is not a correct approach - For these reasons, this Court view that lower appellate court has erred in reversing finding of the trial court with reference to the application of principle of res judicata, as such, findings of lower appellate court are to be set aside - When property is a common passage and even all the parties have equal rights, order of status quo would only convey that parties have to enjoy rights existing as on date of order and therefore, it cannot be treated as violation - For these reasons, this Court view that there are no merits in the contempt case and the same is liable to be dismissed - In the result, this Second Appeal is allowed and the judgment of first appellant Court is set aside and the judgment trial Court, is restored - In view of above findings and observations, Contempt Case is dismissed. **Sardar Balwanth Singh Vs. Sardar Bhagath Singh 2015(3) Law Summary (A.P.) 287**

—and **A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008** - Petitioner is authorized dealer of Fair Price Shop - As supply of Essential Commodities was stopped to her shop, she has filed WP.No.27332 of 2014 - Said Writ Petition was disposed of by this Court, on 16- 09-2014, with observation that so long as petitioner's authorization was valid and subsisting, respondents are bound to supply essential commodities to her fair price shop - Subsequently, one MBR claiming to be a card holder attached to petitioner's fair price shop, filed W.P.No.33679 of 2014, with allegation that though petitioner's fair price shop authorization was suspended, on strength of direction issued by this Court in WP.No.27332 of 2014, respondents are seeking to supply essential commodities to her shop - He has averred that, on 13-08-2014, respondent No.2 has suspended the petitioner's authorization and that therefore, the petitioner is not entitled to be continued as fair price shop dealer - This Court has disposed of said Writ Petition by Order, dated 11-11-2014, with observation that if the petitioner's authorization was suspended on 13-08-2014, unless said order was subsequently stayed by this Court or any other forum, she is not entitled to be continued as the fair price shop dealer Thereafter, respondent No.2 has issued the proceeding in Rc.No.264/2014 (B), dated 15-12-2014, whereby he has removed petitioner from fair price shop dealership and appointed fair price shop dealer of another village as incharge dealer - Feeling aggrieved by same, petitioner filed WP.No.39906 of 2014 - Held, respondents being public servants cannot be expected to ignore orders of this Court by raising a specious plea that they have not received order of this Court despite fact that they had knowledge of same - It is not pleaded case of respondents that they had any doubt about factum of disposal of WP.No.39906 of 2014 or its result or that they have, at any point of time, consulted Government Pleader's office for instructions before denying February quota to petitioner - From

CONTEMPT OF COURTS ACT, 1971:

these facts, irrestible conclusion that needs to be drawn is that respondents have willfully, consciously and deliberately violated order of this Court and they are liable for appropriate punishment - Background of case would clearly reveal that respondent No.2 has acted with malice against petitioner all through and this Court, upon rendering a clear finding that his conduct was wholly malafide, has even mulcted him with exemplary costs of Rs.10,000/- payable from his pocket - Viewed from this background, non-implementation of order of this Court for month of February, 2015, by him cannot be perceived as a bona fide lapse on his part - On contrary, his action suggests deliberate and designed attempts to overreach as many as two orders of this Court i.e., order passed in WP.No.27332 of 2014 and order passed in WP.No.39906 of 2014, out of which present Contempt Case arises - Hence, respondent No.2 is sentenced to simple imprisonment of one month and pay a fine of Rs.2,000/- - As regards respondent No.1, though he is equally guilty of deliberate violation of order of this Court, by not taking any action on receipt of notice from the petitioner on 02.01.2015 to implement order of this Court and wiled away his time till 27.01.2015 on jejune ground that he has received the order copy from the petitioner only on 24.01.2015, only mitigating circumstance in his favour is that on receipt of the order, he has addressed letter, dated 27.01.2015, directing respondent No.2 to implement the order of this Court. Hence, this Court inclined to impose lighter punishment on respondent No.1. Accordingly, respondent No.1 is sentenced to pay fine of Rs.2,000/ - - The Contempt Case is, accordingly, allowed. **T.Nagarathnamma Vs. G.Ram Murthy 2015(2) Law Summary (A.P.) 393 = 2015(5) ALD 307 = 2015(5) ALT 21.**

—Petitioners in W.P.No. 23641 of 2013 filed writ petition against respondents apprehending eviction from their huts - This court by order dt. 13-09-2013 directed respondent No. 2 to consider petitioners' applications for grant of house sites subject to their eligibility and communicate his decision to them within two months from date of receipt of said order and that till communication of such decision, respondents shall not disturb petitioners' possession if they are in possession thereof - After disposal of the said writ petition, another writ petition was filed by a registered union of washer men community that they were making representations to respondent Nos. 1 and 3 for grant of house site pattas, that for last 2 years 200 people occupied the land in D/600/1 of Adavitakkellapdu village, Summerpeta, Guntur Rural and are living with families by raising huts, that some of the members of the Union have filed W.P.No. 23641 of 2013 apprehending dispossession and this court, by order dated 13-09-2012 has directed respondent No. 3 to consider their applications for grant of house site pattas and not to dispossess them till a decision is taken and communicated to the petitioners; that on 05-10-2013 Kancharla Manikya Rao-respondent No. 6 and his wife came with goondas and threatened members of the Union to vacate the huts by claiming that respondent Nos. 3 and 5 have given them the said land; The court has disposed of the writ petition in favour of the petitioners to approach the competent civil court for appropriate relief against respondent No. 6 - Petitioners in

CONTEMPT OF COURTS ACT, 1971:

both the Writ Petitions have filed the respective Contempt Cases on the same day i.e., on 13-12-2013 - In C.C.No. 2233 stating that respondent No. 6 came to the land along with the Tahsildar, Revenue Inspector and the Village Revenue Officer along with goondas, damaged the huts with poclainer and when they tried to resist, the rowdy elements beat up residents of huts including women and children and threw out their utensils and caused damage to huts; that by their action they have disobeyed order dated 13-09-2013 of the Court and that on same day petitioner have lodged a complaint with Superintendent of Police, Guntur Urban - In C.C.No. 128, filed by the Union, it was averred that after their Writ Petition was disposed of on 11-12-2013 directing the Tahsildar not to dispossess the members of Union pending their representation for grant of house site pattas, the respondents came along with goondas to the land and beat the inmates and demolished 25 huts in deliberate disobedience of order dated 11-12-2013 - Held, assuming that huts were sought to be raised overnight, there was absolutely no necessity for Tahsildar to act in a high-handed manner of forcibly removing the huts - In such a situation, he could have followed the due legal procedure by initiating proceedings under the A.P. Land Encroachment Act, 1905 - As noted earlier, except his self-serving statement that huts were attempted to be raised overnight, the Tahsildar failed to place any evidence in support of said stand - Added to this, by making highly disparaging remarks on order passed by this Court which stood proved in absence of specific refutation of allegations leveled by the petitioners, Tahsildar has conducted himself in a manner unbecoming of a public servant - Even after a full-fledged enquiry, he has failed to justify his action of removing the huts despite the restraint order passed by this court in W.P.No. 23641 of 2013 – This court has therefore no hesitation to conclude that there were no bonafides whatsoever in action of the Tahsildar in removing huts on 6-12-2013 - The alleged unlawful interference by the Tahsildar and his subordinate staff on 11-12-2013 is the subject matter of C.C.No. 128 of 2014 - Tahsildar filed his counter affidavit wherein while admitting that when small huts, temporary in nature, were sought to be erected on 5-12-2013, they were removed by himself and his subordinate staff on 6-12-2013 - Statement made by the Tahsildar in his cross-examination reflects his contumacious attitude towards the order of this Court and the due process of law and the scant respect and regard he has for the rule of law - Tahsildar sought to project himself as a messiah of the Government property and appears to think that for protecting such property he can ignore the directions issued by this Court - Attitude of Tahsildar not only reveals his arrogance but also his lawless approach of indulging in blatant violation of the orders of the Constitutional Court - Despite this Court speaking its mind in unmistakable terms and restraining him from repeating his act committed on 6-12-2013, the Tahsildar had the temerity to evict members of the Union more than once - His action not only reflects his vengeful conduct towards persons in occupation of the land in question, but also his utter lack of respect for, nay, fear of violation of the orders of this Court - He has abandoned trepidation for vituperation, shunned discipline for brazenness and preferred confrontation to

(INDIAN) CONTRACT ACT, 1872:

conformance - This Court is thoroughly convinced that plea raised by contemnor that he has acted to protect the public property is a mere subterfuge and unconditional apology offered by him is only a bogey to extricate himself out of the contempt proceedings - Court also convinced that he has not shown real remorse or penitence for his despicable conduct - Even while taking the most liberal view, Court unable to find any mitigating circumstance to let off the contemnor - Had he indulged in isolated violation, Court would have unhesitatingly taken a lenient view against him - If the Contemnor, who is a public servant is let off with a lighter punishment, it sends the wrong signals to the society - This Court has no qualm of conscience in convicting and sentencing him for simple imprisonment for two months and to pay a fine of Rs. 2000/- as any lesser punishment would be a grave travesty of justice. **S.Venkateswarlu Vs. Tata Mohan Rao 2015(2) Law Summary (A.P.) 107 = 2015(4) ALD 771 = 2015(3) ALT 428.**

(INDIAN) CONTRACT ACT, 1872:

—-Sec. 23 - Held, No doubt specific relief Act provisions are not exhaustive, however, that does not mean even a suit of civil nature otherwise not falling within scope of Section 34 of the Specific Relief Act, won't lie for not impliedly or expressly taking away jurisdiction of a civil Court - It is not a contention either from written statement or grounds of appeal much less from any of expressions referred supra including of appellant of Binny supra to say there is a bar to civil suit - In Binny supra even in case of private bodies, it is not prone to writ jurisdiction much less to construe strictly application of Article 14 of Constitution of India or basic principles of natural justice, but for otherwise to govern by contractual terms and to consider scope of Section 23 of the Contract Act therefrom, if at all, opposed to public policy - Though it is one of contentions of appellants of contractual terms when equitably speak, either of employer and employee can invoke when employer invoked clause 16 and terminated with three month's notice, there is nothing to say opposed to public policy from facts and circumstances showing employee did not leave job all through after appointment by working hard and still employer terminated him and from that employee could not secure a suitable employment suffice to say, employer is in a dominant position in upperhand and exercised the discretion unjustly, that too, when employee has been sincerely working with clear track record with unblemished service and not even terminated for any misconduct and misdemeanor in course of his employment and that too so called entity issued termination order is not even entity that appointed as can be seen by keeping Exs.A.1 and A.4 in juxtaposition, besides same not even in dispute but for to say another sister concern to whom if at all transferred was not continuing there as was re-transferred back to the entity appointed i.e. D.3, apart from if at all to terminate is only by D.3,D.1 has no right undisputedly being an independently and separate entity to give order of termination, same is illegal and also opposed to public policy including contra to the terms of the clauses 1 to 16 of the contract of employment under Ex.A.1.

(INDIAN) CONTRACT ACT, 1872:

Thus, it is not even a case of specific plea of he could not be in some other avocation to get any means - Once that also requires consideration in arriving quantum of damages, even from possessing earning capacity not in dispute, even 50% therein as capacity of getting alternative source of earning taken consideration, what trial Court granted of Rs.20lakhs requires to reduce to Rs.10lakhs and but for that there is nothing to interfere with trial Court's decree and judgment by sitting against - Accordingly and in result, appeal is allowed in part by confirming order of termination as illegal and opposed to public policy and consequently from entitlement to reasonable sum as damages to be arrived by some guess work and from what trial Court arrived of Rs.20,00,000/- is excessive by reducing to 50% therein awarded towards damages Rs.10,00,000/- by confirming rate of interest awarded thereon. **Zee Entertainment Enterprises Limited Vs. Syed Inam 2016(2) Law Summary (A.P.) 162 = 2016(4) ALD 645 = 2016(5) ALT 479.**

—Sec.28 - **LIMITATION ACT,** Sec.44 - 'Insurance claim' - Repudiation - Respondent/ Insurance Company insured timber of appellant Company and policy issued - Timber washed away on account of heavy rains - Respondent/Insurance Company repudiated claim of appellant on pretext that policy had, in fact, been issued for a period of 8 months only and period of one year mentioned in policy was on account of typographical mistake - National Commission dismissed complaint as time barred - In this case it is apparent that as on date of flood, there was no insurance policy in existence or any commitment on behalf of respondent to make payment under policy - If policy of insurance provides that if a claim is made and rejected and no action is commenced within time stated in policy, benefits flowing from policy shall stand extinguished and any subsequent action would be time barred - Such a clause would fall outside scope of Sec.28 of Contract Act - Therefore Cl.6 (ii) of Insurance Policy is not hit by Sec.28 of Contract Act. **H.P. State Forest Company Ltd., Vs. United India Insurance Co.,Ltd., 2009(1) Law Summary (S.C.) 106 = 2009(2) ALD 33(SC) = 2009(1) Supreme 375 = AIR 2009 SC 1407.**

—Secs.56 & 16 **KERALA AKBARI ACT,** Sec.29 - "Doctrine of frustration of contract" - "Doctrine of fairness" – Explained - "DOCTRINE OF FRUSTRATION" - Doctrine of frustration excludes ordinarily further performance where contract is silent as to position of parties in event of performance becoming literally impossible - However, a statutory contract in which party takes absolute responsibility cannot escape liability what ever may be reason - In such a situation, events will not discharge party from consequences of non-performance of contractual obligations - In a case, in which consequences of non performance of contract is provided in statutory contract itself, parties shall be bound by that and cannot take shelter behind Sec.56 of Contract Act - "DOCTRINE OF FAIRNESS" - Doctrine of reasonableness or fairness cannot apply in a commercial transaction and it is not possible to equate a contract of employment with a contract to vend arrack - A contract of employment and mercantile transaction stand on different footing and it makes no difference when contract to vend arrack is between an individual and State, which is evident as follows.

(INDIAN) CONTRACT ACT, 1872:

". ……This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal or where both parties are businessmen and the contract is a commercial transaction."

In a contract under Akbari Act and Rules made thereunder licensee undertakes to abide by terms and conditions of Act and Rules made thereunder which are statutory and in such situation, licensee cannot invoke doctrine of fairness or reasonableness - Hence contention of appellant negatived - Appeal, dismissed. **Marry Vs. State of Kerala 2014(1) Law Summary (S.C.) 49 = 2014(1) ALD 1 (SC) = 2013 AIR SCW 6082 = AIR 2014 SC 1.**

—-Secs. 56 & 63 – "Waiver" and "frustration" of contract - Conduct of plaintiff Company, in this case demonstrates that more than two years of the agreement entered into, they did not think of waiving the clauses which required them to obtain the permission prior to proceeding with the sale deed - Only in November, 1979 (more than two years of agreement) they have informed the defendants that they are waiving the said requirement and are prepared to proceed with the transaction even though the permission to construct the theatre was not granted - In view of the above circumstances, this court feel that it is not a fit case where the plaintiffs can be said to have waived the requirement within a reasonable time so as to hold that he can call upon the defendants to complete the transaction even though the prerequisite condition is not fulfilled. Therefore, the contention of the appellant/plaintiff is unsustainable and the same is liable to be rejected as has been done by the trial court - Suit was rightly dismissed by the court below - There are no merits in the appeal and the same is liable to be dismissed. In the result, the appeal fails and the same is dismissed with costs. **Poorna Pictures Pvt. Ltd. Vs. Karimunnisa Begum 2015(1) Law Summary (A.P.) 320 = 2015(3) ALD 2 = 2015(3) ALT 82.**

—Sec.74 - **TRANSFER OF PROPERTY ACT,** Sec.55 - **STATE FINANCIAL CORPORATION ACT,** Sec.29 - "Forfeiture of earnest money" - Appellant/Corporation issued advertisement for sale of land of defaulting Unit - Respondent since became highest bidder, deposited earnest amount of Rs.2.5 lakhs - Inspite of specific request for apprisal regarding approve/authorised passage to factory, appellant issued letter to deposit balance amount of 25% of bid amount - Respondent not satisfied with the information furnished by appellant and did not pay balance amount - Hence appellant/ Corporation invited fresh Tender for sale of land and forfeited earnest amount of 2.5 lakhs deposited by respondent - Division Bench of High Court quashed and set aside order of Corporation forfeiting earnest amount and directed appellant to refund amount along with interest - Appellant contends that they cannot now permit respondent to wriggle out of a confirmed bid, on ground that there is no independent approach road to Unit and that appellant/Corporation are entitled to forfeit security amount in view of Cl.5 of terms and conditions for sale of property as contained in Advertisement - Respondent contends that judgment of High Court is self- speaking and is not open to challenge and that appellants cannot be permitted to take advantage of their own worng and that they have misled respondents in making a huge deposit for plot of land which was not suitable - In this case, respondent had deposited 2.5 lakhs on clear understanding that there would be an independent approach road to Unit - Without any independent passage plot of

(INDIAN) CONTRACT ACT, 1872:

land would be not more than an agricultural land, not suitable for development as a manufacturing Unit - Appellant/Corporation cannot be permitted to relay upon Sec.55 of T.P Act - Since Corporation fails to disclose to respondent material defect about non-existence of independent passage to property, appellant clearly acted in breach of Sec.55(1)(a) (b) of T.P Act - Appellants directed to refund forfeited amount to respondent with interest - Appeal, dismissed. **Haryana Financial Corporation Vs. Rajesh Gupta 2010(1) Law Summary (S.C.) 64.**

—Secs.160,161,167 & 171 - Plaintiff,Firm sent tobacco seed oil to third defendant Company for refining oil - 1st defendant APIDC seized 3rd defendant's premises and stock including tobacco seed oil belongs to plaintiff, since 3rd defendant failed to keep up payment schedule - Plaintiff also availed financial assistance from 2nd defendant/Bank - Since stocks not released, plaintiff approached High Court and on account of delay in complying with directions of High Court oil entrusted to 3rd defendant damaged to large extent and became unfit for use - Hence plaintiff filed suit for declaration of title and interest in goods entrusted to 3rd defendant and for consequential recovery of value of goods - Trial Court partly decreed suit, holding that plaintiff is having title to property in question, restricting suit claim to certain amount as plaintiff failed to establish that damage was on account of exclusive fault of defendants 1 and 2 - Hence, plaintiff filed present Appeal - Sec.167 of Contract Act deals with right of third person claiming goods bailed - If a person, other than bailor, claims goods bailed, he may apply to Court to stop delivery of goods to bailor and to decide title to goods - In this case, lower Court rejected plea of 2nd defendant/Bank that stocks of third party brought to premises of 3rd defendant creates a lien in favour of Bank and held that plaintiff is owner of goods which goes unchallenged, as no appeal has been preferred by Bank - Trial Court also determined value of goods which were attached and not released at instance of 2nd defendant/Bank, at Rs.9,45,600/- - Once trial Court decreed suit of plaintiff and held that it is owner of goods as 2nd defendant/Bank unlawfully kept goods with 1st defendant/Corporation by lodging a claim and failed to establish its right of lien over goods, bank has to compensate loss sustained by plaintiff to extent of value of goods - In this case, Cause of action is wrongful detention, is based on wrongful withholding of plaintiff's goods at instance of 2nd defendant/Bank and goods were converted into cash as per directions obtained by Bank - If it is found that Bank claim is wrongful and unjust it has to compensate loss as on date goods were seized or its value, as case may be - Appeal allowed decreeing suit of plaintiff against 2nd defendant/Bank for some of Rs.9,45,600. **Coastal Oil Mills, Ongole Vs. The APIDC, 2009(3) Law Summary (A.P.) 86 = 2009(6) ALD 41 = 2009(5) ALT 551.**

—Sec.171 - "Banker's lien" - Petitioner availed gold loan for certain amount from respondent, bank by pledging gold jewellery - Though petitioner paid entire loan amount with interest respondent/bank declined to return jewellery on ground that petitioner stood as guarantor for loan availed by one KKR - Hence present writ petition seeking

direction to respondent/Bank to return gold ornaments - Petitioner contends that said KKR paid excessive in loan account and filed case against respondent/Bank before DRT and that Bank has many more securities and mortgages of immovable properties against loan account of KKR - Respondent/Bank contends that petitioner has agreed under Cl.(7) of sanctioned terms that Bank shall have a lien on ornaments pledged in respect of other sums of money which borrower may be liable to pay Bank either solely or jointly with other person or persons and petitioner having stood as a guarantor to loan facility availed by said KKR, and since KKR is liable to pay certain amount to Bank, petitioner is liable to pay same and that therefore respondent/Bank justifies exercise of its lien over pledged gold ornaments, though Bank accepts liability under gold loan discharged by petitioner - In this case, petitioner as borrower under gold loan as well as in capacity as guarantor to other loan account of KKR has expressly agreed to Banker's lien over gold loan ornaments vide Cl.(7) of conditions of sanction of gold loan and Cl.(15) of deed of guarantee - Petitioner as borrower of gold loan account holding that Banker has lien u/Sec.171 of Indian Contract Act over pledged gold ornaments - Documents executed by petitioner and particularly Cl.(15) of gold loan and deed of guarantee respectively clearly disentitle petitioner from seeking relief prayed in writ petition - Writ petition, dismissed. **V.Srinadha Reddy Vs. Indian Bank, Chittoor 2011(3) Law Summary (A.P.) 319 = 2012(1) ALD 149 = 2012(2) ALT 49.**

—Sec.177 - **LIMITATION ACT,** Art.70 - Appellant/plaintiff filed suit for preliminary decree for redemption of plaint schedule ornaments pledged towards loans and directed defendants to return same - Defendant filed written statement stating that alleged pledge of ornaments is not true and suit is not maintainable - After considering evidence and record, Subordinate Judge dismissed suit of plaintiff - As per Sec.177 that redemption of pledged goods should be by payment of amount due and also additional expenses which has arisen from his default - It is duty of plaintiff to deposit said amount and seek for return of pledged goods - But, however, in this case, plaintiff instead of instituting suit for return of ornaments on deposit of amounts due has resorted to suit of settlement of accounts, which is not at all proper - No suit for settlement of accounts is maintainable and only remedy is to deposit money and seek for return of goods - Claim of plaintiff is not sustainable - Judgment and decree passed by lower Court - Justified - Appeal, dismissed. **Heerakar Baloji Vs. Kaleru Venkataiah, 2011(2) Law Summary (A.P.) 122 = 2011(3) ALD 678.**

—Secs.171 & 174 - Petitioner/Firm availed cash credit facility and also agricultural loan from respondent/Bank and created mortgage by deposit of title deeds towards security - Suit filed by respondent/Bank against petitioner settled by way of compromise before Lok Adalat - Since respondent failed to return title deeds, present writ petition filed stating that action of Bank in retaining title deeds as illegal and arbitrary - Respondent/Bank contends that it has got general lien on property despite settlement of cases, on ground that other loan transaction is yet to be settled and that Lok Adalat also upheld Bank's right of general lien and that u/Sec. 171 of Indian Contract Act Bankers have got right of

lien on goods held by Bank in normal course of Banking business unless there is contract to contrary - Banker's lien contemplated by Sec.171 as such is specific provision relating to Banker's lien and has an over riding effect on general provisions of Sec.174 which provide for relationship of pawnee and pawner in respect of pledged goods - Banker's lien will carry over to such pledges and Bank can retain pledged goods, if debtor has not cleared his amount in connection with another loan - Writ petition, dismissed. **Mohan Enterprises Vs. Andhra Bank 2008(1) Law Summary (A.P.) 95 = 2008(6) ALD (NOC) 99.**

CONTRACT SERVICE

—Though the initial period of contract expired, petitioner's services were continued and while rendering her service she tendered resignation to the post of Mentor on 28.05.2013 by sending email to the Director of the third respondent institution - However, within two days thereafter i.e., on 30.05.2013 she withdrew her resignation and sought leave for a period of one week from 03.06.2013 to 10.06.2013 - After expiry of leave, she submitted joining report on 10.06.2013 and she was permitted to join duty four days thereafter - She continued for remaining period of June and July 2013 - However, on 13.08.2013 she received intimation from Registrar of University accepting resignation of petitioner with effect from 01.06.2013 - The said letter was received by her on 27.08.2013 and she submitted a representation on 28.08.2013 seeking her continuance as Mentor - It was followed by another representation on 30.08.2013 - As no orders were passed, present Writ Petition is filed.

Held, learned Counsel for respondents placed reliance on Condition No.7 of letter of appointment dated 25.09.2009, which says that individual shall give one month advance notice or pay back three months salary, in case individual desires to leave University before contract period expires.

In letter of resignation dated 28.05.2013 she stated that she may not be attending college from June onwards and requested for consideration of same as advance intimation of resignation to her duties. - On 30.05.2013 she sent another mail stating that doctors advised her to take rest and she may not be attending duties in month of June and requested for not considering previous mail and specifically stated that she will be back to duties - In above circumstances and in view of law laid down by Apex Court, this Court has no hesitation to hold that communication of second respondent dated 13.08.2013 accepting resignation of petitioner is invalid and contrary to law, and same is, accordingly, set aside - Writ Petition is, accordingly, allowed. **G.Priyanka Vs. State of A.P. 2016(3) Law Summary (A.P.) 230 = 2016(6) ALD 703 = 2016(6) ALT 343.**

COMPASSIONATE APPOINTMENT

—**ENDOWMENT DEPARTMENT** - "Compassionate appointment" - G.O.Ms. No.1357, Revenue (Endowment I) Dept. Dt:18-7-2011 - Petitioner's father worked in R.2 Temple for 30 years and died in harness - High Court directed Commissioner Endowments

COMPASSIONATE APPOINTMENT

and 2nd respondent/temple to examine case of petitioner for offering him compassionate appointment for Junior Assistant Post - Commissioner rejected case of petitioner for compassionate appointment under his proceedings dt:22-2-2011 - Petitioner filed contempt case, alleging violation of interim order of High Court in W.P. - While matters stood thus, Govt., of A.P. promulgated G.O.Ms.No..1357 accepting recommendations of PRC Committee and extending Scheme of compassionate appointment which is available in Govt., to all employees of temples - Contempt case disposed of granting three months time to Commissioner to act on basis of G.O.Ms.No.1357 - Commissioner again rejected petitioner's claim for compassionate appointment on ground that appointments would be from date of issue of appointment order only - Petitioner once again approached High Court claiming that his mother, his younger brother and he were only dependents of deceased father and avered that they were still facing financial crunch owing to loss of bread winner and sought declaration that action of Commissioner in rejecting claim for compassionate appointment was illegal and contrary to object of G.O.Ms.No.37 - Joint Commissioner and Vigilance Officer, Endowments filed counter contending that petitioners brothers were employed in 2nd respondent temple as contract basis and petitioner was not eligible for compassionate appointment as they were earning members in family - 2nd respondent/temple filed separate counter stating that two of petitioners brothers were engaged in its service on contract basis contending that it is not true to say that there was no earning member in family as contended by petitioner - Petitioner contends that authorities were resorting to selective discrimination, by appointing persons of their choice on compassionate grounds - Long and chequered history of present case, reflects callous indifference of Commissioner in implementing orders of High Court in their true spirit - In this case, various orders of compassionate appointment, placed on record by petitioner, indicate that Commissioner was quite generous in allowing such appointments earlier and that Commissioner permitted 2nd respondent/temple also to resort to such compassionate appointments since 2006 - In this case, despite tolerance shown by High Court in face of persistent and intractable stance of Commissioner in time and again searching for ways and means to reject petitioner's case, and he now states that case of petitioner cannot be considered as G.O.Ms.1357 is prospective in nature as clarified by Govt., in its Memo dt; 15-11-2011. **-** Stangely, inspite of various orders passed by High Court in petitioners case, Commissioner remains defiant and headstrong - Pick and choose method adopted by Commissioner, in permitting compassionate appointments in cases of his liking while pressing to service one feable reason or other to deny others identically situated, cannot be countenanced - Such action reeks of patent arbritraness and his anathema to Rule of law - Impugned proceedings of Commissioner are set aside - Respondents directed to provide compassionate appointment to petitioner in post of Junior Assistant in respondent/temple - Writ petition, allowed. **K.Brahmaiah Vs. Commissioner, Endowment Department, Hyderabad 2012(3) Law Summary (A.P.) 64 = 2012(6) ALD 20.**

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—Secs.2, 155, 156(3),190, 200, 460 & 482 - INDIAN PENAL CODE, Secs.463, 464 & 465 - *"Cognizance of offence and non-cognizance of offence"* - *"Forgery"* - Complaint filed for offences of forgery and making false document under provisions of IPC - Magistrate referred matter by invoking provision u/Sec.156(3) - Investigating Agency registered FIR for said offences arrested accused and filed final report - Hence present petitions filed to quash proceedings - Petitioners contend offence u/Sec.465 being non-cognizable offence reference made by Magistrate u/Sec.156(3) Cr.P.C instead invoking provision u/Sec.155 Cr.P.C. is erroneous and that Investigating Officer should not have arrested accused in non-cognizable offence without obtaining warrant from competent Court and after investigation, filing of Report before concerned Court not amounts to complaint since it is Police Report and that cognizance taken by Magistrate is erroneous and illegal and liable to be quashed - Sec.155 Cr.P.C. mandates Police Officer, on receipt of complaint for non-cognizable offence, refer informant to Magistrate and further mandates Police Officer to investigate a non-cognizable offence with order of Magistrate having jurisdiction - In this case, no order was passed by Magistrate for investigation since complaint is filed by complainant by invoking provision u/Sec.200 Cr.P.C. - Sec.190 Cr.P.C. empowers Magistrate to take cognizance not only of offences come under category of cognizable offence and also of non-cognizable offence and no specific bar is mentioned in said chapter - Sec.155 Cr.P.C. speaks about power of Police to proceed on information - Sec.156(3) Cr.P.C. clearly indicates that on receipt of reference by Magistrate, Police Officer have power to investigate, hence forwarding of complaint by Magistrate u/Sec.156(3) in a non-cognizable offence that too in a pre-cognizance offence stage does not cause to any prejudice to petitioners - Said act of Magistrate cannot be held to be illegal - As far as arrest of accused by Police Officer in non-cognizable offence is concerned, it is not only erroneous but also illegal - In present case arrest of petitioner is highly illegal but at same time High Court cannot pass any orders to ventilate grievance of petitioner for said act by invoking provision u/Sec.482 Cr.P.C. - Petitioners are always at liberty to seek their remedy in appropriate forum by invoking appropriate provisions - Petitioners contention that filing of charge-sheet before concerning Court cannot be called as a complaint, as such Magistrate has no power to take cognizance is unsustainable - As far as Sec.465 IPC is concern, there is no specific bar to take cognizance by Magistrate on basis of Police Report - u/Sec.460 Cr.P.C sub-sec.(e) makes it very clear that cognizance taken by Magistrate not empowered will not vitiate proceedings - Thus present complaints are not liable to be quashed - Criminal petitions, dismissed. **V.K.Rudrama Devi Vs. The State of A.P. 2012(2) Law Summary (A.P.) 200 = 2012(2) ALD(Crl) 101 (AP).**

—Secs.2(d), 2(g), 154, 157, 40, 41,41A, 41B, 160 and 161 - Petitioner, Managing Director of a Company is directed to appear before D.S.P of Police CID with all relevant documents and connected papers in person - In this case, except impugned

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notice, petitioner was not furnished either with a copy of directions alleged to have been issued by 1st respondent/Addl. Director General of Police, CID, to 2nd respondent/ DSP or with copies of alleged complaint.

"The point that falls for consideration in this writ petition is whether 1st respondent has power to investigate in to a cognizable offence without registering a case, as required u/Sec.154 of Cr.P.C - In other words, whther 1st respondent or Police can conduct enquiry before investigation to ascertain truth or otherwise of allegations made in complaint?".

Petitioner contends that without registering a case, Police have no power to conduct an enquiry before investigation and admittedly no case is registered against any person so as to summon any person for examination including accused, and hence impugned notice is liable to be quashed - Respondents 1 & 2 contend that Petitioner was called as a witness to speak about allegations in complaint and that 1st respondent has got power u/Sec.41A of Cr.P.C to do so and therefore impugned order needs no interference by High Court - Respondents 3 to 6 contend that Cr.P.C does not expressly bar a Police Officer, muchless 1st respondent, from making a preliminary enquiry as to ascertain truth or otherwise of allegations in complaint and that as Police got power to investigate into matter, there are no grounds to interfere with impugned order - CONDITIONS RELATING TO RECORDING F.I.R - Stated - First Information of Commission of cognizable offence is enough to constitute FIR - Object of FIR from point of view of informant is to set criminal law into motion, and from point of view of investigating authorities, is to obtain information about alleged criminal activity so as to enable to take suitable steps for tracing and bringing to book guilty person - Therefore, condition which is *sine qua non* for recording First Information is that there must be an information and that information must disclose a cognizable offence before an Officer in-charge of Police Station satisfying requirement of Sec.154(1) - "Investigation" - "enquiry" - Defined - For commencement of investigation in a cognizable offence by Police Officer two conditions are satisfied viz., firstly Police Officer should have reason to suspect commission of cognizable offence as required u/Sec.157(1) Cr.P. C and secondly Police Officer should satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts investigation into facts and circumstances of case, as contemplated u/Sec.157(1)(b) Cr.P.C. - Sec.2(g) Cr.P.C - word "Inquiry" - Defined - Term inquiry "as a wider conotation under Code - It includes every inquiry other than a trial - It refers to a judicial inquiry into a matter by Magistrate or Court - Inquiry relates to proceedings before a Magistrate prior to trial while investigation is confined to proceeding taken by Police or by any person other than Magistrate who is authorized in this behalf - Object of investigation is collection of evidence, and of an inquiry is taking of evidence for further action - Police have statutory power to investigate a cognizable offence without Magistrate's order - So, from definition of "inquiry " it is clear that Police have no power to conduct inquiry because it has to be conducted under Code by a Magistrate of Court" - As seen from impugned notice, it is clear that 2nd respondent proposed to examine

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petitioner as a witness and therefore contention of respondents 1 and 2 that source of power of 2nd respondent is from Sec.41A Cr.P.C cannot be accepted and it is wholly devoid of merit and untenable - And that power is available u/Sec.160 contained in Chapter XII of Cr.P.C which authrizes Police Officer making investigation to require attendance before him of any person appears to be acquainted with facts and circumstances of case - Power u/Sec.160 can be exercised by Police Officer after commencement of investigation - Therefore 2nd respondent has no authority to summon petitioner either under Secs.41A or 160 or 161 for examination - Impugned notice is liable to be set aside - Writ petition, allowed. **Parchuri Ramakoteswara Rao Vs.Addl.Director General of Police CID., 2012(3) Law Summary (A.P.) 15 = 2012(2) ALD(Crl) 498 (AP).**

—Sec.24 - Provisions of Remembrancer's Manual (L.R Manual) framed by Govt., of U.P - Mechanism for appointment of District Govt., counsel for civil, criminal and revenue Courts - Renewal or non renewal of term of District Govt., counsel and termination of their services - Stated - High Court issuing mandamus for renewal of term of respondents as District Govt., counsel (criminal) - While renewing term of appointment of existing incumbents, State Govt., is required to consider their past performance and conduct in light of recommendations made by District Judges and District Magistrates - Therefore High Court could not have issued a mandamus for renewal of term of respondents and other similarly situated persons and thereby frustrated provisions of L.R manual and Sec.24 Cr.P.C - Appeal allowed, impugned order, set aside. **State of U.P. Vs. Ajaykumar Sharma 2013(3) Law Summary (S.C.) 233.**

—Secs.24 & 24(8) - 1st respondent/Govt. of A.P appointed petitioner as Special P.P for Court of 1st Additional District Judge u/Sec.24(8) of Cr.P.C - On expiry of petitioner's term Additional P.P of III Additional District Judge was placed in charge of cases - In modification of arrangement, District Collector issued proceedings, continuing petitioner as such till new appointment is made - Subsequently 1st respondent/Govt., appointed 2nd respondent as Special P.P for said Court - Petitioner contends that he was chosen to deal with particular category of cases and that for past two years, he became acquainted and has handled them to substantial extent and as such appointment of 2nd respondent would be detrimental to interests of State and that there are serious procedural irregularities in appointment of 2nd respondent - 2nd respondent contends that mere fact that a panel was forwarded by District Judge even for appointment of Special P.P does not invalidate exercise and that stand taken by petitioner is not only vague but is self contradictory - In this case, term of petitioner expired and he was continued as in-charge till a new incumbent is appointed - 2nd respondent was appointed as Special P.P for period of three years under G.O. in which there is reference to proceedings of District Collector - Therefore it has to be presumed that appointment is with consideration of panel - Sub-section (3) to (6) of Sec.24 of Code, prescribe

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procedure for appointment of P.Ps to Districts - This includes preparation of a Panel of Advocates of particular standing by District Collector to Govt., in consultation with District Judge - Requirement is so mandatory that sub-sec(5) stipulates that Govt. shall not appoint an Advocate as P.P unless his name appears in Panel to be forwarded by District Collector - Though it is competent for 1st respondent/Govt., to appoint 2nd respondent as Special P.P, without calling for, or consideration of Panel, mere fact that such a panel existed does not, in any way, render appointment, illegal, for reason that though such procedure is mandatory for appointment of Special P.P., it is not prohibited - Being ultimate execute authority of State, 1st respondent can choose any mechanism to satisfy itself to arrive at a just and proper conclusion as long as step chosen by it not prohibited by law - Consultative process is not mandatory for appointment of P.P - Even where Panel is required to be forwarded discretion of District Collector to prepare a Panel in consultation with District Judge is almost unfettered, - it is not part of duty of District Judge to send report of assessment about an existing incumbent, either u/Sec.24 of Code or under G.O.MsNo.187 which prescribes procedure for appointment of Law Officers - Writ petition, dismissed. **B.Venkateswara Rao Vs.State of A.P. 2010(2) Law Summary (A.P.) 58.**

—Secs.24, 225 & 321 - "Power of State Government to appoint PPs and Additional PPs" - Crime registered against appellant by Police at Tamil Nadu - Appellant/accused filed petition seeking transfer of case to any other State alleging that he is being unnecessarily harassed by State of Tamil Nadu and that he would not get fair trial - Session Judge transferred case to Court of Sessions Judge Pondicherry - Appellant/accused filing petition before Sessions Court challenging appointment of Public Prosecutors by State of Tamil Nadu contending that PP appointed by Tamil Nadu has no right to conduct prosecution of sessions case pending before Pondicherry Court - Sessions Judge of Pondicherry passing order holding that Tamil Nadu State had not lost its right to appoint PP merely on account of transfer of case to Sessions Court at Pondicherry - High Court confirmed decision of Sessions Court - Purpose of transfer of criminal case from one State to another is to ensure fair trial to accused - In this case, main ground on which transfer of case was that action of prosecution agency had created a reasonable apprehension in mind of accused/appellant that he would not get justice if trial was held in State of Tamil Nadu - Public Prosecutor plays a vital role during trial of Sessions Case though Sessions Judge has got supervising control over entire trial of case, it is PP who decides who are witnesses to be examined on side of prosecution and which witness is to be given up - Tamil Nadu State Government can only appoint PPs and Addl. PPs u/Secs.24 to conduct prosecution and appeal in criminal Courts in respect of any case pending before Courts of Tamil Nadu and in respect of any case pending before Courts at Pondicherry, State Government of Pondicherry is appropriate Government to appoint PP - Expenses for conducting trial are to be born by State of Tamil Nadu - Impugned order passed by High Court, set aside - Appeal, allowed. **Subramaniam Vs. State of Tamil Nadu 2008(2) Law Summary (S.C.) 268.**

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—Sec.24,(4)&(5) - G.O.Ms.No.187, dt.16-12-2000, dealing with appointment and service conditions of Law Officers, Cl.5 (1) - 3rd respondent/District Judge sent panel of 6 Advocates to 2nd respondent/District Magistrate for appointment to post of Addl. Public Prosecutor, in which petitioner's name is shown at Sl. No.4 - District Magistrate in his turn included names of two advocates viz., 4th respondent and one other Advocate and requested 1st respondent, Govt., to appoint an Advocate from panel of 8 Advocates to post of Addl. P.P - Govt., issued G.O. appointing 4th respondent as Addl. P.P for period of 3 years - Petitioner contends that name of 4th respondent not recommended and included in panel sent by District Judge and hence District Magistrate without consulting District Judge included name of 4th respondent as was required under sub-secs.(4) & (5) of Sec.24 of Code and Instructions issued by Govt., in G.O.Ms.No.187 and as such orders issued by Govt., cannot be sustained - From provisions of Sec.24 of Code and Instructions issued by Govt., it becomes clear that District Magistrate shall in consultation with District Judge prepare pannel of names of persons, who in his opinion, are fit to be appointed as P.Ps or Addl. P.Ps - In matter making appointments to posts of PPs/ Addl.PPs, procedure as contemplated u/Sec.24 of Code particularly sub-secs.(4) & (5) thereof, has to be followed in letter in spirit - In instant case, despite name of 4th respondent having been refused to be included in pannel by District Judge, yet District Magistrate included his name in panel and recommended his case along with others for appointment to post of Addl. P.P - There was no consultation of District Judge by District Magistrate as was required u/Sec.24 and instructions issued by Govt. in G.O.Ms.No.187 and as such recommendations made by District Magistrate violative of statutory provisions - Orders issued by Govt. appointing 4th respondent as Addl. P.P based on illegal recommendations made by District Magistrate is sheer violation of provisions of Sec.24 and hence, set aside - Writ petition, allowed. **K.Nagappa Vs. State of A.P 2008(2) Law Summary (A.P.) 98 = 2008(2) ALD (Crl.) 148(AP) = 2008(3) ALT 129 = 2008(2) ALT(Crl.) 356 (AP) = 2008 Crl. LJ 2147.**

—Secs.24(7) & 24(8) - Power of State Govt., to appoint Special Public Prosecutor - Petitioners/accused facing in prosecution launched by State for causing death of deceased - State Govt. appointing one Advocate PSR as Special Public Prosecutor exercising powers u/Sec.24(8) of Cr.P.C, after entertaining representation submitted by wife of deceased - Petitioners contend that Special P.P may get carried away and consequently may not conduct prosecution in a just and fair manner as a true representative of State and they are apprehensive impartiality and fairness on part of Spl.P.P to conduct sessions case - A person to be appointed as a Public Prosecutor or as an Addl. Public Prosecutor u/Sec.24(6) such person is required to be in practice as an Advocate for not less than seven years and in matter of appointment of Spl. P.P a person who has been in practice as an Advocate for not less than ten years, as a Spl. P.P u/Sec.24(8) - Therefore statute has recognized a clear cut distinction between method and manner of making appointment of P.P with that of appointment procedure of Spl. P.P - Power conferred by sub(8) of Sec.24 is required to be exercised carefully, sparingly and cautiously - Very nature of appointment of Special P.P connotes great significance - It is not merely a professional challenge for person so chosen

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to act as Special P.P, but it also connotes a significant trust that is reposed in sense of impartiality and fairness in carrying on prosecution on part of chosen individual - State is bound to verify credentials of any individual, both professional and personal before narrowing down it's choice - Hence, request made by wife of deceased is not a factor to disentitle State from appointing PSR as Special P.P - Writ petition, dismissed. **Tharala Veerabhadram Vs. Govt. of A.P., 2010(3) Law Summary (A.P.) 43 = 2011(1) ALD (Crl.) 90 (AP) = 2010(3) ALT (Crl.) 352 (AP).**

—-Secs.70 & 71 - **CONSTITUTION OF INDIA,** Art.21 - "Issuance of non-bailable warrant" - Complaint filed against appellant practicing Advocate regularly attending Court, u/Sec.324 IPC - Chief Metropolitan Magistrate finding appellant to be absent issued non-bailable warrant against him - In present case, having regard to nature of complaint against appellant and his stature in community and fact that admittedly appellant was regularly attending Court proceedings, it was not fit case, where non-bailable warrant should have been issued by Magistrate - Attendance of appellant could have been secured by issuing summons or at best by a bailable warrant - In facts and circumstances of case issuance of non-bailable warrant was manifestly unjustified - In this case, respondent no.2 was aware that non-bailable warrant issued on account of failure on part of appellant to attend Court on particular date returnable only on particular date - Undoubtedly respondent no.2 was duty bound to execute warrant as expeditiously as possible, but there is no justifiable reason for urgency in executing warrant on a National holiday more so when it had been issued more than a week ago and even complaint against appellant was in relations to offence u/Sec.324 IPC - Unfortunate sequel of an unmindful action on part of respondent no.2 was that appellant practicing Advocate with no criminal history remained in Police custody for quite some time without any justification whatsoever and suffered unwarran-ted humiliation and degradation infront of fellow members of Club - In this case though conduct of respondent no.2 in arresting appellant ignoring this plea that non-bailable warrant issued by Court in a bailable offence had been cancelled deserve to be deplored, yet, strictly speaking action of respondent no.2 in detaining appellant on strength of warrant in his possession, perhaps motivated, cannot be said to be *per se* without authority of law - No other action against respondent no.2 is warranted and he has been sufficiently reprimanded - Any endorsement/variation which is made on such warrant for benefit of person against whom warrant issued or persons who are required to execute warrant, would not render warrant to be bad in law - What is material that there is power vested in Court to issue a warrant that power is to be exercised judiciously depending upon facts and circumstances of each case - No ground is made out warranting interference with impugned judgment of High Court imposing fine of Rs.2000 respondent on no.2 and therefore judgment of High Court confirmed - Appeal, dismissed. **Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra 2011(3) Law Summary (S.C.) 180.**

—Secs.82,83 & 482 - Case registered against accused u/Secs,120-B,147,148, 302/149 IPC - Since petitioner/A2 could not be apprehended even after obtaining non-bailable warrant as he was absconding, Proclamation issued by Magistrate u/Secs.82,83

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of Cr.P.C against petitioner - Petitioner contends that since proclamation did not give 30 days clear time for appearance of petitioner and giving only 5 days time for appearance before Magistrate from date of its publication, is illegal and that 30 days time prescribed u/Sec.82 is mandatory - Inherent power of High Court u/Sec.482 Cr.P.C can be exercised by High Court in three contingencies viz., a) to give effect to any order under Code or b) to prevent abuse of process of any Court or c) to secure ends of justice - In this case, instead of rushing to High Court, petitioner could have appeared before Magistrate in local Court - Due to failure of giving 30 days time as contemplated u/Sec.82 Cr.P.C, petitioner did not suffer any prejudice nor injustice - 30 days time prescribed in Sec.82(1) is not mandatory but is only directory - Criminal petition, dismissed. **K.Rama Krisha Vs. State of A.P. 2010(3) Law Summary (A.P.) 358 = 2011(1) ALD (Crl.) 129(AP) = 2011(1) ALT (Crl.) 1 (AP).**

—Secs.97 & 482 - "Search for persons wrongfully confined" - Wife and husband are estranged spouses are having two sons who are staying with mother - Husband allegedly visited house of parents of wife took away elder child - Wife filed petition u/Sec.97 of Cr.P.C to issue search warrant for production of minor son before Court - Magistrate dismissed petition filed by wife - Sessions Judge set aside finding of Magistrate and directed husband to handover custody of minor child to wife - Hence present Revision by husband - In this case, minor child who is subject matter already crossed 8 years of age and that under Mohammad Law mother would be entitled to custody till child crossed seven years only and that father would take priority to custody of child thereafter and that, as child is over 8 years old, mother cannot seek custody of child and that child is interested to stay with husband rather than wife - Further, in present case, that marriage between wife and husband already stood dissolved, and that wife married Unani Doctor and in fact handedover custody of other child to her relatives, so much so there is no justification for wife to insist upon custody of minor child - Wife contends when Court directed delivery of child to wife, it would be just and proper to insist upon complying with orders of Court and that Sec.97 Cr.P.C envisages that "the Court shall make such order as in circumstances of case seems proper" and that powers of Court are wide enough to order custody of minor child with mother rather than father and that order of revisional Court perfectly valid - Petitioner, father produced child and is examined in Chamber of Judge and that child claimed that he has been staying with his father and curiously stated that he did not have mother - Impugned order of Sessions Judge in revision petition, set aside and ordered that custody of child shall remain with petitioner/father. **Syed Siddiq Ahmed, Vs. State of A.P., 2013(1) Law Summary (A.P.) 28 = 2013(1) ALD (Crl) 394 (AP) = 2013 Cri. LJ (NOC) 539 = 2013(2) ALT (Crl) 178 (AP).**

—Secs.110(e) - **CONSTITUTION OF INDIA,** Art.21 - **A.P. POLICE MANUAL STANDING ORDER,** No.601 - "Opening of rowdy sheet" - Petitioner/press reporter wrote news items against 3rd respondent/SHO - As an act of reprisal, SHO registered crime by

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falsely implicating him as petitioner allegedly forged house site patta document and later opened rowdy sheet against him - Opening of history sheet /rowdy sheet can be justified only when it is proved before Court by State that based on relevant material - Competent Police Officer has applied his mind with due care and considered all aspects in light of law and then ordered opening history sheet/rowdy sheet or its continuation or its retention - In this case, facts would clearly suggest that obviously wreak vengeance against petitioner for his writing a news report against 3rd respondent/ SHO as pleaded by him in his affidavit, rowdy sheet was opened against him - Opening of rowdy sheet will undoubtedly have effect of causing humiliation to petitioner and bringing down his dignity and honour in Society - Action of 3rd respondent, is subversive of Art.21 of Constitution of India which guarantees every person a right to live with human dignity - Therefore, opening rowdy sheet against petitioner is wholly unwarranted and unconstitutional - Hence, quashed - Respondents are saddled with costs of Rs.5,000/- payable to petitioner. **P.Sathiyya Naidu Vs. Superintendent of Police, E.G. at Kakinada 2010(2) Law Summary (A.P.) 383.**

—Sec.125 - Maintenance - Applicability of Sec.125 to Muslim Woman who has been divorced - Appellant/Muslim women filed Application in Family Court u/Sec.125 of Criminal Procedure Code for grant of maintenance against her husband @ Rs.4000/ - per month stating that her husband was working as Nayak in Army and getting salary of Rs.10,000 - Husband resisted Application disputing all averments pertaining to demand of dowry and harassment alleging that he had already given divorce to appellant and also paid Mehar to her - As husband was getting at time of disposal of Application as per salary certificate Rs.17,654/- and accordingly Family Court directed that a sum of Rs.2500/- should be paid as monthly maintenance allowance from date of submission of Application till date of Judgment and thereafter Rs.4000/- per month from date of Judgment till date of remarriage - High Court reduced amount of maintenance from Rs.4000 to Rs.2000 by showing immense sympathy to husband on account of his retirement - Supreme Court considering other aspecs of salary particulars of pension of husband encashment of Commutation and other retiral dues i.e. AFPP, AFGI, gratuity, and leave encashment to a tune of Rs.16,01,455 and which facts have not controverted by respondent/husband - Appeal allowed - Order passed by High Court set aside and that of Family Court is restored. **Shamima Farooqui Vs. Shahid Khan 2015(2) Law Summary (S.C.) 10 = 2015(2) ALD(Crl) 549 (SC) = 2015 AIR SCW 2646 = AIR 2015 SC 2025 = 2015 Cri. LJ 2551 (SC) = 2015(2) SCC (Cri) 785 = 2015(5) SCC 705.**

—Sec.125 - **FAMILY COURTS ACT,1984,** Secs.3 & 8(c) - **HINDU ADOPTIONS AND MAINTENANCE ACT, 1956** - Magistrate awarding maintenance to major daughtors by applying provisions of Sec.20(3) of Hindu Adoption Act - Petitioner-father contends that Magistrate has no jurisdiction to award maintenance to the major daughtors who are entitled to maintain u/Sec.125 Cr.P.C till they are attained majority but not there

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after and it is only Family Court which is entitled to award maintenance - Sessions Judge dismissed order of Magistrate - It is not in dispute that proceedings in civil Court are substantial, where as proceedings u/Sec.125 Cr.P.C are summary in nature - Once civil Court of competent jurisdiction comes to conclusion that wife is not entitled to maintenance, criminal Court u/Sec.125 Cr.P.C cannot seek in appeal over said decision - Family Court conferred jurisdiction to award maintenance u/Sec.125 Cr.P.C. or u/Sec.20(3) of Act - Admittedly in this case, Magistrate's Court at Badrachalam is an Agency Court and conferred with jurisdiction to decide case under Cr.P.C. only but not conferred with civil jurisdiction - Impugned order, set aside - Parties are at liberty to avail remedies under Act - Criminal petition, allowed. **Yerram Vinod Vs. State of A.P. 2011(1) Law Summary (A.P.) 247 = 2011(1) ALD (Crl.) 668 (AP) = 2011(1) ALT (Crl.) 305 (AP).**

—Sec.125 - **HINDU MARRIAGE ACT,** Sec.5 (1) - Petitioner/wife filed petition seeking maintenance alleging that respondent married her as per Hindu custom and six months after marriage started harassing and used to beat severely and therefore she is forced to leave company of respondent - Respondent/husband contends that she is not his legally wedded wife and she was already married to another person which marriage is subsisting - Family Court dismissed petition holding that petitioner not entitled to claim any maintenance from respondent as she is legally wedded wife of some other person and said marriage is subsisting - Petitioner claims maintenance against respondent while admittedly she has not obtained any divorce from her first husband - Even according to petitioner her marriage with respondent took place during subsistence of her first marriage with some other person - Sec.5(1) of Hindu Marriage Act imposes a condition that neither party should have a spouse living at time of marriage, for such a marriage to be lawful - As marriage of petitioner with respondent is said to have been taken place during subsistence of first marriage of petitioner with some other person said marriage cannot be termed lawful nor can petitioner be considered as legally wedded wife of respondent - Petitioner is not entitled to claim any maintenance from respondent - Impugned order of Family Court - Justified - Criminal Revision, dismissed. **Nagireddy Sai Kumari Vs. Nagireddi Vara Nageswara Rao 2008(2) Law Summary (A.P.) 16 = 2008(1) ALD (Crl.) 747 (AP) = 2008(2) ALT (Crl.) 171 (AP) = 2008(2) APLJ 39.**

—Sec.125 - **HINDU MARRIAGE ACT,** Secs.9 & 13-B - Petitioner/husband filed O.P against respondent, wife for restitution of conjugal rights and obtained ex parte decree - Subsequently O.P filed by both parties for divorce by mutual consent, dismissed for default - Now, Family Court allowed maintenance case, filed by 2nd respondent, wife u/Sec.125 Cr.P.C and granted maintenance of Rs.1500/- p.m. - Petitioner contends that Sec.125 Cr.P.C contemplates proof of neglect or refusal on part of husband to maintain his wife - Wife has to further prove that she has reasonable or justifiable cause to live separately from her husband - In view of decree for restitution of conjugal rights, any reasonable or justifiable cause to wife to live separately from her husband - Now, 2nd respondent, wife cannot be heard to say that she has reasonable or

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justifiable cause to live separately from petitioner inspite of decree for restitution of conjugal rights obtained by petitioner against her - Order passed by Family Court is erroneous and liable to be set aside - Revision petition, allowed. **Madavarapu Ramakrishna Vs. State of A.P. 2010(3) Law Summary (A.P.) 55.**

—Sec.125 - **MUSLIM WOMEN (PRORECTION OF RIGHTS ON DIVORCE) ACT, 1986** - **FAMILY COURTS ACT,** Secs.7(1)(f) & 20 - Appellant married respondent according to Muslim rites - Respondent/husband and his family members treated appellant with cruelty demanding more dowry and did not take her back from her parents even after delivery of child - Hence, calimed maintenance - Respondent/husband contends that appellant has already been divorced in accordance with Muslim Law, and that she is not entitled to any maintenance after divorce and after expiry of iddat period - Family Court partly allowed appellant's application - High Court dismissed Revision substantially upholding order of Family Court - Appellant contends that single Judge of High Court gravely erred in dismissing appellant's Revision on misconception of law on ground that after divorce of a Muslim wife, a petition u/Sec.125 of Cr.P.C would not be maintainable - Impugned orders of Family Court and High Court are set aside and quashed, holding that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband u/Sec.125 Cr.P.C, after expiry of period of iddat also, as long as she does not remarry - Matter remanded to Family Court for its disposal on merits in accordance with law. **Shabana Bano Vs. Imran Khan 2009(3) Law Summary (S.C.) 204.**

—Sec.125 - **MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**, Secs.3(1) and (3) and 4,5 & 7 - **MAHOMEDAN LAW,** Secs.307 & 308 - Petitioners, wife and children of respondent filed Application claiming maintenance, contending that respondent/husband ill-treated 1st petitioner, wife and drove petitioners away from his house and petitioners are living in 1st petitioner's parents and respondent is a mechanic having immovable properties getting income of Rs.1 lakh per year - Magistrate granting maintenance to all petitioners @ Rs.500 each per month - Respondent/husband filed Crl. Revision Petition taking stand that 1st petitioner is a divorced wife and therefore she cannot invoke Sec.125 of Cr.P.C and she is covered only by Sec.3(1) of Muslim Women Protection Act - Sessions Judge set aside order of Magistrate holding that 1st petitioner Muslim divorced women cannot straightaway claim maintenance u/Sec.125 Cr.P.C without exercising her option to be governed by Act - Petitioner contends that she is not divorced wife but she is only a deserted wife since there is no proper pronouncement of talak by respondent/husband, and therefore she is entitled to claim maintenance u/Sec.125 of Cr.P.C. - In this case, factually it is clear that Talak has been pronounced only after filing of Application for maintenance by petitioners and respondent/husband has pronounced Talak and there is no proof that it was properly communicated to 1st petitioner - Contention of respondent/husband that he has divorced petitioner is not sustainable both on facts and law - Order of Sessions Judge, set aside - Order of Magistrate, upheld - Crl.R.C, allowed. **S.Shakila Vs. S.Khaleel 2008(3) Law Summary (A.P.) 115 = 2008(2) ALD (Crl.) 660 (AP).**

—Secs.125 and 482 - **Muslim Women (Protection of Rights on Divorce) Act, 1986**, Sec.3(1)(a) - Petitioners 1 & 2 wife and daughter of respondent filed petition u/Sec.125

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Cr.P.C for granting monthly maintenance of Rs.3000/- on ground that respondent/ husband neglected and deserted them having got sufficient means - On contest enquiry Court partly allowed petition awarding Rs.1500- per month to petitioners - Sessions Judge dismissed revision imposing cost of Rs.1000/- against respondent - Hence present petition/Petitioner husbands disputes about maintainability of maintenance case on ground that both parties belong to "Dudekula community" and they follow customs of Islam by reason of which, they are to be treated as Mohammedins and that there was pronouncement of Talak as per law enforced against 1st respondent wife and as such Sec.125 Cr.P.C is not applicable to them and the relevant provisions of Muslim Women Act, 1986 are applicable to them - In this case, admittedly marriage between petitioner and 1st respondent took place in Darga as performed by"Quazi" and consequently " Nikahnama" was prepared and people of Dudekula community got no separate personal laws - Therefore whatever custom of particular religion they follow personal laws of that religion made applicable to them having regard to evidence recorded correspondingly - Wife got right to approach u/Sec./125 for her maintenance unless it is proved that there was divorce between them, but however even supposing that there was divorce between them still she got right to approach Court u/Sec.3(1) (a) of Act which imposes condition with regards to time of payment of maintenance and proceedings initiated u/Sec.125 Cr.P.C are to be treated as proceedings under Act, 1986 for purpose of paying necessary maintenance to her, as both matters to be enquired by same Court - Criminal, petition, dismissed. **Dudekula Mahboob Saheb Vs. Dudekula Shahnaz Begum, 2012(1) Law Summary 81 = 2012(1) ALD(Crl) 719(AP) = 2012(3) ALT(Crl) 86 (AP) = AIR 2012(NOC) 222(AP).**

—Sec.125, 354(6) - Apex Court held that as a normal rule, Magistrate should grant maintenance only from date of the order and not from date of application for maintenance - It is, therefore, open to the Magistrate to award maintenance from the date of application - Apex Court further held that Sec.125 of the Code of Criminal Procedure must be construed with Sub-section (6) of Sec.354 of the Code of Criminal Procedure, Court should record reasons in support of the order passed by it, in both eventualities. **Jaiminiben Hirenbhai Vyas Vs. Hirenbhai Rameshchandra Vyas 2014(3) Law Summary (S.C.) 70 = 2015(1) ALD (Crl) 627 (SC) = 2014 AIR SCW 6511 = AIR 2015 SC 300 = 2015 Cri. LJ 608 (SC) = 2015(2) SCC 385 = 2015(2) SCC (Cri) 92.**

—Sec.125 (4) – Divorce by mutual consent – Maintenance to divorced wife – Trial Court granting maintenance to divorced wife observing that dissolution agreement entered into between petitioner and respondent not valid and there is no customary divorce in their caste – Revision Court allowing revision filed by husband that it is duty of petitioner to prove that she is entitled for maintenance and there was divorce between parties in year 1970 through elders and petitioner is living separate with respondent/husband by mutual consent and that no wife is entitled for maintenance if she is living away by way of mutual consent and present case comes within purview of Sec.125 (4) of Code and as wife received certain amount towards permanent alimony, she is not entitled for maintenance - Wife who obtains divorce by mutual consent and has not remarried cannot be denied maintenance by virtue of Sec.125(4) of Code - In present case,

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petitioner/wife has been denying from beginning that she voluntarily gave divorce agreement and her plea that there was no customary divorce in their community of Kapu is not resisted by respondent/husband and it is also not contention of husband that wife has means of livelihood - Power to be exercised under this section is discretionary – Court has to exercise such discretion in a judicious manner consistent with language of constitution - Petitioner/wife expressed her inability to maintain herself on account of sickness of her father and her old age - When she stretched her hand before a Court of justice by conveying she is suffering from hunger, she cannot be denied relief on ground that respondent/husband gave a paltry amount of Rs.1400/- about 30 years ago to her and she cannot be made to shut her mouth that she agreed to receive said amount towards permanent alimony undertaking not to claim any further amount - Sessions Judge applied letter of law without considering object behind it – Impugned order lacks rationality and objectivity and is liable to be set aside – Criminal case, allowed. **Maddala Nagaratnam Vs. Maddaala Ranga Rao 2008(3) Law Summary (A.P.) 217 = 2008(2) ALD (Crl.) 683 (AP).**

——Sec.144 - Petitioners filed this Writ Petition challenging the order of 5th respondent/ Executive Magistrate promulgating an order u/Sec.144 Cr.P.C - Petitioners belong to a village where government is allegedly taking their consent by force and coercion in order to build a project - Petitioners contended that respondents have virtually robbed them of their freedom to move freely - Respondents denied contentions and argued that there was a law and order problem which necessitated them to promulgate Sec.144 - The point for consideration is whether petitioners have made out any ground for setting aside impugned order and whether acts alleged by petitioners against respondents fall within scope of order passed u/Sec.144 Cr.P.C.

Held, though petitioners contended that facts mentioned in impugned order are not true and that peaceful processions of land owners of Vemulaghat and other neighbouring villages were attacked by the police on 24-07-2016 without provocation causing serious injuries and false cases were foisted on them, this disputed question of fact cannot be gone into in this writ petition - This Court is therefore not expressing any opinion on correctness or otherwise of facts recited in impugned order on basis of which 5th respondent has felt it necessary to invoke Sec.144 Cr.P.C.

Having said that, Court cannot be oblivious of pleadings of petitioners that under guise of above order passed u/Sec.144 Cr.P.C., there are strict and absolute curbs on movement of residents of Vemulghat village; no outsiders are allowed to visit village; every entry into village and exit therefrom is being strictly monitored by police; and police are insisting on identity proofs of persons found in village - No doubt above allegations are denied by respondents - Respondents cannot expand scope of order u/Sec.144 Cr.P.C. and if they do so it amounts to harassment of residents of villagers or outsiders who wish to enter villages bona fide - There would be an atmosphere of fear, intimidation and coercion, which cannot be allowed to exist in a democratic country like India - For foregoing reasons, while sustaining impugned order passed by 5th respondent/Executive Magistrate, Tahsildar, Writ Petition is disposed

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of giving directions to respondents on other restraints alleging interference with fundamental rights of petitioners and residents of two villages. **Yerrangari Santosh Reddy Vs. State of Telangana 2016(3) Law Summary (A.P.) 326.**

—Secs.145, 154,155 & 173 (2) & 482 - Inspector of Police issuing FIR by registering crime in matter relating to 145 Cr.P.C - Issuing of FIR by registering crime in a matter relating to Sec.145 Cr.P.C. is unkonwn to Criminal Procedure Code - A senior Police Officer who had put in 12 long years of service in Department committed such mistake which can be classified as blunder - Police Officer acting u/Sec.154 Cr.P.C is at receiving end with reference to information - Where as a Police Officer in proceedings u/Sec.145 Cr.P.C. is not at receiving end, but is at forwarding stage with reference to information - Therefore question of registering a crime u/ec.154 Cr.P.C and forwarding FIR to Magistrate u/Sec.157 Cr.P.C does not arise in case of proceeding u/Sec.145 Cr.P.C - Even though provisions of Cr.P.C do not contemplate registering of crime and issuing FIR by Police Officer in proceedings relating to Sec.145 Cr.P.C, giving FIR after registering a crime in such cases is not only out side realm of law and would likely to lead abuse of power by certain unscrupulous Police Officers - This cannot be permitted in law - Inspector of Police exceeded his powers under Code and is liable to be quashed on this ground alone irrespective of merits of contents therein. **K.Guravaiah Vs. State 2010(2) Law Summary (A.P.) 190.**

—Secs.145 and 482 - Executive Magistrate Passed orders restraining A and B groups from entering into disputed land until further orders to keep peace in the area - Hence A and B groups filed present petitions to quash orders - Parties in A and B groups are close relations and civil suits are pending between them in different courts - Petitioners contend that when civil suits are pending between parties in respect of same properties Executive Magistrate shall not exercise jurisdiction to pass orders U/sec. 145 Cr.P.C. and that Executive Magistrate has not followed procedure contemplated under said provision and inasmuch as he did not issue notice to respective rival parties calling for their written statements to make an enquiry to decide which party was in possession of disputed land and therefore, impugned order vitiated by procedural irregularity besides lacking jurisdiction - State contends that Executive Magistrate had passed a preliminary order restraining both parties from entering in to disputed properties and said order of Executive Magistrate is predominantly aimed at preventing breach of peace and nothing more and that therefore, order does not suffer vice of illegality or irregularity - From various rulings of Supreme Court, when dispute touching same subject property is already pending in Civil Court, parallel proceedings U/Sec. 145 Cr.P.C. are not maintainable before Executive Magistrate - However, present case is concerned, it appears, Executive Magistrate has not passed final order U/Sec. 145 Cr.P.C. by taking the statements of parties but he has only passed a preliminary order restraining both the parties from entering into property in order to prevent breach of peace - Therefore, parties have to approach concerned

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Civil Court to vindicate their rights in respect of disputed properties and obtain suitable interim order as they are representing that standing crop is there on the disputed land. Till parties obtained, suitable interim orders from Civil Court in order to prevent breach of peace, preliminary prohibitory order passed by Executive Magistrate shall be maintained – Criminal proceedings are disposed of accordingly. **Chella Venkata Ramana Reddy Vs. State of A.P. 2015(2) Law Summary (A.P.) 71 = 2015(1) ALD (Crl) 927 = 2015(2) ALT (Crl) 164 (AP).**

—Secs,145 (8), & 146 - Sub-Collector and Sub-Divisional Magistrate attaching land belonging to members of three parties on ground of breach of peace and tranquility, basing on report of C.I of Police - Petitioner contends that Sub-Divisional Magistrate ought not to have passed impugned order straightaway without notice which is contrary to provisions contemplated u/Sec.145 Cr.P.C and that civil suits are pending between parties - No procedure is envisaged u/Sec.145 Cr.P.C who order attachment of property for interim custody - Sub-Divisional Magistrate in interest of justice may require crop etc., to be harvested, sold, and kept sale proceeds thereof in deposit - Sec.146 Cr.P.C deals with power to attach subject of dispute and to appoint receiver - It comes in to operates only when an order of attachment is already passed - In this case, basing on report of C.I of Police with regard to registration of crimes apprehending law and order problem Sub-Divisional Magistrate straightaway passed impugned order which is bad - When matter is purely civil in nature and a competent civil Court is seized of matter, Sub-Divisional Magistrate cannot issue an order u/Sec.145 Cr.P.C - Admittedly, in a suit has already been admitted for settlement of disputes in respect of land question and same is pending adjudication - Impugned order is bad in law and liable to be set aside - Criminal Revision case, allowed. **Ponuganti Raj Gopal Rao Vs. State of A.P. 2011(1) Law Summary (A.P.) 332 = 2011(1) ALD (Crl.) 674 (AP).**

—Sec.154 - **EVIDENCE ACT,** Sec.3 - **INDIAN PENAL CODE**,Sec.302 - "FIR" - "Dying declaration" - Sessions Judge convicted accused for offence u/Sec.302 and awarded life sentence - High Court maintained judgment of conviction - Out of three accused present appeal preferred only by appellant/accused - FIR - Once registration of FIR is proved by Police and same is accepted on record by Court and prosecution establishes its case beyond reasonable doubt by other admissible cogent and relevant evidence, it will be impermissible for Court to ignore evidentiary value of FIR - DYING DECLARATION - To rule of inadmisiability of hearsay, oral dying declaration is an exception - Dying declaration in this case, is reliable, cogent and explains events that had happened in their normal course which was not only a mere possibility but leaves no doubt that such events actually happened as established by prosecution - Once there exists reliable, cogent and credible evidence against one of accused, mere acquittal of other accused will not frustrate case of prosecution - Where High Court, exercising its judicial discretion ultra-cautiously, acquitted unnamed accused in FIR, there High Court for valid reasons, held present appellant guilty of offence - High Court had recorded reasons in support of both these conclusions - Appeal, dismissed. **Bable @Gundeep Singh Vs. State of Chattisgath 2012(2) Law Summary (S.C.) 152 = 2012(2) ALD(Crl) 952(SC) = 2012 AIR SCW 3962 = 2012 Cri. LJ 3676(SC) = AIR 2012 SC 2621.**

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—Sec.154 - **EVIDENCE ACT,** Secs.41,42 & 43 - Trial Court decreed suit filed by respondents 1 to 4 for specific performance of agreement of sale - Appellants filed suit seeking cancellantion of decree passed in favour of respondents 1 to 4 and said suit dismissed on 10-6-2002 against which appellant preferred 1st appeal and same sill pending - Appellants filed FIR u/Secs.420/423/467/468/120-B IPC alleging, forging of signatures of deceased Kishan Singh on agreement to sell - Respondent filed Application for quashing of FIR on ground that appellants had lodged FIR after loosing civil case with inordintae delay and that findings on factual issues recorded in civil proceedings are binding on criminal proceedings - High Court allowed said Application and quashed FIR on ground that appellant could not succeed before civil Court that and findings have been recorded by civil Court to effect that agreement not forged or fabricated - Hence, present appeal - Findings recorded by civil Court do not have any bearing so far as criminal case is concerned and vice-versa - Standard of proof is different in civil and criminal cases - In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt - However, there may be cases where provisions of Sec.41,42 & 43 of Evidence Act dealing with relevance of previous Judgments in subsequent cases may be taken into consideration - In this case, it is difficult to believe that appellants, father was not aware of pendency of suit - No explanation has been furnished as to why after expiry of date of execution of sale deed dt.15-6-1989 appellants, father did not filed suit for specific performance which was subsequently filed on 6-2-1996 as civil suit - In this case, FIR has been filed on 23-7-2002 after filing 1st appeal before High Court on 15-7-2002 and there is no necessity to wait till decision of suit for lodging FIR - Therefore there is inordinate delay on part of appellant's father in filing FIR and there is no explanation whatsoever for same - Prompt and early reporting of occurrence by informant with all its vivid details gives an assurance regarding truth of its version - In case there is some delay in filing FIR, complainant must give explanation for same - However deliberate delay in lodging complaint is always fatal - Orders passed by High Court quashing criminal proceedings against respondents, cannot be intefered with. **Kishan Singh (d) Through L.Rs. Vs. Gurpal Singh 2010(3) Law Summary (S.C.) 138.**

—- Sec.154 – **INDIAN PENAL CODE,** Sec.149 – FIR - Delay in lodging FIR – Occurrence took place at 3 pm – FIR registered at 7.45 pm – Distance between place of occurrence to Police Station is 24 km – No delay in lodging FIR. **Om Prakash Vs. State of Haryana 2014(2) Law Summary (S.C.) 15.**

—-Sec.154 - **INDIAN PENAL CODE,** Secs.149 & 34 - "FIR" - "Common object" - Due to sending of love letter by son of one of accused, relative of D2 there was clash between two groups in village - Basing on rumour accused came in mob and attacked D2 and D1 with dangerous weapons - Trial Court convicted some accused u/Sec.302 r/w 149 - High Court acquitting accused in respect of Sec.302 r/w 149 holding that there was no common object and confirmed conviction for offence u/Sec.302 IPC - Contention that presence of PW.2 is not stated in Ex. P.1, complaint and since allegations not fully

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established because some accused persons were falsely implicated, evidence of witnesses is suspect - Mere non-mention of name of witness does not render prosecution version fragile - There can be no hard and fast rule that names of witnesses, more particularly, eye witnesses should be indicated in FIR - Even otherwise, though name of P.W.2 not been specifically mentioned in FIR, it cannot lost sight that he is son of deceased and incident took place in his own house - His presence is natural considering time when incident took place - Unless investigation Officer is categorically asked as to why there was delay in examination of witness, defence cannot take advantage therefrom - Mere presence in unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Sec.141 - Where common object of an unlawful assembly is not proved, accused persons cannot be convicted with help of Sec.149 - "COMMON OBJECT' - "COMMON INTENTION" - Common object is different from 'common intention' as it does not require a prior concert and a common meeting of minds before attack - It is enough if each has same object in view and there number is five or more and that they act as an assembly to achieve that object - Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of accused, his conviction can be maintained - NON-EXPLANATION OF INJURIES - When prosecution comes with a definite case that offence has been committed by accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for prosecution again explain how and what under circumstances injuries have been inflicted on person of accused - It is more so when injuries are simple or superficial in nature - Appeal, dismissed. **Gunnana Pentayya @ Pentadu Vs. State of A.P. 2008(3) Law Summary (S.C.) 1 = 2008(2) ALD (Crl.) 726(SC) = 2008(6) Supreme 40 = 2008 AIR SCW 6132.**

—Secs.154,156 & 157 - **CONSTITUTION OF INDIA,** Art.32 - Interpretation of Sec.154 Cr.P.C. **-** Present writ petition filed by minor through her father for issuance of Hebeas Carpus or directions against respondents for protection of his minor daughter who has been kidnapped - Grievance of writ petitioner is that inspite of written Report to in-charge Officer of Police Station concerned, he did not take any action on same and when Superintendent of Police was moved, FIR registered and even thereafter steps not taken either for apprehending accused or for recovery of minor girl child - Petitioner contends that upon receipt of information by Police Officer in-charge of Police Station disclosing of a cognizable offence it is imperative for him to register case u/Sec.154 of Cr.P.C - State contends that Officer-in-charge of Police station is not oblized under law upon receipt of information disclosing commission of cognizable offence to register a case rather discretion lies with him, in appropriate cases, to hold some sort of preliminary inquiry in relation to veracity or otherwise of accusation made in Report - After carefully analyzed various judgments delivered in last several decades, Supreme Court clearly discern divergent judicial opinions on main issue "whether u/sec.154 Cr.P.C, a Police Officer is bound to register or FIR when a cognizable offence is made out or he (Police Officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering FIR" - Issue which has arisen for consideration in these cases is of great public importance - In view

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of divergent opinions in a large number of cases decided by Supreme Court, it has became extremely important to have a clear enunciation of law and adjudication by larger Bench of Supreme Court for benefit of concerned Courts, Investigation Agencies and Citizens - Hence matter referred to Constitutional Bench of 5 Judges of Supreme Court for authoritative judgment.

Constitution Bench held:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

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With above directions Constitution Bench disposed of reference and directed to list all matters before appropriate Bench for disposal on merits. **Lalita Kumari Vs. Govt of U.P. 2013(3) Law Summary (S.C.)179 = 2014(1) ALD(Crl) 159 (SC) = 2013 AIR SCW 6386 = AIR 2014 SC 187 = 2014(1) SCC (Cri) 524 = 2013(2) SCC 1.**

—Secs.154, 157 - **INDIAN PENAL CODE,** Sec.217 & 379 - Delay in registering FIR - Petitioner made complaint to respondent SHO on 27-6-2011 and same is kept in Cold storage - Writ petition filed questioning inaction of SHO in registering FIR - When case came up before High Court on 26-11-2013 and after underwent four adjournments High Court has expressed its dismay at inaction of SHO and passed order directing respondent 3 & 4 C.I and SHO to be personally present before Court to explain reason for not registering FIR dispite law laidown by Apex Court and High Court - Apex Court reiterated legal possession in no uncertain terms and gave following directions.

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv)The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under :(a) Matrimonial disputes/family disputes (b) Commercial offences (c) Medical negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case is should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the general Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable

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offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above." (Emphasis added).

Court comprehended as to why Police in State have been turning a blind eye to above well settled legal possession and forcing innocent citizens to resort to invoking extraordinary jurisdiction of High Court under Art.226 of Constitution of India - Victims are vexed and High Court is disgusted with the attitudy of Police - High Court felt that it is high time that Director General of Police take stern measures against SHOs responsible not registering FIRs where complaints disclosed commission of cognizable offence - DGP directed to forthwith issue circular to all SHOs in State where in incorporate guideliens for registration of cases in consonce with provisions of Sec.154 as explained by Supreme Court and High Court of A.P. - Guide lines must include criminal action to be taken against erring SHOs u/Sec.217 IPC as prescribed in Police manual - Found, no justification what so ever for 4th respondent SHO for keeping complaint pending for nearly 2 1/2 years and respondent no.2 is directed to pay petitioner cost of Rs.20,000/- and further directed to identify SHO who is responsible for non-registration of complaint by petitioner and initiate appropriate proceedings against him as per Police manual and recover from him cost paid by him to petitioner - Writ petition, allowed. **T.V.G. Chandrasekhar Vs. State of A.P. 2014(1) Law Summary (A.P.) 162 = 2014(1) ALD(Crl) 507 (AP) = 2014(2) ALT (Crl) 6 (AP).**

—Secs.154,157,173 & 482 - **POLICE STANDING ORDERS (PSO),** 861.1, 1028 and 1031 - **CONSTITUTION OF INDIA,** Arts.14, 20,21 & 22 - Appellant leased his premises to 1st respondent for carrying on business of jewellary - Appellants illegally broke open shop locks and looted stocks worth about Rs.10 lakhs and certain cash and also lease agreement and some other documents - Since SHO did not take any action on report given by 1st respondent, he sent report to Commissioner of Police and also made representation to Home Minister marking copies to DGP and CP - Thereafter, SHO except registering FIR, did not take any action - Single Judge of High Court allowed writ petition directing DGP and CP to entrust investigation to CBCID for expeditious completion and filing of report before Court - Appellants contend that without there being any formidable reasons and grave situation, investigation cannot be entrusted to a different agency ignoring Police and that single Judge ought not to have entertained writ petition when appellants are not made parties to proceedings and that directions issued by Court is in violation of principles of natural justice - No human right vested in accused to be informed early that a crime is being registered against him or her or a crime is being investigated and/or a registered crime is being transferred from one agency to another agency for purpose of investigation and that no accused can be heard to say that he has not been issue notice before registering crime or entrustring investigation to an agency other than regular Police - Contention that non-joinder and denial of opportunity before transferring case to CBCID is palpable error that invalidates impugned mandamus, is without any merit - No accused can legitimately make out a grievance if investigation is entrusted to specialist agency

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- One cannot lose sight of fact that criminal investigation and criminal trial are intended to know truth and protect rights of innocent and not intended always to bring innocent to book and in that view of matter appellants are not necessary parties and there non-joinder in writ petition does not in any manner vitiated impugned order - There cannot be any denial that person accused of offence is a fundamental right of fair trial - It cannot be achieved without an independent investigation and prosecution which is a linchpin of criminal justice administration - When High Court discovers that investigation and prosecution lack requisite independence and impartiality, it becomes duty of Court to give proper directions - It is in this context that Court requires power to direct CBI or CBCID to investigate offences - High Court can give directions to a Central Agency for enforcement of fundamental rights by taking up fair and impartial investigation - Indeed in appropriate cases, even Magistrate competent to take cognizance of offences can direct re-investigation in appropriate situations - Single Judge considering matter recorded finding of fact that investigation so far "*reveals utter lack of seriousness on part of SHO and he does not appear to maintain neutral pastures and it discloses some what biased approach towards accused*" - Order of learned single Judge - Justified - Appeal, dismissed. **Uppalapati Nirupa Rani Vs. Koganti Lakshmi 2010(3) Law Summary (A.P.) 12 = 2011(1) ALD (Crl) 907 (AP) = 2010(3) ALT (Crl) 332 (AP).**

—Secs.154, 161 & 162 - **EVIDENCE ACT,** Sec.106 - **INDIAN PENAL CODE,** Sec.302, r/w Sec.120-B & 121 - 9 accused persons tried for an offence u/Secs.302 etc., r/w Sec.121-B - Trial Court convicted appellant/accused, High Court dismissed appeal filed by appellants - Appellants contend that delay in lodging FIR often results in embellishment as well as introduction a coloured version or exaggerated story and FIR loses its value and authenticity - Delay in examination of a witness in Course of investigation if not properly explained creates a serious doubt about reliabiity of evidence of witness - Delay of two months and 21 days to lodge complaint to Direct General of Police had been explained and this is not a case where prosecution case could be disbelieved on ground of delay in lodging of FIR - Explanation u/Sec.162 Cr.P.C provides that an omission to state a fact or circumstance in statement recorded by Police Officer u/Sec.161 Cr.P.C may amount to contradiction if same appears to be significant and otherwise relevant having regard to context in which such omission occurs and whether any omission amounts to contradiction in particular context shall be question of fact - Thus, unless omission in statement recorded u/Sec.161 of witness to signficant and relevant having regard to context in which omission occurs it will not amount to a contradiction to evidence of witness recorded in Court - Trial Court and High Court had rightly considered these omissions as not material omission amounting to contradiction covered by explanation u/Sec.162 Cr.P.C - Therefore, High Court rightly maintained conviction of appellants u/Secs.364 & 452 IPC - In this case, appellant contends that there is no evidence what so ever on record to show that 7 persons alleged to have been abducted by appellants have been killed by appellants - Evidence adduced by P.Ws.3 to 6 is that 7 persons abducted by appellants were

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found in different police stations and also in residential quarters near Police Station and on this evidence Court cannot held that two appellants have killed 7 abducted persons only because 7 persons have not been traced or are found missing - When 7 persons abducted by appellants did not show missing immediately after their abduction and were found in different police stations, Court cannot hold 7 abducted persons were last in custody of appellants accused and hence they must discharge burden u/Sec. 106 of Evidence Act, and must explain what they did to abducted persons - Prosecution should have examined witnesses from amongst police personnel or Police Station to establish that 7 abducted persons were last in custody of appellants - In absence of such evidence finding of guilt recorded by trial Court and High Court u/Sec.302 IPC against appellants accused, not correct either on facts or on law - Appeals, partly allowed. **Baldev Singh Vs. State of Punjab 2013(3) Law Summary (S.C.) 87.**

—Secs.154, 161,173 - **CONSTITUTION OF INDIA,** Art.226 - **CONTEMPT OF COURTS ACT,** Sec.2(c) - **TRANSFER OF PROPERTY ACT,** Sec.106 - Lady tenant of flat filed suit against her land lord seeking perpetual injunction - Suit decreed - Suit filed by landlord for eviction of landlady dismissed - Thereafter writ petitioner land lady rushed to police station complaining of trespass physical assult, attempt to rape and forcible eviction by land lord - Investigating Officer visited apartment found petitioner/ tenant's belongings strewn on payment outside apartment building - Without even examining complainant and having failed even to note outcome of two suits which ended in favour of tenant, investigating Officer at behest of Asst. Commissioner of Police prepared draft final report stating that complaint "*lacked evidence*" - As per the version of Investigating Officer that tenant had vacated apartment on her own volition and complaint against 3rd respondent/landlord of trespass, attempt to rape assult etc., lacked evidence or, in other words complaint was false - Petitioner, house wife aged 32 years filed present writ petition to declare failure of 1st respondent/ Commissioner of police to take action on her representation illegal and arbitrary - In this case, records revealed that then Investigating Officer examined complainant and had recorded detailed statement on very date of registration of FIR and said statement was misplaced and he was tendering his apology to High Court for misplacing statement of petitioner - Both Investigating Officer and Asst. Commissioner of Police who approved proposal for closure were present in Court and their statements were recorded on being asked whether a draft final report had been submitted to judicial Officer, Asst. Commissioner of Police expressed ignorance and sought to ascertain position from SHO - CONSTITUTION OF INDIA, Art.226 - High Court is not deprived of its jurisdiction to entertain petition under Art.226 merely because, in considering petitioner's right of relief question of facts may fall to be determined - High Court has jurisdiction to try issues both of fact and law - On consideration of nature of controversy High Court can decide that it should go into disputed questions of fact - CONSTITUTION OF INDIA, Art.21 - Art.21 in its broad application not only

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takes within folds enforcement of rights of an accused but also right of victim - State has a duty to enforce human rights of citizen providing for fair and impartial investigation against any person accused of commission of cognizable offence - If deficiency in investigation is visible or can be perceived by lifting veil which hides realities or covers obvious differences, Court has to deal with them with an iron hand within frame work of law - It is duty of Court to ensure that full and material facts are brought on record to avoid miscarriage of justice - Justice delivery system cannot be allowed to be abused, misused and mutilated by subterfuge - Where Court comes to conclusion that there are serious irregularities in investigation or that investigation has been done with object of helping a party it may direct further investigation - Where non-interference of Court would ultimately result in failure of justice, Court must interfere - In such a situation, it may be in interest of justice that an independent agency chosen by High Court makes a fresh investigation - Stream of justice has to be kept clear and pure and any one soiling its purity must be dealt with sternly so that message perculates loud and clear that no one can be permitted to undermine dignity of Court and interfere with due course of judicial proceedings or administration of justice - Registrar General of High Court directed forthwith to initiate *suo motu* criminal contempt proceedings under Contempt of Courts Act against Police Officials/ personal and 3rd respondent landlord. **Anjali Jain Vs.Commissioner of Police, Hyderabad 2012(1) Law Summary 266 = 2012(2) ALD (Crl) 45(AP) = 2012(4) ALT 641.**

—Secs.154 & 162 - **INDIAN PENAL CODE,** Sec.304 - "Telephonic information" regarding death of person" - "Defective Investigation" - "Delayed examination of witness" - "Discrepancy in deposition of witness" - Trial Judge rejected contention that Telephonic intimation given by P.W. 3 must be treated as FIR for purpose of Sec.154 Cr.P.C and consequently complaint lodged by P.W.1 could not be FIR and contends there of would be hit by Sec.162 Cr.P.C holding that ingredient of Sec.154 of Cr.P.C were not made out and telephonic message given by an unknown person with regard to death of another unknown person could not be treated as FIR - A bare reading of Sec.154 makes it clear that even though oral information given by an Office incharge of Police Station can be treated as FIR, yet some procedural formalities are required to be completed, including reducing information in writing and reading it over to informant and obtaining his or her signature on transcribed information - It is well settled by series of decisions rendered by Apex Court that a cryptic telephonic information cannot be treated as an F.I.R. - INVESTIGATION - Delayed examination of witnesses will not vitiate prosecution case - Delay per se may not be a clinching factor but when there is a whole range of facts that need to be explained but cannot be then cumulative of all facts would have an impact on case of prosecution - In investigation results in real culprit of offence not being defined, then acquittal of accused must follow - It would not be permissible to ignore defects in investigation and hold an innocent person guilty of an offence which has not committed - Investigation must be precise and focused and must lead to inevitable conclusion that accused has committed crime

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- If Investigation Officer leaves glaring loopholes in investigation, defence would be fully entitled to exploit lacunae - In such a situation it could not be correct for prosecution to argue that Court should gloss over gaps and find accused person guilty and if this were permitted in law prosecution could have an innocent person put behind bars on trumped up charges and hence, this is impermissible - Conviction of appellant/ accused for offence of murder of deceased, set aside - However he is guilty of offence punishable under second part of Sec.304 of IPC. **Surajit Sarkar Vs. State of West Bengal, 2013(1) Law Summary (S.C.) 1 = 2013(1) ALD (Crl) 568 (SC) = 2013 AIR SCW 648 = 2013 Cri. LJ 1137 (SC) = 2013(1) SCC (Crl) 877 = 2013(2) SCC 146 = AIR 2013 SC 807.**

—Secs.154 & 313 - **INDIAN PENAL CODE,** Sec.376 (2)(g) & 363 and 366 - "Delay in filing FIR" - Trial Court convicted accused for offences u/Secs.363, 376 (2)(g) and 368 of IPC - High Court dismissed appeals and judgment of conviction as awarded by trial Court was upheld - Hence appellant filed present Appeal - DELAY IN FILING FIR - Once a reasonable explanation is rendered by prosecution, then mere delay in lodging of F.I.R would not prove fatal to case of prosecution - MATERIAL CONTRADICTIONS IN STATEMENTS OF PROSECUTION WITNESSES - Every small discrepancy or minor contradictions which may erupt in statement of witness because of lapse of time, keeping in view educational and other background of witness, cannot be treated as fatal to case of prosecution - Court must examine statement in its entirety correct perspective and in light of attendant circumstances brought on record by prosecution - COMMON INTENTION TO COMMIT OFFENCE OF RAPE - On proof of common intention of group of persons which would be of more than one to commit offence of rape, actual act of rape by even one individual forming group would fasten guilt on other members of group, although he or they have not committed rape on victim or victims - Direct proof of common intention is seldom available and therefore such intention can only be inferred from circumstances appearing from proved facts of case and proved circumstance - In this case, there is no evidence that there was common concert or common intention or meeting of minds prior to commission of offence between two accused - Judgment of trial Court convicting accused u/Sec.376 (2) (g), set aside and appellant is acquitted of said charge - However his conviction u/Sec.368 of IPC and sentence awarded by High Court is maintained. **Om Prakash Vs. State of Haryana 2011(3) Law Summary (S.C.) 83 = 2012(1) ALD(Crl) 148(SC) = AIR 2011 SC 2682 = 2011 Cri. LJ 4225 (SC) = 2011 AIR SCW 4245 = 2012(3) SCC(Cri) 1319 = 2011(14) SCC 309.**

—Secs.155 & 482 - **INDIAN PENAL CODE,** Secs.355, 323 & 506 - Police registered case against petitioner allegedly committed offence u/Secs.355,323 & 506 of IPC - Police investigating case - Petitioner/accused contends that Police has no right to investigate non-cognizable offence without directions from concerned Magistrate and that very investigation is bad, as offences alleged against petitioner are non-cognizable offences - 2nd Respondent/defacto complainant contends that failure of Police to obtain prior permission of Magistrate is a curable defect and same cannot be a ground to quash proceedings - In view of clear mandate of Sec.155 Cr.P.C,

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Police are not entitled to investigate a non-cognizable offence without prior permission of Magistrate concerned - Admittedly in this case, there is no such permission - Therefore very investigation in this case is bad, as it suffers from illegality - Charge sheet in CC, on file of Magistrate, quashed - Criminal petition, allowed. **Y.Muralinadha Reddy Vs. State 2013(3) Law Summary (A.P.) 94 = 2014(1) ALD (Crl) 146 (AP) = 2014(1) ALT (Crl) 14 (AP).**

—Secs.156, 157 & 159 - **INDIAN PENAL CODE,** Sec.302, r/w 149 and 449 - "Powers of Police Officers to investigate congnizable cases" - "Delay in sending FIR" - Sessions Judge convicting 12 accused for committing murder of two persons - High Court confirmed conviction and sentence imposed on 5 accused and acquitted rest of accused by giving benefit of doubt - Trial Court observed that keeping in view of serious and tense situation in village because of murder of three persons entire staff of Police Station sent to maintain law and order problem in village and there is no delay in lodging FIR with Police and that delay in sending FIR to Magistrate was due to shortage of Police personnel - High Court held that delay in sending FIR not deliberate and intentional - Contention that FIR was anti-timed and anti-dated and that delay of 16 hours in sending FIR to Magistrate would cast a serious doubt of its correctness - Explanation, as recorded by trial Court, no cogent and convincing reasons are found for doubting correctness or truthfulness of FIR which was promptly lodged in Police Station - Since delay is satisfactorily explained, not fatal to case of prosecution - EVIDENCE OF INTERESTED WITNESSES - Mere relationship of witnesses cannot be sole basis to discard or disbelieve their evidence if it is otherwise found to be believable and trustworthy - If evidence of any interested witness or a relative on a careful scrutiny is found to be consistent and trustworthy, free from infirmities or any embellishment there is no reason not to place reliance on same - In this case, evaluation of findings recorded by High Court do not suffer from any manifest error and mis-appreciation of evidence on record - Findings of High Court in convicting 5 accused as real culprits and their conviction and sentence - Justified - Appeal, dismissed. **Bathula Nagamalleswara Rao Vs. State rep. by PP 2008(2) Law Summary (S.C.) 117 = 2008(1) ALD (Crl.) 944(SC) = 2008(3) Supreme 129.**

—Secs.156 & 482 - **CONSTITUTION OF INDIA,** Arts.21 & 226 - **INDIAN PENAL CODE,** Secs.397,398 r/w Sec.402 -'Power of Police Officers in field of investigation of cognizable offences" - Company petition - Disputes regarding breach of Joint Ventures - Criminal cases filed against appellants - POWER OF POLICE OFFICERS - Power of Police Officers in field of investigation of a cognizable offence is not unlimited - However, power during investigation must be exercised strictly with limitation prescribed in Criminal Procedure Code and such power may not result in destroying personal freedom of a citizen - In this case, after dispute was finally settled by Company Law Board and High Court in appeal respondent approached Economic Offences Wing, who refused to entertain complaint - Respondent then moved complaint before Judicial Magistrate for initiating criminal action against appellant for breach of contract, which was dismissed by Magistrate holding same as nothing but to take vengence and further

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held that if conditions of agreement are violated respondent has to seek remedy under Contract Act or Company Law instead of filing criminal case - Suppressing said complaint and order passed by Magistrate respondent again filed a complaint before another Judicial Magistrate for initiating criminal action against appellant for breach of contract and conspiracy - In this case, although FIR was registered, but a closure report as a mistake of fact was prepared - High Court while passing order observed that Court would frown upon conduct of complainant in indulging in repeated harassment of petitioners/appellants - Irrespective of dispute with regard to closure of case, a fresh life was given to criminal case at instance of Superintendent of Police, who directed re-investigation in said criminal proceedings irrespective of FIR, appellants were harassed on technicalities, various orders for surrender, arrest and their detention had been passed - High Court dismissed all writ petitions observing that modus operandi of writ petitioner/1st respondent was to defraud person or entity and thereafter approached Courts with multiple proceedings in order to destract attention from his own misdeeds - In this case, neither High Court nor Magisterial Court have never applied their mind and considered conduct of respondent and continuance of criminal proceedings in respect of disputes which are civil in nature and finally adjudicated by competent authority i.e., Company Law Board and High Court in appeal - Complainant has manipulated and misused process of Court so as to deprive appellants from their basic right to move free any where inside or out side Country and more over it would be unfair if appellants are to be tried in such criminal proceedings arising out of alleged breach of Joint Venture Agreement, specially when such disputes have been finally resolved by Court of competent jurisdiction - Hence allowing criminal proceedings out of said FIR to continue would be an abuse of process of Court and therefore for ends of justice such proceedings ought to be quashed - Since High Court failed to lock into this particular aspect of matter while passing impugned order and same is unsustainable in law. **Chandran Ramaswami Vs. State 2013(2) Law Summary (S.C.) 193.**

—Sec.156(3) - Complaint filed against appellant's Company for several irregularities regarding granting of loans - Chief Metropolitan Magistrate Ahamabad, directed investigating Agency to carry out investigation - Investigating Agency submitted report stating that allegations complained of had been committed within territorial limits of city of Mumbai and that investigation should, therefore, be transferred to Investigating Agency in Mumbai - Investigating Agency was only required to state outcome of investigation pursuant to an order u/Sec.156(3) Cr.P.C and that it had no authority to state which Court had jurisdiction to enquire into alleged offence - High Court dismissed writ petition filed by appellant - It is open to Magistrate to direct investigation u/Sec.156(3) Cr.P.C without taking cognizance on complaint and where an investigation is undertaken at instance of Magistrate a Police Officer empowered under sub-sec.(1) of Sec.156 is bound to conduct such investigation even if he was of view that he did not have jurisdiction to investigate matter - Appeal, dismissed. **Rasiklal Dalpatram Thakkar Vs. State of Gujarat 2010(1) Law Summary (S.C.) 158.**

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—Secs.156(3), 155(2), 199(1) and 200 - **INDIAN PENAL CODE,** Secs.499 and 500 - Complaints filed by Inspector and Sub-Inspector before Magistrate against petitioner/ accused for offence u/Sec.499 and 500 IPC for defamatory publication against Police Officers in EEENADU Daily Telugu News paper - Magistrate referred complaints to Police u/Sec.156(3) Cr.P.C. - Petitioners contend that ordering investigation by Magistrate in a non-cognizable offence is bad in law and for said offence there is a bar u/Sec.199 Cr.P.C to take cognizance unless complaint is filed by aggrieved person - In present case, admittedly offence alleged is u/Sec.499 and 500 IPC and there is a bar u/ Sec.199(1) Cr.P.C as per which, complaint should be filed only by aggrieved person - A charge sheet filed by Police Officer cannot be called as a complaint filed u/Sec.200 Cr.P.C and investigation proceeded by Police Officer u/Sec.155(2) and (3) would serve no purpose even if charge sheet is filed before Court concerned in view of bar u/ Sec.199(1) Cr.P.C. - Complainants have approached Court with a proper prayer, where as Magistrate has referred same u/Sec.156 (3) Cr.P.C - Hence, complainants are directed to file fresh complaints and that limitation should be condoned in view of fact that already respondents have set law in motion and also they filed complaints within period of limitation - Magistrate is at liberty to take cognizance if said complaints disclose any offence and that complaints are in accordance with provisions of law. **K.Venkateswarlu Vs. R.G.Subramanyam 2011(2) Law Summary 182.**

—Secs.156(3), 161, 200, 203, 204,199 & 482 - Respondent/complainant filed a private complaint against petitioners accused for offence u/Sec.427, 447 and 448 IPC - Magistrate referred matter to Police for investigation u/Sec.156(3) - Police investigated and submitted report stating that it is a mistake of fact and law - On filing of protest petition by complainant, Magistrate recorded sworn statement of complainant and two more witnesses on his behalf, dismissed complaint u/Sec.203 holding that it is not a fit case for taking cognizance - Sessions Judge, set aside order of Magistrate holding that dismissal of complaint by Magistrate is misconceived - Petitioner contends that Sessions Judge though ordered notice to them and permitted them to appear before Court, has not permitted to advance any arguments which is contrary to established canons of law and that trial Court rightly held that complaint filed by respondent is not maintainable for reason that complainant did not obtain necessary sanction as provided u/Sec.199 Cr.P.C. - When complaint filed by respondent was dismissed, and matter was carried by Sessions Court by filing revision petition invoking provisions Secs.397, 399 Cr.P.C Court issued notices to them - Simply because 1st respondent had shown petitioners as respondents therein, and Court below issued notices to them, they do not get any locus standi - It is only when trial Court after examination of complaint u/Sec.200 Cr.P.C issue process as provided u/Sec.204 Cr.P.C, then only petitioners come into picture and their remedy is altogether different - If it is a warrant case, they can file application seeking discharge or they may approach High Court u/Sec.482 - Revision is not maintainable. **R.Rama Krishna Rao Vs. K.Ramanaiah 2010(3) Law Summary (A.P.) 270 = 2011(1) ALD (Crl) 38 (AP) = 2011(1) ALT (Crl.) 4 (AP).**

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—-Secs.156(3), 173, 202, and 2(h) – "Powers of Magistrate to give directions to police after complaint referred under Section 156 (3) for investigation" - Defacto-complainant filed complaint against accused for offences u/Secs.420,406,r/w 34, and 120(b) of I.P.C. - Magistrate referred complaint U/Sec. 156(3) of Cr.P.C. and police registered case - While investigation is going on defacto-complainant filed petition u/Sec. 156(3) requesting court to direct police to incorporate Secs. 409, and 477 (A) of I.P.C. - Petitioner/Accused contends that when once, court forwarded complaint to police U/Sec. 156(3) Cr.P.C. for registration of F.I.R. and investigation, it will be prerogative of Police, to conduct investigation and either to file charge sheet or refer report and during course of investigation, Judicial intervention is unwarranted and impermissible under law - State and defacto-complainant contends that Magistrate's order directing police to incorporate additional sections of offences in FIR tantamounts to intruding into domain of investigation and therefore, said order is vitiated by abuse of process of law - State and defacto-complainant contends that Magistrate only instructed police to add some more Sections of Offences and conduct investigation and submit report as to whether offences mentioned in FIR are committed by accused or not – That does not mean Magistrate has intruded into domain of investigation - Police have every liberty to conduct investigation and file ultimate report as per law – Therefore, Magistrate was within his right under Sec.156 (3) of Cr.P.C. to give such a direction - Apex court in its decision reported in Dilwar Singh V. State of Delhi (2007 Criminal Law Journal ,4709)- "That Although Sec.156(3) is very briefly worded, there is an implied power in Magistrate u/Sec. 156(3) Cr.P.C. to order registration of a Criminal Offence and or to direct the officer in charge of concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring proper investigation including monitoring same - Even though these powers have not been expressly mentioned in Sec.156(3) Cr.P.C., they are implied in the above provision" - In instant case, Magistrate under impugned order directed police to add Sec. 409 and 477-A I.P.C. to F.I.R and investigate and file report and that by this order Magistrate has not committed any judicious over reaches and impermissible penetration into domain of investigation and prerogative of Police to investigation has been kept intact, but they were only asked to investigate whether accused have in fact committed offences, under newly added Sections including ones which are already referred – Act of Magistrate, justified – Criminal petition, dismissed. **Aknuri Kankaraj Vs. State of Telangana 2015(1) Law Summary (A.P.) 507 = 2015(2) ALD (Crl) 94 = 2015(3) ALT (Crl) 245 (AP).**

—Secs.156(3) & 202 - Powers of Magistrate taking cognizance of offence - Stated - Powers u/Sec.156(3) can be invoked by Magistrate at a pre-cognizance stage, where as powers u/Sec.202 of Code are to be invoked after cognizance is taken on a complaint but before issuance of process - Any Judicial Magistrate, before taking cognizance of offence can order investigation u/Sec.156(3) of Code and in doing so, he is not required to examine complaint since he was not taking cognizance of any offence

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therein for purpose of enabling Police to start investigation - Once Magistrate takes cognizance of offence, he is, thereafter precluded from ordering investigation u/Sec.156(3) of Code. **Rameshbhai Pandurao Hedau Vs. State of Gujarat 2010(1) Law Summary (S.C.) 175.**

—Secs.161 & 164 - **EVIDENCE ACT,** Secs.134,157 & 9 - **INDIAN PENAL CODE,** Secs.201 r/w 120-B & 302 - Sessions Judge convicted appellant accused u/Sec.302 r/w Sec.120-B of IPC - High Court dismissed Appeal preferred by appellant - Hence present Appeal - Evidence given in a Court under oath has great sanctity, which is why same is called substantiative evidence - Statements u/Sec.161 can be used only for purpose of contradiction and statement u/Sec.164 Cr.P.C can be used for both corroboration and contradiction - In a case where Magistrate has to perform duty of recording statement u/Sec.164, he is under an obligation to elicit all information which witness wishes to disclose, as witness who may be an illiterate, rustic villager may not be aware of purpose for which he has been brought, and what he must disclose in his statements u/Sec.164 Cr.P.C - Hence, Magistrate should ask witness explanatory questions and obtain all possible information in relation to case - So far as statement of witnesses recorded u/Sec.164 is concerned object is two fold; in first place, to deter to witness from changing his stand by denying contents of his previously recorded statement, and secondly to tide over immunity from prosecution by witness u/Sec.164 - A proposition to effect that if a statement of witness is recorded u/Sec.164, his evidence in Court should be discarded is not at all warranted - "MOTIVE" is primarily known to accused himself and therefore, it may not be possible for prosecution to explain what actually prompted or excited accused to commit a particular crime - In a case of circumstantial evidence, motive may be considered as a circumstance which is a relevant factor for purpose of assessing evidence in event that there is no unambiguous evidence to prove guilt of accused - "Motive" loses all significance in a case of direct evidence provided by eye witnesses, where same is available, for reason that in such a case, absence or inadequacy of motive cannot stand in way of conviction - "APPRECIATION OF EVIDENCES" - It is not number of witnesses, but quality of their evidence which is important, as there is no requirement in law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact - It is a time honoured principle, that evidence must be weighed and not counted - Test is whether evidence as a ring of truth, is cogent, credible and trustworthy or otherwise - Legal system has laid emphasis on value provided by each witness as opposed to multiplicity or plurality of witnesses - It is thus, quality and not quantity which determines adequacy of evidence, as has been provided by Sec.134 of Evidence Act - It is settled legal proposition that conviction of a person accused of committing offence, is generally based solely on evidence that is either oral or documentary, but in exceptional circumstances such conviction may also be based solely on circumstantial evidence for which prosecution must establish its case beyond reasonable doubt and cannot derive any strength from weakness in defence

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put up by accused - CRIMINAL CONSPIRACY - A criminal conspiracy hatched in secrecy, owing to which, direct evidence is difficult to obtain - Therefore offence can be proved either by adducing circumstantial evidence or by way of necessary implication - In order to constitute offence of conspiracy, it is not necessary that person involved has knowledge of all stages of action - In fact mere knowledge of main object/purpose of conspiracy would warrant attraction of relevant criminal provision - Thus an agreement between two persons to do, or to cause an illegal act, is basic requirement of offence of conspiracy under penal statute - When a statement recorded in Court and witness speaks under oath, after he understands sanctity of oath taken by him either in name of God or religion, it is left to Court to appreciate his evidence u/Sec.3 of Evidence Act - Basis for appreciating evidence in a civil or criminal cases remain same - However, in view of fact that in criminal case, life and liberty of person is involved, by way of judicial interpretation, Courts have created requirement of high degree of proof - Found no merit in appeal - Appeal, dismissed. **R.Shaji Vs. State of Kerala 2013(1) Law Summary (S.C.) 113 = 2013(2) ALD (Crl) 153 (SC) = 2013 AIR SCW 1095 = AIR 2013 SC 651.**

—Secs.161,340 and 482 - **INDIAN PENAL CODE,** Sec.193 - Accused charged for offence u/Sec.332 IPC basing on report of petitioner - Petitioner/*de facto*- complainant was examined as P.W.1 - During course of evidence petitioner stated before Court that he cannot identify accused due to delay - Magistrate having found evidence of *de facto*-complainant i.e., petitioner, was hostility towards accused, lodged complaint - In this case, petitioner/*de facto*-complainant having lodged report to Police, could not able to identify accused due to delay - He did not deviate his version before Court to earlier version stated before Police u/Sec.161 Cr.P.C. - It is well settled law that Sec.161 Cr.P.C statement is not admissible in evidence - Simply because he is complainant, who shown hostility towards accused, it cannot be said that complainant committed any offence much less against his own case - As such it cannot be said that P.W.1 committed an offence u/Sec.193 IPC - Criminal prosecution cannot be initiated merely on ground that witness has taken different stand from his statement u/Sec.161 Cr.P.C without taking in to consideration of various facts - Proceedings in C.C are liable to be quashed - Criminal petition, allowed. **Seshapu Bhujanga Rao Vs. State 2011(2) Law Summary (A.P.) 188 = 2011(2) ALD (Crl) 547 (AP) = 2011(2) ALT (Crl.) 239 (AP).**

—Sec.167(2)(a)(ii) - **INDIAN PENAL CODE,** Sces.498,366,342 & 506 - Petitioner is an accused for offence punishable under provisions of IPC and he is in Judicial Custody for 77 days - Magistrate returned Bail Application on ground that Bail application u/Sec.167(2)(a) of Cr.P.C. has to be filed after 90 days from the date of Judicial custody - Hence present Criminal Revision case - In the present case punishment provide for u/Sec.366 of IPC is "which may extend to 10 years and also fine" - It can vary from minimum to Maximum of 10 years and it cannot be said that imprisonment prescribed is less than 10 years - Therefore, Magistrate has fallen into error in returning petition filed u/

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Sec.167(2)(a)(ii) of Cr.P.C - Since petitioner is in Judicial Custody for 77 days, he is entitled for statutory bail u/Sce.167(2)(a)(ii) of Cr.P.C. as charge sheet not filed within prescribed period of 60 days - Criminal case allowed - Petitioner is ordered to be released on bail on his executing a personal bond for Rs.10,000/-. **Byagar Mallesh Vs. State of A.P. 2014(1) Law Summary (A.P.) 185 = 2014(1) ALD (Crl) 745 (AP) = 2014(2) ALT (Crl) 223 (AP).**

—Secs.173 & 167 - Petitioners charge sheeted for offences u/Secs.302, 376, 379 & 201 IPC - Petition filed u/Sec.167 (2) Cr.P.C seeking release of petitioners on ground that on expiry of 90 days remand period they are entitled to enlarge on bail, as Police failed to file report before expiry of 90 days - Magistrate dismissed petition holding that charge sheet was file though it was named as preliminary charge sheet, no where it was mentioned in charge sheet that *"the investigation is not yet completed and after completion of full investigation another charge sheet will be filed"* - Petitioners contend that they were arrested on 30-10-2008 and remanded to judicial custody by Magistrate on 30-1-2008, filing of charge sheet on 29-1-2009 after expiry of 90 days of remand period, which was returned by Court on same day and same has not been represented before Court till date and that once requirement of Sec.173(2)& (5) Cr.P.C has not been complied with petitioners are entitled to be enlarged on bail, as a matter of right as required u/Sec.167(2) Cr.P.C.

Single Judge referred matter to Division Bench for authoritative pronouncement.

In this case, as seen from charge sheet, two requirements u/Sec.173(2) (5) have been complied with - Though it is clearly mentioned in preliminary charge sheet as to what remains to be done in investigation, it cannot be said that preliminary charge sheet is filed to defeat rights of accused - Once charge sheet is filed within 90 days, but was returned for compliance of certain technical objections of not filing expert's opinion, is a proper compliance under Sec.173(2) and same will not confer any right on accused to seek bail as a matter of right - Even in a case where charge sheet is filed after 90 days, but before accused seeks bail availing benefit under proviso to Sub-sec.(2) of Sec.167, is indefeasible right will be extinguished on filing such charge sheet - Criminal petition, dismissed - Petitioner is at liberty to move regular bail Application. **Venkatarayanakota Krishnappa Vs. State of A.P. 2009(2) Law Summary (A.P.) 1 = 2009(1) ALD(Crl) 818(AP) = 2009(2) APLJ 268 = 2009(2) ALT(Crl) 191(AP) = 2009 Cri. LJ 3168(AP).**

—Secs.173 & 482 - **EVIDENCE ACT,** Sec.73 & 45 - **CONSTITUTION OF INDIA,** Art.20 (3) - Petitioner/A1 charged for offences punishable u/Secs.417, 420,376 & 506 - Sub-Divisional Police Officer filed petition requesting Court to record original voice of petitioner/A1 and victim for forwarding same to A.P.F.S.L for comparison with Compact Disc (CD) allegedly containing voices/conversations of A-1 and victim recorded by cell phone - Trial Court allowed petition permitting to record voices of A1 and victim in open Court - Petitioner contends that directing A1/petitioner to give sample voice for purpose of comparison of same with alleged voice contained in CD

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offends his fundamental right under Art.20 (3) of Constitution - Prosecution contends that petitioner/A1 is not willing to give his sample voice for purpose of comparison with voice contained in CD, then he may be permitted to do so subject to lower Court drawing adverse inference on his refusal to give his sample voice and that recording sample voice of accused in Court, does not violate Art.20 (3) of Constitution of India - Exercise of recording of sample voices of A-1 and victim in open Court is not going to incriminate A-1 on basis of such sample voice, but only facilitates Investigation Officer and Court to identify voice contained in CD which is already in possession of Investigating Officer - By any stretch of imagination, exercise of recording sample voice of A-1 for purpose of identifying male voice already contained in CD which is collected by Investigating Officer during investigation cannot amount to testimonial compulsion which is prohibited under Art.20(3) of Constitution - Trial Court is at liberty to proceed towards that exercise of recording sample voices of petitioner/A1 and victim - Criminal Revision petition, dismissed. **Y.Ranganadh Goud Vs. State of A.P. 2010(2) Law Summary (A.P.) 390.**

—Secs.173(1)(2) & (5) and 167(2) - Petitioners/accused charged for offences u/Secs.147, 148,302,307 r/w Sec.149 IPC - "Filing of preliminary charge sheet" - Since investigation not completed as report filed u/Sec.173 Cr.P.C has been returned, petitioners have indefeasible right to be enlarged on bail u/Sec.167(2) Cr.P.C - Once charge-sheet has been filed, question of granting bail for non- compliance of sub-sec.(2) of 167does not arise - If accused files a petition before filing of charge-sheet and offers to furnish bail he is said to have availed his right - Once right is availed by accused, it will not get extinguished by subsequent filing of charge-sheet - Where in a case Investigating Officer is unable to secure some documents such as Forensic report, Ballstic Expert Report etc. and if Investigating Officer files charge-sheet enclosing all other documents as required to be filed by him under sub-secs.(2) & (5) of Sec.173, then same can be treated as filing of report u/Sec.173(1) Cr.P.C - In this case except P.M Report and wound certificates no other documents were filed along with charge sheet - Admittedly only certain documents were filed - Thus it is clear that there is total non-compliance of sub-sec.(5) of Sec.173 Cr.P.C - Action of investigating Officer in filing only P.M. Report and wound certificate cannot be treated as filing of report u/Sec.173 and such act of Investigating Officer is nothing but an act of subterfuge and clearly not in accordance with law and not in conformity with mandatory provisions of Sec.173 (2) & (5) and therefore it cannot be construed as report contemplated u/Sec.173 (1) Cr.P.C - Petitioners shall be enlarged on bail - Criminal petition, allowed. **Puligada Pitcheswara Vs. State of A.P. 2010(1) Law Summary (A.P.) 1.**

—-Secs.173(2) (5)(8),167 & 309 (2) - CBI filed charge-sheet against appellant/Company for offences u/Secs.409, 420 & 120-B of IPC, after completion of investigation -Magistrate taking cognizance, specifically noting that NBW was still pending - CBI seeking remand of appellant in judicial custody u/Sec.309 (2) - Magistrate rejecting statutory bail Application filed by appellant after expiry of 30 days from date of arrest - Sessions

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Judge allowing revision Application filed by appellant holding that Sec.309 (2) not applicable to appellant who was arrested in course of further investigation - Single Judge of High Court over turned decision of Sessions Judge holding that Sec.309(2) cannot be applied to person who was arrested in course of further investigation - Charge-sheet is a final report within meaning of Sec.173 (2) of Code - If Investigating Officer finds sufficient evidence even against such an accused who had been absconding, law does not require that filing of charge-sheet must await arrest of accused - Power of Investigating Officer to make prayer for making further investigation u/Sec.173(8) is not taken away because a charge-sheet has been filed u/Sec.173 (2) - A further investigation is permissible even if order of cognizance of offence has been taken by Magistrate - It is true that ordinarily all documents accompanying charge-sheet - Even if all documents not filed, by reason thereof submission of charge-sheet itself does not become vitiated in law - In this case, charge-sheet has been acted upon as an order of cognizance had been passed on basis thereof and appellant not questioned said order and that validity of said charge-sheet also not in question - So long as charge-sheet is not filed within meaning of Sec.173 (2) of Act, investigation remains pending - It does not preclude Investigation Officer to carry on further investigation despite filing of a police report in terms of Sec.173 (8) - Appellant has no statutory right to be released on bail - Judgment of High Court - Justified – Appeal, dismissed. **Dinesh Dalmia Vs. C.B.I. 2008(1) Law Summary (S.C.) 46 = 2008(1) ALD (Crl) 331 (SC) = AIR 2008 SC 78 = 2008 Crl. LJ 337 (SC) = 2007 AIR SCW 6112 = 2007(8) SCC 770.**

—Sec.173(2) & (8) - Jurisdiction of Magistrate to direct reinvestigation of case - Stated - Magistrate can take cognizance on basis of material placed on record by investigating agency - It is also permissible for Magistrate to direct further investigation - Magistrate or Superior Courts can direct further investigation, if investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in ends of justice. **Kishan Lal Vs. Dharmendra Bafina 2009(3) Law Summary (S.C.) 49.**

—Secs.173(2) & 173(8), 190 & 319 - **INDIAN PENAL CODE,** Secs.420, 408,120-B/34 - Scame occurred in TTD in relatio to selling of “Poorabhishikam” tickets to piligrims - Basing on report of Asst. Vigilance Officer report/charge-sheet originally filed against A-1, A-3 & A-4 - Subsequently when Magistrate returned charge-sheet, Investigating Officer and Police Department deleted names of A-3 & A-4 from case without collecting further evidence/material about complicity of A3 & A4 - When case taken up for trial lower Court allowed petition filed by prosecution u/Sec.319 Cr.P.C to implead Special Officer, Camp-clerk and Asst.Sharoff in J.E.Os office to implead them as A2 to A4 - Hence present petitions filed by newly added accuused questioning orders of Magistrate - Petitioners contend that impugned order is not sustainable inview of several pronouncements of Supreme Court prescribing norms required for impleading an outsider as accused persons while exercising power u/Sec.319 Cr.P.C - This is subject in which entire public and more particularly those belonging to Hindu Religion in this Country who have faith in Lord have curiousity - When crimes are being committed infront of Lord and under nose of Lord, it is a matter having considerable

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public importance, hence this cannot be viewed lightly and cannot be allowed to be investigated superficially by producing window- dressed - Local Police at Tirumala and Chittoor District are not able to raise to occasion for their own reasons - It is therefore necessary that C.I.D of State has to investigate further into this matter in a comprehensive manner and submit a report to this Court and thereafter additional final report before Magistrate u/Sec.173(8) Cr.P.C - Cr.P.C. Secs.173(2) & 173(8) fresh investigation - Reinvestigation - Further investigation - Meaning of - Even after completion of investigation under sub-sec.(2) of Sec.173, Police has right to further investigate under sub-sec.(8), but not fresh investigation or reinvestigation - Magistrate or Superior Courts can direct further investigation, if investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in ends of justice - Investigation agency can pray before Court and may be granted permission to investigate into matter further - There are no illegal fetters to High Court to order further investigation of this case, u/Sec.173(8) Cr.P.C by C.I.D of State - Pending further investigation trial of C.C in lower Court cannot go on - Hence trial of C.C on file of Magistrate stayed pending further orders on these petitions - Addl. Director General of Police C.I.D is directed to take up further investigation of this case, and entrust same to a team of competent investigating officers constituting special investigating team. **A.Dharma Reddy Vs. State of A.P. 2010(2) Law Summary (A.P.) 437.**

—Secs.173(2) & 173(8) - **INDIAN PENAL CODE,** Sec.498-A - "Filing of additional report by Investigating Officer" - Case registered against A1 to A3 u/Sec.498-A IPC basing on report given by 2nd respondent/*de facto* complainant, wife of A1 - After investigation Sub-Inspector filed charge- sheet against A1 only as sole accused harassing *de facto* complainant in charge-sheet and that witnesses stated that A1 was only harassing de facto complainant and that A1 and A3 are no way concerned and they never involved in harassment of their daughter-in-law - Subsequently, same Sub-Inspector filed memo in C.C without quoting provision of law requesting Court to treat A2 and A3 as accused in addition to A1 as they also harassed their daughter-in-law, mentally and physically in demanding additional dowry; and requesting Court to finalise case as per additional charge-sheet - In this case, it is not stated in Memo at whose instance he made further investigation in this case, after filing of report/ charge-sheet u/Sec.173(2) Cr.P.C in Court and after it was taken cognizance by Court - No permission is taken by Investigation Officer from lower Court for making further investigation - u/Sec.173 (8) Cr.P.C, it is clear that even though law does not prescribed any prior permission to be taken by Police Officer from Magistrate who already took cognizance of case for further investigation, but it is ordinarily desirable that Police to inform Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent about matter - In this case, in memo filed along with additional charge-sheet, Sub-Inspector did not mention any circumstances which prompted him to take up further investigation in this case, after he filed charge-sheet u/Sec.173(2) Cr.P.C - Admittedly no formal permission was taken by S.I of Police

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to make further investigation in this case from Court after his final report/charge-sheet was taken on file - Apart from irregularity or illegality in not obtaining prior permission of lower Court for further investigation, there is gross impropriety on part of S.I of Police in taking up further investigation *suo motu* and come to conclusion which is quite opposite to conclusion which arrived at during original investigation in so far as A2 & A3 are concerned - He made a clean U-turn about complicity of A2 & A3 in this offence - S.I of Police simply abused provisions of Sec.173(8) Cr.P.C - Evidently S.I of Police has tilted from one side to another side on some extraneous consideration - Proceedings in lower Court against A2 & A3 are liable to be quashed - Petition, allowed. **Lanka Vani Vs. State of A.P. 2010(3) Law Summary (A.P.) 207.**

—Sec.173(5), 173(6) & 313 - **INDIAN PENAL CODE,** Sec.120-B - **PREVENTION OF CORRUPTION ACT,** Sec.13(2) r/w 13(1) (e) - "Inspection of unmarked and unexhibited documents" - Trial Court dismissed application filed by appellant accused seeking certified copies of certain unmarked and unexhibited documents which were in custody of Court - Since High Court also dismissed criminal petition appellant/ accused filed Application before trial Court seeking inspection of said unmarked and unexhibited documents - Trial Court rejected said application and High Court also dismissed Criminal Petition - Hence, present Appeals - In this case, Investigating Officer forwarded to Court unmarked and unexhibited documents of cases, that are being demanded by accused, u/Sec.173(5) but are not being relied upon by prosecution - Though prosecution has tried to cast some cloud on issue as to whether unmarked and unexhibited documents are part of Report u/Sec.173 Cr.P.C., it is not denied by prosecution that said unmarked and unexhibited documents are presently in custody of Court - In such circumstances it can be safely assumed that what has been happened in present case is along with Report of investigation a large number of documents have been forwarded to Court out of which prosecution has relied on only on a part thereof leaving remainder unmarked and unexhibited documents - Sec.175(5) Cr.P.C makes it incumbent on Investigating agency to forward/transmit to concerned Court all documents/statements etc., on which prosecution proposes to relay in course of trial - Sec.173(5), however is subject to provisions of Sec.173(6) which confers a power on Investigating Officer to request concerned Court to exclude any part of statement or documents forwarded u/sec.173(5) from copies to be granted to accused - Object of recording statement of accused u/sec.313 of Cr.P.C is to put all incriminating evidence against accused so as to provide him an opportunity to explain such incriminating circumstances obtaining against him in evidence of prosecution - At same time, also to permit him to putforward his own version or reasons, if he so chooses in relation to his involvement or otherwise in crime - Court has been to empowered to examine accused but only after prosecution evidence has been concluded - Courts may relay on a portion of statement of accused and find him guilty in consideration of other evidence against him lead by prosecution, however, such statements made under this section should not be considered in isolation but in

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conjunction with evidence adduced by prosecution - In view of avowed purport and object of examination of accused u/Sec.313 Cr.P.C, appellant/accused cannot be denied access to documents inrespect of which prayers have been made in his application for certified copies of unmarked documents and for inspection before trial Court - Appellant/2nd accused, be allowed an inspection of unmarked and unexhibited documents referred in her application - Venue of such inspection and also persons who will be permitted to be present at time of inspection will be decided by trial Court. **V.K.Sasikala Vs. State 2012(3) Law Summary (S.C.) 242.**

—Secs.173(8) - Accused has no right to be heard at stage of investigation - Prosecution will however have to prove its case at trial when accused will have full opportunity to rebut/question validity and authenticity of prosecution case - Evidentary value can be tested during trial only. **Narendra G.Goel Vs. State of Maharashtra 2009(2) Law Summary (S.C.) 176.**

—Sec.173(8) and 173(2) - "Further investigation" - Case pertains to offence punishable u/Secs.147, 323, 506 and 489 etc., IPC and Secs.3(i)(x) and 3(i)(xi) of S.T & S.C Act - After investigation CID Police filed charge sheet against A1 and A5 - In charge sheet name of A4 is given as Are Lingareddy, s/o Buchi Reddy, described as Ex.M.P.P - CID Police filed charge sheet without arresting A2 to A5, without taking into custody and producing them alongwith charge sheet and without compliance of Sec.170 Cr.P.C - Present petition filed by proposed A4 in PRC - Compliance of Sec.170 Cr.P.C is a condition precedent for filing report or charge sheet and Investigating Officer is expected to file final report u/Sec.173(2) Cr.P.C after completion of investigation - Without completing investigation as prescribed by law, question of Investigating Officer resorting to Sec.173(2) Cr.P.C by way of filing final report/charge sheet before Magistrate will not arise at all - Magistrate also is not expected to take cognizance of offences mentioned therein unless investigation is complete - In this case, no reasons or given for not arresting A4 as well as A2, A3 & A5 before filing charge sheet in Magistrate Court - Inspite of it, Magistrate took cognizance of offence against A1 to A5 by way of taking case on file against A1 to A5 and after taking cognizance Magistrate issued non- bailable warrants against A2 to A5 - Investigation Agency DSP of Police filed petition u/Sec.173(8) Cr.P.C stating that on enquiry A4 Linga Reddy deposed that he was not at all concerned with said offence and was not aware of same and when Investigating Officer met de facto complainant and his family members they stated that A4 was not person involved in commission of offence and there is another Lingareddy whose name is Ganga Lingareddy - Therefore petition filed before Magistrate praying for permission for further investigation of case to ascertain which Lingareddy was real culprit and also for permission to file additional charge sheet after proper investigation - Hence Ganga Lingareddy filed present petition u/Sec.482 Cr.P.C for quashing proceedings - Simply because Are Linga Reddy is stated to have deposed to DSP who went to his house for arrest in execution of non-bailable warrant issued by Magistrate that he was not person concerned in that case, Investigating Officer

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should not have returned without execution of non bailable warrant by way of arresting A4 and taking him into custody - Petition file before Magistrate u/Sec.173(8) Cr.P.C reads that entire further investigation of case by way of changing identity of Lingareddy was complete - It is contended by P.P that when Investigation Officer went to A4/ Are Linga Reddy for his arrest there was agitation by public who gathered at his residence - Investigating Officer cannot be carried away by agitation but has to relay upon substance of his investigation - This is not a case, where another Linga Reddy of same village with sur name is sought to be identified in place of A4 Are Linga Reddy - Petitioner's identity is no way near to identity of A4 against whom charge sheet is already filed - Investigation Officer intended to play game of "Body Doubling" in this case, in order to facilitate A4/Are Linga Reddy to be away from this case - This sort of making a U-turn by Investigating Agency is likely to hamper credibility of said investigation itself - There may be instances of prosecution witnesses turning hostile to prosecution by not identifying accused person in dark during trial in Court and by naming another person as real culprit - This sort of activity by witnesses is resorted for helping accused during trial, but in present Investigating Officer himself wanted to turn hostile to Investigation which he made already in this case and concluding of Investigation by way of filing charge sheet before Magistrate - Such Somersaults by Investigating Officer in CID should not have been permitted by Magistrate - Further investigation in this case as against petitioner is nothing but abuse of process of law - Further investigation quashed in PRC on file of Magistrate - Criminal petition, allowed. **G.Linga Reddy Vs. M.Dharma Raju, 2011(2) Law Summary (A.P.) 94 = 2011(1) ALD (Crl) 892 (AP) = 2011(2) ALT (Crl) 131 (AP).**

—Secs.173(8) & 439 – **CONSTITUTION OF INDIA,** Art.136 & 21 – "Transfer of Investigation from State Police to CBI" - "Bail" - High Court has Discretionary Power to Transfer Investigation from State Police to CBI - Accused has no right to have any say as regards manner and method of Investigation – Save under certain exception under entire Scheme of Code, accused has no participation as a matter of right during course of investigation of case instituted on Police Report till investigation culminates in filing of final Report u/Sec.173(2) of Code in a proceeding instituted otherwise than on Police Report till process is issued u/Sec.204 of Code - GRANTING OF BAIL – After charge sheet being filed, obviously, petitioner/appellant is no longer required for further investigation and there is no likelihood of petitioner/appellant tampering with evidence as copies of all sensitive statements have not been supplied to petitioner/appellant - In this case keeping in a view that the CBI has submitted supplementary charge sheet and Trial likely to take long time, it is appropriate to enlarge petitioner/appellant on bail subject to certain conditions. **Dinubhai Boghabhai Solanki Vs. State of Gujarat 2014(1) Law Summary (S.C.) 97.**

—Sec.174 – Mother committed suicide "custody of minor child" – Appellants/maternal grand parents filed OP for a custody of child and respondent/father filed another O.P – District Judge allowed O.P filed by respondent/father and dismissed O.P filed by grand

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parents - Appellants/grand parents contend that keeping in view of past conduct of respondent relating to suspicious death of their daughter, wife of respondent it would not be safe to trust respondent for being given custody of minor child and also alleges that respondent married 2nd wife within one year of death of his 1st wife and that appellants are looking after minor child affectionately - Respondent contends that he is being natural father of minor child, he is alone entitled for custody of child especially as nothing is established against him which disentitles him from said right of natural parent and that he is highly educated working in Engineering College as Lecturer having professional reputation to his credit and he is financially very sound and his 2nd wife is keen on looking after minor child and for that purpose she had undergone Tubectomy operation, so that she will not beget any children to ensure that minor child is not neglected - Legally natural father undoubtedly stands on a better position than maternal grand father provided there are no circumstances which disqualify father from such custody – Interest and welfare of minor child being paramount consideration, economic condition of father and status in society also needs to be assessed vis-a-vis maternal grand father - Where grand father is seeking preferential custodial right over natural father's claim for custody of minor child, it is essential for grand father to plead and establish that natural father is unfit or is otherwise disqualified from being given custody of child - On analysis of entire evidence oral documentary, respondent-father of child is highly educated and is responsible father having very comfortable financial position - There is total lack of any allegations much less any evidence on part of appellants showing that respondent/ father is any manner unfit for disqualification from having custody of minor child – Mere dislike of respondent by appellants is no ground to deny custody to respondent - Minor child has already lost his mother and it would be wholly erroneous to deprive him of his father as well and overlook claim of father and give custody to maternal grand parents – Order of District Judge granting custody of minor child to respondent/father – Justified – Appeals, dismissed. **K.Venkat Reddy Vs. Chinnapareddy Viswanadha Reddy 2008(3) Law Summary (A.P.) 149 = 2008(6) ALD 222 = 2008(6) ALT 360.**

—Secs.190 and 227- Magistrate taking cognizance of case basing on F.I.R. registered on undated photocopy of petition and issuing summons to accused – High Court set aside summoning orders of Magistrate - In view of report of investigation by CID which was also called for and there being no dispute that FIR was registered only on basis of Photostat copy on which signature is not in original - High court grossly erred in interfering with order of taking cognizance – Order of High Court, set aside- Appeals – Allowed. **Sonu Gupta Vs. Deepak Gupta 2015(1) Law Summary (S.C.) 35**

—Sec.197 - **"Public servant" - "Sanction for prosecution"** - Magistrate took cognizance for alleged commission of offences punishable u/Secs.387/504/34 IPC, against 2nd respondent, Deputy Superintendent of Police - High Court quashed proceedings - All acts done by a public servant in purported discharge of his official duties cannot as a matter of course be brought under protective umbrella of Sec.197 Cr.P.C - If authority vested in public servant is misused for doing things which are not otherwise permitted under law, such acts cannot claim protection of Sec.197 Cr.P.C - Hence in respect of prosecution for such excesses or misuse of authority, no protection

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can be demanded by public servant concerned - In this case, complaint prima face makes out offences alleged to have been committed by 2nd respondent which were not part of his official duties - Judgment and order of High Court, set aside - Directed trial Court to proceed with trial - Appeal, allowed. **Choudhury Parveen Sultana Vs. State of West Bengal 2009(1) Law Summary (S.C.) 81.**

——Sec.197 - The Apex Court framed following points for adjudication (1) Whether an order directing further investigation u/Sec.156(3) of the Code of Criminal Procedure can be passed in relation to public servant in absence of valid sanction and contrary to judgments of this Court in Anil Kumar and Ors. v. M.K. Aiyappa and Anr. : (2013) 10 SCC 705 and Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and Ors.: (2012) 10 SCC 517 (2) Whether a public servant who is not on same post and is transferred (whether by way of promotion or otherwise to another post) loses protection Under Section 19(1) of the P.C. Act, though he continues to be a public servant, albeit on a different post? **L.Narayana Swamy Vs. State of Karnataka 2016(3) Law Summary (S.C.) 1 = AIR 2016 SC 4125 = 2016(2) ALD (Crl) 738 (SC).**

——Sec.197 - **INDIAN PENAL CODE,** Secs. 34, 420 - Rule 26 (i) (k) (i) of the A.P. Rules under The Registration Act, 1908 - This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against petitioner for an offence punishable under Section 420 r/w 34 of IPC.

Held, having regard to facts and circumstances of case and also principle enunciated in cases, Court considered view that complaint is not maintainable against petitioner without obtaining previous sanction - The learned Magistrate, while taking cognizance of offence, has not considered the scope of Section 197 Cr.P.C. - Therefore, it is manifest that trail Court has committed grave error in taking cognizance of offence against petitioner - Taking cognizance of offence against petitioner in violation of Section 197 Cr.P.C. is non-est in eye of law - In such circumstances, compelling petitioner to face rigour of trial would certainly amount to miscarriage of justice.

Having regard to facts and circumstances of case and also principle enunciated in case, this Court considered view that it is a fit case to quash criminal proceedings against petitioner in order to secure ends of justice - For foregoing discussion, this Criminal Petition is allowed, quashing the proceedings against the petitioner. **Ummadisetti Ratnasagar Vs. State 2016(2) Law Summary (A.P.) 237 = 2016(2) ALD (Crl) 135 = 2016(5) ALT 337 = 2016(3) ALT (Crl) 26.**

—Sec.197 - **INDIAN PENAL CODE,** Secs.448, 323, 380 & 506 - Petitioner lodged complaint in Police station against respondents 2, 3 & 4 and crime registered under above provisions of IPC - Investigating Officer did not file charge sheet even though investigation was completed - Respondents contend that charge sheet could not be file in view of pendency of sanction proceedings u/Sec.197 Cr.P.C - A reading of Sec.197 Cr.P.C, it is clear that Court shall not take cognizance of offence against class of persons mentioned in said Section when they are accused of any offence

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alleged to have been committed by them while acting or purporting to act in discharge of their official duty and unless previous sanction of concerned Govt., is obtained - Section gives protection against irresponsible, frivolous or vaxatious proceedings for acts done in discharge of official duty and does not extend to every act or omission done by public servant in service - Said protection is not available to public servant if act complained of is not in connection with discharge of his duty or in excess of his duty - Requirement of sanction has to be gathered from allegations in complaint - In instant case a perusal of allegations in complaint against respondent no.4 prima facie disclose that they do not relate to discharge of official duties by 4th respondent and hence no sanction is required in circumstances of case - This is one of cases where citizen is unable to set criminal law in motion inspite of clear mandate of law, due to one reason or other - Though investigation was completed long back filing of charge sheet was held up on untenable ground of sanction merely because of involvement of public servants - "Action of Police Officer in committing trespass into floor mill of complainant by breaking open lock, removing sign boad and a motor was held to be no part of their duty actual or purported even if property has been acquired for purpose of Police Station" - In this case, it is 11 years since complaint was lodged - Journey to justice through process of law should be swift and secure - Citizen should not have feeling it is difficult to proceed against public servant even if they exceed their powers or misuse their powers - When law treats every one as equal law enforcement agencies should not treat some as more exceptional - Respondents 1 & 2 DGP, Commissioner of Police are directed to issue instructions to concerned officers to file charge sheet within one week - Writ petition, allowed. **G.Haritha Vs. Director General of Police, Govt. of A.P. 2013(3) Law Summary (A.P.) 301 = 2014(1) ALD (Crl) 258 (AP) = 2014(1) ALT (Crl) 261 (AP).**

—Secs.197 & 132 - **ARMY ACT,** Sec.125 - **Armed forces J & K (Special Powers) Act,** Sec.7, r/w Sec.90 Cr.P.C. - Appellants filed application for not entertaining charge sheet filed by CBI - "Prosecution" means a criminal action before Court of law for purpose of determining "guilt" or "innocence" of a person charged with a crime - Civil suit refers to a civil action instituted before a Court of law for realization of right vested in party by law - Phrase "legal proceeding" connotes a term which means proceedings in Court of justice to get remedy which law permits to person aggrieved - It is not synonymous with "judicial proceedings" - Every judicial proceeding is a legal proceeding but not vice-versa for reason that there may be legal proceedings which may not judicial at all e.g statutory remedies like assessment and Income Tax Act, Sale Tax Act, Arbitration proceedings etc - So ambit of expression "legal proceeding" is much wider than "judicial proceedings" - CRIMINAL PROCEDURE CODE, Sec.197 - Sanction for prosecution - Protection given u/Sec.197 Cr.P.C. is to protect responsible public servants against institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants - Use of expression "official duty" implies that act or omission must have been done by public servant in course of his service and that it should have been done in discharge of his duties - Section does not

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extend its protective cover to every act or omission done by public servant in service, but restricts its scope of operation to only those acts or omissions which are done by public servants in discharge of official duty - If on fact, therefore it is prima facie found that act or omission for which accused was charged had reasonable connection with discharge of his duties, then it must be held to be official to which applicability of Sec.197 Cr.P.C cannot be disputed - General clauses act, Sec.322 - "Good faith" - Defined - Good faith to mean a thing which is in fact done honestly whether it is done negligently or not - Any thing done with due care and attention which is nor mala fide, is presumed to have been done in good faith - There should not be personal ill-will or malice, no intention to malign and scandalize - Presumption of good faith therefore can be dislodged on ly by cogent and clinching evidence and so long as such a conclusion is drawn, a duty in good faith should be presumed to have been done or purposes to have been done in exercise of powers conferred under statute - In this case, appellants contend that Armed Forces Act is a special Act and Sec.7 thereof provides full protection to persons who are subject to Army Act from any kind of suit, prosecution and legal proceedings unless sanction of Central Govt., is obtained - Court-martial proceedings are akin to criminal prosecution - However, once matter transferred to Army for conducting Court martial, Court martial has to be as per provisions of Army Act which does not provide for sanction of Central Govt., - Contention raised by appellant rejected. **General Office, Commending Vs. C.B.I. 2012(2) Law Summary (S.C.) 9.**

—Sec.197 & 482 - **APGST ACT,** Sec.37, r/w Sec.197 of Cr.P.C - 'Prosecution of public servants' - "Good faith" - Appellant, Asst. Commissioner of Commercial Taxes inspected respondent's shop and best judgment assessment was completed since respondent failed to give proper explanation for non-maintenance of any account books relating to his business inspite of extension of time - After period of three months after inspection, respondent filed complaint alleging that appellant taken away bill books, cheque books and also Indira Vikas Patras forcibly without giving any acknowledgment and without conducting panchanama - Magistrate issuing notice and process to appellant and asked to appear before Court for trial - High Court dismissing petition filed by appellant u/ Sec.482 Cr.P.C seeking quashing of complaint holding that it is for appellant to lead evidence and establish that acts done by him was in due discharge of official duties and non issue of receipt in evidence of seizure was in dereliction of duties - It is not possible for Court to accept plea taken by appellant that acts complained are done in discharge of official duty or in dereliction of duties for quashing proceedings at initial stage unless complainant is given opportunity to establish his case - Appellant contends that proceedings were nothing but abuse of process of law and therefore, High Court should have interfered in matter - "Good faith" means a thing which is in fact done honestly whether it is done negligently or not and anything with due care and attention which is not malafide is presumed to have been done in "Good faith" - Sec.197 Cr.P.C provides for protection to public servants in discharge of official duties, there is a need to balance between protection to Officers and protection to citizens - In this case, factual scenario goes to show that proceedings were nothing but abuse of process of law - Hence proceedings in CC before Magistrate, stand quashed - Appeal, allowed. **Goondla Venkateswarlu Vs. State of A.P. 2008(3) Law Summary (S.C.) 82 = 2008(2) ALD (Crl.) 876 (SC) = 2008 AIR SCW 5748 = 2008(6) Supreme 472.**

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—-Sec.197(2) and 482 - **INDIAN PENAL CODE,** Secs.120-B, 203 & 302 r/w 34 - Prosecution of public servants - "Sanction" - "Police personnel" - "Encounter" - Complaint filed against Police personnel alleging that complainant's son was killed in fake encounter by accused/Police personnel and dead body was cremated keeping him and his family members in dark, with a view to destroy evidence and manufacture story of Police encounter - Complainant also contends that accused committed offence not in discharge of their official duties and therefore no sanction is require to prosecute them, u/Sec.197 of Cr.P.C - High Court allowed petition filed by some of accused, Police personnel on ground that sanction required u/Sec.197 of Code not obtained and dismissed petition filed by some of Police personnel accused on ground that no Notification issued u/Sec.197(3) of Code to show that they were protected against prosecution in respect of any offence against prosecution - Aggrieved by judgment of High Court appellants/Police personnel and complainant filed present appeals - It is not duty of Police Officers to kill accused merely because he is a dreaded criminal - Undoubtedly Police have to arrest and put them up for trial - Apex Court repeatedly admonished trigger happy Police personnel, who liquidate criminals and project incident as encounter - Such killings must be deprecated and they are not recognized as legal by criminal justice administration system and they amount to State sponsored terrorism - Requirement of "sanction" to prosecute affords protection to Police men who are some times required to take drastic action against criminals to protect life and property of people and to protect themselves against attack - Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution - Sanction must be a precondition to their protection and it affords necessary protection to such Police personnel and that plea regarding sanction can be raised at inception - Power u/Sec.482 Cr.P.C should be used sparingly and with circumspection to prevent abuse of process of Court but not to stifle legitimate prosecution and if it appears to trained judicial mind that continuation of prosecution would lead to abuse of process of Court, powers u/Sec.482 of Code must be exercised and proceedings must be quashed - In instant case, proceedings initiated against Police personnel need to be quashed - Appeal filed by complainant, dismissed. **Om Prakash Vs. State of Jharkhand 2012(3) Law Summary (S.C.) 128.**

—Sec.199 - **INDIAN PENAL CODE,** Secs.499 Explanation-2, 500 & 501 - Public speech given by petitioner/accused making several allegations against Congress Party leaders describing them as Thieves and Betrayers of Country and that said speech published in many Telugu Daily Newspapers - Hence complaint filed u/Secs.500 & 501 IPC - Petitioners contend that complaint/1st respondent has no locus standi to file criminal complaint as he was not named by accused in his speech and that he cannot be termed as aggrieved party within meaning of Sec.199 Cr.P.C and that no public interest litigation can be allowed in case of prosecution in defamation - 1st respondent complaint inviting attention of Court to Explanation 2 of Sec.499 IPC and that if alleged derogatory statement or imputation was made against an association

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or collection of persons as such, then any member of such association or collection of persons can maintain a complaint for defamation before Magistrate in case members of association or collection of persons are definite and identifiable - u/Sec.199 Cr.P.C only a person aggrieved can maintain lis for Criminal defamation - 1st respondent/ complainant claims to be a Congress Party worker since long time and he is not only congress man but also a local leader of youth wing in Congress Party - Members of Indian National Congress is verifiable and ascertainable - Hence it cannot be said that complaint filed by 1st respondent is not maintainable on ground that he is not an aggrieved person - Criminal petition, dismissed. **K.Pawan Kalyan Vs. D.Kiran Kumar 2010(3) Law Summary (A.P.) 299 = 2011(1) ALD (Crl) 29 (AP) = 2011(1) ALT (Crl) 47 (AP).**

—Secs.200,202(2) and 482 - Appellant lodged FIR alleging that respondents 1 to 4 killed his son - Police submitted final report after conducting investigation with finding that they have no clue about culprits - Hence, appellant filed protest petition accusing Police were not conducting proper investigation due to Political pressure - Magistrate accepting final form submitted by Police and at same time directed that protest petition be numbered as separate complaint - Magistrate after examining appellant and two witnesses took cognizance against respondents 1 to 4 for offence u/Sec.302, r/w 120-B of IPC - Respondents challenged order of Magistrate under Sec.482 Cr.P.C - Single Judge of High Court accepted contention of respondents remitted matter to concerned Court for passing appropriate orders after making further enquiry in light of proviso to Sec.202(2) Cr.P.C - Appellant contends that Sec.202(2) Cr.P.C is not mandatory and High Court committed serious error by remitting matter to Magistrate for further enquiry - Respondents contend that proviso to Sec.202(2) is mandatory and Magistrate committed a serious error in taking cognizance against respondents 1 to 4 and issuing non bailable warrants against them without insisting on examination of two witnesses named in complaint - Object of examining complaint and witnesses is to ascertain truth or falsehood of complaint and determine whether there is a prima facie case, against person who according to complaint has committed offence - If upon examination of complainant and/or witnesses, Magistrate is prima facie satisfied that a case is made out against person accused of committing offence then he is required to issue process - Even though in terms of proviso to Sec.202(2), Magistrate is required to direct complaint to produce all his witnesses and examine them on oath, failure or inability of complainant or omission on his part to examine one or some of witnesses cited in complaint will not preclude from taking cognizance and issuing process - Such order passed by Magistrate cannot be nullified on ground of non-compliance of proviso to Sec.202(2) - Examination of all witnesses cited in complaint is not a condition precedent for taking cognizance and issue process against persons named as accused in complaint - High Court committed serious error in directing Magistrate to conduct further enquiry and pass fresh order in light of proviso to Sec.202(2) - Impugned order, set aside - Appeal, allowed. **Shivjee Singh Vs. Nagendra Tiwary 2010(2) Law Summary (S.C.) 165.**

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—Secs.200 & 203 - Trial Court dismissing complaint - Complaint registered against petitioner/accused for offences punishable u/Secs.109,147,148,341,324, 323,427 r/w 149 I.P.C - Trial Judge perused complaint and dismissed u/Sec.203 Cr.P.C for lack of sufficient ground - Petitioner and P.P contend that trial Court after receipt of complaint without examining complainant or his witnesses proceeded to dismiss complaint and therefore order of dismissal of complaint is liable to be set, aside and trial Judge should have recorded statement of complaint without doing same she has dismissed complainant which is not legal - Sec.200 Cr.P.C makes it incumbent on Magistrate to examine witnesses who were present in Court on oath and it can apply Sec.203 Cr.P.C only if after examining complainant and witnesses who are present in Court, he finds sufficient grounds for not proceeding with case - Section is mandatory and it is therefore obligatory on part of Magistrate to examine not only complainant, but also witnesses who are present in Court - Except in cases arising out of clauses (a) and (b) of Sec.200 Cr.P.C, Court is bound to examine complainant and record sworn statement of complainant and witnesses - Object of such examine is to ascertain whether there is prima facie case and sufficient ground for proceedings - Therefore it is incumbent on Magistrate taking cognizance on complaint to examine upon oath complainant and his witnesses, if any to satisfy himself has to veracity of complaint - Correct position therefore appears to be that omission to examine to complaint on oath u/Sec.200 Cr.P.C is not irregularity and if by reason thereof complainant is prejudiced is entitled to an order subsequent proceedings are invalid - In this case, in fact prejudice has been caused to complainant because he had been deprived of opportunity to explain his case to Magistrate which he could have got had Magistrate examine on oath - Impugned order liable to be set aside - Criminal case, allowed. **G.Pal Vijay Kumar Vs. State of A.P. 2013(1) Law Summary (A.P.) 171 = 2013(1) ALD (Crl) 681 (AP) = 2013(2) ALT (Crl) 38 (AP-) = 2013 Cri. LJ (NOC) 644 (AP).**

—Secs.203 & 197 - **INDIAN PEAL CODE,** Secs.277, 268,455 & Sec.23(3) r/w 35(1)(2) **WALTA ACT, 2002** - Complaint filed against respondents/employees of State Govt. for offence u/Sec.277, 268 & 455 IPC for not taking steps for removal of debris from tank deposited on account of immersion of Ganesh idols every year - Magistrate recorded sworn statement of complainant and dismissed complaint u/Sec.203 on ground that complaint is not maintainable for want of sanction as provided u/Sec.197 Cr.P.C - Petitioner contends that once Magistrate recorded sworn statement of Complainant constitutes taking cognizance of offences and in which case, dismissal of complaint does not arise and that sanction is not necessary before taking cognizance of offence and therefore order impugned is unsustainable and liable to be set aside - In this case, admittedly respondents are Public Servants and alleged omissions on their part are only by the virtue of their office and that bar u/Sec.17 is mandatory where acts have been done by public servant in course of his service or discharge of his duty - Since complainant questions omission of respondents by virtue of their office and which omission constitutes an offence, sanction as provided u/Sec.197 Cr.P.C. to prosecute them is mandatory - Order of Magistrate - Justified - Criminal Revision Case, dismissed. **Mamidi Venu Madhav Vs. Sri Ramakanth Reddy, 2011(1) Law Summary (A.P.) 89 = 2011(1) ALD (Crl.) 768 (AP) = 2011(1) ALT (Crl.) 230 (AP) = 2011 Cri.LJ (NOC) 437 (AP).**

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—Sec.203 & 204 - **INDIAN PENAL CODE,** Sec.420 - "Filing of second complaint on same allegations as in first complainant" - Respondent filed complaint before Magistrate against appellant u/Sec.420 IPC, for alleged fraud played by complainant on him in execution of sale deed relating to land - Magistrate dismissedcomplaint holding that whole story of complainant is bundle of falsehood - High Court dismissed revision and same attained finality since not challenged - Civil suits filed by respondents also dismissed and attained finality - Suit filed by appellant against respondent, decreed - Thereafter, respondent filed another complaint before Magistrate on virtually same facts suppressing totally facts of filing of first complaint and its dismissal - Magistrate passing order summoning appellants - Sessions Judge allowed revision and set aside order of Magistrate - High Court reversed order passed by Sessions Judge and directed appellants to appear before trial Court - EXCEPTIONAL CIRCUMSTANCES TO ENTERTAIN SECOND COMPLAINT - EXPLAINED - (a) where the previous order was passed on incomplete record (b) or on a misunderstanding of nature of complaint (c) or order which passed was manifestly absurd, unjust or foolish or (d) where new facts which could not, with reasonable deligence have been brought on record in previous proceedings - Interest of justice cannot permit that after decision has been given on complaint upon full consideration of case, complainant should be given another opportunity to have complaint enquired into again - In this case, second complaint was on almost identical facts which was raised in first complaint and which was dismissed on merits - So second complaint is not maintainable - Core of both complaints is same and nothing has been disclosed in second complaint which is substantially new and not disclose in first complaint - Therefore second complaint is not covered with exceptional circumstances - Hence second complaint cannot be entertained - Order passed by High Court in revision - Quashed - Appeal, allowed. **Poonam Chand Jain Vs. Fazru 2010(1) Law Summary (S.C.) 144.**

—Secs.209,227,482 - **INDIAN PENAL CODE,** Secs.120-B, 419,420,467,468,471 r/w Sec.109 - "Magistrate committing case to Sessions Court" - "Exercise of power u/Sec.482 Cr.P.C" - "Panel Advocate" - "Improper legal advice" and "wrong legal advice" - CBI registered FIR against Branch Managers of Bank for commission of offence punishable under IPC for abusing their official position as public servants and for having conspired with private individuals, Builder and other accused for defrauding Bank by sanctioning and disbursement of housing loans in violation of Bank Rules and Guidelines and thereby causing loss of huge amount to Bank - After investigation CBI filed Charge-Sheet in which, respondent/KNR/panel advocate arrayed as A-6 for giving false legal opinion in respect of housing loans - High Court of AP quashing criminal proceedings on file of CBI in so far as A-6/legal practitioner is concerned - Hence present SLP filed by CBI - Magistrate enquiring in to a case u/Sec.209 is not to act a mere post office and has to come to a conclusion whether case before him is fit for commitment of accused to Court of Session - If there is no prima facie evidence or evidence is totally unworthy of credit it is duty of Magistrate to discharge accused on other hand, if there is some evidence on which conviction may reasonably be based, he must commit case - Magistrate should not make a roving enquiry into

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pros and cons of matter and weigh evidence as if he was conducting trial - OPINION OF LAWYER - A Lawyer does not tell his client that he shall win case in all circumstances - Likewise a physician would not assure patient of full recovery in every case - Only assurance which such a professional can give or can be given by implication is that he is possessed of requisite skill in that branch of profession which he is practising and while undertaking performance of task entrusted to him, he would be exercising his skill with reasonable competence - A professional may be held liable for negligence on one of findings viz., either he was not possessed of requisite skill which he professed to have possessed, or, he did not exercise with reasonable competence in given case, which he did possess - "IMPROPER LEGAL ADVICE" AND "GIVING WRONG LEGAL ADVICE" - Mere negligence unaccompanied by any moral deliquency on part of legal practitioner in exercise of his profession does not amount to "professional mis conduct" - Liability against opining advocate arises only when lawyer was an active participant in a plan to defraud Bank - In this case there is no evidence to prove that A-6/legal practitioner abetting or aiding original conspirators - However, it is beyond doubt that a lawyer owes an "unremetting loyalty" to interest of client and it is lawyer's responsibility to act in a manner that would best advance interest of client - Merely because his opinion may not be acceptable, he cannot be mulcted with criminal prosecution, particularly, in absence of tangible evidence that he associated with other conspirators - At most he may be liable for gross negligence or professional misconduct if it is establishes by acceptable evidence and cannot be charged for offence u/Secs.420 & 109 of IPC along with other conspirators without proper and acceptable link between them - Such tangible materials are lacking in case of respondent - Conclusion of High Court in quashing criminal proceedings and reject, stand taken by CBI - Justified - Appeal, dismissed. **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao 2012(3) Law Summary (S.C.) 149.**

—Secs.211,220 and 222 - **INDIAN PENAL CODE,** Secs.120-B, 302,390,392,397 and 457, r/w Sec.34 - Framing of charges - Trial Court not framed charge u/Sec.397 of IPC.

Trial Court, convicted accused u/Secs.120-B, 302,390,392 and 457 - High Court remitted matter to trial Court to frame charge u/Sec.397 IPC against accused and liberty was also granted to trial Court to record additional evidence, if construed necessary.

Held, charged Sections adequently encompassing all essential facts of murder in course of robbery together with lurking house trespass and house breaking by night - Ingredients of Sec.397 already consider - Remanded uncalled and High Court ought to decide matter on merits. **Bharamappa Gogi Vs. Praveen Murthy 2016(1) Law Summary (S.C.) *57* = AIR 2016 SC 791 = 2016 Cri. LJ 1260 (SC) = 2016(1) ALD (Crl) 694 = 2016(6) SCC 268.**

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—Secs.211 & 313 - INDIAN PENAL CODE, Secs.302, 149,34 and 148 - ARMS ACT, Sec.27 - Appellant convicted u/Sec.302 and sentenced to rigorous imprisonment - In this case, charges framed against all five accused only u/Sec.302 IPC without aid of either Sec.149 or Sec.34 of IPC and that trial Court did not charge accusedu/Sec.148of IPC - In criminal trial, in Bihar no proper attention is paid to framing of charges and examination of accused u/Sec.313 of Cr.P.C, two very important stages in criminal trial - Framing of charge and examination of accused are mostly done in most unmindful and mechanical manner - Patna High Court should take note of neglectful way in which some of Courts in State appear to be conducting trials of serious offences and take appropriate correct steps - In this case, P.W.5 only who claims to have seen appellant accused among other accused while they were going away after commission of offence - But his statement admittedly recorded by Police after ten or twenty days of occurrence and till then he had not disclosed name of appellant as one of accused - In facts and circumstances, it becomes difficult to accept testimony of P.W.5 in so far as appellant is concerned - In this case, appellant neither named in FIR nor established that he is member of unlawful Assembly - It will not be wholly safe to maintain conviction of appellant and applying rule of caution, he must be given bnenefit of doubt - Conviction of appellant, set aside - Appeal, allowed. **Sajjana Sharma Vs. State of Bihar 2011(1) Law Summary (S.C.) 64.**

—Sec.227 - Discharge - Trial Court dismissed discharge petition filed by appellant/ IPS Officer - High Court refused to interfere with order passed by trial Judge - If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion Trial Judge will be empowered to discharge accused and at this stage he is not to see whether trial will end in conviction or acquittal - Further, words “not sufficient ground” for proceeding against accused clearly show that Judge is not mere Post Office to frame charge at behest of prosecution, but has to exercise his judicial mind to facts of case in order to determine whether case for trial has been made out by prosecution - In this case, High Court as well as Supreme Court are confined only for disposal of discharge petition filed by appellant u/Sec.227 of Code - It is for prosecution to establish its charge and trial Judge is at liberty to analyze and to arrive at an appropriate conclusion, one way or other, in accordance with law. **P.Vijayan Vs. State of Kerala 2010(1) Law Summary (S.C.) 150.**

—Secs.227, 239 & 161(3) - INDIAN PENAL CODE, Secs.147, 150,307,382,506 r/ w 34 - Wife filed complaint against husband and his parents, brothers and sisters - After investigation charge-sheet laid for above said offences - Sessions Judge dismissed Application filed by petitioners/accused to discharge them holding that at time of framing charge it is not necessary and proper for Court to consider inconsistencies and contradictions in statement of witnesses and that Court has to see whether their exists any prima facie case or not - Petitioners contend that in this case no test identification parade has been conducted though neighbours are cited as witnesses and that entire case is made up to take revenge against accused and when it is

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clear case of false implication petitioners are entitled for discharge - Court has to see whether there is sufficient ground to proceed against accused - Reasons have to be recorded if Court comes to conclusion that accused have to be discharged - Approach of Court should be pragmatic - Charge should not be framed in cases where available material does not disclose ingredients of offence - Court cannot act merely as a post office or a mouthpiece of prosecution, but has to consider broad probabilities of case, totally effect of evidence and documents produced, any basic infirmities and find out whether prima facie case against accused has been made out - In this case, no prima facie case has been made out against A2 and A8 to A-10 shown in charge-sheet who are A-1, A-2 and A5 in FIR - Therefore, they are entitled for discharge - Order of lower Court set aside in respect of A-2 and A-8 to A-10 - Criminal revision allowed in part. **Mohd. Younus Vs. State of A.P. 2010(1) Law Summary (A.P.) 218.**

—Secs.227,239,245, 258 & 320(1) (2) (8) - "Compounding of offence" - Complaint lodged by de facto complaint against 3 accused for an offence u/Secs.468, 471,476,477-A, 419 & 420 IPC - Case is taken on file and numbered as C.C - Magistrate dismissed petition filed by accused No.3 seeking to discharge - High Court dismissed revision filed by A3 - Trial Court also dismissed petition filed by A-1 for discharge - High Court also dismissed revision filed by A-1 - Subsequently petitioner/A1 filed a fresh petition for discharge on ground that other accused were already acquitted - Trial Court dismissed petition - Petitioner contends that when a case is compounded offence is compounded as a whole - Since Sec.320(1) & 320(2) envisages that it is offence that is compounded and not accused - Sec.320(8) Cr.P.C points out that composition of offence u/Sec.320 shall have effect of acquittal of accused "with whom the offence has been compounded" - Petitioner/accused further contends that as offence was compounded against accused 2 & 3, by trial Court, it is deemed to have been compounded accused no.1 as well and that proceeding against accused no.1 by trial Court is not permissible - De facto complainant contends that there was no composition of offence in this case and that at any rate, where overt acts against A- 1 can be segregated from overt acts against accused 2 & 3, mere compounding of offence against A2 and A3 does not ensure to benefit of A1and that docket order of trial Court under which accused 2 & 3 were acquitted was in a petition filed u/Sec.257 Cr.P.C - However, present case is not case of withdrawal against A2 and A3 and that docket order shows that compounding petition was filed u/Sec.320 Cr.P.C - If it is case that some of accused were either acquitted or discharged remaining accused cannot invoke Sec.320 Cr.P.C albeit Sec.257 Cr.P.C may come to their rescue certain cases - In this case, offence was indeed compounded and consequently compounding of offence through docket order enures to present petitioner/A1 as well - Trial Court not justified in dismissing petition where, petition, inter alia was laid u/Sec.258 Cr.P.C in view of Secs.320 and 257, it is appropriate to allow revision acquitting petitioner/accused no.1 of offenes levelled against him - Impugned order, set aside - Petitioner/accused is acquitted of offences levelled against him in view of composition of offences by

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de facto complainant against accused A2 and A3 - Revision, allowed. **Kamal Kishore Biyani Vs. Shyam Sunder Bung 2013(2) Law Summary (A.P.) 194 = 2013(2) ALD (Crl) 460 (AP) = 2013(3) ALT (Crl) 219 (AP).**

—Secs.235(2), 164, 157 &313, - INDIAN PENAL CODE, Secs.302 & 309 - EVIDENCE ACT, Sec.32 - "Dying declaration" - "Extra judicial confession" - Sessions Judge convicting accused for offences u/Secs.302 & 309 for causing death of his daughters by administering endosulphan pesticide poison due to his indebtedness - Sessions Judge rightly rejected statement given by accused as same is not admissible u/Sec.32 of Evidence Act, since maker of statement is alive - But he proceeded to accept said statement by invoking provisions u/sec.164 Cr.P.C. r/w Secs.157, 155 Evidence Act - If statement recorded by Magistrate is not a dying declaration whether it can be a statement made u/Sec.164(2) or 164(5) Cr.P.C - Sec.164(5) Cr.P.C speaks about statement of person other than accused - In this case, accused is not arrayed as witness - Hence statement of accused cannot be treated as a statement u/Sec.164(5) - As rightly pointed out by appellant, statement recorded u/sec.164(2) amounts to a confession and specific procedure to be followed by Magistrate for recording same - In absence of any such procedure followed by Magistrate while recording statement it cannot be treated as statement made by accused u/Sec.164(2) - Admittedly in this case, person who made statement before Magistrate is arrayed as accused - Statement made by accused cannot be treated as extra judicial confession, since extra judicial confession should be voluntary in nature by person, who makes same - Hence same cannot be treated as extra judicial confession - When evidence collected by investigation agency which is not under purview of any provisions of law to make it as admissible in evidence same cannot be relied upon - Conviction and sentence imposed by Sessions Judge for offence u/Sec.309 is also liable to be set aside since there is no evidence adduced by prosecution to that effect - Conviction and sentence passed by Sessions Judge punishable u/sec.302 & 309 IPC, set aside - Criminal appeal, allowed. **Surasani Venkata Reddy Vs. State of A.P. 2011(1) Law Summary (A.P.) 158 = 2011(1) ALD (Crl) 364 (AP) = 2011(1) ALT (Crl) 194 (AP).**

—Sec.239 - "Discharge of accused" - Complaint filed by wife against her husband a Captain in Indian Army regarding mental and physical harassment faced by her at hands of appellant/husband and also repeated demands for dowry - Trial Court dismissed application filed by appellants, husband and others for discharge u/Sec.239 holding that grounds urged for discharge could be considered only after evidence was adduced in case, and that appellant/husband would not be discharged on minor contradictions in depositions recorded in course of investigation - High Court dismissed Criminal Revision on ground that same did not make out a case for quashing of proceedings against appellants - Hence present appeal assailing correctness of order of dismissal - At stage of framing of charge Court is required to evaluate material and documents on records with a view to finding out if facts emerging therefrom,

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taken at their face value, disclosed existence of all ingredients constituting alleged offence - At that stage, Court is not expected to go deep into probative value of material on record - What needs to be considered is whether there is a ground for presuming that offence has been committed and not a ground for convicting accused has been made out - In present case, allegations made against appellants are specific not only against husband but also against parents-in-law of complaint, wife - Any such determination can take place only at conclusion of trial - Appellants No.1 who happends to be father-in-law of complaint, wife has been a Major General, by all means a respectable position in Army - But nature of allegations made against couple and those against husband appear to be much too specific to be ignored at least at stage of framing of charges -Order of Courts below in refusing a discharge -Justified - Appeal, dismissed. **Sheoraj Singh Ahlawat Vs. State of Uttar Pradesh 2013(1) Law Summary (S.C.) 71.**

—-Secs.239,154 & 173 – **IMMORAL TRAFFIC (PREVENTION) ACT, 1956,** Secs.3 to 7 – Appellants filed petition u/Sec.239 before Judicial Magistrate for discharge – Petition dismissed by Magistrate, Court of Sessions in Revision Petition, has upheld decision of Magistrate and further upheld by High Court – Correctness of said order is challenged before Supreme Court.

Appellants involved in Immoral Trafficking case and furnished wrong information to Investigating Officer, regarding their names and also in bail Application filed by them before Magistrate.

Inspector of Police, registered Second FIR against appellants for offence punishable u/Sec.419 and 420 of IPC.

Appellants contend that registration of second FIR is wholly untenable in law and proceedings arising out of first FIR has already been set aside, offence under second FIR are same transaction with first FIR as they were allegedly committed in course of Investigation made on the first FIR, there was no need for institution of second FIR and registration of second FIR is illegal and void ab initio in law as the same is violation of Art.20(2) of Constitution of India and also contrary to Sec.300 of Cr.P.C and Sec.26 of General Clauses Act.

Court held that from bare perusal of second FIR, it is abundandly clear that both appellants have furnished wrong information to Police as to their names, during course of investigation made on first FIR – Offence alleged to have committed by them are distinct offence committed by appellants and same have no connection with offence for which first FIR was registered against them – Principle of law is not applicable to fact situation instant case as substance of allegations in the said two FIRs is different – Submission made on behalf of appellants are not tenable in law and same cannot be accepted by this Court – Court does not find any reason to interfere with lower Court orders – Accordingly, appeal being devoid of merit is dismissed. **Awadesh Kumar JHA @ Akhilesh Kumar JHA&Anr.,Vs.The State of Bihar, 2016(1) Law Summary (S.C.) 41.**

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—Secs.239,482,227 & 228 – "Discharge" Charge Sheet filed against petitioners/A1 & A2 alleging commission of offences u/Secs.468 & 506 IPC indicting that they fabricated resignation letter of Defacto complainant - Petitioners filed petition before Trial Court u/Sec.239 of Cr.P.C. seeking their discharge in case contending that there is no Prima-facie material to frame charges against them and therefore they have to be discharged - Trail Court dismissed petition holding that admittedly there are disputes between parties and in view of said disputes, unless complainant enters witness box, it is premature to discharge accused - Power of Trial Court to discharge an accused person is some what different from power of High Court to Quash FIR or Criminal Proceeding in exercise of powers u/Secs.482 of Cr.P.C. - However, for purpose of arriving at a decision, weather a prima-facie case has been made out, Trial Court while considering a discharge petition is not precluded from taking account inordinate unexplained delay in lodging FIR - Though question as to whether case would end in conviction or acquittal would be irrelevant while considering discharge petition, having regard to peculiar facts and circumstances of present case, absence of evidence as to who submitted resignation letter assumes much important and trial Court ought not to have ignored said fact - In this case there is no material before Trial Court that accused might have committed offence, even grave suspicion, which required for framing charge, are absent in present case - Trial Court failed to apply its Judicial mind to material placed on record to charge - When there is no prima-facie case for framing of charge it is imperative for Trial Court to discharge accused and opinion of Trial Court that it would be known only after letting evidence by prosecution cannot said to be a correct view – Trial Court is required to take a decision either to discharge or to frame a charge only basing on material available with it and it cannot make petitioner/accused to face Trial thinking that some evidence would be placed in course of Trial – Trial Court without applying Judicial mind to material placed on record by prosecution erroneously dismissed discharge petition filed by petitioners – Order of Trail Court, set aside – Criminal Revision case, allowed. **B.S.Neelakanta Vs. State of A.P. 2014(1) Law Summary (A.P.) 266 = 2014(1) ALD (Crl) 611 (AP) = 2014(2) ALT (Crl) 237 (AP).**

—Secs.256 & 285 - **NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - Respondent filed complaint against appellant for dishnour of cheque - Since complainant absent and no representation for several hearings accused acquitted - High Court allowed appeal filed by complainant without issuing notice to accused - In this case, date fixed for examining defence witnesses - Appearance of complainant not necessary - Presence of complainant or her lawyer would have been necessary only for purpose of cross-examination of witnesses examined on behalf of defence - If complainant did not intend to do so, she would do so at her peril but it cannot be said that her presence was absolutely necessary - Further more, when prosecution closed its case and accused has been examined u/Sec.311 of Cr.P.C, Court is required to pass judgment on merit of matter - Manner in which appeal disposed of by High Court not approved - Trial Court directed to proceed with matter in accordance with law and dispose of case expeditiously. **S.Anand Vs. Vasumathi Chandrasekhar 2008(2) Law Summary (S.C.) 72.**

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——Secs.273 and 317 (2) - **HINDU MARRIAGE ACT, 1955 - CIVIL PROCEDURE CODE,** Or.18, R.4 - **INFORMATION TECHNOLOGY ACT,** Sec.4 - "SKYPE TECHNOLOY" -Petitioner-husband at USA filed petition before Trial Court to permit his examination including marking of documents on Skype technology at his expense, in open Court or through Advocate-Commissioner, on ground that he is unable to get leave to attend the Court due to most urgent works of his project in USA - Respondent-revision petitioner in opposing same contended that petitioner adopted said procedure for recording his evidence only in order to avoid facing criminal case filed against him and prayed for dismissal of his petition - As trial Court after hearing both sides allowed petition, present revision is filed against it.

Held, having regard to above, examination of witnesses and recording of evidence by commissioner contemplated by Order XVIII, Rule 4 C.P.C from words 'witness in attendance' are to be understood as person being present and it need not be physical presence thus, recording of evidence through Audio, Video link or through internet by Skype or similar technological device is permissible complying words in attendance.

From the above, coming back to facts, for there is no foundation to say request to record evidence through Skype technology is a device to avoid facing criminal case allegedly filed against him and so far as apprehensions as to demeanor and possibility of prompting or tutoring can be taken care of with necessary precautions, reconciliation also can be done if need be by use of Skype technology, there are no grounds to interfere with impugned order of lower court permitting recording of evidence of party-witness abroad through Advocate-Commissioner and by use of Skype technology, but for to give necessary directions of precautions required to be taken to ease out apprehensions of other side in giving disposal of revision petition - In result, revision petition is disposed of with directions. **Sirangai Shoba @ Shoba Munnuri Vs. Sirangi Muralidhar Rao 2016(3) Law Summary (A.P.) 345.**

—-Secs.389, 397 and 401 **- NEGOTIABLE INSTRUMENT ACT,** Sec.138 - Suspension of sentence pending appeal, release of appellant on Bail - Magistrate convicted petitioner-Accused under N.I. Act - Petitioner-Accused filed appeal before District Court – District Judge passed order directing petitioner-accused to deposit 50% of cheque amount for suspension of trial Court Judgment - Petitioner-accused contends that the lower appellant Court ought not to have directed to deposit 50% of cheque amount, in as much as Sec.389 of Cr.P.C. does not give jurisdiction to appellant Court to impose such condition.

Held, Court considering facts and circumstances of Case, Criminal Revision is allowed setting aside orders of lower appellant Court in so far as directing petitioner-accused to deposit 50% of cheque amount. **Bommisetty Sridhar Vs. State of A.P. 2016(1) Law Summary (A.P.) 277.**

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—- Sec.294 - Sessions Judge convicting accused for offence u/Sec.302 - Appellant/ accused contends that delay of 3 days in registering FIR not explained and that Medical Officer who conducted postmortem, not examined and that evidence of eye witnessess to occurrence is discrepant and mutually contradictory - CRIMINAL PROCEDURE CODE, Sec.294 - Where genuineness of any document is not disputed, such document can be read in evidence in any enquiry trial or other proceeding without proof of signature of person by whom it purports to be signed - To invoke provisions of Sec.294, document should be one genuineness of which is not disputed - In present case, accused no where admitted genuineness of postmortem certificate nor given any consent at any time for marking it as an exhibit and mere marking of document as an exhibit does not dispense with proof of document - In this case, procedure prescribed u/Sec.294 Cr.P.C. has not been followed and conditions stipulated therein have not been complied with and no witness is examined to prove signature of Medical Officer and that no effort is made by prosecution to examine another doctor who could identify signature and handwriting of Doctor who conducted postmortem examination - Once Postmortem certificate is taken out of consideration for want of necessary proof, there remains no medical evidence on record to establish that death of deceased was homicidal - Conviction of accused, set aside - Appeal, allowed. **Suntru Somi Reddy Vs. State of A.P. 2009(1) Law Summary (A.P.) 347 = 2009(1) ALD (Crl) 429(AP) = 2009(1) APLJ 282 = 2009(1) ALT(Crl) 379(AP) = 2009 Cri. LJ 2102(AP).**

—Sec.301(2) & 439(2) & 154(1) & 200 and Sec.2(u) & 24- “Public Prosecutor” - Defined - Cheques issued by accused in favour of petitioner/complainant, dishnoured - Hence complaint - Accused moved bail Application - Petitioner contends that though he is not a de facto complainant, he is the victim in this case, and that victim has right to put forth his case before Court even at stage of considering application for bail - Respondent submits that petitioner is not a de facto complainant and as such he has no right to put forth his case at stage of hearing bail application - If de facto complainant or victim is allow to come on record at this stage, right to liberty granted to accused person will be seriously, affected - De facto complainant has no right to come on record at this stage and has no right to be heard at this stage - It is duty of Public Prosecutor to assist Court in conducting criminal trials and other criminal proceedings and even representing State, but whether victim or de facto complainant has no role to play or whether he should not be heard at stage of criminal proceedings - There is no specific bar in hearing de facto complainant or victim at stage of considering application for bail or cancellation of bail - Normally, it is duty of State and Public Prosecutor to prosecute accused if private parties are allowed, but there is every possibility of making biased representation and it may be difficult to find out truth or otherwise of allegations and counter allegation - Though it is primary duty of State to conduct prosecution, victims are totally not barred in approaching Court in appropriate cases and represent their grievances - Whatever defacto complainant or victim was to say that initially, they must act as per directions and under instructions of Public Prosecutor, in a given circumstances, hear de facto

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complainant or victim in appropriate cases if Court feels that in interest of justice, it is necessary - Criminal MPs, allowed. **C.S.Y. Sankar Rao Vs. State of A.P. 2009(3) Law Summary (A.P.) 317.**

—- Sec.309, 173 (2), 190 (1) (b),169 - **A.P. POLICE MANUAL,** Part - I, Vol. 2, Or.No.487-3 - *Alibi* - "Deletion of accused persons from case by Police" - This is most horrible offence of attacking one group of persons against another group of persons resulting 11 deaths - Police filed Charge-Sheet against 46 persons for punishing them for offences u/Secs.147,148, 307,302 etc., and Secs.3,4,6 of Explosive Substances Act and 25(1), 27 of Indian Arms Act - Petitioner contends that Sessions Judge passed orders to implead petitioners as accused and issue summons - Sessions Court during course of preparation of examination of accused u/Sec.313 went throw entire prosecution evidence and particularly evidence of P.W.1 to 4 were taking steps u/Sec.313 against revision petitioners - There is no dispute that names of revision petitioners find place in FIR itself as persons were physically present at scene of offence and exhorted,instigated and abated other accused for killing of opposite group - In this case, case, petitioners as well as Public Prosecutor contend that even though names of petitioners find place in FIR as accused person who were physically present at scene at time of offence and participated in commission of offence, their names were deleted by Investigation after obtaining permission from S.P of Police accepting their plea of *alibi* - In this case, even though both revision petitioners are named as A.1 and A.2 in FIR Investigation Officer did not take them into custody and interrogate and recorded their statements - Investigating Officer instead of following prescribed and established procedure as per Cr.P.C digressed and went astray in investigation by receiving petitions from accused and began making enquiry in order to give favorable report of clean chit in their favour - Superintendent of Police readily accepted so called report of enquiry of investigating Officer who is DSP and gave directions to him to delete A1 and A2 in case and this is nothing but mockery of procedure during investigation - Without placing evidence collected during investigation and conclusions of investigating Officer before Court/Magistrate it is not for Investigation Police Officer and for Superintendent of Police to delete any accused from case unilaterally - It is for investigating Officer to place all material before Magistrate after investigation and seek decision of Magistrate as to taking cognizance or not of an offence after particular accused person - Without their being judicial decision on cognizance no Police Officer can unilaterally delete or direct deletion of accused persons from a case - If it is allowed to do so then would lead to despotic and tyrannical results which are unsafe to society and not provide by rule of law - In this case, procedure adopted by investigating Officer and Superintendent of Police is unknown to criminal law and contrary to prescribed criminal procedure - Impugned order of lower Court, justified - Criminal petitions, dismissed. **Kotla Hari Chakrapani Reddy Vs. State of A.P. 2012(3) Law Summary (A.P.) 42 = 2012(2) ALD (Crl) 675(AP).**

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—Sec.311 - **EVIDENCE ACT,** Secs. 6,64,91 & 137 – Cross-examination of re-called witness – Accused facing trial for offences under provisions of IPC – One of witnesses being minor tried in children's Court, did not support prosecution version – Trial Court rejecting Application filed by accused to re-examine that witness for cross-examination with reference to statement in Children's Court – High Court allowing petition passing order directing trial Court to recall and re-examine that witness - Object of Sec.311 of Cr.P.C is to bring on record evidence not only from point of view of accused and prosecution but also from point view of orderly society – If witness called by Court gives evidence against complainant he should be allowed an opportunity to cross-examine – Right to cross-examine a witness who is called by a Court arises not under provision of Sec.311, but under Evidence Act which gives a party right to cross-examine a witness who is not his own witness - High Court's view for accepting prayer in terms of Sec.311 of Code does not have any legal foundation and High Court ought not to have accepted prayer made by accused persons in terms of Sec.311 of Code – Impugned order of High Court, set aside – Appeal, allowed. **Hanuman Ram Vs. The State of Rajasthan 2008(3) Law Summary (S.C.) 141 = 2009(1) ALD (Crl.) 715 (SC) = AIR 2009 SC 69.**

—-Sec.311 - **EVIDENCE ACT,** Secs.60,64 & 91 - Magistrate rejecting Application filed by appellant seeking re-examination of witness on ground that evidence was closed and Sec.313 examination was over - High Court concurred with view of trial Court - It is not only prerogative but also plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between State and subject - Duty cast upon Court to arrive at truth by all lawful means and one of such means is examination of witnesses of its own accord when for certain obvious reasons either party not prepared to call witness who are know to be in a position to speak important relevant facts - Cordial rule in law of evidence that best available evidence should be brought before Court - Whether new evidence is essential or not must of course depend on facts of each case, and has to be determined by Presiding Judge - If a witness called by Court gives evidence against complainant, he should be allowed an opportunity to cross-examine - Right to cross-examine a witness who is called by Court arises not under provisions of Sec.311, but under Evidence Act which gives a party right to cross-examine a witness who is not his own witness - Since a witness summoned by Court could not be termed a witness of any particular party, Court should give right of cross-examination to complainant. **Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd. 2008(3) Law Summary (S.C.) 9 = 2008(2) ALD (Crl.) 601 (SC) = 2008(5) Supreme 679 = 2008 AIR SCW 6398.**

—Sec.311 - **INDIAN PENAL CODE,** Sec.120-B, r/w Secs.420,467,468 and 471 - **PREVENTION OF CORRUPTION ACT,** Sec.13(2), r/w 13(1)(d) - **PRODUCTION EVIDENCE BY DEFENCE** -Charge sheet filed again appellants/accused for offences under provisions of IPC and Prevention of Corruption Act - Prosecution examined nearly 52 witnesses in course of over 50 hearings - There after trial Court fixed date for hearing final arguments - Trial Court dismissed Application filed by appellant/ accused u/Sec.311 Cr.P.C for permission to examine three witnesses - High Court

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also dismissed Crl.M.P filed by appellan/accused - Hence, present appeal - Appellant contends that trial Court committed error in appreciating evidence which could have been provided by three witnesses in antispicitation and that there was no delay on part of appellant/accused in moving application and had this Application been allowed by Courts below no prejudice would have been caused to respondent - Respondents contend that Courts below have recorded finding of fact to extent that said evidence was not necessary to arrive just decision and that it was left to discretion of Court whethr to allow such Application or not and Courts below have considered case in correct perspective and thus no interference is called for - Sec.311 Cr.P.C. empowers Court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial" or "any other proceedings" under Cr.P.C or to summon any person as a witness or to recall and re-examine any person has already been examined, if his evidence appears to it to be essential to arrival of just decision of case - Undoubtedly application filed u/Sec.311 Cr.P.C must be allowed if fresh evidence is being produced to facilitate a just decision - However in present case, trial Court Prejudged evidence of witnesses sought to be examined by appellant and thereby cause grave and material prejudice to appellant as regards her defence, which tantamounts to a flagrant violation of principles of law governing production of such evidence in keeping with provisions of Sec.311 Cr.P.C - In this case, High Court as simply quoted relevant paragraphs from judgment of Trial Court and has approved same without giving proper reasons, merely observing that additional evidence sought to be brought on record was not essential for purpose of arriving at just decision - No prejudice could have been caused to prosecution if a defence had been permitted to examine said three witnesses - Judgment and order of trial Court, as well as of High Court, are set aside - Application filed by appellant/accused u/Sec.311 Cr.P.C., allowed. **Natasha Singh Vs. CBI (State) 2013(2) Law Summary (S.C.) 99.**

—Sec.311 - Re-examination of P.Ws. - Trial Court dismissed Application filed by 2nd respondent seeking permission for his re-examination contending that on earlier occasion he turned hostile under coercion and threat - High Court set aside order of trial Court - In this case, if really there was threat to his life at instance of appellant under other accused, it is not known as to why there was no immediate reference to such coercion ad undue influence against respondent at instance of appellant, when he had every opportunity to mention same to trial Judge or to Police Officers or to any prosecution agency - Such indifferent stance and silence maintained by 2nd respondent and categorical statement made before Court in his evidence appreciated by trial Court in proper perspective while rejecting application filed u/Sec.311 Cr.P.C - Trial Court shall proceed with trial from stage it was left and conclude same expeditiously - Order of trial Court, justified. **Rajaram Prasad Yadav Vs. State of Bihar 2013(2) Law Summary (S.C.) 265.**

-—Sec.313 - **INDIAN PENAL CODE,** Secs.302 and 404 - **EVIDENCE ACT,** Sec.114 - "Circumstantial evidence" - "Evidence of hostile witness" - Sessions Court convicting

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appellant/accused for offence punishable u/Secs.302 and 404 - Conviction basing on circumstntial evidence - High Court dismissed Appeal preferred by appellant/accused - CIRCUMSTANTIAL EVIDENCE - Prosecuion must establish its case beyond reasonable doubt and cannot derive any strength from weakness in defence putt up by accused - Circumstances on basis of which conclusions of guilt is to be drawn must be finally established and same must br of a conclusive nature and must exclude all possible hypothesis, except one to be proved - Facts so established must be consistent with hypothesis of guilt of accused and chain of evidence must be complete so as not to leave any reasonable ground for conclusion consistent with innocence of accused and must further show that in all probability said offence must have been committed by accused - HOSTILE WITNESS - It is settled legal propostion that evidence of a prosecution witness cannot be rejected in toto, merely because prosecution chose to treat him as hostile and cross examined him - Evidence of such witnesses cannot be treated as effect, or washed off record altogether and same can be acceepted to extent that version is found to be dependable upon careful scrutiny there of - Last scene theory - "Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime - POLICE EVIDENCE - Evidence of Police Officer cannot be discarded merely on ground that they belonged to Police Force and or either interested in investigating or prosecution agency - However as for as possible corraboration of their evidence on material particulars should be sought - CITED WITNESSES - Prosecution is not bound to examine all cited witneses and it can drop witnesses to avoid multiplicity or plurality of witnesses - In an extraordinary situation, if Court comes to conclusion that a material witness has been withheld, it can draw an advrse inference against prosecution as has been provided undr Sec.114 of Evidence Act **-** In this case, facts established by prosecution do not warrant further review judgments of Court below - Appeal lacks merit - Hence, dismissed. **Rohtash Kumar Vs. State of Haryana, 2013(2) Law Summary (S.C.) 114 = 2013(2) ALD (Crl) 806 (SC) = 2013 AIR SCW 3208 = 2013 Cri. LJ 3183.**

—Secs.313 & 378 - - **Medical evidence** - Burden of proof - Session Judge convicted accused u/Sec.302, r/w Sec.34 IPC - High Court reversed judgment and order of Session Court - Undoubtedly postmortem report had been proved in this case, but thus does not mean each and every content thereof is stood proved or can be held to be admissible - Such observations cannot be termed to be a substantiative peace of evidence - Court cannot place reliance on incriminating material against accused unless it is put to him during his examination u/Sec.113 Cr.P.C - BURDEN OF PROOF - Once prosecution had brought home evidence of presence of accused at seen

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of crime, then onus stood shifted on defence to have brought forth suggestions as to what could have brought them to spot at dead of night - In this case, accused were apprehended and therefore, they were under obligation to rebut this burden discharged by prosecution and having failed to do so trial Court were justified in recording findings on this issue - High Court committed error by concluding that prosecution had failed to discharge its burden - In this case, circumstantial evidence is so strong that it points unmistakably to guilt of respondents/accused and is incapable of explanation of any other hypothesis that of their guilt - Therefore findings of fact recorded by High Court are perverse, being based on irrelevant considerations and inadmissible materials - Judgment and order of High Court, set aside - Judgment and order of trial Court restored - Appeals, allowed. **State of U.P. Vs. Mohd Iqram, 2011(3) Law Summary (S.C.) 5 = 2011(2) ALD (Crl.) 830 (SC) = 2011 AIR SCW 3844 = 2011 Cri. LJ 3931 (SC).**

—Secs.313(5) and 482 - "Filing of written statement by accused to questions, u/Sec.313 Cr.P.C." - Petitioner filed Application before trial Court u/Sec.313(5) of Cr.P.C seeking permission of Court to file his written statement to answer questions u/Sec.313 Cr.P.C - Trial Judge passing order stating that petitioner can answer orally and also file written statement - Petitioner contends that intention of Legislature in amending provision u/Sec.313(5) Cr..P.C is to enable accused person to file written statement on basis of questions prepared by Court with help of prosecutor and defence counsel which enables accused person to file written statement - When there is specific amendment to said prevision which enables accused to file his written statement to questions put to accused u/Sec.313 C.R.PC, there is no necessity to compel accused to answer before Court orally also - When accused himself is not inclined to answer orally and wants to submit himself for filing written statement, there is nothing wrong in permitting accused to file written statement - Impugned order, set aside - Trial Judge directed to accept written statement of petitioner/accused on basis of questionnaire prepared u/Sec.313 Cr.P.C. **Bollam Chandraiah Vs. State of A.P. 2011(1) Law Summary (A.P.) 207 = 2011(1) ALD (Crl) 676 (AP) = 2011(1) ALT (Crl.) 290 (AP).**

—Sec.317 – **INDIAN PENAL CODE,** Sec.279 & 304-A – **MOTOR VECHICALS ACT**, Sec.187 & 186 – Appellant/accused while driving tractor caused accident resulting death of child - Trail Court acquitted appellant/accused on ground that there was no evidence to hold that appellant/accused was driving Tractor at relevant time - High Court has not given any finding that conclusion drawn by Trail Court are perverse so as to mean that same is against weight of evidence - But only important issue is weather High Court was justified in re-appreciating evidence and reversing order of acquittal merely because of a possibility of another view - In this case High Court in impugned judgment does not seem to have taken a view that Judgment of Trail Court in acquitting accused is based on no material or it is perverse or view taken by Trail Court is wholly unreasonable or it is not a plausible view or there is non consideration any evidence or there is palpable misreading of evidence etc. - On contrary, it is only stand of High Court that on available

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evidence, another view is also reasonably possible in sense that appellant accused would have been convicted – In such circumstances High Court not justified in reversing acquittal – Judgment of Trail Court restored - Appeal allowed. **Basappa Vs. State of Karnataka 2014(1) Law Summary (S.C.) 122**

—Sec.319 - Scope and object - Stated - 2nd defendant/defacto-complainant filed complaint against A1 to A3 for alleged offences u/Secs.379,381 etc., of IPC - During trial, defacto-complainant filed Crl.M.P to add petitioners as A4 and A5 and punish them along with A1 to A3 - Trial Court dismissed Crl.M.P holding that there is no prima facie case, muchless material evidence against petitioners to issue process adding them as proposed accused 4 & 5 - Sessions Judge allowed Revision filed by 2nd respondent to add petitioners as A4 & A5 and proceed against them according to law - Power u/Sec.319 Cr.P.C to add new persons as accused in a trial case in order to try them also along with existing accused persons for offences, is an extraordinary power and that it has to be sparingly exercised by trial Courts - Such power can be exercised even when cross-examination or witness(s) was over or not - Yard stick for exercising that power in favour of prosecution or complainant is that evidence adduced on behalf of prosecution till then, if un-rebutted, would lead to conviction of persons sought to be added as accused in that case - In this case, 2nd respondent suspects that A1 to A3 who are employees in his Company colluded with each other and committed theft of intellectual property relating to setting up of another manufacturing Unit which was within knowledge of A1 and A2 basing on letter Ex.C1 seized from new Company alleged to have been addressed to proposed A4 - Admittedly Ex.C1 does not bear date or signature muchless name of author of said letter - Simply because C1 was seized from office of SCPL Company, no assumptions are permissible in criminal law that any of existing accused or newly added accused addressed that letter to proposed A4 - Except daughter of A1, A5 had absolutely no role in this case, muchless in SCPL - Observations of Sessions Judge in impugned order that Ex.C1 supports evidence of P.W.1 about role of proposed accused for offences for which case was filed, is not sufficient ground for allowing complainant to implead A4 and A5 as new persons for being tried along with A1 to A3 in this case - Thus, both on factual as well as on legal matrices - Impugned order of Sessions Judge does not stand to scrutiny - Hence, set aside - Revision petitions, allowed. **Vijay Agarwal Vs. The State of A.P., 2010(3) Law Summary (A.P.) 1 = 2011(1) ALD (Crl.) 217 (AP) = 2010(3) ALT (Crl.) 295 (AP) = 2011 Cri. LJ (NOC) 107 (AP).**

—Secs.319, 399 & 197 – **INDIAN PENAL CODE,** Secs.420, 467, 468 & 471 – Suo motu powers of Court u/Sec.319 – Prosecution of Public Servants – Sanction of Govt., - Magistrate allowed Application filed by appellant/accused to add R.2 as accused who is a public servant being drawing and disbursing officers who prepared false and forgery bills and misappropriated amount - Sessions Judge allowed Revision and set aside order of Magistrate – High Court confirmed order passed by Sessions Judge - Appellant accused contends that once an order was passed and summons was issued by Magistrate

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he had no power, authority or jurisdiction to review said order or recall summons and that order of Magistrate adding 2nd respondent and summoning him was inconsonance with Sec.319 of Code and should not have been interfered and that Courts below were wrong in invoking Sec.197 of Code and in holding that sanction was necessary -Power u/Sec.319 can be exercised either on Application made to Court or by Courts suo motu – It is discretion of Court to take action under said section and Court is expected to exercise discretion judicially and judiciously having regard to facts and circumstances of each case - Offences punishable u/Secs.409, 420, 467, 468, 471 etc can by no stretch of imagination by their very nature be regarded as having been committed by public servant while 'action or purporting to act in discharge of official duty' – Orders passed by Sessions Judge and High Court, set aside and that order passed by Magistrate, restored – Appeal, allowed. **Bholu Ram Vs. State of Punjab 2008(3) Law Summary (S.C.) 168.**

—Secs.320 & 482 - INDIAN PENAL CODE, Secs.120(b) & 420 r/w 34 Sec.149 - "Compounding of offences" - Quashing of proceedings - Sec.320 Cr.P.C. articulates public policy with regard to compounding of offences - It catalogues offences punishable under IPC which may be compounded by parties without permission of Court and composition of certain offences with permission of Court - Offences punishable under Special Statute are not covered by Sec.320 of Code - When an offences is compoudable u/Sec.320 abetment of such offence or attempt to commit such offence or where accused is liable u/Sec.34 or Sec.149 can also be compounded in same manner - A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but same can be done on his behalf with permission of Court - If a person is otherwise competent to compound offence is dead, his legal representatives may also compound offence with permission of Court - DISTINCTION BETWEEN COMPOUNDING OF OFFENCE U/SEC.320 AND QUASHING OF CRIMINAL CASE BY HIGH COURT IN EXERCISE OF INHERENT POWERS - STATED - Two powers are distinct and different although ultimate consequence may be same viz., acquittal of accused or dismissal of indictment - Power of High Court in quashing a criminal proceeding or FIR or complaint in exercise of inherent jurisdiction is distinct and different from power given to criminal Court for compounding of ffences u/Sec.320 of Code - Inherent power is of wide plenitude with no statutory limitation, but it has to be exercised in accord with guidelines engrafted in such power viz. (i) to secure ends of justice or (ii) to prevent abuse of process of any Court - High Court must consider whether it would be unfair or contrary to interest of justice to continue with criminal proceedings or continuation of criminal proceeding would tatamount to abuse process of law despite settlement and compromise between victim and wrong doer and whether to secure ends of justice, it is appropriate that criminal case is put to an end and if answer to above questions is in affirmative, High Court shall be well within its jurisdiction to quash criminal proceedings. **Glan Singh Vs. State of Punjab 2012(3) Law Summary (S.C.) 187.**

—Sec.320 - **INDIAN PENAL CODE,** Sec.498-A - **DOWRY PROHIBITION ACT,** Sec.4 - While considering request for compounding of offences Court has to strictly follow

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mandate of Section 320 of Code - It is, therefore, not possible to permit compounding of offences u/Sec.498-A of Indian Penal Code and Sec.4 of Dowry Prohibition Act - However, if there is a genuine compromise between husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if offences alleged therein are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape. **Manohar Singh Vs. State of Madhya Pradesh 2014(2) Law Summary (S.C.) 105.**

—Sec.320(6) – **INDIAN PENAL CODE** Secs.343, 376(2) (n), 313 and 506 – "Permission for compounding offences"- Basing on report given by defacto complainant FIR registered against accused for offence under said provisions of IPC - Defacto complainant is 1st year B.Tech student and accused completed B.Tech and they met during a marriage function and later intimacy developed between them and accused with his overtures of love, deceived her with a false promise of marrying her and had repeated sexual intercourse with her and eventually when she become pregnant, got her aborted and when she requested him to marry, he refused – Thus her complaint led police to investigate and file charge sheet - When investigation pending accused filed petition for quashing FIR and when said petition was pending parties filed petition u/Sec. 320 (6) Cr.P.C. seeking permission of High Court for compounding offence and to quash criminal proceedings - Both parties submit that parties are relations and keeping in view of future of defacto complainant and accused, at intervention of elders they entered into compromise and therefore, requested to accord permission to compound offence and filed memo of compromise stating that defacto complainant agreed o receive Rs. 14 lakhs for her education and future needs from family of accused and in return she agreed to compound criminal case and she further agreed that she will have no further rights of any sort against accused and his family members - In a case of this nature more than interest of individuals, interest of Society is at stake – Offence alleged cannot be simply regarded as an offence against an individual rather it should be treated as an offence against society – Therefore, Court must be circumspective and see whether according permission will sub-serve societal interest or not – If offence alleged is purely private in nature and parties want to burry hatchet and lead harmonious life, then Court may appreciate such action on part of parties – However on other hand offence alleged is one which shakes the conscion of Society, Court must be reluctant to accord permission.

It is so held by Hon'ble Apex Court in its judgment reported in Giansingh V. State of Punjab and another 2012 (10) SSC 3037. "…… However, before exercise of such power, high court must have due regard to nature and gravity of crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, cannot be fittingly quashed, even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society".

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So when above caution note of Apex Court is applied to present case in view of gravity of offence, permission cannot be accorded by High Court even exercising its plenary power u/Sec. 482 Cr.P.C - If terms of compromise are approbated by High Court, they would resonate a wrong message to Society to effect that a person can deceive a woman and get rid of prosecution by paying some amount - This by no means will sub-serve public good and interest of Society – Hence, High Court cannot give stamp of approval for such acts of parties though they wish to compromise and bury their mis-deeds under carpet-Criminal Petition dismissed - Petition filed u/Sec.482 to quash proceedings in F.I.R. also dismissed. **Vermagiri Raviteja Vs. State of A.P. 2015(2) Law Summary (A.P.) 316 = 2015(2) ALD (Crl) 133 = 2015(3) ALT (Crl) 392 (AP) = 2015 Cri. LJ 4255.**

—Secs.348, 267, 268,269 & 270 - "Anticipatory bail" - Case registered against petitioners for offence under provisions of IPC and Exclusive Substance Act and were remanded, but no steps taken for obtaining 'production warrant' - Sessions Judge dismissing Anticipatory bail petition filed by petitioners - In this case, accused were involved in more than one case - Confessional statements of petitioners have been recorded - Material objects were already recovered at instance of petitioners - CR.P.C. SECS.267,268 & 269 - Main purpose of these provisions is that criminal proceedings must be completed as early as possible - A production warrant issued u/Sec.267 cannot be treated as a detention order - Powers under this section cannot be exercised for purpose of investigation in some other case and such course appears to be impermissible - Sec.267 Cr.P.C imposes a duty on Court to make an order requiring Officer-in-charge of prison to produce such person, whenever, in course of an enquiry, trial or other proceedings under Cr.P.C; it appears to Court production of such person in judicial custody in some other case is required - Even for computation of set off period under 428 Cr.P.C, immediate remand of accused in a criminal case becomes necessary - When accused in jail during period of investigation or enquiry i.e., before date of his conviction such period has to be given set off - Therefore, where it appears to Court that person already in judicial custody in one case is involved in some other case or cases, then such Court should take steps and issue P.T warrant u/Sec.267 - Admittedly in this case, confessional statements of accused were already recorded and whatever property is to be recovered in other case had been already recovered - So, no purpose would be served by refusing to grant anticipatory bail to petitioners - Criminal petition, allowed. **Talari Ravi Vs. State of A.P. 2009(2) Law Summary (A.P.) 133.**

—Sec.354 - **INDIAN PENAL CODE,** Sec.326 - "Sentencing system" - Accused/ respondent charged for offence u/Sec.326 IPC - Trial Court convicted accused and sentenced them to undergo rigorous imprisonment for three years along with fine - High Court partly allowed appeal by maintaining conviction of respondents and reduced their sentence for period already undergone - Aggrieved by said judgment, State filed

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present Appeal - In operating sentencing system law should adopt corrective machinery or deterrence based on factual matrix - Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration - Courts must not only keep in view rights of victim of crime but also Society at large - While considering impossession of appropriate of punishment - Though in this case, it is stated that both parties have amicibally settled in view of fact that offence charged u/Sec.326 is non compoundable and also in light of serious nature of injuries and no challenge has to conviction, High Court not justified in reducing sentence to period already undergone - Order of High Court set aside and restore sentence imposed on respondents/accused - Appeal filed by State, allowed and respondent/accused (A1 to A3) are directed to surrender within a period of 4 weeks - Order of High Court, set aside. **State of M.P. Vs. Najab Khan 2013(3) Law Summary (S.C.) 120 = 2014(1) ALD (Crl) 873 (SC) = 2013 AIR SCW 4537 = 2013 Cri. LJ 3951 (SC) = AIR 2013 SC 2997 = 2014(1) SCC (Cri) 153 = 2013(9) SCC 509.**

—Sec.357(3), 421 and 431 - Respondent filed complaint against appellant for offence u/Sec.138 of N.I Act - Magistrate found accused guilty of offence and sentenced simple imprisonment for one year and directed to pay Rs.5 laksh to complainant u/Sec.357 (3) - In revision High Court while dismissing revision petition has observed that Courts below had appreciated facts correctly and there is no error, illegality, or impropriety in findings recorded by Courts below to set aside conviction and sentence - High Court After taking in to consideration pecular facts and circumstances, modified sentence imposed on accused to extent if petitioner pays compensation amount of Rs.4 laksh within period of five months, then he needs to undergo imprisonment only till rising of Court and if petitioner commits default in making payment aforesaid he shall undergo simple imprisonment for three months by way of default sentence - Complainant being aggrieved by sentce imposed on accused has filed SLP contending that sence imposed is very minimal and will defeat very purpose of Sec.138 of N.I Act - Further contention of accused that while exercising jurisdiction u/Sec.357(3) of Cr.P.C no direction can be issued that in default of payment of compensation, accused shall suffer simple imprisonment and further contended as regards factual error made by High Court where in High Court, stated that he had deposited one laksh towards compensation requirs to be accepted - It is to be noted accused has already deposited Rs.2 laksh towards compensation amount of Rs.5 lakhs before Magistrate in pursuance of orders passed by Sessions Court and High Court - Therefore appeal of accused allowed to extent that he needs to pay further amount of Rs.3 lakhs towards compensation of Rs.5 lakhs - Remaining part of sentence passed by High Court requires to be confirmed - Conviction and sentence against accused confirmed with modification - Appeal, partly allowed. **K.A.Abbas H.S.A. Vs. Sabu Joseph 2010(2) Law Summary (S.C.) 80.**

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—Sec.378 - **EVIDENCE ACT,** Sec.9 - **INDIAN PENAL CODE,** Secs.364, r/w 302, r/w 149 - 'Appeal against acquittal' - Accused faced trial for commission of offence u/Sec.364, r/w 302, pleaded that they have been falsely implicated because of land dispute, though they did not deny homicidal death of deceased - Trial Court accepted prosecution version and convicted accused persons - High Court directed acquittal of accused holding that there is no direct evidence and case was based on circumstantial evidence and that identification was not possible and that FIR filed at a different Police Station instead of filing at correct Police Station, which gives an impression that genesis of occurrence has been twisted and that evidence relating to kidnaping was inadequate - Generally order of acquittal shall not be interfered with because presumption of innocence of accused is further strengthened by acquittal - Paramount consideration of Court is to ensure that miscarriage of justice is prevented - A miscarriage of justice which may arise from acquittal of guilty is no less than from conviction of an innocent - IDENTIFICATION - In this case, there was light of moon as well as neighbouring houses and electric poles in lane and date of occurrence was 11th day of Lunar month and therefore identification was possible - Further a known person can be identified from distance even without much light - Hence trial Court justified in holding that identification was possible - Hypothetical conclusions of High Court which are based on surmises and conjectures on other hand are unsupportable - LAST SEEN THEORY - It comes in to play where timegap between point of time when accused and deceased were seen last alive and when deceased is found dead is so small that possibility of any person other than accused being author of crime becomes impossible - In this case, there is positive evidence that deceased and accused were seen together by witnesses. **Basudeo Yadav Vs. Surendra Yadav 2008(3) Law Summary (S.C.) 91.**

—Sec.378 - **INDIAN PENAL CODE,** Sec.302, r/w Sec.34 "Appeal against acquittal" - Powers of appellate Court - General principles – Stated - Appellate Court has full power to review, reappreciate and reconsider evidence upon which order of acquittal is founded and it may reach its own conclusion both on question of fact and law - In this case, trial Court failed to take note of relevant aspects and committed grave error in rejecting reliable material placed by prosecution - High Court as appellate Court enalyzed evidence as provided in Sec.378 of Cr.P.C and rightly reversed order of acquittal - Appeal, dismissed. **Mookkiah Vs. State 2013(1) Law Summary (S.C.) 79.**

—Secs.378, 386 & 172 - **INDIAN PENAL CODE,** Secs.148,149 & 302 - **EVIDENCE ACT,** Sec.145 - Appellants/accused caused death of five persons suspecting them practising sorcery in village, by pouring kerosene and set them on fire - Trial Court acquitted accused holding that prosecution failed to establish guilt of accused for offence for which they were charged - High Court confirmed judgment of acquittal of some accused but convicted some persons for offence u/Sec.302, r/w 149 - CASE DAIRY - Criminal Court can use case dairy in aid of criminal enquiry or trial but not as an evidence - Court's power to consider dairy is not unfettered - In light of inhibitions contained in Secs.172(2), it is not open to Court to place reliance on case dairy as a piece of evidence

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directly or indirectly - In this case, High Court fell into grave error in using statements of P.Ws.2 to 4 recorded u/Sec.161(3) of Code; particularly for contradicting P.W.20 without affording opportunity to him to explain position - Course adopted by High Court is impermissible in law as Sec.172 of Code is not meant to be used for purpose it has been used by High Court to overcome contradictions pointed out by defence - Another grave illegality vitiating judgment of High Court is, conviction of appellants u/Sec.302 r/w Sec.149 IPC even though appellants/accused have been acquitted of offence u/Sec.149 - High Court not justified in interfering with judgment of acquittal - Judgment of High Court, set aside - Appeal, allowed. **Md.Ankoos Vs. The Public Prosecutor, High Court of A.P. 2009(3) Law Summary (S.C.) 151.**

—Secs.378(2), 374(2), 231 & 233 - Criminal Rules of practice and Circular orders 1990 made by High Court in exercise of powers under Art.227 of Constitution - "Criminal appeals against acquittal" - Condonation of inordinate delay in representing criminal appeals - In affidavit filed by Manager of Public Prosecutor's Office it is stated that on account of retirement of Manager and suspension his successor processing work could not be completed in time as office was shifted twice from one place to another and it took time to trace files in PP's office and in view of this, appeal papers could not be represented in time - In this case, plea that administrative reasons alleged in affidavit must weigh with Court in condoning delay in representing Appeal papers - It is true that ordinarily Court is lenient in extending time for complying with procedural requirements to avail remedy from High Court - But in a criminal case, especially an appeal by State u/Sec.378(2) & (3) of Cr.P.C., other considerations must and ought to weigh with Court, even while considering application by State condonation of delay in presentation or representation - After appeal is admitted High Court shall have to send for records of case and hear appeal with regard to validity of finding of guilt with regard to legality of sentence - Appellate Court may reverse finding and sentence and acquit accused in case appeal is from order of acquittal reverse order of Sessions Court and direct accused be retried - Therefore, hearing of an appeal so as to be effective must be with reference to evidence adduced by prosecution and defence in trial in accordance with Secs.231 & 233 Cr.P.C respectively - A belated appeal even if it is with leave of Court as contemplated u/Sec.378(3) without record would certainly be a futile exercise - In this case, except a copy of judgment of Court below no other record is available - Therefore inordinate delay in representing appeal to Registry cannot be condoned - Petitions dismissed. **State of A.P. Vs. Avunoori Srikanth 2010(1) Law Summary (A.P.) 304.**

—Secs.378(4) & 372 (as per amendment) - **NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - Magistrate acquitting accused in complaint filed against them u/Sec.138 of N.I Act - Complainant filed appeals against acquittal u/Sec.378 Cr.P.C before Addl. District Judge - Hence present Criminal Petitions filed by accused contending that as against acquittal remedy of complainant is to file appeal to High Court u/Sec.378 (4) Cr.P.C - Respondent/complainant contends that as per amendment to Sec.372

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Cr.P.C introducing new proviso to that section, a victim is competent to file appeal to Sessions Court against acquittal recorded by Magistrate - Petitioners contend that Sec.378 (4) Cr.P.C is a Special Provison and it overrides general provision contained in Sec.372 Cr.P.C - After amendment, proviso to Sec.372 Cr.P.C makes inroads to original general provison contained in Sec.372 and after introduction of said proviso, field became enlarged clothing a victim also with right to file appeal apart from State or complainant as case may be - In case on hand, on plain, simple and proper reading of language employed in Sec.378 (4) Cr.P.C and proviso to Sec.372 Cr.P.C, there is no clash or conflict or inconsistency between two provisions - Against any order of conviction passed by Magistrate appeal lies to sessions Court - Intention of Parliament in introducing proviso to Sec.372 is to supplement to then existing remedies and to confer appellant jurisdiction to sessions Court also apart from High Court against an order of acquittal recorded by trial Court - Thus, on harmonious reading of Sec.378(4) and proviso to Sec.372 found that both provisions can be given effect to simultaneously and that both provisions can operate in field at one and same time and that there is no conflict or clash or inconsistency between these two provisions - In case criminal appeals are not maintainable before Sessions Court, in such an event proceedings in those criminal appeals are not liable to be quashed; but proper course to be adopted in such a case would be to return appeal memoranda to appellant for presentation to proper Court having jurisdiction, that is High Court - Other course open to High Court in these petitions would be to transfer pending appeals from Additional Sessions Court to High Court for disposal according to law - Since appeals presented in lower Court prior to Cr.P.C (Amendment) Act, 2008 came into force both appeals are not maintainable before Sessions Court - Criminal appeals are transferred from Addl. Sessions Judge to High Court. **G.Baswaraj Vs. State of A.P. 2010(3) Law Summary (A.P.) 425 = 2011(1) ALD (Crl.) 201 (AP) = 2011(1) ALT (Crl.) 88 (AP).**

—Sec.385 - **INDIAN PENAL CODE,** Sec.394 - Trial Judge convicting accused (A1, A3, A4) for offence u/Sec.394 IPC - Appellate Court confirmed conviction on basis of available record without presence of appellants (A1, A4) and without hearing arguments of Counsel for accused - Hence A1 alone preferred present revision - Accused contends that it is imperative for appellate Court to dispose of appeal after hearing Counsel for accused and in event there was no Advocate for accused or Counsel representing accused either was absent or refused to advance submissions on behalf of accused, appellate Court was duty bound to appoint legal aid Counsel to represent accused and dispose of case after hearing Counsel for accused and that *ex parte* disposal of case, is not sustainable - In view of Sec.385((2), it is imperative for appellate Court to hear parties - Sec.385 Cr.P.C. does not contemplate situation where accused is absent and where accused is not represented by Counsel - There is no provision in Code to meet such contingency - In present case, A1, A4 were represented by Counsel engaged by them and not by a legal aid Counsel before appellate Court - As Sessions Judge disposed of appeal without hearing Counsel for

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accused, order of appellate Court is unsustainable and liable to be set, aside - Case remitted to appellate Court for fresh disposal according to law after affording opportunity to both sides to make their submissions - Judgment of criminal appeal, set aside. **Cheekatimarla Satyanarayana Vs. The State of A.P. 2011(3) Law Summary (A.P.) 189 = 2012(1) ALD(Crl) 332(AP) = 2012(1) ALT (Crl) 32(AP).**

—Secs.386 & 313(1) - **CIVIL PROCEDURE CODE,** Or.41, Rules 23 to 26 - Sessions Judge remanding back C.C to Magistrate on ground that trial Court erroneously imposed sentence of imprisonment against a juristic person and that contents of Ex.P.15 were not put to accused in examination of accused u/Sec.313 Cr.P.C - If it is an error, it is open to appellate Court to rectify alleged error - Ex.P.15 is Memorandum of Understanding between parties and there is no admission of criminal liability therein - Taken by itself, it may not be said to be an incriminating document as such, and contents of Ex.P.15 are only supporting material for prosecution and cannot be said to be incriminating material against accused as such - Thus both grounds on which lower appellate Court remanded case to trial Court are unsustainable - There is no power for criminal appellate Court to remand a case, like a civil appellate Court under Or.41, Rules 23 to 26 CPC, and option open to appellate Court is to order retrial- Lower appellate Court should have acquainted itself with Sec.386 Cr.P.C about powers to be exercised as appellate judge on criminal side - Criminal Courts know about remanding an accused and not remanding a case - Order of Sessions Judge, set aside - Criminal revision petition, allowed. **Maruthi College of Engineering &Technology Vs. Sate of A.P. 2010(3) Law Summary (A.P.) 170.**

—Sec.391 - **NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - "Permission to lead additional evidence in appeal" - Petitioner, accused convicted by trial Court u/Sec.138 of N.I Act - Petition filed in appeal u/Sec.391 Cr.P.C, dismissed - Petitioner contends that cheque in question was not drawn by him on his account and that it was drawn on account of Firm which is a partnership Concern and that therefore requirements of Sec.138 of Act are not satisfied - Plea not taken by accused petitioner in trial Court and no endeavor was made by accused to prove that said fact when matter was pending before trial Court - Fact that petitioner wants to examine an additional witness to prove facts require for said plea itself indicate that it is not pure question of law - It is undoubtedly a mixed question of fact and law - No party can be permitted to raise a mixed question of fact and law for first time in appeal - It is discretion of appellate Court to permit production of additional evidence and it does not depend upon whether application was made by accused or by prosecution - Discretion of Court has to be exercised in a judicious manner and not in arbitrary manner - In this case, evidently petitioner/accused filed present petition in lower appellate Court u/Sec.391 Cr.P.C to fillup lacunae and without any bonafides - Rejection of petition filed by accused in lower appellate Court for permission to lead additional evidence - Justified - Petition, dismissed. **Dasari Radha Krishna Vs. State of A.P. 2010(2) Law Summary (A.P.) 24.**

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—Secs.391 & 311 - "Powers of appellate Court to take additional evidence" - P.W.1 filed private complaint against petitioners/accused, 1 to 5, husband, in-laws, brother-in-law and sister-in-law for harassing for additional dowry - Basing on complaint crime registered u/Secs.498-A,320 and 406 IPC and u/Secs. 4 & 6 of Dowry Prohibition Act - Trial Court convicting accused - Crl.M.P filed by petitioners in Appeal, to summon P.Ws.1 & 8 for further cross-examination to elicit certain omissions and contradictions , dismissed - Hence present Revision - Public Prosecutor contends that witnesses cannot be summoned for further cross-examination at appellate stage - Petitioners contend, Court is empowered to take additional evidence u/Sec.391 and even under Sec.311 Cr.P.C to recall witnesses already examined in interest of justice - If certain questions are not put to a witness and certain omissions and contradictions are not marked and if witnesses have to be recalled for further cross-examination, such further cross-examination cannot be treated as additional evidence - When there was an ample opportunity to cross-examine witness and to elicit omissions and contradictions and if accused failed to cross-examine witness even after witness was recalled for further cross-examination, accused cannot take advantage of his own lapse and there is no provision to recall witnesses at appellate stage - Normally power to recall a witness should be exercised either on same day or within reasonable time under exceptional circumstances - If power to recall a witness is exercised in casual or routine manner then there is every danger of accused trying to influence witness or trying to threaten witness and to make him hostile - Therefore power to recall a witness cannot be lightly exercised - In this case, since P.W.1 was cross-examined in 2007, it appears that there is no justification in recalling said witness after period of two years that too at appellate stage - Revision, dismissed. **Ch.Ramakoteshwara Rao Vs. State of A.P. 2010(1) Law Summary (A.P.) 89.**

—Secs.391 & 482 - Summoning of witness for further cross-examination and for recording additional evidence - Delay in filing application should not have been sole ground for rejecting appellant's application before High Court - When car in which justice A.N. Ray holding office of Chief Justice of India at that time was travelling along with his son, there was attempt on life of Chief Justice - Sec.391 Cr.P.C - Provision is not limited to recall of witness for further cross-examination with reference to his previous statement - Appellate Court may feel necessity to take additional evidence for any number of reasons to arrive at just decision in case - Law casts a duty upon Court to arrive at truth by all lawful means - As a matter of fact if some later statement has come to be made in some legal ways, it may be admissible on its own without any help from Sec.311 or Sec.391Cr.P.C - It is only such statement or development which is otherwise not within legal frame work that would need exercise of Court's jurisdiction to bring it before it as part of legal record - High Court was in error in refusing to summon P.W.1 for his further cross-examination as prayed for on behalf of appellants - Accordingly order of High Court set aside to that extent - Appeals, allowed. **Sudevanand Vs. State through CBI 2012(1) Law Summary (S.C.) 106.**

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—Secs.397,399,400 & 401 - Case filed against accused for alleged offence u/ Secs.325,324,323, r/w Sec.34 IPC - Magistrate acquitted accused A1 to A5 u/Sec.397 Cr.P.C after full trial - In C.R.P filed by de-facto complainant Sessions Judge found A2 guilty of offence u/Sec.325 and A3 guilty of offence u/Sec.324 and convicted them u/Sec.248(2) Cr.P.C and did not choose to pass any sentences - As per Sec.401(3) Cr.P.C., High Court has no power to convert finding of acquittal into one of conviction in Revision Petition filed u/Sec.397 Cr.P.C - Neither Sessions Judge nor High Court has any power to convert finding of acquittal recorded by Magistrate into one of conviction, while exercising jurisdiction u/Sec.397 Cr.P.C in a Revision petition - Impugned judgment passed by Sessions Judge converting finding of acquittal recorded by Magistrate into one of conviction in so far as petitioners A2 and A3 are concerned for offences punishable u/Secs.325 & 324 IPC, is without jurisdiction - Crl.P. allowed. **Vavilapalli Ramesh Vs. Girada Rama Rao 2011(2) Law Summary (A.P.) 194 = 2011(1) ALD (Crl.) 996 (AP) = 2011(3) ALT (Crl.) 38 (AP) = 2011 Cri. LJ 3988 (AP).**

—Secs.397 and 401 - As per the provision of Sec.138 of NI Act, the learned Magistrate is competent to punish accused, who is convicted of offence punishable u/Sec.138 of the Act with imprisonment for a term which may extend to two years, or with fine which may extend to twice amount of cheque, or with both - Trial court has totally ignored victim and had failed to take note of rights of victim/complainant - Showing undue sympathy to the accused and imposing a sentence, which is not appropriate to gravity of offence, is not justified - Fact that a decree was obtained in a civil suit is no ground to impose a sentence, which is not commensurate to gravity of offence - It is not a case, where amount covered by cheque has been paid - Therefore, this Court holds that sentence imposed in this particular case against accused is grossly inadequate (less) - However, in view of finding that sentence imposed by trial Court is inadequate, this Court proposes to remand case to trial Court and hence it is not necessary to indicate what exactly should be appropriate sentence to be passed. **Sardar Harvinder Singh Vs. Chobrolu Hutasana Rao 2015(1) Law Summary (A.P.) 242 = 2015(1) ALD (Crl) 826 = 2015 Cri. LJ 3568.**

—-Secs.406 & 311, r/w Sec.165 **Evidence Act** - "Transfer of case from one Court to another Court" - Sec.311 of Code and Sec.165 of Evidence Act confers vast and wide powers on Court to elicit all necessary material by playing an active role in evidence collecting process - In this case, record does not indicate that trial Judge had exercised power u/Sec.165 of Evidence Act which is in a way complementary to his other power - It is true that there must be reasonable apprehension on part of party to a case that justice may not be done and mere allegation that there is apprehension that justice will not be done cannot be basis to transfer - There is no manner of doubt that reasonable apprehension that there would be failure of justice and acquittal of accused only because witnesses are threatened by petitioner - Apprehension of not getting a fair and impartial enquiry are trial is required to be reasonable and not imaginary, based upon conjectures and surmises - If it appears that dispensation of criminal justice is not possible impartially

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and objectively and without any bias before any Court are even at any place, appropriate Court may transfer case to another Court where it feels that holding of fair and proper trial is conducive - In this case, on facts and circumstances of case that interest of justice would be served if transfer of case is ordered to some other Court. **Vikas Kumar Roorkawal Vs. State of Uttarkhand 2011(1) Law Summary (S.C.) 55.**

—Secs.407 (5) - Petitioner/accused took a specific stand before trial Court that it has no jurisdiction to entertain complaint - Metropolitan Sessions Judge allowed Tr.Crl.M.P and transferred complaint to IV Addl. Chief Magistrate holding that belatedness is no ground for rejecting petition - Petitioner contends that 24 hours time ought to have been given by Sessions Judge before hearing application as required under Sec.407(5) Cr.P.C and that when accused had taken a specific stand that Court has no jurisdiction to entertain complaint, taking cognizance of offence and transferring criminal case from that Court to another Court having jurisdiction are illegal and caused prejudice to accused - It appears from fair reading of Sec.407 (5) of Cr.P.C that it is mandatory for Court to give at least 24 hours time before hearing application filed u/Sec.407 seeking transfer of case from one Court to another Court - In this case, notice to counsel for petitioner-accused was given at about 9.30 a.m and on same day, impugned order passed - If there is a mandatory provision Courts are bound to follow such provision - For non compliance of Sec.407 (5) impugned order is liable to be set aside - Sessions Judge directed to give sufficient time as required under law to both parties and hear matter afresh - Criminal petition, allowed. **Kolli Venkateswara Rao Vs. Y. Venkateswara Rao 2010(2) Law Summary (A.P.) 307 = 2011(1) ALD (Crl) 322 (AP) = 2010(2) ALT (Crl) 316 (AP) = 2010 Cri. LJ (NOC) 1183 (AP).**

—Sec.437 - Cancellation of bail - Sessions Judge granting bail to petitioners imposing condition, directing petitioners to appear before SHO every day - Sessions Judge cancelled bail holding that petitioners have violated terms and conditions of bail - Cancellation of bail is a serious matter - Court has power to cancel bail, but it should be exercised sparingly and when same is absolutely necessary, in cases where it is alleged that petitioners have misued their bail, threatened witnesses, tampered with evidence or hampered investigation or stalled further proceedings of Court - It must be proved that accused have misused liberty granted to them - In this case, admittedly petitioners have signed in Register maintained by Police - It appears that there may be some misunderstanding between Police and petitioners and Police which might have resulted in not taking their signatures in attendance Registers maintained by Police - Impugned order, set aside - Criminal Revision Case, allowed. **Lankalapalli Malleswara Rao @ Malli Vs. State of A.P. 2010(1) Law Summary (A.P.) 174.**

—Anticipatory Bail – Apex Court issued guidelines for granting/cancellation. **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat 2015(3) Law Summary (S.C.)22**

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—Sec.438 - Anticipatory bail -Appellants, apprehending arrest in case registered u/ Secs.120-B and 420 IPC - Petitioner filed seeking relief of anticipatory bail - High Court passed order granting anticipatory bail on condition that in case of arrest, appellants shall be enlarged on bail on their depositing Rs.32 lakhs and also on their executing personal bond of Rs.1 lakh with two sureties each - In present case, High Court passed impugned order with intention of protecting interest of complainant in matter - Approach of High Court is incorrect as under impugned order a very unreasonable and onerous condition has been laid down by Court as a condition precedent for grant of anticipatory bail - Order of High Court, set aside - Matter remitted back to High Court to consider prayer for anticipatory bail of appellants in accordance with law taking into consideration facts and circumstances of case including gravity of offence alleged. **Ramathal Vs. Inspector of Police 2009(1) Law Summary (S.C.) 130.**

—Sec.438 - "Anticipatory bail" - Appellant/accused arrested for offences u/Secs.403, 409,420,467 r/w 34 of Indian Penal Code - Sessions Judge enlarged appellant/accused on anticipatory bail by imposing certain conditions - High Court set aside order of Sessions Judge granting anticipatory bail - In this case, there is nothing on record that there has been interference or attempt to interfere with due course of administration of justice by appellant/accused - No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail - Impugned order of High Court - Unsustainable - Appeal, allowed. **Hazari Lal Das Vs. State of West Bengal 2009(3) Law Summary (S.C.) 88 = 2009(2) ALD(Crl) 746(SC) = 2009(6) Supreme 564 = 2009 AIR SCW 5632.**

—Sec.438 - "Granting of Anticipatory bail" - FIR registered against appellant u/Secs.420, 467,468& 120-B of IPC in connection with disputes relating to sale of Flat - Suit for specific performance also pending - Sessions Judge rejecting Application for Anticipatory bail - High Court also dismissed bail Application moved by appellant - Salutary provision contained in Sec.438 Cr.P.C was introduced to enable Court to prevent deprivation of personal liberty - It cannot be permitted to be jettisoned on technicalities such as "the challan having been presented anticipatory bail cannot be granted" - Anticipatory bail can be granted at any time so long as applicant has not been arrested - High Court erred in not considering Application for anticipatory bail in accordance with law and contention that dispute herein is purely of civil nature cannot be brushed aside at this stage - Anticipatory bail granted to appellant - Appeal, allowed. **Ravindra Saxena Vs. State of Rajasthan 2010(1) Law Summary (S.C.) 42.**

—Sec.438 - "Anticipatory bail" - Historical perspective - Ambit, scope and object of Sec.438 - Stated - Present petition filed against orders passed by High Court declining bail to appellant - Appellant belonging to Indian National Congress Party, contends that High Court gravely erred in declining anticipatory bail to appellant and that Sec.438 Cr.P.C was incorporated because some influential people are trying to implicate their rivals in false cases for purpose of disgracing them or for other purposes by getting them detained in jail for some days and that in recent times with accentuation of political rivalry, this

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tendency is showing signs of said increase and that entire prosecution story seems to be a cock and bull story and no reliance can be placed on such concocted version - In instant case, there is direct judgment of Constitution Bench of Supreme Court dealing with exactaly same issue regarding ambit, scope and object of concept of Anticipatory bail enumarated u/Sec.438 Cr.P.C - Impugned judgment and order of High Court declining anticipatory bail to appellant cannot be sustained and consequently, set aside - In event of arrest, appellant shall be released on bail on his furnishing a personal bond in sum of Rs.50,000/- with two sureties - Appeal, allowed. **Siddharam Satlingappa Mhetre Vs. State of Maharashtra 2011(1) Law Summary (S.C.) 1.**

—Sec. 438 - Seeking anticipatory bail to the petitioner/A-5 for the offence under Secs. 403, 406,409, 420, 468 and 471 r/w 120-B of IPC - De facto compla-inant, a NRI, started a private company viz., M/s. Material Software System India (p) Ltd. And M/s. Material Soft Information Technologies for software development - De facto complainant filed complaint alleging that A-1 has indulged in several acts of omission and commission and embezzlement and caused huge loss to him to a tune of Rs. 40 crores as he had invested about 20 cr. In the business and more than 8 cr. was drawn by A-1 from different banks by mortgaging the properties of the de-facto complainant - A crime was registered by the PSCCS, Team 1 Hyder-abad in Crime no. 122/2015 against which the petitioner/A-5 filed this petition for anticipatory bail - Petitioner /A5 was appointed by A1 as auditor and A5 was part of the conspiracy for defrauding the complainant by manipulating the accounts - Held, taking into consideration of the nature of allegations, the status of the chartered accountant, his duties and responsibilities towards Company and the surrounding facts and circumstances of the case, it is not a fit case where the custodial interrogation of the petitioner/A5 will be required - In the result, criminal petition is allowed and petitioner/A5 is directed to be released on pre-arrest bail subject to certain conditions - Hence, the criminal petition is allowed. **M.Nagaraj Vs. State of Telangana 2015(3) Law Summary (A.P.) 293 = 2015(2) ALD(Crl) 1022.**

—Sec.438 - "Anticipatory bail" - **INDIAN PENAL CODE,** Sec.498-A - **DOWRY PROHIBITION ACT,** Secs.3 & 4, r/w Sec.34 IPC - De facto-complainant, after her marriage, A1 husband-in-laws treated well for some time and thereafter started harassing her demanding for bring additional dowry and her husband along with in-laws necked her from their house demanding to bring R.10 lakhs additional dowry - Petitioners contend that petitioners no.3 & 4 are parents of mother-in-law of de facto complainant and petitioners 1 & 2 are relatives of petitioners no.3 & 4 and their case is that they are innocent and falsely implicated in this case - It is most unfortunate that Sec.498-A IPC has become a weapon in breaking families rather than in uniting them - Madras High Court in its order has observed some guidelines stating that "it must born in mind that object behind enactment of Sec.498-A IPC and Dowry Prohibition Act is to check and curb the menace of dowry and at save time to save matrimonial homes from destruction. Our experience shows that apart from husband, all family members are implicated are dragged to Police Station..."

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It appears that there is every need to give similar directions in Andhra Pradesh under Domestic Violence Act, Protection Officer is required to assist Police and Court - Sec.498-A IPC is a cognizable and non compoundable offence - Following guide lines issued:

a) A fair and dispassionate investigation should be conducted. After completing investigation, the same should be verified by an officer not below the rank of Deputy Superintendent of Police.

b) During the course of investigation, if the investigating officer is satisfied that there is false implication of any person in the complaint then he may delete the names of such persons from the charge sheet after obtaining necessary permission from the Superintendent of Police or any other officer equivalent to that rank.

c) As soon as a complaint is received either from the wife alleging dowry harassment or from the husband that there is every likelihood of him being implicated in a case of dowry harassment, then, both the parties should be asked to undergo counselling with any experienced counsellor or counsellors. The report of such counsellors should be made as a part of the report to be submitted by the investigating officer to the Court.

d) The Superintendent of Police, in consultation with the Chairman, District Legal Services Authority, may prepare a panel of counsellors and such panel of counsellors along with their address and phone numbers should be made available at all the police stations.

e) Normally, no accused should be arrested, where the allegation is simple dowry harassment. If the arrest is necessary during the course of investigation, the investigating officer should obtain permission of the Superintendent of Police or any other officer of the equal rank in metropolitan cities. If arrest is not necessary, the police may complete the investigation and lay charge sheet before the Court without arresting the accused and seek necessary orders from the Court. However, in the case of dowry death, suspicious death, suicide or where the allegations are serious in nature such as inflicting of bodily injury etc., the police officer may arrest the accused. However, the intimation of such arrest should be immediately sent to the concerned Superintendent of Police who may give necessary guidance to the arresting officer.

f) No accused or witness should be unnecessarily called to the police station and as soon as the purpose of summoning them to the police station is over they should be sent back. There should not be any unnecessary harassment to any person i.e. either to the relatives of the de facto complainant or to the relatives of the husband.

g) The higher police officers should see that the parties do not make any allegations that they are forced to come to any settlement in police stations against their wish. However, this does not mean that the police officers should not make any effort for amicable settlement.

h) The advocates have to play their role in trying to unite the families. They must act as social reformers while dealing with these kind of cases, particularly, where the couple have children. Even when an accused is produced before the Magistrate, they should examine the matter judiciously and consider whether there are valid grounds for remanding the accused to the judicial custody. No accused should be remanded to judicial custody mechanically in routine manner. If the Magistrate feels that the accused cannot be released after taking bonds, necessary orders may be passed accordingly.

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Director General Police A.P. is requested to issue necessary instructions to all concerned in this regard - In this case, having regard to allegations made against petitioners and in facts and circumstances Anticipatory bail granted to petitioner - Criminal petition, allowed. **T.Kaleem Vs. State of A.P. 2014(1) Law Summary (A.P.) 113.**

—Sec.438 - **S.C. AND S.T. (PREVENTION OF ATROCITIES) ACT, 1989,** Secs.3(i)(x) & 18 - "Anticipatory bail" - De facto complainant belonging to Brahmin community, married a person belonging to Schedule Caste professing Christianity - De facto complainant gave report to Inspector of Police against petitioner who is no other than maternal uncle requesting to register case against petitioner for abusing her and her husband in name of caste and religion - Police registered case u/Sec.3(i)(x) of Act and matter is under investigation - Hence petitioner filed a petition seeking anticipatory bail - In this case, de facto complainant merely said that she and her husband were insulted in name of caste and religion - She did not even mention in First Information Report actual words uttered by petitioner, who is no other than her maternal uncle - According to complainant entire incident took place inside house of petitioner where petitioner, de facto complainant and her husband were only present - Even if entire allegations mentioned in FIR are considered to be true, they do not attract ingredients of Sec.3(1)(x) of Act - When offence of provisions of Act not at all attracted, there is no legal impediment to Court to exercise its jurisdiction to grant anticipatory bail to petitioner not- withstanding bar u/Sec.18 of Act - Petitioner is granted anticipatory bail - Criminal petition, allowed. **Paracha Mohan Rao Vs. The State of A.P. 2013(2) Law Summary (A.P.) 188 = 2013(2) ALD(Crl) 535 (AP) = 2013(3) ALT(Crl) 190 (AP).**

—Sec.438 & 82 - **INDIAN PENAL CODE,** Secs. 302,120-B, & 134 - "Anticipatory bail" - Appeals filed against orders of High Court of Madhya Pradesh granting Anticipatory bail to respondents - FIR registered against respondents u/Secs. 302 r/w Sec.34 of IPC and subsequently charge-sheet also filed - Respondents/accused were absconding since very initiation of incident and since they are not traced proclamation u/Sec.82 of Cr.P.C issued against respondents/accused for their appearance to answer complaint - Appellant/State contends that charges filed against respondents/accused relate to Sec.302, 120-B and 34 IPC which are all serious offences and also of fact that both of accused being absconders from very date of incident, High Court is not justified in granting Anticipatory bail that too without proper analysis and discussion - Power exercisable u/Sec.438 of Code is some what extraordinary in character and it is to be exercised only in exceptional cases where it appears that person may be falsely implicated or where there are reasonsonable grounds for holding that a person accused of offence is not likely to otherwise misuse his liberty - CR.P.C. SEC.438 - SCOPE OF - STATED - Sec.438 is a procedural provision which is concerned with personal liberty of an individual who is entitled to plead innocence, since he is not on date of application for exercise of power u/Sec.438 of Code convicted for offence in respect of which he seeks bail - Provisions cannot be invoked after arrest of accused and a blanket order should not be

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generally passed - It flows from any language of section which requires applicant to show that he has reason to believe that he may be arrested - A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on basis of which it cannot be said that applicant's apprehension that he may be arrested is genuine - If any one is declared as an absonder/proclaimed offender in terms of Sec.82 of Code he is not entitled to relief of anticipatory bail - In this case, respondents/accused are facing prosecution for offences punishable for serious offences and particularly accused being proclaimed offenders - Impugned orders of granting bail - Unsustainable - Impugned orders of High Court are set aside - Respondents/accused are directed to surrender before Court concerned within two weeks failing which trial Court is directed to take them into custody - Appeals, allowed. **State of Madhya Pradesh Vs. Pradeep Sharma 2014(1) Law Summary (S.C.) 12.**

—Secs.438, 207 and 208 - "Anticipatory bail" - Applicant must show that he has 'reason to believe' that he may be arrested in non-bailable offence - A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on basis of which it can be said that applicant's apprehension that he may be arrested is genuine - Order u/Sec.438 is a device to secure individual's liberty, it is neither a passport to commission of crimes or a shield against any and all kinds of accusations likely or unlikely - If protective umbrella of Sec.438 is extended indefinitely result would be clear bypassing of what is mandated in Sec.439 regarding custody - Till applicant avails remedies upto higher Courts, requirements of Sec.439 become dead letter - No part of a statute can be rendered redundant in that manner - CASE DAIRY - In this case it is baffling to note that accused and informant referred to particular position of case dairy - At stage bail applications were heard by High Court, legally they could not have been in a position to have access to same - Papers which are to be supplied to accused have been statutorily prescribed - Courts should take serious note when accused or informant refers to case dairy to buttress a stand. **Naresh Kumar Vs. Ravindra Kumar 2008(1) Law Summary (S.C.) 21.**

—Sec.439 - Case registered punishable for offences u/Secs.302,307,328 etc., of IPC and also under provisions of Bombay Prohibition Act - High Court dismissed applications filed u/Sec.439 seeking regular bail - Appellant contends that in Charge Sheet and connected material, there is nothing to show that appellant had any knowledge that illicit liquor was poisonous or that he had any intention to cause death of deceased persons at most it is case u/Sec.304 IP and not u/Sec.302 and that co-accused allegedly having grave role, have already been granted bail and therefore on ground of parity also, accused appellant deserves to be enlarged on bail on same terms and conditions - Appellant/accused is habitual offender and is facing more than 20 cases including similar cases under various provisions of IPC and Bombay provision Act and that there is every likely hood that if accused appellant is released onbail, he would threaten witnesses and again indulge in sale of spurious liquor - Merely because accused/appellant had spent three years as an under trial prisoner, taking notice of gravity of offence is not entitled for bail - Trial Judge is directed to proceed with

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trial on day to day basis avoiding unnecessary adjournments - Appeal of Ravindrasingh (A-11, dismissed. **Ravindersingh @ Ravi Pavar Vs. State of Gujarat 2013(2) Law Summary (S.C.) 185.**

—Sec.439(2) - Bail - Cancellation of - High Court cancelling bail granted to appellants without assigning reasons - Considerations for grant of bail and cancellation of bail stand on different footings - When a person to whom bail has been granted either tries to interfere with course of justice or attempts tamper with evidence or witnessess or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled - Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away liberty of an individual granted and is not to be lightly resorted to - Even though re-appreciation of evidence as done by Court granting bail is to be avoided, Court dealing with application for cancellatin of bail u/Sec.439 (2) can consider whether irrelevant materials were taken into consideration and that irrelevant materials should be of a substantial nature and not of trival nature - In this case, since High Court not indicated any reasons for directing cancellation of bail, impugned order not maintainable and hence set aside - Matter remitted to High Court to decide afresh. **Manjit Prakash Vs. Shobha Devi 2008(2) Law Summary (S.C.) 217 = 2008(2) ALD (Crl.) 269 (SC) = AIR 2008 SC 3032 = 2008 Cri. LJ 3908 = 2008(5) Supreme 265.**

—Sec.439(2) – **"Cancellation of Bail"** – Case registered against accused (A1) u/ Secs.302,201 and 120(b) of IPC - Sessions Judge granted bail to accused – Hence, petitioner, father of the deceased wife of A1 filed petition u/Sec.439(2) for cancellation of bail - Petitioner contends that while granting bail Sessions Judge did not take into consideration submissions made by the Public Prosecutor that if he was released on bail he would interfere with process of investigation and despite fact, offence is a most heinous one, bail was granted ignoring relevant material - In this case Sessions Judge granted bail to second respondent/A1 on irrelevant considerations without applying his mind in facts of the case and ignoring relevant material, and that apart there is reasonable ground for petitioner to apprehend that if A1 is not taken into custody there is very likelihood of intimidating witnesses which would ultimately hamper prospects of trail - Hence bail granted to A1 by Session's Judge is hereby cancelled – Criminal petition allowed. **Syed Chand Pasha Vs. State of A.P. 2014(1) Law Summary (A.P.) 299 = 2014(1) ALD (Crl) 722 (AP) = 2014(2) ALT (Crl) 226 (AP).**

—Sec.439 (2) – **NDPS Act,** Sec.37 – 'Cancellation of bail' – Basing on statement of two persons from whom alleged contraband recovered, appellant was arrested - Trial Court granted bail and subsequently cancelled – High Court dismissed revision filed by appellant - Appellant contends that a bail granted must be cancelled only if requirements contained in sub-sec.(2) of Sec.439 Cr.P.C are fulfilled – Further more, for purpose of cancellation of bail statutory requirements must be satisfied - It is therefore necessary for prosecution to show some act or conduct on part of appellant from which a reasonable inference may arise that witnesses have gone back on their statements as result of an intervention by appellant - Order of High Court cancelling bail, set aside – Appeal, allowed.**Sami Ullaha Vs. Superintendent, Narcotic Central Bureau 2008(3) Law Summary (S.C.) 210.**

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—Sec.439(2), r/w Sec.482 - "Cancellation of bail" - CBI Judge granted bail - CBI filed application contending that reasons given by Judge are not valid, judgment of Supreme Court pertaining 2G Scame has no application to facts of present case and that judge had not taken into consideration basic principles of granting of bail and consequently order of bail suffers from arbitrariness, non-application of mind and giving scope for defeating cause of further investigation and justice - Respondents contend that personal liberty of respondent is primary consideration and investigation is so far as respondent is concerned investigation is over and his detention in prison not warranted - In this case, bail was claimed and granted on ground that investigation is completed and charge-sheet is filed so far as respondent is concerned - It is to be noted that crime as it was registered relates to complicity of several persons having acted in conspiracy and if such is case, it is liability of all conspirators that has to be investigated in to and investigation in a crime is said to be completed only when entire final report is submitted in registered crime against all accused persons - In fact is claim of C.B.I that investigation is not yet completed against co-conspirators and charge sheet is not filed and therefore C.B.I. judge has erred in coming to opinion that investigation in this case is completed - Order of bail granted by CBI Judge is arbitrary without applying principles of law concerning case of this nature and drawing unnecessary inferences from other cases and therefore bail granted is liable to be cancelled - Criminal petition, allowed. **State Vs. V.D.Rajgopal 2012(1) Law Summary 1 = 2012(1) ALD(Crl) 702 (AP) = 2012(2) ALT(Crl) 192(AP).**

—Sec.439(2) & 54,55A, 56 & 57 and 167 - **CONSTITUTION OF INDIA,** Art.22(1) - "Cancellation of bail granted to accused" - 1st respondent is accused of offences punishable u/secs.420, 323,506, 509 & Sec.3(1) (x) of S.C. & S.T. Act - When petitioner/de-facto complainant demanded to return certain amount alleged to have been obtained from complainant for securing Job, accused/respondent abused her in name of "Madiga" caste in filthy language and threatened her with dire consequences - Accused obtained bail from High Court in this crime by alleged misrepresentation of facts - Petitioner/de-facto comp-lainants contends that though accused was taken into custody by Police during course of investigation, he was neither arrested nor produced before Magistrate nor Magistrate remanded accused to judicial custody and when accused approached Sessions Court for bail u/Sec.437 & 439 Cr.P.C, Sessions Judge dismissed bail Application of accused on ground that he was not remanded to judicial custody by Magistrate - Any custody of accused beyond Twenty-four hours without production of accused before Magistrate becomes illegal as well as unconstitutional - It is not for Police Officer to admit arrested accused in hospital and to violate legal and constitutional mandate of production of arrested accused before Magistrate within 24 hours of his detention under arrest - Such action on part of Police Officers is likely to lead uncrupulous tendencies like in present case, where accused was allowed to remain in hospital more than one month after his arrest without production before Magistrate till accused was ordered to be released on bail by

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High Court - Such activity on part of Police Officers will give wrong signals to Society and public at large that rich and influential person can manage uncrupulous Police Officers, so that they need not go either to Court or to a prison even after arrest while in custody - In this case, it was never stated in criminal petition that accused was in judicial custody - In that petition accused, also enclosed copies of remand report, medical certificates, of Doctors as well as order passed by Sessions Judge, refusing bail to accused on ground that he was not remanded to judicial custody - Therefor it cannot be said that accused obtained bail in High Court by making any misrepresentation - Petitioner/de-facto complainant who is seeking cancellation of bail to accused that without their being judicial custody - High Court has no jurisdiction to entertain bail petition u/Sec.439 Cr.P.C and that judicial custody of accused is a condition precedent for entertaining bail application u/Sec439 Cr.P.C - U/Sec.439 Cr.P.C High Court as well as Court of Session are empowered to exercise special powers for releasing on bail "any person accused of an offence and in custody" - Custody referred in Sec.439 Cr.P.C. need not necessarily be judicial custody given u/Sec.167(2) Cr.P.C - It can be either judicial custody or Police Custody u/Sec.167(2) Cr.P.C or detention in custody of an arrested person u/Sec.57 Cr.P.C - If Sec.439 Cr.P.C is to be read as judicial custody, then it amounts to adding something which parliament did not intend to add and which parliament did not intend to restrict power of High Court and Court of Session - Therefore order in criminal petition granting bail to accused not liable to be set aside or cancelled - Criminal petition, dismissed with certain directions to initiate Departmental disciplinary enquiry against Deputy Superintendent of Police for violating constitutional as well as legal provisions and take appropriate action against him. **Alaparthi Chinna Vs. Kota Lakshmi Satyanarayana, 2012(1) Law Summary 94 = 2012(1) ALD(Crl) 770(AP) = 2012(1) ALT(Crl) 227(AP) = 2012 Cri.LJ (NOC) 547 (AP).**

—Secs.473 & 482 - **NEGOTIABLE INSTRUMENTS ACT,** Secs.138 & 142 - 1st respondent filed private complaint against accused u/Sec.138 of N.I Act alleging that cheque issued by accused dishnoured for want of sufficient funds - Magistrate condoning delay of 41 days in filing complaint and took cognizance of offence against accused - Petitioner/accused contends that order passed by lower Court condoning delay is not in accordance with law as it is an order without reasons and passed summary manner - Lower Court should have given notice to accused before passing order condoning delay of 41 days in presenting complaint - In this case, undisputedly lower Court passed order without giving notice to accused and without affording opportunity to accused to contest petition for condonation of delay and to dispute allegation contained therein - Notice to accused respondent is mandatory as per principles of natural justice before passing any order by criminal Court condoning delay in filing private complaint - Order passed by lower Court, set aside - Lower Court directed to consider petition afresh after giving notice to petitioner/accused. **D.Shyam Sunder Vs. Nella Prabhu Lingamurthy 2010(1) Law Summary (A.P.) 176.**

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—-Sec.482 - Basing on complaint charge-sheet laid against appellants u/ Secs.420,467,468 & 471 of IPC, alleging that in order to cause loss to complainant, interpolated Revenue Records and documents were forged and produced before Court in order to defraud Court - High Court dismissed Application filed by appellant for quashing proceedings arising out of charge-sheet - In this case, provisions of Secs.420,467,468 & 471 of IPC are not applicable to appellant - "Where a criminal proceedings is manifestly attend with mala fide and/or where proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on accused and with a view to spite him due to private and personal grudge" - Prosecution is nothing but an abuse of process of law and therefore set aside, impugned judgment and quash prosecution case pending in Court of Chief Judicial Magistrate. **Parminder Kaur Vs. State of U.P. 2009(3) Law Summary (S.C.) 165.**

—Sec.482 - Case registered against petitioner/accused u/Secs.420, 463,192 & 199, r/w Sec.34 and 120-B IPC - Complaints are brother and sister and children of A1 - A1 executed registered deed of settlement for entire industrial Unit in name of complainants and delivered vacant possession - Subse-quently A1 created a registered deed of revocation with an evil intention wrongly mentioning that he was possessor of Unit which is not true - In this case, prima facie A1 got no criminal intention in executing revocation deed in respect of unit and he must have done so under compelling circumstances - If at all A1 and A2 had any criminal intention in creating document it would come within preview of Sec.363 and 364 IPC and corresponding penal sections - But When in fact and circumstances of case there is no prima facie evidence of existence of circumstances, question of prosecuting A1 and A2 were alleged offences does not arise at all - On other hand prosecuting them in respect of those offences is nothing but abuse of process of law - If complainants intend to get document cancelled, they can approach civil Court, because matter is purely civil in nature - Entire proceedings in CC on file of Magistrate are liable to be quashed - Criminal petition, allowed. **Motamarri Surya Kameswara Rao Vs. Motamarri Kiran Kumar 2011(3) Law Summary (A.P.) 149.**

—Sec.482- "Quashing of proceedings in CC" - Proceedings initiated in CC against petitioner/A4 and three others for offences punishable u/Secs.498-A and 325 IPC against A1, Sec.498-A of IPC against A2 & A4 and Secs.4 & 6 of Dowry Prohibition Act, against A1, A2 & A4 - Petitioner contends that even accepting allegations in charge-sheet at their face value, no offence much- less an offence u/Sec.498-A of IPC is made out against petitioner who is brother of A1 and residing in Karnataka State and in absence of any specific allegation in charge sheet continuation of proceedings against petitioner would be an abuse of process of law - Petitioner is alleged to have taken Rs.5 lakhs from father of respondent for starting a business, which by no stretch of imagination would amount to an offence u/Sec.498-A of IPC - 2nd respondent contends that statements of witnesses recorded u/Sec.161 Cr.P.C attribute specific

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role to petitioner in demanding Rs.5 laksh to start his business and said amount was paid with hope that family members of accused will not harass respondent, wife in future and said allegation constitutes an offence u/Sec.498-A IPC and hence it cannot be said that continuation of proceedings would be abuse of process of law - What is required to be brought to notice of Court is particulars of offence committed by each and every accused and role played by each and every accused in committing of that offence - In this case, reading of charge sheet alongwith statement of witnesses recorded u/Sec.161 Cr.P.C would indicate that petitioner is alleged to have taken Rs.5 lakhs from father of L.W.1 to start business - Admittedly, petitioner never stayed with A1 and his family at any point of time and allegations in charge-sheet and cause title clearly disclose that he was resident of Shemoga in Karnataka and that no specific allegation of harassment is attributed to petitioner except stating that amount of Rs.5 lakhs was paid by father of respondent for starting business with condition that other family members of petitioner would not harass respondent - "CRUELTY" - Word cruelty as defined in explanation - II Sec.498-A IPC contains two clauses, viz., (a) any willful conduct which is of such a nature as is likely to drive woman to commit suicide or to cause grave injury or danger to life, limb or health of woman; or (b) harassment of woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her for any person related to her to meet such demand - In present case, there is no averment in charge sheet to show that petitioner harassed respondent and it is not even alleged that petitioner demanded father of respondent to pay Rs.5 lakhs for meeting a demand made against respondent - Said act of petitioner in taking money from father of respondent for starting business would not fall within meaning of cruelty as defined in Sec.498-A IPC, as there is no averment of any kind of harassment in hands of petitioner - Proceedings in CC, quashed - Criminal petition, allowed. **Suresh Kumar Jain Vs. State of A.P. 2013(3) Law Summary (A.P.) 32 = 2013(2) ALD (Crl) 700 (AP) = 2013(3) ALT (Crl) 196 (AP).**

—Sec.482 - Quashing of charge-sheets - Three First Information Reports were filed against NVRR, Supt., in Court of Junior Civil Judge, for offences u/Secs.487, 380 r/w Sec.511, 380 -0, 447 and 379 of IPC - Petitioner contends that Junior Civil Judge developed some grouse against petitioner who is Supt., of Court to take vengeance against him he got implicated petitioner in present cases - High Court while exercise jurisdiction u/Sec.482 Cr.P.C cannot adopt mechanical or casual approach - High Court is under duty to scrutinize allegations in complaint charge-sheet with care and caution - Therefore when obligations are so scrutiunized it would obviously appear that allegations are inherently improbable - Proper scrutiny and examination of facts of all cases would clearly reveal that for some oblique motu, petitioner who is Superintendent of Court was involved in cases - The way in which investigation proceeded with also indicates that it is biased and petitioner/accused is made to face trial of cases, it is nothing but obuse of process of law and it would result in miscarriage of justice

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- All cases are liable to be quashed in exercise of power u/Sec.482 Cr.P.C. **N.Venkata Rami Reddy Vs. The Sub-Inspector of Police, Kuppam P.S. 2013(2) Law Summary (A.P.) 146 = 2013(2) ALD(Crl) 367 (AP).**

—Sec.482 - **CONSTITUTION OF INDIA,** Art.21 - **INDIAN PENAL CODE,** Sec.409 - FIR - Quashing of - High Court refusing to quash FIR lodged against appellant u/Sec.409 IPC - Appellant/accused posted as LDC in the District Literarcy Education Office - As per report of Auditor General embezzlement of certain amount by appellant has been discovered - Therefore, on basis of report given by Auditor General FIR filed against appellant -In this case, during investigation inspite of Police informed that original copies of bills and another documents are not available and therefore no investigation would be made - Appellant also was exonerated from charges in Departmental enquiry - Appellant having waited for six years preferred present petition u/Sec.482 Cr.P.C before High Court to set aside FIR - High Court by impugned order chose not to interfere with FIR and left matter in hands of Authorities - Hence SLP filed by appellant - In this case, during investigation inspite of several requests made by Investigating Agency (Police) records in respect of allegations were not produced and no evidence came against appellant from file of Education Department - As apparent from enquiry report, original records not available for 9 years - There is nothing on record even by way of counter affidavit filed before Supreme Court to show that record has now been traced to make available to Investigating Agency - There is no probability of finding out original documents or evidence mentioned in counter affidavit - On other hand silence on part of respondent regarding availability of original records or other evidence before Investigating Agency shows delay caused due to inaction on part of respondent - Keeping investigation pending for further period will be futile as respondent, Director for State Literacy Programme is not sure whether original records can be procured for investigation and to bring home charges - Considering delay in present case, is caused by respondent, constitutional guarantee of speedy investigation and trial under Art.21 of Constitution is there by violated - As appellant has already been exonerated in Departmental proceedings for identical charges, keeping case pending against appellant for investigation, is unwarranted - FIR quashed. **Lokesh Kumar Jain Vs. State of Rajasthan 2013(2) Law Summary (S.C.) 221.**

——-Sec.482 - **INDIAN PENAL CODE,** Sec.307 r/w Sec.34 - Cognizable offence - High Court Quashed F.I.R registered u/Sec.307 r/w Sec.34 of IPC - High Court could not have been quashed in such a serious case as against the public policy and administration of Criminal justice system

In this case, FIR discloses commission of cognizable offence u/Sec.307 r/w Sec.34 of IPC - Considering nature of the allegation, it is necessary to investigate further in facts and circumstances of instant case

"Offence u/Sec.307 r/w Sec.34 of IPC cannot be wiped out by compromise" - High Court erred in quashing FIR hence order passed by the High Court is set aside

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- Appeal allowed. **State of M.P. Vs. Rajiveer Singh 2016(2) Law Summary (S.C.) 28 = 2016(2) Law Summary (S.C.) 40 = AIR 2016 SC 2210 = 2016 Cri. LJ 2683 (SC) = 2016(2) ALD (Crl) 58 (SC).**

—Sec.482 - **INDIAN PENAL CODE,** Sec.409 - **PREVENTION OF CORRUPTION ACT, 1988,** Secs.13(1)(d), 13(2), 17(a), 19 - Petitioner, a retired employee - Case booked by a CBI Inspector u/Secs.13(1)(d), 13(2) of Prevention of Corruption Act, 1988, and u/Sec.409 of IPC - Petitioner failed 1) in establishing that Investigation Officer had no power to investigate case u/Sec.17 of P.C. Act; 2) to show that offences under above Sections are not applicable to this case; and 3) to show that I.O. was complainant himself - But, petitioner succeeded in showing that prosecution failed to obtain approval and permission from concerned Government to prosecute him - Held, case against petitioner is not maintainable and is quashed - Criminal Petition allowed. **V.Suryanarayana Vs. The State, 2014(3) Law Summary (A.P.) 1 = 2014(2) ALD (Crl) 617.**

—Sec.482 - **INDIAN PENAL CODE,** Secs.494, 495, 420, 417 & 498-A - Complaint filed against petitioner for alleged cheating of victim woman and her parents by stating that his first wife died after delivering two of his children who are studying by staying in Hostel, even though his first wife is very much alive and living with him and that by making said false and fraudulent representation, accused married victim woman - Petitioner contend that Sec.198(1) proviso (c) of Cr.P.C bars taking cognizance of case relating to offences punishable u/Sec.494 and 495 I.P.C - Admittedly, victim is second wife of petitioner who is said to have married hereby suppressing fact of his first wife living - Therefore *prima facie* marriage between petitioner and second respondent is void and therefore it cannot be said that alleged harassment and cruelty meted out by petitioner towards her attracts penal provision u/Sec.498-A IPC - Petition partly allowed quashing proceedings on file of Magistrate in so far as offence u/Sec.498-A IPC - Partly dismissed in so far as offences u/Secs.494,417 and 420 IPC. **A.Subsh Babu Vs. State of A.P. 2010(1) Law Summary (A.P.) 298.**

—Sec.482 - **INDIAN PENAL CODE,** Sec.498-A - Appellant married second respondent who is his close relative and who lost her husband in year 1995 after having two sons through first marriage - Appellant working at Saudi Arabia and used to send money to second respondent and behaved with her very affectionately - Subsequently, believing wrong information sent by his parents, appellant stopped sending money and sending letters to second respondent and never used to come to her house whenever he came on leave - Due to such treatment meted out to her, respondent has been suffering both mentally and physically - Hence FIR by second respondent, basing on which case registered against appellant - High Court without issuing any notice, rejected petition filed u/Sec.482 of Code, holding that by no stretch of imagination it can be said that FIR and charge-sheet do not disclose commission of offence alleged against appellant -

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SCOPE AND POWER OF QUASHING OF FIR AND CHARGE-SHEET - Stated - Power is exercised by Court to prevent abuse of process of law and Court but such a power could be exercised only when complaint filed by complainant or charge-sheet filed by Police did not disclose any offence or when said complaint is found to be frivolous, vexatious or oppressive - IPC, Sec.498-A - "Cruelty" - Meaning of - Provision would be applicable only to such a case where husband or relatives of husband of woman subjects said woman to cruelty - In order to understand meaning of expression 'cruelty' as envisaged u/Sec.498-A, there must be such a conduct on part of husband or relatives of husband of woman which is of such a nature as to cause woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of woman - In this case, on reading of FIR as also charge-sheet filed against appellant no case u/Sec.498-A is made our on face of record - Hence both FIR and charge-sheet are liable to be quashed in exercise of powers u/Sec.482 of Cr.P.C - High Court failed to appreciate facts in proper perspective and therefore committed an error on face of record - Proceedings initiated against appellant u/Sec.498-A, quashed - Appeal, allowed. **Shakon Belthissor Vs. State of Kerala 2009(3) Law Summary (S.C.) 12 = 2009(2) ALD (Crl) 497 (SC) = 2009(5) Supreme 281.**

—Sec.482 - **INDIAN PENAL CODE**, Sec.498-A - Wife of petitioner filed Report to Inspector of Police alleging that her husband, retired Govt., Officer fell in trap of a lady who has been engaged as a caterer and she has been maintaining illicit relationship and basing on said report, crime registered for offence u/Sec.498-A IPC, and "man missing" - Petitioner contends that respondent/complainant lodge report with Police on some misgivings when petitioner left for other States to attend various Seminars and that even if entire allegations in complaint are taken into consideration, no ingredients of Sec.498-A IPC are made out and that mere illicit intimacy of husband does not amount to "cruelty" as described in terms of explanation appended to Sec.498-A IPC - Only allegation against petitioner in complaint presented by complainant/respondent is that he maintained illicit relationship with one lady and that word "cruelty" having been defined in terms of explanation of Sec.498-A, no other meaning can be attributed thereto - Living with another woman may be an act of "cruelty" on pat of husband for purpose of judicial separation or dissolution of marriage, but same would not attract wrath of Sec.498-A IPC - Therefore continuance of proceedings against petitioner in crime amounts to abuse of process of law - Proceedings in crime are quashed - Criminal petition, allowed. **Movva Raja Ram Vs. State of A.P. 2013(2) Law Summary (A.P.) 168 = 2013(2) ALD (Crl) 334 (AP).**

—Sec.482 - **INDIAN PENAL CODE,** Secs.498-A & 326 - DOWRY PROHIBITION ACT, Secs.4 & 6 - Petitioner de-facto complainant lodged complaint against respondents, accused for harassing her physically and mentally and demanding additional dowry and FIR registered under said provisions - SHO filed final report after recording statement of complainant, her parents and brothers, stating that case of complainant is false with plea to close matter - Petitioner contends that without giving any notice

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to petitioner/complainant, final report was accepted by Magistrate and in fact no statements of her parents and brothers and herself were recorded by SHO and false statement was given by SHO and therefore final report and also taking cognizance of it by Magistrate are not tenable and hence matter is to be reopened and further requested to order afresh investigation of case through Women Protection Cell - It is quite emphatical that complainant is alleging without recording statement of her parents and brothers, SHO sent final report claiming that case of complainant happened to be nothing but false - When such a claim is made it is necessary to ascertain as to whether that fact is true or not - When complainant filed complaint before Magistrate and it was forwarded to SHO u/Sec.156(3) for necessary investigation and report and subsequently SHO filed final report, Magistrate should have given a notice to complainant and also give her opportunity of being heard before accepting final report - Therefore Magistrate committed error in doing so under such circumstances - Order of Magistrate accepting final report, set aside - Magistrate directed to give notice to complainant and to hear both parties and pass appropriate orders taking in to consideration representation made by counsel for complainant for conducting necessary investigation through Women Protection Cell - Criminal writ petition according disposed of. **Ateyaka Fatima Khatoon Vs. State 2012(1) Law Summary 103 = 2012(1) ALD(Crl) 553(AP) = 2012(2) ALT (Crl) 58(AP).**

—Sec.482 - **PREVENTION OF FOOD ADULTERATION ACT, 1954,** Secs. 2(ia),(m) and Sec.7(i) r/w sec.16(1) and Sec.13(2) - Sample of ground nut oil was lifted from petitioner/accused on 7-7-2-004 - Public analyst Report dt:10-8-2011, shows that sample did not conform to standard of beliers test and complaint filed on 26-6-2006 - Petitioner contend that there is delay of more than about 1 year 10 month in filing complaint or launching prosecution from date of Analyst Report and nearly two years from date of lifting samples and therefore petitioners have lost their valuable right of getting second sample of ground nut oil analysed by Central Food Laboratory - According to sec.34 of Act, report of CFL Analyst supersedes report of SFL Analyst and report of former shows that there is no adulteration, prosecution cannot be launched and because of delay in launching prosecution second sample has become unfit for analysis by FSL and consequently case should be quashed as petitioners are denied valuable opportunity of getting second sample analysed by CFL as contemplated u/ Sec.13(2) of Act - Public prosecutor contends that petitioners can raise all their contentions in trial Court including plea for discharge and therefore High Court should not interfere in matter - Mere delay in launching prosecution is not by itself a ground for quashing case unless accused shows that prejudice has been caused to him on account of delay - In present case it is true that there is delay of two years in launching prosecution from date of lifting sample - However petitioners would not place any material before Court to show that second sample of ground nut oil has become useless or unfit for analysis by CFL - In view of law laid down in division bench decision of Hon'ble High Court of AP., it follows that this petitioner has to fail and same is, accordingly

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dismissed. **J.Shravan Kumar Vs. State of A.P. 2012(1) Law Summary 313 = 2012(1) ALD(Crl) 569 (AP) = 2012(1) ALT(CrL) 168 (AP).**

—Sec.482 - **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005,** Secs.2 (q), 2-A, 18, 19 & 22 - 1st respondent/wife filed complaint against husband, parents-in-law, including sister-in-law, seeking reliefs of separate residence, compensation etc. - Contention that provisions of Act would not attract against petitioners 1 & 3 as u/ Sec.2 (q) of Act, women are not liable and reliefs that are not being claimed by petitioners can be granted against husband only, and not from any other member of family, including present second petitioner, father-in-law - "Respondent" - "Aggrieved person" - "Protection order" - Meaning of - Female members cannot be made respondents in proceedings under Act - Proceedings are liable to be quashed as far as petitioners nos.1 & 3 are concerned - Petition allowed to extent of petitioner Nos.1 & 3. **Menakuru Renuka Vs. Smt. Menakuru Mohan Reddy 2009(1) Law Summary (A.P.) 367.**

—-Sec.482 – **REPRESENTATION OF PEOPLE ACT,** Secs.171(c), 188 and 127 – **POLICE ACT,** Sec.32 – Police filed proceedings against petitioners-accused that they are alleged to have conducted public meeting at 22.20 hours in view of ensuing fourthcoming elections 2009.

Petitioners-accused contend that allegations of complaint do not attract ingredients of offences alleged and that no unofficial witnesses nor any of members, who attended meeting was cited as witness in charge sheet and persons who filed complaint is neither competent person nor a public servant, who promulgated orders as required u/Sec.195 of Cr.P.C.

Held, persons who filed complaint is neither competent person nor a person, who promulgated orders, and therefore, complaint filed by Police Officer, who is not a competent person, is not maintainable – Complaint does not show whether there is any obstruction, annoyance or injury caused to person who lawfully empowered to promulgate orders or caused any disobedience or tend to cause danger to human life in view of conducting meeting, therefore in absence of establishment of any specific overt acts of offences alleged, no proceedings initiated against petitions-accused can be continued - Accordingly, proceedings initiated against petitioners-accused are quashed. **Balineni Srinivasa Reddy Vs. State of A.P. 2016(1) Law Summary (A.P.)** ***313.***

—Secs.482, 125 and 127(2) - **EVIDENCE ACT,** Secs.45,112,120 & 114 - **CONSTITUTION OF INDIA,** Art.21 - **"DNA Test"** - Respondents 1 & 2 daughter and wife filed MC against petitioner/ husband to award amounts towards their maintenance - Petitioner/husband contends that 1st respondent/wife is guilty of adultery and 2nd respondent not born to him and she was born to 1st respondent by virtue of her adultery with different male person and by reason of which he got no responsibility to provide maintenance to 2nd petitioner - Family Court dismissed Cril.M.P U/SEC.45 OF EVIDENCE ACT, filed by petitioner/husband seeking to send 2nd respondent/ daughter for DNA Test for purpose of determining as to whether he happened to be

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her natural father for purpose of awarding maintenance to her as pleaded in MC - Petitioner contends that if 2nd respondent refused to submit her self for medical examination an adverse inference can be drawn against her within meaning of Sec.114 of Evidence Act - Respondents/wife and daughter contends that complling daughter/ 2nd respondent to undergo DNA Test against her consent is against principles of testimonial compulsion as guaranteed under Art.21 of Constitution of India - Sec.125 Cr.P.C provides a swift and cheap remedy against any person who, despite means, neglects wife, minor children - Having a social purpose, Sec.125 Cr.P.C and sister clauses in their interpretation must receive a compassionate expanse of sense that words permit - In this generous jurisdiction a broader perception and appreciation of facts and their bearing must govern verdic not chopping little logic or tinkering with burden of proof - Objection of section is to prevent destitution on public grounds and vagrancy and it is a summary procedure which does not cover entirely same grounds as civil liability of husband or father or son under his personal law to maintain his wife or child or parents - Thereby it is clear that proceedings are purely civil in nature for which relevant provisions of Cr.P.C are made applicable - Criminal petition, allowed. **Soma Rama Chandram Vs. State of A.P. 2013(1) Law Summary (A.P.) 19 = 2013(1) ALD (Crl) 397 (AP) = 2013 Cri. LJ 1351 (AP) = 2013(2) ALT (Crl) 101.**

—Secs.482 & 156 - Complaint filed against accused for alleged offence u/Sec.498-A - Petitioners seek quashing of proceedings on ground that all alleged acts of ill-treatment and harassment have taken place only at Hyderabad and no part of cause of action arose at Vijayawada and therefore Police at Vijayawada have no jurisdiction to investigate - Sec.156(2) Cr.P.C contains an embargo that no proceeding of Police Officer shall be challenged on ground that he has no territorial power to investigate - In present case, matter is only at threshold stage of investigation and further investigation cannot be quashed on ground of territorial jurisdiction for police to investigate - Criminal petition, dismissed. **Thota Sambasiva Rao Vs. State of A.P. 2009(2) Law Summary (A.P.) 61 = 2009(1) ALD (Crl) 948(AP) = 2009(2) APLJ 248 = 2009(2) ALT (Crl) 359(AP) = 2009 Cri. LJ 3679 (AP).**

—Secs.482 & 156(3) - De facto complainant filed private complaint against her husband-in-laws and other close relatives - Magistrate forwarded private complaint filed by de facto complainant against petitioner's/ - Police after conducting investigation filed charge sheet against petitioners/ accused u/Sec.498-A, 506, 323 r/w 34 IPC - Petitioners/ accused contend that disputes are between, 2nd respondent and her husband 1st accused and other petitioners A2 to A6 are no way responsible but they are falsely implicated in present case by 2nd respondent/wife and that involving all close relatives of A1, husband is nothing but abuse of process of law - Petitioners further contend that Supreme Court expressed serious concern about genuine cases of dowry harassment deprecated practice of creating exaggerated versions of small incidents and also stressed need to scrutinize allegations in matrimonial matters need to be

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scrutinized with great care and circumspection, especially against husband's relatives who were living in different cities and never visited or rarely visited matrimonial home of complainant - It is duty of High Court while acting u/sec.482 Cr.P.C. to scrutinize allegations in complaint to find out whether there is a prima facie truth in allegations levelled against accused - In this case, petitioners are residents of different place and all of them went to place of de facto complainant at her parents house and allegedly assaulted at her parents house where she had several relatives and friends and this allegation obviously seems to be improbable and it would appear that to rope in all close relatives of her husband, 2nd respondent/wife invented incident and file complaint in Magistrate Court at her parent's place - Main incident in this case, which is alleged against petitioners appears to be unnatural and improbable and if case is allowed to be continued against petitioners and to face trial and it would cause substantial in justice and undue hardship to petitioners - Entire proceedings in CC are quashed, Criminal petition, allowed. **Tummala Ramnarayana Vs. State of A.P. 2013(2) Law Summary (A.P.) 3 = 2013(2) ALD(Crl) 293 (AP).**

—Secs.482 & 156(3) - Private complaint filed u/Secs. 420, 406 & 415 IPC against petitioners - Police investigated into matter and filed charge sheet against petitioners - Petitioners contend that even accepting allegations made in charge sheet to be true, no offence is made out against petitioners and it is purely a civil dispute and issue involved in present case is already decided by District Forum which was upheld by State Commission and that initiation of proceedings after judgment of State Commission is only with a view to wreck vengeance against petitioners and same has been instituted with a mala fide intention - When a complaint is sought to be quashed u/Sec.482 Cr.P.C it is permissible to look into material to assess what complainant has alleged, and whether any offence is made out even if allegations are accepted in toto - In these case, agreement of sale between 1st petitioner and 2nd respondent which is subject matter of dispute in present case, is dated 3-8-2005 - There is absolutely no explanation as to why complainant has not come forward with said complaint atlest after disposal of case by District Forum on 20-9-2007, wherein a categorical finding was given with regard to agreement of sale - Nearly three years after execution of agreement of sale, a private complaint is filed questioning very execution of agreement of sale in favour of 1st petitioner in year 2009 - Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheeply invoking jurisdiction of criminal Court - Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution - In this case, it is apparent that private complaint was filed only after meeting her waterloo in District Forum - Obviously it has been done with a view to harass petitioners and with a view to wreck vengence against them - Hence, continuation of proceedings against petitioners would amount to abuse of process of law - Criminal petition, allowed - Proceedings in CC are quashed. **T.Suvarna Vs. State of A.P. 2013(2) Law Summary (A.P.) 121.**

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—Secs.482 & 164 - **INDIAN PENAL CODE,** Sec.420 - "Quashing of criminal proceedings" - Basing on complainant given by 2nd respondent criminal cases registered against petitioners/employees of Bank for offences punishable u/Sec.468, 471,498,406,420, r/w Sec.109 IPC for alleged collusion and impersonation in availing credit facility in Bank by depositing fake title deeds - Petitioners contend that allegations made against them in complaint as well as charge sheet are only procedural lapses in discharging their official functions and so initiation of criminal proceedings against them in absence of any accusation or allegation of abetment on their part in commission of offence is an abuse of process of law - Averments made against petitioners either in report or in charge sheet, *prima facie* do not constitute any offence much less charges framed against them and if proceedings against them are allowed to continue, it is nothing but harassment and even abuse of process of law, and so same are liable to be quashed - Violation of any circulars and instructions and commission of administrative irregularities cannot be said to have been done by official concerned with any corrupt or dishonest intention and such irregularities are administrative lapses could only have resulted in a departmental action against officials but criminal prosecution is not justified - While deciding a petition u/Sec.482 Cr.P.C, High Court should not act as a trial Court and appraise evidence to be adduced by parties to find out if ultimately accused would be convicted or acquitted and that High Court has to go by allegations in complaint/ charge-sheet only and only if allegations in complaint/charge-sheet if taken to be true, do not constitute an offence, charge sheet can be quashed - In this case, statement of complaint and Chief Manager (Vigilance Department) recorded u/Sec.164 Cr.P.C are only procedural lapses in discharging their officials functions and so initiation of criminal proceeding against them in absence of any accusation or allegation of abetment on their part in commission of offence is abuse of process of law and if proceedings against them are allowed to continue, it is nothing but harassment and even abuse of process of law and so same are liable to be quashed - - Criminal petitions, allowed. **J.Sri Ram Surya Prakash Sharma Vs. State of A.P. 2011(1) Law Summary (A.P.) 18 = 2011(1) ALD (Crl.) 207 (AP) = 2011(1) ALT (Crl.) 185 (AP) = 2011 Cri. LJ 2027 (AP).**

—Secs.482 & 188 - Respondent/wife married appellant/husband and lived with him for one month and eight days in India and USA - Allegation that respondent/wife was subjected to cruelty and harassment by husband and his parents - Appellant/husband charged for offences u/Secs.498-A and 406 IPC r/w Secs.3,4 & 6 of Dowry Act - Magistrate took cognizance of case - Appellants contend that proceedings are barred by time and in face of decree of divorce passed by Superior Court at USA and fact that respondent/wife contracted marriage with some other person and that alleged offences committed outside India cannot be enquired into or tried without obtaining sanction of Central Government - Single Judge of High Court refusing to quash proceedings holding that Magistrate had taken cognizance within three years - Appellant contends that single Judge committed error by refusing to quash proceedings ignoring fact that Magistrate took cognizance after almost four years of last act of alleged cruelty committed against

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respondent/wife and proceedings of criminal case of appellant amounts to abuse of process of law and that High Court is duty bound to quash proceedings which are barred by time - While deciding petition filed for quashing FIR or complaint or restraining competent authority from investigating allegations contained in FIR or complaint for stalling trial of case, High Court should be extremely careful and circumspect - If allegations contained in FIR or complaint discloses commission of some crime, then High Court must keep its hands off and allow investigating agency to complete investigation without any fetter - High Court should not go into merits and demerits of allegations and must also refrain from making imaginary journey in realm of possible harassment which may be caused to petitioner on account of FIR or complaint - In this case admittedly, after marriage respondent/wife lived with appellant/husband for less than one and half months and marriage was dissolved by Superior Court at USA and wife not challenged decree of divorce and in fact she married another person and has two children from second marriage and as on to day a period of almost nine yeas has elapsed of marriage of appellant and respondent and seven from her second marriage - Therefore at this belated stage, there does not appear to be any justification for continuation of proceedings - Order of single Judge, set aside and proceedings of criminal case pending in Court of Magistrate, quashed. **Sanapareddy Maheedhar Seshagiri Vs. State of A.P. 2008(1) Law Summary (S.C.) 157.**

—Secs.482 & 190 - "Maintainability of second complaint" - Complaint filed against accused for offences punishable u/Secs.482, 386, r/w Sec.34 - Further another complaint with same set of allegations but had withdrawan by filing Memo not pressing complaint - Accused contends that present complaint filed with same set of allegations is nothing but gross abuse of process of law and that complainant suppressed in present complaint which is filed with same set of allegations that earlier complaint was filed by him and same was withdrawn on his own volition - Complainant contends that earlier complaint was only withdrawan without disposing of it on merits which therefore cannot be taken as a bar to file subsequent complaint and if proceedings are quashed prematurely, lot of injustice would be caused to him - When complainant did not press first complaint, it amounts to that he ceased of matter once for all, unless he sought and obtained necessary permission giving reasons for filing second complaint - Prosecution of innocent persons without any basis is unnecessary harassment of them which cannot be permitted - It is cardinal principles of criminal jurisprudence that nobody should be prosecuted and subjected to harassment unless sufficient grounds are shown to do so in respect of any criminal charge - Complainant has to give reasons as to under what circumstances he had withdrawan first complaint, failing which second complaint filed on basis of same set of facts and circumstances is not maintainable - In this case, in fact no reasons are given for filing S econd complaint and no exceptional circumstances are shown in order to take second complaint on file - Criminal petition, allowed, proceedings in CC are quashed. **Narni Sudhakar Vs. State of A.P. 2011(3) Law Summary (A.P.) 215.**

—Secs.482,197 & 156(3) - **INDIAN PENAL CODE,** Secs.332,186 and 506 r/w 32 - Petitioners/accused who are Officials of Municipality - Pursuant to orders of

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Commissioner Municipality demolished compound wall which was constructed by 1st respondent/ de facto complainant by encroaching public road and since 1st respondent caused obstrution to duties of petitioners Report lodged by petitioners to Police and crime registered against 1st respondent for offences u/Sec.332 and 186 of IPC and ultimately he was convicted and sentenced to undergo RI for one year on Appeal sentence was modified to fine - 1st respondent in retaliation as counter blast lodged Report falsely alleging that petitioners trespassed in to his house and demolished compound wall beat him and caused injuries to him - Magistrate took cognizance of offence u/Sec.332,186,506, r/w 34 IPC against petitioners - Present petition filed to quash proceedings in saidcase - Petitioners contend that act complained of allegedly done by petitioners in discharge of their official duties, sanction u/Sec.197 Cr.P.C is required before taking cognizance of offence against them and therefore complaint is liable tobe quashed - 1st respondent/complaint conteneds that Magistrate took cognizance of offence against petitioners and also dismissed petition filed by petitioners seeking discharge and that respondnt/complainant was treated in hospital as inpatient for three days and case is required to be tried by Magistrate - While exercising jurisdiction u/Sec.482 Cr.P.C Court should not adopt a mechanical or causal approach, it is under a duty to scrutinize averments of complaint and statements of witness if any with a view to ascertain whether proceedings initiated to result in miscarriage of justice if allowed to continue - In this case, when petitioners with their men could be able to demolish compound wall inspite of obstruction caused by 1st respondent/ complainant there was no necessity for petitioners who are officials of Municipality either to abuse or beat - Version of petitioners that in process of obstruction caused by 1st respondent some briks fell on his feet and there by he received injuries appears to be truthful and convincing - If version of respondent that petitioners beat him with briks on his feet is found to be false and act of demolishing being made by petitioners on orders of Commissioner Municipality certainly sanction is required u/Sec.197 Cr.P.C to prosecute petitioners before taking cognizance - Therefore present complaint is bad for sanction required u/Sec.197 Cr.P.C - If case of this nature is allowed to continue and petitioners are made to face trial of case, it is nothing but abuse of process of Court and High Court is under a duty to prevent in exercise of power u/Sec.482 Cr.P.C otherwise it will ultimately result in due hardship to petitioners who are discharging official duties now at various places by virtue of their employment and it will result miscarriage of justice - Complaint filed by 1st respondent is false and frivolous which is liable to be quashed - Accordingly entire proceedings in CC on file of Magistrate are quashed. **B.Vasudeva Chary Vs. K.Mohan Reddy 2013(1) Law Summary (A.P.) 215 = 2013(1) ALD (Crl) 659 (AP) = 2013(1) ALT (Crl) 268 (AP).**

—Secs.482 & 319 - 2nd respondent/wife de facto complainant fled complaint against 5 persons u/Secs.498-A IPC and Secs.3 & 4 of Dowry Prohibition Act - A1 is husband and other accused alleged by complainant are kith and kin of her husband - After due investigation Police considered that no case was made out against other accused

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and deleting their names and charge-sheet laid against A1 alone - Magistrate passing order taking cognizance against A1 only - While de facto complainant was deposing as P.W.1 and that she made allegations against petitioners, trial Judge considered it appropriate to array petitioners as A2 to A4 and consequently ordered summons to petitioners - Hence petitioners contend that Magistrate could not have and should not have issued summonses without prior notice to them - When Court proposes to include new parties as accused a reasoned order is expected by Court - In this case, order assailed is cryptic and without reasons and therefore order assailed deserves to be set aside - However, Trial Court may consider arraying petitioners as co-accused by passing reasoned order - Impugned order, set aside, on ground that it is not a reasoned order - Criminal revision case, allowed. **Korla Triveni Sri Sankalalpa Vs. State of A.P. 2013(2) Law Summary (A.P.) 183 = 2013(2) ALD (Crl) 379 (AP).**

CRIMINAL TRIAL:

—"Interested eye-witness" - Credibility - Accused charged for offences u/Secs.147,148 & 302 IPC - Trial Court convicting accused placing reliance on evidence of P.W.6 who is brother of deceased - High Court dismissed appeals filed by appellants/accused - Appellants/accused contend that P.W.6 had not implicated appellants and he being only eye-witness on whose version conviction was recorded, trial Court and High Court should not have found them guilty - Merely because eye witnesses are family members their evidence cannot per se be discarded - When there is allegation of interestedness, same has to be established - Relationship is not a factor to affect credibility of witness - Prosecution has clearly established accusation so far as accused No.1 is concerned - However prosecution has failed to establish accusation so far as accused No.7 and 6 are concerned - Appeal filed by A1 dismissed while appeal filed by A7 & A6 is allowed. **Mohabbat Vs. State of M.P. 2009(1) Law Summary (S.C.) 119.**

—Trial Court acquitted accused holding that charges framed against accused were not proved beyond reasonable doubt - High Court allowed appeal preferred by State and set aside judgment and order of trial Court and ordered for conviction of accused - If prosecution case supported by two injured eye-witnesses and if their testimony is consistent before Police and Court and corroborated by Medical evidence, their testimony cannot be discarded - Evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly - In this case, there is no denial of fact that defence admitted genuineness of injury reports and post mortem examination reports before trial Court - Genuineness and authenticity of documents stands proved and shall be treated as valid evidence u/Sec.294 Cr.P.C - If genuineness of any document filed by any party is not disputed by opposite party it can be read as substantial evidence under sub-Sec.(3) of Sec.294 of Cr.P.C - Evidence adduced in this case, clearly established involvement of accused/ appellant on date of occurrence - Judgment and order passed by High Court - Justified - Appeal, dismissed. **Akhtar Vs. State of Uttaranchal 2009(2) Law Summary (S.C.) 16 = 2009(2) ALD(Crl) 522 (SC) = 2009(3) Supreme 220 = 2009 AIR SCW 3831.**

CRIMINAL TRIAL:

—Session Judge convicting accused for offences u/Secs.143,148,307,302 & 504 IPC - High Court acquitting some accused - In this case, there is over- whelming evidence to show that incident took place in village - Once genesis of occurrence is proved, contradictions which are minor in nature would not be sufficient to dispel entire prosecution case - It is true that all three prosecution witnesses we have been relied upon by Courts below are interested witnesses - It must, however be borne in mind that despite existence of their animosity, keeping in view relationship between parties, it is unlikely that they would be falsely implicated - All prosecution witnesses are natural witnesses - Essential ingredients to prove crime against accused have categorically been stated by them and both Courts below have placed implicit reliance on their testimonies - Only because other witnesses turned hostile, same should not by itself be a ground for coming to conclusion that incident has not taken place - Contention that only because some co-accused have been acquitted, same by itself should be a ground for recording a judgment of acquittal of appellants, cannot be accepted - Appeal, dismissed. **Gurunath Donkappa Keri Vs. State of Karnataka 2009(2) Law Summary (S.C.) 98 = 2009(2) ALD (Crl) 250(SC) = 2009(4) Supreme 302 = 2009 Cri. LJ 2995(SC) = 2009 AIR SCW 3540.**

— and **INDIAN PENAL CODE,** Secs.302,148,149 and 323 - ARMS ACT, Sec.27- Evidence of prosecution witnesses - Conviction of accused - - Trial Court sentenced convicted A2 u/Sec.302 to suffer life imprisonment and acquitted A1, A3, A4, A5, & A6 - State filed appeal against acquittal of accused, A2 filed appeal against conviction - High Court modified conviction of A2 from Sec.302, to Sec.302 r/w Sec.149 - In this case, P.Ws.1, 4 and 8 are not only much interested in prosecution but they are enimically disposed towards accused party as well - To find out intrinsic worth of these witnesses it is appropriate to test their trust- worthiness and credibility in light of collateral and surrounding circumstances as probabilities and in conjunction with all other facts brought out on record - There are more serious infirmities in evidence of eye witnesses - Conviction cannot be based on uncorroborated, inconsistent evidence suffering from significant improve-ments and omissions - A1, A3, A4, A5 and A6 in crime beyond reasonable doubt as regards A6 State conceded that there was no reliable evidence to prove his involvement in crime - Hence, appellants are entitled to benefit of doubt - Judgment of acquittal passed by trial Court in their favour restored. **Jalpat Rai Vs. State of Haryana, 2011(3) Law Summary (S.C.) 22 = 2012(1) ALD(Crl) 185(SC) = AIR 2011 SC 2719 = 2011 AIR SCW 4222 = 2011 Cri. LJ 4295 (SC) = 2011(14) SCC 208 = 2012(3) SCC(Cri) 1285.**

—First Information Report (FIR) - Delay of two days - Time of two hours delay cannot be said to be used to falsely implicate accused due to the previous enmity - Although defence has been able to point out certain discrepancies and omissions in deposition, such discrepancies and omissions in deposition of witness are only minor and not very material and in any case do not shake trustworthiness of witness - Concurrent findings of High Court and trial Court that prosecution evidence is sufficient to bring home guilt of A1 as

DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939:

well beyond very reasonable doubt - Hence need not be interfered - Evidence Act, Sec.154 - Evidence of "hostile witness" remains admissible evidence and it is open to Court to relay upon dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record - Judgment of High Court confirming conviction of A2 & A3 u/Sec.302, r/w Sec.34 IPC - Justified - Appeals, dismissed. **Himanshu @ Chintu Vs. State of NCT of Delhi 2011(1) Law Summary (S.C.) 39.**

—-**and EVIDENCE ACT,** Sec.9 - **INDIAN PENAL CODE,** Sec.302 r/w Sec.34 & 120-B - ARMS ACT, Sec.27 - "Motive" - "Deficiency in investigation" - "Murder" - "Test identification period" - "Death penalty" - Deceased, sitting MLA while riding pillion seat of motorcycle was shot dead by appellants - Trial Court convicting appellants/accused to undergo rigorous imprisonment for life u/Sec.302 and 120-B IPC - High Court enhanced sentence imposed upon appellants/accused from life to death - MOTIVE - Proof of motive as an essential requirement for bringing home and guilt of accused - Even if prosecution succeeds in establishing a strong motive for commission of offence, but evidence of eye witnesses is found unreliable or unworthy of credit existence of motive does not by itself provide a safe basis for convicting accused - Absence of motive would not therefore by itself make any material difference - But would motive is proved it would lead support of prosecution version - TEST IDENTIFICATION PARADE - Cr.P.C does not oblige investigating agency to necessarily hold a test identification parade nor is their any provision under which accused may claim a right to holding of test identification parade - Failure of investigating agency to hold test identification parade does not in that view have effect of weakening evidence of identification Court - Failure to make a reference to Forensic Science Laboratory - Such deficiency does not necessarily lead to conclusion that prosecution case is totally unworthy of credit - Deficiencies in investigation by way of omissions and lapses on part of investigating agency cannot themselves justify total rejection of prosecution case - In a case where investigating Officer has reasons to be leave that a particular witness is an eye witness to occurrence but he does not examine him without any possible explanation for any such omission, delay may assume importance and require Court to closely scrutinize and evaluate version of witness - Mere delay in examine such a witness would not ipso facto render testimony of witness suspect or affect prosecution version - High Court not justified in imposing extreme penalty of death upon appellants - Trial Court did not find it to be a rarest of rare case and remain contends with award of life sentence only which sentence High Court enhance to death - Considering all circumstances, death sentence awarded to appellants deserves to be commuted to life imprisonment - Judgments and orders under appeal affirmed with modifications - Instead of sentence of death awarded by High Court, appellants shall suffers rigorous imprisonment for life - Appeal are allowed in part. **Sheo Shankar Singh Vs. State of Jharkhand, 2011(1) Law Summary (S.C.) 127 = AIR 2011 SC 1403 = 2011 AIR SCW 1845 = 2011 Cri. LJ 2139 (SC) = 2011(2) ALD (Crl.) 360 (SC).**

DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939:

—Sec.2(i) & 8(viii) - Appellant/wife filed O.P seeking dissolution of marriage on grounds of physial and mental harassment - Trial Court dismissed O.P - Hence present

DOMESTIC VIOLENCE ACT,

Appeal - Appellant contends that respondent was also agreed for mutual divorce but he declined consent only when religious leaders informed him that he would be under obligation to return goods received at time of marriage with appellant and at negligence on part of respondent/husband to maintain appellant and their children for past several years would certainly constitutes basis for grant of divorce u/Sec.2(i) - In this case, record discloses that relationship between appellant and respondent was suffered strain for more than one decade and that one of ground pleaded by appellant/wife is that respondent neglected to maintain her and their children for period of exceeding two years - Though appellant is entitled to receive substantial amounts towards value of goods presented at time of marriage she does not intend to press for return of same - Appellant has made out a case for divorce under provisions of Act - Appeal, allowed. **Dr.Syeda Fatima Manzelat Vs. Syed Sirajuddin Ahmed Quadri 2013(2) Law Summary (A.P.) 265 = 2013(5) ALD 298 = 2013(5) ALT 675.**

DIVORCE ACT:

—Sec.10 (x) - **HINDU MARRIAGE ACT,** Sec.13 (1) (ia) (ib) - **CIVIL PROCEDURE CODE,** Or.6, R.17 - Respondent-husband filed O.P against petitioner-wife seeking divorce u/ Sec.10(x) of Divorcee Act - Family Court allowed Application filed by respondent amending, provision of law, as Sec.13 (1) (ia) (ib) - Trial Court grossly erred in entertaining O.P itself when parties to proceedings are Hindus and enactment of Divorce Act is meant for those persons professing Christian religion - In fact trial Court should have rejected O.P at threshold - After coming to know of mistake respondent/husband filed present Application seeking amendment of provision which is not permissible under law - Impugned order, set aside - O.P filed by respondent is dismissed. **V.Bhagyalaxmi Vs. V. Rahul Kuma 2008(1) Law Summary (A.P.) 109.**

DOMESTIC VIOLENCE ACT:

—AND PASSPORTS ACT, 1967, Sec.10(3)(h) - **GENERAL CLAUSES ACT, 1897,** Sec.27 - Petitioner filed Domestic Violence case against her husband/2nd respondent - Court below, after considering the oral and documentary evidence adduced on either side, awarded an amount of Rs.20,00,000/- towards compensation to petitioner and Rs.30,000/- per month towards maintenance against husband/2nd respondent, by an order - Aggrieved by same, husband/2nd respondent filed appeal before Metropolitan Sessions Judge, along with stay petition - Upon which, Metropolitan Sessions Court partly allowed appeal by staying execution of order for realization of compensation of Rs.20,00,000/- upon furnishing third party security, within a period of two weeks thereafter - As regards maintenance and costs are concerned, no stay was granted by appellate Court - However, 2nd respondent failed to pay same - When 2nd respondent had not attended Court proceedings and failed to comply orders, Non Bailable Warrant was issued against 2nd respondent by Metropolitan Magistrate - Thereafter, petitioner filed petition under Sec.10(3)(h) of Passports Act for revocation/ impounding passport of 2nd respondent - But said petition was returned on ground that it is not maintainable as Passports Act, 1967 has no application to domestic

violence cases under DVC Act - Thereafter, petitioner approached 1st respondent for impounding passport of 2nd respondent through letter - Petitioner received letter from Passport Office stating that Sec.10(3) of Passports Act, 1967 is an enabling provision and not a mandatory one and requested petitioner to obtain orders from competent court to impound passport of 2nd respondent - Aggrieved by same, present writ petition is filed.

Held, As per Sec.10(8) of Act of 1967, an order of revocation under sub-section (7) may also be made by an appellate court or by High Court when exercising its powers of revision - But in present case, there is no conviction against 2nd respondent - However, non-Bailable Warrant was issued against him on 14.03.2014 but still 2nd respondent is not appearing, which is a serious matter and thus evading arrest - In instant case, since petitioner's case falls u/Sec.10(3)(h) of Act of 1967 as non-Bailable Warrant is pending against the 2nd respondent, it is for 1st respondent to consider case of petitioner in terms of Sec.10(3)(h) of Act and pass orders on application of petitioner.

Joint Secretary, Ministry of External Affairs issued Circular No.VI/401/1/1/2006, dated 04.06.2007 covering issue - In circumstances, 1st respondent cannot direct petitioner to obtain specific orders from Court for impounding passport of 2nd respondent - 1st respondent has not properly applied his mind when serious issue was brought to his notice, abdicating his power - The counter filed by respondent in D.Surendernath Reddy's case also supports petitioner's case - However, facts in D.Surendernath Reddy's case and in present case are different - Accordingly, letter No.30(454) Pol/2014, dated 20.10.2014 issued by 1st respondent is set aside - Following principle laid down in aforesaid decision of Hon'ble Apex Court, this writ petition is disposed of directing 1st respondent authority to reconsider application of petitioner for impounding passport of 2nd respondent by taking into account Sec.10(3)(h) of Passports Act, 1967, pass appropriate orders, in accordance with law, and communicate same to petitioner. **K.Sowmya Vs. Regional Passport Officer 2016(3) Law Summary (A.P.) 129 = 2016(2) ALD (Crl) 998 = 2016(6) ALT 327.**

DOWRY PROHIBITION ACT,

DOWRY PROHIBITION ACT, 1961 - Secs.2 to 4 & 6 - **EVIDENCE ACT** - Sec.113A - **INDIAN PENAL CODE** - Secs.107, 304, 304B, 306 & Sec.498A - **CODE OF CRIMINAL PROCEDURE** - Secs.174, & 319 - On a plain reading of Section 498-A, it transpires that if a married woman is subjected to cruelty by husband or his relative, offender is liable to be punished with sentence indicated in Section - But cruelty can be of different types and therefore what kind of cruelty would constitute offence has been defined under explanation. As per first definition contained in Clause (a) - It means a willful conduct of such a nature which is likely to drive victim woman to commit suicide or to cause grave injuries to health and life, limb or health (mental or physical) - The other definition of cruelty is in Clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any

DRUGS AND COSMETICS ACT, 1940:

unlawful demand for any property or valuable security or is on account of failure to meet such demand. **Satish Shetty Vs. State of Karnataka 2016(2) Law Summary (S.C.) 31 = AIR 2016 SC 2689 = 2016(2) ALD (Crl) 247.**

—Sec.6 - Dowry amount or articles of married woman was placed in custody of his husband or in-laws, they would be deemed to be trustees of same - Person receiving dowry articles or the person who is dominion over the same, as per Sec.6 of the Dowry Prohibition Act, is bound to return the same within three months after the date of marriage to the woman in connection with whose marriage it is given - If he does not do so, he will be guilty of a dowry offence under this Section - Section further lays down that even after his conviction he must return the dowry to the woman within the time stipulated in the order. **Bobbili Ramakrishna Raju Yadav Vs. State of A.P. 2016(1) Law Summary (S.C.) 21 = 2016 Cri. LJ 1141 (SC) = AIR 2016 SC 442 = 2016(3) SCC 309.**

DRUGS AND COSMETICS ACT, 1940:

—Sec.18(a)(i), r/w Sec.16,27(d) & 34 - CRIMINAL PROCEDURE CODE, Sec.482 - Drug Inspector collected sample of CLOXEM KID Tablets and sent same to Govt. Analyst - Since Drug was not of standard quality as per report of Analyst complaint filed against A-1, Firm and A-2, Managing partner and other partners, A3, A4 & A6 - Petitioners contend that A-3, A-4, A-6 are only partners and were not in-charge of day-to-day business or affairs of A-1, Firm and it was only A-2 who was in-charge of affairs of Firm and manufacturing process and therefore prosecuting petitioners is not in accordance with law - Public Prosecutor contends that all partners are entitled to participate in running business of Firm and therefore all of them are liable including A-2 who is managing partner - Even as per Sec.34 one of Act, it is apparent that only those persons who were in-charge of and responsible to Company for conduct of business of Company are liable to be punished - Petitioners, A-3,A-4 & A-6 who are mere partners of A-1 Firm who have nothing to do with manafacturing process cannot be impleaded in comlainant for punishing them - Proceedings against petitioners in so far as A-3,A-4 & A-6, quashed - Criminal petition, allowed. **Tumu Venkateswara Reddy Vs. State of A.P. 2010(1) Law Summary (A.P.) 26.**

—Sec.25(3) & (4) - Drug Inspector took samples of drug on 20-10-2008 by name "FYTE" from petitioner/Manufacturer - Since analyst report received with endorsement "not of standard quality", complainant issued notice dt:24-8-2009 to petitioner/accused informing about outcome of analysis of sample which was received by petitioner on 7-9-2009 - Consequently accused sent letter dt:1-10-2009 to complainant notifying that he is intending to challenge analyst report
u/Sec.25(3) of Act - Trial Court dismissing petition filed by accused to send second sample for analysis as it is filed at a belated stage - Petitioner/accused contends that by virtue of Cl.3 of Sec.25 of Act upon receiving copy of analyst report together

(INDIAN) EASEMENTS ACT, 1882,

with notice, accused got a right to notify in writing Complainant or Court about his intention to adduce evidence in controversion of report following which either complainant or Court got obligation to send second sample to Central Drug Labouratory for analysis and report for purpose of deciding complicity of accused in matter finally - Sec.25 of Act provides procedure for taking samples and also consequential steps to be taken and it lays certain obligations as well as provides safeguards for a person from whom a drug has been seized for analysis or testing - In this case, it is not in dispute that expiry date of sample was 29-10-2009 - Therefore, in any case, because of expiry of life period of product or because of failure of complainant to take measures, valuable right of accused to prove his innocence was last - Hence impugned proceedings against accused are untenable - Criminal petition, allowed. **Seelam Koti Reddy Vs. State of A.P. 2012(3) Law Summary (A.P.) 163 = 2013(1) ALD (Crl) 105 = 2013(1) ALT (Crl) 217 (AP) = 2013 Cri. LJ 1058 (AP).**

—Secs.27(d), 27(c) & 22(3) - **CRIMINAL PROCEDURE CODE,** Sec.482 - Drugs Inspector launched prosecution against A-1 to A-4 for dealing with spurious drugs Primolut-N - A-2 is managing partner of A-1 Firm - A-3 is partner of A-1 Firm - A-4 is being partner and not managing partner of A-1 shop and since A-4 was not present in shop when Drugs Inspector inspected shop and obtained samples - A-4 is partner and Registered Pharmacist of A-1 Firm - A4 contends that he being a partner and not managing partner of A-1 shop and since he was not present in shop when Drugs Inspector inspected shop and obtained samples - Hence, he cannot be impleaded as one of accused for prosecution against A-1 Firm - Without there being a registered Pharmacist present in shops no medical business can be transacted in that shop - Therefore A-4 being registered Pharmacist cum partner of A-1 Firm, he is a person involved in day-to-day medical business of A-1 Firm - In case a partner is also a registered Pharmacist of Firm doing medical business then such partner is invariably liable to be prosecuted along with Firm and Managing partner and other partners - Writ petition, dismissed. **B.Upender Vs. State of A.P. 2010(2) Law Summary (A.P.) 114.**

(INDIAN) EASEMENTS ACT, 1882:

—-Secs.7 and 15 & 17(c) - CIVIL PROCEDURE CODE, Sec.100 - The plaintiffs filed the suit for two reliefs, viz., to let out collected rain water and for injunction to restrain defendant from interfering with such right - The appeal was made by defendants which was confirmed by first appellate court - Therefore, this second appeal was filed by defendants.

Held, Section17(c) of the Act does not prohibit acquisition of easementary right regarding trickling water from higher to lower plots in well defined channel as held by Privy Counsel in BASWANTAPPA V. BHIMAPPA - It is also clear from Section 17 (c) of Act that such right to discharge excess water or collected rain water to land of lower owner only for purpose of discharging surface water and not any other

EDUCATION:

water - But here plaintiffs wanted to discharge or let out excess or collected rain water from their land, who is upper land owner to land of defendant, who is lower land owner without any defined channel or stream.

Therefore, in view of bar under Section 17(c) of Act, plaintiffs cannot acquire an easement by prescription under Section 15 of Act and both Courts did not consider requirement to prescribe right to let out or discharge collected rain water or excess water in proper perspective and committed an error - Therefore, Decree of trial court and first appellate court are liable to be set aside holding that in view of prohibition contained under Section 17(c) of Act, plaintiffs cannot acquire easementary right by prescription under Section 15 of Act - Hence, plaintiffs are not entitled to a decree as claimed in suit.

In view of foregoing discussion, the findings of trial court and first appellate court are in totally ignorance of law laid down by this Court, and provisions of Indian Easements Act, particularly, Sections 7 and 17 (c) of Act - Hence, appeal is liable to be allowed, answering substantial question of law in favour of defendants and against plaintiff - In result, appeal is allowed in part at stage of admission, setting aside Decree passed by District Munsiff and Decree passed by Senior Civil Judge, to extent of granting declaration of permanent injunction restraining defendant from obstructing discharge of collected excess water to his land from land of plaintiff. **Medapti Nagi Reddy Vs. Sathi Satyanarayana Reddy 2016(3) Law Summary (A.P.) 305.**

EDUCATION:

—Circular Memo No.12901, Social Welfare, E & D 2/2003/14, dt.30-6-2006 - G.O.Ms.No.4, dt.6-1-2005, Social Welfare - G.O.Ms.No.299, dt.8-9-2007, Health, Medical and Family Welfare (K-2 Department) - "Reimbursement of tution fee paid by SC students" - Petitioners/SC Physiotherapy Students Association contend that Circular Memo No.12901 issued by 1st respondent/Govt., restricting reimbursement of fees to extent of tution fee payable in respect of Govt., seats only, is contrary to G.O.Ms.No.4, dt.6-1-2005 - G.O.Ms.No.4 is very clear that Govt., sanctioned reimbursement of tution fee by Scheduled caste students admitted either under Govt., quota or management quota - It is explicit from said G.O that tution fee paid by SC students either under Govt., quota or Management quota is to be reimbursed - Circular Memo No.12901 dt.30-6-2006 restricting reimbursement of tution fee at rate payable to Govt., seat only - Unsustainable - Writ petition, allowed. **Scheduled Caste Physiotherapy, Students Association Prakasam District Vs.Government of A.P. 2008(2) Law Summary (A.P.) 302 = 2009(2) ALD (NOC) 26.**

—Dr.N.T.R. UNIVERSITY OF HEALTH SCIENCES RULES, Rules 10.4,10.5.1 and 10.5.2 - "Maternity leave" and "Sick leave" - Petitioners 1 to 3 admitted to M.D Courses and paid examination fee and their applications forwarded to University - University raised objection as regards eligibility of petitioners to take examination on ground of lack of required attendance to Course - Petitioner contend that even according to rules of admission, women candidates are entitled to avail maternity leave of 120

ELECTRICITY LAWS:

days and male candidates shall be entitled to avail sick leave of 30 days and that mere availment of leave does not disentitle petitioners to appear examination, though rules mandates that results would be declared only after completion of stipulated length of course - As per rules petitioners 1 and 2 are entitled to avail maternity leave of 120 days and third petitioner is entitled for leave upto a maximum of 30 days - If leave period is treated as absence and petitioners are treated as in eligible very provision contained in rules, conferring benefit of leaves, would be defeated - In this case, petitioners have already been permitted to appear in examination, in compliance of interim directions issued by Court - Hence respondents are directed to publish results of petitioners and issue Memorandum of Marks, Provisional Certificate, etc., for courses studied by them - Writ petitions, allowed. **Dr.G.Supriya Vs. Dr.N.T.R. University of Health Sciences 2009(3) Law Summary (A.P.) 375.**

ELECTION:

—**REPRESENTATION OF THE PEOPLE ACT, 1951**, Secs.33 (1), 33(4) & 100(1)(c) - **CONSTITUTION OF INDIA,** Arts.329(b) & 226 - Returning Officer rejecting petitioner's nomination on ground that serial numbers furnished by proposers not tallied with those in voters list of constituency, and thereby number of proposers fell below required number of 10 as prescribed - Petitioner contends that Sec.33(4) of Act states that Returning Officer shall permit any inaccurate description or clerical, technical or printing error in nomination or electoral roll to be corrected and shall be over- looked - Respondent raised preliminary issue with regard to maintainability of writ petition, stating that Art.329(b) of Constitution of India barred High Court from exercising jurisdiction under Art.226 of Constitution - Once nomination paper of candidate was rejected, Act of 1951 provides for only one remedy, being by way of an election petition to be presented after election is over and there is no remedy provided at any intermediate stage - Thus interference even by Election Commission is such a situation is without jurisdiction - Interference in matter at this stage would invariably have effect of interrupting election process, requiring election machinery to review entire eligibility process - High Court would not interfere in matters of present nature in view of constitutional bar under Art.329(b) - Writ petition, dismissed on ground of maintainability. **Seshagiri Rao Talluri Vs. State Election Commission 2009(2) Law Summary (A.P.)173 = 2009(4) ALD 621 = 2009(4) ALT 273.**

ELECTRICITY LAWS:

—B.P.Ms.No.671, dt.10-6-1987, Cl.7 - Petitioner/Cement Factory entered into agreement with respondent/APSEB for Contracted Maximum Demand (CMD) of 15000 KVA - Respondent issued bill indicating recorded maximum demand was 16320 KVA in addition to levying penalty for exceeding CMD - Petitioner contends though respondents are entitled to levy double charges in terms of Cl.7 on demand in excess of CMD, there is no basis for levy of double charges on energy, since there is no agreement in that context and also challenged validity of Cl.7 in so far as it enables respondents to levy

ELECTRICITY ACT, 2003:

penal charges on energy consumption and that respondents are not put to any loss and are paid for every unit of supply that is availed by petitioner - Respondents contend that demand on one hand, and energy, on other, are two different concepts and said Clause 7 is legal and proper and no exception can be taken to levy of amount against petitioner - In agreement between petitioner and respondents only limits of maximum demand are mentioned and no restriction is placed as to consumption of energy - These two operate in different fields - Maximum demand obligates supplier of energy to maintain supply at a specified intensity - It has nothing to do with volume of energy that can be utilized by consumer - In name of penalizing petitioner for crossing limits of maximum demand, respondents cannot derive double benefit by levying penal tariff on energy also - Therefore Cl.7 of B.P.Ms.No.671 in so far as it permitted levy of peal tariff of energy, proportionate to demand in excess of contracted limits is unreasonable, illegal and irrerational - Writ petition, allowed. **Sri Vishnu Cements Vs. APSEB 2009(1) Law Summary (A.P.) 99 = 2009(3) ALD 29.**

—Concept of imposition of minimum charges presupposes that the licencee is in a state of readiness to supply power to its consumers - When Electricity deportment has itself expressed its inability to supply power to the extent of contracted demand of the consumers, it is wholly unreasonable for Electricity deportment to claim minimum charges from the consumers whose services are under disconnection during the Restriction & Control period - Restriction & Control Order does not contain exemption from payment of minimum charges on the Contracted Maximum Demand in respect of disconnected units – Hence it is not justified to levy minimum charges from date of disconnection till date of termination of agreement – Accordingly write allowed. **Patancheru Steels Pvt. Ltd. Vs. APCPDCL Ltd. 2015(1) Law Summary (A.P.) 58 = 2015(2) ALD 110.**

——This Appeal was filed by APSEB authorities who have been aggrieved by common judgment whereby and whereunder compensation of Rs.80,000/- and Rs.1,24,000/- in two Original Suits was granted for death of one person due to electrocution by a live electric wire - Held, defendants before taking plea of vis major should satisfy Court that they have taken all necessary precautions and safety measures by conducting periodical checkups to live wires and ensured that they were properly maintained and despite (safety measures in place) incident had occurred due to act of natural elements - However, as observed by trial Court they have not produced any record to show that they used to conduct periodical checkups to electric wires and transformers at place of incident - In that view of matter, mere defence plea of vis major is of no avail to defendants - This appeal filed by defendants is dismissed by confirming judgment of trial Court. **Chairman, APSEB Vs. J.Vittal Swamy 2016(3) Law Summary (A.P.) 474**

ELECTRICITY ACT, 2003:

—Secs.39 & 44 – **ELECTRICITY RULES, 2005,** Rules 12 (5) – Pilferage of electrical energy – Complaint filed against respondent/Industry for alleged tapping of energy -

ELECTRICITY ACT, 2003:

Trial Court acquitted respondent/Industry – Special Court took charge sheet on file straight away and that a wrong person was tried - Prosecution contends that Special Court empowered to take cognizance of offences committed by respondent straight away and question of committal for special enactment does not arise - Special Court can definitely take cognizance of offences committed after introduction of Rules, without there being a committal order by a competent judicial Magistrate – Order of trial Court – Justified – Criminal appeal, dismissed. **State of A.P. Vs. Porlakayala Rangaiah 2008(3) Law Summary (A.P.) 298 = 2009(1) ALD (Crl.) 37 (AP) = 2009(1) ALT (Crl) 120 (AP).**

—Sec.126 - Petitioner is a consumer of electricity supplied by the A.P. Eastern Power Distribution Company Limited - The petitioner's service connection was inspected by the Assistant Divisional Engineer/DEP-2, on 30.12.2010, during which, it was found that the petitioner was collecting Rs.8/- per unit + service charges at the rate of 10.3% from its customers as against Rs.5.40 ps being levied by the respondents - Based on this finding, respondent No.1/ADE has provisionally assessed Rs.8,41,652/- as the loss of energy for the alleged unauthorized use of electricity - In reply to the show-cause notice, the petitioner has denied unauthorized use of electricity - It has sought to justify collection of higher amount than the rate at which the respondents supplied power to the petitioner on various grounds - The fact, however, remains that the petitioner has specifically pleaded that the act complained of by the respondents does not fall within the provisions of Sec.126 of the Act - However, rejecting these objections, respondent No.2/SE has passed final assessment order on 30.04.2011 for a sum of Rs.7,88,177/- - Feeling aggrieved by the same, the petitioner has filed an appeal before respondent No.3/CGR, who by his order, dated 13.09.2011, has confirmed the order of respondent No.2. Assailing these orders, the petitioner has filed this writ petition - Held, re-sale of energy pre-supposes the consumer supplying electricity to another person through a separate means to the latter's premises - In this case, the very purpose for which supply is received by the petitioner is to make it available for its customers who use its function hall - Therefore, by no means, it can be said that collecting higher charges from its customers by the petitioner on the use of electricity by them in course of using the function hall amounts to re-sale of energy - Under the above circumstances, the Court is of opinion that the very initiation of assessment proceedings under Section 126 of the Act by treating the alleged act of collecting higher amounts than at the rate at which the electricity is supplied to the petitioner as amounting to unauthorized use of electricity cannot be sustained and the final assessment order of respondent No.2 as confirmed by respondent No.3 in the appeal are accordingly set aside - For the above mentioned reasons, the writ petition is allowed. **Sri Devi Associates Vs. Assistant Divisional Engineer (Operation), APEPDCL 2015(3) Law Summary (A.P.) 120**

—Secs. 142, 146 - Retail Tariff Rates fixed by Electricity Regulatory Commission without following procedure prescribed under provisions of Electricity Act, 2003 and Business Regulations framed thereunder and Respondents threatened to disconnect

ELECTRICITY ACT, 2003:

power supply to petitioners without issuing any notice and without following provisions of Electricity Reforms Act - Held, merely because the additional charges were shown in Annexure-D to the Tariff Order, no immunity can be given for such additional charges and for that matter, Tariff Order can also be subject to scrutiny in appropriate cases - When decision making process is vitiated, decision cannot be held to be legal - In view of this, decision of Commission cannot be upheld - On this point alone, these writ petitions are to be allowed - Respondents are ordered to either refund or adjust energy charges collected on excess energy in future bills of petitioners. **Sri Dhanalakshmi Cotton & Rice Mills Vs. SPDCL Company of A.P. 2014(3) Law Summary (A.P.) 129 = 2015(3) ALD 45.**

—Sec.164 – TELEGRAPH ACT, 1885, Sec.10(d) & 16 – Respondent Power Grid Corporation proposed to erect Tower in midst of lands belonging to petitioners who are landless poor persons and will be deprived of land due to proposed construction of Towers in their lands - Hence petitioners filed present Writ petition seeking writ of Mandamus declaring action of respondent Corporation in erecting Towers in middle of petitioners' land as illegal and arbitrary - Petitioners contend that more than 30 families of their village will be deprived of their shelters due to erection of Towers and the petitioners' have invested lakhs of rupees in developing land and that without issuing notices and opportunity and hearing and without acquiring lands of petitioner's, respondent Corporation is going ahead with erection of Towers for lying transmission of lines which is illegal arbitrary and unconstitutional - Respondent/Corporation contends that it can exercise power to lay transmission lines accross property of petitioners, except claiming compensation petitioners cannot validly challenge the action of Corporation on ground that it affects his valuable rights – There is no provision in Act 1885 which mandate prior notice or any opportunity of hearing to be provided to owner/occupier of premises affected by laying of lines or posts and therefore there is no question of such owner/occupier being put on notice or demanding opportunity of hearing before grounding of Scheme - U/Sec.164 & 67 of Act of 2003 there is no provision in Act of 1885 which mandates prior notice or opportunity of hearing to be provided to owner/occupier of premises affected by lying of lines or posts and therefore there is no question of giving any notice to petitioner herein - However petitioners' have been given notice - Writ petition is dismissed - It is open to petitioners to claim compensation as per law. **Bommireddy Narasimha Reddy Vs. Power Grid Corporation of India Ltd. 2014(1) Law Summary (A.P.) 333 = 2014(1) ALD 697 = 2014(2) ALT 466.**

—Secs.164,167 & 185 - G.O.Ms.No.115 - Energy PR III - **INDIAN TELEGRAPH ACT,** Sec.10 - **ELECTRICITY (SUPPLY) ACT, 1948,** Secs.28 & 29 - **ELECTRICITY ACT, 1910,** Secs.12 & 51 - Petitioners contend that action of respondents A.P. Transco, in proposing to erect poles and lay two Nos. 400 KV double circuit lines through lands of petitioners as arbitrary, illegal and violation of provisions of **Electricity Act, 2003** and that they are bound to initiate appropriate proceedings for acquisition of lands or consent of owners ought to have been obtained by private negotiations before entering in to their lands - Respondents, A.P. Transco contend that Govt., issued

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G.O.Ms.No.115 authorising A.P. Transco to place electricity lines for transmission of electricity or for purpose of telephonic or telegraphic communications under provisions of Indian Telegraph Act and that they have followed procedure contemplated under provisions of Electricity Act, 2003 and that action of respondents is strictly in accordance with provisions of Electricity Act and acquisition of land as contended by petitioners is not provided under law - Prior to enactment of Electricity Act, 2003, consent of owner or occupier was necessary where there was no authorisation u/Sec.51 of Electricity Act, 1910 - Similarly u/Sec.28, r/w Sec.42 of Electricity (supply) Act, 1948, transmission towers or lines can be laid on any private land without giving any notice and without causing damage to property - However, if any damage is caused, compensation shall be paid for damages sustained as provided u/Sec.10 of Indian Telegraph Act - Both Indian Electricity Act, 1910 and Electricity supply Act, 1948 stood repealed under Electricity Act, 2003 which came into force w.e.f. 10-6-2003 - Powers u/Sec.10 of Indian Telegraph Act can be exercised without acquiring land in question, however only right that can be exercised is right of user in property and for purposes mentioned in that Section - Sec.164 of Electricity Act, r/w Sec.10 of Indian Telegraph Act recognized absolute power of A.P. Transco to proceed with placing of electric supply lines or electric poles for transmission of electricity on or over private lands subject to right of owner/occupier to claim compensation if any damage is sustained by him by reason of placing such electric poles - Neither acquisition of lands is necessary nor there is any need for consent of owner or occupier - Impugned action of respondents A.P. Transco - Justified. **G.V.S. Rama Krishna Vs. A.P. Transco rep. by its M.D. 2009(2) Law Summary (A.P.) 18 = 2009(3) ALD 343 = 2009(2) APLJ 253 = 2009(3) ALT 502 = AIR 2009 AP 158.**

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—Sec.26, 49 & 5 - **ELECTRICITY ACT,** Secs.3 to 11, 21, 23 & 27 and Cls. I to V, Cl.7 & 9 to 11 of Schedule to Act - B.P.Ms.No.1160 - Petitioners/appellant purchased sick Unit in auction which was availing 120 KVA HT power supply, conducted by APSFC alongwith all assets and applied for restoration of power supply - 1st respondent APSEB directed petitioner to execute fresh HT agreement and pay “service line charges” - Hence petitioner filed writ of mandamus declaring action of respondents in requiring petitioners to pay “service line charges” as illegal and arbitrary - Respondent/APSEB opposed writ petition contending that as Unit was supplied 220 KVA petitioner is liable to pay service line charges - Single judge allowed writ petition observing that if additional load is connected over and above 120 KVA it will be open to respondent/ APSEB to collect service line charges in accordance with rules treating it as new Unit, but collection of service line charges which are already collected from sick Unit are unjustified - Whether requirement to pay service line charges by consumers as pre-condition for releasing power supply is justified - In this case, Single Judge gave liberty to APSEB to levy and collect “service line charges” in case a requisition is made by respondent for additional load - As found, Board failed to place any material

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before Court in support of their contentions that additional load was connected over and above 120 KV - Accordingly writ appeal is dismissed and writ petition is allowed holding that it will not be necessary for petitioner to pay service line charges in event of not requisitioned additional load. **Sithani Textiles & Fabrics Pvt. Ltd., Vs. The A.P. State Electricity Board, 2011(3) Law Summary (A.P.) 120 = 2011(6) ALD 569 = 2011(6) 292.**

—Sec.78-A - G.O.Ms.No.108, Industries and Commerce (IP.II) Dept., dt.20-5-1996 - BPMS.No.1, dt.3-4-1997 - Petitioner purchased sick unit, Oil Mill in auction from APIDC and started business in manufacture of Egg Trays and sought for 25% rebate on power charges - Respondent/Transco rejected rebate to petitioner as they are not new Industries and are established in old premises, they are not entitled to benefit of 25% rebate envisaged by G.O.Ms.No.108 - Petitioners contend that in view of Sec.78-A of Electricity Supply Act, policy decision taken by Govt. prevails over Executive instructions issued by A.P. Transco, and so, BPMS No.1 does not come in way of enforcing G.O.Ms.No.108 - Specific case of Respondent, Transco is that inasmuch as Industries established by petitioners are not new Industries as they were established in old premises, they are not entitled to benefit of G.O. in view of BPMS No.1 - Merely because new Industry is established in a premises in which another industry was run there in earlier, it would not become an old industry - In this case, petitioners claim that after purchase of premises, dismantled earlier machinery and established new machinery- So, for all practical purposes they are newly established industries - Policy decision of Govt., prevails over executive instructions of Board, and so petitioners cannot be denied benefits, which is due to them under G.O.Ms.No.108 - Action of respondents, Transco in refusing request of petitioners for extending benefit of G.O.Ms.No.108 - Unsustainable - Hence, set aside - Respondents/Transco directed to grant benefit of G.O to petitioners by granting rebate of 25% for period of three years from date of establishment - Writ petitions, allowed. **Ashwin Agro Tech Pvt. Ltd., Vs. Govt. of A.P. 2008(2) Law Summary (A.P.) 61 = 2008(3) ALD 665.**

—and Rules framed thereunder – Accident due to electric shock – Petitioner claiming compensation of Rs.3 lacks for death of his wife and two she-buffaloes due to electric shock – Single Judge dismissed writ petition holding that merely because respondents have paid *ex gratia* on account of death of wife of petitioner and for death of she-buffaloes and same cannot constitute a ground for issuing Writ of Mandamus as prayed for - Appellant contends that L.T lines were cut off 8 days prior to accident but respondents have not taken any precautions to avoid danger to public and animals by said cut off lines – Had respondents removed L.T lines from field accident could not have occurred, therefore, there was gross negligence on part of Officials of respondents and therefore, respondents are liable to pay compensation - Respondent contends that accident occurred due to gale, but not due to negligence on part of Department and Department has taken all safety measures as provided under Electricity Act and amount of *ex gratia* for death of petitioner's wife and she-buffaloes was paid as provisions available in Board Rules and that accident happened only due to natural calamity by reason of heavy gale and

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wind and that there is no negligence on part of Department and its officials - In instant case, due to heavy wind and gale, GI wire touched one of live phase conductor on top of pole, thus GI neutral wire charged with electric supply and deceased was coming on way from field came in contract with said live GI wire and thus herself and her two she-buffaloes were electrocuted – Report of Divisional Engineer (Electrical) clearly discloses that there was negligence on part of Officials of Board as they have not removed fallen wire for period of 8 days and had they removed electrical wire in time, they could have avoided cause of death of deceased - Deceased was hale and healthy aged about 38 years and hence awarded tentative compensation of Rs.90,000 for death of deceased and Rs.2000 each for death of two she- buffaloes. **P.Ramulu @ Ramulu Vs. S.E. Electrical, APSEB, Mahaboobnagar 2008(3) Law Summary (A.P.) 271 = 2009(1) ALD (NOC) 9 = 2009(1) ALT 410.**

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—Secs.2 (9), (13) and 40 - 2nd respondent passed order demanding contribution in respect of employees engaged by contractors with whom appellant-Corporation entered into contract to transport petroleum products - Chairman Industrial Tribunal dismissed petition filed by appellant seeking declaration that they are not liable to pay contribution holding that petitioner is liable to pay contribution to workers engaged by contractors as a principal employer - Appellant/Corporation contends that workers engaged by contractors are not their employees and they have no control over said workers and therefore appellant cannot be termed as "principal employer" in respect of such workers - "Employee" and "Immediate employer" - Meaning of - Not only person employed directly by principal employer, but also a person employed by or through immediate employer on premises of factory or establishment or under supervision of principal employer or his agent on work, which is ordinarily part of work of factory or establishment is also included within meaning of expression "employee" - "Immediate employer" is a person who has undertaken execution, in premises of factory or establishment or under supervision of principal employer or his agent, of whole or any part of any work - Sec.40 of Act requires principal employer to pay contribution in respect of every employee whether directly employed or by or through immediate employer - In this case, workers engaged by contractors for purpose of loading and unloading - May be, they enter premises of depots for purpose of loading - Such entry on premises of appellant for limited purpose is only casual and occasional entry but not on regular basis - Said workers are amenable to control of contractor but not appellant - Engagement of workers is at option of contractors over which appellant-Corporation has no say ensuring proper execution of work - Such work is responsibility of contractor and liability to make good of loss, if any, arising out of improper execution or otherwise is also cast on contractor as per terms of agreement - Activity of appellant-Corporation is to manufacture, store and supply and supply is effected by means of transport through vehicles as per terms of agreement entered into with contractors - In present case, crew engaged by contractors or workers engaged by them for purpose of loading and unloading, do not, come within meaning of "employee" under Sec.2 (9) (ii) of Act r/w Sec.2(13) nor can appellant-Corporation be described as "principal employer" in relation to such workers - No liability can be fastened

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on appellant-Corporation to collect contribution in respect of such workers u/Sec.40 of Act - Finding of Tribunal, unsustainable - Impugned order, set aside - Appeal, allowed. **Hindustan Petroleum Corpn., Vs. Employyes State Insurance Corporation 2008(1) Law Summary (A.P.) 287 = 2008(3) ALD 33 = 2008(1) ALT 654 = 2008(1) APLJ 22 (SN).**

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—Secs.2 (1) (a), (3), 6-A, 6-B& 15 - **A.P. PROCUREMENT (LEVY) CONTROL ORDER,** Clauses 9,12 & 16 - **LICENSING CONTROL ORDER**, Clauses 10 (1), 7(1) - Petitioner/Trading rice mill having capacity of 12.75 tons per hour, obtained FGL - 2nd respondent/Joint Director Civil Supplies inspected rice Mill and seized paddy, rice and broken rice for alleged contraventions of provisions of Levy Control Order and licensing Control Order - District Collector directed 3rd respondent to sell rice through Special Counters for public consumption at rate prescribed by Govt., and park sale proceeds in revenue deposits till final order passed u/Sec.6-A of E.C. Act - Petitioner contends that 2nd respondent h as no jurisdiction to seize as stocks are within permissible margin and on account of illegal seizure respondents tarnished image of petitioner and therefore, they are entitled for award of compensation and that show cause notice issued for cancellation of FGL is illegal - In this case, District Collector passed order u/Sec.6-A of E.C Act after detailed investigation, confiscating 25% of seized stock pending disposal of writ petition, basing on affidavit filed by petitioner in writ petition - Inspite of adequate opportunity, petitioner has not availed same and has not filed any explanation merely on ground that writ petition questioning jurisdiction are pending - Only in case of violation of Art.21 of Constitution of India alone, a citizen can seek adequate compensation from High Court notwithstanding availability of civil law remedy for enforcing tortuous liability - Sec.14 of E.C Act gives protection to authorities acting under E.C Act against personal action if a thing is done in good faith - Petitioner is at liberty to file Appeal u/Sec.6-C of E.C Act before Court of District & Sessions Judge against orders passed u/Sec.6-A and also to submit explanation against showcause notice for cancellation of FGL - Appeals, dismissed. **Santhoshima Parboiled Modern Rice Mill Vs.District Collector, Nalgonda 2010(2) Law Summary (A.P.) 400.**

—Sec.3, 2(a) (v),5, 6-A & 7 – **RICE PROCUREMENT (LEVY) ORDER, 1984,** Secs.3,4,14 & 161 – **CRIMINAL PROCEDURE CODE,** Sec.165 (1) – **INDIAN PENAL CODE,** Sec.406, r/w Sec.7 (1) of Essential Commodities Act – Sub-Inspector of Police, Rural, raided petitioner's business premises and seized some bags of rice meant for PDS on ground that he purchased said rice from FP shop dealer and registered case against petitioner – Joint Collector directing petitioner to furnish Bank guarantee for certain amount for release of seized stock of rice - Petitioner contends that S.I of Police has no jurisdiction to search and seize and by virtue of Notification issued by Govt., of India there are no restrictions to stock and transport of paddy and rice and if any person or dealer indulging in purchase of FFW or PDS rice the only course left open to authorities is to initiate

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proceedings under Cr.P.C - Respondent contends that Notification issued by Govt. of India subsequently amended and that Notification would not affect operation of Levy Order issued by State Govt., and that Enforcement Officer is authorized to search and seize any Essential Commodity if there is any contravention - "Essential Commodity" – Meaning of - There cannot be any dispute that rice, after cooking is meant for human consumption and therefore it can be stated to be a 'food stuff' – Similarly, paddy is a food crop, which is a raw product of rice and therefore it can also be termed as food stuff within meaning of Sec.2(a) (v) of E.C Act – Therefore paddy or rice is a essential commodity - Levy Order 1984 is very much in force – Enforcement Officer can enter any premises search same and seize rice or paddy, he found in contravention of Levy Order – Under provisions of 165 (1) Cr.P.C Officer-in-charge of Police Station or a Police Officer making investigation after recording in writing grounds of his belief can search a thing - There is absolutely no bar for a Police Officer investigating a case under general laws to enter into premises to conduct search and seizure of rice and paddy - Proceedings in CCS Ref.No.PDS/II(3)/1240/2002, dt.12-8-2002 issued by Commissioner of Civil Supplies is contrary to provisions of Levy Order 1984 – Hence writ petitions are dismissed with following findings:

a) The Andhra Pradesh Rice Procurement (Levy) Order, 1984 is in force;

b) 'Rice' and 'paddy' are essential commodities within the meaning of Section 2(a)(v) of the Essential Commodities Act, 1955;

c) The Officer-in-charge of a police station or a Police Officer making investigation under the Code of Criminal Procedure, 1973, can search a premises and seize any essential commodity in any place within the limits of his jurisdiction, under general penal laws;

d) Any officer, within the meaning of Section 2(e) of the Andhra Pradesh Rice Procurement (Levy) Order, 1984 can search and seize rice or paddy or broken rice, including animal, vehicle, vessel or conveyance used for carrying the stock of rice or paddy or broken rice, if he is of the *prima facie* opinion that a dealer contravened any of the provisions of the said Order;

e)The clarification proceedings in CCS Ref. No.PDS/II(3)/1240/2002, issued by the Commissioner of Civil Supplies, Hyderabad, dated 12.8.2002 is contrary to the provisions of the Andhra Pradesh Rice Procurement (Levy) Order, 1984;

f) A dealer or miller or purchaser of paddy or any person, contravening the provisions of the Andhra Pradesh Rice Procurement (Levy) Order, 1984, is liable to be prosecuted under the provisions of the Essential Commodities Act, 1955. **Elluru Chandra Obul Reddy Vs. The Joint Collector, Kadapa Dt. 2008(3) Law Summary (A.P.) 158 = 2008(6) ALD 411 = 2008(6) ALT 538.**

—Secs.3 & 6-A (1) (c) - "Seizure of vehicle" - Petitioners'/owners' vehicles are seized due to their involvment in illegal transportation of scheduled/essential commodities intended for public distribution - Owners of vehicles deployed for purpose of illegal transportation of essential commodity before confiscation can be provided an option to pay not exceeding market price at date of seizure of essential commodity sought to be carried by such vehicle or other conveyance - Owner of vehicle could be a different person from owner of essential commodities which have also been seized

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- Therefore, providing an option to him to pay up fine in view of confiscation has been contemplated and fine that can be imposed can be anything less but in no case it shall be in excess of market price at date of seizure of essential commodity and for determining market price, date of seizure becomes crucial and relevant date for purpose of providing an option to owner of vehicle or other conveyance, which is used or sought to be sued in matter of illegal trnasportation of essential commodities which has been seized initially and later on confiscated market value of such vehicle or other conveyance alone should be taken into account but not value of essential commodities carried thus - If competent authority is not very sure of determining such value, it is always open to him to solicit such assistance from any other assessor, such as a competent Officer of Motor Transport Department - Based thereon market value of vehicle shall be determined and that must be offered to avoid confiscation of vehicle - In this case, since confiscation proceedintgs are still pending, for regulating interim custody of vehicle, it would only be appropriate for authorities to ask for bank guarantee for a reasonable proportionate amount, or any immovable property security or any third party security and owner of vehicle must also give an undertaking not to alienate during pendency of 6-A proceedings. **B.Pundarikam Vs.The District Collector, Medak atSangareddy, 2012(2) Law Summary (A.P.) 32 = 2012(3) ALD 575 = 2012(4) ALT 370.**

—Sec.6-A - **A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008** - Petitioner's/FP shop authorisation kept under suspension apart from initiating proceddings u/Sec.6-A of E.C Act for alleged shortage of 3.60 qts out of total quantity of 162.75 qts - 1st respondent/Joint Collector while declining to interfere with order of 2nd respondent directed RDO to dispose of case within period of four weeks - Hence, present writ petition - Petitioner's authorisation has been suspended for alleged shortage of rice which appears to be within permissible limits - Except this allegation, no other allegation of omission and commission on part of petitioner has been made - Extreme action of suspension of authorisation on flimsy ground of negligable variation in quantity of rice constitutes patent arbitraness - Impugned order of RDO shows that petitioner has offered spot explanation that she has received quantity of PDS rice from MLS point without any weightment - But by no means allegation made against petitioner is so serious to warrant suspension of authorisation - Such unwarranted actions affect morale of even honest dealers - Reason given by 1st respondent/JC in declining to interfere with order passed by RDO, that suspension only interim in nature, he is not inclined to interfere with same, cannot be appreciated - Irrespective of whether order is interim or final in nature, appellate authority is under obligation to examine its sustainability or otherwise in law with reference to facts of case and he failed to apply this principle in disposing of appeal - Impugned orders of Joint Collector and RDO, are set aside - Petitioner shall be allowed to continue as FP shop dealer till enquiry is completed - Writ petition, allowed. **Nune Varalakshmi Vs. Joint Collector (FAC) Kadapa District 2011(1) Law Summary (A.P.) 136 = 2011(3) ALD 533 = 2011(1) ALT 626.**

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—Secs.6-A - **A.P. PULSES (L.S. AND R) ORDER 2007,** Cl.3(2) & 3 - Seizure of red grams by Enforcement Authorities, belonging to petitioners/agriculturists from Cold Storages and CWC stored by them with a view to dispose of same when market conditions improve - 1st respondent/District Collector after hearing arguments of Counsel for petitioners without properly appreciating facts, passed order on 29-5-2009 ordering confiscation of entire seized stock - Subsequently Sessions Judge dismissed Appeal filed by petitioners on 10-8-2009 confirming order of 1st respondent - Hence present writ petitions challenging orders of Sessions Judge confirming order of 1st respondent/ District Collector - In this case, before District Collector as well as before Sessions Court a specific ground was taken that Investigating Officers have misconstrued provisions of sub-clauses 2 & 3 of Cl.3 of A.P. Pulses (L.S & R) Order, 2007 which was not at all applicable to petitioners who are admittedly neither dealers nor traders nor carrying on any business as contemplated under provisions of said Control Order - Supreme Court after considering Cl.3(2) of Order held that Cl.3(3) raises a statutory presumption when stock is found with any individual having 100 or more of specified food grains is ment for sale - In addition to said presumption prosecution has to show that store of food grains was for purpose of carrying on business - Element of business which is essential to attract provisions of Cl.3(1) is thus not covered by presumption under Cl.3(2) - It is held that it is not a solitary instance of storage or sale or sporadic actions of storage or sales that would amount to carrying on business but a course of conduct of either storage or sale that would lead to inference that he is dealing in them - Ultimately it is held that single instance of storage of food grains here would not constitute "carrying on business" and would not attract provisions of Cl.3 of Food grains dealers licensing order , for contravention of which penalty of confiscation as provided u/Sec.6-A of Act is attracted - In this case, neither 1st respondent nor Sessions Judge considered this aspect of matter and examined whether petitioners have stored food grains for purpose of business or only on a solitary instance of storage - When there is no finding that petitioners are carrying on business of such produce or sale or storage of red gram, seizure of stock and conviction under provisions of Essential Commodities Act cannot be upheld - Orders in Criminal Appeals confirming orders passed by 1st respondent/District Collector are set aside - Writ petitions, allowed - Bank guarantees furnished by petitioners pursuant to interim orders of High Court dt:25-8-2009, 1st respondent/Collector shall release them to the petitioners. **Tolusuri Guravaiah Vs. Collector and District Magistrate 2014(1) Law Summary (A.P.) 122.**

—Secs.6-A & 6-B - **A.P. SCHEDULE COMMODITIES DEALERS (LICENSING, STORAGE & REGULATION) ORDER, 2008,** Clause 2 (4) - Vigilance and Enforcement Officials seized BPT/preferred varieties of paddy stored by appellant/petitioner in State Ware Housing Corporation and filed case u/Sec.6-A of E.C Act and issued show cause Notice u/Sec,6-B of E.C Act - After considering explanation filed by petitioner, Joint Collector ordered confiscation of 50% of seized paddy - District & Sessions Judge dismissed appeal - Petitioner contends that he is an agriculturist and he has produced paddy and stored same at SWC as a Farmer and not as a Trader and therefore order of confiscation is not tenable - Petitioner has not produced any evidence to

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show that he is an agriculturist and that he owned any wet land and produced paddy in his own land - Hence he cannot be treated as an agriculturist within meaning of Cl.2(4) of Control Order, 2008 - Order of confiscation modified and reduced to 25%. **Utukuri Nagabraham Vs. State of A.P. 2010(2) Law Summary (A.P.) 179.**

—Secs.6-A, 6-B,6-C,6-D, 6-E, 7 and 11 – Appendix-II to G.O.Ms.No.77 – **A.P. STATE PUBLIC DISTRIBUTION SYSTEM CONTROL ORDER, 2001**, Cl.5 – **INDIAN PENAL CODE,** Sec.21 – Petitioner/FP shop dealer involved in clandestine business of PDS rice and failed to maintain proper account and thereby indulged in clandestine business - Joint Collector passing order directing RDO, to initiate action for cancellation of authorization of petitioner and for initiation of action u/Sec.7 of E.C Act - Contention that it is not competent for Joint Collector to order prosecution and give direction to RDO to initiate action for cancellation of Authorization – A perusal of Sec.6-A (1) of E.C Act would make it clear that power of confiscation is independent of prosecution being launched – Sec.6-D further makes it clear that order of confiscation by Collector shall not prevent infliction of any punishment under E.C Act – Conspectus of Secs.6-A to 6-E and Sec.7 would show that decision to direct prosecution is nothing to do with the power exercisable u/Sec.6-A of E.C Act – In a given case even where Collector decides not to confiscate goods, he can order prosecution - Contention of petitioner that directions issued by Joint Collector are without jurisdiction is misconceived – General power of Collector to confiscate is always available even to order prosecution – Writ petition, dismissed. **Y.Rama Devi Vs.The Joint Collector R.R. District at Lakdikapool, Hyd., 2008(3) Law Summary (A.P.) 265 = 2009(1) ALD (NOC) 6 = 2009(1) ALT 314 = 2008(4) APLJ 142.**

—Sec.6-A(1) and second Proviso of 6-A (1) - Bus as well as kerosene seized and proceedings initiated u/Sec.6-A for contravention of provisions of kerosene Control Order - Owner of Bus filed Application for release of vehicle - Collector concluded proceedings and passed order confiscating vehicle - However, in view of provisions contained in 6-A of Act directed respondent/owner of Bus to pay fine of Rs.20,000/- - Contention that Collector could not have concluded proceedings u/Sec.6-A (1) of Act and that if Collector concluded proceedings u/Sec.6-A(1) of Act there was no reason for him to impose conditions such as payment of fine and if fine is imposed in lieu of confiscation, same shall not exceed market price of essential commodity seized and said contention found favour with single Judge of High Court - Sec.6-A(1) of E.C. ACT - SCOPE AND OBJECT - STATED - Sec.6-A merely confers power of confiscation and not power of release, disposal, distribution, etc., except to limited extent permitted by Sub-Sec.(2) thereof - Of course second proviso to Sub-Sec.(1) of Sec.6-A permits grant of an option to pay in lieu of confiscation of any animal, vehicle, vessel or any other conveyance, a fine equal to its market price at date of seizure - Order of single Judge, set aside and remitted to High Court to consider matter afresh.**Collector of Ganjam Vs. Ramesh Chander Pathi 2009(1) Law Summary (S.C.) 124.**

—Sec.6-A(2) - R3/Deputy Tahsildar, inspected petitioner's business premises and seized Q 345-75 of Rice on ground that there is variation of 84 bags of rice between

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stock register and ground balance – District Collector, directing Deputy Tahsildar to dispose of seized stock of Rice, through public auction - Petitioner filed representation to drop all further proceedings - However five months later R2/District Collector has issued impugned show cause notice u/Sec.6-B of E.C. Act to petitioner, while marking copy to R3/Deputy Tahsildar directing to dispose of seized sock through public auction and remit value thereof to Government exchequer in civil deposits - In this case procedure followed by R2/Collector, is improper as impugned show cause notice issued 5 months after rice was seized from petitioner's business premises - U/Sec.6-A (2) of Act, interim disposal of seized sock are ordered if Collector is of opinion that seized essential commodities are subject to speedy and natural decay or it is otherwise, expedient in public interest to do so - From language of Sub Sec.2 of Sec.6-A of Act, it is implied that Collector has to pass an order by recording his satisfaction within a reasonable time from date of seizure - In this case R2/Collector has not ordered sale of seized stock for 5 months after its seizure itself shows that he was not satisfied, that seized commodity was subjected to speedy and natural decay - If Collector felt that public interest warranted sale of seized stock, he should have passed an order in writing to that effect-without passing any such order Collector cannot issue a direction to his subordinates to sell seized stock - Collector not justified in issuing show cause notice at a leisurely pace i.e., 5 months after initiation of proceedings u/Sec.6-A of Act - Such delays not only cause serious prejudice to interest of trader but also to that of State - If a trader is innocent, he legitimately expects expeditious conclusion of proceedings u/Sec. 6-A of Act - In ordinate delays in completion of such proceedings severely jeopardize his interest - Directions issued by Collector to R3/Deputy Tahsildar to sell seized stock in public auction is set aside - W.P. allowed. **Annapurna Rice Traders Vs. State of A.P. 2015(1) Law Summary (A.P.) 239 = 2015(2) ALD 213 = 2015(4) ALT 691 = AIR 2015 (NOC) 785.**

—Sec.6-A (2) - **A.P. PULSES (L.S & R), ORDER, 2007** - Deputy Tahsildar seized Red Grams from Warehouse on ground that it was stored by some unknown persons in name of benami farmers violating provisions of Order, 2007 and E.C, Act - Collector passing impugned order directing to take possession of seized Red Grams and dispose of same through PDS by observing that he decided to get Red Gram sold so as to avoid natural decay - Single Judge rejecting writ petitions filed by persons who stored Red Grams in warehouse contending that they are all farmers and they had given red grams for storage to warehouseman - Appellant/petitioners contend that impugned order is unjust and improper and illegal for reason that Collector had not complied with conditions incorporated u/Sec.6-A (2) of E.C. Act and Collector did not come to a conclusion that seized Red Gram was subject to speedy and natural decay and that there is no observation or finding of whatsoever type that commodity seized was subject to speedy decay and if commodity so seized is not subject to speedy decay, no order with regard to sale of seized commodity can be passed as interim measure and that no opportunity was given to appellants to give any sort of explanation though it was known to respondent/ Govt. authorities that seized red gram belonged to appellants and that it is obligatory on

ESSENTIAL COMMODITIES ACT:

part of respondent-authorities atleast to hear them so as to know whether Red Gram stored in Warehouse by genuine farmers - Govt., contends that pulses had been stored in Warehouse in benami names and that because of hording of pulses market price of pulses had gone up and that in interest of public at large, Collector had not only seized Red Grams but also directed said Red Gram to be disposed of through PDS and action has been taken in good faith so as to bring down market price of Red Gram and that action of Collector is just and in interest of public at large and that no principle of natural justice has been violated by Govt., authorities by sale of seized Red Grams at interim stage without hearing appellants - Once Collector came to know that names of persons who had given their commodity for purpose of storage were on record, he ought to have made some preliminary enquiry so as to find out whether persons whose names were found in record of warehouse were genuine owners of commodity seized - Without making atleast a preliminary enquiry, it is not proper on part of Collector to jump to conclusion that said commodity had been held by "unknown traders and benami farmers" and said conclusion could have been arrived at only after making some enquiry - When there is prima facie material before Collector that Red Gram belonged to some persons whose names and addresses were made available from record of Warehouse at time of drawing panchanama, so as to follow principles of natural justice he ought to have verified the genuineness of owners of Red Gram and Collector ought to have followed principles of natural justice in facts of this case - DOCTRINE OF NATURAL JUSTICE - Even in an administrative proceeding, which involves civil consequences doctrine of natural justice must be held to be applicable - Even if statute does not provide for hearing a party in clear terms, principles of natural justice need to be followed in administrative proceedings which involves civil consequences - In the instant case Collector did not exercise his power properly and in accordance with provisions of Sec.6-A (2) of Act and he did not follow principles of natural justice - Provisions with regard to sale of seized commodity are having serious civil consequences and therefore said provisions must be implemented strictly - Impugned order passed by Collector which has been confirmed by Single Judge is bad in law - Hence said orders are quashed and set aside - Appeals, allowed. **A.Siva Reddy Vs. District Collector, Kurnool Dist. 2008(3) Law Summary (A.P.) 106 = 2008(6) ALD 1 = 2008(6) ALT 145.**

—Secs.6-A & 6-C - **A.P. SCHEDULE COMMODITIES CONTROLORDER, 2008,** Clauses 2K(2) & Conditions 3(1)(a) to (d), 7(1), 9 and 10 of "B-Form" issued under Control Order, 2008 - Asst. Supply Officer conducted raid on petitioner's rice mill and verified registers and found variations in book balance and ground stock and seized entire stock available in rice mill and filed 6-A case against petitioners - District Collector held enquiry under provisions of Sec.6-A of E.C Act, order for confiscation of 30% of seized stock holding that petitioner violated provisions of Control Order, and also conditions of "B-Form" - In appeal Sessions Judge confirmed confiscation but reduced to 10% - In this case, in view of fact that prosecution failed to prove that petitioner was indulging in clandestine business, mere variation between book balance and ground stock cannot be a ground to order confiscation - In this case, value of whole

ESTATE LAND ACT, 1908:

of stock that was found in possession of petitioner was valued and District Collector proposed to confiscated 30% of value of stock found in possession of petitioners mill - Assuming that petitioner was guilty of violating provisions of Control Order, 2008 what can be confiscated is "variation of stock or value there of", but not entire stock that is found in possession of mill - In present case, facts and circumstances show that there was no violation of Control Order, 2008 and consequently, very order of confiscation of 30% of seized stock or 10% of seized stock, as case may be is void - Confiscation order passed by Sessions Judge, set aside - Petitioner is entitled to entire seized stock or its value - Writ petition, allowed. **Kyasa Narayana Vs. State of A.P. 2013(2) Law Summary (A.P.) 185 = 2013(2) ALD (2) ALD (Crl) 358 (AP) = 2013(3) ALT (Crl) 170 (AP).**

ESTATE LAND ACT, 1908:

—Secs.10,77, 17(3) & 3(1) – A.P. ESTATE ABOLITION ACT, 1948, Sec.2(1) & 9 – "Suo motu enquiry" – Petitioners/respondents purchased land from original grantees and by virtue of long possession and enjoyment acquired occupancy rights even prior to 1-7-1945 and were also granted pattas under provisions of Estate Abolition Act after holding enquiry relying upon preabolition records maintained by estate officers - Show cause notice issued proposing suo motu enquiry on ground that Adangal and Diglot are not available in pre-abolition record of concerned villages inspite of deligent search and in absence of that basic and vital records pattas granted in favour of petitioners not junuine - After considering various earlier proceedings, judicial and quasi judicial in detail single Judge came to conclusion that it is abundantly clear that petitioners and their predecessors were in possession and enjoyment of subject lands since over several decades and they acquired occupancy rights by 1-7-1945 which enable them to claim patta under provisions of Estate Abolition Act – Director of settlement not applied his mind before issuing show cause notice or is intentionally withholding best evidence in his possession - In view of production of pre abolition records in earlier judicial proceedings indicating that they were in fact taken by revenue Officials at time of survey and settlement subsequent upon taking over estate, alleged loss or non availability of said records does not afford a valid or substantial ground for ordering suo motu enquiry - Contention that huge extent of lands have been left uncultivated for several years and they were used as pasture lands by pattadars and is based only on surmises and suspicios – To enable occupants to claim ryotwari patta, land need not be under actual cultivation, but is enough if it is capable of cultivation or it has potentiality for cultivation - In present case, respondent/direct settlement sought to reopen issue by takingup suo motu enquiry almost 37 years after issuance of rough pattas that too without making any specific allegation of fraud or misrepresentation – Impugned show cause notice seeks to suo motu reopen issue of grant of pattas more than 37 years after their issuance without valid or justified grounds certainly amounts to exercise of power in unreasonable, arbitrary and oppressive manner – Observations of single Judge that a perusal of record would show that whole exercise was started with extraneous motive and under political pressure and without application of mind – Order of learned single Judge allowing writ petition holding that impugned notice cannot be sustained – Justified – Writ appeal, dismissed.

(INDIAN) EVIDENCE ACT:

Director of Settlements Hyderabad Vs. Lingreddy Ramakrishna Reddy 2008(3) Law Summary (A.P.) 199.

(INDIAN) EVIDENCE ACT:

—Sec.3 - "Document" - Plaintiff filed suit against defendants who are his own brothers, for partition of plaint schedule property, basing on document containing typed and hand written block letters respectively - Documents also contains some statements - Since defendants have gone back and denying payments plaintiff has to establish contents of documents - Trial Court dismissed Application filed by plaintiff seeking direction to reopen suit and to direct defendant/D.W.1 to give his specimen handwriting for comparison with disputed handwriting on document and to send document to handwriting expert for examination along with specimen handwritings of 1st defendant, observing that document does not contain signature of executants and said document sought to be marked must be brought on record as per law - Since contents of documents cannot be proved by merely producing it for inspection of Court and therefore document is an inadmissible one by reason of which, petitions are not tenable - Plaintiff contends that document in question comes within purview of disputed document as per definition of document u/Sec.3 of Evidence Act and that contents of document can be proved to establish an issue before Court of a law even though actual executant of it did not sign - However question of genuineness of document or under what circumstances document got typed and remaining part was written in hand writing can be decided only basing upon necessary evidence to be recorded and observation of Court in rejecting document at outset is premature - EVIDENCE ACT, Sec.3 - "Definition of document" - Stated - Execution or preparation of document can be decided some time even without there being necessary signature and therefore observations made by Courts below in dismissing plea of plaintiff to send document to hand writing expert for examination and report is not tenable - Defendants can be allowed to raise necessary objections after receiving relevant report from hand writing expert - Order passed by trial Court, set aside - Civil Revision, allowed. **Syed Ali Moosvi Vs. Zainulabeddin Moosvi 2013(1) Law Summary (A.P.) 14 = 2013(2) ALD 110 = AIR 2013 (NOC) 195 (AP) = 2013(3) ALT 419.**

—Sec.3 - **INDIAN PENAL CODE,** Secs.498-A & 302, r/w 34 - "Circumstantial evidence" - Accused charged for offence u/Secs.498-A & 302 - Sessions Judge convicting accused and High Court dismissed appeal - Appellants/accused contend that case rests on circumstantial evidence and circumstances do not establish guilt of accused - Where a cases rests sqarely on circumstantial evidence, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person - Where a case depends upon conclusion drawn from circumstances cumulative effect of circumstances must be such as to negative innocence of accused and bring offences home beyond any reasonable doubt - In this case, body of deceased was found in matrimonial home of deceased

with injuries noticed by them which fit in evidence of Autopsy Surgeon and death took place within one year and four months of marriage in house of accused persons and dead body was found with injurious - According to doctor also death was due to asphyxia resulting from throttling which was ante mortem and homicidal in nature - Appeal, dismissed. **Ghosh Vs. State of West Bengal 2009(2) Law Summary (S.C.)1.**

—-Secs.3 & 32 - "Circumstantial evidence" - Dying declaration - Sessions Judge convicting accused for offences u/Sec.302, r/w Sec.149 - Division Bench of High Court dismissed appeal and affirmed findings of trial Court - CIRCUMSTANTIAL EVIDENCE - Five golden principles – Stated:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. 'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.'

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty.

(3)Thecircumstances should be of a conclusive nature and ten-dency.

(4) They should exclude every possible hypothesis except the one to be proved, and 164

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

DYING DECLARATION - In this case, after having consumed excessive liquor it would not have been possible for any one muchless to deceased to have written said dying declaration with so much of precision or with steady hand - Dying declaration should be such which should immensely strike to be genuine and stating true story of its maker - It should be free from all doubts and on going through it an impression has to be registered immediately in mind that it is genuine, true and not tainted with doubts and it should not be result of tutoring, but dying declaration in present case does not fulfill these conditions - Neither trial Judge nor Division Bench of High Court not considered this aspect of matter - Judgment and order of conviction passed by trial Court and upheld by High Court - Unsustainable - Hence set aside and quashed - Appeals, allowed. **Nanhar Vs. State of Haryana 2010(2) Law Summary (S.C.) 105.**

—Secs.6 to 16 and 24 to 26, 30 and 32,35 and 80 and 132 - **INDIAN PENAL CODE**, Secs.302, 307, 324,120-B,121-A etc., - **PROVISIONS OF EXPLOSIVE ACT** -

(INDIAN) EVIDENCE ACT:

PREVENTION OF DAMAGE TO PUBLIC PROPERTIES ACT - RAILWAYS ACT - Trial Court declined prayer made by accused for summoning witnesses at serial nos.63 to 66 - High Court allowed appeal filed by accused - Hence present SLP - Case relating to bomb blasts in first class compartments of local trains of Mumbai Suburban Railways, resulting death of 180 persons causing severe injuries to 829 persons - "Confessional statement" and its ''admissibility'' – ''Proof of'' – Permission to summon witnesses at serial nos 63 to 66 as defence witnesses - CONFESSIONAL STATEMENT - A confessional statement can be evidenced by person before whom it is recorded, has been rightfully adjudicated by High Court - An admission/confession can be used only as against person who has made same - Ordinarily a confessional statement is admissible only as against an accused who has made it - U/Sec.30 a confessional statement can be used even against a co-accused - For such admissibility it is imperative, that person making confession besides implicating himself, also implicates others who are jointly tried with him - In that situation alone, such a confessional statement is relevant even against others implicated - Admissibility of depositions of witnesses at serial nos 63 to 66 - According to petitioners that evidence of Police Officers would not be permissible u/Sec.11 of Evidence Act, because evidence of witnesses at serial nos. 63 to 66 all in later category of "a statement about existence of fact" - Moreover that it would be clearly hit by "rule of hearsay" - Sec.11 makes "existence of facts" relevant and admissible and not "a statement as to such existence" - SECS.60 & 11 OF EVIDENCE ACT - In order to determine truthful-ness of confessional statement which are sought to be relied upon by accused/respondents it is invitable in terms of mandate of Sec.60 of Evidence Act, that accused who had made said confessional statements must themselves depose before a Court for effective reliance, consequent upon relevance thereof having been affirmed u/Sec.11 of Evidence Act - By following mandate contained in Sec.60 of Evidence Act, it is not open to accused/respondents in view of expressed bar contained in Sec.60 of Evidence Act, to prove confessional statements through witnesses at serial nos.63 to 66 - Hence it is not possible to accept plea that advanced on behalf of accused that they should be permitted to prove confessional statements through witnesses at seral nos.63 to 66 - Sec.132 of Evidence Act clearly negates basis of submission adopted by accused/respondent for being permitted to lead secondary evidence to substantiative confessional statement made by some accused - Accordingly that confessional statements made by accused in case no.4 cannot be proved in evidence through statements of witnesses at serial nos.63 to 64 - In back ground of object sought to be achieved having been clarified by Court, it is apparent, that Sec.35 and 80 would be no avail to accused- respondents in facts and circumstances of case, since Court has already concluded that witness at serial nos.63 to 66 cannot be summoned as their evidence before trial Court should not fall within realm of admissibility with reference to "facts in issue" or "relevant facts" - Accused-respondents cannot be permitted to summon witnesses at serial no.63 to 64 as defence witnesses for specific objective sought to be achieved by them - Impugned order passed by High Court, set aside - Appeal,

(INDIAN) EVIDENCE ACT:

allowed. **State of Maharashtra Vs. Kamal Ahmed Mohammed Vakil Ansari 2013(2) Law Summary (S.C.) 1.**

—Sec.32 - "Dying declaration" - Principles for testing its authenticity - Stated - Sessions Judge convicting appellant/accused u/Sec.302 for murder of deceased - High Court confirmed judgment of Sessions Judge - Appellants set ablaze young bride, merely 22 years of age because her parents failed to provide a Refrigerator and Television - DYING DECLARATION - Though dying declaration is entitled to great weight, it is worthwhile to note that accused has no power of cross-examination - Once Court is satisfied that declaration was true and voluntary, undoubtedly it can base its conviction without any further corroboration - Rule requiring corroboration is nearly a rule of prudence - Evidence of P.W.1 and P.W.5 is unflinching, coherent and consistent - Both witnesses have withstood lengthy cross-examination without any loss of credibility and their evidence cannot be discarded only on ground that they are close relatives of deceased - Course adopted by lower Courts cannot be said to be erroneous - Verdict recorded by trial Court as well as High Court in convicting appellants of murder - Justified - Appeal, dismissed. **Amit Kumar Vs. State of Punjab 2010(3) Law Summary (S.C.) 102.**

—Sec.32 - **CRIMINAL PROCEDURE CODE,** Sec.378 - "Dying declaration" - Trial Court found accused guiltybasing on dying declaration - High Court found that dying declaration not reliable and not free from infirmity and directed acquittal of respondent - "DYING DECLARATION" - Principles governing dying declaration - Stated - After careful scrutiny, Court is satisfied that it is true and free from any effort to induce deceased to make a false statement and if it is coherent and consistent, their shall be no legal impediment to make it basis of conviction, even if there is no corroboration - POWERS OF APPELLATE COURT - Principles regarding powers of appellate Court while dealing with an appeal against order of acquittal - Culled out - If two reasonable conclusions are possible on basis of evidence and record, appellate Court should not disturb finding of acquittal recorded by trial Court - Appeal, dismissed. **State of Rajasthan Vs. Yusuf 2009(2) Law Summary (S.C.) 72 = 2009(2) ALD (Crl) 603 (SC) = 2009(3) Supreme 832 = AIR 2009 SC 2674 = 2009 AIR SCW 4109.**

—Sec.32 - **INDIAN PENAL CODE** - Sec.498-A, r/w Secs.34, 302, r/w Sec.34 - Dying Declaration - Deceased was married to one RPT - After marriage she was staying at matrimonial home in joint family, since there was no issue from marriage and she was ill treated by her mother-in-law and sister-in-law and on that account they used to harass her - In order to get rid of deceased she was poured kerosene burnt to death - Deceased gave four dying declarations till she scumbed to her injuries - Trial Court convicted appellants/accused u/Sec.302 r/w Sec.34 of IPC - High Court dismissed criminal appeal filed by appellant/accused and confirmed their conviction and sentence passed by trial Court - When Court is satisfied that dying declaration

(INDIAN) EVIDENCE ACT:

is voluntary not tainted by tutoring or animosity, and is not a product of imagination of declarant that even there is no impedement in convicting accused on basis of such dying declarations - When there are multiple dying declarations each dying declaration has to be separately assessed and evaluated independently on its own merits as to its evidentiary and one cannot be rejected because certain variations in other - In this case, deceased was in fit state of mind to make dying declarations and her statements those dying declarations are consistent and truthful - Prosecution also examined witnesses as well as Doctors and I.Os and other witness in support of their claim - No infirmity found in order of conviction and sentence recorded by trial Judge and affirmed by High Court - Deceased died within three years of her marriage at instance ofr her mother-in-law and sister-in-law due to harassment meted out to her because of inability to conceive child and she was poured kerosene and burn to death - In view of clinching evidence led in by prosecution there cannot be any leniency in favour of appellants/accused who are sister-in-law of deceased and that whose instance deceased was burnt at hands of her mother-in-law - Conclusions arrived at by Trial Court and affirmed by High Court - Justified - Appeal, dismissed. **Ashabai Vs. State of Maharashtra 2013(1) Law Summary (S.C.) 97 = 2013(1) ALD (Crl) 814 (SC) = 2013 AIR SCW 333 = AIR 2013 SC 341 = 2013(2) SCC 224 = 2013(1) SCC(Cri) 943.**

—Sec.32(1) - "Dying Declaration" - Its relevance - Approach to be adopted by Courts – Stated - Session Judge convicted appellant/accused/husband for offence of cruelty and murder u/Secs.498-A & 302 IPC, basing on Dying Declaration of deceased/ wife - Division Bench of High Court confirmed conviction of accused u/Sec.302 of IPC and set aside conviction u/Sec.498-A IPC - Evidence Act, Sec.32(1) - "Dying Declaration" - Legislature has accorded a special sanctity to statement made by Dying person as to cause of his own death and this is by virtue of solemn occasion when statement is made - Besides, when statement is made at earliest opportunity without any influence being brought on dying declaration there is absolutely no reason to take any other view for cause of his or her death and statement has to be accepted as relevant and truthful one, revealing circumstances which resulted in to his death - Absence of any corroboration cannot be taken away its relevance - With incidents of wives being set on fire, very unfortunately continuing to occur in our Society, it is expected from Courts that they approach such situations very carefully giving due respect to dying declarations and not being swayed by fanciful doubts - In this case, there are two dying declaration recorded at earliest opportunity and they contained motive for crime and reasons as to why deceased suffered burn injuries - As far as her statements viz., that appellant had poured kerosene and set her on fire is concerned, there is no reason to discard it considering fact that it was made at earliest opportunity and on solemn occasion - Prosecution undoubtedly proved its case beyond any reasonable doubt - Judgment and order rendered by Session Judge as modified and confirmed by High Court- Justified - Appeals, dismissed. **Hiraman Vs. State**

of Maharashtra, 2013(1) Law Summary (S.C.) 169 = 2013(2) ALD (Crl) 74 (SC) = 2013 AIR SCW 2134 = 2013 Cri. LJ 2191 (SC).

—Sec.32 (7) r/w Sec.13-A - Statements made in documents relating to transaction and its admissibility as evidence - Suit filed by wife and sons of deceased co-parcener of joint family, for partition of properties - Contention that properties shown in plaint schedule are self-acquired properties of "M" father of deceased co-parcener and were already alienated and that there were no properties belonging to joint family - Trial Court granted preliminary decree for partition of plaint schedule properties holding that suit properties are not self-acquired properties of "M" - Single Judge of High Court confirmed findings recorded by trial Court and upheld preliminary decree - Appellants contend that there was absolutely no evidence to establish that there was sufficient nucleus to acquire plaint schedule properties and findings recorded by trial Court as confirmed on appeal are erroneous and without any basis - Property cannot be presumed to be joint family property merely because of existence of joint family and burden of proving property to be joint family property always lies on person who so asserts - However, once he proves that family possessed sufficient nucleus with aid of which suit properties could be acquired, then presumption has to be drawn that properties are joint and consequently burden of proof shifts to person claiming them to be self-acquired - In this case, there is joint nucleus available under certain documents, sufficient to acquire suit schedule property - Hence trial Court rightly drawn presumption - Contention that recitals in documents in question executed by "M", karta of joint family by itself is sufficient evidence that suit schedule property is self-acquired property of late "M" - Recitals in deeds can only be evidence as between parties to conveyance and those who claim under them - At any rate, a recital by itself cannot prove assertion of fact contained by recital, but some other evidence must be available to substantiate same and such recital by itself does not constitute sufficient evidence to establish existence of fact - In this case, admittedly suit for partition was filed specifically pleading that alienations made by "M" under certain documents were not valid and not binding on plaintiffs - It is not necessary to coparceners to specifically seek setting aside alienations of joint family properties, but it is sufficient if suit is filed for partition after declaring alienations are not binding on them - Admissibility of such recitals u/Sec.32 (7) and 13-A of Evidence Act does not affect question of onus of proof so far as alienation of joint family property made by kartha affecting vested rights of other coparceners - Judgment and preliminary decree granted by trial Court as confirmed on appeal - Justified - LPA, dismissed. **Kasaram Jayamma Vs. Jajala Lakshmamma 2008(1) Law Summary (A.P.) 390 = 2008(3) ALT 104 = 2008(1) APLJ 164 = 2008(3) ALD 657.**

—Sec.33 - 1st respondent filed suit against petitioners for relief of partition and separate possession against GGK, sole defendant - In course of trial GGK was examined in chief as D.W.1 and when his cross-examination was half way through he died and his LRs were brought on record - GGK filed RC against 1st respondent/plaintiff for eviction and same was dismissed and appeal filed against it is pending - 1st respondent/plaintiff filed Application with a prayer to receive cross-examination of

(INDIAN) EVIDENCE ACT:

GGK in RC - Trial Court allowed Application - Petitioners contend that very prayer in Application to make cross- examination of GGK as P.W.1 in RC as cross-examination in present suit is untenable and that circumstances provided for u/Sec.33 of Evidence Act do not exist in this case, and that cross-examination of GGK also was not completed, only on account of lapses on part of 1st respondent/plaintiff - Respondent/ plaintiff contends that Sec.33 of Evidence Act creates a facility for making evidence of person in one set of proceedings as part of record in other set, in case circumstances mentioned therein are proved and that GGK died before conclusion of cross-examination and that itself is sufficient to make his deposition in another case, as part of record of present case and that no interference is warranted with order of trial Court - Though there is slight variation of opinions expressed by High Courts, common feature is that such evidence cannot be eschewed as a whole - Predominent view is that evidence of witness who expires half way through, cannot be eschewed altogether - If witness was alive after examination-in-chief, but did not offer himself for cross-examination, entire evidence needs to eschewed for consideration without any hesitation - If on other hand, witness was cross-examined in certain extent, but was not alive thereafter, evidence need not be ignored altogether - If party who was entitled to cross-examine witness, did not turn up, chief-examination itself becomes entire evidence of witness for all practical purposes - Evidence of GGK as D.W.1 in present suit cannot be treated as having been eschewed, though it can be said to be incomplete - Sec.33 of Evidence Act of certainly gets attracted and 1st respondent is very much entitled to make deposition of that very witness in another case as part of record in present suit - However depositing in another case cannot be treated as cross-examination of deceased witness and at most it can be marked as exhibit, so that it can be treated as relevant or may be commented upon by both parties - CRP, partly allowed modifying order in Application filed by 1st respondent/plaintiff as one for marking cross-examination of GGK in RC as one of documents in suit. **G.Gopalakrishna Vs. G.Venugopal 2013(2) Law Summary (A.P.) 17 = 2013(4) ALD 573 = 2013(4) ALT 295.**

—Secs.33,63, 91,92 & 145 - Secondary evidence - Oral agreement - Admissibility - Suit for specific performance of agreement of sale - Decreed - Defendant directed to execute sale deed in respect of suit land - Appellant/defendant contends that respondent since not having sufficient funds could not pay amount due under agreement within stipulated time and was trying to take shelter that appellant not producing original title deed and that respondent cannot insist on its production as a condition precedent for payment of balance due under agreement because handing over of original title deed arises only at time of registration and that non-production of title deed not a ground to respondent to delay payment - In this case, respondent deposited entire balance sale consideration within extended time granted by trial Court - EVIDENCE ACT, Secs.63,33 & 145 - During pendency of appeal, appellant filed CMP to receive certain documents as additional evidence viz., Xerox copy of certified copy of agreement executed by respondent in favour of 3rd party, deposition of respondent as DW.1 in some other suit and proceedings of Land Reforms Tribunal - Documents filed with petition are Xerox copies of certified

copies and hence are copies of certified copies but not certified copies and they are not admissible in evidence, because they do not satisfy requirements of Sec.63 of Evidence Act - Deposition of respondent in a suit filed against him by purchaser of his land cannot be received in evidence, as it can only be used as contradiction as per Sec.145 of Evidence and deposition would be relevant only if it satisfies requirements of Sec.33 of Evidence Act and therefore these two documents cannot be received as additional evidence in this appeal - EVIDENCE ACT, Secs.91 & 92 - Oral agreement - Appellant admitted in reply notice about measuring of land which fact clearly shows that term was agreed between appellant and respondent and which is not inconsistent with the terms mentioned in agreement is also in existence - Neither Sec.91 nor Sec.92 of Evidence Act apply to facts of this case, because what is mandated by Sec.91 is that contents of document should be proved only by primary evidence, except in case in which secondary evidence is admissible and as Sec.92 of Evidence Act deals with exclusion of extrinsic evidence to contradict, vary, add to or subtract from terms of such document - Second proviso to Sec.92 clearly lays down that separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, can be proved - Respondent is entitled to relief of specific performance - Judgment and decree of trial Court - Justified - Appeal, dismissed. **Beemaneni Mahalakshmi Vs. Gangumalla Apparao2008(1) Law Summary (A.P.) 164 = 2008(1) ALD 375 = 2007(6) ALT 401.**

—Sec.34 - **INDIAN PENAL CODE,** Sec.302 - "Dying declaration" - Trial Court convicting accused basing on dying declaration - 'Dying declaration' - Principles governing dying declaration - Stated - Though a dying declaration is entitled to great weight, it is worthwhile to note that accused has no power of cross-examination and such a power is essential for eliciting truth as an obligation of oath could be - This is reason Court also insists that dying declaration should be of such nature as to inspire full confidence of Court in its correctness - Once Court is satisfied that declaration was true and voluntary undoubtedly, it can base its conviction without any further corroboration - It cannot be laid down as an absolute rule of law that dying declaration cannot form sole basis of conviction unless it is corroborated - Rule requiring corroboration is merely a rule of prudence. **Kalawati Vs. State of Maharashtra 2009(1) Law Summary (S.C.) 101 = 2009(1) ALD (Crl) 914(SC) = 2009(1) Supreme 800 = AIR 2009 SC 1932 = 2009 AIR SCW 1548.**

—Secs.34 & 134 - Trial Court found that evidence of two eye-witnesses was trustworthy, co-gent, consistent and reliable - Basing on testimony of said two eye witnesses trial Court convicted respondents/accused u/Sec.302, r/w Sec.34 IPC awarding capital punishment - District Judge sent documents to High Court under reference for confirmation of capital punishment imposed on respondents, accused - In appeal, High Court acquitted respondents and rejected reference made by trial Court for confirmation of death sentence - Hence, instant appeal by State - Minor omissions in Police statements are never considered to be fatal - Prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free - Main thing to be seen is whether those inconsistencies go to root of matter or pertain to insignificant aspects thereof - These discrepancies are due to normal

errors of observation, normal errors of memory due to mental disposition, shock and horror at time of occurrence and threat to life - It is not often that improvements at earlier version are made at trial in order to give a boost to prosecution case albeit foolishly - Therefore it is duty of Court to separate falsehood from truth - CHILD WITNESS - It would be doing injustice to a child witness possessing sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago - A child of tender age is always receptive to abnormal events which takes place in its life and would never for get those events for rest of his life - Child would be able to recapitulate correctly and exactly when asked about same in future - Sec.134 of Evidence Act specifically provides that no particular number of witness shall, in any case, be required for proof of any fact - It is well known principle of law that reliance can be placed on solitary statement of a witness, if Court comes to conclusion that said statement is true and correct version of case of prosecution - Courts are concerned with merit and statement of particulars witness and not at all concerned with number of witnesses examined by prosecution - Time-honoured rule of appreciating evidence is that it has to be weighed and not counted - Law of evidence does not require any particular number of witnesses to be examined in proof of given fact - However, where, Court finds that testimony of solitary witness is neither wholly reliable nor wholly unreliable, it may, in given set of facts, seek corroboration but to disbelieve reliable testimony of a solitary witness on ground that others have not been examined is to do complete injustice to prosecution - EVIDENCE OF RUSTIC WITNESS - A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements - Some discrepancies are bound to take place if a witness is cross-examined at length for days together - Therefore, discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion - To do so is to ignore hard realities of village life and give undeserved benefit to accused who have perpetrated heinous crime - Basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that evidence of such a witness should be appreciated as a whole - Rustic witness as compared to an educated witness is not expected to remember every small detail of incident and manner in which incident had happened more particularly when his evidence is recorded after a lapse of time - ORAL DYING DECLARATION - High Court committed serious error in disbelieving oral dying declaration made by deceased before his real brother implicating appellants as his assailants - Reason given by High Court for disbelieving oral dying declaration was that it was not mentioned by witness either in FIR or in his statement recorded u/Sec.161 of Cr.P.C - FIR need not be an encyclopedia of minute details of incident nor it is necessary to mention therein evidence on which prosecution proposes to relay at trial - Basic purpose of filing FIR is to set criminal law in to motion and not to state all minute details therein - Therefore, interest of justice would be served to respondent accused is sentenced to R.I for life - Commission of offence punishable

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u/sec.302, r/w Sec.34 IPC - Judgment rendered by High Court, set aside - Judgment of trial Court convicting respondents, restored. **State of U.P. Vs. Krishna Master 2010(3) Law Summary (S.C.) 42.**

—Secs.40 to 42, 45 and 112 - FAMILY COURTS ACT, Secs.7 & 8 - SPECIFIC RELIEF ACT, Secs.34 & 35 r/w Or.2, Rule 2 CPC - Plaintiff filed suit claiming that 1st defendant married 2nd defendant as per Hindu Vedic rites and customs and they lived together as man and wife for sufficiently long period enough and as a result of which relationship plaintiff born to 2nd defendant - In view of denial of relationship by 1st defendant denying his marriage with 2nd defendant and consequently his relationship with plaintiff - Hence present suit - JURISDICTION OF FAMILY COURT - u/Sec.7(1) explanation (e) of Act, Family Court cannot entertain any suit or a proceeding for a declaration as to legitimacy of any person without establishing validly any claim of marital relationship of parents - In face of denial of marital relationship by petitioner between him and 2nd defendant in suit he cannot suggest that Family Court should try suit brought out by plaintiff for declaration about his ligitimacy - Civil Court's jurisdiction to entertain suit of plaintiff is not barred u/Sec.8 of Act as Explanation (e) to sub-sec(1) of Sec.7 of Family Courts Act is not attracted in instant case - For establishing relationship of man and wife between 1st defendant and 2nd defendant, impleading 1st wife of petitioner herein and son born to him through her are neither proper nor necessary parties - If they have been impleaded suit would have been hit by principle of misjoinder of parties - DNA FINGER PRINTING TEST - No doubt it is fairly advanced scientific test - Before petitioner herein is ordered to undergo this test, it would be really necessary to understand scientific principles behind this test - DNA finger printing test undoubtedly offers credible material for establishing paternity of person - Supreme Court has occasion to consider efficacy and legal force behind conducting DNA finger printing test in several cases - Principles on subject have been summarized by Supreme Court with the following manner:

''1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the Court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the Court, the respondent refuses to submit himself to medical examination, the Court will be entitled to draw an adverse inference against him."

Therefore applying these principles to present case Court has erred in exercising its jurisdiction at present moment of suit in ordering for DNA test on petitioner - Present stage of suit is premature one for ordering DNA test - CRP.No.2961 allowed accordingly. **Davu Gopal Lunani Vs. Sri Siva Gopal Lunani 2014(1) Law Summary (A.P.) 22 = 2014(2) ALD 131 = 2014(1) ALT 396 = AIR 2014 29.**

—-Secs.40 to 43 - **INDIAN SUCCESSION ACT,** Sec.168 - Allegation of forgery of "Will" - Civil suit filed questioning genuineness of Will - Criminal compliant filed alleging that appellant forged Will - Indisputably, in a given case, a civil proceeding as also criminal proceeding may proceed simultaneously, cognizance in a criminal proceeding

can be taken by criminal Court upon arriving at satisfaction that their exists a prima face case - Ordinarily a criminal proceeding will have primacy over civil proceeding - Precedence to a criminal proceeding is given having regard to fact that disposal of a civil proceeding takes a long time and in interest of justice former should be disposed of as expeditiously as possible - In event of both are pending criminal matter should be given precedence - If primacy is to be given to a criminal proceeding, indisputably, civil suit must be determined on its own merit, keeping in view evidences brought before it and not in terms of evidence brought in criminal procee-ding - Axiomatically, if judgment of a civil Court is not binding on a criminal Court, a judgment of criminal Court will certainly not be binding on civil Court - Sec.43 of Evidence Act categorically stated that judgments, orders or decrees, other than those mentioned in Secs.40,41 & 42 are irrelevant, unless existence of such judgment, order or decree, is a fact in issue or is relevant under some other provisions of Act - Pendency of two proceedings whether civil or criminal however, by itself would not attract provisions of Sec.41 of Evidence Act - A judgment has to be pronounced - Genuineness of Will must be gone into - Law envisages not only genuineness of will but also explanation to all suspicious circumstances surrounding thereto besides proof thereof in terms of Sec.63(c) of Succession Act and Sec.68 of Evidence Act - Appeal, dismissed. **Syed Askari Hadi Ali Augustine Imam Vs. State (Delhi Admn.) 2009(2) Law Summary (S.C.) 110 = 2009(2) ALD (Crl) 358 (SC) = 2009(4) Supreme 222 = 2009 AIR SCW 3251 = AIR 2009 SC 3232.**

—Sec.45 - DNA Test - Plaintiff filed suit for partition among herself and defendants 1 & 2 contending that herself and defendants born to one "V" who is owner of schedule property - 2nd defendant contends that plaintiff and 1st defendant are destitute children brought up by "V" and not entitled for any share in plaint schedule property - Trial Court allowed Application filed by plaintiff directing 2nd defendant to give his blood for DNA test and deposit amount in to Court for said test - Petitioner-2nd defendant con-tends that DNA test cannot be ordered in a casual way and this is not a fit case for ordering DNA test - In this case, since there is a conflict whether plaintiff and 1st defendant were born to "V", it is essential to order DNA test which will set at rest dispute between parties regarding partition of suit schedule property - Order of trial Court - Justified - Revision petition, dismissed. **Marada Venkateswara Rao Vs. Oleti Varalakshmi 2008(1) Law Summary (A.P.) 244 = 2008(2) ALD 293 = 2008(2) ALT 348 = AIR 2008 AP 195.**

—Sec.45 - Suit filed for specific performance of agreement of sale - Trial Court allowed earlier application filed by petitioner/defendant to send agreement of sale to State Forensic Laboratory which had opined that it is not possible to offer any opinion on disputed portion in document - When matter posted for further evidence, petitioner/ defendant again filed petition to send document Truth Laboratory - Plaintiff opposed request contending that he not only had no faith in any private Agency accessible to one and all, and that successive applications for same relief ought not to be entertained - Trial Court passed impugned order holding that opinion of hand writing

expert is not conclusive on any issue and second application for same purpose cannot be entertained - Revision petitioner contends that impugned order is vitiated, as earlier expert stated that he cannot give any opinion, due to which present request became necessary and that request is not one of seeking a second opinion after opinion was already expressed by expert - Unfortunately expert of State Forensic Laboratory expressed helplessness in expressing any opinion on reference made to laboratory - Successive applications u/Sec.45 of Evidence for same relief are impermissible merely because opinion of expert is not favourable to a party - But facts of present case, are clearly distinguishable in sense that first expert did not express any opinion at all even though whatever expert says may be an opinion, it may be of valuable assistance in appreciating probabilities arising out of other evidence on record - It is appropriate to refer document to Central Forensic Science Laboratory for examination by concerned expert and his opinion - Impugned order of Senior Civil Judge, set aside - I.A allowed directing forwarding document to Central Forensic Science Laboratory - CRP, allowed. **S.Neelakantam Vs. Maharudraiah Swamy 2010(2) Law Summary (A.P.) 388.**

—Sec.45 - Petitioner/plaintiff filed suit for specific performance of agreement of sale - P.W.2 scribe of agreement though supported version of petitioner/plaintiff, he appears to have stated some thing different in cross-examination - Trial Court dismissed IA filed by petitioner/plaintiff u/Sec.45 of Evidence Act to send document to hand-writing-expert on ground that no contemporaneous document signed by 1st defendant is available and that signature on Vakalath and written statement are at variance with one on document - Exercise to be undertaken u/Sec.45 of Evidence Act is some what typical and it is only an expert is conversant with niceties of writing etc., that can express his view as to whether a particular writing or signature sent for comparison is that of person, who is alleged to have subscribed to it and existence of contemporaneous documents would certainly be helpful to expert - Mere absence of such helpful circumstances cannot render whole exercise u/sec.45 of Act impossible or untenable - Grounds mentioned by trial Court while rejecting Application cannot be sustained - Impugned order, set aside - Trial Court directed to send document to expert together with specimen signatures of 1st respondent/defendant - CRP, allowed. **Jonnalagadda Ravi Sankar Vs. Jakka Rama Krishna Rao 2012(3) Law Summary (A.P.) 132 = 2013(1) ALD 213 = 2013(3) ALT 798.**

—Sec.45 - Respondent filed suit against petitioner for recovery of certain amount on strength of promissory note executed in favour of father of respondent - Petitioner filed written statement contending that he paid amount in instalments and though father of respondent promised to destroy promissory note, present suit filed by putting fictitious date - Trial Court dismissed Application filed by petitioner to send promissory note to hand writing expert for determination of age of signature on document - Hence present revision - Mere determination of age even if there exists any facility for that purpose cannot, by itself determine age of signature - In a given case, ink, or for that matter pen,

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may have been manufactured several years ago, before it was used to put a signature - If there was a gap of ten years between date of manufacture of ink or pen and date on which, signature was put or document was written, document cannot be said to have been executed or signed on date of manufacture of ink or pen and it is only in certain forensic cases, that such questions may be come relevant - Order of trial Court justified - Petitioner is at liberty to adduce such evidence, as is in his possession to put forward his contention - CRP, dismissed. **Kambala Nageswara Rao Vs. Kesana Balakrishna 2014(1) Law Summary (A.P.) 64 = 2014(1) ALD 521 = 2014(1) ALT 636 = AIR 2014 AP 37.**

—Sec.45 - By order, learned Judge directed that C.R.P.Nos.1500 and 1572 of 2010 be placed before a Bench of two or more Judges for consideration - Division Bench that dealt with the matter opined that it should be considered by a Full Bench - That is how C.R.P.Nos.1500 and 1572 of 2010 along with connected C.R.P.Nos.4098 and 5008 of 2010 came to be placed before Full Bench.

In effect, question referred for decision by learned Judge was "whether the Court would be barred from sending disputed handwriting/signature to an expert if time gap between admitted signature and disputed signature was very long" - However, reference order passed thereafter by Division Bench, which led to matter being placed before Full Bench, went a step further - Significantly, very same learned Judge who had passed order presided over said Division Bench - It was brought to notice of Division Bench that another Division Bench of this Court had held in JANACHAITANYA HOUSING LIMITED Vs. DIVYA FINANCIERS that there can be no set time limit for filing an application for sending handwriting/signatures for comparison and expert opinion - This decision was interpreted by Division Bench to mean that even if there were no contemporaneous signatures, an application u/Sec.45 of Indian Evidence Act, 1872, could be moved - Referring to an earlier decision rendered by a learned Judge dating back to the year 1960 in ANNAPURNAMMA Vs. B.SANKARARAO, which held to effect that a belated application would be of no avail if there was a lapse of time between admitted signature and disputed signature, Division Bench opined that these two views needed to be reconciled, though they had no direct relation but had a bearing on question referred to Division Bench - This was basis for reference to a Full Bench.

Held, it is essentially within judicious discretion of Court, depending on individual facts and circumstances of case before it, to seek or not to seek expert opinion as to comparison of disputed handwriting/signature with admitted handwriting/signature u/Sec.45 of the Indian Evidence Act - Court is however not barred from sending disputed handwriting/signature for comparison to an expert merely because time gap between admitted handwriting/signature and disputed handwriting/signature is long - Court must however endeavour to impress upon petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards - That being said, there can be no hard and fast rule about this aspect and it would ultimately be for expert concerned to

voice his conclusion as to whether disputed handwriting/signature and admitted handwriting/signature are capable of comparison for a viable expert opinion - View expressed by Division Bench in JANACHAITANYA HOUSING LIMITED Vs. DIVYA FINANCIERS, as to stage of proceedings when an application can be moved by a party u/Sec.45 of Indian Evidence Act, continues to hold field and there is no necessity for this Full Bench to address that issue - Matters may be posted before Court concerned for adjudication on merits. **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu 2016(1) Law Summary (A.P.) 222 = 2016(2) ALD 1 = 2016(2) ALT 248.**

—Sec.45 - **CIVIL PROCEDURE CODE,** Sec.115 - Suit filed by 1st respondent basing on promissory note - Decreed - E.P filed for realization of decretal amount by sale of EP Schedule properties - Petitioner filed E.A claiming title to item II of E.P Schedule properties basing on registered Will - Pursuant to Application filed by 1st respondent/ DHR, Will sent to Private Hand-writing Expert who opined that Will was forged document - Executing Court dismissed E.A filed by petitioner with prayer to send very same document to any Govt. Handwriting Expert alleging that opinion of Private Handwriting Expert was incorrect and biased - Opinion expressed by Handwriting Expert is not conclusive on issue and it is always open to parties to raise their objections to findings/ conclusions recorded by Expert and it is also open to cross-examine expert and elicit information from him - In this case, revision petitioner instead of filing objections to said opinion wanted to send very same documents to another Handwriting expert for comparison - When there is direct evidence to prove a document Court need not refer to or relay upon opinion of Expert - Evidently, in this matter executant of Will is no more and decree holder alleging that document is not genuine, sought comparison of signatures on said document with admitted signatures of executant - This is a case where petitioner wanted comparison of signatures on very same set of documents which were earlier sent for opinion of expert to be sent for a second opinion by another Expert alleging that decree holder managed to get opinion in his favour - Such a course is impermissible under law - Application made by petitioner to send document for second time to another Expert rightly rejected by Court below - Impugned order, justified - CRP, dismissed. **N.Sreenivasulu Vs. N. Prakash Reddy 2009(2) Law Summary (A.P.) 80 = 2009(4) ALD 745 = 2009(2) APLJ 81 = 2009(4) ALT 543.**

—-Secs.45 & 47 – Handwriting/signature/fingure impression – Comparison by Court without assistance of Expert – Aspect – Discussed – Suit for partition of joint family property by daughters of deceased, father – Defendant, son contends that daughters are not members of joint family and that father and his brother have executed Wills bequeathing joint family property in his favour – Trial Court decreed suit expressing doubt regarding execution of wills of deceased father and his brother, commenting that defendant has not taken any steps to compare signatures - Evidence Act, Sec.45 – Court can compare disputed handwriting/signature /finger expression such comparison by Court without assistance of any Expert has always been considered to be hazardous

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and risky – Further even in cases where Court is constrained to take up such comparison, it should make a thorough study, if necessary with assistance of Counsel, to ascertain characteristics, similarities and dissimilarities – Necessarily, judgment should contain reasons for any conclusion based on comparison of thumb impression, if it chooses to record a finding thereon - Court should avoid reaching conclusions based on a mere casual or routine glance or perusal – Finding reached by trial Court on said aspect of Wills, cannot be sustained, especially as Expert opinion was not before Court - Impugned judgment of trial Court, set aside – Suit remanded for fresh consideration – Appeal, allowed. **Kovilapu Suryanarayana Vs. Jogi Thavitamma 2009(1) Law Summary (A.P.) 17 = 2009(2) ALD 371 = 2009(2) ALT 644.**

—Secs.45 & 73 - Suit filed for specific performance of agreement to sell - Decreed and same confirmed by first appellate Court - Single Judge of High Court set aside decree passed by both Courts and remanded suit for trial afresh - After conclusion of evidence on either side, trial Court dismissed petition filed by petitioner/defendant u/Sec.45 to send signature of P.W.3 on his deposition alongwith signature of plaintiff on plaint - Respondents contend that Application was made with an evil design to protract litigation and to harass them - In this case, if really P.W.3 is fictitious person, said fact can be established by other means, such as cross-examining P.W.3, adducing positive evidence regarding false identity of P.W.3 and like - Even if opinion of expert indicates that signatures of P.W.3 on his deposition and signatures of plaintiff on vakalth and GPA are not identical, his evidence being only an opinion evidence, it is not obligatory on part of Court to relay on said evidence - That apart, Court can arrive its own opinion by comparing respective signatures in exercise of its power u/Sec.73 of Evidence Act - Whenever a signature is disputed, it is not obligatory on part of Court to send same for expert's opinion at request of a party, if there is possibility of establishing execution of a particular document or identity of an individual by some other means - Absolutely there are no bonafides on part of revision petitioners in filing Application seeking expert's opinion as per provisions of Sec.45 of Evidence Act - CRP, dismissed. **Mohd. Abdul Hakeem Vs. Naiyaz Ahmed 2010(3) Law Summary (A.P.) 9.**

—Secs.45 & 73 - Respondent/plaintiff filed suit for specific performance basing on agreement of sale against petitioners/defendants contending that she is ready and willing to pay sale consideration, petitioners did not come forward to receive same and therefore, she has filed suit - After evidence of defendant closed and when matter adjourned for arguments, petitioner filed Application u/sec.45 of Evidence Act to send agreement of sale to Finger Print Expert for comparison, alleging that thumb impression appeared on it is not that of 2nd petitioner herein and that it is a forged one - Trial Court dismissed petition observing that no petition to reopen evidence of petitionrs(defendants) is filed and therefore, petition is not maintainable and that application filed u/Sec.45 of Evidence Act cannot be ordered as a matter of course and when Court feels that it is necessary to send document, then only Court may

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allow application and that even if there is expert's opinion, much importance need not be given to same - When signature or thumb impression on a document is denied, it has to be proved as a fact whether signature or impression is that of person who had alleged to have put his signature or thumb impression - While passing orders on interlocutory applications, generally, Court should avoid making comments on merits of case and as to whether evidence adduced by one party is trustworthy or not and whether evidence of any particular witness is shaken or not, such observations appear to be not necessary and more over, create a reasonable apprehension in mind of party and therefore it is always better to avoid such comments - Though power of Courts to send document to an expert u/Sec.45 of Act is discretionary power, Courts have to exercise discretion in a just and reasonable manner and if there are any lapses on part of party, Court may consider those lapses but merely because there are some latches or some delay on part of party, that should not come in way of rejecting their claim.

In this case, respondent also could not show any provision to file an application to reopen case - When an application has been filed to adduce further evidence it is deemed that request is made to reopen matter and there is no need to file a separate application to reopen case.

Since it appears that by not sending document to hand writing expert, right of 2nd petitioner is held to be affected - Impugned order, set aside - Trial Court directed to send disputed matter to Handwriting Expert at an early date - Revisions, allowed. **Kolli Ranga Rao Vs. Kolli Varalakshmi Janani, 2011(1) Law Summary (A.P.) 349 = 2011(3) ALD 547 = 2011(4) ALT 252.**

—Secs.45 & 73 - Suit for specific performance of agreement of sale - After completion of evidence petitioner/defendant filed Application u/Sec.45 of Evidence Act for sending agreement of sale for opinion of Handwritting Expert - Trial Court dismissed Application holding that according to certain judgments of High Court Expert's opinion does not bind Court and that Court can arrive at its own conclusion on genuineness or otherwise of documents based on evidence on record and also its own opinion on comparison of signatures u/Sec.73 of Evidence Act - Petitioner contends, placing reliance on judgments of Supreme Court that comparison of signatures by Court itself is a risky proposition and therefore trial Court ought to have sent said document for an expert - In this case, trial Court has observed that there is already evidence of P.Ws.1 to 4 available on record and from this it is clearly implied that trial Court does not want to relay solely upon comparison of signatures in adjudicating upon nature of document but it would like to appreciate evidence also before rendering conclusive finding on document - Trial Court exercised its sound discretion in declining to send document for Expert's opinion - Order of trial Court justified - CRP, dismissed. **Chidara Uma Maheshwar Rao Vs. Methuku Janardhan 2013(3) Law Summary (A.P.) 49 = 2013(6) ALD 314.**

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—Secs.45 & 73 - **CIVIL PROCEDURE CODE,** Or.21, Rules 58 and 97 and Sec.115 - Respondents having obtained decree for possession in suit filed E.P for delivery of possession against respondents, JDRs - Petitioner filed claim petition claiming that he is tenant in decree schedule property, u/Sec.45 of Evidence Act to send documents to Expert for comparison of signatures, after completion of enquiry in so called claim petition when same posted for arguments - Lower Court while exercising discritionary jurisdiction, came to conclusion that there was no necessity for sending documents to expert as Court itself can undertake such comparison to come to opinion of its own in exercise of power u/Sec.73 of Evidence Act - Comparison of hand writing or signature is not a science at all much-less any scientifc approach in making such comparison and it is only an art which has to be acquainted by experience - So far as judicial Officers in State of A.P., are cocerned they are provided with subject of introduction to comparison of signatures and hand writing during their basic induction course at time of their induction into subordinate judiciary after their selection - Judicial Officers are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on above subject in A.P. Judicial Academy, it is not as if Judicial Officers undertake power u/Sec.73 of Evidence Act in a gullible manner and they are provided with basic confidence in undertaking this subject - It cannot be said that lower Court which is a Court presided over by Senior Subordinate Judicial Officer cannot undertake work of comparison of signature in exercise of power u/Sec.73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter - Judicial discretion exercised by lower Court in refusing to send disputed documents and admitted documents to expert for comparison of signatures - Justified - Revision petition, dismissed. **J.Krishna Vs. Maliram Agarwal 2013(1) Law Summary (A.P.) 360 = 2013(4) ALD 568 = 2013(4) ALT 393 = AIR 2013 AP 107.**

—Secs.45,74,76,77 & 79 - **BANKER'S BOOKS EVIDENCE ACT, 1891,** Secs.2(3) & 4 - Petitioners filed suit seeking cancellation of three sale deeds executed by late A.V. and R. A alleging that defendants forged thumb impressions in said sale deeds and got them registered. - - Trial Court dismissed application filed by petitioners/ plaintiffs to re-open case after closure of their evidence - Pursuant to directions of High Court in CRP petitioners having got two Bank documents marked through Manager in evidence as Ex.11 & 12 and filed Application u/Sec.45 of Evidence Act, r/w Sec.151 CPC to send disputed sale deeds for expert opinion as to thumb impressions therein in comparison with those affixed by A.V and R.A in Exs.A.11 & 12 - Trial Court allowed Application and directed documents to be forwarded to finger print expert for opinion - Single Judge of High Court, allowed CRP, and set aside order of trial Court - Hence present Review petition filed by petitioner/plaintiff - Documents, Ex.11 and 12 being record of Bank's usual and ordinary business transaction, falls squarly within ambit of Bankers document as defined in Sec.2(3) of Act, 1981 in terms of Secs.4 of said Act - Respondents defendants contend that they denied execution of

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Ex.A1 & A12 by A.V. and R.A and affixed their thumb impressions therein and once document records that transactiion reflected there in was between bank and person who affixed his/her thumb impression, prima facie a presumption would operate to effect that thumb impression was that of person who allegedly entered into transaction and this presumption however would be rebuttable in view of Sec.4 of Act - It is for respondent/defendants to adduce necessary evidence to rebut this presumption, but thumb impressions in these bank documents cannot be discarded on bald assertion of defendants that they disputed genuineness thereof - Single Judge while allowing CRP did not consider import and impact of presumption in law which attached to Bank documents, Exs.A11 & 12 , with which thumb impressions in disputed documents were sought to be compared - Consequently it was not a case, where request for examination by an expert could be rejected at threshhold on ground that opposite party disputed genuineness of thumb impressions in bank documents - No doubt presumption which attaches in his documents is not absolute and it would be open to opposite party to dislodge such a presumption by adducing evidence to contrary - However, such a party cannot shut out examination of these documents by expert by a bald assertion that it disputes genuineness thereof - Order under review reflected an apparent error - Review, allowed - CRP, dismissed. **Anapalli Bhaskar Vs. Gudi Venkateswarlu, 2013(3) Law Summary (A.P.) 75 = 2013(6) ALD 83.**

—Secs.45 and 112 - Revision petitioner filed suit against respondent claiming a sum of Rs. 3,00,000/- towards educational and marriage expenses claiming herself as daughter born to the respondent through her mother Tulasi - Respondent resisted the suit questioning the paternity of the revision petitioner and he filed I.A. No. 191 of 2013 requesting the court to refer revision petitioner and her mother Tulasi for DNA Test - Trial Judge, on a consideration of contentions and rival contentions of both parties and also the law on subject, allowed the application and directed the revision petitioner and her mother to go for DNA test - Aggrieved by the decision, the present revision is preferred - Held, In Dipanwita Roy Vs. Ronobroto Roy case, when the Family court rejected the request of the husband for DNA Test of his wife, High Court of Calcutta in its civil revisional jurisdiction allowed the petition and ordered for DNA test and that was challenged in the Supreme Court and the Supreme Court upheld the order of Calcutta High Court - While directing for DNA test, Calcutta High Court put some conditions and the Honourable Supreme Court upheld those conditions - In view of the decision in the above case, the contention of revision petitioner with regard to Section 112 of Indian Evidence Act cannot be sustained - Second objection contended by the appellant is that the petition is hit by doctrine of estoppel - Revision petitioner submitted that mother of revision petitioner filed M.C.No. 18 of 1993 and in that M.C. a similar petition was filed by respondent herein and that petition was dismissed on 27-04-1995 and no revision was preferred against the said order by the respondent herein and therefore, he is estopped from again filing of such application - In the decision relied on by the advocate for revision petitioner, difference between estoppel

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and res judicata was interpreted and held that if an issue is decided against a party that party is estopped from raising the same in a later proceedings - As rightly pointed out by the respondent, that decision has no application herein and the facts and parties are entirely different - For these reasons, this Civil Revision Petition is dismissed as devoid of merits. **Manjudari Neerada @ Radhi Vs. M.P.Narasimha Rao 2015(1) Law Summary (A.P.) 452 = 2015(3) ALD 596 = 2015(4) ALT 157.**

—-Sec.45, 112 &114 (h) – DNA Test - In this case, Petitioner and respondent are man and wife - Petitioner filed original petition before trial court for grant of divorce by dissolution of marriage between parties and in that original petition he had taken plea that he is not responsible for birth of male child by respondent and that he had no access to respondent who is mother of said male child and that respondent had conceived male child on account of illicit intimacy with one MS and that therefore it is in the interest of justice, to refer parties and male child and respondent to undergo DNA test – Respondent wife resisted said application filed by petitioner denying allegations and that respondent cannot compel to undergo DNA examination and that son is aged 3 years and after lapse of 3 years for first time the allegations are made - Trail court have considered pleadings dismissed applications of petitioners husband by following a decision of Supreme Court.

This court is in agreement with arguments of petitioner/husband, but for DNA test it would be impossible for petitioner husband to establish and confirm the assertions made in pleadings – Therefore this court is satisfied that a direction can be issued as prayed for in petition of husband - CRP allowed and impugned order is set aside - Trail court shall accordingly direct the petitioner and child of respondent to undergo DNA test. **Govindula Sathaiah Vs. Govindula Manjula 2016(2) Law Summary (A.P.) 86 = 2016(3) ALD 572.**

—Secs.50 & 114 - Scope of presumption that could be drawn as to relationship of marriage between two persons living together - Stated - Provisions of Secs.50 & 114 refer to common course of natural events, human conduct and private business - It is clear that act of marriage can be presumed from common course of natural events and conduct of parties as they are borne out by facts of particular case - Law presumes in favour of marriage and against concubinage when a man and women have cohabited continuously for number of years - Partners lived together for long spell as husband and wife there would be presumption in favour of wedlock - Presumption is rebuttable, but a heavy burden lies on person who seeks to deprive relationship of legal origin to prove that no marriage took place - Law leans in favour of legitimacy and frowns upon bastardy. **Tulsa Vs. Durghatiya 2008(1) Law Summary (S.C.) 77.**

—Secs.63,65 & 66 - “Secondary evidence” - Trial Court dismissed Application filed by petitioner/plaintiff seeking permission to mark Xerox copy of statement of son of respondent/defendant - Petitioner contends that trial Judge had not understood distinction between primary evidence and secondary evidence and that if a document is not hit

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by a provisions of Secs.35 & 36 of Stamp Act same to be received by way of evidence and to be given exhibit mark subject to any objection, which may be decide at stage of final hearing - Respondent/defendant contends that document in question being a Xerox copy containing some calculations, same being undated and unsigned, trial Judge arrived at correct conclusion in disbelieving same and holding it as inadmissible - Xerox copy of such statement or conclusions may be unsigned or undated definitely is not primary evidence and it is secondary evidence - It is true that respondent/ defendant specifically denied very existence of original document much less custody of such document - In every such case necessarily Court cannot come to conclusion that such secondary evidence is not genuine and not *bona fide* - It would be just and proper to go into these aspects at appropriate stage - Since parties are expected to let in oral evidence also in this regard and such parties also would be further cross- examined in this regard it may be just and proper to permit petitioner to mark document in question by way of secondary evidence subject to condition of trial Judge considering of other aspects at appropriate stage while deciding suit - Impugned order, set aside - CRP, allowed. **M.Aruna Vs. Trilok Kumar Sanghi 2009(2) Law Summary (A.P.) 140 = 2009(3) ALD 553 = 2009(1) APLJ 95(SN).**

—Secs.63,65 & 66 - "Secondary evidence" - Respondent/plaintiff filed suit for specific performance of agreement of sale - When suit commenced for trial, respondent sought to file Photostat copy of agreement of sale, pleading that original document was handedover to Advocate for preparation of notice and for drafting pleadings and that inspite of repeated requests said Advocate did not return original - Inspite of objection raised by petitioner/defendant, trial Court overruled objection and paved way for marking of Photostat copies of agreement of sale and endorsements made thereon - Petitioners contend that Sec.66 of Evidence Act enables a party to adduce secondary evidence, only when a party, who, in natural course of events, is supposed to have custody of document in original, refused to furnish same, inspite of demand and that Advocate engaged by party cannot be said to be a person, to have natural custody of document, in relation to suit transaction - When there is serious dispute as to genuinity of fourth endorsement, on document, it becomes just impossible for Court, to verify plea, by examining photostat copy - From perusal of Sec.66, it is evident that normally a notice to produce original of document is to be issued to "party" - However, if one takes into account language employed in Sec.65 , it is possible that secondary evidence can be adduced even where person, in whose custody original is, not a party to suit - In this case, person who is said to be in possession of original of agreement of sale, is an Advocate who is not a party to suit - Mere statement by respondent/ plaintiff that a notice was issued to said Advocate for production of original, ad that he did not comply with request, does not suffice, to enable him to adduce secondary evidence and it becomes essential and necessary to secure presence by taking summons from Court - If party, who intends to adduce secondary evidence, is relieved of obligation to summon such person to prove factum of original being in custody

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of such person, very rigor against secondary evidence contained in various provisions including Sec.65, may get diluted - Nature of burden as regards issuance of notice for production of original, substantially differs from a case, where such a person is a party to suit, and one where he is not a party - Trial Court did not bestow its attention to this aspect Trial Court directed to consider matter afresh - Impugned order, set aside,Revision - allowed. **Manepalli Venkata Sreerama Murthy Vs. Garlapati Lakshmana Swamy 2010(2) Law Summary (A.P.) 447.**

—Secs.63,65, 68 & 69 – "Secondary evidence" - Petitioner filed suit against Respondents for partition and separate possession basing on partition deed and a Will – Respondents/ defendants filed written statement stating that originals of deed of partition as well as Will were lost on way to office of their Counsel and therefore enclosed Xerox copies of deed of partition and Will - Petitioner/plaintiff filed a Memo with a prayer to refuse to receive Xerox copies of deed of partition and Will for which respondent filed counter - Trail Court passed a detailed order holding that Xerox copies of deed of partition cannot be received as Certified copy thereof can be obtained, but Xerox copy of Will can be received as "Secondary evidence" by observing that respondents have laid adequate foundation in the written statement for receiving secondary evidence of Will – Hence petitioner/plaintiff filed present Revision - Sec.63 of Evidence Act defines types of secondary evidence and Sce.65 stipulates conditions under which secondary evidence of Document can be received, where parties seriously dispute very existence of original, of which, secondary evidence is sought to be adduced, thorough scrutiny and verification are to be undertaken - Way back 1954, Supreme Court held that laying of foundation for receiving secondary evidence would take in its fold, steps such as furnishing of contents of documents, persons who scribed it, persons who attested it and details of persons who had possession of document immediately before it was lost - If those tests are applied to present case, respondent/defendant would miserably fail - Will is Typical Document – It is required to be proved u/Secs.68 and 69 of Evidence Act and even if no opposition is offered by other party, it is only on examination of attestors, that document can be acted upon - In this case trail Court proceeded on assumption that certain paragraphs in written statement wherein disputed Will was referred to would constituted foundation – However same does not accord with judgment of Supreme Court - Order of Trail Court set aside - CRP Allowed. **Suddapalli Lakshi Saroja Vs. Vishnu Bolla Murali Krishna, 2014(1) Law Summary (A.P.) 296.**

—Secs.63 & 66 - "Secondary evidence" - "Xerox copy of agreement" - Petitioners filed suit for relief of specific performance of agreement of sale - After commencement of trial in course of evidence on behalf of petitioners they intended to bring on record said agreement - Since respondents/defendants not acceded request of petitioners after receiving notice u/Sec.66 of Evidence Act - Application filed requesting Court to receive xerox copy of said agreement as "secondary evidence" - Trial Court dismissed said Application - Hence present Revision - If proposed secondary evidence conforms to tests u/sec.63 of Act, Application needs to be allowed - Once it is shown that

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preliminary steps contemplated u/Sec.66 are complied with, question as to whether document so received can be treated as relevant or is admissible, can certainly be decided at a subsequent stage - Question pertaining to custody of original and efforts made by consent party to procure same, can be subject matter of evidence - In this case, respondent/defendant does not dispute existence of agreement - Hence, impugned order of trial Court, set aside - Application allowed subject to proof of relevance and other conditions of parties - CRP, allowed. **Koneru Srinivas Vs. G.Sarala Kumari 2012(3) Law Summary (A.P.) 305.**

—Sec. 65 - This Revision Petition is filed challenging order in Court of Senior Civil Judge, City Civil Court, permitting respondent to mark photo copies of three documents.

Held, Court below, by impugned order, allowed said Application simply extracting Section 65 of the Indian Evidence Act, 1872 and holding that photo copies are admissible in evidence - No reference is made to Sec.66 of Act regarding procedure laid down therein, to be followed by a party, who wishes to produce secondary evidence, alleging that primary evidence is in custody of the other side.

Therefore, impugned order cannot be sustained and it is accordingly set aside - Civil Revision Petition is therefore allowed. **B.Ahsok Vs. G.Balaji, 2016(1) Law Summary (A.P.) 76 = 2016(2) ALT 694 = 2016(1) ALD 55.**

—-Sec.65 - This appeal by special leave is directed against order passed by learned Single Judge of High Court who set aside order rendered by trial court permitting the defendant-appellant to lead secondary evidence in Civil Suit filed by respondent no.1 - Short question that arises for consideration by this Court is as to whether the High Court is justified in reversing the order passed by the Trial Court allowing defendant-appellant to lead secondary evidence of the contents of the documents.

Held, it is well settled that if a party wishes to lead secondary evidence, Court is obliged to examine the probative value of document produced in the Court or their contents and decide question of admissibility of a document in secondary evidence - At same time, party has to lay down the factual foundation to establish the right to give secondary evidence where original document cannot be produced - It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

After considering entire facts of case and evidence adduced by the appellant for the purpose of admission of the secondary evidence, this Court in of the view that all efforts have been taken for the purpose of leading secondary evidence - Trial court has noticed that the photocopy of Exhibit DW-2/B came from custody of DEO and the witness, who brought the record, has been examined as witness - In that view of matter, there is compliance of provisions of Section 65 of the Evidence Act - Merely because the signatures in some of documents were not legible and visible that cannot be a ground to reject secondary evidence

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- In our view, trial court correctly appreciated efforts taken by appellant for the purpose of leading secondary evidence.

For the reasons aforesaid, impugned order passed by High Court cannot be sustained in law - Appeal is accordingly allowed and order passed by High Court is set aside. **Rakesh Mohindra Vs. Anita Beri 2016(1) Law Summary (S.C.) 33 = 2015 AIR SCW 6271 = 2016(1) ALD 19 (SC).**

—Sec.65 - CIVIL PROCEDURE CODE, Sec.151 - "Secondary evidence" - Trial Court allowed Application permitting defendant to lead secondary evidence in respect of sale deed by producing only attested copy of sale deed as original was not traced in Tahsil office - Plaintiff/Revision petitioner contends that there was no sale deed in existence as claimed and report of MRO did not disclose loss or misplacements or destruction of original sale deed or where document so lost etc., - In this case, trial Court observed that unless original sale deed had been produced before Tahsildar, production of attested copy obtained from original document through mechanical process could not have been possible and it also observed that defendant himself never claimed that original sale deed was lost or destroyed in his custody to obligate him to explain such loss or destruction - Plaintiff contends that when he is contending document to be concoted and fabricated for purpose of suit in absence of any proof of submission of original sale deed before Tahsil Office, trial Court should not have permitted secondary evidence and that Sec.65 of Evidence Act has no application when MRO never stated that original sale deed was filed before him or that it was misplaced and when it was not proved that original document was compared with copy, any secondary evidence cannot be received - In this case, prima facie, conclusions of trial Court that there is justification for permitting defendant to lead secondary evidence of document cannot be considered to be unfounded and improper - Even trial Court in the application made it clear in its order that plaintiff is at liberty to question document, if marked during course of trial - Any evidence, which defendant produces by way of secondary evidence concerning existence, condition and contends of document will be subject to being questioned on all permissible grounds by plaintiff and will be further subject to appreciation by trial Court of admissibility, credibility and acceptability of such evidence sought to be produced as secondary evidence - No prejudice caused to petitioners - Impugned order, justified - CRP, dismissed. **Syed Haji Pasha Vs. Syed Ahmed 2010(1) Law Summary (A.P.)293.**

—Secs.65 & 66 - REGISTRATION ACT, Secs.17 & 49 - STAMP ACT, Secs.2 (14) & 32 - "Secondary evidence" - Suit for eviction - When plaintiff wanted to mark Xerox copy of agreement, defendant resisted on ground that document is fabricated and cannot be marked without producing original and that plaintiff has to pay stamp duty and said document also requires registration - Trial Court receiving document as 'secondary evidence' subject to condition of payment of stamp duty and penalty - Sec.2(14) of Stamp Act defines "INSTRUMENT" as "instrument" includes every document by which any

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right or liability is, or purpose to be, created, transferred, limited, extended, extinguished, or recorded - Xerox copy document in question would not fall within meaning of *instrument*, said document cannot be received as evidence even on condition of Stamp Duty and Penalty for reason that there is no question of such document being sent either for purpose of impounding or collecting stamp duty and penalty on such document, since such document would not fall within definiton of instrument - Impugned order, set aside - CRP, allowed. **Sunkara Surya Prakash Rao Vs. Madireddi Narasimha Rao 2009(1) Law Summary (A.P.) 356 = 2009(3) ALD 388.**

—- Sec.65(a) - A bare statement made on affidavit by a party would be sufficient proof of fact that document has been lost or not traced out - There can never be an absolute proof of fact that document had in fact been lost - A statement of the person that document was lost and inspite of his best efforts he could not trace out document would be sufficient evidence of fact that document had been lost - Learned Court below in my view has placed a high degree of proof on petitioners in respect of requirement u/Sec.65(a) of Evidence Act and order passed by learned Court below rejecting to receive photocopies of letters as secondary evidence in my view is not appropriate having regard to facts and circumstances of present case - Mere admitting secondary evidence cannot relieve petitioners from proving the contents of documents and the respondent can always take objection as to proof of the contents of the documents and their probative value - For foregoing reasons, order passed by learned Court below dated 01.11.2013 in I.A.No.740/2013 in O.S.No.1/2010 is liable to be set aside and accordingly the same is set aside - Civil Revision Petition is allowed. **Ramakrishna Constructions Vs. The Singareni Collieries Co. Ltd. 2014(3) Law Summary (A.P.) 274 = 2015(1) ALD 427 = 2015(3) ALT 494.**

—Sec.65(c) and 63 - **NOTARIES ACT, 1952,** Sec.8(1) (a) - "Secondary evidence" - Suit filed for specific performance of agreement of sale - Since plaintiff lost original agreement of sale while shifting his house, he filed petition seeking permission to receive notarized copy of agreement of sale as secondary evidence - Petitioner/Defendant filed counter stating that main suit for specific performance of contract filed basing on a fake, forged and created agreement of sale and that defendants neither sold schedule property to any body nor signed not put their impressions on any document and that they have not received any consideration nor issued any receipt and that when original agreement was misplaced and not traced, how Notary attested its copy without seeing original is not explained - Trial Court allowed petition holding that prima facie, petitioner had shown that original agreement has been lost beyond recovery while shifting his house - It is clear from Sec.8 (1) (a) of Notaries Act that a Notary can not only certify or attest execution of any instrument, but also verify and authenticate execution of instrument - Point, whether a Notary is competent to attest copy of document basing on original document, is a matter to be decided after adducing evidence but not at this stage - Opportunity shall be given to parties to produce

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necessary evidence with regard to leading secondary evidence - In this case, copy of agreement of sale is attested by Notary as photostat copy of original – Photostat copy of document is admissible in evidence, provided it is certified as true copy - Whether Xerox copy of document comes within meaning of Sec.63 (3) of Act is a matter to be decided and resolved after adducing evidence but not at stage of threshold - Trial Court rightly observed that Court is entitled to reject any document which is irrelevant and inadmissible at any stage of case - In this case, since document sought to be received as secondary evidence is suit document necessary requirements that are to be followed under law are required to be proved beyond preponderance of probability - It can be done ordinarily after adducing evidence - Trial Court allowing petition - Justified - CRP, dismissed. **Sattamma Vs. Ch.Bhikshpati Goud @ Ch.Bhupal Goud 2010(2) Law Summary (A.P.) 43.**

—Sec.68 - This appeal is filed by sole plaintiff in O.S.No.3 of 1977 on file of Subordinate Judge, - Suit was filed for relief of partition and separate possession in respect of items 1, 2 and 3 of plaint A schedule properties, against the defendants - Plaintiff presented suit as an indigent person, and after due enquiry, trial Court accorded permission - Trial Court passed a preliminary decree, through its judgment, dated 30.06.1989 - Aggrieved by that, defendant No.3, his sons - Defendants 7, 8 and 9 preferred A.S.No.1994 of 1989 - A learned Single Judge of this Court allowed appeal, through his judgment, dated 27.03.2000, and has set aside the preliminary decree passed by the trial Court - Hence, this L.P.A - Held, lawmakers have insisted that a Will must be attested and the proof thereof shall be through a separate mechanism - Section 68 of Act mandates that at least one of two attestors of Will must be examined - Even where such attestors were not alive, any person who is acquainted with writing or signature of such person can be examined as a witness - 1 st defendant did not take any steps, in this regard - Even if a person, who is contesting Will, does not dispute fact that it was in handwriting of testator and it was written and signed by testator, he can successfully oppose disposition made thereunder, if it is demonstrated that Will was not attested. Failure to take steps that are stipulated under Section 68 of the Act would leave Will in state of an unattested document - From this point of view also, Ex.B.5 cannot be said to have been proved - Excessive reliance was placed by learned Single Judge upon fact that Ex.B.5 was referred to with approval in the compromise decree in Ex.B.26. Admittedly, plaintiff was not a party to that suit - Added to that, no finding was recorded about Ex.B.5 in Ex.B.26 on touchstone of Section 68 of the Act - Viewed from any angle, Ex.B.5 was not proved - 1st defendant, however, projected a plea that the claim of plaintiff is on basis of succession and unless suit is filed within three years from the date, on which the succession opened, it is barred by limitation - Trial Court has rightly repelled that contention - In result, Letters Patent Appeal is allowed and judgment of learned Single Judge in A.S.No.1994 of 1989 is set aside - Preliminary decree passed by trial Court is upheld. **Anantharaju Venkata Seshamma Vs. Rajupalem Seshavataram 2015(3) Law Summary (A.P.) 460**

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—Secs.68, 69- Will - Signature of the executant is disputed and help of forensic lab is sought by the petitioner which was dismissed by the trial court - Held, examination of attestors would only bring about compliance with the requirement u/Sec. 68 of the Act, beyond that it does not add finality to the genuinity of the Will - Trial Court directed to send the Will along with document containing the undisputed signature of the executants of the said document to the Forensic Science Lab - Revision Petition Allowed. **Mathangi Devasahayam Vs. Jetty Manikyamma 2014(2) Law Summary (A.P.) 421 = 2014(5) ALD 741 = 2014(6) ALT 81.**

—Secs.73 & 45 -Petitioner/plaintiff filed suit basing on sale deed contending that he purchased said property from defendant under document, sale deed, executed by defendant which is filed alongwith suit - Petition filed by plaintiff requesting to obtain thumb impressions and signatures of plaintiff/defendant in presence of their counsel in open Court and get them examined and compared by Regional Forensic Laboratory along with signatures and thumb impressions in sale deed - Defendant resisted request contending that alleged sale deed is a fabricated document and even if registered sale deed is proved to have been executed by him, still said suit is not maintainable - Trial Court dismissed petition by coming to a conclusion that Court itself can looking to disputed signatures and thumb impressions and come to a conclusion by its own knowledge as per Sec.73 of Evidence Act and mere filing of petition to send document alongwith signatures and thumb impressions of parties obtained in Court need not be followed at first instance - In this case, plaintiff asserts its execution by defendant, while defendant denies same and reliefs to which parties are entitled and questions in controversy in suit are solely based on proof or otherwise of execution of document in question - In a case, like present one, it cannot be said that Court itself can come to a just conclusion by comparing thumb impressions and signatures on disputed document and those obtained in open Court and any such comparison with naked eye by Court may be an unsafe experiment in attempting to arrive at truth - In present case, exercise u/sec.45 of Act has to be permitted to be undertaken to have comprehensive adjudication of questions in controversy between parties and any exercise u/Sec.73 Evidence Act may not meet requirements - Order of trial Court, set aside - I.A, allowed - Trial Court directed to obtain signatures and thumb impressions of plaintiff and defendant in presence of their counsel in open Court on an appointed date and forward to SFCL - CRP, allowed. **Thumu Srikanth Vs. Akula Babu 2010(3) Law Summary (A.P.) 85.**

—Sec.92(4) - Let in evidence contrary to contends of registered title deed - Appellants/ plaintiffs filed suit for permanent injunction and declaration of title - 1st defendants contends that plaintiffs misrepresented and made him to believe that they have sold a particular plot - Trial Court dismissed suit - On appeal trial Court dismissed appeal - Hence plaintiffs filed present second Appeal - Appellants contend that Sec.92 proviso 4 of Evidence Act excludes evidence of oral agreement altering terms of registered sale deed Ex.A-10.

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"....Subsequent oral arrangement set up by defendant/appellant cannot be proved by perol evidence, such an evidence is not admissible in evidence".

High Court in second Appeal did not re-consider or reassess evidence let in by both parties in order to come to its own findings on facts - Even if concurrent findings on facts recorded by Courts below are acceptable on evidence, law does not permit such evidence in view of proviso (4) to Sec.92 of Evidence Act and that findings on facts recorded by Court below on such inadmissible and irrelevant evidence become illegal - Respondent further contend that having played fraud in drafting Ex.A10, sale deed in favour of 1st defendant, plaintiffs cannot take advantage on their own fraud - A person who is guilty of fraud cannot take advantage of his fraud in Court of law - In this case, it cannot be said that suit site of Ac.0-7.5 cents is unspecified - Plaintiffs have given boundary measurements for said Ac.0-7.5 cents and also appended plan which is now attached to decree with description, in order to localise suit land - Therefore it cannot be contended that decree becomes inexecutable even if it is granted as prayed for by plaintiffs - In view of discussion of material aspects of case and particularly legal position which follows that decisions of both Courts below are unsustainable in law - 1st defendant cannot have any legal difference to oppose plaintiffs claim of Ac.0-7.5 cents of suit land - Decrees passed by Courts below, set aside - Decree granted in favour of plaintiffs/appellants as prayed for in plaint. **Mallu Venkatramana Reddy Vs. Gandluri Govinda Reddy, 2013(1) Law Summary (A.P.) 201 = 2013(4) ALD 23 = 2013(2) ALT 550.**

—Secs.100, 101,102,103 & 104 - **CIVIL PROCEDURE CODE,** Or.8, Rules 3,4,5 and Or.6, Rule 2 and Or.37, Rule 3 - "Burden of proof" - Suit based on Accounts - Plaintiff/Appellant/Firm filed suit against defendants/respondents/agriculturists for recovery of amounts taken by them from time to time and at all transactions were entered in books of Accounts acknowledged by defendants under signature in corresponding account entries in accounts books of plaintiffs - Since defendants refused to comply with request of plaintiffs to pay dues plaintiffs instituted suit against respondent/defendants - Respondents/defendants took preliminary objection that suit not maintainable and that Father of defendant was customer of plaintiffs Firm and that defendants had nothing to do with plaintiffs - Trial Court decreed suit - 1st appellate Court after considering contentions of both parties allowed, appeal and modified decree of trial Court - Defendants preferred 2nd appeal - Single Judge held that averments pleaded in plaint and evidence in support thereof at variance with each other and evidence did not substantiate claim and onus to prove Accounts having not been discharged judgments below were unsustainable - Hence present appeal - High Court observed that findings of Courts below are perverse and accordingly jurisdiction u/Sec.100 of CPC could be exercised - Perversity has been noticed on two counts, namely in correct placing of onus on defendant to prove that signatures had been forged more so when there was denial of same and second variance in pleadings and evidence amounts in question were not appositely taken note of - Hence it is required to see whether

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approach of Single Judge in annulling judgments of Courts below is correct on aforesaid grounds which according to him, reflect perversity of approach - There is no plea what so ever as regards denial of signature or any kind of forgery or fraud - High Court observed that plaintiffs should have examined handwriting expert - Plaintiffs had asserted that there was an acknowledgment under signature of defendant and there was no denial by defenant about signatures and further acknowledgment have been proven without objection - In present case, plaintiffs have examined witnesses, proved entries in books of accounts and also proved acknowledgments duly signed by defendants - Defendant, on contrary except making a bald denial of averments had not stated anything else - Thus High Court has fallen into error in holding that it was obligatory on part of plaintiffs to examine handwriting expert to prove signatures - Finding that plaintiffs had failed to discharge burden is absolutely misconceived in facts of case - Rules 3,4,5 of Or.8 of CPC dealing with manner in which allegations of fact in plaint should be traversed and legal consequences flowing from its non-compliance - It is obligatory on part of defendant to specifically deal with each allegation in plaint and when defendant denies any such fact he must not do so evasively but answer points of substance - It is clearly postulated that therein that it shall not be sufficient for defendant to deny generally grounds alleged by plaintiff but he must be specific with each allegation of fact - Defendants could not have been permitted to lead any evidence when nothing was stated in pleadings - In this case, Court below had correctly rested burden of proof on defendant but High Court in erroneous impression, has overturned said finding.

"Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable" - Applying this principle to pleadings and evidence on record, found no reason that Books of Accounts maintained by plaintiff/Firm in regular course of business should have been rejected without any kind of rebuttal or discarded without any reason - High Court has erroneously recorded that findings returned by Courts below are perverse and warranted interference - Therefore judgment rendered by High Court is legally unsustainable and accordingly set aside, appeal, allowed. **Gian Chand & Brothers Vs. Rattan Lal @ Rattan Singh 2013(2) Law Summary (S.C.) 61 = 2013(3) ALD 49 (SC) = 2013 AIR SCW 777 = AIR 2013 SC 1078.**

—Sec.101 - **LIMITATION ACT,** Sec.5 - Hindu law - "Partition" - "Burden of proof" - Partition - LIMITATION - When a person after attaining majority, questions any sale of his property by his guardian during his minority burden lies on person who upholds/ asserts purchase not only to show that guardian had power to sell but further that whole transaction was *bona fide* - In view of Sec.101 of Evidence Act it is plaintiff who should have first of all discharge burden that sale deed had been executed for share which admittedly belong to appellant in order to discharge burden of debt for legal necessity and for benefit of appellant who admittedly was minor - *Misplacing burden of proof would vitiate judgment* - Suit has to be tried on basis of pleadings

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of contesting parties which is filed in suit before trial Court in form of plaint and written statement and nucleus of case of plaintiff and contesting case of defendants in form of issues emerges out of that - In this case, basic principle, seems to have been missed not only by trial Court but consistently by 1st appellate Court which has been compounded by High Court - Whole case out of which this appeal arises had been practically made a mess by missing basic principle that suit should be decided on basis of pleadings of contesting parties after which Sec. 101 of Evidence Act would come into play in order to determine and whom burden falls for proving issues which have been determined - PARTITION - In suit for partition it is expected of plaintiff to include only those properties for partition to which family has clear title and unambiguously belong to members of joint family which is sought to be partitioned and if someone else's property meaning thereby disputed property is included in schedule of suit for partition, and same is contested by third party who is allowed to be impleaded by order of trial Court, obviously it is plaintiff who will have to first of all discharge burden of proof for establishing that disputed property belongs to joint family which should be partitioned excluding some one who claims that some portion of joint family did not belong to plaintiffs joint family in regard to which decree for partition is sought - Appeal, allowed. **Rangamal Vs. Kuppaswami 2011(3) Law Summary (S.C.) 105 = AIR 2011 SC 2344 = 2011 AIR SCW 3428 = 2011(5) ALD 38 (SC).**

—-Sec.112 - Where petitioner is disputing and contending that he is not biological father of the 4th respondent and where 4th respondent is not entitled to the benefits under Sec. 112 of the Evidence Act, when respondents failed to prove their case, the 4th respondent is liable to be treated as not the biological daughter of the petitioner - Consequently, grant of maintenance in favour of the 4th respondent payable by the petitioner is certainly unjustified and cannot be permitted - Indian Evidence Act, 1872, Sec.112 - In event of conflict between Sec.112 of Evidence Act and DNA test, the DNA test takes precedence - Criminal Procedure Code, Sec.125 - So far as income of the 1st respondent (wife) is concerned, 1st respondent cannot be expected to adduce negative evidence that she did not have any income - It is for the petitioner to show that the 1st respondent has income of her own - Petitioner failed to prove same - Trial court is consequently justified in awarding maintenance in favour of the 1st respondent as she admittedly is wife of the petitioner - Grant of maintenance by the Trial court in favour of respondents 1 to 3 is quite justified whereas the award of maintenance in favour of 4th respondent by Trial court is unsustainable as the 4th respondent cannot be considered to be biological daughter of the petitioner - This revision is therefore liable to be allowed so far as the award of maintenance against the 4th respondent by the Trial Court is concerned and is liable to be dismissed in respect of the award of maintenance in respect of other respondents. **Achugatla Raju @ A.B.V.Raju Vs.Smt. Achugatla Sujana @ Shoba 2014(3) Law Summary (A.P.) 279 = 2014(2) ALD (Crl) 986.**

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—Sec.112 - Petitioner is husband of respondent - Respondent had given birth to a female child on 3-12-2008 - He filed the O.P. seeking dissolution of their marriage on the ground of cruelty and also on the ground that respondent had committed adultery - Pending O.P., petitioner filed I.A. before Family Court to direct the petitioner, respondent and the child to undergo a D.N.A. Test at Center for Cellular and Molecular Biology, Hyderabad by giving blood samples for conducting scientific investigation so as to decide paternity of the child and to submit a report - In the affidavit filed in support of this application, the petitioner contended that ever since they got married, respondent was reluctant to consummate the marriage, that she had been indifferent and had not evinced any interest to cohabit with him - According to him, when questioned, she replied that she did not like him on account of their difference in age and also on account of the fact that the petitioner was not looking smart and was having a bald head - He alleged that she also disclosed to him that her parents had forced her to marry the petitioner and so she did not want to cohabit with him - According to petitioner, in June, 2008 the respondent became pregnant and he was surprised about this fact because there was no cohabitation between himself and respondent - He alleged that respondent threatened him and then went away to her parents' house in October, 2008 - He alleged that a person, who was neighbour of respondent's parents' house, was coming to petitioner's house during his absence in the afternoon to meet the respondent and the said person, and to enable him to establish the said fact, a DNA Test is necessary - By order, Court below dismissed the said application - Court below observed that respondent had pleaded that during delivery period of respondent till her discharge from the hospital, petitioner daily visited the respondent and stayed with the respondent and the child, and after discharge also petitioner accompanied respondent to his in-laws house - If allegations made by petitioner are correct, he would have taken objection at the time of delivery itself, and so the present allegation made by petitioner is only to harass the respondent without any basis - It also observed that there were no specific allegations against respondent and that the allegations made against her are vague and false and appear to be made only to get rid of her - It held that there is a presumption in law that the child born through lawful wedlock is legitimate and that access existed between parents and this presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities - It held that the petitioner should prove non-access with the mother of child during the relevant time in order to dispel the presumption u/Sec.112 of the Evidence Act, and a mere bald allegation that she was having illegal intimacy with the neighbor of her parents' house, whose name and particulars are also not mentioned, cannot be a ground to direct the parties to undergo a D.N.A. Test - Challenging the same, this Revision is filed - Held, marriage between petitioner and the respondent is sought to be dissolved on pleas of the respondent's adultery as well as cruelty - There is a specific plea that the respondent was not willing to consummate the marriage with the petitioner - In view of above facts similar to those in law laid down in Dipanwita Roy's case and having regard to the admission of

respondent in her cross-examination that she was willing to undergo a D.N.A. Test, Sec.112 would not come in the way of a DNA test and the respondent cannot also plead violation of her right to privacy and object to undergoing it - So the Court of opinion that the Court below was not correct in refusing to direct the parties to undergo a D.N.A. Test - In this view of the matter, the Court opinion that the order passed by the Court below cannot be sustained - It is accordingly set aside and I.A. is allowed - Respondent is directed to submit blood samples of herself as well as that of her child for a D.N.A. Test at C.C.M.B., Hyderabad for conducting scientific investigation to decide about the paternity of the child at the cost of petitioner - Civil Revision Petition is allowed accordingly. **K.Sugandha Kumari Vs. K.Vijaya Laxmi 2015(3) Law Summary (A.P.) 525**

—Secs.112 & 74 - "Legitimacy of children" - Presumption - It is undesirable to inquire into paternity of child when mother is married woman and husband had access to her - Adultery on her part will not justify finding of illegitimacy if husband has had access - It is undesirable to enquire into paternity of child whose parents "have access" to each other - Sec.112 of Evidence Act is based on presumption of public morality and public policy - If a man and woman have lived together for long years as husband and wife and a son having been born to them, legal presumption would arise regarding valid marriage, though such a presumption is rebuttable - Evidence Act, Sec.74 - "Admissibility of public document" - Trial Court admitting document holding it to be a public document without formal proof cannot be questioned by defendants in appeal since no objection was raised by them when such document was tendered and received in evidence - An objection as to admisibility and mode of proof of a document must be taken at trial before it is received in evidence and marked as an exhibit - HINDU SUCCESSION ACT, Secs. 4 & 30 - A male Hindu governed by Mitakshara System is not debarred from making a Will inrespect of co-parcenary/ancestral property. **Shyam Lal @ Kuldeep Vs. Sanjeev Kumar 2009(2) Law Summary (S.C.) 166 = 2009(4) ALD 106(SC) = 2009(4) Supreme 711 = AIR 2009 SC 3115 = 2009 AIR SCW 5006.**

—Sec.114 - Drawing adverse inference - Suit for recovery of certain amount towards transport charges - Trial Court after recording evidence and marking Exhibits, decreed suit - Appellant/defendant contends that trial Court totally erred in passing decree and that question of drawing adverse inference as against defendants would not arise and that respondent as plaintiff may have to establish its case irrespective of fact whether defendants entered into witness box or not - EVIDENCE ACT, SEC.114 - Scope ambit and applicability - Stated - In this case that not only defendants not entered into witness box at all there is no response from them when specific demand made by plaintiff by issuing notice through Advocate - Though averments made in plaint had been denied in written statement, no evidence had been adduced at all by defendants - Trial Court arrived at correct conclusion and findings recorded may trial Court confirmed - Appeal, dismissed. **Bharat Petroleum Corpn., Ltd. Vs.Srinivasa Transport,Visakhapatnam 2008(2) Law Summary (A.P.) 379 = 2008(4) ALD 787 = 2008(6) ALT 199 = 2008(3) APLJ 14 (SN).**

(INDIAN) EVIDENCE ACT:

—Sec.114 - Presumption as to possession - Appellant/plaintiff filed sui for injunction restraining defendants from interfering with peaceful possession and enjoyment of suit property - Trial Court decreed suit - Lower Appellate Court dismissed suit holding that plaintiff failed to prove his possession over suit property on date of filing suit - Recitals in documents cannot be ignored - When recitals relating to delivery of possession are clear and categorical in title deeds, discrepancy, if any, in oral evidence cannot be taken as a ground to disbelieve factum of possession - Lower appellate Court ignored principles of law that possession follows title - Decree and judgment of trial Court restored - Second appeal, allowed. **Veesam Mohan Reddy Vs. Rebba Pedda Agaiah 2008(1) Law Summary (A.P.) 370 = 2008(2) ALD 304 = 2008(2) ALT 329 = 2008(1) APLJ 92.**

—Sec.114(g) – "Adverse inference" – As per Docket order of Trail Court dated 26-12-2013, that there was no representation by Counsel for petitioner as well as Advocate-Commissioner - As per observations of the Court despite lapse of 6 months expert's evidence was not recorded and was no representation by petitioner's counsel and even petitioner also called absent – Hence lower Court directed return of warrant by 30-12-2013 and accordingly order passed for return of warrant - Petitioner contends that in view of Advocates, strike for cause of United Andhra Pradesh, Advocate-Commissioner has not executed warrant and Counsel for petitioner was not present - Conduct of Counsel for petitioner and Advocate-Commissioner is legally impermissible – Supreme Court repeatedly held that strike by lawyers is un-constitutional and same constitutes professional misconduct - In view of Authoritative pronouncements of Supreme Court irrespective of cause, lawyers cannot go on strike – Therefore, plea that because of lawyers' strike, Advocate-Commissioner could not execute warrant cannot be countenanced in law - By staying away form work, Court was left with no option other than directing return of warrant by Advocate–Commissioner - Approach of lower Court in passing order for return of warrant, justified - If petitioner suffered any damage on account of return of warrant by Advocate-Commissioner, he shall be free to claim such damages form his Advocate as well as Advocate-Commissioner by initiating appropriate proceedings – CRP disposed of accordingly. **Thulluri Subba Rao Vs. Yelchuri Srinivasa Rao 2014(1) Law Summary (A.P.) 304 = 2014(3) ALD 36 = 2014(4) ALT 67.**

—Sec.114(g) - **INDIAN PENAL CODE,** Secs.498-A & 302 - **CRIMINAL PROCEDURE** CODE, Sec.313 - "Two dying Declarations" - Appellant/accused husband of deceased harassed deceased for wife additional dowry and poured kerosene on her body and set fire to on her - Sessions Judge having appreciated entire evidence found appellant/accused not guilty of offence u/Sec.498-A IPC and found him guilty of offence u/Sec.302 IPC, convicted and sentenced him for life imprisonment merely basing on Dying Declaration - Appellant/accused contends that there are two Dying declarations of deceased, one recorded by P.W.8 Magistrate and other recorded by P.W.13 Sub-Inspector and that dying declaration recorded by Sub-Inspector not produced by prosecution because it is in favour of accused and that non-production thereof amounts to denial of fair trial to appellant/accused and caused prejudice to him and that in

(INDIAN) EVIDENCE ACT:

view of non-production of Dying declaration of deceased adverse inference has to be drawn against prosecution u/Sec.114(g) of Evidence Act and that conviction based on dying declaration recorded by P.W.8 liable to be set aside and accused has to be acquitted - Prosecution contends that no adverse inference can be drawn against prosecution for non-production of Dying declarations recorded by P.W.13 Sub-Inspector, as P.W.13 in his evidence stated that statement of deceased recorded by him matched with contents of dying declaration of deceased recorded by P.W.8 Magistrate and that criminal appeal be dismissed confirming judgment of Sessions Judge, convicting accused - In this case, evidently, there is no eye witness to incident and entire case of prosecution based on circumstantial evidence of witnesses and that even though prosecution witnesses P.Ws. 1 to 7 and P.W.9 and 10 who are father and mother of deceased turned hostile but Sessions Judge relying upon Dying declaration recorded by P.W.8 found appellant/accused guilty of charge u/Sec.302 IPC - EVIDENCE ACT, SEC.114(g) - Scope of - If there are independent witnesses whose evidence is reliable and trust worthy to prove charge levelled against accused, infirmities arising out of non-examination of other independent witnesses will not be sufficient to put prosecution out of Court - Therefore, in such an event presumption u/Sec.114(g) of Evidence Act will not come to rescue of accused and that Courts have specifically look in to facts and circumstances of each case, other important evidence available on record, prejudice that is caused to accused and then only Courts have to come a definite conclusion whether to draw nor to draw adverse inference - In this case, admittedly prosecution on very same day after P.W.8 recorded dying declaration of deceased, P.W.13 also record dying declaration of deceased, but same not produced by prosecution and suggestions was also made to P.W.13 that they have suppressed dying declaration recorded by him because it was running contrary to case of prosecution and that by giving such suggestion to P.W.13 a doubt was created by defence at statement of deceased recorded by P.W.13 was in favour of appellant/accused and that appellant/accused in his examination u/Sec.313 has categorically stated that he was not available on day of incident and his deceased wife told him that three persons tutored her and forced her to give statement against accused, and non production of dying declaration of deceased recorded by P.W.13 certainly cause prejudice to accused and give rise to draw adverse inference against prosecution u/Sec.114(g) of Evidence Act **-** Therefore convicting accused merely basing on dying declaration of deceased recorded by Magistrate would not be proper and more particularly P.W.2 and P.W.9 who is father of deceased stated that when he enquired deceased told that she caught fire accidently while cooking food - Hence prosecution failed to prove guilt of appellant/accused for charge u/Sec.302 beyond all reasonable doubt - Conviction and sentence of appellant/accused basing on Dying declaration recorded by P.W.8/Magistrate cannot be sustained and is liable to be set aside - Criminal appeals, allowed. **Sivagallu Sailu Vs. State 2013(1) Law Summary (A.P.) 251 = 2013(2) ALD (Cri) 45 (AP) = 2013(1) ALT (Crl) 292 (AP).**

EXEMPLARY COSTS:

—Sec.118 - "Evidence of child witness" - A child witness is found competent to depose to facts and reliable one such evidence could be basis of conviction - Even in absence of oath evidence of child witness can be considered u/Sec.118 of Evidence Act provided such witness is able to understand questions and able to give rational answers thereof - There is no rule or practice that in every case evidence of child witness be corroborated before conviction can be allowed to stand - However as a rule of prudence Court always finds it desirable to have corroboration to such evidence from other dependable evidence on record - In present case not only evidence of child witness is reliable and not tutored, it is corroborated by other testimony - Hence all accused are rightly convicted and sentencd - Appeal, dismissed. **Gul Singh @ Guliya Vs. State of M.P. 2014(3) Law Summary (S.C.) 43.**

—Sec.126 - INDIAN PENAL CODE, Sec.320 - "Professional Communications" - A1 along with 3 accused caused death of deceased and A1 disclosed to JJK, Advocate, as to how he committed offence - During pendency of sessions case after examinationof P.Ws.1 & 2 Application filed by A1, seeking relief, restraining prosecution from examining JJK, contending that A1 being client disclosed many things to JJK and u/Sec.126 of Evidence Act information given to Advocate is confidential and it is not admissible in evidence - EVIDENCE ACT, Sec.126 - Advocate is not supposed to disclose to any body communication, if any by his client to him during his professional employment, and it is protected from disclosure - In this case, A1 came to JJK while he was in Office and made a confessional statement as to how he killed deceased - JJK was never engaged by A1 either in this case, or any other case, previously to defend him and he went to Advocate to help him to surrender before Police by making extra-judicial confession to him - Surrendering client to Police is not duty of Advocate - It cannot be said that information given to JJK was during course of his employment - Ingredients of Sec.126 of Evidence Act, not attracted - Since accused sought for help of Advocate to surrender before Police, there is no need for any advice - Petitioners not entitled for any relief as prayed for. **S.Kishore Kumar Goud Vs. State of A.P. 2008(2) Law Summary (A.P.) 385 = 2008(2) ALD (Crl.) 221 (AP) = 2008(3) ALT (Crl) 33 (AP) = 2008(3) APLJ 45.**

EXEMPLARY COSTS:

— Petitioner employee of Govt., factory not vacated residential quarters after transfer, inspite of order of eviction - Appellate Authority granted interim stay in regard to order of eviction and dismissed appeal after several years, holding that petitioner was under legal obligation to hand over possession of quarters on transfer and having failed to do so, order of eviction, justified - High Court while dismissing writ petition levied exemplary costs of Rs.50,000/- and said amount shall be placed in accounts of High Court Legal Services Committee, observing that conduct of petitioner in retaining accommodation for 10 years amounted to indiscipline and that cannot be tolerated and therefore he should be 'saddled with exemplary costs' - 'Exemplary costs' are levied where a claim is found to be false or vexatious or where a party is found to be guilty of misrepresentation, fraud or suppression of facts - Levy of

FAMILY COURTS ACT:

exemplary costs on ordinary litigants, as punishment for merely for approaching Courts and securing an interim order, when there was no fraud, misrepresentation or suppression is unwarranted - In fact it will be bad precedent - Once other side is represented, costs levied by reason of any attempt by a party to delay proceedings, should normally be for benefit of other party who has suffered due to such conduct - Only where both parties are at fault, costs may be ordered to be paid to legal services authority - At all events, power to levy exemplary costs, should be used sparingly to advance justice and it should not be threatening and oppressive - Direction of payment of exemplary costs, deleted - Special leave petition, dismissed. **Satyapal Singh Vs. Union of India 2009(3) Law Summary (S.C.) 212.**

FAMILY COURTS ACT:

—Sec.7 - **CIVIL PROCEDURE CODE,** Or.1, Rule 10, r/w Sec.151 - Revision petitioner/wife filed O.P against 1st respondent/husband for partition and separate possession of Schedule property in Family Court - 2nd respondent filed I.A under Or.1, Rule 10 to permit her to implead herself as 2nd respondent in O.P - Family Court allowed I.A - Hence present revision - 2nd respondent contends that there is collusion between revision Petitioner and 1st respondent who are wife and husband and they are her parents and schedule property gifted to her by revision petitioner under registered gift deed and she is absolute owner of said property and revision petitioner is not having any right over it - Revision petitioner contends that 2nd respondent has no locus standi to file Application for impleading in O.P filed by her against her husband for partition and separate possession of schedule property - Case of 2nd respondent does not fall under explanation u/Sec.7 of Family Courts Act, as such her application for impleadment is not maintainable and only disputes between parties as mentioned u/Sec.7 of Act, can be decided by Family Court - 2nd respondent being daughter, cannot agitate her rights in said O.P - If she has got any grievance against revocation of gift deed said to have been executed by revision petitioner in her favour it is open for her to file separate suit in respect of same - But as per explanation to Sec.7 of Act, she cannot herself implead in O.P filed by revision petitioner against her husband who is 1st respondent herein - Impugned order passed by trial Court to implead 2nd respondent as well as her husband is liable to be set aside - CRP, allowed. **Racha Jana Bai Vs. Racha Gowreesham 2013(3) Law Summary (A.P.) 158 = 2014(1) ALD 724 = 2014(2) ALT 220.**

—Sec.7 - **CRIMINAL PROCEDURE CODE,** Sec.125(1)(b) - **HINDU ADOPTIONS AND MAINTENANCE ACT, 1956,** Sec.20(3) - Respondent/daughter filed suit against petitioner/defendant/father for main-tenance - Petitioner/defendant contends that respondent/plaintiff is earning and file present suit against him falsely with a view to harass him while another suit filed by her is pending - Family Court held that Sec.125 Cr.P.C provides maintenance to children by father, whether they are Christians, Hindus or Muslims and suit is maintainable - Petitioner/defendant contends that respondent/

FAMILY COURTS ACT:

plaintiff being Christian is not entitled for maintenance without their being such enactment in her favour - U/Sec.125 Cr.P.C, maintenance of children is obligatory on father (irrespective of his religion) and that as long as he is in a position to do so and children have no independent means of their own, it remains his absolute obligation to provide for them - On perusal of Sec.125 Cr.P.C, and Sec.20(3) of Maintenance Act that an unmarried daughter can claim maintenance from parents irrespective of religion to which she belongs even after attaining majority - Respondent/plaintiff can maintain suit against petitioner/defendant - her father - CRP, dismissed. **Thadisina Chinna Babu Vs. Thadisina Sarala Kumari 2009(3) Law Summary (A.P.) 274.**

—-JURISDICTION – u/Sec.7(1) Explanation (b), Family Courts Act, 1984, a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since u/Sec.8, all those jurisdictions covered u/Sec.7 are excluded from the purview of the jurisdiction of the Civil Courts - In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court - It makes no difference as to whether it is an affirmative relief or a negative relief - What is important is the declaration regarding the matrimonial status. **Balram Yadav Vs. Fulmaniya Yadav 2016(2) Law Summary (S.C.) 14 = AIR 2016 SC 2161 = 2016(4) ALD 49 (SC).**

—Sec.19 - **HINDU MARRIAGE ACT,** Secs.9, 13(1)(i-a), 13(1-A)(ii) - **CODE OF CRIMINAL PROCUDURE,** Sec.125 - Cruelty as a ground for dissolution of marriage by husband - Wife in her counter specifically mentioned that brother of her father-in-law also gave evidence in the maintenance case and he admitted about illicit intimacy of her husband with a woman - In her cross-examination, she admitted that she has not mentioned about her husband's illicit intimacy in her legal notice or her pleadings in maintenance case - When the cross-examination of the husband as P.W. 1 is scanned, nothing was confronted to him touching that aspect of case leaving apart making any suggestion therefor to him - When evidence of junior paternal uncle of husband is perused, strangely, he was not cross examined on that aspect of case at all - Held, when a definite allegation is made in counter by wife that this witness (husband's junior paternal uncle) in maintenance case has admitted illicit intimacy of her husband with a woman, certainly, searching cross-examination of this witness on that aspect of the case, is expected or at least a certified copy of his evidence in the maintenance case ought to have been filed and got marked as document in this case, and then resorted to confronting it, if any such admission did really occur as required u/Sec. 145 of the Indian Evidence Act - Therefore, on ground of cruelty, in view of reckless and scandalous allegation levelled against the husband that he maintained illicit intimacy, we are of view that he is entitled to dissolution of marriage by grant of decree of divorce u/Sec.13(1)(i-a) of Act - Somehow, court below went wrong omitting to this aspect of the case in the light of not only the plea but also

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the evidence on record and, therefore, the finding of the court below that the husband did not depose as to how he was subjected to cruelty through physically and mentally by his wife is perverse and has to be reversed - Family Courts Act, Sec.19, Hindu Marriage Act, Secs. 9, 13 (1) (i-a), 13 (1-A) (ii), Code of Criminal Procedrure, Sec.125 - So, at outset we would like to observe that the direction given by court below while granting decree for restitution of conjugal rights on 14-9-2006 directed that wife should join husband within three months from that day - This apart even till 30-09-2008, that order of the court below was in force as it was stayed only on 30-09-2008 - Thus, it is clear that only one year ten months after passing of decree for restitution of conjugal rights by court below, interim suspension order was granted by this court - She admits that she did not get issued any legal notice or lodge any complaint with regard to the quarrels and threats by her husband, for which reason she was not joining him - Her father, who was examined as R.W.2 admits that they did not give any notice for restitution of conjugal rights and also for willingness to send his daughter - It is thus, clear from evidence of the wife and her father that they did not abide by direction given by the court below and made no attempts to see that the wife joins conjugal society of her husband and only reason they have reiterated was that they obtained interim suspension of the order passed by court below in an attempt to show that they did not disobey the orders of the court below - Wife has not brought out any circumstances from which it could be gathered that husband was trying to take advantage of his own wrong - Family Courts Act, Sec.19, Hindu Marriage Act, Secs.9, 13 (1) (i-a), 13 (1-A) (ii), Code of Criminal Procedrure, Sec. 125 - It is therefore, clear that even in the absence of any attempt being made by way of resorting to execution proceedings under the Code of Civil Procedure, husband is entitled to dissolution of marriage by grant of decree of divorce when once the period mentioned in clause (ii) of Sec.13(1-A) of Act lapses, unless there are such circumstance to stamp him as wrongdoer in terms of Sec.23(1) of the Act - Family Courts Act, Sec.19, Hindu Marriage Act, Secs.9, 13 (1) (i-a), 13(1-A) (ii), Code of Criminal Procedrure, Sec.125 - Wife converted to Christianity without the permission of her husband - When viewed that conduct of wife, certainly, she has no legitimate ground to resist the request of her husband for grant of relief of decree of divorce as we found in above that husband has not committed any wrong as explained within provisions of Sec.13(1)(1-A)(ii) of the Act - For aforesaid reasons, FCA No.60 of 2010 is to be allowed as husband is entitled to the relief of decree of divorce by dissolution of marriage between the parties, consequently FCA No.176 of 2008 preferred by the wife becomes infructuous. **K.Kavitha Vs. Shiva Shankar 2014(3) Law Summary (A.P.) 245 = 2014(6) ALD 552 = 2014(6) ALT 162.**

—-Sec.19-A - Spouse claiming permanent alimony must come forward by disclosing all necessary facts, with regard to her income, properties etc., in petition filed - In this case, petitioner-wife has suppressed material facts with regard to her investments in shares and mutual funds - When same was confronted to her in the cross-examination,

FERTILIZER CONTROL ORDER, 1985:

she categorically admitted the same - In addition to her disentitlement having regard to her conduct, further, it is to be noted that petitioner-wife is having sufficient income as a medical practitioner, working as freelance consultant and in view of shares and debentures held by her apart from LIC policies and other assets, that she is not entitled for any amount towards permanent alimony from respondent-husband. **Dr.Aneel Kaur Vs. Dr.A.Jaya Chandra 2014(3) Law Summary (A.P.) 418 = 2015(1) ALD 478 = 2015(1) ALT 176.**

—Sec.19 (1) & (2) - **HINDU MARRIAGE ACT, 1955** - Sec.13(1) (ia), 13-B & 25(1) & (2) **- HINDU ADOPTION AND MAINTENANCE ACT, 1956,** Sec.25 - Wife filed petition before Family Court against husband seeking divorce on ground of cruelty - Proceedings ended in compromise - Pursuant to Memorandum of Settlement Court allowing O.P filed by wife and grant a decree of divorce directing husband to pay maintenance and permanent alimony - Subsequently wife filed O.P u/Sec.25 of Hindu Marriage Act, seeking maintenance @ Rs.4,000/- p.m or in alternative for payment of Rs.5 lakhs towards permanent alimony and thus prayed for enhanced maintanance in changed circumstances - Family Court dismissed O.P considering Settlement whereunder it was agreeed between partes that there should not be any future claim against each other and held that Sec.25 of Hindu Marriage Act has no application - Appellant/wife contends that a decree for maintenance in terms of compromise between parties is not a bar to maintain application u/Sec.25 (2) of Hindu Marriage Act - Grant of maintenance u/Sec.25 (1) is incidental to decree granting substantial relief under Act - Sub-sec.(2) of Sec.25 provides that if Court is satisfied that there is a change in circumstances of either party at any time after granting maintenance under sub-sec.(1) Court may at instance of either party vary, modify or riscind such order passed undr sub-sec.(1) - On combined reading of sub-secs.(1) & (2), it is clear that right of maintenance is a continuing right even after a decree is granted uder Act and quantum of maintenance is variable from time to time if there is change in circumstances of either party - Discretion conferred on Court under Sec.25(2) to vary maintenance awarded u/Sec.25(1) in changed circumstances cannot be restricted and substantive right conferred under statute cannot be denied to a party merely on ground of agreement contra between parties - Such agreement defeating right of maintenance provided under statute being contrary to public policy is not valid contract and therefore cannot operate as a bar to exercise jurisdiction confer u/Sec.25 (2) - Dismissal of OP filed by wife at threshold without making enquiry into correctness of her plea as to change of circumstances, merely on basis of Settlement - Erroneous - Impugned order, set aside - Appeal, allowed. **P.Archana @ Atchamamba Vs. Varada Siva Rama Krishna 2008(2) Law Summary (A.P.) 216.**

FERTILIZER CONTROL ORDER, 1985:

—Clauses 8 (2) 26-A & 27- Cl.(5) of Terms and Conditions of Form A-1 - Respondents insisting petitioners/Fertilizers Dealers to submit separate Form A-1 intimations to different Notified Authorities in respect of their storage points - Petitioners contend that in view of composite nature of intimation prescribed under Form A-1 there is

FOREST CONSERVATION ACT, 1950,

no reason or justification for respondents in insisting to have different acknowledgments under Form A-2, by filing different intimations by sale points and to that of storage points - Govt., contends that having regard to very objective of Control Order for equitable distribution of Fertilizers to Farmers and to monitor stocks available with various dealers, it is necessary to have required information with all Notified Authorities - As terms and conditions are part of Form A-1, which is part and parcel of Clause 8 of Control Order itself, it cannot be said that Cl(5) of Form A-1 is contrary to provisions of Control Order - From reading of Cl.(5), it is clear that if a dealer is having both sale depot as well as storage point in local area of same Notified Authority, he need not file a separate Memorandum of Intimation for such storage point - Requirement of filing separate intimation is applicable only in case if dealer is having sale depot within local area of one Notified Authority and storage point outside area of that Notified Authority - Sale and storage points as mentioned in Form A-1 are only with regard to points within same local area but cannot be stretched to storage points outside local area of Notified Authority - Insisting upon a separate intimation in cases where storage points are located outside local area of sale point, it cannot be said to be either illegal or arbitrary - Writ petition, dismissed. **Fertilizer Wholesale Dealers Welfare Assn., Vijayawada Vs. Govt. of A.P. 2009(3) Law Summary (A.P.) 58.**

FOREST CONSERVATION ACT, 1950,

—-Secs.2 and 2(iii) - G.O.MS 185, Dated 11/03/1997 - "Assignment of Forest land to Freedom Fighter" – State Government allotted an extent of 10 acres to petitioners father vide, proceedings R-2/M.R.O dated 16-02-1997 – During life time of his father he was cultivating said land and after his death petitioner has been cultivating same by raising different crops - Petitioner averred that 3rd respondent / Forest ranger along with other persons came to his land and damaged standing crop as well as existing bore-well without prior notice claiming that said land to be a part of reserve forest.

In this case, Joint survey held by Revenue and Forest Departments revealed that assigned land forms part of protected forest and that under section 2(iii) no forest land or any portion thereof can be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

It is regrettable to note that when petitioners father was chosen for assignment, R-2/Tahsildar assigned land which is admittedly a part of protected forest - By assigning such land, assignee as well as his family members faced serious difficulties interfering their position with forest land – Ín opinion of this court, surely this is not a way a Freedom fighter and his family must be treated - Petitioner cannot be made to suffer on account of mistake of Tahsildar deliberate or bona fide in assigning forest land.

With regard to the submission of Govt. Pleader for revenue the petitioners family owns six acres of dry land and that he has been running a fair price shop besides his wife being member of Z.P.T.C. all this facts do not disentitled family of petitioner to assignment of alternative land because assignment was not made to petitioner or his wife but, to his father in recognition of his services as freedom fighter.

GREATER HYDERABAD MUNICIPAL CORPORATION ACT:

In light of the above facts and circumstances of the case, Respondents 1 and 2 (Collector & Tahsildar) are directed to assign alternative agricultural land in petitioners native village or Mandal – Till such alternative land is assigned to petitioner he shall not be evicted from land assigned to his father – Writ petition disposed of with above directions. **Padi Pratap Reddy Vs. District Collector, Warangal 2016(2) Law Summary (A.P.) 76 = 2016(1) ALT 731 = 2016(2) ALD 417.**

GREATER HYDERABAD MUNICIPAL CORPORATION ACT:

—Sec.21(B) - CIVIL PROCEDURE CODE, Or.26, Rule 10(A) and Sec.151 - INDIAN EVIDENCE ACT, Sec.45 - Second petitioner is a stranger to the election dispute - Thus, she cannot be compelled to undergo medical examination against her will - Certainly subjecting second petitioner to medical examination would offend her personal liberty, privacy and dignity of person that is bestowed on her as a woman - There can be many reasons where woman would genuinely wish to keep the issue of giving birth to a child not disclosed - By virtue of subjecting her to medical examination at instance of petitioner in election petition, factum of giving birth to or otherwise would be in public domain and would be against the conscience and will of the person concerned and can have deleterious effect which cannot be repaired - Consequence of such medical examination can be far and wide - CRP allowed. **Md Majid Hussain Vs. Md Aqueel 2014(3) Law Summary (A.P.) 481 = 2015(2) ALD 195 = AIR 2015 AP 21.**

—Secs.21(B), 71, 72 - **A.P. MUNICIPAL CORPORATIONS (CONDUCT OF ELECTION OF MEMBERS) RULES, 2005,** Rule 100 (3); Section 75(1) of the Act read with CIVIL PROCEDURE CODE, Order VII, Rule 10, 10-A (3) and 11(d) - REPRESENTATION OF THE PEOPLE ACT, 1951, Secs.81, 82 and 117 - Revision petitioner was declared as elected for the Division/ward on having secured highest number of votes among nine contested rival candidates for the said Division/ward of Municipal Corporation, Nizamabad - 1st respondent among other contested candidates who secured second highest votes in said election filed petition challenging election of revision petitioner on ground that he was disqualified under Section 21 (B) of the Act to contest in election as he was blessed with more than two children as on date of filing nomination, thereby not entitled to continue as member of said Division/ward - Revision petitioner filed counter in main election petition denying same - Specific contention of petitioner is that there were totally 10 contested candidates on fray for Division/ward No.29 of Nizamabad Municipal Corporation in said election – But 1st respondent filed election petition without impleading all other contested candidates for said ward and though they are necessary parties to election in view of Sections 71, 72 and 74 of the Act and Rules framed thereunder. Therefore, for non-compliance of mandatory provisions of Sections 72 read with Section 74, the petition is liable to be dismissed in limini without any trial as per Rule 100 (3) of Election Rules, 2005, prayed to dismiss election petition pending on the file of Election Tribunal.

GREATER HYDERABAD MUNICIPAL CORPORATION ACT:

Held, a close analysis of legal position in plethora of decisions referred above makes it clear that if defect in election petition is curable, an opportunity shall be given to cure defect, if failed to cure, petition shall be dismissed as per Order VII Rule 11 or strike out pleadings as per Order VI Rule 16 of C.P.C; defect of non joinder of other candidate is incurable defect, even otherwise petition filed by 1st respondent/Election Petitioner under Order I Rule 10 of C.P.C was dismissed by Tribunal and same was confirmed by this Court and attained finality - Therefore by applying law declared by various Courts, referred above, this Court has no option except to reject contention of 1st respondent/Election Petitioner, holding that election petition is not maintainable for non-compliance with Section 72 read with 74 (b) of the Act.

If petition is allowed to be tried, result at conclusion of trial would be same i.e. dismissal in view of patent defect in petition which is incurable - Acceptance of such request is nothing but allowing malicious abuse of process to waste valuable judicial time of Court and parties to petition - Tribunal without considering expected result at conclusion of trial, postponed decision about maintainability, till conclusion of trial adopting nonchalant approach, committed a prejudicial error in dismissing petition - Keeping in view of law referred above, view of Court that order of tribunal is liable to be set aside to palliate pang of parties to face ordeal of trial, since, result will be same even after conclusion of trial of Election Petition in view of legal, incurable infirmity - Accordingly order is set aside, allowing revision, dismissing Election Petition, as Tribunal did not exercise jurisdiction which vested on it - In result, Civil Revision Petition is allowed setting aside order of Tribunal. **M.A.Faheem Uddin Vs. Shaik Nayeem 2016(2) Law Summary (A.P.) 24 = 2016(3) ALD 548.**

—- Secs.373,421(1) & 124(a) - Writ petition filed seeking to declare action of respondents to remove traffic signals and hoardings erected as arbitrary and illegal and in violation of principles of natural justice - 3rd respondent/Cantonment Board, with a view to protect Cantonment area had planed complete systematic traffic control system in entire Cantonment area and was accorded permission to take up work under supervision of concerned departmental officers - 2nd respondent requested petitioner to stop all works on said roads with immediate effect, remove advertisement gantries installed in various places as they were obstructing visibility of approaching motorists and causing accidents - Petitioner contends that 3rd respondent could not have entered into any agreement for erecting advertisement hoardings over traffic signals falling in GHMC area, since permission granted by 1st respondent is still in force and their action in issuing notice is illegal - Having permitted petitioner to instal traffic signals and erect hoardings it is not open to 2nd respondent to now turn around and contend that traffic signals and hoarding should be removed on ground that there was no permission - Respondents contend that petitioner was earning huge revenue from advertisement hoardings; not a single paise had been paid to GHMC and that petitioner could not take advantage of his own wrong in installing traffic signals and erecting

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hoardings and contend that he would and suffer irreparable loss if they were removed - Evidently, no written permission for erection or exhibition of any advertisement upon any land within limits of GHMC has been communicated to petitioner - Till its communication order cannot be regarded as anything more than provisional in character - PRINCIPLES OF NATURAL JUSTICE - Principles of natural justice are not embodied rules and cannot be put in a straight jacket - It depends upon facts and circumstances of each case - To sustain allegation of violation of principles of natural justice one must establish that prejudice has been caused by non-observance thereof - It is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as to their scope and extent - There must have been *some real prejudice* to complainant and there is no such thing has a mere technical infringement of natural justice, its application depends upon nature of jurisdiction conferred on administrative authority, upon character of rights of persons affected, scheme and policy of statute - Petitioner cannot take advantage on his own wrong, in installing traffic signals and erecting advertisement hoardings without prior written permission of commissioner GHMC - Hence Challenge to impugned proceedings on ground of violation of principles of natural justice must fail - While revenue generated on these advertisement hoardings has benefited petitioner, GHMC has suffered a huge loss on that score - Writ petition, dismissed. **Stan Power Vs. Greater Hyderabad Municipal Corpn., 2010(2) Law Summary (A.P.)S 230.**

—Sec.428, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, A.P. Urban Areas (Development) Act, 1975, Secs. 17, 18 - Since according to 2nd respondent, 40' out of the petitioner's land is required for road widening leaving only balance of 5', and petitioner cannot put to use such small area for construction, it is obligatory on the part of 2nd respondent to acquire the entire property of the petitioner - Otherwise, it would amount to legitimizing the arbitrary and expropriatory action contrary to the provisions of the GHMC Act as well as the AP Urban Areas (Development) Act, 1975 and the law declared by the Supreme Court in the above decisions - Similar view has also been taken by this Court in its judgment dt. 02-09-2014 in W.P. No. 1995 of 2012 and in judgment dt. 16-10-2014 in W.P. No. 24427 of 2014 - Therefore the respondents are directed to initiate proceedings under Section 18 of AP Urban Areas (Development) Act, 1975 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for acquisition of the entire land owned by the petitioner for road widening and pay compensation to the petitioner - Writ Petition is allowed accordingly. **G.Usha Rani Vs. State of A.P. 2015(1) Law Summary (A.P.) 278 = 2015(4) ALD 35 = 2015(2) ALT 741.**

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—Secs.4(1)(2)(3) & 6,7,8,10,11,12,48 & 49 - **HINDU MINORITY AND GUARDIANSHIP ACT, 1956,** Sec.6 - Respondent filed O.P seeking relief to order for appointing petitioner

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as guardian by directing respondents to handover ward to petitioner and also direct to produce minor before Court and appoint petitioner as guardian for minor for interim protection of petitioner - Respondent filed I.A in O.P, contending that petitioner is widow of father of minor - After death of her husband his parents drove her out of their house and since then she is residing with her parents - Subsequently she married another person and residing with him and petitioners became old and if ward is allowed to remain in custody of paternal grand parents future of ward would be ruined and her present husband is prepared to take ward in adoption and to meet future education for bright future of ward and that paternal grand paents are illiterates and cannot maintain ward decentluy and paramount consideration is welfare of ward rather than other circumstances and inspite of number of requests paternal grand parents bluntly refused to handover ward and that they have no right to act as parents, nor they have right to keep ward in their custody - Petitioners filed counter in I.A denying allegations that they drove away respondent from house after death of their son and that she left house within one month after death of their son she voluntarily opted to severe relationship with petitioners and left house by taking Rs.22000/- by executing a document wherein she categorically admitted to give custody of boy with them in event of contacting second marriage - Trial Court allowed petition appointing her as guardian ward and directing petitioners to handover custody of child to respondent and that petitioners are permitted to visit child during week ends - Aggrieved by present order present revision petition filed contending that trial Court erred in granting interim custody and that respondent lost her right over child moment she got remarried and that trial Court ought to have seen dominent factor for consideration of Court is welfare of child and petitioners as grand parents are entitled custody of children and that trial Court ought not to have grant interim custody though not prayed and by granting interim custody to respondent there will be disturbance to education and it is not desirable to grant interim custody during academic year - Respondents contend that trial Court is perfectly justified in passing impugned order and respondent being natural guardian of minor child she is entitled for custody of child u/Sec.6 of Hindu Minority and Guardianship Act, and that second marriage of respondent would not disentitled her from having custody of minor child and that petitioners are old aged and they cannot look after welfare of child and they cannot give good education to ward - Desire of ward and congenial atmosphere for proper upbringing of child play a prominant role while deciding issue of custody of ward and that Apex Court held that while deciding aspect of custody of minor child, Court should keep in mind relevant statute and rights flowing from them and such cases cannot be decided solelly by interpreting legal provisions and since it is human problem it is required to be solved with human touch - In this case, it is allegation of petitioners, grand parents that second husband of respondent has brought another child from his relative's side and he is bringing up child and that minor boy is studying in school where his grand parents are residing and now middle of academic year, in event of giving custody to respondent at this stage education of boy will be disturbed and as per wish of minor boy Court deems

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it proper to continue minor boy in custody of his paternal grand parents who are petitioners herein - Revision accordingly, allowed by setting aside, order of trial Court in I.A - Keeping in view, delicate feelings of respondent, mother she is permitted to visit child during week ends. **Kotholla Komuraiah Vs. Kotholla @ Bikkanuri 2013(3) Law Summary (A.P.) 235 = 2014(1) ALD 362 = 2014(1) ALT 138.**

—Sec.7 - Custody of female minor child - Respondent got married appellant's daughter who gave birth to female child and died in hospital and thereafter child is in custody of appellant/maternal grand mother - Respondent/father filed Application for custody of child contending that child was not properly looked after by appellant and it was perilous for child to continue custody of appellant - Family Court passed order to give custody of minor to respondent/father - High Court passing order holding that there are no compelling reasons on basis whereof custody of child should be denied to father/respondent and that appellant has lost her husband and therefore suffered a great financial set back and therefore for better upbringing and welfare of child her custody should be entrusted to her father - Child is staying with appellant's family and she is also studying in one of reputed school and she is with appellant right from her childhood which has resulted into a strong emotional bonding between two and appellant being a woman herself can very well understand needs of child - Natural guardians of child have right to custody of child, but that right is not absolute and Courts are expected to give paramount consideration to welfare of child - Appellant got married second time and has a child too and minor child might have to be in care of step mother - Child remained with appellant, grand mother for a long time and is growing up well in an atmosphere which is conducive to its growth - As such it may not proper at this stage for diverting environment to which child is used to - Therefore it is desirable to allow appellant to take custody of child - Impugned order, set aside - Appeal, allowed. **Anjali Kapoor Vs. Rajiv Bajjal 2009(2) Law Summary (S.C.) 180.**

—Secs.7,8,10 & 47 - **HINDU MINORITY AND GUARDIANSSHIP ACT, 1956,** Sec.6 - **LEGAL SERVICES AUTHORITY ACT, 1987,** Sec.2,3 & 19(5) and 20 - **CIVIL PROCEDURE CODE,** Or.41, Rule 22 - "Custody of minor children" - "Custody battle between paternal grant parents and mother for person and properties of minor children" - "Award of Lok Adalat" - On account of sudden death of her husband, respondent wife and her children are under protection of her father-in-law/1st appellant who also assumed management of properties belonging to her under her late husband - Respondent filed GOP u/Sec.10 of Act 1890 seeking custody of children and also their property and to render account of income and expenditure in respect of children's property - 1st appellant/father-in-law contends that he obtained decree from Lok Adalat regarding custody of children and their property and no need to send children to respondent, mother - Respondent contends that family settlement and compromise giving up her rights with regard to custody and property are false and that same were

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brought into existence using her signed blank papers and that Award passed by District lok adalat has no legal sanctity and not binding on her or on children - Appellant contends that respondent read contents of petitions filed before Lok Adalat and that she attended Lok Adalat and only thereafter signed on terms of compromise and therefore Award was binding on her and that District Court has no jurisdiction to entertain a challenge against Award passed by Lok Adalat as same was final, binding and unassailable - Trial Court allowed OP holding that Lok Adalat has no jurisdiction to go into custody of minors - Admittedly there is no case pending between parties as on date of institution of complaint before Legal Services Authority and it is therefore a pre-litigation case - As per Sec.6 of Hindu Minority and Guardianship Act,1956, natural guardian of Hindu minor are father and after him, mother - Therefore in normal scheme of things, after death of father respondent was natural guardian of children and that appellant had no right to represent interest of minors before Lok Adalat - Sec.19(5)(ii) of 1987 requires that a pre-litigation case, should be heard by a Lok Adalat organised for Court which had jurisdiction to hear matter had it been instituted - Provision speaks of "jurisdiction" generally and it cannot therefore be construed in narrow sense to mean "territorial jurisdiction" only **-** Issue of guardianship over person and properties of children in present case, fell squarely within jurisdiction of District Court alone - Therefore, once jurisdiction with regard to deciding issues of guardianship stood vested in District Court, pre-litigation case, pertaining thereto could only be referred to a Lok Adalat organised for a District Court - In light of statutory environment of Sec.19 as it stand presently, though Legal Services Authority can organize Lok Adalat for an area, jurisdiction of such Lok Adalat for determining particular cases by way of compromise or settlement would be with reference to jurisdiction of Court for which Lok Adalat is organized - In present case also, subject matter of complaint before Lok Adalat was with regard to declaration of guardian for children - Such a declaratory relief did not fall within realm of Lok Adalat and at that a petition fled by paternal grant parents portraying themselves as guardians of children against their natural guardian and this aspect was completely over looked by Lok Adalat - Lok Adalat presided by Junior Civil Judge has no jurisdiction as per Sec.19(5)(ii) of Act 1987 and award passed by said Lok Adalat is non-est in eye of law and it is null and void for want of jurisdiction - Natural guardian of minor child according to Hindu law being father in next place guardian of child is mother - Mere fact that respondent/mother entered into matrimony again after death of her first husband would not, by itself, be sufficient to disentitle her to seek custody of her children to first marriage - In this case, after discussing *in camera* both children expressed desire that they wish to stay with this mother and they desire to stay together and incustody of mother and therefore custody of children should be with mother in their best interest - In this case, what ever be differences between appellant and 1st respondent, children can neither be denied their mother's love and care nor grand parents affection and benediction - As children's strong desire is to remain together and in control and protection of their mother, their custody should be with her - As Award of Lok Adalat found to be null and void, recitals therein to

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effect that respondent waived her rights in properties stand nullified - Since properties are maintained by 1st appellant till now, he is under legal duty to account for income and expenditure in relation thereto to extent of shares of respondent and children till date of handing over their shares in said properties. **Karuturi Satyanarayana Vs. K.Krishnaveni Durga Kumari, 2010(3) Law Summary (A.P.) 381 = 2011(1) ALD 174 = 2011(2) ALT 111 = AIR 2011 (NOC) 129 (AP).**

—Secs.7,9,12 & 17 - **CIVIL PROCEDURE CODE,** Or.39, Rules 1, 2 & 4 - Respondents/ grand father and maternal aunt and uncles of minor children initiated proceedings against appellant/father of children before Family Court after death of mother of children - Family Court disposed of Application u/Sec.12 r/w Or.1 & 2 of CPC passing *ex parte* interim order restraining appellant from interfering with custody of children of appellant - Appellant filed Application for vacation of interim order of injunction contending that he is natural guardian and that 1st respondent is aged about 72 years and mentally retarded peson and unfit to be guardian of his children and that motive of respondents is only to gain property that appellant purchased in favour of his deceased wife - Family Court vacated injunction granted observing that respondents did not approach Court with clean hands - As against orders of Family Court respondents filed writ petition contending that in absence of mother, maternal grand parents shall be guardian of minor children and that second marriage of appellant disentitles him to custody of children - High Court set aside order of Family Court with certain directions that appellant father will have visiting rights and directing Family Court to conclude proceedings within six months, observing that children had developed long standing affection towards their maternal grand father and uncles and it will take a while before they develop same towards their step mother and that sex of mior girl would soon face difficulties of attaining adolescence is an important consideration and she will benefit from guidance of her maternal aunt if custody is given to respondents and that there is special bondage between children and it is desirable that they stay together with their maternal grand father, uncles and aunt - In this case, custody of minor children with respondents is lawful and has sanction of order of High Court granting interim custody of children in their favour - Hence, custody of children should not undergo an immediate change prevails - Children are happy and are presumbly take care of with love and affection by respondents, judging from reluctance on part of girl child to go with her father - She might attain puberty at any time and it may not be in interest of children to separate them from each other.

"A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of minor the paramount consideration should be welfare and well-being of child. Thus the strict parameters governing an interim injunction do not have full play in matters of custody" - Order of Family Court vacating its injunction order, set aside - Appeal, dismissed. **Athar Hussain Vs. Syed Siraj Ahmed 2010(1) Law Summary (S.C.) 28.**

—Sec.7 & 12 - **CONSTITUTION OF INDIA,** Art.227 - "Interim custody of minors" - Respondents 1 & 2 were blessed with twins and as Doctor advised to keep them separately to avoid infection and as petitioners are not having children they were given

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custody of their minor ward temporarily - Petitioners also executed a document admitting that stay of minor ward with them is temporary and they will handover to respondent when ever they request - Since petitioners avoiding to handover their minor ward to them, respondents have filed application for interim custody and also for visiting rights, alleging that petitioners have not bestowing proper care to their daughter - Petitioner filed counter denying allegations of respondent contending that minor was born in year 2001, on 9th day after birth, custody was given to them with complete willingness and consent and they have been looking after child with care and she is aged nine years and not willing to join respondents/parents - District Judge allowed application partly permitting respondents to have visiting rights on child by recording finding that paramount consideration for grant of custody is welfare of minor who has bluntly refused to go with respondents - Petitioners contend that Court below has committed serous error by permitting respondents to have visiting hours and as minor ward is not willing to spare any time even for visiting rights and inspite of blunt refusal when she was examined - In normal course when visiting rights are given to natural parents High Court is slow in interfering in such orders during pendency of proceedings - However it is case of respondents that she was tutored not to go with respondents - But conduct of child when examined to go to show that she has developed that some sort of fear and is unwilling to spare any time with respondents - It is not in dispute that natural parents have preferential right for custody of child in normal course, they cannot be denied visiting rights of child, but, claim for visiting rights and custody of child are to be examined keeping in mind welfare of child, which is a paramount consideration - In this case, it is to be noticed that when wishes of minor child were enquired into even by Court she has bluntly refused to go with respondents - Even with regard to grant of visiting rights same are not absolute and paramount consideration is to be given to welfare of child - Instead of seeking custody of their child though competent Court of law, it is clear that respondents made a futile attempt to have custody forcibly by making false allegations of kidnap and demand of money by petitioners and obtained search warrant- When respondents filed writ of Habeas Corpus before High Court, same too ended in dismissal - When her wishes were enquired, she started crying inconsolably - Therefore, it cannot be said that she was tutored by petitioners not to go with respondents - Hence allowing visiting right of minor ward by respondents as ordered by court below will definitely have an adverse impact on welfare of minor ward - Therefore respondents are not entitled for any visiting rights of minor ward unless a congenial atmosphere is developed - CRP, allowed. **Mohd. Haleem Vs. Dr.Shafiuddin, 2012(1) Law Summary (A.P.) 20 = 2012(2) ALD 67 = 2012(2) ALT 4.**

—Secs.8 &17 – **HINDU MINORITY AND GUARDIAN ACT,** Secs.6 &13 – **HINDU MARRIAGE ACT, 1956,** Sec.26 – Custody of minor child - District Judge permitting custody of minor child to mother - High Court granted vistitation rights to father.

Appellant/father contends that Court below not held that he suffers from any disability in his role as father, and therefore, there was no comprehensive reason for

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Court to direct custody of child to be entrusted to respondent/mother and that minor was abandoned when he was about one year and nine months old and thereafter in garb of seeking custody several rounds of litigation were unleashed – With reference of Sec.6 of Act father is legal guardian and welfare of minor child lies with him and that primary focus being welfare of child, respondent/wife should have brought on record as to how with her meager income she would be able to provide good education to child

Respondent contents that child's welfare cannot be weighed in terms of money, facilities, area of house, or financial might of either father or mother and that respondent/ wife had no option but to reside with her parents – Merely because she was residing with parents cannot disqualify her from looking after her child – She may not be as financially sound as appellant,/father has no fixed residence and that High Court took note of Sec. 13 of Act which is foundation for Custody of child – Welfare of minor is paramount consideration.

In present dispute, child has become victim - In determining question as to who should be given custody of minor child paramount consideration is welfare of child, and not right of parents under statute for time being in force – Merely because there is no defect in his personal care and his attachment for his children - Which every normal parent has, he would not be granted custody – Simply because father loves his children and is not shown to be otherwise undesirable does not necessarily lead to conclusion that welfare of children would be better promoted by granting their custody to him – Children are not mere chattels nor are they toys for their parents – Sec.6 of Act constitutes father as natural guardian of a minor son – But that provision cannot supersede paramount consideration as to what is conducive to welfare of minor.

Order passed by District Judge and High Court modified and accordingly visitation right also – Appeal, dismissed. **K.Shaik Mahaboob Basha Vs. Shaik Ameer Saheb 2008(3) Law Summary (S.C.) 233.**

—Secs.10 & 25 - **MULLA'S PRINCIPLES OF MAHOMEDIN LAW,** Art.352 - "Right of mother to custody of minor children" - Family Court dismissing petition filed by husband seeking custody of minor son on ground that mother is natural guardian - Appellant/ husband contends that respondent wife herself got married after obtaining divorce and therefore lost her right as natural guardian - Respondent contends that since appellant also married, it is not safe to give custody of child to appellant and thus lower Court rightly dismissed petition filed by appellant - In this case, both appellant and respondent have married again - Once mother marries she loses her right as natural guardian and guardianship to have custody of child - Factually the child is hardly about 3 years old and admittedly he is in custody of respondent mother - However, circumstances that would be required to be considered for purpose of appointment of guardian is *sine quo non* to welfare of child, which will prevail over all other aspects - Appellant's 2nd wife not examined to show as to how best interest of child is protected when he seeks custody of

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child - Matter requires enquiry afresh and disposal on merits considering various facts and circumstances to see what would be best course for welfare of child, for purpose of appointment of guardianship - Matter remanded for fresh disposal on merits - Arrangement made earlier in respect of appellant's visiting rights shall continue to remain in force - Appeal accordingly, allowed. **Syed Asadullah Vs. Rasheeda Begum 2008(2) Law Summary (A.P.) 389 = 2008(5) ALD 216 = 2008(4) ALT 765.**

—Sec.25 and 17 (3) – **CONSTITUTION OF INDIA,** Art.226 – "Custody of minor child" - Appellants/Maternal grand parents of minor child filing application for custody of minor child contending that respondent/father and his mother tortured their daughter deceased mother of minor child, for not bringing more dowry – Trial Court and High Court directed appellants to handover child in custody of his father with visiting rights to appellants - Appellants contend that both Courts are wholly wrong in granting custody of minor child to respondent-father and approach of Courts below was technical and legalistic rather than pragmatic and realistic – In such matters paramount consideration which is required to be borne in mind by Court is welfare of child and nothing else and that child's mother was killed and criminal proceedings were initiated against respondent and his mother which are pending - Respondent/father contends that both Courts below considered relevant provisions of law, position of respondent as natural guardian being father of child and held that there is no earthly reason to deprive him of custody of minor child – Approach of both Courts below is not in accordance with law and consistent with view taken by Apex Court in several cases – Both Courts also emphasized that father has right to get custody of minor child and he has not invoked any disqualification provided by 1956 Act - On facts and in circumstances case both Courts are duty-bound to consider allegations against respondent/father and pendency of criminal case further offence punishable u/Sec.498-A IPC – In instant case, on overall considerations Courts below are not right or justified in granting custody of minor child to respondent/father without applying relevant and well-settled principle of welfare of child as paramount consideration – Trial Court ought to have ascertained wishes of child as to with whom he wanted to stay - When asked, the child unequivocally refused to go with father or to stay with him and also stated that he is very happy with his maternal grant parents and would like to continue to stay with them - Application filed by respondent/father for custody of his son minor child, dismissed. **Nil Ratan Kundu Vs. Abhijit Kundu 2008(3) Law Summary (S.C.) 121 = 2008(6) ALD 105 (SC) = 2008 AIR SCW 5769.**

—Secs.25(3), r/w Sec.17(3) - UN Convention, Arts.2 & 41 - Family Court allowed OP filed by petitioner/mother seeking custody of son from respondent No.1/mother of petitioner and maternal grand mother of minor, on ground that petitioner being natural mother is entitled to custody of minor child - 1st respondent/grand mother contends that Sec.25(3) r/w Sec.17(3) of Act are attracted on facts and circumstances of case as minor child is old enough to form an intelligent preference; his preference for staying with grand mother may be taken into consideration by High Court and that trial Court has ignored aforesaid provision and it has also not kept in mind decision of Supreme Court - Even parents do not have preferential unlimited right to custody

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without reference to welfare of minor child - Sec.25 of Act - Term "welfare" used in prevision has been interpreted in several decisions of High Court as well as of Supreme Court *"…the welfare of the child is not to be measured by money alone nor by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."* - Object of Guardians and Wards Act is not merely physical custody of minor but due protection of rights of Wards health, maintenance and education - Power and duty of Court under Act is welfare of minor - In present case, minor is now aged 16 years - Material welfare of child includes stability, security, living environment and understanding care and guidance with which minor child in acquainted for last 16 years - It is also on record that child is showing consistently good performance in education and he got 556 out of 600 marks in SSC examination - Minor child is now studying intermediate and intermediate examination being crucial for shaping career of a student, ensuring that minor child is not disturbed from his environment at home appears to be crucial circumstance with respect to his welfare - In cross-examination he states that "he is grand mother will look after and take care of his interest even though she is old - After I grow I take care of my self and my grand mother has not brought any pressure or given any threat to me not to join my natural mother I do not want to go my natural mother" - In this present case, minor child's intelligent preference deserves to be given weightage, it would not be in interest of minor to disturb him from grand-mother's custody and environment to which he is well accustomed to during past 16 years - Trial Court has not approached issue from proper perspective - Hence, impugned order, set aside - Appeal, allowed. **G.Vishnudevendramma Vs. G.Padmaja 2011(1) Law Summary (A.P.) 114 = 2011(2) ALD 435 = 2011(2) ALT 100 = AIR 2011 AP 70.**

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—It has to be held that even though 3rd defendant went in adoption in 1940, he did not lose his right in coparcenary property in natural family which had vested in him on day he was born - Therefore, 3rd defendant would also be entitled to a share in the A1 schedule properties along with defendant Nos. 1 and 2 and plaintiff - Therefore, Plaintiff cannot now contend that 3rd defendant would not be entitled to a share in A1 schedule properties and he, ie., plaintiff should get 1/3rd share - In any event, plaintiff had not amended the plaint and sought 1/3rd share in A1 schedule properties and he has claimed only 1/4th share therein - Therefore, appeal is allowed. **Madala Yathirajulu (Died) by his LRs Vs. Madala China Ananthaiah 2014(3) Law Summary (A.P.) 213 = 2015(2) ALD 284 = 2015(1) ALT 67 = AIR 2014 Hyd. 32.**

—Sec.7 - "Consent wife for adoption" - Suit for declaration partition and possession - Term "consent" used in proviso to Sec.7 and explanation appended thereto not defined in Act - it would reasonable to say that consent of wife envisaged in proviso to Sec.7

should either be in writing or reflected by affirmative/positive act voluntarily and willingly done by her - If adoption of Hindu Male becomes subject matter of challenge before Court, party supporting adoption has to adduce evidence to prove that same was done with consent of his wife - Presence of wife as spectator in assembly of people who gather at place where ceremonies of adoption are preformed cannot be treated as her consent - Court cannot presume consent of wife simply because she was present at time of adoption - Wife's silence or lack of protest on her part also cannot give to an inference that she had consented to adoption - In this case, trial Court and appellate Court held that there is valid adoption and adopted person became coparcener of adoptive father - Single Judge declined to interfere with concurrent findings recorded by two Courts - Interference is warranted only when Apex Court is convinced that finding is exfacie perverse - A finding of fact can be treated as perverse if it based on no evidence or there is total misleading of pleading - In this case, trial Court, lower appellate Court and single Judge of High Court misdirected themselves in deciding issue relating to consent to adoption and that all Courts held that consent can be presumed because wife was present in ceremonies of adoption - Unfortunately all Courts completely ignored that presence of wife in ceremonies of adoption was only as a mute spectator and not as an active participant -Evidence of important person who played most pivotal role in adoption was not examined despite fact that he was not only actively involved at various stages of adoption but also instrumental in admitting adopted boy in school - Trial Court did not take cognizance of omission but brushed aside same with cryptic observation that no objection was raised from side of defendants that plaintiff was not given in adoption by his natural father - Lower appellate Court and single Judge of High Court did not even advert to this important lacuna which would have made any person of reasonable prudence to doubt *bona fide* claim of adopted person that he was adopted with consent of wife - Wife succeeded in proving that adoption not valid because her consent had not been obtained as per mandate of proviso to Sec.7 of Act - Findings recorded by trial Court and lower appellate Court approved by single Judge of High Court that adoption was with the consent of wife is perverse inasmuch as same based on unfounded assumptions and pure conjectures - Judgments and decrees passed by trial Court, lower appellate Court and High Court, set aside. **Ghisalal Vs. Dhapubai (Dead) by L.Rs. 2011(1) Law Summary (S.C.) 71 = AIR 2011 SC 644 = 2011(3) ALD 117(SC) = 2011 AIR SCW 592.**

—-Secs.8 & 8(c) and 7 - A crippled Lady left by her husband soon after marriage living with her parents, adopted appellant - Since Sub-Divisional Officer disbelieved claim of adoption in Land Ceiling proceedings, crippled lady filed suit seeking declaration that appellant is her adopted son - Trial Court decreed suit - First Appellate Court dismissed appeal and affirmed judgment and decree of trial Court - High Court allowed second appeal holding that in view of Sec.8(c) stipulated that so far as female Hindu is concerned, only those falling within enumerated categories can adopt a son - High Court also noted that there is great deal of difference between a female Hindu who is divorced and who is leading life like a divorced woman and as such claimed adoption is not an adoption

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and had no sanctity in law and suit filed by Lady liable to be dismissed - A married woman cannot adopt at all during subsistence of marriage except when husband has completely and finally renounced world or has ceased to be a Hindu or has been declared by Court of competent jurisdiction to be of unsound mind - If husband is not under such disqualification, wife cannot adopt even with consent of husband whereas husband can adopt with consent of wife. **Brijendra Singh Vs. State of M.P. 2008(1) Law Summary (S.C.) 108 = 2008(2) ALD 105 (SC) = AIR 2008 SC 1056 = 2008 AIR SCW 652 = 2008(1) Supreme 354.**

—Sec. 11 - **INDIAN EVIDENCE ACT, 1872,** Sec. 13 - Defendants in Original Suit No.108 of 1988 on file of Court of Additional Subordinate Judge, Ongole preferred this Appeal challenging decree and judgment dated 06.03.1996, wherein suit filed by plaintiff, for partition of schedule property into 2 equal shares and allot one such share to plaintiff, for rendition of true and correct accounts and grant mesne profits, was decreed. Plaintiff filed suit for aforesaid reliefs alleging that plaintiff, 1st defendant and one Angalakurthy Ramulu are natural children of Angalakurthy Subbaiah and Rosamma- 2nd defendant is daughter of 1st defendant and wife of Ramulu - After obtaining permission from Angalakurthy Subbaiah, Angalakurthy Papayya and Ammakkamma adopted Ramulu on 10.05.1943, as per Hindu rites and customs, under a registered adoption deed - Angalakurthy Subbaiah is no other than the brother's son of Papayya. Since date of adoption, Ramulu ceased to be member of his natural family and has been living with Papayya and Ammakkamma as their natural son - Angalakurthy Subbaiah, who own and possessed a thatched house in village and as same became dilapidated and fell down, shifted his residence to the house of Ramulu - Subsequently, Ramulu married 2nd defendant. As Subbaiah became old, Ramulu used to assist and manage property of Subbaiah - After death of Subbaiah in year 1964 suit schedule property devolved upon his widow Rosamma and his two daughters, plaintiff and 1st defendant, and since then they are jointly enjoying schedule property with assistance of Ramulu - Later, after death of Rosamma, in year 1977, plaintiff and 1st defendant together became entitled to entire schedule property and have been enjoying the same jointly but, as the 1st defendant is living in village where schedule property situate, 1st defendant is in management of routine work relating to cultivation etc., and plaintiff used to visit the village in connection with cultivation like raising crops, harvesting etc., occasionally - Thus, possession of schedule property by plaintiff and 1st defendant is joint as they are co-sharers; moreover, the 2nd defendant, who is resident of same village, also used to assist her mother, 1st defendant. While matter stood thus, the plaintiff requested 1st defendant to co-operate for partition of schedule property but she refused; thereupon, elder by name Tulluri Venkaiah was sent to mediate but no purpose was served; hence, the suit for the aforesaid reliefs.

Held, from various principles laid down by different High Courts, it is obvious that a person who was adopted by another family, adopted boy ceases to be member of natural family and unless any property is vested prior to his adoption either in partition

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or otherwise, he is disentitled to claim share in the natural family property; if any property is vested on him, it cannot be divested on account of his adoption - Regarding contention that prior to un-codified law on Hindu Adoptions and Maintenance, adopted boy is entitled to claim share even in natural family property, being a coparcener, this view is against principles of law laid down by various High Courts - Therefore, contention of learned counsel is without any substance and does not merit consideration. Hence, this Court hold that Ramulu, adopted son of Papayya and Ammakkamma, was not entitled to claim share in the property of his natural family - Unless there is a custom or an agreement between two families to constitute a composite family, the plea of a composite family by custom is not acceptable. Hence, by applying the principles laid down in the decision referred supra, and for lack of sufficient pleading and evidence to establish that Ramulu and his natural family constituted as composite family, this plea is only an after-thought or an invention made for the first time during Appeal without any plea and evidence before trial Court - Hence, it is not open to defendants to claim half share in the property of his natural family, as a member of composite family - Therefore, it does not merit consideration and the 2nd defendant being the wife of Ramulu is not entitled to claim any share in natural family of Ramulu as a member of composite family.

In view of consistent principles laid down by Apex Court and this Court entries in revenue records are only for fiscal purpose and such long continuous possession as per entries in adangals etc., would not create or confer any title in immovable property and therefore long continuous possession of property by Ramulu is not sufficient to claim title by adverse possession in absence of proof of continuous possession of Ramulu for over a statutory period of 12 years after setting up adverse or hostile title - After adoption of Ramulu by his adopted parents, he ceased to be a member of his natural family and no property was vested on him before his adoption in property of natural family - Therefore, plaintiff and 1 st defendant alone remained as members of family and they are entitled to claim entire property in equal shares being legal heirs of deceased Subbaiah and Rosamma - In view of the undisputed relationship between the plaintiff, 1 st defendant and Ramulu, trial Court rightly concluded that plaintiff and 1 st defendant alone are entitled to equal share being daughters of Subbaiah and Rosamma and this finding of trial Court is free from any legal infirmity warranting interference of this Court - Hence, finding of trial Court is hereby confirmed holding that plaintiff and 1 st defendant are entitled to equal share in suit schedule property, except Item 4 of schedule property since it was admittedly separate property of Ramulu, husband of 2 nd defendant, as per the admissions made by PW.1 in her evidence and supported by documentary evidence EXs.B-1 to B-3. Hence, well reasoned judgment of trial Court is free from irregularities and illegalities and same is hereby confirmed holding this point in favour of the plaintiff-respondents 1 to 3 and against defendants-appellants - In view of above, Court find no merit in Appeal and, accordingly, Appeal Suit is liable to be dismissed. **Angalakurthy Venkata Narayanamma Vs. Molakapalli Lakshmamma 2015(3) Law Summary (A.P.) 496.**

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—Sec.11(vi) - Suit for partition - "Delegation of power of adoption" - "Conditions for valid adoption" – Stated - Plaintiff/adopted son filed suit for partition against adopted father - 1st defendant/adopted father requested natural parents of plaintiff to give plaintiff in adoption - Natural parents agreed and gave plaintiff in adoption by handing over him to 1st defendant who brought him to his house - Formal adoption Ceremony took place and deed of adoption also executed - 1st defendant contends that there was no adoption on 10-3-1982 and that plaintiff was brought to his house only to bring him up and actually adoption has taken place on 22-5-1983 and it was not valid and that adoption not valid as plaintiff was aged more than 15 years by date of adoption and as there was no proper taking and giving and therefore suit is liable to be dismissed - Trial Court accepted contention of plaintiff that there was adoption on 22-5-1983 and there is also a custom in "Vysya community" where boy aged 15 years can be validly given in adoption and also accepted decisions of High Court and consequently accepted customary adoption - Having considered so, trial Court found that adoption was in contravention of Sec.11(vi) of Hindu Adoption and Maintenance Act,1985 - A reading of Sec.11 of Act unambiguously shows that power to deligatge is available to both persons giving and also to persons taking in adoption and as such delegation can be either by person giving or person taking - Evidently in this case, 1st defendant could not have taken boy in adoption as he has no wife and consequently it has to be delighted to his brother P.W.4 and his wife - Adoption found valid and all aspects and consequently findings of lower Court on this aspect has to be set aside and held that plaintiff is adopted son of 1st defendant - Appeal is allowed holding that plaintiff is adopted son of 1st defendant and there shall be partition of plaint A schedule items. **Thavva Venkata Punna Rao Vs. Tavva Sriramulu 2013(1) Law Summary (A.P.) 211 = 2013(4) ALD 19 = 2013(2) ALT 529.**

—Sec.16 - Serial Circular No.24/97 - "Presumption of adoption" - Compassionate appointment - Termination - Deceased Railway employee, working as Senior Gangman, during his life time executed affidavit stating that he had adopted 1st respondent and submitted registered adoption deed seeking permission to recognize R.1 as his adopted daughter and subsequently included name of her adopted daughter in family declaration form and submitted for drawing privilege pass - After death of deceased employee 1st respondent was appointed as Ticket Collector on compassionate grounds as Ticket Collector and also paid pensionary benefits and later promoted to post of Senior Travelling Ticket Examiner - Subsequently basing on anonymous complaint, as per instructions of Central Vigilance Commission 1st respondent was terminated from service - Central Administrative Tribunal after considering matter in detail allowed O.A filed by 1st respondent, setting aside termination order - Assailing Tribunal order S.C. Railways filed present writ petition - Petitioner, S.C. Railway contends that statutory presumption under Sec.16 of Adoption Maintenance Act is rebuttable presumption and mere producing registered adoption deed is not conclusive proof of adoption and same stood rebutted in facts and circumstances of case rendering R.1 not entitled for

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appointment and that Tribunal committed serious error in not going into factual matrix and entire proceedings of R.1 in securing appointments on compassionate grounds consequent to death of deceased employee, is void ab initio and R1 was rightly terminated from service - 1st respondent contends that contention of S.C Railway that adoption deed is brought into existence for purpose of claiming compassionate appointment is absurd, as Railway Department itself issue proceedings during life time of deceased employee to effect that adoption is agreed to by administration and adoption deed had taken place for getting compassionate appointment after several years and that it cannot be said that appointment was secured by fraudulent means i.e. by making misrepresentation by playing fraud on administration - 1st respondent also contends that she was appointed on basis of registered adoption deed, but not on mere adoption deed as contended by Railway Authorities and that in view of statutory presumption available u/Sec.16 of Act SC Railway has no right to file writ, challenging impugned order of Tribunal and that Railway Authorities shall not take any action basing on anonymos complaint and as per instructions of Central Vigilance Commission Railway Authorities cannot terminate her from service and impugned order of termination is liable to be dismissed - In this case, deceased employee was issued with privilege pass in favour of his adopted daughter, 1st respondent, which goes to show that said adoption was accepted by competent authority - No misrepresentation or fraud committed by R1, adopted daughter of deceased employee in securing job on compassionate grounds - Merely because name of adopted father not changed in school/colleges records, it cannot be said that R.1 is not adopted daughter of deceased employee - Appointment of 1st respondent cannot be terminated on basis of report of Vigilance Inquiry Report made on basis of anonymous complaint - Registered adoption deed has to be declared void only by competent authority - S.C. Railway is not competent to declare registered adoption deed as void for any reason whatsoever - It is not mentioned under which provision of law 1st respondent is terminated - Therefore termination order has been issued without jurisdiction - A perusal of Sec.16 of Act shows that whenever any document registered under law for time being is produced before any Court purporting to record adoption made and signed by person giving and person taking child in adoption, Court shall presume that adoption has been made in compliance with provisions of Act, unless and until it is disproved, employment of 1st respondent cannot be terminated on basis of report of Vigilance Department - There are no grounds to allow writ petition - No irregularity or illegality in impugned order and Tribunal rightly set aside termination order of 1st respondent - Writ petition, dismissed. **Union of India Vs. C.Aruna Devi 2011(3) Law Summary (A.P.) 198 = 2011(6) ALD 130 = 2011(5) ALT 757.**

—Sec.18 - **HINDU MARRIAGE ACT, 1955**, Sec.13(1)(ia) - Wife filed O.P before Family Court u/Sec.18 of (HAM) Act, for grant of past and future maintenance - Husband filed another O.P under provisions of HM Act for dissolving his marriage with respondent/ wife - On basis of evidence adduced by both wife and husband in respective O.Ps.,

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Family Court came to conclusion and passed common Order that husband substantiated his claim where as wife failed to substantiative her claim that she deserted husband by reason of which husband suffered mental agony which it amount to cruelty where as at end on those grounds allowed O.P filed by husband granting relief prayed by him while dismissing O.P filed by wife rejecting plea of providing maintenance to her - By virture of observations of Supreme Court, Family Court came to conclusion that due to behavior of wife, husband suffered mental agony which amounted to mental cruelty which is not acceptable in view of admission made by husband that wife never treated him with cruelty - But what is significant is that admittedly there has been no cohabitation between wife and husband since 2006, where as petition for divorce was filed in 2008 and it is not in dispute that petition was filed after gap of two years from 2006 - What is important is that mandate of relevant provision that there should be a desertion for continuous period of two years immediately preceding presentation of petition for divorce on that ground is complied with who ever may be at fault - Desertion is willful termination of existence of cohabitation without consent express or implied of party alleging desertion and against his or her wish - Therefore without any hesitation it is held that she has abandoned matrimonial house once for all marital bond has been irrtrievably broken down - Hence husband is entitled for divorce - Sec.18 of HAM Act, does not specifically speak of granting maintenance to divorced wife - In fact significancy clause 2(a) thereunder provides that Hindu Wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if she is guilty of desertion, that is to say of abandoning her without reasonable cause and without her consent or against her wish or of wilfully neglecting her - It infers that if wife alone is guilty of desertion of husband she is not entitled for any maintenance from him - In context of observations awarding maintenance to wife because of whose fault marriage between her and husband has been broken is against concept of marriage - How can one of spouses who got no respect for marital bond to be granted maintenance - Wife or husband will have obligation of maintaining other spouse when other spouse is neglected by him or her without lawful excuse having got sufficient means while other spouse got no means to maintain her self or him self having entered into wedlock - Thus it is not proper to uphold plea of wife to provide maintenance to her in circumstances enumerated as against husband - In result both appeals are dismissed confirming orders passed by Family Court. **Guntamukkala Naga Venkata Kanaka Durga Vs. G.Eswar Sudhakar 2012(3) Law Summary (A.P.) 291 = 2013(2) ALD 148 = 2012(6) ALT 618 = AIR 2013 AP 58.**

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—— **"Joint Family property"** - "Powers of Kartha of joint family to sell away share of other coparcener" - Respondents filed suit for partition and to declare judgment and decree in O.S.813/81 as un enforceable, void and illegal - Trial Court granted both reliefs even though decree in O.S.813 becomes final on ground that 1st defendant who is father of defendant No.2 and kartha of joint family has no power to sell away

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shares of other coparceners and his power of alienation is only restricted to his share - As regards legal position with regard to powers of alienation by Manager of Hindu Joint Family, there is no manner of doubt what so ever that so long as debt contracted is not for immoral or illegal purpose, it not only binds manager of joint family, but also other coparcener - In this case, entire litigation fought by deceased-1st defendant had been well within knowledge of other coparceners - Therefore by no stretch of imagination can it be said that there was collusion between deceased, D-1 and D-3 in filing O.S.813/81 - In fact it can be held that there is collusion between deceased D-1 and other coparcener of joint family for which D-1 admittedly Kartha - Therefore, view taken by trial Court that 1st defendant cannot bind his sons and grand sons in respect of alienations made by him to extent of their shares, is contrary to settled legal position and same liable to be set aside - Appeal, allowed. **Y.Kesava Sharma Vs. K.Venugopal Rao (died per LR.s) 2010(1) Law Summary (A.P.) 108.**

—-**Gifts** - Only if the consent of the other coparceners is taken, a gift of undivided interest in the coparcenary property by a coparcener, either to another coparcener or to a stranger, is valid - Admittedly, consent of the 1st defendant (first son of deceased) was not obtained by deceased during his lifetime before executing Gift Deeds in favour of the 2nd defendant (2nd son of deceased) - Therefore, said Gift Deeds are void-not only because they were executed by deceased without consent of 1st defendant but also because they comprised specific joint family properties of family and not just his undivided interest in entire joint family properties - Hindu Succession Act, 1956, Sec.30 - Will - Will contained a recital that there was a partition in 1964 between executant and defendants, but there was no such partition in 1964, and that a sham partition was set up to ensure that a collusive decree which was passed, in support of that partition to defeat rights of first wife of 2nd defendant - Signature of executant on second page of said Will is not put horizontally but at an angle and Will itself was executed on two stamp papers each of value Rs.5/- - DW.5 is stated to be familiar with writing of documents/agreements and is a businessman and he would have been aware that Wills need not be executed on stamp paper - Iniquitous bequests under Ex.B.12 i.e. giving nothing to 1st defendant, giving only one property to plaintiff (surviving wife of executant) and giving two properties to 2nd defendant, also create a suspicion about its authenticity - It is unthinkable that a more substantial provision would not have been made by executant in favour of his wife, plaintiff, for her maintenance and security in her old age, and she would be left to the mercy of defendants-Held, there is no satisfactory explanation from 2nd defendant on these matters - Hence both Wills cannot be believed. **Agina Chandra Mouli Vs. Agina Varamma 2014(2) Law Summary (A.P.) 305 = 2014(6) ALD 430 = 2014(5) ALT 473.**

—**Partition – "Coparcenary property"** – **"Burden of proof"** - Plaintiff filed suit for partition of family property – Partition effected by family arrangement – High Court

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placed burden on petitioners/defendants – In this case Trial Court as well as High Court held that there is complete partition – Therefore presumption would be that there is complete partition of family property - Consequently, burden of proof that certain property was excluded from partition would be on party that alleges same to be Joint Family Property - High Court committed error in placing burden of proof on petitioners/ defendants – Appeal allowed. **Kesharbai @ Pushpabai Eknathrao Nalawade Vs.Tarabai PrabhakarraoNalawade 2014(2) Law Summary (S.C.) 7.**

— **Partition Suit** – Trial Court dismissed suit - First appeal CCCA.No.9 of 1997 is filed against judgment and decree dated 15.03.1996 passed by the V Additional Judge, City Civil Court in O.S.No.1468/88, wherein Court below dismissed suit filed by appellant/plaintiff, for partition and separate possession along with mesne profits in respect of A, B, C, and D suit schedule properties - Held, Court below has erroneously held that Ex.B4 and B5 show that plaintiff has relinquished his share in 'A' schedule property - Even as per the defendants, if plaintiff has relinquished his share through Exs.B4 and B5, question arises as to why defendants have not evicted plaintiff from 'A' schedule property, till today - In view of above, the findings of trial Court on issues Nos.1 and 2 which are relevant for purpose of 'A' schedule property are erroneous and same are required to be set aside - Since it is admitted case of both parties that 'A' schedule suit property is joint family property, the plaintiff and respondents were unable to establish that the appellant/plaintiff relinquished his share in 'A' schedule property, the appellant/plaintiff is entitled for share in the property - Further, any relinquishment of immovable property has to be by way of relinquishment deed and Exs.B4 and Ex.B5 cannot be termed as relinquishment deed as the same are not registered - In view of findings in first appeal, no substantial question of law is involved in this Second appeal - In view of the facts and circumstances and law laid down in judgments referred, this Court do not see any merit in the judgment of the trial Court and the same is set aside to the extent of 'A' schedule suit property - In view of the findings given in CCCA.No.9 of 1997, Second Appeal No.495 of 2008 stands dismissed. **Yadguni Vs.Yadguni 2015(2) Law Summary (A.P.) 462 = 2015(6) ALD 315 = 2015(5) ALT 497.**

—and **CIVIL PROCEDURE CODE,** Or.6, Rule 17, Or.20, R.6 & Or.8, Rule 5 - **EVIDENCE ACT,** Sec.17 - **LIMITATION ACT,** Arts.110 & 113 - **"Ancestral property"** - "Self acquired property" - Determination - "Amendment of plaint" - SUIT FOR PARTITION - In suit for partition whether parties are arrayed as plaintiffs or defendants, but each party has to be treated as plaintiff - 1st respondent/plaintiff wife of late S.R filed suit for partition against appellant/2nd defendant and other respondents - Plaintiff contends that there was earlier partition - Admittedly defendant themselves have taken specific plea that there was no partition - Or.8, Rule 5 CPC envisages that every allegation of fact in plaint if not denied specifically or by necessary implication, or stated to be not admitted in pleading of defendant, shall be taken to be admitted

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except as against a person under disability - There is no other provision in CPC imposing such a condition on plaintiff to deny allegations of fact made by defendants in their written statement - PRIOR PARTITION - Plaintiff has admitted there was earlier partition - Mere pleadings or a version of a party cannot be considered as admission and admission means admitting fact which is asserted by other party - When a party pleads that there is partition and when other side dispute same, it becomes a disputed that fact and when it is a disputed fact, Court has to give a finding on said disputed fact - Of course at a subsequent stage, a party cannot be permitted to take contra stand to earlier stand taken by said party - It is also settled law that an admission made by an person cannot be split up and part of it can be used against him - ADMISSION - Correct meaning of word "admission" appears to be when a party to proceedings had made a statement or taken a stand and when other side has admitted same as true, same amounts to admission - Thus even when party admits plea or stand of a party in earlier proceedings, same also can be treated as an admission - AMENDMENT OF PLAINT - Once an amendment is allowed and plaintiff carried amendment in original plaint, amendment relates back to date of original plaint - SUIT FOR PARTITION OF JOINT FAMILY PRPERTIES - LIMITATION - Applicability of Arts.110 & 113 of Limitation Act - Art.113 is applicable to suits for which there is no prescribed period of limitation - Under said Article, suit has to be filed within a period of 3 years when right to sue accrues - Art.110 of Limitation Act is applicable when a person is excluded from joint family property and when he seeks to enforce right to share therein; and 12 years period is prescribed from date when exclusion becomes known to plaintiff - In this case, amendment application has been filed in year 1993, i.e. admittedly within a period of 12 years from date of death of late SR - Admittedly suit has been filed in year 1989 - In circumstances it can be safely held that Art.110 of Limitation is relevant provision and Art.113 has no application to facts of case and therefore amendment is not barred by limitation - Appeal filed by 2nd defendant and Cross-objections filed by 1st defendant are liable to be dismissed - As far as writtens statement scheduled properties are concerned, defendants cannot seek partition of same - Judgment and decree passed by Court below, stands confirmed. **Reddi Radhakrishna Vs. Reddy Lakshmi 2013(3) Law Summary (A.P.) 132 = 2013(5) ALD 683 = 2013(5) ALT 312.**

—and **HINDU SUCCESSION (AMENDMENT) ACT, 2005**, Secs.6&8 - **"COPARCENARY PROPERTY"** - "Ancestral property" - "Self Acquired property" - Meaning of - Only when property which is received by a person from his ancestors by survivorship can be held to be ancestral/coparcenary property and any other property which although, might have been received from ancestors by means of will or consent decree or a father partitioned property, will loose its character as that of coparcenary property and will become self acquired property in hands of person receiving it - Sec.6 of Act as it stood at relevant time provided for devolution of interest in coparcenary property - Sec.8 lays down general rules of secession that property of male dying

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intestate devolves according to provisions of Chapter as specified in clause (1) of schedule - In Schedule appended to Act natural sons and daughters are placed as clause (1) but a grand son, so long as father is alive has not been included - Sec.19 of Act provides that in event of Succession by two or more heirs they will take property per capita and not per strips, as also tenants, and not joint tenants - "COPARCENER OF PROPERTY" - Meaning of - Coparcenary property means property which consists of ancestral property and a coparcener would means a person who shares equally with others in inheritance in estate of common ancestor - Coparcenary is a narrower body than joint Hindu Family - A coparcenary has no definite share in coparcenary property but he has an undivident interest in it and it enlarges by deaths and diminishes by births in family and it is not static - So long on partition an ancestral property remains in hands of single person, it has to be treated as a separate property and such a person shall be entitled to dispose of coparcenary property treating it to be his separate property but if a son is subsequently born, alienation made before birth cannot be questioned - But moment a son is born, property becomes coparcenary property and son would acquire interest in that and become a coparcener. **Rohit Chauhan Vs. Surinder Singh 2013(2) Law Summary (S.C.) 279 = 2013(5) ALD 149 (SC) = 2013 AIR SCW 4715 = AIR 2013 SC 3525.**

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—Maintenance - "Determination of paternity" - DNA test - **EVIDENCE ACT**, Sec.112 - **CONSTITUTION OF INDIA,** Art.21- Respondents filed suit to declare the 1st respondent as legally wedded wife and 2nd respondent as legitimate son of revision petitioner and for grant of maintenance to them - In said suit, they filed an interlocutory application to send blood samples of 2nd plaintiff and defendant to Forensic Science Laboratory, Hyderabad for purpose of conducting DNA test to decide the paternity of 2nd plaintiff - Said I.A., was allowed by learned trial Court - Feeling aggrieved, defendant filed the present revision - Held, petitioner contended that he has no sort of any relationship with the respondents, he has a legally wedded wife and has a female child through her. In view of the total denial of relationship by petitioner and making wild allegations against the 1 st respondent touching her moral character, the right of respondents to establish their relationship has to be adequately protected by trial Court - If trial Court refuses prayer made by respondents to direct petitioner to undergo NDA test, it would be in considered view of this Court is nothing but refusal to protect the rights of respondents - Learned trial Court upon considering relevant materials before it, arrived at conclusion that directing the petitioner to undergo NDA test is proper. Having regard to facts and circumstances of the case, this Court is of the opinion that learned trial Court exercised discretion properly and allowed the petition filed by respondents - As this Court is of view that the DNA test proposed to be conducted is essential to establish rights of respondents, order passed by trial Court does not require any interference in the revision - For foregoing, civil revision petition fails and accordingly the same is dismissed. **Chinta Madhu Sudhana Rao Vs. Chinta Naga Lakshmi 2015(2) Law Summary (A.P.) 257 = 2015(4) ALD 595 = 2015(5) ALT 580 = AIR 2015 Hyd. 131.**

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— Sec.5 - **INDIAN SUCCESSION ACT,** Sec.372 - **EVIDENCE ACT,** Sec.50 & 114 - **INSURANCE ACT**, Sec.39 - "LIC Policy' - "Nomination" - Disputes between beneficiaries of deceased policy holder - Deceased took insurance policies nominating his mother/ appellant as beneficiary and subsequently married 1st respondent - 1st respondent, wife and respondents 2 & 3 sons of deceased policy holder filed Application for Succession Certificate - Appellant/mother contends that deceased was not married at all - Trial Court granting succession certificate basing on number of documents including photographs showing performance of marriage cermany and held that presumption of valid marriage should be drawn - 1st appellate Court while upholding judgment and order of trial Court, held that appellant is entitled to 1/4th share in estate of deceased - High Court dismissed Revision - Nomination of policy only indicated hand which was authorised to receive amount on payment of which insurer got a valid discharge of its liability under policy - Policy holder continued to have an interest in policy during his life time and nominee acquired no sort of interest in policy during lifie time of policy holder - On death of policy/holder, amount payable under policy became part of his estate which was governed by law of succession applicable to him - Such succession may be testamentary or intestate - A nominee could not be treated as being equivalent to an heir or legatee - Amount of interest under policy could, therefore, be claimed by heirs of assured in accordance with law of succession governing them - 1st appellant as one of heirs of deceased, policy holder is entitled to 1/4th share in estate of deceased - Appeal, dismissed. **Challamma Vs. Tilaga 2009(3) Law Summary (S.C.) 104.**

—Secs.7 & 12 - Nullity of marriage - Respondent/wife filed petition before Family Court seeking annulment of marriage on account of fraud played by appellant/husband contending that statements made by him, basing on which she married him were incorrect - Appellant/husband filed counter making a counter-claim for restitution of conjugal rights stating *inter alia,* that allegations levelled against him are absolutely false and that he sincerely and honestly disclosed about himself and his caste to respondent /wife and she having been convinced with his honesty and sincerity liked him and expressed her love towards him, though he belongs to SC community and that marriage was performed with free consent of wife and marriage consummated - Family Court declared that marriage as *null* and *void* and wife is entitled to decree and that husband is not entitled to relief of restitution of conjugal rights - Family Court did not go into aspects of nullity of marriage u/Sec.12 of Act, however it went into ingredients of Sec.7 of Act and granted a decree of nullity of marriage on ground that required rites and ceremonies were not followed, nor there was any proof with that effect - Findings recorded by Family Court not sufficient to grant decree in favour of wife and it ought not to have taken into consideration or relay much upon ingredients of Sec.7 before granting relief of declaration of marriage as null and void - Court ought to have relied upon ingredients of Sec.12 of Act - Facts relating to social status, financial status and other material aspects if concealed, or wrong statement of facts, which were made in order to encourage other partner to marry and such conduct would certainly entitle other spouse to seek a decree of nullity of marriage - Reasoning given by Court on aspects of applicability of Sec.7 and fulfillment of ingredients of such provision, not relevant to present case - Family Court ought to

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have gone into aspects of fraud and misrepresentation on part of husband while granting decree as sought for - Unfortunately those aspects have been ignored and Court drifted into other area, which is actually not in dispute - Even after marriage, Application can be made u/Sec.12 of Act pleading fraud and misrepresentation and in such a case, Courts are not precluded from interfering with such marriage with little hesitation and to pass a decree declaring marriage as null and void - Present case is eminently a fit case where decree for declaration of marriage as *null* and *void* is absolutely warranted - Appeal, dismissed - Cross objections, allowed. **M.Devender Vs. A.Sarika 2008(3) Law Summary (A.P.) 44 = 2008(4) ALD 728 = 2008(5) ALT 183.**

—-Secs. 9 & 13(1) ((ia) - **"Restitution of conjugal rights"** - **"Dissolution of marriage"** - Respondent/wife filed petition for restitution of conjugal rights before Family Court u/Sec.9 - Appellant/husband filed petition seeking dissolution of marriage on ground of cruelty and desertion - Family Court dismissed petition filed by wife for restitution of conjugal rights and granted decree of divorce - High Court allowed appeal filed by respondent/wife and set aside decree of divorce granted in favour of appellant/ husband, observing that finding of Family Court that lodging complaint with Police against husband amounts to cruelty is perverse because it is not a ground for divorce under Hindu Marriage Act and that further held that husband and wife did not live together for long time and therefore question of treating with each other with cruelty does not arise and conclusion that wife caused mental cruelty to appellant/husband is based on presumptions and assumptions - High Court wrongly held that because appellant/husband and respondent wife did not stay together there is no question of parties causing cruelty to each other - Staying together under same roof is not a pre-condition for mental cruelty - While staying away a spouse can cause mental cruelty to other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations - In this case, conduct of respondent-wife in filing complaint making unfounded, indecent and defamatory allegations against her mothr-in-law and she made all attempts to ensure that her husband and his parents were put in jail and he was removed from his job and this conduct of wife caused mental cruelty to appellant/husband and that apart appellant/huband/respondent wife were living separately for more than 10 years - As such, marriage having irretrievably broken down, dissolution of marriage would relieve both sides of pain and anguish - Marriage between appellant and respondent was dissolved by decree of divorce - Appellant/ husband working as Asst. Registrar in High Court of A.P. and getting good salary and respondent, wife fought litigation for more than 10 years and she is entirely dependent on her parents - Therefore her future must be secured by directing appellant husband to give permanent alimony of Rs.15 lakhs - MEDIATION - Court recognize "mediation" as an affective alternative dispute resolution in matrimonial matters and parities are wanted to explore possibility of settlement through mediation.

Following directions issued to Courts dealing with matrimonial matters:

a) In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the

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Counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

b) The criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.

c) All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage - Appeal disposed of accordingly. **K.Srinivas Rao Vs. D.A.Deepa 2013(1) Law Summary (S.C.) 155 = 2013(3) ALD 11 (SC) = 2013 AIR SCW 1396 = AIR 2013 SC 2176 = 2013(5) SCC 226 = 2013(2) SCC (Cri) 963.**

—Secs.9, 13(1), (ia) & (ib) - Respondent/husband filed O.P against appellant/ wife for divorce alleging grounds of desertion and cruelty - Trial Court decreed O.P and rejected counter claim of appellant-wife - Hence present appeal filed by wife - Appellant contends that respondent/husband did not prove grounds of desertion or cruelty and still trial Court granted decree of divorce and that disputes in family arose, ever since sister of respondent/husband started living separately from her husband in house of her parents and allegation that appellant dislike respondent on ground that he is deaf and his father was suffering from leprosy is totally baseless and that O.P was filed at instigation of respondent's sister and that same woman was instrumental in filing of suit for cancellation of gift deed executed by father of respondent's in favour of his son - Respondent/husband contends that appellant wife is living separately from 1991 onwards and that itself is sufficient to prove grounds of diversion and that is not at all desirable to set aside decree of divorce granted way back in year 1999 - Desertion of one spouse by other is recognized as a ground for divorce under Act - Basically, if a spouse live separately from his or her life partner, for a period, exceeding to years it is treated as desertion - However, if very reason for spouse to live separately is harassment or ill-treatment, one, who is accused of such acts, cannot take plea of desertion - It is only when husband or wife leaves matrimonial home out of his or her own volition, with an inten-tion to live separately from other spouse, that act of desertion can be said to have taken place - Circumstances that led to living of parties separately, need to be taken into account in entirety - In this case, on the basis of evidence it is difficult to come to conclusion that appellant

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left matrimonial home on her own accord - Acrimony on part of respondent and his other family members, towards appellant and her son is evident from fact that O.S was filed with a prayer to set aside gift executed by father of respondent in favour of his grand son - At every place appellant/wife emphasized that disputes in family arose on account of presence of their sister-in-law in their house, deserting her husband - Plea of appellant/wife that respondent and her sister have beaten up her on a particular day and attempted to throw her in to well by pushing a peace of cloth in her mouth and that she was rescued by villagers, cannot at all be ignored - It is under circumstances that appellant had to leave house of respondent and all the same she expressed her willingness to live with respondent in a rented house if there is no interference by her sister-in-law and that respondent in his evidence expressed his disinclination to live with appellant/wife under any circumstances - When this is state of affairs, it is just impossible to assume that respondent proved ground of desertion on part of appellant - One of tests to know mind of a party complaining desertion of his or her spouse, is, to see whether he/she made an effort to joint Company of other spouse and these steps may include issuance of notice, requiring other spouse to come and join or filing of O.P u/Sec.9 of Act - In this case, there is not even an iota of evidence to suggest that appellant had expressed her dislike towards respondent, or his father at any point of time - Hence ground of cruelty not proved by respondent - Order of decree passed by trial Court, set aside - Appeal, allowed - Counter claim allowed and there shall be decree for restitution of conjugal rights. **Narra Susheela Vs. Narra Srinivasa Reddy 2013(3) Law Summary (A.P.) 191.**

——Secs. 9, 13 (i) (a), (i) (b) - The appellant in both these appeals filed O.P. under Hindu Marriages Act under Sec.13(i) (a), (i)(b) for dissolution of marriage - The respondent filed O.P under Sec.9 for restitution of the conjugal rights - They both developed differences and are living separately for 14 years.

Held, in light of undisputed fact that parties have been living separately for nearly 14 years there may be no escape from conclusion that marriage has irretrievably broken down - As held by Supreme Court, a long time separation itself would lead to mental cruelty - Therefore, irrespective of findings of lower court on failure of appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on sole reason that there is no possibility for reunion of parties in order to live together - Since marriage between parties has irretrievably broken down, any attempt to force parties to live together would tantamount to causing mental cruelty and would only prolong mental agony of parties for rest of their lives.

In aforementioned facts and circumstances of case, OP filed by wife/Appellant is decreed and O.P. by respondent/husband is dismissed. Both appeals are allowed. **Kalapatapu Lakshmi Bharati Vs. Kalapatapu Sai Kumar 2016(3) Law Summary (A.P.) 289.**

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\—Secs.9,13(1),(ia), 26 & 27 - Appellant/wife filed O.P u/Sec.9 before Family Court, Chennai for restitution of conjugal rights - Respondent/husband filed O.P u/Sec.13(1)(ia),26 & 27 for dissolution of marriage, custody of child and return of jewellery and other items - Family Court dismissed Application for restitution of conjugal rights and allowed petition filed by husband for dissolution of marriage and held that child would remain in custody of mother on principle that welfare of child was paramount and further husband not entitled jewellary or any items from wife - Family Court also while passing decree for dissolution of marriage directed to pay permanent alimony of Rs.5 lakhs each wife and her minor son - Division Bench of High Court concurred with conclusion as regards decree of dissolution of marriage, however directed respondent/husband to pay maintenance of Rs.12,500/- to appellant, wife and her son - Hence present appeals assailing common judgment passed by High Court in both appeals - In this case, husband clearly deposed about constant and consistent ill-treatment metedout to him by wife in as much as she had shown her immense dislike to his "Sadhana" in Music and she has also made allegations about conspiracy in family of husband to get him remarried for greed of dowry and there is no iota of evidence on record to substantive same and that Family Judge as well as High Court has clearly analysed evidence and recorded a finding that wife treated husband with mental cruelty - Findings returned by Family Judge which has been given stamp of approval by High Court relating to mental cruelty cannot be said to be in ignorance of material evidence or exclusion of pertaining materials are based on perverse reasoning and said conclusion clearly rests on proper appreciation of facts - DESERTION BY WIFE - As factual matrix would reveal both Courts have proceeded on basis that wife had not endeavored to unite herself with husband and there had long lapse of time since they had lived together as husband and wife - To test tenability of said conclusion on perusal of petition for divorce from which it is evident that there is no pleading with regard to desertion and it needs no special emphasis to state that a specific case for desertion has to be pleaded - Interestingly that petition was not filed seeking divorce on ground of desertion but singularly on cruelty - In absence of prayer in that regard conclusion as regards desertion by Family Judge which has been concurred with by High Court is absolutely erroneous and accordingly same is overturned - However, it is established that husband has proved his case of mental cruelty which was foundation for seeking divorce - Therefore despite discharging finding of desertion, respondent/husband has rightly been granted decree of divorce - PERMANENT ALIMONY - In this case, husband had made out a case for divorce by proving mental cruelty - As decree is passed, wife is entitled to permanent alimony for her sustenance - While granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude and it shall depend upon status of parties, there respective social needs, financial capacity of husband and other obligations - While granting alimony, Court is required to take note of fact, that amount of maintenance fixed for wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her

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husband and at same time amount so fixed cannot be excessive or affect living condition of other party - Considering status of husband, social strata to which parties belong and further taking note of orders of Apex Court on earlier occasions it is appropriate to fix permanent alimony at Rs.50 lakhs and out of which Rs.20 lakhs shall be kept in F.D in name of son in Nationalized Bank which would be utilized for his benefit - Decree for dissolution of marriage is affirmed only on ground of mental cruelty which eventually leads to dismissal of appeals. **U.Sree Vs. U. Srinivas, 2013(1) Law Summary (S.C.) 17 = 2013(1) ALD 162 (SC) = 2013 AIR SCW 44 = AIR 2013 SC 415 = 2013(2) SCC 114 = 2013(1) SCC (Crl) 858.**

—Secs.9,13(1) (ia),13(1) (iii) and 23(2) - **CONSTITUTION OF INDIA,** Sec.142 - Matrimonial offences - Dissolution of marriage - Appellant/husband married respondent in year 1997 at age of 22 years and age of wife is 19 years at time of marriage and present age of husband is 35 and age of wife is 32 - Since wife developed serious medical complication after giving birth to two children she underwent surgeries and suffered brain damage consequently that respondent wife would wake up in middle of night, and thereafter would not allow appellant, husband to sleep and she has been shouting and screming without any reason - Respondent wife claims to be hale and healthy before Family Court and she expressed that she was ready and willing for any medical evaluation at Court's behest - It is her assertion after second pregnancy appellant/husband did not extend any emotional or moral support to her rather than taking care of her, she was shiftes to her parents house in year 2002 and her parents took good care of her - Appellant/husband filed OP before Family Court for dissolution of marriage under Sec.13(1) (ia)(iii) - Respondent filed OP seeking restitution of conjugal rights u/Sec.9 of Act - Family Court arrived at conclusion that respondent/ wife did not suffer from any mental disorder or unsoundness of mind - She merely suffered from cognitive deficiency acquired during second pregnancy and she could have improved even further had there been moral and emotional support by her husband and concluded that appellant/husband had failed to establish that mental unsoundness of mind or mental disorder of respondent wife was of such degree, that he could not be expected to live with her - Said conclusion of Family Court dismissed OP filed by appellant/husband and allowed OP filed by respondent/wife holding that respondent wife is entitled to relief of restitution of conjugal rights and accordingly directed appellant/husband to receive her back in to his house within three months and to give her moral and emotional support and on his failing to do so, he was directed to pay interim maintenance amount fixed by Family Court - High Court dismissed both appeals preferred by husband by accepting and re-endorsing each finding of fact recorded by Family Court - Efforts of parties to convince to one and another of setting matter amicabally, did not yield any truthful results - In this case, a perusal of grounds on which divorce sought u/Sec.13(1) of Hindu Marriage Act would reveal that same are grounds based on "fault" but fault of party against whom dissolution of marriage is sought - In matrimonial jurisprudence, such provisions are

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founded on matrimonial offence theory or fault theory - Under this jurisprudence it is only on ground of "opponents" with fault - That a party may approach a Court for seeking annulment of his/her matrimonial alliance - In other words eithr of parties is guilty of committing matrimonial offence, aggrieved party alone is entitled to divorce - In this case, husband himself is at fault and not wife - Claim of wife is in actuality appellant is making out a claim for a decree of divorce on basis of allegations for which he himself is singularly responsible - On said allegations it is wife who deserves to be castigated - Therefore he cannot be allowed to raise an accusing finger at respondent on basis of said allegations, or to seek dissolution of marriage - Party seeking divorce has to be innocent of blame - In this case, that grounds/facts on which claim for divorce can be maintained u/Sec.13(1) of Act are clearly not available to appellant/husband in facts and circumstances of case and as such the payers made by appellant must fail - Appellant contends that Court would be justified in annulling marriage between parties, specially when parties have lived apart for more than 12 years and that there was no liklihood of parties ever living together as husband and wife and accordingly Court should consider annulment matrimonial ties between parties on ground of irretrievable break down of marriage - In this case, on reversal of roles husband without any fault of his own would have never accepted as just dissolution of his matrimonial ties, even if couple had been separated for a duration, as is case in hand, specially his husband had right from beginning, fervantly expressed desire to restore his matrimonial relationship with his wife and to live a normal life with her - Plea advanced by appellant/husband not accepted - Appeal filed by husband, dismissed. **Darshan Gupta Vs. Radhika Gupta 2013(2) Law Summary (S.C.) 239 = 2013(5) ALD 1 (SC) = 2013 AIR SCW 5505.**

—Secs.9, 28 & 13 - **Restitution of conjugal rights** - Family Court allowed O.P filed by respondent/wife for restitution of conjugal rights - Appellant/husband contends that O.P filed by wife not at all sustainable by any tenable evidence and criminal compliant filed by wife against husband for offence of bigamy ended in acquittal and that wife herself disliking husband since date of marriage and used to pick up quarrels without any reason and in fact wife herself deserted her husband without any reason - It is case of appellant/husband that wife herself left society of husband without reasonable excuse - Whereas it is case of wife as there was a reasonable excuse to leave company of husband as he addicted to bad vices, she left company of husband and thereafter she made several attempts to join society of husband, but he rejected all attempts and requests of wife - Wife is not entitled for restitution of conjugal rights if she left society of husband without any reasonable excuse - If there is reasonable excuse for leaving society of husband and if there are no legal grounds to deny decree of restitution of conjugal rights, then she is entitled for restitution of conjugal rights - Unless there is legal ground, request to grant a decree of restitution of conjugal rights cannot be rejected - In instant case, it is not case of husband before trial Court that he is ready and willing to join society of wife - Restitution of conjugal rights can be refused only on ground that spouse has left company without any reasonable cause and that there are legal grounds

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to refuse for restitution of conjugal rights - In instant case, as husband was demanding money and got addicted to bad vices and tortured her, she left company, but thereafter, she made several attempts through elders to join company of husband, but all her requests were rejected - Hence, it cannot be said that wife left company of husband without any reasonable cause - No grounds to refuse restitution of conjugal rights - Appeal, dismissed. **Pilli Venkanna Vs. Pilli Nookalamma 2009(1) Law Summary (A.P.) 103 = 2009(2) ALD 300 = 2009(2) ALT 397 = AIR 2009 AP 69.**

—Sec.10(2), 13(1-A), 23(1)(a) – Decree for judicial separation – No resumption of cohabitation between appellant/husband and respondent/wife – Appellant sought for divorce on that ground - Defendant contended that there was no effort by appellant to resume cohabitation and becomes 'wrong' within meaning of Sec.23(1) and hence he is not entitled to divorce – Held, mere disinclination or not taking steps either for his (appellant) transfer from Hyderabad to Chennai, nearer to place of working of respondent or not making further effort cooperate with respondent for her transfer from Nellore to Hyderabad, cannot be construed as 'wrong' - Also appellant was sending maintenance amount to his daughter every month – Hence, reasoning of Court below that there were no efforts from appellant for cohabitation by itself is immaterial to negate relief of decree of divorce as sought by appellant – Appeal, allowed - Hindu Marriage Act, Sec.10(2),23(1-A), 23(1) (a) – Cohabitation does not necessarily its depend on whether there is sexual intercourse between husband and wife – Sexual intercourse is strong evidence and may be conclusive evidence that they are cohabiting but it does not follow in its absence that they are not cohabitating - Hindu Marriage Act, Sec.19(2), 13(1-A), 23(1)(a) - Mother and father are employees – Mother/respondent getting Rs.11,000/- and appellant getting Rs.18,000/- per month – Maintenance by appellant of Rs.2500/- ordered by court below to child just and reaasonable – Appeal against order dismissed. **A.Venkata Ramanaiah Vs. Ch.Lavanya @ Alahari Lavanya 2014(2) Law Summary (A.P.) 182 = 2014(5) ALD 1 = 2014(4) ALT 686.**

—-Secs.12 and 28 - **HINDU ADOPTIONS AND MAINTENANCE ACT, 1956,** Sec.2(1)(c) - Appellant who was respondent in O.P. filed this appeal u/Sec.28 of Hindu Marriage Act, aggrieved by order and decree passed by Senior Civil Judge, filed by his wife u/Sec.12 of the Hindu Marriage Act, 1955 to declare her marriage performed with the respondent as null and void - Petitioner is a Hindu, by birth and brought up and even as on date, is not in dispute - Respondent is a Muslim by birth, so also his parents, brother and family members - According to him, he was converted into Hindu religion in order to marry petitioner - He is major by the year 2008 itself and even prior to the so called marriage, he also claims that he was adopted to Chaluvadi Venkata Subba Rao and Kameswari - So called conversion and so called adoption are in dispute from petitioner, including from evidence on record that of P.Ws.1 and 2 and from the cross-examination of the respondent as R.W.1.

Held, once there is no valid and voluntary conversion and its recognition as a Hindu of respondent-husband from parent Muslim religion, because of bar under

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Sec.2 and 5 of the H.M. Act, marriage is ab initio void - Even otherwise, it can be annulled u/Sec.12(1)(c) of the H.M. Act and matrimonial Court u/Sec.23(1)(c) and (e) of H.M.Act for lesser relief, including by this Court while sitting in appeal can grant divorce under Sec.13(2)(a)(iv) of H.M.Act as so called ceremony of marriage of petitioner and respondent was performed on 15-8-2008, petitioner was born on 28-11-1991 according to her and on 25-8-1991 according to him and even taken earlier date as her birth date of 25-8-1991, by 15-8-2008 she did not complete 17 years to say by time of her marriage she did not complete 18 years and u/Sec.13(2)(a)(iv) from causes omissa supplied to read 15 years as 18 years and 18 years as 21 years, for she can repudiate within 21 years, when by time petition for annulment filed on 15-7-2010 she did not attain 21 years.

Having regard to above, without even any necessity for this Court while sitting in appeal to invoke, Sec.23(1)(c) and (e) of H.M. Act to a lesser relief for divorce under Sec.13(2)(iv) of H.M. Act with causus omissus supplying by reading with Sec.5(iii) of 15 and 18 years as 18 and 21 years respectively to dissolve their marriage, from the very marriage is null and void ab initio for no valid conversion of respondent husband by voluntarily and with faith in Hinduism and to acceptance of Hindu neighbourhood and otherwise from force proved against her to maintain claim within one year after its cessation as one of grounds to annul besides fraud regarding his qualifications and employment which are part of deliberate false representations regarding his status, qualifications, properties etc., and from within one year of said fraud detected, petition is maintained by her in this regard and also in relation to material facts and circumstances regarding him discussed supra that entitles her to seek annulment of marriage - Thus, even from said re-appreciation of pleadings and evidence on record on factual matrix with reference to law, for this Court while sitting in appeal, there is nothing to interfere but for dismissal of appeal - In result, appeal is dismissed. **Shaik Mahammed Rafi Vs. Grandhi Poorna Seetha Manoja 2016(3) Law Summary (A.P.) 83 = 2016(6) ALD 520 = 2016(4) ALT 302.**

—Secs.12(1)(c), 12(2)(a), 13 & 27 – Respondent filed OP in Family Court against Appellant husband for annulment of marriage and for return of dowry, Gold and Silver Articles presented at the time of marriage contending that appellant and his family members suppressed vital information about appellant at the time of marriage that he is suffering from “Psoriasis” and that she has been subjected to serious harassment ever since marriage on ground that she did not bring adequate dowry - Appellant/husband contends that himself and respondent were living happily, respondent became pregnant but she got it terminated, despite his opposition – Trail Court allowed OP filed by respondent -Appellant/husband contends that OP not maintainable in law, since ingredients of Sec.12 of Act are totally absent in it and that “Psoriasis”, even if exists in a spouse is not a ground for divorce and that plea as to suppression of vital information was not at all proved and that OP is barred, since it is not presented with in time stipulated, are because spouse lived together even after respondent is said to have noticed “Psoriasis” on appellant - Respondent contends that though “Psoriasis” may not be a

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disease that warrants divorce, plea raised by respondent that a time of settlement of marriage, vital information about health conditions of appellant was suppressed and that itself is sufficient for annulment of marriage - A perusal of Sec.12 makes it clear that two important words, namely, "Force" and "Fraud" are employed in it and word suppression does not occur in this – Nowhere in OP, it was mentioned that any force was exerted upon respondent or her parents for consent to marriage with appellant and it appears that failure on part of appellant to inform that he is suffering from "Psoriasis" was treated as an act of fraud – Sec.12(1)(c) of Act gets attract only when consent was obtained through force are by playing fraud – Content of these words can be better understood if one takes into account, purport of Sec.12(a) of Act and in relevant of clause words used are "force has ceased to operate or as case may be fraud discovered" - This provision cannot at all be operated vis-à-vis suppression of information – Therefore respondent cannot be said to have made out a case u/Sec.12(1)(c) of Act - In this case petitioner filed the OP u/Sec.12(1)(c) with his or her full consent lived with other party to marriage after force, ceased or fraud has been discovered, Court cannot entertain O.P - In present case, even according to respondent wife, fact that appellant is suffering from "Psoriasis" came to her knowledge in May 2005, even if her consent is said to have been obtained by fraud she can maintain OP if only she stopped living with him and filed OP thereafter – In this case evidence discloses that she lived with appellant till July 2005 and that disentitles respondent to maintain O.P – Decree passed by Trail Court set aside. **S.Mahender Vs. Shalini, 2014(1) Law Summary (A.P.) 275 = 2014(2) ALD 741 = 2014(2) ALT 369 = AIR 2014 AP 43.**

—Sec.13 & 13(1) (i) - **INDIAN PENAL CODE,** Sec.497 - Family Court "adultery" "cruelty" "dissolution of marriage" - Family Court upheld plea of respondent/petitioner/husband and allowed O.P filed by husband and dissolved marriage between appellant/respondent/wife holding that husband could prove adultery between respondent/wife and one RNR and also her cruelty against respondent-husband - In this case, Family Court mainly accepted evidence of P.W.2, neighbor of respondent/husband, who stated that on date of incident she found respondent raising hue and cry that his wife was not opening doors of their house even though he called her then she got woke up and then found one person running in front of her carrying clothes and rushing to ground floor of house and also leaving said place - Respondent/wife in O.P contends that when there is plea of adultery, adulterer is a necessary party whereby non-adding him as a party in is fatal to proceed with case - On other hand petitioner/husband contends that in view of amendment of Sec.13 (1)(i), adulterer need not be added as a party in the case - In context of adding alleged adulterer as a party in divorce O.P; what is required to be considered is as to whether any alleged finding of adultery would adversely affect interest of adulterer by reason of which opportunity should be provided to him to defend himself to disprove claim of adultery applying concept of principles of natural justice - As a matter of fact presence of adulterer in divorce proceedings helps better to effectively and completely adjudicate controversy and also safe guard his interest - Findings of Family Court that there is no need to add

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adulterer as a party to divorce proceedings are unacceptable - Verdict of Family Court, set aside which results in dismissal of plea of petitioner to dissolve marriage by decree of divorce without going to merits of evidence adduced - Family Court appeal, allowed. **Ch.Padmavathi Vs. Ch. Sai Babu 2012(3) Law Summary (A.P.) 242.**

—Secs.13 and 13(1) (ia) - **Divorce** - Husband filing Application against wife for divorce stating that wife is quarrel some, rude ad illmannered and constantly threatening him as well as his family that since she and her two uncles are advocates they would make lives of husband and his family meserable and that she has been making basis complainants to his superiors which has affected in Army - Wife contends that husband-in-laws had wilfully and cruelly treated her and had spared no efforts to cause her mental harm and inflected grave injuries and that they had pressurised her to meet not only their unlawful demands of money but also spurious reasons - Trial Court held although circumstances mentioned clearly reval that it is a case of broken marriage however there is no ground given in Sec.13 of Act, where decree of divorce can be founded on proof of irretrievably broken marriage and also held that petitioner has been unsuccessful in proving respondent to have treated him with cruelty of nature as to entitle him to decree of divorce - Single Judge of High Court granted alternative relief to husband by passing a decree for judicial separation u/Sec.10 of Hindu Marriage Act - Division Bench held that findings of single Judge in granting partial relief and that of trial Judge in declining relief of divorce cannot be sustained and accordingly set aside both judgments and held that cruelty alleged by respondent/ husband stands proved - As result appeal dismissed and modify judgment of single Judge and that decree of divorce prayed by respondent, husband granted - In this cae trial Court as well as appellate Court have both concluded that behviour of husband as well as wife falls short of standard required to establish mental cruelty in terms of Sec. 13(1)(ia) - It is not a case, where it is necessar for Division Bench of High Court to correct any glaring and serious errors committed by Court below which had resulted in miscarriage of justice - There is no compelling necessity, independently placed before Division Bench to justify reversal decree of judicial separation - It is wholly in- apropriate for Divison Bench of High Court to have granted a decree of divorce to husband - Judgment and orders passed by Division Bench, set aside - Order passed by Single Judge restored - Appeal, allowed. **Manisha Tyagi Vs. Deepak Kumar 2010(2) Law Summary (S.C.) 12.**

—Secs.13(i-a) - **Divorce** - Irretrievable break down of marriage - Respondent/husband hails from Hyderabad, settled down at New York city in 1981 and became citizen of U.S.A, married appellant, lecturer in Hyderabad City, in 1989 - Appellant was suffering from Bronchial Asthma and on account of cold climatic condition, she returned to India and that appellant and respondent are living separately in India and USA respectively from 1991 - Family Court decreed O.P instituted by respondent/husband, dissolving marriage of parties - Respondent/husband contends that appellant suppressed important piece of information relating to state of her health - Since cold climatic conditions are

considered to be adverse to interest of Asthmatic patients, if information about health of appellant is known to respondent/husband well before, surely it would have provided him certain opportunity and assess carefully suitability of engaging appellant in a holy wedlock - In that context, perhaps respondent has been alleging that appellant had concealed this vital information - When appellant returned to India, parties had hardly any opportunity to lead conjugal life happily - There relationship is marred by Asthmatic attacks suffered by appellant/wife - Career chosen by respondent/husband at New York is one of a kind of its own, and it is a creative art of dance - It is therefore improper to make a demand on respondent to pursue his career at some other geographical location, which would be more suitable for appellant/wife to lead a life together with him - In such circumstances, it is wholly appropriate to consider marriage to have broken down irretrievably - Conclusion of Family Court that marriage between appellant and respondent had been irretrievably broken down - Justified - Respondent/husband directed to provide permanent alimony to appellant wife - Appeal, dismissed. **Varalaxmi Charka @ Renuka Vs. Satyanarayana Charka 2008(1) Law Summary (A.P.) 452 = 2008(2) ALD 785 = 2008(2) ALT 474 = AIR 2008 AP 134.**

—Sec.13(1)(a) – Petitioner, wife filed petition against husband/respondent for dissolution of their marriage on ground of "cruelty" and for refund of marriage expenses and gold ornament etc - Family Court upon appreciation of evidence and contentions raised by both rival parties dismissed O.P filed by petitioner for dissolution of marriage with respondent and grant of divorce holing that petitioner failed to prove that respondent treated with her cruelty entitling her to seek dissolution of marriage with respondent - Appellant/wife contends that family Court failed to properly appreciate evidence and that P.Ws 1 to 3 categorically deposed that respondent treated petitioner with cruelty and Family Court ought to have dissolved marriage of petitioner with respondent and granted divorce - CRUELTY – Meaning of – "Their must be danger to life, limb or health, (bodily or mentally) or reasonable apprehension of it to constitute cruelty" - In this case, admittedly petitioner is a deaf and dumb girl and petitioner and respondent were lived happily for six month after marriage and thereafter respondent started ill-treating her – Admittedly parents of petitioner are welltodo having substantial properties and as such parents of petitioner take respondent as their illatom son-in-law- Respondent started harassing petitioner under influence of alcohol - In this case petitioner having waited patiently all-through, filed present petition for dissolution of marriage with respondent and grant of divorce - No lady, much less a lady at teen age and that too with disability of deaf and dumb, will dare to file a petition seeking divorce against her husband knowing fully well that no body will marry her in future considering disability being suffered by her - Respondent also admitted that he filed paper publication against petitioner demanding grant of his life maintenance for Rs.25 lakhs and said paper publication is nothing but admitting his incapacity to earn – Character and conduct of respondent can be read with this paper publication and it can be said without any slightest doubt that he is crave and greedy for property of his wife and not for love – Conduct of respondent from beginning of marriage shows that he has been harassing

petitioner on one pretext or other and such conduct of respondent definitely amounts to cruelty, though not physically, but mentally which made petitioner to file present O.P for divorce as last resort - Therefore, in any view of matter conduct of respondent towards petitioner amounts to cruelty and accordingly petitioner entitled for grant divorce u/Sec.13(1)(ia) of Hindu Marriage Act – Finding recorded by Family Court that petitioner failed to prove that respondent treated her with cruelty cannot be sustained – Petitioner is entitled to dissolution of her marriage with respondent and grant of divorce – Order of Family Court passed in OP, set aside - FCA, allowed. **Mandavelli Hema Vs. Mandavelli Bhimasankara Prasad 2011(2) Law Summary (A.P.) 329 = 2011(4) ALD 583 = 2011(4) ALT 521.**

—Sec.13(1)(ia) - **"Dissolution of Marriage"** - Respondent /wife filed petition before Family Court seeking dissolution of marriage with appellant, husband on ground that appellant was addicted to vices like alcoholism and drugs and in such mental and physical state, he was abusing her in filthy language and was beating her rudely as result of which she is apprehending danger in his hands - Appellant filed counter denying allegations made in petition stating that wife not amicable to him and to his parents and because of illegal advice of her parents, she used to pickup quarrels frequently and that he was put to mental agony at instance of respondent/wife - After going into merits of case and also basing on evidence both oral and documentary, Family Court granted decree of divorce - It is always not necessary that all averments shall be made only during course of evidence - In matrimonial disputes, conduct of parties some times will be spoken by parties themselves and some times could be perceived from statement made in petition or counter filed before Court - In this case, obviously appellant, husband instead of supporting his case by adducing evidence or making statements in counter, had resorted to make some serious allegations against his wife - In normal course, though initial responsibility is on petitioner who makes allegation seeking divorce, it is equally, responsibility of opposite party spouse to repel such allegations and substantiate same through oral or documentary evidence - In this case, appellant/husband spending time with hotels without paying bills and same being paid by father-in-law would prove disrespect of husband to family and wife and same amounts to causing mental agony, which is other words to be treated as mental cruelty - There is sufficient material to point out mental cruelty on part of husband towards wife - Hence dissolution of marriage and consequential decree of divorce is only solution - Conclusions arrived at by Court below - Justified - Appeal, dismissed. **Kamma Damodar Rao Vs. Kamma Anuradha 2010(3) Law Summary (A.P.) 316 = 2011(1) ALD 41 = 2011(1) ALT 636 = AIR 2011 AP 23.**

—Secs.13(1)(ia) - Appellant/petitioner wife filed O.P before Family Court to grant divorce dissolving marriage between herself and respondent/husband on ground of cruelty - Lower Court upon appreciation of evidence in light of contentions raised by rival parties, came to conclusion that petitioner, wife failed to prove cruelty on

part of respondent/husband and accordingly dismissed O.P - Hence petitioner-wife filed present appeal - Petitioner/appellant contends that judgment of lower Court is purely based on surmises and conjectures and failed to appreciate abundant evidence available on record with regard to series of incidents made by respondent/husbands in his cross-examination about his cruelty and came to wrong conclusion that petitioner did not mention any specific dates of instances alleged in petition and also failed to consider that respondent through his harassing conduct created a compulsion situation to petitioner to seek assistance of parents along with minor children after which respondent/husband instead of making attempt to take petitioner back left her to her fate and started harassing her more and as such petitioner left with no option and filed petition for dissolution of marriage and that petitioner made out a case u/Sec.13(1)(ia) of act for grant of divorce - Respondent contends that after filing O.P, petitioner filed a case against respondent for offence u/Sec.498-A of IPC and that evidence of petitioner coupled with respondent shows that petitioner wanted to get rid of respondent by hook and crook and wanted to occupy flat of respondent and that there are no grounds to maintain petition for divorce and allegations made by petitioner are common in day to day life and after 12 years of marriage and having two children, petitioner filed O.P. **-** In this case, according to petitioner, marriage of herself and respondent is inter caste and love marriage - There were many occasions where she had black scars on her arms and face due to respondent's act of violence only, because he did not approve her dressing style and right from beginning from marriage, she was warned by respondent to stay away from social activity - Further respondent/husband has been creating lot of mental tension by making derogatory, cheap and vulgar comments for every thing petitioner does - Therefore, as behavour of respondent was becoming more aggressive and torturous day by day and as being unable to bear with cruelty meted out by her physically and mentally in hands of respondent, she filed present petition to dissolve marriage - Respondent in his evidence states that petitioner by filing present O.P humiliated and abused respondent and bet him and filed false 498-A case after filing present O.P only to pressures respondent to give divorce - But still he has got no complaint against petitioner and he wants to continue marital knot - Respondent also contends that petitioner is not cooperative for sex - But fact remains that they were blessed with two children during their wedlock and unless either of spouse is interested party for sex, there is not possibility of conception and conception of two children by petitioner clearly shows that she was a consented party for conception - Respondent did not show any instances of reluctance by petitioner towards sex therefore it cannot be said that petitioner is reluctant for sex as pleaded by respondent and said plea is unsustainable - In this case, it is very important to note that respondent /husband admitted that he has not made any attempt for restitution of conjual rights or filed any petition for same against petitioner and that respondent also admitted that he had received Rs.3.48 lakhs from petitioner's father for period of three years - It is case of the petitioner that respondent was also making some imputations against her which amounts to character assassination and from beginning

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respondent entertained suspicion about her conduct and was closely watching her movements - When there is a doubt of intergrity of character by spouse vice-versa, no conjual life will be smooth and happy as petitioner felt embarrassed about suspicious conduct of her husband, waited all through and filed petition for divorce on ground of cruelty - In instant case, defaming women's modesty by making serious allegations as a counter blast to petition filed by her throws light of respondent's suspecting nature towards his wife - Petitioner has given sufficient proof and evidence against cruel behavour, suspicious nature, mental and physical torture meted out in hands of respondent and has established that respondent treated her with cruelty and as such petitioner is entitled to decree of divorce - In this case, conduct of respondent towards petitioner amounts to "cruelty" and petitioner established ingredients of Sec.13(1)(ia) of Act and accordingly she is entitled for grant of divorce thereunder by dissolving her marriage with respondent - Impugned order of Family Court, set aside - Family Court appeal is allowed. **Devi Niket Pillai Vs. Niket N Pillai, 2012(2) Law Summary (A.P.) 58 = 2012(4) ALD 502 = 2012(3) ALT 772.**

—-Sec.13(1)(i-a) - The court below rightly observed that the acts complained by the appellant are usual bickering on account of differences between the spouses and common in the domestic life and not of such serious nature to entitle the appellant for dissolution of marriage by grant of decree of divorce - Therefore, the order under challenge does not at all warrant interference as it does not suffer from any illegality - Mere fact that the court below did not discuss in detail touching each act of alleged cruelty is no ground to set aside the impugned common order and decrees. **Gopalakrishna Surapaneni Vs. Anuradha Surpaneni Maiden 2014(3) Law Summary (A.P.) 453 = 2015(2) ALD 408 = 2015(1) ALT 125.**

—-Sec.13(1)(1A) – **Divorce by mutual consent** – Suit filed for dissolution of marriage – Settlement between parties - Contract to dissolve the marriage, Court has to satisfy itself that the contract is legal and valid in the eye of law. **Vennangot Anuradha Samir Vs. Vennangot Mohandas Samir 2016(1) Law Summary (S.C.) 6 = 2015 AIR SCW 6524 = 2016(1) ALD 51 (SC).**

—Secs.13(1)(ia) & 9 – **"Divorce"** – Respondent, husband filed O.P., for divorce stating that appellant wife is not cooperating with him in family life and various acts and omissions on her part would constitute 'cruelty' - Appellant, wife contends that ever since marriage, not only respondent but also her family members, including his sisters used to harass her and she was forced to swallow sleeping pills – Appellant, wife filed O.P., u/Sec.9 of Act for restitution of Conjugal Rights – Trial Court passed decree of divorce and dismissed O.P., filed by Appellant - In this case the appellant narrated nature of suffering undergone in hands of respondent - Trail Court arrived at conclusion that respondent and appellant are living separately since several years and even with short time from date of marriage petitioner established that respondent protested for sex and it amounts to 'cruelty' - This finding of the Trail Court is totally perverse and contrary to Provisions of Act and

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cannot be sustained either on facts or in law - Tone and tenor of judgment is contrary to very letter and sprit not only of provisions of Act, but also Family Court Act - Appeal allowed, by imposing costs of Rs.10,000/- payable by respondent/husband to appellant/ wife - Decree of divorce set-aside. **Devika (Bhagya Lakshmi) Vs. N.Narasing Rao 2014(1) Law Summary (A.P.) 249 = 2014(2) ALD 630 = 2014(3) ALT 669.**

—Sec.13(1)(a) and 9 - **"Cruelty"** - Respondent/husband filed O.P for divorce against wife pleading that through her acts and omissions she caused cruelty to him and same constituted a ground for divorce - Appellant, wife filed M.Cand same was allowed awarding a sum of Rs.2000/- per month - Though, respondent/husband filed another O.P with a view to procure presence of appellant wife and oabta-ined decree, appellant did not joined him - Trial Court allowed O.P filed by respondent, husband and granted decree for divorce - Hence present Appeal by wife - Appellant/wife contends that trial Court did not appreciate evidence on record properly and erroneously passed decree for divorce and even if grounds pleaded by respondent/husband are taken as true at most, they constitute desertion and there was absolutely no basis for trial Court to come to conclusion that ground of 'cruelty' is proved and that none other than daughter of parti es deposed as R.W.1 and categorically stated that her self, her mother and her brother had to leave house of respondent on account of physical assault by respondent/husband - In this case, respondent filed O.P for divorce on ground of 'cruelty' and trial Court framed only one point for its consideration viz., "whether responfent is entitled to decree for divorce as prayed for" - CRUELTY - Act recognizes 'cruelty' as one of grounds for dissolution of marriage and to consider a ground for dissolution, cruelty need not be one manifested through any external injuries or physical assault - If one of spouses caused mental agony or continued harassment to other, through his or her acts and omissions beyond point of tolerance, Court can certainly grant divorce - In this case, appellant and her children left house of respondent is not in dispute - While respondent pleaded that appellant left house abruptly and without any justification, appellant pleaded that she was forced to go out on account of fact that respondent has ill treated and had beaten her - In instant case, finding was recorded to effect that respondent neglected to maintain appellant and accordingly, granting maintenance and said finding became final - This is a rare case, which a grown up child of spouses deposed as a witness in divorce proceedings, R.W.2, daughter of parties, narrated her experience vis-a-vis quarrel between parties and she stated that in 1997 respondent has driven away appellant and children and he did not even permit them to take away clothes with them and also stated that respondent has neglected to maintain them throughout -Respondent miserably failed to prove ground of cruelty - Trial Court was mostly impressed by fact that though there exists a decree for restitution of conjugal rights and appellant did not join respondent - Decree passed by trial Court set aside and award costs of Rs.10,000/- payable directly to appellant by respondent - Appeal, allowed. **Vytla Ailvelu Manga Devi Vs. Vytla Venkata Lakshmi Narasimha Palla Rao 2014(1) Law Summary (A.P.) 92 = 2014(1) ALD 719 = 2014(1) ALT 408 = AIR 2014 (NOC) 310 (AP).**

—Secs.13(1) (ia), 11 & 12 - **CRIMINAL PROCEDURE CODE,** Sec/125 - **HIGH COURT OF A.P. FAMILY COURTS (COURT) RULES, 2005,** Rule 5(d) - Respondent/petitioner/

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husband filed O.P against appellant wife in Family Court seeking direction that there marriage is null and void and for relief of divorce - In this case, respondent/husband is Hindu by religion and appellant wife is Christian by religion and it is love marriage and marriage was solemnised at Ramaalayam as per Hindu rites and both are employed - Husband sought relief against wife on grounds of cruelity and desertion and they have also adopted a female child from a Missionary Charity of Mother Theresa - Family Court passed order dissolving marriage between respondent and appellant giving visiting rights to appellant/wife to see minor child whenever she desired to see - Appellant/wife contends that adopted child is also Christian and she has got complaints of cruelty against respondent/husband - Lower Court observed that though wife belongs to Christian religion, both parties married as per Hindu rites and religion and she joined him and lived like Hindu woman and adopted child following norms under Hindu Law and lived like Hindu and it follows that all practical purpose the parties are governed by Hindu Marriage Act - There is no pleading on part of husband that his wife has got faith in Hinduism and was following Hindu customs in her life - In absence of valid plea in evidence finding of lower Court on this aspect is baseless - Even after marriage, both parties were following their own religions and following respective religious customs - Marriage between Christian lady and Hindu male is not valid marriage under 1955 Act and as under that Act marriage can be solemnised only between two Hindus and that for purpose of claiming maintenance u/Sec.125 Cr.P.C., marriage between parties cannot be said to be invalid - Rule 5(d) of High Court of A.P. Family Rules provides for filing Application before Family Court under 1872 Act as well as Indian Divorce Act, it is for both parties to approach Family Court once again to get their disputes finally determined in appropriately framed proceedings under appropriate law applicable to both parties - Since marriage between parties in this Appeal is not valid under 1955 Act, respondent could not have approached Family Court for divorce or for nullity u/Sec.13(1) of 1955 Act - Order passed by Family Court, set aside - CMA, allowed. **K.Hema Kumari Vs. D.P.Yadagiri 2012(2) Law Summary (A.P.) 129 = 2012(4) ALD 604 = 2012(4) ALT 119.**

—-Secs.13(1)(1a),13-B & 23 - Respondent-husband filed petition at Bombay for dissolution of marriage on ground that petitioner-wife had committed various acts of cruelty – Petitioner-wife moved an Application before Supreme Court for transfer of divorce case pending from Bombay to Hyderabad.

Pending transfer petition, both parties entered settlement Agreement, that respondent-husband agreed to pay Rs.12,50,000/- towards full and final settlement of claim of petitioner-wife.

Both parties filed application u/Sec.13-B of Act, with a prayer to treat divorce petition pending before Bombay Court as an Application u/Sec.13-B of Act and treat present petition as second motion and grant divorce by way of mutual consent.

Held, petitioner-wife needs money for treatment of her breast cancer, hence it cannot be ruled out that in order to save her life by getting money, she agreed for settlement of dissolution of marriage.

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Supreme Court held, petitioner-wife is suffering from such a disease which has compelled her to agree for mutual consent divorce - It is a duty of respondent-husband to take care of health and safety of petitioner-wife.

In present case, by settlement agreement, respondent-husband is promising to do something which he is already duty bound, is not a valid consideration for settlement.

Petition is ordered to be transferred from Family Court Bombay to Family Court at Hyderabad and respondent-husband shall pay amount to petitioner-wife immediately for her treatment – Family Court at Hyderabad shall dispose of petition in accordance with Law. **Vennangot Anuradha Samir Vs. Vennangot Mohandas Samir 2016(1) Law Summary (S.C.) 51 = 2015 AIR SCW 6524 = 2016(1) ALD 51 (SC).**

——Secs.13(1)(ia) & 25 - C.M.A. is filed by appellant husband against order passed by Principal Senior Civil Judge, in O.P., dismissing his petition seeking dissolution of marriage under Section 13(1)(ia) of Hindu Marriage Act, 1955 - Petition, in C.M.A. M.P. No.200 of 2014 in C.M.A. No.1056 of 2006, is filed by petitioner-wife against respondent-husband under Section 25 of Hindu Marriage Act, 1955 for grant of Rs.25,00,000/- towards her permanent alimony and Rs.20,00,000/- to Kumari K. Navya, (the daughter of petitioner and respondent), towards her maintenance, education and marriage expenses - Held, Sec.25 of the Hindu Marriage Act, which enables a charge to be created on immovable property, does not explicitly provide for a charge being created on movable property. Ordinarily conferment of power, by a specific statutory provision, is a pre-requisite for its exercise - However, exceptional circumstances may justify exercise of power in absence of any statutory prohibition - In absence of any prohibition in Section 25 of Act, and as held by the Punjab and Haryana High Court in Durga Das v. Tara Rani, this Court direct that permanent alimony, payable by respondent to petitioner in terms of order now passed by this Court, shall be secured by way of a charge over retiral/terminal benefits of respondent - Charge shall, however, be limited only to such of those retiral benefits for which there is no statutory prohibition for creation of a charge or attachment - Both C.M.A. No.1056 of 2006, and C.M.A.M.P.No.200 of 2014 in C.M.A.No.1056 of 2006 are disposed of accordingly. **K.Narasinga Rao Vs. K.Neeraja @ Rajini 2015(2) Law Summary (A.P.) 427 = 2015(5) ALD 25 = 2015(5) ALT 166 = AIR 2015 Hyd. 163.**

—-Secs.13(1)(a), 13(1)(b) and 28 - Appellant has married respondent after death of his first wife - A son and a daughter were born out of their wedlock - Appellant specifically alleged that respondent has left his company without intimation, at instigation of her brother - He has further alleged that respondent was always insisting for transfer of properties in her name, and, as appellant turned down demands of respondent,

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she left his company and filed maintenance case wherein an order was passed rejecting claim for maintenance - It is his further case that there was no matrimonial relationship between himself and respondent after birth of their daughter and son and till date of filing of petition for dissolution of marriage - Respondent filed a counter-affidavit denying allegations made by appellant.

Held, though it appears from pleadings of parties that rejection of claim of respondent for maintenance under Ex-A-1 was, subsequently, set aside by this Court and, on remand, respondent was granted maintenance, fact however remains that respondent continued to live separately since 1995 till appellant has filed O.P for divorce in 2004 and even thereafter also she was living separately - Except taking a stand in her cross-examination that she was necked out, no evidence was placed by her in order to prove this plea - She appeared to be rest content with securing maintenance and living separately - She has not made any attempt, whatsoever, to join company of appellant, at least after she succeeded before Court in claiming maintenance - This conduct of respondent, in Court opinion, clearly proves that she is living away from appellant without any justifiable reason - A long and continuous separation by respondent without any attempt to reconcile with appellant gives rise to a reasonable presumption that she has deserted appellant forever.

In aforementioned facts and circumstances of case, and in view of principles laid down by Supreme Court in decisions referred supra, this Court of opinion that lower Court has committed a serious error in dismissing petition for divorce - Hence order of lower Court is set aside - Civil Miscellaneous Appeal, is, accordingly, allowed. **S.Brahmanandam Vs. S.Rama Devi 2016(3) Law Summary (A.P.) 366.**

—Secs.13(ia) (ib) - **"Cruelty"** - **"Desertion"** - Petitioner/husband earlier filed O.P for restitution of conjugal rights and obtained decree and inspite of decree responent/ wife did not join for one year - Having become vexed with cruel attitude of respondent/ wife and desertion for more than two years he filed O.P for divorce on groundof cruelty and desertion - Family Court dismissed O.P and hence petitioner preferred present C.M.A - "CRUELTY" AND "DESERTION" - Interpreted - Though factum of separation of petitioner and respondent was occasionally proved, there are instances when petitioner respondent lived together as is clear from evidence, at that juncture there is not even inclination of *anmius deserendi* on part of wife to permanently cease co-habitation and marital relation - Allegation of husband in claim petition adverted to by Family Court while recording finding that they tantamount to cruelty by husband to wife, cannot be said to be perverse - On appreciation of entire evidence on record as well as findings of Family Court, there is no evidence on part of husband to establish desertion within essential ingredients - Petitioner miserably failed to establish allegations of cruelty meted out by his wife by adducing substantial legal evidence - Findings recorded by Family Court - Justified - CMA, dismissed. **K.S.V.V.L.Narasimha Rao Vs. Kamisetty Suguna 2010(3) Law Summary (A.P.) 213.**

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—Secs.13(1)(ia) & (ib) - Petitioner's wife filed O.P to grant divorce by dissolving marriage between herself and respondent-husband - Lower Court on appreciation of evidence came to conclusion that petitioner was able to prove that respondent treated her with cruelty entitling her to seek divorce and allowed O.P filed by wife - Respondent/appellant contends that lower Court failed to properly appreciate evidence and gave erroneous finding granting divorce and that appellant is very much affectionate towards petitioner and always treated her with love and affection, and that petitioner deserted respondent at instance of her parents and therefore conduct of petitioner amounts to desertion and respondent's conduct could not amount to cruelty and that petitioner failed to prove ingredients of Sec.13(1) (ia) & (ib) of Act to grant divorce on ground of desertion and cruelty - Petitioner/respondent mainly contends that from beginning of marriage - Respondent/appellant suspecting fidelity of petitioner on one pretext or other ad same was continued stage by stage and reached its peak by attributing unchastity against petitioner, making enquiries about her character at her working place, beating her on one pretext or other and therefore finding of lower Court is totally unsustainable - Provision in Cl. (ia) of Sec.13 (1) was introduced by Marraige Laws Amendment Act, 68 of 1976 simply states "treated the petitioner with cruelty" - Object, it would seem was to give a definition exclusive or inclusive , which will amply meet every particular act or conduct and not fail in some circumstance - In case of this nature burden lies on person alleging cruelty - In this case, petitioner wife filed petition against respondent/husband seeking divorce on ground of cruelty and therefore it is for petitioner to prove that conduct of respondent towards her amounts to cruelty - Instances narrated by petitioner in her evidence clearly bring out cruel conduct of respondent towards petitioner - Except denying averments made by petitioner, respondent did not adduce any rebuttal evidence - There cannot be any straight jacket formula or fixed para meters for determining "cruelty" in matrimonial matters - It is not required that physical violence along with mental torture are essential to constitute cruelty, even conduct of inflicting mental agony and torture in giving circumstances may constitute cruelty - Therefore, in any view of matter, conduct of respondent towards petitioner amounts to "cruelty" and petitioner established ingredients of Sec.13(1)(ia) of Act, she is entitled for grant of divorce - Findings of lower Court - Justified - Appeal, dismissed. **K.R.Srinivas Vs. Dharmavaram Sridevi 2012(2) Law Summary (A.P.) 99 = 2012(3) ALD 759 = 2012(4) ALT 491 = AIR 2012 AP 131.**

—-Sec.13(1)(ia) and (ib) - Petitioner/husband filed O.P. No.396 of 2000 on file of Judge, Family Court, against respondent/wife for dissolution of their marriage dated 26.06.1997, performed as per Hindu rites and customs at under Section 13 (1) (ia) and (ib) of Hindu Marriage Act on the grounds of cruelty and desertion - After contest, trial Court dismissed petition with costs on 11.09.2003 - Impugning the same, petititioner/husband preferred appeal - Held, Having regard to referred judgments as rightly concluded by trial Court, husband cannot take advantage of his own faults, for no fault of wife in driving out her from marital home and for the sake of record having

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filed restitution of conjugal rights with no mind and even wife expressed her willingness to join and even after restitution of conjugal rights petition allowed, he did not execute much less served any notice to her to come and join and further even not allowed her to join and even case registered for offence under Section 498-A IPC from his demands to part with property having driven out when she tried to join by proceeding with her mother (RW.2) and PW.3 (that is proved from their evidence) he beat her and demanded to part with her property in his name to alienate and further when she was attending Court to give evidence she was way laid and beaten for which another case registered where he was convicted - Thus, there is neither desertion nor cruelty on the part of wife, but for cruelty and desertion on the part of the husband - In view of above, there is no illegality or irregularity or impropriety in appreciation of evidence and to conclusions and findings arrived by lower Court, for this Court while sitting in appeal to interfere - It is needless to say that it is one of contentions of appellant/husband that after December, 1997, parties are living separately and that is a ground for divorce - As held in expressions supra, irretrievably broken down of marriage is not a ground for divorce - It is needless to say even amendment proposed after Naveen Kohli and Samar Ghosh to make it a ground for divorce and that was even recommended by law commission, it could not fructify in Parliament - In result, appeal is dismissed. **Anchuri Subbaraju Vs. Anchuri Sunitha 2015(2) Law Summary (A.P.) 331 = 2015(4) ALD 614 = 2015(5) ALT 564.**

—Sec.13(ia) & (ib) - **CONSTITUTION OF INDIA,** Art.142 - Divorce - Respondent/husband filed O.P before Family Court seeking annulment of marriage on ground of desertion - Appellant/wife suffering from mental illness and living with her parents - Complaint of dowry harassment filed against respondent was closed - Appellant/wife contends that respondent harassed her and dropped her at her parents house - Considering documentary evidence brought on record by both parties and after hearing their respective counsel allowed O.P on ground that marriage between parties is irretrievably broken down and respondent directed to pay amounts towards maintenance of appellant and towards maintenance and marriage of their daughter - Appellant contends that Supreme Court alone has exclusive power to declare a marriage between parties as irretrievably broken down in exercise of power under Art.142 of Constitution - Court below is not empowered to grant decree of divorce on ground that marriage between parties irretrievably broken down - In this case, respondent has not established ground of desertion and cruelty as there is allegation that respondent contracted plural marriages and said fact was proved in preliminary enquiry conducted by disciplinary authority against respondent - Observations of Court below that complaint lodged by appellant against respondent was closed as false, cannot be a ground to hold that there was cruelty on part of appellant - Filing of criminal cases *per se* cannot be treated as an important ground for granting divorce since same does not amount to cruelty - Impugned order of O.P stands dismissed - CMA,allowed. **M.Pushpalatha Vs. M.Venkateswarlu 2010(2) Law Summary (A.P.) 52.**

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—Secs.13 (1) (ia) and (ib) - **INDIAN PENAL CODE,** Sec.498-A - "Willful desertion" - "Cruelty" - Petitioner/husband filed OP seeking dissolution of marriage on ground of willful desertion and cruelty - Family Court dismissed petition holding that petitioner failed to prove that respondent wife deserted him without any reasonable cause or ill treated him - Appellant/husband contends that from very beginning, respondent demanded separate residece and when petitioner could not take a separate residence near to house of her parents, she started going to parents house without informing him - Respondent/wife remained in her parent's house for about one year and then join petitioner and gave birth to female child in 1993 and finally left house of petitioner in 1995 and lodged false complaint against him u/Sec.498-A - Respondent contends that since never deserted petitioner and that it is petitioner who had ill-treated respondent and beat her and driven her out of his house and that ingredients of Sec.13(1) (ib) of Hindu Marriage Act are not proved since there is no willful desertion and that there is no evidence to show that respondent had ill-treated petitioner - Admittedly petitioner and respondent have been residing separately and whole trouble started when respondent lodged a complaint a police u/Sec.498-A IPC and petitioner was arrested and he was remanded to judicial custody - Conduct of parties has to be taken into consideration to know intention of parties - Some times even subsequent conduct also speaks about intention of parties - In this case, on critical analysis of evidence on record though demand of separate residence of respondent/ wife may not amount to treating petitioner with cruelty and allegation that respondent treated petitioner with cruelty is not proved, but since allegation of petitioner that respondent deserted him without any reasonable cause is proved petitioner is entitled for decree as prayed for - Impugned order of Court below, set aside - Appeal, allowed. **Methuku Suresh @ Suresh Vs. Methuku Anuradha, 2011(1) Law Summary (A.P.) 170 = 2011(3) ALD 154 = 2011(2) ALT 389 = AIR 2011 (NOC) 213 (AP).**

—Sec.13(1)(ia)(ib) and (ii) and 5 – **"Divorce"** - Petitioner/husband filed OP against his wife/respondent for divorce on ground that after giving birth to four children out of their wedlock and after birth of 4th child respondent/wife got herself converted into Christianity – Though appellant/petitioner husband asked respondent to come back to fold of Hinduism, she was adamant and also deserted him and has resorted to various acts of cruelty and subjected him to mental agony – Trail court dismissed OP - Hence present appeal - A valid Hindu Marriage can take place only between a man and a woman professing that religion, as on date of marriage and that first sentence in Sec.5 of Act made this aspects clear - It reads, " a marriage may be solemnized between two Hindus, if the following conditions are fulfilled namely ……"

In this case it is clear that respondent/wife got herself converted into Christianity after her marriage with appellant – Act recognizes conversion of spouse into another religion is a valid ground for other to seek divorce - In this case it is not in dispute that respondent/wife left company of appellant, husband soon after 4th child born and other developments in this case constitute a clear case of desertion as well as cruelty - Order and decree passed by Tail Court, set aside - CMA allowed. **Madanam Seetha Raulu Vs. Madanam Vimala 2014(1) Law Summary (A.P.) 310 = 2014(3) ALD 468 = 2014(5) ALT 461 = AIR 2014 (NOC) 412 (AP).**

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—Secs.13(1)(ia), (ib) & 10 - "Desertion" and "cruelty" - Respondent/husband filed O.P seeking divorce on ground of cruelty and desertion contending that petitioner/wife not only deserted him for continuous period of three years but also subjected him to cruelty and torture and that she had no intention to return to matrimonial home, but managed to stay in house of petitioner with assistance and pressure from Police - Petitioner contends that respondent and his parents started harassing to bring more money from her parents and that respondent's parents refused to provide food to petitioner and even on date of filing of O.P, petitioner was with respondent - Basing on evidence of parties, both oral and documentary, trial Court allowed O.P filed by respondent/husband - ESSENTIAL INGREDIENTS OF OFFENCE OF DESERTION - STATED, (i) factum of separation (ii) intention to bring cohabitation permanently to an end-animus deserendi (iii) element of permanence which is a prime condition requires that both these essential ingredients should continue during entire statutory period of two years immediately preceding presentation of petitioner for divorce - As prescribed in law, desertion means living separately for a period not less than two years preceding date of filing of O.P - Even according to legal position laid down in cases cited in this matter, mere living apart by parties is not desertion - Desertion indicates a state of mind in which a party who is guilty of act must indicate either in express words or by conduct to put an end to relationship - But in instant case, petitioner and husband lived together for considerable period of time and even now they are willing to live together - In this case, there are instances when petitioner and respondent lived together as his clear from evidence both oral and documentary, and at that juncture there is not even an inclination of animus deserendi on part of wife to permanently cease cohabitation and marital relation and these facts and circumstances would also probablize there is no love lost between spouses - Ingredients of mental cruelty as stated above are not at all attracted to grant divorce on ground of cruelty on part of petitioner/wife - Respondent/husband failed to establish grounds of "cruelty" alleged to have been meted out by his wife - Findings recorded by trial Court - Not justified - Impugned order, set aside - CMA, allowed. **Adigarla Venkata Lakshmi Vs. Adigarla Venkata Satya Sreenivasulu 2010(3) Law Summary (A.P.) 122.**

—Secs.13(1)(i-a) & (i-b) and Rule 8 - Appeal by wife against grant of divorce by Family Court sought by husband on grounds of adultery and cruelty - Alleged adulterer not made a co-respondent by husband amounts to infraction of Rule 8 of the Rules framed under Act - On merits too, there is absolutely no tenable ground to conclude that wife was living in adultery and consequently causing mental cruelty to husband - Held, impugned order passed by Court below is unsustainable - Order set aside - Appeal, allowed. **Radhika @ M.Lavanya Vs. M.Lokender 2014(2) Law Summary (A.P.) 215 = 2014(5) ALD 340 = 2014(4) ALT 627.**

—Sec.13(1)(ia) & (i-b) – Cruelty and Desertion, grounds for – Lower Court is unjustified in granting a decree of divorce on mere ground that appellant (wife) filed a criminal

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case against respondent (husband) under Sec.498-A IPC and a maintenance case u/Sec.125 Cr.P.C - Hindu Marriage Act, 1955, Sec.13(1)(i-b) – Granting of divorce on ground of cruelty basing on interested evidence rather than on disinterested evidence of respondent (husband) – Contrary to well established principles of law - Hindu Marriage Act, 1955, Sec.13(1)(i-b)- Grounds of desertion – Husband's contention that from day on there was no cordiality between him and his wife and he was not allowed to see his child was disproved in face of photos to contrary and constant communication and correspondence between them for more than one year – Decree and decretal order set aside. **Katada Baby @ Kollati Baby Vs. Katadi Sri Venkata Satya Raja Sekhar 2014(2) Law Summary (A.P.) 156 = 2014(4) ALD 531 = 2014(4) ALT 708.**

—Sec.13-B - **CONSTITUTION OF INDIA,** Art.142 - "Divorce by mutual consent" - On account of differences between appellant/husband and respondent/wife, they took decision to obtain a decree of mutual divorce - Joint petition filed for divorce filed u/Sec.13-B - District Judge dismissed joint petition on account of withdrawal of consent by respondent/wife - Single Judge of High Court while dismissing Appeal observed that appellant would be free to file a petition of divorce in accordance with law which would be decided on its own merits - Supreme Court can in exercise of its extraordinary powers under Art.142 of Constitution, convert a proceeding u/Sec.13 of Hindu Marriage Act, 1955, into one u/Sec.13-B and pass decree for mutual divorce without waiting for statutory period of six months, none of other Courts can exercise such powers - Other Courts are not competent to pass a decree for mutual divorce if one of consenting parties withdraws his/her consent before decree is passed - In this case respondent wife made it very clear that she will not live with petitioner, but, on other hands he is also not agreeable to a mutual divorce - Parties are living separately for more than seven years - As part of agreement between parties, appellant transferred valuable property rights in favour of respondent and it was after registration she withdrew her consent for divorce - She still continues to enjoy property and insists on living separately from husband - Stand of respondent-wife that she wants to live separately from her husband but is not agreeable to mutual divorce is not acceptable - Impugned judgment and order of High Court, set aside - Petition for grant of mutual divorce u/Sec.13-B of Act, accepted - Appeal, allowed. **Anil Kumar Jain Vs. Maya Jain 2010(1) Law Summary (S.C.) 45.**

—Sec.13(b) - **GUARDIANS AND WARDS ACT,** Sec.7 (1) (a) - Petitioner and respondent are wife and husband, filed O.P in Family Court at Visakhapatnam seeking divorce on mutual consent - Wife along with child has been staying at Hyderabad - Family Court passed *ex parte* order in O.P filed by husband under Guardians and Wards Act to appoint him as guardian of minor son - High Court allowed CMA filed by wife and remanded matter to Family Court Visakhapatnam - Wife filed present Application seeking transfer of O.P from file of Family Court Visakhapatnam to Family Court Hyderabad - In fact O.P filed by respondent/husband is pending adjudication - Minor boy is residing with petitioner at Hyderabad and that petitioner is working at Hyderabad and it is very difficult for her to get leave so as to attend Court at Visakhapatnam

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- Further, Supreme Court held that it is wife's convenience that must be looked at for trial of matrimonial proceedings - O.P filed by husband is transferred to Family Court, Hyderabad - Transfer CMP, allowed. **Anmika Vs. Annamneedi Raja Sekhar 2010(1) Law Summary (A.P.) 187.**

——Sec.13-B – **FAMILY COURTS ACT** - This revision has been preferred by the 2ND petitioner in Family Court O.P.No.1547 of 2014, Family Court, - Sole respondent herein is the 1st petitioner in above O.P - Petitioner herein is husband and respondent is his wife - Both of them have filed aforesaid O.P.No.1547 of 2014 under Section 13-B of Hindu Marriage Act, 1955, for dissolution of their marriage performed on 22.08.2010 by a decree of divorce by mutual consent - Petition was returned as not maintainable - Learned Family Court Judge, in her communication dated 28.04.2015 addressed to Registry has set out that the O.P. was moved on 08.10.2014 and it was posted to 09.04.2015 for appearance of both parties after six months and that since the 1st petitioner was present and 2nd petitioner was not present, matter was posted to 22.04.2015 and that on 22.04.2015, counsel for 2nd petitioner filed a chief affidavit of PW.2, which was notarized in Australia and on that day neither GPA Holder of 2nd petitioner nor the 2nd petitioner was present and hence, same is returned - Held, therefore, Family Courts are justified in seeking assistance of any practicing lawyer to provide necessary skype facility in any particular case - For that purpose, parties can be permitted to be represented by a legal practitioner, who can bring a mobile device. By using skype technology, parties who are staying abroad can not only be identified by Family Court, but also enquired about free will and consent of such party - This will enable the litigation costs to be reduced greatly and will also save precious time of Court - Further, other party available in Court can also help Court in not only identifying other party, but would be able to ascertain the required information - Accordingly, I direct Family Court to entertain I.A. as it is maintainable and permit GPA of 2nd petitioner in O.P. to represent and depose on behalf of 2nd petitioner in O.P. and Family Court shall also direct such GPA or any legal practitioner chosen by him to make available the skype facility for Court to interact with 2nd petitioner, who is staying at Melbourne, Australia and record consent of 2nd petitioner and proceed with matter thereafter as expeditiously as is possible - Accordingly, civil revision petition is allowed. **Dasam Vijay Rama Rao Vs. M.Sai Sri 2015(2) Law Summary (A.P.) 413 = 2015(4) ALD 757 = 2015(5) ALT 150 = AIR 2015 Hyd. 191.**

—Sec.13(1)(ib) - **A.P. HIGH COURT RULES TO REGULATE PROCEEDINGS UNDER HINDU MARRIAGE ACT,** Rule 6(1) (i) - "Desertion" - Respondent/husband filed O.P seeking divorce with his wife on ground of desertion, contenting that wife demands unquestioned freedom and that marriage between respondent and petitioner had broken down irretrievably since both are living separately and are not even in talking terms - Petitioner/ wife denied all allegations and that respondent having bad habits and a man of suspicious nature and right from date of marriage she had treated respondent

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with love and affection; but he changed his attitude and neglected her as well as children and causing mental agony and she is only maintaining her two sons and that he has been insisting to sell away her property and give sale proceeds - In this case, respondent filed O.P seeking divorce on ground of 'desertion' alone - DESERTION - Meaning of - Explained - Desertion of respondent by other party to marriage without reasonable cause and without consent or against wish of such party and includes wilful neglect of petitioner by other party to marriage - Respondent has to establish that his wife has deserted him without any reasonable cause or without his consent and that such desertion by wife is wilful and with a view to neglect to avoid marital life for respondent - In this case, there is no averment at all as to when wife deserted him and what was reason for such a desertion - Pleading and evidence of respondent/husband are not specific with regard to desertion - Evidence of other witnesses goes to show that what they have stated is out side ambit of pleadings and evidence of respondent- Lower Court erroneously relied upon evidence of P.Ws.2 to 4 and recorded in judgment stating that case of respondent/husband as seen from evidence and also from pleadings that petitioner/wife developed illicit intimacy with another person, which lead them to live separately - But there is no such averment about wife developing illicit intimacy with another person - Under Rules framed by High Court specific action of adultery and occasion when and place where such acts were committed together with name and address of person with whom such adultery was committed shall be contained in petition - Therefore, Court below ought not to have allowed P.Ws. 2to 4 to speak about adulterous life of wife as so-called adulterer is not at all made a party and no particulars have been furnished in evidence - No such ground of irretrievable break down of marriage is provided by legislature for granting a decree of divorce, but Court cannot add such a ground to Sec.13 of Act as that could be amending Act, which is a function of Legislature - Therefore, only ground taken by respondent/husband that marriage has been broken down irretrievably cannot be considered at all for grant of divorce - Judgment and decree of lower Court, set aside - Appeal, allowed. **M.R.Thulasi Kumari Vs. K. Krishnan 2010(2) Law Summary (A.P.) 412.**

—Secs.15 and 28 – **CIVIL PROCEDURE CODE,** Or.XLIII Rule 1(d) – **LIMITATION ACT,** Art.127 - Wife preferred appeal under Sec.28 of Hindu Marriage Act and under Order XLIII Rule 1(d) of Code of Civil Procedure, impugning order dated 19.07.2004 dismissing her application filed under Order 9 Rule 13 CPC in I.A.No.928 of 2003, to set aside ex-parte divorce decree dated 24.04.2002 in H.M.O.P.No.86 of 2001 on file of Senior Civil Judge, obtained by her husband - Held, despite re-marriage by the act of a party who obtained decree of divorce or annulment of marriage, other party's right and remedy to seek for setting aside exparte decree or to file appeal against decree as per statutory provisions no way be taken away - Once it is shown that she has no knowledge of proceedings and not served with summons in filing application within one month from date of knowledge as per Article

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127 of the Limitation Act, which says substitute service is no proper service so to construe and even otherwise filed application to condone delay as a caution and delay is once condoned in I.A.No.745 of 2003 apart from the exparte decree set aside petition in I.A.No.928 of 2003 is entertained for the same not a bar from remedy of appeal also provided under Sec.28 of the HM Act r/w, Or.XLI - Order XLI CPC, for Order IX Rule 13 CPC is a parallel and other efficacious remedy to avail without going for appeal, to file application and seek to set aside the exparte decree, apart from such rejection prone to miscellaneous appeal remedy under Order XLIII Rule 1(d) and Rule 2 and Order XLI CPC r/w. Section 28 of the HM Act. It is also for what is the bar provided under Order IX Rule 13 of CPC is maintainability of an application under Order IX Rule 13 CPC where before maintaining such application if invoked already the doors of appellate Court by appeal remedy also provided - In the result, the appeal is allowed with no costs and the impugned order of the lower Court dated 19.07.2004 in I.A.No.928 of 2003 is set aside and consequently the said application is allowed by setting aside the exparte decree of divorce dated 24.04.2002 by restoring the HMOP No.86 of 2001 to the file of the Senior Civil Judge, to decide the same preferably within six months and on merits by receiving counter of the respondent-wife therein and by recording the evidence afresh of both sides. **Maganti Krishna Durga Vs. Maganti Anil Kumar 2015(2) Law Summary (A.P.) 444 = 2015(5) ALD 375 = 2015(5) ALT 346.**

——Sec.16 - **INDIAN EVIDENCE ACT,** 1872 Sec.68 **- TRANSFER OF PROPERTY ACT, 1882,** Sec.3 - Trial Court framed issues based on contentions of both the parties - Trial Court agreed with defendants and held that suit schedule properties are self-acquired properties of late Anandi Bai - Trial Court ultimately held that plaintiffs are not entitled for partition and accordingly dismissed suit.

Appeal is preferred by plaintiffs aggrieved by judgment of Trial Court.

Held, second marriage between first plaintiff and Vasudeva Rao was solemnized long prior to HM Act, 1955 and hence, said Act had no application to parties - Appellants/plaintiffs submitted that even provisions of provincial enactment i.e. Madras Hindu (Bigamy Prevention and Divorce) Act,1949 which introduced strict monogamy among Hindus even prior to HM Act, 1955, have no application to parties because though marriage took place during existence of Madras Act, 1949 but the parties belong to Telangana area in Hyderabad State which is a Part-B State and their marriage took place at Hyderabad and hence provisions of Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 have no application to them.

Cardinal principle of Hindu law is that there is a marked distinction as to presumption in case of acquisitions in names of male members and female members of the joint family - Acquisitions in name of male member of a joint family is concerned, there is a presumption that if joint family had sufficient ancestral nucleus, properties standing or acquired in name of male members are joint family properties unless presumption is rebutted by showing properties are separate properties of a particular

member or members in whose names properties stand or were acquired - However, there is no presumption in case of properties standing in name of female members - In such case, it is for party who claims properties as joint family properties to specifically plead particulars and details in pleadings and establish same by adducing necessary evidence - In absence of which, there is no need for detailed scrutiny as to how female members acquired property in question - If plaintiffs adduced no evidence, no further question arises and female member in whose name property stands must be held to be beneficial owner of property in question.

Plea of plaintiffs was that Khande Rao being Kartha of joint family advanced joint family funds, his earnings and also the earnings of his two sons and acquired suit properties covered by Exs-B2 but in name of his wife-Ambu Bai - However, except taking such a plea plaintiffs have not adduced any proof positive showing that joint family of Khande Rao and his sons had sufficient nucleus and details of income fetching properties and method and manner of advancing amounts from joint family nucleus by Khande Rao to acquire suit properties in name of Anandi Bai - What all established was that during relevant period Khande Rao was an Engineer and Anandi Bai was only house wife, but it could not be shown that two sons were employees by date of purchase of suit properties - So, there is no strong evidence from plaintiffs' side to establish that joint family nucleus comprising sufficient properties to advance funds to purchase suit properties - On other hand, contention of defendants is that father of Anandi Bai was a businessman and with gold, silver and cash presented by her parents as Stridhana, Anandi Bai purchased suit properties - As laid down in above principle, when plaintiffs failed to prove factum of flow of funds from joint nucleus to acquire suit properties by cogent evidence, there is no need to go deep into whether Anandi Bai had obtained Stridhana property and with same she purchased suit schedule properties - Trial Court was right in holding that suit schedule properties were the self-acquisitions of late Anandi Bai.

So, having regard to Section 68 of Evidence Act and Section 3 of Transfer of Property Act and above observation of Honourable Apex Court, it is clear that in proof of due execution of Will and its attestation, attesting witnesses shall clearly spell out that executant had either signed or put thumb impression in their presence and they in turn have attested in presence of executants - If they failed to state these crucial facts, it cannot be held that execution of Will was duly proved.

Thus, as rightly contended by Appellants/plaintiffs, these two witnesses have not deposed about crucial facts relating to attestation i.e., executant signing in their presence and thereafter their attesting Will in her presence - No such connotation can be given to their evidence and going by the law of execution and observation of Honourable Apex Court it can be said in instant case, defendants failed to prove due execution of Will and its attestation - So, for all above reasons, it can be held that the defendants on one hand failed to prove due execution of Will and on other, failed to dispel suspicious circumstances - Therefore, it is held Exs.B1-Will is not a genuine document and it will not bind plaintiffs.

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In result, this appeal is allowed and judgment and decree of Trial Court is set aside and a preliminary decree is passed in favour of plaintiffs, directing partition of Plaint-A schedule property into two equal shares and allot one such divided share to them with costs throughout. **Sushila Bai Vasudev Rao Bodhanker (died per LRs) Vs. Govind Rao Bodhankar 2016(2) Law Summary (A.P.) 90 = 2016(3) ALD 1.**

—Sec.16 & 5(1) - Plaintiff, minor represented by mother, wife of D2 filed suit for partition against D1 step mother and D2 father contending that he is entitled for half share and that registered partition deed bewteen D1 and D2, is collusive and not binding on plaintiff - D3 and D4 contends that plaintiff, his mother and D2, father are in collusion and filed present suit to defeat rights of these defendants and that registered partition deed is *bona fide* transaction effected between co-owners and that suit properety is not ancestral property and that plaintiff not entitled to any partition - Trial Court decreed suit declaring that plaintiff is entitled to half share in properties - Contention that in pursuance of Sec.16 of Act, even though plaintiff is a legitimate son born to D2, he does not acquire any right to property, but acquires right to his parents, for which parent has a share - Appellants/ D3 and D4 contends that an illegitimate child cannot claim share in joint family, but such illegitimate child can only be entitled to share in self acquired properties of parents - When properties ceased to be joint family property and when property remains in hands of single person though it is a coparcenary property, it cannot be treated as separate property and in such a case, by virtue of Sec.16 (1) of Act, illegitimate children are entitled for a share on properties of father though not they have any right in ancestral property - As regards registered partition deed, trial Court recorded finding that it is not binding on D2 and plaintiff - There cannot be any partition of ancestral property between wife and husband - There can be a partition of property in lieu of maintainance of any pre-existing right that can be conferred on partition deed upon a wife - In this case no evidence to show that partition deed executed in pursuance of pre-existing right - A share was given to D1 who is first wife of D2 and therefore said partition deed is not binding on defendant - Judgment and decree of trial Court, confirmed - Appeal, dismissed. **Vempati Anasuyamma Vs. Gouru Venkateswarloo, 2008(2) Law Summary (A.P.) 307 = 2008(4) ALD 759 = 2008(5) ALT 104 = AIR 2008 AP 207.**

—Sec.24 - Petitioner-husband filed O.P against 1st respondent, wife for dissolution of marriage - 1st respondent-wife and 2nd respondent minor son aged 8 years filed Application u/Sec.24 of Hindu Marriage Act for interim maintenance and litigation expenses pending disposal of O.P - Senior Civil Judge after enquiry granted interim maintenance to 1st respondent @ Rs.5000/- per month and to 2nd respondent son @ Rs.3000/- per month and also granted litigation expenses of Rs.10000/- - Revision petitioner working as Manager of SBH - Revision petitioner contends that wife working as Teacher in private school and getting salary of Rs.4000 to Rs.5000 per month which is sufficient for her to maintain her self and also to maintain 2nd respondent son, but petitioener did not adduce any evidence in proof of said fact and he also

did not file his salary certificate to prove that his salary is not Rs.40000 as pleaded by respondents - If salary of petitioner is Rs.40000 per month and in view of fact that revision petitioner did not adduce any evidence in proof of 1st respondent-wife getting income and also in view of price rise in present days and also fact that 2nd respondent is school going boy and as such maintenance granted is not on higher side and granting litigation expenses of Rs.10000 is also reasonable - In view of judgment of Supreme Court that not only wife but minor children are also entitled for interim maintenance in an Application u/sec.24 of Act - Contention raised by revision petitioner/husband that minor son is not entitled for interim maintenance under Sec.24 of Act has no substance - Impugned order passed by lower Court - Justified - Revision petition, dismissed. **Meka Prakash Vs. Smt Meka Deepa Rani 2012(1) Law Summary 196 = 2012(3) ALD 48 = 2012(3) ALT 16 = AIR 2012 AP 96.**

—Secs.24 & 26 – Divorced wife filed Application against husband claiming maintenance for minor children – Senior Civil Judge allowed Application granting interim maintenance to children - Petitioner/divorced husband contends that Application claiming interim maintenance and educational expenses for minor children, Sec.24 is not applicable and even if Sec.26 of Act to be made applicable, wishes of children to be ascertained first and without ascertaining wishes of such minor children granting interim maintenance or educational expenses may not be just and proper - Sec.24 of Act no doubt talks of maintenance of wife during pendency of proceedings but this Section, cannot be read in isolation and cannot be given restricted meaning to hold that it is maintenance of wife alone and no one else – order of civil Judge granting interim maintenance to children - Justified – CRP, dismissed. **Lanka Venkatapathi Rao Vs. Smt.Lanka Vijayasree 2008(3) Law Summary (A.P.) 194 = 2009(1) ALD 737 = 2008(6) ALT 218.**

—Sec.24 r/w Sec.151 CPC - Respondent/husband filed O.P seeking divorce on certain allegations - Petitioner/wife filed Application seeking interim maintenance of Rs.5,000/- p.m and legal expenses of Rs.10,000/-, contending that respondent/husband is an employee in University, earning Rs.8,000/- p.m and getting Rs.20,000/- per annum on landed property - Respondent/husband contends that petitioner/parents possessed landed properties worth corers of rupees - Trial Judge dismissed Application holding that there is no material to show that petitioner has no indenpendent source of income especially when parents possess substantial property and she is unable to maintain herself and meet legal expenses - Wife's own income vis-a-vis income of husband is *sina qua non* to justify claim and both ways it requires to be positively established by cogent, legal and acceptable material - Therefore as long as woman not owns or possesses property in her own right title or interest of whatsoever nature or has no income and as source thereof to maintain herself, Court can grant maintenance as well as expenses of proceedings - There is no valid legal and acceptable basis for Court below to reject claim of petitioner/wife for grant of interim maintenance and expenses of proceedings - I.A filed by wife, allowed, directing respondent to pay arrears of interim maintenance at Rs.2,500/- p.m and Rs.5,000/- towards legal expenses - C.R.P, allowed. **Eada Aruna Vs. Eada Nagi Reddy 2010(3) Law Summary (A.P.) 57.**

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—Sec.25(2) - **CRIMINAL PROCEDURE CODE,** Sec.125 - Appellant, divorced wife awarded maintenance of Rs.1000/- per month and also Rs.400/- per month u/Sec.125 Cr.P.C - Husband filed Criminal M.P for cancellation of order of awards contending that wife constructed house and getting monthly rent of Rs.1500 and also getting income of Rs.5000 per month by running Beauty Parlour - Taking into consideration, evidence on record, trial Court concluded that wife was in an affluent condition and due to change of circumstances disclosing that wife was in a position to maintain herself, earlier order granting Rs.1000/- per month should not be continued and consequently cancellation of order of maintenance, ordered - Sec.25 of Act clearly provides for award of maintenance to either spouse only with reference to income and other property of applicant and respondent, conduct of parties and other circumstances of case, it may seem to Court to be just, and any such payment may be secured, with necessary, by a charge on immovable property - In this case, it is clear that subsequent to grant of monthly maintenance of Rs.1000/- by earlier order wife had come in to possession of such property as would enable her to derive independent and sufficient income from same for her own maintenance in ordinary and natural course of human events - Wife is not entitled to seek any reconsideration even on own merits of material on record - Appeal, dismissed. **Polavarapu Sri Devi Vs. Polavarapu Gangaraju 2010(1) Law Summary (A.P.) 258.**

—Sec.27 - **INDIAN PENAL CODE,** Secs.494, 498-A and 304-B - **DOWRY PROHIBITION ACT,** Sec.2 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Case registered against appellant and two other accused for alleged commission of offence under Sec.498-A r/w Sec.34 of IPC - Appellant/A1 filed Application stating that complainant not to be his legally wedded wife as she was already married and therefore Sec.498-A has no application to facts of case - High Court dismissed Application on ground that disputed questions of fact are involved - Appellant contends that in view of acquittal of co-accused persons, proceedings against appellant should not proceed -Concept of marriage to constitute relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights, right to property etc., may follow or flow and a liberal approach and different perception cannot be an anatheme when question of curbing a social evil is concerned - Wife is absolute owner of stridhan of property u/Sec.27 of Marriage Act - Property presented to husband and wife at or about time of marriage belongs to them jointly - DOWRY - Defined - Any property are valuable security given or "agreed to be given" either directly or indirectly by one party to marriage to other party to marriage "at or before or after the marriage" as a "consideration for marriage of the said parties" would become 'dowry' punishable under Dowry Act - Property or valuable security so as to constitute 'dowry' within meaning Dowry Act must, therefore, be given or demanded "as consideration of marriage" - Voluntary presents given at or before or after marriage to bride or bridegroom, as case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within mischief of expression 'dowry' made punishable under

HINDU MINORITY AND GUARDIANSHIP ACT,1956:

Dowry Act - IPC, Secs.304-B & 498-A - Absence of definition of 'husband' to specifically include such persons who contract marriages ostensibly and co-habitate with such woman, in purported exercise of his role and status as 'husband' is no ground to exclude them from purview of Sec.304-B or 498-A IPC, viewed in context of very object and aim of legislation introducing those provisions - Order of High Court in rejecting Application u/Sec.482 of Code holding that disputed question of fact are involved - Justified - Appeal, dismissed. **Koppisetti Subbharao @ Subramaniam Vs. State of A.P. 2009(2) Law Summary (S.C.) 63.**

—AND **INDIA PENAL CODE,** Secs.498-A & 494 - "Divorce" - Respondent/husband filed petition against petitioner/wife seeking divorce on grounds of desertion and cruelty - On appreciation of of oral and documentary evidence Court allowed petition by granting decree of divorce by dissolving marriage of petitioner and respondent - Appellant/wife contends that order of Court is erroneous and that there is no evidence on record to show that she is unfit for marital life and that she was suffering from mental disorder and on that ground alone respondent/husband had left her at her parents house and that he never tried to bring back appellant from her parents house and that mere filing of cases against husband by wife when she was harassed or when husband remarired another women, does not amount to cruelty - Admittedly in this case there is no medical evidence to substantiate allegation that appellant, wife is unfit for marital life - If at all appellant, wife had any health problem, respondent/husband ought to have taken her to competent doctor and got her examined - Merely because wife had some health problems that cannot be ground for granting divorce and that mere filing of criminal cases cannot be treated as treating husband as cruelty - Mere filing of criminal cases relating to matrimonial disputes cannot be treated as an act of cruelty by wife - While dealing with matrimonial cases, Family Court has to examine all aspects thoroughly and Court should examine as to which party is at fault and who is responsible for trouble and whether a party is justified in living separately - In this case, main contention of respondent/husband in seeking divorce appears to be excessive white discharge and his opinion that appellant, wife is unfit for sexual intercourse - Trial Court also failed to consider that there is no evidence to prove that it is appellant/wife who deserted respondent/husband - Impugned order of lower Court, unsustainable and is liable to be set aside - CMA, allowed. **Goka Kameswari Vs.Goka Venkataramaiah, 2011(2) Law Summary (A.P.) 312 = 2011(5) ALD 96 = 2011(5) ALT 181.**

HINDU MINORITY AND GUARDIANSHIP ACT,1956:

—Secs.6 to 8 and 13 - **GUARDIANS AND WARDS ACT,1890,** Sec.7 & 25 - Respondent's wife, daughter of appellant died after giving birth to son who is residing with appellant, maternal grandfather - Appellant filed Application u/Sec.7 of Guardians and Wards Act for appointing him as guardian and respondent filed Application u/Sec25 for custody of his son - District Judge allowed Application filed by appellant appointing him as

HINDU SUCCESSION (ANDHRA PRADESH AMENDMENT) ACT, 1986:

guardian till minor attains age of 12 years, directing appellant to allow respondent/ father to meet minor son once in a month and dismissed Application filed by respondent/ father with liberty to file such Application after completion of age of 12 years by minor - High Court allowed Application filed by respondent/father and directed appellant to handover custody of child to respondent - It is true that under Act 1890, father is guardian of minor child until he is found unfit to be a guardian of minor - In deciding such question Supreme Court consistently held that welfare of minor child is paramount consideration and such a question cannot be decided merely on basis of rights of parties under law - Though father is natural guardian in respect of minor child, taking note of fact that welfare of minor to be of paramount consideration in as much respondent-father got married within a year after death of his first wife and also having a son to second marriage, residing in a rural village, working at distance of 90 kms and of fact that child is all along with appellant maternal grandfather and his family since birth and getting good education and hence District Judge is justified in appointing appellant as guardian of minor child - Order of High Court modified with certain conditions about visitation rights of father - Impugned order accordingly modified permitting appellant/maternal grand- father to continue custody of child till age of 12 years. **Shyamrao Maroti Korwate Vs. Deepak Kisanrao Tekam 2010(3) Law Summary (S.C.) 95.**

—Sec.13 - **GUARDIANS AND WARDS ACT,** Sec.17 - Custody of 10 years old male child - It is trite that while determining question as to which parent care and control of child should be committed, first and paramount consideration is welfare and interest of child and not rights of parents under statute - It is no doubt true that father is presumed by statutes to be better suited to look after welfare of child, being normally working member and head of family, yet in each case, Court has to see primarily to welfare of child in determining question of his or her custody - Better financial resources of either of parents or their love for child may be one of relevant considerations but cannot be sole determining factor for custody of child - In this case child's interest and welfare will be best served if continues to be in custody of father - However it will be open to parties to move Court for modification of order or for seeking any direction regarding custody and well being of child, if there is any change in circumstances - Appeal, dismissed. **Mausami Moitra Gangulu Vs. Jayant Gangulu 2008(3) Law Summary (S.C.) 57.**

HINDU SUCCESSION (ANDHRA PRADESH AMENDMENT) ACT, 1986:

—Sec.29-A - **HINDU ADOPTIONS AND MAINTENANCE ACT, 1956,** Sec.12, proviso (b) - Respondent is natural daughter of appellant was given adoption on 4-2-1985 and Court held that adoption is valid - Respondent as coparcener filed suit for partition of family properties against natural father - Trial Court dismissed suit holding that a woman is not coparcenar on date when respondent P.W.1 was given in adoption and therefore she cannot claim any right in ancestral properties of her natural father with other coparcenars and also held that from date of adoption for all purposes she will be daughter in adoptive family as she was not coparcenar in natural family on

HINDU SUCCESSION (ANDHRA PRADESH AMENDMENT) ACT, 1986:

date of adoption and she is not entitled for partition in properties of her natural family - Appellate Court reversed finding arrived at by trial Court holding that since respondent by virtue of Sec.12, proviso (b) of Hindu Adoption and Maintenance Act, 1956, shall not be divested of property of natural family, she can claim partition of properties of natural family - In instant case, respondent is not a coparcenar on date of adoption and if that is so it cannot be said that any right is vested in her as a coparcenar on said right - When once she has no right on crucial date to claim partition in capacity of coparcenar it cannot be said that she cannot be divested of right to claim partition in properties of natural family after she was given in adoption of adoptive family - After adoption for all purposes she is considered to be daughter having all rights in adoptive family and she cannot claim any right which was not vested in her on date of adoption - First appellate Court is in manifest error in holding that respondent can exercise her right as coparcenar after she was given in adoption to adoptive family - Decree and judgment passed by first appellate Court liable to be set aside - Second appeal, allowed. **Avula Jayarami Reddy Vs. Yerrabothula Nagarathnamma 2011(3) Law Summary (A.P.) 297 = 2012(1) ALD 292 = 2012(1) ALT 356.**

--Sec.29(A) - **HINDU ADOPTION AND MAINTENANCE ACT, 1956**: —Sec.12 - **CIVIL PROCEDURE CODE,** Or.7, Rule 11 and Or.43 CPC, r/w Sec.104 - Appellant/plaintiff filed suit for partition of plaint schedule property claiming 1/6th share in it and also for future mesne profits and costs contending that she is adopted daughter of defendants/ respondents 1 & 2 and she is a coparcener of joint Hindu Family consisting of herself and defendants 1 to 6 by virtue of Sec.29-A of Hindu Succession Act and that she is in joint possession of plaint schedule property which belongs to joint family and that she is entitled to 1/6th share of suit schedule property, Trial Court did not number suit and at S.R stage returned plaint by docket order holding that only a daughter by birth would become a coparcener in view of language contained in Sec.29(A) of Hindu Succession Act, and as plaintiff is claiming to be adopted daughter she cannot become a coparcener and that Sec.12 of Hindu Adoption and Maintenance Act cannot help appellant/plaintiff - In this case, true effect of order passed by trial Court has to be looked into (and not nomenclature used by it-the word “plaint returned” or “plaint rejected” or not conclusive) if effect of order of trial court is in fact, a “rejection” of plaint (although order of trial Court says it is “returned”) only, an appeal u/Sec.96 CPC lies and not CRP u/Sec.115 CPC - On perusal of order of trial Court, it is clear that although said order states that plaint is “returned” since trial Court did not state (i) that it is returned on ground of want of jurisdiction (either territorial or pecuniary or with regard to subject matter), or (ii) in which Court suit should have been instituted, or (iii) that some other Court/Forum is proper Court/Forum, it has to be held that it has actually “rejected” plaint - Appellant/plaintiff has rightly filed appeal u/Sec.96 CPC and contention of respondents 3 to 6 that appeal is not maintainable u/Sec.96 CPC and appellant/plaintiff ought to have filed C.R.P u/Sec.115 CPC, is rejected - Rejection of plaint can only be made in accordance with Or.7, Rule 11 CPC - It is

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not finding of trial Court that any one of clauses mentioned in Or.7, Rule 11 CPC, was attracted warranting rejection of plaint - Therefore trial Court erred in returning plaint/rejecting it at threshold even without numbering suit and also erred in going into tenability of plaintiff's claim for partition as adopted daughter at stage of numbering suit and rejecting plaint at said stage on ground that an adopted daughter cannot invoke Sec.29 A of Hindu Succession Act - Trial Court ought to have numbered suit, issue notice to respondents - Matter remitted back to trial Court and decide suit itself on merits - Appeal, allowed. **Vallapureddy Geeta Bhavani Vs. Nallu Narasimha Reddy 2012(3) Law Summary (A.P.) 3.**

—and **CIVIL PROCEDURE CODE,** Or.XXXIX, RULE 4 - u/Sec.29A added by Amendment, daughter shall by birth become a coparcener in her own right in a joint Hindu family governed by Mitakshara law, and shall have the same rights and be subject to the same liabilities as if she would have been a son - In event of partition, she shall be allotted same share as that of son, and if she is dead at time of partition, her children will be allotted her share - Hindu Succession (Andhra Pradesh Amendment) Act, 1986 - CIVIL PROCEDURE CODE, O.XXXIX, RULE 4 - It is clear that in Andhra Pradesh, there is a State Amendment under Chapter-II A to Hindu Succession Act, 1956 and it came into force w.e.f. 05.09.1985 after the State Legislation has received the approval of President - Therefore, argument of learned Counsel for defendant No.8 that as per the proviso to sub-section (1) of Sec.6 of the Hindu Succession (Amendment) Act, 2005, disposition or alienation including any partition made before 20th day of December, 2004 shall not affect, has to be negative in view of the fact that no partition has taken place even till now and coparceners are not made parties to Exs. A.1 (Agreement of Sale) and A.2 (G.P.A) - Hindu Succession Act, 1956 - CIVIL PROCEDURE CODE, O.XXXIX RULE 4 - Certainly defendant No.8, who is a agreement of sale-cum-GPA holder, will alienate Ac.11.38gts and also change the nature of property and if it is allowed to happen, interest of plaintiffs and defendants 5 and 6 as well as innocent purchasers will be jeopardised - Therefore, order of trial court to vacate status quo order, dated. 28.01.2014, passed in I.A. No. 113 of 2014, is to be set aside - In the result, the Civil Miscellaneous Appeal is allowed. **C.Anitha Vs. Narne Constructions Pvt., Ltd. 2014(3) Law Summary (A.P.) 234.**

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-—is prospective in nature – Rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born - Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected - Any transaction or partition effected thereafter will be governed by the Explanation. **Prakash Vs. Phulavati 2015(3) Law Summary (S.C.) 53 = 2015(6) ALD 180 (SC) = 2015 AIR SCW 6160.**

HINDU SUCCESSION ACT, 1956:

HINDU SUCCESSION ACT, 1956:

—"Partition" - Plaintiff filed suit for relief of partition and allotment of one-fourth share in suit property - Suit contested by first defendant/appellant with plea of ouster - Trial Court decreed suit - In this case, relationship of parties not disputed - 1st defendant and his brother one B purchased an extent of 2472 sq. yards in year 1955 and they are entitled to equal shares of property - No relief is claimed by plaintiff vis-a-vis share held by first defendant, her claim is only in relation to share of B - 1st defendant taken plea to claim share in property left by her brother B stood ousted in view of, fact that she had been given gold and silver held by her mother - In this case, neither value nor quantity of gold jewellary much less point of time at which it was given were suggested and that there was not even a suggestion that so-called giving of gold silver ornaments was in lieu of share of plaintiff or that she has agreed for that course of action - Defence offered by defendant/appellant is not acceptable and claim of plaintiff must be accepted - In written statement as well as in course of evidence, it was mentioned that an extent of about 400 sq. yards was effected in widening of road and if that is so, it needs to be taken into account while determining property that is available for partition and that would be possible only in final decree proceedings - Trial Court not correct when mentioned extent of share of plaintiff in preliminary itself - Therefore preliminary decree needs to be modified to that extent - Appeal, dismissed with a slight modification in preliminary decree to extent that area that is available for partition and extent of share of plaintiff shall be determined in final decree proceedings. **G.V.Deena Dayal Vs. A.Bhagirathgi 2013(2) Law Summary (A.P.) 172 = 2013(4) ALD 650 = 2013(4) ALT 683.**

—-Will - Proof of - Executant of the Will was a paralytic patient at the time of execution of Will - Defendants not filed medical reports relating to condition of late executants during entire period of his illness - DW3 stated that DW1 had read over contents of Will to executants before he obtained his thumb impression on it but according to DW4 and DW2 the executants of the Will was fully conscious and was able to read the newspapers also - Also evidence of DW1 contradicts the evidence of DW3 - DW1, a scribe was brought to write Will from a different village, 5 km away from the village of executants where enough document writers would be present - DW2 was taking more than active interest in proceedings in suit also suggests that he was made to attest the Will by DW4 who was one of main beneficiaries under Will - Held, evidence of DW2 is interested testimony biased in favour of defendants and he is not a trustworthy witness - Trial court's finding that the defendants failed to prove that the late executants of the Will was of a sound mind at the time of its execution was correct - Civil Procedure Code, Order 1 Rule 9 - Will - Non-joinder of parties - Plaintiff had no knowledge about beneficiary under the Will since it was suppressed ten years after filing of suit - No plea was raised in written statement about non-joinder of that person by the defendants and no issue was got framed by them on point of non-joinder - Defendants cannot raise the said plea for the first

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time in appeal since they cannot be allowed to take advantage of their own wrong in not disclosing about that person being a beneficiary under the Will to the plaintiff either in their reply legal notice or in the written statement - Held, the appellants cannot invoke Order 1 Rule 9 of CPC and contend that suit is liable to be dismissed on the ground of non-joinder of said party - Hindu Succession Act, 1956 - Gift Deed - Allegedly executed on 15-01-1982 was not sent to plaintiff along with written statement and it was also not filed in suit - No mention of settlement deed in reply notice by defendants - Neither original nor certified copy of it was filed by defendants - Only a photocopy of it was filed - Also, no evidence as to soundness of health of executants of said deed -Attestors of the deed have not been examined and no explanation given for it - Held, the execution of Gift Deed by the late executants cannot be accepted - Trial Court Judgment upheld and Appeal Dismissed. **Ravi Raja Babaiah Vs. Vemulapalli Rajeswari Devi 2014(2) Law Summary (A.P.) 444 = 2014(5) ALD 642 = 2014(5) ALT 8.**

—Sections 4, 6 (before 2005 amendment) and 8 –Suit for partition filed by son against his father and father's 3 brothers in respect of grandfather's property after the death of grandfather but during life time of father, claiming 1/8 share in co-parcenary property – Suit held not maintainable as grandmother, who is class I heir of grandfather was alive at the time of death of grandfather – In such situation as per proviso to section 6, father's share in co-parcenary property devolves as per section 8 and not Rule of survivorship. **Uttam Vs. Subhag Singh 2016(1) Law Summary (S.C.) *67* = AIR 2016 SC 1169 = 2016(4) SCC 68 = 2016(3) ALD 152 (SC).**

—Secs.6 as amended by Act,39 of 2005, Secs.6(3) & 6(5) - Plaintiff/respondent son of late N.P., filed suit for partition against 1st defendant mother and sisters, defendants 2 to 6 - Plaintiff and defendant succeed to estate of NP and they are entitled to plaint A and B schedule properties and that NP has got half share in schedule properties and same has to be devided between plaintiffs and defendants - Hence the suit - After considering evidence on record trial Court decreed suit of plaintiff with regard to A schedule properties except item no.5 and suit with regard other property was dismissed - Aggrieved by said judgment present Appeal filed - Appellants contend that in view of amendment to Sec.6 of Succession Act,1956 by Act, 39 of 2005 daughters are also copercenars and they are entitled for equal shares since no final decree for partition or partition of properties was effected after death of N.P. and that benefit of Act should be given to appellants - Plaintiff contends that since NP died in year 1975 his succession has opened and devolution of his share by virtue of notional partition has already been decided and consequently late NP along with plaintiff will be entitled to two equal shares and therefore contention of appellants not correct - DEVOLUTION OF INTEREST IN COPARCENARY PROPERTY - According to appellants u/sec.6(5) of Act, only exception is to a partition which has been effected before 20-12-2004 under deed of partition which was duly registered and also a partition

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finally affected by a decree of Court and that provisions u/Sec.6(3) of Act where under it was held for determination of share of Hindu father who dies after commencement of Act, notional partition is taken into consideration and therefore, theory of notional partition cannot be accepted and even if NP died in year 1975 still Benefit of Act 39 of 2005 has to be extended - If a Hindu dies prior to Act 39 of 2005, devolution can only by theory of notional partition and not otherwise - In this case, trial Court has not properly considered factum of possession - It is not case of plaintiff that he has been in possession of property - In fact suit itself was filed for possession and therefore merely because for some years name of late NP was considered in Revenue records, it cannot be said that settlement deed executed by NP is not true or not acted upon - Appeal, allowed in part. **Bashyam Anjamma Vs. Narra Satyanarayana 2013(2) Law Summary (A.P.) 88 = 2013(5) ALD 788 = 2013(4) ALT 445.**

—Sec.6 - Plaintiffs, who are partly aggrieved of preliminary decree in so far as it related to the allotment of smaller extents of shares in plaint 'A' and 'B' schedule properties, had preferred this appeal against said preliminary decree and the judgment dated 30.06.2006 of learned V Additional District Judge (Judge, Fast Track Court), passed in O.S.No.140 of 2003 - Held, as held by Hon'ble Supreme Court, declaration in Section 6 that daughter of coparcener shall have same rights and liabilities in coparcenary property/ancestral property as she would have been a son is unambiguous and unequivocal and thus, on and from September 9, 2005, daughter is entitled to a share in ancestral property and is a coparcener as if she had been a son - Therefore, findings of trial Court in instant suit that son/the 1 st defendant is entitled to 5/8 th share and that daughters i.e., plaintiffs 2 and 3 are entitled to 1/8 th share each along with the 1 st plaintiff, mother, are not correct as the trial court had failed to take note of amended new provision of Section 6 of the Act - 1 st plaintiff who is wife of Bhupathi Reddy is entitled to 1/16 th share in plaint 'A' and 'B' schedule properties and that the plaintiffs 2 and 3, who are the daughters and the 1 st defendant, who is the Son, of Bhupathi Reddy are entitled to 1/4 th + 1/16 th share each (5/16 th share each) in plaint 'A' and 'B' schedule properties - As a sequel, it must be held that the preliminary decree granted by the trial Court is to be modified accordingly in respect of shares of the plaintiffs and 1 st defendant - In result, appeal is allowed in part and the preliminary decree passed by the trial Court insofar as it related to determination of shares of the sharers is set aside by holding that plaintiffs 2 and 3 and the 1 st defendant are entitled to a 5/16 th share each and that the 1 st plaintiff is entitled to a 1/16 th share in both the plaint 'A' and 'B' schedule properties. **M.Sujutha Vs. M.Surender Reddy 2015(2) Law Summary (A.P.) 213**

—Sec.6 and 2005 Amendment Act - **CIVIL PROCEDURE CODE,** Or.20, Rul 18 and Sec.97 - "Coparcanery property" - Rights of daughter - From 9-9-2005 new Sec.6 provides for parity of rights in coparcenary property among male and female members of joint Hindu Family - According to new section daughter of a coparcener becomes

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a coparcenery by birth in her own rights and liabilities in same manner as son - Thus daughter is entitled to a share in ancestral property and is a coparcener as if she had been a son - Partition of a joint Hindu Family can be effected by a registered instrument of partition and by decree of Court - In present case admittedly, partition has not been effected before 20-12-2004 either by registered instrument of partition or by decree of Court - Only stage that has reached in suit for partition filed by 1st respondent is determination of shares *vide* preliminary decree dated 19-3-1999 which came to be amended on 27-9-2003 - A preliminary decree determines rights and interest of parties - Suit for partition is not disposed of by passing of preliminary decree - It is only by final decree that immovable property of joint Hindu Family is partitioned by meets and bounds and after passing of preliminary decree suit continues until final decree is passed - A suit for partition continues after passing of preliminary decree and proceedings in suit get extinguished only on passing of final decree and rights of parties in a partition should be settled once for all in suit alone and not in other proceedings - Judgment of High Court, set aside and order of trial Court, restored - Appeal,allowed. **Ganduri Koteshwaramma Vs. Chakiri Yanadi 2012(1) Law Summary (S.C.) 148 = 2012(2) ALD 50(SC) = 2011 AIR SCW 6163 = AIR 2012 SC 169.**

—Secs.6 & 8 - Deceased, S.V got properties through partition of joint family as well as through settlement from 1st wife of his father - 1st appellant is wife, 2nd appellant and 2nd respondents are daughters and 1st respondent is mother of S.V - Respondents 1 & 2 mother and daughter of S.V. filed suit for partition and separate possession of suit property contending that 1st appellant wife of S.V. is trying to alienate property on assumption that she is absolute owner and that by operation of law property has devolved upon all Class - I heirs - Suit resisted by appellant contending that suit property was self acquisition of S.V. and same is not available for partition - Trial Court dismissed suit - District Judge allowed appeal filed by respondents 1 & 2 by taking view that on death of S.V property has devolved by succession on all his Class-I heirs - Appellants contend that suit properties are self acquisition in hands of S.V. and that trial Court has taken correct view of matter and lower appellate Court has reversed judgment on wrong assumption of fact - Respondents 1 & 2 contend that though property may have partaken character of self-acquired property during life time of S.V., after his death it is available for partition among Class-I heirs and that matter is covered by Sec.8 and not Sec.6 of Hindu Succession Act - Sec.6 gets attracted whenever a Hindu Male who was a member of coparcenary dies before any partition in family has taken place - In such event, his interest in coparcenary property would devolve by survivorship and not by succession - Sec.8 operates in cases where a Hindu Male not being member of coparcenary but holding property in his own right dies and in such event devolution would be through succession in favour of Class-I heirs and in their absences Class-II heirs and so on - In this case, S.V. died holding suit properties in form of self acquisitions - On his death

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a substantial change takes place be it as regards persons who can claim share in it, or nature property - Property loses its character of self-acquisition and would be available for partition - View taken by lower appellate Court, justified - Second appeal, dismissed. **Sadhineni Rajani Vs. Sadhineni Hymavathi 2012(1) Law Summary 142 = 2012(2) ALD 777 = 2012(3) ALT 628.**

—Secs.6 & 8 - Suit for declaration of right and title over plaint schedule property and consequential perpetual injunction - Trial Court dismissed the suit - First appellate Court set aside the decree of trial Court and allowed for declaration of right over suit property in favour of plaintiffs/respondents - 2nd Appeal filed by sole defendat/appellant and died during pendency of Appeal - In 2nd Appeal, High Court finds that trial Court is right in holding that defendant/appellant is entitled to 1/7th share in property of his father and therefore 4th plaintiff (wife) has no exclusive absolute right to gift away the property to her daughters - Held, Sec.8 of Act operates that devolution would be through succession in favour of Class-I heirs, defendant/appellant being son is entitled to 1/7th share - Wife (4th plaintff), who has got share in property of her husband along with her children and she has no right to gift the entire property to her daughters and sons, and therefore gift deed is void in so far as the shares of other sharers - High Court allowed the 2nd Appeal by setting aside decree and judgment of Court below, Consequently decree and judgment of trial Court, restored. **Divireddy Suryanarayana Reddy (died) per L.Rs. Vs. K.Kasturamma 2015(3) Law Summary (A.P.) 332**

—Secs.6 & 23 - **HINDU SUCCESSION (AMENDMENT) ACT, 2005,** Sec.4 - Plaintiff/ appellant and 3rd defendant/3rd respondent are sisters and defendants 1 & 2/respondents 1 & 2 are brothers - All are being children of late OD & V - Plaintiff filed suit for partition of “A” schedule property into four equal shares and “B” schedule properties into 12 equal shares and for allotment of one such share each to her and for possession - Plaintiffs contend that during life time of OD there was partition of landed properties among OD and defendants 1 & 2 and plaint “A” schedule property fell to share of OD - Plaint “B” schedule consists of vacant site - Late OD left his last Will and testment bequeathing life estate to his wife V and vested remainder to plaintiff - Since V, mother died intestate possessed of plaint “A” schedule land all parties are entitled to 1/4th share each therein - Defemdamts 1 & 2 contends that there was no partition among OD and defendants 1 & 2 and that Will is forged and after death of their father defendants 1 & 2 partitioned their family properties in 1971 and that house portion “B” schedule properties combined together forms part of dwelling house of defendants 1 & 2 and therefore not liable partition at instance of plaintiff - Trial Court granted preliminary decree for partition of “A” schedule and denied partition of plaint “B” schedule - Lower appellate Court dismissed appeal holding that plaintiff is not entitled to any share in “B” schedule since defendants 1 & 2 are living jointly in said house and therefore suit becomes premature - Hence present second Appeal - Appellant/

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plaintiff contends that admittedly plaintiff is residing in portion of joint family house and that plaint "B" schedule cannot be construed as house property which is in occupation of members of joint family for their residence jointly and therefore Sec.23 of Act is not applicable to said property - Appellant/plaintiff further contends during pendency of second appeal Hindu Succession Amendment Act came into force and Sec.4 there of omitted Sec.23 of 1956 Act resulting taking away of restriction contained in Sec.23 of 1956 Act - Respondents/defendants 1 & 2 contends that Sec.4 of 2005 Act which omitted Sec.23 of 1956 Act can only be prospective in nature and it has not retrospective operation and it cannot be applied to pending civil proceedings which were commenced prior to 2005 Act coming into force on 9-9-2005 - In view of discussion of subject relating to Sec.23 of 1956 Act and its deletion by 2005 Act and after restrictive provision u/Sec.23 of 1956 Act was omitted in 2005 Amendment Act, it is not necessary for High Court to apply said restriction now in present second appeal - In any event items 1 to 3 of plaint "B" schedule are all vacant sites and not dwelling houses, even though they are stated to be apurtenant sites for dwelling house - Therefore second appeal is liable to be allowed by applying amended provision of Hindu Succession Act, 1956 Act, as it stands to day - 2nd appeal allowed granting preliminary decree in favour of plaintiff/appellant for partition of "B" schedule properties. **Prathipati Jogayyamma Vs. Vobhilineni Veera Venkata Satyanarayana 2013(2) Law Summary (A.P.) 12.**

— Secs.8,19 & 6 - Applicability of Sec.8 - "B" owner of property died in 1972 leaving behind one son "SR" and three daughters who partitioned properties of their deceased father "B" and their names also mutated in revenue records of rights - Subsequently "SR" transferred properties fell to his share to respondents by way of sale deed - Appellant/ SR's son born in 1977, filed suit for setting aside alienations made by SR contending that property of "B" was joint family property and that consideration for transaction is very meager and not for legal necessity - Suit decreed - First appellate Court reversed findings of trial Court, holding that upon death of "B" son SR became co-sharer of property and he, along with his three sisters, having inherited same in equal shares, property lost character of ancestral property in terms of Sec.8 of Hindu Succession Act - Respondents contend that in view of Sec.8, as son of B and his daughters inherited his property and not appellant as a grand-son - Having regarding to Secs.8 & 19 of Act properties is ceased to be joint family property and all heirs and legal representatives of "B" would succeed to his interest as tenants in common and not as joint tenants and that joint coparcenary did not continue - In terms of Sec.19 of Act, as SR and his sisters became tenants and common and took properties devolved upon them per capita and not per stirps, each on of them was entitled to alienate their share - Impugned judgment of first appellate Court - Justified. **Bhanwar Singh Vs. Puran 2008(1) Law Summary (S.C.) 220.**

—Sec.14 - **PARTITION ACT,** Sec.4 - **SPECIFIC RELIEF ACT,** Sec.12 - **TRANSFER OF PROPERTY,** Sec.44 - Vendor entered into agreement of sale with vendee in respect

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of house representing that he was absolute owner of property - Subsequently vendor's wife sent to notice to vendee as well as vendor calling upon them to cancel agreement as she held half share in property having devolved upon her on death of her son as she was not willing to sell her share - Thereafter vendor informed vendee that he is unable to execute sale deed in his favour and take back advance amount paid by him - Hence vendee filed suit for specific performance of agreement of sale against vendor and his wife - Trial Court decreed suit - High Court allowed appeal preferred by vendor wife to extent of half share in property and judgment and decree of trial Court was confirmed to extent of half share of vendor in property - Findings of two Courts as to whether property is ancestral property or not, is divergent - Trial Court held that property not ancestral property, but High Court did not agree with that finding - High Court considered that u/Sec.14 of Hindu Succession Act, share devolved upon mother would become streedhana property, in absence of any express authority from wife he cannot alienate or otherwise dispose of streedhana property of his wife - Hence view taken by High Court - Justified - Finding of High Court that vendee is not entitled to seek specific performance of agreement to extent of half share of vendor's wife – Justified - Sec.12 of Specific Performance Act prohibits specific performance of a part of contract except in circumstances under sub-sections 2,3 & 4 - Agreement is binding on vendor for his half share only - It is only after sale deed executed in favour of vendee that right under Partition Act may be available - Vendee has no right to apply for partition of property and get share demarcated only after sale deed is executed in his favour - Decision of High Court - Upheld - Appeals, dismissed. **Kammana Sambamurthy (D) By. Lrs. Vs. Kalipatnapu Atchutamma (D) 2010(3) Law Summary (S.C.) 159.**

—Sec.14(1) - A female Hindu was given right of enjoyment of lands in lieu of maintenance and possession was given - By virtue of Sec.14(1) she acquired absolute rights over lands in respect of which she was given right of enjoyment and she became full owner thereof without any restriction on her right to deal with property in manner she liked as rights get enlarged to full ownership u/Sec.14(1) of Act. **Subhan Rao Vs. Parvathi Bai 2010(3) Law Summary (S.C.) 83.**

—Secs.14(1) and 14(2) - Deceased, KCSR gifted property to his kept mistress (concubine) towards maintenance by creating life interest in her and vested reminder with donor and his heirs - Subsequently kept mistress gifted property to plaintiffs under registered gift settlement deed - Trial Court decreed suits holding that plaintiffs have proved gift deed executed by KCSR to his kept mistress and also gift deed executed by kept mistress in favour of plaintiffs as KCSR has executed gift deed in favour of concubine in lieu of her right to maintenance during her lift time and said limited interest gets enlarged u/Sec.14(1) of Hindu Succession Act - 1st appellate Court came to conclusion that life interest granted to kept mistress under gift was not a pre-existing right and it was a grant in first instance and as such Sec.14(2) of Act would apply

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and consequently held that limited right of maintenance granted to kept mistress under said gift deed does not get enlarged into absolute estate u/Sec.14(1) of Act - Hence, second appeal - Sec.14(1) of Act clearly reads that any property possessed by Hindu female shall be held by her as full owner thereof and not as limited owner - Therefore, Hindu Women's pre-existing right of maintenance gets enlarged in to an absolute estate - In view of settled legal proposition as kept mistress was gifted property in view of her maintenance through gift, her limited right under said document gets enlarged as absolute right in view of her pre-existing right when Act came into force - In this case, said kept mistress alleged to be concubine of KCSR, has a pre-existing right of maintenance from her paramour - A curse reading of Sec.14 of Act, there is no word concubine or kept mistress, but it clearly reads that any female Hindu - According to 14(1) of Act if any female Hindu has a pre-existing right of maintenance on date of said Act, such limited right of maintenance during life time gets enlarged into absolute estate - Therefore, a concubine has a pre-existing right of maintenance from her paramour or after him from his estate and grant of such limited right by paramour to her during life time of her paramour gets enlarged into absolute estate u/Sec.14(1) of Act - Trial Court rightly decreed suit - Lower appellate Court on erroneous view of matter, held that issue in controversy is based u/sec.14(2), but not u/Sec.14(1) of Act - Both second appeals are allowed. **Singamsetty Narayana Vs. Kontham Lakshmmam 2012(1) Law Summary (A.P.) 51 = 2012(2) ALD 74 = 2012(2) ALT 27 = AIR 2012 AP 54.**

—Secs.14(1) & 14(2) - **CONSTITUTION OF INDIA,** Art.15(3) - Hindu woman executing Will bequeathing suit schedule property in favour of her daughter, which she got from her husband under partition for her maintenance - Trial Court came to conclusion that woman was given suit schedule property under Ex.A.1 with restrictive right and therefore she would not become absolute owner as result of which she could not have bequeathed properties to her daughter under Will - ANALYSIS OF SECS.14(1) & 14(2) OF ACT - Principles in so for as property given to female Hindu in lieu of maintenance or in lieu of arrears of maintenance - Stated - If property is given to widow under a deed or instrument or devise like partition deed or settlement deed or a will or award in recognition of her sastric rights to maintenance or arrears of maintenance would become absolute property after coming into force of Hindu Succession Act - When in a family partition between father and sons, mother, wife or daughter or widow of predeceased son of kartha/manager of family had given property towards maintenance - without anything else; same shall have to be considered in light of language of document, conferring such right - In his case, wife was given absolute right only for certain extent of land to enforce her pre-existing right to maintenance and limited or restrictive estate was given in respect of other item - Therefore she had no right to bequeath suit schedule property under will - Contention of appellant that wife died in year 1973 and suit filed in the year 1984 is barred by limitation is misconceived - A right to partition of property held jointly is a continuous cause

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of action and therefore question of limitation does not arise - Appeal, dismissed. **Kallakuri Pattabhiramaswamy Vs. Kallakuri Kamaraju 2009(2) Law Summary (A.P.) 219 = 2009(5) ALD 410 = 2009(5) ALT 150.**

—-Sec.14(1) & (2) - **TRANSFER OF PROPERTY ACT,** Sec.52 - "Property of female Hindu" - "Lis-pendens" - Sec.14 of Hindu Succession Act undoubtedly declares in sub-sec(1) thereof that property of female Hindu is her absolute property, but it creates an exception in sub-sec.(2) which provides that sub-sec.(1) will not apply to any property which is given away by instruments such as by way of gift or under a will - Life estate given to female Hindu under a will cannot become an absolute estate under provisions of Sec.14(2) of Hindu Succession Act - TRANSFER OF PROPERTY ACT, Sec.52 - Broad principle under laying Sec.52 of T.P Act is to maintain status quo uneffected by act of any party to litigation pending its determination - Even after dismissal of suit, a purchaser is subject to "lis pedendens", if an appeal is after wards filed - Doctorine of lis pendens is founded in public policy and equity, and if it has to be read meaningfully a sale until period of limitation for second appeal is over will have to be covered u/Sec.52 of T.P Act. **Jagan Singh (Dead) through L.Rs. Vs.Dhanwanti 2012(1) Law Summary (S.C.) 64.**

—Sec.15 (1) & (2) - **"Self acquired property of woman"** - Law is silent with regard to self-acquired property of a woman - Sec.15(1) however apart from exceptions specified in sub-sec.(2) thereof does not make any distinction between self-acquired property and property which she had inherited from her parents - Self acquired property of female would be her absolute property and not property which she had inherited from her parents - u/Sec.15(1) of Hindu Succession Act a self-acquired property of widow dying intestate cannot be inherited by succession but it would go to heirs of her pre-deceased husband. **Omprakash Vs. Radhacharan 2009(2) Law Summary (S.C.) 192 = 2009(5) ALD 1 (SC) = 2009(5) Supreme 181.**

—Sec.15(2) - **"Property of female Hindu dying intestate"** - Succession - Stated - 1st respondent filed suit for partition of suit schedule property - Admittedly properties belong to wife of 1st respondent/plaintiff - Appellant grand son of father-in-law of 1st respondent pleads that wife of plaintiff has inherited property from her father, Sec.15(2) Hindu Succession Act gets attracted and therefore plaintiff cannot claim entire property - From Sec.15, it is evident that property of female Hindu dying intestate shall devolve firstly upon sons and daughters and husband - Sub-sec.(2) however, carved out an exception in respect of property inherited by female Hindu from her father or mother in which case property devolves upon heirs of her father - It is not in dispute that father-in-law of plaintiff has executed a Will in favour of plaintiff's wife, which, in fact was exhibited as a document on appellant's side - Thus plaintiff's wife had become owner of property through testamentary succession and not by inheritance - Sec.15(2) gets attracted only in a case of inheritance and not that of succession - Therefore with her death her husband that is, plaintiff succeeded to property by virtue

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of Sec.15(1)(a) along with his sons and daughters including children of any pre deceased son or daughter - In instant case, plaintiff and his wife did not have issues - Accordingly property devolved upon plaintiff alone - Judgments of Courts below - Justified - Appellant failed to make out any substantial question of law - 2nd appeal, dismissed. **Goraka Anjaneyulu Vs. Gunti Tatayya Naidu 2011(2) Law Summary (A.P.) 127 = 2011(4) ALD 283 = 2011(4) ALT 45 = AIR 2011 AP 120.**

—Sec.30, Ch.II of Part VI of **INDIAN SUCCESSION ACT, 1925** - **INDIAN EVIDENCE ACT,** Secs.67 & 68 - Suit for partition of plaint schedule properties and allotment of shares after ejecting defendants therefrom for determination of future profits from date of suit till possession delivered and also for past profits - Lower Court held all the issues in favour of respondents 1 and 2/Plaintiffs - Aggrieved by same, defendants 1 and 4 have filed this AS - Held, Indeed, a perusal of Ex.A-5-Will would show that testatrix referred to Will dated 11-3- 1990 and rescinded the same - From evidence of appellant No.1, who was examined as DW-1, it is clear that he had admitted signature of testatrix while denying the execution of Ex.A-5 Will - In face of evidence of PW-3 to PW-5, which remained unshaken, it needs to be held that respondent Nos.1 and 2 are able to prove Ex.A-5-Will as true and valid. Even if PW-1 and PW-2 did not have personal knowledge of manner in which Vasantha Devi executed the Will, the same would not in any manner affect its genuineness - On contrary, their non-involvement in execution of Will strengthens its genuineness as it was the testatrix who obviously wanted to bequeath property to her only surviving blood relations, namely, her natural sister and her daughter - Appeal is dismissed. **Ravada Appala Reddy Vs. Kadambari Sarojini Devi 2015(2) Law Summary (A.P.) 509**

HPCL DEALERSHIP, LICENCE:

—- **"Termination"** - Corporation terminating licence of respondent/dealer for alleged malpractices found during inspection of outlet of petitioner/dealer - Inspite of comprehensive explanation of respondent/dealer, Corporation passed impugned order of termination of licence basing on report of Inspection Officers - Single Judge allowed writ petition and set aside impugned order on ground that in absence of any Rules regarding inspection and conducting enquiry and termination of licence, Authorities shall act in a fair manner and in consideration of principles of natural justice, observing that mere charge and explanation were not sufficient to hold respondent/dealer was guilty of alleged act - It could have been fair on part of Corporation if inspecting officer was called and examined in matter and writ petitioner/dealer was given an opportunity to cross-examine him to elicit truth or otherwise of allegations - While seeing implementation or compliance of contractual obligation, if authority like Corporation proceeds on footing that writ petitioner/dealer had committed some irregularities or found some lapses, it cannot unilaterally resort to take extreme step of terminating licence - Any such extreme action should be preceded by reasonable enquiry, at least appearing as fair and reasonable - Standard of enquiry to be conducted by judicial

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authority, or a Court or a quasi-judicial authority, is different from standard of enquiry that is expected to be conducted by an authority like Corporation - It does not mean that Corporation can proceed and resort to terminate licence by simply calling upon writ petitioner, dealer to offer an explanation and without assigning any reason can reject and can proceed further - Findings recorded by Single Judge - Justified - Writ appeal, dismissed. **Hindustan Petroleum Corpn., Ltd. Vs.Haji Abdul Rehman HajiAbdulla, HPCLDealers, 2010(1) Law Summary (A.P.) 153.**

HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY ACT, 2008:

—-Sec.32 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - If the respondents are allowed to insist that petitioner must surrender the land to them free of cost if he wants respondents to consider his application for building permission, it amounts to coercing the petitioner to part with his property without compensation - It would be unjust to make the petitioner suffer in this manner - Petitioner cannot be compelled to give up valuable land purchased by him free of cost to respondents on pain of denial of permission for construction in the rest of land which is not required for road widening - Otherwise it would amount to legitimising the arbitrary and expropriatory action of respondents contrary to provisions of Act and law declared by the Supreme Court in many decisions - Writ petition allowed accordingly. **Mohammed Ahmed Ali Vs. State of Telangana, Hyderabad 2014(3) Law Summary (A.P.) 447 = 2015(3) ALD 35 = 2014(6) ALT 427.**

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—Sec.146 - When petitioner's property was sought to acquired by respondent/MCH, he filed writ petition which was disposed of by Single Judge that demolition can be effected only after following due process of law - Single Judge allowed Contempt Case, sentencing respondents to pay fine of Rs.10,000/- each to petitioner for depriving him of his livelihood and causing mental agony, in default to suffer simple imprisonment for period of 7 days as demolition effected by issuing notice on wrong person which amounts to deliberate violation of order of Court and hence contemptuous - MCH contends that since petitioner is, as per records, not said to be true owner of disputed property, notices were issued to registered owners as defined in Municipal records - Therefore issuance of notices to registered owners and agreements obtained by such registered owners for demolition of property for public purpose, cannot be termed as violation of order of Court - Since respondent/MCH followed procedure as contemplated u/Sec.146 of Act, it is neither deliberate nor wilful and accordingly sought to be excused - Due process of law should be understood and procedure must be followed by respondents with due diligence and then arrive at correct conclusion with regard to title and then they have to proceed with demolition - As matter of fact, whole exercise cannot and need not be taken by respondents - Respondents having identified registered owners, followed list and served notices on them and they cannot go into question of title - *Prima facie*, procedure contemplated u/Sec.146 had been followed by respondents

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- Since there is serious question of title involved and since respondents have followed procedure as contemplated u/Sec.146, and as there is no deliberate deviation in issuing notices to true owners, action of respondents does not amount to violation of order of Court, either deliberately or wilfully - Impugned order of learned single Judge, set aside - Contempt Appeal, allowed. **Dr.C.V.S.K. Sharma Vs. Mohd. Moinuddin 2009(3) Law Summary (A.P.) 71 = 2009(5) ALD 516 = 2009(4) ALT 796.**

—-Sec.146 – **LAND ACQUISITION ACT,** Secs.3(b) & 4(1) – **CONSTITUTION OF INDIA,** Art.300-A - Question referred to this Bench is "whether in case of acquisition of land by Municipal Authorities, for road widening, on consent of the landlord of a shop any notice is necessary to be given to the tenant in the shop?"

Held, this Court of considered opinion that judgment of Full Bench in Ushodaya Publications states correct position of law and that Court do not find any reason to take a differing view - Court hold that a notice to tenant in a shop is necessary in case of acquisition of land by Municipal authorities for road widening even if landlord/ owner of premises has given his consent. **Raisunnisa Begum Vs. Premsukhalal Jain 2016(1) Law Summary (A.P.) 8 = 2016(1) ALD 749 = 2016(1) ALT 424.**

—-Secs.148(2), 93 & 97 - **MUNICIPAL CORPORATION OF HYDERABAD (ACQUISITION AND DISPOSAL OF IMMOVABLE PROPERTY) RULES, 1970**, Rule 6 - G.O.Ms.No.408 - Pursuant to tender-cum-auction notice issued by Vijayawada Municipal Corporation for grant of lease hold rights of vacant shops, petitioner participated and his offer was accepted relating to shop no.7/A - Petitioner obtained DDs for amount payable towards rent and goodwill - 1st respondent refused to receive DDs, orally informing him that issue had to be ratified by higher authorities - Hence writ petition seeking declaration that action of respondents in not giving effect to proceedings and thereby depriving petitioner benefit confirmed on him pursuant to tender notice, is arbitrary and illegal - Corporation contends that petitioner had offered one Rs.1,97,000 as goodwill and Rs.1800 as rent and that other tenderer offered Rs.1,98,000 towards goodwill and Rs.2000 towards rent and that Standing Committee passed fresh resolution to effect that shop no. 7/A shall be allotted to highest bidder after conducting negotiations - Petitioner did not attend and other tenderer attended negotiations and offered Rs.2,20,000 as goodwill and Rs.2,000 towards rent and that Standing Committee has right to approve or reject or cancel tenders and therefore impugned action cannot be held to be arbitrary or illegal - In instant case, tender-cum-auction notice admittedly issued by Commissioner of Corporation in exercise of powers u/Sec.148 of H.M.C Act, and auction was conducted and thereafter matter placed before Standing Committee for necessary sanction and by Resolution it was resolved by Standing Committee to accept petitioner's offer and same was also acted upon and accordingly petitioner was informed to remit amounts - Sanction granted by Standing Committee in its meeting was conclusive for grant of lease in favour of petitioner and same was communicated to petitioner and he had also taken DDs - Contract in favour of petitioner stood

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concluded and therefore it is not open to respondents to modify Resolution - Since sanction of the Standing Committee was already acted upon and there was concluded contract in favour of petitioner - Respondents are bound to implement proceedings - Writ petition, allowed. **P.Sambasiva Rao Vs. Govt. of A.P. 2009(2) Law Summary (A.P.) 243 = 2009(5) ALD 33 = 2009(3) APLJ 91 = 2009(6) ALT 68.**

—Secs.148 (3), 124 & 679-A - G.O.Ms.No.299 - **CONSTITUTION OF INDIA,** Arts.14, 21 & 226 - 2nd respondent/Municipal Corporation granted lease of school premises in favour of petitioner-Educational Society for period of 20 years for locating Women's College, with approval of 1st respondent/Govt. by G.O.229 - While petitioner running college respondent/Corporation terminated lease and called upon petitioner to vacate premises for alleged violation of conditions of lease - Hence, present writ petition filed seeking declaration that Memo issued by 1st respondent and consequential termination notice issued by 2nd respondent-Corporation as arbitrary and illegal **-** Petitioners contend that alleged violation of conditions of lease is absolutely false and without any basis and having considered petitioner's explanation, the then Commissioner ordered that no further action was required and as matter of fact, after granting sanction vide G.O.229 u/Sec.148, 1st respondent has become *functus officio* and therefore question of cancellation of lease does not arise - In this case specific plea of petitioner is that most of allegations made in impugned order related to period prior to execution of lease deed which were already explained by petitioner in its replay and having accepted same further proceedings were dropped - With regard to other allegations relating to violation of conditions of lease there is no prior notice to petitioner giving opportunity to meet said allegations - Undisputedly impugned termination not preceded by any notice affording opportunity to petitioner to explain allegations - Since admittedly no such opportunity was given to petitioners on face of it, order of termination is in violation of principals of natural justice and liable to be set aside - Before taking action u/Sec.679-A of Act Govt., is bound to give opportunity for explanation to authority or person concerned - Orders of Govt., as well as termination of lease by Corporation are in violation of principles of natural justice - Impugned orders, set aside. **B.R.G.K.S.V. Educational Society Vs. Government of A.P. 2008(1) Law Summary (A.P.) 203 = 2008(2) ALD 417 = 2008(2) ALT 297 = 2008(1) APLJ 60.**

Sec.456 – **"Demolishing old structures** - Both writ petitions are filed by owner and tenants respectively questioning notice of respondent corporation, one for inaction in demolishing building premises based on structural stability report of JNTU, Kakinada and another directing tenants to vacate Kowtha complex - As they are interconnected and as counsel appearing for parties had requested for disposal of main cases itself, both matters were heard together and being disposed of by a common order - After receipt of JNTU, Kakinada report, and in compliance with orders of Court in Writ Petition, Corporation issued final notice u/Sec.456 of Act to owner and tenants - After considering explanation submitted on behalf of tenants and after providing personal hearing, final orders were passed - Questioning said order,

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appeals were filed before Senior Civil Judge, invoking Sec.654 of Act - The tenants were again directed to approach JNTU, Kakinada to obtain report - After taking into consideration of report, present impugned order is passed - Question same W.P. No. 34551 is filed.

Held, in context of exercise of powers by Commissioner in terms of Sec.456 of Act, an absolute primacy is to be given to opinion of Commissioner except in exceptional circumstances where power itself is being exercised malafidely or for extraneous consideration - It also cannot be said that a detailed investigation and technical evaluation is required to be carried out in every case before a structure is directed to be pulled down, very purpose of entrusting emergency powers in Sec.456 of Act would get defeated – Sec.456 of Act provides for different modes of exercising power depending on facts arising in a particular case.

In circumstances, writ petitions are disposed of, leaving it open to Corporation to carry out task of demolition of building Nos.1 to 3 either by itself or by owner/ tenants ensuring necessary precautions that are required to be taken in terms of Sec.456(2) of Act - However, considering fact that tenants are in occupation, reasonable time of two weeks may be allowed for vacating premises making it clear that if any untoward incidents happen in interregnum period, tenants shall be solely responsible in all respects, both civil and criminal consequences. **K.Lalith Manohar Vs. Vijayawada Municipal Corporation 2016(3) Law Summary (A.P.) 339.**

—Secs.521 (1) (e) (ii) - **PREVENTION OF FOOD ADULTERATION ACT,** Rule 50, Clauses (A) (2) (T) - G.O.Ms.No.1997, dt.3-7-1977 - Municipal Corporation issued Notification enhancing licence fee from Rs.400 to Rs.1900 on shops of silver and gold Ornaments - Petitioners contend that shops dealing with sale of gold and silver Ornaments will not come under category of trade or operation and therefore no licence fee can be levied or collected and that Sec.521 (1) (e) (i) has no application to business of petitioner association and therefore levy and collection of licence fee in pursuance of Notification is illegal and arbitrary - Respondent/Corporation contends that said shops come under category, which creates nuisance to public by throwing waste material on roads by shop owners and customers for which Corporation has to clean every day - Corporation provided all amenities like sanitation, lighting, water supply etc., and services have to be considered as services to traders with a view to facilitate and stream line their business operations - Hence increase of licence fee for gold and silver jewellery shops, not arbitrary - In the instant case, admittedly members of petitioner association have taken trade licence and they are paying licence fee but only on enhancement of licence fee they have chosen to question same - Nature of business in which members of petitioner Association are involved with regard to sale of gold and silver ornaments, they are also indulging in repairing, making ornaments through their workers directly or indirectly, and therefore it cannot be said that nature of business of petitioners will not come u/Sec.521 (e) (ii) of Act - Enhancement of yearly licence from Rs.400 to 1900 - Not arbitrary, illegal or excessive - Writ petition, dismissed. **Gold and Silver & Diamond Merchants Association, Kurnool Vs. M.C.H. Kurnool 2008(3) Law Summary (A.P.) 19 = 2008(5) ALD 239.**

INDUSTRIAL DISPUTES ACT:

IMMORAL TRAFFIC (PREVENTION) ACT, 1956:

—Secs.3 to 5 and 18(1) – "Closure of Brothel House" - Inspector of Police raided lodge of petitioner and registered Crime u/Secs.3,4 & 5 of Act, without considering explanation submitted by the petitioner to the notice issued under Sec.18(1) Act, and passed impugned Order of attachment - "CLOSER OF BROTHEL HOUSE" – Magistrate on receipt of information from police or otherwise that a house is being run as a brothel house after issuance of notice to the owner or lessor, he may pass orders directing eviction of occupier of house - In this case Sec.18 provides for issuance of notice of attachment for improper use of premises and Magistrate was not given any power for attachment of premises directly - In this case, 1st respondent/sub-divisional Magistrate ordered closure of 2nd and 3rd floors of lodge with immediate effect - In view of Sec.18(1) order passed by 1st respondent is illegal – Order set aside – Writ petition, allowed. **M.Ramakrishna Vs.The Sub-Divisional Magistrate and RDO, Vijayawada 2014(1) Law Summary (A.P.) 198.**

INDUSTRIAL DISPUTES ACT:

—Sec.2-A (2) - Management of Factory dismissing workmen from service basing on alleged letters of resignation - Workmen contend that during course of unloading a truck in factory premises, Timekeeper picked up quarrel and forcibly collected their signatures on blank papers and they did not entertain any idea of resignation, when their employment is only source of their livelihood - Labour Court passing award directing reinstatement of workmen with back wages - Management contends that workmen submitted their resignation voluntarily, and that Labour Court proceeded as though it was a wrong retrenchment or dismissal of workmen from service - Appointing authority has power and competence to terminate services of an employee, either on disciplinary grounds, or otherwise, in accordance with relevant Rules or Standing Orders - Either way, appointing authority would not be under obligation to hear or examine concerned employee, in person - But acceptance of resignation, stands on a different footing - In such cases, proposal to bring about cessation of employment emanates from employee himself and therefore heavy duty rests upon appointing authority to ensure that letter of resignation is submitted by employee himself, and that there is no element of coercion or threat, in process - In present case, no Official of management much less appointing authority had made an endeavour to inquire from workmen, personally, as to whether they submitted their resignations, at all - Reasons mentioned in alleged letters of resignation also are some-what abnormal - Proceedings in Labour Court resisted as though workmen were removed on disciplinary grounds - Finding of Labour Court that workmen did not submit resignation, at all - Justified. **Andhra Sugars Ltd., Vs. Labour Court,Guntur 2008(2) Law Summary (A.P.) 130 = 2008(4) ALD 527 = 2008(3) ALT 770 = 2008(2) APLJ 21(SN).**

—Sec.2-A(2) - Charge-sheet issued against petitioner/Conducter in APSRTC for alleged irregularities in cash and ticketing - Enquiry Officer found petitioner guilty of charges and was terminated from service - Labour Court passing award directing APSRTC to reinstate petitioner in service but, without continuity of service and back

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wages - Petitioner contends that labour Court not discussed merits of matter and merely refer to evidence adduced before Enquiry Officer - No reasons were recorded as to why petitioner was being denied benefit of continuty of service and back wages and that matter deserved reconsideration and case should be remanded to Labour Court for fresh disposal on these aspects - APSRTC contends that material on record clearly demonstrated culpabulity of petitioner and that in any event, entitlement to back wages and continuity of service was not automatic upon direction of reinstatement - In this case, petitioner has specifically raised an allegation with regard to validity of domestic enquiry, Labout Court necessarily ought to have considered matter on merits and come to decision as to whether proper case had been made out for interference - Labour Court merely confirmed finding recorded in domestic enquiry and thereafter, went on to apply doctrine of "proportionality" - Award is devoid of cogent reasons not only vis-a-vis denial of consequential reliefs but is equally so even for justifying grant of relief of reinstatement - However, award in present case must stand or fall in its entirety - Petitioner having taken advantage of unreasoned awared in respect of one relief cannot decry it in respect of reliefs denied on very same ground - Grant of back wages was no longer considered to be an automatic or natural consequence of reinstatement - "Doctrine of proportionality" would have to be applied stringently in cases involving trust, honesty, integrity and where employee concerned deals with public money, financial transactions or acts in a fiduciary capacity - In present case, no such exercise was undertaken by Court in application of doctrine - Award of Labour Court, unsustainable under facts and law - Hence, set aside - Matter remitted to Labour Court - Writ petition, allowed. **A.Ramaiah Vs.The Hon'ble Industrial Tribunal-Cum-Labour Court 2009(3) Law Summary (A.P.)109.**

—Secs.2-A(2), 25-F and 25(O) - Payment of retrenchment compensation - Petitioner joined as wage labourer in year 1992 in K.C.P.S.I.C. Ltd., and did clerical work till 2001 - Subsequently transferred to work shop of 1st respondent at Tada and worked their for about one year - Thereafter 1st respondent issued retrenchment order alleging that work shop at Tada incurred huge losses - Labour Court came to conclusion that retrenchment of petitioner is not in accordance with provisions of Sec.25-F and 25(O) of I.D Act and proceeded to award compensation instead of retrenchment - Petitioner contends that labour Court having recorded finding that retrenchment is not in accordance with provisions of Sec.25-F and 25(O) of I.D Act, committed serious error in not granting reinstatement and instead awarding a paltry sum of Rs.20,000 as compensation - Petitioner worked in 1st respondent establishment for about 10 years and received Rs.60,000 as retrenchment compensation - Nerely seven years have elapsed from date of retrenchment as on this day - Award of compensation in lieu of reinstatement is justified - Compensation enhanced to Rs.1,00,000 from Rs.20,000 as awarded by labour Court in lieu of reinstatement. **S.Narayana Rao Vs. K.C.P.S.I.C. Ltd. 2009(2) Law Summary (A.P.) 251 = 2009(5) ALD 440 = 2009(6) ALT 699.**

INDUSTRIAL DISPUTES ACT:

—Sec.11-A - Petitioner driver of APSRTC, while driving bus which met with fatal accident and consequently 1st respondent/Corporation placed him under suspension and after considering explanation submitted by petitioner he was removed from service since charges levelled against him held proved - Revision filed by petitioner before Regional Manager, rejected - Labour Court while deriving power from Sec.11-A of I.D Act adjudicated matter by re-appreciating entire evidence adduced in domestic enquiry held that finding of Enquiry Officer not on material evidence, but made on basis of report of preliminary Enquiry Officer who based his finding on basis that young boy died in accident while crossing road and as no cogent reasons were given by Enquiry Officer to come such conclusion finding found to be perverse and therefore charges levelled not found to be established and consequently Labour Court ordered reinstatement of petitioner with continuity of service but without back wages - Single Judge allowed writ petition filed by petitioner by directing 1st respondent/Corporation to pay 50% of back wages from date of removal till date of reinstatement - Hence Corporation filed present Appeal - Petitioner/appellant contends that having accepted validity of domestic enquiry Labour Court would not have interfered with order of punishment imposed by Enquiry Officer as findings of enquiry are not perverse and are based on material evidence - Since introduction of Sec.11-A of Act, Labour Court/ Industrial Tribunal is equipped powers to reappreciate evidence led in domestic enquiry and satisfy itself whether said evidence relied upon by employer establishes misconduct alleged against workman and Labour Court should interfer only when punishment was shockingly disproportionate to gravity of charge established - BACK WAGES - Awarding back wages depends upon facts and circumstances of case, even if Court finds that it is necessary to award back wages, question would be whether back wages should be awarded fully or only partially (and if some percentage) - Now back wages are no longer considered to be automatic or natural consequence of reinstatement.

Factors which are to be taken into consideration while awarding back wages - Summarized:

a) Manner and mode of selection & appointment,

b) Nature of employment, adhoc, daily wage contract labour, temporary, permanent

c) Length of service, which the workman had rendered. If the workman had rendered considerable period of service, he may be awarded full or partial back wages keeping in view the age and qualification passed by him and that he may not be in a position to get another employment.

d) Whether he was gainfully employed during the period of suspension / termination.

e) Payment of full back wages cannot be the natural consequence of reinstatement. It depends upon the facts and circumstances.

In present case as writ petitioner exonerated of all charges, he is entitled reinstatement and also to back wages basing on limitation and guidelines indicated above - Petitioner has also discharged his burden at earliest point of time by stating

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that he was not gainfully employed during period when he was out of service and even in counter filed by Corporation in ID it is not even alleged that petitioner was employed gainfully during period of his termination - Petitioner is entitled to full back wages - W.A filed by employee seeking total back wages, allowed - W.A filed by Corporation, dismissed. **M.Ch.Subba Rao Vs. Depot Manager, APSRTC, Chilakaluripet Depot 2012(3) Law Summary (A.P.) 154 = 2012(6) ALD 707 = 2012(6) ALT 459.**

—Secs.11-A - **A.P.S.R.T.C (CONDUCT DISCIPLINE AND APPEAL) RULES,** R.8 - 1st respondent/Conductor was removed from service for alleged attempt to defraud Corporation by allowing bus to commence its journey without issuing tickets to all passengers - Labour Court passing award directing reinstatement of Conductor back to duty with all attendant benefits, but denied payment of back wages completely - Petitioner/ Corporation contends that Labour Court had unduly taken into account and consideration fact that fare collected from three passengers i.e. Rs.1.50ps each being too marginal a money, whereas Courts have been consistently pointing out that irrespective of quantum of money misappropriated, punishment should be severe - In this case, only at time surprised check was undertaken there were 65 passengers carrying tickets on board, obviously bus is full - Only three more passengers remained to be issued tickets and all other 65 passengers have been issued correct denomination tickets and they were all made to pay exact amounts being fare for journey - First respondent/conductor has also taken out three tickets from tray and punched them as well - Thus it reflects that conductor is still in process of issuing tickets - Collection of Rs.1.50ps from each one of passengers being correct fare and tickets having already removed from tray and punched, is conclusively establishing intended act of conductor to pass tickets to passengers - Therefore it is only a case of technical violation of allowing onward journey of bus, without completing issuance of tickets - Punishment should not only meet offender, but also quantum of guilt held established against employee concerned - In instant case, conductor is not wholly blameworthy - Since severe punishment of removal has been imposed, Labour Court exercised power available to it u/Sec.11-A of Act - Disciplinary Authority failed to apply its mind properly to relevant factors - Award passed by Labour Court - Justified - Writ petition, dismissed. **Depot Manager, APSRTC, Medak Vs. D. Narayana 2008(2) Law Summary (A.P.) 239 = 2008(4) ALD 682 = 2008(5) ALT 26.**

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—Secs.1, 3, 13(1) - **A.P. SHOPS AND ESTABLISHMENTS ACT,** Sec.2 (e) - **PAYMENT OF WAGES ACT,1936**, Sec.2(ii) - G.O.Ms.No.116, Labour, Employment, Training and Factories (LAB-II), dt.7-12-2207 - Petitioner's Establishment inspected by Squad team and initiated prosecution against petitioners for violation of Sec. 3 (1) of Act, after obtaining permission from Joint Commissioner - Petitioner contends that his establishment is registered under A.P. Shops and Establishment Act, as commercial establishment and registration is being renewed from time to time and therefore petitioner's Establishment cannot be termed as industrial Establishment within meaning

INSECTICIDES ACT, 1968:

of Act - In this case, prosecution could not produce any notification issued by appropriate Govt., u/Sec.2(ii) (h) of Payment of Wages Act to show that petitioner's establishment or class of such establishments are included within preview of said enactment - Act applies only in case 100 or more workmen are employed on any day of preceding 12 months - In this case, inspection report of Squad Team is attached to complaint filed before lower Court shows that establishment was registered for 52 employees only - Thus there is no basis for prosecution/complainant to show that Act is applicable to petitioner's establishment - Prosecution of petitioner for offence punishable u/Sec.13 (1) of Act has no legs to stand - Proceedings in STC on file of Magistrate, quashed - Petition, allowed. **A.Rama Mohana Rao Vs. State of A.P. 2010(2) Law Summary (A.P.) 14.**

INSECTICIDES ACT, 1968:

—- Sec.29(1) (a) r/w S. 3(k) (1) (VIII) - A complaint was lodged against Petitioners/ Accused/ under provisions of Insecticides Act - Aggrieved, Petitioners/Accused Nos. 1 to 4 filed instant petition seeking quashment on main plank of argument that shelf life of pesticide was expired by 12-07-2012 and L.W. 1 drew sample on 06-08-2011 and sent for analysis and Analyst report was served on Petitioner/Accused No. 2 on 30-08-2011 - Further, on 02-12-2011, a show cause notice dated 17-09-2011 was served on Petitioner/Accused No. 3 by Joint Director of Agriculture, Kurnool, to furnish particulars of persons responsible for manufacture of said mis-branded product and Petitioner/Accused No. 3 vide Reply Letter dated 07-12-2011, informed that he was not satisfied with result and wants to contest the contents of Analytical Report - But in spite of it, Complainant even without mentioning about said Reply Letter, filed complaint before trial court on 17-05-2014 which was returned on 19-06-2014 and represented on 28-06-2014 and ultimately complaint was taken cognizance on 31-01-2014 and as such, long prior to filing of complaint and taking cognizance, shelf life of product was expired and so Petitioners/Accused lost their valuable right of seeking to send another sample for analysis to Central Insecticides Laboratory (CIL) and hence, continuation of proceedings against Petitioners/Accused will amount to abuse of process of law and therefore may be quashed - Held, however, inspite of knowing clear intention of Petitioners/Accused complainant, it appears, did not take any action to send second sample for analysis within shelf life of product - On other hand, he filed complaint on 17-05-2014 which was ultimately taken cognizance by trial court on 31-10-2014 - Thus, by time complaint was taken cognizance, shelf life of product was expired long ago and thereby valuable rights of accused conferred under Section 24(3) and (4) of Insecticides Act, were defeated for no fault of Petitioners/ Accused - Hence, continuation of proceedings, in considered view of this Court, will amount to abuse of process of law - Accordingly, the Criminal Petition is allowed and proceedings are hereby quashed against Petitioners/Accused Nos. 1 to 4. **New Rythu Fertilizers Vs. State of A.P. 2015(2) Law Summary (A.P.) 252 = 2015(2) ALD (Crl) 1038.**

INSURANCE ACT, 1938:

INSURANCE:

—Medi-claim Policy - Petitioner took out Medi-claim policy with 1st respondent/Insurance Company and same being renewed from time to time on payment of stipulated premium - Petitioner suffered ailment to his Kidney and continuous Dialysis became necessary thrice in a day, till transplantation of kidney takes place - Respondent/Insurance Company rejected claim of petitioner on ground that Dialysis, which petitioner was undergoing, was excluded from coverage - Petitioner contends that Policy is a continuous one and once particular decease and ailment was covered under policy, it cannot be excluded during subsistence of Policy - Respondents contend that duration of policy is only one year, and though it is renewed year after year, it cannot be treated as a continuous one and that once particular decease or ailment is excluded from coverage, petitioner cannot claim reimbursement for treatment thereof - RENEWAL OF POLICY - Cl.3 - In case premium is paid without delay, renewal becomes a matter of course - It is not alleged that petitioner delayed payment of premium at any point of time - Once policy was taken and it is being renewed from time to time it virtually becomes a continuous phenomenon, and any changes as to coverage that takes place in between would not apply to policyholder - Petitioner is entitled for reimbursement that are included in policy taken out by him and exclusion of decease from list does not effect rights of petitioner to claim reimbursement - Petitioner is entitled for renewal of Policy as long as premium for renewal is paid within stipulated time - Writ petition, allowed. **Dr.T. Suresh Vs. The Oriental Insurance Co., Ltd., 2009(3) Law Summary (A.P.) 371.**

INSURANCE ACT, 1938:

—Sec.45 - Principle "Uberrima fides" - Respondent/plaintiffs husband during his life time took two Life Insurance Policies and died due to parlytic strock - Appellant/defendant Corporation reputed claim in one policy for alleged withholding correct information as to his health at time of taking out policy - Trial Court decreed suit relying upon evidence of D.W.1, agent of Corporation who is responsible of for issuance of suit policy - Appellant/Corporation contends that investigation revealed that deceased suffered from diabetes long prior to taking of suit policy and had in fact been treated therefor - Failure of deceased in disclosing this information in proposal form (Ex.A.1) vitiated of contract of insurance and Corporation is entitled to repudiate plaint claim under a vitiated contract - Entire case revolves around Ex.A.1, suit Policy Proposal Form - Enforsement in Ex.A.1 duly signed by insure stating to effect that he had fully explained questions in Ex.A.1 to proposal - No policy of Life Insurance can be called in question by any insurer on ground that statement made in proposal for insurance leading to issue of policy was inaccurate are false after lapse of two years unless insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and it was fraudulently made by policy-holder and that policy-holder knew at time of making it that statement was false or that it suppressed facts which it was material to disclose - Absence of evidence that questionnaire had been fully explained to and was understood by insure so as to establish concealment are suppression of material fact within his

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knowledge, clearly disentitled Insurance Corporation from repudiating policy - Evidence in present case clearly demonstrates that there was failure on part of defendant Corporation indischarging this obligaton - Having failed in this regard, and hence it is not open to Corporation to repudiate suit policy - Judgment and decree of trial Court - Justified - Appeal, dismissed. **LIC, Rep. by B.M. Vs. K. Subadramma 2009(1) Law Summary (A.P.) 213 = 2009(3) ALD 790.**

— Sec.45 - **EVIDENCE ACT,** Sec.115 - Life Insurance Policy - Appellants-plaintiffs-claimants filed suit for recovery of Insurance amount on death of insured - Respondent/ Insurance Corporation repudiated policy on ground that insured suppressed material fact - Trial Court decreed suit - Single Judge of High Court opined that there was no material to show that non-disclosure was of material fact justifying repudiation of policy by Corporation - Division Bench of High Court opined that parties are bound by warranty clause contained in agreement and that non-disclosure related to a material fact - If a person makes a wrong statement with knowledge of consequence, he would ordinarily be estopped from pleading that even if such fact had been disclosed, it would not have made any material change - A deliberate wrong answer which has a great bearing on contract of insurance, if discovered may lead to policy being vitiated in law - Contract of insurance including contracts of life assurance are contracts uberrima fides and every fact of materiality must be disclosed otherwise there is good ground for rescission - This duty to disclose continuous upto conclusion of contract and covers any material alteration in character of risk which may take place between proposal and acceptance - Impugned judgment of Division Bench of High Court - Justified - Appeal, dismissed. **P.J.Chacko Vs. Chairman, L.I.C of India 2008(1) Law Summary (S.C.) 101.**

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—**DISPLACED FAMILIES** - Writ Petition is filed by some of the displaced persons, who are ten in number, under Teluguganga project for a mandamus to declare the action of the respondents in not granting house site pattas admeasuring 0.50 cents to each of them as per G.O.Ms.No.324, Energy, Forests, Environment, Science & Technology (For.I) Department, dated 01.12.1988, as illegal and arbitrary - Another Writ petition is filed by four of the displaced persons under Somasila project for a mandamus to declare the action of the respondents in not allotting Acs.2.00 of agriculture land and Ac.0.50 cents of homestead land to each of them as per the Resettlement and Rehabilitation Policy, 2005 contained in G.O.Ms.No.58, Irrigation & Power (Projects Wing) Department, dated 19.03.1980, and G.O.Ms.No.324, dated 01.12.1988, as illegal and arbitrary - Held, when the Government has issued an order as a welfare measure to safeguard interests of the displaced families under a particular project, the respondents are bound to implement the same - In the absence of a counter-affidavit, this Court is unable to render any specific findings as to whether the project has been implemented or not - If the petitioners are displaced under Teluguganga project as claimed by them, they are entitled to all the benefits that are envisaged in G.O.Ms.No.324, dated 01,12,1988 - Therefore, respondent No.1 is directed to consider the claim of the petitioners for

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grant of house site pattas as per G.O.Ms.No.324, dated 01.12.1988, take a decision and communicate the same to the petitioners within two months from the date of receipt of a copy of this order - These Writ Petitions are accordingly allowed to the extent indicated above. **Kuraku Venkata Ramanaiah Vs. District Collector, Kadapa 2015(3) Law Summary (A.P.) 106**

—Secs.4, 5-A, 6 & 17(1) & (4) - **A.P. AGRICULTURAL LAND (CONVERSION FOR NON-AGRICULTURAL PURPOSES) ACT,** Sec.7 - Pursuant to requisition from A.P. Industrial Infrastructure Corporation Ltd., (APIIC) to acquire land for purpose of construction of Intake Well and Pump House for supply of Contour to Ceramics Company, to District Collector, petitioner's land notified and notification was published, invoking urgency clause by dispensing with enquiry u/Sec.5-A of Act and further declaration u/Sec.6 also published - On receipt of notice for payment of 80% compensation petitioner came to know about acquisition proceedings - Hence, petitioner filed present writ petition - Petitioner contends that though there is no urgency warranting invocation of provisions u/sec.17(1) & (4) of Act respondents invoked same by dispensing with enquiry u/Sec.5-A of Act and that by invoking urgency clause, petitioner deprived of opportunity to show that land is unsuitable for construction and to raise other valid objections and that acquisition cannot be said to be for public purpose because there is no benefit to general public if a private company sets up a Pump House for its own benefit and that as land in question is not converted from agricultural to non-agricultural, respondents cannot be permitted to acquire his agricultural land for using for industrial purpose - Govt., contends that in view of urgency for construction Intake Well and Pump House for supply of Contour, enquiry u/Sec.5-A has been dispensed with by invoking urgency clause and accordingly APIIC has provided funds for payment of compensation and that APIIC is a Govt., owned Company with aim and object to provide infrastructure facilities for purpose of development - APIIC contends that proposed acquisition relates to public purpose and that development of industrial infrastructure requiring acquisition of land is in larger public interest and that once private land is acquired under Act it becomes land belonged to State - In this case, petitioners main contention, firstly, that having regard to purpose for which land in question is acquired, no valid reasons have been assigned to dispensing with enquiry u/Sec.5-A of Act which is valuable right available to land owners to put-forth their objections for proposed acquisition and that in view of dispensing with enquiry u/Sec.5-A, petitioner is deprived right to raise his valid objections for proposed acquisition and that there is no element of public purpose within meaning of Act - Power of invoking urgency clause u/Sec.17(1) (4) of Act confers extraordinary power on State to acquire private property without complying with mandate of Sec.5-A and these provisions can be invoked only when purpose of acquisition cannot brook delay of even a few weeks or months - Having regard to purpose for which land is notified for acquisition, it is not of such urgent requirement so as to invoke power u/Sec.17(1) (4) of Act - Invoking urgency clause u/Sec.17(1) & (4) of Act by dispensing with enquiry u/Sec.5-A in this

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case, is illegal - Plea of petitioner that respondents ought to have followed procedure under Chapter-VII of Act while issuing impugned proceedings - Unsustainable - Writ petition, allowed in part declaring notification issued to extent of invoking urgency clause by dispensing with enquiry u/Sec.5-A as illegal and consequently declaration issued u/Sec.6 of Act, quashed. **Pasala Padma Raghava Rao Vs. Collector, East Godavari, 2012(1) Law Summary 39 = 2012(2) ALD 553 = 2012(2) ALT 60.**

——Sections 4,5A,6,17(1),17(3A),17(4)- Possession of property was taken by invoking urgency clause and 80% compensation was paid subsequent to taking of possession – However Sec.5-A enquiry was conducted and objections were considered and Sec.6 declaration was issued - Award could not be passed in view of interim order of High Court in writ petition challenging the acquisition – High Court allowed one writ petition observing that acquisition suffers from fundamental law and dismissed the other – State appeal was allowed by Supreme Court holding that acquisition was valid – Land owners appeal against dismissal of writ was dismissed - However, compensation is to be determined in accordance with the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. **State of Uttarakhand Vs. Rajiv Berry 2016(2) Law Summary (S.C.) 43 = AIR 2016 SC 3685 = 2016(5) ALD 81 (SC).**

---Sec.4(1) - It is case of petitioners that they are eking out their livelihood by cultivating lands - They are all landless poor persons and are owners of small extents of lands - While so, 3rd respondent issued notification u/Sec.4(1) of Land Acquisition Act, 1894 identifying houses and house sites of petitioners for acquiring same situated in aforesaid survey numbers for public purpose i.e., for construction of Tourism Project, Recreation Amenities and other commercial complex - That some of petitioners filed objections in pursuance to notices issued to them u/Sec.5(A) of Act - However, without considering said objections being filed by petitioners, 3rd respondent issued declaration u/Sec.6 of Act rejecting objections of petitioners - It is case of some of petitioners that though they have purchased lands, their names are not mentioned in notification issued u/Sec.4(1) of Act - Aggrieved by notification u/Sec.4(1) of Act and impugned proceedings issued by 3rd respondent, rejecting objections of petitioners in pursuant to notification, present writ petitions are filed.

Counter affidavit is filed by 2nd respondent on behalf of other respondents denying averments in affidavits filed in support of writ petitions stating that subject land under acquisition has historical importance.

Held, Admittedly, objections of petitioners were rejected by 3rd respondent, without considering them objectively, stating that petitioners will be paid market value plus 30% solatium and 12% additional market value as per award enquiry basing on documents submitted by them - In impugned order, it is also stated that same is required for public purpose, as such, same cannot be deleted from purview of notification u/Sec.4(1) of Act - Excepting stating so, there is no proper reason or explanation forthcoming in impugned order passed by 3rd respondent.

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As per law laid down by Hon'ble Supreme Court consideration of objections of petitioners should be objective and should be after application of mind, but in present case, 3rd respondent rejected objections of petitioners only on ground that petitioners would be paid compensation as per Act and also that said land is required for public purpose - Right conferred u/Sec.5-A of Act is an important valuable right to petitioners and is one of procedural safeguard against arbitrary acquisition of lands - Unless procedure as envisaged under Sec.5-A of Act is followed in its true spirit, it cannot be said that procedure established under law is followed, depriving petitioners of their lands, as same will be in violation of Art.300-A of Constitution of India - Decision of 3rd respondent on objections of petitioners by way of impugned order does not satisfy test of application of mind and also reasons provided in impugned order does not inspire confidence of this Court for upholding action of respondents in issuing Declaration under Section 6(1) of the Act.

In view of above facts and circumstances, impugned order rejecting objections of petitioners is liable to be set aside and accordingly same is set aside - Consequently, declaration made u/Sec.6 of Act is also set aside - 3rd respondent is directed to reconsider objections in proper perspective in terms of law laid down by Hon'ble Apex Court referred to above, after giving an opportunity of hearing to petitioners and take action accordingly in pursuance thereto - Accordingly, both writ petitions are allowed to extent indicated above. **Shaik Jonny Vs. State of A.P. 2016(3) Law Summary (A.P.) 192 = 2016(6) ALD 373 = 2016(5) ALT 571.**

—Sec.4(1) - Publication of preliminary Notification and power of Officers thereupon - Stated - There are two requirements for issuance of Notification u/Sec.4 of Act - First requirement is that Notification requires to be published in Official Gazette and second requirement is that acquiring authority should cast public notices of substance of such Notification in a convenient place in locality in which land proposed to be acquired is situate and both contentions are cumulative and they are mandatory - Non-compliance with mandatory requirement of Sec.4(1) invalidates entire acquisition proceedings - Merely because parties concerned were aware of acquisition proceedings are served with individual notices does not make position alter when statute makes it very clear that all procedures/modes have to be strictly complied with in manner provided therein - Merely because land owners failed to submit their objections within 15 days after publication of Notification u/Sec.4(1) of Act, authorities cannot be permitted to claim that it need not be strictly resorted to. **Kulsam R. Nadiadwala Vs. State of Maharashtra 2012(2) Law Summary (S.C.) 121 = 2012(5) ALD 70(SC) = 2012 AIR SCW 3079 = AIR 2012 SC 2718.**

—Sec.4(1) - Not being satisfied with compensation awarded, claimants had preferred the first mentioned appeal - On other hand, LAO had preferred latter mentioned appeal inter alia contending that compensation as determined by the court below is high and excessive - Held, therefore, legal position makes it clear that claimants in instant case are entitled to subsoil/mineral wealth subject to certain limitations

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- Therefore, this Court inclined to consider this additional feature of acquired land as one of necessary considerations while determining market value of acquired land - Besides that there is one Well for which determination of compensation was deferred - For one of irrigation Wells a compensation of Rs.88,000/- was awarded as per estimate prepared by Executive Engineer concerned of R & B - Coming to contention of claimants that there is a bund of about 301 feet in lands and for said bund also no compensation was determined by Court below, though there was a reference to the same in order of court below, it is to be noted that there is no whisper in evidence in regard to this bund and compensation for the bund - Therefore, no compensation is awardable in respect of said bund - Regarding trees which were found on inspection compensation was awarded - Trial Court do not find any reason to award any further compensation towards the value of any other trees as claimed by claimants for want of evidence of reliable character - Therefore, while determining compensation in a comprehensive manner for the acquired land, this Court have to take into consideration the compensation also to be awarded for one more Well only for which determination of compensation was deferred in award - In the result, the appeal of claimants in LAAS 1614 of 2005 is allowed in part and a compensation of Rs.50,000/- is awarded towards value of one of irrigation Wells for which determination of compensation was deferred by LAO - In regard to rest of aspects, the order of court below is confirmed subject to rider that insofar as interest on solatium is concerned, appellants-claimants are entitled for same from 19.09.2001, i.e., date of judgment of Hon'ble Apex Court in SUNDER V. UNION OF INDIA - Trial Court also make it clear that in view of judgments of Hon'ble Supreme Court (3 and 4 supra), appellants-claimants are not entitled for any interest from date of taking possession inasmuch as possession was taken even prior to notification under Section 4(1) of Act - However, claimants are at liberty to pursue remedies, which law permits, for claiming rents/damages from date they were dispossessed and till date of issuance of draft notification - Appeal of State in LAAS No.1685 of 2005 shall stand disposed of as a sequel to findings in aforementioned appeal of claimants. **T.Padma Bai Vs. LAO & RDO,Manthani Karimnagar Dt. 2015(2) Law Summary (A.P.) 287**

—Secs.4(1), 5-A and 3 (c) & 17 (b) - G.O.Ms.No.822 dt.16-7-1985 - Notification published by 1st respondent/Collector proposing to acquire land of petitioner for purpose of house sites to weaker section - RDO issued Notice to petitioner proposing to conduct enquiry and rejected objections raised by petitioner - Hence present writ petition, contending that it is not competent for 2nd respondent/RDO, to conduct enquiry u/Sec.5-A of Act, much less to reject objections raised by petitioner and that Notice was given contrary to provisions of Act - Sub-sec(1) of Sec.5-A of Act mandates that Notice of not less than 30 days from date of publication of notification in locality shall be issued to interested parties - In the instant case, notice u/Sec.5-A dt.6-11-2006 and enquiry proposed to be conducted on 23-11-2006, there is serious flaw in very

notice itself - Mere fact that petitioner participated in enquiry does not wipe away consequences that flow from serious defect contending in notice - Conferment of powers of Collectors on RDO, or MRO through G.O.Ms.No.822 in exercise of power u/Sec.3(c) of Act is bound to lead several anomalies - In this case, District Collector/ 1st respondent issued Notification u/Sec.4 (1) of Act and it is for him to satisfy himself as to whether there is any substance in objections raised by owner of land and to from opinion whether or not to proceed with acquisition - However 2nd respondent/ RDO himself formed opinion and rejected contentions of land owners - Impugned endorsement made by RDO, set aside. **Yepuri Sambasiva Rao Vs. District Collector, Krishna District 2010(2) Law Summary (A.P.) 140.**

—Secs.4, 5-A & 6 - Land acquisition proceedings initiated to acquire land lands of petitioners for purpose of setting up LPG Bottling Unit for HPC Ltd - Petitioners contend that purpose for which land acquisition proceedings had been initiated is not public purpose and that no notice was given giving opportunity to raise objections u/Sec.5-A of Act and that these are lands of landless poor persons or small farmers - Govt. contends that proposed acquisition is public purpose and that several of petitioners having failed to file any objections cannot now contend that there was no opportunity and opportunity given had not been availed and in such circumstances writ petitions are liable to be dismissed - In this case, though opportunity had been given, writ petitioners having left place, subsequently had not availed said opportunity and hence, now they cannot turned down and say that no proper opportunity had been given u/Sec.5-A of Act - When acquisition is made for public purpose, at best, petitioners can agitate for reasonable compensation or higher compensation as case may be - Objections raised relating to slight variations may not vitiate proceedings - Petitioners can agitate their rights for due and reasonable compensation and cannot object for proposed acquisition - Writ petitions, dismissed. **K.Nooruddin Vs. Govt. of A.P. 2009(3) Law Summary (A.P.) 344 = 2009(6) ALD 276 = 2009(6) ALT 146.**

—Secs.4(1), 5-A & 6 - Petitioner's land is proposed to be acquired to provide house sites to poor - Respondents District Collector and RDO have issued notification u/Sec.4(1) of Act in two news papers Hindu (English) and Janata (Telugu) daily - Petitioner contends that as two news papers do not have circulation in village in which land is situated, objections could not be filed by petitioner or her parents on her behalf and consequently petitioner went unrepresented in purported enquiry held u/Sec.5-A of Act leading to publication of declaration u/Sec.6 of Act - This is a case where publication is made in news papers which have no circulation at all in locality - Therefore, on ratio laid down by Apex Court, Notification u/Sec.4(1) of Act, itself cannot be construed as a valid notification within meaning of Sec.4(1) of Act - As such Notification u/Sec.4(1) of Act is liable to be quashed - Therefore, shorn of technicalities and having regard to facts of case which undoubtedly to show that respondents failed to comply with mandatory statutory provision of publication of notification u/Sec.4(1)

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of Act in news papers published in regional language having circulation in locality - Notification u/Sec.4(1) of Act itself is liable to be set aside - Writ petition, allowed. **Kethineni Vani Vs. District Collector, Machilipatnam, 2011(2) Law Summary (A.P.) 248 = 2011(4) ALD 370 = 2011(4) ALT 563.**

—Secs.4(1), 5-A & 6 - Govt., issued Notification for acquisition of certain land including land belonging to appellant-Company in which it was running industrial unit, for development of Industrial Estate - Subsequently declaration made u/Sec.6 of Act and award announced - High Court dismissed CWP filed by appellant - Hence present appeal by way of Special leave - Appellant contends that Notification u/Sec.4(1) not published in locality wherein land situate which prevented appellant-Company from making objections u/Sec.5-A and that Company itself is running industry and that High Court committed error in dismissing writ filed by appellant/Company - Respondent/Govt., contends that land acquisition Authority complied with all formalities and appellant-Company failed to file objections u/Sec.5-A and that High Court is justified in dismissing Writ Petition - Purpose of publication of Notification u/Sec.4(1) of Act is two-fold, to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections u/Sec.5-A of Act and second, to give land owners/occupants a notice that it will be lawful for any Officer authorized by Govt., to carry out activities enumerated in sub-sec.(2) of Sec.4 of Act - In this case, there was no publication of substance of notification u/Sec.4-A of Act in locality which is held to be mandatory and that by effecting publication in locality it would be possible for person in possession to make their representation/ objection in enquiry u/Sec.5-A and by non publication of same in locality as provided under Act, owner or occupier loses his valuable right and for these reasons also, acquisition proceedings are liable to be quashed - All three modes of publications u/Sec.4(1) of Act, are mandatory - In this case, on going to the material placed by appellant-Company it is established that it is running industrial Unit even prior to Notification u/Sec.4 of Act and appellant has established its case on these ground also - Impugned order of High Court, set aside and land acquisition proceedings in so far as appellant-Company is concerned, quashed - Civil Appeal, allowed. **V.K.M. Kattha Industries Pvt. Ltd. Vs. State of Haryana, 2013(3) Law Summary (S.C.) 1.**

—Sec.4(1),5-A & 6 - **A.P. AGRICULTURAL LAND (CONVERSION FOR NON-AGRICULTURAL PURPOSES) ACT, 2006** - Petitioners' lands were notified for acquisiton for providing house sites to people belonging schedule caste - Petitioners have earlier filed writ petition before stage of holding enquiry u/Sec.5-A of act on ground that without conversion of agricultural lands into house sites, acquisition thereof is contrary to provisions of A.P. Agricultural land, Act, 2006 and said writ petition dismissed - During pendency of said writ petition respondents rejected petitioners objection filed u/Sec.5-A of Act - Following dismissal of previous writ petition, respondents have issued

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declaration u/Sec.6 of Act - Hence petitioners questioned said declaration by way of present writ petition - Petitioners contend that there are several wet and dry lands belonging to Govt., which would have been utilized for providing house sites instead of acquiring the double crop wet land of petitioners who are small farmers - Even though State has power of eminent domain same need to be exercised carefuly and reasonably - When agricultural lands are sought to be acquired care and caution to be exercised should be much more because not only agriculturists will be deprived of their lands for cultivation but Society at large will be deprived of agricultural production - In this case, respondents have not disputed fact that all these lands are wet lands - While need for providing house sites to under privileged people in Society need to be over-emphasized, at same time interest of small farmers need to be protected to extent possible - In recognition of this fact even Govt., has been issuing instructions from time to time to spare lands owned by small farmers as far as possible - Proposed acquisition is meant for house sites and indisputably,lands of petitioners proposed for acquisition of double crop wet lands - Thesefore respondents ought to have avoided acquisition of these lands for two reasons viz., that petitioners proven small farmers and that lands proposed to be acqauired are wet lands - While ordinarily High Court does not interfere with acquisition proceedings in absence of serious legal infirmities, treating this case, as an exceptional one, where interest of small farmers need to be protected and to avoid acquisition of double crop wet land - Court is inclined to interfere with proposed acquisiton - Accordingly impugned land acquisition proceedings are quashed - Writ petition, allowed. **Shaik Kalesha Saheb Vs. District Collector, SPSR Nellore District, 2012(1) Law Summary 35 = 2012(2) ALD 339.**

—Secs.4(1), 5-A & 6 – **CONSTITUTION OF INDIA,** Art.300-A - Right of property - Respondent Collector issued draft notification u/Sec.4(1), proposing to acquire lands belonging to petitioners for purpose of providing house sites to SCs, BCs, OCs, etc., - Collector rejected objections of the petitioners filed u/Sec.5-A of Act stating that acquisition of land is essential - Subsequently District Collector issued draft declaration u/Sec.6 of Act - Petitioners contend that they are small and marginal farmers eking out their livelihood solely depending on subject lands – Petitioners further contend that Government Lands are available in village in particular Sy., Nos. – When such Government lands are available in very same village, respondent Authority are not justified in acquiring lands of small and marginal farmers - In this case reason shown by Authorities that alternative lands are faraway from habitation is not sustainable and cannot be a ground to disturb small and marginal farmers - Notification issued u/Sec.4(1), proceedings issued u/Sec.5-A and draft declaration u/Sec.6 of Act are set aside, - Writ Petition allowed. **P.Venkaiah Vs. District Collector, Guntur, Guntur District 2014(1) Law Summary (A.P.) 358 = 2014(3) ALD 635.**

—Secs.4(1), 5-A & 6 – **LAND ACQUISITION RULES,** RULE 3 - Notification issued to acquire land of petitioners for purpose of providing house sites to weaker section – 3rd respondent/Collector rejected objections submitted by petitioners taking into account,

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remarks of RDO and Tahsildar and published declaration u/Sec.6 - Petitioner contends that 3rd Respondent did not consider objections independently and simply accepted remarks offered by 4th respondent and that land previously acquired for purpose of house sites from sum of petitioners is still vacant and that proposed lands to be acquired is very fertile and that land low lying abutting see - 3rd respondent acts as quasi judicial authority, independently in context of acquisition of lands and he is under obligation to examine each and every objection independently - Remarks offered by 4th respondent, at most, provide information vis-à-vis objection raised by land owner – Neither District Collector nor RDO can act as adversaries to land owners – Steps stipulated u/Sec.5-A of Act or Rules made thereunder are mandatory - In this case, petitioners raised as many as 17 objections and large number of objections were not even mentioned in impugned order - If Govt. allots house sites in land acquired previously, loss can be avoided to Govt., exchequer – Leaving lands belonging to Govt., and proposal to acquire lands from small farmers is not justifiable - When petitioners specifically pleaded that lands are within Costal Regulatory Zone 3rd respondent ought to have examined matter in a greater detail and any lapse in this regard, on his part would result in violation of directions issued by Hon'ble Supreme Court, prohibiting constructions within Costal Regulatory Zone – Before becoming party such probable violation, 3rd respondent ought to have examined matter objectively - Whole episode reflects very sad state of affairs, telling upon lack of objectivity and fairness on part of respondents 3 & 4 – They were not mindful of burden exchequer, in form of market value for land proposed to be acquired and filling up same to level of three feet and they did not hesitate to violate judgment of Supreme Court in relation to Costal Regulatory Zone, instead of utilizing available vacant Govt., land – Writ petitions, allowed with certain directions. **Gandepalli Nuka Raju Vs. The State of A.P., 2008(3) Law Summary (A.P.) 282 = 2009(1) ALD (NOC) 8 = 2009(2) ALT 554.**

—Secs.4 (1), 5-A,6,9 and 10 - Rules made u/Sec.5 of L.A Act, Rule 3 - **A.P. URBAN AREA DEVELOPMENT ACT,** Sec.2(b),(e) & (f) and Sec.13(1) - **A.P. AGRICULTURAL LANDS (CONVERSION INTO NON- AGRICULTURAL PURPOSES)ACTS, 2006,** Sec.3 - Petitioners' lands acquired for public purpose namely for formation of Bypass Road - Govt., issued G.O under Sec.13(1) of Urban Areas Development Act and Master Plan approved - Petitioners contend that their lands which are reserved for agricultural purpose in Master Plan under Urban Areas Development Act, cannot be used for purpose of laying Bypass Road and that there cannot any acquisition contrary to Master Plan or Zonal Development Plan and that such acquisition cannot be said to be for public purpose within meaning of L.A Act and therefore, impugned acquisition without there being a public purpose is without jurisdiction and that acquisition of lands for formation of roads is also contrary to provisions of Sec.3 of A.P. Agricultural Lands Act - Govt. contends that alleged contravention of Master Plan and Zonal development plan are not relevant so far as proceedings under L.A Act are concerned and therefore interference by Court is not warranted on any grounds whatsoever Contention of petitioners that there cannot be acquisition contrary to Master Plan and it cannot be

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held to be a public purpose under L.A Act is without substance and untenable - It is for State Govt., to decide whether land is needed for public purpose and whether it is suitable or adoptable for which acquisition is sought - Impugned acquisition proceedings are not illegal, on grounds of contravention of provisions of Urban Area Development Act - This is a case where land to an extent of Ac.34.83 cents is sought to be acquired for formation of Bypass Road - Admittedly petitioners are concerned only with Ac.5.94 cents out of total land sought to be acquired - Material available on record shows that out of 110 land owners only 23 persons raised objections - Even assuming that respondents committed error in rejecting objections raised by petitioners having regard to fact that a large chunk of land has already been taken possession by respondents and formation of Bypass Road is held up only on objections raised by petitioners in respect of small extents of lands held by them and hardship that may be suffered by petitioners cannot be a valid ground to set aside impugned acquisition proceedings - Public interest shall outweigh interests of individuals and therefore no justifiable reasons to grant Mandamus as prayed for - In this case, many land losers have accepted acquisition and received compensation particularly fact that possession of considerable portions of acquired lands as already been taken - Impugned acquisition proceedings cannot be held to be vitiated on ground of non-compliance with provisions of Sec.5-A of Act - Writ petition, dismissed. **I.Kalakoti Siva Reddy Vs. District Collector, Krishna 2010(3) Law Summary (A.P.) 176.**

—Secs.4(1) & 6(1) & 3(c) and 5-A - District Collector issued Notification proposing to acquire lands belonging to petitioners for providing house sites to weaker sections - RDO who authorised u/Sec.3(c) conducted enquiry and informed petitioners that their objections are rejected, consequently District Collector, issued declaration u/Sec.6(1) of Act - Petitioners contend that even if RDO is conferred power to conduct enquiry, while considering objections made by owners of land, no power vests in RDO to reject objections and that RDO can only send a report to competent authority-be it appropriate Govt., or District Collector; who alone is entitled to take appropriate decision before issuing declaration u/Sec.6(1) of Act - RDO or any Revenue Officer exercising powers of Collector as per Sec.3(c) or Sec.3-A of Act is only given power to make or submit a report to such Authority who issued notification u/Sec.4(1) of Act and that RDO cannot reject objections raised by owners and that action of RDO *ex facie* illegal - Hence declaration u/Sec.6(1) of Act, unsustainable - Declaration u/Sec.6-A in all writ petitions - Quashed. **P.V.S.A.V.D.S.Sabrahmanya Varma Vs. Govt. of A.P. 2010(2) Law Summary (A.P.) 286.**

—Secs.4(1), 5A, 9(3) and 10 – **A.P. PANCHAYAT RAJ ACT, 1994,** Sec.242(f) – **PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996,** Secs.4(i) & 5 - Government proposed to acquired land for rehabilitation of Tribal on account of Polavaram Project – Notification issued enquiry held u/Sec.5-A and notice was issued u/Sec.9(3) and 10 of Act, but so far no award passed - Petitioner/tribal filed present writ

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petition assailing procedure adopted by Government in acquiring land in notified Tribal area without complying with statutory mandate as envisaged in Sec.242(f) of A.P. Panchayat Raj Act and Sec.4(i) of Panchayat Extension to the Schedule Areas Act - Petitioners contends that there is violation of Sec.4(i) of Panchayat Extension to the Schedule Areas Act, in as much as no resolution of Gram Sabha is obtained for acquiring land as mandated by said provision before acquisition proceeding are initiated and therefore on that ground, entire acquisition proceeding are vitiated - Government contends that during relevant period, there was no elected Gram Panchyat in Village and Special Officer was appointed and in view of same no consultation as mandated by Sec.4(i) of Panchayat Extension to the Schedule Areas Act, was followed and however Mandal Parishad passed resolution for proposal to acquire land and therefore resolution passed by Mandal Parishad is sufficient and not obtaining resolution of Gram Sabha in view of fact Gram Panchayat was not constituted could not vitiate acquisition process - Panchayat Extension to the Schedule Areas Act is a special enactment made to protect interest of Tribals and Sec.4(i) of Act mandates consultation of Gram Sabha or Panchayat before initiating proceedings for acquisition of land in tribal areas – According to Sec.5 provision of PESA Act shall prevail over any other provision – Therefore any deviation from complying with mandate is ex-facie illegal - In present case, acquisition proceedings are not concluded and no award is passed - Action of respondent Authorities initiating Land Acquisition proceeding without complying with provision in Sec.4(i) of Panchayat Extension to the Schedule Areas Act, is illegal and process by respondent Authorities cannot be saved - Respondents are directed to strictly comply with provisions of Sec.4(i) of Panchayat Extension to the Schedule Areas Act and take further steps only after consulting Gram Sabha - Writ Petition, allowed. **Udata Venkateswar Rao Vs. Govt. of A.P. 2014(1) Law Summary (A.P.) 285 = 2014(3) ALD 447 = 2014(3) ALT 460.**

—Secs.4(1), 5-A, 9(3) and 10 – **CONSTITUTION OF INDIA,** Arts.14 and 300-A - It is a settled law that right to object for acquisition created u/Sec.5-A of Act for owner of property is a human right and is a right akin to fundamental right - Therefore, such a valuable and precious right cannot be dealt with nor can be permitted to be viewed in a routine, mechanical and cavalier manner - Authorities in present case did neither afford personal hearing to petitioner nor have they considered any objections raised by the petitioner herein - On other hand, authorities in an arbitrary manner issued Sec.9(3) and 10 notice and fixed the award enquiry during the currency of the status quo order - Totality of facts and circumstances in this case drives this court towards an irresistible conclusion that impugned action is highly preposterous and is liable to be deprecated and this court has absolutely no scintilla of hesitation to hold that there is absolutely no justification on part of respondent authorities in fixing award enquiry during subsistence of status quo order passéd by this court and passing award enquiry basing on said enquiry – Writ petition allowed. **Meka Seetharatnam Vs. District Collector, Krishna District 2015(1) Law Summary (A.P.) 1 = 2015(2) ALD 747 = 2015(3) ALT 279.**

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—Secs.4(1), 5-A, 6,11-A & 17(4) - Lands acquired for purpose of house sites to poor - Enquiry u/Sec.5-A dispensed with invoking urgency clause - Possession taken on 10-6-1984 - Award passed on 21-11-2005 - Since admittedly award passed beyond two years from declaration u/Sec.6 dt.17-1-1987 entire proceedings stood lapsed u/Sec.11-A of Act - Consequently Government directed to publish fresh Notification u/Sec.4(1) - Petitioners/Govt. filed review petitions contending that since possession of land in question was taken on 10-6-1984, Sec.11-A of Act has no application and therefore it cannot be held that proceedings stood lapsed - Possession of land governed by notification u/Sec.4(1) of Act can be taken u/Sec.16 after passing of award where urgency clause u/Sec.17(4) is not invoked - In case where urgency clause invoked and enquiry u/Sec.5-A is dispensed with, Collector is entitled to take possession even before Award is made on expiry of 15 days from publication of notification u/Sec.9(1) of Act and thereupon such land shall absolutely vest in Govt. free from all encumbrances - In this case, admittedly possession taken on 10-6-1984 - Though by time declaration dt.28-4-1984 was published u/Sec.6, said declaration was quashed by High Court by Order dt.18-10-1985 - Since possession taken on 10-6-1984 was illegal and not in accordance with law, land did not statutorily vest in Govt. - Consequently it is mandatory to pass award within two years as laiddown u/Sec.11-A of Act - Admittedly Award passed on 21-11-2005 beyond two years from declaration - Hence entire proceedings stood lapsed - Order under review - Not erroneous - Review petitions, dismissed. **District Collector, E.G. District Vs. Maddukuri Joga Rao 2008(2) Law Summary (A.P.) 223 = 2008(4) ALD 691 = 2008(2) APLJ 75.**

—Secs.4(1) (6), 11-A, and 23 - **CONSTITUTION OF INDIA,** Arts.14, 21, 300-A & 226 - Acquisition of land for construction of APSRTC Bus Depot - Petitioner contends that Corporation took possession of land in1971 to an extent of Acs.11.15 guntas including his father's land, but award passed only to extent of Ac.9.16 guntas, leaving out land owned by petitioner's father - Pursuant to representations of petitioner, after death of his father, RDO submitted detailed report after enquiry and verification of records, to Corporation - Inspite of repeated repre-sentations and legal notice to Corporation and District Collector, compensation not paid to petitioner - Hence writ petition, seeking direction to respondents to pay compensation contending that taking advance possession without tendering payment of 80% renders whole acquisition proceedings a nullity and as such respondents may be directed to initiate acquisition proceedings afresh - Respondents contend that since advance possession was taken, time limit stipulated u/Sec.11-A of Act not applicable and that writ petition suffers from huge and unexplained delay - DOCTRINE OF LATCHES - Petitioner is Govt., employee, had been going round Office of RDO, since 1988, and present writ petition filed after making relentless efforts to sensitize respondents to need for payment of compensation for land acquired without passing award and paying compensation - Since valuable right of petitioner to receive compensation for property taken over by respondents is involved, writ petition cannot be thrown out on ground of latches - Hence contention of respondents, rejected - Once lands stood vested in State, there is no question of divesting land and revesting land in erstwhile owners that only right is, as to determination of compensation and that Sec.11-A does not apply to cases of acquisition u/Sec.17 where possession was already taken

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and land stood vested in State - Even if petitioner's father did not participate in award enquiry, nothing prevented LAO from passing award in 1976 - Petitioner is entitled for payment of compensation for inordinate delay in passing award and wrongful deprival of use of property in addition to payment of market value as on date of publication of notification on 20-4-1972 - For purpose of computing damages, market value prevailing on 3-9-1998 shall be taken into consideration - To balance equities, date of filing of writ petition is taken as relevant date to award damages to petitioner - Accordingly, writ petition disposed of. **E.P.Vinaya Sagar Vs. LAO-cum-RDO, Kamareddy, 2008(2) Law Summary (A.P.)324 = 2008(4) ALD 303 = 2008(3) ALT 92.**

—Sec.4(1), r/w Sec.17(1) and 17(4), 5-A & 6 - Acquisition of land for proposed fourland road of National Highways - Division Bench of High Court confirmed notification holding that urgency shown for invoking Sec.5-A was justified as it was necessary to remove traffic congestion - Appellants contend that dispensation of Sec.5-A of Act in present situation not proper and there is no proper application of mind - Right to file objection u/Sec.5-A is a valuable right and Govternments are not given a free hand dispense with Sec.5-A and it is only a safe guard against arbitrary exercise of power by State - In this case, because of globalization of economy Indian economy is progressing with fast speed - Therefore in order to keep pace with speed, invitation of Sec.5-A has become imperative - Traffic congestion is a common experience of one and all and it is very difficult to negotiate with traffic congestion in some reasons - Therefore in present situation, it cannot be said that invocation of Sec.5-A is for ulterior purpose or is arbitrary exercise of power - Order passed by Division Bench of High Court - Justified - Appeal, dismissed. **Sheikhar Hotels Gulmohar Enclave Vs. State of Uttar Pradesh 2008(2) Law Summary (S.C.) 211 = 2008(4) ALD 141(SC) = AIR 2008 SC 2284 = 2008 AIR SCW 4084.**

—Secs.4(1), 5-A,6 & 17(4) - **CONSTITUTION OF INDIA,** Arts.14 & 300-A - Land belonging to petitioner-Trust registered as charitable institution under Endowments Act acquired for purpose of providing house sites to S.C & Backward caste people by invoking urgency clause, u/Sec.17(4) and possession was taken on 6-8-1996 - Even after lapse of 10 years no enquiry was conducted for passing of Award - Petitioner contends that long delay in payment of compensation for lands acquired from petitioner vitiates very exercise of power under Act and that petitioner is entitled for restoration of possession of said land taken from it and is willing to refund adhoc compensation received by it with interest - Respondents contend that house pattas were also distributed to beneficiaries and they could not occupy sites and construct houses as there is no approach way to enter into sites from road points and that it is not possible to restore land as prayed by petitioner as almost all land acquisition proceedings except passing of Award had been completed including payment of 80% of compensation was completed - This is a pecular case where urgency clause had been invoked and advance possession had been taken but inspite of long lapse of time no Award has been made - In this case, where even after filing counter-affidavit specifically reiterating

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stand that rest of compensation is going to be paid or Award is going to be passed shortly way back in year 2006, even after long lapse of three years thereafter, when no further steps had been taken it may have to be taken that very invocation of urgency clause, in peculiar facts and circumstances may not be just and proper - Notification issued under Sec.4(1) of Act, quashed - Respondents are entitled to compensation amount already deposited and petitioner is entitled to restoration of lands in question - Writ petition, allowed. **Sri Tummalapalli Krishnamurthy Vishranthi Bhavanam Vs. District Collector, Eluru 2009(3) Law Summary (A.P.) 159.**

—Secs.4(1), (6), 9(3), 10, 11(2), 12(2) & 18 - Land acquired for Outer Ring Road, encircling Hyderabad City - Notification published and declaration also published - Petitioners raised several objections for acquisition at various stages - Petitioners contend when they appeared before Special Deputy Collector (LAO) no survey or enquiry has taken place on 11-4-2007 but to their surprise watchman received notice dt.24-2-2010 purported to be u/Sec.12(2) of Act stating that award was passed on 18-4-2008 and that at no point of time they are served with notices u/sec.9(3) and 10 of Act and further challenge award in respect of their lands stating that neither any compensation was paid, nor offer to them - Object of issuing notice 12(2) of Act is to inform parties that an award is going to be pronounced - Award must naturally precede on enquiry u/Secs.9 & 10 of Act - Irrespective of nature of enquiry award must be pronounced on date specified u/Sec.11(2) of Act - Curiously enough, notice served on petitioners, in year 2010, made a mention to award dated 18-4-2008 - It is matter of common knowledge that Act was amended in year 1984, fixing time frame, for publication of notifications, pronouncement of award etc., - 3rd respondent/Spl. Deputy Collector does not appear to have kept that in view - Therefore very notice dt.24-2-2010 u/Sec.12(2) of Act is untenable in law - A perusal of award discloses that enquiry was held on 12-6-2006 - But there is no reference to notices dt.27-3-2008, issued u/Sec.9(3) and 10 of Act - If award enquiry was held on 12-6-2006, notices dt.27-3-2008 are totally untenable, if not meaningless - In field of compulsory acquisition of land, payment of compensation and passing of award for that purpose assumes utmost significance - Passing of award is an exercise in which LAO is supposed to deal with contentions of land owners; ascertain market value and determine compensation - Date of pronouncement of award assumes significance from point of view of seeking reference u/Sec.18 of Act - Such an important aspect dealing with valuable lands/rights of petitioners was reduced to an empty exercise by 3rd respondent/ Special Deputy Tahsildar - Award passed by 3rd respondent, unsustainable in law and accordingly set aside - Writ petition, allowed. **G.Krishna Prasad Vs. State of A.P., 2011(2) Law Summary (A.P.) 168 = 2011(4) ALD 51 = 2011(4) ALT 432.**

—Secs.4(1), 5-A, 6 & 17(4) - Land belongs to Temple proposed to be acquired for providing house sites to poor and urgency Clause u/Sec.17(4) was invoked dispensing with enquiry u/Sec.5-A of Act - Contention that there is no justification for dispensing

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with enquiry u/Sec.5-A of Act, as purpose for house sites does not involve any urgency warranting invocation of Sec.17(4) and that subject land not fit for house sites, since it is wet land and far away from village and that there is no justification in acquiring endowment land which has been endowed for purpose of maintenance of Temple and that proposal to acquire said land is contrary to guidelines issued by State Govt., in G.O.Ms.No.456 - L.A.O contends that enquiry u/Sec.5-A dispensed with in view of urgency to provide house sites and that award enquiry held after issuing notices u/Sec.9(1), 9(10), 9(3) and 10 of Act and that Temple Authorities did not appear in enquiry and therefore market value tentatively fixed and 80% compensation tendered to Temple Authorities and that land was taken possession and therefore impugned acquisition proposal is legal and valid - Exception carved out u/Sec.17(4) of Act. wherein requirement of enquiry u/Sec.5-A of Act is dispensed with and that power is exercisable in exceptional cases only on formation of opinion as to necessity to dispense with enquiry u/Sec.5-A of Act and therefore, unless it is shown that there exists urgency for invoking urgency clause and that appropriate Govt. had formed its opinion on application of mind on basis of some material in that regard, enquiry u/Sec.5-A cannot be dispensed with - Power u/Sec.17(4) cannot be exercised in routine manner and dispensing with enquiry invoking urgency clause, should be founded on real urgency to carry out notified purpose on emergency basis and it is enjoined upon Govt., to form opinion as to existence of emergency on basis of some material - No material in forthcoming to justify is formation of opinion - What is more important is very nature of proposal i.e. providing house sites for construction of houses is itself time consuming - Nature of activity namely construction of houses, even after allotment of sites would take considerable time and therefore there can be no comprehension in saying that subject land is required on emergency basis - In case, where urgency clause has been invoked, possession cannot be taken until expiration of 15 days from date of publication notice as mentioned in Sec.9 as per Sec.17(1) and if possession is taken before expiry of 15 days same is not legal - In this case, possession was taken even before expiry of 15 days time which is clearly illegal being contrary to Sec.17(1) - Therefore it cannot be said land is vested in Govt. - Proposal to acquire subject land dispensing with Sec.5-A is untenable - Impugned Notification to extent of dispensing with enquiry u/Sec.17(4) of Act, set aside - Writ petition, allowed. **Sri Seetharama Swamy Temple Vs. R.D.O. & L.A.O. Kakinada 2012(3) Law Summary (A.P.) 114 = 2012(5) ALD 610.**

—Secs.4(1), 5-A, 6 & 17(4) - 2nd. respondent/Special Collector, Land Acquisition invoked urgency clause u/Sec.17(4) proposing to acquire lands of petitioners for Irrigation Project and dispensed with enquiry u/sec.5-A and declaration u/Sec.6 also published - Petitioners contend that alignment of Canal was designed in such a way that it passes through private land, though vast extent of Govt., land is available and that acquisition would result in deprivation of their only source of livelyhoood - Respondent/Govt., contends that urgency clause was invoked to complete project

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at earliest - Officials of irrigation and Revenue Departments virtually have become insensitive to rights of citizens and enquiry u/Sec.5-A of Act is only protection available to citizen in context of compulsory acquisition - Sec.17(4) of Act provides for dispensing with enquiry only when execution of work cannot wait for 30 days, which is needed for such enquiry - Present proposed acquisition of Irrigation Project and judicial notice can be taken of fact that not a drop of water has been let off into canals, which were drug and lined with cement concrete about 20 years ago - Many such canals constructed by spending huge amounts of public revenues have turned out to be dump yards and predominant object in executing such projects is to enable Contractors to earn sufficient revenue that too by borrowing huge amounts from World Bank and other agencies and unfortunately political executive is pursing some other objectives and official executive is becoming insensitive to problems of citizens - Special Collector feels that enquiry u/Sec.5-A of Act is unnecessary in matters of this nature and in ultimate analysis, urgency expressed by his Contractors is becoming trying force for Special Collector to issue notification by dispensing with enquiry u/Sec.5-A - Writ petition allowed by imposing costs of Rs.10,000/- against Special Deputy Collector and declaration u/Sec.6 is set aside - Petitioners are entitled to submit their representations. **V.Buchi Rajam Vs. State of A.P. 2012(2) Law Summary (A.P.) 198 = 2012(4) ALD 442 = 2012(5) ALT 114.**

—Secs.4(1), 5-A, 17(4) and 11-A - Petitiooners' lands were notified for acquisition under 4(1) of Act to provide house sites to landless poor and in view of urgency, enquiry u/Sec.5-A of Act, was dispensed with by invoking provisions of Sec. 17(4) - Admittedly possession of land was taken leaving balance small extent of land in possessions of petitioners - Main plea of petitioners in writ petition is that for non-passing of award within period of two years as envisaged u/Sec.11-A of Act, entire land acquisition proceedings have lapsed - Respondent/LAO contends that after enquiry u/Sec.5-A of Act was dispensed with, 80% compensation amount was offered to petitioners and after depositing same advance position was taken and notice u/Sec.9(1) and 10 of Act relating to constitution of Committee and negiotations that have taken place between petitioners and Committee and subsequently lay out for 202 plots was prepared and that 139 beneficiaries were identifie and Pattas were distributed to them - u/Sec.11-A of Act if Award is not passed within two years from publication of declaration u/Sec.6, land acquisition proceedings should lapse - Supreme Court held that where advance possession is taken, aquisitin proceedings would not lapse even if award is passed beyond period of two years from date of publication of declaration u/Sec.6-A of Act - In view of judgment of Supreme Court plea of petitioners that land acquisition proceedings have lapsed as award was not passed within period prescribed u/Sec.11-A of Act cannot be accepted - LAO directed to pass award u/sec.11(1) of Act after giving notice to petitioners within period of two months - Writ petition disposed of accordingly. **Syed Habibulla Shah Vs. State of A.P. 2013(1) Law Summary (A.P.) 318 = 2013(4) ALD 263 = 2013(3) ALT 624.**

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—Secs.4(1), 5-A, 17(4), 17(3-A) & 18 - Petitioners land acquired to proposed construction of 76/5 400 KV Sub-Station of 3rd respondent Power Grid Corporation - In view of urgency involved in matter enquiry u/Sec.5-A was dispensed with by invoking power u/Sec.17(4) - In award enquiry petitioners made a claim of Rs.25 lakhs per acre - Land Acquisition Officer passed award determining market value of land at rate of Rs.2.24 lakhs - 1st respondent contends that RDO himself correspondent with 3rd respondent Power Grid Corporation indicating tentative value of land to be fixed u/Sec.17(3-A) of Act at rate of Rs.10 lakhs press solatium and interest and 3rd respondent/Grid deposit amount accordingly - Respondents 1 & 2 R.D,O & Collector that procedure prescribed under Act was strictly followed and market value was determined on basis of statitics that are available for lands in immediate neighbourhood and in case petitioners are not satisfied with award they can avail remedy u/Sec.18 - 3rd respondent/Grid admits that land was acquired at their instance and so far as quantum of compensation is concerned that 1st respondent/Collector indicated tentative market value of land to be proposed to be acquired at Rs.10 lakhs per acre and taking into account a sum of Rs.8,30,12,800/- representing 80% market value, proportionate salatium interest and additional market value was deposited and they do not have any objection for payment of compensation on that basis - In this case, land owned by petitioners aggregating about 38 acre for benefit of 3rd respondent/Grid by initiating proceedings under Act and by invoking urgency clause u/Sec.17(4) and that compensation awarded by 1st respondent/RDO is totally inadequate and disproportionate - In ordinary course of things, owner of land acquired by Govt. has to seek remedy u/sec.18 of Act, if he is not satisfied with the compensation awarded by LAO - This case, however presents typical features - Sec.17(3-A) of Act mandates that whenever enquiry u/Sec.5-A is dispensed with, Govt., or agency for whose benefit land is acquired shall be under obligation to deposit 80% tentative compensation - In this case, total value fixed at Rs.13 lakhs inclusive of salotium and 80% thereof being Rs.10,40,000/- per acre was required to be deposited and such deposit made by 3rd respondent/Grid - A fair exercise will be one in which market value fixed in award u/Sec.12 of Act is not less than, one that is taken into account while complying with Sec.17(3-A) - If compensation in award passed u/Sec.12 is less than, offered u/Sec.17(3-A) of Act a serious anomaly comes into existence and exercise under taken by LAO, yet either stage would tend to become dubious, if not imperfect and arbitrary - Petitioner allowed with following direction; a)the 1st respondent shall forthwith pay the compensation @ Rs.10,40,000/-, per acre, inclusive of the market value and all statutory benefits, towards 80% of the compensation in deposit with him, to the petitioners, within 15 days from today;b)The 3rd respondent shall deposit the balance of 20% of the compensation with the 1st respondent within four weeks from today, and the former shall pay the same to the respective petitioners, within 15 days thereafter; and c) the award, dated 10.02.2011, shall stand modified to the extent indicated above, and that the petitioners shall not have any further claim against the respondents, including the right to seek reference to civil Court. **K.Swamy Reddy Vs. Revenue Divisional Officer 2012(3) Law Summary (A.P.) 84 = 2012(5) ALD 282 = 2012(6) ALT 12.**

—- Secs.4(1), 5-A, 6 & 17(4) - **CONSTITUTION OF INDIA,** Art.300-A - RULES FRAMED UNDER ACT, Rule 3-B - 1st respondent /Special Collector proposed to acquire lands of petitioners for purpose of excavation of distributory to main canal of Irrigation Scheme without considering objections raised by petitioners and without application of mind mechanically and without providing any opportunity or personal hearing, by invoking provisions of Sec.17(4) and issued Draft Notification - Petitioners contend that number of objections raised before respondents and respondents failed to consider any one of them from proper perspective and that hearing objections u/Sec.5-A must be of an effective one and not mere formality and there must be proper application of mind with regard to public purpose and that all the petitioners are small farmers and eking out their livelihood by doing agricultural operations in their respective lands - In this case, reading of impugned proceedings of 1st respondent/Special Collector rejected objection of petitioners for acquisition manifestly shows that there is absolutely no objective consideration nor pragmatic approach adopted by 1st respondent while considering objections raised by petitioners except observing that proposed acquisition is inevitable to make requirements of requisition Department - Right to property is a constitutional right as enshrined under Art.300-A of Constitution of India which mandates that no citizen shall be deprived of his/her property except in accordance with law - Farmers are back bone of our Indian economy and process of urbanization, agriculture is getting crippled day by day and number of farmers growing food grains is getting diminished - Indiscriminate acquisition may also lead to unrest in Society and compulsory acquisition may some times lead to displacing farmers from their native villages and may lead to severance of bond from native habit, which would disturb social net work also and it may ultimately result in unwarranted, un healthy excessive urbanization - Non-consideration of objections in true letter and spirit of Provisions of law laid down by Hon'ble Supreme Court would render very proceedings of 1st respondent/Special Collector and declaration u/Sec.6 of Act null and void and unsustainable in eye of law - Evidently respondent Authorities did not undertake objective consideration of objections submitted by petitioners and 1st respondent failed to record any reasons for rejection of objections submitted by petitioners - Writ petition allowed in part setting aside proceedings of 1st respondent/ Special Collector and draft declaration issued by him - Respondent are directed to conduct enquiry u/Sec.5-A of Act by giving opportunity of being heard to petitioners and proceed in accordance with law by taking into consideration subsequent developments. **Grandhi Narayana Rao Vs. Special Collector, E.G. District 2014(1) Law Summary (A.P.) 41 = 2014(2) ALD 202 = 2014(2) ALT 668.**

—Secs.4(1), 6 - **RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013,** Sec.24(2) - Writ Petition filed u/Art.226 of Constitution of India challenging draft Notification issued by District Collector, Srikakulam, under provisions of Secs.4(1) and 6 of Land Acquisition Act and Award passed by Land Acquisition Officer cum Revenue Divisional Officer, as illegal, arbitrary, unconstitutional and against principles of natural justice -Respondents adopted arbitrary and illegal procedure and there is no evidence to show that respondent-authorities took possession of petitioner's property in accordance with Sec.16 of

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Land Acquisition Act by holding panchanama - Petitioners have been in possession of the property ever since the date of purchase of subject lands - Even as per respondents, nobody came forward to receive compensation amount as per the award and awarded amount is now lying in the revenue deposit - Held, impugned proceedings are also liable to be invalidated in view of 2013 Act and impugned proceedings are highly iniquitous, unreasonable, preposterous, arbitrary, illegal and opposed to very spirit and object of the Land Acquisition Act - Writ Petition Allowed and impugned proceedings set aside. **Jagannadha Industries Vs. District Collector, Srikakulam District 2014(3) Law Summary (A.P.) 55 = 2014(6) ALD 627.**

—Secs.4(1) & 6, Amendment Act, 68 of 1984, Sec.73(a) - Respondents/Govt., proposed to acquire endowment land belonging to petitioner for providing house sites to weaker sections of Society issued Notification - Award of enquiry held and possession of land was taken on 10-4-1996 and pattas were also issued to eligible beneficiaries - No further steps have been taken by respondents for passing award and paying compensation - Hence present writ petition to pay market value of property as on market date - Respondent contends that as land in question belongs to Endowment Department, market value has to be fixed by State Level Committee constituted for this purpose and Collector submitted proposal to Commissioner and market value of land is yet to be received from Commissioner's Office - In this case, there is marked negligence on part of functionaries, who are concerned with fixation of market value and fixation of award and supine indiffernce exhibited by these functioniries has deprived petitioner of its valuable right to receive compensation and utilize same - Sweepting amendments introduce to provisions of Act by Act.68 of 1984 and these amendments in Tribunal include reduction of time limit for making declaration u/Sec.6 of Act from 3 years to one year from date of publication of Notification u/Sec.4(1) of Act and passing of award within two years from date of publication of declaration u/sec.6 of Act - If statutory benefits under Act are extended to petitioner on amount of compensation same will not neutrailise inflation - Market value as in year 1996 would have been too meagre compared to present day market value of lands, as appreciation of land value through out country is common phenomenon - In this case, only way to redress rightful and legitimate grievance of petitioner is to direct respondents to assess market value of property by advancing date of notification to 5-2-2013 and extend all statutory benefits thereon to petitioner on market value so fixed till date of payment - Respondents are directed to pass award and pay amount within four months - Writ petition, allowed. **Sri Narendra-Veerabhadra Swamivarla Devasthanam Vs. State of A.P. 2013(2) Law Summary (A.P.) 70 = 2013(4) ALD 365.**

—Secs.4(1), 18 & 23(1-A) - Lands belonging to appellants/claimants acquired by Govt., for purpose of formation of Road by issuing notification u/Sec.4(1) - Land Acquisition Officer, determined marked value at rate of Rs.95,000/- per acre - On reference, trial Court after elaborate enquiry and by considering some registered sale deeds enhanced

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compensation from Rs.95,000/- to Rs. 2,07,811/- per acre - Hon'ble Supreme Court has been considering enhancement of compensation by taking judicial notice of esclating prizes in land values, especially after 1998-2000 and keeping this aspect in mind in facts of present case, it is appropriate to grant compensation at Rs.2,15,000/- per acre - Accordingly appellants/claimants are entitled to compensation at Rs.2,15,000/- per acre with all statutory benefits - Appellant/claimants are entitled for 12% additional market value and solatium in terms of Sec.23(1-A) of Act from date of notification - Appeals filed by claimants partly allowed - Appeals filed by LAO, dismissed. **Spl. Deputy Collector, LAO, Kurnool Vs. K.Shobha Rani 2013(3) Law Summary (A.P.) 90 = 2014(1) ALD 435 = 2013(6) ALT 37.**

—Secs.4(1), 6, 18,30 and 31(2) – Pursuant to acquisition of land belonging to petitioners, Land Acquisition Officer passed awards directing amounts be deposited in Court - Petitioners contend that there is no basis for 1st respondent Land Acquisition Officer in directing deposit of amount in Court and that Act is self-contained code and circumstances under which Land Acquisition Officer can make reference to civil Court, are provided for u/Secs.18 or 30 of Act and that steps taken by 1st respondent are contrary to law and that necessity to deposit compensation would have arisen if only a reference was made u/Secs.18 or 30 - Sec.31 deals with payment or deposit of compensation – A perusal of this provision discloses that necessity for making deposit of compensation in a Court would arise, if only, person interested as mentioned in award do not agree to receive it when tendered and section is very clear to effect that deposit, if at all is to be in Court to which a reference u/Sec.18 would be made – When it is not even pointed out that there is any title dispute, question of making deposit of amount in a Court is totally illegal - Impugned awards are set aside to extent they directed remission of amount in Court – LAO directed to issue revised orders in accordance with law, without touching quantum of compensation – Writ petitions, allowed. **B.Lakshmi Suseela Vs. Spl.Collector (L.A) 2009(1) Law Summary (A.P.) 65.**

—Secs.4(1), 18, 51-A & 54 – Government proposed to acquire lands of appellants for purpose of accommodating persons displaced in course of acquisition of land for Steel Plant – L.A.O. passed award fixing market value at Rs.1,270/- per acre for dry land and Rs. 2,250/- per acre for wet land - When matter referred to Court, trail court enhanced market value to Rs.1600/- per acre for dry land and Rs.2,667/- per acre for wet land – Hence present Appeal filed u/Sec.54 of Act seeking further enhancement - Law laid down by Supreme Court is that when comparable sales are taken into account, it is safer for to take higher one into account - In this case Exs.A-1 and A-2 are taken into account, compensation work out about Rs.10 lakhs per acre and even if 50% is deducted, it will be Rs.5 lakhs per acre - Appeal allowed by enhancing market value of acquired land to Rs.1 lakh per acre. **Narla Susheela Vs. LAO, Spl.Deputy Collector, L.A., Steel Plant, Visakha, 2014(1) Law Summary (A.P.) 320 = 2014(3) ALD 481 = 2014(5) ALT 347.**

—Secs.4(1),18 & 54 – Land of appellants acquired for purpose of providing houses sites - Land Acquisition officers fixed market value at Rs.2000/- per acre and in

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reference, Trail Court enhanced compensation to Rs.10,000/- - Appellants Contend that market value of acquired land at relevant point of time was not less then Rs.50 per sq.yard since land existing village and located between Railway line and Highway - Basing on Document the market value for acquired land can be enhanced to Rs.20/- per sq.yard - Appeal allowed enhancing market value to Rs.20/- per sq.yard. **Jali Narqasaiah Vs. L.A. Officer, Nalgonda District 2014(2) Law Summary (A.P.) 45 = 2014(4) ALD 66 = 2014(5) ALT 183**

—-Secs.4(1), 54 - Question that was needed to be answered was whether capitalisation method based upon income derived from land should be taken into account or its potential value should be taken into account.

Held, hence, keeping in mind proximate closeness of lands acquired to State Highway and also renowned pilgrim centre of Kondagattu Anjaneyaswamy temple and also closeness to JNTU college of Engineering, R.T.C. bus depot and other educational institutions and commercial establishments situated within limits of village, Court consider that Ex.A.5 ought to have been taken as a basis for determining land value instead of capitalisation method.

Railways have to undertake lot of developmental works before Broad Guage Railway Line is laid thereon - Firstly, land has got to be cleared and levelled - It has to be consolidated, compacted and a track bed of certain strength and capacity has to be developed - May be, for formation of a Railway line, there may be no necessity to form roads, or water line mains or regular drainage facility or street lighting as is normally undertaken while developing a lay-out - Therefore, 50% of cost reflected in Ex.A.5 is liable to be deducted towards developmental costs - When so done, land value would come to Rs.3,63,000/- per acre (Rs.7,26,000/2=3,63,000), and it can be approximated to Rs.3,50,000/- per acre.

Therefore, allow this appeal by fixing market value at Rs.3,50,000/- per acre while retaining all other statutory benefits, which reference Court has awarded. **Gaddameedi Narsa Goud Vs. LAO, Spl.Deputy Collector,Karimnagar 2016(2) Law Summary (A.P.) 143 = 2016(4) ALD 711 = 2016(4) ALT 231.**

—Sec.5-A - "Acquisition of wet lands for providing house sites" - Petitioners/ agricultural wet lands notified for acquisition for providing house sites to landless poor persons - Petitioners raised objection that lands proposed to be acquired are agricultural wet lands and there are vast extents of Govt., lands available for acquisition - When dry lands of Govt., assigned or unassigned, are available, no justification for acquiring agricultural wet lands of petitioners for providing house sites to landless poor persons - Even according to Govt. policy, as far as, acquisition of agricultural wet lands needs to be avoided, for, Nation is already facing scarcity of food grains - With acquisition of more and more agricultural lands and increase in population, shortage of food grains will become more acute - This is not in National interest - Impugned acquisition proceedings, quashed - Writ petitions, allowed. **Abdul Khader Vs. Government of A.P. 2013(1) Law Summary (A.P.) 358 = 2013(4) ALD 269 = 2013(3) ALT 672.**

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—Secs.11(1) (ii) and 18(1) - Power of Collector to obtain reassessment report relating to Subabul trees existing in acquired land - Collector not accepting evaluation report of Subabul trees submitted by Divisional Forest Officer as same was comparatively higher than assessment made by Officials of Forest Department, consequently directed DFO to re-examine valuation - Hence, writ petition filed - Single Judge passed judgment that since Court is satisfied with assessment report made in relation to Subabul trees already being just and proper same to be adopted - Sec.11 of L.A Act, makes it clear that power to determine compensation vests in Collector and amount of compensation to which a claimant is entitled has to be determined by Collector as per his own opinion - It is for him and him alone to decide as to what material is relevant and what is irrelevant- Hence writ cannot lie to command Collector to consider or not to consider any material relating to determination of compensation and rejection of such objection by Collector is not amenable to extraordinary jurisdiction of High Court - U/Sec.18(1) of L.A Act, an interested person has right to apply for reference be it in respect of measur-ament of land, amount of compensation, persons to whom it is payable, or apportionment of compensation among persons interested - Claimant/person interested has every right of participation in any enquiry and he has a right to bring material supporting his claim to notice of Collector during enquiry and has a right to participate - Judgment of single Judge, set aside -Writ appeal, allowed. **Govt. of A.P. Vs. Avirneni Rama Krishna 2010(2) Law Summary (A.P.) 240.**

—Secs.11(2) & 18, 4 (1) & 6 – "Consent award" - Petitioners' land acquired for purpose of allotment of house sites to weaker section in year 2003 and possession was taken without paying offered amount – Collector passing consent award in year 2006 – Hence writ petition filed by petitioners seeking declaration that award is arbitrary and illegal and contrary to provisions of Act - Respondent/Govt., contends that possession was taken in 2003 with consent of petitioners who agreed to receive certain amount towards compensation and subsequently LAO passed award u/Sec.11(2) pursuant to notification u/Sec.4(1) dt.18-4-2005 and that inspite of notices petitioners did not turn up to receive compensation and that writ petition is misconceived - Petitioners contend that award cannot be termed as a consent award and same is liable to be set aside since no opportunity was given to petitioners to participate in award enquiry - Consent award u/Sec.11(2) of Act can be made by Collector on being satisfied that all persons interested in land who appeared before him have agreed in writing and after notification u/Sec.4(1) of Act is published - In this case, admittedly petitioners agreed to receive compensation at rate of a certain amount per acre when advance possession of land was taken in 2003 - Long after notification u/Sec.4(1) of Act was published in 2005 – Hence it is not to Collector to relay upon such agreement entered into prior to notification while passing impugned award - Impugned award cannot be treated as consent award u/Sec.11(2) of Act – Hence if petitioners are not satisfied with quantum of compensation awarded, can seek reference to civil Court u/Sec.18 of Act. **M.Lingeswara Reddy Vs. Government of A.P. 2008(3) Law Summary (A.P.) 324 = 2008(6) ALD 768 = 2008(4) APLJ 5 (SN).**

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—Secs.16 & 48 - **A.P. (TELANGANA AREA) LAND REVENUE ACT, 1317 Fasli**, Sec.54-A - "Reconveyance" - "Public Interest Litigation" - Land belonging to husband of 3rd respondent acquired in 1965 under provisions of L.A Act and subsequently reconveyed to her - Petitioners filed writ petition in public interest - Petitioners have not filed present writ petition to subserve interest of anybody else and there is no hidden agenda in this case - Merely stating that petition has been "filed in public interest and in good faith" does not convert into public interest litigation - Petitioners have clearly made out a private grievance and have not styled their grievance as public interest issue - However the contents of writ petition deserve consideration - In this case, Collector issued notification u/Sec.4 of L. A Act proposing to acquire land for purpose of construction of sub-divisional camp building and staff quarters and thereafter issued declaration u/Sec.6 and award also passed and possession of land was taken by Collector - After lpase of 40 years, 3rd respondent's husband made representation to Minister, Major Irrigation that she would like to have her land and same was reconveyed to her since land not required by Govt., by any public purpose now or in future - Grievance of petitioners in present writ petition is that if respondent no.3 is entitled to reconveryance of her land then they too or so entitled and alternatively petitioners are of view that reconveyance of land in favour of respondent is illegal and arbitrary and deserves to be set aside - A perusal of Sec.54-A shows that if agricultural land is no longer required patta thereof shall be made in favour person from whom land was required provided that person consents to refund compensation originally paid to him - Sec.16 provides that where Collector has made an award u/Sec.11 of L.A Act, he may take possession of land which shall thereupon vest absolutely in Govt., free from all encumbrances - Sec.48 of Act provides where possession of land not been taken, Govt., is at liberty to withdraw from acquisition - From this it follows that if possession has been taken, Govt., cannot ordinarily withdraw from acquisition - Sec.54-A of Telangana Act, however permits reconveyance of land, if compensation is repaid by landowner to state - There is no reference to possession of land having been taken - On harmonious reading of Sec.16 and 48 of L.A Act and Sec.54-A of Telangana Act after possession of acquired land is taken, ordinarily, Government cannot reconvey it to owner - Following view laid down by Supreme Court, actions of official respondents suffer from two vices; first of all, there is a defect in reconveyance of acquired land inasmuch as it has been achieved through an executive order, which is not permissible and basis for reconveyance is opinion rendered by project authorities and Chief Engineer which is also not permissible - Secondly since possession of land has been taken by District Collector and acquired land has vested absolutely in Govt., free from all encumbrances, re-conveyance cannot be made as matter of course, as has been done in present case - Re-conveyance of land in favour of respondent no.3 by impugned letters is vitiated and is illegal and arbitrary - Impugned order set aside- Writ petition, allowed. **Topara Rajender Vs. Govt. of A.P. 2012(1) Law Summary 112 = 2012(2) ALD 222 = 2012(4) ALT 698.**

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—Sec.17 (3-A) - **A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987** - Acquisition of 'endowment lands' for implementation of irrigation projects - In W.P.M.P interim directions issued that no endowment land shall be acquired by State or sold by temples without permission of Court - State filing Applications to vacate or suitably modify interim orders so as to enable State to acquire some endowment lands for implementation of some schemes contending that if order is permitted to operate forever, overall development of State would be adversely affected - Original petitioners contend that it is pious obligation on part of State to protect such lands and that "the lands endowed to the religious institutions which were safe and secure during alien rules for centuries together, became vulnerable not only to private encroachments but even unlawful occupation by the Govt..." - Therefore, State should not be permitted to dispose of endowment land in any manner - For purpose of implementing irrigation schemes, State has also to acquire lands belonging to citizens and it cannot be denied that right to acquire lands belonging to citizens is a sovereign right of State and unless State exercises its power of eminent domain, it cannot function effectively so as to implement irrigation schemes - If lands of citizens can be acquired under provisions of Act upon payment of compensation, no reason to restrain State from acquiring endowment lands especially when they are required for implementation of irrigation schemes - Though obligation has been cast upon State under provisions of Endowments Act to protect endowment lands, but that obligation would in no way curtail right of eminent domain of State and, therefore, it would not be just and proper for Court to restrain State from acquiring endowment lands especially when lands are required for a very laudable purpose of implementing irrigation schemes etc - Interim order is modified to effect that it would open to State to acquire those lands which are required for any irrigation purpose including purpose of construction of dams or water storage tanks or for purpose of construction of canals - Applications, allowed to above extent. **District Collector Prakasam Dt. Vs. A.P. Archaka Samakhya,Tenali 2008(2) Law Summary (A.P.) 251 = 2008(4) ALD 1 = 2008(3) ALT 421 = 2008(2) APLJ 153 = AIR 2008 AP 150.**

—Sec.18 - **CONSTITUTION OF INDIA,** Art.226 - 'Reference' - 'Doctrine of laches' - Petitioner's land acquired for house sites - After payment of first instalment towards award under protest, petitioner applied for reference on same day regarding enhancement - As no action was taken for more than 20 years petitioner caused legal notice - RDO rejecting claim of petitioner on ground that claim suffers from laches - Sec.18 of Act vests a valuable right in owner of land and if he is not satisfied with quantum of compensation fixed by LAO, to refer dispute regarding market value of acquired land to civil Court - If he satisfies requirement of provisions of Sec.18 of Act by seeking such reference within time prescribed, there is no option left to LAO other than referring dispute to civil Court - Constitution of India, Art.226, does not in express terms prescribe limitation for exercise of power by High Courts - If petitioner is able to make out a case on merits, he cannot be non-suited on jejune grounds of delay and laches or like, provided that result of writ petition is not likely to affect third party rights - DOCTRINE OF LACHES - While doctrine of laches is not an absolute and unqualified one, and one of main tests being applied by Supreme Court is, whether due to long lapse of time, any rights came

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to be vested in others and granting of relief would unsettle such rights and cause prejudice to their interest - Petitioner cannot be non-suited and writ petition cannot be thrown out merely on ground that he did not assert his legal right for period of 20 years - No third party rights have crept in during period of delay and by referring dispute to civil Court, none of settled rights of respondents or third parties will get unsettled - Reasons put forth by 1st respondent/Collector in rejecting petitioner's request for reference - Not, justified - Respondents, directed to refer claim of petitioner to civil Court. **P.Chandrasekhara Reddy Vs. District Collector,Mahaboobnagar Dt. 2008(2) Law Summary (A.P.) 411 = 2008(4) ALD 797 = 2008(4) ALT 686.**

—Sec.18 - Land comprises of coconut tope acquired for purpose of canal and possession taken - LAO fixed total compensation to certain amount and reference Court enhanced by applying "multiplier of 20" to asses value of fruit bearing trees - Hence petitioner questoned "multiplier of 20" to assess vaule of fruit bearing trees - Coconut tope - Yields of coconuts and value assessed thereof - Value fixed by reference Court by adopting "multiplier 20" cannot be sustained - Proper multiplier in respect of coconut thope is 10 - Appropriate multiplier for coconut trees to be adopted is 10 and compesation is payable accordingly - Appeal partly allowed. **Spl. Deputy Collector & LAO, Yeluru Vs. Bayya Janki 2009(1) Law Summary (A.P.) 231 = 2009(2) ALD 144 = 2009(2) ALT 683 = 2009(1) APLJ 124.**

—-Sec.18 - Collector published notification under Act, proposing to acquire land for purpose for providing house sites to poor - Possession of land was taken and land acquisition Officer passed an award fixing market value at Rs.4,500 per acre - Claimant protested for fixation of market value, sought for reference to be made to civil Court.

Before reference Court claimant sought for compensation at Rs.50-60 per square yard on premise, that land was acquired for providing house sites to poor, hence market value should be determined on square yard basis.

Land Acquisition Officer, relied on basis of sale deed of year 1979, which is basis for him to arrive at market value in his award.

Reference Court fixed market value at Rs.8000/- per acre.

Held, market value fixed at Rs.8000 per acre being too low, unreasonable, unrealistic and is not based on vital factor that it is adjoining the old Abadi - Court feel that it would be fair and reasonable to fix at Rs.25,000/- per acre and accordingly its value has been fixed at Rs.25,000 per acre and on that basis all other statutory benefits other than one covered by Sec.23(1) of Act shall be worked out. **2016(1) P.Jaya Prakash Rao Vs. State Law Summary (A.P.) 374 = 2016(5) ALD 56.**

—Secs.18 & 30 - **CIVIL PROCEDURE CODE,** Or.1, Rule 10 - Application filed for reference u/Sec.18 for fixing market value while receiving compensation under protest as per award - On death of original claimant legal representatives were impleaded as respondents 3 to 5 - Deceased 2nd respondent in his counter specifically stated

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that 6th respondent is his younger brother and were co-owners of acquired land and he was cultivating till acquisition and he had no objection to pay half of enhanced compensation to 6th respondent - Respondents 3 to 5 who were impleaded as L.Rs of 2nd respondent however claimed that they alone or entitled to receive enhanced compensation excluding 6th respondent who had no right - Trial Court held that 6th respondent being younger brother of 2nd respondent is entitled to half share in compensation - Trial Court has also noted even during award enquiry 2nd respondent admitted that 6th respondent is entitled to half share which was accordingly referred to in award by LAO - Consequently 6th respondent was held entitled to half share of compensation - Respondent 3 to 5 filed appeal contending that in reference u/ Sec.18 of Act, reference Court has no power to adjudicate with regard to apportionment of compensation and reference Court cannot go beyond order of reference and that 6th respondent is neither a proper nor a necessary party - The Larger Bench of High Court of A.P. has clearly laid down that a person may not be entitled to be impleaded as a party only for purpose of enhancement of compensation, but if any other question arises, which touches issue of his entitlement or apportionment to amount of compen-sation, same can be considered by reason of application under Or.1, Rule 10 of CPC - Principle thus laid down by Larger Bench that procedure are only hand maids of justice, which can be suitably moulded to do complete justice between parties, is sufficient answer to claim of appellants that course could not have been had to Or.1, Rule 10 of CPC to implead 6th respondent - Reference Court did not travel beyond order of reference and was only considering and deciding to question that arose subsequent to reference due to death of 2nd respondent which cannot be considered to be travelling beyond reference and such determination cannot be said to be one which should have been subject matter of an independent reference u/Sec.30, 31 of Act, all over again - Impleading 6th respondent after death of 2nd respondent and declaring him to be entitled to half share in compensation by reference Court not illegal or unsustainable - Appeal, dismissed. **D.Lakshminarayana Rao Vs. D. Gopalakrishna Rao 2010(2) Law Summary (A.P.) 212.**

—Sec.18,11-A, 23 & 51-A – L.A.O. passed orders and fixed market value at Rs.6,700/ - and Rs.8,000/- etc., per acre - Present Appeals arose in all L.A.O.Ps out of reference made u/Sec.18 - In this case unwarranted negative attitude exhibited by Trial Court has resulted in denial of just and reasonable compensation to poor farmers for past quarter of century - Appellant contends that trial Court turned blind eye to undisputed oral and documentary evidence on record and dismissed L.A.O.Ps by citing totally untenable reasons - Trial Court has adopted a negative, inconsistent and unwarranted approach ignoring mandate u/Sec.51-A and 23 of Act - Determination or consistency if at all on part of Trial Court was to deny any enhancement of compensation to claimants before it, at any cost, whatever be evidence on Record or grounds pleaded by to farmers whose lands are acquired - In this case if subsequent Notifications are to be taken as basis corresponding enhancement has to be ordered - Present market

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value for lands similar to those acquired from appellants was in range of Rs.25,000/- to Rs.30,000/- per acre in the year to 1983 - Hence appeals are allowed by enhancing market value to Rs.25,000 per acre**. Ganesuri Nageswara Rao Vs. LAO & Spl.Tahsildar(LA) Ponnu 2014(2) Law Summary (A.P.) 20 = 2014(4) ALD 89 = 2014(5) ALT 76.**

—Secs.18 & 12 - Petitioners contend that even though their lands were acquired and award passed in year 2001 their claim for enhancement has not been referred to Civil Court u/Sec.18 of Act and that they received compensation amounts under award under protest and thereafter they have made number of representations to 2nd respondent/Collector for reference of dispute to Civil Court u/Sec.18 of Act - Govt., contends that pleadings in writ petition are vague and petitioners have not stated as to true date on which they have received award notices u/sec.12 (2) of Act and whether request made by them for reference within stipulated time of two months as envisaged u/Sec.12(2) of Act - It is trile that any request for reference of dispute to civil Court shall be made u/Sec.18 of Act within two months of receipt of notice u/Sec.12(2) of Act - In this case, even according to petitioners, award passed as far back as 2001 and they allowed more than nine years to pass by before they woke up and aproached respondent no.2/Collector with request for reference - Writ petition, dismissed. **D.R. Krishna Reddy Vs. Government of A.P. 2011(3) Law Summary (A.P.) 338 = 2012(1) ALD 424 = 2012(2) ALT 331.**

—Secs.18 & 13 - **A.P. STATE AMENDMENT TO SEC.12 OF ACT** - Compensation - "Competing claims" - Proprties of petitioners and some brothers were notified for acquisition - Apprehending that LAO may pass award in favour of private respondents, petitioner filed writ petition in which orders are obtained for giving liberty to petitioner to participate proceedings in award - Inspite of claim made by petitioners LAO has not referred matter to Competent civil Court u/Sec.6 of Act as directed by High Court and instead LAO is seeking to disburse compensation to private respondents - When "competing claims" were made for payment of compensation, Collector is left with two options viz., either to refer disputes to competent civil Court for adjudication or to award compensation in favour of all or some of claimants - In latter eventuality any person interested who has not accepted award, may make written application, to Collector for reference of dispute inter alia as to persons to whom compensation is payable to civil Court u/Sec.18 of Act - In this case, as notice of award is not stated to have been issued so far limitation for making such request for reference u/Sec.18 of Act has not been commenced - Therefore right of petitioners for seeking reference of dispute u/Sec.18 of Act is well preserved - Petitioners are at liberty to make written representation to Respondent no.3/Dy. Special Collector, Land Acquisition and if such request is made 3rd respondent shall refer dispute to competent civil Court u/Sec.18 of Act - If request is made within one month compensation shall not be disbursed even thereafter till conclusion of proceedings u/Sec.18 of Act. **Bodela Siva Bhaskar Reddy Vs. Government of A.P. 2013(1) Law Summary (A.P.) 90 = 2013(2) ALD 586.**

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—Secs.18, 28-A - As per Sec. 28-A of Act, the application has to be made within three months from the date of award of the Court - In instant case reference court answered the reference by virtue of order dated 9-11-1990 and the petitioners submitted the application on 11-12-1990 - As per the counter affidavit the respondents could not find the application of the petitioners in the record - While referring to the same, it is emphatically argued by the learned Government Pleader that in view of the same, the petitioners are not entitled for any relief from this Court - The said defence sought to be canvassed and pressed into service by the respondents, in the considered opinion of this Court, cannot stand for the twin tests of reasonableness and rationality in the absence of any denial of genuineness of the application and the postal acknowledgment produced by the petitioners along with the present writ petition - The aspect of delay, if any, on the part of the petitioners in approaching this court, in the opinion of this Court, is of no consequence in view of the object behind the enactment and the intention of the legislature in incorporating Sec.28-A of the Act - The contention advanced by the learned Government Pleader on laches and delay is also of no consequence and deserves to be rejected in view of the law laid down by the Hon'ble Apex Court - In the instant case also there is absolutely no involvement of any third party rights - Therefore, on the ground of delay, the petitioners cannot be non-suited and deprived of their legitimate claim under Sec.28-A - Writ petition is allowed, directing the respondents to consider the claim of the petitioners for enhancement of compensation. **Kunapureddy Kondal Rao Vs. Land Acquisition Officer 2015(1) Law Summary (A.P.) 130 = 2015(1) ALD 678 = 2015(2) ALT 78.**

—Secs.23, 11,18 & 54 - As against award passed by Land Acquisition Officer landowners preferred reference, contending that land in question has great potential value and that market value fixed by LAO is quite inadequate and besides they are also entitled to statutory benefit under Act 68 of 1984 - Tribunal fixed market value at Rs.6 per sq.ft. - Contention of appellant before High Court that Tribunal had not properly evaluated evidence on record and wrongly placed reliance on a sale deed relating to a small piece of land and that without any proper appreciation of materials on record, compensation enhanced - Where large area is subject-matter of question, rate at which small plots are sold cannot be said to be a safe criteria - It cannot, however, be laid down as an absolute proposition that rates fixed for small plots cannot be basis for fixation of rate - Where there is no other material it may in appropriate cases be open to adjudicating Court to make comparison of prices paid for small plots of land - However, in such cases necessary deductions/adjustments have to be made while determining prices - A land may be plain or uneven, soil of land may be soft or hard bearing on foundation for purpose of making construction - Fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in area also developed to be valued as a building site or plot, particularly when vast tracts are acquired for development purpose. **Lucknow Development Authority Vs. Krishna Gopal Lahori 2008(1) Law Summary (S.C.) 118 = 2008(1) ALD 18(SC) = AIR 2008 SC 399 = 2007 AIR SCW 7144.**

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—Secs.23 & 18 - Determination of compensation - Lands acquired for public purpose of establishing Medical College etc - Collector fixing compensation at Rs.40,000 per acre - On reference, District Judge enhanced same to Rs.72,600/- - On appeal to High Court single Judge enhanced compensation to Rs.99,668/- and on LPA Division Bench enhanced same to Rs.1,25,000/- per acre - In this case, acquired lands are abutting to developed town and can easily be said to be a part and parcel of said developed town, having a great potential - Matter has been approached rather casually by Division Bench - Matter remitted to Division Bench for fresh consideration. **State of Haryana Vs. Gurbax Singh (Dead) by LRs 2008(2) Law Summary (S.C.) 144.**

—Secs.23 & 18 -'Market Value'- 'Determination of" ' - Value mentioned in sale agreement - In absence of any date of sale agreement, sale agreement could not have been constituted basis for determination of market value of land in 1983 when land was acquired in present case - Division Bench of High Court was right in taking view that said agreements cannot constitute basis for determination of market value of acquired land - District Judge in his order held that after considering all oral and docuentary evidence adduced by parties, that market value of land acquired in present case has to be determined on basis of its potentiality for urban development and not on basis of revenue or agricultural classification of land as done by Collector because land acquired in present case had a great potential value for urban purposes i.e., Commercial, Industrial and residential - Contention of appellant that a cut of 60% should have been applied to rate, found no merit - Cut applied by D.B of High Court in impugned judgment reducing value from Rs.176 per sq.yards to Rs.120 was just and reasonable in facts of present case - Appeals, dismissed. **National Fertilizers Ltd.,Vs. Jagga Singh 2012(1) Law Summary (S.C.) 119 = 2012(2) ALD 30(SC) = 2011 AIR SCW 6659 = AIR 2012 SC 2535.**

—Secs.23 & 24 - "Determination of compensation" - Lands acquired for establishment of Jail - Land acquisition Collector awarded compensation at certain rate per acre and Reference Court increased compensation uniformly and High Court dismissed Appeals of landowners for further enhancement - Hence, present appeals contending that compensation awarded is inadequate - Appellants contend that having regard to purpose of acquisition (construction of Jail) which does not involve any development activity, no deduction should be made from market value of small development plots and that as acquisition was for construction of a Jail, there will be no need set apart any part of land for formation of roads, drains, parks etc - Contention of appellants proceeds on misunderstanding of legal possession relating to deductions - CONCEPT OF DEDUCTION OF DEVELOPMENT COST TO ARRIVE AT MARKET VALUE - STATED - If value of large extent of agricultural or undeveloped land is to be based on sale price of a small developed plot in a private layout, then standard deduction should be one-third plus one-third in all two-thirds, as 'development cost' from value of plots - Purpose of acquisition can never be a factor to increase market value of acquired land - Generally, residential plots are costlier than industrial plots, and commercial plots are costlier than

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residential plots - If purpose of acquisition is relevant factor in determining compensation, then it would lead to absurd and unjust situation, that compensation payable for small land will be different, depen-ding on purpose of acquisition and that compensation will be less, if acquisition is for sewage treatment plant, more if acquisition is for an industrial lay out, much more if acquisition for residential lay out and highest if acquisitition is commercial value - Compensation for acquired lands increased per acre to certain extent and appellants will be entitled to all statutory benefits of solatium etc - Appeals allowed in part. **Subh Ram Vs. Haryana 2010(1) Law Summary (S.C.) 53.**

—- Secs.23 (2), 34 - Determination of market value - "Development charges" - "Solatium and interest" - Sale deed dated 12-3-1984 - Notification u/Sec.4 issued on 23-1-1985 - There is a difference of nearly 10 months between the two days - Claimants would be entitled to benefit of increase for this intervening period - In this case, land certainly has potential and even sale instances show that land from revenue estate of same village was sold as plots and with number of facilities - Therefore applying 30% deduction to value indicated in Ex.A.1 claimants should be entitled to receive compensation Rs.2,800 per cent for acquired land - In all these appeals would be entitled to same rate of compensation - Solatium envisaged in Sec.23(2) is in consideration of compulsory nature of acquisition, does solatium is not same as damages on account of land owners disinclination to part with land acquired - In any case, there can be no doubt in law that claimants are entitled to solatium and interest there upon at rate specified in proviso (2) Sec.34 of Act for relevant period - Claimants also would entitled to get interest on solatium according to Sec.34(b) of Act. **Radha Mudaliyar Vs. Tahsildar (LA) T.N.H Board, 2011(1) Law Summary (S.C.) 187 = AIR 2011 SC 54 = 2010 AIR SCW 6774 = 2011(2) ALD 108 (SC).**

—Secs.28-A & 18 - Petitioners filed present writ petition seeking direction to respondents 1 & 2 District Collector & RDO to re-determine compensation amount u/Sec.28-A of Act as per judgment of in A.S.No.1321/94, contending that petitioners are entitled for relief sought for in writ petition as per provisions of Sec.28-A of Act and failure of Rspondents Authorities in not extending said benefit to petitioners is patently illegal and opposed to very spirit of object of provisions of Act - Govt. contends that petitioners herein not entitled for benefit u/Sec.28-A of Act in terms of judgment of High Court in A.S.No.1321/94, as petitioners were not parties said appeal and further contended term "Court" as stipulated in Sec.28-A of Act is only reference Court but not High Court - In this case, there is absolutely no justification on the part of the respondent/Authorities in refusingt to extend benefit of Sec.28-A of Act in favour of petitioners herein in terms of judgment and decree - Respondents are directed to consider claim of petitioners in accordance with Provisions of Sec.28-A of Act for the purpose of redeterination of comnpensation in terms of enhanced compensation in judgment of High Court. **Pasupuleti Konda Babu Vs. District Collector, Visakhapatnam 2014(1) Law Summary (A.P.) 243 = 2014(4) ALD 304.**

—Secs.31(1) & 31(2) and Sec.11(a) and 16 - Lands acquired for purpose of establishment of Thermal Station - Consent award passed covering certain extent of land and

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compensation in respect of certain extent distributed to five persons who are identified as land- owners - Compensation for balance extent of Ac.1.40 cents ordered to be deposited in civil Court as no one came forward to claim said amount - Petitioners contend that their names were not identified for acquisition even though they are owners of said land of Ac.1.40 cents and therefore they were not aware of award enquiry and consequently they could not make claim before LAO - LAO deposited compensation amount inrespect of Ac.1.4 cents of lands before civil Court in purported exercise of power under 31(2) of Act - Govt., contends that as petitioners have not attended award enquiry in pursuance of public notice issued u/Sec.9(1) and 10 of Act and no claims were presented by them at any stage during land acquisition proceedings amount was deposited in civil Court and that petitioners are entitled to approach civil Court for appropriate relief - U/Sec.11 of Act after completing award enquiry, award has to be passed u/sub-sec.(1) if there is no consent and u/sub-sec.(2) thereof if there is consent from land owners - A close analysis of sub-sec.(2) of Sec.31 of Act would show that Land Acquisition Officer is required to deposit amount of compensation only under four contingencies viz., that parties do not consent to receive compensation, where there is no person competent to alienate land, where there is any dispute as to title to receive compen-sation or where there is a dispute relating to apportionment of it - In a given case, owner of land may not make a claim for receiving compensation - Mere absence of such a claim cannot be brought under contingency of there being no person competent to alienate land - In order to bring a situation under said contingency, LAO has to go through revenue record and come to specific conclusion that there is no person who is competent to alienate land - Land Acquisition Officer has committed an illegality in depositing amounting in civil Court in absence of any contingencies arising u/Sec.31(2) of Act - Award to that extent is set aside - LAO is directed to make an appropriate application before civil Court in which deposit is made for return of reference alongwith deposit - Petitioners are permitted to make claims before 3rd respondent/RDO and on examination of claim 3rd respondent shall pass appropriate order, if he finds that petitioners are true owners of property, compensation shall be paid to them - Writ petition allowed to extent indicated above. **Shaik Kareemunnisa Begum Vs. Govt. of A.P. 2011(3) Law Summary (A.P.) 378.**

—Secs. 54 & 18 - Lands of claimants/respondents acquired for opening New Mins of Singareni Collieries - L.A.O awarded compensation at Rs.4,000/- per acre for dry land and Rs.6,000/- per acre for wet land - Claimants received compensation under protest and sought for reference u/Sec.18 of Act for proper adjudication of market value - Trial Court after scrutinizing and analysing evidence and placing reliance on sale transactions determined market value at Rs.36,000 per acre uniformly irrespective of dry or wet land - Appellant/Singareni Collieries Co., vehemently contended that reference Court has committed a serious error in enhancing compensation by taking into account un-comparable sale statistics and in this case land acquired is very large extent - Hence appeal u/Sec.54 of Act - As seen from record, claimants have discharged

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burden of proofing necessary documentary evidence as well as oral evidence and reference Court has fairly and reasonably determined market value under principles of Land Acquisition Act - Where large area is subject matter of acquisition, rate at which small plots are sold cannot be said to be safe criteria - However, be laid down as an absolute proposition that rate fixed for small plots cannot be basis for fixation of rate - Where there is no other material it may in appropriate cases be open to adjudicating Court to make comparison of prices paid for small plots of land - When each land holder is clubbed together then area becomes large and it cannot be said to be small piece of land so also distance is not criterion that quality and potentiality of such land is important - Reference Court determined compensation taking into account cumulative effect of all sale deeds - R.W.1 & 2 also deposed that lands are having trees and P.Ws.1 to 8 in their evidence deposed that they were raising commercial crops and getting yearly income of Rs.10,000 from yield and by virtue of compulsory acquisition, claimants are deprived of their livelihood and sole avocation of small marginal farmers - Trial Judge not committed any error or perversity - Findings of reference Court - Justified - Appeal, dismissed. **Project Officer, Singareni Colieries Co., Ltd. Vs. Burra Komuraiah 2010(2) Law Summary (A.P.) 310.**

——G.O.Ms.No.1307, dt.23-12-1993 - **CONSTITUTION OF INDIA.** Art.14 - Lands of petitioners acquired for construction of Alaganur Balancing Reseroir(ABR) - Petitioners made representation for settlement of issue of payment of ex-gratia - Govt., issued G.O.Ms.No.1307 for payment of ex gratia to different categories of occupants of lands - G.O reads, that (i) to pay exgratia for lands which are in category A to DKT patta holders (ii) as regards lands covered in category B i.e, those who have been cultivating land without D- Form pattas whose possession is confirmed by entries in 10(1) and Adangal accounts may be paid exgratia without solatium (iii) Category D i.e, those who are in possession and enjoyments of lands and whose names are found only in Adangals may be paid exgratia which is 30% market value without solatium (iv) as regards Category C i.e., who have purchased assigned lands from DKT patta holders will not be entitled for any exgratia as it amounts to violation of conditions of assignment and contraventions of provisions of A.P. Assigned Land (PoT) Act - Petitioners contend that classification between lands covered by D-Form pattas and those not covered by D-Form pattas but possession is confirmed by entries in 10(1) village account is discriminatory and violative of Constitution of India - A person who occupies Govt., land for purpose of cultivation is an encroacher - Such occupation is regularized by D-Form patta - Relevant entries in 10(1) village accounts or Adangals for purpose of showing occupation of lands cannot be equated to grant of D-Form Patta - Board Standing Order (BSO) 15 contemplates issue of D-Form Patta to occupant in respect of land unless grant of patta is prohibited thereunder - However a D-Form patta is not granted to a person in occupation of land - Even if occupation is for long period i.e., it leads to an inference that such person is either not entitled for D-Form Patta by being not a land less person or land itself cannot be assigned in view of relevant

paragraph in BSO 15 - Govt.,instead of evicting such occupants under provisions of A.P. Land Encroachment Act choose to pay compensation - There is no similarity between lands held by ryots who occupied/encroached land without D-Form pattas - Therefore Govt., is justified in classifying lands into different categories for purpose of payment of exgratia - Writ petition, dismissed. **T.Nadipi Sunkanna Vs. The Government A.P. 2011(2) Law Summary (A.P.) 227 = 2011(4) ALD 38.**

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013:

—-ANDHRA PRADESH ESCHEATS AND BONA VACANTIA ACT, Sec.11(1) and Rule 7 - CONSTITUTION OF INDIA, Arts. 14, 21 - In the instant case, there is no evidence to show that Rule 7 was adhered to - There is also no evidence to show that the respondents complied with the provisions of Sec.12 of the Act by way of publication in the State gazette - There is non-adherence to Sec. 13 of Act which prohibits sale or grant till expiry of 12 years from the date of taking possession by the Government - Such a provision of law cannot be brushed aside and its object cannot be lost sight of by the authorities - Memo of Mandal Revenue Officer, shows that lands were handed over to Executive Engineer, R&B Department, long prior to alleged gazette notification - This clearly shows the highhandedness on the part of the respondent authorities - In opinion of this Court, impugned action tantamount to highhandedness on the part of respondents and unlawful enrichment and the welfare State cannot be a party to the same because of the actions of the authorities, discharging the functions of the State under the statutes - For the aforesaid reasons, writ petition is allowed, declaring the action of the respondents in taking possession of the subject lands without following the mandatory provisions of Andhra Pradesh Escheats and Bona Vacantia Act, 1974 and the Rules framed thereunder as illegal, arbitrary and iniquitous and presumptuous and violative of Arts.14 and 300-A of the Constitution of India and opposed to the very spirit and object of the provisions of the Act - The respondents are further directed to initiate proceedings under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of subject lands and pay compensation. **Dr.Adusumilli Venkata Subba Rao Vs. District Collector (LA), Nizamabad District 2015(1) Law Summary (A.P.) 113 = 2015(4) ALD 650 = 2015(2) ALT 212.**

LAND LAWS:

—-What Documents determine title and ownership land - Petitioners Claiming their rights based on entries in Revenue records and some others basing their claims on longstanding position evidenced by registered sale deeds - Government denying their title mainly basing on entries in revenue records such as RSR and TSLR.

From respective pleadings and stands taken by petitioners, following points emerged from consideration.

1. (a) What documents constitute title for lands?

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(b) Whether the entries in the revenue records constitute conclusive proof of title and if not whether they have evidentiary value in determi-nation of title?

2. Whether multiple registered sale transactions reflecting long standing possession give rise to a presumption of title to the property?

3.Whether the entries in Resurvey and Resettlement Register (RSR) and Town Survey Land Register (TSLR) are conclusive in determining title?

4. Whether eviction proceedings under the 1905 Act can be initiated when there is a bonafide title dispute.

The following 14 conclusions are arrived at by the Court to above points 1 to 4.

(1) A patta granted under BSO-27 confers absolute title.

(2) An assignment made under BSO-15 prior to 18-6-1954 in Andhra Area and a patta granted under Laoni Rules before 25-7-1958 in Telangana Area confer absolute title with right to transfer the land. Unless the Revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated.

(3) In case of Laoni pattas granted on collection of market value, the pattadar is entitled to sell the land without any restrictions.

(4) In respect of estate and inam lands, ryotwari pattas/occupancy rights certificates constitute title. In case of protected tenants under the Hyderabad Tenancy and Agricultural Act 1950, the protected tenants having ownership certificates hold absolute title.

(5) In the absence of patta, revenue records form basis for determining title. A-Register/Diglot, Ledger/Chitta in Andhra Area and Sethwar, Supplementary Sethwar and Wasool Baqui in Telangana Area are the basic settlement record which provide basis for subsequent entries in the Village Accounts. Before integration of revenue record, No.1 and No.2 Accounts (old), No.3 Account, No.10 Account and Register of Holdings in Andhra Area and Pahani patrika, Chowfasla, Faisal Patti and Khasra Pahani in Telangana Area are relevant Village Accounts for determination of title. After integration of the Village Accounts under the 1971 Act, (i) Printed Diglot or A-Register, (ii) Village Account No.1, (iii) Village Account No.2, (iv) No.3 Register and (v) Village Account No.4 – Register of Holdings constitute relevant record.

(6) Between two rival claimants relying upon the entries in revenue record, the person whose name is recorded in the basic records such as A-Register and Record of Holdings and their successors-in-interest will be considered as the rightful owners. In deciding such disputes, the revenue authorities and the courts need to carefully weigh the evidence relied upon by the rival parties with reference to the record referred to hereinbefore. Even in cases of disputes between the Government and private persons, the above referred record constitute material evidence in determination of title.

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(7) While there is a presumption that all porambokes and lands reserved for communal purposes vest in the Government, no such presumption arises in respect of waste lands, assessed or unassessed.

(8) A person in possession of land for 12 years or more without title can claim transfer of registry in his favour as envisaged by para-7 of BSO-31.

(9) Long possession supported by multiple registered sale transactions give rise to presumption of title. Such presumption is however rebuttable.

(10) RSR is not a stand alone document. It is one of the relevant records in determination of ownership.

(11) Description of Government land in RSR only means that it is not an inam land. It can include patta lands also.

(12) Dots or blank in pattadar column does not necessarily mean that the land is vested in or it belongs to the Government. Despite such blanks or dots, a private person can claim ownership based on entries in revenue record prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If the Government disputes such entries, it needs to get its right declared by instituting proceedings before the competent court of law.

(13)The entries in TSLR do not constitute conclusive proof of title.

(14) Where there is a bonafide dispute regarding title of a person in possession of the lands other than public roads, streets, bridges or the bed of the sea or the like, summary proceedings under the 1905 Act cannot be initiated. In all such cases, the Government which claims title shall approach the competent Civil Court for declaration of its title. **G.Satyanarayana Vs. Govt. of A.P. 2014(2) Law Summary (A.P.) 52 = 2014(4) ALD 358 = 2014(3) ALT 473.**

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—Secs.11-A, 11-B. 19 & 20 - Taluq Legal Service Committee under Act, has no jurisdiction to decide dispute, which is beyond Rs.25 lakhs – Hence the award passed by Lok Adalat in respect of subject matter of value of Rs.45 lakhs is without jurisdiction and is accordingly set aside. **Mohd. Aasham Pasha Vs. E.Srihari Chary 2016(1) Law Summary (A.P.) 215 = 2016(2) ALD 603 = 2016(2) ALT 447.**

——Secs.19 and 22(e) – **CIVIL PROCEDURE CODE,** Sec.2(2), 146 and Or.22, Rl.10 - The contention of petitioners is that instead of securing final decree, the respondents 5 to 8 filed P.L.C. before the 3rd respondent/Mandal Legal Services Committee, seeking allotment of portions of suit schedule properties and on considering same, the 3rd respondent/Mandal Legal Services Committee, passed an award accepting the division of suit schedule properties as agreed upon by respondents 5 to 8 by observing that award can be executed before District Court - It is further contended that 3rd respondent/ Mandal Legal Services Committee, entertained separate applications filed by respondent Nos.6 to 8 seeking a direction to Sub-registrar, Macherla for execution of deeds of conveyance, for making necessary entries in concerned record and to deliver possession

of their respective portions allotted in terms of award and also to issue pattadar pass books and title deeds and 3rd respondent/Mandal Legal Services Committee, beyond scope of his jurisdiction and contrary to provisions under Legal Services Authority Rules, cause executed a registered document conveying title to portions of property on remitting necessary stamp duty and also passed orders for delivery of possession of suit schedule property - It is further contended that pursuant to direction and at behest of respondents 5 to 8, 4th respondent/Circle Inspector of Police, called petitioners to police station and ordered that they should hand over vacant possession of suit schedule properties to respondents 6 to 8, which is totally illegal and hence Award is liable to be set aside.

Respondents contended that Lok Adalat award under challenge is dealing with allotment of shares, pursuant to preliminary decree that was made final - Earlier final decree application was closed as withdrawn, from stay of passing of final decree and there was a proposal through elders later to give quietus to lis - Commissioner appointed found only item 4 residential house is not partiable, but for other items - It was suggested through elders pursuant to preliminary decree to take separate possession and to give up claim of profits that was not materialized - It is there from approached Legal Services Authority and orders in question were passed which no way requires interference, thereby sought for dismissal of writ petition.

Held, once there is a preliminary decree and even earlier any final decree application filed and withdrawn that is not a bar to file fresh final decree application for which particularly in partition suit there is no limitation as till passing of final decree in respect of all properties with relation to rights of all parties, suit is deemed pending; and as such a separate suit is not maintainable but for to work out preliminary decree by filing application for recourse to final decree proceedings or if necessary by seeking amendment of preliminary decree for anything required and to apply for final decree pursuant thereto - When such is case, there is a bar to maintainability of separate suit and once such is bar a P.L.C is also a bar to maintain - When same is questioned in writ petition in saying what is preliminary decree rights defined are to be worked out and not to file any P.L.C case in relation to properties covered by partition preliminary decree, for such relief to set aside Lok Adalat award obtained instead working out rights by final decree petitions, same is prone to writ jurisdiction as laid down by a division bench of this Court in Kothakapu Mutyal Reddy Vs. Bhargam Constructions.

Therefore, P.L.C proceedings are thereby unsustainable and are liable to be set aside by restoring status quo ante and relegating parties to position and status as on date of filing of the P.L.C. - In result, writ petition is allowed by setting aside award of Lok Adalat and all proceedings in P.L.C. are hereby quashed - It is open to parties concerned to file appropriate application for passing of final decree/partly final decree(s) as case may be pursuant to preliminary decree before Court where preliminary decree is passed, for their respective remedies. **Karumanchi Venkaiah Vs. State of A.P. 2016(3) Law Summary (A.P.) 222.**

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—Sec.19(5) – **A.P. STATE LEGAL SERVICE AUTHORITY REGULATIONS, 1996** - Regulation No.38(1) provides that every Award of the Lok Adalat shall be signed by panel constituting Lok Adalat, and under Regulation No.38(2), original Award shall form part of the judicial records and a copy of Award shall be given to each of parties duly certifying them to be true by Secretary of High Court Legal Services Committee or the District Legal Services Authority or the Chairman of Mandal Legal Services Committees, as case may be, who are authorized to sign the true copies of the Award - In the case on hand, Award is not signed by all members of Lok Adalat Bench - A perusal of original record would go to show that two members of panel of Lok Adalat have not signed Award - When a statutory duty is conferred on Lok Adalat, it has to exercise that duty in accordance with law especially when the Award passed by the Lok Adalat shall become final and no appeal shall lie to any court against Award - Impugned Award is not signed by parties to appeal and therefore it is not binding on any one of parties to appeal - Therefore, petitioner is an aggrieved party and he can challenge the Award - For foregoing reasons, impugned Award is liable to be set aside as it is not an Award within the meaning of Sec.21 of Act - Accordingly writ petition is allowed. **V.Kameswara Rao Vs. D.L.S.-cum-7th Addl District & Sessions Judge,Vijayawada, 2014(3) Law Summary (A.P.) 354**

—-Secs.20,21 & 19 - **CONSTITUTION OF INDIA,** Arts.226 & 227 - **MOTOR VEHICLES ACT, 1988,** Sec.173 - Motor accident - Role of Lok Adalat – Stated - Respondents 1 and 2, claimants, husband and son of deceased who died in motor accident filed petition claiming compensation of Rs.5 lakhs - Tribunal awarding compensation of Rs.1.44 lakhs - In appeal preferred by respondents 1 and 2, High Court Lok Adalat enhancing compensation to Rs.1.72 lakhs - Single Judge of High Court in FAO dismissing petition holding that nothing has been pointed out showing that such a petition under Art.227 of Constitution is maintainable and that meagre increase in amount of compensation does not warrant any interference - No Lok Adalat has power to "hear" parties to adjudicate cases as a Court does - It discusses subject-matter with parties and persuades them to arrive at a just settlement - In their conciliatory role, Lok Adalats are guided by principles of justice, equity, fair play - Act does not contemplate nor require an adjudicatory judicial determination, but a non-judiciary determination based on a compromise or settlement arrived at by parties with guidance and assistance from Lok Adalat - "Award" of Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process - Making of award is merely an administrative act of incorporating terms of settlement or compromise agreed by parties in presence of Lok Adalat, in form of an executable order under signature and seal of Lok Adalat - It is true that where award is made by Lok Adalat in terms of settlement arrived at between parties, it becomes final and binding on parties to settlement and become executable as if it is a decree of a Civil Court, and no appeal lies against it to any Court - If any party wants to challenge such an award based on settlement, it can be done only by filing petition under Art.226 and or Art.227 of Constitution - In this case, a simple Appeal by legal heirs of deceased for enhancement of compensation has been tossed around and is pending for more

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than eight years, putting them to avoidable expenses and harassment - High Court directed to hear and dispose of FAO on merits. **State of Punjab Vs. Jalour Singh 2008(2) Law Summary (S.C.) 57.**

—Secs.21 & 19(5) - Petitioner and her children filed Application for issuance Succession Certificate for death family benefits - 1st respondent, concubine and her children, subsequently added as parties - When matter referred to Lok Adalat award was passed u/Sec.21 which was signed by all parties and accepted by Bench - Petitioner challenged award passed by Lok Adalat vitiated by illegalities and against provisions of Act and u/Sec.19(5), Lokadalat has no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law - Reading of award clearly goes to show that there was a consensus and part of pension is also given as lumpsum to petitioner and therefore consciousness of petitioner in accepting terms cannot be doubted - Purpose of Lok Adalat is for expeditious and comfortable settlement of issues between parties and when there is no egregious fraud vitiating award of Lok Adalat, she cannot be allowed to challenge award - Writ petition, dismissed. **Kataru Anjamma Vs. Chairman,LokAdalat Bench-cum-I Add.Sr.Civil Judge 2011(1) Law Summary (A.P.) 145 = 2011(2) ALD 135 = 2011(1) ALT 628.**

—-Sec.21 and 22-E - **CIVIL PROCEDURE CODE,** Or. 23 Rule 3 - Plaintiffs in O.S.No.107/2010 have preferred this appeal aggrieved by order of lower court - Suit was filed by the plaintiffs, seeking to declare the award passed in O.S.No.481/2007 as non-est, which was not maintainable; the plaintiffs' suit was barred by law; Section 9 CPC enables a Civil Court to take cognizance of all civil disputes except those disputes, which are expressly or impliedly barred by law; in present case, Act is a special law; it prohibits any suit or appeal against award passed by Lok Adalat, basing on a compromise arrived at between the parties; and suit was not maintainable under Section 9 CPC, and under Order VII Rule 11 CPC r/w Sections 21 & 22-E of the Act - Held, whether or not appellant is justified in his claim, that award of Lok Adalat is vitiated by fraud, are matters to be examined by Court below - As power to reject a plaint under Order 7 Rule 11(d) is to be exercised by civil court only if suit appears, from statement in the plaint, to be barred by law, court below erred in rejecting plaint on the ground that a civil suit is not maintainable - Order under appeal is set aside - This Court make it clear that we have not expressed any opinion on truth or otherwise of appellant's claim that award of Lok Adalat is vitiated by fraud - Court below shall adjudicate suit on its merits, and in accordance with law - Order, under challenge in this appeal, is set aside and appeal is allowed with costs. **Kothakapu Muthyam Reddy Vs. Bhargavi Constructions 2015(2) Law Summary (A.P.) 479 = 2015(6) ALD 1 = 2015(5) ALT 476.**

—Secs.22-B, 22-C,22-D & 22-E - Chapter VI-A - **CONSTITUTION OF INDIA,** Art.39-A - "Permanent Lok Adalat" - "Taking cognizance of offence" - Respondent carrying business

in electrical goods, entered into agreement with appellant/Insurance Company - Goods were stolen from godown in burglary - Appellant repudiated claim stating that Surveyor observed that loss cannot be assessed since quantity not verifiable as documents provided creates doubt and that there was movement of stock from godown without billing and that credibility of documents is doubtful and that watchman not provided at godown as per terms of policy coupled with mis-representation - District Consumer Forum refusing to entertain Application on premise that defficiency occurred in connection with commercial contract - Permanent Lok Adalat overruled objection of appellant and pass order holding that it has pecuniary jurisdiction over matter and same has to be decided after taking independent evidence of parties - High Court allowed writ Application holding that as Sec.497/461 of IPC being not compoundable, PLA has no jurisdiction to entertain claim of respondent - Division Bench of High Court allowed appeal filed by respondent holding that pendency of criminal case has nothing to do with exercise of jurisdiction by PLA as it was not concerned as to who had committed burglary but was only concerned with fact as to whether burglary has taken place or not - Contention that Chapter-VI-A of Act has no application in this case which involves complicated question of fact and law and that as contract of insurance has been repudiated it is not a fit case for settlement with in meaning of Sec.22-B - Respondent contends that object of legislation is to promote resolution of dispute by conciliation and therefore it is for welfare of general public that construction which would achieve object of beneficial legislation should be preferred - In this case, genuineness of claim itself is in dispute - Where parties have taken extreme positions, same prima facie many not be subject matter of conciliation which provides for a non-binding settlement - Sec.21-C (1) contains certain Provisos which limit jurisdiction of PLA - Main purpose behind Sec.22-C (8) seems to be that most of petty cases which ought not to go in regular course would be settled in pre-litigation stage itself - Present case, falls outside jurisdiction of PLA - Order of High Court, set aside - Appeal, allowed. **United India Insurance Co., Ltd., Vs. Ajay Sinha 2008(2) Law Summary (S.C.) 198 = 2008(5) ALD 1 (SC) = AIR 2008 SC 2398 = 2008 AIR SCW 3970.**

—Sec.22C to 22E, 29 - **NATIONAL LEGAL SERVICES AUTHORITY REGULATIONS**, Regulation 12 & 17 - "Pre Litigation case" - Dispute arose between petitioner and respondents 2 & 7 who are brothers regarding partition of their landed property - Petitioner received notice from Lok adalat along with impugned Award - Petitioners contend that said award was passed behind back of petitioner and respondent no.7 and that they never received any notice, and they never appeared before Lok Adalat and they never entered into any settlement or compromise with 2nd respondent, alleging that after obtaining impugned award 2nd respondent is trying for change of revenue records - Hence writ present petition filed - 2nd respondent contends that there have been family disputes among brothers with regard to share of property after death of father when petitioner and his three sons tried to dispossess she filed suit in civil Court for injunction and said suit was however withdrawn thereafter 2nd respondent made an application to District Collector bringing to his notice about partition

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of properties in 1992 itself - Said application was referred to Lokadalat for resolving dispute which were registered as prelitigation case - At that stage village elders settled matter between parties and three brothers agreed for agreement and draft of "boobhagaparishkara patram" (land dispute settlement agreement) was prepared and three brothers signed it in presence of 8 witnesses - As parties have already entered into agreement Lokadalat passed Award - Respondents 4 to 7 contend that there was no information or knowledge about pre litigation case alleged that said Award is not based on mutual understanding and therefore it is not binding on them and that 2nd respondent suppressed and misrepresented material facts and obtained impugned Award.

In light of these only point that would arise consideration is whether award passed by Lokadalat in Pre Litigation case without obtaining signatures of parties to award is valid - Secs.22A to 22-E deal with various aspects of pre litigation conciliation and settlement - AWARD - A perusal of Regulations would show that when an Award is drawn up which is a mere administrative act, it shall contain terms of settlement or compromise agreed by parties under guidance and assistance of permanent Lok adalat - Draft so drawn up shall be Award only when it is signed or parties affix their thumb impression which is counter signed by members of permanent Lok adalat - A plain reading of regulation 17 to extent necessary and Appendix 1 would leave no doubt that unless and until there is prior settlement/agreement between parties and unless and until parties signed award drawn in accordance with settlement before permanent Lok adalat it cannot become an Award executable u/Sec.22E of Act - In this case, on perusal of original draft of Award curiously, it contain signature of 2nd respondent alone and signature of petitioner is absent - Further Award purports to divide property between petitioner, 2nd respondent and 7th respondent although he is not party to settlement or compromise - For these reasons impugned Award being Pre Litigation case is liable to be set aside - Writ petition, allowed. **Bal Reddy Vs. Taluka Legal ServicesCommittee, Narayanapet, 2012(1) Law Summary (A.P.) 27 = 2012(2) ALD 195 = 2012(3) ALT 20 = AIR 2012 AP 60.**

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——Clause 15 – **CENTRAL RESERVE POLICE FORCE (CRPF) ACT,** 1949, Sec.11(1) – CONSTITUTION OF INDIA, Art.226 - "Disciplinary action" - Respondent in writ petition was a Constable in CRPF who was granted casual leave for 15 days - He overstayed leave by 136 days - During that period he received two letters from his superiors to join his duty - No reply was given by him - After he was admitted to duty, disciplinary proceedings were initiated against him and charges were framed - Respondent filed statement of defence assigning two reasons for his overstay, firstly illness of his wife and secondly, family disputes - Employer examined three witnesses in this regard while respondent has not cross-examined them - On earlier occasion also, he overstayed his leave - Basing on enquiry report submitted by enquiry officer finding respondent guilty of both charges, appellant No.2 has removed respondent

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from service - Appeal filed by respondent challenging said punishment was also rejected by appellant No.1 - Respondent then filed Writ Petition - The learned single Judge allowed writ petition, set aside order of removal and directed his reinstatement without back wages - This Writ Appeal is filed by Deputy Inspector General of Police, CRPF against that order.

Held, it is a settled position of law that scope of interference with orders passed by disciplinary authority by High Court u/Art.226 of Constitution of India is limited to examining whether decision suffers from any patent illegalities, proven mala fides or findings not based on any evidence - While exercising writ jurisdiction, this Court will not sit in appeal and act as an appellate body - Even where two views are possible, Court will not interfere with decision of disciplinary authority merely because it prefers to follow another view - As regards plea taken by respondent that punishment imposed on him being disproportionate to proven misconduct, Courts cannot lightly interfere with quantum of punishment unless it shocks judicial conscience.

In light of above mentioned decision and having regard to facts of case, this Court of opinion that gravity of misconduct admitted by respondent warrants punishment of removal from service and such a punishment could not have been interfered with by learned single Judge - For afore-mentioned reasons, Writ Appeal is allowed and impugned order is set aside. **D.I.G. of Police, CRPF, Group Centre, Chennai Vs. K.Ravinder 2016(3) Law Summary (A.P.) 378.**

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—Secs.3,5 & 22 - CIVIL PROCEDURE CODE, Or.1, Rule 8 - "Encroachment of public street" - Suit filed by respondent against defendants for encroaching substantial part of public street making it narrowing down causing inconvenience to user of street - Trial Court decreed suit and permanent injunction was issued directing removal of unauthorised construction - District Judge dismissed appeal filed by appellant/defendant and second appeal also dismissed by High Court holding that there is no specific question of law involved in appeal - Appellant contends that suit is barred by limitation and that there is no any official document to indicate that there was a public street used by residents of area and that suit said to be representative capacity as shown in plaint but formalities not followed and that suit should have been dismissed at very threshold - Any member of community may successfully bring a suit to assert his right in community property or for protecting such property by seeking removal of encroachment and that in such suit he need not comply with requirement of Or.1, Rule 8 CPC - All three Courts namely, High Court, First Appellate Court as also Trial Court held that disputed land is part of public street where appellant has encroached upon by constructing a part of a house and said findings are therefore findings of fact - No infirmity in judgment and decree passed by trial Court affirmed by 1st appellate Court and by High Court in second appeal - Decree passed by trial Court confirmed - Appeal, dismissed. **Hari Ram Vs. Jyoti Prasad 2011(1) Law Summary (S.C.) 155 = AIR 2011 SC 952 = 2011 AIR SCW 1097 = 2011(3) ALD 101 (SC).**

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—Sec.5 - Respondents filed appeal against judgment and decree of trial Court with delay of four years - Division Bench of High Court condoned delay by making cryptic observation that cause shown by respondents is sufficient - High Court committed grave error by condoning more than four years delay in filing of appeal ignoring judicially accepted parameters for exercise of discretion u/Sec.5 of Limitation Act - Impugned order of High Court, set aside and Application for condonation of delay filed by respondents, dismissed - Appeal, allowed.

Higher functionaries of 1st respondent are directed to conduct thorough probe into matter so that accountability of defaulting Officers/Officials may be fixed and loss, if any, suffered by respondent No.1 recovered from them after complying with rules of natural justice. **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Devp.,Corpn., 2010(1) Law Summary (S.C.) 167.**

—Sec.5 - Condonation of delay - High Court allowed all applications by condoning delay - Liberal approach in considering application for condonation of delay on ground of sufficient cause - Explained - concepts such as “liberal approach”, “justice oriented approach” “substantial justice” cannot be employed to jettisons substantial law of limitation - Especially in cases where Court concludes that there is no justification for delay - Approach adopted High Court tents to show absence of judicial balance and restraint which a judge is required to maintain while adjudicating any lis between parties - While considering applications for condonation of delay u/Sec.5 of Limitation Act Court do not enjoy unlimited and unbridled discretionary powers- All discretionary powers, especially judicial powers have to be exercised within reasonable bounds known to law - Discretion has to be exercised in systemic manner informed by reason - Whims or fancies, prejudices or predilections cannot and should not form basis of exercising discretionary powers - Judgment of High Court is unsustainable either in law or in equity - Appeals, allowed. **Lanka Venkateswarlu (D) by LRs. Vs. State of A.P. 2011(1) Law Summary (S.C.) 175.**

—Sec.5 - Condonation of delay of 679 days in filing appeal - Suit filed for recovery of possession of suit property and for injunction - District Judge dismissed Application for condonation of delay on grounds is hit by principles of res- judicata - Scope of determination of points in appeal are quite different from determination of decision to set aside ex parte decree - Even if there are no grounds to set aside *ex parte* decree still right of appeal cannot be closed and mere refusal of part of period of delay which was refused to be taken into consideration in condoning delay in setting aside ex parte decree, shall not bar consideration of subsequent delay to be considered which was evidently because of pendency of earlier application - Evidently in this case, 1st petitioner is said to be a man of unsound mind, second petitioner is said to be absent during period and no advantage or “malafides” can be attributed for not prosecuting case by petitioners - In this case, there is no proof of malafides of petitioners - Refusal to condone delay in filing appeal is not proper and parties should be given an opportunity to express their grievances against judgment in which valuable

rights are involved and where one of party to proceedings is a man of unsound mind - Order of Court below set aside - Delay in filing appeal condoned on payment of costs - CRP, allowed. **Maddineni Venkateswarlu Vs. Maddineni Rajamma 2011(3) Law Summary (A.P.) 81 = 2011(5) ALD 721 = 2011(5) ALT 781.**

—Sec.5 - Condonation of delay of 427 in filing appeals - Chief Post Master General filing appeals by way of special leave against final judgment and order of Division Bench of High Court - It is right time to all Govt., bodies agencies and instrumentalities that unless they have reasonable and acceptable explanation for delay and there was bona fide effort, there is no need to accept usual explanation that file was kept pending for several months/years due to considerable degree of procedural red-tape in process - Govt., Departments are under a special obligation to ensure that they perform their duties with diligence and commitment - Condonation of delay is an exception and should not be used as an anticipated benefit for Govt., Departments - In this case, Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such huge delay - Appeals are liable to be dismissed on ground of delay. **Office of the Chief Post Master General Vs. Living Media India Ltd., 2012(1) Law Summary (S.C.) 136**

—Sec.5 - Condonation of Delay - I.A. filed by petitioners in trial court dismissed for delay - Revision filed - Held, though normal rule requires that every day's delay shall be explained for purposes of condonation of delay, but even if relaxed standards and norms are applicable in cases where a party pleads want of knowledge of event itself, even in such cases honest and bona fide efforts made for taking appropriate steps with promptitude should be demonstrated - When a huge delay is sought to be condoned, it is expected of the petitioners to offer reasonable explanation for such a huge delay - In the instant case, 1653 days was delay that was prayed to be condoned - At every stage of proceedings, there was demonstrable laxity and no anxiety was shown on the part of petitioners to prosecute matter diligently - In such a fact scenario, condonation of such a huge delay would not subserve cause of justice - Sadly no effort is made to exhibit steps taken promptly for getting the decree set aside - Hence, there are no bonafides behind this exercise - Further, there is no error committed by Trial Court in dismissing I.A. No. 187 of 2011 - Accordingly, Revision stands dismissed. **Bommadevu Subbalakshmi Vs. G.Subbarao 2014(3) Law Summary (A.P.) 115 = 2014(6) ALD 116.**

—Sec.5 - **CIVIL PROCEDURE CODE,** Or.9, Rule 3 - **LAND ACQUISITION ACT,** Sec.4 (1) - Delay of 920 days in filing revival Application - Single Judge allowed writ petition filed by respondents/owners of land for Mandamus to declare inaction of applicants in paying compensation to them, directing appellants to pass award within six months - Writ appeal filed against order of single Judge with delay of 493 days - Division Bench dismissed Application since affidavit is not inconformity with

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requirements of Or.9, Rule 3 and consequently W.A, (S.R) also dismissed as barred by time - However, Bench gave liberty to applicants to file application for revival of appeal along with fresh Application for condonation of delay - Revival Application filed with delay of 920 days stating that delay occurred due to administrative reasons and also on account of pursuing wrong remedy of recalling order instead of seeking revival of writ appeal and also due to misplacement of case bundle in Govt. Pleader's Office - In this case, explanation offered by applicants reveals that they have not shown due diligence at any stage of proceedings - Lethargy, indifference and indolance on part of applicants at every stage is writ large - Applicants miserably failed to show "sufficient cause" in causing delay of 493 days in filing writ appeal - Evidently filing of two contempt cases seemed to have forced these persons to file revival Application alongwith present application for condonation of delay - Required details as to when and where case bundle was misplaced, person, who was responsible for misplacing it, when and where bundle was re-traced and person who re-traced bundle are conspicuously absent in affidavit - Reasons put-forth by applicants for condonation of enormous delay of 920 days in filing revival application do not satisfy condition of showing "*sufficient cause*" - Hence Application, dismissed - Consequently W.A (S.R) is also dismissed as barred by limitation. **State of A.P. Vs. A.Murali Madhava Rao 2009(2) Law Summary (A.P.) 40.**

—Sec.5 - **CIVIL PROCEDURE CODE,** Sec.114, O.47, Rule 1 - Petitioner herein along with others filed O.S.No. 15 of 1993 for perpetual injunction against 1st respondent and others to restrain them in any way from interfering with peaceful possession and enjoyment of the plaint schedule property therein - While petitioner is seeking relief of perpetual injunction on basis of a Will, 1st respondent sought for partition contending that said Will executed by her father in favour of petitioner is a concocted one - Judgment was decreed - Challenging the judgment, 1st respondent filed A.S.No. 2401 of 1998 before this court, and challenging said judgment in O.S.No. 16 of 1997, she filed A.S.No. 138 of 1999 before this court - By common judgment, A.S.No. 2401 of 1998 was allowed and O.S.No. 5 of 1996 was decreed as prayed for - A.S.No. 138 was partly allowed by same judgment and it was directed that decree of injunction shall continue only till passing of final decree in O.S. No. 5 of 1996 - Petitioner had approached the Supreme Court and filed Special Leave to Appeal questioning the common judgment and both SLPs were dismissed by a non-speaking order - On 08-09-2014, petitioner had filed present Review A.S.M.P.S.R.No. 7468 of 2014 and No. 7469 of 2014 seeking review of the judgment and to condone delay of 536 and 542 days respectively under Sec. 5 of Limitation Act - Reasons given for seeking condonation of delay was that the grounds raised in present Review petitions could not be taken in the earlier Review petitions.

Held, …..the explanation offered by petitioner for condonation of such a long period of delay is no explanation in the eye of law much less a reasonable explanation - It is not acceptable - If such inordinate long delay of 536 and 542 days in filing

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the present Review petitions is condoned, it would cause grave prejudice to respondent No.1 - Law of limitation may harshly affect the Review petitioner but it has to be applied with all its rigour when statute so prescribes and this court has no power to extend period of limitation on equitable grounds - Also, it is settled law that an entirely new ground which was not raised earlier at time of hearing of the appeal at High Court would not be considered for the first time at Review stage - Consequently, ASMPs are dismissed. **V.S.H.Babu Vs. V.Savithri 2015(2) Law Summary (A.P.) 89 = 2015(4) ALD 383 = 2015(4) ALT 134.**

—-Sec. 5 and CPC,Or.9, R.13 - Petitioner filed O.S No. 173 of 2002 in Court of Chief Judge, City Civil Court, Hyderabad for relief of cancellation of compromise decree in O.S No. 1706 of 1994 dated 06-03-1995 passed by the Court of Senior Civil Judge, for declaration that the irrevocable General Power of Attorney and the deed of assignment dated 27-12-1991 are not binding upon her and for other consequential reliefs including the one of recovery of Rs.1,13,59,931/- from the respondents - An ex parte decree was passed by the trial Court - On coming to know that an ex parte decree was passed against them, defendant Nos.3 and 2 i.e., respondent Nos.1 and 2 herein filed an application under Order IX Rule 13 CPC. Since there was a delay of 824 days in presenting the application, they filed I.A No. 2324 of 2007 under Section 5 of the Limitation Act - It was pleaded that they have not been served with any summons at all and even on verification of the record of the Court, it emerged that they were set ex parte without even ensuring that the summons are served - I.A was opposed by the petitioner by filing a detailed counter - She stated that summons was served in accordance with law and plea of respondent Nos.1 and 2 is not correct - The trial Court allowed the I.A - Hence this revision.

Held, occasion to set a defendant in a suit, ex parte, would arise only when summons are served and the party did not care to enter appearance - Strictly speaking, there was no necessity for respondent Nos.1 and 2 to file application for condonation of delay since they did not have the knowledge about the decree till the steps were taken thereon by petitioner - Trial Court has taken correct view of the matter - This Court is not inclined to interfere with the order under revision - C.R.P is accordingly dismissed. **Sahebzadi Amina Marzia Vs. Shaheen Aga 2015(2) Law Summary (A.P.) 369**

—Sec. 5 - **CIVIL PROCEDURE CODE,** Or. IX Rule 13, and Sec.115 - Whether against order dismissing application filed u/Sec.5 of the Limitation Act to condone the delay in filing any application u/Or. IX, Rule 13 of CPC, revision or appeal lies?

Held, it is well settled that an appeal is creature of statute and there is no right to appeal unless it is given clearly and in express terms by a legislation - In other words, a right of appeal requires legislative authority -Against the Order passed in a petition filed u/Sec.5 of the Limitation Act, only a revision lies u/Sec.115 CPC, but not an appeal u/Sec.104 or Or. XLIII, Rule 1 of CPC. **Gogireddy Eswara Reddy**

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—Sec.5 - **CRIMINAL PROCEDURE CODE,** Sec.239 **INDIAN PENAL CODE,** Sec.13(2) - **PREVENTION OF CORRUPTION ACT,** Sec.13(1)(e) - 1st respondent, Member of Assembly during his tenure as Minister, properties owned and possessed by him are disproportionate to his known sources of income to tune of more than Rs.23 lakhs - After investigation Charge-sheet registered against 1st respondent and his father, mother, sister and his brother-in-law - Respondents filed petition u/Sec.239 Cr.P.C for discharge - Special Judge rejected petition filed by respondents - High Court reversed order of Special Judge and granted discharge - Hence present Appeal by State after lapse of 1954 days along with Application u/Sec.5 of Limitation Act to condone delay of 1954 days - Respondents contend that mere change of Govt., would not be a justification to condone inordinate delay and that to change of Govt., many issues which have attained finality would be reopened after long delay which should not be allowed - Condonation of huge delay on ground that successor Govt., which belongs to a different political party, had taken decision to file special leave petitions would be setting very dangerous precedent and it would lead to miscarriage of justice - Respondents further contends that there is life span for every legal remedy and condonation of delay is an exception - Further contends that Limitation Act does not provide for different period of limitation for Govt., in resorting to remedy provided under law and case on hand being not a case of fraud or collusion by its Officers or agents, huge delay is not fit to be condoned - DISCHARGE - It is true that at time of consideration of Application for discharge Court cannot act as a mouth- piece of Prosecution or act as Post-office and may sift evidence in order to find out whether or not allegations are groundless so as to pass an order of discharge - Law does not permit a mini trial at this stage - In this case, while passing impugned orders, Court has not sifted materials for purpose of finding out whether or not there is sufficient grounds for proceeding against accused but whether that would warrant a conviction - Further, in defect in Investigation itself cannot be a ground for discharge - Order impugned suffers from grave error and calls for rectification - Order of discharge, set aside - Appeals, allowed. **State of Tamilnadu Vs. N.Suresh Rajan 2014(1) Law Summary (S.C.) 37**

——Sec.60 - A close analysis of the language of Article 60, Limitation Act, 1963 would indicate that it applies to Suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. **Narayan Vs. Babasaheb 2016(1) Law Summary (S.C.) 79 = AIR 2016 SC 1666 = 2016(6) SCC 725 = 2016(3) ALD 217 (SC).**

—-Sec. 65 - This Second Appeal is filed by the defendants - Held, thus claim of defendants is that ever since 1957 they were in possession of suit property and therefore, in 1970 when Bhanumathi claimed property by virtue of her sale, D-1 asserted his title and possession against her and in that view, present suit which is filed long

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after, is barred by limitation - This argument does not hold water - PW.2 is son of plaintiff - In his cross-examination no doubt he made some admissions - For instance, he deposed as if suit property was in possession of plaintiff since 1970 when Bhanumathi handed over possession -He also admitted that disputes commenced from the year 1970 onwards with D-1 - He further admitted that D-1 used to come to site and go away and he used to obstruct their entry into site from the beginning - Now point is whether these admissions would amount to establishment of adverse possession by defendants - PW.2 was born in the year 1959 and he was 11 years old by 1970 - In view of his tender age by 1970, it is difficult to believe his words that his mother obtained possession of suit property in 1970 itself - In contrast, plaintiff (PW.1) in her evidence stated that she obtained possession of property one week after execution of Ex.A.5 - Therefore, evidence of PW.2 with regard to delivery of possession cannot be viewed seriously - Similarly his other admission that disputes commenced from year 1970 onwards with D.1 also cannot be taken seriously as by 1970, PW.2 was only a tender aged boy - Therefore, his evidence will not clinch adverse possession - So none of points raised by appellants would clinchingly establish that defendants have enjoyed suit property openly, continuously and against right, title and interest of Bhanumathi and plaintiff beyond statutory period of limitation - Appellate Court upon proper consideration of facts and evidence rightly held that plaintiff deserved decree in her favour and said finding does not suffer any legal infirmity.

In the result, this Second Appeal is dismissed by confirming the judgment and decree District Judge, decreeing plaintiff's suit. **Koppisetty Ramana Vs. Emani Ramanamma 2016(2) Law Summary (A.P.) 184 = 2016(5) ALD 22 = 2016(4) ALT 214.**

—Sec.136, 135 & 15 - DHR filed suit for perpetual injunction against petitioner in respect of suit property - Trial Court while passing decree, apart from granting relief of perpetual injunction also passed a decree granting mandatory injunction to remove structures raised on suit property during pendency of suit - Appellate Court confirmed decree and judgment passed by trial Court and granted one month time to petitioner to remove structures raised by him in suit property illegally during pendency of suit and handover vacant site to respondent/DHR - EP filed by DHR to enforce decree, allowed - Petitioner contends that period of limitation prescribed by Art.136 for executing a decree for mandatory injunction is three years and since DHR filed E.P more than three years after passing of decree by Court of first instance, E.P is barred by limitation even though it is filed within three years from date of passing of decree by appellate Court - Executing Court rejected said contention of petitioner holding that appeal is a continuation of original suit, decree passed by trial Court merged with decree of appellate Court, appellate Court passed decree on 9-8-2002, E.P filed on 15-10-2003, therefore E.P is not barred by limitation - "...Legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and one to be regarded as one legal proceeding" - In this case,

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while passing judgment in appeal, appellate Court granted one month time to petitioner to remove constructions illegally made and hand over vacant site to respondent and failing which as per decree of appellate Court respondent can get constructions removed through process of Court - Thus, at instance of petitioner only issue was pending consideration before appellate Court and ultimately it was decided against him - Order passed by executing Court, confirmed - CRP, dismissed. **Fateh Mohammed Vs. Fareeda Banu A Khursheed Banu 2009(3) Law Summary (A.P.) 247.**

—Art.11 - **CARRIERS ACT, 1865,** Sec.10 - Appellant/1st plaintiff filed suit for recovery of amount towards compensation for non-delivery of goods booked by 2nd paintiff insured with first plaintiff - Respondent/Defendant/Transporter contends that Court has no jurisdiction to try suit and claim of plaintiffs is hopelessly time barred and that defendeant cannot be called as carrier doing transport business and that defendant neithr consigner nor consignee but he is a simple lorry broker and his job ended when he took lorry driver to consigner - Trial Court rejected contention of defendant and held that defenant falls within definition of "common carrier" - But with regard to limitation aspect trial Court recorded finding that claim of plaintifff is barred by limitation as suit filed after expiry of 3 years period stipulated in Art.11 of Limitation Act - 1st appellant/Insurance Company contents that 3 years period is to be completed from date of confirmation of loss by defendant and that as Police gave such certificate only on 4-8-1994 under Ex.A.3, suit is filed on 19-3-1997, as such it is well within time - Respondent/defendant contends that even according to case of plaintiffs goods booked on 6-11-1993 and in ordinary course they were to be reached by 10-11-1993, as such, limitation period starts from aforesaid date and that is case of compensation for non-delivery of goods, and as per Art.11 of Limitation Act period of limitation is 3 years from period when goods ought to have been delivered - Supreme Court also held that time would run after elapsing of reasonable time, on expiry of which, delivery ought to have been made - In this case, even complaint was also lodged with Police on 23-11-1993, and even from that date also, suit not filed within period of three years, but it was filed only on 19-3-1997, after expiry of three years period as prescribed under Art.11of Limitation Act - Finding recorded by trial Court that suit claimed barred by limitation - Justified - Appeal dismissed accordingly. **National Insurance Co. Ltd. Vs. Sri Maheswari Lorry Transport 2013(3) Law Summary (A.P.) 289 = 2014(1) ALD 438.**

—Arts.59,54 & 66 of Schedule - **TRANSFER OF PROPERTY ACT,** Secs.53-A - "Time is essence of contract" - Defendants, legal heirs of PHR who obtained Ex.B.1 agreement for sale in year 1977 from plaintiff in respect of plaint schedule land - PHR paid sale consideration amount and since he did not come forward for obtaining registered sale deed, after paying balance consideration, plaintiff got issued Ex.A.1 notice in year 1983 to PHR stipulating that time is essence of suit contract and to pay balance consideration within 15 days of notice - PHR got issued Ex.A.2 reply notice throwing

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blame on plaintiff for not performing terms of suit contract - Plaintiff got issued Ex.A3 notice to PHR cancelling suit contract and again got issued Ex.A.4 notice to defendants - Subsequently plaintiff filed suit for recovery of possession of plaint schedule property and for mesne profits - Trial Court dismissed suit as barred by limitation under Art.59 of Schedule to Limitation Act - On appeal by plaintiff lower appellate Court allowed appeal and decreed suit for possession - Questioning same defendants filed Second Appeal - Defendants/Appellants contend that suit is barred by limitation, in asmuch as filing suit for possession starts from 1978 which is date stipulated in Ex.B.1 agreement for performance of contract and suit filed in year 1992 is barred by limitation and defendants are entitled to protect their possession u/Sec.53-A of T.P Act - In this case, plaintiff issued notice to PHR on 3-8-1983 stipulating time as essence of suit contract and calling upon him to perform his part of contract within 15 of receipt of said notice - Inspite of exchange of notices between parties neither of parties to suit contract approached any court for specific performance of Ex.B.1 within 3 years Ex.A.1 notice or E.A.2 reply notice - Therefore it follows that PHR's right to obtain register sale deed to suit land in pursuance of Ex.B.1 agrement stood extinguished - When suit agreement stood cancelled and when right of PHR to obtain registered sale deed stood extinguished, defendants are not entitled to resist present suit for possession filed by plaintiff taking protection u/Sec.53-A T.P. Act - In this case, right to seek possession of suit property accrued to plaintiff only on date of Ex.A.3 consequential notice cancelling contract, or at best 15 days of receipt of Ex.A.1 notice, dt:3-8-1983 whereby plaintiff stipulated condition that time is essence of suit contract - In this case, suit filed on 4-11-1992 is well within period of limitation in view of Art.66 of Schedule to Limitation Act which prescribed period of limitation of 12 years for filing suit for possession of immovable property when plaintiff became entitled for possession by reason of any forfeiture or breach of condition - This is not suit for cancellation or setting aside instrument or decree or for recession of Ex.B.1 contract - Therefore Art.59 of Schedule has no application to present suit which is one framed for recovery of possession and consequential mesne profits for period of three years prior to filing of suit - Decision of lower appellate Court is in accordance with factual scenario and also legal provisions attracting said facts - Decision of lower appellate Court justified - Second appeal, dismissed. **Sangam Anantharavamma Vs. Peesapati Amaravathanulu 2013(1) Law Summary (A.P.) 32 = 2013(1) ALD 723 = 2013(2) ALT 234 = AIR 2013 (NOC) 242 (AP).**

—Art.61(a) of Schedule - Appellant/plaintiff borrowed amount from defendant and executed Ex.B.1 document styling same as "Avadhi Vikraya patram", for Rs.5000 conveying suit property of Ac.1.14, with condition that in case she repays Rs.5,000/- to defendant within 3 years thereof, then property has to be reconveyed to her by defendant - Plaintiff got issued notice demanding reconveyance after receiving Rs.5000/- from her and subsequently deposited Rs.5000/- in Bank in name of Advocate and filed suit - Defendant resisted suit on ground that Ex.B.1 is not a mortgage deed by

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way of conditional sale and it is an outright sale with condition to reconvey property in case consideration of Rs.5000 was repaid within 3 years of that date and since defendant did not repay amount within stipulated time in Ex.B.1, she isnot entitled for reconveyance of property in her favour - Trial Court negatived plaintiff's claim and lower appellate Court, dismissed Appeal - Hence present, Second Appeal - In this case, both Courts below came to conclusion that it is a time bound sale deed and that it is not a conditional mortgage deed - Though description of document in Telugu predominantly is a time bound sale deed, it is not as such and it is only a mortgage deed primarily - Therefore, interpretation of Ex.B.1 by Courts below as a sale deed with a term for reconveyance in case condition specified therein is fulfilled within stipulated time, is incorrect interpretation of document - It is well settled principle of law that once a transaction is mortgage is continues to be a mortgage - Under Art.61-A of Schedule to Limitation Act, 1963, a mortgagor is entitled to file suit for redemption of recovery of immovable property mortgaged within 30 years from date when right to redeem or to recover possession accrues and said period of limitation of 30 years cannot be curtailed by agreement by limiting same to 3 years in Ex.B.1 document - In view of Art.61(a) of Schedule to Limitation Act, appellant/plaintiff is having right to mortgage covered by Ex.B.1 document within 30 years of same - Therefore appellant/plaintiff is entitled to file present suit for redemption and to demand execution of redemption deed or reconveyance deed by defendant in her favour and consequently to recover possession of suit property from defendant - Both Courts below failed to interpret Ex.B.1 document in right direction and came to erroneous conclusion on nature of Ex.B.1 and it made both Courts to non-suit plaintiff erroneously - Judgments and decrees passed by both Courts below, set aside - Second appeal, allowed. **Sannappa Nagamma Vs. Sapatla Pakkirappa 2013(3) Law Summary (A.P.) 128 = 2013(6) ALD 791 = 2013(6) ALT 328.**

—Art.65 - "Adverse possession"- Claim for adverse possession against Government - Govt. allotted land for enjoyment for a period of 15 years - Land was only for a limited period and was only for cultivation and it cannot be said that by said grant transferee has acquired absolute title to land in question from State Govt. - Therefore period of limitation, to claim adverse possession which would have been applicable in present case would be 30 years - Appeals, dismissed. **G.Krishna Reddy Vs. Sajjappa (D) by LRs. 2011(3) Law Summary (S.C.) 64 = AIR 2011 SC 2762 = 2011 AIR SCW 4406 = 2011(6) ALD 95 (SC).**

— Art.65 - "Adverse Possession" - Appellant/ Plaintiff filed suit for declaration and possession - Trial Court dismissed suit on ground that defendants are shown to be in possession for more than 12 years prior to filing of suit and hence held that defendants acquired titled by Adverse Possession - In this case, trial Court failed to notice all the aspects and not discussed or bestowed its attention to crucial documents and pleadings - In the absence of any plea of title set up by defendants, title of plaintiff has to be held to have been established.

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"ADVERSE POSSESSION" - In this case adverse possession as pleaded by defendants is firstly neither against true owner nor against person having interest in property - Hence finding of trail Court upholding adverse possession pleaded by defendants merely on ground that defendants were in possession since 1977 is clearly erroneous and unsustainable as mere possession for any length of time would not convert into adverse possession - Appellant/Plaintiff is entitled to declaration and possession and suit decreed as prayed for to extent of relief of declaration and possession - Appeal allowed. **Naseeb Khatoon Vs. Syed Abdul Aziz 2014(1) Law Summary (A.P.) 187 = 2014(3) ALD 297 = 2014(3) ALT 620.**

—Arts.135 & 136 - Petitioner/plaintiff filed suit against respondent/defendant for relief of perpetual and mandatory injunction - Trial Court decreed suit - Appeal preferred by defendant, dismissed - Petitioner filed E.P in so far as it relates to mandatory injunction as well as recovery of costs - Executing Court dismissed E.P as time barred applying Article 135 - Petitioner contends that executing Court not justified in applying Art.135 though E.P filed for enforcement of mandatory injunction as well as recovery of costs - Limitation Act prescribes different periods of limitation for enforcement of decrees; for mandatory injunction on one hand, and other categories of decrees on the other hand - For former, limitation is three years under Art.135 and for latter, i.e., decrees of other categories limitation is 12 years under Art.136 - In this case, concentration is only upon enforcement of decree for mandatory injunction - Therefore, E.P squarely covered by Art.135 - Order of executing Court - Justified - Revision, dismissed. **Jada Chennaiah Vs. Jada Venkata Subbaiah 2010(1) Law Summary (A.P.) 427.**

—and CIVIL PROCEDURE CODE, Or.34, Rule, 5 - First respondent filed suit seeking recovery of amount on the basis of a promissory note secured by mortgage of said property and suit was decreed - Wife of petitioner filed E.A. and when same was dismissed, appeal filed, and same was also dismissed by judgment and decree, confirming order passed by lower Court - Petitioner filed E.A. under Order 21 Rule 90 of CPC to set aside sale of property held on 21.08.2009 and same was dismissed - Thereafter, children filed a petition for setting aside sale in E.A., as aforesaid, and same was also dismissed, against which present civil revision filed - As a last attempt, petitioner filed E.A. seeking permission to deposit money before confirmation of sale - Sale certificate was issued and application in E.A. was dismissed on same day, by closing petition as infractuous - But, it was made subject to result of Civil Revision.

E.A. filed by children of petitioner was dismissed on ground that sale was held and no amount was deposited by them either before 30 days or at least before 60 days - It was also noted that their mother earlier filed claim petition and same was dismissed - Their father also filed a petition under Order 21 Rule 90 of CPC and same was also dismissed - In view of same, ignorance of execution proceedings pleading by them was held to be not genuine and petition was barred by limitation.

MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007,

Held, lower Court dismissed application of children of petitioner – Hence, Court dismissed Civil Revision.

Regarding another Civil Revision, it was held that though this is not a case of appeal against confirmation of sale, since order passed by Executing Court in dismissing application for depositing money was challenged, benefit of said ratio laid down by Supreme Court can be extended to this case also - Courts would be jealous of protecting the interest of mortgagor who would be willing to deposit the amount of mortgage money - No doubt petitioner made several attempts to defeat the sale without depositing any amount in past - But when petitioner came forward now to deposit sale amount, he should not be deprived of his right to retain property - In view of failure of Court to follow procedure provided in Rule 5 of Order 34, order passed by Executing Court, is set aside and application is remanded to Executing Court for passing an order in accordance with law within a period of 60 days from date of receipt of a copy of order - In view of setting aside above order passed by Executing Court, order passed in E.P. on same day shall also be required to be set aside even though there was no separate challenge to said order - Executing Court shall first decide E.A. and as a consequence thereof should pass orders in E.P., C.R.P. is, accordingly, allowed. **M.Srividya Chowdary Vs. M.Sreenivasulu 2016(1) Law Summary (A.P.) 1 = 2016(2) ALD 751.**

MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007,

—-Secs.22(2), 23 - **ANDHRA PRADESH MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS RULES, 2011 - BENAMI TRANSACTIONS (PROHIBITION) ACT 1988,** sub-section (3)(b) of Section 4 - There is no transfer of property by respondent No.3 in favour of petitioner at any point of time - Though subject property is registered in name of respondent No.3, it is specific case of petitioner that he has paid sale consideration through cheques issued by him out of his own earnings - However, respondent No.3 maintained that as petitioner was looking after finances of family, he has issued cheques though money belonged to herself - It is further pleading of petitioner that respondent No.3 is holding property as a benami for him and therefore transaction falls under sub-section (3)(b) of Section 4 of Benami Transactions (Prohibition) Act 1988.

Held, question as to whether phrase 'protection' occurring in sub-section (2) of Section 22 of the Act and Chapter-VI of Rules includes power to order eviction of a person in physical possession of property claimed by a senior citizen and handover same to him/her, is a moot question which need not be adjudicated in present case as impugned order was not passed in terms of action plan under Rule 21 of the Rules, but dehors the same - This is evident from fact that respondent No.3 has made her application under Chapter-V of the Act and respondent No.2 has relied upon sub-section (2) of Section 22 of the Act - Respondent No.2 has, however, lost sight of fact that State Government has come out with an action plan vide G.O.Ms.No.49,

MEDICAL COUNCIL ACT:

dated 28-12-2011 under said provision and in that action plan he figures nowhere - Therefore, respondent No.2 has no jurisdiction whatsoever to allow application made by respondent No.3 for reliefs of evicting petitioner and handing over of title deeds kept in his custody to him.

Unless case falls directly under Section 23 of the Act, Tribunal cannot exercise its power for adjudicating disputes concerning properties of senior citizens - On analysis as above, this Court has no hesitation to hold that impugned order is ultra vires powers of respondent No.2 and same is accordingly quashed, leaving respondent No.3 free to approach the competent Court of law for enforcement of her rights and redressal of her grievance qua the subject property - Subject to the liberty given to respondent No.3 as above, Writ petition is allowed. **M.P.Tej Babu Vs. State of Telangana 2016(2) Law Summary (A.P.) 13 = 2016(3) ALT 697 = 2016(3) ALD 150.**

MEDICAL COUNCIL ACT:

—Secs.10A & 19A - Establishment of Medical Colleges Regulation (Amendment 2010, Part - II), Cl.8.3 - CONSTITUTION OF INDIA, Art.32 - "Establishment of Medical College & Hospital" - "Renewal of admission for intake of students - Board of Governors of MCI revoking letter of permission accorded for renewal of admission of 2nd Batch of Students on account of lack of facilities in petitioners' College even for admission of 50 students and also on account of deficiencies and forgery - DUTY OF INSPECTION TEAM - Medical Council Act especially Sec.10A mandates that when new medical college to be established or number of seats to be increased, permission of Central Govt., is a prequisite - Sec.19A oblizes MCI to prescribe minimum required standards for medical education and recommendataion made by MCI to Central Govt., carry considerable weight, it being an Expert Body - Mushrooming of large number of Medical, Engineering, Nursing and Pharmaceutical Colleges which has definitely affected quality of education in this Country, especially in medical field which call for serious introspection - Private Medical Educational Institutions are always demanding more number of seats in their Colleges even though many of them have no sufficient infrastructural facilities, clinical materials, faculty members - Reports appear in every now and then that many of private institutions which are conducting Medical Colleges are demanding lakhs and some times crores of rupees for M.B.B.S and Post-Graduate admission in their respective Colleges - Central Govt., Ministry of Health and Family Welfare, CBI or Intelligence Wing have to take effective steps undo to such unethical practices or else self-financing institutions will turn to be students financing institutions -In this case, no good reason found to invoke Art.32 of Constitution of India and none of fundamental rights guaranteed to petitioners stand violated - Petition, dismissed. **Rohilkhand Medical College & Hospital, Bareilly Vs. M.C.I. of India 2013(3) Law Summary (S.C.) 71.**

MINES AND MINERALS REGULATION AND DEVELOPMENT ACT, 1957

MEDICAL NEGLIGENCE:

——Appeal against the impugned decree and judgment of Trial Court which held 1st defendant liable for medical negligence resulting in the death of Appellant's wife - Held, failure to take necessary care for removal of placenta after birth of child within 30 minutes which is a normal period of waiting for delivery of placenta would amount to failure of duty doctor to take necessary care and caution as an ordinary prudent doctor, which resulted in post delivery complications and Appellant's wife died due to such complications - Such omission amounts to negligence - Trial court's judgment upheld - Appeal Dismissed - Motor Vehicles Act, 1988- Principles laid down in the Act can be adapted even to the cases of medical negligence while awarding damages. **State of A.P. Vs. Ranganna 2014(2) Law Summary (A.P.) 397 = 2014(6) ALD 392 = 2014(6) ALT 225.**

MINES AND MINERALS REGULATION AND DEVELOPMENT ACT, 1957 - and A.P. MINOR MINERAL CONCESSION RULES, 1966, Rule 13 (1) and 15 & 35 - Basing on report of Tahsildar Deputy Director of Mines granted quarry lease in favour of petitioner - District Collector asked A.D Mines not to permit quarry operations on ground that Tahsildar issued NOC without verifying rights of pattadars of land and without obtaining prior permission of District Collector and on the ground of contemplation of full-fledged enquiry -As a sequel to same, A.D. Mines directing petitioner to stop quarrying.

Petitioner contends that action impugned is not in consonance with order of State Govt. issued vide G.O.Ms.No. 181, since it is never the case of respondent that subject properties are Govt., land and only after due and thorough verification of connected revenue records, Tahsildar issued NOC and forwarded same to District Collector.

Respondent contends that present writ petition is not maintainable in view of availability of alternative remedy of Appeal to Director of Mines under Rule 35 of A.P. Minor Mineral Concession Rules, 1966 and since Tahsilder issued NOC without properly verifying records and without verifying properly ownership and in view of enquiry already ordered by District Collector, appointing RDO as a Enquiry Officer.

Held, petition submitted quarry lease application before Mines Department and it is sought information from Tahsildar as to classification and availability of land for grant of quarry lease and Tahsildar granted NOC while categorically stating that subject land is patta land - Thereafter, after a lapse of nearly one year District Collector, asked Mines Department, not to allow any quarry operations, since Tahsildar without properly verifying as to right of pattadars and without obtaining prior permission of District Collector granted lease - A perusal of contents of G.O.Ms.No.181, is clear it is obligatory and mandatory on the part of District Collector to respond on the report of Tahsildar within 30 days from the date of receipt of report from Tahsildar, but in the instant case, District Collector, did neither act nor respond in manner indicated in G.O.Ms.No.181 - Further held, impugned action was not preceded by any notice and opportunity of

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957:

being heard, as such same is in violation of principles of natural justice - Hence, writ petition is allowed, setting aside proceedings of District Collector and A.D. Mines. **BSCPL Infrastructure Limited Vs. Govt. of A.P. 2016(1) Law Summary (A.P.) 367 = 2016(3) ALD 330.**

MINERAL CONCESSION RULES, 1960:

—R.37(1), 37(1-A) & 37(2), 37(3) - INDIAN PARTNERSHIP ACT, 1932, Secs.59,63 - CONSTITUTION OF INDIA, Art.226 - Allegation of forgery and other rights of parties under Indian Partnership Act have to be decided by a competent judicial forum, but not by Government - Constitution of India, Art.226 - Mineral Concession Rules,R.37(1), 37(1-A) & 37(2), 37(3) and Indian Partnership Act, Secs.59 & 63 - Procedural safeguard contained in Proviso to said sub-rule has to be followed by Government which was not done in instant case - Hence, principles of natural justice have been clearly violated while passed impugned order - Impugned memo is accordingly set aside - Writ petition, allowed. **B.Janga Reddy Vs. Government of A.P. 2014(3) Law Summary (A.P.) 8 = 2014(6) ALD 475 = 2014(5) ALT 431.**

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957:

—Sec.4A& 5 - MINERAL CONCESSION RULES, 1960, Rule 27 (5) - CONSTITUTION OF INDIA, Art.246, Schedule VII, List I, Entry-54 - G.O.Rt.T.No. 723, Industries & Commerce (M.III) Dept., Dt.25-11-2009 - Granting and termination of "lease" - Govt. of A.P. issued G.O. suspending mining operation of petitioner-Company and others - Mines and Minerals Act and Mineral concession Rules does not indicate any exclusive power vests with State Govt., to suspend mining operations unilaterally - Central Govt., has got power to pass any orders unilaterally - It is only Central Govt., which has got power to pass any orders as it is authority which has to give approval for granting of prospecting licence or mining licence and if Central Govt., refuses to approve proposal made by State Govt., State Govt., cannot grant such licence - Even if termination of such licence or lease is concerned Central Govt., can order for premature termination after consultation with State Govt., after giving reasonable notice to effecting party - Contention that State Govt., got inherent power to pass any order including suspending mining operations is unsustainable - Action of State Govt., in not issuing any notice to affected parties can be termed as violative of principles of natural justice as leases in present case are statutory leases in favour of petitioners under provisions of Mines and Mineral Act, 1957, which legislation is enacted by Union Govt., in pursuance of Entry -54 of VII Schedule - State Govt., has no power whatsoever in passing impugned G.O., No.723, as it is violative of principles of natural justice and therefore said G.O is liable to be set aside - There is no power vested with State Govt., to order for suspension of mining operation unilaterally and issue to executive orders which runs contrary to provisions of Act and Rules - Impugned G.O. Rt.No.723 is unsustainable and accordingly set aside - Writ petitions, allowed. **Obulapuram Mining Co., Pvt. Ltd., Bellary Vs. Govt. of A.P. 2010(2) Law Summary (A.P.) 334.**

MOTOR VEHICLES ACT, 1988:

—Govt., Circulars - Petitioners granted quarry lease to certain extent of land in particular Survey for extracting black granite - District Collector passing order for alienation of Ac.0.20 cents in same Survey No. for construction of Temple - Petitioners contend that deity was installed not out of any devotion but with an object of causing hindrance for quarrying activity and that Supreme Court issued specific directions prohibiting assignments of land for construction of Temples or other places of worship at public places and that Govt. prohibited mineral bearing areas from being put to other use - If one applies principle of *"ajusdem generis",* it becomes clear that public places mentioned in order must be akin to roads and parks and not waste poramboke lands - Therefore order passed by Supreme Court does not apply to facts of case - In this case, that land alienated to respondent 6 & 7 for construction of Temple bears any mineral and it is small extent of Ac.0.08 guntas out of several acres - Neither petitioners nor any individual has submitted an application for grant of lease of said land - Impugned order of Collector - Justified - Writ petition, dismissed. **I.Renuka Vs. Collector 2010(1) Law Summary (A.P.) 170.**

MOTOR VEHICLES ACT, 1988:

—Motor accident – Deceased aged 70 years, mother of claimants, while proceeding by walk, RTC bus came with high speed dashed against her causing death – Tribunal dismissed petition filed by daughters of deceased holding that petitioners failed to establish that they are legal heirs of deceased and that there is no evidence to show that there was rash and negligence on part of driver of bus - In this case except sole testimony of P.W.1 there is no evidence placed by petitioners to prove accident – Though no eye witnesses were examined on behalf of petitioner, circumstances would disclose that accident occurred due to rashness and negligence on part of driver of bus – Though petitioner claimed Rs.3 lacks by contending that deceased used to earn Rs.3,000/- per month, they did not adduce any evidence as to what is occupation of deceased and on what sources she was earning Rs.3,000/- per month – Since deceased was 70 years old, there is no possibility of applying any multiplier – Hence petitioners are awarded no fault liability compensation of Rs.50,000 - Order of Tribunal, set aside – CMA, allowed in part. **G.Ramulamma Vs. Depot Manager, APSRTC,Yadagirigutta 2008(3) Law Summary (A.P.) 279 = 2009(1) ALT 442 = 2009(1) ALD 262 = 2008(4) APLJ 9 (SN).**

—Motor accident - "Composite negligence" - Appellant/claimant, cleaner of Tractor sustained injuries when truck met with collision head on with an Oil tanker coming in opposite direction and had suffered permanent disability - Tribunal arrived at total compensation payable to claimant at Rs.1,25,000/- and awarded Rs.62,500/- representing 50% thereof, accepting contention of Insurance Company that without impleading owner of Oil tanker and its insurer which is other vehicle involved in accident, 2nd respondent/ Insurance Company cannot be mulcted with accountability and liability to pay for entire quantum of compensation - When a person is injured without his playing directly or indirectly any role or without any negligence on his part, but yet as a result of negligence on part of another person or due to negligence of two or more persons, then in such a

MOTOR VEHICLES ACT, 1988:

case it cannot be construed as case of contributory negligence - Therefore, without there being any part or role played in accident in question, a third party cannot be described as a contributor or causative factor for injury - In case of composite negligence, person who has been wronged has a choice of initiating proceedings against all or any of more than one or wrong doers - Every wrong doer becomes liable for whole of damage that has been caused or meted out - CONCEPT OF COMPOSITE NEGLIGENCE - Explained - Where negligent acts of two or more independent persons have between them caused damage to a third, sufferer is not driven to apply any such analysis to find out whom he can sue - Those who are sued cannot insist on having others joined as defendants - Mere omission to sue some of them will not disentitle plaintiff from claiming full relief against those who are sued - Only in cases of contributory negligence, contributor of such negligence cannot make a claim for payment of compensation in whole without accounting for his part of contribution - In cases of composite negligence, suitor, having no role to play either directly or remotely and having not contributed any negligence to causative factors of injury, is therefore entitled to seek compensation from all of them or any of them - It is a choice left to him - Appellant is entitled to recover whole of compensation from 1st respondent, owner of truck - Since 2nd respondent-Insurer had undertaken to indemnify 1st respodent, liability in this regard becomes joint and several - Balance 50% compensation of Rs.62,500/- shall also liable to be paid to appellant - CMA, allowed. **Sombathina Ramu Vs.T. Srinivasulu 2008(1) Law Summary (A.P.) 440 = 2008(3) ALD 362 = 2008(4) ALT 14 = 2008(2) APLJ 3.**

—Deceased owner of vehicle aged 42 years doing business died in accident while transporting mangos in vehicle - Tribunal awarding compensation of Rs.1.8 lakhs to claimants as against claim of Rs.5 lakhs - Insurance Company contends that owner of vehicle is not covered by policy and therefore awarded by tribunal is liable to be set aside - No liability can be fastened against insurance Company for death of owner of vehicle unless an extra premium is paid in Insurance Company covering risk of owner of vehicle also - In this case admittedly no such premium was paid and as such tribula not justified in fastening liability against Insurance Company to pay compensation - CMA allowed. **Divisional Manager, National Insurance Co., Ltd., Vs. Mahamooda 2009(1) Law Summary (A.P.) 227 = 2009(2) ALD 489 = 2009(3) ALT 682.**

—— "Motor Accident" - Death of boy aged 7 years- Accident took place due to rash and negligent driving of driver of vehicle in which deceased boy was travelling - Tribunal awarded compensation of Rs.1.5 lakhs - Appellant/Insurance Company contends that compensation awarded to petitioner is excessive - Supreme Court in categorical terms held that since there were huge uncertainties in drawing conclusions on prospectus of child with regard to his academic and professional career, assessment should be carefully made - Tribunal is required to take into consideration various aspects such as family back ground of child, financial and other status of parents and future potentialities of deceased child - Compensation of Rs.1.5 lakhs awarded by Tribunal - Justified - M.A.C.M.A, dismissed. **New India Assurance Co., Ltd. Vs. P.Raju 2010(1) Law Summary (A.P.) 447.**

MOTOR VEHICLES ACT, 1988:

—"Motor accident" - Deceased, while proceeding on a bicycle, a car owned by 1st respondent insured with 2nd respondent, came in rash and negligent manner and hit him causing death - Appellants, wife, father and son of deceased filed O.P claiming compensation of Rs.5 lakhs - Tribunal awarded a sum of Rs.4,41,500/- against 1st respondent and exonerated 2nd respondent from liability - Hence, present appeal - 2nd respondent/ Insurance Company contends that Tribunal recorded a clear finding to effect that vehicle was being used for commercial purposes and licence held by driver did not enable him to drive such vehicle and that there did not exist valid insurance policy - In this case, after verification of certified copy of insurance policy that policy found genuine and therefore it can be received as additional evidence as Ex.B.3 straightaway - Once it emerges that vehicle was covered by policy, as on date of accident, 2nd respondent/Insurance Company would be liable to insure the 1st respondent owner of vehicle - Tribunal held that driving licence was only for light motor vehicles and driver not permitted to drive a transport vehicle - This view of Tribunal is unsustainable since connotation "light motor vehicle" is relevant in context of size and make of vehicle and not use, to which it is put - Expression "transport vehicle" on other hand deals with use and not size of vehicle - Even a small vehicle like, Autorickshaw can be treated as transport vehicle because of its use whereas a big sedan or can be used as private vehicle - LMV licence issued to driver enables to drive vehicle of that category - Admittedly, vehicle involved in accident was light motor vehicle and Ex.B.1 is LMV licence - Therefore reasons assigned by Tribunal, unsustainable - 2nd respondent is liable to pay compensation awarded by Tribunal - CMA, allowed. **E.Rajeswari Vs. T.S.Sekhar 2010(3) Law Summary (A.P.) 321 = 2011(1) ALD 48.**

—"Motor accident" - Deceased while bringing fish breed in Mini lorry sustained injuries in accident and died due to rash and negligent driving of driver of lorry - Tribunal awarded compensation of Rs.2 lakhs to claimants - Appellant/claimants filed present appeal for non-fastening liability on respondent 3 & 4 insurance Company and for enhancement of compensation - *Amicus curiae* contends that though deceased was travelling alongwith goods i.e., fish breed in goods carriage vehicle, Tribunal erred in holding that insurance Company does not cover risk of owner of goods - Insurance Company contend that insurance Company is not liable to pay compensation before judgment of Apex Court in BALJIT KAUR'S CASE and after judgment only principle of pay and recovery came into existence and as accident occurred in 2000 insurance Company is not liable to pay compensation - *Amicus curiae* contends that P.Ws.1 & 2 have categorically stated that deceased was travelling alongwith goods in crime vehicle at time of accident, insurance Company is liable to pay compensation - Therefore as per oral and document evidence deceased was travelling alongwith goods at time of accident - To rebut evidence of P.Ws.1 & 2 respondent/Insurance Company have neither adduced any evidence nor elicited from their cross-examination that deceased was unauthorised passenger in goods vehicle at time of accident, except suggesting

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that accident occurred due to overload of vehicle and deceased boarded vehicle as against rules - In view of judgment of Apex Court in BALJIT KAUR'S CASE respondent Nos.3 & 4, Insurance Company are directed to pay compensation to claimants and recover same from owner of crime vehicle - So far as enhancement of compensation is concerned Tribunal awarded just and reasonable compensation of Rs.2.16 lakhs under all heads and there is no need to interfere with same - CMA, allowed in part. **Mamindla Padma Vs. Kanakadurga Leasing and Finance Limited, 2011(2) Law Summary (A.P.) 149 = 2011(4) ALD 249.**

—"Motor accident" - "Composite negligence" - Claimant while travelling in taxi sustained grievous injuries and simple injuries including fracture of skull bones in accident occurred due to negligence of drivers of taxi and also lorries - Tribunal awarded compensation of Rs.8,95,000/- as against claim of Rs.20 lakhs, directing respondents nos.1 to 3 to pay 5/6th share of compensation and respondent nos.4 to 6 to pay 1/6th of compensation to claimant with proportionate costs and interest - Principle, where there is "composite negligence" all the wrong doers are equally liable for payment of compensation to claimant, applies in present case, since both drivers of lorry and taxi are responsible for accident and claimant to a passenger in taxi - In this case, Tribunal erred in apportioning payment of compensation at 5/6th share by respondent nos.1 to 3 on one hand and 1/6th on respondent nos.4 to 6 on other, instead of fastening liability equally on all respondents - Therefore liability for payment of compensation to claimants is fastened on all respondents equally directing respondents 1 to 3 to pay 50% of total compensation awarded by Tribunal to claimant and remaining 50% by respondent 4 to 6 with proportionate costs - Appeal allowed in part. **New India Assurance Co., Limited, Bhimavaram Vs. Dulam Nageswara Rao 2011(3) Law Summary (A.P.) 144 = 2011(6) ALD 575.**

—"Motor accident" - "Enhancement of compensation" - Deceased aged 40 years, house wife died in accident while going on scooter - Husband and four children claiming compensation - Tribunal awarded total compensation of Rs.1,02,100/- against claim of Rs.2 lakhs applying multiplier "12.79" - Hence claimants filed present MACMA for enhancement of compensation - As per decision of Apex Court monthly income of house wife has to be fixed at Rs.3000/- even on a modest estimation for rendering multifarious services by her for managing entire family and appropriate multiplier for a person aged between 36 to 40 is "15" - Compensation awarded by Tribunal is inadequate and claimants are entitled to a total compensation of Rs.4,30,000/- - Court is required to award just compensation and is enjoined with power of awarding any amount in excess of amount claimed by claimants which in its consideration is just and reasonable and Court is not bound by pleadings of parties so far total amount of compensation is concerned - Claimants are awarded Rs.4,30,000/- towards compensation which is more than claim made by claimants - Appeal, allowed.

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Mohd.Nizamuddin Vs. J.Satyanarayana Reddy 2011(3) Law Summary (A.P.) 91 = 2011(6) ALD 402.

—"Motor Accident" - Deceased 3rd year B.E. (Mechanical) student, while proceeding on his motor cycle, A.P.S.R.T.C Bus driven in a rash and negligent manner came from behind and hit motor cycle as result of which, deceased fell down and died on spot - Tribunal awarded compensation of Rs.9,02,000/- as against claim of Rs.10 lakhs - A.P.S.R.T.C. conteneds that while deceased was proceeding on motor cycle he applied breaks suddenly due to which he fell down and bus which was comming from behind dashed deceased and that there is inconsistency in FIR and averments in claim petition and therefore it has to be held that accident was not due to fault of driver of Bus - In this case, Tribunal correctly held that accident was due to rash and negligent driving of driver of Bus on being arrived at proper analysis of evidence of record as regards quantum of compensation - Monthly income of deceased was Rs.12,000/- and anual income comes to Rs.1,44,000/- from this half of amount shall be deducted towards his personal and living expenditure which comes to Rs.72,000 to arrived at loss of dependency multipler relevant age of mother (50 years) has to be selected which is 13 - In all claimants are entitled compensation of Rs.9,46,000/ - - Therefore enhancement of compensation would be Rs.9,46,000/- - Rs.9,02,000 = Rs.44,000/- - Appeal filed by APSRTC dismissed - Cross-objections filed by Claimants partly allowed. **Managing Director, APSRTC Vs. C.Rangaswamy 2012(2) Law Summary (A.P.) 136.**

—"Motor accident" - **CIVIL PROCEDURE CODE,** Or.6, Rule 4 - Deceased while proceeding on Scooter, Tractor insured with appellant dashed against Scooter caused accident resulting death of deceased - Legal representatives of deceased filed O.P. claiming compensation of Rs.4 lakhs - Tribunal awarded compensation of Rs.2,33,220/- to claimants - Appellant/Insurance Company contends that there is no insurance coverage of tractor as on 24-1-2002, on date of accident and that insurance policy was taken out on 29-1-2002, but an official of appellant-company issued policy as though it is in force with effect from 24-1-2002 and that Tribunal did not addressed this vital issue and held that appellant held that appellant is also liable to pay compensation and therefore permission may be accorded to appellant to proceed against owner of vehicle to recover amount, in case it is required to pay and that rate of interest awarded is also excessive - Respondent/owner of vehicle filed counter clearly stating that insurance policy was taken at 10.45 am on 24-1-2002 and that accident occurred at 7.30 p.m. on that day and that policy could become operative on expiry of 24 hours after it was issued - Claimants contend that accident occurred on account of rash and negligence on part of driver of tract and that there existed insurance policy issued by appellant covering tractor - In this case, a perusal of Ex.B.1, policy discloses that it was issued on 24-1-2002 and is valid till 23-1-2003 and it also reflects that receipt for premium was generated on 29-1-2002 and that date of receipt hardly would

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have any bearing upon date with effect from which policy would become operational and that there is nothing in law, which would suggest that a policy would become enforceable from date of issuance of receipt - In this case, there is absolutely no basis or foundation for plea advanced by appellant that policy obtained by fraud or misrepresentation - Or.6, Rule 4 makes this aspect of plea of fraud or misrepresentation or like must plead with relevant facts with required amount of detail - Unless opposite party is made aware of allegations of fraud against him he would not be in a position to contradict same and therefore unless a plea of fraud or misrepresentation is specifically taken, it cannot be permitted to be raised or expanded at a later stage - Wherever insurance company takes specific plea in counter/written statement that insurance policy was obtained or procured by playing fraud or misrepresentation, an issue deserves to be frame on that and insurance company can certainly establish its plea, by adducing evidence - In this case, only step which appellant would have taken in this regard, against owner of vehicle was to file a suit and even to file such a suit limitation would have started from date on which appellant became aware of relevant facts - Obviously such facts became evident in year 2002 when claim was made on basis of policy and limitation had expired and High Court cannot make any cause of action aline, if it was already barred by limitation - However, interest awarded by Tribunal reduced from 9% to 7% - Appeals, partly allowed. **United India Insurance Co. Ltd., Vs. Kaki Prabhakar, 2012(1) Law Summary 77 = 2012(2) ALD 6 = 2012(2) ALT 70.**

—"Motor accident" - Appellant L.K.G. student was hit by tractor, sustained serious injuries on right leg and right hand, and he suffered paralysis and his left eye was totally affected - Tribunal awarded compensation of Rs.1.25 lakhs towards compensation as against claim of Rs.3 lakhs - Single Judge of High Court allowed AAO filed by 1st respondent/Insurance Company taking view that vehicle not insured with first respondent - Appellant contends that 1st respondent did not raise plea of absence of insurance policy and that owner of vehicle, 2nd respondent did not furnish any information about occurrence of accident thereby implying existence of insurance coverage and that no oral or documentary evidence was adduced to substantiate plea as to absence of insurance coverage and that view taken by single Judge cannot be countenanced - 1st respondent/Insurance Company contends that neither policy of insurance was filed into Court nor particulars thereof were furnished and in that view of matter 1st respondent cannot be held liable - In this case, detailed discussion was undertaken by Tribunal about existence of Policy - It is on basis of information furnished by Police and M.V Inspector that name of 1st respondent/Insurance Company was mentioned in column no.17 of claim petition and in that column particulars of 1st respondent have been mentioned and that very fact that 1st respondent pleaded that liability is subject to statutory limits and policy conditions, discloses, that he did not take an unequivocal plea of non existence of insurance policy - At any rate, law permits an Insurance Company to pay amount and recover same from owner of vehicle

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in event of there being any defect in policy or liability having been improperly fastened upon Insurance Company - Therefore, 1st respondent is liable to pay amount covered by order passed by Tribunal - Judgment in AAO, set aside - Order passed by Tribunal shall become enforceable in all respects - Appeal, allowed. **Imran Basha Vs. M/s. United India Insurance Company Lt., 2013(3) Law Summary (A.P.) 316 =2014(1) ALD 547 = 2014(1) ALT 641.**

—"Payment of interest on compensation amount to minor children" - On death of husband Court awarded compensation to wife and two minor daughters and father directing that shares of two minor daughters shall be kept in fixed deposit - Petitioner filed I.A praying to permit her to withdraw amount with interest on shares of her minor daughtrs to meet eduation expenses of her daughters - Court dismissed Appliation simply on ground that there is no clause in Award permitting petitionerf to withdraw interest - When mothr is seeking permission to withdraw accrued interest for purpose meeting education expenses for minor children, lower Court ought to have allowed her to withdraw accrued interest - Petitioner is permitted to withdraw interest accrued on shares of her minor daughters - Revision allowed. **G.Sumathi Vs. The National Insurance Co., Ltd., 2013(2) Law Summary (A.P.) 263 = 2013(5) ALD 565.**

—Accident Claims – Deceased died in an accident leaving behind him his wife and three daughters who are majors and married – Tribunal awarded Rs.6,54,000 with interest @ 7.5 p.a - Appeal against the award by the insurance company/appellants on several grounds and to reduce compensation - Deceased was running one X-ray Laboratory and there was none to look after same after his death, dependants suffered income loss – Tribunal righty considered that point and fixed monthly income from X-ray Lab at Rs.6000/- but there a was no basis for it, neither income proof nor any record or licence to run it - But deceased was B.Sc., graduate and an amount of Rs.5100 instead of Rs.6000/- can be fixed - Defendants only wife, among 4 claimants - other 3 major married daughters also suffer for proportionate contribution of deceased - Accident Claim - Age of deceased – Disputed – Income tax return which was admitted by wife is not decisive – Date of Birth in birth certificate and driving licence are one and same and accordingly multiplier was correct and slightly reduced compensation of Rs.6,05,400/- was awarded - Appeal partly allowed. **New India Assurance Co., Ltd., Rajahmundry Vs. Bobba Bharathi 2014(2) Law Summary (A.P.) 152**

—-'Motor Accident' - Deceased aged 46 years, employee died in accident – Tribunal awarded Rs.22.10 Lakhs as compensation to claimants/appellants – High Court on appeal reduced compensation to Rs.13.90 Lakhs - Hence present appeal by claimants **-** Appellants contend that earning capacity of deceased was Rs.35,000 per month as per salary certificate and other documents but High Court without any reason, reduced compensation amount by fixing Rs.14,000/- as monthly salary of deceased

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– Similarly High Court has not even considered future prospects of deceased who died at young age of 46 years and also ignored fact that 12 years service was left for deceased on date of death - Total Compensation enhanced to Rs.29.30 Lakhs – Appeals are accordingly allowed. **Ramilaben Chinubhai Parmar Vs. National Insurance Company 2014(2) Law Summary (S.C.) 35.**

—Accidental death - Compensation awarded by the Tribunal on notional income of deceased - Appeal by Appellant/insurance company against compensation award as excessive and exorbitant - No independent appeal by claimants/dependants to enhance compensation awarded - Held, Tribunal had awarded lesser compensation than was assessed by High Court but as appeal was filed by Insurance Company, compensation cannot be enhanced - Appeal Dismissed. **New India Assurance Co., Ltd. Vs. Rajyalakshmi 2014(2) Law Summary (A.P.) 287.**

—Second Schedule – "Bus accident"- Tribunal granted Rs.2 lakhs against claim of Rs.2.88 lakhs claimed by Appellant, wife whose husband died in bus accident – Hence present Appeal by wife - Appellant contends that Tribunal having observed that claimant is entitled to Rs.2.88 lakhs ought to have granted said amount without restricting compensation to Rs.2 lakhs and that there is no bar to Tribunal to grant higher compensation than claimed by Claimants - Respondent/APSRTC contends that appellant ought to have filed amendment petition claiming enhancement of compensation and without doing so she cannot maintain appeal and that Tribunal selected multiplier of '16' has to be reduced to '15' - In this case, Tribunal basing on evidence on record held that claimant in fact is entitled to Rs.2.88 lakhs - However Tribunal pruned said amount to Rs.2 lakhs since claim of Appellant is only Rs.2 lakhs - Compensation enhanced to Rs.2.88 lakhs from Rs.2 lakhs - Appeal allowed. **Apparaju Sobha Rani Vs. Midiyam Rama Rao 2014(1) Law Summary (A.P.) 253.**

—There is no limitation for filing the claim petitions - Since there is no limitation for filing claim petitions, there may not be any limitation for filing the cross objections - It is clear from record that notice in appeal was served on the claimant on 22-03-2006 but he filed cross objections on 12-09-2014 - In view of the same, if there is any enhancement of compensation, the A.P.S.R.T.C. shall not be put to loss by directing it to pay interest for this period - Therefore, in case cross objections are allowed and any amount is enhanced, claimant shall not be entitled to interest on enhanced amount from 22-03-2006 to 12-09-2014 - It is not in dispute that angular fallen on ground at a great speed and after forcibly entered into bus, hit right leg of injured/claimant - From this it is clear that angular was not properly tied on top of bus - It is responsibility of driver and conductor to tie angular or any other object on top of bus - Whether it was tied by a passenger or any other person, responsibility lies on crew to examine all articles placed on top of the bus and see that no accident occurs, when bus is running speedily - Therefore, there is nothing on record to say that driver of bus is not responsible for the accident - Accordingly,

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MACMA is dismissed and Cross Objections are allowed, enhancing compensation from Rs.1,67,235/- to Rs.3,81,735/- - Claimant shall not be entitled for interest from 22-3-2006 to 12-9-2014 on enhanced amount – Enhanced compensation shall carry interest at 7.5% p.a. from date of filing of cross objections till date of realisation. **A.P.S.R.T.C. rep. by its M.D.,Hyderabad Vs. Muttukonda Tirupati Reddy 2015(1) Law Summary (A.P.) 216**

—-'Cross objections" - Short question that falls for consideration in this appeal is whether the registered owner of a vehicle is liable to pay compensation or a transferee from the registered owner, which is not recorded with the registration authorities is liable to pay compensation - Tribunal by its award observed that the appellant herein and the third respondent i.e. the financier and purchaser both are jointly and severally liable to pay the compensation awarded - Appellant financier aggrieved by the same, filed present appeal.

Held, hence it is clear that in the absence of taking any steps by registered owner for transfer of the vehicle, the registered owner would continue to be liable - Moreover, Tribunal has held that both the appellant and third respondent are jointly and severally liable to pay compensation - In above circumstances, it appears that there are no merits in appeal and accordingly it is liable to be dismissed. **Sri Phanidra Finance Corporation Vs. Gali Brahmanandham (died) 2015(1) Law Summary (A.P.) 411**

—Learned counsel for the Insurance Company submitted that since the deceased was working only as casual conductor his gross salary should not be taken into consideration - In fact, though the deceased was working as casual conductor there was every possibility of regularizing his services in future and in view of the same Court does not see any reason to accept the contention of learned counsel for the Insurance Company - Since the deceased was below 40 years of age, 50% has to be added as addition to the income of the deceased in view of the recent judgment of the Apex Court - Accordingly, M.A.C.M.A filed by the Insurance Company is dismissed and the Cross Objections filed by the claimants is allowed. **Divisional Manager, Oriental Insurance Co. Ltd. Vs. Nomula Uma Rani 2015(1) Law Summary (A.P.) 195**

—-An acid tanker being driven in a rash and negligent manner and at high speed came from opposite direction and dashed against the Qualis - As a result, a minor boy and his mother died on the spot and other persons travelling in Qualis sustained injuries - Tribunal, on appreciation of oral and documentary evidence, came to conclusion that driver of Qualis and the driver of the Acid Tanker are both responsible for accident and accordingly apportioned the negligence between them as 50:50 - On issue of compensation, the Tribunal awarded 1,60,000/- towards loss of dependency and 4,500/- towards funeral expenses and loss of estate - Claimants appealed against award of the Tribunal.

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Held, only eye-witness to accident is P.W.1 who was travelling in the Qualis that met with the accident - Admittedly, Acid Tanker is a heavy vehicle - It appears that there is nothing to disbelieve the version of P.W.1 and thus, it cannot be said that finding of the Tribunal on this issue is perverse and not based on evidence - Tribunal has to appreciate the evidence adduced before it - FIR and the chargesheet have to be considered in the light of other evidence adduced before Tribunal - When sole testimony of P.W.1 reveal that there was contributory negligence in occurrence of accident, the Tribunal is justified in believing the evidence of P.W.1, particularly, in the absence of any contra evidence - Therefore, this Court do not see any reason to disturb finding of the Tribunal on this aspect - In this case, deceased was aged about 16 years and he was studying 10th class - He was only son of his parents - Even if 10th class qualification is taken, deceased would have secured a job with minimum basic of Rs. 6000 per month - Even if 50% is deducted towards personal expenditure, the loss of earnings would be Rs. 3000/- per month and the annual loss would be Rs. 36,000/- - Appropriate multiplier applicable to the instant case is 18 - Thus total loss of earnings would come to Rs. 6,48,000/- - Claimants are also entitled for Rs. 1,00,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses - Thus the claimants are entitled for a total compensation of Rs. 7,73,000/ - - Out of the amount now awarded, first claimant (father) is entitled for Rs. 5,79, 750/- and the second claimant (sister) is entitled for Rs.1,93,250 - Accordingly, M.A.C.M.A. No. 1015 of 2005 filed by the claimants is allowed and M.A.C.M.A.No.77 of 2006 filed by the Insurance Company is dismissed. **L.Hanuman Prasad Vs. G.Nagendra Gound 2015(2) Law Summary (A.P.) 168**

—-Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles - Claimant may implead the owner, driver and insurer of both the vehicles or anyone of them - Were the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 **-** In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible - He can recover at his option whole damages from any of them. **Khenyei Vs. New India Assurnace Co.Ltd. 2015(2) Law Summary (S.C.) 19 = 2015(4) ALD 98(SC) = AIR 2015 SC 2261 = 2015 AIR SCW 3169.**

—Sec. 2 - This appeal is preferred by petitioners-claimants assailing judgment and award dated 19.04.2010 passed in MVOP No.263 of 2008 on file of Motor Accidents Claims Tribunal whereunder and whereby an amount of Rs.3,75,000/- was awarded to petitioners.

Held, this Court of considered view that finding of Tribunal that there was contributory negligence on part of deceased to cause the accident to extent of 25% is not sustainable either on facts or on law and said finding is hereby set aside

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- In light of foregoing discussion, this Court have no hesitation to hold that accident occurred due to rash and negligent driving of driver of crime vehicle only - Tribunal awarded Rs.10,000/- to first petitioner towards consortium - Taking into consideration age of first petitioner and principle enunciated in cases cited trial Court inclined to award an amount of Rs.50,000/- to first petitioner towards consortium – This Court also inclined to award Rs.50,000/- to petitioners 2 to 4 towards loss of love and affection - Thus, total compensation, which petitioners are entitled to, under various heads is Rs.6,40,000 - Compensation awarded under various heads is just and reasonable to meet the ends of justice - Without filing regular appeal or cross-objections, insurer is not entitled to challenge the legality or otherwise of findings recorded by Tribunal - Finding of Tribunal that insurer has to pay 75% of compensation awarded to petitioners became final - Viewed from this angle also, contentions raised by second respondent has no legs to stand - First respondent being owner of crime vehicle is vicariously liable to wrongful acts done by his employee - Crime vehicle was insured with second respondent insurance company as on date of accident - Hence second respondent has to indemnify liability of first respondent - Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to petitioners - In result, appeal is allowed in part, enhancing compensation from Rs.3,75,000/ - to Rs.6,40,000/- with interest at 7.5% p.a. throughout. **Chakali Swaroopa Vs.Mohd. Ghouse 2015(2) Law Summary (A.P.) 302**

—Secs.2(3) &166 - Interpretation of statutes - Motor accident - Liablity to pay compesation - Appellant/Insurance Company issued policy of insurance for Maruthi Gypsy - Said vehicle was requisitioned during election by Sub-Divisional Magistrate - When vehicle was in possession of said Officer and while he was travelling in said vehicle accident occurred as result whereof a boy sustained injuries and later on expired - Legal representaties of deceased boy filed Application for compensation - Insurance Company contends that under terms of insurance Policy it is not liable to reimburse owner of vehcile as regards its liability on account of said accident - Tribunal upheld contentions of Insurance Company - Division Bench of High Court set aside award of Tribunal holding *"In view of the above discussion, the appeal is allowed and the award of the Tribunal is modified and it is held that the owner of the vehicle, the State Gov-ernment and the Insurance Company are all jointly and severally liable to pay the compensation - Since the vehicle was insured with the Insurance Company it shall deposit the amount payable to the claimants* - In this case, car was not handedover to Officer with consent of owner thereof - When vehicle is requisitioned, owner of vehicle has no other alternative but to handover possession to statutory Authority - State shall be liable to pay amount of compensation to claimants and not registered owner of vehicle and consequently appellant herein - Appeal, allolwed. **National Insurance Co., Ltd., Vs. Deepa Devi 2008(1) Law Summary (S.C.) 70.**

—Secs.2(3), 166, 147 - "Motor accident" - "Act policy" - Owner-cum-driver of tractor while coming along with some labourers, Tractor turned turtle due to load and claimant

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sustained multiple injuries - Claim petition filed before Tribunal claiming compensation of Rs.1 lakh - Appellant/Insurance Company contends that they have no liability to compensate the claimant as he himself is owner and also driver of offending vehicle at time of accident and Policy does not cover risk of owner or driver of vehicle - Tribunal awarded sum of Rs.54,000 as compensation, holding that accident took place due to rash and negligent driving of driver of tractor and that there was a valid Insurance coverage for vehicle at time of accident - One of main ingredients to claim compensation under provisions of M.V Act is that claimant has to establish that there was negligence on part of driver and driver was acting under instructions of his master - Then only Insurance Company will be liable to indemnify owner of vehicle - Appellant/Insurance Company further contends that Policy is an Act policy which does not cover even in made of vehicle, leave alone, driver or owner of vehicle - Policy covers risk of death or bodily injury of 3rd party only - A look at policy clearly indicates that it was an act policy and no extra premium was paid covering risk of owner or driver of vehicle - Sec.147 of M.V Act does not contemplate coverage of any risk of bodily injury or death to owner of vehicle unless such risk is covered by Policy - In present case, Insurance Policy of offending vehicle is stated to be act policy and said vehicle is to be used only for purpose mentioned there in and it specifically cover only third parties - In this case, a perusal of policy clearly indicates that it was an Act policy and no extra premium was paid covering risk of owner or driver of vehicle - Insurer is not liable where policy does not cover risk of either owner or inmates of vehicle - There is no contractual liability as envisaged in Sub-clause(ii) of Proviso to Sub-section (1) of Sec.147 of Act - Award passed by Tribunal, set aside - Appeal, allowed. **New India Assurance Co. Ltd. Vs. Dongre Sanjeev 2012(3) Law Summary (A.P.) 257.**

—Secs.2 (3) & 168 - "Owner" of vehicle - Meaning of - "Hire Purchase Agreement" - 4th respondent purchased vehicle by availing loan from appellant/financer - Vehicle met with accident while it is in possession and control of 4th respondent resulting death of person - Tribunal awarding compensation in favour of 1st and 2nd respondents/ claimants rejecting objection of appellant that it is not liable to pay any amount of compensation together with owner of vehicle, driver and Insurance Company - In this case, as vehicle is subject matter of Hire Purchase Agreement, appellant's name mentioned in Registration Book - In case of motor vehicle which is subjected to Hire Purchase Agreement, financer cannot ordinarily be treated to be owner - Person who is in possession of vehicle and not financer being owner would be liable to pay damages for motor accident - Appellant/financer not liable to pay any compensation to claimants - Impugned judgment of Tribunal - Unsustainable - Hence, set aside - Appeal, allowed. **Godavari Finance Co. Vs. Degala Satyanarayanamma 2008(2) Law Summary (S.C.) 29 = 2008(3) ALD 18(SC) = AIR 2008 SC 2493 = 2008(2) Supreme 841.**

—Sec.2(13) - Motor accident - "Goods" - Defined - Appellant/husband aged 55 year earning Rs.3,000/- per month, died while travelling in goods Van owned by 1st respondent insured with 2nd respondent, together with 3 bags of rice and 3 bags

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of cement died in accident - Tribunal awarded compensation of Rs.1,11,400/- against claim of Rs.1,30,000/- to be paid by 1st respondent owner of Van - Appellant contends that evidence on record clearly disclose that deceased were travelling along three bags of rice and three has of cement and said items deserved to be treated as goods and not luggage and that Tribunal proceed on assumption that rights and cement also needs to be treated as luggage and there by exonerated 2nd respondent/insurance Company and that correct multiplier also not applied - 2nd respondent/Insurance Company contends that there was no proof that deceased was travelling with any goods and assuming that load of rice and cement was owned by him that does not answer description of goods and that lower Court has discussed matter at length with reference to decided cases and no interference is warranted - In this case, specific case of appellant was that deceased was travelling with rice bags and cement bags and that Tribunal proceeded on assumption that deceased was travelling with material referred above that would constitute luggage but not goods - GOODS - Defined - Definition of goods in Act is partly inclusive an partly exclusive and it takes in its fold, but excludes substances live-stock or anything carried any vehicle luggage or personal of effects carried in motor vehicle - "Luggage" on other hand is explained as trunks, suit cases and other baggage of traveller - Emphasis in context of describing "luggage" is on utility in course of travel - These are articles or substances that are essential for a person when he is on travel - They may include cloths or other items such as soaps and limited quantity of eatables and certain material of daily utility - Goods on other hands have no relivance for use by person while travelling - Only purpose of carrying them in vehicle is to transport shift them from one place to another - Once certain articles do not constitute luggage, they need to be treated as goods irrespective of quantity - Rice and Cement cannot be treated as luggage since they are not used or utilized by a person in course of his travelling - In this case, deceased was travelling with rice and cement - Once those items cannot be treated as luggage inescapable conclusion is that they are goods - Since they were being carried in vehicle classified as a goods vehicle, 2nd respondent/insurance company is liable to pay compensation - Therefore, appellant is entitled to be paid compensation of Rs.1,30,000/- with interest at 7% - 1st and 2nd respondents shall be jointly and severally liable to pay compensation - Appeal, allowed. **P.Osuramma Vs. P.Ramachandra 2012(1) Law Summary 88 = 2012(2) ALD 227 = 2012(2) ALT 660.**

—Sec. 2(13), 173 - Whenever a driver of a goods carrier offers to transport items like gas stove, cylinders, cots, almirahs, rice bags etc., and when such items are loaded in the vehicle, they have to be treated as goods alone and the owner of goods or representatives of the owner accompanying such goods have to be treated as the owner or representatives of goods - Motor Vehicles Act, 1988, Sec.2(13), 173 - There is no rule which says that a goods vehicle should be loaded only with a particular type of goods and no other type of goods can be allowed into goods vehicle - Where owner of goods wants to carry goods which can fill half portion or 1/4th portion

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of lorry, then such owners of goods may not get any goods vehicle to transport their goods - Moreover, there may be a situation where the lorry with half of the load may be proceeding from one destination to other destination and in the midway, remaining part of lorry can be filled with some other goods at some other place, ie., in the midway - Thus, owner of vehicle has not violated the terms and conditions of insurance policy and claimant has to be treated as owner of the goods - Motor Vehicles Act, 1988, Sec.2(13), 173 - Insurance company should pay amount to claimant first and then recover same from owner of vehicle - Tribunal has assigned valid reasons for drawing logical conclusions and passed a reasoned award - Appeal dismissed. **New India Assurance Co. Ltd. Vs. M.V.Prasad 2014(3) Law Summary (A.P.) 144.**

—Secs.2 (14), 2(47) & 3 r/w Rule 16 of Central Motor Vehicles Rules, 1989 - CONSUMER PROTECTION ACT - Complainant's brother while travelling in transport vehicle sitting with driver sustained injuries due to accident - Hence complaint claiming compensation - Insurance Company contends that vehicle, at time of accident was driven by complainant's brother who possessed licence to drive Light Motor Vehicle and not Heavy Motor Vehicle and in absence of necessary endorsement as required, Insurance Company, not liable - District Forum dismissed complaint holding that complainant not entitled to compensation - State Commission set aside order of District Forum and directed Insurance Company to pay compensation - National Commission dismissed Revision and confirmed orders of State Commission - Orders passed by State Commission and National Commission are set aside and Insurance Company cannot be held liable to pay compensation - Appeal, allowed. **New India Assurance Co. Ltd. Vs. Prabhu Lal 2008(1) Law Summary (S.C.) 7.**

—Secs.2 (19) & 2 (30) - Motor accident - 1st respondent/Claimant while going on his Moped, bus owned by 3rd respondent dashed against him resulting fracture injuries - Trial Court directed appellant/Insurance Company, owner of bus and APSRTC jointly and severally to pay award sum to claimant since negligence on part of driver of bus is proved - Appellant contends that when bus is hired by APSRTC, Insurer cannot be held liable for payment of insurance amount - "Owner" - Defined - In this case, that though appellant insured offending bus, it was on hire to APSRTC - There is also no dispute that bus was put to schedule as per trip sheet fixed by concerned APSRTC officials and driver was under control of hirer - In such a case, APSRTC alone would be liable to pay compensation - Appellant cannot be made jointly and severally liable to pay award sum - 1st respondent/Claimant is at liberty to proceed against APSRTC and recover entire amount awarded - CMA, allowed accordingly. **Branch Manager, Oriental Insurance Co. Ltd. Vs. Javvaji Bhaskar Rao 2009(1) Law Summary (A.P.) 277 = 2009(2) ALT 512.**

—Secs. 2(28), 61 & 39 - **CENTRAL MOTOR VEHICLE RUIES,** Rules 47 & 48 - Forms 20,21,22-A,23 & 23-A - "Injuries" - While claimants, coolies travelling on trailer loaded

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with paddy bags, sustained injuries in accident due to rash and negligent driving by driver of tractor - Tribunal granted compensation of Rs.4,59,435/- as against claim of Rs.5 lakhs - Appellant/Insurer contends that in order to fasten liability on Insurer, insurance of trailer is not sufficient but both tractor and trailer should be insured and that since owner of tractor who is necessary party not impleaded, appellant/insurer cannot be held vicariously liable - Claimants contend that since trailer was admittedly insured, there is no requirement under law that both vehicles should be insured and as claim was made against owner of trailer, appellant insurer cannot deny its liability - Under Cl.44 "Tractor" means a Motor Vehicle which is itself constructed to carry any load (other than equipment used for purpose of propulsion); but excludes a road-roller - As per said definition although a trailer is not a mechanically propelled vehicle and cannot move on its own but to be drawn by another motor vehicle, it is still a vehicle for purpose of Act by virtue of inclusive definition in Cl.28 - Hence as per Sec.61, r/w Sec.39 it is mandatory to register every vehicle - Trailer is no exception to said requirement and that a trailer even though drawn by motor vehicle it by itself is a motor vehicle and it is required to be registered separately not-withstanding registration of tractor - A trailer attached to a motor vehicle is a part of motor vehicle and that no separate insurance is required for a trailer is accepted, it equally applies to a converse case where a trailer alone is insured - Insurer cannot avoid its obligation as insurer of trailer - By insuring only trailer insurer has consciously entered into contract with insured and undertaken obligation to discharge liability arising out of such contract and indemnify insured avoiding such obligation is not just and proper - Appellant/insurer is also jointly and severally liable - Compensation awarded by tribunal is just and reasonable - Claimant is not entitled for enhancement in this appeal - Cross-objections are dismissed. **New India Assurance Co, Ltd, Vs. Nunna Veera Venkata Satyanarayana, 2011(1) Law Summary (A.P.) 176 = 2011(2) ALD 302 = 2011(3) ALT 45.**

—Sec.2(30) - **INDIAN EVIDENCE ACT,** Sec.114(g) - Burden lies on Insurance Company to establish that owner has wilfully committed breach of policy by entrusting vehicle to an unauthorized driver and breach was so fundamental that resulted in accident - Lower Court rightly observed that the appellant/Insurance Company has not summoned RTA officials to establish that driver did not possess any driving licence - Moreover, police have not charge sheeted the driver for not possessing valid driving licence - Considering all these, it must be held that the appellant/Insurance Company failed to establish breach of policy committed by insured – Award passed by Tribunal confirmed. **Bajaj Allianz General Insurance Co, Ltd. Vs. M.Sreedevi 2015(1) Law Summary (A.P.) 34**

——-Secs.2(30) and 168 - Indian Penal Code, Sec.304-A - Appellant/2nd Respondent denied the averments made in petition including manner of accident, involvement of vehicle and that he took a plea that 1st respondent purchased offending vehicle

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by availing finance from 2nd respondent and that offending vehicle was under seizure which was seized by Police even from December 2005 and that vehicle was even now in police station.

Held, in instant case, no evidence is led in by appellant before Tribunal to substantiate its contention that alleged crime vehicle was financed by it - Tribunal has rightly drawn adverse inference against appellant by holding that though plea is taken with regard to loan taken by owner of alleged vehicle i.e., 5th respondent herein, no such material is produced either before Tribunal - Appellant has not filed any loan agreement alleged to have been executed between it and 5th respondent, owner of offending vehicle - Definition u/Sec.2(30) of Act of 1988 is very clear with regard to 'owner' means, a person in whose name motor vehicle stands and registered and in respect of hypothecation agreement, lease or hirepurchase agreement, 'owner' contextually means person in possession of vehicle under that agreement - As such, in absence of material produced by appellant, it cannot be said that appellant is not liable to pay compensation - In view of aforesaid premises, this Court do not find any force in contentions of learned counsel for appellant that financier is not liable to pay compensation and also do not find any infirmity in order passed by Tribunal - Accordingly, this MACMA is dismissed. **Apna Finance (Idea) Ltd. Vs. Uppalapati Ramana 2016(2) Law Summary (A.P.) 355 = 2016(6) ALD 385 = 2016(5) ALT 326.**

—Secs.3,4,7,8(8), 10(2) and 13(2) - **INDIAN EVIDENCE ACT,1872,** Secs.41,42 and 43 – Accident due to rash and negligent driving resulting in permanent disability - Claimant awarded compensation - Appeal by vehicle owner/first respondent disowning liability to pay compensation - Second respondent/Insurance Company contended that first respondent has no valid licence at time of accident and hence it is not liable to pay compensation - Held, Mere contending that driver of vehicle was not having valid driving licence is not sufficient - Insurance Company should have obtained necessary documents from the concerned RTA authorities and ought to have filed in this case or ought to have filed applications into Court to summon the records from the concerned RTA office - Letter filed in earlier case cannot be treated as evidence in this case - Thus, it has to be held that the Insurance Company failed to prove that the first respondent was having valid driving licence as on the date of accident - Insurance Company is liable to reimburse the appellant herein - Appeal allowed. **Katru John Kennedy Vs. Subbavarapu Lakshmi 2014(2) Law Summary (A.P.) 224.**

—Sec.3, r/w 181 - "Motor accident" - Driver of offending vehicle, drove vehicle in rash and negligent manner and dashed against deceased, aged 26 years, working at NTPC, earning Rs.12,000/- p.m. as result of which deceased sustained grievous injuries and sccumbed to injuries instantaneously - Tribunal awarded total compensation of Rs.12,49,000/- - Appellant-Insurance Company contends that accident occurred due to negligence of deceased and that driver of offending vehicle had no valid driving licence at time of accident and that compensation awarded is on higher side and

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liable to be reduced - In this case, 1st respondent/ owner of vehicle clearly admitted that driver of offending vehicle had valid and effective driving licence as on date of accident - 2nd respondent/Insurance Company, except making a bald allegation that driver of vehicle had no valid driving licence to drive vehicle at time of accident did not adduce any evidence to substatiate said contention - If really driver had no valid licence, he would have been charge-sheeted u/Sec.3, r/w 181 of Act - As such Tribunal held that driver of offending vehicle had valid and effective licence to drive vehicle on date of accident - Tribunal had appreciated oral and documentary evidence and rightly taken income of deceased at Rs.12,000/- p.m. and applied multiplier "17" and determined loss of dependency at Rs.2,24,000/- - Amount awarded towards loss of estate is reduced to Rs.10,000 - Therefore claimants are entitled to only Rs.12,44,000 - Appeal, partly allowed. **Oriental Insurance Co., Dhanbadh, Bihar State Vs. Dumpa Haritha, 2011(1) Law Summary (A.P.) 26 = 2011(2) ALD 838.**

—Secs.4 & 5 – Motor accident – Claimant, father claiming compensation of Rs.10 lacks for death of his son in accident – Appellant/Insurance Company contends that driver of vehicle is minor on date of accident and not holding a valid and effective driving license and hence not liable to reimburse owner of vehicle - Single Judge of High Court allowed appeal holding that there is no evidence on record to indicate that owner of vehicle parted keys of vehicle to his son deliberately or knowingly - If in absence of father son takes keys and drives vehicle for a fun and caused accident, it cannot be said that there is an express or implied consent on part of owner – Division Bench of High Court dismissed appeal - Appellant contends that keeping in view provisions of Secs.4 & 5 of Act question of any willful default on part of owner is wholly irrelevant in this case as neither a license could be granted in favour of minor no in fact driver of vehicle was holding valid license - In this case, admittedly vehicle was being driven by deceased who is aged about 15 years and he did not hold any valid license on date of accident – Single Judge and also Division Bench of High Court did not put unto themselves a correct question of law and proceeded on wrong premise that it is for Insurance Company to prove breach of conditions of contract of insurance and High Court did not advert to itself provisions of Secs.4 & 5 of Act and thus misdirected itself in law - Impugned judgments of High Court, unsustainable and hence set aside – Judgment of Tribunal, restored – Appeal, allowed. **United India Insurance Co., Ltd., Vs. Rakesh Kumar Arora 2008(3) Law Summary (S.C.) 199 = 2009(3) ALD 136(SC) = 2008 AIR SCW 6872 = AIR 2009 SC 24 = 2008(7) Supreme 343.**

—Secs.10,41, 171 & 173 - **CENTRAL MOTOR VEHICLES RULES,** Rule 51 - Motor accident - Driver, holder of licence of three wheeler causing accident while deceased travelling in transport vehicle - Tribunal awarding compensation to claimants - High Court dismissed Appeal preferred by appellant/Insurance Company - Appellant/Insurance Company contends that driver of vehicle being not holder of a legal, valid and effective driving licence, it is not liable to reimburse claim of claimants and that registration certificate as also policy of insurance having clearly mentioned vehicle in question was

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a transport vehicle and as driver was not possessing a valid licence for a transport vehicle, impugned judgment cannot be sustained - Respondent contends that driver of vehicle is having an effective driving licence for autorickshaw and it did not matter as to whether it was adapted for carrying passengers or goods - "Light motor vehicle" - Defined - Light motor vehicle would not include a light transport vehicle - A driver who had a valid licence to drive a light motor vehicle, is authorized to drive a light goods vehicle as well - Impugned judgment, set aside - However, appellant is directed to satisfy award in favour of claimants and recover same from owner of vehicle - Appeal, allowed. **New India Assurance Co.Ltd. Vs. Roshanben Rahemansha Fakir 2008(2) Law Summary (S.C.) 188.**

——Secs.19, 113-115. 194, 200 and Rule 21 of the Central Motor Vehicles Rules, 1989 - Petitioner is a driver by profession having valid driving license upto 23.04.2018 - It is the case of the petitioner that he was working as a driver of a vehicle - While he was proceeding with a load of sand, same was seized alleging that said vehicle was found plying with an overload of 7,770 Kgs. of sand - On said ground, Assistant Secretary, RTA issued the impugned proceedings suspending driving license for three months from 30.04.2016 to 29.07.2016, which is subject matter of challenge in this writ petition - The main ground urged by learned counsel for petitioner is that once offence is compounded by paying compounding fees, question of suspending driving license for same offence does not arise and hence authorities erred in suspending driving license - A counter came to be filed by Motor Vehicle Inspector denying averments made in affidavit.

Held, therefore, a harmonious reading of Section 194 and 200 of Act, 1988 makes it clear that benefit under Section 200 of Motor Vehicles Act has to be extended not only to owner who allows the vehicle to be driven, but also to person who drives vehicle - Having regard to judgments referred to above and a plain reading of Section 200 of the Act, 1988 makes it clear that once an offence is compounded under Sub-Section (1) of Section 200, no further proceedings shall continue in respect of such offence.

When stringent punishment and strict interpretation of guidelines are required to be made, authorities ought not to have invited or entertained an application for compounding the offence, knowing that offences of this nature would fall within the recommendations of the Hon'ble Supreme Court Committee on road safety - Having regard to above, this Court is of view that suspension of license for a period of three months, even after compounding the offence under Section 200 of the Act 1988, is illegal and same is liable to be set aside - Accordingly, the Writ Petition is allowed, setting aside proceedings. **Narsimha Vadlakonda Vs. State of Telangana 2016(3) Law Summary (A.P.) 53 = 2016(4) ALT 275 = 2016(6) ALD 707.**

—Secs.21, 22, 19 (1)(c), 184 - **INDIAN PENAL CODE,** Sec.304 (A) - "Suspension of driving licence" - Petitioner's driving licence suspended for period of six months on ground, he was involved in accident - Petitioner contends that he is involved in

accident for first time and Police have registered case against petitioner u/Sec.304(A) and he was enlarged on bail and said criminal proceedings are still pending consideration and that licensing authority passed impugned order without issuing any notice and without giving any reasonable opportunity being heard and as such, impugned order suffers from vice of violation of principles of natural justice and that petitioner has not been convicted earlier and being involved in accident for first time, provisions of Sec.21 have no application - Admittedly in this case, petitioner not convicted previously and he is involved in accident for first time and criminal proceedings initiated against him are still pending consideration - In fact u/Sec.21 of Act licence of an individual can be suspended or cancelled only if he was convicted previously in an offence u/Sec.184 of Act for causing death or grievous injuries to person involved in accident - Impugned order passed by 1st respondent licensing authority suffers from violation of provisions of Sec.21 of Act, but also suffers from vice of violation of principles of natural justice, and as such cannot be sustained and liable to be set aside - Writ petition, allowed. **K.Vidyanand Vs. Addl. Licensing Authority, Hyderabad Central Zone 2011(3) Law Summary (A.P.) 30 = 2011(5) ALD 718 = 2011(5) ALT 741.**

—Sec.34, 10 and 149 - Motor accident - Deceased aged 27 years, unmarried, while travelling in Truck died due to rash and negligent driving of driver - Tribunal awarding compensation of Rs.1.18 lakhs to claimant/mother of deceased - High Court directing Insurance Company to recover amount from owner of vehicle - Insurance Company contends that as deceased was travelling as a gratuitous passenger and as driver of vehicle not possessing effective driving licence, High Court should not have passed impugned order - Respondent/owner of vehicle contends that deceased was a vegetable vendor and he had been travelling in truck for collecting empty boxes and thus, he was not a gratuitous passenger and that as Insurance Company has already deposited amount of compensation, right to recover amount from owner of vehicle need not have been granted - Owner of vehicle alone is liable to pay compensation to claimant for causing death of her son by rash and negligent driving on part of driver of truck - Judgment of High Court - Justified. **New India Insurance Co. Ltd. Vs. Kaushalaya Devi 2008(2) Law Summary (S.C.) 193.**

—Secs.60 & 31 - "Motor accident" - Deceased aged 27 years earning Rs.4000/- per month, while proceeding on his Scooter, Ambassador car driven by its driver with high speed dashed back side of Scooter and on account of sudden impact deceased sustained fatal injuries and died on spot - Trial Court awarded compensation of Rs.3,75,600/- to claimants as against claim of Rs.4 laksh, melting responsibility on 1st respondent to pay compensation - Appellate/1st respondent contends that he sold car to 2nd respondent who is owner of vehicle at time of accident and he is not liable to pay compensation - Tribunal in its order relied upon judgment of High Court of Jharkhand, wherein it was held that when registered owner transferred vehicle by selling to third party before date of accident by executing letter of delivery by transferee, neither transferor nor transferee got ownership transfer in registration

certificate, owner of said vehicle is liable to pay compensation on ground that ownership does not get changed merely because owner has entered into some agreement with third party for sale of vehicle - Moment, possession of vehicle is delivered by transferor after completion of sale and possession is taken by transferee, sale is completed and ownership of vehicles passes from transferor to transferee - In this case, Ex.B.1 and B.2, receipts signed by 2nd respondent clearly show that car was sold to 2nd respondent who took delivery of vehicle on 28-10-1999 itself and accident was occurred on 17-2-2001 - Tribunal erred in fixing liability on 1st respondent/appellant - It is only 2nd respondent who is 1st respondent in appeal is liable to pay compensation - Claimants can proceed against 2nd respondent in O.P for recovery of award amount. **Uppala Muralidhar Rao Vs. K.Balakrishna Reddy 2009(2) Law Summary (A.P.) 237 = 2009(5) ALD 397.**

—Secs. 122, 126, 173 - From a close reading of the entire material it is clear that the deceased was proceeding by the side of the lorry, but, however, on seeing another lorry coming in opposite direction he tried to move his motor cycle towards further left and in that process the motor cycle hit the rear side portion of the lorry - In fact, before proceeding by the side of parked lorry, the deceased should have observed whether any lorry is coming from opposite direction or not - Therefore, in the circumstances it appears that both the deceased and the lorry driver of the parked lorry were negligent - But as far as the role of the parked lorry driver is concerned, he is mainly responsible for parking the lorry in a careless manner, without any parking lights and indicators - Therefore, negligence has to be apportioned between the lorry driver and deceased at 75% and 25% respectively - M.A.C.M.A. is allowed and compensation enhanced from Rs.50,000/- to Rs.10,61,000/-. **B.Jaisoorya Vs. D.Ramakrishna Reddy 2015(1) Law Summary (A.P.) 106**

—Sec.128 - “Triple riding on motor cycle” - “Motor accident” - When three deceased persons were making triple riding on Hero Honda Motor Cycle, D.C.M. Van came in opposite direction dashed motor cycle resulting in spot death of three riders of motor cycle - Tribunal awarded compensation **-** Appellant/Insurance Company contends that triple riding is prohibited u/Sec.128 of M.V Act and is punishable and that triple riding on motor cycle meant for riding only for two persons, causes discomfort and inconvenience for rider/driver on motor cycle for want of space and there will be cramping resulting in lack of proper control on motor cycle and that because of triple riding there will be contributory negligence on part of driver of motor cycle and that 25% of compensation has to be disallowed towards contributory negligence - Finding as to negligence or contributory negligence has to depend on evidence on record - It is only in absence of any evidence on record, question of drawing presumptions under law or on facts can be resorted to - D.C.M. Van driver drove same towards wrong side and dashed opposite motor cycle killing three riders on motor cycle on spot - Finding of Tribunal that accident took place due to rash and negligent driving of D.C.M. Van driver - Justified

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- Motor cycle rider/driver on which three deceased persons were travelling did not contribute any negligence for this accident - This accident was not due to triple riding of motor cycle, but due to fault as well as rash and negligent driving on part of D.C.M van driver - No dispute with regard to quantum of compensation awarded by Tribunal - Appeals, dismissed. **United India Insurance Co., Ltd., Patancheru Vs. Chendri Ramaiah 2011(1) Law Summary (A.P.) 56 = 2011(3) ALD 3.**

—Secs.134,203,205 - **INDIAN PENAL CODE,** Sec.304, Part - II & 304-A - "Motor Accident" - "Hostile witness" - "Drunken driving" - B.M.W. car driven rash and negligently at high speed and dashed against victims , causing accident in which six persons were killed and some were injured - After completion of investigation charge-sheet filed against accused u/Secs.201,304(1) r/w 34 of IPC - Trial Court found respondent-accused guilty of commission of offence u/Sec.304 Part-II of IPC and awarded a jail sentence for five years and acquitted for other charges - Single Judge of HIgh Court reduced sentences two years while converting conviction of accused from Sec.304 Part-II to 304 - Appellannt State contends that admittedly respondent not holding any valid Indian licence to drive vehicle in India andhe was in intoxicated condition at time of accident and that his negligence coupled with intoxication woul lead to culpulable homicide and that respondent/accused fled away from scene of crime, and he did not rendered any help to injured and that he did not even report matter to Police and tried to obliterate evidence available and that High Court committed grave error in interfering with well reasoned order of trial Court - In this case, looking at the nature and manner in which accidedent had taken place, it can be safely be held that he had no intention to cause death, but certainly had knowledge that his act may result in death - Thus, looking at matter from all angles that knowledge can still be attributed to accused that his act might caused such bodily injuries which may in ordinary course of nature, be sufficient to cause death, but certainly he did not have any intention to cause death and he was not driving vehicle with that intention - In this case, there is nothing to prove that accused knew that a group of persons were standing on road he was going to pass throw - If that be so, there cannot be an intention to cause death or such bodily injury as is likely to cause death - Hence accused committed an offence u/Sec.304 Part - II - Judgment ande order of conviction passed by High Court partly set aside and order of conviction of trial Court, is restored and upheld - DRUNKEN DRIVING - In this case, evidence of experts clearly indicates presence of alchohol in blood of accused beyond permissible limit, that was finding recorded by Court below and that if a particular procedure has been prescribed u/Secs.185 & 203, then that procedure has to be followed, has no application to facts of this case - VALID DRIVING LICENCE - There is no presemption in law that a person who has no licence does not driving and that driving without a licence is an offence under M.V Act and not under Penal Code, unless and until it is proved that a person was driving a vehicle a rash and negligent manner so as to attract Sec.304-A of IPC - Admittedly first accused was not having Indian licence at time

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of accident though he has produced a licence issued by licensing authority from State in USA - As such an inference that accused was not conversant in driving a vehicle on Indian roads in absence of an Indian licence at time of accident - Therefore, question whether he knew driving is not much consequence - HOSTILE WITNESS - Glaring defects in system like non recordingof statements correctly by Police and retraction of statements by prosecution witness due to intimidation inducement and other methods of manipulation - Courts however cannot shut their eyes to reality - If a witness becomes hostile to subvert judicial process, Courts shall not stand as a mute spectator and every effort should be made to bring home truth - Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimedation - Further Sec.193 of IPC imposes punishment for giving false evidence but seldom it is invoked.

Payment of compensation to victims or their relatives is not a mitigating circumstance, on other hand, it is a statutory obligation - All the mitigating and aggravating circumstances will have to be weighed while awarding sentence - In this case, six human lives were lost and method that would be good for Society rather than incarcerating convict further in jail - Further sentene of fine also would compensate at least some of victims of such road accidents who have died espicially in hit and run cases where owner or driver cannot be traced - Therefore accused has to pay an amount of Rs.50 lakhs to Union of India within six month which will be utilized for providing compensation to victims of motor accidents where vehicle owner, driver etc., could not be traced, like victims of hit and run cases - Accused would be in community service for two years which will be arranged by Ministry of Social Justice and Employment within two months. **State Tr.P.S Lodhi Colony, New Delhi Vs. Sanjeev Nanda 2012(3) Law Summary (S.C.) 26.**

—Secs.140,141,146,147 - "Motor Accident" - 'No fault compensation' - While driver of private owned car proceeding to temple along with five persons met with fatal accident in which driver and four others died - Commissioner under Workmen's Compensation Act rejected claim of compensation of driver holding that accident did not take place in course of employment - Tribunal also rejected claim of heirs of four occupants of car dying in accident - Appellants also were equally unsuccessful in High Court - SCOPE, AMBIT AND APPLI-CABILITY OF SEC.140 OF ACT - STATED - Tribunal gravely erred in taking view that claim for compensation u/Sec.140 of Act can succeed only in case it is raised at initial stage of proceedings and further that claim must fail if accident had taken place by using car without consent or knowledge of its owner - Right to claim compensation u/Sec.140 in respect of death or permanent disablement of any person shall be in addition to any of right except right to claim under scheme referred to in Sec.163-A, to claim compensation in respect thereof and any other provision of this act or of any other law for time being in force - Liability arising from Sec.140 would almost invariably be passed on insurer to be paid off from vast fund created by virtue of Secs.146,147of Act unless owner of vehicle causing

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accident is guilty of some flagrant violation of law - Provisions of Sec.140 are indeed intended to provide immediate succour to injured or heirs and legal representatives of deceased - Hence, normally a crime u/Sec.140 is made at threshold of proceeding and payment of compensation u/Sec.140 is directed to be made by an interim award of Tribunal which may be adjusted if in final award claimants are held entitled to any larger amounts - But that does not mean that in case a claim u/Sec.140 was not made at beginning of proceedings due to ignorance of claimants or no direction to make payment of compensation u/Sec.140 was issued due to over sight of Tribunal, door would be permanently closed - Such a view would be contrary to legal provisions and would be opposed to public policy - Tribunal is completely wrong in denying to appellant, compensation in terms of Sec.140 of Act - Claimants are fully entitled to no fault compensation u/Sec.140 of Act - Insurance Company directed to pay compensations to claimants - Appeal, allowed. **Eshwarappa @ Maheshwarappa Vs. C.S.Gurushanthappa 2010(3) Law Summary (S.C.) 75.**

—Secs.140 & 161 - Motor accident - While deceased travelling on scooter, lorry came in opposite direction in rash and negligent manner with high speed and dashed scooter, due to which deceased sustained grievous injuries and died while undergoing treatment in hospital - Tribunal passed separate orders in both claim petitions awarding compensation to claimants - Appellant/Insurance Company contends that in this cases some unknown vehicles might have caused accident, but claimants in collusion with 1st respondent/owner of vehicle and Police stage managed to register case about six months after accident and filed claim petitions with a view to claim compensation from Insurance Company - In this case lorry neither seized nor sent for examination and report of M.V Inspector - Injured witness who lodged complaint with Police not examined as witness - PW.2 stated to be eye witness was brought on record by Police about 6 months after incident - For these sufficient reasons it can be said that this is a case foisted in collusion with owner of lorry and Police - Impugned award passed by Tribunal, set aside - Appeals, allowed. **United India Insurance Co., Ltd., Vs. Md.Yousuf Ali 2009(1) Law Summary (A.P.) 176.**

—Secs.140, 161 & 173 - Motor accident - Claimants, heirs of deceased alleged that while deceased was going on his scooter, Tractor and Trailer belonging to 1st respondent hit scooter and caused accident in which deceased sustained grievous injuries, succumbed to those injuries - Hence claim laid seeking compensation of Rs.8 lakhs - In this case police carried investigation into crime and submitted final report setting out that same is undetectable, as it is a hit and run case - Tribunal did not place reliance upon deposition of eye witness and consequently did not believe that accident was caused by Tractor and Trailer in question - Hence, no liability can be fastened on to 2nd respondent, insurer of Tractor and Trailer - Liability of insurer is coextensive along with owner of vehicle in question and unless said owner incurs any such liability due to involvement of insured motor vehicle in accident causing death of deceased, liability of owner of vehicle and insurer becomes illusive - Obligation of insurer to compensate legal heirs of victim

does not arise - CMP, dismissed - Claimants are at liberty to seek compensation either u/Sec.140 or 161 of Act. **Konda Anuradha Vs. Gopi Reddy Venkata Reddy 2008(2) Law Summary (A.P.) 94 = 2008(3) ALD 355 = 2008(4) ALT 34.**

—Secs.140 & 166 - Motor accident - "No fault liability" - Claim of compensation by legal representatives of deceased - While deceased was sitting on road, driver of Jeep drove in rash and negligent manner, dashed deceased who died soon after accident - Petitioners-sisters of deceased filed O.P claiming compensation of Rs.85,000/- - Respondent/Insurance Company contends that claim made by sisters of deceased not maintainable as they are neither dependents, nor legal representatives of deceased and there was no loss of income to them on account of death of their deceased brother as they were dependents on their respective husbands and they are earning members by themselves - Tribunal though held that accident occurred due to rash and negligent driving of driver of offending Jeep, dismissed OP recording a finding that it cannot be said that petitioners-sisters are actual dependents on income of deceased - Liability in terms of Sec.140 of Act does not cease because of absence of dependency - View taken by Tribunal that claimants would not fall within meaning of dependents cannot be a sustainable view - Hence, set aside - Appeal allowed to extent of Rs.50,000 under no fault liability. **Shaik Lalbi Vs. M.Balakrishnan 2008(2) Law Summary (A.P.) 54 = 2008(3) ALD 636.**

—Secs.140 & 166 - Motor accident - Deceased aged 41 years earning Rs.10,000/- per month died in accident, occurred on account of rash and negligent driving of driver of lorry - Tribunal awarded total compensation of Rs.4,57,000/- to claimants of deceased as against claim of Rs.10 laksh - Hence appeal filed by claimants for enhancement - Apex Court laid down certain criteria to ensure uniformity and consistency in award of compensation by various Tribunal and Court and also laid down a Table indicating multiplier to be applied to various age groups and also procedure of computation of compensation and deductions to be made from income of deceased - Accordingly in case of deceased aged 41 to 45 multiplier is "14" and where deceased had married deductions to personal and living expenses of deceased should be 1/4th where number of dependent family members are 4 to 6 - In this case, there were six dependents as on date of award apply-ing aforesaid decision of Apex Court only 1/4th amount should be deducted towards personal expenses of deceased - As deceased was found to be 42 years old, multiplier should be "14" - Accordingly amount come to Rs.5,67,000/- besides amount of Rs.15,000/- towards loss of consortium to 1st claimant wife and Rs.10,000/- towards love and affection as already awarded by Tribunal - Claimants are entitled for enhancement of compensation of Rs.1,35,000/- - CMA, allowed in part. **Gampa Jaya Vs. Satya Shanker Rao 2010(1) Law Summary (A.P.) 240.**

—Secs. 140, 147 & 166 - "Motor accident" - "Third Party" - 1st respondent/Managing Director of 2nd respondent Company while travelling in car dashed against Bullock

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cart sustained bodily injuries in accident - 1st defendant filed petition claiming compensation against appellant/Insurance Company as well as 2nd respondent/Company -Tribunal awarded compensation of Rs.8,63,200 as against claim of Rs.20 lakhs - Appellant/Insurance Company resisted claim on ground that claimant suppressed fact that he was Managing Director of 2nd respondent/Company and claim petition is not maintainable and as such he could not be treated as Third Party and policy taken by Company did not cover occupant in vehicle but only covered owner for limited quantum and hence claim not allowable as sought for - High Court treated Company to be owner of vehicle and repelled stand that Managing Director was owner and he was only occupant of car and Insurance Company was liable to indemnify owner for claim put forth by victim and that Insurer is liable to pay compensation - Under provisions of Sec.147 (1)(a)(b), Policy of insurance must be a policy which complies with conditions enumerated therein.

"DISTINCTION BETWEEN ACT POLICY AND COMPREHENSIVE POLICY/ PACKAGE POLICY - STATED - There is no scintilla of doubt that "comprehensive/ package policy" would cover liability of insurer for payment of Compensation for occupant in a car - There is no cavil that an "Act Policy" stands on a different footing from a comprehensive package policy - Finding of High Court and Tribunal as regards liability of insurer and remit matter to Tribunal to scrutinize policy in a proper perspective and if necessary by taking additional evidence and if conclusion is arrived at that policy in question is "Comprehensive Package Policy", liability would be fastened on insurer - Other findings recorded by Tribunal and affirmed by High Court, undisturbed - Appeal allowed accordingly. **National Insurance Company Ltd. Vs. Balakrishnan 2012(3) Law Summary (S.C.) 260 = 2013(1) ALD 106 (SC) = 2012 AIR SCW 6286 = AIR 2013 SC 473 = 2013(1) SCC 731 = 2013(1) SCC (Crl) 677.**

—Sec.147 – "Motor Accident" – "Act Policy" – "Contraventions of conditions of Policy" – Claimant, cleaner of jeep while proceeding in jeep as cleaner met with accident and sustained grievous injuries and suffered 60% disability due to amputation of left leg – Tribunal granted compensation of Rs.2.43 lakhs payable by Insurance Company and 3rd respondent, owner of jeep – Hence present appeal filed by Insurance Company - Appellant Insurance Company contends that Policy is only "Act-Policy" issued to insured to use vehicle for his private purpose i.e., social, domestic and pleasure purposes and insured's own business - Policy does not cover use for hire or for reward - Claimant contends that crime vehicle is registered as transport vehicle and appellant Insurance Company cannot contend that its user is restricted for private purpose only - Owner hired vehicle to Bank at time of accident – Hence appellant, Insurance Company cannot be held responsible in view of clear violation of terms of contract policy - Therefore 2nd respondent who is owner of jeep is liable to pay compensation - M.A.C.M.A is allowed. **National Insurance Co., Ltd., Chittoor Vs. Kesari Ravi 2014(2) Law Summary (A.P.) 1 = 2014(4) ALD 472 = 2014(4) ALT 216.**

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—- Sec.147 as amended - "Motor accident" - While appellant was travelling in DCM van owned by 1st respondent and insured with 2nd respondent, together with some goods when vehicle dashed against stationary vehicle appellant and other inmates in vehicle sustained injuries - Tribunal awarded compensation of Rs.1,05,000 as against claim of Rs.1,20,000 - Single judge dismissed CMA and affirmed order passed by Tribunal - Hence present LPA - In this case, appellant admittedly sustained injuries in accident and same has resulted in amputation of his right leg even by time OP was filed - Approach of Tribunal treating business man as daily wage unskilled worker cannot at all be countenanced - A person who supplies goods by travelling to various person can easily earn monthly income of Rs.2000 - On account of disability suffered by appellant, deduction can be effected to extent of 50% - If multiplier "16" is applied to income of appellant that Rs.12000/-, resulted figure would be Rs.1, 92,000/- - Added to that their would be several ailments in future also and expenditure which appellant may have to incur for arrangement of artificial limb needs to be treated as part of compensation - Compensation enhanced to Rs.2 lakhs and respondents 1 & 2 are liable to pay entire compensation jointly and severally - LPA, allowed. **Katam Thimmaiah Vs. A.Amar Babu 2014(1) Law Summary (A.P.)182**

——Sec.147 - Aggrieved by the award passed by Motor Accidents Claims Tribunal, the first respondent/owner of the tractor filed the instant MACMA - When the claimant and some others who were the laborers under first respondent/owner while travelling in a tractor-cum-trailer to bring grass for the cattle, on the way the driver drove the vehicle in a rash and negligent manner and thereby the claimant fell down from the tractor and the tractor ran over him causing injuries to his head and other parts of the body -Impugning liability on the driver, claimant filed OP against respondents 1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.4 lakhs as compensation under different heads - Second respondent/Insurance Company in its counter opposed the material averments in the claim petition - It mainly contended that the first respondent did not pay premium to cover the risk of a labourer but only driver and on this plea, R2 repudiated its liability.

Tribunal held that Ex.B1—policy cover the risk of one employee who is obviously the driver of the tractor and hence it does not cover risk of claimant who was labourer under R1/owner - On this finding Tribunal exonerated second respondent/Insurance Company and fastened liability on R1/owner alone.

Held, Court find force in submission of appellant/owner - Between Ex.B1 and Ex.B3, latter has to be preferred since what was supplied to policy-holder is more important than what was preserved by Insurance Company - Thus, as per Ex.B3 the sum of Rs.25/- is shown as paid under head "WC to employee 1" which means to cover risk of one employee to extent of compensation payable under Workmen's Compensation Act - In present context, word 'employee' need not necessarily be interpreted as driver of tractor because as per proviso to Section 147(1) of MV Act, risk of driver to extent of compensation payable under WC Act is invariably covered and therefore, appellant/owner is not in need to pay any more compensation

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for driver - Of course, he may pay extra premium to give full coverage over and above coverage given under WC Act to driver - However, premium of Rs.25/- cannot be taken as an extra premium for driver in view of heading "WC to employee 1" - In Court considered view, if appellant/owner paid extra premium to get extra coverage to driver, then nomenclature of heading would not have been "WC to employee 1" but it would have been something else like "extra premium to driver" or "extra liability to driver" etc - So, heading "WC employee 1" – Rs.25/- should be understood in relation to another employee but not driver.

Other argument of Insurance Company is that tractor is meant for sitting of driver alone and so premium of Rs.25/- should be taken for his coverage alone - This argument though apparently looks sound but not correct - In instant case, both ExB1 and B3 would show that appellant insured not only tractor but also his trailer - Foreseeing necessities of employees travelling in tractor-cum-trailer for his work, appellant/owner must have paid premium to give coverage to one employee to extent of workmen's compensation - Hence, argument of Insurance Company cannot be accepted - Consequently finding of Tribunal in exonerating Insurance Company cannot be countenanced - It is therefore held that policy covers risk of claimant.

For another reason also it must be held that policy covers risk of claimant - Undisputed evidence would show that tractor tyre ran over him after he fell down from tractor - This would show that tractor caused accident after he fell down on road but not while he was in vehicle - In such an event it must be said that claimant received injury as a third party but not as inmate of vehicle - It was so held by this Court in a decision reported in United India Insurance Company Limited vs. Kurva Yejju Mallamma - In result, this MACMA is allowed. **A.Narsimha Reddy Vs. Midde Chinna Niranjan 2016(1) Law Summary (A.P.) 469.**

—Sec.147 - **CONSTITUTION OF INDIA,** Art.142 - Claimant, Branch Post-Master in village, while travelling in trolly fell down on ground and sustained grievous injuries - Tribunal awarded compensation fixing liability to pay on 1st respondent/owner of vehicle, directing appellant/2nd respondent/Insurance Company to satisfy award by paying compensation to claimant with liberty to realize amount from 1st respondent owner of vehicle - Object of Act is not only to provide compensation, which is just and reasonable to victims of road traffic accidents, but also to make them enjoy fruits of award without subjecting them to long drawn procedure - Tribunal has inherent jurisdiction to issue direction to avoid hardship to claimant in realizing amount of compensation awarded by Tribunal - Award passed by Tribunal on above aspect affirmed - Appellant/Insurance Company directed, to first satisfy award and then recover amount from owner of vehicle - Appeal, dismissed. **United India Insurance Co., Ltd., Warangal Vs. Jualapally Sudhakar Rao 2010(1) Law Summary (A.P.) 114.**

—Secs.147 & 147(1) (i)(c) proviso - WORKMEN'S COMPENSATION ACT, Sec.30 - "Motor accident" - Deceased, working as cleaner in Mini lorry belonging to 3rd respondent, son of R1 and elder brother of R2, died in accident - Commissioner

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awarded sum of Rs.2.86,608 as against claim of Rs.4 lakhs - Appellant/Insurance Company contends that 3rd respondent/owner of vehicle did not pay any extra premium to cover risk towards cleaner and that there was no justification for commissioner in awarding interest, that too from date of accident - Respondents 1 & 2 contend that 3rd respondent, owner has taken out policy, as provided for u/Sec.147 M.V Act and even if no extra premium was paid it would cover liability towards bodily injuries to or death of persons employed by owner of vehicle and that Commissioner is conferred with power to award interest - Obligation to take out insurance policy for vehicle arises under M.V Act and extent to which policy must cover is indicated in Sec.147 of Act - Minimum coverage provided for u/Sec.147 is towards death or bodily injury or damage to any property of 3rd party caused due to use of vehicle liability in respect of passenger of vehicle, and liability arising out of death or bodily injury of person engaged in driving or performing other functions upon vehicle which, in turn, specified proviso to sub-sec.(1) of Sec.147 M.V Act - In earlier judgments, rendered by High Court of A.P., it was proceeded on assumption that proviso to Sec.147 (1) of M.V Act would relieve owners of vehicle from obligation to take out policy, to cover risk towards drivers, conductors or other employers and it is left to their discretion to take out such policy by paying extra premium - Important phrase "other than a liability arising under Workmen's Compensation Act" was not appreciated - Therefore, contention of appellant that it is not under obligation to cover liability arising out of death or bodily injuries to a cleaner unless extra premium is paid; cannot be accepted - Order passed by Commissioner holding that 3rd respondent owner and appellant/ Insurance Company are jointly and severally liable to pay compensation - Justified - However interest cannot be awarded from date of accident, unless there did not exist any controversy as to liability - Obligation on part of appellant to pay interest would arise after expiry of one month, from date of order passed by Commissioner - CMA, partly, allowed. **New India Assurance Co., Ltd. Vs. Pujala Chenchu Nagaiah 2010(3) Law Summary (A.P.) 431 = 2011(1) ALD 596 = 2011(2) ALT 357.**

—Secs.147, 149, 5 & 110-A – "Motor Accident" - Liability of Insurance Company – Deceased aged 40 years while driving his Tonga met with accident due to negligence of driver of tractor, received injuries and ultimately expired – Appellant filing Application for payment of compensation - Tribunal dismissing Application holding that admittedly driver of tractor not holding any licence at time of accident and that in view of conditions contained in policy Insurance Company not liable to pay compensation - Owner of vehicle has statutory obligation to see that driver of vehicle whom he authorized to drive same holds a valid licence – Avoidence of liability would largely depend upon violation of contract of insurance – Where breach of conditions of contract is ex-facie apparent from records, Court will not fasten liability on Insurance Company – Appeal, dismissed. **Sardari Vs. Sushil Kumar 2008(1) Law Summary (S.C.) 177.**

—Secs.147 & 166 - Motor accident - Death of pillion rider - Liability of Insurance Company - Deceased, while travelling as pillion rider on scooter fell down and died instantaneously

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on account of severe head injury - Tribunal awarding compensation, directing Insurance Company to deposit amount - Insurance Company contends that scooter was driven by person not having valid driving licence and risk of pillion rider not covered under Policy and therefore Insurance Company not liable to pay compensation - In this case, Policy not covered risk of person travelling on scooter as no additional premium was paid to that effect - Therefore it covers risk of 3rd party only - Insurance Company cannot be made liable to pay compensation - Order of Tribunal to extent of making Insurance Company liable to pay compensation, set aside - If amount is already paid to claimants, it may not be recovered from them - However Insurance Company is at liberty to recover it from owner of scooter. **United India Insurance Co. Ltd., Visakhapatnam Vs. Vana Kamayya 2008(1) Law Summary (A.P.) 186 = 2008(1) ALD 399 = 2007(6) ALT 231.**

—Sec.147 (1) (prior to amendment) - "Motor accident" - Claimant, aged 48 years while travelling in a goods vehicle as spare driver, though employed as driver in another vehicle owned by the same owner, sustained bodily injury and there by rendered permanently disabled due to accident - Tribunal passed award in favour of claimant holding that he is entitled for total compensation of Rs.3 lakhs, and liability was made joint and several with owner and driver - Division Bench of High Court held that proviso to Sec.147(1) will cast liability on insurer who indemnify owner in respect of injury sustained by employee of insured arising out of and in course of employment - High Court misconstrued proviso following sub-sec(1) of 147 of 1988 Act - What is contemplated by proviso to Sec.147(1) is that policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in course of his employment other than a liability arising under Workmen's Compensation Act - Admittedly in this case, claimant was not driving vehicle nor he was engaged in driving said vehicle - Merely because he was travelling in cabin would not make his case different from any other gratuitous passenger - Impugned judgment of High Court is founded on misconstruction of Sec.147 and that High Court was wrong in holding that insurance company shall be liable to indemnify owner of vehicle and pay compensation to claimant as directed in award by Tribunal - However, in this case, claimant was driver on heavy vehicle and due to accident he has been rendered permanently disabled and he has not been able to get compensation so far due to stay order passed by Supreme Court and he cannot be compelled to struggle further for recovery of amount - As such he may be allowed to withdraw amount deposited by Insurance Company before Supreme Court along with accused interest - Thereafter Insurance Company may recover amount so paid from owner - Appeal, allowed. **Manager, National Insurance Co. Ltd Vs. Saju P. Paul, 2013(1) Law Summary (S.C.) 41 = 2013(2) ALD 95 (SC) = 2013 AIR SCW 609 = AIR 2013 SC 1064 = 2013(2) SCC 41 = 2013(1) SCC (Crl) 812.**

—Secs.147(1) and 167 - "Motor accident" - "Liability of Insurance Company" — Truck hired by one DS for carrying Iron rods and cement and was travelling with goods along with his two labourers - Truck met with accident resulting cause of death

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of two labourers - Tribunal awarded compensation to the Legal representatives of deceased fixing liability on the Insurer - High Court concurred with finding recorded by Tribunal and directed that Insurance Company having satisfied award shall be entitled to recover same with interest from owner/insured by initiating execution proceedings before Tribunal - Hence present appeal at instance of owner of vehicle - Appellants contend that High Court has committed serious error in coming to hold that employee of hirer is not covered without appreciating terms of policy which covers driver and six employees and further contend that term "employee" has to be given a broder meaning keeping in view language employed in policy and that there is a distinction between "passenger in a goods vehicle" and "an employee of hirer of vehicle" - But high Court has gravely erred in not appreciating said distinction in proper perspective - On an apposite reading of Secs.147 & 167, intendment of Legis-lature as it appears, is to cover injury to any person including owner of goods or his authorized representative carried in a vehicle and an employee who is carried in said vehicle - In this case, on a bare reading of Policy their can be no iota of doubt that the policy relates to insured and it covers six employees (other than driver, not exceedings six members) and it is statutory in nature - It neither covers any other category of person nor does it increase any further liability in relation to quantum - Appeal, dismissed. **Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd. , 2013(1) Law Summary (S.C.) 189 = 2013(2) ALD 105 (SC) = 2013 AIR SCW 301 = AIR 2013 SC 1125.**

—Sec.147 (1) (b)(i) & 17(b) - **A.P MOTOR VEHICLE RULES, 1989,** Rule 473 - **MOTOR VEHICLES ACT, 1939** - **CIVIL PROCEDURE CODE,** Or.41, Rule 33 - "Motor accident" - Deceased aged 25 years and 35 years doing business earning Rs.1500 & Rs.3000 p.m respectively, died in accident by travelling in goods vehicle due to negligence of driver - Tribunal granting compensation, restricting to Rs.1,62,000/- & 1,28,000/ - as claimed though determined just compensation at Rs.2,19,000/- and Rs.2,04,000/ - - During pendency of appeals filed by Insurance Company, Court allowed Application filed by respondents for amendment of figures of compensation amounts as per enhancement - Appellant/Insurance Company contends that deceased were passengers in goods vehicle and therefore they are not covered under Policy and that when claimants restricted their claim, which was awarded, it is not permissible for Court to enhance awarded compensation - Respondents contend that appellate Court has powers under Or,41, Rule 33 of CPC, even if claimants did not ask for amount they are entitled to, they can seek appropriate amendment at stage of appeal for that purpose - Though owner of goods travelling in a goods vehicle is not covered under insurance policy subsequent to amendment of Sec.147 (1)(b)(i) of 1988, even owner of goods travelling in a goods vehicle is considered as third party covered under policy - If only respondent had been diligent, they would have certainly filed an amendment application before Tribunal - Having not done so, they cannot be permitted to claim more amount by amending impugned award or their OPs at appellate stage - Further

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more in appeal filed by insurer, claimants cannot seek enhancement of amount without filing cross-objection or separate cross appeal - Appeals, dismissed. **Oriental Insurance Co., Ltd., Vs. Yarava Lakshmi Devi 2009(2) Law Summary (A.P.) 166 = 2009(4) ALD 491 = 2009(4) ALT 151.**

—Secs.147(5) & 149 - Deceased while travelling in bus fell down from bus through door and sustained injuries due to negligence of driver and died in that accident - Tribunal awarded compensation of Rs.6,01,244/- against claim of Rs.15 lakhs - High Court dismissed appeal filed by Insurance Company - Hence, present appeal - Appellant/Insurance Company contends that having regard to undisputed facts that cheque issued by owner of vehicle towards premium for insurance of vehicle was dishnoured, contract of insurance became void and insurer cannot be compelled to perform its part of promise under Policy - Where Policy of insurance is issued by authorized insuer on receipt of cheque towards payments of premium and such cheque is returned dishnoured, liability of authorized insurer to indemnify third parties in respect of liability which that policy covered subsists and it has to satisfy award of compensation by reason of provisions of Secs.147(5) and 149(1) of Act unless Policy of insurance is cancelled by authorized insurer and intimation of such cancellation has reached insured before accident. **United India Insurance Co. Ltd. Vs. Laxmamma 2012(2) Law Summary (S.C.) 51 = 2012(4) ALD 165 (SC) = 2012 AIR SCW 2657 = AIR 2012 SC 2817 = 2012(2) SCC(Cri) 692 = 2012(5) SCC 234.**

—Secs.149 (2) & 15 - Policy conditions - Interpretation of - Fake driving licence - Liability of Insurance Company - Bus owned by respondent/complainant met with accident during currancy of insurance policy issued by appellant/Insurance Company - Claim not settled since driver of vehicle did not have valid driving licence - Hence complaint - State Commission rejected complaint holding that there was no valid licence issued by R.T.A - National Commission took a contrary view that though Licensing Authority not issued any licence since there was a renewal, claim would not have been refused by Insurance Company - Statute is beneficial one qua third party - But benefit cannot be extended to owner of offending vehicle - Logic of fake licence has to be considered differently in respect of third party and in respect of own damage claims - A fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing same with or without knowing to be forged - Sec.15 of Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of Act w.e.f. the date of its expiry" - No Licensing Authority has power to renew a fake licence, and, therefore, a renewal if at all made cannot transform a fake licence as genuine - Conceptual difference between third party right and own damage cases has to be kept in view - Initially, burden is on insurer to prove that licence is a fake one - Once it is established natural consequences has to flow - Official records clearly establishd that no driving licence issued - Insurance Company not liable for own damages - Appeal, allowed. **Oriental Insurance Co. Ltd. Vs. Prithvi Raj 2008(1) Law Summary (S.C.) 130.**

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—Secs.149(2)(a)(ii) - **EVIDENCE ACT,** Sec.106 - Deceased labourer earning Rs.4,500/- per month while travelling in Van with cement covers died in accident due to negligence of driver of van - Claimants wife and mother of deceased claimed compensation of Rs.3 lakhs - Tribunal on appreciation of oral evidence cam to conclusion that accident occured due to rash and negligent driving of driver of vehicle - Appellant/Insurance Company contends that vehicle involved in accident is Autotrally and that deceased was travelling as passenger and therefore he was gratuitous passenger and that admittedly driver was not having effective driving licence and therefore Insurance Company is not liable to indemnify owner of vehicle - Claimants contend that burden lies on Insurance Company that insured violated terms and conditions of policy and that it is not sufficient to prove that Driver was not having driving licence by Insurance Company, but, Insurance Company should also prove that driver was qualify and incompetent to hold driving license and that merely because license is not renewed for a brief period it does not mean that driver was disqualified from driving vehicle and that liability of Insurance Company is statutory liability and Insurance Company has to satisfy claims of third parties and then recover same from owner of vehicle - It is not in dispute that burden of proof would be on Insurance Company to establish that there has been breach of terms and conditions of policy u/Sec.106 of Evidence Act - Where Insurance Company asserts that insured has violated terms and conditions of policy, burden lies on Insurance Company to prove same - Provisions relating to awarding of compensation are beneficial provisions, such provisions have to be liberally construed and main purpose of provisions is to see that third parties do not become helpless victims of motor accidents - It is not sufficient to prove by Insurance company that driver was not duly licensed, but they have to prove that he was disqualified for obtaining a driving licence during period of disqualification - Order passed by Tribunal, justified - MACMA, dismissed. **New India Assurance Co. Ltd. Vs. K.Devi, 2011(2) Law Summary (A.P.) 318 = 2011(5) ALD 485 = 2011(5) 544.**

—Secs.149 (2), 147,94 & 95 - Motor accident - Despite death of owner of vehicle no steps taken to get registration of vehicle transferred and insurance policy also continued to be renewed in name of deceased owner - Driver died in accident while driving said vehicle - Legal heirs of driver claiming compensation - Commissioner workmen compensation awarded compensation - High Court dismissed appeal preferred by Insurance Company - Appellant/Insurance Company contends that contract was void ab initio and it had no statutory or contractual liability to reimburse owner of vehicle in relation thereto - If appellant/Insurance Company had been renewing insurance policy on year to year basis on receipt of heavy amount of premium with knowledge that owner of vehicle expired and name of his legal heirs and representatives had not been transferred in registration book maintained by authorities under M.V Act, Insurance Company not bound to satisfy claim of third party - If despite knowledge of fact that owner had died, Insurance Company with its eyes wide open, had been accepting amount of premium every year from widow of deceased owner of vehicle, a contract by necessary implication

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had come into being and doctrine of "acceptance sub silentio" shall be applicable - It cannot be said that contract itself is void unless it is shown that in obtaining said contract a fraud had been practiced - Appeal, dismissed. **United India Insurance Co., Ltd. Vs. Santro Devi 2009(1) Law Summary (S.C.) 20 = 2009(3) ALD 129 (SC) = 2008(8) Supreme *803 = 2009 AIR SCW 647.***

—Sec.157 - "hit and run accident" - Deceased lady aged 60 years earning Rs.600/- p.m died on spot in accident occurred due to rash and negligent driving of jeep by driver - Tribunal awarded Rs.50,000 under no fault liability - Appellant/Insurace Company contends, policy issued in favour of Secretary of Vidlaya who is not party to proceedings and question of payment of compensation by insurer in discharge of obligation to indemnify insured arises only when insured is held responsible vicariously for negligence of driver - Respondent contends when jeep was transferred to some other person with vehicle policy of insurance shall be deemed to have been transferred and therefore even if earlier owner of jeep is not made party, same does not enable insurer to escape liability - In respect of 3rd party risk, certificate of insurance together with policy of insurance described therein shall be deed to have been transferred in favour of person to whom motor vehicle is transferred - CMA dismissed. **New India Assurance Co., Ltd., Vs. Petlu Nagaratnam 2009(2) Law Summary (A.P.) 58 = 2009(3) ALD 340 = 2009(2) APLJ 9 (SN) = 2009(3) ALT 423.**

—Secs.157, 2(30) & 50 - "Motor accident" - "Liability of pay motor accident compensation on recorded owner" - Registered owner soled truck and gave its possession to transferee - On date of sale, truck was covered by Insurance Policy taken out by registered owner - Change of ownership of vehicle not entered in Certificate of Registration - However purchaser took out insurance policy for truck in name of earlier owner as ownership not transferred - Accident occurred during period when policy taken out from Oriental Insurance Company - Tribunal and High Court held that Sec.157 of Act would apply only to earlier policy being that of New India Assurance Company Ltd. taken out by recorded owner during validity period of which truck was soled by him - Hence it can have no application to second policy taken out from Oriental Insurance Company Ltd., in name of recorded owner after sale of truck - Sec.157 has no application to facts of this case - In this case, that not- withstanding sale of vehicle neither transferor nor transferee took any steps for change of name of owner in certificate of registration of vehicle - As such in view of this omission recorded original owner of vehicle must be deemed to continue as owner of vehicle for purpose of Act even though under civil law he ceased to be its owner - Sec.2(30) - "Owner" - Meaning of - Having regard to provisions of Sec.2(30) and Sec.50 recorded original owner whose name continued in records of registering Authority as owner of truck was equally liable for payment of compensation amount - Since Insurance Policy in respect of truck was taken out in his name he was indemnified and claim will be shifted to insurer, Oriental Insurance Company Ltd - Recorded owner and insurer giving policy in his name are liable for paying compensation - Appeal, allowed. **Pushpa @ Leela Vs. Shakuntala 2011(1) Law Summary (S.C.) 48 = AIR 2011 SC 682 = 2011 AIR SCW 562 = 2011(3) ALD 112 = 2011(2) SCC240.**

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—-Secs.158, 165 to 168, 170 to 173 **- ANDHRA PRADESH MOTOR VEHICLES RULES, 1989,** Rules 455 to 476-A, 458, 459 - In this appeal owner of vehicle was not served and a point arose whether the presence of the owner is necessary in an appeal filed by claimants seeking enhancement of compensation - Hence, it has become necessary for this Court to decide said point, as this point has been arising in a number of appeals pending in this Court.

In view of legislative provisions and law laid down by this Court in decisions of Division Bench, it is not necessary for this Court to send a notice to a party who remained ex parte in the Tribunal.

Tribunal took age of deceased as 42 to 45 years on basis of Exs.A7 and A10 and applied multiplier of "9" - Income of deceased was taken as Rs.2,400/- per month and 1/3rd was deducted therefrom - Accordingly, loss of earnings was calculated at an amount of Rs.1,72,800/- and an amount of Rs.15,000/- was awarded towards consortium and another amount of Rs.15,000/- towards loss of estate - Thus, in all, an amount of Rs.2,02,800/- was awarded with interest at 9% per annum.

Held, in view of decision in Smt.Sarla Verma v. Delhi Transport Corporation, the appropriate multiplier for the person aged 42 to 45 years is "14" - As per Rajesh v. Rajbir Singh, there must also be enhancement in the income, which can be taken as 30% - Monthly income of Rs.2,400/- is grossly inadequate - Monthly income of deceased should be at least Rs.3,600/- with 30% enhancement - In view of number of dependants of deceased, appropriate deduction should be 1/4th, but not 1/3rd - Loss of dependency, therefore, comes to Rs.5,89,680/- (Rs.3,600 + 1080 (3600 X 30/100) = Rs.4,680/-; Rs.4,680 - 1170 (4680/4) = Rs.3,510/-; Rs.3,510 X 12 X 14 = Rs.5,89,680/-) - The loss of consortium should be enhanced to Rs.50,000/- - The amount awarded towards loss of estate need not be disturbed - An amount of Rs.10,000/- is awarded towards funeral expenses and an amount of Rs.20,000/- towards loss of love and affection to the children.

Thus, compensation amount is enhanced to Rs.6,84,680/- and award passed by Tribunal is modified accordingly - The enhanced amount shall carry interest at 9% per annum from the date of petition till the date of realization - The appeal is, accordingly, allowed. **Kanamarlapudi Nirmala Devi Vs. Shaik Abdul Razak 2016(1) Law Summary (A.P.) 319 = 2016(2) ALD 487.**

—Secs.158 (6), 163-A,165 & 166 - Deceased driver in Police Department aged 55 years and Police Constable aged 35 years died due to landmine blast - Tribunal held that claimants are not entitled to any compensation since accident was not due to rash and negligent driving of driver and it was due to landmine blast and however awarded Rs.1 lakh to claimants in each MVOP - Case of claimants of deceased driver is that he was earning Rs.7500 per month and on account of sudden death of deceased they became destitute and thus claimed total compensation of Rs.4 lakhs - Case of claimants of deceased Police Constable is that he was earning Rs.6000/- per month and due to sudden demise they have lost source of their livelihood - Thus they claimed

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total compensation of Rs.15 lakhs - Respondents contend that accident occurred due to landmine blast by unknown extremists and that driver of bus was not negligent in driving bus and that claimants in both claim petitions have been paid compensation and exgratia and they would be provided rent-free quarters till date of retirement of deceased in each case, and that claimants in each case were also provided with house site and Govt. making arrangements for providing employment to one of legal heirs of each of deceased and that Tribunal awarded total compensation of Rs.1 lakh to claimants in both MVOPs - When claimants have claimed compensation under no fault liability u/Sec.140 of Act or u/Sec.163-A of Act, they are not required to prove that accident occurred due to rash and negligent driving by driver of bus or negligent use of vehicle of respondents - Where income of deceased or victim is more than Rs.40,000 per annum, claimants are not entitled to file petition u/Sec.163-A - Petition filed u/Sec.163-A of Act can be treated as petition filed u/Sec.166 of Act - Moreover, when Sec.166(4) of Act envisages that Tribunal shall treat any report of accidents forwarded to it under sub-sec(6) of Sec.158 as an Application for compensation under Act, there is nothing wrong in treating an application filed u/Sec.163-A of Act, an application u/Sec.166 of Act - Petition filed u/Sec.163-A of Act can be treated as an application u/Sec.166 of Act - Where owner or driver or conductor had not taken necessary precautions for safety of passengers although Terrorist attacks were expected and vehicle met with an accident in Terrorist attacks it has to be held accident arose out of use of vehicle and respondents were negligent and therefore are liable to pay compensation - Admittedly in this case, they were proceeding in Forest Area in which, extremists were moving - In such a situation, Police higher Officials should have been very cautious and very careful with their rich experience, they ought to have visualized that extremists may keep a watch on movements of Police and may use landmines to kill Police personnel - Exgratia and other allowances paid to legal heirs of deceased cannot be taken into consideration for determining compensation under provisions of Act - Total compensation awarded to deceased Constable comes to Rs.10.97 lakhs - Compensation awarded to deceased driver comes to Rs.5,07,000. **Bhupati Prameela Vs.Superintendent of Police,Vizianagaram 2010(2) Law Summary (A.P.) 267.**

—-Sec.163-A – PWs. 2 and 3 on oath admitted before Court about involvement of the car in the accident - Except denying their admission Appellant/Insurance Company has not conducted any independent survey to come with different evidence - Appellant/Insurance Company issued Ex.B-1 policy in her name undertaking to bear third party risks - Ex.B1 was covering period from 21-02-2003 to 20-02-2004 and accident being occurred on 06-10-2003, policy was in force by the date of accident - As such, Insurance Company cannot repudiate its liability on ground that vehicle was sold by PW.3 and she was not in effective possession and control over the same - Evidence would show that PW2 has not paid entire sale consideration and RC was not transferred in his name by the date of accident - So, under law, PW3 was

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registered owner and PW2 was only a custodian of vehicle - PW2 would not fit in definition of 'owner' under S.2(30) of the M.V.Act - So he was only a custodian and PW3 was owner - Therefore the argument of appellant cannot be upheld - In result, this MACMA is dismissed by confirming the award of Tribunal in MVOP No. 627 of 2004. **New India Assurance Co. Ltd, Kurnool Vs. Anela Sathyamma 2014(3) Law Summary (A.P.) 207.**

—Sec.163-A - Though owner and Insurance Company are entitled to prove the fault of the claimant/deceased in a claim u/Sec.163-A of M.V. Act, they have not established the same by adducing any positive evidence except the Insurance Company taking a plea in its counter - Therefore, there is no positive evidence to effect that deceased himself was responsible for the accident - On other hand, evidence of PW1 is to effect that accident was occurred due to failure of break system - So, briefly, facts and evidence would show that deceased while driving vehicle of first respondent met with accident and died as third party - Ex.B1-policy copy covers risk of third parties - Therefore, his risk shall be deemed covered under the terms of policy. **New India Assurance Co., Ltd. Vs. Nellakoti Kanthamma 2015(1) Law Summary (A.P.) 24**

—Secs.163-A & 166 - Motor accident - Deceased, unmarried aged 18 years while travelling in Bus sustained injuries due to accident and subsequently died - Tribunal granting compensation of Rs.3,84,000/- to 1st respondent father only heir of deceased, estimating income of deceased at Rs.3,000/- p.m applying multiplier 16 - High Court allowing multiplier 15 and allowed compensation of Rs.3,64,500/- by increasing rate of interest from 7% to 10% - No justification for increase in rate of interest - Interest brought down to 7% as was directed by Tribunal - Appeal allowed to that extent. **MG. Dir, Bangalore Metropolitan Tpt. Corp., Vs. Sarojamma 2008(2) Law Summary (S.C.) 35 = 2008(4) ALD 1 (SC) = 2008(3) Supreme 242.**

—Secs.163-A and 166 - "Motor accident" - Deceased aged 29 years, working as contract agent, bearing Rs.6,500/- per month, while coming on TVS Motor Cycle, Zeep driven at high speed in rash and negligent manner dashed motor cycle and deceased sustained grievous injurious and died on spot - Claimants, wife minor children, unmarried daughter and parents filed claim petition claiming compensation of Rs.8 lakhs - Tribunal awarded total compensation of Rs.5,16,136/- by applying multiplier 17 - Appellant/Insurance Company contends that Tribunal having categorically found that 1st respondent owner-cum-driver of zeep is responsible for accident, is not justified in holding that claimants are not required either to plead or establish wrongful act or negligence and accordingly fastened liability on Insurance Company and that where Insurance Company is not liable to indemnify 1st respondent/owner of zeep and Tribunal committed error in fastening liability Respondents/claimants contend that when claim is made u/Sec.163-A of Act claimants are not required to plead and prove

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aspect of negligence and that Tribunal ought not to have looked into negligence aspect and it is also option of claimants either to claim u/Sec.163-A or Sec.166 of Act and when once they claimed compensation u/Sec.163-A of Act compensation has to be paid on structured formula basis without looking into aspect of negligence - In view of number of judgments of High Courts and Apex Courts that negligence aspect is irrelevant when a claim is made u/Sec.163-A - Very purpose of enacting Sec.163-A of Act would be defeated if Tribunal try to look into negligence aspect - When there is no need to plead and prove negligence aspect, question as to who is responsible for accident need not be gone into and that Sec.163-A of Act is a beneficial legislation which has to be interpreted keeping in view of very object of legislation - Since both vehicles are involved in accident, it is to be held that finding of Tribunal that Insurance Company is liable to indemnify 1st respondent/owner of zeep cannot be disturbed - Total compensation of Rs.5,16,136/- reduced to Rs.4,68,120/- by applying multiplier 16 - Appeal allowed in part. **United IndiaInsurance Co.Ltd., Warangal Vs. Myadada Latha 2013(1) Law Summary (A.P.) 304 = 2013(4) ALD 613.**

—Secs.163-A &166 - "Motor accident" – Claimants, wife, two minor children and mother of deceased aged 26 years who died in accident, filed petition claiming Rs.3 lakhs as compensation – Tribunal awarded compensations of Rs.1,86,100/- as against claim of Rs.3 lakhs – Hence present Appeal for enhancement - In this case, admittedly accident occurred due to rash and negligent driving of driver of crime vehicle insured with second respondent Insurance Company - When it is duty of Court to do justice to parties when technicalities come in way much importance need not be given because ultimately justice has to be done and when two views are possible, view infavour of victim which relieve there distress and misery should be adopted even claim petition filed u/Sec.163-A & 166 of Act, as Sec.166 of Act since beneficial that can be considered - Therefore deceased aged 26 years and multiplier applicable is '17' and as claimant as blacksmith, his income can be taken minimum Rs.3,000/- per month - Compensation amount enhanced from Rs.1,86,100/- to Rs.3 lakhs - Appeal allowed. **Syed Patimna Bee @ Patime Bee Vs. J.Chandra Sekhar, 2014(1) Law Summary (A.P.) 307**

—Secs. 163-A & 166 - Appeal is filed by A.P.S.R.T.C/Respondent to claim petition, aggrieved by award dated. 23-09-2006 in M.V.O.P. No. 452 of 2003 on file of Motor Accidents Claims Tribunal-cum-Principal District Judge - Grounds being that Tribunal gravely erred in finding that accident was the result of rash and negligent driving of the bus driver though there is no fault of bus driver and it was a vis major and outcome of fire accident and Tribunal also erred in awarding such a huge compensation, of Rs.21,10,000/- which is abnormally high and unsustainable and multiplier '13' taken is also not correct and claim at best be maintained only under Sec.163-A for motor vehicle bus in use for no fault of bus driver to claim under Section 166 of Motor Vehicles Act and when such is case it is Schedule-II of the Act that is applicable - Held, coming to facts it is not mere accidental occurrence as under guise of

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passengers some of miscreants, once entered bus that too one of them carrying with him petrol bottle and in the transit the miscreants tried to snatch away the suit case having an eye over it of one of passengers, when that person resisted, other miscreants of unlawful assembly with common concert, who was carrying petrol bottles sprinkled petrol and set ablaze but for the negligence of driver and conductor in allowing such persons without checking, accident could not be outcome and as such it is for fault liability claim as under Section 166 of the Act is maintainable and it cannot be regarded to adopt Schedule II of Act as a claim under Section 163-A of the Act that too income claimed is more than Rs. 40,000/- p.a. for which Section 163-A has no application but for under Section 166 of the Act - Thus Tribunal is right in entertaining claim and deciding under Section 166 of the Act holding that the accident was the result of the negligence of driver and conductor of bus for which deceased passengers for his no fault was set ablaze by some of miscreant passengers of bus from negligent allowing by driver and conductor of bus - Hence what Tribunal awarded of Rs.21,10,000/- is no way excessive to say there is nothing to interfere – Appeal, dismissed. **A.P.S.R.T.C. Vs. Borra Ramasubbamma @ Ramulu 2015(1) Law Summary (A.P.) 543**

—Secs. 163-A and 166 – **WORKMEN'S COMPENSATION ACT** - The endorsement of no claim preferred under W.C. Act is assurance for the Court and mere non-making of such endorsement itself cannot non-suit the claimants in the factual scenario for no dispute on the factum of no claim preferred under W.C. Act - From both provisions mentioned u/Secs.163-A and 166 of M.V. Act, the claimant can choose or the Tribunal can consider as per the Division Bench expression of this Court in Bhupati Prameela and others Vs. Superintendent of Police, Vizianagaram, thereby, the claim is taken u/Sec. 167 read with 163-A of M.V. Act to restrict the liability of the insurer to the extent of W.C. Act liability - It is also from the fact that when the driver of the vehicle, i.e., deceased met with death in the course of employment, the factum of accident whether due to his negligence is immaterial to the W.C. Act claim - Thereby, the claim is maintainable. **Ch.Rani Vs. Shyamsunder Mandhani *2015*(1) Law Summary (A.P.) 30**

—Secs.163-A, 166 & 167 - Deceased driver stopped his lorry at level crossing as Railway gate was closed and died due to massive and sudden heart attck and collapsed in cabin of lorry - Claimants approached MAC Tribunal claiming compensation of Rs. 6 lakhs u/Sec.163-A of M.V Act - Tribunal negatived appellants claim for compensation on ground that they failed to show that death of deceased resulted from an accident arising of out of use of motor vehicle - Appellants contend that in a claim u/Sec.163-A of Act, proof of negligence resulting in accident causing death of deceased is not necessary as distinguished from a claim u/Sec.166 of Act and u/Sec.167 of Act, claimants are entitled to choose either of fora under M.V Act and Workmen's Compensation Act to claim compensation for death of deceased - In this case

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deceased suffered heart attack when lorry was in stationed condition and died then and their - There is no evidence on record to show that employment of deceased as driver of heavy goods vehicle contributed aggravation to or accelerated his heart attack - Death of deceased in present case is not one resulting from an accident either during course of employment or during course of a motor vehicle or during course of use of a motor vehicle and that it was due to natural cause of heart attack and that evidence on record does not indicate that employment of deceased as driver of heavy goods vehicle contributed or aggravated natural cause of heart attack - Lower Tribunal rightly negatived claim of dependents of deceased who are appellants herein - Appellants are not entitled for compensation either under Sec.163 of M.V Act or under Workmen's Compensation Act - Appeal, dismissed. **Puppala Naga Malleswara Kumari Vs. M.Rambabu, 2011(1) Law Summary (A.P.) 298 = 2011(3) ALD 445 = 2011(2) ALT 760.**

—Secs.163-A, 166 & 173 - **A.P. MOTOR VEHICLES RULES,** Rule 455 & 473 - **CIVIL PROCEDURE CODE,** Or.41, Rule 22 - "Cross-objections" - "Deceased, Reader and Head of Department of Commerce in College,earning Rs.24,200/- per month, while proceeding in Maruti Car along with his wife died in accident, due to rash and negligent driving of driver of lorry which came from opposite direction and dashed Maruti car - Tribunal granted compensation of Rs.13,59,300 as against claim of Rs.20 lakhs by daughter of deceased who was pursuing MBBS Course - Insurer filed MACMA u/ Sec.173 of Act questioning very grant of compensation and whereas claimant filed cross-objections under Or.41, Rule 22 of CPC, dis-satisfied with quantum of satisfaction - Insurance Company contends that Tribunal over-compensated claimant and quantum of amount awarded by Tribunal to claimant is irrational and therefore, compensation is to be reduced considerably.

CROSS OBJECTIONS - A plain reading of provision of Sec.173 does not indicate sustainability of cross-objections in event of appeal filed by insurer found to be not maintainable.

Statute has to provide for filing cross-objections - In absence of any provision entitling respondent to file cross-objections, same is not maintainable - Sec.173 of M.V. Act does not provide for filing any cross- objections by respondent in appeal - In absence of any such provision, cross-objection filed by respondent does not deserve for consideration and accordingly they stand rejected - Claim of compensation by married daughter of deceased - there cannot be quarrel with regard to maintainability of application by claimant who is married daughter of deceased - There is no any distinction between married daughter and unmarried daughter while assessing loss of dependency - Once daughter is married, she cannot said to be wholly dependent on her parents - It does not mean that daughter is no more dependent on parents once she got married and that she cannot be categorized as a wholly dependent on parents after her shifting to her in-laws house consequent on marriage - In this case, total loss of dependency can be assessed at Rs.12,60,996/- by applying multiplier

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11 and that Tribunal grant compensation of Rs.13,59,300/- - Claimant failed to make out any valid grounds for enhancement of compensation awarded by Tribunal - Appeal and cross-objections, are dismissed. **New India Assurance Co. Ltd. Vs. Vasireddy Sujatharani 2011(2) Law Summary (A.P.) 283.**

—Secs.165, 166,167 & 163-A - "Motor accident" - Deceased aged 37 years earning Rs.5000/- p.m. died in motor accident, while proceeding in Auto, a Van being driven by its driver/1st respondent in rash and negligent manner came from opposite direction and hit Auto caused accident in which deceased sustained multiple injuries and died - Appellants/claimants, wife daughter and father of deceased filed claim petition claiming compensation of Rs.10 lakhs - Tribunal came to conclusion that accident occurred due to negligent driving of Auto driver and also came to conclusion that claimants are entitled to compensation of Rs.4,22,112/- and claimants cannot claim from respondents 1 to 4 driver and owner of Van and Insurance Company and there is no claim against 3rd respondent driver of Auto and accordingly dismissed claim petition - Appellants/claimants contend that Tribunal failed to appreciate evidence of P.W/2 and wrongly relied on Ex.A.1 FIR and that Auto being small vehicle when compared to Van, Tribunal ought to have held that driver of Van is responsible for accident and that mere use of vehicle on public road is enough to claim compensation and that when two vehicles are involved it cannot be definitely said that driver of one vehicle is totally innocent - In this case, three persons were setting in back seat of Auto and two persons on either side of driver of Auto and thus driver was sitting between two persons on his driving seat - It is clear from evidence that Auto was over loaded in passengers - Admittedly Van driver being in elevated position would be able to visualize movements of Auto which was coming from his opposite direction - Had he been more deligent he could have avoided accident - Therefore it cannot be said that accident occurred solely due to negligence of Auto driver - In this case, Auto driver is not examined and panchanama prepared at scene of offence and Sketch of scene of offence are not filed - Magistrate has acquitted driver of Auto in criminal case and it appears Investigating Officer not examined in criminal case - Claimant's allegation is that accident occurred due to rash and negligent driving of driver of Van but respondents 1 & 2 driver and owner of Van managed Police and got registered a case against 3rd respondent Auto driver - Merely because Police issued FIR or laid charge-sheet against a driver, contents of FIR and charge-sheet cannot be basis for deciding negligent aspect - Tribunal should appreciate evidence adduced before it and in proper perspective - It appears that provisions of MV Act are required to be amended so as to render complete justice to all victims of motor accidents and there should be a social security, legislation covering all victims of motor accidents and dependents of person who died in motor accident - Irrespective of terms and conditions of Policy, victims should pay compensation, in fact, injured or dependents of deceased are no way concerned with terms and conditions of policy and they are not parties to insurance policy and therefore not bound by terms and conditions of

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Policy - In most of cases victims are only either pedestrians or travelling in vehicles and they are not expected to know that vehicle which cause accident was being driven by person who had no driving licence or he was under influence of alcohol and dispute should be between ensured and ensurer - Having regard to fact that Auto was overloaded and fact that driver of Van was in elevated position and could have visulized movements of Auto, it may be just and reasonable to apportion negligence between van driver and auto driver as 60:40 - Claimants are entitled to a total compensation of Rs.7,70,600/- - Respondents 1,2 and 4 are jointly and severally liable to pay 60% of awarded amount - 3rd respondent driver of Auto is liable to pay 40% of compensation amount in view of apportionment of negligence between Van driver and 3rd respondent/driver of Auto - Accordingly MACMA, is allowed. **Dadi Komuravva Vs. Garshe Buchaiah 2013(2) Law Summary (A.P.) 24 = 2013(4) ALD 634 = 2013(4) ALT 327.**

—Secs.165 & 168 – "Motor accident" – "Learning licence" - Deceased aged 50 years, carpenter while travelling in Auto with his wife and another person accident occurred on account of negligent driving of driver, dashing motor cycle – Tribunal granted compensation of Rs.2.97 lakhs against owner and driver and dismissed against Insurance company - R.3, Insurance Company, contends that accident occurred due to collusion - Owner and Insurer of motor cycle are also parties and it is bad for non-joinder of necessary parties - In this case Tribunal observed that R1 & R2 violated conditions of Policy for allowing person holding learning license - M.A.C.M.A. allowed, while upholding amount of compensation - Insurance Company directed to deposit compensation amount and recover same from R1 & R2. **Karimella Santhamma Vs. More Venkanna 2014(2) Law Summary (A.P.) 28.**

—Sec.166 - Motor accident - Deceased driver of appellant/Corporation, aged 38 years lost his life due to rash and negligent driving of bus - Tribunal awarding compensation of Rs.2,46,000 as against claim of Rs.5 lakhs - High Court enhanced compensation to Rs.3,35,952/- holding that award as made was inadequate and just compensation not awarded - Appellant/Corporation contends that hen there was no appeal by the claimants in Appeal filed by the appellant/Corporation, High Court should not have enhanced amount and that multiplier as adopted was high - Under M.V Act there is no restriction that Tribunal/Court cannot award compensation amount exceeding claim amount - Function of Court is to award "just" compensation which is reasonable on basis of evidence produced on record - In such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing claim there would be change of cause of action. **APSRTC Vs. M. Ramadevi 2008(1) Law Summary (S.C.) 115.**

—Sec.166 - Motor accident - Claimant aged 20 years, agriculturist, while travelling in Jeep, received fracture injury to left arm - Tribunal granting compensation of Rs.50,000/- as against claim of Rs.1 lakhs, payable by both appellant/Insurer and owner of vehicle - Appellant/Insurance Company contends that offending Jeep was a contract carriage

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vehicle and same was run as stage carriage in violation of permit and so R.1, owner is liable to pay compensation and that offending vehicle to be run by driver L.M.V. transport, but driver had L.M.V. non-transport driving licence and thus R.1 violated terms and conditions of policy - Tribunal recorded reasons in detail and granted compensation - Hence award of Tribunal, justified - Respondent/claimant is at liberty to withdraw amount - Appellant is at liberty to recover same from R.1, owner of offending vehicle. **New India Assurance Co., Ltd., Kadapa Vs. Patan Nizam Vaili Khan 2008(2) Law Summary (A.P.) 145 = 2008(4) ALD 219 = 2008(4) ALT 427.**

—Sec.166 - EMPLOYEES STATE INSURNCE ACT, 1948, Sec.53 - "Motor accident" - Deceased while travelling by Matador sustained serious injuries and died - Tribunal awarded compensation of Rs.1.2lakhs holding that accident occurred due to rash and negligent driving of Truck - Appellant/Insurance Company contends that Application filed by claimant u/Sec.173 of M.V Act not maintainable in view of Sec.53 of ESI Act - High Court dismissed Application filed by appellant/Insurance Company - Remidies under M.V. Act and ESI Act are not mutual exclusive - Payment or non-payment of contribution and action or non action prior to or subsequent to date of accident is really inconsequential - In this case, deceased employee is clerly an "insured" person as defined in Act - As deceased employee has suffered employment injury as defined u/Sec.2(8) of Act and there is no dispute that he was in employment of employer, by operation of Sec.53 of Act proceedings under Compensation Act were excluded statutorily - Appeal, allowed. **National Insurance Co., Ltd., Vs. Hamida Khatoon 2009(3) Law Summary (S.C.) 76 = 2009(6) ALD 86 (SC) = 2009(6) Supreme 663 = AIR 2009 SC 2599 = 2009 AIR SCW 4520.**

—Sec.166 - "Motor accident" - Deceased, Carpenter, aged 40 years earning Rs.84/- per day while travelling in jeep died in accident - Tribunal awarded compensation of Rs.2,32,766 as against claim of Rs.8,31,000 applying multiplier 15 - High Court enhanced compensation to Rs.4,84,000/- applying multiplier 17 - Appellant/Insurance Company contends that amount enhanced by High Court is excessive and exorbitant and that deduction of only 1/4th towards his personal expenses from total income has wrongly been allowed and it would have been 1/3rd of his total income - In this case, deceased had left behind a large family to be lookedafter, who all were dependents on his income including his widow, sons, daughter and aged parent - Keeping in mind family back ground, High Court has deducted 1/4th amount which deceased would have spent on himself - No error committed by High Court in deducting only 1/4th amount from total income of deceased towards expenses which would have been incurred on himself - Appeal, dismissed. **State of Karnataka Vs. Moideen Kunhi (dead) by L.Rs. 2009(3) Law Summary (S.C.) 84.**

—Sec.166 - "Compensation for future treatment" "for loss of marriage prospects" - Appellant/claimant aged 18 years while travelling in tempo which met with accident, sustained serious injuries on head, nose, back and lower region of abdomen and remained in hospital one and half months - Tribunal awarded total compensation of

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Rs.1,49,440 as against claim of Rs.3 lakhs - In Appeal High Court enhanced an amount of Rs.40,000/- - Being not satisfied claimant filed appeal before Supreme Court - In this case, appellant produced substantiative evidence to prove that as a result of accident eight grievous injuries including fracture of pelvis and he had to remain in hospital for one month and half on account of grievous injuries he was unable to continue his studies and he will have to undertake lifelong treatment for recurrence of urethral strictures and consequential dysfunction due to fracture of pelvis - Unfortunately neither Tribunal, nor High Court adverted to this part of evidence and omitted to award compensation for expenses likely to be incurred by appellant for future treatment - In the instant case, appellant had claimed compensation of Rs.3 lakhs only - However as Tribunal and High Court and for that reason Supreme Court are duty bound to award just compensation and as such compensation enhanced from Rs.1,89,440 to Rs.6 lakhs - FUTURE TREATMENT - Keeping in view nature of injuries and fact that he will have to take treatment for remaining life it will be reasonable to infer that he will be required to spend a minimum of Rs.1,000/- per month for future treatment, which would necessarily include fees of doctors, medicines, transportation etc. - In absence of concrete evidence about anticipated expenditure, ends of justice will be met if appellant is awarded Rs.2 lakhs, which if deposited in fixed deposit would earn an interest of Rs.14,000/- to Rs.16,000/- per annum - LOSS OF MARRIAGE PROSPECTS - On account of injuries suffered by appellant, prospects of his marriage have considerably reduced and rather, they are extremely bleak , therefore a sum of Rs.2 laksh should be awarded to appellant for loss of marriage prospects and enjoyment of life - Impugned judgment is modified and declared that appellant shall be entitled total compensation of Rs.6 lakhs. - Appeal allowed. **Ibrahim Vs. Raju 2011(3) Law Summary (S.C.) 198 = 2012(3) ALD 60 (SC) = 2012 AIR SCW 413 = AIR 2012 SC 543.**

—Sec.166 - "Motor accident" - Death of unborned child in uterus - Vehicular accident between car and bus - Due to impact of accident claimant who was 30 weeks pregnant suffered fatal blow on stomach and her baby died inside uterus - Tribunal awarded compensation of Rs.50,000/- for loss of child and Rs.10,000/- towards pain and sufferings - High Court enhanced compensation amount to Rs.1,80,000 - DETERMINATION OF COMPENSATION AMOUNT OF DEATH OF STILL BORN CHILD - Discussed - In instant case, neither Tribunal nor High Court applied any principle for determination of amount of compensation on account of death of still born child - There is no discussion on question of non-pecuniary compensation awarded by Tribunal to claimant mother on account of pain and suffering as a result of death of child - However, as accident took place in year 1995, at this juncture it would be too harsh to direct claimants to undergo entire gamut of a fresh exercise u/Sec.168 of Act - Appeal, dismissed. **National Insurance Co. Ltd. Vs. Kusuma 2011(3) Law Summary (S.C.) 38.**

—Sec.166 - Deceased aged 33 years working as welder getting wages of Rs.4,400/- per month while riding motor cycle with person sitting on pillion seat, lorry bearing No.APK 7039 driven in rash and negligence manner by its driver dashed motor cycle as result deceased and pillion rider fell down and received severe injurious and

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deceased died instaneously, whereas pillion rider survived - Appellants. widow minor children and parents of deceased filed claim petition seeking compensation of Rs.5,77,820/- - Tribunal dismissed claim filed by appellants in toto without making any assessment of compensation on ground that appellants failed to establish involvement of above said lorry in accident - Contention that Tribunal passed impugned order ignoring settled principles governing burden of proof relating to factum of accident in motor vehicle accident cases and and that decision of Tribunal below is result of improper appreciation of evidence and inadvertence to pleadings of parties - Insurance company contends that Tribunal furnished valid reasons for recording finding that appellants failed to establish involvement of above said lorry in accident and that finding recorded by Tribunal needs no interference - In present case, report lodged on next day of accident amd therefore FIR promply lodged - Factum of accident need not be proved in claim cases by standard of beyond reasonable doubt - Tribunal has to take a broad and comprehensive view of matter and claimants are not required to prove each and every fact relating to occurrence of accident meticulously - Tribunal picked up some discrepancy here and there and took view that P.Ws. 2 & 3 are planted witnesses - Tribunal by going through contents of written statement filed by respondents ought to have understood properly scope of their context in cliam petition in relation to factum of accident - None of respondents anywhere stated in their written statement that above said lorry was not involved in accident and it was planted for purpose of present case - Theory that second respondent owner and police colluded with the claimants was for first time put-porth by 3rd respondent/Insurance Company in course of cross-examination without there being any pleading in the written statement - Tribunal ought not to have permitted 3rd respondent/Insurance Company to cross-examine witneseses on point that said lorry was not at all involved in accident since it was not pleaded by 3rd respondent in its written statement - In this case, Tribunal applied standard of proof of beyond reasonable doubt in a claim case, for compensation under M.V Act, which is contrary to settled legal principles and also procedure to be adopted by Tribunal in deciding accidents claim case - Approach adopted by Tribunal therefore is disapproved and finding recorded by Tribunal that appellants failed to prove that accident was due to rash and negligent driving of driver of lorry is set aside - Therefore 2nd respondent/owner of vehicle and 3rd respondent/Insurance Company are held jointly and severally liable to pay compensation to appellants/claimants - Therefore appellants are entitled to a total compensation of Rs.9,70,400/-, applying relevant multiplier “16” - Appeal, allowed. **Bodige Padma Vs. Makula Shanker 2012(3) Law Summary (A.P.) 74 = 2012(5) ALD 500 = 2012(5) ALT 559.**

—Sec.166 - “Motor accident” - Decesed/Process Server in Judicial Department, aged 33 years, getting salary of Rs.4,935/- p.m, while travelling on Motor Cycle, Lorry came from behind and dashed against motor cycle, causing grievous injuries to deceased resulting instantaneous death - Claimants, wife, children and parents of deceased filed claim petition stating that they have lost their sole bread winner - Tribunal awarded

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total compensation of Rs.6,98,160/- against claim of Rs.8 lakhs - Hence Claimants filed present Appeal seeking enhancement of compensation - Claimants contend that amount awarded towards loss of dependency is less and needs to be enhanced and that deceased being Govt., Servant and he is less than 40 years of age at time of accident, an addition of 50% of actual salary to salary of deceased should be added for calculating future prospects - Insurance Company contends that no appeal has been filed challenging application of multiplier 17 by Tribunal and that since 1st claimant is given benefit of "compassionate appointment" in District Court and since 4th claimant is pensioner, they are not entitled to any amount as compensation under Provisions of Act and that amount awarded cannot exceed claim made by claimants in their petition - In present case, deceased is a Court employee and met with accident and he has not done no wrong but his dependents are suffering at cost of wrong doer and that M.V Act being beneficial legislation, compensation which is to be determined must be just, reasonable and proper and that claimants are to be compensated for loss of dependency which should not be a wind fall - In absence any bar in M.V Act, Court has got power to award higher compensation to victims of accident and only restriction being amount awarded should be just and reasonable and in view of facts and circumstances, in this case, compensation awarded is neither arbitrary, nor unjustifiable but just and reasonable - Compensation enhanced from Rs.6,98,160/ - to Rs.10,92,968/- - Appeal, allowed. **Tatha Sreevani @ D.Sreevani Vs. D.Vijaya Kumar 2012(3) Law Summary (A.P.) 312 = 2013(1) ALD 615 = 2013(2) ALT 578.**

—Sec.166 - Motor accident - "Quantum of compensation" - "Multiplier" - Deceased while returning from plant site on scooter died in accident due to rash and negligent driving of driver of truck - Tribunal, after analyzing entire evidence awarded compensation of Rs.10,08,000/- to claimants, wife and children of deceased - High Court modified and reduced compensation to Rs.5 lakhs - Appellants/claimants contend that Tribunal applied multiplier 12 instead of 17 having regard to fact that deceased at time of his death was 35 years old - In this Case, High Court while reducing quantum of compensation as well as rate of interest failed to assign any reason and that impugned order of High Court being non-speaking order calls for interference in these appeals - FORMULA RELATING TO SELECTION OF MULTIPLIER - STATED - Applying formula in decisions of Apex Court and when said formula is applied since deceased is stated to be 35 years old at time of his death, multiplier would be "16" which has to be applied for calculating compensation - Applying multiplier of "16", compensation works out to Rs.13,44,000/- - Hence order of High Court in so far as it reduced quantum of compensation, set aside - 1st respondent/Insurance Company is directed to pay to appellant/claimants a total compensation of Rs.13,44,000/-. **Rebeka Minz Vs. DM, United India Insurance Co. Ltd. 2012(3) Law Summary (S.C.) 117 = 2013(1) ALD 27 (SC) = 2012 AIR SCW 4779 = AIR 2012 SC 3263 = 2012(3) SSC (Cri) 822 = 2012(8) SCC 145.**

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—Sec.166 - "Motor accident" - Deceased painter earning Rs.3000/- per month died in accident occurred due to rash and negligent driving of driver of lorry - Tribunal awarding compensation of Rs.3,28,000/- as against claim of Rs.5 laksh to claimants who are widow, parents and minor children of deceased, fastening liability on 1st respondent/owner and 2nd respondent/Insurance Company jointly and severally - Hence present appeal filed by claimants for enhancement - Claimants specifically contended before Tribunal that deceased was painter, aged 25 years, earning Rs.3000/- per month - Insurance company in its counter did not dispute specifically the fact that deceased was painter earning Rs.3,000/- and threfore whether Tribunal is justified in reducing income stated by claimants to Rs.2000 stating that no documentary evidence is placed in proof of income - Tribunal should have accepted claim which appears to be bona fide and honest - In this case, admittedly deceased is a painter aged 25 years on date of death - Statement made by claimants that by working as painter, deceased was earning Rs.3000/- can be considered to be honest and genuine - Tribunal ought to have accepted statements of appellants/claimants about income of deceased which was at Rs.3000 per month and should have computed compensation on said basis - In this case, considering income of deceased, Rs.3000/- per month at his annual income comes to Rs.36000/- and 1/4th has to be deducted towards personal and living expenditure of deceased which comes to Rs27000/- - To arrive loss of depedency above amount has to capitalized with multiplier "18" which comes to Rs.4,86,000/- and this apart 1st appellant/ claimant, widow of deceased is entitled for loss of consortium, funeral expenses and loss of estate and in all appellants are entitled for an amount of Rs.5,06,000/- - Court is not supposed to restrict compensation to claim made in claim petition even though it exceeds the claim actually made in claim petition - Appellant/claimants are therefore entitled for compensation of Rs.5,06,000 - CMA, allowed. **Fathima Begum Vs. Sangamesh Chidri, 2012(2) Law Summary (A.P.) 194 = 2012(5) ALD 125 = 2012(5) ALT 277.**

—Sec.166 - "Motor accident" - Deceased aged 42 years, caterer of food items earning Rs.4500/- per month, while proceeding to bus stand Auto came from behind in rash and negligent manner dashed deceased, due to which left leg of deceased was fractured and ultimately as a result of infection of injury he died - Wife of deceased lodged FIR nearly 45 days after accident - Appellants/claimants filed petition claiming Rs.5 lakhs towards compensation - Tribunal upheld contentions of 2nd respondent/ Insurance Company that Auto not at all involved in accident and false claim had been laid against insurance company in collusion with owner and driver of Auto and also traffic police - Tribunal dismissed entire claim made by appellants - Hence present appeal preferred by claimants - In this case, Tribunal had unnecessarily indulged in microscopic examination of evidence of P.W.1, wife of deceased, as to explanation regarding delay in lodging FIR which approach is totally erroneous and uncalled for in an enquiry in claim case u/Sec.166 of M.V. Act for which a summary of procedure is contemplated - Since strict rules of evidence have no application for proceedings

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before Tribunal under M.V. Act, evidence of P.W.1/wife given basing on version of eye witnesses to accident as to number of Auto and identity of driver of Auto can be relied on and taken into consideration - Approach of Tribunal that it was not possible for P.W.1 to observe number of vehicle at time of accident is unrealistic and prompted by misconceived notions - Victims might have furnished particulars of offending vehicle after ascertaining them from persons who witnessed accident - In this case, there is no dispute about fact that deceased received fracture to his left leg in an Auto accident - Appellants/claimants produced entire record relating to prolonged medical treatment of deceased before Tribunal - Police filed charge-sheet after making thorough investigation into offence - 1st respondent/driver admitted offence before Magistrate and paid fine imposed by Magistrate and this important fact has been overlooked by Tribunal on ground that findings of Criminal Court are not binding on civil Court or Tribunal - In claim cases under M.V Act, summary procedure is contemplated to prove respective versions of parties - Therefore victims who are under a duty to prove accident, need not prove same beyond reasonable doubt just like prosecution in a criminal case - Finding recorded by Tribunal is contrary to evidence on record and appreciation of evidence by Tribunal is contrary to established norms - As such finding of Tribunal, set aside - Consequently respondent/owner of offending vehicle and 2nd respondent/Insurance Company are jointly and severally liable to pay compensation to claimants - DETERMINATION OF QUANTUM OF COMPENSATION - Appellants claimed compensation of Rs.5 lakhs on account of death - For purpose of computing compensation in absence of independent evidence adduced by claimants about his income - income of deceased considered at Rs.3000/- p.m. - Taking into consideration age of decease relevant multiplier is "14" and loss of dependency arrived at Rs.3,36,000/- - Rs.50,00 can be granted to claimants for medical expenses for prolonged of treatment of deceased - Claimants are entitled for a total amount of Rs.4,06,000/- - Appeal, partly allowed. **T.Subramanyam Vs. G.Bhaskar Hussainaiah 2012(2) Law Summary (A.P.) 227 = 2012(5) ALD 303 = 2012(5) ALT 284.**

——Sec.166 - This Bench is constituted to answer reference made in above M.A.C.M.A.No.364 of 2010 is filed by the claimant seeking enhancement of compensation awarded by Accidents Claims Tribunal, whereas, M.A.C.M.A.No.1020 of 2010 is filed by the National Insurance Company Limited, questioning the very award of compensation itself - For the purpose of this reference, Court take facts as narrated in M.A.C.M.A.No.364 of 2010 - It was specific case of claimant that for purpose of tuition fee of deceased, she obtained loan from Bank and was educating her deceased brother - On behalf of claimant, the certificate issued by the Medical college showing the fee paid for the deceased and also the notices demanding the payment of balance outstanding amount of loan, issued by Bank were exhibited - Seeking enhancement of compensation awarded by the Tribunal, the claimant has filed M.A.C.M.A.No.364 of 2010, whereas, questioning the award of compensation, the Insurance Company has filed M.A.C.M.A.No.1020 of 2010 - It was case of Insurance Company that claimant was

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not dependant on deceased, as such, she is not entitled for compensation u/Sec.166 of Motor Vehicles Act.

When matters have come up before Division Bench, in view of conflicting opinions rendered earlier by 2 different Division Benches in case of Oriental Insurance Co. Ltd. v. P.Satyavathamma and in Vanguard Insurance Co. Ltd. v. Chellu Hanumantha Rao, Division Bench has referred matters to Full Bench, for answering the following question: "Whether non-dependant heir of deceased who died in a motor accident is entitled to lay claim for compensation u/Sec.166 of the Motor Vehicles Act, 1988 where there is no other dependant legal heir claiming compensation ?"

Held, in view of clear and unambiguous language u/Sec.166 of Motor Vehicles Act, it is clear that application can be made either by injured or the legal representatives of the deceased - Though 'legal representative' is not defined under the provisions of Motor Vehicles Act, 1988, from Rule 2(g) of A.P.Motor Vehicles Rules, 1989, it is clear that definition of 'legal representative' is given same meaning as defined u/ Sec.2(11) of Code of Civil Procedure.

In view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case, it is clear that compensation which is payable on account of no fault liability will form part of estate of deceased - In that view of matter, there is no basis for contending that application is to be filed only by dependants - As Court have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under Motor Vehicles Act - In view of the clear language u/Sec.166 of Act and in view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case, wherein, it is held that compensation to be awarded u/Sec.140 of Motor Vehicles Act will form part of estate of deceased, and further, as Act also provides for compensation on other conventional heads, Court view that the non-dependant also can lay a claim by filing application u/Sec.166 of Act - It is also to be noticed that situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also - In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in judgment of Hon'ble Supreme Court in Montford Brothers' case, it is common in Indian society, where, members of family who are not even dependant also can extend their support monetarily and otherwise to victims of accidents to meet immediate expenditure for hospitalization etc.,

For aforesaid reasons and in view of language u/Sec.166 of Motor Vehicles Act, 1988, r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, Court view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application u/Sec.166 of Motor Vehicles Act.

Accordingly, Bench answer reference, holding that a non-dependant heir of deceased who died in a motor accident is entitled to lay a claim for compensation u/Sec.166 of the Motor Vehicles Act, 1988 where there is no other dependant legal heir for claiming compensation - Reference is answered accordingly. **Dr.Gangaraju Sowmini Vs. Alavala Sudhakar Reddy 2016(1) Law Summary (A.P.) 406 = 2016(2) ALT 306 = 2016(2) ALD 226.**

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—- Sec.166 - 2nd respondent-Reliance General Insurance Company Limited, the Insurer, preferred the present appeal against impugned order passed in favour of four claimants for Rs.34,50,000 with interest at 12% p.a. from date of claim petition till date of decree and later at 6% p.a - As per claim petition, it was due to rash and negligent driving of driver of crime car belonging to 5th respondent herein, car dashed bike of deceased while he was proceeding on his bike and was taken to Hospital immediately but succumbed to injuries in transit.

It is contended on behalf of appellant-Insurer that trial Court gravely erred in finding composite negligence of deceased rider of bike vis-à-vis driver of car instead of holding that deceased was alone negligent and liable for accident that too, in proceeding at about 40 kms speed on road and taking right turn by driver of car was not on wrong side even as per P.W.2 eye witness to accident, that Tribunal also gravely erred in arriving net salary of Rs.34,468/- without deduction of personal expenses of Rs.18,400/- besides conveyance allowance of Rs.800/- and compensation awarded is highly excessive, so also in taking 50% future prospects even deceased was only a probationer in private job and that rate of interest awarded at 12% p.a. is also unsustainable and award of tribunal thereby is liable to be set aside.

Held, deceased was a post-graduate in Applied Science as per Ex.A.13 and 15 from Periyar University and passed in distinction in year 2004 and those are the copies of provisional and regular P.G.Degree certificates to that effect - As the claim is under Section 166 of the Act, as per Sarla Verma, Reshmakumari and Rajesh the multiplier that is applicable is 16 for persons in the age group of 31 to 35 years - Tribunal rightly has taken the multiplier - Coming to earnings for consideration and personal expenses deduction out of it, evidence of P.W.3 who is the Manager (Legal) of Fullerton Indian Private Limited, Hyderabad branch where the deceased was working as H.R. Assistant Manager, since 23.08.2013 (even by the date of accidental death on 19/20.11.2013) as per Ex.A.7 as probationer to say undergoing probation still - Merely because he is in probation, does not mean he was not in employment with monthly salary to be computed for assessing compensation as on the date and time of death - As per Section 2(22) of the Income Tax Act, income is an inclusive definition which includes any special allowance and benefit granted to the assessee (employee) other than perks to meet expenses for performance of duties or as employment of profit or to compensate for increase in the cost of living or value of any benefit or perquisite.

Net salary thereby is Rs.34,468/- Ex.A.9 Salary sheet also proved through P.W.3 for the total three months period from 23.08.2013 to 19.11.2013 in this regard - P.W.3 denied the suggestion of deceased never worked in the entity and Exs.A.7 to A.9 are created or he was not paid any salary by the entity or he is deposing false - There is no other much less worth cross-examination to discredit the evidence of P.W.3 or to doubt the probative value of the Exs.A.7 to A.9.

If 1/3rd deducted towards personal expenses of the deceased, contribution of the deceased to the family is the remaining 2/3rds which comes to (Rs.37,125-

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Conveyance Allowance of Rs.800 + IT deduction of Rs.438 + P.F. contribution of Rs.1575 + Professional Tax of Rs.200 + Mediclaim recovery of Rs.444 = Rs.34,468/ -is the net salary as arrived by the tribunal and even instead of Rs.438/- if at least 12% deducted towards income tax, after 50% prospective increase on Rs.34,468+Rs.438=Rs.52,359/-, of which 12% towards income tax deduction taken at Rs.6,283/-, the net amount comes to Rs.46,076/- and after 1/3rd deduction, the 2/3rds comes to Rs.30,717/- x 12 x 16 = Rs.58,97,718/-, besides loss of consortium to the first claimant-wife Rs.1,00,000/-, loss of estate Rs.10,000/-, care and guidance to the minor child Rs.25,000/- even as awarded by the tribunal taken, funeral expenses Rs.25,000/- as laid down in Rajesh supra, it comes to more than what the tribunal awarded of Rs.34,50,000/- - Thus, as held in Ranjana Prakash, this Court has since no power to enhance for what is awarded is no way excessive but low, there is nothing to reduce the quantum of compensation awarded by the tribunal of Rs.34,50,000/ - The latest expression of the three judge Bench of the Apex Court in Rajesh v. Rajbir Singh , it is held categorically that it is reasonable to award rate of interest at 7.5% p.a - Hence, the rate of interest is modified to 7½% p.a. uniformly from date of claim petition till realisation instead of 12% p.a. from date of claim petition till date of award and thereafter 6% p.a. till realization as awarded by the Tribunal.

Accordingly and in result, appeal is disposed of before admission while setting aside finding of Tribunal on contributory negligence of deceased and car driver equally and held accident was result of only due to rash and negligent driving of car driver however, by not interfering with quantum of compensation awarded by Tribunal for same is no way excessive, but for modifying the rate of interest from 12%p.a.from date of claim petition filed before tribunal till date of award and thereafter at 6% p.a. till realization, to 7.5% p.a. from date of claim petition till realization uniformly, rest of award holds good. **Reliance General Insurance Co, Ltd. Vs. S.Sunitha @ R.Sunitha 2016(2) Law Summary (A.P.) 391 = 2016(5) ALD 431.**

—Sec.166, 2(4), 235, 214, 2(1) & 233 – **A.P. MOTOR VEHICLES RULES, 1989,** Rules 268 & 269 - Motor accident – Agrl. Cooly aged 26 years, earning about Rs.1500/- p.m died while travelling in Auto due to negligent driving of driver – Tribunal awarding compensation of Rs.1,67,590 as against claim of Rs. 2 lakh - Appellant/Insurance Company contends that driver of Auto was not having valid driving license at time of accident and he was having only license to drive light motor vehicle - As per Rules "Auto-rickshaws" can carry passengers – Therefore, a person having a license to drive Auto-rickshaws only without having a license to drive light motor vehicles, also can drive Auto-rickshaws carrying passengers - Driver of Auto who had a driving license to drive light motor vehicles and auto-rickshaws, earlier could even drive public service vehicles, goods carriages, educational institution buses and private service vehicles also from 29-4-1999 when he was given license to drive "transport vehicle" also – So, entrusting auto to driver who caused accident cannot be said to have violated terms and conditions of Policy - Tribunal did not commit any error in making appellant/Insurance Company also liable to pay compensation payable to claimants – Appeal, dismissed. **Oriental Insurance Co., Ltd., Vs. Mamidi Radha 2008(3) Law Summary (A.P.) 228 = 2008(6) ALD 562.**

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—Secs.166 and 140 - Motor accident - - "No fault liability" - "Doctrine of res ipsa loquitur" - Deceased, cleaner of lorry aged 18 years getting salary of Rs.2000/- per month, died in accident due to rash and negligent driving of driver of tripper - Claimants, parents and brothers filed claim petiton claiming compensation of Rs. 2 lakhs - Tribunal took view that since claimants did not examine any eye witness to accident, they failed to substantiate their version that accident was result of rash and negligent driving of driver of Tipper and arrived at decision that appellants/claimants 1 and 2 are entitled for compensation of Rs.50,000 under no fault liability as envisaged u/Sec.140 of M.V Act and accordingly granted compensation of Rs.50,000/- and dismissed rest of claim - Appellants/claimants contend that since there is no dispute about fact that deceased died while he was in between lorry and Tipper and in view of fact that claimants specifically attributed rash and negligent driving of driver of Tipper burden is on owner and insurer af Tipper to establish accident was not due to rash and negligent driving of driver of Tipper, on failure by them to discharge said burden, claims Tribunal ought to have drawn inference against them and should have held owner of vehicle and insurer, respondents 1 and 2 are jointly and severally liable to pay compensation and that Tribunal went wrong in awarding compensation u/sec.140 of M.V Act, and should have granted compensation on fault liability u/Sec.166 of Act - Insurance Company and 2nd respondent contends that burden is on claimants to establish that accident was due to rash and negligent driving of driver of Tipper and on their failure to discharge said burden claims Tribunal is justified in granting compensation under no fault liability - Claimants/appellants further contend that having regard to facts and circumstances leading to occurrence of accident Claims Tribunal ought to have applied doctrine of res ipsa loquitur on failure by owner and insurer to discharge burden that accident was not due to rash and negligent driving of driver of Tipper - BURDEN OF PROOF - In normal Course burden to prove cause of accident lies on claimants, but when claimants are persons known to them do not know cause of accident, they can explain circumstances which resulted in accident and in such an event doctrine of res ipsa loquitur comes to their risk which lays down principle that accident speaks for itself - In instant case, since lorry in which deceased working was in stationary position, accident must have been caused due to movement of Tipper which was driven by its driver - Manner in which accident took place, therefore, is exclusively within knowledge of driver of Tipper and under these circumstances since claimants proved that accident, burden to prove as to how accident had taken place is on owner or insurer of Tipper and they ought to have examined driver of Tipper to explain circumstances under which accident took place and for non-examination of driver of Tipper an adverse inference against insured and insurer can be drawn in effect that had the driver of offending vehicle had been examined he would have stated that accident took place as he drove vehicle without observing the position of deceased in between two vehiles - Therefore finding recorded by Tribunal that claimants failed to prove that accident caused to rash and negligent driving of driver needs to be set aside - Taking circumstances into account in which accident took

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place and by applying doctrine of res ipsa loquitur, that accident was caused due to rash and negligent driving of driver of Tipper - Consequently owner and insurer of Tipper, respondents 1 and 2 are jointly and severally liable to pay compensation to claimants - Taking into consideration age of mother of deceased as 48 years on date of his death multiplier of "13", claimants are entitled to total compensation of Rs.3,22,000/- - Award passed by Tribunal, set aside - Appellants/claimants parents of deceased are granted compensation of Rs.3,22,000/-. **Moinuddin Vs. Md.Kareemuddin 2013(2) Law Summary (A.P.) 99 = 2013(5) ALD 276 = 2013(4) ALT 465.**

—Secs.166 and 147 and 95 (a) & 95 (b) (i) - Motor accident - Deceased, owner of cloth shop while travelling in jeep died on spot in accident due to rash and negligent driving of driver - Tribunal awarded compensation of Rs.10, 75,517 as against claim of Rs.20 lakhs to claimants, wife, children and parents, holding that Insurance Company and owner of vehicle are jointly and severally liable to pay compensation amount - Petitioner/ Insurance Company contends that on date of accident, deceased travelled in private jeep insured under Act Policy and therefore, occupants and inmates of vehicle are not third parties to make Insurance Company liable for payment of compensation - Respondents/claimants contend that in absence of any plea taken by Insurance Company about non-payment of extra premium and that Act Policy does not cover passengers travelling in a private jeep, it is not open for Insurance Company to raise such pleas in this appeal since it is not established by Insurance Company that more than 5 passengers travelled in vehicle - Once Insurance Company under Cover Note has not undertaken liability by collecting extra premium for passengers who traveled in insured vehicle, it cannot be held liable to pay compensation and it is only respondent/owner of vehicle who is liable to satisfy decree and pay compensation amount - Judgment and decree passed by Tribunal, set aside - CMA, allowed. **United India Insurance Co.Ltd. Vs. Kondakotla Saroja 2008(3) Law Summary (A.P.) 37.**

—Secs.166 & 163 - "Motor accident" - Deceased aged 19 years, student of Engineering was killed in motor accident when motor cycle on which he was going along with his friend was hit by Truck belonging to 1st respondent - Parents of deceased aged 42 and 45 years, filed claim petition - Tribunal awarded total compensation of Rs.1,92,000/ - applying multiplier "17" keeping in view age of deceased - In present case, deceased aged 19 years, student of Engineering Course and having regard to age of parents compensation enhanced to Rs.7 lakhs - Appeal partly, allowed. **Radhakrishna Vs. Gokul 2013(3) Law Summary (S.C.) 223 = 2014(3) ALD 181 (SC) = 2014 AIR SCW 548.**

—Secs.166 & 163(A) Schedule II - "Motor accident" - Deceased aged 48 years carrying on business, earning Rs.1500 per month, sustained injuries in motor vehicle accident resulting amputation of left leg - Tribunal granted Rs.25000 towards compensation arriving at decision that there was contributory negligence on part of appellant - In this case, appropriate multiplier according to II Schedule to 163(A) of Act relevant

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to age of appellant is 13 - Therefore amount for which appellant is entitled towards loss of earnings and permanent disability comes to Rs.1,75,000 - Apart from this amount an amount of Rs.20,000 can be granted towards pain and suffering - Appellant/ claimant is entitled for total compensation of Rs.1,95,500. **Pothuraju Chandraiah Vs. G.Narasimha 2009(3) Law Summary (A.P.) 332.**

—Seecs.166,163-A & 168 - **CENSUS ACT, 1948,** Secs.4 & 18, Rules 5(c) (d) & (e) of Rules - **CONSTITUTION OF INDIA,** Art.36 - "Motor accident" - "Criteria for determination of compensation payable to dependents of house wife who dies in accident and who does not have regular source of income" – Stated - 1st appellant's wife aged 39 years died in road accident when car driven by 1st appellant was hit by truck - Tribunal awarded compensation of Rs.2.5 lakhs as against claim of Rs.19.2 lakhs, liable to be paid by Insurance Company - High Court dismissed appeal preferred by appellant, observing that compensation awarded by Tribunal is just and fair - In India, Courts have recognized that contribution made by wife to house is invaluable and cannot be computed in terms of money - Gratuitous service rendered by wife with true love and affection to children and her husband, managing house hold affairs cannot be equated with services rendered by others - A wife/mother does not work by clock and she is in constant attendance of family throughout day and night - She takes care of all requirements of husband and children including cooking of food, washing of cloths etc - A house keeper or maid servant can do household work such as cooking food, washing clothes and utensils, keeping house clean etc., but she can never be substitute for a wife/mother who renders selfless service to her husband and children - Husband and children are entitled to adequate compensation in lieu of gratuitous services rendered by deceased house wife - Amount payable to dependents cannot be diminished on ground that some close relation like grant-mother may volunteer to render services to family which deceased was giving earlier - It is highly unfair, unjust and in appropriate to compute compensation payable to dependents of deceased wife/mother, who does not have regular income by comparing her services with that of house keeper or a servant or an employee, who works for fixed period - Though, Sec.163-A does not in terms apply to cases in which claim for compensation is filed u/Sec.166 of Act, in absence of any other definite criteria for determination of compensation payable to dependents of a non-earning housewife/mother it would be reasonable to relay upon criteria specified in Cl.(6) of Second Schedule and then apply appropriate multiplier - In this case, 1st appellant categorically stated that deceased was earning Rs.50,000/- per annum by paintings and handicrafts, respondents did not lead any evidence to controvert same - Notwithstanding this, Tribunal and High Court altogether ignored income of deceased - However without any tangible reason, Tribunal decided to reduce amount of compensation by observing that deceased was actually non earning member and amount of compensation would be too much - High Court went a step further and dismissed appeal by erroneously presuming that neither of claimants was dependent upon deceased and services rendered by her could be

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estimated as Rs.1250 per month - Impugned judgment as also award of Tribunal are set aside, holding that appellants are entitled to compensation of Rs.6 lakhs - Appeal, allowed. **Arun Kumar Agrawal Vs. National Insurance Company 2010(3) Law Summary (S.C.) 175.**

— Secs.166, 163-A & 140 - "Motor accident" - 1st respondent/petitioner whil driving lorry, lost control over vehicle as a result vehicle truned turtle and 1st respondent received fracture to both legs on account of injuriess sustained by him and sustained permanent disability due to fractures - Respondent filed claim petition u/Sec.166 of M.V. Act seeking compensation of Rs.1.5 lakhs - Tribunal after enquiry granted compensation of Rs.1 lakhs holding that 2nd respondent/owner of vehicle and appellant/Insurance Company are jointly and severally liable to pay compensation - Appellant/Insuance Company contends that Tribunal having held that accident was on account of rash and negligent drving of 1st respondent/claimant who is neither 3rd party nor person covered under terms and conditions of Policy of Insurance is not entitled to claim compensation from appellant/Insurance Company and that Tribunal has no jurisdiction to entrtain claim preferred by claimant in exercise of jurisdiction u/Sec.166 of M.V. Act - Claimant contends that even if it is considered that accident was due to rash and negligent driving of claim-ant himself,claimant can maintain claim u/Sec.163-A of M.V.Act, before Tribunal and High Court even in appeal can treat claim as one filed u/Sec.163-A of M.V. Act and can grant compensation basing on "structured formula" basis as per said Provision - Supreme Court clarified that payment of amount in terms of Sec.140 of Act is ad hoc in nature, whereas under claim envisaged u/Sec.163-A of Act, rights and obligations of parties are to be determined finally and that Sec.163-A was introduced in Act by way of Social Security Scheme as parliament intended to provide for making of an award consisting of pre-determined sum without insisting on long-drawn trial or without proof of negligence in causing accident and that Sec.163-A of Act covers cases where even negligence is on part of victim, it is by way of an exception to Sec.166 of Act - A claim u/Sec.166 of Act as well as Sec.163-A of Act are founded on fault liability principle - Sec.163-A enables claimant to get compensation basing on structured formula basis in alternative to one available u/Sec.166 of Act - Claimant can chose either of them - When once they have choosen to claim compensation u/Sec.166 of Act and proceeded with enquiry of claim they cannot turn round and say that their claim can be considered as was made u/Sec.163-A of Act - In this case, claim petition is filed u/Sec.166 of Act by claimant/1st respondent, he himself specifically pleaded in claim petition that while he was driving vehicle he lost control over vehicle due to whch turned turtle - Tribunal basing on pleadings of claimant as well as evidence recorded a specific finding that accident was due to his non fault - At appellate stage it is not open to claimant to urge before High Court that Tribunal ought to have considered her claim as one made u/Sec.163-A of Act and that he had deliberately chosen to make a claim u/Sec.166 of Act and it was considered by Tribunal and Tribunal recorded an erroneous finding

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that appellant Compnay is liable to pay compensation to claimant - Finding recorded is contrary to provisions of Act and also to terms and conditions of Policy - However, despite fact that claim made by him u/Sec.166 of Act cannot be convered into a claim u/Sec.163-A of Act, he is entitled for compensation u/Sec.140 of Act under no fault liability clause - Finding of tribunal awarding compensation u/Sec.166 of Act, set aside — Appellant/Insurance Company is entitled to recover amount, if any deposited by owner of offending vehicle without instituting any separate suit - Appeal, allowed. **United India Insurance Co. Ltd Vs. C.Ramulu, 2013(1) Law Summary (A.P.) 262 = 2013(3) ALD 757 = 2013(2) ALT 799.**

—Secs.166, 163-A, 140 & 156(6) – "MOTOR ACCIDENT" - TRIBUNAL DISMISSED CLAIM PETITION ON GROUND THAT ACCIDENT OCCURED DUE TO NEGLIGNECE OF CLAIMANT HIMSELF - HENCE CLAIMANT PREFERED PRESENT APPEAL - Claimant is driver of lorry, while driving said lorry all of sudden some stray cattle ran across road and in order to avoid accident he applied sudden brakes and lost control over lorry as result of which lorry dashed against road side tree and in that process his wife sustained injuries and died on spot and that his wife is engaged as coolie for loading and unloading of fruits on lorry and earning Rs.2,500/- per month and she is aged 21 years and he claimed total compensation of Rs. 1.3 lakhs - In this case except evidence of claimant as P.W.1 there is no other oral evidence – It is not in dispute that lorry hit road side tree, and very fact that lorry hit a road side tree corroborates version of claimant – Claimant would not have applied sudden brakes as he had not seen stray cattle across road - When driver with good intention to save life of person or cattle applied sudden brakes, it cannot be said that he drove vehicle rashly and negligently, since it was beyond his control and therefore it cannot be said that claimant was negligent at the time of driving lorry - M.V. Act provides that claimant can claim compensation not only U/sec.166 of Act but also under Sec.163-A of Act – If a vehicle is involved in an accident that itself is sufficient to make a claim U/Sec. 163-A of Act – When a claim is made U/Sec. 163-A of Act, claimant is not required to plead and prove negligence of driver - Thus claim need not be under any particular provision of Act – Once legal possession is clear, claimant's application can be treated as an appli-cation filed under Sec. 163-A of Act - As per evidence of Claimant, deceased was aged 20 years, at time of accident, so appropriate multiplier to be adopted is "16" and by applying the same total loss of earnings would come to Rs.2,40,000 - and claimant is also entitled to Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses and thus in all claimant is entitled for Rs. 3,65,000 - Since, Insurance policy was in force at the time of accident both respondents, owner of lorry and Insurance Company, jointly and severally liable to pay compensation – Order of Tribunal set aside – Appeal allowed. **B.Sreekanth Reddy Vs. G.Pratap Reddy 2015(1) Law Summary (A.P.) 502**

—Secs.166 & 165 - APSRTC's Bus damaged due to rash and negligent driving of driver of lorry - Tribunal awarding compensation of Rs.42,000/- towards repair and Rs.14,440/

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- towards loss of earnings for five days during which period bus was under repair, jointly liable to be paid by owner and insured of lorry - Appellant insured of lorry contends that Tribunal has no jurisdiction to pass an award for loss suffered by 1st respondent, APSRTC during period of repairs of its bus - Tribunal constituted under Act can pass award with regard to damage caused to property only, but it is not empowered to pass any award relating to damage or loss suffered by owner of vehicle due to its remaining idle during period of its repair - For that purpose Civil Court is only competent to pass decree - Tribunal granting damages towards loss of earnings to 1st respondent/APSRTC - Erroneous - Award, modified. **New India Assurance Co., Ltd., Vs. APSRTC, rep. by its MD 2008(2) Law Summary (A.P.) 354 = 2008(5) ALD 44 = 2008(5) ALT 652 = AIR 2008 AP 226 = 2008(3) APLJ 11 (SN).**

—Secs.166 & 167 - Awarding compensaton - "Motor accident" - "Head on collusion" - Awarding of compensation - Enhancement of compensation - Deceased while proceeding on Car sustained injuries in accident on account of head on collusion between car of deceased and truck and died - Tribunal awarded compnesation of Rs.2 lakhs in favour of appellant/claimants, wife and minor son of deceased - Tribunal has committed error in law in coming to conclusion that absence of rebuttal evidence that there was contributory negligence of 20% on part of deceased - Tribuanal ought to have seen that non-production of FIR has no consequence for reason that charge sheet was filed against Truck driver for offence punishable u/Secs.279, r/w Sec.302 IPC, r/w provisions of M.V. Act - Finding of fact recorded on issue No.1 by Tribunal and affirmed by High Court is erroneous for want of proper consideration of pleadings and legal evidence by both of them - Impugned judgment of awards of Tribunal and High Court are set aside - Award of Compensation enhanced to Rs.10,48,400/- - Appeal, allowed, accordingly. **Minu Rout Vs. Satya Pradyumna Mohapatra, 2013(3) Law Summary (S.C.) 109 = 2013(6) ALD 115 (SC) = 2013 AIR SCW 5375.**

—Secs.166 & 168 - Motor Accident - Compensation - Determination of - Deceased aged 35 years earning Rs.35 per day while riding bicycle died in accident on spot - Tribunal awarded compensation of Rs.1.69 lakhs applying multiplier of 16 - In appeal, filed by claimants, High Court enhanced compensation to Rs.2.97 lakhs by enhancing income of deceased and reducing multiplier to 12 - Appellants contend that High Court committed error in applying multiplier 12 when deceased is only 35 years old and none of claimants was more than that age - Insurance Company contends that compensation granted by High Court is on higher side - Compensation enhanced to Rs.3.45 lakhs applying multiplier 14 considering consortium to widow and loss of estate - Appeal, allowed. **Laxmi Devi Vs. Mohammad Tabbar 2008(2) Law Summary (S.C.) 103 = 2008(3) ALD 129 (SC) = AIR 2008 SC 1858 = 2008 AIR SCW 2605.**

—Secs.166 & 168 - Motor accident - Deceased aged 38 years working as Scientist in ICAR on monthly salary of Rs.3402/- died in accident involving Bus belonging to Delhi Transport Corporation - Claim petitions filed by widow, three children, parents

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and grand father of deceased - Tribunal awarded compensation of Rs.5.94 lakhs applying multiplier 22 - High Court chose multiplier 13 and determined total compensation at Rs.7,19,624/- - Appellants/claimants contend that High Court erred in holding that there was no evidence in regard to future prospects and High Court ought to have taken higher amount as income of deceased and appropriate multiplier for person dying at age of 38 would be 16 and therefore loss of dependency would be Rs.26,41,152 - Basically, only three facts need to be established by claimants for assessing compensation in case of death; a) age of deceased; b) income of deceased; and c) number of dependents - No evidence need to be led to show actual expenses of deceased - In fact any evidence in that behalf will be wholly unverifiable and likely to be unreliable - Hence it is necessary to standardize deductions to be made under head of personal and living expenses of deceased - In fact one-third deduction, got statutory recognition under Second Schedule of Act in respect of claims u/Sec.163-A of M.V. Act - Contention of appellants that actual future pay revisions should be taken into account for purpose of calculating income is not sound - As against contention of appellants that if deceased had been lived he would have earned benefit of revised pay scale, it is equally possible that if had not died in accident, he might have died on account of ill health or other accident or lost the employment or met some other calamity or disadvantage - Imponderable in life are too many - Therefore, interest of justice would be met if one-fifth is deducted as personal and living expenses of deceased - In this case, multiplier will be 15 having regard to age of deceased at time of death - Total compensation enhanced to Rs.8,84,870 - After deducting Rs.7,19,624 awarded by High Court enhncement would be Rs.1,65,246 - Increase in compensation awarded shall be taken by widow exclusively. **Sarla Verma Vs. Delhi Transport Corpn., 2009(2) Law Summary (S.C.) 29 = 2009(3) ALD 83(SC) = 2009(3) Supreme 487 = AIR 2009 SC 3104 = 2009 AIR SCW 4992.**

—Sec.166 & 168 - "Permanent and partial Disability" - Determination of compensation - Appellant working as a Coolie earning Rs.4500/- per month while riding as pillion on motor cycle sustained grievous injuries in accident resulting his right hand completely disabled due to which his work and livelihood completely suffered - Tribunal awarded compensation of Rs.1,13,900/- as against claim of Rs.5,50,000/- - In instant case, appellant aged 35 years and was working as Coolie earning Rs.4500/- per month at time of accident and this claim is reduced by Tribunal to a sum of Rs.3000/- on assumption that wages of labourer during relevant period was Rs.100/- per day and this assumption has no basis - Appellant was working as a Coolie and therefore he is not expected to produce any documentary evidence to substantiate his claim - Doctor who was examined as claimant's witness has stated that appellant has sustained malunited fracture 2nd, 3rd, 4th, 5th MCB right and malunited fracture scapula right and in his opinion appellant has suffered permanent physical disability of 41% to right upper limb and in view of disability, claimant cannot work as Coolie and cannot do any other manual work as Coolie - Additional amount of Rs.2 lakhs granted to appellant by way of compensation. **Ramachandrappa Vs. Royal Sundaram Aliance Insurance Co. Ltd. 2011(3) Law Summary (S.C.) 152.**

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—-Secs.166 and 173 - The claimant maintained that claim u/Sec.166 of Act for compensation of Rs.4,00,000/- for injuries sustained by him in accident due to rash and negligent driving of 1st respondent, driver of bus which belongs to 2nd respondent which is insured with the 3rd respondent and under hire with 4th respondent APSRTC by joining all of them for joint liability - Tribunal having considered evidence on record supported by respective pleadings held that accident was result of rash and negligent driving of driver of hired bus with APSRTC insured with insurer, however insurer cannot be liable but for driver, owner and hiree-APSRTC, respondent Nos. 1, 2 and 4 respectively jointly in awarding compensation of Rs.2,35,678/- with interest @ 7.5% - Owner of hired bus maintained M.A.C.M.A in 2007 with contentions that APSRTC is liable vicariously and Tribunal ought to have fixed liability on insurer while claimant maintained M.A.C.M.A in 2013 that Tribunal erred in not awarding compensation as prayed for by restricting it to Rs.2,35,678 - Appeal of claimant against respondent Nos.1, 2, and 3 were ended in dismissal for default - In fact respondent Nos.2 and 3 are on record even in M.A.C.M.A. 2007 and both matters taken up together for common disposal, as arisen out of the same award and as they are represented through advocate from hearing of both sides - Thus dismissal order against respondent Nos.1 to 3 of appeal M.A.C.M.A of 2013 is set aside and heard respondent Nos.2 and 3, along with M.A.C.M.A of 2007 - Issue for consideration is quantum awarded is unsustainable, apart from exoneration of insurer is unsustainable and whether insurer also jointly be made liable from policy covered risk otherwise.

Held, Apex Court in Managing Director, KSRTC Vs. New India Assurance Co. Limited observed of insurer has to indemnify from joint liability of owner and lessee RTC of vehicle insured with insurer even there is lack of intimation of lease from owner to insurer and in fixing joint liability, insurer has to indemnify - Having regard to this, exoneration of insurer by Tribunal is unsustainable and is liable to set aside, by fixing joint liability on owner, APSRTC and insurer so as to recover by any payment made by owner or RTC from the insurer for liability to indemnify from policy once covered risk and not entitled to exoneration by showing otherwise.

Regarding quantum of compensation, main thrust in appeal maintained by claimant is that Tribunal ought to have believed evidence of PW.5 owner under whom injured is working, from salary certificate Ex.A13 - There is no other proof to show that he was paying Rs.6000/- per month - In fact, as per Latha Wadhwa Vs. State of Bihar in absence of proof of earnings, minimum of Rs.3000/- per month can be taken - Accident occurred was nearly 5 years after expression - Thus it can be safely taken Rs.3,500/- per month - Accordingly, compensation of Rs. 2,35,678/- is enhanced to Rs. 2,60,000/- - Accordingly, and in result, both appeals are allowed. **T.Rama Krishna Vs. Valluri Babu Rao 2016(3) Law Summary (A.P.) 383.**

—Secs.166, 169 & 173 - **CIVILPROCEDURE CODE,** Or.41, Rule 27 and Or.13, Rule 1 - “Acceptance of additional evidence at appellate stage” - Motor accident - Tribunal awarded compensation to claimants of deceased who died in motor accident - Insurance

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Company sought to produce additional evidence by filing Report of Insurance Surveyor and copies of Pahanies, contending that they are essential for effective adjudication of appeal - Claimants contend that Phanies are not documents of title and these documents pertain to subsequent to death of deceased - Insurance Company cannot be permitted to adduce additional evidence after a period of decade of occurrence of accident - A reading of Sec.169 & 173 of M.V Act and Rule 437 of M.V Rules shows that there is no reference to Rule 27 of Or.41 CPC and it is not made applicable to appeals filed under Sec.173 of M.V Act - Since Tribunal can follow its own procedure appellate Court may receive additional evidence in interest of justice - In this case, since conditions for receiving additional evidence under Rule 27 of Or.41, C.P.C are not fulfilled, appellant, Insurance Company cannot be permitted to adduce additional evidence - In this case, appellant/Insurance Company, having slept over matter for about 10 years, now cannot dig graveyard and come up with new plea - Thus surveyor obtained material behind back of claimants and therefore petition filed to receive additional evidence cannot be entertained and same is liable to be dismissed - There is no need to disturb award passed by Tribunal - Petition for additional evidence and appeal, dismissed. **National Insurance Co., Ltd. Vs. Syed Najmunnisa 2010(1) Law Summary (A.P.) 202.**

——Secs.166 & 173 - "Motor Accident" - Deceased HB and NR both died in consequence of injuries received in Motor Accident - LRs of HB filed OP claiming compensation of Rs.4,05,000 and LRs of N.R. filed OP claiming compensation of Rs.3,10,000 - Tribunal awarded compensation of Rs.3,03,000 and Rs.1,54,336/- respectively in both claim petitions - Insurance Company filed present two appeals and said appeals claimants/respondents filed cross-objections contending that compensation granted by Tribunal is grossly inadiquate and requires enhancements - Appeals as well as cross-objections having been directed against quantum of compensation, other issues need not be diverted to - Appellants/Insurance Company raised question that there is no provision under Motor Vehicles Act enabling parties to file cross-objections, claimants, therefore, ought to have filed appeals challenging findings in award and cross-objections filed by them are not maintainable - Apex Court clearly lays down that claimants can question inadequacy of compensation granted by Tribunal by its award not only by preferring separate appeal but also by filing cross objections in Appeal filed by owners or insurer - Therefore there is no substance in contention urged by insurer that cross-objections filed by claimants are not maintainable - In this case, since appeals are filed by Insurance Company and cross-objections filed by claimants questioning quantum of compensation granted by Tribunal, High Court can proceed to decide compensation which is just and reasonable either by enhancing or by reducing same - Deceased HB aged 23 years and is driver by profession and he died while driving Zeep he was hale and healthy getting income of Rs.3500 per month - Relevant multiplier is "15" - claimants are entitled for compensation of Rs.3,25,000 - Deceased NR is an Agriculturist aged 55 years having 50 acres of land getting income of Rs.1 lakh per annum - Relevant Multiplier to age of deceased is 11 - Claimants

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are entitled for compensation of Rs.2,26,250/- - Appeals filed by Insurance Company are liable to be dismissed and cross-objections deserve to be allowed - Accordingly cross objections are allowed. **National Insurance Co. Ltd. Vs. Gane Seshamma 2013(2) Law Summary (A.P.) 139 = 2013(6) ALD 322.**

—Secs.166 & 173 - "MOTOR ACCIDENT" – While deceased proceeding on tractor accident occurred due to rash and negligent driving of 1st respondent driver, who applied brakes suddenly on result of which deceased fell down and tractor ran over deceased and he died while undergoing treatment in hospital - Claimants, parents of deceased filed petition, claiming compensation of Rs. 2 Lakhs – After analyzing oral and documentary evidence available on record, Tribunal dismissed claim petition. Hence, claimants filed present appeal - 1st respondent driver stated that in his absence deceased started to drive tractor and while getting down from tractor he fell underneath tractor – 2nd respondent owner of tractor also stated same– R3 Insurance Company stated that at time of accident R1 driver, not holding a valid driving licence and therefore, there is violation of conditions of Policy - Plea of claimants is not denied by respondents in their written statements – When respondents have not denied averments made by claimants same amounts to admission and when a fact is admitted by respondents, (or defendants), there is no need to prove said fact, since admitted facts need not be proved and this is also a basic principle - Whether R1 was having a valid driving licence or not, settled legal position is that even in case of violation of conditions of policy, such as driver not having valid driving licence, Insurance Company cannot escape from its liability and only order that can be made is that Insurance Company should pay compensation to claimants and then recover same from owner of vehicle - In this case admittedly deceased aged 21 years and was earning 100/- per day as coolie - Therefore earnings of deceased have to be taken at Rs. 3000/- per month. Appropriate multiplier to be adopted for calculation of loss of earning would be "18" and by applying same total loss of earning would come to Rs. 3,24,000/-. Thus total compensation including loss of love and affection of parents and funeral expenses would come to Rs. 4,50,000/- - Claimants shall be entitled to said amount as compensation – Impugned order of Tribunal is set aside – Appeal allowed accordingly. **Parasagani Venkaiah Vs. Pandi Prasad 2015(1) Law Summary (A.P.) 417**

—Secs.166 & 177 - **MOTOR VEHICLES ACT, 1939,** Sec.110-B - **A.P MOTOR VEHICLES ACT RULES, 1989,** Rule 2 (g) - **CIVIL PROCEDURE CODE,** Sec.2(11) - "Legal representative" - Dependent - Deceased aged 55 years died in motor accident while going on his Luna - Sister of deceased, loan surviving legal representative filed petition for compensation - Tribunal dismissed O.P holding that married sister of deceased cannot be considered a dependent legal heir - Though married daughter, unmarried daughter, married sister and unmarried sister, brother, nephew all come in category of legal representatives, all of them would not be entitled to a share in compensation awarded under Act - Definition of legal representative, in Sec.2(g) of Rules read with Sec.2(11) CPC does not make any difference in interpretation of term legal "representative" for purpose of 1988 Act - Order of tribunal justified - CMA, dismissed. **Seshapu Ramulamma Vs. Doppalapudi Raju 2009(1) Law Summary (A.P.) 209 = 2009(2) ALD 823 = 2009(2) ALT 436 = 2009(1) APLJ 256.**

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—Secs.166-(1) and (4), 158(6) and 168 – Tribunal/Court can award compen-sation under M.V.Act over and above amount claimed by claimants though subject to payment of Court fee - Only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from evidence - Question referred to Larger Bench answered in affirmative - Order accordingly. **Adam Indur Muttemma Niamabad District Vs. Rathod Reddia, Nizamabad 2015(2) Law Summary (A.P.) 582 = 2015(4) ALD 585 = 2015(4) ALT 775 = AIR 2015 HYDERABAD 117.**

—Sec.167 - "Motor accident" - "Vicarious liability" - Deceased aged 61 years working at Nigeria, getting monthly salary of Rs.1,71,000/-, while proceeding in Car from Air port, zeep came in opposite direction driven by driver of 1st respondent in rash and negligent manner caused accident resulting death of deceased - Tribunal awarded total compensation of Rs. 13,45,000/- holding that 1st respondent being, master is vicariously liable for acts of its driver and therefore 1st respondent is liable to pay compensation to claimants - Appellant contends that claimants have to prove that accident occurred due to rash and negligent driving of driver of zeep and that negligence is foundation to claim compensation and that there is no proof of rash and negligent driving by driver of zeep and that maxim *res ipsa loquitur* not applicable and in absence of proof of rash and negligent driving, claimants cannot claim compensation and that driver had taken zeep out of office for his own use and that he was not on official duty and vehicle was not used for official purpose and therefore principle that master is vicariously liable for acts of servant not applicable - Mere averments that deceased was working in Nigeria or earning huge salary is not sufficient to prove income of deceased - As seen from contents of documents filed by claimants, there is no allegation against driver of zeep that he was using vehicle unauthorisedly - Circumstances that zeep was taken from office premises and that keys were with driver of zeep compel to draw presumption that driver was acting as per directions of master - Controlling Officers are not expected to keep keys with driver during holidays - No evidence in this case to say that driver of vehicle had used zeep for his personal pursuit - No documentary evidence in this case to show income of deceased and no documents have been filed to show educational qualifications or certificates of experience of deceased - Considering salary earned by deceased in 1980 it may be just and reasonable to take his salary at Rs.15,000 per month at time of accident and that loss of dependency comes to Rs.10,000 per month - Claimants are entitled to total compensation of Rs.8,75,000/- - Appeal, partly allowed and cross-objections are dismissed. **M.D., Hyderabad Metropolitan Water Supply Vs. A.Saraswathi 2009(3) Law Summary (A.P.) 256.**

—Sec.168 - "Motor accident" - Deceased 1 & 2 aged 21 years studying B.E. Computers while proceeding on motor cycle on holiday trip, tourist bus came in rash and negligent manner dashed against motor cycle causing death of deceased - Tribunal came to conclusion that accident occurred due to rash and negligent driving of bus driver

and awarded compensation of Rs.3.5 lakhs to claimants in each O.P as against claim of 15 lakhs, after applying multiplier '13' - Appellants/claimants contend that both deceased were final year students of B.E. Computer course and that Tribunal ought to have taken multiplier '15' and ought to have taken minimum income of both deceased at Rs.15,000/- p.m and that therefore order of Tribunal cannot be sustained and liable to be modified by awarding Rs.15 laksh compensation to claimants in each O.P - Insurance Company contends that Tribunal awarded reasonable compensation and there is no need to enhance compensation and that in view of future uncertainties, income of Software Engineers cannot be taken as basis for determining compensation - In this case it is most unfortunate that both claimants have lost their only sons shattering all their future hopes and their only hope would be that when they become old, weak and sick, children would lookafter them and provide basic needs - JUST COMPENSATION - U/Sec.168 of M.V Act, Tribunal is duty bound to act in a realistic manner sitting in arms chair - Therefore awarding just and reasonable compensation is neither charity nor out of sympathy - Claimants, as a matter of right are entitled for just and reasonable compensation - Courts have to do substantial justice and technicalities and procedural law should not defeat main object of rendering justice - As far as students, who are about to complete their course, are concerned , it is very difficult to determine income - Guess work becomes inevitable - But even for guess work some rationale has to be followed - Every conclusion must be based on sound reasoning and established legal principles - In this case, that minimum income of B.E., Graduate can be fixed at Rs.12,000/- p.m - Since both deceased were bachelors, 50% of income has to be deducted towards their personal expenses and therefore loss of contribution to dependents comes to Rs.6,000/- p.m. and Rs.72,000/- per annum and after applying relevant multiplier '15', total compensation comes to Rs.10,80,000 - Claimants in each O.P are awarded a sum of Rs.10,80,000 - Appeals, allowed. **B.Ramulamma Vs. M/s. Venkatesh Bus Union 2009(3) Law Summary (A.P.) 173 = 2009(6) ALD 684 = 2009(5) ALT 784.**

—Sec.168 - "Enhancement of compensation" - Deceased aged 19 years, getting salary of Rs.6000/- per month while travelling in jeep died in accident due to rash and negligent driving of driver - Tribunal awarded compensation of Rs.1,72,000 to claimants/parents aged 56 & 55 - High Court enhanced amount of compensation from Rs.1.72 lakh to Rs.3.39 lakhs - Appellant/Insurance Company contends that in case where an unmaried young man dies, average age of parents will be taken for determining multiplier and not age of deceased - In this case, Tribunal by taking average age of parents who are 55 and 56 years of age rightfully applied multiplier of 8 - Award passed by Tribunal restored, - Appeal allowed. **National Insurance Co. Ltd.Vs. Shyam Singh 2011(3) Law Summary (S.C.) 1.**

—Sec.168 - "Concept of just compensation" - Stated - "Whether compensation in Motor vehicle accident case is payable to a claimant for both heads, viz., loss of

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earning/earning capacity as well as permanent disability" - In this case, due to sudden movement of bus, appellant/claimantt aged 45 years, proprietor of Furniture Mart, while travelling in bus, fell down and rear wheel of bus rammed over on his right leg and sustained severe injuries on his head right hand and neck - After treatment his right leg below knee was imputed - Tribunal awarded compensation of Rs.9,42,822 by applying multiplier 13 - High Court reduced compensation to Rs.6,72,822 - In matters of determination of compensation, particularly, under M.V Act, both Tribunals and High Court are statutorily charged with responsibility of fixing a "just compensation" - It is true that determination of "just compensation" cannot be equated to a bonanza, on other hand concept of "just compensation" suggests Application of fair and equitable principles and a reasonable approach on part of Tribunal and Courts - Determination of quantum in motor accidents cases and compensation under Workmens Compensation Act, must be liberal since law values life and limb in free country in generous scalses - While computing compensation, approach of Tribunal or Court has to be broad based and some times it would involve some guess work as there cannot be any precise formula to determine quantum of compensation - High Court has committed error in setting aside award amount of Rs1 lakh under head "permanent disability" on ground that substantial amount had been fixed under head "loss of earning" and loss of earning capacity - Appellant is entitled to additional compensation of Rs.1.8 lakhs and total compensation of Rs.8,52,822 - Appeals filed by claimant, appellant allowed in part. **S.Manickam Vs. Metropolitan Transport Corpn. Ltd. 2013(3) Law Summary (S.C.) 161 = 2013(5) ALD 116 (SC) = 2013 AIR SCW 4337 = AIR 2013 SC 2629.**

—Secs. 168 r/w 149 - Appeal filed against dismissal of claim by Tribunal - Accident occurred on 28-05-2004 and it was reported by mother of deceased on 5-6-2004 with a delay of 7 days - Important document is Ex-A.13, which is the referral card of Government hospital, Mahabubnagar, wherein it was mentioned that deceased was admitted of history of road traffic accident which was on 28-5-2004 but there was nothing to speak which vehicle involved in accident and at whose fault the accident occurred - Police registered a case based on the report given by the mother of the deceased - After investigation police filed Ex-A.4 charge sheet concluding that accident was the result of rash and negligent driving of the driver of the auto of first respondent - P.W. 2, being an eye witness to occurrence and one of passengers in auto has not reported occurrence immediately to police - Held, though PW-2's evidence is not independent, but serves as a piece of corroboration to substantiate recorded evidence within factual matrix to say that deceased sustained injuries while travelling in auto of first respondent on fateful day i.e., on 28-05-2004 - Instead of so appreciating, the trial court went beyond in saying that conduct of P.W. 2 is highly improbable to believe and his evidence thereby is totally incorrect and accordingly rejected his evidence - That is not way for appreciation of evidence, more particularly, in road traffic accident claims - R.W.1, an employee of second respondent/insurance company, would not speak anything more but delay in reporting Ex-A.1 FIR - Thereby, his

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evidence is no way of much credence to belie evidence on record proved by preponderance of probabilities of accident and involvement of crime vehicle of first respondent, deceased died while travelling in crime auto, due to the rash and negligent driving of said auto - Appeal allowed - Appellants/Claiments are entittled to Compensation of Rs.3 lacs. **N.Narasimhulu Vs. G.Srinivasulu 2014(3) Law Summary (A.P.) 404.**

—Secs.168 & 170(b) - "Motor accident" - Appellant while driving Maruti Car, Truck came from opposite direction hit Car causing accident which resulted in instantaneous death of appellant's mother and appellant received grievous injuries to her body and that grievous injuries sustained by appellant on right side of her face which left permanent scars and caused disfiguration of face other parts of body including her leg - Consequently appellant underwent number of surgeries due to grievous injuries sustained by her and suffered 30% permanent disability - MAC Tribunal awarded compensation of Rs.23,51,726/- both under heads of pecuniary and nonpecuniary damages holding that accident took place on account of rash and negligent driving of Truck by its driver - On Appeal of Insurance Company High Court reduced compensation to Rs.14 lakhs - Appellant/claimant contends that High Court has exceeds its jurisdiction in interfering with finding of fact record by Tribunal with regard to award of pecuniary damages towards medical expenses without proper appreciation of pleadings and evidence on record and has considerably reduced amount under heading of pecuniary damages from Rs.17.51,726/- to Rs.7,77,000/- and same is not only erroneous, but also suffers from error in law and therefore appellant prayed for setting aside same and award just and reasonable compensation in favour of appellant both under heads of pecuniary and nonpecuniary damages by applying law laid down by Supreme Court - Appellant further contends that High Court not justified in not enhancing nonpecuniary compensation though sufficient evidence was brought on record by appellant before MACT to show that she was a celebrity in sphere of modeling and acting who had a bright future ahead of her which was doomed by accident which resulted in number of surgeries conducted on her body and that opportunity for appellant to act in movies and T.V. serials is lost by her on account of grievous injuries sustained by her.

BODILY INJURY CASES - While assessing compensation, in bodily injury cases, Courts and Tribunals should take into account all relevant circumstances, evidence, legal principles, governing quantification of compensation - There should be realization on part of Tribunals and Courts that possession of one's own body is first and most valuable of all human rights, and that all possession and ownership are extensions of this primary right, while awarding compensation for bodily injuries and that bodily injury is to be treated as a deprivation which entitles a claimant to damages and amount of damages varies according to gravity of injuries.

CONCEPTS OF PECUNIARY AND NONPECUNIARY DAMAGES - In order to appreciate two concepts pecuniary damages may include expenses incurred by claimant; i) medical attendance, ii) loss of earning profit upto date of trial iii) Other material loss - So far non pecuniary damages are concerned, they may include i)

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damages for mental and physical shock , pain, suffering, already suffered or likely to be suffered in future ii) damages to compensate for loss of amenities of life which may include a variety of matters i.e., on account of injury claimant may not be able to walk, run or sit iii) damages for loss of expectation of life, i.e., on account of injury normal longevity of person concerned is shortened; iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life - In light of facts of case and keeping in view evidence on record that appellant is a film actress and also taking in to consideration that in film world of this country heroine will certainly get substantial sum for acting in films, T.V. Serials, modeling, it would be just and proper to take 50% of her annual income for purpose of compensation of her future loss of income keeping in view that through out her life she may not been in a position to act in film, albums and modeling - Her annual income is assessed at Rs.5 lakhs, 50% of which is 2.5 lakhs per annum which is multiplied by 17 as proper multiplier considering her age at time of accident by applying legal principle laid down by Apex Court - Hence, compensation under this head enhanced from Rs. 2 lakhs to Rs.42,50,000/- - Compensation for loss of amenities, pleasure of life and her inability to attend social functions in future enhanced to Rs.10 lakhs from Rs.2 laksh - Pain and suffering enhance to Rs.9 lakhs from Rs.1 lakhs - Tribunal awarded Rs. 17,15,726 towards medical expenses based on legal evidence and therefore compensation awarded by Tribunal affirmed - Thus total compensation enhanced to Rs.79,66,000/- making observations that MAC Tribunals and appellate Courts should keep in view rights of claimants under provisions of M.V Act to determine compensation claims of claimants by considering facts of each case and legal position laid down by Supreme Court on relevant aspects and accordingly appeals of Appellant, allowed. **Rekha Jain Vs. National Insurance Co., Ltd, 2013(3) Law Summary (S.C.) 11 = 2013(6) ALD 35 (SC) = 2013 AIR SCW 4597 = AIR 2013 SC 3429.**

—Sec.168 & 173 - "Motor accident" - Petitioner/claimant aged about 20 years selected and commissioned as Fighter Pilot in Indian Air Force, while proceeding in Auto rickshaw, hit by a car resulting in serious injury to his spinal card and became totally unfit to discharge functions of Pilot and accordingly he was discontinued from service - Appellant/claimant contends that accident occurred on account of rash and negligent driving on part of driver of car bearing No.3737 and that his entire future is shattered and therefore claimed sum of Rs.20 lakhs as compensation under different heads - Tribunal dismissed O.P holding that involvement of vehicle bearing no. 3737 is doubtful - Hence, present Appeal - Appellant/claimant contends that order passed by Tribunal is totally perverse and totally negative approach was exhibited in entire proceedings and that Tribunal lost sight of fact that claim was made by appellant under a Social Security Measure and on account of negative approach appellant denied benefit under M.V Act - 3rd respondent/Insurance Company contends that perusal of F.I.R and other related documents filed in proceedings clearly demonstrate that accident occurred on account of rash and negligent driving by driver of another car no.3736 and just

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to ensure that claim is made against insurance Company, vehicle bearing no.3737 was brought into picture and that Tribunal has analyzed oral and documentary evidence carefully and arrived at just and proper conclusion - In this case, since occurrence of accident not disputed, but involvement of vehicle was doubted by 3rd respondent/ Insurance Company, heavy duty rested upon them to prove that contention - Evidently, it is mostly belief and assumption of 3rd respondent/Insurance Company than a confirmed fact and it is obligatory on part of Insurance Company to prove facts pleaded by them and they did not choose to examine even a single witness and that Tribunal ought to have drawn inference that plea taken by them is not proved and accepted version of appellant - In this case, Presiding Officer of Tribunal has exhibited his defective tendencies and paved way for examinatin of as many as seven persons as Court witnesses and he lost sight of fact that what was before him was a petition filed under Social Security scheme formulatged by Parliament and findings are to be a recorded only on basis of probabilities - This is a rare case, in which Residing Officer of Motor Accident Claims Tribunal has gone to extent of disbelieving statement of owner of vehicle that it was involved in accident, even after driver of vehicle was convicted in criminal case - Curious part of it is that material used by Presiding Officer to discredit conviction handed out by a Court, is statement recorded u/Sec.162 Cr.P.C by Inspector of Police - Once it is proved that appellant suffered injuries in accident to extent of his being declared unfit to hold post of Piolit, he is certainly entitled to be paid compensation - At time of accident, appellant was aged 20 years drawing salary of Rs.3,046/- p.m and his annual income would be Rs.36,552/- and appropriate multiplier for a person of 20 years of age is “18” - Thus loss of earning would be 6,57,936/- and that increase towards future prospectus to extent of 30% must be allowed, in case of salaried persons whether public or private employment - On this count a further sum of Rs.2 lakhs deserves to be added and accordingly loss of earning comes to Rs.8,57,936/- - In this case, appellant has become unfit even to walk on his own accord and his confined to a wheel chair - Taking into account amount spent on treatment, extra nourishment and medical assistance that he needs for rest of life and pain and suffering he has undergone at time of accident it is appropriate to award a sum of Rs.10 lakhs on all counts - Hence, appellant is entitled to be paid a total sum of Rs.18 lakhs as compensation - Impugned order of Tribunal, set aside - Appeal, allowed. **Bolleddu Anil Raj Vs. P.Sambasiva Rao 2013(3) Law Summary (A.P.) 214 = 2014(1)ALD 541.**

—Secs. 169(3) & 168 - Tribunal granted compensation of Rs.8000/- to injured as against claim of Rs.50,000/- towards four simple injuries and one grievous injury - Appellant/injured contends that compensation granted is very low and requires enhancement for awarding just and reasonable compensation - If Tribunal is satisfied from evidence of injured and also from contents of injury certificate that injured sustained simple or grievous injuries as case may be can even in absence of evidence of Doctor, grant compensation to injuries mentioned in injury certificate - There is no legal

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impediment for Tribunal to award compensation basing on evidence of injured claimant and by perusing contents of injury certificate - In this case, Tribunal erred in holding that in absence of X-ray report injury no.2 cannot be considered to be grievous even though it is mentioned by Doctor who is issued injury certificate that said injury is grievous injury - Strict rules of Evidence Act have no application to proceedings under M.V Act - Tribunal under Act is empowered by legislature to evolve its own summary procedure for adjudicating compensation claims - In this case, respondents allowed injury certificate of appellant/claimant to be admitted in evidence and marked as Ex.A-2 on his behalf without any protest as to its genuineness or authenticity - Tribunal ought to have considered nature of injuries mentioned in injury certificate - In all, claimant is entitled to compensation of Rs.34,000 - Enhanced compensation shall carry interest from date of petition till date of realization - Appeal is allowed in part. **Pullemla Krishnaiah Vs. Chirtala Anjaneyulu 2011(1) Law Summary (A.P.) 150 = 2011(3) ALD 485.**

—Sec.170 - "Motor accident" - Accident occurred due to rash and negligent driving of driver - Tribunal awarded compensation of Rs.59,500/- for simple and grievous injuries and towards laprotomy surgery and loss of income etc - Appellant/Insurance Company contends that no reliance can be placed on any medical record placed by injured in absence of examining Doctor who issued said records - In case of wound certificate issued by a Govt. Hospital or a Govt. general Hospital it is only extract of accident Register maintained by Govt Hospital in causality Department - In this case, attested copy of wound certificate has issued by Govt., Hospital and it was marked without any objection during evidence of injured before lower Tribunal - Injured sustained five simple injuries and one grievous injury to abdomen - Hence injured is entitled for reimbursement of amount covered by medical bills - In absence of proof of laprotomy surgery, injured is not entitled for any compensation amount for undergoing said surgery - Hence compensation altered from Rs.59,500 to Rs.28,266 - Appeal, partly allowed. **National Insurance Co., Ltd., Vs. Ahmed Ali @ Mohd. Ali, 2011(1) Law Summary (A.P.) 148 = 2011(2) ALD 806.**

—Secs. 170, 149(2) & 158 - INDIAN PENAL CODE, Secs.304-A & 337 - "Motor Accident" - Deceased working as Electrician and drawing monthly salary of Rs.7,885/- while going on bike as pillion rider, accident occurred as accused-driver drove tractor in rash and negligent manner and dashed against bike - Deceased died while undergoing treatment - Tribunal awarded compensation of Rs.5,74,000/- to claimants of deceased - Appellant/Insurance Company contends that Tractor and Trailer in question was not at all involved in accident and it is duty of Police conce-rned to forward relevant documents to insurer concerned within 30 days from date of information, which is mandatory, but Police failed to do so - In this case, in complaint, complainant never stated about involvement of vehicle in question or about rash and negligent driving of tractor by its driver - Involvement of Tractor is not indicated not only in complaint,

but also in inquest report and scene of offence panchanama - Contrary to contents of FIR Investigating Officer narrated distract version in charge-sheet - Charge-sheet was filed against accused who is not at all named in charge sheet stating that accused is absconding and that number of Tractor was handwritten - In this case, compliant was given immediately after accident and inquest panchanama, scene of offence panchanama and postmortem report were conducted immediately on date of complaint, but no where involvement of Tractor in question was stated by any of witnesses including eye witness to accident - Charge-sheet filed by S.I of Police concerned contrary to records, in collusion with owner of tractor with an intention to illegally help claimants for obtaining compensation - Tribunal did not appreciate evidence properly and erroneously came to conclusion that tractor and trailer involved in said accident - Order of Tribunal, set aside - Appeal, allowed. **United India Insurance Co. Ltd. Vs. G.Mallaiah 2010(3) Law Summary (A.P.) 115.**

—Secs.170,173(1), 168 & 169 - A.P. MOTOR VEHICLES RULES, 1989, Rule 473 - ARBITRATION ACT, Sec.41 - CIVIL PROCEDURE CODE, Or.41, Rule 22 - Motor accident - Deceased died in road accident Tribunal awarded compensation of Rs.7.6 lakhs - Insurance Company filed Appeal and claimants filed cross-objections questioning quantum of compensation - Appellant/Insurance Company contends that since appellants/ claimants did not seek and obtain permission from Tribunal at appropriate stage u/ Sec.170 of M.V. Act, appeal is liable to be dismissed as not maintainable - It is also contended that no cross-objections are maintainable in an appeal of this nature and that in any event when appeal itself is not maintainable, cross-objections filed therein will not survive for consideration - As per Sec.41(a) of Arbitration Act, 1940, provisions of CPC are applicable to all proceedings before Court and to all appeals under that enactment - Sec.173(1) of M.V Act, appeal lies to High Court on award of Motor Accidents Claims Tribunal - Sec.173 of Act is silent with regard to procedure applicable to an Appeal before High Court preferred by aggrieved person thereunder - Neither Act nor A.P Motor Vehicle Rules 1989, prescribes any special procedure to be followed in appeals before High Court.

Cross-objections filed under Or.41, Rule 22 CPC are maintainable in an Appeal filed u/Sec.173 of Act and that even though such appeal is not maintainable for any reason, cross- objections filed therein survive independently and have to be decided by High Court on merits independently - It follows that cross objections filed by claimants herein are liable to be disposed of on merits independent of maintainability or otherwise of Appeal - In this case, finding of lower Tribunal on quantum of compensation cannot be disturbed because appeal filed by Insurance Company is not maintainable - Since main Appeal is not maintainable in law, quantum of compensation awarded by lower Tribunal cannot be disturbed - Appeal as well as cross-objection are dismissed. **New India Assurance Co., Ltd. Vs. Mohammed Ahmedunnisa 2011(2) Law Summary (A.P.) 11.**

—Sec.173 – Motor accident – Tribunal awarding compensation to claimant – Appellant/ Insurance Company claiming exoneration on ground of violation of Policy conditions

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contending that driving license of driver of offending vehicle not in force on date of accident – High Court dismissing appeal holding that at time of accident driver was competent to drive vehicle and that merely there was a gap in renewal of driving license that cannot be a ground for exoneration – Insurance Company would have no liability in case of this nature – Impugned order of High Court, set aside – Appeal, allowed – Claimant is at liberty to recover amount from R2. **National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala 2008(3) Law Summary (S.C.) 146.**

—Sec.173 - "Motor accident" - Deceased, while travelling in jeep sustained grievous injuries in accident due to rash and negligent driving of driver of jeep and succumbed to injuries next day - Tribunal awarded compensation of Rs.3,37,000 as against claim of Rs.5 lakhs - Appellant/Insurance Company contends that Tribunal ought to have fastened liability of appellant since policy is an Act policy and deceased was a passenger on hire at time of accident and therefore it does not cover insured in respect of passengers, who travelled in jeep on hire basis - Tribunal has clearly and categorically held that appellant/insurer did not adduce any evidence to show that jeep was used to transport passengers on hire/reward basis and that mere alleging that terms and conditions of insurance policy are violated is not sufficient without adducing any authentic proof - If a private vehicle is allow to carry persons other than owner or driver, as per conditions of registration, all such persons come within expression "third party" - Since policy in this case, covers third party risk, appellant-insurer is liable for payment of compensation as held by Tribunal - Interest reduced from 9% to 6% - Award of Tribunal in all other aspects shall remain unaltered - Appeal, allowed in part. **United India Insurance Co. Ltd. Vs. Ahmadi Begum 2011(1) Law Summary (A.P.) 37 = 2011(2) ALD 14 = 2011(2) ALT 401.**

—Sec. 173- Either as a owner of the goods or as a third party, risk of deceased is covered under terms of Policy and Insurance Company cannot escape its liability - Hence, appeal by Insurance Company was dismissed and award of Tribunal upheld. **National Insurance Co. Ltd. Vs. Zuleka Begum 2014(3) Law Summary (A.P.) 87.**

—Sec.173 - The question would be whether the deceased can be treated as a third party when the death of the deceased did not occur while he was travelling in the tractor and as the accident took place while he was trying to board the trolley. In view of the judgments referred to above (Branch Manager, Bajaj Allianz General Insurance Company Limited v. Kumari Podha 2014 (1) An. W.R. 285 (Ori.), Divisional Manager, Oriental Insurance Co. Ltd. V. Minka Munda and two others 2009 (ii) OLR 982, New India Insurance Company v. Darshana Devi and others 2008 ACJ 1388, the deceased has to be treated as a third party and since the insurance policy was in force at the time of the accident, this Court of the view that the order of the Tribunal in directing the insurance company to pay the amount and recover the same from the owner of the vehicle warrants no interference, and the appeal is liable to be dismissed - Accordingly, the appeal is dismissed confirming the award passed on the

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file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC). **New India Assurance Co. Ltd. Vs. Voggani Chinna Venkataiah 2015(1) Law Summary (A.P.) 315**

—Sec.173 - Claimants preferred present appeal u/Sec. 173 of the Motor Vehicles Act against grant of inadequate compensation in M.V.O.P. No. 221 of 2005 on the file of Motor Accidents Claims Tribunal which awarded Rs. 42,000/- on death of a railway employee - Held, since deceased was aged about 48 years having fixed income, 30% of actual salary should be added to the actual income of the deceased for the purpose of calculating the loss of dependency in view of the judgments of the Apex Court in various judgments - If the income of the deceased is taken at Rs. 6535/- and when 30% of it is added to the income, the monthly income would come to Rs. 8495/-(Rs.6535/- +1969/-) which is rounded of to Rs. 8,500/- - Though claimants are 4 in number but since claimant No. 2 was aged about 24 years having sufficient income of his own, it would be appropriate to deduct 1/3rd of amount towards personal and living expenses of the deceased - If 1/3rd is deducted, the contribution of the deceased to the family would be Rs. 5,667/- per month. As the age of deceased was 48 years at the time of accident, Tribunal adopted multiplier '13' which needs no interference. Applying multiplier '13', the total loss of dependency would be Rs. 5,667/- x12x13= 8,84,052/- - Accordingly, appeal is allowed by enhancing the compensation from Rs.42,000/- to Rs.9,26,052/-. **Meesala Nageswaramma Vs. Siva Cheederla 2015(2) Law Summary (A.P.) 64**

—Sec.173 – "MOTOR ACCIDENT" - Deceased aged 38 years, doing timber business, while proceeding on his motor cycle along with two others, offending bus being driven by its driver in a rash and negligent manner at high speed came on wrong side and dashed against Motor Cycle, died in accident - Claimants wife, minor children and parents of deceased filed petition claiming total compensation of Rs.5,00,000/- (rupees five lakhs only) – Tribunal came to conclusion that since claimants have not filed inquest report and P.M. Report and they have not assigned any reason for not filing those documents and age of deceased could not be ascertained with authentic proof and therefore claimants have failed to prove their claim - Claimants contend that Tribunal ought to have considered age of wife and age of children and other documentary evidence to determine age of deceased and that merely because inquest report and P.M., report are not filed it is not necessary to dismiss claim petition - In this case, age of deceased has been mentioned in Charge Sheet – Tribunal ought to have gone through records and read documents filed before it, Tribunal without reading documents filed before it simply came to conclusion that no documents have been filed showing age of deceased - Judicial Officers are expected to read entire evidence i.e., oral and documentary evidence before drawing any conclusion and particularly before dismissing claim petitions - Having regard to nature of business and age of deceased and circumstances no documents have been filed to show that

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deceased was having any agriculture, this Court consider, just and reasonable to take income of deceased at Rs. 60,000/- per annum, loss of earnings comes to Rs.45,000/- and appropriate multiplier is "16" – Thus loss of dependency comes to Rs.7,20,000/- (Rupees seven lakhs twenty thousand only) - First Claimant, wife is entitled to a sum of Rs.1,00,000/- towards loss of consortium, and minor children, claimants No. 2 & 3 are entitled to sum of Rs.1,00,000/- towards loss of care and guidance, and claimants are also entitled Rs.25,000/- towards funeral expenses and accordingly appeal allowed awarding compensation of Rs.9,45,000/-.**S.Thenmai Vs. APSRTC, 2015(2) Law Summary (A.P.) 85**

—Sec.173 - "ACCIDENT" – ENHANCEMENT OF COMPENSATION - Claimant aged 27 years, working as Salesman while, travelling on scooter as pillion rider, offending lorry came at high speed dashed against scooter from behind caused accident - Claimant sustained multiple bleeding injuries on his left leg on account of which he cannot sit and walk and he is suffering with unbearable pain while walking - Tribunal awarded total compensation of Rs. 1,26,200/- out of total claim of Rs. 3,00,000/-. Hence, claimant preferred this appeal - Claimant contends his left foot was completely damaged in accident and he was operated twice and sustained 35% permanent disability - Courts and Tribunals have to examine as to how disability sustained by a claimant affects his normal duties which he was doing prior to date of accident – A Sales-man has to move from shop to shop or from village to village during course of his job - When person is limping he cannot do any hard work, it will be difficult for such a person to work as a sales man – It appears that except doing sedentary type of job, claimant cannot do any other hard work - Thus physical disability resulting in functional disability has to be assessed having regard to nature of work being done by injured - Appropriate multiplier applicable to age of claimant is "18" and thus total loss of earning would come to Rs. 4,32,000/- and thus claimant is entitled for a total claim of Rs. 5,00,000/- including loss of enjoyment medical expenses etc. - It is settled law that irrespective of amount claimed by claimants, courts may award compensation which appears to be just and reasonable in facts and circumstances of case – Since compensation awarded is more than compensation claimed by claimant, claimant is directed to pay deficit court fee before obtaining decree – Appeal allowed accordingly. **C.Prabhakar Vs. A.N.Raghava Venkatramana 2015(1) Law Summary (A.P.) 499**

—Secs.177 & 142 - "Motor accident" - Claimant/Engineer aged 32 years earning Rs.7,000/- per month while proceeding on motor cycle, bus came from opposite direction with high speed, dashed against motor cycle as a result, claimant fell down and sustained bleeding injuries and had undergone four operations in NIMS, consequently sustained permanent disability - Tribunal awarded only Rs.1.2 lakhs towards compensation as against claim of Rs.20 lakhs - Appellant/claimant contends that Tribunal failed to consider that claimant is qualified mechanical Engineer with

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Masters Degree and also failed to consider medical bills submitted by claimant - Insurance Company contends that claimant has not sustained any fracture, therefore he has not sustained any permanent disability - In this case, claimant is a mechanical engineer and restriction in movement of leg, particularly at ankle may not result in total loss of earning capacity and physical disability sustained by claimant may not cause total loss of earnings - Therefore, functional disability for purpose of assessing loss of income can be reasonably assessed at 5% - Therefore, appropriate multiplier would be "16" - There is no evidence to show that claimant took treatment in a Nursing Home and therefore there is no need to disturb findings of Tribunal as far as awarding of medical expenses is concerned - Considering prolonged period of treatment, compensation enhanced to Rs.2.06 lakhs - Appeal allowed in part. **C.N.Somasekhar Reddy Vs. I.D.L.,Chemicals Ltd., 2010(1) Law Summary (A.P.) 96.**

—Sec.181 & 163-A, Second Schedule - **INDIAN PENAL CODE,** Sec.304-A - "Motor accident" - Deceased, plumber aged 39 years died in motor accident - Tribunal having specifically held that claimants are entitled for compensation of Rs.4,06,000, restricted to Rs.3 lakhs which was actually claimed in claim petition - Claimants contend that restri-ction of compensation amount is not in accordance with law - Insurance Company challenges both quantum and their liability to pay compensation - In this case, contention of Insurance Company is that driver of offending vehicle charge-sheeted for offence u/Sec.304-A IPC and also u/Sec.181 of M.V Act for causing death by rash and negligent driving of vehicle - Magistrate took case on file u/Sec.304-A only and no cognizance was taken u/Sec.181 of M.V. Act - It is incumbent on part of Insurance Company to adduce required evidence in proof of fact that driver had no valid driving licence - Insurance Company did not even take steps either to examine owner of vehicle or its driver and also it has to further establish that owner of vehicle either wilfully allowed driver who was not duly licenced to drive such vehicle or that he failed to exercise reasonable care, otherwise Insurance Company cannot disown its liability on ground of breach of terms of Policy - JUST COMPENSATION - It is for Tribunal to determine just compensation from evidence which is brought on record - If evidence on record justifies passing of award for more than amount actually claimed, claim cannot be rejected solely on ground that claimant has restricted his claim and it can be permitted at appellate stage also - Claimants are entitled for compensation of Rs.4,25,000/- which is just and reasonable - Enhancement would be Rs.1,25,000 and first claimant, widow of deceased shall be exclusively entitled for enhanced compensation - M.A.C.M.A filed by claimants allowed - M.A.C.M.A filed by Insurance Company, dismissed. **D.Krishnaveni Vs. Mohd.Sikander 2009(3) Law Summary (A.P.) 235.**

—Sec.207 - **A.P. MOTOR VEHICLES RULES, 1989,** Rules, 488-B and 192 - 2nd respondent/Motor Vehicle Inspector seized petitioner's vehicle while returning with his family members from Tirupathi, stating that number punched on chassis of vehicle

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appears to have been tampered - Pursuant to directions of High Court first respondent issued show cause notice basing on report submitted by 3rd respondent Dy. Transport Commissioner after receiving explanation submitted by petitioner cancelled registration of vehicle - Hence present writ petition filed challenging order of cancellation - 1st respondent/Dy. Transport Commissioner filed counter stating that various steps taken place from the seizure of vehicle till impugned order are passed and writ petition not maintainable on ground that alternative remedy of appeal is available to petitioner - Petitioner contends that 1st respondent did not inspect vehicle physically not verified original records and passed impugned order, just to exhibit her vindictiveness,on account of filing of writ petition seeking reliefs and further submits that all three respondents have acted in tandem and flouted all norms of discharge of powers conferred upon them under M.V., Act and Rules made thereunder - G.P for Transport submits that number on chassis of vehicle of petitioner was suspected to have been tampered and accordingly seizure was affected and that according to Rule 192, chassis must contain particulars not only of serial number but also month and year of manufacture and that same have not been found on vehicle of petitioner and that petitioner did not avail remedy of appeal - In this case, petitioner produced all documents pertaining to vehicle and no infirmity was found therein - Since only ground of seizure was discrepancy as to number 1st respondent could have ordered release, even while continuing step for verification - She exhibited her authoritarianism and has chosen to call for report of respondent no.3 and when petitioner approached Court complaining about non-disposal of application, direction was issued to respondent no.1 to conclude proceeding within stipulated time - A reasonable person in place of 2nd respondent/ Flaying Squad would have referred matter to registering Authority for further verification but he acted in an arbitrary, capricious and unlawful manner by seizing vehicle just on suspicion, that too, with reference to matter upon which petitioner has no control - In this case, petitioner and his family members were put to untold hardship and huge financial loss on account of arbitrary and illegal action of respondents - Plea of alternative remedy cannot be accepted as petitioner has already been shown taste of remedies from Ceaser to Ceaser and there is no point in subjecting him to another round of humiliation and depravity - Petitioner shall be paid Rs.35,000/- towards loss sustained by him - Vehicle shall be released forthwith. **G.Srinivas Goud Vs. The Dy.Transport Commissioner, Nizamabad 2013(1) Law Summary (A.P.) 93 = 2013(2) ALD 566 = 2013(4) ALT 221.**

—and **CONSTITUTION OF INDIA,** Art.227 - Motor accident - Legal Representatives of deceased filed claim petition - Tribunal awarded compensation fixing primary liability on driver and owner of bus holding that driver of bus not possessing valid driving licence and that amount may be recovered from driver and owner - Pursuant to directions, appellant/Insurance Company made payments by depositing amount by cheque - E.P filed by Insurance Company for recovery of amount - 4th respondent/owner of bus contends that civil suit is required to be filed for recovery of amount - Executing Court

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dismissed E.P - High Court dismissed Application filed under Art.227 of Constitution - Whenever a direction has been issued by Tribunal, it must be held to have been done in exercise of its inherent power - It would be travesty of justice, if Insurance Company which is directed to pay amount and then face immense difficulties in executing decree - Impugned judgment, set aside - Appeals, allowed. **New India Assurance Co. Ltd. Vs. Kusum 2009(3) Law Summary (S.C.) 71.**

—and **MOTOR VEHICLES RULES, 1989,** Rules 100 & 100(2) - **CONSTITUTION OF INDIA,** Arts.21 & 32 - PUBLIC INTEREST LITIGATION (PIL) Visual Light Transmission (VLT) - Petitioner seeking issuance of a writ or directions requiring use of such safety glasss on windows/window shields in vehicels having 100% VLT and for prohibition on use of block filims on glasses of vehicles - Court cannot issue directions that vehicles should have glasses with 100% VLT - Rule 100 of Rules is a valid piece of legislation and is on statute book - Once such provision exists, Court cannot issue directions contrary to provisions of law - Use of blok films or any other material upon safety glass, windows screen and side windows is impermissible - In terms Rule 100(2), 70% and 50% VLT standard are relatable to manufacture of safety glasses for windshields (front and rear) and side windows respectively - Use of films or any other material upon a window screen or side windows is impermissible in law - It is VLT of safety glass with any additional material being pasted upon safety glasses which must confirm with manufacture specifications - Court prohibit use of block films of any VLT percentage or any other material upon safety glass windscreens (front and rear) and side glasses of all vehicles throughout country - Home Secretary, Director General Commissioner of Police of respective States/centre are directed to comply with these directions. **Avishek Goenka Vs. Union of India 2012(2) Law Summary (S.C.) 61 = 2012(6) ALD 80 (SC) = AIR 2012 SC 3230 = 2012 AIR SCW 4578 = 2012(3) SCC(Cri) 891 = 2012(8) SCC 441.**

—and **CONSTITUTION OF INDIA,** Art.226 - "Motor accident" - Deceased, while he was on his fields died due to electrocution - Petitioners/claimants filed writ petition seeking declaration that action of respondents/APEPDC in not paying compensation of Rs.10 lakhs is illegal and arbitrary - Respondents have taken specific plea that deceased on account of his negligence and that while live wire was hanging safely over branches of trees, deceased tried to remove same and in process got electrocuted and therefore it is not appropriate for High Court to render findings on these disputes while exercising jurisdiction under Art.226 of Constitution of India and that only appropriate remedy for petitioners is to file civil suit for recovery of compensation - Scheme of respondent/Corporation, irrespective of whether death has occurred on account of negligence of respondents or not, dependents of victim are entitled for *ex gratia* - Receipt of *ex gratia* amount shall be without prejudice to right of petitioners to claim of compensation before civil Court - Writ petition, dismissed. **Saladi Veera Veni Vs. A.P.E.P.D.C. Ltd.Visakhapatnam 2010(3) Law Summary (A.P.) 30.**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

MOTOR SPIRIT AND HIGH SPEED DISEL (REGULATION OF SUPPLY, DISTRIBUTION AND PREVENTION OF MALPRACTICES) ORDER, 1998:

—MARKETING DISCIPLINE GUIDELINES, 2001 - RON Test - "Adulteration" - Anti Adulteration Cell inspected petitioner's retail outlet and took samples of MS and HSD and found that RON test carried on MS did not meet specifications - 1st respondent Corporation passed order suspending sales and supply of all products by petitioner on ground of alleged adulteration by drawing adverse inference that product was adulterated at petitioner's outlet - Petitioners contend that even assuming that RON test did not meet specifications same does not amount to adulteration as defined under Cl.2(a) of Control Order 1998 and that adverse inference drawn by Corporation that product was adulterated is unsustainable since Corporation failed to draw samples as provided in Annexure-III of Marketing Discipline Guidelines, 2001 and that penal proceedings against petitioner can be initiated only when it is established that there was variation in sample drawn at petitioner's retail outlet when compared to reference sample of IOC drawn from "supply location" - It is not open to Corporation to draw an adverse inference that product was adulterated merely on ground that petitioner failed to retain "tank lorry sample" - In this case, no show cause notice was issued to petitioner to impose penalty on ground that MS sample drawn from petitioner's outlet did not meet stipulated specification for RON - Impugned order imposing penalty is liable to be set aside being in violation of fundamental principles of natural justice, arbitrary and illegal - Hence, impugned order, set aside. **M.Satyanarayana Murthy & Co. Vs. Indian Oil Corpn. 2009(2) Law Summary (A.P.) 84 = 2009(3) ALD 673 = 2009(2) APLJ 201 = 2009(4) ALT 420.**

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—Secs.8, 21, 41 & 42 - Trial Court convicting accused for offences u/Secs.8/21 of Act on recovery of some packets of Morphine from his pockets - High Court confirmed conviction of appellant - Provisions of NDPS Act being harsh in nature, procedural safe guards contained therein must scrupulously be complied therewith - In this case, at no point of time appellant was informed that he had a statutory right of being searched by a Gazetted Officer - Nothing has been brought on record to show that provisions of Sec.42 of NDPS Act were substantially complied with - Impugned judgment, set aside - Appeal, allowed. **Sarju @ Ramu Vs. State of U.P. 2009(3) Law Summary (S.C.) 59 = 2009(2) ALD(Crl) 822(SC) = 2009(5) Supreme 730 = AIR 2009 SC 3214 = 2009 Cri. LJ 4123 (SC) = 2009 AIR SCW 5149.**

—Secs.8(c), r/w 20 (b) and 50 - ARMS ACT, Sec.27 - Case registered against accused on ground that they are in possession of two packets of Ganja and knife - Trial Court convicting accused for offences u/Sec.8(c) of NDPS Act and u/Sec.27 of Arms Act - Appellants, accused contend that trial Court erred in placing reliance on evidence of P.Ws.1 to 3 who are all "Police witnesses" and despite non compliance of mandatory provisions u/Sec.50 of NDPS Act by Police Officials, trial Court convicted appellants

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- Conviction can be based on testimony of Police witnesses even though no independent witnesses were examined on behalf of prosecution - If really it was not possible to secure mediators at given time, Court cannot find fault with arresting Police Officer is not securing mediators - However when there is ample opportunity for Police Officer to secure presence of mediators and fails to do so, it can be considered as a lapse on part of investigating agency - In this case, no attempt was made to secure mediators - It is quite and unsafe to place reliance on evidence of P.Ws. 1 to 3 who are police witnesses - Inordinate delay in reaching FIR to Magistrate is not at all explained by prosecution - Conviction and sentence passed by trial Court against appellant/ accused, set aside - Appeal, allowed. **Tadigiri Rambabu Vs. State of A.P. 2009(3) Law Summary (A.P.) 340.**

—Secs.8(c), r/w Sec.20(b)(i), 42, 50 & 57 - Sessions Judge convicted appellants for offence u/Sec.8(c) r/w Sec.20(b)(i) of Act - In this case, Inspector of Police along with his staff seized two packets of ganja from appellants/accused - Charge-sheet laid into Court for said offences - Trial Court after taking evidence adduced by prosecution and other material on record into consideration found appellants guilty of said offence u/Sec.8(c), r/w 20(b)(i) and accordingly convicted and sentenced them - Appellants contend that evidence of P.W.1 is unreliable and untrustworthy as he is a stock witness and he has admitted in his cross-examination that he had attested in not less than 50 to 60 mediators' reports in cases pertaining to that particular Police Station and that P.W.2 - Inspector of Police who is Investigating Office himself admitted that he is not Investigating Officer of case and he had only laid charge sheet and that L.W.3 who is SHO of Police Station concerned and registered crime not examined and in these circumstances it is not known who has in fact investigated case and that there is nothing in evidence of P.W.2 as to compliance of provisions u/Sec.42,50,57 of Act - In view of non-examination of SHO of Police Station concerned who registered case not examined to say as to who investigated case, it is not known as to who investigated case, and these lacunae are fatal to case of prosecution - Further there is also nothing on record to show that provisions u/Secs.42,50 & 57 of Act were followed which required an Investigating Officer to record information as to such seizure and arrest of accused and also to inform about same to immediate superior Officer - Since prescribed procedure not complied with, trial vitiated - Impugned judgment is perverse and suffers from infirmities and irregularities and as such conviction and sentence of both appellants, erroneous and liable to be set aside - Appeal, allowed. **Annapureddi Sambaiah Vs. State of A.P. 2011(2) Law Summary (A.P.) 256 = 2011(2) ALD (Crl) 623 (AP) = 2011(3) ALT (Crl) 151 (AP).**

—-Secs.20(b) - **TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986,** Clause (f) of Section 2 - Writ petition is filed by the mother of detenu seeking relief of Habeas Corpus under

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Article 226 of Constitution of India to produce detenu and set him at liberty by declaring detention order illegal, arbitrary and violative of Article 21 of the Constitution of India.

Held, it appears that one and same person has written both portions - Court unable to comprehend as to why Inspector of Police or Jailor, Central Prison, Cherlapalli, as case may be, has not taken endorsement in handwriting of detenu himself, when it is mentioned in endorsement that detenu studied upto fifth class in English medium and understood grounds and order of detention explained in English and Hindi languages, which, certainly, gains greater significance in present context in judging whether constitutional safeguard has been complied with or not - Court have no hesitation to answer same in negative.

Second aspect which Court would like to point out is even taking an extreme view for argument sake, still, objection raised by detenu, stood unanswered - Reason being, endorsement as well as other portion recorded by Inspector of Police would only refer to supply of order of detention and grounds of detention, but, absolutely silent as to supply of documents or explaining purport of documents in Hindi language which constituted basis for forming an opinion that detenu was a 'drug offender' - So, that infirmity, which crept into, is carried forward and Court, therefore, find that there has been no compliance of constitutional requirement of supplying relevant material either in English language or its translated copies in Hindi language, which language is known language of detenu - For aforesaid reasons, Writ Petition is allowed by quashing order of detention. **Saraswathi Bai Vs. State of Telangana 2016(2) Law Summary (A.P.) 210 = 2016(4) ALT 640 = 2016(2) ALD (Crl) 976.**

—Secs.24,29,37 & 67 - **INFORMATION TECHNOLOGY ACT, 2000,** Sec.79 - Appellant was arrested as prima facie case made out under provisions of NDPS Act - High Court and Special Judge dismissing bail Applications observing that enquiry was at critical stage and investigation was still in progress - Contention that appellant's Companies are mere network service providers and are protected u/Sec.79 of Technology Act from any prosecution - In this case, appellant and his associates were not innocent intermediaries or network service providers as defined u/sec.79 of Technology Act, but said business was only a fagade camouflage for more sinister activity - Sec.79 will not grant immunity to an accused who has violated provisions of Act as this provision gives immunity from prosecution for an offence only under Technology Act - In face of overwhelming inculpatory evidence it is not possible to give finding envisaged u/Sec.37 of Act for grant of bail that there were reasonable grounds for believing that appellant not guilty of offence alleged, or that he would not resume his activity should bail be granted - Appeal, dismissed. **Sanjay Kumar Kedia Vs. Narcotics Control Bureau 2008(1) Law Summary (S.C.) 1.**

—Sec.37 - **CODE OF CRIMINAL PROCRDURE**, Sec.439(2) - Respondent/A1 arrested under NDPS Act and granted bail by the learned incharge Metropolitan Judge, against which Complainant/Intelligence Officer of Narcotics Control Bureau, filed Revision u/Secs.397 and 401 of Cr.P.C on grounds that judgement of learned judge is illegal, improper and incorrect and contrary to rules of criminal jurisprudence and provisions

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of NDPS Act, that learned judge erred in allowing petition granting bail without following mandatory provisions of Sec.37 of NDPS Act etc., - Revision Petition was opposed not only on maintainability as a revision against order granting bail or dismissal of application for cancellation of bail but also on drawing attention of court to several minute facts of case including from panchanamas in saying there is no material to say accused is likely to be convicted from facing trial and the bar u/Sec.37(1)(b) of NDPS Act has no application and Sessions Judge was right in granting bail and order no way requires interference much less to cancel by sitting against by this court even from prayer to cancel or set aside bail order - Held, even as revision filed impugning bail order or cancellation order, same shall be disposed of by converting or treating as an application for cancellation u/Sec.439 Cr.P.C. - It is also for this reason that it is not form or provision but substance that is criteria and procedural law is handmaid but not mistress of justice and Court is no way prevented from wrong provision to treat with correct provision if there is substance in the application of correct provision in matter on record - Even bail cancellation application before Court of Sessions dismissed again filing application for cancellation of bail before High Court not barred u/Sec.439(2) Cr.P.C. apart from power of court to convert revision as application u/Sec.439(2) Cr.P.C. - Trial court is bound to follow said expressions of Apex Court and directions therein to make every endeavour to give expeditious disposal and thereby contention of respondent/A1 that there will be delay in conducting trial and bail order cannot be cancelled by invoking Sec.439(2) and Sec.482 Cr.P.C is also not tenable but for to say Courts are bound to follow guidelines for expeditious disposal - Bail order is liable to be cancelled by invoking Sec.439(2) Cr.P.C. under which provision application is originally filed and even if registry returned in directing to file as revision for its so filing even if a prayer for cancellation of bail and not a revision against even the order dismissing application for cancellation of bail, same is within inherent power of Court u/Sec.482 Cr.P.C. be taken as filed under correct provision for cancellation of bail u/Sec.439(2) Cr.P.C. - Accordingly, and in result, Criminal Revision Case is allowed by cancelling the bail granted to A1. **Intelligence Officer, Narcotics Control Bureau Hyderbad Vs. Shivakumar 2014(3) Law Summary (A.P.) 425.**

—Sec.50 – Appellant/Accused convicted under Act - Contention that accused was not made aware of his right to be searched before Magistrate or Gazetted Officer - In this case, no evidence had been adduced to show that appellant was communicated of his right either to be searched in presence of Magistrate or a Gazetted Officer on one hand and by an empowered Officer on other and there had been even no substantial compliance of Sec.50 of NDPS Act – Impugned judgment of conviction, set aside – Appeal, allowed. **Man Bahadur Vs. State of H.P. 2008(3) Law Summary (S.C.) 150 = 2008(2) ALD (Crl.) 781 (SC) = 2008(7) Supreme 80.**

—Secs.50,41(1), 42(2)&21 - **CRIMINAL PROCEDURE CODE,** Sec.313 - Police recovered three polythene packets from left side packet of accused containing powder

NATIONAL HIGHWAYS ACT, 1956:

of light brown colour, suspected to be smack - As per report of CFSL, sample gave positive test for heroin - Charge-sheet filed against accused for committing offence u/Sec.21 of Act - SEC.50 - SCOPE AND AMBIT - Discussed - This provision is mandatory and implicitly make it obligatory on authorized Officer to inform person to be searched of his right - This provision which afford minimum safeguard to accused, provide that in a search is about to be made of person u/Sec.41,42 or 43 of Act , and if person so requires then said person has to be taken to nearest Gazetted Officer of any Department mentioned in Sec.42 of Act or nearest Magistrate - Merely asking accused whether he wished to be searched before Gazetted Officer or Magistrate, without informing him that he enjoyed a right under law in this behalf, would not satisfy requirement of Sec,50 of Act - Search u/Sec.41(1) of Act would not attract compliance to provisions of Sec.50 of Act - Since compliance is imperative substantial compliance is not sufficient - Accused had a right to be informed of choice available to him making him aware of existence of such a right was in a obligation on part of searching Officer - This duty cast upon Officer is imperative and failure to provide such an option in accordance with provisions of Act, would render recovery of contraband or illicit substance, illegal - Satisfaction of requirements in terms of Sec.50 of Act is *sine qua non* prior to prosecution for possession of Narcotic substance - Once recovery itself is found to be illegal, being in violation to provisions of Sec.50 of Act, it cannot on basis of statement of Police Officers or even independent witnesses, form foundation for conviction of accused u/Sec.21 of Act - In no event illegal recovery can be foundation of a successful conviction under provisions of Sec.21 of Act - Appeal, dismissed. **State of Delhi Vs. Ram Avtar @ Rama 2011(3) Law Summary (S.C.) 71.**

NATIONAL HIGHWAYS ACT, 1956:

—Secs.3(g)(5) (1) (2) - Respondents issued Notification to acquire land belonging to petitioners in which he was operating petrol bunk from last 20 years, under provisions of N.H Act to widen National Highway - Since competent Authority did not fix compensation as per existing market value, petitioner made representation to refer matter to Arbitrator - When matter not referred to Arbitrator, petitioner filed Writ Petition and obtained directions to consider Representation of petitioner for enhancement of compensation - Petitioner contends that inspite of documentary evidence filed by him in support of his claim for higher market value for award of compensation, impugned order passed stating that commercial sale documents cannot be considered in fixing market value - Petitioner further contends that when Govt. has notified District Collector as Arbitrator to exercise powers and functions u/Sec.3(g)(5) of Act it is obligatory on his part to consider material produced by claimants in arriving at market value for purpose of fixing compensation for land acquired - It is true that remedy is provided under Act by way of appeal, in instant case, District Collector has not considered material placed by petitioner at all and simply rejected his claim by recording a finding that commercial sale documents cannot be considered for fixing land value - When commercial bit of land is acquired for purpose of road widening, it is not

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open to Arbitrator to reject documents placed by petitioner for purpose of assessing market value simply on ground that petitioner has produced commercial sale documents - Arbitrator, who is notified authority under Act has not considered claim of petitioner in proper perspective - Impugned award set aside with direction to consider matter afresh - Writ petition, allowed. **Kommula Srinivas Vs. District Collector & Arbitrator Nizamabad 2012(3) Law Summary (A.P.) 134 = 2013(1) ALD 176 = 2013(2) ALT 66 = AIR 2013 (NOC) 206 (AP).**

NEGOTIABLE INSTRUMENTS ACT:

—It is clear as crystal that if the person who commits an offence Under Section 138, Negotiable Instruments Act, 1881, is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company. **Standard Chartered Bank Vs. State of Maharashtra 2016(2) Law Summary (S.C.) 1 = AIR 2016 SC 1750 = 2016 Cri. LJ 2362 (SC) = 2016(1) ALD (Crl) 892 (SC).**

—-Application for discharge u/Sec.258 Cr.P.C. has no application in proceedings under Negotiable Instruments Act - Only remedy is to avail remedy u/Sec.482 Cr P C. **Munukuntla Kasi Annapurna Vs. State of A.P. 2016(3) Law Summary (A.P.) 466.**

—Secs.3,7,138 & 142 - **CRIMINAL PROCEDURE CODE,** Secs.177 to 179 - Territorial jurisdiction - Place of jurisdiction - Place or situs where complaint is to be filed - Complainant had no choice - Territorial jurisdiction is restricted to the Court within whose local jurisdiction offence was committed, which in the presence context is where the cheque is dishonoured by the Bank on which it is drawn. **Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014(3) Law Summary (S.C.) 1 = 2014(2) ALD (Crl) 190 (SC) = 2014(5) ALD 1 (SC) = 2014 AIR SCW 4798 = 2014(3) SCC (Cri) 673 = 2014(9) SCC 129.**

—Sec.4 - **INDIAN STAMP ACT,** Secs.2(5) and 2 (22) - Plaintiff filed suit for recovery of amount basing on promissory note and sought to mark instrument as Ex.A1 - Trial Court over- ruled objection raised by defendant that instrument does not constitute a promissory note and permitted plaintiff to mark the instrument - PROMISSORY NOTE - Meaning of - A close reading of definition of promissory note indicates that it must contain an unconditional undertaking signed by maker, to pay a certain sum of money only to, or to order of, a certain person, or to bearer of instrument - BOND - Defined - Principal ingredient, which makes a difference lot between bond and promissory note, is that if instrument is an unconditional undertaking to pay or to order of certain person, it is to be classified as promissory note - All ingredients stated above are required to be satisfied to classify an instrument as a promissory note - “An instrument to be promissory note, must necessarily contain the words ‘to the bearer, or to the order’ - In a way these two

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words, i.e., "to the bearer or the order" are to be read conjunctively and not disjunctively". **M.D.Nyamathulla Vs. A.Chitharanjan Reddy 2008(2) Law Summary (A.P.) 87 = 2008(3) ALD 303 = 2008(3) ALT 153 = AIR 2008 AP 141.**

—Sec.118 (a) - **CIVIL PROCEDURE CODE,** Sec.100 - Respondent/plaintiff filed suit basing on pronote executed by appellant/defendant - Defendant contends that plaintiff did not pay amount under suit pronote - Trial Court dismissed suit holding that defendant successfully rebutted presumption attached to Ex.A.1, pronote - Lower appellate Court reversed decree holding that presumption u/Sec.118 N.I Act has to be drawn on Ex.A.1 and consequently suit is liable to be decreed - Appellant/defendant contends that pleadings of defendant are misappropriated by lower appellate Court and inspite of there being specific pleading by defendant that no consideration was paid on date of execution of pronote, lower appellate Court erroneously thought as if there was no pleading on part of defendant - A bare reading of Sec.118 N.I Act shows that presumption attached to passage of consideration just like other presumptions also is clearly rebuttable and it is for defendant to satisfy court that in a given case, presumption cannot be drawn in view of contra evidence on record - In view of past transactions between parties it is probable that defendant had believed plaintiff and executed pronote and later accepted to receive amount subsequently - In this case, plaintiff's evidence was recorded after defence evidence as issue framed by trial Court has put burden of proof on defendants - Plaintiff therefore was aware of evidence lead by defence but has chosen to lead only his evidence and not of any other witness or any other evidence to establish passage of consideration on date of A1 - Evidence on part of DWs.2 to 4 fully supports case of defendant and after noticing aforesaid evidence also, plaintiff in his evidence states as mentioned above that he has kept faith in D.Ws.2 to 4 - Onus of proving that no consideration passed on date of Ex.A1 was, therefore, discharged by defendant and same shifted back to plaintiff, but plaintiff has examined only himself and has not produced any oral or documentary evidence to establish passage of consideration - Trial Court rightly appreciated aforesaid aspect but lower appellate Court has ignored said evidence of D.Ws2 to 4 by giving a strange reason that they are all retired people and their evidence is artificial - Lower appellate Court therefore committed serious error in reversing well considered judgment of trial Court and findings of lower appellate Court are contrary to evidence on record and as such have to be held to be perverse and liable to be set aside - Substantial question of law, therefore is answered in favour of appellant - Judgment and decree of lower appellate Court, set aside - Second Appeal, allowed. **Abbisetti Krishnamoorthy Vs. Singasani Raghuramaiah (died) 2011(2) Law Summary (A.P.) 100 = 2011(4) ALD 106 = 2011(5) ALT 143.**

—Sec.131 & 131-A - Statutory protection - Plaintiff/respondent Bank issued two non-crossed demand draft which were materially altered and deposited for collection at appellant/defendant Bank by proprietor of STC who opened account with defendant

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Bank - It is alleged that defendant/Bank without enquiry or verification about creditworthiness or genuineness of STC or its proprietor credited amout due under materially altered DDs to account of STC and allow to withdraw cash to extent of Rs.50,000/- under cheques before realisation of said amount from plaintiff's/Bank - Plaintiff paid amount to account of defendant/Bank without knowing truth of alteration and subsequently came to know about fraud and filed complaint before Police and suit for recovery of amount - Appellant/defendant contends that as per Bank practice no detailed enquiry is required to be made about creditworthiness of customer for opening of current account and that it had acted in bona fide manner in ordinary course of business in good faith and without negligence - Trial Court decreed suit holding that defendant/Bank was guilty of negligence and accordingly liable to pay amount claimed by plaintiff - Appellant contends that trial Court erred in comming to conclusion that there was negligence on its part and in fact it is plaintiff/Bank which had been utterly negligent in processing DDs and that it has followed usual banking practice and that when a DD is received for collection they would look at amount, name, date of DD and Bank on which it was drawn and that it was not expected of Bank to make any further enquiry into genuineness of DD and that it is entitled to protection afforded to it by Sec.131 of N.I Act - Respondent/plaintiff Bank contends that statutory protection afforded by Sec.131 of Act could not be claimed by defendant Bak and that negligence of defendant Bank in opening of account and its operation clearly disentitled defendant Bank from seeking protection u/Sec.131 of N.I Act - Mere fact that plaintiff Bank contributed by its negligence to fraud and fact that defendant Bank could not have detected alteration through a simple examination does not resolve matter - U/Sec.131 protection is afforded to a Banker who acts in good faith and without negligence in instrument conversion - Unless defendant Bank is in a position to demonstrate that it acted in good faith and without negligence, it would not be absolved of liability of accounting to plaintiff/Bank for conversion of materially altered instruments - General rule is that collecting Bank would be liable under common law for conversion of an instrument devoid of title or tainted with defective title - This being general rule, exception would be protection afforded to such a Banker by Secs.131 and 131-A of Act - Such protection is conditional upon proof of good faith and absence of negligence on part of such Banker as is evident from language of Sec.131 and it is for Banker who is seeking such protection to discharge burden of proof that he acted in good faith and without negligence - In this case appellant/defendant Bank being liable for conversion of tainted DDs under general rule failed to discharge burden of proving good faith and lack of negligence so as to seek protection under provisions of Secs.131 & 131-A of Act - Proximity of opening of account, presentation of DDs and withdrawal of amounts thereunder clearly demonstrate that defendant Bank ought to have suspected bona fides of transaction and that it failed to take proper and necessary care in matter and this failure amounts to negligence and demonstrates lack of good faith on part of defendant/Bank, clearly disentitling it to protection u/Sec.131 of Act - Judgment and decree of trial Court found to be unassailable on facts and in law and are accordingly confirmed - Appeal, dismissed. **Canara Bank, Nalgonda Vs. Nalgonda Co-operative Central Bank Ltd. 2009(1) Law Summary (A.P.) 299.**

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—-Sec.138 - Complaint u/Sec.138 of the N.I.Act filed before the expiry of fifteen days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed - Second respondent filed the complaint without strictly adhering to the procedure contemplated under Sec. 138 of the Act - Mere taking cognizance of offence after expiry of 15 days time as stipulated under S. 138 (c) of the Act would not cure the legal defect of premature complaint; therefore, continuation of the proceedings against the petitioners are not legally sustainable - Accordingly Criminal Petition is allowed quashing the proceedings against the petitioners. **K.Jayalalitha Vs. State of A.P. 2015(1) Law Summary (A.P.) *94* = 2015(1) ALD (Crl) 373 = 2015(2) ALT (Crl) 12.**

—Sec.138 – "Civil" and "Criminal" liability – Purchasers issued post dated cheques towards advance payment in respect of purchase orders – Said cheques got dishonored when presented on ground that purchasers stopped payment because they had cancelled purchase order – Purchasers also requested suppliers to return said cheques – Hence compliant filed against purchasers u/Sec.138 of N I Act - Magistrate took cognizance and issued summons – Revisions filed by purchasers challenging said order, allowed by Sessions Judge - High Court allowed petition of Suppliers filed against orders of Sessions Judge - In this case cheques not issued towards legally enforceable debt or liability subsisting on date of drawl for bringing offence u/Sec.138 – As such purchaser or drawee not liable - CIVIL AND CRIMINAL LIBILITY - If cheque is issued as advance payment for purchase of goods and for any reason said order is cancelled, said cheque cannot be said to have been drawn to existing debt or liability - Breach of conditions of advance payment for purchase putting seller to loss may create civil liability, but not criminal liability u/Sec.138 of NI Act – Criminal liability to be made out u/Sec.138, there should be legally enforceable debt or liability - View taken by High Court is wrong and not justified - Hence impugned order is set aside - Appeal allowed. **Indus Airways Pvt. Ltd. Vs. Magnum Aviation Pvt. Ltd. 2014(2) Law Summary (S.C.) 1.**

—Sec.138 - The finding of the trial court that Accused No. 2 was sued in his individual capacity also appears to be incorrect - A perusal of the cause title would show that Accused No. 1 society was represented by its secretary, KC and the secretary was shown as Accused No. 2 - By this, it does not mean that Accused No. 2/KC was individually shown as an accused - Cheque issued in favour of the complainant also show that it was issued by Accused No. 1 and signed by Accused No. 2. Hence, prosecuting Accused No. 1 and Accused No. 2 for the loan taken by Accused No. 2 for Accused No. 1's business activity cannot be said to be incorrect - Therefore, it can be safely held that Accused No. 2/KC has issued the cheque in discharge of a legally enforceable debt - Accordingly, Criminal Appeal is allowed and the Accused No. 2 is found guilty for an offence punishable under Section 138 of N.I. Act. **P.Ranga Rao Vs. Bharath Vaddera Labour Contractor 2015(1) Law Summary (A.P.) 307**

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—Sec.138 - Trial court recorded that the case against Accused Nos. 1 and 2 was abated on 05-12-2006, for death of A-2 who was representing A-1 firm and after hearing both sides and after perusal of material and evidence on record, trial court held other two partners of the firm A-3 and A-4 not guilty for offence punishable under Sec.138 of the N.I.Act and accordingly they were acquitted for said offence - Impugning the said acquittal judgment, the complainant filed the present appeal contending that trial court's acquittal judgment is contrary to law, weight of evidence, probabilities of the case, etc. - Held, however, the fact remains that A-1 firm including from Ex. D-1 deed of partnership showing A-2, A-3 and others including mother of A-4 partners and not A-4, not dissolved by virtue of any clause therein from death of one of the partners, particularly A-2 and the firm is represented by other partners to continue and the firm A-1 originally arrayed, further wrongly recorded the proceedings against A-1 abated as if, though nothing to say so from Ex. B-1 partnership deed for mere death of the active partner or managing partner A-2 since A-3 continues to represent firm as one of the partners even claimed as sleeping partner apart from other partners there for case against the firm not abated, for the reason of no automatic dissolution of the firm for death of one of the partners - Thus the trial court ought to have recorded the proceedings against A-1 firm as abated, but for recording A-3 being one of the partners on record to represent A-1 firm and once, A-1 firm is there on record, though not liable for imprisonment of A-3 representing A-1 firm, the fine can be imposed to recover for not exceeding double the value of the cheque amount - In the result, while upholding the trial court's acquittal judgment of A3 and A4, however by setting aside the recording of abatement of the prosecution against A1 firm by remitting the matter to the trial court for re-trial in directing to decide afresh by arraying A3 as representing A1 firm as one of the partners. **Padmavathi Cotton Traders Vs. T.V.Thangavadiveld Muruga Nadar Sons Firm 2015(1) Law Summary (A.P.) 355**

—Sec. 138- Appellant who was complainant was aggrieved by lower appellate court's acquittal judgment in Criminal Appeal reversing trial court's conviction judgment , and preferred present appeal - Held, complainant not even filed any application either before the trial court where trial completed and decided on merits, including in appeal before the lower appellate court where considering the same on merits answered the issue - Thus, for this court, while sitting in second appeal, there are no grounds to afford opportunity to the complainant to give life to the litigation for the laches of the comaplaint - As such, that proposition also cannot be considered to rescue the complainant - In result, appeal is dismissed. **G.Sreeramachandrudu Vs. P.Srinivas, 2015(2) Law Summary (A.P.) 55 = 2015(2) ALD (Crl) 282 = 2015(2) ALT (Crl) 183.**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Secs.177, 178 & 179 - "Dishnour of cheque" - "Jurisdiction to entertain petition filed u/Sec.138 of N.I Act" - Keeping view of relevant provisions of Cr.P.C particularly Secs.177, 178 & 179 and in light of language used interpreted Sec.138 of N.I Act and laid down that Sec.138 has

five components, viz., i) drawing of cheque ii) presentation of cheque to Bank iii) returning of cheque unpaid by drawee Bank iv) giving notice in writing to drawer of cheque demanding payment of cheque amount and v) failure of drawer to make payment within 15 days of receipt of notice - It is not necessary that all above five act should have been perpetrated at same locality - It is possible that each of those five acts could be done at five different localities - But concatenation of all above five is sine qua non for completion of offence u/Sec.138 of N.I Act - In view of Sec.178(d) of Cr.P.C if five different acts were done in five different localities any one of Courts exercising jurisdiction in one of five local areas can become place of trial for offence u/Sec.138 of Act - Complainant can choose any one of those Courts having jurisdiction over any one of local areas within territorial limits of any one of those five acts was done - In K. Bhaskaran's case Supreme Court, while considering territorial jurisdiction at great length has concluded that amplitude of territorial jurisdiction pertaining to complaint under N.I Act is very wide and expensive. **Escorts Ltd Vs. Rama Mukherjee 2013(3) Law Summary (S.C.) 151.**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Sec.200 & 482 - Petitioner is sole accused in C.C on file of Magistrate, for offence under Sec.138 of N.I. Act - Magistrate receiving sworn statement of de facto complainant and taking case on file u/Sec.138 of N.I Act - Docket order shows that sworn statement of de facto complainant not recorded - Sec.200 envisages that before Magistrate takes cognizance of offence on complaint he shall examine complainant on oath - Examination of complainant is sine quo non for taking a private complaint on file - Admittedly Magistrate did not do so, but accepted sworn affidavit of de facto complainant and had taken case on file - Petitioner contends that taking case on file by Magistrate without recording sworn statement of complainant was violative of Sec.200 Cr.P.C and is unsustainable - CC on file of Magistrate against petitioner quashed on ground that sworn statement of de facto complainant had not been recorded by trial Court and as such criminal case is liable to be quashed - Criminal petition, allowed. **P.Ravinder Reddy Vs. Nalamalapur Subba Reddy 2013(1) Law Summary (A.P.) 371 = 2013(1) ALD (Crl) 929 (AP).**

—Sec.138 – **CRIMINAL PROCEDURE CODE,** Sec.202, 203 & 204 – "Territorial Jurisdiction" - Appellant filed private complainant against respondent for offence punishable u/Sec.138 – Magistrate recorded evidence of appellant and perusing the documents satisfied that primafacie case has been made out and accordingly ordered to issue summons to respondents - Respondent filed application u/Sec.202, 203 & 245 of Cr.P.C., questioning maintainability of complainant due to lack of territorial Jurisdiction of Court - Magistrate allowed application filed by the respondent and recalled his previous order of issuing summons to respondents - High Court rejected petition filed by appellants u/Sec.482, concurring with view taken by Magistrate - Scheme of Cr.P.C does not provide for review of order of issuance of process and prohibits interference by accused at interlocutory stage u/Sec.203 - High Court not justified in rejecting petition filed by appellant u/Sec.482 of code – Orders of High Court and orders passed Magistrate, set

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aside – Magistrate is directed to restore the complainant to its board and proceed with matter in accordance with law. **IRIS Computers Ltd. Vs. Askari Infotech Pvt. Ltd. 2014(1) Law Summary (S.C.) 143.**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Sec.255(2) - "Appeal against acquittal" - Accused borrowed certain amount from complainant/appellant and subsequently gave cheque towards discharge of debt and same was "dishonoured", when presented, as account said to have been closed even prior to issue of cheque - Trial Court convicted accused for offence u/sec.138 of N.I Act and sentenced to undergo simple imprisonment for one year and to pay compensation of Rs.1,20,000/- - Appellate Court having accepted that cheque issued for legally enforceable liability as on date of issue of cheque, however found that offence u/sec.138 of Act, is not made out, as cheque was issued after closure of account by accused, following reasoning of Gujarat High Court, acquitted accused - Appellant contends that where an account if closed after a cheque is a given or account is closed before cheque is given, one can safely say that though it has been returned on account of closure of account, but it would in effect mean insufficiency of funds in account of person who gave cheque - Consequently Court held that offence u/sec.138 of Act has been made out and it was also found that a dishonest person would resort to such types of tactics to avoid liabilities - When judgment of our own High Court lays down, correct law, it is not permissible for Sessions Judge to have relied upon Judgment of Gujarat High Court and acquitting accused - Therefore judgment of appellate Court, set aside - Accused found guilty of offence u/Sec.138 of Act and accordingly convicted u/Sec.255(2) Cr.P.C and is sentenced to pay Rs.2 lakhs out of which Rs.1.9 lakhs shall be paid as compensation to appellant and in default accused to suffer rigorous imprisonment for one year. **Dasari Venkateswarlu Vs. State of A.P. 2012(2) Law Summary (A.P.) 256 = 2012(2) ALD(Crl) 286 (AP).**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Sec.256 - Revision petitioner filed complaint u/Sec.138 against accused - Case was adjourned from time to time and finally posted for appearance of accused - Since both complainant and accused did not appear on that day trial Court acquitted accused u/Sec.256 Cr.P.C in view of non appearance of complainant - Petitioner complainant con-tends that presence of complainant not necessary as case stood posted to that date for appearance of accused and not for trial - In present case, presence of complainant on that day, patently not necessary as case stood posted for appearance of accused only - Invocation of Sec.256 on ground that complainant was absent is unjust and erroneous - Impugned order of trial Judge, set aside - Criminal Revison case, allowed. **Venkateswara Tea Traders Vs.Madhu Agencies, 2011(2) Law Summary (A.P.)225 = 2011(2) ALD (Crl) 567 (AP) = 2011(3) ALT (Crl) 20 (AP).**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Secs.258 and 378(4) – **A.P. POLICE MANUAL, ORDER**, 447 Chapter 25 - Appellant/Complainant filed Private Complaint, against accused for offence U/Sec. 138 of N.I. Act. – Magistrate passed Conditional

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Order on 11-10-2006, that, "Complainant absent - Accused Present. N.B.W. Pending - It is the matter of 2003, if the complainant failed to take steps to execute the N.B.W by next date of hearing, the C.C. stands dismissed - Call on 18-10-2006" - On that day neither complainant nor accused were present before Court and NBW issued against accused were still pending – Since Complainant did not comply with order, Magistrate, acquitted Accused – Hence, Present Appeal - Appellant contends that, Conditional Order dt. 11-10-2006, wherein complainant was directed to get NBWs executed by next date of hearing failing which impugned order of acquitting accused, is illegal and erroneous - Perusal of order would show that on 11-10-2006 or 18-10-2006 neither complainant nor accused were present before Court – When NBWs issued against accused were still pending question of complainant being present before court on those days is of no use – Hence, absence on that day does not in any way affect progress of case - Non compliance of condition imposed by Court, i.e., execution of NBWs by complainant leading to dismissal of complaint appears to be illegal and improper - A reading of Order, 447 Chapter 25 of A.P. Police Manual makes it clear that NBWs have to be executed only by police Officer and same should be done on high priority – Criminal Procedure Code doesn't any where prescribe any mode of execution of warrants or authority which should execute warrant - As per Police Manual it is only the Police who have to execute warrants - Neither CRPC nor Criminal Rules of Practice contemplates execution of NBWs by complainant, more so in a case arising out of private complaint - Even Sec. 258 Cr.P.C. only gives power to Magistrate to close a case arising otherwise, than on a private complaint. There is no provision in Code which permits Magistrate, to dismiss complaint due to non execution of warrants pending against accused – Therefore, condition imposed by Magistrate in directing complainant in private complaint filed U/Sec. 138 of N.I. Act to execute NBWs is illegal and incorrect – Order of Magistrate Set aside - Criminal Appeal, Allowed. **K.Sangameshwer Vs. Md.Chand Pasha 2015(2) Law Summary (A.P.) 81 = 2015(2) ALD (Crl) 111 = 2015(2) ALT (Crl) 193(AP).**

—Sec.138 - **CRIMINAL PROCEDURE CODE,** Secs.482 and 385 - In an appeal/revision when appellant/respondent and his counsel failed to turn up, the court shall secure the presence of appellant/respondent by issuing summons or warrant, as the case may be, and after securing presence of concerned party, proceed with hearing of parties by their counsel and if party seeks legal aid then appoint an amicus curiae and hear the matter - In present case, appellate court was not right in appointing an amicus curiae at the very first instance without trying to secure presence of respondent/accused - Therefore, impugned docket order of learned I Additional Metropolitan Sessions Judge, is set aside - Accordingly, this criminal petition is allowed. **Escube Enterprises Vs. Sate of Telangana 2014(3) Law Summary (A.P.) 331 = 2015(1) ALD (Crl) 168 = 2015(1) ALT (Crl) 233 (AP).**

—Sec. 138 - **INDIAN PENAL CODE,** Sec.420 - **CRIMINAL PROCEDURE CODE,** Sec.156 (3), 173, 200 & 468 - Petitioner filed private complaint for alleged offences

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u/Secs.138 of N.I Act and Sec.420 of IPC - Magistrate referred matter to police u/Sec.156(3) and after investigation referred same as "Civil in Nature" - Magistrate also rejecting another private complaint filed by petitioner for same offences on ground that same is barred by limitation - Apparently, offences alleged against respondents are u/Sec.138 of N.I Act and under Sec.420 of IPC - Magistrate took into consideration only offence with regard to Sec.138 of N.I Act, but has totally forgotten to take into consideration other offence punishable u/Sec.420 IPC - It is true that to attract provisions of Sec.138 of N.I Act, complainant shall strictly adhere to provisions of said Section of Law i.e. issuance of notice within specified period and thereafter complainant shall be filed within further period of 30 days - In so far as offence punishable u/Sec.420 of IPC is concerned, maximum sentence that can be imposed for said offence is seven years and u/Sec.468 of Cr.P.C there is no period of limitation for it - Hence order of Magistrate in holding that entire complaint is barred by limitation is not correct and same is liable to be set aside - Trial Court directed to accept complaint, follow procedure as provided for u/Sec.200 Cr.P.C and pass appropriate orders in so far as offence punishable u/Sec.420 IPC is concerned - Revision, allowed. **Bommidi Madhu Sudhanarao Vs. Kallepu Ramesh 2011(1) Law Summary (A.P.) 168 = 2011(1) ALD (Crl) 552 (AP) = 2011(1) ALT 192 (AP) = AIR 2011 (NOC) 265 (AP).**

—-Sec. 138 - **INDIAN PENAL CODE,** Sec. 420 - **CRIMINAL PROCEDURE CODE,** Sec. 156(3) - This Criminal Petition is filed by the petitioners/A.1 and A.2 under Section 482 Cr.P.C. seeking to quash proceedings in Crime of Police Station, for the offence punishable under Section 420 IPC, which is outcome of a report of the 2 nd respondent-de facto complainant - 2 nd respondent filed private complaint on the file of II Additional Judicial First Class Magistrate, for offence punishable under Sec.420 IPC against petitioners/A.1 and A.2 that they have issued cheque which was not honored and that cheque was not of their account and the learned Magistrate referred same u/Sec.156(3) Cr.P.C., for investigation to Station House Office, Police Station. learned Magistrate returned complaint to show how offence under Sec.420 IPC is attracted against A.2.

Held, from bar u/Sec.300 Cr.P.C., and also for no offence is made out under Sec.420 IPC and crime proceedings against petitioners/A.1 and A.2 are liable to be quashed to sub-serve the ends of justice - Accordingly, this Criminal Petition is allowed and all proceedings in Crime of Police Station, against the petitioners/A.1 & A.2 are hereby quashed. **Rambha Lakshmana Rao Vs. The State of A.P. 2016(1) Law Summary (A.P.) 117.**

—Secs.138 & 20 – **CRIMINAL PROCUDER CODE,** Sec.357(3) – **GENERAL CLAUSES ACT,** Sec.27 – **EVIDENCE ACT,** Sec.114 – Accused barrowed amount from complainant and executed promissory note and thereafter issued cheque for certain amount as part payment – When complainant presented cheque same dishonored with an endorsement "in sufficient" – After issuing statutory notice to accused, complaint filed invoking Sec.138

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of Act - Trail Court found accused guilty for offence punishable u/Sec.138 and sentenced him to undergo imprisonment for period of 2 months and to pay Rs.2,000/- towards compensation to complainant under Sec.357(3) of Cr.P.C. - Sessions Judge allowed appeal and set-aside order of conviction and sentence - Complainant/appellant contends that Sessions Judge acquitted respondent accused by reversing findings of Trail Court on sole ground that complainant would have possibly managed postal authorities for making endorsement on postal covers under which demand notice was sent to accused, therefore there was no notice of demand as contemplated u/Sec.138 of Act - Observation of appellate Court is that it is for complainant to examine postal authority as against established principles dealing with burden of proof under Evidence Act and therefore impugned judgment of acquittal suffers from gross error of law and it is liable to be set aside - In this case there is no dispute with regard to dishonour of cheque with endorsement "in sufficient funds" and only contention raised by respondent accused that statutory notice as required u/Sec.138 of NI Act has not been sent to him and that complainant himself got managed postal Authorities and got endorsement "door locked" - In view of decision of Supreme Court it is clear that when notice is sent by registered post by correctly addressing drawer of cheque, mandatory requirement of issue of notice in terms of clause (b) proviso to Sec.138 Act stands complied with - Then it is for the drawer to rebut presumption about service of notice and show that he had no knowledge that notice was brought to his address mentioned on cover was correct and that letter was never tendered or that report of post man was incorrect - In this case endorsement clearly indicates that complainant sent notice to accused to address mentioned on promissory note executed by accused and it is clear that complainant has dispatched notice to correct address of accused and thus complied with statutory provision u/Sec.138-B of NI Act - Therefore finding of Metropolitan Session Judge that it is for complainant to examine post man concerned to prove endorsement is erroneous - When evidence on record clearly indicates that accused not claimed, it was returned to sender and therefore finding of Metropolitan Session Judge that complainant has failed to prove that he issued demand notice to accused is contrary to evidence on record and is therefore liable to be set aside - Judgment of acquittal recorded by Sessions Judge set-aside - Appeal allowed. **Mutyala Bhushanam Vs. Patneedi Sreeramamurthy 2014(1) Law Summary (A.P.) 325 = 2015(2) ALD (Crl) 318.**

—Secs.138, 64, 72 & 2 – Cheque issued by petitioner, 2nd respondent/complainant returned with endorsement "not clearing member" – Hence, complaint - Petitioner contends that cheque was never presented to drawee bank and if that cheque is returned with an endorsement, "insufficient funds" then only offence would be constituted - 2nd respondent/complainant contends that cheque issued on defunct bank and as such issuing of cheque on a bank which is not functioning amounts to an offence u/Sec.138 of Act - When issuance of cheque of a closed account is an offence u/Sec.138 of Act why it is not an offence when a cheque of defunct bank is issued - Cheque in question was issued for a huge amount of Rs.15 lakhs - There is absolutely no justification in driving complainant from pillar to post by dismissing complainant for unsustainable technical reasons - It is for trial Court to decide issue on merits - Criminal petition, dismissed.**S.Nirmala Deshpande Vs. State of A.P. 2008(3) Law Summary (A.P.) 301.**

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—Secs.138 & 139 - Petitioner borrowed certain amount from one AVR and executed promissory note in his favour agreeing to repay amount with interest - Inspite of repeated demands by AVR, petitioner did not pay amount and as AVR is in need of money, transferred promissory note in favour of 2nd.respondent/complainant for certain amount - Subsequent to transfer, on demand made by 2nd respondent/ complainant to pay amount due under transferred promissory note, petitioner issued cheque for certain amount - When 2nd respondent/complainant presented cheque for collection, said cheque returned with memo stating that account of petitioner was closed - Subsequently complainant issued notice and filed complaint against revisioner petitioner u/Sec.138 of N.I Act - Petitioner having admitted signature on promissory note and cheque, contended that one BA who is a relative of complainant, running a Chit in which he was member and said BA obtained two blank cheques and promissory note in connection with chit transaction and present complaint filed to harass her - Trial Court convicted revision petitioner for offence u/Sec.138 of N.I Act, to undergo simple imprisonment for six months and to pay fine - On appeal filed by petitioner, appellate Court confirmed conviction - Hence present Revision - In instant case, complainant issued first legal notice on 16-9-1998 and second legal notice on 18-10-1998 and that debt due under pomissory note borrowed on 11-5-1995 and cheque issued by petitioner should be presented by complainant on or before 11-5-1998, but cheque was actually presented on 2-7-1998 and therefore on date of presentation of said cheque there was no existing legally enforceable debt - Both Courts below held that since suit based on promissory note was pending before civil Court, it cannot be said that cheque was presented beyond period of limitation - Findings recorded by both Courts below on this aspect do not seem to be correct - Merely because civil suit is pending, it cannot be said that cheque can be presented by complainant at any time during pendency of said civil suit - Cause of action to file complaint u/ Sec.138 of N.I Act is an independent cause of action and therefore cheque shall be presented by complainant within period of validity of debt borrowed - In this case, cheque presented beyond period of limitation and therefore it will not give rise to any cause of action - Further, complainant filed another complaint against petitioner on file of another Court and it is marked as Ex.D.1 - Number of cheque in present case, is 0208203, whereas other cheque is 0208202 - This fact lends assurance to contention of petitioner that two blank cheques have been obtained by AVR, relative of complainant in connection with chit transaction from revision petitioner - Thus by examining herself as D.W.1 and by marking Ex.D1 revision petitioner could be able to rebut presumption in favour of complainant u/sec.139 of N.I. Act - In this case, complaint was filed on 12-11-1998 which is long after issuance of first legal notice dt. 16-9-1998 and by which time limitation to file complaint as provided u/Sec.138 of N.I Act expired and therefore complaint filed by complainant/2nd respondent is barred by limitation - For forgoing reasons conviction and sentence passed by trial Court against petitioner/accused which was confirmed by 1st appellate Court, set aside - Revision petitioner, acquitted of offence u/Sec.138 of N.I act - Criminal revision, allowed. **Mandapalli Nirmalatha Vs. State of A.P. 2012(2) Law Summary (A.P.) 222 = 2012(2) ALD(Crl) 40(AP) = 2012(3) ALT(Crl) 141(AP).**

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—Secs.138 and 139 - Prosecution is maintainable for an offence u/Sec.138 of N.I. Act, when the drawer of cheque issues stop payment instructions to his banker - In resultant criminal case, in order to effectively rebut presumption u/Sec.139 of N.I. Act, accused shall establish that he has issued stop payment instruction not for want of sufficient funds in his account but for a valid reason - There were no sufficient funds in the account of accused as deposed by PW2 - PW2 stated that in account of accused there was only an amount of Rs.24,404.69 which was far lower than cheqes amount - This would show that without having sufficient funds in his account, accused issued cheques - Though accused disputed evidence of P.W.2, he did not produce any convincing evidence to establish that there were enough funds in his account - So on a conspectus of facts and evidence, Court hold that accused failed to rebut presumption u/Sec.139 of N.I. Act and consequently render themselves guilty of offence u/Sec.138 of N.I. Act. **Dr.Reddy's Laboratories Limited Vs. Reddy Pharmaceuticals 2015(1) Law Summary (A.P.) 171 = 2015(2) ALD (Crl) 1026 = 2015 Cri.LJ (NOC) 393 Hyd. = 2015(2) ALT (Crl) 310 (AP).**

—Secs.138 & 147 - **CRIMINAL PROCEDURE CODE,** Sec.320 - Appellant/accused obtained loan from complainant Bank for his business and issued cheque - Complaint filed since cheque dishnoured - Magistrate convicting appellant/accused and ordered to undergo six months imprisonment and also to pay compensation - Appellate Court confirmed conviction and reduced compensation - High Court dismissed Revision and confirmed orders passed by trial Court and Appellate Court - Appellant submits that since matter amicably settled between parties and amount also paid towards full and final settlement, compromise may be recorded appellant/accused may be ordered to be acquitted by setting aside conviction as well as sentence - Offences not referred to in Sec.320 (1) & (2) and not included in Table are not compoundable and similarly offences punishable under laws other than IPC also cannot be compounded - Sec.138 is intended to prevent dishonesty on part of drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing payee or holder in due course to act upon it - It thus seeks to promote efficacy of banking operations and ensures credibility in transacting business through cheques - In such matter therefore, normally compounding of offences should not be denied - Parliament also realized this aspect and inserted Sec.147 - Since matter has been compromised between parties and amount has been paid towards full and final settlement to respondent/Bank, appellant/accused is entitled to acquittal - Order of conviction and sentence, set aside - Appeal, allowed. **Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd. 2008(1) Law Summary (S.C.) 172.**

—-Secs. 138 & 139 - **CRIMINAL PROCEDURE CODE,** Secs. 397, 401 & 482 - These revisions, U/sec. 397 and 401 of Cr. P.C., are filed against orders dated 27-11-2012 passed by Prl. Sessions Judge, in Crl. R.P. Nos. 64 and 70 of 2012, which were filed against the orders, dated 06-09-2012, passed by the II Additional Judicial Magistrate of First Class, in Crl. M.P. Nos. 2051 and 2050 of 2012 in C.C. No. 727 of 2006-

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In both the revisions, Complainant-Vijaya Bank is the first respondent - Said bank filed a private complaint against the revision petitioner herein for the offence punishable under Sec. 138 of N.I. Act - Said complaint was numbered as C.C. No. 727 of 2006 -Pending disposal of the above C.C., the complainant filed Crl. M.P. Nos. 2051 and 2050, under S. 482 of Cr.P.C. and under S. 139 of N.I. Act, the relief sought for permitting the amendment of the private complaint i.e. "in the reply notice, dated 15-02-2006, signed on 17-02-2006 the accused admitted the debt for which she gave the cheque which was bounced" and to recall P.W.1 for further examination - Held, Section 482 Cr. P.C. saves only the inherent powers of the High Court - Though the wording of Section 151 of C.P.C. is similar to the wording of Section 482 of Cr.P.C., so far as Section 151 C.P.C. is concerned, it saves the inherent power of every civil court which inheres from its very constitution to undo a wrong or to prevent any abuse of process of law or for rendering complete justice between the parties and to subserve the ends of justice - There is inbuilt inherent power on the Magistrate is untenable that too such power if at all to exercise is only for clerical or arithmetical mistakes to rectify by the court or on the direction of the court to the parties, which no way empowers or effect the right of either party therefrom, and not otherwise - Even a latin maxim speaks that it is only to exercise the power by legal fiction or deemed existence, where it shows impossibility of disposal of a matter - It is not even such a contingency here and thus the complainant bank is not entitled to thrust that proposition - Thereby the impugned orders of the learned Sessions Judge, setting aside the dismissal order of the learned Magistrate covered by Crl. R.P. No. 64 of 2012 in permitting the amendment of the complaint is untenable and is liable to be set aside within the scope of S. 482 of Cr.P.C - Coming to the impugned order in Crl. R.P. No. 70 of 2012 against the orders in Crl.M.P. No. 2050 of 2012 permitting to recall the P.W.1 for further chief examination, once it is a material for the complainant to say that the accused made an admission about the cheque amount due, to say within the wording of explanation to Section 138 read with 139 of N.I. Act, the debt or other liability means legally enforceable debt or other liability for such presumption, said recall of P.W.1 can be permitted for further chief examination to subserve the ends of justice not only under Section 311 Cr.P.C. but also within the power of the Court under Section 165 of Indian Evidence Act which provision is equally applicable in Criminal cases - Accordingly, Crl. R.C. No. 328 of 2013 is allowed setting aside the order, dated 27-11-2012 in Crl.R.P. No. 64 of 2012. **Dr.Sd.Munwar Sultana Vs.Vijaya Bank, Nellore 2015(1) Law Summary (A.P.) 423 = 2015(1) ALD (Crl) 967.**

—Secs.138 & 139 – **INDIAN PENAL CODE,** Secs.420, 406 & 120-B – **CRIMINAL PROCEDURE CODE,** Sec.482 – Appellant/MD of Company signed blank cheques and left with accused for efficient management - Complaint filed for alleged misuse of cheques by respondents 2 & 3/accused – FIR sought to be lodged - Hence Application for quashing of FIR – High Court allowing Application holding that even if allegations in complaint are taken as true and correct, at this stage, they do no make out prima facie

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case of cheating or criminal breach of trust or forgery and that therefore continuation of proceedings against petitioner is nothing but abuse of process of Court - Contention that no case for proceedings against respondents u/Sec.420 of IPC is made out – Filling up of blanks in a cheque by itself would not amount to forgery – However, a case for proceeding against respondents u/Sec.406, be made out – A cheque being property same was entrusted to respondents – If said property has misappropriated or has been used for a purpose for which same had not been handed over a case u/Sec.406 may be found to have been made out - Investigation may be confined to charge u/Sec.406 - Appeal, partly, allowed. **Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. 2008(1) Law Summary (S.C.) 202.**

—Secs.138 and 139 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Petitioner, Secretary Correspondence Educational Society while resigning from his position issued cheques in favour of complainant promising release guarantees and securities given to Banks - Cheques dishonoured for reason "account closed" - Despite notices petitioner did not choose to pay amount covered under cheques - Hence he filed complaint - Petitioner contends that as on date of issuance of cheques, there was no amount due to respondent, complainant and therefore it could not be said that cheques were issued toward discharge debt or liability muchless legal enforceable debt or liability - Cheques were given to complainant/respondent as security for due performance of getting personal guarantees and securities released from Banks - Mere failure to fulfill promise of getting personal guarantees and properties released from Banks cannot be construed as a debt or liability as provided in Sec,138 of N.I. Act - Respondent/ complainant contends that petitioner undertook to get personal guarantees and properties released from Banks and as a security as Managing Director petitioner issued two cheques for certain amount for due discharge of his liability and that cheques are issued towards discharge of liability bouncing of cheques attract provisions of Sec.138 of N.I Act - Words "other liability" mentioned in Sec.138 of N.I Act includes liability consequent on failure of promise to get personal guarantees and properties release from Banks and that presumption mandated by Sec.139 includes a presumption that their exists a legally enforceable debt or liability - In this case, as on this day, liability of complainant/respondent consequent on failure of petitioner to get personal guarantees and securities released is not crystallized - To attract Sec.138 of N.I Act, firstly, liability must be crystallized and after crystallization of liability, if cheques issued as security are presented, drawer cannot avoid further consequences - In this case, since liability is not crystallized as on date of issuance of cheques, it cannot be said that cheques are issued towards discharge of legally enforceable debt or liability - Therefore continuation of proceedings against petitioner amounts to abuse of process of law - Proceedings in CC are quashed - Criminal petition, allowed. **Lakshmi Prabhakar Vs. Satya Venkata Srinivasa Borsu 2013(2) Law Summary (A.P.) 160 = 2013(2) ALD (Crl) 320 (AP).**

—Secs.138, 139, 140 - **CRIMINAL PROCEDURE CODE,** Secs.207, 251 - **LIMITATION ACT,** Secs 8,9 & 12 - For purpose of deemed service, it is sufficient to say date

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of intimation or postman went to address for delivery or absence of or unclaimed or refused - Here, for all practical purposes there is a registered letter posted duly to correct address for endorsement by sender - Postal authorities are agents of sendee to deliver and if that is the case, irrespective of seven days waiting, otherwise required from internal guidelines and instructions, leave about its statutory force to bind the parties, who sent notice to whom, first intimation was dated 19-9-2005 and from there the 15 days' time commences, leave about requirement of waiting for seven days for return back to the sender cover - When such is case, even it is reckoned from the date of return ie., on 24-9-2005, as per endorsement it is beyond 15 days of statutory waiting for payment for accrual of cause of action and 30 days for filing of complaint and thereby trial court referring to Secs.8, 9 and 12 of Limitation Act, came to conclusion that the complaint is beyond the limitation period - There is nothing to interfere in saying complaint was not filed within statutory time and thereby filed after expiry of the cause of action ie., one month after accrual of cause of action and is barred by limitation - In the result, Criminal Appeal is dismissed. **Peddireddy Sanjeeva Reddy Vs. State of A.P. 2014(3) Law Summary (A.P.) 263**

—Secs.138, 139 & 141 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Dishnour of cheque - "Other Association of individuals" - "Legally enforceable debt" - Petitioners /A1 to A8 agreed to buy Computer System and delivered two cheqes signed by A7 only for certain amount towards value of Systems, but Systems are not delivered accordingly to A7 that there was no legally enforceable debt - A1 to A8 contends that importantly A1 to A6 and A8 did not sign two dishnoured cheques and hence there is no basis to say that A` to A6 and A8 got any connection with those two dishnoured cheques and that there has been no relationship of Firm and partners in order to connect A1 to A6 and A8 with any liability under said two cheques and that cheques were issued by A7 on his behalf or on behalf of his Company only to defacto Complainant in connection with agreement to sell Computer System and that in order to apply Sec.138 of Act, there should be account in name of drawer of cheque whereas for purpose of invoking Sec.141 of Act, it is necessary that cheque should have been issued by company or a Firm or an Association of persons, which is not case here by reason which also prosecution of all of them u/Sec/138 of Act is not tenable - Opposite party contends that as A1 to A8 were collected responsible for payment of amount covered by two dishnoured cheques and that there was legally enforceable debt payable by A1 to A8 who come within perview of words "Association of individuals" as employed in Sec.141 of Act to prosecute them for offence punishable u/Sec.138 r/w Sec.141 of Act - In this case, Memorandum of Understanding was executed between A1 to A8 on one hand and complainant on other with reference to payments of rents for buildings and it cannot be termed as "business deal" and it is only understanding with regard to payment of rents which is different from word "Business" and therefore it cannot be held that there was other association of "individuals" formed for definite purpose of conducting or achieving something - Thereby it is not

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proper to bring acts of A1 to A6 and A8 within ambit of Sec.138 r/w 141 of Act - Criminal petition allowed so far as A1 to A6 and A8 are concerned and is dismissed so far as A7 is concerned. **Alladi Narasimha Rao Vs. Core Tree Solutions Pvt Ltd. 2012(3) Law Summary (A.P.) 224 = 2013(1) ALD (Crl) 1 (AP) = 2013 Cri. LJ 1046 (AP) = 2013(2) ALT (Crl) 299 (AP).**

—Secs.138,139 & 141 - **CRIMINAL PROCEDURE CODE,** Secs.311 & 313 - **EVIDENCE ACT,** 118 - Complaint filed by appellant u/Sec.138 of N.I Act on ground that cheque drawn by accused was dishnoured by Bank for want of "sufficient funds" - Lower Court disallowed complaint and acquitted accused on ground that cheque was not drawn towards discharge of any debt or liability and that cheque was drawn as proprietary of Concern and therefore complaint should have been filed impleading proprietary Concern as one of accused and that there is no proof of service of notice on accused prior to filing of complaint and that complaint is barred by limitation - Lower Court came to conclusion that even if notice served on accused on 11-7-1998 complaint should have been filed by 25-8-1998 within 45 days and instead, complaint was instituted on 26-8-1998 and therefore barred by limitation - In fact that 25-8-1998 was declared holiday as it was "Vinayaka chaturdhi day" and lower Court should have taken judicial notice of said fact and therefore complaint is not barred by limitation - A proprietary concern is no juristic person in eye of law and therefore comment of lower Court that complaint is bad for non-joinder of proprietary concern of accused is unwarranted by law - In this case, when accused did not deny service of notice on him it is not for lower Court to make further probe to it and Sec.138 did not contemplate service of notice "by post" and it is open for complainant to send notice for service by adopting any mode of means and he has preferred to send notice through professional counter service and it is valid notice u/Sec.138 - No document filed by accused in his examination u/Sec.313 Cr.P.C can be either marked as an exhibit nor can be relied upon by Court as if it is a proved document unless such document requires no formal proof under Evidence Act - Lower Court also failed to see that apart from presumption u/Sec.118 of Act for consideration, there is another presumption u/Sec.139 of Act to effect that cheque was drawn for purpose of discharging debt or liability - When accused did not deny consideration and did not deny existence of debt or liability by examining himself as witness during trial, it cannot be said that said presumptions stood rebutted and that lower Court failed to notice and consider effect of presumption u/Sec.139 of Act at all - Finding of lower Court that Ex.P.1 cheque is not supported by any debt or liability is highly unreasonable, manifestly unjust and touches border of perversity and therefore it cannot be allowed to stand - Judgment of lower Court, set aside - Accused/respondent convicted for offence u/Sec.138 of Act sentencing him for simple imprisonment for six months - Appeal, allowed. **A.Brahmananda Reddy Vs.The State of A.P. 2012(1) Law Summary 161 = 2012(2) ALD(Cri) 941 (AP) = 2012(1) ALT(Crl) 287 (AP).**

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—Secs.138 & 141 - 1st respondent filed complaint against petitioner and others alleging that A1 is a Firm carrying on business in cotton A2,A3 and A4 are Directors of A1 Firm - A 2 issued four cheques on behalf of A1 Firm and said cheques returned due to "insufficient" funds - Hence private complaint filed against accused - Petitioner/A2 contends that even accepting allegations in complaint are proved, no offence is made out against petitioner, who was only a Director of Company and as such continuation of proceedings against him would amount to abuse of process of law - Complaint/2nd respondent contends that in view of allegations made against petitioner, High Court should not invoke its inherent jurisdiction u/Sec.482 of Code and interdict proceedings - Apex Court quashed proceedings in accused against Director of Company on ground that complaint has not specified role of Director in day-to day affairs of Company except making a bald allegation that he was in charge of and was responsible to Company conduct of its affairs - In present case, admittedly petitioner is neither Managing Director nor authorized signatory to sign on cheques which were dishonoured - In absence of any allegation attributing specific role to petitioner in discharge of day-to-day affairs of Company and in light of principles laid down by Apex Court and as statutory requirements of Sec.141 of Act have not been satisfied, continuation of proceedings against petitioners would amount to abuse of process of law - Proceedings in CC against petitioners are quashed - Criminal petition, allowed. **Arrakuntal V.Ganeshan Vs. Sai Rama Cotton Syndicate 2013(2) Law Summary (A.P.) 176 = 2013(2) ALD (Crl) 331 (AP) = 2013(2) ALT (Crl) 275 (AP).**

—Secs.138 & 141 - **CRIMINAL PROCEDURE CODE,** Sec.482 - "Cheque" issued by appellant/1st accused in discharge of liability in respect of purchase of mobile oil by appellant, his father, brother and mother - "Dishonoured" - Magistrate took cognizance of compliant - Hence petition praying for quashing of complaint - High Court dismissed petition on ground that plea of appellant that cheque was not issued by him, involved a disputed question of fact which could not be gone into by Court in proceedings u/Sec.482 of Code - Inherent power do not confer an arbitrary jurisdiction on High Court to act according to whim or caprice - Powers have to be exercised sparingly, with circumspection and in rarest of rare cases, where Court is convinced, on basis of material on record, that allowing proceedings to continue would be an abuse of process of Court or that ends of justice require that proceedings ought to be quashed - In this case, as per complainant's own pleadings, Bank account from where cheque had been issued was not held in name of appellant and therefore, one of requisite ingredients of Sec.138 of Act not satisfied - Continuance of further proceedings in complaint u/Sec.138 against appellant would be an abuse of process of Court - Order of High Court, set aside - Complaint against appellant in Court of Magistrate, quashed - Appeal, allowed. **Jugesh Sehgal Vs. Shamsher Singh Gogi 2009(3) Law Summary (S.C.) 1 = 2009(2) ALD (Crl) 419(SC) = 2009(5) Supreme 320.**

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—Secs.138 & 141 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Liability of Directors of Company - Accused/A14 is limited Company doing business in chemicals etc., to which A1 is Managing Director - All business financial affairs are decided, organized and administered by A1 being M.D and other accused 2 to 12 - Magistrate taking into account allegations made in complaints took cognizance of offence and issued process to accused to face trial for commission of offence u/Sec.138 of Act - High Court allowed applications filed by accused for quashing order taking cognizance and issuing process - In case of offence by Company for dishonour of cheque, culpability of Directors has to be decided with reference to Sec.141 of N.I Act - SEC.141 OF N.I ACT - From plain reading of Sec.141 it is evident that every person who at time of offence was committed is in charge of and responsible to Company shall be deemed to be guilty of offence u/Sec.138 of Act - In case of offence by Company to bring its Directors within mischief of Sec.138 of Act, it shall be necessary to allege that they were in charge of and responsible to conduct business of Company - It is necessary ingredient which would be sufficient to proceed against such directors - However, it may not necessary to allege and prove that in fact such of Directors have specific role in respect of transaction leading to issuance of cheque - Sec.141 of Act makes Directors in charge and responsible to Company "for the conduct of the business of Company" within mischef Sec.138 of Act and not particular business for which cheque was issued and same mandated in Sec.141 of Act - In this case, there is no averment that two accused were in charge of and responsible for conduct of business of company at time of offence was committed - Hence prosecution of accused A.K.S. and V.P cannot be allowed to continue. **A.K.Singhania Vs. Gujarat State Fertilizer Co. Ltd., 2013(3) Law Summary (S.C.) 248 = 2014(1) ALD (Crl) 317 (SC) = 2013 AIR SCW 6195 = 2014 Cri. LJ 340 (SC) = AIR 2014 SC 71.**

—-Secs.138 & 141 - Apex Court held, putting the criminal law into motion is not a matter of course - To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it - Before a Magistrate taking cognizance of an offence u/Secs.138 and 141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements - Criminal law cannot be set into motion as a matter of course - Order of the Magistrate summoning accused must reflect that he has applied his mind to the facts of case and the law applicable thereto - Magistrate has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused - MAGISTRATE'S DUTY..It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused - The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any

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offence is prima facie committed by all or any of the accused. **Pooja Ravinder Devidasani Vs. State of Maharashtra 2015(1) Law Summary (S.C.) 1**

—-Sections 138 and 141 - Trail Court acquitted respondent, on ground that the Company M/s. Salvi Infrastructure Pvt. Ltd was not made accused and instead respondent was made accused in his personal capacity and it was further held that it was not proved that respondent was a person liable to make payment for M/s. Salvi Infrastructure Pvt. Ltd - High Court by impugned order confirmed said order of Trail Court - Apex court reversed orders of lowers courts and allowed appeal of complainant and held that in case accused is Managing Director of Company he is liable even in absence of company made as party. **Mainuddin Abdul Sattar Shaikh Vs. Vijay D Savli 2015(2) Law Summary (S.C.) 43 = AIR 2015 SC 2579 = 2015 Crl. LJ 3618 (SC) = 2015 AIR SCW 4015 = 2015(2) ALD (Crl) 599 (SC).**

—-Secs.138 & 141 - Present quash petitions filed so far as by petitioners A-3 to A-5 are that they are mere directors and they are no way responsible for day to day affairs of Company which is a statutory requirement u/Sec.141 of the N.I. Act with specific allegations in complaint for taking cognizance and the private complaint case without even such averments and without proper application of mind on said requirement taken cognizance for offence by learned Magistrate - Held, a bald averment in complaint is not even sufficient but for a specific allegation as to how a Director of a Company who stands in a different footing to Managing Director by his status liable or to be made liable for offences punishable u/Sec.138 of N.I. Act - Here a perusal of the very complaint relevant portion extracted supra, but for a bald statement, there is no material averment as to how A-3 to A-5 are liable - It is not even case from perusal of cheque of any of them are signatories, along with A-2 on behalf of A-1 entity - Mere serving of notice and their silence even with no reply, no way make them liable thereby, but for to draw adverse inference so far as A-1 and A-2 concerned as to but for no defence they could have replied as laid down in Apex Court's expression in Rangappa V. Mohan - Cognizance taken by learned Magistrate so far as A-3 to A-5 is thus unsustainable and is liable to be quashed - In result, Criminal Petition is allowed and all proceedings in so far as A-3 to A-5 are quashed. **Narendra Urangi Vs. Greenmint India Agritech Pvt. Ltd 2015(3) Law Summary (A.P.) 239**

—Secs.138,141 - **ANDHRA PRADEESH (TELANGANA AREA) MONEY LENDERS ACT, 1349** F, Secs.2(4)(d), 2(7) - Magistrate is either mandatorily obliged to call upon the complainant to remain present before the court, nor to examine the complainant and his witness upon oath for taking decision as to whether or not to issue process on the complaint u/Sec.138 of N.I. Act - Negotiable Instruments Act, 1881, Sec.138 - If five different acts were done in five different localities, any one of the Courts exercising jurisdiction in one of the five local areas can become the place of trial

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for an offence u/Sec.138 of Act - Negotiable Instruments Act, 1881, Sec.138 - Argument of the learned Counsel for petitioners that a single complaint is not maintainable cannot be accepted, since all cheques were dishnoured on one day, a single notice was issued demanding petitioners to repay due amount and a single reply was given - Negotiable Instruments Act, 1881, Secs.138 & 141 and Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F, Secs.2(4) (d), 2(7) - A conjoint reading of Secs.2(4) and 2(7) of the A.P. (Telangana Area) Money Lenders Act, 1349, F would clearly indicate that money advanced by a company in form of loan is excluded from purview of the Act - Negotiable Instruments Act, 1881, Secs.138 & 141 - Applying principles of law enunciated in judgments of Apex Court, argument of learned Counsel for petitioners that complaint against all accused is not maintainable cannot be accepted - At the same time argument of learned Counsel for second respondent defacto complaint that since cheque of accused No.1 company was issued by accused No.2 in discharge of debt incurred in his personal capacity, Company as well as its Directors are liable for prosecution cannot also be accepted - Whether cheque was issued pursuant to an understanding amongst its Directors or with consent of all Directors are disputed questions of facts, which need to be established during trial - Criminal petition is liable to be rejected against accused No.2. **Vasundhara Projects Pvt. Ltd. Vs. State of A.P. 2014(2) Law Summary (A.P.) 410 = 2014(2) ALD (Crl) 883 = 2014(3) ALT (Crl) 193 (AP).**

—Secs.138,139,142 & 131 - **CRIMINAL PROCEDURE CODE,** Sec.200 - Compl-aints filed for offences u/Sec.138 of N.I Act for dishonor of cheques - Trial Court convicted accused - Sessions Judgeallowed appeals setting aside convictions on ground that complainant did not sign complaints and they were signed by power of attorney holder of complaint - In this case, lower appellate Court should have noticed that Magistrate after satisfying himself about validity and propriety of power in favour of Officer of company and issued summons to accused - Therefore there cannot be any doubt of fact that taking cognizance of cases for respective offences by Magistrate is valid and legal - BURDEN OF PROOF - Respondent contends that initial burden is on complainant to prove that dishonoured cheques were supported by "legally enforceable liability" - Sec.139 of Act raises a presumption in favour of holder to effect that holder of cheque received cheque of nature referred to Sec.138 for discharge of any debt or other liability in whole or in part - No doubt said presumption u/Sec.139 is rebuttable presumption - Opening words of Sec.131 reads "*it shall be presumed unless the contrary is proved*" - In that view of matter it is not for complainant initially to prove existence of any legally enforceable debt or other liability for cheques involved in these cases - Initial burden is on accused to prove that dishonour of cheques were not supported by any legally enforceable debt or other liability - In this case, accused did not lead any evidence at all - Neither he examined himself as a witness to rebut presumption u/Sec.139 of Act nor he examined any witnesses nor marked any documents in respect of his case - Accused having received legal notices u/Sec.138 (b) of Act

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did not choose to give any replay notice - Impugned judgment of lower appellate Court not sustainable either on facts or in law - Judgment passed by lower appellate Court, set aside - Appeals, allowed. **Videocon International Ltd. Vs. Innovations, 2011(3) Law Summary (A.P.) 85 = 2011(2) ALD(Crl) 847 (AP) = 2011(3) ALT (Crl) 183 (AP).**

—-Secs.138 and 142 - A power of attorney holder is not a total substitute for his principal - In instant case, complaint was filed by the complainant represented by his SPA and complaint was signed by complainant - Both complainant and his SPA gave their sworn statements - Trial court in its docket order permitted SPA to proceed with the case on behalf of complainant - Then Ex. P1 would show that complainant authorized his SPA holder to prosecute the complaint and also to make statements on oath before any court - Thus PW1 authorised to give evidence also on behalf of complainant - Evidence of PW1 would show that he is none other than son of complainant's brother and he is having personal knowledge regarding business transactions with accused - He deposed that he sent cement bags on different occasions to the accused and he deposited cheques issued by accused in bank - Thus, when evidence of PW1 is perused, besides being SPA, he is having personal knowledge on the facts concerning to this case - Accused has not brought on record any facts which are said to be in exclusive knowledge of complainant to draw an adverse inference for his non-examination - Therefore, trial court's observation in this regard cannot be approved - In result, accused is found guilty of offence punishable u/Sec. 138 of NI Act - Criminal Appeal is allowed by setting aside judgment passed by the Special Judicial Magistrate of First Class, Mobile (PCR). **Omprakash Vs. L.Sunitha, 2015(1) Law Summary (A.P.) 428**

—Secs.138 & 142 - A perusal of the amended Section Section 142, of N.I. Act leaves no room for any doubt that with reference to an offence Under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction. **Bridgstone India Pvt. Ltd. Vs. Inderpal Singh 2015(3) Law Summary (A.P.) (S.C.) 73**

—Secs.138 & 142 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Cheque issued by petitioner dishonoured twice for "insufficient funds" - Hence complaint filed by respondent on basis of 'second dishonour' without mentioning about first dishonour - Petitioner/ accused contends that private complaint is not maintainable on basis of second dishnour which occurred after exchange of notices between parties immediately after first dishnour of cheque - Payee is free to present cheque repeatedly within its validity period, but once notice has been issued and payment was not received within 15 of receipt of notice then payee has to avail very cause of auction arising thereon and file complaint

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and that dishnour of cheque on each presentation gives a fresh right to present it again during period of its validity, but it does not give rights to fresh cause of auction and that complaint has to be filed within one month from day immediately following day on which period of 15 days from date of receipt of first notice expires - Evidently, in this case, private complaint filed by complainant is barred by limitation when reckoned with that of receipt of first notice by accused on his failure to make payment of amount covered by cheque within 15 days thereof - Complainant, having lost opportunity to file complaint on basis of said cause of auction, is barred from basing his complaint on basis of subsequent dishnour of cheuqe after exchange of first notice - Proceedings in C.C. on file of Magistrate - Quashed - Criminal petition, allowed. **Sathu Janardhan Vs. P. Naga Vara Prasad 2010(1) Law Summary (A.P.) 86.**

—Secs.138, r/w 142 - **INDIAN PENAL CODE,** Secs.415 & 420, r/w Sec.34 - **CRIMINAL PROCEDURE CODE,** Secs.156(3) & 482 - A1 & A2 father & son availed loan of Rs.20 lakhs from CVSR for purpose of higher education of A2, son who issued cheque for Rs.20 lakhs - When cheque presented it came to be dishonoured for want of sufficient funds - Since father and son issued cheque without maintaining sufficient funds in account it constitutes an offence of cheating punishable u/sec.420 and also offence u/Sec.138/142 of N.I Act - Hence filed complaint - Magistrate forwarded complaint to S.H.O. u/Sec.156(3) Cr.P.C, who registered case, u/Sec.138 and 142 of N.I Act and Secs.415,420 r/w 120-B of IPC - After completing enquiry charge-sheet presented before Magistrate who took charge-sheet on file - Hence criminal petitions by A1 and A2 for quashing CCs - A2 contends that mere dishnour of cheque is not sufficient to infer intention of drawer i.e., A2 to deceive complainant right from inception of issuance of cheque - Complainant contends that A1 & A2 borrowed amount for higher education of A2 and subsequently A2 issued cheque towards discharge of liability and cheque came to be dishonoured on ground of insufficient funds - Both A1 & A2 induced complainant to part with amount and it constitutes fraudulent and dishonest inducement to deliver property which comes within meaning of cheating as defined in Sec.415 and therefore, proceedings initiated against petitioners for offence u/Sec.420 rw/ 34 IPC is to be allowed to reach its logical conclusion - Mere breach of contract cannot give rise to criminal prosecution u/sec.420 IPC, unless fraudulent or dishonest intention is shown right at begning of transactions ie., time when offence is said to have been committed - It is well settled that deception cannot be inferred basing on mere dishnour of cheque - Provision of Sec.420 IPC is not attracted unless *mala fide* intention of person issuing cheque is established - In this case, no specific instances have been pleaded about existence of *mala fide* intention - Dishonest intention and misrepresentation are to be specifically indicated to attract provision of Sec.420 IPC and if such specific allegations are not there and general allegation of dishnoure of cheque is there, only Sec.138 of N.I Act will be attracted - No specific instances have been pleaded in complaint about existence of *mala fide* intention - A1 is not signatory to cheque and therefore proceedings initiated against

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him basing on said cheque amounts tp abuse of process of Court - When complainant being payee of cheque presented a complaint, as provided u/Sec.142 of N.I Act, Magistrate ought not to have referred complaint to Police u/Sec.156 (3) Cr.P.C - Therefore, very referring of complaint is not in accordance with provisions of Sec.142 of N.I Act - Complaint cannot be made to suffer for irregular procedure adopted by Court - However, complainant cannot be made remdyless - Complaint as it is cannot be quashed - What is to be quashed is order of Magistrate in taking cognizance of case for offence u/sec.420 r/w 34 IPC - Complainant is at liberty to adduce evidence at pre-cognizance stage relatable to A2 alone and thereupon Magistrate has to consider evidence and pass appropriate orders as to whether evidence brought on record is sufficient to take cognizance of case u/Secs.138/142 of N.I Act - Criminal petitions, allowed, quashing order passed by Magistrate taking cognizance of offence u/Sec.420 r/w Sec.34 IPC. **Chelluboyina Satyanarayana Vs. The State of A.P. 2012(2) Law Summary (A.P.) 214 = 2012(2) ALD(Cri) 120 (AP) = 2012(3) ALT(Cri) 103 (AP).**

—Secs.138, 139 & 142 - **EVIDENCE ACT,** Sec.118 - "Statutory presumption" - Burden of proof - Complainant/1st respondent filed a case against accused/petitioner alleging that he issued Ex.P.1 & Ex.P.2 cheques in discharge of subsisting debt and said cheques bounced when presented - Trial Court found accused guilty and sentenced to simple imprisonment for period of 10 months - Accused preferred criminal appeal unsuccessfully - Hence present Revision - Accused contends that there was no legally enforceable debt in respect of which cheques were issued and that therefore Sec.138 of Act has no application - Statutory presumption is created u/Sec.139 of Act that cheque was issued in discharge of subsisting debt, preponderance of judicial view is that onus is upon holder of cheque to show that cheque was issued in discharge of subsisting debt - Supreme Court has clarified that if accused by preponderance of evidence has discharged burden contemplated by Sec.139 of Act, burden would shift to complainant to prove his case, beyond reasonable doubt without help of Sec.139 of Act - Thus, it is primarily for drawee to show that cheque was issued in connection with subsisting debt - Onus on part of drawer is in nature of proof in a civil case, viz., establishing a fact by preponderance of evidence, whereas complaint shall have to establish his case, beyond reasonable doubt - In this case, main contention of accused that there was no allegation much less proof from complainant that cheques were in discharge of legally enforceable debt and that trial Court and appellate Court also did not give any finding that cheques were in discharge of legally enforceably debt - In this case, two cheques under Exs.P.1 & P.2 were not contemporaneous with borrowal and alleged borrowal of Rs.2.3lakhs was on 15-2-2001 more than a year there after on 11-4-2002 and 8-3-2002 Ex.P.1 & P.2 cheques were allegedly issued - Very fact that borrowal was more than a year prior to issuance of cheques would show that cheques were not in discharge of borrowals made by accused as nexus between borrowal and issued cheques has not been established - P.W.1/complainant did not produce any proof regarding any alleged borrowal on 15-2-2001 - Thus very

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basis of claim u/Sec.138 of Act that cheques were issued in connection with a subsisting debt has not been made out by complainant - Appreciation of evidence and consequent conclusion by trial Court and appellate Court erroneous and are liable to be set aside - Complaint failed to establish Ex.P.1 and P.2 were cheques were in connection with subsisting debt - Conviction and sentence recorded by trial Court and confirmed by appellate Court, set aside - Criminal revision allowed. **Shaik Ayaz Vs. Abdul Khader 2011(3) Law Summary (A.P.) 352 = 2012(1) ALD 399(AP) = 2012(1) ALT(Crl) 110 (AP).**

—Sec.138, r/w 142 and Secs.6,7,64 & 72 - **CRIMINAL PROCEDURE CODE,** Secs.177, 178 & 179,482 - "Jurisdiction" - Petitioner/accused joined as subscriber in one of chits of 2nd respondent/complainant at Nellore Branch - Petitioner became successful bidder of chit and receive prized amount and issued account payee cheque for certain amount on I.I Bank, Nellore Branch towards arrears of chit amount - When 2nd respondent/complainant presented cheque in its account at Union Bank of India, Hyderabad Branch for collection, said cheque returned with endorsement "insufficient funds" - Since petitioner/accused failed to make any payment 2nd respondent/complainant presented complaint before Magistrate at Cyberabad, R.R. District - Magistrate took cognizance of offence u/Sec.138, r/w 142 of N.I Act and registered case - Hence criminal petition by accused to quash proceedings - Petitioner/accused contends that no part of cause of action for filing complaint for an offence u/Secs.138, r/w.142 against petitioner has arisen within territorial jurisdiction of Magistrate Court, Cyberabad and that entire Chit transaction took place at Nellore and cheque has been issued by petitioner at Nellore and Bank of petitioner/accused, on which cheque has been drawn, is situated at Nellore and cheque has been dishonoured by Bank at Nellore and therefore it is only Nellore Court which has jurisdiction and no other Court has jurisdiction - Sec.177 of Cr.P.C determines jurisdiction of Court trying matter and Court ordinarily will have jurisdiction only where offence has been committed - Provisions of Secs.178 & 179 of Code are exceptions to Sec.177 and these provisions presuppose that all offences are local and therefore, place where an offence has been committed plays important role - In essence, it is cause of action for initiation of proceedings against accused - Court derives jurisdiction only when cause of action arises within its jurisdiction - Five essential ingredients of offence u/sec.138 of N.I Act are 1) drawing of cheque; 2) presentation of cheque to Bank; 3) returning of cheque unpaid by drawee Bank; 4) giving notice in writing to drawer of cheque demanding payment of cheque amount; 5) failure of drawer to make payment within 15 days of receipt of notice - It is not case of 2nd respondent complaint that cheque in question was issued and delivered at Hyderabad and only ground alleged to confer territorial jurisdiction on Court of Magistrate Cyberabad is presentation of cheque at Union Bank of India, Hyderabad Branch for collection.

"A combined reading of Secs.3, 72 & 138 of N.I Act, would leave no doubt that law mandates the cheque to be presented at the Bank on which it is drawn if

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drawer is to be held criminally liable" - Ratio of Supreme Court judgment is that cheque is deemed to have been presented to drawee bank irrespective of fact where it is deposited by payee in his own Bank - Sec.138 of Act contemplates that cheque is required to be presented for encashment to drawee Bank and that payee Bank, merely acts as an agent of payee/complainant for purpose of presenting cheque for encashment to drawee Bank - A cojoint reading of Secs.6,7,64 & 72 and also Sec.138 of N.I Act brings out that in order to attract penal provisions of Sec.138, a cheque is required to be presented for encashment to drawee Bank and that payee Bank acts merely as an agent of payee/complainant for purposes of presenting cheque to drawee Bank - N.I ACT ,SEC.138 - Expression 'presentation of cheque to Bank' used in Section is referable to only drawee Bank - Payee's Bank has no relevance for purpose of constituting an offence u/Sec.138 of Act - What is required under section is dishonor of cheque by drawee Bank - Payee's Bank rather called it as only collecting Bank, question of dishonour of cheque by collecting Bank does not arise - Collecting Bank acts only as an agent on behalf of payee - A combined reading of Secs.3, 72 & 138 of Act would leave no doubt that law mandates cheque to be presented to Bank on which it is drawn, if drawer is to be held criminally liable - In view of matter it is held, that on pleadings in complaint no part of cause action can be said to have arisen within local area of Magistrate Cyberabad, R.R. District - Impugned order of taking cognizance of case, for offence u/sec.138, r/w 142 of N.I Act, by Magistrate Cyberaabad - Quashed - Criminal petition, allowed. **N.Santhi Lakshmi Vs. State of A.P. 2012(1) Law Summary 283 = 2012(1) ALD(Crl) 733(AP) = 2012(2) ALT(Crl) 172 (AP) = 2012 Cri. LJ 3818 (AP).**

—Secs.138, 142 & 118 - **CRIMINAL PROCEDURE CODE,** Secs.251 and 255(2),378(4) & 372 - Complainant presented the appeals against the said two revision reversal judgments contending that the revision court below failed to note that a mere non-mentioning of the execution of pronote and revival letter in the complaint or statutory notice cannot be a ground for acquitting the accused by reversing the conviction judgments, that the court below failed to note that the admission of loan transaction by the accused and his failure to come to witness box to prove his contention of the cheque was not signed by him etc., that the revision court below failed to note the cardinal principle of law that when once the complainant has proved that there is an existence of legally enforceable debt it is for the accused to rebut the same that he has not been discharged by accused to rebut and thereby sought to set aside the acquittal judgment and prayed to convict the accused by allowing the appeal - Held, the lower revisional court mainly there from and also in saying the non-mention of the pronote and revival letters Exs. P-6 and P-7 are fatal to the case of the complainant ignoring the factum of the cheque issued by the accused not in dispute routed from his account with his signature and it is even as per Apex Court in Rangappa vs. Mohan case, burden on accused to show how the debt or other liability is not legally enforceable and what is the evidence favourable to the accused from the

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material on record even to say there is discharge of the burden lies on the accused. Thus A2 is found guilty - Thus the reversal and acquittal judgments of the lower revisional court by sitting against the conviction judgments of the trial court are unsustainable and outcome of ill appreciation of facts and law that resulted in grave injustice to the complainant-bank and the same is prone to the jurisdiction of this Court by way of appeal under Section 378(4) read with Section 378 (1)(b) and (3) and otherwise under Section 372 and its proviso read with Section 2(w)(a) and otherwise within inherent power of this Court saved by Section 482 Cr.P.C, for this Court to set aside the said revision Court reversal judgments to secure ends of justice being necessary - In the result, the two appeals taken u/Sec.482 Cr.P.C from otherwise if not maintainable either u/Sec.378(4) or u/Sec.372 amended Cr.P.C and the lower revision court's acquittal judgments are set aside by restoring the trial court's conviction judgments**. Tamilnad Mercantile Bank Ltd Vs. Subaiah Gas Agency 2015(1) Law Summary (A.P.) 525**

—Sec.138, 142 r/w Sec.305 of Cr.P.C - Accused Company in a cheque bouncing case has every authority to substitute a person of its choice to represent Company under Sec.305 of Cr.P.C - If person who signs cheque and shown as a person representing Company dies, prosecution against Company will not get abated - Held, both lower Courts have erred in holding that Managing Director who signed and issued cheque alone has to represent Company and that Company cannot be permitted to substitute a person of its choice – Impugned Orders of revisional court confirming orders passed by trial Court, set aside. **India Brewery & Distillery Pvt Ltd. Vs. R.K.Distilleries 2014(2) Law Summary (A.P.) 172 = 2015(1) ALD (Crl) 149 = 2015(3) ALT (Crl) 28 (AP).**

—Secs. 138 &142 - **LIMITATION ACT,** Sec.12 - **GENERAL CLAUSES ACT,** Secs.8 & 9 - Cheque bounce case -Cause of Action - Trial Court concluded complaint was filed on 23-12-1997 whereas the 15 days' after service of notice expire on 25-12-1997 and hence there was no accrual of cause of action and acquitted accused - Appeal against the judgment of Trial Court - Held, Trial Court judgment was unsustainable on two counts, firstly, registered notice was sent by appellant/Complainant on 29-11-1997 and it is served later before return of acknowledgment dt. 9-12-1997 to say service in between 29-11-1997 and 9-12-1997 and not on 9-12-1997 and when as per postal rules maximum 7 days to deposit for service and not beyond, if taken same from 29-11-1997, seven days expire by 6-12-1997 and if such is case 15 days from that date after excluding date 6-12-1997 and including of 15th day is 22-12-1997, the day when from cause of action for one month accrues u/Sec.142(b) r/w S.138 proviso (b) of N.I. Act - Thus there is accrual of cause of action by date of filing the complaint - Hence acquittal judgment is unsustainable and it is set aside - Criminal Appeal, Allowed. **Om Pralasj Agarwal Vs. Khaja Krishna Prasad 2014(2) Law Summary (A.P.) 386.**

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—Secs.138, r/w 142 - **LIMITATION ACT,** Sec.18 - **PARTNERSHIP ACT,** Sec.19(2) - Accused along with his family members borrowed amount from complainant and executed promissory note and subsequently issued cheque as against amount due on promissory note - Cheque returned unpaid and dishonoured with endorsement "account closed" - Hence complaint - Trial Court acquitted accused holding that debt is time barred and therefore there was no legally enforceable debt and that cheque was not given for legally enforceable debt - Appellant contends that cheque was given by accused to discharge legally enforcibly debt and that P.W.1 was one of partners of Firm and act of Firm includes an act of any one of partner and therefore prays to set aside order of acquittal - In this case, a specific plea has been taken in complaint that as on date of giving complaint, amount due under promissory note with compound interest and P.W.1 has categorically stated that accused issued a cheque towards part payment of amount borrowed and therefore calculation of interest by trial Court is totally incorrect and it is a wrong calculation - In this case, nothing has been elicited in cross-examination of P.Ws. 1 to 3 to show that cheque was not given for legally enforceable debt or liability - Therefore burden placed on accused has not been discharged and hence complaint Firm proved its case beyond all reasonable doubt for offence u/Sec/138 & 142 - Accused found guilty of offence u/Secs.138 & 142 - In this case, debt is of year 1995 and compound interest is added from date of execution of promissory note - Hence awarding compensation twice amount borrowed would meet ends of justice - Accused sentenced to pay Rs.47,000 - Criminal appeal, allowed. **Sri Lakshmi Kanchana Finance Corpn., Vs. State of A.P. 2009(3) Law Summary (A.P.) 228.**

—Secs.138,142,143 &149 - **CRIMINAL PROCEDURE CODE,** Secs.200 & 482 - Court took cognizance of offence u/Sec.138 of N.I Act after receiving sworn statement of complainant by way of Affidavit - Petitioner seeking qaushing of criminal case contending that Court did not follow procedure prescribed by law before taking cognizance and did not record sworn statement of complainants and instead received sworn Affidavits of complainant in lieu of recording his sworn statement - It is mandatory for Magistrate before taking cognizance of offence on complaint, to examine complainant and witnesses present, if any on oath and to reduce substance of such examination to writing and to obtain signature of complainant and witnesses together with signature of Magistrate - Proceedings u/Sec.200 Cr.P.C are in nature of enquiry prior to taking cognizance by Magistrate - When Sec.145 of Act which starts with non-obstanti Clause provides for taking evidence on affidavit of complainant not only during trial, but also during enquiry or other proceedings under Cr.P.C it cannot be said that recording of sworn statement by Magistrate personally in his/her own hand or typed to his/her dictation is a mandatory condition for taking cognizance of offence punishable u/Sec.138 of N.I Act - Examining complainant on oath u/Sec.200 Cr.P.C is nothing but taking evidence during pre-cognizance enquiry or pre-registration enquiry by Magistrate under that provison - Receiving of sworn Affidavit from complainant instead of sworn statement

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by Magistrate before taking cognizance of offence u/Sec.138 of N.I Act is permissible and not in any way contrary to procedure prescribed by law - Petitions, dismissed. **A.V.R.Murthy Vs. Smt.Nunna Venkata Ramanamma 2010(2) Law Summary (A.P.) 40.**

—Secs.138 & 145 - **CRIMINAL PROCEDURE CODE,** 2(g) & 200 - Petitioner 1 & 2/A1 & A2 are accused for offence u/Sec.138 of N.I Act in CC - Magistrate taking cognizance of offence of case by way of evidence affidavit of complainant/2nd respondent instead of recording sworn statement of complainant by Court - Petitioner taking objection regarding procedure adopted by Magistrate, contending that earlier decision rendered by High Court is liable to be re-considered by High Court in view of prior pronouncements of Supreme Court - High Court never intended to exclude other provisions of Cr.P.C, while taking cognizance of offence punishable u/Sec.138 of Act and that procedure prescribed u/Sec.200 Cr.P.C for taking cognizance of case under general criminal law cannot be applicable to take cognizance of offence punishable under Sec.138 of Act having regard to special provision contained u/Sec.145 of Act - Fact that oath has to be administered to complainant and substance of statement of complainant has to be recorded by Magistrate into writing and signature of complainant has to be obtained in that statement recorded on oath and Magistrate has to certify same at end, denotes that entire procedure contemplated u/Sec.200 Cr.P.C is nothing but recording evidence of complainant at time of taking cognizance in absence of accused before Court - Said exercise expected to be done by Magistrate at stage of Sec.200 Cr.P.C is nothing short of recording evidence by way of sworn statement of complainant - Sec.145 of Act is an exception to mode of recording sworn statement of complainant by Magistrate at stage of Sec.200 Cr.P.C - Decision of High Court rendered in earlier case does not require re-consideration - Criminal petition, dismissed. **Sri Gayatri Devi Traders Vs. The State of A.P. 2010(3) Law Summary (A.P.) 366 = AIR 2011 (NOC) 156(AP) = 2011(1) ALD (Crl) 177 (AP) = 2011(1) ALT (Crl) 85 (AP).**

—Secs.138 & 147 - **CONSTITUTION OF INDIA,** Arts.32, r/w 142, 141,144 - **CRIMINAL PROCEDURE CODE,** Secs.397 & 401 - Compounding offence u/Sec.138 of N.I Act - Magistrate convicted petitioner/accused for offence u/Sec.138 of N.I. Act to suffer simple imprisonment for one year and pay fine - Pending appeal petitioner/accused and respondent/Complainant settled the disputes and filed Crl.M.P. u/Sec.147 of N.I Act to record compromise and set aside conviction in CC - Sessions Judge directed parties to follow Guidelines issued by Supreme Court in Damodar S.Prabhu's case, in compounding offence u/Sec.138 of N.I Act - Hence present Revision filed by accused - Petitioner/accused contends that Guidelines as to payment of certain percentage of amount to Legal Services Authority in event of offence u/Sec.138 of N.I Act is compounded cannot be made applicable to present case since complaint came to be instituted much prior to issuance of Guidelines - Interpreting Judgments of Supreme

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Court to make Guidelines applicable to cases instituted subsequent to judgment is nothing but diluting guidelines issued by Supreme Court - When once guidelines are issued in matter of entertaining applications for compounding offence u/Sec.138 of N.I Act, they are to be made applicable to all cases pending in whatever stage they are - Impugned order of lower Court - Justified - Criminal Revision case, dismissed. **D.Lakshmi Vs. V.Sarma, 2013(1) Law Summary (A.P.) 311 = 2013(1) ALD (Crl) 926 (AP) = 2013 (2) ALT (Crl) 348 (AP) = 2013 Cri. Lj (NOC) 471 (AP).**

—Secs.138 & 147 - **CRIMINAL PROCEDURE CODE,** Sec.320 - "Compounding of offences" - Parties involved in commercial transactions and that disputes arose on account of disho-nour of cheques issued by appellants - Appellants prayed for setting aside his conviction in this matters by relying on consent terms and have been arrived at between parties - The interest of justice would indeed better served if parties resorted to compounding as a method to resolve their disputes at an early stage instead of engaging in protracted litigation before several forms thereby causing undue delay expenditure and strain on part of judicial system - This is clearly a situation that is causing some concern since Sec147 of Act does not prescribe as to what stage is appropriate for compounding offences and whether same can be done at instance of complainant or with leave of Court - An application for compounding made after several years not only results in system being burdened but complainant is also deprived of effective justice - In view of submission following guidelines be followed:

GUIDE LINES –

(a) directions can be given that writ of summons be suitably modified making it clear to accused that he could make an application for compounding of offences at first or second hearing of case

(b) if application is made before Magistrate at subsequent stage, compounding can be allowed subject to condition that accused will be required to pay 10% cheque amount to be deposited as condition for compounding with Legal Services Authority or such authority as Court deems fit

(c) If application for compounding is made before Sessions Court or High Court in revision or appeal such compounding may be allowed on condition that accused pays 15% of cheque amount by way of costs

(d) finally if application for compounding is made before Supreme Court the figure would increase to 20% of cheque amount - Appeals are disposed of accordingly. **Damodar S. Prabhu Vs. Sayed Babala H. 2010(2) Law Summary (S.C.) 71.**

—Secs.138(a) and (c) r/w 142 - Appellant/complainant filed complaint for offence u/Sec.138 of N.I Act against 2nd respondent/accused, since cheque issued by 2nd respondnet returned with endorsement "payment stopped by drawer" - Trial Court took cognizance of complaint and after taking into consideration oral and documentary evidence, found accused not guilty for offence u/Sec.138 and thereby acquitted accused - Appellant/complaint contends that notice was issued to accused after dishnour of

cheque to his correct address and it has to be deemed as service of notice to accused and that lower Court has erred in coming to conclusion that notice not served on accused in compliance of provisions of Sec.138 and that accused himself has filed insolvency petition showing complainant as one of creditors and said admission itself establishes that cheque was issued towards enforcible debt - In present case, notice was sent by registered Post with acknowled-gement due and that sending notice to correct address of accused by registered post acknowledgment due is sufficient compliance of proviso(b) of Sec.138 - As held by Apex Court "Once notice has been sent by registered post is acknowledgment due to a correct address, it must be presumed that service has been made effective - In this case, in Insolvency petition, complainant is one of the respondents and as said proceedings are in between accused and complainant and others, admissions made therein were binding and admissible in criminal proceedings - Thus trial Court has erred in coming to conclusion that there is no legally enforciable debt in favour of complainant - Thus, complainat could establish compliance of provisions of (b) and (c) of Sec.138 of N.I Act and threby proved commission of offence by accused u/Sec.138 of N.I Act - Judgment passed by Magistrate, set aside - Accused found guilty and convicted for offence u/Sec.138 of N.I Act and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/-. **Vanama Srinivasa Rao Vs. State of A.P., 2013(1) Law Summary (A.P.) 161 = 2013(1) ALD (Crl) 383 (AP) = 2013(2) ALT (Crl) 42 (AP).**

—Secs.138(b), 139 & 142 - **CRIMINAL PROCEDURE CODE**, Sec.251 - "Dishnour of cheque" - Magistrate convicting accused to suffer RI for one year for offence u/Sec.138 - Sessions Judge while confirming conviction of accused reduced sentence of imprisonment from one year to 6 months - In this case, petitioner borrowed Rs.60,000/- from R2/complainant and executed promissory note and on demand accused gave cheque for Rs.52,000/- towards part satisfaction of amount under promissory note - Cheque returned with endorsement "insufficient funds" - Therefore complainant issued statutory notice to accused and presented complaint before Magistrate - Petitioner contends that notice in question issued under proviso (b) to Sec.138 of N.I Act is not valid and therefore conviction and sentence of petitioner u/Sec.138 of N.I Act is liable to be set aside - Demand in statutory notice must be in respect of amount covered under cheque in question and mere demand of amount due under promissory note cannot be construed as demand of amount covered under cheque in question, in which case, notice, wherein a demand has been made for payment of pronote amount cannot be construed as notice, within proviso (b) of Sec.138 of Act - What is necessary is making of demand for amount covered by bounced cheque and if it is conspicuously absents in notice, it is to be treated as imperfect notice - Object of notice is to give a chance to drawer of cheque to rectify his omission - Evidently what is demanded by complainant is payment of amount due under pronote - Though no formal notice is prescribed in provision, statutory provision indicates in unmistakable terms as to what should be clearly indicated in notice and what manner of demand

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it should make - What is necessary is making of demand for amount covered by bounced cheque, which is sonspicuously absent in notice issued in this case - In the text of notice what is demanded by complainant is pronote amount and not bounced cheque amount - Therefore notice cannot be construed as valid within proviso(b) to Sec.138 of N.I Act - Therefore conviction of petitioner, accused for offence u/Sec.138 is not valid and legal and liable to be set aside - Criminal revision case, allowed. **Matta Rambabu Vs. State of A.P. , 2011(1) Law Summary (A.P.) 327 = 2011(2) ALD (Crl) 9 (AP) = 2011(2) ALT (Crl) 199 (AP).**

—Secs.138(b) & 142 - "Dishonour of cheque" - "Statutory notices issued" - Inspite, payment not arranged by respondents/Company, hence complaint filed as cheque dishonoured for insufficiency of funds when presented second time - Magistrate took cognizance and issued summons to respondents - Magistrate dismissed Application filed by respondents for discharge on preliminary ground that complaint not filed within 30 days after expiry of notice based on 1st dishonour of cheque - High Court allowed revision and quashed order passed by Magistrate - A careful reading of Secs.138 & 142 makes it manifest that complaint u/Sec.138 can be filed only after cause of action to do so as accrued in terms of clause (c) of proviso to Sec.138 which would happens no sooner than when drawer of cheque fails to make payment of cheque amount to payee or holder of cheque within 15 days of receipt of notice required to be sent in terms of Cl.(b) of proviso to Sec.138 of Act - What is important is that neither Sec.138 nor Sec,142 or any other provision contained in Act forbids holder or payee of cheque from presenting cheque for encashment on any number of occasions within a period of six months of its issue or within period of its validity which ever is earlier - CAUSE OF ACTION - There is nothing either in Sec.138 nor Sec.142 to curtail right of payee, leave alone a forfeiture of said right for no better reason than failure of holder of cheque to institute prosection against drawer when cause of action to do so had first arisen - Simply because prosecution for offence u/Sec.138 must on language of Sec.142 be instituted within one month from date of failure of drawer to make payment does not militate against accrual of multiple causes of action to holder of cheque upon failure of drawer to make payment of cheque amount - In absence of any juristic principle on which such failure to prosecute on basis of first default in payment should result in forfeiture, it is difficult to hold that payee would lose his right to institute such proceedings on subsequent default that satisfies all requirements of Sec.138 - So long as cheque is valid and so long as it is dishonoured upon presentation to Bank, holder's right to prosecute drawer for default committed by him remains valid and exercisable - By reason of fresh presentation of cheque followed by fresh notice in terms of Sec.138, proviso (b) drawer gets an extended period to make payment and thereby benefits in terms of further opportunity to avoid prosecution - Such fresh opportunity cannot help defaulter on any juristic principle to get a complete absolution from prosecution - Prosecution based on second or successive default in payment of cheque amount should not be

impermissible simply because no prosecution based on first default which was followed by a statutory notice and a failure to pay had not been launched - If entire purpose underlaying Sec.138 of N.I Act, is to compel drawer to honour their commitments made in course of their business or other affairs, there is no reason why a person has issued a cheque which is dishonoured and who fails to make payments despite statutory notice served upon him should be immune to prosecution simply because holder of cheque has not rushed to Court with a complaint based on such default - There is no real or qualitative difference between a case where default is committed and proseuction immediately launched and another where prosecution is deferred till cheque presented again gets dishonoured for second or successive times - Object underlaying Sec.138 of Act is to promote and inculcate faith in efficacy of Banking system and its operations, giving credibility to negotiable instruments in business transactions and to create an atmosphere, faith and reliance by discouraging people from dishnouring their commitment which are implicit when they pay their dues through cheques - Provision is intended to punish those unscrupulous persons who issued cheques for dischaging their liabilities without really intending to honour promise that goes with drawing up of such a negiotable instrument - It is intended to enhance acceptability of cheques in settlement of liabilities by making drawer liable for penalties in case cheques were dishnoured and to safeguard and prevent harassment of honest drawers - Prosecution based upon second or successive dishonour of cheque is also permissible so long as same satisfies requirements stipulated in provisio to Sec.138 of N.I Act. **MSR Leathers Vs. S.Palaniappan 2012(3) Law Summary (S.C.) 171.**

—Sec.138, proviso (b) - "Appeal against acquittal" - Appellant-Complainant-Company is manu-facturing cement - Respondents owed Rs.22,08,522 towards cost of cement purchased from appellant/company - In discharge of said debt in part, respondents issued cheque for Rs.13,50,000/- in favour of appellant and said cheque was dishnoured with an endorsement "exceeded arrangement" - At request of respondent when cheque again presented for clearance and same again dishnoured endorsing "refer to drawer" - Subsequently appellant issued notice to respondents calling upon them to pay amount of Rs.22,08,522/- within 15 days after receipt of notice and thereafter, since respondents did not make payment, appellant filed complaint u/Sec.138 - Magistrate acquitted respon-dents-accused holding that statutory notice issued u/Sec.138 by appellant, complaint is defective and is not in accordance with Sec.138 proviso (b) of Act and therefore complaint is not maintainable - Appellant contends that since there being no form of notice prescribed by statute under proviso (b) of Sec.138 of Act, and when details of transactions are clearly mentioned and demand was also made by appellant to pay amount due together with interest, issuance of notice is enough compliance of statutory requirement u/Sec.138 of Act and that trial Court erroneously dismissed complaint given by appellant - Respondents contend that demand regarding cheque amount of Rs.13,50,000/- is absent in notice and as such, statutory notice is invalid

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and complaint filed by appellant is not maintainable for defective notice - In this case, crux of issue is that apart from other requirements, complainant has to make a specific mention in statutory notice issued under Sec.138 of Act about demand of cheque amount - Demand as to non-payment of cheque amount may also include mention about costs of notice, interest accrued on cheque amount and damages etc., but complainant has to specify in notice that in event of failure to pay cheque amount, respondent- accused are liable for prosecution u/Sec/138 of Act - Thus respondents-accused must be aware of fact that failure to pay cheque amount will be resulting in being liable for prosecution u/Sec.138 of Act - In this case, appellant only stated in notice that respondents are liable to pay an amount of Rs.22,08,522 which is entire amount due to appellant-complainant together with interest - Therefore trial Court rightly held that impugned notice issued by appellant/complaint does not satisfy legal requirements u/Sec.138 proviso (b) of Act - Therefor it is defective - Order of trial Court holding that complaint filed by appellant is not maintainable - Justified - Appeal preferred against order of acquittal, dismissed. **Sri Ratnagiri Cements Pvt. Ltd.Vs.M/s. Rao "N" Sons ModernAppliances, 2012(1) Law Summary 206 = 2012(2) ALD (Crl) 912 (AP) = 2012(1) ALT (Crl) 293(AP).**

—Sec.138(c) - Complainant/appellant filed complaint against accused alleging offence punishable u/Sec.138 for dishnour of cheque on ground of closure of account - Trial Court acquitted accused on ground that complaint was premature - Appellant/complainant contends that simply because complaint filed before expiry of notice period of 15 days contemplated by Sec.138(c) of Act, complaint cannot be dismissed as premature - In this case, complainant filed complaint on 6-5-2005, got his sworn statement recorded on 6-5-2005 itself, and lower Court took cognizance of offence on same day i.e. on 6-5-2005 itself - Complaint could have asked to record his sworn statement on next day or Court could have returned complaint on ground that period provided u/Sec.138(c) of Act did not expire - When period of 15 days after service of notice to accused is given for payment of amount cover by dishonoured cheque accused can validly make payment of cheque amount till 12.00 mid night on 15th day - It is only thereafter cause of action will arise for filing complaint alleging offence u/Sec.138(c) of Act against accused; till 12.00 mid night on 15th day there is no occurrence of offence at all - Mere dishnour of cheque is no offence u/Sec.138(c) and it is only default in repayment of dishnoured cheque amount which attracts penal liability under that provision - Complaint filed by appellant in Court is premature and by that time that there was no offence u/Sec.138 of Act committed by accused - Lower Court rightly acquitted accused - Findings of acquittal - Justified - Appeal, dismissed. **Shyamlal Jain Vs. Kevalchand Jain 2010(3) Law Summary (A.P.) 49.**

—Secs.145, 143 & 147 - **EVIDENCE ACT,** Sec.137 - **CRIMINAL PROCEDURE CODE,** Sec.296 - "Tril for dishonoured cheque" - Provisions of Sec.143,144,145 & 147 expressly depart from and over ride provisions of Code of criminal procedure - Similarly

NOTARIES ACT, 1952:

provisions of Sec.146 depart from principles of Indian Evidence Act - Person giving evidence on affidavit, on being summoned at instance of accused must start his deposition in Court with examination-in-chief - Sec.137 of Evidence Act does not define "examine" to mean and include three kinds of examination of witnesses, it simply defines "examination-in-chief", "cross-examinaion" and re-examination - Court may at its discretion call a person giving his evidence on affidavit and examine him as to facts contained therein - But if Application is made either by prosecution or by accused Court must call person giving his evidence on affidavit again to be examined as to fact contained therein - A person who has given is evidence on affidavit and has been cross-examined can be summoned for re-examination - Sec.296 of Cr.P.C does not have any relevance - Crucial difference between 296 (2) of Code and 145 (2) of Act is that former deals with evidence of a formal nature whereas under latter provision, all evidence including substantial evidence may be given on affidavit - Sec.296 is part of elaborate procedure of regular trial under Code while object of Sec.145 (2) is to design a much simplier and swifter trial procedure departing from elaborate code and time consuming trial procedure of Code - Provisions of Secs.143 to 147 of Act do not take away any substantial right of accused - Those provisions are not substantative but procedural in nature and would, therefore undoubtedly apply to cases that were pending on date of provisions came into force - Case of complainant u/Sec.138 of Act would be based largley on documentary evidence - Accused on other hand in large number of cases may not lead any evidence at all and let prosecution stand or fall on its own evidence - This is basic difference between nature of complainant's evidence and evidence of accused in a case of dishonoured of cheque - View, taken by High Court that on request made by accused Magistrate may allow him to tender his evidence on affidavit - Erroneous. **Mandvi Co-Op-Bank Ltd. Vs. Nimesh B. Thakore 2010(1) Law Summary (S.C.) 101.**

——Sec.145(1) - Dishonourof cheque - Evidenceon affidavit - Sec.145(1) of NI Act is self explanatory and over-rules the requirement of examination of complainant on solemn affirmation u/s 200 Cr.P.C - Cognizance of complaint can be taken without complying the mandateZ of Sec.200 Cr.P.C. **A.C.Narayan Vs. State of Maharashtra2016(3) Law Summary (S.C.) 31.**

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—Secs.8,9,12,13 & 15 - **NOTARIES RULES, 1956,** Rules 8, 4-A, 7(3)(b) and Rule 14 - **CONSTITUTION OF INDIA,** Arts.19(1) (g) and 19(6) - "Appointment of notaries" - Petitioner/Advocate filed Application for considering his candidature for appointment as a Notary - 3rd respondent/Commissioner & Inspector General and Stamps, Govt., of A.P., turned down request of petitioner through his proceedings on ground that maximum number of notaries that can be appointed for State of A.P., is fixed at 575, whereas there were already 1256 notaries appointed and hence no fresh appointment can be considered to be made in near future - Maximum number of Notaries mentioned

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in Schedule to be appointed to by State of A.P., is standing at 863, whereas by date of introduction of sub-rule 4-A of Rule 8, total number of Notaries appointed was standing at 1256 and thus there number exceeded ceiling - By virtue of 2nd proviso to sub-rule 4-A, if all these 1256 notaries seek further renewal of their certificates of practice and if they are otherwise entitled to be granted such renewals, no fresh appointment can ever be made, by State of A.P. - In other words no appointments of notaries are likely to be made in State of A.P. in near future - Whether that would amount to imposing a kind of prohibition on fresh entrants, who seek or desire to practice as notaries, is question that falls for consideration.

CONSTITUTION OF INDIA, ART.19(1) (g)and 19(6) - "REASONABLE RESTRICTIONS" - When once it is recognized that performing functions of a Notary is a profession, any regulatory mechanism that can be contemplated should lead to an appropriate way of regulating profession, but ideally, shall not result in imposing total prohibition - Art.19(1) (g) of Constitution has granted a fundamental freedom to carry on any profession to our citizens - Such fundamental freedom can be regulated by law in terms of Cl.6 of Art.19.

Determination of what factors constitutes a reasonable restriction can be subjected to judicial review for purpose of ascertaining as to whether restriction imposed is reasonable or unreasonable and as to whether it is necessary or unnecessary restriction upon lawful occupations, rationale behind measure can be tested - When Govt. seeks to override a basic freedom guaranteed to citizen, same may be viewed as reasonable in very exceptional circumstances and within narrowest limits and cannot receive judicial approval as a general pattern of reasonable restriction on fundamental rights - Imposition of restriction on maximum number of notaries to be appointed in each State, has in fact no basis or bearing for any evil that it sought to be checked or remedied - By appointing a large number of Notaries, conceivably there cannot be any problem created for State or administration or citizens - Services of a professional Notary, would only become available to Society in a good measure, should requirement in that regard be felt - Functions liable to be performed by a professional Notary cannot be restricted by imposing a ceiling on total number of notaries that can be appointed for each State - There is no nexus between mischief that is sought to be suppressed and fixation of quota - Sub-Rule 4-A of Rule 8 of Notaries Rules declared as unconstitutional - Writ petitions, allowed - Respondents directed to take up applications of petitioners for appointment as Notaries - Writ petitions, allowed. **P.K.D. Prasada Rao Vs. Union of India, 2012(2) Law Summary (A.P.) 162 = 2012(4) ALD 558 = 2012(5) ALT 719.**

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—and - **REGISTRATION ACT,** Sec.17(1) (e) - Suit for partition - Trial Court passed preliminary decree directing partition of suit schedule properties into two equal shares by metes and bounds - Thereafter final decree passed accepting report of Advocate Commissioner and engrossed on non-judicial stamp papers and same forwarded to Sub-Registrar - Meanwhile plaintiff died and his wife filed Application to recognize her

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as legal representative of deceased plaintiff and insert her name in final decree duly erasing name of her husband in Court order - Trial Court dismissed Application on ground that Court has become *functus officio* and cannot recognize any representative to deceased, who died subsequent to passing of final decree - In this case, admittedly final decree engrossed on NJ stamp papers and sent to Sub-Registrar - There is a gap of four months between passing final decree and sending engrossed final decree for registration - In meanwhile, though original plaintiff submitted NJ stamp papers on 2-1-2009, he died on 4-2-2009 - In such situation, if name of legal representative is not inserted in final decree in place of deceased original plaintiff, it would result in miscarriage of justice and also render whole exercise of trial in suit, preliminary decree and passing or final decree futile - In such circumstances, even though engrossing of final decree is ministerial act till proper registration is made giving finality to Court proceedings, Court cannot be described as *functus officio* - If name of petitioner who is admittedly wife of deceased, original plaintiff, is not inserted in final decree, it would result into another proceeding - Court below ought to have exercised its inherent power in dealing with application - Impugned order, set aside - Application is allowed and Court below directed to insert name of petitioner in place of deceased original plaintiff - Revision, allowed. **Lakanam Venkata Ramana Rao (died) per L.R Vs. Ponnamanda Alivelamma 2010(1) Law Summary (A.P.) 289.**

---**Hindu joint family** - Suit for partition and possession of separate of 1/3rd filed against 1st defendant and defendants 4 to 13 who are other alienees of the plaint schedule properties alleging that said alienation are collusive and nominal and not binding on plaintiff - 1st defendant filed detailed written statement admitting relationship but seriously disputed remaining allegations in plaint and that plaint schedule properties are his own and self acquired properties and exercising individual rights alienated properties - Trial Court passed decree for partition holding that D.W.1 not a bona fide purchaser of value and that 1st defendant failed to establish that suit schedule properties are self acquired properties - In a suit of this nature burden is entirely on plaintiff to prove existence of joint family property or at least availability of a nucleus which is sufficient to acquire properties claimed as joint family properties - In present case does not establish either of two- Even existence of joint family is not established by plaintiff and thereby no presumption can be drawn in favour of plaintiff - In this case, admittedly there is clear absence of any ancestral property or nucleus as admitted by plaintiff - 1st defendant has started earning as a coolie initially and then worked on Soda machine by taking it on lease from P.W.3 and later started his own business and earned monies out of same - Contention of plaintiff therefore is itself not established apart from fact that there is no evidence to establish existence of any joint family or any property acquired through funds of joint family - Conclusions of trial Court, therefore that evidence of P.W.1 and P.W.3 is believable and issue no.1 being decided accordingly, are therefore clearly perverse - Lower appellate Court fell into same error - Therefore it is clear and evident that judgments of both Courts below are opposed

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to settled to legal possession and there are serious errors of appreciation of evidence including error in shifting burden of proof on to defendants than that of plaintiff - Both impugned judgments are perverse and hence, set aside - Second appeal, allowed. **B.Nadamuni Chetty Vs. P.Krishna Reddy 2011(1) Law Summary (A.P.) 373 = 2011(2) ALD 828 = 2011(2) ALT 362.**

– Ouster is a weak defence in a suit for partition of family property and it is strong if the defendant is able to establish consistent and open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner.

Res judicata – Dismissal earlier suit of wife for possession on the basis of settlement deed executed by husband in her favour will not be a bar for claiming her birth share - Later suit for partition for plaintiff's one-half share in the property is maintainable as cause of action is entirely different. **Nagabhushanammal (D) by Lrs. Vs. C.Chandikeswaralingam 2016(1) Law Summary (S.C.) 61 = AIR 2016 SC 1134 = 2016(4) SCC 434 = 2016(3) ALD 92 (SC).**

– "Doctrine of pious" obligation plaintiff will be liable even after partition for pre-partition debt of D1 provided if debt was not immoral or illegal and for payment of which no arrangement was made at date of partition.

As loan was borrowed for purpose of improving joint family lands, loan would ipso facto be for legal necessity and it would be joint family debt for which all joint family property would be liable - In such a case only effect of partition was that after disruption of joint family status by partition, the father had no right to deal with the property by sale or mortgage even to discharge an antecedent debt nor was the son under a legal obligation to discharge the post-partition debts of the father.

It can be emphatically said that D3 can enforce the pious obligation against plaintiff and D2 even without making them as parties in the suit filed by him. Running the risk of pleonasm, the debt was a pre-partition debt and it was not tainted with any immorality and as such the share of plaintiff shall also be liable to discharge the said debt.

In view of the above findings, judgment of appellate Court in A.S.No.47 of 1998 insofar as its granting preliminary decree for partition in favour of plaintiff in respect of items 1 and 2 of plaint A schedule is liable to be set aside. **Palaparthi Manikyam Vs. Palaparthi Venkata Satyanarayana 2016(2) Law Summary (A.P.) 380 = 2016(5) ALD 791 = 2016(5) ALT 295.**

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—-Sec.34 - To invoke Section 34 Indian Penal Code, it must be established that the criminal act was done by more than one person in furtherance of common intention of all - It must, therefore, be proved that: (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually

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committed by them in furtherance of that common intention - Common intention implies pre-arranged plan - Essence of liability Under Section 34 Indian Penal Code is conscious mind of persons participating in the criminal action to bring about a particular result. **Sudip Kr. Sen Vs. State of West Bengal 2016(1) Law Summary (S.C.) 1.**

—-Secs. 34, 120-B, 201 and 302 - Prosecution has examined PW-1 to PW-30 and marked Exs.P-1 to P-42 - Appellants have not examined any witnesses, but marked Ex.D-1, a portion of statement of PW-16 recorded under Section 161 Cr.P.C - On appreciation of oral and documentary evidence, Sessions Judge convicted and sentenced appellants - This is a case based purely on circumstantial evidence - Motive set up by prosecution is founded on alleged extra-marital relationship between A-1 and A-4, the wife of Easwaraiah, who was killed - As motive plays a pivotal role in a case based on circumstantial evidence, Court has to carefully appreciate evidence pertaining to this aspect.

Held, if this Court examine testimony of PW-4 and PW-5 from this perspective, Court strongly feel that these witnesses were evidently tutored to plant theory of illicit intimacy to

A-1 - As noted hereinbefore, while evidence of PW-1, brother of Easwaraiah was vague on this aspect, in their evidence PW-2 and PW-3, another brother and sister of deceased, did not utter a word about this aspect - On contrary, PW-3 has attributed intention of grabbing property of her brother Easwaraiah as reason for A-1 to A-5 to kill him - For all these reasons, this Court feel that it is not safe to believe version of PW-4 and PW-5 on aspect of alleged illicit intimacy between A-1 and A-4 – This Court opinion, prosecution has failed to prove alleged illicit intimacy between A-1 and A-4 and consequently it also failed to prove strong motive for A-1 to A-5 to eliminate deceased.

In instant case, prosecution plea is rested on corpus delecti being established, but it has failed to prove that dead body is that of Easwaraiah - As prosecution has come out with specific plea that dead body is that of Easwaraiah, its failure to prove this plea is fatal to its case - For reasons best known to prosecution, it has failed to send amplified D.N.A. of item Nos.3 to 5 of report dated 14-8-2007 and resultantly expert's opinion and D.N.A. samples could not be secured by prosecution - Thus, prosecution has miserably failed to establish that skull and bones are that of Easwaraiah and thereby it has failed to establish crucial link i.e., corpus delecti.

Only basis on which they were sought to be linked to be that of Easwaraiah was a pair of chappals allegedly found lying near the dead body - The said chappals were said to have been sold by PW-7 who deposed that they were sold to Easwaraiah about four months prior to incident - Court perceive this piece of evidence as wholly incredulous for reason that PW-7 being a shop keeper keeps selling chappals to various customers and it may not be possible for him to remember what type of chappals were sold by him to different customers, that too after a gap of four months after alleged sale.

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As time gap between date of missing of Easwaraiah i.e., 17-7-2005 and 15-8-2005 being 28 days only, if really dead body was that of Easwaraiah, there was no possibility of same getting reduced to state of only skull and bones within such a short duration - All this would lead to reasonable doubt that not being able to trace out Easwaraiah who went missing, Police has planted skull and bones belonging to someone else -Another facet of prosecution case which sounds highly unnatural and improbable is alleged involvement of A-5, wife of A-1, in alleged murder of deceased - As per prosecution theory, motive for murder is alleged extra marital relationship between A-1 and A-4 - If that be so, it is highly unthinkable that A-5, wife of A-1, will be part of conspiracy to do away with husband of A-4 to facilitate her husband (A-1) to continue extra marital relationship with A-4, detrimental to her interests.

Court below has failed to properly appreciate evidence on record and convicted appellants and sentenced them in absence of strong evidence establishing the guilt of appellants beyond reasonable doubt - In the result, Criminal Appeal is allowed. **Mekala Muralimohan @ Murali Vs. State of A.P. 2016(3) Law Summary (A.P.) 1 = 2016(2) ALD (Crl) 705.**

—Secs.34, 120-B, 420 - Criminal Petition filed under Sec.482 of Cr.P.C. - Contentions in the grounds of the petition seeking to quash the proceedings are that it is purely a Civil dispute and the Criminal proceedings are nothing but abuse of process by influencing police and misusing the position and no criminal offence is made out prima facie - Held, the complainant, by suppressing facts by abusing the process, filed the complaint - Therefore, the complaint proceedings that was filed before the learned Magistrate by the complainant, in turn referring to police for investigation u/Sec.156(3) of Cr.P.C. is outcome of suppression of the material facts and the police also without proper investigation simply relied on his complaint version and filed the charge sheet by converting the civil dispute into a criminal prosecution, which is nothing but abuse of process of law - Accordingly, the Criminal Petition is allowed quashing the proceedings of Magistrate, that was taken cognizance from the police final report by the learned Magistrate against the petitioners/A1 to A3 and also the A4, who is not even a party, for nothing survives even against him because of the proceedings quashed against the petitioners/A1 to A3. **Indu Dalmia Vs. State of A.P. 2015(3) Law Summary (A.P.)174**

—-Secs. 34 and 302 - Sessions Court found accused guilty of offence punishable u/Sec. 302 read with 34 IPC and accordingly, sentenced them to undergo imprisonment for life and to pay fine of Rs. 500/- - According to PW1, while he was returning after purchasing chips, he observed from a distance of 10 feet accused attacking deceased, who was pillion-riding with him - Upon raising hue and cry accused ran away - Deceased fell down on road and it was PW1 who shifted him to local government hospital - Then about 11.30 PM, he went to police station and lodged complaint in which he stated that he had seen 5 or 6 persons, who attacked his brother-in-

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law (deceased) and that deceased died on spot and that one SG, reporter of Vartha newspaper, was responsible for death of deceased because of defamation case filed against him - It was also alleged that said SG threatened deceased to withdraw defamation case and since it was not done, SG got executed a murder with help of hired killers - Accused filed this appeal against judgment and sentence of Sessions Court.

Held, burden is lying heavily on prosecution to establish that it is SG, who has hired A1, A2 and A3 for accomplishing the crime - No evidence is produced in that regard - That was missing completely - In absence of any material for suspecting role of accused for commission of offence, it becomes very difficult for Court to believe that it is A1, A2 and A3, who alone have committed the crime - To cover up, PW1 has improved case, by attributing motive for offence to A1 and A2 - Thus the original theory of hired killers, as mentioned in Ex.P1 was changed to that of direct action for a motive - Only repeated answer furnished by PW10 was confession said to have been made by A1 to A3 no sooner they were apprehended around 2.30 PM near APSRTC bus stand, Mahaboob Nagar is so artificial - It does not inspire any confidence in Court mind, for such an event to occur at all in less than 30 minutes of their apprehension at a public place - This apart, a confession said to have been made to a police officer can never be made basis for convicting.

For all above said reasons, we are convinced that prosecution has failed to establish that it is A1 to A3, who have committed offence charged against them and hence, they are entitled to be acquitted.

Accordingly, both appeals are allowed - Judgment and sentence rendered on file of Sessions Judge is set aside. **Rajamoori Ram Reddy Vs. State of A.P., 2016(1) Law Summary (A.P.) 15 = 2016(2) ALD(Crl) 91 = 2016(1) ALT(Crl) 227(AP).**

—Secs.34, 302, 342 - Theory of 'last seen' of the deceased in the company of Accused Nos.1 and 2 has no credible basis for Court to subscribe to that view - When once theory of 'last seen' together by Accused No.1 with the deceased falls to ground, there is no other circumstance, which could link the death of the deceased to Accused No.1 – Court, therefore of opinion the prosecution has failed to establish guilt of Accused No.1 beyond all reasonable doubt, deserves to be accepted - In the result, the criminal appeals are allowed. **Shaik Baji @ Repalle Baji Vs. State of A.P. 2015(3) Law Summary (A.P.) 201**

—Sec.84 – **EVIDENCE ACT,** Sec.105 – Appellant/ accused convicted for offence punishable u/Sec.302 IPC – High Court dismissed Appeal filed by accused - Distinction between "legal insanity" and "medical insanity" – Stated – There is no definition of "unsoundness of mind" in IPC – However Courts have mainly treated this expression as equivalent to insanity – Term "insanity" itself has no precise definition - It is a term used to describe varying degrees of mental disorder – So every person who is mentally deceased, is not *ipso facto* exempted from criminal responsibility – A distinction is to be drawn between "legal insanity" and "medical insanity" – Court is concerned with "legal

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insanity" and not with "medical insanity" - In dealing with cases involving defence of insanity, distinction must be made between cases, in which insanity is more or less proved and question is only as to degree of irresponsibility and cases in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane - Mere fact that accused is conceited, odd iraseible and his brain is not quite alright, or that physical and mental ailments from which is suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in past or that he was liable to recurring fits of insanity at short intervals or that he was subjected to getting epileptic fits but there is nothing abnormal in his behavior, or that his behavior was queer, cannot be sufficient to attract application of Sec.84 - In this case, evidence discloses that appellant was calm and quiet and he was neither angry nor was shouting and doctor indicated that appellant accused is normal – Order of trial Court and High Court justified – Appeal, dismissed. **Siddhapal Kamala Yadav Vs. State of Maharashtra 2008(3) Law Summary (S.C.) 187.**

—Secs.96 & 97 - Right of private defence - While complainant preparing boundary damaged by accused in his field, accused variously armed came and gave blows with their weapons to complainant and his father and subsequently father died - Trial Court convicted accused for offence u/Secs.323 & 308 - Appellants contend that evidence clearly established that accused persons were exercising their right of private defence - RIGHT OF PRIVATE DEFENCE - Right given u/Sec.96 to 98 and 100 to 106 is controlled by Sec.99 - To claim right of private defence extending to voluntary causing of death, accused must show that there are circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him - Burden is on accused to show that he had right of private defence which extended to causing of death - It is a right of defence, not of retribution, expected to repeal unlawful aggression and not as retaliatory measure - In this case, appellants exceeded right to self defence and protection for exercising right of private defence cannot be extended to appellants - Appropriate conviction would be u/Sec.304 Part-1 IPC. **Genda Singh Vs. State of U.P. 2008(2) Law Summary (S.C.) 263.**

—Secs.96 & 97 - **CRIMINAL PROCEDURE CODE,** Sec.313 - "Right of private defence" - Appellant and his father were prosecuted for causing death of deceased - Trial Court after marshalling entire evidence came to conclusion that seeing from all angles probabilities of case are much more in favour of defence than in favour of prosecution and prosecution failed to prove its case against accused person beyond any reasonable doubt and benefit has to be given to them and thus acquitted - SCOPE AND FOUNDATION OF PRIVATE DEFENCE AND PRINCIPLES EMERGE ON SCRUTINY OF JUDGMENTS - STATED - High Court reversed trial Court's judgment of acquittal and convicted accused - In this case, High Court in impugned judgment has not followed consistent legal position as crystallized by various judgments of Supreme Court - High Court or Appellate Court would not be justified in setting aside a judgment of acquittal on ground that version given by complainant is more truthful - High Court without properly comprehending entire evidence on record and reversed well reasoned judgment

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of trial Court - Hence impugned judgment of High Court, set aside and judgment of acquittal of trial Court, restored. **Darshan Singh Vs. State of Punjab 2010(1) Law Summary (S.C.) 83.**

—Secs.96, 97and 302 r/w 34 - Self-defence - Trial Court convicted accused/respondents - High Court acquitted accused accepting plea of exercise of right of private defence - Appellants contend that High Court has acted on surmises and conjectures and has accepted plea of exercise of right of private defence - High Court accepted plea of private defence without any material to substantiate plea and abruptly came to conclusion that right has been exercised and accused persons were acting in self defence - Right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly - Person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arthmetical exactitude of only that much which is required in thinking of a man in ordinary times or under normal circumstances - In this case, High Court wrongly interpreted opinion of Doctor and clearly overlooked relevant material so far as aspect of alleged non-explanation of injuries on accused - Evidence clearly shows that though there may be at some points of time exercise of private defence by respondents existed, same has been exceeded - Respondents therefore convicted u/Sec.304 Part-1 IPC. **Ram Pyare Mishra Vs. Prem Shanker 2008(3) Law Summary (S.C.) 39.**

—Secs.96 r/w 102 & 105, 99 & 302 - **CRIMINAL PROCEDURE CODE,** Secs.193 & 378 - When deceased asked accused not to graze goats in their land, accused gave a blow of axe on his head causing death - Trial Court convicted accused for offence u/Sec.302 IPC - High Court, set aside conviction - Accused took stand, when they were trying to drive away goats which entered into field of deceased he beat them with lathi that by exercising private defence two blows were given by accused - High Court accepted stand of accused holding that right of private defence is available - RIGHT OF PRIVATE DEFENCE - Burdenof establishing plea of self-defence is on accused and burden stands discharged by showing preponderance of probabilities in favour of that plea on basis of material on record - Accused need not prove existence of right of private defence beyond reasonable doubt - It is enough for him to show as in civil case that preponderance of probabilities is in favour of his plea - Burden is on accused to show that he had a right of private defence which extended to causing of death - Right of private defence commences, as soon as a reasonable apprehension of danger to body arises from an attempt or threat, to commit offence, although offence, may not have been committed but not until there is that reasonable apprehension - Right lasts so long as reasonable apprehension of danger to body continues - No restrictions have been imposed by legislature on powers of appellate Court in dealing with appeal against acquittal - When such appeal is filed, High Court has full power to reappreciate, review and reconsider evidence at large, material on which order of acquittal is founded and to reach its own conclusion on such evidence - Appellate Court has full power to review, reappreciate upon which order of acquittal is founded - CRPC, puts no limitation, restrictions or condition on exercise of such power - High Court rightly held that appellant accused was exercising

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right of private defence - Appeals, dismissed. **Satya Narain Yadav Vs. Gajanand 2008(3) Law Summary (S.C.) 13 = 2008(2) ALD (Crl) 785(SC) = 2008(5) Supreme 647 = 2008 AIR SCW 5562.**

—Sec.96, 106, 302 and 304 and **CRIMINAL PROCEDURE CODE,** Sec.313 - 'Right of Private Defence' – Statement of Accused - Limitations of Right of Private defence – stated - Limitations of Right of private defence prescribed u/Secs. 96 to 106 of IPC and such right can be exercised only to defend unlawful action and not to retaliate – Circumstances must show that the Court can find that there was apprehension to life or property or of grievous hurt then only right of private defence is in operation – Person exercising right of private defence is entitled to stay and overcome threat - Dimension of injuries may not be serious, it is situs of injuries that would indicate wheather the accused could reasonably entertain apprehension that atleast grievous injuries/hurt would be caused to him by assaulters – Non-explanation of Injuries on person of accused cannot be held to be fatal to prosecution - In this case, evidence on record also does not establish that injuries caused on body of deceased must in all probability cause his death or likely to cause his death – On spur of moment, during heat of exchange of words accused caused injuries on the body of deceased which caused his death – Therefore ingredients of murder as defined in Sec.300 of I.P.C have not been established against the accused – Hence accused is guilty of culpable homicide not amounting to murder u/Sec.304 I.P.C - In absence of motive and intention to kill accused cannot be convicted u/Sec.302 of I.P.C - Conviction of accused u/Sec.302 of I.P.C set aside, but held him guilty of offence u/Sec.304 of I.P.C and sentenced him to seven years RI with fine – For offence u/Sec.324 and Sec.27 of Arms Act passed by trial Court, affirmed – Appeal disposed of accordingly. **Manjeet Singh Vs. State of Himachal Pradesh 2014(2) Law Summary (S.C.) 26**

—Secs. 109, 302 - Reason assigned by the leaned Sessions Judge to convict the accused is absolutely a strained one – Court fail to understand the finding recorded by the learned Sessions Judge in paragraph 63 of the judgment rendered by him - The learned Sessions Judge has rightly construed that PW.13 is a crucial witness for unfolding the links between the accused and the crime - PW.13 is working as a Village Revenue Officer (V.R.O) - He was stated to have been summoned by the Circle Inspector of Police, the Investigating Officer and it is in his presence that the accused appear to have made the confessional statement about the offence - It is a pity that this witness has not even spoken that the confessional panchanama has been prepared as per the statement made by the accused - On the other hand, he has categorically stated that the confessional panchanama has been prepared by the police constable to the dictation of the Circle Inspector of Police, the Investigating Officer - Therefore, it is absolutely unsafe to place reliance upon PW.13 for holding the accused to be guilty of the offence - Thus, Court held that the prosecution could not establish the crime to have been committed by the accused/A.1 & A.2 beyond

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all reasonable doubt for the offences punishable u/Sec.302 read with 34 I.P.C respectively and therefore, the conviction and sentence recorded by the trial Court are unsustainable and the accused are entitled for acquittal - Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded by the trial Court in its judgment. **Madaboina Thuljaram Vs. State of A.P. 2015(3) Law Summary (A.P.) 206**

—Sec.120-A - **EVIDENCE ACT,** Secs.32(1) & 10 and 342 r/w Sec.164 Cr.P.C - "Dying declaration" - "Confessional statement" - "Statement of co-accused" - "Extra- judicial confession" - Sessions Judge acquitting accused/appellant for alleged offences u/Sec.302, r/w 120-B and also u/Sec.307 - High Court reversed judgment of acquittal passed by Sessions Judge, taking into account, such as motive behind act as well a statement of bystander - In this case, prosecution has not able to adduce any material evidence to corroborate statements of P.Ws.1 & 2 - Mere circumstantial evidence to prove involvement of appellant is not sufficient to meet requirements of criminal conspiracy u/Sec.120-A of IPC - A meetings of minds to form criminal conspiracy has to be proved by placing substantial evidence and that respondent State has not adduced any evidence which underlines same - DYING DECLARATION - Admissibility - Dying declaration cannot be used as evidence u/Sec.32 of Evidence Act though it was recorded as dying declaration - In this case, at time when P.W.1 gave statement he would have been under expectation of death but that is not sufficient to wiggle into cassette of Sec.32 - As long as maker of statement is alive it would remain only in realm of statement recorded during investigation - When statement is recorded as dying declaration and victim survives, such statement need not stand strict scrutiny of dying declaration, but may be treated as a statement u/Sec.164 Cr.P.C - CONFESSIONAL STATEMENT - Sec.164 Cr.P.C provides guidelines to be followed for taking statement of accused as a confession - One essential condition is that it must be made voluntarily and not under threat or coercion - If Confession appears to Court to have been caused by inducement, threat or promise such as is mentioned in Sec.24 of Evidence Act, it must be excluded and rejected brevi manu - Court should carefully examine confession and compare it with rest of evidence, in light of surrounding circumstances and probability of case - In this case, statement has neither been recorded by judicial Magistrate nor has it fulfilled procedural requirements, including that of certificate to be appended by Magistrate - Hence statement is not admissible against appellant as confession u/Sec.164 - EXTRA-JUDICIAL CONFESSION - Concept of extra-judicial confession is primarily a judicial creation, and must be used with restraint - Such confession must be used only in limited circumstances and should also be corroborated by way of abundant caution - When there is a case, hanging on extra-judicial confession corroborated only by circumstantial evidence, then Courts must treat same with utmost caution - Sec.10 of EVIDENCE ACT - It refers to statement of fellow conpirator that pertains to common intention behind act, and such statement can be used against other conspirators - In present case, prosecution failed to substantiate allegation of conspiracy against appellant - A1 could not be under any circumstances be called

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a co-conspirator so as to attract provisions of Sec.10 of Evidence Act - A post-arrest statement would not fall within ambit of Sec.10 of Evidence Act - Therefore statement made by A-1 in Police custody cannot be used to implicate appellant in conspiracy to murder deceased - Evidence adduced by prosecution against appellant not sufficient to justify his conviction u/Sec.302 or Sec.307 or u/Sec.120-B of IPC - Decision of High Court reversed - Appeals, allowed. **S.Arul Raja Vs. State of Tamil Nadu 2010(3) Law Summary (S.C.) 1.**

—Secs.120-B, 419, 420, 468, 471 – **PREVENTION OF CORRUPTION ACT, 1988,** Secs.13(2) r/w 13(1)(d) - **CRIMINAL PROCEDURE CODE,** Sec.239 - Mere violation of internal guidelines which have no force of a statute, not attract penal provisions - It must be noted that there is a marked difference between simple negligence and criminal negligence - Inspite of the guidelines, if a bank panel advocate failed to cause personal searches in the concerned offices and issued legal opinion only on the basis of documents referred to him, he may be attributed with negligence for which lapse bank may dispense with his services or complain to the Bar Council - However, to attribute criminal negligence, there must be an element of mens rea, without establishing which, no penal prosecution can be initiated. **State (CBI/SPE,Hyderabad) Vs. K.Jaipal Reddy 2015(1) Law Summary (A.P.) 61**

—Secs.120-B, 420, 468, 471 - Offences alleged against petitioners are only u/Secs.120-B, 420, 468 and 471 of IPC - According to charge sheet allegations, in pursuance of criminal conspiracy, petitioners with a dishonest intention applied for loans for establishing poultry units and manufacturing poultry medicines without any lands for poultry units on their own to Andhra Bank, Shamsheergunj Branch, Hyderabad - In connivance with the officials of bank, petitioners obtained loan to extent of 81.25 lakhs under scheme of term loans and OCC facility and by availing said loan, lands were purchased subsequently and those lands were offered as security and thereby caused loss to the bank and obtained wrongful gain for them - Repayment of loan by petitioners began in 1996 and by date of FIR, substantial loan amount was paid back - Total amount paid by way of instalment was 70.29 lakhs and amount paid after settlement was 77.43 lakhs thus a total sum of Rs. 147.72 lakhs was paid and all loan account were cleared by middle of 2003 - Criminal Petition was filed by the petitioners to quash proceedings in C.C - Held, criminal cases having overwhelmingly and predominantly civil flavour stand on different footing for the purpose of quashing particularly offences arising from commercial, financial, mercantile, civil and partnership or such like transactions or offences arising out of matrimonial relating to dowry etc., or family disputes - Correspondence between petitioners and Andhra Bank, it is clear that Bank accepted one time settlement and in pursuance of such settlement entire loan amount is paid and there is no grievance to Bank - Though petitioners' earlier petition was dismissed by this court in 2009 in view of several judgments of the Supreme Court, second petition is absolutely maintainable - Considering judgments of

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Honorable Supreme Court, view that continuation of proceedings against petitioners would be futile exercise, therefore, to secure ends of justice, powers u/Sec. 482 Cr.P.C have to be exercised - For these reasons, Criminal Petition is allowed and proceedings in C.C.No. 3 of 2003 are hereby quashed. **T.B.Shankar Rao Vs. C.B.I. State of A.P. 2014(3) Law Summary (A.P.) 384.**

—-Secs.120-B, 504 & 506 - **CRIMINAL PROCEDURE CODE,** Sec.482- Criminal Petition against Order passed by lower court granting permission to police to conduct investigation for the offences - Petition sought quashing of said Order u/Sec.482 Cr.P.C on ground that it was passed without application of mind - Held, the impugned Order refers to according permission to conduct investigation on basis of report given by one person and it does not reflect anything more than lodging of a report - Hence, it cannot be said that impugned Order was passed by Magistrate after applying his mind to facts of case and appears to be case where learned Magistrate in a routine manner accorded permission for registration of a crime and investigation of case - Order under challenge passed without assigning any reasons and same deserves to be set aside - Concerned Magistrate was directed to pass an order showing application of mind to facts in issue while referring case to police for investigation into a non-cognizable offence - Indian Penal Code, Secs.120-B, 504, 506 & Cr.PC, S. 482 - Non-cognizable offence - Reasons have to be given by Magistrate while passing order to police to investigate them. **S.Purnachandra Rao Vs. State of A.P. 2014(2) Law Summary (A.P.) 348 = 2014(2) ALD (Crl) 674.**

—Secs.143,302, r/w 149 - “Inordinate delay in lodging FIR” - Sessions Judge convicting appellant/accused for causing death of deceased 1 & 2 - In this case, appellants and deceased 1 & 2 and material witnesses belong to different castes and belong to different village of same Gram Panchayat - Disputes arose on account of Panchayat elections - While deceased 1 & 2 proceeding in tractor, appellants formed into unlawful assembly by arming with axes, knives and bombs with common objects to kill deceased - Trial Court convicted appellant/accused relying on evidene P.Ws.1 & 2 and other material available on record - Appellants contend that there is inordinate delay in lodging FIR and also its reaching Magistrate and that oral evidence of P.Ws.1 & 2 is inconsistent with medical evidence and that trial Court ought to have acquitted appellants - It is not proper for Court to arrive at a conclusion that delay becomes fatal to case of prosecution - Delay of what ever duration it might be, if properly explained, cannot be said to be fatal to case of prosecution - In any event, while reappraising evidence of fact that since P.Ws.1 & 2 on whose evidence entire case of prosecution is based being no other than brothers of deceased 1 & 2, their version has to be scrutinized with utmost care and caution - Delay of 12 hours in lodging FIR and further delay in forwarding FIR to Magistrate for which there was no satisfactory explanation by prosecution, delay adversely affects prosecution case - Defence version that only after coming to know about existence of dead bodies on road, P.W.1 after due deliberations

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and consultations with people of their faction falsely implicated appellants is also quite possible - Trial Court ought not to have placed reliance on evidence of P.Ws.1 & 2 - Conviction recorded by trial Court, not proper - Appellants are entitled for benefit of doubt - Conviction, set aside - Criminal Appeal, allowed. **Marella Chalama Reddy Vs. State of A.P. 2009(3) Law Summary (A.P.) 165.**

—Secs.147, 148, 364,302, r/w Sec.149 - **ARMS ACT,** Secs.25(1) (B) & 27 - **A.P.P.S. Act,** Sec.8(1) - **EVIDENCE ACT,** Secs.40 to 44 - "Acquittal of co-accused" - After completion of investigation, Police filed charge sheet against 23 accused including petitioner - Accused tried in different S.C. numbers i.e. S.C.No.825/04, S.C.Noi.531/06 and S.C.No.177/05 and petitioner tried in separate S.C.No.2/2011 - He contends that since some S.C numbers in which accused are alleged to have committed offence along with present petitioner ended in acquittal after due trial by competent Court, on ground that there was no evidence that accused killed deceased same benefit should be extended to petitioner herein as there would be no purpose in proceeding against present petitioner and that pendency of case against petitioner amounts to abuse of process of law, therefore proceedings against petitioner in present complaint shall be quashed - Prosecution opposed contention of petitioner that acquittal of co-accused in a separate trial cannot be made basis for quashing proceedings against petitioner in present S.C number who is being separately tried and that petitioner has absconded himself from 1999 and after lapse of 10 years, he was arrested and now he is facing trial in S.C number 2/2011 which is likely to be concluded within one month - In criminal cases, each and every case has to be decided on merits of case - In present case, even though it is submitted by prosecution that petitioner was absconding for long time, there is no material to show that he absconded from facing trial and tried to flee from hands of justice - Absconding is word that has to be viewed in a proper manner - Mere absence of person to attend Court or face trial cannot be a ground to say such person is absconding - In this case, since petitioner's wife contested in election in year 2004, contention of prosecution that petitioner was absconding is totally not acceptable - However, whether petitioner is absconding is not question before Court - In all three cases all material witness turned hostile and did not support case of prosecution and more particularly person who lodged complaint has categorically introduced a new version that he has never lodged a complaint and he was asked to fix his thumb impression on a white paper and subsequently some contents were written on it - Close relatives of deceased have deposed that they were not aware of facts whether deceased was kidnapped and murdered and also they were not aware of cause for death of deceased - In these circumstances whether trial has to be proceeded against petitioner or not is question to be considered - While placing reliance on evidence recorded by competent Court, co-accused were acquitted - Evidence of witnesses was against case of prosecution - If evidence of witness is against some of accused then trial can be proceeded against a person who is facing trial - But in this case, witnesses more particularly witnesses those who claim to be

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eye witnesses to occurrence have turned hostile to entire case of prosecution - Thus in these circumstances pendency of case against petitioner in present S.C.No.2/11 is abuse of process of law and further trial against petitioner is a futile exercise - Proceedings initiated against petitioner/accused in S.C.No.2/11 are quashed - Criminal petition, allowed. **Pothula Suresh Vs. State of A.P. 2011(2) Law Summary (A.P.) 266 = 2011(2) ALD(Crl) 181 (AP) = 2011(3) ALT(Crl) 177 (AP).**

—Secs.147, 148,307, r/w Sec.149 - "Appreciation of evidence" - Trial Court convicting accused for offence u/Sec.324 IPC - Sessions Judge allowed appeal in part - Petitioners/ accused contend that they are falsely implicated in this case, in view of quarrels occurred previously and that alleged eye witnesses are closely related and that there is misreading of evidence and therefore judgments of Courts below have to be set aside - Revisional power of High Court should be exercised only when there is some glaring defect in procedure or manifest error on point of law resulting in miscarriage of justice - Normally re-appreciation of evidence is not permissible in Revision - But where in a case justice require interference for a correction of manifest illegality for prevention of gross miscarriage of justice, Revisional Court may re-appreciate evidence - However, in a case of misreading or non-reading of evidence tentamounting to perversity such finding can be certainly interfered in Revision - In this case, a careful reading of evidence of P.W.2 to 4 is parrot like - Both Courts have also not considered whether evidence of P.Ws.2 to 4 is parrot like or not, whether conduct of P.Ws. 2 to 4 is natural or not - Court may not accept a part of evidence of witness and when such part of evidence goes to root of case, Court cannot simply ignore same - Thus it appears to be a clear case of misreading of evidence which resulted in gross injustice and which required to be corrected in revision - Admittedly both Court have categorically held that participation of other accused except A1, A3 & A4 not proved - When it appears that certain accused have been falsely implicated in Criminal case and there appears to be no acceptable evidence or independent evidence to separate chaff from grain it may be just and reasonable to throw out entire prosecution case rather than to convict some of accused - Once it is found that there was an attempt to falsely implicate accused then what is guarantee that some of accused are not falsely implicated - Though it appears that P.W.1 was attacked and some persons caused injuries to him but when it is not possible to separate chaff from grain, all accused are entitled to benefit of doubt - In this case, Courts below have failed to read evidence correctly and when it appears that certain important points were not touched by lower Courts, it amounts to misreading of evidence and when there is misreading of evidence leading to incorrect conclusions, same results in miscarriage of justice - Impugned judgments, set aside - Revision, allowed. **Paramata John Vs. State of A.P. 2010(1) Law Summary (A.P.) 76.**

—-Secs.147,149,302,323,380 & 436 - Member of unlawful Assembly - It is contendended that mere presence of the accused at the place of incident would not amount to their

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unlawful assembly - Court held that it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act, rather they can be convicted u/Se.149, Indian Penal Code. **Anup Lal Yadav Vs. State of Bihar 2014(3) Law Summary (S.C.) 56.**

—Sec.149 – Common object – Interested witness – Trial Court convicting accused primarily placing reliance on evidence of P.W.1, son of deceased and P.W.2 brother-in-law of P.W.1 - High Court dismissing appeal - Merely because eye witnesses are family members their evidence cannot *per se* discarded – When there is allegation of interestedness, same has to be established – Mere statement that being relatives of deceased they are likely to falsely implicated accused cannot be a ground to discard evidence which is otherwise cogent and credible - "Common object" – "Common object" is different from 'common intention' as it does not require a prior concert and a common meeting of minds before attack – Where common object of unlawful assembly is not proved, accused persons cannot be convicted with help of Sec.149 – Sec.149 consists of two parts – 1st part of section means that offence to be committed in prosecution of common object must be one which is committed with a view to accomplish common object - Distinction between two parts of Sec.149 cannot be ignored or obliterated – Findings of trial Court and High Court - Justified – Appeal, dismissed. **Maranadu Vs. State by Inspector of Police, Tamil Nadu 2008(3) Law Summary (S.C.) 113 = 2008(2) ALD(Crl) 766 (SC) = 2008(6) Supreme 677 = 2008 Crl. LJ 4562 = AIR CW 6210.**

—Secs.149 & 302 - Trial Court convicting accused for offence punishable for offences u/Sec. 302 r/w Sec.149 & 307 - "Common object" and "common intention" - Meaning of - Word "object" means purpose or design, and in order to make it "common", it must be shared by all - In other words, object should be common to persons, who compose assembly, that is to say, they should all be aware of it and concur in it - "Common object" is different from a "common intention", as it does not require a prior concert and a common meeting of minds before attack - It is enough if each has same object in view and their number is five or more and they act as an assembly to achieve that object. **Raj Nath Vs. State of U.P., 2009(1) Law Summary (S.C.) 95 = 2009(2) ALD (Crl) 282(SC) = AIR 2009 SC 1422.**

—-Secs. 149 and 302 - According to prosecution version, accused including appellants belonged to one political party and deceased belonged to another political party and there were longstanding political feuds between them - Accused bore grudge against deceased as he gave evidence against appellant in one murder case - They also suspected deceased of causing death of one Usha Prakash - On the day of funeral of said Prakash, while deceased and PW 1,4,5,6,9 and 14 were chitchatting, all accused picked up quarrel with deceased and others saying that they would file a case against deceased for causing death of Prakash - Accused also attacked prosecution witnesses - Police received information and after reaching spot found deceased and nine others with injuries - Inquest of dead body of deceased was held in hospital next day and dead body was sent for post-mortem - Autopsy over

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dead body of deceased held that cause of death of deceased was due to haemorrhage and shock - Finally a charge sheet was filed in case after receiving all relevant documents.

Appellant submitted alleged incident for which appellants and others have been prosecuted has not taken place in manner as set up by prosecution, that entire prosecution case falls to ground only reason that though incident has taken place at around 6 PM and information in respect thereof was passed on by P.W.s 1 and 10 over phone to Police, no F.I.R. was registered till 10.00 P.M.

Held, ordinarily, every omission in prosecution case is fatal - But, in a case of this nature, where Ex.P-1 report was prepared, admittedly after confabulations, with a delay of more than three hours, these omissions assume significance and give rise to a serious suspicion whether attack on deceased has taken place, in manner, in which it was projected by prosecution - Applying ratio of the judgment of the Supreme Court in Punati Ramulu, it follows that Ex.P-1 cannot be treated as an FIR, that investigation made by Police based on such report becomes tainted, that accused cannot be convicted based on such tainted investigation, more so, when more than one witness had admitted that discussions and deliberations had taken place before Ex.P-1 was drafted and that whole prosecution theory is untrustworthy as is evident from the fact that there are many material contradictions and omissions in case as projected by it.

In these facts and circumstances of case, Court opinion that due to failure of investigation agency to conduct proper investigation, commencing from time of registration of FIR and various omissions and contradictions in its case, it is not safe to convict the accused - For aforementioned reasons, conviction and sentence recorded against all appellants/accused for respective offences punishable under Section 324 read with Section 149 IPC, Section 148 IPC and Section 302 IPC read with Section 149 IPC are set aside - Criminal Appeal is, accordingly, allowed. **Bheemgonda,Vs. State of A.P. 2016(2) Law Summary (A.P.) 261.**

—Sec.182 - **CRIMINAL PROCEDURE CODE,** Secs.195 and 468 - Magistrate took cognizance for offence u/Sec.182 IPC against petitioner/A1 alone though complaint filed against from accused persons - Hence present Criminal petition - Petitioner challenging order of Magistrate on two grounds viz., for taking cognizance under Sec.182 IPC Magistrate has to follow Sec.195 Cr.P.C and that he has not followed - Secondly that offence u/Sec.182 IPC is punishable with imprisonment of six months and as per 468 Cr.P.C., there is a bar to take cognizance of offence prescribing certain limitation for offence under Sec.182 IPC. period of limitation is one year but from allegations from complaint itself it is barred by limitation - From reading of Sec.182, false information with an intention to cause public servant to use his lawful power to injury another person is an offence which is punishable with imprisonment of six months - To attract offence u/Sec.182 there must be material to show that false information was given to a public servant - Limitation as per Sec.468 Cr.P.C for an

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offence u/Sec.182 is one year - Admittedly it is not filed within that time - It is very clear from Sec.195 that for an offence u/Sec.182 IPC cognizance can be taken only on complaint from a public servant or a subordinate to public servant - Admittedly complainant herein i.e, respondent is not a public servant he is a business man - In this case, admittedly Magistrate took cognizance for offence under Sec.182 IPC though many offences are complained against petitioner herein and other accused - So when a clear bar is there under Sec.195 Cr.P.C taking cognizance on complaint of private individual is not in accordance with law, therefore incorrect - Proceedings in C.C - Quashed - Petition, allowed. **Lata Jain Vs. Laxminivas Agarwal Hyderabad 2014(2) Law Summary (A.P.) 147 = 2014(2) ALD (Crl) 659.**

—Secs.191/193 - **CRIMINAL PROCEDURE CODE,** Sec.344(1) - Petitioner is first informant in crime of Police Station relating to offences punishable u/Secs.143,348 etc., of IPC - After investigation police filed charge sheet in crime as CC - After trial Magistrate acquitted all accused - In this case, petitioner was examined as P.W.1 and he turned hostile to prosecution and did not support version contained in F.I.R/ his report Ex.P.1 - After pronoucement of acquittal in CC, trial Court gave show cause notice to petitioner as to why Court should not proceed against him u/Sec.344(1) Cr.P.C for giving false evidence knowingly on oath - Tral Court was of opinion that accused gave false evidence with an intention to help accused - Petitioner contends that since there are no two statements given on oath by same petitioner contrary to or inconsistent or irreconcilable with each other before trial Court, trial Court should not have proceeded against petitioner for trying offence u/Sec.191 punishable u/Sec.193 IPC against petitioner - Petitioner further contends that in absence of any finding of lower Court in judgment of acquittal passed in CC to effect that petitioner P.W.1 gave false evidence and is liable to be proceeded for giving false evidence knowingly in Court and that there is no finding of trial Court in judgment in CC to effect that petitioner gave false evidence before Court; and trial Court also did not express therein any opinion that petitioner should be proceeded with for “perjury” as per Sec.344(1)IPC - Before invoking Sec.344 Cr.P.C it is incumbent on Magistrate or Sessions Court to express opinion in judgment/ final order that witness had given false evidence knowingly or wilfully or had fabricated false evidence - Coupled with said finding, judgment/final order should contain satisfaction of Magistrate/ Sessions Judge as to necessity and expediency in interest of justice that such witness should be tried summarily for giving or fabricating false evidence - In absence of above two ingredients in its judgment, lower Court should not have resorted to procedure u/Sec.344(1) Cr.P.C. - In present case, petitioner as P.W.1 in CC did not subscribe to contents of Ex.P.1 report given by him to Police while giving evidence on oath in Court - It is no offence of perjury as defined in Sec.191 IPC and punishable u/Sec.193 as statement in FIR was not given by petitioner on oath in Court - When procedure prescribed under Sec.344 (1) Cr.P.C was not followed by lower Court and when allegations against petitioner do not attract offence u/Sec.191/ 193 IPC, it follows that registration of C.C in lower Court is nothing but abuse of

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process of law and petitioner cannot be asked to undergo rigmarole of trial for offence u/Sec.191/193 in that case - Order and registration of C.C against petitioner, quashed - Criminal petition, allowed. **Malayanauru Anantha Anandacharyulu Vs. The State of A.P. 2012(3) Law Summary (A.P.) 9 = 2012(2) ALD (Crl) 232 (AP).**

—Sec.193 - **CRIMINAL PROCEDURE CODE,** Secs.344 & 482 - "Perjury" - Petitioner/VRO figured as mediator in charge sheet filed by investigating Officer in Sessions case in which accused was tried for offence u/Sec.302 and ultimately acquitted by Sessions Judge on ground that procesution failed to establish guilt of accused - In this case, while rendering judgment, Sessions Judge observed that petitioner/P.W.7 signed on each page of panchanama, knowing that they would be used as evidence in Court in trial of murder case and gave contradictory version in Court - Making said observation Sessions Judge issued show cause notice u/Sec.344 Cr.P.C. against petitioner stating that he gave false evidence and therefore committed offence u/Sec.193 IPC - Mere fact that petitioner deposed contrary to contents of panchanama does not by itself indicate that petitioner gave false evidence - Panchanama cannot be treated as substantive piece of evidence - Unless contents mentioned in panchanama are spoken to by witness to said document, it cannot be said to be proved in course of trial before Sesions Judge - Except evidence of Investigating Officer there was no material before Sessions Judge showing that petitioner gave false evidence - Sessions Judge only indicated in notice that petitioner having signed panchanama gave evidence contrary to contents and therefore resorted to give false evidecene - View taken by Sessions Judge is misconceived and without their being any sufficient material before him had taken steps to prosecute petitioner according to provisions of Sec.344 of Cr.P.C and issued show cause notice - Show-cause notice issued by Sessions Judge, quashed - Criminal petition, allowed. **V.Bala Peddanna Vs. The State of A.P. 2013(2) Law Summary (A.P.) 268 = 2013(2) ALD (Crl) 466 (AP) = 2013(3) ALT (Crl) 224 (AP).**

—Sec.294, r/w Sec.109 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Petitioner running Bar and Restaurant after obtaining required permission and licences - Case foisted against petitioner u/Sec.294 alleging that management organizing obscene dances in guise of Orchestra - Though Bar and Restaurant is public place, but however there is no evidence which would go to show that any annoyance as such had been caused to others - It is also not case of prosecution that petitioners caused any annoyance to others - Ingredients of Sec.294 r/w Sec.109 IPC are not attracted even if allegation in charge sheet to be appreciated in proper perspective - Proceedings against petitioners, quashed. **Seema Dass Vs. State of A.P. 2010(1) Law Summary (A.P.) 362.**

—Secs. 295-A, 427 & 447 - Admittedly, PW1 made enquiries and took the advice of his superiors before lodging the exhibit P1 report. Despite the said facts, the accused was not named as the culprit responsible for the incident- These aspects cumulatively

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throw any amount of doubt on the case of the prosecution in regard to the alleged involvement of the accused in the alleged crime - Moreover, the police after investigation did not file charge sheet against the Revenue Inspector or any other accused except the petitioner herein - The withholding of the earliest or the first information by the prosecution goes a long way and this by itself is a circumstance to extend a reasonable benefit of doubt to the accused, in the facts and circumstances of the case. PW1 is not a direct witness to the incident and for the reasons best known, he did not even name the accused as the person responsible for the incident in his belated report under exhibit P1 - Further, both PWs 2 and 3 have stated that there is a street light at or near the scene of offence and that they had identified the accused in the illumination of the said light when the incident had happened on the night of 17th during 10 to 12 midnight. However, the sketch of the scene of offence exhibit P9, exhibited by the investigating officer does not show the existence of any such electrical pole with light in on condition - Their evidence in this regard lays bare their interestedness in showing the complicity of the accused in the crime - Neither the catechist offering prayers or any member of the congregation was examined by the police during investigation and no such witness was examined during the course of trial in support of the version of the PW1 - Viewed thus, this court finds that the prosecution had failed to show that the accused is the person responsible for defiling or damaging the statue of Mary Matha, and hence, it follows that the prosecution had failed to bring home the guilt of the accused beyond all reasonable doubt by adducing the necessary evidence of the required standards - In the result, the Criminal Revision Case is allowed and the judgment of the court below confirming the judgment of conviction and sentences against the accused passed by the trial court is set aside in view of the finding that the accused is not guilty of the offence punishable under Section 295 of the IPC. **Yeleboina Mariyadas Vs. State of A.P. 2015(1) Law Summary (A.P.) 298.**

—Secs.279 & 304-A - Rash driving - Causing death by negligence - Appellant driver of bus causing death of child by driving bus rashly and negligently - Trial Judge categorically held that bus was being driven at high speed - Admittedly bus did not have any mechanical failure - There is concurrent finding of fact that bus was being driven rashly and negligently - No reason to take a different view - Not possible to re-appreciate evidence - Simple imprisonment for commission of offence u/Sec.304-A and one month simple imprisonment for offence u/Sec.279 IPC cannot be said to be shocking - Appeal, dismissed. **B.Nagabhushanam Vs. State of Karnataka 2008(2) Law Summary (S.C.) 222.**

—Secs.297, 447, 427, 153-A r/w 34 - **A.P.POLICE MANUAL STANDING ORDERS** - Under influence of third respondent in W.P.No.7733 of 2015, false complaints were filed against the petitioner through unconcerned persons - Third respondent instigated BPR , MSR and KPR and they lodged false complaints against petitioner

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in respect of petitioner's property in Sy.Nos.2, 3/2, 4/2 and 5/2 situated at Mallampally village and Station House Officer, Mulugu, Warangal District/fifth respondent in W.P.No.10421 of 2015 and sixth respondent in W.P.No.7733 of 2015 registered Cr.Nos.260/2013 dated 26.11.2013, 12/2014 dated 16.01.2014 and 252/2014 dated 07.10.2014 - Third respondent in W.P.No.7733 of 2015 instigated local rival persons to achieve his unlawful object and consistently put the petitioner in fear of injury in order to commit extortion and demanded huge amount of Rs.50,00,000/- as petitioner's family is well settled with landed properties, doing mining business and running a petrol pump - When petitioner declined to pay such huge amount, he instigated the above three persons and got filed the three false complaints and influenced the Station House Officer, Mulugu to register criminal cases against the petitioner and punish by affecting arrest and to suffer imprisonment by hook or crook with false evidence - Third respondent in WP.No.7733 of 2015 is using influence on revenue and police department to coerce petitioner to surrender and to oblige his unlawful demands - The Deputy Superintendent of Police, Mulugu, influenced the Station House Officer, Mulugu for opening the rowdy sheet and to exhibit the photograph of the petitioner in the rowdy sheets board in Police Station - Pleading above said action is illegal, void, without jurisdiction, violative of principles of natural justice, violative of Articles 14, 19, 21 and 300-A of Constitution of India and violative of Standing Order No.601 of the A.P. Police Manual Standing Orders and while praying to grant compensation of Rs.5,00,000/- to the petitioner herein, the present writ petitions have been filed before this Court under Article 226 of the Constitution of India - Held, nature of allegations made against the petitioner in the above FIRs against petitioner herein, do not by any stretch of imagination, fall within the parameters of Police Standing Order 601 nor allegations made in the teeth of above factual scenario would attract the ingredients of the said Standing Order - On the other hand, same are purely arising out of property disputes between the parties and no allegation of disturbance to public order and security is involved - In facts and circumstances of case, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that impugned action of opening and continuing rowdy sheet against the petitioner is highly illegal, arbitrary and unreasonable and preposterous, iniquitous and reprehensible besides being patent infraction of fundamental rights guaranteed to petitioner herein under Chapter III of Constitution of India. **M.Malla Reddy Vs. The State of Telangana 2015(3) Law Summary (A.P.) 34**

—Secs.300 & 302, r/w Secs.34 & 201 - **EVIDENCE ACT,** Secs.3, 24 & 27 - "Murder" - "Circumstantial evidence" - "Extra-judicial confession" - Sessions Judge convicted and sentenced accused to suffer rigorous imprisonment for life - Division Bench of High Court affirmed conviction and confirmed sentence passed by Sessions Judge - Appellant/accused contends that trial Judge as well as Sessions Court not appreciated evidence brought on record in proper perspective keeping in view parameters laiddown by Apex Court in various Authorities relating to restriction of conviction on circumstantial

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evidence and as such, judgments are unsustainable in law - Reliance on extrajudicial confession before ZS & NS is unacceptable in as much as confession was made after 18 days which makes it absolutely dented and there is no earthly reason that appellant would confess before P.W.2 - Respondent contends that circumstance of "extra-judicial confession" cannot be disregarded despite some improvements in version of witnesses, as there is no suggestion that his version is tainted - Quite apart that after abscondance of accused B.S, he came and confessed before Court - Omissions which amount to contradictions in material particulars i.e. go to root of case/materially affect trial one core of prosecution case, render testimony of witness liable to be discredited - In this case, omissions and improvements which have been highlighted are absolutely minor - In this case, there is substantial reason to disbelieve disclosure of statement and recovery of weapon used and it is apt to mention that doctor who has conducted postmartem has clearly opined that injuries on person of deceased could be caused by weapon(blade or such spade) and said opinion has gone unrebutted - In this case, all there circumstances which have been established by prosecution complete chain - There can be no trace of doubt that circumstances have been proven beyond reasonable doubt - Prosecution is not required to meet any and every hypothesis putforward by accused - A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and commonsence, it must grow out of evidence in case - If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are proven to error, it is argued that it is too imperfect - Present case, is one where there is no trace of doubt that all circumstances complete the chain and singularly lead to guilt of accused persons - Judgment of conviction and order of sentence recorded by trial Judge, which has been affirmed by High Court - Justified - Appeal, dismissed. **Jagroop Singh Vs. State of Punjab 2012(3) Law Summary (S.C.) 13**

—Secs.300,302 & 307 - **EVIDENCE ACT,** Secs.32 & 114 - "Bride burning" - "Multiple dying declarations" - Deceased admitted in hospital with 99% burning injuries and died during treatment - Sessions Judge found accused persons guilty and sentenced them for life imprisonment - High Court reversed judgment of Sessions Judge and acquitted accused - Respondents/accused contend that High Court has rightly held that no reliance could be placed on uncorroborated dying declaration - State contends that High Court has failed to notice fact that deceased in custody of respondents/ accused and therefore burden of explaining fact of burning is on accused persons and they have failed to provide any explanation when examined u/Sec.313 Cr.P.C and that High Court has not properly appreciated evidence of accused - In this case, there are not only material contradactions to in both declarations but also inter se descripences in depositions of witnesses as well - So far as evidence of P.W.3 is concerned deceased was only abusing her father-in-law and that was not even corroborated by other P.Ws. and that P.W.3 himself turned hostile - Due to descrapencies and contradiction between two dying declarations and also in absence of any reliable

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evidence, HIgh Court is justified in reversing order of conviction which calls for no interference - Appeals, dismissed. **State of Rajasthan Vs. Shravan Ram 2013(2) Law Summary (S.C.) 177.**

—Sec.302 - Allegation that A1 developed illicit intimacy with A2 and committed murder of her minor daughter by administering poison - Trial Court acquitted A2 and convicted appellant/A1 to undergo imprisonment for life - Contention that there is no direct evidence and circumstantial evidence relied upon by prosecution is shaky, in many respects and that there is inordinate delay of nine hours in submitting complaint - In this case, there is inordinate unexplained delay in filing complaint - None of witnesses have stated that they have seen appellant either procuring poisonous granules, much less administering same to deceased - Motive attributed to A1 is that she developed illicit intimacy with A2 and felt deceased as on obstruction for their affair - Except making a bald allegation that she developed illicit intimacy with A2, none of witnesses have spoken to any particular instance or consequential action in that regard - Though medical evidence suggests that death of deceased was on account of poisonous material, question as to manner in which poison came to be administered, remains almost a mystery - Suggestion made to PW3, brother of appellant that deceased died on account of humiliation and mental agony caused due to desertion of A1 by her father - Prosecution failed to prove charges against appellant - Conviction, set aside - Appeal, allowed. **Bandaru Parvathi Vs. The State of A.P. 2008(1) Law Summary (A.P.) 386 = 2008(1) ALD (Crl) 778 (AP) = 2008(2) ALT (Crl) 100 (AP).**

—Sec.302 - Motive - Trial Court convicted appellant/accused for alleged commission of death of deceased by pouring kerosene and set her on fire - Prosecution contends that deceased in her statement to police, marked as Ex.P.1 stated that accused came to their house when she was alone and held her hand and asked her to forget, in context of their marriage - When deceased did not agree what was proposed by appellant, he poured kerosene on deceased and set her on fire - Appellant/accused contends that P.W.3 brother of accused and P.W.5 have stated that appellant poured water to extinguish fire on body of deceased, whereas neither in Ex.P.1 nor in Ex.P.31 dying declaration, there is reference to this fact and that other independent witnesses have been declared hostile and virtually nothing on record to hold appellant guilty of offence u/Sec.302 IPC - If dying declaration of deceased has an element of truth and probability, it can constitute basis for convicting accused even in absence of any corroborative evidence - In this case, there is material contradiction between Ex.P.1 and Ex.P.31 - In fact covering body of deceased with gunny bag by P.W.5 was subsequent to pouring of water by appellant/accused and this material fact was however omitted by deceased - Further, deceased did not speak about presence of her brother P.W.3 in both her statements and entire prosecution virtually rested upon evidence of P.W.3 - Under these circumstances it cannot be said that dying declarations are trustworthy - If in fact, intention of accused was to kill deceased, he would not have been first person to pour water and extinguish fire - Prosecution alleged that there was love affair between deceased and accused and motive for accused to have caused death of deceased was, that latter did not agree to forget

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former - Assuming that appellant did not reciprocate gesture of deceased, one hardly expects him to have resorted to such a heinous crime - It is unthinkable that appellant got enraged only because deceased did not forget him - If he did not like deceased, he would have refused to respond and be done with it - No motive, worth its name, existed for appellant to have resorted to acts attributed to him - Conviction and sentence against appellant, set aside - Appeal, allowed. **Nataru Govinda Reddy @ Govindu Vs. State of A.P. 2008(1) Law Summary (A.P.) 337 = 2008(1) ALD (Crl) 539 (AP) = 2008(2) ALT (Crl) 124 (AP) = 2008 Crl.LJ 3296.**

—Sec.302 - "Extra judicial confession" - Trial Court convicting appellant/accused for causing death of deceased, wife and daughter, basing on alleged extra judicial confession - Appellant/accused contends that there is delay of 18 days regarding alleged extra judicial confession of appellant/accused from date of occurrence; that some culprits might have killed deceased and appellant was falsely implicated and that appellant is nearing septuagenarian and a lenient view is to be taken - In this case alleged confessional statement of appellant was reduced into writing by Panchayat Secretary P.W.11 - Any statement reduced in writing before Police is inadmissible in evidence and such admission cannot be treated as an extra judicial confession and not a valid confession in eye of law - Surprisingly in this case no such extra judicial confession, which was allegedly reduced into writing by P.W.11, was brought on record - Procedure adopted and reasoning accorded by trial Court in this regard giving credence or according status of admissibility to that kind of piece of evidence cannot be sustained - Any confessional statement particularly when it was reduced into writing shall be beyond all reasonable doubt in order to attach unquestionable sanctity to it for purpose of conviction - Alleged confession made voluntarily by appellant, accused before P.W.11 was not on record - Extra judicial confession, which is basically a weak piece of evidence, shall not suffer from any kind of infirmities like doubt, suspicion etc - Since very case of prosecution based on evidence which is treated as extra judicial confession cannot be made as foundation to record an order of conviction - Reasoning assigned by trial Court, liable to be set aside - Hence, conviction of appellant accused, set aside - Criminal appeal, allowed. **Srisala Mahalaxmi @ Mahalaxmi Vs. State 2009(2) Law Summary (A.P.) 409.**

—Sec.302 - 'Last seen theory' - Accused tried for offence u/Sec.302 and sentenced to undergo imprisonment for life - Appellant/accused contends that except circumstantial evidence that accused was seen in company of accused last by P.W.4, there is no other factor for conviction - In this case, entire question, boils down to whether theory of deceased was last seen in company of accused would be such as, that can fetch successfully conviction of accused or not - From chain of circumstances, time gap between 9 p.m when P.W. 4 as seen deceased in company of accused and retrieval of dead body of deceased at 6 a.m. on following day, acquires lot of significance and importance - Chain of events leading to death of deceased, has not been completely established - Presence of third parties at toddy hut where dead body of

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deceased found, cannot be ruled out - Hence benefit of doubt should have been given to accused - Conviction and sentence, set aside - Appeal, allowed. **Tekulapally Narasimha Reddy Vs. State of A.P. 2010(1) Law Summary (A.P.) 232.**

—Sec.302 - "Circumstantial evidence" - "Extra-judicial confession" - Sessions Judge convicting sole accused for offence u/Sec.302, causing death of deceased by strangulating with rope in Auto - Appellant/accused contends that except evidence of P.Ws.9 & 10, Deputy MRO and MRO who deposed about extra-judicial confession i.e. Ex.P.7, there is no other evidence to show that accused is assailant of deceased and that there is no immediate impetus for accused to give confessional statement to P.W.10 and that Ex.P.7 was fabricated and pressed in to service at instance of Police and in view of those suspicious circumstances it is not safe to place an implicit reliance on Ex.P7, so as to base conviction - Prosecution contends, unless accused gave statement in Ex.P.7, it would not be possible for P.Ws.9 & 10 to scribe such a lenghty statement as in Ex,P7 that trial Court rightly placed implicit reliance on evidence of P.Ws.9 & 10 and also recitals in Ex.P.7 - CIRCUMSTANTIAL EVIDENCE - INGREDIENTS - Stated - Circumstances from which conclusion of guilt is to be drawn should be fully established and that facts so established should be consistent only with hypothesis of guilt of accused and that circumstance should be of conclusive nature and tendency and there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with innocence of accused and must show that in all human possibility act must have been done by accused - EXTRA JUDICIAL CONFESSIONS - Extra judicial confessions are those which are made by party elsewhere than before Magistrate or in Court; this term embracing not only express confessions of criminal, but all those admissions and acts of accused from which guilt may be implied - When witness who gave evidence about extra-judicial confessions, is reliable and words spoken by him are clear and unambiguous, such evidence can be relied upon it should be taken as a whole - It must be credible, cogent, and believable - There is no need for accused to go to Office of P.W.10 to give such lengthy statement especially when several other Govt., Officers are available in and around place, where accused was residing - Barring Ex.P.7, there is no other evidence to show that accused is assailant of deceased - Therefore if Ex.P7is eschewed from consideration, there is no other evidence to show that accused is assailant of deceased - Prosecution cannot be said to be proved its case against accused beyond all reasonable doubt for charge u/Sec.302 IPC - Accused entitled for acquittal - Criminal appeal, allowed. **Gellela Thirupalu Vs. State of A.P. 2011(1) Law Summary (A.P.) 209 = 2011(1) ALD(Crl) 659 (AP) = 2011(1) ALT(Crl) 340 (AP) = 2011 Cri. LJ (NOC) 376(AP).**

—Sec.302 - "Eye witness" - "Chance witness" - Appellant/accused charged for offence u/Sec.302, r/w 34 IPC - Trial Court relied upon evidence of P.W.1 & P.W.2 convicted appellants u/Sec.302 r/w Sec.34 and sentenced for life imprisonment - High Court

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affirmed the conviction and sentence and dismissed appeal - EYE WITNESS - P.W.1 clearly stated that he was present at time of occurrence and has seen appellants with double barrel gun and single barrel gun and a Rifle with cartridges and he has also stated that when appellants fired, deceased who was driving motor cycle and also stated that he found deceased lying dead by gun shot on road and his father was lying by gun shot in paddy field - Evidence of P.W.1 could not have been doubted either by trial Court or High Court - CHANCE WITNESS - Evidence of P.W.2 could not be discarded on ground that he was only a chance witness - Incident took place when deceased were travelling on a motor cycle on road and P.W.2 was also coming on same road on his cycle when he saw incident - When a witness figures as eye witness in FIR he cannot be categorized as chance witness - Once it is accepted that P.W.1 and P.W.2 were present at -place of occurrence and their evidence was reliable, fact that other independent witnesses named in FIR have not been examined before Court cannot be a ground for not believing prosecution case - It is necessary for accused to throw a reasonable doubt that prosecution evidence is such that it must have been manupulated or shaped by reason of irregularity in matter of investigation or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof, but where prosecution evidence has been held to be true and where accused had full say in matter conviction cannot obviously be set aside on ground of every irregularity or illegality in matter of investigation - In other words unless, lapses on part of investigation are such as to cast reasonable doubt about prosecution story or seriously prejudice defence of accused, Court will not set aside conviction - Appeal, dismissed. **Hiralal Pandey Vs. State of U.P. 2012(2) Law Summary (S.C.) 40.**

—Sec.302 – Accused was convicted of murder of his daughter by trial Court – Appeal made before High Court against judgment – Held, prosecution witnesses consistent - Circumstantial evidence too corroborates prosecution version - Accused alone in company of deceased by time P1 and P2 (wife and son of accused) left house, accused not coming forward with any version of his own in relation to death of his daughter-even defence has not suggested any possibility of murder of the deceased committed by a third person, age of deceased was such no criminal can kill her in such gruesome manner, going to extent of cutting various parts of her body, that too in broad day light in midst of densely populated area – Conviction by trial Court upheld and appeal dismissed. **Sk.Ramjani Vs. State of A.P. 2014(2) Law Summary (A.P.) 177.**

—Sec.302 – Murder - Trial Court sentenced accused to life imprisonment - Appeal against sentence - Confession by accused that he has committed crime and consequently tracing of his torn shirt no doubt raises an element of suspicion against accused, but not conclusive proof, and benefit of it should go to accused - No clinching evidence on this aspect and no other circumstantial evidence - Held, it is difficult to hold that accused committed murder of deceased - Appeal, allowed. **Mareppagari Kuppaiah Vs. State of A.P. 2014(2) Law Summary (A.P.) 244.**

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—-Sec. 302 - This Criminal Appeal is filed against judgment, whereby the appellant was found guilty for the offence under Sec.302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for one month.

Held, P.W-5, who is no other than wife of deceased, also testified that her husband and appellant used to move together and they were in friendly terms - If there was illicit intimacy between appellant and wife of deceased, and as a result of this if there was enmity between accused and deceased, P.Ws.1 and 2 being co- coolies, staying together in connection with coolie work outside their native place, would have certainly known this fact - Fact that neither of these witnesses has spoken about alleged intimacy coupled with fact that both have testified that deceased and appellant were in cordial terms would completely belie theory of prosecution that appellant and wife of deceased had illicit relationship and this was root cause for appellant to kill deceased - In a case based on circumstantial evidence, Courts must be circumspect in appreciating and evaluating the evidence.

In a case based on circumstantial evidence, settled law is that circumstances from which conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature - Moreover, all circumstances should be complete and there should be no gap left in chain of evidence - Further, proved circumstances must be consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence.

Prosecution failed to establish motive for appellant to kill deceased - The circumstantial evidence adduced by prosecution does not establish that all incriminating facts and circumstances are found incompatible with innocence of appellant - For reasons already recorded, even last seen theory also could not be established by prosecution - Therefore, this Court opinion that lower court has committed an error in convicting appellant.

In result, Criminal Appeal is allowed - Conviction and sentence recorded against appellant/accused are set aside. **Palapatla Srinivasa Reddy Vs. State of A.P. 2016(2) Law Summary (A.P.) 105 = 2016(2) ALD (Crl) 433.**

—-Sec.302 - According to prosecution, accused/appellant burnt deceased and she died due to hyporalimic shock, approximately 12 to 16 hours prior to post-mortem examination - P.W.18 has sent seized material objects to Forensic Science Laboratory (FSL), through Sub-Divisional Police Officer, with a letter of advice - Assistant Director of FSL, issued report to effect that no flammable substances were found in material objects sent to them - After completion of investigation, P.W.18 filed charge sheet - The plea of appellant was one of denial - Therefore, prosecution has examined P.Ws.1 to 18 and marked Exs.P.1 to P.27 - No evidence was let in on behalf of defence - On appreciation of oral and documentary evidence, lower Court has disposed of case in manner as stated above.

Held, In face of a specific Rule by the Criminal Rules of Practice in form of Rule 33, which applies to the States of Andhra Pradesh and Telangana, it is incumbent on person who records dying declaration to put preliminary questions

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in order to know capability of declarant to make a declaration - In absence of such preliminary questions having been put to victim, though declaration cannot per se be treated as invalid, it raises a serious suspicion on its genuineness - Having regard to various suspicious features, as noted above, and in light of fact that all material prosecution witnesses have turned hostile, three declarations allegedly given by deceased do not inspire confidence in Court and it is wholly unsafe to convict appellant based only on these declarations, when nearest relations of deceased, such as her father, brother, sister and her own husband, have themselves turned hostile, and none of them in any way implicated appellant in the offence.

For the afore-mentioned reasons, this Court of opinion that prosecution failed to prove guilt of appellant beyond all reasonable doubt and therefore conviction and sentence of appellant made by lower Court cannot be sustained - In result, Criminal Appeal is allowed - The conviction and sentence recorded against appellant/accused are set aside. **Pathan Shafi Vs. State of A.P. 2016(2) Law Summary (A.P.) 347 = 2016(2) ALD (Crl) 621 = 2016(2) ALT (Crl) 470.**

—Sec.302 - **A.P. POLICE MANUAL - A.P. POLICE STANDING ORDERS,** 601(A) – "Habitual offender" - The grievance of the petitioner is as to the opening of a rowdy sheet in his name - According to him, he was only involved in one criminal case, which ended in his acquittal, but on the basis of this solitary instance, the police authorities opened a rowdy sheet in his name - Held, the opening of a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case was not sufficient to term him a 'habitual offender' under clause (A) of Order, 601 - Further, it is an admitted fact that he stood acquitted in the said case - Despite same, police authorities seem to have continued rowdy sheet in his name - This Court therefore has no hesitation in holding that opening of rowdy sheet in name of petitioner and continuance of the same thereafter was in utter violation of law laid down by this Court - Writ Petition is therefore allowed - Rowdy sheet opened in name of petitioner is accordingly quashed. **K.Suresh Babu Vs. Superintendent of Police, Anantapur District 2015(3) Law Summary (A.P.) 184**

—Sec.302 - **CRIMINAL PROCEDURE CODE,** Secs.174 & 313 - **EVIDENCE ACT,** Secs.114 & 118 - **OATHS ACT,** Secs.4(1) - "Child witnesses" - A2 sister's son of A1/Husband poured kerosene on deceased/wife, A1 set fire toher causing injuries resulting death of deceased - Trial Court convicted A1 and acquitted A2 basing on evidence of child witness P.W.3 - Appellant/A1 contends that except child witness P.W.3 there is no other evidence to show that accused poured kerosene on body of deceased and set fire to her - Admittedly P.W.3 is under care and custody of his maternal grand mother who was examined as P.W.1, possibility of P.W.1 tutoring P.W.3 who is aged 7 years at the time of incident cannot be ruled out and if really A1 is assailant of deceased he would have fled away from scene of occurrence - Prosecution contends that when neighbours came to scene of occurrence A1 was merely standing without

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trying to extinguish fire, that there was continuous harassment meted out to deceased prior to incident - CHILD WITNESS - There cannot be any dispute that if evidence of child witness is found to be true and trustworthy and not on out come of tutoring or prompting by any relatives it can be acted on - Since children are prone to tutoring, much are and caution should be taken in appreciating evidence of child witnesses - In this case, statement of childwitness is laconically cryptic and tersely and does not reveal anything about sequence of events that took place on date of incident - He did not say as to reason for woke up and further he attributes specific overt-acts against A1 & A2 - When two views are reasonably possible, view which is favourable to accused should be adopted — In this case, circumstances indicate that immediately after incALTident appellant A1 rushed to house of P.W. 1 , and informed about incident - A1 also sustained burn injuries during course of same transaction and it is duty of resolution to cite doctor who examined and treated A1 - Facts of case suggest that he must have made some effort to put off flames on deceased, as result he sustained some burn injuries - Immediate conduct of A1 shows that possibility of deceased committing suicide for reason that she was not keeping good health cannot be ruled out in view of fact that prior to incident that deceased was being treated by sorcery - Therefore due to health problems and unable to overcome health condition, deceased might have committed suicide by setting fire to her- self - In the circumstances, it is not safe, to place an implicit reliance on solitary testimony of P.W.3 alone who is a child witness so as to base conviction - Prosecution miserably failed to establish guilt of A1 beyond all reasonable doubt - Appellant A1 is entitled to acquittal - Criminal appeal, allowed. **Rajulapadu Rambabu Vs. State of A.P. 2011(1) Law Summary (A.P.) 287 = 2011(1) ALD(Crl) 527(AP) = 2011(1) ALT(Crl) 367 (AP).**

—Sec.302 - **CRIMINAL PROCEDURE CODE,** Secs.374, and 293 - **CRIMINAL RULES OF PRACTICE,** Rule 58 - **EVIDENCE ACT,** Sec.62 - "Death by administration of cyanide poison" - Sessions Judge convicting appellant/accused u/Sec.302 to undergo life imprisonment for causing death of deceased by giving them liquor containing cyanide poison - Appellant/accused contends that report of Regional Forensic Science Laboratory does not show that accused as result of cyanide poison not establish and that bottle which was seized from scene of occurrence has not been sent to RFCSL to ascertain whether it contains any substance of cyanide and that important circumstances of motive and accused was in possession of cyanide poison, not establish by prosecution - In this case facts, appear to be in nature of hearsay evidence and it is not his objective observations or analysis - And his opinion is based upon analysis conducted by some other expert -In absence of marking Chemical Examiner report, opinion of Doctor is hit by rule of hearsay - Therefore case of prosecution that deceased consumed alcohol, which contained cyanide poison cannot be said to be proved beyond reasonable doubt - Therefore orgin and genesis of occurrence has been suppressed by prosecution and distorted version was brought on record - In this case, not steps have been taken to identify person from whom cyanide poison was purchased - Except

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that accused gave brandi bottle to deceased there is no other circumstance to indicate that it is accused and none else, who had given brandi bottle containing cyanide poison - Therefore benefit of doubt should go to accused and this aspect of case had been completely overlooked by trial Court - Prosecution failed to establish guilt of accused beyond reasonable doubt - Conviction and sentence imposed against accused, set aside - Criminal appeal, allowed. **Thumma Babul Reddy Vs. State of A.P. 2011(1) Law Summary (A.P.) 98 = 2011(2) ALD(Crl) 90 (AP) = 2011(1) ALT (Crl) 250 (AP) = 2011 Cri. LJ 2991 (AP).**

—Sec.302 - **INDIAN EVIDENCE ACT** - "Evidence of Hostile witness" - "Culpable homicide amounting to murder".

CULPABLE HOMICIDE - "Culpable homicide amounting to murder" - Determination of - Whenever Court is confronted with question whether offence is "Murder" or "culpable homicide not amounting to muder", on facts of case, it will be convenient for it to approach problem in three stages - Firstly whether accused has done an act by doing which he has caused death of another - Secondly for considering whether that act of accused amounts to culpable homicide as defined in Sec.299 - If answer to this question is prima facie found in affirmative, stage for considering operation of Sec.300 of IPC is reached - This is stage at which Court should determine whether facts proved by prosecution bring case within ambit of four clauses of definition of murder contained in Sec.300 - If answer to this question is negative offence would be culpable homicide not amounting murder.

HOSTILE WITNESS - It is settled legal proposition that evidence of prosecution witness cannot be rejected in toto merely because prosecution chose to treat him as hostile and cross examined him - Evidence of such witnesses cannot be treated as effaced or washed off record altogether, but same can be accepted to extent that there version is found to be dependable on a careful scrutiny thereof. **Khachar Dipu @ Dilipbhai Nakubhai Vs. State of Gujarat 2013(2) Law Summary (S.C.) 75.**

—Sec.302 - **EVIDENCE ACT** - Appellants accused were convicted for offence of murder of deceased based principally on evidence of P.W.5 eye witness who is elder brother of deceased - Appellants contend that Medical evidence did not match with oral evidence of P.W.5 and it would be unsafe to relay on his oral description of events and that since he was related and interested witness, his testimony should be closely scrutinized and on such close scrutiny it would turn out that he was not a reliable witness - In this case, on reading of FIR it is cler that P.W.1 was present at place of occurrence - Consequently presence of P.W.1 at place of occurrence could not be doubted and he was an eye witness to incident - Difference between "related witness" and "interested witness" - Stated - "Related" is not equalevent to "interested" - A witness may be "interested" only when he or she derives some benefit from result of a litigation; in decree in a civil case, or in seeing an accused person punished - A witness who is a natural one and is only possible eye witness in circumstance

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of case cannot be said to be interestd - In this case, P.W.5 was present at place of occurrence and was an eye witness to incidnt - His testimony is not unreliable but supported in its essential details by testimony of other witnesses - Evidence of P.W.5 credible not withstanding that he was related and interested witness - Conviction and sentence awarded to appellants by trial Court and confirmed by High Court, upheld - Appeal, dismissed. **Raju @ Balachandran Vs. State of Tamil Nadu, 2013(1) Law Summary (S.C.) 104 = 2013(1) ALD (Crl) 756 (SC) = 2012 AIR SCW 6524 = AIR 2013 SC 983.**

—Sec.302 - **EVIDENCE ACT,** Secs.17,25 & 27 - Sessions Judge acquitting respondent/ sole accused who is charged u/Sec.302 IPC - Prosecution contends that evidence of child witnesses, P.Ws.2 & 3 is very clear that it is accused who caused injuries to accused deceased, that further accused himself went to Police Station and gave statement stating that he committed murder, that all circumstances would go to show that it is accused and none else, who committed murder of deceased - In dealing with order of acquittal, though appellate Court has got full power to re-appreciate, evidence but it will be slow in interfering with same in view of fact that there is presumption under law that accused is presumed to be innocent unless contrary is proved and that presumption of innocence is further strengthened by an order of acquittal - Unless there are compelling or substantial reasons, ordinarily High Court would not interfere with same - A confessional FIR given by accused to a Police Officer cannot be used against him in view of bar u/Sec.25 of Act - No part of confessional statement is receivable in evidence except to extent that ban of Sec.25 of Act is lifted by Sec.27 of Act - When accused went to Police Station and gave statement that he killed his wife, definitely it amounts to a confession - It is not admission made by accused with regard to some other fact because accused admitted his guilt, which amounts to a confession and is not admissible in law - Therefore evidence of P.W.12 and recitals in Ex.P.17 report of accused to Police have no evidentiary value - As seen from evidence also, origin and genesis of occurrence has been suppressed by prosecution - Trial Court, upon consideration of entire oral and documentary evidence on record, rightly acquitted accused - Criminal appeal, dismissed. **State of A.P. Vs. Ramancha Laxma Reddy 2010(3) Law Summary (A.P.) 154.**

—Sec.302 - **EVIDENCE ACT,** Sec.27 - "Circumstantial evidence" - Last seen theory - Sessions Judge convicted accused u/Sec.302 and sentenced to imprisonment for life basing on circumstantial evidence - Accused is husband of deceased - In this case, no eye witnesses to occurrence - P.W.1 is elder brother of deceased and he categorical admits that to his knowledge deceased and her husband lived happily and did not quarrel with each other and the accused did not harass deceased or themselves - None of occupiers of flats examined in this case, spoke about any dispute or differences or quarrels between accused and deceased - Thus prosecution has failed to establish any motive for accused to kill his wife who is deceased - Lower Court

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also came to conclusion on motive observing that motive may not be relevant even in a case based on circumstantial evidence - Observations of lower Court that motive is not very much essential to be established in a murder case based on circumstantial evidence may not be entirely correct - Establishment of motive is an essential initial ingredient to be established by prosecution in any case based on circumstantial evidence - Admittedly deceased was wearing Manglasutram Chain and black beads chain regularly even as per prosecution case - There were no gold ornaments on dead body of deceased except silver toe rings - Absence of gold jewelry on body of deceased assumes importance and it may be case of murder for gain and that some outsiders who are more than one in number might have committed offence - Thus all circumstances relied on by prosecution have absolutely no relevance and on other hand, no circumstance established by prose-cution is going to drag accused in net - Conviction and sentence, set aside - Appeal, allowed. **Thadepalli Srinivasa Murthy Vs. State of A.P. 2010(2) Law Summary (A.P.) 222.**

—-Secs.302 – **INDIAN EVIDENCE ACT,** Sec.32 - It is clearly evident at page 2 of statement that there is a variation in spacing between lines - While ten lines from top have even spacing between them, last six lines were written with less space between them, when compared to spacing left between lines in upper portion - This gives rise to a serious suspicion that statement has been written after obtaining signature of deceased - In his evidence, P.W.7 has stated that he has recorded Ex.P.11 - However, it is endorsed on Ex.P.11 as “Recorded before me, (signed), Tahsildar, Sattupalli.” - Thus, it is clear that statement of P.W.7 that he himself has recorded dying declaration does not appear to be correct - Moreover, there is a perceptible difference in ink between contents of the document and the above quoted endorsement with the signature of P.W.7 - This would further strengthen suspicion that Ex.P.11 would have been prepared by someone else after obtaining signature of deceased.For the reasons best known to prosecution, they failed to file said requisition - In Court opinion, non-filing of requisition would raise any amount of suspicion about genuineness of Ex.P.11., P.W.9 in his evidence has candidly admitted that in his investigation he did not come across statement of deceased recorded by P.W.7 - All these circumstances would vitiate credibility of Ex.P.11 rendering it wholly unsafe to be relied upon.

There are serious inconsistencies between Exs.P.6, P.11 and P.10 on aspect of cause of injuries and also manner in which injuries were suffered by injured - As noted above, in Ex.P.6 it was recorded by the Doctor that patient allegedly suffered burns due to fall on kerosene bottle accidentally - In Ex.P.11 she has stated that her husband as well as her mother-in-law have beaten and poured kerosene on her and lit match stick - In Ex.P.10 she has stated that both accused have poured kerosene and her mother-in-law has lit match stick - Statements contained in Exs.P.10 and P.11 appear to be unduly lengthy and unbelievably narrative not capable of being made by a person who has suffered 90% burn injuries - In our opinion, both these documents appear to have been brought into existence after obtaining signatures

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of deceased on blank papers For above mentioned reasons, this Court not prepared to believe Exs.P.10 and P.11 in order to form basis for conviction of accused - Apart from above, D.W.1, who is no other than mother of deceased, has not supported prosecution case and on contrary when she was examined as D.W.1, she has categorically stated that her husband was behind deceased making allegations against accused and that unable to bear her stomach pain, deceased has committed suicide - This version of D.W.1 lends credibility to the of defence that accused are innocent and deceased has committed suicide - For all above reasons, appeal is allowed - Conviction and sentence recorded against accused are set aside and accused are acquitted of all charges. **Elaprolu Ramesh Vs. State of A.P. 2016(2) Law Summary (A.P.) 299.**

—-Sec.302 - **MOTOR VEHICLES ACT**, Secs.132,184 & 134/187 – Appeal filed against conviction of accused under Sec. 302 of IPC and various sections of M.V.Act of having caused death of a Sub Inspector with his vehicle - There are discrepancies in nature of injuries on deceased and the evidence by police officials is at variance with each other - Held, when there is discrepancy in evidence of police officials themselves, and identity of the accused is far from satisfactory, it is not at all safe to rest conclusion on surmises - Benefit of doubt, as in any other criminal case, needs to be given to accused - Appeal allowed and conviction and sentence against the accused set aside. **Gurumeet Singh Vs. State of A.P. 2014(3) Law Summary (A.P.) 125.**

—Sec.302 r/w Sec.32 Secs.506, 507 - **CRIMINAL PROCEDURE CODE,** Secs.439(2)& 482 - Petitioners A1 to A5 filed this petition seeking to set aside order under Sec.302 of IPC dt. 08-01-2015 in Crl.M.P.No.734 of 2014 passed by learned III Additional District and Sessions Judge, cancelling bail earlier granted by him in Crl.M.P.No. 3362 of 2014 at instance of de facto complainant alleging threat to his life etc. - Held, lower court cancelled bail taking above allegations into consideration - It must be noted that threat allegations are under investigation and persons who allegedly threatened de facto complainant and connection of accused with them if any has to be found out only after thorough investigation by concerned police - However, before that exercise being completed, lower court came to a premature conclusion about the correctness of the allegations and cancelled the bail in a post-haste manner - In considered view of this court, lower court ought to have directed concerned police to complete the investigation in Cr. No. 705 of 2014 expeditiously and basing on the result of the investigation it ought to have passed an appropriate order regarding cancellation of bail - By virtue of order of lower court, personal liberty of accused was jeopardized even before establishing their hand in threat allegedly caused to de facto complainant - Impugned order passed by III Additional District and Sessions Judge, Ranga Reddy District in Crl. M.P.No. 734 of 2014 is set aside and accused are directed to be on bail - Depending on result of investigation in Cr.No. 705

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of 2014, de facto complainant is at liberty to move court of III Additional District and Session Judge, for cancellation of bail of accused, in which case, said court shall pass appropriate order on merits - Accordingly, this Criminal Petition is allowed. **Syed Abdul Majid @ Majid Vs. M.A.Jabbar 2015(2) Law Summary (A.P.) 100 = 2015(1) ALD (Crl) 939 = 2015(2) ALT (Crl) 5 (AP).**

—Sec.302 r/w 34 - Murder - Circumstantial evidence - A-1 is wife of deceased - A-2 developed illicit-intimacy with A-1 - As deceased is an absticle in continuing their illicit-intimacy, A-1 and A-2 decided to do away with deceased - When deceased was in intoxicated condition, A-1 and A-2 killed him - Sessions Judge committed A-1 and A-2 to suffer life imprisonment - Appellant/accused contends that entire case rests upon circumstantial evidence only and that accused and deceased for last seen together by P.W.8, not supported prosecution and to other important witnesses were also declared hostile - LAST SEEN THEORY - Last seen theory alone is not sufficient to prove guilt of accused - Last seen theory comes into play where time gap between point of time when accused and deceased were last seen alive and deceased was found dead was so small that possibility of any person other than accused being author of crime becomes impossible - In this case, evidence goes to show that there was an illegal intimacy between A-1 and A-2 to draw an inference for motive to kill deceased - But said circumstance of illegal intimacy/motive by itself alone is not sufficient to prove guilt of accused and convict A-2 for offence u/Sec.302 r/w 34 - Once prosecution failed to establish that deceased was not in company of A-1 and A-2 and last seen by P.W.8, there is a missing link to connect accused for commission of offence - Mere illegal intimacy between A-1 and A-2 and fact that death of deceased is homicidal are not enough to come to conclusion that accused are responsible for commission of offence - CIRCUMSTANTIAL EVIDENCE - With a view to base a conviction on circumstantial evidence, prosecution must establish all pieces of incriminating circumstances by reliable and clinching and circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of accused - Conviction of accused, set aside - Appeals, allowed. **Santhavarapu Venkateshwarlu Vs. Thammishetti Ankiamma 2008(2) Law Summary (A.P.) 187 = 2008(2) ALD (Crl) 226 (AP) = 2008(2) ALT (Crl) 265(AP).**

—Sec.302, r/w Sec. 34 - Sessions Judge tried case and acquitted accused on ground that though injuries received by A1 in same incident not referred by prosecution during course of trial - Contention that though eye witnesses turned hostile there is sufficient circumstantial evidence in form of medical reports and postmortem report to effect that 1st respondent A1 stabbed deceased and that motive for accused to kill deceased was clearly established and trial Court acquitted accused, by taking hyper technical view of matter and that mere fact that injuries sustained by A1 not referred by prosecution cannot be a factor to acquit accused - In this case, it is a matter on record that A1 sustained injuries at about same time at same place, at which deceased was murdered and police themselves shifted A1 to Hospital - Crime also registered for offence u/Sec.324 IPC against deceased and P.W.1 - In all fairness, they ought to have mentioned said fact in final report and during course of trial - Hence trial Court was left with no

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alternative, except to presume that version presented by prosecution not truthful one - When there was no reference to injuries sustained by A1 and even according to prosecution he was receiving treatment in Hospital by time of deceased was shifted to same hospital, there does not exist any basis to convict accused - Non-mentioning of injuries sustained by A1 in entire prosecution certainly shake very truthfulness of version of prosecution - Extending benefit of doubt to accused by trial Court - Justified - Criminal appeal, dismissed. **Public Prosecutor, Hyderabad Vs. Molli Venkateswara Visweswara Kumar 2008(1) Law Summary (A.P.) 277 = 2008(1) ALD (Crl) 565 (AP) = 2008(2) ALT (Crl) 111 (AP) = 2008 Cri. LJ 1997 (AP).**

—Sec.302, r/w Sec.34 - Murder - Dying declaration - Sessions Court convicting appellant/accused solely basing on dying declaration recorded by P.W.1, for causing murder of deceased by pouring kerosene and set him ablaze - P.W.1 stated that he obtained signatures of deceased and Medical Officer on dying declaration, but he did not take certificate of fitness from Doctor, whether deceased was in position to give a statement or not and did not obtain endorsement of Medical Officer about consciousness of deceased - Considering dying declaration and manner in which it was recorded, dying declaration recorded by P.W.1 cannot be relied upon and there is no other evidence on record to implicate appellants/accused to incident - From story put up by prosecution whole incident, as is being alleged to have been happened, is wholly improbable and cannot be relied upon - No case made out by prosecution and appellants/accused are entitled for acquittal - Appeal, allowed. **Shaikh Rafiq Vs. State of Maharashtra 2008(1) Law Summary (S.C.) 146.**

—Sec.302, r/w Sec.34 - Murder - Trial Court convicting appellant/accused for causing murder of deceased - High Court confirmed conviction and dismissed criminal revision filed by complainant claiming compensation to heirs of deceased - Contention that prosecution failed to explain injuries found on person of appellant/accused and his wife and that injuries caused to deceased by appellant in his self-defence and also to protect body of his wife from further assault by deceased and that appellants/accused are entitled to benefit of doubt - In a murder case, non-explanation of injuries sustained by accused at about time of occurrence or in course of altercation is very important circumstance from which Court can draw inference that prosecution has suppressed genesis and origin of occurrence and has thus not presented true version - In present case, prosecution not explained injuries on person of accused and his wife - View taken by Courts below that accused had no right of private defence to his body or to person of his wife, unsustainable - In light of evidence and in view of improbabilities, serious omissions and infirmities, interested nature of evidence and other circumstances, it is clear that prosecution has failed to prove case against appellant/accused beyond reasonable doubt - High Court is in error in brushing aside serious infirmity in prosecution case regarding non-explanation of injuries sustained by accused and his wife - Conviction of accused, set aside - Appeal, allowed. **Babu Ram Vs. State of Punjab 2008(1) Law Summary (S.C.) 149.**

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—Secs.302 r/w sec.34 - **ARMS ACT,** Sec.27 - "Appreciation of evidence" - Sessions Judge convicting appellant accused for offence u/Sec.302 IPC - High Court affirmed conviction - APPRECIATION OF EVIDENCE - Law is fairly well settled that even if acquittal is recorded in respect of co-accused on ground that there were exaggerations and embellishments yet, conviction can be recorded even if evidence is found cogent, credible and truthful in respect of another accused and that mere fact that witnesses were related to deceased cannot be a ground to discard their evidence - In law testimony of injured witness is given importance - When eye witnesses are stated to be interested and enimically disposed towards accused it has to be noted that it would not be proper to conclude that they would shield real culprit and rope in innocent persons - Truth or otherwise of evidence as to be weighed pragmatically - Court would be required to analys evidence of related witnesses and those witnesses who are enimically disposed - If after careful analysis and scrutiny of their evidence, version given by witnesses appears to be clear, cogent and credible and there is no reason to discard same and conviction can be made on basis of such evidence - Trial Court was right in recording finding on charge against appellant on proper appraisal of evidence - High Court concurred with the same and in view of evidence of informant who was eyewitness and I.O's evidence regarding his evidence treating statement of P.W.2 as FIR is perfectly legal and valid - In view of concurrent findings by High Court as well as Sessions Judge and order of conviction and sentence imposed against appellant is on basis of legal evidence on record and on proper appreciation of same - Appeal, dismissed. **Umesh Singh Vs. State of Bihar 2013(2) Law Summary (S.C.) 84.**

—Sec.302, r/w Sec.34 and **S.Cs and S.Ts (PREVENTION OF ATROCITIES) ACT, 1989**, Sec.3 (1)(x) and 3 (2) (v) - Trial juge convicting appellants/accused for alleged causing of death of deceased by forcibly administering pesticide to him on account of alleged illicit intimacy with daughter of 1st appellant - Contention that there is neither eye witness account, nor any circumstantial evidence to sustain conviction of the appellants/accused and that trial Court had adopted a far-fetched reasoning, beyond any imagination to connect accused with occurrence and very charge framed against accused was without any factual basis - In this case, some witness have spoken to existence of empty pesticide tin and a sickle, but those items were not treated as material objects - Not a single witness has spoken to various acts attributed to individual accused - None spoke about alleged illicit relations - All same, trial Court had drawn several inferences, and in fact, provided every possible link to connect accused with occurrence - Such approach is impermissible in law - When prosecution miserably failed to examine a single witness to speak to facts mentioned in charge sheet, it is totally ununderstadable as to how trial Court was able to find appellants/accused as guilty - Conviction and sentence ordered against appellants, set aside - Appeal, allowed. **Kothapalli Veeranna Vs. The State of A.P. 2008(1) Law Summary (A.P.) 272 = 2008(1) ALD (Crl) 598(AP) = 2008(1) ALT (Crl) 358 (AP).**

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—Sec.302, r/w Sec.34 and 109 - Murder - Circumstantial evidence - Sessions Judge convicting appellant/accused for commission of offence basing on circumstantial evidence - In a case where offence is said to have been established on circumstantial evidence alone, indisputably all links in chain must be found to be complete - Circumstantial evidence which formed part of records would not be relied upon for arriving at conclusion that appellant/accused is guilty of commission of said offence - In this case, *corpus delicti* has not been proved - Same need not be but death as a fact must be proved and even death not proved in this case and no piece of mortal remains of deceased was found - No reliable or acceptable evidence that offence has been committed by appellants - Neither any direct nor circumstantial evidence had been brought on record to establish guilt on part of appellant/accused - Impugned judgment, set aside - Appeal, allowed. **K.T.Palanisamy Vs. State of Tamil Nadu 2008(1) Law Summary (S.C.) 64.**

—Secs.302 r/w 34 & 149 - **CRIMINAL PROCEDURE CODE,** Sec.313 - "Motive" - "Interested witnesses" - Sessions Court convicted appellants/accused to suffer life imprisonment u/Sec.302 for committing murder - High Court confirmed conviction - Appellants/accused contend that alleged eye witnesses are family members of deceased, as such, are interested witnesses and that prosecution failed to prove motive and also failed to prove its case beyond any reasonable doubt - There is no hard and fast rule that family member can never be true witnesses to occurrence and that they will always depose falsely before Court - It will always depend upon facts and circumstances of a given case - Primary endevour of Court must be to look for consistency - Evidence of witness cannot be ignored or thrown out solely because it comes from mouth of a person who is closely related to victim - It is not always necessary for prosecution to establish a definite motive for commission of crime and it will always relatable to facts and circumstances of a given case - It will not be correct to say as an absolute proposition of law, that existence of a strong or definitive motive is *sine qua non* to holding an accused guilty of criminal offence - It is not correct to say that absence of motive essentially results in acquittal of accused if he is otherwise found to be guilty - When positive evidence against accused is clear in relation to offence, motive is not of much importance - Mere absence of motive, even if assumed, will not *per se* entitle accused to acquittal, if otherwise, commission of crime is proved by cogent and reliable evidence - Admission or confession of accused in statement u/Sec.313 of Cr.P.C recorded in course of trial can be acted upon and Court can relay upon these confessions to proceed to convict him.

COMMON INTENTION - "Common intention and commission of crime by members of an unlawful assembly" - It is a settled a principle of law that to show common intention to commit a crime it is not necessary for prosecution to establish as a matter of fact, that there was a pre-meeting of minds and planning before crime was committed - It is not even expected of prosecution to assign particular or independent roles played by each accused once they are members of unlawful assembly and have assaulted deceased persons, which resulted in their death - Every person of such

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an unlawful assembly can be held to be liable - Contentions raised by appellants/ accused are rejected - Appeals, dismissed. **Dharmidhar Vs. State of U.P. 2010(2) Law Summary (S.C.) 145.**

—Sec.302, r/w Sec.34 & 302, R/w Sec.109 - **EVIDENCE ACT,** Sec.25 & 27 - "Private defence" - Sessions Judge convicting A1 for committing double murder and acquitting A2 & A3 rejecting prosecution case that they abetted commission of crime - Appellant, A1 contends that crime occurred at about 10.30 p.m when A1 was in his house along with A2 and A3 and LW3, deceased (D1 &D2)who were strangers intruded into house inspite of request by A1 - Intruders also abused A2 & A3 and provoked - There was no pre-mediation on part of A1, but when deceased attacked, in lawful exercise of right of private defence due to grave and sudden provocation, A1 used knife to safeguard his life and life of A2 and A3 - Non-examination of LW3 and version in confessional statement of A1 to extent it is admissible or strong factors to exonerate A1 - EVIDENCE ACT, Sec.25 - No confessional made to Police Officer shall be proved as against person accused of any offence - There may be situations where a heinous crime is committed in exercise of right of private defence for protecting life and property - In such cases, accused may himself offer to confess giving incidents leading to exercise of such right or private defence - In such case, no doubt confession is inadmissible against accused, but if such confession favours accused in extricating himself from situation or to justify conduct which might be culpable, does Sec.25 Evidence Act prohibit using such confession to extent it favours accused - In this case, both intruders behaved in a violent manner and they being anti-social elements cannot be ruled out, accused A1 receiving some injuries in scuffle cannot be ruled out - Therefor it is not a culpable homicide amounting to murder as it is covered by fourth exception to Sec.300 IPC - Further, A1 was certainly exercising his right of private defence - Appellant, A1 is convicted u/Sec.304 Part-1 IPC - Criminal appeal, partly allowed. **Kandi Venkata Suneel Kumar Reddy Vs. State of A.P. 2010(1) Law Summary (A.P.) 389.**

—Secs.302, r/w 34 & 323 - Trial Court convicting accused for offence of causing death of deceased by assaulting him with lathis - High Court acquitting accused of offence u/Sec.323, r/w 34 while affirming imposition of life imprisonment for offence u/Sec.302, r/w Sec.34 as awarded by trial Court - In this case, it is evident that all accused persons prepared mentally and physically, to assault deceased and in furtherance to their common intention to kill accused - Deceased had suffered number of injuries - Collection of bloodstained earth itself is relevant piece of evidence and provides link in commission and place of crime - Where evidence is clear, cogent and creditworthy; and where Court can distinguish truth from falsehood, mere fact that injuries on person of accused are not explained by prosecution cannot, by itself be a sole basis to reject testimony of prosecution witnesses and consequently, whole case of prosecution - In this case, High Court and trial Court have recorded reasons for returning concurrent

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findings - It cannot be ignored that extent of participation, even in case of common intention covered u/Sec.34 IPC would not depend on extent of overt act - If all accused have committed offence with common intention and inflicted injuries upon deceased in pre-planed manner, provisions of Sec.34 would be applicable to all - Appeal, dismissed. **Mano Dutt Vs. State of U.P. 2012(1) Law Summary (S.C.) 193.**

—Sec.302, r/w Sec.34 & 379 - **IDENTIFICATION OF PRISONERS ACT,** Secs.5, 4 & 2(a) - **A.P. IDENTIFICATION OF PRISONERS RULES, 1975,** Rules 3, 12 (xxiii) (c) & 2(g) - **CRIMINAL PROCEDURE CODE,** Sec.2(h) - Murder - "Circumstantial evidence" - "Last seen" "Motive" - "Chance prints and finger prints" - Sessions Judge convicting accused for offences u/Sec.302, r/w Sec.34 sentencing them to undergo imprisonment for life - Admittedly there are no eye witnesses to incident and entire case of prosecution based on "circumstantial evidence" - When case of prosecution is wholly dependent on circumstantial evidence presumption of innocence of accused must have a dominant role - Before recording conviction on basis of circumstantial evidence Court must firmly be satisfied; (a) that the circumstances from which the interference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt; (b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and (c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him - In this case, firstly prosecution failed to prove motive for appellant/accused to kill deceased, - Secondly prosecution also failed to prove fact of accused last seen in company of deceased and evidence of P.W.1 who is roommate of deceased is inconsistent and creates any amount of doubt on credibility and trustworthiness of his evidence and thirdly prosecution failed to prove recovery of MOs. - EVIDENTIARY VALUE OF FINGER PRINT EXPERT - In this case, admittedly P.W.15 finger print expert did not note down length and breadth of broken glass pieces from which chance prints were collected and in view of non taking of length and breadth of chance finger print from broken pieces of beer bottles by expert and there being no recorded evidence produced by him whether chance finger prints were developed from single piece of broken bottle or two pieces of broken beer bottles, evidence of expert cannot be relied upon to connect accused to death of deceased, particularly when there is no evidence produced to show that accused and deceased took liquor just before death of deceased - Hence prosecution failed to prove last circumstance also to connect accused to death of deceased - It is highly hazardous to relay on circumstantial evidence which is brought on record in a very unsatisfactory manner and which does not inspire confidence in mind of Court - Prosecution failed to establish circumstances much less each circumstance connecting accused to death of deceased beyond all reasonable doubt - Conviction and sentence of appellants, accused for charges u/Secs.302, r/w 34 and 379 IPC, recorded by Sessions Judge cannot be sustained and is liable to be set aside - Appeal, allowed. **Narne Gopikrishna Vs. State of A.P. 2012(3) Law Summary (A.P.) 137 = 2013(1) ALD (Crl) 121 = 2012(3) ALT (Crl) 210 (AP).**

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—Sec.302, r/w 34, Secs.380 & 414 - Benefit of doubt - A-1, A-2 and A-3 charged for murder of deceased - Sessions Judge convicted A-1 and A-2 and acquitted A-3 for lack of cogent and convincing evidence - High Court confirmed conviction and sentence - Appellant/accused contends that High Court committed gross error in convicting appellant/A-1 on basis of highly unbelievable, insufficient and unconvincing evidence led by prosecution and that A-1 falsely implicated in commission of crime - In this case, finding of trial Judge and as accepted by High Court is wholly untenable and cannot be sustained and that confessional statement made by A-1 not found believable and reliable by trial Judge and accordingly they were acquitted of charge u/Sec.380, on same set of evidence was found against A-3 for holding him guilty of offence u/Sec.414 and has been giving benefit of doubt - There are material discrepancies and vital improvements in testimony of some P.W.s in regard to presence of A-1 - Evaluation of findings recorded by trial Court and affirmed by High Court suffers from manifest error and improper appreciation of evidence on record - Thus on basis of evidence appearing on record, two views are possible, A-1 is entitled to benefit of doubt - Conviction and sentence of A-1, set aside. **Krishnan Vs. State rep. by Inspector of Police 2008(2) Law Summary (S.C.) 107.**

—Sec.302, r/w 34 & 447,504 - **CRIMINAL PROCEDURE CODE,** Secs.216 & 217 - "POWER OF FRAMING , ALTERING AND ADDING CHARGES" - "PLEA OF PREJUDICE" - Trial Court convicting 2nd accused alone for offences u/Secs.302,447 & 304 appellants/accused causing death of deceased by assaulting him with deadly weapons - High Court allowed State appeal and convicting all 3 accused u/Sec.302 IPC - In this case, evidently both the Courts below after appreciation of evidence available on record came to conclusion regarding participation of all three appellant/accused - It is matter of great regret that trial Court did not proceed with case in correct manner - If trial Court was of view that there was sufficient evidence on record against A1 & A3 which would make them liable for conviction and punishment for offences other than those u/Sec.447 and 504 r/w Sec.34 IPC, Court was certainly not helpless for alter/add requisite charges at any stage prior to conclusion of trial - Sec.216 Cr.P.C empowers trial Court to alter/add charges at any stage before conclusion of trial - However, law requires that, in case of such alteration/addition of charges causes any prejudice in any way to accused, there must be a fresh trial on such altered/new charges and for this purpose prosecution may also be given opportunity to recall witnesses as required u/Sec.217 Cr.P.C - Court must endeavour to find truth - There would be failure of justice not only by unjust conviction but also by acquittal of guilty, as a result of unjust failure to produce requisite evidence - Of course right of accused have to be kept in mind and safeguard but they should not be over emphasised to extent of forgetting that victims also have rights.

PLEA OF PREJUDICE - 'Prejudic' is in capable of being interpreted in its generic sense and applied to criminal jurisprudence - "Plea of prejudice" as to be in relation to investigation or trial and not matters falling beyond their scope - Once accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that same has defeated rights available to

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him under jurisprudence, then accused can seek benefit under orders of Court - In this case, it is clearly established that appellants/accused did not intend to kill deceased and it all happned in spur of moment upon a heated exchange of words between parties after criminal trespass by appellants/accused on to land of deceased - Therefore it does not same to be a pre-determined or pre-meditated case - Ends of Justice would therefore be met, if all three appellants/ accused are convicted u/Sec.304 Part - I, r/w Sec.34 IPC and sentences are awarded accordingly. **Bhimanna Vs. State of Karnatka 2012(3) Law Summary (S.C.) 105.**

—Secs. 302 & 84 - Murder - Benefit of protection u/Sec.84 - Trial Court convicted appellant/accused for offence of murdering his younger brother basing on complaint submitted by mother of appellant - Allegation that appellant killed deceased with spade on account of his mental imbalance and family disputes -Contention that evidence of so-called eye witness, P.W.4 is totally unreliable in view of information elicited through him in cross-examination and that serious inconsistency is noticeable even as to manner in which FIR came to be registered and that trial Court formed an opinion as to mental condition of appellant without any basis and material on record - This is one of rare cases where mother has to shoulder heaviest possible task, viz., to accuse one of her sons, of committing of murder of another - No women, even in worst of circumstances, would imagine that she would face such delicate situation - Equally, same, Court is also faced with unenviable situation, of assessing evidence of mother in context of holding one of her sons, guilty of killing another - Trial Court formed opinion that appellant was on sound mind and on that account denied benefit of protection u/Sec.84 IPC - Such an important aspect was dealt with a very callous and indifferent manner - Case of prosecution vested much upon evidence of P.W.4 who is admittedly an old man of 60 years - It is unnatural that people of that age of P.W.4 would walk long distances to answer nature calls at midnight - Presence of P.W.4 at occurrence is totally unnatural and he is a planted witness - Not a single person, either from family or outside was examined to reveal mental status or conduct of appellant/accused - It is not at all safe to convict appellant on basis of incoherent and unnatural evidence - Conviction against appellant/accused, set aside - Appeal, allowed. **Gongadi Rama Subbarayudu Vs. State of A.P. 2008(1) Law Summary (A.P.) 416 = 2008(1) ALD (Crl) 753(AP) = 2008(2) ALT (Crl) 28 (AP).**

—Secs.302 & 107 - 'Suicide' and abatement - Allegation that accused developed physical contact with deceased on false promise of marriage and later wrote letters demanding dowry which caused deep depression and drove deceased to take extreme step of putting and end to her life - Trial Court convicted accused u/Sec.306 IPC - Sessions Judge allowed appeal and set aside conviction - Prosecution contends that letters clearly established persistant demand on part of accused for dowry and letter Ex.P.2 received by deceased on previous day of her committing suicide prove to be last straw on camel's back and drove deceased to take extreme step of ending her life as she was aware that it was impossible for her parents to meet said demand on account of their poverty and therefore said letter written by accused was proximate cause for commission of suicide

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and therefore writing of such letter by accused amounted to abetment within meaning of Sec.107 IPC - Accused contends that there is no mens rea on part of accused or any intention to instigate or aid or abet deceased to commit suicide and letter Ex.P.2 does not constitute abatment within meaning of Sec.107 IPC and that any amount of humiliation does not amount to causing abatment - In order to establish ingredients of offence u/ Sec.306 IPC prosecution has to show that abatment was of kind has defined in Sec.107 IPC - There is nothing in Ex.P.2 to show that accused in any way instigated or intentionally aided by any acts or omissions in commission of suicide by deceased - Mens rea is necessary to constitute instigation, any amount of abuse or threat or humiliation without necessary intention does not amount to instigation - In present case, letter Ex.P.2 which according to prosecution is proximate cause for commission of suicide does not disclose that accused had in any way induced or instigated or intentionally aided or assisted in commission of suicide by deceased - If deceased felt dejected or disappointed on receiving letter there were so many ways and means remedying sutiation - Resort to extreme step of ending life on saying contends of letter Ex.P.2 is not warranted on part of any person of ordinary prudence - Order of acquittal - Justified - Criminal appeal, dismissed. **Public Prosecutor High Court of A.P. Vs.M. Krishnaiah 2009(1) Law Summary (A.P.) 190 = 2009(1) ALD (Crl) 531(AP) = 2009(1) APLJ 249 = 2009(1) ALT (Crl) 358 (AP) = 2009 Cri. LJ 2342 (AP).**

—Sec.302, r/w Sec.109 - **CRIMINAL RULES OF PRACTICE,** Rule 33(1) - **EVIDENCE ACT,** Sec.32 - "Dying declaration" - Sessions Judge basing on dying declaration convicting A1 for offence u/Sec.302 and A2 for offence u/Sec.302 r/w Sec.109 - A1 poured kerosene on deceased wife in pursuance of abetment by his mother A2 and set her ablaze - P.W.1 to 9 closed relatives and neighbours and also parents of deceased did not support prosecution and have accommodated in cross-examination that deceased was not conscious and coherent when dying declaration recorded - In this case, there is no direct evidence about commission of offence by accused and alleged ill feeling between accused/deceased and Sessions Judge relied on two DDs, Ex.P.17 and Ex.P.26 which are available on record - Appellant accused contends that conviction cannot be based solely on such D.D.s - In this case, D.D. recorded by Magistrate is not satisfactory and is not in spirit and purpose for which statement is to be recorded - It is specific evidence of P.W.14 who is S.I of Police that he has examined deceased and recorded statement - If that be so, statement recorded by him has got more evidentiary value rather than statement which were drafted and brought by deceased to Police Station which is Ex.P.17 - But, for best reasons known to prosecution said statement which amounts to D.D is not placed before Court - Therefore, view from any angle D.D.s under Ex.P.17 and Ex.P26 are not consistent and statement recorded by Magistrate does not disclose factum of offence - Non-furnishing of statement of deceased recorded by P.W.14, S.I of Police entitles appellants to draw an adverse inference - Accused entitled for reasonable benefit of doubt - Convictions and sentence imposed by Sessions Judge cannot be sustained - Conviction, set aside - Both appeals, allowed. **P.T.M. Marappa Vs. State of A.P. 2011(1) Law Summary (A.P.) 223 = 2011(1) ALD(Crl) 772(AP) = 2011(2) ALT(Crl) 15(AP).**

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—Secs.302 & 109 - **EVIDENCE ACT,** Sec.118 - Child witness - Appellant/A-1 and A-2 tried for offence of murder of deceased - Trial Court convicting A-1 basing on testimony of child witnesses and gave benefit of doubt to A-2 and acquitting him - In this case, P.W.s 1 and 2 are child witnesses, daughter and son of deceased and as per defence version, deceased was practising sorcery and having illicit intimacy with some persons in village and admittedly incident took place in a dark night and none of witnesses spoke as to how they identified assailants in dark night - It is highly difficult and not appropriate to place reliance on testimony of P.Ws. 1 and 2 who are child witnesses - Since they are no other than children of deceased, they are susceptible for tutoring by family members of deceased - Trial Court rightly acquitted A-2 and wrongly convicted appellant on same evidence - Evidence forthcoming is of such a nature that truth cannot be separated from falsehood and is liable to be rejected in toto - Conviction and sentence passed by trial Court, set aside - Appeal, allowed. **Dasarigalla Chandraiah, Central Prison, Cherlapalli. Vs. State of A.P. 2008(2) Law Summary (A.P.) 149 = 2008(2) ALD (Crl) 47(AP) = 2008(2) ALT (Crl) 229(AP).**

—Secs.302 & 148 - **SCHEDULED CASTE AND SCHEDULED TRIBE (PREVENTION OF ATROCITIES) ACT,** Sec.3(2)(v) - **CONSTITUTION OF INDIA,** Art.21 - Accused tried for an offence u/Sec.302 IPC alternatively u/Sec.3(2)(v) of S.C & S.T Act and trial Court convicted appellants/accused for offence u/Sec.3(2)(v) of Act and Sec.148 IPC - Appellants/accused contend that in absence of any conviction for offence u/Sec.302 IPC, accused cannot be convicted for offence u/Sec.3 (2)(v) of Act on ground that deceased belong to Scheduled caste and that statements recorded u/Sec.161 Cr.P.C neither produced nor furnished to appellants and due to non supply of same accused have deprived of their valuable right to cross-examine prosecution witnesses and that once Sec.161 statement is suppressed a presumption has to be drawn that same is favourable to accused - CR.P.C, Sec.161 - There are discrepancies with regard to manner of assault on deceased in evidence of P.Ws - As such it can safely presume that Sec.161 Cr.P.C statements recorded by Police are not favourable to case of prosecution and they were purposefully suppressed by prosecution - Cross-examination is undoubtedly greatest legal engine ever invented for discovery of truth - Denial of opportunity for cross-examination on earliest statements would result a fatal flaw and also infraction of fair trial under Art.21 of Constitution - Prosecution wantonly suppressed earliest statements recorded, if which produced will not substantiate accusation made against accused - Sec.3(2)(V) S.C & S.T ACT - Unless a person commits any offence under IPC, punishment of imprisonment for life by invoking provisions under S.C & S.T Act does not arise - Conviction can be on offence committed but mere charge for commission of offence does not lead to conclusion that a person committed offence - When a person is acquitted of charge for offence under IPC, by no stretch of imagination he can be convicted for offence u/Sec.3(2)(v) of Act, since commission of offence under IPC has not been established by prosecution beyond reasonable doubt - In this case, trial Court without recording any conviction and sentence for offence u/Sec.302 IPC convicted accused for offence u/Sec.3(2)(v) of Act - When prosecution failed to establish that accused committed an offence u/Sec.3(2)(v) of Act, conviction and sentence recorded

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by trial Court, unsustainable and liable to be set aside - Criminal appeal, allowed. **Gangula Venkateswara Reddy Vs. State of A.P. 2009(1) Law Summary (A.P.) 284 = 2009(1) ALD (Crl) 453 (AP) = 2009(1) ALT(Crl) 365 (AP) = 2009 Crl. LJ 1958.**

—Secs.302, 148,149,307,342,364,506 & 221 and 220-B - **ARMS ACT,** Sec.30 - Land dispute - Appellant, wanted to take possession of land forcibly from complainant party - One person died due to gun injury - Deceased body of injured person recovered - Trial Court convicted all accused persons u/Sec.302/149 IPC - High Court allowed four appeals filed by convicted persons out of six appeals - Appellants contend that High Court allowed appeals disbelieving theory of conspiracy for taking possession of said disputed land forcibly and that names of appellants not mentioned in FIR and that there was inordinate delay in lodging FIR and dead body was recovered after two weeks of incident and that body was completely in a de-composed as it remained in water for two weeks and there is no material before Court to hold that dead body recovered was that of deceased - State contends that issue of delay in lodging FIR has been fully considered by Courts below and Courts were satisfied that there was no delay at all as complainant/informant remained in custody of assailants and that witnesses fully identified cloths found on person of deceased as they were same at time of incident and at time of recovery of dead body - In instant case, dead body identified by two fellow labourers and medical evidence is same as that of ocular evidence and that issue of identification does not require any further consideration - Findings recorded by Courts below on issue of identification of dead body also does not call for any interference - Appeal, dismissed. **Jarnail Singh Vs. State of Punjab 2009(3) Law Summary (S.C.) 112.**

—Secs.302,149,326 and 324 - **CRIMINAL PROCEDURE CODE,** Secs.162 and 107 - "Free fight" - In this case there was a free fight between two groups one led by P.W.1 and another group led by A.1 - Sessions Judge convicting some accused and acquitting some accused - Aggrieved by acquittal of some accused State preferred Criminal appeal, where as challenging convictions and sentences recorded against some accused, accused preferred another criminal appeal - In this case, as seen from evidence there was free fight in two groups - There is no dispute with regard to fact that cause of death of deceased was homicidal - None of witneses stated about origin or genesis of occurrence and they simply stated that while they were present in their respective houses they heard some galata from out side and came out and saw all accused armed with weapons - It is not at all case of any one of prosecution witneses that they were armed with any deadly weapons - Prosecution has failed to explain injuries sustained by accused and on other hand P.W.1 who set criminal law in to motion has categorically stated that none of accused sustained injuries - That means prosecution has suppressed origin or genesis of occurrence - Delay in lodging FIR and further delay in sending same by itelf is not a ground to discard testimony of witness, but certainly delay in registering case and also sending same to Court can be taken as one circumstance, so as to doubt prosecution case when there are other circumstances appearing in prosecution evidence - In view of

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several infirmities in evidence of prosecution, it is not safe to place implicit reliance on their evidence - At best accused persons have to be guilty of individual overt acts - As seen from record, a perfunctory investigation has been conducted by Investigating Officer and he has not conducted investigation in accordance with law and he has not taken effective steps to conduct investigation in correct lines - So, in view of perfunctory investtigation and in view of delay in lodging report and also delay in sending report to Court and in view of fact that witnesses suppressed origin and genesis of occurrence it is not safe to place an implicit reliance on evidence of prosecution witnesses so as to base conviction - Trial Court has given correct finding with regard to "free fight" between two groups - Hence, appellants are found not guilty of charges levelled against them - Criminal Appeal, allowed and conviction and sentences recorded by trial Court against appellants are set aside - Criminal appeal preferred by State, dismissed. **Korrai Chilakaiah Vs. State of A.P. 2013(2) Law Summary (A.P.) 106 = 2013(2) ALD (Crl) 280 (AP).**

—Secs.302, r/w 149, 452, 148 and 123 - Sessions Judge convicted accused for offence u/Sec.302 r/w Sec.149 and sentenced for imprisonment for life - High Court dismissed appeal preferred by accused - APPRECIATION OF EVIDENCE - Medical evidence of injuries sustained by deceased assumes significant importance - All eye-witnesses have categorically stated that deceased was injured by use of firearm, whereas medical evidence given by doctor specifically indicates that no firearm injuries were found on person of deceased - While appreciating evidence between medical evidence and ocular evidence, oral evidence of eye-witness has to get primacy as medical evidence is basically opinionative - But when Court finds inconsistency in evidence given by eye witnesses which is totally inconsistent to that given by medical experts, then evidence is appreciated in different perspective by Courts - In present case, medical evidence completely rules out prosecution version of injuries being caused by firearms, coupled with fact that no evidence has been produced by prosecution of any pellet or bullet being recovered from place of incident or from body of deceased in post-mortem - In light of fact that there was enimity between parties and eye-witnesses examined are related to deceased and are interested witnesses - In absence of lantern or torch, in light of which incident was said to have been witnessed, prosecution case as placed before Court is full of doubts, and as such accused/appellants are entitled to benefit of doubt - Judgment of High Court and trial Court, set aside - Appeals, allowed. **Kapildeo Mandal Vs. State of Bihar 2008(1) Law Summary (S.C.) 29.**

—Secs.302 & 201 - Appellant/accused convicted for committing murder of 11 months old child by throttling its neck - Prosecution alleged that appellant/accused is wife of P.W.6 who is younger brother of P.W.1 and P.W.2 is wife of P.W.1 and P.W.3 is sister of P.W.1 who is living in same house deserting her husband, attributing motive to accused that if deceased is killed, entire property of P.W.1 would also accrue to her husband, since P.W.2 had undergone family planning operation after birth of deceased child - Appellant contends that there is any amount of inconsistency as regards to

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occurrence and entire family had conspired against appellant to implicate her on account of fact that her parents not able to meet demands of dowry and that there is 4 ½ hours delay in filing complaint and that apart from denying her complicity appellant had explained in detail as to what had happened on date of occurrence and immediately prior thereto and that trial Court did not take same in to account - Theory of P.Ws.1,2,3 & 6 is different and stands belied - Evidence of P.W.3 is at total variance with what was stated by P.Ws. 1 & 2 - This is one of rare cases where appellant had offered a detailed explanation as to what transpired between herself and other witnesses immediately preceding death of child - Even half of what is contained in her statement is true, it is more a case for prosecuting P.Ws.1,2,3 & 6 for offence u/Sec.498-A for harassing appellant - Appellant who hardly crossed age of minority, was victimized in a deep-rooted conspiracy - In this case, deceased aged 11 months and within that period family spent Rs.50,000/- for his treatment and admittedly just 4 days prior to incident child discharged from hospital - Unfortunate ill-health of child was converted as a device by P.Ws. 1,2,3 & 6 to get rid of appellant - Trial Court has unfortunately fallen prey to a cleverly woven story, least realizing that a close analysis of same would have revealed crude design of P.Ws.1 2, 3 & 6 - Very fact that even parents of appellant were not informed till she was arrested discloses design according to which whole show was conducted - Conviction and sentence passed against appellant-accused, set aside - Appeal, allowed. **Ukkajigari Vanaja Vs. State of A.P. 2008(1) Law Summary (A.P.) 247 = 2008(1) ALD (Crl) 405(AP) = 2008(1) ALT (Crl) 220 (AP).**

—Secs.302 & 201 - Circumstantial evidence - "Last scene theory" - Trial Court convicting A1 and A2 for alleged killing deceased by stabbing with knife and through dead body on railway track to make it appear as if death was caused to run over by train - Since deceased informed husband of a lady about her illicit intimacy with A1 - Admittedly there is no direct evidence to prove alleged offence and when prosecution depends on circumstantial evidence absence of sufficient motive assumes significance and importance - In present case, it must be held that prosecution failed to establish any motive on part of accused to commit offence and that motive alleged against A1 having been found to be too remote and does not inspite any confidence - Circumstantial evidence - Where prosecution seeks to relay upon circumstantial evidence, it is incubent on their part to establish or necessary circumstances that would form a chain leading to invariable conclusion that offence is committed by accused alone and nonelse - "Last scene theory" - It comes into play where time gap between point of time when accused and deceased were last scene alive and deceased is found dead is so small that possibility of any person other than accused being author of it becomes impossible - Even in such a case, courts should look for some corroboration - In this case, prosecution failed to establish circumstances relied upon by them, more importantly circumstances of deceased last scene in company of A1 and A2 and alleged recovery of MOs from house of A2 - Prosecution also failed to establish motive alleged against A1 to cause death of deceased - Evidence produced by prosecution is to scanty to be relied upon on bais a conviction thereon - Impugned judgment, set aside - A1 and A2 are found not guilty of offences. **Lan Prabhudas Vs. The State of A.P. 2009(1) Law Summary (A.P.) 199 = 2009(1) ALD (Crl) 411(AP) = 2009(1) ALT (Crl) 298 (AP).**

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—Secs.302, 304-B & 201 – **CRIMINAL RULES OF PRACTICE,** Rule 33(4) "dying declarations" – Appellants A1 to A3 charged for offences punishable u/Secs.302, 304-B & 201 OF IPC – Trail Judge convicted accused for offence punishable u/Sec.302 IPC, but acquitted them of charge u/Secs.304 –B and 201 IPC – Hence present Criminal Appeal - Appellant accused contends that every witness examined by prosecution turned hostile and trial Court has rested conviction of accused only upon two dying declarations Ex.P11 & P14 and that they cannot be relied upon, since they were recorded 6 days after incident and that precautions that are stipulated under law were not taken at all and that Pw-14/Magistrate who recorded Ex.P11 admitted that neither he has mentioned in it that person from whom statement was being recorded was conscious, not that was noted down by him was read over to person – Ex.P14 cannot be relied upon, since it was said to have been recorded by police official, that too after requisition was given to Magistrate - In this case no steps were taken to register any crime and at the stage of giving requisition for dying declaration also, no crime was registered and it was only after PW-5 submitted complaint on 4-9-2009 after death of his daughter a crime was registered – Though incident occurred on 30-8-2009, dying declarations Ex.P11& P14 came to be recorded only on 4-9-2009 i.e., after a gap of 6 days – Recording of dying declarations 6 days after incident would have its own impact upon its credibility - It is elicited from PW-14/Magistrate that he did not mention in Ex.P11 that he found person from whom he was recording statement, was conscious and that he did not read over contents of declaration to that person - Rule 33 of Criminal Rules of Practice assumes significance in this regard and sub-rule(4) there of mandates that after statement is recorded it shall be read over to declarant and his or her signature must be obtained there on if possible and it is only then Magistrate shall sign statement – In view of admission of PW-14 in the evidence, legal acceptability of Ex.P11 suffers a serious dent – Ex.P14 was recorded by SHO one hour before Ex.P11 was recorded - Law presumes truthfulness on part of person who is making statement since he or she is virtually at end of life - Not withstanding sympathies which law can exhibit towards a person who lost life, liberty of another person cannot be put at stake unless, valid basis exists therefor - It is only when is dying declaration perfect in all respects and is free from any defect, that it can be treated as sole basis to convict accused – Conviction ordered in this case is unsustainable and conviction and sentence ordered by Sessions Judge, set aside - Criminal Appeal allowed. **Konda Ashok Vs. State of A.P. 2014(1) Law Summary (A.P.) 288 = 2014(1) ALD (Crl) 760 (AP).**

—Secs.302, 304-B & 498-A - Death of wife within a year of marriage at her husband's house – Both husband and mother-in-law were made accused and charge-sheeted under Sec.304-B – Subsequently sections altered to 302 and 498-A – Trial Court held there are no eye witness nor circumstantial evidence and acquitted accused – Appeal by the State under Sec.378(1) and (3) of Cr.PC against acquittal – Held that alteration of Section was bad in law and S.216 of Cr.P.C. confers power on High Court to alter charge at appellate stage even - Judgment of trial Court is set aside and de novo trial ordered. **State of A.P. Vs. Ettekapalli Yellamma @ Yellamma @ Nayom 2014(2) Law Summary (A.P.) 168.**

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—Secs.302 & 307 r/w Sec.149 - Deceased died on account of injuries inflected on vital organs - Appellant/accused contends that no single injury has been found to be sufficient in ordinary course of nature to cause death as per medical evidence and at best they have only caused an injury which was likely cause to death and therefore no case for an offence u/Sec.302 IPC - Every variation or discrepancy in statement of witness cannot belie case of prosecution per se - In this case, fact that injuries were inflected by collective offence upon deceased and injured witnesses is duly demonstrated not only by medical report but also by statements of Doctors - Thus prosecution has been able to establish its case - Contention of appellants that this is a case, where Court should exercise its discretion to alter offence to one u/Sec.304, Part-II of Sec.326 IPC from that u/Sec.302 IPC, rejected - Appeal dismissed. **Atmaram Vs. State of Madhya Pradesh 2012(2) Law Summary (S.C.) 108.**

——Secs.302, 307 and 324 r/w Sec.34 - Two appeals arise out of a common case - Prosecution has failed to establish sufficient motive for committing offence as alleged against accused - Express F.I.R. was received by Magistrate more than 12 hrs after it was purportedly registered by police and this gives rise to a serious suspicion that it may have been ante-timed - When a person was stabbed and has received grave injury, it is natural course of human conduct that nearest kith and kin will at first instance attend to person at same place where he has received injuries, more so when such place happens to be his own house and shift him to a nearby hospital without any loss of time - Without taking these measures, nobody is expected to leave a seriously injured person to her fate by placing her on a cot on street like an orphan - From rough sketch, it appears that distance between place occurrence and compound wall on which blood was allegedly found is nearly 40 ft. and distance between cot on which deceased was placed and said compound wall is about 5 ft. to 6 ft. - It is not case of prosecution that deceased was attacked after she was placed on the cot - Therefore, it is impossible to believe that compound wall of deceased was found with blood marks if offence has taken place 40 ft. away from it within the compound of deceased - For all above reasons, Court opinion that offence has not taken place at place projected by prosecution - Prosecution has not seized the blood stained clothes and produced before Court - This lapse makes a huge dent on case of prosecution rendering its version wholly untrustworthy - Failure of prosecution to explain whether bloodstained earth and control earth were seized from place under cot and also its failure to seize cot and send tape to Forensic Science Laboratory throw any amount of doubt on truthfulness of its case - Opinion of P.W. 3-Doctor that if a person falls on a bamboo stick can sustain such injury as caused to deceased probabalizes defence theory that deceased would have accidentally fallen on a bamboo stick in course of altercation and as a result thereof she would have sustained injury.

Oral evidence given by P.Ws. 4, 5 and 6 are also not inspiring confidence and they seem evidently planted witnesses - Case of prosecution suffers from several loose ends and gaping holes casting heavy cloud on its credibility - Court further

view that alleged occurrence would not have taken place at scene of offence set up by prosecution and in manner it has pleaded - Probability of deceased sustaining injury in an altercation between two groups could not be ruled out and prosecution failed to prove its case in a convincing manner to enable the court to conclude without any element of doubt in its mind that accused No.1 has caused the death of the deceased and that accused Nos.1, 3 and 4 have also caused injuries to P.W.1 in manner as propounded by it - Therefore, this court feels that all accused deserve benefit of doubt and accordingly, they are entitled to be acquitted - In result, both Criminal Appeals are allowed. **Narasapuram Balaiah Vs. State of A.P. 2016(2) Law Summary (A.P.) 270 = 2016(2) ALD (Crl) 331 = 2016(2) ALT (Crl) 449 (AP).**

—Secs. 302, 323,324 r/w 34 and 300 Exception-4 - Complainant and appellant accused are closely related and dispute arose because of conflicting claims as to ownership of land - Trial Court convicting accused u/Sec.302 IPC - Appellant/accused contends that they were exercising right of private defence or alternative occurrence took place in course of sudden quarrel and therefore Sec.302 IPC has no application - Where offender takes undue advantage or has acted in a cruel or unusual manner, benefit of Exception-4 of 300 cannot be given to him - In this case, in light of evidence, inevitable conclusion is that occurrence took place in course of sudden quarrel, appropriate conviction would be u/Sec.304 Part-1 IPC. **Iqbal Singh Vs. State of Punjab 2008(3) Law Summary (S.C.) 48 = 2008(2) ALD (Crl) 641 (SC) = 2008(6) Supreme 329 = 2008 AIR SCW 6368.**

—Secs.302 & 324 - Trial Court convicting appellant/accused for offence of killing his step-mother and causing grievous injuries to PWs. 3 & 4 - Alleged accusation against appellant that his father P.W.4 married deceased on ground that appellant's mother deserted him and after marriage P.W.4 effected partition of family properties and when P.W.4 did not agree for allotment of one acre more to appellant and his brother, he nurtured grievance and grouse against his father, P.W.4 and step-mother, deceased - Contention that prosecution has falsely implicated appellant by taking advantage of family disputes and that deceased not at all legally wedded wife of P.W.4 and was not of virtuous character, and murder could have been handiwork of one of her paramours and that there are glaring material contradictions in evidence of alleged eye-witnesses and that medical evidence does not at all corroborate with ocular evidence and that independent witnesses have turned hostile, and it is only interested witnesses, that have spoken about involvement of appellant - In this case, there was no plausible explanation for delayed submission of FIR, and possibility of delay being utilized for deliberations and consultations, cannot be excluded - There are several missing links, inconsistencies and improvements, in case presented by prosecution - Doubt cast upon character of deceased and allegation that P.W.4 had driven out mother of appellant would have their own relevance and significance - When whole episode is shrouded with so much of mistery and doubtful circumstances, it is not at all safe to convict appellant-accused - Benefit of doubt needs to be extended to accused - Conviction and sentence against accused, set aside - Appeal, allowed. **Samineni Upender Rao Vs. State of A.P. 2008(1) Law Summary (A.P.) 216 = 2008(1) ALD (Crl) 444 (AP) = 2008(1) ALT (Crl) 288 (AP).**

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—Secs.302 & 324 - **CRIMINAL PROCEDURE CODE,** Sec.154 - Trial Court convicted accused - Accused contend that he has been falsely implicated in this case and that FIR not issued on basis of statements of alleged eye-witnesses who did not give any report to Police - Though Police enquired and obtained their statements FIR not issued on basis of such statements and thus earliest version in this case has been suppressed - Admittedly P.Ws.1,3 & 4 did not give any report to Police - Admittedly no FIR was issued on basis of statements given by P.Ws.1,3 & 4 - Thus allegation that only selected persons have been chosen as eye witnesses lends support from above circum-stances - Admittedly P.W.1 is reisiding 1/2 KMs of scene of offence and P.Ws.3 & 4 are residing at a distance of $1/4^{th}$ KMs from scene of offence - Alleged incident took place at 11.30 pm - Normally, presence of witnessess at scene of offence at relevant time appears to be doubtful - According to P.W.10 blood stained shirt, M.O.7 was hanging to a hanger in house of accused - It appears to be unnatural and improbable to say that accused would keep blood stained shirt to a hanger even after four days after date of offence, though police visited his house before seizure of M.O.7, from his house - "Where two views are reasonably possible on basis of evidence on record, one that favours accused must be accepted" - Trial Judge not considered facts and circumstances and erred in convicting accused - It is not safe to convict accused basing on evidence of P.Ws.1,3 & 4 - Judgment of trial Court, set aside - Appeal, allowed. **Thummala Lovaraju Vs. The State of A.P. 2009(2) Law Summary (A.P.) 95 = 2009(1) ALD (Crl) 720 (AP) = 2009(2) ALT (Crl) 135 (AP) = 2009(2) APLJ 12 (SN).**

—Sec.302, 324 & 304 Part-II - **CRIMINAL PROCEDURE CODE,** Sec.162 - "Delay in lodging FIR" - "Authenticity of FIR" – Sessions Judge convicting appellant/accused u/ Sec.304 Part-II for causing death of deceased relying on evidence of P.W.4 wife of deceased and P.W.10 Investigating Officer - Contention that trial Court gravely erred in treating P.W.4 as eye witness and considering evidence of Investigating Officer, despite P.W.7 mediator not supporting his version - If really FIR was not registered soon after Police received information about murder of deceased after arriving at village on same night itself, it certainly raises a serious doubt about truthfulness of prosecution version - AUTHENTICITY OF FIR - Entire fabric of prosecution case would collapse if FIR is held to be fabricated - Registering complaint as FIR after reaching SPOT and after due deliberations, consultations and discussions, complaint could not be treated as FIR, but it would be a statement made during investigation and hit by Sec.162 Cr.P.C. - 'Inordinate delay' in registering FIR in this case creates any amount of doubt in mind of Court that eye witnesses were introduce only as an after thought - FIR looses its authenticity and in strict sence is only a statement made during course of investigation and is hit by Sec.162 Cr.P.C - A careful analysis of evidence of P.W.4, wife of deceased in light of medical evidence clearly indicates that she is not a direct witness to occurrence but was wrongly considered as eye witness by trial Court - When once it is held that P.W.4 not at all eye witness it is not possible to base a conviction even if testimony of Investigating Officer is believed with regard to recovery of weapon of offence - Conviction of accused is based on

surmises and conjectures, but not on any legal evidence - Hence, set aside - Appeals, allowed. **Munavath Redia Vs. State of A.P. 2009(1) Law Summary (A.P.) 375.**

—Secs.302 & 326 r/w Sec.34 - **S.C. AND S.T. (POA) ACT, 1989,** Sec.3(ii) (v) - Disputes arose between accused/appellants and their father and sister relating to partition of land - Deceased and P.Ws.1 to 4, Members of CPI (ML) group promised to dispossess appellants from land and accordingly picked up quarrel with appellants and hacked A1 with knife on his head, A1 in turn hacked deceased with knife as result of which deceased succumbed to injuries - Charge-sheets filed against appellants/accused and P.Ws.1 to 4 - Sessions Judge convicted accused/appellants - Asst. Sessions Judge acquitted P.Ws.1 to 4 - In this case, entire evidence of P.Ws.1 to 4 is quite contrary to their statements recorded by Police u/Sec.161 Cr.P.C - As many as 24 contradictions were marked on behalf of appellants in 161 statements of P.Ws.1 to 4 and they have been duly proved by defence - Medical evidence does not support prosecution story and it comes into conflict with oral evidence - When there are case and counter case, both must be tried by one and same judge and must be disposed of simultaneously by him, otherwise, it is not possible to arrive at a definite conclusion as to genesis of incident and also fix up aggressor - Admittedly accused also received injuries - When prosecution does not explain injury sustained by accused at about time of occurrence of in course of same transaction, Court can draw inference that prosecution has suppressed genesis and origin of occurrence and has thus, not presented true version - In this case, basic version of prosecution itself is that prosecution party trespassed into land of appellants arming with deadly weapons with a view to dispossess them forcibly from land in their occupation - Therefore undoubtedly they are aggressors - Both cases ought to have been tried and disposed of simultaneously by one and same Court - Evidence of P.Ws.1 to 4 does not stand to legal scrutiny - Trial Court without going into crucial aspects and without analyzing evidence in proper perspective convicted appellants by adopting a mechanical approach which is reprehensible - Conviction against appellants, unsustainable - Appeal, allowed. **Adapa Gangadhara Rama Rao Vs. State of A.P. 2009(3) Law Summary (A.P.) 378.**

—Secs.302, 201,371,411 r/w Sec.34 - Investigation - Appreciation of evidence - Trial Judge convicting accused awarding death sentence for causing death of deceased by strangulating body and thereafter cutting it into pieces and packing same in gunny bags and abandoning same at deserted place - High Court while answering death reference in negative sustained their conviction u/Sec.302, rw/ Sec.34 IPC awarding them rigorous imprisonment for life - Hence present appeal against order of High Court - Appellant contends that some of the witnesses have turned hostile and have not supported case of prosecution - Mere fact that witnesses have turned hostile would not affect case of prosecution adversely - Firstly it is for reason that fact that those witnesses were to prove already stand fully proved by other prosecution witnesses and those witnesses have not turned hostile, instead they have fully supported case of prosecution - It is settled principle of law that statement of hostile witness can also be relied upon by Court to extent its supports case of prosecution.

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DISCREPANCIES IN STATEMENT OF WITNESSES - Undoubtedly some minor discrepancies or variations are traceable in statements of witnesses - But what Court has to see is whether these variations are material and affect case of prosecution substantially - Every variation may not be enough to adversely affect case of prosecution - It is settled principleof law that Court should examine statement of witness in its entirety and read said statement along with statement of other witnesses in order to arrive at a rational conclusion - No statement of witness can be read in part and/or in isolation - No material or serious contradiction in statement of witnesses - There is no material in statement of witnesses which may *g*ive any advantage to accused.

DELAY IN EXAMINATION OF WITNESSES - It would depend upon a number of circumstances - For example, non-availability of witnesses, investigating Officer being pre-occupied in serious matters, investigating Officer spending his time in arresting accused who are absconding - In this case Investigating Officer recorded statements of nearly 28 witnesses - Therefore some delay was bound to occur in recording statements of witnesses.

COMMON INTENTION - Ingredients of more than two persons being present, existence of common intention and commission of overt act stand established in present case - Statement of witnesses clearly show that all 8 accused were present at scene of occurrence and they had demanded money and extended threat of dire consequences, if their demand was not satisfied - Therefore they had altercation with deceased and deceased was strangulated by accused persons and then his body disposed of by cutting in to pieces and packing same in gunny bags and abandoning same at a deserted place - Therefore offence was committed with common intention and collective participation - No reasons to interfere with judgment of High Court either on merits or on quantum of sentence - Appeals, dismissed. **Shyamal Ghosh Vs. State of West Bengal 2012(2) Law Summary (S.C.) 160.**

—Secs.302, 364 and 201, r/w Sec.34 - **INDIAN EVIDENCE ACT,** Sec.11, 106, 114 and 134 - CRIMINAL PROCEDURE CODE, Sec.386 - Appeals filed against common judgment passed by HIgh Court - High court while dismissing criminal appeals filed by appellants, allowed criminal revision petition filed by wife of deceased and enhanced sentence of four appellants from seven years RI to imprisonment for life u/Sec.364 IPC.

POLICE ATROCITIES: Police atrocities in India always being subject matter of controversy and debate in view of provisions of Art.21 of Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited - Torture is not permissible whether it occurs during investigation, interrogation or otherwise - Wrong-doer is accountable and State is responsible if a person in custody of Police is deprived of his life except in accordance with procedure established by law - Safety of people is supreme law and safety of State is Supreme law, co-exist - However doctrine of welfare of an individual must yield to that of community.

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ALIBI - Most of appellants had taken alibi for screening themselves from offences - However none of them could establish same - If there is sufficient evidence to show that accused fabricated some evidence to screen/absolve himself from offence, such circumstance may point towards his guilt.

BURDEN OF PROOF - Sec.106 of Evidence Act is not intended to relieve prosecution of its burden to prove guilt of accused beyond reasonable doubt, but section would apply to cases when prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless accused by virture of special knowledge regarding such facts failed to offer any explanation which might drive Court to draw a different inference - Sec.106 of Evidence Act is designed to meet certain exceptional cases, in which it would be impossible for prosecution to establish certain facts which are particularly within knowledge of accused.

EVIDENCE OF ACCOMPLICE - Deposition of accomplice in a crime who has not been made an accused/put to trial, can be relied upon, however, evidence is required to be considered with care and caution - Accomplice who has not been put on trial is a competent witness as he deposes in Court after taking oath and there is no prohibition in any law not to act upon his deposition without corroboration.

TESTIMONY OF SINGLE WITNESS - There is no legal impediment in convicting a person on sole testimony of single witness - But if there are doubts about testimony, Court will insists on corroboration.

CORPUS DELICTI - Recovery of - In a trial for murder it is neither an absolute necessity nor an essential ingredient to establish corpus deliti - Death of deceased must be established like any other fact - Corpus delicti in some cases may not be possible to be traced or recorved - What is therefore required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit dead body may not be traced.

ENHANCEMENT OF SENTENCE - Suo motu powers of enhancement under revisional juridiction can be exercised only after giving notice /opportunity of hearing to accused - High Court in exercise of its power u/Sec.386 (e) Cr.P.C is competent to enhance sentence suo motu - However such a course is permissible only after giving opportunity of hearing to accused - Judgment and order of High Court - Justified - Appeals, dismissed. **Prithipal Singh Vs. State of Punjab 2012(1) Law Summary (S.C.) 1.**

—-Secs.302 and 379 - Appellants-accused submitted that case is based on circumstantial evidence and prosecution failed to establish all essential links in chain of circumstances so as to hold that it is the appellants-accused who had committed crime - That excepting for alleged extra-judicial confession said to have been made by appellants before PWs 3 to 5, absolutely no evidence is placed before Court by prosecution and that learned Sessions Judge has erred in accepting evidence of prosecution witnesses and convicting appellants - M.Os.4, 5 and 6 were not identified by any of

relations - Corpse that was found was not that of deceased and it was in a highly decomposed state, and that as per medical evidence, the deceased died more than 15 days prior to 01.08.2006 when the postmortem was conducted - Conviction and sentence of appellants-accused cannot be sustained - On other hand, based on extra-judicial confession made by the appellants accused before PWs 3 to 5 and their subsequent confession leading to the recovery of material objects, Court below has found appellants-accused guilty and conviction and sentence is based on legally acceptable evidence warranting no interference.

Held, as per Ex.P1-inquest panchanama, in Col.No.7, it was mentioned that dead body was in a highly decomposed state, that skull of deceased was kept in between two legs, having no hair on head, that skin peeled, that body was covered with insects, that bones of both legs were visible, and that stomach and chest portion is inside shirt - That apart, as already stated, deceased disappeared on and from 22.07.2006, but as per condition of body found, apparently it was dead body of a person, who died more than 15 days prior to 01.08.2006 when postmortem was conducted, as spoken to by PW 9-the Medical Officer and borne out from Ex.P9 postmortem report - For foregoing discussion, this Court have no hesitation to hold that prosecution has miserably failed to prove its case, much less beyond reasonable doubt - Neither any motive is established nor is there any evidence to show that Kashiram and appellants were last seen together and the servant of Kashiram, (LW 9) has not been examined - Extra judicial confession said to have been made by appellants is full of discrepancies and inconsistencies and same is therefore untrustworthy - So called confession leading to recovery of M.Os.4 to 6 is also not satisfactorily established - Medical evidence on record has not established identity of dead body as that of Kashiram - Above aspects have not been considered by trial court and therefore, judgment impugned is not sustainable and same is liable to be set aside - In the result, conviction set aside - Criminal Appeal is allowed. **Kompala Mallaiah Vs. State of A.P. 2016(2) Law Summary (A.P.) 370 = 2016(2) ALD (Crl) 606.**

—Secs.302 & 392, r/w Sec.34 - **EVIDENCE ACT,** Sec.114 - "Circumstantial evidence" - Trial Court convicted appellant/accused relying upon circumstantial evidence for causing murder of deceased by robbing ornaments worn by her - High Court maintained conviction of accused - Hence present appeal filed against order of High Court.

CIRCUMSTANTIAL EVIDENCE - Care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent - Only circumstantial evidence of a very high order can satisfy test of proof in criminal prosecution - In case resting on circumstantial evidence, prosecution must establish a complete unbroken chain of events leading to determination that inference being drawn from evidence is only inescapable conclusion - In absence of convincing circumstantial evidence accused would be entitled to benefit of doubt - Evidence in this case, produced by prosecution does not in any way establish guilt of accused - Prosecution had endeavoured to prove allegations levelled against accused on basis of circumstantial evidence - Prosecution failed to establish an unbroken chain of events lending to

determination that inference being drawn from evidence is only inescapable conclusion - In fact prosecution has not been able to connect accused with alleged crime in any manner what so ever - Appellant/accused is liable to be acquitted of charges levelled against him. **Madhu Vs. State of Kerala 2012(1) Law Summary (S.C.) 77.**

—Sec.302, 404 & 201, r/w Sec.34 - **CRIMINAL RULES OF PRACTICE,** Rule 45 - Trial judge convicting appellants/accused basing on circumstantial evidence - Contention that there are no eye-witnesses to offence and circumstantial evidence has several missing links and that there was inordinate delay in conducting test-identification parade and that alleged identification not conducted in accordance with procedure prescribed under Rule 45 and that prosecution failed to establish link between occurrence of incident and appellants - In this case, cause of death, according to prosecution, was on account of stab injuries on body - Post-mortem report, however, discloses something else and confusion is further confounded on account of failure of prosecution to examine doctor who conducted post-mortem - Prosecution failed to construct an uninterrupted chain between murder of deceased and appellants - Conviction and sentence recorded by Sessions Judge against appellants/accused, set aside - Appeal, allowed. **Turaka Veerabhadra Rao Vs. State of A.P. 2008(1) Law Summary (A.P.) 76 = 2008(1) ALD (Crl) 381 (AP) = 2008(1) ALT (Crl) 168 (AP).**

—Secs.302 & 498-A, r/w Sec.304-B and 201 - **EVIDENCE ACT,** Sec.27 - Murder - Trial Court convicted accused (A-1) for murder of his wife - Appellant/A-1 contends that circumstantial evidence relied upon by trial Court not only weak, but also totally untrustworthy and that evidence of P.W.1 father of deceased, is also totally untrustworthy - In this case, circumstance of recovery of ornaments pleaded cannot be said to have been used for strangulation of deceased and does not provide any valid link - Recoveries effected, u/Sec.27 of Evidence Act would become relevant and important, if only recovered items were used in commission of offence - Another significant fact is that after post-mortem was conducted, P.W.1 did not choose to receive dead body, and as result, it came to be handed over to Municipality and as such it is not safe to act upon evidence of P.W.1 - Nothing reliable exists on record to connect A-1 to occurrence and whole incident is shrouded in mystery - Accused entitled to benefit of doubt - Conviction and sentence against appellant/ A-1, set aside - Criminal Appeal, allowed. **Onteru Venkata Subba Reddy Vs. State of A.P. 2008(1) Law Summary (A.P.) 446 = 2008(1) ALD (Crl) 803 (AP) = 2008(2) ALT(Crl) 89 (AP) = 2008 Crl. LJ 2870.**

—Secs.304, 304-A, 504 & 506 - **Medical negligence** - Complainant/2nd respondent brought his father to appellant's clinic for treatment - Complainant's father died within half an hour after three injections were administered - Appellant threatened complainant to remove dead body immediately and also threatened not to take any action and subsequently threatened with revolver to withdraw complaint - Magistrate issuing process against appellant - High Court dismissed revision preferred by appellant - Appellant contends that complainant's father was suffering from heart ailment and died before he reached clinic

and that in exercise of his professional conduct, no criminal liability can be imposed on him - Even if all allegations are taken to be true it is an act of negligence covered by Sec.304-A IPC - In this case, no summons would have been issued to the appellant/ accused for commission of offences punishable u/Secs.304 & 506 IPC - Sec.304-A excludes all ingredients of Sec.299 as also of Sec.300 - Even if averments made in complaint are accepted in their entirety, act in question of giving injections to deceased would not fall within mischief of Sec.304 - Therefore, no process could have been issued against appellant/accused for commission of an offence under said section - In every mishap or death during medical treatment, a medical man cannot be proceeded against in criminal Court – Criminal prosecution of doctors without adequate medical opinion pointing to their guilt would be doing disservice to community at large – If Courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, doctors would be more worried about their own safety than giving all best treatment to their patients – It would also lead to shaking mutual confidence between doctor and patient - So far as issuance of process for offences punishable u/Secs.504 & 506, liable to be quashed – Likewise process for offence punishable u/Sec.304 is ill- conceived and process could only be issued by Magistrate to appellant, accused for offence punishable u/Sec.304-A, IPC. **Mahadev Prasad Kaushik Vs. State of U.P. 2008(3) Law Summary (S.C.)156 = 2009(1) ALD (Crl) 261 (SC) = AIR 2009 SC 125 = 2008(7) Supreme 292.**

—Sec.304-A - **"Test identification" -** Accused drove lorry behind deceased without blowing horn, dashed cycle of deceased due to which he fell down and front wheel of lorry ran over back of deceased causing spot death and ran away - Magistrate convicting accused for offence u/Sec.304-A IPC - Petitioner contends that P.Ws 3 & 4 claimed to have witnessed accident had no opportunity to have a good look at accused and as such their evidence that it is accused who drove vehicle on date of accident cannot be accepted and that Investigation Officer ought to have been examined owner of lorry or seized documents of lorry to connect accused with crime vehicle and that rough sketch of scene of offence not prepared by Investigation Officer - In this case, admittedly prosecution witnesses have no prior acquaintance with accused and that lorry stopped at distance of 20 or 25 feet from place of accident and driver after stopping lorry ran away from place of accident, show that witnesses had no opportunity to have a good look at accused - TEST OF IDENTIFICATION PARADE - Primary object of holding a Test of Identification Parade is to enable witnesses to identify persons involved in offence, who were not previously known to them - In this case, as far as identity of accused is concerned, Courts below have not considered issue in proper perspective and same resulted in miscarriage of justice - Hence conviction, set aside - Criminal revision case, allowed. **Piginarayi Ranga Rao Vs. State of A.P. 2009(1) Law Summary (A.P.) 438 = 2009(1) ALD (Crl) 971(AP) = 2009(2) ALT (Crl) 128(AP) = 2009 Crl. LJ 3699 (AP).**

—Sec.304-A - Accused while driving RTC Bus in rash and negligent manner hit bicycle driven by deceased and caused his death - Trial Court convicting accused for offence punishable u/Sec.304-A to undergo rigorous imprisonment for one year - In appeal

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Sessions Judge confirmed same - Contention that there are no eye witnesses to actual occurrence and admittedly road was under repair and there was no possibility for driver to drive bus at high speed and that mere driving vehicle at high speed is not sufficient and that prosecution must show that vehicle was driven in a rash and negligent manner at high speed - In this case, a careful reading of evidence of P.Ws shows that they did not allege that accused was driving bus in rash and negligent manner - Since bus was stopped only at a distance of 10 feet from place of accident, it appears that bus was in all probabilities not driven at high speed at time of accident - There is no evidence to say how cycle to came in to contact with bus - Whether cyclist slipped and came before bus or whether bus hit cyclist is not clear from evidence - Finding of Courts below appears to be not based on record - No conviction can be placed on mere assumptions or presumptions - Accused is entitled for benefit of reasonable doubt - Conviction and sentence passed by Courts below, set aside - Revision, allowed. **G.Kumar Vs. The State of A.P. 2009(2) Law Summary (A.P.) 231 = 2009(2) ALD (Crl) 116(AP) = 2009(3) ALT (Crl) 20 (AP).**

—Sec.304-A - **CONSUMER PROTECTION ACT,** Sec.23 - Medical negligence - Criminal liability - Respondent/complainant suffering from chronic renal failure was referred to Hospital for kidney transplant and was under treatment of Appellant doctor - Since appellant suffering from high fever and after investigation Reports showed serious infection of blood and urinary infection, appellant suggests Amikacin injection and Augmentin Cap. - When respondent complained to appellant that he had slight tinnitus (ringing in ear), appellate alleged that he immediately told respondent to stop taking Amikacin and Augmentin and scored out treatment and discharge card - Subsequently respondent on his own accord joined another hospital and was operated upon for transplant after he ceased to be under treatment of appellant - Evidently respondent did not complain of deafness during this period and conversed with doctors normally - Respondent filed complaint before National Commission claiming compensation of Rs.12 lakhs as his hearing had been affected - Appellant contends that there was no material brought on record by respondent to show any co-relationship between drugs prescribed and state of his health - National Commission nominated Expert who gave his opinion that drug Amikacin administered by appellant as a life saving measure and was rightly used and there has been no negligence on part of appellant - However, National Commission allowed complaint of respondent and awarded Rs.4 lakhs as well as Rs.3 lakhs as compensation - MEDICAL NEGLIGENCE - Explained - Simply because a patient has not favourably responded to a treatment given by a doctor or a surgery has failed, doctor cannot be held straightaway liable for medical negligence - When patient dies or suffers from mishap, there is a tendency to blame doctor for this - Things have gone wrong and therefore, somebody must be punished for it - To fasten liability in criminal proceedings viz., u/Sec.304-A IPC degree of neligence has to be higher than negligence which is enough to fasten liability in civil proceedings - Thus, for civil liability it may be enough for complainant to prove that doctor did not exercise reasonable care in accordance with principles mentioned above, but for convicting a doctor in criminal case,

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it must also be proved that this negligence was gross amounts to recklessness - PROTECTION TO DOCTORS IN CRIMINAL CASES - Doctors have to be protected from frivolous complaints of medical negligence - Supreme Court has laid down certain rules in this connection: (i) a private complaint should not be entertained unless complainant has produced *prima facie* evidence before Court (ii) Investigating Officer, should before proceeding against doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion, preferably from a doctor in Govt., service (iii) a doctor accused of negligence should not be arrested in a routine manner simply because a charge has been levelled against him unless his arrest is necessary for furthering investigation - In this case, evidently that respondent was already seriously ill before he met appellant - There is nothing to show from evidence that appellant was in any way negligent, rather it appears that appellant did his best to give good treatment to respondent to save his life but respondent himself did not cooperate - Hearing loss in renal patients is a complex problem which is a reasult of many adverse and unrelated factors - Generally, state of hearing of renal patient at any time is more likely to be result of multifactorial effect than response to a single agent - Appellant not guilty of medical negligence - Impugned judgment and order of National Commission, set aside - Appeal allowed. **Martin F.D.Souza Vs. Mohd. Ishfaq 2009(1) Law Summary (S.C.) 155.**

—Sec.304-A – **CRIMINAL PROCEDURE CODE,** Sec.482 - Medical Negligence -Second defendant gave a complaint that her husband died due to rash and negligent act of petitioner, doctor - Police registered case basing on one sentence in complaint that deceased died due to negligent act of petitioner - Complaint doesn't mention in what manner petitioner was directly responsible for death of deceased - Material placed before court falls short to establish that death of deceased is direct result of rash and negligent act of petitioner leave apart gross, rash and negligent act - No post-mortem report - Held, various enunciated principles have not been scrupulously followed before registration of criminal case or taking cognizance of offence against the petitioner - Second respondent is not a competent person to say that her husband died due to negligent act of petitioner - Even if allegations made in the complaint ex facie taken to be true and correct, no prima facie case is made out against petitioner/ accused for the offence punishable under section 304-A of IPC - Hence, Criminal Petition is allowed quashing proceedings against petitioner. **Dr.Dommati Siva Kumar Vs. State 2014(3) Law Summary (A.P.) 65 = 2014(2) ALD (Crl) 866.**

—Sec.304-A and 134-B, r/w Sec.187 of **Motor Vehicles Act** - Deceased, 10th class student while proceeding on cycle, accused had driven lorry in rash and negligent manner dashed against deceased causing her instantaneous death - Magistrate convicted accused - Appellate Court confirmed conviction and modified sentence - Appellant/ accused contends that there are no eye witnesses to accident and evidence of P.W.1 father of deceased, that he had identified accused before Court cannot be believed because for first time he claims to have identified accused after three and half years of accident and that when accused had absconded from scene of offence immediately

after accident and when prosecution witness had no prior acquaintance with accused and no test identification parade was conducted, claim of P.W.1 that he identified accused cannot be accepted - Merely because driving licence of accused and trip sheet containing name of accused were seized from lorry, it does not mean that accused himself had driven lorry at time of accident - In this case, once evidence of P.W.1 is excluded from consideration, there remains no evidence against accused - Non arresting of accused immediately after accident create doubt about seizure of documents from accused - When appreciation of evidence results in miscarriage of justice, it is duty of Court to prevent gross miscarriage of justice and for correcting manifest illegality - Prosecution failed to prove its case beyond reasonable doubt and both Courts below grossly erred in believing evidence of prosecution - Conviction and sentence passed against accused, set aside - Criminal Revision case, allowed. **Nallapalli Seetharamaiah Vs.State of A.P. 2009(3) Law Summary (A.P.) 241.**

—Secs.304-A, & 201 - **Medical Negligence** - Criminal Petition filed by Accused/Doctors to quash proceedings against them in lower Court filed by the 2nd Respondent, father of deceased - Both State Consumer Disputes Redressal Commission and State Medical Council found no negligence on part of accused and patient died due to Amniotic Fluid Embolism - No Post Mortem examination done - Cause of death not known except presumptions and assumptions of 2nd Respondent - Held, mere negligence is not sufficient and to fasten criminal liability, gross negligence and high recklessness on part of doctors is required - Material relied by petitioners, reasonable and would rule out assertions that are made in complaint against them - Criminal Petitions allowed and proceedings in lower Court quashed - Criminal Procedure Code Sec.482 - Medical Negligence - Supreme Court indicated 4 steps to exercise powers u/Sec. 482, Cr.P.C - Firstly, when material relied on by accused is sound, reasonable and indubitable - Secondly, when material relied upon by accused would rule out assertions contained in charges levelled against the accused - Thirdly, if material is such, as would persuade a reasonable person to dismiss and condemn factual basis of accusation as false and when such material is not refuted by complainant - Fourthly, if proceedings with trial court result in abuse of any process of Court, High Court should persuade to such criminal proceedings by exercising powers u/Sec.482 of Cr. P.C. - Present case is a fit one to exercise powers u/Sec.482 of Cr.PC. **Dr.P.Malathi Vs. States 2014(2) Law Summary (A.P.) 367 = 2014(2) ALD (Crl) 924 = 2014(2) ALT (Crl) 284 (AP).**

—Secs.304-A, 337 & 338 - **CRIMINAL PROCEDURE CODE,** Sec.294 - **EVIDENCE ACT,** Sec.3 - Accused A.P.S.R.T.C bus driver drove bus in rash and negligent manner and dashed against cycle causing death of one boy and injuries to another boy - Trial Court convicted accused and same confirmed by lower appellate Court - Petitioner/ accused contends that Investigating Officer neither seized any document nor examined Depot Manager or Traffic Controller to establish that accused was driving bus at relevant time of accident and that Test Identification not conducted and that Panch witnesses

have not been examined - Prosecution contends that there cannot be re-appreciation of evidence and that admitted facts need not to be proved and that once document has been admitted it need not be proved - If accused is already known to identified witnesses there is no need to hold Test Identification parade - Evidence of witnesses of also looses importance if accused have already been shown to witnesses before there examination in Court - Test Identification parade should be held at earliest possible opportunity - In instant case, since documents are marked by concerned, they can be received as evidence and can be looked into - Though prosecution witness of case deposed that accused drove bus at high speed, none of witnesses had deposed that driver of bus had driven bus in rash and negligent manner -Mere driving of vehicle at high speed cannot be considered as rash and negligent driving - Inspite of speed-breakers, sign boards and observing school or children, if driver drives bus at high speed same may amount to rash and negligent driving on part of driver of bus - But nothing can be inferred without any legal evidence - No conviction can be based on assumptions and presumptions or any inference can be drawn not basing on legal evidence - Merely because a ghastly accident has occurred resulting in death of some persons, accused cannot be convicted - In this case, there is misreading of evidence resulting in miscarriage of justice and that evidences of witnesses are not based on any legally acceptable evidence - Judgments of both Courts below, set aside - Criminal revision case, allowed. **K.Rajaiah Vs. State of A.P. 2010(2) Law Summary (A.P.) 421.**

—Sec.304-A, 338 & 337 - Petitioner, accused while driving lorry with load of rice, allowed some persons to board and caused accident by driving vehicle in rash and negligent manner - Deceased 1 to 4 were crushed to death beneath rice bags at spot - Trial Court convicted petitioner and appellate Court confirmed conviction - Petitioner contends that evidence on record shows that suddenly a person emerged on scooter from back side of lorry which was parked along with road and came infront of lorry and in above circumstances petitioner applied sudden breaks to save life of scootarist and had petitioner not applied sudden breaks, scootarist would have died - In this case, admittedly lorry proceeding on National Highway on up-gradient road at place of accident - Therefore it appears that though lorry was being driven at speed it may be proceeding with normal speed - Mere driving vehicle at speed cannot termed as driving vehicle in a rash and negligent manner - Rough and negligent driving means driven vehicle rashly in a careless manner — When scootarist suddenly emerged from back side of stationed lorry and came in front of lorry petitioner applied sudden breaks and moved lorry to extreme left and as a result of which lorry fell in rich resulting in major accident - Before a conviction can be sustained u/Sec.304-A a very high degree of negligence must be proved - Negligence which amount to recklessness and utter indifference to consequences and rules of road must be established - Mere driving at high speed or some sort of negligence, which is not criminal rashness or negligence may not prove ingridents of Sec.304-A IPC - Simple, lack of care may result in civil liability, but by itself may not constitute criminal negligence punishable under Sec.304-A -

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Findings of Courts below not based on record and hence liable to be set aside - Criminal Revision case, allowed. **K.Nagaraju Vs. The State of A.P. 2009(2) Law Summary (A.P.) 90.**

—Sec.304-B - Allegation that death of deceased, wife was on account of harassment by accused/husband and his parents - Trial Court convicted appellants/accused for offence u/Sec.304-B - Appellants/accused contend that prosecution failed to prove alleged acts of harassment or demanding any amount towards dowry - Prosecution contends that though some of witnesses have turned hostile, circumstances of case clearly disclose harassment for dowry on part of appellants - INGREDIENTS REQUIRED TO PROVE CASE U/SEC.304-B IPC - Stated - Mere making a demand of amount, unless followed by an element of cruelty of harassment does not attract provisions of Sec.304-B - As long as there was no allegation of harassment, physical or otherwise, fact that accused made certain demands for amounts that too for purchase of auto to eak out livelihood, cannot be treated as harassment for dowry, particularly, when such demands are said to have been acceded to without demur - Though in postmortem report, it is indicated that death is on account of "blunt injury in the abdomen" and that no external injuries are found, it becomes difficult to relate death of deceased to any acts and omissions on part of first appellant/accused, husband - Conviction of appellants/accused on unsupported testimony of PWs 1 & 2, father and brother of deceased, unsustainable - Conviction and sentence, set aside - Appeal, allowed. **Yallamanda Chand Basha Vs.State of A.P. 2008(1) Law Summary (A.P.) 332 = 2008(1) ALD (Crl) 809 (AP) = 2008(2) ALT (Crl) 113 (AP).**

——Sec.304-B – **EVIDENCE ACT,** Sec.113-B – Deceased, wife committed suicide on account of alleged dowry harassment - Asst. Sessions Judge convicting accused, husband for offence u/Sec.304-B IPC - Appellant/accused contends that there is abnormal delay in lodging FIR and as said delay is unexplained, trial Court ought not to have convicted appellant/accused as if he is guilty of offence punishable u/Sec.304-B IPC and that except interested and discrepant testimony of P.Ws.1 to 4 there is absolutely no other incriminating material to hold that appellant harassed deceased for dowry and on account of which alone deceased committed suicide - No doubt, delay in lodging a report definitely plays a vital role, but every delay cannot be said to be fatal to case of prosecution and it depends on facts and circumstances of case - When an unnatural death of woman had taken place within a span of seven years from date of marriage, a presumption u/sec.113-B of Evidence Act shall automatically be drawn – But such a presumption is not conclusive and it is rebuttle presumption - In this case, a scan of evidence of P.Ws. 1 to 4 does not reveal that there was harassment for dowry soon before death of deceased and on account of said harassment only she had taken extreme step of consuming poison and thus committed suicide - It is unfortunate a woman aged 20 years committed suicide within three years from date of her marriage, but that cannot be a ground to hold that said death was solely on account of dowry harassment and appellant accused alone is responsible for such unnatural death of deceased – Conviction

and sentence imposed on appellant, set aside – Criminal appeal, allowed. **Dunnapothula Kistaiah Vs. State of A.P. 2008(3) Law Summary (A.P.) 319.**

—Sec.304-B - **PASSPORTS ACT, 1967**, Sec.12 (1) (b)- Trial Court convicted accused for offences u/Sec. 304-B IPC and Sec.12 (1) (b) of Passport Act - Charge against accused is that he subjected his deceased wife to cruelty and harassment for additional dowry, on account of which her health got deteriorated and ultimately died - Further charge against accused is that while obtaining passport, he suppressed his marital status and did not mention name of his deceased wife, in application - Accused contends that there was no need for him to suppress any fact for obtaining passport and even if it is accepted that he suppressed facts, it would not go root of case for reason that suppression of fact no way debars him for getting passport - When once Doctor states that death was unnatural and there is no cogent evidence to establish that soon before death of deceased, there was harassment, it is not safe to hold that accused is guilty of offence u/Sec.304-B - If really said harassment is in existence as on date of report, same would have been mentioned in Report - It is not known as to why P.W.1 has not stated all these facts in his report marked as Ex.P.1 - But however as there is no evidence that it is an unnatural death and there is harassment for dowry soon before her death, accused cannot be said to have committed offence falling u/Sec.304-B IPC for reason that he is husband of deceased - Court below erred in coming to conclusion that accused is guilty of offence falling u/Sec.304-B IPC and 12(1) (b) of Act - Conviction, set aside - Appeal, allowed. **Dr.Madas Venkat Goud Vs. State of A.P. 2010(2) Law Summary (A.P.) 27.**

—Secs.304-B & 302 – **EVIDENCE ACT,** Sec.113-B – Allegedly on ground that insufficient dowry brought by deceased, she was tortured and harassed by accused – Sessions Judge convicted accused for offences punishable u/Sec.304-B of IPC – High Court while dismissing appeal preferred by appellant acquitted other three accused - Appellant contends that Sessions Judge as also High Court committed serious error in convicting judgment as they failed to take into consideration that neither in FIR nor in evidence any allegation made to effect that dowry demanded by appellant and as prosecution not able to show that any dowry was demand soon before commission of offence, impugned judgment liable to be set aside – Cause of action for committing offence appears to an ego problem on part of appellant, namely, deceased had not been coming to her matrimonial home, on her own, while he had been coming to his home on leave - Indian Penal Code, Sec.302 – It might be right in contending that on material on record it was possible for trial Court as also High Court to pass judgment of conviction against appellant u/Sec.302 of IPC as death occurred in matrimonial home – It was a homicidal death – Appellant did not make any statement under Sec.313 Cr.P.C that deceased committed suicide or it was an accidental one - In this case, FIR was lodged against others also - Three more persons being sisters of appellant were also charged for commission of said offence – If deceased was forced to take poison they must have some hand in it – As they have been acquitted it is difficult for Court to come to conclusion that it was appellant

and appellant alone who was responsible for her death – Impugned judgment, unsustainable – Hence, set aside – Appeal, allowed. **Tarsem Singh Vs. State of Punjab 2009(1) Law Summary (S.C.) 1.**

—Secs.304-B & 306 - **EVIDENCE ACT,** Sec.113-A - Appellant (A-1) tried along with his parents (A2 & A3) - Trial Court convicted appellant u/Sec.306 and acquitted accused A2 & A3 - Appellant/A1 contends that evidence of P.Ws.1 to 4 is only hear say evidence and is not admissible and having accepted contents of Ex.P.-9 suicide note with regard to allegation relating to offence u/Sec.304-B, gave erroneous finding convicting appellant for offence u/Sec.306 IPC, though there is no incriminating material against appellant in Ex.P.9 warranting conviction u/Sec.306 - Trial Court having noticed that deceased did not mention about demand of dowry either in Ex.P.9, suicide note or in Ex.P.10, letter written by her to her father, relied on evidence of very same witnesses on aspect that they were informed by deceased that appellant was keeping deceased at a distance and there was no conjugal life between both - In this case, what all stated by P.Ws. 1 to 3 is only hearsay evidence and trial Court ought to have held same is not admissible - Absolutely there is nothing in Ex.P.10 indicating that appellant was ill-treating or harassing deceased - Entire letter only indicates that deceased was feeling guilty of committing mistake of involving in inter caste marriage for which her parents were unwilling - From contents of Exs.P.9 & P.10 it is obvious that deceased was unable to adjust with appellant, and she is a sensitive girl and was under emotional distress at time of writing both Ex.P.9 as well as Ex.P.10 - Material available on record does not indicate that appellant by his conduct either aided or instigated deceased to commit suicide - Facts and circumstances do not able Court to raise a presumption under Sec.113-A of Evidence Act as to abetment of commission of suicide by deceased against appellant - She was in a desperate condition on account of her dissatisfaction regarding married life and ultimately resorted to extreme step of committing suicide - Conviction, set aside - Appeal, allowed. **Karre Mohan Krishna Vs. State of A.P. 2009(2) Law Summary (A.P.) 123.**

—Sec.304-B & 498-A and 306 - **DOWRY PROHIBITION ACT,** Secs.3 & 4 - **EVIDENCE ACT,** Sec.113-B - Appellants/Accused A1 to A3 convicted u/Sec.304-B and 498-A for harassing and ill-treatment of deceased who committed suicide because of harassment and illtreatment of accused for additional dowry - In this case, evidence of P.Ws 4 & 5 clearly established that even one day prior to her death, deceased expressed her anguish and wept saying that accused were torturing her for sake of certain amount or three acres of land - Irrespectve of invoking any presumption u/Sec.113-B of Evidence Act, prosecution is able to prove all necessary facts constituting offence “dowry death” against A1 to A3 - Prosecution could not lead acceptable evidence to prove offences u/Secs.3 & 4 of Dowry Prohibiton Act - Prosecution could only prove offence punishable u/Sec.304-B IPC - This is not a case of bride burning - It is not a case of homicide and it is a case of suicide committed by deceased because of harassment of A1 to A3 for sake of certain amount or land - There are no strong

reasons for imposing maximum punishment of imprisonment of life in this case - In the interest of justice it is appropriate to impose rigorous imprisonment of seven years instead of imprisonment for life - Appeal partly dismissed, confirming conviction of appellants 1 to 3/A1 to A3 u/Sec. 304-B, but altering sentence of imprisonment alone from life to rigorous imprisonment for seven years. **Gorre Dharma Reddy Vs. State of A.P. 2010(1) Law Summary (A.P.) 376.**

—Secs.304-B, 498-A & 306 - **DOWRY PROHI-BITION ACT,** Sec.4 - Deceased hanged herself and died infront of appellants' house on account of alleged harassment and demand for additional dowry by her in-laws and husband - Appellant/accused contend that trial Court erred in convicting appellants for both offences u/Secs.306 & 304-B IPC, in absence of any evidence to show that there was abetment to commit suicide and also failed to take into consideration contradictions in evidence of P.Ws. 1 to 3 on crucial aspect of time and date of incident and alleged demand for additional dowry - Perusal of evidence of P.W.1 makes it crystal clear that A1 is no other than son of sister of P.W.1 and marriage of A1 and his daughter was settled even in childhood itself and accuse started harassing deceased for additional dowry from two months prior to death of deceased and that alleged demand of additional dowry not reported to any body by P.W.1 and that scrutiny of evidence of P.W.2 is entirely different to that of P.W.1 her husband for all material aspects and that P.W.3 is brother of deceased and son of P.Ws. 1 & 2 - In this case, alleged harassment, according to prosecution, is that trouble started on ground that deceased did not beget children and she did not bring additional demand of dowry - In this regard framing of charge, which is framed on allegation that are not found in charge sheet, is very vague and that evidence of witnesses is not consistent as to quantum of dowry, mode of payment and as to demand for additional dowry - In this case, according to P.W.1 Ex.P.1 Report was written in Police Station and himself and P.W.2 signed document - A perusal of Ex.P.1, it does not contain signature of P.W.2 except P.W.1 - Thus, there are inconsistencies as to presentation of Ex.A.1 and it goes a long way to infer against case of prosecution - Trial Court without appreciating all these aspects and evidence on record in proper perspective simply carried away with arguments of Public Prosecutor and convicted accused without any positive, cogent, convincing and trustworthy evidence - Prosecution miserably failed to prove charges which are very vague and ambiguous, against accused and consequently accused are found not guilty for charges levelled against them and they are entitled to be acquitted - Appeal, allowed. **Dontharaboina Sadanadam Vs. State 2012(3) Law Summary (A.P.) 102 = 2012(2) ALD (Crl) 892 (AP).**

—Sec.304-II, - **CRIMINAL PROCEDURE CODE,** Sec.162 - "Delay in lodging FIR" - "Benefit of doubt" - Sessions Judge convicting appellant/accused for offence u/Sec.304-II - Appellant/accused contends that there is inordinate delay in lodging FIR as well as forwarding same to Magistrate and that alleged evidence of eyewitnesses consists of material inconsistencies and improbabilities and that appellant was falsely implicated at instance

of his co-contractors who paid some amount to P.W.1, wife of deceased - When there is no proper explanation in respect of delay in forwarding FIR to Magistrate, same is fatal to case of prosecution - Inordinate delay of 1½ days in sending report to Magistrate after registration of report, said delay contributed to doubtful circumstances surrounding prosecution of case in absence of any explanation thereof - In this case, investigation commenced much earlier to lodging of FIR and therefore it hits by Sec.162 of Cr.P.C and same cannot be treated as FIR in eye of law - Registering FIR much latter to commencement of investigation gives any amount of scope for introducing a concocted and distorted version - In this case, trial Court without properly scrutinizing evidence of P.Ws and without examining impact of delay in lodging of FIR as well as sending same to Magistrate convicted accused - Conviction recorded by trial Court is misconceived and as result of improper appreciation of evidence - Appellant is entitled for benefit of doubt - Conviction, set aside - Appeal, allowed. **Lingala Lasmaiah @ Laxmaiah Vs. State of A.P. 2009(1) Law Summary (A.P.) 384.**

—Secs.306, r/w 34 and 107 - **CRIMINAL PROCEDURE CODE**, Sec.482 - A1 to A5 are accused for offence u/Sec.306 r/w 34 - Prosecution alleged that deceased consumed pesticide poison and committed suicide as A1 to A5 abused deceased by saying that he is impotent person and allowed his wife to have illicit intimacy with A1 and created harassment and degraded prestige of deceased in locality and Society - Petitioners contend even if above prosecution allegations are taken for granted for sake of argument, they do not satisfy requirements of any of three varieties of abetment contained in Sec.107 IPC viz., instigation, engaging in any conspiracy or intentional aiding - A word uttered in fit of anger or emotion without intending consequences to actually follow cannot be said to be instigation - Apart from *mens rea* some positive act by accused is essential or constitute instigation of intentional aiding resulting in abetment as per Sec.107 IPC - In this case, there was only one instance in which only one sentence was uttered by A1 to A5 in fit of anger or emotion without intending consequences to actually follow - Even if said imputation alleged to have been made by A1 to A5 against deceased is true, it does not amount to instigation of deceased to commit suicide - Prosecution could not make out offence of abetment to commit suicide u/Sec.306 IPC with reference to ingredients of abetment enunciated in Sec.107 IPC even if prosecution allegations are taken on their face value - Proceedings in P.R.C before 1st Class Magistrate, quashed - Criminal petition allowed. **Makkena Balaiah Vs. State of A.P. 2010(2) Law Summary (A.P.) 330.**

—Secs.306 & 366 - Trial Court framed charges against accused for offences u/Secs.366 & 306 and convicted for offence u/Sec.366 - Sessions Judge dismissed appeal and confirmed conviction - Offence u/Sec.306 contemp-lates abetment to commit suicide and there must be evidence that accused abetted commission of suicide by deceased and there must be some uttrances like inducement to deceased that he/she should commit suicide - It is alleged that accused kidnapped and left her at Hubly by taking her from Markapur and thus accused deserted deceased at Hubly and there was no

quarrel at any point of time between accused and deceased and also there was no occasion for accused to express a view that deceased should commit suicide - In this case, deceased offered explanation as to why she did not lodge Police complaint after return to Markapur because accused promised to marry her and that accused is not stranger to family of deceased and he is distant relative of deceased - From the facts and circumstances of case, it is quite possible to cull out that this is a case, where deceased eloped with accused rather than was kidnapped by accused - It is a case of deceased running away with accused by way of elopement and it is unfortunate that deceased ultimately committed suicide - Perhaps she lost her hope about marrying deceased and committed suicide - From evidence that offence of kidnap not made out in view of fact that no point of time deceased or P.W/.1/mother lodged complaint about kidnap till demise of deceased - Prosecution failed to make out either offence u/Secs.366 or offence u/Sec.306 IPC - Accused liable to be acquitted - Revision allowed. **Ambadipudi Parasuramudu, Anantapur Vs. State of A.P. 2011(3) Law Summary (A.P.) 157 = 2012(1) ALD (Crl) 61 (AP) = 2012(1) ALT (Crl) 16 (AP).**

—Secs.306 & 376 - **"Dying declarations"** - Allegation against accused raped deceased - Deceased immolated herself with a view to commit suicide as she could not withstand insult - Trial Judge considered that no case, u/Sec.306 made out and however held that prosecution established guilt of accused beyond reasonable doubt for offence u/Sec.376 and sentenced accused for period of seven years - Sessions Judge reversed conviction recorded by trial Court and acquitted accused - Hence revision petition filed by de facto complainant/husband of deceased - PLURALITY OF DYING DECLARATION - In this case, statements of deceased recorded by MRO,SHO and C.I under Ex.P.12, Ex.P.13 and Ex.P.18 - Petitioner/husband of deceased contends that appellate Court erred in appreciating statements of deceased and recorded acquittal - Accused/2nd respondent contends that statements under exhibits P.12, P.13 and P.18 could not be treated as dying declarations as they were not relating to cause or circumstances relating to death of deceased and inconsistencies in dying declarations, one of which being in favour of accused should lead an acquittal of accused - In Ex.P.12 deceased made statement that she had illicit intimacy with accused since about a years prior to death and that illicit intimacy developed on account of threat from accused that he would kill her unless she accepts for illicit intimacy with accused - Accused contends that it is fantastic for deceased to state that she did not accept to sleep with deceased on one occasion but continued illicit intimacy for period of one year on account of fear and that such a statement was unnatural and could not be swallowed - Where deceased admitted that she had illicit intimacy with accused, carnal acquaintance between accused and deceased would not be rape within meaning of Sec.376 - Accused therefore cannot be convicted for offence u/Sec.376 IPC on strength of Ex.P.12 - There was no endorsement from any competent physician on Ex.P.13 certifying that deceased was in a fit state to make statement and on this ground alone Ex.P.13 deserved to be discarded as dying declaration - In this case, there is no reasonable and proper explanation from prosecution why Ex.P.12

should be discarded - Ex.P.13 and Ex.P.18 cannot be treated as dying declarations since they did not contain endorsement from a competent Medical Officer that deceased was in a fit state to make statement and therefore they become inadmissible - Viewed from any angle benefit of doubt accrues to accused in view of clear admission of deceased that she had illicit intimacy with accused - In light of admission of deceased there cannot be rape of deceased by accused - Consequently accused is liable to be acquitted for offence u/Sec.376 - Criminal revision, dismissed. **Thanugula Rajender Vs. State of A.P. 2011(3) Law Summary (A.P.) 347 = 2012(1) ALD(Crl) 368 (AP) = 2012(1) ALT(Crl) 96(AP).**

—Sec.306, 498-A & 107 - **DOWRY PROHIBITION ACT,** Sec.3 - Trial Court convicting appellant/accused for inflicting mental and physical torture which prompted her to commit suicide by burning herself, pouring kerosene on her body - In appeal, High Court concurred views of trial Court - "Abetment" - More active role which can be described instigating or aiding doing of a thing it required a person can be said to be abetting commission of offence u/Sec.306 - Courts should be extremely careful in assessing facts and circumstances of each case and evidence adduced in trial for purpose of finding whether cruelty meted out to accused had in fact induced her to end her life by committing suicide - In case of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to commission of suicide - Mere fact that husband treated deceased wife with cruelty is not enough - In this case, in view of back ground facts conviction so far as it relates to Sec.306 IPC, set aside - High Court amply demonstrate commission of offences punishable u/Sec.408-A IPC and Sec.3 of D.P Act - Hence convictions are sustained - But sentence in respect of Sec.3 of D.P Act reduced to three years. **Kishangiri Mangalgiri Goswami Vs. State of Gujarat 2009(1) Law Summary (S.C.) 88.**

—Secs.306, r/w 511 & 506 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Charge-sheet filed against complainant u/Sec.302 r/w Sec.34 IPC - Afraid of frequent threats complainant consumed poison with intention to commit suicide and treated in hospital and was survived - Petitioners contend com-plainant/2nd respondent attempted to commit suicide and was survived and petitioners cannot be charged for offence u/Sec.306 r/w 511 and unless person aggrieved, makes a complaint, petitioners cannot be proceeded for charge u/Sec.506 IPC - To attract punishment u/Sec.511 IPC, acts should amount to attempt and it was an attempt to commit an offence under Code and offence was punishable with imprisonment and charge should mention both Sec.511 and Principal Section - In view of allegation made in statement of complainant, petitioners cannot be charged for offence u/Sec.306 IPC - Therefore, Sec.511 IPC will not attract in circumstances of case which is a risiduary provision - Hence, allowing impugned proceedings to continue against petitioners wil result in abuse of process of law and unnecessary harassment to petitioners - Impugned proceedings, quashed - Criminal petition, allowed. **K.Khaleel Vs.State of A.P. 2010(3) Law Summary (A.P.) 173.**

(INDIAN) PENAL CODE

—Secs.307, 324, 337 and 21 - Asst. Sessions Judge convicting accused for offence u/Sec.307, to undergo R.I for 5 years - Sessions Judge, convicting accused u/Sec.324 I.P.C. by setting aside conviction imposed by trial Court - Petitioner, accused contends that he is working as Typist and never intended to attack P.W.1 and his intention was to attack only P.W.2 because of certain rivalry - In absence of any intention, Courts below cannot find petitioner/accused guilty and that previously also, a false case has been foisted against him and made him to run from pillar to post and pursuant to orders passed by Apex Court, he was reinstated into service - Essential ingredients to make out an offence u/Sec.324 I.P.C should be, that there must be voluntarily causing hurt and also required intention - To constitute an offence of voluntarily causing hurt, there must be complete correspondence between result and intention or knowledge of person who causes said hurt - Lower appellate Court ought not have convicted petitioner for offence punishable u/Sec.324 I.P.C, for reason that said act does not satisfy required ingredients i.e, voluntarily causing hurt or intention - It is true that petitioner is public servant within meaning of Sec.21 I.P.C and there is every likelihood of removing him from service - It is only in cases where moral turpitude is involved then only public servant is to be removed from service and offence punishable u/Sec.337 I.P.C would not involve moral turpitude so as to remove petitioner from service - Conviction and sentence imposed on petitioner by lower appellate Court, set aside - Petitioner convicted for offence u/Sec.337 IPC and sentenced to pay fine of Rs.1000 - C.R.C, partly allowed. **Ch.Pitchavadhanulu Vs. State of A.P. 2010(2) Law Summary (A.P.) 452.**

—Secs.307 & 427, r/w 34 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Police registered crime against petitioners, Engineering students - 2nd respondent/complainant himself attended Court and represented that he wants to withdraw case and requested to get offence compounded by invoking inherent powers u/Sec.482 Cr.P.C - Offence u/Sec.307 is not compoundable - However petition allowed invoking powers conferred u/Sec.482 and crime before Police Station, quashed. **Baddam Sandeep Vs. State of A.P. 2010(2) Law Summary (A.P.) 299.**

—Secs. 323 & 324 - Petitioner sought to quash proceedings in C.C.No. 94 of 2015 on file of Judicial Magistrate of First Class, - Contention of the petitioner was injuries suffered by complainant are simple in nature and accused/petitioner have not used any weapon or instrument for causing injuries to complainant and that being case, an offence under Sec. 323 may at best be maintainable but not Sec. 324 IPC and since offences under Secs. 290 and 323 are non-cognizable offences, police cannot investigate those offences without permission of Magistrate under Sec. 155(2) of Cr.P.C and since investigation completed and chargesheet was laid without such permission, entire proceedings are vitiated and thereby accused deserve quashing of proceedings - Held, report of de facto comp-lainant clearly shows commission of a non-cognizable offence under Sec.323 IPC since no instrument or other substance was used to cause injuries - Hence, at very first instance, police ought to have

treated report as non-cognizable case and ought to have followed procedure contemplated under Sec. 155 Cr.P.C. Instead, knowingly FIR was registered for offence under Sec. 324 and 290 IPC and investigation was completed and chargesheet was laid - Therefore, this Court constrained to hold that investigation was hit by Sec. 155(2) Cr.P.C - In light of above discussion, proceedings in C.C. No. 94 of 2015 on file of Judicial Magistrate of First Class, are quashed against all accused - In result, Criminal Petition is allowed. **Guguloth Jagan Vs. State of Telangana 2015(2) Law Summary (A.P.) 173 = 2015(2) ALD (Crl) 165 = 2015(2) ALT (Crl) 294 (AP) = 2015 Cri. LJ (NOC) 402.**

—Secs. 323,354 & 506 - **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,** Sec. 3(1) (x)- Petitioners 3 and 4 are husband and wife - On complaint of husband of fourth respondent, police registered a crime on 12/03/2009 against petitioners 3 and 4 herein for offences alleged u/Secs.344, 383, 506 and 420 IPC - In said complaint it was alleged that accused by wrongfully confining complainant got registered sale deed on 09/03/2009 in office of the Sub-Registrar, in respect of land admeasuring 0.92.236 cents - A chargesheet was filed and in trial judgment came in favour of Petitioners 3 and 4 - On 5/6/2009, fourth respondent, who is wife of complainant lodged a complaint alleging that after obtaining anticipatory bail, accused in said crime, who are petitioners 3 and 4 came to their house and threatened fourth respondent and her husband, and abused them in name of their caste and threatened them with dire consequences - A crime was registered u/Sec. 323, 354, 506 and Sec. 3(1)(x) of SC, ST Act but complaint was absolutely silent as to when exactly offence took place i.e. time and date of occurrence of offence - Complaint is also not clear as to who committed act of outraging modesty of fourth respondent - Petitioners have filed the present writ for quashing of case against them - Held, u/Sec. 3(1)(x) of the Act, two necessary and indispensable ingredients must exist - They are, victim should belong to Scheduled Caste or Scheduled Tribe and there must be humiliation of such person in public view - It is case of the petitioners that fourth respondent belongs to 'Balija' community which is a forward caste - In order to demonstrate same, a caste certificate issued by Tahsildar, is placed on record by learned counsel for petitioners, which unambiguously shows that fourth respondent belongs to 'Balija' community - Genuineness of said certificate is not disputed by any of respondents and on other hand in counter filed by official respondents, it is stated that fourth respondent belongs to Balija community which can never be a Scheduled Caste - Principles laid down in various judgments, voluminous material available before this Court and facts and circumstances of case and various litigations instituted by fourth respondent and her husband, who is a retired employee of Central Excise Department, against petitioners herein drive this Court to an irresistible conclusion that prosecution launched against petitioners is undoubtedly and certainly a patent abuse of process of law, which can neither be permitted to be initiated nor be permitted to be continued, lest citizens lose their faith and confidence in the system of rule of law - Court is also of definite opinion

that this is eminently a fit case where extra-ordinary jurisdiction of Court under Article 226 of the Constitution of India is required to be pressed into service to restrain and avoid and avert abuse of process of law - For above said reasons, Writ Petition is allowed and case in Crime No. 184 of 2009 on file of the II Town Police Station, is hereby quashed. **K.Venugopal Reddy Vs. Deputy Superintendent of Police, Ananthapur 2015(2) Law Summary (A.P.) 178 = 2015(2) ALD (Crl) 1043.**

—Secs.354 & 448 - Petitioner convicted for offences under said sections - Appellate Court confirmed judgment of trial Court - Accused seeking permission to compound offence - By virtue of amendment of Code of Cr.P.C in 2009 offence u/Sec.354 is no more compoundable within State of A.P. - However petitioner contends that offences in this case occurred on 9-7-1999 and that offence u/Sec.354 IPC was compoundable by date of offence and that amendment which came into force on 31-12-2009 would apply to case - Offence u/Sec.354 IPC is compoundable within State of A.P. so long as offence was committed prior to 31-12-2009 - In present case, offence occurred in year 1999 - Consequently offence is compoundable - Case remitted to Asst. Sessions Judge to enable petitioner to move Court to compound offence. **Pati Ranga Reddy Vs. State of A.P. 2011(3) Law Summary (A.P.) 174 = 2012(1) ALD (Crl) 171 (AP).**

—Secs.364-A and 120-B - **"Kidnapping minor for ransom"** - "Child witness" - A minor boy studying 4th class kidnapped by accused - Father of boy (complainant) reported matter in Police Station - Later on boys father received telephone calls from unknown persons demanding ransom of Rs.10 lakhs and police registered case against unknown persons - Subsequently caller reduced amount to Rs.7 lakhs threatened complainant with ransom is not paid his son would not remain alive - Again caller reduced amount to Rs.3 lakhs send message to complainant to go to Railway Station with amount wearing block colour shirt - Again complainant received from caller from different places - Later on one of associates of accused was arrested and subsequently two more associates also were arrested - Police filed Charge-sheet against eight accused persons for offence punishable u/Sec.364-A and 120-B r/w Sec.34 IPC - Sessions Judge sentenced seven accused to undergo imprisonment for life and however one accused was acquitted as not found guilty - To attract provisions of Sec.364-A what is required to be proved is; (1) that accused kidnapped are abducted persons; (2) kept him under detention after such kidnapping and abduction; and (3) that kindnapping or abduction was for ransom - To pay ransom in ordinary sense means to pay price or demand for ransom and that demand has to be communicate - It is settled legal position that punishment must fit crime and it is duty of Court to impose proper punishment depending upon degree of criminality and desirability to impose such punishment - As a measure of social necessity and also measure deterring other potential offenders, sentence should be appropriate befitting crime - In this case, victim boy student of 4th class was examined as P.W.2, he being a child witness Court has to satisfy that he is capable of understanding events - Trial Judge, after satisfying his capacity to depose, accepted his evidence to extent that he was kidnapped and

detained in a house and another person, made telephone calls demanding ransom and also threatened himon various occasions - Considering alarming raise in kidnapping young children for ransom legislature in its wisdom provided for stringent sentence - In those cases who ever kidnapes or abducts young children for ransom, no leniency be shown in awarding sentence, on other hand, it must be dealt with in harshet possible manner and an obligation rests on Courts as well - High Court was right in maintaining order of conviction and sentence of appellant - Impugned judgment of High Court - Justified - Appeal, dismissed. **Akram Khan Vs.State of West Bengal 2012(1) Law Summary (S.C.) 54.**

—Sec.376 - Accused faced trial for alleged commission of offence of rape - Trial Court acquitted all accused - In appeal filed by State, High Court set aside order of acquittal observing that version of prosecutrix was sufficient to fasten guilt on accused - Circumstances highlighted by trial Court were not sufficient to warrant acquittal - In this case, trial Court noted that though prosecutrix claimed that she was raped by several persons at several times there was no injury noticed and doctor has categorically stated that there was no sign of rape and in fact there was no injury - It is true that injury is not a *sine qua non* for deciding whether rape has been committed - But it has to be decided on factual matrix of each case - Where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor if prosecutrix's version is credible, then no corroboration is necessary - But if prosecutrix's version is not credible then there would be need for corroboration - If Court finds it difficult to accept version of prosecutrix on face value it may search for evidence direct or circumstantial - In view of factual position in this case trial Court is justified in directing acquittal - High Court's judgment upsetting acquittal is clearly unsustainable - Conviction recorded by High Court, set aside - Appeal, allowed. **Lalliram Vs. State of M.P. 2008(3) Law Summary (S.C.) 69.**

—Sec.376 - **CRIMINAL PROCEDURE CODE**, Secs.154 & 161 - Trial Judge sentenced accused to rigorous imprisonment for 10 years and fine - In this case, prosecutrix/ victim woman was examined as P.W.1 - No eye witnesses to occurrence - Immediately after offence P.W.1 and her husband P.W.2 went to Police Station on same day and gave Report - Accused was arrested and examined for potency test and scene of offence also observed in presence of mediators - Accused contends that all material witnesses in this case, turned hostile to prosecution and there is no incriminating material against accused to warrant his conviction and though prosecutrix/P.W.1 spoke to offence in her examination in-chief, had given gobye to her version in cross examination and denied offence and therefore no reliance should have been placed on examination-in-chief of P.W.1 - Prosecution contends that evidence of P.W.1/victim itself is sufficient to find accused guilty u/Sec.376 IPC and that Court need not expect any corroboration for P.W.1's evidence of this nature - In this case, though P.W.1 was examined in-chief on 25-3-2004, she was cross-examined on 24-6-2004 and that in mean while P.W.1 was gained over by accused - It is a case of crude manoeuvring of witness

during period of three months after P.W.1's examination - When P.W.1 was examined in-chief, cross-examination by defence Counsel was reported as Nil - Subsequently after manoeuvring witness petition filed in lower Court to recall P.W.1 for further cross-examination and in said further cross-examination she gave gobye to previous version given in examination-in-chief and deposed in that manner - Since it is a case of winning over witness after her first examination-in-Court - Cross-examination of P.W.1 loses its weight and it cannot be relied upon at all for any purpose as it is tainted one - Apart from P.W.1's evidence and Ex.P.1, Report which has got corroborative value, there is also medical corroboration in this case - Lower Court also placed heavy reliance on oral evidence of P.W.1 only in finding accused guilty of offence u/Sec.376 IPC - No reason put forward as to why P.W.1 launched prosecution of accused if there was no rape - There are no circumstances to disbelieve P.W.1's evidence in this case - Conclusion arrived by lower Court is proper and just - No grounds to interfere with finding of guilt recorded by lower Court - Appeal, dismissed. **Narra Peddi Raju Vs. State of A.P. 2011(3) Law Summary (A.P.) 193 = 2012(1) ALD (CRL) 410 (AP) = 2012(1) ALT (Crl) 59 (AP).**

—Sec.376, r/w Sec.109 and Secs.378 & 506 – **CRIMINAL PROCEDURE CODE,** Sec.90 – Sessions Judge convicting accused for offence u/Sec.376 of IPC and sentenced to imprisonment for life – High Court allowed appeal holding that prosecution failed to prove its case beyond reasonable doubt and set aside order of conviction - In this case accused being related to prosecutrix used to often visit her house and took advantage of this relationship and kept prosecutrix under misconception that he would marry her and committed rape on her for more than 2 years thereby making her pregnant - He thus invaded her person by indulging in sexual intercourse with her, in order to appease his lust, all time knowing that he would not marry her and he committed an act of brazen fraud leading her to believe that he would marry her - A women's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants indulge in it - Accused in this case has committed vile act of rape and deserves to be suitably punished for it - Judgment and order of High Court set aside and conviction and sentencing of accused by Trail Court under Sec.376 of IPC, upheld – Appeal allowed. **State of U.P. Vs. Naushad 2014(1) Law Summary (S.C.) 147 = 2014(1) ALD (Crl) 634(SC) = 2013 AIR SCW 6717 = AIR 2014 SC 384.**

—Secs.376 & 302 - **CRIMINAL PROCEDURE CODE,** Sec.313 - Respondent/accused charged for committing rape and murder - Trial Court acquitted accused - Respondent/accused was employed by P.W.1 to do household work as well as work in kiran shop - P.W.1 and his wife gone to another village to settle alliance to their daughter, deceased - Taking advantage of deceased is alone accused insisted to have sex with him and when she slapped him he became furious and hit her with chutney Grinder and thereafter stabbed with knife - Respondent/accused contends that there are several discrepancies and inconsistencies in evidence of P.Ws and prosecution implicated accused without

any basis and that being rustic villager he did not think it fit, to offer any explanation during course of examination u/Sec.313 Cr.P.C - In this case, admittedly accused was employed by P.W.1 and deceased was alone in house and accused admitted his immediate presence at scene of occurrence at relevant point of time - Presence of accused at scene of offence stands established - Evidence discloses that accused ran away from that place and very fact of accused found running from scene of occurrence and his cloths contained not only stains of blood, but also semen and failure to explain the circumstances would naturally provide strong circumstance against accused - When a heinous crime of rape on a girl whose marriage was on unveil, followed by her murder, is proved by evidence on record, minor discrepancies on unimportant aspects, cannot basis to let off accused, who has otherwise been proved to have committed offence and such approach would result in failure of justice - Society would not at all be safe, if persons who are otherwise proved to be guilty, are let off on hyper -technical grounds - Respondent/accused found guilty of offences punishable u/Sec.376 and 302 IPC - Judgment of trial Court reversed - Accused sentenced to undergo imprisonment for life - Appeal preferred by State, allowed. **State of A.P. Vs. Madala Venkata Narasimha Rao 2008(1) Law Summary (A.P.) 405 = 2008(1) ALD (Crl) 770 (AP) = 2008(2) ALT (Crl) 71 (AP) = 2008 Cri. LJ 1992 (AP).**

—Sec.376 r/w Sec.504 - Appellant/accused convicted for a offence u/Secs.376 & 506 - u/Sec.375 IPC that penetration in sufficient to constitute sexual inter course necessary to offence of rape - High Court is right in holding that appellant/accused in guilty of offence of rape and there is no merit in contention of the appellant that there was only an attempt to rape and not rape by appellant - Penetration is not essential ingredient of rape - Legislature requires Court to record adequate and special reasons in any given case where punishment to less than minimum sentence of several years is to be imposed - Conduct of accused at time of commission of offence of rape age of prosecutrix and consequences of rape on prosecutrix on some of relevant factors which Court should consider while considering question of reducing sentence to less than minimum sentence - There are no adequate special reasons to reduce sentence to less than minimum sentence u/Sec.376(1) IPC - Appeal, dismissed. **Parminder alias Ladka Pola Vs. State of Delhi, 2014(1) Law Summary (S.C.) 68 = 2014(1) ALD (Crl) 850 (SC) = 2014 AIR SCW 709 = AIR 2014 SC 1035.**

—Secs.376(2), 302, 109 & 114 - **CRIMINAL PROCEDURE CODE,** Secs.161 & 164 - Sessions Judge convicting appellants, accused 1 to 3 u/Secs.376(2) & 302 IPC and A4 u/Sec.376 r/w 109 and A5 u/Sec.376(2), r/w 114 for committing gang rape on deceased which resulted death of deceased - Appellants, accused contend that they are falsely implicated and that there is inordinate delay in lodging FIR and that statements of P.W.4 recorded u/secs.161 & 164 not furnished to accused and therefore, on account of said lapses entire trial is vitiated - In this case, delay in lodging FIR and recording statement of P.W.4 u/Sec.161 Cr.P.C by Investigating Officer is properly explained by prosecution and same is not fatal to prosecution case - As regards non furnishing of statement of P.W.4 recorded by Magistrate u/Sec.164 Cr.P.C that said

fact assumes importance only when it is shown that prejudice has occasioned to accused - It is not at all case of prosecution that either A4 or A5 committed any sexual assult on deceased - P.W.4 did not state that either A4 or A5 handedover deceased to A1 to A3 - Prosecution is specific on aspect that A1 to A3 gang raped deceased, which act ultimately, resulted in her death - In this case, that since entire evidence rested on evidence of P.W.4 who is no other than cousin of deceased girl, it is not appropriate for Court to accept or reject entire evidence of P.W.4 - It is highly difficult to believe that either A4 or A5 secured presence of deceased girl who is only aged 9 years on date of incident for satisfying lust of A1 to A3 - From evidence of P.W.4 it is obvious that A1 to A3 did commit gang rape on her and were also responsible for her death - Conviction and sentence passed by trial Court against A1 to A3 confirmed - Conviction and sentence passed against A4 and A5, set aside - Criminal appeal partly allowed. **Kallukunta Deva Vs. State of A.P. 2010(1) Law Summary (A.P.) 133.**

—Secs.399 & 402 - **ARMS ACT,** Sec.25 - **CRIMINAL PROCEDURE CODE**, Sec.173 - On completion of investigation charge sheet filed against accused for offences u/sec.399 & 402 and Arms Act, Sec.25 - Trial Court convicted Appellant accused - Accused filed appeal before High Court against judgment of trial Court - High Court affirmed conviction of appellants and reduced sentence u/Sec.399 IPC - Hence, this appeal - Appellants contend that High Court grossly erred in law in not acceptig appeal of appellant Jasbirsingh as prosecution story was completely false on face of it unbelievable and that High Court has failed to reappreciate evidence on record independently - Respondent submits that appellant along with other accused was found planning to commit dacoity and was arrested along with fire arm and at spot, as such, Courts below have rightly found that appellant Jisbirsingh guilty of charge framed agaist him - None of charge in present case, against appellant can be said to have been proved beyond reasonable doubt - In view of fact and circumstances which are apparent from evidence on record this Court find that both Courts below have erred in law holding at prosecution has successfully proved charge of offences punishable u/Sec.399 and 402 IPC and one punishable u/Sec.25 of Arms Act, against appellant Jasbirsingh - This Court of opinion it is a fit case, where appellant is entitled to benefit of reasoable doubt and deserves to be acquitted - Appeal allowed accordingly. **Jabir Singh Vs.State of Haryana 2015(2) Law Summary (S.C.) 1**

—Secs.405, 409, 418, 423 and 464 - Petitioners are accused 1 and 2 registered for the alleged offences u/Secs.405, 409, 418, 423 and 464 IPC - According to them, petitioner in WP.No.26246 of 2007 purchased an extent of Ac.5-00 cents from the petitioner in W.P.26369 of 2007, by way of a registered sale deed - On complaint made by second respondent, police registered the subject crime - Seeking quashment of said crime, present writ petitions came to be filed.

Held, Hon'ble Apex Court while dealing with an allegation of cheating u/Sec.420 of IPC and necessary ingredients of same, held that in order to bring a case for offence of cheating, it is not merely sufficient to prove that a false representation had been

made, but it is further necessary to prove that representation was false to knowledge of accused and was made in order to deceive complaint - In instant case, said indispensable ingredient is conspicuously absent in complaint and allegations contained therein - Therefore, further continuation of prosecution against petitioners undoubtedly amounts to abuse of process of law - For aforesaid reasons, writ petitions are allowed, and F.I.R. is quashed. **M.Srinivasulu Reddy Vs. Station House Officer, Vijayawada 2016(1) Law Summary (A.P.) 418 = 2016(3) Law Summary 409 = 2016(1) ALD (Crl) 1014 = 2016(2) ALT (Crl) 369 = 2016(3) ALT 431.**

—Secs.406 & 420 - **S.C. & S.T. (PREVENTION OF ATROCITIES) ACT, 1989,** Sec.3(1)(x) - **CRIMINAL PROCEDURE CODE,** Secs.156(3), 210 & 482 - Basing on complaint of 1st respondent, charge-sheet filed by women Police Station before Magistrate u/Sec.498-A - 1st respondent subsequently filed another complaint before Magistrate on advise of Investigating Officer under Special Act - Petitioners/accused while denying factual allegations made against them in complaint contend that allegations in private complaint which was registered earlier and charge sheet filed in subsequent CC on completion of investigation into said crime, are identical and advise of Investigating Officer to file another case is illegal, as it is his duty to register case under appropriate sections of law and file a final report u/Sec.173 of Cr.P.C. - 1st respondent contends that earlier charge sheet filed by Police gave an option to her to file a separate complaint under provisions of Special Act and hence she was forced to file separate complaint and that she cannot be deprived of her right to pursue remedies in respect of offences committed against her merely due to non-inclusion in earlier charge-sheet - Petitioners contend that there cannot be two FIRs against same accused in respect of same case, but ultimate object of every investigation was recognized to be to find out whether offences alleged to have been committed and if so by whom and that investigating agency is not precluded from further investigation inspite of forwarding a report u/Sec.173(2) in light of Sec.173(8) of Cr.P.C - It is possible to file a further complaint by same complainant based on material gathered during course of investigation - In present case, though both cases arises out of same incident 1st case did not cover offence under Special Act which could not be investigated by Investigating Officer of first case, due to statutory bar compelling victim to pursue second case - Though petitioners suffer inconvenience, expense, stress, trouble and possibility of adverse verdict twice over for same set of facts which could have been avoided if 1st complaint from 1st respondent itself was compre-hensively investigated into by Police Officer competent to do same and prosecuted before Court of competent jurisdiction at same time, legal right of 1st respondent, complainant against offences covered by her second complaint and pursue same to its logical conclusion, cannot be negatived or nullified on any such equitable consideration - As equities can only supplement and not override legal rights liabilities and as such further proceedings in crime do not appear to be susceptible to any quashing in exercise of inherent powers u/ Sec.482 Cr.P.C - Criminal petition, dismissed. **Perugu Gopinath Reddy Vs. P.Sushmitha 2009(3) Law Summary (A.P.) 78.**

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—Sec.406 and 420 r/w Sec.34 – **CRIMINAL PROCEDURE CODE,** Sec.482 - Complaint filed against A1 to A5 for offences punishable u/Sec.406, 420 & 34 of IPC - Petitioners, A1 to A5 fixed marriage alliance with LW3 daughter of defacto Complainant - Lagnapatrika also prepared and Defacto Complainant spent Rs.1 lakh for celebrating engagement function and presented gold chain and also fixed Kalyanamandapam – Petitioner, A1 informed that he was not willing to marry daughter of Defacto Complainant and advised to perform marriage of his daughter with another boy - Basing on Report of Defacto Complainant Police Registered case against the petitioners/accused - Hence petition filed to quash charge sheet - In this case act complained would not attract any criminal offence – Letdown from a promise to marry does not in any way attract offence u/Sec.420 IPC – Merely because A1 received some gold ornaments presented by Defacto Complainant it does not constitute an offence of Criminal breach of trust - Defacto Complainant since acted on promise made by petitioners, more particularly that of A1, if he had really incurred any expenditure based on assurance of petitioners, he can recover same by way of damages which remedy lies in Civil Law – No criminal offence is made out against petitioners warranting prosecution against them - Criminal proceedings pending against petitioner are quashed – Criminal petition allowed. **M.Giriprasad Vs. K.Munikrishna Reddy 2014(1) Law Summary (A.P.) 345 = 2014(2) ALD (Crl) 52 (AP) = 2014(2) ALT (Crl) 171 (AP).**

—-Secs.406, 420, 477-A and 506 – **CRIMINAL PROCEDUR CODE,** Sec.190 - Fifth respondent in the writ petition/second respondent in the criminal revision, filed a complaint u/Sec.190 Cr.P.C. before lower Court, and the same was referred to Police Station, u/Sec.156(3) Cr.P.C - Thereupon, Crime was registered u/Secs.406, 420, 477-A and 506 of IPC r/w Sec.120-B of IPC on file of said police station.

After investigating crime, police filed a final report referring complaint as of 'Civil Nature' - Aggrieved thereby, fifth respondent filed a petition u/Sec.173(8) Cr.P.C. before Court below to refer case for further investigation to Deputy Commissioner of Police, Central Crime Station, Detective Department - This petition was dismissed - Challenging this order, fifth respondent filed Criminal Revision Petition before the learned Metropolitan Sessions Judge - Criminal revision was allowed and matter was remanded to Court below to consider protest petition afresh and to pass a speaking order in accordance with law - Thereupon, by order, Court below allowed petition and directed Station House Officer, to conduct further investigation and submit a report - Aggrieved thereby, Accused Nos.1, 2 and 6 to 9 in Crime filed Criminal Revision.

In meanwhile, fifth respondent submitted representation to Commissioner of Police, complaining that the Sub-Inspector failed to understand case and had given him notice that he wanted to close case, as he opined that it was of 'Civil Nature', and requested that matter be entrusted to Central Crime Station/Criminal Investigation Department, as a large sum of money was involved and he had faith and trust in said department - Acting thereupon, Commissioner of Police, instructed Inspector of Police, to transfer case to Deputy Commissioner of Police, Detective Department, for further investigation - Thereupon, case was renumbered as Crime on the file of Central Crime Station, Detective Department, by the Inspector of Police, Central Crime Station - However, as S.R. had been allowed by the Court below in the meanwhile,

whereby Station House Officer, was directed to conduct further investigation in Crime, but as Central Crime Station, was proceeding with investigation in renumbered Crime, by issuing Notices u/Secs.91 and 160 of Cr.P.C. - Accused Nos.1, 2 and 6 to 9 in Crime also filed Writ Petition before this Court - By order passed in WPMP, this Court took note of the Order passed by the Court below specifically entrusting the investigation to the Station House Officer, and granted interim stay of all further proceedings pursuant to the Notices issued in Crime on the file of the Central Crime Station, Detective Department - Petitions were filed by the police authorities and the fifth respondent to vacate the interim order - However, with consent of learned counsel for the parties, cases are taken up for final disposal.

It was contended that directing further investigation was not justified on facts and in law and so too, entrustment of case to another agency.

Held, there is no indication of any of documents specifically mentioned by Court below having been actually verified - Further, as pointed out by Supreme Court, once Magistrate opined that case was a fit one for further investigation, unless such a conclusion is shown to be wholly without basis, it is not for the revisional Court to exercise jurisdiction u/Sec.397 of Cr.P.C. and set at naught direction to undertake further investigation - Needless to state, such investigation is intended to further ends of justice - In that view of matter, this Court does not find any reason to interfere with order passed by the Court below directing further investigation - Mere use of word 'reinvestigation' in body of order does not detract from final direction which only required investigating agency to undertake 'further investigation' and not 'reinvestigation' - Such a hyper-technical error would not weigh with this Court when intention of Court below was otherwise spelt out in clear terms - Order under revision therefore does not warrant interference.

In light of this concession made by the learned senior counsel that complainant, at point of time when he sought transfer of case to Central Crime Station, stated that investigating officer, who then held office, was not able to appreciate depth of case and react accordingly, but as said officer is no longer in office there would be no necessity to seek transfer of case to the Central Crime Station at this stage - He would therefore state that investigating agency which had earlier filed final report could undertake further investigation as directed by Court below and given fact that order passed by the Commissioner of Police, was contrary to direction passed by Court below and was also at variance with legal position, same cannot be sustained - Central Crime Station, would therefore have no power to undertake such further investigation as it is neither open to police authorities nor Magistrate concerned to direct such further investigation through a particular agency - Notices issued by said agency are therefore set aside.

Writ petition is accordingly allowed and the criminal revision is dismissed - The interim order passed in WPMP shall stand vacated in light of this final order. **Yoginder Garg Vs. Govt. of A.P. 2016(1) Law Summary (A.P.) 439 = 2016(1) ALD (Crl) 552 = 2016(2) ALT (Crl) 12.**

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—Secs.406, 420 & 506, r/w Sec.34 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Petitioners/accused placed order with complainant for print and supply of Survey Forms - Accused agreed to pay Rs.46,000/- per one lakhs forms and total cost of order was estimated as Rs.3.68 crores - Initially complainant printed 70 lakhs forms, but 50,000 forms were supplied to accused in five consignments costing Rs.25 lakhs - Apart from Forms complainant also supplied stationary worth Rs.2 lakhs to petitioners - Out of said amount of Rs.25 lakhs petitioners paid only Rs.15 lakhs to complainant - Petitioner/accused failed to receive form and pay balance amount Rs.10 lakhs - Hence complaint filed against petitioner u/Secs.406, 420,506 IPC - Petitioner/deceased contend that even accepting allegations in charge sheet to be true no offence is made out u/Sec.420 IPC and that one of main ingredients to constitute cheating is that their should be dishonest intention from inception, lacking in present case - Even offence u/Sec.406 IPC is made out as there was entrustment neither intruistment of property nor was there misapprppriation of property entrusted to accused - A reading of Sec.405 IPC would reveal that to constitute an offence u/Sec.406 IPC there must be entrustment with property and accused must have misappropriated property or diksposed of that property in violation of such trust - Even if placing an order to print material is to be treated as entrustment second limb of Sec.405 of IPC i.e, misappropriation of property entrusted is missing - In this case, prima facie to print 8 crores survey forms which lead to printing of Rs.50 lakhs forms payment of megre amount and thereafter refusing to take material could not fall within meaning of entrustment as defined u/Sec.405 of IPC - Proceedings in so far as offence u/Sec.406 IPC alone are quashed - Criminal petition allowed, in part. **V.Ramesh Babu Vs. State of A.P. 2013(3) Law Summary (A.P.) 111 = 2013(2) ALD (Crl.) 731.**

—Secs.415, 405 & 406,420 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Appellant/owner of land entered into agreement of sale to sell certain extent of land to 2nd respondent and received advance amount - Since 2nd respondent was unable to pay balance amount of sale consideration, appellant executed sale deed in favour of 3rd party - Respondent contends that appellant executed sale deed without calling upon him to pay balance amount and as such he committed an offence u/Secs.406 & 420 of IPC - Hence FIR lodged by respondent - High Court rejected Application filed by appellant for quashing FIR - "Criminal breach of trust" and "cheating" - Defined - An offence of cheating would be constituted when accused has fraudulent or dishonest intention at time of making promise or representation - A pure and simple breach of contract does not constitute an offence of cheating - If dispute between parties was essentially a civil dispute resulting from a breach of contract on part of appellant by non refunding amount of advance same would not constitute an offence of cheating - High Court may also interfere where action on part of complainant is mala fide - Impugned judgment of High Court, unsustainable - Hence, set aside - Appeal, allowed. **Dalip Kaur Vs. Jangar Singh 2009(3) Law Summary (S.C.) 7.**

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—Secs.415 & 420, r/w Sec.34 - **CONTRACT ACT,** Sec.18 - Civil dispute - Complaint filed against petitioner, GPA and other co-accused for alleged execution of sale agreements with dishonest and fraudulent intention - Magistrate ordered summoning petitioner and other accused u/Sec.420 r/w Sec.34 IPC - Sessions Judge dismissed Revision petition filed against issuance of summons - Single judge of High Court dismissed application filed u/Sec.482 Cr.P.C holding that matters raised triable issues and could only be determined by leading evidence at trial - If at very initiation of negotiations it is evident that there was no intention to cheat dispute would be of civil nature - But such conclusion would depend on evidence to be led at time of trial - Impugned order of High Court cannot be interfered with - SLP, dismissed. **S.P. Gupta Vs. Ashutosh Gupta 2010(2) Law Summary (S.C.)** ***116.***

—Secs.417, 420 & 306 - Accused convicted and sentenced for offence u/Sec.417 - Prosecution case is that appellant/ accused and deceased were selected as Sub-Inspectors and when they were undergoing training, they got acquainted with each other and their acquaintance blossomed into love affair and subsequently marriage of accused fixed with another girl - Allegation that deceased took an extreme step of committing suicide being not able to bear deception played by appellant/accused - Contention that even if suicide note is considered in *toto,* no ingre-dients of Sec.417 IPC are made out and therefore conviction and sentence of appellant recorded for offence u/Sec.417 IPC is not legal and proper and same is liable to be set aside - Sec.417 IPC defines cheating - In definition of cheating there are set forth two separate clauses of acts, which person deceived may be induced to do - In first place he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property - Second clause of acts set forth in Section is doing or omitting to do anything, which person deceived would not do or omit to do if he were not so deceived - Mere breach of contract cannot give rise to criminal prosecution under Sec.420 unless fraudulent or dishonest intention is shown right at beginning of transaction, that is time when offence is said to have been committed - In this case, trial Court proceeded to conclude that accused had carnal relationship with deceased since both of them spent a whole night - There is no basis for trial Court to infer that accused had physical union with deceased and even close relations of deceased who have been examined as P.Ws did not speak of accused having carnal relationship with deceased - Suicide note is explicit that she desired to have next birth so that she could be loved by accused - It appears she immensely loved accused without there being no reciprocation from accused - It is nowhere stated in suicide note that accused deceived her and therefore, she became frustrated and resorted to take such an extreme step - Trial Court recorded conviction of appellant/accused for offence u/Sec.417 IPC on mere conjectures and surmises and hence liable to be set aside - Criminal appeal, allowed. **K.Ashok Kumar Reddy Vs. State of A.P. 2008(2) Law Summary (A.P.) 7 = 2008(1) ALD (Crl) 995 (AP) = 2008(2) ALT (Crl) 202 (AP) = 2008 Cri. LJ 2783.**

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—Secs.418, 426,148 & 506 - **CRIMINAL PROCEDURE CODE**, Secs.156(3),173,191(b),202 & 204 - Magistrate referred complaint of 2nd respondent for investigation - After investigation Police filed final report u/Sec.173 referring case as civil in nature - Magistrate, after making enquiry into protest petition took cognizance of case against accused including petitioners 1 & 2 - Petitioner contends that when Police referred case without filing Charge Sheet then course open to complainant is to file a second complaint before Magistrate on which Magistrate has to make necessary enquiry contemplated u/Sec.202 Cr.P.C and issue process u/Sec.204 Cr.P.C after taking cognizance of offences against accused - In this case, no doubt basis of complaint is violation of mutual agreement said to have been executed among Family members who are in occupation definite and different portions of same house property and it is alleged that in case of modifications in portions which are in respect of occupation of parties, such modifications shall be carried out upon mutual agreement of all parties - Though original dispute among family members and between parties is civil dispute, it had turned out into criminal proportion because of interference by anti-social elements, brought by A3 & A5 - Therefore lower Court rightly took cognizance of case after recording Sworn statement of complainant/2nd respondent - No grounds in law to quash proceedings in lower Court at this stage - Criminal petition, dismissed. **Ch.Venkata Ramana Reddy Vs. State of A.P. 2010(3) Law Summary (A.P.) 354 = 2011(1) ALD(Crl) 124(AP) = 2011(1) ALT(Crl) 51(AP).**

—Sec.420 - 2nd Respondent, who was a third party, was assured by A-5 in returning the document if the entire loan amount is cleared - Knowing reason for repayment of loan amount, A-5 induced the 2nd Respondent to repay the due amount and having received the entire loan amount of Rs. 7,72,60,862/- from the 2nd Respondent A-5 failed to return the original documents - Said act of A-5 in inducing the 2nd Respondent to part with money caused wrongful loss to him, thereby, prima facie, constituting an offence punishable u/Sec. 420 of IPC - Criminal Petition filed by A-5 partly allowed. **Ravinder, Branch Manager, ICICI Bank Ltd. Vs. State of A.P. 2014(2) Law Summary (A.P.) 434.**

—-Sec.420 - **REGISTRATION ACT**, Secs. 82 & 83 - **CRIMINAL PROCEDURE CODE,** Sec.173 - A former member of Parliament submitted a complaint to Sub-Registrar, against petitioner herein alleging irregularities committed by him violating provisions of Registration Act - Sub-Registrar served a notice on petitioner for appearance before him and the same was returned unserved - Based on said report, police investigated case and filed chargesheet against petitioner under Sec.173 of Cr.P.C., for offences under Secs.420 of IPC and 82, 83 of Registration Act and same was taken on file by cognizance of offence against accused - It is after taking cognizance before framing of charges under Sec.240 of Cr.P.C as per police warrant case, petitioner filed application under Sec.239 of Cr.P.C. seeking for his discharge and same dismissed by Magistrate which is being challenged in present revision.

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Held, for a complaint, to take cognizance by Magistrate under Sec. 190 of Cr.P.C. procedure is on filing of written complaint and after examination of complainant and witnesses by recording their statements, take case on file - Here, it is not such a report submitted by Sub-Registrar to police crime registered and investigated - Here, the provision is not only for a prior sanction of Registrar to lay a private complaint case but also for instituting prosecution case intimating by report of case within 24 hours of institution and the mandatory requirements of the statutory formalities not complied with, law and fact that was missed in this case in dismissing application for discharge sought by petitioner, suffice to say Court could not have taken cognizance of offence against accused.

Accordingly, in result, Revision is allowed by setting aside discharge dismissal application and accused is discharged for Magistrate has no right to take cognizance. **Guniganti Ravinder Rao Vs. State of A.P. 2016(1) Law Summary (A.P.) 22.**

—Sec.420 - **MONEY CIRCULATION & BANNING ACT, 1978**, Secs.3,4,5 & 6 - **CRIMINAL PROCEDURE CODE,** Sec.482 - FIR lodged against appellant,Director of a Company for offence u/Sec.420 IPC, r/w Secs.3 to 6 of MC&B Act - Magistrate issued non-bailable warrants against appellant - Appellant filed petition u/Sec.482 of Cr.P.C seeking to quash proceedings initiated against him - High Court passed orders directing appellant to approach trial Court seeking for order of discharge - Appellant contends that even according to averments of complaint in FIR there were no allegations whatsoever against appellant and that High Court ought to have quashed proceedings against appellant instead of compelling him to approach trial Court for obtaining order of discharge - In this case, appellant contends that he cannot be held liable or responsible for any alleged irregularities committed by Company after he had resigned from Company and he was not Director at relevant point of time - IPC, Sec.420 - "Cheating" - Main ingredients - Stated - Two main ingredients are dishonest and fraudulent intention - In instant case, according to appellant there has been no dishonest intention nor have any allegations as to extent of such dishonest intention been made, in complaint and FIR - In fact no material whatsoever has been produced by complainant which would indicate any such dishonest/fraudulent intention at any stage - Complaint itself expressly stated that offence had taken place only after appellant ceased to be Director of Company - There cannot be any vicarious liability in absence of any allegation and material to show that appellant was incharge or responsible for conduct of Company's business at relevant point of time - Summoning of accused in a criminal case is serious matter - Criminal law cannot be set into motion as a matter of course - In instant case, appellant ceased to be Director of Company at relevant point of time and admittedly there are no allegations against appellant in FIR - Inherent power should not be exercised to stifle legitimate prosecution but at same time no person be compelled to face criminal prosecution if basic ingredients of alleged offence against him are altogether absent - Impugned judgment of High Court, set aside - Appeal, allowed - Proceedings initiated against appellant are quashed. **M.A.A.Annamalai Vs. State of Karnataka 2010(3) Law Summary (S.C.) 126 = 2011(1) ALD(Crl) 494 (SC) = 2010 AIR SCW 6846 = 2011 Cri. LJ 692(SC).**

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—Sec.420 - **NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - **CRIMINAL PROCEDURE CODE,** Sec.300 - Petitioner/accused entered into agreement with Company traded in commodities and became liable to pay certain amount and towards discharge of said liability, accused issued cheque for said amount in favour of above Company and said cheque was bounced for want of sufficient funds in account of accused and that accused issued cheque with an intention to cheat *de facto* complainant - Petitioner contends that another complaint was filed by complainant against petitioner alleging offence u/Sec.138 of N.I Act and that when it is pending trial, present case for offence u/Sec.420 IPC on same allegations and on same cause of action is not maintainable as petitioner cannot be tried twice on same allegations in view of Sec.300 Cr.P.C. - This is not a case, where petitioner/accused was convicted for one of two offences by any competent criminal Court and thereafter is being tried for another offence on basis of same cause of action - In this case, both criminal cases one for offence u/sec.138 of N.I Act and second one for offence u/Sec.420 IPC are pending trial - Ingredients of above two offences are entirely different - Police are incompetent to register a case for offence u/Sec.138 of N.I Act and investigate into same and to file charge sheet for said offence - Sec.142(a) of N.I Act creates a bar for Court to take cognizance of any offence punishable u/sec.138 except on a complaint in writing made by payee or holder in decourse of cheque - Only allegation is that accused gave cheque in question with an intention to cheat second respondent thus, allegation of deception is on date of issue of cheque and not on date of entering into agreement for trading commodities - In absence of any such basic ingredients of inducement by fraud or deception at inspection of transaction, mere giving of cheque for amount due without their being sufficient funds in account of accused, cannot attract liability u/Sec.420 IPC - Prosecution could not make out any ingredients for maintaining charge sheet u/Sec.420 IPC against accused - Proceedings in CC, quashed - Criminal petition, allowed. **G.Man Mohan Hari Prakash Vs. State of A.P. 2011(2) Law Summary (A.P.) 16 = 2011(1) ALD(Crl) 882(AP) = 2011(2) ALT(Crl) 127(AP).**

—Sec.420 - **NEGOTIABLE INSTRUMENTS ACT,** Secs.138 &142 - **CRIMINAL PROCEDURE CODE,** Sec.482 - 2nd respondent is partner of two Finance Firms - Since some partners are not in a position to uphold trust of Managing partner, Firm dissolved and accounts settled - In pursuance of memorandum of understanding petitioner issued cheque to 2nd respondent for Rs.3.85 lakhs - When said cheque presented, 2nd respondent received intimation that account was closed - Hence 2nd respondent lodged complaint against petitioner for offences punishable under Sec.420 IPC,and Sec.138 of N.I Act - Petitioner contends that he had availed loan from Financiers and execute promissory note and issued blank cheque and subsequently he paid entire loan amount, when requested for return of promissory note and blank cheque 2nd respondent stated they are misplaced and that Police not authorized to investigate into case filed for offence u/Sec.138 of Act - Scheme and provisions of Secs.138 & 142 of Act make it clear that it is payee who has to make a complaint in writing and upon such complaint, Court is empowered to take cognizance - As such, giving

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a complaint to Police and registering a case for offence u/sec.138 of Act, appears to be not contemplated under Act - Time limit prescribed for issuing a Notice, on receipt on information by payee from Bank regarding return of cheque as unpaid, and time limit given to drawer to enable him to make payment and time limit prescribed to payee to file complaint, makes it very clear that no Police investigation is contemplated under provisions of Act - Unless it is specifically alleged that at very inception accused has dishonest intention which are ingredients of sec.415 punishable under Sec.420 of IPC have not been made out - Since there is no allegation that petitioner had fraudulent intention on date of issuing cheque and closed account by date of issuing cheque it appears that ingredients of Sec.420 of IPC have not been made out - Hence proceedings against petitioners , quashed - Criminal petition, allowed. **J.Vidya Sagar Vs. State of A.P. 2010(2) Law Summary (A.P.) 194.**

—Sec.420 r/w Sec.34 – **CRIMINAL PROCEDURE CODE,** Sec.482 – Defacto-Complainant gave original sale deed of his shop room property to petitioners/A1, A2 & A3 to find out intending purchasers – Allegation that petitioners obtained loan from Bank by offering property of Defacto-Complainant by playing fraud on him with out informing him - Hence Defacto-Complainant gave complaint to police - SHO registered case against petitioners u/Sec.420 of IPC - Petitioners filed present petition to quash investigation in said crim - Sale deed was given for loan borrowed by A2 from Bank in the year 2008 - Defacto-Complainant filed present complaint in the year 2012 – Sale deed was with A1 for period of 4 years much prior to 2008 – It is not un understandable as to why Defacto-Complainant kept quiet without asking A1 to return sale deed - Dispute between parties is basically of Civil in nature and it arose on account of non payment of instalments by A2 to Bank – Allegations leveled in compliant inherently improbable and manifestly untrue – If investigation is allowed to continue on basis of said complaint it is nothing but abuse of process of law and ultimately miscarriage of justice - Main object of jurisdiction and powers of High Court u/Sec.482 of Cr.P.C is to prevent abuse of process of law and miscarriage of justice - Criminal petition allowed. **Dasari Venu Gopal Vs. State of A.P. 2014(2) Law Summary (A.P.) 16 = 2014(2) ALD (Crl) 33 (AP) = 2014(3) ALT (Crl) 134 (AP).**

—Secs. 420, 193, 198, 465, 209, 199 r/w 34 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Wife of second respondent filed a criminal case against the first petitioner and it was closed and then the second respondent filed a criminal case under various sections against petitioners including first petitioner and appellants chose to approach the High Court u/S. 482 of Cr.P.C for quashing of proceedings against them in said criminal case -Held, a perusal of allegations made in the complaint clearly demonstrates that the de facto complainants were very much frustrated with the amount awarded to them by the Labour Court and by any means to get some share out of compensation amount awarded to first petitioner, filing of criminal cases by de facto complainants one after the other is nothing but abuse of process of law - One should not be allowed to use criminal Court as instrumentality to take personal vengeance by filing frivolous and vexatious complaints - In present case, registration of Crime No.38 of 2011 against

the petitioners herein after referring Crime No. 82 of 2010 as mistake of fact, would certainly amount to abuse of process of law - There is a bar under law to register second FIR in respect of the same incident basing on same incident on same set of facts - Criminal Petition allowed and proceedings in Crime No. 38 of 2011 quashed. **Bondi Janaki Vs. State of A.P. 2014(3) Law Summary (A.P.) 25.**

Secs.420, 379, 468, 385 and 506 - Criminal Petition is filed u/Secs.482 Cr.P.C. seeking to quash proceedings against petitioner.

First respondent in a private complaint alleged that he visited his brother's house and after settlement of financial transaction, he has taken back 20 blank promissory notes, blank cheques and two non-judicial stamp papers each duly signed by him from his brother - While first respondent was getting into bus polythene bag in which above referred cheque books, promissory notes and non-judicial stamp papers were kept, was misplaced and he rushed to Police Station and informed same - Subsequently, Station House Officer, issued a non-tracing certificate - First respondent issued a paper ad about same.

On 20.01.2016, petitioner got issued a legal notice to first respondent as if he executed a promissory note in favour of petitioner for an amount of Rs.2.00 lakhs agreeing to repay same with interest @ 24 % p.a. and also issued a cheque for Rs.2,52,000/- - First respondent got issued a reply notice stating that he lost polythene bag at Pamarru bus stand and directed petitioner to handover same - Petitioner demanded huge amount from first respondent for return of above said documents - Petitioner filed case as if first respondent has committed offence punishable u/Sec.138 of Negotiable Instruments Act, taking advantage of custody of signed cheque - Petitioner also filed suit against first respondent for recovery of suit amount as if first respondent executed a promissory note - Immediately first respondent approached SubInspector of Police, Pamarru Police Station and submitted a written complaint but in vain - Hence first respondent was forced to file private complaint before trial Court.

Learned Judicial Magistrate, after examining witnesses, has taken cognizance of offences against petitioner for offences punishable u/Secs.385 and 427 of IPC and issued summons - Hence present petition.

Held, first respondent filed complaint alleging as if petitioner committed offences punishable under sections 420, 379, 468, 385 and 506 of IPC - As stated supra, trial Court, after recording of statements of witnesses, took cognizance of offences against petitioner u/Secs.385 and 427 of IPC even though it is not case of first respondent that petitioner committed offence u/Sec.427 IPC - It is needless to say that Court cannot take cognizance of an offence without there being pleading or prayer - Had trial Court taken a little bit of care and caution, it might not have taken cognizance of offence u/Sec.427 IPC against petitioner - Trial Court, basing on material available on record, arrived at a conclusion that no prima facie case is made out against petitioner for offences u/Secs.420, 379, 468 and 506 of IPC - If really first respondent is aggrieved by action of trial Court in not taking cognizance of offences against petitioner for above referred sections of law, certainly, he would have challenged same by way of filing a Revision Case - Therefore,

order passed by trial Court became final so far as taking of cognizance of offences u/ Secs.420, 379, 468 and 506 of IPC are concerned, against petitioner.

Having regard to facts and circumstances of case and also principles enunciated in the case cited supra, Court's considered view that petitioner deserves relief as sought for.

For foregoing discussion, this Criminal Petition is allowed, quashing proceedings against the petitioner. **Battula Siva Nageshwar Rao Vs. Jasti Venkateswara Rao 2016(2) Law Summary (A.P.) 127 = 2016(2) ALD (Crl) 148 = 2016(2) ALT (Crl) 380.**

—Ses.420, 463, 464, 465, 468 & 471- No explanation, much less cogent and convincing explanation was offered by 2nd respondent for filing of two complaints - If alleged offence is committed within territorial jurisdiction of Judicial Magistrate of 1st Class, Prathipadu, that Court alone has jurisdiction to entertain complaint - If that is so, filing of second complaint in another Court is not maintainable viewed from factual or jurisdictional aspect - A perusal of record reveals that in order to circumvent procedure contemplated under Cr.P.C, 2nd respondent has taken a plausible plea that 3rd Addl. Judicial Magistrate of 1st Class, Rajahmundry has jurisdiction to entertain complaint - This aspect also clearly indicates that 2nd respondent filed present complaint with an ulterior motive - Court has no hesitation to hold that present complaint is not maintainable either on facts or on law - Criminal petition is allowed. **Gullampudi Veera Nagamani Vs. State of A.P. 2014(3) Law Summary (A.P.) 397 = 2015(1) ALD (Crl) 320 = 2015(2) ALT (Crl) 20 (AP).**

—Secs.420, 467 & 471 - **CRIMINAL PROCEDURE CODE,** Secs.2 (h) & 156 - **EVIDENCE ACT,** Secs. 45 & 72 - Magistrate convicted petitioner/ accused, working as RTA Office agent in Company for offence committing forgery of registration certificates and other documents issued to customers - Sessions Judge dismissed appeal - Petitioner contends that P.W.1 who lodged complaint died after giving evidence in chief and therefore his evidence was completely rejected and there is no other evidence to show that accused cheated customers of company or fabricated registration certificates and that specimen handwriting and signatures of accused were not taken on directions and in presence of Magistrate and therefore opinion of expert needs to be rejected and no reliance can be placed upon his evidence - INVESTIGATION - Defined - Investigation defined u/Sec.2(h) of Cr.P.C which includes all proceedings under Code for collection of evidence by Police Officer or by any person authorised by Magistrate in this behalf - U/Sec.156 (1) Cr.P.C any Officer in-charge of Police Station may without order of Magistrate, investigate any cognizable case and therefore object of investigation is to collect evidence and that during course of investigation accused person can be called upon by Investigating Officer to give finger impression or signature of specimen of his handwriting because he is not giving testimony of nature of a "personal testimony" - In this case, only evidence available on record is evidence of P.W.11 who was handwriting expert - Evidence of an expert under Sec.45 of Evidence Act is opinion evidence - Basing on expert's evidence alone accused cannot be convicted - At best,

it can be taken as corroboration to other evidence if any available on record - These aspects not considered by trial Court as well as appellate Court and therefore findings of both Court are perverse - Conviction of accused, set aside - Criminal Revision Case, allowed. **Rathi @ Ramesh Rathi Vs. State of A.P. 2009(2) Law Summary (A.P.) 385.**

—Secs.420, 468 & 471 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Petitioner,A1 availed housing loan to be repayable in180 Equated Monthly Instalments - Petitioner paid instalments for total amount of Rs.1,80,600/- and thereafter failed to pay remaining instalments and amount of Rs.10,60,107/- ultimately became due - Bank came to know that link documents are fabricated documents and therefore gave Report to Police against A1 for offence punishable under provisions of IPC - Basing on report Police filed charge sheet against A1 and A2 to A4 mentioning that A1 with the connivance of A2 to A4 obtained house loan from Bank by submitting frabicated documents and that A1 paid some amounts and failed to pay amount relating to remaining instalments and there by cheated Bank - In this case, charge-sheet does not disclose as to how petitioner A1 entered into conspiracy with other accused and that mere making a bold allegation that petitioner-A1 by conspiring with A2 to A4 obtained loan is not sufficient and it must be clearly mention in charge-sheet that there was a dishonest intention on part of petitioner A1 at inception i.e., at time of borrowing loan from Bank - In this case, petitioner A1 could not be able to pay instalments after making payments upto an amount of Rs.1,80,600/- and that Bank lodged report with SHO and that from averments of Report it does not appear that there was any criminal intention on part of petitioner to cheat Bank while borrowing loan - Mere fact that loan borrowed by petitioner became over due does not involve in any criminal liability - In this case, dispute as well as liability of petitioner/A1 is purely a civil dispute and it does not involve any criminal offence - Launching CRIMINAL prosecution in a case of this nature is nothing but abuse of process of law and if prosecution is allowed to continue against petitioner/A1, it would result in miscarriage of justice - Proceedings in CC on file of Metropolitan Magistrate, quashed - Criminal petition, allowed. **K.Emanuel Vs. State of A.P. 2013(1) Law Summary (A.P.) 51.**

—Secs.420 & 506 - **CODE OF CRIMINAL PROCEDURE,** Sec.482 - Petitioner filed this criminal petition praying for quashing of C.C No. 508 of 2013 on file of Judicial Magistrate of First Class, Mahabubnagar and FIR in Crime No. 380 of 2013 on file of Mahabubnagar Rural Police Station-2nd Respondent/De facto Complainant alleged in his complaints that Petitioner cheated him having entered into Agreement and Partnership Deed in relation to a property but 2nd Respondent failed to show any material evidence - Held, there is no prima facie proof that allegation would capture deception on part of petitioner right from inception nor is there any criminal intimidation - FIR as well as Calendar Case do not show any substance and prima facie material against petitioner - Petitioner is not even owner of property in respect of which whole sequence of violations allegedly arose - Even if there is any violation on part

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of petitioner, it is purely a civil dispute of breach of contract - In that view of matter, 2nd Respondent failed to show that there was criminal intimidation on the part of petitioner nor was there any intention to cheat right at inception - Therefore, both cases deserve to be allowed quashing the Calendar Case and the FIR - Criminal Petitions allowed - Both C.C No. 508 of 2013 on the of Judicial Magistrate of First Class, Mahabubnagar and FIR in Crime No. 380 of 2013 on file of Mahabubnagar Rural Police Station are quashed. **M.A.Rawoof Vs. State of A.P. 2014(3) Law Summary (A.P.) 186 = 2014(2) ALD (Crl) 954.**

—Secs.423, 426,465,468 and 471 - **CRIMINAL PROCEDURE CODE,** Sec.311-A (Amendment Act 25/2005) - 3rd respondent-defacto complainant sold 73sq.yards out of 150 sq.yards retaining 77sq.yard - Accused also purchased Plot No.9 from its owner during same time - Owner of Plot No.9 and 3rd respondent jointly executed sale deed and kept pending with Sub-Registrar for some time - During period of pending registration accused with intention to grab remaining 77sq.yards in Plot No.10 changed 73sq.yards into 150 sq.yards with connivance of officials of Sub-Registrar's Office by replacing page nos.2,4,5 and by forging signatures of 3rd respondent on those pages - 3rd respondent came to know about changing of pages and forging of his signature sent - Forensic expert after making comparison gave report that signatures did not tally - As per complaint of 3rd respondent alleged forgery and replacing of pages took place in Sub-Registrar's Office while document kept pending for registration for some period - Even as per prosecution offence took place with connivance of officials of Sub-Registrar's Office - No officials of Sub-Registrar's Office were examined - If really page numbers are to be replaced, then not only officials of Registration Department but also other two executant of 3rd respondent must have colluded with petitioner - None of those joint executants of sale deed along with 3rd respondent is made co-accused along with petitioner - In this case, Investigation Officer stated to have obtained specimen signatures of 3rd respondent during investigation and he did not obtain specimen signature or handwriting of accused to find out whether alleged forged signatures of 3rd respondent were made by accused - Investigation Officer did not follow procedure prescribed u/Sec.311-A Cr.P.C while collecting specimen signatures of 3rd respondent - It would be a matter for evidence during trial of civil dispute to find out and decide whether what was sold by 3rd respondent and what was intended to be purchased by accused was 73 sq.yards or 150sq.yards - In this case, there is also no evidence collected by Investigating Officer to show that it was accused who committed alleged forgery - Prosecution of petitioner, accused for above offences is nothing but abuse of process of Court - It is matter of civil litigation between parties to be decided in an appropriately framed civil suit by civil Court - Proceedings in C.C, quashed - Criminal petition, allowed. **M.Durga Reddy Vs. State of A.P., 2011(2) Law Summary (A.P.) 185 = 2011(2) ALD(Crl) 873(AP) = 2011(3) ALT (Crl) 41(AP).**

—Sec.437 - Appellant/accused are implicated for offence u/Secs.121, 124 & 120-B of IPC - High Court rejected bail petitions - Supreme Court granted interim bail

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- GRANT OF BAIL - Principles applicable - In this case, stringent conditions for grant of bail are imposed - Accordingly bail is granted subject to condition that appellant/accused shall report to concerned Police Station once week on every monday to show their presence and that they should be permitted to take along their lawyer and that they shall appear before trial Court on each and every date of hearing and shall not seek exemption except on a particular day they are unable appear because of reasons beyond their control like illness etc., - Appellant/accused also informed Court about their place of stay/residence and disclose to Court as to when there is a change of residence - Further they shall not leave station or travel Abroad without prior permission of trial Court. **Lingaram Kodopi Vs. State of Chhattisgarh 2014(1) Law Summary (S.C.) 76 = 2014(1) ALD (Crl) 1023 (SC) = 2014 AIR SCW 1166 = 2014(2) SCC (Cri) 215 = 2014(3) SCC 474.**

—Sec.448, 427,506, (Part II), r/w 34 - **CRIMINAL PROCEDURE CODE**, Sec.482 - **HYDERABAD MUNICIPAL CORPORATION ACT** - Municipal Corporation demolished structure of complainant/2nd respondent inspite of service of notice to Corporation by civil Court - 2nd respondent filed private complaint against A1 to A6 describing A1 as Municipal Corporation represented by its Commissioner - Lower Court took cognizance against A1 to A4 - Petitioner contends that what all A1 is alleged to have done in this case was in exercise of powers under Hyderabad Municipal Corporation Act and that therefore taking cognizance of complaint against A1 is illegal as complainant did not obtain prior sanction for prosecution of A1 as required u/Sec.197 of Cr.P.C - Alleged demolition of construction of 2nd respondent/complainant made by A1 and other officials in exercise of their official duties and that therefore sanction for prosecution of A1 u/sec.197 is a pre-requisite for taking cognizance of complaint against A1 - Sanction for prosecution is condition precedent for taking cognizance of such a case against public servant - Sanction has to be previous in point of time and it should be previous to taking cognizance of offence by Court or Magistrate - Subsequent sanction if any obtained cannot cure initial or inceptual defect attached to case - Sanction for prosecution u/Sec.197 Cr.P.C shall be obtained and presented before Magistrate prior to stage of issuing process to accused u/Sec.204 Cr.P.C - At same time, no sanction, u/Sec.197 is required for presentation of complaint or for recording of sworn statement of complainant by Magistrate - Question of applicability of Sec.197 Cr.P.C has to be considered after examination of complainant and his witnesses if any by way of recording their sworn statements by the Magistrate - Prohibition for taking cognizance of offence contained u/Sec.197 (1) Cr.P.C is mandatory prohibition and has to be considered at threshold of case and not at subsequent stage - Therefore cognizance of offence of case against petitioner/A1 by lower Court is not in accordance with law and liable to be quashed - Proceedings against petitioner/ A1 in CC, quashed - Petition, allowed. **M.C.H. Visakhapatnam Vs. State of A.P. 2010(1) Law Summary (A.P.) 196.**

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—Secs.468, 471 & 260 - A1 is owner of Tourist bus, A2 is driver and A3 is Asst.-cum-agent in office of RTA - Special permit granted to A1 for playing his bus - Allegation that A1 with a mala fide intention to cheat authorites approached A3 and paid amount for preparing a forged permit - Accordingly A3 prepared forged permit with help of counterfeit stamps of RTA and by forging signatures of concerned authorities and handedover same to A1 - Asst. Motor Vehicle Inspector seized documents along with alleged forged permit and lodged Report before SHO - Magistrate convicting A1 nd A3 for offences u/Secs.468,471 & 260 IPC - Sessions Judge modified conviction and sentence passed by trial Court - Hence present two Criminal Revision cases - In this case, from evidence of P.W.4, mediator, police obtained specimen signatures and samples of handwriting of A3 under cover of panchanama for purpose of ascertaining as to whether signatures on alleged forged permit belong to concerned authorities or not - Investigation Officer did not take any steps to satisfy him self about alleged forgery committed by A3 by sending specimen signatures of authorities who issued permit and further hand writing expert also not examined in this case - In any event without obtaining specimen signatures of authorities who issued permit no purpose will be served by taking specimen signatures and hand writing of A3 - Prosecution could not be able to establish any intention or knowledge on part of A1 that forged permit could be used for carrying passengers illegally - Therefore way in which investigation was proceeded creates any amounts of doubt as to whether in fact any such fake permit was founded in bus or whether same was introduced for purpose of falsely implicating accused in this case - In so far as A3 is concerned except confessional statement which is not admissible in evidence no evidence is forthcoming in this case, that he forged permit - Therefore there is no evidence in this case, that A3 forged permit unless it is proved that A1 cheated or dishonestly used forged permit as genuine one or he knows or has reason to believe that permit to be forged one and he is not liable for punishment for using genuine a forged document - Therefore in this case, there is absolutely no legal evidence to convict either A1 or A3 - When courts below recorded conviction without therebeing any legal evidence and evidence on record was not considered with proper legal perspective and when evidence was misconstrued, High Court can re-appreciate evidence, reject same and interfere with concurrent findings recorded by Courts below under revisional jurisdiction - In this case, there is absolutely no legal evidence to convict A1 & A3 and both Courts below were misdirected in appreciating evidence on record and erroneously convicted revision petitioners, A1 & A3 - Conviction, set aside - Criminal cases, allowed. **Gunaganti Hanmandlu Vs. State of A.P. 2012(1) Law Summary 228.**

—Sec.494,418,r/w 314 – **CRIMINAL PROCEDURE CODE** Sec. 482 - A1 is husband of defacto complainant, A2 and A3 are parents, A4 is sister and A5 is brother-in-law of A1 - It is alleged that when report lodged by complainant against A1 for offence U/Sec. 498 A of IPC is pending, he had second marriage with connivance of A2 to A5 - Petitioners contend that complainant suppressed material facts and gave a false report to implicate accused and that in fact A1 obtained divorce against defacto complainant

from family court and lawfully married second time and accused 2 o 5 have nothing to do with said marriage and defacto complainant has full knowledge about passing of decree and said decree is still in force as complainant has not filed any appeal and obtained stay of said decree and as such present complaint for offence u/Sec. 494 is not maintainable - Defacto complainant contends that divorce decree obtained by A1 was an exparte decree and he obtained same by playing fraud on defacto complainant and therefore, he cannot contact second marriage on the strength of such an exparte decree - To attract offence u/Sec. 494 IPC - Accused must have contacted 1st marriage; 1st marriage must be subsisting and his spouse must be living and accused must have married again during subsistence of 1st marriage – In such scenario, 2nd marriage becomes void – Thus fact of 2nd marriage being void is sin quo non for applicability of Sec.494 IPC - Family Court order shows that court granted an exparte decree of divorce in favour of A1 against defacto complainant and dissolved marriage between both of them – No doubt it is an exparte decree but under law, there is no distinction between expare decree and contested decree – Defacto complainant has not produced any material before court showing that either said exparte decree was set aside by subsequent order by same court or by appellate court – Therefore, it shall be presumed that said decree dt. 6-11-2010 is in force - Report lodged by defacto complainant on 13-6-2014 – Therefore offence u/Sec. 494 IPC has no application – Criminal petition, allowed. **Chundi Raghava Rajesh Vs. State of Telangana 2015(1) Law Summary (A.P.) 442 = 2015(2) ALD (Crl) 145.**

—Sec.498-A – **"Harassment"** and **"Cruelty"** – Basing on complaint of de facto complainant, wife for alleged harassment of A1, husband and his family members, charge-sheet filed after investigation – Trial Court convicting A1 for offence u/Sec.498-A - High Court on re-appraisal of evidence set aside conviction - State contends that High Court has taken an unreasonable view in acquitting respondent/accused, overlooking his conduct before and after marriage – Respondent contends that where on an appraisal of evidence, adduced in case, Court below has taken a plausible view, appellate Court should not interfere, particularly with an order of acquittal even if different view can possibly be taken - Every "harassment" does not amount to "cruelty" within meaning of Sec.498-A IPC - Definition stipulates that harassment has to be with a definite object of coercing woman or any person related to her to meet an unlawful demand for purpose of Sec.498-A IPC, harassment simpliciter is not "cruelty" and it is only when harassment is committed for purpose of coercing woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to cruelty punishable under Sec.498-A IPC - Delay in filing FIR – A delayed report not only gets bereft of advantage of spontaneity, danger of introduction of coloured version, exaggerated account of incident or concocted story as result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity – It is therefore essential that delay in lodging report should be satisfactorily explained - In present case, FIR in regard to alleged occurrence on 19th April, 1996 was lodged on 22nd May 1996 – Admittedly after de facto complainant discharged from hospital on 22nd April 1996 and went to her parents house and resided there – No explanation

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worth name for delay in filing compliant with police has come on record - When substratum of evidence given by complainant is found to be unreliable, prosecution case has to be rejected in its entirety – Judgment of High Court, acquitting respondent – Justified – Appeal, dismissed. **State of A.P. Vs. M.Madhusudhan Rao 2008(3) Law Summary (S.C.) 204 = 2008(2) ALD (Crl) 917 (SC) = 2008(7) Supreme 641.**

—Sec.498-A - **CRIMINAL PROCEDURE CODE,** Sec.239 - **EVIDENCE ACT,** Sec.73 - Magistrate convicting sole accused for offence u/Sec.498-A - Case registered against petitioner/accused basing on report of wife - Trial Court took cognizance of offence against petitioner - Having analysed evidence, trial Court came to conclusion that prosecution has established guilt of petitioner/accused and accordingly sentenced him - Petitioner/accused contends that false case foisted against him as if he committed offence u/Sec.498-A and that marriage between petitioner and de facto complainant was not to liking of complainant and P.Ws.2 & 3 focibly got marriage performed - Main contention of petitioner is that marriage is not to liking of de facto complainant and same established from contents of Ex.D.2, letter written by her stating that she was not liking said marriage and she does not want to lead marital life with petitioner and she does not want to be house of petitioner for reason that petitioner's mother is suffering from incurable disease - In this case, signature of complainant, P.W.1 both in English and Telugu on Ex.P.1 report, tally with her signature in Telugu on Ex.D2, letter and signature in English on her deposition as P.W.1 - U/sec.73 of Evidence Act which deals with comparison of signature, writing or seal with other admitted or proved, states that in order to ascertain whether a signature writing or seal is that of person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to satisfaction of Court to have been written or made by person may be compared with one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose - Court thoroughly satisfied that complainant in Ex.P.1 and executant of D.2 letter is one and same - Prosecution has come forward with false case and defence theory appears to be correct - Conclusions of courts below, erroneous - Impugned judgment of trial Court as confirmed by appellate Court, set aside - Petitioner acquitted - Criminal Revision Case, allowed. **Naraman Mojes Vs.The State of A.P., 2010(3) Law Summary (A.P.) 350 = 2011(1) ALD(Crl) 224 (AP) = 2011(1) ALT (Crl) 55 (AP).**

—Sec.498-A - **CRIMINAL PROCEDURE CODE,** Sec.248(1) - Marriage between petitioner/defacto-complaint and accused performed in year 1986 - Petitioner/defacto complainant filed complaint since accused harassing to bring additional dowry and developed vices like having extra-marital relationship with another woman and coming home late in night, being unable to bear acts of cruelty and torture at hands of accused - Trial Court considering evidence and facts came to conclusion that prosecution failed to prove ingredients of Sec.498-A IPC and acquitted accused for said offence - In this case, petitioner admitted in her evidence that she waited for three years to inform her parents about alleged harassment on part of accused to bring additional dowry

and that reason given by her is that it was to safeguard family prestige, which is hard to accept - If, in fact accused had caused harassment to her on account of additional dowry she could have informed her parents about same immediately and she also failed to substantiative extra marital relationship of her husband - In this case, evidence of P.Ws.2 & 4 who are interested witnesses is full of contradictions - Admittedly at time of marriage, customary presentations were only given to accused and such customary presentations cannot be termed as dowry by any stretch of imagination - Judgment of trial Court in acquitting accused for offence u/Sec.498-A IPC - Justified - Not a fit case to order for2 retrial - Criminal revision case, dismissed. **Ch.Gangabhavani Vs. State of A.P. 2010(3) Law Summary (A.P.) 134.**

—Sec.498-A – **CRIMINAL PROCEDURE CODE**, Sec.482 – Defacto-Complainant and A1 fell in love with each other – Since parents of A1 not agreeing for his marriage, elders performed marriage of Defacto-Complainant with A1 – Subsequently disputes arose between A1 and Defacto-Complainant and A1 filed a case against Defacto-Complainant seeking divorce – Defacto-Complainant filed case against petitioners – Hence present petition by parents of A1 and close relatives to quash proceedings in Criminal Case - In this case facts clearly show that Defacto-Complainant after receiving notice in divorce case, filed case falsely implicating all petitioners - Normally in case of this nature there will be tendency of roping as many relatives of husband as accused in case filed u/Sec.498-A of I.P.C. – There is in ordinate delay of 9 years in filing complaint in question and therefore offence u/Sec.498-A of I.P.C., is barred by limitation and Trial Court ought not to have taken cognizance of case for offence punishable u/Sec.498-A of I.P.C., against petitioners - Entire proceedings in C.C against petitioners are quashed - Criminal petition allowed. **Gummallka Satyanarayana Vs. State 2014(2) Law Summary (A.P.) 41 = 2014(2) ALD (Crl) 25 (AP) = 2014(2) ALT (Crl) 174 (AP).**

—Sec.498-A - **DOWRY PROHIBITION ACT,** Secs. 3 & 4 - Accused A1-A4 have filed this petition seeking quashing of proceedings of Judicial Magistrate of First Class - Learned Magistrate has taken cognizance for offences punishable u/Sec.498-A of IPC and Sects.3 and 4 of Dowry Prohibition Act from the police final report, which is outcome of the report of the 2nd respondent/de facto complainant none other than wife of A-1 - Investigation by police nowhere discloses phone calls de facto complainant received and from which number to which number even to create any part of cause of action on receiving information of phone calls within jurisdiction of Karimnagar District - De facto complainant even served, did not choose to appear - All witnesses are apart from interested nothing is of any independent evidence material collected during investigation - De facto complainant filed complaint in waiting for more than six months to alleged incident set up within jurisdiction of Kamanpur - Police who investigated did not even mention in final report about her giving of report earlier and as to why no crime was registered and any further action taken - Held, thus complaint filed by de facto complainant that was referred to police investigation by Magistrate and police final report filed pursuant there to is outcome from suppression of material fact of

earlier deed of divorce between de facto complainant and A-1 through elders amicably and same reiterated referring in settlement executed immediately after 04-06-2014 some settlement arrived earlier at Godavarikhani of Karimnagar District also from the panchayhath held and pursuant to which, items belonging to de facto complainant and her father lying with accused persons were also returned, continuation of criminal proceedings is nothing but abuse of process of law as it is a fit case to quash the calender case - Complaint itself discloses while de facto complainant residing with accused at his place and came out from there i.e., main cause of action besides marriage in occurring some cause of action to maintain complainant at her place of parents not sustainable by referring to Secs.177 and 178 of Cr.P.C. - For all these reasons and having regard to above, Criminal Petition is allowed and thereby, proceedings of Judicial Magistrate of First Class are hereby quashed. **Amit Kumar Yadav Vs. State of Telangana rep.by Public Prosecutor 2015(3) Law Summary (A.P.) 246**

—-Secs. 498-A, 302 - DOWRY PROHIBITION ACT, Secs. 3,4 - Appeal is filed by appellant/A1 against judgment, challenging his conviction for offences punishable u/Secs.498-A and 302 I.P.C. - Criminal Revision is filed by the de facto complainant/PW.1 against same judgment aggrieved by acquittal of A2 & A.3 of charges u/Secs.498-A, 304-B and 302 IPC and u/Secs.3 & 4 of Dowry Prohibition Act.

Held, upon careful perusal of evidence of Medical Officer PW 9, other evidence on record and opinion of expert, Court have no hesitation in holding that from material on record, it cannot be said that deceased was done to death violently due to smothering, as has been held by learned Sessions Judge - Nothing incriminating has been seized from place where dead body was lying, which suggests that any kind of pressure was applied on neck of deceased who admittedly was an able bodied strong woman, as found by PW 9, medical officer, and also as noticed from photographs - If such a person is done to death violently by one person, several incriminating objects are to be found at place where said act was committed - Admittedly, even according to prosecution witnesses, they reached scene within minutes after incident and none of them noticed anything in room which suggests that any pressure with any material object was applied on deceased which incapacitated her and was thereafter smothered to death - Therefore, this Court unable to concur with view expressed by learned Sessions Judge that medical evidence conclusively established that deceased was killed by A.1 by smothering her.

Evidence of prosecution witnesses on record do not even show that deceased was subjected to any harassment or cruel treatment at hands of accused - On other hand, as noticed above from Exs.D1 and D.2 which are photographs taken just two or three months before death of deceased, it cannot be said that accused subjected deceased to any cruel treatment or harassment - It is also on record that for well being of deceased and for her begetting children, A.2 and A.3, being father-in-law and mother-in-law, worshipped the God and went on pilgrimage to Kasi along with PW 2, mother of deceased - Thereafter, when deceased conceived and was blessed with a son, they named child as “Rama Kasi” - All these circumstances do not show that deceased was subjected to any cruelty or harassment so as to convict appellant/A.1 for offence punishable

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u/Sec.498-A I.P.C. - It is found that evidence on record does not establish that there was any demand for dowry at time of marriage or subsequent thereto nor was there any harassment for additional dowry - As a matter fact, it is admitted by PW 1 that major part of expenses even for marriage were met by A.1 by himself - There is also documentary evidence to show that around period when A.1 and deceased were married, A.1 was having bank balance of more than Rs.6 lakhs - Nearly 6 years after marriage also bank balance of A.1 was in range of Rs.3 lakhs as spoken to by DWs 1, 7 and 8, who are Bank Officials and who produced Bank statements Exs.D8, D9 & D10 - Evidence of prosecution witnesses does not also show that deceased was killed by A.1. None of prosecution witnesses even remotely say that it is A.1 who has violently killed deceased - On other hand, evidence of prosecution witnesses as well as defence witnesses clearly goes to show that deceased committed suicide by hanging and since child in room cried, A.2 and A.3 and several neighbours assembled there and after forcibly opening the door, they found the deceased hanging, brought her down and having found her still alive, immediately called A.1 and all of them took deceased to Bollineni hospital where she was declared dead - Therefore, acquittal of A.2 & A3 by learned Sessions Judge cannot be said to suffer with any irregularity or illegality or that findings suffer from any perversity warranting interference therewith under revisional jurisdiction of this Court.

In result, Criminal Appeal filed by A.1 is allowed - Conviction and sentence recorded against appellant/A.1 of charges u/Sec.498-A and 302 IPC are set aside - Consequently, appellant/A1 shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him - Criminal Revision filed by the de facto complainant/PW.1 against acquittal of A.2 & A.3 is dismissed. **Yerramsetti Satish Vs. State of A.P. 2016(2) Law Summary (A.P.) 112 = 2016(2) ALD (Crl) 714.**

—Sec.498-A - **DOWRY PROHIBITION ACT,** Secs.3 & 4 - **CRIMINAL PROCEDURE CODE,** Sec.41 & 41-A - Held, that Police Officers do not arrest accused unnecessarily and Magistrate does not authorize detention casually and mechanically - Supreme Court issued specific directions in case of arrest for above offences both Magistrate and Police Officers are liable for action if any violation of directions. **Arnesh Kumar Vs. State of Bihar 2014(2) Law Summary (S.C.) 81 = 2014 AIR SCW 3930 = 2014(2) ALD (Crl) 779 (SC) = AIR 2014 SC 2756 = 2014(3) SCC (Cri) 449 = 2014(8) SCC 273.**

—Sec.498-A - **DOWRY PROHIBITION ACT**, Secs.3 & 4 - CRIMINAL PROCEDURE CODE, Sec.482 - Offences are alleged to have committed in Mumbai but second respondent/wife, after allegedly driven out of her matrimonial home, went to house of her parents at Tenali and filed a complaint and FIR and Charge sheet were lodged there - When petitioners contested matter, it was held that Tenali Courts do not get territorial jurisdiction merely because respondent returned to Tenali, however, question of territorial jurisdiction shall be determined by Trial Court and not in a petition u/

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S.482 Cr.P.C - Petition is dismissed. **Sivangala Thandi Deepak Vs. State of A.P. 2014(3) Law Summary (A.P.) 33 = 2014(2) ALD (Crl) 894.**

—Secs.498-A & 302 - **EVIDENCE ACT,** Sec.114 (g) - Dying declaration - Appellant/accused charged with offence punishable u/Secs.498-A and 302 - Trial Court acquitted accused for offence u/Sec.498-A, but convicted u/Sec.302 - Contention, that there are several inherent contradictions in oral as well as documentary evidence adduced by prosecution and that there are contradictions in two dying declarations and that statement of deceased recorded by Investigating Officer neither filed nor reasons for not filing same are furnished - If a dying declaration or a statement of deceased is said to have been recorded, but is not placed before Court, it becomes permissible to draw an inference as provided for u/Sec.114 (g) of Evidence Act - Further contradictions, if any in dying declarations would have their own impact on strength of case, particularly when prosecution rests its case exclusively on circumstantial evidence - When so many doubts shroud veracity of case of prosecution, benefit of doubt deserves to be extended to appellant - Conviction and sentence ordered against appellant-accused, set aside - Appeal, allowed. **Kadiyamsetty Venkata Rao Vs. The State of A.P. 2008(1) Law Summary (A.P.) 238 = 2008(1) ALD (Crl) 423 (AP) = 2008(1) ALT (Crl) 273 (AP).**

—Sec.498-A, 302 & 324 - Sessions Judge convicting accused no.1 for offence u/Sec.498-A & 302, A2 father of A1 under 498-A and 324 and A3 and A4 u/Sec.498-A for causing death of deceased, wife of A1 and daughter of P.Ws.1 & 2 - Appellants/accused contend that medical evidence in this case is not conclusive on aspect that death of deceased is homicidal, and that evidence on record does not indicate commission of offence punishable u/Sec.302 and also that evidence on record does not warrant any conviction against accused 1 to 4 for remaining offences and seek to set aside conviction and sentences passed against appellants - In this case, most of P.Ws did not support prosecution and they were treated hostile by prosecution - Trial Court rested its decision mainly on evidence of P.Ws.1 & 2 who are parents of deceased and P.W.4 daughter of P.Ws.1 & 2 - However, prosecution could be able to establish by positive evidence of P.W.11 though treated hostile by prosecution that dead body was originally found lying on coat at house of accused No.1, which means that immediately preceding death of deceased she was in company of accused no.1 - This fact was deposed by P.W.11 which remains unrebutted, though he was declared as hostile by prosecution on aspect of extra judicial confession - It is for accused in case of this nature where offence is committed within four walls, to offer plausible explanation as to what had actually happened to deceased - Prosecution has clinchingly established that accused no.1 had subjected deceased to cruelty with a demand to get additional dowry and trial Court is also perfectly justified in convicting accused no.1 for offence u/Sec.498-A IPC - Conviction recorded by trial Court against accused no.2 for offenceunder Sec.324 is proper - In view of fact that accused no.1 and deceased were residing separately conviction and sentence passed by trial Court against accused 2 to 4 for offence u/Sec.498-A cannot be sustained and is liable

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to be set aside - Conviction against accused no.1 u/Sec.302 & 498-A IPC, confirmed - Appeal, partly allowed. **Nimmaraboina Gangaiah Vs. State of A.P. 2009(3) Law Summary (A.P.) 323.**

—Sec. 498-A and 304-B - **CRIMINAL PROCEDURE CODE,** Sec.156 - Sessions Judge committing all accused for offence punishable u/Sec.498-A/304-B - High Court partly allowed appeal and conviction against two accused, set aside - Hence remaining three accused preferred present appeal - In this case, Cumulative effect of documentary and oral evidence clearly shows that appellants have been rightly found guilty of offence by High Court - Offence under Sec.304-B r/w 498-A IPC is made out in this case and has been proved by prosecution beyond any reasonable doubt - Concept of reasonable time would be applicable, which would primarily depend upon, facts of a given case, conduct of party and impact of cruelty and harassment inflicted upon deceased in relation to demand of dowry to cause of unnatural death of deceased - In this case marriage itself has not survived even for a period of two years, entire period would be relevant in determining such an issue - Appellant contends that investigating office who took over investigation at subsequent stage upon transfer of investigation to CID, ought to have relied and referred only to statements recorded u/Sec.161 Cr.P.C by earlier investigating Officer and that he had no jurisdiction to record fresh statement of witnesses - It is settled principle of law that statements u/Sec.161 Cr.P.C recorded during investigation are not substantiative piece of evidence but can be used primarily for very limited purpose for confronting witnesses - When case was transferred to CID for investigation it obviously meant that in normal course, authorities were not satisfied with conduct of investigation by earlier investigating Officer and considered it appropriate to transfer investigation to Specialized branch i.e., C.I.D - Appeal, dismissed. **Uday Chakraborty Vs. State of West Bengal 2010(2) Law Summary (S.C.) 179.**

—Secs.498-A & 304-B - **DOWRY PROHIBITION ACT,** Sec.4 - **EVIDENCE ACT,** Sec.32(1) - Deceased/wife committed suicide by consuming poison within period of 7 years from date of marriage on account of alleged cruelty and harassment by demanding to bring balance dowry amount - Appellants/A1 & A2 contend that they are falsely implicated and that there is no direct evidence for harassment and that hearsay evidence of Police and other witnesses cannot be relied on in view of present legal position - In present case, none of witnesses stated that they have any personal knowledge about harassment of beatings caused by A1 husband and no role has been attributed to A2 mother of A1 except a general statement that accused were harassing deceased - Statements said to be made by deceased to P.Ws were long prior to death of deceased and that is not information about circumstances leading to death of deceased - Such statements do not come within purview of Sec.32(1) of Evidence Act and therefore no reliance can be placed on such statements - In absence of any other material and as evidence of P.Ws is only hearsay evidence, it is not safe to come to conclusion that prosecution proved guilt of accused beyond reasonable doubt - Appellants/accused are entitled to benefit of doubt - Conviction and sentence imposed on appellants/A1 & A2, set aside - Criminal appeal,

allowed. **Dheshetti Rajesham, Vs. State of A.P. 2008(1) Law Summary (A.P.) 88 = 2008(1) ALD (Crl) 349 (AP) = 2008(1) ALT (Crl) 148(AP).**

—Secs.498-A and 304-B and 306 – Appellant/accused tried for offence punishable u/Secs.498-A, 304-B – Trial Court held accused persons guilty of offence punishable u/Sec.498-A and 306, while directing acquittal of charge in terms of Sec.304-B – High Court held that offence u/Sec.306 not made out - Secs.304-B and 498-A of IPC cannot be held to be mutually inclusive - These provisions deal with two distinct offences – It is true that cruelty is a common essential to both sections and that has to be proved – Explanation to Sec.498-A gives meaning of 'cruelty' – In section 304-B there is no such explanation about meaning of cruelty – Meaning of cruelty or harassment is same as prescribed in explanation to Section 498-A under which cruelty by itself amounts to an offence - A person charged and acquitted u/Sec.304-B can be convicted u/Sec.498-A without that charge being their, if such a case is made out and if case is established, there can be conviction under both sections. **Balwant Singh Vs. State of H.P. 2008(3) Law Summary (S.C.) 153.**

—Sec.498-A, 304-B & 306 - **EVIDENCE ACT,** Secs.113-A & 32 - Appellant/accused was tried under S.C. & S.T Act for offences puni-shable u/Secs.498-A,304-B & 306 of IPC - Trial Court acquitting appellant for offence punishable u/Sec.304-B and convicting u/Secs.498-A & 306 - Contention that false case, foisted against appellant and that if really there was harassment and death of deceased was on account of said harassment, all facts about harassment would have been spoken by P.W.s 1& 2, brother & mother of deceased, but they failed to state any such facts and their deposition is a subsequent development and Court need not give any credence to said evidence and that when said evidence is discarded, there is absolutely no other evidence connecting appellant with said offence - In this case, it may be true that on two or three occasions appellant expressed his unhappiness about dowry he received and was coming late in nights, but from that it cannot be inferred that it was solely on account of same, deceased committed suicide - Trial Court not discussed crucial aspect of non-compatibility between wife and husband - Deceased is graduate, whereas appellant studied only 4th class and there was no compatibility between them and similar circumstances must have forced her to take extreme step of committing suicide, for which appellant cannot be faulted - EVIDENCE ACT, SEC.113-A - PRESUMPTION - It is not case of P.Ws. 1 & 2 that appellant approached and asked for more dowry and similarly they have not stated in their evidence that they have seen appellant beating deceased - There evidence is only to effect that deceased was informing them that appellant was demanding more dowry and was beating her - From this a presumption as provided u/Sec.113-A cannot be drawn - There is no evidence connecting appellant with any offences alleged against him - Prosecution miserably failed to establish guilt of appellant beyond all reasonable doubt - Conviction and sentence imposed on appellant/accused, set aside - Criminal appeal, allowed. **K.Amarnath Vs. State of A.P. 2008(1) Law Summary (A.P.) 233 = 2008(1) ALD (Crl) 429 (AP) = 2008(1) ALT (Crl) 244 (AP).**

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—Secs.498-A, 304-B - **EVIDENCE ACT,** 113-A - **DOWRY PROHIBITION ACT** - Accused chargesheeted u/Sec.498-A/304-B IPC - Sessions Court convicted both accused under said provisions - 1st accused, husband died - If married women dies on account of burns or bodily injury within 7 years of marriage and if it is so that she was subjected to cruelty or harassment by her husband or any relatives and such death is called dowry death u/Sec.304-B IPC and husband or relatives shall be presumed to have caused dowry death - If maried women is subjected to cruelty by husband or his relatives is liable for conviction u/Sec.498-A - It is interesting to note that Sec.498-A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry death, but also case, of cruelty to married women by their in laws" and Sec.304-B was introduced as per Act Sec.43 of 1986 to make penal provisions "more stringent and effective" - Amendments under Evidence Act are only consequential to amendmenrts under Dowry Prohibition Act, 1961 and IPC - It is significant to note that u/Sec.113-A expression is "Court may presume" where as u/Sec. 113-B, expression is "Court shall presume" - Being a mandaory provision on guilty conduct of accused u/Sec.304-B it is for prosecution, to first show availability of all ingredients of offence so as to shift burden of proof in terms of Sec.113-B of Evidence Act - Once all ingredients are present, presumption of innocence fades away - In view of mandatory provisions of law u/Sec.304-B of IPC/113-B of Evidence Act, it is obligatory on part of prosecution to estabslish that death occures within 7 years of marriage - Sec.304-B IPC permits presumption of law only in given set of fact and not presumption of fact - Fact is to be proved and then only, law will presume - In present case, prosecution failed to establish crucial facts on death occurring within 7 years of marriage - Conviction of appellant u/sec.304-B, set aside. **Gurdip Singh Vs. State of Punjab 2013(3) Law Summary (S.C.) 103.**

—Sec.498-A & 302 - **CRIMINAL PROCEDURE CODE,** Secs.161 & 161(3) - "Dying declaration" - Appellant/accused convicted for offence u/Sec.498-A and 302 IPC - for causing death of deceased by pouring kerosene and set fire on her, basing on dying declarations - Appellant/accused contends that two dying declarations are inconsistent as to cause of death - First statement involvement of mother-in-law was also spoken to by deceased and that within half-an-hour thereafter, cryptic statement was given to P.W.15/Magistrate and at that time of recording statement of deceased Ex.P.28, not stated and therefore it must have been fabricated subsequently to suit case of prosecution and that after registration of case P.W.17 examined deceased and recorded statement u./Sec.161(3) Cr.P.C. but that statement was not filed into Court for reason that it was not favourable to case of prosecution and that by deliberate suppression of important document an adverse inference can be drawn that as two dying declarations are inconsistent, it is not safe to place any reliance and that as third dying declaration has not been produced by prosecution, and appellant is entitled benefit of doubt that deceased would not have given such an elaborate statement as in Ex.P.28 - Prosecution contends that once Ex.P.28 and P.W.30 are proved to be true and trustworthy, a conviction can be based there on even without there being corroboration and that these

two statements are very clear that appellant/A1 poured kerosene and set fire to deceased and therefore trial Court rightly placed an implicit reliance on statement of deceased, Ex.P.28 & Ex.P.30 and there are absoultely no grounds to interfere with conviction and sentence of trial Court - In this case, P.Ws.1 to 9 who are close relations and material witnesses did not support case of prosecution and entire case rests upon two dying declarations in Ex.P.28 & Ex.P.30 - Dying declaration recorded by Magistrate is very cryptic and does not contain any details except saying that her husband poured kerosene and set fire and presence of mother-in-law is not spoken to by deceased in said dying declarations - Where there were material contradictions in two dying declarations made in a bride-burning case, declarations can be said to be not reliable - DYING DECLARATIONS - There cannot be any dispute that when there are more than two dying declarations, there must be consistency with regard to all dying declarations - If one dying declarations is inconsistent with other no implicit reliance can be placed on dying declarations - In view of fact that two dying declarations are not consistent on material particulars and third dying declaration has been suppressed by prosecution, in such circumstances, two dying declarations required corroboration and there is no such corroboration and this aspect of case has not been considered by trial Court in a right perspective and hence impugned judgment, liable to be set aside - Conviction and sentence recorded against appellant/accused no.1 for offences u/Secs.498-A and 302 IPC are set aside and accused is found not guilty for said charges and accordingly acquitted - Criminal appeal, allowed. **Vadde Pallepu Sekhar Vs. State of A.P., 2011(2) Law Summary (A.P.) 271 = 2011(2) ALD(Crl) 396(AP) = 2011(2) ALT(Crl) 307 (AP).**

—Secs.498-A, 304-B and 201 – **EVIDENCE ACT,** Sec.113-B and 106 – Accused/husband and in-laws of deceased charged for alleged killing of deceased by burning with kerosene and cremating her body – Trial judge convicting accused, in-laws u/Sec.304-B, 498-A and 201 and acquitting husband accepting defence version that he was not in village at time of death of deceased - Single Judge of High Court convicting accused u/Sec.498-A and acquitted them u/Sec304-B on premise that husband had been acquitted and State not preferred appeal against acquittal - NECESSARY INGREDIENTS FOR APPLICATION OF SEC.304-B – STATED – High Court committed serious irregularity by acquitting respondents/in-laws of charge u/Secs.304-B and 201 on premise that husband had been acquitted and state did not challenge same by filing appeal, but that by itself did not justify conclusion that prosecution failed to prove charge u/Secs.304-B and 201 against remaining accused - Single judge of High Court gave undue weightage to minor discrepancies in F.I.R and statement of P.W.1 and acquitted accused ignoring most important factor that deceased suffered injuries in a dwelling unit belonging to her in-laws and in their presence, that she died due to those injuries and that defence failed to offer any satisfactory explanation for injuries on head of deceased - If single Judge of High Court had adverted Sec.106 of evidence Act and correctly applied principles of law, he would not have committed grave error of acquitting respondents - Impugned judgment, set aside – Conviction of respondents u/Secs.304-B r/w 201, restored – Appeal, allowed. **State of Rajasthan Vs. Jaggu Ram 2008(1) Law Summary (S.C.) 191.**

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—Secs.498A, 306 & 201 - **CRUELTY** - Demand of dowry - Trial Court convicted appellants accused u/Sec.398A, 306, 201 and 114 - High Court maintained conviction and sentence - In this case, deceased wife was paind and disturbed as husband was having illicit affair with appellant no.4 and even if it is proved that cruelty as envisaged under first limb of Sec.498A IPC would not get attracted - It would be difficult to hold that mental cruelty was of such a degree that it would drive wife to commit suicide - Mere extra marital relationship, even if proved would be illegal and immoral, but in absence of some acceptable evidence on record that can establish such high degree of mental cruelty, Explanation to Sec.498A which includes cruelty to drive a woman to commit suicide would not be attracted and that allegation of illicit relation with other woman would be illegal and immoral but not cruelty u/Sec.498A - In this case, basing on available evidence it is difficult to sustain conviction u/Sec.306 & 498A - Once this Court hold accused appellants are not guilty of offence u/Sec.306 & 498A IPC, conviction u/Sec.201 IPC is also not sustainable - Conviction and sentence of all appellants accused are set aside - Appeal, allowed. **Ghusabhai Raisangbhai Chorasiya Vs. State of Gujarat 36**

—-Secs.498-A, 323, 506 - **DOWRY PROHIBITION ACT, 1961** Secs.3 and 4 - In this petition filed under Section 482 Cr.P.C., petitioners seeks to quash the proceedings of FIR where under the petitioners were charged for the offences under Secs.498A, 323 and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. The defacto complainant is the wife of A1 - She filed a private complaint before the Judicial Magistrate against A1 to A6 for the aforementioned offences and the said complaint was forwarded to the police under Section 156 (3) Cr.P.C. and the same was registered as crime and being investigated into - Hence, the instant quash petition at the instance of petitioner/A6.

Held, penal provisions required strict construction and when phrases of a statute are not defined, they have to be understood in natural, ordinary or popular sense - That being so, phrase “relative of the husband” employed in Sec.498-A IPC should be understood as “relatives of the husband’s side” with whom he obtained relationship by way of blood, marriage or adoption - That being so A6 during the relevant period being sister-in-law of complainant, she cannot be said to be “relative of the husband” - It is true by virtue of marriage between A1 and complainant, relatives of one side became relatives of both sides in a general sense - However, for strict construction of penal provision under Sec.498-A, A6 who was relative of complainant, cannot be said to be relative of husband of complainant i.e., A1 - For this reason and also for reason that no allegations of cruelty falling within the meaning of Sec.498-A IPC and allegations touching other offences are made against A6, she deserves quashment of proceedings - In result, this Criminal Petition is allowed and proceedings are quashed against petitioner/A6. **Shaik Riayazun Bee Vs. The State 2016(2) Law Summary (A.P.) 314 = 2016(3) ALT (Crl) 70 (AP) = 2016(2) ALD (Crl) 576.**

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—Secs.498-A, 494 & 511 - **DOWRY PROHIBITION ACT,** Secs.3 & 4 - CRIMINAL PROCEDURE CODE, Secs.188, 161 & 162 - Petitioner married daughter of defacto complainant in 2004 at Hyderabad and complaint lodged in 2006 for alleged demand of dowry and planning for bigamy - Investigation Officer registered FIR and examined witnesses and aggrieved party wife not examined by Investigation Officer as envisaged under provisions of Cr.P.C - It is stated in charge sheet that he has contacted said witness and she confirmed contents of complaint, but he has not recorded any statement by examining her personally and also Investigating Agency relied on statement forwarded by said witness attested by notarized public and said procedure and reliance on statement is not legally acceptable - Merely recording statement as stated by witnesses cannot be called as investigation - Investigation includes examination of witnesses, confronting witnesses on basis of material collected by Investigation Officer and also version of person who is aggrieved because of said complaint - Mere production of complaint without proper examination cannot be called as statement recorded during investigation - Entire reading of complaint and charge sheet, it is evident that entire occurrence took place in United States of America - Allegations contained in complaint also regarding occurrences in USA - Of course, offence committed by a person, which is punishable under law in India, he can be prosecuted for offence committed abroad - But at same time Sec.188 of Cr.P.C mandates that no Court shall take cognizance except previous sanction by Central Govt., when an offence is committed out side jurisdiction of India - Mere demand of dowry will not attract an offence u/Sec.498-A IPC - There are two elements in said section which includes explanation which clearly indicates "cruelty" means by way of harassment driving a women to commit suicide or to suffer with injury, second element of said section indicates that harassment should be in connection to demand of dowry - But, entire reading of complaint, above said ingredients are totally not attracted, even based on present complaint, which is in nature of hearsay no offence made out as alleged in charge sheet - Proceedings against petitioners in CC, quashed - Criminal petitions, allowed. **Rajesh Gutta Vs. State of A.P. 2011(2) Law Summary (A.P.) 38 = 2011(1) ALD(Crl) 885 (AP) = 2011(2) ALT(Crl) 96(AP) = 2011 Crl. LJ 3506(AP).**

—Sec.498-A, 506, r/w Sec.34 - **DOWRY PROHIBITION ACT,** Sec.4 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Criminal petition filed by first accused in crime on file of Police Station for offences punishable u/Secs.498-A etc., - After marriage petitioner/A-1 put up family in London and later daughter and son were born - Subsequently misunderstanding arose between petitioner and *de facto* complainant (R2) and they are constrained to live separately as per orders of Court - In this case, *de facto* complainant (R2) made a complaint to Police against petitioner and Police after conducting investigation closed file as undected crime - Later petitioner filed divorce case and Country Court at London granted divorce dissolved marriage between petitioner and de facto complainant and subsequently *de facto* complainant came to India with prior permission of Court and did not go back to London - Petitioner contends that there was no relationship between him and *de facto* complainant since 2005 onwards and

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de facto complainant made a complaint in Kanigiri Police Station basing on which Police registered case for alleged offences under provisions of IPC and Dowry Prohibition Act - Petitioner was arrested by Police and subsequently released on bail by Magistrate - Petitioner contends that Kanigiri Police have no jurisdiction to entertain crime as no part of offence and no cause of action arose in their limits - Country Court at London granted divorce and *de facto* complainant already left UK and there is no relationship between petitioner and *de facto* complainant - In view of fact that in present case, entire incident even according to *de facto* complainant took place in London, offence being committed out side India trial in any Court in India cannot be proceeded with beyond cognizance stage without previous sanction of Central Govt., - If *de facto* complainant suppressed material fact viz., that there was a divorcee of decree passed by Country Court on petition filed by petitioner, dissolving marriage between petitioner and *de facto* complainant - Further criminal case and also maintenance case against petitioner in London closed as undected crime that she was also refused maintenance - In view of suppression of material facts by *de facto* complainant Magistrate of First Class Kanigiri, has no jurisdiction to try offence against petitioner without previous sanction of Central Govt., - Proceedings on file of Magistrate's Court at Kanigiri is nothing but abuse of process of law - Hence said proceedings are quashed - Criminal petition, allowed. **N.Brahmaiah Vs. State of A.P. 2011(3) Law Summary (A.P.) 288.**

——Secs.498-A, 506, 509 **- CRIMINAL PROCEDURE CODE,** Secs.482, 125 **- HINDU MARRIAGE ACT,** Sec.24 - Contention of petitioner is that the petitioner is not the legally wedded wife of first respondent and a husband is not entitled to claim maintenance from his wife under
Sec. 125 Cr.PC and the proceedings against the petitioner are nothing short of abuse of process of law and therefore it is a fit case to quash the proceedings by exercising inherent jurisdiction under Sec. 482 Cr.PC - Contention of the first respondent is that he is entitled to claim maintenance under Sec. 125 Cr.PC from the petitioner, who is his legally wedded wife and that the order passed clinchingly establishes that the petitioner is legally wedded wife of first respondent.

Held, after reading Sec. 24 of Hindu Marriage Act and Sec. 125 Cr.PC., Court can safely arrive at a conclusion that under Sec. 125 Cr.PC, "husband" is not entitled to claim maintenance even from his legally wedded wife - Question of claiming maintenance by a paramour from a kept mistress or a husband from his second wife is unimaginable - From a perusal of record, it is manifest that first respondent instituted proceedings against petitioner with an ulterior motive to wreak vengeance against her.

Having regard to facts and circumstances of case and also principles enunciated in cases cited supra, this Court of considered view that continuation of proceedings against petitioner would certainly amount to abuse of process of law - Therefore, it is a fit case to quash proceedings against petitioner in order to secure ends of justice - In result, Criminal Petition is allowed, quashing proceedings in M.C. **Malleshwaramma Vs. G.S.Srinivasulu 2016(3) Law Summary (A.P.) 171 = 2016 Cri. LJ 4066 = 2016(2) ALD (Crl) 784.**

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—Secs.499, 500 - Defamation – Notice given by First accused/petitioner in a daily against her father, who is first respondent making imputation against his character was done in good faith and for protection of her interest and also for protection of other accused, hence, it falls within the exception (9) of Sec.499 and it cannot be said that first petitioner or remaining petitioners have committed offence punishable under Sec.500 of IPC – If ingredients of Sec.499 are not attracted, the trial, if conducted against accused would be futile exercise and it is nothing but abuse of process of law ultimately resulting in miscarriage of justice - Criminal petition, allowed. **Syed Sameena Tasneem Vs. Sajid Hussain 2014(2) Law Summary (A.P.) 193 = 2014 Cri. LJ 4215 (AP) = 2015(1) ALD (Crl) 538.**

—- Secs.499/500 and Sec.499, Exception 9 - **CRIMINAL PROCEDURE CODE**, Sec.482 - 1st respondent filed private complaint against petitioner alleging offence punishable u/Sec.499/500 of IPC on basis of written statement counter and affidavit filed in lieu of examination-in-chief filed by petitioner as defendant in suit relating to removal of compound wall - It is contention of petitioner as 7th defendant in suit that all documents filed by 1st respondent as plaintiff are fabricated and forged using his position as revenue official - Trial Court dismissed suit without giving any finding whether revenue records filed by 1st respondent as plaintiff were genuine and fabricated - Evidently, criminal case is filed by 2nd respondent with a mala-fide intention and with a view to harass petitioner and to coerce him for terms in pending Appeal and also with oblique motive - In this case, except civil litigation, which 1st respondent himself started, petitioner has no other dispute with 1st respondent and therefore it cannot be said that petitioner had any intention to defame 1st respondent or that petitioner maliciously made those allegations in his pleadings and that allegations in petitioner's pleadings and affidavit in suit cannot be termed as defamatory and that it is not a case where alleged defamatory statements were published by way of any public notice or public statement or in any public meeting and they were made in Court proceedings in writing and no outsider had any occasion to read same - Sec.499 of IPC contemplates making or publication of imputation with an intention to harm reputation of other person - In present case, intention of petitioner is evident that he made same with an intention to preserve disputed site to diety and not with an intention to harm reputation of 1st respondent - Alleged imputations contained in pleadings and evidence in civil suit are covered by Exception 9 of Sec.499 of IPC, even assuming that imputations are prima facie defamatory in nature - Proceedings in C.C, quashed - Criminal petition, allowed. **G.Janardhana Reddy Vs. A. Narayana Reddy 2010(1) Law Summary (A.P.) 32.**

—Secs.499, 500 & 505,292 - **CRIMINAL PROCEDURE CODE**, Secs.199 & 482 - **CONSTITUTION OF INDIA**, Art.19(2) - **INDECENT REPRESENTATION OF WOMEN (PROHIBITION ACT) 1986,** Secs.4 & 6 - 23 Complaints filed against accused/appellant for alleged defamation in respect of imputations against character of Tamil speaking women suggesting that all women in Tamilnadu have engaged in premarital sex - High Court refused to quash proceedings by exercising its inherent power u/Sec.482

(INDIAN) PENAL CODE

on premise that relevant considerations were questions of fact which were best left to be determined by trial Judge - Appellant contends that complainants were not "persons aggrieved" within meaning of Sec.199 (1) (b) and that even if allegations in various complaints are taken on their face value and accepted in their entirety, same do not disclose any offence what so ever and opinion of appellant does not by any means, fall within ambit of Secs.499,500,505 IPC or Secs.3 & 4 Act 1986 - Complainants/respondents contend that in these cases are mostly women belonging to Tamilnadu, who were personally aggrieved by appellant's remarks and that endorsement of premarital sex by a prominent person such as appellant would have a morally corruptive effect on minds of young people and that constitutional protection for speech and expression is not absolute and that it is subject to ressonable restrictions based on considration of "public order", defamation, decency and morality - Defamation - Defined - Definition makes it amply clear that accused must either intend to harm reputation of particular person or reasonably know that his/her conduct could cause such harm - Explanation 2 to Sec.499 further states that it may amount to defamation to make an imputation concerning a Company or an Association or collection of persons as such - In this case, with regards to complaints in question there is neither any intent on part of appellant to cause harm to reputation of the complainants nor can we discern any actual harm done to their reputation - Both elements i.e.,mens rea and actus reus are missing - Even if remarks of complainant in their entirety is considered, nowhere has it been suggested that all women in Tamilnadu have engaged in premarital sex and that imputation can only be found in complaints that were filed by various respondents - It is a clear case of complainants reading in too much into appellant's remarks - Dissemination of news and views for popular consumption is permissible under our constitutional scheme - Different views are allowed to be expressed by proponents and opponents - A culture of responsible reading is to be inculcated amongst prudent readers. Morality and criminality are far from being co-extensive - An expression of opinion in favour of non-dogmatic and non- conventional morality has to be tolerated as same cannot be a ground to penalise author - Various complaints filed against appellant do not support or even draw a prima facie case for any of statutory offences as alleged - Impugned judgment and order of High Court, set aside - Criminal proceedings, quashed - Appeals, allowed. **S.Kushboo Vs. Kanniammal 2010(2) Law Summary (S.C.) 54.**

—Sec.500 - **PRESS AND REGISTRATION OF BOOKS ACT, 1867,** Secs.5 & 7 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Nellore Tabloid of Vaartha Daily a news relating to committing of rape by father on his own daughter giving name of culprit as suspended Police Constable VM with Roll no.1219 - 2nd respondent filed complaint that though culprit was Police Constable with Roll No.1299, accused gave number as no.1219 in order to defame de facto complainant/R2 - Inspite of errata published by petitioners/accused, 2nd respondent filed private complaint against A1 to A4 reporter, Desk In-charge, Editor, Managing Editor and Chief Managing Editor respectively - Petitioners contend that when name of person who committed rape on his own daughter

PENSION REGULATIONS, 1995:

as VM and he was described as suspended Police Constable with a wrong Roll no.1219 instead of 1299, there is no possibility of public mistaking 2nd respondent who is a Police Constable with Roll no.1299 as culprit - There is absolutely no averment in complaint that mentioning of wrong roll number by accused in news item was intentional - Executive Editor, Managing Editor and resident Editor cannot be made liable in absence of any allegation against them in complaint that they have any hand in selection of matter that is published in news paper and that presumption u/Sec.7 of Act is available as against Editor only and no such presumption arises as against Executive Editor, Managing Editor and Resident Editor - Since there is no imputation much less intentional imputation in news item in question, private complaint filed by 2nd respondent against A3 also does not stand to scrutiny - Complaint is abuse of process of Court as against A3 and A4 - Proceedings in CC against petitioner 1 and 2/A3 & A4, quashed - Petition, allowed. **Tankasala Ashok Vs. State of A.P. 2010(1) Law Summary (A.P.) 254.**

—Sec.506 - S.C. & S.T. (POA) ACT, Sec.3(1) (x) - **CRIMINAL PROCEDURE CODE,** Sec.4, 7, 209,427 & 441 - Case registered against petitioner u/Sec.506 IPC basing on report given by 2nd respondent/complainant - Police investigated and filed final report stating that it is fall - On protest petition filed by 2nd respondent Magistrate recorded sworn statement and took cognizance of case against petitioner u/Sec.3(1)(x) of S.C, S.T Act - Since offence is triable by Special Court for offence under POA Act, it has to be committed by Magistrate to said Court - While committing case Magistrate insisted upon petitioner to obtain order of bail from Special Court or any other competent Court - Hence present criminal petition seeking direction to Magistrate - From language of Sec.209, Cr.P.C it does not appear that at time of committing case to Court of Session he must be on bail by Sessions Court -When accused appeared before Court on receiving summons from Court issued after registering PRC and undertakes himself to appear before Magistrate during committed proceeding and also appear before Court of Session/Special Court and accused not being arrested and released on bail earlier in connection with said case, need not be driven to obtain bail from Sessions/Special Court - There is no requirement in law that in each and every case triable by Court of Session accused shall be arrested and released on bail - When only summons were issued to accused to secure his attendance after charge sheet is filed in a case triable by Court of Session accused shall not be compelled to approach Special Court and obtain bail - Magistrate is directed not to insist petitioner to obtain bail from Court concerned for purpose of commitment of PRC to Special Court or Court of Session - Magistrate can commit case, by obtaining personal bond from him to appear before Special Court till conclusion of trial - Criminal petition, allowed. **Guddanti Narasimha Rao Vs. State of A.P. 2010(3) Law Summary (A.P.) 309.**

PENSION REGULATIONS, 1995:

— AND CONSTITUTION OF INDIA, Arts.14,16 (1) & 19(1) (g) - Voluntary retirement - Petitioner/Asst. General Manager of Andhra Bank filing application for voluntary retirement

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

on 12-4-2004 and subsequently made another application on 19-4-2004 requesting respondents to treat his earlier application as withdrawn - Second respondent/General Manager of Bank issuing letter dt.21-4-2004 accepting request of petitioner and informed that he will be relieved from service on 11-7-2004 after expiry of notice period of 3 months - Respondents passed order on 9-7-2004 rejecting request of petitioner in second application dt.24-6-2004 - Petitioner contends that since he submitted application requesting respondents to treat his application for voluntary retirement as withdrawn much before expiry of notice period, respondents should not have rejected same and as such, action of respondents in rejecting same is illegal and arbitrary - Respondents submits that petitioner's request for voluntary retirement having been accepted was relieved from service, and he was also paid terminal benefits, and therefore he is not entitled to seek his continuance in service and that petitioner assailed order of rejection of his request for withdrawal of his application for voluntary retirement after lapse of 3 years - In view of ratio laid down by apex Court in number of judgments, it can safely be said that since petitioner was to be relieved from service after expiry of 3 months notice period on 11-7-2004, he shall be deemed to be continued to be employee of respondents-bank upto that date, and as such, he had *locus poenitentiae* to withdraw his application for voluntary retirement before said date - In this case, petitioner was suffering from health problems, is evident from correspondence placed before Court, which he made to respondents prior to making of his application dt.12-4-2004 for voluntary retirement - Whatever be reasons taken by petitioner for withdrawing his application for voluntary retirement, but such request having been made by petitioner before he was relieved from service on 11-2-2004, 2nd respondent-General Manager should have considered same positively - Petitioner having not assailed order rejecting his application to withdraw his application for voluntary retirement and consequential order retiring him and relieving from service immediately, and he having received all terminal benefits, that petitioner except consequential benefits, like continuity of service and other alleged benefits, is not entitled to claim any monetary benefits - Order passed by 2nd respondent-General Manager rejecting application of petitioner for withdrawal of his application for voluntary retirement and consequential order dt.12-7-2004 relieving from service, are set aside - Respondents are directed to reinstate petitioner into service with consequential but not monetary benefits and petitioner shall return amounts paid to him by respondents pursuant to his retirement - Writ petition, partly allowed. **V.Vishnu Vardhan Vs. Andhra Bank, Hyd., 2008(1) Law Summary (A.P.) 142 = 2008(3) ALD 54 = 2008(3) ALT 428.**

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

—Sec.47 - "Alternate employment" - Petitioner/driver of APSRTC, met with accident while returning home from duty and was declared unfit to continue to post of Driver owing to injuries and disability which resulted from accident - Petitioner sought alternate employment in accordance with Sec.47 of Act while disclaiming interest in receiving monetary benefits in lieu thereof - Petitioner filed writ petition aggrieved by continued inaction of APSRTC - Pursuant to interim order in writ petition APSRTC passed order

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

that petitioner had willingly opted for retirement on medical grounds in prescribed proforma, Annexure-1 in view of his health condition and that he was retired from service and in that view of matter, APSRTC decried petitioner's eligibility for alternate employment u/Sec.47 of Act - petitioner filed present writ challenging proceedings, retiring him from service and also order rejecting his request for alternate employment - APSRTC contends that petitioner's accident did not occur in course of employment, but thereafter he was found unfit to continue in service as driver and that petitioner submitted his option in Annexure-A seeking to retire on medical grounds and accepting offer of additional monetary benefits - Clear language of Sec.47(1) and interpretation thereof by Supreme Court leave no room for doubt that APSRTC is under statutory obligation not to dispense with an employee who requires a disability during his service - Contention that as accident due to which petitioner sustained disability was not in course of employment, Act would have no application; not tenable and perspicuous wording of Sec.47 indicates that any disability acquired by an employee "during his service" would bring him within protective umbrella of said provision and it is not necessary that disability should be a direct consequence of or be connected to his employment - A copy of duly filled in printed format contained in Annexure-A submitted by petitioner being a printed format, all that was required to be done was filling in of name and details of petitioner and affixation of his signature - This document is said to embody voluntary waiver of his statutory right by petitioner and this practice on part of APSRTC, in providing a printed format to nullify mandatory benefit conferred by a social welfare legislation to say very least is not only shockingly retrogressive but is a blasphemy against beneficial objectives underlaying Sec,47 of Act - A mere printed format baldly stating to effect that employee was accepting monetary benefits in view of alternate employment u/Sec.47 of Act falls far short of requirements to validate such waiver - Attitude of APSRTC in resorting to such a practice therefore requires to be deprecated in strongest terms - APSRTC cannot bank upon dubious and self-serving "Annexure-A" option obtained by it from petitioner to deny him statutory benefit u/Sec.47 of Act - Action of APSRTC in present case in seeking to rid itself of a disabled employee, petitioner herein is deprecable and warrants condemnation - Proceedings and order are set aside - APSRTC directed to forthwith provide alternate employment to petitioner in a suitable post with same pay scale and service benefits enjoyed by him at time of his retirement from service and if necessary by creating a supernumerary post - Petitioner is entitled for full back wages from date of his retirement from service till his reinstatement in suitable post - Writ petition, allowed. **K.Moses Vs. APSRTC, Hyd., 2010(3) Law Summary (A.P.) 416 = 2011(1) ALD 823 = 2011(1) ALT 739.**

—Sec.47 - Circular instructions issued by APSRTC on 26-8-2005 - Respondent/petitioner driver of APSRTC met, with accident while returning home from duty rendering him unift to continue in service as driver because of disability sustained in accident - When responent/petitioner got served legal notice, APSRTC responded by calling upon him to receive terminal benefits - Petitioner has instead reiterated his claim for alternative

PETROLEUM PRODUCTS:

employment - Single judge directed APSRTC to consider petitioner's case for alternative employment in accordance with provisions contained in Sec,47 of Disabilities Act - Since writ petitioner has submitted his option in prescribed format expressing his willingness for retirement on medical grounds and opted for payment of additional monetary benefit in lieu of alternative emloyment - Writ petitioner was accordingly retired from service and hence he is not elgible for alternative employment under provisions of Sec. 47 Disabilities Act - Sec.47 sanctions, injunctions against establishments in which person with disability is employed - It prevents every establishment from dispensing with or reducing in rank any employee who acquires disability during his service and also further mandates establishment, by directing it to shift such a person to some other post with same pay scale and service benefits provided is found not suitable for post he was holding at time of incurring/acquiring disability - Therefore Sec.47 of Act has conceived of protection in absolute terms in favour of persons acquiring disability during course of employment by sanctioning appropriate injunction against employer - Language of Sec.47 is plain and certain casting statutory obligation on employer to protect an employee acquiring disability during service - Employee therefore is under obligation to look up for suitable alternative employment - Expression "during service" found in Sec.47 of Act is not inteded to convey meaning that disability should have been acquired all due to employment, instead it conveays meaning that such disability should have been acquired during currency of contract of employment - Therefore, for securing benefit of provison contained in Sec.47, one does not require to acquire disability all due to employment - Sec.47, it is well to remember, thrust obligation on employer to provide for alternative employment but not on employee to seek alternative employment - If there is no direct or immediately suitable alternative post available a supernumerary post has to be created for accommodating person with diability - Provision contained in Sec.47 is intented to prevent discrimination against persons with diabilities and prevention of discrimination, as is to well known, is one of facets of Art.14 of Constittion itself - It is for employer to provide an alternative employment and it is not required for an employee to solicit or explore all avenues/ opportunities for securing alternative employment - Writ petitioner is directed to refund additional monetary benefit received by him from appellant APSRTC in lieu of alternative employment - Writ appeal accordingly dismissed. **APSRTC Vs. K.Moses 2012(1) Law Summary 212 = 2012(2) ALD 772 = 2012(2) ALT 410.**

PETROLEUM PRODUCTS:

—Dealership - Termination of - Petitioner, H.P Dealer in MS, HSD and Turbojet deals through his outlet - Vigilance Team of respondent/Company inspected petitioner's outlet and took samples of M.S and found same not in accordance with Specifications as per Laboratory Report - Petitioner submitted repre-sentation denying allegations in show cause notice and sent sample left with him to laboratory and said sample accorded with standard Specifications - Inspite, respondent/Company terminated dealership of petitioner for alleged adulteration - Petitioner contends that very purpose of leaving a

PETROLEUM RULES OF 2002 FRAMED UNDER PETROLEUM ACT, 1934:

sample with a dealer, whenever inspection is conducted is to ensure transparency in process and that when sample left with it found to be in accordance with specifications very basis for initiation of proceedings against it, disappeared and that impugned order is illegal, arbitrary and capricious - In this case, sample of HSD that was tested on spot did not reveal any variation as to standards - So far as MS is concerned samples were drawn in dead storage and that analysis of sample left with petitioner revealed that it accords with standard specifications - If result of analysis of sample left with petitioner does not indicate, traces of adulteration of product agency or Department must equally respect out- come - Virtually, no reason is stated as to why result of analysis of sample left with petitioner, must be ignored - Impugned order, set aside - Respondent under obligation to restore dealership of petitioner forthwith - Writ petition, allowed. **Sri Srinivasa Agencies, HP Dealer, E.G. Dist. Vs. Hindustan Petroleum Corpn., Ltd. 2010(1) Law Summary (A.P.) 271.**

PETROLEUM RULES OF 2002 FRAMED UNDER PETROLEUM ACT, 1934:

—- Rule 144 - ESSO (ACQUISITION OF UNDERTAKINGS IN INDIA), ACT, 1974 - CONSTITUTION O INDIA, Art.226 - Petitioner, partnership Firm purchased land leased out to ESSO Company, in which Petroleum retail out let commissioned through their dealer - Petitioner issued notice to respondents, Company calling upon them to deliver vacant possession of property in view of termination of tenancy and also claimed damages - Respondents have resisted for vacating premises, alleging that action of petitioner's vendor in not extending first option to them or purchase of said land is unjust though there is a clause to that effect in lease agreement - Writ petition filed by petitioner seeking direction, declaring action of respondent in not handing over vacant possession of land as illegal and arbitrary and without any authority of law - Petitioner contents in view of order passed by DRO cancelling No Objection Certificate granted u/Sec.144 of Petroleum Rules, respondent cannot store any petroleum products in site in question and that there is no reason for not delivering possession to petitioner who claimed title under registered sale deeds - Even according to respondents there is no lease for period beyond 1990 and possession of respondents over property is unlawful and illegal - Respondents contend that writ petition filed by petitioner is not at all maintainable having regard to nature of relief sought for and that respondents came into possession pursuant to contractual obligations by entering into lease with predecessor in title to petitioner and in that view of matter to seek delivery of possession, petitioner has to approach common law Court, but he cannot seek any relief in writ petition filed under Art.226 of Constitution and in view of several factual disputes, petitioner is not entitled for any relief in this writ petition - DISPUTED QUESTIONS OF FACT IN WRIT PETITION - ".... that in an appropriate case the writ Court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if same arises out of a contractual obligation and or involves some disputed questions of fact."

POLICE PROTECTION FOR IMPLEMENTATION OF ORDERS

In this case, admittedly there is no lease executed either by LRs of original owner or by petitioner who is purchaser of site and as much as title of petitioner pursuant to registered sale deeds, is not in dispute and therefore there is no basis for to defend possession of respondents - Though petitioner is bona fide purchaser of site in question for valuable consideration which was purchased for making constructions he is unduly deprived of benefit of several years - In view of judgment of Hon'ble Supreme Court, in absence of absolute bar this Court can grant relief to petitioner in this writ petition filed under Art.226 of constitution, particularly in absence any semblance of defence to retain possession by respondents by any further period - Writ petition, allowed. **Sri Baba & Co. Nellore Vs. Hindustan Petroleum Corpn., Ltd. 2012(1) Law Summary 149 = 2012 (2) ALD 752 = 2012(2) ALT 535.**

POLICE PROTECTION FOR IMPLEMENTATION OF ORDERS

—Petitioners contend that they are absolute owners of land, which they inherited from father of 4th petitioner - They alleged that when respondent Nos.7 to 10 were trying to interfere with their possession and enjoyment of land, they filed Suit before Principal Senior Civil Judge, for perpetual injunction - They also filed I.A. seeking temporary injunction pending disposal of suit - The said application was dismissed - Respondent Nos.7 to 10 questioned same in C.R.P.No.517 of 2013 before this Court - The said Revision was dismissed confirming the findings of the II Additional District and Sessions Judge.

The petitioners filed complaints/representations dt.26-05-2016 and 30-05-2016 to respondent Nos.1 to 6 seeking police aid to protect their possession and for implementation of order of temporary injunction granted by Civil Court - When this did not yield any results, they filed W.P.No.17048 of 2016 questioning inaction of respondent Nos.1 to 6 in taking action against respondent Nos.7 to 10 on basis of the complaint by them on 26-05-2016 and 30-05-2016 complaining about illegal interference, criminal trespass etc. into their land and in not providing police protection to enforce injunction order granted in their favour and against respondent Nos.7 to 10 in C.M.A.

At admission stage, the said Writ Petition was disposed of relying on judgment of Supreme Court in LALITA KUMARI VS. STATE OF UTTAR PRADESH, and holding that allegations in complaints referred to above given by petitioners prima facie disclose commission of cognizable offences and respondent Nos.1 to 6 should follow said judgment of Supreme Court and take appropriate steps - As far as relief of police protection is concerned, Court observed that petitioners are always at liberty to avail remedy available under law - Thus, even this Court had held that petitioners are not disentitled to police aid, but granted liberty to petitioners to avail remedy available under law.

Petitioners contended that having regard to order of injunction pending disposal of suit granted in favour of petitioners after contest by the Civil Court, and having regard to the law laid down by this Court and Supreme Court in Satyanarayana Tiwari

POST OFFICE ACT:

Vs. S.H.O.P.S. and P.R. Murlidharan Vs. Swami, respondent Nos.1 to 6 cannot deny police protection to petitioners for enforcement of said order of injunction.

Government Pleader for Home appearing for respondent Nos.1 to 6 did not dispute above legal position or entitlement of petitioners for police aid to enforce injunction order granted in their favour in a Writ proceeding.

Respondent Nos.7 and 8, however, opposed said contentions of petitioners - According to him, petitioners having failed to obtain an order of police aid in W.P.No.17408 of 2016, cannot maintain present Writ Petition for same relief and it should be construed that Court had rejected petitioners' entitlement in getting such relief in said Writ Petition and also sought to rely on certain pleadings of petitioners in Writ Petition, and sought to contend that even petitioners admitted that they have been dispossessed by respondent Nos.7 to 10 - According to him, in light of said pleadings and documentary evidence filed by respondent Nos.7 to 10, petitioners ought not to be granted any relief - The question is whether decision in W.P. 17048 of 2016 bars filing of this Writ petition.

Held, since in present case, prima facie title and possession of petitioners has been established after contest by Civil Court, there cannot be any dispute that they can seek relief of police protection under Art.226 of Constitution of India – Court of opinion, respondent Nos.7 to 10 are bound by findings in C.R.P.No.517 of 2013 wherein this Court confirmed findings in C.M.A. District and Sessions Judge, holding that petitioners were in possession of property and had also a prima facie title - They cannot be allowed to reopen question of possession collaterally in this Writ Petition filed by petitioners seeking implementation of injunction orders granted in favour of petitioners.

This Court in considered opinion, it would be travesty of justice to allow respondent Nos.7 to 10 to violate order of injunction and claim to have dispossessed petitioners from the subject property in violation of the injunction order - Therefore this Court in considered opinion, petitioners have made out a clear case for grant of police aid to protect their possession of land - Though petitioners have alleged certain acts of trespass by respondent Nos.7 to 10, they, however, insist that they are still in possession of property in question.

Accordingly, Writ Petition is allowed, and action of respondent Nos.1 to 6 in not providing police aid in implementation of injunction order granted in favour of petitioners in CMA by District Judge is declared as arbitrary and illegal and direction is given to respondent Nos.1 to 6 to provide police protection for implementation of said orders. **A.Bharathi Vs.State of Telangana2016(3) Law Summary (A.P.) 314.**

POST OFFICE ACT:

— Secs.2 (f), 2(i) & 9 - INDIAN POST OFFICE RULES, Rule 30 - Law Journal - Concession of duty of postage - Petitioner take publication of Law Joural Titled "Law animated world" and obtained certificate of registration from Registrar for News Papers of India - Superintendent of Post Offices declining concession of duty of postage as Journal solicited donations - Expressions "news" and "current topics" - Meaning of - Expression

POST OFFICE (M.I.S) RULES 1987:

news need not be confined for purpose of appreciation as only relating to topics of political interests/questions of political debates - Any information on recent events and current affairs is liable to be understood as "news" - When we understand adjective "current" as belonging to present time happenings, it, then, boils down to matters of larger public interest and would comprehend "news" - Therefore, act of reporting of matters relating to current events or passing on information in full or in an abbreviated form from concerning law and its jurisprudential advancements and developments, undoubtedly, attracts sweep of both expressions "news" and "current topics" - Therefore that a Journal, which is sought to be brought about, for purpose of propagating judgments rendered by various Courts is a publicaion of "news" and "current topics" - Sec.9 of Act also permits publication to carry advertisements - Consequently even a solicitation seeking donation is liable to be under stood as one form of advertisement indulged in by publisher - Therefore, objection raised by respondents for registration of publication of petitioner is incorrect - In context of setting of Sec.9 equitable considerations would arise rather than any attempt to deny benefit to one particular class of publication - Therefore putting undue fetters or restrictions which will render very objective to be frustrated and circumscribed - Hence grievance of petitioner - Justified - Respondents directed to register publication of Journal titled "Law Animated World" for according it necessary concession of duty of postage. **I.Balamani Vs. Senior Superintendent of Post Offices, Hyderabad 2008(2) Law Summary (A.P.) 348.**

POST OFFICE (M.I.S) RULES 1987:

—Rule 12 - POST OFFICE SAVINGS ACCOUNT RULES, R.4, 6(5) - POST OFFICE SAVINGS BANK GENERAL RULES, 1981, Rules 16,17 & 18 - Petitioner's husband deposited Rs.6,18,000/- by opening twelve accounts under Post Office Monthly Incoming Scheme (P.O. M.I.S.) - 1st respondent/Head Post Master issuing proceedings denying interest on deposits made by petitioner beyond limit provided under Rules, deducting interest amounting to Rs.1,27,530/- on ground that interest has been paid on amount over and above Rs.4,64,000/- - Respondents submit that by virtue of Rules 17 and 18 of Post Office Savings Bank General Rules, petitioner is not entitled for interest and 1st respondent rightly deducted interest paid on excess amount and only paid balance amount to petitioner - In this case, petitioner has deposited different amounts into various accounts and none of those accounts has exceeded prescribed deposit limit - Though Rules prescribed that more than two accounts shall not be opened by any person, it was a mistake occurred on part of Post Master also in allowing petitioner to open more accounts contrary to Rules - Had there been any objection at time of opening of accounts or obtaining declaration from depositor that depositor did not open more than two accounts in any Post Office, that would have made petitioner and her husband that they have knowledge about Rules that they should not open more accounts than two - As deposits were not made intentionally after knowing Rules, petitioner cannot be deprived of interest accrued thereon - Respondents directed not to recover amount already paid towards interest and if any amount deducted towards payment of interest to petitioner shall be refunded to him - Writ petition, allowed. **K.Susheela Vs. Ministry of Communications Dept., Mancheriyal 2008(1) Law Summary (A.P.) 437.**

PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLES OF ESSENTIAL COMMODITIES ACT, 1980,

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994:

—Secs.17,20 and 21 - NATIONAL INSPECTION AND MONITORING COMMITTEE (N.I.M.C.), - Experts Team visited petitioners' Ultrasound Scanning Centres and noticed various contraventions and seized machines from respective Scanning Centres under cover of different panchanamas - Basing on N.I.M.C. Report District Medical & Health Officer passed orders cancelling registration of petitioners Ultrasound Scanning Centres under Act - Petitioners contend that there is failure on part of appropriate authority under Act to give reasonable opportunity to petitioners by way of giving show cause notice and that even though N.I.M.C Team notices certain contraventions under Act there is no allegation against any of petitioners that they were indulging any misuse for sex determination leading to foeticide - Act provides for various regulatory measures by way of checks on genetic counselling centres, genetic laboratories and genetic clinics as well pre-natal diagnostic techniques and when there is non-complacence of regulatory provisions of Act, there is every likelyhood of centres or clinics indulging in such activity which is contrary to object for which Act was passed and as per Sec.20(2) of Act, mere breach of provisions of Act or Rules made thereunder is sufficient ground for cancellation of registration - In this case, Sheet anchor of petitioners' case is failure on part of appropriate authority to follow principles of natural justice in giving reasonable opportunity of being heard - Recording of reasons is *sine-qua-non* of principles of naural justice and that if no reasons are recorded for dispensing with prior show notice it amounts to violation of principles of natural justice - In present case, DMHO, who is appropriate authority gave a total gobye to statutory safeguards contained in Sec.20(1) & (2) before exercising his power or authority of cancellation of registration of petitioners centres/clinics under Act - There is clear violation of statutory pre-requisits as well as principles of natural justice - Cancellation of registration under Act and without taking advise of Advisory Committee appropriate authority cannot exercise jurisdiction u/Sec.20(2) of Act for cancelling registration of petitioners in these matters and taking advise of Advisory Committee is a condition precedent for either suspending or cancelling registration by appropriate authority - Impugned actions of DMHO are *ultra vires* and are vitiated by improper exercise of jurisdiction and suffers from violation of not only general principles of natural justice but also statutory provisions relating to natural justice — Orders quashed - Writ petitions, allowed. **Venkateshwara Imaging Centre Vs. D.M.H.O , Warangal, 2012(2) Law Summary (A.P.) 273 = 2012(1) ALD (Crl) 993 (AP) = 2012(3) ALD 593 = 2012(5) ALT 554 = AIR 2012 AP 165.**

PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLES OF ESSENTIAL COMMODITIES ACT, 1980,

—-Sec.3(1) & (2) - **A.P. STATE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008,** Cl.17 (A), r/w Sec.7 of ESSENTIAL COMMODITIES ACT, 1995 - Petitioners/ detenus are detained u/Sec. 3(1) & (2) of Act 1980, on ground that they have been engaged in clandestine busines of purchasing of commodities meant for publc distribution

PREVENTION OF CORRUPTION ACT, 1988:

system by hoardin, diverting and selling same without any licence under Order 2008, r/w Sec.7of E.C. Act.

Question is, whether mere purchase of rice meant for public distribution system from card holders unauthorizedly for making unjust enrichment amounts to contravention of any of provisions of 1995 Act or Control Order 2008.

A careful reading of Cl.17(A) of Order 2008 shows that same is attracted if a fair price shop dealer or card holder or any person causes interruption or interferes with a smooth distribution of schedule commodities under public distribution system or other Govt., Schemes at any level right from Food Corporation of India godown to F.P. shop point, till scheduled commodity reaches intended beneficiary - From this unequivocal plain language of this provision it is clear that it gets attracted when there is interruption of food grains from stae of FCI godown till it reaches intended beneficiary i.e, card holders.

Therefore the activity of detenus compleely falls out side Cl.17(A) of Control Order, 2008 - Once there is no prohibition on such activity either under 1995 Act or under Control Order, 2008, which undisputedly is only order that governs distribution and control of rice meant for public distribution system, detenus cannot be accused of committing any offence - Once their activities do not constitute an offence under law their preventive detention under provisions of 1980 act cannot be sustained - Impugned orders of detention are set aside - Writ petitions allowed. **Maimuna Begum Vs. State of Telangana 2016(3) Law Summary (A.P.) 65 = 2016(2) ALD (Crl) 684 = 2016(5) ALT 280.**

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—Secs.7,13(1)(d), r/w 13(2) - Appellant/Site engineer demanded bribe amount from Complainant, Proprietor of Engineering Company and he was trapped by conducting Sodium Carbonate test - Trial Court convicting appellant to undergo rigorous imprisonment for two years - High Court confirmed finding of trial Court, but reduced sentence of two years into one year - Appellant contends that in corruption case demand and acceptance are two most important aspects and both, demand as well as acceptance must be proved by prosecution - In absence of clear evidence of demand and acceptance, conviction in corruption cases cannot be sustained - In this case, appellant had clearly demanded amount from P.W.1/Complainant, Proprietor of Engineering Services Company and accused demanded a bribe amount to be paid to clear final bill - P.W.2, who is an independent witness had corroborated evidence of complainant - It is difficult to accept submission of appellant that there was no demand and acceptance of bribe amount. **V.Kannan Vs. State 2009(3) Law Summary (S.C.) 31 = 2009(2) ALD(Crl) 726 (SC) = 2009(6) Supreme 166.**

—Secs.7 & 13(i)(d), r/w 13(2) - A.P. TRANSCO EMPLOYEES REGULATION DISCIPLINE AND APPEAL REGULATIONS, Regulation 10(1) & (2) - CONSTITUTION OF INDIA, Art.311(2) - 1st respondent/Chairman and M.D of A.P.S.P.D.C Ltd., dismissing petitioner/ Asst. Engineer from service consequent on his conviction in criminal case for offences under provisions of Prevention of Corruption Act - Petitioner contends that since sentence

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has been suspended by appellate Court, conviction recorded by trial Court cannot be based for dismissing him from service - Respondent contends that what is suspended by High Court is only sentence and not conviction of petitioner and therefore, order of dismissal consequent on conviction of petitioner is legal and proper and same not liable to be set aside - When conviction is on a corruption charge against public servant, appellate Court or revisional Court should not suspend order of conviction during pendency of appeal, even if sentence of imprisonment is suspended - Mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into issues and findings made against such public servant once again should not even temporarily absolve him from such findings - Order passed by 1st respondent dismissing petitioner from service consequent on his conviction in criminal case - Justified - Writ petition, dismissed. **Ch.Gopala Rao Vs. SPDC of A.P. Ltd. 2009(1) Law Summary (A.P.) 254 = 2009(3) ALD ALD 63 = 2009(1) APLJ 309 = 2009(2) ALT 625.**

—Secs.7, 13(1)(d), 13(2) & 20(1) - CRIMINAL PROCEDURE CODE, Sec.313 - Trial Court convicted appellant/accused Officer a Public Servant for offence of demanding and accepting illegal gratification for doing Official favour - De-facto complainant/transport contractor who transported Officer furniture and records of Office to newly construct building when asked payment of bill, accused/Officer demanded Rs.600/- as bribe for passing Bill - In pre-tap proceedings, trap party recovered tainted amount from accused Officer - Prosecution alleged that accused Officer demanded and accepted illegal gratification for doing Official favour of passing bill - Accused Officer denied demand and acceptance of bribe amount by taking plea that de-facto complainant P.W.1 used to take handloans from him and used to repay same after bills were passed and on date of trap, he repaid Rs.400 towards part payment of loan amount and thus amount received by him was towards repayment of loan and not bribe - Prosecution contends that though there is no evidence regarding earlier demands, in fact situation where amount was found and recovered from possession of accused Officer and his own admission that he received amount, it is sufficient to hold him guilty charged offence - Essential ingredients of Sec.7 of Act are that person accepting gratification should be a Public Servant and that he should have accepted gratification for himself or others and gratification should be as a motive or reward for doing or forbearing to do any official act in discharge of his official duties - Defence of accused Officer is that he received amount, not towards bribe but it was towards repayment of loan amount and he took this plea in his statement recorded u/Sec.313 Cr.P.C - Mere failure to offer spot explanation will not render invalid explanation given u/Sec.313 Cr.P.C. - In this case, P.W.1 defacto complainant admittedly owed accused Officer - P.W.6 in his evidence clearly stated that P.W.1 de-facto complaint used to take hand loans from accused Officer now and then and said evidence not contradicted by prosecution - In view of admission of P.W.1 coupled with evidence of P.W.6, probability of defence that amount was received by accused officer was towards loan and not as bribe, cannot be ruled out - Prosecution failed to prove guilt of accused/Officer beyond reasonable doubt and accused/Officer could rebut presumption raised against him - Conclusions

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drawn and reasons assigned by trial Court in convicting accused/Officer not tenable - Conviction recorded against accused/Officer is unsustainable - Conviction set aside - Accused Officer stands acquitted - Appeal, allowed. **T.S.Laxman Rao Vs. State of A.P. 2012(1) Law Summary 334 = 2012(2) ALD(Crl) 185(AP) = 2012(3) ALT(Crl) 61 (AP).**

—-Secs.7 & 13(2) r/w Sec.13 (1)(d) - State Government/first respondent by virtue of a Memorandum permitted Anti-Corruption Bureau to file charge sheet against petitioner in Court of law against which petitioner has filed present petition and petitioner is also praying for quashment of proceedings on the file of Court of First Additional Special Judge for SPE and ACB cases.

Held, prosecution under provisions of Prevention of Corruption Act, 1988 is an extreme action which badly and severely affects and disturbs social life of an individual - Unless Government comes to a conclusion that there is a substantial material to launch prosection, permission for prosecution cannot be accorded in a routine, unreasonable and arbitrary manner - A perusal of impugned order vividly shows that there is absolutely no application of mind at all - Grant of sanction is not a mere formality and there is a solemn and sacred duty cast upon sanctioning authority to exercise this power with great care, caution and circumspection and it cannot be lost sight of that this discretionary power given to the State is a safeguard for innocent employees and is a sword in hands of sanctioning authorities to prevent frivolous complaints.

Hon'ble Apex Court has laid down the law in case of Chittaranjan Das V. State of Orissa, 2011 (7) SCC 167, and in view of that this Court finds no scintilla of hesitation nor any traces of doubt to hold that the impugned action is highly unreasonable and preposterous and cannot stand for judicial scrutiny.

For aforesaid reasons, writ petition is allowed, setting aside Memorandum issued by first respondent State Government and proceedings on file of Court of First AdditionalSpecial Judge for SPE and ACB cases are hereby quashed. **Lakshmi Kanth Shinde @ L.K.Shinde Vs. State of Telangana 2016(1) Law Summary (A.P.) 59 = 2016(1) ALD (Crl) 472 = 2016(2) ALT 123.**

—Secs.7 and 13(2), r/w Sec.13(1) (d) - **INDIAN PENAL CODE,** Sec.34 - Accused Officers No.1, Mandal Surveyors and Accused No.2 working as Mandal Revenue Inspector tried for offences punishable under provisions of Prevention of Corruption Act, based on grounds of bribe and trap and found guilty and sentenced to suffer R.I for two years and to pay fine - Essential ingredients of Sec.7 of Prevention of Corruption Act are that person accepting gratification should be a public servant and should accept gratification for himself or another and gratification should be as a motive or reward for doing or forbearing to do any official act in exercise of his Official duties - U/Sec.13(1) (d) of Act, a public servant should have used corrupt or illegal means or otherwise abused his position as such public servant and that he should have obtained a valuable thing or pecuniary advantage for him self or for any other person

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- In this case, trap was conducted and that amount was handedover to A.O. 2 on demand by A.O. 1 and A.O.2 in turn handed over amount to A.O.3 - Amount was recovered from A.O.3 - Colour test was conducted on both hand figures of A.O.2 and A.O.3 yielded positive result - Post trap proceedings were recorded - Thus according to prosecution accused Officers demanded and accepted illegal gratification for doing an official favour to P.W.1 defacto complainant and thus guilty of charged offence - Accused Officers pleaded not guilty - BURDEN OF PROOF - Initial burden is on prosecution to prove demand and acceptance, de hors plea of alibi of accused - Burden cannot be placed on accused Officr to prove that there was no demand made by him - Burden shifts on accused only after it has been established by prosecution - In this case, there is no evidence either direct or circumstantial to prove demand by A.O.1 - Trial Court which has placed burden on accused/Officer in this regard has drawn inference only on basis of evidence of P.W.1 and Ex.P.1 complaint, is not tenable - On analysis of evidence, it must be held that there was no demand and acceptance by A.O.1 of any bribe amount from P.W.1 - P.W.1 in his evidence clearly admitted that A.2 did not make any demand to pay bribe amount at any point of time - Thus there cannot be any doubt that A2 never demanded bribe amount from P.W.1 - In this case, prosecution did not prove demand and acceptance by adducing any acceptable evidence - Reasons of trial Court in convicting Officers are not tenable - Impugned judgment is liable to be set aside - Criminal appeal, allowed. **Chodagudi Sambasivarao Vs. State, rep. by Inspector of Police, ACB 2012(2) Law Summary (A.P.) 110 = 2012(2) ALD (Crl) 201 (AP).**

——Sec.7,13(2), 13(1)(d) - Accused has to be served a notice if appeal is preferred against his acquittal after limitation period - Art.113(a) of Limitation Act mutais mutandis applies to Sec.378 Cr.P.C. and therefore State/Central Government has to file appeal within 90 days from date of judgment againt order of acquittal under Prevention of Corruption Act, 1988 - Sec.378(3) Cr.P.C - Submission that there is no period of limitation for filing an appeal against acquittal by State/Central Government and that they can avail six months period as provided under Sec.378(5) Cr.P.C cannot be accepted - No period of limitation to apply for leave by State is prescribed u/Sec.378(3) Cr.P.C and it cannot avail period of six months or two months prescribed u/Sec.378(5) Cr.P.C - There are no two different periods of limitation - One for obtaining leave by State and another for filing appeal - Appeal made by State Govt., against order of acquittal under Prevention of Corruption Act, 1988 after 176 days was held time barred. **State of A.P. Vs. Syed Mohamood Saeed 2014(2) Law Summary (A.P.) 235 = 2015(2) ALT(Crl) 71 (AP) = 2015(2) ALD (Crl) 672 (AP).**

—-Secs.7, 13(1)(d) r/w 13(2) - Criminal Appeal against judgement of Trial Court convicting accused - Held, prosecution failed to prove demand and acceptance of illegal gratification by accused - Defence can establish its stand through preponderance of probability and not by proving beyond reasonable doubt - Appeal Allowed - Judgment of the Trial Court, set aside.**Gundappa Vs. State 2014(2) Law Summary (A.P.) 336.**

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—Secs.12,13 (1) (a) & 13(2) r/w Sec.34 of IPC – Appellant/A1, S.I of Police convicted for demanding and accepting bribe of Rs.5,000/- from P.W.1 – Allegation that appellant/A1 demanded P.W.1 to pay bribe amount of Rs.5,000/- and as per his directions P.W.1 paid bribe amount, (tainted currency notes) to A2 which were recovered at instance of A2 from kit box and sodium corbonate test conducted on hand fingures of A2 proved positive - Appellant contends that since main witnesses P.W.1 & 2 at whose instance trap was organized did not support case of prosecution conviction on appellant A1 based on mediator P.W.4, not sustainable and that nothing was seized from possession of appellant, no phenolphthalein test was conducted on his hands and in absence of any positive evidence it is not at all safe for trial Court to come to conclusion that appellant is guilty of alleged offence - In this case admittedly no phenolphthalein test was conducted on hands of appellant A1 and bribe, tainted amount was also not at all recovered from possession of A.1, but it was seized from possession A2 only - Prosecution miserably failed to bring home guilt of appellant A1 for offence punishable u/Sec.13 (1) (d), r/w Sec.13 (2) of Act and also miserably failed in bring home guilt of appellant for offence u/Sec.7 of Act beyond all reasonable doubt – Conviction of appellant, set aside – Criminal appeal, allowed. **K.Giri Vs. State of A.P. 2008(3) Law Summary (A.P.) 254.**

—Sec.13(1)(d) & 13(2) - Special Judge sentenced accused/appellant to rigorous imprisonment for one year and also fine for alleged demand of Rs.500 for forwarding seed licence for renewal - Lower Court disbelieved explanation offered by accused/ appellant and recorded finding of guilty of accused - Appellant/accused contends that it is for prosecution to prove demand as well as acceptance of money for doing an official favour - In this case, there is no accompanying witness or shadow witness for P.W.1 either at time of alleged demand of bribe of Rs.500 or for alleged payment of bribe amount to accused - P.W.3 who is actual applicant did not accompany P.W.1 either to office of accused or to house of accused and his evidence is to effect that his father informed him about accused demanding bribe of Rs.500 from him for forwarding application to Joint Director - That part of evidence of P.W.3 is not relevant and admissible as it is in form of hearsay - If really accused demanded bribe of Rs.500/ - from P.W.1 he would have appointed a date for payment and would have available in his office when P.W.1 intended to pay said bribe amount to him - Instead evidence of P.Ws.1,3 and 7 shows that when trap laying party along with mediators and P.W.1 went to office of accused, office was closed and accused was not available in his office - Prosecution evidence shows that prosecution party was almost chasing to locate accused and finally found him at his house - Lower Court did not assess prosecution evidence properly and landed in erroneous conclusion in favour of prosecution - Finding of conviction recorded by lower Court is not sustainable either on facts or in law - Conviction set aside - Appeal allowed. **Sanga Reddy Ananda Reddy Vs. State of A.P. 2011(2) Law Summary (A.P.) 84 = 2011(2) ALD(Crl) 433(AP) = 2011(2) ALT(Crl) 217(AP).**

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—Sec.19 - Accused/respondent working as Asst. Engineer in APSRTC, charged for offences u/Secs. 7, 13 (1) (d)/13(2) - Special Judge ACB found accused not guilty of charges and therefore acquitted - In this case, it is alleged that accused demanded Rs.150 from P.W.1 for forwarding his application to higher authorities for restoration of incentive to him - Except evidence of P.W.1 with regard to demand of bribe by accused and acceptance of tainted cash of Rs.150 as bribe by accused , there is no corroborative evidence for same - Lower Court sought for corroboration of P.W.1's evidence because P.W.1 was with hopeless service record and criminal record and admittedly he was suspended thrice and domestic and Departmental enquiries conducted against him and he was reverted in service - In absence of any corroboration of P.W.1's evidence, lower Court rightly found favour holding that defence version is probable - In so far as sanction for prosecution as required u/Sec.19 of Act, lower Court held that sanction is not valid and legal - APSRTC which came into existence under Road Transport Corporation Act is a Statutory Corporation which manages its own affairs - Therefore it is a separate, independent Entity *qua* State Govt., - Hence sanction for prosecution in this case, should have been granted u/Sec.19(1)(c) of Act and not under 19(1)(b) of Act - Sanction for prosecution of accused given by State Govt., is bad in law - Appeal, dismissed. **S.I. of Police, Anti-corruption Bureau, Visakhapatnam Vs. U.Subrahmanya Sharma 2011(3) Law Summary (A.P.)166.**

—Secs.19, 7, 13(1) (d), r/w 13(2) - Order of sanction to prosecute - Respondent, employee in Office of Registrar of Firms was put to trial for alleged commission of offence of demanding Rs.300 for grant of certificate - Commissioner of Stamps issued order of sanction to prosecute respondent solely basing on Report of Inspector General of Police - Trial Judge convicting respondent - High Court reversed same holding that order of sanction being illegal judgment of conviction would not be sustained - In this case, sanctioning Authority purported to pass order of sanction solely on basis of report made by I.G of Police - No material placed before sanctioning Authority except report - Before passing order of sanction, entire records containing material collected against accused should be placed before sanctioning Authority - In this case, High Court committed manifest error in proceeding to determine legality or validity of order of sanction having regard to irrelevant factor viz., that offence involved only a sum of Rs.300 - Impugned order of High Court is justified although some observations made by High Court do not laid down correct legal position - Appeal, dismissed. **State of Karnataka Vs. Ameer Jan 2008(1) Law Summary (S.C.) 41.**

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—Secs.7 & 10 (2) - In the circumstances, it has to be taken that black pepper in its form is primary food, collection of sample of which is prohibited by proviso to sub-section (2) of Sec.10 of the Act - Apart from that, a reading of provisions of the Act discloses that the Act is intended for prevention of sale of adulterated food, but no offence can be launched against purchaser, who purchased such article of food - If this type of prosecution is allowed, then every person, who stocks adulterated goods,

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is liable for prosecution and several small hoteliers also would be exposed to such threat - Provisions of Act are intended against manufacturers, who sell adulterated food to other persons as contained in Sec.7 of the Act - Writ Petition is liable to be allowed, and same is, accordingly, allowed quashing proceedings. **Mohd.Ali Mirza Vs. State of A.P. 2015(1) Law Summary (A.P.) 248 = 2015(2) ALD (Crl) 102 = 2015Cri. LJ 1211.**

—Secs.7(i) and 2(ia) (m), r/w Secs.16 (1) (a) (1) and Sec.13 (2) r/w Rule 9(b) of Rules - Food Inspector collected samples of "mixed milk" from petitioner's Hotel and sent to Public Analyst who sent report opining that samples does not conform to standards prescribed for milk - Hence complaint filed against petitioner - Petitioner contends that there is inordinate delay of more than 1 year 8 months in giving notice u/Sec.13(2) of Act and due to such delay in giving notice u/Sec.13(2), right of accused to send second sample to Central Food Laboratory for analysis for obtaining second opinion, virtually defeated - In this case, sample obtained by Food Inspector is described as "mixed milk" and that no standards prescribed for "mixed milk" in Act or Rules framed there under - In fact sample obtained in this case is "mixed milk" meant for preparation of "tea" and Food Inspector should not have obtained sample of such mixed milk meant for preparation of tea - Panchanama also does not disclose that Food Inspector made any stirring of contents of milk before obtaining samples - Hence, proceedings in C.C on file of Magistrate, quashed - Criminal petition, allowed. **Mohd.Yaseen Khan Vs. State of A.P. 2009(3) Law Summary (A.P.) 387.**

—Secs.7(i) & 2(ia) (m) and Sec.16(1) (a) (i) - **CRIMINAL PROCEDURE CODE,** Sec.468 - Food Inspector seized Double filtered Groundnut Oil from petitioner's shop and sent one sample to public analyst and lodged complaint for selling adulterated groundnut oil - Petitioner contends that samples lifted on 29-12-2003 and sent for analysis on 30-12-2003 and complaint filed in year 2007 and therefore is barred by time u/Sec.468 Cr.P.C and that petitioners are deprived of an opportunity to challenge said report by getting it re-examined by Central Food Laboratory in view of delay of more than three years in filing complaint from date of lifting samples - In this case, it is clear that valuable right of petitioners to get sample re-examined by Central Food Laboratory has been lost - No valid grounds to continue criminal proceedings against petitioners - Criminal petition, allowed. **Bolisetty Satyanaga Bala Raju Vs. The State of A.P. 2010(2) Law Summary (A.P.) 306 = 2011(1) ALD(Crl) 182(AP) = 2010(2) ALT(Crl) 324(AP).**

—Secs.13(2) - Petitioners are accused in Criminal Case for offences committed under provisions of Food Adulteration Act - 2nd petitioner is proprietor of Hotel and 1st petitioner is vendor and agent of 2nd petitioner - Food Inspector purchased 1500 grams of green gram from 1st accused, suspecting same to be adulterated - Since report of Analyst disclosed that sample was adulterated foodstuff prosecution was launched against petitioners - Petitioners/accused contend that report of Analyst did not give any reasons how sample was adulterated Food and that there was a delay of nearly two years between date of report of Analyst and date on which complaint was laid

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before Court and that notice u/Sec.13(2) of Act not issued and that sample lifted by Food Inspector not meant for sale and that very provisions of Act do not apply - Most important allegation in this case is that very case does not fall within ambit of Prevention of Food Adulteration Act - Provisions of Act would apply in respect of adulterated foodstuff which is sought to be sold - But in present case, that green gram was never intended to be sold to public - In present case, green gram found in premises of restaurant not ment to be sold in shape in which they were found in premises - It was to be converted in to foodstuff in tiffins and meals - In such an event it would not be tantamount to sale of food item for human consumption - In this case, foodstuff purchased by Food Inspector not a food item within meaning of Act - Once sample seized from premises of A2 from custody of A1 is not food item within meaning of Act, whether same is adulterated or otherwise, petitioners cannot be prosecuted for offence under provisions of Act - Prosecution of petitioners is misconceived and liable to be quashed - Criminal petition, allowed. **Pydi Prasada Rao Vs. State of A.P. 2011(2) Law Summary (A.P.) 252 = 2011(2) ALD(Crl) 185(AP) = 2011(3) ALT(Crl) 168(AP).**

—Sec.16(1)(a) r/w Sec.7 – Food Inspector inspected jail premises and collected samples of various materials including 'Haldi' and 'Rice' stored for consumption of prisoners - Since samples collected were not found in conformity with prescribed standard and therefore held adulterated Prosecution Reports were filed alleging for commission of offence u/Sec.16 of P.F.A. Act – Magistrate took cognizance - High Court dismissed Applications filed u/Sec.482 of Cr.P.C. - In this case it is not allegation that the appellant had stored 'Haldi' and 'Rice' for sale - According to prosecution Report these food items were not stored for sale, and therefore allegations made do not come within mischief of Sec.16(1)(a) of Act - Allegations made against appellant do not constitute any offence and hence prosecution of appellant for offence u/Sec.16(1)(a) of Act shall be an abuse of process of Court - Impugned orders are set aside - Appeals Allowed. **Rupak Kumar Vs. State of Bihar 2014(1) Law Summary (S.C.) 130.**

——Secs.16 (1) (a) (i), 7 (i) and (2) (i) (a) - **PREVENTION OF FOOD ADULTERATION RULES,** Rules 14 & 16 - Appellant/Food Inspector filed complaint against A1 and A2/respondents 1 & 2, as sample of ground- nut oil lifted from A1 contained castor oil as per Analyst Report and therefore adulterated - Magistrate acquitted 1st respondent A1 on grounds that Food Inspector failed to observe mandatory provisions contained in Rules 14 & 16 and that despite of 1st respondent handedover bill under which he purchased groundnut oil from 2nd respondent, Food Inspector did not lift any sample of corresponding groundnut oil from premises of 2nd respondent - Appellant contends that evidence is consistent with regard to sampling and sealing process and that report of Analyst revealed that groundnut oil is adulterated since it contained castor oil and that Magistrate ought not to have acquitted A1/1st respondent - 1st respondent contends that his mother is owner of shop and he is student transacting business and cannot be held liable for punishment and that there is deliberate violation of mandatory provisions of Rules 14 & 16 by Food Inspector and evidence of PWs highly discrepant on material particulars - Taking sample by FI

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amounts to sale and R1 cannot escape liability on ground that licence was in name of his mother and he was transacting business only as she was sick on relevant date and mere fact that licence is in name of mother of R1 does not absolve him from criminal liability under Act, if he is otherwise liable for commission of offence - In this case it is clear from evidence that sampling were not taken once but twice which is not contemplated under Rules and evidence also indicates that Food Inspector took samples without clearing intervening vessel - If sample was taken with impure or contaminated, implements report of public analyst cannot be pressed into service to convict accused person for offence under Act - Rules 14 & 16 are mandatory and Food Inspector while conducting sampling and sealing process has to strictly observe mandatory provisions contain in Rules 14 & 16 and any violation will result in benefit of doubt to accused - In this case, no sample was lifted from shop of 2nd respondent eventhough name of A2 was disclosed on very same day by A1 at time of inspection - P.Ws 1, 3 & 4 gave a different versions with regard to sampling and sealing process - Food Inspector did not strictly follow Rules 14 & 16 - Judgment of acquittal passed by Magistrate, confirmed - Appeal preferred by State, dismissed. **Food Inspector, Zone II, MCH, Secunderabad Vs. B.Rama Rao 2008(3) Law Summary (A.P.) 143 = 2008(2) (Crl) 697(AP) = 2008(3) ALT (Crl) 311(AP).**

—Sec.16(1) (a) (i) & 13(2) - Food Inspector filed complaint against A-1 & A-2, seller and manufacturer for keeping adulterated karam (chilli powder) for sale to public - In this case, sample packets purchased by Food Inspector from A1 on 19-3-2000 and it was dispatched to public analyst for analysis on 21-3-2000 - Report of analyst is dated 19-4-2000 and sanction for launching prosecution issued by Director on 1-5-2002 - Complaint filed on 20-6-2002 - Notice u/Sec.13(2) of Act enclosing public analyst report served on petitioner, accused more than 27 months of obtaining sample packet by Food Inspector informing their right to send second sample to Central Food Laboratory for second report by way of challenge to first report - By time Food Inspector gave notice u/Sec.13(2) of Act to accused, SHELF life of second sample expired long back and is unfit for analysis after more than 26 months of its purchase - Accused would be entitled for out right acquittal because he has lost his valuable defence of obtaining second opinion from Central Food Laboratory to prove that report of public analysist is not correct - Criminal case against petitioner/A2 is liable to be quashed - Proceedings in CC on file of Magistrate, quashed - Petition, allowed. **Gurulakshmi Food Products, Guntur Vs. The State of A.P. 2010(1) Law Summary (A.P.) 229.**

—Sec.16(1)(a)(i), r/w Secs.7(i)(ii) and (2)(ia)(m) - **PREVENTION OF FOOD ADULTERATION RULES,** Rule 32(b), r/w proviso after Rule 32(f) - CRIMINAL PROCEDURE CODE, Sec.482 - Food inspector inspected shop of 1st respondent purchased Cadbury 5 Star Chocolates from 1st petitioner and sent for analysis - Public Analyst issued opinion that sample contained vegetable oil and also contained Benzoic Acid which was not declared on lable and sample was both adulterated and mis branded - Hence case book against petitioners - Petitioners contend that in view of Appendix-B Clause A 25.03 of PFA Rules and in view of Rule 32(b) r/w proviso after Rule 32(f) of P.F.A

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Rules petitioners are not guilty of committing offenceunder provisions of PFA Act, 1954 - Prosection contends that samples were indeed adulterated as can be seen from report of Analyst and that it automatically is tantamount to injurious to health, so much so offences are made out against accused - In this case, admittedly, seized samples were 5 Star Filled Chocolate Cakes weighing 16 gms each and that A.25.03 of Appendix-B of PFA Rules provides separate specification for a Filled and White Chocolates - That presence of hydrogenated vegetable oils are not permitted in chocolate portion of sample and not in Filled Portion of chocolate and that it would be tantamount to adulteration so long as hydrogenated vegetable oils are found in chocolate portion - In this case, Public Analyst Report did not distinguish between chocolate portion and Filled Portion of Chocolate - It mearly recorded that sample contained hydrogenated vegetable oils which was marked on lable and that sample also contained Benzoic Acid, which was not declared on lable and that consequently sample was tatantamount to adulteration and misbranding in view of clear distinction between white Chocolate and Filled Chocolate Analyst Report cannot be accepted - While so, Analyst Report disclosed that sample contained hydrogenated vegetable oils, but did not state whether hydrogenated vegetable oils were found in chocolate Portion or in Filled portion - Unless Analyst Report specifically disclosed that prohibited vegetable oils were found in Chocolate portion, it cannot be held that sample was adulterated - Admittedly lable did not show sample contain Benzoic Acid and net weight of samples drawn was 16 gms as can be seen from Analyst Report and that labeling envisaged by Rule 32-B is not necessary when net weight of confectionary is 20gms or less - Thus it is clear that petitioners are not guilty of either adulteration or misbranding of sample - Claim of violation under provisions of PFA Act, is misconceived - Prosecution against petitioners liable to be quashed - Criminal petition, allowed. **Sanka Ravi Gopal Vs. State of A.P. 2012(1) Law Summary 119 = 2012(1) ALD (Crl) 521 (AP) = 2012(2) ALT (Crl) 49 (AP).**

—Secs. 16(1)(a)(i)(a), 7(i) and 2(i) (a) (m) and Sec.17,13(2) & 20 - Petitioner/Manufacturer prosecuted for violations of provisions of Act Offence by companies - Petitioners contend that prosecution is not valid u/Sec.20 of Act and there is violation of mandatory provisions of Sec/13(2) of Act and there is delay and consequently accused entitled for acquittal since there is no proper consent for prosecution - Petitioner further contends, in order to initiate valid prosecution there must be proper consent and in absence of failure to give proper description of accused, prosecution is not valid - It is not necessary for sanctioning authority to consider that person who sold Food Article is owner, servant, agent, partner or relative of owner or duly authorized in this behalf - Scheme of Sec.20 of Act is to give consent to initiate prosecution to competent person and to prosecute offender - “Offence companies” - A reading of Sec.17 of Act clearly shows that if a person is nominee he will be responsible, if not persons who was incharge at time of offence of Company are liable for punishment - Therefore, even if particulars of nominee is not mentioned consent order, still a valid prosecution can be initiated against Company or by alleging as to who was in management of affairs

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at time of offence - In fact it is duty of company also to inform person incharge of affairs - Therefore, when once concerned order for initiation of prosecution u/Sec.20 of Act refers offender which is Company, it cannot be said that prosecution against Company is not valid for reason that name of nominee was not mentioned - In this case, as consent order for prosecution u/Sec.20 of Act clearly describes offender which is Company it cannot be said that prosecution is vitiated for non mentioning name of nominee - In these two cases at all stages there was delay in prosecuting case and in fact life of sample was only six months and therefore prosecution is to be quashed - Proceedings against petitioner/accused no.4 on files of different Magistrates are liable to be quashed. **Hindustan Lever Limited Vs. State 2012(2) Law Summary (A.P.) 280 = 2013(2) ALD (Crl) 694 (AP) = 2012(2) ALT (Crl) 83 (AP).**

—Secs.16(1)(a) (i), 7(i), 2(ia), (m), 13(2) & 14 - Food Inspector lifted samples of Priya Chilli Powder from Kiran shop of A1 - As per report of Public Analyst, sample found adulterated - Even Director Central Food Laboratory opined that it did not confirm to standards of chillies and capsicum (Lal Mirchi) Powder as per prevention of Food Adulteration Act Rules - Petitioners contend that since there is nothing on record to show that petitioners or their persons, who manufactured samples that were lifted by Food Inspector and sent for analysis and since charge sheet shows that purchased bill, supplier's name and addresses etc., were not furnished, petitioner cannot be made liable for punishment under Act because provisions of Sec.14 of Act are not complied with and so charge sheet against petitioners is liable to be quashed - In this case, petitioners herein were impleaded as accused on basis of label declaration found on packets alleged to have been seized from possession of A1 - In this case, even according to complaint label declaration is to effect that product was manufactured on 1-6-2006 and it is best before 12 months from date of manufacture - Shelf life of product expired on 1-6-2007 and complaint was filed on 20-8-2007 nerely two months after shelf life - Central Food Laboratory examined sample on 7-1-2008, nearly 7 months after expiry of shelf life - Because of delay there must be variations in standards prescribed - As complaint and notice u/Sec.13(2) of Act was given after "shelf life" of product, petitioners could not apply to CFL within period of shelf life - In this case, since A1 did not produce any bill and he has not disclosed name and addresses of supplier of product lifted by Food Inspector from him, it cannot be said that they supplied product to accused No.1 for public sale - Accused No.1 assuming that all allegations in complaint are true petitioners cannot be said to have committed an offence under Act, in view of issuance, of notice u/Sec.13(2) of Act, which was given after shelf life of product was expired - Therefore petitioners could not have been applied for CFL within period of shelf life - Therefore petitioner cannot be said to have committed offence under Act and as such no prosecution could be launched against petitioners only on basis of label declaration and therefore continuance of proceedings against petitioners is nothing but abuse of process of Court - Proceedings against petitioners in C.C, quashed - Criminal petition, allowed. **P.Gopalakrishna Vs. Food Inspector, Visakhapatnam 2011(2) Law Summary (A.P.) 172 = 2011(2) ALD(Crl) 565(AP) = 2011(2) ALT(Crl) 241(AP).**

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—Secs.16(1)(a)(i), 7(i), 2 (i) (a) (m), 13(2) & 13(5) - **CRIMINAL PROCEDURE CODE,** Secs.258, 482 and 4(2) - Food Inspector inspected shop of accused no.1 and purchased sealed packets of Priya chilli powder and sent samples to Public Analyst - Analyst opined that it was adulterated - Petitioner filed Application u/Sec.13(2) and sample sent to Director Central Food Laboratory for analysis - Director opined that sample confirmed to standards of chillis and capsicum powder as per Prevention of Food Adulteration Act Rules - Pursuant to said report petitioner filed Application u/sec.227 to discharge or dismiss complaint - Magistrate dismissed petition holding that no accused in complaint case can be discharged after taking cognizance - Hence present petition - Petitioner filed petition u/Sec.227 after filing charge sheet - Admittedly petitioner also filed application u/Sec.13(2) of Food Adulteration Act requesting to send sample to Director - Certificate of analysis issued by Director reveals that sample confirms to standards of chillis and capsicum powder - u/Sec.13(5) of Food Adulteration Act, Certificate of analysis issued by Director will supersedes Certificate issued by Public Analyst - As such Certificate issued by Director will prevail certificfate issued by Public Analyst - Consequently report of Public Analyst is of no avail and cannot be considered for any purpose and no offence shall be made out against petitioners-accused - Proceedings in C.C, quashed - Criminal petition, allowed. **P.Gopalakrishna Vs. Food Inspector 2011(2) Law Summary (A.P.) 190 = 2011(2) ALD(Crl) 179(AP) = 2011(2) ALT(Crl) 366(AP).**

—Secs.16(1)(a)((ii) and 7(1) and (v) and 2(i)(b) – **PREVENTION OF FOOD ADULTERATION RULES, 1955**, Rule 44(e) – Food Inspector inspected shop of accused and purchased 40 grams of ground nut oil suspecting same to be adulterated – As per Analyst report ground nut oil is adulterated and hence complaint filed against accused - Trial Court convicted and sentenced accused for offence under provisions of Food Adulteration Act - Appellate Court confirmed judgment and conviction of accused - Petitioner/accused contends that prosecution has failed to add wholeseller or manufacturer of alleged adulterated oil as one of accused and same is fatal to case of prosecution and that prosecution failed to secure independent witnesses to act as mediators for raising samples and that copies of information under Exs.P1 to P5 not served on proprietor of shop and A1 is a sales man, as such same also goes to root of case and vitiates trial - In this case, it is a fact that P.Ws.1 & 2 are official witnesses and P.W.3 mediator turned hostile – Trial Court ought to have seen that it was not safe to base conviction on evidence of official witnesses that too when there are discrepancies in their evidence and not corroborating with each other - Prosecution failed to prove case beyond all reasonable doubt and trial Court ought to have acquitted both accused at least by extending benefit of doubt – Impugned judgment of both Courts below, set aside – Criminal revision, allowed. **Sriharikota Venkata Ramanaiah Vs. State of A.P. 2011(2) Law Summary (A.P.) 344 = 2011(2) ALD (Crl) 193 (AP) = 2011(3) ALT(Crl) 148(AP).**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012,

PREVENTION OF MONEY LAUNDERING ACT, 2002:

—Petitioner, a Director of two companies registered under the Companies Act was accused in several crimes against those companies – Enforcement Case Information Report (ECIR) was registered against petitioner and others – Petitioner resigned from both companies in 2012 whereas crimes were registered in 2013 – Competent Authority (3rd respondent) directed petitioner to appear before him – Petitioner challenged order – Held, Sec.50(2) of the Act vests power in competent authority to summon any person whose attendance he considers necessary to give evidence or to produce any records during course of any investigation or proceeding under Act – Writ petition, dismissed. **Kolakalapudi Brahma Reddy Vs. Union of India 2014(2) Law Summary (A.P.) 163 = 2014(4) ALD 219 = 2014(5) ALT 369.**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012,

—Sec.42-A - **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,** Sec.14 - District and Sessions Judge, invested with power to try offences under Protection of Children from Sexual Offences Act, 2012 (POSCO Act) made a reference under Sec.395(2) Cr.P.C. seeking clarification as to jurisdiction of the Court to try case when offences alleged against accused are triable under two legislations i.e., POSCO Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Held, a perusal of Sec.20 of SC/ST Act and Section 42-A of POSCO Act reveal that there is a direct conflict between two non-obstante clauses contained in these two different enactments - If Section 20 of SC/ST Act is to be invoked in a case involving offences under both the Acts, same would be triable by a Special Court constituted under Section 14 of SC/ST Act and if provisions of Section 42-A of the POSCO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POSCO Act - When there are two different enactments containing two non-obstante clauses, Court has to see the object and purpose of the two enactments and the legislation which is later in point of time.

A perusal of both enactments would show that POSCO Act is a self contained legislature which was introduced with a view to protect the children from offences of sexual assault, harassment, pornography and other allied offences - It was introduced with number of safeguards to children at every stage of proceedings by incorporating a child friendly procedure - Legislature introduced non-obstante clause in Section 42-A of the POSCO Act with effect from 20.06.2012 giving an overriding effect to provisions of the POSCO Act, though legislature was aware about existence of nonobstante clause in Section 20 of the SC/ST Act - Applying test of chronology the POSCO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990 - POSCO Act being beneficial to all and later in point of time, it is to be held that the provisions of POSCO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments - Reference is thus answered holding that where an accused is tried for offences under both the enactments, the appropriate Court to try the offence would be the Court

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designated under Section 28 of the POSCO Act. **State of A.P. Vs. Mangali Yadagiri 2016(1) Law Summary (A.P.) 112 = 2016 Cri. LJ 1415 = 2016(1) ALD (Crl) 314 = 2016(1) ALT (Crl) 101 (AP).**

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—According to provisions of Act, proceedings have to be held in camera and to be tried summarily and time fixed is sixty days for disposal from date of first hearing - This Act is to provide speedy remedy for deserving aggrieved person and for that reason, a summary enquiry is contemplated - Court cannot go into title dispute and relief of complainant and documents sought to be relied on in this case are in respect of title dispute - Benefits of the Act are not to protect a lady complainant who by her adulterous life caused mental agony and family disorder both for husband and children - Learned Sessions Judge has committed error in setting aside well reasoned order of learned III Additional Chief Metropolitan Magistrate, Hyderabad - Criminal Revision Case, allowed. **Kolli Babi Sarojini Vs. Kolli Jayalaxmi 2014(2) Law Summary (A.P.) 425.**

—All petitioners are residents of Prakasam district whereas the respondent is a resident of Hyderabad - There is nothing on record to show that the present petitioners had any domestic relationship and lived together with the 2nd respondent in a shared household at any point of time - Further, after the proceedings in Crime No. 204 of 2010 were quashed by this Court, by orders dated 04-10-2012, the present DV case was filed by the 2nd respondent - Viewed thus, this Court finds that the petitioners have made out valid and sufficient grounds to quash the proceedings against them in D.V.C.No. 18 of 2012 on file of VI Metropolitan Magistrate, Medchal, Ranga Reddy District - Accordingly, Criminal Petition is allowed - Consequently, proceedings against the petitioners herein are hereby quashed. **P.Sugunamma Vs. State of A.P. 2015(2) Law Summary (A.P.) 162 = 2015(2) ALD (Crl) 305 = 2015(2) ALT (Crl) 196 (AP).**

—and **HINDU MARRIAGE ACT,1955**, Secs.5, 11 & 15 - **SPECIAL MARRIAGE ACT, 1954,** Secs.2 & 13 - **CRIMINAL PROCEDURE CODE,** Sec.125 - **INDIAN PENAL CODE,** Secs.198(1) & 494 - Appellant (wife) married respondent filed petition seeking certain reliefs including damages and maintenance - Trial Court granted interim maintenance - Sessions Judge affirmed order of trial Court - Hence respondent/husband filed writ petition before High Court - While writ petition pending respondent/husband filed Application seeking recall of order of interim maintenance stating that his marriage with appellant was void on ground at time of said marriage appellant was already married to one RKM by showing certificate of marriage issued by competent authority u/Sec.13 of Special Marriage Act - Trial Court rejected said Application on ground that notwithstanding certificate issued u/Sec.13, proof of existence of conditions enumerated in Sec.15 of Act would still required to be adduced and only thereaftrer certificate issued u/Sec.13 of Act can be held to be valid - Respondent/husband filed Revisions against said order - High Court disposed of both writ petition and revision by impugned common order holding that appellant was not legally wedded wife of respondent and not entitled

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to maintenance granted by Court below - Appellant/wife filed present appeals against order of High Court - Appellant denied allegation of earlier marriage and even if that marriage between appellant and respondent to be void, parties having lived together, a relationship in nature of marriage had existed which will entitle appellant to claim and receive maintenance under DV Act - Respondent-husband contends that object behind insertion of expression "relationship in nature of marriage" in Sec.2(f) of D.V. Act is to protect women who have been misled into marriage by males spouse by concealment of factum of earlier marriage of husband and that Act is a beneficial piece of legislation which confers protection of different kinds to women who have been exploited or milsed into marriage - In present case, situation is however, otherwise - From marriage certificate it is clear that appellant was already married to one RKM which fact was known to her but not to respondent - Second marriage which is void and also gives rise to a bigamous relationship was voluntarily entered into by appellant without knowledge of husband and therefore appellant not entitled to any of benefits under DV Act - In fact grant of maintenance in present case would amount to conferment of benefit and protection to wrong doer which would go against avowed object of Act -In this case, admittedly both appellant and respondent are governed by provisions of Hindu Marriage Act - Sec.11 of Hindu Marriage Act makes it clear that marriage solemnised after commencement of Act "shall be null and void and may on a petition presented by either party there to against other party, be so declared by a decree of nullity if it contravenes any one of conditions so specified in clause (i) (iv) and (v) of Sec.5" - Though law specifically does not caste obligation on either party to seek declaration of nullity of marriage and it may be open to parties even without recouse to Court to treat marriage as nullity such course is neither prudent nor intended and a declaration in terms of Sec.11 of Hindu Marriage will have to be asked for, for purpose of precaution and/or record - Therefore until declaration contemplated by Sec.11 is made by competent Court, women with whom second marriage is solemnized continues to be wife within meaning of Sec.494 IPC and would be entitled to maintain complaint against her husband - It is only upon a declaration of nullity or annulment of marriage between parties by competent Court that any consideration of question whether parties had lived in a "relationship in the nature of marriage" would be justified - In absence of any valid decree of nullity or necessary declaration Court will have to proceed on footing that relationship between parties is one of marriage and not in nature of marriage - In present case, until invalidation of marriage between appellant and respondent is made by competent Court it would only be correct to proceed on basis that appellant continues to be wife of respondent so as to entitle her to claim all benefits and protection available under D.V Act - Interference made by High Court with grant of maintenance in favour of appellant, not at all justified - Impugned order passed by High Court, set aside - Appeals, allowed. **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad 2013(1) Law Summary (S.C.) 89 = 2013(3) Law Summary (S.C.)**

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62 = 2013(1) ALD (Crl) 469 (SC) = 2013 AIR SCW 168 = 2013 Cri. LJ 684 (SC) = AIR 2013 SC 346.

—Secs.2(a), 2(f), 12, 14, 16 and 22 - **HINDU MARRIAGE ACT**, Secs.5 and 7 - Contents of the complaint would clearly go to show that the first respondent is very much aware that the petitioner was a married person - First respondent is entitled to contract second marriage after 10-11-2009 only in view of judgment and decree passed in O.P.No. 4 of 2009 - In order to constitute a valid marriage under Hindu law, the parties to the marriage have to satisfy the conditions stipulated u/Sec.5 of the Hindu Marriage Act - A married woman marrying another married man during the subsistence of their marital tie with their respective spouses is not valid one - Likewise, a divorced woman is not entitled to marry a man whose marital ties is in subsistence - Even as per the provisions of the Hon'ble Apex Court, relationship between petitioner and first respondent will not come within the purview of 'relationship in the nature of marriage' as defined u/Sec.2(f) of the DVC Act - In the absence of domestic relationship between the petitioner and the first respondent, the first respondent will not be recognised as an 'aggrieved person' as defined u/Sec.2(a) of the Act and this Court has no hesitation to hold the first respondent is not an aggrieved person to claim any relief under the provisions of the Domestic Violence Act against the petitioner - Court can quash the proceedings if the allegations made in complaint are inherently improbable and if continuation of proceedings would amount to abuse of process of court - In the instant case, the allegations made in the complaint are bereft of the basic ingredients of clauses (a), (f) and (s) of Sec.2 of the Act - For the foregoing reasons Court comes to considered view that continuation of proceedings against petitioner is nothing but abuse of process of law and hence liable to be quashed -Criminal Petition is allowed and proceedings against petitioner are hereby quashed. **Somarapu Satyanarayana Vs. Vijaya Lakshmi 2015(1) Law Summary (A.P.) 80 = 2015(1) ALT (Crl) 306 (AP) = 2015(1) ALD (Crl) 361.**

—Secs.2(q),18,19(a) & (b) and 20 (1)(d) - **CRIMINAL PROCEDURE CODE,** Sec.482, - Petition filed for quashing proceedings in DVC filed by 2nd respondent against her husband and parents-in-law for compensation alleging domestic violence - Contention that DVC against petitioners is not maintainable in view of definition of "respondent" in Sec.2(q) of Act, but same can be filed only against any adult male person but not against female persons - 'Respondent' under 2 (q) of Act - Defined - Definition of respondent would clearly go to show that any adult male person can only be shown as respondent when aggrieved person has sought any relief under Act - Proviso which has an expanded meaning, says that when aggrieved wife or female living in a relationship in nature of marriage may also file a complaint against relative of husband or male partner - Complainant shall be necessarily be a woman and respondent also shall necessarily be a male except in cases where complainant is a wife, respondent may be a female relative of husband or male partner - Act do not exclude women altogether in a proceeding initiated under Act - "Respondent" as defined u/Sec.2(q)

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of Act includes a female relative of husband depending upon nature of reliefs claimed against respondent in DVC. **Afzalunnisa Begum Vs. The State of A.P. 2009(2) Law Summary (A.P.) 204 = 2009(2) ALD (Crl) 155(AP) = 2009(2) ALT(Crl) 204 (AP).**

—Sec.12, 5 & 9 - **CRIMINAL PROCEDURE CODE,** Sec.482 - Complainant, aggrieved woman filed application u/Sec.12 of Act - Magistrate returned same with an endorsement that complaint is to be filed before Project Officer - Sec.12 is very clear that an aggrieved person or a Protection Officer or any other person on behalf of aggrieved may present Application to Magistrate and said provision does not say that unless an aggrieved person approaches Protection Officer, she cannot file Application u/Sec.12 of Act - Duties of Police Officers and service providers are envisaged u/Sec.5 of Act and u/Sec.9 of Act Protection Officers have to assist Magistrate in discharge of his functions under provisions of Act - Magistrate may utilize service of Protection Officer and call for a report under provisions of Act - Impugned order of Magistrate is without jurisdiction and same is liable to be set aside - Magistrate directed to entertain application filed by petitioner in accordance with law - Criminal petition, allowed. **M.Jayamma Vs. State of AP 2012(1) Law Summary 147 = 2012(2) ALD(Crl) 284 (AP) = 2012(2) ALT (Crl) 170 (AP).**

—Secs.18 and 22 - All these Criminal Petitions are filed u/Sec.482 of Code of Criminal Procedure seeking to quash the proceedings in respect of Domestic Violence Cases - Held, in view of the remedies which are civil in nature and enquiry is not a trial of criminal case, the quash petitions u/Sec.482 Cr.P.C on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like without there existing any domestic relationship as laid down u/Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V. case against them or a competent court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of court - In that view, when the present Criminal Petitions are perused, except Crl.P.No. 7289 of 2014, the other petitions are filed with the plea that there is no domestic violence and the petitioners were unnecessarily roped in the case. Hence, they are held not maintainable and accordingly dismissed. **Giduthuri Kesari Kumar Vs. State of Telangana 2015(1) Law Summary (A.P.) 486 = 2015(2) ALD (Crl) 470.**

—Secs.19 & 12 - **CIVIL PROCEDURE CODE,** Or.39, r/w Sec.150 - Petitioner -wife filed Application before family Court seeking injunction against her husband from dispossessing her from suit schedule property relying on Sec.19 of Domestic Violence Act, contending that said property purchased out of funds given by her family members, in name of respondent/husband - Respondent-husband contends that he purchased schedule property by raising house loan from bank and he is ready to provide alternative accommodation to petitioner - Family Court dismissed petition directing respondent to pay certain amount to wife towards rent - Sec.19 of Act, has to be read along with 12 - Certain reliefs are

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provided under Sec.19 (2) while disposing of Application under Sec.12(1) and Magistrate can order with respect of possession of household - A *sine qua non* for order u/Sec.19 is an Application u/Sec.12 before Magistrate and Magistrate has to satisfy himself before passing order u/Sec.19 that domestic violence has taken place - In a suit pending before Family Court, no such relief could be sought as requirements for issue of injunction under Or.39 of CPC are altogether different than requirements u/Sec.19 of Act and that law has provided different fora for different remedies - Revision, dismissed. **M.Nirmala Vs. Dr.Gandla Balakotaiah 2008(1) Law Summary (A.P.) 224.**

—Secs.20,22,23 & 26(3) - **CRIMINAL PROCEDURE CODE,** Sec.482 - 2nd respondent/ wife filed petition against petitioners, husband and in-laws contending that she was alleged to be attempted to be killed by setting fire to cooking gas and petitioners were alleged to be abusing her in filthy language and to be not even attending to her medical need during sickness and that police registered crime u/Sec.498A r/w Sec.307 of IPC against petitioners - Petitioners contend that Magistrate taking cognizance of domestic violence case and proceeding with it is subject of challenge by petitioners that OP on file of senior civil Judge at instance of 2nd respondent for divorce and for a permanent alimony and return of of gold jewelry ended in order on merits directing 3rd petitioner husband to pay Rs.10 lakhs towards value of jewelry etc., and that relief claimed in domestic violence case and in G.P is identical concerning refund of amount paid at time of marriage and competent civil Court adjudicated matter, and domestic violence case is an abuse of process of law and therefore further proceedings in DVC to be quashed - In this case, in so far as reliefs claimed in Domestic Violence Case are concerned, they cover claim towards loss of earning and monetary relief u/Sec.20(2) of act towards maintenance and compensation u/Sec.20(2) of Act are on face of them not such as a case be considered to be not maintainable under provisions of Sec.20 & 22 of Act - Therefore claims to be left for adjudication byMagistrate on merits on evidence of parties than in a summary proceedings like present one restricted to considering applicability of Sec.482 Cr.P.C to take court to inherent powers of High Court to quash proceedings against petitioners - Therefore reliefs claimed in domestic violence case have to be determined on merits in according with law by Magistrate - Therefore further proceedings in DVC No.1 of 2006 on file of Magistrate are quashed in respect of claims made in Annexure C to E annexed to domestic violence petition without prejudice to any other remedies - Petitioners 1 to 3 can apply to trial Court for dispensing with their personal appearance and all future dates of hearing - Trial Court shall also positively consider any request by 3rd petitioner/husband for dispensing with his personal presence on any specific dates of hearing due to his personal obligation. **K.Veerabhadra Rao Vs. State 2012(1) Law Summary 8 = 2012(1) ALD(Crl) 761 (AP) = 2012(2) ALT (Crl) 209 (AP).**

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—Secs.5 &68 - **CIVIL PROCEDURE CODE,** Or.1, Rule 10 - Petitioner filed IP against respondents 2 to 4, attached their properties and brought one item for sale - Since

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1st defendant became highest bidder he deposited amount and sale deed executed - Petitioner filed Application to set aside sale on ground that property already sold much before I.P filed - Trial court allowed Application filed by 1st respondent under Or.1, Rule 10 to add him as party - Petitioner contends 1st respondent is already pursuing remedy u/Sec.68 of Act and that Sec.5 of Act excludes applicability of Or.1, Rule 10 to proceedings - Respondent contends that since there is no provision under Act to enable a party to get impleaded in proceedings under Act, Or.1, Rule 10 is very much applicable and that in an Application filed for withdrawal of money deposited by 1st respondent he is necessary party - The effort of 1st respondent to ensure that amount is not withdrawn at least till Application filed by him is disposed of cannot be treated as without basis and if Act provided for any facility through which 1st respondent can become a party to Application, Application filed under Or.1, Rule 10 can certainly be rejected by placing reliance upon Sec.5 of Act - However no such provision is cited - In that view of matter it cannot be said that in facts and circumstances of case, Application under Or.1, Rule 10 CPC is excluded - CRP, dismissed. **Poluru Venkata Ratnam Vs. Mandava Venkateswara Rao 2009(2) Law Summary (A.P.) 378 = 2009(5) ALD 251 = AIR 2009 AP 197 = 2009(6) ALT 239.**

—Secs.6,9,11 & 13 - **TRANSFER OF PROPERTY ACT**, Sec.53 - Creditors I.P - Respondents 1 to 4 filed I.P contending that appellant 5th respondent borrowed substantial amounts from them and to avoid payment he has executed collusive sale deeds in favour of appellant and also in favour of 6th respondent in respect of two items in B schedule - Trial Court allowed I.P and adjudged 5th respondent as insolvent - District Judge dismissed appeal preferred by appellant and 6th respondent - Appellant contends that he is a *bona fide* purchaser for valuable consideration from 5th respondent and that even assuming that there existed circumstances to adjudge 5th respondent as insolvent, property purchased by appellant ought not to have made subject-matter of proceedings and that appellant not aware of indebtedness of his vendor and he cannot be penalized - In this case, no evidence either oral or documentary was adduced by appellant or respondents 5 & 6 - For all practical purposes trial Court was left with no alternative, except to order I.P, as prayed for, since virtually there was no resistance by appellant and respondents 5 & 6 - By date of sale of property in favour of petitioner and 6th respondent took place, there was no decree against 5th respondent - That however hardly makes any difference - Act is comprehensive enactment, aimed at merely protecting interest of creditors and for equitable distribution of resources that are available with an insolvent - Act enables Court to proceed against all properties that are held by insolvent or for fraudulently transferred - Apart from provisions of Sec.53 of T.P Act, aims at neutralizing plans of fraudulent transfers that are brought into existence to defeat claims of creditors - Courts below have appreciated matter from correct perspective - No substantive question of law arises for consideration in this second appeal - If appellant clears debts due to respondents 1 to 4 it shall be open to them to approach trial Court to modify decree passed by it suitably - Second appeal, dismissed. **G.Raju Krishna Vs. P.Rama Devi 2009(2) Law Summary (A.P.) 255.**

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—Sec.6(1)(b),9,53,54 r/w Sec.4 - Additional District Judge, in A.S.No. 124 of 2007 delivered judgment adjudging the 1st respondent as an insolvent having found that he had committed an act of insolvency under S. 6(1) (b) of the Provincial Insolvency Act - The respondents preferred the present appeal against the judgment - Held, the trial court exercised its jurisdiction to annul the original of Ex.A-4-Gift deed simultaneously, along with adjudging the 1st appellant herein as insolvent while deciding the petition filed under S.9 of the Act without any application under Ss. 53,54 read with S.4 of the Act, the question of filing application by the Official Receiver will also arise only when the creditors whose debts as per the procedure in Part III and Section 54A of the Act - However, the trial Court simultaneously passed an order annulling the transaction covered by original of Ex.A4 without complying the procedure contemplated under Section 54A of the Act - Therefore, the order passed by the trial Court, confirmed by the appellate Court regarding annulment of original of Ex.A4 is erroneous on the face of it and in view of the law laid down by this Court and other Courts - In view of the foregoing discussion, the trial Court and the appellate Court committed an error in adjudging the first appellant as insolvent and in annulling the transaction covered by original of Ex.A4 and consequently, the orders passed by both the Courts are hereby set aside - Appeal is allowed. **Gounda Mohammed Vs. Shaik Sabhb 2015(2) Law Summary (A.P.) 584 = 2015(6) ALD 166.**

—Sec.9 - **GENERAL CLAUSE ACT,** Sec. 35(3) - Limitation - Application filed by appellant to declare respondents Nos.1 & 2 as insolvents on ground that 1st respondent borrowed money from appellant and respondents 1 & 2 have transferred properties to defeat his rights and therefore an act of insolvency was committed - Lower Court allowed Application - District Judge allowed appeal on legal aspect that application is barred by time without going other merits of contention of 1st respondent - Appellant contends that order of lower Court holding that application barred by limitation is not correct - Admittedly as per provisions of Sec.9 of Act application to declare a person as insolvent shall be filed within period of three months from date of insolvency - In this case, evidently act of insolvency is on 8-6-2001 and application was filed on 7-9-2001 - Lower appellate Court has considered period of limitation is 90 days and consequently, application having been filed after period of 90 days is barred by limitation - Calculation made by lower appellate Court in considering period of limitation not proper - There is nothing in provisions u/Sec.9 of Act period of limitation is 90 days - As per Sec.3, sub-sec.(35) of General Clause Act “month” shall mean a month reckoned according to British Calendar and therefore it is not 90 days that has taken to be taken into consideration - Evidently months July and August have got 31 days and consequently, number of days in that month is not criterion and months alone is criterion - Therefore in view of above circumstances, judgment of lower appellate Court holding that petition was beyond period of limitation is not proper and is liable to be set aside - Appeal, allowed. **K.Konda Reddy Vs. K.Thirupalamma 2011(3) Law Summary (A.P.) 128 = 2011(6) ALD 527.**

PROVINCIAL INSOLVENCY ACT:

—Secs.9, 53 & 54 - Respondent Nos.2 and 3 in I.P.No.26 of 2004 on the file of Additional Senior Civil Judge, preferred this appeal questioning the judgment and decree in A.S.No.16 of 2009 passed by Additional District Judge, dated 29.04.2011 - Held, by date of filing petition, seeking annulment u/Secs.53 or 54 of the Act, petitioner was not even adjudged as insolvent - So, first condition was not satisfied - Petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Sec.54-A of the Act - Thereby, order annulling sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act - Hence, orders of trial Court and appellate Court to extent of annulling sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and same is liable to be set aside - Accordingly, Appeal is allowed in part and order of the trial Court and appellate Court to extent of annulling sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 is hereby set aside while confirming order adjudging first respondent as insolvent. **Tadikamalla Venkata Ramana Kishore Vs. Padarthi Santhakumari 2015(2) Law Summary (A.P.)** ***361***

—Secs.28(1) & (2), 9 and 10 - Petitioner filed suit against 1st respondent/father and respondent 2,3 & 4, sons - Suit decreed - Item of immovable property namely, house was attached and steps initiated for sale of property by filing E.P - 1st respondent raised objection in E.P stating that he filed I.P and that all properties of a person declared as insolvent have to be handedover to Official Liquidator and if so advised, petitioner has to seek enforcement of decree in accordance with provisions of Act - Executing Court sustained objection, raised attachment and dismissed E.P by recording a finding that respondents donot have any saleble interest in schedule property - Hence, present Revision - SEC.28(2) OF P.I. ACT - It is evident that once an order of adjudication is passed by Court declaring person as insolvent, entire property of person so declared shall vest in Court or Receiver and shall become devisable among creditors - Order passed in I.P. filed u/sec.9 of Act by creditor cannot be equated to one passed in an I.P filed u/Sec.10 of Act by debtor himself, when it comes to question of consequences provided for u/Sec.28 of Act - Any other different approach would tantamount to give a licence to a debtors to arrange for filing of a collusive O.P u/Sec.10 of Act by fictitious persons and to block all efforts made by real creditors by taking shelter u/Sec.28(2) of Act - Order in I.P would utmost, galvanize 1st respondent - It is not in dispute that respondent 2 to 4 are equally judgment debtors and they had their own right vis-a-vis property, which was sought to be sold - View taken by executing Court - Unsustainable - Impugned order of executing Court, set aside - Revision allowed- Executing Court directed to proceed with sale of attached item of property. **Pulipati Anjaneyulu Vs. Polepalli Subbaiah 2012(3) Law Summary (A.P.) 253 = 2013(1) ALD 293 = 2013(3) 291.**

RAILWAYS ACT, 1989,

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPATIONS) ACT, 1971:

—Secs.2(c)& (e), 5-A (1) and (2) & 15 - Respondent Estates Officer A.P.D., Airports Authority passed order u/Sec.5-A (2) for removal of flat in residential complex belonging to petitioner without considering her explanation - Petitioner contends that she availed loan from Bank and having paid said amount to vendor she got constructed flat and is in possession - Respondent issued notice stating that land in S.No.15 acquired for establishment of Airport by then Civil Aviation Department by paying compensation and said land is now in possession of Airport Authority as such land in S.No.15 is public premises and is encroached by Archana apartments - Petitioner contends that as much as apartment is constructed in S.No.19 but not in S.No.15 as claimed by respondents, it is beyond scope of provisions contained under Public Premises Act and that in view of long standing possession of vendor of petitioner and petitioner after constructing of flat in question, and if there is any claim by respondent authority it is for them to approach competent civil Court to establish their claim but at same time, they cannot pass any order unilaterally presuming that property in question is "public premises' within meaning of Secs.2(e) of Act - Having regard to object of Legislation, it is not intended to decide complicated questions of title and possession, and if respondents are having any right over land in question it is for them to approach competent civil Court to establish title - In this case, notices of demand for assessment, issued right from year 1982 and there is also an enquiry notice with regard to non assessment of property tax issued to vendor of petitioner in 1982 and very same premises was assessed to property tax in name of petitioner's vendor under provisions of Hyderabad Municipal Corporation Act - Having regard to objective of said Legislation and provisions contained therein, it is designed and intended for ordering eviction and removal of encroachments in cases where there is dispute with regard to title and possession of property in question - But in cases where there is bona fide dispute with regard to title/boundaries of land belonged to Govt. or its Companies such disputes are out side scope of said Legislation - Said piece of Legislation never intended to give its authorities power to decide such complicated question of title dispute so as to decide same by passing order u/Sec.5 of Act - But, when there is a dispute with regard to title and possession of very public premises, bar created u/Sec.15 of Act would not come in way of respondents to seek declaration with regard to title and possession, in event of any disputes with regard to boundaries of public properties - Respondents are not empo-wered to decide such complicated questions of title and possession - Impugned orders issued u/Sec.5(a)(2) of Act against petitioners are quashed - Writ petitions, allowed. **T.Satya Suguna Devi Vs. Estates Officer & A.P.D. Hyderbad 2009(3) Law Summary (A.P.) 203.**

RAILWAYS ACT, 1989,

—"Untoward incident" - Bona fide passenger - Deceased aged 35 years while travelling in general compartment of train fell down in station on account of sudden jerk and died of multiple injuries - Railway Claims Tribunal awarded compensation of Rs.4 lakhs

RAILWAYS ACT, 1989,

to claimants - Appellant/Railways contend that deceased was not a *bona fide* passenger and he fell down from train on account of his own negligence and carelessness and that no ticket was recovered from deceased and that finding recorded by Tribunal that deceased was bona fide passenger is not supported by evidence - Respondent contends that deceased died in horrrible condition having been run over by train in precincts of Station itself and it is difficult expect ticket with him and that very fact that deceased travelled full length of journey discloses that he was a bona fide passenger and that appellant did not plead any acts of negligence or lack of prudence on part of deceased much less proved same - It is no doubt true that no ticket was recovered from dead body of deceased - Recovery of ticket from body of deceased who died in untoward incident, would certainly prove beyond any doubt that he was a bona fide passenger - However, mere absence thereof does not by itself lead to conclusion to contrary - In this case untoward incident occurred at destination of deceased - Therefore finding recorded by Tribunal in this regard does not warrant interference.

CONTRIBUTORY NEGLIGENCE - Necessary facts that constitute negligence or lack of proper care must not only be pleaded but also be proved by railway administration - No such effort was made by appellant - Since provisions are in nature of social security measures even where two views are possible one that is beneficial to victims must be adopted - Order of Tribunal justified - Appeal, dismissed - Cross-objections, allowed. **Union of India Vs. V. Santhabai, 2011(1) Law Summary (A.P.) 183.**

—Secs.23 & 124A - Tribunal allowed the claim petition in toto by awarding an amount of Rs.4.00 lakhs as compensation to the applicants - Held, No rebuttal evidence was let in by respondent to demolish stand of applicants that deceased died of untoward incident - Absolutely there is no material on record to establish that death of deceased would fall within Proviso (c) to Sec.124-A of Act - In the above factual scenario, it is not possible to arrive at a conclusion that deceased committed offence punishable under Section 156 of the Act - Having regard to facts and circumstances of case and also principles enunciated in cases cited, High Court considered view that respondent failed to establish negligent act or lack of prudence on part of deceased so as to exonerate its liability by taking aid of Clauses (b) or (c) of Proviso to Sec.124-A of the Act - For the foregoing reasons, it is to be held that death of deceased was due to untoward incident, but not due to his own criminal act or self-negligence, and that respondent is liable to pay compensation to applicants - The Tribunal has assigned cogent and valid reasons to its findings - There are no grounds much less valid grounds to interfere with the well considered order of the Tribunal - In result, appeal is dismissed. **Union of India Vs. Koyya Malli Naidu (A.P.) 190**

—Secs.123,124-A, 125 - **"Untoward incident" - "Jerk of train"** - Deceased while alighting from train fell down due to jerk of train and sustained injuries and succumbed to injuries on same day - Tribunal granting compensation of Rs.4 lakhs to claimants - Contention that deceased attempted to alight from train before coming to halt on platform and thereby fell down which amounts to self inflicted injuries and Railways not liable to

pay compensation - Respondents/claimants contend that deceased fell down because of jerk resulting after brakes applied to train and therefore it cannot be categorized as self inflicted injury as enumerated in proviso to Sec.124(A) - UNTOWARD INCIDENT - Meaning of - In this case, appellant/Railways did not adduce any evidence that jolt of train after reaching platform is a usual one - In absence of such evidence, it cannot be termed that a jolt of train after reaching platform is a usual one - Deceased sustained injuries in an untoward incident for which he succumbed - Order of Tribunal - Justified - Appeal, dismissed. **Union of India Vs. M. Siva Parvati 2008(2) Law Summary (A.P.) 71 = 2008(3) ALD 347 = 2008(3) ALT 829 = AIR 2008 AP 145.**

—Sec.124-A - **RAILWAYS CLAIMS TRIBUNAL ACT,** Sec.23 - *"Bona fide* passenger" - "Untoward incident" - Deceased while travelling in express train by purchasing ticket fell down near Gooty Railway Station on account of heavy jerk and came under wheels and his two legs have been cut and died - Respondent/Railways contends that though deceased was *bona fide* passenger he died on account of his own negligence - Tribunal dismissed O.A holding that death occurred on account of attempt made by deceased to get down moving train - Appellants contend that view taken by Tribunal that deceased was guilty of offence punishable u/Sec.124-A of Railways Act would only reflect perversity with which matter was examined - In ordinary course, when bona fide passenger suffers injuries or dies in course of travel a presumption is to be drawn that it is on account of untoward incident - It is only when Railways plead specific facts that constitutes contributory negligence on part of such passenger, that a different view can be taken - In this case, only basis for respondent/Railways to plead that deceased died on account of his attempt to get down from moving train is evidence of P.W.1 who is S.I of Police and his statement cannot be taken on its value unless it is corroborated by any independent witness and for best reasons known to it, respondent did not examine any independent witnesses - It is not at all safe to rest conclusion on basis of statement made by Police Official to Court - Tribunal did not at all view matter from angle, in which provision was enacted - On other hand, its discussion centered around penal provision viz., Sec.124-A of Act and went to extent of observing that deceased was guilty of committing a crime, of trespassing in to railway track - There cannot be better instance of perversity, than this - Circumstance of case clearly indicate that deceased is a bona fide passenger and he died on account untoward incident - Appellants are entitled to be paid compensation of Rs.4 lakhs - Appeal, allowed. **Ramavatu Decamma Vs. Union of India, 2011(1) Law Summary (A.P.) 219 = 2011(5) ALD 27.**

RECORDS OF RIGHTS:

—Form-VIA - Petitioner purchased land under Registered sale deeds in the year 2001 tracing out title to property referring to Registered sale transactions of years 1975 and 1998, and filed Forum-VIA for mutation of her name in record of rights in respect of said land – R3/Tahsildar, rejected Application filed by petitioner on ground that it is Government land and it is covered by laoni-patta – Hence present Writ Petition - Petitioner assailed said order stating that subject land is neither Government land nor covered by laoni-patta

and also referred by circumstances of granting of Pattadar Pass Books of her vendor to buttress her claim that subject land is private land – Petitioner also filed copies of sale deeds of years 1975, 1978 and 2001 which proved sale transactions are registered without any objection by registering Authority and she also filed copy of Pattadar Pass Books and Title Deeds issued infavour of her vendor - In this case R3/Tahsildar failed to substantiate subject land was covered by laoni-patta – Even assuming that land was originally assigned under laoni-paatta, unless said patta contains a condition prohibiting alienation, assignee under such patta is entitled to sell land - In this case R3/Tahsildar not pleaded in counter-affidavit that purported laoni-patta contained any conditions against alienation - In the absence of any finding that patta contained condition against alienation very invocation of provisions of Act 9 of 1997 is wholly without jurisdiction - In this case, registered sale transactions taken as many as 3 occasions and the Pattadar Pass Books and Title Deeds are granted to petitioner's predecessors, would establish that subject land was treaded as a free hold land – Having allowed parties to sell property from time to time, respondents have acquiesced in raising plea that subject land belongs to Government Land at this length of time – Impugned proceedings of R3/Tahsildar set aside and R3 directed to mutate name of petitioner in respect of subject land and issue Pattadar Pass Books and Title Deeds – Writ Petition Allowed. **Sunkara Sujana Vs. District Collector, Ranga Reddy District 2014(1) Law Summary (A.P.) 257 = 2014(3) ALD 70 = 2014(2) ALT 1.**

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

—Secs.1, 18,31,34,19(6) - "Jurisdiction of civil Court" - Plaintiff/Bank filed suit for recovery of amount of Rs.5,01,129/- from defendants basing on equitable mortgage - Defendants filed suit against plaint/Bank for rendition of accounts, recovery of rent and for eviction of plaintiff/Bank - Trial Court by its judgment adjusted claim of Bank from arrears of rent allegedly payable by Bank as tenant to defendants and consequently dismissed suit filed by plaintiff/Bank and decreed suit filed by defendants, directing Bank to pay Rs.7,70,194/- - Division Bench of High Court set aside decree of trial Court and remitted matters back for fresh trial directing trial Court to permit both parties to adduce further evidence and dispose of suits afresh - JURISDICTION - Sec.1 of Act lays down that Tribunal shall have jurisdiction where debt due to bank or financial institution is Rs.10 lakshs or more - Sec.31 lays down that every suit or other proceeding pending in a Court immediately before date of establishment of Tribunal shall stand transferred toTribunal - A bar is created u/Sec.18 excluding jurisdiction of civil Courts in respect of all matters which come under purview of Tribunal - Sec.34 of Act lays down that Act of 1993 shall have over riding effect, over other enactments - In instant case, trial Court passed decree on 30-12-1999 in favour of defendants for an amount of Rs.7,70,194/- - Suit filed by plaintiff was instituted in 1979 where as suit filed by defendants was instituted in year 1981 - No doubt according to proviso of Sub-sec.(1) of Sec.37, provisions relating to transfer shall have no Application to any appeal pending before any Court - However when once matter is remanded by appellate Court setting aside decree passed by trial Court, original suit automatically revives - Once suit is

revived, it must, in eye of law, be deemed to be pending before beginning when it was instituted - Suit cannot be treated has one freshly instituted on date of remand order - Otherwise serious questions as to limitations would arise - Since trial Court has not properly addressed issues based on rival contentions matter has to be remitted back to trial Court for fresh disposal according to law - Defendants shall not be deprived of their right to get their suit adjudicated by civil Court - Judgment and decree of trial Court, set aside and matters remanded to trial Court for disposal afresh according to law after affording opportunity to both parties to adduce further evidence. **Bank of India Vs. Vegi Venkateswara Rao & Brothers 2009(3) Law Summary (A.P.) 153.**

—Sec. 2(g) - **JURISDICTION OF DRT** — Stated - Appellant-Company entered into agreement with respondents 2 & 3 granting licence in their favour to use premises for certain consideration payable to appellant, along with plant and machinery - Appellant had no knowledge of fact that respondents 2 & 3 had availed certain cash credit facility and hypothecated material and stock to Bank - Appellant took possession of factory premises along with machinery and stock - Respondents also requested appellants that stock should be sold and adjusted towards licence fee and surplus money should be refunded - Bank filed suit against appellants and respondents 2 & 3 and obtained ex parte judgment since appellant did not appear before Tribunal - Tribunal declined to set aside ex parte decree - Order of Tribunal was neither interfered by High Court nor by Supreme Court in SLP preferred by appellant - Appellant filed another application for setting aside decree on ground that Tribunal had no jurisdiction - Appellate Tribunal allowed application accepting contention raised on behalf of appellant on ground that it is claim for damages in tort and was not a 'debt' and also that it was beyond jurisdiction vested in Tribunal u/Sec.17 (1) of Recovery Act - It cannot be said that stand of High Court to be erroneous, of course to some, extent entire suit could not have been decreed against appellant - Cause of action in favour of Bank and against appellant, at best could be limited to hypothecated stock and goods - In this case, it appears that Bank is acting in a manner which is ex facie not in consonance with commercial principles and in a most causal and irresponsible manner - Appellant contends that there was no privity of contract and they were not covered under definition of "debt" and as such, recovery proceedings would not be initiated , much less recovery could be effected from them under provisions of Recovery Act.

"Debt" - Defined - (a) Any liability;

(b) claim as due from any person;

(c) during course of any business action activity under by Bank;

(d) where secured or unsecured

(e) and lastly legally recoverable.

Word "debt" under Sec.2(g) of Recovery Act is incapable of being given a restricted and narrow meaning - In present case, Bank had admittedly granted financial assistance to respondents 2 & 3 who in turn had hypothecated goods plant and machinery in favour of Bank - Goods in question have been sold by appellant without consent of Bank - Claim raised by Bank falls within ambit and scope of Sec.2(g)

of Recovery Act and jurisdiction of Tribunal cannot be ousted - Scheme of Recovery Act and language of its various provisions imposes an obligation upon banks to ensure proper, expeditious recovery of its dues and in present there is certainly ex facie failure of statutory obligation on part of Bank and it Officers/Officials - Appellants liable to pay to respondents Bank value of hypothecated stock sold by appellant - Appeal, partially allowed. **Eureka Forbes Ltd., Vs. Allahabad Bank 2010(2) Law Summary (S.C.) 120.**

—Secs.2(g), 17 & 19 - **SECURITASATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002,** Sec.2(ha) - Petitioners operating accounts at 1st respondent Bank and are allowed an overdraft facility - 1st respondent/Bank filed O.As. before Debt Recovery Tribunal against petitioners and 2nd respondent/Officer loans who acted with mala fide intention and committed fraud in connivance with petitioner and other customers - After filing written statements in O.As when matter came up for defence side evidence, petitioners filed I.As to frame preliminary issue with regard to maintainability of O.As before Tribunal and dispose of same on merits by returning for presentation before proper Court for disposal - Tribunal dismissed I.As stating that not only employee but also customer involved in misappropriation of amount in all cases and since this is a liability from employee as well as customer O.As are maintainable - Petitioners contend that limited jurisdiction conferred on Tribunal cannot be enlarged to decide fraud, in view of fact fraud has been played by employee of 1st respondent/Bank i.e. 2nd respondent - Such power is exclusive jurisdiction of civil Court but not by Debt Recovery Tribunal - Issuance of bank drafts is clearly business activity of Bank - Essence of definition of "Debt" in Sec.2(g) of Act is existence of any liability founded on allegation as due from any person; only rider being that liability must be legally recoverable - In this case, respondent/Bank clearly mentioned in all O.As amounts which were credited to account of petitioners and withdrawn by them and demanded for refund of same with specific interest - On failure to reimburse amounts which were withdrawan by petitioners on crediting to respective amounts, O.As were filed for recovery of amounts - Since proceeds are fraudulently deposited to credit of account of petitioners and later withdrawan by them in course of normal banking business, same falls within definition of 'Debt' - Hence jurisdiction of Tribunal not ousted - Writ petitions, dismissed. **Lakkavajjula S.S.S. Prasad Vs. Oridential Bank of Commerce,Vijayawada 2010(1) Law Summary (A.P.) 141.**

—Sec.19 - Tribunal allowed O.A. and issued Recovery Certificate - Petition filed to set aside order of Tribunal and also Application for stay of recovery proceedings - Application for stay dismissed for default - Tribunal allowed Application and condoned delay in filing Application for setting aside order subject to condition of depositing one-tenth of O.A. claim within 15 days - Contention that condition imposed in impugned order for deposit of one-tenth of O.A claim should be declared arbitrary, stating that when Tribunal restored similar proceedings on payment of Rs. 300/- only, there is no justification to impose

condition of deposit of 1/10th of O.A. claim for setting aside order - Undisputedly, the amount due from petitioner/borrower is about more than Rs.45 crores - Therefore discretion exercised by Tribunal in condoning delay caused in filing Application cannot be termed as arbitrary or perverse - In such matters superior Courts will always be extremely loath to interfere with discretion exercised by adjudicating bodies created under Special Acts - Writ petition, dismissed. **Dr.Pinna N.R. Vs. M.G. Road, Branch,Secunderabad 2008(2) Law Summary (A.P.) 201 = 2008(3) ALD 681.**

—Sec.19 - **STATE FINANCIAL CORPORATION ACT, 1951,** Secs.29 & 31 - Appellant/ Bank sanctioned working capital loan to borrower Company for which respondent executed deed of personal guarantee - Since borrower Company committed default, appellant filed Application in High Court for attachment and sale of assets of borrower Company to which respondent was not made a party - Appellant filed Application against respondent u/ Sec.19 of Act in Tribunal, praying for issuance of Certificate against respondent for certain amount - Respondent also filed Application for stay of further proceedings in case filed by appellant on ground that rights of appellant against respondent as guarantor did not crystallize till rights of appellant against borrower Company are established - Tribunal dismissed Application filed by respondent holding that appellant cannot be forced to exhaust remedy elsewhere and then to proceed against guarantor and liability of guarantor is co-extensive with that of principal debtor - High Court allowed Application filed by respondent and stayed further proceedings in O.A filed by appellant against respondent - Appellant contends that liability of guarantor and principal debtor are co-extensive and not in alter native - SFC, ACT, SECS.29 & 31 - On a co-joint reading of Secs.29 & 31 it appears that in case of default in repayment of loan or any instalment or any advance or breach of agreement, Corporation has two remedies available to it against defaulting industrial concern, one under Sec.29 and another u/Sec.31 - Since Corporation must be held entitled and given full protection by Court to recover its dues it cannot be bound down to adopt only one of two remedies provided under Act and that doctrine of election is not applicable to this case - Liability of guarantor and principal debtors are co-extensive and not in alternative - High Court, not justified to stay further proceedings - Appeal, allowed. **Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala 2009(3) Law Summary (S.C.)** ***42.***

—Sec.19 (20) - **CIVIL PROCEDURE CODE,** Sec.34 - Respondent availed loan of Rs.3 crores from appellant, Bank by depositing title deeds with undertaking to repay with interest at PLR of petitioner/Bank+2% with quarterly rests in 72 monthly instalments - As respondent committed default and failed to regularize account, appellant filed O.A before DRT for recovery of amount together with interest *pendente lite* at 16% p.a with quarterly rests - DRT passed order declaining to grant interest *pendente lite* but granted post decree interest at 6% per annum - DRAT allowed appeal, to limited extent awarding lump sum interest of Rs.10 lakhs - Hence present writ petition by petitioner/Bank - Petitioner/Bank contends that DRT and DRAT as well were not judicious in their approach to matter of grant of interest *pendente lite* - Respondent availed loan

for commercial purpose and defaulted on repayment schedule - Since respondents not responsive despite several appraisals, petitioner-Bank compelled to seek legal remedies and that neither total waiver of interest as directed by DRT, nor meager interest of Rs.10 lakhs as awarded by DRAT deserve acceptance and interst as agreed is liable to be awarded - Respondents contend that grant of interest *pendente lite* is a matter within discretion of Tribunal - Undisputedly term loan of Rs.600 lakhs was sanctioned, secured in equitable mortgage of immovable property of respondents and respondents availed said loan jointly and agreed to repay with interest at PLR of Bank+2% with quarterly rests in 72 monthly instalments - From a conjoint reading of observations in judgments and provisions of Sec.19(20) of Act, it is manifest that Tribunal is vested with power to grant interest *pendente lite,* but such power should be exercised fairly, judiciously and for reasons and not in any arbitrary or fanciful manner - In instant case payment of entire O.A. amount in lump sum after order was passed by DRT is hardly a reason and reasons are lacking as to why interest is limited to Rs.10 lakhs only and why plea of petitioner for agrred rate of interest was rejected - Therefore, impugned order of DRAT is unsustainable - Admittedly loan was for commercial purpose, therefore said loan cannot be treated on par with agricultural loan - By retention of commercial loan during pendency of O.A it is logical to infer that 1st respondent would have earned income from out of amout - Petitioner/Bank cannot be denied interest *pendente lite* - Petitioner/Bank is entitled for reasonable interest *pendente lite* - Hence respondent directed to pay simple interest at PLR of Bank without quarterly rests. **Andhra Bank Vs. Valluripalli Nagarjun 2010(3) Law Summary (A.P.) *438* = 2011(1) ALD 457 = 2011(2) ALT 202 = AIR 2011 (NOC) 190 (AP).**

—Sec.29 - **INCOME TAX ACT, 1961,** Schedule - II, Rules, Rules 57, 58 - Loan advanced by Bank to Firm on basis of equitable mortgage of properties owned by partners of Firm by deposits of title deeds - Borrower having defaulted in paymen of loan amount respondent/Bank filed O.A. before DRDT - Tribunal passing ex parte decree - Recovery certificate issued in favour of Bank and that properties broought to sale in public auction in which appellants emerged as successful bidders - Appellate/ Tribunal set aside sale with direction to defendants/respondents to deposit entire amount claimed in O.A. - Aggrieved by orders passed by appellate Tribunal appellants/Auction purchasers filed writ petition before High Court which has been dismissed - High Court approached issues from a slightly different angle; for instead of going into question whether appellants were bona fide auction purchasers, it examined validity of auction itself and came to conclusion that auction conducted by Recoery Officers was illegal and void because of non-compliance with provisions of Rule 57 in Second Schedle of Income Tax Act, which were in view of provisions of Sec.29 of RDDB Act - Hence present appeal assails correctness of order passed by High Court - Appellant, contend that even if High Court would examine a ground other than one on which remand had been ordered, it failed to appreciate that provisions of Income Tax Rules set out in Second Schedule of I.T Act were applicable only “as far as possible” and with necessary modification - In this case, application filed by JDR for setting aside sale

had been dismissed by Tribunal and inasmuch as there was no challenge to said dismissal order at any stage - High Court ought to have held that condition precedent for setting aside sale namely filing of proper applicaion was not satisfied thereby rendering sale in favour of appellants immune from any challenge or interference - Sec.29 of Act incorporates provisions of Rules found in Second Schedule to Income Tax Act for purpose of realization of dues by Recovery Officer under Act - It is note worthy that Income Tax Rules make provisions that do not strictly deal with recovery of Debts under Act - Such of Rules cannot possibly apply to recovery of debts under Act - Rules 86 and 87 under Income Tax Act do not have any Application to provisions of RDDB Act, while Rules 57 & 58 of said Rules in Second Schedule with process of recovery of amount due and present no difficulty in enforcing them for recoveries under RDDB Act - Contention that use of words "as far as possible" in Sec.29 is meant to give discretion to Recovery Officer to apply said Rules not to apply same in specific fact situations is rejected - It is therefore reasonable to hold that phrase "as far as possible" used in Sec.29 of RDDB Act, can at best mean that Income Tax Rules may not apply where it is not at all possible to apply them having regard to scheme and context of legislation - No reason to hold that Rules 57 and 58 of Income Tax Rules are anything but mandatory in nature, so that a breach of requirements under those Rules will render auction non est in eye of law - Appeal, dismissed. **C.N. Paramsivan Vs. Sunrise Plaza TR. Partner, 2013(2) Law Summary (S.C.) 134 = 2013(3) ALD 165 (SC) = 2013 AIR SCW 1036 = AIR 2013 SC 2941.**

—Secs.29 & 30 - **TRANSFER OF PROPERTY ACT, Sec.53 - INCOME TAX (CERTIFICATE PROCEEDINGS) RULES,** Rule 11 - "Rights of 3rd party auction-purchaser" - Partnership Firm availed loan from Bank by mortgaging certain properties - Since loan amount not repaid, bank initiated recovery proceedings and attached a plot mortgaged to Bank belonging to one of partners - Recovery Officer passed order for sale of property by way of public auction - Since appellant was highest bidder, Recovery Officer ordered sale of property in his favour and handed over physical possession of property to appellant/auction purchaser and subsequently land in question also mutated in favour of auction-purchaser - Division Bench of High Court passed order in LPA filed by one of partners, objector Bank accepted to finally settled matter subject to condition that objector has to pay certain amount within a particular period and accordingly LPA was adjudicated - In this case, High Court finally concluded that proceedings before Recovery Officer were in flagrant violation of Provisions of Rule 11(2) of Income Tax Rules - Having so concluded High Court set aside proceedings conducted by Recovery Officer including sale of public auction - Appellant/auction purchaser assailed order passed by Division Bench of High Court in LPA, vehemantly contending that in terms of law declared by Supreme Court property purchased by 3rd party/auction-purchaser, in compliance of Court order cannot be interfered with on basis of success or failure of parties to proceeding, if auction purchaser had bonafidely purchased property - In any event, ordinarily a bonafide purchaser for value in auction sale is treated differently than a decree- holder purchasing such properties - In event, even if such a decree is set aside, interest of bonafide purchaser in an auction sale is saved - Law makes a clear

distinction between stranger who is bona fide purchaser of property at an auction-sale and a decree-holder purchaser at Court auction - Strangers to decree are afforded protection by Court because they are not connected with decree - Unless protection is extended to them Court sales would not fetch market value or fair price of property - In present case, auction having been confirmed by Court it cannot be set aside unless some fraud or collusion has been proved - No fraud or collusion has been established by any one in this case - It is, therefore apparent that rights of auction-puchaser in property purchased by him cannot be extinguished except in cases where said purchase can be assailed on ground of fraud or collusion - The objection raised by respondent/partner ought to have been rejected on grounds of delay and latches especially because 3rd party rights had emerged in mean-time - More so, because auction purchaser was a bonafide purchaser for consideration having purchased property in furtherance of a duly publicized public auction - Interference by High Court even on grounds of equity is clearly uncalled for - Impugned order passed by High Court allowing LPA, set aside - Right of appellant/auction auction purchaser in the property confirmed - Appeal, allowed. **Sadashiv Prasad Singh Vs. Harendar Singh 2014(1) Law Summary (S.C.) 1 = 2014(3) ALD 120 (SC) = 2104 AIR SCW 1083 = AIR 2014 SC 1078.**

—and **INDIAN ELECTRICITY ACT,** Sec.2(c) - General Terms and Conditions of (electricity) Supply, Condition No. 8.4 - Whether Petitioner, who purchased the property of defaulting sick Company under a registered sale deed from auction purchaser can be directed to pay electricity dues of the sick company?.

Held, the responsibility is cast on the seller to clear all dues before selling such property - However, said condition does not disable the Company from recovering dues when arrears become due and before Unit was sold - It is for respondent to take necessary steps for recovery of dues, and if it fails to do so, it cannot enforce same against the purchaser - There was no claim of respondents till petitioner applied for service connection but it was rejected by the respondents - In view of incapacity of seller to comply with Condition No.8.4 coupled with the fact of first respondent not taking steps to recover arrears and long silence till an application is made by the petitioner, order of rejection passed by third respondent is set aside - Writ Petition is allowed - Respondents are directed to continue the electricity supply to petitioner. **Dhanalakshmi Iron Industries Vs. Central Power Distribution Co. of A.P. Ltd. 2014(3) Law Summary (A.P.) 168 = 2014(6) ALD 129.**

(INDIAN) REGISTRATION ACT

— and STAMP ACT - "Release deed" - Unregistered, unstamped release deed - Defendants sought to mark document purports to speak about past transactions and

that such past transactions in a document do not require registration - Trial Court passing docket order holding that document is admissible in evidence and not required compulsory registration - Petitioners/plaintiffs contend that document refers to past transaction but relates to releasing of rights as of to day and it is not a partition list or a document speaking about past transactions - Present document extinguished rights of executant over his share of joint family properties and consequently document is liable to stamp duty as well as registration - In present case past transactions have been referred to in document in question - However, main purport of document is present transaction of executant relinquishing his right in joint family properties and it being a case of transfer of property, document in question is compulsorily registerable - Docket order of trial Court - Unsustainable and accordingly set aside - CRP, allowed. **Laxminarsamma Vs. N.Venkatreddy 2013(2) Law Summary (A.P.) 1 = 2013(4) ALD 607 = 2013(4) ALT 303.**

– Secs.2(6) and 17 – **TRANSFER OF PROPERTY ACT,** Sec. 54 and Sec.6(c) – Plaintiff/ petitioner filed suit against defendants for declaration of right in schedule passage to reach his lands and for consequential injunctions restraining defendants from interfering with plaintiff's peaceful possession and enjoyment of right in regard to said passage and not to cause any obstruction for ingress and egress - During trial plaintiff intended for marking document in support of his claim in regard to plaint Schedule passage – Defendants raised objections for marking said document on ground that said document discloses an easement by way of passage and creates some interest in property, though no title and ownership are given and said document is inadmissible in evidence as it is unregistered – Trail court upheld objection raised on behalf of defendants and refused to admit said document in evidence - Hence plaintiff filed present Revision.

In this case, under this document license is granted to plaintiff to use same passage which was already in existence and which was provided for – Admittedly no title or ownership over said passage is created under document and created in favour of plaintiff who is beneficiary under the document and therefore in mind of court the document in question created no right in immovable property; and, only irrevocable permission was accorded under it to use existing passage by granting license so to say - Having regard to facts and reason, this court holds that order of court below is liable to be set aside – Trial court is directed to admit document in evidence provided plaintiff pays stamp duty and penalty, if any, payable and said document as per provisions applicable to transaction of license – CRP allowed accordingly. **Dwara Satyanarayana Vs. Malladi Bhanumathi 2016(2) Law Summary (A.P.) 82 = 2016(4) ALT 516 = 2016(3) ALD 505.**

(INDIAN) REGISTRATION ACT

Sec.17 - **INDIAN STAMP ACT**, 1899, Sec.2 (24) - SPECIFIC RELIEF ACT, 1963, Sec.2 (b) - TRANSFER OF PROPERTY ACT, 1882 - Unsuccessful plaintiff in O.S. on the file of Court of Subordinate Judge, preferred this appeal challenging decree and judgment, whereby and where under the suit filed by plaintiff for partition was dismissed.

Aggrieved by decree and judgment of trial Court, unsuccessful plaintiff preferred present appeal on various grounds mainly questioning validity of settlement letter marked as Ex.B4, which was withdrawn by issuing notice since defendants did not perform their part of obligation i.e. payment of balance of consideration agreed to be paid, but trial Court, on erroneous appreciation, dismissed the suit - It is further contended that trial Court, placing reliance on Ex.B4 without any registered document of relinquishment, accepted contention of defendants erroneously and negated claim of plaintiff - Ex.B4 letter does not convey or extinguish any right or liability of parties and, therefore, on strength of Ex.B4, plaintiff cannot be non-suited to claim share in schedule property - That apart, under Ex.B4, is still due and, in absence of payment of balance of amount agreed to be paid, claim of the plaintiff cannot be thrown out - However, trial Court, on erroneous appreciation of both fact and law, negated relief of partition without assigning any legal reasoning and prayed to allow appeal to set aside decree and judgment of trial Court and to pass preliminary decree for partition of schedule property into 7 equal shares, to allot one such share with separate possession of the property and render true and correct account of both past and future profits - Defendants argued totally in support of findings recorded by trial Court while contending that Ex.B4 is only a release deed though it was contended before trial Court that it was a settlement deed; said release deed will never extinguish or create any right in immovable property and, therefore, not required to be registered - Thus, trial Court rightly admitted Ex.B4 in evidence - If, for any reason, the plaintiff was not paid Rs.14,500/- after deducting Rs.500/- already paid out of amount agreed to be paid under Ex.B4 by defendants, his remedy is only to recover Rs.14,500/- and not entitled to claim any share in property having given up his share in clear and unequivocal terms under Ex.B4.

Held, releasing right means a person, who had interest in property along with others, giving up his right in the property which enlarges the right of others who had same right in property - If release in favour of a third person having no right in property, it cannot be said to be release and, at best, it may amount to gift as defined under Transfer of Property Act - Plaintiff agreed to receive Rs.15,000 in lieu of his share in joint family property giving up his right in favour of other coparceners who are continuing as members of Hindu undivided coparcenary - On Account of relinquishment of share by the plaintiff, share of other co-parceners is increased. In view of law declared in decisions referred, it is clear that Ex.B4 executed by the plaintiff in favour of defendants is release deed or relinquishment deed but not settlement deed as defined under Sec. 2(24) of Act of 1899 or under Section 2 (b) of Act of 1963 - Trial Court, therefore, rightly concluded that Ex.B4 is relinquishment

deed which requires no registration - If Ex.B4 is treated as release deed, it is required to be duly stamped under Article 46 to Schedule I-A of Act of 1899 (A.P. amendment) but Article 46 was introduced by amendment to Schedule I-A of Act of 1899 by G.O.Ms.No. 2045 (Reg. I) dated 28-11-2005 with effect from 01-12-2005. Clause (A) to Article 46 was introduced by G.O.Ms.No. 1129, Rev. (Regn. I) Dept., dated 13-06-2005 but withdrawn by G.O.Ms.No. 1169, Rev. (Regns. I) Dept., dated 15-09-2010 to restore the original stamp duty of 3%. However, these two amendments to Schedule I-A of Act of 1899, by introducing Article 46, have no application to the present facts of the case for reason that Ex.B4 was executed long prior to these amendments - Moreover, trial Court collected stamp duty and penalty and admitted document in evidence - When once document is admitted under the provisions of the Act of 1899, same cannot be questioned at any subsequent stage in view of bar under Section 36 of the Act of 1899 - In present case, stamp duty payable on the document was decided by trial Court and collected penalty and stamp duty - Therefore, question of inadmissibility of Ex.B4 in evidence on account of non-payment of stamp duty does not arise - As discussed above, document of release would not create any independent right but it enlarges right in immovable property and, therefore, it is not required to be registered under Sec.17 of Registration Act as held by the Apex Court.

If total attending circumstances are taken into consideration, it is evident that the plaintiff relinquished or given up or released his undivided 1/7 th share in Hindu undivided coparcenary in favour of the defendants and it was acted upon too - Consequently, plaintiff is only entitled to recover amount due under Ex.B4 i.e. Rs.14,500/- with interest if any - Thus, trial Court, after appreciation of entire evidence on record, rightly concluded that Ex.B4 was executed by plaintiff, acted upon and, therefore, plaintiff is disentitled to claim any share in Hindu undivided coparcenary - On reappraisal of entire evidence with reference to law laid down by Apex Court and this Court, find no legal infirmity warranting interference of this Court - Hence, the finding of trial Court on Ex.B4 is hereby confirmed holding these two points in favour of defendants and against the plaintiff.

The plaintiff is ceased to be a member of Hindu undivided coparcenary after execution of Ex.4 as he relinquished or given up his right in property of Hindu undivided coparcenary - Consequently, question of rendering true and correct account of income from property of joint family does not arise - Thereby, defendants are not under obligation to render true and correct account of income - Accordingly, the point is answered in favour of the defendants and against the plaintiff - In view of foregoing discussion and findings, Court find no ground warranting interference with findings recorded by the trial Court and, consequently, Appeal deserves to be dismissed as it is devoid of merits.

In result, Appeal is dismissed confirming decree and judgment passed in O.S. on the file of Court of Subordinate Judge. **Pasagadugula Narayana Vs. Pasagadugula Rama Murty 2016(1) Law Summary (A.P.) 80 = 2016(1) ALD 238.**

(INDIAN) REGISTRATION ACT

—-Secs. 17,48 and 49 - This Appeal has been preferred aggrieved by the orders passed by the High Court of Judicature of Andhra Pradesh wherein and whereby the learned Judge has dismissed the Revision Petition preferred by the Appellants/Defendant Nos. 1 & 2 by confirming the orders passed of Principal Senior Civil Judge - Both the Trial Court and the High Court upheld the objection raised by the plaintiff/ respondent No.1 and came to a conclusion that two recitals i.e. Exhibit B21 and Exhibit B22 are not evidencing the past transaction, but they prima facie disclose the partition of the property and relinquishment of rights by one of the parties - As such, both documents require stamp duty under the Indian Stamp Act, and registration under the Registration Act, - As Exhibits B21 and B22 are unregistered and unstamped documents, they are not admissible in evidence - Trial Court gave a specific finding that even both the exhibits are not admissible for collateral purpose also - Aggrieved by that, the present appeal is filed.

Held, it is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question - A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act - Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of Sec.17(i)(b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties - This Court is of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e., severancy of title, nature of possession of various shares but not for the primary purpose i.e., division of joint properties by metes and bounds - An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded - Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.

Accordingly, Civil Appeal is partly allowed holding that Exhibits B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy. **Yellupu Uma Maheswari Vs. Budda Jagadheeswara Rao 2016(1) Law Summary (S.C.) 26 = 2016(1) ALD 40 (SC) = 2015 AIR SCW 6184.**

(INDIAN) REGISTRATION ACT

—Secs.17 & 49 - Petitioner/plaintiff filed suit for partition and separate possession claiming 1/3rd share in suit schedule property - Defendants filed written statement resisting claim of plaintiff that she relinquished her rights over suit schedule property - When defendant produced copy of relin-quishment deed and sought to mark it on his behalf, plaintiff raised objection on ground that relinquishment deed is compulsorily registerable document u/Sec.17 of Registration Act - Trial Court overruled objection and marked relinquishment deed as Ex.B1 - Petitioner/plaintiff contends that contents of document go to show that rights have been relinquished under document "in praesenti" and therefore it cannot be treated as recording a past transaction, whereunder rights have already been relinquished over movable and immovable property of joint family - Since document sought to be received in evidence on behalf of respondent/defendants is not properly stamped, same cannot be received even for purpose of proving collateral transaction - Defendants contend that plaintiff had already relinquished her share in joint family properties, movable and immovable, document is only evidence in past transaction and therefore it is not a compulsorily registrable document - Since document sought to be marked on behalf of respondents, defendants is relinquishment deed and since same is not properly stamped and unregistered it is inadmissible in evidence - Trial Court erred in receiving document and marking it as Ex.B-1 - Docket order of trial Court, set aside - CRP, allowed. **Vangala Laxmamma Vs. Pasham Narsi Reddy 2010(1) Law Summary (A.P.) 419.**

—Secs.17 & 49 - "Collateral purpose" - Collateral transaction - Respondent filed suit for declaration and permanent injunction against petitioner/defendant - During trial petitioner/defendant sought to produce unregistered sale deed for purported collateral purpose, namely, to prove possession of property - Trial Court declined permission to mark document on ground that since sale deed is compulsorily registerable as per Sec.17 of Act and same did not admissible in evidence even though it is impounded - Purport of phrases collator "collateral transaction" and "collateral purpose" - Explained - From the principles laid down Supreme Court and various High Courts - It is evident that

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act;
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act;
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration;
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards;
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of providing an important clause would not be using it as a collateral purpose."

(INDIAN) REGISTRATION ACT

On a compendious reference of case law discussed the following conclusions emerge;

i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property;

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property;

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether;

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards;

v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit;

vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document;

vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.

When the above crystallized legal position to the facts of this case, that unregistered sale deed is admissible in evidence for collateral purpose to limited extent of showing possession of plaintiff - Therefore for limited purpose of proving petitioners, possession unregistered document, which is impounded is admissible in evidence - Order of trial Court, set aside - CRP, allowed. **K.Ramamoorthi Vs. C.Surendranatha Reddy, 2012(3) Law Summary (A.P.) 49 = 2012(6) ALD 163 = 2012 (6) ALT 786.**

—Secs.17 & 49 - **STAMP ACT,** Sec.3 - Respondent/plaintiff filed suit for eviction of petitioner/defendant basing on unregis-tered document - Inspite of objection by petitioner, trial Court marked document - Petitioner/defendant contends that since document is lease deed and it is a compulsorily registerable document u/Sec.17 of Registration Act and that R.1/plaintiff intends to relay upon said document for purpose of establishing factum of landlord and tenant relationship and such document cannot be marked for collateral purpose - In this case, on careful reading of document in question, a recital had been incorporated to effect that lessor and lessee here by agree to get lease deed with above terms and conditions executed and registered when demanded by either of parties - In light of same trial Judge was of opinion that document would fall under agreement in furtherance of which a further lease deed to be executed and in light of

same such documents can be received in evidence and be marked on behalf of plaintiff - Impugned order of trial Court - Justified - CRP, dismissed. **Pullella Lakshminarayana Vs. Maddimsetti Mukteswara 2009(1) Law Summary (A.P.) 329 = 2009(4) ALD 59 = 2009(1) APLJ 373 = 2009(4) ALT 567.**

—Secs.17 & 49 proviso - **INDIAN STAMP ACT,** Sec.47-A - Petitioner/plaintiff filed suit for relief of specific performance of agreements of sale - During trial when petitioner sought to file agreements objection raised stating that agreements not properly stamped and not registered and therefore petitioner filed Application to send documents to Collector under Stamp Act for collection of Stamp duty and penalty - Authority to whom documents were marked refused to impound them by observing that property covered by agreements belongs to a Mutt and sought to enforce Sec.22-A of Registration Act as amended by A.P. - Trial Court refused to receive documents observing that person who executed agreements of sale himself did not have title and that though there is a mention as to delivery of possession, agreements not registered as required u/Sec.17 of Act - Admittedly agreements are not registered and question as to whether they required to be registered and objection about admissibility on ground that documents are not sufficiently stamped was raised at an earlier stage - Obviously, to get defect cured petitioner/plaintiff filed Application seeking reference of same to Collector under Stamp Act - If authority conferred with power to cure defect refused to do so, party cannot be pushed to a state of helpless ness - Readiness on part of concerned party to pay deficit stamp duty and penalty before competent authority can be treated as a sufficient ground to receive documents in evidence, if concerned authority expresses inability or refuses to cure defect - This may sound a bit abnormal and departure from normal practice and same is however resorted to, lest entire proceedings get locked up in an inextricable or vicious circle - Facility created under proviso to Sec.49 of Registration Act cannot be lost sight of and said proviso carves out two exceptions to principle that if document which is otherwise required to be registered cannot be received in evidence, unless it is registered - First is when it is relied upon in a suit for specific performance and second is when it is sought to be used for collateral purpose - Since suit on hand is one for specific performance, bar contained u/Sec.49 of Act cannot be applied - Therefore view taken by trial Court as to admissibility of document is unsustainable - Documents in question shall be received in evidence subject to proof and relevance - Since Collector expressed view that deficit stamp Duty cannot be receive on ground that property is recorded in name of Mutt, trial Court shall insist on petitioner/plaintiff to implead Mutt as one of defendants and proceed further - CRP, allowed accordingly. **Kukku Venkataratnam Vs. K.Sujilabai, 2013(1) Law Summary (A.P.) 247 = 2013(4) ALD 125 = 2013(3) ALT 249.**

—Secs.17 & 49 & 17(1A) - **TRANSFER OF PROPERTY ACT,** Sec.53-A - Suit filed by plaintiffs seeking declaration of title and perpetual injunction in respect of suit

schedule property - Defendants sought to mark in evidence unregistered sale deeds - Trial Court disallowed same holding that said documents are compulsorily require registration u/Sec.17 of Registration Act and as they are not so registered, they are inadmissible in evidence - Under proviso to Sec.49 of Registration Act, an unregistered document affecting immovable property requiring registration can still be received as evidence of contract in specific performance suit and as evidence of any colleteral transaction not required to be effected by registered instrument - As regards receiving such a document in evidence of part performance u/Sec.53-A of T.P Act, statutory amendment of 2001 make position clear in so far as documents executed thereafter are concerned - Sec.17(1A) of Act inserted in statute by Act 48 of 2001 - Provision speaks only of compulsory registration of documents of conveyance for consideration executed after commencement of Act 48 of 2001 for purpose of Sec.55-A of Act - Therefore subject documents, being unregistered sale deeds of year 1996 would fall within ambit of protection afforded by aforestated section they would continue to be governed by unamended Sec.53-A - Defendants would be entitled to mark in evidence these two unregistered sale deeds of year 1996 for purpose of proving any colleteral transaction not required to be affected by a registered document and as evidence of part performance of contract u/sec.53-A of Act - Order of trial Court, set aside - Trial Court directed to permit defendants to mark two unregistered sale deeds - CRP, allowed. **M.Manjula Vs. Gajam Chandriah (Died) 2011(3) Law Summary (A.P.) 133 = 2011(6) ALD 109 = 2011(6) ALT 217.**

—Sec.17(1)(b) - "Family settlement arrangement" - During course of evidence defendant sought to present two documents styled as "family settlement arrangement" and "arrangement" - Plaintiff objected to marking of documents on ground that they are in nature of settlement deeds which creates rights in parties and therefore they require stamp duty and registration - Trial Court sustained objection with reference to family settlement arrangement and rejected objection relating to arrangement - Defendant contends that document in question is mere family arrangement which was reduced into writing what family members of defendant have earlier agreed to and such an agreement, though reduced into righting is not liable for payment of stamp duty and registration - Recitals in document refer to creation of rights in favour of plaintiff and his family members in past itself and purpose of this document is only to reduce said arrangement in to writing and these document therefore is intended to record past arrangement - Document in question clearly shows that title already came to be resided in plaintiff and husband of other family members and that past arrangement was merely reduced into writing to avoid dispute in future - Document is a family arrangement which merely reduced into righting previous arrangement made by family members of defendant and that it does not required any registration - Impugned order, set aside - Trial Court directed to admit document in his evidence. **Bandikatla Padmavathi Vs. Bandikatla Veera Brahma Chari, 2013(1) Law Summary (A.P.) 229 =2013(3) ALD 249 = 2012(4) ALT 10.**

(INDIAN) REGISTRATION ACT

—Secs.17(1)(b) & 49 - **INDIAN STAMP ACT,** 35(a) - Petitioner/plaintiff filed suit seeking declaration of title and perpetual injunction restraining respondents/defendants from interfering with peaceful possession of land and for correction of entry in revenue records relating to pattadar column by deleting name of one R and substituting name of plaintiff -Respondents/defendants 1 to 3 filed written statement opposing claim of petitioner/plaintiff - When petitioner/plaintiff sought to mark a document filed as Kharidnama - Respondent objected on ground that said document is compulsorily registrable u/Sec.17 of Registration Act, as it extinguishes title of executant in respect of property of value more than Rs.100/- - Trial Court passed docket order holding that said document required registration and therefore, it cannot be admitted and marked in evidence and thus rejected request of petitioner - Petitioner contends that impugned order of trial Court is contrary to law and that document in question is a sale deed which had already been impounded by trial Court and penalty was collected; therefore u/Sec.35(a) of Stamp Act, it is admissible in evidence and trial Court ought not to have refused to admit/mark document - Trial Court has rightly held that document is in question is not admissible in evidence as it is document which is compulsorily registrable under Registration Act - Merely because stamp duty and penalty have been paid and provisions of Indian Stamp Act have been complied with, it would not automatically make said document admissible in evidence, if as per law, said document is also required to be registered and that admissibility of document cannot be left open and hanging by trial Court and should be decided as and when such objection is raised - In this case, questioned document is a compulsorily registrable document under provisions of Registration Act and this being so, there was no necessity for trial Court to keep issue hanging till final stage of suit and decide issue of admissibility of document just prior to delivery of judgment - Supreme Court only indicated that there is no illegality if objection as to admissibility is postponed to a final stage, but Court did hold, as a matter of law, that in all cases where objections as to admissibility are raised, they should be decided at final stage and cannot be decided as and when they are raised - Order of trial Court justified - CRP, dismissed. **Golla Dharmanna Vs. Sakari Poshetty 2013(3) Law Summary (A.P.) 1 = 2013(5) ALD 490 = 2013(6) ALT 205.**

—Secs.17(1)(g) & 49 - **SPECIFIC RELIEF ACT, 1963,** Sec.21 - Under proviso to Sec. 49 of Act, an unregistered document, which is compulsorily registerable, is still admissible in evidence under two circumstances, viz., (1) If such document is filed in a suit for specific performance; and (2) The same is sought to be filed as evidence of any collateral transaction not required to be effected by registered instrument - Present case falls under second limb of the proviso because suit being one for recovery of damages, even assuming that document requires registration, same can be admitted in evidence for collateral purpose i.e., for recovery of money and not for specific performance of agreement of sale - Lower court has overlooked these crucial aspects in refusing to mark document - C.R.P., allowed. **P.Veerraju Vs. Lakkaraju Indira Bai 2014(3) Law Summary (A.P.) 394 = 2015(1) ALD 472 = 2015(2) ALT 507.**

(INDIAN) REGISTRATION ACT

—Sec.17(1)(g) & 49 - Sec. 17 (2) (v) **AS AMENDED BY A.P. STATE LEGISLATURE** - Petitioners filed suit for refund of advance amount paid by them to the respondents under agreement of sale - Lower Court refused to mark said document on ground that suit agreement is compulsorily registerable in view of amendment to clause (g) sub- Sec.(1) of Sec. 17 of Act and that as suit is not filed for specific performance of agreement of sale, benefit of proviso to Sec. 49 of Act is not available to petitioners. - Document in question being an agreement of sale simplicitor falls under sub clause (v) of sub Sec. (2) of Sec.17 of Act and further as relief claimed in suit is only for refund of advance money paid under agreement of sale document can be looked into for collateral purpose under Second exception contained in proviso to Sec. 49 of Act and that lower court has completely overlooked this aspect – Civil Revision Petition, allowed. **V.S.Ravinder Raj Vs. Siddala Narasimha 2015(1) Law Summary (A.P.) 403 = 2015(3) ALT 221 = 2015(3) ALD 227.**

—Secs.19-B & 47-A - Sub-Registrar initiated proceedings for collection of deficit stamp duty by issuing notice - Sec.47A & 19B provide for penalty - A statute of limitation conferring jurisdiction upon statutory authorities to impose penalty must, therefore be construed strictly - A penal statute, unless expressly provided, cannot be given a retrospective effect - Under Sec.47A date of knowledge would be starting point for computing period of limitation - Proceedings, if any, have to be initiated within a period of two years - However, in terms of Sec.19B of Act, period of limitation provided was four years from date of registration and not from date of knowledge. **C.J. Paul Vs. District Collector 2009(3) Law Summary (S.C.)** ***37.***

—Sec.21(a) (1) as amended through A.P Act 4 of 1999 - Petitioner wanted to sell away land in Sy.No.36/2 to which he is granted settlement patta by Asst. Settlement Officer - When petitioner approached Sub-Registrar with a request to furnish market value, stamp duty and registration charges etc., Registrar refused to furnish particulars since said land included in list appended to Notification, dt.31-5-2005 issued by Govt. - Petitioner contends that once settlement patta was granted, question of it being treated as AWD does not arise and inclusion of land assigned to him or his predecessors in list of assigned lands is untenable - 3rd respondent/Thasildar stated that part of land covered by Sy.No.37, was assigned to beneficiaries, land claimed by petitioner which is subject matter of present writ petition is adjacent to said assigned land also included in same G.O issued by Govt., dt.4-5-2005 - In this case, statement of 3rd respondent, Thasildar compled with non denial of fact that land in Sy.No.36/2 was not assigned, much less was held by Govt., not denied - Hence said land in Sy.No.36/2 in respect of which petitioner was granted patta cannot be treated as Govt., land, much less prohibition contained u/Sec.22-A of Act would apply to it - Writ petition allowed. **K.Ramatulasi Rao Vs. State of A.P. 2012(1) Law Summary 179 = 2012(3) ALD 8 = 2012(3) ALT 292 = AIR 2012 AP 98.**

(INDIAN) REGISTRATION ACT

—Sec.22-A -Sub-Registrar refusing to receive document presented by petitioners for registration on ground that category of document mentioned u/Sec.22-A cannot be registered and that lands belonging to Govt. falls in one of categories mentioned in said provision - Petitioners contend that name of their grand father was mutated in revenue records and after his death his son succeeded to properties and pattadar pass books issued in his favour and that petitioners are claiming said property as lineal descendents of his father - There is overwhelming evidence in respect of petitioners' plea that lands are treated as private lands and registered transaction has taken place as far back as 1947 and revenue records such as pattadar pass books and title deeds were issued in favour of petitioners father - Stand of respondents treating property as Govt., land, cannot prima facie be appreciated - Sub-Registrar directed to receive documents and register same - Writ petition, allowed. **Shaik Ali Vs. District Collector, Chittoor 2011(1) Law Summary (A.P.) 106 = 2011(2) ALD 48 = 2011(1) ALT 474 = AIR 2011 AP 80.**

—-Sec.22-A – After considering the judgments passed by learned Judges relating to Sec.22-A of Registration Act, this Full Bench issued the following directions:-

(i) The authorities mentioned in the guidelines, which are obliged to prepare lists of properties covered by clauses (a) to (d), to be sent to the registering authorities under the provisions of Registration Act, shall clearly indicate the relevant clause under which each property is classified.

(ii) Insofar as clause (a) is concerned, the concerned District Collectors shall also indicate the statute under which a transaction and its registration is prohibited. Further in respect of the properties covered under clause (b), they shall clearly indicate which of the Governments own the property.

(iii) Insofar as paragraphs (3) and (4) in the Guidelines, covering properties under clause (c) and (d) are concerned, the authorities contemplated therein shall also forward to the registering authorities, along with lists, the extracts of registers/ gazette if the property is covered by either endowment or wakf, and declarations/orders made under the provisions of Ceiling Acts if the property is covered under clause (d).

(iv) The authorities forwarding the lists of properties/lands to the registering authority shall also upload the same to the website of both the Governments, namely igrs.ap.gov.in of the State of Andhra Pradesh and registration. telangana.gov.in of the State of Telangana. If there is any change in the website, the State Governments shall indicate the same to all concerned, may be by issuing a press note or an advertisement in prominent daily news papers.

(v) No notification, contemplated by sub-section (2) of Section 22-A, is necessary with respect to the properties falling under clauses (a) to (d) of sub-section (1) of Section 22-A.

(vi) The properties covered under clause (e) of Section 22-A shall be notified in the official gazette of the State Governments and shall be forwarded, along with

the list of properties, and a copy of the relevant notification/gazette, to the concerned registering authorities under the provisions of Registration Act and shall also place the said notification/gazette on the aforementioned websites of both the State Governments. The Registering authorities shall make available a copy of the Notification/ Gazette on an application made by an aggrieved party.

(vii) The registering authorities would be justified in refusing registration of documents in respect of the properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A provided the authorities contemplated under the guidelines, as aforementioned, have communicated the lists of properties prohibited under these clauses.

(viii) The concerned authorities, which are obliged to furnish the lists of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, and the concerned Registering Officers shall follow the guidelines scrupulously.

(ix) It is open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines. The concerned authorities are obliged to consider the request in proper perspective and pass appropriate order within six weeks from the date of receipt of the application and make its copy available to the concerned party.

(x) The redressal mechanism under Section 22-A(4) shall be before the Committees to be constituted by respective State Governments as directed in paragraph-35.1 above. The State Governments shall constitute such committees within eight weeks from the date of pronouncement of this judgment.

(xi) Apart from the redressal mechanism, it is also open to an aggrieved person to approach appropriate forum including Civil Court for either seeking appropriate declaration or deletion of his property/land from the list of prohibited properties or for any other appropriate relief.

(xii) The directions issued by learned single Judges in six judgments referred to above or any other judgments dealing with the provisions of Section 22-A, if are inconsistent with the observations made or directions issued in this judgment, it is made clear that the observations made and directions issued in this judgment shall prevail and would be binding on the parties including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts.

(xiii) If the party concerned seeks extracts of the list/register/gazette of properties covered by clauses (a) to (e) of Section 22-A (1), received by the registering officer on the basis of which he refused registration, it shall be furnished within 10 days from the date of an application made by the aggrieved party.

(xiv) Registering officer shall not act and refuse registration of a document in respect of any property furnished to him directly by any authority/officer other than the officers/authorities mentioned in the Guidelines.

(xv) Mere registration of a document shall not confer title on the vendee/alienee, if the property is otherwise covered by clauses (a) to (e), but did not find place in the lists furnished by the concerned authorities to the registering officers. In such cases, the only remedy available to the authorities under clauses (a) to (e) of sub-section (1) of Section 22-A is to approach appropriate forums for appropriate relief. **Vinjamuri Rajagopala Chary, Guntur Vs. Prl. Secy. Rev. Dept., 2016(1) Law Summary (A.P.) 138 = 2016(1) ALT 550 = 2016(2) ALD 236.**

—Sec.22-A - **A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) ACT, 1977**, G.O.Ms.No. 1142, Dt:18-6-1954 - Petitioners, who are presently in possession and enjoyment of assigned lands, approaching Sub-Registrar to ascertain stamp duty for effecting sale of said lands, who insists 'No Objection Certificate' from Revenue authorities - RDO forwarding recommendations of Tahsildar for issuing certificate, to District Collector who in turn addressed letter to Sub-Registrar stating that lands belong to Govt., and NOC cannot be issued - Respondents contend that once Govt. assigns lands, condition prohibiting alienation continue to operate and subsequent alienation would not make any difference and even if lands cannot be resumed to Govt., under provisions of Act, prohibition contained u/Sec.22-A of Registration Act, operates - When Govt., itself incorporated conditions prohibiting alienation for first time in year 1954, it is just unimaginable as to how same condition would operate for assignments made two decades earlier thereto and that a purchaser of assigned lands virtually enjoys possession adverse to interest of Govt., with expiry of 30 years stipulated under Limitation Act, he acquires ownership rights by way of prescription - Law does not provide for issuance of any NOC from Revenue authorities - It is almost a matter of convenience - Taking advantage of that, all possible things are dug of and rights of citizens are sought to be trampled, without there being any material - In this case, after thorough verification and enquiry Tahsildar certified that Govt., cannot claim any rights over said land and recommended for issuance of NOC - Writ petition, allowed. **K.M.Kamulla Basha Vs. District Collector, Chittoor District 2009(1) Law Summary (A.P.) 335 = 2009(3) ALD 385.**

—Sec.22-A - **A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS ACT) 1997** - Petitioners purchased land from different persons through different sale deeds in year 2006 and 2008 and intended to dispose of said land - 3rd respondent Sub-Registrar refused to accept documents on ground that 2nd respondent/Tahsildar addressed letter to District Collector stating that as per revenue records land belongs to Govt - Admittedly from year 1932 onwards, several transactions have taken place and land is recorded as patta and it is in possession of private individuals - However, by making mention to an R.S.R. of year 1909, it is sought to be pleaded that land belongs to Government - In this case, evidently respondents have not only recognised sales, which took place from year 1932, but also have made entries in revenue records depicting land as patta - Obviously respondents aware that almost for one century, land is treated as patta land under enjoyment of private individuals - Action of 3rd respondent in not accepting documents presented by petitioners would constitute a typical example of arbitrariness of very high order - 3rd respondent directed to entertain sale deeds presented by petitioners - Writ

petitioner, allowed. **P.Suresh Vs. The A.P. State, rep.by District Collector, Kadapa 2009(1) Law Summary (A.P.) 421 = 2009(3) ALD 802 = 2009(2) APLJ 178 = 2009(3) ALT 419.**

—Sec.22-A - **A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) ACT, 1977 - LOANI RULES** - Petitioner/Private Ltd., Company acquired land in various sub-divisions of Sy.No.103 through different sale deeds for real estate purpose - When petitioner requested R2/Sub-Registrar to furnish information as to stamp duty, registration etc., R2 refused to furnish particulars on ground that land is "assigned" in character and resumed by Govt. - Petitioners contend that its vendor granted Loani pattas on payment of consideration determined by Revenue Authorities in year 1952 and provisions contained u/Sec.22-A of Registration Act or A.P. Assigned Lands Act, 1977 are not applicable - Respondents contend that lands assigned were resumed to Govt., by initiating proceedings under A.P. Assigned Lands Act, 1977 and lands are vested with Govt., and that vendors of petitioner not entitled to transfer lands in view of restriction placed under relevant provisions of Loani Rules - Petitioner further contends that pattas were granted under Loani Rules, on payment of consideration and that no condition prohibiting alienation of lands was corporate in pattas and that even where assignment of lands was made in favour of landless poor, policy decision to impose condition prohibiting alienation of such assigned lands was taken only in year 1958 and since assignments made in instant case were much prior to that, respondents are not entitled to enforce prohibition retrospectively - Once availability of land is ascertained, Tahsildar has to determine value thereof and is only on payment of such value, patta is granted - Hence for all practical purposes it is a sale by Govt., may be purely discretionary - Loani Rules do not provide for stipulation of prohibiting alienation of lands by purchaser or transferee - Respondents also plead that assignment in favour of vendors was cancelled - Records, however, does not support plea - No orders of cancellation have been placed before Court - Orders that have been passed by R5 Tahildar are in respect of different sub-Division Sy.No.103 - Once it is emerged that no orders of resumption have been passed on lands proposed to be purchased by petitioner nor there exists a condition prohibiting alienation of lands, 2nd respondent/Sub-Registrar cannot refuse to receive documents much less refuse to furnish particulars - 2nd respondent/Sub-Registrar is directed to furnish necessary information pertaining to lands in question and entertain documents that may be presented in accordance with law, without treating lands as owned by Govt., or assigned lands - Writ petition, allowed. **Sri Manarupa Meadows Pvt. Ltd. Vs. The District Registrar, R.R. Dist., 2012(2) Law Summary (A.P.) 17 = 2012(4) ALD 418 = 2012(4) ALT 169.**

—Sec.22-A - **ENDOWMENT ACT,** Sec.87 - Petitioners purchased land and divided same in plots and executed a sale deed in respect of one plot - When presented same for registration, 1st respondent/Sub-Registrar refused to register on ground that land belongs to temple - Petitioners contend that except making a bald claim

2nd respondent did not place any material before 1st respondent to establish that land belongs to temple and that there was no basis to invoke Sec.22-A of Act - Endowment Department contends that land was endowed to temple and prohibition contained u/Sec.22-A (1)(c) of Act squarely gets attracted - Petitioners insist that unless there is a clear determination, or adjudication in favour of temple as regards land, Sec.22-A cannot be invoked - Once registering authority come to know, or is informed that subject matter of document presented before him for registration is a land, falling into any categories mentioned in clauses (a) to (e) of Sec.22-A (1), he has no option, except to desist from registering document - He cannot embark upon or undertake any enquiry as to validity, legality or propriety of claims vis-a-vis land or its character - Only alternative to petitioners is to seek adjudication as to nature and character of even title over land and that can be either by filing a suit by instituting proceedings u/Sec.87 of Endowments Act - Writ petition, dismissed. **Hanumanthu Krishna Rao Vs. The Sub-Registrar, Panduru 2009(2) Law Summary (A.P.) 66 = 2009(4) ALD 249 = 2009(2) APLJ 339 = 2009(4) ALT 511.**

—Secs.22-A, 22-A (1) (b) and 22-A (1) (e) and 71 - G.O.Ms.No.786, Revenue (Registration -I) Dept., dt. 9-11-1999 - Sub-Registrar refusing to entertain documents for registration on ground that registration in respect of said land was prohibited - Petitioner contends that his land is neither Govt., land nor assigned land and that prohibition in respect of registration could not be applied to it - Hence present writ petition - 3rd respondent/ Sub-Registrar contends that when petitioner applied for information as to market value of land, Office informed him that subject land was Govt. land and therefore no value exists in respect thereof in basic value Register and that District Collector furnished with list of Govt., lands and as per said list that particular survey number notified as Govt., land and that notwithstanding substitution of Sec.22-A of Act under Act No.19 of 2007, notification issued under erstwhile provision would still continue to operate and that petitioner not presented his document for registration and therefore no cause of action for filing present writ petition - Govt., contends that it is not necessary for Govt., to issue a notification u/Sec.22-A(2) of Act, as it presently stands and that once Govt., land is involved, Sec.22-A(1)(b) would apply and not Sec.22-A (1)(e) of Act and that notification issued under erstwhile Sec.22-A of Act vide G.O.Ms.No.786 would continue to operate in view of validating clause in Act No.19/2007 and therefore prohibition put in place thereunder in respect of said survey number would continue to be operative not withstanding substitution of provision - Where State Govt., stakes a claim that a particular land belongs to it seeks to put in place a prohibition with regard to registration of document in respect thereof same would invariably fall within Sec.22-A (1)(e) of Act alone and Govt. must necessarily publish notification u/Sec.22-A (2) of Act giving full description of property concerned - Sanctity of such notification is spelt out by Sec.22-A(3) of Act, which places an embargo upon registering officers from registering any document falling within ambit of notification - In present case, undisputedly no such notification has been published u/Sec.22-A of Act in respect

of subject land - Stand taken by respondents that subject land, should be treated as land in respect of which documents cannot be entertained for registration, notwithstanding fact that no notification has been issued u/Sec.22-A (2) of Act in respect thereof, cannot be countenanced - Sub-Registrar directed to receive, register and deliver documents in accordance with due procedure - Writ petition, allowed. **T.Yedukondalu Vs. Principal Secretary to Government 2011(2) Law Summary (A.P.) 175 = 2011(4) ALD 43 = 2011(4) ALT 82 = AIR 2011 AP 132.**

—Sec.22-A, 22-A(1)(b) & 22-A(2) - G.O.Ms.No. 237 (wrongly mentioned as G.O.Ms.No.240), dt:5-3-2004 - Sub-Registrar refused to register document presented by petitioner who is absolute owner and possessor of subject land and that his ancestors were in ownership with possession thereof for more than 100 years - Govt. of A.P. issued impugned G.O. in exercise of powers conferred by Sec.22-A(1) of Registration Act - Petitioner aggrieved by said G.O in so far as it categorized his land as Govt., land and prohibited registration of document relating thereto on ground of public policy, contends that as Act of 1999 was struck down by High Court, impugned G.O., which was issued there under would also not survived and therefore impugned G.O is ultra vires and illegal and that refusal by 2nd respondent, Sub-Registrar to register documents presented by him in respect of subject land, relying upon said G.O., is also illegal and arbitrary - Sub-Registrar contends that subject land was a poromboke (Govt., land) as per information furnished by Tahsildar under letter dt:13-2-2012, and that after Act of 1999 was struck down by High Court, new Sec.22-A was incorporated in Registration Act 1908 under A.P. Amendment Act, 19 of 2007 w.e.f.20-6-2007 and that registration of documents relating to subject land was prohibited u/Sec/22-A (1)(b) of Act, as it stand presently - It is admitted fact that no notification has been issued u/Sec.22-A of Act as it now stands - Significantly ground of public policy available in earlier Sec.22-A of Act no longer figures as reason for prohibiting registration of documents under present provision - Thus presently there is no notification issued under existing 22-A(2) of Act 1908. prohibiting registration of documents relating to subject land - Documents executed by persons other than those statutorily empowered to do so are subjected to prohibition of registration thereunder - Only a list of persons who are statutorily empowered to execute documents on behalf of Govt., would be commu-nicated to registration authorities under this provision and not a list of properties allegedly belonging to Govt., - Such a list could only be furnished to notification u/Sec.22-A(2) r/w Sec.22-A (1) (e) of Act - To interpret these provisions otherwise would make said 22-A(2) wholly redundant - Admittedly Govt., is still in process of finalizing proposals for issuing notification under existing Sec.22-A (2) of Act 1908 and there is no sanction presently for it to put into effect a prohibition of registration of documents in relation to lands included in such proposals and to ask registration authorities to act upon same - In absence of Notification u/Sec.-22-A(2) of Act, 1908, there is no legal basis for refusal by registration authorities to receive and register documents presented by petitioner in respect of subject land - G.O.Ms.No.237, Revenue (Registration-

1), dt:15-3-2004, declared as illegal - Writ petition, allowed, accordingly. **Syed Zakir Hussain Vs. The State of Andhra Pradesh 2013(2) Law Summary (A.P.) 151 = 2013(5) ALD 30 = 2013(4) ALT 671.**

—Sec.22-A Clauses (a) to (e) - 1st Petitioner executed sale deeds in favour of 3rd petitioner - 2nd petitioner sold said property to 4th petitioner - When documents presented for registration before Sub-Registrar he refused to register documents on ground that he received information from Inspector Wakfs,5th respondent, to effect that said lands are owned by Wakfs Institution - Petitioner contends that in recognition of their rights, ryotwari patta under A.P. Inams Act, and pattadar pass books also were issued in their favour - Petitioner further contends that there is no basis for 5th respondent to claim right or title as regards said land; much less for 3rd respondent to refuse registration of documents - In this case, principal ground urged onbehalf of respondent 4 and 5 is that relief claimed in suit was only for recovery of possession and there was no occasion to examine question of title and this may not be correct - Relief of recovery of possession is larger in scope than one for mere declaration of title - It is only when plaintiffs in a suit establish their title that they can seek recovery of possession - Once relief of recovery of possession was denied, respondents 4 & 5 cannot still assert title in property - 3rd respondent/Sub-Registraor is directed to receive documents presented by petitioner and process same in accordance with law, without applying prohibition contained under Sec.22-A of Act. **Inampudi Hari Babu Vs. Govt. of A.P. 2012(2) Law Summary (A.P.) 245 = 2012(3) ALD 378 = 2012(3) ALT 789.**

—Sec.22-A(1)(b) - Petitioner, Construction Company presented sale deeds for registration after construction of residential Complex - Sub-Registrar refusing to register documents on ground that RDO & Tahsildar addressed letters that land on which building constructed belongs to Govt - Undisputedly building cons-tructed over a plot of land on which there existed house from year 1967 - RDO & Tahsildar made claim on strength of certain entries in Revenue Records - Undisputedly when Govt., did not enjoy any rights of possession for past four decades, much less did it make any claim for it, RDO & Tahsildar cannot be permitted to prevent registration - Apart from entries from Revenue Records there must factual basis for prohibition contained in Sec.22-A (1) (b) of Act to operate - Record does not disclose that RDO & Tahsildar ever issued any notices against petitioners - Sub-Registrar directed to process documents without reference to objection raised by RDO & Tahsildar - Writ petition, allowed. **T.Radha Bhai Vs. The District Collector 2009(1) Law Summary (A.P.) 373.**

—22-A(1)(c) and (1)(e) - **A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS ENDOWMENTS ACT,1987,** Secs.6(c) (1) and 29 - Trustees of Trust property passed resolution authorizing Life Trustee to execute sale deeds in respect of Trust lands in favour of 3rd parties - 1st petitioners's father purchased certain extent forming part of land by separate registered sale deeds and he is in continuous uninterrupted

possession and also perfected his title to said land - After death of 1st petitioner's father petitioners 2 to 5 purchased land under agreement of sale from 1st petitioner and paid substantial amount - When they have approached 1st respondent/Sub-Registrar for registration of regular sale deeds, he informed them that subject land is shown in list of properties prohibited for registration in view of letter addressed by Executive Officer representing Trust - Petitioners contend that there was unionmous resolution by trustees authorizing life Trustee to execute sale deeds in respect of said Trust land and therefore subject land does not belong to Endowments Department so as to include same in list of prohibiting Registration u/Sec.22-A of Registration Act - Commissioner of Endowments contends that Trustees published u/Sec.6(c)(1) of Endowment Act and since then Trustees under administrative control of Endowments Department and that Executive Officer has been looking after day to day administration of Trust and as sales effected without prior approval of Commissioner of Endowments, such sales are null and void - In this case, as sale deeds were executed by life Trustee in respect of Trust land pursuant to resolution of Trustees, subject land is no more property of Trust - Basing on letters of respondents 3 & 5, Commissioner addressed letter to 1st respondent/Sub-Registrar - In absence of any Notification under 22-A (1) (e) of Registration Act, it is not open for Sub-Registrar to refuse document for registration of subject land - When Trust land was transferred by way of sale deeds as early as in year 1981,83 & 85 by putting purchasers in possession and in absence of taking any steps to nullify such sale deeds or to take back possession of trust land, it is not open for respondents to plead that 5th respondent/trust still continues to own subject land covered by that particular survey no - In this case, claim of 1st petitioner in respect of subject land is bonafide pursuant to registered sale deeds in year 1981,83 & 85 and therefore Govt., any Religious Institution cannot claim subject land is still owned by them and respondents cannot prevent transfer of subject land in favour of petitioners 2 to 5 - Complicated questions with regard to title and possession cannot be gone into by respondents by preventing transfer of lands in exercise of powers u/Sec.22-A of Registration Act - When there is a bone fide claim by private person in respect of immovable property of Govt. or Religious Institutions or Local Body to approach to competent Form or Court to establish their right - But claim of bona fide purchasers cannot be deprived of , by preventing transfer of lands making communications to Registering Authorities - There is no basis or authority for respondents 3 & 5 to address letters to 1st respondent/Sub-Registrar for prohibiting transfer of subject land - 1st respondent/Sub-Registrar directed to receive documents presented by petitioners - Writ petition, allowed. **P.Srinivasulu Vs. Sub-Registrar, Renigunta,Chittoor Dt. 2012(3) Law Summary (A.P.) 179 = 2012(6) ALD 260.**

—-Sec.22-A, 22-A(1) (a to e) - Petitioners intended to sell a part of land in Sy.No.383/2 and approached 2nd respondent/Sub-Registrar with a request to furnish particulars of market value, stamp duty, registration fee etc - 2nd respondent refusing to furnish particulars on ground that land in said Sy.No was included in list of Govt., properties

and he is enforcing prohibition contained u/Sec.22-A - Petitioners contend that at no point of time, land was held by Govt., and that not only names of their ancestors were shown in Khasra pahani for year 1954-55, but also they were issued pattadar pass books and title deeds recently by concerned revenue authorities - 1st respondent/ District Collector contends that in land in said Sy.No. sub-division was done contrary to prescribed procedure and that entries in revenue records were not properly made and that land continues to be held by Govt. - Sec.22-A of Act was introduced recently with a view to prohibit registration of documents in respect of properties owned by Govt, - Initially purpose of Section was that any document which affects public interest cannot be registered and Govt., was clothed with power to issue a G.O., showing list of properties held by them - Execution of any document in respect of land mentioned in G.O., was to be treated *per sea* as opposed to public policy - That provision was set aside by High Court of A.P., following judgment rendered by Supreme Court - In place of said provision which was struck down by High Court, State Legislature enacted Sec.22-A of Act with a different context - It prohibits registration of documents pertaining to properties which fall in five categories i.e., clauses (a) to(e) of Sub-Section (1) - One such item is properties owned by State or Central Govt., and that registering authority would naturally be guided by particulars furnished by revenue authorities as regards iden-tification of properties owned by Govt. - Though objective underlying Sec.22-A of Act is laudable, in quite large number of instances, citizens are put to hardship and made to go around Courts in matter of effecting transfer of their properties - In this case, names of petitioners ancestors were mentioned in phanies, of year 1951 and same entries were repeated for year 1954 to 1955 and also ultimately pattadar pass books and title deeds were issued by revenue authorities themselves - If revenue authorities do not respect entries made by them as well as pattadar pass books and title deeds, issued by them, they cannot expect other organs of State to have any respect for them - A situation is emerging as though sweet will of an individual would prevail over entries made under Statutes - Writ petition, allowed with costs of Rs.10, 000/- payable by 1st respondent/District Collector to School of Visually Disabled Persons. **S.Laxma Reddy Vs. District Collector, 2012(2) Law Summary (A.P.) 144 = 2012(5) ALD 232 = 2012(4) ALT 534.**

—Secs.22-A(1)(c), 22-A(2) and 22-A(1)(e) - Commissioner/Endowment Department issued proceedings to registration Authorities indicating particulars of immovable properties allegedly belonging to particular Maths to desist from entertaining registration of documents in connection with these properties and accordingly issued communication under Secs.22-A (1)(c) - Petitioner contends that basing on Communication Joint-Sub-Registrar, Tirupathi, refused to receive documents as said lands was indicated in the list appended to proceedings as properties of Maths - Joint Sub-Registrar contends that subject lands were classified as properties belonging to Endowment Department, registration of documents pertaining to subject land was prohibited u/ Sec.22-A(1)(c) of Act and as long as lands were included in list of endowment properties

he had no option except to refuse registration of documents pertaining thereto - Communication addressed by Commissioner of Endowment Department proceeds on a complete misconception and misunderstanding of scope of above provision - In event Religious/Charitable Endowment/Wakf institution seeks to assert any right over a property, prohibition as to registration of documents relating to such property can operate only if a notification is issued u/Sec.22-A (2) of Act in connection with Sec.22-A(1)(e) thereof - In absence of a Notification u/Sec.22-A(2) it is not open to Endowment Department to communicate a list of properties allegedly owned by religious institutions by way of letter and trace power to do so to Sec.22-A (1)(c) of Act - Communication addressed by Commissioner Endowments is without jurisdiction and unsustainable and accordingly set aside - Joint Sub-Registrar, Tirupati is directed to receive and process documents presented by petitioners - Writ petition, allowed. **Pasuparthi Jayaram Vs. Govt. of A.P. 2013(2) Law Summary (A.P.) 135 = 2013(5) ALD 785 = 2013(4) ALT 541.**

—Secs.22-A, 22-A(1)(e), 71 & 72 of 1908 - Sec.22-A Reintroduced by A.P. State Legislature by passing Act 19 of 2007with different phraseology and this inserted section 22-A became breeding ground for litigation, as Revenue Authorities have been preparing "lists of prohibited properties for registration" and sending same to Sub-Registrars concerned and said Registering Authorities have been strictly following "lists" and refusing even to receive documents leave alone registering them, if transactions under documents pertain to immovable properties included in "prohibitory lists" - Notwithstanding legal position settled by High Court Registering Officers have been ignoring these judgments and driving parties to approach High Court again and again - In order to see litigation of this nature is curbed once for all it is not only appropriate but imperative to issue following directions which shall be general application throughout State of A.P. and govern all transactions of registration to take place, in future;

"(A) The Registering officers shall not insist on production of NOCs as a condition for receiving the documents for registration.

(B) The Registering officers shall not refuse to receive the documents for registration only on the ground that the properties were included in the prohibitory lists sent by the Revenue authorities, for reasons such as that the ownership column of the RSR contains dots, or that the lands are shown as AWD lands in the Revenue Records or that the lands are assigned lands.

(C) In cases of entries in RSRs containing dots or describing the lands as AWD, unless a notification has been issued under Section 22-A(2) of the Act, the Registering officers shall not refuse to receive and register the documents. The registration of such documents, however, shall be without prejudice to the right of the Government and its functionaries to initiate appropriate proceedings for recovery of possession of the properties covered by such documents, if in their opinion they belong to the Government.

(D) In cases of assigned lands, if there is clear proof to the effect that such assignments were made prior to the issuance of G.O.Ms.No.1142, dated 18-6-1954 in the Andhra Area and G.O.Ms.No.1406, dated 25-7-1958 in the Telangana Area, the Registering officers shall receive and register the documents, notwithstanding the fact that the properties were included in the prohibitory lists sent by the Revenue authorities. In respect of the documents involving properties assigned subsequent to the issuance of the above mentioned G.Os., in view of the embargo contained in Section 5(2) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the Registering officers shall make an endorsement while refusing to receive the document specifying the reason. If the parties feel aggrieved by such orders, they are entitled to avail appropriate remedy as available in law.

(E) Wherever there is no specific evidence that assignments of lands were made subsequent to the issuance of G.O.Ms.No.1142, dated 18-6-1954 in the Andhra Area and G.O.Ms.No.1406, dated 25-7-1958 in the Telangana Area, benefit of doubt should be extended in favour of the parties who intend to transfer the lands. In such cases, the Registering officers shall write to the Revenue authorities to produce proof of the fact that the assignments were made subsequent to 18-6-1954 or 25-7-1958, as the case may be, within a stipulated time. If within such time, the Revenue authority concerned fails to send such proof, the Registering officers shall register the documents.

(F) In cases of documents pertaining to assignments made to Ex-servicemen and Freedom fighters, the Registering officers must consider whether ten years period has expired from the date of assignment and shall register the documents if the said period has expired. In other cases, the Registering officers shall pass an order under Section 71 of the Act and communicate the same to the parties concerned.

(G) In cases pertaining to assignments made to Political Sufferers, the assignees or the persons claiming through them are entitled to transfer the lands by sale or otherwise without any restrictions and the Registering officers shall receive and register the documents whenever they are presented.

(H) Where assignments are made on payment of market value, the Registering officers shall not refuse to register unless the assignment deed stipulated any period during which the land shall not be sold and the stipulated time has not expired.

(I) In cases of alienation of properties which are claimed to belong to Religious and Charitable Endowments falling under the A.P. Hindu Religious Institutions and Endowments Act, 1987, or Wakfs falling under the Wakfs Act, 1995, unless relevant material is available before the Registering officers to show that they are owned by such Institutions, registration of the documents shall not be refused. Even if evidence is available to show that the properties sought to be alienated belong to the Institutions referred to above, the Registering officers shall receive the documents, pass orders assigning reasons for rejection and communicate the same to the parties concerned, who shall be free to assail such orders by availing the remedy of appeal under Section 72 of the Act.

(J) In cases where notifications are issued under sub-section (2) of Section 22-A(1) of the Act prohibiting registration of the documents pertaining to the properties

falling under clause (e) of sub-section (1) of Section 22-A of the Act, the Registering officers shall make an endorsement while refusing to receive the document specifying the reason for such refusal. Needless to observe that if the parties feel aggrieved by such rejection orders, they can avail appropriate remedies as available in law. "

Above directions shall bind all Revenue Authorities and Registering Officers in State of A.P. - Violation of above directions by Officers concerned will be viewed as contempt of Court. **Raavi Satish Vs. State of A.P. 2013(1) Law Summary (A.P.) 118 = 2013(2) ALD 1 = 2013(1) ALT 774.**

—Sec.22-A & 72 - 2nd respondent/Sub-Registrar refused to register sale deed sought to be presented by petitioner on ground that 3rd respondent/Tahsildar informed him that subject property is included in list of prohibited properties - Petitioner contends that land was initially assigned to private property to private party in year 1993 and that legal heirs of assignee sold same under Registered sale deed in year 2000 in favour of one SSR who constructed subject building over said land by availing loan from S.B.I and that in view of default committed by SSR, owner of property, same was put to auction in which one RVR has purchased it under registered sale deed in year 2008 executed by Bank - Subsequently said purchaser obtained loan from Bank and committed default and that for recovery of loan amount, property was once again put to auction in which petitioner purchased it - When petitioner and Bank presented sale deed for registration consequent on auction, 2nd respondent/ Sub-Registrar passed impugned order of refusing registration - Mere inclusion of properties in prohibitory list by Revenue Authorities would not deter registering officers from registering document and that such prohibitory list cannot be elevated to status of statutory notification u/Sec22-A(2) of Registration Act - High Court also held that if assignments were made prior to 18-6-1954 on which date G.O.Ms.No.1104 was issued envisaging prohibition of transfer of assigned lands for first time, Registering Officers shall not refuse to register documents only on ground that lands covered by said documents are assigned lands - In the present case, State and its executive apparatus have allowed the property to be transferred under two register sale deeds dated 6-9-2000 and 31-5-2008 and sale deed last registered was as recent as 2008 - Revenue Authorities need to show proper responsibility in preparing so-called prohibitory list and they cannot be oblivious of previous history of property and solely guided by so-called entries in record such as Re-servay and Settlement Register - In this case, both respondents 2 & 3 Sub-Registrar, Tahsildar have not only ignored settled legal position but also ground realities in dealing with property in question - 2nd respondent Sub-Registrar is directed to register sale deed executed by Bank in favour of petitioner in respect of questioned property subject to parties complying with provisions of Registration Act and Indian Stamp Act - Writ petition, allowed. **Pasupuleti Bala Gangadhar Vs. State of A.P. 2013(1) Law Summary (A.P.) 315 = 2013(4) ALD 426 = 2013(3) ALT 610.**

(INDIAN) REGISTRATION ACT

—Sec.22-A (1), (2) - Writ petitioners complained against inclusion of Survey No.242 as property belonging to Mutts/ Institutions, as illegal and without factual or legal basis - Petitioners alternatively canvass that unless a notification under Section 22-A of Act is issued for any property, registration of document for such property cannot be prohibited or refused by the 4th respondent/Sub Regisrar - In short, legal objection stated is that unless a notification under Section 22-A (2) of Act is issued, prohibition or refusal to register property is illegal and unauthorized - Legal grounds urged against alleged refusal to receive or register document by 4th respondent are that Section 22-A of Act prescribes prohibition from registration of certain categories of land and to attract prohibition from registration of document, properties should be notified in gazette under Section 22-A (2) of the Act - As Survey No.242 is not notified in gazette under Section 22-A (2) of Act, the 4th respondent cannot rely upon details submitted by Revenue and Endowments Departments and refuse to receive or register documents covering properties in the list forwarded by these departments - Such refusal to receive or register is illegal, arbitrary, contrary to Act and violative of Article 300-A of Constitution of India - Hence, the writ petitions.

Held, list of properties held by institutions is communicated to Sub-Registrar to apply Section 22-A(1)(c) of the Act - Properties prohibited by Section 22-A (1) (a) to (d) are not properties where these entities claim avowed or accrued interest, but claim proprietary rights in law and by record - For prohibiting registration of documents for properties already held by an institution, a notification for any purpose is a surplusage - A particular immovable property is treated as a property belonging to an institution under an act, grant etc - Insistence upon notification to prohibit registration of properties belonging to religious endowment or wakf property negates the plain meaning of Section 22-A (1) (c) of the Act - Likewise, ceiling surplus (agriculture/urban) stood vested in the Government and by communicating the list of such properties, Government informs details of surplus ceiling land to Registration Department - By insisting upon notification for all instances covered by 22-A(1)(a) to (d), this Court would be firstly defeating very purpose of A.P. Amendment Act 19 of 2007 and mischief is sought to be prevented by Legislature - For situations covered by Section 22-A (1)(a) to (d), in this Court considered view, no notification under sub-Section (2) of Section 22-A is required for prohibiting registration of documents covered by these sub sections - For reasons stated supra, this Court is in agreement with ratio laid down in Guntur City Housing Construction Cooperative Society's and P.Srinivasulu's case that a notification is not required for the prohibition contemplated under Section 22-A(1) (a) to (d) of the Act and a notification under Section 22-A (2) is required for purposes of Section 22-A(1)(e) of Act - Writ petitions are ordered accordingly. **C.Radhakrishnama Naidu Vs. Govt of A.P. 2015(2) Law Summary (A.P.) 530 = 2015(4) ALT 1.**

—-Sec.22-A (1) (c) - This writ petition is filed seeking writ of mandamus declaring the action of the respondent No.2 vide proceeding in Rc.No. DP2/27164/2013, dated 15.01.2014

and subsequent action in invoking Section 22 (A) (1) (c) of the Registration Act vide letter No.N2/10868/2014-1, dated nil-5-2014 and proceedings Rc.No.A5/2088/2013, dated 06.09.2014 as illegal and arbitrary - Held, normally writ petition will not be entertained when alternative remedy is available and learned Assistant Government Pleader also pleaded same while citing judgments. But in view of fact that 'order in W.P.No.32162 of 2012 has become final, wherein it is held that subject land is a private patta land and also in view of Judgment rendered by Hon'ble Supreme Court in Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh and another (supra), this Court do not see any reason to relegate the petitioner to avail alternative remedy - W.P, allowed. **Vykunta Veera Anjaneyulu Vs. State of A.P. 2015(2) Law Summary (A.P.) 500 = 2015(6) ALD 110 = 2015(5) ALT 333.**

—-Secs.23, 25 & 77 - Sale deed executed and presented for registration in 1979 - Sub-Registrar refusing to register sale deed on ground of non-enclosure of certificate from Urban Land Ceiling Authority - Petitioner again produced document for registration in year 2003 after obtaining certificate from vendor, after lapse of 24 years, contending that registrar is under obligation to find whether document is registerable or not and if document, which is presented for registration, is returned and later it is directed to be registered it would relate back to date of earlier presentation - Order of Sub-Registrar refusing to register document cannot be faulted for reason that petitioner not complied with statutory obligation of production of ULC certificate - It is always open for registering authority to insist for payment of stamp duty on present market value if he decides that document submitted for registration shall be treated as having been submitted only in 2003 - SCOPE AND OBJECT - SECS.23 & 25 - Stated - Document shall not be accepted for registration unless it is presented within four months from date of its execution - Admittedly, present document presented within four months from date of execution, but, presented without enclosing certificate of ULC - Therefore Sub-Registrar cannot be faulted in refusing to register document - Registrar has no jurisdiction to register document if it is presented after four months without accounting for delay and delay can be condoned u/Sec.25 of Act provided Registrar is approached within four month i.e., within eight months of execution of document - If Registrar condones delay it can be presented for registration - But if Registrar is approached after expiry of period of eight months of execution he has no jurisdiction to condone delay u/Sec.25 of Act - When once party fails to present document within eight months it cannot be presented at any time subsequently - In this case, petitioner once again presented document after expiry of 24 years which is beyond scope of Sec.23 & 25 of Act - Impugned orders passed by respondents/registering authorities are in accordance with law and they are neither illegal nor arbitrary - Writ petition, dismissed. **G.Kadambari Vs. District Registrar of Assurances, Hyderabad 2008(1) Law Summary (A.P.) 313 = 2008(2) ALD 662.**

—Secs.24 and 34 - Whether the document requires registration or not but when the document is presented for registration, the same shall be within a period of eight months from the date of execution - If a document is presented beyond the period

of registration or all the executants do not present themselves within a period of eight months, the Registrar under the Act has no power to accept the document for registration - For the Registrar to complete registration the document shall comply with all the requirements of law - In the case on hand, Respondents Nos.13 and 21 are admittedly executants and not presented within 8 months - They are required to be present for accepting the document for registration and also endorsing the act of registration - Unless and until all the executants appear before the Registrar for accepting the document for registration, the Registrar on his own accord cannot register the document by excluding Respondents 13 and 21 herein - When such course is impermissible before the Registrar, by applying the principle of severability, this court cannot exclude respondents 13 and 21 for any purpose and save the registration insofar as others are concerned - Either the registration is fully compliant or not is the question for decision - If the registration is not conforming to the requirements of law, the registration of document is illegal - For the above reasons, the writ petition is allowed as indicated above. **G.Krishna Reddy Vs.Govt. of A.P. 2015(1) Law Summary (A.P.) 69 = 2015(1) ALT 579 = 2015(2) ALD 474.**

—Secs.34, 35 (3), 58,59,60,72,73,76 & 77 - Sub-Registrar refusing to register documents presented by petitioners treating "admission of execution under threat as denial of execution" - Petitioners contend that when once document is executed in presence of registering Officer, same cannot be kept pending without registration and even subsequently person who executed document denies execution, Registering Officer has no choice, but to register - Respondents contend as per Secs.34 & 35 of Act and Rules 26 & 58, mere presentation of document for registration does not amount to admission of execution - Registration can be refused when person by whom document purported to be executed denies execution or person, who purportedly is dead - If any objection is raised, Registering Officer has to consider whether parties appearing before him are not parties they profess to be, whether document is forged and whether document is presented without proper authority by representative, and whether executing party is dead or not - In case, Registering Officer is not satisfied, he can refuse registration - Registering Officer is bound to examine document, conduct enquiry and satisfy himself as to identity of property, identity of person executing document and as to compliance with Stamp Act and other provisions of Registration Act- Unless such an exercise is done, Registering Officer cannot certify that documet is registered and only after such certification, registration becomes valid - In this case, 4th respondent issued a telegram and also appeared before Sub-Registrar alleging that her signatures were obtained without her consent by threatening - As such execuution not proved or admitted in accordance with Sec.35 (3) (a) of Act, r/w Rules 26 & 58 of Rules - Therefore impugned order is justified - After order passed u/Sec..73, r/w Secs.75 & 76 of Act, person aggrieved can file a suit for decree directing document to be registered within 30 days of passing such decree - Hence Petitioners are at liberty to apply to District Registrar u/Sec.73 of Act and also file a suit thereafter - Writ petitions, dismissed. **Jasti Bhujangeswara Rao Vs.Sub-Registrar, Repalle 2009(1) Law Summary (A.P.) 452 = 2009(2) ALD 719 = AIR 2009 AP 78 = 2009(3) ALT 804.**

(INDIAN) REGISTRATION ACT

—Sec.49 - "Collateral purpose" - Respondent fled suit for declaration of title and for recovery of possession contending that their ancestor, VRC purchased suit property through unregistered sale deed in year 1960 and since then, he and thereafter, they were in uninterrupted possession of same and thereby perfected their title through adverse possession and that defendants 1 and 2 State of A.P and Tahsildar, ought not to have granted assignment in favour of petitioners/defendants 3 & 4 - During course of evidence plaintiff sought to introduce unregistered sale deed in evidence, which was opposed by defendants 3 & 4 on ground that document is in nature of sale deed, is unregistered and hence same is not admissible in evidence - Trial Court rejected objection holding that proviso to Sec.49 of Registration Act, even on unregistered document affecting immovable property can be received for collateral purpose - Hence present CRP filed by defendants 3 & 4 - In this case, plaintiffs have claimed two main reliefs in suit which appear to be mutually contradictory viz., declaration of tile through adverse possession and for recovery of possession and they sought to rely upon unregistered sale deed for purpose of establishing their possession eventually to get their title declared through adverse possession - In present case, unregistered document was not pressed into service for seeking declaration of plaintiff's title and same is sought to be relied upon for purpose of establishing possession of their ancestor - This by itself cannot be said to be main purpose which is directly relatable to main relief claimed by plaintiff.

Supreme Court laid down: "…Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes….".

Ratio laid down by Supreme Court applies even though nature of one of reliefs claimed in present case, is at variance with that claimed in case before Supreme Court, therefore, irrespective of whether plaintiffs in case on hand sought for recovery of possession obviously as an alternative relief, ratio laid down by Supreme Court will still apply to present case - Order of trial Court in admitting unregistered sale deed - Justified - C.R.P. dismissed. **Doma Govinda Raju Vs. Vanimisetti Papa Rao 2012(2) Law Summary (A.P.) 287 = 2012(5) ALD 257 = AIR 2012 AP 126.**

—Sec.49 - "Colleteral purpose"- 1st Respondent/plaintiff filed suit for permanent injunction against petitioner/D1 and Respondents 2 to 9 - During evidence of petitioner/D1, he sought to mark document, possessory agreement of sale in order to show that R1/ /plaintiff is not in possession of suit property and on contrary he is in possession of property - Trial Court declined to receive said document in evidence only on ground that purported agreement of sale is in nature of possessory agreement evidencing delivery of possession and that as same is not registered it cannot be looked into evidence - Even if petitioner is not a party to said document still to prove his plea regarding possession he can relay upon said document - Trial Court has committed serious jurisdictional error in not admitting possessory agreement of sale into evidence

for collateral purpose, viz., to determine possession of parties - Impugned order of lower Court in I.A. set aside and said document is directed to be marked in evidence subject to its proof and relevancy - CRP, allowed. **Kancherla Sivaramaiah Vs. Musunuru Venkata Krishna Rao 2015(3) Law Summary (A.P.) 416.**

—Sec.49 – STAMP ACT, Sec.2 (15) – Petitioner filed suit for partition and separate possession – Respondents/defendants opposed suit by taking plea of prior partition – Petitioners taking objection when defendants sought to introduce a document as to its admissibility – Trial Court dismissing Application filed by petitioners - Petitioners contend that though there is a mention about prior exercise of partition, it is through document that right to enjoy properties mentioned therein is vested on parties thereto, and thereby document answers description of partition deed and once document confers right upon parties, either of enjoyment or of ownership, it is required to be registered and stamped - Even where unregistered document can be received in evidence under proviso 2 Sec.49 of Registration Act, requirement as to stamp, cannot overlooked – In this case, document clearly makes a mention that one year prior to date on which it was written, properties were devided between parties thereto - Once principal recital is there, subsequent elaboration does not make much of difference in context of registration – First recital is that parties have partitioned their properties, one year prior to date of document and therefore document cannot be said to be a partition deed – Order of trial Court dismissing Application - Justified – Revision petition, dismissed. **Vaka Venkata Chalapathi Vs. Pemma Jayalakshumma 2008(3) Law Summary (A.P.) 262 = 2009(1) ALD (NOC) 7.**

—Sec.49 - **TRANSFER OF PROPERTY ACT,** Secs.107 & 108 - Appellant filed suits for declaration of title and for eviction of respondents/tenants from suit premises - Respondent/ Company contends that tenancy was taken for providing residential accommodation to its Officer and even if suit premises vacated by said Officer tenancy of respondent continued and said agreement is illegal and invalid and against Statute - Suits of appellant dismissed - High Court also dismissed Appeals - Appellant contends that lease agreement creating tenancy from month to month in respect of suit premises not compulsorily registerable and as such prohibition contained in Sec.49 not applicable - Even if agreement in question compulsorily registerable even then purpose of letting specified in agreement was 'collateral purpose' and accordingly it can be looked into under proviso to Sec.49 and said term did not extinguish tenant's right under Act - A document required to be registered is not admissible into evidence u/Sec.49 - However such unregistered document can be used as an evidence of collateral purpose - If a document is inadmissible in evidence for want of registration, non of its term can be admitted in evidence and that to use a document for purpose of proving an important clause would not be using it for collateral purpose - In this case, Cl.9 of agreement which requires respondent to use suit premises only for its particular named Officer, cannot be looked into even for collateral purpose - CHANGE OF USER - Although suit premises leased out exclusively for named Officer of respondent, fact that respondent sought to use it for some other Officer would not constitute "change of user" within meaning of Sec.108 (o) of T.P Act, therefore respondent cannot be evicted for violation of said provisions - Appeal, dismissed. **K.B.Saha & Sons Pvt. Ltd. Vs. Development Consultant Ltd. 2008(2) Law Summary (S.C.) 149 = 2008(3) Law Summary (S.C.) 218 = 2008(6) ALD 92 (SC) = 2008 AIR SCW 4829 = 2008(4) Supreme 360.**

(INDIAN) REGISTRATION ACT

—Secs.49 & 17 - "Collateral purpose" - Plaintiff/petitioner filed suit against respondents/ defendants seeking a decree for declaration of title inrespect of suit property and for permanent injunction - Defendants filed written statement contesting suit claim - During his evidence plaintiff/petitioner sought to mark unregistered original sale deed under which he claims to have been purchased property sought to mark unregistered original sale deed who have purchased suit property - Defendants/Respondents raised objection to admissibility of sale deed on ground that it is unregistered document - Trial Court passing order that unregistered sale deed is inadmissible in evidence - Plaintiff/petitioner contends that not with standing fact that document in question is unregistered same could have been received in evidence for collateral purpose - Respondents/defendants contend that an unregistered sale deed cannot be received in evidence in suit for declaration of title to property even for collateral purpose under proviso to Sec.49 of Registration Act.

COLLATERAL PURPOSE - As per well-settled principle of law per Apex Court any purpose other than one which relates to establishment of title to property can be treated as collateral - In this case, it is clear that plaintiff intends to relay upon document in question to prove his title to suit schedule property, but not for any other purpose - Therefore, contention that document can be looked into for collateral is without substance - CRP, dismissed. **Vengalapudi Manga Vs. Paluri Kannabbai 2013(2) Law Summary (A.P.) 180 = 2013(5) ALD 170 = 2013(4) ALT 710.**

—Sec. 49 (c) & 17(1) - This Civil Revision Petition is filed aggrieved by orders passed by Senior Civil Judge, in O.S.No.230 of 2010 dated 09.02.2012 wherein the Court below declared suit settlement agreement dated 10.06.1997 as inadmissible in evidence for want of Stamp Duty and Registration.

Held, no doubt, in view of proviso to Section 49 of Registration Act, 1908, unregistered document is admissible in evidence in a suit for specific performance, but in present case, trial court held that document is a settlement deed and it is not properly stamped and moreover, it is hit by Section 25 of the Indian Contract Act - As such instrument which is chargeable with stamp duty, shall not be admitted into evidence unless it is properly stamped - Admittedly, suit settlement document is not properly stamped - In view of above facts and circumstances, this Court do not see any illegality or infirmity in the order passed by Court below. **Madala Jyothi Vs. Karanam Tirupalaiah, 2015(2) Law Summary (A.P.) 496 = 2015(5) ALT 472 = 2015(5) ALD 587.**

—and **A.P. RULES, framed under Registration Act,** Rule 26 - **A.P. ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT** - **CIVIL PROCEDURE CODE,** Or.39, Rule 1 & 2 - Petitioner purchased plot of 164 Sq. yards in R.S.No.171 through sale deed - When 5th respondent sought to interfere with possession of petitioner he filed suit and obtained ad interim injunction - 3rd respondent/Tahsildar executed deed of cancellation vis-a-vis said plot referring an order passed by District Collector/1st

respondent in which Collector took note of fact that Patta was granted in respect of an extent of Ac. 0.21 cents of lands in R.S.No.171 in favour of Labour Co-operative Society by Settlement Officer and on finding that Society violated conditions of Patta, RDO, 2nd respondent passed order cancelling Patta followed by change of classification of land and restoration of same to Govt. - 1st respondent also directed 4th respondent/ Sub-Registrar to execute deed of cancellation as per Rule 26 of A.P. Rules framed under Registration Act - Hence present writ petition - 5th respondent contends that he is in possession of land referred above and his representation for regularization is pending - Petitioner contends that Patta was granted in favour of Society by Settlement Officer under Estate Abolition Act and that 2nd respondent/RDO has no jurisdiction to cancel it and in case, 1st respondent/District Collector, wanted to take any action in relation to land, she ought to have issued notice to affected parties, but instead, order has been passed straightaway in violation of principles of natural justice and though order of Collector was general in terms in respect of Ac.0.21 cents, third respondent/Tahsildar was selective in executing deed of cancellation and that whole exercise smacks arbitrariness - Being Head of Revenue Administration Collector ought to have satisfied herself before taking further steps on basis of orders passed by 2nd respondent/RDO and at any rate notice ought to have been issued to Society and other persons who derived rights from it before patta was cancelled - However, even putting a premium upon patent illegality committed by 2nd respondent/RDO, Collector issued further directions to Tahsildar to execute deed of cancellation violating principles of natural justice - 3rd respondent, Tahsildar was choosy and he has executed a deed of cancellation only in respect of 164 Sq.yards in relation to sale deed executed in favour of petitioner/Society - It is fundamental that he ought to have issued notice to petitioner before he sought to annul sale deed and evidently at every level patent violation of principles of natural justice has taken place and effort was made to ensure that 5th respondent is conferred with benefit over land - Impugned orders are set aside - Writ petition, allowed - Authorities under enactments are at liberty to take steps in accordance with law. **Jasti Purna Chandra Lakshmi Sujatha Vs. District Collector 2012(3) Law Summary (A.P.) 264 = 2013(1) ALD 575 = 2013(2) ALT 231.**

—and **A.P. RULES FRAMED UNDER REGISTRATION ACT,** Rule 26(k) - **CANCELLATION OF GIFT DEED** - Petitioners and respondent no.4 are brothers - 4th Respondent executed gift deeds in favour of petitioners in respect of building and possession delivered - Subsequently 4th respondent executed deeds of cancellation which are registered by 2nd respondent/Sub-Registrar - Petitioner challenge action of Sub-Registrar in registering deeds of cancellation, contending that absolute title in respect of property stood transferred in their favour with the execution of gift deeds and acceptance thereof and that Sub-Registrar ought not be have registered deeds of cancellation unless they are executed with participation of all parties to transaction - 4th respondent contends and that gift deeds were conditional and since petitioner violated condition to maintain 4th respondent, he has cancelled gift deeds - Petitioner further contends that registration of documents

REPRESENTATION OF THE PEOPLE ACT, 1951:

by sub-registrar is contrary Rule 26(k) of A.P. Rules framed and that once transfer of immovable property by way of gift is complete, it can be cancelled only with participation of both parties - When a gift deed is executed, it is almost a unilateral transaction - It is devoid of any consideration and donor chooses to transfer his title in favour of donee out of love and affection - Participation of donee is not at all contemplated till deed is executed - Donor is entitled to cancel gift deed as long as gift is not accepted by donee - Once gift is accepted right of donor to unilateraly cancel gift deed ceases to exists - In case, 4th respondent felt that there exist circumstances warranting cancellation of documents he could have filed suit for cancellation of gift deeds, in Court of law - Govt. of A.P. framed Rule 26(k) of Rules which prohibits registration of documents through which previous transactions are sought to be cancelled unilaterally - Recently Supreme Court also in Civil Appeal held that cancellation of sale deed or other deeds of transfer without participation of all parties to it cannot be sustained in law - Writ petition, allowed. **Garagaboyina Radhakrishna Vs. District Registrar 2012(2) Law Summary (A.P.) 242 = 2012(5) ALD 228 = 2012(6) ALT 49.**

REGISTRATION OF BIRTH AND DEATH ACT, 1969:

—Sec.14 - Petitioner filed representation requesting to issue date of birth certificate to his son to apply for VISA for further studies in foreign countries - 2nd respondent rejecting the request stating *"birth of a baby child was registered in our records without the name of the child, since you are furnishing the information regarding the name of the Male Child beyond 15 years prescribed time. Therefore your request for registration and issue of Birth Certificate cannot be considered as per Section 14 of the Registration of Birth & Death Act, 1969"* - Petitioner contends that rejection of his representation to issue date of birth certificate to his son is illegal and violation of natural justice and there is nothing in Act which precludes or prohibits registering authority to enter name of person in birth certificate even at a subsequent stage - He further averred that his son's date of birth recorded in official register without mentioning his name an if 2nd respondent had not entered his son's name in Register and not issued birth certificate to his son, he would be prevented from higher studies - Respondent is directed to issue certificate to petitioner's son and enter name of his son in birth certificate after satisfying himself that certificate relates to person whose name is sought to be entered. **Md.Hasnuddin Vs. State of A.P. 2008(1) Law Summary (A.P.) 161.**

REPRESENTATION OF THE PEOPLE ACT, 1951:

—Secs.21,22 & 23 - "Revision of Voters' List" - Petitioners' names were deleted on ground that they are not ordinary residents of village - Petitioners contend that they are very much residents of village and their names are included in voters' list on being satisfied about their residence and that Enumerating Officials have deleted their names without following procedure prescribed by law - Deletion of name of an individual from electoral rolls visits him with serious consequences - For all practical purposes, he is excluded from democratic process and is denied of any role in election process - Sec.22 of Act itself mandates that concerned person shall be given "reasonable opportunity of being

REPRESENTATION OF THE PEOPLE ACT, 1951:

heard" - 3rd respondent/Electoral Registration Officer ought to have ensured that affected persons are put on notice - Evidently respondents did not give petitioners adequate opportunity and their objections have not been considered - Order of 3rd respondent, deleting names of petitioners from electoral rolls, set aside - 3rd respondent directed to give opportunity of being heard to petitioners on fixed date and take appropriate action in accordance with law - Writ petition, allowed. **Darla Rama Devi Vs. Govt. of A.P. 2009(1) Law Summary (A.P.) 326 = 2009(2) ALD 826.**

—Sec.100(1) (iii)&(iv) and Rules, 1961, Rule 63 - **CIVIL PROCEDURE CODE,** Or.14, Rule 1 and Or.8, Rule 2 - "Conditions for counting of votes" - "Applicability of CPC to election petitions" - Stated - Pursuant to Notification, appellant as well as respondent filed their nominations - Counting of votes took place and appellant secured 62216 and respondent secured 62215 votes - At request of election agent recounting took place and result remained same - Appellant declared duly elected by margin of one vote - In this case, evidently from pleadings that case has been limited only to 6 tendered votes and there had been no pleading in respect of remaining 4 tendered votes either in election petition or written statement filed by appellant - High Court rejecting Application for summoning tender votes on ground that none of parties had taken pleadings nor an issue had been framed in respect of these tendered votes and thus it is not permissible to lead any evidence on fact which is not in issue - Procedure provided for trial of civil suits under CPC is not applicable in its entirety to trial of election petition - Procedure prescribed in CPC applies to election trial with flexibility and only as guidelines.

CONDITIONS FOR COUNTING OF VOTES - Stated - (i) The Court must be satisfied that a prima facie case is established; (ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes; (iii) A roving and fishing inquiry should not be directed by way of an order to recount the votes; (iv) An opportunity should be given to file objection; and (v) Secrecy of the ballot requires to be guarded.

It is neither desirable nor required for Court to frame an issue not arising on pleadings - Court should not decide a suit on matter/point on which no issue has been framed - There may be an exceptional case where in parties proceeded to trial fully knowing rival case and lead all evidence not only in support of their contentions but in refutation thereof by other side - In such eventuality, absence of an issue would not be fatal and it would not be permissible for party to submit that there has been mis-trial and proceedings stood vitiated - Court cannot travel beyond pleadings and issue cannot be framed unless there are pleadings to raise controversy on particular fact or law - It is therefore, not permissible for Court to allow party to lead evidence which is not in line of pleadings - Therefore in this case, election petitioner/respondent has claimed only that there has been irregularity/illegality in counting 6 tendered votes and case squarely falls within ambit of Sec.100 (1) (d)(iii) of Act - Admittedly, in this case there is no reference to 4 tendered votes either in election petition or written statement - Said four tendered votes neither had been relied upon in reply by appellant nor had been entered in list of documents - Judgment of High Court - Justified - Appeal, dismissed. **Kalyan Singh Chauhan Vs. C.P.Joshi, 2011(1) Law Summary (S.C.) 88 = 2011(3) ALD 90 (SC) = 2011 AIR SCW 1061 = AIR 2011 SC 1127.**

REPRESENTATION OF THE PEOPLE ACT, 1951:

—Sec.127-A – **A.P. MUNICIPALITIES ACT, 1965**, Sec.342-E - Police registered a crime u/Sec.127-A of Representation of People Act, and Sec.343-E of A.P. Municipalities Act, on report given by Town Planning Officer, Municipality who was the official of Model Code of Conduct Team-IV alleging that the petitioner/accused published a pamphlet and circulated by keeping the same between the folders of a Telugu daily on 10-03-2014 without disclosing the particulars of printer and publisher of the said pamphlet and thus violated election code - Petitioner/accused seeks to quash the proceedings in Cr. No.51 of 2014.

Held, when the meaning of "election pamphlet or poster" is perused and applied to the impugned pamphlet, the impugned pamphlet does not contain any material in promoting or prejudicing election of a candidate or group of candidates relating to Municipal Election - As already stated, the petitioner through the pamphlet only appeals to the voters of the Assembly Constituency to give him an opportunity in the forthcoming State Assembly Elections - Therefore, he has not violated the Code of Conduct in vogue in respect of the Municipal Elections - So far as the violation of Code of Conduct relating to Assembly Elections is concerned, same was not in vogue by 10-03-2014 since Notification was yet to be given by then - Therefore, continuation of criminal proceedings in Cr. No. 51 of 2014 would certainly amount to abuse of process of law - In the result, this Criminal Petition is allowed and proceedings in Cr. No. 51 of 2014 are hereby quashed. **B.Naveen Nischal Vs. State of A.P. 2015(1) Law Summary (A.P.) 494 = 2015(3) ALT (Crl) 212 = AIR 2015 Hyd. 161 = 2015(1) ALD (Crl) 951.**

-and CIVIL PROCEDURE CODE, Or.6, Rl.16 r/w Sec.151 and Or.7, Rl.11 r/w Sec.86 - Main averment in the aforesaid petitions is that the election petition does not disclose any cause of action and it is bereft of material facts and material particulars - In election petition 1st respondent has not demonstrated as to how order of Returning Officer was incorrect or wrong - On other hand, he raised same objections and filed election petition - Therefore, there is no cause of action for election petitioner - Since election petition is bereft of material facts showing how order passed by Return Officer is wrong, averments made in paras 2, 9 to 11 of election petition are liable to be struck out and since there is no cause of action election petition is liable to be rejected - The 1st respondent filed common counter in above two petitions wherein he referred five objections filed by him before 8th respondent and tried to justify how those objections were legally valid and how 8th respondent erred in rejecting his objections and as such how instant petitions are not maintainable.

Held, cumulative effect of paras-2, 9 to 11 is nothing but again lampooning order of 8th respondent as erroneous without demonstrating as to how his order was factually and legally perverse and wrong - Even mentioning of judgment in Resurgence India 's case and allegation that petitioner suppressed Rs.21 lakhs from total assets, Court will presently see, will not constitute any material facts so as to strengthen allegations in paras-2, 9 to 11 - Therefore, pleadings in paras-2, 9 to 11 being frivolous

REVENUE RECOVERY ACT:

and vexatious and not containing any material facts and cause of action are liable to be struck off.

Thus, none of objections raised by 1st respondent before 8th respondent and repeated in his election petition merit consideration - Apart from above, 1st respondent in para-10 of election petition has taken a new ground to effect that petitioner has concealed Rs.21 lakhs worth of movable assets of his wife and showed his gross total value as Rs.2,79,67,680/- instead of Rs.3,00,67,680/- - It must be held that this objection also does not hold water - In Item No.VII petitioner has shown item wise movable assets of his wife and showed their gross total value as Rs.2,79,67,680/ - - However, total value comes to Rs.3,00,67,680/- - It is only a mistake in totalling items of movable properties - Since there is no concealment of any item, clerical error in totalling cannot be taken as a felony - Thus, on a conspectus, election petition is liable to be dismissed in limini without necessity of conducting trial for two reasons— firstly, petition is bereft of material facts and cause of action and secondly, objections raised before 8th respondent and repeated in election petition do not merit consideration, which can be and in fact, have been, decided without necessity of conducting trial.

So, at the outset, two petitions filed by petitioner deserve to be allowed and consequently election petition is liable to be dismissed in limini.

E.A. relating Or.6, Rl.16 is allowed and Paras-2, 9 to 11 in Election Petition are ordered to be strike out for being frivolous and vexatious and not containing material facts and cause of action therein - E.A relating Or.7, Rl.11 r/w Sec.86 C.P.C. seeking dismissal of Election Petition is allowed and E.P. is rejected in *limini*. **Peddireddigari Ramachandra Reddy Vs. Madiraju Venkata Ramana Raju 2016(3) Law Summary (A.P.) 203 = 2016(6) ALD 299 = 2016(5) ALT 655.**

REVENUE RECOVERY ACT:

—Sec.5-A & 9 - Deceased, AP during his life time executed Gift Settlement deed in favour his sister/3rd. respondent, and her name is not mutated in revenue records - Subsequent to death of AP name of his wife who acquired said land by way of succession was mutated in revenue records - Wife of AP executed registers sale deeds in favour of petitioners and basing on said sale deeds petitioners names are entered into revenue records and subsequently pattadar pass books and title deeds were issued - Thereafter 3rd.respondent made application for mutation of her name in revenue records on base of Gift Settlement deed and since revenue officials fail to consider application 3rd. respondent filed writ petition which was allowed by High Court with direction to revenue officials to enter name of 3rd respondent on basis of Settlement deed - In pursuance of directions of High Court 3rd respondent made another application and MRO, issued proceedings entering name of 3rd respondent in revenue records - Proceedings of MRO are set aside with a direction to conduct fresh enquiry on ground that before passing order petitioners are not given opportunity accordingly 2nd respondent/Tahsildar taken up fresh enquiry and passed order that matter required adjudication by competent civil Court as both parties claimed title by gift of settlement

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deed and registered sale deeds - 3rd respondent filed Revision u/sec.9 of ROR Act, against orders of 2nd respondent/Tahsildar - 1st Respondent/Joint Collector allowed revision holding that registered Gift deed executed by original pattadar AP in year 1979 being 1st transaction and same should be implemented in revenue records - Hence said order of R.1/Joint Collector assailed in present writ petition - Petitioners contend that 1st respondent/Joint Collector committed grave error in going into question to title claimed by rival parties and that revision u/Sec.9 of ROR Act, against order of R.2 not maintainable at all since remedy of Appeal is available against said order - 3rd respondent contends that since title acquired by her in respect of said property upheld by competent civil Court there is no need for compelling 3rd respondent to get her title declared in civil Court and therefore 1st respondent/Joint Collector is justified in setting aside 2nd respondent order and directing mutation of 3rd respondents name in revenue records - Law is well settled that revenue authorities exercising jurisdiction under ROR Act cannot go into serious questions of title - In instant case, though Gift deed under which 3rd respondent is claiming title is stated to have been executed prior to sale deeds under which writ petitioners are claiming title and admittedly there has never been any enquiry with regard to validity of said Gift deed and there is adjudication with regard to title claimed by 3rd respondent under Gift deed - In facts and circumstances, 2nd respondent rigtly held that matter requires adjudication by competent civil Court - 1st respondent/Joint Collector committed grave error in entertaining revision petition though remedy of appeal is available u/Sec.5 (5) of ROR Act, which 3rd respondent failed to exhaust - Absolutely no justifiable reason could be shown in present case for invoking revisional jurisdiction straightway without exhausting remedy of appeal - Impugned order is unsustainable and same set aside - Writ petition, allowed. **Vanga Narsa Reddy Vs. Joint Collector, Adilabad 2012(2) Law Summary (A.P.) 189 = 2012(5) ALD 576 = 2012(6) ALT 6.**

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—Secs.2(f)(i), 3, 8(1)(e), 8(1)(g),8(3), 10 and 10 - "Information" - Defined - Evaluation of answer book of examination - Respondent appeared for SSC examination and disappointed when he got mark sheet - Though he had done well in examination, but his answer books not properly valued and that improper valuation had resulted in low marks - Definition of "information" in Sec.2(f) of RTI Act refers to any material in any forum which includes records documents opinion papers among several other enumerated items - Term "record" is defined in Sec.2 (i) of Act as including any document, manuscript or file among others - When a candidate participates in examination and write his answer book and submits it to Examining Body for evaluation and declaration of result, answer books is a document or record and therefore evaluated answer book is also as "information" under RTI Act - Provision barring inspection or disclosure of answer books are re-evaluation of answer books and restricting remedy of candidate only to retotaling is valid and binding on examinee - Position may however be different if there is superior statutory right entitling examinee as a citizen to seek access to answer books as information - This right is claimed by students not with reference rules or byelaws of Examining Body, but under RTC Act which

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enables them and entitles them to have access to answer books as "information" and inspect them and take certificate copies thereof - In a phylosophical and very wide sence, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in examination as Govt., does while governing its citizens or as present generation with reference to future generation while preserving environment - Duty of Examining Bodies is to subject candidates who have completed a course of study or a period of training in accordance with its curricula to a process of verification/examination/ testing of their knowledge, ability or skill, or to ascertain whether they can be set to have successfully completed or fast course of study or training - When examining body, if it is a public authority entrusted with public functions is required to act fairly, reasonably, uniformly and consistently for public good and public interest - Once examiner has evaluated answer books he ceases to have any interest in evaluation done by him - He does not have any copy right or proprietary right, or confidentiality right in regard to evaluation and therefore it cannot be said that Examining Body holds evaluated answer books in a fiduciary relationship, *qua* examiner - Hence Examining Body does not hold evaluated answer books in fiduciary relationship and exemption u/Sec.8(1) (e) is not available to Examining Bodies with reference to evaluated answer books - As no other exemption under Sec.8 is available in respect of evaluated answer books, Examining Bodies will have to permit inspection sought by examinees.-Right to information is a cherished right - Information and right to information are intended to be formidable tools in hands of responsible citizens to fight corruption and to bring in transparency and accountability - Provisions of RTC Act, should be enforced strictly and all efforts should be made to bring to light necessary information under Cl.(b) of Sec.4(1) of Act which relates to securing transparency and accountability in working of public authorities and discouraging corruption - Order of High Court directing Examining Bodies to permit examinees to have inspection of their answer books is affirmed, subject to clarifications regarding scope of RTI, Act and safe guards and conditions subject to which information should be furnished. **Central Board of Secondary Education Vs. Aditya Bandopadhyay, 2011(3) Law Summary (S.C.) 118 = 2011(6) ALD 38(SC) = 2011 AIR SCW 4888.**

—Secs.2(f), 2(h),2(j) & 2(n),3,4,7 (7), 8(1) (d) & 11(1) - 2nd respondent, member of Society filed application before petitioner/Co-operative Building Society for supply of information regarding (a) up-to-date list of total members of Society with addresses (b) list of members who are allotted plots and registered along with addresses (c) and list of members who paid amounts and awaiting for allotment by way of lottery - Since information not supplied, preferred appeal before 1st respondent who negatived objection raised by petitioner Society that it is not public authority and hence provisions of RTI Act are not attracted to it - Petitioners contend that RTI Act does not enable information available with private body that petitioner to be furnished or made public and that RTI Act is intended only for securing check on activities of public authorities and that it has no role to play in matters of information either gathered or available with private bodies and that until and unless body falls within definition of public authority in terms of Sec.2(h) of Act, right to information could not be enforced against

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it at all - Information concerning private body also undoubtedly forms part of "information" for purpose of this enactment provided such information is liable or capable of being accessed by public authority under any other law in force, for time being - Therefore, right to information is one which is capable and accessible under RTI Act provided information is held by or under control of any public authority - Various provisions of Co-operative Societies Act which clearly disclosed controlling power and reach of access of Registrar of Cooperative Societies appointed and constituted as such u/Sec.3 of Societies Act - Therefore, even from perspective of expression "right to information" as defined by RTI Act, Registrar of Cooperative Societies who answers definition of "public authority" - Therefore information sought for by 2nd respondent relating to writ petitioner society is liable to be furnished and it is not one which is falling in any one of exceptions contained u/Sec.8 of Act - Writ petition, dismissed. **Sri Bhavana Rishi Co-op. Society Vs. A.P. Information Commission 2010(2) Law Summary (A.P.) 151.**

—Secs.2(f) & 3 to 11 of Chapter – II – **EVIDENCE ACT**, Sec.74 – "Muntakhab" – Petitioner/ Public Information Officer refusing to give certified copy of "Muntakhab" on ground that 2nd respondent's name does not figure in said 'Muntakhab' nor she produced legal hair certificate issued by competent civil Court establishing her succession - 2nd respondent contends that 'Muntakhab' is a public document u/Sec.74 of Evidence Act and petitioner cannot deny supply of certified copy of same and that petitioner cannot claim any privilege nor supplying of copy of said document is prohibited u/Sec.8 of RTI Act - Chapter – II contains Secs.3 to 11 which deal with citizens' right to information and obligation of public authorities, which is heart and soul of RTI Act – If information is available with public authority, unless and until it is one of categories mentioned in Sec.8 (1), there should not be any objection for furnishing information subject to procedural compliance under RTI Act – Even information regarding private persons can also be made available after Sec.11 of RTI is complied with - Theory of 'implied bar' does not apply to law, which is made to give full scope to fundamental rights - Even if a 'Muntakhab' is considered as privileged document u/Sec.74 r/w Sec.123 of Evidence Act, still public authority as defined u/Sec.2 (h) of RTI Act can not refuse - By reason of Sec.22 of RTI Act, provisions of RTI Act shall have effect not withstanding anything inconsistent therewith contained in any other law – Writ petition, dismissed. **Public Relation Officer Hyd., Vs. A.P. Information Commissioner 2009(1) Law Summary (A.P.) 8.**

—Secs.2(f), 2(h), 2(i) & 2(j), 6, 8(1)(b) and 24 - **JUDGES PROTECTION ACT, 1985** - Trial Court granting interim injunction in suit filed against petitioner - District Judge, R4 passed order dismissing CMA preferred by petitioner and said order has become final since not challenged before any higher Court - Administrative Officer/R1 rejecting Application filed by petitioner u/Sec.6 of Information Act seeking information as to why certain documents and arguments were not considered by District Judge while considering CMA - Registrar General/appellate authority rejected appeal and Govt., also dismissed second appeal - Hence petitioner filed present writ petition impleading

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District Judge as respondent No.4 - Petitioner contends that respondent Nos.1 to 3 wrongly rejected application filed by petitioner on ground that correctness or otherwise of judicial order or judgment cannot be questioned under Right to Information Act and that right to information is a fundamental right of a citizen and citizen cannot be deprived of right on ground that judicial officers are not amenable to Act - Respondents submit that in his Application petitioner wanted to know mind of judge for rejecting CMA, and not material, which in any form was available in records and therefore 1st respondent/ A.O rightly rejected application of petitioner - Words "information", "public authority", "record" and "Right to Information" - Defined - A citizen has a right to receive "information", which is in any form, including records, documents, e-mails etc., and information in relation to any private body which can be accessed by a public authority under any other law for time being in force - Information does not mean every information but it is only such information which is recorded and stored and circulated by public authority - In this case, petitioner under guise of seeking information had virtually asked to know as to why and for what reason R4, Judicial Officer had come to a particular conclusion which was against petitioner - Under provisions of Act a citizen can seek only information which is available on record with public authority in material form, but cannot seek clarification by raising queries as to what was in mind of Judge when he decided case - For said purpose he has to read judgment and if he is aggrieved by judgment for any reason he has to file appeal - Under provisions of Act, a public authority is having an obligation to provide such information which is recorded and stored but not thinking process, which transpired in mind of authority which had passed order on judicial side - Respondent Nos.1 to 3 had not given any discriminatory treatment to petitioner so as to do undue favour to respondent No.4 and they have only acted in terms of Act and passed orders rejecting application of petitioner - Petition, rejected. **Khanapuram Gandaiah Vs.The Administrative Officer,R.R. Dt. 2009(2) Law Summary (A.P.) 49 = 2009(4) ALD 113 = 2009(4) ALT 184 = AIR 2009 AP 174.**

—Secs.5,6,7,8 & 19 - **CONSTITUTION OF INDIA**, Art.19 - Petitioner submitted Application to PIO requiring information relating to ten items of particular subject - Reply was given complying with information only on one item observing that rest of items do not come under definition of information - Commissioner dismissed Appeal - Petitioner contnds that person who makes Application u/Sec.6 cannot be required to disclose purpose for which he needs information - INFORMATION - Defined - Applicant cannot be required to give reasons for requesting information - Act has comprahensively defined word "information" - It takes in its fold, large verity of sources of information including documents, emails, opinions, press releases, models and data material etc - Common feature of various categories, mentioned in definition is that they exists in one form or other and PIO has only to furnish same, by way of copy of description - Reason are basis as to why a particular state of affairs exists or does not exists cannot be treated as a source or item of information - Act is an effective device, which if utilize judiciously and properly would health citizens to become more informed - It no doubt relieves an applicant from obligation to disclose reason as to why he wants information - However indescriminate efforts to

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secure information just for sake of it, and with there being without any useful purpose to serve, would only pur enormous pressure on limited human resources that are available - In this case effort of petitioner appears to have been directed mostly in relation to administrative action or inaction, without specifying actual grievance and it is well neigh impossible for any one to accede to request of petitioner within scope of act and rules - Order passed by respondents, justified - Writ petition, dismissed. **Divakar S.Natarajan Vs. State Information Commissioner, Hyd. 2009(1) Law Summary (A.P.) 181 = 2009(2) ALD 644 = 2009(2) ALT 500 = 2009(1) APLJ 299.**

—Secs.6,7,8,19 & 20 - Petitioner, Medical practitioner filing Application before PIO (Municipal Manager) seeking information relating to land in a particular survey number, as to possession and enjoyment of number of persons - Since petitioner failed to get information Appeals filed before 1st and 2nd respondents - In this case, it is not even remotely evident as to why petitioner wanted that information, muchless, that he has any grievance about various acts and omissions mentioned in Application - Obviously, respondents 2 & 3 caught up in a tangle, if they furnish information according to their knowledge and assumption it amounts to exercising powers not conferred upon them and reason is that it is only Revenue Authorities under relevant provisions of law or Courts, that can certify or pronounce upon possession of individuals over land - In this case, for all practical purposes petitioner treated respondents 2 & 3 as his subordinates, if not, servants to blindly obey all his directions - Petitioner has resorted to gross misuse of provisions of Act - Writ petition, dismissed. **A.Sudhakar Reddy Vs. The State Information Commission 2009(1) Law Summary (A.P.) 382.**

—Sec.8 (1) (h) & 19 (5) - 2nd respondent made Application before petitioner/Public Information Officer, Syndicate Bank under RTI Act seeking information regarding accounts of Industrial Unit - Petitioner rejected application on ground that Bank has initiated proceedings under SARFAESI Act, for recovery of dues from 2nd respondent and therefore information sought for by him false within exempted category u/Sec.8(1) (h) of Act - 2nd respondent filed Appeal against orders of 2nd respondent before GM of Bank who partly allowed appeal - Feeling aggrieved by said order 2nd respondent filed appeal before Central Information Commission who allowed same by holding that onus to prove that denial of information is justified, is on Public Information Officer u/Sec.19(5) of Act and that since he failed to to offer any such information appeal deserves to be allowed - Hence Public Information Officer filed present writ petition - Scheme of Act would reveal that every Public Information Officer nominated as such under Act has dual role to play viz., as Officer of Public authority and also Public Information Officer - While such Officer is loyal who is employer while acting in his role as Officer, he acts as a quasi-judicial authority while disposing of request made for furnishing information - It is only either public authority, against whom directions are given, or any other party who feels aggrieved by such direction, that can question orders passed by appellate authorities - As such Public Information Officer who filed present writ is wholly incompetent to question order of appellate authority and writ

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petition filed by him is not maintainable - However what is exempted u/Sec.8(1)(h) is information, which would impede process of investigation or apprehension or prosecution of offenders - It is not pleaded case of Bank that any investigation or apprehension or prosecution of respondent no.2 will be impeded by furnishing information sought by him and even if information relates to a pending dispute before Court or Tribunal, that would not fall u/Sec.8(1) (h) of Act - Writ petition, dismissed. **Public Information Officer Vs. Central Information Commission 2011(3) Law Summary (A.P.) 340 = 2012(1) ALD 433 = 2012(2) ALT 348.**

—Secs.8(1) (j) & 6(2) - **CONSTITUTION OF INDIA**, Arts.19 (1) (a) & 21 - Pursuant to advertisement issued by ONGC, 1st petitioner and several others applied for post of Field Officer - 1st petitioner not selected - 2nd petitioner practicing Advocate filed Application on behalf of 1st petitioner seeking information regarding number of S.C candidates selected, name of authority who selected candidates and date of issue of posting orders to 285 candidates and their dates of joining and also made request to furnish qualification certificates submitted by selected candidates - 1st respondent furnished information on all aspects and so far as furnishing of qualification certificates is concern he took view that it is exempted u/Sec.8 (1) (j) of Act - 3rd respondent/ appellate authority passed order upholding stand taken by 1st respondent - Petitioners contend that 1st respondent was under obligation to furnish copies of qualification certificate furnished by selected candidates and that certificates referred to above do not fall with in ambit of Sec.8(1)(j) - From perusal of Sec.8, evidently exemption gets attracted under two circumstances viz., (a) if information is personal in nature and has no relationship to any public activity or interest and (b) furnishing of same would cause unwarranted invasion of privacy of individual - Right to information is treated as a facet of fundamental rights guaranteed under Arts.19 & 21 of Constitution of India - That, however, would be in respect of information which relates to functioning of Government and public activity - Information which relates to individual cannot be compared with or equated to one of public activity - Even while exercising right of freedom of speech and expression an individual can insist that information relating to him cannot be furnished to others unless it is in realm of public activity or required to be furnished under any law - Though Sec.6(2) of Act enables every individuals to seek information without disclosing purpose, information that can be furnished to him is subject to restriction placed u/Sec.8 of Act - No exception can be taken to impugned orders - Writ petition, dismissed. **Kunche Durga Prasad Vs Public Information Officer,Rajahmundry 2010(1) Law Summary (A.P.) 236.**

—Secs.18 & 19 - Second appellant filed Application u/Sec.6 of Act for obtaining information from State Information Officer relating to magisterial enquiries initiated by Govt., - As there is no response, appellant filed complaint u/Sec.18 of Act before State Chief Information Commissioner who directed second respondent to furnish information within 15 days - Said direction challenged by State in present writ petition - As no

response received appellant filed complaint u/Sec.18 and same was disposed of by an order directing disclosure of information forthwith - Said order was also challenged by way of writ petition by respondents - Single Judge of High Court dismissed both writ petitions upholding order of Commissioner - In writ appeal, Division Bench held that u/Sec.18 of Act Commissioner has no power to direct respondent to furnish information and such power has already been conferred u/Sec.19 (8) of Act on basis of exercise u/Sec.19 only and further held that direction to furnish information is without jurisdiction and directed Commissioner to dispose of complaints in accordance with law - Procedue under Sec.19 of Act when compared to Sec.18 has several safe guards for protecting interest of person who has been refused information he has sought Sec.19(5) in this connection may be referred to - Sec.19(5) puts onus to justify denial of request on information Officer and therefore it is for Officer to justify denial - There is no such safe guard in Sec.18 - Procedure u/Sec.19 is a time bound one, but no limit is prescribed u/Sec.18 - A right of appeal is always a creature of statute and is a right of entering a superior forum for invoking its aid and interposition to correct errors of inferior forum and it is a very valuable right - Therefore when statute confers such right of appeal that must be exercised by person who is aggrieved by reason of refusal to be furnished with information - Impugned judgment of Divison Bench - Justified - Appellants therefore directed to file appeals u/Secs.19 of Act in respect of two requests by them for obtaining information - If such appeal is filed following statutory procedure by appellants same should be considered on merits by appellate authority without insisting on period of limitation - Right of respondents to get information in question must be decided on basis of law as it stood on date when request was made - Appeals are disposed of accordingly. **Chief Information Commr. Vs. State of Manipur 2012(1) Law Summary (S.C.) 41 = 2012(3) ALD 1 (SC) = 2012 AIR SCW 651 = AIR 2012 SC 864.**

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

—Sec. 2(a), 3(1) (X) - Substance of allegations made in complaint is that petitioners herein denied promotions to Dr. Y. Kiran Kumar as he belongs to Schedule Caste - Held, there is no allegation in the complaint that petitioners have intentionally insulted or intimidated appellant in his presence in name of his caste and in a place within public view and even if allegations made in complaint ex facie taken to be true and correct, petitioners never insulted the appellant in name of his caste so as to attract alleged act of petitioners within ambit of Sec.3(1)(x) of Act - Even assuming but not admitting the allegations are true and correct, same will not fall under anyone of provisions enumerated under Sec.3 of Act - When alleged act of petitioners is not punishable under Sec. 3 of Act, by any stretch of imagination, it cannot be presumed that the alleged act of petitioners will come under the purview of 'atrocity' as defined under Sec. 2(a) of Act - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec.2(a), 3(1)(X)-any dispute pertaining to inter se seniority

or service matter falls outside the purview of provisions of S.C. and S.T. (PoA) Act - This is a fit case to quash proceedings for two reasons viz., - 1) Allegations made in complaint do not constitute offence alleged to have been committed by the petitioners under Sec.3(1)(x) of S.C. & S.T (POA) Act; and 2) Entrustment of investigation to police in nothing short of abuse of process of law - Hence proceedings deserve to be quashed - Criminal Petitions, allowed. **Dr.I.V.Rao Vs. State of A.P., 2014(3) Law Summary (A.P.) 150 = 2015(1) ALD (Crl) 806 = 2015 Cri. LJ 652.**

—-Sec.3(1)(X) - **INDIAN PENAL CODE,** Secs.342 & 509 and 506 r/w Sec.34 - Originally, Crime was registered for the offences punishable u/Sec.3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Secs.342, 509 and 506 r/w Sec.34 of IPC on the report of the de facto complainant against five accused persons - Caste of A.1 to A.3 is shown as Yatha and the caste of A.4 and A.5 is shown as Gavara and they are not the scheduled castes or scheduled tribes and the de facto complainant shown his profession as Church Pastor and still as S.C. Mala in report - Police after investigation filed final report referring case as mistake of fact and a notice is also issued to de facto complainant - After receipt of notice, de facto complainant raised protest application - In course of investigation by police as many as seven witnesses were examined - Very report of de facto complainant vis-à-vis statement of him recorded during investigation clearly speaks that he is working as Pastor of Christ Sangam Church from year 2004 - The de facto complainant stated that he constructed the Church having purchased land and firstly he erected Church in a thatched shed and later in year 2007-08 he constructed a slabbed Church building and he further saying there is mettu way to go to Church from road - Neighbors are picking up quarrel with him for using way and that is root cause for present crime.

Petitioners there from sought for quashing of the private P.R.C. pending for committal supra besides saying complaint engineered with false allegations to implicate them by abusing the socalled concession as if available under his impression, though otherwise not even available to invoke Sec.3(1)(x) of the Act as if member belongs to SC/ST - Other contention is there are no worth ingredients from the case propounded by complainant to attract Secs.506 or 509 or 342 IPC against any of the five accused - Counter filed by the 2nd respondent-de facto complainant speaks, from the material papers while not in dispute, mere conversion to Christianity and/or professing Christianity no way ceases his original birth caste and thereby the proceedings are not liable to be quashed, for offences taken cognizance by learned Magistrate and hence to dismiss quash petition.

Held, once he is ceased to be a member of Scheduled Caste or Scheduled Tribe by conversion into Christianity from words discussed particularly from the Order, 1950 amended by Act 63 of 1956 and later by Act 15 of 1990 and covered by Three-Judge Bench's well considered expression in Soosai's case that was not even referred to conclusion in another Three-Judge Bench expression in Chandra Mohanan's case,

de facto complainant for no longer continues as a member of Scheduled Caste from facts supra and when not entitled to benefit of Sec.3 of the Act, prosecution invoking Sec.3(1)(x) of the Act is unsustainable and cognizance taken as P.R.C. is unsustainable and liable to be quashed.

Even coming to other penal provisions by Secs.149, 323, 342, 352, 506 and 509 of IPC are concerned (protest petition against five accused), prima facie there is no wrongful confinement defined u/Sec.341 of IPC punishable u/Sec.342 of IPC as from very say in report to police what was alleged, is they were obstructed by disputing entitlement to proceed from their alleged property to enter into Church from road, there is nothing to say wrongful restraint or wrongful confinement there in - Even undisputedly this is a matter of Civil dispute seized by Civil Court - Coming to Secs.323 or 504 or 352 of IPC, Court finds that these allegations are included to make a claim mainly to rope under substantial allegation of abuse on caste name as an after thought to civil litigation and thereby cognizance taken for other offences also liable to be quashed - It is needless to say, paramount consideration u/Sec.482 of Cr.P.C. irrespective of any allegations made to decide is, in rendering substantial justice and not mere enforcement of law - Having regard to above, Court is constrained to quash P.R.C. proceedings to sub-serve the ends of justice - Having regard to above, Criminal Petition is allowed and all proceedings relating to P.R.C. are quashed. **Chinni Appa Rao Vs. State of A.P. 2016(1) Law Summary (A.P.) 246 = 2016(1) ALD (Crl) 545.**

—Secs.3(1) (ix) (x) and 4 - **CRIMINAL PROCEDURE CODE,** Secs.156(3) & 200 & 482 - 2nd respondnet filed Private complaint against petitioner/accused stating that petitioner A1 made her to stand in front of her putting her legs in chair and treated her indiscrimination intentionally as she belongs to Schedule caste and also insulted her in name of caste and that petitioenr did not allow her to sit in her classes and whenever she forcibly sits in class, A1 would say that "if this lady (complainant) is sitting in my class I dont take class)" - Magistrate referred case, u/Sec.156(3) Cr.P.C to SHO of Police Station for investigation - Petitioners 1 to 5/A1 to A5 contend that they are working in cadre of Associate Professor, Professor and Director of N.I.T. Warangal, and are leading respectable life in Society and they are falsely implicated in this crime even though they are nothing to do with alleged offence - Petitioners/ accused further contend that entire complaint does not even remotely suggest attraction of any provisions of Act, much less ingredients of Secs.3(1)(ix)(x)& 4 of Act, and that 2nd respondnet/complaint has taken help of Media for redressal of her grievance by falsely attributing *mala fides* and later went on relay hunger strike in order to pressurize Authorities of N.I.T to give her promotion contray to Guide lines and Scheme and when she could not succeed in all her attempts, he lodged present complaint taking advantage of caste that there is no provision for anticipatory bail undr Act and therefore present complaint filed by 2nd respondent is vxatious and frivolous and if prosecution against petitioners is allowed to be cotinued it is nothing but abuse of process of law - 2nd respondent/complainant contends that basing on private complaint, Magistrate

having found *prima facie* material forwarded to same to police u/Sec.156(3) Cr.P.C for investigation and acordingly investigation was startd and same is in progress, and number of witnesses were examined and therefore, at this stage, Court cannot go into merits of case and that averments of complaint squarly fall under definition Ses.3 (1) (ix)(x) of Act and that inherent powers u/Sec.482 Cr.P.C cannot be exercised as complaint will not come under exceptional case sand any finding on subject matter at the stage is premature - In this case, complainant has not annexed her caste certificate and also did not enclose earlier Representations said to have been made to higher Authorities and it is also alleged in complaint that she went on hunger strike against Administration of petitioners - Filing of private complaint afer went on hunger strike shows that conduct of complainant and that filing of complaint and referring to Police on same day as requested by complainant is very strange and that Magistrate simply forwarded and did not scrutinize even contents of complaint and truly a silent spectator at time of forwarding complaint to Police u/Sec.156(3) for investigation - Present case is a classic illustration of non-application of mind by Magistrate - Even *prima facie*, allegations in privte complaint do not constitute offence under which complaint is filed - In this case, allegations made in complaint are so absurd and inherently impropable more particularly in this case, 2nd respondent-complaint set criminal law in motion with a view to harass petitioners and arrayed them as accused in complaint which is nothing but abuse of process of law - Proceedings against petitioners A-1 to A-5 in Crime are quashed - Criminal Petition, allowed. **Dr.B.Lakshmi, Warangal Vs. State of A.P. 2012(3) Law Summary (A.P.) 122 = 2012(2) ALD (Crl) 655 (AP) = 2012(3) ALT (Crl) 149 (AP).**

—Sec.3(1)(x) – **INDIAN PENAL CODE,** Sec.306 & 107 – Deceased was in love with A1 and moved together for three years and subsequently A1 refused to marry stating that she belongs to “Madiga” caste and his parents also refused to perform marriage – Allegation that accused abeted deceased to commit suicide and also abused her and her parents naming their caste – Special Judge convicting accused - Appellant/Accused contends that there is no consistency in ‘dying declarations’ and admittedly father of deceased is Balija by caste and his offspring would be none other than Balija and will not get status of ‘Madiga’ and very charge u/Sec.3(1)(x) of Act is bad in law - Prosecution contends that it is only on account of refusal to marry, deceased had taken extreme step of committing suicide and such refusal is intentionally aiding, which definitely amounts to abetment, within meaning of Sec.107 IPC – Since P.W.1 admittedly belongs to Madiga caste deceased also belongs to Madiga caste and therefore conviction of accused for offence u/Secs.306 IPC and 3(1)(x) of Act, sustainable - In this case, cause for deceased to take extreme steps of committing suicide is refusal by A1 to marry and on account of refusal is suicide by deceased, and thus there is a cause and an act, - If it can be said that cause is end result of death/suicide, then it can definitely be said that it is intentionally aiding - It is true that suicide by deceased was solely on account of 1st accuused’s refusal to marry – That may be cause for her to take extreme step of committing suicide, but it cannot be said that 1st accused has intentionally aided or abeted deceased to

commit suicide – There may be so many reasons for individual to take extreme step of committing suicide - In instant case, definitely that cause for deceased to commit suicide is refusal of accused to marry her but it cannot be said that said refusal is intentional aiding, as defined u/Sec.107 IPC – Contention that refusal amounts to intentional aiding cannot be accepted and accused cannot be held to be guilty of offence u/Sec.306 - When once father of deceased is admitted to be a member belong to Balija caste, it cannot be said that deceased is Madiga by caste so as to attract provisions of Act – Appellants/accused are not guilty of offences for which they are tried - Trial Court erred in finding them guilty – Conviction, set aside – Appeals, allowed. **M.Ramesh Vs. State of A.P. 2009(1) Law Summary (A.P.) 57 = 2009(1) ALD (Crl) 22 (AP) = 2009(1) ALT (Crl) 286 (AP).**

—Sec.3(x) & Sec.3(1)(iv) - CRIMINAL PROCEDURE CODE, Sec.482 - Petition to quash FIR - 2nd respondent belong to Erukala Caste lodged complaint against petitioners who are adjacent owners of their land, alleging that they entered into their land abused them in filthy language in the name of their caste and threatened them - Basing on said complaint Police registered case against petitioners for offence punishable u/ Sec.3(x) - In this case, there is nothing on record to show that no offence is made out as per allegations made in FIR - Authorities and Police Officers must consider that Sec.3(1) (iv) of Act envisages that who ever not being Member of Schedule Caste and Schedule Tribe wrongfully occupies or cultivates any land owned by or allotted to, or notified by any competent authority to be allotted to member of Schedule Caste or Schedule Tribe or gets land allotted to him transferred, shall be punishable with imprisonment under provisions of Act - Therefore, whereever a Schedule Tribe or Schedule Caste is wrongfully dispossess or where any interference is made with their enjoyment of rights over land should register case under relevant provisions of Act - No merits in petition - Criminal petition, dismissed. **Nerella Veeranjaneyulu Vs. State 2011(3) Law Summary (A.P.) 183 = 2012(1) ALD (Crl) 287 (AP) = 2012(1) ALT (Crl) 42 (AP).**

—Secs.3(1) (x) - **SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995,** RULE 7 - **INDIAN PENAL CODE,** Sec.323 - Appellants A1 to A3 who are father and sons belong to Reddy community convicted for abusing P.W.1/victim touching his "mala" caste and causing injuries - Appellants/accused contend that when offence took place at a public place on road near drinking water well, there is possibility of persons moving around scene at time of offence and failure of prosecution to examine independent witnesses is fatal to prosecution - Genesis of this incident appears to be unauthorized entry and movement of P.W.1 across garden land belonging to A1 and when A1 questioned P.W.1 about same P.W.1 became aggrieved and went away and after two days he gave Exhibit P.W.1 Report alleging abuses in name of his caste - Even as per prosecution case at place of incident, A-1's Agricultural land is there - In those circumstances lower Court did not appreciate evidence on record with reference to genesis of incident and came to erroneous conclusion in favour of

prosecution - Reasoning and finding of guilt recorded by lower Court, not justified - Conviction and sentence, set aside - Appeal, allowed. **Mogili Seshi Reddy Vs. Station House Officer, Jonnagiri P.S. Kurnool District 2011(3) Law Summary (A.P.) 130 = 2012(1) ALD (Crl) 1 (AP) = 2012(1) ALT (Crl) 4 (AP).**

—Sec.3(i)(x) – **CRIMINAL PROCEDURE CODE,** Sec.202 & 482 - Petitioner working as Controller Administration in NGRI & Second respondent working as Section Officer in finance of NGRI – Basing on Report of 2nd respondent complainant alleging that petitioner picked up quarrel with her and abused her in her cast name - Crime Registered punishable u/Sec.3(i)(x) of Act - Assistant Commissioner of Police investigated into case and referred case as "Lack of Evidence" - Hence complainant filed protest petition purportedly u/S.202 of Cr.P.C., and Magistrate took cognizance of offence and issued summons to petitioner and posted matter for evidence of complainant - Hence present petition filed by petitioner to quash entire proceedings in PRC - In this case considering all aspects investigating officer arrived at a conclusion that complainant bore grudge against petitioner and lodged a Report with police with exaggerated facts and with a delay of more than 24 hours without mentioning any reasons for said delay and that witnesses examined by him in course of investigation did not support version of complainant.

Cr.P.C. Sec.482 – Apex Court has laid down time and again the powers u/Sec.482 can be excised to quash Criminal Proceedings:

1) Where the allegations made in the First Information Report or the complainant, even if they are taken at their face value accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; and

3) Where a criminal proceedings is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge - Therefore for purpose of arriving at a conclusion as to weather complaint or FIR can be quashed, High Court has to scrutinized allegations made in complaint or FIR with care and circumspection.

In the present case, facts and circumstances obviously appear that complainant lodged with intension to wreak vengeance against accused because of enmity with petitioner/accused and if this kind of criminal cases are allowed to continue, it would result in miscarriage of justice since allegations made in complaint are so absurd and they inherently improbable - Proceedings against petitioner in PRC on file of Magistrate are quashed - Criminal petition allowed. **Ch.Srinivasa Rao Vs. State 2014(1) Law Summary (A.P.) 315 = 2014(1) ALD (Crl) 749 (AP) = 2014(3) ALT (Crl) 85 (AP).**

—Sec.3(1)(x) - Petition is filed under Sec. 482 of Cr.P.C seeking to quash proceedings in FIR No. 270 of 2014 - Police registered FIR basing on a report given by one Jatoth Gutta of Kistuthanda Chinnavangara, belonging to Scheduled Tribe.

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

Held, so from referred judgments, it is clear that irrespective of the place of offence being a 'public place' or 'private place', it must be within 'public view' i.e. member/members of public present and witnessed incident to constitute an offence under Sec. 3 (1)(x) of SC & ST Act - Coming to the instant case, the complaint allegations would read as if the offence took place in house of petitioner/accused, but it is not mentioned about 'public view'. As such, from the facts, it must be held that offence under Sec. 3 (1)(x) of SC & ST Act is not made out as per law and continuation of investigation will thereby amount to abuse of process of law - In the result, this Criminal Petition is allowed and proceedings in FIR are hereby quashed. **P. Bhaskar Raju Vs. The State of Telangana, 2015(2) Law Summary (A.P.) 325**

—Sec.3(1)(x) – **CRIMINAL PROCEDURE CODE,** Sec.482 – Petitioners /A1 to A3 filed suit against Defacto-Complainant for declaration and Injunction in respect of certain extent of land, Defacto-Complainant contesting same - Defacto-Complainant filed private complaint against petitioners alleging that while he was conducting agricultural operations in said land, petitioners came with a tractor and tried to plough land and when Defacto- Complainant obstructed, petitioner abused him and his people in name of their caste and threatened with dire consequences - Magistraten forwarded case to police for investigation and crime registered by police - Hence Criminal petition to quash investigation - Admittedly Civil suit is pending in respect of said land between Defacto- Complainant and petitioner – Whenever there is dispute between parties in relation to property and complaint is made u/Sec3(1)(x), Court is under duty to scrutinize allegation with care under circumspection - To attract offence under Act utterances made must be in name of cast and should be with intention to humiliate or intimidate person belonging to Scheduled Cast and Scheduled Tribe in place with public view - In this case it is highly difficult to gather such an intention on part of petitioners under utterances cannot said to be made in place with a public view – Hence it does not attract offence punishable u/Sec.3(1)(x) Act - If Investigation is allowed to continue in case of this nature it is nothing but abuse of process of law and ultimately it would result in miscarriage of justice - Criminal petition allowed. **Parsa Somaiah Vs. State of A.P. 2014(2) Law Summary (A.P.) 125**

—Sec.3 (1) (x) - **INDIAN PENAL CODE,** Secs.354 & 323 **CRIMINAL PROCEDURE CODE,** Sec.482 - "Quashing of FIR" - 2nd respondent /De facto complainant gave Report that petitioners/accused 1,3 & 4 outraged modesty of his wife and abused him touching upon his community - Petitioners/accused 1, 3 & 4 filed present petition seeking for quashment of FIR registered against them u/Sec.354 IPC as well as u/Secs.3 & 5 of S.C & S.T. Act - In this case, there is no any specific overt act against any of accused and that sweeping statement that accused molested wife and outraged her modesty is not making out prima facie case against petitioners for offence u/Sec.354 IPC - Hence complaint is liable to be quashed in so far as case is u/sec.354 IPC - There is no evidence that any person witnessed incident to consider

that offence under Sec.3(1)(x) of Act occurred within "public view" - In body of complaint also, no averment was made as to who witnessed incident apart from accused and victim, defacto- complainant and his wife - Accused and victims cannot be considered to be "public" within meaning of Sec.3(1)(x) - Private complaint is liable to be quashed as against petitioners- Petition, allowed. **J.Chinna @ Naresh Kumar Vs. The State of A.P. 2012(3) Law Summary (A.P.) 90 = 2012(2) ALD (Crl) 686 (AP) = 2012(3) ALT (Crl) 296 (AP).**

—Sec.3(1)(x) – **INDIAN PENAL CODE,** Sec.506 – Second Respondent de-facto complainant Sarpanch of village belonging to Madiga community alleged that petitioner/ Panchayat Secretary taking advantage of his innocence made him to put is signatures on some cheques and other papers withdrew funds of Gram Panchayat and utilized them for his own purposes and when requested to reimburse misappropriated public fund petitioner abused him in filthy language touching his caste - Subsequently second respondent lodged written Report to police and on such report case registered against the petitioner for offence punishable u/Sec.506 of I.P.C and Sec.3(1)(x) of SC & ST Act - Petitioner contend that second respondent misappropriated funds of Gram Panchayat and on representation by villagers District Panchayat Officer caused enquiry and subsequently Collector also issued notice to second respondent that he misused his powers and misappropriated certain amounts and failed to give explanation to show-cause notice and therefore he has to repay the said amount within seven days from date of receipt of notice - In this case most crucial aspect which requires consideration is that long prior to lodging of Report second respondent, De-facto complainant threatened petitioner to implicate him in false cases under provisions of Act and this fact also was brought to notice of Collector Panchayat Wing by petitioner – Therefore there is documentary proof in regard to statement made by petitioner and obviously threats were hurled by second respondent to implicate petitioner in false charges under provisions of Act - In this case petitioner was never directed to repay any amount - Therefore, version that when second respondent De-facto complainant asked misappropriated amount altercations between both of them and in course of said altercation petitioner abused de facto complainant seems to be inherently improbable and ex facie false and it would clearly appear that certain allegation was invented by de facto complainant for purpose of fixing petitioner under false charge under Act - Main object of exercise of powers u/Sec.482 of Cr.P.C is to prevent abuse of process of law and miscarriage of justice for such purpose can certainly subject allegations leveled in FIR/Charge sheet to find as to wheather there is falsity or absurdity which is inherent in very allegations – In this case, allegations made in FIR and also Prima facie absurd and false and if on basis of said allegation, petitioner who is a Panchayat Secretary is forced to undergo ordeal Sessions trial, it is nothing but abuse of process of law - Charge sheet Quashed - Criminal Petition allowed. **Punugoti Naga Kiran Kumar Vs. State of A.P. 2014(2) Law Summary (A.P.) 141 = 2014(2) ALD (Crl) 39 (AP).**

—Secs. 4,3 & 18 - **CRIMINAL PROCEDURE CODE.** Secs.2(a),26(b)(ii), First Schedule and Sec.438 - "Anticipatory bail" - Petitioner/accused is alleged to have given a depressing picture in investigating cases registered under provisions of SC & ST, Act and therefore, registered case against him for offence punishable u/sec. 4 of Act - Petitioner filed application u/sec. 438 of Cr.P.C. seeking anticipatory bail - State contends that application is not maintainable in view of bar u/Sec. 18 of Act and also on ground that offence u/Sec. 4 of Act is bailable - Sec.18 of Act states that nothing in Sec. 438 Cr.P.C. shall apply in relation to any case involving arrest of any person on an accusation of having committed an offence under Act - From reading of Sec. 18 of Act, it is clear that bar under Sec. 438 Cr.P.C. shall apply when a person commits offences under Act in which he is liable to be arrested. Arresting a person would arise only if he commits an offence which is non bailable – Since punishment prescribed u/Sec. 4 of Act is an imprisonment up to 1 years and in view of First Schedule to Cr.P.C, said offence has to be treated as bailable - Ergo, though offence under Sec. 4 of Act is made punishable with maximum imprisonment of one year and triable by Special Court, presided over by Sessions Judge, same has to be treated as bailable offence - Hence Application u/Sec.438 Cr.P.C. cannot be entertained - Criminal petition, dismissed. **Thati Venkata Nagaraju Vs. State of A.P. 2015(1) Law Summary (A.P.) 438**

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

—Petitioner, a successful bidder of the auction conducted by respondent No.3, filed the instant writ petition praying to declare the action of respondent No.3 in forfeiting the amount deposited by him, on the ground that when the e-auction notice, dated 22-09-2012, was issued by respondent No.2/Indian Overseas Bank, pendency of S.A. before the Debts Recovery Tribunal is not notified therein - Held, the respondents not only failed to mention about pendency of the S.A. before the DRT in the e-auction notice, but also when the auction was held on 25-10-2012, on which day, petitioner deposited Rs.6,62,500/- towards 25% of sale price, he was not made known about pendency of S.A. Only when respondent No.3 issued letter, dated 6-11-2012, confirming sale of the property in favour of petitioner for a total sale consideration of Rs.26,50,000/-, a clause was incorporated therein that sale confirmation was subject to outcome of the S.A. pending before the DRT - This conduct of respondents is sufficient enough to accede to request of the petitioner in setting aside forfeiture letter, which respondent sought to construe that it was an order of forfeiture, dated 06-02-2013 forfeiting amount of Rs.6,62,500/-, which was deposited by petitioner towards 25% of sale price of bid and direct respondents to return said amount to petitioner - With above directions, writ petition is allowed. **K.Chandrasekhar Vs. Govt. of India 2015(3) Law Summary (A.P.) 298 = 2015(6) ALD 185.**

—and **SECURITY INTEREST (ENFORCEMENT) RULES, 2002:** —When the Tribunal has got power to stay the proceedings, it has also got power to impose conditions,

as it may consider appropriate and necessary - Contention of the learned Senior Counsel appearing for the petitioner is that prima facie finding operates as res judicata - Certain observations or findings made while disposing of the interlocutory application, cannot be said to be a finding or ratio laid down - If the ratio is laid down in the interlocutory order, then such a ratio can be said to operate as res judicata in subsequent proceedings - If it is a final decision, parties are refrained from re-agitating same point at the subsequent stage of proceedings - Therefore, under no stretch of imagination it can be said that finding of observation given by this court at interlocutory stage has finally determined rights of parties - It is a prima facie view taken by this court for purpose of disposal of miscellaneous petition in writ petition - Therefore, contention that prima facie finding operates as res judicata cannot be accepted - Sec.17 of the SARFAESI Act can be invoked by the debtor – Sec.18 deals with a different situation, where any order passed by the Debts Recovery Tribunal is appealable before the appellate authority - So, both provisions are two independent provisions and they cannot be read together - Therefore, when a dispute has been finally resolved, notwithstanding fact that appellate authority has got a power, debtor has got power to file an appeal before appellate authority.....there is an effective alternative remedy available to the petitioner as contemplated under Sec.18 of the Act. .....it is not such an extraordinary case where pleading of petitioner can be struck down because direction of Tribunal or direction of this court has not been complied with, and it cannot be a ground to arrive at a conclusion that it is a case to strike down pleadings of writ petitioner. .....similarly order of this court has also not been complied with even after lapse of one year - Can it said to be an abuse of process of court, when writ petitioner for a variety of reasons may not be in a position to pay the amount - It is not case of 2nd respondent that in spite of having liquidated cash available with petitioner, it is not paying the amount wilfully or wantonly to avoid its liability - Under those circumstances, it cannot be said that it is an abuse of process of court. **Deccan Chronicies Holing Ltd. Vs. Debt Recovery Tribunal, 2014(3) Law Summary (A.P.) 339 = 2015(1) ALD 236 = 2015(3) ALT 40.**

—Sec. 13(2) - Since the borrowers failed to repay the loan, steps were initiated under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - A demand notice u/Sec.13(2) of the Act was issued on 02.05.2006 followed by a possession notice on 06.08.2006 - Later on, an auction notice was issued on 22.02.2007 which was published in Indian Express and Prajasakthi on 28.02.2007 fixing the auction on 30.03.2007 - Three bidders participated in the auction and the bid of the 2nd accused was found to be highest and sale certificate was issued in his favour on 02.06.2007 - After adjusting the amount outstanding to the loan amount, balance amount was put in fixed deposit at request of 3rd respondent on 03.06.2007 - Thereafter, at the request of the 3rd respondent, the fixed deposit proceeds were transferred to the account of the 3rd respondent at Bangalore on 17.12.2007 - The 3rd respondent initially filed a complaint before the Banking Ombudsman and the same

was rejected on 06.11.2007 on the ground that the complaint requires consideration on elaborate documentary and oral evidence - Thereafter, the 3 rd respondent filed petition before the District Consumer Disputes Redressal Forum, and the same also dismissed on 27.07.2009 - It appears that when said complaint was pending, he filed a complaint on 30.06.2008 before the Additional Chief Metropolitan Magistrate at Secunderabad, against the petitioner as accused No.3, the then Chief Manager/ Authorized Officer as accused No.1 and the auction purchaser as accused No.2 alleging that they committed offences u/Secs.420, 415, 418, 464, 477(A), 506 and 409 of Indian Penal Code - Learned Magistrate referred the complaint to the 2nd respondent for investigation and the same was registered as FIR - 2nd respondent issued a notice to Chief Manager of Bank on 26.02.2009 to attend police station in person - Chief Manager attended police station and explained case - Thereafter, the 2nd respondent issued a letter on 18.07.2009 to furnish information on loan account and same was furnished to him on 07.08.2009 - Another letter was issued on 07.11.2009 calling for various documents and same was also furnished on 05.01.2010 - Again letters dated 25.03.2010 and 27.03.2010 were issued calling for some more documents - At that stage, this writ petition was filed on 06.04.2010 - This writ petition was admitted on 07.04.2010 and stay of all further proceedings in FIR was granted - Held, facts unfold a case of harassment of the officers of the Bank for discharging their lawful duties - There may be procedural lapses or irregularities which can be remedied in the regular channels provided under provisions of the SARFAESI Act - Invocation of the criminal proceedings is surely not an alternative remedy except for the purpose of harassing the officers - Very complaint is not maintainable and its reference to Police is unwarranted - Learned Magistrate should have looked into the allegations in the complaint and should not have ordered for investigation in a routine manner - This is a clear case of non-application of mind by the learned Magistrate who ought to have taken the legal provisions and binding precedents into account - In view of the above facts, clear legal provisions and the case law on this aspect, the FIR is liable to the quashed and accordingly quashed - Writ Petition is allowed. **State Bank of India Vs. State of A.P. 2015(3) Law Summary (A.P.) 320 = 2015(6) ALD 665.**

—Secs.13(2) & 13(12) - **SECURITY INTEREST (ENFORCEMENT) RULES, 2002**, Rule 3 - Possession notice - Petitioner availed loan from 1st respondent/Bank by mortgaging immovable property - Since financial asset transferred treated loan as nonperforming asset (NPA), respondent got issued notice of demand u/Sec.13(2) - Since petitioner failed to comply with notice of demand respondent issued possession notice u/Sec.13(4) informing that secure asset has been taken possession and general public were cautioned not to deal with property - Petitioner contends that basis for possession notice being notice of demand issued by Advocate of second respondent who is not authorized Officer entire proceedings are unsustainable or vitiated - Respondents contend that when notice is counter signed by authorised officer of second respondent, action initiated

under Act is not vitiated - Any person aggrieved, has to necessarily approach DRT having jurisdiction u/Sec.17(1) of Act and if any adverse order is passed such person can even approach DRT - In this case, however, though possession notice was issued by authorised person of second respondent, same is based on a notice of demand issued by advocate of 2nd respondent which is without jurisdiction and ultra vires - Impugned order, set aside - Writ petition, allowed. **Sampoorna Battu Vs. ICICI Bank 2012(1) Law Summary (AP) 302 = 2012(3) ALD 245 = 2012(3) ALT 418.**

—Secs.13 (2) & 17 (7), R/W RULE 4 OF **SECURITY INTEREST (ENFORCEMENT) RULES** - GUIDELINES ISSUED BY RESERVE BANK OF INDIA - Petitioner availed loan from respondent/Bank and committed default in payment of instalments - Pursuant to notice from Bank, petitioner paid all amounts and approached Bank to liquidate remainder of liability - Inspite, respondent/Bank insisted for payment of further amount towards securitisation expenses incurred by it and impugned notice got published inviting sealed bids for sale of security assets - Petitioner contends that tender notice published inviting bids has not bothered to verify as to whether account has become a non performing asset (NPA) and that Bank has no authority to reject to receive balance outstanding amount from borrower until and unless securitisation expenses are also paid up simultaneously - Respondent/Bank contends that though petitioner has paid substantial amounts after issuance of notice u/Sec. 13(2), his liability was outstanding together with costs of Rs.1.9 lakhs as claimed by Recovery agent and that Bank is legitimate and justified in demanding amount towards securitisation expenses - Sec.13(7) - A mere look at provision contained under sub-sec.7 would indicate that all such costs, charges and expenses which have been properly incurred by secured creditor and any other expenses incidental thereto to be recovered from Banker - In this case, substantial amount has already been charged to borrower - One can perhaps understand these amounts representing proper expenditure - These expenses have been incurred by respondent/Bank for securing realization of secured asset by way of its sale - Therefore, they can legitimately pass muster in terms of Sec.13(7) - However, what baffled is statement made in counter affidavit filed by respondent/Bank that borrower is liable to pay further sum of Rs.1.9 lakhs for payment to Recovery agent - Respondent/Bank has intended to outsource services of Recovery agent or Enforcement agent as supplementing measure to efforts of recovery which Bank Officials themselves are required to undertake - A very handsome commission of not less then 10% recovery amount has been indicated has payable towards commission to these professional recovery/Enforcement agents - Granting of exorbitant amount of commission to recovery agents and enforcement agents at minimum rate of 10%, is too excessive and disproportionate to nature of work liable to be performed by them - Claim of respondent/Bank that sum of Rs.1.9 lakhs payable to Recovery agent held as exorbitant and unreasonable - Petitioner directed to pay sum of Rs.15,000/- towards proper expenses in this regard - Bank not justified in proposing to charge petitioner a further sum of Rs.1.9 lakhs in terms of Sec.13(7) - Since petitioner liquidated entire liability, directed

respondent/Bank to treat petitioner to have been freed from all further obligations - Writ petition, allowed. **Badugu Vijayalakshmi Vs. Authorised Officer & Chief Manager, SBI, Chirala 2010(1) Law Summary (A.P.) 119.**

—Secs.13(4),17, 34 & 35 - Respondents 1 to 3 - Fruit processing partnership Firm availed financial assistance for its business purpose by pledging property belonging to 4th respondent who is son partner in partnership Firm - Appellant initiated proceedings under Act and has taken possession of mortgaged property through its Authorize Officer - Respondents 1 to 3 filed suit contending that there is title dispute as such civil Court has jurisdiction and obtained temporary injunction from civil Court against appellant restraining Bank from taking steps for sale of the properties under Securitisation Act - Appellant contends that in view of provisions u/Sec.34 of Act, civil Court has not having any jurisdiction either to entertain suit or to grant injunction orders restraining appellant Bank from taking action in pursuance of power conferred under Act for recovery of debt and if respondents/plaintiffs are aggrieved of steps taken by u/Sec.13(4) of Act there is remedy of appeal u/Sec.17 of Act before DRT and without availing remedy of appeal by-passing same - Respondent approached civil Court and inspite of bar of suit, trial Court granted injunction - In view of judgment of Supreme Court considering scope of Provisions u/Sec.13, 17 & 34 of Act, case of appellant to accept bar u/Sec.35 of Act and also overriding effect of Provisions of Act given u/Sec.35 coupled with remedy provided to aggrieved parties u/Sec.17(2) of Act - Order of injunction, granted by civil Court, set aside - CMA, allowed. **Canara Bank, Khammam Branch, Vs. Jetti Samba Siva Rao 2014(1) Law Summary (A.P.) 221 = 2014(3) ALD 92 = 2014(2) ALT 588 = AIR 2014 AP 67.**

—Sec.14 - These writ petitions are posted before Full Bench to answer question framed in order of reference, which is as under:

"Whether the Chief Judicial Magistrate exercising his jurisdiction in Corporation area can assist secured creditor in taking possession of secured asset and pass an order in favour of secured creditor for the purpose of taking possession or control of any secured asset?"

Held, intention of Legislature was to achieve speedier recovery of dues without intervention of Tribunals of Courts and for quick resolution of disputes arising out of action taken for recovery of such dues - Ergo, by conferring jurisdiction on an authority to exercise power of assistance, which, his counterpart in a Metropolitan area, is exercising, Court is not interpreting provision in a different manner so as to negate intent of Legislature - Giving jurisdiction to Chief Judicial Magistrates in non-metropolitan area, who are exercising same functions as that of Chief Metropolitan Magistrates in metropolitan areas, would not in any way abrogate or contradict words used in Sec.14 of the SARFAESI Act, thereby causing prejudice to any of parties - On other hand, it would hasten process of rendering assistance to secured creditors to recover possession of their assets thereby achieving object for which SARFAESI Act has been introduced.

For the aforesaid reasons, Bench answer reference holding that nomenclature "Chief Metropolitan Magistrate" referred to in Sec.14 is inclusive of "Chief Judicial Magistrate" in non-metropolitan area and as such Chief Judicial Magistrate in a non-metropolitan area gets jurisdiction to entertain an application u/Sec.14 of the SARFAESI Act, 2002 - These writ petitions are directed to be placed before appropriate Bench for hearing on merits in light of observations made in this judgment. **T.R.Jewellery S.P.S.R. Nellore Dt. Vs. State Bank of India 2016(1) Law Summary (A.P.) 253 = 2016(2) ALD164 = 2016(2) ALT 226.**

—Secs.17 & 34 - Bank of India advanced loan to 10th respondent./Auto Mobiles under equitable mortgage - Since respondent committed default in repayment, Bank auctioned said property - Appellant/auction purchaser became highest bidder and property settled in his favour - Some other respondents filed suit claiming property as Joint Family property - DRT dismissed suit - Respondents filed suit in civil Court and same upheld by High Court holding that Civil Court has jurisdiction since properties are joint family properties - Any matter inrespect of which an auction may be taken even later on, Civil Court shall have no jurisdiction to entertain any proceedings thereof - Bar of Civil Court applies to all matters which may be taken cognizance of DRT - Civil Court jurisdiction is completely barred, so far as "measure" taken by secured creditor u/Sub-sec.(4) of Sec.13 of Act - In instant case, Bank proceeded only against secured assets of borrowers on which no rights of respondents have been crystalised before creating secured interest in respect of secured assets - High Court is in error in holding that only civil Court has jurisdiction to examine as to whether measures taken by secured creditor under Act are legal or not - Judgment of High Court, set aside - Appeal, allowed. **Jagidish Singh Vs. Heeralal 2013(3) Law Summary (S.C.) 256 = 2014(1) ALD 46 (SC) = 2013 AIR SCW 6378 = AIR 2014 SC 371.**

—Secs.17(1) & (7), 18(1) & (2)m 36 & 37 - **RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993** - **LIMITATION ACT,** Sec.29 & 24 - Appeal and I.A preferred before Debt Recovery Appellate Tribunal (DRAT) against order of Debt Recovery Tribunal (DRT), questioning the possession taken over by respondents/ Bank with regard to security asset - Petitioner preferred appeal before DRAT along with application seeking condonation of delay of 16 days in filing said appeal - DRAT dismissed I.A placing reliance upon decision of Madhya Pradesh High Court holding that u/Sec.18 of SARFAESI, Act, 2002, Appellate Tribunal DRAT has no power to condone delay in presentation of Appeal - Hence present Writ Petition - Though Sec.17 of SARFAESI Act styled as a right to appeal, it is, in fact, a forum for original proceedings against security measures - Sub-Sec.7 of Sec.17 provides that any Application made u/Sec.17 of SARFAESI Act shall be disposed of in accordance with provisions of DRT Act and Rules made there under - Sec.18 of Act provides right to appeal to DRAT against orders of DRT passed under Sec.17 of SARFAESI Act - Such appeal is also required to be disposed of in accordance with provisions of DRT Act and Rules

made thereunder - Tribunal and appellate Tribunal while discharging there functions exercise same powers as are vested in civil Court under CPC, while trying a suit in respect of specified as above - There is no express exclusion of Limitation Act under SARFAESI Act and so far as DRT Act is concerned under which DRT and DRAT function and entertain original and appellate proceedings under SARFAESI Act, clearly exercise powers of civil Court under CPC and in addition, Limitation Act is expressly made applicable u/Sec.24 of DRT Act - In view of that Sec.29(2) of Limitation Act is clearly attracted and thereby Sec.4 to 24 (inclusive) of limitation Act would be applicable to proceedings u/Sec.17 and 18 of SARFAESI Act before DRT as well as DRAT - Consequently therefore order impugned passed by DRTA rejecting petitioners application for condonation of delay for want of jurisdiction is liable to be set aside - Provisions of Sec.5 of Limitation Act are applicable to proceedings before DRAT u/Sec.18 of SARFAESI Act - Impugned order, set aside - DRAT directed to consider petitioner's application for condonation of delay afresh on merits and pass appropriate orders in accordance with law - Writ petition, allowed. **Sajida Begum Vs. State Bank of India, SARC Nampally, Hyderabad 2012(3) Law Summary (A.P.) 187 = 2012(6) ALD 69 = 2012(6) ALT 130.**

——and Rule 8(1) of the **Security Interest (Enforcement) Rules**, 2 - Petitioner alleged that 7th respondent failed to deposit 25% of bid amount on day of auction and also failed to deposit balance 75% within fifteen days - Petitioner further contended that sale was contrary to mandate of SARFAESI Act and the Rules of 2002 - Significantly, petitioner raised issue of postponement of sale from 01.07.2015 to 15.07.2015, but same was brushed aside on ground that petitioner, being applicant therein, was fully aware of extension of date of auction and Tribunal held that sale could not be set aside on this ground - Tribunal seems to have been of opinion that as petitioner and his family members were not coming forward to pay bank's dues, technical issue as to extension of date of auction did not warrant quashing of sale - Before this Court, petitioner again contended that bank had no power or authority to postpone sale from 1-7-2015 to 15-7-2015 without issuing a fresh sale notice - Therefore, Petitioner herein called in question said order given by Tribunal.

In its counter-affidavit, bank stated that after issuance of auction sale notice dated 29.05.2015 to borrowers under Rule 8(6) of Rules of 2002, it published same in newspapers on 30.05.2015, notifying date of auction as 1-7-2015 - The bank further stated that as bidders had problems logging in due to non-availability of digital signatures, its Authorised Officer extended date of auction sale to 15-7-2015 - Publication of postponement of auction sale was carried out in Newspaper on 1-7-2015 - The bank stated that on 15-7-2015, sale was knocked down in favour of 7th respondent and a sale certificate was issued on 13-8-2015 - The bank however admitted that actual possession of secured asset sold was not taken despite issuance of sale certificate.

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Held, Authorised Officer of bank could not have resorted to postponing date of auction even by 15 days by taking recourse to Rule 15 Schedule-II, Part-1 of Income Tax Act, 1961 - Once sale did not take place on 1-7-2015, due to a reason not at all attributable to petitioner, bank necessarily had to take recourse to proceedings afresh from the stage of Rule 8(6) of the Rules of 2002 - The auction sale held on 15-7-2015 was therefore incurably tainted by illegality and cannot be sustained - Once said sale is held to be illegal, consequential steps taken, by way of confirmation and issuance of a sale certificate, would be equally unsustainable in law - In present case, bank admits that sale was held on 15-7-2015 but strangely goes on to state that confirmation thereof took place on next day, i.e., 16-7-2015 - This methodology was itself alien to procedure contemplated under Rule 9 of the Rules of 2002 - Provision clearly and categorically posits that purchaser must immediately pay 25% of sale price on day of sale itself - Further, if balance purchase price is not paid on or before 15th day from confirmation of sale, time can only be extended as agreed upon in writing by parties.

According to bank, 7th respondent/auction purchaser sought extension of time under its letter dated 29-7-2015 and same was granted by the bank up to 12-8-2015 - Perusal of bank's letter dated 29-7-2015 granting such extension does not reflect petitioner being taken into confidence or his consent being obtained for granting such extension. **Polisetty Harinadh Vs. Authorized Officer, IOB, Visakhapatnam 2016(3) Law Summary (A.P.) 180 = 2016(6) ALD 409 = 2016(6) ALT 59.**

—and SECURITY INTEREST (ENFORCEMENT) RULES, 2002 - RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, Sec.3 - Petitioner herein sought for a Writ of Mandamus for declaring E-auction notice issued by Authorised Officer, proposing to sell immovable property, as illegal being contrary to provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules 8(6) and 9 of Security Interest (Enforcement) Rules, 2002.

Principal borrower has committed default in making repayment of loan and other financial assistance availed by him - In those set of circumstances, 1st respondent–Bank has classified loan account as 'non performing asset' and hence initiated measures for securitisation of loan under Sub-section (2) of Section 13 of Act - Demand notice has not produced desired result as borrower and its two guarantors have not repaid outstanding liability of approximately of Rs.1.50crores - In those set of circumstances, authorised officer of 1st respondent–Bank, 2nd respondent herein, has drawn a notice under Sub-section (4) of Section 13 read with Rule 8 (6) of Security Interest (Enforcement) Rules, 2002 informing principal borrower and two guarantors, including petitioner herein that possession of secured asset described in schedule to sale notice enclosed thereto has been taken under Sub-section (4) of Section 13 of Act and hence authorised officer has proposed to sell assets through e-auction mode, for which purpose a last

and final opportunity to discharge liability in full has been accorded to principal borrower and two guarantors, failing which sale of secured asset would be processed and undertaken - It is this notice, which triggered present writ petition.

Held, Supreme Court has clearly enunciated that a reading of sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 of Rules together, service of individual notice to borrower specifying a clear 30 days time gap for effecting sale of immovable secured asset is a Statutory mandate - Hence, use of expression 'or' found in Rule 9(1) of Rules is only appropriate to be read as 'and', as that alone would be in consonance with sub-section (8) of Section 13 of the Act - Court may also add that a notice of intended sale by providing a clear 30 days time to borrower preceding any decision to sell away secured asset would, in fact, be in consonance with mandate of provision contained in sub-section (8) of Section 13 of the Act, as it is too well known that Rules made under a Statute are only essentially intended to secure effective implementation of provisions contained in Statute - Court opinion, therefore, putting borrower on notice of 30 days duration by secured creditor conveying intention to put secured asset to sale is mandatory - Such notice would be applicable even if secured creditor later on decides to adopt any one of those four methods provided in clauses (a) to (d) of sub-rule (5) of Rule 8 of the Rules - As was already noticed supra, in cases of obtaining quotations from persons dealing with similar secured assets and also by entering into a private treaty, may not require publication of intended sale in newspapers - Hence, without, first of all, putting borrower on notice, threatening that prospects of liquidation of secured asset by any of methods specified under sub-rule (5) of Rule 8 of Rules would not only sub-serve object behind sub-section (8) of Section 13 of Act, but would, in fact, enhance efficacy of realising/securitising secured asset - As was already held by Court, secured asset is liable to be sold only in event of default persisting in liquidating liability - In other words, only when borrower commits a default in payment of outstanding liability, in spite of notice threatening with intended sale of secured asset, actual sale notification can follow, but not otherwise.

In instant case, secured creditor has put borrower on one single notice of sale, which was also published in two newspapers, but, he has not put borrower on a separate individual notice prior to deciding on mode of sale of secured asset - For this reason, Court opinion that sale undertaken pursuant to sale notification is vitiated for want of not providing opportunity of 30 days clear time before undertaking the actual sale.

Hence, allow writ petition, set aside sale, but however, Court preserve liberty to secured creditor to proceed further now by undertaking sale of secured asset, if borrower is still in default in clearing outstanding liability, by publishing afresh sale notification in accordance with sub-rule (6) of Rule 8 r/w. sub-rule (1) of Rule 9 of Rules.

M.Amarender Reddy Vs. Canara Bank 2016(2) Law Summary (A.P.) 221 = 2016(5) ALD 354 = 2016(4) ALT 193.

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—Bus Conductor - Removal from service - Traffic Inspector on checking found that respondent/conductor not issued tickets to some passengers and charged money to unused tickets and not mentioned destination and boarding places of passengers in waybills in order to misappropriate public money - Regional Manager passed order dismissing respondent from service and forfeited salary for suspension period - General Manager dismissed appeal filed by respondent - Asst. Managing Director dismissed second appeal - Labour Court set aside order of dismissal considering that punishment and penalty imposed on respondent was harsh in comparison to quantum of misconduct and it was reduced to stoppage of to increments in salary - High Court dismissed writ petition on ground that presumption that punishment of removal/dismissal from service is excessive - Contention that Labour Court and High Court had unnecessarily given consideration to amount involved without appreciating fact that conductor holds a post of trust and therefore punishment of removal from service awarded cannot be considered dis-proportionate - High Court passed order without appreciating fact that termination of service is very appropriate to seriousness of charge levied against respondent in view of fraud and misappropriation of money by respondent - Labour Court and High Court not justified in holding that punishment awarded was dis-proportionate - Punishment awarded by disciplinary authority as upheld by appellate authority, restored - Appeal, allowed. **Uttaranchal Transport Corporation Vs. Sanjay Kumar Nautiyal 2008(2) Law Summary (S.C.) 64.**

—Bank Employee - Disciplinary action - Enquiry Officer submitted Report holding that charges framed against petitioner/employee are proved - 3rd respondent/disciplinary Authority disagreed with findings on one of charges and ultimately dismissed petitioner from service - 2nd respondent partly allowed appeal converting order of dismissal into one of removal from service - Petitioner contends that 3rd respondent committed procedural lapses and that order of dismissal does not contain any reasons, worth their name and that 3rd respondent has straightway recorded a finding contrary to Report of Enquiry Officer, even before submission of explanation - In this case, controversy is about one charge and it is always open to disciplinary authority to disagree with findings recorded by Enquiry Officer - Evidently 3rd respondent not only disagreed with findings of Enquiry Officer, but also held that another charge is prove and he did not give opportunity to petitioner before he held a charge proved, in disagreement with enquiry report - Such a course is totally impermissible in law - 3rd respondent, disciplinary authority is discharging administrative, if not quasi-judicial functions - Law requires that conclusions arrived at by authorities must be supported by reasons - Absence of reasons is prone to pave way per arbitrariness and subjectivity in whole exercise - 3rd respondent has disagreed with findings of enquiry officer on a charge and proceeded to hold same as proved, without inviting explanation or objection about it from petitioner - Order of dismissal passed by 3rd respondent, unsustainable since it is totally bereft of reasons - Modification of punishment of dismissal into one of removal hardly of any solace to petitioner - A semblance of relief granted by appellate authority cannot cure serious defect and a glaring illegality in hands of disciplinary authority - Impugned orders of disciplinary authority and appellate authority,

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set aside - Matter remanded to 3rd respondent for fresh consideration and disposal - Writ petition, allowed. **B.V.Bhaskar Reddy, Kadapa Vs. State Bank of India 2008(2) Law Summary (A.P.) 1 = 2008(4) ALD 344 = 2008(3) ALT 592.**

—**CONSTITUTION OF INDIA,** Art.226 - Petitioner/employee of SBI, in-charge of gold loan Accounts, dismissed from service for alleged conduct of non-accounting of some amount remitted to gold loan account - Enquiry Officer submitting report holding that charge against petitioner not proved - 2nd respondent/disciplinary authority passed order imposing punishment of dismissal - Contention that 2nd respondent misdirected himself, firstly when he straight away disagreed with findings of enquiry officer and secondly, when he stuck to his earlier stand, by stating certain reasons which are totally opposed to record - Having issued show cause notice, as to why he cannot disagree with findings of enquiry officer, 2nd respondent did not assign any reasons worth its name, and has reduced entire exercise, to a formality - Even while issuing show cause notice to petitioner directing him to explain as to why punishment of dismissal shall not be inflicted upon him, 2nd respondent observed that there are no extenuating circumstances warranting lessor form of punishment - Except he wanted to inflict punishment upon petitioner he was not mindful of record or evidence - When Presenting Officer himself was of view that petitioner cannot be said to have resorted to any act of misconduct, 2nd respondent improved upon entire matter - This is one of rare cases, where disciplinary authority disagree with findings of enquiry officer and held that charge is proved, though neither complainant was examined, nor complaint was made part of record - 2nd respondent acted in a most capricious, arbitrary and irrational manner and marred career of petitioner for no fault of his - Impugned order, set aside - Petitioner shall be reinstated into service forthwith with all attendant benefits and back wages - Writ petition, allowed. **K.Suresh Babu Vs. Deputy General Manager 2008(3) Law Summary (A.P.) 27 = 2008(5) ALD 479 = 2008(5) ALT 426.**

—CONSTITUTION OF INDIA, Art.226 - Charge-sheet filed against petitioner, driver of APSRTC for causing accident by hitting motor cyclist - Petitioner attained age of superannuation and charge-sheet issued before he retired and disciplinary proceedings continued and ultimately 2nd respondent imposed punishment of reduction of pay of petitioner by one incremental stage with cumulative effect - Petitioner contends that by time impugned order was passed, petitioner retired from service and question of reducing his pay by one incremental stage does not arise and that impugned order cannot have any effect upon retirement benefits of petitioner - Punishment of this nature would carry any meaning, if only an employee is in service, it does not result in any recovery of amount which has already been earned by employee in form of emoluments - Once petitioner had retired from service punishment of reducing his basic pay by one incremental stage is almost futile exercise - 2nd respondent not realized this and imposed punishment in routine manner - Respondents directed to release all retirement benefits to petitioner without any deduction. **M.T.Rao Vs. A.P.S.R.T.C. Vizianagram 2008(2) Law Summary (A.P.) 409 = 2008(5) ALT 10 = 2008(5) ALT 650.**

— "Regularisation" - "Termination"-Appellants are appointed on daily wages in connection with some projects - Representation of appellants for regularisation of their services rejected and they are terminated from services - High Court dismissed writ petition filed by

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appellants - No person who is temporarily or casually been employed could be directed to be continued permanently - Appeal, dismissed.**C.Balachandran Vs. State of Kerala 2009(1) Law Summary (S.C.) 73.**

—Dakshin Bharath Hindi Prachara Sabha, Service Regulations, Regulation 20 - Petitioner Grade-1 Clerk of Sabha handed over letter of resignation to Manager of Office out of emotion on ground that Secretary insulted her before all staff members - Secretary issued proceedings accepting of resignation - Petitioner contends that competent authority of accept of resignation is only Board and Secretary not competent with power to accept resignation and that Regulation 20 stipulates, that a notice of 3 months for a permanent employee is necessary and there is no provision for waiver thereof - In this case, petitioner did not handover resignation to Secretary and he is not appointing authority - For all practical purposes Secretary provoked, if not forced her, to submit resignation and having been successful in his effort, he accepted it in utter violation of law and his action is highly objectionable and deplorable - Petitioner is permanent employee and termination of services at her instance could have been brought about, only by delivery of notice of not less than three months and there is no provision under regulations of waiver of this requirement - Therefore acceptance of resignation of petitioner is totally untenable and cannot be sustained in law - Respondent directed to reinstate petitioner forthwith - Writ petition, allowed. **P.Gayathri Vs. The Secy., 2010(3) Law Summary (A.P.) 97.**

—Petitioner joined service of CISF in year 1981 as a washer- man submitting caste certificate issued by Police Patel to effect that he belongs to “Chakali” community - Respondents undertook verification of genuinity of certificate and about a quarter century thereafter required petitioner to obtain caste certificate from Competent Authorities - MRO issued certificate in year 2004 to effect that petitioner belongs “Chalaki-BC-A community” - Deputy Commandant CISF Unit issued Article of charge to petitioner alleging that he submitted incorrect caste certificate at time of recruitment and said charge was elaborated through statement of imputation - Petitioner contends that there is inconsistency between Article of charge on one hand and in statement of imputation on other and that there is clear error apparent on face of record in asmuch as allegation of submitting false certificate is made in it though no such averment was made in Article of charge - Respondents contend petitioner was appointed against post earmarked for SC category and that he made a representation to effect that he belongs to SC category - Petitioner contends that there is clear inconsistency in version of respondents and error apparent on face of record, since it is not explained as to how an individual who produces a caste certificate to effect that he belongs to a particular caste, can be appointed against a vacancy reserved in favour of a different category - Allegation against petitioner that he claimed status of SC candidate could have been substantiated, if only he made a specific representation in that regard, particularly through application - If there did not exist any Notification, nor did petitioner submit any application it

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was ununderstandable as to how respondents have drawn inference that petitioner made a representation to effect that he belongs to SC community - Even according to respondents, appointment was made in a course of a "Recruitment Rally" and that respondents are not clear about existence of any SC reservation of such post - In this case, respondents did not keep in view, basic tenet that disciplinary proceedings can be initiated in context of social status, if only, representation made at time of recruitment by an individual has turned out to be false,in subsequent verification - Post held by petitioner is that of Dhobi "washer-man" - He belongs to caste, known after that profession - He served organization in menial post for about three decades and at fag end of his service, he is being hounded with irrelevant, baseless and perverse proceedings and such a course cannot be permitted, in a country governed by Rule of Law - Impugned proceedings, set aside - Writ petition, allowed. **P.Kumaraiah Vs. Union of India, 2011(3) Law Summary (A.P.) 292 = 2012(1) ALD 608 = 201(1) ALT 139.**

—Petitioner joined in service of CISF as Constable and worked at various places throughout Country - Subsequently petitioner appeared Departmental Competitive Exami-nation and was selected and got appointed as Sub-Inspector - However within two weeks 4th respondent issued proceedings rejecting candidature of petitioner on ground that he did not meet eligibility criteria and therefore petitioner was required to return order of appointment - Hence, present writ petition challenging said order - Petitioner contends that he was selected and appointed as Sub-Inspector on basis of his performance in written examination and on valuation of service record and that there was absolutely no basis for 4th respondent in withdrawing order of appointment and that impugned order of 4th respondent is violative of principles of natural justice since neither show cause notice was issued to him nor any reasons are mentioned in it - Respondent contends that a candidate must have good record for a period of four years preceding selection, and that in case of petitioner, it emerged that in year 2008 verbal counselling was given to him and on basis of same, his performance for period 1-3-2008 and 31-12-2008 was assessed as "average" and this would disable petitioner from being considered and that mere issuance of order of appointment does not confer any right on petitioner and withdrawal of same on realizing mistake cannot be treated as punishment - Impugned order is blissfully silent as to why candidature of petitioner was rejected, and what are eligibility criteria, which he did not meet - In case order of appointment is found to be irregular in any manner, candidate so appointed must be put on notice and he be given an opportunity to explain as to why order of appointment be not cancelled or withdrawn - If order is not preceded by any showcause notice it becomes violative of principles of natural justice - It becomes illegal and arbitrary, if it is bereft of reasons - Order impugned suffers from both vices - In this case, no Rule is sited in support of contention of respondents that if assessment or evaluation of performance of candidate is "average" it would disentitled him from being copnsidered under LDCE - Appointment of petitioner to post of Sub-Inspector

with a dint of heard work cannot be permitted to be taken away on basis of non-existent reasons and in violation of principles of natural justice - Impugned order, set aside - Writ petition, allowed**. Mahesh Gopalan Vs. Central Government of India, New Delhi 2011(3) Law Summary (A.P.) 314 = 2012(1) ALD 494 = 2012(1) ALT 158.**

—**CONSTITUTION OF INDIA,** Art.136 - "Claim for compassionate appointment" - When 5th respondent aged 16 years his father who was working as Peon, in school died in harness - When 5th respondent's mother applied for compassionate appointment, she was informed by Deputy Director (Education), that respondent would apply to Management for appointment as and when he attained majority - Petitioner accordingly applied for appointment as Sanskrit Teacher, since he had requisite qualification for appointment against said post - Inspite of direction from DEO, Manager of Institution appointed in favour of appellant in preference claim made by respondent - High Court disposed of Writ petition permitting 5th respondent to accept offer made to him by Manager as Peon and to file separate petition for redressal of grievance, if he continued to feel aggrieved - Accordingly his appointment as Peon thus remained without prejudice to 5th respondent claim against post of Sanskrit Teacher in School - Single Bench of HIgh Court allowed petition filed by respondent quashing appointment of appellant directing Manager to appoint 5th respondent in his place - Writ appeal filed by appellant dismissed by High Court - Hence, present SLP - Appellant contends that appointments on compassionate basis are made only to give succour to a family in financial distress on account of untimely death of earning member - Such appointment cannot therefore be made where family concerned has managed to survive for several years before claim for appointment is made by some one who was eligible for such appointment and that claim for appointment in instant case had been made nearly five years after demise of father of 5th respondent was liable to be rejected on ground of being highly belated - Compassionate appointment Scheme itself permits applications to be made within two years from date of death of Govt. servant - In case of minors permissible period for making applications is three years from date of minor attains majority - In this case, 5th respondent filed Application for appointment as Sanskrit Teacher was made within three years of his attaimg majority - Since 5th respondent satisfied other conditions stipulated in Govt., order - Therefore High Court justified in holding prayer for appointment made by 5th respondent should have been allowed - 7th respondent has not been allowed despite the order passed by High Court and salary for period appellant had worked could be paid to him and appointment of 7th respondent shall in that view be effective be from date is actually appointed by Manager of Institution - Appeal, dismissed. **Shreejith Vs. Deputy Director, Education Kerala 2012(3) Law Summary (S.C.) 1.**

—**CONSTITUTION OF INDIA,** Art.309 – Departmental enquiry against Bank employee for alleged irregularities - Disciplinary authority passed final orders confirming proposed

SERVICE LAWS:

punishment of dismissal of employee from Service - Appellate authority reduced punishment of dismissal to that of removal from service - Single Judge allowed petition filed by employee observing that though disciplinary authority disagreed with findings of enquiry Officer in respect of charge C.2 (i), he did not give opportunity to original petitioner to defend his case and remanded matter for fresh consideration after giving fresh show- cause notice - Appellant/Bank contends that respondent had not placed any material before learned single Judge to show that any prejudice caused to respondent while differing from finding of enquiry Officer on charge C 2(i) and as no prejudice was caused to respondent delinquent, single Judge ought not to have quashed and set aside order of removal which is otherwise just and legal - "Right to be heard" being a constitutional right of employee, cannot be taken away by any legislative enactment or service Rule including Rules made under Art.309 of Constitution of India Undisputedly, disciplinary authority had not given any opportunity before coming to conclusion on charge covered by C 2 (i) contrary to findings recorded by enquiry Officer - It is true that principles of natural justice cannot be put to straight jacket formula and if no prejudice is caused to any one by not following principles of natural justice very scrupulously, order violative of principles of natural justice need not become void in all cases - However, in view of seriousness of charge on C 2 (i) contention of appellant/Bank that no prejudice was caused to employee inspite of not giving notice by disciplinary authority before coming to different conclusion than one arrived at by enquiry Officer, cannot be accepted - Order of learned single Judge justified. **State Bank of India Vs. B.V. Bhaskar Reddy 2009(1) Law Summary (A.P.) 69.**

—Judiciary - G.O.Ms.No.164 - **CONSTITUTION OF INDIA,** Arts.14 & 16 - In response to Notification for 98 posts of Junior Civil Judges, petitioner, practicing Advocate appeared for written test as well as interview and was provisionally selected - Govt., issued G.O approving selection of 94 candidates for appointment as junior civil judges and that petitioner's name not included in said G.O., since her husband who is a practicing Advocate, is having close links with CPI (Maoist) Party, which is a prohibited Organization - Petitioner contends that neither there is any case registered against her husband nor she has taken up any case pertaining to Maoist party and that though there is no material against her, she has been unjustly denied appointment - Verification of character and and anticidents, however shows that confidential intrinsic intelligence collected recently has brought to notice of Govt., that petitioner and her husband are having close links with CPI (Maoist) Party and are also in touch with under ground cadre of CPI (Maoist) Party - Merely being in select list would not give any legal right to a person to claim appointment - Appointing authority has discretion to consider such selected candidates from stand point of all circumstances, reports and anticidents - Post to which appointment is sought to be made being a responsible and sensitive post of a Judge, association with unlawful organizations or political affiliations or relevant circumstances which, 1st respondent/Govt., took into consideration while exercising its discretion - Discretion exercised by 1st respondent/Govt., in not appointing petitioner cannot be said to be arbitrary, or unreasonable - Writ petition, dismissed. **K.Vijaya Lakshmi, Markapur, Prakasam Dt Vs. Govt. of A.P., 2009(1) Law Summary (A.P.) 430 = 2009(3) ALD 168 = 2009(2) APLJ 52 = 2009(3) ALT 544.**

SERVICE LAWS:

—G.O.Ms.No.342, Dt.4-8-1997, Clause 3(iv) (a) (ii) & 3 - **CONSTITUTION OF INDIA,** Arts.162 & 309 - Stoppage of increments of employee - Consideration for promotion - A.P. Administrative Tribunal passed order directing petitioner Govt., to consider case of promoting respondent, employee who suffered penalty of stoppage of increments - Govt., filed writ petition questioning order of Tribunal - In this case, respondent, employee was appointed as Agricultural Officer - Enquiry was ordered against him for certain irregularities and punishment imposed withholding three annual grade increments with cumulative effect - As per clause of G.O., 342, respondent, employee, who suffered penalty of stoppage of three increments with cumulative effect is not entitled to be considered for promotion/appointment by transfer for twice period for which increment(s)/are stopped with cumulative effect both for selection as well as non selection posts - Period of six years completes by 10-12-2007 and thus respondent is not entitled for promotion up to 10-12-2007 - Respondent contends that his case not considered for a year 2005-06 and he should have promoted on par with his juniors as three increments period is already over by withholding three increments by 1-10-2004 as per clarification issued by Govt., in Circular Memo No.34633/Ser.C/99, G.A (Ser.C), Department dt.4-11-1999- Respondent contends that as per said Circular Memo which was in force as on date of panel year 2005-06, is entitled for promotion - Govt., issued another Circular Memo No.5074/Ser.C/A1/2009-1, dt.9-2-2009 clarifying earlier Circular dt.4-11-1999 bringing into effect Govt. order in G.O.Ms.No.342 - As per G.O.Ms.No.342 respondent is not entitled to be considered for promotion till 10-12-2007 - However, respondent's case immediately considered after punishment was over and subsequently promoted on 30-8-2009 - Tribunal failed to consider effect of G.O., and erroneously relied on clarification Memo dt.4-11-1999 - Order of Tribunal, set aside - Writ petition, allowed. **State of A.P. Vs.K.Abhimanyudu 2009(3) Law Summary (A.P.) 222 = 2009(6) ALD 636.**

—"Alteration of date of birth in Service Register" - Petitioner, retired Trolley Man, aged 73 years, filed O.A., before Central Administrative Tribunal, Hyderabad Branch, questioning letter dated 28-6-2006 issued by South Central Railway seeking recovery of certain amount with allegation that petitioner received over payment for four years beyond age of superannuation due to alteratin of date of birth in Serice Register - Tribunal dismissed O.A - In this case, petitioner entered in Railway as Trolley Man on 30-11-1953 and his date of birth was entered as 7-10-1932 and later stage it was corrected as 7-10-1936 - As per date of birth entered at initial stage petitioner ought to have retired on 31-10-1990 on attaining age of superannuation i.e., 58 years - However Railway Administration allowed petitioner to continue to work till 24-10-1994 on basis of corrected date of birth - Hence impugned proceedings issued requiring petitioner to pay back Rs.99,994/- and as matter of fact said amount was recovered from gratuity payable to petitioner - Admittedly petitioner was an illeterate man was appointed as Trolley Man attending to hard labour work - Service record and registers are always maintained by Railway Administration and they were in their custody -

SERVICE LAWS:

Petitioner also addressed letters pointing out discrepancy in entry as to date of birth - Even if date of birth is taken as 7-10-1932, there was no fault on part of petitioner in continuing service beyond age of superannuation as per that date - If at all any thing it were authorities, who are required to maintain records that were not vigalent - Petitioner cannot be made to suffer on that account - In absence of evidence of fraud or misrepresentation, salary already paid for service beyond actual age of retirement cannot be recovered - Amount was already recovered by respondents from gratuity payable to petitioner - It is therefore just and necessary that petitioner be compensated following principle of restitution - Impugned letter dated 28-6-2004 issued by respondents - Quahsed - Respondents directed to refund amount recovered from petitioner - Writ petition, allowed. **Laxmaiah Vs. South Central Railway, rep. by its GM., 2013(3) Law Summary (A.P.) 297 = 2014(2) ALD 384 = 2014(1) ALT 289.**

—VRS - "Revised Pay Scales" - Petitioners 1 & 2 were retired in service 15-10-1998 and 10-5-2000 respectively and contend that they are entitled to monetary benefits from 1-1-1997 under Revised Pay Scales till their respective - Central Govt., has been applying its Rules to Central Public Sector Under takings (PSUs) through various mechanisms including Presidential directive - It is contended that when petitioners retired from service under VRS concession of mode of employment cannot change benefits to which they would have been entitled to had they been in service and that petitioners are entitled for claculation of ex gratia taking into consideration Revised Pay Scales together with monetary benefits from 1-1-1997 and shall pay same to petitioners - Respondent contends on account of amalagamation, that ex gratia was paid to petitioners once and for all on account of implimentation of VRS and that petitioners cannot seek for payment of additional ex gratia towards monetary benefits on account of Revised Pay Scales - Contention of petitioners that in fact Dearness Allowance and gratuity were revised after petitioners retired from service through VRS and revision regarding Dearness Allowance and gratuity were in fact implemented in favour of petitioners and that petitioners are entitled to such benefit in respect of other benefits as well - Revised Pay Scales in 3rd respondent/Company are applicable to every employee that retired from service after 1-1-1997, so much so same is applicable to petitioners and that action of respomdent in not extending revised pay scales is arbitrary - Respondents directed to extend Revised Pay Scales to petitioners - Writ petitions, **L.Venkateswara Sastry Vs. The Union of India, 2013(3) Law Summary (A.P.) 97 = 2013(6) ALD 369.**

—Dismissal of an Employee by HPCL - Writ Petition filed by Respondent/employee - Writ Petition allowed by Single Judge - Writ Appeal filed against Order of Single Judge - Held, Principles of natural justice have their own importance in administrative law - Once notice of hearing was issued and requests for adjournments were acceded to, an employee, who was determined not to participate in enquiry cannot complain

SERVICE LAWS:

of violation of principles of natural justice - Principles of Natural Justice - Once a person has remained ex parte, he cannot complain of denial of opportunity, much less, violation of the principles of natural justice - Setting aside the order of dismissal, on such grounds, would amount to putting premium on irresponsible and challant conduct of an employee, who is already facing charges - Writ Appeal Dismissed. **Hindustan Petroleum Corpn., Vs. V.Srinivasa Rao 2014(2) Law Summary (A.P.) 295 = 2014(5) ALD 335 = 2014(5) ALT 374.**

—"Administrative Laws" – "Rules framed are prospective" - Petitioners, working in Mumbai Municipal Corporation prayed their promotions to vacant post according to Rules framed under M.M - Corporation Act - Promotions made prior to 28-4-2011 under extant Rules promoting petitioners – A Rule becomes effective only from date of promulgation by publication in Official Gazette on 28-4-2011 – Appeals allowed. **Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje 2014(1) Law Summary (S.C.) 158.**

—"Change of date of birth" - "Superannuation" - "Suppression of fact" - Respondent/ employee joined service by recording his date of birth as 20-2-1942 - Competent Authority rejecting Application of respondent for change of his date of birth from 20-2-1942 to 15-1-1948 - Trial Court decreed suit filed by respondent relying upon date entered in birth certificate issued by a Municipal Corporation holding that correct date of birth of respondent is 15-1-1948 - 1st appellate Court allowed appeal and reversed judgment of trial Court - High Court also dismissed 2nd appeal - Respondent employee got his date of birth recorded as 15-1-1948 by producing copy of judgment of trial Court - Appellants contend that once decree passed in favour of respondent/ employee was set aside, finding recorded therein will be deemed to have become non-existent and same could not be made basis for entertaining respondent's claim that his date of birth was 15-1-1948 and that copy of birth certificate issued by Corporation cannot be taken into consideration for deciding controversy relating to respondent's date of birth because if he is treated to have been born on 15-1-1948, then he would have been a minor as on 27-5-1965 onwhich date respondent appointed as LDC and as such after securing employment on basis of date of birth as 20-2-1948, respondent is estopped from claiming his correct date of birth as 15-1-1948 - In this case, respondent instead of relying upon birth certificate he produced copy of judgment of trial Court and got his date of birth recorded as 15-1-1948 by suppressing fact that lower Court had reversed judgment of trial Court - Therefore Division Bench of High Court committed serious error by setting aside orders passed by Single Judge - In this case, respondent also did not question Report of enquiry Officer who found him guilty in all charges and disciplinary Authority imposed penalty of 10% cut in basic pension - Impugned judgment of Division Bench, set aside - Appeals, allowed. **Lakshmibai National Institute of Physical Education Vs. Shant Kumar Agrawal 2013(1) Law Summary (S.C) *181***

—Master and Servant – Employer and Employee – Relationship – Determination of – Principles – Stated - In order to determine the existence of employer-employee

relationship, correct approach would be to consider as to whether there is complete control and supervision of the employer, Company - The prima facie test for determination of relationship, master and servant is existence of right in master to supervise and control the work done by servant not only in matter of directing what work the servant to do but also the manner in which he shall do his work. **National Aluminum Co., Ltd. Vs. Ananta Kishore Rout 2014(2) Law Summary (S.C.) 88.**

SPECIAL MARRIAGE ACT:

—Sec.1954, Secs.27,36 & 37 – "Maintenance" and "support" – Medical reimbursement – Allegedly wife sustained injuries on account of appellant/husband pushed her – Though appellant/husband not responsible for injuries sustained by wife a false claim was put forward by her against husband for reimbursement of medical expenses - Appellant/husband contends that petitioner filed by wife was not maintainable as she was gainfully employed and not entitled to amount from him and she had already received amount from Insurance Company and he is not liable to pay anything to her – Trial Court directed husband to pay certain amount – High Court partly allowed petition, observing that trial judge did not commit any error of law or of jurisdiction in ordering appellant/husband to pay medical reimbursement - PERMANENT ALIMONY AND MAINTENANCE - Wife is entitled to "maintenance" and "support" and two terms "maintenance" and "support" are comprehensive in nature and of wide in amplitude – Decision or reasoning of Courts below – Justified – Appeal, dismissed. **Rajesh Burmann Vs. Mitul Chatterjee (Burman) 2009(1) Law Summary (S.C.) 12 = 2009(1) ALD 102 (SC) = AIR 2009 SC 651 = 2008(8) Supreme 358.**

SPECIFIC RELIEF ACT

—Respondent filed suit against appellant for relief of specific performance of agreement of sale, contending that, appellant in his capacity as Manager of Joint family he agreed to sell certain extent of land for consideration of certain amount and amount was also paid on date of agreement that appellant was under obligation to execute sale deed with participation of his sons by receiving balance of consideration - Respondent got issued notice and filed suit for specific performance - Appellant filed written statement, contending that agreement pleaded by respondent was forged one and that even according to recitals in agreement, or notice suit land is his ancestral property and it could not have been sold, except for family necessities and that recitals in agreement or notice do not support case of respondent - Trial Court decreed suit - District Judge dismissed appeal - Hence second appeal - Appellant contends that trial Court and lower appellate Court have misunderstood and misinterpreted ExA.1 and A.2, agreement and notice and proceeded as though suit property is exclusively owned by appellant and it was sold for family benefit and that his contradictions cannot be reconciled, and that they are not in conformity with recitals in agreement and notice - Trial Court proceeded as though sale was effected for benefit of family, where as in agrement Ex.A.1 it was clearly mentioned that alleged sale is for personal benefit of appellant - Respondent/plaintiff contends that conduct of appellant shows that he

went on changing stands as and when suited to his convenience - At one stage he disputed execution of Ex.A.1, and later on, he made an attempt to fall back upon theory of coparcenary property, interests of family and non- joinder of necessary properties - Trial Court and lower appellate Court were convinced that agreement is proved and inescapable legal consequences is that suit be decreed and that no substantial question of law arises for consideration - In this case, at threshold of plaint itself, it is pleaded that appellant is Kartha of joint family and he executed Ex.A.1 for sale of an item of immovable property for family necessity - However a perusal of agreement presents a different picture - In that it is mentioned that property is one that has accrued to appellant from his ancestors and that sale is effected to meet his own expenses and in Ex.A.2 notice also respondent/plaintiff mentioned that appellant is manager of Joint family and for benefit of joint family necessities he offered to sell property - When there is serious dispute as to very character of property, enforceability of transaction suffers corresponding weakness - However when objection raised to effect that property belongs to joint family and that in absence his sons and other co-parceners it cannot be completed and that respondent is under obligation to implead other co-parceners and as matter of fact Ex.A. 1 itself provides for that - Inspite of these facts respondent plaintiff did not take steps to implead other co-parceners - Decree passed by trial Court and affirmed by lower appellate Court, set aide - Second appeal, allowed. **Jala Anjaiah Vs. Ramisetty Anjaiah 2012(1) Law Summary 107.**

—Sec.2(b), 3 and 34 – **LIMITATION ACT,** Sec.34 and 38 – **CIVIL PROCEDURE CODE**, Or.41, Rule 31(1)(a) - Settlement Vs. Will - Mere stray sentence in the document cannot defeat the very purpose of the document - Mere using of the sentence that the deed will come into force after the death of the executant would not change the very nature of the document - Finding of the First Appellate Court that documents are settlement deeds, upheld - Suit for declaration with inadequate or irrelevant consequential relief would undoubtedly fall within the ambit of proviso to Section 34 of the Specific Relief Act - Plaintiff instead of asking the relief of injunction ought to have asked the relief of recovery of possession of the plaint schedule property which he is not in possession of - Held, plaintiff not entitled for the relief of declaration - Plaintiff's right to sue accrued in 1984 and the limitation period to file a suit is until 1987 but the plaintiff filed suit 1991 - Held, suit barred by limitation – Grant of relief does not arise - Trial Court opinion upheld and First appellate court's grant of relief of declaration unsustainable – Second Appeal by the defendant No. 6, allowed. **V.Nagamanemma Vs. V.Nagulu Naidu 2014(2) Law Summary (A.P.) 250 = 2014(5) ALD 486.**

—Sec.14(b) - Personal services - Respondent/plaintiff/workman of Tyre Copany filed suit for reliefs of wages and all other consequential benefits of service from defendant's Company - Defendant filed Application stating that civil Court has no jurisdiction - Trial Court allowed Application and dismissed suit - 1st appellate Court reversed judgment and decree of trial

Court, holding that civil Court has no juridiction to entertain dispute - High Court confirmed order of 1st appellte Court - In this case, reliefs claimed by plaintiff are clearly seeking enforcement of contract of personal service and civil Court has no jurisdiction to grant such reliefs - High Court and 1st appellate Court were clearly in errer in holding that civil Court has jurisdiction - Impugned judgment of High Court and appellate Court, set aside - Appeal, allowed. **Apollo Tyres Ltd. Vs. C.P. Sebastian 2009(3) Law Summary (S.C.) 109.**

—Sec.16 - Plaintiff filed suit for specific performance of agreement of sale contending that he paid advance amount of Rs.50,000/- towards sale consideration of Rs.3.5 lakhs and took possession of schedule property and constructed room for watchman and always ready and willing to perform her part of contract, but defendant changed his mind due to increase in value of land alleging that plaintiff not ready and willing to perform her part of contract and cancelled agreement of sale forfeiting advance paid by plaintiff - Trial Court decreed suit in favour of plaintiff directing defendant to execute sale deed - As seen from terms and conditions of agreement, there is no default clause or clause for forfeiture of amount and also not mentioned that time is essence of contract - Plaintiff also mentioned in reply notice that defendant after receiving part of sale consideration made plaintiff to spend considerable amount to clear encroachments and now cannot unilaterally cancel agreement, muchless forfeit advance amount and that she is always ready and willing to perform her part of contract - In this case, plaintiff ascertaining from beginning that she is ready and willing to pay balance sale consideration and there was evidence to effect that she offered amount to defendant, but he refused to receive same on account of hike in prices of land and in view of explanation given by plaintiff and in view of her offer to pay balance sale consideration, it cannot be said that plaintiff is not ready and willing to perform part of her contract - No exclusive substantial question of law to be considered, except that time is essence of contract and Courts below specifically mentioned that there was no default clause or that there was no clause that time is essence of contract and in absence of such clause, stipulation of period for payment of balance of sale consideration by itself cannot be treated as time is essence of contract - Second Appeal, dismissed. **K.Mahadeva Rao Vs. Smt.Vaztha Tabassum Ghouse 2008(2) Law Summary (A.P.) 293 = 2008(4) ALD 781 = 2008(5) ALT 44.**

—Sec.16 - Suit is filed for specific performance of agreement of sale dated 10.08.1963 - Defendant is not under any legal obligation to execute any sale deed in favour of plaintiff and plaintiff had never demanded defendant to execute sale deed prior to the filing of suit - Defendant, who is owner of suit lands, is at liberty to sell his share to any person after 14.12.1964 - Before instituting suit, plaintiff had not issued any notice - There is no enforceable agreement to sell - Findings in former suit do not operate as res judicata as it is only a simple suit for perpetual injunction - After full fledged trial and on merits, trial Court had decreed suit of plaintiff - Aggrieved defendant had preferred first appeal and same was allowed by District Judge - Therefore, sole plaintiff had preferred this second appeal - Since, sole plaintiff/appellant had died

during pendency of this appeal, his legal representatives were brought on record as appellants 2 to 4; and, they are prosecuting this second appeal - It is also pertinent to note that sole defendant also had died during pendency of this second appeal and his legal representatives were brought on record.

Held, Court below is justified in holding that plaintiff who had set up a false plea of payment of consideration is not entitled to equitable relief of specific performance and that plaintiff, who is not ready and willing to perform his part of contract by not paying the balance sale consideration within one month i.e., before 10.09.1963 is not entitled to relief - In view of narrow compass of two substantial questions of law raised in second appeal, contentions raised by appellants do not merit consideration - Even otherwise, no valid and sufficient grounds as required under law are made out to over turn well reasoned findings of fact recorded by court below - In view of provision of law, Court below is right in not granting relief of refund of earnest money and part of sale consideration paid as no relief alternatively for refund of said amounts was claimed by plaintiff - Plaintiff did not also make an attempt even during pendency of first appeal to seek an amendment of plaint; the plaintiff had thus failed to seek the alternative relief - This Court accordingly holds that plaintiff is not entitled to aforementioned alternative relief - Viewed thus, this Court finds that there is no merit in second appeal and that there is no substance in substantial questions of law and hence, second appeal is liable to be dismissed - In result, Second Appeal is dismissed. **Narayana Reddy (died) per Lrs. Vs. Khaja Guam Mustafa (died) per Lrs., 2015(3) Law Summary (A.P.) 546**

—Secs.16 & 20 - Suit filed basing on agreement of sale executed by appellant/defendant - Defendant took specific stand that agreement of sale cannot be enforced since plaint schedule property is joint family property of appellant/defendant and his sons are not parties to agreement - Trial Court decreed suit holding that in light of recitals in agreement that plaint schedule property is self acquired property of appellant/defendant and hence non-joining of sons in execution of agreement may not seriously alter situation - Appellant/defendant contends that theory of blending as laid down by Hindu Law had not been considered in proper perspective and that plaint schedule properties were never treated as seperated properties of appellant/defendant and this is a case of absence of title and hence relief of specific performance cannot be granted - Respondent/plaintiff contends that sons of defendants are not necessary parties since property is self acquired property and that as plaintiff always has been ready and willing to perform his part of contract and that trial Court arrived at correct conclusion in decreeing suit - Findings of trial Court relating to granting of specific relief on strength of agreement of sale directing to execute registered sale deed and delivery of possession of plaint schedule property to plaintiff, are confirmed - Appeal, dismissed. **Akella Venkata Rama Subrahmanya Sarma Vs. Annangi Sreeramamurti 2008(3) Law Summary (A.P.) 81 = 2008(5) ALD 534 = 2008(5) ALT 369.**

—Sec.16(c) - Appellants/plaintiffs filed suit for specific performance of agreement of sale in respect of suit schedule property - Trial Court dismissed suit - District Judge dismissed appeal by confirming judgment of trial Court - Hence, second appeal filed

contending that both Courts below failed to appreciate evidence and other material on record in proper perpective and came to erroneous decision in dismissing suit and appeal - Trial Court failed to consider that it has passed common order in I.As granting injunction against defendants and directed plaintiffs to deposit balance amount of consideration of Rs.3 lakhs in to Court and accordingly said amount was deposited by appellants/plaintiffs - However, trial Court without there being any material support has observed that late CNR, original purchaser during his life time had never approached D1 offering balance amount of sale consideration in order to obtain sale deed as such D1 had already intimated him that he had cancelled agreement of sale for non-payment of balance amount of sale consideration - Cl.3 of Ex.A1 agreement reads that vendor shall obtain encumbrance certificate on property for period of 13 years and Cl.8 of Ex.A.1 reads that execution and registration of sale deed shall be completed within one year from date of recording names of vendors in revenue records - Therefore observations made by trial Court are absolutely baseless when seen in light of such clauses in agreement of sale - When terms of Ex.A.1 agreement are crystal clear, D1 was under obligation to do certain acts under said agreement and plaintiffs cannot be said to be not in a position to comply with conditions of agreement - In fact plaintiffs have capacity to pay balance amount of sale consideration and they are ready and willing to perform their part of contract - Plaintiffs further contend that in circumstances it can be presumed that when agreement of sale was not terminated, as required in common paralance of law, how could a Court decline to grant relief of specific performance stating that plaintiffs are not entitled to such relief - Comment of 1st appellate Court is erroneous in light of plaintiff depositing Rs.3 lakhs balance amount of sale consideration into Court - Therefore contention of defendants that Ex.A.1 agreement was cancelled orally should have no legs to stand - Further observation of 1st appellate Court that due to increase of price of lands in surrounding area, plaintiffs are not entitled to perform agreement of sale is erroneous and that escalation of real estate price was no ground for denying specific performance relief when other side tries to wriggle out of contractual obligations - Question of time being essence of contract is concerned, once it is admitted that agreement was orally cancelled in absence of any particular date it is to be inferred that time stipulated becomes unconfined, whereupon onus lies on defendants to show that they terminated agreement lawfully - Since it is case of plaintiffs through out that they were ready and willing to perform their part of contract and as such, they are protected by provisions of Sec.16(c) of Act as well as explanation thereto - In this case, contention of defendants that their father D1 cancelled Ex.A.1 agreement of sale orally not corroborated by examining any independent witness and further, no prescribed procedure is followed or steps were taken to cancel Ex.A.1 and that defendants nowhere in proceedings have stated date of cancellation of Ex.A.1 by D.1 - It is settled proposition of law that escalation of real estate price is not a ground to deny specific relief - So far as readiness, willingness and capacity of plaintiff are concerned, having regard facts and circumstances of case Court is of view plaintiffs are ever ready and willing to

perform their part of contract and that their capacity to pay balance sale consideration particularly having regard to fact that they deposited balance sale consideration of Rs.3 lakhs into Court - In this case, having regard to material available on record questions raised by plaintiffs are substantial questions of law and they are proved and Court is of view that Courts below have committed error in deciding suit and 1st appeal in favour of defendants - Therefore judgments of 1st appellate Court and trial Court are set aside - Second appeal admitted and allowed. **Chama Radamma Vs. Chama Venu Gopal Reddy 2012(2) Law Summary (A.P.) *47* = 2012(3) ALD 690 = 2012(4) ALT 384 = AIR 2012 AP 169.**

—Sec.16(c) - **CIVIL PROCEDURE CODE,** Sec.100 - Second appeal - Respondent/ plaintiff filed suit against appellant/defendant for specific performance of agreement of sale contending that defendant agreed to sell plaint schedule property for certain amount and received some amount as advance and also agreed to handover possession after registration of sale deed - Since defendant failed to execute sale deed, legal notice issued to which defendant gave reply denying execution of agreement and receiving of advance amount - Hence, filed suit - Appellant/derfendant contends that he is an illiterate and not worldly- wise and that he was under influence of plaintiff's husband who by playing fraud obtained thumb mark of defendant on white paper and subsequently created agreement of sale - Since agreement of sale is forged one, same is not enforceable - Trial Court decreed suit holding that plaintiff has proved payment of advance amount and execution of agreement - Appellate Court confirmed judgment of trial Court, however holding that burden lies on defendant to show that contents of agreement were not read over to him before he affixed his thumb impression observing that plaintiff clarified in her evidence that as usual practice scribe referred in agreement that possession of land was delivered to plaintiff though possession was not delivered on date of agreement - Hence, present second appeal challenging same - In this case, High Court found that both Courts below mechanically recorded a finding that agreement is true and that plaintiff is ready and willing to perform his part of contract - Phrase "substantial question of law" as mentioned in amended in Sec.100 CPC is not defined in Code - Word substantial as qualifying "question of law", means - of having substance, essential, real, of sound worth, important or considerable - Findings of Courts below appears to be perverse and not based on evidence on record and appears to be as a result of non-application of mind - In this case, admittedly defendant is an illiterate person - A perusal of recitals of agreement clearly go to show that matter was adjusted by writing closely about thumb impression and schedule of property was closely written - It clearly suggests that matter was written so closely on paper to adjust same above thumb impression which was already thereon agreement - Any person with open eye on perusal of agreement can come to reasonable conclusion that first thumb impression was obtained and subsequently matter was written on agreement - It is duty of Court to examine entire material placed before it in proper perspective - Evidence has to be analyzed and conclusions have to be drawn based on sound reasoning - Plaintiff

failed to adduce any sufficient and satisfactory evidence to show that defendant had put his thumb mark in presence of P.Ws. and also payment of advance amount to defendant - Courts failed to appreciate that there was inconsistency with regard to delivery of possession in pleadings of plaintiff and in her evidence - Burden of proof - Appellate Court observed that burden lies on defendant to show under what circumstances he had put to thumb impression - Heavy burden lies on party who is relying on document executed by an illiterate and rustic villager to prove that contents of document were read over to that person and he understood same, that means if it is not mother tongue of that person contents of document are truly translated to that man in his mother tongue and after understanding contents of same he had to put his thumb impression on such document - A duty is cast upon Courts to keep in mind strict rule of law in respect of onus where executant happens to be ignorant illiterate - In this case, admittedly, agreement of sale is dated 30-1-1991 and suit was filed on 21-3-1994 i.e., beyond period of three years, therefore it is clear that suit not filed within reasonable time - That delay in approaching court also should be taken into consideration in a suit for specific performance of contract - In this case, that Courts below have wrongly placed burden on defendant instead of placing it on plaintiff with regard to proof of execution of agreement - Courts below also gave perverse finding that plaintiff proved payment of advance amount to defendant and executed agreement - Impugned judgments, set aside - Second appeal, allowed. **Ayithi Appalanaidu Vs. Petla Papamma, 2011(2) Law Summary (A.P.) 204 = 2011(5) ALD 393 = 2011(3) ALT 735 = AIR 2011 AP 172.**

—Secs.16(c) - **CIVIL PROCEDURE CODE,** Or.6, R.3, r/w Forms Nos.47 & 48 of Apendix -A of CPC - **EVIDENCE ACT,** Sec.45 - 1st respondent/plaintiff filed suit demanding 1st defendant to execute sale deed after accepting balance sale consideration - Defendants denied specifically that plaintiff never demanded specific performance of forged contract of sale - Trial Court decreed suit rejecting plea of forgery on ground that opinion of expert not corroborated and no steps are taken by 1st respondent in that direction - Appellant/ 2nd defendant contends that expert evidence is offered before Court, corroboration is not required and that trial Court committed error in rejecting of evidence of expert and that signature of 1st defendant on agreement is a forged signature and that requirements u/ Sec.16 (c) of Act and Or.6, R3 r/w Forms 47 & 48 of CPC are mandatory and that plaintiff not specifically make a demand in writing by sending Notice - Opinion given by expert is a relevant fact and expert himself becomes a witness - In such an event, merely because witness is not corroborated, Court cannot throw away opinion of expert (relevant fact) and evidence given in relation to such relevant fact, (evidence of expert) - Trial Court erreneously applied law ignoring binding precedents of Supreme Court and therefore finding of trial Court cannot be sustained - Ex.A.1 not binding as signature of 1st defendant is forged - Reading Form Nos.47 & 48 of CPC together and Sec.16(c) of Specific Relief Act, it has to be held that ordinarily requirement of law is issuance of registered notice by plaintiff demanding, accepting of balance sale consideration and execution of sale deed by vendor - Therefore suit for specific performance has to comply requirements

prescribed in Sec.16(c) of Act and Forms 47 & 48 of Apendix-A of CPC - In this case, even oral demand has not been proved and plea of oral demand does not carry case of plaintiff any further - Therefore suit is barred and is liable to be dismissed - Appeal, allowed. **Baddam Prathap Reddy Vs. Chennadi Jalapathi Reddy 2008(2) Law Summary (A.P.) 357 = 2008(5) ALD 200 = 2008(5) ALT 192 = 2008(3) APLJ 30.**

—Secs.16 (c), 10, 21 & 23 - **CIVIL PROCEDURE CODE,** Or.3, Rules 1 & 2 - **EVIDENCE ACT,** Sec.20 - Respondent filed suit represented by his attorney holder for specific performance of agreement of sale against appellant - Defendant resisted suit contending that plaintiff not ready and willing to perform contract by paying balance of sale price and get sale completed and he was not entitled for specific performance in view of breach committed by him and earnest money amount paid by him stood forfeited and that suit not maintainable as it was not filed by duly authorized person - Trial Court held that time was not essence of contract and defendant failed to prove agreement was rescinded and that plaintiff proved that he was ready and willing to perform his part of contract and that suit not barred by time and therefore plaintiff entitled to specific performance - District Judge dismissed appeal filed by defendant affirming finding recorded by trial Court - High Court dismissed 2nd appeal - Appellant contends that plaintiff did not sign agreement nor sign plaint nor gave evidence - Plaintiff's attorney holder who represented plaintiff initially not examined - 2nd attorney holder not personally aware of transaction and therefore no acceptable or valid evidence about readiness and willingness - Trial Court ought to have dismissed suit by drawing presumption that plaintiff's case was false for non-compliance with Sec.16(c) - In a suit for specific performance plaintiff should not only plead and prove terms of agreement, but should also plead and prove his readiness and willingness to perform his obligation under contract - Under Rule 2 of Or.III of CPC word "acts" used does not include act of power of attorney holder to appear as witness on behalf of party - Power of attorney holder of a party can appear only as witness in his personal capacity but he cannot appear as a witness on behalf of party - In this case, an attorney holder who signed plaint and instituted suit but has no personal knowledge of transaction can only give formal evidence about validity of power of attorney and filing of suit and therefore, evidence of P.W.1 plaintiff's attorney holder is therefore of no assistance in suit for specific performance except to prove that he was authorised by plaintiff to file suit - It is evident from Sec.23 of Act even where agreement of sale contains only provision for payment of damages or liquidated damages in case of breach and does not contain any provision for specific performance, party in breach cannot contend that in view of specific provision for payment of damages and in absence of provision for specific performance, Court cannot grant specific performance, but where provision naming an amount to be paid in case of breach is intended to give to party in default an option to pay money in lieu of specific performance, then specific performance may not be permissible - In this case, none Courts below have referred to relevant evidence or significance of plaintiff not tendering evidence - They have merely gone by evidence

of attorney holder to hold that plaintiff was ready and willing and defendant committed breach - Material on record shows that respondent/plaintiff committed breach - Therefore, earnest money forfeited and respondent is not entitled for refund of earnest money - Judgments of Courts below, set aside and dismissed suit for specific performance - Appeals, allowed. **Man Kaur (Dead) by Lrs.,Vs. Hartar Singh Sangha 2010(3) Law Summary (S.C.) 140.**

—Secs.16 (c) & 20 - Reconveyance - Suit property belongs to plaintiffs, two brothers and their grant-mother - When plaintiffs were minors, grand-mother executed registered sale deed for consideration and delivered possession to defendant/vendee - Defendant paid part of sale consideration and executed agreement of reconveyance agreeing to reconvey suit house to late grand-mother and plaintiffs after receiving amount with interest - Since defendant failed to perform contract inspite of notice, plaintiffs filed suit for specific performance - Trial Court decreed suit with direction to plaintiff to pay balance amount, holding that plaintiffs are entitled to get reconveyance deed - High Court dismissed appeals filed by both parties - However in SLPs judgments are set aside and cases remanded back to single Judge for deciding matter afresh - High Court set aside decree passed by trial Court holding that plaintiffs failed to make averment and lead evidence to prove their readiness and willingness to perform their contract and no steps were taken by plaintiffs on their part to show their readiness or willingness - Plaintiff must aver performance of, or readiness and willingness to perform, contract according to its true construction - Compliance of requirement of Sec.16(c) is mandatory and in absence of proof of same that plaintiff has been ready and willing to perform his contract suit cannot succeed - In this case, from entire tenor of plaint, it is clear that plaintiffs have pleaded for their readiness and willingness to perform their part of contract as per agreement but other agreement referred to only for purpose of accounting to be made for payment of consideration for resale of property - In evidence also there is no specific statement made by plaintiffs in their evidence they were ready and willing to pay entire consideration amount for reconveyance of suit house - In absence of pleadings or proof by plaintiffs as to their willingness and readiness to perform their part of contract and get sale deed executed in their favour on payment of amount, no case is made out by plaintiffs for specific performance contract of reconveyance - Appeal dismissed. **Bal Krishna Vs. Bhagwan Das (Dead) 2008(2) Law Summary (S.C.) 93 = 2008(3)ALD 27(SC) = 2008(2) Supreme 752 = 2008 AIR SCW 2467 = AIR 2008 SC 1786.**

—-Sec.19 - **CIVIL PROCEDURE CODE,** Sec.96 - The appellant herein instituted O.S. for specific performance of agreement of sale or in alternative for refund of advance amount with interest and costs - Plaint schedule property is an extent of Ac. 6-27 cents - Defendants 1 to 26 are owners of various extents of lands out of plaint schedule property and Defendant No.27 is their General Power of Attorney holder - Defendants/ respondents resisted suit by filing written statements - The learned Senior Civil Judge, by way of impugned judgment and decree dismissed suit for specific performance and ordered refund of advance amount with interest - This appeal is directed against that judgment and decree.

SPECIFIC RELIEF ACT

Held, in instant case, plaintiff neither proved existence of any privity of contract with defendants nor it adopted procedure as contemplated under clause (e) of Section 19 of Specific Relief Act - It is evident from a reading of clause (c) of Section 16 of Specific Relief Act that a person who fails to aver and prove his due performance and fails to prove his readiness and willingness to perform his/her part of contract is not entitled to equitable relief of specific performance of contract of sale - PW 1 admitted absence of any documentary proof to show availability of amount in credit of Trust and on other hand, he categorically stated that he was not having any documentary evidence to show that said amount was available with Trust - PW 1 also admitted the non-availability of amount at present also - It is also not evidence of PW 1 that balance sale consideration was available - In instant case also, except advancement of pleading in written statement that plaintiff has always been ready, plaintiff did not make any attempt to substantiate its claim by adducing either oral or documentary evidence - Therefore, in absence of compliance of mandatory requirements of Section 16 of Specific Relief Act, plaintiff trust is not entitled for any equitable relief of specific performance of agreement of sale.

In instant case, according to Exs.A1 to A6, it is incumbent on part of General Power of Attorney i.e., defendant No. 27, to secure lay out and to make land into plots before sale and without being preceded by same, Ex. A7 was executed - Therefore, on that ground also Ex.A7 cannot be given any credence.

The compliance of mandatory provisions of Clause (c) of Section 16 of Specific Relief Act is a condition precedent for grant of relief in favour of person applying for - In present case, except pleading that plaintiff has always been ready and willing to perform contract, plaintiff did not adduce any cogent and convincing evidence to substantiate said pleading - Proof of availability of funds is also an indispensable factor which needs to be demonstrated by person pleading so - In instant case, evidence of PW 1 shows vividly absence of same at all relevant points of time - Solvency of persons cannot be equated with willingness of parties unless such solvency translates into reality as per provisions of Section 16 (c) of the Act.

For aforesaid reasons and having regard to principles and parameters laid down in judgments referred this Court does not find any valid reason to meddle with well considered judgment and decree rendered by learned Senior Civil Judge - Accordingly, Appeal stands dismissed, confirming judgment and decree passed by court below. **Sri Raghupathi Venkata Ratnam Naidu Trust Vs. Karri Veera Swami(died), per L.Rs 2016(3) Law Summary (A.P.) 270.**

—Secs.19,20 & 21 – **TRANSFER OF PROPERTY ACT,** Sec.52 – Petitioner filed suit for specific performance of agreement of sale stating that he purchased suit property on assurance given by 1st respondent that it is free from all encumbrances – Trial Court declined to order execution of said agreement on ground that 3rd party rights intervened as 3rd respondent purchased without knowledge or notice of prior sale and he is not affected by Sec.52 of T.P Act – High Court gave finding that agreement between petitioner

and 1st respondent not binding on 3rd respondent since 1st respondent has no marketable title to suit property and endorsed view of trial Court – However enhanced interest from 9% to 18% in view of steep rise in price of immovable properties - Petitioner contends that findings of both trial Court and High Court regarding petitioner's readiness and willingness to conclude sale was contrary to evidence adduced and is therefore liable to be set aside and suit liable to be decreed for specific performance in respect of suit land – Respondent contends that on date of agreement 1st respondent has no power or authority to execute agreement, since Power of Attorney executed by 2nd respondent was revoked - Granting relief of specific performance is purely discretionary and is dependent on provisions of Sec.20 of Act and Court u/Sec.21 has power to award compensation for breach of contract instead of decreeing suit for specific performance – Judgment of trial Court as well as High Court – Justified – SLP, dismissed. **S.Abdul Khader Vs. Abdul Wajid (D) by Lrs. 2008(3) Law Summary (S.C.) 100.**

—Sec.19(b) - **CIVIL PROCEDURE CODE,** Or.1, Rule 10 - 1st respondent filed suit for specific performance of agreement of sale, exhibit A-1 and for declaration that sale deeds exhibits A2 and A5 executed in favour of appellants as null and void - Respondents 2 to 5 remained *ex parte* - Appellants alone contested suit - After suit decreed, respondents 2 to 5 have executed sale deeds and latter 1st respondent divided land into plots and soled in favour of 75 persons - Appellants filed Application under Or.1, Rule 10 and got impleaded purchases as respondents 6 to 82 - Appellants contend that suit is not only untenable in law but also defective and that Ex.A1 purposely brought into existence and that no reference was made to Ex.A.1 in notices that were exchanged between parties and that every attempt was made to defraud appellants - 1st Respondent/plaintiff contends that appellants were very much aware that respondents 2 to 5 are joint owners of property and still Exs.A2 and A5 were obtained only from respondents 2 and 3 and that they did not even plead that they are bona fide purchasers without knowledge and in that view of matter they are not entitled for any exemption u/Sec.19(b) of Specific Relief Act and that alleged ratification said to have been made by respondents 4 & 5 does not by itself create or convey title in favour of appellants - In suit for specific performance, proof of agreement of sale assumes significance and best persons to speak about are those who executed agreement of sale - Admittedly respondents 2 to 5 are joint owners of property and for best reasons known to them, they remained ex parte - No legal bar for execution of Ex.A.1 was pleaded by any one including appellants - Sec.19 enables a plaintiff in a suit for specific performance to claim relief against transferee, subsequent to suit contract - If subsequent transaction is for value in good faith without notice of original contract, appellants could have availed benefit u/Sec.19(b) - In this case, admittedly respondents 4 & 5 did not execute any sale deed in favour of appellants - A person other than one who is vested with right to transfer cannot execute sale deed, acting on behalf others - Respondents 4 & 5 did not authorize any one to execute sale deeds on their behalf - For all practical purposes their did not exists anything for respondents 4 & 5 to ratify - Therefore Exs.B5 & B6 are of no legal consequence - Even assuming that prayer in relation to Exs.A2

& A5 was defective, it cannot be a ground for interference at stage of Appeal - Appeal, dismissed. **A.Pramoda Vs. D.Komaraiah 2009(3) Law Summary (A.P.) 279.**

——Sec.19(b) – **CIVIL PROCEDURE CODE,** Sec.99 - First respondent filed suit for relief of specific performance of an agreement of sale said to have been executed in his favour by respondent Nos.2 to 5 (defendant Nos.1 to 4) - Relief was also claimed to effect that sale deeds dated 30.05.2002 executed in favour of appellants herein, be declared as null and void - It was pleaded that respondent Nos.2 to 5 inherited suit schedule property from late Pentaiah and they have agreed to sell same to first respondent, for a consideration of Rs.9 lakhs - He stated that a sum of Rs.2 lakhs was paid as advance and on same day, agreement of sale was executed - A further sum of Rs.5 lakhs is said to have been paid later - It was alleged that in spite of repeated offers to pay balance amount of Rs.2 lakhs and request for execution of sale deed, respondent Nos.2 and 5 did not reciprocate - It was further averred that the respondents 2 and 3 have clandestinely and in violation Agreement of Sale, have executed sale deeds, in favour of the appellants and that same cannot be sustained in law - Respondents 2 to 5 remained ex parte - Appellants alone contested suit - They pleaded that Agreement of Sale was brought into existence with collusion between first respondent and respondents 2 and 5 only to defeat rights of the appellants under Exs.A.2 and A.5 - It was urged that Exs.A.2 and A.5 were initially executed by respondents 2 and 3 and that respondent Nos.4 and 5 have executed deeds of ratification on 03.04.2004, Exs.B.5 and B.6 - They further pleaded that ever since the date of sale, they are in possession and enjoyment of the property - Trial court held all issues against appellants and decreed the suit - After suit was decreed, respondents 2 to 5 have executed sale deeds in favour of first respondent - Latter, in turn, is said to have divided land into plots and sold same in favour of about 75 persons - Appellants filed A.S.M.P.No.485 of 2008 under Order 1 Rule 10 of CPC with a prayer to implead them as respondents - Application was ordered and purchasers are impleaded as respondents 6 to 82.

It was contended by appellants that the suit presented by plaintiffs, was not only untenable in law but also was defective and that relief of cancellation of sale deeds in favour of petitioners was not prayed for, and at a later point of time, it was inserted and Ex.A.1 was brought into existence only with an attempt to cast doubt upon the legality and validity of the sale deeds executed in favour of appellants and that this is evident from fact that no reference was made to Ex.A.1, in notices that were exchanged between the parties - It was also contended that trial Court has drawn certain inferences, which are not at all supported by pleadings or evidence and that Ex.A.1 is inadmissible in evidence, since it was not registered.

First respondent submitted that only persons, who could have disputed execution or existence of Ex.A.6 are D.W.s 2 to 5 and they have chosen to remain ex parte and that the appellants were not sure as to their case, or the manner in which they are said to have derived title - It is argued that appellants were very much aware

that respondents 2 to 5 are joint owners of the property and still, Exs.A.2 and A.5 were obtained only from respondents 2 and 3 - Further, alleged deeds of ratification, said to have been executed by respondents 4 and 5 hardly bring about any change and that the appellants made a vain effort to plead the existence of an agreement of sale in their favour, in respect of suit land, anterior in by time; and having taken a specific plea in written statement and made a mention in the evidence, they have not filed same into Court - Further, Sec.99 of CPC bars grant of any relief in favour of appellants and that appellants did not even plead that they are bonafide purchasers without knowledge, in that view of matter, they are not entitled for any exemption under Sec.19 (b) of Specific Relief Act - Alleged ratification said to have been made by respondents 4 and 5 does not by itself create or convey a title in favour of appellants.

Held, very preamble of judgment discloses that the relief was not only as regards specific performance of an agreement of sale, but also to declare the documents executed in favour of appellants, as null and void - Therefore, doubt expressed by petitioner as to accuracy of decree, is without basis.

If law requires or permits that a particular transaction can be brought into existence through a prescribed procedure, a procedure different from what is prescribed can never bring the same result - Ratification can never be resorted to, for adding legality to a transaction, which does not exist, or one which has not taken in accordance with law - We are immediately concerned with transaction of sale - A sale can take place only with participation of vendor either personally or through agent - There cannot be expost facto approval of sale - Admittedly, respondents 4 and 5 did not execute any sale deed in favour of appellants - A person other than one, who is vested with right to transfer, cannot execute sale deed, acting on behalf of others - Respondents 4 and 5 did not authorize any one to execute sale deeds on their behalf - Only possibility to import theory of ratification, in case of sale transaction is where deeds are executed by a power of attorney and principal puts a seal of approval for it by way of ratification, if any doubt was expressed about authorization - For all practical purposes, there did not exist anything for respondents 4 and 5 to ratify - Therefore, Exs.B.5 and B.6 are of no legal consequence - Result of above discussion is that sale in favour of appellants is not saved by law.

In case on hand, no formal defect, as such, is noticed - Even assuming that prayer in relation to Exs.A.2 and A.5 was defective, it cannot be a ground for interference at stage of appeal - Trial Court has framed an issue, touching controversy - Parties adduced evidence in relation thereto, and a specific finding was recorded - Alleged defect did not effect merits of the matter. **A.Pramoda Vs. D.Komaraiah 2016(1) Law Summary (A.P.) 49.**

—Sec. 20 - **JUDICIAL DISCRETION** - In a suit for specific performance of a contract, the Court has to keep in mind Section 20 of the Specific Reliefs Act -This Section empowers judicial discretion to Courts to grant decree for Specific performance - Court is not bound to grant specific performance merely because it is lawful to do so - Court

should meticulously consider all facts and circumstances of the case and to see that it is not used as an instrument of oppression to have an unfair advantage not only to the plaintiff but also to the defendant. **K.Nanjappa Vs. R.A.Hameed 2015(3) Law Summary (S.C.) 1 = AIR 2015 SC 3389 = 2015 AIR SCW 5172 = 2015(6) ALD 41 (SC).**

—Sec.20 – Provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so. **Ramesh Chand Dead Through Lrs Vs. Asruddin(Dead) 2015(3) Law Summary(S.C.) 36**

—Sec.20 - **LIMITATION ACT,** Sec.15(5) - Readiness and willingness - Suit filed for specific performance of agreement dt.12-12-1970 - Plaintiff paid Rs.50,000/- to defendant as against price fixed under agreement for Rs.3.75 lakhs - Trial Court passed decree, appellate Court reversed judgment of trial Court on ground that plaintiff's suit was barred by limitation - Appellants/plaintiffs contend that conclusion has been reached by appellate Court on an apparent mis-interpretation of provisions of Sec.15(5) of Limitation Act and that claim of plaintiff that letter dt. 9-9-1971 had been sent by defendant to plaintiff requesting for further sum of Rs.1 lakh for purpose of furnishing Bank Guarantee in favour of Income Tax Authorities and alleged refusal/failure of plaintiff to comply said request not borne out by evidence on record and consequential findings on question of readiness and willingness of plaintiffs are plainly incorrect and that in such a situation, notwithstanding expiry of long efflux of time, when plaintiff was no way at fault a decree of specific performance should follow, if required suitably enhancing value of property and that plaintiff indicated willingness to offer an amount of Rs.6 crores for property in question as against Rs.3.75 lakhs as mentioned in agrement dt.22-12-1970 - Respondent contends that meanings sought to be attributed to provisions of Sec.15(5) of Limitation Act is wholly unacceptable and that law does not countenance situation where initiation of civil action can be postponed, till availability of defendant in India which would be virtual effect of Sec.15(5) of Limitation Act if contention made on behalfof appellants on this Court are to be accepted - In this case, ultimate question that has now to be considered is, whether plaintiff should be held to be entitled to a decree for specific performance of agreement of 22-12-1970 - Long efflux of time (over 40 years) that has occurred and galloping value of real estate in mean time or twin inhibiting factors in this regard - However same have to be balanced with fact that plaintiffs are in no way responsible for delay that has occurred and their keen participation in proceedings till date show live interest on part of plaintiffs to have agrement enforced in law.

SPECIFIC RELIEF ACT, Sec.20 - Discretion to direct specific performance of agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles - Parameters for exercise of discretion vested by Sec.20 of Specific Relief Act cannot be entrapped

within any precise expression of language and contours thereof will always depend on facts and circumstances of each case - Ultimate guiding test would be principles of fairness and reasonableness as may be dictated by peculiar facts of any given case, which features experienced judicial mind can perceive without any real difficulty - However that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny relief of specific performance - In this case, ends of justice would require to intervene and set aside findings and conclusions recorded by High Court and to decree suit of plaintiff for specific performance of agreement dt.22-12-1970 and that sale deed that will now have to be executed by defendants in favour of plaintiffs will be for market price of suit property as on date of present order - As no material what soever is available to make correct assessment of market value of suit property as on date, trial Judge of High Court is requested to undertake such exercise with such expedition as may be possible in prevailing facts and circumstances - Appeals allowed, accordingly. **Satya Jain(D) LRs Vs. Ans Ahmed Rushdie(D) Tr.L.RS. 2013(1) Law Summary (S.C.) 55.**

—Secs.20 &12 (2) - **CPC** Or. 41, Rule 27 - *"time is essence of contract"* - Plaintiff filed suit for specific performance of agreement of sale pleading that defendant executed agreement of sale agreeing to sell property to total consideration of Rs.10.5 lakhs and received Rs.5 lakhs towards advance on date of agreement and subsequently Rs.50,000/- and agreed to receive remaining balance sale consideration within 1 ½ months from date of agreement at time of delivery of possession and also agreed to settle dispute including 26 sq.yds abutting area agreed to be sold - Defendant contends that since plaintiff failed to pay balance sale consideration within stipulated period, suit agreement automatically stood cancelled and that Municipal Corporation acquired 54 sq.yds for widening of road and that he gave consent by surrendering 54 sq.yds and constructed four new mulgies on part of site occupied by old existing shed by investing Rs.3 lakh and that therefore plaintiff not entitled to discretionary relief in view of subsequent development - Trial Court dismissed suit holding that plaintiff is not entitled for specific performance of agreement of sale and entitled only for refund of Rs.4.5 lakhs from defendant with interest and in view of acquisition of 54 sq.yds of land by Municipal Corporation and construction of four new mulgies by defendant, plaintiff not entitled to discretionary relief of specific performance - Appellant/plaintiff contends that time is not essence of contract where immovable property is involved and that defendant not justified in forfeiting amount of one lakh and that acquisition of part of property and construction of mulgies thereon by defendant would not disentitle plaintiff from claiming relief of specific performance of agreement of sale and in such case Sec.12(2) of Act cannot be invoked against plaintiff, but it can only for benefit of purchaser - Defendant contends that plaintiff has failed to pay balance sale consideration within 1½ months as agreed - Even as per terms of agreement, failure on part of plaintiff to pay amount within 1 ½ months not only entitles defendant for cancellation of agreement but also forfeiture of one lakh out of advance amount and when it is

specifically agreed that "*time is essence of contract*", plaintiff is not entitled to discretionary relief of specific performance - "*Time is essence of contract*" - Intention to treat time as essence of contract may be evidenced by circumstance which should be sufficiently strong to displace normal presumption that in a contract of sale of land stipulation as to time is not essence of contract - In this case, a combined reading of clauses in agreement, makes it clear that parties intended to complete transaction within 1 ½ months from date of execution of agreement and that sale deed should be executed by paying balance sale consideration and possession of property will be delivered at time of execution and registration of sale demand that failure to pay balance sale consideration by vendee within a period of 1 ½ months agreement stands cancelled and in such an event vendor is entitled to forfeit Rs. 1 lakh and refund balance and that it shows that parties intended to be *time is essence of contract* - In view of same, plaintiff is not entitled to discretionary relief of specific performance of agreement of sale - Appeal, dismissed. **Syed Quadri Vs. Syed Mujeebuddin 2009(3) Law Summary (A.P.) 32 = 2009(5) ALD 682 = 2009(5) ALT 502.**

—Secs.20 & 16 - Appellant/plaintiff filed suit for specific performance of agreement of sale - Respondent/defendant contends that very purpose of offering land for sale, was to clear debts payable to Bank and that having undertook to pay balance amount within 15 days, appellant did not make any payment and as such he was compelled to transfer properties of his close relatives to discharge liability towards bank and that time is essence of contract and appellant lost his right to seek specific performance of same - Concept of "Time being essence of contract" has a close proxmity with point of time, at which relief is prayed for, and this, in turn would have a direct bearing upon manner in which discretion of Court is to be exercised - Courts concede some latitude to parties in matter of seeking remedies, where time is not essence of contract - Extent of latitude would depend upon purpose for and circumstances under which transction came into existence - In this case, very first sentence in agreement discloses that respondent agreed to sell land to clear loan due to Bank and to other creditors and agreement also provided for payment of amount by appellant directly to bank on or before particular date - Neither from pleadings nor from agreement, it is evident that appellant made any efforts to remit amount and bank refused to receive same - Very fact that appellant did not remit amount with bank, upto date of filing of suit, which is more than two years from due date, is strong indication that he was not ready or not willing to discharge his obligation - Present case is a typical one, where discretion of Court vested u/Sec.22 of Act, must be exercised to refuse relief of specific performance in favour of appellant/plaintiff - Judgment of appellate Court - Justified - Second appeal, dismissed. **Shaik Mahaboob Sahab Vs. K.Nageswara Rao 2008(1) Law Summary (A.P.) 24 = 2008(2) ALD 624 = 2008(3) ALT 144 = AIR 2008 AP 55.**

—Sec.22(2) - Suit for specific performance of agreement of sale - Appellant/defendant contends that since no relief is sought for partition of undivided 1/6th share of joint family property, no decree can be passed contrary to Sec.22(2) of Act - Held, that plaintiff has sought only for specific performance of larger relief and therefore bar u/

SPECIFIC RELIEF ACT

Sec.22(2) of Act could not deprive him from seeking that relief - Appeal, dismissed. **Pasupuleti Rangamma Vs. Pasupuleti Ranganayakulu 2014(2) Law Summary (A.P.) 138 = 2014(4) ALD 496 = 2014(4) ALT 749 = AIR 2014 AP 98.**

—Sec.26 - **CIVIL PROCEDURE CODE**, Or.6, Rule 17 - **CONSTITUTION OF INDIA,** Art.227 - Suit for specific performance of agreement for sale and permanent injunction - Trial Court allowed Application seeking amendment not only of plaint but also agreement to sell - High Court allowed writ petition and set aside order of trial Court on grounds of expiry of limitation and if such amendment is allowed nature of suit would change - Appellant contends that in view of nature of amendment sought for in plaint as well as in agreement, High Court was not justified in rejecting prayer for amendment of plaint and agreement and also that in view of Sec.26 of Act it is open to appellant to apply for amendment of agreement of sale - Neither nature and character of suit would be changed nor question of limitation could arise - Respondent contends that if description of suit property needs to be corrected, it can only be corrected by instituting suit for correction or rectification of deed and that neither prayer for amendment of agreement nor prayer for amendment of plaint could be allowed even though said amendment relates only to change of part of description of suit property - CONSTITUTION OF INDIA, ART.227 - Power of High Court - High Court ought not to have interfered with order of trial Court when order of trial Court was passed on sound consideration of law and facts and when it cannot be said that order of trial Court was either without jurisdiction or perverse or arbitrary - Impugned order of High Court, set aside - Order of trial Court restored - Application for amendment of plaint as prayed for, allowed. **Puran Ram Vs. Bhaguram 2008(2) Law Summary (S.C.) 85.**

—Sec.26 & 16 - **EVIDENCE ACT, 1872,** Sec.5 & 103 - "Burden of proof" - "Admissibility of documents and its probative value" - "Undue influence" - "Rectification of deed" - Late BPS settled his two properties in favour of son and daughter by registered deed - Subsequently son and daughter exchanged properties by way of executing unregistered deeds - Son filed suit for effecting rectification of deed and where as daughter filed counter suit - Trial Court decreed suit filed by son and dismissed suit filed by respondent/daughter - High Court allowed appeals filed by daughter - During pendency of appeals appellant sold property to 2nd respondent - Hence present appeals - Sec.26 of Specific Relief Act has limited application and is applicable only where it is pleaded and proved that through fraud or mutual mistake of parties, real intention of parties is not expressed in relation to an instrument and such rectification is permissible only by parties to instrument and by non else.

FRAUD AND UNDUE INFLUENCE - "...in cases of fraud and undue influence and coercion if parties pleading with must set forth full particulars and case can only be decided on particulars as laid- If there are facts on record to justify inference of "undue influence" omission to make an allegation of undue influence specifically, is not fatal to plaintiff being entitled to relief on that ground; all that Court has to see is that there is no surprise to defendant and that mere lack of details in pleadings

cannot be a ground to reject a case for reason that it can be supplemented through evidence by parties.

"BURDEN OF PROOF" - When fraud, mis-representation or undue influence, is alleged by a party in a suit, normally burden is on him to prove such fraud, undue influence or misrepresentation, but when person is in fiduciary relationship with another and latrer is in a position of active confidence burden of proving absence of fraud, misrepresentation or undue influence is upon person in dominating position, he has to prove that there was fair play in transaction and that apparent is real and that transaction is genuine and bona fide.

View taken by High Court holding that document being unregistered document could not have been relied upon and it had wrongly been admitted, is not legally correct - Even though document may be admissible, still its contents have to be proved and in instant case, as appellant did not examine either attesting witnesses of document nor proved its contents, no fault can be found with judgment impugned before Court - Sec.26 of Specific Relief Act provides rectification of a document, if parties feels that they have committed any mistake - Mere rectification by parties herein does not take case within ambit of Sec.26 of Act - High Court reached correct conclusion - Appeals, dismissed. **Joseph John Peter Sandy Vs.VeronicaThomas Rajkumar 2013(1) Law Summary (S.C.) 199 = 2013(5) ALD 22 (SC) = 2013 AIR SCW 2604 = AIR 2013 SC 2028.**

—Sec.28 – **CIVIL PROCEDURE CODE,** Secs.47 & 151 - Suit for specific performance filed by petitioner in 2002 - In 2008, decree to execute a sale deed passed against defendants by collecting balance sale consideration within two months - Petitioner again filed E.P. in 2011 stating that though he offered to pay balance sale consideration within that time, respondents refused to receive same and have also avoided execution of sale deed - E.A was filed by respondent/defendant against E.P. of Petitioner - E.A. was allowed by Executing Court in 2012 - As a result, Executing Court dismissed E.P - Petitioner filed present revision.

Held, there was nothing on record to indicate that he (respondent) ever made any effort to collect or demand balance of consideration from petitioner, within that time - Plea of petitioner that when he offered amount, respondents refused to receive remained unrebutted - 1st respondent did not file any rejoinder to counter-affidavit (filed by petitioner) - Executing Court did not record any evidence of parties - Therefore, the finding recorded by trial court, in this behalf, cannot be sustained - When valuable rights accrued to a party, on account of suit for specific performance being decreed, they cannot be taken away on basis of such an untenable finding - Court must ensure strict compliance with conditions stipulated in a provision, which has effect of nullifying a decree - Even where two views are possible on facts of case, the one, which would sustain decree must be adopted - The revisions are allowed and orders under revisions are set aside. **K.S.Venkata Raman Vs. Prem Jeevan 2014(3) Law Summary (A.P.) 302 = 2015(2) ALD 207.**

SPECIFIC RELIEF ACT

—Sec.28(1) - **CIVIL PROCEDURE CODE,** Sec.158 - "Limitation" - Petitioner filed suit for specific performance of agreement of sale against respondent - Respondent was set exparte and ex parte decree passed by trial Court with stipulation that petitioner shall deposit balance sale consideration amount in Court within one month from date of decree - Petitioner did not deposit balance sale consideration as per said condition but however filed IA for condoning delay of 1417 days and extension of time for deposit of balance sale consideration - Petitioner has averred in his Application that he has left to his native place in Maharashtra and that his Advocate was not aware of his whereabouts, due to which he could not comply with decretal condition regarding deposit of balance sale consideration and that he was under impression that suit was pending and his advocate was looking after suit proceedings and that recently he came back and came to know about passing of ex parte decree - Respondent resisted petitioner's Application - Trial Court dismissed Application of petitioner on ground that averments in his application are not supported by any evidence and that petitioner failed to give satisfactory explanation for inordinate delay of 1417 days in filing application and therefore declined relief as per amended provision of Sec.148, that Court cannot enalrge time beyond 30 days - Petitioners contend that trial Court is vested with power to extend time for payment of balance sale consideration u/ Sec.28(1) of Specific Relief Act and that therefore lower Court has misdirected itself in holding that he has no power to extend time beyond 30 days as stipulated u/Sec.148 CPC - Relief of specific performance is purely a discretionary relief and Court is not bound to grant same merely because there was a valid agreement of sale - It is an equitable remedy which lies purely in discretion of Court, which of course has to be exercised according to settled principles of law - Trial Court is completely justified in dismissing petitioner's Application for extension of time for deposit of balance sale consideration, on ground of inordinate delay - CRP, dismissed. **Ali Jaffar Vs. V.Venkat Reddy 2012(1) Law Summary 189 = 2012(3) ALD 220 = 2012(3) ALT 202 = AIR 2012 AP 102.**

—Secs.31 - **Sec.26(K(i) of Rules framed by State of A.P under Registration Act** - Govt., alienate Hill Poramboke land in favour of petitioner on payment of market value for construction of Cottages for "Aged people and Orphans" on payment of market value at Rs.45 lakhs per Acre - Tahsildar also executed registered deed of conveyance in favour petitioners - Subsequently 2nd respondent/District Collector addressed letter dt.20-7-2012, to respondents 4 & 5 not to approve/release layout and building plans, if any submitted by petitioner until further communication - Hence present writ petition filed for Mandamus to set aside letter of District Collector - Petitioners contends that land having been allotted to petitioner and registered conveyance deed having been executed in favour of petitioner by Tahsildar, concerned on behalf of Govt., 2nd respondent/ District Collector has no power or authority to interfere with right of petitioner to use said land for purpose for which it was allotted and that respondents have no power to interfere with or curtail rights of petitioners without getting registered conveyance

deed cancelled by competent civil Court - Person who seeks cancellation of registered document has two remidies available to him under law, viz., i) to seek invalidaion of registered document by competent Court of law u/Sec.31 of Specific Relief Act ii) to seek cancellation of registered document by following procedure prescribed u/ Sec.26(k)(i) of Rules framed by State of A.P. under registration Act and except those two remedies, no person or authority has right to unilaterally invalidate a registered document on any ground - However that so long as allotment made to petitioner under registered sale deed executed in its favour remain in force, none of respondents has power or authority to interfere with right of petitioner to utilize land for purposes it was allotted and sold - If at all 2nd respondent/Collector opines that allotment itself is vitiated by any illegalities, he can only initiate appropriate proceedings against petitioner in accordance with law - Till such proceedings are initiated and appropriate orders are passed by competent authority 2nd respondent/Collector has no right to address impugned letter - Hence impugned letter, set aside - Writ petition, allowed. **Hayagreeva Farms & Developers Vs. Govt of A.P. 2013(3) Law Summary (A.P.) 251 = 2014(2) ALD 250 = 2014(3) ALT 3.**

—Secs.31, 34 - **CIVIL PROCEDURE CODE,** Or.41, Rule 33 - Contention that sale deed obtained from plaintiff by coercion threat and by playing fraud and also obtained promissory notes - Plaintiff filed suit for declaration and injunction contending that defendants have no capacity to purchase land - Defendants filed written statement denying allegations about claim of plaintiff - Trial Court decreed suit of the plaintiff - Learned single Judge allowed appeal preferred by defendants and dismissed suit of plaintiff - Division Bench dismissed LPA filed by plaintiff and as against dismissal order plaintiff preferred SLP - Supreme Court set aside judgment in LPA holding that order under challenge needs to be heard in greater detail and remanded matter - There is nothing to show that document is invalidated by mere fact that consideration was not paid before Sub-Registrar - Failure of defendants to produce discharged promissory notes as found by lower Court is irrelevant - Evidently, when a promissory note has been discharged it will be given back to the executants of promissory note and it will not be kept with holder of promissory note - Therefore when consideration under promissory note was given discharge under sale, promissory note will be returned to plaintiff and there is absolutely no reason for examining scribe or attestars or to produce said promissory notes by defendant - In this case, all circumstances against 1st plaintiff or further crystallised by single fact that suit was filed in year 1979 merely one year after realization of fraud and coercion, even without issuing any notice - It is quite clear that order to explain and attempt to avoid liability on sale deeds, theory of coercion fraud and confinement for six months was developed by plaintiff - Power under Or.41, Rule 33 are wide and poses no doubt about power of appellate Court to reassess evidence and pass appropriate orders - LPA, dismissed. **Suraneni Lakshmi Vs. B.Venkata Durga Rao 2011(1) Law Summary (A.P.) 361= 2011(3) ALD 721 = 2011(2) ALT 501.**

SPECIFIC RELIEF ACT

—Sec.34 - **SUCCESSION ACT,** Secs.217 & 227 - Appellant filed suit for declaration and permanent injunction contending that suit properties are joint family properties - Respondents/defendants filing Application raising preliminary objection stating that after probate has been granted in respect of suit properties, civil Court has no jurisdiction to proceed with suit for declaration of title and permanent injunction - Trial Court dismissed suit - High Court affirmed order of civil Court holding that suit not maintainable after grant of probate by competent probate Court - Functions of probate Court are to see that Will executed by testator is actually executed by him in a sound disposing state of mind without coercion or undue influence and same is duly attested and therefore it is not competent for probate Court to determine whether testator has or has not authority do dispose of suit properties which he has bequeathed by his Will - Probate Court is also not competent to determine question of title to suit properties and cannot go into question whether suit properties bequeathed by Will are joint ancestral properties or acquired properties of testator - High Court as well as trial Court had acted illegally in dismissing suit of appellant on sole ground after framing preliminary issue - Judgment of High Court as well as of trial Court, set aside - Appeal, allowed. **Kanwarjit Singh Vs. Hardyal Singh Dhillon 2008(1) Law Summary (S.C.) 82.**

—Sec.38 - **CIVIL PROCEDURE CODE**, Sec.100 and Or.41, Rule 27 - Appellant/plaintiff filed suit for permanent injunction against Municipality - Trial Court dismissed suit - Appellant/plaintiff filed certain documents before 1st appellate Court as additional evidence in proof of their possession of suit property - Though said documents are marked appellate Court refused to rely on document on ground that they relate to period subsequent to filing of suit - Municipality categorically admitted possession of appellants in counter filed by it in writ petition filed by appellants earlier - In this case, 1st appellate Court had fallen in to grave error in holding that documents received as additional evidence are not useful for considering as evidence in relation to possession of appellants - Respondent-Municipality not filed any written statement before trial Court and pleadings of appellants were not contraverted or denied by respondent Municipality - Moreover respondent/municipality admitted possession of appellants over suit property - In absence of any plea by respondent/Municipality that parties were at issue as to whether appellants were in possession suit property and there was no basis for 1st appellate Court to hold that suit barred by res judicata - It is not at all case of appellants that at any point of time respondent took possession of suit property from them and absolutely no proceedings have been brought on record by respondent/Municipality showing steps taken by them to remove alleged encroachment made by appellants - Both Courts below were totally unjustified that act of demolition by respondent/Municipality indicates their exercising right of dispossession of appellants from suit property - Evidence on record clearly reveals that appellants are in settled possession of suit property since long time prior to filing of suit and they were never dispossessed of property by respondent/Municipality - A person who is in settled possession of property is entitled for relief of injunction irrespective of fact whether he succeeds in proving his title to property or not - Since evidence in proof of possession

of plaintiffs available on record is totally ignored by both Court below and findings rendered are contrary to settled legal principles, they are liable to be set aside in present second appeal - Suit filed by appellants seeking permanent injunction, decreed - Second appeal allowed. **Mohd. Khasim Vs. Municipal Corporation Warangal, 2012(1) Law Summary 333 = 2012(2) ALD 94 = 2012(2) ALT 665.**

—Sec.38, r/w 2-A - 1st plaintiff filed suit for perpetual injunction basing of agreement of sale and subsequently obtained registered sale deed in favour of his wife/2nd plaintiff and hence she is entitled to pursue suit as it was instituted for her benefit - Defendants contend that plaintiff did not show plaint schedule property correctly with correct measurements and boundaries and that 1st defendant purchased suit property about 20 years back and was put in possession and that there is no cause of action to suit and that document executed by vendors of plaintiff not true, valid and binding on defendants and that 1st defendant perfected his right by adverse possession - Trial Court negatived relief in plaint holding that D1 was able to prove prima facie his adverse possession - Appellate Court reversed decree and judgment of trial Court, holding that plaintiffs had been in possession of suit property as on date of suit - ".....(1) A suit for permanent injunction without prayer for declaration of title is maintainable (2) When title is specifically denied and cloud cast on title to be cleared, it would be safe to pray for relief of declaration in such suit (3) In a suit for permanent injunction, question of title may be incidentally gone into....." - Factum of possession predominantly is a finding of fact - Appellate Court had taken nature of defence taken by contesting defendants into consideration and also subsequent events and granted decree of perpetual injunction - In this case, order impleading 2nd plaintiff attained finality - Merely on ground that it is a subsequent cause of action to drive such a party to yet another litigation would be further making litigation more complicated and paving way to multiplicity of proceedings - Finding recorded by appellate Court, confirmed - Second appeal, dismissed. **Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjaneyulu 2008(2) Law Summary (A.P.) 134 = 2008(4) ALD 505 = 2008(6) ALT 676 = 2008(2) APLJ 141.**

—Sec, 42 - Plaintiff filed suit for declaration of title and permanent injunction restraining defendant from interfering with their possession and enjoyment of suit property - Defendant contends that he purchased property for valid consideration under registered sale deed from Manager of joint family for maintenance of joint family - Trial Court dismissed suit - Appellant/plaintiff contends that Manager of joint family at best, could have alienated his half share and not that of other coparcener and therefore he is entitled for declaration of title at least for half extent of suit property - It is no doubt true that u/ Sec.42 of Act suit for declaration of title without claiming possession not maintainable - However relief sought in present suit was not merely for declaration of title but was also for permanent injunction restraining defendant from interfering with possession and enjoyment - As such preliminary objection to maintainability of suit must fail. **Nagamma Vs. G. Kamalamma 2008(2) Law Summary (A.P.) 104 = 2008(2) ALD 794 = 2008(1) ALT 281.**

– and **CIVIL PROCEDURE CODE,** Or.41, Rule 27 - Defendants preferred instant appeal aggrieved by Judgment and Decree, granting specific performance decree in favour plaintiff - Trial Court having regard to evidence of PW1-plaintiff, PW2-one of attestors of Ex.A.1 and Pw.3-Bank Manager stating about passing of Rs.5,500/- from account of Pw.1 to D-4, has come to conclusion that agreement of sale was genuine - In this process, trial Court disbelieved contention of defendants that Ex.A.1 was fabricated after obtaining signatures of defendants on blank papers - Trial Court also disbelieved contention of defendants that they were not absolute owners of suit property and accordingly decreed suit as prayed for - Hence, present appeal by defendants 1, 3 and 4.

Held, precedential jurispru-dence on legal issue tells us that mere attestation of a document is not a proof of attestor knowing contents and consented - Such proof is to be independently established - In instant case, as already pointed out supra, documents spelled out as if D-4 and his wife alone are owners of subject matter of sale and they alone were shown as executants - No doubt, PWs.1 and 2 deposed that all defendants and wife of D-4 were present and executed document but that is not a sufficient explanation for question as to why other defendants were made to affix their signatures and thumb impression when they were not allegedly owners of property - Trial court made an endeavor by presuming that D-4 and his wife are owners of 1/4th of joint family property and hence they were shown as executants and other defendants as consenting parties - When that fact is not borne out either in pleadings or in oral and documentary evidence, Court considered view, court cannot make such presumption.

Merely because plaintiff is ready and willing to perform her part of contract, that itself is not sufficient to grant equitable relief particularly when she failed to establish that defendants are fullfledged owners of property and that other defendants have consented for transaction and further, allowing specific performance cause undue hardship to defendants - Hence, plaintiff is not entitled to specific performance.

In result, this appeal is allowed and decree and judgment is set aside and D-4 is directed to refund advance amount of Rs.27,000/- to plaintiff with interest @ 6% p.a. from date of filing suit till realization. **K.Bhudamma Vs. Vidyadevi 2016(1) Law Summary (A.P.) 431 = 2016(3) ALD 351 = 2016(2) ALT 543.**

—and **EVIDENCE ACT,** Sec. 45 - **LIMITATION ACT,** Art.54 - **TRANSFER OF PROPERTY ACT,** Sec.53-A - Respondents filed suit for declaration of title and perpetual injunction against defendant, Bogi Reddy, basing on gift deeds executed by their grant-father Jaffer Saheb - Defendant filed suit for specific performance basing on agreement of sale executed by Jaffer Saheb as regards same property - Trial Court through common judgment decreed suit filed by respondents and dismissed suit filed by defendant - District Judge through common judgment dismissed appeals - Appellants contend that evidence

on recorded clearly demonstrates that agreement of sale Ex.B.1 proved and possession of appellants was admitted by Jaffer Saheb himself and they perfected their title by way of adverse possession and that suit for injunction filed by respondents not tenable when possession has already been parted - Respondents contend that suit filed by appellants barred by limitation since filed nearly decades after date of alleged agreement of sale - Agreement, Ex.B.1 said to have been executed by Jaffer Saheb contained thumb impressions - Trial Court sent document to handwriting expert for comparison - Expert's report discloses that thumb impressions on agreement and thumb impressions of Jaffer Saheb taken by trial Court on plain paper are identical - Jaffer Saheb in his statements before Revenue Authorities have clearly admitted execution of Ex.B.1 and also delivery of possession to Bogi Reddy - In view of this clinching evidence, hardly their exists any doubt that exhibit B.1 was proved and possession of land is with Bogi Reddy or his legal representatives - In this case, Courts below mistook Survey number in 10 (1) adangal and gave finding that appellants failed to prove their possession - In fact 10 (1) adangal contained only one Survey number and name of wife of Bogi Reddy was written against it - Therefore findings recorded by trial Court are clearly perverse - Suit filed by plaintiff for declaration of title and perpetual injunction without relief of recovery of possession is untenable - Admissions of Jaffer Saheb clinchingly established that appellants perfected their title through adverse possession - LIMITATION - Starting point for computing period is dates specified for performance of agreement, or date on which refusal is communicated - Continuous possession over suit property discloses that appellants did not face any resistance from respondents or Jaffer Saheb - There is nothing to disclose that intention communicated to appellants - Soon after receiving notice in suit filed by respondents, appellants filed suit for specific performance - Therefore it cannot be straightaway said that their existed clear starting point of limitation and suit was barred - Appellants perfected their title through adverse possession and relief claimed by them in their suit becomes redundant - Suit filed by respondents stand dismissed and suit filed by appellants stand decreed as prayed for - Second appeals, allowed. **Musalreddygaru Subbamma Vs. Mulla Ismail 2008(1) Law Summary (A.P.) 294 = 2008(2) ALD 61 = 2008(3) ALT 532.**

—and **TRANSFER OF PROPERTY ACT,** Sec.55 (1) (b) & (c) - Appellant/plaintiff filed suit for specific performance of agreement to sell - Trial Court dismissed suit for specific performance holding that appellants not ready and willing to perform their part of contract and also that time was not essence of contract - High Court affirmed decree of trial Court and held that time was essence of contract - T.P Act, Sec.55 (1) (b) (c) - Applicability - This section deals with rights and liabilities of buyer and seller - Sub-sec.(b) clearly says that it would be open to buyer to ask seller to produce for examination of all documents of title relating to property which are in possession of seller and buyer - So far as present case is concerned, condition regarding clearance or exemption from endowment Department is not a document of title relating to property which would benefit buyer for examination for purpose of completing agreement for sale - Section applicable only in absence of contract to contrary - In this case, there is admittedly a contract for sale which clearly lays down terms and conditions to govern sale transaction - In a suit for specific performance of

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contract for sale it has to be proved that plaintiff who is seeking for decree for specific performance of contract for sale must always be ready and willing to complete terms of agreement for sale and that he has not abndoned contract and his intention is to keep contract subsisting till it is executed - In this case, not only trial Court as well as High Court on concurrent findings of fact and on consideration of evidence on record came to conclusion that appellants were not ready and willing to perform terms and conditions of sale - Concurrent findings of fact arrived at by High Court and trial Court on question of readiness and willingness to perform their part of obligation, so far as appellants are concerned cannot be interfered with - Appeal, allowed. **A.K.Lakshmipathy (dead) Vs. Rai Saheb Pannalal H Lohti Charitable Trust 2009(3) Law Summary (S.C.) 142 = 2009(6) ALD 139(SC) = 2009 AIR SCW 7144 = 2009 (7) Supreme 201.**

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—Sec.2 (5) - "Bond" - Respondent/plaintiff filed suit for recovery of certain amount basing on a document - Petitioner/defendant taking objction to mark document that it does not answer description of "promissory note" or "bond" - Trial Court passing order treating document as bond - Petitioner contends that so called document is neither dated nor attested and does not answer description of bond as defined u/Sec.2(5) of Stamp Act - BOND - Defined - First category of documents which are defined as bond or those which obligate an individual to pay an amount on occurrence or non-occurrence of an event - Berift of condition or contingency, obligation under document does not make it a bond - No such condition is present in document in question - Second category of documents are those which are attested by witness and not payable to order or bearer - Here again document does not hit to definition - Third category is totally different altogether and disputed document does not come under it - In this case, there is no privity of contract between petitioner and 1st respondent/plaintiff - Document does not contain any date - Mere fact that petitioner paid one instalment under document does not make it admissible in law if it is otherwise not - Order passed by trial Court in relation to said document, set aside - CRP, allowed. **K.Veera Nagi Reddy Vs. Shaik Idayathullah 2009(1) Law Summary (A.P.) 197.**

—Secs.2(5) and 2(23) - "Bond" and "receipt" - Defined - Respondent filed suit against petitioner/defendant for recovery of certain amount basing on document described as 'receipt' - Petitioner/defendant took plea that document is in nature of bond and having not been properly stamped not admissible in evidence - Trial Court after considering recitals of document, rejected said plea of petitioner - Hence present CRP - In document it is stated that a sum of Rs. 1 lakh with interest at Rs.2.50ps. was received by petitioner from respondent and document is attested by two persons - Undisputedly recitals contained in suit document do not contain any such obligation on part of petitioner to pay money to respondent - It is case of respondent that petitioner has received money which he has acknowledged by executing suit document - Even if "receipt" was attested by two witnesses that by itself does not constitute "bond", unless executant of document has undertaken obligation to pay money thereunder - Order

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of lower Court, justified - CRP, dismissed. **Menda Joga Rao Vs. Varanasi Harinadham 2011(2) Law Summary (A.P.) 130 = 2011(4) ALD 303 = 2011(4) ALT 14 = AIR 2011 (NOC) 338 (AP).**

—Secs.2(5) and 2(23) - "Bond" - "Receipt - Respondent filed suit to recover certain amount from defendant basing on document executed by defendant - When plaintiff sought to mark said document raised objection by defendant on ground that document is not "receipt" but is a "bond" as defined and unless it is impounded and penalty is levied thereon, it is inadmissible inevidence - Trial Court overruled objection of defendant on ground that requirements of "bond" are absent and documents amounts to only acknowledgment of defendant to pay amount to plaintiff - Hence present revision preferred by defendant - STAMP ACT, Sec.2(5) - "BOND" - Defined - To answer Description of Bond, instrument must evidence; (1) person obliges himself to pay money to another, on condition that said obligation shall be void if specified act is performed or is not performed as case may be; (2) an instrument where by a person obliges himself to pay money to another and is attested by witnesses but said money is not payable to order or bearer; (3) any witness attested by witness whereby a person obliges himself to deliver grain or other agricultural produce to another - Undisputedly document in question has been attested by as many as seven witnesses and recitals clearly disclose obligation undertaken by defendant/petitioner to refund amount without interest to plaintiff/respondent - Crucially there is no undertaking contained in said document that amount is payable to order or bearer of plaintiff - Therefore Cl.(b) of Sub-Clause 5 of Sec.2 is squarely attracted to instrument in instant case.

2(23) RECEIPT - Defined - Definition of receipt discloses that (1) where any money or any bill of exchange, cheque or promissory note is acknowledged to have been received or (2) Where any other movable property is acknowledged to have been received in satisfaction of debt (3) where any debt or demand, or any part of debt or demand is acknowledged to have been satisfied or discharged (4) where instrument signifies or imports any such acknowledgment and where same is or is not signed with name of any person, then alone, such instrument can answer definition of "receipt" - Suit document which squarely attracted conditions contained in Cl.(b) of Sub-Clause (5) of Sec.2 - In that view of matter suit document is chargeable as a "bond" in as much as it did not contain any recital that money payable to order or bearer of plaintiff and suit document liable to be construed as "bond" but not "receipt", since it contained something more than a mere acknowledgment of money and consequently liable to be charged to duty accordingly. **Undeela Gownadh Vs. Mutyam Anil Kumar 2011(3) Law Summary (A.P.) 185 = 2011(6) ALD 693.**

—Secs.2(5), 36 & 61 - 1st respondent/plaintiff filed suit for specific performance of agreement of sale and produced a document marked as Ex.A.1 - Initially suit filed against 2nd respondent as sole defendant and as he has stated in his written statement that suit schedule property was sold to petitioner, latter was impleaded as defendant

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no.2 in suit and by time petitioner was impleaded suit document was marked as Ex.A.1 - After his impleadment, petitioner has filed I.A for impounding exhibits A.1 & A4 as said documents require payment of stamp duty and penalty - Trial Court while holding Ex.A.1 is only agreement of sale and not bond as pleaded by petitioner/ defendant no.2 and also held that Ex.A.4 could be admitted into evidence for collateral purpose - Hence petitioner/2nd defendant filed CRP against order of trial Court to extent it relates to Ex.A.1 - Petitioner contends that trial Court committed serious error in construing Ex.A.1 as agreement of sale and not as agreement of bond as defined u/Sec.2(5) of Stamp Act - 1st respondent contends that trial Court has not committed any error in construing Ex.A.1 as an agreement of sale and that since u/sec.36 of Act there is an absolute bar on raising of any objection over document which is admitted in evidence, petitioner is not entitled to raise objection - Provisions of Sec.36 of Act or in peremptory terms and they do not admit of any exceptions except to extent of Sec.61 of Act - A statutory provision requires to be reasonably construed keeping in view object with which same is made and object behind Sec.36 of Act is to see that parties do not raise objections as to admissibility of instruments already admitted in evidence again and again - However in this case, petitioner was not on record when exhibit A.1 was admitted in evidence and therefore, ordinarily, petitioner should have been entitled to raise objection dispute admission of Ex.A1 in evidence, provided, he, as defendant no.2, is asserting his rights dehors respondent no.2/defendant no.1 - When 2nd respondent/1st defendant has not raised any objection to marking of document, petitioner, stepped into former who shoes and is claiming title through him, cannot plead that he is entitled to raise objection with respect to admissibility of A1 once again - Bar u/sec.36 of Act is squraly attracted in case of petitioner - CRP, dismissed. **N.S.Ramanjaiah Setty Vs.T.Krishna Bhagavan 2012(1) Law Summary 245 = 2012(4) ALD 466.**

—Sec.2(5)(b) - Respondent/plaintiff filed suit for recovery of certain amount against petitioner/defendant - During evidence respondent/plaintiff sought to mark document stated to have been executed by petitioner/defendant in favour of respondent/plaintiff - Defendant filed IA to determine true nature of document in question and not to admit same till it is properly stamped and impounded - Trial Court accepted plea of plaintiff holding that document in question can be considered as agreement and not as bond which does not require deficit stamp duty.

"BOND" - Defined - As petitioner allegedly oblized to pay money to respondent/ plaintiff, instrument clearly falls under definition of bond - Trial Court, therefore, committed a jurisdictional error in totally misconstruing instrument as agreement and not requiring additional stamp duty - Impugned order, set aside - Trial Court directed to treat document in question as bond and take appropriate steps in accordance with provisions of Act, if it is found that same is not sufficiently stamped - CRP, allowed. **Nareddi Mohan Reddy Vs.Siripuram Mallaiah 2012(3) Law Summary (A.P.) 125 = 2012(6) ALD 745.**

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—Sec.2 (5) (b) & Art.13 - "Memorandum of understanding" - Suit for recovery of certain amount - During trial, plaintiff sought to mark document styled as "memorandum of understanding" - Trial Court refused to receive document unless stamp duty is paid - Petitioner/plaintiff contends that document sought to be marked not 'bond' as defined u/ Sec.2(5) of Act and there is no obligation created under document and that in order to constitute bond it must be executed by one party in favour of other and create obligation to pay, whereas both parties have subscribed their signatures on document now sought to be marked and liability under it is pre-existing - Respondent contends that payment of amount is contemplated under document and mere affixing of signature by plaintiff will not take away character of 'bond' - Merely because document is styled as 'memorandum of understanding', it does not lose character of 'bond' or 'promissory note' - Nomenclature of document will not decide rights and obligations of parties to document concerned - In this case, 100-rupees non-judicial stamp paper purchased in name of plaintiff and document is styled as 'memorandum of understanding' setting out terms and conditions - Covenants, intention and conduct of parties are necessary to know character of document - That apart, plaintiff asserting his right on basis of document, which cannot be permitted if it is inadequately stamped - When plaintiff created obligation for defendant to pay certain amount to him and terms reduced to writing on stamp paper and attested by witnesses, document styled as 'memorandum of understanding' to come within definition of 'bond' as stipulated in Sec.2 (5) (b) of Stamp Act - Requiring petitioner/plaintiff to pay stamp duty under Art.13 - Order of trial Court - Justified - CRP, dismissed. **P.Srinivasa Babu Vs. AMR Consultants Ltd., 2008(2) Law Summary (A.P.) 321 = 2008(4) ALD 747 = 2008(4) ALT 759.**

—Secs.2(12) and 16(b) and 47-A - **REGISTRATION ACT** - SUITS VALUATIONS ACT - Suit for partition - Assessment of Stamp duty on instrument of partition - Trial Court directed petitioner who is not party before Court to complete registration on basis of stamp duty as per suits valuatgion - Suit decreed on compromise - When decree presented before petitioner/Sub-Registration same objected to by petitioner observing that there is no proper valuation for purpose of Registration - Civil Judge took view once valuation has fixed by Court, Registrar cannot make an attempt to reassess same - High Court dismissed petition preferred by District Sub-Registrar - Hence, present SLP - Once Court had made exercise to fix Market value of a property, same can be reopened or alter only in a process known to law - That is not situation in instant case, where a partition was filed in year 1999, compromised in year 2001, stamp value assess on basis of suit valuaion and decree presented by Registration in year 2007 - Market value for purpose of Indian Samp Act, is not same as suit valuation for purpose of jurisdictionand Court fee - Procedures are different for assessment of Stamp duty and for registration of instrument - Suits valuaion Act and Indian Stamp Act operate in different fields - Registering authority cannot be compelled to follow in variably value fixed by Court for purpose of suit valuation - Order of High Court and order of Civil Judge are set aside - Civil Judge is directed to consider matter afresh after affording opportunity for hearing to petitioner and pass appropriate orders with reference to stamp

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duty for purpose of registration of partition deed. **Addl. Dist.Sub-Registrar, Siliguri Vs. Pavan Kumar Verma 2013(2) Law Summary (S.C.) 108.**

—Secs.2 (15), 35, Art.40, Schedule 1-A -**A.P. (AMENDMENT) ACT, Act.17 of 1986** - **REGISTRATION ACT,** Sec.49 - Petitioner/plaintiff filed suit for declaration and injunction contending that they are absolute owners of suit schedule property - Respondent/ defendants contend that property belonging to defendants' family since 90 years and they have been in possession and enjoyment of same - Defendant sought to mark unregistered document titled as "Pampaku jabitha" (partition list) - Trial Court permitted defendants to mark document inspite of objection raised by plaintiff that document is neither written on proper stamp paper nor registered and it is partition deed not admissible in evidence - Nomenclature used for describing document is of no consequence and nature and character of document has to be discerned only from its contents - A close reading of entire document would disclose that though document is captioned as partition list it is not a partition list simplicitor which merely contains list of items of property that fell to share of each of persons, but is a document whereunder partition of vacant cites is sought to be made - Finding of trial Judge that it is only partition list and not partition deed is, unsustainable - STAMP ACT, Sec.2(15) - "Instrument of partition" - Defined - A memorandum regarding past partition is also brought within definition of 'instrument of partition' by A.P. (Amendment) Act, 17 - By virtue of said amendment a memorandum regarding past partition also amounts to instrument of partition requiring same duty as a bottomry bond for amount or market value of separated share or shares - Sec.35 of Indian Stamp Act contains a bar against admissibility of such document in evidence and bar contained in Sec.35 being an absolute one, document even assuming to be a memorandum of past partition, still coming within definition of 'instrument of partition' u/Sec.2(15) of Stamp Act, is inadmissible in evidence for any purpose including collateral purpose - In this case, defendants sought to produce and relay on disputed document not for collateral purpose but for main purpose of proving their alleged title to suit property and thereby non-suit plaintiffs - Therefore, document is inadmissible in evidence in view of bar contained u/Sec.35 of Stamp Act as being insufficiently stamped, and also in view of Sec.49 of Registration Act - Impugned order permitting admission of document, set aside - CRP, allowed. **Pariti Suryakanthamma Vs. Saripalli Srinivasa Rao 2010(1) Law Summary (A.P.) 223.**

—Secs.2 (23) and 2(5) – Distinguishing features between "bond" and "receipt" – Stated – Petitioner filed suit for recovery of certain amount on strength of a document treating it as receipt - Respondent contends that document answers description of bond – Trial Court passing order holding that document is bond - Petitioner contends that document in question is a receipt and it does not contain ingredients of bond and that respondent had acknowledged receipt of amount and no condition is incorporated in it - Respondent contends that apart from acknowledgment receipt of amount, respondent had undertaken

to repay amount and was attested by two witnesses, and there by it deserves to be treated as 'bond' - From perusal of definitions, a 'bond' manifest an obligation to pay – A receipt on other hand does nothing more than acknowledge, factum of receiving money – It does not connote any obligation for repayment or return of what is received under it – Distinguishing feature between these two documents is presence or absence of obligation to pay – If obligation can be discerned from document, it answers description of 'bond' - In present case, document not only acknowledged receipt of amount but also contains an obligation to repay it within period of three years from date of document and there is no provision for interest and it is attested by two witnesses – Therefore it is too difficult to treat document as mere 'receipt' – Order of trial Court – Justified – CRP, dismissed. **K.Shaik Mahaboob Basha Vs. Shaik Ameer Saheb 2008(3) Law Summary (A.P.) 233.**

—Secs.2(23), 2(22) and Sec.35 (prior to amendment) - **NEGOTIABLE INSTRUMENTS ACT**, Secs.4 & 13(1) - "Receipt" - "Promissory Note" - Negotiable instrument" - Defined - Plaintiff filed suit for recovery of certain amount basing on document described as "receipt" - Defendant filed written statement maintaining that said document is rank forgery and he never executed suit receipt in favour of plaintiff - When plaintiff sought to mark said document defendant raised objection taking stand that document is promissory note and not receipt - Trial Court upheld objection and further held that as document in question was executed prior to coming into force of amendment to Sec.35 of Act, it cannot be impounded and same is not admissible in evidence - Negotiability of document is main feature of promissory note where certainty of sum payable and an unconditional undertaking signed by maker are other two important requirements to be satisfied for document to fall within description of promissory note - In this case, true translation of document in question is, *"on 7-5-2005 I have borrowed Rs.5,00,000/- from B. Jayaraghava Naidu, S/o Tirupalu, I wil repain in 6 months"* - A close and careful examination of document in question would reveal that same contains two sentences - In first sentence, fact of defendant receiving sum of Rs.5 lakhs on 1-7-2005 from plaintiff is acknowledged - In second sentence which is rather cryptic, it is mentioned that he will pay amount in six months - While requirements of sum being certain and an unconditional undertaking are satisfied, it needs to be examined whether it satisfied most vital aspect of negotiability of document - In instant case, document does not refer to person to whom defendant has undertaken to pay, though it was acknowledged therein that amount was received from plaintiff - Therefore, essential requirement of undertaking to pay to a certain person is absent from document - As such it cannot be said that document satisfies ingredients of promissory note - If document contains something more than what is required to be mentioned in receipt, same does not cease to be a "receipt" merely by addition of certain other words so long as document does not fall in any other category of documents such as promissory note, bond etc., - Document in question falls within definition of "receipt" in Sec.2(23) of Act - Trial Court committed error in holding that same is promissory note - As receipt is liable for being impounded under Act, trial Court, is directed to refer same

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to competent Authority for this purpose - CRP, allowed. **B.Jaya Raghava Naidu Vs. B. Rama Subba Reddy 2011(1) Law Summary (A.P.) 12 = 2011(2) ALD 49 = 2011(2) ALT 24 = AIR 2011 AP 62.**

—Sec.2(24) - Appellant/plaintiffs filed suit basing on family settlement Ex.A.6 - Trial Court decreed suit partly holding that Family Settlement cannot be acted upon since it is neither registered nor properly stamped - Relief granted to 1st appellant and claim of 2nd appellant rejected - Appellants contend that Family Settlement is not required to be registered and that trial Court committed error in taking view that it cannot be acted upon for want of registration and deficiency of stamp duty - Indian Stamp Act, 24(2) - "Family settlement" - Defined - From this provision it is clear that Settlement particularly within a family need not be restricted to members of family upto a particular degree - Therefore irresistible conclusion is that a Family Settlement can be among not only heirs of particular class, but also can take in its fold persons outside purivew of succession - A settlement which does not create any right "in praesenti" cannot be treated as inadmissible, on ground that it is not registered - Partition of property can be only among parties who have a pre existing right to a property - In instant case, 2nd appellant did not have any pre-existing right *de horse,* Ex.A.6 - She has specifically based her claim on that document - In absence of Ex.A6 their would not have been any occasion for appellants to claim rights, as they did, in relation to property - Ex.A.6 has created a legal right in parties and in particular, 2nd appellant and she is certainly entitled to seek partion on strength of it - Judgment and decree of lower Court, set aside and preliminary decree is passed in terms of Ex.A.6 - Appeal, allowed. **Zaheda Begum Vs. Lal Ahmed Khan 2009(3) Law Summary (A.P.) 126 = 2009(6) ALD 432 = 2009(6) ALT 565.**

—Sec.2(24) and Art.49-A(b) of Schedule-I-A - "Settlement" - Petitioner created a family Trust, titled " K.G.K. Family Private Trust" and beneficiaries of Trust are petitioner, his wife and two sons by appointing N.V. and V.K as Trustees for administration of Trust - Petitioner thereafter executed settlement deed settling all his properties in favour of Trust- When said Settlement deed presented for registration Sub-Registrar issued Memo to pay deficit stamp duty of Rs.4.65 lakhs treating document as one covered by Art.49-A(b) of Schedule 1-A - Hence petitioner filed present writ petition - Petitioner contends that as beneficiaries of Trust are none other than his own family members, registration authorities should not have classified Settlement deed as one falling under Art.49-A(b) and ought to have treated it as one coming within ambit of 49-A(a) of Schedule-I-A of Act - In this case, by subject document petitioner settled his absolute property in favour of a Family Trust created for himself, his wife and two sons and that settlement is essentially for distributing property of settler amongst his family members - Sub-Registrar directed to treat settlement deed as one falling under 49-A(a) of Schedule 1-A of Indian Stamp Act and collect stamp duty thereon accordingly - Writ petition, allowed. **Kolli Venkata Raja Sekhar Vs. Govt. of A.P. 2013(3) Law Summary (A.P.) 59 = 2013(6) ALD 189.**

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—Secs.6 & 41(b) and Art.20 of Schedule 1-A and Art.41-C of Schedule 1-A - Petitioner/ partnership Firm established in 1970 with 15 partners - 12 partners retired upto 2004 - On 27-8-2009 3rd petitioner joined as a partner and a fresh deed of partnership was executed - On next day i.e., 28-8-2009 two existing partners, respondents 4 & 5 retired by receiving sum of Rs.4 corers each and deed of retirement executed on that day was presented for registration before 1st respondent/Sub-Registrar by paying stamp duty as provided under Art.41-C of Schedule 1-A - 1st respon-dent/Sub-Registrar and 2nd respondent District Registrar took view that document is one of "conveyance" and petitioners paid stamp duty of Rs.30 lakhs under protext. under Art.20 of Schedule 1-A - Petitioners contend that view taken by 2nd respondent that deed of "retirement" is to be treated as deed of "conveyance" is contrary to law and that consequences that flow from retirement of partners cannot be equated to those of conveyance and that there was no justification for respondents 1 & 2 in demanding stamp duty on that basis - 1st respondents contends that recitals in document clearly discloses that rights of retiring partners were transferred by receiving consideration and that same amounts to a transaction of sale - Petitioners contend that separate Article is incorporated in Schedule-1-A to Act to deal with documents pertaining to partnership or retirement therefrom and that respondents were not at all justified in treating simple deed of retirement as deed of conveyance or sale deed and that receipt of consideration by out going partners does not at all change character of transaction - Respondents/Govt., further contends that though document is named as deed of retirement, in effect it is nothing but deed of conveyance and that recitals in document, and in particular factum of receipt of consideration would clearly demonstrate that title outgoing partners were conveyed to remaining partners and thereby transaction of sale has taken place - Govt. further contends that where deed is capable of being treated under various Articles, one which attracts higher amount of stamp duty must be applied u/Sec.6 of Act - But possibility or occasion for applying principle under lying Sec.6 of Act would arise, if only a document is capable of being treated under two different provisions - Document in question is one of retirement from partnership and it is specifically dealt with under Art.41-C of Schedule 1-A to Act, it cannot at all be treated as Conveyance and therefore there does not exists any possibility to apply principle underlying Sec.6 of Act - Impugned proceedings issued by respondents 1 & 2 treating document is deed of conveyance, set aside - Writ petition, allowed.**Kamal Wineries Vs. Sub-Registrar of Assurances 2012(2) Law Summary (A.P.) 170 = 2012(4) ALD 662 = 2012(5) ALT 435.**

—Secs.12,12(2),12(3) and 35 – 1st respondent filed suit against petitioner and 2nd respondent for recovery of certain amount, seeking to relay upon a promissory note - Petitioner raising objection for admissibility of document since not properly stamped contending that R.1 lifted cancelled stamp from another document and pasted on suit promissory note and signature on stamp did not spread over to document and as such there is no valid cancellation as provided u/Sec.12 of Stamp Act – Trial Court overruled

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objections - Sec.12 of Act mandates that whenever any adhesive stamp is affixed on document, it must be cancelled to ensure that it is not used for any other purpose – Sub-sec.(2) of Sec.12 directs that if stamp is not properly cancelled document has to be treated as one, which is not stamped at all and as a result document becomes inadmissible u/Sec. 35 of Act - Even where two parallel lines are drawn across stamp fixed on document it would amount to cancellation u/Sec.12 of Act – But in instant case, neither such lines are drawn nor any signature was put across stamp extending to paper – Therefore non-compliance with Sec.12 of Act comes to be established – Impugned order unsustainable in law – Document not admissible in evidence - Revision petition, allowed. **Mohd. Jani Miya Vs. Koriginja (Varala) Ramesh 2008(3) Law Summary (A.P.) 207 = 2009(1) ALD 732 = AIR 2009 AP 14 = 2009(3) ALT 457.**

—Secs.12 & 35 - **CIVIL PROCEDURE CODE,** Or.13, Rule 3 - Petitioner/plaintiff filed suit for recovery of money under promissory note - Respondent/defendant filed written statement contending that suit promissory note was fabricated by affixing stamps removed from some office records - Defendant filed I.A u/Sec.35 of Stamp Act with prayer to reject suit promissory note alleging that it was inadmissible in evidence - Trial Court allowed I.A filed by defendant holding that there was no cancellation of adhesive stamps as required under Stamp Act - In this case, alleged signature of defendant on adhesive stamps affixed on it did not commence with or extend to suit promissory note i.e., paper on which document was executed and alleged signature of defendant was confined only to adhesive stamps affixed **-** U/Sec.12 of Stamp Act, it is clear that cancellation of adhesive stamps affixed to any instrument chargeable with duty is mandatory so as to ensure that same are not used again for any other purpose - Sub-sec.2 of Sec.12 further made it clear that in absence of such cancellation, instrument shall be deemed to be unstamped - CIVIL PROCEDURE CODE, Or.13, Rule 3 - Rejection of inadmissible document under Or.13, Rule 3 of CPC can be at any stage of suit proceedings, however, reasons for such rejection shall be recorded - In instant case, a specific plea was raised in written statement itself that suit promissory note was fabricated by affixing used adhesive stamps which were removed from office record - Said objection taken by defendant at earliest point of time - Trial Court is justified in rejecting document in question as inadmissible in evidence - Revision petition, dismissed. **Chaganti Venkata Bhaskar Vs. C.Chandrasekhar Reddy 2010(1) Law Summary (A.P.) 435.**

—-Secs.33 & 35 - **REGISTRATION ACT,** Sec.49 - Respondent/plaintiff filed suit against petitioner/defendant seeking perpetual injunction in respect of plaint schedule property contending that plaintiff and his brothers are absolute owners of plaint schedule property and defendant has nothing to do with plaint schedule property and however he is proclaming that he will trespass into plaint schedule property - Petitioner/derfendant contends that he is in possession and enjoyment of plaint schedule property under unregisrtered mortgage deed and denied ownership and possession of respondent/ plaintiff of said property - Trial Court dismissed petition filed by defendant u/Sec.35

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of Stamp Act requesting Court to impound petition mentioned unregistered mortgage deed, on main ground that boundaries of plaint schedule property and mortgaged property are different - Admissibility and relevancy are two tests for approval of evidence tendered by a party and Court shall apply these two tests before admitting the document into evidence - Evidence must be relevant to facts in issue in one of ways prescribed u/Secs.5 to 55 of Evidence Act and thus admissibility and relevancy are two different concepts - In instant case, since mortgage deed in issue is not duly stamped and registered it is inadmissible in evidence and is liable to be impounded u/Sec.33 of Indian Stamp Act and Court shall impound mortgage deed and collect requisite stamp duty and penalty u/Sec.35 of Stamp Act - So, at that stage defendant has to convince to satisfaction of trial Court that property covered by plaint schedule and mortgage deed in fact one and same and it is relevant for purpose of proving his case, and further same is admissible in evidence for collateral purpose - Hence what is pertinent at this stage is only to impound document and collect proper stamp duty and penalty under relevant provisions of Stamp Act and therefore impugned order is liable to be set aside - CRP, allowed - Trial Court is directed to impound mortgage deed and collect stamp duty and penalty under relevant provisions of Stamp Act. **Trinadha Patro Vs. Lingaraj Rana, 2015(3) Law Summary (A.P.) 418.**

——Secs.33 & 35, r/w Art.47-A, Schedule IA - Respondent/plaintiff filed suit for specific performance of agreement of sale - Petitioner/defendant took objection when respondent wanted to mark agreement as exhibit A1, stating that document contains clause regarding delivery of possession and it requires payment of stamp duty as well as registration - Trial Court overruled objection on ground that respondent/plaintiff purchased stamp worth Rs.35000/- for purpose of executing registered sale deed by revision petitioner - Hence present revision petition - Petitioner contends that agreement of sale which is sought to be marked as exhibit A.1 contains clause regarding delivery of possession and as such payment of stamp duty is required under Art.47-A of schedule IA - When once document is one of sale and liable for payment of stamp duty, unless necessary stamp duty and penalty is paid by impounding document same cannot be received under evidence u/Sec.35 of Act - Respondent contends that since already amount of Rs.35000 is deposited by way of challan for purchase of stamp papers to get registered sale deed, trial Court found that there is no necessity for impounding document - In this case, admittedly agreement of sale contains a clause regarding delivery of possession - When once agreement of sale contains a Clause regarding delivery of possession, it attracts Art.47-A of schedule IA - Procedure is envisaged u/Sec.33 of Act for impounding document and since document is not duly stamped and same cannot be admitted in evidence unless procedure u/Sec.33 of Act is followed - In view of law laid down by High Court as well as Apex Court, agreement of sale requires stamp duty and accordingly same cannot be admitted in evidence unless necessary stamp duty is paid under Art.47-A of Schedule I-A of Act - Objection raised by revision petitioner/defendant sustained - CRP, allowed.

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Veesarapu Padma Vs. Rangineni Anitha, 2013(3) Law Summary (A.P.) 223 = 2014(1) ALD 162 = 2014(1) ALT 216.

—Secs.33 & 35 - **REGISTRATION ACT,** Sec.49 - Appellant/plaintiff filed suit for recovery of certain amount basing on agreement executed by respondent which is sought to be registered as sale deed - Trial Court passed order directing to impound agreement - High Court refusing to interfere with orders of trial Court - Appellant contends that said unregistered deed of sale was sought to be put in evidence not for purpose of enforcement of contract but only for purpose of recovery of amount of consideration, which undisputably has been paid to respondent and such a purpose being a collateral one, provisions of Secs.33 & 35 of Act not to be attracted - Sec.33 of Act casts a statutory obligation on all authorities to impound a document - Court being an authority to receive a document in evidence is bound to give effect there to - Contention that document is admissible for collateral purpose is not correct - There is no prohibition u/Sec.49 of Registration Act to receive an unregistered document in evidence for collateral purpose - But document so tendered should be duly stamped or should comply with requirements of Sec.35 of Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid u/Sec.35 of Stamp Act - Appeal, dismissed. **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra 2009(1) Law Summary (S.C.) 35 = 2009(1) ALD 109 (SC) = 2009(1) Supreme 58 = AIR 2009 SC 1489.**

—Secs.33, r/w Sec.40 - Petitioner filed suit for partition against respondents No.4 to 10 - District Registrar rejecting petitioner's Application for impounding and receiving of deficit stamp duty on a purported partition deed considering objections of respondents to genuineness of document - Petitioner contends that neither of reasons assigned by respondent No.3, District Registrar are germane as they fall completely outside scope of provisions of Indian Stamp Act, Secs.33 r/w Sec.40 of Act, leaves no discretion with Collector except to impound document and collect deficit stamp duty if he is of opinion that such instrument is not duly stamped - Govt. contends that in view of objections raised by respondent Nos.4 to 10, respondent No.3/District Registrar has refused to impound document and collect deficit stamp duty and that civil suit is already pending and therefore parties need not establish the genuineness of document before civil Court before seeking impounding of document and get it validated - Scheme underlying Sec.33,38 & 40 of Act would only provide for ensuring payment of proper stamp duty on every instrument executed between parties - No mechanism is laid down under scheme of Act to hold an enquiry in to genuineness or otherwise of documents nor any such requirement is laid down for competent authority to get satisfied about such genuineness before collecting stamp duty - Though 3rd respondent placed reliance on Circular issued by Inspector General of Registration and Stamps that Circular cannot over ride specific statutory provisions - 3rd respondent/District Registrar directed to receive deficit stamp duty from petitioners and release document to them - Writ petition, allowed. **T.Purushotham Rao Vs. State of A.P. , 2011(1) Law Summary (A.P.) 138 = 2011(3) ALD 664 = 2011(4) ALT 745.**

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—Secs.34,35 & 37 - **STAMP RULES,** Rule 2 - **EVIDENCE ACT,** Sec.45 - **SPECIFIC RELIEF ACT,** Sec.20 - Appellant/plaintiff filed suit for specific performance alleging that first defendant executed agreement of sale and delivered possession and subsequently executed sale deed in favour of 2nd defendant - Defendant denied all allegations contending that D1 executed a valid sale deed in favour of D2 and delivered possession - Trial Court dismissed suit holding that agreement of sale was false - First appellate Court allowed appeal filed by plaintiff holding that agreement of sale proved and decreed suit - High Court allowed second appeal and dismissed suit holding that first appellate Court wrongly placed onus on defendants to prove negative and as first defendant denied execution of agreement, burden of establishing execution of document was on plaintiff - Contentions that agreement of sale executed on two stamp papers purchased on different dates more than six months prior to date of execution not valid and that first appellate Court not justified in comparing disputed thumb impressions with admitted thumb impressions and recording finding about authenticity of thumb impression - Stamp Act, Sec.54 - Stipulation of period of six months prescribed is only for purpose of seeking refund of value of unused stamp papers and not for use of stamp papers - Sec.54 does not require person who has purchased a stamp paper to use it within six months and therefore there is no impediment for a stamp paper purchased more than six months prior to proposed date of execution, being used for a document - Even assuming that use of such stamp papers is an irregularity, Court can only deem document to be not properly stamped, but cannot, only on that ground, hold document to be invalid and same is admissible in evidence on payment of stamp duty and penalty u/Sec.35 or 37 of Act - Evidence Act, Sec.45 - When there is no bar to a Court to compare disputed finger impression with admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of characteristics of admitted finger impression and after verifying whether same characteristics are found in disputed finger impression - Where Court finds that disputed finger impression and admitted thumb impression are clear where Court is in a position to identify characteristics of finger prints, Court may record a finding on comparison, even in absence of an expert's opinion - First appellate Court lost sight of fact that party who propounds document will have to prove it - In this case, plaintiff came to Court alleging that D1 had executed agreement of sale in his favour - D1 having denied it, burden is on plaintiff to prove that D1 had executed agreement and not on D1 to prove negative - Decision of High Court reversing decision of first appellate Court - Justified - Appeal, dismissed. **Thiruvengada Pillai Vs. Navaneethammal 2008(2) Law Summary (S.C.) 177 = 2008(3) ALD 112(SC) = AIR 2008 SC 1541 = 2008 AIR SCW 1684.**

—Sec.35 - **REGISTRATION ACT,** Sec.49 - **EVIDENCE ACT,** Sec.32 - **A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971,** Sec.5-A - **TRANSFER OF PROPERTY ACT,** Sec.54 - Suit for injunction - Document styled as "Illu Vikraya Dasthaveju Pramana Patram" i.e., house sale deed affidavit - Trial Court took document as a mere affidavit and not conveyance and held that said document does not require any stamp duty - Disputed document is stated to be engrossed on stamp paper worth Rs.50/- and it was notarised by a Notary public and said document reads that executant

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of document earlier executed a simple sale deed(?) for property in question under which plaintiff purchased same for consideration of Rs.1,25,000/- and it further reads that vendor confirms said sale deed by way of disputed document - Virtually document is stated to be record of past transaction between plaintiff and vendor for suit property and said document was sought to be marked during interlocutory proceedings for interim injunction - When plaintiff relied upon disputed document styled as sale deed affidavit, it requires stamp duty and penalty as original document, since disputed document intends to record earlier transaction and since it contains all terms of original white papers sale deed - Even if deficit stamp duty and penalty are paid on disputed document, it can be marked in evidence only for collateral purpose under proviso to Sec.49 of Registration Act and it cannot be received for proof of terms and contents of that document, since it is a document which is compulsorily registerable u/Sec.17 of Registration Act - Respondent contends that document is liable to be marked as affidavit in interlocutory proceedings like any other affidavit - This is not an affidavit given by party for purpose of pending suit or interlocutory proceedings, but it is document which is stated to have been given recording earlier transaction and this is not an affidavit deposed by deponent for purpose of suit - Disputed document is totally inadmissible even as an affidavit of earlier transactions, since affidavit of living person is no evidence as it is hit by Sec.32 of Evidence Act - Impugned order of trial Court is erroneous in law - Order of trial Court, set aside and directed to mark disputed document only on payment deficit stamp duty and penalty as evidence of conveyance and mark same for collateral purpose and not proving terms and contents of said document - Impugned order of trial Court, set aside - Revision petition, allowed. **Uppula Ramesh Vs. Elagandula Harinath 2013(3) Law Summary (A.P.) 16 = 2014(1) ALD 1 = 2014(1) ALT 700.**

—Secs.35 & 38(2) - **REGISTRATION ACT,** Secs.49 & 17 - Suit for partition - During course of examination defendants filed document captioned as agreement - Trial Court passed order holding that document is relinquishment deed which is compulsorily registerable - Defendants filed Revision against said order - Thereafter trial Court dismissed petition filed by defendants u/Sec.35 of Stamp Act stating that since document held to be reqlinquishment deed and as such it is compulsorily registerable and the earlier order has become final - Defendants also filed another CRP against said order - Petitioner contends that Court wrongly came to conclusion that document is relinquishment deed and Application for sending document to District Registrar for assessment and collection of stamp duty cannot be dismissed since Sec.38 (2) Stamp Act clearly shows that Application filed for sending document for compounding has to be allowed and that document also would be relied upon by revision petitioners for collateral purpose u/Sec.49 of Registration Act - No infirmity in order passed by trial Court regarding aspect that it is a relinquishment deed and compulsorily registrable document and as such order is confirmed and CRP is liable to be dismissed - When petition is filed for sending document for impounding, Court cannot compel party to

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pay stamp duty and penalty and same can be referred to Collector u/Sec38(2) Indian Stamp Act for assessment and collection of stamp duty - Defendants filed petition only for sending document and if respondent/plaintiff have any objection, same can be raised at time of marking or exhibiting document in evidence - In view of same trial Court should have allowed petition for sending document to District Registrar for impounding - Trial Court erroneously dismissed same holding that document was held to be relinquishment deed and it is compulsorily registerable document - Even though document is registerable document same can be sent to Registrar for impounding - CRP, allowed. **K. Gopal Reddy Vs. M.Buchamma 2013(3) Law Summary (A.P.) 172 = 2014(1) ALD 316 = 2014(2) ALT 508.**

—Secs.35 and 47-A - Once the issue is limited to the extent of deficit stamp duty payable by the parties, the 2nd respondent (Joint Sub-Registrar) has to act according to Sec.47-A of the Stamp Act read with Rule 7(4) of the Rules - At any rate to prevent loss of revenue, the 2nd respondent has no authority either under the Registration Act or the Stamp Act to return a duly executed document to one of the parties without putting the other on notice of such decision - The counter affidavit of 2nd respondent is silent about the date of issue of notice either to the Petitioner or 3rd respondent for payment of deficit stamp duty - If the 2nd respondent acts on oral request of 3rd respondent and in his over enthusiasm returns the document to 3rd respondent, this court is compelled to hold that the action of 2nd respondent is illegal, unauthorized and unjust - The 3rd respondent also acted contrary to the terms of contract and condition agreed at the time of execution and registration of sale deed namely to return the document to petitioner - For the above reasons, the writ petition is allowed by declaring that without registration return of pending document to 3rd respondent by 2nd respondent is illegal and without jurisdiction. **Peddi Koteswari, Karimnagar Vs. District Registrar of Assurances 2015(1) Law Summary (A.P.) 154 = 2015(2) ALD 660 = 2015(1) ALT 627.**

—Sec.36 - **CIVIL PROCEDURE CODE,** Sec.151 - I.A. was filed by petitioners in lower court regarding marking of documents that before admitting documents filed by P.W.1 in evidence, the date for hearing objections as to their admissibility should be given and there should be judicial determination of the same; and since such an opportunity was not given prior to marking of documents, and they are inadmissible documents, court below should provide an opportunity to both sides before marking documents and judicially determine their admissibility - I.A. was dismissed by court below stating that documents were already been marked, therefore this application has become infructuous and is liable to be dismissed and that the objections of petitioners, if any, would be considered during arguments - Present revision is filed challenging that order.

Held, after amendment of the Code of Civil Procedure brought into effect in 2002, a new procedure hitherto unknown, has been introduced by amending Order XVIII

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Rule 4 CPC permitting filing of affidavits in lieu of chief-examination - Therefore, affidavits in lieu of chief-examination are being filed through witnesses referring to certain documents in the said affidavits in support of the case of respective parties - Therefore, neither the court nor the opposite party has an opportunity to scrutinize the admissibility or proof of such documents - Since objections as to admissibility of documents on the ground of insufficiency of stamp duty or registration or otherwise would have a bearing on the merits of the case, it is not open to the trial court to mark the documents which are mentioned in the affidavit in lieu of chief-examination straight away without giving opportunity to other party to dispute their admissibility - Therefore, impugned order dt. 21-06-2007 in I.A. No. 339 of 2010 in O.S. No. 18 of 2007 is set aside; the said I.A. is allowed - Civil Revision Petition is accordingly allowed. **B.V.Ramana Reddy Vs. Ceylon & India General Mission Church 2014(3) Law Summary (A.P.) 327 = 2014(2) ALD 183.**

—-Sec.36 and Sec.4-A of Schedule 1-A - **REGISTRATION ACT,** Sec.17(1) - **CIVIL PROCEDURE CODE,** Order XVIII, Rule 4 - Revision petitioner is the 4th defendant, respondent No.1 is plaintiff and respondents 2 to 4 are defendants Nos.1 to 3 before trial Court - Case of petitioner is that at the time of marking possessory agreement of sale as Ex.A.1, objection could not be raised as it was marked in affidavit filed u/Order XVIII, Rule 4 of CPC in lieu of examination in chief and learned counsel was sick on that day and therefore, questioning admissibility of possessory agreement of sale, learned counsel for revision petitioner, filed memo bringing to notice of Court that document is inadmissible, in view of 47-A of Schedule 1-A of the Indian Stamp Act and 17(1) of the Registration Act - Trial Court, considering objection based on memo, passed an order holding that when document is received in evidence, marked as exhibit without any objection, same cannot be agitated at subsequent stage,

Raising several contentions and one among other is that mere marking of document as exhibit without applying mind, does not amount to admission of document in evidence and revision petitioner is entitled to challenge admissibility of document at any time and Sec.36 of Indian Stamp Act, 1899, is not applicable to present facts of case - But trial Court committed a grave error in exercising jurisdiction conferred on it - Therefore, it warrants interference of this Court and prayed to set aside order.

Held, a co-joint reading of Sec.36 of Indian Stamp Act and Order XII Rule 3 of CPC, there is little conflict as to rejection of any document which is already marked on ground that document is irrelevant or inadmissible in evidence after recording reasons - If really bar contained in Sec.36 is absolute which preclude Court to entertain any objection as to admissibility at any subsequent stage, after document is marked in evidence, Order XIII Rule 3 become redundant - When Court did not determine judicially as to admissibility of possessory contract of sale and marked same as Exhibit, without applying its mind, admissibility of document can be decided judicially and reject if Court find that document is inadmissible in evidence or reject document at any stage of proceedings - Hence, trial Court did not exercise its jurisdiction under Order XIII Rule 3 of CPC, consequently liable to be set aside.

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No doubt, powers of Court under Article 227 of the Constitution are supervisory in nature and when trial Court did not exercise jurisdiction which is conferred on it or where trial Court exercised its jurisdiction excessively or admitted inadmissible evidence or when Court exercised its jurisdiction illegally or with material irregularity this Court can interfere with order under challenge - In present facts of case, Court failed to exercise its jurisdiction so vested on it to decide admissibility of the document and thereby order of the trial Court warrants interference of Court since it is against settled law - Therefore, finding the trial Court is hereby set aside - In the result, the Civil Revision Petition is allowed. **Syed Yousuf Ali Vs. Mohd. Yousuf 2016(1) Law Summary (A.P.) 395 = 2016(3) ALD 235 = 2016(2) ALT 557.**

—Secs.38 (2) - **CIVIL PROCEDURE CODE,** Sec.107 (2) - Suit for specific performance of agreement of sale - In view of objections for impounding for marking agreement, trial Court impounded document and directed petitioner to pay deficit stamp duty and ten times penalty - Petitioner/appellant filed Application to send document to District Registrar and Collector under Stamp Act to pay stamp duty and get endorsement- Respondent contends that purpose of paying stamp duty and penalty of impounding is for purpose of marking document and that question of marking document would not arise at stage of second appeal and that Sec.38(2) of Act cannot be made applicable at appellate stage - In this case, there is some delay on part of petitioner - But however, on careful analysis of series of events, may be that because appellate Court had reversed decree and judgment of Court of first instance and allowed appeal, petitioner had chosen to file present application at this stage - It is no doubt true that normally marking of documents would be before trial Court, but for certain exceptions - It is needless to say that first appeal or second appeal, are continuation of original proceedings i.e. original suit - Though application had been filed at a belated stage, petitioner to be permitted to pay stamp duty and penalty - Petition, allowed. **P.Ramesh Vs. Shaik Begum Bee 2009(1) Law Summary (A.P.) 77 = 2009(2) ALD 334 = 2009(1) APLJ 43 (SN).**

—Secs.40, 19-A & 18 - **A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971,** Sec.5-A - District Registrar issuing certificate validating agreement of sale after collecting certain amount under provisions of Stamp Act - There is no provision either under Stamp Act or under Registration Act which empowers any authorities thereunder to validate document, witnessing any transaction - Such powers are conferred only upon revenue authorities u/Sec.5-A of A.P. Rights in Land and Pattadar Pass Books Act, 1971 - Proceedings issued by District Registrar validating document under Stamp Act, set aside. **H.Agarwal Vs. Govt. of A.P. 2009(1) Law Summary (A.P.) 428.**

—Secs.41-A and 47-A - Circumstances contemplated by Sec.41-A of Act are entirely different and distinct from circumstances envisaged by Sec.47-A of Act - If re-determination u/Sec.41-A is admitted in favour of department then the object of both sections in recovering deficit stamp duty is lost - The lis is taken up for decision on the reference of sub Registrar - Therefore, Sub Registrar is required to make out a full and complete

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case including suppression or fraud for decision by 2nd respondent - Had it been a case where without reference to determination u/Sec.41-A of Act registration of document is completed, then Sec.47-A of Act is attracted - In view of aforesaid discussion, this Court of view that 2nd respondent acted without jurisdiction in re-determining his own valuation - Proceedings dated 16-10-2000 as confirmed by 1st respondent in proceedings dated 20-03-2001 are set aside and the Writ Petition is allowed. **K.Rameswara Reddy Vs. Chief Controlling Revenue Authority 2015(1) Law Summary (A.P.)186 = 2015(2) ALD 634 = 2015(2) ALT 692.**

—Secs.41-A, 47-A & 33 - Petitioner and others presented partition deed before 2nd respondent,Sub-Registrar who referred matter to 1st respondent/District Registrar and Collector, since he found stamp duty paid on document not adequate - 1st respondent, in turn, issued notice informing petitioners that some amount is payable towards deficit stamp duty - On receipt of notice, petitioners submitted representation to respondents stating that in case, document cannot be registered, they would withdraw document and cancel transaction - However, 1st respondent issued proceedings u/sec.41-A of Act requiring petitioner to pay certain amount towards deficit stamp duty and registration fee - Hence petitioner challenges said proceedings, contending that occasion for respondents to levy any deficit stamp duty, did not exists once petitioner and others to document have decided not to proceed with transaction and that Sec.41-A can be invoked only when document is registered - Respondents contend that Act confers wide powers on respondents to levy deficit stamp duty and registration charges, whenever such deficit is noticed and that Sec.33 of Act empowers respondents to impound document and in present case, deficit stamp duty and registration charges alone are levied - Exercise u/Sec.47-A can be undertaken only when party insists on document being registered and in case party, that presented document gives up idea of getting document registered, registering authority or Registrar cannot insist payment of amount found to be deficit - Provisions of Sec.41-A would get attracted only when (a) a document is already registered but concerned authority notices that proper stamp duty was not paid and (b) fact that proper stamp duty was not paid is noticed within a period of five years from date of registration - In this case, document not presented at all and in fact it was presented for registration - Therefore question of invoking Sec.41-A of Act does not arise - Writ petition, allowed. **Prajay Engineers Syndicate Ltd. Vs. District Registrar & Collector 2012(1) Law Summary 292 = 2012(3) ALD 317 = 2012(3) ALT 639.**

—-Sec.47-A - **REGISTRATION ACT,** Sec.47, r/w Sec.49 - Original suit was filed by sole plaintiff for specific performance of contract of sale which was maintained against three defendants - In course of trial, when sought for exhibition of documents in question, objection raised by defendants for its marking on ground of deficit stamp duty - Objection was overruled by impugned order against which defendant No.2 and defendant No.3, filed this revision petition.

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Held, from this now coming back to Sec.47-A, explanation inserted by Amendment Act, 21 of 1995, to make it liable as an agreement to sell followed by or even evidencing delivery of possession of property agreed to be sold shall be chargeable as sale - Explanation very clearly speaks so unambiguously, not followed by, even if evidencing in any form delivery of possession later even that requires stamp duty to impound as a sale, even though it is styled as a mere agreement - Here, last one para of Page 3 of document speaks delivery of possession contemporaneous with execution from same wording as "meeku vikrainchi meeku swadheenam cheyadamaindi" - No doubt, terms of document speaks further for obtaining sale deed and payment of balance consideration to say it is a possessory sale agreement within meaning of sale - However, trial Court rejected said objection covered by impugned order - In fact, expression of Division Bench of this Court in B.Ratnamala V. G.Rudramma, which is crystal clear in lending law in this field, particularly in total interpretation of expression saying evidencing delivery in any form even subsequently document though styled as agreement once evidencing possession, it is within definition of explanation to Sec.47-A of Act as a sale for liability of stamp duty to impound without which it cannot be admitted.

It is made clear that document is within meaning of sale defined by Sec.47-A of Act and without payment of stamp duty and penalty, if at all seek to impound by Court unless file an application to refer to District Registrar for impounding as laid down by this Court in Chintam Kantam V. Dhulipudi Venkateswara Rao and it is only on collection of stamp duty, if at all impounded by Court with penalty for ten times or if at all referred to District Collector and duly certified on original as duly stamped to act upon it, subject to any requirement of registration of main purpose, as case may be, within meaning of Sec.47 read with Sec.49 of Indian Registration Act including the A.P. Amendment Act 4 of 1999 with effect from 1-4-1999, which no doubt will override first proviso to Sec.49 of Registration Act in a suit for specific performance - Accordingly, revision is allowed. **Penupothula Hanumantha Rao Vs. K.V.Narsimha Jogendra Sreshti 2016(3) Law Summary (A.P.) 370.**

—Sec.47-A - **WEALTH TAX,** Sec.7 - Petitioner-Society entered into agreement of sale for purchase of Ac.49.23 of land in year 1982 and sale deeds were executed in its favour in respect of Ac.40.90 upto December, 1990 for balance extent of Ac.9.04 cents, sale deeds executed in 1991 and presented for registration - 1st respondent-Sub-Registrar referred matter to 2nd respondent-District Registrar who passed order determining value at a far higher rate - Senior civil Judge dismissed appeal filed by petitioner-Society - Petitioner contends that lands covered by sale deeds are already burdened with agreement of sale in year 1982, and possession thereof, already delivered to petitioner and value must be ascertained, keeping in view these factors and since land was already agreed to be sold and possession was parted by owner, land would not fetch normal rate, if offered to 3rd party - It is not at all concern of Registering Authorities to assess advantage or disadvantage of a property in context of determining stamp duty and registration charges and Sec.47-A is very clear in its purport, and it does not permit of any such exercise - Any

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inroads made into process of ascertaining market value on basis of advantages or disadvantages, would lead to disastrous consequences and whole objectivity would be wiped off - Analogy drawn by petitioner between Sec.47 on one hand and Sec.7 Wealth Tax not impressive as one relates to transfer of title, other relates to levy of tax - Writ petition cannot be treated as further appeal against order passed by civil Court, in appeal preferred u/Sec.47-A - Writ petition, dismissed. **Matrusri Educational Society Vs. Sub Registrar, Medchal 2008(1) Law Summary (A.P.) 257 = 2008(2) ALD 354 = 2008(3) ALT 247.**

—Sec.47-A of Schedule 1-A and 35 - Suit for specific performance of agreement of sale and delivery of possession - Trial Court directing petitioner/plaintiff to pay stamp duty and penalty on agreement of sale and until stamp duty and penalty is paid document is inadmissible in evidence - Petitioner/plaintiff contends that he has specifically averred, in plaint, that possession was not delivered under agreement and since there was specific pleading that possession was not delivered and execution of agreement was denied in written statement, case falls outside scope of Art.47-A of Stamp Act - A pedantic approach(thumb rule) cannot be made to say that once document recites as to delivery of possession, whether possession was delivered or not stamp duty requires to be paid as if it was a sale and in facts and circumstances of case, it must be treated that agreement in question is a simple agreement and question of paying stamp duty does not arise - Respondents contend that agreement relied upon by plaintiff seeking decree of specific performance of agreement and delivery of possession, itself recites that possession was delivered to plaintiff under agreement - In this case, admittedly there is recital in agreement of sale on basis of which suit is filed - Therefore necessarily it has to be charged as a sale with stamp duty and thus it requires impounding and that unless stamp duty and penalty if any are paid, it cannot be admissible in evidence - Further, pleadings of parties have no relevance whatsoever - Recital in document as to delivery of possession itself is enough to invoke provisions of Art.47-A of Schedule 1-A of Act - Where agreement holder is not in possession of property under agreement of sale, even though there is recital in agreement as to delivery of possession, he need not pay proper stamp duty as required - It shall be treated as a simple agreement of sale falling outside scope of Explanation 1 to Art.47-A of Schedule 1 of Stamp Act - Purpose of Act is to see that a person, who is in physical possession and enjoyment shall not avoid to pay proper stamp duty as required under Explanation 1 to Art.47-A of Stamp Act - Otherwise document shall not be admissible in evidence as required under Sec.35 of Stamp Act - Impugned order of trial Court, set aside - Agreement of sale is ordered to be admitted in evidence - CRP, allowed. **B.Bhaskar Reddy Vs. Bommireddy Pattabhi Rami Reddy, 2010(3) Law Summary (A.P.) 138.**

—Sec.47-A & Art.63, Schedule 1-B - **TRANSFER OF PROPER ACT,** Secs.54 & 105 - “Noida” allotted land to several Housing Co-operative Societies by execution of lease

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deeds - In view of clause contained in lease deed they must be compulsorily registered - Members of Noida Association executed various agreements for transfer of leasehold rights with the Co-Operative Societies and from its members from 1988 on- wards - Said agreements for transfer of lease hold rights were denoted as agreements of sale - When document presented for registration Sub-Registrar informed that stamp duty to be fixed on documents should be as applicable to conveyance under Art.23 of Schedule1-B of Act - Writ petition filed before High Court challenging decision of Sub-Registrar, dismissed - Object under laying of Sec.47-A of Act is to neutralize effect of under valuation of immovable property under registered instrument of sale or exchange or gift or partition or settlement - It is not enough for authorities for purpose of invoking Sec.47-A that consideration amount stated in instrument of sale is less than prevailing market value but they must be satisfied that there is an attempt of under valuation - SECS.54 & 105 OF T.P ACT - From a plain reading of these provisions there cannot be any doubt that in case of lease there is a partial transfer and right of reversion remains with lessor - Where as in case of sale, there must be an absolute transfer of ownership and not some rights only as in case of a lease - Such being position, it is amply clear that document in question presented for registration was in fact a lease and transfer to members of association was assignment of leasehold rights - Buildings and all other appurtenants attach to land become a part of assigned transfer through lease and not separate sale - ART.63 OF SCHEDULE-1-B OF ACT - A plain reading of provision shows that stamp duty chargeable to a document is not on market value of property on consideration indicated in same - If Art.63 of Stamp Act is to be applied, duty shall be paid on consideration of amount of consideration shown in deed itself and not on market value of land or construction thereon - In this case, consideration would be that which has been mentioned in lease deed at date of agreement to enter into same and there is no scope for looking into market value of property under provisions of Act in case of an assignment by way of transfer of lease under Art.63 of Schedule-1-B of Act - Judgment of High Court, set aside - Consideration to be mentioned in the document would be market value of property on date when agreement was entered into and not when it was presented for registration. **Residents Welfare Association, Noida Vs. State of U.P. 2009(2) Law Summary (S.C.) 46.**

——Arts. 6, 47-A of Schedule 1-A – **CIVIL PROCEDURE CODE,** Or.13, Rule 3 - Petitioner herein is the plaintiff and he filed suit for specific performance of an agreement of sale - Lower Court observed that the recitals in Ex.A1-agreement of sale disclose that the deceased first defendant agreed to sell the land of an extent of Ac.7-00, received an amount of Rs.20,000/- as advance and delivered possession to the plaintiff - Ex.A2 is another agreement of sale - It was also noticed that there was a specific recital in Exs.A1 and A2 that possession of land was delivered to vendee - If the agreement of sale coupled with delivery of possession was executed, the document has to be executed on a stamp paper as specified under Article 47-A of Schedule 1-A of the

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Indian Stamp Act, 1899 and since the penalty was collected under Article 6 instead of Article 47-A of the Act, both the documents were held to be insufficiently stamped documents - It was held by trial Court that, though, defendants did not raise objection at time of marking of documents, they can raise objection with regard to admissibility at a later point of time and, accordingly, allowed application, by an order - Challenging said order, present Civil Revision Petition is filed.

Held, a learned single Judge of this Court considered case of an unregistered agreement of sale and following judgment of Full Bench of this Court held that objector can raise an objection with regard to admissibility of a document on ground that it has been not duly registered despite fact that said document has already been exhibited and admitted in evidence - Court have considered elaborately issue with regard to marking of document and it was held that it is the duty of a Court of Law to exclude all irrelevant or inadmissible evidence even if no objection was taken by opposite side - In view of above legal position, order of the trial Court is sustainable and it does not warrant interference - However, if document does not require registration and it is only insufficiently stamped, trial Court can take necessary action under provisions of Stamp Act as aforesaid - Accordingly, Civil Revision Petition is dismissed subject to above observations. **Srinivasa Builders Vs. A.Janga Reddy 2016(1) Law Summary (A.P.) 379 = 2016(3) ALD 343 = 2016(2) ALT 321.**

—Art.6(B) of Schedule 1-A - Revision petitioner/plaintiff filed suit against respondents/ defendants for specific performance of agreement of sale and construction - Defendants raised objection when plaintiff sought to mark agreement on ground that it was insufficiently stamped - Trial Court upheld objection raised by defendants and directed plaintiff/petitioner to takes steps for payment of proper stamp duty and penalty under Sec.6(B) of schedule 1-A - Admittedly document in question was executed on stamp papers worth Rs.100/- and said document was titled as "agreement of sale and construction" - Specific case of plaintiff is that he paid Rs1 lakh on date of agreement itself and that inspite of repeated requests defendant failed to complete construction of flat within time agreed upon amd went on postponing registration of sale deed - Hence suit filed for specific performance of contract - In this case, on careful reading of recital of suit agreement it is clar that it is nothing but simple agreement for sale of Flat to be constructed by defendant and it is also not in dispute that possession of said Flat has not yet been delivered to plaintiff/revision petitioner - Art,6(B) is applicable only to agreement for development/sale in relation to construction of house or building including multi-unit house or building - Suit agreement sought to be marked by plaintiff as Ex.P.1 is not agreement for any of purposes mentioned under Art.6(B) and it is only a simple agreement to sell one of Flats proposed to be consructed by defendant - Hence, trial Court committed errer in holding that document in question was insufficiently stamped - Order of trial Court, set aside and directed trial court to receive agreement in evidence without insisting payment of additional stamp duty - CRP, allowed. **K.Sudhakar Reddy Vs. Sudha Constructions 2012(1) Law Summary (A.P.) 17 = 2012(1) ALD 615 = 2012(3) ALT 93.**

(INDIAN) STAMP ACT:

—Schedule IA, Art.7(a) & 35 (b) - **TRANSFER OF PROPERTY ACT,** Sec.58(b) - Petitioners executed instrument titled as "Memorandum conferming deposit of title deeds" in favour of 4th respondent/Bank in connection with a loan transaction - When instrument presented for registration 3rd respondent issued notices calling upon petitioners to deposit deficit stamp duty by treating instrument as simple mortgage deed - Petitioner contends that instrument is a document evidencing deposit of title deeds and not a simple mortgage as defined u/Sec.58(b) of T.P Act - Govt. contends that instrument presented by petitioners falls under Art.35 (b) of Schedule IA and not under Art.7(a) of Act - Under "Mortgage by deposit of title deeds", mortgager delivers to creditor or his agent documents of title to immovable property with intent to create a security thereon - Mere mentioning of word "Mortgage" not change character of instrument inasmuch as even deposit of title deeds also, is one kind of mortgage - If instrument pertains to deposit of title deeds, Art.7 of Schedule IA is attracted, while in case of other mortgages, Art.35(b) is applied - Instrument in question attracts Art.7 of Schedule IA of Act and therefore petitioners are not liable to pay stamp duty demanded by respondents - Respondents are directed to register instruments by collecting stamp duty as per provisions of Art.7 of Schedule IA of Act - Writ petition, allowed. **Nirmala Baldwa Vs. Govt. of A.P. 2010(3) Law Summary (A.P.) 406 = 2011(1) ALD 619 = 2010(6) ALT 653 = AIR 2011 AP 26.**

—Art.31 of Schedule 1-A - "Deed of rectification" - Petitioener submitted application for establishment of outlet of HPC Ltd., by taking required extent of land on lease for period of 15 years through a document by paying stamp duty of Rs. 2,46,300 and registration charges of Rs.8,210/- - HPC insisted that lease must be for period of 30 years - In view of this, petitioner obtained a deed of rectification from lessors for period of 30 years - When document presented by petitioener for registration before 3rd respondent/Sub-Registrar for registration, instead of collecting stamp duty, and registration charges for extended lease period of 15 years, 3rd respondent/Sub-Registrar has collected stamp duty for entire 30 years period - Hence writ petition, seeking direction for refund of stamp duty and registration charges collected in excess from him - Petitioner contends that stamp duty for lease deed is payable under Art.31 of Schedule 1-A of Act and same was paid for period of 15 years when earlier lease deed was executed and that in light of extension of lease for further period of 15 years Sub-Registrar is supposed to collect differential amount and not entire amount covered by earlier original lease deed - Govt., contends that deed of rectification has effect of bringing about a fresh lease and that fact there existend a lease deed may be for period of 15 years does not make any difference in this regard - Necessity has arisen for petitioner to seek rectification of lease in context of period of lease and therefore a deed of rectification, just mentioning period as 30 years even while keeping other terms of lease in tact, was executed and presented for registration - Sub-Registrar calculated stamp duty payable for lease deed for period of 30 years in respect of said property at Rs.5,29,335/- and registration fee at Rs.12,295/-,

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Had lease deed for period of 30 years has been executed for first time, there would certainly have been justification for Sub-Registrar in levying entire amout referred to above - Very deed of rectification discloses that there existed lease deed for period of 15 years and rectification has effect of extending term of lease by another 15 years - Sub-Registrar at most could have collected stamp duty and registration charges for extended period in terms of Cl.(v) of Art.31 of Act - Once petitioner paid stamp duty and registration charges for lease period of 15 years same was required to be taken into account and there was no justification for Sub-Registrar in collecting stamp duty for entire period on deed of rectification - Sub-Registrar is directed to refund stamp duty and registration charges paid on rectification lease deed - Writ petition, allowed. **L.Gopal Singh Vs. Inspector General Stamps & Registration 2012(2) Law Summary (A.P.) 148 = 2012(5) ALD 226 = 2012(4) ALT 563 = AIR 2012 AP 189.**

—Art.47-A of Schedule-1A - Explanation - Art.6-(B) in schedule -1A - Petitioner/plaintiff filed suit for perpetual injunction stating that he is absolute owner of plaint schedule property basing on settlement deed executed by her grand father - Respondents/ defendants filed written statement contending that petitioner entered into agreement of sale with first respondent and handed over possession to respondents after receiving sale consideration amount - When respondents sought to mark said agreement of sale petitioner/plaintiff raised objection to marking of said document contending that as per explanation -1 to Art.47-A of Schedule-1A of Act agreement needs to be stamped as regular sale deed and therefore same is not admissible in evidence - Trial Court overruled objection holding that agreement of sale not required payment of stamp duty and penalty under Art.47-A - Hence present revision - Petitioner contends that order passed by trial Court is contrary to law and that agreement of sale was followed by delivery of possession of property agreed to be sold and as such it shall be chargeable as sale under Art.47-A and unless deficit stamp duty and penalty is paid as per Act it cannot be admitted in evidence - Respondent contends that order of trial Court is correct in law and that after introduction of Art.6(B) in Schedule 1-A to Act situation has underwent a change and High Court held that Art.6-B does not applied in respect of agricultural land and would apply only in respect of Urban properties and therefore CRP be dismissed - Subject agreement of sale cannot be received in evidence unless proper stamp duty and penalty are paid as per Explanation-1 of Art.47-A of Act and that agreement of sale attracts said Explanation and has to be stamped as a “sale” as admittedly possession was delivered after receiving balance sale consideration as per it’s terms - Order passed by trial Court, unsustainable - CRP, allowed. **Vanapalli Jayalaxmi @ Venkata Jayalaxmi Vs. A.Kondalarao, 2013(3) Law Summary (A.P.) 257 = 2014(1) ALD 491 = 2014(1) ALT 356 = AIR 2014 AP 1.**

STANDARDS OF WEIGHTS AND MEASURES ACT, 1976:

STANDARDS OF WEIGHTS AND MEASURES ACT, 1976:

—STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT) ACT, 1985 - STANDARDS OF WEIGHTS AND MEASURES (PACKAGE COMMODITIES) RULES, 1977, Rules 2(1) & 6(1) - Inspector of Legal Metrology (Weights and Measures) seized SIM cards and recharge coupons for alleged violation of Act and Rules - Petitioners contend that SIM (Subscriber Identity Module) cards and recharge coupons are not of "pre-packed" commodities of said Acts and Rules and that petitioners are holders of licence and are permitted to carry on operations of providing Mobile Cellular Telephone services within A.P., Circle and are governed by provisions of Indian Telegraphic Act and Indian Wireless Telegraphy Act and that petitioners instal and run applicable systems and services provided by them to subscribers are at rates fixed by Telecom Regulatory Authority of India and that petitioners are offering above cards and coupons which contain necessary software packages at various commercial establishments, dealer outlet shops etc and there is sale of neither product nor commodity, it is only a charge for service to be provided, collected in advance from subscribers and that amounts paid for pre-paid cards and re-charge coupons are paid in advance for services offered by petitioners in future - Respondents contend that pre-paid and post-paid cards and re-charge coupons contain necessary software packages and that package contains SIM card which is computer software generated chip inserted in handset Cellular or Mobile phone to activate card or services of phones net work and that SIM card is a pre-paid commodity or article within meaning of Rule 2(1) of Rules and that chip has definite pre-determined value in terms of air time used for conversation based on which charges are levied and that since SIM card is pre-paid commodity or article, it is liable to comply with requirements of Rule 6(1) and Rule 2(1) of Rules and that by adding administration fees of Rs.50/- to MRP declared on package which is inclusive of all taxes, petitioners have violated those Rules - Respondents justify actions of inspectors of Legal Metrology in making inspections and effecting seizures of SIM card packets - Software is intellectual property and inspite of it, when once it is contained in medium which is bought and soled, it is an article of value - What is essential for an article to become goods is its marketability - If a cannd software otherwise is goods, Court cannot say it is not because it is an intellectual property - Except SIM card serving as a medium or modem containing software to facilitate customer to have access to service provider's net work, SIM card has no intrinsic value at all - Whether service provider is assessed to sales tax or service tax in relation to transactions of sale of SIM card or re-charge coupon, neither SIM card nor re-charge coupon can be termed as commodity having any commercial value - In view of matter, either SIM card or re-charge coupon of petitioners who are Cellular Phone Service Providers are neither commodities nor pre-packed commodities for purpose of 1976 Act or 1985 Act or Rules - Writ petitions, allowed. **Tata Cellular Limited Vs. Govt. of A.P. 2012(2) Law Summary (A.P.) 206 = 2012(4) ALD 469 = 2012(5) ALT 105.**

—Secs.3(1) (a) and 39 - **STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES), RULES 1977**, Rules 4, 6 (1) and 23(1) - Notification Vide GSR No.620(E),

STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014:

dt.26-9-1977 - Inspector, Legal Metro-logy seized Dates Fruit packets on ground that the packets do not bear declaration of name and letters of manufacturer as required by Act and Rules - Petitioner contends that Provisions of Act and Rules do not apply to product being marketed by it as they are not covered by definition of Packaged Commodities - Respondent contends that Date fruits plucked from palm trees and is processing them, it is but a "process of manufacturing" and so name and address of manufacturer has to be declared on packges of seedless Dates fruits being marketed by it , as goods are packed and not re-packed as claimed by petitioner and that all kinds of fruit packages come under purview of Rules and as products seized do not contain declaration, petitioner is not entitled relief sought for - As Dates, which admittedly are fruits are grown on trees and are natures bounty, question of noting name of manufacturer of Dates on packets does not arise - As packages contained name of petitioner as re-packer it cannot be said that there is any violation of either Rule 6(1) (a) of Rules or Sec.39 of Act - Proceedings of seizure of goods belonging to petitioner liable to be quashed - As seizure seems to have been made with an ulterior motive by Officer who seized products of petitioner is liable to pay costs to petitioner in his individual capacity - Writ petition, allowed. **Lion Dates Pvt., Ltd. Vs. The Inspector, Legal Metrology, Hyderabad 2008(1) Law Summary (A.P.) 462 = 2008(6) ALD(NOC) 91 = 2008(3) ALT 265 = AIR 2008 AP 188.**

STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014:

—Petitioners are street vendors doing their business of selling Ice-creams, Fast Foods, Fruit Chats, Chat Bandar etc., near the children park in Kurnool - According to petitioners, they were granted licences as early as in year 1995 and they have been doing this business to eke out their livelihood all through - They were granted licences by Municipal Corporation and collecting annual licence fee from petitioners - Petitioners have subsisting licences - While so, Municipal Corporation is trying to forcibly dispossess them from the business premises, near children park even though licences were subsisting - Hence, this writ petition.

Held, though petitioners sought a vague relief, categorical assertion of the respondent corporation that they have been removing street vending units of the petitioners wherever they attempt to vend near children park, substantiate their contention that petitioners are harassed and prevented from carrying on street vending by unlawful means - Thus, the action of the respondent Corporation in removing petitioners vending units from the children park area is ex facie illegal and the writ petition deserves to be allowed - Footpaths are meant for pedestrians and they have a right to use them - Petitioners shall ensure that they do not occupy the footpaths by blocking the right of way of pedestrians - They shall not put up any permanent structures and shall not make seating arrangements blocking the footpaths - It is also the responsibility of the petitioners to maintain hygienic conditions - If petitioners violate any of these conditions, it is open to respondent Corporation to take appropriate action as warranted by law by following due process of law and observing principles of opportunity of hearing - Accordingly, the writ petition is allowed. **R.Prashanti, Kurnool Dt. Vs. State of A.P. 2015(3) Law Summary (A.P.) 48 = 2015(6) ALD 400.**

(INDIAN) SUCCESSION ACT, 1925:

—Sec.3 – Municipal Authorities dispossess petitioners by demolishing shops/temporary structures – Town Veding Committee has not identified petitioners as street vendors – Municipal Authorities alleged that petitioners are doing business at non-vending zone and that they are not street vendors.

Under sub-sec.(3) there of, no street vendor shall be evicted or, as the case may be, relocated till survey specified under sub-sec.(1) has been completed and certificate of vending is issued to all street vendors.

Held, unless vending zones are identified, no person can be accused of doing business in non-vending zone – Hence Municipal Authorities is directed to issue identity cards and also direct to identify the vending zones as per provisions of Act and relocate all the street vendors in those vending zones subject to limit prescribed u/Sec.3 of Act. **Keerti Rajesham Vs. State of Telangana 2016(1) Law Summary (A.P.) 243 = 2016(3) ALD 114.**

(INDIAN) SUCCESSION ACT, 1925:

—"Holographic Will" - Proof of - Suit for partition - plaintiffs filed suit for partition - Plaintiffs/daughters of deceased KSM filed suit against sons for partition - Defendants denied rights of plaintiffs for partition and claiming on fabricated unregistered will to have been executed by deceased KSM - During pendency of suit 4th defendant wife of deceased KSM died and subsequently 5th defendant came on record basing on will said to have been executed by 4th defendant in her favour - Trial Judge decreed suit, discarding will - Hence present appeal.

PROOF OF HOLOGRAPHIC WILL - STATED - In this case, plaint proceeded on premise that will was fabricated one and forged one and there is nothing casting any aspirations on attestors on will and therefore reasons given by trial judge in discarding Ex.B1 will are not valid and it has to be held that will is proved and proved to be valid and binding on parties - Plaintiffs are entitled for equal share in item no.5 conveyed under will Ex.B.1 by their father

"Mesne profits" - Trial Judge has directed that enquiry shall be conducted separately regarding mesne profits - Court has got power to grant future mesne profits even without asking same Court by itself can award same or order separate enquiry - This power can also be exercised by appellate Court, since power of appellate Court is coextensive with power of original Court and when appeal is pending suit is deemed to be pending - Hence it is a fit case where without any further enquiry *mesne* profits can be directed to be paid by appellants to plaintiffs. **Kautarapu Ganapathi Rao Vs. Vangara Kameswaramma 2011(3) Law Summary (A.P.) 103 = 2011(6) ALD 753 = 2011(6) ALT 519.**

—Secs.57, 141,74 to 111 - "Will" -"Construction of" - Interpretation of will" - "Mufussil will" - In present case Muffssil will executed in year 1920 - Since subject Will is not covered by any clauses Sec.57 Part 7 of Act 1925 is not applicable thereto- Court must put itself as a far as possible possession a person making will in order to collect testators intention

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from his expression - Will must be construed and as a whole to gather intention of testator and endeavour of Court must be to give effect to each and every dispossession and every dispossession of testator contained in will could be given effect to as far as possible consistent with testator's desire - In this case, female folk were left in lurch with no male member to lookafter - in view of predominant desire that his grand daughter should have his properties and that his properties did not go out of family, testator desired that his daughter adopted a son with consent of her husband and his grand daughter married that boy - On construction of will and in circumstances it must be held that no legacy came to be vested in particular person, therefore plaintiffs did not acquire any right title or interest in properties of testator - Persons not claiming legacy for 19 years after death of testator - Never claimed any legacy under subject Will - "The distinction between a repugnant provision and a defeasance provision is sometimes subtle, but the general principle of law seems to be that where the intention of the donor is to maintain the absolute estate conferred on the donee but he simply adds some restrictions in derogation of the incidents of such absolute ownership, such restrictive clauses would be repugnant to the absolute grant and therefore void; but where the grant of an absolute estate is expressly or impliedly made subject to defeasance on the happening of a contingency and where the effect of such defeasance would not be a violation of any rule of law, the original estate is curtailed and the gift over must be taken to be valid and operative." **Siddamurthy Jayarami Reddy (D) by LRs. Vs. Godi Jaya Rami ReddY 2011(1) Law Summary (S.C.) 162.**

— Secs.57, 213 - **INDIAN EVIDENCE ACT, 1872** - Will, proof of, for a legal representative - Lower court held that legatee has to obtain probates of will in order to be impleaded as a party in the suit - Held, it is not necessary based on the following principles:

(1) It is not necessary for the executor or legatee of a Will to obtain Probates of the Wills in the State of Andhra Pradesh (Also in the Telangana State after its formation).

(2) For considering an application to come on record as the legal representative of a deceased party, the Court need not undertake a roving enquiry on the validity of the Will(s). A summary enquiry into the claim of execution of the Wills is enough for the Courts to permit a person who claims to be the legal representative of the deceased party to come on record for the limited purpose of continuing the proceedings.

(3) The burden lies on the executant or legatee to prove the Will(s) propounded by him in the suit or final decree or other proceedings, as the case may be, as per the provisions of Chapter V of the Indian Evidence Act, 1872, if he asserts any right over the property of the party based on the Will(s) after his coming on record.

Lower Court committed a grievous error in dismissing petitioner's application contrary to settled legal position - Hence, the order under revision is not sustainable. **Naram Bhoomi Reddy (died) Vs. Naram Venkat Reddy, 2014(3) Law Summary (A.P.) 41 = 2014(6) ALD 63 = 2014(5) ALT 270.**

—Sec.63 - **EVIDENCE ACT,** Sec.68 - "Will" - Proof of - Suspicious circumstances - Petition filed for granting of letters of administration - Respondents alleged suspicious

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circumstances - Trial Court ordered and decreed for issuance of letter of administration in favour of petitioner - High Court allowed appeal holding that evidence of P.W.2, one of attesting witnesses is vague - Appellant contends that High Court has lost sight of fact that P.W.2 deposed in Court after long lapse of time and merely because omitted to say certain things that cannot be a ground to discard evidentiary value of his evidence and that High Court should not have interfered with order of trial Court - Having regard to provisions of Sec.68 of Evidence Act and Sec.63 of Succession Act, a Will to be valid should be attested by two or more witnesses in manner provided therein and propounder thereof should examine one attesting witness to prove Will - Attesting witness should speak not only about testator's signature or affixing his mark to Will but also that each of witnesses had signed Will in presence of testator - In this case, no issue was framed regarding validity of Will - Evidence of P.W.2 does not in any way support claim of due execution and attestation of Will - On contrary, it clearly establishes that he did not sign in his presence, he did not know what was nature of document - There was no attesting witness who has signed in his presence and therefore requirements of Sec.68 of Evidence Act have to be complied with in order to show that two persons who claimed to have signed as attesting witness can be really treated as attesting witnesses - Appeal, dismissed. **Yumnam Ongbi Tampha Ibemma Devi Vs.Yumnam Joykumar Singh 2009(2) Law Summary (S.C.) 88.**

—Secs.63 & 61 - **EVIDENCE ACT,** Sec.68 - "Will" - "Execution" - "Proof" - "Validity" - "Burden of proof" - Suspicious circumstances - Appellant contends that house property purchased from joint family funds but on date of purchase of house property in name of deceased/ plaintiff under registered sale deed there was no family property and that deceased plaintiff purchased property from selling gold ornaments given by her parents - Appellant further contends that deceased received head injury and shifted to hospital to treatment and appellant brought her to his house and treated her cordially and made her to executive will by cancelling another Will - Will being a document has to be proved by primary evidence except where Court permits by documentary evidence to be proved by leading secondary evidence - Since it is required to be attested as provided in Sec.68 of Evidence Act, it cannot be used as evidence until one of attesting witnesses, at least has been called for purpose of proving its execution - In order to assess as to whether Will has been validly executed and is a genuine document propounder has to show that Will was signed by testator and that he had put his signatures to testment of his own free Will that he was at relevant time in a sound disposing state of mind and signed in presence of two witnesses who attested in his presence and in presence of each other - One these elements are established, onus which rests on propounder is discharged - Where there are suspicious circumstances, onus is on propounder to remove suspicion by leading appropriate evidence - Burden to prove that Will was forged or that it was obtained under undue influence or coercion or by playing fraud is on person who alleges it to be so - In this case appellant also tries to impress upon Court with regard to validity of Will

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executed in his favour on ground that he has large family and has no shelter which made deceased plaintiff to bequeath property standing in her favour - In this case, after deceased plaintiff was brought from hospital to her own house, she survived only for ten days - It is highly improbable for any one to believe that for ten days service even if assumed that appellant and his family members served deceased/ plaintiff she would change her mind and take away life interest conferred on her husband who has been by her side throughout her life - Therefore contention of appellant cannot be accepted - Trial Court appreciated evidence brought on record in right perspective and recorded finding that appellant failed to substantiate his plea that property is being purchased by deceased plaintiff out of joint family income and that said property fell to his share oral partition - Appeal, dismissed. **Gadepalli Jayaprakash Vs. Gadepalli Saraswati (died) pr L.Rs 2010(1) Law Summary (A.P.) 400.**

—Secs.63 & 63(c) - **EVIDENCE ACT,** Secs.45,47,67 & 68 - "Will" - Proof of - Suspicious circumstances - Appellant filed suit against his brothers respondents 1 & 2 for declaration, possession and permanent injunction basing on Will executed by his father - District Judge decreed suit - Single Judge of High Court allowed appeal filed by respondents 1 & 2.

WILL - proof of - It would prima facie be true to say that will has to be proved like any other document except as to special requirements of attestation prescribed by Sec.63 of Succession Act - Test to be applied would be usual test of satisfaction of prudent mind in such matters - However, there is one important feature which distinguish Will from other documents - Unlike other documents Will speaks from death of testator and so when it is propounded or produced before Court - Ordinarily when evidence adduced in support of Will is disinterested, satisfactory and sufficient to prove sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder - Onus of propounder can be taken to be discharged on proof of essential facts indicated - In this case, it is clear that appellant succeeded in discharging onus of proving that Will had in fact executed by his father and he had signed same in presence of attesting witnesses who also appended their signatures in his presence - Fact that testator was in sound state of health physically and mentally is established from statement of 2nd respondent - Even from statement of respondent no.1 it is established that Will was signed by his father.

SUSPICIOUS CIRCUMSTANCES - Single Judge came to conclusion that execution of Will was shrouded with suspicion and appellant failed to dispel suspicion - Single misread statement of D.W.3 and recorded something which does not appear in statement - While P.W.3 categorically stated that he had signed as witness after testator had signed Will, portion of his statement extracted in impugned judgment gives an impression that witnesses had signed even before executant had signed Will - Single Judge committed patent error relating to issue of validity of Will by assuming

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that both attesting witnesses were required to append then signatures simultaneously - Sec.63(c) of Act does not contain any such requirement and it is settled law that examination of one of attesting witnesses is sufficient - While recording adverse finding on this issue single Judge omitted to consider categorical statements made by D.3 and D.4 that attestator had read out and signed Will in their presence and thereafter they had appended their signatures - Fact that appellant was present at time of execution of Will and that testator did not give anything to respondents 1 & 2 from his share in joint family property one not decisive of issue relating to genuineness or validity of Will - Evidence produced by parties unmistakably show that respondent no.2 had separated from family in 1965 after taking his share and respondent no.1 also got his share in second partition which took place in 1985 - Neither of them bothered to look after parents in their old age - Atitute of respondent Nos.1 and 2 left their father and his wife with no choice but to live with appellant who along with his wife and children took care of old parents and looked after them during their illness - Therefore,their was nothing unnatural or unusual in decision of testator, father to give his share in joint family property to appellant - Any person of ordinary prudence would have adopted same course and would not have given anything to ungrateful children from his/her share in property - Single Judge clearly in error in reversing well reasoned finding recorded by trial Court on issue of execution of Will - Impugned judgment of single Judge, set aside and judgment of trial Court restored - Appeals, allowed. **Mahesh Kumar (Dead) By L.Rs. Vs. Vinod Kumar 2012(1) Law Summary (S.C.) 174 = 2012(4) ALD 71 (SC) = 2012 AIR SCW 2347.**

—Secs.63 & 64 - **EVIDENCE ACT,** Secs.90,71 - Will - Proof of - Suspicious circumstances - Respondents/original plaintiffs filed suit basing on Wil executed by "N" testator contending that said Will was a document which was more than 30 years old - Appellants/defendants disputed validity of Will on various circumstances - Trial Court accepted submissions of appellants/defendants and held that plaintiff had failed to prove Will since it had not come in evidence that testator "N" executed Will in presence of witnesses - Trial Court dismissed suit and first appellate Court also took same view and dismissed appeal - In second appeal Single Judge of High Court decided question of law in favour of respondents//original plaintiffs - Hence present appeal by Special leave.

EVIDENCE ACT, SEC.30 - Presumption u/Sec.90 of Indian Evidence Act, regarding documents 30 years old does not apply to a Will - A will has to be proved in terms of Sec.63-C of Succession Act, r/w Sec.68 of Evidence Act - In present case, there is no dispute that requirement of Sec.68 of Evidence Act is satisfied, since one attesting witness P.W.2 was called for purpose of proving execution of Will and he has deposed to that effect - As he has stated that he has signed Will in presence of Testator N and N also signed Will in his presence.

VALIDITY OF WILL - Property mentioned in Will is admittedly ancestral property of Testator N - She had to face litigation initiated by her husband to retain her title and possession over property - Besides she could get amounts for her maintenance

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from her husband only after Court battle, and thereafter also she had to enter into correspondence with appellant to get those amounts from time to time - Appellant is her step son whereas respondents/plaintiffs are sons of her cousin and that she would definitely desire that her ancestral property protected by her in litigation with her husband does not go to stepson, but would rather go to relatives on her side and this context cannot be ignored while examining validity of Will - In view of factual and legal position, held that plaintiffs respondents had proved that "N" had executed Will in favour of plaintiffs and bequeathed suit properties to them and got Will registered on next day - Accordingly civil Appeal, dismissed - Suit filed by respondents/defendants will stand decreed and hereby granted declaration of their title to suit property and for permanent injunction restraining defendants from interfering with possession thereof.
M.B. Ramesh (D) By LRS Vs. K.M. Veeraje Urs (D) By LRS. 2013(2) Law Summary (S.C.) 161 = 2013(4) ALD 104 (SC) = 2013 AIR SCW 2732 = AIR 2013 SC 2088.

—Sec.63(c) - Will - Proof of - **EVIDENCE ACT,** Sec.68 - Appellants and respondents filed Applications for grant of probate basing on two different Wills - District Judge granted probate in respect of Will propounded by respondents and dismissed Application for grant of probate propounded by appellant - Appellant contends that a Will having regard to provisions contained in Sec.63(c) of Succession Act, is required to be attested by two or more witnessess and furthermore, although in terms of Sec.68 of Indian Evidence Act, it is permissible to examine one witness, who must testify to prove valid execution and attestation of Will, i.e., both witnesses have signed in presence of testator or testator has either signed in presence of one or acknowledged his signature before other - As in this case, said legal requirement had not been complied with, Will in question cannot be said to have been proved - If attesting witness examined besides his attestation does not, in his evidence, satisfy requirements of attestation of Will by other witness also it falls short of attestation of Will atleast by two witnesses for simple reason that execution of Will does not merely mean signing of it by testator but means fulfilling and proof of all formalities required u/Sec.63 of Succession Act - Where one attesting witness examined to prove Will u/Sec.68 of Evidence Act fails to prove due execution of Will then other available attesting witness has to be called to supplement his evidence to make it complete in all respects - Where one attesting witness is examined and he fails to prove attestation of Will by other witess there will be deficiency in meeting mandatory requirments of Sec.68 of Evidence Act - Impugned judgment, unsustainable and hence set aside - Appeal allowed.
Lalitaben Jayantilal Popat Vs. Pragnaben Jamnadas Kataria 2009(2) Law Summary (S.C.) 155 = 2009(1) Law Summary (S.C.) 52 = 2009(2) ALD 19(SC) = 2009(1) Supreme 339 = AIR 2009 SC 1389.

—Secs.276, 283 (e) and 213 - **T.T.D EMPLOYEES SERVICE RULES, 1989**, Rule 4 - **A.P. REVISED PENSION RULES,** Rule 48 - **HINDU MARRIAGE ACT, 1956**, Sec.16 - Appellants/plaintiffs 1,2 & 3, 2nd wife and children of deceased, driver of T.T.D filed suit basing on Will seeking declaration that they alone are entitled to death-cum-retirement benefits of deceased - Respondents/defendants 1, 2 & 3, 1st wife and children contend that deceased

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executed Will bequeathing all benefits due to him from T.T.D to them - Trial Court disbelieved both Wills relied on by plaintiffs and defendants, held that plaintiffs 2 & 3 and defendants 1,2 3 are entitled to death-cum-retirement benefits of deceased and that defendants are also entitled to succession certificate - Hence appeal filed by plaintiffs - Since marriage of 1st plaintiff with deceased, during subsistence of marriage of deceased with 1st defendant, is void, plaintiffs would not become members of family of deceased and so first plaintiff, first wife in any event not entitled to share in death-cum-retirement benefits of deceased - Children of void marriage also would be legitimate in view of Sec.16 of Hindu Marriage Act, plaintiffs 2 & 3 would be legitimate children of deceased and as property of male Hindu dying intestate, as per Hindu Succession Act devolves on his widow and children, in any event plaintiffs 2 & 3 are entitled to share family pension, death-cum-retirement benefits and gratuity payable to deceased - Admittedly deceased executed Will in favour of the plaintiffs nominating 1st wife to receive pensionary benefits along with her sons and produced Will before TTD and it is difficult to believe that deceased would have executed Will in favour of defendants and as such trial Court rightly disbelieved Will relied on by defendants - It is not case of plaintiffs that deceased and 1st plaintiff were living together even prior to coming into force of Hindu Marriage Act - So, status of 1st plaintiffs can only be that of a concubine, but not wife of deceased - Issuance of succession certificate in view of decree passed in suit would be redundant, because as per Sec.383 (e) of Indian Succession Act, certificate granted thereunder would stand revoked and decree or order in suit or other proceeding with respect to effects comprising debts or securities specified in certificate - Decree of civil Court over-rides the succession certificate - So, issuance of succession certificate when there is a decree of civil Court is redundant and unnecessary - Appeal, dismissed - CMA, allowed. **G.Bharathi Vs. G.Pramela 2008(1) Law Summary (A.P.) 52 = 2008(2) ALD 444 = 2008(1) ALT 319.**

—Secs.372 & 127 - **INDIAN EVIDENCE ACT,** Sec.68 - Respondents 1 & 2 filed O.P for grant of Succession Certificate in their favour in respect of estate of deceased, basing on Will - Appellant/3rd respondent denied averments of 1st respondent that she lived with deceased as wife or that she gave birth to 2nd respondent - He contends that deceased who is his uncle died intestate and unmarried and his estate devolved upon his paternal grand-mother who is impleaded as 2nd respondent in O.P who executed Will in his favour and he also challenged validity and legality of Will executed by deceased in favour of 1st respondent and that there are many suspicious circumstances surrounding said Will - Appellant further contends that very facts pleaded by respondents untenable and said Will originates from an immoral act of illicit relation between 1st respondent and deceased and even if it is held to be proved, it cannot be acted upon since it promotes immoral acts and that there was no necessity or occasion for deceased to execute Will, when he was 32 years of age - Respondents contend that though execution of will by a person at age of 32, may appear to be unusual, situation and circumstances that prevailed in family, nothing abnormal about it would appear and that Will was proved beyond any reasonable doubt and hardly their exists any suspicious circumstances - Sec.127 of Act does not invalidate Will, as long as it does

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not contain a condition that requires legatee to commit further criminal or immoral act - Object underlying Sec.127 of Act is to prohibit a Will, from being used as device to promote illegal and immoral acts - In instant case, testator did not require legatees to do or abstain from doing any acts, much less, those, which are illegal or immoral and that Will executed by him not loaded with any conditions - Once Will is held proved by examining an attesting witness, mere failure to mention same in one of proceedings, cannot by itself be a suspicious circumstance - Deceased admitted his fatherhood of 2nd respondent, one does not require a greater proximity, than this, to make a bequest, equally same is sympathy towards 1st respondent - Respondents 1 & 2 have proved execution of Will and have explained suspicious circumstances - Though deceased was unmarried, he admitted that he is father of 2nd respondent - School register clinchingly proved this aspect - In insurance policy name of 2nd respond was clearly mentioned as daughter of deceased - Order of lower Court - Justified - CMA, dismissed. **L.Hariprasad Vs. Lagadapati Suryakumari (Died) Per LRs 2010(3) Law Summary (A.P.) 147.**

—and - **CIVIL PROCEDURE CODE,** Sec.100 - "Validity of certified copy of Succession certificate" - Plaintiff/appellant filed suit basing on promissory note executed by defendant in favour of one AN, adopted mother of plaintiff - Defendant pleads discharge of amount to original holder AN and trial Court disbelieved plea of discharge but dismissed suit on ground that Ex.A.3, succession certificate in favour of plaintiff is invalid - Lower appellate Court dismissed appeal on ground that Ex.A.3 being certified copy of succession certificate no decree can be passed on its basis - Hence present second Appeal - Plaintiff/appellant is adopted son of AN who is payee under suit pro- note - In this case, in fact plaintiff impleaded no party at all in proceedings relating to Succession certificate as there are no rival claimants for Succession certificate - Defendant who is not a party to succession certificate proceedings and who is not a rival claimant for estate of deceased AN, is not entitled to question succession certificate - Succession certificate is only an instrument which confers right on holder thereof to receive amounts give on pronote or other security which are mentioned therein and to give valid discharge to person liable to deceased creditor; and nothing more - Since defendant is only debtor and has no claim over estate of AN, he has no jurisdiction either to plead or in question validity of Ex.A.3, succession certificate and only plea of defendant in suit was one of discharge and it was disbelieved by trial Court and it has become final - When succession certificate covers several debts and several securities, single original certificate cannot be filed in all suits - Therefore plaintiff/appellant obtained certified copy from another suit where it was filed and filed same in trial Court to prove his entitlement of suit debt on behalf of deceased AN - Trial Court as well as lower appellate Court erred in non suiting plaintiff on ground that Ex.A.3 Succession Certificate is invalid - On basis of mere succession certificate, plaintiff is entitled to obtain decree in suit, when there is no dispute about Ex.A.1 pronote and when discharge pleaded by defendant is disbelieved - second appeal, allowed. **Alla Nagireddy Vs. G.Narayana Reddy 2013(2) Law Summary (A.P.) 21 = 2013(4) ALD 49 = 2013(4) ALT 442.**

SWATANTRA SAINIK SAMMAN PENSION SCHEME, 1980:

—Cls.2.1,to 2, 2.2 and 2.3 - Petitioners are freedom fighters participated in Anti-Nizam movement for merger of Hyderabad State in to Union of India - Petitioners 1 & 2 submitted Applications to respondent Union of India in year 1992 and 3rd petitioner submitted his Application in year 1997 - Respondents contend that since pension was given on basis of benefit of doubt, petitioners are entitled for same prospectively only - In this case, petitioners 1 & 2 made Application in year 1992 where as 3rd petitioner submitted his application for grant pension in 1997 - In case of petitioners 1 & 2 warrants of arrest were issued on their claim is based on primary evidence as such consideration of their cases by giving benefit of doubt is contrary to very Scheme by Central Govt., - Petitioners 1 & 2 cannot be categorized as persons entitled under benefit of doubt and it is categoric case of petitioners and that arrest warrants were issued against them and they remained underground for more than six months - Apex Court and HIgh Court of A.P. categorically held that standard of proof applicable in participation of freedom movement is on basis of preponderance of probabilities. but not on touchstone of test of probability beyond reasonable doubt - Freedom fighters who sacrificed their lives, wealth, health and valuable young age for liberation of Country are entitled for pension as a matter of right and it is not a grace nor a charity for them on other hand it is a recognition of their sacrifices - Petitioners 1 & 2 are entitled for pension from date of receipt of their Applications - However third petitioner is not entitled to said benefit as his claim is based on secondary evidence and as such writ petition is dismissed to extent of 3rd petitioner. **Kesireddy Ramachandra Reddy Vs. Union of India 2014(1) Law Summary (A.P.) 139 = 2014(3) ALD 129 = 2014(2) ALT 150.**

TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT,

—-Secs. 2(3), 2(b) - The Commissioner of Police, Hyderabad City, passed an order of detentionexercising the power available to him under sub-section 2 of Section 3 of Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act on ground that detenue was a Bootlegger as defined in Section 2(b) of the Act and that he has been acting in a manner prejudicial to the maintenance of public order - Order of detention passed by the Commissioner of Police, Hyderabad City was approved, within the time limit of '12' days provided for under Section (3) of the Act, by the State Government through their orders contained in G.O.Rt.No.1357 General Administration Department - State Government has also placed matter for consideration of the Advisory Board, which tendered its opinion and taking the same into account and consideration, the Government passed orders through their G.O.Rt.No.2335 General Administration (Law & Order) Department fixing period of detention as '12' months commencing from date of his detention i.e., 23-6-2015 - Petitioner seeks a writ of Habeas Corpus for setting at liberty Naresh Singh @ Dabba Naresh.

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Held, in instant case, very basis for formation of opinion of detaining authority having not been communicated to detenue in Hindi language while communicating translated version of detaining order and grounds of detention, it has rendered further detention of detenue illegal - Therefore, Court allow this Writ petition holding the further continuance of detention of the detenue is illegal - Hence, Court set-forth at liberty detenue, if his detention is not called for any further in connection with any other cases. **Malathi Bai Vs. State of Telangana 2016(1) Law Summary (A.P.) 329 = 2016(1) ALD (Crl) 846 = 2016(4) ALT 5 = 2016(2) ALT (Crl) 303 (AP).**

—-Sec.3(1) r/w Sec.2(a) & (b) - A Writ of habeas corpus is sought by the wife of the detenu to declare the order of detention dated 19.10.2015, passed by the Collector and District Magistrate, under Section 3(1) read with Section 2(a) & (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 as being arbitrary and illegal - In ground (f) of the affidavit, filed in support of the Writ Petition, the petitioner stated that the material submitted, along with the order of detention, did not give details of all the relevant documents, including the bail orders pursuant to which the detenu was released; and the detaining authority did not look into the bail orders to find out for how many days the detenu was in judicial custody - In reply to ground (f) it is stated by the detaining authority, in the counter-affidavit filed by him, that the petitioner was arrested in the said crimes, and he was released on bail; and he (i.e., the detaining authority) did not look into the bail orders.

Held, As the order of detention is liable to be set aside on grounds that the orders granting bail to the detenu were not placed before the detaining authority when he passed the order of detention, and copies of the bail orders were not furnished to the detenu along with the grounds of detention which resulted in denial of his right to make an effective representation, it is unnecessary for us to examine whether order of detention should also be set aside for other grounds urged for the petitioner, for it is well settled that even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be rendered invalid.

The detention order, and continued detention of the detenu, stand vitiated for failure of detaining authority to consider orders whereby bail was granted to detenu, and in not furnishing copies thereof to detenu along with grounds of detention respectively - Writ Petition is allowed, order of detention is set aside, and detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. **Angoth Renuka @ Rena Vs. State of Telangana 2016(2) Law Summary (A.P.) 1 = 2016(2) ALD (Crl) 98 = 2016 Cri. LJ 4511 = 2016(2) ALT (Crl) 359 = 2016(3) ALT 418.**

—-Secs. 3(1) & (2) - Section 7-A r/w Sec. 8 of the A.P. Prohibition (Amendment) Act, 1997 - A Writ of Habeas Corpus is sought by wife of detenu seeking release

from Central Prison, after declaring his detention, by order of 2nd respondent, as illegal and unconstitutional.

Held, while submission urged on behalf of petitioner that ordinary laws would have sufficed to act as an effective deterrent, and it was unnecessary to resort to preventive detention under Act, cannot be said to be without merit, it is unnecessary for us to dwell on this aspect, as order of detention must be set aside on short ground that failure to furnish copies of bail orders to detenu, while he is in preventive custody, would vitiate order of detention itself.

As continued detention of detenu stands vitiated, for reason of detaining authority's failure to furnish detenu copies of the bail orders relied upon in grounds of detention, Writ Petition is allowed, order of detention is set aside, and detenu shall be set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/cases registered against him. **I.Dhanalaxmi Vs. State of Telangana 2016(2) Law Summary (A.P.) 196.**

—-Section 3 (1) read with 2 (a) and (b) - Detenu was subjected to preventive detention under Section 3 (1) read with 2 (a) and (b) of Act - Wife of said detenu, filed present writ petition seeking a Writ of Habeas Corpus to produce detenu before this Court by declaring detention order, as illegal and unconstitutional - Consequential relief was sought for release of detenu forthwith from Central Prison, where he is lodged - The detention of petitioner's husband was approved by Government - Thereafter, matter was referred to the Advisory Board under Section 11(1) of Act 1 of 1986; and, after consideration of report submitted on by Advisory Board, Government confirmed detention of the petitioner's husband for a period of twelve months from date of his detention.

Held, Constitution of India, therefore, vests a person subjected to preventive detention with right to make a representation against order of detention - To facilitate exercise of this constitutional right, detaining authority is required to communicate to detenu grounds on which order has been made and also material documents like conditional bail orders, so as to afford him an earliest opportunity to make such a representation.

From ratio in decision, it is clear that non-supply of conditional bail orders by sponsoring authority to detaining authority and failure to refer to same in order of detention and grounds of detention, and non-consideration of such vital and relevant material, invalidates detention order - The law laid down in Vasanthu Sumalatha's case which was recently affirmed by us in W.P.No.4805/2016 to effect that failure to supply documents relied upon by detaining authority would result in denying an opportunity to make an effective representation as guaranteed under Article 22(5) of the Constitution of India, would squarely apply to the instant case.

On this short ground alone, writ petition is to be allowed and detention order deserves to be set aside. **Gattu Kavita Vs. The State of Telangana 2016(3) Law Summary (A.P.) 246.**

TELEGRAPHS ACT, 1885:

—-The detenu was detained by respondent No.2 in exercise of his powers under the provisions of Act by terming him as a 'goonda'. In support of his satisfaction that detenu was a 'goonda', respondent No.2 has relied upon four criminal cases instituted against former for offence under Section 420 of Indian Penal Code besides referring to eight earlier cases in detention order - The substance of accusation against detenu is that though illiterate, he masqueraded himself as an Ayurvedic Doctor and established an ayurvedic medicine shop under name and style of 'Siddhi Vinayaka Ayurvedic Bandar' in Kapadia Towers, Bapubhag Colony, Secunderabad and has been cheating several members of

public by promising cure of diseases such as Cancer and Spondylosis etc., and collecting huge amounts from them.

The detention order has been questioned on multiple grounds, all of which do not need a reference having regard to ground on which this Court has chosen to dispose of writ petition - The ground, which appealed to this Court and, argued by learned counsel for detenu in writ petition is that while order and grounds of detention were transcribed in Kannada and furnished to detenu, several other documents relied upon by respondent No.2 were in language of either Telugu or English, which detenu cannot understand.

Held, as regards confessional statement, same being self-inculpatory is not admissible in evidence and, therefore, they cannot even be looked into by any Court except to extent of statement which led to discovery of anything during course of investigation - Therefore, alleged statement of detenu cannot be relied upon by State in support of its plea that he is an illiterate - As per affidavit of his wife, as reproduced above, detenu, is a Kannadiga and he knows only Kannada language - Other than alleged confessional statement, State failed to produce any material before this Court to show that detenu cannot read or write Kannada language - Therefore, averment of wife of detenu, made in her affidavit, filed in this writ petition, deserves acceptance.

As, admittedly, detenu was not supplied some of documents in Kannada language, he was deprived of his valuable right of making effective representation against his detention and, therefore, following settled legal principle laid down in aforementioned judgments, impugned detention order, as approved and confirmed by respondent No.1, is liable to be and, is, accordingly set-aside - The detenu is directed to be released forthwith - In result, writ petition is allowed. **Renu Kumar Bagalakoti Vs. The State of Telangana 2016(3) Law Summary (A.P.) 241.**

TELEGRAPHS ACT, 1885:

—Secs.7-B & 9 - Petitioner subscriber of telephone received inflated bills for three months - Petitioner filed suit seeking declaration that inflated amount as illegal and also for consequential permanent injunction restraining defendants from disconnecting telephone and subsequently amended plaint seeking for direction to refer matter to an arbitrator for arbitration u/Sec.7-B - Suit partly decreed with direction to appoint

(INDIAN) TELEGRAPH RULES, 1951:

arbitrator within one month - 2nd respondent appointed 1st respondent as arbitrator beyond time stipulated in decree - Inspite of objection taken by petitioner and called upon respondents to recall appointment, 1st respondent proceeded with arbitral proceedings and passed award and held that petitioner liable to pay amount - Hence writ petition - Petitioner contends that since 2nd respondent failed to appoint arbitrator within stipulated time, waived his right to appoint arbitrator and that petitioner could not proceed in arbitration proceedings as he raised jurisdictional objection and awaited ruling on this issue and that award is violative of principles of natural justice - Respondent contends that 2nd respondent, dehors decree, is competent u/Secs.7-B of Act to appoint arbitrator and that appointment of arbitrator and that arbitration award as well are legal and valid - In this case, petitioner raised dispute and challenged correctness of demand on ground of malfunctioning of telephone line and such dispute is an arbitral dispute falling under provisions of Sec.7-B of Act - Award passed u/Sec.7-B of Act shall not be questioned in any Court, thus giving finality to award - In this case, petitioner however did not participate in arbitration proceedings - As soon as he received orders appointing 1st respondent/arbitrator under bonafide belief that appointment is violative of decree and also raised objection as to his jurisdiction to conduct proceedings - 1st respondent should have ruled his jurisdiction and called upon petitioner to enter his defence - As 1st respondent failed to do so, it is to be held that petitioner has no opportunity to defend his case on merits - Arbitration award, set aside - Writ petition, allowed. **Maddala Rama Prasad Vs. P.V.V.V. Prasada Rao 2010(2) Law Summary (A.P.) 181.**

(INDIAN) TELEGRAPH RULES, 1951:

—Rules, 2 (pp) & 443 - Disconnection of Telephone lines stand in name of husband for non-payment of telephone dues inrespect of wife's telephone - Appellant obtained two telephone lines to his residece, one in his name and another in his wife's name and third telephone installed in his name at business premises - For non-payment of telephone dues in connection with telephone of wife, other two tele-phones of appellant at residence and business premises were disconnected - Contention that telephone in name of appellant would not have been disconnected for default in payment of dues in connection with telephone line in name of his wife - Rule 2(pp) of Telephone Rules covers housewife who is economically dependant on her husband - A person who is economically dependant on another who is paying his telephone bills, telephone line in name of such other relative on whom subscriber is dependent can be disconnected for non-payment of telephone bills of nominal subscriber - Rules 443 - Interpretation of - Intention of Rule has to be seen - Intention obviously is that payment of telephone dues should be made promptly otherwise Telephone Department will suffer - Telephone line in name of person who is really paying bill in connection with telephone line in name of another person who is economically dependent on former can be disconnected for non-payment of bills in connection with telephone connection in name of latter - Such an interpretation would effectuate intention of Rule 443, which is that telephone bills should be paid promptly - Interpretation has to be given to subserve intention of Rule which is that telephone bills should be promptly paid,

TENDERS:

otherwise Department will be short of funds needed for financing telephone services which are to be rendered to consumers - After all, salary of employees of Telephone Department have to be paid, telephone equipment has to be maintained, repaired and kept up-to-date - Hence word 'subscriber' in Rule 2(pp) has to be given a wider meaning - Appeal, dismissed. **Surjit Singh Vs. Manager Telephone NIgam Ltd. 2008(2) Law Summary (S.C.) 44.**

TENDERS:

—E-procurement tender notification was issued by the Panchayat Raj Department for the work - The last date for submission of tender forms was 06.06.2014 - Petitioner, 4th respondent and another person submitted tenders - On 06.06.2014, the technical bids were opened at 4.30 P.M. - Technical evolution Committee of Superintending Engineers have scrutinized technical bids and declared 4th respondent as ineligible - While so, on 11.07.2014, the Engineer in Chief directed the Superintending Engineer to consider the price bid submitted by 4th respondent also - At that stage, this writ petition is filed.

Held, it is to be noted that consideration of price offered by a bidder could arise only if he is qualified in technical bid - Consideration of price bids is restricted to qualified bidders only - Therefore, price offered by unqualified bidder has no relevance - It is always open to employer to reject offers of qualified bidders also and go for fresh tenders but cannot induct, at last minute unqualified bidder.

In the facts of this case, it cannot be said that authorities of State acted reasonably, fairly and in public interest - Transparency and fairness in awarding contracts by State is in public interest - Decision of Engineer-in-Chief validating 4th respondent technical bid is wholly illegal and amounts to arbitrary exercise of power - It was clearly intended to favour 4th respondent - Process adopted is arbitrary and irrational - For reasons aforesaid, the writ petition is allowed - Decision of respondent authorities in validating technical bid of 4th respondent is declared as illegal and respondent authorities are directed to consider participants whose technical bids are declared valid and finalize tenders as expeditiously as possible, preferably within four weeks. **Krishna Constructions Vs.The State of A.P. 2015(3) Law Summary (A.P.)155**

TENDERS - BIDS - Respondents could not finalise the tender process within the bid validity period - Petitioner on its own, through letter, dated 12.7.2011, extended the bid validity period up to 31.10.2011 - Having waited for three months thereafter, the petitioner has addressed another letter, dated 12.10.2011, to respondent No.2, wherein it raised the concerns about completion of the contract as the monsoon was approaching and also delay would cause rise in material costs - On receipt of said letter, respondent No.2 has sent a reply, stating that as petitioner has extended bid validity period up to 31.10.2011 and approval of bid is under process, its request cannot be considered - A week thereafter, respondent No.2 has addressed letter informing petitioner that its offer of execution of contract is accepted - Petitioner was, therefore, called upon to attend office of respondent No.2 along with documents within 15 days, failing

which, its Earnest Money Deposit (EMD) will be forfeited and further action will be initiated - This letter was followed by another letter whereby respondent No.2 has forfeited the petitioner's EMD by placing reliance on Clause-11(c) of G.O.Ms.No.94, Irrigation and CAD (PWOOD) Department, dated 01.7.2003 - This writ petition questions this letter.

Held, if a tenderer is provided freedom not to extend bid validity period and is allowed to take back his EMD after expiry of bid validity, in event of his refusal to extend bid validity, Court do not find any reason as to why a tenderer who has voluntarily extended bid validity period shall be denied freedom to withdraw his offer of extension or confine extension of bid validity only to a particular period, before his bid is accepted - Admittedly, by time petitioner's letter, dated 12.10.2011, restricting its extension of bid validity period up to 07.10.2011, was received by respondents, its tender was not accepted - Therefore, under tender conditions, there is no prohibition on petitioner from withdrawing its offer of extension of bid validity at any time before its tender was accepted - Having failed to seek extension of bid validity by respondent No.2 or even respond to petitioner's voluntary offer of extension of the bid validity, it is wholly arbitrary on part of the respondents to accept the petitioner's offer after it has withdrawn its voluntary offer of extension of bid validity and forfeit EMD on ground that latter has refused to enter into agreement - Such an action also is unconscionable and capricious - For above-mentioned reasons, the Writ Petition is allowed as prayed for. **RSR Infra Works (India) Pvt Ltd Vs. State of A.P. 2015(3) Law Summary (A.P.)283**

TRANSFER OF CASE FROM ONE COURT TO OTHER COURT

- Petition by wife for withdrawal and transfer of O.P. filed by husband for restitution of conjugal rights pending with Family Judge's Court, Ranga Reddy District to the Judge, Family Court, Vijayawada to be tried along with O.P. and M.C.C.F filed by her.

Petitioner/wife and respondent/husband married legally and settled in Hyderabad - A girl was born to them - Afterwards, as per petitioner, her husband started harassing her to bring money from her parents - She filed a complaint in Vijayawada on that - Thereafter, respondent filed O.P. on file of Judge, Family Court, Ranga Reddy District at for restitution of conjugal rights - Petitioner also filed maintenance case at Vijayawada - On grounds that she has a nine-month old girl and her parents were permanent residents of Vijayawada, she sought transfer of O.P. filed by her husband - It was countered by her husband on ground that the Court is not vested with jurisdiction to transfer the case pending in State of Telangana to State of Andhra Pradesh.

Held, as submitted by learned Advocate Generals of both the States, Section 24 (1) (b) (2) of CPC empowers this Court to withdraw any suit, appeal or other proceeding pending in any court subordinate to it and transfer same as per Section 24(1) (b) (ii) of C.P.C. for trial or disposal to any court subordinate to it and competent to try or dispose of same - Admittedly, both Courts are subordinate to this High Court - As such, it cannot be contended that this Court has no power to transfer this CMP.

TRANSFER OF PROPERTY ACT:

Coming to merits of case, petitioner has small child and she has filed M.C. before Family Court, Vijayawada, and she states that she is dependant on her parents and it is difficult for her to travel all way from Vijayawada to Ranga Reddy District - Respondent has to attend cases, which were filed by petitioner at Vijayawada - The Supreme Court in Sumita Singh v. Kumar Sanjay AIR 2002 SC 396, held that while considering transfer petitions in matrimonial proceedings, convenience of a wife is to be looked into - In view of above facts and circumstances, this Court feel that it is just and proper to withdraw O.P. from file of Family Court, Ranga Reddy District and transfer same to Family Court, Vijayawada, since M.C. and O.P. are already pending on file of Family Court at Vijayawada - The presence of respondent is dispensed with in the O.P.G.L. and M.C. on each and every date of adjournment except on dates of cross-examination or on any other date as specifically required by Court - Accordingly, Transfer CMP is allowed. **Chalasani Deepthi Vs. Chalasani Krishna Chaitanya (A.P.) 339 = 2016(5) ALD 165.**

TRANSFER OF PROPERTY ACT:

—Sec.3 - INDIAN EVIDENCE Act, Sec. 68 - Document Ex.A-1 is a simple sale deed and it is not required to be attested under law - Therefore, question of applying test of attestation to such a document does not arise - Indian Evidence Act itself provides for presumption of certain degree, in favour of the documents that are required to be attested and once the registration of a document and execution thereof by the executants are not disputed, document cannot be ignored - Lower appellate court itself took note of such an important factor pertaining to document - In Para 14, it is clearly mentioned that respondent has stated that he did not verify signature of his father on Ex-A-1, much less did he take steps to get the signature verified through an hand - Writing Expert - Further, except the self-serving statement of the respondent, there was no other evidence to doubt, let alone to disprove Ex.A-1 - Therefore, substantial question of law, viz., "whether the parameters that are relevant for attestation of a document can be applied to in the context of proof of a document, which is not required in law to be attested," arises and the said question is answered in the negative - It is found that lower appellate court committed an error in reversing decree passed by the trial Court - Second Appeal is, accordingly, allowed - Judgment and decree of lower appellate court is set aside. **Pathan Sabirabi Vs. Shaik Rasool 2014(3) Law Summary (A.P.) 111 = 2014(6) ALD 695.**

—Sec.3 - **EVIDENCE ACT**, Sec.68,69 and 90 - Will unregistered – Attestation - Validity of - If the attesters are alive Sec.68 must be complied with if not, Sec.69 must be complied with to prove Will - It is only on proof of such contents of the documents, they become enforceable - Plaintiff obtained agricultural loan on Will Property - Defendant too got a passbook on property - Therefore defendant cannot be said to have proved Will as required under law - Hence Second Appeal allowed and judgment and decree passed by two lower courts set aside. **Muppala Veeraiah Vs. Chaganti**

TRANSFER OF PROPERTY ACT:

Jaya Lakshm 2014(2) Law Summary (A.P.) 230 = 2014(4) ALD 645 = 2014(5) ALT 756 = AIR 2014 AP 120.

—Sec.41 - **A.P. COOPERATIVE SOCIETIES ACT,** Sec.61 (1) (b) - Petitioner, lives in USA is Member of Society at Hyderabad, paid entire cost of plot and corresponding with Society for allotment of alternative plot - Society informed petitioner that his membership and his plot were transferred to his sister 4th respondent basing on his letter and notarized Affidavit - Shocked by letter of 3rd respondent/Society, petitioner wrote back informing that alleged letter and affidavit were forged with malafide intention to grab his plot and that 4th respondent is neither his sister nor in any way related to him, requesting to restore his membership and cancel transfer made in favour of 4th respondent - On receipt of copy of legal notice of petitioner sent to Society, 4th and 5th respondents filed affidavits for transfer of plot in favour of 5th respondent - Petitioner initiated arbitration proceedings before Co-operative Sub-Registrar and obtained award in his favour - Tribunal allowed appeal filed by Society questioning award - Petitioner contends that whole approach of Tribunal in reversing award passed by Arbitrator is fundamentally erroneous and that documentary as well as circumstantial evidence clinchingly established fraud played by 3rd and 4th respondents and that neither 4th respondent nor 5th respondent who is subsequent transferee derived any legal right over plot in question - 3rd respondent/Society supports findings of Tribunal - 5th respondent contends that he is bona fide transferee from 4th respondent, who is ostensible owner, for consideration and that he took reasonable care to ascertain that transferor has power to make transfer and acted in good faith - In this case, approach of Tribunal clearly suggests that it proceeded with pre-conceived notions and evidently desperate in reversing Arbitrators's award on jejune and non-existent grounds and that findings on facts are diametrically contrary to record - Casual and flippant manner in which Tribunal overturned Arbitrator's award lent support to blatant fraud played by respondent Nos.3 &4 - T.P ACT, SEC.41 - To Attract this provision, 5th respondent should satisfy two conditions, viz., that petitioner who is person interested in plot in question gave his consent expressly or impliedly to 4th respondent who claimed to be ostensible owner and 4th respondent transferred property to 5th respondent and 5th respondent also should satisfy that he being transferee has taken reasonable care to ascertain that 4th respondent had power to make transfer and acted in good faith - Admittedly 5th respondent cannot claim to be a *bona fide* transferee - Not only, that he did not take any care to know about bona fide nature of transfer made in favour of 4th respondent with reference to available record, but also by filing a false Affidavit he did not act *bona fide* - 5th respondent therefore not entitled to invoke provisions of Sec.41 of T.P Act - Transfer of plot and petitioner's membership in favour of 4th respondent initially in favour of 5th respondent later is vitiated by fraud played by 3rd respondent/Society and 4th respondent - Order of Tribunal in reversing Arbitrator's award - Illegal and injudicious - Hence order quashed - Writ petition, allowed. **Dr.S.K. Singh Vs. Cooperative Tribunal Hyd. 2009(1) Law Summary (A.P.) 405 = 2009(2) ALD 474 = 2009(2) ALT 244.**

—Sec.53-A - **LIMITATION ACT,** Schedule, Arts.64 & 65 - Appellant/plaintiff filed suit for declaration of title, recovery of possession and ascertainment of *mesne* profits, contending

TRANSFER OF PROPERTY ACT:

that he inherited suit property from his mother and that respondent/defendant dispossessed him from suit land - - Respondent/defendant filing written statement contending that plaintiff sold suit land to him under agreement of sale in 1957 and ever since he is in continuous and uninterrupted possession of suit land - Trial Court decreed suit - First appellate Court reversed judgment and decree of trial Court - Hence, Second appeal - Appellant contends that once respondents admitted title of plaintiff, it is not open to them to take plea of adverse possession and that respondents did not take any plea u/Sec.53-A of T.P Act and he also flatly denied execution of agreement of sale - In this case, respondents-defendants categorically admitted title of mother of appellant and after her death appellant succeeded to same - Unless there is valid conveyance of suit property in favour of respondents, appellant does not get divested of his title and therefore title continued to vest with appellant - ADVERSE POSSESSION - Burden of proof - Burden to prove plea of adverse possession squarely rests upon one, who raises it - Plea of adverse possession must be inconsistent with title of original owner, and if party taking plea of adverse possession admits title of his opponent, he cannot be extended benefit thereof - In this case, agreement not registered and it deserves to be treated as an agreement of sale and respondent could have resisted plea for recovery of possession by taking plea u/Sec.53-A of T.P Act - In suit for declaration of title and recovery of possession, only thing a plaintiff has to satisfy Court is about existence of title - Appellant is entitled for relief of recovery possession - Judgment and decree of first appellate Court, set aside - Second appeal, allowed. **Eerappa Vs. Golla Nagaiah 2008(1) Law Summary (A.P.) 227 = 2008(2) ALD 349 = 2008(2) ALT 416 = AIR 2008 AP 191.**

—Sec.54 - Where a person claims title to the property by way of purchase even if he has failed to prove his purchase, but once it is clear from evidence that he denied title of original owner, possession of such person should be treated as adverse to the original owner - It appears that even if such person fails to prove his title as per law i.e., by not obtaining any registered sale deed and by not applying Sec.54 of T.P. Act his long and continuous possession, hostile possession, denying title of owner is sufficient to prove that he has proved adverse possession – Second appeals, allowed. **Gorige Ailamma Vs. Utkoori Somaiah 2015(1) Law Summary (A.P.) 43**

—Sec.54 - **MOHAMMEDAN LAW,** Sec.226 - Right of pre-emption on ground of vicinage - Respondents/plaintiffs who are adjoining owners of suit property and are entitled to pre-empt suit property - When appellant about to sell suit property on basis of registered agreement and refused to sell to respondents, they filed suit restraining appellants from executing sale deed - Trial Court dismissed suit and first appellate Court dismissed appeal - High Court allowed second appeal holding that in light of amendment to Constitution, law of pre-emption on ground of vicinage cannot be held to be unconstitutional and void - Where parties enter into a mere agreement to sell, it creates no interest in suit property in favour of vendee and proprietary title does not validly pass from vendor to vendee and until that is completed no right to enforce pre-emption arises - Therefore unless title to suit property has passed in accordance with Act, no right to enforce pre-emption arises - There are no equities in favour of pre-emptor whose sole object is to disturb a valid

TRANSFER OF PROPERTY ACT:

transaction by virtue of rights created in him by statute - It would be open to pre-emptee, to defeat law of pre-emption by legitimate means which is not fraud on part of either vendor or vendee and a person is entitled to steer clear of law of pre-emption by lawful means - Right of pre-emption is a weak right and is not looked upon with favour by Courts and therefore Courts cannot go out of their way to help pre-emptor - Judgment and decree of High Court, set aside - Appeal, allowed. **Kumar Gonssab Vs. Sd. Mohammed Miyan Urf Baban 2008(3) Law Summary (S.C.) 33 = 2008(5) ALD 72(SC) = 2008(6) Supreme 122 = 2008 AIR SCW 6311.**

—Sec.55 - **STATE FINANCIAL CORPORATION ACT,** Sec.29 - Earnest money - Forfeiture of - Pursuant to advertisement issued by appellants/Corporation for sale of various Units including land - Respondent offered Rs.50 lakhs and became highest bidder and deposited earnest money Rs.2.5 lakhs - Respondent could not deposit balance amount of 25% of bid amount within stipulated time on account of issue of passage to units - Appellants, Corporation issued fresh tenders and forfeited sum of Rs.2.5 lakhs deposited by respondent as earnest money - Divison Bench of High Court set aside order of forfeiting earnest money and directed appellant, Corporation to refund amount along with interest - Appellant Corporation contends that respondent visited site and he would have known exact situation of passage and also aware of exact nature of land being purchased by him and that appellants/Corporation are entitled to forfeit security amount in view of terms and conditions for sale of property as contained in advertisement - A mere perusal of Sec.55 (1) (a) (b) of T.P Act will show that it is incumbent upon appellants/Corporation to disclose respondent about non-existence of independent passage to unit it is also duty of appellants/ Corporation to inform respondent that passage mentioned in revenue records not fit for movement of vehicles - Appellant also failed to produce buyer entire documets as required by Sec.51 (1) (b) of T.P. Act - Reliance on Sec.29 of State Financial Corporation Act is wholly misplaced - Corporation is directed to refund forfeited amount with interest - Appeal, dismissed. **Haryana Financial Corpn. Vs. Rajesh Gupta 2010(2) Law Summary (S.C.) 24.**

—Sec.55(1) (a) - **CONSTITUTION OF INDIA,** Art. 226 - Petitioners participated in auction of plots in venture named “Golden mile” started by HUDA and emerged as highest bidders and deposited amounts at various stages - Since litigation surfaced challenging rights and title of Govt., over land sales did not reach finality - Hence petitioners filed writ petitions for refund of amount deposited by them - Petitioners contend since the respondents HUDA failed to furnish correct information about their title to land and failed to disclose factum of pendency of litigation, they are under obligation to refund amount deposited by them with interest - Respondents contend that petitioners participated in the auction being fully aware of pending litigation and are deemed to have waived objections, if any, in this regard and that transactions between petitioners and respondents is purely commercial in nature governed by various terms and conditions, writ petitions not maintainable, as regards such disputes - Petitioners further contend

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that there was a clear infraction of Sec.55(1) (a) of T.P Act by respondents and that they did not disclose defect in title and pendency of litigation in respect of land and when upset price itself was quoted at Rs.4.5 crores per acre it was obligation of respondents to ensure that their title is clear, and there is not a semblance of litigation - On a careful analysis of precedents referred and other pronouncements akin to them, it emerges that High Court cannot decline judicial review, just because *lis* in a writ petition arises out of contract - Much would depend upon nature of contract and obligation of parties arising out of it, if there does not exist much dispute as to facts or any contraversy as to interpretation of clauses, parties cannot be driven to Civil Courts and to spend their time and money in litigating before civil Courts - When a substantial develop-ment has taken place in form of litigation raising doubt and casting in cloud on title of respondents, they were under obligation to inform petitioners and other prospective purchasers of same, so that parties would have decided whether or not to proceed with bids - Therefore there was a failure on part of respondents in disclosing defect or cloud upon their title as required u/sec.55(1)(a) of T.P Act, at least as on date of auction - Respondents are under obligation to refund amount deposited by petitioners - Writ petitions, allowed. **IBC Knowledge Part Pvt. Ltd. Vs. HUDA, Secendrabad 2010(2) Law Summary (A.P.) *1.***

—Sec.58 - "Mortgage of title deeds" - Plaintiff filed suit against defendants 1 to 10 for recovery of certain amount - Defendants 2 to 4 are partners of 1st defendant Firm and 6 to 9 stood as guarantors and Defendant No.10 executed mortgage on 12-4-1978 covering all transactions for purpose of creation of mortgage and deposited title deeds in respect of certain properties - Defendants 1 to 9 remained ex parte and suit contested by defendant 10 alone contending that she is not aware of loan transactions between plaintiff and defendant no.1 and that she never created any mortgage and that so called mortgage note is fabricated and forged one and that it has no connections what ever monitory transactions between plaintiff and defendant no.1 - Trial Court decreed suit by recording finding that existence of mortgage against defendant No.10 is proved - Appellant/10th defendant contends that even according to averments in plaint loan transaction between plaintiff and defendant No.1 was in year 1981, where as so called mortgage note is of year 1978 and that defendant No.1 colluded with plaintiff in bringing about so called mortgage note and suit was filed and that collusion between plaintiff and defendant No.1 is evident from fact that defendant No.1 to 9 remained ex parte and burden to oppose suit fell upon defendant No.10 alone.

TRANSFER OF PROPERTY ACT, Sec.58 - "Scope of mortgage" - From perusal of first part of Section 58 it is evident that mortgage can be in relation to money advanced or to be advanced by way of loan - However, what becomes important is that it must be in relation to "payment of money" - Such payment can be of any which is already advanced or is agreed to be advanced; by way of loan - Either way it must be of a clear and definite amount - Unless amount is stipulated, there cannot exist

any valid mortgage - Sec.58 does not enable a party to create a mortgage, which resembles a blank cheque - Existence of ascertain amount and agreed amount becomes relevant in context of pursuing further remedies or democrating right of parties - In this case, it is pertinent to note that even by date, loan was not advanced - When there is no reference to any amount in exhibit A.32, list of title deeds said to have been submitted by defendant No.10, question of there being even a future mortgage for that does not arise - It was only on 20-3-1981, defendant no.10 and its partners submitted an application under Ex.A.22 with a request to open Account to avail cash credit facility - That being case existence of mortgage in year 1982 in relation to transaction does not arise and facts are fitted into inescapable conclusion is that there is no valid mortgage - In this case, trial Court was mostly carried away by fact that defendant No.10 did not enter into witness box and one person examine as P.W.1 - That hardly makes any reference - Burden squarely rested heavily on plaintiff to prove existence of mortgage and they have miserably failed in this front - Decree passed by trial Court, set aside - Appeal, allowed. **Sita Bai Vs. South Indian Bank Ltd. 2013(2) Law Summary (A.P.) 255 = 2013(4) ALD 677.**

—Secs.58 & 34 - Appellants/plaintiffs borrowed money from respondents by executing mortgage with condition to re-purchase - Since respondent/defendant failed to receive consideration and reconvey lands, appellants/plaintiffs filed suit - Respondent/defendant contested suit alleging that plaintiffs had never been willing to perform their part of contract nor they had paid money within stipulated period of three years as contained in agreement and, as such plaintiffs have lost their right of reconveyance - Trial Court decreed suit - Lower appellate Court allowed appeal and set aside judgment and decree of trial Court - High Court dismissed appeal, holding that there was no material to show that consideration amount was offered within stipulated time of three years - If sale and agreement to re-purchase are embodied in separate documents, it cannot be a case of mortgage and in such cases relating to reconveyance time is always essence of contract - " In case of agreement of re-purchase, condition of re-purchase must be construed strictly against original vendor and stipulation with regard to time of performance of agreement must be strictly complied with as time must be treated as being of essence of contract in case of agreement of re-conveyance" - In this case, there is an agreement of reconveyance with specific stipulation for reconveyance of lands within period of three years which was admittedly not complied with by plaintiffs/appellants - Suit filed after expiration period of limitation - Appeal, dismissed. **Gauri Shankar Prasad Vs. Brahma Nand Singh 2008(2) Law Summary (S.C.) 241 = 2008(5) ALD 33 (SC) = 2008(5) Supreme 201.**

—Sec.58 (c) - Mortgage by conditional sale - Predecessor in interest of respondent, owner of property of land entered into conditional sale deed with appellant - Since appellant/defendant did not accept offer of return of amount on premise that he acquired absolute title, respondent/plaintiff filed suit for redemption of mortgage - Trial Court and appellate Court gave concurrent finding that it is sale and not mortgage - High Court by

TRANSFER OF PROPERTY ACT:

reason of judgment opined that transaction constituted a mortgage and not an out and out sale - Whether transaction is a sale or a mortgage not only would depend upon language used in deed, but also circumstances attending thereto - When an absolute transfer of property is made, it cannot be limited to a period - In this case, transaction shows that appellant was to have title in property for period of five years and was to remain in possession thereof only for said period - Plaintiff/respondent is entitled to tender amount not only at expiry of said period but even prior thereto - On tender of such amount, appellant is required to execute a deed of reconveyance in favour of plaintiff/respondent - No doubt document is styled as a deed of conditional sale, but it is not conclusive of matter - Having regard to terms of transaction that High Court is correct in its opinion that transaction evidenced a mortgage and not a sale - Appeal, dismissed. **Vishwanath Dadoba Karale Vs. Prisa Shantappa Upadhye (D) Th.Lrs., 2008(2) Law Summary (S.C.) 79.**

—Sec.58(c) - Mortgage transaction with condition that land is to be returned to defendant/ purchaser after receiving sale consideration with in 5 years, -Defendant also put in possession - Plaintiff alleged that period of 5 years is only nominal as there was no condition that after five years sale would become final - As defendant avoided to redeem suit property, plaintiff issued notice calling upon defendant to redeem suit property after accepting amount - Defendant contends that transaction in question is not mortgage transaction but outright sale and denied relationship of mortgagee and mortgagor - Considering pleadings and evidence of parties trial Court did not consider it to be a sale transaction and held it to be a mortgage transaction by conditional sale - Suit of plaintiff for redumption accordingly decreed declaring plaintiff is entitled to redeem suit property after paying amount to defendant - District Judge allowed Appeal holding that there was no relationship of debtor and creditor between parties and thus transaction in question was an absolute sale with condition to repurchase but plaintiff failed to get land reconveyed within stipulated period - High Court justified findings recorded by first appellate Court - In this case, alleged sale document was executed in year 1967 transfering suit property by way of sale subject to one stipulation/condition that on receiving sale amount within 5 years land was to be returned to plaintiff/vendor - Admittedly defendant also came in possession and used and enjoyed suit property as absolute owner - It was only after 11 years plaintiff/appellant filed suit alleging that suit property was mortgaged in favour of defendant/respondent with a condition to reconvey land - High Court justified in not interfering with findings of fact recorded by first appellate Court - Appeal, dismissed. **Vanchalabai Raghunath Ithape (d) by Lr. Vs. ShankararaoBaburao Bhilare 2013(3) Law Summary (S.C.) 173 = 2013(5) ALD 56 (SC) = 2013 AIR SCW 3993 = AIR 2013 SC 2924.**

—Secs.105, 108, r/w Sec.52 - **EASEMENT ACT**, Sec.52 - **DELHI MUNICIPAL CORPORATION ACT,** Secs.119,120(2) - Distinction between “lease” and “licence” - Stated - A licence may be created on deal or parole and it would be revokable - However when it is accompanied with grant it becomes irrevocable - A mere licence does not

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create interest in property to which it relates - Licence may be personal or contractual - A "licence" without grant created a right in licensor to enter into land and enjoy it - "Lease" on other hand would amount to transfer of property - There is a marked distinction between "lease" - Sec.105 of T.P Act defines a lease of immovable property as a transfer of right to enjoy of such property made by certain time in consideration for a price paid or promised - U/Sec.108 of said Act lessee is entitled to be put to in possession of property - A lease is therefore a transfer of interest in land - Interest transferred is called lease hold interest -Lessor parts his right to enjoy property during term of lease, and if it follows from it that lessee gets that right to exclusion of lessor - Sec.52 of Easement Act - Licence defined - If document gives only a right to use property in a particular way or under certain terms while it remains in possession and control of owner thereof, it will be a licence - Legal possession, therefore continues to be with owner of property, but licensee is permitted to make use of premises for a particular purpose - It is quite clear that distinction between "lease" and "licence" is marked by last clause of Sec.52 of Easement Act as by reason of licence no estate or interest in property is created - A licence can be revoked at any time at pleasure of licensor - Even other wise unless parties to agreement add in intention to enter into a deed of lease Administration would not have agreed to demise premises on payment of rent in lieu of grant of exclusive possession of demised land and further stipulated service of three months notice called upon either party to terminate agreement. **Pradeep Oil Corpn., Vs. Municipal Corporation of Delhi 2011(1) Law Summary (S.C.) 199.**

—Sec.106 - **INDIAN EVIDENCE ACT,** Illustration(f), GENERAL CLAUSES ACT, Sec.27 – Tenancy - Ex.A-1(notice of termination) sent by registered post with acknowledgment due satisfies requisites of Sec.106 of Transfer of Property Act, construes that there has been valid termination of Tenancy.

TRANSFER OF PROPERTY ACT, Sec.106 - **CIVIL PROCEDURE CODE,** Or.XXXIX, Rule 10 - The court below granted relief in I.A. No. 980 of 2012 that has not been asked for - Held, hitherto, Order XXXIX Rule 10 of CPC used to come to rescue of landlords/plaintiffs for giving protection against defendant/tenant during pendency of suits to pay mesne profits/damages for use and occupation with limitation that such direction was limited to extent of payment of admitted amount/rent only, which is now obviated by introduction of Order XV-A of CPC clothing Court with insignia of power to give direction to defendant to deposit such amount as Court may direct, of course, through process of adjudication - In the instant case, Court below has resorted to passing relevant orders in I.A. No.980 of 2012 and I.A. No.1877 of 2012, which do not suffer from any infirmity - Appeal partly allowed by reducing amount of Rs.75,000/- per month to Rs.60,000/- per month towards damages granted by Court below and in all other respects judgment and decree of Court below is confirmed. **Ramesh Charties Vs. R.Ratna Sudha 2014(3) Law Summary (A.P.) 76 = 2014(6) ALD 543 = 2014(6) ALT 8.**

—Secs.106 & 116 - Respondent/plaintiff filed suit for eviction and for recovery of arrears of mesne profits and damages for use and occupation - Appellant/defendant contends that

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he agreed to enhance rent and that there is dispute between Housing Board and plaintiff in respect of suit premises and therefore he has no right to evict him - Trial Court ordered eviction and directed appellant to vacate premises within 3 months - Lower Appellate Court, dismissed Appeal - Appellant contends that respondent is not properly authorised person to file suit and that proceedings initiated by him seeking eviction of appellant from suit premises are to be declared as bad in law and that in view of letter addressed by Housing Board to appellant calling for his willingness to purchase suit premises, respondent/plaintiff is no more landlord of premises and that suit is liable to be dismissed and that since respondent accepted rent subsequent to termination of tenancy, it amounts to waiver - Respondent contends that appellant/defendant having taken premises on lease from respondent, is estopped from disputing title of plaintiff-Association u/Sec.116 of T.P. Act - In this case, plaintiff-Association filed suit by its Secretary and after expiry of term he became Special Secretary and authorised to institute proceedings on behalf of plaintiff-Association and as such contention of appellant that plaintiff -P.W.1 is not authorised to sign and give evidence on behalf of plaintiff-Association, untenable - Whatever payment appellant/defendant makes after receipt of notice, it would be received by plaintiff-Association under protest - Mere acceptance of amount after issuing of eviction notice does not efface default committed by appellant/defendant - Judgment of trial Court as confirmed by lower appellate Court - Justified - Second appeal, dismissed. **Nazeer Khan Vs. Vijayanagar Welfare Association 2008(1) Law Summary (A.P.) 62 = 2008(1) ALD 828.**

—Secs.122,125 & 126 - "Gift" - "Settlement" - "Gift settlement" - "Cancellation" - Plaintiff filed suit for declaration of title and for injunction and for recovery of possession of item no.2 of suit property basing on Will executed by one KVGM contending that 1st defendant is an orphan without any right and taking advantage that she worked as maid servant for some time in house of KVGM forcibly took possession of item no.2 of suit property - 1st defendant filed written statement disputing the Will and that allegation that she is orphan is defamatory and it is coined for purpose of suit and it is nothing but blasphemy to call daughter of KVGM as a maid servant and she became absolute owner of plant schedules properties after death of her father KVGM.

Trial Court found that 1st defendant is daughter of late KVGM and holding that settlement deed relied on by 1st defendant has been cancelled and Will in favour of plaintiff is true and decreed suit with regard to item no. 1 for injunction and for recovery of possession of item no.2 – 1st appellate Court held that 1st defendant is not daughter of KVGM. and possession of proved and dismissed appeal.

TRANSER OF PROPERTY ACT, SEC. 126 - SUSPENSION OR REVOCATION OF GIFT – Suspension revocation of gift deed – Appellants/defendants contend that when once a valid gift has been executed without any reservation of right for cancellation, cancellation is not valid and consequently plaintiff cannot get rights in suit property and Will executed by KVGM cannot supersede gift deed and therefore cancellation and deed cannot be a valid document.

Plaintiff contends that gift is not valid as there is no delivery of possession of property and it was a conditional gift of maintaining deceased KVGM and as promise has

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failed gift deed was cancelled and consequently, appellants have no right in property and further contends that was conveyed under gift deed is future interest and there is no delivery of possession of property and as such gift is not valid.

Sec. 122 of T.P. Act is very clear that it never postulates delivery possession of property as condition precedent for gift and that law is also well settled a gift of vested remainder can be validly made keeping life interest to donar – Judgment and decree passed by lower Courts against law and gift deed cannot be cancelled and rights of 1st defendant cannot liable to – Judgments of lower Courts liable to be set aside – Plaintiffs suit, dismissed – 2nd appeal, allowed.**Pagadala Bharathi Vs. J.Radhya Krishna 2013(1) Law Summary (A.P.) 41 = 2013(2) ALD 373 = 2013(3) ALT 467.**

—Sec.123 - Cancellation of gift - Petitioner and respondent no.7 are sons of respondent nos.5 & 6 - Respondents 5 to 7 executed a deed of gift in year 2004 in favour of petitioner transferring an item of immovable property and petitioner accepted gift and made several improvements to property by incurring expenditure - 5th respondent executed deed of cancellation of gift in year 2011 and same was admitted to Registration - Petitioner challenges action of 2nd respondent/Sub-Registrar in registering document - Petitioner contends that deed of cancellation can be accepted by registering authority only when it is executed with consent of parties to transaction - 5th respondents contends that though property exclusively belongs to him gift deed was executed by himself and respondents No.6 & 7 and that gift in favour of petitioner conditional and necessity to cancel gift deed had arisen on account of violation of conditions by petitioner and that prohibition contained under Rue 26 of A.P. Rules under registration Act would operate only in respect of sale deeds - In this case, it is 7 years after gift was made that 5th respondent has executed deed of cancellation and it is not at all competent for him to unilaterally cancel gift deed without participation of other executants viz., respondents 6 & 7 and that registration of deed of cancellation presented by one of executants of gift deed and not consented by donee, is contrary to law - Writ petition, allowed. **Kapuganti Jagannadha Gupta Vs. District Registrar, Srkakulam 2012(1) Law Summary 329 = 2012(3) ALD 404 = 2012(4) ALT 435.**

—Secs.222 & 223 - Interpretation of - Apex Court observed that the delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property - There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. **Renikuntla Rajamma Vs. K. Sarwanamma 2014(2) Law Summary (S.C.) 109 = 2014(5) ALD 173 (SC) = 2014 AIR SCW 4256 = AIR 2014 SC 2906.**

—and **SPECIFIC RELIEF ACT** - Appellants/plaintiffs filed suit for specific performance of agreement - Defendant contends that sale deed was to be executed within six months from date of contract as he was in dire need of money for construction of house and therefore time is essence of contract, but plaintiffs not in a position to pay balance

consideration and complete contract and hence plaintiffs not entitled to discretionary relief - Trial Court decreed suit holding that defendant failed to prove that time is essence of contract and plaintiffs are ready and willing to perform their part of contract - Single judge of High Court allowed appeal of defendant and dismissed suit - In case of sale of immoveable property, there is no presumption as to time being an essence of contract - In instant case, though parties agreed that sale deed is to be executed within six months, in last paragraph of agreement they made it clear that in event of failure to execute sale deed, earnest money will be forfeited - In such circumstances, clauses mentioned in agreement of sale would render ineffective specific provision relating to time being essence of contract - It is true that defendant in his written statement made a bald claim that time was essence of contract - Even if recital in agreement of sale is accepted that sale deed has to be executed within a period of six months, there is an express provision in agreement itself that failure to adhere time, earnest money will be forfeited - In such circumstances and in view of recital pertaining to forfeiture of earnest money makes it clear that time was never intended by parties to be of essence - Mere fixation of time within which contract is to be performed does not make stipulation as to time as essence of contract - Judgment and decree of High Court, set aside and confirm decree granted by trial Court - Civil appeal, allowed. **Balasaheb Dayandeo Naik, Vs. Appasaheb Dattatraya Pawar 2008(1) Law Summary (S.C.)124**

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UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967:

—Secs. 43(D) (2)(A) - Present revision is filed against order passed by VII Additional Metropolitan Sessions Judge, in Crl. M.P.No. 308 of 2015 in Crime No. 338 of 2014 of P.S. Gopalapuram/SIT, Hyderabad, wherein and whereunder the bail granted to the petitioners was cancelled - Held, in case on hand, there is no report submitted by the Public Prosecutor and on other hand an application seeking extension of remand beyond the prescribed period came to be filed at instance of the investigating agency - Though accused are alleged to have committed offences, which according to prosecution, endanger security of State, but at same time compliance of mandatory provisions cannot be ignored and the indefeasible right which got accrued to the accused cannot be defeated - For the aforesaid reasons there is no other option for this Court except to allow the Revision - Accordingly, Criminal Revision is allowed and order impugned is hereby set aside. **Shah Mudassir Vs. State of Telangana 2015(2) Law Summary (A.P.) 132 = 2015 Cri. LJ 4208 = 2015(2) ALD (Crl) 351 = 2015(2) ALT (Crl) 202 (AP).**

USURIOUS LOANS ACT

— and CIVIL PROCEDURE CODE, Sec.34 - Appeal questioning scaling down of interest by lower Court as usurious in a pronote - Held, lower Court went wrong in concluding that pronote is a mere renewal and also putting burden on the plaintiffs/appellants to prove rate of interest not usurious, though burden is on defendant to prove it as usurious - Regarding prelite interest, Loan advanced for commercial transaction and defendant failed to discharge burden of showing contract rate being substantive rate is usurious,

WAKF ACT:

it has to prevail for nothing to scale down from said contract rate at 27% per annum even under Usurious Loans Act - When it comes to pendent lite and post lite interest as per proviso to Sec.34 of CPC can exceed 6% per annum and fixed as 9% per annum - Appeal allowed and decree of lower Court, modified. **Malladi Krishnayya Vs. Tadikonda Siva Suryaprakasa Rao, 2014(3) Law Summary (A.P.) 104 = 2014(6) ALT 696 = 2015(2) ALD 34.**

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—Secs.5 & 6 - **A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT - INDIAN EVIDENCE ACT,** Sec.116 - This appeal, by unsuccessful defendant is directed against decree and judgment passed in first appeal - Learned Additional Chief Judge while dismissing said appeal of defendant had confirmed decree and judgment of Rent Controller passed filed by sole plaintiff for recovery of possession of premises, for mesne profits and costs and had further directed defendant to vacate and handover vacant possession of said property to plaintiff.

Held, admittedly defendant was inducted as a tenant of plaint schedule property by plaintiff - Except a claim by defendant that Wakf Board is owner no evidence was adduced to show that plaintiff had lost her title to disputed properties - In view of ratio in decision of Supreme Court, it is clear that landlady and tenant relationship exists and therefore, there is no substance in substantial question of law raised and said question is devoid of merit.

This brings Court to next question on jurisdiction of civil Court in view of contention that A.P Buildings (Lease, Rent and Eviction) Control Act was amended by Act 7/2005 enhancing jurisdiction of Rent Controller - Counsel for defendant would contend that buildings whose rents are up to Rs.3,500/- in municipality areas continued to be covered by Rent Control Act and, therefore, defendant is entitled to protection of Rent Control Act and he cannot be evicted by having resort to a civil suit for eviction - However, Counsel for plaintiffs would contend that suit was instituted in year 2001 and even as per contentions of defendant amendment to Rent Control Act was by virtue of Act 7/05 and, therefore, amended provisions which have no retrospective effect have no application to case on hand as suit for eviction was instituted on 1-3-2001 - Supreme Court held that suit(s), appeal(s), revision application(s) or execution case(s) which are pending for determination under General Law are not affected by amended Sec.32 and will continue to be decided in accordance with General Law - By this judgment, Supreme Court upheld judgment (majority) of this Court insofar as it related to prospective operation of Sec.32(c) and its effect on pending proceedings and finding of majority decision of this Court in regard to clause (b) of G.O.636 dated 29.12.1983 declaring said part of GO as redundant is declared bad in law and had set aside said finding - It is also held in this decision that exemption granted by State Government u/Sec.26 of Act by GO 636 dated 29.12.1983 has over riding effect over rest of provisions of Act - In view of facts of instant case and settled legal position, contention that

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Rent Control Court is having jurisdiction and that General Law is not applicable to facts of case is devoid of merit - Accordingly, this Court finds that there is no substance in this substantial question also - Having regard to reasons, this Court finds that substantial questions raised do not merit consideration as there is no substance in said questions and that second appeal, which is devoid of merit is liable to be dismissed - In result, second appeal is dismissed. **Mohd. Saber Vs. Rafiunnisa Begum (Died) 2016(1) Law Summary (A.P.) 37 = 2016(4) ALD 308.**

—- Sec.54/(1) and 83,83(5),83(7) & 83(9) - **CIVIL PROCEDURE CODE,** Sec.115 - Petitioner/plaintiff filed suit for declaration that construction made by 1st defendant on grave yeard land is illegal and for perpetual injunction restraining D1 from interfering with grave yard and for mandatory injunction for removal of construction made on grave yard land - 1st defendant contends that plaintiff is not present Muthavalli and has fabricated story of encroachment and there is no encroachment of any part of grave yard - 1st defendant also filed suit against plaintiff and others - Tribunal after considering entire evidence dismissed both suits by common judgment - Hence petitioner filed present revision against dismissal of his suit - Petitioner/plaintiff contends evidence of P.W.1 and D.W.5 & 6 is sufficient enough for decreeing suit contending that though several issues were framed, Tribunal had not at all discussed with reference to evidence adduced and documents marked, though there is clear direction in order passed by High Court in C.R.P to consider evidence and dispose of according to law and that Tribunal had not properly appreciated scope and ambit of Sec.83 of Act and totally erred in holding that plaintiff failed to establish his case by producing record showing extent of land attached to Wakf Institution - 1st Respondent/1st defendant contends that scope of revision u/Sec.83(9) of Act is very limited, High Court cannot interfere with findings of fact arrived at by Tribunal and that there cannot be any re-appreciation of both oral and documentary evidence available on record like in appeal as Sec.83(9) of Act clearly bars appeal against decision of Tribunal and only revision is provided, that too, to examine correctness, legality or propriety of such determination and that High Court cannot extend scope of revision and deal with it like an appeal, when legislature itself has barred provisions for appeal - In view of number of decisions it is held that scope of revisional jurisdiction u/Sec.83(9) of Act, is not like that of appeal, since legislature itself barred appeal provision, but however it is wider than revisional jurisdiction u/Sec.115 CPC - But for satisfying as to correctness, legality or propriety of such determination, Court can examine facts in each case where decision is entirely improbable and perverse and Court below has followed procedure contemplated under law - In this case, Tribunal has not considered evidence on record with reference to issues framed and pleadings on record and same needs interference within scope of revisional jurisdiction u/Sec.83(9) of Act - Tribunal also not understood scope of Sec.83(5) of Act, and as per this section, Tribunal shall be deemed to be a civil Court and shall have same powers as may be exercised by civil Court under CPC while trying suit or executing a decree or order and as per Sec.83(7) of Act decision

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of Tribunal shall be final and binding upon parties to application and it shall have force of decree made by civil Court - Judgment and decree of Tribunal, set aside - CRP, allowed - Matter remanded to Tribunal for fresh disposal. **Mohammed Abdul Hameed @ Khursheed Vs. Zulfikhar Ahmed 2013(2) Law Summary (A.P.) 199 = 2013(5) ALD 402.**

—Secs.64(5), 64(3) and 70, r/w Rule 24 - **CONSTITUTION OF INDIA,** Art.226 - Appellant claims to be mutavalli of institution containing a Mosque sought for writ of mandamus inter alia assailing correctness of proceedings passed by Chief Executive Officer placing petitioner under suspension contending that entire proceedings are without jurisdiction and even without alleged show cause notice is bereft of any valid material or basis to warrant any such proposed action - Admittedly impugned orders not being initiated and having any inception from competent authority viz., Board, same would not hold good in law - Board asserting there is due compliance of necessary requirement since Special Officer has approved entire proceedings and therefore there is nothing illegal nor there is want of jurisdiction - Having regard to nature of seriousness of allegation, order of suspension is perfectly sustainable and enquiry is rightly initiated - There is no dispute to fact that power to initiate action is left with board and in absence of regular Board, Special Officer who has to act, no doubt, CEO does not find plays anywhere under provisions of Act and Rules made thereunder - Role played by CEO is mere a immaterial and administrative and not a final word - In this case, there is no denial to fact that note put up by CEO has been approved by Special Officer and therefore first objection does not hold any water - Appeal, dismissed. **M.A.Azeem Baig Vs. Chief Executive Officer 2010(2) Law Summary (A.P.) 116.**

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——"Compassionate appointment" -This writ petition was filed assailing action of the Rashtriya Ispat Nigam Limited (RINL), in not considering petitioner for compassi-onate appointment to a Class IV post and to set aside proceedings issued by the Deputy Chief Personnel Manager, RINL, rejecting her request for such appointment.

Petitioner's husband was a permanent employee, died in a road accident while on his way to attend to his duties - Petitioner thereupon submitted a representation seeking compassionate appointment in RINL as there was no other earning member in family - Pursuant to this order, impugned proceedings were issued by the Deputy Chief Personnel Manager, RINL, stating that as per the Personnel Policy Circular, dependent of an employee who meets with a fatal accident arising out of and in course of employment alone would be entitled to compassionate appointment and as the petitioner's husband met with a fatal road accident while on his way to attend duties, it was not an accident arising out of and in the course of his employment - She was therefore held disentitled to be considered for compassionate employment in terms of the Circular - Aggrieved thereby, she filed present case.

Held, it is clear that this is a case where the RINL denied compassionate appointment on wholly untenable grounds, be it in terms of its contradictory actions

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under the Policy Circular No.25/90 dated 11.10.1990 or in terms of its 'Employees' Family Benefit Scheme' - Only ground put-forth by the RINL in impugned proceedings therefore does not stand to reason - Having wrongfully denied petitioner such appointment pursuant to order passed by this Court directing consideration of her case, after maintaining a studious silence in face of her many representations, it is not open to RINL to take advantage of its own delay and wrongful actions and cite passage of time as a ground to deny compassionate appointment at this stage - This Court finds that reasons justifying exception to rule by way of a compassionate appointment of a dependant of deceased employee still continue to hold good in so far as petitioner is concerned.

As petitioner who was in her 20's at time she sought compassionate appointment has now attained age of 48 years and her unmarried daughter is eligible for seeking such appointment under rules, this is a fit case for the RINL to consider her candidature for such appointment in terms of its 'Employees' Family Benefit Scheme' and the Circular dated 11.10.1990 - Daughter of petitioner is therefore permitted to make an application in this regard with supporting documents within two weeks from date of receipt of a copy of this order - Upon receipt of such application, respondents shall consider same in accordance with rules and in light of observations made supra and take appropriate action in matter within four weeks thereafter - Writ petition is allowed to extent indicated above. **Pulagam Ratnavathi Vs. The Chairman-cum-M.D, Rashtriya Ispat Nigam Ltd. 2016(1) Law Summary (A.P.) 462.**

—Learned Commissioner arrived at a conclusion that deceased died out of and in course of his employment and allowed application in part by awarding compensation of Rs.3,29,300/- with interest at 9% per annum from date of filing of application - Feeling aggrieved by the order of Commissioner, opposite party/Insurance Company preferred present appeal - Held, burden of proof lies on insurer:- (1) to establish that driver of crime vehicle or deceased workman was not having valid and effective driving licence at relevant point of time; and (2) insured intentionally and wilfully entrusted vehicle to driver/workman, who has no driving licence, at time of accident - As observed earlier, opposite party failed to discharge burden shouldered on it to establish that deceased was not having valid and effective driving licence at relevant point of time and that opposite party No.1 intentionally and wilfully entrusted auto to the deceased knowing fully well that he was not having driving licence - Fact remains that at time of accident, deceased was attending calls of nature - In such circumstances insisting production of driving licence of deceased has no relevancy at all in order to ascertain whether opposite party No.1 had violated the terms and conditions of policy - Viewed from this angle also, stand taken by opposite party No.2 has no legs to stand - Having regard to facts and circumstances of case and also principles enunciated in cases cited supra, Court unable to accede to contention of learned counsel for opposite party No.2 that opposite party No.1 had violated terms and conditions of policy so as to absolve opposite party No.2 from its liability - Findings

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recorded by learned Commissioner are supported by evidence much legally admissible evidence - Commissioner has assigned cogent and valid reasons to his findings - There are no grounds much less valid grounds to interfere with the well-considered order of the Commissioner - There is no substantial question of law in this appeal which warrants interference of this court - Appeal lacks merits and bona fides - Accordingly, points are answered - In result, civil miscellaneous appeal is dismissed. **United India Insurance Co. Ltd Vs. Sri Mohd. KhaleelKhan 2015(3) Law Summary (A.P.) 533**

—Sec.2(1)(1), Proviso, Part-I, Schedule-1 and Part-II, Schedule - I - "Permanent disablement" - Workman, driver of lorry while driving, lorry met with accident, received serious injuries and subsequently his right leg amputated - Commissioner awarded compensation of Rs.1.22 lakhs holding that workman suffered permanent partial disability in accident in course of employment - In appeal, workman contends that though disability was assessed at 50% permanent partial by Orthopedic Surgeon, as he cannot drive any vehicle for ever due to amputation of his right leg below knee, it shall be treated as 100% disability and compensation has to be awarded on that basis - There is no dispute that workman is incapable of performing his duties as driver, which he was performing prior to accident, as such his case has to be considered to be one of total disablement, but Sec.2(1)(1) of Act contemplates that total disablement shall be deemed to result from every injury specified in Part-I of Schedule - I or combination of injuries specified in Part-II of Schedule-I and there is also no dispute that appellant/workman did not suffer injuries in Part-I of Schedule-I or combination of injuries as mentioned in Part-II of Schedule – I - Court's discretion to award compensation is not controlled by injuries contained in Parts - I and II of Schedule - I "...Inspite of there being no sufferance of injuries mentioned in Part - I of Schedule - I or combination of injuries as mentioned in Part - II of Schedule - I, if there is 100% disability to do work, workman was doing earlier, it has to be treated that workman has suffered 100% disability".**Pamarthi Subba Rao Vs. H. Rama Rao 2008(2) Law Summary (A.P.) 156 = 2008(3) ALD 650 = 2008(3) ALT 68.**

—Secs.2(1)(1) & 30 - **"Total permanent disablement"** - "100% Loss of earning capacity" - Items 4 and 5 of Part-I of Schedule - I of Act - Claimants in both appeals are injured drivers - Contention that while assessing compensation payable, disability suffered by injured as certified by Doctor or Medical Board is relevant and that unless disability can be described as total permanent disablement as appended u/Sec.2(1) (1) of Act, such disability cannot be treated and assessed at 100% loss of earning capacity - Respondents/claimants contend that under definition of total permanent disablement as appended u/Sec.2(1) of Act, test for assessing disablement is whether workman is capable of performing work, which he was doing at time of accident and that drivers in both appeals are now rendered unfit to work as drivers and that keeping in view of nature of profession of work which they were carrying on at time of accident and on account of disablement suffered, they are not in a position to carry out same work or profession thereby Commissioner has rightly assessed disability as 100% - So far as first case is concerned claimant/driver was examined

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by conducting necessary test and as certified that his right eye optic otrophy with divergent spirit with chronic dacryo cystitis, where as left eye is normal as per schedule injury which has been certified that claimant suffered 30% disability which is permanent though it is certified that claimant can drive Auto but he cannot drive perfectly as he used to dive - In second case, it is found that claimant on examination clinically as well as radiologically establish as per certificate that he was having intertrochantic fracture of right femur with non-union resulting in 2" inches shortening of leg and restriction of movements of right hip and that claimant also had a fracture of ileum which is united but claimant cannot squat properly, cannot walk with out help of crutches for long distances having pain in sitting position on account of pelvic compression - Though doctor certified injury as a disability to extent of 50% Commissioner has assessed loss of earning capacity to 100% - In both cases, claimants are professional drivers - Their capacity to drive vehicle as professional driver is so seriously affected, as it is not possible for either of them to carry on their profession as drivers - Keeping in view, fact that both claimants are professional drivers and now they are not in a position to undertake said professional work any more, irrespective of disability certified by doctors concerned, loss of earning capacity of respective claimants is 100% - Findings of Commissioner assessing loss of earning capacity at 100% - Fully justified - Appeals, dismissed. **United India Insurance Co. Limited Vs. Y.Ananda Rao 2012(3) Law Summary (A.P.) 95 = 2012(6) ALD 33.**

—Secs.3 & 30 - 1st respondent's husband aged 28 years, who is driver of Auto owned by second respondent and insured with appellant,while driving auto two persons stabbed him causing his death - Commissioner of Labour awarded compensation of Rs.1,58,929/ - as against claim of Rs.2 laksh - Appellant/insurance Company contends that it is not liable to pay compensation since death did not occur on account of accident - Though accident may be one of causes it cannot be said that if injury or death occurs otherwise than through accident, but in course of employment, compensation cannot be awarded - Order of Commissioner, justified - Appeals dismissed. **Oriental Insurance Co.,Vs. K.Karuna 2012(1) Law Summary 93 = 2012(2) ALD 1 = 2012(2) ALT 420.**

—Sec.4-A(3), First Schedule - **MOTOR VEHICLES ACT, 1988**, Sec.168 - "Motor accident"- In this cases claimants suffered injuries in motor accident and applicability of provisions of M.V Act and Workmen Compensation Act for determination of compensation in respect of claimants who suffered disability – Stated - Amount of compensation is to be determined in terms of provisions of respective Acts - Where as in terms 1923 Act, Commissioner who is quasi judicial authority is bound to apply principles and factors laid down in Act for purpose of determining compensation, Sec.168 of 1988 Act enjoins Tribunal to make award determining amount of compensation which appears to be just - Both statutes provide for mode and manner in which percentage of loss of earning capacity is required to be calculated - They provide that amount of compensation in cases of this nature would be directly relatable to percentage of physical disability

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suffered by injured vis-vis the injuries specified in First Schedule of 1923 Act - Where there are more injuries than one, aggregate amount of compensation has to be taken but same should not exceed amount which would have been payable in case of permanent total disablement - Function of Commissioner is to determine amount of compensation as laid down under Act - Even if no amount is claimed Commissioner must determine amount which is found payable to workman - Even in cases arising out of 1988 Act, it is duty of Tribunal to arrive at just compensation having regard to provisions contained in Sec.168 thereof. **Oriental Insurance Co. Ltd., Vs. Mohd. Nasir 2009(2) Law Summary (S.C.) 123.**

—Secs.4,4A, 3, 4A(1) - **MOTOR VEHICLES ACT** - "Motor accident" - Commissioner for Workmens's Compensation awarded compensation of Rs.3,35,600/- to claimants of deceased against owner of accident vehicle and not against insurer - Appellants, claimants contend that Commissioner should have awarded compensation as against insurer also and that Commissioner should have awarded interest from date of accident - Admittedly, deceased was working as driver under 1st respondent/owner of accident vehicle, though in fact he was not actually driving vehicle at time of accident - There will be two drivers and for some time one driver would drive vehicle and after some time 1st driver takes rest and second driver takes steering for driving vehicle and for that reason deceased was in vehicle at time of accident - Therefore presence of deceased in accident vehicle was neither unauthorised nor unwarranted - Therefore, 2nd respondent/Insurance Company cannot avoid payment of compensation in this case, by way of indemnifying 1st respondent injured - Sec.4A(3) of Act postulates awarding of interest as well as penalty - As per said section, compensation u/Sec.4 shall be paid as soon as it falls due - Insurance Company is liable to pay compensation amount together with interest - Though Insurance Company is not liable to pay penalty for default in payment of compensation - 2nd respondent/Insurance Company is jointly and severally liable to pay compensation amount along with 1st respondent as determined by Commissioner together with interest - Appeal, allowed. **Shaik Murthuza Vs. Nadella Kutumba Rao 2011(1) Law Summary (A.P.) 341 = 2011(4) ALD 561 = 2011(4) ALT 507.**

——Sec.30 - Claimants, who are legal representatives of deceased workman, had filed a WC case before Commissioner claiming compensation, from employer of deceased-cum-owner of auto trolley and insurance company, for loss sustained by them on account of untimely death of said deceased out of and during the course of his employment as driver on said vehicle, which was insured with insurance Company - Insurance company, AW1 was examined and exhibits A1 to A5 were marked - AW1 was not cross-examined - In fact, when the exhibits were marked, there was no representation for the opposite parties 1 and 2; and as cross-examination of AW1 was not done, opposite parties 1 and 2 were set ex parte; and, arguments on side of applicants were heard by Commissioner and matter was reserved for judgment - Allowing

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application of applicants and awarding compensation with interest were passed - Against said orders, Insurance company did not prefer any appeal as contemplated under provision of Section 30 of Workmen's Compensation Act, 1923 (presently known as Employees' Compensation Act, 1923) - However, Insurance company had filed an interlocutory application for setting aside the ex parte order passed in the WC case - Commissioner, had dismissed said Interlocutory application - Feeling aggrieved of said dismissal orders passed by Commissioner, present writ petition is filed by Insurance Company.

Held, it is to be noted that order passed in an interlocutory Application is not an independent order and even that order is also not challenged independently by availing the remedies, which law permits, and it was only challenged in this writ petition, wherein order passed in main case is also assailed - Effect of order of dismissal passed in interlocutory Application is that order granting compensation in main case is maintained - Therefore, ultimately writ petitioner/Insurance company is now challenging order in WC case - For entertaining an appeal u/Sec.30 of the Act, appellant would be required to make a pre-deposit of entire amount awarded as compensation - Further, an appeal against orders of Commissioner would be entertained only when a substantial question of law is involved and otherwise not - Court is in respectful agreement with view of the High Court of Punjab and Haryana at Chandigarh that if a writ petition like present one is entertained, it would amount to anomalous results and would defeat object of the Act - Having regard to reasons, Court finds that writ petition is not maintainable and is liable to be dismissed. **Bajaj Allianz General Insurance Co. Ltd. Vs. The Commissioner for Workmen Compensation 2016(1) Law Summary (A.P.) 270 = 2016(3) ALD 336.**

—-Sec.30 and Sec.2(dd) - **MOTOR VEHICLES ACT, 1988,** Secs.2(9) and 2(10) - This appeal under Section 30 of the Workmen's Compensation Act,1923 (presently known as Employees Compensation Act), by the unsuccessful 3rd opposite party - Held, having regard to the facts and the evidence it can safely be concluded that there was a policy under exhibit B1 in existence and that there was a valid transfer for consideration of the mini Lorry/vehicle by the 2nd opposite party in favour of the 1st opposite party coupled with the delivery of possession of the vehicle and that the 1st opposite party is exercising peaceably the ordinary rights of ownership; and, under law there was also a deemed transfer of the policy in favour of the 1st opposite party, who was the employer of the deceased/driver; and, further, in view of the precedential guidance in the decision of the Supreme Court in Prembai Patel's case and in the light of the statutory provisions, it can safely be held that the learned Commissioner was justified in holding that the 3rd opposite party/appellant is liable to pay the compensation awarded to the applicant as per the provisions of the M.V. Act and the Workmen's Compensation Act - Though it is contended that the age of the deceased was not correctly determined, a plain reading of the impugned order shows that when it was suggested to PW1 that her husband was 36 years of age, she had denied the suggestion

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and that the learned Commissioner had relied upon the crime records in fixing the age of the deceased as '31' years at the time of his involvement in the accident - Hence, the said approach cannot be found fault - This Court, thus, on a careful examination finds that the compensation was correctly determined having regard to the facts and on proper appreciation of the evidence brought on record and that therefore, the order impugned calls for no interference - The points are accordingly answered against the appellant/3rd opposite party holding that the impugned order of the learned Commissioner is sustainable, both under facts and in law - In the result, the appeal is dismissed. **National Insurance Co., Vs. Smt. T.Sabitha 2015(3) Law Summary (A.P.) 124**