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1980

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A new point is not allowed to be raised for the first time in appeal when it will require a fresh enquiry on a question of fact.

Iyyappan v. *Dharmodayam Co.*, A. I. R. 1966 S. C. 1017; referred to.

By virtue of Sections 3 and 4 of the Act, it was not necessary for the Government to give details of the calculations in the order and if the cost of management was fixed at 10 per cent of the *Nikasi* of all the Jagirs, it could order realisation of the dues at 10 per cent from each Jagir.

Certiorari is issued (1) for correcting errors of jurisdiction, i.e., when an inferior Court or tribunal acts without jurisdiction or in excess of it or refuses to exercise it; or (2) when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, e. g., when it decides without giving opportunity to the parties to be heard, or when the Court or tribunal violates the principles of natural justice; or (3) when the order of the inferior tribunal is shown to suffer from an error which is apparent on the face of the record. The High Court in issuing a writ of *certiorari* acts in exercise of supervisory and not appellate jurisdiction. The High Court does not review or re-weigh the evidence upon which the determination of the inferior tribunal purports to be based. The Court demolishes the order which

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it considers to be without jurisdiction or palpably erroneous; but does not substitute its own view for those of the inferior tribunal. What is done by *certiorari* is that the offending order or proceeding is put out of the way as one which should be used to the detriment of any person.

The High prerogative writ of mandamus is issued when there is a specific legal right but no specific legal remedy for enforcing such right. Two conditions must be satisfied for issuance of a mandamus. The petitioner must show that he has a legal right to the performance of a legal duty by him against whom mandamus is sought. Secondly, there must be a legal duty incumbent on the officer or authority in his or its public character.

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The expression 'before the date of vesting' need not be read as immediately before the date of vesting. There is no warrant for adding the word "immediately", which is not therein the section. All that the saving clause requires is (1) that by its nature the land should be *khudkasht* and (2) that it is not enough to be *khudkasht* land, it should also have been recorded as such.

Pt. Biharilal v. *State of M. P.*, 1961 M.P.L.J. 493, *Dayaram* v. *Maheshwar*, 1961 M.P L.J. 837 and *Meharbansingh* v. *Nareshsingh*, A.I.R. 1971 S.C. 77; referred to.

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Hajl Sk. Subhan v. *Madhorao*, A.I.R. 1962 S.C. 1230; distinguished.

A person who is in possession but was dispossessed by a trespasser, must be deemed to be in possession and the trespasser cannot take advantage of his own wrong.

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Absorption Rules—Absorption of staff of schools run by Janpada Sabha in Govt. Service—Government order dated 21-12-1967—Clause 3(b)—Period of 7 years mentioned in—Computation of—Expression should have worked on the post for a minimum period of 7 years "in the same institution"—Interpretation of—Period of 7 years need not be continuous nor in same institution—Total period of 7 years in similar institution is sufficient compliance—Word "same" used in popular language for "similar": For the purpose of computing the period of 7 years, provided in clause 3(b) of the Government order dated 21-12-67 concerning absorption on the post of Head Master or Principal, the period during which a person was incharge Principal must be included.

Satyandra Prasanna Singh Yadav v. *The State of Madhya Pradesh and others*, M. P. No. 368 of 1973, decided on the 14th April, 1976; relied on.

The language of the above clause 3(b) concerning Absorption requires that the person concerned should have worked on the post of principal for a minimum period of 7 years in the same institution. It is not provided therein that the period of 7 years should be a continuous

one. The clause should be liberally construed and the period of 7 years need not be a continuous period.

Having regard to the context of clause 3 (b), the words "in the same institution" occurring therein should be construed to mean "in the same or similar institution". This construction has the merit of avoiding injustice to persons placed in the same class who had the misfortune of being transferred from one institution to another, without in any way affecting the object of prescribing the qualification that the person concerned should have worked as principal for a minimum period of 7 years.

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The existence of one or more of the grounds mentioned in section 12(1) of the Act, therefore, constitutes a necessary part of the cause of action in a suit for eviction of a tenant from an accommodation.

Any need not in conformity with the purpose for which the accommodation was let, or inconsistent with its actual user, is, therefore, not a '*bona fide* requirement' for purposes of either of these clauses, viz. (e) and (f) of section 12(1) of the Act.

The Court has to determine as to which of the two purposes was the dominant purpose, the other being subsidiary and ancillary to it. This depends on various factors, i e., purpose for which the accommodation was let, or its user. its constructional design, situation, amenities available, conveniences provided etc.

Moolchand alias Norangilal v. *Sheodutt Paliwal and another*, 1973 M. P. L. J. 378; relied on.

The finding based on appreciation of evidence is binding in second appeal.

Sarvate T. B. v. *Nemichand*, 1966 M. P. L. J. 26 S. C. and *Mattulal* v. *Radhe Lal*, A. I. R. 1974 S C. 1596; referred to.

No doubt, the burden of proving *bona fide* requirement for his business as well as residence, as also the fact that the plaintiff had no reasonably suitable accommodation of his own, lay upon the plaintiff. Whether in a given case that burden is discharged by the evidence on record, is again a question of fact.

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Sarvate T. B. v. *Nemichand*, 1966 M. P. L. J. 26 S. C.; referred to.

In the interpretation of statutes, the Courts decline to consider other statutes proceeding on different lines and including different provisions, or judicial decisions thereon.

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Accommodation Control Act, Madhya Pradesh (XLI of 1961)--Section 12(1)(a)—Expression "arrears of rent legally recoverable from him" in—Excludes arrears which had been barred by time--Provision does not competent to pay or tender arrears of rent which are time barred—Section 13(1)—Expression "for the period for which payment is made" in—Refers to two periods--Expression "period for which the tenant may have made default" in—Has only one meaning—Section 13—Does not constitute a new source or foundation of right to claim time barred rent--Section 13(2)--Dispute contemplated by—Is referable to those arrears which are legally recoverable and are not time-barred--Section 13 (1)--Tenant not obliged to deposit time-barred arrears of rent: The expression "arrears of rent legally recoverable from him" is significant. It excludes the arrears which had become barred by time, so that if the tenant, on receipt of the notice of demand, had paid the arrears of rent, which were within limitation, this ground for eviction would not be available to the landlord. This sub-section does not require the tenant to pay or tender any arrears of rent, the remedy for the recovery of which was barred.

The expression "for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made" refers to two periods :

(i) The period for which the tenant may have made default;

(ii) period subsequent thereto.

Expression "period for which the tenant may have made

default" in section 13(1), only one meaning can be assigned.

It must be remembered that section 13 does not constitute a new source or foundation of a right to claim rent otherwise time-barred.

When a dispute is raised as to the amount of rent payable, it is relatable only to those arrears which are legally recoverable and are not time-barred.

There can be no doubt that if there is any dispute as to the amount of rent payable by the tenant under sub-section (2) of Section 13, the Court shall not, while fixing reasonable provisional rent to be deposited, include the arrears of rent time-barred.

Under section 13(1) of the Act, the tenant is not obliged to deposit time-barred rent under the first part of Section 13(1) of the M. P. Accommodation Control Act, 1961.

Abdul Gafoor v. *Abdeali*, 1973 M. P. L. J. 179; overruled.

New Delhi Municipal Committee v. *Kalu Ram*, A. I. R. 1976 S. C. 1637 and *Chitra Kumar Tiwari* v. *Gangaram*, 1966 J. L. J. 1028; referred to.

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ground as if the decree on the ground specified in clause (f) was not passed.

Ram.charan v. *Nahneram*, S. A. No. 127 of 1966, decided on the 7th Nov. 1968 and *Dindayal* v. *Vimalchand*, 1973 M.P.L.J 465; approved.

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Act, 1958—M. P. III: *vide* General Clauses Act, Madhya Pradesh, 1957.

Act, 1958—M. P. XIX: *vide* Civil Courts Act, M. P.

Act, 1958—XXXII: *vide* Public Premises (Eviction of Unauthorised Occupants) Act, Indian.

Act, 1959—M. P. II: *vide* General Sales-tax Act, Madhya Pradesh, 1958.

Act, 1959—M. P. XX: *vide* Land Revenue Code, Madhya Pradesh.

Act, 1960—M. P. XIX: *vide* Agricultural Produce Markets Act, Madhya Pradesh.

Act, 1960—M. P. XXVII: *vide* Industrial Relations Act, Madhya Pradesh.

Act, 1961—M. P. XVII: *vide* Co-operative Societies Act, Madhya Pradesh, 1960.

Act, 1961—M.P. XXXVII: *vide* Municipalities Act, Madhya Pradesh.

Act, 1961—XLI: *vide* Accommodation Control Act, M.P.

Act, 1961—XLIII: *vide* Income-tax Act, Indian.

Act, 1962—M. P. VII: *vide* Panchayats Act, Madhya Pradesh.

Act, 1963: *vide* Constitution (Fifteenth Amendment) Act.

Act, 1963—XLVII: *vide* Specific Relief Act.

Act, 1964—M. P. XIV: *vide* Nagariya Sthawar Sampathi Kar Adhiniyam, M. P.

Act, 1965—: *vide* Matrimonial Causes Act.

Act, 1966—M. P. XI: *vide* Municipal Corporation Act, M. P.

Act, 1967—M. P. XII: *vide* Anusuchit Jan Jati Rini Sahayata Adhiniyam, Madhya Pradesh.

Act, 1970—M. P. XII: *vide* Nirashriton Ki Sahayata Adhiniyam, M. P.

Act, 1971—M. P. XIII : *vide* General Sales Tax (Amendment and Validation) Act, Madhya Pradesh.

Act, 1971—XL: *vide* Public Premises (Eviction of Un-authorised Occupants) Act, Indian.

Act, 1973—M.P. XXII: *vide* Vishawavidhyalaya Adhiniyam, M. P.

Act, 1974—II: *vide* Criminal Procedure Code, 1973.

Act, 1974—M.P. XIII: *vide* Moneylenders Act, M. P.

Act, 1977—M. P. VIII: *vide* Panchayats *(*Amendment*)* Ordinance, M. P.

Act, 1978—M. P. III: *vide* Panchayats (Amendment) Ordinance, Madhya Pradesh.

Act, 1978—M. P. IV: *vide* Panchayats *(*Amendment*)* Act, Madhya Pradesh.

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Agricultural Produce Markets Act, Madhya Pradesh (XIX of 1960) -Bye-laws, framed by the Krishi Upaj Mandi Samiti, Kelaras—Categorisation of servants—Is beyond the scope of Bye-laws—Agricultural Produce Markets Rules, Madhya Pradesh 1962--Rule 38—Appointments and punishment of servants and Officers—Have nothing to do with their categorisation--Provision regarding it made in this Rule—Bye-laws cannot override the rules—Rule 38—Empowers Director to issue direction that servants other than those mentioned in this rule may be included in category of superior officers--Anything in Bye-laws going beyond Rule 38--Is not valid : It is beyond the scope of the bye-laws to categorise the servants of a market committee.

The question of appointment and punishment of officers and servants has nothing to do with categorising of servants for which provision has been made under Rule 38 only.

As mentioned in opening words of Sec. 39 of the Act, Bye-laws are subject to the Rules. Bye-laws cannot override the Rules.

Anything contained in the bye-laws which goes beyond Rule 38 cannot be held to be valid.

PRABHUDAYAL v. THE KRISHI UPAJ MANDI SAMITI, KELARAS SABALGARH, DIST. MORENA, I.L.R. [1980] M.P. ... 822

Agricultural Produce Markets Rules, M. P., 1962—Rule 38 —Anything in Bye-laws going beyond this rule—Is not valid : *vide* Agricultural Produce Markets Act ... 822

Agricultural Produce Markets Rules, M. P., 1962—Rule 38 —Appointments and punishment of servants and officers ---Has nothing to do with their categorisation—Provision regarding it made in this Rule: *vide* Agricultural Produce Markets Act ... 822

Agricultural Produce Markets Rules, M. P., 1962—Rule 38 —Empowers Director to issue direction that servants other than those mentioned in this rule may be included in category of superior officers: *vide* Agricultural Produce Markets Act ... 822

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Anusuchit Janjati Rini Sahayata Adhiniyam, Madhya Pradesh (XII of 1967) - Section 2(4)--'Debt'--Includes arrears of rent under a decree or otherwise - Section 7(1) --Suit or execution of a decree for arrears of rent is included--Civil Court or Executing Court has no jurisdiction—Interpretation of Statutes—Meaning of the words used in a statute plain—Intention of Legislature has to be gathered from those words: Definition of 'Debt' in Section 2(4) of the Anusuchit Janjati Rini Sahayata Adhiniyam, Madhya Pradesh, 1967, is an inclusive one and it provides that all liabilities owing to a creditor in cash or kind payable under a decree or order of a Civil Court or otherwise subsisting on the appointed date will be a debt. Therefore, arrears of rent under a decree or otherwise would fall within the ambit of the definition of the word 'debt' as defined in sub-section (4) of section 2 of the said Adhiniyam and Section 7(1) of the Adhiniyam would be attracted to a suit or proceedings instituted to recover such arrears of rent.

Sadashiv Rao v. *Mst. Naina*, C.R. No. 603 of 1968, decided on the 18th April 1969=1969 M. P. L. J. (S. N.) 42 and *Daryao Bai* v. *Suraimal*, C. R. No. 363 of 1974, decided on the 20th Aug. 1974; held no longer good law.

Punaji v. *Moti*, M. P. No. 16 of 1971, decided on the 31st Oct. 1973; followed.

Balaram v. *Rupabai*, M. A. No. 125 of 1971, decided on the 18th Oct. 1973=1973 M. P. L. J. S. N. 132; held no longer good law.

Mirabai v. *Smt. Kausholyabai*, I. L. R. (1948) Nag. 794 and *Chandanlal* v. *Sambhaji*, 1938 N. L. J. 360; followed.

Where the meaning of the words used in a statute is plain, then the intention of the Legislature has to be inferred from the meaning of the words used, themselves.

Craies on Statute Law—Chapter 8; referred to.

DARYAOBAI v. SURAJMAL, I. L. R. [1980] M.P. 920

Anusuchit Janjati Rini Sahayata Adhiniyam, Madhya Pradesh (XII of 1967) - Section 7(1)—Suit or execution of a decree for arrears of rent is included—Civil Court

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Bye-laws framed by the Krishi Upaj Mandi Samiti Kelaras —Categorisation of servants—Is beyond the scope of Bye-laws: *vide* Agricultural Produce Markets Act 822

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Civil Courts Act. M. P. (XIX of 1958) - Section 7(2)—Additonal District Judge empowered to discharge functions of District Judge assigned to him by General or special Order: *vide* Municipalities Act, Section 20(2) ... 269

Civil Court Act, M. P. (XIX of 1958)—Section 7(2)—Election Petition presented to District Judge outside the Revenue District—Such Court has no jurisdiction to entertain or try—It has also no jurisdiction to transfer the petition to Additional District Judge: *vide* Municipalities Act, Section 20(2) 269

Civil Procedure Code (V of 1908)—Sections 22 and 23—Order of Single Judge transferring suit from one Court to another under—Not a 'Judgment'—Not appealable under clause 10 of Latters Patent: *vide* Latters Patent ... 231

Civil Procedure Code (V of 1980)—Sections 22, 23 and 24—High Court, Jurisdiction of—Transfer of suit from the Court within its jurisdiction to another Court within the jurisdiction of another High Court—Transfer within jurisdiction: Latters Patent ... 231

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Civil Procedure Code (V of 1908)—Section 24—District Judge or Additional District Judge exercising jurisdiction to entertain Election Petition—Does not act as *persona designata* but as an established Court: *vide* Municipalities Act, Section 20(2) 269

Civil Procedure Code (V of 1908)—Section 24—Does not empower the District Judge situated outside the Revenue District to make valid transfer of Election Petition to Additional District Judge within the Revenue District—Defect of jurisdiction cannot be cured by such transfer: *vide* Municipalities Act, Section 20(2) ... 269

Civil Procedure Code (V of 1908)—Section 34—Applicable to mortgage decrees: *vide* Moneylenders Act, Section 2(v) ... 149

Civil Procedure Code (V of 1908)—Section 47—Special remedy provided—Recourse to section 47 not available: *vide* Civil Procedure Code, Section 151 1155

Civil Procedure Code (V of 1908)—Section 100—Burden of proof regarding need—Question whether burden is discharged—Is a Question of fact: *vide* Accommodation Control Act, Section 12(1) ... 672

Civil Procedure Code (V of 1908)—Section 100—Finding based on appreciation of evidence—Finding is binding in second appeal: *vide* Accommodation Control Act, Section 12(1) ... 672

Civil Procedure Code (V of 1908), Section 100 and Accommodation Control Act, Madhya Pradesh (XLI of 1961), Section 12—Finding that transfer of demised house is not genuine—Is a finding of fact—Not open to challenge in second appeal—Plaintiff not entitled to evict tenant under section 12 of the M. P. Accommodation Control Act: *vide* Transfer of Property Act, Section 109 ... 977

Civil Procedure Code (V of 1908)—Section 115—Appellate Court ignoring reasonings contained in the order of the trial Court and reaching his own conclusion—High Court entitled to interfere: *vide* Civil Procedure Code, Section 115 ... 352

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Civil Procedure Code (V of 1908)—Section 115—Revisional jurisdiction is a part of the appellate jurisdiction as a superior court circumscribed by the limits under this section: *vide* Civil Procedure Code, Section 115, Order 6, rule 5, Section 2(2) and Section 96 and Accommodation Control Act, Section 12(1)(a), (f) and (h) ... 1176

Civil Procedure Code (V of 1908)—Section 115—Revisional powers of the High Court—Interference when permissible—Appellate Court ignoring reasonings contained in the order of the trial Court and reaching his own conclusion—High Court entitled to interfere: It is a proposition well settled that the appellate Court is bound to consider the reasons on which the trial Court arrived at findings of fact. And, in case, after appreciating the oral evidence produced by the parties, the appellate Court comes to a different conclusion, though bearing in mind that it has not enjoyed the opportunity of seeing and hearing the witnesses, it can certainly record its own findings holding that those reached by the trial Court were erroneous. In such a case, three things must appear from the judgment of the appellate Court : (1) that it applied its mind to the reasons given by the trial Court; (2) that it was present to its mind that the Trial Court had the advantage of seeing and hearing the witnesses, which the appellate Court itself did not have; and (3) that the appellate Court must give cogent reasons for disagreeing with the trial Court.

If this is not done, it must be said that the order of the appellate Court is contrary to law. The appellate Court has the undoubted jurisdiction to reappreciate the oral evidence and reach a finding contrary to that arrived at by the trial Court, but this, it can do only if its order satisfies the above three conditions.

Under section 115 of the Civil Procedure Code this Court has jurisdiction to set aside an order of a subordinate Court if it exercised its jurisdiction illegally or with material irregularity. These words do not refer to the decision arrived at by the subordinate Court, but they refer to the manner in which it is reached.

Sarju Pershad v. *Jwaleshwari*, 1950 S. C. R. 781=A. I. R. 1951 S. C. 120, *W. C. Macdonald* v. *Fred Latimer*, A. I. R. 1929 P. C. 15 at p. 18, *Watt* v. *Thomas*, 1947 A. C. 484 (486), *Veeraswami* v. *Tallurl Narayya*,

75 I. A. 252=A. I. R. 1949 P. C. 32, *T. D. Gopalan* v. *Commr. of Hindu Religious and Charitable Endowments*, A. I. R. 1972 S. C. 1716, *Tulsiram* v. *Shyamlal*, 1968 M. P. L. J. 281, *Mangamma* v. *Faidayya*, A. I. R. 1941 Mad. 393, *Kaluni Dai* v. *Kanhai Sahu*, A.I.R. 1972 Orissa 28, *Sarjug Rai* v *Maheshwari Devi*, A. I. R. 1975 Pat. 192 and *D. L. F. Housing Etc. Co.* v. *Sarup Singh*, A. I. R. 1971 S. C. 2324; referred to.

RAMA RAO v. SHANTIBAI, I. L. R. [1980] M. P. ... 352

Civil Procedure Code (V of 1908)—Section 115—Word 'Court' in—Used in a narrow sense—Means only a Civil Court: *vide* Civil Procedure Code, Section 115 and Workmen's Compensation Act, Section 19(2) ... 708

Civil Procedure Code (V of 1908)—Section 115, Order 6, rule 5, Section 2(2) and Section 96 and Accommodation Control Act, M.P.(XLI of 1961), Section 12(1)(a),(f) and (h)—Dismissal of suit for non-furnishing of particulars ordered under Order 6, rule 5—Order of dismissal is appealable as a decree—Plaintiff directed to furnish particulars in respect of grounds under section 12(1)(f) and (h)—Non-compliance—Dismissal of suit unjustified —Only those grounds could be struck out—Order dismissing suit for non-compliance of an order under Order 6, rule 5—Decree not drawn—Appeal without certified copy of decree is incompetent—Appeal Court proceeding with such an appeal commits jurisdictional error—Can be challenged in revision—Interpretation of Statute—Should be done to advance cause of justice—Revisional jurisdiction is a part of the appellate jurisdiction as a superior court circumscribed by the limits under section 115 of Civil Procedure Code: Where the Plaintiff does not supply full particulars as ordered by the Court under Order 6, rule 5, Civil Procedure Code and the Court passes an order dismissing the suit, the order amounts to a decree as defined in Section 2(2) of the Civil Procedure Code and an appeal under Section 96, C. P. Code is competent.

Nazir Abbas Sujjat Ali v. *Raz Azamshah Suleman shah*, A.I R. 1941 Nag. 223 and *Smt. Chamarin* v. *Budhiyarin*, A.I.R. 1975 M.P. 74; referred to.

Budhulal v. *Chhotelal*, 1976 J. L. J. 797; relied on.

When eviction of the tenant is claimed on grounds provided

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for under section 12(1)(a)(f) and (h) of the M. P. Accommodation Control Act, 1961, and the plaintiff did not comply with the orders of the Court under Order 6, rule 5, Civil Procedure Code for supply of particulars in respect of grounds under section 12(1)(f) and (h), dismissal of the suit for non-compliance of the order is not justified. Court can strike out only those grounds of eviction in the plaint about which particulars were not supplied. Courts of justice are not courts of military discipline.

When the court dismissed the suit for non-compliance of an order under Order 6, rule 5. Civil Procedure Code but a decree is not drawn and an appeal is preferred against such an order which is not accompanied by a certified copy of the decree, the appeal is incompetent and the Appellate Court has no jurisdiction to proceed with the appeal or decide it. If the appellate court proceeds with it and decides it, it commits a jurisdictional error against which revision is entertainable.

Ganesha v. *Radhelal*, 1972 M.P.L J. Note 78 and *Jagat Dhish Bhargava* v. *Jawaharlal Bhargava*, A. I. R. 1961 S. C. 832; referred to.

Interpretation of Statute should be done in such a manner so as to advance the cause of justice. Justice should not be lost in technicalities.

Jurisdiction of the High Court under section 115 of the Civil Procedure Code is a part of the appellate jurisdiction as a superior Court and it is only one of the modes of exercising power conferred by the statute. Section 115, Civil Procedure Code circumscribes the limits of that jurisdiction.

Shankar Ramchandra Abhayankar v. *Krishnaji Dattatraya Bapat*, A.I.R. 1970 S. C. 1; referred to.

M. P. STATE CO OPERATIVE DEVELOPMENT BANK LIMITED, BHOPAL v. J. L. CHOUKSEY, I. L. R. [1980] M. P. 1176

Civil Procedure Code (V of 1908)—Section 115 and Order 33, rule 1—Revision—Maintainability of Subordinate Court permitting plaintiff to sue as an indigent person—Such decision cannot be equated with one relating to

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Court—fees—Revision against such an order not barred – Order 33, rule 6—Expression "Government Pleader" and "Collector"—Means local Government Pleader and Collector of the same District—Order 33, rule 1—Notice of application under, sent to Government Pleader and Collector of the District where suit is pending—Sufficient compliance of rule—Order granting permission to sue as indigent person neither illegal nor suffers from material irregularity—Order cannot be revised: The decision on an application under Order 33, rule 1 of the Civil Procedure Code is not the same as one relating to the adequacy of Court-fees under the Court-fees Act. Hence, a Revision under Section 115 of the Civil Procedure Code is not barred by the defendant against an order of the Subordinate Court permitting the plaintiff to sue as an indigent person.

Rathnavarmaraj v. *Smt. Vimla*, A. I. R. 1961 S. C. 1299, *Shamsher Singh* v. *Rajendra Prasad and others*, A. I. R. 1973 S. C. 2384, *M, L. Sethi* v. *R. P. Kapur*, A. I. R. 1972 S. C. 2379 and *The Managing Director (MIG) Hindustan Aeronautics Ltd.* v. *Ajit Prasad Tarway*, A.I.R. 1973 S. C. 76; referred to.

The expression "the Government pleader" occurring in Order 33, rule 6, Civil Procedure Code means local Government Pleader and in the case of Collector it would mean the Collector of the same district. Therefore, where suit in *forma pauparis* has been filed in a Court at Seoni, notice to the Collector, Seoni is a sufficient compliance of Order 33, rule 6, Civil Procedure Code, and failure of the trial court to issue notice to the Collector, Jabalpur within whose jurisdiction the plaintiff resides does not make the order permitting the plaintiff to sue as an indigent person as contrary to the express provision of law and it cannot be said that the trial Court has acted illegally or with material irregularity in passing the said order.

Bhaskar Krishnarao Deoras v. *State of M. P.*, 1969 M.P.L.J. (S. N.) 69 and *Surajmal and others* v. *Indermal*, 1970 M.P.L.J. (S.N.) 46 D. B.; distinguished.

SHEELCHAND v. BABULAL, I. L. R. [1980] M. P. ... **1091**

Civil Procedure Code (V of 1908), Section 115 and Workmen's Compensation Act (VIII of 1923), Section 19(2)—Commissioner under the Workmen's Compensation Act is not a Court—Civil Procedure Code—Section 115—Word 'Court' in—Used in a narrow sense—Means only a Civil Court—Order of Commissioner deciding a disputes under section 19(2) of Workmen's Compensation Act—Not Revisable under section 115 of the Code: The word 'Court' used in a generic sense will include a tribunal but a tribunal does not constitute a Court in the technical sense. The main distinction between a Court and a tribunal is that a Court is a tribunal constituted by the State as a part of the ordinary hierarchy of Courts. A tribunal, on the other hand, is constituted under a Special Act to exercise some special jurisdiction.

The word 'Court' as used in Section 115 of the Civil Procedure Code is used in a narrow sense meaning only a Civil Court in the normal hierarchy of Courts. It will not include tribunals which are established under Special Acts and exercise special jurisdiction. Provisions contained in section 19(2) and Section 3(5) of the Workmen's Compensation Act also lead to an inference that the Commissioner under the Workmen's Compensation Act is not a Civil Court. Therefore, a Revision would not lie to the High Court under Section 115, Civil Procedure Code from a decision of the Commissioner under the Workmen's Compensation Act, deciding a dispute under section 19(2) of that Act.

Sawatram Ramprosad Mills v. *Vishnu Pandurang*, A.I.R. 1950 Nag. 14 and *H.C.D. Mathur* v. *E.I. Rly.*, A. I. R. 1950 All. 80 F. B; followed.

A. C. Companies v. *P. N. Sharma*, A.I.R. 1965 S. C. 1595; *Engineering Mazdoor Sabha* v. *Hind Cycles Ltd.*, A.I.R. 1963 S.C. 874; *Jugal Kishore* v. *Sitamarhi Central Cooperative Bank*, A. I. R. 1967 S.C. 1494; *Krishna Gopal* v. *Dattatraya*, 1972 M.P.L J. 485 and *Mangilal* v. *Union of India*, 1974 M.P L.J. 216; referred to.

General Manager, Bhilai Steel Project v. *M/s Bhutani & Co.*, 1965 M.P.L.J. (S.N.) 73; approved.

Sheikh Amir S/o Sheikh Kalu v. *Jandarbeg S/o Sikandarbeg*, 1970 M.P.L.J. (S.N.) 68; *Firm G.D. Gianchand* v. *Abdul Hamid*, A.I.R. 1938 Lah. 855; *Abdul Rashid* v. *Hanuman Oil & Rice Mill*, A.I.R. 1951 Assam 88; *Dirji* v. *Goalin*,

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A. I. R. 1941 Pat. 65 F. B; *Mohanlal* v. *Fine Knitting Mills Co.*, A.I.R. 1960 Bom. 387 and *Rajiyabi* v. *M. M. and Co.*, A.I.R. 1970 Bom. 278; not followed.

YESHWANT RAO v. SAMPAT, I. L. R. [1980] M. P. ... 708

Civil Procedure Code (V of 1908), Section 115 and Workmen's Compensation Act (VIII of 1923), Section 19(2)—Order of Commissioner deciding a dispute under section 19(2) of Workmen's Compensation Act—Not revisable under section 115 of the Code: *vide* Civil Procedure Code, Section 115 and Workmen's Compensation Act, Section 19(2) ... 708

Civil Procedure Code (V of 1908)—Section 151—Order passed under—Order not appealable—Such order not generally revisable—Order 21, rules 97 and 103—Order under Order 21, rule 97—No appeal or revision can be preferred against such order as remedy of suit provided under Order 21, rule 103—Order under Order 21, rule 97—Order binding on parties unless set aside by suit—Section 47—Special remedy provided—Recourse to section 47 not available: Order passed under Section 151 intended to serve ends of justice. The order is not appealable. Such order would not ordinarily be interfered with in revision.

As there is an express provision in Order 21, rule 103 for a suit to establish right, no revision or appeal could be preferred against the order passed under Order 21, rule 97, C. P. C.

Even an erroneous decision summarily arrived at would bind the parties subject, however, to the result of the suit under Order 21, rule 103, Civil Procedure Code, if it comes to be filed within limitation.

Pirelal v. *Bhagwati Prasad*, A. I. R. 1969 M. P. 35; referred to.

Where special remedy is provided recourse to appeal under Section 47, Civil Procedure Code is not available.

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SUPREME GENERAL FILMS EXCHANGE PRIVATE LTD. JOINT STOCK COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT, 1913, THROUGH THE MANAGER, PLAZA TALKIES, JABALPUR v. HER HIGHNESS TEJ KUNWAR SURYAVANSHI JI, I. L. R. [1980] M. P. ... 1155

Civil Procedure Code (V of 1908)—Order 3, rule 1—General rules of procedure in—When applicable: *vide* Municipalities Act, Section 20(2) ... 269

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Civil Procedure Code (V of 1908), Order 6, rule 5 and Accommodation Control Act, M.P (XLI of 1961), Section 12 (1) (f) and (h)—Order dismissing suit for non compliance of an order under Order 6, rule 5—Decree not drawn—Appeal without certified copy of decree is incompetent-Appeal Court proceeding with such an appeal commits jurisdictional error—Can be challenged in Revision : *vide* Civil Procedure Code, Section 115, Order 6, rule 5, Section 2(2) and Section 96 and Accommodation Control Act, Section 12(1) (a), (f) and (h) 1176

Civil Procedure Code (V of 1908), Order 6, rule 5 and Accommodation Control Act, M. P. (XLI of 1961), Section 12(1) (f) and (h)—Plaintiff directed to furnish particulars in respect of grounds under section 12 (1) and (h)—Non-compliance—Dismissal of suit unjustified—Only those grounds could be struck out: *vide* Civil Procedure Code, Section 115, Order 6, rule 5, Section 2 (2) and Section 96 and Accommodation Control Act, Section 12 (1) (a), (f) and (h) ... 1176

Civil Procedure Code (V of 1908)—Order 6, rule 17—Suit by a landlord against tenant for eviction—Amendment of plaint introducing alternative claim for possession based on title—Permissibility—Amendment not found to be *mala fide*—Cannot be rejected on the ground of inordinate delay—When such amendment refused by trial Court—He acts illegally and with material irregularity in the exercise of his jurisdiction—Order liable to be interfered with in revision: In a suit by a landlord against a tenant for eviction under Section 12 of the M. P. Accommodation Control Act, 1961, a landlord

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can claim in the alternative a decree for possession based on his title by a paying requisite Court-fees.

Girdharilal v. *Rajkishore*, C. R. No. 178 of 1964, decided on the 26th Oct. 1964=1966 M.P.L.J. S. N. 28; relied on.

Harishchandra Behra & others v. *Garbhoo Singh & another*, 1961 M. P. L. J. 501 and *Subbiah Nadar Thankaswamy* v. *Champaka Pillai Meenakshi Ammal & another*, A. I. R. 1961 Mad. 413; referred to.

An amendment cannot be refused merely on the ground that it was being sought at a belated stage if the administration of justice requires that. It can also not be refused because of some mistake or negligence on the part of the party seeking amendment provided the relief sought to be claimed through the amendment is just. It can be refused by the Court only when it finds that the party seeking amendments was acting *mala fide* or that if the amendment is allowed it would entail an irreparable injury to the other side which cannot be compensated by costs.

Jai Jai Ram Manohar Lal v. *National Building Material Supply, Gurgaon*, A. I. R. 1969 S. C. 1267; relied on.

When the trial Court in a suit for eviction on certain grounds under Section 12 of the M. P. Accommodation Control Act, 1961 rejects an application of the plaintiff for amendment of the plaint to incorporate an alternative claim for a decree for possession on the basis of his title on the ground that it was filed with inordinate delay and would cause an irreparable injury to the defendant, without specifying the injury which cannot be compensated by costs and without finding that the amendment sought by the plaintiff is *mala-fide*, the trial Court acts in the exercise of its jurisdiction illegally and with material irregularity and the order is liable to be set aside in revision.

MUNICIPAL COUNCIL, RAIGARH v. LAXMANDAS, I.L.R. [1980] M.P. ... 770

Civil Procedure Code (V of 1908)—Order 6, rule 17 and Section 115—Amendment not found to be *mala fide*—Cannot be rejected on the ground of inordinate delay—When such

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amendment refused by Trial Court—He acts illegally and with material irregularity in the exercise of his jurisdiction—Order liable to be interfered with in revision : *vide* Civil Procedure Code, Order 6, rule 17 ... 770

Civil Procedure Code (V of 1908), Order 11, rule 19(2) and Evidence Act, Indian (I of 1872), Section 162, Order 11, rule 19(2) of the Code must be read subject to Section 162, Evidence Act—Civil Procedure Code, Order 26, rule 9—Dispute regarding encroachment—Cannot be decided in the absence of agreed map except by appointment of Commissioner No finding regarding encroachment—Can be reached on oral evidence—Cause of action—Issue of demarcation by itself—Cannot furnish any cause of action—Vicarious liability—Officers not acting illegally or in excess of their powers in discharge of official duty—State not liable for the said alleged acts or omission—Mines and Minerals (Regulation and Development) Act, 1957—Section 27—Suit not maintainable against a person for anything done in good faith or intended to be done under this Act—Limitation Act, 1908—Section 28—Failure to bring a suit within limitation—Right to property is extinguished—Gives a good title to wrong-doer—Right to immovable property extinguished—Right to claim damages, or rent or profits due prior to extinguishment—It extinguished—Limitation Act, 1908—Article 47—Right to property extinguished—Operation of Article cannot be eluded by bringing a suit for damages—Object of suit under the Article—Lease-Agreement ascertaining the terms of lease, and giving lessee right to exclusive possession immediately or at a future date—Agreement operates as a lease—When parties contemplate execution of formal deed—Matter remains at the stage of agreement though may have been reached finally—Practice—No foundation in pleading—Party cannot set up a new case—Transfer of Property Act—Section 108(c)—Covenant of quiet enjoyment—Cannot extend to tortious acts of strangers—Words "claiming under him" in—Is restricted in its meaning to claiming a right under the lessor: The provision of Order 11, rule 19(2) of Civil Procedure Code, must be read subject to Section 162 of the Evidence Act

State of Punjab v. *Sodhi Sukdev Singh*, A. I. R. 1961 S. C. 493; referred to.

Where there is a dispute as to encroachment, the fact whether there is such an encroachment or not cannot be

determined in the absence of an agreed map, except by the appointment of a Commissioner under Order 26, rule 9 of the Code of Civil Procedure. It is needless to stress that no finding as to the alleged encroachment can be reached on the oral evidence adduced by the plaintiff.

The issue of a demarcation certificate, by itself does not furnish any cause of action to the plaintiff.

Where the servants of State have not acted illegally and contrary to law and in excess of their powers in discharge of their official duties and hence the State is not vicariously liable for any alleged acts or omissions on their part.

According to Section 27 of the Mines and Minerals (Regulation and Development) Act, 1957 no suit lies against any person for anything which is in good faith done or intended to be done under this Act.

The failure to bring a suit under Article 47 of the Limitation Act results in the extinguishment of the right to the property by reason of Section 28 of the Limitation Act.

The extinguishment of the right or title of the rightful owner under Section 28 of the Limitation Act will operate to give a good title to the wrong-doer.

Lala Hem Chand v. *Lala Pearey Lal and others*, A. I. R. 1947 P. C. 64; relied on.

Where a right to immovable property is extinguished, the right to recover damages or rents or profits of the property even prior to such extinguishment will be lost.

Rajah of Venkatagiri v. *Isakapalli Subbiah and others*, I. L. R. 26 Mad. 410, *Jagatram* v. *Pilai*, 26 N.L. R. 160, *Jaidevi Kuari* v. *Dakshini Din and others*, A. I. R. 1937 All. 300 and *Sankaran Parameswaran Namboori* v. *Veeramani Pattar Narayana Pattar and others*, A. I. R. 1957 Kerala 117; referred to.

Where the right to property is extinguished by reason of Section 28, due to the failure of the unsuccessful party to bring a suit under article 47 of the Limitation Act, he cannot elude the operation of article 47 by framing a suit as one for damages.

Jagatram v. *Pilai*, 26 N. L. R. 160; relied on.

The whole object of the suit contemplated by Article 47 of the Limitation Act is for the establishment of rights by the unsuccessful party

When a document, though in form an agreement to lease, finally ascertains the terms of the lease, and gives the lessee a right of exclusive possession either immediately or at a future date, the document is said to effect an actual demise and it operates as a lease.

It is well settled that when the parties to a contract contemplate the execution of a formal deed, the matter is still at the stage of agreement though it may have reached finality.

Shamjibhai v. *Jagoo Hemchand Shah and others*, A. I. R. 1949 Nag. 581: referred to.

The determination in a cause should be founded upon a case to be found in the pleadings or involved in or consistent with the case thereby made. The appellant cannot, therefore, set up a new case for which there is no foundation in the pleadings.

The covenant of quiet enjoyment in Section 108 (c), Transfer of Property Act does not extend to tortious acts of strangers

The expression "claiming under him" in Section 108 (c), Transfer of Property Act must be restricted in its meaning to claiming a right under the lessor.

Naorang Singh v. *A. J. Meik and another*, A. I. R. 1923 Cal. 41; referred to.

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Major S. S Khanna v. *Brig. F. J. Dillon*, A.I.R. 1964 S. C. 497; relied on.

San'osh Chandra & others v. *Gyan Sunder Bai and others*, 1970 J.L.J. 290 (F. B.); distinguished.

Ramdayal Umraomal v. *Pannalal Jagannathji*, 1977 M.P.L.J. 752=A. I. R. 1978 M. P. 16; not approved.

Statutory rule of procedure, which must be generally followed, is that the court should give its decision on all the issues in the case so as to avoid unnecessary remand and protraction of litigation. An order that preliminary issue should be taken first or not for decision, does not decide rights of the parties and is not a case decided within the meaning of Section 115, Civil Procedure Code and no revision lies.

Ghatmal v. *Amaravathi Dyeing Private Ltd.*, A. I. R. 1976 A.P. 70 and *Basti Ram Roop Chand* v. *Radhye Shyam*, A. I. R. 1973 All. 499; referred to.

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Alluri Venkata Narasimha Raju v. *K. Yellamanda*, A. I. R. 1960 A.P. 32 and *Mrs. Sarad mbal Ammal* v. *Kandasamy Goundar*, A. I. R. 1949 Mad. 23; relied on.

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Bhagwati Dhar Bajpai v. ***Jabalpur University and others***, A. I. R. 1967 M. P. 239; referred to.

Commissioner of Income Tax v. ***Messrs Dey Brothers***, A.I.R. 1935 Rang. 144; distinguished.

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penalty or a lesser penalty should be imposed on him.

Div. Personnel Officer v. *T. R. Challappan*, A. I. R. 1975 S. C. 2216; relied on.

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Inspector General of Prisons has no jurisdiction to review any order of his predecessor under the power conferred on him by Rule 29(1)(ii).

Sub-clause (iv) of clause (1) of Rule 29 empowers "any

other authority specified in this behalf by the Governor by a general or special order" to review an order of punishment.

The ban of the second proviso does not apply to this clause. It only applies to sub-clause (ii) of Clause (1) of Rule 29.

The Governor exercising the power under sub-clause (iv) of clause (1) of Rule 29 act as a *persona designata* or in his individual discretion. The power of the Governor under sub-clause (iv) would be exercisable by him only with the aid and advice of his Council of Ministers and in accordance with the Rules of business.

Samsher Singh v. *State of Punjab*, A. I. R. 1974 S. C. 2192; referred to.

An enquiry as contemplated by rule 14 is not obligatory for imposing minor penalties, but the disciplinary authority may in its discretion hold an enquiry under Rule 14 even in cases where only a minor penalty is proposed to be imposed.

The words in the proviso of Rule 29(1) "no such penalty shall be imposed except after an enquiry in the manner laid down in rule 14" will be applicable only to such cases where the order under review was not passed after holding an enquiry in accordance with Rule 14.

On a proper construction of the language of the proviso, the reviewing authority is not obliged to hold a fresh inquiry under Rule 14 of such an inquiry had already been held before passing the order under review.

Tirath Singh v. *Bachittar Singh*, A. I. R. 1955 S. C. 830; referred to.

When a Civil Servant is departmentally dealt with and is departmentally punished for a certain act of misconduct, it cannot be said that he has been prosecuted and punished for an offence within the meaning of Article 20(2) of the Constitution.

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Servant who continues in service under terms and conditions prescribed by Note, can be discharged from service without assigning any reason, simply by giving a month's notice. Such a civil servant cannot be said to be on probation.

A reading of sub-rules (4),(5) and (6) of Rule 8 will show that all of them apply to a probationer.

In cases where the initial period of probation is extended under sub-rule (2), the Note has no application.

Where a civil servant continues in service even after the extended period of probation, then the servant would be deemed to be confirmed.

A civil servant who continues in service after the initial period of probation and in whose case, the period of probation is not extended under sub-rule (2), cannot be taken to have been impliedly confirmed after expiry of three years. Such a person's case falls within the Note and his services can be terminated by giving a month's notice even after expiry of three years.

State of Punjab v. *Dharam Singh*, A. I. R. 1968 S. C. 1210, *Raghuvansh Kumar* v. *State of Maahya Pradesh*, Misc. P. No. 65 of 1968, decided on the 2nd March 1970, *Narayan Singh Thakur* v. *Excise Commissioner, Madhya Pradesh, Gwalior and others*, 1971 M. P. L. J. 496 and *Chhatarsal Singh Yadav* v *State of Maahya Pradesh*, 1973 M. P. L. J. 98; distinguished.

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The reading of the provisions of Section 13(1) and 13(2)(i) of the Act would make it clear that where a claimant has not acquired a mining lease but holds only a prospecting licence which ceases to have effect upon issuance of a notification under section 4 of the Act, he is entitled to claim from the Government that part of the reasonable and *bona fide* expenditure actually incurred by him over obtaining the licence and prospecting operation done as the notified area would bear to the total area covered by the prospecting operations. The same amount would be payable to the claimant under section 13(2)(i) where the claimant obtains a mining lease after the prospecting operation and that lease comes to an end by acquisition.

Whatever the claimant could claim under section 13(1), would be admissible to him under section 13(2)(i) and nothing more.

The claim of solatium under section 13(4) of the Act is permissible only to such claimant where no acquisition is made under section 9 and notification under section 4 ceases to have effect in accordance with the provisions of section 7(2) of the Act.

A claimant whose mining lease is acquired, is entitled to compensation only as calculated by section 13(2) of the Act.

East India Coal Co. Ltd. v. *The Union of India*, A. I.R. 1974 Pat. 48; referred to.

The reading of the Rule makes it clear that Section 13(4) of the Act envisages compensation to a person whose lease is suspended by notification under section 4 till such time the notice is rescinded, or the maximum period of three years when the notice ceases to have effect automatically under Section 7(2) of the Act. But where declaration under section 9 is made, neither the notice is rescinded nor will it cease to have effect in order to attract Section 13(4).

It cannot be disputed that expenses incurred over supervision and control and sifting of data would be intimately connected with the prospecting operations and, therefore, a permissible item under section 13(1)(iv).

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Bhikraj Jaipuria v. *Union of India*, A. I. R. 1962 S. C. 113, *State of West Bengal* v. *B. K. Mondal & Sons*, A. I. R. 1962 S. C. 779, *State of Bihar* v. *Karam Chand Thapar and Bros. Ltd.*, A. I. R. 1962 S. C. 110 *Union of India* v. *A. L. Rallia Ram*, A. I. R. 1963 S. C. 1685, *New Marine Coal Co.* v. *The Union of India*, A. I. R. 1964 S. C. 152, *State of M. P.* v. *Ratanlal*, 1967 M.P.L.J. 104 (S. C.), *K. P. Chowdhry* v. *State of Madhya Pradesh*, A.I.R. 1967 S.C. 203 and *Mulamchand* v. *State of Madhya Pradesh*, A. I. R. 1968 S. C. 1218; referred to.

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Constitution of India—Article 311—Applies to dismissal or removal of Government servant-But not to his compulsory retirement : *vide* States Re-organisation Act, Section 115 (7), Proviso, Constitution of India, Article 311 and New Pension Rules, Rule 2 (3) (ii) .. **1121**

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Constitution of India--Articles 320 and 315, Public Service Commission (Limitation of Functions) Regulations, M.P , 1957, Regulations 2(a), 3 and 5 and Civil Services (General Conditions of Service) Rules, M. P , 1961, Rules 2(b) and 7—"Commission"—Means entire body and not one member thereof—Body not delegating functions to chairman—Chairman alone interviewing candidate—Selection of a candidate notified—Other members later on making endorsement as "seen" indicative of intimation only and not of their approval—Consultation is not with the commission—Necessity of consultation—Appointment in cases not covered by

Regulations 3 and 5—Direct recruitment can be made only in consultation with Public Service Commission—Constitution of India—Article 226(1)(a) and (b)—Impugned order resulting in reversion of petitioner resulting in substantial injury—Writ petition by such person—Maintainable: Proviso to Rule 7 of M. P. Civil Services (General Conditions of Service) Rules, 1961, indicates that the commission shall be consulted before a person is appointed to a service or post if such consultation is necessary under Article 320 of the Constitution read with the M. P. Public Service Commission (Limitation of Functions) Regulations, 1957. Article 320 of the Constitution as also the M. P. Public Service Commission (Limitation of Functions) Regulations, 1957, define "the Commission" as Public Service Commission, Madhya Pradesh. M. P. Civil Services (General Conditions of Service) Rules, 1961, also define 'Commission' as M. P. Public Service Commission. Therefore, where the Public Service Commission is to be consulted it only means the Commission, as understood within the scheme of the Constitution and defined in the Rules referred to above, has to be consulted and consultation with one member, the Chairman alone, who out of the members present at the time of selection could not be said to be consultation with the Public Service Commission, unless the Commission had choosen to delegate its functions to one of its members and subsequently endorsed the decision of that member by approval.

Where the Chairman of the Public Service Commission by himself by his order constituted two Boards to sit for interview and in one of them he himself sat which was for the interview in respect of posts for which petitioner and Respondent No. 3 were candidates and after the interview the selection of respondent no. 3 was notified and it was later endorsed by the other two members with endorsement "seen", the powers could not be said to have been delegated to the Chairman by the "commission to interview candidates alone; and subsequent endorsement by the other members only indicated intimations to them and not their approval. Therefore, selection by the Chairman alone could not be construed to be selected by the Public Service Commission.

K. K. Bhatia v. *Rajasthan Public Service Commission*, 1972 Raj. Law Weekly 22, *Anandi Lal Verma* v. *State of Rajasthan*, 1975 S. L. R. 49 and *Chandra Mohan* v. *State of U. P*, A. I. R. 1966 S. C. 1987; relied on.

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Devajit Chaliha v. *Harendra Nath*, A. I. R. 1971 Assam 136; distinguished.

It is not open to the executive Government completely to ignore the existence of the Commission. Once relevant regulations have been made they are meant to be followed in letter and in spirit. Where the regulations and rules indicate that appointment by direct recruitment could only be made in consultation with the Public Service Commission, it cannot be contended that consultation with Public Service Commission is not necessary. Where the Government has consulted and accepted the advice given by the Chairman and it was only on that recommendation that the Government acted in appointing a candidate, the real question for consideration would be whether what the Government accepted as the recommendation of the Public Service Commission was in fact the recommendation of the Public Service Commission or not and it cannot be contended that that consultation with the Public Service Commission is not mandatory but only directory.

State of U. P. v. *Manbodhan Lal*, A. I. R. 1957 S. C. 912, *Laxman Hirway* v. *State of Madhya Bharat*, A. I. R. 1958 M. P. 135, *D. Made Gowda* v. *The State of Mysore*, A. I R. 1966 Mys. 220 and *Tuhi Ram Sharma* v. *Prithvi Singh*, A. I. R. 1971 Punj. 297; distinguished.

When the State Government has made appointment of respondent no. 3 as Deputy Director, Women's Welfare (incharge of applied nutrition) in contravention of the provisions contained in Article 320(3) of the Constitution and Rule 7 of the M. P. Civil Services (General Conditions of Service) Rules, 1961, and also in contravention of Rule 5 of the M. P. Public Service Commission (Limitation of Functions) Regulations, 1957 and the petitioner who was working on that post was reverted it results in substantial injury to petitioner and her petition squarely falls within the ambit of Article 226(1)(a) and (b) of the Constitution.

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Where a decree for money provided recovery of the decretal amount in the first instance by sale of the pledged goods before proceeding against the judgment-debtor personally and the judgment-debtor failed to pay off the decretal amount within the time fixed by the Court, in execution it is open to the decree-holder to proceed for recovery of the decretal amount in any other manner and it is not necessary that the decree-holder first proceed against the property pledged.

Fatehchand v. *Indian Cotton Co. Ltd., Bombay*, A. I.R. 1935 Nag. 129; distinguished.

Mahalinga Nadar v. *Ganapathi Buddien*, I.L R. 27 Mad. 528 (F.B.), *Jiwan Das* v. *Sahu Sarju Prasad* A.I.R.1945 All.299, *Hardis Mundra* v. *National & Grandlays Bank*, A. I. R. 1963 Cal. 132, *Bank of Chittoor* v. *Narasimhulu*, A.I.R. 1966 A. P. 163, *Hargobind Kishan Chand* v *Hakim Singh & Co.*, A. I. R. 1926 Lah. 110, *Ramchandrarao* v. *Vithal Keshav*, A. I. R. 1948 Bom. 143 and *Chena Pemaji* v. *Ghelabhai Narandas*, I. L. R. 7 Bom. 301; referred to.

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Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961)--Section 64(1), Proviso--Distinction between a dispute relating to any matter arising out of election process and dispute relating to election itself after process is completed--Jurisdiction of Registrar to deal with dispute relating to matter before election process completed and result of election declared--Constitution of India--Article 226--Petition regarding matter before election process completed and result declared--Petition not barred on ground of alternative remedy--Bye-laws of Jabalpur Wholesale Consumer Co-operative Society Ltd., Jabalpur-Bye-law 12-A (1)(f)--Expression "Is interested directly or indirectly in any contract" in--Meaning of: Proviso to section 64 (1) of the Act makes a distinction between a dispute relating to any matter arising out of the election process and a dispute relating to the election itself after the process is completed and thus ousts the jurisdiction of the Registrar to deal with a dispute pertaining to any such matter before the election process itself is completed and the result of the election is declared.

Petitioner approaching the Court before election process was completed and result declared, at that stage Registrar was not competent to deal with a dispute of this nature and as such it cannot be said that the alternative remedy under sub-section (1) of section 64 of the Act was available to petitioner. The petition is not liable to be dismissed on the ground of alternative remedy.

The expression "is interested directly or indirectly in any contract" in sub-clause (f) of clause (i) of bye-law 12-A clearly means that the petitioner holds an interest in any contract with the Society at the material time, that is, at the time of the election.

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for trial of cases instituted by Special Police Establishment of the Central Government—Judicial Magistrates trying those cases at their headquarters although offences were committed within the territorial jurisdiction of other Sessions Divisions—Appeal would lie before the Sessions Judge in respect of offences committed within their respective territorial jurisdiction: *vide* Criminal Procedure Code, 1973 ... 175

Criminal Procedure Code, 1973 (II of 1974)—Criminal Trial—Jurisdiction—Forum of appeal—Appointment of one Judicial Magistrate for more than one District for trial of cases instituted by Special Police Establishment of the Central Government—Judicial Magistrates trying those cases at their headquarters although offences were committed within the territorial jurisdiction of other Sessions Divisions—Appeal would lie before the Sessions Judge in respect of offences committed within their respective territorial jurisdiction—Trial of cases in wrong Sessions Division, Sub-Division or local area—Findings, sentence or order not vitiated on that ground unless it occasions failure of justice—Objection to jurisdiction must be raised during trial : Where one judicial magistrate is appointed for more than one District for trial of cases instituted by Special Police Establishment of the Central Government and such judicial magistrate tries those cases at his headquarter although offences involved therein were committed within the territorial jurisdiction of other Sessions Divisions an appeal against the judgment of such judicial magistrates would lie before the Sessions Judge in respect of offences committed within their respective territorial jurisdiction.

If the trial of cases have been made in a wrong Sessions divisions, sub-divisions or other local area, the findings, sentence or order of the Court shall not be set aside merely on that ground unless it occasions a failure of justice and such objection, if any, has been raised during the trial. Such objection cannot be permitted to be agitated at the appellate stage.

Jagannath Sonu v. *State of Maharashtra*, A. I. R. 1963 S. C. 728; *Valia Ambu Poduval* v. *Emperor*, I L. R. 30 Mad. 136, *Hira Lal* v. *Emperor*, A. I. R. 1918 Lah. 196, *Shori Lal* v. *The State*, A. I. R. 1952 All. 193, *Rahim Poonaji* v. *Abdul Rahim*, A. I. R. 1953 M. B. 156, *Babulal* v. *State*, (1962) 1 Cr. L.J. 670, *State of Haryana* v. *Shri Ram Niwas Birla*, 1973 P. L. R. 541, *The Public*

Prosecutor v. *Sadanand Patnaik*, (1912) 13 Cr. L. J. 350, *Lalta Prasad Saxena* v. *State*, A. I. R. 1952 All. 70, *K. C. Paipal* v. *The State of Kerala*, A. I. R. 1962 Ker. 242, *Narayandas Daga* v. *The State of Maharashtra*, (1963) 66 L.R. 17, *D. C. Verma* v. *Bhagwanji Virji and others*, (1976) Guj. L. R. 412 and *T. S. Bajpai* v. *K. K. Ganguly*, (1976) 1 Cr. L. J. 514; referred to.

Ram Chandra Prasad v. *State of Bihar*, A. I. R. 1961 S. C. 1629, *Nasiruddin Khan* v. *State of Bihar*, A. I. R. 1973 S. C. 186 and *Divan Singh* v. *Emperor*, A. I. R. 1936 Nag. 56; relied on.

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Criminal Procedure Code, 1973 (II of 1974), Section 294 and Evidence Act (II of 1872), Section 45—Post-mortem report—Value of—When can be used in evidence against the accused for the offence of murder—Doctor not examined by the prosecution to prove it—Accused cannot be convicted on the basis of post-mortem report: *vide* Penal Code, Section 72 ... 1169

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Criminal Procedure Code, 1973 (II of 1974)—Section 432—Petition erroneously made to High Court—High Court may express opinion as regards sentence and sent it to State Government for exercise of jurisdiction under this Section: *vide* Criminal Procedure Code, Section 432 ... 288

Criminal Procedure Code, 1973 (II of 1974)—Section 432—Remission of sentence—Jurisdiction can be exercised by State Government—High Court has no jurisdiction to remit sentence under Section 432—Petition erroneously made to Hight Court—High Court may express opinion

as regards sentence and send it to State Government for exercise of jurisdiction under this Section : Jurisdiction under Section 432 of the Code of Criminal Procedure for remission of sentence can be exercised by the State Government only. High Court has no jurisdiction to remit sentence under this Section. However, if a petition is made to the High Court, it may express opinion as regards sentence and sent it to the State Government for exercise of jurisdiction under the said section.

Kali v. *King Emperor*, A. I. R. 1923 All. 473 (3) and *Nawab* v. *Empero*, A. I. R. 1932 Lah. 308; referred to.

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Criminal Procedure Code, 1973 (II of 1974)—Section 438—Grant of anticipatory bail—Effective till the conclusion of trial unless cancelled under section 437(5) or 439(2)—Directions can also be issued for not to commit the accused persons under custody while committing case to Sessions Court: *vide* Interpretation of Statute ... 784

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Debtor and Creditor—Creditor showing price of goods sold on behalf of constituent as cash received—The relationship of creditor and debtor does not come into existence—M. P. Moneylenders Act, 1934—Section 2—Definition of loan—To be read in the background of legal concept of loan—Every debt is not a loan—Concept of debt wider than loan—Loan contemplates actual advance whether of money or in kind in context—Transaction creating different relationship—Is not included in loan—Unpaid price of goods remaining with seller of goods who agrees to pay interest—Does not amount to loan—Section 2—Word 'money-lender' in—Definition of—Words "in the regular course of business" in—Signify certain degree of system and continuity—Stamp Act—Section 29—Imposes duty on executor to supply proper stamp—Section 44(1)—Stamp duty and penalty recovered from creditor—Creditor entitled to recover from debtor—Hindu law—Pious obligation of son to pay debt of father—Liability restricted to assets inherited—No personal

liability arises: Simply because the defendant in his account books entered the price which he was liable to pay to the plaintiff as cash received by him from the plaintiff or because the plaintiff allowed the amount of price to lie with the defendant, it cannot be held that the relationship of lender and borrower was created between the parties.

Gordon Woodroffe and Co. v. *Shaik M. A. Majid and Co.*, A. I. R. 1967 S.C. 181 at p. 185; referred to.

The definition of loan in Moneylender's Act must be read in the background of the legal concept of loan. Although a loan of creates a debt but every debt is not a loan. The concept of debt is much wider than that of loan.

Ram Ratan Gupta v. *Director of Enforcement*, A. I. R. 1966 S. C. 495 and *Shree Ram Mills Ltd.* v. *Commr. of M.P.T.*, A.I.R. 1953 S.C. 485; referred to.

If the legal nature of the transaction is not lending of money, the transaction cannot be regarded as a loan although it may carry out the same economic function which is performed by entering into a transaction of loan.

Olda Discount Co. Ltd. v. *John Play Fair Ltd.*, (1938) 3 All E. R. 275; *Premor Ltd.* v. *Shaw Brothers*, (1964) 2 All E. R. 583 at pp. 588-589 and *Chow Yoong Rong* v. *Coong Fah*, (1961) 3 All E. R. 1163 (P. C.); referred to.

The essence of the definition of loan under the Money-lenders Act is that it should be an actual advance whether of money or in kind at interest. The definition does not depart from the basic conception of a loan and transactions which in law create relationships different from lender and borrower are not included within it.

Spargo's case, (1861) 73 All E. R. Rep. 261-265 and *Beninson* v. *Shiber*, A. I. R. 1946 P. C. 145; referred to.

The relationship between the plaintiff and the defendant created a debt in favour of the plaintiff but the debt did

not amount to a loan even though the plaintiff allowed the unpaid price to remain with the defendant and the defendant paid interest on it.

The words "in the regular course of business" in the definition of money-lender signify a certain degree of system and continuity of transactions. Every person who has advanced a loan therefore is not a money-lender.

Kirkwood v. *Gadd*, 1910 A. C. 422 and *Ganjanan* v. *Brindaban*, A.I.R. 1970 S. C. 2007; referred to.

Under section 29 of the Stamp Act, the expenses for providing the proper stamp on a bond is to be borne by its executor.

In accordance with sub-section (1) of section 44 of the plaintiff is entitled to recover the duty and penalty paid by him under section 35 from the defendant and this amount can be included as costs in the suit as provided in sub-section (3) of the same section.

Lokmat Motor Service v. *New Lokmat Lodging*, A. I. R. 1945 Nag. 178; referred to.

It is natural for a son to help his father in the business. But these facts cannot give rise to an inference that the son whose name is associated in the business has any interest in the business.

The debts incurred by the father in the course of business started by him are not *ayyavaharika* debts and the sons are under a pious obligation to discharge such debts. Son, therefore, although not personally liable for the payment of the amount due is liable to the extent of his share in the joint family property, if any.

Brij Narain v. *Mangala Prasad*, A. I. R. 1924 P. C. 50 and *Faquir Chand* v. *Harnam Kaur*, A. I. R. 1967 S.C. 727; referred to.

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Divorce Act, Indian (IV of 1869)—Section 10—Husband seeking divorce on the ground that living with wife was unsafe and humanly impossible—During pendency of the petition husband gains knowledge that his wife is living in adultery—Amendment raising adultery as a ground for Divorce—Amendment when can be allowed—Order allowing such amendments—Validity and effect of Divorce—Proceedings under—Nature of—Section 11—Charge of adultery—Requisites for proof thereof: The ordinary rule is that the rights of the parties must be determined as on the date of the action and not on the basis of the rights which accrued to them after the institution of the suit. But where the nature of the relief as originally sought has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts.

When during the pendency of the petition filed by the husband under section 10 of the Indian Divorce Act against his wife, it comes to the knowledge of the husband that his wife is having a child not born from his cohabitation and thereupon applies for amending the petition adding a ground of adultery in it. The position of law is that divorce on the ground of adultery could be allowed to be incorporated in the petition subsequently by amendment provided the ground existed at the time of filing of the petition.

Rameshwar v. *Jot Ram*, A. I. R. 1976 S. C. 49, *P. Venkateshwarly* v. *Motor & General Traders*, A. I. R. 1975 S C. 1409, *Potterson* v. *State of Alabama*, (1934) 294 U. S. 600 and *Ramji Lal* v. *State of Punjab*, A. I. R. 1966 Punj. 374 F. B.; followed.

Divorce is a Civil Proceeding and the analogies of Criminal law are not apt.

In order to prove that wife is guilty of adultery the petitioner is only required to prove his case by preponderance of probabilities and the degree of probability depends on the gravity of the offence.

Direct proof of adultery can rarely be given. Even if given, it is suspicious and is apt to be disbelieved. The accepted rule, therefore, is that circumstantial evidence is all

that can normally be expected in proof of the charge. The circumstances must be such as lead to it by fair inference as a necessary conclusion and unless this were so, no protection whatever could be given to marital rights.

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Drugs and Cosmetics Rules, 1945—Rule 65(9)—"Registered Medical Practitioner" in—Does not include a Homoeopathic and Biochemic Practitioner Registered under Homoeopathic and Biochemic Practitioners Act in M.P.: *vide* Homoeopathic and Biochemic Practitioners Act, Section 19 ... 628

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party necessary: *vide* Public Premises (Eviction of Un-authorised Occupants) Act, Section 18(2)(b) ... 639

Estoppel—Mere mechanical receipt of costs without conscious decision to abandon right—Will not create estoppel: *vide* Public Premises (Eviction of Un-authorised Occupants) Act, Section 18(2)(b) ... 639

Essential Commodities Act (X of 1955)—Sections 3 and 7—Conviction thereunder for contravention of provisions of Rice (Movement) Control Order, M. P., 1957 and Foodgrains (Restriction on Border Movement) Order, M. P., 1959—Plea of accused regarding search by an officer not authorised by law—Tenability of—Penal Code, Indian—Section 379—Accused attempting to transport paddy to another State in a truck without permit—After seizure of paddy accused fleeing away with the truck—Truck pursued and caught—Conviction of accused under the section—Justification of : If the accused is convicted under section 3 read with section 7 of the Essential Commodities Act, 1955, for contravention of the provisions of Rice (Movement) Control Order, M. P., 1957 and Foodgrains (Restriction on Border Movement) Order, M. P., 1959, the conviction cannot be challenged on the ground that the search and the seizure were made by the head constable who was not authorised for the same under the provisions of the Rice (Movement) Control Order, M. P., 1957, as this irregularity or even illegality would not render the search and the seizure of the goods or the proceedings launched thereunder illegal.

Tej Bahadur Singh v. *The State of U. P.*, (1970) 3 S.C.C. 779 and *Radha Kishan* v. *State of Uttar Pradesh*, A.I.R. 1963 S. C. 822; relied on.

Where the driver of the truck, after the seizure of goods (paddy) was effected and the head constable directed him to park the truck, did not obey his directions and fled away taking the goods with him and later on the goods were seized after pursuing him and the driver had full knowlege about the transport of the goods in the truck without any permit, the driver is liable for contravention of M. P. Rice (Movement) Control Order, 1957, and M. P. Foodgrains (Restriction on Border Movement) Order, 1959, as also under section 379 of the Indian Penal Code.

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Hansraj Gupta and others v. *Dehra Dun-Mossoorie Electric Tramway Co. Ltd.*, A. I. R. 1940 P. C. 98; relied on.

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Evidence—Nature of evidence required in Matrimonial Cause—Hindu Marriage Act—Section 10(1)(d)—Proof regarding suffering from syphilis for 3 years prior to the petition wanting—Judicial separation cannot be granted—Section 12(1)(c)—Obtaining of consent of husband by concealment—Does not arise if fact regarding which concealment is alleged is not known to the party—Definition of fraud in section 17 of Contract Act—Cannot be incorporated in this provision—"Fraud" in matrimonial law—Has technical meaning—Meaning of fraud in the context of annulment of marriage—Wife concealing her ailment of venereal disease—Does not amount to fraud

within this provision: In a matrimonial cause, the Court must be satisfied, apart from any plea of the respondent, that the evidence adduced by the petitioner is reliable.

The petitioner-husband failed to prove that the wife was suffering from syphilis for a period of three years before the presentation of the petition, the husband's relief for judicial separation under section 10(1)(d) must be rejected.

The question of inducing the consent of the husband by concealment of a fact can only arise when the fact was known to the wife or her parents. When neither the wife nor her parents know that she was suffering from syphilis, there can be no question of concealing that fact from the husband or obtaining his consent by practising fraud. The case of fraud, therefore, cannot be said to be made out.

It is not permissible to incorporate in the Hindu Marriage Act, the definition of fraud contained in Section 17 of the Indian Contract Act, for these Acts are not in *pari materia*.

The word "fraud" in matrimonial Law has a technical meaning. It does not include cases of misrepresentation or active concealment even of material facts inducing consent of a party. Fraud as already stated, in the context of annulment of marriage means such fraud which procures the appearance without the reality of consent, i. e. where there is no real consent at all. The word "fraud" in section 12(1)(c) of the Hindu Marriage Act must be understood in the sense.

Moss v. *Moss*, 1897 P. D. 263-269, *Alfred Robert Jones* v. *Mt. Titli*, 1933 All.122, *Aykut* v. *Aykut*, A.I.R. 1940 Cal. 751 and *Jude* v. *Jude*, A.I.R. 1949 Cal. 563; referred to.

Even where the wife knew that she was suffering from venereal disease, which fact she concealed from the husband, this cannot be held to be fraud within the meaning of section 12(1)(c) making the marriage voidable and entitling the husband to obtain a decree for annulment of marriage.

Harbhajan Singh v. *Smt. Brij Balab*, A.I.R. 1964 Punj. 359; *Rani Bala Debnath* v. *R. K. Debnath*, 73 C. W. N. 751,

Raghunath v. *Vijay*, A I.R. 1972 Bom 132 and *Rajaram* v. *Deepabai*, 1973 M. P. L. J. 626; referred to.

Birendra Kumar v. *Hemlata Biswas*, A. I. R. 1921 Cal. 459; distinguished.

The parliament intended to use the word "fraud" in section 12(1)(c) in the sense in which it had normally been understood in India under the matrimonial law.

MADHUSUDAN v. SMT. CHANDRIKA, I. L. R. [1980] M. P. . 249

Evidence Act, Indian (I of 1872)—Section 92, Proviso 1—Admissibility of oral evidence to prove mistake—Strong evidence necessary to make out a case of mistake: *vide* Society Registration Adhiniyam ... 568

Evidence Act, Indian (I of 1872)—Section 116—Estoppel—Tenant not let into possession by the landlord—Tenant not estopped from challenging derivative title claimed by the landlord: *vide* Transfer of Property Act, Section 109 ... 977

***Ex-parte* Decree—No application under Order 9, rule 13, Civil Procedure Code filed—Appeal against it under section 96(2), Civil Procedure Code—Cannot be converted into proceedings for setting aside *ex-parte* decree on grounds envisaged under Order 9, rule 13, Civil Procedure Code—Special remedy under Order 9, rule 13, Civil Procedure Code—Must be restored to for seeking setting aside of *ex-parte* decree—Practice—*Ex-parte* proceedings against defendant—Plaintiff must adduce evidence to prove his case to the satisfaction of the Court—Absence of defendant does not lighten the burden of proof upon him—No duty cast upon the Court to tell the plaintiff about sufficiency or otherwise of the evidence to prove his case:** The appeal against the *ex-parte* decree under Section 96(2) of the Code of Civil Procedure cannot be converted into proceedings for setting aside the decree with the concomit a duty of affording to the parties an opportunity of adducing evidence for and against any ground that may be raised in support thereof under Order 9, rule 13, Civil Procedure Code. Nor can such an appeal be converted into an appeal under Order 43, Rule 1 (d), Civil Procedure Code. The reason is that when a particular remedy is provided for

setting aside an *ex-parte* decree and there is, by way of appeal, another Special remedy against an order refusing to set it aside, these remedies and none other must be followed.

Ramlal v. *Rewa Coal Fields Ltd., Calcutta*, 1966 M. P. L. J. 507; relied on.

Every Court in dealing with an *ex-parte* case should take good care to see that the Plaintiff's case is atleast *prima facie* proved. Mere absence of the defendant does not justify the presumption that the whole of the plaintiff's case is true.

Even the plaintiff failed to make out a *prima-facie* case and the defendant is entitled *ex-debito justitiae* to have such a decree set aside. It is no doubt the practice that no issues are framed but that does not absolve the plaintiff of his responsibility to prove his case. The plaintiff is bound to prove his case to the satisfaction of the court and his burden is not lightened merely because the defendant is absent.

Mohanlal v. *Union of India*, 1962 J. L. J. S. N. 269; not approved.

Per S.R. Vyas J. - While the *exparte* evidence is being recorded it is for the plaintiff to decide as to what should be the kind and extent of evidence which will satisfy the court for holding that his claim deserves to be decreed. There is no duty cast upon to the Court to tell at every stage of recording the *ex-parte* evidence that the evidence given by the plaintiff is either sufficient or more evidence is necessary. The fact that the defendant is absent and has not joined any issue with the plaintiff does not in any way lesson the plaintiff's burder for proving his case.

Mohanlal v. *Union of India*, 1962 J. L. J. S. N. 269; not followed.

Sheonarayan v. *Kanhaiyalal*, A. I. R. 1948 Nag. 168 and *Bhujangrao* v. *Baliram*, A. I. R. 1928 Nag. 165; referred to.

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NAGAR PALIKA NIGAM, GWALIOR, THROUGH COMMISSIONER, NAGAR PALIKA NIGAM v. MOTILAL, I. L. R. [1980] M. P. ... 39

General Clauses Act, Madhya Pradesh, 1957 (III of 1958)—Section 13—Applicable when M. P. Act repeals in M. P. any Central Act—Certificate of Registration under Societies Registration Act, 1860—Is an instrument within the meaning of this provision: *vide* Society Registration Adhiniyam ... 568

General Clauses Act, M. P., 1957 (III of 1958)—Section 24(e)—Publication of Rules in official Gazette—Presumption—Publication of draft rules in Newspaper not necessary: *vide* Panchayats Act, Section 6-A (1)(a), Panchayats (Amendment) Act and Panchayats (Amendment) Ordinance ... 115

General Sales tax Act, M. P., 1958 (II of 1959), Section 8(1) and General Sales-tax, Rules, Madhya Pradesh, 1959, Rule 20(4)—Relation between the two: *vide* General Sales-tax Act, Section 19(1) ... 910

General Sales-tax Act, Madhya Pradesh, 1958 (II of 1959)—Section 19(1)—Assessment re-opened thereunder—Assessee obtaining a declaration in form XII-A from the purchasing dealer claiming the concession rate of tax under section 8(1) of the Act, because the goods were not specified in the registration certificate of the purchasing dealer—Tenability of—General Sales Tax Rules, Madhya Pradesh, 1959—Rule 20(4)—Compliance of provisions thereof—Mandatory—General Sale Tax Act, Section 8(1) and General Sales Tax Rules, 1959, Rule 20(4)—Relation between the two: There is a complete procedure provided under the Rules for the taxing authorities to grant registration certificates. It is as a result of this, that they on being satisfied that particular goods are used as a "raw material" that the same are mentioned in the registration certificate. If a particular goods is not so mentioned, then there is no further stage provided under the Act or the Rules at which the taxing authorities may enquire as to whether the goods so purchased can be used as a raw material.

The language of Section 8(1) of the Act clearly goes to show that the concessional rate of tax would be permissible only when the restrictions and conditions as have been prescribed are complied with. This being in the

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nature of an exception it has to be strictly complied with. The relevant condition is provided in Rule 20(4) of the Rules framed under the Act. From the perusal of the above Rule 20.4), it is apparent that the selling-dealer will be entitled to pay tax at the reduced rate only if raw-materials are specified in the registration certificate of the purchasing dealer as being required by him for the manufacture of other goods for sale and there is a declaration given by such purchasing dealer in Form XII-A, duly signed by him.

State of Madras v. *Radio and Electricals Ltd.*, 18 S. T. C. 222; followed.

Commissioner of Sales Tax, M.P. v. *M/s Samaj Paper Mart, Indore*, 1968 M. P. L. J. 65; referred to.

THE COMMISSIONER OF SALES TAX, M. P. v. LALLOOBHAI B. PATEL & CO. LTD., SAGAR, I. L. R. [1980] M. P. ... 910

General Sales-tax Act, M. P., 1958 (II of 1959) and General Sales-tax (Amendment and Validation) Act, M. P. (XIII of 1971), Sections 9 and 10—Hessian cloth—Falls outside entry No. 6 of Schedule I-Liable to Sales-tax, State and Central both even before amendments: *vide* General Sales-tax Act and General Sales-tax (Amendment and Validation) Act, Sections 9 and 10 ... 278

General Sales-tax Act, M. P., 1958 (II of 1959) and General Sales-tax (Amendment and Validation) Act, M. P. (XIII of 1971), Sections 9 and 10—Hessian cloth liable to State as well as Central Sales Tax: *vide* General Sales-tax Act and General Sales-tax (Amendment and Validation) Act, Sections 9 and 10 ... 278

General Sales-tax Act, M. P., 1958 (II of 1959) and General Sales-Tax (Amendment and Validation) Act, M. P (XIII of 1971), Sections 9 and 10—Implied contract of sale of packing material—Question of fact—Effect of Amendments: *vide* General Sales-tax Act and General Sales-tax (Amendment and Validation) Act, Sections 9 and 10 ... 278

General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959) and General Sales Tax (Amendment and Validation) Act, Madhya Pradesh (XIII of 1971), Sections 9 and 10—Retrospective effect of amendments—Hessian cloth—

Falls outside entry No. 6 of Schedule I—Liable to Sales Tax, State and Central both even before amendments—Sales of Bidis by assessee duly packed in crates—Price of packing materials included in price of Bidis—Packing material form part of bargain—Implied sale of packing materials can be presumed—Implied contract of sale of packing material—Question of fact—Effect of Amendment—Hessian cloth liable to State as well as Central Sales Tax: Where there is an implied contract of sale of packing material, is a pure question of fact, depending upon circumstances found in each case.

Where there is a sale of Bidis by the assessee and Bidis have to be supplied to the purchaser duly packed in crates and the price of the packing materials have been taken into account in fixing the price of Bidis and the purchaser will not pay the price of Bidis as settled if the Bidis were supplied in loose or without the packing material, the packing material does form part of the bargain and an implied sale of packing material taxable to State and Central Sales Tax can be presumed.

After the passing of General Sales Tax (Amendment and Validation) Act, M. P., 1971, giving retrospective effect of the amendment, under Sections 9 and 10, hessian cloth is treated as outside entry No. 6 of Schedule I and would thereupon be held liable to State and Central Sales Tax for the period prior to 6th May 1971.

Commissioner of Sales Tax, M. P. v. *New Bhopal Textils Ltd., Bhopal*, 1970 Vikrya Kar Nirnaya (3) at page 234, *M/s Ishan M. Gulam Bidi Merchants, Katni* v. *Commissioner of Sales Tax, M. P.* M. C. C. No. 179 of 70, decided on the 21st Sept. 1971, *Hyderabad Deccan Cigarette Factory* v. *The State of Andhra Pradesh*, (1966) 17 S. T. C. 624, *State of Madras* v. *M/s Gannon & Co.*, A.I.R. 1958 S.C. 560, *Commissioner of Taxes, Assam* v. *Prabhat Marketing Co., Ltd.*, (1967) 19 S. T. C 84, *Vimalchand Prakashchand* v. *Commissioner of Sales Tax*, (1968) 22 S. T. C. 22, *Nimar Cotton Press* v. *Sales Tax Officer, Nimar Circles, Khandwa*, 1961) 12 S T. C. 313, *M/s Patel Volkart Private Ltd.* v. *Commissioner of Sales Tax, M. P.*, 1972 M. P. L. J 221, *Commissioner of Sales Tax, M. P., Bhopal* v. *Bharat Kala Bhandar, Khandwa*, 21 S. T. C. 382 and *Commissioner of Sales Tax, M. P.* v. *M/s New Bhopal Textile Ltd.*, 1970 M.P.L.J. 607; referred to.

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General Sales-tax Act, M. P. 1958 (II of 1959) and Sales-tax (Amendment and Validation) Act, Sections 9 and 10—Sale of Bidi by assessee duly packed in crates—Price of packing materials included in price of Bidis—Packing material form part of bargain—Implied sale of packing materials can be presumed: *vide* General Sales-tax Act and General Sales-tax (Amendment and Validation) Act, Sections 9 and 10 ... 278

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Government of India Act, 1935—Section 103—Law made by Central legislature—Could be amended or repealed by legislature of Province in its application to that province: *vide* Homoeopathic and Biochemic Practitioners Act, Section 19 ... 628

Government of M. P. Education Department Letter No. 11548/8760/20-1/72 dated 6.12.1972—Rule 2—Degree of Bachelor of Teaching—Not a post-graduate degree - Rule 4, proviso (b)—Whether it is independent proviso to Rule 4 or is a sub-proviso to proviso (a) of Rule 4—Consequences which follow in two cases—Rule 4—Provision generous and benevolent to teachers—Rule 4, provisos (a) and (b)—Word "And" between two provisos—Effect of - Rule 4, proviso (a)—Principal absorbed as lecturer—Entitled to be absorbed as principal provided he obtains post-graduate degree within 3 years of date of absorption: The degree of Bachelor of Teaching is not a post-graduate degree.

The question is whether proviso (b) is an independent proviso to Rule 4, or is a sub-proviso to proviso (a) to Rule (4). In the latter case, the construction of the rule will be this. If a principal of a taken over institution does not hold a post-graduate degree : (1) By virtue of rule 4 (read without the proviso), he was qualified to be absorbed as an Upper Division Teacher, provided he is a graduate; otherwise, as a Lower Division Teacher notwithstanding that he may have worked as Principal for 7 years in the same institution and may also possess

10 years teaching experience. (ii) However, by virtue of proviso (a), he will be absorbed as a lecturer (i. e. one grade below the post of Principal), although he may not be even a graduate. (iii) Since he does not hold a post-graduate degree, he is really not entitled to be absorbed as a l ecturer. But a latitude is shown to this category of teachers, that is, three years time is granted to them within which they should acquire a post-graduate qualification, which is normally required for holding a post of Lecturer.

Final absorption rules were studiously made generous and benevolent in favour of the teachers who were absorbed from such institutions; i. e. educational institution managed by Janpad Sabhas.

The conjunction "and" between provisos (a) and (b) to Rule 4 has been employed to separate them. The two provisos must be read independent of each other, unless such reading will lead to any absurdity.

A principal who was absorbed as a lecturer by virtue of Rule 4, Proviso (a) of the memorandum dated December 6, 1972 (*supra*), is entitled to be absorbed as a Principal, if he obtains a post-graduate degree within 3 years from the date of absorption.

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Government of M. P. Education Department Letter No. 11548/8760/20-1/72 dated 6-12-1972—Rule 4— Provision generous and benevolent to teachers: *vide* Government of M. P. Education Department Letter No. 11548/8760/20-1/72, dated 6-12-1972 ... 1016

Government of M. P. Education Department Letter No. 11548/8760/20-1/72, dated 6-12-1972—Rule 4, Proviso (a)—Principal absorbed as lecturer—Entitled to be absorbed as principal provided he obtains post-graduate degree within 3 years of date of absorption: *vide* Government of M. P. Education Department Letter No. 11548/8760/20-1/72, dated 6-12-1972 ... 1016

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Lakshman Singh v. *Rup Kanwar*, A.I.R. 1961 S. C. 1378 and *Debi Prasad* v. *Tribeni Devi*, A. I. R. 1970 S. C. 1286; referred to.

Under section 7 of the Act, the consent of the wife to the adoption made by her husband need not be directly proved and it may be inferred from circumstances.

The expression "any text, rule or interpretation of Hindu Law" interpreted in a wide sense is capable of embracing any custom or usage forming part of that law.

In section 4(a) of the Act the expression 'any text, rule

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to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, and that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. When the Will is surrounded by suspicious circumstances, the burden of proof is heavier. If the alleged signature of the testator is shaky and doubtful; if the condition of the testator's mind appears to be feeble; if the dispositions made appear to be unnatural; or if the propounder himself takes prominent part in the execution of the Will which confers on him substantial benefit, it would be the duty of the propounder to remove the suspicion from the mind of the Court by cogent and satisfactory evidence. But even where a Will is charged with suspicion, the rules enjoin only "a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth".

H. Venkatachala Iyenger v. *B. H. Thimmajamma,* A. I. R. 1959 S. C. 443; *Purnima Devi* v. *Khagendra Narayan,* A.I.R. 1962 S.C. 567; *Shashi Kumar* v. *Subodh Kumar,* A.I.R. 1964 S.C 529; *Ramachandra* v. *Champabai,* A.I.R. 1965 S.C. 354 and *Thatatah* v. *Venkata Subbatah,* A.I.R. 1968 S.C. 1332; referred to.

The appellate Court in dealing with any case where credibility or oral evidence has to be assessed gives due weight to the opinion expressed by the trial Judge who has the advantage of watching the dameanour of witnesses. This principle applies also to a case where a Will is in issue and its proof depends on oral evidence.

Shama Charan Kundu v. *Khettromoni Dosi,* I. L. R. 27 Cal. 521 (P. C.) at p. 528; referred to.

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Hindu Law—Inheritance—Remarriage of widow—Effect on her limited interest in husband's property—Son predeceased mother—Mother's right to inherit her son—Whether affected by her remarriage: The suit land belonged to

Chhabilal. On his death, the same was inherited by his son Udal. The widow of Chhabilal had remarried during the life time of her son. The son died in the year 1957 and his wife had already remarried. Widow of Chhabilal claimed the suit land on the death of her son as his only heir to inherit the property left by him being his mother as the son's widow had already remarried. On the death of mother, son's widow has been substituted in her place in the second appeal.

Chhabilal's brothers's widow claiming herself to be the owner after the death of Chhabilal's son, had transferred the suit lands in favour of defendant No. 2 Chitgovind. Her claim was that the remarriage of Chhabilal's wife Dukala Bai, deprived her of all the rights to inherit the suit property and, therefore, being the widow of Chhabilal's brother Samayalal, was the only heir to inherit and as such she became the rightful owner and the alienation made by her in favour of defendent No. 2 was valid.

On behalf of Appellant it was contended that after the death of Udal (son), Mst. Dukala Bai inherited the suit land not as the widow of Chhabilal, but as the mother of Udal and, therefore, her remarriage during the life time of Udal did not came in her way to inherit the suit land.

Held :—Mother succeeds to the property of her son as his mother. She does not cease to be a mother simply because she has taken second husband. At the time of remarriage of Dukala Bai, the suit property belonged to her son and she had only the limited interest in it. The effect of her remarriage was that she was divested of her limited interest. Her remarriage did not destroy the relationship by blood i. e. mother and son. The remarriage will disentitle the widow to inherit the property from her husband but it will not disentitle her to inherit the property of her son, being mother when the son dies after remarriage. A widow upon her remarriage forfeits her rights and interest in her husband's property which is already vested in her, but she retains unimpaired rights to inherit to her husband's lineal descendants if the inheritance opened after remarriage. The reason was that though the remarriage puts an end to the connubial relationship, it does not effect consanguinity.

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Akora Seth v. *Boreani* (leading case), (1868) 11 Weekly Reports 82=2 B. L. R. 199, *Lakchmana* v. *Sasomulyani*, (1905)I. L. R. 28 Mad. at p 425=15 M. L. J 245, *Mst. Palti* v. *Nirdhan Gope*, A. I. R. 1924 Pat. 233 and *Apa* v. *Damdia*, 14 N. L. J. 149; relied on.

Bhondu Ganpat Kirad and others v. *Ramdayal Govind Ram Kirad & another*, 1959 M. P. L. J. 1173 (F. B.); distinguished.

MST. RATNI BAI v. MST.MANKUWAR BAI, I.L.R. [1980] M. P. ... 993

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Hindu Marriage Act (XXV of 1955)—Section 9—Restitution of conjugal rights—Marriage solemnised when wife was 10 to 12 years old—Marriage neither *ab initio* void nor voidable—Wife coming and living with her husband after becoming major—Marriage validated and defect condoned—Relief of restitution of conjugal rights cannot be refused to husband: A Marriage solemnised in contravention of age mentioned in clause (iii) of section 5 of the Hindu Marriage Act can neither be declared *ab initio* void nor voidable. A person contravening is liable to be punished under section 18 of the Act. Where marriage took place when wife was only 10 to 12 years but after becoming major she has been coming and living with her husband, thereby showing that she has validated the marriage and condoned the defect, if there was any, the husband cannot be denied a decree for restitution of conjugal rights on the ground that the wife was only 10 to 12 years of age when she was married.

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Ghesalal v. *Tulsibai*, 1977 J. L. J. S. N. 52 and *Gindan & ors.* v. *Barelal*, 1976 J. L. J. 97; referred to.

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Hindu Marriage Act (XXV of 1955)—Section 10(1)(d)—Proof regarding suffering from syphilis for 3 years prior to the petition wanting—Judicial separation cannot be granted: *vide* Evidence ... 249

Hindu Marriage Act (XXV of 1955)—Section 12(1)(c)—"Fraud" in matrimonial law—Has technical meaning—Meaning of fraud in the context of annulment of marriage—Wife concealing her ailment of venereal disease—Does not amount to fraud within this provision: *vide* Evidence ... 249

Hindu Marriage Act (XXV of 1955)—Section 12(1)(c)—Obtaining of consent of husband by concealment by—Does not arise if fact regarding which concealment is alleged is not known to the party—Definition of fraud in section 17 of Contract Act—Cannot be incorporated in this provision: *vide* Evidence ... 249

Hindu Women's Rights to Property Act (XVIII of 1937)—Section 3(1) and (4)—Part C States (Laws) Act, 1950—Section 3—Extends Hindu Women's Rights to Property Act, 1937 to Vindhya Pradesh from 16-4-50—Also applicable to agricultural land in Vindhya Pradesh—Nature of Property, whether ancestral and joint family or separate—No presumption that joint family owns any coparcenary property—In absence of necessary plea, property held by last surviving coparcener to be regarded as his separate property—Inheritance—Last surviving coparcener dying in 1948 leaving behind his widow, two widows of predeceased sons and a daughter—Widow alone inherits as a limited owner—Death of limited owner in 1951—Legal fiction—Section 4—Destroys legal fiction—Daughter alone inherits as against widows of predeceased sons: The Hindu Women's Rights to Property Act, 1937, which was enacted by the Central legislature under the Government of India Act, 1935, did not extend to Panna. The Act applied to all property in the Cheif Commissioners' Provinces, but to property other than agricultural land in the Governors Provinces. When Parliament by Part C States (Laws) Act, 1950, extended the Hindu Women's Rights to Property Act, 1937, to

the Part C State of Vindhya Pradesh, the effect was as if the latter Act was incorporated by reference in the former. In other words, the Hindu Women's Rights to Property Act, 1937, had effect in Vindhya Pradesh as if it had been enacted by Parliament in 1950 and applied to Vindhya Pradesh. As Parliament had complete jurisdiction to legislate in respect of any matter so far as Vindhya Pradesh was concerned, the word 'property' as used in the Act ought to be construed to include agriculture land in Vindhya Pradesh.

In *re. Hindu Women's Rights to Property Act*, A. I. R. 1941 F. C. 72, *Umayal Achi* v. *Lakshmi Achi*, A. I. R. 1945 F. C. 25, *Mithan Lal* v *State of Delhi*, A. I. R. 1958 S. C. 682 at pp. 685 and 686 and *Bhaiyalal* v. *State of Madhya Pradesh*, A. I. R. 1962 S. C. 981; referred to.

Hari Dass v. *Rukmi*, A. I. R. 1965 Punj. 254; distinguished.

The property held by the last surviving coparcener cannot be regarded as "separate property" within the meaning of Section 3(1) of the Hindu Women's Rights to Property Act, 1937.

But there is no presumption that joint family owns any coparcenary property. Therefore, where there is no allegation that the suit land was the ancestral or joint family property in the lands of the last surviving coparcener, the case must be decided on the footing that it was his separate property.

Manoharlal v. *Bhuri Bai*, A. I. R. 1972 S. C. 1369; referred to.

Under the Hindu law, the widow comes as an heir after son, grand-son and great grand-son and predeceased son's widow is not an heir at all. Under Section 3(1) of the Hindu Women's Rights to Property Act, the widow gets the same share as a son. Similarly the widow of a predeceased son inherits in like manner as a son under the proviso. On the deaths of last surviving coparcener in 1948, his widow alone inherited the suit land as a limited owner under the Hindu law. The widows of the predeceased sons did not get any interest. On the death of the widow of the last surviving coparcener, in 1951, the Hindu Women's Rights to Property Act, 1937 had come into force in the area

of Vindhya Pradesh. On her death succession reopened to the last male holder. The settled position under the Hindu Law is that where a limited owner succeeds to an estate, the succession to the estate on her death has to be decided on the basis that the last full owner died on that date and in deciding as to who are the heirs of the last full owner, one has to see the law as applicable on the date of death of the limited owner. In tracing the heirs of the last male holder after the death of the limited owner, the Hindu law applies a fiction because of this fiction, the heirs of the last male holder have to be traced as if he had died on the date when the limited owner died. However, section 4 of the Hindu Women's Rigths to Property Act, 1937, destroys the fiction of Hindu law and it is not possible to apply section 3(1) to a case where the Hindu male had died before the commencement of the Act although the limited owner dies after its commencement. In this view of the matter, the plaintiff who are widows of predeceased sons and recognized as heirs under section 3(1) of the Act cannot succeed in preference to the daughter of the deceased as section 3(1) cannot be applied.

Daya Singh v. *Dhan Kaur*, A. I. R. 1974 S. C. 665, *Doni Chand* v. *Anar Kali*, A. I. R. 1946 P. C. 173, *Jasoda Kuer* v *Phul Kuer*, A. I. R. 1958 Pat. 600 and *Laktan Lal* v. *Bichu Mian*, A. I. R. 1960 Pat. 181 referred to.

MST. BHAGWAN KUNWAR v. MST. NANHI-DULAYA, I. L. R. [1980] M. P. ... 490

Hindu Women's Rights to Property Act (XVIII of 1937)—Section 4—Destroys legal fiction—Daughter alone inherits as against widows of predeceased sons: *vide* Hindu Women's Rights to Property Act, Section 3(1) and (4) ... 490

Homoepathic and Biochemic Practitioners Act, M. P. (XXVI of 1951)—All definition sections—To be read subject to contract to contrary—Such terms if not expressly mentioned—Are to be implied: *vide* Homoeopathic and Biochemic Practitioners Act, Section 19 628

Homoeopathic and Biochemic Practitioners Act, M. P. (XXVI of 1951)—Amended definition of Registered medical Practitioner - Shows that Drugs mentioned in Schedules H and L could be sold on prescription of a

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Homoeopathic Practitioner: *vide* Homoeopathic and Biochemic Practitioners Act, Section 19 ... 628

Homoeopathic and Biochemic Practitioners Act, M. P. (XXVI of 1951)—Section 19 Expression "Registered medical practitioner"—similar to expression "legally qualified medical practitioner" and "duly qualified medical practitioner"—Denotes that he is recognised by law to practice medicine—Drugs and Cosmetics Rules, 1945—Rules exclude persons practicing Biochemic system of medicine—All definition sections—To be read subject to contract to contrary—Such terms if not expressly mentioned—Are to be implied—Amended definition of Registered medical Practitioner—Shows that Drugs mentioned in Schedules H and L could be sold on prescription of a Homoeopathic Practitioner—Drugs and Cosmetices Rules 1945—Rule 65(9)—"Registered Medical Practitioner" in—Does not include a Homoeopathic and Biochemic Practitioner registered under Homoeopathic and Biochemic Practitioners Act in M. P.—Government of India Act, 1935—Section 103—Law made by Central legislature—Could be amended or repealed by legislature of Province in its application to that province—Government of India Act, 1935, Section 103—Difference between the two—Drugs Act, 1940—A pre-Constitution Act—Can in no sense be construed to be made under Article 252 by Parliament—Conflict between M. P. Act and Drugs Act, an existing law, former will prevail—Drugs and Cosmetics Rules, 1945—Rule 65(9)—Medicines not falling under Schedules H and L—Can be sold even without prescription of a registered medical practitioner: The expression "registered medical practitioner" denotes that the medical practioner concerned is recognised by law to practice medicine. The expression "registered medical practitioner" used in the Drugs and Cosmetics Rules will *prima facie* be construed in the light of section 19 of the Homoeopathic to Madhya Pradesh, notwithstanding that the definition of registered medical practitioner as contained in rule 2 (ee) of the Drugs and Cosmentics Rules excludes persons practicing the Homeopathic system of medicine. It does not, hwever, follow that the extended definition contained in section 19 must apply in all cases.

The objection of section 19 of the Act is to provide an extended definition in all Acts to which the section

applies of the expressions "legally qualified medical practitioner" or "duly qualified medical practitioner" or any other similar expression. But all definition sections have to be read subject to a contrary context. Most often some such words are expressly mentioned in the definition sections, but even otherwise such words are to be implied.

Knightsbridge Trust v. *Byrne*, (1940) 2 All E. R. 401 at p. 405; referred to.

The extended definition of the expressions to which section 19 relates must like all definitions be read subject to a contrary context.

The amendment of the definition of registered medical practitioners given in the rule so as to exclude a Homoeopathic Practitioner gives an idea that the makers of the rule never intended that the drugs mentioned in Schedules H and L be sold on the prescription of a Homoeopathic Practitioner.

The context of Rule 65(9) clearly shows that the expression "registered medical practitioner" as used in the said provision does not include a Homoeopathic and Biochemic Practitioners registered under the Homoeopathic and Biochamic Practitioners Act of Madhya Pradesh.

A law made by the central legislature under section 103 of Government of India Act could be amended or repealed by an Act of the Legislature of Province in its application to that Province. It is expressly so provided in section 103. Article 252 of the Constitution corresponds in some respects to section 103 of the Government of India Act, but there is a material difference in that a law passed Parliament under Article 252 cannot be amended or repealed by an Act of the Legislature of a State.

A law to fall under Article 252 of the Constitution must be a law made by Parliament.

The Drugs Act, 1940, which is a pre-constitution law made by the Central Legislature under the Government of India Act, can in no sense be construed to be a law made by Parliament under Article 252.

If there is a conflict between M. P. Act and the Drugs

Act which is an existing law, the former will prevail.

Medicines which do not fall within the description of substances specified in schedules H and L and which are not preparations containing these substances can be sold by a Chemist even without a prescription of a registered medical practitioner.

DR. PRAKASH CHANDRA TIWARI v. STATE OF M. P., I. L. R. [1980] M.P. 628

Homoeophathic and Biochemic Practitioners Act, M. P. (XXVI of 1951) and Drugs Act (XXIII of 1940)—Conflict between M. P. Act and Drugs Act, an existing law Former will prevail: *vide* Homoephathic and and Biochemic Practitioner Act, Section 19 ... 628

Identification - Accused persons' objection that their Photographs were shown to the prosecution witnesses and hence identification not proper—Tenability of: *vide* Penal Code, Sections 302, 149, 307 read with Sections 34 and 396 and Arms Act, Section 25 ... 1053

Income-tax Act, Indian (XI of 1922)—Reference—Application for Registration of Partnership firm—Delay in filing—Mistake of Counsel on account of lapse of his memory—Whether delay liable to be condoned: The assessee applied for registration for the assessment year 1963-64. It was due to be filed before the end of the accounting year, i. e. on October 28, 1962. However, the application was actually filed on November 11, 1963. There was a delay of 12 months and 14 days. The assessee was called upon to explain the cause of delay. The assessee gave an explanation that the partnership deed was signed by all the partners on on March 22, 1962; which was, alongwith other necessary papers, handed over to the counsel for being filed in the Income Tax Office, but due to lapse of memory, the counsel forgot to file the necessary papers before the Income Tax Officer. This explanation was filed by a partner of the firm and it was supported by an affidavit of the counsel. After recording evidence on the point, the Income Tax Officer refused registration. On appeal, the Appellate Assistant Commissioner held that it was a fit case for condonation of delay and, therefore, after setting aside the order of the Income Tax Officer,

directed him to register the firm. In further appeal before the Tribunal, by the Revenue, it was contended that (i) it was not certain when the application for registration was really handed over to the counsel and (ii) the counsel being an agent of the firm, the firm must suffer the consequences for default of its agent. The Tribunal held that in the circumstances of the case, it would not be proper to penalise the firm for the default of the counsel. Accordingly the appeal was dismissed. At the instance of the Commissioner of Income Tax a reference was made to the High Court.

Held :—The law is settled that mistake of Counsel may in certain circumstances be taken into account in condoning delay. *Bona fide* mistakes have got to be taken note of by the Courts in considering whether the delay in filing is liable to be condoned or not. It is essentially a question of fact whether the mistake of the counsel was *bona fide*. On the facts and circumstances of the case the lapse on the part of the counsel was *bona fide* and the Tribunal was right in condoning the delay.

Pandu v. *Hira*, A. I. R. 1936 Nag. 85, *Mata Din* v. *A. Narayanan*, A. I. R. 1970 S. C. 1953 and *Punjab University* v. *A. S. Ganesh*, A. I. R. 1972 S. C. 1973; referred to.

COMMISSIONER OF INCOME TAX v. M/S KHEMRAJ LAXMICHAND, RAIPUR, I. L. R. [1980] M. P. ... 511

Income-tax Act, Indian (XI of 1922)—Section 26-A—Partnership deed—Construction of—Deed not expressly mentioning individual shares of partners of each group of partners—Could be ascertained by necessary implication by reading deed as a whole: *vide* Income-tax Act, Section 26-A ... 777

Income-tax Act, Indian (XI of 1922)—Section 26-A—Partnership firm—Registration of—Partnership deed—Construction of—Deed not expressly mentioning individual shares of partners of each group of partners—Could be ascertained by necessary implication by reading deed as a whole—Where requirements of section 26-A satisfied—Assessee firm entitled to registration—Word "Specify"

in section 26-A—Meaning of: The assessee filed an application for registration of firm under section 26-A of the Income Tax Act, 1922, before the Income Tax Officer. The application was filed by all the partners. The Income-tax Officer refused registration on the ground that shares of each partner of the various groups had not been specifically mentioned in the partnership deed. The Appellate Assistant Commissioner maintained that order. In further appeal, the Appellate Tribunal held that the requirements of Section 26-A of the Income Tax Act, 1922 were satisfied inasmuch as the partnership deed could be reasonably construed as clearly implying that the shares of the partners of each group were equal. At the instance of the Commissioner of Income Tax, the Tribunal made a reference to the High Court.

Held:—Section 26-A of the Income Tax Act, 1922, merely requires "the individual shares of the partners" to be specified in the instrument of partnership. However, the specification of the shares need not be express, it may be implied.

The requirement of the section is satisfied; if the deed can be reasonably construed as clearly implying that the shares of the partners are equal. If shares of each partner of the respective group is not specifically mentioned, but, by implication, the partners are entitled to equally share the profits falling to the share of their respective group, the Tribunal is justified is directing the Income Tax Officer to grant registration to the assessee firm under section 26-A of the Income Tax Act, 1922, for the relevant assessment year.

Parekh Wadilal Jivanbhai v. *Commissioner of Income Tax, M. P., Nagpur and Bhandara*, (1967) 63 I. T. R. 285; relied on.

Dullichand Laxminarayan v. *Commissioner of Income Tax, Nagpur*, (1956) 29 I. T. R. 535; referred to.

N.T. Patel and Co. v. *Commissioner of Income Tax, Madras*, (1961) 42 I. T. R. 224 and *Mandyala Govindu & Co.* v. *Commissioner of Income Tax, Andhra Pradesh* (1976) 102 I. T. R. 1; distinguished.

THE COMMISSIONER OF INCOME TAX, BHOPAL v. M/S R. S. NIKHERA CONSTRUCTION CO., BHILAI, I.L.R. [1980] M.P. ... 777

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Income-tax Act, Indian (XI of 1922)—Section 26-A—Where requirements of section 26-A satisfied—Assessee firm entitled to registration: *vide* Income-tax Act, Section 26-A ... 777

Income-tax Act, Indian (XI of 1922)—Section 26-A—Word "Specify" in—Meaning of: *vide* Income-tax Act, Section 26-A ... 777

Income-tax Act, Indian (XLIII of 1961)—Minor incapable of entering into agreement for partition—Documents evidencing partition not signed by guardian of minor—Minor cannot be held to be represented in the partition: *vide* Income-tax Act ... 691

Income-tax Act, Indian (XLIII of 1961)—Partial partition between two brothers in respect of Hindu Undivided Family funds—Minor son of one brother also given a share—Whether inference of partition between one brother and his minor son can be drawn—Minor incapable of entering into agreement for partition—Documents evidencing partition not signed by guardian of minor—Minor cannot be held to be represented in the partition—Partnership firm—Minor admitted to the benefits for partnership—Contribution by minor towards capital of partnership firm came from Hindu Undivided Family—Father looking after the interest of his minor son in the partnership—Inference whether share income of minor son from partnership firm could be included in the total income of assessee Hindu Undivided Family—Section 147(b)—Notice sent and served on right person though mentioning wrong file number and he acted upon it—Order of Income Tax Officer not vitiated: Merely because there was a partial partition between brothers in respect of a cash asset in which minor son of one brother is also given a share, no inference of separation and partition between one brother and his minor son can be drawn.

There cannot be any agreement of partition with the minor. Where the agreements relating to partial partition and the relevant entries in the account books about it do not bear the signature of the guardian of the minor, it cannot be held that the minor was represented in that partial partition by his guardian

When the contribution by the minor son towards the capital of the partnership firm came out of the Hindu

Undivided Family of the father and his minor son and the father looks after the business of the partnership in which his minor son and wife are partner, it is easily explained that he looked after the interest of his own family members of which his minor son was admitted to the benefits of the partnership. That being so, the Tribunal was right in holding that share income of the minor son from the partnership firm could be included in the total income of the assessee Hindu Undivided Family.

When notice of proceedings under section 147(b) of the Income-tax Act, 1961, is sent and served on a right person and he acted on its basis, the order passed by the Income Tax Officer is not vitiated merely because of wrong mentioning of the file number in the notice.

Commissioner of Income Tax v. *Smt.Anusuya Devi*, 68 I.T.R. 750 S C., *Appovier alias Seetaramier* v. *Ramma Subba Ajyan and others*. 11 Moore's Indian Appeals 75, *Hari Bakshi* v. *Babu Lal and another*. A.I.R. 1924 P.C. 126 at p. 133, *M.S.M.M. Muyyappa Chettiar* v. *Commissioner of Income Tax*, 18 I. T. R. 586, *Kakumanu Pedasubhayya and another* v. *Kakumanu Akkamma and another*, A.I.R. 1958 S. C 1042, *Girjabai* v. *Sadashiv Dhundiraj*, I. L. R. 43 Cal. 1031 P. C. and *Commissioner of Income-tax, Andhra Pradesh* v. *Adinarayana Murty*, 65 I. T. R. 607; referred to.

MADANLAL v. COMMISSIONER OF INCOME TAX, BHOPAL, I.L.R. [1980] M.P. ... 691

Income-tax Act, Indian (XLIII of 1961)—"Salary"—Is periodical payment for services other than mechanical —Word "Perquisite"—Signifies additional benefit in addition to periodical payment—"Compensatory allowance"—Neither salary nor perquisite—Implication of "perquisite" and "compensatory allowance"—"Compensatory allowance"—Is not an additional salary: "Salary" is a periodical payment for services other than mechanical.

"Perquisite" signifies some additional benefit in addition to the amount that may be legally due by way of contract for services rendered. It signifies some additional benefit conferred as the employee in addition to salary.

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"Compensatory allowance" is allowance in the nature of compensation to counter-balance the loss suffered by an employee. It cannot be equated with "salary" or "perquisite".

A. K. Venkiteswaran v. *Commissioner of Income-tax*, (1973) 92 I. T. R. 233; distinguished.

Commissioner of Income-tax, Bombay City v. *D. R. Pathak*, (1975) 99 I. T. R. 14; referred to.

"Compensatory allowance" cannot be interpreted to signify additional salary. It is counter-balance for the loss or inconvenience suffered.

"Compensatory allowance" granted by Presidential order could not be considered to be additional salary or perquisite under section 17(1) or 17(2) of the Income-tax Act, 1961 and is not liable to income-tax.

SHRI BISHAMBHAR DAYAL, RETIRED CHIEF JUSTICE, MADHYA PRADESH HIGH COURT v. THE COMMISSIONER OF INCOME-TAX, M. P., BHOPAL, I.L.R. [1980] M. P. ... 80

Income-tax Act, Indian (XLIII of 1961)—Sections 28, 22 and 56—Business Income—Meaning of—Accommodation constructed by assessee and let out to various Govt. Departments for facilitating the assessee's business—Furniture also let out for furnishing of such accommodation—Letting of furniture is subservient and incidental to lease of accommodation—Income derived from letting out of furniture—Is business Income—Not liable to be assessed as income from property or from other sources—But liable to be assessed as business income—Section 56(2), clause (iii)—Word "inseparable" in—Connotation of: The assessee Company built residential quarters and let out the same to its employees and where accommodation is let out to the Govt. Departments for locating a branch of State Bank of India, Post Office, Police Station, Central Excise Office etc. for facilitating the assessee's business, the letting out of furniture to them for furnishing of such accommodation is subservient and incidental to the lease and, therefore, incidental to the assessee's business.

In order that clause (iii) of Section 56(2) of the Income-tax

Act, 1961, may apply the letting of the machinery, plant or furniture should be inseparable from the letting of the building. The word 'inseparable' does not connote that the machinery, plant or furniture should by its very nature be inseparable from the building so that the building has also necessarily to be let out along with it or that it should be fixed to the building. The inseparability referred to in the section arises from the intention of the parties--The parties should intend that the subject matters of the lease should be enjoyed together and that the letting of the building and of the other assets should be practically one letting. The section does not require that the letting of the machinery, plant or furniture should be primary and the letting of the building subsidiary.

Held—The receipts derived by the assessee from the hire of furniture was rightly held by the Income-tax Appellate Tribunal to be taxable under section 28 of the Income Tax Act, 1961, as business income.

Sultan Brothers Private Ltd. v. *Commissioner of Income-Tax, Bombay City II,* (1964) 51 I. T. R. 353; referred to.

ADDITIONAL COMMISSIONER OF INCOME TAX, M P., BHOPAL v. THE NATIONAL NEWSPRINT AND PAPER MILLS LTD., NEPANAGAR, I. L. R. [1980] M.P. ... 901

Income-tax Act, Indian (XLIII of 1961)—Section 37(1)—Nature of expenditure to fall within the section: *vide* Income tax Act, Section 80 G ... 1000

Income-tax Act, Indian (XLIII of 1961)--Section 56(2), Clause (iii)—Word "inseparable" in--Connotation of: *vide* Income-tax Act, Sections 28. 22 and 56 ... 901

Income-tax Act, Indian (XLIII of 1961)—Section 80(G)—Provides for deduction of donation to certain funds, charitable institutions etc.—Also applied to donations to the Govt. or any local authority—Donations made by assessee to Chief Minister' Drought Relief Fund—Governed by the section and admissible as deduction to some extent -Assessee entitled to the benefit of the section when donations are disallowed as expenditure under section 37(1) of the Act—Section 37(1)—Nature

of expenditure to fall within the section: Section 80-G of the Income-tax Act, Indian, 1961, provides for deduction in respect of donations to certain funds, charitable institutions. The Section applies also in respect of donations to the Govt. or any local authority, to be utilised for any charitable purpose. If the donations are made by the assessee to the Chief Minister's Drought Relief Fund, they are covered by Section 80-G. The section, however, allows only a certain percentage of the donations as admissible deduction. It is undisputed that the assessee would be entitled to the benefit of Section 80-G in case it is held that the donations cannot be allowed as expenses under section 37(1) of the Act.

The donations to the Chief Minister's Drought Relief Fund do not fall within Sections 30 to 36 of the Act and or not in the nature of capital expenditure or personal expenses of the assessee. Therefore, if it is held that the donations were in the nature of expenditure "laid out or expended wholly or exclusively for the purposes of the business", it will have to be held that the Tribunal was right in allowing them in computing the income chargeable of the assessee. It is clear from a reading of Section 37(1) that it is not necessary for an expenditure to fall within it that it should have been incurred "necessarily". The legal position, therefore, is that a business expenditure can be allowed under section 37(1), if it fulfils the necessary conditions even though it is incurred voluntarily and without any necessity.

Commissioner of Income Tax, Kerala v. *Malyalam Plantations Ltd.*, 53 I. T. R. 140; relied on.

Further, the nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the tax-payer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business, i. e., between the expenditure and the character of the assessee as a trader and not as owner of assets, even if they are assets of the business.

Travancore Titanium Product Ltd. v. *Commissioner of Income Tax, Kerala*, 60 I. T. R. 277 at p. 287 (S. C), *Indian*

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Aluminium Co. Ltd v. *Commissioner of Income Tax, West Bengal*, 84 I. T. R. 735 (S. C.) and *Shahzada Nand and Sons* v. *Commissioner of Income Tax, Patiyala*, 108 I. T. R. 358 (S. C.); followed.

For an expenditure to fall within Section 37(1), it need not be a necessary expenditure. The test laid down is of commercial expediency. The expression "Commercial expediency" is not limited to an existing practice prevailing in any particular trade or business. Even if the incurring of a particular expenditure may not be supported by any prevailing practice, yet if at the time when the expenditure is incurred, commercial expediency justifies it, the expenditure would be taken to be for the purposes of the business.

Hence, it is incorrect to say that in every case a donation to an official fund or a political organization would not be an allowable expenditure under Section 37(1) of the Act.

THE ADDITIONAL COMMISSIONER OF INCOME TAX, M. P., BHOPAL v M/S KUBER SINGH BHAGWANDAS, BHOPAL, I. L. R. [1980] M. P. 1000

Income-tax Act, Indian (XLIII of 1961)—Sections 80-G and 37(1)—Assessee entitled to the benefit of Section 80 when donations are disallowed as expenditure under section 37(1) of the Act: *vide* Income-tax Act, Section 80-G 1000

Income-tax Act, Indian (XLIII of 1961)—Section 147(b)—Notice sent and served on right person though mentioning wrong file number and he acted upon it—Order of Income Tax Officer not vitiated: *vide* Income Tax Act ... 691

Income-tax Act, Indian (XLIII of 1961)—Section 271(1)—Interest—Is by way of compensation for delay in recovering tax—Not a penalty for default: *vide* Income-tax Act, Section 271 (1) 613

Income-tax Act, Indian (XLIII of 1961)—Section 271(1)—Nothing turns upon the use of word "may" in—Discretions steps in when authority has to determine whether there was reasonable cause under clauses (a) and (b): *vide* Income-tax Act, Section 271(1) ... 613

Income-tax Act, Indian (XLIII of 1961)--Section 271(1)—Prescribes circumstances in clauses (a),(b) and (c) in which penalty can be imposed and the quantum of penalty is prescribed by clauses (i), (ii) and (iii)--Nothing turns upon the use of word "may' in--Discretions steps in when authority has to determine whether there was reasonable cause under clauses (a) and (b)--Clause (c)--Confers power on authority to see whether there was concealment—Court satisfied about absence of reasonable cause or concealment—No other reasons necessary to be given--Quantum of penalty is the matter of arithmetical calculations--Penalty can neither be more nor less than prescribed—Interest—Is by way of compensation for delay in recovering tax--Not a penalty for default: The language of section 271 is abundantly clear and certain. Penalty can be imposed only under one or more of the circumstances mentioned in clauses (a), (b) and (c) of sub-section (1) of S. 271 of the Income-tax Act, 1961, and the quantum of penalty is prescribed in clauses (i), (ii) and (iii) of the same sub-section.

Nothing much turns upon use of the word "May".

The element of discretion steps in when under clause (a), the authority has to satisfy itself whether the return was not furnished "without reasonable cause", so also in clause (b). Now, in order to determine whether the cause was reasonable or not, the matter is left in the discretion of the authority. So also under clause (c), it is for the authority to decide whether there has been concealment of the particulars of the income or that there was any inaccurate furnishing of the particulars. If the Income-tax Officer is satisfied that under clauses (a) or (b), there was absence of reasonable cause or under clause (c) there was concealment or inaccurate furnishing of the particulars, and imposes the penalty, no other reasons need be given for imposing the penalty.

Sharp v *Wakefield*, L. R. 1891 A. C. 173 at p. 179 and *U. J. S. Chopra* v. *State of Bombay*, (1955) 2 S. C. R. 94 at p. 115; referred to.

Madanlal v. *Shree Chandeo Sugar Mills Ltd.*, A. I. R. 1962 S. C. 1543, *Neel* v. *State of West Bengal*, A. I. R. 1972 S. C. 2066, *Union of India* v. *M. L. Capoor*, A.I.R. 1974 S C. 87 and *Hindustan Steel Ltd.* v. *State of Orissa*, (1972) 83 I. T. R. 26; distinguished.

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The quantum of penalty is a matter of arithmetic calculation which has to be peremptorily based on the second part of Section 271(1). The penalty cannot be either more nor less than the prescribed.

Interest is by way of compensation for the delay in realisation of tax. It is not penalty for committing default in filling the return of income within the time allowed. under sub-section (1) or sub-section (2) of S. 139 of the Act. Penalty is punishment; it is *in terrorem*. Therefore, no question arises for imposition of double penalty.

K.C. Vedadri v. *Commissioner of Income-tax, Madras*,(1973) 87 I. T. R. 76, *Express Newspapers (P) Ltd.* v. *Income-tax Officer, Madras*, (1973) 88 I. T. R. 255, *Additional Commissioner of Income-tax, Gujrat* v. *Santosh Industries*, (1974) 93 I. T. R. 563, *Narandas* v. *Income Tax Officer*, (1975) 98 I T.R. 453, *D.B. Navalgundkar and Co.* v. *Commissioner of Income-tax, Mysore*, (1975) 98 I.T.R. 675 and *Gursahai* v. *Commissioner of Income-tax*, (1963) 48 I. T. R. 1; referred to.

M/S TODARMAL SUFARISHMAL OF LASHKAR v. THE COMMISSIONER OF INCOME-TAX, NAGPUR, I. L. R. [1980] M. P. ... 613

Income-tax Act, Indian (XLIII of 1961)—Section 271(1)—Quantum of penalty is the matter of arithmetical calculations—Penalty can neither be more nor less than prescribed: *vide* Income-tax Act, Section 271(1) ... 613

Income-tax Act, Indian (XLIII of 1961)—Section 271(1)(c)—Confer power on authority to see whether there was concealment—Court satisfied about absence of reasonable cause or concealment—No other reasons necessary to be given: *vide* Income-tax Act, Section 271(1) ... 613

Industrial Disputes Act (XIV of 1947)—Section 10-A—Arbitrator acting under—Possesses the status of statutory Tribunal: *vide* Industrial Disputes Act, Section 10-A and Constitution of India, Article 226 ... 718

Industrial Disputes Act (XIV of 1947)—Section 10-A—Award—Must contain reasons: *vide* Industrial Disputes Act, Section 10-A and Constitution of India,Article 226 ... 718

Industrial Disputes Act (XIV of 1947), Section 10-A and Constitution of India, Article 226—Labour union, party to arbitration agreement, not challenging award—Employees affected may challenge it in writ petition—Section 10-A—Arbitrator acting under—Possesses the status of statutory tribunal—Award—Must contain reasons—Natural justice—Rules of—Applicable to administrative orders—Also require reasons in support of the orders passed by *quasi*-judicial authority or tribunals: When the Union which is a party to the arbitration agreement does not challenge the award given by the arbitrator, employees affected by the award are entitled to challenge it by a petition under Article 226 of the Constitution of India.

Sital v. *C. G. I. Tribunal*, A. I. R. 1969 M.P. 200 and *Bhilai S. Emp. Asso.* v. *A. W. Kanmadikar*, 1973 M. P. L. J. 1025; relied on.

The arbitrator acting under section 10-A of the Industrial Disputes Act, 1947, has the status of statutory tribunal.

The award given by the arbitrator may affect not only the parties to the agreement but also those who are given opportunity of being heard under sub-section (3)(a) of section 10-A.The award may affect thousands of workers. In this background it is legitimate to infer from section 10-A an implied statutory obligation on the arbitrator to give his reasons in support of the conclusions of fact and law reached by him in the award.

The award should disclose on its face the reasons which may show the broad working of the arbitrator's mind in coming to his conclusions in adjudicating upon the dispute so that if the matter is brought before the Court, judicial scrutiny by it within the permissible limits under Article 226 of the Constitution of India is not made impossible or rendered wholly nugatory.

Engineering Mazdoor Sabha v. *Hind Cycles Ltd.*, A. I. R. 1963 S. C. 874; referred to.

Rohtas Industries v. *Its Union*, A. I. R. 1976 S. C. 425; relied on.

Rohtak Delhi Tronsport (Private) Ltd. v. *Risal Singh*, (1964) 1 L. L. J. 89; followed.

Natwar Singh v. *State of M. P.*, 1980 J. L. J. 69 (F. B.); (held—requires reconsideration).

A *quasi*-judicial authority or tribunal must give reasons in support of its order. This general obligation has been spelt out as a fundamental principle without the aid of a statute on the reasoning that requirement of stating the reasons is a principle of natural justice and the constitutional provisions (Articles 226 and 136) relating to judicial review would be defeated if the *quasi*-judicial authorities and tribunals are free not to give reasons. Even in cases of administrative orders where rights of the parties are affected, rules of natural justice have to be followed and it is desirable that the order should contain reasons.

R. v. *North Umberland Compensation Appeal Tribunal*, (1952) 1 K. B. 338 at p. 352, *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder*, A.I.R. 1961 S. C. 1669, *Siemens Engg. & Mfg. Co.* v. *Union of India*, A.I.R. 1976 S. C. 1785, *Mahendra & Mahendra Ltd.* v. *Union of India*, A.I.R. 1979 S.C. 798 at p. 823, *Organ Chemical Industries* v. *Union of India*, A. I. R. 1979 S. C. 1803 at p. 1806, *Rama Verma* v. *State of Kerala*, A. I. R. 1979 S. C. 1918 at p. 1922, *Bhagat Raja* v. *Union of India*, A. I. R. 1967 S. C. 1606, *Som Datt* v. *Union of India*, A. I. R. 1969 S. C. 414, *Tarachand* v. *Delhi Municipality*, A. I. R. 1977 S.C. 567, *Cooper* v. *Wandsworth Board of Works*, (1863) 14 C. B. N. S. 180 at p. 194, *Mohanlal* v. *Union of India*, 1980 J. L. J. 165 at p. 167, *Hochtief Gammon* v. *State of Orisso*, A. I. R. 1975 S. C. 2226 at p. 2234 and *Mohabir Jute Mills* v. *Shibban Lal*, A. I. R. 1975 S. C. 2057 at p. 2060; referred to.

Wade Administrative Law, 4th edition p. 464, Jain & Jain, Administrative Law, 3rd edition pp. 244, 245 and footnote 1, at p. 245 and Schwartz, Administrative Law, 1976, p. 423; referred to.

M. G. PANSE v. S. K. SANYAL, I. L. R. [1980] M. P. ... 718

Industrial Disputes Act (XIV of 1947)—Section 33-C(2)—Grievance of workmen about extent of liability of employer for minimum wages—Application under-Maintainability of: *vide* Industrial Disputes Act, Sections 2(h), 4(1)(iii) and Section 20 ... 813

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Industrial Disputes Act (XIV of 1947), Section 33-C(2) and Minimum Wages Act (XI of 1948), Section 20--Jurisdiction--Workmen applying for balance of amount payable at notified rate--Dispute not covered under section 20, Minimum Wages Act--Jurisdiction under section 33-C(2) not ousted: *vide* Industrial Disputes Act, Section 33-C(2) and Minimum Wages Act, Sections 2(h), 4(1)(iii) and Section 20 ... 813

Industrial Disputes Act (XIV of 1947), Section 33-C(2) and Minimum Wages Act (XI of 1948),Sections 2(h),4(1)(iii) & Section 20--'Attendance Bonus'--Payable under independent contract and not under terms of employment--Cannot be included in minimum wages payable--Determination of right or liability and extent of liability--Distinction between--Industrial Disputes Act--Section 33-C (2)—Grievance of workmen about extent of liability of employer for minimum wages--Application under—Maintainability of--Jurisdiction--Workmen applying for balance of amount payable at notified rate -Dispute not covered under section 20, Minimum Wages Act--Jurisdiction under section 33-C(2) not ousted--Period of Limitation under-Minimum Wages Act—Section 20—Not applicable to a claim under section 33-C(2), Industrial Disputes Act: The requirement that the workmen should attend the work for a minimum number of days, during a quarter so as to entitle him to 'attendance bonus', does not appear to be a part of the contract of employment. This requirement is created by the contract under which the bonus is paid. Therefore, the 'attendance bonus' paid to a workman is not wages.

Bala Subrahmanya v. *B. C. Patil*, A. I. R. 1958 S. C. 518; relied on.

There is a distinction between determination of the right or liability and determination of the extent of the liability. The former may not fall within Section 33-C (2) of the Industrial Disputes Act but the latter does fall within it. The workmen's right and the employer's liability are already fixed by the notification of the Govt. under section 4 of the Minimum Wages Act. Therefore, where grievance of the workmen is that the whole of the amount of Wages to which they are entitled to by virtue of the notification of the Govt. has not been paid to them, their application regarding that

grievance is entertainable under section 33-C(2) of the Industrial Disputes Act, 1947.

C. I. W. T. Corpn. v. *Workmen*, A. I. R. 1974 S. C. 1604; relied on.

When the dispute does not relate to the rates of Wages and the claim of the workmen is for the balance of the amount payable to him in accordance with the rates applicable which is not in dispute, such a claim is not cognizable by the authority under Section 20 of the Minimum Wages Act and jurisdiction under Sec. 33-C(2) of the Industrial Disputes Act for entertaining such a claim is not taken away.

Athani Municipality v. *Labour Court, Hubli*, A. I. R. 1969 S.C. 1335; relied on.

The period of limitation provided for under section 20 of the Minimum Wages Act is not applicable for claim under section 33-C(2) of the Industrial Disputes Act, 1947.

MANGANESE ORE (INDIA) LTD., NAGPUR v. BISEN, I.L.R. [1980] M.P. ... 813

Industrial Disputes Act (XIV of 1947), Section 33-C(2) and Minimum Wages Act (XI of 1948), Sections 2(h), 4(1)(iii) and Section 20--Determination of right or liability and extent of liability—Distinction between: *vide* Industrial Disputes Act, Section 33-C(2) and Minimum Wages Act, Sections 2(h), 4(1)(iii) and Section 20 ... 813

Industrial Relations Act, M. P. (XXVII of 1960), Sections 66, 67 and 35 and Constitution of India, Article 220—Employer implementing the order of Labour Court and also challenging the order in writ petition – Petition does not become infructious: *vide* Industrial Relations Act, Sections 66, 67 and 35 and Constitution of India, Article 226 ... 730

Industrial Relations Act, M. P. (XXVII of 1960), Sections 66, 67 and 35 and Constitution of India, Article 226—Order of *quasi*-judicial Tribunals—Should be speaking order—Revisional order not giving reasons--Liable to be quashed--Employer implementing the order of Labour

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Court and also challenging that order in writ petition--Petition does not become infructious: It is incumbent on a *quasi*-judicial Tribunal while passing an order to see that it is supported by reasons, that is to say, it ought to be a speaking order, it is necessary in the interest of justice and also in compliance with the basic principles of natural justice that not only the superior court but also the aggrieved party is in a position to adjudge the reasoning behind that order. If this is not done by the administrative Tribunals exercising *quasi*-judicial functions public confidence would be shaken in the adjudicatory process.

Siemens Engineering and Manufacturing Co. of India Ltd. v. *The Union of India and another*, A. I. R. 1976 S.C. 1785; relied on.

Where the employer implemented the orders of the Labour Court and also filed a writ petition challenging it, the petition does not become infructuous. If the orders are quashed there would be restitution of the departmental order.

M. P. STATE ROAD TRANSPORT CORPORATION, BHOPAL v. SHIVMURTHY PATHAK, I. L. R. [1980] M. P. ... 730

Industrial Relations Act, M. P. (XXVII of 1960), Sections 66, 67 and 35 and Constitution of India, Article 226--Revisional order not giving reasons--Liable to be quashed: *vide* Industrial Relations Act, Sections 66, 67 and 35 and Constitution of India, Article 226 ... 730

Inheritance—Last surviving coparcener dying in 1948 leaving behind his widow, two widows of predeceased sons and a daughter—Widow alone inherits as a limited owner - Death of limited owner in 1951—Legal fiction: *vide* Hindu Women's Rights to Property Act, Section 3(1) and (4) ... 490

Interpretation of Statute—Construction of a provision made in a judicial decision—Deemed to be in consonance with legislative intent, if no amendments made in the statute thereafter: *vide* Representation of the People Act, Sections 100(1)(a), 100(1)(d)(i), 8(2), 8(3), 32, 36(2) ... 936

Interpretation of Statute—Interpretation put on wordings of

one Act or the decisions given thereon—Cannot guide the interpretation of different Act : *vide* Accommodation Control Act, Section 12(1) ... 673

Interpretation of Statute—Meaning of the words used in a statute plain—Intention of Legislature has to be gathered from those words: *vide* Anusuchit Janjati Rini Sahayata Adhiniyam, Section 2(4) ... 920

Interpretation of Statute—Principles—Criminal Procedure Code, 1973—Section 438—Provisions of—Not to be read in isolation— But together with those of Section 437(1)—Grant of anticipatory bail—Effective till the conclusion of trial unless cancelled under section 437(5) or 439(2)—Directions can also be issued for not to commit the accused persons under custody while committing the case to Sessions Court: The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. If the statutory provision is open to more than one interpretation, the Court has to choose that which represents the true intention of the Legislature. The intention of the Legislature must be found in the words used by the Legislature itself and in case of doubt, it is always safer to have an eye on the object and purpose of the statute or reason and spirit behind it. Historical facts and surrounding circumstances leading to the enactment of a particular provision in the statute, are also in admissible aid to interpretation and construction so as to discover the real intention, object and spirit behind it.

M/s Ram Krishna Ram Nath v. *Janpad Sabha*, A. I. R. 1962. S. C. 1073 (1079) and *Henritta Muir Edwards* v. *A. G. of Canada*, A. I. R. 1930 P. C. 120 (125); relied on.

Provisions of Section 438 of the Code are not to be read in isolation but together with the provisions of section 437. The conditions proposed by Section 437(1) are impliedly contained in Section 438.

Balchand v. *State of M. P.*, A. I. R. 1977 S. C. 366; relied on.

In view of the background and historical facts leading to the introduction of Section 438 in the Code and in the absence of any suggestion that anticipatory bail shall be effective upto a particular stage or till the filing of the challan, bail granted under section 438 of the Code

would be deemed by implication as if it is granted under section 437(1) of the Code and it shall be effective till the conclusion of trial, unless it is cancelled under section 437(5) or section 439(2) of the Code and filing of challan in the Court is by itself no ground to cancel the bail.

Bashir v. *State of Haryana*, A. I. R. 1978 S. C. 55 and *Dashrath* v. *State of M. P.*, 1978 J. L. J. 261; relied on.

Natabar Parida v. *State of Orissa*, A. I. R. 1975 S. C. 1465; referred to.

B. L. Verma and others v. *State of M. P.*, Misc. Cr. Case No. 1063 of 1978, decided on 13th Oct. 78 and *Kabilas and others* v. *State of M. P.*, Misc. Cr. Case No. 1433 of 78, decided on 30th Nov. 78; relied on.

Kanhaiyalal Rathi and another v. *State of M. P.*, 1978 M. P. L. J. (S. No.) 30; not followed.

Rewat Dan and others v. *State of Rajasthan*, 1975 Cr. L. J. 691; does not lay down good law.

An application for anticipatory bail can lie for directing the committing Magistrate not to commit the accused persons under custody while committing the case to the Court of Sessions.

RAMSEWAK v. STATE OF M.P., I.L.R. [1980] M. P. ... 784

Interpretation of Statute—Saving clause—To be liberally construed giving effect to saving provision : *vide* Motor Vehicles Act, Section 68-C and D .. 1131

Interpretation of Statute—Should be done to advance cause of justice : *vide* Civil Procedure Code, Section 115, Order 6, rule 5, Section 2 (2) and Accommodation Control Act, Section 12 (1) (a), (f) and (h) ... 1176

Interpretation of Statute—Two views possible—The view more in consonance with justice and convenience should be preferred : *vide* Transfer of Property Act, Sections 109 and 37 ... 1109

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Jagir Land Records Management Act (XXV of 1949)—Sections 3 and 4--Costs fixed at 10% of the *Nikasi* of Jagir--Not necessary for the Government to give details of calculation in the order: *vide* Abolition of Jagirs Act, Schedule I, Clause 1 ... 827

Jurisdiction—Objection to jurisdiction must be raised during trial: *vide* Criminal Procedure Code, 1973 ... 175

Land Revenue Code, M.P. (XX of 1959)—Section 43--Proceedings before Revenue Court—Governed by Civil Procedure Code regarding award of costs--Tort—Damages—Party not pressing for costs before Revenue Court--Cannot sue for costs alone in Civil Court: The proceedings before a Revenue Court are governed by the Code of Civil Procedure in so far as awarding of costs are concerned.

A separate suit for recovery of costs incurred in defending a revenue proceeding and for compensatory costs does not lie. The claim ought to have been pressed before the Revenue Court.

Mohammad Amin v. *Jogendra Kumar*, A.I.R. 1947 P.C. 108; relied on.

RAM NARAIN v. MADAN MOHAN ZIRA, I. L. R. [1980] M.P. ... 898

Law-Invalidity of law—Effect: *vide* Vishwavidhyalaya Adhiniyam, Section 46(b) ... 735

Lease—Agreement ascertaining the terms of lease, and giving lessee right to exclusive possession immediately or at a future date—Agreement operates as a lease: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

Letters Patent—Clause 10—Division Bench hearing Letters Patent under—Powers of : *vide* Letters Patent, Clause 10 ... 129

Letters Patent—Clause 10—Impugned order finally deciding a question in the ancillary proceedings—Whether amounts to 'Judgment' within the meaning of Clause 10: *vide* Letters Patent, Clause 10 ... 129

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Letters Patent—Clause 10—'Judgment'—Meaning of—Civil Procedure Code—Sections 22 and 23—Order of Single Judge transferring suit from one Court to another under—Not a 'Judgment'—Not appealable under clause 10 of Letter Patent—Sections 22,23 and 24—High Court, Jurisdiction of—Transfer of suit from the Court within its jurisdiction to another Court within the jurisdiction of another High Court—Transfer within jurisdiction—Transfer of suit from one Court to another—Preponderance of balance of convenience—Is prime consideration: A 'judgment' within the meaning of clause 10 of Letters Patent must be the final pronouncement which puts an end to the proceedings so far as the Court dealing with it is concerned and the Judgment must involve the determination of some rights or liability though it may not be necessary that there must be a determination on the merits.

The order transferring a suit is not a 'Judgment' as it neither affects the merits of the controversy between the parties in the suit itself nor does it terminate or dispose of the suit on any ground. It is an application in a suit as a step towards determination of the controversy between the parties in the suit. Hence, against such an order appeal under clause 10 of the Letters Patent is not competent.

Asumati Debi v. *Rupendra Deb*, A. I. R. 1953 S. C. 198; followed.

Justices of the Peace v. *Oriental Gas Company*, 8 Bengal L. R. 433, *Tuljaram* v. *Allagappa*, 35 Mad. 1 (F. B.), *Dayabhai* v. *Murugappa Chettyar*, A. I. R. 1935 Rang. 267, *Manohar* v. *Baliram*, A. I. R. 1952 Nag. 357, *Radhye Shyam* v. *Shyam Behari*, A.I.R. 1971 S C 2337, *Shanti Kumar* v. *H. Ins. Co., New York*, A. I. R. 1974 S. C. 1719, *Asha Devi* v. *Dukhi Sao*, A. I. R. 1974 S. C. 2048, *Firm Kanhaiyalal* v. *Zumerlal*, A. I. R. 1940 Nag. 145 and *Western U. P. Electric & Power Supply Co. Ltd.* v. *Hind Lamps Ltd*, (1969) 2 S. C. W. R. 16; referred to.

High Court has jurisdiction to transfer suit pending in a Court within its jurisdiction to another Court within the jurisdiction of another High Court.

Preponderance of balance of convenience is of prime consideration for transfer of the suit from one Court to another.

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Ram Kumar v. *Tularam*, A. I. R. 1920 Pat. 138, *Thakur Singh* v. *Thakur Sheo Ratan*, A. I. R. 1923 Oudh 30, *Saroj Bashim* v. *Girja Prasad*, A. I. R. 1926 Cal. 326, *Firm Kanhaiyalal* v. *Zumerlal*, A. I. R. 1940 Nag. 145, *Basanti Devi* v. *Mst. Sahodra*, A. I. R. 1935 All. 976, *G. M. Rajalu* v. *M. G. Nair*, A. I. R 1938 Mad. 745, *Waman* v. *Raghunath*, A I. R 1949 Bom. 263, Purna *Chandra* v. *Samanta*, A. I. R. 1943 Orissa 46, *Sulayandi Nadar* v. *Venugopala*, A. I. R. 1960 Ker. 91, *Jyotena Raja* v. *Jagalsingh*, A. I. R. 1971 Cal. 398, *Kumaragubara Temple* v. *K. S. Mudaliar*, A. I. R. 1977 *Mad.* 27, *Laxmikant* v. *Govindrao*, A. I. R. 1927 Nag. 219, *Vithoba* v. *Karim*, A. I. R. 1932 Nag. 49, *Raghunandan* v. *G. H. Chawla*, 1963 M P. L. J. S. N. 117 and *Davia* v. *James Arthur*, A. I. R. 1958 Ker 82; referred to.

JAGATGURU SHRI SHANKARACHARAYA, JYOTISH PETHADHISWAR SHRI SWAMI SWAROOPANAND SARASWATI v. SHRI RAMJI TRIPATHI, I. L. R. [1980] M.P. ... 231

Letters Patent—Clause 10—'Judgment'—Test—Order of Single Judge setting aside *exparte* decree—Whether a 'Judgment'—Impugned order finally deciding a question in the ancillary proceedings—Whether amounts to 'Judgment' within the meaning of Clause 10—Division Bench hearing Letters Patent under—Powers of—Order of Single Judge—When can be interfered with: A 'Judgment' within the meaning of clause 10 of Letters Patent must be the final pronouncement which puts an end to the proceedings so far as the Court dealing with it is concerned and the 'Judgment' must involve the determination of some right or liability though it may not be necessary that there must be a decision on the merits. Even if the impugned order finally decides some questions in the ancillary proceedings it would be 'Judgment' within the meaning of clause 10 of the Letters Patent. Where the Single Judge disagreeing with the order passed by the trial Court sets aside the *exparte* decree, the order amounts to 'Judgment' within the meaning of Clause 10 of the Letters Patent and is appealable.

The power of a Division Bench hearing a Letters Patent appeal under Clause 10 from the judgment of a Single Judge in First Appeal is not limited only to a question of law but it has the same power which the Single Judge has as a First Appellate Court in respect of both

questions of fact and of Law. The limitations on the powers of the Court imposed by sections 100 and 101 cannot be made applicable to an appellate Court hearing Letters Patent appeal asked for the reason that Single Judge of the High Court is not a Court subordinate to the High Court.

Justices of the Peace for Calcutta v. *Oriental Gas Company*, 8 Bengal L. R. 433, *Tuljaram* v. *Allagappa*, 35 Mad. 1 (F.B.), *Dayabhai* v. *Murugabble Chettyar*, A. I. R. 1935 Rang. 267, *Manohar* v. *Baliram*, A. I. R. 1952 Nag. 357 (F. B.), *Asrumati Debi* v. *Rupendra Deb*, A. I. R. 1953 S. C. 198, *Radhye Shyam* v. *Shyam Behari*, A. I. R. 1971 S. C. 2337, *Punjab Soap Works* v. *H. Lever Ltd.*, 1962 M. P. L. J. 240, *Ganpati* v. *Pilaji*, A. I. R. 1956 Nag. 311, *E. S. W. M. Co.* v. *S. S. (Pr.) Ltd.*, A. I. R. 1962 Bom. 241, *Maharaj Kishore Khanna* v. *Kiran Shashi Dasi*, A. I. R. 1922 Cal. 407, *Baldeodas* v. *Shubchurndas*, A. I. R. 1926 Cal. 327, *Asha Devi* v. *Dukhi Sao*, A. I. R. 1974 S. C. 2048 and *T. D. Gopalan* v. *Commr. H. R. & C. E., Madras*, A. I. R. 1972 S. C. 1716; referred to.

Shanti Kumar v. *H. Ins. Co., New York*, A. I. R. 1974 S. C. 1719; followed.

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Letters Patent—Clause 10—Order of Single Judge—When can be interfered with: *vide* Letters Patent, Clause 10 ... 129

Limitation Act, Indian (IX of 1908)—Section 28—Failure to bring a suit within limitation—Right to property is extinguished: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

Limitation Act, Indian (IX of 1908)—Section 20—Gives a good title to wrong doer—Right to immoveable property extinguished—Right to claim damages, or rent or profits due prior to extinguishment—Is extinguished: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

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Limitation Act, Indian (IX of 1908)—Article 47—Right to property extinguished—Operation of Article cannot be eluded by bringing a suit for damages—Object of suit under the Article: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 448

Limitation Act, Indian (XXXVI of 1963)—Does not provide for suit for relief of rectification—Matter governed by residuary Article 113—Starting point is when right to sue accrues: *vide* Society Registration Adhiniyam ... 568

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—Section 27—Suit not maintainable against a person for anything done in good faith or intended to be done under this Act: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

Minimum Wages Act (XI of 1948)—Section 20—Period of limitation under—Not applicable to a claim under section 33-C(2), Industrial Disputes Act: *vide* Industrial Disputes Act, Section 33-C(2) and Minimum Wages Act, Sections 2(h), 4(1)(iii) and Section 20 ... 813

Moneylenders Act, Madhya Pradesh (XIII of 1934)-Section 2—Definition of loan—To be read in the background of legal concept of loan—Every debt is not a loan—Concept of debt wider than loan—Loan contemplates actual advance whether of money or in kind in context—Transaction creating differrent relationship—Is not included in loan—Unpaid price of goods remaining with seller of goods who agrees to pay interest—Does not amount to loan: *vide* Debtor and Creditor ... 743

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2—Word 'Moneylender' in—Definition of: *vide* Debtor and Creditor ... 743

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2—Words "in the regular course of business" in—Signify certain degree of system and continuity: *vide* Debtor and creditor ... 743

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(v)—Implication of moneylending—Isolated act of particular kind—Does not mean carrying on business of that kind—Occasional advances to friends or relatives

or acquaintances or one or several isolated acts of lending money—Does not amount to business of money lending—Trust not a person—Does not fall within the term moneylender—Trustees acting as such—Included in definition of moneylender—Trust registered as a public trust under M. P. Public Trusts Act, 1951—Carrying on moneylending business—Is governed by M. P. Moneylenders Act—Section 2(vii)(b)—Not applicable to trust—Words "any other enactment" in—Refer to enactment for registration of society or association—Doctrine of "*ejesdum generis*"—Is not a rule of law—Is merely rule of construction to aid in finding out intention of legislature—Section 2(vii)—Loan advanced by trustees of trust registered under M. P. Public Trusts Act—Does not exempt the loan from the definition under this provision—Section 3(1)(a)—Confers discretion on Court in matter of non-compliance—Section 3(1)(b)—Confers no such discretion—Civil Procedure Code—Section 34—Applicable to mortgage decrees—Order 34, rule 11(a)(i)—Power in Court to give direction for payment of interest at the contract rate from date fixed for redemption upto date of actual payment on aggregate sum due: The business of moneylending imports a notion of system, repetition and continuity. The fact that a person carries out isolated transactions of a particular kind does not mean that he carries on business of such a kind. A man, therefore, does not become a moneylender by reason of occasional loans to relations, friends or acquaintances, nor does he become a moneylender merely because on one or several isolated occasions he may lend money to strangers. There must be more than occasional or disconnected loans to justify a finding that the plaintiff is a moneylender.

Edgelow v. *MacElwee*, L. R. (1918) 1 K. B. 295, *Sitaram Shrawan* v. *Bajya Parnya*, A. I. R. 1941 Nag. 177, *Gajanan* v. *Brindaban*, A. I. R. 1970 S.C. 2007, *Litchfield* v. *Dreyfus*, L. R. (1906) 1 K. B. 584 and *In Re. Bhairo Dutt Bhanduri*, I. L. R. (1940) All. 60 (F. B.); referred to.

There can be no doubt that the trust is not a person and, therefore, does not come within the definition of the terms 'money-lender' as contained in section 2(v) of the Act, but the trustees acting as such undoubtedly are moneylenders.

A trust registered as a public trust under the M. P. Public

Trusts Act, 1951 engaged in the business of moneylending comes within the purview of the M. P. Moneylenders Act, 1934 and must comply with the requirements of the Act.

The trust is not a society or association. Clause (b) of Section 2(vii), therefore, in terms does not apply.

The words "any other enactment" in Section 2 (vii) (b) obviously refer to an enactment for the registration of such society or association.

Laxminarayan Narayandas v. *Deo Radha Ballabh Jagan Baldeo Trust*, 1961 M. P. L. J. 1184; referred to.

The *ejusdem generis* rule is not a rule of law, but is merely a rule of construction to aid the Courts to find out the true intention of the legislature.

Jage Ram and others v. *The State of Haryana*, A. I. R. 1971 S. C. 1033; referred to.

The mere fact that the loan was advanced by the plaintiffs as trustees of a trust registered as a public trust under the M. P. Public Trusts Act, 1951 would not, by the fact of such registration alone, exempt the loan from the definition of 'loan' as contained in section 2(vii) and, therefore, the plaintiffs were bound to comply with the requirements of the M. P. Moneylenders Act, 1934.

The Court has, therefore, a discretion in the matter when the provisions of clause (a) of section 3(1) have not been complied with. In case of non-compliance of clause (b) of section 3(1), however, the Court has no such discretion.

There can be no doubt that section 34 of the Code applies to mortgage decrees.

Sunder Koer v. *Rai Sham Krishan*, I. L. R. 34 Cal. 150 P.C. and *Kusum Kumari* v. *Debi Prasad Dhandhania and others*, A. I. R. 1936 P. C. 63; referred to.

The Court has also a discretion and exercise such discretion in terms of Order 34, rule 11(a)(i) of the Code for

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payment of interest at the same rate thereafter i. e. from the date fixed for redemption upto the date of realisation or actual payment, on the aggregate sum due.

Soli Pestonji Majoo v. *Ganga Dhar Khemka*, A. I. R. 1969 S. C. 600 and *K. Monick Chand and others* v. *Elias Saleh Mohamed Sait and others*, A. I. R. 1969 S. C. 671; referred to.

RAJARAM BHIWANIWALA v. NANDKISHORE, I. L. R. [1980] M. P. ... 149

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(v)—Isolated act of particular kind—Does not mean carrying on business of that kind : *vide* Moneylenders Act, Section 2(v) ... 149

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(v)—Occasional advances to friends or relatives or acquaintances or one or several isolated acts of lending money—Does not amount to business of moneylending : *vide* Moneylenders Act, Section 2(v) ... 149

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(vii)—Loan advanced by trustees of trust registered under M. P. Public Trusts Act—Does not exempt the loan from the definition under this provision: *vide* Moneylenders Act, Section 2(v) ... 149

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(vii)(b)—Not applicable to trust : *vide* Moneylenders Act, Section 2(v) ... 149

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 2(vii)(b)—Words "any other enactment" in—Refer to enactment for registration of society or association: *vide* Moneylenders Act, Section 2(v) ... 149

Moneylenders Act, C. P. and Berar (XIII of 1934)—Section 3—Is Welfare Legislation – Court to adopt beneficial rule of construction—If two views possible, one more beneficial to debtor to be preferred—Section 3—Requirements mandatory—Non-compliance – Court empowered to re-open entire accounts of dealings and appropriate payments made towards principal amount: The Moneylenders Act is a piece of welfare legislation brought

about with a view to relieve the debtors out of the clutches of the Moneylenders. The Court should, therefore, adopt a beneficial rule of construction. If two views are possible, the one more beneficial to the debtors should be preferred as the Act has been passed to safeguard their interest.

Gajanan v. *Brindaban*, A. I. R. 1970 S. C. 2007; relied on.

Where the statement of accounts furnished by the Plaintiff do not show the principal amount and interest separately; interest due in the previous year has not been separately shown in the following year; none of them were signed by the plaintiff himself or by any of his agents and are not in the form prescribed, there is non-compliance with the mandatory provisions of section 3 of the Moneylenders Act and it would permit the Court to re-open the entire accounts of dealings and the amount repaid shall have to be appropriated towards the principal.

Rajaram v. *Nandkishore*, 1975 M.P.L.J. 225 F.B.; followed.

Niranjan and others v. *Nathusa and another*, 1956 N. L. J. (S. N.) 115=S. A. No. 378 of 1955, decided on the 18th January 1956 and *Pyarelalsa* v. *Champalal*, 1947 N.L.J. 385; referred to.

KAPILNATH MISTRI v. SHYAMKISHORELAL, AGARWAL, I. L. R. [1908] M. P. ... 1141

Moneylenders Act, C. P. and Berar (XIII of 1934)—Section 3—Requirements mandatory—Non compliance—Court empowered to re-open entire accounts of dealings and appropriate payments made towards principal amount: *vide* Moneylenders Act, Section 3 ... 1141

Moneylenders Act, Madhya Pradesh (XIII of 1934)—Section 3(1)(a)(b)—Confers discretion on Court in matter of non-compliance—Section 3(1)(b)—Confers no such discretion: *vide* Moneylenders Act, Section 2(v) ... 149

Motor Vehicles Act (IV of 1939)—Section 68-C—Scheme under—Cannot be struck down merely for failure to notify in Rajpatra appointment of Authorised Officer within 30 days of publication of scheme—Objector can

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approach Government itself: *vide* Motor Vehicles Act, Section 68 C and D ... 1131

Motor Vehicles Act (IV of 1939)—Section 68-C and D—Interpretation of Statute—Saving clause—To be liberally construed giving effect to saving provision—State Road Transport Services (Development) Rules, Madhya Pradesh, 1959, as amended in 1970—Rule 4(2)—Government appointing Law Secretary as Special Secretary under—Appointment is saved—Government failing to notify appointment in time under Rule 136 of the Rules of 1974—Rule 4(2) of 1959 Rules would still hold the field—Motor Vehicles Act—Section 68-C—Scheme under—Cannot be struck down merely for failure to notify in Rajpatra appointment of Authorised Officer within 30 days of publication of Scheme—Objector can approach Govt. itself: The scheme prepared under section 68-C, Motor Vehicles Act was published in Madhya Pradesh Rajpatra on 4-4-1975 inviting objections, if any, before the authority constituted by the State Government under Rule 136, M. P. Motor Vehicles Rules, 1974. Meanwhile Government by order dated 6-3-1975 had authorised the Special Secretary Home Department (Nationalisation) as the officer authorised to receive objections. But the order was not published in M. P. Rajpatra till 20-6-1975. On 7-6-1975 when the scheme came up for consideration before the Special Secretary an objection was raised that the scheme, as published under section 68-C, without there being a authority to whom objections could be addressed under Rule 136(2), could not be approved under section 68-D(2) as the petitioners would be deprived of the opportunity of filing their objections under section 68-D(1).

Held-A saving clause that preserves the operation of repealed Act for "things done or omitted to be done" even in the absence of other savings as in section 6, General Clauses Act, is to be liberally construed. Such savings clause preserves the legal effect and consequences of things done though their effects and consequences project into post repeal period.

Govt. had in 1970 for purposes of Rule 4(2) of the repealed M. P. State Road Transport Services (Development) Rules already appointed the Law Secretary as Special Secretary. As the notification dated 6-3-1975 was in supersession of all previous notifications if the notification could not be published within time the notification

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under rule 4(2), M. P. State Road Transport Services (Development) Rules, 1959, still held the field; that the appointment made in 1970 was under Rule 4(2) of the repealed 1959 Rules and was an 'action taken' and 'thing done' under the repealed Rules; that the appointment was therefore saved under Rule 307 of 1974 Rules and that there was an officer duly authorised to receive objections.

Ram Parshad v. *State of Punjab*, A. I. R. 1966 S. C. 1607, *Universal Imports Agency* v. *Cheif Controller*, A. I. R. 1961 S. C. 41 and *Hasan Nurani* v. *Assistant Charity Commissioner*, A.I.R. 1967 S.C. 1742; relied on.

NARULA TRANSPORT SERVICE, HAMIDIA ROAD, BHOPAL v. STATE OF M. P., I. L. R. [1980] M. P. ... 1131

Motor Vehicles Act (IV of 1939)—Section 110—Rule of jurisprudence—Expression "to any question relating to any claim for compensation which may be adjudicated upon by the claims tribunal"—Can be limited to claim which can be made under Section 110 but not otherwise: *vide* Motor Vehicles Act, Sections 110 to 110-F ... 169

Motor Vehicles Act (IV of 1939)—Sections 110 to 110-F—Claim by persons other than those enumerated in Section 110-A—Cannot be made under Section 110—Claim not covered by Section 110-F: *vide* Moter Vehicles Act, Sections 110 to 110-F ... 169

Motor Vehicles Act (IV of 1939)—Sections 110 to 110-F—Scheme of the provisions—Claim by persons other than those enumerated in Section 110-A—Cannot be made under Section 110—Claim not covered by Section 110-F—Rule of jurisprudence—Expression "to any question relating to any claim for compensation which may be adjudicated upon by the claims tribunal"—Can be limited to claim which can be made under Section 110 but not otherwise: The scheme is that the claims can be tried only by a Claims Tribunal and the jurisdiction of the Civil Court is barred when there is composite claim for damages to property and injury to persons. However, by virtue of the proviso to Section 110, where such a *claim* includes a claim for compensation in respect of damage to property exceeding rupees two thousand,

the claimant may at his option refer "the claim" to a Civil Court for adjudication.

The scheme of the provision beginning with Section 110 and ending with Section 110-F is that the legislation has provided cheap and speedy remedy for claims for compensation in respect of accidents involving death or bodily injury to persons arising out of the use of a motor vehicle and also damage to any property to a third party so arising or both.

A claim by a person other than those enumerated under Section 110-A cannot be made under Section 110. The claim is, therefore, not covered by Section 110. If a claim of a third party is not entertainable under Section 110, to apply the bar under Section 110-F merely because by its nature the claim is entertainable by the Claims Tribunal will leave the third party without remedy. But it is an elementary rule of jurisprudence that where there is a right there is remedy. Therefore, the expression "to any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal" must be limited to a claim which can be made under Section 110 but not otherwise.

Ali Ahmed & Sons v. *M.P.S.R.T.C.*, 1974 M. P. L. J. S. N. 10; relied on.

JAYENDRA SINGH KUSHWAHA v. MADHYA PRADESH ELECTRICITY BOARD, THROUGH DIVISIONAL ENGINEER, M. P. ELECTRICITY BOARD, GWALIOR, I. L. R. [1980] M. P. ... 169

Municipal Corporation Act, Madhya Pradesh (XXIII of 1956)—Section 58(1), Proviso 2 and Section 423—Supersession of Municipal Corporation -Appointment of Administrator for purposes of section 423—Administrator entitled to exercise all powers and duties of Corporation and Standing Committee—Constitution of India—Article 226—Writ of *quo warranto*—When can be issued—Requisites of—Petition maintainable at the instance of private persons, though he may not be personally aggrieved or interested—High Court, Jurisdiction of, to control executive action in matter of appointment to public office against statutory provision-Usurper in office continuous to be an usurper each day he remains in office—Inappropriate to dismiss petition on ground of delay: In a case of

quo-warranto the usurper in office continuous to be an usurper each day that he remains in office and it would be inappropriate for this reason alone to dismiss the petition, assuming that there was any delay. Another test to be applied in such cases is whether any rights have sprung up in some persons during the period who would be adversely affected by the petition being allowed.

Section 423 of the Act itself provides that on supersession of the Corporation, all powers and duties of the Corporation and the Standing Committee etc. shall be performed by the person appointed for this purpose. The appointment of the Administrator for this purpose under section 423 of the Act during the period of supersession is admitted. That being so, in section '8, the person so appointed i.e., the Administrator, is to be read in place of Corporation and Standing Committee wherever they occur. There is thus no difficulty in the implementation of section 58 during the period of Corporation's supersession.

Per Shiv Dayal C. J.- A proceeding for issuance of writ of *quo-warranto* wherein the validity of an appointment to a public office is challenged is maintainable at the instance of a private person, although, he is not personally aggrieved or interested in the matter. In proceedings for a writ of *quo-warranto* the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office; and an order that is passed is an order ousting him from that office.

G.D. Karkare v *T.L. Sheyde*, I. L. R. 1952 Nag. 409= A. I. R. 1952 Nag. 330; referred to.

Under Article 226 of the Constitution this Court has jurisdiction and authority to control executive action in the matter of making appointments to public offices against relevant statutory provisions. These proceedings protect the public from usurpers of public office.

The only requisite which must be satisfied before a writ of *quo-warranto* can be issued are :

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(i) The office must be public;

(ii) The office must be substantive in character and independent in title;

(iii) the office must have been created by a statute or by Constitution; and

(iv) the office is held by usurper without legal authority. An office is usurped if the respondent is not entitled to that office or if the appointment of the respondent has not been made in accordance with law.

If in England, in a monarchical system, where the first principle is that the King can do no wrong, an appointment made by the King could be questioned by any of his subjects, who had no personal interest in the matter, certainly in a democratic republican Constitution, a citizen cannot be refused to move for a writ of *quo-warranto* for testing the validity of an appointment.

G.D. Karkare v. *T.L. Sheyde*, I. L. R. 1952 Nag. 409= A. I. R. 1952 Nag. 330 and *University of Mysore* v. *Govindrao*, A. I. R. 1965 S. C. 491=(1964) 4 S. C. R. 575; relied on

V.D. Deshpande v. *Hyderabad State*, A. I. R. 1955 Hyd. 361 and *King* v. *Speyer and King* v. *Cassel*, (1916) 1 K. B. 595; referred to.

SUDHIR KUMAR MISHRA v. MUNICIPAL CORPORATION, JABALPUR, THROUGH ITS COMMISSIONERS, JABALPUR, I.L.R. [1980] M.P. ... 536

Municipal Corporation Act, M. P. (XXIII of 1966)—Section 66(1)—Imposes not only duty to fulfil any obligation imposed by Act but also obligation imposed by any other Act for the time being in force: *vide* Nirashriton Ki Sahayata Adhiniyam Section 7 and Constitution of India, Article 19(1)(f) ... 206

Municipal Corporation Act, M.P. (XXIII of 1956)—Section 66(1)—Imposition of duty to give relief to destitute by other Act becomes duty of corporation—Authorises imposition of cess for the purpose though imposed on

corporation by another Act—Becomes duty and power imposed and conferred by Corporation Act: *vide* Nirashriton Ki Sahayata Adhiniyam, Section 7 and Constitution of India, Article 19(1)(f) ... 206

Municipal Corporation Act, M. P. (XXIII of 1956)—Section 138—Cess to be imposed with reference to annual letting value determined according to this provision: *vide* Nirashrition Ki Sahayata Adhiniyam, Section 7 and Contitution of India, Article 19(1)(f) ... 206

Municipal Corporation Act, Madhya Pradesh (XXIII of 1956)—Section 366(3)—Authorises Corporation to charge fee for grant of building permission—Bye-law in —Effective as bye-law—Effect can be given to it as order of Commissioner, fixing fee for grant of building permission—Practice—Order quoting wrong provision—Order not invalid—Exercise of power can be referable to a jurisdiction which confers validity upon it—Distinction between Tax and fee and their implication—Wrong crediting of fund—Does not change nature of the amount—Co-relation between total collections and expenditure incurred for rendering service established—Absence of uniformity will not make the amount a tax—Co-relation necessary to sustain fee—Need not be arithmetical exactitude: General provision made in Section 366 (3) of the Corporation Act, 1956 confers sufficient authority to impose a fee on grant of building permission.

The Act authorises Commissioner to fix rates of fee for grant of building permission required under Section 294.

The Bye-law although ineffective as a bye-law can be given effect to as an order of the Commissioner fixing the the rate of fee under section 366(3) for grant of building permission.

The basic distinction between a tax and a fee is that the levy of tax is for the purposes of generel revenue whereas a fee in the strict sense is payable as a sort of return or consideration for services rendered and the collections made from imposition of fee are co-related to the expenses incurred in rendering the services.

State of Maharashtra v. *Salvation Army*, A. I. R. 1975 S. C. 846; referred to.

The fact that the fee collected is not credited to a separate fund is not of importance for deciding the question whether the levy in its real nature is a tax or fee.

Government of Madras v. *Zenith Lamps*, A. I. R. 1973 S. C. 724 and *State of Rajasthan* v. *Sajjanlal*, A. I. R. 1975 S. C. 706 at p. 725; referred to.

It is true that normally a fee is uniform and no account is taken of the paying capacity of the recepients of services, but absence of uniformity will not make it a tax if co-relation is established between the total collections and the expenditure incurred for rendering the services.

S. T. Swamiar v. *Commr. H. R. & C. E.*, A. I. R. 1963 S.C. 966 at p. 975; referred to.

The co-relation necessary to sustain a fee needs only be of a general nature and arithmetical exactitude has not to be established.

The Indian Mica and Micanite Industries Ltd. v. *The State of Bihar*, A. I. R. 1971 S. C. 1182 at p. 1187, *Delhi Cloth and General Mills Ltd.* v. *Chief Commissioner, Delhi* A. I. R. 1971 S. C. 344 and *State of Maharashtra* v. *Salvation Army*, A. I. R. 1975 S. C. 846; referred to.

It is well settled that if while passing an order a wrong provision is quoted, that by itself will not invalidate the order and the exercise of the power will be referable to a jurisdiction which confers validity upon it.

LOONKARAN PARAK v. STATE OF M. P., I. L. R. [1980] M. P. ... 403

Municipal Corporation Act, M. P. (XXIII of 1956)—Section 366(3)—Bye-law in—Effective as bye-law— Effect can be given to it as order of Commissioner, fixing fee for grant of building permission : *vide* Municipal Corporation Act, Section 366(3) ... 403

Municipal Corporation Act, M. P. (XXIII of 1956), amended by Act of 1966—Section 423, Clauses (e) and (c) to be read as independent clauses (b) and (c) of sub-section (1)

and not as part of clause (a): *vide* Nirashriton Ki Sahayata Adhiniyam, Section 7 and Constitution of India, Article 19(1)(f) ... 206

Municipal Corporation Act, M. P. (XI of 1966), as amended —Section 423—Powers which Administrator can exercise in cases of superceded Corporation: *vide* Nirashriton Ki Sahayata Adhiniyam, Section 7 and Constitution of India, Article 19(1)(f) ... 206

Municipal Corporation Act, M. P. (XI of 1966), as amended —Section 423(1)(b)—Administrator appointed continues till Corporation is re-constituted: *vide* Nirashriton Ki Sahayata Adhiniyam, Section 7 and Constitution of India, Article 19(1)(f) ... 206

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 20(2)—Confers jurisdiction to try election petition on District Judge within the Revenue District where such election or selection held—Civil Courts Act, M. P., 1958—Section 7(2)—Additional District Judge empowered to discharge functions of District Judge assigned to him by General or Special Order—Election Petition presented to District Judge outside the Revenue District —Such Court has no jurisdiction to entertain or try—It has also no jurisdiction to transfer the petition to Additional District Judge—Section 24, Civil Procedure Code—Does not empower the District Judge situated outside the Revenue District to make valid transfer of Election Petition to Additional District Judge within the Revenue District—Defect of jurisdiction cannot be cured by such transfer—District Judge handing over petition to counsel for its presentation to Additional District Judge along with order of its transfer—Counsel acts as agent of District Judge and not of petitioner—District Judge or Additional District Judge exercising jurisdiction to entertain Election Petition—Does not act as *persona designata* but as an established Court—Civil Procedure Code—Order 3, rule 1—General rules of procedure in—When applicable—Presentation of Election Petition by counsel—Validity of: When a District Judge has no jurisdiction to entertain an election petition, he cannot assign it to the Additional District Judge for trial. There can, therefore, be no transfer of the Election Petition under section 7(2) of the Civil Courts Act. There can also be no transfer of election petition under section 24 of the Civil Procedure Code.The defect

of jurisdiction cannot be cured by transfer under section 24 of the Civil Procedure Code, even when the transferee court is competent to try the proceeding.

Ledgard v. *Bull*, I. L. R. (1887) 9 All. 191 P. C. at p. 202 and *Raja Soap Factory* v. *S. P. Shantharaj*, A.I.R. 1965 S. C. 1449 at pp. 1450 and 1451; referred to.

Where the District Judge hands over the Election Petition along with the transfer order, to the counsel for its presentation before the Additional District Judge, the counsel acts as an agent of the District Judge and not of the petitioner.

The District Judge or the Additional District Judge to whom a petition is to be presented under section 20 of the Municipalities Act, 1961, is not a *persona designata* but a court.

Babulal Bhikoji Mandloi v. *Dattatraya Narayan*, A. I. R. 1972 M. P. 1 (F. B.); followed.

An Election Petition under Section 20 of the Municipalities Act, 1961, can be presented by a pleader or an Advocate acting on behalf of the petitioner. There is no requirement that it should be presented personally by the petitioner. In the absence of any such provision, the general rule enacted in Order 3, rule 1, Civil Procedure Code applies.

ANUP v. BABOOLAL, I. L. R. [1980] M.P. ... 269

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 127(3)(ii)—Exemption from tax—House let out to tenant—Tenant not using it for charitable purpose—House not exempted from tax even though rent received is used for charitable purpose—Word "used" in—Meaning of: The word "used" in Section 127 (3)(ii) of the Municipalities Act, Madhya Pradesh, refers to the actual use of the "places" and not to the use of the rent realized by letting out the places and conveys the idea of actual user of the house for charitable purpose. If merely the rent is used for charitable purpose and the house is used by the tenant for non-charitable purpose, the house would not qualify for exemption from tax as provided by clause (ii) of Section 127(3) of the Act.

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SWAMI SHIVANAND v. MUNICIPAL COUNCIL, SATNA, I.L.R. [1980] M. P. ... 227

Municipalities Act, M. P. (XXXVII of 1961)—Section 341—Committee of nominated members only—Requirements of stating the reasons provided for the second proviso are mandatory: *vide* Municipalities Act, Section 341 ... 11

Municipalities Act, M. P. (XXXVII of 1961)—Section 341—Object of—Committee of nominated members only—Requirements of stating the reasons provided for in second proviso are mandatory—Constitution of India—Article 226—Failure of State Govt. to state reasons for exercise of powers under section 341(1)(d)—Notification liable to be quashed—Writ of *certiorari*—Exercise of statutory power without complying with its mandatory requirements—Writ of *certiorari* may be issued—Constitution of India—Article 226 – Administrative Act of public authority – Done in excess of jurisdiction—Writ of *certiorari* can be issued: Section 341 of the Act, read as a whole, clearly shows that the committee so appointed by the State Govt. should ordinarily consist of a majority of elected members as laid down in the First proviso to clause (d). It follows necessarily that constitution of a committee consisting only of nominated members is undoubtedly an abnormal course to be adopted as a last resort. It is for this reason that the Second proviso to clause (d) has been inserted; its object being to confer an extra-ordinary power to deal with an unusual situation and at the same time to provide a check against arbitrary or capricious exercise of that power.

The exercise of the power under section 341(1)(d) can be made only in "public interest" and "by order, stating the reasons therefor." The manner of exercise of this extra-ordinary power by the State Govt. which permits a deviation from the ordinary course of constituting a Committee consisting mostly of elected members, is prescribed obviously to check any possible abuse of the power. In case exercise of this power by the State Government is challenged its validity has to be tested in the light of the stated reasons, to the extent judicial review of subjective satisfaction of a public authority is permitted in a proceeding for a writ of *certiorari*. The requirement of "stating the reasons" itself acts as an internal check against any possible abuse the power.

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Mohinder Singh Gill and another v. *The Chief Election Commissioner, New Delhi and others*, (1979) 1 S. C. C. 405; para 8; *Collector of Monghyr and others*, v. *Keshav Prasad Goenka and others*, A. I. R. 1962 S. C. 1694 and *Union of India* v. *M. L. Capoor and others*, A. I. R. 1974 S. C. 87; relied on.

A writ of *certiorari* can be issued to quash a notification issued by State Govt. in exercise of statutory power without complying with a mandatory requirement laid down therein.

The earlier classification of functions as 'judicial' or "administrative" for applying the doctrine of natural justice only to the former, has long been discarded. Enlargement of the scope of "*certiorari*" to quash an administrative act done in excess of jurisdiction, by a public authority, has not been in doubt for several years.

Mohinder Singh Gill and another v. *The Chief Election Commissioner, New Delhi and others*, (1978) 1 S. C. C. 405 Para 8 and 43 to 53; *Mrs. Maneka Gandhi* v. *Union of India and another*, (1978) 1 S. C. 248, Paras 8 to 12 and *A. K Kraipak and others* v. *Union of and others*, A. I. R. 1970 S. C. 150; relied on.

Radheshyam Khare and another v. *State of Madhya Pradesh and others*, A. I. R. 1959 S. C. 107; referred to.

DR. SHRIKRISHNA RAJORIA v. STATE OF M. P., I. L. R. [1980] M. P. ... 11

Nagariya Sthawar Sampathi Kar Adhiniyam, M. P. (XIV of 1964)—Section 9—Objections preferred against notice of demand—Opportunity to produce evidence not given—Order passed liable to be quashed: *vide* Nagariya Sthawar Sampathi Kar Niyam, Rule 4(9) ... 197

Nagariya Sthawar Sampathi Kar Niyam, M. P., 1964—Rule 4(9)—Is a special rule of evidence exclusively for the purpose of the Act—Oral partition among members of joint Hindu family not rendered invalid—Rule is not invalid—Nagariya Sthawar Sampathi Kar Adhiniyam, M. P., 1964—Section 9—Objections preferred against notice of demand—Opportunity to produce evidence not given—Order passed liable to be quashed: Rule 4(9) is a

special rule of evidence made for the purpose of a special law. It is not correct to think that a partition among the members of a joint Hindu family whereby portions are allotted to joint owners by metes and bounds, would be rendered invalid because of the impugned Rule. There can be no doubt that there is nothing in the impugned Rule which in any way affects the substantive rights or liabilities of parties which may accrue from an oral partition, nor does it invalidate any such transaction. The Rule is purely a rule of evidence prescribing a particular mode of proof. Having regard to the scheme of the Act and the Rules and in view of the obvious intention of the impugned Rule and its scope, it cannot be held to be unreasonable. The Rule does not say that an oral partition or an oral transfer of any portion would be inoperative or ineffective. On the other hand, when the Rule permits that a fact can be proved by a decree of a Court of law, it contemplates the validity of such partition or transfer. It will be for the civil court to see whether such partition or transfer is valid and it creates ownership in different persons in respect of different portions of the building.

Rohtak and Hissar Distt. Electric Supply Co. v. *State of U.P. and others*, A.I.R. 1966 S.C. 1471; referred to.

The language of clause (ii) of sub-section (2) of Section 35 of the Act is comprehensive enough to make special rule of evidence as contained in Rule 4(9). Furthermore, it is now settled that if the power is conferred to make subordinate legislation in general terms, the particularisation of topics is construed as merely illustrative and does not limit the scope of the general power.

Emperor v. *Shibnath Banerjee*, A. I. R. 1945 P. C. 156 at p. 160, *Afzalullah* v. *State of Uttar Pradesh*, A. I. R. 1964 S.C. 264 para 13 and *Sant Saran Lal* v. *Parsuram*, A.I.R. 1966 S.C. 1852; referred to.

Rule 4(9) of the M. P. Nagariya Sthawar Sampathi Kar Adhiniyam, 1964, being a special rule of evidence, made exclusively for the purpose of this Act, is valid.

When an objection against the past notice of demand according to the amended law was filed and no opportunity was given to the objector to produce evidence

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to prove that the annual letting value of the house is assessed excessively, the orders passed by the authorities are liable to be quashed.

MUNNALAL v. B.S. BASWAN, I.L.R. [1980] M.P. ... 197

Nagariya Sthawar Sampathi Kar Niyam, M. P. (XIV of 1964)—Rule 4(9)—Oral partition among members of joint Hindu family not rendered invalid: *vide* Nagariya Sthawar Sampathi Kar Niyam, Rule 4(9) ... 197

Nagariya Sthawar Sampati Kar Niyam, M. P. (XIV of 1964)—Rule 4(9)—Rule is not invalid: *vide* Nagariya Sthawar Sampathi Kar Niyam, Rule 4(9) ... 197

Natural Justice—Rules of—Applicable to administrative orders—Also require reasons in support of the orders passed by *quasi*-judicial authority or Tribunals: *vide* Industrial Disputes Act, Section 10-A and Constitution of India, Article 226 .. 718

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Unless the tax is confiscatory or extortionate, reasonableness of the rate is not open to judicial review.

Assistant Commissioner, Madras v. *B. & C. Co.*, A. I. R. 1970 S. C. 169 at p. 179 and *S. Kodar* v. *State of Kerala*, A.I.R. 1974 S.C. 2272 at p. 2276; referred to.

The Constitution does not provide any guarantee against multiple taxation and, therefore, imposition of the cess cannot be invalid on the ground that lands and buildings are already subject matters of taxation under other enactments.

Delite Talkies v. *Commissioner, Jabalpur Corporation*, 1966 M.P.L.J. 683 at p. 685 and 686 and *Assistant Commissioner, Madras* v. *B. & C. Co.*, A. I. R. 1970 S. C. 169 at p. 179; referred to.

The cess imposed is a tax on lands and buildings under Entry 49, List II of Constitution. Under this entry owners of other properties cannot be taxed at all. The Act, therefore, cannot be said to discriminate between owners of lands and buildings and owners of other properties. "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".

F. J. Ferreira v. *Bombay Municipality*, A. I. R. 1972 S. C. 845 at p. 854; referred to.

The cess imposed by the Act cannot, therefore, be held to be discriminatory offending Article 14 of the Constitution.

By force of Section 25 of the Corporation Act, the rules under the Ordinance continued under the Act as rules deemed to have been made under it until superseded by new rules.

Clauses (c) and (c) of section 423 as amended should be read as independent clauses (b) and (c) of sub-section (1) and not as part of clause (a).

The Administrator can continue as provided by section 423(1)(b) "until the Corporation is re-constituted".

Under Section 66(1) of the Corporation Act it is the duty of Corporation not only to fulfil any obligation imposed by the Corporation Act but also to fulfil any obligation imposed by "any other law for the time being in force".

By virtue of Section 66(1) of the Corporation Act, the duty to give relief to destitutes and the power to impose the cess for carrying out this duty, though imposed and conferred on the Corporation by another Act, also became a duty and power imposed and conferred under the Corporation Act.

As administrator exercises all the powers of the superseded Corporation, he is competent to exercise even those powers which if exercised by the Corporation require that a meeting be specially called for the purpose or that a resolution be passed by a special majority.

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State of Haryana v. *Mohan Lal*, A. I. R. 1970 S. C. 1848; referred to.

The assessment of the cess with reference to the annual letting value determined in accordance with Nagariya Sthawar Sampathi Kar Adhiniyam, 1964 was clearly illegal.

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Panchayats Act, M. P. (VII of 1962)—Sections 5 and 21(1)—Voters list prepared under section 5 is for election to Gram Panchayat only : *vide* Panchayats Act, Section 6-A(1)(a), Panchayats (Amendment) Act and Panchayats (Amendment) Ordinance ... 115

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The proviso in section 21(2) of the M. P. Panchayats Act, 1962 introduced by the Amendment Act, providing that either the Sarpanch or the Up-Sarpanch of every Gram Panchayat belong to one of the scheduled caste or scheduled Tribes is not violative of Article 14 of the Constitution

The voters list prepared under section 5 of the M. P. Panchayats Act, 1962 is for the purpose of election to Gram Panchayat. Any other construction would render the voters list an exercise in futility because such a voters list is not required for holding any other election to the Gram Sabha.

Insertion of sub-section (5) in section 17 of the Principal Act by the M. P. Panchayats (Amendment) Ordinance, 1978 is not violative of Article 20 of the Constitution. A provision providing for disqualification for contesting

an election does not amount to *ex post facto* Criminal law so as to attract the prohibition contained in Article 20 of the Constitution.

Even though, while enumerating the several sections of the Act which confer rule making power on the State Government, section 11(4) has not been mentioned in the preamble to 1978 Rules but the general rule making power contained in section 318 has been mentioned as also section 12 of the Act. Rule 3 of the 1978 rules gives the requisite guidance in the matter of construction of ward and sub-rule (1) thereof expressly refers to section 11 (4).

The contention that while reducing the age of a voter from 21 years to 18 years resulting in increase of number of eligible voters, it was necessary to frame more electoral rolls is not correct. The rules provide for preparation and publication of the provisional list of voters so as to give an opportunity to all persons concerned to file their objections, if any, to the preparation of voters list. Absence of provision of a appeal does not invalidate the rules.

Under section 24(e) of the General Clauses Act, publication in the official gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made. There is a presumption also. There is no requirement for its publication in Newspaper

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Panchayats Act, M.P. (VII of 1962)—Sections 159 and 158—Word 'imposition' in Section 159—Meaning of—Does not include the initial stage of decision to levy tax or acquisition of that power—Means stage commencing with assessment or quantification of tax with reference to a particular person—Appeal lies only against assessment and not against decision to levy tax—Constitution of India—Article 226—Impugned order wholly without authority—Question involved of frequent occurrence—Petition not liable to be thrown out on the ground that the petitioner gave consent to impugned order—Words and phrases—Word "impose"—Meaning of: The word "imposition" occurring in Section 159 of the Panchayats Act, Madhya Pradesh, 1962, must be construed to mean the stage of taxation commencing with the assessment or quantification of tax with reference to an ascertained person and it does not include the initial stage of decision to levy the tax itself or acquisition of that power. Such a construction is quite permissible and would avoid the absurdity resulting from the other view and would be in harmony with Section 158 (2) also.

Section 159 of the Act does not permit an appeal against the decision to levy the tax and that it is, only against the assessment or quantification of tax made against any tax payer after the levy has been brought into force.

Where the impugned order though passed with the consent of the parties, is wholly without authority and the question involved is of frequent occurrence, it is desirable to decide the same and not to leave it open on the ground that no challenge to the consent order should be permitted under the writ jurisdiction

The word 'impose' depending on its context means also the stage in taxation subsequent to acquisition of authority to levy tax, and that it does not always include necessarily the initial stage of acquiring power to levy the tax. It is settled that a word has to be construed in the context or setting in which it occur.

Municipality of Anand v. *State of Bombay and another*, A. I. R. 1962 S. C. 988; relied on.

JANPAD PANCHAYAT, REHLI v. COLLECTOR, SAGAR, I. L. R. [1980] M. P. ... 1

Part C States (Laws) Act (XXX of 1950)—Section 3—Extends Hindu Women's Rights to Property Act, 1937 to Vindhya Pradesh from 16-4-50—Also applicable to agricultural land in Vindhya Pradesh: *vide* Hindu Women's Rights to Property, Act, Section 3(1) and (4) ... 490

Partition Act (IV of 1893)—Section 4—Decree for partition defining shares of each party—Offer by one party to purchase the share of the other party—Mode of valuation—Relevant date for determination of valuation—Expression "make a valuation of such share in such manner as it thinks fit" in—Leaves discretion on Court to adjust equities: Section 4 of the Partition Act does not speak of any date which is to be taken into consideration for fixing the valuation. However, the valuation has to be fixed with great care and caution so as not to cause any hardship to the parties. The contention that section 4 of the Partition Act refers to the market value as prevailing on the date of the suit is not correct. The court must determine the value of the share on the date other party made an offer to purchase it while taking into account the relevant factor.

The expression "make a valuation of such share in such manner as it thinks fit" in section 4 of the Partition Act leaves a discretion to the court to adjust equities.

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Subal Chandra Modak v. *Gostha Behari Das*, (1956) 60 C. W. N. 829, *Kashi Nath and others* v. *Atma Ram* and others, A. I. R. 1973 All. 548, *Re. Ilias Ahmad's case*, A. I. R. 1917 All. 2, *Sumitra and another* v. *Dhannu and another*, I. L. R. 1949 Nag. 370, *Bhikari Behera* v. *Dharmananda Natia and others*, A. I. R. 1963 Orrisa 40 and *Lal Kejriwal and others* v. *Bhawanath Jha*, A. I. R. 1977 Pat. 5; referred to.

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Penal Code, Indian (XLV of 1860)—Section 302—Offence of murder—Proof of—Criminal Procedure Code, 1973, Section 294 and Evidence Act, Section 45—Post-mortem report—Value of—When can be used in evidence against the accused for the offence of murder—Doctor not examined by the prosecution to prove it—Accused cannot be convicted on the basis of post-mortem report: The post-mortem report is the findings of an expert on the basis of which the opinion is given about cause of death, nature of injury and its effect or connection with death.

Opinion of the expert given in Court is admissible in evidence under section 45 of the Evidence Act. But his opinion in the report about the cause of death and about the effect of the injury cannot be used as evidence

against the accused unless the expert (Doctor) is examined in Court and his evidence recorded. Section 294 of the Code of Criminal Procedure does not in any way modify the law of Evidence.

When the Judge obtained the signature of the defence counsel on the document, i. e., post-mortem report, saying that genuineness is not disputed, it only means that signature of the Doctor on the post-mortem report need not be proved. But in the absence of the Doctor's evidence it could not be used as expert evidence against the accused about cause of death and effect of the injury so as to sustain conviction for the offence of murder. For maintaining conviction under section 302, Indian Penal Code it has to be established that the accused inflicted an injury with intention to cause death of the deceased and the injury so inflicted is sufficient in ordinary course of nature to cause death.

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Penal Code, Indian (XLV of 1860), Sections 302, 149, 307 read with sections 34 and 396 and Arms Act, Indian (XI of 1878), Section 25—Convictions of the accused persons thereunder—Evidence—Expert evidence—When acceptable—Medical evidence and the evidence of eye-witnesses—Contradiction between the two—Effect of—Evidence of eye-witnesses not to be rejected—Identification—Accused persons' objection that their photographs were shown to the prosecution witnesses and hence identification not proper—Tenability of—Circumstances proving the guilt of accused persons—Nature of—Section 396—Implication of: In a criminal case of a highway dacoity, some of the accused persons, before committing dacoity stay in a lodge and sign in the Register of the lodge Thereafter, they commit dacoity for which they are prosecuted. During the trial the prosecution obtains their specimen signatures and gets them compared with the signatures in the Register of the lodge, through a Handwriting Expert.

Held—The evidence of the Handwriting Expert is admissible to prove pre-concert.

When a medical witness cannot give a categorical opinion regarding the nature of the injury on the head of the

deceased victim, it does not negative the evidence of the injury by the bullet. The injury being by bullet is established by ballistic expert who found blackening of the head skin.

Rejwa and others v. *State of U. P.*, A. I. R. 1973 S. C. 1204; relied on.

After committing a highway dacoity, the accused persons have been identified, the identification cannot be rejected on the ground that as the dacoity was committed at 5 or 5.30 A. M., it was dark, there was no visibility and the prosecution witnesses had no opportunity to see culprits. Besides, when the accused persons contend that their photographs were taken by the police and those photographs were printed in the newspapers, but when it is found from the record that the photographs were printed after the indentification parade was held, the objection of the accused persons is untenable.

Circumstances, e. g., assemblage of all the accused persons at a particular place, possession of a huge amount of money with them for which they cannot account for, injuries on their bodies for which they have no explanation and the possession of stolen goods are pieces of circumstances which go against the accused persons, proving their guilt.

By perusal of Section 396 of the Penal Code, it will be found that this Section declares that the liability of other persons is co-extensive with that of the actual murderer and for this purpose, all that is required to be proved is that they should have been "conjointly committing" the dacoity and any death caused by a dacoity in the course of the dacoity would be murder and is attributed to all of them. The first essence of an offence under this Section is that the dacoity is the joint act of the persons concerned; and the second essence of the offence is that the murder is committed in the course of the commission of the dacoity in question.

Bhoj n Singh and others v. State of Uttar Pradesh, A. I. R. 1974 S. C. 1564, *Shivmohan Singh* v. *State, Delhi Administration*, A. I. R. 1977 S. C. 949, *Ramesh Ramdas Tilli* v. *The State of Maharashtra*, A. I. R. 1975 S.C. 345

and *State of M. P.* v. *Kailashi alias Kailash Narayan*, 1977 J. L. J. Note No. 19; referred to.

The legal position is that the act of one of the accused persons in shooting at an innocent person who was discharging his public duty with sordid object of facilitating his pre-planned object deserves the extreme penalty of law.

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Penal Code, Indian (XLV of 1860)—Section 379—Accused attempting to transport paddy to another State in a truck without permit—After seizure of paddy accused fleeing away with the truck—Truck pursued and caught—Conviction of accused under the section—Justification of: *vide* Essential Commodities Act, Sections 3 and 7 ... 892

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Public Premises (Eviction of Un-authorised Occupants) Act, Indian (XL of 1971)—Section 18—Appellate Officer can dispose of appeal on the ground of non-prosecution—Appellate Officer has also power to restore appeal which has not been dismissed on merits: *vide* Public Premises (Eviction of Un-authorised Occupants) Act, Section 18(2)(b) ... 639

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Per K. K. Dube J.—Under sub-section (2) of section 18, the Central Government is authorised to frame rules regulating the procedure to be followed in appeals. The above provisions would clearly indicate that Civil Procedure Code in terms is not made applicable to provide the procedure in appeal.

It is manifest from the provision that an appeal is not to be dismissed *in limine*. The appellate officer is bound to call for the record, fix a date of hearing and give notice to the Estate Officer and to the department concerned as also to the appellant.

If the appellant did not appear on the date of hearing the appellate officer could proceed to decide the appeal in his absence and that is the sort of disposal by adjudicating upon it that is contemplated under the scheme.

If the appellate officer dismissed the appeal for default of appearance the order passed is erroneous and not in exercise of jurisdiction conferred on him. Such an order was *non-est* and the appellate officer could undoubtedly restore it to rectify his own mistake.

The appellate officer had no jurisdiction under any of the provisions of section 9 to direct re-deliver of possession.

Bajpai J.—The finality contemplated under section 10 of the Act does not relate to such orders, which terminated or, disposed of the appeal for want of prosecution or failure to appear on the date fixed. Finality has been given only to such orders which decided the dispute raised in the appeal on merits after hearing both the parties.

In the absence of any such language using the words "shall decide", it may be permissible for the appellate officer to dispose of the appeal on the ground of non-prosecution or default so long as there was no such prohibition for doing so. But whenever there is power to dismiss the appeal on such ground, even in the absence of specific provision, it cannot be urged that there is no such power to restore the appeal or set aside such dismissal, which is not on merits.

It is true that there may be cases where possession had been taken in contravention of stay order already operative or in the absence of knowlege about the stay order. In such cases, it may sometimes be proper to direct re-delivery of possession by granting a mandatory *ad interim* injunction.

For successfully asserting the plea of estoppel, it is necessary to show that the opposite party had really derived advantage or taken benefit of the order.

Smt. Sarat Kumari Dasi v. *Amuliyadhan Kundu and others*, A. I. R. 1923 P. C. 13; referred to.

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Unless a conscious decision to abandon the right was taken, the mere fact of receiving the amount of costs mechanically by counsel will not create estoppel.

Normally jurisdiction under Article 226 is not to be invoked against interlocutory orders made by the tribunals in respect of stay orders or injunctions. But when the Tribunals or Subordinate Courts act in an arbitrary manner and want to create a new state of affair by granting a mandatory injunction and to change the circumstances, which had already come into existence, it becomes a proper case for interference even in exercise of jurisdiction under Article 226 of the Constitution of India.

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Representation of the People Act (XLIII of 1951)—Sections 81(3), 83(1) and 86(1)—Election Petition alleging corrupt practice—Reference made to pamphlet annexed with petition—Annexnre treated as integrated with petition—Contents of pamphlet not included in petition—Copy of annexure not served on respondent along with copy of petition—Non-compliance of mandatory requirements of Section 83—Amounts to fatal defect—Petition liable to be dismissed on ground of non-compliance of Section 81(3) read with Section 83(2)—Permitting interpretation of contests of pamphlet in petition—Amounts to introduction of practice not previously alleged in the petition—Such amendment cannot be allowed: The word 'petition' as used in Section 81(3) of the Act includes the annexures to the petition containing particulars of the corrupt practice alleged therein.

Where an election is challenged on the ground of corrupt practice, but the petitioner fails to supply copies of Annexures to the petition for being served on the respondents, the defect produced by the non-supply of copies is a defect of presentation of the petition and so cannot be allowed to be cured subsequently and the petition is liable to be dismissed.

Section 83 of the Act is mandatory and requires the election petition to contain first concise statement of material facts and then requires the fullest possible particulars. The function of particulars is to present as full a picture of the couse of action with such further information in detail as to make the opposite party understand the case as he will have to meet.

A distinction has to be drawn between documents which

are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petition, and annexures or schedules which are treated as integrated with the Election Petition. So for as the documents of the former type are concerned, they are in no sense an integral part of the averments in the petition and, therefore. cannot be treated as part of the Election Petition, and need not be served upon the Respondent. But as regards averments not included in the Election Petition but set out in the schedules or annexures attached to the Election petition, even though they are outside the Election Petition they must be signed and verified, but such annexures or schedules are then treated as integrated with the Election Petition and copies of them must be served on the Respondents, if the requirements regarding service of the election petition is to be wholly complied with.

Where the Petitioner does not correctly and faithfully narrate the substance of Pamphlet in the election petition and allegations have been made against the elected candidate that he has committed corrupt practice by distributing pamphlets with heading "Musalman Kishi Bhi Kimath per Congress Ko Vote Na Den", and the pamphlet is annexed to the petition the intention of petitioner is clearly to base his allegations regarding corrupt practice on the pamphlet and not to use it merely as a piece of evidence. It is therefore, the duty of the petitioner to either incorporate fully and faithfully the contents of the pamphlet in the petition itself or to serve it on the Respondent. Otherwise the allegations about corrupt practice would be wholly incomplete and would not at all meet the requirements of section 83 of the Act in the absence of the pamphlet which must be treated as an integral part of the election petition.

To allow the petitioner to incorporate the contents of the aforesaid pamphlet in the petition would have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. An amendment of the petition which would have the effect of introducing particulars of a corrupt practice not previously alleged in the petition cannot be allowed.

Smt. Sahodra Bai Rai v. *Ram Singh Ahirwar and others.* A. I. R. 1968 S. C. 1079; relied on.

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Samant N. Balakrishna v. *George Fernandez and others*, A. I. R. 1969 S. C. 1201; *Mohan Raj* v. *Surend·a Kumar Taparia and others*, A.I.R. 1969 S. C. 677 and *Kashinath* v. *Smt. Kudsia Begam and athers*, A. I. R. 1971 S. C. 372; referred to.

KUSHALCHAND v. HARLAL, I. L. R. [1910] M. P. ... 25

Representation of the People Act (XLIII of 1951)—Sections 81(3),and 83(2)--Petition liable to be dismissed on ground of non-compliance of Section 81(3) read with Section 83(2): *vide* Representation of the People Act, Sections 81(3),83(1) and 86(1) ... 25

Representation of the People Act (XLIII of 1951)—Section 83—Non-compliance of mandatory requirements of Section 83—Amounts to fatal defect: *vide* Representation of the People Act, Sections 81(3),83(1) and 86(1) ... 25

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Representation of People Act (XLIII of 1951)—Section 100(1)(a) and 100(1)(d)(i) and Sections 8(2) and 8(3)—Respective scope of: *vide* Representation of the People Act, Sections 100(1)(a),100(1)(d)(i),8,(2)8(3),32,36(2) .. 936

Representation of the People Act (XLIII of 1951)—Sections 100(1)(a), 100(1)(d)(i),8(2)(3), 32, 36(2)-- Constitution of India—Article 102 and Sections 32 and 36(2)(a) of the Act—Expression "for being chosen", "to be chosen" and "chosen" used respectively in—Connotation of—Section 8(2)—Disqualification of a candidate to contest elections of either house of Parliament, on conviction for any offence and sentence of imprisonment for not less than two years—Has to be decided on the basis of facts subsisting on the date of scrutiny—Section 100(1)(d)(i)—Expression "improper acceptance" to be answered with reference to section 36 of Representation of the People Act on the basis of facts existing on the date of

subsequently—Subseqnent acquittal by appellate Court—Does not cure the disqualification—Sections 100(1)(a) and 100(1)(d)(i) and Section 8(2) and 8(3)—Respective scope of—Section 8(2)—Pendency of appeal against conviction and sentence grant of bail subseqnently—Effect of Section 8(3)—Lays down exception in cases of sitting members only—Effect of suspension of execution of sentence—Disqualification does not remain in abeyance—Returning Officer accepting the nomination as valid—Amonnts to "Improper Acceptance"—Materially affects election of a candidate—Calling for no further proof—Right to contest election is a statutory right—Can be exercised only in the manner prescribed—Interpretation of statute—Construction of a provision made in a judicial decision—Deemed to be in consonance with legislative intent, if no amendments made in the statute there after: The use of the expressions "for being chosen" in Article 102 of the Constitution of India, "to be chosen" in Section 32 and "chosen" in Section 36(2) (a) of the Representation of the People Act, 1951 have been used to indicate that disqualification is relevant at the stage of being chosen as a candidate "on the date of scrutiny of nominations" and if the disqualification subsists on the date of scrutiny, the nomination must be rejected by the returning officer by virtue of Section 8(2) of the Representation of the People Act. 1951.

The question of "improper acceptance" of a nomination within the meaning of that expression used in Section 100(1)(d)(i) of the Representation of the People Act, 1951, has to be answered with reference to Section 36(2) of the Act on the basis of only those facts which existed "on the date of scrutiny of the nominations," excluding from consideration all facts coming into existence. Subsequent to that date; and the disqualification, if any, existing on the date of scrutiny cannot be cured by any subsequent event.

Veluswami Thevar v. *Raja Nainar*, A. I. R. 1959 S. C. 422 paras 13 to 15; referred to.

Mannilal v. *Parmai Lal*, A. I. R. 1971 S. C. 330; distinguished.

Chatturbhuj Vithaldas v. *Moreshwar Parashram*, A. I. R. 1954 S.C. 236, *Pashupati Nath* v. *Harihar Prasad*, A.I.R. 1968 S. C. 1064, *Hussain Khan* v. *S. Nijalingappa*,

A. I. R. 1969 S. C. 1034, *Sk. Abdul Rahman* v. *Jagat Ram*, A. I. R. 1969 S. C. 1111, *Amrit Lal* v. *Himathbhai*, A. I. R. 1968 S. C. 1455 and *Chandanlal* v. *Ram Dass*, (1972) 41 E. L. R. 214; relied on.

Section 8(3) of the Representation of the People Act, 1951, is in the nature of an exception to Section 8(2) and that benefit is given only to sitting members, if they file an appeal or revision within the prescribed period.

The expression "date of conviction" in all the sub-sections of Section 8 of the Representation of the People Act, 1951,must have the same meaning as they are used in the same context. When the undoubted meaning of "date of conviction" in sub-section (3) indicates the starting point of disqualification incurred by virtue of sub section (2), even by sitting member, there is no occasion to construe that expression differently for persons other than sitting members and that too when the legislature has chosen not to extend such a benefit to them. It is, therefore, not correct that section 8(2) is attracted only as a result of such conviction by the Court of last resort and not earlier.

There is no indication in Section 8(2) of the Act, that the disqualification thereunder remains in abeyance during the pendency of appeal against conviction. On the other hand, Section 8(2) gives the contrary indication by laying down an exception only in case of sitting members. Suspension of the sentence or order grant of bail under section 389, Cr. P. C. has the only effect of avoiding sufferance of sentence pending appeal, but then in order to attract the disqualification under section 8(2) it is not necessary to suffer any part of the sentence awarded.

Udainath Singh v. *Jagat Bahadur Singh*, 3 E. L. R. 26 *Khagendranath* v. *Umesh Chandra*, A. I. R. 1958 Assam 183 and *Sarat Chandra* v. *Khagendranath*, A. I. R. 1961 S.C. 334; relied on.

Mannilal v. *Parmai Lal*, A. I. R. 1971 S.C. 330; referred to.

Dilip Kumar v. *State of M. P.*, A. I. R. 1976 S. C. 133, *Mahtab Singh* v. *State of U. P.*, A. I. R. 1979 S. C. 1262, *Annamalay* v. *Thornhill*, A. I. R. 1931 P. C. 263

and *Mohammad Gul* v. *Emperor*, A. I. R. 1932 Nag. 121; distinguished.

In cases where the nomination of a returned candidate is "improperly accepted" within the meaning of that expression as used in sub-section (i) of clause (d) of sub-section (1) of Section 100 of the Act, the result of the election in so far as it concerns the returned candidate is materially affected in order to make out a ground under section 100(1)(d)(i) of the Act without anything more being required to be proved. Since improper acceptance of the nomination being that of the returned candidate himself, he could not have contested the election and be declared elected but for such improper acceptance of his nomination.

Vashisth Narain v. *Dev Chandra*, A. I. R. 1954 S. C. 513, *Mahadeo* v. *Udai Pratap*, A I. R. 1966 S. C. 824, *Amrit Lal* v. *Himathbhai*, A. I. R. 1968 S. C. 1455 and *Durai Muthuswami* v. *N. Nachiappan*, A. I. R. 1973 S. C. 1419; relied on.

Right to contest election is a statutory right and can be exercised only in the manner prescribed by the statute. Section 8(2) is a part of the statute and the right is subject to it.

When the legislature which is presumed to have known the construction made in judicial decisions of this provision did not choose to alter the same even though several amendments have been made in the Act, thereafter, this shows that the construction so put by the judicial decisions, is in consonance with the legislative intent and has its approval.

Veluswami Thevar v. *Raja Nainar*, A. I. R. 1951 S. C. 422 para 13; referred to.

PURSHOTTAMLAL KAUSHIK v. VIDYA CHARAN SHUKLA, I. L. R. [1980] M. P. ... 936

Representation of the People Act (XLIII of 1951)—Section 100(1)(d)(i)—Expression "improper acceptance" to be answered with reference to section 36 of Representation of the People Act on the basis of facts existing on the date of scrutiny and ignore facts coming into existence subsequently—Subsequent acquittal by appellate Court

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—Does not cure the disqualification: *vide* Representation of the People Act, Sections 100(1)(a),100(1)(d)(i), 8(2), 8(3),32,36(2) ... 936

Restitution—Possession taken in contravention of stay order or in absence of knowledge of stay order—Sometimes it is proper to direct re delivery of possession: *vide* Public Premises (Eviction of Un-authorised Occupants Act, Secton 18(2)(b) ... 639

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Rule—Rule reducing age of superannuation or reducing qualifying service for compulsory retirement—Amounts to variation in condition of service—Previous approval of Central Government not obtained—Rule cannot be enforced: *vide* States Reorganisation Act, Section 115(7), Proviso, Constitution of India Artircle 311 and New Pension Rules, Rule 2(3)(ii) ... 1121

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Sales Tax Act, Central (LXXIV of 1956)—Section 8(1)—Re—assessment proceeding—Filing of certificate at appellate stage—Is of no avail to assessee—Assessee not entitled to produce evidence in reassessment proceedings: *vide* Sales-tax Act, Central, Sections 8(1),8(4),9(3),13(1), Central Sales-tax (Registration and Turnover) Rules, 1957, Rule 12 (1), General Sales-tax Act, Section 19(1) and Sales-tax (Central) Rules, 1957 ... 188

Sales Tax Act, Central (LXXIV of 1956)—Section 8(1)—Tribunal is justified in accepting evidence to the assessment proceedings regarding date when "C" form silent

about it: *vide* Sales Tax Act, Central, Sections 8(1),8(4), 9(3), 13(1), Central Sales Tax (Registration and Turnover) Rules,1957, Rule 12(1),General Sales-tax Act,M.P., Section 19(1) and Sales-tax (Central) Rules, 1957 ... 188

Sales Tax Act, Central (LXXIV of 1956), Sections 8(1),8(4), 9(3),13(1), Central Sales-tax (Registration and Turnover) Rules, 1957, Rule 12(1), General Sale-tax Act, M. P., 1958 (II of 1959), Section 19(1) and Sales-tax (Central) Rules, M. P., 1957—Declaration in form 'C' not completely filled in—Requisite information and details not furnished therein—Assessee not entitled to benefit of Section 8(1) of the Central Sales Tax Act—Re—assessment proceeding—Filling of certificate at appellate stage —Is of no avail to assessee—Assessee not entitled to produce evidence in reassessment proceedings—Tribunal is justified in accepting evidence to the assessment proceedings regarding date when "C" form silent about it: When the statute gives a concession to an assessee subject to his compliance with certain provisions of the Act or the Rules, then, in that event, the assessee to get the benefit given to him by the statute, has to strictly comply with the conditions which entitle him to that benefit. The reasoning which weighed with the learned member, Board of Revenue, is the principle of natural justice which in the circumstances would be inapplicable. A declaration form, which leaves the column of date of registration blank and thus is not completely filled in would not give the requisite information and details to the assessing authority as has been contemplated by the Act and the Rules in that behalf. In view of this, the assessing authority will have no option but to ignore such an incomplete 'C' form. The assessee was not entitled to have the benefit of Section 8(1) of the Central Sales Tax Act. The letters filed in the re-assessment proceedings were thus of no avail. The filing of the certificate at the appellate stage was also of no avail.

On the facts and circumstances of the case, the Tribunal was not justified in holding that regarding the date of registration, which was not mentioned in the three 'C' forms originally produced, evidence should have been accepted in the reassessment proceedings

Dy. Commr. (Comml). Taxes v. *Parekutti Hajee Sons*, 13 S. T. C. 680 and *K. M. Chopra and Co.* v. *Additional Commissioner of Sales Tax*, 19 S. T. C. 46; relied on.

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COMMISSIONER OF SALES TAX, M. P. v. M/S BOMBAY TAXTILE STORES, UJJAIN, I. L. R. [1980] M. P. ... 188

Sales-tax Act, C. P. and Berar (XXI of 1947)—Section 2(J)(a)(III), as amended—Sale by Cement Marketing Co. to a purchaser outside the State—Goods delivered to purchaser outside the State where manufacture of cement takes place—Sale is explanation sale and is exempt from sales-tax: *vide* Sales-tax Act, C. P. and Berar, Section 2(J)(a)(iii), as amended, and Constitution of India, Article 286(1)(a) Explanation ... 361

Sales-tax Act, C. P. and Berar (XXI of 1947), Section 2(J)(a)(III), as amended in 1951 and Constitution of India, Article 286(1)(a), Explanation—Cement appropriated by manufacturer to contract in favour of Cement Marketing Co. who held authorisation—Sale takes place at the place of manufacturer—Sale is intra-state sale—Assessee manufacturer liable to pay sales-tax to State—Sale by Cement Marketing Co. to a purchaser out-side the State—Goods delivered to purchaser outside the State where manufacture of cement takes place—Sale is explanation sale and is exempt from sale—tax—Constitution of India—Article 286, Explanation—Words "actually delivered" in—Implication of: The facts appearing from the statement of the case are as follows. The Associated Cement Companies Ltd., here-inafter referred to as the ACC is the assessee in this case. It has a cement factory at Kymore in M-dhya Pradesh. The relevant period of assessment is from 11th August 1951 to 31st July 1952. The sales of cement during this period were regulated by an agreement entered into on 4th June 1942 between four cement manufacturing companies including the ACC and the Cement Marketing Company of India Ltd., hereinafter referred to as the CMI. This agreement is Annexure 1. By clause 2 of the agreement the CMI was appointed the sole and exclusive sales Manager for the sale of cement and by clause the manufacturing companies agreed that none of them will directly or indirectly sell or deliver or export or consign any cement to any person, firm or company save and except the CMI or to the order of or as directed by the CMI. By clause 5 it was agreed that the manufacturing companies shall be paid by the CMI a uniform basic payment at a certain rate Free on Rail, or Free on Board, or Free on truck or lorry at works for all cement delivered to or to the orders of the CMI. or in accordance with the instructions of the CMI. By clause 6 the

CMI was authorised to sell the said cement at such Price or prices and such terms as it may in its discretion think fit. The CMI was further authorised to enter into such contracts for the sale or supply of cement on such terms and couditions as it may think fit. By clause 7 the manufacturing companies agreed to deliver or consign cement in accordance with the orders and instructions of the CMI and from the factory or works specified by the CMI.

The manner in which the sales took place is shown by Annexures 2A to 2E. The purchaser obtained an authrorisation in form Annexure 2 A from the Regional Honorary Cement Advisor to the Government of India authorising the CMI to sell cement. The authorisation mentioned the name and address of the person in whose favour it was issued, the name of the cement factory or company required to supply cement, the quantity authorised to be sold and the name of the Railway Station to which cement was required to be booked. The authorisation also mentioned full details of the purpose for which and the place at which the cement was to be consumed. On the basis of the authorisation the CMI received order from the purchaser for despatch of cement (Annexure 2-B). The CMI entered into a separate agreement with the purchaser (Annexure 2-C). In this agreement the condition for delivery was F. O. R. works siding. The price was either F. O. R. ex-works or F. O. R. destination, but in either case the risk passed to the purchaser after delivery by the works to the carrier. The purchaser was required to pay the railway freight and in those cases where the rate agreed was F. O. R. destination the freight was deducted from the price entered in the invoice. After receiving an order from a purchaser backed by requisite authorisation of the Regional Honorary Cement Advisor, the CMI in its turn placed order with the ACC for despacth of the the required quantity of cement to the purchaser. The order mentioned the name of the consignee (purchaser) and the name of the destination railway station (Annex. 2E). The ACC then advised its Factory Manager at Kymore to despach cement to the purchaser in accordance with the instructions of the CMI (Annexure 2F). After despatch of cement factory intimated the purchser about it (Annexure 2G) and debited the price to the account of the CMI (Annexure 2H). The railway receipt mentioned the ACC as the consignor and the purchaser as the consignee (Annexure 2-I).

Held-Per Malik and Singh JJ.-Tare C. J. (contra.)—The sale between Associated Cement Company and the Cement Marketing Company India Ltd. was not in the course of inter-State trade or commerce.

Mohd. Serajuddin v. *State of Orissa*, A.I.R. 1975 S.C. 1564; referred to.

Per Singh J.—Before a sale could be said to be in the course of inter-State trade or commerce the movement of the goods from one State to another must have been under a covenant or as an incident of the contract of sale must have taken place by transfer or documents of title during the movement of goods from one State to another.

Mohanlal Hargovind Das v. *State of Madhya Pradesh*, (1955) 2 S. C. R. 509, *Bengal Immunity Co. Ltd.* v. *The State of Bihar*, (1955) 2 S. C. R 603, *M/s Ram Narain Sons Ltd.* v. *Asstt. Commissioner of Sales-tax*, (1955) 2 S. C. R. 483, *Cement Marketing Co. of India Ltd.* v. *State of Mysore*, (1966) 3 S. C. R. 777, *Singareni Collieries Co.* v. *State of Andhra Pradesh*, (1966) 2 S. C. R. 190, *State of Bihar* v *Tata Engineering and Locomotive Co. Ltd.*, (1971) 2 S. C. R. 849 and *Kelvinator of India Ltd.* v. *State of Haryana*, A I. R. 1973 S. C. 2526; referred to.

The words "actually delivered" in explanation to Article 286 mean physical delivery of the goods as opposed to notional delivery e. g. by entrusting the goods to common carrier or delivery of documents of title like railway receipt.

Shri Bajarang Jute Mills Ltd., Guntur v. *State of A. P.*, (1964) 15 S. T. C. 430 and *Singareni Collieries Co.* v. *State of A. P.*, (1966) 2 S. C. R. 190; referred to.

The explanation to Article 286(1)(a), has relevance to those cases when the title passed in one State, but the goods were actually delivered as a direct result for consumption in another State, in such cases the sale is deemed to take place in another State the outside all other States.

Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. *Commercial Tax Officer*, (1961) 1 S. C. R. 902, *Indian*

Copper Corporation Ltd. v. *The State of Bihar*, (1961) 2 S. C. R. 276 and *A. V. Thomas & Co. Ltd.* v. *Deputy Commissioner of Agricultural Income-tax*, (1963) 2 Suppl. S. C. R. 608; referred to.

The sales between Associated Cement Company and Cement Marketing Company India Ltd. are inside sales and could be taxed by Madhya Pradesh State. These were not explanation sales within the meaning of Article 286(1)(a) and (iii).

Cement Marketing Co. of India Ltd. v. *State of Mysore*, (1966) 3 S. C. R. 777 and *Associated Cement Co. Ltd*, *Kymore* v. *Assistant Commissioner of Sales-tax*, (1971) 28 S. T. C. 629; distinguished.

Per Tare C. J —Transactions effected between Associated Cement Company and Cement Marketing Co. of India Ltd. were explanation sales, as per Article 286(1)(a) of the Constitution of India and as such not taxable under section 2(j)(a)(iii) of the C. P. and Berar Sales Tax Act, 1947 as amended by the M. P. Amendment Act No. 4 of 1951.

THE ASSOCIATED CEMENT CO. LTD., KYMORE v. THE COMMISSIONER OF SALES TAX, M.P., INDORE, I. L. R. [1980] M. P. .. 361

Society Registration Adhiniyam, Madhya Pradesh, 1973—Certificate issued under old Act—Deemed to be issued under this Act: *vide* Society Registration Adhiniyam ... 568

Society Registration Adhiniyam, Madhya Pradesh, 1973—Registered society in M. P.—Now governed by this provision—Registrar under Society Registration Adhiniyam—Has more powers than Registrar under Public Trusts Act—Public Trusts Act, Madhya Pradesh, 1951—Section 36(i)(b)—Society for religious and charitable purpose—Society registered under Society Registration Adhiniyam—Is exempt from registration under Public Trusts Act—General Clauses Act, Madhya Pradesh—Section 13—Applicable when M. P. Act repeals in M. P. any Central Act—Certificate of Registration under Societies Registration Act, 1860—Is an instrument within the meaning of this provision—Certificate issued under old Act—Deemed to be issued under the Act of 1973—Public Trusts Act, Madhya Pradesh—Section 32—Suit by socity registered

under Societies Registration Adhiniyam, 1973—Not barred under this provision—Bars only hearing and not institution of suit—Practice is to stay suit till Trust is registered—Rule "Boundaries prevail over area"—Not of universal application—Boundaries vague but area exactly specified—Description by area would prevail—Evidence Act, Section 92, Proviso 1—Admissibility or oral evidence to prove mistake—Strong evidence necessary to make out a case of mistake—Limitation Act, 1963—Does not provide for suit for relief of rectification—Matter governed by Residuary Article 113—Starting point is when right to sue accrues—Specific Relief Act, 1963—Section 26—Is an enabling provision—Failure to sue for rectification—Does not affect title to property—Relief of possession a primary relief—Relief of rectification ancillary—Suit for possession within time—Relief for rectification not barrad : A registered society in Madhya Pradesh is now governed by 1973 Adhiniyam.

If the provisions of the 1973 Act are compared with the provisions contained in the Public Trusts Act, it will be seen that the Registrar and the State Government exercise more powers of control over a registered society then exercised by the Registrar under the Public Trusts Act over a registered public trust.

A registered society formed for religious and charitable purpose is no doubt a public trust, but as it is administered under the Society Registri Karan Adhiniyam, 1973, it is "a public trust administered under any enactment for the time being in force" within the exemption contained in section 36(1)(b) of the Public Trusts Act.

Having regard to the provisions of the M. P. Society Registration Adhiniyam, 1973, it is quite clear that the affairs and properties of a registered society are administered under that Act and, therefore, a registered society will fall within the exemption contained in section 36(1)(b) of the public Trusts Act.

Section 13 of the M. P. General Clauses Act must be construed in the light of those decisions of the Supreme Court. This Section is, therefore, applicable when a Madhya Pradesh Act repeals, so far as Madhya Pradesh is concerned, any Central Act.

A certificate of registration issued under the Societies

Registration Act, 1860, will amount to an instrument within the meaning of section 13 of the Madhya Pradesh General Clauses Act.

The certificate of registration of the plaintiff society must be deemed to have been issued under the 1973 Act and the society must be deemed to have been registered under this Act, although there is no specific provision to that effect contained in this Act.

As the plaintiff society is a registered society and is administered under the provisions of the Madhya Pradesh Society Registrikaran Adhiniyam, 1973, the Madhya Pradesh Trusts Act, 1959, is not applicable to it and the suit is not barred under Section 32 of the said Act.

The definition of Public Trust in M.P. Act does not expressly include a registered society.

Section 32 of the Public Trusts Act does not bar the institution of a suit but only its hearing and decision. The usual practice is to stay the hearing of the suit until the trust gets registered.

The rule that boundaries will prevail over area in case of discrepency is not of universal application. Where the boundaries given are vague and the area is exactly specified, the property conveyed will be taken as that described by the area and not by the boundaries.

Watcham v. *East Africa Protectorate*, 1919 A. C. 533; referred to.

Oral evidence is admissible under proviso 1 to section 92 of the Evidence Act to prove the mistake. However, when plaintiff's case depends merely on oral evidence, the difficulty lies in convincing the Court about the true intention of the parties, for clear and strong evidence is needed to make out a case of mistake.

Fowler v. *Fowler*, 45 E. R. 97 and *Rajaram* v. *Manik*, A. I. R. 1952 Nag. 90; referred to.

There is no specific article in the Limitation Act, 1963 dealing with the relief of rectification and matter would be governed by the residuary Article 113. The period of limitation starts running under this article from the

date when the right to sue accrues. But in case of rectification, which is a relief founded on fraud or mistake, section 17 of the Act has to be taken into account and the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it.

Section 26 of New Specified Relief Act, 1963 is an enabling provision and failure to sue for rectification does not affect title to the property.

Rajaram v. *Manik*, A. I. R. 1952 Nag. 90 and *Bala Prasad Asaram* v. *Asmabi*, A. I. R. 1954 Nag. 328; referred to.

When the relief of possession is within limitation, ancillary relief for rectification cannot be held to be barred by limitation.

Tetali Sooramma v. *Kovvuri Venkayya*, A. I. R. 1938 Mad. 589; referred to.

SHANKER SINGH v. SANSTHA SONABAI BHARVKASHRAM, KHURAI, I.L.R. [1980] M. P. ... 568

Society Registration Adhiniyam, Maphya Pradesh, 1973 and Public Trusts Act, Madhya Pradesh (XXX of 1951)—Registrar under Society Registration Adhiniyam—Has more powers than Registrar under Public Trusts Act: *vide* Society Registration Adhiniyam 568

Specific Relief Act (XLVII of 1963)—Section 26—Failure to sue for rectification—Does not affect title to property: *vide* Society Registration Adhiniyam ... 568

Specific Relief Act (XLVII of 1963)—Section 26—Is an enabling provision: *vide* Society Registration Adhiniyam ... 568

Specific Relief Act (XLVII of 1963)—Section 26—Relief of possession a primary relief—Relief of rectification ancillary: *vide* Society Registration Adhiniyam ... 568

Specific Relief Act (XLVII of 1963)—Section 26—Suit for possession within time Relief for rectification not barred: *vide* Society Registration Adhiniyam ... 568

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Specific Relief Act (XLVII of 1963)--Section 42--Considerations for grant of interlocutory injunction--Principles of irreparable injury--Party entering into negative covenant with open eyes--Balance of convenience and irreparable injury would be out of consideration--Comparative injury--Consideration of: *vide* Specific Relief Act, Section 92 ... 878

Specific Relief Act (XLVII of 1963)--Section 42--Does not prevent Court from enforcing negative covenants in the agreement of service--Grant of injunction--Discretionary --Cannot be granted if contract unconscionable or excessively harsh or unreasonable or one sided or the virtual effect, if granted, would compel performance of service or to remain idle--Considerations for grant of interlocutory injunction--Principles of irreparable injury--Party entering into negative covenant with open eyes--Balance of convenience and irreparable injury would be out of consideration--Comparative injury--Consideration of: Section 42 of the Specific Relief Act, 1963 indicates that the Court is not precluded from enforcing a negative covenant preventing an employee from working elsewhere during the term covered by the agreement.

Niranjan Shankar Golikari v. *Century Spinning & Manufacturing Co. Ltd.*, A. I. R. 1967 S. C. 1098; relied on.

The grant of an injunction under section 42 of the Specific Relief Act is discretionary. No injunction will be granted if the contract is unconscionable or excessively harsh or unreasonable or one sided or the virtual effect of its grant would be to compel the performance of the service or to remain idle.

While considering the question of grant of interlocutory injunction the Court acts upon the principles of preventing irreparable injury. If the covenant is clear and the breach is clear and serious injury is likely to arise from the breach, the Court will interfere before the hearing to restrain the breach, but if the covenant is obscure or the breach doubtful and no irreparable damage can arise to the Plaintiff, then the question resolves itself into a question of comparative injury. These principles would also apply where the injunction asked for is mandatory injunction to enforce a negative contract.

Halsbury's Laws of England (Third Edition), Vol. 21, pp. 381, 382, para 800; referred to.

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Where the effect of interlocutory injunction would be that the party injuncted would not be able to continue his service with the other party or to serve any where else or to engage himself in any business or vacation calling for the utilisation of his specialized expert knowledge and thereby he may miss many good opportunities which he may never get and the party seeking injunction has already claimed damages and the alleged loss resulting from deprivation of the service can be calculated in terms of money, comparative injury to the party sought to be injuncted would be greater.

PERMALI WALLACE LTD., BHOPAL v. DR. K. T. SHAMSUNDER, I.L.R. [1980] M. P. ... 878

Specific Relief Act (XLVII of 1963)--Section 42--Grant of injunction--Discretionary--Cannot be granted if contract unconscionable or excessively harsh or unreasonable or one sided or the virtual effect, if granted, would compel performance of service or to remain idle: *vide* Specific Relief Act, Section 92 ... 878

Stamp Act, Indian (II of 1899)—Section 29—Imposes duty on executor to supply proper stamp: *vide* Debtor and Creditor ... 743

Stamp Act, Indian (II of 1899)—Section 44(1)—Stamp duty and penalty recovered from creditor - Creditor entitled to recover from debtor: *vide* Debtor and Creditor ... 743

State Road Transport Services (Development) Rules, M. P., 1959, as amended in 1970—Rule 4(2)—Government appointing Law Secretary as Special Secretary under—Appointment is saved: *vide* Motor Vehicles Act, Section Section 68-C and D ... 1131

State Road Transport Services (Development) Rules, M. P., 1959, as amended in 1970, Rule 4(2) and Motor Vehicles Rules, M. P., 1974, Rule 136—Government failing to notify appointment in time under Rule 136 of the Rules of 1974—Rule 4(2) of 1959 Rules would still hold the field: *vide* Motor Vehicles Act, Sectiod 68 C and D ... 1131

States Reorganisation Act (XXXVII of 1956)—Section 115—Reorganisation of States—Unification of various service rules—Notification giving option to Government Servant to opt for pension Rules of constituent units of new State

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—Failure to exercise option—New Rules become applicable automatically: *vide* States Reorganisation Act, Section 115(7) Proviso, Constitution of India, Article 311 and New Pension Rules, Rule 2(3)(ii) ... 1131

States Reorganisation Act (XXXVII of 1956), Section 115(7). Proviso, Constitution of India, Article 311 and New pension Rules, M. P., 1951, Rule 2(3)(ii) and as amended in 1966—Authority ordering compulsory retirement of Govt. servant—Need not be the appointing authority—Constitution of India—Article 311—Applies to dismissal or removal of Govt. servant—But not to his compulsory retirement—States Reorganisation Act, 1956—Section 115—States Reorganisation of States—Unification of various service rules—Notification giving option to Govt. Servant to opt for Pension Rules of constituent units of new States—Failure to exercise option—New Rules become applicable automatically—Section 115(7), Proviso—Is mandatory—Rule reducing age of superannuation or reducing qualifying service for compulsory retirement—Amounts to variation in condition of service—Previous approval of Central Government not obtained—Rule cannot be enforced—New Pension Rules, 1951—Application of, on ground of consent, express or implied—Statute—Mandatory provision thereof—When waived by a person entitled to the benefit thereof—Failure to give option—Amounts to deprival of such benefit—New Pension Rules as amended in 1966—Notification stating that new provision substituted after consultation with Central Government under Section 115 of States Reorganisation Act—Connotation of: There is no law or rule that the service of a person appointed by a higher authority cannot be terminated by a lower authority. The prohibition contained in Article 311 of the Constitution applies to a case of dismissal or removal. The order of compulsory retirement is not an order of dismissal or removal. Therefore, even though the petitioner was appointed in the erstwhile Rewa State by an order of the council of ministers but in the State of M. P. Chief Conservator of Forests was the appointing Authority and was also competent to terminate the service of a Forest Ranger. The order of compulsory retirement passed against the petitioner, a Forest Ranger, was within the authority of the Chief Conservator of Forests.

The Government issued a notification on 12-11-1959 stating that subject to reservation mentioned in paragraphs 2 and 3, all Government Servants, under its rule making

control, including those who were employed for the affairs of any of the constitutent States immediately before 1-11-1956, shall be governed by the set of rules mentioned in the notification. M.P. Pension Rules, 1951 as amended from time to time was mentioned in it. The Notification gave an option to the Government servant for opting for the Pension Rules applicable to him before the formation of the new State. If the option is not exercised within 6 months, the Govt. Servant shall automatically be governed by the New Pension Rules. The petitioner did not exercise the option and hence M. P. New Pension Rules, 1951, became applicable to him.

The New Pension Rules, reducing the age of superannuation or reducing the qualifying service after which a Government Servant would be retired, were disadvantageous to the petitioner as compared to the rules applicable to him before the reorganisation. It amounted to variation in the conditions of service applicable to the petitioner. Proviso to Section 115(7) of the States Reorganization Act provided that such variation to the disadvantage of Government servants cannot be made except with the previous approval of the Central Government which is mandatory. But the position would be different when new rules are applied with the express or implied consent of the Govt. servant concerned. It is well settled that benefit of a mandatory statutory provision may be waived by a person for whose benefit the provision may have been introduced if no question of public interest is involved. In the instant case, no question of public interest is involved. Therefore, when the petitioner failed to exercise option, it would be inferred that he waived the protection available to him under the proviso to Section 115(7) and the New Pension Rules, 1951, as in force in 1959, must be deemed to have been applied to him with his consent.

P. S. Mankad v. *State of Gujarat*, A. I. R. 1970 S. C. 143, *State of Rajasthan* v. *Rajendar Singh*, A. I. R. 1973 S. C. 2121, *Dhirendra Nath* v. *Sudhir Chandra*, A.I.R. 1964 S. C. 1300 and *Lachoo Mal* v. *Radhye Shyam*, A. I. R. 1971 S. C. 2213; relied on.

The petitioner has not been retired on the ground of inefficiency. He has been retired "in the public interest". The provision contained in sub-para (ii) of sub-rule (3)

of Rule 2 of the New Pension Rules was omitted and substituted by another provision in 1966 which was made in consultation with the Govt. of India, as required by Section 115 of the States Reorganization Act. Under the new provision substituted in 1966, a Govt. Servant could be compulsorily retired by the Govt, after 25 years of qualifying superior service, in the public interest. Further amendments made in 1972, in the New Pension Rules, were not issued in consultation with the approval of the Central Govt. since it cannot be said that the petitioner's compulsory retirement is invalid.

GHANSHAMDAS SHRIVASTAVA v. CHIEF CONSERVATOR OF FORESTS (GENERAL), M. P., BHOPAL, I. L. R. [1980] M. P. ... 1121

States Reorganization Act (XXXVII of 1956)- Section 115 (7), Proviso—Is mandatory : *vide* States Reorganization Act, Section 115 7), Proviso, Constitution of India, Article 311 and New Pension Rules, Rule 2(3)(ii) ... 1121

Statute—Mandatory provision thereof—When waived by a person entitled to the benefit thereof—Failure to give option—Amounts to deprival of such benefit: *vide* Statute Reorganization Act. Section 115(7), Proviso, Constitution of India, Article 311 and New Pension Rules, Rule 7(3)(ii) ... 1121

Succession Act, Indian (XXXIX of 1925)—Will—Propounder of Will—Has a right to call upon a person contesting the Will to show his interest—Ejectment suit—Decision on title—Is a deision on incidental matter—Not conclusive between rival claimants to titled—Tenant setting up title in third party—A question of title would be incidental—Tenant suffering a decree on mistaken belief that plaintiff was landlord—Landlord not examining witness on Will—Proof of title not final—Rightful claimant can subsequently dispute the Will and also testamentary capacity of testator—Practice—Evidence—Court as a Court of conscience—Can ask plaintiff to summon attesting witness to satisfy the conscience regarning valid execution of Will: Before a person could be permitted to contest a Will, the propounder of a Will has a right to call upon him to show that he has some interest.

L. S. Rajamanikam v. *W. H. Farrar*, A. I. R. 1923 Mad. 131; referred to.

Any decision on a question of title even though tried with rent suit, would be a decision on an issue incidentally arising. That would not be conclusive between the rival claimants to title.

In a case where the tenant sets up title of a third party as landlord and does not claim any higher rights than that of a tenant. Any decision on a question of title in such a case would be incidental.

Muktakeshi Dasi v. *Manilal Jana*, LVII I. L. R. Cal. 371; referred to.

If there is no bar of *res-judicata* or estoppel against a tenant who suffered a decree on a mistaken belief that the plaintiff was his landlord, the plaintiff should as well not suffer, if he failed to prove his derivative title by an inadvertent omission to examine an attesting witness of the Will. And that proof of title again had no finality because the rightful claimants could come forward any time and dispute both the Will and the testamentary capacity of the testator.

SUKHLAL TIWARI v. PREM LAL PANDA, I. L. R. [1980] M. P. ... 1026

Succession Act, Indian (XXXIX of 1925)—Will—Tenant suffering a decree on mistaken belief that plaintiff was landlord—Landlord not examining witness on Will—Proof of title not final—Rightful claimant can subsequently dispute the Will and also testamentary capacity of testator : *vide* Succession Act ... 1026

Sugarcane (Control) Order, 1966—Clause 3, Sub-clause (e)—Consideration which Government takes into account in fixing price : *vide* Sugarcane (Control) Order, Clause 3, sub-clause (e) ... 434

Sugarcane (Control) Order, 1966—Clause 3, sub-clause (e)—Does not prohibit fixing of minimum price at start of crushing season : *vide* Sugarcane (Control) Order, Clause 3, sub-clause (e) ... 434

Sugarcane (Control) Order, 1966—Clause 3, sub-clause (e)

—Does not say whether the recovery of sugar from sugarcane should be of the year for which minimum price of sugar cane is to be fixed or for any earlier year—Is also silent regarding recovery to be taken into account for entire year or for any period of year—Recovery of sugar in previous year—Is only to be taken into account for fixing minimum price—Does not prohibit fixing of minimum price at start of crushing season—Government can take into consideration particular period of year if there is reasonable basis behind it—Consideration which Government takes into account in fixing price : In fixing the minimum price, regard must be had to the recovery of sugar in the previous year. It cannot be held that Clause 3 prescribes a condition which makes it impossible to fix the minimum price for sugarcane at the start of the crushing season.

It is open to the Central Government, to have regard to the recovery for any particular period during a year if there is some reasonable basis behind it.

The minimum price of sugarcane fixed by the Government has not only to be fair to the factory owner but also to the grower.

The price of sugarcane fixed by the Government is taken into account in fixing the price for levy sugar so that the factory owner may make a reasonable margin of profit judged by average standards of efficiency on the capital employed by him in the business of manufacturing sugar.

P. C. S. Mills v. *Union of India* A. I. R. 1973 S. C. 537 and *S. L. Syndicate Ltd* v. *Union of India*, A. I. R. 1975 S. C. 460 at pp 464 and 465 referred to.

Union of India v. *M/s Shervani Sugar Syndicate*, A. I. R. 1973 All. 190; not followed.

M/S KALOORAM GOVINDRAM, JAORA M. P. v. THE UNION OF INDIA, I. L. R. [1980] M. P. ... 434

Sugarcane (Control) Order, 1966—Clause 3, sub-clause (e) —Government can take into consideration particular period of year if there is reasonable basis behind it : *vide* Sugarcane (Control) Order, Clause 3, sub-clause (e) ... 434

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Sugarcane (Control) Order, 1966—Clause 3, sub-clause (e)—Recovery of sugar in previous year—Is only to be taken into account for fixing minimum price: *vide* Sugarcane (Control) Order, Clause 3, sub-clause (e) ... 434

Tenancy Act, C.P.(I of 1920) and Land Revenue Code, M.P., 1954 (II of 1955)—Distinction between: *vide* Will ... 764

Title—Ejectment suit—Decision on title—Is a decision on incidental matter—Not conclusive between rival claimants to title: *vide* Succession Act ... 1026

Title—Tenant setting up title in third party—A question of title would be incidental: *vide* Succession Act ... 1026

Tort—Damages—Party not pressing for costs before Revenue Court—Cannot sue for costs alone in Civil Court: *vide* Land Revenue Code, Section 43 ... 898

Tort—Vicarious liability—Officers not acting illegally or in excess of their powers in discharge of official duty—State not liable for the said alleged acts or omissions: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Section 162 ... 448

Tort—Vicarious liability—When master is liable for the act of his servant—Word 'prohibition'—Definition of—Statutory rules as regards conduct of driver of Vehicle—Explanation of—Negligence—Driver while acting in the course of his employment giving lift to a person in disregard of statutory rule or prohibition—Accident occurring—Owner is vicariously liable : The concept of trespass or the concept of agency in determining the master's liability for the acts of his servants is not relevant. The only relevant considerations, before the master is held liable for the act of his servant, are whether the servant is liable and whether the act is done by the servant in the scope or course of his employment.

It is a question of fact to be determined in each case whether the word "prohibition" defines the sphere of employment or it merely deals with the conduct within the sphere of employment.

A statutory rule providing that no person should be carried in a goods vehicle other than a *bona-fide* employee of

the owner or the hirer of the vehicle deals with the conduct of the driver within the sphere of employment. That sphere is not in any manner limited by the prohibition contained in the statutory rule.

The act of a servant, employed to drive a vehicle, in giving lift to a person in disregard of a statutory rule or prohibition while driving the vehicle in execution of the owner's business, is an act for which the owner is vicariously liable.

Bhaiyalal v. *Rajrani*, A.I.R. 1960 M.P. 147; overruled.

Pushpabai v. *Ranjit G. & P. Co.*, A. I. R. 1977 S. C. 1735; relied on.

Rose v. *Plenty*, 1976 A.C.J. 387, *Young* v. *Edward Box and Co. Ltd.*, (1951) 1 T.L.R. 789; *Twine* v. *Bean's Express Ltd.*, (1946) 1 All E. R. 202 and *Canadian Rly. Co.* v. *Leckhert*, A.I.R. 1943 P.C. 63; referred to.

NARAYANLAL v. RUKMANIBAI, I. L. R. [1980] M. P. ... 807

Transfer of Property Act (IV of 1882)—Section 37—Transferee becomes a co-owner with the co-lessor—All co-owner must join in termination of tenancy: *vide* Transfer of Property Act, Sections 109 and 37 ... 1109

Transfer of Property Act (IV of 1882)—Section 37—Transfer of a fractional share in the leased property—Does not effect severance of tenancy—Governed by this section and not by section 109: *vide* Transfer of Property Act, Sections 109 and 37 ... 1109

Transfer of Property Act (IV of 1882)—Section 92—Mortgage—Doctrine of subrogation—Final decree for foreclosure in favour of the first mortgagee—Effect of—Puisne mortgage- Redemption—Non-joinder of party in the suit by the first mortgagee—Redemption of the first mortgage by puisne mortgagee—Whether revives the rights of the mortgagor to redeem the mortgage: On 7.2.1898 Sadhu and Budhu had executed a usufructuary mortgage of the suit lands in favour of Laxmichand by a registered mortgage deed. On 30.9.1907 they executed a second mortgage in respect of one Khasra number only which

was a simple mortgage in favour of Mohanlal and the deed was registered one. First mortgagee on his dispossession filed a suit for possession and for foreclosure of the first mortgage in his favour. The second mortgagee was not made a party to the suit. The suit was decreed and a final decree for foreclosure as well as for possession was passed in favour of the plaintiff.

Subsequently second mortgagee filed a suit against the first mortgagee for redemption of the first mortgage. In this suit mortgagors or their legal representatives were not joined. A preliminary decree for redemption was passed which was followed by a final decree for redemption.

Legal representatives of the mortgagor filed the present suit against the legal representatives of the second mortgagee and purchasers of the mortgaged property from one of the legal representatives of the second mortgagee, for redemption, possession and *mesne* profits.

Held-Under Section 92 of the Transfer of Property Act, a party who pays off mortgage debts becomes subrogated to the rights of the mortgagee. Such a person steps into the shoes of the mortgagee and is clothed with all his rights. Section 92 was introduced by an amendment of the Act in 1929. Even before the amendment, equitable doctrine of subrogation was recognized in India and sections 74 and 75 of the Act prior to the amendment were based upon principle underlying it.

The mortgagors having lost their right to redeem the mortgage in favour of the first mortgagee, on the passing of final decree for foreclosure, they could not enforce the said right against the puisne mortgagee who had stepped into the shoes of the first mortgagee by obtaining a decree for redemption. There can hardly be any doubt that if there had been no second mortgage the plaintiff's right to redeem the first mortgage was lost for ever after the foreclosure decree. The mere fact that the mortgagors had effected a second mortgage after the first mortgage, does not and cannot place them in a better position.

As the puisne mortgagee was not joined in the suit for

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foreclosure by the first mortgagee, he could redeem the first mortgage and acquire all the rights of the first mortgagee. But this does not enhance, enlarge or revive the rights of the mortgagor to redeem the first mortgage in view of the decree against them. Once the right of the mortgagor to redeem the first mortgage is lost by a foreclosure decree it cannot be revived by redemption of the first mortgage by the puisne mortgagee.

Kurumpakochika v. *Narayana*, A. I. R. 1959 Kerala 56; relied on.

Hirabai v. *Ganesh*, A. I. R. 1959 Bom. 172 and *Bidhakamal Nayan* v. *Bira Naik*, A. I. R. 1954 S. C. 336; distinguished.

GYARSU v. MST. DEOKI, I.L.R. [1980] M. P. ... 871

Transfer of Property Act (IV of 1882)--Section 92--Puisne mortgage--Redemption--Non-joinder of party in the suit by the first mortgagee--Redemption of the first mortgage by Puisne mortgagee--Whether revives the rights of the mortgagor to redeem the mortgage: *vide* Transfer of Property Act, Section 92 ... 871

Transfer of Property Act (IV of 1882)—Section 108(c)—Covenant of quiet enjoyment—Cannot extend to tortious acts of strangers: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

Transfer of Property Act (IV of 1882)—Section 109—Applicable where transfer of a part of property leased or any part of transferor's interest therein: Transfer of Property Act, Sections 109 and 37 ... 1109

Transfer of Property Act (IV of 1882)—Section 109—Brings about severance of tenancy—Termination of tenancy by the transferee in respect of part transferred is valid: *vide* Transfer of Property Act, Sections 109 and 37 ... 1109

Transfer of Property Act (IV if 1882)—Section 109—Brings about statutory attorment i. e. as if lessee attorns by contract to the lessor: *vide* Transfer of Property Act, Section 109 ... 49

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lessors or one lessor cannot determine tenancy —If all lessors do not agree - Remedy of joint lessor is partition—One joint lessor entitled to separate share of land—Can enforce forfeiture clause in lease regarding his share: *vide* Transfer of Property Act, Section 109 ... 49

Transfer of Property Act (IV of 1882) - Section 109—Partition is transfer for purpose of this provision: *vide* Transfer of Property Act, Section 109 ... 49

Tranefer of Property Act (IV of 1882)—Right of ejectment not restricted to case of termination of lease-hold right by effiux of time or it is surrendered before transfer—Applicability of the section to such cases: *vide* Transfer of Property Act, Section 109 ... 49

Transfer of Property Act (IV of 1882)—Section 109—Right of ejectment—Right inherent in ownership: *vide* Transfer of Property Act, Section 109 ... 49

Transfer of Property Act (IV of 1882)—Section 109—Statutory attornment—Effect - Transfer of leased property or a part thereof—Transferee acquires all rights and new relationship created - This relationship not dependent upon consent of lessee: *vide* Transfer of Property Act, Section 109 ... 49

Transfer of Property Act (IV of 1882)—Section 109—Tenancy when can be split up and when not—Partition is transfer for purpose of this provision—Brings about statutory attornment i. e. as if lessee attorns. by contract to the lessor—Effect of Section 140 of English law of Property Act and this provision is similar - Right of ejectment—Right inherent in ownership—Transferee of part of leased property—Can determine lease of that property under circumstances mentioned in section 111, Transfer of Property Act - Right of ejectment not restricted to a case of termination of lease-hold right by effiux of time or it is surrendred before transfer—Section 109—Applicability of, to such case—Joint lessors or one lessor cannot determine tenancy—If all lessors do not agree—Remedy of joint lessor is partition—One joint lessor entitled to separate share of land—Can enforce forfeiture clause in lease regarding his share—Statutory attornment—Effect—Transfer of leased property or a part thereof—Transferee acquires all rights and new relationship created—This relationship not dependent upon consent of lessee—

Transfer of part of leased property—Amounts to splitting of tenancy: The discussion in this case leads to the following conclusions :-

(1) It is settled law that in the absence of a specific provision in the statute, the tenancy cannot be split up by one of the parties without the consent of the other. The Court or the Rent Controlling Authority also cannot split up the tenancy. The lessee can be ejected from the whole of the demised property or not at all.

(2) If there is a specific provision which gives the Court or the Rent Controlling Authority power to split up the tenancy, the statute will override; for instance, clause 13(8) of the C. P. and Berar Letting of House and Rent Control Order, 1949.

(3) If the lessor transfers any part of the property leased, the transferee, by virtue of section 109 of the Transfer of Property Act, acquires all the rights of the lessor in respect of that "part of the property". This means that the transferee possesses all the rights in that part of the property as if it had alone originally been comprised in the lease. If not already determined, the transferee is entitled to determine the lease and sue for ejectment.

(4) If the lessor transfers any part of his interest in the property leased, the transferee becomes a co-lessor and as such, the transferee alone cannot determine the tenancy or sue for ejectment without the other co-lessor joining him, or unless and until the transferee gets a partition effected.

(5) For the purposes of section 109, a partition is a transfer of the part of the property allotted to each co-owner. It automatically splits up the tenancy.

(6) Section 109 creates statutory attornment and has the same effect as if the lessee by contract attorns to the lessor's transferee in respect of the property transferred (whole or part, as the case may be).

(7) Although the wording of section 140 of the English Law of Property Act, 1925, is somewhat different from that of section 109 of our Transfer of Property Act, the effect of the two provisions is the same.

(8) The right of ejectment is inherent in ownership.

(9) A transferee of a part of the property leased can determine the lease in respect of the part transferred, in any of the circumstances enumerated in section 111 of the Act, and sue for ejectment. There is nothing to restrict this right of ejectment to cases where the lease had been determined before the transfer, or to cases where the lease is determined by efflux of time.

Section 109, Transfer of Property Act applies to three cases:-(1) Where the lessor transfers the whole property leased; (2) where the lessor transfers any part of the property leased i. e. assignee of the reversion of part; and (3) where the lessor transfers any part of his interest in the property leased (i. e assignee of part of the reversion).

It is settled law that one of the joint-lessors cannot alone terminate a lease. Lease must be determined by all the lessors If one of the lessors desires to determine the tenancy and the other does not, the former has to effect a partition and get his share separated.

One of several joint lessors, who had become separately entitled to a share of the land leased, is entitled to enforce the forfeiture clause in the lease deed separately as regards his share of the lands. It gives sufficient cause of action to the lessor to bring a suit for ejectment.

Korapalu v. *Narayana*, I. L. R. 38 Mad. 445=A. I. R. 1915 Nag. 813 and *Syed Ahmad* v. *Magnesite Syndicate Ltd.*, I. L. R. 39 Mad. 1049; referred to.

A transfer of the leased property or a part thereof, the transferee *ipso facto* acquires "all the rights" of the lessor, and a new relationship is created between the transferee and the lessee.

By virtue of Section 109, Transfer of Property Act, *proprio vigore*, transfer of a part of the property leased itself splits up the tenancy.

Harihar Banerji v. *Ramsashi Roy*, A.I.R. 1918 P. C. 102=45 I. A. 222 and *Kannyan* v. *Alikutti*, I. L. R. 42 Mad. 603=A. I. R. 1920 Mad. 838; referred to.

By virtue of Section 109, Transfer of Property Act, the transferee is entitled to eviction from the part transferred to him, not only when the lease had been determined before the transfer but also when it is determined after the transfer in any of the circumstances enumerated in section 111 of the Transfer of Property Act.

Once the transferee acquires all the rights of the transferor, he necessarily acquires the right to terminate the lease, and since the right, title and interest, which he acquires are only in respect of a part of the property, he is entitled to terminate the lease in respect of the part transferred to him.

Subhaschandra v. *Radhavallabh*, 1972 M. P. L. J. 651=1972 J. L. J. 881; approved.

Dwarkaprasad v. *Khemchand and another*, Second Appeal No. 464 of 1971, decided on the 28th August 1972; not approved.

P. B. PATHAK v. DR. RIYAZUDDIN, I. L. R. [1980] M. P. ... 49

Transfer of Property Act (IV of 1882)—Section 109—Transfer of demised house found to be not genuine—No attornment of tenancy in favour of transferee—Evidence Act Indian—Section 116—Estoppel - Tenant not let into possession by the landlord—Tenant not estopped from challenging derivative title claimed by the landlord—Civil Procedure Code, Section 100 and Accommodation Control Act, Madhya Pradesh, 1961—Section 12—Finding that transfer of demised house is not genuine—Is a finding of fact—Not open to challenge is second appeal—Plaintiff not entitled to evict tenant under section 12 of the M. P. Accommodation Control Act: Section 109 of the Transfer of Property Act can only be attracted if there is a genuine transfer. If no title passed, there could be no attornment of tenancy in favour of the plaintiff under section 109.

It is now settled law that doctrine of estoppel under section 116 of the Evidence Act applies where the tenant has been let into possession by the landlord. But where the Landlord himself did not induct the tenant into property but claims his position under a derivative title,

such as assignee, donee, lessee, heir etc., there is no estoppel against tenant. So a tenant already in possession is entitled to show that the Plaintiff does not possess the derivative title he claims, but it is in some other person.

Krishna Prasad v. *B. C. Concern*, A. I. R. 1937 P. C. 251; relied on.

Where the fact finding Court found that the transfer in favour of the Plaintiff is not genuine and the sale deed is a bogus, sham and colourable one brought about to evict the tenant, it is a finding of fact based on appreciation of evidence and it is not open for challenge in Second Appeal. When the finding being of fact, the fact that it is itself an inference from other facts will not alter its character as one of fact.

MEERKHAN v. KUTUB ALI, I. L. R. [1980] M. P. ... 977

Transfer of Property Act (IV of 1882)—Section 109—Transfer of part of leased property—Amounts to splitting of tenancy: *vide* Transfer of Property Act, Section 109 ... 49

Transfer of Property Act (IV of 1882) - Sections 109 and 37—Effect of—Section 109—Applicable where transfer of a part of property leased or any part of transfer's interest therein - Brings about severance of tenancy—Termination of tenancy by the transferee in respect of part transferred is valid - Section 37—Transfer of fractional share in the leased property—Does not effect severance tenancy—Governed by this section and not by section 109—Transferee becomes a co owner with the co lesser—All co-owners must join in termination of tenancy—Interpretation of Statute—Two views possible—The view more in consonance with justice and convenience should be preferred: Section 109 of the Transfer of Property Act has the effect of severing the tenancy in respect of the part of the property transferred by the lessor and the transferee can terminate the tenancy of the part transferred to him.

But when there is only a transfer of a fractional share in the property leased or in a part thereof, it would be governed by Section 37 and not by Section 109 of the

Transfer of Property Act. A transferee of a share in the property leased or in any part thereof will become a co-owner with the lessor and will stand in the same position as a co-lessor. A co-lessor cannot terminate the lease and that an effective quit notice for terminating the lease has been to be given on behalf of all the co-lessors.

Nanalal v. *G. J. Motorwala*, A. I. R. 1973 Guj. 131 (F.B.) and *Abdul Hamid* v. *Bhuwneshwar Prasad*, A. I. R. 1953 Nag. 18; referred to.

If there are two views possible of a statutory provision, it is a well recognized cannon of construction that the view which leads to injustice and inconvenience should be rejected, and the one which is more inconsonance with justice and convenience should be preferred.

Smt. Durgavani Devi v. *Mohiuddin*, 86 C. L. J. 198, *Daulatsingh* v. *State of Bombay*, 1957 N. L. J. 625 and *Ram Charan* v. *State of U. P.*, (1969) Vol. I, Rent Control Reporter 855; dissented from.

Ramchandra v. *Ram Saran*, A.I.R. 1978 All. 173; relied on.

SARDARILAL v. NARAYANLAL, I.L.R. [1980] M.P. ... 1109

Transfer of Property Act (IV of 1882)—Sections 109 and 111 —Transferee of part of leased property—Can determine lease of that property under circumstances mentioned in section 111: *vide* Transfer of Property Act, Section 109 ... 49

Trust—Not a person—Does not fall within the term Money-lender—Trustees acting as such—Included in definition of moneylender: *vide* Moneylenders Act, Section 2(v) ... 149

Vishwavidhyalaya Adhiniyam, M.P.(XXII of 1973)—Section 46(b)-"Incorporation of University byelaw"—Meaning of —Invalidity of law—Effect—Constitution of India—Article 226—Interpretation of provision of Act involved —High Court can exercise discretionary power even though alternative remedy is available: Incorporation of University bye-law means establishment and incorporation of University by an enactment relating to the

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incorporation of the university in exercise of legislative powers in item 32 of the State List in VII Schedule of the Constitution of India.

Once a law has been struck down as void being in excess of the competence of the Legislative body, it becomes *non-est* from its very inception and rights cannot be claimed except in the matter of penalty on the ground that during a particular period it was operative as having not been quashed by the superior courts.

Ordinarily the High Court does not exercise powers under Article 226 where alternative remedy is available. But it can exercise the discretionary power where basic question is about the interpretation of the provisions of the Act.

BABULAL SHARMA v. THE VICE-CHANCELLOR, AWADESH PRATAP SINGH UNIVERSITY, REWA, I. L. R. [1980] M. P. ... 735

Will--Burden of proof on propounder – Nature of evidence necessary to be adduced: *vide* Hindu Adoption and Maintenance Act, Section 11(vi) ... 838

Will—Date of execution and date of death of testator—Law applicable thereto: *vide* Will ... 764

Will—Effect and validity of in respect of tenancy lands—Powers of testamentary disposition – Tenancy Act, C. P., 1920 and Land Revenue Code, Madhya Pradesh, 1954—Distinction between—Date of execution and date of death of testator—Law applicable thereto: Land in suit was held in occupancy tenancy by Moharsai in 1946 when the Will was executed and that according to the law then in force no bequest could be made in respect of such a land. In 1946, the law regulating the tenancy was contained in C. P. Tenancy Act, 1920. This was repealed by the M.P. Land Revenue Code, 1954 from Ist October 1955. Under 1954-Code, the suit land became either *Bhumiswamy* or *Bhumidhari* holdings of Moharsai and it could pass on his death by inheritance or bequest, as the case may be, under Section 151 of the Code. Therefore, if Moharsai died when the 1954-Code was in force and the relevant Law was that as contained in 1954-Code, the Will would be valid. The rules enacted by English Law, Section 24 of the Wills Act, 1837 have been

incorporated in Section 90 of the Indian Succession Act which provides that the description contained in a Will of property, the subject of Gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator. The property existing at the time of the testator's death and falling within description of property bequathed in the Will would pass under it although it was not in existence at the time when the Will was executed for the reason that the Will has the same effect as if it were executed at the time of the testator's death.

Rangoo v. *Haris*, A. I. R. 1932 Nag. 163; referred to.

The validity of a Will or provisions thereof as regards restrictions on the power of testamentary disposition is determined according to the law in effect at the time of the testator's death rather than that in force when the Will was executed. Halsbury's Laws of England Vol. 39, pages 1012-1013, Jarman on Wills, Eighth Edition, Vol. I, Page 419.

American Jurisprudence, Vol. 57, Article 61 and provisions of English law before the Wills Act, 1837; referred to.

SMT. RAMBATI v. SMT. BUNDKUWAR, I. L. R. [1980] M. P. ... 764

Words and Phrases—

"Accident"—Meaning of—To be construed in wider sense connoting mishap or untoward event, etc.: *vide* Workmen's Compensation Act, Section 3 ... 1033

"Claiming under him" in—Section 108 of the Transfer of Property Act—Is restricted in its meaning to claiming a right under the lessor: *vide* Civil Procedure Code, Order 11, rule 19(2) and Evidence Act, Section 162 ... 448

"Compensatory allowance"—Is not an additional salary: *vide* Income-tax Act, Section 17 ... 80

"Compensatory allowance"—Neither salary nor perquisite—Implication of "perquisite" and compensatory allowance: *vide* Income-tax Act, Section 17 ... 80

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"Impose"—Meaning of: *vide* Panchayats Act, Sections 159 and 158 ... 1

"Perquisite"—Signifies additional benefit in addition to periodical payment: *vide* Income-tax Act, Section 17 ... 80

"Prohibition"—Definition of; *vide* Tort ... 807

"Same" used in popular language for "similar": *vide* Absorption Rules ... 443

"Tax and fee"—Distinction between and their implication—Wrong crediting of fund—Does not change nature of the amount – Co-relation between total collections and expenditure incurred for rendering service established—Absence of uniformity will not make the amount a tax —Co-relation necessary to sustain fee – Need not be arithmatical exactitude: *vide* Municipal Corporation Act, Section 366(3) 403

"Used" in Municipalities Act, Section 127(3)(ii)—Meaning of: *vide* Municipalities Act, Section 127(3)(ii) ... 227

Workmen's Compensation Act (VIII of 1923)—Section 3—Physical strain resulting in death need not be unusual even outside course of employment: *vide* Workmen's Compensation Act, Section 3 ... 1033

Workmen's Compensation Act (VIII of 1923)—Section 3—Words "arising out of employment" in—Mean "a casual relationship, between the accident and the employment" —Burden to prove that employment contributed to accident—Lies on applicant—Word "accident" in—Meaning of—To be construed in wider sense connoting mishap or untoward event etc.—Physical strain resulting in death need not be unusual even outside course of employment: The words "arising out of employment" are understood to mean "a casual relationship between the accident and the employment".

M. Mackenzie v. *I. M. Issak*, A. I. R. 1970 S. C. 1906; referred to.

The burden to prove that the employment contributed to the accident is on the applicant.

The principles gathered from the decided cases are as follows :-

(A) "Accident" means an untoward mishap which is not expected or designed by the workman. "Injury" means physiological injury.

(B) "Accident" and "injury" are distinct in cases where accident is an event happening externally to a man; e. g when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases "accident" and "injury" coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of a disease un-connected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection.

English cases discussed.

Laxmibai v. *Chairman and Trustees, Bombay Port Trust*, A. I. R. 1954 Bom. 180, *Bai Diva* v. *S. C. Mills*, A. I. R. 1956 Bom. 424, *Shantaben Thakor* v. *New Raipur Mills*, A. I. R. 1968 Guj. 113, *Parwatibai* v. *Rajkumar Mills*, A. I. R. 1959 M. P. 281 and *Clover, Clayton and Co. Limited* v. *Hughes*, 1910 A. C. 242 at p. 246; discussed.

Per Raina J.-The word "accident" has not been defined in the Act; but has been construed by the courts in a

wider sense as connoting a mishap or untoward event, external or internal, not expected or designed by the victim.

The crucial test for determining whether accident arose out of employment is "was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment".

Lancashire and Yorkshire Rly. Co. v. *Highley*, 1917 A. C. 352 and *Machinnon Mackenzie and Co. Private Ltd.* v. *Ibrahim Mahommad Issak*, A. I. R. 1970 S. C. 1906; referred to.

In other words there must be casual relationship between the accident and the employment.

It is immaterial that physical strain which resulted in death was not unusual even outside the course of his employment. An accident may occur to a workman while in course of the employment or otherwise.

SMT. SUNDERBAI v. THE GENERAL MANAGER, ORDNANCE FACTORY, KHAMARIA, JABALPUR, I. L. R. [1980] M. P. ... 1033

Workmen's Compensation Act (VIII of 1923)—Schedule II, Clause XXIX—Word "farming" in—Meaning of—Workers having means or connection with Tractor or other contrivances mentioned in the clause or with work that is done—Would be workmen within this clause—Worker having means with mechanical pumps or electric motors in connection with irrigation—Would be a workman: The word "farming" in Schedule II, Clause XXIX of the Workmen's Compensation Act ordinarily means business of ultivating land which obviously does not mean merely plaughing of land but all other subsequent operations in which a farmer necessarily engages like irrigating the fields, harvesting the crop etc.

The correct meaning of clause XXIX of Schedule II of the Act would be that persons who are employed for any such work which has some nexus or connection with the tractor or other contrivances mentioned in that clause or with the work that is being done by them would be workman.

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The deceased had a nexus with the work that was being done by the mechanical pumps or the electric motors. Irrigation, obviously is a necessary part of "farming". That being so the deceased would be a workman as defined in section 2(1)(n) read with Clause XXIX of Schedule II of the Workmen's Compensation Act, 1923.

THE BHOPAL SUGAR INDUSTRIES LTD., SEHORE v. SMT. SUMITRA BAI, I. L. R. [1980] M. P. ... 560

Workmen's Compensation Act (VIII of 1923)—Schedule II, Clause XXIX—Worker having means with mechanical pumps of electric motors in connection with irrigation—Would be a workman: *vide* Workmen's Compensation Act, Schedule II, Clause XXIX ... 560

Workmen's Compensation Act (VIII of 1923)—Schedule II, Clause XXIX—Workers having means or connection with Tractor or other contrivances mentioned in the clause or with work that is done—Would be workmen within this clause: *vide* Workmen's Compensation Act, Schedule II, Clause XXIX ... 560