

CONTENTS

Amalendu Kumar Bera & Ors. v. The State of West Bengal	.....	484
Babu and Anr. v. State rep. by Inspector of Police, Chennai	.....	438
Debabrata Dash and Anr. v. Jatindra Prasad Das & Ors.	.....	331
Deep Trading Company (M/s.) v. M/s. Indian Oil Corporation and Ors.	.....	470
Escorts Ltd. v. Universal Tractor Holding LLC	.....	389
Executive Engineer, Nandur, Madhameshwar Canal v. Vilas Eknath Jadhav and Others	.....	493
Joseph John Peter Sandy v. Veronica Thomas Rajkumar & Anr.	.....	368
Mahadeo (D) through LRs & Ors. v. State of U.P. & Ors.	.....	539
Modinsab Kasimsab Kanchagar v. State of Karnataka & Anr.	.....	357
Mohinder v. State of Haryana	.....	555
Municipal Corporation of Delhi v. Yashwant Singh Negi	.....	550

Nagendrappa Natikar v. Neelamma	.....	426
National Fertilizers Ltd. v. Tuncay Alankus & Anr.	.....	496
Prakash v. State of Rajasthan	.....	458
Rajesh Patel v. State of Jharkhand	.....	411
Sarva U.P. Gramin Bank & Ors. v. Manoj Kumar Chak	.....	562
Shantilal Gulabchand Mutha v. Tata Engineering & Locomotive Co. Ltd. & Anr.	.....	432
Sooguru Subrahmanyam v. State of A.P.	.....	514
State of U.P. v. Hari Ram	.....	301
Sundramma (J.) v. State of Karnataka & Anr.	.....	453
Syed Yousuf Hussain v. State of Andhra Pradesh	.....	528
Union of India & Ors. v. Anil Kumar Sarkar	.....	396

SUBJECT-INDEX**ARBITRATION AND CONCILIATION ACT, 1996:**

(1) ss. 11(6) and 11(8) - Appointment of arbitrator - Forfeiture of right of Corporation to appoint arbitrator as provided in arbitration clause of agreement - Held: Corporation has forfeited its right to appoint arbitrator - Matter referred to Chief Justice of High Court for consideration of application of appellant-dealer u/ss 11(6) afresh. *M/s. Deep Trading Company v. M/s. Indian Oil Corporation and Ors.* 470

(2) ss.48(1)(e) and 202 - Suit filed by respondent against Escorts AMI in a North Carolina Court in United States - Consent order passed to refer the matter to arbitration - Arbitration followed by award in favour of respondent - Respondent sought execution of that award by filing execution petition in India - Held: Even as per requirement of US Law, a notice of three months is required to be given in case a party does not want award to be enforced - In the instant case, consent order clearly recorded that award given by arbitrator shall be final and binding on parties - If petitioner wanted to dispute it, it was required of them to have issued necessary notice which it had not done - Submission that respondent ought to proceed for confirmation of award under US Law and then come to India for execution is not tenable in view

of changed law and doing away of rule of double excequatur - Federal Arbitration Act of U.S. - s.9 - New York Convention.

Escorts Ltd. v. Universal Tractor Holding LLC 389

CIRCULARS / GOVERNMENT ORDERS / NOTIFICATIONS:

(1) Circular No. 17 of 2009 dated 30.11.2009 - Circular dated 12.7.2010. (See under: Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998) 562

(2) Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training O.M. No. 22011/4/91/ Estt.(A) dated 24.9.1992. (See under: Service Law) 396

CODE OF CIVIL PROCEDURE, 1908:

(1) O. 8, r.10 - Judgment on failure of defendant to file written statement - Held: Relief under O. 8, r. 10 is discretionary, and court has to be more cautious while exercising such power where defendant fails to file written statement - Court must be satisfied that there is no fact which need to be proved in spite of deemed admission by defendant, and court must give reasons for passing such judgment - In the instant case, trial court has not examined as to whether suit was filed within limitation and whether on the basis of pleadings, relief granted by it could have been granted - As trial court failed to meet the parameters laid down

(v)

by Supreme Court to proceed under O. 8 r. 10, judgment and decree passed by it set aside and case remanded to it to decide afresh - Appellant is at liberty to file written statement within the period provided.

Shantilal Gulabchand Mutha v. Tata Engineering & Locomotive Co. Ltd. & Anr. 432

(2) O. 23, r.23.

(See under: Hindu Adoptions and Maintenance Act, 1956) 426

(3) s.47.

(See under: Delay / Laches) 484

CODE OF CRIMINAL PROCEDURE, 1973:

s.125.

(See under: Hindu Adoptions and Maintenance Act, 1956) 426

CONSTITUTION OF INDIA, 1950:

(1) Art. 129 - Contempt petition filed for violation of order of Supreme Court - Held: Respondent cannot be held guilty of contempt of court on definite charge that he withdrew a very large amount from his account in violation of orders of Supreme Court - Amount had been withdrawn prior to said order - Further, amount had been withdrawn during the period when there was no attachment order in respect of the account - Thus, there could be no question of committing any violation of Court's order by respondent - Order holding him guilty of contempt is based on an erroneous premise, and is, therefore, recalled - Supreme Court Rules, 1966 - O. 47 - Rules to Regulate Proceedings for

(vi)

Contempt of Supreme Court, 1975 - r. 3(c).

National Fertilizers Ltd. v. Tuncay Alankus & Anr. 496

(2) Art.136.

(See under: Penal Code, 1860) 411

(3) Art. 136 - SLP challenging order passed by High Court in review petition and not main judgment - Held: Not maintainable - Once High Court has refused to entertain review petition and same was dismissed confirming main order, there is no question of any merger and aggrieved person has to challenge main order and not the order dismissing the review petition because on dismissal of review petition principle of merger does not apply - Principle of merger.

Municipal Corporation of Delhi v. Yashwant Singh Negi 550

(4) Art.142 - Allotment of plot cancelled for deficiency in payment - Held: It may be that Development Authority did not have any discretion either to extend time for payment or to regularize the allotment which had been initially made in favour of husband of appellant - However, it also cannot be ignored that appellant is an illiterate widow and has two minor children - This apart, the site which was allotted to her is still available and can be given to her - In view of peculiar facts and circumstances of the case, and, purely in the interest of justice on humanitarian grounds, in exercise of jurisdiction under Art. 142, it is directed that the site which was originally allotted to appellant's

(vii)

husband and subsequently allotted to her, be regularized and registered in her name.

J. Sundramma v. State of Karnataka & Anr. 453

CONTRACT ACT, 1872:

(1) s.16 - Contract induced by undue influence - Held: High Court has come to conclusion that it was a case of undue influence, as on the date of executing alleged document, i.e. Memorandum of agreement, respondent was unmarried and was dependent on her father and brother for settling her marriage and for sustenance - She having contended that plaintiff was in a position to dominate her will, alleged document was termed as an unconscionable - Said document was clouded with suspicious and unexplained circumstances.

(Also see under: Specific Relief Act, 1963)

Joseph John Peter Sandy v. Veronica Thomas Rajkumar & Anr. 368

(2) s.25.

(See under: Hindu Adoptions and Maintenance Act, 1956) 426

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 357,
411 and 514

CRIMINAL LAW:

Motive.

(See under: Penal Code, 1860) 458
and 514

(viii)

DELAY / LACHES:

(i) Decree against State Government - Execution of - Objection u/s 47 - Rejected - Delay in filing revision - Held: In the application for condonation of delay, no sufficient cause has been shown which may entitle respondent to get a favourable order for condonation of delay - Merely because respondent is State, delay in filing appeal or revision cannot and shall not be mechanically considered; and in absence of 'sufficient cause' delay shall not be condoned - Code of Civil Procedure, 1908 - s.47 - Limitation Act, 1963 - s.5.

(ii) Delay - 'Sufficient cause' - Consideration of.

Amalendu Kumar Bera & Ors. v. The State of West Bengal 484

DOCTRINES / PRINCIPLES:

(1) Principle of merger.
(See under: Constitution of India, 1950) 550

(2) Rule of double executur.
(See under: Arbitration and Conciliation Act, 1996) 389

DOWRY PROHIBITION ACT, 1961:

ss. 3, 4 and 6 r/w s.5 (1), proviso - Accused-husband found guilty of demanding and receiving cash and gold - Conviction and six month sentence under each of three counts awarded by High Court, upheld.

(Also see under: Penal Code, 1860)

Modinsab Kasimsab Kanchagar v. State of Karnataka & Anr. 357

EVIDENCE:

- (1) Circumstantial evidence.
(See under: Penal Code, 1860) 458
and 514
- (2) Onus of proof.
(See under: Specific Relief Act, 1963) 368

FOREIGN ENACTMENTS:

- Federal Arbitration Act of U.S. - s.9.
(See under: Arbitration and Conciliation Act,
1996) 389

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956:

- s.18 - Suit claiming maintenance by wife - Held: Is maintainable in spite compromise reached between parties, under O. 23, r. 3 CPC and an order u/s 125 CrPC based thereon granting permanent alimony - Code of Criminal Procedure, 1973 - s.125 - Code of Civil Procedure, 1908 - O. 23, r.23 - Contract Act, 1872 - s.25.
Nagendrappa Natikar v. Neelamma 426

INTERNATIONAL CONVENTIONS / TREATIES:

- New York Convention, 1958.
(See under: Arbitration and Conciliation Act,
1996) 389

JUDICIARY:

- Ad-hoc promotion - Seniority.
(See under: Orissa Judicial (Special Schemes)
Rules, 2001) 331

LAND ACQUISITION ACT, 1894:

- (1) s.48 - Resolution by Development Authority to withdraw acquisition in respect of a part of land

acquired - Held: Once land is acquired and mandatory requirements are complied with including possession having been taken, land vests in State Government free from all encumbrances - Merely because some land was left at relevant time, that does not give any right to the Authority to send proposal to Government for release of land in favour of land owners.

Mahadeo (D) through LRs & Ors. v. State of U.P. & Ors. 539

(2) Dispossession of land owner prior to notification u/s 4(1) - Damages - Held: It will be open to such land owner to recover possession of his land by taking appropriate legal proceeding - In case possession is not recovered, he would be entitled to rent or damages for use and occupation for the period Government retained possession of property.

Executive Engineer, Nandur, Madhameshwar Canal v. Vilas Eknath Jadhav and Others 493

LIMITATION ACT, 1963:

- s.5.
(See under: Delay / Laches) 484

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

ss. 18 and 54 - Accused carrying a tin containing 3½ kg. opium - Conviction and sentence of 10 years RI with a fine of Rs. 1 lakh awarded by trial court affirmed by High Court - Held: In the light of oral and documentary evidence and in view of s. 54 and in absence of any evidence from accused discharging the presumption as to possession of

(xi)

contraband, conviction and sentence, upheld.

Mohinder v. State of Haryana 555

ORISSA JUDICIAL SERVICE (SPECIAL SCHEMES)
RULES 2001:

rr. 3, 4, 5 and 7 - Member of Orissa Superior Judicial Service (Junior Branch) - Ad hoc promotion as Additional District Judge in Fast Track Court created in terms of 11th Finance Commission recommendations - Claim that such ad hoc service be treated for purpose of seniority in Orissa Superior Judicial Service (Sr. Branch) - Held: Not tenable - In absence of any vacancy in Senior Branch cadre of Superior Judicial Service to be filled up by promotion, no appointment to Senior Branch of service by way of promotion can be made - On the date of appointment of officer to ad hoc post of Addl. District Judge in Fast Track Court or on the date he joined said post, there was no cadre post available - Orissa Superior Judicial Service Rules 1963.

Debabrata Dash and Anr. v. Jatindra Prasad Das & Ors. 331

ORISSA SUPERIOR JUDICIAL SERVICE RULES
1963:

(See under: Orissa Judicial (Special Schemes) Rules, 2001) 331

PENAL CODE, 1860:

(1) s.34.
(See under: Prevention of Corruption Act, 1988) 528

(2) s.302 - Murder - Circumstantial evidence - Husband suspecting fidelity of wife - Dead body of

(xii)

wife found in premises in exclusive possession of couple - Death caused by smothering - Husband absconded after incident - Held: All links in the chain of evidence are established beyond reasonable doubt and the established circumstances are consistent with singular hypothesis that accused is guilty of crime and it is totally inconsistent with his innocence - Conviction and sentence as awarded by trial court and affirmed by High Court, upheld - Evidence - Circumstantial evidence - Criminal law - Motive.

Sooguru Subrahmanyam v. State of A.P. 514

(3) s.302/34 and s.300, Exception 4 - Conviction by trial court of 5 accused u/s 302/149 IPC - Acquittal of one accused by High Court - Held: Evidence of eye-witness makes it clear that deceased was attacked by four appellants in furtherance of their common intention and, as such, they all were liable u/s 302/34 for causing his death - Further, deceased was unarmed and accused-appellants were armed with knives and attacked him even after he fell down - They took undue advantage and acted in cruel and unusual manner towards deceased - Besides, keeping in view the injuries on deceased, Exception 4 to s.300 is not attracted - Conviction and sentence of appellants u/s 302 upheld.

Babu and Anr. v. State rep. by Inspector of Police, Chennai 438

(4) ss. 302, 364 and 120-B - Minor boy kidnapped and murdered by three accused - Circumstantial evidence - Conviction and sentence of life

(xiii)

imprisonment - Affirmed by High Court - Held: Cogent and acceptable evidence adduced by prosecution has established the deceased last seen with accused, recovery of incriminating articles pursuant to disclosure statements of accused, motive for crime and threat given by accused to finish the family of complainant - It leads to conclusion that appellants/accused kidnapped and murdered the deceased - Conviction and sentence, upheld - Evidence - Circumstantial evidence - Motive.

Prakash v. State of Rajasthan 458

(5) ss. 304-B and 498-A - Demand from husband through wife (deceased) for repayment of society loan - Held: Demand was not in connection with dowry, therefore, provisions of s.304-B were not attracted and appellant-husband acquitted of charge - But, there is clear evidence establishing that deceased was subjected to harassment by her husband on account of her failure to meet said unlawful demand - Therefore, conviction u/s 498-A maintained - Appellant sentenced to period already undergone - Dowry Prohibition Act, 1961 - ss. 3, 4 and 6.

(Also see under: Dowry Prohibition Act, 1961)

Modinsab Kasimsab Kanchagar v. State of Karnataka & Anr. 357

(6) s.376 - Conviction by courts below - Held: In the instant case, prosecution version as narrated by prosecutrix, is most improbable and unnatural - The witness who is stated to have rescued prosecutrix from place of occurrence and employer of prosecutrix did not support prosecution case -

(xiv)

Doctor who medically examined prosecutrix and IO were not examined - Courts below erred in holding that their non-examination did not prejudice the defence - Further, inordinate delay of 11 days is fatal to prosecution case, which has created reasonable doubt - Therefore, benefit of doubt must enure to appellant - Impugned judgment set aside - Constitution of India, 1950 - Art.136.

Rajesh Patel v. State of Jharkhand 411

PREVENTION OF CORRUPTION ACT, 1988:

ss. 7 and 13(1)(d) r/w s.13(2) of the Act, r/w s. 34 IPC - Demanding and accepting of illegal gratification - Conviction of two accused by courts below - Plea of appellant that he did not demand nor did he receive the amount - Held: It has been established by evidence on record that both the accused were on duty at relevant time and place, vehicle was intercepted, tainted currency notes were recovered from co-accused, documents were returned back to complainant and no case for any traffic violation was registered - Conclusion arrived at by trial court that appellant was involved in commission of crime, as affirmed by High Court cannot be found fault with - Penal Code, 1860 - s.34.

Syed Yousuf Hussain v. State of Andhra Pradesh 528

REGIONAL RURAL BANKS (APPOINTMENT AND PROMOTION OF OFFICERS AND OTHER EMPLOYEES) RULES, 1988:

(See under: Regional Rural Banks

(Appointment and Promotion of Officers

and other Employees) Rules, 1998) 562

REGIONAL RURAL BANKS (APPOINTMENT AND PROMOTION OF OFFICERS AND OTHER EMPLOYEES) RULES, 1998:

rr. 2(d), (e), (f) and (j) - Promotions to be made "on the basis of seniority-cum-merit" - Connotation of - Circulars dated 30.11.2009 and 12.7.2010, enabling the management to eliminate from zone of consideration such employees who have been rated Grade 'D' in performance appraisal or who have suffered punishment - Set aside by High Court - Held: Rules do not provide the criteria introduced by two circulars - The procedure prescribed under said circulars clearly has the effect of supplanting the provision of eligibility, which is not permissible - Determination of bare minimum criteria is the function of DPC and cannot be taken-over by management - Misconduct committed by employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal - Circulars being contrary to statutory Rules, have rightly been quashed by High Court - Circular No. 17 of 2009 dated 30.11.2009 - Circular dated 12.7.2010 - Service law - Promotion - Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988.

Sarva U.P. Gramin Bank & Ors. v. Manoj Kumar Chak 562

RULES TO REGULATE PROCEEDINGS FOR CONTEMPT OF SUPREME COURT, 1975:

r. 3(c).
(See under: Constitution of India, 1950) 496

SERVICE LAW:

(1) Promotion.

(See under: Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998) 562

(2) (i) Promotion - Sealed cover procedure - Recommendation of DPC for promotion of respondent not given effect to on the ground that subsequently memorandum of charges were issued to him - Held: When respondent's batch mates were promoted, admittedly, on that date he was not under suspension, no charge sheet was served upon him nor was he facing any criminal prosecution - In such circumstances, in terms of paragraph 2 of O.M. dt. 24.09.1992, recommendation of DPC has to be honored and there is no question of applying 'sealed cover process' - Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training O.M. No. 22011/4/91/Estt.(A) dated 24.9.1992.

(ii) Disciplinary proceedings - Commencement of - Held: Disciplinary proceedings commence only when a charge sheet is issued.

Union of India & Ors. v. Anil Kumar Sarkar 396

(3) Seniority on ad-hoc promotion.

(See under: Orissa Judicial (Special Schemes) Rules, 2001) 331

SPECIFIC RELIEF ACT, 1963:

s.26 - Suit for rectification of settlement deeds - Held: Appellant could not have filed suit for rectification of settlement deed, as there was no mistake in its understanding or execution by parties

- It was only the father of parties who could have sought rectification of deed, but he was neither impleaded, nor examined before trial court, though he was still alive at the time of institution of suit - As respondent was not a party to the alleged rectification deed, she was not bound by it - Besides, memorandum of agreement relied upon by plaintiff has not been proved - Evidence - Onus of proof.

(Also see under: Contract Act, 1872)

Joseph John Peter Sandy v. Veronica Thomas Rajkumar & Anr. 368

SUPREME COURT RULES, 1966:

O. 47. 496
(See under: Constitution of India, 1950)

URBAN LAND (CEILING AND REGULATION) ACT, 1976:

s. 10(3) - Acquisition of vacant land in excess of ceiling limit - Expressions "deemed to have been acquired" and "deemed to have vested absolutely" - Connotation of - Held: 'Vesting' in sub-s. (3) of s.10 means vesting of title absolutely and not possession - Under s.10(3), what is vested is de jure possession not de facto possession - Mere vesting of land under sub-s. (3) of s.10 would not confer any right on State Government to have de facto possession of vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999 - State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-s. (5) of s. 10 or forceful dispossession

under sub-s. (6) of s. 10 - On failure to establish any of these situations, land owner or holder can claim benefit of s.3 of Repeal Act - Uttar Pradesh Urban Land Ceiling (Taking of Possession, payment of Amount and Allied Matters) Directions, 1983.

State of U.P. v. Hari Ram 301

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

s. 3 - Saving clause - Held: No documents have been produced to show that respondents had been dispossessed before coming into force of Repeal Act and, therefore, High Court is right in holding that respondent are entitled to get benefit of s. 3 of Repeal Act.

State of U.P. v. Hari Ram 301

UTTAR PRADESH URBAN LAND CEILING (TAKING OF POSSESSION, PAYMENT OF AMOUNT AND ALLIED MATTERS) DIRECTIONS, 1983:

(See under: Urban Land (Ceiling and Regulation) Act, 1976) 301