2008 (14) SCC 632 : 2008 (6) Supreme 714

Before:- H.S.Bedi :J , Tarun Chatterjee :J

South Konkan Distilleries & Anr.
Versus
Prabhakar Gajanan Naik & Ors.

It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation. In L.J. Leach & Co. Ltd. & Anr. v. M/s. Jardine Skinner & Co. [AIR 1957 SC 357], this Court at paragraph 16 of the said decision observed as follows:-

"It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice."

2008 (17) SCC 157

Before:- C.K.Thakker :J , D.K.Jain :J

Fakhruddin Ahmad
Versus
State of Uttaranchal & Anr.

it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received

from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

2008 (13) SCC 547

Before:- Arijit Pasayat :J , P.Sathasivam :J

Jayant Achyut Sathe
Versus
Joseph Bain D Souza and Ors.

It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

39. In Premium Granites v. State of T.N. while considering the Court's powers in interfering with the policy decision, it was observed at p.

"54. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be."

2008 (10) SCC 714

Before:- B.N.Agrawal :J , G.S.Singhvi :J

N.Balakrishnan And Another
Versus
Kailasa Naicker (Dead) By Lr.

It is well settled that, in a second appeal filed under Section 100 of the Code of Civil Procedure, 1908, if the High Court is of the opinion that a substantial question of law arises, then such question of law is required to be framed and decided. In this case, the High Court upset the judgment of the lower appellate court without framing any substantial question of law. Therefore, on this ground alone the impugned order is liable to be set aside.

2008 (8) SCC 765 : 2008 (6) Supreme 383

Before:- J.M.Panchal :J , K.G.Balakrishnan :J , R.V.Raveendran :J

N.D.M.C.& Ors.
Versus
Tanvi Trading & Credit Pvt.Ltd.& Ors.

It is well settled that the law for approval of the building plan would be the date on which the approval is granted and not the date on which the plans are submitted. This is so in view of paragraph 24 of the decision of this Court in Usman Gani J. Khatri of Bombay v. Cantonment Board and others etc. etc. (1992) 3 SCC 455.

2008 (12) SCC 531

Before:- Dalveer Bhandari :J , J.M.Panchal :J

Gorige Pentaiah
Versus
State of A.P.& Ors.

In G. Sagar Suri & Another v. State of UP & Others (2000) 2 SCC 636, this court observed that it is the duty andobligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters areessentially of civil nature.

This court in Roy V.D. v. State of Kerala (2000) 8 SCC 590 observed thus:-

"18. **It is well settled that** the power under section 482 Cr. P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 Cr. P.C to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

This court in Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another (2005) 1 SCC122 observed thus:-

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

2008 (10) SCC 153 : 2008 (6) Supreme 122

Before:- P.Sathasivam :J , Tarun Chatterjee :J

Kumar Gonsusab & Ors.
Versus
Sri Mohammed Miyan Urf Baban & Ors.

It is well settled that it would be open to the pre-emptee, to defeat the law of pre-emption by any legitimate means, which is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means.

2008 (9) SCC 622 : 2008 (6) Supreme 1

Before:- Aftab Alam :J , Arijit Pasayat :J , P.Sathasivam :J

Commissioner of Income Tax-I, Ahmedabad
Versus
Gold Coin Health Food Pvt.Ltd.

15. In Principles of Statutory Interpretation, 11th Edn. 2008, Justice G.P. Singh has stated the position regarding retrospective operation of statutes as follows:

"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word `declared' as well as the word 'enacted'. But the use of the words `it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the Corm. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. **It is well settled that** if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language `shall be deemed always to have meant' or 'shall be deemed never to have included'' is declaratory, and

is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law."

16. In Zile Singh v. State of Haryana and Ors. (2004 (8) SCC 1), it was observed as follows:

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only - "nova constitutio futuris formam imponere debet non praeteritis" - a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. **It is well settled that** if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already

implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

2008 (10) SCC 796

Before:- B.N.Agrawal :J , G.S.Singhvi :J

Rajaram Prasad Gupta and Another
Versus
Ramchandra Prasad And Others

It is well settled that in cases where the subject of suit is residential premises and the judgment-debtor is residing in it, prayer for stay is ordinarily granted.

2008 (9) SCC 413

Before:- C.K.Thakker :J , D.K.Jain :J

Nil Ratan Kundu & Anr.
Versus
Abhijit Kundu

In Tarun Ranjan Majumdar & Anr. v. Siddhartha Datta, AIR 1991 Cal. 76, the High Court considered Sections 7, 12 and 25 of 1890 Act. It held that when the Court is of the opinion that some order is required to be passed with regard to custody of a ward, it can be passed considering the welfare of the ward. It was further observed that even if a child is in the custody of one who has no legal right thereto and its welfare is reasonably looked after in a manner in which it should, the legal guardian cannot claim an order of return or recovery of custody merely on the strength of his legal right or financial soundness.
51. In Bimla Devi v. Subhas Chandra Yadav 'Nirala', AIR 1992 Pat. 76, the Court held that paramount consideration should be welfare of minor and normal rule (the father is natural guardian and is, therefore, entitled to the custody of the child) may not be followed if he is alleged to have committed murder of his wife. In such case, appointment of grand-mother as guardian of minor girl cannot be said to be contrary to law.

52. Construing the expression `welfare' in Section 13 of 1956 Act liberally, the Court observed;

"**It is well settled that** the word `welfare' used in this section must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being". (emphasis supplied)

53. In Goverdhan Lal & Ors. v. Gajendra Kumar, AIR 2002 Raj. 148, the High Court observed that it is true that father is a natural guardian of a minor child and therefore has a preferential right to claim custody of his son, but in the matters concerning the custody of minor child, the paramount consideration is the welfare of the minor and not the legal right of a particular party. Section 6 of 1956 Act cannot supersede the dominant consideration as to what is conducive to the welfare of the minor child. It was also observed that keeping in mind the welfare of the child as the sole, consideration, it would be proper to find out wishes of the child as to with whom he or she wants to live.

54. Again, in M.K. Hari Govindan v. A.R. Rajaram, AIR 2003 Mad. 315, the Court held that custody cases cannot be decided on documents, oral evidence or precedents without reference to 'human touch'. The human touch is the primary one for the welfare of the minor since the other materials may be created either by the parties themselves or on the advice of counsel to suit their convenience.

55. In Kamla Devi v. State of Himachal Pradesh, AIR 1987 HP 34, the Court observed;

"The Court while deciding child custody cases in its inherent and general jurisdiction is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases giving due weight to the circumstances such as a child's ordinary comfort, contentment, intellectual, moral and physical development, his health, education and general maintenance and the favourable

surroundings. These cases have to be decided ultimately on the Court's view of the best interests of the child whose welfare requires that he be in custody of one parent or the other".

Principles governing custody of minor children

56. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved, with human touch. 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 a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, any bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.

Related witness
2008 (16) SCC 73

Before:- P.Sathasivam :J , R.V.Raveendran :J

State of Uttar Pradesh
Versus
Kishanpal & Ors.

(9) From the above it is clear that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. A

witness, who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be `interested'.

(10) The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness. **It is well settled that** it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. Vide State of A.P. v. Veddula Veera Reddy & Ors. (1998) 4 SCC 145, Ram Anup Singh & Ors. v. State of Bihar (2002) 6 SCC 686, Harijana Narayana & Ors. v. State of A.P.

(2003) 11 SCC 681, Anil Sharma & Ors. v. State of Jharkhand (2004) 5 SCC 679, Seeman @ Veeranam v. State, By Inspector of Police (2005) 11 SCC 142, Salim Sahab v. State of M.P. (2007) 1 SCC 699, Kapildeo Mandal and Ors. v. State of Bihar, AIR 2008 SC 533, D. Sailu v. State of A.P., AIR 2008 SC 505.

(11) In Kulesh Mondal v. State of West Bengal, (2007) 8 SCC 578, this Court considered the reliability of interested/related witnesses and has reiterated the earlier rulings and it is worthwhile to refer the same which reads as under:

"11. "10. We may also observe that the ground that the [witnesses being close relatives and consequently being partisan witnesses,] should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab, AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para 25)
`25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan (AIR 1952 SC 54 at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.'

11. Again in Masalti v. State of U.P. (AIR 1965 SC 202) this Court observed: (AIR pp. 209-10, para 14)

`14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial

approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

12. To the same effect is the decision in State of Punjab v. Jagir Singh, (1974) 3 SCC 277, Lehna v. State of Haryana, (2002) 3 SCC 76 .... As observed by this Court in State of Rajasthan v. Kalki (1981) 2 SCC 752, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar, (2002) 6 SCC 81".

Common Object
2008 (11) Scale 233 : 2008 (16) SCC 73

Before:- P.Sathasivam :J , R.V.Raveendran :J

State of Uttar Pradesh
Versus
Kishanpal & Ors.

It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed.

(26) In Bhagwan Singh and Others vs. State of M.P., (2002) 4 SCC 85, this Court while considering unlawful assembly/sharing of common object held as under:-

"9. Common object, as contemplated by Section 149 of the Indian Penal Code, does not require prior concert or meeting of minds before the attack. Generally no direct evidence is available regarding the existence of common object which, in each case, has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine the actual part played by each offender and easy to hold that such persons who attacked the victim had the common object for an offence which was known to be likely to be committed in prosecution of such an object. It is true that a mere innocent person, in an assembly of persons or being a bystander does not make such person a member of an unlawful assembly but where the persons forming the assembly are shown to be having identical interest in pursuance of which some of them come armed, others though not armed would, under the normal circumstances, be deemed to be the members of the unlawful assembly."

The same principle has been stated in State of A.P. v. Veddula Veera Reddy and Others, (supra) and Sahdeo and Others v. State of U.P. (2004) 10 SCC 682.

(27) In the case on hand, the accused persons have been proved to be in inimical terms with the complainant party, the accused persons who came on the spot are shown to have armed with deadly weapons i.e. guns and pistols. The facts and circumstances of the case unequivocally prove the existence of the common object of such persons forming the unlawful assembly who had come on the spot with weapons and attacked the complainant's party. In consequence of which three precious lives were lost and another three sustained firearm injuries.

(28) In State of Rajasthan v. Nathu and Others, (2003) 5 SCC 537, this Court held:

"If death had been caused in prosecution of the common object of an unlawful assembly, it is not necessary to record a definite and specific finding as to which particular accused out of the members of the unlawful assembly caused the fatal injury. Once an unlawful

assembly has come into existence, each member of the assembly becomes vicariously liable for the criminal act of any other member of the assembly committed in prosecution of the common object of the assembly."

(29) In Rachamreddi Chenna Reddy and Others v. State of A.P., (1999) 3 SCC 97, with reference to common object and how the same has to be interfered with, this Court held thus:

"7. .... The question whether the group of persons can be made liable for having caused murder of one or two persons by virtue of Section 149 IPC depends upon the facts and circumstances under which the murder took place. Whether the members of an unlawful assembly really had the common object to cause the murder of the deceased has to be decided on the basis of the nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the settings and surroundings under which the occurrence took place.

9. In Bolineedi case (1994 Supp (3) SCC 732) this Court held that for arriving at a conclusion of constructive liability, what the courts have to see is whether they had the common object and members of the assembly knew it likely to be committed in prosecution of that object. In the aforesaid case, the fact that all the accused persons chased and surrounded the deceased and inflicted injuries with their respective weapons was held to be sufficient to conclude that they had the common object to kill the deceased."

2008 (9) SCC 284 : 2008 (6) Supreme 56

Before:- Altamas Kabir :J , Markandey Katju :J

Rajbir Singh Dalal (Dr.)
Versus
Chaudhari Devi Lal University, Sirsa & Anr.

42. In Ambica Quarry Works v. State of Gujarat & others (1987) 1 SCC 213 (vide para 18) this Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

43. In Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. (2003) 2 SC 111 (vide para 59), this Court observed:-

"**It is well settled that** a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision." (Emphasis supplied)

44. As held in Bharat Petroleum Corporation Ltd. & Another v. N.R. Vairamani & Another (air 2004 sc 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:

"Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

2009 (0) AIR(SC) 840 : 2008 (9) JT 115 : 2008 (11) Scale 52

Before:- A.K.Mathur :J , Tarun Chatterjee :J

T.Kaliamurthi & Anr.
Versus
Five Gori Thaikal Wakf & Ors.
It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require

such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

2008 (12) SCC 698

Before:- Arijit Pasayat :J , P.Sathasivam :J

North West Karnataka Road Transport Corpn.
Versus
H.H.Pujar

In State of Haryana and Anr. v. Rattan Singh (1977 (2) SCC 491), it was, inter alia, held as follows:

"4. **It is well settled that** in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

2008 (16) SCC 328

Before:- Arijit Pasayat :J , P.Sathasivam :J

Asraf Ali
Versus
State of Assam

16. Thus **it is well settled that** the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

17. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim audi alteram partem. The word "may" in clause (a) of sub-section(1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

18. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial Court, with a direction to re-try from the stage at which the prosecution was closed.

2008 (9) SCC 368

Before:- C.K.Thakker :J , Lokeshwar Singh Panta :J

Rajinder Singh
Versus

State of Jammu & Kashmir & Ors.

It is well settled that Revenue Records confer no title on the party. It has been recently held by this Court in Suraj Bhan & Ors. v. Financial Commissioner & Ors., (2007) 6 SCC 186, that such entries are relevant only for "fiscal purpose" and substantive rights of title and of ownership of contesting claimants can be decided only by a competent civil Court in appropriate proceedings.

In Suraj Bhan and Others v. Financial Commissioner and Others [(2007) 6 SCC 186], this Court held:

"...**It is well settled that** an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh)..."

2008 (12) SCC 481 : 2008 (5) Supreme 287

Before:- C.K.Thakker :J , D.K.Jain :J

K.D.Sharma
Versus
Steel Authority of India Ltd.& Ors.

16. Reference was also made to a recent decision of this Court in A.V. Papayya Sastry & Ors. v. Govt. of A.P. & Ors., (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated:

"It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order-by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any

Court, at any time, in appeal, revision, writ or even in collateral proceedings".

2008 (14) SCC 58

Before:- C.K.Thakker :J , D.K.Jain :J

Ramesh Chandra Sankla Etc.
Versus
Vikram Cement Etc.

It is well settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues.

65. Before more than hundred years, the Privy Council in Tarakant v. Puddomoney, (1866) 10 MIA 476, favoured this approach.

66. Speaking for the Judicial Committee, Lord Turner stated:

"The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points". (emphasis supplied)

67. The above principle has been consistently followed. This Court dealing with the provisions of Order XIV Rule 2 (prior to the amendment Act of 1976), in Major S.S. Khanna v. Brigadiar F.J. Dillion, (1964) 4 SCR 409, stated;

"Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it

thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit". (emphasis supplied)

68. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated;

"This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force". (emphasis supplied)

2008 (8) SCC 564 : 2008 (4) Supreme 360

Before:- A.K.Mathur :J , Tarun Chatterjee :J

K.B.Saha & Sons Pvt.Ltd.
Versus
Development Consultant Ltd.

20. In the case of Rana Vidya Bhushan Singh Vs. Ratiram [1969 (1) UJ 86 (SC)], the following has been laid down:

"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th En., at p. 189:

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, 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 proving an important clause would not be using it as a collateral purpose.

2008 (9) Scale 182

Before:- H.K.Sema :J , Markandey Katju :J

Union of India
Versus
Prabhakaran Vijaya Kumar & Ors.

It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. v. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar v. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

13. In Hindustan Lever Ltd. v. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce

pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations.

2008 (8) Supreme 453

Before:- C.K.Thakker :J , D.K.Jain :J

State of Uttar Pradesh & Anr.
Versus
U.P.Rajya Khanij Vikas Nigam S.S.& Ors.

It is settled law that there can be no estoppel against a statute.
46. **It is well settled that** a Court of Law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and not in violation of statutory provisions.

2008 (12) SCC 181 : 2008 (5) Supreme 45

Before:- Aftab Alam :J , P.P.Naolekar :J

Mahant Dooj Das (Dead) through LR.
Versus
Udasin Panchayati Bara Akhara & Anr.

16. In Abdul Waheed Khan v. Bhawani and Others, AIR 1966 SC 1718, it was held that it is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention and it is also equally well settled that a statute ousting the jurisdiction of a civil court must be strictly constructed.

In Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddi, AIR 1967 SC 781, this Court held that under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of civil nature excepting suits of which there is a bar expressly or impliedly provided. It is well settled

principle that a party seeking to oust jurisdiction of an ordinary civil court shall establish the right to do so.

In Smt. Bismillah v. Janeshwar Prasad and Others, (1990) 1 SCC 207, this Court has reiterated the principle laid down and said that it is settled law that exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of law which seek to oust the jurisdiction of civil court need to be strictly construed.

In Sahebgouda (Dead) by LRs. and Others v. Ogeppa and Others, (2003) 6 SCC 151, this Court has held that **it is well settled that** a provision of law ousting the jurisdiction of a civil court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish his right to do so.

In Dwarka Prasad Agarwal (D) by LRs. v. Ramesh Chander Agarwal and Others, (2003) 6 SCC 220, a 3-Judge Bench has held that Section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted.

2008 (7) SCC 46

Before:- S.B.Sinha :J , V.S.Sirpurkar :J

Hardeo Rai
Versus
Sakuntala Devi and others

In M.V.S. Manikayala Rao v. M. Naraisimhaswami and others, AIR 1966 SC 470 this Court stated the law thus:-

"**It is well settled that** the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased."

2008 (3) Supreme 217

Before:- S.B.Sinha :J , V.S.Sirpurkar :J

Usha Breco Mazdoor Sangh
Versus
Management of M/s.Usha Breco Ltd.& Anr.

In Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Others [(2005) 7 SCC 764], a Three-Judge Bench of this Court opined:

" **It is well settled that** the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide E.P. Royappa v. State of T.N.) There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility."

2008 (12) SCC 577

Before:- A.K.Mathur :J , Altamas Kabir :J

Kamlesh Babu & Ors.
Versus
Lajpat Rai Sharma & Ors.

"3. Bar of limitation. - (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation had not been set up as a defence."

16. Even in the decision of this Court in Darshan Singh's case (supra) the said provision does not appear to have been brought to the notice of the Hon'ble Judges who decided the matter.

17. **It is well settled that** Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.

2008 (14) SCC 151

Before:- B.N.Agrawal :J , D.K.Jain :J , P.P.Naolekar :J

Sahara India (Firm), Lucknow
Versus
Commissioner of Income Tax,Central-I & Anr.

It is well settled that the principle audi alteram partem can be excluded only when a statute contemplates a post decisional hearing amounting to a full review of the original order on merit

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2008 (14) SCC 283

Before:- Ashok Bhan :J , Dalveer Bhandari :J

Pradip J.Mehta
Versus
Commissioner of Income Tax, Ahmedabad

. **It is well settled that** when two interpretations are possible, then invariably, the Court would adopt the interpretation which is in favour of the tax payer and against the Revenue. Reference may be made to the decision in Sneh Enterprises v. Commissioner of Customs, New Delhi [(2006) 7 SCC 714], of this Court wherein, inter alia, it was observed as under:

"While dealing with a taxing provision, the principle of "Strict Interpretation" should be applied. The Court shall not interpret the

statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue."

2008 (5) SCC 124

Before:- Arijit Pasayat :J , P.Sathasivam :J

M.R.Satwaji Rao (D) by L.Rs.
Versus
B.Shama Rao (Dead) by L.Rs.& Ors.

In Jayasingh Dnyanu Mhoprekar and Another v. Krishna Babaji Patil and Another, (1985) 4 SCC 162, again considering similar claim with reference to Section 83 of the Transfer of Property Act and Section 90 of the Indian Trusts Act, this Court held:

"6. The only question which arises for decision in this case is whether by reason of the grant made in favour of the defendants the right to redeem the mortgage can be treated as having become extinguished. **It is well settled that** the right of redemption under a mortgage deed can come to an end only in a manner known to law. Such extinguishment of right can take place by a contract between the parties, by a merger or by a statutory provision which debars the mortgagor from redeeming the mortgage. A mortgagee who has entered into possession of the mortgaged property under a mortgage will have to give up possession of the property when the suit for redemption is filed unless he is able to show that the right of redemption has come to an end or that the suit is liable to be dismissed on some other valid ground. This flows from the legal principle which is applicable to all mortgages, namely "Once a mortgage, always a mortgage".....

2008 (8) SCC 42

Before:- Arijit Pasayat :J , S.H.Kapadia :J

Novva ADS
Versus
Secretary, Deptt.of Municipal Administration and Water Supply and Anr.

It is well settled that a delegated legislation would have to be read in the context of the primary statute under which it is made and, in case of any conflict, it is primary legislation that will prevail.

2008 (2) Supreme 752

Before:- Lokeshwar Singh Panta :J , P.P.Naolekar :J

Bal Krishna & Anr.
Versus
Bhagwan Das (Dead)by Lrs.& Ors.

In Syed Dastagir v. T.R. Gopalakrishna Setty, AIR 1999 SC 3029, this Court has held in para 9 as under:

¡> In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, some times vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. ¡i

In Motilal Jain v. Ramdasi Devi (Smt.) and Others, (2000) 6 SCC 420, this Court has held that an averment as to readiness and willingness in plaint is sufficient if the plaint, read as a whole, clearly indicates that the plaintiff was always and is still ready and willing to fulfil his part of the obligations. Such averment is not a mathematical formula capable of being expressed only in certain specific words or terms. Further, in Umabai and Another v. Nilkanth Dhondiba Chavan (Dead)

by LRs. and Anr., (2005) 6 SCC 243, this Court in para 30 has said as under:

¡>**It is well settled that** the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

2008 (2) Supreme 548

Before:- B.Sudershan Reddy :J , S.H.Kapadia :J

Bhikhubhai Vithlabhai Patel & Ors.
Versus
State of Gujarat & Anr.

It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.

2008 (2) Supreme 413

Before:- S.B.Sinha :J , V.S.Sirpurkar :J

Vimlaben Ajitbhai Patel
Versus
Vatslabeen Ashokbhai Patel and others

It is well settled that apparent state of affairs of state shall be taken a real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one, who pleads contra.

2008 (2) Supreme 629

Before:- Ashok Bhan :J , J.M.Panchal :J

Synco Industries Ltd.
Versus
Assessing Officer, Income Tax, Mumbai & Anr.

It is well settled that where the predominant majority of the High Courts have taken certain view on the interpretation of certain provisions, the Supreme Court would lean in favour of the predominant view.

2008 (4) SCC 755

Before:- H.K.Sema :J , Markandey Katju :J

Gujarat Urja Vikash Nigam Ltd.
Versus
Essar Power Ltd.

It is well settled that sometimes `and' can mean `or' and sometimes `or' can mean `and' (vide G.P. Singh's `Principle of Statutory Interpretation' 9th Edition, 2004 page 404.)
It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.

2008 (3) SCC 542

Before:- B.Sudershan Reddy :J , S.H.Kapadia :J

Divine Retreat Centre
Versus

State of Kerala & Ors.

It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

23. Chandrachud, J. (as His Lordship then was), in Kurukshetra University v. State of Haryana, (1977) 4 S.C.C. 451 while considering the nature of jurisdiction conferred upon the High Court under Section 482 of the Code observed:

>It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

It is well settled that a public interest litigation can be entertained by the Constitutional Courts only at the instance of a bona fide litigant.

2008 (17) SCC 505

Before:- H.S.Bedi :J , S.B.Sinha :J

Nishan Singh
Versus
State of Punjab

it is well settled that acquittal of one accused itself would not lead to the conclusion that the entire prosecution case was false. In Sukhdev Yadav & Ors. v. State of Bihar [(2001) 8 SCC 86], this Court held:

"It is now well-settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness

and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence."

2008 (4) SCC 406

Before:- H.K.Sema :J , Markandey Katju :J

D.G.Railway Protection Force & Ors.
Versus
K.Raghuram Babu

It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide N. Kalindi and others v. M/s. Tata Locomotive and Engineering Co. Ltd AIR 1960 SC 914. Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide Brook Bond India v. Subba Raman 1961 (11) LLJ 417.

2008 (14) SCC 356 : 2008 (2) Supreme 257

Before:- Dalveer Bhandari :J , Tarun Chatterjee :J

Vaishakhi Ram and Ors.
Versus
Sanjeev Kumar Bhatiani

It is well settled that the burden of proving subletting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of subletting. Reliance can be placed on the decision of this Court in the case of Joginder Singh Sodhi v. Amar Kaur [(2005) 1 SCC 31].

2008 (4) SCC 720 : 2008 (2) Supreme 472

Before:- H.K.Sema :J , Markandey Katju :J

Government of Andhra Pradesh & Ors.
Versus
P.Laxmi Devi

It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide Commissioner of Income Tax v. Firm Muar AIR 1965 SC 1216. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.

20. In Partington v. Attorney-General (1969) LR 4 HL 100, Lord Cairns observed as under:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

2008 (3) SCC 174

Before:- Markandey Katju :J , P.P.Naolekar :J

Suresh Nanda
Versus
C.B.I.

In Nirmaljit Singh Hoon v. State of West Bengal & Anr., (1973) 3 SCC 753, the Court stated that **it is well settled that** before a Magistrate can be said to have taken cognizance of an offence under Section 190(1) (a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done

so for the purpose of proceeding under Section 200 and the provisions following that section. Where, however, he applies his mind only for ordering an investigation under Section 156(3) or issues a warrant for arrest of accused, he cannot be said to have taken cognizance of the offence.

23. In Darshan Singh Ram Kishan v. State of Maharashtra, (1972) 1 SCR 571, speaking for the Court, Shelat, J. stated that under Section 190 of the Code, a Magistrate may take cognizance of an offence either (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been said, taking cognizance does not involve any formal action or indeed action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, thus, takes place at a point when a Magistrate first takes judicial notice of an offence.

24. In Devarapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors., (1976) 3 SCC 252, this Court said:

¡>It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from, being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

Generalia Specialibus non derogant -- Meaning Special law prevails over the general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant".

Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

2008 (2) SCC 41

Before:- C.K.Thakker :J , P.Sathasivam :J

U.P.State Sugar Corporation Ltd.& Ors.
Versus
Kamal Swaroop Tondon

Now **it is well settled that** retiral benefits are earned by an employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of boon. It is paid to him/her for his/her dedicated and devoted work.

2007 (8) Supreme 437

Before:- A.K.Mathur :J , Markandey Katju :J

Union of India
Versus
S.R.Dhingra and Ors.

It is well-settled that a mistake does not confer any right to any party, and can be corrected.

2008 (2) SCC 728

Before:- P.Sathasivam :J , Tarun Chatterjee :J

Nopany Investments (P) Ltd.
Versus
Santokh Singh (HUF)

It is well settled that in the case of reversal, the first appellate court ought to give some reason for reversing the findings of the trial court whereas in the case of affirmation, the first appellate court accepts the reasons and findings of the trial court.
In Santosh Hazari's case [supra], this court observed:-

"The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with the reasons given by the court, decision of which is under appeal, would ordinarily suffice." (Emphasis supplied).

Again, in Madhukar & Ors. Vs. Sangram & Ors. [supra], this court had to set aside the judgment of the High Court because the first appellate court was singularly silent as to any discussion, either of the documentary or the oral evidence. In addition, this court in that decision was of the view that the findings of the first appellate court were so cryptic that none of the relevant aspects were noticed. In this background, this court at paragraph 8 observed as follows:-

"Our careful perusal of the judgment in the first appeal shows that it hopelessly falls short of considerations which are expected from the court of first appeal. We, accordingly set aside the impugned judgment and decree of the High Court and remand the first appeal to the High Court for its fresh disposal in accordance with law."

2007 (13) Scale 808

Before:- A.K.Mathur :J , Markandey Katju :J

U.P.State Agro Industrial Corporation Ltd.
Versus
Kisan Upbhokta Parishad & Ors.

it is well settled that ordinarily the meaning of the word or expression in common parlance or in common use should be accepted, unless the statute or order in which it is used has defined it with a specific meaning.

2008 (1) SCC 560

Before:- J.M.Panchal :J , S.B.Sinha :J

Sheikh Abdul Rashid & Ors.
Versus
State of Jammu & Kashmir & Ors.

In State of Bihar and Others v. Akhouri Sachindra Nath and Others [1991 Supp (1) SCC 334], this Court held:

" .. **It is well settled that** no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service ."

2007 (13) Scale 602

Before:- P.Sathasivam :J , Tarun Chatterjee :J

K.N.Ananthraja Gupta
Versus
D.V.Usha Vijaykumar

It is well settled that a co-owner is entitled to evict a tenant on the ground of bona fide requirement.

2008 (1) SCC 362

Before:- A.K.Mathur :J , Markandey Katju :J

B.Ramakichenin @ Balagandhi
Versus
Union of India & Ors.

15. **It is well settled that** the method of short-listing can be validly adopted by the Selection Body vide Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar and another, 1994(6) SCC 293 (vide paras 6, 8, 9 and 13), Government of Andhra Pradesh v. P. Dilip Kumar and another, 1993(2) SCC 310, etc.

16. Even if there is no rule providing for short-listing nor any mention of it in the advertisement calling for applications for the post, the Selection Body can resort to a short-listing procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of short- listing can be resorted to by the Selection Body, even though there is no mention of short-listing in the rules or in the advertisement.

2007 (8) Supreme 112

Before:- B.Sudershan Reddy :J , P.P.Naolekar :J

Paramjit Singh @ Mithu Singh
Versus
State of Punjab Through Secretary (Home)

it is well settled that even a defect, if any, found in investigation, however, serious has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.

2007 (7) Supreme 595

Before:- Arijit Pasayat :J , P.Sathasivam :J

State of Uttranchal & Anr.
Versus
Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad

it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. This view has been reiterated in Gangadhar Pillai v. Siemens Ltd. (2007 (1) SCC 533). The same question has been examined in considerable detail with reference to employee working in a Government Company in Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd. (2007 (1) SCC 408) and paragraphs 34 and 35 of the judgment are being reproduced below:-

¡>34. Thus, **it is well settled that** there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of E. Ramakrishnan and Ors. v. State of Kerala and Ors. (1996) 10 5CC 565) this Court held that there can be no regularization de hors the rules. The same view was taken in Dr. Kishore v. State of Maharashtra (1997) 3 SCC 209) and Union of India and Ors. v. Bishambar Dutt (1996) 11 SCC 341). The direction issued by the Services Tribunal for regularizing the services of persons who had not been appointed, on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

2007 (11) SCC 747

Before:- A.K.Mathur :J , Markandey Katju :J

G.K.Mohan and Ors.
Versus
Union of India & Ors.

It is well settled that categorization can be done on the basis of educational qualifications and there will be no violation of Article 14 if this is done.

2007 (12) Scale 374

Before:- H.S.Bedi :J , S.B.Sinha :J

Niyamat Ali Molla
Versus
Sonargon Housing Co-operative Society Ltd.& Ors.

20. In Samarendra Nath Sinha & Anr. v. Krishna Kumar Nag [(1967) 2 SCR 18, this Court held:

¡>Now **it is well settled that** there is an inherent power in the court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention. 'Every court,' said Bowen L.J. in Mellor v. Swira [30 Ch. 239] 'has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the court so as to carry out its intention and express the meaning of the court when the order was made.- In Jankirama Iyer v. Nilakanta Iyer [AIR 1962 SC 633] the decree as drawn up in the High Court had used the words 'mesne profits' instead of 'net profits'. In fact the use of the words 'mesne profits' came to be made probably because while narranting the facts, those words were inadvertently used in the judgment.

2007 (8) SCC 329

Before:- P.K.Balasubramanyan :J , Tarun Chatterjee :J

Saroja
Versus
Chinnusamy (Dead) by L.Rs and Anr.

It is well settled that an ex parte decree is binding as a decree passed after contest on the person against whom such an ex parte decree has been passed. It is equally well settled that an ex parte decree would be so treated unless the party challenging the ex parte decree satisfies the court that such an ex parte decree has been obtained by fraud.

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it is well settled that notwithstanding acquittal of the said appellant of the offence under Section 302 IPC, his conviction under Section 201 IPC is still permissible. (See: Constitution Bench decision in Smt. Kalawati & Anr. Vs. The State of Himachal Pradesh).

2007 (7) SCC 120

Before:- S.H.Kapadia :J

Aurohili Global Commodities Ltd.
Versus
M.S.T.C.Ltd.

it is well settled that parties have to stand by the terms of the contract.

2007 (6) SCC 167

Before:- Markandey Katju :J , Tarun Chatterjee :J

Andhra Bank
Versus
ABN Amro Bank N.V.and Ors.

It is well settled that delay is no ground for refusal of prayer for amendment.

2007 (4) Supreme 572

Before:- Lokeshwar Singh Panta :J , R.V.Raveendran :J

B.Arvind Kumar
Versus
Government of India & Ors.

It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required.

2007 (4) Supreme 359

Before:- Markandey Katju :J , S.B.Sinha :J

State of Uttar Pradesh & Ors.
Versus
Jeet S.Bisht & Anr.

It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.

22. In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty 2003 (7) SCC 197, this Court observed as follows:

"...The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided .."

2007 (5) SCC 614

Before:- B.P.Singh :J , H.S.Bedi :J

Hardesh Ores Pvt.Ltd.
Versus
Hede and Company

It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another : (2004) 9 SCC 512 and Popat and Kotecha Property Vs. State Bank of India Staff Association : (2005) 7 SCC 510.

2007 (5) Supreme 557

Before:- C.K.Thakker :J , Tarun Chatterjee :J

State of Bihar & Ors.
Versus
Bihar State +2 Lecturers Associations & Ors.

The Constitution Bench of this Court stated:-

" **It is well settled that** though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be

sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule."

2007 (5) SCC 634

Before:- C.K.Thakker :J , P.K.Balasubramanyan :J

Suman Sood @ Kamal Jeet Kaur
Versus
State of Rajasthan

it is well settled that an inference as to conspiracy can be drawn from the surrounding circumstances inasmuch as normally, no direct evidence of conspiracy is available.

2007 (3) Supreme 1019

Before:- Markandey Katju :J , S.B.Sinha :J

Sujoy Sen @ Sujoy Kr.Sen
Versus
State of West Bengal

it is well settled that in a case of circumstantial evidence the prosecution has to establish the chain of circumstances which inevitably connect the accused to the crime. Even if a single link breaks, the whole prosecution case collapses.

2007 (6) SCC 100

Before:- Markandey Katju :J , S.B.Sinha :J

Binapani Paul
Versus
Pratima Ghosh & Ors.

It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami.

2007 (4) Supreme 165

Before:- Markandey Katju :J , S.B.Sinha :J

Bharat Petroleum Corpn.Ltd.
Versus
Maddula Ratnavalli & Ors.

it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim 'dura lex sed lex', which means 'the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it. ¡¡

20. A statute, however, must be construed justly. An unjust law is no law at all (Lex injusta non est lex).

2007 (4) Supreme 154

Before:- B.Sudershan Reddy :J , S.H.Kapadia :J

Asharam & Anr.
Versus
State of Madhya Pradesh

It is well settled that an FIR is not a substantive piece of evidence. It cannot contradict the testimony of the eye witnesses even though it

may contradict its maker. (see Dharma Rama Bhagare v. The State of Maharashtra reported in 1973 (3) SCR 92 at page 100).

2007 (5) SCC 519

Before:- Altamas Kabir :J , C.K.Thakker :J

Bihar Public Service Commission & Ors.
Versus
Kamini & Ors.
it is well settled that in the field of education, a Court of Law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications should better be left to educational institutions [vide University of Mysore v. Govinda Rao, (1964) 4 SCR 576 : AIR 1965 SC 591]. This is particularly so when it is supported by an Expert Committee.

2007 (5) Scale 34

Before:- P.K.Balasubramanyan :J , S.B.Sinha :J

Subhash Mahadevasa Habib
Versus
Nemasa Ambasa Dharmadas (D) by Lrs.& Ors.

In Seth Hiralal Patni Vs. Sri Kali Nath (supra), it was held that:

"**It is well settled that** the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like S. 21 of the Code of Civil Procedure."

In Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu & Anr. (supra), it was held Section 21 is a statutory recognition of the principle that the

defect as to the place of suing under Sections 15 to 20 of the Code may be waived and that even independently of Section 21, a defendant may waive the objection and may be subsequently precluded from taking it.

2007 (2) Supreme 936

Before:- A.R.Lakshmanan :J , Altamas Kabir :J

All Bengal Excise Licensees Association
Versus
Reghbendra Singh & Ors.

42. In Mulraj v. Murti Raghonathji Maharaj, this Court has dealt with effect of a stay order passed by a court and has laid down:
In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. **It is well settled that** in such a case the party must have knowledge of the injunction order before it could be penalised for before disobeying it. Further it is equally well-settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a court.

2007 (9) SCC 582

Before:- Markandey Katju :J , S.B.Sinha :J

Harjit Singh & Anr.
Versus
State of Punjab & Anr.

It is well settled that the punishment of dismissal is not proper in case of absence from duty and I am supported on this point by a case State of Punjab Vs. Ahhar Singh, reported as 1991(4) SLR 539 wherein it was held as under:-
"Mere absence from duty for a few days does not amount to an act of gravest misconduct and the cumulative effort of which may go to prove incorriginiety and complete unfitness of the employees for police service and dismissal from service was held illegal."
Even otherwise, I am of the considered view that if a person committed negligence of being absent from duty that should not go to the root of his service because in that case it will be too harsh not only for him, but for the children who are dependent on him_.."

2007 (2) Supreme 285

Before:- Markandey Katju :J , S.B.Sinha :J

Imtiaz & Anr.
Versus
State of Uttar Pradesh

It is well settled that common intention may develop on the spot among a number of persons and hence pre-concert in the sense of distinct previous plan is not necessary to attract Section 34 IPC.

27. Also, it is not necessary to adduce direct evidence of common intention. The intention may be inferred from the surrounding circumstances and the conduct of the parties.

2007 (2) Supreme 336

Before:- B.Sudershan Reddy :J , H.K.Sema :J

State Bank of India & Ors.
Versus
Somvir Singh

It is well settled that the hardship of the dependant does not entitle one to compassionate appointment de hors the scheme or the statutory provisions as the case may be.

2007 (1) Supreme 922

Before:- Markandey Katju :J , S.B.Sinha :J

Dhananjay @ Dhananjay Kumar Singh
Versus
State of Bihar & Anr.

in Badrilal v. State of M.P. [(2005) 7 SCC 55] a Division Bench of this Court held as under :

"A joint petition of compromise has been filed on behalf of the parties in which prayer has been made for recording the compromise. The offence under Section 307 IPC is not a compoundable one, therefore, compromise cannot be recorded, but at the same time **it is well settled that** while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased. In the facts and circumstances of the case, we are of the view that ends of justice should be met in case the sentence of imprisonment awarded against the appellant by the trial court and reduced by the High Court is further reduced to the period already undergone."

2007 (11) SCC 467

Before:- Markandey Katju :J , S.B.Sinha :J

Bishnu Prasad Sinha & Anr
Versus
State of Assam

It is well settled that statements under Section 313 of the Code of Criminal Procedure, cannot form the sole basis of conviction; but the

effect thereof may be considered in the light of other evidences brought on record. {See Mohan Singh vs. Prem Singh [(2002) 10 SCC 236], State of U.P. vs. Lakhmi [(1998) 4 SCC 336], and Rattan Singh vs. State of HP. [(1997) 4 SCC 161].}

2007 (1) Supreme 197

Before:- A.K.Mathur :J , G.P.Mathur :J

Associated Indem Mechanical Pvt.Ltd.
Versus
West Bengal Small Scale Industrial Development Corporation Ltd.& Ors.

It is well settled that the word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. (See Dadaji v. Sukhdeobabu AIR 1980 SC 150; Reserve Bank of India v. Pearless General Finance and Investment Co. Ltd. AIR 1987 SC 1023 and Mahalakshmi Oil Mills v. State of Andhra Pradesh AIR 1989 SC 335). The inclusive definition of "district judge" in Article 236(a) of the Constitution has been very widely construed to include hierarchy of specialized Civil Courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition. (See State of Maharashtra v. Labour Law Practitioners' Association AIR 1998 SC 1233). Therefore, there is no warrant or justification for restricting the applicability of the Act to residential buildings alone merely on the ground that in the opening part of the definition of the word "premises", the words "building or hut" have been used.

2007 (2) Supreme 664

Before:- Dalveer Bhandari :J , S.B.Sinha :J

Aloke Nath Dutta & Ors.

Versus
State of West Bengal

Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.
This Court in Shankaria v. State of Rajasthan [(1978) 3 SCC 435] stated the law thus :
"22. This confession was retracted by the appellant when he was examined at the trial Under Section 313 Cr. P.C. on June 14, 1975. **It is well settled that** a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded Under Section 164 Cr. P.C, the Court must apply a double test:
(1) Whether the confession was perfectly voluntary?
(2) If so, whether it is true and trustworthy ?
Satisfaction of the first test is a sine quo non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test does not arise. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."
[Also see Anil @ Raju Namdev Patil v. Administration of Daman and Diu, Daman and Anr. - 2006 (12) SCALE5 16].

2007 (1) Supreme 704

Before:- Markandey Katju :J , S.B.Sinha :J

Nagar Nigam, Meerut
Versus
Al Faheem Meat Exports Pvt.Ltd & Ors.

It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity. In this case the contract has not only been given by way of private negotiation, but the negotiation has been carried out by the High Court itself, which is impermissible.
The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money Deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'. (See Ram and Shyam Company vs. State of Haryana and Others, AIR 1985 SC 1147).

2007 (2) SCC 230

Before:- Markandey Katju :J , S.B.Sinha :J

Raghunath Rai Bareja and another
Versus
Punjab National Bank and others

it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim `dura lex sed lex', which means `the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it.
Thus, in Madamanchi Ramappa & Anr. vs. Muthaluru Bojjappa AIR 1963 SC 1633 (vide para 12) this Court observed :
" . what is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law." .
In Council for Indian School Certificate Examination vs. Isha Mittal & Anr. 2000(7) SCC 521 (vide para 4) this Court observed :
" . Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."
Similarly in P.M. Latha & Anr. vs. State of Kerala & Ors. 2003(3) SCC 541 (vide para 13) this Court observed :
"Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law." ..
In Laxminarayan R. Bhattad & Ors. vs. State of Maharashtra & Anr. 2003(5) SCC 413 (vide para 73) this Court observed :
"It is now well settled that when there is a conflict between law and equity the former shall prevail." ..
Similarly in (vide para 35) this Court observed :

"In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom." ..
Similarly in E. Palanisamy vs. Palanisamy (Dead) by Lrs. & Ors. 2003(1) SCC 123 (vide para 5) this Court observed :

" .. Equitable considerations have no place where the statute contained express provisions." ..
In India House vs. Kishan N. Lalwani 2003(9) SCC 393 (vide para 7) this Court held that :

" ..The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations."....

2007 (1) SCC 486

Before:- Arijit Pasayat :J , Lokeshwar Singh Panta :J

Srikant
Versus
District Magistrate, Bijapur & Ors.

It is well settled that a decision pronounced by a Court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by law. It is in the interest of public at large that finality should attach to the binding decisions pronounced by a court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

In Union of India & others v. Chowgule & Co. Ltd. & others 2003(2) SCC 641, this Court held that even under the new policy, the appellant who had an accrued right under the old policy was entitled to the benefits under the new policy.
It is well settled that rights which have accrued under the old law continue to exist unless there is an express or implied inconsistent provision in the new law

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It is well settled that legislation can be declared invalid or unconstitutional only on two grounds namely, (i) lack of legislative competence and (ii) violation of any fundamental rights or any provision of the Constitution (See Smt. Indira Nehru Gandhi v. Raj Narain, [1975 Supp SCC 1]).

2006 (6) Supreme 490

Before:- C.K.Thakker :J , Markandey Katju :J

Manalal Prabhudayal
Versus
Oriental Insurance Co.Ltd.

It is well settled that award of interest is in the discretion of court. Normally, when interest is granted, appellate, revisional or writ court would not interfere with exercise of discretion unless the discretion has been exercised arbitrarily or capriciously. It is equally well settled that like grant of interest, rate of interest is also in the discretion of the court and in the absence of any agreement between the parties, usually, the court would not interfere with rate of interest unless it is convinced that the direction of the lower court was ex facie bad in law.

2006 (6) Supreme 292

Before:- Ashok Bhan :J , Markandey Katju :J

Vijayalashmi Rice Mill & Ors
Versus
Commercial Tax Officers, Palakol & Ors

It is well settled that the basic difference between a tax and a fee is that a tax is a compulsory exaction of money by the State or a public authority for public purposes, and is not a payment for some specific services rendered. On the other hand, a fee is generally defined to be a charge for a special service rendered by some governmental agency. In other words there has to be quid pro quo in a fee vide Kewal Krishan Puri vs. State of Punjab (AIR 1980 SC 1008).

2006 (6) Supreme 11

Before:- Arijit Pasayat :J , Lokeshwar Singh Panta :J

Reiz Electrocontrols Pvt.Ltd.
Versus
Commissioner of Central Excise, Delhi-I

It is well settled that registration of trade mark/brand name once granted relates back to the date of application.

It is well settled that declaration of law can be made prospective i.e. operative from the date of the judgment. This Court in several decisions has laid down the law and declared it to be operative only prospectively. The Constitution Bench of this Court in the matter of Somaiya Organics (India) Ltd. & Anr. vs. State of U.P. & Anr. reported in (2001) 5 SCC 519 has discussed at length the principles of Prospective over-ruling

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2006 (6) Supreme 1

Before:- Arijit Pasayat :J , R.V.Raveendran :J

S.Sudershan Reddy & Ors
Versus
State of Andhra Pradesh

It is well settled that FIR is not an encyclopaedia of the facts concerning the crime merely because of minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR.

In Richpal Singh and Ors. v. Dalip (1987 (4) SCC 410), it was held as under:

"12. **It is well settled that** ouster of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established."

2006 (4) Supreme 540

Before:- B.P.Singh :J , R.V.Raveendran :J

D.Vinod Shivappa
Versus
Nanda Belliappa

It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in Heydon's case (76 ER 637) also known as the rule of purposive construction or mischief rule.

In Tara Singh, the Court made the following observations: (SCC p.541, para 4)

"4. **It is well settled that** the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

In Amar Singh v. Balwinder Singh & Ors., (2003) 2 SCC 518, this Court held that:

"... There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may

cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. ....."

2006 (3) Supreme 386

Before:- P.K.Balasubramanyan :J , S.B.Sinha :J

Gursewak Singh
Versus
Avtar Singh and others

It is well settled that an order of re-counting of votes can be passed when the following conditions are fulfilled:

(i) a prima facie case;

(ii) pleading of material facts stating irregularities in counting of votes;

(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and

(iv) an objection to the said effect has been taken recourse to."

16. The said dicta has been reiterated in M. Chinnasamy v. K.C. Palanisamy and Others [(2004) 6 SCC 341], Hoshila Tiwari v. State of Bihar and Others [(2005) 12 SCC 342] and Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan & Ors. [2006 (2) SCALE 81]. The reason why we referred to the said decisions is that at every level, in case of a challenge to an election, pleadings of the parties have been held to play a significant role.

2005 (7) Supreme 727

Before:- A.K.Mathur :J , B.N.Agrawal :J

Sohan Singh
Versus
State of Uttaranchal

It is well settled that delay in examination of prosecution witnesses by the police during the course of investigation, ipso facto, may not be a ground to create doubt regarding veracity of the prosecution case.

2005 (8) Supreme 106

Before:- R.V.Raveendran :J , S.B.Sinha :J

Romesh Lal Jain
Versus
Naginder Singh Rana

It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well.

In Amar Malla and Others v. State of Tripura, (2002) 7 SCC 91, this Court held:
9... **It is well settled that** merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the investigating officer."

2006 (8) Supreme 830

Before:- Altamas Kabir :J , B.P.Singh :J

Hansa Industries Pvt.Ltd.and Ors.
Versus
Kidarsons Industries Pvt.Ltd.

13. This Court held that courts have leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The principles were concretized and succinctly reduced to the following propositions :-

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) **It is well settled that** registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of

a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

14. The aforesaid judgment of this Court refers to many other decisions to which we need not advert in this case but some of those decisions do take the view that a compromise or family arrangement is based on the

assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

2006 (12) SCC 28

Before:- Markandey Katju :J , S.B.Sinha :J

Union of India & Anr.
Versus
Kunisetty Satyanarayana

It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

2006 (7) Supreme 151

Before:- Arijit Pasayat :J , Lokeshwar Singh Panta :J

State of Gujarat & Ors.
Versus
Dilipbhai Shaligram Patil

It is well settled that an order granting pending disposal of the writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position, they would have been but for the interim orders of the Court. Any other view would result in the act or order of the court prejudicing the party for no fault of his and would also mean rewarding writ petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the courts. [(See Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board and Ors. 1997 (5) SCC 772)].
The position was also highlighted in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992 (3) SCC 1). It was inter alia noted as follows:-
"While considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

2006 (7) Supreme 359

Before:- Ashok Bhan :J , Markandey Katju :J

Baraka Overseas Traders
Versus
Director General of Foreign Trade & Anr.

It is well settled that rights which have accrued under the old law continue to exist unless there is an express or implied inconsistent provision in the new law vide 'Principles of Statutory Interpretation' by Justice G.P. Singh, 9th Edition (2004) p. 586.

2006 (6) Supreme 777

Before:- A.R.Lakshmanan :J , Lokeshwar Singh Panta :J

Jindal Vijayanagar Steel (JSW Steel Ltd.)
Versus
Jindal Praxair Oxygen Company Ltd.

It is well settled that an action can be instituted only in a Court where the immovable property is situated. Thus clause 12 of the Letters Patent never arose for consideration.

2006 (7) Supreme 44

Before:- C.K.Thakker :J , K.G.Balakrishnan :J , P.K.Balasubramanyan :J , S.H.Kapadia :J , Y.K.Sabharwal :J

Kuldip Nayar
Versus
Union of India & Ors.

It is well settled that legislation can be declared invalid or unconstitutional only on two grounds namely, (i) lack of legislative competence and (ii) violation of any fundamental rights or any provision of the Constitution (See Smt. Indira Nehru Gandhi v. Raj Narain, [1975 Supp SCC 1]).

It is well settled that a challenge to Legislation cannot be decided on the basis of there being another view which may be more reasonable or acceptable. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any Constitutional provision or violate the Fundamental rights.

It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without

giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

2005 (7) Supreme 492

Before:- A.R.Lakshmanan :J , S.H.Kapadia :J , S.N.Variava :J

Sudhir G.Angur
Versus
M.Sanjeev

In our view, Mr. G.L. Sanghi is also right in submitting that it is a law on the date of trial of the suit which is to be applied. In support of this submission, Mr. Sanghi relied upon the Judgment in the case of Shiv Bhagwan v. Onkarmal, A.I.R. 1952 Bombay 365, wherein it has been held that no party has a vested right to a particular proceeding or to a particular Forum. It has been held that **it is well settled that** all procedural laws are retrospective unless the Legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a Court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repelled. It could not be denied that now the Court has jurisdiction to entertain this suit.

. In Y.B. Patil (supra) it was held:

"4... **It is well settled that** principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding..."

2005 (3) Supreme 706

Before:- Arijit Pasayat :J , S.H.Kapadia :J

Prem Chand Vijay Kumar
Versus
Yash Pal Singh

Thus, **it is well settled that** if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque.
15. In Sil Import, USA v. Exim Aides Silk Exporters, Bangalore, 1999 (4) SCC 567, it was held that the language used in Section 142 admits of no doubt that the Magistrate is forbidden from taking cognizance of the offence if the complaint was not filed within one month of the date on which the cause of action arose. Completion of the offence is the immediate forerunner of rising of the cause of action. In other words, cause of action would arise soon after completion of the offence and period of limitation for filing of the application starts simultaneously running.

2005 (3) Supreme 574

Before:- N.Santosh Hegde :J , P.K.Balasubramanyan :J , Tarun Chatterjee :J

Kasturi
Versus
Iyyamperumal

It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos. 2 and 3

shall only be gone into and it is also not open to the Court to decide whether the respondent Nos. 1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be added raised by the appellant against respondent Nos. 2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos. 1 and 4 to 11 relating to the contracted property.

2005 (3) Supreme 267

Before:- A.R.Lakshmanan :J , Ashok Bhan :J

Amarendra Komalam
Versus
Usha Sinha

It is well settled that once a issue of fact has been judicially determined finally between the parties by a Court of competent jurisdiction and the same issue comes directly in question in subsequent proceedings between the same parties then the persons cannot be allowed to raise the same question which already stands determined earlier by the competent Court.

It is well settled that possible logical extensions from the ratio of a judgment surely are not part of the ratio itself and it is hazardous to apply precedents in that manner."

2005 (2) Supreme 437

Before:- N.Santosh Hegde :J , S.B.Sinha :J

Rekha Mukherjee
Versus
Ashish Kumar Das

. In Sushil Kumar Sen (supra), Mathew J. considered the effect of allowing an application for review of a decree holding that the same would amount to vacating the decree passed, stating : AIR 1975 SC 1185

"2. **It is well settled that** the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one (see Nibaran Chandra Sikdar v. Abdul Hakim (AIR 1928 Cal 418), Kanhaiya Lal v. Baldeo Prasad (ILR (1906) 28 All 240), Brijbasi Lal v. Salig Ram (ILR (1912) 34 All 282) and Pyari Mohan Kundu v. Kalu Khan (ILR (1917) 44 Cal 1011 : 41 IC 497). AIR 1917 Cal 29

2005 (1) Supreme 393

Before:- B.P.Singh :J , H.K.Sema :J , N.Santosh Hegde :J , S.B.Sinha :J , S.N.Variava :J

Nathi Devi
Versus
Radha Devi Gupta

It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions should be mandatory in character."

17. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be adopted. (See : Swedish Match AB and another v. Securities & Exchange Board, India and another : 2004 (7) Scale 158.)

2005 (1) Supreme 37

Before:- A.R.Lakshmanan :J , S.N.Variava :J

India Agencies (Regd.) , Bangalore
Versus
Additional Commissioner of Commer.Taxes, Bangalore

It is well settled that `the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it. There is an understandable reason for the stringency of the provisions.

2005 (1) Supreme 469

Before:- G.P.Mathur :J , R.C.Lahoti :J

Atma Ram Properties (P) Limited
Versus
Federal Motors Private Limited

It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate Court is that in spite of the appeal having been entertained for hearing by the appellate Court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the

grant of stay asks to itself is: Why the status quo prevailing on the date of the decree and/ or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.

2004 (8) Supreme 4

Before:- Arijit Pasayat :J , C.K.Thakker :J

V.Raja Kumari
Versus
P.Subbarama Naidu

It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide Harcharan Singh v. Shivrani (1981(2) SCC 535) and Jagdish Singh v. Natthu Singh (1992(1) SCC 647).

2004 (8) Supreme 547

Before:- Ashok Bhan :J , R.C.Lahoti :J

Distt.Registrar and Collector, Hyderabad
Versus
Canara Bank

Though an instrument not duly stamped may attract criminal prosecution under Section 62 of the Act but the Parliament and the Legislature have both treated it to be a minor offence punishable with fine only and not cognizable. Here again **it is well settled that** such offence is liable to be condoned by payment of duty and penalty on the document and no prosecution can be launched except in the case of a criminal intention to evade the Stamp Law or in case of a fraud and that too after giving the person liable to be proceeded against, an opportunity of being heard.

2004 (7) Supreme 636

Before:- B.P.Singh :J , H.K.Sema :J , N.Santosh Hegde :J , S.B.Sinha :J , S.N.Variava :J

P.S.Sathappan (Dead) By Lrs.
Versus
Andhra Bank Limited

. Now **it is well settled that** any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. No such bar is discernible from Section 6(3) of the Act. It could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the nigh Court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed."

The question whether a Letters Patent Appeal was maintainable against the Judgment/Order of a single Judge passed in a First Appeal under Section 140 of the Motor Vehicles Act was considered by this Court in the case of Chandra Kanta Sinha v. Oriental Insurance Co. Ltd. reported in (2001) 6 SCC 158. In this case, it was held that such an Appeal was maintainable. It is held that the decision of this Court in the case of New Kenilworth Hotel (P) Ltd. (supra) was inapplicable.

27. Thereafter in the case of Sharda Devi v. State of Bihar reported in (2002) 3 SCC 705 the question again arose whether a Letters Patent Appeal was maintainable in view of Section 54 of the Land Acquisition Act. A three Judges Bench of this Court held that a Letters Patent was a Charter under which the High Courts were established and that by virtue of that Charter the High Court got certain powers. It was held that when a Letters Patent grants to the High Court a power of Appeal, against a Judgment of a single Judge, the right to entertain such an

Appeal does not get excluded unless the statutory enactment excludes an Appeal under the Letters Patent. It was held that as Section 54 of the Land Acquisition Act did not bar a Letters Patent Appeal such an Appeal was maintainable. At this stage it must be clarified that during arguments, relying on the sentence "The powers given to a High Court under the Letters patent are akin to the constitutional powers of a High Court" in para 9 of this Judgment it had been suggested that a Letters Patent had the same status as the Constitution of India. In our view these observations merely lay down that the powers given to a High Court are the powers with which that High Court is constituted. These observations do not put Letters Patent on par with the Constitution of India.

2004 (7) Supreme 196

Before:- A.K.Mathur :J , B.N.Agrawal :J

Anjlus Dungdung
Versus
State of Jharkhand

it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. **It is well settled that** in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less than appellant.

2004 (6) Supreme 194

Before:- C.K.Thakker :J , G.P.Mathur :J , R.C.Lahoti :J

Balvant N.Viswamitra
Versus

Yadav Sadshiv Mule (D) Through Lrs.

it is well settled that a court having jurisdiction over the subject-matter of the suit and over parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do .... If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not open to challenge on the basis of being a nullity. (emphasis supplied)
18. Again, in Bhawarlal v. Universal Heavy Mechanical Lifting Enterprise (1999) 1 SCC 558, this Court held that "even if the decree was passed beyond the period of limitation, it would be an error of law, or at the highest, a wrong decision which can be corrected in appellate proceedings and not by the executing court which was bound by such decree."

2004 (4) Supreme 662

Before:- P.V.Reddi :J , Ruma Pal :J

Indian Mineral & Chemicals Co..
Versus
Deutsche Bank

it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course". (p. 147)

2004 (4) Supreme 446

Before:- S.B.Sinha :J , Y.K.Sabharwal :J

Engineering Kamgar Union
Versus
Electro Steels Castings Ltd., and another

it is well settled that in absence of Presidential assent, the Parliamentary Act would prevail and where the assent has been received, the State Act would, (See also M.P.A.I.T. Permit Owners Assocn. and another v. State of Madhya Pradesh (2003 (10) Scale 380)).

2004 (10) SCC 745

Before:- A.R.Lakshmanan :J , G.P.Mathur :J , S.Rajendra Babu :J

Kiran Tandon
Versus
Allahabad Development Authority and another

It is well settled that the Court has power under sub-rule (2) Order I, Rule 10, CPC to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could be exercised by the High Court in appeal, if necessary, suo motu to do complete justice between the parties. This principle was laid by the Privy Council in Bhupendra Narayan Sinha v. Rajeshwar Prasad, AIR 1931 PC 162 and has been consistently followed by all the Courts.

2004 (4) Supreme 254

Before:- B.P.Singh :J , N.Santosh Hegde :J

Ram Swaroop
Versus
State of Rajasthan

It is well settled that a statement recorded under Section 161 of the Code of Criminal Procedure cannot be treated as evidence in the criminal trial but may be used for the limited purpose of impeaching the credibility of a witness.

It is well settled that a decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every

observation found therein nor what logically follows from the various observations made therein. (See Krishena Kumar v. Union of India, AIR 1990 SC 1782; Municipal Corporation of Delhi v. Gurnam Kaur, AIR 1989 SC 38 and M/s. Orient Paper and Industries Ltd. and another v. State of Orissa, AIR 1991 SC 672). Shri Vijay Cotton and Oil Mills (supra) is therefore not an authority for the proposition that where possession is taken before issuance of Notification under S. 4(1), interest on the compensation amount could be awarded in accordance with S. 34 of the Act with effect from the date of taking of possession.

2004 (2) Supreme 336

Before:- Arijit Pasayat :J , Y.K.Sabharwal :J

Jagdish Ram
Versus
State of Rajasthan & Anr.

It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Dy. Chief Controller of Imports and Exports v. Rashanlal Agarwal and others (2003) 4 SCC 139).

In so far as the statutes providing for finality of the order or decision passed or rendered in accordance with the provisions of the statutes are concerned, it may be stated that **it is well settled that** such a statutory provision cannot take away the constitutional fight given by Articles 32, 226 and 227 of the Constitution. In this connection,

reference may be made to what was observed in para 10 of Lila Vati v. State of Bombay (AIR 1957 SC 521).

2004 (2) Supreme 140

Before:- B.N.Agrawal :J , Y.K.Sabharwal :J

Sashi Jena
Versus
Khadal Swain

Thus, the question to be considered is as to whether accused has any right to cross examine a prosecution witness examined during the course of inquiry under Section 202 of the Code. **It is well settled that** the scope of enquiry under Section 202 of the Code is very limited one and that is to find our whether there are sufficient grounds for proceeding against the accused who has no right to participate therein much less a right to cross examine any witness examined by the prosecution, but he may remain present only with a view to be informed of what is going on. This question is no longer res integra having been specifically answered by a 4-Judge Bench decision of this Court in the case of Chandra Deo Singh vs. Prakash Chandra Bose @ Chabi Bose & Anr., AIR 1963 SC 1430, wherein this Court categorically laid down that an accused during the course of inquiry under Section 202 of the Code of Criminal Procedure, 1898, has no right at all to cross examine any witness examined on behalf of the prosecution. It was observed thus at page 1432:

"Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the

instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person..."

2004 (1) Supreme 900

Before:- B.N.Agrawal :J , Y.K.Sabharwal :J

P.S.Sairam
Versus
P.S.Rama Rao Pisey

Crucial question in the present appeal is as to whether business which was conducted by defendant No.1 was his separate business or it belonged to joint family, consisting of himself and his sons. **It is well settled that** so far as immovable property is concerned, in case the same stands in the name of individual member, there would be a presumption that the same belongs to joint family, provided it is proved that the joint family had sufficient nucleus at the time of its acquisition, but no such presumption can be applied to business. Reference in this connection may be made to a decision of this Court in the case of G. Narayana Raju vs. G. Chamaraju and others (1968) (3) SCR 464) wherein in a suit for partition defence was taken that business of Ambika Stores was separate business of defendant as the business did not grow out of joint family funds or at least by efforts of members of joint family which was accepted by the trial court as well as the High Court. When the matter was brought to this Court in appeal, upholding the judgment of the High Court, the Court observed thus at page 466:

"It is well established that there is no presumption under Hindu Law that a business standing in the name of any member of the joint family is a joint family business even if that member of the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate."

2004 (2) Supreme 130

Before:- S.H.Kapadia :J

Bhimsen Gupta Petitioner
Versus
Bishwanath Prasad Gupta

It is well settled that law of limitation bars the remedy of the claimant to recover the rent for the period beyond three years prior to the institution of the suit, but that cannot be a ground for defeating the claim of the landlord for decree of eviction on satisfaction of the ingredients of Section 11(1)(d) of the said Act, 1982. In the case of Bombay Dyeing & Manufacturing Co. Ltd. vs. The State of Bombay & Others reported in [AIR 1958 SC 328] it has been held that when the debt becomes time barred the amount is not recoverable lawfully through the process of the court, but it will not mean that the amount has become not lawfully payable. Law does not bar a debtor to pay nor a creditor to accept a barred debt.

2004 (1) Supreme 87

Before:- Arun Kumar :J , Brijesh Kumar :J

Secunderabad Cantonment Board
Versus
Mohammed Mohiuddin

"With regard to question of title, **it is well settled that** highly disputed question of title cannot be entertained and adjudicated in a petition under Art. 226 of the Constitution of India. From the various contentions raised and arguments urged on behalf of the respective parties, it is apparent that there is a serious dispute of title among the various persons and authorities in respect of title to the property in question."

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38 .In D. Ramachandran v. R. v. Janakiraman and others [(1999) 3 SCC 267] this Court held : AIR 1999 SC 1128 :1999 AIRSCW 784 para 8

"We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; Instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. **It is well settled that** in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The Court cannot probe into the facts on the basis of the controversy raised in the counter".

2003 (8) Supreme 73

Before:- S.B.Sinha :J

State of Bank of India
Versus
Ram Das

It is well settled that a case which has not been pleaded in the plaint cannot be made out by evidence. It is also well settled that signatures to the documents having been admitted or proved the contents thereof automatically go into evidence, when the documents were admitted into evidence without objection (see Order no. 53 dated 5.9.1982) (vide AIR 1972 S.C. 608 P.C. Purushothama Reddiar, Appellant vs. S. Perumal, Respondent) .

It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to gathered from the enacting part of the section. In Aswini Kumar Ghose vs. Arabinda Bosee (AIR 1952 SC 369, Patanjali Sastri, J., observed".

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously."

In Madhav Rao Sciendia vs. Union of India (1971) 1 SCC 85 at page 139, Hidaytullah, C.J., observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, interfere, to be made with a view to determining which provision answers the description and which does not."

It is well settled that in a case where the court comes to the conclusion that the members of the defence party exceeded the right of private defence, the court must identify and punished only those who have exceeded the right. Section 34/149 IPC will not be applicable in the case of persons exercising their right of private defence. (See : State of Bihar vs. Mathu Pandey 1970 (1) SCR 358 and Subramani vs. State of Tamil Nadu 2002 (7) SCC 210) .

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32. This Court referred to the decision in Satish Kumar vs. Surinder Kumar (AIR 1970 SC 833) and held:
"The true legal position in regard to the effect of an award is not in dispute. **It is well settled that** as a general rule, all claims which are the subject-matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference.. This conclusion, according to the learned judge, is based upon the elementary principles that, as between the parties and their privies, an award is entitled to that respect which is due to judgment of a court of last resort. Therefore, if the award which has been pronounced-between the parties has in fact, or can in law, be

deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed."

2003 (5) Supreme 196

Before:- B.N.Agrawal :J , B.N.Srikrishna :J

Pawan Kumar
Versus
State of Haryana

it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated.

2003 (2) Supreme 962

Before:- A.R.Lakshmanan :J , S.B.Sinha :J

Sharda
Versus
Dharmpal

It is well settled that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court –

In Chief Executive Officer & Vice-Chairman, Gujarat Maritime Board vs. Haji Daud Haj Harun Abu and others (1996) 11 SCC 23, this Court held that the conferral of incidental and ancillary powers necessarily flows from the conferral of the substantive power. "**It is well settled that** where a substantive power is conferred upon a court or tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred".

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19. In State of Uttar Pradesh v. Ram Sagar Yadav AIR 1985 SC 416 the Court speaking through Chandrachud CJ. held as under :

"**It is well settled that**, as a matter of law, a dying declaration can be acted upon without corroboration. See Khushal Rao v. State of Bombay 1958 SCR 552 : (AIR 1958 SC 22) ; Harbans Singh v. State of Punjab 1962 Supp. (1) SCR 104 : (AIR 1962 SC 439; Gopalsingh v. State of M.P. (1972) 3 SCC 268 : (AIR 1972 SC 1557) . There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear of convincing that the Court may, for its assurance, look for corroboration to the dying declaration....."

It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

60. It is also well settled that a statutory Tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

61. In Savitri vs. Gobind Singh Rawat (AIR 1986 SC 984) , it has been held as follows : -
"Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditnur, ed id since quo res ipsa isse non potest" (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) (Vide Earl Jowitt's Dictionary of English law, 1959 Edn. P.1797) . Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then something else will be supplied by necessary intendment. Such a construction though it may not always he admissible in the present case however would advance the object of the legislation under consideration. A contrary view as likely to result in grave hardship to the applicant, who may have no means to subsist

until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties..."

62. In Arabind Das vs. State of Assam and others (AIR 1981 Gauhati 18 (F.B.) , it has been held as follows : -
"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule making authority.

2003 (1) Supreme 537

Before:- Arijit Pasayat :J , B.N.Agrawal :J , M.B.Shah :J

Ram Narain Poply
Versus
Central Bureau of Investigation

It is well settled that an approver is not worthy of credit and his evidence must be corroborated in all material particulars through independent evidence. The conviction cannot be based on sole evidence of an approver. It is submitted that in the instant case there is no corroboration of the so-called conspiracy through any independent evidence; in fact the evidence of approver himself does not disclose any conspiracy as alleged in the charge.

2002 (8) Supreme 651

N.Natarajan
Versus
B.K.Subba Rao

It is well settled that in criminal law that a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in section 195 CrPC, there is a restriction that the same cannot be entertained unless a complaint is made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar imposed under section 195 CrPC. In ordinary crimes not adverted to under section 195 CrPC, if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under section 340 CrPC. For that matter, the wordings of section 340 CrPC are significant. The court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed covered by the said provision. Therefore, it is wholly unnecessary to examine this aspect of the matter. We proceed on the basis that the respondent has locus standi to present the complaint before the designated judge.

2003 (1) Supreme 150

Lallan Rai
Versus
State of Bihar

IT is well settled that culpable homicide is genus and murder is the specie and that all murders are culpable homicide but not vice-versa. A combined reading of the provisions in chapter XVI of the IPC with respect to offences affecting the human body and the exceptions and illustrations would show that without ascertaining as to who caused the death or that one of many injuries inflicted by a certain person alone was the cause of death, no one can be, much less a number of persons together, be convicted for their acts under section 302 IPC simpliciter. More than one person together can be convicted only with the aid of section 149 IPC (if their number is more than five) or section 34 IPC if they act in furtherance of common intention. Since the appellants, however are acquitted under section 302/149 IPC, the

High Court could not have convicted as many as six persons under section 302 IPC.

2002 (8) Supreme 604

Alamgir
Versus
State (N.C.T.) of Delhi

it is well settled that those circumstances must be proved to be such as to be conclusive of the guilt of the accused and incapable of explanation on any hypothesis consistent with the innocence of the accused. It has been contended further that it is on this score the law seems to be well settled as well, to wit that the courts will be well advised in case of circumstantial evidence to be watchful and to ensure that conjectures and suspicions do not take place of legal proof.

2002 (7) Supreme 524

P.Tulsi Das
Versus
Government of A.P.

It is well settled that a person holding a lesser grade of post can be made to be incharge of a higher post and be paid also the scales of pay permissible for the higher grade or category of post but that will not make the said person entitled to claim to be a regular member or incumbent of the post to claim consequential benefits for any advanced career or promotion as if he is a regular incumbent to the said post.

2002 (6) Supreme 508

Before:- B.N.Agrawal :J , U.C.Banerjee :J

Dana Yadav

Versus
State of Bihar

It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the persons who are alleged to have been involved in the offence. Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits. Reference in this connection may be made to the decisions of this Court in the cases of Budhsen, (supra), Sheikh Hasib (supra), Rameshwar Singh v. State of Jammu & Kashmir and Ravindra alias Ravi Bansi Gohar v. State of Maharashtra and Others.

(6) IT is also well settled that failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. Question is what is its probative value? Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trust worthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by catena of decisions of this Court in the cases of Kanta Prashad v. Delhi Administration, Vaikuntam Chandrappa (supra), Budhsen (supra), Kanan and Others v. State of Kerala, Mohanlal Gangaram Gehani v. State of Maharashtra, Bollavaram

Pedda Narsi Reddy (supra), State of Maharashtra v. Sukhdev Singh and Another, Jaspal Singh alias Pali v. State of Punjab, Raju alias Rajendra v. State of Maharashtra, Ronny alias Ronald James Alwaris (supra), George and Others v. State of Kerala and Another, Rajesh Govind Jagesha (supra), State of H.P. v. Lekh Raj and Another and Ramanbhai Naranbhai Patel and Others v. State of Gujarat.

It is well settled that no test identification parade is called for and it would be waste of time to put him up for identification if the victim mentions name of the accused in the first information report or he is known to the prosecution witnesses from before. Reference may be made in this regard to the cases of Dharamvir & Anr. v. State of M.P. and Mehtab Singh v. State of M.P. In the case of Sajjan Singh v. Emperor where the Court while examining the case in similar circumstances observed at page 50 thus:

"IF an accused person is already well- known to the witnesses, an identification parade would of course, be only a waste of time. If, however, the witnesses claim to have known the accused previously, while the accused himself denies this, it is difficult to see how the claim made by the witnesses can be used as reason for refusing to allow their claim to be put to the only practical test. Even if the denial of the accused is false, no harm is done, and the value of the evidence given by the witnesses may be increased. It is true that it is by no means uncommon for persons who have been absconding for a long time to claim an identification parade in the hope that their appearance may have changed sufficiently for them to escape recognition. Even so, this is not in itself a good ground for refusing to allow any sort of test to be carried out. It may be that the witnesses may not be able to identify a person whom they know by sight owing to some change of appearance or even to weakness of memory, but this is only one of the facts along with many others, such as the length of time that has elapsed, which will have to be taken into consideration in determining whether the witnesses are telling the truth or not."

it is well settled that belated idedtification of accused in court for the first time after more than two years from the date of the incident should not form the basis of conviction, especially when the same is not corroborated by either previous statement made before the police or any other evidence.

2002 (6) JT 200

Before:- B.P.Singh :J , M.B.Shah :J

Kodadi Srinivasa Lingam
Versus
State of A.P.

it is well settled that oral dying declaration can be relied upon and be the basis for convicting the accused. To what extent oral or written dying declaration could be relied would always depend upon the facts and circumstances of each case. Therefore, we do not think the enunciation of law with regard to dying declaration is accurate. Further, there is no statutory provision which requires that dying declaration recorded by the judicial magistrate or executive magistrate must be attested by a medical officer certifying the mental state of the patient.

2002 (4) Supreme 501

Before:- B.N.Agrawal :J , R.C.Lahoti :J

H.S.Ahammed Hussain
Versus
Irfan Ahammed

It is well settled that life expectancy of the deceased or the beneficiaries whichever is shorter is an important factor. Reference in this connection may be made to the decision of this Court in the case of C.K. Subramonia Iyer and others v. T. Kunhikuttan Nair and others AIR 1970 SC 376 In the case of National Insurance Co. Ltd v. M/s. Swaranlata Das and others 1993 Suppl. (2) SCC 743, it was observed that "the appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower" According to the Second Schedule, if the age is above 40 years but not exceeding 45 years, the multiplier

applicable is 15 and if the age is above 35 years but not exceeding 40 years, the multiplier would be 16 but the High Court has taken the multiplier as 13 and 14 instead of 15 and 16 respectively.

2002 (4) Supreme 53

Before:- K.G.Balakrishnan :J , R.P.Sethi :J

Assistant Director of Inspection Investigation: Chamundi Granites Private Limited
Versus
A.B.Shanthi: Deputy Commissioner of Income Tax, Bangalore

It is well settled that a state does not have to tax everything in order to tax something It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably "

2002 (4) Supreme 631

Before:- B.N.Agrawal :J , M.B.Shah :J

Government of Orissa
Versus
Ashok Transport Agency

it is well settled that in a partition suit every defendant is plaintiff, provided he has cause of action for seeking partition. In my view, prayer for leave can be made not only by the person upon whom interest has devolved, but also by the plaintiff or any other party or person interested.

(34) IN the case of Kiran Singh and others v. Chaman Paswan and Others [AIR 1954 SC 340], question was raised, when decree passed by a Court is nullity and whether execution of such a decree can be resisted at the execution stage which would obviously mean by taking an objection under section 47 of the Code. Venkatarama Aiyar, J. speaking for himself and on behalf of B.K. Mukherjea, Vivian Bose, Ghulam Hasan, JJ., observed at page 352 thus:

"IT is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings."

(35) IN the case of Ittyavira Mathai v. Varkey Varkey and Another [AIR 1964 SC 907], the question which fell for consideration before this Court was, if a court, having jurisdiction over the parties to the suit and subject matter thereof passes a decree in a suit which was barred by time, such a decree would come within the realm of nullity and the Court answered the question in the negative holding that such a decree cannot be treated to be nullity but at the highest be treated to be an illegal decree. While laying down the law, the Court stated at page 910 thus:-

"IF the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But **it is well settled that** a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities."

(36) AGAIN, in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Others [AIR 1970 SC 1475], the Court was considering scope of objection under section 47 of the Code in relation to the executability of a decree and it was laid down that only such a decree can be subject matter of objection which is nullity and not a decree which is erroneous either in law or on facts. J.C. Shah, J., speaking for himself and on behalf of K.S. Hegde and A.N. Grover, JJ., laid down the law at pages 1476-77 which runs thus:-

"A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person, who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed and an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

(37) IN the case of Everest Coal Company (P) Ltd. v. State of Bihar and Others. [(1978) 1 SCC 12], this Court held that leave for suing the receiver can be granted even after filing of the suit and held that the infirmity of not obtaining the leave does not bear upon the jurisdiction of the trial court or the cause of action but it is peripheral. It also held that if a suit prosecuted without such leave culminates in a decree, the same is liable to be set aside. These observations do not mean that the decree is nullity. On the other hand, the observation of the court at page 15 that "any litigative disturbance of the court's possession without its permission amounts to contempt of its authority; and the wages of contempt of court in this jurisdiction may well be voidability of the whole proceeding" would lend support to the view and such decree is voidable but not void.

(38) IN the case of Haji Sk.Subhan v. Madhorao, [AIR 1962 SC 1230], the question which fell for consideration of this Court was as to whether an executing court can refuse to execute a decree on the ground that the same has become inexecutable on account of the change in law in Madhya Pradesh by promulgation of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and a

decree was passed in ignorance of the same. While answering the question in the affirmative, the Court observed at page 1287 thus:-

"THE contention that the executing court cannot question the decree and has to execute it as it stands, is correct, but this principle has no operation in the facts of the present case. The objection of the appellant is not with respect to the invalidity of the decree or with respect to the decree being wrong. His objection is based on the effect of the provisions of the Act which has deprived the respondent of his proprietary rights, including the right to recover possession over the land in suit and under whose provisions the respondent has obtained the right to remain in possession of it. In these circumstances, we are of the opinion that the executing court can refuse to execute the decree holding that it has become inexecutable on account of the change in law and its effect."

2002 (3) Supreme 369

Before:- Arijit Pasayat :J , B.N.Agrawal :J , M.B.Shah :J

Krishna Mochi
Versus
State of Bihar

It is well settled that in a criminal trial credible evidence of even a solitary witness can form basis of conviction and that of even half a dozen witnesses may not form such a basis unless their evidence is found to be trustworthy inasmuch as what matters in the matter of appreciation of evidence of witnesses is not the number of witnesses, but the quality of their evidence.
it is well settled that non- examination of any witness would not affect the prosecution case, but in a given case non- examination of a material witness may affect the same. Reference in this connection may be made to the decision of this Court in the case of Masalti (supra). **It is well settled that** non-examination of investigating officer is not fatal for the prosecution unless it is shown that the accused has been prejudiced thereby.

2002 (2) Supreme 143

Before:- B.N.Agrawal :J , M.B.Shah :J

Ram Nath Sao @ Ram Nath Sahu
Versus
Gobardhan Sao

ABATEMENT
Suit for partition Limitation Act, 1963 -- Section 5 -- Condonation of delay -- Some of the defendants expired -- No steps for substitution of their legal representatives were taken within time prescribed -- Suit abated accordingly -- Application for condonation of delay was rejected holding that no sufficient cause shown either for condonation and setting aside abatement -- Not proper, the expression "sufficient cause" should receive a liberal construction when no negligence or inaction is imputable to defaulting party.
Held: It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or preserve. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammeled by the conclusion of the lower Court. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot

be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts could not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not loose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like matter. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit.

2002 (2) Supreme 59

Before:- B.P.Singh :J , S.S.M.Quadri :J

Gurbax Singh
Versus
Kartar Singh

it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently.

2002 (1) Supreme 83

Before:- Brijesh Kumar :J , R.C.Lahoti :J

Madhukar D.Shende
Versus
Tarabaiaba Shedage

IT is well settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of "not proved" merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.

2002 (1) Supreme 36

Before:- S.N.Phukan :J , V.N.Khare :J

Darshan Singh
Versus
Gujjar Singh

It is well settled that if a co- sharer is in possession of the entire property, his possession cannot be deemed to be adverse for other co-sharers unless there has been an ouster of other co-sharers.

Immovable property One co-sharer was in the possession of entire immovable property -- Whether possession of one co-sharer would be deemed to be adverse to other co-sharers -- No -- Exclusive

possession of co-sharer cannot be deemed to be adverse possession to other co-sharers unless there has been ouster of other co-sharers. Held: In our view, the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied.

2001 (8) Supreme 618

Before:- Brijesh Kumar :J , R.C.Lahoti :J

Fakir Mohd.
Versus
Sita Ram

It is well settled that 'and' is capable of being read as 'or', if the context demands it to be so read. The rule of homogenous construction also dictates the said 'and' in clause (c) being read as 'or' failing which there will be an apparent conflict between clauses (a) and (b) of sub-section (3) read with sub-section (4) and clause (c) of sub-section (3) of Section 19A.

(7) THE word 'or' is normally disjunctive and the word 'and' is normally conjunctive. But at times they are read as vice-versa to give effect to the manifest intent of the legislature as disclosed from the context. It is permissible to read 'or' as 'and' and vice-versa if some other part of the same statute, or the legislative intent clearly spelled out, require that to be done. (See Statutory Interpretation by Justice G.P. Singh, 8th Edition, 2001, p. 370).

2001 (8) Supreme 524

Before:- B.N.Agrawal :J , M.B.Shah :J

Surendra Singh Rautela @ Surendra Singh Bengali: Mohd.Anis: State of Jharkhand
Versus
State of Bihar: State of Bihar
It is well settled that the High Court, suo motu in exercise of revisional jurisdiction can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under section 377 of the Code for enhancement of sentence and no such appeal has been preferred. Reference in this connection may be made to decisions of this Court in the cases of Nadir Khan v. The State (Delhi) Administration [AIR 1976 SC 2205] and Eknath Shankarrao Mukkawar v. State of Maharashtra [AIR 1977 SC 1177]. It has been also settled by this Court in the cases of Jayaram Vithoba and Another v. The State of Bombay [AIR 1956 SC 146] and Bachan Singh and Others v. State of Punjab [AIR 1980 SC 267] that the suo motu powers of enhancement under revisional jurisdiction can be exercised only after giving opportunity of hearing to the accused. In the case on hand, undisputedly, no opportunity of hearing was given to the appellant Surendra Singh Rautela on the question of enhancement of sentence.

(9) THUS, in view of the foregoing discussions, we are of the view that the High Court was quite justified in upholding conviction of appellant Surendra Singh Rautela under sections 302 and 307 of the Penal Code but was not justified in enhancing the sentence of life imprisonment awarded under section 302 of the Penal Code into death penalty.

2001 (8) Supreme 358

Before:- Brijesh Kumar :J , R.C.Lahoti :J

Kamaleshwar Kishore Singh
Versus
Paras Nath Singh

IT is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless

by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance or the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit.

2001 (5) Supreme 492

Before:- N.Santosh Hegde :J , S.P.Bharucha :J , Shivaraj V.Patil :J , V.N.Khare :J , Y.K.Sabharwal :J

Shyam Sunder
Versus
Ram Kumar

Practice and Procedure -- Change in the Rights of Parties, where the Substantive Law changed After Decision of Suit, but during pendency of Appeal -- Amendment is not retrospective -- previous Section had been precise, plain and simple, which do not require any clarifications by an Amendment -- the Amending Act is not a Declaratory Act -- the Appeal to be decided with the Law, as it had been when the Suit was filed -- Punjab Pre-emption Act, 1913, Section 15 (As amended by Haryana Amendment Act, 1995).

Punjab Pre-emption Act, 1913, Section 15 (As amended by Haryana Amendment Act, 1995) -- Rights of parties, where the Amendment took away the right, when the Appeal had been pending -- In a pre-emption case, where an Appeal is filed against the decree of the Trial Court -- Appellate Court is to decide only the question, whether the decision of Trial Court is correct -- to ensure that, Rights of Pre-emptor will not be displaced, the Appellate Court not to consider any subsequent event taking place during pendency of Appeal -- the reason is, it is the legal position which held field over a century.

Practice and Procedure -- whether Appeal is continuation of Suit and the Appellate Court is re-hearing the Suit -- Only in certain context and not always -- the plaintiff in a Pre-emption suit -- Plaintiff's right is incoherent up to decision in Suit -- once Suit is Won and decree passed in is favour, Plaintiff gets a vested right -- Appellate Court do not have such wide power to disturb the said vested right -- it's power is confined to decide the question, whether the decision of the Trial Court is correct or not -- Punjab Pre-emption Act, 1913, Section 15 (As amended by Haryana Amendment Act, 1995).

Interpretation of Statutes -- Prospective and Retrospective Operation -- Presumption -- where a Statute is amended, but the amendment is silent about whether it is retrospective -- where the amended Statute affects substantive Rights of Parties -- it is presumed that, Statute is of Prospective Operation.

Words and Phrases -- Declaratory Statutes -- ordinarily when a Statute declares a previous law, it requires to be given retrospective effect -- it functions to supply an omission or to supply an explanation to previous Statute -- when a declaratory Statute is passed, it comes into effect from the date, when the previous law was passed -- Legislature's power to enact Law includes the power to Declare existing law, and when such a Declarative Act is passed, it has been held to be Retrospective -- Mere absence of use of word `declaration' in an Act explaining what was the law before may not appear to be a declaratory Act, but if Court finds an Act as Declaratory or Explanatory, it has to be construed as Retrospective -- Conversely where a Statute uses

the word `Declaratory' the words so used may not be sufficient to hold that the Statute is declaratory Act as words may be used in order to being into effect New Law.

Interpretation of Statutes -- Rule of Benevolent Construction -- Court is to Interpret Statute in Advancing the ends of Justice -- Limitations on the powers of Court, when the Rule of Benevolent Construction is not applied:- (1) when the Court will have to re-legislate a provision of Statute -- (2) when the words used in the Statute is capable of only one meaning -- (3) when there is no ambiguity in the Statute.

Interpretation of Statutes -- Definition of Relations between the weaker and stronger -- Role of the Rule of benevolent construction -- Ordinarily, the Rule of benevolent construction has been applied while construing welfare legislations or provisions relating to relationship between weaker and stronger contracting parties.

In the case of Moti Ram v. Suraj Bhan & Ors. [1960 (2) SCR 896] it was held thus:

"IT is clear that the amendment made is not in relation to any procedure and cannot be characterized as procedural. It is in regard to a matter of substantive law since it affects the substantive right of the landlord. It may be conceded that the Act is intended to provide relief to the tenants and in that sense is a beneficial measure and as such its provision would be liberally constructed: but this principle would not be material or even relevant in deciding the question as to whether the new provision is retrospective or not. **It is well settled that** where an amendment affects vested rights, the amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication. The amending Act obviously does not make the relevant provision retrospective in terms and we see no reason to accept the suggestion that the retrospective operation of the relevant provision can be spelt out as a matter of necessary implication."

Before:- K.T.Thomas :J , R.P.Sethi :J

Dalmia Cement (Bharat) Limited
Versus
Galaxy Traders and Agencies Limited

It is well settled that a notice refused to be accepted by the addressee, can be presumed to have been served on him (vide Harcharan Singh v. Shivrani [1981 (2) SCC 535] and Jagdish Singh v. Natthu Singh [JT 1991 (5) SC 400 =1992 (1) SCC 647]. Here the notice is returned as unclaimed and not as refused. Will thereby any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus:

27. Meaning of service by post- Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

(7) SECTION 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The despatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But. as the presumption is rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he in fact received the notice. It is open to the dispatcher to adopt either of the options. If he opts the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. Such a course appears to have been adopted by the appellant-Company in this case and the complaint filed, admittedly, within

limitation from the date of the notice of service considered to have been served upon the respondents.

2001 (1) Supreme 41

Before:- A.S.Anand :J , R.C.Lahoti :J , Shivaraj V.Patil :J

Vijay Laxmi Sadho
Versus
Jagdish
It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

THIS decision was relied upon in Life Insurance Corporation of India v. Smt. G.M. Channabasamma7, in which the following observations were made:

".....**IT is well settled that** a contract of insurance is contract uberruna fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the posal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act has made special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years from the date on which it was effected. Having regard to the facts of the present case, learned counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed in mithoolal Nayak v. Life Insurance Corporation of India

must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case."

2000 (8) Supreme 553

Before:- S.N.Phukan :J , V.N.Khare :J

Vannattankandy Ibrayi
Versus
Kunhabdulla Hajee

It is well settled that the destruction of a house does not by itself determine the tenancy of the land on which it stands."

(6) THIS statement of law does not explain whether the destruction of a house will destroy the tenancy of the house itself but only indicates its effect on the tenancy of the land. In Woodfalls' Law of Landlord and Tenant, 28th edition, Vol. I para 1-2056, page 928 - the proposition stated as thus :

"A demise must have a subject-matter, either corporeal or incorporeal. If the subject matter is destroyed entirely, it is submitted that the lease comes automatically to an end, for there is no longer any demise. The mere destruction of a building on land is not total destruction of the subject matter of a lease of the land and building. So demise continues. "

2000 (5) Supreme 467

Before:- K.G.Balakrishnan :J , M.Jagannadha Rao :J

Government of A.P.
Versus
G.V.K.Girls High School

It is well settled that the legislature cannot overrule a judgment by passing a law to that effect unless it removes the basis of the legal

rights upon which the judgment is based, with retrospective effect and provided there is no violation of any constitutional provision in such withdrawal of rights retrospectively.

2000 (9) SCC 752

Before:- K.T.Thomas :J , R.P.Sethi :J

State of Andhra Pradesh
Versus
Kommaraju Gopala Krishna Murthy

It is well settled that when the amount is found to have been passed to the public servant the burden is on the public servant to establish that it is not by way of illegal gratification.

2000 (3) Supreme 601

Before:- R.P.Sethi :J , S.Saghir Ahmad :J

Lily Thomas
Versus
Union of India

It is well settled that children borne out of bigamous marriage are legitimate children, and mere conversion cannot absolve them from their liability. In this regard making law or amendment to law for making uniform law applicable to all people is not possible.
BIGAMY -- Second Marriage -- Contracting second marriage by Hindu after converting to Islam -- Inspite of conversion to Islam, he. will be liable for the offence of Bigamy within the provisions of Section 17 of Hindu Marriage Act and also under Section 494 of Penal Code of India -- Evidently mere by conversion, first marriage will not get dissolved. If a Hindu wife files a complaint for the offence under Section 494 on the ground that during the subsistence of the marriage, her husband had married a second wife under some other religion after converting to that religion,

the offence of bigamy pleaded by her would have to be investigated and tried in accordance with the provisions of the Hindu Marriage Act. It is under this Act that it has to be seen whether the husband, who has married a second wife, has committed the offence of bigamy or not. Since under the Hindu Marriage Act, a bigamous marriage is prohibited and has been constituted as an offence under Section 17 of the Act, any marriage sole-mnized by the husband during the subsistence of the marriage. In spite of his conversion to another religion, would be an offence triable under Section 17 of the Hindu Marriage Act read with Section 494, IPC.

2000 (2) Supreme 145

Before:- A.P.Misra :J , M.Jagannadha Rao :J

Haldiram Bhujiawala
Versus
Anand Kumar Deepak Kumar

PARTNERSHIP ACT, 1932 -- Suit by unregistered firm -- Section 69 -- Suit for permanent injunction by the firm on the basis of statutory rights under Trades Marks Act and on Common Principles of tort is not barred under Section 69 -- Therefore, application for rejection of plaint under Order 7, Rule 11 was rightly rejected -- However, where a suit is barred, fresh suit can be filed by the firm after getting registration. It has been held that bar under Section 69 regarding statutory rights or common rights is not applicable. The right to evict a tenant upon expiry of the lease was not a right under the Transfer of Property Act. The fact that the plaint in that case referred to a lease and to its expiry, made no difference. Hence, the said suit was held not barred. In that case the reference to the lease in that plaint was obviously treated as a historical fact. That case is therefore, directly in point. Following the said judgment, it must be held in the present case too that a suit is not barred by Section 69(2) if a statutory right or a common law right is being enforced. A suit for perpetual injunction to restrain the defendants not to pass off the defendants' goods as those of the plaintiffs by using the plaintiffs' trade mark and for damages is an action at common law and is

not barred by Section 69(2). The decision, in Virendra Dresses v. Varinder Garments, AIR 1982 Delhi 482, and the decision of the Division Bench of Delhi High Court in Bestochem Formulations v. Dinesh Ayurvedic Agencies, RFA (OS) 17 of 1999 dated 12.7.1999 (Del) (DB) based on tort and not on contract.

1999 (3) Supreme 171

Before:- A.P.Misra :J , S.B.Majmudar :J

Ferro Alloys Corporation Limited
Versus
Union of India

IT is no doubt true that principle of constructive res judicata can be invoked even inter se Respondents, but **it is well settled that** before any plea by contesting Respondents could be said to be barred by constructive res judicata in future proceedings inter se such contesting Respondents, it must be shown that such a plea was required to be raised by the contesting Respondents to meet the claim of the appellant in such proceedings. If such a plea is not required to be raised by the contesting Respondents with a view to successfully meet the case of the appellant, then such a plea inter se contesting Respondents would remain in the domain of an independent proceedings giving an entirely different cause of action inter se the contesting Respondents with which the appellants would not be concerned. Such pleas based on independent causes of action inter se Respondents cannot be said to be barred by constructive res judicata in the earlier proceedings where the Us is between the appellants on the one hand and all the contesting Respondents on the other

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1999 (3) Supreme 364

Before:- A.P.Misra :J , M.Jagannadha Rao :J

Sardul Singh
Versus
Pritam Singh

It is well settled that notwithstanding the absence of pleadings before a court or authority, still if an issue is framed and the parties were conscious of it and went to trial on that issue and adduced evidence and had an opportunity to produce evidence or cross-examine witnesses in relation to the said issue, no objection as to want of a specific pleading can be permitted to be raised lateR

1999 (2) Supreme 333

Before:- M.B.Shah :J , N.Santosh Hegde :J , S.P.Bharucha :J

T.A.V.Trust Alleppey
Versus
Commissioner of Income Tax, Kerala

Commissioner of Income-Tax, Gujarat vs. Motilal Hirabhai Spg. and Wvg. Co. Ltd. [113 ITR 173], where it was stated:

"**IT is well settled that** if evidence is allowed to be let in without any objection, it would not be open to the party aggrieved to raise any objection, as to its admissibility at a subsequent stage. Not only that but once a document is properly admitted, the contents of those documents are also admitted in evidence, though those contents may not be treated as conclusive evidence."

1999 (2) Supreme 123

Before:- A.S.Anand :J , M.Srinivasan :J , U.C.Banerjee :J

Githa Hariharan: Drvandana Shiva
Versus
Reserve Bank of India: Jayanta Bandhopadhyaya

Constitution of India, 1950 -- Natural Guardianship -- Article 14 -- Hindu Minority and Guardianship Act, 1956 -- Even during the life time of father, mother can be a natural guardian of the minor -- Section 19(b) of Guardians and Wards Act would be interpreted

in the similar analogy -- The decision, however, would operate prospectively only.

While both the partners are duty bound te-take care of the person and property of their minor child and act in the best interest of his welfare, we hold that in all situations where the father is not in actual charge of the affairs of the minor either because of his indifference or because of an agreement between him and the mother of the minor (oral or written) and the minor is in the exclusive care and custody of the mother or the father for any other reason is unable to take care of the minor because of his physical and/or mental incapacity, the mother, can act as natural guardian of the minor and all her actions would be valid even during the life time of the father, who would be deemed to be 'absent' for the purpose of Section 6(a) of HMG Act and Section 19(b) of GW Act.
It is well settled that if on one construction a given statute will become unconstitutional, whereas on another construction, which may be open, the statute remains within the constitutional limits, the Court will prefer the latter on the ground that the Legislature is presumed to have acted in accordance with the Constitution and Courts generally lean in favour of the constitutionality of the statutory provisions.

1999 (2) Supreme 82

Before:- D.P.Wadhwa :J , M.Srinivasan :J

Mathew M.Thomas
Versus
Commissioner of Income Tax

IT is well settled that the word "proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgment of this court in Garikapati Veeraya v. N. Subbiah Choudhry wherein the court said at p. 553:

"(I) That the 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 are to be regarded as one legal proceeding." Hence we are unable to persuade ourselves to agree with the view expressed by the full bench of the High court in the judgment under appeal that the Circular would apply only to proceedings pending before the competent authority.

1999 (1) Supreme 278

Before:- D.P.Wadhwa :J , M.Jagannadha Rao :J

Indian Airports Employees Union
Versus
Ranjan Chatterjee

IT is well settled that disobedience of orders of the court, in order to amount to "civil contempt" under Section 2(b) of the Contempt of courts Act, 1971 must be "wilful" and proof of mere disobedience is not sufficient (S.S. Roy v. State of orissa). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar).

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12. That apart, it is now well settled that the right of pre-emption is a weak right and is not looked upon with favour by courts and therefore

the courts cannot go out of their way to help the pre-emptor. (See: Radhakishan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi & Ors. [AIR 1960 SC 1368].

9. Again in T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors. [(2004) 3 SCC 392 this Court observed as follows:

"The law as regards permitting amendment to the plaint, is well settled in L.J. Leach and Co. Ltd. v. Jardine Skinner and Co., it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But this is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.

"THE general rule of law, as to commissions, undoubtedly is, that the whole service or duty must be performed, before the right to any commissions attaches, either ordinary or extraordinary; for an agent must complete the thing required of him, before he is entitled to charge for it. In the case of brokers employed to sell real estate, **it is well settled that** they are entitled to their commission when they have found a purchaser, even though the negotiations are conducted and concluded by the principal himself; and also where there is a failure to complete the sale in consequence of a defect in title and no fault on the part of the brokers." 1950 (0) AIR(SC) 15

It is well settled that in exercising their powers whether general or special, the directors, must always bear in mind that they hold a fiduciary position and must exercise their powers for the benefit of the company and for that alone and that the court can intervene to prevent the abuse of a power whenever such abuse is held proved, but it is equally settled that where directors have a discretion and are bona fide acting in the exercise of it, it is not the habit of the court to interfere with them. When the company is in no need of further capital, directors are not entitled to use their power of issuing shares

merely for the purpose of maintaining themselves and their friends in management over the affairs of the company, or merely for the purpose of defeating the wishes of the existing majority of shareholders. 1950 (0) AIR(SC) 172 Nannalal Zaver

It is well settled that the Constitution must be interpreted in a broad and liberal manner giving effect to all its parts, and the presumption should be that no conflict or repugnancy was intended by its framers. In interpreting the words of a Constitution, the same principles undoubtedly apply which are applicable in construing a statute, but as was observed by Lord Wright in James v. Commonwealth of Australia (1),

> "THE ultimate result must be determined upon the actual words used not in vacuo but as occurring in a single complex instrument in which one part may throw light on the other.` `The Constitution,` his Lordship went on saying, `has been described as the federal compact and the construction must hold a balance between all its parts.`" A. k. Gopalan

> **It is well settled that** a writ of certiorari can be issued only against inferior courts or persons or authorities who are required by law to act judicially or quasi-judicially, in those cases where they act in excess of their legal authority. Such a writ is not available to remove or correct executive or administrative acts. **Province of Bombay** 1950 (0) AIR(SC) 222

it is well settled that the owner of a property does not cease to be its owner merely because it is placed in the hands of a receiver. 1953 (0) AIR(SC) 425

IT is well settled that if a Statute giving a special remedy is repealed without a saving clause in favour of pending suits all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after. If a case is appealed, & pending the appeal the law is changed, the appellate Ct. must dispose of the case under the law in force when its decision was rendered. The effect of the repeal is to obliterate the Statute repealed as completely as if it had never been passed, & it must be considered as a law which never existed, except for the purposes of those actions or suits which were commenced, prosecuted &

concluded while it was an existing law. Pending judicial proceedings based upon a Statute cannot proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the Ct. of last resort, for that Ct., when it comes to announce its decision, conforms it to the law then existing, & may, therefore, reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a Statute which was necessary to support the judgment of the lower Ct. has been withdrawn by an absolute repeal."Keshavan Madhav Menon 1951 (0) AIR(SC) 128

IT is well settled that if a Ct. acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Ct. to which it would lie if its order was with jurisdiction.

Janardhan Reddy1951 (0) AIR(SC) 217

It is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, & therefore it is necessary to inquire in each case what is the pith and Sub-stance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another legislature. This was emphasised very Clearly m 'Gallagher v. Lynn', 1937 AC 863 at p. 870, in these words :

"IT is well established that you are to look at the 'true nature & character of the legislation': 'Russell v. The Queen', 1882 7 A. C. 829' 'the pith & Sub-stance of the legislation'. If, on the view of the statute as a whole, you find that the Sub-stance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field".

Bombay/Balsara

it is well settled that in an enabling Act words of a permissive nature cannot be given a compulsory meaning

S. Krishanan

It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably.

Bihar/Kameshwar Singh

It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects ; and for that purpose it must have large powers of selection or classification of persons and ,*things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per so amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. 1953 (0) AIR(SC) 91

1953 (0) AIR(SC) 201

Before:- M.C.Mahajan :J , S.R.Dass :J

T.Saraswathi Ammal
Versus
Jagadambal

It is well settled that custom cannot be extended by analogy. It must be estabished inductively, not deductively and it cannot be established by a priori methods. Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the community living in another district is necessarily following the same-custom.

1953 (0) AIR(SC) 235

Before:- M.C.Mahajan :J , S.R.Dass :J

Trojan and Company
Versus
Rm.N.N.Nagappa Chettiar

It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

1953 (0) AIR(SC) 385

Before:- B.Jagannath Das :J , M.C.Mahajan :J , Vivian Bose :J

R.Mathalone
Versus
Bombay Life Assurance Company Limited

It is well settled that a trustee is not entitled to claim indemnity till he suffers an injury for which he has to be indemnified.

1953 DGLS(Soft.) 136

IN THE SUPREME COURT OF INDIA

Equivalent Citations:

Before:- B.P.Sinha :J , K.N.Wanchoo :J , K.Subba Rao :J , N.H.Bhagwati :J , S.R.Dass :J

Sri Ram Ram Narain Medhi
Versus
State of Bombay

It is well settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. As was observed by the Judicial Committee of the Privy Council in British Coal Corporation v. The King, 1935 A C 500 at p. 518 : (AIR 1935 P C 158 at p. 162) :

"Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."

1954 (0) AIR(SC) 715

Before:- B.K.Mukherjee :J , N.H.Bhagwati :J , Vivian Bose :J

Mangleshwari Prasad
Versus
State of Bihar

it is well settled that circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

1954 (0) AIR(SC) 621

Before:- B.Jagannath Das :J , N.H.Bhagwati :J , T.L.Venkatarama Ayyar :J

Bhagat Ram
Versus
State of Punjab

it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt. This Court has affirmed the proposition in 'Hanumant v. State of Madhya Pradesh', AIR 1952 SC 343 (A), in the following terms at pp. 345-346. "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances. should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be

proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused".

1954 (0) AIR(SC) 352

Before:- Ghulam Hasan :J , M.C.Mahajan :J , Vivian Bose :J

Shankar Sitaram Sontakke
Versus
Balkrishna Sitaram Sontakke

It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of res judicata.

1954 (0) AIR(SC) 424

Before:- B.K.Mukherjee :J , M.C.Mahajan :J , N.H.Bhagwati :J , T.L.Venkatarama Ayyar :J , Vivian Bose :J

Dhirendra Kumar
Versus
Superintendent and Remembrancer of Legal Affairs To The Government of West Bengal

NOW **it is well settled that** though article 14 is designed to prevent any person or class of persons from being singled out as a special subject for discriminatory legislation, it is not implied that every law must have universal application to all persons who are not by nature, attainment or circumstance, in the same position, and that by process of classification the State has power of determining who should be regarded as a class for purposes of legislation and in relation to a law

enacted on a particular subject; but the classification, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.

1954 (0) AIR(SC) 440

Before:- B.K.Mukherjee :J , M.C.Mahajan :J , N.H.Bhagwati :J , T.L.Venkatarama Ayyar :J , Vivian Bose :J

T.C.Basappa
Versus
T.Nagappa
it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess (2).

1954 (0) AIR(SC) 545

Before:- M.C.Mahajan :J , N.H.Bhagwati :J , S.R.Dass :J , T.L.Venkatarama Ayyar :J , Vivian Bose :J

Suraj Mali Mohta and Company
Versus
A.V.Visvanatha Sastri

It is well settled that in its application to legal. Proceedings article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position.

1955 (0) AIR(SC) 481

Before:- Jagannadha Das :J , S.B.Sinha :J , Vivian Bose :J

Sahu Madho Das and others
Versus

Mukand Ram and another

It is well settled that a compromise or, family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

1955 (0) AIR(SC) 661

Before:- B.Jagannath Das :J , B.P.Sinha :J , N.H.Bhagwati :J , S.R.Dass :J , Syed Jafar Imam :J , T.L.Venkatarama Ayyar :J , Vivian Bose :J

Bengal Immunity Company Limited
Versus
State of Bihar

IT is well settled that marginal notes to the S. of an Act of Parliament cannot be referred to for the purpose of construing the Act.

1955 (0) AIR(SC) 778

Before:- B.Jagannath Das :J , B.P.Sinha :J , Vivian Bose :J

Bed Raj
Versus
State of Uttar Pradesh

A question of a sentence is a matter of discretion and **it is well settled that** when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; see for example the observations in Dalip Singh v. State of Punjab(1) and Nar Singh v.

State of Uttar Pradesh (2). In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate.

1956 (0) AIR(SC) 181

Before:- B.Jagannath Das :J , B.P.Sinha :J , Vivian Bose :J

Baladin
Versus
State of Uttar Pradesh

It is well settled that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under section 142, Indian Penal Code.

1956 (0) AIR(SC) 87

Before:- B.P.Sinha :J , P.N.Bhagwati :J , T.L.Venkatarama Ayyar :J

Merla Ramanna
Versus
Nallaparaju

It is well settled that when a sale in execution of a decree is impugned on the ground that it is not warranted by the terms thereof, that question could be agitated, when it arises between parties to the decree, only by an application under section 47, Civil Procedure Code and not in a separate suit.

1956 (0) AIR(SC) 202

Before:- B.Jagannath Das :J , B.P.Sinha :J , P.N.Bhagwati :J , S.R.Dass :J , Vivian Bose :J

Union of India: Ganesh Jute Mills Limited
Versus
Commercial Tax officer, West Bengal: Commercial Tax officer

IT is well settled that the provisions of a statute have to be construed with reference to the state of affairs as they existed at the time the statute was passed

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1956 (0) AIR(SC) 374

Before:- P.N.Bhagwati :J , S.R.Dass :J , T.L.Venkatarama Ayyar :J

Firm Bhagat Ram Mohanlal
Versus
Commissioner of Excess Profits Tax Nagpur

It is well settled that when the karta of a joint Hindu family enters into a partnership with strangers, the members of the family do not ipso facto become partners in that firm. They have no right to take part in its management or to sue for its dissolution. The creditors of the firm would no doubt be entitled to proceed against the joint family assets including the shares of the nonpartner co-parceners for realisation of their debts. But that is because under the Hindu law, the karta has the right when properly carrying on business to pledge the credit of the joint family to the extent of its assets, and not because the junior members become partners in the business. In short, the liability of the latter arises by reason of their status as copartners and not by reason of any contract of partnership by them.

1957 (0) AIR(SC) 49

Before:- S.R.Dass :J , Syed Jafar Imam :J , T.L.Venkatarama Ayyar :J

Sree Meenakshi Mills Limited
Versus
Commissioner of Income Tax, Madras

it is well settled that under section 100 of the Code of Civil Procedure the High court has no jurisdiction to reverse the findings of fact arrived at by the lower appellate court however erroneous, unless they are vitiated by some error of law.

1958 (0) AIR(SC) 578

Before:- B.P.Sinha :J , J.L.Kapur :J , N.H.Bhagwati :J , P.B.Gajendragadkar :J , P.N.Bhagwati :J , Syed Jafar Imam :J

Express Newspaper Private Limited: Press Trust of India, Indian National Press, Shri Kanayalal Nanabhai Desai, Hindustan Times Limitedloksatta Karyalaya, Sandesh Limited, Jansatta Karyalaya: Express Newspaper Private Limited
Versus
Union of India

IT is well settled that writs of certiorari and prohibition will lie only in respect of judicial or quasi-judicial acts :

"THE orders of certiorari and prohibition will lie to bodies and persons other than courts stricto sensu. Any body of persons having legal authority to determine questions affecting rights of subjects and having the duty act judicially, is subject to the controlling jurisdiction of the High court of justice, exercised by means of these orders."

1958 (0) AIR(SC) 770

Before:- A.K.Sarkar :J , J.L.Kapur :J , N.H.Bhagwati :J

Ganga Dhar
Versus
Shankar Lal
it is well settled that the mortgagee's right to enforce the mortgage and the mortgagor's right to redeem are co-extensive.

1958 (0) AIR(SC) 845

Before:- K.Subba Rao :J , N.H.Bhagwati :J , S.K.Das :J , S.R.Dass :J , Vivian Bose :J

Sewpujanrai Indrasanarai Limited
Versus
Collector of Customs

It is well settled that where proceedings in an inferior court or tribunal are partly within and partly without its jurisdiction, prohibition will lie against doing what is in excess of jurisdiction. (see Halsbury's Laws of England, 3rd Edn. Vol. 11, para. 216, p. 116). In the recent decision in Dalmia's case, Shri Ram Krishna Dalmia V. Shri Justice S. R. Tendolkar and others(1), this court held a part of a notification made under s. 3 of the Commission of Enquiry Act (LX of 1952) to be bad, and holding that it was severable from the rest of the notification, deleted it and held that rest of the notification to be good.

It is well settled that an appellate court is entitled to take into consideration any change in the law (vide the case of Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri(1)

1963 (0) AIR(SC) 354

Before:- B.P.Sinha :J , K.Subba Rao :J , Raghubar Dayal :J

Sakharam Alias Bapusaheb Narayan Sanas
Versus
Manikchand Motichand Shah

It is well settled that where there is a right recognised by law, there is a remedy,; and, therefore, in' the absence of any special provisions indicating the particular forum for enforcing a particular right, the general law of the land will naturally take its course.

1962 (0) AIR(SC) 53

Before:- A.K.Sarkar :J , B.P.Sinha :J , J.R.Mudholkar :J , N.Rajagopala Ayyangar :J , S.R.Dass :J

Instalment Supply Private
Versus
Union of India

It is well settled that in matters of taxation, doctrine of res judicata does not apply because each year assessment is final only for that year and does not govern the later years.

1962 (0) AIR(SC) 123

Before:- J.C.Shah :J , K.Subba Rao :J , M.Hidayatullah :J , P.B.Gajendragadkar :J , Raghubar Dayal :J

Balaji
Versus
Income Tax Officer, Special Investigation Circle, Akola

IT is well settled that the Entries in the Lists are not powers but are only fields of legislation, and that widest import and significance must be given to the, language used by Parliament in the various Entries.

1962 (0) AIR(SC) 195

Before:- A.K.Sarkar :J , B.P.Sinha :J , J.R.Mudholkar :J , N.Rajagopala Ayyangar :J , S.R.Dass :J

Dhaneshwar Narain Saxena
Versus
Delhi Administration
It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of Hori Ram Singh v. The Crown (1).

1962 (0) AIR(SC) 1314

Before:- B.P.Sinha :J , J.C.Shah :J , J.L.Kapur :J , J.R.Mudholkar :J , M.Hidayatullah :J

Chuni Lal V.Mehta, Sons Limited, Advocate General For The State of Maharashtra Intervener
Versus
Century Spinning and Manufacturing Company Limited

it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law

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1963 (0) AIR(SC) 1128

Before:- A.K.Sarkar :J , J.L.Kapur :J , M.Hidayatullah :J , Raghubar Dayal :J , S.R.Dass :J

Mysore State Electricity Board (In All Aapeals)
Versus
Bangalore Woollen, Cotton and Silk Mills Limited

It is well settled that in order to decide whether a decision in an earlier litigation operates as res judicata, the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it.

1964 (0) AIR(SC) 907

Before:- J.R.Mudholkar :J , K.Subba Rao :J , Raghubar Dayal :J , Syed Jafar Imam :J

Ittyavira Mathai
Versus
Varkey Varkey

CIVIL PROCEDURE CODE, 1908-- Section 2(2) -- Decree -- Nullity -- Decree passed in suit barred by time -- The decree is illegal and not in nullity. If the suit was barred by time and yet, the court decreed it, the court would be

committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it.
it is well settled that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction.

1963 DGLS(Soft.) 50

IN THE SUPREME COURT OF INDIA

Equivalent Citations:

Before:- A.K.Sarkar :J , M.Hidayatullah :J , N.Rajagopala Ayyangar :J , S.K.Das :J

Lakshmi Achi
Versus
T.V.V.Kailasa Thevar

It is well settled that where an appeal has been preferred against a preliminary decree the time for applying for final decree runs from the date of the appellate decree; see. Jowad Hussain v. Gendan Singh (1). In that decision the Privy Council quoted with approval the following observations of Benerjee, J. made in Gajadhar Singh v. Kishan Jiwan Lal (2).

"IT seems to me that this rulethe rule regulating application for final decree in mortgage actionscontemplates the passing of only one final decree in a suit for sale upon a mortgage. The essential condition to the making of a final decree is the existence of a preliminary decree which has become conclusive between the parties. When an appeal has been preferred, it is the decree of the appellate Court which is the final decree in the cause."

1964 (0) AIR(SC) 136

Before:- J.R.Mudholkar :J , K.Subba Rao :J , Raghubar Dayal :J

A.Raghavamma
Versus
A.Chenchamma

It is well settled that a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity.

1964 (0) AIR(SC) 743

Before:- J.C.Shah :J , K.C.Das Gupta :J , K.N.Wanchoo :J , N.Rajagopala Ayyangar :J , P.B.Gajendragadkar :J

Central Bank of India Limited
Versus
P.S.Rajagopalan

it is well settled that it is open to the Executing court to interpret the decree for the purpose of execution. It is, of course, true that the executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour court; but like the executing court, the Labour court would also be competent to interpret the award or settlement on which a workman bases his claim under s. 33C (2).

1964 (0) AIR(SC) 719

Before:- K.C.Das Gupta :J , K.N.Wanchoo :J , P.B.Gajendragadkar :J

Khardah and Company Limited
Versus
Workmen
IT is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the tribunal and justify his action, but in such a case) the question as to whether the dismissal of The employee is justified or not would be open before the tribunal and the tribunal

will consider the merits ,if the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee. If the enquiry is good and the conduct of the management is not mala fide or vindictive, then, of course, the tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer.

1964 (0) AIR(SC) 269

Before:- J.R.Mudholkar :J , K.Subba Rao :J , Raghubar Dayal :J

Nagraj
Versus
State of Mysore

It is well settled that the jurisdiction of the court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded.

1964 (0) AIR(SC) 1854

Before:- J.R.Mudholkar :J , K.N.Wanchoo :J , K.Subba Rao :J , N.Rajagopala Ayyangar :J , P.B.Gajendragadkar :J

Champaklal Chimanlal Shah
Versus
Union of India
It is well settled that temporary servants are also entitled to the protection of Art. 311(2) in the same manner as permanent government servants, if the government takes action against them by meting out one of the three punishments i.e. dismissal, removal or reduction in rank: (see Parshotam Lal Dhingra v. Union of India(`). But this protection is only available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is also not disputed that the mere use of expressions like `terminate` or `discharge` is not conclusive and in spite of the use of such innocuous expressions, the court has to apply the two tests mentioned in Parshotam Lal Dhingra's case(1), namely-(1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it

must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service the motive operating on the mind of the government is wholly irrelevant. It is on these principles which have been laid down in Parshotam Lal Dhingra's case() that we have to decide whether the appellant was entitled to the protection of Art. 311(2) in this case.

1964 (0) AIR(SC) 457

Before:- J.C.Shah :J , K.N.Wanchoo :J , K.Subba Rao :J , P.B.Gajendragadkar :J , Raghubar Dayal :J

State of Maharashtra
Versus
Mishrilal Tarachand Lodha
it is well settled that the plaintiff has to value his appeal against the dismissal of his suit on the amount of the claim he had made in the plaint and has not to include the interest due on the amount claimed up to the date of instituting the appeal, that the defendant has not to include that amount of future interest subsequent to the date of the decree till the institution of the appeal in the valuation of the appeal for the purposes of court-fee and that no court-fee is to be paid on the amount of costs decreed in the suit when the party aggrieved appeals against the decree.

1964 (0) AIR(SC) 1256

Before:- J.C.Shah :J , K.C.Das Gupta :J , K.N.Wanchoo :J , N.Rajagopala Ayyangar :J , P.B.Gajendragadkar :J

Memon Abdul Karim Haji Tayab, Central Cutlery Stores, Veraval
Versus
Deputy Custodian General, New Delhi

It is well settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date.

1998 (7) SCC 608 : 1998 (7) Supreme 248

Before:- A.S.Anand :J , D.P.Wadhwa :J

Mohammedkasam Haji Gulambhai
Versus
Bakerali Fatehali

IT is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of Section 14(1 of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a

right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession."

The court also relied on its earlier decision in Krishnawati v. Hans Raj. In that case, two persons lived in a house as husband and wife. One of them had rented the premises and allowed the other to carry on business in a part of it. Again, the question was if it amounted to sub-letting. This court held that if two persons live together in a house as husband and wife and one of them who was the tenant of the house allows the other to carry on business in a part of it, it will, in the absence of any other evidence, be a rash inference to draw that the tenant has let out that part of the premises. The court said that it was a settled law that onus to prove sub-letting was on the landlord. If the landlord prima facie shows that the occupant who was in the exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. The court said that the landlord in that case produced no evidence to show sub-letting in spite of the denial by the tenant in the written statement of any sub-letting.

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it is well settled that the principal does not lose his powers merely because those powers have been delegated to another body.

THERE is no doubt that convictions can be based on extra-judicial confession but **it is well settled that** in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by he witness but it is for the court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.

1998 (5) Supreme 56

Before:- M.Jagannadha Rao :J , S.B.Majmudar :J
Ganesh Shet
Versus
C.S.G.K.Setty

It is well settled that the circumstances referred to in sub-clauses (2 to (4 in regard to exercise of discretion for granting a decree for specific performance are not exhaustive. The relief for specific performance is discretionary and is not given merely because it is legal but it is governed by sound judicial principles. (See Mademsetty Satyanarayana v. G. Yelloji Rao and Sardar Singh v. Krishna Devi.)

(13) IT is again well settled that in a suit for specific performance, the a evidence and proof of the agreement must be absolutely clear and certain.

(14) IN Pomeroy on Specific Performance of Contracts (3rd Edn.), (para 159 it is stated clearly that a

"GREATER amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in a contract which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement with exactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non- performance is not enough; its object is to procure a performance by the defendant, and this demands a clear, definite, and

precise understanding of all the terms; they must be exactly ascertained before their performance can be enforced. This quality of certainty can best be illustrated by examples selected from the decided cases ...".

(15) THE question is whether, when parties have led evidence in regard to a contract not pleaded in the evidence, relief can be granted on the basis of the evidence and whether the plaintiff can be allowed to give a go-by to the specific plea in the plaint. Is there any difference between suits for specific performance and other suits?

(16) IT appears to us that while normally it is permissible to grant relief on the basis of what emerges from the evidence - even if not pleaded, provided there is no prejudice to the opposite party, such a principle is not applied in suits relating to specific performance. In Gonesh Ram v. Ganpat Rai the Calcutta High court has considered the same question. There the agreement pleaded was not proved but the plaintiff wanted to prove an antecedent agreement based on correspondence. It was held that the plaintiff, in a suit for specific performance, could not be permitted to abandon the case made out in the plaint and to invite the court to examine whether a completed agreement may or may not be spelt out of the antecedent correspondence. In that connection, Sir Asutosh Mookerjee observed:

"THE court would not in a case of this description permit the plaintiffs to depart from the case made in the plaint as the Court discourages, as a rule, variance between pleading and proof. The test applied in such cases is whether if the variance were permitted in favour of the plaintiffs, defendants would be taken by surprise and be prejudiced thereby. ... This rule is applied with special strictness in cases of specific performance of contracts. In Hawkins v. Maltby one contract was alleged and another was proved, with the result that the bill was dismissed. No doubt where there has been a part performance, the court may struggle with apparently conflicting evidence rather than dismiss the suit. This appears to have been the view adopted by Lord Cottenham in Mundy v. Jolliffe. In the case before us there is no question of part performance."

1998 (5) SCC 1 : 1998 (4) Supreme 537

Before:- D.P.Wadhwa :J , S.P.Kurdukar :J , Sujata V.Manohar :J

Harshad Shantilal Mehta
Versus
Custodian

IT is well settled that the Insolvency court can, both at the time of hearing the petition for adjudication of a person as an insolvent and subsequently at the stage of the proof of debts, reopen the transaction on the basis of which the creditor had secured the judgment of a court against the debtor. This is based on the principle that it is for the Insolvency court to determine at the time of the hearing of the petition for insolvency whether the alleged debtor does owe the debts mentioned by the creditor in the petition, and whether, if he owes them, what is the extent of those debts. A debtor is not to be adjudged an insolvent unless he owes the debts equal to or more than a certain amount, and has also committed an act of insolvency. It is the duty of the Insolvency court, therefore, to determine itself the alleged debts owed by the debtor irrespective of whether those debts are based on a contract or under a decree of court. At the stage of the proof of the debts, the debts to be proved by the creditor are scrutinised by the Official Receiver or by the court in order to determine the amount of all the debts which the insolvent owes as his total assets will be utilised for the payment of his total debts and if any debt is wrongly included in his total debts that will adversely affect the interests of the creditors other than the judgment creditor in respect of that particular debt as they were not parties to the suit in which the judgment debt was decreed. That decree is not binding on them and it is right that they be in a position to question the correctness of the judgment debt."

1998 (4) Supreme 490

Before:- G.B.Pattanaik :J , S.Saghir Ahmad :J

Benny T.D.
Versus

Registrar of Co-operative Societies

It is well settled that when recruitment is made to the posts governed by statutory rules under provision to Article 309, said rules must be strictly adhered to. The view of the High Court, therefore, not proper and set aside.
Appointment in excess of the posts advertised -- Though the appointments in excess of the posts advertised is not bad but the conclusion that the appointments in excess of the staff strength approved by the Registrar was not justified because there was no material on the record to that effect. The plea that in the public interest the selection should be annulled even though the report had not been submitted to the employer not accepted as it would be in gross violation of natural justice.

1998 (4) Supreme 440

Before:- M.Jagannadha Rao :J , S.B.Majmudar :J

Jagan Nath
Versus
Jagdish Rai

It is well settled that the initial burden to show that the subsequent purchaser of suit property covered by earlier suit agreement was a bona fide purchaser for value without notice of the suit agreement squarely rests on the shoulders of such subsequent transferee. In the case of Bhup Narain Singh v. Gokul Chand Mahton the Privy council relying upon earlier Section 27 of the Specific Relief Act of 1877 which is in pari materia with Section 19(l)(b) of the present Act, made the following pertinent observations at 6 p. 70 of the Report in this connection:

"SECTION 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and therefore it is for the transferee to establish the circumstances which will allow him to retain the benefit of a transfer which prirna facie, he had no right to get:"

However, it has to be kept in view that once evidence is led by both the sides the question of initial onus of proof pales into insignificance and

the court will have to decide the question in controversy in the light of the evidence on record. Even this aspect of the matter is well settled by a decision of the Privy council in the case of Mohd. Aslam Khan v. Feroze Shah wherein it was observed with reference to the very same question arising under Section 27(6 of the earlier Specific Relief Act of 1877 that:

"IT is not necessary to enter upon a discussion of the question of onus where the whole of the evidence in the case is before the court and it has no difficulty in arriving at a conclusion in respect thereof, Where a transferee has knowledge of such facts which would put him on inquiry which if prosecuted would have disclosed a previous agreement, such transferee is not a transferee without notice of the original contract within the meaning of the exception in Section 27(b)."

IT is well settled that in the absence of any express or implied agreement to the contrary, in a monthly tenancy, the rent is payable at the end of each month of tenancy.

It is well settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such termination of the services of a probationer. In the case of Samsher Singh v. State of Punjab a bench of this court consisting of seven Judges, inter alia, held that the services of a probationer can be terminated when the authorities are satisfied regarding his inadequacy for the job, or unsuitability for temperamental or other reasons not involving moral turpitude, or when his conduct may result in dismissal or removal but without a formal enquiry. An enquiry is necessary only when the termination is by way of a punishment, and to determine this the substance of the order and not the form is decisive. The same position has been reaffirmed in Anoop Jaiswal v. Govt. of India where the decision in Samsher Singh v. State of Punjab has been quoted extensively. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If it comes to the conclusion that the probationer is not suitable he is liable to be discharged. He cannot, in this situation, claim the benefit of Article 311(2.

In Babu Ram Gupta v. Sadhir Bhasin this court said:

"**IT is well settled that** while it is the duty of the court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order-to uphold the majesty of law and dignity of the courts."

1998 (3) Supreme 258

Before:- A.S.Anand :J , V.N.Khare :J

Sayyed Ali
Versus
A.P.Wakf Board, Hyderabad

It is well settled that if a decision of a court or a tribunal is without jurisdiction, such a decision or finding cannot operate as res judicata in any subsequent proceedings. The plea of res judicata presupposes that there is in existence a decree or judgment which is legal but when the judgment is non est in law, no plea of res judicata can be founded on such ajudgment. It would be appropriate here to quote the following passage from Res judicata - Spencer Bower and Turner, 2nd Edn., p. 92-

"COMPETENT jurisdiction is an essential condition of every valid res judicata, which means that, in order that a judicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the parties, or (in the case of in rem decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing."

(8) IN Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy this court observed as follows:

"A question of jurisdiction of the court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. * * * Similarly, by an erroneous decision if the court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise."

(9) IN Richpal Singh v. Dalip this court held thus:

"A salutary and simple test to apply in determining whether the previous decision operates as res judicata or on principles analogous thereto is to find out whether the first court, here the Revenue court could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so, there was no res judicata. The subsequent civil suit was not barred by res judicata."

(10) IN Pandurang Mahadeo Kavade v. Annaji Balwant Bokil it was held that in order to operate res judicata it must be established that the previous decision was given by a court which had jurisdiction to try the present suit, and the plea of res judicata would not be available if the previous decision was by a court having no jurisdiction. Learned counsel for the appellant referred to a decision of this court in the case of Mohanlal Goenka v. Benoy Kishna Mukherjee in support of his argument. In this case it was held that a the principle of res judicata will also apply to execution proceedings. But this case has no bearing on the controversy which is before us, and, therefore, learned counsel cannot derive any assistance from this decision. Thus, **it is well settled that** doctrine of res judicata does not apply to a decision of a court or tribunal which lacked jurisdiction.

1998 (1) Supreme 90

Before:- M.Jagannadha Rao :J , S.C.Sen :J

I.T.C.Limited

Versus
Debts Recovery Appellate Tribunal

it is well settled that in regard to payment under Bank Guarantees or irrevocable Letters of Credit, the contract between the sellers (appellant) and the Bank was independent of the contract between the buyers and sellers in respect of the goods and that the Bank had no authority to refuse payment on the ground of any alleged breach of contract by the sellers in their contract with the buyers. The only exceptions which have been recognised by the courts were cases of fraud or irretrievable injury. In the case of those exceptions, the buyer could seek an injunction against the Bank before the Bank paid money to the sellers. No such injunction was sought by the buyers. Further, the exceptions relating to forgery or fraud and misrepresentation recognised by the courts relate to forgery or fraudulent presentation of the documents tendered to the Bank. The case on hand did not come within the said exceptions and, therefore, there was no cause of action against the appellant. Learned counsel also contended, that merely because the word fraud or misrepresentation were used in the plaint, the Bank could not claim that the said allegations have to be accepted as true for purposes of Order 7 Rule 11 Civil Procedure Code.

-**it is well settled that** any IPR can be changed if there is an overriding public interest involved. It has been stated on affidavit by the State of orissa that after a package of incentives was given to the industries, the government was faced with severe resource crunch. On a review of its financial position, it was felt that for the sake of the economy of the State, it was necessary to limit the scope of exemption granted to various industries. Accordingly, further notifications were issued under Section 6 of the orissa Sales Tax Act from time to time. Because of this new perception of the economic scenario, the scope of the earlier notifications was restricted by subsequent notifications issued under Section 6. This also led to issuance of the second IPR dated 31/7/1980.

1998 (1) SCC 756 : 1997 (10) Supreme 529

Before:- M.M.Punchhi :J , M.Srinivasan :J

General Court Martial
Versus
Col.Aniltej Singh Dhaliwal
It is well settled that an admission can be explained by the makers thereof. In Nagubai Ammal v. B. Shama Rao the court held that an admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, the weight to be attached to which must depend upon the circumstances under which it is made. The court said that it may be shown to be erroneous or untrue so long as the person to whom it was made has not acted upon it at the time when it might become conclusive by way of estoppel. The same principle has been reiterated in K.S. Srinivasan v. Union of India, Basant Singh v. Janki Singh and Prem Ex-Servicemen Cooperative Tenant Farming Society Ltd. v. State of Haryana.

1997 (10) Supreme 309

Before:- G.B.Pattanaik :J , G.T.Nanavati :J

Banwari Ram: Bans Narain Singh
Versus
State of Uttar Pradesh

It is well settled that there is no difference so far as power of the Appellate Court is concerned to deal with an appeal from a conviction and that from an appeal against the order of acquittal. The procedure for dealing with two kinds of appeals was identical and the power of the Appellate Court in disposing of the appeals were in essence the same. If, however, on the evidence, two use are possible, one supporting the acquittal has to be adopted.

1997 (10) Supreme 554

Before:- K.Venkataswami :J , S.B.Majmudar :J

Vanita M.Khanolkar
Versus
Pragna M.Pai

it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High court. Even the power flowing from the paramount charter under which the High court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. No such bar is discernible from Section 6(3 of the Act. It could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed.

1997 (9) Supreme 69

Before:- M.Jagannadha Rao :J , S.B.Majmudar :J

Union of India
Versus
United India Insurance Company Limited

It is well settled that when the issue framed by the trial court is wide and parties understood the scope thereof and adduced such evidence as they wanted to, then there can be no prejudice and a contention regarding absence of a detailed pleading cannot be countenanced

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1998 (5) Supreme 173

Before:- G.T.Nanavati :J , M.Jagannadha Rao :J

Sudhir Samanta
Versus
State of West Bengal

WHILE it is true that before a person could be held to be a member of an unlawful assembly, it is not necessary that he should have done some overt act or been guilty of some omission in pursuance of the common object of the unlawful assembly, **it is well settled that** first, it must be established that he was a member of the unlawful assembly. When, as in this case, a large number of villagers were present at the scene of the offence and common object and specific acts were attributed only to a few among the nine accused and there was nothing so far as A-4, A-9 and A-5 were concerned as regards the common object or overt acts or motive, the question arises whether they were only members of the general crowd or whether there was proof that A-4, A-9 and A-5 went there with the same common object as those accused to whom overt acts were attributed. It has been held that in such a context, and with a view to guard against convicting persons who were not part of the unlawful assembly, it is permissible to consider the nature of the gathering, how they assembled and what weapons they were armed with, how they proceeded and further the part played by them.

1997 (7) Supreme 427

Before:- G.B.Pattanaik :J , K.Ramaswamy :J , S.Saghir Ahmad :J

S.S.Bola
Versus
B.D.Sardana

IT is well settled that Parliament and State Legislatures have plenary powers of legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation

retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned."
The court also further held that the exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation and such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power.

1997 (6) Supreme 29

Before:- G.B.Pattanaik :J , K.Ramaswamy :J , S.Saghir Ahmad :J

R.S.Rekhchand Mohota Spinning and Weaving Mills Limited
Versus
State of Maharashtra

It is well settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Article 246 and other articles of the Constitution. The three lists of the Seventh Schedule to the Constitution are legislative heads of fields of legislation. These demarcate the area over which the appropriate legislatures can operate. **It is well settled that** widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or 3 1990 1 SCC 109 in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted as the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well settled by various decisions of this court and other courts. Some of these decisions have

been referred to in the decision of this court in India Cement Ltd. v. State of T.N."

1997 (5) Supreme 62

Before:- D.P.Wadhwa :J , K.Ramaswamy :J

Mahendra Raghunathdas Gupta
Versus
Vishvanath Bhikaji Mogul

It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attomment by the tenant is not required a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment.

It was held by this court in the case of Yogender Pal Singh v. Union of India

"... **It is well settled that** when a competent authority makes a new law which is totally inconsistent with the earlier law and the two cannot stand together any longer it must be construed that the earlier law has been repealed by necessary implication by the later law...."

1997 (3) Supreme 1

Before:- A.M.Ahmadi :J , K.Venkataswami :J

B.V.Radha Krishna
Versus
Sponge Iron India Limited

It is well settled that if a question of law is referred to arbitrator and the arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this court in Alopi Parshad and Sons Ltd. v. Union of lndiu and Kapoor Nilokheri Cooperative Dairy Farm Society . In Indian Oil Corpn. Ltd. v. Indian Carbon Ltd , this court has held that the court does not sit in appeal over the award and review the reasons. The court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous."

(12) IN Hindustan Construction Co. Ltd. v. governor of orissa this court observed on the scope of interference by the court as follows:

"... It is well known that the court while considering the question whether the award should be set aside, does not examine that question as an appellate court. While exercising the said power, the court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the 000000 award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act."

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it is well settled that time is not of the essence of the contract unless the parties specifically make it so. Section 11 of the Sale of Goods Act gives statutory recognition to this principle. This aspect of the matter was also overlooked in Britannia Biscuits Co. case '.

1997 (3) Supreme 365

Before:- K.Ramaswamy :J , S.Saghir Ahmad :J

Tamil Nadu Electricity Board
Versus
Bridge Tunnel Constructions

IT is well settled that in the matter of challenge to the award there are two distinct and different grounds, viz., that there is an error apparent on the face of the record and that the arbitrator has exceeded his jurisdiction. In the latter case, the court can look into the arbitration agreement but under the former it cannot do so unless the agreement was incorporated or cited in the award or evidence was made part of the agreement. In the case of jurisdictional error, there is no embargo on the power of the court to admit the contract into evidence and to consider whether or not the umpire had exceeded the jurisdiction because the nature of the dispute is something which has to be determined, outside the award, whatever might be said about it in the award or by the arbitrator. In the case of non-speaking award, it isnot open to the court to go into the merits. Only in a speaking award the court can look into the reasoning in the award and correct wrong proposition of law or error of law. It is not open to the court to probe the mental process of the arbitrator and speculate, when no reasons have been given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. but in the later case the court, with reference to the terms of THE CONTRACT/arbitration agreement, would consider whether or not THEARBITRATOR/umpire has exceeded his jurisdiction in awarding or refusing toaward the sum of money awarded or omitted a consolidated lump sum.

(37) IN fact, in G.S. Atul & Co. case , having noticed that the arbitrator had exceeded his jurisdiction to grant the amount dehors the terms of the contract and being a non-speaking award, the court was unable to speculate as to what extent the award was within the terms of the contract or claims made and to what extent the amount awarded was in respect of a non arbitrable dispute. Accordingly, the order of the civil court was set aside reversing the judgment of the division bench of the Calcutta High court.

It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts.

1996 (8) Supreme 121

Before:- A.M.Ahmadi :J , S.C.Sen :J , S.P.Bharucha :J

C.T.Limited
Versus
Commercial Tax officer

THE learned counsel cited from the judgment of this court in the case of Bhopal Sugar Industries Ltd. v. SALES TAX OFFICER the following:

"**IT is well settled that** while interpreting the terms of the agreement, the Court has to look to the substance rather than the form of it. The mere fact that the word 'agent' or 'agency' is used or the words 'buyer' and 'seller' are used to describe the status of the parties concerned is not sufficient to lead to the irresistible inference that the parties did in fact intend that the said status would be conferred. Thus the mere formal description of a person as an agent or a buyer is not conclusive, unless the context shows that the parties clearly intended to treat a buyer as a buyer and not as an agent. Learned counsel for the appellant relied on several circumstances to show that on a proper construction of the agreement it could not, but be, held to be a contract of sale. Learned counsel strongly relied on a decision of this court in Sri Tirumala Venkateswara Timber and Bamboo Firm v. CTO, where this Court held the transaction to be a sale in almost similar circumstances. Speaking for the Court, Ramaswami, J., observed as follows: 'As a matter of law there is a distinction between a contract of sale and a contract of agency by which the agent is authorised to sell or buy on behalf of the principal. The essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. The transferee in such a case is liable to the transferor as a debtor for the price to be paid and not as agent for the proceeds of the sale. The essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds.' It is clear from the observations made by this Court that the true relationship of the parties in such a case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the said relationship."

It is well settled that unless the a property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same.

It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section.

It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act.

It is well settled that the approver's evidence must pass the double test of reliability and corroboration in material particulars. It is said that the approver is a most unworthy friend and he having bargained for his immunity must prove his worthiness for credibility in court. Firstly, we will have to scrutinize the evidence of Gurjant Singh (Public Witness 3, approver carefully to find out as to whether his evidence can be accepted as trustworthy. Secondly, once that hurdle is crossed the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Ordinarily, combined effect of S. 133 and 114 of the Evidence Act, 1872 is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Section 114 Illustration (b) incorporates a rule of caution to which the courts should have regard. See Suresh Chandra Bahri v. State of Bihar.

1996 (4) Supreme 42

Before:- A.S.Anand :J , Faizan Uddin :J

Kirtikant D.Vadodaria
Versus
State of Gujarat

It is well settled that a son has to maintain his mother irrespective of the fact whether he inherits any property or not from his father, as on the basis of the relationship alone he owes a duty and an obligation, legal and moral, to maintain his mother who has given birth to him. Further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. But the question before us is whether a stepmother can claim maintenance from the stepson under Section 125 of the Code. In other words, whether Section 125 of the Code includes within its fold the stepmother also as one of the persons to claim maintenance from her stepson.

1996 (1) Supreme 264

Before:- A.M.Ahmadi :J , S.C.Sen :J

State of Maharashtra
Versus
National Construction Company, Bombay

CODE OF CIVIL PROCEDURE,1908 -- Order 2, Rule 2 -- Bar under Order 2, Rule 2 in filing 2nd petition, only when causes are same -- Where first suit was filed to enforce Bank guarantee, 2nd suit to claim damages for breach of contract relating to which Bank guarantee was given, will not be barred being based on different cause of action.

The legal position would be that a Bank guarantee is ordinarily a contract, distinct and independent of underlying contract. The Supreme Court has held in AIR 1970 SC 1059 that where the cause of action on the basis of which previous suit was filed does not form the foundation of the subsequent suit and in a earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the suit of the plaintiff filed subsequently, will not be barred under Order, 2 Rule 2. Applying this ruling to the facts of the case, it was clear that in the first

suit, the appellant could only claim the relief for 14, 12, 836 was the maximum amount and they could claim relief of I, 13, 27, 298. 16 which they did in the 2nd suit. Therefore, the 2nd suit was not barred.

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it is well settled that Section 53-A confers no active title on the transferee in possession; it only imposes a statutory bar on the transferor.

IN Ram Gopal Reddy v. Additional Custodian Evacuee Property , a Constitution bench of this court had held that the benefit of Section 53-A cannot be taken aid of by the plaintiff to establish his right as owner of the property. Therefore, Section 53-A can be used as a shield but not as an independent claim either as a plaintiff or as a defendant. In Delhi Motor Co. v. U.A. Basrurkar , a bench of three Judges had held that Section 53-A is meant only to bring out a bar against the enforcement of a right by a lessor in respect of the property of which the lessee had already taken possession but does not give any right to the lessee to claim possession or to claim any other right on the basis of an unregistered lease. Section 53-A is available only as a defence to a lessee and not as conferring a right on the basis of which the lessee can claim rights against the lessor. In that case the appellants had put forward certain documents as a lease which was admittedly beyond 11 months and, therefore, it was held that the company was not entitled to avail of the statutory right under Section 53-A. In Sardar Govindmo Mahadik v. De.vi Sahai , this court had held that the court would look at the writing that is offered as a contract for transfer for consideration of any immovable property, then examine the acts said to have been done in furtherance of the contract, and find out whether there is a real nexus between the contract and the acts pleaded as a part performance so that to refuse relief would be perpetuating the fraud of the party, who after having taken advantage or benefit of the contract, backs out and pleads non-registration as a defence, a defence analogous to Section 4 of the Statute of Frauds. In that case it was held that the mortgagee in possession was not entitled to claim title of ownership against suit of mortgagor for redemption. Therefore, the doctrine of part performance in Section 5

(8) THE contract for sale of immovable property does not create any title except when covered under Section 54 of the Act and

registered under Section 17 of the Registration Act. Equally, it does not create an interest in the property. It merely gives a right to enforce it specifically as an equitable relief in a court of law. In Technicians Studio (P) Ltd. v. Lila Ghosh , this court had held that **it is well settled that** Section 53-A confers no active title on the transferee in possession; it only imposes a statutory bar on the transferor.

IT is well settled that if a court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the court to which it would lie if its order was with jurisdiction."

It is well settled that the plea of adverse possession is not a pure question of law but a mixed question of fact and law. It is also well established that the party pleading adverse possession must state with sufficient clarity as to when his adverse possession commenced and the nature of its possession. In this case, the defendant's plea is that the adverse possession of the predecessor-in-interest, i.e., the first defendant, commenced in 1954. Once that plea falls to ground, as held hereinabove, there is no alternate plea. To repeat, the defendants have not suggested that their adverse possession commenced at any later point of time.

IT is well settled that in order to decide whether a decision in an earlier litigation operates as res judicata, the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it. ... It is indeed true that what becomes res judicata is the 'matter' which is actually decided and not the reason which leads the court to decide the 'matter'."

These observations are well settled and reiterate established principle laid down by the courts for the same, sound and general purpose for which the rule of res judicata has been accepted, acted, adhered and applied, dictated by wisdom of giving finality even at the cost of absolute justice. In a recent English decision Ampthill Peerage case , finality at cost of fallibility has been graphically described at pp. 423 and 424 thus:

1995 (1) SCC 642

Before:- B.P.Jeevan Reddy :J , S.C.Sen :J

Bombay Metropolitan Region Development Authority, Bombay
Versus
Gokak Patel Volkart Limited

IT is well settled that when the statute lays down the period of limitation for passing an order that requirement is fulfilled as soon as an order is passed within that period. If the order is set aside on appeal and the appellate order directs a fresh order to be passed then there is no requirement of law that the consequential order to give effect to the appellate order must also be passed within the statutory period of limitation. This proposition of law is well settled.

1995 (1) SCC 235

Before:- J.S.Verma :J , K.S.Paripoornan :J , S.P.Bharucha :J

Municipal Corporation of Delhi
Versus
Ganesh Razak

it is well settled that it is open to the Executing court to interpret the decree for the purpose of execution. It is, of course, true that the Executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour court; but like the Executing court, the Labour court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2. Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2, it would, in appropriate cases, be open to the Labour court to interpret the award or settlement on which the workman's right rests."

1994 (6) SCC 485

Before:- G.N.Ray :J , M.N.Venkatachaliah :J

State of Rajasthan
Versus
Puri Construction Company Limited

It is well settled that if a question of law is referred to arbitrator and the arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this court in Alopi Parshad & Sons Ltd. v. Union of India and Kapoor Nilokheri Cooperative Dairy Farm Society. In Indian Oil Corpn. Ltd. v. Indian Carbon Ltd. , this court has held that the court does not sit in appeal over the award and review the reasons. The court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous.

1994 (5) SCC 572

Before:- G.N.Ray :J , Kuldip Singh :J , N.P.Singh :J , P.B.Sawant :J , S.Mohan :J

Syndicate Bank: Canara Bank: State Bank of India
Versus
K.Umesh Nayak: R.Jambunathan: State Bank of India Staff Union

In the appeal filed by the management against the award of the Tribunal in this Court, the only question that fell for determination was whether the award of the Tribunal granting the striking workmen wages for the period from 11th January, 1968 to 29th February, 1968 was valid. In paragraph 4 of the judgment, this Court observed as follows (AIR 1978 SC 1489):

"4. **It is well settled that** in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wages for the strike-period."

1994 (5) SCC 566

Before:- A.M.Ahmadi :J , B.L.Hansaria :J

Maharashtra State Financial Corporation
Versus
Suvarna Board Mills

It is well settled that natural justice cannot be placed in a strait-jacket; its rules are not embodied and they do vary from case to case and from one fact situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if lie would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of the case.

1993 (2) SCC 429

Before:- A.S.Anand :J , B.P.Jeevan Reddy :J , L.M.Sharma :J

M.V.Nair
Versus
Union of India

It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.

1992 (3) SCC 204

Before:- M.Fathima Beevi :J , S.R.Pandian :J

Madan Gopal Kakkad
Versus
Naval Dubey

A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.

(35) NARIMAN, J. in Queen v. Ahmed Ally while expressing his view a on medical evidence has observed as follows:

"THE evidence of a medical man or other skilled witnesses, however, eminent, as to what he thinks may or may not have taken place under particular combination of circumstances, however, confidently, he may speak, is ordinarily a matter of mere opinion."

(36) FAZAL Ali, J. in Pratap Misra v. State of Orissa^ has stated thus:

"**IT is well settled that** the medical jurisprudence is not an exact science and it is indeed difficult for any Doctor to say with precision and exactitude as to when a particular injury was caused ... as to the exact time when the appellants may have had sexual intercourse with the prosecutrix."

1992 (2) SCC 717

Before:- A.M.Ahmadi :J , R.M.Sahai :J

Madanlal Phulchand Jain
Versus
State of Maharashtra

It is well settled that a Hindu can have interest in the ancestral property as well as acquire his separate or self-acquired property

and if he acquires a separate property by inheritance, birth of a son or adoption of a son will not deprive him of the power he has to dispose of the same by gift or will -- Therefore, the Commissioner of Income Tax in exercise of power under Section 45(2) of Maharashtra Act held that the land inherited by the appellant from his uncle was a separate property and hence the contention that one-fifth share of his major son in the said property should be deducted from the holding, rejected, since in his said separate property, the son will have no right by birth.
A Hindu can own separate property besides having a share in ancestral property and therefore, when the appellant inherited the land left by his uncle that property came to him as a separate property and he had an absolute and unfettered right to dispose of that property in any manner.
It is well settled that excluding the property inherited from a maternal grandfather, the only property which can be characterised as ancestral property is the property inherited by a person from his father, father's father or father's father's father and that means the property inherited by a person from other relation became his separate property and his male issue does not take any interest therein by birth. Thus, the property inherited from collateral such as brother's uncle etc. cannot be said to be ancestral property and his son cannot claim a share therein as if it were ancestral property.

1993 (Supp.1) SCC 300

Before:- M.Fathima Beevi :J , M.H.Kania :J , N.M.Kasliwal :J

P.J.Thomas
Versus
Taluk Land Board
It is well settled that a statute is not to be read retrospectively except of necessity.

1992 (2) SCC 330

Before:- J.S.Verma :J , K.Jayachandra Reddy :J

Syndicate Bank
Versus

Vijay Kumar

It is well settled that the Bank guarantee is an autonomous contract and imposes an absolute obligation on the Bank to fulfil the terms and the payment in the Bank guarantee becomes due on the happening of a contingency on the occurrence of which the guarantee becomes enforceable.

It is well settled that **it is not the function of the judiciary to look into the equation of post and determination of pay scales and ordinarily court do not enter upon the task job evaluation but if the aggrieved employees are unjustly treated by arbitrary state action or inaction the court certain interfere. The courts must realise that job evaluation is both a difficult and time consuming task which even expert body having the assistance of the staff with requisite expertise have found difficult to undertake sometimes on account of relevant data and scales for evaluating performances of different groups of employees. Merely because the Sub-registrars were conferred gazetted status and the registration service was included in the state service did not entitle the sub-registrars to be placed in the higher scale if their duties and responsibilities did not justify the same.**

1994 (0) AIR(SC) 26

Before:- K.Jayachandra Reddy :J , R.C.Patnaik :J

Ramu Alias Ram Kumar
Versus
Jagannath

It is well settled that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it was invoked by a private complaint.

1992 (2) SCC 343

Before:- K.Ramaswamy :J , N.M.Kasliwal :J

Peerless General Finance and Investment Company Limited: Reserve Bank of India: Reserve Bank of India: Reserve Bank of India
Versus
Reserve Bank of India: Timex Finance and Investment Company Limited: Timex Finance And Investment Company Limited: Timex Finance And Investment Company Limited

It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. courts cannot be expected to decide them without even the aid of experts.

IT is well settled that the court is not a tribunal from the crudities and inequities of complicated experimental economic legislation. The discretion in evolving economic measures, rests with the policy makers and not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist secular democratic Republic, inequality is an anathema to social and economic justice. The Constitution of India charges the State to reduce inequalities and ensure decent standard of life and economic equality. The Act assigns the power to the RBI to regulate monetary

system and the experimentation of the economic legislation, can best be left to the executive unless it is found to be unrealistic or manifestly arbitrary. Even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibilities from those on whom a democratic society ultimately rests. The court has to see whether the scheme, measure or regulation adopted is relevant or appropriate to the power exercised by the authority. Prejudice to the interest of depositors is a relevant factor. Mismanagement or inability to pay the accrued liabilities are evils sought to be remedied. The directions are designed to preserve the right of the depositors and the ability of RNBC to pay back the contracted liability. It is also intended to prevent mismanagement of the deposits collected from vulnerable social segments who have no knowledge of banking operations or credit system and repose unfounded blind faith on the company with fond hope of its ability to pay back the contracted amount. Thus the directions maintain the thrift for saving and streamline and strengthen the monetary operations of RNBCs.

1992 (1) SCC 710

Before:- B.P.Jeevan Reddy :J , N.M.Kasliwal :J

Omprakash
Versus
Jaiprakash

It is well settled that an appeal is a continuation of suit and in the present case the appeal was pending before this Court. There is no manner of dispute that the present suit had been filed by the plaintiff-respondent claiming that he was the real owner of the property and the names of the defendants-appellants were mentioned in the sale deeds as benami. In our view, Section 4 of the Benami Act is a total prohibition against any suit based on benami transaction and the plaintiff-respondent is not entitled to get any decree in such suit or in appeal.

1992 (1) SCC 160

Before:- B.P.Jeevan Reddy :J , P.B.Sawant :J

V.B.Rangaraj
Versus
V.B.Gopalakrishnan

it is well settled that unless the Articles otherwise provide the shareholder has a free right to transfer to whom he will. It is not necessary to seek in the Articles for a power to transfer, for the Act (the English Act of 1980) itself gives such a power. It is only necessary to look to the Articles to ascertain the restrictions, if any, upon it. Thus a member has a right to transfer his share/ shares to another person unless this right is clearly taken away by the Articles.

1993 (Supp.1) SCC 233

Before:- M.Fathima Beevi :J , N.D.Ojha :J , S.Ranganathan :J

Revathinnalbalagopala Varma: Indirabayi
Versus
His Highness Shri Padmanabha Dasa Bala Rama Varma (Since Deceased)

it is well settled that the fact that an estate is impartible does not make it the separate and exclusive property of the holder: where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family.

1992 (1) SCC 659

Before:- Kuldip Singh :J , Ranganath Misra :J

Radhasoami Satsang, Saomibagh, Agra
Versus
Commissioner of Income Tax
CIVIL PROCEDURE CODE,1908 -- Section 11 -- Principles of res judicata do not apply to Income Tax proceedings -- Each Assessment year being a unit, what is decided in one year may not apply in the following year, out where a fundamental aspect permitting through the different assessment years has been found a fact one way or the others and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in the subsequent year.

It is well settled that no formal document is necessary to create a trust.

1992 (1) SCC 105

Before:- M.Fathima Beevi :J , M.H.Kania :J , N.M.Kasliwal :J

Uma Kant: University of Rajasthan, Jaipur
Versus
Bhikalal Jain
It is well settled that in matters relating to educational institutions, if two interpretations are possible, the Courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.

1992 (1) SCC 31

Before:- R.M.Sahai :J , T.K.Thommen :J

By Ram Pestonji Gariwala
Versus
Union Bank of India

It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of 'res judicata'. " (Page 355)

42. S. R. Das, C.J. in Sailendra Narayan Bhanja Deo v. State of Orissa, AIR 1956 SC 346, states:

".....a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case (Page 351).

43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. As stated by Spencer Bower & Turner in Res judicata, Second Edition, page 37:

"Any judgment or order which in other respects answers to the description of a res judicata is nonetheless so because it was made in pursuance of the consent and agreement of the parties Accordingly, judgments, orders, and awards by consent have always been held no less efficacious as estoppels than other judgments, orders, or decisions, though doubts have been occasionally expressed whether strictly, the foundation of the estoppel in such cases is not representation by conduct, rather than res judicata.

1992 (Supp.2) SCC 29

Before:- K.Ramaswamy :J , N.M.Kasliwal :J

East India Hotels Limited
Versus

Syndicate Bank

It is well settled that the plaintiff cannot be allowed to go against its own pleadings and the case as set up in the plaint.

Section 6 -- The respondent was in possession of the premises under leave and licence agreement -- The appellant did not accept the request for renewal of licence but the respondent bank did not vacate the premises even after notice of the appellant -- However, in 1990 a fire broke out in the premises and hank started its business at some other place -- Under these circumstances, whether the bank was entitled to recover the possession under Section 6 and whether it amounted to dispossession within the meaning of Section 6 of the Act -- The High Court held that the plaintiff bank was no doubt a licensee but even alter the expiry of licensed period it cannot be dispossessed otherwise than in due course of law and therefore, was entitled to file a suit for possession under Section 6 of the Act -- Held, that there can be no doubt that Section 6 provides for a summary remedy to any person dispossessed without consent, otherwise then in due course of law and such person is entitled to recover the possession by filing a suit within six months, but the court under Section 6 will not go into the question of title. -- The question of finding out the intention of the parties does not arise in the instant case inasmuch as the bank was in occupation of the premises as a licensee and it is also admitted that though the licence came to an end on 31.12.1986 but the company never took law into his own hands in order to dispossess the bank rather served a notice upon the bank to hand over the possession -- Then a fire broke out on 12.4.1990 without any fault of any party as a result of which the bank started its business at some other place and vacated the suit premises when the company fixed new lock and bank was not allowed to enter the premises -- Under these circumstances, the bank was not entitled to file a suit under Section 6 -- However, according to justice K. Ramaswamy, the bank was entitled to such decree and could file a suit under Section 6 of the Act.
In the above-noted circumstances since there is conflicting judgement given by the two judges, the case ordered to be placed before the Chief "Justice for constituting a larger Bench.

1991 (4) SCC 514

Before:- K.Jayachandra Reddy :J , S.R.Pandian :J

Bhagwanswarup
Versus
State of Rajasthan

"We have gone through the entire evidence bearing on the aforesaid offence under Section 202 but have not been able to discern anything therein which may go to establish the aforesaid ingredients of the offence under Section 202 of the Penal Code. The offence in respect of which the appellants were indicted viz. having intentionally omitted to give information respecting an offence which he is legally bound to give not having been established, the appellants could not have been convicted under Section 202 of the Penal Code. **It is well settled that** in a prosecution under Section 202 of the Penal Code, it is necessary for the prosecution to establish the main offence before making a person liable under this section. The offence under section 304 (Part II) and the one under Section 331 of the Penal Code not having been established on account of several infirmities, it is difficult to sustain the conviction of the appellants under Section 202 of the Penal Code. The High Court has also missed to notice that the word 'whoever' occurring at the opening part of Section 202 of the Penal Code refers to a person other than the offender and has no application to the person who is alleged to have committed the principal offence. This is so because there is no law which casts a duty on a criminal to give information which would incriminate himself. That apart the aforementioned ingredients of the offence under Section 202 of the Penal Code do not appear to have been made out against the prosecution. There is not an iota of evidence to show that the appellants knew or had reason to believe that the aforesaid main offences had been committed."

1991 (3) SCC 130

Before:- B.C.Ray :J , J.S.Verma :J

Chandmal

Versus
Firm Ram Chandra and Vishwanath

IN the case of Majati Subbamo v. P.V.K. Krishna Rao , it has been observed that the denial of title of the landlord by the tenant must be made in clear and in unequivocal terms. It was further observed that **it is well settled that** the court hearing a suit or appeal can take into account events which are subsequent to the filing of the suit in order to give appropriate relief or mould the relief appropriately.

1991 (3) SCC 410

Before:- R.M.Sahai :J , T.K.Thommen :J

Kalawatibai
Versus
Soiryabai

It is well settled that a section has to be read in its entirety as one composite unit without bifureating it or ignoring any part of it. Viewed from this perspective the section, undoubtedly, comprises of two parts, one descriptive, specifying the essential requirements for applicability of the section, other consequences arising out of it. One cannot operate without the other. Neither can be read in isolation. Both are integral parts of the section. Mere provision that any property possessed by a female Hindu on the date the Act came into force shall be held by her would have been incomplete and insufficient to achieve the objective of removing inequality amongst male and female Hindus unless it was provided that the otherwise limited estate of such a female would become enlarged into full or absolute estate. Any other construction would result in not only ignoring the expression, and not as a limited owner'which would be against principle of interpretation but also against the historical background of enactment of the section. Whereas if it is read in its entirety with one part throwing light on another then the conclusion is irresistible that a limited owner became a full owner provided she was in possession of the property on the date of enactment of the Act.

Articles 64 and 65 -- Alienation by Hindu widow without legal necessity '-- The reversioners can file a suit for possession after the death of widow -- Alienee of such estate could not acquire any

right of estate of widow so as to take benefit of Section 14, nor can claim adverse possession over the said property -- There is no provision in the Hindu Successin Act which deprives the reversioner of their rights except to the extent mentioned in Section 14 of the said Act.
It is clear that an alienee from a Hindu widow prior to 1956 did not acquire limited estate or widow's estate nor she was a limited owner who could get any benefit under Section 14 of the Act. It was not even life estate except loosely as the eight to continue in possession was not related with her span of life but of the transferer, i.e. the Hindu widow. The High Court was not justified in closing in concluding that it was a question of fact. Possession under a gift deed which was found to be invalid as it was not permitted under the Hindu Law was on general principle contrary to the law and as such could be adverse. When did it come adverse to the donor and what circumstances constitute adverse possession against the donor is an accept which docs not arise for consideration. Therefore, it is obvious that appellant could not acquire any right by adverse possession against the reversioner during the life time of her mother.

1991 (1) SCC 357

Before:- L.M.Sharma :J , M.Fathima Beevi :J

Life Insurance Corporation of India
Versus
G.M.Channabasamma

It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding, whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted.

1991 (Supp.2) SCC 18

Before:- K.Ramaswamy :J , S.Ranganathan :J

Municipal Corporation of Greater Bombay
Versus
Indian Oil Corporation Limited

17. In S..P.Jainv.KrishnaMohanGupta,(1987)1 SCC 191 : (AIR.1987 SC 222), this court held that law should take pragmatic view of the matter and respond to ihe purpose for which it was made and also take cognizance of the current cadabilities of technology rid life style' the community.**It is well settled that** the purpose of law provides agood guide to the interpretation of the meaning of the Act .The legislative futility is to be ruled out so long as interpretative possibility permits. (Emphasis supplied)

18. In S. P. Gupta, v. Union of India 1981 Suppl. SCC 87 : (AIR 1982 SC 149), interpreting S. 123 of the Indian Evidence Act, this Court held that the Section was'enated irftts second half of the last century, but its meaning and content cannot remain static. The interpretation of every statutory provision must keep pace with changing concepts and. the values and it must, to the extent to which its language permits or rather does not prohibit,, suffer adjustments through judicial inter-pretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation. The language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of - clash between conflicting interests. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. It is here that a Judge is called upon the perform a creative function. He has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which

will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice.

1991 (1) SCC 422

Before:- B.C.Ray :J , R.M.Sahai :J

Rai Chand Jain
Versus
Chandra Kanta Khosla

It is well settled that unregistered lease executed by both the parties can be ,looked into for collateral purposes.

1991 (1) SCC 494

Before:- M.H.Kania :J , N.D.Ojha :J

Isabellajohnson
Versus
M.A.Susai

It is well settled that there cannot be no estoppel on a pure question of law and the question of resjudicata is a pure question of law and there is no question of estoppel -- The jurisdiction of the civil court being barred cannot be conferred on the ground that the earlier decision of the Rent Controller to the effect that it was the City Civil Court and not the Rent Controller to entertain the suit for eviction, constituted res judicata between the parties on the question of jurisdiction and it cannot be said that in such a case even if that decision was wrong the issue of jurisdiction was finally decided between the parties and that decision was that it was the civil court and not the Rent Controller which had jurisdiction.

1991 (1) SCC 489

Before:- K.Ramaswamy :J , L.M.Sharma :J

Veerattalingam

Versus
Ramesh
It is well settled that a court while construing a will should try to ascertain the intention of the testator to be gathered primarily from the language of the document; but while so doing the surrounding circumstances; the position of the testator, his family relationship and the probability that he used the words in a particular sense also must be taken into account. They lend a valuable aid in arriving at the correct construction of the will. Since these considerations are changing from person to person, it is seldom profitable to compare the words of one will with those of another or to try to discover which of the wills upon which the decisions have been given in reported cases, the disputed will approximates closely. Recourse to precedents, therefore, should be confined for the purpose of general principle of construction only, which by now, are well settled. There is still another reason as to why the construction put on certain expressions in a will should not be applied to a similar expression in the will under question for a will has to be considered and construed as a whole, and not piecemeal. It follows that a fair and reasonable construction of the same expression may vary from will to will. For these reasons it has been again and again held that in the matter of construction of a will, authorities or precedents are of no help as each will has to be construed in its own terms and in the setting in which the clauses occur (see Ramachandra Shenoy v. Mrs. Hilda Brite, (1964) 2 SCR 722 at p. 736(AIR 1964 SC 1323 at pp. 1328-29). The risk in not appreciating this wholesome rule is demonstrated by the case before us.

1990 (3) SCC 396

Before:- L.M.Sharma :J , P.B.Sawant :J

M.J.Zakharia Sait
Versus
T.M.Mohammed

"IT is now well settled by several authorities of this court that an. allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected

candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process."

(30) IN W. Hay v. Aswini Kumar Samanta a division bench of the Calcutta High court held that **it is well settled that** in a "libel action" the ordinary defamatory words must be set out in the plaint. Where the words are per se or prima facie defamatory only the words need be set out. Wherever the defamatory sense is not apparent on the face of the words, the defamatory meaning or as it is technically known in law the innuendo must also be set out and stated in clear and specific terms. Where again the offending words would be defamatory only in the particular context in which they were used, uttered or published, it is necessary also to set out except where as in England, the law is or has been made expressly otherwise, the offending context (colloquium) in the plaint, and to state or aver further that this context or the circumstances constituting the same, were known to the persons to whom the words were published, or, at least, that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.

1990 (3) SCC 190

Before:- K.Jayachandra Reddy :J , M.Fathima Beevi :J , S.R.Pandian :J

Vijayeesingh
Versus
State of Uttar Pradesh

It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts. It is also well settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the questions is : What is the nature of burden that lies on the accused under S. 105 a if benefit of the general exception of private defence is claimed and how it can be discharged? In Woolmington v. Director of Public Prosecutions, Viscount Sankey, L.C. observed:

"WHEN evidence of death and malice has been given (this is a question for the jury) the prisoner is entitled to show, by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

It is further observed:

"JUST as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence...

THROUGHOUT the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisonerS guilt subject to what I have already said as to the defence of insanity and subject also to any stationary exception. If, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

In Emperor v. U. Damapala, a full bench of the Rangoon High court following the Woolmington case held that the ratio therein is not in any way inconsistent with the law in British India, and that indeed the principles there laid down form valuable guide to the correct interpretation of S. 105 of the Evidence Act and the full bench laid down that even if the evidence adduced by the accused fails to prove the existence of circumstances bringing the case within the exception or exceptions pleaded, the accused is entitled to be acquitted if upon a consideration of the evidence as a whole the court is left in a state of reasonable doubt as to whether the accused is or is not entitled to the benefit of the exception pleaded.

1990 (2) SCC 562

Before:- K.Ramaswamy :J , P.B.Sawant :J , Ranganath Misra :J

Vijay Kumar Sharma: G.Abal Ali and K.Moideen: K.C.Naik: Hasanabha: K.S.Hegde
Versus
State of Karnataka

IT is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field and, therefore, it is necessary to enquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the legislature which enacted it then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another legislature."
In Atiabari Tea Co. Ltd. v. State of Assam , Gajendragadkar, J. (as he then was) speaking per majority, has explained the purpose of the rule of pith and substance thus :

"THE test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the legislature, and it has to be resolved by reference to the entries to which the impugned legislation is relatable. When there is a conflict between two entries in the legislative lists, and legislation by reference to one entry would be competent but not by reference to the other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question."

1990 (1) SCC 593

Before:- A.M.Ahmadi :J , K.Jagannatha Shetty :J , Sabyasachi Mukharjee :J

Suresh Chand
Versus
Gulam Chisti

"The legislature found that rent control law had a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release, from the shackles of legislative restriction, 'new constructions' for a period of ten years. So much so, a landlord who had let out his new building could recover possession without impediment if he instituted such proceeding within ten years of completion."

this Court held as under (at p. 2034 of AIR):

"**It is well settled that** no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" - an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

1990 (1) SCC 400

Before:- Kuldip Singh :J , S.Ranganathan :J , V.Ramaswami :J

Frick India Limited
Versus
Union of India

It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in

such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplies the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in subitem (3) of Item 29A.

1990 (1) SCC 357

Before:- L.M.Sharma :J , V.Ramaswami :J

Trideshwar Dayal
Versus
Mahbshwardayal

This Court in Janardhan Reddy v. State of Hyderabad, 1951 SCR 344 : (AIR 1951 SC 217), after referring to a number of decisions, observed that **it is well settled that** if a Court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Court to which it would lie if its order was with jurisdiction. We, therefore, agree with the appellants that the Chief Controlling Revenue Authority had full power to interfere with the Collector's order, provided it was found to be erroneous. Their difficulty, however, is that we do not find any defect in the Collector directing to take steps for the realisation of the stamp duty.

1990 (1) SCC 345

Before:- K.N.Singh :J , N.M.Kasliwal :J

Mohd.Zainulabudeen (Since Deceased) By Lrs
Versus
Sayed Ahmed Mohideen

It is well settled that where one co-heir pleads adverse possession against another co-heir then it is not enough to show that one out of

them is in sole possession and enjoyment of the profits of the properties, The possession of one co-heir is considered in law., as possession of all the co-heirs. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. Thus it is a settled rule of law as between co-heirs that must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to construe ouster. Thus in order to make out a case of ouster against Fathima Bee or the plaintiffs, it was necessary for the defendants to plead that they had asserted hostile title coupled with exclusive possession and enjoyment to the knowledge of Fathima Bee. The written statement filed by the defendants in the present case is totally lacking in the above particulars and thus apart from the want of evidence, there is no proper pleading of ouster in the present case. Thus it is clear that neither in the written statement nor in reply to the notice of the plaintiffs any stand was taken that the right of Fatima Bee or plaintiffs was specifically denied on any particular occasion so as to put them on notice that from that date the possession of the defendants would be adverse to the interest or rights of the plaintiffs or Fathima Bee. We are supported in the above view by a decision of this court in P. Lakshmi v. L. Lakshmi Reddy, 1957 SCR 195 (AIR 1957 SC 314).

1989 (Supp.2) SCC 744

Before:- E.S.Venkataramiah :J , K.N.Singh :J , N.M.Kasliwal :J

Raojibhai Jivabhai Patel
Versus
State of Gujarat

It is well settled that a classification to be valid has to satisfy two conditions:

(1 that there is an intelligible differentia between those who are included in the class which is affected by any law or rule and those who are placed outside the said rule; and

(2 that there is a reasonable nexus between the classification and tne object to be achieved by the rule or law in question.

1989 (Supp.2) SCC 706

Before:- M.M.Dutt :J , S.R.Pandian :J , V.Ramaswami :J

Padala Veerareddy
Versus
State of A.P.

19. This Court in Palvinder Kaur v. State of Punjab, 1953 SCR 94: (AIR 1952 SC 354) has pointed out that in cases depending on circumstantial evidence Courts should safeguard themselves against the danger of basing their conclusion on suspicions howsoever strong.

20. In Chandrakant Ganpat Sovitkar v. State of Maharashtra, (1975) 3 SCC 16: (AIR 1984 SC 1290 at p. 1299) it has been observed:

"**It is well settled that** no one can be convicted on the basis of mere suspicion, though strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety."

21. In Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: (AIR 1984 SC 1622), this Court has reiterated the above dictum and pointed out that the suspicion, however, great it may be, cannot take the place of legal proof and that "fouler the crime higher the proof."

1990 (1) SCC 109

Before:- B.C.Ray :J , E.S.Venkataramiah :J , G.L.Oza :J , K.N.Singh :J , Ranganath Misra :J , S.Natarajan :J , Sabyasachi Mukharjee :J

Synthetics and Chemicals Limited
Versus
State of Uttar Pradesh

It is well settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. The three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. **It is well settled that** widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted as the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well settled by various decisions of this court and other courts. Some of these decisions have been referred to in the decision of this court in CivilNo. 62 (N)/70 India Cement Ltd. v. State of Tamil Nadu.

1990 (2) SCC 71

Before:- S.Ranganathan :J , Sabyasachi Mukharjee :J

Goodyear India Limited: Goodyear India Limited: Gedore India Private Limited: State of Haryana: State of Haryana: Kelvinator of India Limited: Food Corporation of India: Food Corporation of India, Karnal: State of Haryana: Wipro Products Limited: Hindusta
Versus
State of Haryana: Gedore Tools Private Limited: Goodyear India Limited: State of Maharashtra

It is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow

from it. See Quinn v. Leathern and State of Orissa v. Sudhansu Sekhar Misra.

1989 (4) SCC 595

Before:- B.C.Ray :J , Sabyasachi Mukharjee :J

K.V.George
Versus
Secretary To Government, Water and Power Department, Trivandrum

18. In Satish Kumar v. Surinder Kumar, AIR 1970 SC 833, it has been observed that (at p. 838) :-

"The true legal position in regard to the effect of an award is not in dispute. **It is well settled that** as a general rule, all claims which are the subject-matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference ..This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to judgment of a court of last resort. Therefore, if the award which has been pronounced between the parties has in fact, or can in law, be deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed."

1989 (4) SCC 603

Before:- A.M.Ahmadi :J , K.Jagannatha Shetty :J

Southern Roadways Limited, Madurai, Represented By Its Secretary
Versus
S.M.Krishnan

As to the nature of agent's-possession in respect of principal's property, this Court in a recent judgment rendered in Smt. Chandrakantaben v. Vadilal Bapalal Modi (1989) 2 SCC 630 said at p. 643 : (AIR 1989 SC 1269 at p. 1277) :

"**It is well settled that** the possession of the agent is the possession of the principal and in view of the fiduciary relationship defendant 1 cannot be permitted to claim his own possession. This aspect was well emphasised in David Lyell v. John Lawson Kennedy (1889) 14 App Cas 437 where the agent who was collecting the rent from the tenants on behalf of the owner and depositing it in a separate earmarked account continued to do so even after the death of the owner. After more than 12 years of the owner's death his heir's assignee brought the action against the agent for possession and the agent defendant pleaded adverse possession and limitation. The plaintiff succeeded in the first Court. But the action was dismissed by the Court of Appeal. The House of Lords reversed the decision of the Court of Appeal and remarked: "For whom, and on whose behalf, were those rents received after Ann Duncan's death? Not by the respondent for himself, or on his own behalf, any more than during her lifetime". Emphasising the fiduciary character of the agent his possession was likened to that of trustee, a solicitor or an agent receiving the rent under a power of attorney. Another English case of Williams v. Pott (1871) LR 12 Eq 149, arising out of the circumstances similar to the present case was more interesting. The agent in that case was the real owner of the estate but he collected the rents for a considerably long period as the agent of his principal who was his mother. After the agent's death his heir claimed the estate. The mother (the principal) had also by then died after purporting by her will to devise the disputed lands to the defendants upon certain trusts. The claim of the plaintiff was dismissed on the plea of adverse possession. Lord Romilly, M. R. in his judgment observed that since the possession of the agent was the possession of the principal, the agent could not have made an entry as long as he was in the position of the agent for his mother, and that he could not get into possession without first resigning his position as her agent which he could have done by saying: "The property is mine; I claim the rents, and I shall apply the rents for my own purposes." The agent had thus lost his title by reason of his own possession as agent of the principal."

1989 (4) SCC 732

Before:- Kuldip Singh :J , M.H.Kania :J

Majati Subbarao
Versus
P.V.K.Krishna Rao

it is well settled that the Court hearing a suit or appeal can take into account events which are subsequent to the filing of the suit in order to give appropriate relief or mould the relief appropriately.

1989 (4) SCC 313

Before:- M.H.Kania :J , T.K.Thommen :J

Abdul Khader Rowther
Versus
P.K.Sara Bai

As observed by this Court in Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.), Civil Appeal No. 37/66, decided on 4-4-1968 (reported in AIR 1968 SC 1355), that **it is well settled that** in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.

1989 (3) SCC 574

Before:- J.S.Verma :J , L.M.Sharma :J

B.V.Dsouza
Versus
Antonio Fausto Fernandes

It is well settled that the main purpose of enacting the Rent statutes is to protect the tenant from the exploitation of the landlord, who being in the dominating position is capable of dictating his terms at the inception of the tenancy; and, the Rent Acts must receive that

interpretation which may advance the object and suppress the mischief. By adopting a different approach the Rent laws are likely to be defeated altogether.

1989 (1) SCC 420

Before:- M.N.Venkatachaliah :J , Ranganath Misra :J

Dineshchandra Jamnadas Gandhi
Versus
State of Gujarat

It is well settled that wherever possible, without unreasonable stretching or straining the language of such a statute, should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its art full circumvention..."

1989 (1) SCC 374

Before:- M.N.Venkatachaliah :J , Ranganath Misra :J

Ayya Alias Ayub
Versus
State of Uttar Pradesh

It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should be used merely to clip the wings of an accused who is involved in a criminal prosecution....."

1988 (4) SCC 419

Before:- A.P.Sen :J , L.M.Sharma :J

Baliram Waman Hiray

Versus

Justice B.Lentin

it is well settled that a Commission of Inquiry has not the attributes of a court inasmuch there is no Us before it and it has no powers of adjudication of rights.

In Tarachand v. State of Rajasthan, AIR 1980 SC 2133 the grievance of the detenu detained under the COFEPOSA Act was that he had sent representations to the detaining authority viz. the State Government and the Central Government on 23-2-1980 but there was a delay of 1 month and 5 days in his representation reaching the State Government and even then the State Government had failed to consider his representation and pass orders. While striking down the detention order the Court observed that "**it is well settled that** in case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority (State Government in that case), to afford the earliest opportunity to make a representation and to consider the representation speedily.

1988 (3) SCC 57

Before:- S.Natarajan :J , Sabyasachi Mukharjee :J

Jagan Nath
Versus
Chander Bhan

It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant, user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the

right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of Cl. (b) of S. 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This court in Smt. Krishnawati v. Hans Raj, (1974) 1 SCC 289 : (AIR 1974 SC 280) had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises allowed the other to carry on business in a part of it. The question was whether it amounted to sub-letting and attracted the provisions of subsection (4) of S. 14 of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of S. 14(1)(b) of the Act.

1988 (3) SCC 570

Before:- M.H.Kania :J , R.S.Pathak :J

Assistant Commissioner of Commercial Taxes (Assistance) Dharwar
Versus
Dharmendra Trading Company

It is well settled that if the Government wants to resile from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the concessions granted the court may permit the Government to do so but before allowing the Government to resile from the promise or go back on the assurance the Court would have to be satisfied that allegations by the Government about misuse being made or undue

advantage being taken of the concessions given by it were reasonably well established.

1988 (2) SCC 587

Before:- G.L.Oza :J , Sabyasachi Mukharjee :J

Anil Kumar Neotia
Versus
Union of India

Deeming provision is intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provisions. **It is well settled that** the word 'includes' is an inclusive definition and expands the meaning. See Corporation of the City of Nagpur v. Its Employees, (1960) 2 SCR 942: (AIR 1960 SC 675) and Vasudev Ranichandra v. Pranlal Jayanand, (1975) 1 SCR 534: (AIR 1974 SC 1728). The words 'all other rights and interests; are words of widest amplitude. Section 4 also uses the words "ownership, possession, power or control of the Company in relation to the said undertakings". The words 'pertaining to' are not restrictive as mentioned hereinbefore."

1988 (2) SCC 360

Before:- S.Ranganathan :J , Sabyasachi Mukharjee :J

International Airport Authority of India
Versus
K.D.Bali

It is well settled that there must be purity in the administration of justice as well as in administration of Quasi justice as are involved in the adjudicatory process before the Arbitrators. But it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the authority, hearing the proceeding is biased. The apprehension must be judged from a healthy, reasonable and average point of view and, not on mere apprehension of any whimsical person.

1988 (2) SCC 77

Before:- B.C.Ray :J , K.Jagannatha Shetty :J

Sunil Kumar
Versus
Ram Parkash

It is well settled that in a Joint Hindu Mitakshara Family, a son acquires by birth an interest equal to that of the father in ancestral property. The father by reason of his paternal relation and his position as the head of the family is its Manager and he is entitled to alienate joint family property so as to bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate or for meeting an antecedent debt. The power of the Manager of a joint Hindu family to alienate a joint Hindu family property is analogous to that of a Manager for an infant heir as observed by the Judicial Committee in Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree (1856) 6 Moo Ind App 393.

SPECIFIC RELIEF ACT, 1963

Section 38(4) and 41 -- Suit for permanent injunction for restraining father from alienating the property by coparcener -- held suit was not maintainable.

A suit for permanent injunction by a coparcener against the father, a Karta for restraining him from alienating the house property belonging to the Joint Hindu Family for legal necessity would not be% maintainable because the coparcener had got the remedy of challenging the sale and getting it satisfied in a suit subsequent to the completion of sale. The rights of the coparcener are not independent of the control of Karta. If

there is no such need or the benefit the purchaser takes the risk and the right had interest or coparcener will remain unimpaired in the alienated property.

1987 (Supp.1) SCC 553

Before:- E.S.Venkataramiah :J , K.N.Singh :J

B.K.Mohapatra
Versus
State of Orissa

It is well settled that the doctrine of an "Act of State" cannot be pleaded by the State as a defence against its own citizen. An act of state is an act done in relation to a foreigner by the sovereign power of a country or its agent either previously authorised or subsequently ratified. Such and act cannot be questioned or made the subject of legal proceedings in any court of law.

1988 (1) SCC 86

Before:- K.Jagannatha Shetty :J , Sabyasachi Mukharjee :J

Delhi Cloth and General Mills Company Limited
Versus
Union of India

It is well settled that the principle of estoppel cannot be applied unless the person pleading estoppel can show that he has been prejudiced by the conduct of the party on whose assurance he has acted."

1987 (4) SCC 382

Before:- G.L.Oza :J , Sabyasachi Mukharjee :J

Nano Kishore Marwah
Versus
Samundri Devi

it is well settled that if the right to file a suit accrues on the date of filing of the suit then the rights will have to be determined on the basis of the law applicable on the date of the suit and, not subsequently.

1987 (4) SCC 410

Before:- G.L.Oza :J , Sabyasachi Mukharjee :J

Richpal Singh
Versus
Dalip

It is well settled that outter of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established the limit of the jurisdiction of Revenue Court under section 77 (3) of Punjab Act is apparent from the fact that the suits by the landlord to eject a tenant do not encompass suits to decide whether a person is a tenant or not or whether the plaintiff is a landlord or not. As the revenue Court could not go into the question involved, the subsequent civil suit was not barred by res-judicata.

1987 (4) SCC 345

Before:- E.S.Venkataramiah :J , K.N.Singh :J

Yashbir Singh
Versus
Union of India

It is well settled that anyone who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulties and it would create insecurity and instability in the service which would affect its efficiency. The

petitioners are therefore not entitled to challenge the validity of the Railway Board's Circular dated July 2, 1970 after 11 years and their challenge is bound to fail on this ground alone.

1987 (0) AIR(SC) 1550

Before:- A.P.Sen :J , B.C.Ray :J

E.S.Reddi

Versus

Chief Secretary, Goverment of A.P.

It is well settled that a court of law cannot compel a statutory authority to exercise its statutory discretion in a particular manner. The legislative will in conferring discretion in an essentially administrative function cannot be interfered with by courts."

1987 (2) SCC 344

Before:- G.L.Oza :J , V.Khalid :J

Kewal Ram
Versus
Ram Lubhai

It is well settled that when a decree of the trial Court is either confirmed, modified or reversed by the appellate decree, except when the decree is passed without notice to the parties, the trial Court decree gets merged in the appellate decree. But when the decree is passed without notice to a party, that decree will not, in law, be a decree to which he is a party. Equally so in the case of an appellate decree.

1986 (4) SCC 537

Before:- R.S.Pathak :J , Sabyasachi Mukharjee :J

Institute of Chartered Accountants of India
Versus
L.K.Ratna

It is well settled that every. member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial

administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably, apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the, tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

1986 (4) SCC 326

Before:- A.P.Sen :J , B.C.Ray :J

A.K.Roy
Versus
State of Punjab

It is well settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence that R. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in S. 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be construed to authorise sub-delegation of powers by the Food. (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person. authorised under S. 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in State of Bombay v. Parshottam Kanaiyalal (1961) 1 SCR 458: (AIR 1961 SC 1) and Corporation of Calcutta V. Md. Omer Ali, (1976) 4 SCC 527 : (AIR 1977 SC 912).

Compilation by P. V. Ganediwala, District Judge.

12. It is well settled that ouster of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established.

it is well settled that minor discrepancies cannot demolish the veracity of the prosecution case.

It is well settled that a liability cannot be created retrospectively.

it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right.

It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be 202 for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in the cases of Kunhay Ammed & Others v. State of Kerala & Another (2000) 6 SCC 359; S. Shanmugavel Nadar v. State of Tamil Nadu & Another JT 2002 (7) SCC 568; State of Manipur v. Thingujam Brojen Meetei AIR 1996 SC 2124; and U.P. State Road Transport Corporation v. Omaditya Verma and others AIR 2005 SC 2250).

10. A judgment which continues to exist can obviously be reviewed, though of course the scope of the review is limited to errors apparent on the face of the record but it cannot be said that the review petition is not maintainable at all.

it is well settled that a writ of quo warranto applies in a case when a person usurps an office and the allegation is that he has no title to it or a legal

authority to hold it. According to the learned counsel for a writ of quo warranto to be issued there must be a clear infringement of the law.

It is well settled that High Court while exercising the power of judicial review from the order of the disciplinary authority do not act as a Court of appeal and appraise evidence. It interferes with the finding of enquiry officer only when the finding is found to be perverse.

. **It is well settled that** to decide on the innocence or otherwise of an accused person in a criminal trial is within the exclusive domain of a Court of competent jurisdiction as this is essentially a judicial function. A Governor's power of granting pardon under Article 161 being an exercise of executive function, is independent of the Court's power to pronounce on the innocence or guilt of the accused. The powers of a Court of law in a criminal trial and subsequent appeal right upto this Court and that of the President/Governor under Article 72/161 operate in totally different arenas and the nature of these two powers are also totally different from each other. One should not trench upon the other. The instant order of the Governor, by pronouncing upon the innocence of the accused, has therefore, if we may say so with respect, exceeded the permissible constitutional limits under Article 161 of the Constitution.

It is well settled that a High Court in Writ Petition cannot interfere with the finding of fact, regarding bonafide need.

It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

It is well settled that admission to a course can be given only to those candidates who are eligible as per the regulations of the Examining Body and the State Government. Therefore, unless the students fulfilled the eligibility requirements stipulated by the Board which is the affiliating and examining authority, their admissions will be invalid and they cannot be permitted to take the examination.

It is well settled that a company cannot maintain a petition under Article 32 of the Constitution for enforcement of Fundamental Rights guaranteed under Article 19 of the Constitution. “A company, being not a citizen, has no Fundamental Rights under Article 19 of the Constitution.

it is well settled that the principles of natural justice mandate that the authority who hears, must also decide.

It is well settled that when the statutes create an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires 'mens rea' as a necessary constituent of such an offence.

It is well settled that if a person has submitted to the jurisdiction of the Authority, he cannot challenge the proceedings, on the ground of lack of jurisdiction of said authority in further appellate proceedings.

It is well settled that deduction for development cost has to be made only where the value of a small residential/commercial/industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land.

It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value."

It is well settled that the construction of provision by the Court before such provision is amended or substituted is an exercise of interpretation of the law as existed and does not and should not be treated as covering the situation after express enactment amending the provisions of Law so construed earlier."

So far as election law is concerned by now **it is well settled that** it would be unsafe to accept the oral evidence on its face value without seeking for assurance from other circumstances or unimpeachable document. It is very difficult to prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to get the help of interested witnesses. In Abdul Hussain Mir vs. Shamsul Huda and another (1975) 4 SCC 533, the Three Judge Bench of this Court held that oral evidence, ordinarily is inadequate especially if it is of indifferent quality or easily procurable. According to this Court, the oral evidence has to be analyzed by applying common sense test.

It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the yeaRs. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

it is well settled that in a suitable case the Court could lift the corporate veil where the companies share the relationship of a holding company and a subsidiary company and also pay regard to the economic realities behind the legal facade.

Till the final decree as stated above is passed in a partition suit, **it is well settled that** the suit is said to be pending, till the final decree is signed by the Judge after engrossing the same on the stamps.

. **It is well settled that** the High Court or the Central Administrative Tribunal will not interfere with the findings of fact recorded at the domestic enquiry, however, if the case is a case of no evidence or the finding is highly perverse or improbable then it is the duty of the High Court and the Central Administrative Tribunal to go into the merits of the case……"

It is a question of challenging the public policy and **it is well settled that** public authorities must be given a very long rope, full freedom and full liberty in framing policies, though the discretion of the authorities cannot be absolute and unqualified, unfettered or uncanalised. The same can be the subject matter of judicial scrutiny only in exceptional circumstances where it can be shown to be arbitrary, unreasonable or violative of the statutory provisions.

It is well settled that in civil revision the jurisdiction of the High Court is limited, and it can only go into the questions of jurisdiction, but there is no error of jurisdiction in the present case.

It is well settled that the intention of the parties should be ascertained on a construction of a document; and where there is any patent ambiguity in any recital, aid may be taken from evidence of surrounding circumstances and the conduct of the parties.

It is well settled that the Court cannot ordinarily interfere with policy decisions.

It is well settled that market value has to be determined with reference to comparable lands and with reference to comparable sales, if available.

It is well settled that the High Court in second appeal cannot interfere with the findings of fact of the first appellate court.

It is well settled that a person in the possession of clinching evidence on an issue in dispute cannot hope to succeed by withholding that evidence.

It is well settled that the court must put itself as far as possible in the position of a person making a will in order to collect the testator's intention from his expressions; because upon that consideration must very much depend the effect to be given to the testator's intention, when ascertained. The will must be read and construed as a whole to gather the intention of the testator and the endeavor of the court must be to give effect to each and every disposition. In ordinary circumstances, ordinary words must bear their ordinary construction and every disposition of the testator contained in will should be given effect to as far as possible consistent with the testator's desire.

It is well settled that by an interim order the final relief should not be granted, vide U.P. Junior Doctors Action Committee v. Dr. B. Sheetal Nandwani, AIR 1992 SC 671 (para 8), State of U.P. v. Ram Sukhi Devi, JT 2004(8) SC 264 (para6), etc.

It is well settled that the words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. If the language used has a natural meaning, normally the Court cannot depart from that meaning, unless reading the statute as a whole, the context directs the Court not to do so. In the construction of the statutes their words are normally interpreted in their ordinary grammatical sense. Of course, the context in which they occur and the object of the statute has to be kept in mind while adopting ordinary grammatical sense of the word. It is often said that the golden rule is that the words of a statute must prima facie be given their ordinary meaning. Parliament should prima facie be credited with meaning what is said in an Act of Parliament or Constitution. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless the

Courts seek, whenever possible, to apply the golden rule of construction, that is to read the statutory language grammatically and terminologically in the ordinary and primary sense, which it bears in its context without omission or addition. Of course, Parliament should also be credited with good sense that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage.
2011 AIR(SCW) 404

It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of Sunder and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not.

It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant.

It is well settled that the date relevant for determining the age of the accused, who claims to be a juvenile/child would be the date on which the offence had been committed and not the date on which he is produced before the competent authority or in the court. (See: Pratap Singh v. State of Jharkhand & Anr., 2005 (3) SCC 551 and Ravinder Singh Gorkhi v. State of U.P., 2006 (5) SCC 584.

The order dated 25.3.1991 appointing an Arbitrator was also not a nullity, even though it may be erroneous. **It is well settled that** a decree will be a nullity only if it is passed by a court usurping a jurisdiction it did not have. But a mere wrong exercise of jurisdiction or an erroneous decision by a court having jurisdiction, will not result in a nullity. An order by a competent court, even if erroneous, is binding, unless it is challenged and set aside by a higher forum. Be that as it may.

It is well settled that a person invoking an equitable extraordinary jurisdiction of the Court under Article 226 of the Constitution is required to come with clean hands and should not conceal the material facts.

It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: State of U.P. through CBI v. Amarmani Tripathi, 2005 (8) SCC 21; Prahlad Singh Bhati v. NCT, Delhi & Anr. 2001 (4) SCC 280; Ram Govind Upadhyay v. Sudarshan Singh & Ors., 2002 (3) SCC 598.

. **It is well settled that** in an appeal by special leave under Article 136 of the Constitution, against an order of acquittal passed by the High Court, this court would not normally interfere with a finding of the fact based on appreciation of evidence, unless the approach of the High Court is clearly erroneous, perverse or improper and there has been a grave miscarriage of justice.
It is well settled that the modern method of interpretation is purposive vide Directorate of Enforcement v. Deepak Mahajan & Anr., (1994) 3 SCC 440, Hindustan Lever Ltd. v. Ashok Vishnu Kate & Ors., (1995) 6 JT 625 (vide page 631) and Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985) 4 SCC 71.

In our opinion, though the judgment of the learned Single Judge is a final judgment, it is in another sense an interlocutory order as **it is well settled that** an appeal is a continuation of the original proceedings. Since the original order of the learned Additional District Judge was an interlocutory order, hence the appeal against that order and the judgment of learned Single Judge in that sense was also interlocutory.

27. It is well settled that this Court does not ordinarily interfere under Article 136 of the Constitution with interlocutory orders.

It is well settled that general terms following particular expressions take their colour and meaning as that of the preceding expressions, applying the principle of ejusdem generis rule, therefore, in construing the words “or any other process”, the import of the specific expressions will have to be kept in mind.

It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo (1960) 3

SCR 604. It is clear, however, that an attempt should always be made to read the two parts of the documents harmoniously, if possible. It is only when this is not possible, e.g., where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

In fact **it is well settled that** in proceedings under Section 202, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not". It has been further held (Para 5) as follows:-

".....Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:
(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
(4) where the complaint suffers from fundamental legal defects, sguch as, want of sanction, or absence of a complaint by legally competent authority and the like."
The aforesaid examples are of course purely illustrative and provide sufficient guidelines to indicate the contingencies where the High Court can quash proceedings.

It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues ....."

It is well settled that though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the Court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. (See: R.P. Kapur v. State of Punjab, AIR 1960 SC 866 and Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr., (1995) 6 SCC 194.)

"**It is well settled that** in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations 8 depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes."

it is well settled that the sale deeds pertaining to the portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands."

"36. Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. ....."

In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, this Court observed that **it is well settled that** the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete.

It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently. (Also see: Hira Lal Hari Lal Bhagwati v. CBI, New Delhi, 2003 (5) SCC 257).

It is well settled that special law will prevail over the general law, vide G.P. Singh's 'Principles of Statutory Interpretation', Ninth Edition, 2004 pp. 133, 134.

it is well settled that if the accused is charged for a higher offence and on the evidence led by the prosecution, the court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence.

it is well settled that there is no requirement in law of producing any clinching evidence on any formal ceremony of conversion to Hinduism.

it is well settled that the public servant who is entitled to the protection of Article 311, must get two opportunities to defend himself. First, to defend the charge against him and prove his innocence, which opportunity is to be given by giving him the report against him, and then a second notice when the government decides provisionally about the proposed punishment, as to why the same should not be imposed.

It is well settled that suggestion made but assertively denied does not constitute evidence.

Uma Shankar Gopalika v. State of Bihar & Another (2005) 10 SCC 336, in which this Court observed that **it is well settled that** every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

In Pandurang, Tukia and Bhillia v. The State of Hyderabad (1955) 1 SCR 1083, this Court laid down that **it is well settled that** common intention in section 34 of the Indian Penal Code presupposes prior concert, because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all.

28. In Mohan Singh & Anr. v. State of Punjab AIR 1963 SC 174, this Court observed that it is now well settled that the common intention required by Section 34 is different from the same intention or similar intention. The persons having similar intention which is not the result of pre- concerted plan cannot be held guilty for the “criminal act” with the aid of Section 34.

In Munnu Raja and Another v. The State of Madhya Pradesh, (1976) 3 SCC 104, this Court held:-

"....**It is well settled that** though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross- examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated...."

It is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the landlord is kept out of scene rather, such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements take place behind the back of the landlord.

it is well settled that the prosecution is not supposed to prove motive when prosecution relies on direct evidence, i.e., evidence of eye- witnesses.

This Court in Shankaria v. State of Rajasthan stated the law thus: (SCC p. 443, para 23)

"23. This confession was retracted by the appellant when he was examined at the trial under Section 311 CrPC on 14-6-1975. **It is well settled that** a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 CrPC, the Court must apply a double test:

(1) Whether the confession was perfectly voluntary?

(2) If so, whether it is true and trustworthy?

Satisfaction of the first test is a sine qua non for its admissibility in evidence.

This Court in Kavita v. State of T.N. reported in (1998) 6 SCC 108, at page 108 held as follows:-

"4. There is no doubt that convictions can be based on extra-judicial confession but **it is well settled that** in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the court to decide on the acceptability of the evidence having regard to the credibility of the witnesses."

In Devarapalli Lakshminarayana Reddy (supra), a bench of three Hon`ble Judges have explained the power of the Magistrate under Section 156 (3) and Sections 200 and 202. The following discussion and ultimate conclusion are relevant which reads as under:-

"13. **It is well settled that** when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself."

"**It is well settled that** a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."

explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under :-

"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self- respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual

molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

** ** ** **

The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

. In Malkhan Singh v. State of M.P. AIR 2003 SC 2669, this Court has observed as under:

"**It is well settled that** the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine."

It is settled law that Section 20 of the Specific Relief Act, 1963 confers discretionary powers.vide: M. Meenakshi & Ors. v. Metadin Agarwal (2006) 7 SCC 470, Nirmala Anand v. Advent Corporation (P) Ltd. & Ors. (2002) 5 SCC 481, Parakunnan Veetill Joseph's Son Mathrew v. Nedumbara Karuvila's Son & Ors. (1987) Supp. SCC 340]. It is also well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time.

This is a case of circumstantial evidence, but **it is settled law that** a person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt

vide Vijay Kumar Arora v. State (NCT of Delhi), (2010) 2 SCC 353 (para 16.5), Aftab Ahmad Ansari v. State of Uttaranchal, (2010) 2 SCC 583 (vide paragraphs 13 and 14), etc. In this case, we are satisfied that the prosecution has been able to prove its case beyond reasonable doubt by establishing all the links in the chain of circumstances.

6. In cases of circumstantial evidence motive is very important, unlike cases of direct evidence where it is not so important vide Wakkar and Anr. v. State of Uttar Pradesh (2011) 3 SCC 306 (para 14). In the present case, the prosecution case was that the motive of the appellant in murdering his daughter was that she was living in adultery with one Sriniwas, who was the son of the maternal aunt of the appellant. The appellant felt humiliated by this, and to avenge the family honour he murdered his own daughter.

Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762, dealt with the issue and observed as under:

14. The general rule of criminal justice is that a crime never dies. The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders)..... **It is settled law that** a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."

It is settled law that the objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the statute. It is incumbent on the court to strive and interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind while applying the provisions of the Act to the facts of the case. It is a cardinal principle of construction of statute or the statutory rule that efforts should be made in construing the different provisions, so that each provision may have effective meaning and implementation and in the event of any conflict a harmonious construction should be given. It is also settled law that literal meaning of the statute must be adhered to when there is no absurdity in ascertaining the legislative intendment and for that purpose the broad features of the Act can be looked into. The main function of the Court is to merely interpret the section and in doing so it cannot re-write or re-design the section. Keeping all these principles in mind, let us consider the relevant provisions.

it is settled law that the fact finding task undertaken by the High Court, which is evident from the impugned judgment, is not warranted in a writ petition filed under Article 226 of the Constitution of India.

It is settled law that this Court grants a decree of divorce only in those situations in which the Court is convinced beyond any doubt that there is absolutely no chance of the marriage surviving and it is broken beyond repair. Even if the chances are infinitesimal for the marriage to survive, it is not for this Court to use its power under Article 142 to dissolve the marriage as having broken down irretrievably. We may make it clear that we have not finally expressed any opinion on this issue.

It is well settled that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either Government, Governmental agencies or a State or instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226, High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.

Shalini Sham Shetty

It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. The law on this aspect is well settled."

It is well settled that the burden of establishing the plea of self defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record. In Vidhya Singh v. State of Madhya Pradesh, 1971 (3) SCC 244, this Court had observed that right of self defence should not be construed narrowly because it is a very valuable right and has a social purpose.

Sikandar singh

It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence.

It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with a degree of

proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged.
Jeffrey

It is well settled that courts perform all judicial functions of the State except those that are excluded by law from their jurisdiction. Section 9 of Code of Civil Procedure, for example, provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
UIO/R. Gandhi

It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service (See: Nyadar Singh v. Union of India, AIR 1988 SC 1979). Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post. We are therefore of the view that the punishment inflicted on the delinquent employee not being one of the punishments enumerated in Regulation 36, is not permissible in law.
South Bengal

It is well settled that a Statute can be invalidated or held unconstitutional on limited grounds viz., on the ground of the incompetence of the Legislature which enacts it and on the ground that it breaches or violates any of the fundamental rights or other Constitutional Rights and on no other grounds. (See State of A.P. v. McDowell and Co., [(1996) 3 SCC 709], Kuldip Nayar v. Union of India and Ors., [(2006) 7 SCC 1].
Goa Glass

It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial Court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law. Thus, we are of the view that on this ground alone, the impugned order is fit to be set aside and the matter remitted to the High Court."
Amarjit singh

it is well settled that no provision or word in a statute is to be read in isolation. In fact, the statute has to be read as a whole and in its entirety. In Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd., [(1987) 1 SCC 424], this Court while elaborating the said principle held as under:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

Zameer Ahmed

This was strongly refuted by the counsel appearing for the respondents stating that **it is well settled that** under Order 23 Rule 3 of the Code of Civil Procedure, 1908, a compromise may be signed by the counsel or the Power of Attorney holder. Counsel for the respondents referred to and relied upon the judgment of this Court in Byram Pestonji Gariwala v. Union Bank of India & Ors., (1992) 1 SCC 31 where it was held thus:

"39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non- resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated."

Shanti Budhiya

It is well settled that while giving reports after Ballistic examination, the bullets, cartridge case and the cartridges recovered and weapon of offence recovered are carefully examined and test firing is done at the FSL by the said weapon of offence and then only a specific opinion is given.

Manu Sharma

It is well settled that an order of Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the

judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should be read in isolation and out of context.
Goan Real Estate

It is equally well settled that Article 32 of the Constitution guarantees the right to a Constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. **It is well settled that** no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. In Northern Corporation v. Union of India, (1990) 4 SCC 239, this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involves breach of fundamental right, for the enforcement of which alone, Article 32 is attracted.
Ramdas Athawale

Mr. Jethmalani placed reliance on Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Others 1991 (Supp) 1 SCC 600 wherein vide paras 166, 167 and 168, this Court observed thus:

"166. **It is well settled that** even if there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.
Md. Shahabuddin

It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

48. It is a well-established law that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and the validity of such impugned order must be judged on a consideration of its substance and not its form. The principle is that we must ascribe the act of a public servant to an actual existing authority under which it would have validity rather than to one under which it would be

void. In such cases, this Court will always rely upon Section 114 Ill. (e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. [Reference in this regard may be made to the decisions of this Court in P. Balakotaiah v. Union of India, AIR 1958 SC 232; Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, (1966) 1 SCR 120; Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India, (1992) 2 SCC 343; B.S.E. Brokers' Forum, Bombay v. Securities and Exchange Board of India, (2001) 3 SCC 482]
Md. Shahabuddin

It is well settled that Article 136 of the Constitution does not confer a right to appeal on any party; it confers a discretionary power on the Supreme Court to interfere in suitable cases. Article 136 cannot be read as conferring a right on anyone to prefer an appeal to this Court; it only confers a right on a party to file an application seeking leave to appeal and a discretion on the Court to grant or not to grant such leave in its wisdom. When no law confers a statutory right to appeal on a party, Article 136 cannot be called in aid to spell out such a right. The Supreme Court would not under Article 136 constitute itself into a tribunal or court just settling disputes and reduce itself to a mere court of error. The power under Article 136 is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles."
Mathai

It is well settled that if exception has been added to remedy the mischief or defect, it should be so construed that remedies the mischief and not in a manner which frustrates the very purpose. Purposive construction has often been employed to avoid a lacuna and to suppress the mischief and advance the remedy. It is again a settled rule that if the language used is capable of bearing more than one construction and if construction is employed that results in absurdity or anomaly, such construction has to be rejected and preference should be given to such a construction that brings it into harmony with its purpose and avoids absurdity or anomaly as it may always be presumed that while employing a particular language in the provision absurdity or anomaly was never intended.
M. Nizamuddin

It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator. (emphasis supplied)
Jagjit Singh/Pamela

It is well settled that when soon after the occurrence the FIR is lodged at the police station, false story being cooked up and/or false implication of accused stands ruled out.
Kirpal Singh/UP

It is well settled that in a case where the Trial Court has recorded acquittal, the Appellate Court should be slow in interfering with the judgment of acquittal.
Abdul Mannan/Assam

It is well settled that a right to sue for unliquidated damages for breach of contract or for tort, not being a right connected with the ownership of any property, nor being a right to sue for a debt or actionable claim, is a mere right to sue and is incapable of being transferred.
Economic Transport

It is well settled that an increase in market value by about 10% to 12% per year can be provided, in regard to lands situated near urban areas having potential for non-agricultural development. (See: Sardar Jogendra Singh v. State of UP, 2008 (17) SCC 133). Haridwar Devlopm
In Munshi Ram & Others v. Delhi Administration (1968) 2 SCR 455, this court observed that "**it is well settled that** even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of materials available on record.
Darshan Singh/Punjab

In DCM Ltd. v. Union of India (1996) 5 SCC 468, this Court reiterated that "**It is well settled that** the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also find a cause of action. This doctrine is applicable against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well established that the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise

or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."
DCM Ltd./UOI

It is well settled that where the right to sue is personal to the deceased, the same does not survive for the benefit of his legal representatives.
Dwarika Prasad/Nirmala

It is well settled that in a suit for partition of the joint properties every defendant is also in the capacity of the plaintiff and would be entitled to decree in his favour, if it is established that he has the share in the properties. Therefore, the suit for partition of the joint properties, filed by the late father of respondent No. 1, could not have been dismissed as withdrawn without notice to another brother, who was also entitled to share in the properties.
Dwarika Prasad/Nirmala

It is well settled that in the event, the Will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the tenants/respondents from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Code of Civil Procedure is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings.
Sureshkumar Bansal/Krishna

It is well settled that the arbitrator is the master of facts. When the arbitrator on the basis of record and materials which are placed before him by the railways came to such specific findings and which have not been stigmatized as perverse by the High Court, the High Court in reaching its conclusions cannot ignore those findings.
Madnani Construction/UOI

In Bishan Singh & Others v. The State of Punjab (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

"22. **It is well settled that** the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."
UP/Ram Sajivan

it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated.

It is well settled that the first information report need not contain every minute detail about the occurrence. It is not a substantive piece of evidence. It is not necessary that the name of every individual present at the scene of occurrence is required to be stated in the first information report.
Moti Lal/UP

It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the 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.
Kashi Math Sansthan/Shrimad Sudhindra
It is well settled that no direct evidence of knowledge on the part of an accused that he knew that the deceased was to come at a particular place can be led in a criminal trial. It is only from the proved circumstances of a particular case that the Court would attribute such a know ledge to an accused.

Ram Bharosey/UP

It is well settled that admission previously made can be allowed to be explained in order to show that it was erroneous. The maker of the admission can very well show that the facts admitted are not correct.
Geo Group Communications

. In B.S. Bajwa v. State of Punjab & Ors., AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:-

"**It is well settled that** in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This along was sufficient to decline interference under Article 226 and to reject the writ petition". (Emphasis added)
Shiba Shankar

it is well settled that neither power under Section 482 of the Code of Criminal Procedure, 1973 nor jurisdiction under Article 226 of the Constitution can be exercised by the High Court to quash the complaint if prima facie commission of offences is made out.
Bharat Amratlal

It is well settled that the burden of proving sub- letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of sub-letting."
Celina

It is well settled that in a suit for specific performance of a contract for sale, it has to be proved that the plaintiff who is seeking for a decree for specific performance of the contract for sale must always be ready and willing to complete the terms of the agreement for sale and that he has not abandoned the contract and his intention is to keep the contract subsisting till it is executed.

It is well settled that the expression 'cause of action' means that bundle of facts which gives rise to a right or liability.

In Haridas Aildas Thadani & Others v. Godraj Rustom Kermani, (1984) 1 SCC 668 this Court said that "**It is well settled that** the court should be extremely liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side. It is also clear that a revisional

court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.

It is well settled that a statutory provision cannot control a constitutional provision. An appeal is a creature of the statute and the conditions mentioned in Section 13(6) of the Act will apply to the statutory appeal and not to the constitutional remedy. That is because a constitutional provision is on a higher pedestal as compared to a statutory provision. A statute cannot control the constitutional provisions
Ram Babu Agarwal

It is no doubt true that Rules under Article 309 can be made so as to operate with retrospective effect. But **it is well settled that** rights and benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect. [See : N.C. Singhal v. Director General, Armed Forces Medical Services - 1972 (4) SCC 765; K.C. Arora v. State of Haryana - 1984 (3) SCC 281; and T.R. Kapoor v. State of Haryana - 1986 Supp. SCC 584]. Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay, having accrued to the respondents under the unamended Rules, it follows that respondents-employees will be entitled to Non-Practising Allowance @ 25% of their pay upto 20.5.2003.

It is well settled that if a literal interpretation leads to absurd consequences, it should be avoided, and a purposive interpretation be given.
Rishabh Chand Bhandari

It is well settled that the intention of the parties to an instrument must be gathered from the terms thereof in the light of surrounding circumstances. In Union of India v. Millenium Mumbai Broadcast (P) Ltd., 2006 (10) SCC 510, this Court said that a document must be construed having regard to the terms and conditions as well as nature thereof.
Commercial Auto Sales

It is well settled that it is not in every case that deduction towards development charges has to be made when a big chunk of land is acquired for housing colonies etc. Where the acquired land falls in the midst of an already developed land with amenities of roads, electricity etc. deduction on this account may not be warranted. At the same time, where all civic and other amenities are to be provided to make it

suitable for building purposes or under the local building regulations setting apart of some portion of the lands for providing common facilities is mandatory, an appropriate deduction may be justified.
Charan Das

In Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd - (2003) 2 SCC 111 (vide paragraph 59), this Court observed:

"**It is well settled that** a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

17. As held in Bharat Petroleum Corporation Ltd. & another v. N.R. Vairamani & another, (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed:-

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated." (emphasis supplied)
Bihar School examination

As a legal proposition, **it is well settled that** a question of title may arise even in a suit for injunction relating to possession. In this connection reference may be made to the decisions of this Court in the following cases:

1. Sajjadanashin Sayed Md. B.E. Edr(D) by Lrs. v. Musa Dadabhai Ummer and Ors. - (2000) 3 SCC 350.

2. Annaimuthu Thevar (dead) by Lrs. v. Alagammal and others - (2005) 6 SCC 202.

3. Swamy Atmananda and others v. Sri Ramakrishna Tapovanam and others - (2005) 10 SCC 51.

4. Williams v. Lourdusamy and another -(2008) 5 SCC 647
Gangai Venayagar Temple/Meenakashi

It has been held by this Court in Vithal Yeshwant Jathar v. Shikandarkhan Makhtumkhan Sardesai - 1963 (2) SCR 285 at page 290:

"...**It is well settled that** if the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point - each of which by itself would be sufficient for the ultimate decision - the decision on each of these points operates as res judicate between the parties".

With regard to the concurrent finding of acquittal recorded by the trial Court as well as the High Court for the offence under Section 302 IPC is concerned, **it is well settled that** while hearing an appeal under Article 136 of the Constitution, this Court will normally not enter into reappraisal or review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. The Court may interfere where on proved facts wrong inference of law is shown to have been drawn.

The expression "reasonably suitable accommodation" is the pivot of the provision permitting the court going into the question whether the premises involved were reasonably suitable for the purpose. It is on that count that Dr Saroj Kumar Das case was decided by making the following observation:

"So far as the law on the question is concerned **it is well settled that** the alternative accommodation must be reasonably suitable and if it is not so then mere availability of alternative accommodation will not be a ground to refuse a decree for eviction if otherwise the courts are satisfied about the genuine requirement of the landlord and to this counsel for both the parties also agreed but the main contention was that on the facts appearing in evidence in this case whether the inference could be drawn that the flat on the thirteenth floor in South Calcutta was reasonably suitable to satisfy the need of the appellant-landlord."

Gulab chand Pukhraj

In State of U.P. v. Gambhir Singh, (2005) 11 SCC 271, at page 272, this court observed as under:

"We do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. **It is well settled that** if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred".

The High Court while following Sarbati Devi case (supra) held that **it is well settled that** mere nomination made in favour of a particular person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates the hand which is authorized to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession, governing them.
Shipra Sengupta

It is well settled that when a Statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. [See Principles of Statutory Interpretation by Justice G.P. Singh 11th Edition, 2008 pages 390 to 392].
Vijay Narayan Thatte

It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

It is well settled that industrial tribunal or a labour court may interfere with a quantum of punishment awarded by the employer in exercise of its power under Section 11A of the U.P. Industrial Disputes Act but, ordinarily, the discretion exercised by the employer should not be interfered with.
U. P. State Road Corporation

it is well settled that the permissible occupation cannot be regarded as adverse possessory right.
Biswanath Agarwalla

In our view, the High Court as well as the Family Court was not justified in rejecting the application for medical examination of the wife-respondent. It is difficult to conceive that the Family Court cannot be conferred with jurisdiction to pass an order for medical

examination in an appropriate case because when such report is received, that would facilitate the court in giving a positive conclusion on the mental condition of the wife-respondent. It is true that the Hindu Marriage Act or any other law governing the field does not contain any express provision empowering the court to issue direction upon a party in a matrimonial proceeding to compel him to submit herself/himself to a medical examination. But, in our view, it does not preclude the court from passing such an order. The court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not either for the purpose of taking evidence on the ground for which the matrimonial proceeding was started. **It is well settled that** the primary duty of the court is to see that the truth comes out. Therefore, although the medical examination for a party is not provided in the Act, even then, the court has complete inherent power in an appropriate case under Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit. In Sharda vs. Dharmpal [(2003) 4 SCC 493], a three-Judge Bench decision of this Court has taken into consideration the power of the court to allow such application for medical examination of a party in a matrimonial proceeding and observed as under:-

"In certain cases medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may being the parties to terms."

Lalit Kishore/Lalit Sharma

It is well settled that in an appeal against acquittal the Appellate Court does not reverse the finding of acquittal if the Court while granting acquittal has taken a reasonable or a possible view on the evidence and materials on record. Law is equally well settled that if the view taken by the Court granting acquittal is perverse or shocks the conscience of the higher Court, the finding of acquittal can be reversed. In the instant case, the High Court as the First Appellate Court has a duty to consider in detail the material on record and also should appreciate the evidence very carefully before affirming the order of acquittal given by the trial Court.

Champaben Govindbhai

It is well settled that Statutory Rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made

under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or Circulars or Instructions, Statutory Rules cannot be altered or amended by such Executive Orders or Circulars or Instructions nor can they replace the Statutory Rules. The Rules made under Article 309 of the Constitution cannot be tinkered by the administrative Instructions or Circulars.
Ajay kumar Das/Orissa

It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.

15. In Government of West Bengal v. Tarun Kumar Roy, 2004 (1) SCC 347, a three-Judge Bench of this Court held as under:

"14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently."
MP/Ramesh Chandra Bajpai
In Kanan & Ors. v. State of Kerala [AIR 1979 SC 1127], this Court held :

"**It is well settled that** where a witness Identifies an accused who is not known to him in the Court for the first time, his evidence Is absolutely valueless unless there has been a previous T. I. parade to test his powers of observations. The Idea of holding T. I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on

the question of his capability to identify an unknown person whom the witness may have seen only once. If no T. I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court."
Ramesh/Karantaka

It is well settled that whenever a Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 IPC is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder punishable under Part I or Part II of Section 304 IPC, depending, respectively, on whether second or third clause of Section 299 IPC is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300 IPC, the offence would still be culpable homicide not amounting to murder punishable under the First Part Section 304 IPC. The above are only broad guidelines and not cast-iron imperatives.
Raj Kumar/Maharashtra

(16) In the case of ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711, this Court held that:

"**It is well settled that** the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question

whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition." (Para 6)
Rajiv Modi/Sanjay Jain

It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer.
UOI/Devendra Kumar

It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.
Sarla Goel/Kishan Chand

It is well settled that provisions of statutory rules cannot be overridden or violated by administrative instruction and that administrative instruction which is inconsistent with and violative of the Rules, is illegal and void.
Radha mohan Malakar

it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost.
Olympic Industries

in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:

"Now, **it is well settled that** the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener whose share he had purchased."

Ramdas/sitabai

The first Appellate Court relied upon the decision in P. Lakshmi Reddy v. L Lakshmi Reddy AIR 1957 SC 314 at para 4, wherein this Court referred to the decision in Corea v. Appuhamy 1912 AC 230 (C). In the said case the principle of law has been clearly enunciated. The relevant portion of the said judgment reads as under:

"**It is well settled that** in order to establish adverse possession of one co-heir as against another it is not enough to show that one of them is in sole possession or enjoyment of the profits of the properties. Ouster of the non-possessing co- heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heirs title. It is a well settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

8. This principle has been consistently applied by the Indian courts.

Bonder/Hem singh

We then pass on to another important point which seems to have been completely missed by the High Court. **It is well settled that** where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh [(1973) 2 SCC 808], this Court made the following observations:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."
Subramaniyam/TN

It is well settled that essential legislative function cannot be delegated.
Global Energy

It is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. (See Sarkar on Evidence, 15th Edn., p. 845.) A decision given under Section 145 of the Code has relevance and is admissible in evidence to show: (i) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date; and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is not bound by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court."
M.P. Peter/Kerala

It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., 1999 (5) SCC 740 this Court observed. "There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard."
Narendra goel/Maharashtra

It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation ipso facto may not be a ground to create a doubt regarding the veracity of the prosecution's case. So far as the delay in recording a statement of the witnesses is concerned no question was put to the investigating officer specifically as to why there was delay in recording the statement. Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect.
Abuthagir

It is well settled that a decision which is per incuriam is not `law' declared in terms of Article 141 to have a binding effect. (See Prabhakar Rao v. State of A.P. (1985 Supp 2 SCR537), State of Maharashtra v. Digambar (1995 (4) SCC 683), Union of India v. K.N. Sivadas (1997 (7) SCC 30), State of U.P. v. Synthetics and Chemicals Ltd. (1991 (4) SCC 139) and Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990 (3) SCC 682). State of Rajasthan/Jagdish Narain

It is well settled that the exercise or non-exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review. Limited judicial review is available in certain cases. This Court has succinctly discussed the issue in the case of Epuru Sudhakar & Anr. v. Government of Andhra Pradesh & Others, (2006) 8 SCC 161 that the consideration of religion, cast or political loyalty of

a convicted person for the purpose of commutation of his sentence are held to be prohibited grounds. It observed as follows in relevant paras:

"34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness.
Mohammed Ishaq

It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court.
Harminder Kaur

Purushottam Kumar Jha v. State of Jharkhand and Others [(2006) 9 SCC 458] wherein Thakker, J. speaking for the Bench, stated the law, thus:

"23. **It is well settled that** whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the

last refuge of a losing litigant". (Vide Gulam Mustafa v. State of Maharashtra; Ajit Kumar Nag v. GM (PJ), Indian Oil Corpn. Ltd.)"
Swaran Singh chand

It is well settled that there exists a distinction between common intention and common object.
HP/Nazar Singh

Similarly, in Musa Khan and Others v. State of Maharashtra [(1977) 1 SCC 733], it was opined:

"...**It is well settled that** a mere innocent presence in an assembly of persons, as for example a bystander, does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages..."
Akbar Sheikh

It is well settled that a suit for partition stands disposed of only with the passing of the final decree. It is equally settled that in a partition suit, the court has the jurisdiction to amend the shares suitably, even if the preliminary decree has been passed, if some member of the family to whom an allotment was made in the preliminary decree dies thereafter. The share of the deceased would devolve upon other parties to a suit or even a third party, depending upon the nature of the succession or transfer, as the case may be. The validity of such succession, whether testate or intestate, or transfer, can certainly be considered at the stage of final decree proceedings. An inference to this effect can suitably be drawn from the decision of this Court in the

case of Phoolchand v Gopal Lal (AIR 1967 SC 1470). In that decision, it was observed as follows:

“There is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if the circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented... it would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specifications of shares in the preliminary decree varied before a final decree is prepared. If this is done there is a clear determination of the rights of the parties to the suit on the question in dispute and we see no difficulty on holding that in such cases there is a decree deciding these disputed rights, if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court.”
Maddineni

The Court therein was dealing with an offence. The said word used having regard to the contentions raised therein that Section 498A of the Indian Penal Code was possible to be misused. It was in the aforementioned context, the Court observed:

“12. **It is well settled that** mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done “not with an evil eye and unequal hand”. (See A. Thangal Kunju Musaliar v. M. Venkatichalam Potti.)
Radhey Shyam Garg

It is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an offence is committed, a first information report can be lodged under Section 154 of the Code of Criminal Procedure (for short, 'the Code'). A complaint petition may also be filed in terms of Section 200 thereof. However, in the event for some reasons or the other, the first information report is not recorded in terms of sub-section (1) of Section 156 of the Code, the magistrate is empowered under sub-section (3) of Section 156 thereof to order an investigation into the allegations contained in the

complaint petition. Thus, power to direct investigation may arise in two different situations - (1) when a first information report is refused to be lodged; or (2) when the statutory power of investigation for some reason or the other is not conducted.
Dharmeshbhai Vasudevbhai

. The first appellate court can re-appreciate evidence and record findings different from those recorded by the trial court. **It is well settled that** if the appraisal of evidence by the trial court suffers from material irregularity, as for example when its decision is based on mere conjectures and surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions which do not naturally or logically flow from the proved facts, the appellate court is bound to interfere with the findings of the trial court. It is equally well settled that where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would not reverse them on the basis of conjectures and surmises or without analyzing the relevant evidence in entirety. As the final court of facts, if the first appellate court is reversing the judgment of the trial court, it is bound to independently consider the entire evidence. The High Court has ignored these well settled principles. In these peculiar circumstances, we have to examine the correctness of the findings recorded by the High Court.
L. N. Aswathama

it is well settled that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting . in acquittal or conviction, as the case may be. The findings of the criminal Court are inadmissible."

15. A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever.
Seth Ramdayal Jat

It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretation of the statute has to be given. This is because it is a well-settled principle of

interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended to have exceeded its jurisdiction.
M. Rathinaswami/TN

One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

14. **It is well settled that** mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". (See A. Thangal Kunju Musaliar v. M. Venkatichalam Potti (1955 (2) SCR 1196))
Satishkumar Batra

It is well settled that while deciding a First Appeal, the High Court must consider the evidence on record, oral and documentary and also the questions of law raised before it and at the same time it was the duty of the court to consider the reasons given by the trial court against which the first appeal was filed and thereafter dispose of the same after passing a speaking and reasoned order in accordance with law.
Nicholas/Joseph

it is well settled that bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. However, a bail granted to

a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. As mandated by Section 436 of the Code what is to be ascertained by the officer or the court is whether the offence alleged to have been committed is a bailable offence and whether he is ready to give bail as may be directed by the officer or the court. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all. Similarly, a court while exercising powers under Section 436 of the Code is not bound to issue notice to the complainant and hear him.
Rasiklal/Kishore

In Suresh Chandra Bahri v. State of Bihar (1995 Supp (1) SCC 80), this Court held that **it is well settled that** substantive evidence of the witness is his evidence in the Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in Court at the trial. From this point of view it is a matter of great importance, both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. Thereafter this Court observed:-
Santosh Devidas/MS

It is well settled that in an Election Petition for proving an allegation of corrupt practice the standard of proof is like that in a criminal case. In other words, the allegation must be proved beyond reasonable doubt, and if two views are possible then the benefit of doubt should go to the elected candidate vide Manmohan Kalia vs. Yash & Ors. (1984) 3 SCC 499 vide paragraph 7 in which it is stated :-

"It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process."

In Razik Ram vs. Jaswant Singh Chouhan (1975) 4 SCC 769 vide paragraphs 15 and 16 it was observed:-

"Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. **It is well settled that** a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial.
M. J. Jacob

It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose Patanjali Sastri, J. observed:

¡>The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; ¡¡
Central Bank of India/state of Kerala

it is well settled that in such an eventuality, this Court should first consider the legality or otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of the occurrence, he was juvenile but on the date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside. Reference in this connection may be made to a decision of this Court in Bhoop Ram v. State of U.P. (1989) 3 SCC 1, in which case at the time of grant of special leave to appeal report was

called for from the trial court as to whether the accused was juvenile or not which reported that the accused was not a juvenile on the date of the occurrence but this Court, differing with the report of the trial court, came to the conclusion that the accused was juvenile on the date the offence was committed and as he was no longer a juvenile on the day of judgment of this Court, sentence awarded against him was set aside, though the conviction was upheld. ¡¡
Pawan/Uttaranchal

It is well settled that the Will should be read as a whole and the surrounding circumstances may be given effect to for the purpose of ascertaining the intention of the testator from the words used and the surrounding circumstances wherefor the Court will put itself in the armchair of the testator. We, therefore, do not find any legal infirmity in the impugned judgment.

Bhagwan krishan Gupta

it is well settled that no amount of consent can confer jurisdiction on a court when it has none. If the court had no jurisdiction, any order passed by it is a nullity. When the court lacks inherent jurisdiction, the procedural provision of estoppel, waiver or res-judicata shall also not apply. {[[See Chief Justice of Andhra Pradesh & Ors. v. L.V.A. Dikshitulu & Ors. [AIR 1979 SC 193 at 198] and Chandrabhai K. Bhoir and Ors. v. Krishna Arjun Bhoir and Ors. [2008 (15) SCALE 94]}.
Muthavalli

It is well settled that all trusts are not settlements, and all settlements are not trusts, but a deed of trust can also be a deed of settlement.
S. N. Mathur

20. **It is well settled that** a first information report is not an encyclopaedia, which must disclose all facts and details relating to the

offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information.
Ashabai Machindra

It is well settled that the object of the introduction of Sub- section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under Sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us.
Shakuntala devi

The basic principle of Article 136 is that if a litigant feels that injustice has been done by a Court or any other body charged with administration of justice, there is one superior court he may always approach and which, in its discretion, may give him special leave to appeal so that justice may be done: (1996) 1 SCJ 786, 803.

(11) It is not possible to define with any precision, the limitations on the exercise of the discretionary jurisdiction vested in the Supreme

Court by the constitutional provision made in Article 136. The limitations whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and over-riding power, naturally, it has to be exercised sparingly and with caution and in special and extraordinary situations.

(12) **It is well settled that** though special leave is granted, the discretionary power which is vested in the Court at the stage of the special leave petition continues to remain with the Court even at the stage when the appeal comes up for hearing and when both sides are heard on merits in the appeal: (1999) 2 SCC 321.
Anurag Kumar

It is well settled that Exemption Notification have to be read in the strict sense.
Hotel Leela

It is well settled that suggestion not put up on any point to the Defendant regarding the matter in dispute. The claim of the Defendant regarding the denial of the relationship as licensor and licensee is deemed to be admitted."
Bhagwan sarup

In State of Maharashtra v. B.E. Billimoria [(2003) 7 SCC 336], this Court observed:

"32. **It is well settled that** the provisions of the statute are to be read in the text and context in which they have been enacted. **It is well settled that** in construction of a statute an effort should be made to give effect to all the provisions contained therein. It is equally well settled that a statute should be interpreted equitably so as to avoid hardship..."

It is well settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would inter alia be interested in ensuring that real culprits are punished.

Recently in Bhanwar Singh & Ors. v. State of M.P. [2008 (7) SCALE 633], this Court held:

"45. It would also be instructive to look at the following observations made in Gurdatta Mal v. State of UP., [AIR 1965 SC 257], in the context of Sections 34 and 149 IPC:-

"**It is well settled that** Section 34 of the Indian Penal Code does not create a distinct offence: it only lays down the principle of joint criminal liability. The necessary conditions for the application of Section 34 of the Code are common intention to commit an offence and participation by all the accused in doing act or acts in furtherance of that common intention. If these two ingredients are established, all the accused would be liable for the said offence... In that situation Section 96 of the Code says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused were liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the said act or acts done in furtherance of common intention, if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence."

Nagaraja

It is well settled that the presumption in regard to existence of joint family gets weaker and weaker from descendant to descendant and such weak presumption can be rebutted by adduction of slight evidence of separate possession of the properties in which even the burden would shift to the plaintiff to prove that the family was a joint family.

2009 (2) SCC 177

It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.

Deepak bajaj

it is well settled that a Director is not a mere employee or servant of the Company. In Lee v. Lee's Air Framing Ltd., 1961 AC 12, it was held that a Director is a controller of the company's affairs and is not a mere servant of the Company. Such Director may have to work also as an employee in a different capacity. Gower and Davies' Principles of

Modern Company Law, (17th Edn. pp. 370-76) also deals with duties of Director viz-a-viz as an employee of the Company and makes it clear that a Director per se cannot be said to be an employee or servant of the Company.

29. In Ram Pershad v. Commissioner of Income Tax, New Delhi (1972) 2 SCC 696, this Court held that a Managing Director may have a dual capacity. He may be both, a Director as well as an Employee.
Comed

It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation (supra)]
Sethi Auto

Furthermore, by now **it is well settled that** save in certain exceptional situations, the principle of audi alteram partem mandates that no one shall be condemned unheard. It is a part of rules of natural justice and the soul of natural justice is 'fair play in action', which demands that before any prejudicial or adverse order is passed or action is taken against a person, he must be given an opportunity to be heard
Babloo Pasi

It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator.
G. Gopal

This can be compared with exercise of extraordinary jurisdiction by a writ Court under Article 32 or 226 of the Constitution. **It is well settled that** this Court can exercise power by issuing writs, directions or orders to every authority within the territory of India (as also those functioning outside the country provided such authorities are under the control of Government of India). But the jurisdiction of a High Court has territorial limitations. It can exercise the power "throughout the territories in relation to which it exercises the jurisdiction", that is to say, the writs issued by a High Court cannot run beyond the territory subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be within those territories which clearly implies that they must be amenable to its jurisdiction in accordance with law.
Durgesh Sharma

The principle was reiterated by this Court in Ram Sarup Gupta (dead) by Lrs. v. Bishun Narain Inter College [AIR 1987 SC 1242]:

"**It is well settled that** in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance if the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open

to a party to raise the question of absence of pleadings in appeal. ¡¡ [emphasis supplied]
Bachhaj

It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and latches in making the application for amendment cannot be a ground to refuse amendment. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise. [See B.K.N. Pillai v. P. Pillai and another [AIR 2000 SC 614 at Page 616]. Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.
Surendra Kumar Sharma

2009 (16) SCC 187

Before:- Aftab Alam :J , Tarun Chatterjee :J

Mariamma Roy
Versus
Indian Bank & Ors.

It is well settled that even if an alternative remedy was available to an aggrieved party against a particular order, but if it was open to such party to move a writ application and the court has the power to entertain the same if it finds that while passing the order there has been a violation of the principle of natural justice.

It is well settled that while interpreting a provision of a statute, the same has to be interpreted taking into consideration the other provisions of the same statute.

Ajit singh/Jit ram

"**It is well settled that** the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order". (emphasis supplied)
2008 (6) Supreme 637

it is well settled that in an appeal against conviction under these sections, the offences being bailable, bail is granted without much ado but, in the facts and circumstances of the present case, especially in view of the conduct of these accused persons after grant of bail during trial, the High Court was not justified in granting bail to them.
2008 (14) SCC 611
