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~ Assisted By ~
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~ Edited By ~
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– **Section 3 and 4(1)(a)** – These best proprietary rights in State but save certain non proprietary or possessory or usufructuary interest in favour of ex proprietor or other person : *Raghubir Singh Vs. State of M.P., I.L.R. (1973) M.P. 385 (F.B.)*

– **Sections 3, 4(1)(a), 5(f) and Land Revenue Code, M.P., 1959, Section 22(2) and 251** – What was saved by section 5(f) of the act is non proprietary rights of the ex proprietor of the tank – By virtue of section 251 of the Code all tanks vested exclusively in the state government – Order recording tank in the name of state government rightly passed by S.D.O. : *Chandrika Prasad Tiwari Vs. State, I.L.R. (2001) M.P. 1832*

- **Sections 3, 6, 14 and Land Revenue Code, M.P. (XX of 1959), Section 57(D)** – Case not decided under section 14 of the Act – Application under section 57(2) of the Code maintainable : *Sohanlal Vs. State of M.P., I.L.R. (1989) M.P. 480*

– **Section 4** – Transfer of possession of Sir land - Transferee does not become occupancy tenant – Suit by holder of Sir land – Maintainability : *Budhilal Vs. Mahant Jagannathdas, I.L.R. (1965) M.P. 471 (D.B.)*

- **Sections 4 and 5** – Land Revenue Act, Central Provinces, 1917, Section 2 (8) – ‘Mahal’ – Transfer of Property Act (IV of 1882), Section 8 – Abadi – Vests in Proprietor – Not appurtenant to village share - Transfer of Village share – Abadi does not pass – Suit for Abadi land by Proprietor Lambardar - Abadi not saved – Suit not maintainable : *Mt. Rupkali Vs. Kedarnath, I.L.R. (1957) M.P. 450*

– **Section 4(1)(a) – Not only proprietary but also cultivating rights in land vests in State unless otherwise expressly provided** – Section 45 – Does not abrogate or control Section 6 : *Abdul Halim Vs. The State of M.P., I.L.R. (1962) M.P. 269 (D.B.)*

– **Section 4(2)** – Lands not recorded as home-farm in annual papers of 1948-49 – Lands not saved to ex-proprietor – Land Revenue Act, 1917, Sections 45 and 47 – Papers prepared under Section 47 – Have not the same evidentiary value as record of rights prepared under Section 45 – Are not documents of title – Do not create any title in land : *Subhedar Mritunjaya Prasad Vs. The State of M.P., I.L.R. (1962) M.P. 949 (D.B.)*

– **Section 4(3)** – Damages accruing due prior to date of vesting – Right of proprietor to recover – Transfer of Property Act, section 8 – Profits of and accruing due, prior to sale – Not a legal incident of property – Does not pass along with land – Central Provinces Land revenue Act, Section 218(4) – Occupation of land by mining

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proprietor without sanction of Deputy Commissioner and without offering compensation – Occupation is that of trespasser – Revenue Court has no jurisdiction to determine and award compensation – Action lies in Civil Court: *The Amalgamated Coalfields Ltd. Vs. The Board of Revenue M.P., Gwalior, I.L.R. (1962) M.P. 210 (D.B.)*

- **Section 5 (a)** – Abadi Site along with house in possession of Trespasser – Suit for possession of site after removal of structure – Whether suit can be continued: *Rani Zamitkunwar Devi Vs. Narsingh, I.L.R. (1957) M.P. 413*

- **Section 5(f)** – Word “tank” in – Includes embankment or pars surrounding it – Contains no words to qualify nature of embankment or pars – Embankments or pars recorded as grass or are built upon – Does not disentitle proprietor from holding them: *Ramkumar Dani Vs. The State of M.P., I.L.R. (1961) M.P. 965 (D.B.)*

- **Section 5(f)** – Saves to the ex proprietor, the non proprietary or usufructuary of possessory right in respect of tank in which no other person except the proprietor has any right of irrigation – Land Revenue code, M.P., 1959 – Section 57(1) – Saves right of a person existing at the time of commencement of the act – Section 251 – Provides for abolition of certain kinds of rights in tanks which were saved under section 5(e), (f) and (g) of the abolition Act – Words “vesting of tanks” in – Meaning of – Abolishes rights in tanks situated on unoccupied lands in which villagers had right of irrigation or nistar – Abolition of Proprietary Rights Act, M.P. – Section 3 and 4(1)(a) – These best proprietary rights in state but save certain non proprietary or possessory or usufructuary interest in favour of ex proprietor or other person: *Raghubir Singh Vs. State of M.P., I.L.R. (1973) M.P. 385(F.B.)*

- **Section 7 and 87** – Deputy Commissioner – Power of, to dispossess a person whose entry has a lawful origin – Section 87 not attracted – Suit against Government for loss – Maintainability – Transfer of Property Act, Section 105 – Right of enjoyment and licence coupled with profits-a-prendre – No distinction between the two: *The State of M.P. Vs. Yakinuddin, I.L.R. (1958) M.P. 706 (D.B.)*

- **Form prepared under Section 13** – Not binding on Claims Officer: *Bishnooprasad Vs. Dau Tikaram, I.L.R (1957) M.P. 125., (D.B.)*

- **Section 13** – compensation Officer not to record rights of tenants and not to make enquiry regarding same: *Singhai Komalchand Vs. The State of M.P., I.L.R. (1963) M.P. 454 (D.B.)*

- **Section 13 (3)** – Compensation Officer – Power of, to decide disputes between ex-proprietor and third party – Third party not party to proceeding not bound by any decision – Land Revenue Act, 1917 – Section 5(3) and section 40, first proviso –

Additional Deputy Commissioner subordinate to Deputy Commissioner for purposes of the Act – No power to review without sanction of Deputy Commissioner – Review – No inherent power in Court to review: *Rajaram Vs. Rani Jamit Kunwar Devi, I.L.R. (1960) M.P. 253 (D.B.)*

- **Section 15(4)** – Operates between proprietor and the government – Does not bar tenant from challenging entry made by Compensation Officer: *Singhai Komalchand Vs. The State of M.P., I.L.R. (1963) M.P. 454(D.B.)*

- **Section 17(C)(VI)** – Subsequent mortgagee not undertaking to satisfy previous mortgage – Subsequent mortgage not an excluded debt – Section 28 – Starting point from which limitation for application under the section starts: *PT. Motiram Vs. Chironjilal, I.L.R. (1958) M.P. 859,(D.B.)*

- **Section 19** – Purpose of: *Mst. Shanta Bai Vs. Mst. Savitri Bai, I.L.R. (1971) M.P. 1027(D.B.)*

- **Section 19** – Debtor not showing all debts owing to a particular creditor – Creditor bound to file statement regarding all his claims even secured claims – Purpose of section 19- Section 24(I) to (5) and (6) – excluded debt – Amount not reduced – Section 27 – Excluded debts – include debts charged on proprietary rights and non proprietary rights – Sections 28 and 33 – Provide the only remedy for a secured creditor: *Mst. Shanta Bai Vs. Mst . Savitri Bai, I.L.R. (1971) M.P. 1027 (D.B.)*

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- **Sections 24, 27 and 28** – Scope any effect of – Section 33(C) – Exclusion of jurisdiction has reference to section 24 and not section 27: *Hiralal Vs. Babu Shiv Prasad, I.L.R. (1972) M.P. 973 (F.B.)*

- **Section 24(1) to (5) and (6)** –Excluded debts – Amount not reduced: *Mst. Shanta Bai Vs. Mst. Savitri Bai, I.L.R. (1971) M.P. 1027 (D.B.)*

- **Section 27** – Excluded debts – Include debts charged on proprietary rights and non proprietary rights: *Mst. Shanta Bai Vs. Mst . Savitri Bai, I.L.R. (1971) M.P. 1027 (D.B.)*

- **Section 28** - Remedy of decree-holder is under the section for preliminary decree: *Kishan Chand Vs. Mst. Rani Bahu, I.L.R. (1963) M.P. 69(D.B.)*

-Section 28 – Applicable to properties remaining encumbered and not vested in the State: *Pyarelal Vs. Bhagwati Prasad*, I.L.R. (1970) M.P. 949 (D.B.)

– **Section 28 and 33** – Provide the only remedy for a secured creditor: *Mst. Shanta Bai Vs. Mst. Savitri Bai*, I.L.R. (1971) M.P. 1027 (D.B.)

– **Sections 33(C)** – Exclusion of jurisdiction has reference to section 24 and not section 27: *Hiralal Vs. Babu Shiv Prasad*, I.L.R. (1972) M.P. 973 (F.B.)

– **Section 39** – Civil Procedure Code, Section 9 – Order Passed by Deputy Commissioner under section 39 – Not liable to be challenged collaterally in Civil Court though order be wrong – Order binding on parties: *Guruprasad Vs. Pritam*, I.L.R (1961) M.P. 391

– **Section 39** – Thekedari in the name of one co-sharer – Rights of other co-sharers – Rights of other co-sharers in sir and khudkasht lands – Arrangement between thekedar and his co-sharers – Arrangement binding on successors or thekedar – Lands settled with thekedar after Abolition of Proprietary Rights – Thekedar deemed to have acted on behalf all members of the family who are entitled to claim theka as their joint family property: *Tekram Vs. Amolibai*, I.L.R. (1959) M.P. 975(D.B.)

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– **Section 43** – Benefit under, not available to purchaser of mortgaged property: *Kishan Chand Vs. Mst. Rani Bahu*, I.L.R. (1963) M.P. 69 (D.B.)

– **Section 45** – Presupposes a valid tenancy: *Gulab Bai Vs. President, Board of Revenue, M.P., Gwalior*, I.L.R. (1965) M.P. 34(D.B.)

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– **Section 45** – Suit for declaration on basis of leased creating occupancy tenant – Maintainability – Word “Possession” in – To be given larger meaning – Includes persons who are in actual possession as also persons entitled to possession: *Pt. Beharilal Vs. The State of M.P.*, I.L.R. (1960) M.P. 676 (D.B.)

– **Section 48** – Lands belonging to the ex-proprietor – When they can be reserved for grazing – Conditions to be satisfied – Order of deputy commissioner, Land

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- **Section 54, Land Revenue Code, 1954, Section 238, Central Provinces & Berar General Clauses Act, Section 5(c)(e)** – Continuation of Raiyati Rights Proceeding after repeal of Section 54 of the Act, 1950 – Permissibility – Held – The proceeding under Section 54 of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, started prior to the repeal of the section could continue under Section 5(c)(e) of the Central Provinces & Berar General Clauses Act, read with Section 239 of M.P. Land Revenue Code. *Mamraj Vs. Board of Revenue, M.P., I.L.R. (1956) M.P. 3.*

- **Section 54 - Word “may” in** – Does not confer discretion on Deputy Commissioner – Means “shall” Power vested in officer to be used for the benefit of persons mentioned in the provision of the Act has to be exercised – When conditions fulfilled – Court can compel exercise of that power – Rights accrues when application made – Not when order passed – Rights saved by section 5, General clauses Act, though act repealed : *Mamraj Vs. The Board of Revenue, M.P., I.L.R. (1960) M.P. 74(D.B.)*

- **Section 54 – Real owner entitled to cultivate lands** – Trespasser actually doing cultivation – Cultivation by wrong doer to be ascribed to cultivation by true owner – Raigarh State Wazib-ul-arz – Bhogra land allotted to co-sharers –Succession to such lands governed by rules relating to succession of ryots: *Dayaram Vs. Maheshwar, I.L.R. (1960) M.P. 451(D.B.)*

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- **Section 84** – Fiction in, limited to appeals only: *Tukaram S/o Bhuwanlal Vs. Smt. Anjanibai, I.L.R. (1959) M.P. 573 (D.B.)*

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- **Sections 2(c), 3 and 4(2)** – Combined effect of – Expression ‘Before the date of vesting’ in – Does mean immediately before the date of vesting – Requirements of the saving clause – Possession of trespasser is no possession in the eye of law – Possession deemed to be possession of person entitled thereto – Trespasser cannot take advantage of his own wrong: *Pancham Singh Vs. Dhaniram, I.L.R. (1980) M.P. 926 (D.B.)*

– **Section 54 (1)** – Land secured by ex-thekedar under Land is impressed with former character: *Mst. Piloni Vs. Anandsingh, I.L.R. (1960) M.P. 285(D.B.)*

- **Section 84** – Fiction in, limited to appeals only: *Tukaram S/o Bhuwanlal Vs. Smt. Anjanibai, I.L.R. (1959) M.P. 573(D.B.)*

- **Section 91 (1)** – Rules framed thereunder – Rules are not executive instructions – Framed for carrying out purposes under the Act: *Smt. Gulab Bai Vs. Board of Revenue of M.P., I.L.R. (1957) M.P. 25 (D.B.)*

– **Section 91(1)** – Rule 1 of the rules framed under – Ex-Proprietor not entitled to reservation of grass land unless so reserved before date of vesting: *Kallu Vs. Munna, I.L.R. (1976) M.P. 159*

– **Section 91(1)** – Rule 1 of the rules framed under – Possession of unoccupied land by proprietor as qua proprietor – Such possession does not amount to reservation of land for exclusive use: *Kallu Vs. Munna, I.L.R. (1976) M.P. 159*

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– **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 not in same institution – Total period of 7 years in similar institution is sufficient compliance – Word “same” used in popular language for “similar”: *Maheshkumar Verma Vs. State of M.P., I.L.R. (1980) M.P. 443 (D.B.)*

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– **By requisition no interest in property is acquired** – Property merely taken out of control of owner – Compensation paid to owner or tenant – Is not for deprivation of enjoyment of property – Requisition does not terminate the lease of tenant occupying premises at the time of requisition of premises – Tenant paid compensation for disturbance of his possession – Tenancy not terminated evening case of periodic tenancy: *Shivram Bakshi Vs. State of M.P., I.L.R. (1975) M.P. 307 (D.B.)*

– **Section 2(c), 3 and 4(2)** – Expression “Before the date of vesting” in – Does not mean immediately before the date of vesting – Requirements of the saving clause: *Pancham Singh Vs. Dhaniram, I.L.R. (1980) M.P. 926 (D.B.)*

– **Section 3** – Conditions to be satisfied for exercise of power thereunder: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450 (F.B.)*

– **Section 3** – Word “public purpose” in – Meaning – Whether justiciable in Court – Requisition of premises for stocking food grains by Government – Whether for Public purpose: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450 (F.B.)*

– **Section 3** – Opinion of the Collector or state Government under – Is subjective opinion – Not subject to objective test – Absence of recital about formation of opinion or the purpose in the order – Does not prove that there was not formation of opinion – Authority must satisfy Court by evidence about formation of opinion – Section does not contemplate holding of enquiry regarding formation of opinion or the purpose – Making of enquiries about available accommodation desirable – Requisition of occupied premises should be last thing – Constitution of India – Article 226 – Allegation made against particular officer – That officer alone should file return and an affidavit in support thereof – Affidavit of either subordinate or superior officer not sufficient: *Rajmal Surana Vs. State of M.P. I.L.R. (1966) M.P. 893(D.B.)*

– **Sections 3 and 14** – Vires of: *Kanhaiyalal Vs. The Collector, Damoh., I.L.R. (1961) M.P. 450(F.B.)*

– **Sections 3 and 14** - Vires of – Conditions to be satisfied for exercise of power under section 3 – section 14 – Power of State Government to delegate all powers including the power to form opinion as to necessity of requisition – Formation of opinion and the requisition – Form one composite act to be performed by the same authority – Delegation of power to requisition and connected duty of forming opinion by State – Validity – Section 3 – Word “public purpose” in – Meaning – Whether justiciable in court – Requisition of premises for stocking food grains by Government – Whether for public purpose – constitution of India, Articles 19(1)(b) and 31(2) – Former provides safeguards to Indian citizen – Later provides general safeguards to all – Constitution of India, Article 226 – Decision of authority erroneous No ground of interference unless decision is mala fide: *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450 (F.B.)*

– **Section 3(1)** – Absence of recital about formation of opinion or the purpose in the order – Does not prove that there was no formation of opinion – Authority must satisfy Court by evidence about formation of opinion: *Rajmal Surana Vs. State of M.P. I.L.R. (1966) M.P. 893 (D.B.)*

– **Section 3(1)** – Section does not contemplate holding of enquiry regarding formation of opinion or the purpose – Making of enquiries about available accommodation desirable – Requisition of occupied premises should be last thing : *Rajmal Surana Vs. State of M.P. I.L.R. (1966) M.P. 893 (D.B.)*

– **Section 38** and Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950) – Section 86 – Person making composit application under both provisions – Revenue Court has jurisdiction to decide whether that person has become a pucca tenant: *Bhujbalsingh Vs. Arjunsingh, I.L.R. (1975) M.P. 830 (D.B.)*

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– **Section 4(1)(iv)** – Not exhaustive – Fixation of compensation – Arbitrator to take into consideration provisions of section 23(1) – Land Acquisition Act in – Prevailing rent level a good and reasonable basis for fixing market value of possessory interest : *S.S. Nirmal Chand Vs. The Collector, Jabalpur, I.L.R. (1962) M.P. 262 (D.B.)*

- **Section 9 and Civil Procedure Code (V of 1908), Order V, Order VII, rule 10 and Section 24** – Application for such transfer of eviction proceedings from Rent Controlling Authority to Civil Court becomes a plaint only on payment of requisite Court-fee – On transfer of such proceedings notice to defendant mandatory – Notice of amended plaint also necessary to defendant – Failure to serve such notice on

defendant – Entire proceedings are vitiated: *M/s Decom Marketing Ltd., Bombay Vs. Kallubhai, I.L.R. (1987) M.P. 756*

- **Section 10 and Accommodation Control (Amendment) Act, M.P. (VII of 1985), Section 23-J** – Landlord filing suit for eviction before rent Controlling Authority – Promulgation of Ordinance taking away jurisdiction of Rent Controlling Authority except in cases of specified class of landlords – Landlord applying for continuance of proceedings before Rent Controlling Authority alleging himself to be a ‘physically handicapped person’ as envisaged by clause (iv) of section 23-J – Rent Controlling Authority has jurisdiction to determine whether landlord in pending case falls within the ambit of section 23-J – Expression ‘Physically handicapped person’ in clause (iv) of section 23-J – Also includes landlords suffering from Malignancy cancer : *Smt. Chuneela Kumari Vs. Karunashanker, I.L.R. (1986) M.P. 595*

– **Section 12(2)** – Suit based on the grounds of bona fide requirement along with other grounds – Ground of bona fide requirement being a distinct cause of action can be permitted to be withdrawn – Such withdrawal governed by Civil Procedure Code : *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 14** – Power of State Government to delegate all powers including the power to form opinion as to necessity of requisition – Formation of opinion and the requisition – Form one composite act to be performed by the same authority – Delegation of power to requisition and connected duty of forming opinion by state – Validity : *Kanhaiyalal Vs. The Collector, Damoh, I.L.R. (1961) M.P. 450 (F.B.)*

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– **Section 23-A and 23-C(1)** – Rent Controlling Authority can make an order of eviction only if landlord makes out a prima facie case and it remains uncontroverted: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

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- **Accommodation Control Act, Madhya Pradesh, 1955** : vide Letting of Houses and Rent Control Order, 1949, Clause 24-A. *Shri D.P. Tiwari Vs. House Allotment Officer & Ors., I.L.R. (1959) M.P. 828 (D.B.)*

– **Act does not control freedom of landlord regarding letting** – Once choice regarding purpose of letting exercised – Choice cannot be changed unilaterally by landlord : *Lalji Bhai Vs. Collector, Seoni, I.L.R. (1967) M.P. 334 (D.B.)*

– **Interpretation** – Interpretation on the Act to be put in such a way as not to make non sense of legislation: *Mangilal Vs. Pyarchand, I.L.R. (1967) M.P. 92*

– **Applicable between landlord and tenant** – Does not apply to persons who are not tenants – Accommodation Control Act, M.P., 1955 – Section 2 – Person against whom decree for ejection passed – Does not fall within definition of tenant – Tenant not entitled to deduction at fair rent fixed after decree is passed – Interpretation of Statute – Earlier Act to interpreted on the basis of later Act under certain circumstances : *Kishanlal Vs. Keshrichand, I.L.R. (1971) M.P. 572*

– **Section 2** – Person against whom decree for ejection passed – Does not fall within definition of tenant: *Kishanlal Vs. Keshrichand, I.L.R. (1971) M.P. 572*

– **Section 2** – Tenant not entitled to deduction at fair rent fixed after decree is passed: *Kishanlal Vs. Keshrichand, I.L.R. (1971) M.P. 572*

– **Section 2-A** – Section 2-A does not exclude pending suits and decrees obtained before 1st January 1959 : *Miss Jarbai Vs. Phirojsha, I.L.R. (1960) M.P. 124 (D.B.)*

– **Section 3** – Purpose of inclusive definition in section 3 – Contract of sub lease – Lasts as long as original contract of lease exists: *Premnaraian Vs. Smt. Zenab Bai, I.L.R. (1968) M.P. 87*

– **Section 3(a) and 4(i)** – Lease of open plot of land for constructing temporary structure with condition to vacate on demand – Plot constitutes open plot : *Mangilal Vs. Pyarchand, I.L.R. (1967) M.P. 92*

– **Section 3(a) and 4(i)**- Test to determine whether site is open plot or not – Test is on what condition plot was let out : *Mangilal Vs. Pyarchand, I.L.R. (1967) M.P. 92*

– **Section 3(c) – Word “Assignee” in** – Does not include assignee of merely arrears of rent – Refers to assignee of the rights of landlord: *Babu Bhai Vs. Bhagwandas, I.L.R. (1966) M.P. 761*

– **Section 4** – Tenant against whom decree for ejection is passed – Tenant ceases to be a tenant and becomes liable to pay mesne profits from the date of termination of tenancy : *Kikabhai Vs. Kamlakar, I.L.R. (1973) M.P. 626 (D.B.)*

– **Section 4** – Applicable to a tenant whose tenancy determined but against whom no suit filed: *Shyamlal Vs. Umacharan, I.L.R. (1960) M.P. 377 (F.B.)*

- **Section 4** – Absence of pleading regarding grounds under section 4 and its adjudication – Decree passed cannot be said to be founded on any grounds covered by this section : *M.P. Chougani Vs. Abdul Azim, I.L.R. (1963) M.P. 673 (D.B.)*

– **Section 4** - Does not furnish any additional ground for ejectment – Restricts rights of landlord as regards eviction – Bar imposed by section removed – Matter falls to be governed by provisions of Transfer of Property : *Rajaram Vs. Ramswaroop, I.L.R. (1963) M.P. 117*

– **Sections 4 and 16** – Executing Court, Power of, to enquire into existence of grounds mentioned in Section 4 – Relevant date for existence of those grounds – Decree-holder entitled to execute only on proof of grounds mentioned in Section 4 : *Sardar Raghubir Singh Ahluwalia Vs. Komal Chand, I.L.R. (1963) M.P. 723*

– **Section 4(a)** – Expression “tenant” in – Refers to original tenant and not sub tenant – purpose of inclusive definition in section 3 – Contract of sub lease – Lasts as long as original contract of lease exists – Section 5 – Sub tenant – Not entitled to notice of demand from original lessor : *Premnaraian Vs. Smt. Zenab Bai, I.L.R. (1968) M.P. 87*

– **Section 4(a)** – Amount payable for supply of water – Not included in the agreement of rent – Does not automatically become rent – Arrears in payment of amount for water supply – Do not become arrears of rent – No ground for ejectment : *Krishnachandra Vs. Hiralal, I.L.R. (1964) M.P. 274*

– **Section 4(a)** – Demand for arrears of rent – Rent not paid – Suit for ejectment – Demand excessive as found by Court on investigation – Notice not bad in law – Ground for eviction valid – Tenant should have paid what he thought was due – Requirements of the Section – Notice of demand to be decided with reference to language and object of section – What is contemplated by the notice stated : *Mohammad Yakub Vs. Aliwaz Khan, I.L.R. (1963) M.P. 100 (D.B.)*

– **Section 4(a)** – Does not define “Rent” – “Rent” – Meaning of – Section 4(a) – Amount payable for supply of water – Not included in the agreement of rent – Does not automatically become rent – Arrears in payment of amount for water supply – Do not become arrears of rent – No ground for ejectment – Section 4(g) – Premises let out for residence and business – Need for residence established – Landlord entitled to ejectment regarding part of premises used for residence: *Krishnachandra Vs. Hiralal, I.L.R. (1964) M.P. 274*

– **Section 4(c)** – sub-letting written permission of landlord not necessary – Permission can be direct or indirect – Pleadings: *Bodhanlal Vs. Seth Kewealchand, I.L.R. (1962) M.P. 715*

– **Section 4(d)** – Premises let out for specific purpose – Premises used for other purposes – Tenant liable to be ejected : *Kikabhai Vs. Kamlakar, I.L.R. (1973) M.P. 626 (D.B.)*

– **Section 4(e)** – Tenant sub letting premises after the coming into force of the Act against the express terms to the lease – Tenant becomes liable to be evicted under this provision : *Kikabhai Vs. Kamlakar, I.L.R. (1973) M.P. 626 (D.B.)*

– **Section 4(e)** – Protects sub-tenancies validly created: *Smt. Thakurain Dulaiya Vs. Shivnath Punjabi., I.L.R. (1971) M.P. 691 (D.B.)*

– **Section 4(e)** – Tripartite agreement between landlord, tenant and sub tenant – Implies oral consent of landlord to sub tenancy – Does not establish priority between landlord and sub tenant : *Smt. Thakurain Dulaiya Vs. Shivnath Punjabi., I.L.R. (1971) M.P. 691 (D.B.)*

- **Section 4(e)** and its proviso and C.P. and Berar Letting of Houses and Rent Control Order, 1949, Section 12-A – Agreement of sub tenancy – When legal – Agreement of sub tenancy found to be void in its inception – Effect of – Contract act – Section 65 – Agreement of sub tenancy discovered to be void – Still sub tenant liable to pay compensation to be tenant for use and occupation of the premise – Civil Procedure Code, 1908 – Order 7, Rule 7 – Power of court to award compensation though not specifically prayed for : *Firm Durgaprasad Mangniram, Sagar Vs. Dr. Ganesh Prasad, I.L.R. (1982) M.P. 725*

– **Section 4(f) and Transfer of Property act (IV of 1882)** – Section 111(g) – Second part of Clause (g) of section 111 is in conflict with section 4(f) – Former stands abrogated: *Smt. Sugga Bai Vs. Smt. Takuribai, I.L.R. (1969) M.P. 70*

– **Section 4(f)** – Suit for ejectment – Defendant denying title of landlord in written statement – Cannot be ground for ejectment forfeitures – Denial to be before institution of suit – Section 17 – In pending suit, tenant liable to ejectment on same grounds as in the suit substituted after commencement of Act : *Ratanlal Vs. Damodardas, I.L.R. (1960) M.P. 864 (D.B.)*

– **Section 4(f)** – Denial of title of landlord contemplated in – Denial must be before suit – denial in written statement cannot give ground for ejectment – Section 17 – The expression, “No decree for eviction shall be passed except on one or more of the grounds mentioned in section 4 of the Act” in – Implies that in pending suit tenant liable to be ejected on same grounds as in suit instituted after commencement of Act: *Ratanlal Vs. Damodardas, I.L.R. (1962) M.P. 431 (D.B.)*

– **Section 4(g)** – Premises let out for residence and business – Need for residence established – Landlord entitled to ejectment regarding part of premises used for residence: *Krishnachandra Vs. Hiralal, I.L.R. (1964) M.P. 274*

–**Section 4(g) and (h)** – Question whether accommodation is residential or non-residential – question is one of fact – Cannot be allowed to be raised in second appeal: *Punamchand Vs. Ramlal, I.L.R. (1963) M.P. 290*

– **Section 4(g) and (h)** – Landlord claiming eviction of tenant from premises let out for residential and non residential purpose under one lease – Bonafide need for residence only proved by landlord – Landlord entitled to evict tenant from residential portion only – Lease – Splitting of, by agreement of parties : *Richhpal Vs. Kishanlal, I.L.R. (1966) M.P. 312*

– **Section 4(g) and (h)** – Suit for eviction on ground of residential and non-residential purpose from premises used for residential or non-residential purposes respectively – Maintainability – suit for eviction from non-residential premises on the ground that premises needed for residential purposes – Not maintainable – Premises rented for non-residential purposes – Part of the premises used for residence – Premises do not cease to be non-residential – Person sleeping in non-residential premises – Nature of premises not altered : *Phundilal Vs. Ashok Kumar, I.L.R. (1963) M.P. 109*

– **Section 4(h)** – Grounds on which the suit for ejectments could be dismissed: *Mainabai Vs. Keshavlal, I.L.R. (1973) M.P. 486*

– **Section 4(h)** – Person part owner of premises – Person needing premises genuinely for business – Person entitled to get benefit of the provision : *Messrs Pravinchand Hathibhai And Co., Satna Vs. Shankerlal, I.L.R. (1967) M.P. 791*

– **Section 4(h)** – Object of the Act - Person part owner of premises – Person needing premises genuinely for business – Person entitled to get benefit of the provision: *Messrs Pravinchand Hathibhai And Co., Satna Vs. Shankerlal, I.L.R. (1967) M.P. 791*

– **Section 4(h)** – Any piece of un cultivated land – Does not come under “accommodation” – Can be so if other criteria are satisfied – Cannot be other accommodation any case – “Other accommodation” in – Meaning of – Words “for the purpose” – Meaning of – Grounds on which the suit for ejectment could be dismissed : *Mainabai Vs. Keshavlal, I.L.R. (1973) M.P. 486*

– **Section 4(i)** – Covers a case of open plot of land required by landlord for construction of a house which can be used either for residential or non residential

purpose – Section 3(a) and 4(i) – Lease of open plot of land for constructing temporary structure with condition to vacate on demand – Plot constitutes open plot – Test to determine whether site is open plot or not – Test is on what condition plot was let out – Accommodation control Act, M.P. – Interpretation on the Act to be put in such a way as not to make non sense of legislation: *Mangilal Vs. Pyarchand, I.L.R. (1967) M.P. 92*

– **Section 4(i)** – Landlord deposing regarding need for construction – Evidence corroborated by sanctioned plan – Need sufficiently established – Landlord can claim ejectment under this provision – Section 4(d) – Premises let out for specific purpose – Premises used for other purposes – Tenant liable to be ejected – Section 4 – Tenant against whom decree for ejectment is passed – Tenant ceases to be a tenant and becomes liable to pay mesne profits from the date of termination of tenancy – Civil Procedure code – Order 20, rule 12 – Contemplates passing of preliminary decree when amount has to be ascertained – In case of mesne profits claimed on basis of agreed rent – Preliminary decree is not necessary – Accommodation Control Act, M.P. 1955 – Section 4(e) – Tenant subletting premises after the coming into force of the Act against the express terms of the lease – Tenant becomes liable to be evicted under this provision: *Kikabhai Vs. Kamlakar, I.L.R. (1973) M.P. 626 (D.B.)*

– **Section 5** – Sub tenant – Not entitled to notice of demand from original lessor: *Premnaraian Vs. Smt. Zenab Bai, I.L.R. (1968) M.P. 87*

– **Section 5** – Not retrospective – Not applicable to suits filed before the coming into force of the Act: *Dharam Chand Vs. Rajendra Kumar, I.L.R. (1960) M.P. 901*

– **Section 5(a)** – “Tenant” in – Does not include Sub-tenant – Suit for ejectment – Sub-tenant cannot be ordered to deposit rent provisionally during pendency of suit: *Hazurising Vs. Sardar Vijaya Singh, I.L.R. (1963) M.P. 132*

– **Section 5(2)** – Vires of: *Punamchand Vs. Ramlal, I.L.R. (1963) M.P. 290*

– **Section 5(2)** – Vires of – Section 4(g) and (h) – Question whether accommodation is residential or non-residential – Question is one of fact – cannot be allowed to be raised in second appeal: *Punamchand Vs. Ramlal, I.L.R. (1963) M.P. 290*

– **Section 8** – Rent Controlling Authority acting the under section – Function more like civil Court than criminal Court – Criminal Procedure Code – Section 435 – Revision to Sessions Judge against order of the Rent Controlling Authority imposing fine – Revision not maintainable – Accommodation control act – section 8(5) – Rent Controlling authority, Power of, to impose penalty : *The State of M.P. Vs. Gulabkhan, I.L.R. (1964) M.P. 442*

– **Section 8(5)** – Rent Controlling Authority, Power of, to impose penalty: *The State Of M.P. Vs. Gulabkhan, I.L.R. (1964) M.P. 442*

– **Section 9(4)** - Application by tenant for fixation of fair rent after decree for ejection is passed – Maintainability – Stage upto which protection to tenant extends : *Sitaram Singh Vs. B.L. Shori, I.L.R. (1967) M.P. 819*

– **Section 12** – “District Judge” – Not a persona designata: *Krishana Rao Vs. Waman Rao, I.L.R. (1963) M.P. 347*

- **Section 12** – word “Final” – Does not exclude revisional jurisdiction of High court – District Judge does not exercise special jurisdiction under the section: *Krishana Rao Vs. Waman Rao, I.L.R. (1963) M.P. 347*

– **Section 12** - Bona fide – Court has to be satisfied objectively: *Parasram Vs. Damadilal, I.L.R. (1971) M.P. 117*

– **Section 12 and Civil Procedure code, Section 115** – Appeal under, lies to Court of District Judge and not to district Judge acting as persona designate – Decision open to revision – Finality of decision in Section 12 – Means that order is not appealable : *Kailaschandra Vs. District Judge, Bhopal, I.L.R. (1962) M.P. 808 (D.B.)*

– **Section 12(1)(a) and 13(1)** – Default under Section 12(1)(a) – Tenant carrying out requirement of section 13(1) – Tenant not to be ejected : *Parasram. Vs. Damadilal., I.L.R. (1971) M.P. 117*

– **Section 12(i)(e)(f)** – Purpose of letting agreed between landlord and tenant – Determines character of letting for purpose of this provision – Act does not control freedom of landlord regarding letting – Once choice regarding purpose of letting exercised – Choice cannot be changed unilaterally by landlord – Section 39 – Applies both to residential and non residential accommodation – Nature of accommodation to be determined according to purpose for which let out or purpose for which landlord intends to let out – Collector, Power of, to let out accommodation of one purpose for another purpose – Words and Phrases – Words “Residence” – Meaning of : *Lalji Bhai Vs. Collector, Seoni, I.L.R. (1967) M.P. 334 (D.B.)*

– **Section 13(2)** – Dispute regarding rent – Court not bound to act suo motu: *Parasram Vs. Damadilal., I.L.R. (1971) M.P. 117*

– **Section 16** – scope of – Enacted to meet extra ordinary situation arising out of decrees passed before coming into force of the Act: *Sardar Raghubir Singh Ahluwalia Vs. Komalchand, I.L.R. (1963) M.P. 723*

– **Section 16** – Grounds mentioned in – Existence of them before suit not mandatory – Must exist before decree is sought to be executed: *Abdul Haq Vs. Raghavendra Sing, I.L.R. (1961) M.P. 818 (D.B.)*

– **Section 16** – Condition to be satisfied before decree for ejectment can be executed – Does not exclude decrees passed before the commencement of the Act and on grounds resembling or some what akin to those mentioned in section 4 – Section 4 – Absence of pleading regarding grounds under section 4 and its adjudication – Decree passed cannot be said to be founded on any grounds covered by this section: *M.P. Chougani Vs. Abdul Azim, I.L.R. (1963) M.P. 673 (D.B.)*

– **Section 16** – Scope of – Enacted to meet extraordinary situation arising out of decrees passed before coming into force of the Act – Executing court, Power of, to enquire into existence of grounds mentioned in section 4 – Relevant date for existence of these grounds - Decree-holder entitled to execute only on proof of grounds mentioned in section 4: *Sardar Raghbir Singh Ahluwalia Vs. Komalchand, I.L.R. (1963) M.P. 723*

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– **Section 16 and 17** – Provisions in, make grounds of ejectment mentioned in section 4 applicable to proceedings pending on 1st January 1959 – Section 17 – Applicable to pending appeals – Section 2-A does not exclude pending suit and decrees obtained before 1st January 1959 – M.P. Extension of Laws act, 1958 – Section 6 – Question of keeping alive old rights and liabilities by new Act to be decided by provisions of new Act: *Miss Jarbai Vs. Phirojsha, I.L.R. (1960) M.P. 124 (D.B.)*

– **Section 16 and 17** – Decree for eviction of tenant – Cannot be passed in pending suit or appeal except on grounds mentioned in section 4 – Decree obtained after 1-1-59 – Not executable except on one or more grounds mentioned in section 4 – Word “tenant” in sections 16 and 17 used in popular sense – Includes an ex-tenant – section 4 – Applicable to a tenant whose tenancy determined but against whom no suit filed – Interpretation of Statute – Hardship – No ground for putting narrow construction: *Shyamlal Vs. Umacharan, I.L.R. (1960) M.P. 377 (F.B.)*

– **Section 17** – Decree for ejectment passed against tenant after the Act came into force – Tenant not raising any pleas available under section 4 of the Act – Tenant challenging decree in executing Court – Executing Court not competent to entertain it

and can refuse to execute it: *Shri Syed Maqzurul-Haq Vs. Dularam, I.L.R. (1960) M.P. 682 (D.B)*

– **Section 17** – In pending suit, tenant liable to ejection on same grounds as in the suit instituted after Commencement of Act: *Ratanlal Vs. Damodardas, I.L.R. (1960) M.P. 864 (D.B.)*

– **Section 17** – The expression “No decree for eviction shall be passed except on one or more of the grounds mentioned in Section 4 of the Act” in – Implies that in pending suit tenant liable to be ejected on same grounds as in suit instituted after commencement of Act : *Ratanlal Vs. Damodardas, I.L.R. (1962) M.P. 431 (D.B.)*

– **Section 18** – Accommodation not falling vacant – Rent Controlling Authority – Jurisdiction of – To pass an order of allotment - Expression “accommodation falling vacant” in the section – Meaning of – Landlord if can plead his own requirement : *Bhanji Vs. Rent Controlling Authority Raipur, I.L.R. (1960) M.P. 593 (D.B.)*

– **Section 18** – Rent Controller, Authority of, to allot occupation without calling upon landlord to give information in writing of accommodation falling vacant – Section 19(1) – House got vacated on ground of bona fide residence by a compromise decree – House can be re-let only with the permission of rent controller – Authority has no jurisdiction to enquire into the need of landlord : *Deoraj Vs. The Rent Controlling Authority, Durg, I.L.R. (1963) M.P. 218 (D.B.)*

– **Section 19(1)** – House got vacated on ground of bona fide residence by a compromise decree – House can be re-let only with the permission of Rent Controller – Authority has no jurisdiction to enquire into the need of landlord: *Deoraj Vs. The Rent Controlling Authority, Durg, I.L.R. (1963) M.P. 218 (D.B.)*

– **Section 39** – Applies both to residential and non residential accommodation: *Lalji Bhai Vs. Collector, Seoni, I.L.R. (1967) M.P. 334 (D.B.)*

– **Section 39** – Collector, Power of, to let out accommodation of one purpose for another purpose: *Lalji Bhai Vs. Collector, Seoni, I.L.R. (1967) M.P. 334 (D.B.)*

– **Section 39** – Nature of Accommodation to be determined according to purpose for which let out of purpose for which landlord intends to let out: *Lalji Bhai Vs. Collector, Seoni, I.L.R. (1967) M. P. 334 (D.B.)*

Accommodation Control Act, M.P. (XLI of 1961)

– **Act not meant to deprive owner of beneficial enjoyment of property** – Provision meant for benefit of landlord: *Firm Panjumaal Daulatram, Satna Vs. Sakhi Gopal, I.L.R. (1980) M.P. 672*

– **Confers protection to tenant personally and for limited purpose:** *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Dismissal in default of application not permissible** – Filing of papers is proper course: *Singhai Bhaiyalal Vs. Rikhilal Jain, I.L.R. (1968) M.P. 457*

- **Does not apply to persons who are not tenants:** *Kishanlal Vs. Keshrichand, I.L.R. (1971) M.P. 572*

– **Object and Scope of:** *Smt. Mankunwarbai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676(F.B.-5)*

– **Act not meant to deprive the owner of beneficial enjoyment of his property:** *Daulal Vs. M/s Indian Mill Stores, Ganjpara, Raipur, I.L.R. (1978) M.P. 373*

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– **Act to be strictly construed** – Should not be needlessly extended beyond the particular mischief which it is intended to avoid or remedy – Section 13(4) and (6) – Words “defence against eviction” in – Means defence against eviction resting on Section 12: *Premdas Vs. Laxmi Narayan Pande, I.L.R. (1965) M.P. 669 (D.B.)*

- **Relief prayed are not independent** – Relief of injunction flows from the relief of declaration – Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d): *Shabbir Hussain Vs. Naade Ali, I.L.R. (2003) M.P. 80*

- **Applicable between landlord and tenant** – Does not apply to persons who are not tenants – Accommodation Control Act, M.P., 1955 – Section 2 – Person against whom decree for ejection passed – Does not fall within definition of tenant – Tenant

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Eviction Suit – Tenant adopting every dilatory practice to prolong the trial contrary to undertakings given to High court for early disposal of eviction suit – Making justice teasing illusion – Contumacious conduct strongly deprecated – Sections 18(3) and 12(1)(h) – Eviction suit Decreed – Tenant instead of complying with decree, preferring appeal – On dismissal of appeal, tenant loses the right of re entry – Appellate Court is not required to fix another date – Civil Procedure Code, 1908 – Order XVII, rule 3 – Case posted for defendant’s evidence – Defendant No. 1 present in person and others defendants through their counsel – Numerous applications to avoid leading of evidence – Recourse to Order XVII, Rule 3 by the Trial Court – Held proper and justified: *Pratap Singh Vs. Sharad Chand, I.L.R. (1998) M.P. 491*

Pleading – Validity of notification challenged that plaintiff has not established that whole of the income derived from the accommodation is utilized for the purpose of the Trust – No pleading in written statement – Absence of either admitted or established fact supporting the ground – Not possible to take a different view – Appeal dismissed: *Ramgopal Vs. Bala Mandir Trust, I.L.R. (2003) M.P. 484 (SC) (D.B.)*

– **Sections 1(3), 12(1) and Schedule** – Act applicable to Municipal area of a town – Sub sequently additional area included in the Municipal area of the Town – No fresh notification necessary under section 1(3) of the act for making the Act applicable to that additional area – Suit for eviction of tenant in respect of tenancy premises situated in that additional area cannot be decreed without existence of a ground under section 12(1) of the Act – Civil Procedure Code, 1908, Order 31 rule 1 – Suit by Sanchalak of a trust without joining all the trustees – Maintainability of: *Union of India Vs. Swargshram Pili Kothi, Chittrakut, I.L.R. (1984) M.P. 654*

– **Section 2** – “Person” in – Refers to person whose tenancy is determined: *M.P. Wakf Board, Bhopal Vs. Mst. Sirajbi, I.L.R. (1979) M.P. 63*

– **Sections 2 and 12** – Parties fall within the meaning of landlord and tenant as defined under the Act – None of grounds envisaged in the Act made a ground for eviction under Section 12 of the Act – Suit of plaintiff–respondent dismissed: *State Vs. Pradeep Kumar (D) His L.Rs. Smt. Meena Sharma, I.L.R. (1992) M.P. 555*

– **Section 2(a)** – Lease of a hostel as going concern – Incidentally lessee getting into possession of the building – Lease cannot be said to be in respect of accommodation: *Smt. Shantilata Sarkar Vs. Sheolal, I.L.R. (1967) M.P. 803*

– **Section 2(a)** – Lease of Cinema hall – Whether a lease of “Accommodation” or a lease of Cinema business – Test for determination of – Inference in case of lease of Cinema hall without machinery for exhibition of films – Section 12(1)(f) – Need of landlord – Must exist till the end – Section 12(1)(m) – Trial Court not recording specific finding about requirement of that provision – No ground under that provision is made out: *Anant Vs. Smt. Gontibai, I.L.R. (1983) M.P. 252 (D.B.)*

– **Section 2(a)** – Word “Accommodation” in – Includes land which is not used for agriculture – Does not include land when construction standing on that land has fallen down – Civil Procedure Code – Section 151 – Not to be invoked to contravene the provisions of the Act – Can be used to supplement existing provision in Code: *Shrikishandas Vs. Radhabai, I.L.R. (1969) M.P. 492*

- **Section 2(b) and Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954), Section 29** – Provisional Possession to the auction purchaser before issue of sale certificate – Such purchaser becomes a “landlord” under the Accommodation Control Act, 1961 – Entitled to recover rent – Protection to tenant from ejection for two years – Exception – Tenant’s failure to pay or tender whole amount of arrears of rents to transferee within one month after service of notice of demand – Bar of two years not attracted – Tenant liable to ejection even within two years on proof of ground under Section 12(1) of the Accommodation Control Act, 1961 – Transfer of property Act, Section 106 and Evidence Act, Section 114 – Both parties failing to prove commencement of tenancy – Presumption that it starts from 1st of calendar month arises: *Puranchand Vs. Anandi Bai, I.L.R. (1981) M.P. 396*

– **Section 2(b), 12(1)(f)** – Suit for eviction–Non-residential accommodation – Bona-fide need of landlord for carrying on his own business–Need has to be examined on date of institution of suit – Suit: *Shakuntala Bai Vs. Narayandas, I.L.R. (2004) M.P. (SC) 714 (D.B.)*

- **Section 2(b), 12(1)(f)** – Suit decreed by trial Court–Death of landlord during pendency of appeal by tenant–Will not make any difference as his heirs are fully entitled to defend the estate: *Shakuntala Bai Vs. Narayandas, I.L.R. (2004) M.P. (SC) 714 (D.B.)*

- **Section 2(b), 12(1) (f), Civil Procedure Code (V of 1908)**–Order 22 Rule 4, Order 6 Rule 17 and Section 100–Suit for eviction–Non-residential accommodation–Bona-fide need of landlord for carrying on his own business–Need has to be examined on date of institution of suit–Suit decreed by trial Court–Death of landlord during pendency of appeal by tenant–Will not make any difference as his heirs are fully entitled to defend the estate–Legal representatives brought on record–They also set up bona-fide need for carrying on business for their own livelihood–Suit has to be

decided on the basis of amended pleadings—Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff—Judgment and decree passed by High Court set aside: *Shakuntala Bai Vs. Narayandas*; I.L.R. (2004) M.P. (SC)714 (D.B.)

– **Section 2(e) and Section 12(1)(e)** – Definition of family members includes son living jointly and separately: *Lalchand Vs. Laxman*, I.L.R. (1988) M.P. 273

– **Section 2(i)** – “Any decree” in – Includes a compromise decree: *Harnarayan Vs. Tulsira*, I.L.R. (1973) M.P. 85 (D.B.)

– **Section 2(i)** – Statutory tenants cannot urge new facts which come into existence subsequently: *Taramal Alias Tarachand Sindhi Vs. Prof. Laxman Sewak Surey*, I.L.R. (1973) M.P. 148

– **Section 2(i)** – Tenant as defined includes even a person allotted accommodation under section 39: *Neol Paul Vs. P. Kumar*, I.L.R. (1992) M.P. 804

– **Section 2(i)** – proceedings after fixation of rent can be only by tenant – Tenant cannot continue proceedings after decree for ejection is passed: *Kasturchand Vs. Sirekunwar*, I.L.R. (1978) M.P. 188

– **Section 2(i)** – Person against whom decree for ejection is passed – Person ceases to be a tenant – Proceedings for fixation of rent can be only by tenant – Tenant cannot continue proceedings after decree for ejection is passed – Decree – Decree of civil court – Not subject to proceedings of fixation of rent – Can be challenged in appeal or other proceedings – Fixation of rent – Has not the effect of reducing the amount of decree: *Kasturchand Vs. Sirekunwar*, I.L.R. (1978) M.P. 188

– **Section 2(i)** – Person against whom a decree even on the basis of Compromise is passed – Person ceases to be tenant – Protection under the Act not available to such person – Exception applies to persons who were previously tenants – “Any decree” in – Includes a compromise decree: *Harnarayan Vs. Tulsira*, I.L.R. (1973) M.P. 85 (D.B.)

– **Sections 2(i), 23-A, 23-E, 23-J and 39** – Tenant as defined includes even a person allotted accommodation under section 39 – Land lord falling under section 23-J can file an application before the Rent Controlling Authority seeking eviction of tenant whether contractual tenant or an allottee: *Neol Paul Vs. P. Kumar*, I.L.R. (1992) M.P. 804

– **Sections 2(i) and 23-J** – Landlord falling under Section 23-J can file an application before the Rent Controlling Authority seeking eviction of tenant whether contractual tenant or an allottee: *Neel Paul Vs. P. Kumar, I.L.R. (1992) M.P. 804*

– **Section 2(1)(a)** – Suit for recovery of plaintiffs share of rent in property held in joint ownership – Maintainable – Does not amount to division of tenancy – Earlier suit for plaintiffs ¼ share of rent decreed – Plaintiff cannot be forced to file repeated suit for one and the same reliefs: *Nawal Chand Vs. Dali Chand, I.L.R. (1992) M.P. 904*

– **Section 3(2)** – Challenge to vires of order passed under this provision – Things to be enquired into – Reasons for grant of exemption – Validity and sufficiency thereof, to be decided on facts in each case – Reason to be germane to the purpose for which power granted: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1(D.B.)*

– **Section 3(2)** – Clearly lays down legislative policy and principle: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1(D.B.)*

– **Section 3(2)** – Confers discretion in matter of selection of institution satisfying condition mentioned in section 3 of the accommodation Control Act: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1(D.B.)*

– **Section 3(2)** – Exemption to be granted for reasonable eviction of tenant and reasonable fixation of rent: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1(D.B.)*

– **Section 3(2)** – Does not Confer unfettered and uncanalized discretion Government in matter of exemption: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1(D.B.)*

– **Section 3(2)** – Provision constitutionally valid: *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1 (D.B.)*

– **Section 3(2)** – Accommodation owned by public trust – Exemption Notification dated 7.9.1989 – Validity thereof in relation to property owned by registered Public Trust – Once the validity of the whole of notification has been upheld by the Supreme Court in S.L.P.(C) No. 4360/94 by order dated 19.10.1995, its applicability on the accommodation in question owned by the respondent Public trust is not be attacked: *Bipin Bhai Vs. Murti Shri Deo Radha Madhavlal Ji Geda Trust, Sagar, I.L.R. (1998) M.P. 604 (D.B.)*

– **Section 3(2) and Constitution of India, Article 14** – Constitution validity of section 3(2) of the act was challenged and repelled – However, it does mean that uncontrolled or unguided discretion has been vested in the State Government while exercising this power the State Govt. has to act according to the provision of Article 14 of the Constitution – Held – There is nothing on record to ascertain why and how the State Government decided to grant exemption are satisfied – Since the effect of the notification is to withdraw the protection and leave the petitioner to the mercy of the respondent no. 2 – Impugned notification must be held to be violative of Article 14 of the Constitution – Petition allowed: *Chintamani Chandra Mohan Agarwal Vs. State of M.P., I.L.R. (1993) M.P. 466 (D.B.)*

– **Sections 3(2) and 12(1)–Suit for eviction by religious institution**–Eviction decree granted by Trial Court affirmed by High Court–Only objection that suit was not filed by all the trustees repelled–Plaintiff covered by exemption notification–Validity of notification challenged that plaintiff has not established that whole of the income derived from the accommodation is utilized for the purpose of the Trust–No pleading in written statement–Absence of either admitted or established fact supporting the ground–Not possible to take a different view–Appeal dismissed: *Ramgopal Vs. Bala Mandir Trust; I.L.R. (2003) M. P. (SC) 484 (D.B.)*

– **Section 3(2), 14(2) – Suit for eviction by lessee of trust** – Notification exempting suit property from operation of the accommodation Control Act, Section 3(2) and notification thereunder would alone apply to the property in suit and not affected by any contract between the lessee and sub lessee: *A.M. Qureshi Vs. M/s Shakti Pictures Circuit Limited, Amrawati, I.L.R. (2002) M.P. 328*

– **Section 6(5)** – Words “shall be deemed to be the payment of rent in advance” in – Must be read in the context in which they appear – Legal fiction created is for a limited purpose of taking it out from the mischief of section 6(2) (a) – Section 6(5) – Expression “Rent in advance” in – Meaning of – Transfer of property Act – Section 105 – Agreement of advancing loan for reconstruction or rebuilding – Does not amount to present demise – Liability to pay rent arises only when lease comes into existence – Legal fiction – Court has to see the purpose of fiction – Court to consider all facts inevitable corollaries and consequences of giving effect to fiction – Full effect has to be given to fiction – Has to be carried to logical conclusion – Has not to be extended beyond the purpose for which it is created – Contract Act, Indian – Section 23 – Agreement to pay part of the agreed lease money as rent till the loan remained unpaid – Is not against public policy: *Navnit Das Vs. Bhagwandas, I.L.R. (1977) M.P. 227*

– **Section 7** – Provisions relating to increase in – Applicable to clauses 1 and 2 of the section: *Smt. Jagrani Vs. Jorawal, I.L.R. (1969) M.P. 339 (F.B.)*

– **Section 7** – Merely sets out principle for determining “Standard rent”: *Mukundlal Vs. Shankarlal, (1967) M.P. 100 (D.B.)*

– **Section 7** – Paragraph after clause (2) ending with the proviso – Applies both to clauses (1) and (2) of the section: *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Section 7** – Proviso after clause (2) of Section 7 – Applicable to both clauses (1) and (2) of Section 7 - Both clauses prescribe a statutory datum line of rent: *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Sections 7 and 8** – Order of fixation of rent passed by R.C.A. is subject to decision on appeals, if filed, till then order of R.C.A. is not inchoate: *Dr. Ashwani Trivedi Vs. Bhumi Vikas Bank, I.L.R. (2000) M.P. 62*

– **Sections 7, 10, 31 and 32 and Civil Procedure Code, 1908, Section 115**–Revision–Rent Control Accommodation–Standard rent–Fixation of –Basis–Premises constructed prior to 1948–More than one assessment have been there–Determination of standard rent should be on basis of Section 10(4)–Order impugned set aside: *Smt. Usharani Vs. Smt. Dharma Bai Thakur; I.L.R. (2004) M.P 1170*

- **Section 7 (1) – Words “Such reasonable annual rent of fair rent’ In** – Meaning of: *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Section 9(4) – Assessment list register** – Not inadmissible because it did not contain certain particulars which were not required by the enactment: *Damumal Vs. Smt. Shevantibai, I.L.R. (1966) M.P. 689 (F.B.)*

– **Section 9(4) – Entry in Assessment Note-book** – Relevance of, in determining the rent as shown in municipal assessment register or as actually paid on 1-1-41 – Assessment List register – Not inadmissible because it did not contain certain particulars which were not required by the enactment – Evidence Act – Section 76 – Certified copy of Entry in Assessment List Register Admissibility: *Damumal Vs. Smt. Shevantibai, I.L.R. (1966) M.P. 689 (F.B.)*

- **Section 9** - Civil Procedure Code (V of 1908), Order V, Order VII, rule 10 and Section 24 – Transfer of eviction proceedings from Rent Controlling Authority to Civil Court of ‘Competent Jurisdiction’ – Valuation of suit at Rs. 23400/- Civil Judge Class II is not a Court of Competent Jurisdiction to entertain and try that suit – Application for such transfer of eviction proceedings from Rent Controlling Authority to Civil Court become a plaint only on payment of requisite Court fees on transfer of

such proceedings, notice to defendant mandatory – Notice of amended plaint also necessary to defendant – Failure to serve such notice on defendant – Entire proceedings are vitiated – Civil Procedure Code – Order VIII, rule 10 and Section 24 – Plaint after amendment going beyond pecuniary jurisdiction of that Court – Proper procedure is to return plaint for presentation to proper court and not to entertain an application under section 24 of the Code for its transfer or to order transfer on it – Section 24 – Transfer of suit by court on administrative grounds – No notice to parties necessary – Procedure as to notice – Becomes imperative when any party applies for transfer thereof – District Judge ordering transfer of a suit without notice to defendant and also directing transferee Court not to issue any summon to defendant – Act illegally – Jurisdiction – Judgment and decree for eviction passed on the basis of evidence recorded by Civil Judge Class II having no jurisdiction – Liable to be set aside: *M/s Decom Marketing Ltd, Bombay Vs. Kallubhai, (1987) M.P. 756*

– **Section 10** – Order of dismissal for default – Not a final order: *Singhai Bhaiyalal Vs. Rikhilal Jain, I.L.R. (1968) M.P. 457*

– **Section 10** – Tenant applying for fixation of standard rent – Tenant remaining absent – Two courses open – Course of dismissal of application not correct – Dismissal in default of application not permissible - Filing of papers is proper course – Review – Power not inherent in Court – Has to be conferred by statute – Order of dismissal for default – Not a final order: *Singhai Bhaiyalal Vs. Rikhilal Jain, I.L.R. (1968) M.P. 457*

– **Section 10** – jurisdiction of Rent Controlling Authority to determine standard rent after the decision of civil suit for the period of pendency of suit – Four conditions necessary for exercising jurisdiction by Rent Controlling Authority: *Dhiraj Bai Vs. Bari Bai, I.L.R. (1979) M.P. 926 (D.B.)*

-**Sections 10, 11, 31 and 32** – Miscellaneous (Second) appeal – Appeal lies to District judge from orders of Rent controlling Authority – Order means final order and not interim order passed by rent controlling authority – Order fixing interim rent not affecting substantive rights of the parties – Not a final order – Hence no appeal lies against such an order – Appellate order set aside: *Mukesh D. Ramtek Vs. Smt. Keshar Singh, I.L.R. (2001) M.P. 1923*

– **Sections 11, 31, 32** – Order fixing interim rent not affecting substantive rights of the parties – Not a final order – Hence no appeal lies against such an order – Appellate order set aside: *Mukesh D. Ramtek Vs. Smt. Keshar Singh, I.L.R. (2001) M.P. 1923*

- **Sections 11-A, 12 (1) (f), 23-A (b) and 23-J-Civil Procedure Code (V of 1908)** – Order 7 Rule 10, Section 100–Second Appeal–suit for eviction and arrears of rent–Land lady widow–Covered under section 23-J- Requiring the non-residential accommodation bonafide for starting hotel business for her major son–Rent Controlling Authority alone has jurisdiction in the matter–Civil Court ought to have returned the plaint for presentation before RCA–Decree set aside–Matter remanded back to the trial Court for return of plaint: *Prahlad Vs. Smt. Kalabati Bai; I.L.R. (2003) M.P. 704*

– **Sections 11-A, 12(1) (f), 23-A(b), 23-J & Civil Procedure Code, 1908, Section 100** - Second appeal – Suit for eviction – Non residential accommodation – Bona fide need - Landlord within the meaning of section 23-J – only Rent Controlling Authority was having jurisdiction – Civil Court ought to have returned the plaint – Decree of eviction set aside – Case remanded for return of plaint to plaintiff : *Prahlad Vs. Smt. Kalabatibai, I.L.R. (2002) M.P. 937*

– **Section 12** – Enact a procedural right – Party coming to Court has to follow that procedure: *Chandbai Vs. Phoolchand, I.L.R. (1966) M.P. 990*

– **Section 12** – Is prospective and not retrospective: *Gokuldas Pagaria Vs. Parmanand Chaurasia, I.L.R. (1969) M.P. 657 (D.B.)*

– **Section 12** – Compound without the bungalow let out – Lease is of open land: *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

– **Section 12** – Lease not specifying purpose – Purpose can be ascertained from surrounding circumstances: *Moolchand Vs. Sheodutt Paliwal, I.L.R. (1978) M.P. 1051*

– **Section 12** – Premises used for both purposes – Court has to decide primary purpose: *Moolchand Vs. Sheodutt Paliwal, I.L.R. (1978) M.P. 1051*

– **Section 12** – Bona fide – Court has to be satisfied objectively: *Parashram Vs. Damdial, I.L.R. (1971) M.P., 117*

– **Section 12** – Small portion used for shop and major portion used for residence – House can be said to be let for residence: *Moolchand Vs. Sheodutt Paliwal, I.L.R. (1978) M.P. 1051*

– **Section 12** – Structure built on land leased – Subject matter to lease not altered: *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

- **Section 12 and Transfer of Property Act (IV of 1882)** – Plaintiff proved to be the owner of suit house – Rent Receipts passed jointly in the name of plaintiff and her husband – Whether husband also becomes the owner: *Smt. Sundar Bai Jain Vs. Moolchand Agarwal, I.L.R. (1984) M.P. 593*

– **Section 12** – Protection under – available to statutory tenants: *Smt. Sakina Bi Vs. Smt. Shamboo, I.L.R. (1977) M.P. 332*

– **Section 12** – Grounds provided by, not available to legal representatives: *M.P. Wakf Board, Bhopal Vs. Mst. Sirajbi., I.L.R. (1979) M.P. 63*

– **Section 12 and Contract Act, Indian (IX of 1872)** – Section 23 – Compromise decree – Provision for ejectment without stating grounds – Decree is nullity – Such compromise hit by section 23, Contract Act: *Hubbilal Vs. Mohammad Makbool, I.L.R. (1977) M.P. 148*

– **Section 12** – Restriction on eviction of tenants – Section 12 starts with a non-obstante clause – Even if there is a contract to the contrary then also the Act will prevail – View that before efflux of time as provided in the contract of tenancy, the suit cannot be brought, is not a good law on the subject: *Smt. Shanti Devi Agrawal Vs. Punjab National Bank, Raigarh, I.L.R. (1999) M.P. 357 (D.B.)*

– **Section 12 and Transfer of Property Act (IV of 1882)** – Suit for eviction against tenant by one of the Co heirs of the deceased landlord – Competent – Civil Procedure Code, 1908 – Order 41, rule 27 – Admission of additional evidence in the appellate Court – when can be allowed – Registration Act, Indian, 1908 – Section 60 – Presumption about certified copies – Extent of – Plaintiff proved to be the owner of suit house – Rent Receipts passed jointly in the name of plaintiff and her husband – Whether husband also becomes the owner: *Smt. Sundar Bai Jain Vs. Moolchand Agarwal, I.L.R. (1984) M.P. 593*

– **Section 12 and Civil Procedure Code (V of 1908), Order 23 rule 3** – Compromise in a suit for ejectment of tenant and for rent – Compromise providing for ejectment and for payment of rent regularly – Judgment – debtor is estopped from raising objection regarding section 12 of the M.P. accommodation control act – Decree is not nullity – Decree – holder can execute decree: *Munshiram Vs. Dhanraj, I.L.R. (1978) M.P. 77*

– **Sections 12 and 13 – Suit for ejectment instituted on grounds in section 12** – Court acquired jurisdiction to decide question arising under Section 13: *Inderlal Vs. Mahngi Bai, I.L.R. (1969) M.P. 863 (D.B.)*

– **Section 12 and 13 – Do not bestow new benefit upon landlord** – Not also enlarge his rights conferred under Transfer of property Act: *Smt. Mankunwarbai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676 (F.B.)*

– **Sections 12, 13** – Defence and striking of defence for not depositing rent – Tenant claiming possession on the basis of contract for sale – Such defence can be taken under the general law – General defence cannot be struck off – Discretion – Court cannot exercised discretion in favour of a person who does not want to deposit rent – Defence under section 12 is conditional on deposit of rent – Order impugned set aside – Two months time granted to tenant to deposit Arrears of rent: *Shyamlal Agrawal Vs. Sardar Gurbachan Singh, I.L.R. (1999) M.P. 699*

– **Section 12(1)** – Applicable to pending proceedings – Landlord has to allege grounds mentioned in the section: *Mangilal Vs. Shivprasad, I.L.R. (1966) M.P. 938*

– **Section 12(1)** – Need of one co owner proved – Decree for ejection of whole premises must follow: *Shantaram Vs. Shyam Sundar, I.L.R. (1972) M.P. 909 (D.B.)*

– **Section 12(1)** – Once the Section 12(1) is complied with, protection ceases – Tenant is a tenant at sufferance and is a rank trespasser: *Shantaram Vs. Shyam Sundar, I.L.R. (1972) M.P. 909 (D.B.)*

– **Section 12(1)** – Not applicable to suits already pending when Act came into force: *Gokuldas Pagaria Vs. Parmanand Chaurasia, I.L.R. (1969) M.P. 657 (D.B.)*

– **Section 12(1)** – Compromise decree for eviction – Non-mention of any ground in the decree – Executability – Decree whether a nullity: *Shyamlal Gour Vs. Kedarnath Gupta, I.L.R. (1979) M.P. 718*

– **Section 12(1)** – Suit for eviction on grounds under – Compromise decree – Construction – Compromise decree for eviction – Non-mention of any ground in the decree – Executability – Decree whether a nullity: *Shyamlal Gour Vs. Kedarnath Gupta, I.L.R. (1979) M.P. 718*

– **Section 12(1)** – Suit for eviction of tenant in respect of tenancy premises situated in that additional area cannot decreed without existence of a ground under: *Aftab-E-Jadid Vs. Bhopal Shramjivi Patrakar Sangh, I.L.R. (1984) M.P. 605 (D.B.)*

– **Section 12(1)** – Protection to tenant from ejection for two years – Exception – Tenant's failure to pay or tender whole amount of arrears of rents to transferee within one month after service of notice of demand – Bar of two years not attracted – Tenant liable to ejection even within two years on proof of ground under the section: *Puranchand Vs. Anandi Bai, I.L.R. (1981) M.P. 396*

– **Section 12(1)** – Restrictions imposed thereunder on the rights of landlord to seek eviction of tenants – Object of – Section 12(1)(e) and (f) – Lease for composite purpose – Landlord establishing bona fide requirement for a particular purpose in respect of a part of tenancy accommodation – Court cannot split up the tenancy – Landlord entitled to a decree for eviction of tenant from the whole tenancy accommodation – Interpretation of Statute – Preamble is key to open the mind of legislature: *Jagjitkumar Vs. Jagdish Chandra, I.L.R. (1982) M.P. 1057 (D.B.)*

– **Section 12(1)** – Non obstante clause in – Has overriding effect over all other laws including Transfer of Property Act – Existence of one or more of the grounds in section 12(1) – Constitutes necessary part of cause of action in suit for eviction – Section 12(e) and (f) – Need not in conformity with purpose for which it was let or inconsistent with actual user – Is not a bonafide requirement – Case of composite letting – Court to find out which is dominant purpose and which is ancillary thereto – The purpose can be determined from various factors – Civil Procedure Code – Section 100 – Finding based on appreciation of evidence – Finding is binding in second appeal – Burden of proof regarding need – Question whether burden is discharged – Is a question of fact – Act not meant to deprive owner of beneficial enjoyment of property – Provision meant for benefit of landlord – Interpretation of Statute – Interpretation Put on wordings of one Act or the decisions given thereon – Cannot guide the interpretation of different Act: *Firm Panjuml Daulatram, Satna Vs. Sakhi Gopal, I.L.R. (1980) M.P. 672*

– **Section 12(1) and Section 12(4)** – Distinction between the Two: *Chandbai Vs. Phoolchand, I.L.R. (1966) M.P. 990*

– **Sections 12(1)(a), 12(3), 13(1) and 13(6)** – Tenant depositing arrears of rent within the time prescribed by 1st part of Section 13(1) of the Act – Earns benefit of Accommodation Control Act, M.P. (XLI of 1961)

Section 12(3) – Defaults in making payment of future rent as required by second part of Section 13(1) – Matter would be wide open for trial Court in not to strike or to strike out the defence – Accommodation Control Act, M.P., 1961, Section 2(e) and Section 12(1)(e) – Definition of family members includes son living jointly and not separately: *Lalchand Vs. Laxman, I.L.R. (1988) M.P. 273*

– **Section 12(1)(e) and 12(4)** – All provisions to be read together: *Chandbai Vs. Phoolchand, I.L.R. (1966) M.P. 990*

– **Section 12(b)** – Essentials to be established for applicability of this section: *Girdharilal Vs. Prafullachandra, I.L.R. (1969) M.P. 479*

– **Section 12(b)** – Tenant giving portion of leased premises for use to a partnership of which he is one partner – Tenant retaining control over premises so given – Action does not amount to sub letting – Essentials to be established for applicability of this section – Possession – Elements constituting possession – Lease and license – Distinction: *Girdharilal Vs. Prafullachandra, I.L.R. (1969) M.P. 479*

- **Sections 12(2), 23-J, 23-A, 23-C(1) and (2), 23-D(3), 23-E(2) and 23-F**, Accommodation Control (Amendment) Act, M.P. (VII of 1985), Section 11-A and 9 and Constitution of India, Articles 14 and 50 – Amendment Acts of 1983 and 1985 – Are valid – Section 23-J – Special procedure for specified category of landlords to recover possession from tenants on grounds of personal bona fide requirement – Provision giving such benefit to landlords specified in section 23-J – Is neither unreasonable nor discriminatory – Not violative of Article 14 of the Constitution – Section 23 – Benefit under – Available to retired persons who were landlords while in service and tenancy subsisting during their service – Section 23-A and 23-C(1) – Rent Controlling Authority can make an order of eviction only if landlord makes out a prima facie case and it remains uncontroverted – Section 23-C(2) – Leave to contest – Grant of – Rent Controlling Authority has to act judicially – The words ‘if necessary’ – Import of – Tenant’s application for leave to contest supported by affidavit disclosing facts disintitling landlord to grant of relief – Leave to contest has to be given – Section 23- D(3) – Rebuttable presumption – Prima facie case for eviction made out in landlord’s application – Onus shifts on the tenant to disprove the bona fide of landlord – Provision is valid – Section 23-E(2) – Revisional powers of the High court – extent of – Provision not invalid – Section 23-F – Stay order – Period of six months to be counted from the date of stay order and not from the date of order of eviction – Fresh order of stay on expiry of earlier stay order can be passed by High court – Sections 23-A and section 12 and constitution of India, Articles 14 and 50 – Availability of two procedures for eviction of tenants, one under section 12 to be manned by Judicial Officer and the other under section 23-A to be manned by executive Officer – Vice of discrimination not attracted – Not violative of article 14 or 50 – Section 12(2) of Amendment Act of 1983 – Suit based on the grounds of bona fide requirement along with other grounds – Ground of bona fide requirement being a distinct cause of action can be permitted to be withdrawn – Such withdrawal governed by Civil Procedure Code – Interpretation of statute – Litigant has no vested right to a particular forum – Legislature can provide for pending proceedings by making an express provision to that effect: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 12(3)** – Court has no discretion in implementation of the section: *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 12(3), Proviso** – Comes into play in a subsequent suit – Commences operation on dismissal of first suit but not earlier: *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 12(3)** – Proviso in not surplusage – Proviso is life and soul of the scheme comprising section 12(1)(a), 13(1) and 12(3) – Furnishes guarantee to landlord for payment of rent : *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 12(3)** – Benefits means dismissal of suit merely for non-compliance with Section 13: *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 12(3)** – Deposit of rent – Appellant denying relationship of landlord and tenant belated deposit of entire rent – Appellant not entitled for benefit of provision of Section 12(3): *Alladin Vs. Mahila Sonabai, I.L.R. (1994) M.P. 164*

– **Section 12(3), Proviso** – Default spoken of in – Does not refer to default in the same suit itself – Refers to default before institution of suit: *Smt. Rampyari Vs. Shri Ramautar, I.L.R. (1969) M.P. 543 (F.B.)*

– **Section 12(3) and 13** – Consequence of non compliance with section 13 in relation to section 12(3) – Distinct and independent from consequences under section 13(6): *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Sections 12(3) and 13** – Tenant instead of depositing rent and filing written statement indulged in moving interlocutory application – Cannot be permitted to take benefit of section 12(3) of the Act merely on his depositing rent after passing of the decree – No interference called for in the impugned judgment & decree: *Rajendra Kumar Rathore Vs. Anandi Bai, I.L.R. (2000) M.P. 1269*

– **Section 12(4)** – Amended pleading does not support bona fide need – Suit could not be decreed on ground of bona fide need in view of Section 12(4) of the Act – Suit dismissed: *Khuman Singh Vs. Nathuram, I.L.R. (1992) M.P. 469*

– **Section 12(4)** – Does not take away right accrued under the repealed Act Provides a particular time before which it could be exercised – Section 12(1)(e) and 12(4) – All provision to be read together – Section 12 – Enacts a procedural right – party coming to court has to follow that procedure – Section 12(1) and Section 12(4) – Distinction between the two: *Chandbai Vs. Phoolchand, I.L.R. (1966) M.P. 990*

– **Section 12(e)** – Effect of – Once section 12(1) Is complied with, protection ceases – Tenant is a tenant at sufferance and is a rank trespasser – Need of one co owner proved – Decree for ejection of whole premises must follow – Transfer of

property Act – Section 109 – Applies to a partition amongst lessors – Does not affect integrity of the lease: *Shantaram Vs. Shyam Sundar, I.L.R. (1972) M.P. 909 (D.B.)*

– **Section 12(6)** – Decree for eviction against tenant also on other ground than that mentioned in section 12(1)(f) – Restrictions contained in section 12(6) – Not applicable: *Om Prakash Vs. Ramcharan, I.L.R. (1980) M.P. 1150 (D.B.)*

- **Section 12(6) and Civil Procedure Code (V of 1908), Order 21 rule 11(2)** – The word ‘pays’ in section 12(6) of the Act – Is not the same as ‘deposits’ – Payment of the compensation to Judgment – Debtor as required by section 12(6) of the Act is mandatory before obtaining delivery of possession – Mere deposit in C.C.D. – Not sufficient – Objection on this account can be raised at any stage of the proceedings and even suomotu in suitable cases – Order 21, rule 11(2) – Execution application – To state all material particulars – Omission to mention in it about payment of the compensation to the Judgment debtor – Whether a material defect – Omission to specify dismissal of first execution application in it – Is an illegality: *M/s Decom Marketing Ltd., Indore Vs. Kallubhai, I.L.R. (1986) M.P. 731*

– **Section 12(f)** – Need for starting business – Question of fund not relevant – Section 12(7) – Need for rebuilding – Question of funds necessary consideration – Transfer of property act- Section 106 – Notice by karta – Sufficient to terminate tenancy and is competent to file suit for ejection – Civil Procedure Code – Section 100 – Finding of fact – No interference possible on ground that one set of witnesses should have been believed instead of other set of witnesses : *Rajendra Prasad Vs. Jagdish Prasad, I.L.R. (1977) M.P. 1001*

– **Section 12(7)** – Need for rebuilding – Question of funds necessary consideration: *Rajendra Prasad Vs. Jagdish Prasad, I.L.R. (1977) M.P. 1001*

– **Section 12(1)(i)** – Three conditions necessary to be satisfied for ejection under this provision – Tenant Building accommodation suitable for residence – Ground for ejection becomes available to landlord – Vacant possession of accommodation on date of suit not necessary – Act gives protection to needy tenant: *Ahmad Khan Vs. Michel Nath, I.L.R. (1977) M.P. 910*

– **Section 12(4)** – Relates to suit under Section 12(1)(e) or (f): *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

– **Section 12(1)(a)** – Rent for entire month deemed to be in arrears when the tenant has not paid or deposited rent in case of transferee purchasing property in the middle of tenancy month: *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **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: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

– **Section 12(1)(a)** – Arrears of rent – Transferee not entitled to arrears of rent due before the transfer – It is a mere debt and cannot be recovered as arrears of rent by the assignee: *Iqbal Ahamd Vs. Mohd. Sami, I.L.R. (1992) M.P. 191*

– **Section 12(1)(a)** – Plaintiff not entitled to decree of eviction under section 12(1)(a) on the basis of demand notice served by his predecessor in title: *Iqbal Ahamd Vs. Mohd. Sami, I.L.R. (1992) M.P. 191*

– **Section 12(1)(a)** – Terms of the provision satisfied – Question of mala fides or bona fides does not arise – Landlord refusing to accept rent without lawful excuse – Tenant has still to comply with the provision – Tenant paying rent to previous landlord, when the same is due to new landlord – New Landlord has a right still to recover rent from tenant: *Abdul Hakim Vs. Smt. Anwar Jehan Begum, I.L.R. (1974) M.P. 484*

– **Section 12(1)(a)** – Eviction suit on ground of non payment of rent despite demand – Tenant’s plea that there is a agreement for sale of the accommodation – Misconceived – Relationship of land lord – tenant does not come to an end even if there is an agreement for sale of suit accommodation: *Rajendra Kumar Rathore Vs. Anandi Bai, I.L.R. (2000) M.P. 1269*

– **Section 12(1)(a)** – Question like default or condonation of delay finally disposed of in a revision – Not open to reargue or re-examine the same while hearing an appeal – Decree for eviction under section 12(1)(a) must follow: *J. Jacobs Vs. Dr. S.C. Barat, I.L.R. (1982) M.P. 963*

- **Section 12(1)(a)** and Civil Procedure Code (V of 1908), as amended by Act No. (CIV of 1976), Order 41, Rule 22 – Interpretation of – Accommodation Control Act, M.P. – Section 12(1)(a) and (e) – Landlord claiming eviction of tenant under – Courts below passing decree under Section 12(1)(a) only – Decree challenged in appeal by tenant – Landlord entitled to assail findings under section 12(1)(a) – Filing of cross objection not necessary – Section 12(1)(a) - Agreement existing for payment of rents

in advance every month – Landlord by notice demanding payment of rents in advance – Tenant failing to comply – Grounds under section 12(1)(a) made out within the meaning of this clause – Postal cover not containing endorsement of refusal – Endorsement that addressee not available – Effect of: *Tejkumar Jain Vs. Purshottam, I.L.R. (1982) M.P. 350*

- **Section 12(1)(a)** – Agreement Existing for payment rents in advance every month – Landlord by notice demanding payment of rents in advance – Tenant failing to comply – Grounds under section 12(1)(a) made out within the meaning of this clause: *Tejkumar Jain Vs. Purshottam, I.L.R. (1982) M.P. 350*

Section 12(1)(a) – Postal order not containing endorsement of refusal – Endorsement that addressee not available – Effect of: *Tejkumar Jain Vs. Purshottam, I.L.R. (1982) M.P. 350*

– **Section 12(1)(a) and (e)** – Landlord claiming eviction of tenant under – Courts below passing decree under section 12(1)(e) – only Decree challenged in by appeal tenant-landlord entitled to assail findings under section 12(1)(a) – Filing of cross Objection not necessary: *Tejkumar Jain Vs. Purshottam, I.L.R. (1982) M.P. 350*

- **Section 12(1)(a) and (e)** - Civil Procedure Code (V of 1908)–Section 115 and– Suit for eviction, recovery of rents, declaration of ownership and permanent injunction against tenants who are claiming to be owners–Court fees payable–Court fees Act, 1870 Sections 7(iv)(c), 7(iv)(d), 7(v)(e) and Article 17(iii)–Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect order set aside : *Shabbir Hussain Vs. Naade Ali; I.L.R. (2003) M. P. 80*

– **Section 12(1)(a) and (f)** – Bona fide need – Plaintiff partner in another firm would not by itself be sufficient to negative the need of the suit accommodation for his own business – Non availability of reasonably suitable alternative accommodation – Plaintiff entitled to decree for eviction Letters by landlord for reasonable rent – No bearing on the issue relating to bona fide need: *State Bank of Indore Vs. Satya Narayan Bajaj, I.L.R. (2001) M.P. 1903*

– **Sections 12(1)(a) and (f)** – Suit based on arrears of rent and bona fide need – Application for production of document – Plaintiff filed affidavit disclosing non – Possession of document but filing some documents at belated stage: *Jaikishan Das Vs. Rambabu Agrawal, I.L.R. (1992) M.P. 878*

– **Section 12(1)(a), (e), (f) and section 12(4)** – Notice demanding arrears of rent and terminating tenancy on other grounds – Such composite notice is valid – Tenant bound to comply with demand for arrears of rent – Tenant failing to pay arrears within 2 months – Decree under section 12(1)(a) liable to be passed against him – Accommodation Control Act, M.P., 1961, Section 12(1) and 12(4) and Civil Procedure Code, Order 6, rule 17 – Suit premises transferred during the pendency of suit – Purchaser becoming plaintiff – Amendment of plaint after lapse of a year seeking eviction of tenant on ground of bonafide requirement for business – Bar of section 12(4) – Operative – Decree for eviction under section 12(1)(f) – Cannot be passed: *Harisingh Vs. Madanlal, I.L.R. (1982) M.P. 446*

– **Section 12(1)(a), 12(3), 13(1) and 13(5)** – Suit for ejectment under section 12(1)(a) – Compliance of section 13 by the tenant in the trial court – Dismissal of the suit under sections 12(3) and 13(5) – Tenant not required to comply with section 13(1) in the appeal court: *S.S. Harishchandra Jain Vs. Dr. Captain Indersingh Bedi, I.L.R. (1978) M.P. 811 (F.B.)*

– **Sections 12(1) (a) & 13** – Whether the tenant on deposit of entire arrears of rent in executing Court – Secured freedom from eviction in execution of final decree? No: *Smt. Nathibai Vs. Maheshwari Samaj Ramola Trust, I.L.R. (1996) M.P. 206 (D.B.)*

– **Sections 12(1) (a) & 13(1) – Default under Section 12 (1)(a)** – Tenant carrying out requirement of section 13 (1) – Tenant not to be ejected: *Parashram Vs. Damdilal, I.L.R. (1971) M.P. 117*

– **Sections 12(1) (a), 13(1) & 13(2)**–Civil Procedure Code (V of 1908)–Section 100–Second Appeal–Suit for eviction–Arrears of rent–Quit cum demand notice served–Not replied by tenant–Failure of appellant/tenant to prove payment–Rate of rent payable not in dispute–Non compliance of Section 13(1)–Decree under Section 12(1)(a)–Not assailable: *Vishwanath Vs. Krishnabai ; I.L.R. (2003) M.P. 641*

– **Sections 12(1)(a), 13(5)** – No eviction could be obtained in execution proceedings which did not emanate from the suit instituted under 12(1)(a) of the act 1961- Protection of the tenant against his eviction extends to the stage of execution – Executing Court exceeded in its jurisdiction in ordering eviction on the basis of a decree not passed under this Act: *Ramjidas Vs. Laxmi Kumar, I.L.R. (1991) M.P. 678*

– **Sections 12(1)(a), 12(1)(c)** And Evidence Act, Indian, 1872, Sections 109, 115, 116 – Plaintiff landlord’s claim on the basis of derivative title – Relationship not accepted by tenant from the beginning – Estoppel not attracted because tenant not denying title of landlord who originally let him in – Tenant entitled to deny landlord

tenant relationship with the plaintiff – Suit for eviction dismissed: *Sardar Harbans Singh Vs. Shailesh Chand Gupta, I.L.R. (2001) M.P. 1887*

– **Sections 12(1)(a) and 12(1)(c)** – Tenant permitted to deposit rent and deposits the same by appellate court – No order for eviction can be passed – Temporary use of a small portion of the premises without any objection from the land lord is not sufficient to attract application of section 12(1)(c): *Mahavir Prasad Tiwari Vs. Ramendra Awasthy, I.L.R. (1991) M.P. 30*

– **Sections 12(1)(a) and 12(1)(c)** – Suit for eviction on ground of arrears of rent and disclaimer of title – Transfer of suit house in favour of present plaintiff/landlord during pendency of earlier suit – Plaintiff served notice on defendant/tenant but filed the suit before expiry of sixty days – Cannot take advantage of demand notice served by his predecessor: *Iqbal Ahmad Vs. Mohd. Sami, I.L.R. (1992) M.P. 191*

– **Sections 12(1)(a) and 12(1)(e)** – Tenant in his statement on oath admitted his status as tenant – Desired only to see the sale deed for acceptance of ownership/landlord and payment of rent – Title is relevant only as incidental point for proof or disposed of tenancy: *Mohammed Ismail Vs. Mohammad Ibrahim, I.L.R. (1999) MP. 780*

– **Sections 12(1)(a), 12(1)(e)**, Accommodation Control (Amendment) Ordinance, M.P. (I of 1985) and Civil Procedure Code (V of 1908), Section 100- Second Appeal – Suit for eviction dismissed by both the courts below for cessation of jurisdiction of Civil Court on account of deletion of Section 12(1)(e) from the Act – Effect of Amending Act, 1985 – Section 12(1)(e) restored by Amending Act No. 1 of 1985 during pendency of First Appeal – Amendment procedural in nature – Shall have retrospective effect to pending suit – Suit for eviction on the ground u/s 12(1)(e) of the Act – Bona fide need – Lower Appellate Court finding plaintiff's bona fide need – Decree of eviction must follow such finding: *Nemichand Jain Vs. Shanti Bhai Rathore, I.L.R. (1992) M.P. 105*

– **Sections 12(1)(a), 12(1)(e)** – Suit for eviction–Eviction decree passed–For supporting the decree on other ground it is not necessary for plaintiff to file cross-objection - Appellate Court has power to substitute the ground of eviction: *Kamal Kumar Vs. Smt. Imratibai, I.L.R (2003) M. P. 215*

– **Sections 12(1)(a), 12(1)(e), 13(2) and 13(6)** – Suit for eviction on ground of arrears of rent and bona fide need – Failure of tenant to deposit rent – Consequential striking of defence – Does not debar the defendant tenant to contest the issue as to arrears of rent – Else it would amount to condemning defendant without opportunity: *Kewal Kumar Vs. Satish Chandra, I.L.R. (1992) M.P. 547 (D.B.)*

– **Sections 12(1)(a)(c)(e)(i) and 12(4)** – Arrears of rent paid by appellant – Plaintiff not entitled to decree under Section 12(1)(a) – Tenants challenging derivative title of purchaser/plaintiff – Not a ground under Section 12(1)(c): *Khuman Singh Vs. Nathuram, I.L.R. (1992) M.P. 469*

– **Section 12(1)(b) – Sub-letting** - Defence that a partnership firm is tenant and the plaintiff received payment from the firm – Not established by defendant by filing account books or other documents – Defendant has parted with the possession can safely be presume – Plaintiff successfully proved sub-letting by defendant – Entitled for decree of eviction: *Kriti Narayan Vs. Mohanlal Rathi, I.L.R. (1992) M.P. 850*

– **Section 12(1)(b)** – Occasional use for limited purpose – Does not amount to concurrent user – When object is to help: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Section 12(1)(b)** – Parting with possession in manner other than sub letting or assignment – Furnishes ground for eviction: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Section 12(1)(b)** – Parting with possession in the provision may be regarding part of accommodation: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Section 12(1)(b)** – “Possession” – Concept involves two important factors: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Section 12(1)(b)** and Civil Procedure Code, 1908–Section 100–Second Appeal–Suit for eviction –Sub letting–Tenant entering into partnership and carrying on business in part of suit shop with partners–Does not amount to sub–tenancy–Appellant/Plaintiff realising rent from alleged sub-tenant and kept belongings in his house–Case of sub-tenancy not substantiated–Lower Appellate Court rightly dismiss the suit: *Basant Kumar Vs. Mukund Singh I.L.R. (2004) M. P. 959*

– **Section 12(1)(b), 14 and Section 43(3)** – Three acts viz sub letting, Assignment and otherwise parting with possession are included being unlawful when without landlords consent: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

– **Sections 12(1)(B) AND 12(1)(e)** – Suit for eviction dismissed – Allowed by appellate court taking additional evidence an appeal by purchaser of the property though not party to the suit in trial court – Legality: *Abhay Kumar Jain Vs. Santosh Kumar, I.L.R. (2001) M.P. 216*

– **Section 12(1)(c)** – Temporary use of a small portion of the premises without any objection from the land lord is not sufficient to attract application of Section 12(1)(c): *Mahavir Prasad Tiwari Vs. Ramendra Awasthy, I.L.R. (1991) M.P. 30*

– **Section 12(1)(c)** - Disclaimer of derivative title tenant does not fall within the mischief of section 12(1)(c) of the Act – Plaintiff also not entitled to decree of eviction under this provision: *Iqbal Ahamd Vs. Mohd. Sami, I.L.R. (1992) M.P. 191*

– **Section 12(1)(c)** – Ground of Bona fide need incorporated by way of amendment – On the date of institution of suit plaintiff did not plead bona fide need – Suit filed by purchaser land lord within one year and subsequently amended the plaint stating as one year has elapsed court can try the issue of bona fide need: *Khuman Singh Vs. Nathuram, I.L.R. (1992) M.P. 469*

– **Section 12(1)(c)** – Nuisance – Tenant causing damage to pump house below the staircase with a view to prevent flow of water to landlord’s upstairs portion – Disconnection of electricity due to non payment of electricity dues by tenant – Held Such act of tenant amounts to nuisance and annoyance to landlord – Appeal dismissed: *Smt. Prem Kaur Ahuja Vs. Sardar Karam Singh, I.L.R. (1994) M.P. 387*

– **Section 12(1)(c)** – Denial of landlord’s title – Sufficient to pass a decree against tenant: *Badrilal Dubey Vs. Chandra Prakash, I.L.R. (1998) M.P. 869*

– **Section 12(1)(c)** – Expression “act inconsistent with the purpose” is independent and separate from expression ‘act which has likelihood of affecting adversely and substantially the interest of the landlord therein’ – Provision does not speak of whole or part of accommodation: *Badrilal Dubey Vs. Chandra Prakash, I.L.R. (1998) M.P. 869*

– **Section 12(1)(c)** – Inconsistent act proved, not necessary to prove further that act is likely to affect adversely and substantially the interest of landlord: *Badrilal Dubey Vs. Chandra Prakash, I.L.R. (1998) M.P. 869*

– **Section 12(1)(c)** – Eviction – Change of user accommodation rented for residential purpose but a part of it being used for commercial purpose – Held – The use of two rooms for residence does not destroy ground for eviction – There is no material on record particularly in the phase of mere denial to permit inference of presumption of acceptance of change/conversion to non-residential purpose and thus there is a change in the use – Appeal dismissed: *Badamilal Dubey Vs. Chandraprakash Khairatilal Khanna, I.L.R. (1997) M.P. 181*

– **Section 12(1)(c)** – Denial of title – Suit filed for eviction – Tenant denying the title of the landlord and claiming ownership of the suit premises – Trial Court

dismissed the suit for eviction but granted decree directing the respondent to pay rent to appellant – Appeal and Cross Objection filed by landlord/appellant and tenant/respondent dismissed by first Appellate Court – Plaintiff Challenging the decree but decree for payment of rent not challenged by tenant – Mere disclaimer of title sufficient for eviction whether or not it has substantially or adversely effected the interest of landlord adversely: *Ibrahim Vs. Abdul Jabbar, I.L.R. (1993) M.P. 211*

– **Section 12(1)(c)** – Tenability of eviction suit by vendor against tenant after transfer of demised premises – Sale of house – No express stipulation in sale deed whereby vendor reserving the right to recover possession from tenant and hand over it to purchaser – Suit for eviction by the vendor against tenant is not maintainable – Vendor's appeal dismissed: *Smt. Manju Tiwari Vs. Harprasad Rasgai, I.L.R. (1998) M.P. 310*

– **Sections 12(1)(c), 12(1)(e) and 12(1)(m)** – Residential accommodation – Converted by tenant to run school – It is an act inconsistent with the purpose for which accommodation was let – Tenant incurred liability u/s 12(1)(C) of the Act : *Rajendra Donald Vs. Smt. Violet Singh, I.L.R. (1992) M.P. 564*

- **Sections 12(1) (c), 12(1) (f), and 12 (1) (h), Civil Procedure Code (V of 1908)**– Order 41 Rule 1 and Section 96, Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act 1977, Section 7(3)–First appeal–Suit for eviction and mesne profits–Bonafide requirement of landlord to open clinic by her son–Resisted by tenant–Requirement of law is that land lord must be owner of reasonably suitable alternative accommodation–Plot owned by plaintiff's husband–Cannot be an alternative suitable accommodation as envisaged under Section 12 (1) (f) of the Act–It is choice of plaintiff and tenant is no body to direct plaintiff to start business as a particular place–Merely because he joined service in an hospital would not overshadow genuiness–Mesne profit–Tenant continued in occupation even after expiry of extended period lease–Oil Company can avail only one right of renewal–Right of renewal availed–Possession became unauthorized from the date on which renewed period expired–Trial Court rightly granted decree of eviction and mesne profit : *M/s. Hindustan Petroleum Corporation Ltd. Vs. Smt. Kamal Vasini Agrawal; I.L.R. (2005) M. P. 862*

– **Section 12(1)(c), (K) and (m)** – Decree of eviction under section 12(1)(C) and (f) – Bona fide requirement of old lady for starting her own business – Age will not come in the way to start business – Bona fide need has to be judged objectively – Tenant and his staff creating obstruction in using room in possession of landlord at suit premises – Such act constitutes nuisance with the meaning of Section 12(1)(c) : *Dr. Sudhir Tiwari Vs. Smt. Bhagwanti Devi Issrani, I.L.R. (2002) M.P. 289 (D.B.)*

– **Section 12(1)(d)** – Accommodation leased for residential purpose – Tenant using it as godown – Purpose changed – Tenant liable to be evicted: *Pushkar Sharma Vs. Smt. Sudha Mishra, I.L.R. (1995) M.P. 609*

– **Section 12(1)(e)** – Distinction between residential and non-residential accommodation: *Laxman Prasad Vs. Shrideo Janki Raman, I.L.R. (1979) M.P. 368 (D.B.)*

– **Section 12(1)(e)** – Premises needed for consecrating of deity – This is residential purpose: *Laxman Prasad Vs. Shrideo Janki Raman, I.L.R. (1979) M.P. 368 (D.B.)*

– **Section 12(1)(e)** – Bona fide need – Court not supposed to objectively determine the need: *Subhash Chand Vs. Gyanchand, I.L.R. (2000) M.P. 741*

– **Section 12(1)(e)** – Bona fide Need – Has to be genuine need of land lord and not a feigned need – Land lord acquiring alternative suitable accommodation during pendency of suit – Not entitled to decree for eviction: *Uttamchand Vs. Purushottam Das Ji Patel, I.L.R. (2000) M.P. 1450*

– **Section 12(1)(e)** – Disclaimer by Tenant – A ground for eviction covered by this provision: *Ranjilal Vs. Vijay Kumar, I.L.R. (1973) M.P. 306 (D.B.)*

– **Section 12(1)(e)** – Suit for eviction on ground of bona fide need – Plaintiff/landlord residing in a small house seeks eviction of tenant for medical profession of his son and that other sons are to be married – Not a case of future need: *Subhash Chand Vs. Gyanchand, I.L.R. (2000) M.P. 741*

– **Section 12(1)(e)** – Bona-fide need for residential purpose – Accommodation let out for business of defendant – Used as guest house – Cannot be said to be residential use – Eviction cannot be sought residential need: *Madhya Pradesh Handloom Corporation Federation Vs. Krishnakant, I.L.R. (2004) M.P. 850*

– **Section 12(1)(e)** – Bona fide need – Lower appellate Court finding plaintiff's bona fide need – Decree of eviction must follow such finding: *Nemichand Jain Vs. Shanti Bhai Rathore, (1992) M.P. 105*

– **Section 12(1)(e)** – Plaintiff can not be non suited merely because no suit has been filed for eviction of tenant's in his brother's share of the house – Judgment and decree of Courts below set aside – Suit decreed: *Ramrao Vs. Dr. Prem Kumar Shinha, I.L.R. (1992) M.P. 920*

– **Section 12(1)(e)** – Alternative accommodation – Though available but not suitable – Cannot disentitle plaintiff for getting a decree of eviction – Size of the family age of members and their status equally important to be considered – Decree of Eviction rightly granted: *Subhash Chand Vs. Gyanchand, I.L.R. (2000) M.P. 741*

– **Section 12(1)(e)** – Bona fide need of the landlady – Test – Availability or non-availability of suitable alternative accommodation – Plaintiff cannot be compelled to occupy a house which she does not feel to be suitable – Grounds floor in occupation of landlady being used for running a school - Cannot be said to be alternative accommodation: *Rajendra Donald Vs. Smt. Violet Singh, I.L.R. (1992) M.P. 564*

– **Section 12(1)(e)** – Bona fide need – Alternate accommodation available on upper floor of the suit house – Plaintiff's explanation for not using the same for his requirement and subsequently letting it out – Case of bona fide need not made out – plaintiff not entitled to the decree of eviction – Suit dismissed: *Sarju Prasad Patel Vs. Nanak Chand, I.L.R. (2002) M.P. 92*

– **Section 12(1)(e)** – Bona fide requirement – Landlord sought eviction on the ground of bona fide requirement as his son has been transferred to Jabalpur – Courts below granted decree on the ground of bona fide requirement as premises required for education of grand children – Held – Concurrent findings of fact cannot be interfered in second appeal unless the court has misdirected itself: *Smt. Prem Kaur Ahuja Vs. Sardar Karam Singh, I.L.R. (1994) M.P. 387*

– **Section 12(1)(e)** – Bona fide requirement – What is – Mere assertion not decisive – Require means there should be element of need – Family of landlords growing in size – Three brothers, their wives and eight children residing in five rooms on second floor and 4 rooms on third floor – Landlord not expected to squeeze and to live uncomfortably – Decree of eviction passed by trial Court affirmed – Appeal dismissed: *Kailashchandra Tejpal Vs. Vinod Guljarilal, I.L.R. (1993) M.P. 546*

– **Sections 12(1)(e) and 12(1)(i) and Civil Procedure Code (V of 1908)** – Section 96 – Suit for evidence decreed – First Appeal – Tenant's right as a society – Co-operative Societies Act, M. P., 1960 – Sections 64 and 80 – Bar of Civil Court's Jurisdiction – Only with regard to disputes touching Constitution, Management, Business or Liquidation of society – Dispute between landlord and society which is a tenant – Bar not attracted – Bonafide need for residence/non-residential purpose – While in Government service one cannot claim decree of eviction for non-residential purpose bonafide – Bonafide need for residential purpose – Accommodation let out for business of defendant – Used as guest house – Cannot be said to be residential use – Eviction cannot be sought for residential need – Tenant acquiring another accommodation for his business – Not a ground enumerated in Section demised premises but the defendant did not accede to the same. On 01.07.1991, a notice was sent to the 12(1)(i) of the Act – Not applicable

to accommodation let out for composite purpose—Decree of eviction set aside: *Madhya Pradesh Handloom Corporation Federation Vs. Krishna Kant; I.L.R. (2004) M.P. 850*

- **Section 12(1)(e) or (f)** – Landlord proving need for part of the leased premises – Landlord entitled to evict tenant from whole of the premises: *Jeewanlal Vs. Anant, I.L.R. (1972) M.P. 579*

– **Section 12(1)(e) and (f)** – Expression “if he is the owner thereof” – Meaning and significance of – Whether synonymous with “absolute owner” – Plaintiff receiving or entitled to receive rent from the defendant on his own account – Remains the ‘owner’ – Entitled to seek eviction of tenant under the aforesaid clauses: *Asif Ali Vs. Rahandomal, I.L.R. (1985) M.P. 427*

– **Section 12(1)(e) and (f)** – Plaintiff receiving or entitled to receive rent from the defendant on his own account – Remains the ‘owner’ – Entitled to seek eviction of tenant under the aforesaid clauses: *Asif Ali Vs. Rahandomal, I.L.R. (1985) M.P. 427*

– **Section 12(1)(e) and (f) and section 12(4)** – Acquisition by transfer of property – Meaning of – partitions of joint family property – Alters mode of enjoyment – Does not result in acquisition of property – Section 12(1)(f) – Not applicable to property got in partition of Hindu joint family property: *Tribhuwandas Vs. Premchand, I.L.R. (1965) M.P. 1003*

- **Section 12(1)(e) and (f)** – Lease for composite purpose – Landlord establishing bona fide requirement for a particular purpose in respect of a part of tenancy accommodation – Court cannot split up the tenancy – Landlord entitled to a decree for eviction of tenant from the whole tenancy accommodation: *Jagjitkumar Vs. Jagdish Chandra, I.L.R. (1982) M.P. 1057 (D.B.)*

- **Sections 12(1)(e), 12(1)(a)** and Civil Procedure Code (V of 1908)– Order 41 Rules 33, 22, Sections 100, 96–Suit for eviction–Eviction decree passed–For supporting the decree on other ground it is not necessary for plaintiff to file cross-objection–Appellate Court has power to substitute the ground of eviction–Eviction decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court–No illegality–Question answered against appellant: *Kamal Kumar Vs. Smt. Imartibai; I.L.R. (2003) M. P. 215*

– **Sections 12(1)(e), 12(1)(f)** – Accommodation let out for joint purpose Portions for each purpose can be separated – Decree for residential portion granted: *Hari Prasad Vs. Motilal, I.L.R. (1989) M.P. 285*

– **Sections 12(1)(e), 12(1)(f)** – Bona fide need – Need for establishing a Dharamshala, need for residential accommodation – Premises let out for non residential purpose cannot be got vacated for establishing Dharamshala, a residential purpose – Accommodation let out for joint purpose – Portions for each purpose can be separated – Decree for residential portion granted: *Hari Prasad Vs. Motilal, I.L.R. (1989) M.P. 285*

– **Sections 12(1)(e), 12(4)** – Suit for eviction – On ground of bona fide requirement, suit filed to evict tenant within one year of acquisition of title – Title acquired by virtue of will in his favour – Bar under Section 12 (4) would still be applicable: *Pushkar Sharma Vs. Smt. Sudha Mishra, I.L.R. (1995) M.P. 607*

– **Sections 12(1)(e), 23** –Defendant tenant admitted that he paid rent to plaintiff– Landlord-tenant relationship established–bona-fide requirement found proved by the trial Court–Suit for eviction decreed : *Nawab Saheb Vs. Firoz Ahmed; I.L.R. (2003) M.P. 222*

– **Section 12(1)(f)** – Word “business” in – if includes practice or profession – Word not to receive narrow construction – Is wider than term “Trade” – Section 2(i) – Statutory tenant cannot urge new facts which come into existence subsequently: *Taramal Alias Tarachand Sindhi Vs. Prof. Laxman Sewak Surey, I.L.R. (1973) M.P. 148*

– **Section 12(1)(f)** – Eviction – Bona fide requirement – Plaintiff/Landlord carrying on business as an active partner of partnership firm – Plaintiff need is ‘for the business’ – Eviction sustained: *Govind Jangde Vs. Arun Kumar Singh, I.L.R. (1998) M.P. 107*

- **Sections 12(1) (f)**–Bonafide–It is choice of plaintiff and tenant is no body to direct plaintiff to start business as a particular place–Merely because he joined service in an hospital would not overshadow genuiness–Mesne profit–Tenant continued in occupation even after expiry of extended period lease: *M/s. Hindustan Petroleum Corporation Ltd. Vs. Smt. Kamal Vasini Agrawal I.L.R. (2005) M.P. 862*

- **Sections 12(1) (f)**–Requirement of law is that landlord must be owner of reasonably suitable alternative accommodation–Plot owned by plaintiff's husband– Cannot be an alternative suitable accommodation as envisaged under Section 12 (1)(f): *M/S. Hindustan Petroleum Corporation Ltd. Vs. Smt. Kamal Vasini Agrawal, I.L.R. (2005) M.P. 862*

- **Section 12(1)(f)** and Civil Procedure Code (V of 1908), Order 22 Rule 4, Order 6 Rule 17–Legal representatives brought on record–They also set up bona-fide need for carrying on business for their own livelihood–Suit has to be decided on the basis

of amended pleadings—Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff—Judgment and decree passed by High Court set aside: *Shakuntala Bai Vs. Nrayan Das, I.L.R. (2004) M.P. (SC) 714 (D.B.)*

– **Section 12(1)(f)** – Need of landlord – Must exist till the end : *Anant Vs. Smt. Gontibai, I.L.R. (1983) M.P. 252 (D.B.)*

– **Section 12(1)(f)** – Bona fide need of accommodation for major sons established – Impugned judgment & decree of eviction passed by the Courts below confirmed : *R.P. Tiwari Vs. Smt. Sulochna Choudhary, I.L.R. (2001) M.P. 839*

- **Section 12(1)(f)** – Landlord after obtaining possession can always rebuild or reconstruct the accommodation suiting to his needs: *Radheshyam Soni Vs. Kamta Prasad Shukla, I.L.R. (2001) M.P. 1374*

– **Section 12(1)(f)** – Shop required for running hotel for landlord’s son – Previous suit against order tenant of adjoining shop for eviction failed – Failure to justify how he can manage hotel in single room through his evidence – Plaintiffs need not bona fide: *Sardar Jagat Singh Vs. Gehimal, I.L.R. (2001) M.P. 66*

– **Section 12(1)(f)** – The word “business” has wider connotation than “commercial activity” – Includes activity directed towards earning livelihood and thus includes vocation and profession : *Tarachand Gupta Vs. Mst. Annapurna Bai, I.L.R. (1968) M.P. 816*

– **Section 12(1)(f)** – The word “business” in - Not be interpreted in the restricted sense of covering commercial activity only – The word “business” has wider connotation than “commercial activity” – Includes activity directed toward earning livelihood and thus includes vocation and profession – Interpretation of Statute – Expression in one statute – Not to be interpreted in another statute in the same sense unless in pari materia – Words to be interpreted in the context in which they are used – Words susceptible of wider connotation – To be interpreted that way unless something in the statute to give it limited connotation : *Tarachand Gupta Vs. Mst. Annapurna Bai, I.L.R. (1968) M.P. 816*

– **Section 12(1)(f)** and Civil Procedure Code (V of 1908), section 100 – Contractual tenancy for life time – No bar to suit for eviction – Notwithstanding the contract the suit for eviction under the Act of 1961 is maintainable – Eviction sought for on ground of need of two plaintiff’s one of whom did not appear in witness box – On ground to brush aside evidence of the other plaintiff – Findings based on such evidence cannot be suit to be perverse – Genuine need and availability of alternative accommodation – Essentially issues of fact – Concurrent findings of facts thereon by

two courts below – Not open to interference is second appeal : *Amar Singh Vs. Ram Kunwar Bai, I.L.R. (1999) M.P. 1168*

- **Section 12(1)(f)** – Bona fide Requirement – Discloser of particulars in quit notice not required – Experience in business sought to be started also not required – Need of plaintiff not whimsical or fanciful – No evidence in rebuttal – Bona fide requirement proved : *Ibrahim Vs. Abdul Jabbar, I.L.R. (1993) M.P. 211*

– **Section 12(1)(f)** – Bona fide requirement for non residential purposes – Suit filed for bona fide requirement of major son of co landlord – Section 12(1)(f) does provide for requirement of major son of landlord and not plaintiff only – Requirement for major son of co landlord who may not be one of the plaintiff's is covered – Appeal dismissed : *Sohanlal Vs. Dindayal Ghamandiram Chaudhari, I.L.R. (1993) M.P. 198*

– **Section 12(1)(f)** – Certain business could not be accommodated in part of suit accommodation – Does not mean that need is no: *Daulat Vs. M/s. Indian Mill Stores, Ganjpara, Raipur I.L.R. (1978) M.P. 373*

- **Sections 12 (1) (f), 2(b)** –Eviction Suit–Second Appeal–Ownership–Landlord may even be devoid of ownership: *Ram Pukar Singh Vs. Bhimsen; I.L.R. (2005) M.P. 1176*

- **Sections 12 (1) (f), 2(b) and Evidence Act Indian, 1872, Section 116 and Civil Procedure Code (V of 1908)**– Order 8 Rule 5, Section 100–Eviction Suit–Second Appeal–Ownership–Landlord may even be devoid of ownership–Ownership not specifically denied – To say that a defendant has no knowledge of a fact pleaded by plaintiff is not tantamount to denial of existence of that fact–Having taken the plea of agreement to sell the suit house to him by plaintiff, defendant is estopped from denying plaintiff's ownership : *Ram Pukar Singh Vs. Bhimsen; I.L.R. (2005) M.P. 1176*

– **Section 12(1)(f) and 12(1)(h)** – Suit house let out for non residential purpose – Bona fide requirement for major sons – Requirement of ground floor for non residential purpose bona fide – Evidence adduced by both parties on the question of alternative accommodation – It is not of much significance that plea of alternative accommodation was not raised in plaint : *Radheshyam Soni Vs. Kamta Prasad Shukla, I.L.R. (2001) M.P. 1374*

– **Section 12(1)(f) and 12(4) and Civil Procedure Code (V of 1908), Order 6 rule 17** – Suit premises transferred during the pendency of suit – Purchaser becoming plaintiff – Amendment of plaint after lapse of a year seeking eviction of tenant on ground of bona fide requirement for business – Bar of Section 12(4) operative –

Decree for eviction under section 12(1)(f) cannot be passed : *Harisingh Vs. Madanlal*, I.L.R. (1982) M.P. 446

– **Section 12(h) and 18(1) – Section 18(1)** – Casts duty on court to record election of tenant and to incorporate the same in order – Duty is cast also to specify the date for vacating possession by tenant – Section 18(2) and (3) – Gives concession to tenant to re enter on fulfillment of condition – Condition not fulfilled – Right to re entry is lost – Section 18(3) – To be construed strictly – Section 18(1) – Word “Court” in – Includes even appellate court – Tenant not abiding by conditions in order – Tenant filing appeal – Act does not provide for fixing fresh date by appellate court : *Ghanshyam Vs. Nathmal*, I.L.R. (1978) m.p. 384

– **Sections 12(1)(g) and 18** – Plaintiff claiming eviction also on bona fide need to start business and that tenant is in arrears of rent as also on ground under section 12(1)(g) – Question of re entry does not arise – Section 18 not attracted: *Mohd. Sharif Vs. Keshar Singh*, I.L.R. (2000) M.P. 68

– **Sections 12(1)(g), 12(1)(h) and 12(7)** – Condition specified in sub-Section (7) of Section 12 are attracted in case of a decree under Section 12(1)(h) and not under Section 12(1)(g) – Both Courts below recorded categorical finding that the house is unsafe for human habitation – Courts ought to have granted decree of eviction subject to condition that tenant if willing be given to reoccupy the house after repair – Error of law committed by courts below – Interference in second appeal justifiably warranted: *Subhash Kumar Vs. Kanhaiyalal*, I.L.R. (1992) M.P. 914

– **Section 12(1)(h)** – Suit for eviction – First appellate court reversing judgment of trial court decreed the suit on ground that landlord has prepared the plans, estimates for reconstruction of the house – Not proper : *Varalman Vs. Manohar Chand Chopda*, I.L.R. (2000) M.P. 602

– **Section 12(1)(h)** – Compromise decree – Landlord avoiding to hand over possession after reconstruction – Tenant’s application under Order 23, rule 11 for re entry is maintainable – Petition under Article 227 of the Constitution of India dismissed : *K.K. Rathi Vs. Dr. Dinkar Rajimwale*, I.L.R. (1998) M.P. 375

– **Section 12(1)(h) and 12(7)** – Eviction on ground of reconstruction – Relevant factors and rider – Condition of the house is a relevant factor – Mere preparation of plans and estimates not sufficient – Plaintiff has to prove that the house is in dilapidated condition : *Varalman Vs. Manohar Chand Chopda*, I.L.R. (2000) M.P. 602

- **Sections 12(1) (h) and 18** – Suit for eviction on ground of bonafide need for rebuilding the premises–Suit decreed with right of tenant to reoccupation after

rebuilding–Failure to offer premises to tenants after rebuilding– Award of compensation at the rate of Rs. 3000/- p.m. to the tenants–In absence of any supporting evidence–Cannot be sustained–Trial Court directed to calculate compensation at the rate at which the tenants from the date of re-occupation–Appeal disposed of : *Syed Jameel Abbas Vs. Mohd. Yamin @ Kallu Khan ; I.L.R. (2004) M.P. (SC) 531 (D.B.)*

– **Section 12(1) (i)**–Bona–fide need for residence/non-residential purpose–While in Government service one cannot claim decree of eviction for non-residential purpose bonafide : *Madhya Pradesh Handloom Corporation Federation Vs. Krishnakant, I.L.R. (2004) M.P. 850*

–**Section 12(1) (i)** – Tenant acquiring another accommodation for his business–Not a ground enumerated in Section 12(1) (i)of the Act–Not applicable to accommodation let out for composit purpose–Decree of eviction set aside : *Madhya Pradesh Handloom Corporation Federation Vs. Krishnakant, I.L.R. (2004) M.P. 850*

– **Section 12(1)(i)** – Origianl tenant acquired accommodation – One of heirs of deceased tenant occupying that accommodation – Rest heirs are residing in tenanted accommodation – Landlord need not prove that all heirs have acquired accommodation - Landlord need entitled for eviction decree U/s 12 (1)(i) : *Pushkar Sharma Vs. Smt. Sudha Mishra, I.L.R. (1995) M.P. 609*

– **Section 12(1)(i)** – Own accommodation Sold out by tenant during pendency of suit – Cannot be accepted as sufficient to defeat the suit : *Ram Gulam Vs. Murlidhar, I.L.R. (1989) M.P. 60*

– **Section 12(1)(i) and Pleading** – Pleading not be scrutinized with such meticulous care as to result in genuine case being defeated – Own accommodation sold out by tenant during pendency of suit – Cannot be accepted as sufficient to defeat the suit : *Ram Gulam Vs. Murlidhar, I.L.R. (1989) M.P. 60*

– **Section 12(1)(i)** – Premises let out for residential and non residential purposes – Eviction suit on the ground that the tenant has acquired suitable accommodation of his own for residential purposes – Does not satisfy the requirement and provision would not come to rescue of landlord – Appeal allowed – Remand order set aside : *Narayan Prasad Patwa Vs. Sahodra Bai, I.L.R. (1998) M.P. 231*

– **Section 12(1)(m)** – Material alteration of accommodation to detriment of landlord’s interest – Tenant constructing a wall in the verandah without obtaining permission from landlord – Wall causing obstruction to landlord – Tenant has materially altered the premises to detriment of landlord’s interest – Decree of eviction

under section 12(1)(m) does not call for any interference : *Smt. Prem Kaur Ahuja Vs. Sardar Karam Singh, I.L.R. (1994) M.P. 387*

– **Section 12(1)(m)** – Trial Court not recording specific finding about requirement of that provision – No ground under that provision is made out : *Anant Vs. Smt. Gomitibai, I.L.R. (1983) M.P. 252 (D.B.)*

– **Section 12(1)(n)** – Requirement of this Section is to establish that plaintiff would contract house on the open plot – Eviction of tenants sought from an open plot for constructing building for business of major sons – Plaintiff proved her intention by showing sufficiency of funds and by filing map sanctioned by Municipal Council – Suit decreed : *Leelawante Vs. Shrichand, I.L.R. (1992) M.P. 653*

– **Section 12(1)(o)** – Requirements are mandatory : *Motilal Bhatia Vs. Yusuf Ali, (1975) M.P. 121*

– **Section 12(1)(o) and Court fees Act (VII of 1870), Section 7(XI)(CC)** – No separate valuation for purposes of jurisdiction need be made nor separate Court fees required to be paid for purposes of jurisdiction with regard to ejection from encroached portion as encroachment on appurtenant portion of the premises gave cause of action in favour of the landlord – Reference answered accordingly : *Madak Chand Jain Vs. Smt. Fatma Bai, I.L.R. (2001) M.P. 409 (D.B.)*

– **Section 13** – Does not constitute a new source or foundation of right to claim time barred rent : *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

– **Section 13** – Prescription under – Is a deposit by the 15th of the month – If court closed on 15th – Deposit can be made on next day : *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 13** – Court omitting to fix provisional rent during entire trial – Tenant is not at fault in not complying with section 13 : *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997 (F.B.)*

– **Section 13** – Default spoken in - Means default in payment of rent after the commencement of relationship of landlord and tenant between parties : *Shri N.K. Kame Vs. Biharilal, I.L.R. (1973) M.P. 692 (D.B.)*

– **Section 13** – Does not contemplate deposit of rent assigned to transferee to landlord: *Shri N.K. Kame Vs. Biharilal, I.L.R. (1973) M.P. 692 (D.B.)*

– **Section 13** – Pre supposes subsistence of relationship of landlord and tenant: *Shri N.K. Kame Vs. Biharilal, I.L.R. (1973) M.P. 692 (D.B.)*

– **Section 13** – Vires of: *Shambhoo Narain Trivedi Vs. Kishanlal, I.L.R. (1973) M.P. 532 (D.B.)*

– **Section 13** – Scope of – Section 13(6) – Confers discretion on Court to strike out defence - Striking out defence – Extreme penalty – Must be sparingly used: *Harnamsingh Vs. Babulal, I.L.R. (1967) M.P. 286*

– **Section 13 (6)** – Conditions necessary for operation of the Section- Section 13 – Applicable only if defendant admits to be tenant or proved to be so: *Chhotelal Vs. Dadu, I.L.R. (1966) M.P. 818*

– **Section 13 and General Clauses Act, M.P., 1957 (II of 1958), Section 7** – Last day for depositing rent a holiday – Deposit made on opening day – Deposit is in time – Accommodation Control act, M.P., 1961 – Section 12 – Protection under – Available to statutory tenants : *Mst. Sakina Bi Vs. Smt. Shamboo, I.L.R. (1977) M.P. 332*

– **Section 13 – Provisions to be strictly interpreted – Section 13(1)** – Casts duty on tenant to deposit arrears claimed provided dispute regarding rate of rent does not exist – Section 13(2) – Expression “as to amount of rent payable” in - Means “as to the rate of rent payable” -Casts duty on Court to decide rate of rent only: *Ramkuar Agarwal Vs. Narayandas Daga, I.L.R. (1972) M.P. 778*

– **Section 13** – Scope of later provision of the section – Confers option on the tenant to pay or to deposit in court by the 15th of the month – General clauses Act, M.P., 1957 – Section 7 – Confers benefit if by any M.P. Act, any act or proceeding is allowed to be done or taken on a certain day or within specified time – Prescription under section 13 of the accommodation control act, is a deposit by the 15th of the month – If court closed on 15th – Deposit Can be made on next day – Rules and Orders – Chepter XXII, paragraph 466 – Requires permission of court to make a deposite –General Clauses Act, M.P. - Section 7 – Word “allowed” - Implication of – Does not apply for construing agreements or compromise decrees – Applicable to enactments where act allowed to be done in court is not the only manner of doing it – Civil procedure code – Order 22, rule 3 or 4 – Legal representatives can continue suit only on the same cause of action on which suit filed by the deceased – cannot litigate personal rights as legal representatives: *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 13 and 13(1)** – Appeal filed by Landlord –Section 13 applies and tenant has to comply with Section 13(1) – This is not so in case of appeal filed by

tenant : *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

– **Section 13(1)** – The word “suit” in – Does not include appeal : *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

– **Section 13(1)** – The word “on a suit or proceeding being instituted” in – Does not involve the giving of finding on question whether defendant is a tenant – Suit for ejectment instituted on grounds in Section 12 – Court acquires jurisdiction to decide question arising under Section 13 – The word “tenant” in – Meaning of : *Inderlal Vs. Mahngi Bai, I.L.R. (1969) M.P. 863 (D.B.)*

– **Section 13(1)** – Words “suit or proceedings” in M.P. Act – Does not include appeal : *Sharadchan Vs. Vishnupant, I.L.R. (1979) M.P. 1 (F.B.)*

– **Section 13(1)** – Casts duty on tenant to deposit arrears claimed provided dispute regarding rate of rent does not exist : *Ramkuar Agarwal Vs. Narayandas Daga, (1972) M.P. 778*

– **Section 13(1)** – Objects and purpose of: *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

– **Section 13(1)** – The reason for making provision for fixing provisional rent: *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

– **Section 13(1)** – Word “thereafter” in second part of sub section (I) – Meaning and implication of: *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

– **Section 13(1)** – Expressions “thereafter” and “continue to deposit” – Connotation of: *Anandilal Vs. Shiv Dayal Pandey, I.L.R. (1981) M.P. 495 (D.B.)*

– **Section 13(1)** – Obligation to pay rent arises when provisional rent is fixed: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M .P. 997 (F.B.)*

– **Section 13(1)** – Expression “for the period for which payment is made” in – Refers to two periods: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

- **Section 13(1)** – Expression “period for which the tenant may have made default” in – Has only one meaning : *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

– **Section 13(1)** – Tenant not obliged to deposit time barred arrears of rent : *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

– **Section 13(1)** – Consequences of non compliance with the provision – Section 13(6) – Tenant depositing all rent upto the date application made under this provision – Defence cannot be struck off unless there is contumacy or mala Fide : *Bachchoobhai Vs. Premanand, I.L.R. (1977) M.P. 164*

– **Section 13(1)** – Court has also power to fix time when fixing provisional rent so that party may not be prejudiced by time taken by Court in passing order : *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997 (F.B.)*

– **Section 13(1)** – What amounts to compliance with both parts of section 13(1) – Implications of section 13(1) – No power in court to extend time for payment contemplated in section part of section 13(1) : *Bachchoobhai Vs. Premanand, I.L.R. (1977) M.P. 164*

– **Section 13(1)** – Does not contemplate order of Court for depositing rent – Court, Power of, to extend time for depositing rent – Section 13(6)- Tenant pleading adjustment for repairs from rent – Landlord moving for striking out defence – Court has to determine the dispute and to decide whether adjustment is permissible : *Suraj Prasad Vs. Ganpat Rai, I.L.R. (1968) M.P. 821*

– **Section 13(6)** – Tenant pleading adjustment for repairs from rent – Landlord moving for striking out defence – Court has to determine the dispute and to decide whether adjustment is permissible : *Suraj Prasad Vs. Ganpatrai, I.L.R. (1968) M.P. 821*

– **Section 13-A** – Tenant not bound to deposit arrears of rent – Monthly rent from the date of application alone liable to be deposited : *D.R. Jha Vs. Shriram Sharma, I.L.R. (1985) M.P. 507*

- **Section 13 (1) and 13(2)** – Word “proceeding’ in – Signify appeal : *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

- **Section 13 (1) and 13(2)** – Word “suit or proceeding” – Should be interpreted to mean suit or appeal – Does not include appeal at the instance of tenant : *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

– **Section 13(1) and (2)** – Time barred arrears of rents – Tenants not obliged to deposit the same under these sub-sections: *Smt. Mankunwarbai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676 (F.B.)*

– **Section 13(1) and (2)** – Suit, Appeal and Second Appeal – Steps in a series of proceedings and constitute one legal proceeding – The word “suit” in Section 13(1) does not include appeal - Section 13(6) – Applicable to appeal also – Section 13(1) and (2) – Word “proceeding” in – Signify appeal – Words “suit or proceeding” – Should be interpreted to mean suit or appeal – Does not include appeal at the instance of tenant – Appeal filed by landlord – Section 13 applies and tenant has to comply with Section 13(1) – This is not so in case of appeal filed by tenant – Interpretation of statute – Reference to language of repealed Act – Cannot be taken in aid to construe provision of repealing Act : *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

– **Section 13(1), (2) and (3)** – Dispute raised as to amount of rent payable by tenant or person to whom payable – Sub Section (1) of section 13 is controlled by these provisions – Obligation to pay rent arises when provisional rent is fixed – Court has also power to fix time when fixing provisional rent so that party may not be prejudiced by time taken by court in passing order – Section 13 – Court omitting to fix provisional rent during entire trial – Tenant is not at fault in not complying with section 13 – Section 13(2) – does not provide the manner of raising the dispute – Dispute raised in written statement – It is sufficient for purpose of sub section (2) of Section 13 : *Chhogalal Vs. Idol Of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997 (F.B.)*

– **Section 13(1), (2) (3) and(5) and 12(1)(a) and 12(3)** – Words “suit or proceedings” in subsection (1) and proceedings in subsection (3) of section 13- Interpretation of – Whether include appeal – Interpretation of Statutes – Principles of – Construction statutes – Cardinal rule of – Intention of enactment to be gathered from the language employed – Duty of Court to give effect to the words used in a statute – Suit for ejectment under section 12(1)(a) – Compliance of section 13 by the tenant in the trial court – Dismissal of the suit under sections 12(3) and 13(5) – Tenant not required to comply with section 13(1) in the appeal court : *S.S. Harishchandra Jain Vs. Dr. Captain Indersingh Bedi, I.L.R. (1978) M.P. 811 (F.B.)*

– **Section 13(1),(2),(5),(6) and 12(1)(a) and 12(3)** – Liability of tenant to deposit arrears of rents – Object and Scope of Act – Sections 12 and 13 – Do not bestow new benefit upon landlord – Not also enlarge his rights conferred under Transfer of Property Act – Interpretation of Statute – Creation of new right – Specific language necessary therefore – Word “Dispute” - Meaning of – Civil Procedure Code – Order 7, rule 11 – Rejection of claim for time barred arrears of rents – Expression “whole of the arrears of rents legally recoverable” – Excludes time barred arrears of rent –

Accommodation Control Act, M.P., 1961 – Section 13(1) and (2) – Time bared arrears of rents – Tenant not obliged to deposit the same under these sub-section : *Smt. Mankunwarbai Vs. Sunderlal Jain, I.L.R. (1979) M.P. 676 (F.B.)*

– **Section 13(1), (2) and (6)** – Rent Controlling Authority revoking leave to defend granted to the tenant earlier on his failure to deposit arrears of rent and that too without deciding dispute under section 13(2) – Order suffers from error of jurisdiction – Liable to be quashed : *D.R. Jha Vs. Shriram Sharma, I.L.R. (1985) M.P. 507*

– **Section 13(1) and (6)** – Confers discretion on Court to extend time – Discretion to be exercised according to circumstances of the case : *Bhanwarlal Vs. Pannalal, I.L.R. (1969) M.P. 1037*

– **Section 13 (1) and (6)** – Absence of power to extend time under the second part of section 13(1) – Does not abridge scope of section 13(6) : *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 13(1) and (6)** – Period of one month mentioned in sub section (1) refers to payment of rent and not to making application for time – Confers discretion on Court to extend time – Discretion to be exercised according to circumstances of the case – Word “may” in sub section (6) of section 13 – Confers discretion – Section 13(6) – Discretion in Court to strike out defence – Right to defend civil litigation – A valuable right – Can be taken away in case of abuse of process of Court : *Bhanwarlal Vs. Pannalal, I.L.R. (1969) M.P. 1037*

– **Section 13(1) and (6)** – The expression “the tenant shall deposit in the out to pay to the landlord an amount calculated at the rate of rent at which it was paid for the period for which the tenant may have made default” in section 13(1) – Refers to deposit of rent prior to suit but after commencement of relationship of landlord and tenant – Section 13 – Pre supposes Vires subsistence of relationship of landlord and tenant – Default spoken in – Means default in payment of rent after the commencement of relation ship of landlord and tenant between parties – Transfer of Property act – Section 109 – Arrears of rent – Is a mere debt and “chose in action” – Is not part of reversion – Transferee entitled to recover because of contract of assignment – accommodation Control act, M.P., 1961 – Section 13 – Does not contemplate deposit of rent assigned to transferee landlord : *Shri N.K. Kame Vs. Biharilal, I.L.R. (1973) M.P. 692 (D.B.)*

- **Section 13(1), (6) and 12(1)(a) and Bihar Building (Lease, Rent and Eviction) Control act (III of 1947), Section 11-A** – Distinction between M.P. and Bihar acts – Words “At any stage of the suit” in Bihar act includes all stages of litigation – Not so in M.P. Act – Words “suit or proceedings” in M.P. Act – Does not include appeal – Principle that suit includes appeal does not apply in the context of

various provisions in the M.P. act – Interpretation of Statute – Intention of legislature – Equitable considerations: *Sharadchand Vs. Vishnupant, I.L.R. (1979) M.P. 1 (F.B.)*

– **Section 13(1) and 13(2)** – Tenant raising dispute regarding rent – Application made beyond one month of the date of receipt of writ of summons – Tenant required to deposit all arrears of rent upto date of application and to deposit future rent regularly to get benefit of section 12(3) and 13(5) : *Bachchoobhai Vs. Premanand, I.L.R. (1977) M.P. 164*

– **Section 13(1) and 13(2)** - Tenant raising dispute with regard to the arrears of rents only and not with regard to rate of rent – Operation of the whole of sub section (1) of Section 13 is arrested till the Court passes an order under sub section (2) of Section 13 – Tenant’s liability to comply with second part of Section 13(1), commences only after an order under Section 13(2) – Expressions “thereafter” and “continue to deposit” – Connotation of – Section 13(2) – Order contemplated under – Relates to that part of deposit for which there is a dispute : *Anandilal Vs. Shiv Dayal Pandey, I.L.R. (1981) M.P. 495 (D.B.)*

– **Section 13(1) and 13(2)** – Tenant’s Liability to comply with second part of Section 13(1) commences only after an order under Section 13(2): *Anandilal Vs. Shiv Dayal Pandey, I.L.R. (1981) M.P. 495 (D.B.)*

– **Sections 13(1) and 13(6)** – Tenant not complying with the provision of section 13(1) – Striking of defence under section 13(6) – Yet tenant permitted to cross examine land lord for limited purpose – No interference called for : *Bhanwarsingh Vs. Smt. Chameli Bai, I.L.R. (2000) M.P. 282*

– **Section 13(2)** – Casts duty on Court to decide rate of rent only: *Ramkuar Agarwal Vs. Narayandas Daga, I.L.R. (1972) M.P. 778*

– **Section 13(2)** – Dispute regarding rent to be raised at earliest opportunity: *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, (1972) M.P. 1056 (D.B.)*

– **Section 13(2)** – Dispute regarding rent rent - Court not bound to act suo mote: *Parashram. Vs. Damdilal, I.L.R. (1971) M.P. 117*

– **Section 13(2)** – Exery dispute as to the amount of rent payable by rent – Is a dispute as within the meaning of this provision : *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

– **Section 13(2)** – Expression “as to amount of rent payable” in – Means “as to the rate of payable”: *Ramkuar Agarwal Vs. Narayandas Daga, I.L.R. (1972) M.P. 778*

– **Section 13(2)** – Fixing of provisional rent – Contemplates enquiry – Enquiry is to be preliminary – Court has to satisfy itself prima facie about reasonable provisional rent : *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

– **Section 13(2)** – Enquiry thereunder is summary nature by filing affidavits – Not obligatory to record oral evidence: *Ramnath Mahore Vs. Dr. Rakesh Kumar Gangil, I.L.R. (1985) M.P. 628*

– **Section 13(2)** – Does not provide the manner of raising the dispute: *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997 (F.B.)*

– **Section 13(2)** – Order contemplated under – Relates to that part of deposit for which there is a dispute: *Anandilal Vs. Shiv Dayal Pandey, I.L.R. (1981) M.P. 495 (D.B.)*

– **Section 13(2)** – Provision mandatory – Court has to decide dispute regarding rent even if raised after one month of the date of receipt of writ of summons – Even though arrears upto that date not deposited and though protection may have been lost : *Bachchoobhai Vs. Premanand, I.L.R. (1977) M.P. 164*

– **Section 13(2)** – Dispute contemplated by – Is referable to those arrears which are legally recoverable and are not time barred: *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R. (1980) M.P. 517 (F.B.)*

– **Section 13(2)** – Dispute raised in written statement – It is sufficient for purpose of sub section (2) of Section 13 : *Chhogalal Vs. Idol of Bhagwan Shri Satyanarayan, Neemuch, I.L.R. (1976) M.P. 997 (F.B.)*

– **Section 13(2)** – Words “may be deposited or paid in accordance with the provisions of sub section (1) of till the decision of the suit or appeal” in – Implication of – Every disputer as to the amount of rent payable by tenant – Is a dispute within the meaning of this provision – Dispute regarding rent to be raised at earliest opportunity – Section 13(1) – Word “thereafter” in second part of sub section (1) – Meaning and implication of – The reason for making provision for fixing provisional rent – Fixing of provisional rent – Contemplates enquiry – Enquiry is to be preliminary – Court has to satisfy itself prima facie about reasonable provisional rent : *Firm Ganeshram Harvilas, Moirena Vs. Ramchandra Rao, I.L.R. (1972) M.P. 1056 (D.B.)*

- **Section 13(3)** – Dispute as to whom rent is payable – Tenant in his written statement denying relationship of landlord and tenant – It does not amount to raising of dispute : *Alladin Vs. Mahila Sonabai, I.L.R. (1994) M.P. 163*

– **Section 13(3)** – Dispute thereunder – Nature of: *J. Jacobs Vs. Dr. S.C. Barat, I.L.R. (1982) M.P. 963*

– **Section 13(3) or 13(2)** – Denial of relationship of Landlord and tenant – Cannot be a dispute falling within the section: *J. Jacobs Vs. Dr. S.C. Barat, v I.L.R. (1982) M.P. 963*

– **Section 13 (5)** – Substantial repetition of enacting part of section 12(3) - Enacts special provision for awarding costs – Redundant to the extent it overlaps section 12(3) – Cannot prevail upon or override section 12(3): *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 13(6)** – Applicable to appeal also: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar, I.L.R. (1969) M.P. 524 (F.B.)*

– **Section 13(6)** – Discretion in Court to strike out defence – Right to defend civil litigation – A valuable right – Can be taken away in case of abuse of process of Court: *Bhanwarlal Vs. Pannalal, I.L.R. (1969) M.P. 1037*

– **Section 13(6)** – Effect of striking out the defence: *Smt. Krishnabai Vs. Smt. Laxmibai, I.L.R. (1972) M.P. 563 (D.B.)*

– **Section 13(6)** – word “May” in – Has no compulsive force – Not mandatory – Confers discretion on Court to strike out or not to strike out the defence when provision not complied with : *Shri Jagdish Kapoor Vs. The New Education Society, Jabalpur, I.L.R. (1969) M.P. 534 (F.B.)*

– **Section 13(6)** – word “May” in sub section (6) of section 13 – Confers discretion: *Bhanwarlal Vs. Pannalal, I.L.R. (1969) M.P. 1037*

– **Section 13(6)** – Application under – Rejection of – RCA not taking step to decide disputes under section 13(2) or 13(3) of the Act – Cannot pass any order either rejecting or allowing the application under section 13(6) – Impugned order set aside – Case remanded: *Smt. Sankata Devi Verma Vs. Jagdish Singh Chandel, I.L.R. (2000) M.P. 1015*

– **Section 13(6)** – Striking out defence – Extreme penalty – Must be sparingly used: *Harnamsingh Vs. Babulal, I.L.R. (1967) M.P. 286*

– **Section 13(6)** – Confers discretion on court to strike out defence: *Harnamsingh Vs. Babulal, I.L.R. (1967) M.P. 286*

– **Section 13(6)** – Order Striking out of the defence passed – Effect of – Thereafter no defence against eviction can be raised – Section 13(3) – Dispute thereunder – Nature of – Denial of relationship of landlord and tenant – Cannot be a dispute falling within Section 13(3) or 13(2) – Section 12(1)(a) – Question like default or condonation of delay finally disposed of in a revision – Not open to reagitate or re-examine the same while hearing an appeal – Decree for eviction under section 12 (1) (a) must follow : *J. Jacobs Vs. Dr. S.C. Barat, I.L.R. (1982) M.P. 963*

– **Section 13(6)** – Exercise of power under – Not imperative – Provision is penal – Word “may” in – Has no compulsive force – Not mandatory – Confers discretion on Court to strike out or not to strike out the defence when provision not complied with – Interpretation of Statute – Word “May” – Discretionary and unabling word unless provision using the word made exercise of the power imperative on the authority: *Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur, I.L.R. (1969) M.P. 534 (F.B.)*

– **Section 13(6)** – Confers discretion on Court to strike out defence – Directory, not mandatory – Provision is in terrorem – Power to be sparingly used and in exceptional cases – Absence of power to extend time under the second part of section 13(1) – Does not abridge scope of section 13(6) – Section 12(3) – Benefit means dismissal of suit merely for non-compliance with section 13 – Section 12(3), Proviso Comes into play in a subsequent suit – Commences operation on dismissal of first suit but not earlier – Court has no discretion in implementation of section 12(3) – Consequence of non-compliance with section 13 in relation to section 12(3) – Distinct and independent from consequences under section 13(6) – Section 12(3) – Proviso in, not surplusage – Proviso is life and soul of the scheme comprising sections 12(1)(a), 13(1) and 12(3) – Furnishes guarantee to landlord for payment of rent – Section 13(5) – Substantial repetition of enacting part of section 12(3) – Enacts special provision for awarding costs – Redundant to the extent it overlaps section 12(3) – Cannot prevail upon or override section 12(3) – Interpretation of Statutes – Procedural enactment – Duty of Court – Apparently confliction provision to be interpreted in a way so that they harmonise – Duty of court when conflict irreconcilable – Conflict between specific and general provisions – Specific provision to prevail – Things to be considered in ascertaining real intention of legislature : *Chitra Kumar Tiwari Vs. Ganga Ram Patil, I.L.R. (1966) M.P. 620*

– **Section 13(6) and 13(1)** – Striking out defence – Not necessary consequence of non compliance of section 13(1) – What amounts to compliance with both parts of section 13(1) – Implications of section 13(1) – No power in court to extend time for payment contemplated in second part of section 13(1) – Section 13(1) and 13(2) – Tenant raising dispute regarding rent – Application made beyond one month of the date of receipt of writ of summons - Tenant required to deposit all arrears of rent upto date of application and to deposit future rent regularly to get benefit of sections 12(3)

and 13(5) - section 13(1) – Consequences of non compliance with the provision – Section 13(6) – Tenant depositing all rent upto the date of application made under this provision – Defence cannot be struck off unless there is contumacy or mala fides – Section 13(2) – Provision mandatory – Court has to decide dispute regarding rent even if raised after one month of the date of receipt of writ of summons – Even though arrears upto that date not deposited and though protection may have been lost : *Bachchoobhai Vs. Premanand, I.L.R. (1977) M.P. 164*

– **Section 14(1)** – Deals with possession regarding subletting or assignment: *M/S Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey I.L.R. (1975) M.P. 82 (D.B.)*

– **Section 14(2), 3(2)** – Suit for eviction by lessee of trust – Notification exempting suit property from operation of the accommodation Control Act, Section 3(2) and notification thereunder would alone apply to the property in suit and not affected by any contract between the lessee and sub lessee : *A.M. Qureshi Vs. M/S Shakti Pictures Circuit Limited, Amrawati, I.L.R. (2002) M.P. 328*

– **Section 18** – Does not prohibit landlord from claiming increased rent for reentry in the reconstructed premises – Parties cannot be directed to get standard rent fixed by Rent controlling authority – Rent assessed at Rs. 200/- p.m. but as new tenant inducted in the premises – Tenant awarded compensation of Rs. 5000/-: *Subhaniya Anjuman Islamiya, Bilaspur, Vs. Manrakhanelal Nai, I.L.R. (1986) M.P. 720*

- **Section 18 and 12(1) (h)**–Suit for eviction on ground of bonafide need for rebuilding the premises–Suit decreed with right of tenant to reoccupation after rebuilding–Failure to offer premises to tenants after rebuilding– Award of compensation at the rate of Rs. 3000/- p.m. to the tenants–In absence of any supporting evidence–Cannot be sustained–Trial Court directed to calculate compensation at the rate at which the tenants from the date of re-occupation–Appeal disposed of : *Syed Jameel Abbas Vs. Mohd. Yamin @ Kallu Khan; I.L.R. (2004) M.P. (SC) 531 (D.B.)*

– **Section 18(1)** – Tenant not abiding by conditions in order – Tenant filing appeal – Act does not provide for fixing fresh date by appellate court : *Ghanshyam Vs. Nathmal, I.L.R. (1978) M.P. 384*

– **Section 18(1)** – Word “Court” in – Includes even appellate court: *Ghanshyam Vs. Nathmal, I.L.R. (1978) M.P. 384*

– **Section 18(2)** – Requirements of: *Pooranchand Vs. Chandu, I.L.R. (1977) M.P. 462*

– **Section 18(2) and (3)** – Gives concession to tenant to re enter on fulfilment of condition – Condition not fulfilled – Right of re entry is lost: *Ghanshyam Vs. Nathmal, I.L.R. (1978) M.P. 384*

– **Section 18 (3)** – To be construed strictly: *Ghanshyam Vs. Nathmal, I.L.R. (1978) M.P. 384*

– **Section 18(3)** – Right of reentry – Tenant failing to hand over possession of the premises within the period fixed by eviction decree – Not entitled to reentry – Evidence Act, 1872 – Section 115 – Estoppel by conduct – Tenant failing to deliver possession within time – After reconstruction landlord offering tenant to reoccupy it on enhanced rent – Tenant claiming re entry by an application under section 18(3) of the Accommodation Control Act, 1961 – Landlord not raising objection about non-delivery of possession by tenant within time fixed in the decree - Such an objection cannot be permitted in High Court – Landlord estopped from questioning right of reentry – Accommodation Control Act, 1961 – Section 18 – Does not prohibit landlord from claiming increased rent for reentry in the reconstructed premises – Parties cannot be directed to get standard rent fixed by rent controlling authority – Rent assessed at Rs. 200/- p.m. but as new tenant inducted in the premises – Tenant awarded compensation of Rs. 5000/- : *Subhaniya Anjuman Islamiya, Bilaspur, Vs. Manrakhantal Nai, I.L.R. (1986) M.P. 720*

– **Section 18(3) and 12(1)(h)** – Eviction Suit Decreed – Tenant instead of complying with decree, preferring appeal – On dismissal of appeal, tenant loses the right of re entry – Appellate Court is not required to fix another date : *Pratap Singh Vs. Sharad Chand, I.L.R. (1998) M.P. 491*

– **Section 20(d)** – Decree for eviction of tenant when can be passed thereunder : *Shri Nabhi Nondan Digamber Jain Hitopadeshani Sabha, Bina Itawa, Sagar Vs. Rameshchand, I.L.R. (1983) M.P. 387*

- **Section 23** - Accommodation Control (Amendment) Act, M.P. (VII of 1985), Section 9 and Civil Procedure Code (V of 1908), Order 18, rule 15 – Transfer of proceedings pending before the Rent Controlling Authority by virtue of section 9 of the Amendment Act of 1985 – Record of the proceedings before Rent Controlling Authority – Constitutes record of Civil Suit – Evidence recorded by Rent Controlling Authority – Cannot be ignored or excluded – Proper procedure to be adopted indicated : *Pannalal Shrivastava Vs. Dinesh Chandra Mishra, I.L.R. (1986) M.P. 367 (D.B.)*

– **Section 23, Proviso** – Persons claiming independent title are not bound by the decree for eviction passed against tenant : *Sunil Vs. Satyanarayan Dubey, I.L.R. (1986) M.P. 23 (D.B.)*

– **Sections 23, 12(1)(e)**–Defendant tenant admitted that he paid rent to plaintiff–Landlord-tenant relationship established–bona-fide requirement found proved by the trial Court–Suit for eviction decreed : *Nawab Saheb V. Firoz Ahmed; I.L.R. (2003) M. P. 222*

– **Section 23-A, Proviso** –Words “any accommodation” in – Meaning and scope of: *Harishankar Vs. Dalchand Agarawal, I.L.R. (1985) M.P. 369*

- **Section 23- A** and Court fees Act (VII of 1870), (as applicable to M.P.), schedule II, Article 1(b), clause 6 – Application under section 23-A of M.P. Accommodation Control Act, 1961 – Court fee of Rs. 2/- payable on such an application : *Smt. Rambai Saxena Vs. Smt. Jaswant Kaur Sabharwal, I.L.R. (1985) M.P. 696 (D.B.)*

– **Section 23-A** – Facts of the nature which would disentitle landlord from getting an order under section 23 –A must be stated – Tenant failing to state such facts – Leave rightly refused: *Firm Umedchand Prakash Chand, Dhamtari Vs. Sikander, I.L.R. (1986) M.P. 272*

– **Section 23-A** – Application for ejection by landlord covered by section 23-J – Revision against eviction order pending in High Court – Death of landlord – Effect – Ejection order liable to be set aside : *Santosh Kumar Jaiswal Vs. Joseph, I.L.R. (1998) M.P. 785*

– **Section 23-A** – Suit for eviction under section 23-A of the Act – Summary enquiry contemplated – Parties have no right to summon witnesses by filing process-fee only: *Smt. Saroj Thareja Vs. Smt. Tarabai, I.L.R. (1989) M.P. 255*

– **Section 23-A** – Landlord – A retired govt. servant acquiring suit premises after his retirement – Is a specified landlord within the meaning of section 23-J – Application before RCA prior to expiry of one year period – Tenable: *Brijnath Prasad Sain Vs. Daya Shankar Sain, I.L.R. (1992) M.P. 596*

– **Section 23-A** – Application for eviction before Rent Controlling Authority against only one of the heirs of original deceased tenant – Does not suffer from any infirmity for non joinder of other heirs of deceased tenants as parties to the lis as the lone non applicant is karta of the tenant’s family: *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887*

– **Section 23-A** – Proviso to this section has no binding effect – Subsequent event – Decree in favour of landlord in respect of a small portion of the house would not

negate the bona fide need already established : *Brijnath Prasad Sain Vs. Daya Shankar Sain, I.L.R. (1992) M.P. 596*

– **Section 23-A**, Proviso – Scope of – Covers both nonresidential as well as residential accommodation – Application for eviction of tenant from residential accommodation – Bar of, for one year from the date of acquisition of accommodation or any interest therein by transfer – Applies to residential accommodation also – Construction of statute – Principles for determining the scope of a proviso to a section – Punctuation marks – Value of – Refence to statement of objects and reasons for construing the section – Permissibility of – Words “any accommodation” in the proviso – Meaning and scope of : *Harishankar Vs. Dalchand Agarawal, I.L.R. (1985) M.P. 369*

– **Section 23-A** – Besides power of eviction Rent controlling authority is not clothed with any other power – Rent controlling authority is a court of limited jurisdiction – Cannot be said to possess power to direct recovery of money – Section 13 of the act is merely an alternative way of tendering rent to the landlord – Power to grant compensation – Cannot be enlarged by application of section 144, Civil Procedure Code – Remedy of applicants to file Civil Suit for compensation – No bar – Applicants earlier filed application under section 144, C.P.C. but did not claim compensation cannot be permitted to raise the grounds in another application – Principle of estoppel by conduct would apply : *Smt. Shakuntala Bai Sangewar Vs. Gopichand Gupta, I.L.R. (1999) M.P. 258*

- **Sections 23-A, 12(2), 23-C(1) and (2), 23-E(2) and 23-F, 23-J**, Accommodation Control (Amendment) Act, M.P. (VII of 1985), Section 11-A and 9 and Constitution of India, Articles 14 and 50 – Amendment Acts of 1983 and 1985 – Are valid – Section 23-J – Special procedure for specified category of landlords to recover possession from tenants on grounds of personal bona fide requirement – Provision giving such benefit to landlords specified in section 23-J – Is neither unreasonable nor discriminatory – Not violative of Article 14 of the Constitution – Section 23 – Benefit under – Available to retired persons who were landlords while in service and tenancy subsisting during their service – Section 23-A and 23-C(1) – Rent Controlling Authority can make an order of eviction only if landlord makes out a prima facie case and it remains uncontroverted – Section 23-C(2) – Leave to contest – Grant of – Rent Controlling Authority has to act judicially – The words ‘if necessary’ – Import of – Tenant’s application for leave to contest supported by affidavit disclosing facts disintitling landlord to grant of relief – Leave to contest has to be given – Section 23- D(3) – Rebuttable presumption – Prima facie case for eviction made out in landlord’s application – Onus shifts on the tenant to disprove the bona fide of landlord – Provision is valid – Section 23-E(2) – Revisional powers of the High court – extent of – Provision not invalid – Section 23-F – Stay order – Period of six months to be counted from the date of stay order and not from the date of order of

eviction – Fresh order of stay on expiry of earlier stay order can be passed by High court – Sections 23-A and section 12 and constitution of India, articles 14 and 50 – Availability of two procedures for eviction of tenants, one under section 12 to be manned by Judicial Officer and the other under section 23-A to be manned by executive Officer – Vice of discrimination not attracted – Not violative of article 14 or 50 – Section 12(2) of Amendment Act 1983 – Suit based on the grounds of bona fide requirement along with other grounds – Ground of bona fide requirement being a distinct cause of action can be permitted to be withdrawn – such withdrawal governed by Civil Procedure Code – Interpretation of statute – Litigant has no vested right to a particular forum – Legislature can provide for pending proceedings by making an express provision to that effect : *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Sections 23-A, 23-C and 23-J** and Accommodation Control (Amendment) Act, M.P. 1985, Section 9 – On coming into force of the Amending Act all cases instituted by landlady other then covered under Section 23-J stood transferred to Civil Court – Even if in such a transferred case the tenant suffered consequences of Section 23-C, he would be entitled to opportunity to defend as envisaged in the Civil Procedure Code – Trial Court passed the decree without giving opportunity to tenant to defend – Decree of eviction set aside and case remanded to trial Court to decide the case giving opportunity to defendant to file written statement : *Baijnath Rajput Vs. Narayan Prasad Gupta, I.L.R. (1992) M.P. 640*

– **Section 23- A and 12 and Constitution of India, Articles 14 and 50** – Availability of two procedures for eviction of tenants, one under section 12 to be manned by Judicial Officer and the other under Section 23-A to be manned by Executive Officer – Vice of discrimination not attracted – Not violative of Article 14 or 50: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-C(2)** – Tenants application for leave to Contest supported by affidavit disclosing facts disentitling landlord to grant of relief – Leave to contest has to be given: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-D(3)** – Rebuttable presumption – Prima facie case for eviction made out in landlord's application – Onus shifts on the tenant to disprove the bona fide of Landlord – Provision is valid: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-E(2)** – Revisional power of the High Court – extent of – Provision not invalid: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-F** – Fresh order of stay on expiry of earlier stay order can be passed by High court: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-F** – Stay order – Period of six months to be counted from the date of stay order and not from the date of order of eviction: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-J Clause (IV)** – Expression ‘Physically handicapped person’ in - Also includes landlords suffering from Malignancy cancer: *Smt. Chuneela Kumari Vs. Karunashanker, I.L.R. (1986) M.P. 595*

– **Section 23-J** – Special Procedure for specified category of landlord to recover possession from tenants on grounds of personal bona fide requirement – Provision giving such benefit to landlords specified in section 20-J – It neither unreasonable nor discriminatory – Not violative of Article 14, of the Constitution: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276(D.B.)*

– **Section 23-A and 23-D** – Application under section 23-A on ground of requirement of the premises shall be presumed to be bona fide unless contrary is proved – Initial burden is on the landlord : *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887*

– **Sections 23-A, 23-D, 23-E** – Non – residential accommodation – Landlord retired Govt. Employee seeking eviction of tenant bona-fide for engaging himself in commercial activity–Nothing wrong in it–Tenant failed to rebut presumption in favour of landlord–RCA justified in ordering eviction : *Dayaram Yadav V. Santoolal Bachwani; I.L.R I.L.R. (2005) M.P. (SC) 477 (D.B.)*

– **Sections 23-A, 23-D, 23-E and 23-J** – Revision against order of eviction passed by Rent Controlling Authority – Landlord – A retired Govt. Servant acquiring suit premises after his retirement – Is a specified landlord within the meaning of Section 23-J – Application before RCA prior to expiry of one year period – Tenable – Proviso to Section 23-A has no binding effect – Subsequent event – Decree in favour of landlord in respect of a small portion of the house would not negate the bona fide need already established – Sub-Section (3) of Section 23-D – Presumption – Tenant though entered the witness box did not turn up for cross examination despite repeated opportunity – Presumption in favour of landlord’s bona fide need can not be said to have been rebutted by the tenant – Order of eviction passed by R.C.A. maintained : *Brijnath Prasad Sain Vs. Daya Shankar Sain, I.L.R. (1992) M.P. 596*

– **Section 23-A, 23-D, 23-E, 23-G and 23-J** and Civil Procedure Code (V of 1908), Order 6 Rule 17 – Application for amendment at revisional stage – Points Involved not relevant to the controversy – Prayer for amendment deserves to be rejected – Section 23-A – Application for eviction before rent controlling Authority against only one of the heirs of original deceased tenant – Does not suffer from any

infirmity for non joinder of other heirs of deceased tenants as parties to the lis as the lone non applicant is Karta of the tenant's family – Section 23-E – Revision – R.C.A. rejecting prayer for eviction of tenant on misreading and misinterpreting evidence on record – Ample scope of interference by High Court with the finding of the R.C.A. – Section 23-A and 23-D (3) – Application under section 23-A on ground of requirement of the premises shall be resumed to be bona fide unless contrary is proved – Initial burden is on the landlord – Section 23-A and 23-G – Landlord successfully proved that the alternate non residential accommodation are not available as his other sons are carrying on their respective occupations there – Suit Accommodation required for major son's advocate's office – R.C.A. cannot import a finding that he can open his office in a residential part of the house on upper floor – Finding and order of R.C.A. reversed – Prayer for eviction of tenant allowed subject to compliance of section 23-G of the Act : *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887*

– **Section 23-A, 23-D, 23-E and 23-J** – Revision against order of ejection – Landlady widow – Bona fide need for her kirana Business – Tenant in occupation of the premises for forty years – Cannot become practically an owner – landlady must get back possession of the accommodation when required for her own business – Hibinama – Validity of – Cannot be gone into at the instance of a stranger – Express consent of one of the other co owners to get the accommodation vacated – Applicant entitled to file application under Section 23-A of the Act : *Smt. Taherabi Vs. Smt. Mehmooda Khanam, I.L.R. (2001) M.P. 1762*

- **Sections 23-A, 23-D, 23-E, 23-J** –Revision–Application for eviction for bonafide requirement for business of unemployed son–Death of applicant–One of the Co-applicants being widow is competent to continue proceedings–Bonafide need–Shall be presumed unless contrary is proved–Tribunal rightly directed tenant to vacant and deliver possession: *Shri Chand Vs. Smt. Laxmi Bai ; I.L.R. (2004) M. P. 978*

– **Section 23-A, 23-E, 13(1)(a)(2) and (6)** – Rent Controlling Authority has no jurisdiction to grant a decree for arrears of rent nor a decree for eviction on the ground of arrears of rent – Tenant not bound to deposit arrears of rent – Monthly rent from the date of application alone liable to be deposited – Rent Controlling Authority revoking leave to defend granted to the tenant earlier on his failure to deposit arrears of rent and that too without deciding dispute under Section 13(2) – Order suffers from error of jurisdiction – Liable to be quashed : *D.R. Jha Vs. Shriram Sharma, I.L.R. (1985) M.P. 507*

– **Sections 23-A, 23-E and 23-J** –Revision against order of eviction passed by Rent Controlling Authority–Constitution of India, Article 14 and M. P. High Court Rules and Orders, Section I, Chapter I, Rule 1–Constitutional validity of Section 23-J

of the Act and whether the provisions are violative of Article 14—Question can only be entertained by a Division Bench—After retirement Government servant acquiring the tenanted premises by succession from his father—He is a "Land lord" within the meaning of Section 23-J—Bona fide need of landlord proved—Order of eviction rightly passed : Mohd. *Umar Vs. Ashok*; *I.L.R. (2003) M. P. 336*

– **Sections 23-A, 23-E and 23-J** – Revision against order of ejection passed by the Rent controlling Authority – Retired Govt. Servant acquiring accommodation after retirement is a landlord within the meaning of section 23-J of the Act entitled to invoke provision of section 23-A even if the accommodation is required and let out after his retirement – Constitution of India – Article 14 – “Retired Govt. servant” is a separate class itself – Such classification not hit by Article 14 of the constitution of India – Reference answered accordingly – Words & phrases “Retired Government Servant” – Includes a person retired for defence Services : *Kanjulal Yadu Vs. Parasram Sharma, I.L.R. (2000) M.P. 416 (F.B.)*

– **Section 23-A and 23-G** – Landlord successfully proved that the alternate non residential accommodations are not available as his order sons are carrying on their respective occupations there – Suit accommodation required for major son’s advocate’s office – R.C.A. cannot import a finding that he can open his office in a residential part of the house on upper floor – Finding and order of R.C.A. reversed – Prayer for eviction of tenant allowed subject to compliance of section 23-G of the act : *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887*

– **Section 23-A and 23-J** – Landlady widow – Bona fide need for her Kirana business – Tenant in occupation of the premises for forty years – Cannot become practically an owner – Landlady must get back possession of the accommodation when required for her own business : *Smt. Taherabi Vs. Smt. Mehmooda Khanam, I.L.R. (2001) M.P. 1762*

– **Section 23-A, 23-j** and Civil Procedure Code (V of 1908), Order 23, Rule 1 – Application for eviction on the grounds of bona fide need – Land lady a widow making application for her bon fide need as also of her son would not disentitle her to persue her application – Pulrality of need very much clearly under-written in provisions of section 23-A(a) - Suit for eviction on ground of bona fide need with drawn – Fresh application under section 23-A of the act not bareed on ground that earlier suit was withdrawn without obtaining leave – Suit for eviction under section 23-A of the Act – Summary enquiry contemplated – Parties have no right to summon witnesses buy filling process-fee only : *Smt. Saroj Thareja Vs. Smt. Tarabai, I.L.R. (1989) M.P. 255*

- **Section 23-A, 23-J**, Accommodation Control (Amendment) Ordinance, M.P. (I of 1985) and Accommodation Control (Amendment) Act, M.P. (VII of 1985) –

Rent Controlling Authority passing an ex parte order of eviction of tenant under section 23-A of the M.P. Accommodation Control Act, 1961 as amended by M.P. Act No. 27 of 1983 – After coming into force of M.P. ordinance No. 1 of 1985 and M.P. Act No. 7 of 1985, an application for setting aside ex parte order would be before Rent Controlling Authority only – Landlord not covered under section 23-J After ex parte order is set aside, application would become a pending application for an order of eviction and shall stand transferred to civil Court : *Akshya Kumar Dubey Vs. Viral Das, I.L.R. (1987) M.P. 658*

– **Section 23-A and 23-J** – Rent Controlling Authority has jurisdiction under Section 23-A to entertain application for eviction even when some of the applicants landlords are not covered under Section 23-J : *Jagdish Prasad Vs. Sumitrabai, I.L.R. (1988) M.P. 48*

– **Sections 23-A to 23-J**, Section 28, 31, 32, 35 and Accommodation Control (Amendment) Act, M.P. (XXVII of 1983) – Court wrongly acts under an appealable provision and passes order – Party against whom order passed is not deprived of appeal – Order of eviction passed under chapter III-A – Executable under Section 35 – Any order made in executing proceedings – Sections 31 & 32 not applicable – Revision under section 23-E only lies to High Court – Notification of appointment of an officer as Rent Controlling Authority published – Officer acting as Rent controlling Authority under notion that he was validly appointed – De facto doctrine comes into existence – Order cannot be challenged on ground of jurisdictional competence – Order also cannot be questioned in collateral proceedings : *Dr. Nathuram Tiwari Vs. Radhakishan Ramgopal Agarwal, I.L.R. (1989) M.P. 293*

- **Section 23-A, 23-A(a)** and 23-E and Constitution of India, Articles 14 and 50 – Section 23-A – Not violative of Article 14 – Withdrawal of judicial powers from Civil Court and vesting it in Executive in breach of Directive principles of the Constitution – Not sufficient to invalidate the provision – Section 23-E – Revisional jurisdiction of High Court – Scope of – Section 23-A(a) – Bona fide need for residence – 2 rooms for a family of 7 persons cannot be said to be sufficient : *Mahendra Kumar Jain Vs. Dharamchand Jain, I.L.R. (1985) M.P. 502*

– **Section 23-A, Section 50** – Rules framed under Section 50 – Authority has power to restore an application dismissed in default, under Rule 16 : *Kanhaiyalal Vs. Smt. Durgabai Vyas, I.L.R. (1991) M.P. 244*

- **Section 23-C** – Application for leave to defend not accompanied by affidavit – Application cannot be dismissed on that ground – Authority to give an opportunity to tenant to file affidavit : *Gopal Sahai Vs. Thakur Sahan Singh, I.L.R. (1987) M.P. 792*

– **Section 23-C(2)** – Leave to contest – Grant of – Rent Controlling Authority has to act judicially : *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **Section 23-D, Sub-Section (3)** – Presumption – Tenant though entered the witness box did not turn up for cross-examination despite repeated opportunity – Presumption in favour of landlord's bona fide need can not be said to have been rebutted by the tenant – Order of eviction passed by R.C.A. maintained : *Brijnath Prasad Sain Vs. Daya Shankar Sain, I.L.R. (1992) M.P. 596*

– **Section 23-E** – Revision – Section 23-C – Application seeking leave to defend not filed by counsel within the period stipulated by law – Party cannot be made to suffer because of lapses of the part counsel – Delay condoned : *Sapan Banerjee Vs. Smt. Shanti Devi Jaiswal, I.L.R. (1999) M.P. 1192*

– **Section 23-E** – Eviction case under – Requirement of landlord cannot be rationed by the court : *Kailashchandra & Brothers, Indore Vs. Dr. Kamla, I.L.R. (1998) M.P. 425*

– **Section 23-E** – Revisional jurisdiction of High Court – Scope of : *Mahendra Kumar Jain Vs. Dharamchand Jain, I.L.R. (1985) M.P. 502*

– **Section 23-E** – RCA ordered eviction on the bona fide personal need of landlord – Revision preferred by tenant in High Court – Death of landlord during the pendency of revision – High Court of exercise of revisional jurisdiction can take into account subsequent event i.e. death of landlord to determine whether requirement as pleaded subsists or not – Tenant's Revision allowed : *Pushkardas Vs. Smt. Savita Devi, I.L.R. (1998) M.P. 249*

– **Section 23-E** – Revision under – Powers – High Court are wider than under Section 115, Civil Procedure Code – However such powers are lesser than appellate powers – Finding not perverse – No interference can be made : *Kailashchandra & Brothers, Indore Vs. Dr. Kamla, I.L.R. (1998) M.P. 425*

– **Section 23-E** – Revisional Jurisdiction examining correctness of the finding – High court would not reappreciate the evidence – High Court is required to interfere only to prevent miscarriage of justice – Important piece of evidence withheld by defendant - Adverse inference rightly drawn by R.A.C. – Nature of accommodation – Whether residential or non residential – Purpose of letting at the initial stage has to be seen – Second test is to look to its structural design composite tenancy – If it is established that landlord required residential or non residential part of the accommodation, decree for eviction from entire premises can be passed : *President*

Transport Co Operative Bank Maryadit, Indore Vs. Smt. Chandra Prabha, I.L.R. (1999) M.P. 507

– **Section 23-E** – Revision – Rent Controlling Authority transferring the case of widow/landlady to Civil Court on Ground that it has no jurisdiction as she let out the premises after her widowhood – No distinction can be made – Whether tenancy created prior or subsequent to her widowhood – Immaterial – Constitution of India – Article 15(3) – State has power to make special provision for women – The case of widow is certainly a disadvantaged class – case of a retired Govt. servant is different – Order of impugned cannot be sustained in law – Matter remanded to the R.C.A for deciding the case according to law : *Smt. Vimladevi Vs. Gurindersingh, I.L.R. (1992) M.P. 51*

– **Section 23-E**, (As amended by act No. 27 of 1983 and act no. 7 of 1985) – Revision – Application seeking eviction of tenant by landlord on ground of bona fide section 23-C and section 5 of Limitation Act, 1963 – Leave to defend sought beyond stipulated period of 15 days and condonation of delay sought on vague grounds – In absence of any sufficient cause R.C.A. rightly refuse leave to defend and condon delay – Tenant cannot contest the prayer for eviction – Bona fide requirement and non availability of alternative accommodation cogently established – Section (D)(3) – Unless the contrary is proved there is presumption that the requirement is bona fide – Eviction order proper – Words and phrases – Expression “bona fide or genuine” means honestly or in good faith : *Smt. Sheela Devi Vs. Devendra Singh Parihar, I.L.R. (2000) M.P. 198*

- **Section 23-E** – Revision – Application for eviction by landlady – Tenant disputing landlady tenant relationship – Section 13(6) – Application under – Rejection of – RCA not taking step to decide disputes under section 13(2) or 13(3) of the Act – Cannot pass any order either rejecting or allowing the application under section 13(6) – Impugned order set aside – Case remanded : *Smt. Sankata Devi Verma Vs. Jagdish Singh Chandel, I.L.R. (2000) M.P. 1015*

– **Section 23-E** – Revision – Powers of High Court – Limitation – Interference cannot be made by high court in the findings of rent controlling authority unless perverse – Section 13(1) and 13(6) – Tenant not complying with the provision of section 13(1) – Striking of defence under section 13(6) – Yet tenant permitted to cross examine land lord for limited purpose – No interference called for : *Bhanwarsingh Vs. Smt. Chameli Bai, I.L.R. (2000) M.P. 282*

- **Section 23-E** and Constitution of India, Article 50 – Withdrawal of judicial powers from Civil Court and vesting it in executive in breach of directive principles of the Constitution – Not sufficient to invalidate the provision : *Mahendra Kumar Jain Vs. Dharamchand Jain, I.L.R. (1985) M.P. 502*

– **Sections 23-E and 23-A(a)** – Revision – Application for eviction of residential accommodation by widow – One room of accommodation used as office – Real and primary purpose of accommodation is residential – Landlady 71 years old suffering from hypertension and heard disease – Could not climb stairs – Requirement of Ground floor genuine – Idea to sell accommodation and manage alternate shelter does not negate her bona fide requirement : *T.D. Agrawal Vs. Smt. Nirmal Mitra, I.L.R. (2002) M.P. 1005*

– **Section 23-G** – Revision – R.C.A. rejecting prayer for eviction of tenant on misreading and misinterpreting evidence on record – Ample scope of interference by High Court with the finding of the R.C.A. : *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887*

– **Section 23(J)** – Landlord – Whether employee of Municipal Corporation is Government Servant within definition of Landlord under Section 23-J – Held – Municipal Employees have their own recruitment rules – Appointed and Terminated by Municipal Authorities only – Salary is not drawn from State Exchequer – They are not Civil servant – Fundamental Rules not applicable to them – Provisions of Article 311 of Constitution not attracted in their cases – They cannot be said to be Government Servant or Civil Servant – Respondent cannot be said to be employee of State Government – Order eviction passed by RCA quashed – Revision allowed : *Mohandas Vs. Devandas, I.L.R. (1994) M.P. 216*

– **Section 23-J** – Principle of interpretation – Jurisdiction of Civil Court : *Ashok Kumar Vs. Baboolal, I.L.R. (1998) M.P. 1 (F.B.)*

- **Section 23(J)** – Application by widow alone falling in special category of landlords under section 23(j) for eviction of tenant on ground of bona fide need of herself and that of her married sons and their children is competent before Rent Controlling Authority under section 23-A(a) : *Col. Harbans Singh Vs. Smt. Margrat G. Bhingardive, I.L.R. (1990) M.P. 179 (F.B.)*

– **Section 23-J** – Rent Controlling Authority has jurisdiction to entertain eviction application of a widow provided it is for her requirement and not of some one else of the family – Widow and her two major sons inheriting tenancy premises in suit on death of father – Widow filing eviction application against tenant under Section 23-A(b) seeking tenant's eviction for the requirement of her major sons – Application not tenable before Rent Controlling Authority – For such cases Civil Court is the forum – Arbitration Act, 1940 – Section 34 – Eviction of tenant can be claimed in accordance with M.P. Accommodation Control Act, 1961 and in performance of any agreement or arbitration agreement : *Smt. Sushila Devi Somani Vs. Kedarnath Gupta, I.L.R. (1988) M.P. 105*

– **Section 23-J, 11-A, 12(1)(f), 23-A(b)** & Civil Procedure Code, 1908, Section 100 - Second appeal – Suit for eviction – Non residential accommodation – Bona fide need - Landlord within the meaning of section 23-J – only Rent Controlling Authority was having jurisdiction – Civil Court ought to have returned the plaint – Decree of eviction set aside – Case remanded for return of plaint to plaintiff : *Prahlad Vs. Smt. Kalabatibai, I.L.R. (2002) M.P. 937*

– **Section 23-A(a)** – Bona fide need for residence – 2 rooms for a family of 7 persons cannot be said to be sufficient : *Mahendra Kumar Jain Vs. Dharamchand Jain, I.L.R. (1985) M.P. 502*

- **Section 23-A(a), 23 D(3) and 23(E)** – Presumption as to bona fide nature of requirement – Landlord has first to establish prima facie about bona fide requirement as a fact – Requirement for relations – Must be as per section 2 (e) : *Smt. Gyanibai Vs. Shivlal, I.L.R. (1986) M.P. 670*

– **Section 23-A(a) and 23-E** – Revision – Application for eviction of residential accommodation by widow – One room of accommodation used as office – Real and primary purpose of accommodation is residential – Landlady 71 years old suffering from hypertension and heard disease – Could not climb stairs – Requirement of Ground floor genuine – Idea to sell accommodation and manage alternate shelter does not negate her bona fide requirement : *T.D. Agrawal Vs. Smt. Nirmal Mitra, I.L.R. (2002) M.P. 1005*

– **Section 23-A(a) and Section 23(j)** – Suit for eviction – Widow co owner/landlady can initiate eviction proceedings against tenant – Application by widow alone falling in special category of landlords under section 23(j) for eviction of tenant on ground of bona fide need of herself and that of her married sons and their children is competent before Rent Controlling Authority under Section 23-A(a) – Interpretation of Statue – Elementary principles of: *Col. Harbans Singh Vs. Smt. Margrat G. Bhingardive, I.L.R. (1990) M.P. 179 (F.B.)*

– **Section 23-A(b)** – Widow and her two major sons inheriting tenancy premises in suit on death of father – Widow filing eviction application against tenant under Section 23-A(b) seeking tenant's eviction for the requirement of her major sons – Application not tenable before Rent Controlling Authority – For such cases Civil Court is the forum : *Smt. Sushila Devi Somani Vs. Kedarnath Gupta, I.L.R. (1988) M.P. 105*

– **Section 23-A(b), 11-A, 12(1)(f), 23-J** & Civil Procedure Code, 1908, Section 100 - Second appeal – Suit for eviction – Non residential accommodation – Bona fide need - Landlord within the meaning of section 23-J – only Rent Controlling Authority

was having jurisdiction – Civil Court ought to have returned the plaint – Decree of eviction set aside – Case remanded for return of plaint to plaintiff : *Prahlad Vs. Smt. Kalabatibai, I.L.R. (2002) M.P. 937*

– **Section 23-A(b) and 23-E**–Revision–Application for eviction on ground of bona-fide need–May fail if title is seriously disputed–Prima facie title not established–No error in order of R.C.A : *Smt. Maya Trivedi V. Rajnikant Tiwari; I.L.R. (2004) M.P.. 1167*

– **Section 23-A(b), 23(j)** and interpretation of Statutes – Joint landlords one of them landlord under section 23(j) – Suit maintainable before Rent Controlling Authority – Need for starting business of the major son or daughter – Eviction can be granted if other co owners do not object – Interpretation – Words capable of one construction – Not open to adopt any other hypothetical construction on ground of objects and policy of the Act : *Shivraj Vs. Smt. Aasha Lata, I.L.R. (1990) M.P. 643 (D.B.)*

– **Section 23-C (2)** – Leave to defend – Mere denial of landlord’s assertions in the application – Not sufficient – Facts of the nature which would disentitle landlord from getting an order under section 23-A must be stated – Tenant failing to state such facts – Leave rightly refused : *Firm Umedchand Prakash Chand, Dhantari Vs. Sikander, I.L.R. (1986) M.P. 272*

– **Section 24, 25 and 26** – Meant for the benefit of tenant – No right crated in favour of landlord: *Munnalal Tiwari Vs. Laxminarain Lohia, I.L.R. (1968) M.P. 112*

– **Section 24(1)** – Application for recovery for rent before Rent controlling Authority – Maintainability: *Munnalal Tiwari Vs. Laxminarain Lohia, I.L.R. (1968) M.P. 112*

– **Section 24(1)** – Right of landlord to recover rent under Transfer of property Act – Not effected: *Munnalal Tiwari Vs. Laxminarain Lohia, I.L.R. (1968) M.P. 112*

– **Section 24(1)** – Scope of – Right of landlord to recover rent under Transfer of Property Act – Not effected – Application for recovery for rent before Rent Controlling Authority – Maintainability – Section 24, 25 and 26 – Meant for the benefit of tenant – No right created in favour of landlord : *Munnalal Tiwari Vs. Laxminarain Lohia, I.L.R. (1968) M.P. 112*

– **Section 28** – Revision under section 23-E only lies to High court – Notification of appointment of an officer as Rent Controlling authority published Officer acting as Rent Controlling Authority under notion that he was validly appointed – De facto doctrine comes into existence – Order cannot be challenged on ground of

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– **Section 31** – Appeal under, lies to the Court of the District Judge and not to District Judge as persona designate – Accommodation Control Act, M.P., 1961 – Section 32 and Civil Procedure Code, Section 100 – Appeal against order of District Judge – Appeal lies to High Court – Section 32 – Lays down grounds on which Second appeal lies – Modifies to that extent Section 100 – Civil procedure Code – Combined effect to section 32 of M.P. Accommodation Control Act, 1961 and Section 100, Civil Procedure code – Order in appeal modified in review – Appeal lies only against order passed in review and not against original order – Section 7 – Merely sets out principles for determining “standard rent” – Proviso after clause (2) of section 7 – Applicable to both clauses (1) and (2) of Section 7 – Both clauses prescribe a statutory datum line of rent – Section 7(1) – Words “Such reasonable annual rent or fair rent” in – Meaning of – Section 7 – Paragraph after clause (2) ending with the proviso – Applies both to clauses (1) and (2) of the section – Interpretation of Statutes – Principle – Statute to be construed according to intention expressed in statute itself – The subject matter with respect to which it is used and the object in view to be borne in mind – Statute to be construed with reference to its intended scope and purpose and to carry out the purpose rather than to defeat it : *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Sections 31, 7, 10, 32** and Civil Procedure Code, 1908, Section 115– Revision– Rent Control Accommodation–Standard rent–Fixation of –Basis–Premises const - ructed prior to 1948–More than one assessment have been there–Determination of standard rent should be on basis of Section 10(4)–Order impugned set aside: *Smt. Usharani Vs.. Smt. Dharma bai thakur; I.L.R. (2004) M.P. 1170*

– **Sections 31, 32** – Appeal lies to District Judge from orders of Rent Controlling Authority – Order means final order and not interim order passed by Rent Controlling Authority : *Mukesh D. Ramtek Vs. Smt. Keshar Singh, I.L.R. (2001) M.P. 1923*

– **Sections 31 & 32** - Appeal and Second appeal against the order of R.C.A. – Pendency of appeals would be continuation of lis between the parties – Order of R.C.A. gets suspended even if stay is not granted as the amount is not certain till final adjudication of appeals – Cause of action – Arises only when ultimate appellate Court determines the rent – Judgment & Decree of Trial Court set aside – Suit decreed with costs : *Dr. Ashwani Trivedi Vs. Bhumi Vikas Bank, I.L.R. (2000) M.P. 62*

– **Sections 31 & 32** – Any order made in executing proceedings – Sections 31 & 32 not applicable : *Dr. Nathuram Tiwari Vs. Radhakishan Ramgopal Agarwal, I.L.R. (1989) M.P. 293*

– **Section 32** – Lays down grounds on which Second Appeal lies – Modifies to that extent Section 100, Civil Procedure Code : *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Section 32 and Civil Procedure Code (V of 1908), section 100** – Appeal against order of District Judge – Appeal lies to High Court : *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Section 32 and Civil Procedure Code (V of 1908), section 100** – Combined effect of section 32 of M.P. accommodation Control Act, 1961 and Section 100, Civil Procedure code – Order in appeal modified in review – Appeal lies only against order passed in review and not against original order : *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (D.B.)*

– **Section 32, 11, 31** – Order fixing interim rent not affecting substantive rights of the parties – Not a order – final order – Hence no appeal lies against such an order – Appellate order set aside : *Mukund D. Ramtek Vs. Smt. Keshar Singh, I.L.R. (2001) M.P. 1923*

– **Section 35** – Order of eviction passed under Chapter III-A – Executable under section 35 : *Dr. Nathuram Tiwari Vs. Radhakishan Ramgopal Agarwal, I.L.R. (1989) M.P. 293*

– **Section 35** – The Rent Controlling Authority has power to review its own order: *Ram Nath Singh Vs. Sanjay, I.L.R. (1998) M.P. 136*

– **Sections 37, 38** – Restoration of Essential Services – Portion of latrine and bathrooms let out to tenant damaged by Corporation while removing other unauthorized construction raised by landlord – Act of corporations even unwarranted is linked with act of the landlord – Landlord cannot get away with consequence pleading that it was not his act – application under section 38 of M.P. Accommodation Control Act for restoration of essential services maintainable : *Sushma W/o Mahesh Kumar Vs. Devraj Pyareram Verma, I.L.R. (1993) M.P. 538*

– **Sections 37(2), 37(3) and 45** – Civil suit barred when matter covered by sub section (3) of section 37 and not sub section (2): *Mohd. Yunus Vs. Ramkali Bai, I.L.R. (1989) M.P. 715*

– **Section 38** – Blocking of passage used by tenant in going to the corporation privy – Amounts to with holding of essential service enjoyed by a tenant – Tenant entitled to use of passage : *Ganga Das Vs. Ramchandra, I.L.R. (1989) M.P. 434*

– **Section 38** – Expression ‘essential supply or service’ – Meaning of – Closing door at the back side of the tenancy premises is also covered within the said expression: *Smt. Sudesh Mehta Vs. Bhagchand, I.L.R. (1986) M.P. 718*

– **Section 38** – Closing of passage – Amounts to contravention of the section: *Ghasiram Vs. Dhanraj, I.L.R. (1968) M.P. 463*

– **Section 38 – Phrase “any essential supply or service” in** – Includes things such as Electricity Supply, Water Supply, Door ways etc. – Closing of passage – Amounts to contravention of the Section – Section 38(3) and (4) – Agent contravening provision of Section 38 – Agent liable still landlord should be made party – Non joinder of landlord – Not fatal : *Ghasiram Vs. Dhanraj, I.L.R. (1968) M.P. 463*

- **Section 38 and Transfer of Property Act (IV of 1882), Section 109** – Landlord transferring residential portion and retaining bath-room and latrine-splitting tenancy- Original land-lord continues to be the land-lord of bath-room and latrine and tenant entitled to their user-in the event of obstruction, the tenant entitled to claim restoration of user of bath-room and latrine: *Krishna Gopal Vs. Laxminarayan, I.L.R. I.L.R. (1989) M.P. 719*

– **Section 38(3) and (4)** – Agent contravening provision of Section 38 – Agent liable still landlord should be made party – Non joinder of landlord – Not fatal : *Ghasiram Vs. Dhanraj, I.L.R. (1968) M.P. 463*

– **Section 39** – For deciding question of operation of the Section, Collector has to accept proved rent – Fair rent not determinable when accommodation already let out : *Sheo Prasad Vs. The Rent Controlling Authority And The Authorised Officer, Sagar, I.L.R. (1970) M.P. 77 (D.B.)*

– **Section 39** – Jurisdiction to allot residential houses: *Shankeral Vs. State Of M.P., I.L.R. (1979) M.P. 74*

– **Section 39** – Rent not exceeding Rs. 25/- per month and house whether fallen vacant or likely to fall vacant – Jurisdictional facts – Assumption of jurisdiction to allot – When can be made: *Shankeral Vs. State Of M.P., I.L.R. (1979) M.P. 74*

– **Section 39, Provison** – Authorised Officer cannot act as Accommodation Rationing Authority and cannot determine landlord’s need in terms of number of rooms or floor area : *Smt. Jayabai Jethwa Vs. The Authorised Officer, Rent Control House Allotment Section, Raipur, I.L.R. (1986) M.P. 434 (D.B.)*

– **Section 39** – Authorised Officer without allotment of accommodation directing sub tenant to vacate it – Order without jurisdiction and liable to be quashed – Proper procedure and action indicated: *Durga Prasad Verma Vs. K. P. Dixit, I.L.R. (1983) M.P. 599 (F.B.)*

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– **Section 39, Proviso** – The word ‘satisfied’ used in proviso to Section 39 – Meaning of – Connotes objective satisfaction after due enquiry and on application of well established tests and not subjective satisfaction : *Smt. Jayabai Jethwa Vs. The Authorised Officer, Rent Control House Allotment Section, Raipur, I.L.R. (1986) M.P. 434 (D.B.)*

– **Section 39** – The expression “has fallen vacant or is likely to fall vacant” – Meaning of – Tenant withdrawing his physical possession and unauthorisedly sub-letting Accommodation to a sub tenant – Accommodation is “fallen vacant” entitling Authorised Officer to allot it – Authorised Officer without allotment of accommodation directing sub tenant to vacate it – Order without jurisdiction and liable to be quashed – Proper procedure and action indicated : *Durga Prasad Verma Vs. K. P. Dixit, I.L.R. (1983) M.P. 599 (F.B.)*

– **Section 39** – Order of allotment made by the Authorised Officer – Civil Suit – Whether can be filed challenging the allotment order – Section 45 – Scope of – Section 39 – Jurisdiction to allot residential houses – Rent not exceeding Rs. 25/- per month and house whether fallen vacant or likely to fall vacant – Jurisdictional facts – Assumption of jurisdiction to allot – When can be made – Civil Procedure Code, 1908 – Order 39, rules 1 and 2 – Grant of temporary injunction – Material consideration – Principles to be observed therefore : *Shankarlal Vs. State Of M.P., I.L.R. (1979) M.P. 74*

– **Section 39 and its Proviso** – Procedure to be followed by Authorised Officer while considering need of accommodation by landlord for his occupation – Relevant consideration for determination of such need of landlord – The word ‘satisfied’ used in proviso to Section 39 – Meaning of – Connotes objective satisfaction after due enquiry and on application of well established tests and not subjective satisfaction – Authorised Officer cannot act as accommodation Retioning Authority and cannot determine landlord’s need in terms of number of rooms or floor area – Authorised Officer influenced by extraneous and irrelevant considerations and substituting its

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– **Section 39(1) and (2)** – Limitation of 15 days for passing order – Applicable only when landlord gives information under section 39(1) – Section 39(2) – Conditions necessary for passing order under this provision – Monthly rent of accommodation Rs. 25/- Not necessary for landlord to give intimation regarding accommodation having fallen vacant – Section 39(2) and (5) – Case falling within exception in section 39 (5) Section 39(2) is out of the way – Section 39(5) – First exception – Does not contemplate fixing of “rental value” – Period between accommodation falling vacant and order of allotment immaterial – Section 39(2) – Not limited in its operation to let out accommodation – Covers cases of accommodation, which “has fallen vacant or is likely to fall vacant” - Not restricted to accommodation let out to a tenant – Implications and extent of words “any accommodation which has fallen vacant or is likely to fall vacant” in : *Tejpal Jain Vs. The Collector, Jabalpur, I.L.R. (1978) M.P. 452 (D.B.)*

– **Section 39(2)** – Partners of firm consenting to use of partnership property by one partner – Requirement “his own occupation” is satisfied – Collector ceases to have power allot accommodation under sub section (2) : *M/S Tulsiram Visnudutta, Kareli Vs. The Rent Controlling Authority, Jabalpur, I.L.R. (1974) M.P. 63 (D.B.)*

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- **Section 39(2)** – Proviso – Couched in mandatory form – Words “when he needs the accommodation for his own occupation” in – Includes the need of one out of plurality of landlords – Partners of firm consenting to use of partnership property by one partner – Requirement “his own occupation” is satisfied – Collector ceases to have power to allot accommodation under sub section (2) : *M/S Tulsiram Visnudutta, Kareli Vs. The Rent Controlling Authority, Jabalpur, I.L.R. (1974) M.P. 63 (D.B.)*

– **Section 39(4)** – Action to take possession of premises by use of force on ground that there is or is likely to be contravention of Act or Rule – Action is quasi judicial attracting principles of natural justice – Action under section 39(4) for contravention of Section 14 – Can be taken against tenant but not his relations : *Dayaram Vs. Rent And Accommodatioin Controlling Authority, I.L.R. (1964) M.P. 368 (D.B.)*

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– **Section 39(5)** – For deciding question of operation of the Section, Collector has to accept proved rent – Fair rent not determinable when accommodation already let out : *Sheo Prasad Vs. The Rent Controlling Authority And The Authorised Officer, Sagar, I.L.R. (1970) M.P. 77 (D.B.)*

– **Section 45** – Scope of: *Shankerlal Vs. State Of M.P., I.L.R. (1979) M.P. 74*

– **Section 50 Section 23-A** – Rules framed under Section 50 – Authority has power to restore an application dismissed in default, under Rule 16: *Kanhaiyalal Vs. Smt. Durgabai Vyas, I.L.R. (1991) M.P. 244*

– **Section 52(2)** - Applicable to pending proceedings if section 52 (2) thereof omitted for purposes of Cantonments Act, 1957: *Mangilal Vs. Shivprasad, I.L.R. (1966) M.P. 938*

– **Section 52(2)** – Mention of particular matters in – Does not show that section 10 of the M.P. General Clauses Act is not applicable : *Seth Vishnudatta Vs. Abdul Nabi, I.L.R. (1964) M.P. 583 (D.B.)*

– **Section 52(2)** – Expression “All suits and other proceedings under the said Act pending at the Commencement of the Act” – Does not include pending ejection suits – Refers to suits or proceedings authorised by repealed Act – General clauses Act, M.P., 1957, as amended in 1960 – Section 10 and 10-A – Old Act expiring by efflux of time before coming into force of new act – Matter governed by section 10 by force of Section 10-A of General Clauses (Amendment) act, 1960 – Section 10 applicable when repeal followed by fresh enactment unless different intention expressed in new enactment - Different intention to be inferred from provisions of the new enactment – Mention of particular matters in section 52(2) of M.P. Accommodation Control Act – Does not show that Section 10 of the M.P. General Clauses act is not applicable : *Seth Vishnudatta Vs. Abdul Nabi, I.L.R. (1964) M.P. 583 (D.B.)*

– **Section 96, 100, Order 41 Rules 22, 33** – Eviction decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court – No illegality – Question answered against appellant : *Kamal Kumar Vs. Smt. Imartibai, I.L.R. (2003) M.P. 215*

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– **Audited accounts** – Correctness of – Allegation of it incorrection – Burden of proof lies on person alleging it: *Mahant Govind Sharandas Guru Vs. Registrar, Public Trust, Raipur, I.L.R. (1987) M.P. 425*

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- **Rules 34 and 35 and Constitution of India, Article 226, Rule 35** – Applicable only during probationary period – Petitioner joined duties on 21-6-1971 and passed departmental examination on 25-11-1972 and confirmed on 21-06-1972 – First increment given on 21-06-1972 – Petitioner entitled to second increment on 21-06-1972 – Orders entitling him to second increment only on 21-06-1972 – Liable to be quashed – Interpretation of Statute – Heading of a statute – Use of, or construction of sections : *Ramesh Kumar Mishra Vs. State of M.P., I.L.R. (1983) M.P. 34*

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– **Provision in repealed act** – Not saved by repealing Act – Right under repealed act – Not enforceable: *Balmukund Vs. Gendalal, I.L.R. (1967) M.P. 421*

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– **Conferring power on certain officer and also prescribing procedure for exercise of power** – Power to be exercised in that manner – Exercise of power in prescribed manner – Does not become performance of duty because it is meant to protect interest of person to be affected thereby – Prevention of food Adulteration Act, 1954 – Section 11 – Manner prescribed is mandatory – Power given by Section 10 to be exercised in manner prescribed by the section – Manner prescribed not followed – Exercise of power becomes null and void – Section 10 Person bolting away – Identity remains undisclosed – Action amounts to preventing exercise of power : *Habib Khan Vs. The State of M.P., I.L.R.. (1972) M.P. 607*

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– **Rainfall of extraordinary violence** – Not act of God: *Kalloolal Vs. Hemchand, I.L.R. (1957) M.P. 275 (D.B.)*

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– **Expression of the sovereign in an agreement** – Not enforceable in Municipal Courts of successor State: *Govind Rao Vs. Major Krishna Rao, I.L.R. (1967) M.P. 75 (D.B.)*

– **Executive act of State Government** – Cannot be equated with legislative function: *Firm Madanlal Kishangopal, Tarana Vs. Municipal Council, Tarna, I.L.R. (1979) M.P. 111 (D.B.)*

– **Order of sovereign ruler direction delivery of possession of house** – Ruler not exercising legislative function – Order is purely executive of administrative order - cannot be enforced in court of successor State until right recognized by it : *Govind Rao Vs. Major Krishna Rao & Anr., I.L.R. (1967) M.P. 75 (D.B.)*

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– **Meaning of – Action of State govt.** – Not justiciable in the Civil Court: *Shrimant Thailendrakishore Das Vs. The State of Madhya Pradesh, I.L.R. (1958) M.P. 542 (D.B.)*

– **Municipal Court, Jurisdiction of, to investigate and ascertain rights** – Citizen, Right of, to enforce the terms in the instrument of accession : *Firm Bhagwandas Shobhalal Jain, Agar Vs. State of M.P., I.L.R. (1966) M.P. 913 (D.B.)*

– **Breach of agreement by the former State** – Gives rise to personal right – Not enforceable against succeeding State on ground of Act of State – New Sovereign coming in place of old State – New sovereign not under obligation of the old State - Municipal Court, Jurisdiction of, to investigate and ascertain rights – Citizen, right of, to enforce the terms in the instrument of accession – Sale of Goods Act – Section 4 – Distinction between a sale and an agreement to sell – Contract – Contracts which can be separated – Limitation Act – Article 115 – Breach of contract by one party – Breach accepted by opposite party - Question of successive breaches does not arise – Suit for damages governed by this Article – Starting point – Date of breach of contract – Words and phrases – “Cause of action” – Meaning of – Civil Procedure Code – order 2, Rule 2 – Breach of one contract – Reliefs accruing there from cannot

be split up: *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State Of M.P., I.L.R. (1966) M.P. 913 (D.B.)*

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– Amount deposited with bank, firm etc. – Depositee becomes owner – Depositor owns only a debt also known as obligation or actionable claim – Such right is proprietary right – This amounts to actionable claim: *Balkishan Muchhal Vs. The Controller Of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376 (F.B.)*

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- Additional District Judge not subordinate to District Judge – Is not a Civil Court of a grade inferior to that of District Court: *Gourishankar Vs. Firm Dulichand Laxminarayan, I.L.R. (1958) M.P. 122*

– **Power of, to try election petition:** *Sohan Coudhary Vs. Shri R.D. Doongaji, I.L.R. (1959) M.P. 196 (D.B.)*

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– **Levy under** – Is in the nature of fee and not tax – Satisfies the test of quid pro quo: *R.C. Pandey Vs. State of M.P., I.L.R. (1987) M.P. 335 (D.B.)*

- **Sections 6(2), 7(2)(1), 15(2)(g) and 19(3)** and Constitution of India, Entries 11-A, 26, 47 and 23 of List III and Entry 78 of List I of the seventh schedule to the constitution and article 226 – State Legislature competent to legislate M.P. Adhivakta Kalyan Nidhi Adhiniyam, 1982 under specific Entry 23 of List III on the point of social security and social insurance even in regard to Advocates, prevailing over general entry 78 of List I – Levy under the Adhiniyam is in the nature of fee and not tax – Setting the test of fee provision is not invalid : *R.C. Pandey Vs. State of M.P., I.L.R. (1987) M.P. 335 (D.B.)*

– **Section 19(3)** – Deals with recovery of fee – Provision is not invalid : *R.C. Pandey Vs. State of M.P. I.L.R. (1987) M.P. 335 (D.B.)*

Administration of Evacuee Property Central Ordinance (XXVII of 1949)

- **Administration of Evacuee Property Central Ordinance (XXVII of 1949) and Administration of evacuee Property Act (XXXI of 1950)** – Combined effect of

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– **Section 5(1)** – Vesting not depending upon issue of notification under this section – Administration of Evacuee Property Central Ordinance, 1949 (No. 27 of 1949) – Section 8(2) – property vesting in custodian by operation of law on the day of ordinance – Vesting deemed to be under the ordinance – No steps under section 7 necessary – No steps taken under section 7 of the Central ordinance upto 7.5.54 – Property could not vest in custodian since provincial Acts were ultra vires – Administration of evacuee Property (Amendment) act, 1960 – Section 8(2-A) – Validates automatic vesting under the Provincial laws declared ultra vires – Combined effect of all laws as amendment upto 1960 – Evacuee Interest (Separation) Act, 1951 – Action of competent authority for separating interest of evacuee – Validity: *Union of India Vs. Shri Ismail Abdul Shakoor, I.L.R. (1970) M.P. 968 (D.B.)*

– **Section 7** – No Steps taken under section 7 of the Central ordinance upto 7.5.54 – Property could not vest in custodian since provincial Acts were ultra vires: *Union of India Vs. Shri Ismail Abdul Shakoor, I.L.R. (1970) M.P. 968 (D.B.)*

– **Section 8(2)** – Property vesting in custodian by operation of law on the day of ordinance – Vesting deemed to be under the ordinance – No steps under section 7 necessary: *Union of India Vs. Shri Ismail Abdul Shakoor, I.L.R. (1970) M.P. 968 (D.B.)*

Administration of Evacuee Property Act (XXXI of 1950)

– **Section 7** – Notice under, to mention specific property – If fresh property or title discovered later fresh notice to be issued – Fresh proceeding not barred on principle of res judicata – Mahomedan Law – Gift – Registration not enough in the absence of delivery of possession of property: *Saira Bai Vs. Asistant Custodian Of Evacuee Property, M.B., Indore, I.L.R. (1960) M.P. 356*

– **Section 7** – Confers power on Custodian to determine whether property is evacuee property – No enquiry regarding claim of third person against that property contemplated – Evacuee interest (Separation) Act, Sections 6 and 20 – Jurisdiction of competent officer – Dependent on issue of general and Individual notice – Absence of general or individual notice – jurisdiction of civil Court to determine claim not barred: *Mohammad Abdul Latif Vs. Mohammad Abdul Rashid, I.L.R. (1959) M.P. 387 (D.B.)*

– **Section 40** - Does not impose disability on power to contract – Contract prior to vesting of property in custodian – Binding on Custodian – Suit for specific performance not hit by this section or section 23 of Contract Act – Section not retrospective – Transfer of property Act, Section 54 – Transfer not to relate back to the date of agreement : *Seth Kirodimal Vs. Seth Haji Suleman, I.L.R. (1959) M.P. 391*

– **Section 40 and 41** – Does not prohibit making a contract for sale – Require sale to be confirmed by custodian in order to take effect – Confirmation renders transfer effective from the date of transfer : *Mirza Ataullah Bed Vs. Chaudhari Sulkhichan, I.L.R. (1961) M.P. 84 (D.B.)*

– **Section 46** – Jurisdiction of Civil Court barred in matters decided under section 7: *The Custodian of Evacuee Property, M.P. Jamnagar House, New Delhi Vs. Mannoolal, I.L.R. (1977) M.P. 993 (D.B.)*

– **Section 46** – Refund of consideration of Auction Price – Tahsildar not acting as agent of state government but exercising the statutory powers – State government not liable to refund price : *The Custodian of Evacuee Property, M.P. Jamnagar House, New Delhi Vs. Mannoolal, I.L.R. (1977) M.P. 993 (D.B.)*

Administration of Evacuee Property Act (XLII of 1954)

– **Section 2(d)(ii)** – No action taken under Ordinance No. 27\49 (Central) or Ordinance No. 56\49 (Madhya Bharat) – Evacuee property does not vests in custodian – Inquiry contemplated by section 7 of Act not made – Persons migrating to Pakistan before 1951 – Not liable to be declared as evacuee because of provisions of section 2(a)(ii) of Act 42 of 1954 – Their property also not liable to be declared as evacuee property: *Rubab Bai Vs. The Assistant Custodian of Evacuee Property Cum-Managing Officer, Indore, I.L.R. (1962) M.P. 78 (D.B.)*

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– **Section 8(2-A)** – Validates automatic vesting under the Provincial laws declared ultra vires: *Union of India Vs. Shri Ismail Abdul Shakoore, I.L.R. (1970) M.P. 968 (D.B.)*

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– **Discretion vested in public body** – Discretion to be exercised fairly and honestly and not arbitrarily with an ulterior motive: *Pt. Girjashanker Sharma Vs. Collector, Hoshangabad, I.L.R.. (1978) M.P. 466 (D.B.)*

– **Government officer to exercise administrative functions bona fide with fair mind** – If powers exercised arbitrarily – Action can be challenged by party adversely affected – Discretion vested in public body – Discretion to be exercised fairly and honestly and not arbitrarily with an ulterior motive – Plea of mala fide is relevant plea – Action or order of authority in exercise of judicial, quasi judicial or administrative power – Can be struck down as null and void at the instance of aggrieved party – Arbitrary refusal of solvency certificate – Infringes upon fundamental right guaranteed by constitution of India, Article 19 – Mala fides – Not possible to be proved by direct evidence – Can be inferred from conduct of authorities in the light of facts and circumstances: *Pt. Girjashanker Sharma Vs. Collector, Hoshangabad, I.L.R. (1978) M.P. 466 (D.B.)*

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– **Distribution of state Largess through negotiation** – Transparency in action and public Interest supreme: *Som Distilleries Ltd. Vs. State of M.P., I.L.R. (1999) M.P. 19*

- **Constitution of India, Article 309** – Executive Instructions – Cannot override any provision of statutory rules: *K.K. M Nair Vs. Union of India, I.L.R. (1993) M.P. 1 (F.B.)*

- **Prosecution Sanction** – On the basis of regular investigations made under the directions of Lokayukt by Special police Establishment, Lokayukt recommending prosecution of Ministers prima facie liable for prosecution under Section 13(1)(d) of Prevention of Corruption Act – State Government by order Dated 2.5.1997 refusing to accord sanction for prosecution of minister by a non-speaking, detailed order showing dispassionate application of mind objectively – Order dated 2.5.1997 set aside and matter remanded back to the state government for passing a proper speaking order showing application of mind: *Gautam Bandopadhyay Vs. State, I.L.R. (1998) M.P. 174 (D.B.)*

Administrative Service (Cadre) Rules, 1954

– **Rule 9, Indian Administrative Service (Regulation of Seniority) Rules, 1954, Rule 3(3)(b) and Indian Administrative Service (Pay) Rules, 1954, Schedule II, Section III, Clause (1)** – Appointment of a non cadre officer to a cadre post under rule 9 – Requirements of – Petitioner's appointment on a senior cadre post in accordance with Rule 9 referred to Central Govt. – Central Govt. neither giving specific approval to such appointment nor directing State Govt. to terminate it – Appointment cannot be held to be invalid or ignored on the ground that it was not approved by the Central

govt. or that there was no vacancy in the cadre strength of promotees during that period – Administrative service (Regulation of Seniority) Rules, 1954 – Rule 3(3)(b) – Fixation of Seniority – Year of allotment – Petitioner officiated in a senior cadre post from 10-11-1975 to 30-09-1976 – Enures for his benefit to give him seniority under Rule 3(3)(b) of the Seniority Rules – Petitioner entitled to be assigned 1971 as the year of allotment and his seniority liable to fixed on that basis and entitled to all consequential reliefs – Proviso to clause (1) of Section III of Schedule II of pay Rules, 1954 cannot be imported either in rule 9 of cadre Rules or Rule 3(3)(b) of Seniority Rules : *K.L. Jain Vs. Union of India, I.L.R. (1984) M.P. 26 (D.B.)*

Administrative Service (Regulation of Seniority) Rules, 1954

- **Rule 3(3)(b) – Fixation of seniority** – Year of allotment – Petitioner officiated in a senior cadre post from 10.11.1975 to 30.09.76 – Enures for his benefit to give him seniority under Rule 3(3)(b) of the Seniority Rules – Petitioner entitled to be assigned 1971 as the year of allotment and his seniority liable to be fixed on that basis and entitled to all consequential reliefs : *K.L. Jain Vs. Union of India, I.L.R. (1984) M.P. 26 (D.B.)*

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- **Rule 95, Administrative Tribunals Act, 1985, Sections 19, 17**, Contempt of Courts Act (LXX of 1971), Section 19 - Contempt of Tribunal– Allegation of violating order of the Tribunal–Proceedings of contempt quasi- criminal in nature - No proceedings in contempt would lie assuming that there is any dispute of vagueness in the language of the order–Mandate on the DPC was to consider and assess respondent's fitness for promotion–DPC complied with the order–If decision of DPC was incorrect it was for respondent to have challenged that decision–Respondent did not do so–Order of tribunal holding appellant guilty of contempt set aside–Question of maintainability of appeal to High Court kept open : *State of M.P. Vs. Banwarilal Gupta; I.L.R. (2004) M.P. (SC) 527 (D.B.)*

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- **Section 28 and Industrial Disputes Act (XIV of 1947)** – Jurisdiction of Tribunal – Not ousted by this section where the matter is adjudicated by the Industrial Tribunal or Labour Court under the provisions of Industrial Disputes Act – Administrative Tribunals Act – Section 28 – Merely excludes jurisdiction of regular Civil Courts in contra – Distinction with the Tribunal – The expression ‘no Court’ in – *Connotation of: Rammoo Vs. Union Of India, I.L.R. (1990) M.P. 128 (D.B.)*

– **Sections 2 (q), 14** – Incentive Bonus is nothing but an extra emolument for the extra effort put in by the employees–Will be a remuneration–Will fall under the wide definition of "service matter" –Tribunal has jurisdiction : *H.M. Awasthy Vs. Union Of India, Through The General Manager, Ordinance Factory, Katni, M.P. I.L.R. (2005) M.P. 575 (D.B.)*

– **Sections 2 (9), 15 and 29** – Power of Civil Court not taken away by Section 29 of Administrative Tribunals Act – Impugned order set aside – Execution case restored to file : *Dr. S.K. Mathur Vs. State, I.L.R. (1992) M.P. 901 (D.B.)*

– **Section 6** – Qualification for appointment as Chairman – At least two years in office of Vice Chairman – Appointment not in contravention of section 6(1)(b) of the Act – Cannot be said to be illegal : *Rakesh Pandey Vs. Union Of India, I.L.R. (2001) M.P. 29 (D.B.)*

– **Sections 15 and 19** – Petition of Home Guards – Voluntary force of Home Guards constituted under the statutory provision from amongst the willing persons possessing prescribed qualification to supplement ordinary police in emergencies : *Punpratap Singh Vs. State, I.L.R. (2000) M.P. 1090 (D.B.)*

– **Section 17** – Contempt proceedings – Tribunals dropping contempt proceedings not amenable to writ jurisdiction of high court : *Takhat Singh Vs. State, I.L.R. (2000) M.P. 339 (D.B.)*

- **Sections 17, 19, Contempt of Courts Act (LXX of 1971)**, Section 19, Administrative Tribunal (Procedure) Rules, M.P. 1986 Rule 95 - Contempt of Tribunal– Allegation of violating order of the Tribunal–Proceedings of contempt quasi- criminal in nature - No proceedings in contempt would lie assuming that there is any dispute or vagueness in the language of the order–Mandate on the DPC was to consider and assess respondent's fitness for promotion–DPC complied with the order– If decision of DPC was incorrect it was for respondent to have challenged that decision–Respondent did not do so–Order of tribunal holding appellant guilty of contempt set aside–Question of maintainability of appeal to High Court kept open : *State of M.P. Vs. Banwarilal Gupta; I.L.R. (2004) M.P.(SC) 527 (D.B.)*

– **Section 19 – Petition challenging termination order dismissed by the tribunal** – Petitioner appointed as physical Education Teacher – Furnished wrong information that no criminal prosecution is pending against him – Petitioner studied in Hindi medium – Could not understand implication of the word “Prosecution” of “conviction” – Explanation plausible : *Ramratan Yadav Vs. Kendriya Vidhyalaya Sangthan, New Delhi, I.L.R. (2000) M.P. 1243 (D.B.)*

– **Section 19 – Termination** – Offence alleged not involving moral turpitude – Cannot be taken to be so grave a misconduct warranting termination – Order of Administrative Tribunal as also the order of petitioner’s termination quashed with all consequential benefit’s of continuous service : *Ramaratan Yadav Vs. Kendriya Vidhyalaya Sangthan, New Delhi, I.L.R. (2000) M.P. 1243 (D.B.)*

- **Section 19** –Approach to Administrative Tribunal after 7 years of rejection of Representation–No explanation for delay–Tribunal rightly refused to condone the delay–No interference in writ petition : *B.S.P Gour Vs. State And Others; I. L. R I.L.R. (2003) M.P. 1199 (D.B.)*

- **Section 19 and Constitution of India, Article 227** -Service Law–Transfer–Relieving a constable from District Executive Force to work in the specially constituted HAWK Force is not a transfer to separate police force–A disciplined body of men cannot be a chooser as to posting–Issue of writ–High Court can refuse to issue a writ if it is satisfied that no failure of justice is there : *Vinay Verma Vs. State; I.L.R. (2003) M. P. 292 (D.B.)*

— **Section 19** — Service Law — Railways Servant —Departmental enquiry— Re-appraisal of evidence—As a normal procedure never the job of a court or Tribunal and to come to its own conclusion—Disciplinary Authority is the best judge to examine the evidence : *Union Of India Vs. A.K. Mishra I.L.R. (2004) M.P. 122 (D.B.)*

– **Section 19 and Constitution of India Article 227** –Power of Superintendence – Writ petition – Service matter – Petitioner appointed to class IV posts on regular scale of pay or on daily wages but continued beyond 89 days – Some promoted to higher post – Remained in service for a long time – Article 14 enquiry and subsequent termination without offering opportunity of hearing – Action of respondents unfair and arbitrary – Order of termination quashed and Tribunals order set aside : *Mata Prasad Sahu Vs. State, I.L.R. (2000) M.P. 823 (D.B.)*

– **Section 19 – Service Law** – Writ Petition – Ordinance Factories and Ordinance Equipment Factories Group “C” and Group “D” (Industrial posts) Recruitment Rules, 1979 Contained in SRO 357, framed under article 309 of the Constitution – Not supersede at any time – Rules being statutory unless being executive order does not supersede the Rules : *Union Of India Vs. D.K. Jain, I.L.R. (2001) M.P. 945 (D.B.)*

– **Section 19** – Writ petition against order of administrative Tribunal – Service Law – Promotion – Employee on deputation to special police Establishment holding promotional post of assistant public prosecutor Grade I – Could not be considered for promotion in parent department because of deputation – Retirement from the same promotional post held by incumbent – Tribunal rightly granted pensionary benefit on

the same scale of pay – No interference called for : *State Vs. Prafulla Chandra Bandopadhyay, I.L.R. (2001) M.P. 1838 (D.B.)*

- **Section 19 and Constitution of India, Article 227**–Service Law–Termination on ground of conviction in criminal case–Claim of subsistence allowance till decision in appeal by High Court–Penal Code Indian, 1860–Sections 302, 326 and Criminal Procedure Code, 1973, Sections 374(2) and 387–Appellate Court or revisional Court has power only to suspend execution of sentence–Stay of conviction can be ordered only in exceptional case–Civil Services (Classification Control and Appeal) Rules 1966 Rule 19–Competent authority can terminate the services after conviction by criminal Court–On termination master and servant relationship comes to an end–Filing of appeal or stay of execution of sentence does not revive the relationship–Employee cannot be taken to be under suspension till decision in appeal–Not entitled to suspension allowance : *Jamna Prasad Vs. State; I.L.R. (2003) M. P. 368 (F.B.)*

- **Section 19 and Constitution of India, Article 227**–Writ Petition–Service law–Departmental enquiry–Punishment of Removal–Delinquent Police Head Constable–Allegation of demanding bribe and on non-payment causing arrest–Charge proved–Punishment of Removal–Not improper–Police Regulation M. P. Regulations 214 and 221–Power to impose punishment–Superintendent of Police has power to impose punishment of removal on a Head Constable–Punishment order is within jurisdiction–Civil Services (Classification, Control and Appeal) Rules 1966–Rule 18–Common proceedings–Superintendent of Police passed an order and appointed SDOP to conduct enquiry against two persons and submit enquiry report–Rule 18 is satisfied–No illegality committed : *Rameshchandra Vs. State; I.L.R. (2003) M. P. 391 (D.B.)*

- **Section 19 and Constitution of India, Article 227**–Service Law–Railways servant–Departmental enquiry–Re-appraisal of evidence–As a normal procedure never the job of a court or Tribunal and to come to its own conclusion–Disciplinary Authority is the best judge to examine the evidence–In rarest of rare cases it is permissible for the Court to substitute lesser punishment without remitting the case to Disciplinary Authority if the evidence so warrants–Conniving a barat party to travel in train without ticket–Finding of enquiry officer that charges are not proved beyond doubt–Not a case of no evidence–Disciplinary Authority inflicted punishment of removal from service disagreeing with the finding of enquiry officer–Modified by the appellate authority to compulsory retirement–No notice or reasons given why it differs from the enquiry report–Clearly indicates non-application of mind–Main witnesses not supported the prosecution–Two passengers apprehended without ticket and 38 were let off–Ground reality not taken into account that in Bihar and Madhya Pradesh marriage parties and political volunteers barge into trains ticketless and very often the ticket checker is helpless and some times he is threatened by passengers–Element of doubt if the employee had any pecuniary advantage–Delinquent is entitled to benefit of doubt–Punishment of compulsory retirement–Harsh and shockingly

disproportionate–Punishment substituted by withholding of three increments with cumulative effect but with continuity in service–Order of Tribunal modified : *Union Of India Vs. A.K. Mishra; I.L.R. (2004) M.P. 122 (D.B.)*

- **Section 19**, Constitution of India, Article 227 and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 Rule 17–service Law–Departmental Enquiry–Punishment of reversion substituted by withholding 4 increments with commulative effect–Enquiry Officer recorded finding of guilt and submitted the report–Report not furnished to the employee–Grievances has to be accepted to the extent from which Rule 17 becomes applicable–Order of punishment set aside–Disciplinary authority may proceed from the stage it required to furnish the copy of the report and complete the enquiry in three months : *State Vs. R.K. Rai ; I.L.R. (2003) M.P. 667 (D.B.)*

– **Section 19 and Constitution of India, Articles 227,226,14–Writ Petition** – Service Law – Promotion – Pay fixation –Fundamental Rule 22-D–An employee is entitled to get his pay fixed in the pay scale of higher post–Rule Speaks of Promotion from lower post to higher post and not from one scale to another--Even if employee was getting same salary on lower post benefit of FR 22-D cannot be denied--Benefit granted to similarly situated employees by virtue of an earlier order – Subsequent challenge with no plausible explanation–Action discriminatory Attracts Article 14 of the Constitution : *STATE OF M.P. Vs. Dayaram Patidar; I.L.R. (2003) M.P. 614 (D.B.)*

– **Section 19–Constitution of India, Article 227, Writ Petition–Service law**–Prevention of Corruption Act, 1988, Sections 5(1)(d), 5(2) and Penal Code, Indian 1860, Section 161–Trap case–Prosecution for taking bribe–Conviction and sentence by Special Judge–Dismissal from service–Subsequent acquittal by High Court on appeal –Reinstatement–Back wages–Employer not responsible for bringing about the situation of dismissal–Employee not entitled to back wages : *Anoop Kumar Shrivastava Vs. State; I.L.R. (2003) M.P. 33 (D.B.)*

– **Section 19 and Constitution of India**, Article 227–Service law–House Rent allowance–Both of the spouses Government servants–Wife in Central Government Service–Petitioner-husband State Government employee entitled to HRA–Interpretation–When two words occur in a particular sentence and there is no reason to give distinctive meaning they should convey the same meaning–Word 'Government' used in M. P. Govt. Circular in the context means State Government only : *Dr. G. K. Kundlani Vs. State; I.L.R. (2003) M.P. 381 (D.B.)*

- **Section 19 and Constitution of India, Article 227**–Service Law–Transfer–When a Public officer is visited with a chargesheet on the basis of serious allegation the department may in its wisdom transfer him to another place–Revocation of suspension order does not confer a right to be retained at the same place–Order of

stay obtained from Tribunal but by then employee relieved—Department directed not to initiate disciplinary proceeding for not obeying transfer order : *Union of India Vs. Sri Vilas Ramesh Chand Tarhate; I.L.R. (2003) M. P. 491 (D.B.)*

- **Section 19 and Constitution of India, Article 227**—Service Law—Correction in father's name and date of birth in service record—Wrong entries—Came to knowledge on promotion to the post of Head Constable—School leaving certificate from Govt. School—Satisfactory piece of evidence—Has to be accepted—Reliance cannot be placed on Medical report being based on estimation—Entry cannot be treated conclusive as per Rule 84 of M. P. Financial Code—Order of Tribunal set aside : *premlal Shrivastava Vs. State of M.P.; I.L.R. (2003) M.P. 1195 (D.B.)*

- **Section 19 and Constitution of India, Article 227**, Railway Servants (Discipline and Appeal) Rules 1968—Rule 9(9)(c)—Writ Petition—Service law—Departmental Inquiry—No Presenting Officer appointed—Inquiry Officer himself conducting as presenting officer—No man shall be a Judge in his own cause—Clear and real distinction between an Inquiry Officer acting as Presenting Officer, and an Inquiry Officer putting some question to any witness to clarify the evidence or ascertain the truth—While the first vitiates the inquiry the second would not—Tribunal rightly set aside orders passed by disciplinary authority—Principles of natural justice in departmental inquiry summarised : *Union Of India, Through Its Secretary, Ministry Of Railway, New Delhi Vs. Mohd. Naseem Siddiqui, Bhopal; I.L.R. (2004) M.P. 821 (D.B.)*

- **Section 19 and Constitution of India, Article 227** -Writ petition—Service Law— Recruitment— M.P. Secretariate Service Recruitment Rules 1976, Rules 5 & 8—English Stenographers—Subsequent to appointment condition for obtaining certificate in Hindi Shorthand imposed—Deleted by policy decision—When Rules do not cover any area or apply to a particular arena the Government can take policy decision—Vested rights of hindi Stenographers not affected—Tribunal erred in holding that appointments were made dehors the rules : *Vinod Kumar Zakariah Vs. State Of Madhya Pradesh; I.L.R. (2003) M.P. 739 (D.B.)*

- **Section 19 and Constitution of India, Article 227**—Writ Petition challenging order of Central Administrative Tribunal—Deputation for availing training in the United States of America SR 17 and 49—Hotel entitlement and daily allowances—Deputation abroad not in a representational visit but on training—Incumbent entitled to allowance for accommodation one step below his normal entitlement : *Director, Indian Veterinary Institute Vs. Dr. S.C. Dubey; I.L.R. (2003) M. P. 592 (D.B.)*

- **Section 19 and Constitution of India—Article 227** —Service Law—Compassionate appointment—Provided by Railways only if an employee is medically decategorised—Father of petitioner not medically decategorised but voluntarily retired

from the Railways–Petitioner not entitled to compassionate appointments: *Sunil Kumar Rai Vs. Union of India through the General manager Central Railway, Bhopal; I.L.R. (2003) M.P. 1079 (D.B.)*

– **Section 19 and Constitution of India–Article 227–Service Law–Recruitment–Post of Assistant Surgeon advertised–Petitioner participated but could not be selected by the public Service Commission–After participation petitioner is estopped and cannot be permitted to turn around and challenge the procedure :** *Dr. Manoj Singh Tomar Vs. The State; I.L.R. (2003) M.P. 1082 (D.B.)*

- **Section 19 and Constitution of India, Article 227–Service Law–Pension–Civil Services (Pension) Rules M. P., 1976, Rule 9(4)–Pendency of Disciplinary proceeding–Withholding of pension–Could not last for a period more than two years–Enquiry dropped by the Government itself–Non-payment of dues for further six years–Petitioner entitled to interest @ of 12% :** *B.D. Dubey Vs. State of M. P.; ILR I.L.R. (2003) M.P. 267 (D.B.)*

- **Section 19 and Constitution of India Article 227–Service law–ad hoc appointment of Additional Divisional Medical Officer in Railways Subsequent to 1/10/1984–Terminated by the apex Court giving liberty to apply for selection through UPSC–Petitioner granted age relaxation for facing UPSC–Not selected by the UPSC–Railways have no alternative but to relieve him and to appoint a person selected by UPSC–No illegality in termination :** *Dr. Krishna Kumar Vs. The Union of India; ILR I.L.R. (2004) M.P. 373 (D.B.)*

- **Section 19–Constitution of India, Article 227–Writ petition–Service Laws–Fixation of TRCA for EDAs–Recovery of excess payment–Received for a long period without knowing it to be in excess–Should not be made–Once put on notice employee will have to refund excess amount effective from date of notice :** *Union Of India Vs. All India Postal Extra Departmental Employees Union; I.L.R. (2004) Mp.918 (D.B.)*

– **Section 19 and Constitution of India, Article 227–Railway Servants (Discipline and Appeal) Rules 1968, Rule 6 and 11–Writ Petition–Service law–Disciplinary action and imposition of Minor penalty–Dispensing regular enquiry–Charge not admitted by employee–Negligence could not be inferred by disciplinary authority–Minor penalty to be imposed likely to affect either financially or careerwise–Not possible to dispense with regular enquiry–Order impugned set aside :** *Union Of India Vs. C.P. Singh; I.L.R. (2004) M.P. 940 (D.B.)*

– **Section 19 and Constitution of India Article 227 – Writ Petition – Service Law – Misconduct – Departmental Enquiry – Punishment –Discrimination–Three Employees charge sheeted for the same incident – Two others awarded lesser**

punishment and petitioner alone is awarded severe punishment of compulsory retirement – Disproportionate and discriminatory – Orders set aside-case remitted back to Disciplinary authority for reconsideration : *Chain Singh Jatt Vs. Union of India; I.L.R. (2004) M.P. 253 (D.B.)*

- **Section 19 and Constitution of India, Article 227** and Central Civil Service (Pension) Rules 1972, Rule 8–Writ petition–Service Law–Pension–Under Regulations employee is entitled to pension subject to future good conduct –Future misconduct can be with respect to misconduct committed during service leading to conviction after retirement–Employee copulsorily retired on ground of pendency of Criminal Case–Conviction after retirement–Withholding of pension–Can only be on sound foundation based on evidence–But cannot be reduced below Rs. 375/-per mensem–Appeal against conviction pending before High Court–Employee entitled to pension in terms of Rule 8(1) (b) of Pension Rule–Impugned orders set aside : *Shri Bhagwati Prasad Tiwari Vs. Union of India; I.L.R. (2004) M. P. 246 (D.B.)*

- **Sections 19, 21**, Constitution of India, Article 227and Civil Services (Classification, Control and Appeal) Rules, M. P., 1966, Rules 10, 14 and 16–Service Law–Departmental Enquiry–Withholding three increments with cumulative effect–A major punishment–Procedure provided under Rule 14 has not been followed–Tribunal rightly set aside the order : *State Vs. S. R. Sonwani; I.L.R. (2003) M. P. 265 (D.B.)*

– **Section 19 and 21 and Constitution of India, Article 227**–Service Law–Promotion– Supersession – Representation made rejected by State Government–In the matter of seniority and promotion one should be vigilant and delight to approach the Court in quite promptitude–Stale claims are not to be agitated–Approach to Administrative Tribunal after 7 years of rejection of Representation–No explanation for delay–Tribunal rightly refused to condone the delay–No interference in writ petition : *B. S. P. Gour Vs. State; I.L.R. (2003) M.P. 1199 (D.B.)*

– **Sections 19, 22 and Constitution of India Article 227**-writ petition–Service law–Civil Procedure Code 1908, Order 47, Rule 1-Review-Not permissible on the premises that a particular ground was not urged–Doctrine of merger–Order passed by the appellate authority accepted and not challenged–Appellate order becomes operative–Tribunal erred in granting review on ground that original order was not passed by competent authority–Order of Tribunal is vulnerable : *State Vs. Alok Nigam; I.L.R. (2003) M. P. 670 (D.B.)*

– **Section 21**–Approach to Administrative Tribunal after 7 years of rejection of Representation–No explanation for delay–Tribunal rightly refused to condone the delay–No interference in writ petition : *B.S.P Gour Vs. State and others; I.L.R. (2003) M.P. 1199 (D.B.)*

– **Section 28** – Merely excludes jurisdiction of regular Civil Courts in contra distinction with the Tribunal : *Rammoo Vs. Union Of India, I.L.R. (1990) M.P. 128 (D.B.)*

– **Section 28**, Constitution of India, Article 227 and Industrial Disputes Act, 1947, Section 10 – Industrial Tribunal Constituted under the Industrial Disputes Act – Within the Superintendence of the High Court under Article 227 of Constitution – Award passed by the Industrial Tribunal amenable to the jurisdiction of the High Court : *S.C. Verma Vs. Central Govt. Industrial Tribunal, Jabalpur, I.L.R. (1995) M.P. 467 (F.B.)*

- **Sections 28, 29**, Constitution of India, Article 323-A and Civil Procedure Code (V of 1908), Section 141 – Transfer of pending cases – Administrative Tribunal created in substitution of High Court – Section 141, Civil Procedure Code is not applicable to writ proceedings – Writ petitions stand transferred under section 29(2) : *M.P. High Court Bar Association Vs. Union Of India, I.L.R. (1991) M.P. 527 (D.B.)*

– **Section 29** – Appeal pending in High Court having been saved necessarily the proceeding arising there from are also saved – Execution of such decree is not liable to be transferred to Tribunal : *M.L. Beohar Vs. Union Of India & Ors, I.L.R. (1992) M.P. 948*

– **Section 29** – Transfer of pending proceedings to Tribunal – Object of constituting tribunal is to provide for an exclusive adjudicatory and not executory forum – Execution proceedings in Service matters not being adjudicatory proceeding are saved – Other proceeding shall include only pending proceeding whose cause of action still required to be adjudicated and not such proceedings where all that remain to be done is execution – Executing Court directed to resume proceedings : *Kamlendra Singh Vs. State, I.L.R. (1992) M.P. 950*

Admission

– **Raises only a presumption** – Presumption rebuttable – Unless satisfactorily explained it is to be considered like any other evidence : *Mst. Jhunkaribahu & Ors. Vs. Phoolchand & Ors. I.L.R. (1957) M.P. 531 (D.B.)*

– **Admission made in a separate and earlier litigation** – Does not bind party in subsequent litigation, but is a piece of evidence – Value to be attached depends upon the content and the circumstances : *Balram Vs. Durgalal, I.L.R. (1970) M.P. 624 (D.B.)*

- **Principle that admission to be taken as a whole** – Limited in application to facts and not to the plea of law : *Indermal & Ramprasad & Ors., I.L.R. (1972) M.P. 536 (D.B.)*

- **Admission in pleadings cannot be dissected** – Admission to be read as a whole – Civil Procedure code – Order 12, rule 6 – Contemplates judgment on admission – Converse is also true – Defendants can confess judgment to a portion of plaintiff's claim : *The Arun General Industries Ltd., Calcutta Vs. The Rishab Manufacturers (P) Ltd., Katni, I.L.R. (1976) M.P. 275*

- **Admission in examination** – Condition in which a candidate can be refused permission to appear in examination or cancel his examination : *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa & Ors., I.L.R. (1979) M.P. 289 (F.B.)*

- **Admission on point of fact** – Serves to shift the burden – Mutation Does not have the effect of transfer of title – Hindur law – Limited owner – Agreement between limited owners to sever joint status – Does not have effect on the line of devolution – Agreement is binding on them during their life time – Cannot prejudice reversioners – Cannot convert life estate into absolute estate and from fresh stock of descent – Life estate in hands of limited owners forms one unit – Reversioner can come in only when whole unit ends – In the intervening period limited owners can Agreement valid only till last limited owner dies – Abolition of Property Rights Act, Section 84 – Fiction in, limited to appeals only : Admission on points of facts is not conclusive but serves to shift the burden. *Tukaram S/o Bhuwanlal Vs. Smt. Anjanibai, I.L.R. (1959) M.P. 573 (D.B.)*

Adoption

- **Effect of, on blood relationship** : *Kaveribai Vs. Rewabai, I.L.R. (1967) M.P. 574*

- **Adoption of husband's brother invalid in the absence of custom to the contrary**: *Tilokchand Vs. Bhagirath & Ors., I.L.R. (1981) M.P. 694*

- **Burden of proof** – Nature of proof – Material evidence not produced – Adverse inference to be drawn : *Chhotibai Vs. Ganeshlal, I.L.R. (1964) M.P. 570 (D.B.)*

- **Proof of** – Importance to be attached to conduct of principal parties, their relations and attending circumstances – Burden heavy on persons who set up adoption : *Babulal Vs. Smt. Dwarkabai, I.L.R. (1964) M.P. 388 (D.B.)*

- **Adoption by the widow of another coparcener** - 'Right of adopted son to challenge the disposition made by will : *Mst. Jhunkaribahu & ors Vs. Phoolchand & Ors. I.L.R. (1957) M.P. 531 (D.B.)*

Adverse inference

- **Incriminating facts and circumstances established** – Accused offering no explanation or giving a false statement – Adverse inference can be drawn against him : *State Of M.P. Vs. Muratsingh, I.L.R. (1974) M.P. 990 (D.B.)*

Adverse possession

- **Adverse possession arrested by a suit for possession** – Essentials to be proved for establishing adverse possession by one co heir against other co heirs : *Swaroop Narain Vs. Mst. Bhanwar Kunwar Bai & anr., I.L.R. (1967) M.P. 261*

- **Third party dispossessing tenant** – Possession of third party not adverse to landlord during continuance of lease : *Pyarelal Vs. Suganchand, I.L.R. (1961) M.P. 856*

- **Person claiming must show the assertion of hostile title against recorded owner** : *Ramlal Vs. State of M.P., I.L.R. (1988) M.P. 519*

- **Adverse possession against minor** – Agent of minor managing property on behalf of minor and continuing in possession of the property for more than 12 years after attainment of majority by the minor – Agent cannot acquire title by adverse possession : *Birambai & Anr Vs. Bhojraj & Ors., I.L.R. (1985) M.P. 497*

- **Adverse possession against limited owner** – Does not affect right of next reversioner : *Shyamlal Vs. Smt. Bhagwati Bai (Deceased) Through L.Rs. Mangli, I.L.R. (1979) M.P. 1020*

- **Right to claim mutation based on adverse Possession – Whether can be claimed** : *Kashiram Vs. Nathu, I.L.R. (1983) M.P. 183 (F.B.)*

- **No question of adverse possession or estoppel in respect of ancestral property unless ouster established** : *Munnulal Vs. Munnilal, (1990) M.P. 681*

- **Person entering possession with consent** – No adverse possession in absence of notice disclaiming owner's title : *Ganesh Prasad Vs. Narendralal, I.L.R. (1990) M.P. 703*

– **Doctrine “possession follows title”** – Applies when lands not capable of use and enjoyment and are submerged : *Amritlal Vs. Keshriprasad Bilaiya, I.L.R. (1979) M.P. 464 (D.B.)*

Advocates Act (XXV of 1961)

- **and Constitution of India, Article 227, Clause 3** – Do not empower authorised agent to act and plead in High Court – Civil Procedure Code – Order 3, rule 1 – Permits authorised agent to appear, apply and act – Does not allow him to plead in any Court : *Vidyawati Vs. Fattilal, I.L.R. (1969) M.P. 109*

– **Section 34 – Power of High Court to make rules** – Conduct and Etiquette rules framed by the bar council of India – What is minimal expectation from a person of the status of a practicing lawyer of the high court is decent conduct and behaviour – Advocate turning back and leaving the court before dictation of order by the court after hearing arguments – Show cause notice issued to the advocate to explain what he meant by the statement that “in the profession he is ready to face any consequence” and why his case be not referred to the Bar council for appropriate action – Caution issued to the advocate with the hope that he will come upto the status of the High Court : *Niranjan Soni Vs. State Of M.P., I.L.R. (1999) M.P. 276*

- **Section 49, Bar of India Rules, Part IV, Rule 5** – No student can be admitted unless he obtains 40% of marks in the qualifying examination – Statutory Rule – No estoppel or promissory estoppel against any statute : *Rajesh Namdeo Vs. Awadhesh Pratap Singh Vishwavidyalaya, I.L.R. (1989) M.P. 212 (D.B.)*

Advocates Act (XXV of 1971)

- **Section 8(2)** – Member of Bar Council continues to hold office till successor appointed though term may have expired : *B.K. Jain Vs. Y.S. Dharmadhikari, I.L.R. (1978) M.P. 103 (D.B.)*

Agency

– **Agent acting within the scope of authority in entering into transactions** – Agent has power to perform all acts incidental to the performance or breach of such contract : *Kulsekapatnam Hand Made Match Workers Co Operative Cottege Industrial Socierty Ltd. Vs. Firm Radhelal Lalloolal, Satna, I.L.R. (1974) M.P. 636 (D.B.)*

– **Agent occupying dual capacity viz selling agent as well as favoured buyer** – Agent acting as selling agent in particular transaction – Agent acts as agent in its

normal meaning – His authority, however is subjects to his contractual terms : *Kulsekarapatnam Hand Made Match Workers Co Operative Cottege Industrial Socierty Ltd. Vs. Firm Radhelal Lalloolal, Satna, I.L.R. (1974) M.P. 636 (D.B.)*

– **Can be created by contract – Railway not an agent of consignee :** *Assoiciated Cement Co. Ltd. Kymore, M.P. Vs. Assistant Commissioner Of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1974) M.P. 270 (D.B.)*

– **Principal “holding out” an implied authority to agent – Principal liable on basis of apparent authority :** *Kulsekarapatnam Hand Made Match Workers Co Operative Cottege Industrial Socierty Ltd. Vs. Firm Radhelal Lalloolal, Satna, I.L.R. (1974) M.P. 636 (D.B.)*

Agent

– **When a person can be said to act as agent of candidate in Election:** *Raghubirsingh Vs. Raghubirsingh Kushwaha, I.L.R. (1972) M.P. 451*

– **Agent’s remuneration fixed by agreement** – Remuneration can be enhanced retrospectively by the principal : *Prakashchandra Vs. Firm Swarupchand Hukumchand & Co, Indore, I.L.R. (1976) M.P. 30 (D.B.)*

Agreement

– **Earnest money** – It is part of purchase price when transaction goes forward, forfeited when transaction falls through : *Gyasiram Vs. Gulkandibai, I.L.R. (1975) M.P. 133*

– **No agreement providing penalty for breach** – State Government has no power to impose penalty : *The Gwalior Agriculture Company Ltd, Dabra Vs. State Of M.P., I.L.R. (1975) M.P. 599 (D.B.)*

– **Agreement for submission to an arbitration and an agreement to accept the decision of a valuer or appraiser – Distinction between :** *Sardar Amarjeet Singh Vs. State Of M.P., I.L.R. (1985) M.P. 174 (D.B.)*

– **Breach of agreement to sell by seller – Remedy of purchaser** – Property in goods remains with the seller who can deal with and dispose them of : *Union Of India Vs. Tarachand, I.L.R. (1979) M.P. 1100 (D.B.)*

Agricultural Cattle Preservation Act, M.P. (18 of 1959)

Section 4 (1)(a) (as amended by M.P. Krishik Pashu Pariraksan (Sanshodhan) Adhiniyam (1991) – Validity of total ban on slaughter of bulls and bullocks – Imposes unreasonable restriction of fundamental rights of butchers – Declared ultra vires only to the extent of sub clause (a) of sub section 1 of section 4 : *Hasmattullah Vs. State of M.P., I.L.R. (1996) M.P. 57 (SC) (FB)*

Agricultural Produce Market Act, C.P. & Berar (XXIX of 1935)

– **Section 3** – Land of private person declared as market – Declaration not illegal though ineffective – Does not affect proprietary title of owner – Section 4 and 16 – A – Do not vest in the market committee proprietary interest in land declared to be a market area if property belongs to some other persons : *The State Of M.P. Vs. The Municipal Committee, Damoh, I.L.R. (1963) M.P. 1059 (D.B.)*

– **Section 4 and 16-A** – Do not vest in the market committee proprietary interest in land declared to be a market area if property belongs to some other persons : *The State Of M.P. Vs. The Municipal Committee, Damoh, I.L.R. (1963) M.P. 1059 (D.B.)*

– **Section 15** – Provision of – Applicable to Municipality also : *Ramanlal Vs. The Municipal Committee, I.L.R. (1962) M.P. 351 (D.B.)*

Agricultural produce Markets act, Madhya Bharat (XVII of 1952)

– **License granted under** – Not effective as a license under M.P. Food Grains Control Order : *The State Of M.P. Vs. Jogilal, I.L.R. (1964) M.P. 782 (D.B.)*

– **Does not control supply, distribution and sale of essential commodities** – Provides for licensing business in agricultural produce in declared market area – Not covered by Section 16 of essential commodities act and as such not repealed – License granted under – Not effective as a license under M.P. Food Grains Control Order – M.P. Food Grains Control Order, 1958 – Clause 3 – storing for sale of food grain – Amounts to dealing in the business – Deals with controlling provision – No question of mens rea arises – M.P. Food Grains /Control Order, 1958 – Clause 3(2) – Burden on accused to show that storage was not for sale – Act of storing food grains in excess of 100 mds. Without license – Amounts to offence but only a nominal one – Procuring food grain without a license to an extent which would lead to a presumption of a person carrying on business as dealer – Amounts to offence – Essential commodities Act No. 10 and Criminal Procedure Code, Section 32 – Government empowering First Class Magistrate under this provision – the extent of

fine which can be imposed under Section 32, Criminal Procedure Code – Such sentences necessary to have deterrent effect : *The State Of M.P. Vs. Jogilal, I.L.R. (1964) M.P. 782 (D.B.)*

– **Section 26, rules 10 and 13** – Election programme once fixed cannot be altered at the sweet will of Collector – Voters List – List once finalized – Cannot be altered except for permissible corrections as accidental errors – Election rules Strict compliance essential : *Gopalsing Vs. Collector. Morena, I.L.R. (1964) M.P. 195 (D.B.)*

Agricultural Produce Markets act, M.P. (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, M.P. 1962 – Rule 38 – Appointments and punishment of servants and Officers – Have nothing to do with their categorization – 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 : *Prabhudayal Vs. The Krishi Upaj Mandi Samiti, Kelaras Sabalgarh, Dist. Morena, I.L.R. (1980) M.P. 822 (D.B.)*

– **Rule 54, By law 5** – Rights of Marketing committee, of control market yard : *Municipal Council, Khurai Vs. Agricultrue Produce Marketing Committee, Khurai, I.L.R. (1968) M.P. 93*

– **Rule 56 and By law 84 framed thereunder** – Authority to make assessment – To observe principles of natural justice : *M/S Roopchand Phoolchand Oil Mill, Raipur Vs. Krishi Upaj Mandi Samiti, Raipur, I.L.R. (1976) M.P. 148 (D.B.)*

– **Section 3** – Does not prohibit issue of notification until other manner of publication of notification is prescribed – words and Phrases – Word “May” – Sometimes not used in permissive or directory sense – Has the effect of “must” – Intent of legislature – To be gathered not only from phrase logy but also from nature, design and consequences which follow from construing the word in one sense in or other – rule 3 – does not make publication in other manner compulsory – Section 14(2) – Vesting is statutorily automatic – Not necessary for municipal committee to follow procedure laid down by Section 109 of C.P. and Berar municipalities act- Interpretation of Statutes – Special Act dealing with special subject – special provision governs the matter and not general provision in any Act – Section 14(1) and

(2) – provision not unconstitutional : *The Municiple Committee, Khurai Vs. The State Of M.P., I.L.R. (1964) M.P. 668 (D.B.)*

– **Section 3, 4 and 5** – Exclusion of trading in cotton in one sub market yard and restricting it to principal market yard – These sections are not violated : *Ghanshyamdas Vs. State Of M.P., (1973) M.P. 428 (D.B.)*

– **Section 3, 4 and 5** – Prohibition of trading in particular agricultural produce at particular yard – Does not amount to total prohibition of trading in that produce in entire market area : *ghanshyamdas Vs. state of m.p., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 3 (3), 4 And 5** – Agricultural Produce included in notification issued under section 3(3) – Trading in that produce permissible in any market yard in market area unless prohibited : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 3, 4 And 5** – Permanent establishment of market for certain area for regulating purchase and sale of certain agricultural produce – Inclusion or exclusion of any kind of agricultural produce – Can be made after complying with Section 4 and 5 – Agricultural produce included in notification issued under section 3(3) – Trading in that produce permissible in any market yard in market area unless prohibited – Prohibition of trading in particular agricultural produce at particular yard – Does not amount to total prohibition of trading in that produce in entire market area - section 4(1) – Concerned only with inclusion in or exclusion from a notification issued under section 3(3) – Has no application where it is intended to restrict the trading in a notified agricultural produce – Section 5 does not come into operation where section 4 does not apply – exclusion of trading in cotton in one sub market yard and restricting it to principal market yard - Section 3, 4 and 5 are not violated – Section 15(2) – Restriction of trading in a particular commodity at a particular market area – Is not making provision for reasonable facilities in the market area – Management of market yard – Includes directing and controlling in a particular manner the use of market yard – Power of management of market committee – Not confined merely to administrative matters but extends to the regulation of trade in a notified agricultural produce in the best interests of trade and convenience of trade In the produce – agricultural produce markets rules, M.P., 1962 - Rule 54 – Vires of : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 3(3)** - Holding of enquiry under – Is optional – Not a condition precedent to validity of notification under sub section (3) : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 3(3)** - Holding of enquiry under – Is optional – Not a condition precedent to validity of notification under sub section (3) – Section 13 and 14 – Land

or building belonging to local authority not used by it situated in market yard – Market committee needing the same – Acquisition to be made by it according to section 13 – Land or building situated in market area but belonging to local authority and used by it – Does not pass to market committee unless transferred – Section 14(2) – Land or building vesting in market committee – Enquiry by Collector regarding compensation – Title of local authority cannot be disputed – No enquiry permissible whether land or building was or was not used for market – Dispute between local authority and the market committee – Aggrieved party's remedy is suit – Section 35 – Applicability : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 3(3) and 4(1)** – Section 4 (1) – Concerned only with inclusion in or exclusion from a notification issued under Section 3(3) – Has no application where it is intended to restrict the trading in a notified agricultural produce : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 3(5) and Rule 54** – Recovery of registration fee by Municipality – Amount to infringement of the right of marketing committee – Amounts to violation of these provisions : *Municipal Council Khurai Vs. Agriculture Produce Marketing Committee, Khurai., I.L.R. (1968) M.P. 93.*

– **Section 4 and 5** – Does not come into operation where section 4 does not apply : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428, (D.B.)*

– **Section 4 and 5** – Inclusion or exclusion of any kind of agricultural produce – Can be made after complying with these sections : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 13 and 14** – Land or building belonging to local authority not used by it situated in market yard – Market committee needing the same – Acquisition to be made by it according to section 13 : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 13 and 14** – Land or building situated in market area but belonging to local authority and used by it – Does not pass to market committee unless transferred : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 14(2)** - Dispute between local authority and the market committee – Aggrieved party's remedy is suit : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 14(2)** – Land or building vesting in market committee – Enquiry by Collector regarding compensation – Title of local authority cannot be disputed – No enquiry permissible whether land or building was or was not used for market : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 14(4)** - Compensation has to be assessed at the value of possession of property to Municipal Committee : *The Agricultural Produce Market Committee, Khurai Vs. The Municipal Council, Khurai, I.L.R. (1968) M.P. 569 (D.B.)*

– **Section 14(4)** – If property vests in Council – That factor also to be taken into consideration in determination of compensation : *The Agricultural Produce Market Committee, Khurai Vs. The Municipal Council, Khurai, I.L.R. (1968) M.P. 569 (D.B.)*

– **Section 14(4)**- Market value not to be brought into picture : *The Agricultural Produce Market Committee, Khurai Vs. The Municipal Council, Khurai, (1968) M.P. 569 (D.B.)*

– **Section 14(4)**- Imposes fixing of compensation for use and occupation of land or building – Does not imply acquisition out and out – Compensation has to be assessed at the value of possession of property to Municipal Committee – Market value not to be brought into picture – If property vests in council – That factor also to be taken into consideration in determination of compensation : *The Agricultural Produce Market Committee, Khurai Vs. The Municipal Council, Khurai, I.L.R. (1968) M.P. 569 (D.B.)*

– **Section 15(2)** – Management of market yard – Includes directing and controlling in a particular manner the use of the market yard : *Ghanshyamdas Vs. State Of M.P., I.L.R. I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 15(2)** – Power of management of the market committee – Not confined merely to administrative matters but extends to the regulation of trade in a notified agricultural produce in the best interests of trade and convenience of trade in the produce : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 15(2)** – Restriction of trading in a particular commodity at a particular market area : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

– **Section 20 read with Rule 56 framed there under** – Authorises market committee to levy market fees – “Levy” included assessment thereof : *M/s Roopchand Phoolchand Oil Mill, Raipur Vs. Krishi Upaj Mandi Samiti, Raipur, I.L.R. (1976) M.P. 148 (D.B.)*

– **Section 35** – Applicability : *The Municipal Council, Kanker Vs. The State Of M.P., I.L.R. (1969) M.P. 917 (D.B.)*

– **Section 43** – Notification issued under old Act – Saved and continues in force – Market established prior to 1960 – Continue as market under Act of 1960 – Resolution of Municipal committee establishing market within 3 miles of existing market – Resolution : *Ramanlal Vs. The Municipal Commit TEE, I.L.R. (1962) M.P. 351 (D.B.)*

Agricultural Produce Markets (Validation) Act, M.P. (XII of 1962)

– **Section 3** – Validity of : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of M.P., I.L.R. (1966) M.P. 186 (D.B.)*

– **Section 3** – Validity of – Constitution of India – Legislative Lists Not to be read in a narrow or restricted sense – General word to be held to extend to all ancillary and subsidiary matters Validation of action – To be regarded as ancillary and subsidiary to power to legislate – Validity of law – Not affected because of its effect on judicial decision as likely to reopen past controversies – Constitution of India – Article 14 – Law constitutional though affecting individual : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of M.P., I.L.R. (1966) M.P. 186 (D.B.)*

Agricultural Produce Markets Rules, M.P. 1962

– **Rule 38** – Appointments and punishment of servants and officers – Have nothing to do with their categorisation – Provision regarding it made in this Rule : *Prabhudayal Vs. The Krishi Upaj Mandi Samiti, Kelaras Sabalgarh, Dist. Morena, I.L.R. (1980) M.P. 822 (D.B.)*

– **Rule 38** – Deputy Director – Subsequent action of director may rectify the approval of Deputy Director in appointment of a Secretary doctrine of promissory estoppel operates against director and committee as well : *Krishi Upaj Mandi Samiti, Mhow Vs. Shree Ram Choudhary, I.L.R. (1998) M.P. 961*

– **Rule 38** – Anything in Agricultural Produce Markets Rules, M.P. 1962 Bye laws going beyond this rule – Is not valid : *Prabhudayal Vs. The Krishi Upaj Mandi Samiti, Kelaras Sabalgarh, Dist. Morena, I.L.R. (1980) M.P. 822 (D.B.)*

– **Rule 38** – Empowers Director to issue direction that servants other than those mentioned in this rule may be included in category of superior officers : *Prabhudayal Vs. The Krishi Upaj Mandi Samiti, Kelaras Sabalgarh, Dist. Morena, I.L.R. (1980) M.P. 822 (D.B.)*

– **Rule 54** – Vires of : *Ghanshyamdas Vs. State Of M.P., I.L.R. (1973) M.P. 428 (D.B.)*

Agricultural Produce Markets act (XXIV of 1963)

- **Section 17(3)** and industrial Disputes Act (XIV of 1947), Section 2(j) – Definition of “Industry” – Scope of – Includes activities of Krishi Upaj Mandi Committee provided for in section 17(3) of M.P. Krishi Upaj Mandi Adhiniyam, 1972 : *Administrator, Krishi Upaj Mandi, Sagar Vs. State Of M.P., I.L.R. (1982) M.P. 418*

Agricultural Service (Gazetted) Recruitment Rules, M.P., 1966

- **Rules 14, 15 and 16**, Civil Service (General Conditions of Service) Rules, M.P., 1961, Rule 7, Public Service Commission (Limitation of Functions) Regulations, M.P., 1957 and Constitution of India, article 320(3) – Obligation of Govt. to consult public Service commission – Requirement of – Petitioner an Agricultural Assistant promoted to the post of Assistant Director of Agriculture a class II post until further orders – Promotion subject to concurrence of Public Service Commission – Promotion is ad hoc – Departmental Promotion Committee on scrutiny of petitioner’s promotion found him unsuitable – Public Service Commission concurring with the opinion of Committee – Petitioner reverted as Agricultural Assistant – Reversion Valid : *N. S. Lad Vs. State Of M.P., I.L.R. (1982) M.P. 1014 (F.B.)*

Air (Prevention and Control of Pollution) Act, 1981

– **Sections 18 , 20 and 22-A** and water (Prevention and Control of Pollution) Act, 1974, Sections 30, 32, 33-Characteristically special enactments-Relate to prevention and control of pollution and also provide for penal consequences in case of breach of statutory provisions-Fields of operation are different- Provisions of Section 133 Criminal Procedure Code can be culled in aid to remove public nuisance caused by effluent of discharge and air discharge causing hardship to general public : *State of M. P. Vs. Kedia Leather & Liquor Ltd., I.L.R. (2003) M. P. (SC) 1051*

-**Sections 18 , 20 and 22-A** and water (Prevention and Control of Pollution) Act, 1974, Sections 30, 32, 33- Public nuisance-High Court not justified in holding that there was any implied repeal of Section 133 Criminal Procedure Code by the Special enactments: *State of M. P. Vs. Kedia Leather & Liquor Ltd., I.L.R. (2003) M. P. (SC) 1051*

– **Sections 19, 21** – Refusal of permission to manufacture hydrated lime in industrial area to petitioner – Other industry granted permission before area was declared as are pollution control area – Refusal of permission to petitioner not discriminatory : *M/s Chhatisgarh Hydrate Lime Industries Korba Vs. Special Area Development Authority, Korba, I.L.R. (1991) M.P. 263 (D.B.)*

- **Section 40, Companies Act, Indian (I of 1956)**, Section 175 and Criminal Procedure Code, 1973 (II of 1974), Section 482 – Prosecution of Chairman and Deputy Chairman of Company u/s 40 of the Act of 1981 – Requirements of – The words “directly incharge of” used therein – Connotation of – Neither the complaint allege nor the provisions of Companies Act provide Chairman and Deputy Chairman as persons directly incharge of business of company – Prosecution of Chairman and Deputy Chairman not in accordance with law – Liable to be quashed in exercise of powers u/s 482, Criminal Procedure Code – Interpretation of Statute – Each word used therein has to be given meaning : *N. A. Palkhivala Vs. M.P. Pradushan Niwaran Mandal, I.L.R. (1990) M.P. 466*

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– **Joint family dealing in money transactions** – Family incurring antecedent liability – Manager alienating property to satisfy the liability – Alienation for legal necessity – Alienation Binding on members of Joint family : *Dayaram Vs. Kashiram , I.L.R. (1964) M.P. 402 (D.B.)*

– **Tenant-in-common** – Alienation in favour of stranger by a tenant in common – Equities to which the alienee is entitled stated : *Tikam Chand Vs. Rahim Khan, I.L.R. (1974) M.P. 298 (D.B.)*

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– **Prior mortgage debts by father and father’s uncle** – Coparcener challenging alienation – Subsequent mortgage by grand –father and mother for self and as guardian of minor son for satisfying earlier mortgage debts and for money needed for family firm – Prior mortgage debts, became family debts – Subsequent mortgage binding on coparcener challenging alienation and also on executants : *Sunderlal Vs. Shri Krishanadas, I.L.R. (1966) M.P. 600 (D.B.)*

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- Alienee from a co-owner of specific item of property – Has equity to claim that the specific item be allotted to the share of his vendor in a suit for general partition : *Abdul Rahman & Anr. Vs. Syed Amid & ors. I.L.R. (1957) M.P. 463*

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- **Rule 16(3)**, All India Services (Pay) Rules, 1954, Rule 24 – Compulsory retirement – Instructions issued by Govt. Serve as a guideline – Confidential Reports of remote period – Not relevant – Confidential Reports of later years – Are of utmost importance – Respondent No. 1 appointed to selection grade in 1976 and to the super time scale in 1980 and given first increment in that remarks are of average and two of fair – Order of compulsory retirement of respondent No. 1 on 11-4-1984, based on previous adverse entries is arbitrary and violative of Rule 16(3) – Order of Single Judge in writ position maintained and Letters Patent Appeal dismissed : *Union Of India Vs. S.C. Vaish & anr., I.L.R. (1987) M.P. 31 (D.B.)*

- **Rule 16(3)**, All India Services (Pay) Rules, 1954, Rule 24, Letters Patent, M.P., Clause 10 and Limitation Act, Indian (XXXVI of 1963), Section 12 – Exclusion of time requisite for obtaining certified copy of impugned order – When to be allowed – Compulsory retirement – Instructions issued by Govt. serve as a guideline – Confidential Reports of remote period – Not relevant – Confidential Reports of later years – Are of utmost importance – Respondent No. 1 appointed to selection grade in 1976 and to the super time scale in 1980 and given first increment in that scale in 1982 – Of confidential report of last five years, three remark are of average and two of fair – Order of compulsory retirement of respondent No. 1 on 11-4-1984, based on previous adverse entries is arbitrary and violative of Rule 16(3) – Order of Single Judge in writ petition maintained and Letters Patent Appeal dismissed : *Union Of India Vs. S.C. Vaish & anr., I.L.R. (1987) M.P. 31 (D.B.)*

- **Rule 16(3)** – Compulsory retirement – Consideration of public interest – Procedural safe – Guards – Adverse entries in service record for the period before promotion of Government servant – Value of – Overall assessment of Govt. servant has to be made – Old and State confidential reports not to be considered – Petitioner an I.A.S. Officer promoted in super time Scale of I.A.S. from 01.07.1980 compulsorily retired by an order dated 09.04.1984 – Order challenged as mala fide and arbitrary – Govt. to rebut such please by voluntarily filing documents – Court finding that Review Committee not recommending petitioner's compulsory retirement – Old and state entries in service record of petitioner considered and relevant entries misconstrued as adverse – After promotion no entries are found to be adverse –

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- **Rule 19 (iii)(a)(i)** – Gratuity – Held – A retired High Court Judge is entitled to retirement gratuity under the Rules 1958 and the same is payable with interest @18% per annum from the date of retirement as the Central Government has been delaying the payment of the same without any valid justification : *T.P. Naik Vs. Union of India, I.L.R. (1997) M.P. 105*

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- **Rule 25(1) and Constitution of India, Article 226** – Representation to the President is not an efficacious remedy – Petition under Article 226 of the Constitution not barred : *S.C. Vaish Vs. Union Of India, I.L.R. (1985) M.P. 677*

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- **Rule 8(d) of the rules framed under the Act provide non person unauthorized can conduct any tourist to protected monuments without licence** – Guide lines issued by the Government for training, age limit, licensing, renewal of licence, issue of identity cards disciplinary action : *Tourist Approved Guide Association Vs. Union Of India, I.L.R. (1999) M.P. 325 (D.B.)*

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- **Sections 3, 5 and Constitution of India, Articles 31(c), 300-A and 248, Seventh Schedule, List III Entry 42** – Abolition of gratuitous grants and case grants – Siledar grant held to be property – Extinguishment of Siledary grant without any compensation – Not just, fair and reasonable – Act receiving assent only of Governor and not of president – Article 31-c of Constitution not attracted – Legislation for acquisitioning a grant which does not amount to property – Can be enacted only by Parliament – Parliament not enacting the Act – Section 5 of the Act providing for acquisitioning of grant held to be ultra vires – Other provisions of the Act consequently becoming meaning less – Whole Act Struck done : *Ganpatrao Vs. State Of M.P., I.L.R. (1988) M.P. 476 (D.B.)*

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– **Scope of** : *Shri Ram Soni Vs. Collector, Sagar & ors, I.L.R. (1984) M.P. 708 (D.B.)*

- **Sections 1(4), 3, 7, 14(8-A), 14-A, 22, 26** and Constitution of India, Article 226 – Application of the act to member of scheduled Castes – Act came into force for them on 15-8-73 – Debt Relief Courts had jurisdiction in respect of transaction of 1970 – Debt Relief Courts are quasi – Judicial tribunals – Orders of Debt Relief Court and Revisional Court not giving reasons – Courts did not apply their minds and failed to exercise jurisdiction – Orders of Court below quashed and case sent back to debt Relief court for decision afresh : *Shrimati Phulmati Bai Vs. Manbai, I.L.R. (1989) M.P. 12 (D.B.)*

– **Section 2(4)** – “Debt” – Includes arrears of rent under a decree of 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 : *Daryaobai Vs. Surajmal, I.L.R. (1980) M.P. 920 (F.B.)*

– **Sections 2(4) and 6 – Word “Debt”** – Definition of – Is inclusive definition – Also included liability for arrears of rent decreed – Liabilities coming under an agreement between landlord and tenant : *Pooranmal Vs. Sushila Devi, I.L.R. (1981) M.P. 418*

– **Sections 2(4) and 6** – Words “All liabilities” – Include even liability not actually in the nature of loan – Word “Debt” – Definition of is inclusive definition – Also include liability for arrears of rent decreed – Liabilities coming under an agreement between landlord and tenant – Interpretation of Statutes – Object of – Rules of construction – Preamble – Language of the Statute plain and clear – Preamble cannot be called in aid to ascertain intention : *Pooranmal Vs. Sushila Devi, I.L.R. (1981) M.P. 418*

- **Sections 7 and 8–Suit for recovery of debt**–Transaction after appointed day– Act has no application–Suit for recovery maintainable–Decree passed in appeal executable : *Manmohan Panika Vs. Anand Kumar Tamrakar I.L.R. (2004) M.P. 522*

– **Section 7(1)** – Suit or execution of a decree for arrears of rent is included – Civil Court or executing Court has no jurisdiction : *Daryaobai Vs. Surajmal, I.L.R. (1980) M.P. 920 (F.B.)*

– **Section 7(2)** – Proceedings for execution pending – Direction which Court has to give – Section 7(2) and (3) – Special provisions relating to suit or proceedings pending – Not controlled by Section 8 – Section 8 – Provision when attracted – Interpretation of Statute – Statute to be construed in a way as not to render any provision nugatory, redundant or meaningless : *Mst. Mankuwar Bai Vs. Udairam, I.L.R. (1979) M.P. 285*

– **Section 7(2) and (3)** – Special provisions relating to suit or proceedings pending – Not controlled by section 8: *Mst. Mankuwar Bai Vs. Udairam, I.L.R. (1979) M.P. 285*

– **Section 8 – Provision when attracted** : *Mst. Mankuwar Bai Vs. Udairam, I.L.R. (1979) M.P. 285*

- **Section 8** – Application filed beyond 60 days from the date of establishment of Debt Relief Court for determination of debts qua creditor – Applicability of section 5 of Limitation Act for condonation of delay would be within the jurisdiction of the Competent authority – Limitation Act, 1963 – Section 29(2) – Provisions of Sections 4 to 24 of Limitation Act would apply to the extent to which they are not expressly excluded by the section 8(3), M.P. Anusuchit Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967 : *Ramsingh Vs. State Of M.P., I.L.R. (1998) M.P. 736*

- **Section 8(3)**–Writ Petition–Challenge as to validity of ex-parte order of Debt Recovery Court (SDO)–Service of notice–Names of parties kept blank, name of Court not described–Cannot be regarded as due service of notice : *Hari Ram Soni Vs. Damdu Lal Ahirwal and ors.; I.L.R. (2005) M.P. 949*

– **Section 22** – Civil Suit filed for declaration and possession by claimant dismissed for default – Does not operate res judicata – No occasion for filing such suit : *Girdharilal Patel Vs. The Collector, Jabalpur, I.L.R. (1999) M.P. 191*

– **Section 26** –Jurisdiction of Civil Court barred under section 26 – Advocate, who appeared in the case did not act properly – Required to be issued a caution to remain careful in future – in view of submission it cannot be said that revisional authority exercised jurisdiction not vested in it or failed to exercise jurisdiction vested in it by law – Petition deserves to be rejected : *Girdharilal Patel Vs. The Collector, Jabalpur, I.L.R. (1999) M.P. 191*

Apology

– **Tender of, must be unconditional, unreserved, unqualified and not half hearted** : *In Re Siyaram, I.L.R. (1964) M.P.181 (D.B.)*

Appeal

– **Right of party to be determined by what Court actually did and not by what it ought to have done** : *Goverdhan Vs. Ganesh, I.L.R. (1962) M.P. 766*

– **Appeal against order of Collector confirming sale** – Auction purchasers not made parties – Auction purchaser appearing in appeal – Appeal not incompetent – Defect merely of form and not of substance: *Firtu Vs. The State Of M.P., I.L.R. (1965) M.P. 12 (D.B.)*

– **Rights of appeal** – A vested right – Vests in the party on the date of initiation of proceeding – Right governed by the law prevailing at the time of initiation of proceeding to some other persons : *The Municipal Counce, Mandsaur Vs. Mukutbiharilal & anr., I.L.R. (1963) M.P. 612 (D.B.)*

– **Right of appeal** – Creature of statute : *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579 (F.B.)*

– **Revision regarding question of damages when can be interfered** : *The M.P. State Road Transport Corporation, Jabalpur Vs. Jahiram & anr., I.L.R. (1971) M.P. 329 (D.B.)*

– **Appellate judgment under special statute** – Held appealable under general law: *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P. 943 (F.B.)*

– **Right of appeal to be expressly provided by statute** : *Hazarilal Gupta Vs. The State Transport Appellate Authority, M.P., I.L.R. (1974) M.P. 84 (D.B.)*

– **Right of appeal accrues on the date of institution of original proceedings** – Not affected by subsequent change in law unless contrary intention is expressed : *Radheshyam Gupta Vs. Smt. Laxmi Bai, I.L.R. (1978) M.P. 1057 (D.B.)*

– **Right of appeal – Is a statutory right** – Cannot be taken away by assumption or analogy – Can be taken away only by a statute : *Ramkishan Vs. State Of M.P., Through The Secretary, Revenue Department, Bhopal, (1981) M.P. 124 (D.B.)*

– **Right of appeal – A vested right** : *Nehru Singh Vs. S.Rajan & Ors, I.L.R. (1973) M.P. 263 (D.B.)*

Appeal - Appeal to protect mother cow not an appeal on ground of religion – Appeal to religious minded persons generally to vote for a particular person to protect their religion – Not an appeal to vote on ground of religion : *Krishnachandra Sharma Vs. Rishab Kumar, I.L.R. (1959) M.P. 31 (D.B.)*

Appellate

- **Appellate authority, functions and powers** - can exercise only those powers which original authority could exercise : *Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal, Vs. State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1964) M.P. 687 (D.B.)*

- **Appellate Authority, discretion of whether to grant stay or interim order** – Discretion to be according to settled legal principles and not arbitrary : *Durg Transport Co, Private Ltd., Durg, Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (D.B.)*

Appointment

- **Validity of appointment** – To be judged by law in force at the time of the appointment : *Dr. H.N. Bhargava Vs. University Of Sagar, I.L.R. (1978) M.P. 43 (D.B.)*

Appreciation of evidence

- **Statement of witness recorded U/s 164 Cr.P.C.** – Evidence that at the stage of investigation prosecution doubted the veracity and credibility of the witness : *Lallusingh Vs. State of M.P., I.L.R. (1996) M.P. 162 (D.B.)*

Apprentices act (LII of 1961)

- **Section 2(aa)** – Definition – “Apprentice” means a person undergoing training under a contract : *Pramod Kumar Shrivastava Vs. South Eastern Coaldfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1232*

- **Sections 21 and 22** – None of the petitioners, after apprenticeship training could obtain certificate of proficiency from national council under section 21(h) – Employer within his rights to hold examination for proficiency test in respective trades as envisaged under section 22 of the act : *Pramod Kumar Shrivastava Vs. South Eastern Coaldfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1232*

Arbitration

– **Introduced with sole purpose of avoiding technicalities and hair splitting:** *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

– **Circumstances in which arbitration clause will come into play :** *Hindhustan Steel Ltd, Bhilai Vs. M/s Ramdayal Dau & Co., Durg, I.L.R. (1976) M.P. 371*

– **For operation of arbitration clause existence of Contract is necessary :** *Hindhustan Steel Ltd, Bhilai Vs. M/S Ramdayal Dau & Co., Durg, I.L.R. (1976) M.P. 371*

– **Power of arbitration to enquire into the fact that contract was put an and to under duress, pressure and out of fear :** *Hindhustan Steel Ltd, Bhilai Vs. M/s Ramdayal Dau & Co., Durg, I.L.R. (1976) M.P. 371*

– **Power of Court to reject administrative decision – It can decide question on merits :** *Heavy Electricals (India) Ltd. Through The General Manager, Bhopal Vs. Pannalal Devchand Malviya, Contractor, Bhopal, I.L.R. (1976) M.P. 856 (D.B.)*

– **Arbitration clause in the agreement** – When can be invoked – No dispute about liability to pay licence fee according to terms of the agreement – Arbitration clause not attracted : *M/S Suhag Hotels (Pvt.) Ltd, New Delhi Vs. M.P. Housing Board, Bhopal, I.L.R. (1984) M.P. 129 (D.B.)*

– **Parties entering into fresh or subsidiary contract in addition to original contract** – Subsequent contract not governed by arbitration clause in original contract : *M/S Umrao Singh And Com. Contractors, Lucknow, (U.P.) Vs. State Of M.P., I.L.R. (1979) M.P. 695 (D.B.)*

– **Jurisdiction of :** *M/s Uttam Singh Dural & Co. (P) Ltd., New Delhi Vs. M/S Hindustan Steel Ltd., Bhilai, I.L.R. (1983) M.P. 269 (D.B.)*

– **Question whether party interested in dispute** – Question depends upon facts of each case, nature of dispute, and entire circumstances of case : *Seth Fida Hussain Vs. Shri Fazal Hussain, I.L.R. (1964) M.P. 623 (D.B.)*

– **Court has power when matter comes before it to see whether officer acted administratively** – Decision open to judicial scrutiny even because of special clause in agreement of not referring that question to arbitrator – All arbitration proceedings rendered ineffective – When decision of arbitrator is effected by decision of the

question under other clause of the agreement : *Heavy Electricals (India) Ltd. Through The General Manager, Bhopal Vs. Pannalal Devchand Malviya, Contractor, Bhopal, I.L.R. (1976) M.P. 856 (D.B.)*

– **Employee of one party appointed arbitrator whose decision made final** – Officer has to act judicially – Court has power when matter comes before it to see whether officer acted administratively – Decision open to judicial scrutiny even because of special clause in agreement of not referring that question to arbitrator – All arbitration proceedings rendered ineffective – When decision of arbitrator is effected by decision of the question under other clause of the agreement – Provision of arbitration Act, 1940 – Applicable in case of quasi agreement of arbitration – Power of court to reject administrative decision – It can decide question on merits : *Heavy Electricals (India) Ltd. Through The General Manager, Bhopal Vs. Pannalal Devchand Malviya, Contractor, Bhopal, I.L.R. (1976) M.P. 856 (D.B.)*

Arbitration Act, Indian (X of 1908)

– **Section 32** – Bars suit on basis of award, but not defence - Award once given – Suit on original cause of action not maintainable : *Ram Sunder Vs. Sudama & ors. I.L.R. (1960) M.P. 317*

Arbitration Act, Indian (X of 1940)

– **and Co Operative Societies Act, M.P., 1960 (XVII of 1961)** – Inconsistency between awards under Arbitration act and under Co operative societies Act : *Deputy Registrar, Cooperative Societies, Bilaspur Division, Bilaspur Vs. Narayan Prasad Mishra, I.L.R. (1977) M.P. 1123*

– **Provisions of Arbitration Act, 1940** – Applicable in case of quasi agreement of arbitration: *Heavy Electricals (India) Ltd. Through The General Manager, Bhopal Vs. Pannalal Devchand Malviya, Contractor, Bhopal, I.L.R. (1976) M.P. 856 (D.B.)*

– **Arbitrator** – Which person can be nominated as arbitrator to decide dispute between parties – No bias can be inferred against Housing Commissioner as arbitrator because Administrator – Principal Officer of the Board imposed fine on contractor when he had no jurisdiction to evaluate the quality : *M.P. Housing Board, Bhopal Vs. Karodi Shah Kohli, (1978) M.P. 868*

– **No bias can be inferred against Housing Commissioner as arbitrator because Administrator** – Principal Officer of the Board imposed fine on contractor when he had no jurisdiction to evaluate the quality : *M.P. Housing Board, Bhopal Vs. Karodi Shah Kohli, I.L.R. (1978) M.P. 868*

– **Award separable** – Bad portion can be separable from good portion – Portion of Award defective because of error apparent on face of record – Bad portion separable – No power in Court to examine merits of whole award : *M/S Umrao Singh And Com. Contractors, Lucknow, (U.P.) Vs. State Of M.P., I.L.R. (1979) M.P. 695 (D.B.)*

– **“Dispute”** – If one party asserts and other party repudiates the same, that is a “dispute” – Arbitrator entertained counter – Claim not contemplated by the order of reference – Order of court below that arbitrator exceeded its authority, cannot be sustained – It is the duty of the arbitrator to consider claim and counter claims – Allegation that arbitrator has failed to take a note of the other legal question and factual matrix besides alleged bias – For decision on objection : *M/s Western Coalfields Ltd, Coal Estate, Nagpur Vs. M/s Narbada Constrcutions, Jabalpur, I.L.R. (1999) M.P. 683 (D.B.)*

– **Contains no deeming provision** – Application under section 14 or 17 – Not to be treated as suit for enforcing Award – Public Trusts Act, M.P. – Section 27(4) – Bars suit relating to public trust under section 92, Civil Procedure Code – Public Trusts act, M.P., Section 27 and Civil Procedure Code, Section 92 – Educational institution – Not necessarily a public trust – Arbitration Act, section 30(C) – Words “or is otherwise invalid” in – Not to be read ejusdem generis – Empowers Court to set aside Award on ground other than those mentioned in different clauses of Section – Suo motu jurisdiction to be exercised in limited space – Civil Procedure Code – Does not prevent private arrangement being arrived at – Nor is there any bar to a proceeding under section 14, read with section 17 of the Arbitration Act for making Award a rule of Court – Civil Procedure Code – section 92 – Scope and object of Arbitration Act – Arbitration Act – Section 17 and Civil Procedure Code, Section 92(1) – Decree passed under Section 92(1), Civil Procedure Code – Supersedes decree passed on Award given on basis of private arrangement – Arbitration Act – Section 11 – Parties agreeing to settle “dispute” regarding certain transaction without formulating dispute – Agreement cannot be said to be inoperative or ineffective for vagueness : *Divyanand Saraswati Vs. Gopaldas, I.L.R. (1970) M.P. 672*

– **Schedule I, rule 8** – Confers discretion upon umpire to grant costs : *M.P. Electricity Board, Jabalpur Vs. The Central India Electric Supply Co. Ltd., Bilaspur, I.L.R (1976) M.P. 57 (D.B.)*

– **Section 2(a)** – Does not contemplate admission of opposite party regarding existence of agreement – Fact of agreement can be proved – Contemplates written agreement from which terms and conditions can be ascertained : *Dattatraya Vs. Amirkhan, I.L.R. (1964) M.P. 966*

– **Section 2(a)** – Arbitration agreement signed by broker – Trial Court recording finding that broker was not the agent of the respondent without affording opportunity to the parties to lead evidence finding is rendered illegal : *M/s Foods, Fats And Fertilisers Ltd. Tadepalligudem, Andhra Ppradesh Vs. M/s Ramkishandas Radhakishan, Ambikapur, I.L.R. (1985) M.P. 689 (D.B.)*

– **Section 2(a)** – Arbitration Agreement – Award passed by two arbitrators containing clause that all future disputes arising out of implementation of the award shall be referred to arbitrators – Award signed by all the parties and made rule of the Court – It amounts to arbitration agreement – Subsequently dispute between the parties regarding implementation of award – Arbitrators amending the award to the extent that amount from bank can only be withdrawn under joint signatures of at-least 2 partners – Subsequent award challenged on the ground of absence of arbitration agreement – Arbitrators can amend the award by making supplementary award in view of arbitration clause in earlier award : *Govind Prasad Agrawal Vs. Bhurelalji Agrawal, I.L.R. (1993) M.P. 185 (D.B.)*

– **Section 2(a)** – Arbitration agreement – Requisite of – Tender floated by M.P. Electricity Board containing terms of the contract including general conditions of the contract containing Arbitration clause – Party making offer subject to terms and conditions in the tender and expressly excluding any other terms and conditions – Arbitration clause in general Conditions of contract cannot form part of contract – Estoppel – Board challenging jurisdiction of arbitrator and taking part in arbitration Proceedings, submitting reply and counter claim but without prejudice to its right to challenge existence of arbitration agreement – Board not estopped from challenging existence of arbitration – agreement – Words “without prejudice” – Meaning of : *M/S Chitram Company Private Ltd. Main Road, Foyapuram, Madras Vs. M.P. Electricity Board, Rampur, Jabalpur, I.L.R. (1983) M.P. 572*

– **Sections 2(a), 30** – Arbitration Award – Time limit for unforeseen claims – Expression unforeseen relates to occurrence of loss due to acts of God or force majeure such as strikes, break down, riots etc – The claims arising out of breach of contract or flow from terms and contract can not be considered as “unforeseen claims” – Two claims found de hors contract in award and for remaining claims though, a different view can also be taken but that would not be a ground for interference as award is not de hors contract – Award separable in nature under different claims – Good part of award upheld while claims awarded beyond contract set/aside – Appeal partly allowed : *State of M.P. Vs. M/s Mittal & Company, Dholpur, Rajasthan, I.L.R. (1996) M.P. 437 (D.B.)*

– **Section 2(a), 33 and 39 and Limitation Act, Indian (XXXVI of 1963)**, Articles 137 and 119 – Trial Court passing composite order dismissing application under sections 14 and 17 of the Act and allowing application under section 33

declaring the award illegal – Such order is appealable under section 39 – Limitation for filing application under section 33, governed by Article 137 of Limitation Act – Section 2(a) – Arbitration agreement signed by broker – Trial Court recording finding that broker was not the agent of the respondent without affording opportunity to the parties to lead evidence – Finding is rendered illegal : *M/s Foods, Fats And Fertilisers Ltd. Taedpalligudem, Andhra Pradesh Vs. M/s Ramkishandas Radhakishan, Ambikapur, I.L.R. (1985) M.P. 689 (D.B.)*

– **Section 2(C) and section 31 – Amount of Award** – Does not give indication that amount for which reference was made was also same – Decree on Award for an amount beyond pecuniary jurisdiction of Court – Decree not necessarily void : *Birdichand Vs. Punamchand, I.L.R. (1971) M.P. 932*

– **Section, 3, 15 to 17, 30, 33, 39 (i) First Schedule, clause 2, Section 5, 28(i)** – Section 39(I) – Composite order refusing to set aside Award and passing a decree in terms thereof – Order refusing to set aside award is appealable – Sections 15-17, 30, 33 – Award filed in Court – Court, Power of, to pass decree in the absence of application by a party to that effect – Section 3 First Schedule, Clause 2 – Arbitration not appointing Umpire - Proceedings not vitiated – Sections 5, 28(i) – Award given beyond 4 months after entering upon arbitration – Court, Power to extend time after passing of award : *Sheoram Prasad Vs. Pt. Gopal Prasad, I.L.R. (1958) M.P. 570 (D.B.)*

– **Sections 4, 8 and 20** – Parties already abdicated their rights by consent and conferred power of appointing arbitrator to an authority specifically named in the agreement – Even if for a short period vacancy is created by resignation of the arbitrator till appointment of his successor that by itself would not make an application to the Civil Court maintainable : *Union Of India Vs. M/S Raju Construction Company, I.L.R. (2001) M.P. 109*

– **Section 8 and 25, Proviso** – Allegations and counter allegations made against arbitrators – Court, Power of, to supersede arbitration agreement – Word “Umpire” – Meaning of – Difference in the authority of umpire and sarpanch – Section 10(2) and (3) – Pre supposes Award – Agreement providing that award of majority will be binding – All arbitrators still must participate in proceedings when reference is to named arbitrators – Indifference of one or some arbitrators in proceedings – Award rendered invalid – Section 18(1)(b) – Arbitrator expressing his unwillingness to take part – Duty of other arbitrators to inform the Court about the fact – Arbitrators still continuing with proceedings and giving Awards – Arbitrators commit an error : *Maganlal Vs. Ramaji, I.L.R. (1966) M.P. 282 (D.B.)*

- **Sections 8 and 37 and Limitation Act, Indian (XXVI of 1963), Section 14** – Arbitrator refusing to arbitrate – Defendant not concurring in the appointment of new

arbitrator – Plaintiff's application under section 8 of Arbitration Act seeking appointment of new arbitrator rejected – Time spent in proceeding before Arbitrator and court has to be excluded : *Jugalkishore Asati Vs. State Of M.P., I.L.R. (1981) M.P. 307 (D.B.)*

– **Section 9, Proviso** – Complete power of condonation – Circumstances when appointment can be set aside : *M/S Kamani Engineering Corporation Ltd. Bombay Vs. Madhya Pradesh Electricity Board, Jabalpur, I.L.R. (1965) M.P. 834*

– **Section 9, Proviso** – Words “sufficient cause” in – Applicable in the matter of appointment of arbitrator by the defaulting party : *M/S Kamani Engineering Corporation Ltd. Bombay Vs. Madhya Pradesh Electricity Board, Jabalpur, I.L.R. (1965) M.P. 834*

– **Section 10(2) and (3)** – All arbitrators still must participate in proceeding when reference is to named arbitrators – Indifference of one or some arbitrators in proceedings – Award rendered invalid : *Maganlal Vs. Ramaji, I.L.R. (1966) M.P. 282 (D.B.)*

– **Section 10(2) and (3)** – Presupposes Award – Agreement providing that award of majority will be binding : *Maganlal Vs. Ramaji, I.L.R. (1966) M.P. 282 (D.B.)*

– **Section 11** - Parties agreeing to settle “dispute” regarding certain transaction without formulating dispute – Agreement cannot be said to be inoperative or ineffective for vagueness : *Divyanand Saraswati Vs. Gopaldas, I.L.R. (1970) M.P. 672*

– **Section 11(2)** – Empower Court to remove arbitrator – Does not empower Court to give direction regarding scope of reference : *Jivrajbhai Vs. Chintamanral, I.L.R. (1960) M.P. 333*

– **Section 14** – Panch Faisla pleaded and filed by defendant in preliminary objection not bearing signature of the Panchas – Not an award in the eye of law – Order rejecting plaint by Courts below assuming that there has been an award and is barred – Is an impermissible procedure – Courts should have instead on complete written statement by the defendant – Order impugned set aside – Case remanded back to the trial Court : *Lukeshwar Vs. Dhebar Singh, I.L.R. (2001) M.P. 829*

– **Sections 14, 17**, Limitation Act Indian, 1963, Section 13 and Civil Procedure Code, 1908, Order 5 Rules 2,12,17,20, Order 9 Rule 7,13–Proviso (2), Order 43 Rule 1 (d)–Miscellaneous Appeal–*Ex-Parte* decree–Court should not proceed *ex-parte* unless satisfied that summons was duly served–Substituted service–Least satisfactory of all the modes of service–Reader could not have issued summons for appearance–

No date for appearance mentioned—Substituted service ordered without fulfilling prerequisites—Cannot be said to be proper service—Where there is no service of summons second proviso to Rule 13 of Order 9, CPC not attracted—Starting point of limitation would be the date of knowledge and not the date of publication—Absence of proper service—*Ex-parte* award set aside—Appeal allowed : *Chandra Agency Vs. Director Of State Lotteries, Madhya Pradesh, Bhopal; I.L.R. (2005) M. P. 514*

– **Sections 14, 21, 30, 33 and 39** – Appeal against refusal to entertain objection – Arbitration and Conciliation Act, 1996 - Section 85 – Repeal and saving – Proceedings under the Act of 1940 Commenced prior to coming into force of the new act of 1996 when arbitrator applied its mind – Shall continue to be governed by the 1940 Act by virtue of Section 85(2)(a) of the 1996 Act – Section 21 – Proceedings deemed to have commenced on the day arbitrator entered into reference – Sections 14, 30 and 33 – Reference to the Rule making Court and objection – Since proceeding commenced prior to coming into force of the new Act the trial Court was in error in refusing to entertain appellant’s objection under Section 30, 33 of the 1940 Act – Impugned order set aside – Matter remanded to trial Court for decision afresh : *Mohd. Akil Khan Vs. M.P. Film Development Corporation, I.L.R. (2001) M.P. 1229 (D.B.)*

- **Sections 14, 30 and Sections 8, 9 and 20 and Limitation Act, Indian (XXXVI of 1963)**, Article 119, Section 5 and 12(2) – Notice of application under section 14 and not about filing of award served on appellant – Appellant appearing in trial Court on 16.06.1983 and learnt about filing of award made on 15.07.1983 held to be within time – Limitation Act – Section 12(2) and deduction of time for obtaining certified copy of the impugned judgment and decree – Copy filed in Court alone has to be consider for that purpose earlier certified copy not relevant – Section 5 – Applicable to application under section 5 – Applicable to applications under section 30, Arbitration Act – Objection filed against award within Limitation – Court ought to substantiate the objections – Sections 8, 9 and 20, Arbitration Act – Agreement providing for arbitration by a particular person – Parties cannot appoint any other person as arbitrator and seek his award – Award given by such other person would be without jurisdiction – Award and Judgment and decree passed in terms of award are liable to be quashed : *Bharat Aluminium Company Ltd. Korba Vs. M/S Hukum Chand Stone & Lime Company, Katni, I.L.R. (1985) M.P. 294 (D.B.)*

– **Sections 14, 30 and 33** – Reference to the Rule making Court and objection – Since proceeding Commenced prior to coming into force of the new Act the trial Court was in error in refusing to entertain appellant’s objection under sections 30, 33 of the 1940 Act – Impugned order set aside – Matter remanded to trial Court for decision afresh : *Mohd. Akil Khan Vs. M.P. Film Development Corporation, I.L.R. (2001) M.P. 1229 (D.B.)*

– **Sections 14, 30, 39(1) (vi)**–Appeal against 'Rule of Court' –Failure to deposit amount as per clause of agreement–Finding of Arbitrator that contractor was not required to deposit more money as inspite of receiving substantial amount material to that extent not supplied to Contractor–Sales Tax Collected not deposited with Revenue–Award passed within parameters of contract–Cannot be questioned on ground of error apparent on face of record–Award rightly made 'Rule of Court'–Interest–Neither claimed before Arbitrator nor cross–Objection filed–Prayer for interest cannot be accepted : *Madhya Pradesh State Electricity Board Vs. M/s Mangalam Petro Chemicals; I.L.R. (2005) M. P. 412*

– **Sections, 14, 31(1), 40, 2(c)** - Suit to enforce award in Small Cause court – Maintainability : *Dad Khan Vs. Abdul Samad, I.L.R. (1959) M.P. 436 (D.B.)*

– **Sections 14, 32 and 33** – Bar to suits contesting arbitration agreement or award – Provisions have got limited application – Applicable only where existence effect or validity of an arbitration agreement or enforceable award is challenged and not the contract itself – Genuineness of an arbitration agreement or award cannot be presumed by the Court by mere plea of defence : *Lukeshwar Vs. Dhebar Singh, I.L.R. (2001) M.P. 829*

- **Sections 14(2), 17, 29, 30, 33 and Limitation Act, Indian (XXXVI of 1963), Article 119** – Filing of award – Award or signed copy of it to be filed by arbitrator or someone on his behalf – Notice to parties of filing of award – No prescribed procedure – Starting point of limitation – Date of service of notice – Parties present or represented on the date of filing of award – Even oral intimation sufficient compliance of service of notice – Objection filed beyond 30 days of the service of notice of filing of signed copy of award – Objection held time barred – Withdrawal of part claim by contractor while accepting payment of final bill – Does not amount to substitution of new contract – Absence of reasons in award – No error of law on the face of record – Scope of Court before whom the award filed, explained – Interest – Arbitrator can award interest of principles of section 34, Civil Procedure Code – Court can award interest from date of decree when award relates to payment of money : *Unioin Of India Vs. Prithipal Singh & Co., Nagpur, I.L.R. (1989) M.P. 365 (D.B.)*

- **Section 16** – Court has general discretion to remit an award for reconsideration of arbitrator – Discretion can be exercised on same grounds as will justify setting aside of award : *Jaykumar Jain Vs. Om Prakash, (1972) M.P. 173 (D.B.)*

– **Sections 16, 30 and 33** – Award – Grounds for interference – Arbitrator wrongly holding claim referred to as barred by limitation – Is a ground for remitting award for decision on merits : *Mohanlal Vs. State Of M.P., I.L.R. (1981) M.P. 627 (F.B.)*

– **Sections 16, 16(2) and 19** – Time fixed may be extended both before and after the expiry of time – Jurisdiction of arbitrator – Ordinarily becomes functus official after passing of the award – Exception provided in section 16 – Scope of Section 19 explained : *State Of M.P. Vs. Vijay Raj Kankariya, I.L.R. (1988) M.P. 437 (D.B.)*

– **Section 17 and Civil Procedure code (V of 1908) – Section 92(1)** – decree passed under section 92(1), Civil Procedure Code – Supersedes decree passed on Award given on basis of private arrangement : *Divyanand Saraswati Vs. Gopaldas, I.L.R. (1970) M.P. 672*

– **Section 17** – Award of umpire under electricity act – Subject to this provision : *M.P. Electricity Board, Jabalpur Vs. The Central India Electric Supply Co. Ltd., Bilaspur, I.L.R. (1976) M.P. 57 (D.B.)*

– **Sections 17 and 30** – Arbitrators examining non material witness behind back of parties – Mere irregularity – Does not vitiate Award : *Keshrimal Vs. Basantilal, I.L.R. (1966) M.P. 306 (D.B.)*

– **Sections 17 and 30** – Award signed by arbitrators – Parties signing and giving expression of their acceptance – Party cannot object that they were not allowed to lead evidence : *Keshrimal Vs. Basantilal, I.L.R. (1966) M.P. 306 (D.B.)*

– **Sections 17 and 39** – Decree in terms of Award – Appeal maintainable only on Limited ground that decree not in terms of award – Section 39 – Appeal against order under section 33 – Maintainability – Order refusing to set aside award – Appeal not maintainable – Limitation act – Article 158 – Application to set Aside award on any ground - Application governed by this provision : *Mauj Bihari Vs. Umrao Bihari, I.L.R. (1961) M.P. 832 (D.B.)*

- **Sections 17 & 39** – Arbitration Award remitted for re consideration supplementary award passed by arbitrators – Execution – Held – The two awards are inseparable and indivisible – The decree passed pursuant to earlier award shall remain suspended and shall not be executed until supplementary award along with original award is made rule of the court after permitting parties to raise objections – Trial court erred in rejecting objection – Revision allowed : *Madan Mohan Agarwal Vs. Suresh Agarwal, I.L.R. (1997) M.P. 611 (D.B.)*

- **Sections 17 & 39** – Decree in accordance with award – Appeal not maintainable - Composite order refusing to set aside award and passing a decree in accordance with its terms – Order refusing to set aside award and the decree – Both are appealable – Order refusing to set aside award set aside in appeal – Decree also lapses – Right of appeal – Not taken away because two separate order passed – Earnest money – A part

payment of consideration – Is a guarantee for due performance of the contract – Distinction between earnest money and part of the purchase price exists – Deposit whether earnest money or part of price – Depends upon proper construction of contract – Does not depend upon how parties chose to describe – Section 16 - Court has general discretion to remit an award for reconsideration of arbitrator – Discretion can be exercised on same grounds as will justify setting aside of award : *Jaykumar Jain Vs. Om Prakash, I.L.R. (1972) M.P. 173 (D.B.)*

– **Section 18(1)(b)** – Arbitrator expressing his unwillingness to take part – Duty on other arbitrators to inform the Court about the fact – Arbitrators still continuing with proceedings and giving awards – Arbitrators commit an error : *Maganlal Vs. Ramaji, I.L.R. (1966) M.P. 282 (D.B.)*

– **Section 20** – Scope of: *Daulatram Vs. Shriram & ors., I.L.R. (1964) M.P. 436*

– **Section 20** – Application under – Can be filed only in a Court within whose jurisdiction cause of action arises : *Associated Commercial Engineers, Tawanagar Vs. State Of M.P., I.L.R. (1981) M.P. 409 (D.B.)*

– **Section 20, M.P. Co-Operative Societies Act, 1961** – Section 64 – Appointment of arbitrator – Word Court in Section 20 includes Registrar discharging duties under M.P. Co-operative Societies Act – Provisions of Section 20 of Arbitration Act can be invoked by Registrar : *Kishan Sahkari Sheetgrah Evam Vary Factory Ltd. Vs. R.C. Gupta & anr., I.L.R. (1994) M.P. 475*

– **Section 20** – Court, Power of, to exercise jurisdiction in proceedings under the section : *Associated Commercial Engineers, Tawanagar Vs. State Of M.P., I.L.R. (1981) M.P. 409 (D.B.)*

– **Section 20** - essentials required for application of this provision – Section 2(a) – Does not contemplate admission of opposite party regarding existence of agreement – Fact of agreement can be proved – Contemplates written agreement from which terms and conditions can be ascertained – court, Power of, to ask other party to file arbitration agreement : *Dattatraya Vs. Amirkhan, I.L.R. (1964) M.P. 966*

- **Section 20 and Limitation Act, Indian (XXXVI of 1963), Article 137** – Submission to arbitration Essential ingredients of Agreement for submission to arbitration and an agreement to accept the decision of a valuer or appraiser – Distinction between – Limitation Act – Article 137 – Limitation prescribed thereunder applies to application under section 20 of the Arbitration Act : *Sardar Amarjeet Singh Vs. State Of M.P., I.L.R. (1985) M.P. 174 (D.B.)*

– **Section 20** – Jurisdiction of Civil Court – Requisites – There has to be an agreement between the parties and dispute must have arisen from that – No agreement or contract between the applicant and the plaintiff – Trial Court erred in assuming jurisdiction to that extent – Order of Trial Court modified : *M/S N.G.E.F. Limited, Transformer Divion, Banglore Vs. M/s Raipur Alloys And Steel Limited, I.L.R. (2001) M.P. 224 (D.B.)*

– **Section 20** – Parties to arbitration Agreement leaving appointment of arbitrator to a third person – This provision still applicable – Application made under this provision – Court has first to decide whether order for filling agreement can be passed – Section 20(4) – Words “the arbitrator appointed by the parties in the agreement” – Cover arbitrator appointed in accordance with procedure laid down therein – Person refuses to appoint arbitrator – Reference can still be made if parties agree upon an arbitrator – Contingency covered by word “otherwise” in sub section (4) of Section 20 : *Messrs Parganiha And Agnihotri Vs. Union Of India, I.L.R. (1979) M.P. 831 (D.B.)*

– **Section 20 and 20(1)** – Section 20 – Scope of – Section 20(1) – Not applicable to a case where parties referred dispute to arbitrators without intervention of Court – Section 41 – Words “arbitration proceedings” in – Do not refer only to proceedings held by court in pursuance of Arbitration agreement – Section 41(b), Schedule II – Empowers Court to pass orders for preservation of property during pendency of arbitration proceeding before arbitrators : *Daulatram Vs. Shriram, I.L.R. (1964) M.P. 436*

– **Section 20, 39(1)(IV)** – Suit for reference and for filling of agreement – Section 20 - Jurisdiction of Civil Court – Requisites – There has to be an agreement between the parties and dispute must have arisen from that – No agreement or contract between the appellant and the plaintiff – Trial Court erred in assuming jurisdiction to that extent – Order of Trial Court modified : *M/S N.G.E.F. Limited, Transformer Divion, Banglore Vs. M/s Raipur Alloys And Steel Limited, I.L.R. (2001) M.P. 224 (D.B.)*

– **Section 20(1)** – Not applicable to a case where parties referred dispute to arbitrators without intervention of Court: *Daulatram Vs. Shriram & ors., I.L.R. (1964) M.P. 436*

– **Section 20-A** – Reference by Heads of the branches of the joint family to two arbitrators instead of four – Legality – Hindu Law – Joint Hindu family – Head of each Branch – Representative of that branch – Represents all members of that Branch – Arbitration Act, Sections 17 and 30 – Arbitration examining non material witness behind back of parties – Mere irregularity – Does not vitiate Award – Award signed by arbitrators – Parties signing and giving expression of their acceptance – Party

cannot object that they were not allowed to lead evidence : *Keshrimal Vs. Basantilal*, I.L.R. (1966) M.P. 306 (D.B.)

– **Section 20(4)** – Provision in – Conditions under which it comes into operation : *Union Of India Vs. S.V. Krishna Rao*, I.L.R. (1971) M.P. 357

– **Section 20(4)** – Person refuses to appoint arbitrator – Reference can still be made if parties agree upon an arbitrator – Contingency covered by word “otherwise” therein : *Messrs Parganiha And Agnihotri Vs. Union Of India*, I.L.R. (1979) M.P. 831 (D.B.)

– **Section 20(4)** – Words “the arbitrator appointed by the parties in the agreement” – Cover arbitrator appointed in accordance with procedure laid down therein : *Messrs Parganiha And Agnihotri Vs. Union Of India*, I.L.R. (1979) M.P. 831 (D.B.)

– **Section 21** – Proceedings deemed to have commenced on the day arbitrator entered into reference : *Mohd. Akil Khan Vs. M.P. Film Development Corporation*, (2001) M.P. 1229 (D.B.)

– **Section 21** – Conditions in which a person can be said to be interested in a thing : *Seth Fida Hussain Vs. Shri Fazal Hussain*, I.L.R. (1964) M.P. 623 (D.B.)

– **Section 21** – Does not prescribe any for of application : *Radha Wallabh Vs. Seth Gopaldas*, I.L.R. (1967) M.P. 269 (D.B.)

– **Section 21** – Conditions necessary for its applicability – Question whether party interested in dispute – Question depends upon facts of each case, nature of dispute, and entire circumstances of case – Interested party is necessary party but not vice versa – Conditions in which a person can be said to be interested in a thing : *Seth Fida Hussain Vs. Shri Fazal Hussain*, I.L.R. (1964) M.P. 623 (D.B.)

– **Section 25 and 8, Proviso** – Allegations and counter allegations made against arbitrators – Court, Power of, to supersede arbitration agreement – Word “Umpire” – Meaning of – Difference in the authority of umpire and sarpanch – Section 10(2) and (3) – Pre supposes Award – Agreement providing that award of majority will be binding – All arbitrators still must participate in proceedings when reference is to named arbitrators – Indifference of one or some arbitrators in proceedings – Award rendered invalid – Section 18(1)(b) – Arbitrator expressing his unwillingness to take part – Duty of other arbitrators to inform the Court about the fact – Arbitrators still continuing with proceedings and giving Awards – Arbitrators commit an error : *Maganlal Vs. Ramaji*, I.L.R. (1966) M.P. 282 (D.B.)

– **Section 28**– Court power of extend time after the award is made : *Jamnadas Vs. Maheshprasad, I.L.R. (1973) M.P. 500 (D.B.)*

– **Section 28** – Word “Court” in – Includes appellate and revisional Court : *Jamnadas Vs. Maheshprasad, I.L.R. (1973) M.P. 500 (D.B.)*

– **Section 28(1)** – Power of appellate Court to extend time when no application for the purpose made to trial court – Power conferred is discretionary – Things to be noted for exercising discretion : *Jamnadas Vs. Maheshprasad, I.L.R. (1973) M.P. 500 (D.B.)*

– **Section 29** – Confers power on Court to grant interest on principal sum only from date of decree : *M.P. Electricity Board, Jabalpur Vs. The Central India Electric Supply Co. Ltd., Bilaspur, I.L.R. (1976) M.P. 57 (D.B.)*

– **Section 29** – Court can award interest from date of decree when award relates to payment of money : *Union Of India Vs. Prithpal Singh & Co., Nagpur, I.L.R. (1989) M.P. 365 (D.B.)*

- **Section 29** – Contract Act, Indian (IX of 1872), Section 29 – Contract agreements embodying business agreements – Construction of – Should be construed fairly and broadly – Court can imply a term not inconsistent or in contradiction of express terms, to give it business efficacy – Vagueness or uncertainty in contract – Cannot make the contract void, if they can be removed by proper interpretation – Contract agreement providing for acceptance of decision of a third party on a particular matter – Contract cannot be held to be void for uncertainty – Arbitrator – Jurisdiction of – Expression “Dispute arising out of the contract” – Connotation of – Contract agreement providing that clause 32 of General Conditions of Contract would govern the parties subject to such variation as was expressly or impliedly agreed upon – constitutes agreement in respect of clause 32 as a part of contract agreement – Agreement – Arbitration Act, 1940, - Sections 39(1)(i) – Appeal – Expression “superseding an arbitration” – Meaning of – Order of trial court merely declaring that no arbitration agreement exists between the parties – Does not amount to an order superseding the arbitration or an interim award – Such order not appealable – Civil Procedure Code, 1908 – Section 115 – Revision – Expression “Court acting illegally’ and with material irregularity – Meaning of – Trial Court not construing contract agreement fairly and broadly asking a wrong question – Applying wrong test – Misconstruing the meaning of a provision in law – High Court entitled to interfere with the order passed by trial Court in its revisional jurisdiction : *M/S Uttam Singh Dural & Co. (P) Ltd., New Delhi Vs. M/S Hindustan Steel Ltd., Bhilai, I.L.R. (1983) M.P. 269 (D.B.)*

– **Section 30** – Award not to be set aside because of mistake of law or fact committed by arbitrators – Can be set aside if error in law appears on face of award : *M/S Umrao Singh And Co., Contractors, Lucknow, (U.P.) Vs. State Of M.P., I.L.R. (1979) M.P. 695 (D.B.)*

– **Section 30** – Scope and limits of the powers of the Court in setting aside an award – Section 21 – Does not prescribe any form of application : *Radha Wallabh Vs. Seth Gopaldas, I.L.R. (1967) M.P. 269 (D.B.)*

– **Section 34** – Conditions necessary for invoking Section 34 : *Steel Authority Of India Ltd., New Delhi Vs. M/S Narain Rice And Oil Mills, Bilaspur, I.L.R. (1987) M.P. 516 (D.B.)*

– **Section 30** – Parties invoking arbitration clause – Decision of concerning authority – Is subject to confirmation by arbitrator : *State Of M.P. Vs. M/s Continental Constructioin (P) Ltd., New Delhi, I.L.R. (1981) M.P. 242*

– **Section 30** – Procedure before the arbitrator – Not bound by rules of procedure or evidence – Must observe fundamental principles of natural justice : *State Of M.P. Vs. Satyapal Wasson, I.L.R. (1981) M.P. 512 (D.B.)*

– **Section 30** – Bad portion of award relating to interest separable – Such part alone is liable to be set aside : *The State Of M.P. Vs. M/S M.B. Gharpuray, Poona, I.L.R. (1987) M.P. 637 (D.B.)*

– **Section 30** – Arbitration Clause – Comprehensive one Such clause confers authority on arbitrator to assess damages in whatever circumstances even where contract stood frustrated or had to be completed at an extra cost – Parties invoking arbitration clause – Decision of concerning authority – Is subject to confirmation by arbitrator : *State Of M.P. Vs. M/s Continental Constructioin (P) Ltd., New Delhi, I.L.R. (1981) M.P. 242*

– **Section 30 and Civil Procedure Code (V of 1908), Section 34** – Interest – Award of, by arbitrator – Dispute as to interest referred to arbitrator – Rate of interest for period subsequent to passing of award is governed by Section 34, Civil Procedure Code : *The State Of M.P. Vs. M/s M.B. Gharpuray, Poona, I.L.R. (1987) M.P. 637 (D.B.)*

– **Section 30** – Court entitled to look into proceedings if appended with award to find out whether arbitrator failed to arbitrate on the main dispute referred – Arbitrator failing to arbitrate on main dispute and adopting via media – Award liable to be set aside : *State Of M.P. Vs. Satyapal Wasson, I.L.R. (1981) M.P. 512 (D.B.)*

– **Section 30** – Arbitrator need give reasons for award – Reasons given – Court entitled to examine if arbitrator proceeded contrary to law – Procedure before the arbitrator – Not bound by rules of procedure or evidence – Must observe fundamental principles of natural justice – Court entitled to look into proceedings If appended with award to find out whether arbitrator failed to arbitrate on the main dispute referred – Arbitrator failing to arbitrate on main dispute and adopting via media – Award liable to be set aside : *State Of M.P. Vs. Satyapal Wasson, I.L.R. (1981) M.P. 512 (D.B.)*

– **Section 30 and Civil Procedure Code (V of 1908), Section 34** – Arbitration not bound to state reasons for award – Arbitrator not giving reasons nor referring to contract or any of its terms and awarding a particular sum against each item of claim in favour of the claimant – Not possible to hold any error apparent on the face of award – Court not entitled to interfere – Bad portion of award relating to interest separable – Such part alone is liable to be set aside – Interest – Award of, by arbitrator – Dispute as to interest referred to arbitrator – Rate of interest for period subsequent to passing of award is governed by Section 34, Civil Procedure Code – Award of interest at 9% per annum on transaction not commercial in nature - Award to that extent is bad – Award of interest modified to 6% per annum : *The State Of M.P. Vs. M/S M.B. Gharpuray, Poona, I.L.R. (1987) M.P. 637 (D.B.)*

– **Sections 30, 2(a)** – Arbitration Award – Time limit for unforeseen claims – Expression unforeseen relates to occurrence of loss due to acts of God or force majeure such as strikes, break down, riots etc – The claims arising out of breach of contract or flow from terms and contract can not be considered as “unforeseen claims” – Two claims found de hors contract in award and for remaining claims though, a different view can also be taken but that would not be a ground for interference as award is not de hors contract – Award separable in nature under different claims – Good part of award upheld while claims awarded beyond contract set/aside – Appeal partly allowed : *State of M.P. Vs. M/s Mittal & Company, Dholpur, Rajasthan, I.L.R. (1996) M.P. 437 (D.B.)*

– **Sections 30, 14, 39(1) (vi)**–Appeal against 'Rule of Court' –Failure to deposit amount as per clause of agreement–Finding of Arbitrator that contractor was not required to deposit more money as inspite of receiving substantial amount material to that extent not supplied to Contractor–Sales Tax Collected not deposited with Revenue–Award passed within parameters of contract–Cannot be questioned on ground of error apparent on face of record–Award rightly made 'Rule of Court'–Interest–Neither claimed before Arbitrator nor cross–Objection filed–Prayer for interest cannot be accepted : *Madhya Pradesh State Electricity Board Vs. M/s Mangalam Petro Chemicals; I.L.R. (2005) M. P. 412*

– **Sections 30 and 31** – Contract or claiming extra cost due to rise in prices of material and labour – State objecting to such claim – Arbitrator awarding claim for

extra cost without deciding the objection – Arbitrator misconducted himself in giving the award – Court can reexamine and set aside the award : *Continental Construction Co. (P) Ltd., New Delhi Vs. State Of M.P., I.L.R. (1986) M.P. 399 (D.B.)*

– **Sections 30 and 33** – Award – Cannot be set aside for want of jurisdiction with arbitrators : *M/S Ram Sharan And Ramdaral Dau Company, Contractors, Station Road, Durg Vs. Hindustan Steel Limited, Bhilai, I.L.R. (1981) M.P. 961 (D.B.)*

– **Sections 30 and 33** – Plea that contractors accepted payment in full and final settlement of their claims under the contracts – Is not a plea of novation – Is a plea of accord and satisfaction – Arbitrators have jurisdiction to decide it : *M/S Ram Sharan And Ramdaral Dau Company, Contractors, Station Road, Durg Vs. Hindustan Steel Limited, Bhilai, I.L.R. (1981) M.P. 961 (D.B.)*

– **Sections 30 and 33** – Arbitration Clause in contract – Does not come to an end on the completion of performance of the terms thereof – Still survives for adjudication of disputes arising under – Legal position – When differs – Plea that contractors accepted payment in full and final settlement of their claims under the contracts – Is not a plea of novation – Is a plea of accord and satisfaction – Arbitrators have jurisdiction to decide it – Award – Cannot be set aside for want of jurisdiction with arbitrators : *M/S Ram Sharan And Ramdaral Dau Company, Contractors, Station Road, Durg Vs. Hindustan Steel Limited, Bhilai, I.L.R. (1981) M.P. 961 (D.B.)*

– **Sections 30, 39 and Limitation act 1963, Article 119** – Award of Arbitration – Objection as to filed beyond 30 days of receipt of notice – Objection barred by limitation – Award based on material and evidence on record – Cannot be interfered with even if it is erroneous – Civil Court cannot sit as appellate forum – Interest – Agreement does not prohibit grant of interest – Pendente lite interest can be granted : *State Of M.P. Vs. M/s Jaiswal Tractors, I.L.R. (2002) M.P. 663*

– **Section 30(c) – Words “or is otherwise invalid” in** – Not to be read ejusdem generis – Empowers Court to set aside award on grounds other than those mentioned indifferent clauses of section – Suo motu jurisdiction to be exercised In limited space : *Divyanand Saraswati Vs. Gopaldas, I.L.R. (1970) M.P. 672*

– **Sections 31(1), 2(c), 14, 40– Suit to enforce award in Small Cause court** – Maintainability : *Dad Khan Vs. Abdul Samad, I.L.R. (1959) M.P. 436 (D.B.)*

– **Section 32 – Applicability – Section 34** – Condition under which proceedings can be stayed – Bars suit regarding a decision upon the existence, effect or validity of arbitration agreement or Award : *Mst. Manmati Vs. Moihan, I.L.R. (1969) M.P. 124*

– **Section 32 – Award given on basis of oral reference to arbitration** – Suit for claim included in that award – Maintainability : *Baratilal Vs. Mst. Binda Bai, I.L.R. (1962) M.P. 424 (D.B.)*

– **Section 32 – Compromise between parties subsequent to awards** – Court, Power of, to give effect to compromise : *Nawab Usmanali Khan Vs. Sagarmal, I.L.R. (1961) M.P. 304 (D.B.)*

– **Section 32 – Bar to suits** – This section clearly puts an embargo on the power of the plaintiff to proceed with suit, the decision whereof may have a bearing upon existence, effect or validity of an award or in any way effects the award – The promise to abide by the award and to act on that basis was nothing independent of the award – Morality and legality are two distinct features – Right existed but remedy stood barred – Appeal is devoid of merit – Dismissed : *Champalal Harchand Mahajan Vs. Kanakmal Devchand Mahajan, I.L.R. (1993) M.P. 575*

– **Section 32 and 33** – Suit involving enforcement, amendment or modification or setting aside an award – Maintainability – A party to an agreement to refer to arbitration – Does not cease to be a party because of his denial of the agreement – Word “restriction” in Section 33 – Not used in restricted sense – After making of award three calculable possibilities arise : *Shyamsingh Vs. Pralhadsingh, I.L.R. (1961) M.P. 532 (D.B.)*

- **Section 32 and 33** – Suit involving enforcement, amendment or modification or setting aside an award – Maintainability : *Shyamsingh Vs. Pralhadsingh, I.L.R. (1961) M.P. 532 (D.B.)*

- **Sections 32 and 33** – Bar to suits contesting arbitration agreement or award – Provisions have got limited application – Applicable only where existence effect or validity of an arbitration agreement or enforceable award is challenged and not the contract itself – Genuineness of an arbitration agreement or award cannot be presumed by the Court by mere plea of defence : *Lukeshwar Vs. Dhebar Singh, I.L.R. (2001) M.P. 829*

– **Section 33 – A party to an agreement to refer to arbitration** – Does not cease to be a party because of his denial of the agreement : *Shyamsingh Vs. Pralhadsingh, I.L.R. (1961) M.P. 532 (D.B.)*

– **Section 33** – Order passed thereunder – Appeal against that order – Maintainability – Order refusing to set side award – Appeal not maintainable : *Mauj Bihari Vs. Numrao Bihari, I.L.R. (1961) M.P. 832 (D.B.)*

– **Section 33** – Word ‘restriction’ in – Not used in restricted sense – After making of award three calculable possibilities arise : *Shyamsingh Vs. Pralhadsingh, I.L.R. (1961) M.P. 532 (D.B.)*

– **Section 33** – Proceedings under this Section – Different from those under sections 14 to 17 : *Hindustan Steel Limited, Bhilai Steel Ploject, Bhilai Vs. Messrs Kaushal Constructioin Company, Durg, I.L.R. (1967) M.P. 645*

– **Section 33** – Application for determining arbitration agreement during pendency of arbitration – Duty of Court to find out issues on which parties have joined and then determine which issues fall within jurisdiction of arbitrators in view of arbitration agreement : *Hindustan Steel Limited, Bhilai Steel Ploject, Bhilai Vs. Messrs Kaushal Constructioin Company, Durg, I.L.R. (1967) M.P. 645*

– **Section 33** – Contemplates application for 3 purpose – Language wide enough to include the determination of the effect of the arbitration proceedings before arbitrators – Proceeding under this section – Different from those under Sections 14 to 17 – Application for determining arbitration agreement during pendency of arbitration – Duty of court to find out issues on which parties have joined and then determine which issues fall within jurisdiction of arbitrators in view of arbitration agreement : *Hindustan Steel Limited, Bhilai Steel Ploject, Bhilai Vs. Messrs Kaushal Constructioin Company, Durg, I.L.R. (1967) M.P. 645*

– **Section 33** – Language wide enough to include the determination of the effect of the arbitration proceedings before arbitrators : *Hindustan Steel Limited, Bhilai Steel Ploject, Bhilai Vs. Messrs Kaushal Constructioin Company, Durg, I.L.R. (1967) M.P. 645*

– **Section 33** – Question when a party can rescind the contract – Question is a mixed question of law and fact – Mixed question of law and fact referred to arbitrator – Jurisdiction of civil Court to override arbitrator’s decision – Question of law not specifically referred to arbitrator – Power of Court to examine legal aspect to ascertain whether the error is apparent on face of award – Con tract Act – Section 73 – Person suffering loss due to breach of contract – Reasonable steps to mitigate damages to be taken by him – Not entitled to recover loss which is due to his not behaving reasonably after the breach – Burden of showing that he did not possess means of remedying inconvenience due to non-performance on person complaining of breach of contract : *Pannalal Vs. The State Of M.P., I.L.R. (1964) M.P. 752 (D.B.)*

– **Section 34** – Condition necessary for invoking section 34 : *Steel Authority of India Ltd. Vs. M/s Narain Rice and Oil Mills, I.L.R. (1987) M.P., 516 (D.B.)*

– **Section 34** – Condition under which proceedings can be stayed : *Mst. Manmati Vs. Mohan, I.L.R. (1969) M.P. 124*

– **Section 34** – Mode of making enquiry – Affidavit in support of application – Is no evidence – Value of such affidavit : *Mithailal Vs. Inland Auto Finance, New Delhi, I.L.R. (1969) M.P. 833 (D.B.)*

- **Section 34** – Stay of suit for arbitration Proceedings – Essential condition is the binding agreement between the parties to the dispute involved in the suit to arbitration : *Smt. Rakshawti Vs. Smt. Jasumati & ors., I.L.R. (2002) M.P. 355*

– **Section 34** – Plaintiff alleging that the signed the blank form of agreement – Court to decide the validity of the agreement before passing order about stay : *Mithailal Vs. Inland Auto Finance, New Delhi, I.L.R. (1969) M.P. 833 (D.B.)*

– **Section 34** – Party taking part in interlocutory proceedings regarding appointment of receiver or issue of temporary injunctions – Not covered by expression “the other step in proceedings” – No ground for refusal of stay of proceedings : *Sansar Chand Vs. The State Of M.P., I.L.R. (1960) M.P. 868 (D.B.)*

– **Section 34** – Arbitrator cannot be changed simply because of relationship with one of the parties and it is known to the other party in the absence of any development after the agreement: *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

– **Section 34** – Discretion can be exercised even in the face of the arbitration agreement in certain circumstances : *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

– **Section 34** – Mere failure to reply to notice – Not an indication of unwillingness : *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

– **Section 34** – Move under the section – Is evidence of willingness : *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

– **Section 34** – Determination of question of stay under – Plaint allegations and material on record to be taken into consideration – Court not tetter on enquiry by taking evidence : *Century Spinning & Manufacturing Co. Ltd., Bombay Vs. Motilal Dhariwal, I.L.R. (1961) M.P. 707 (D.B.)*

– **Section 34** – Eviction of tenant can be claimed in accordance with M.P. Accommodation Control Act, 1961 and in performance of any agreement or arbitration agreement : *Smt. Sushila Devi Somani Vs. Kedarnath Gupta, I.L.R. (1988) M.P. 105*

– **Section 34** – Proceeding under the Arbitration Act – Court, Power of, to stay the proceedings – Interpretation of deed – Words occurring sometimes singular and sometimes plural – Singular cannot be said to be excluded Section 9, Proviso – words “sufficient cause” in - Applicable in the matter of appointment of arbitration by the defaulting party – Complete power of condonation – Circumstances when appointment can be set aside : *M/S Kamani Engineering Corporation Ltd. Bombay Vs. Madhya Pradesh Electricity Board, Jabalpur, I.L.R. (1965) M.P. 834*

– **Section 34** – Plaintiff’s suit for declaration of right arising under hire purchase agreement – Defendant relying upon arbitration clause in that agreement and asking for stay of suit – Plaintiff alleging that he signed the blank form of agreement – Court to decide the validity of the agreement before passing order about stay – Mode of making enquiry – Affidavit in support of application – Is no evidence – Value of such affidavit : *Mithailal Vs. Inland Auto Finance, New Delhi, I.L.R. (1969) M.P. 833 (D.B.)*

– **Section 34** – “Willingness and readiness” contemplated by – Necessary at two points of time – Mere failure to reply to notice – Not an indication of unwillingness – Move under Section 34 – Is evidence of willingness – Discretion can be exercised even in the face of the Arbitration agreement in certain circumstances – Arbitrator cannot be changed simply because of relationship with one of the parties and it is known to the other party in the absence of any development after the agreement – Arbitration – Introduced with sole purpose of avoiding technicalities and hair – Splitting : *Ardeshwar Vs. State Of M.P., I.L.R. (1971) M.P. 1056 (D.B.)*

- **Section 34 and Civil Procedure Code (V of 1908) Order 37 rule 2(2) and rule 3(5)** – Appearance of defendant in consequence upon a summons under sub rule (2) of Rule in Form 4 in Appendix B – Does not tantamount to taking any steps in the proceeding – Appearance of defendant in answer to summons under rule 2 but before taking any steps in terms of sub rule (5) of rule 3, filing an application under section 34, Arbitration Act, - Maintainability of : *M/s Sharda Talkies, Raipur Vs. M/S Dhadiwal Exhibitors, Raipur, I.L.R. (1986) M.P. 233*

- **Section 34 and Civil Procedure Code (V of 1908), Order 37, rule 2(2) and rule 3(5)** – Appearance of defendant in answer to summons under rule 2 but before taking any steps in terms of sub rule (5) of rule 3, filing an application under section 34, arbitration Act – Maintainability of : *M/s Sharda Talkies, Raipur Vs. M/S Dhadiwal Exhibitors, Raipur, I.L.R. (1986) M.P. 233*

– **Section 34 and 39(i)(iv)** – Power of the appellate Court to interfere with the discretion exercised by trial Court in granting stay of suit – Plea not available to defendant in terms of agreement – Cannot be a dispute which can be raised under

arbitration clause : *Steel Authority Of India Ltd., New Delhi Vs. M/s Narain Rice And Oil Mills, Bilaspur, I.L.R. (1987) M.P. 516 (D.B.)*

– **Section 34 and 39(i)(iv)** – Power to stay suit discretionary – Conditions necessary for invoking Section 34 – Powers of the appellate Court to interfere with the discretion exercised by trial Court in granting stay of suit – Plea not available to defendant in terms of agreement – Cannot be a dispute which can be raised under arbitration clause : *Steel Authority Of India Ltd., New Delhi Vs. M/s Narain Rice And Oil Mills, Bilaspur, I.L.R. (1987) M.P. 516 (D.B.)*

– **Section 37(3)** – Commencement of arbitration – When reference made to arbitration – Section 37(3) of Arbitration Act is only for computation of limitation – Saving clause – Only pending proceedings are saved – Reference made to arbitrator after coming into force of Adhinyam – Reference and proceeding before arbitrator without jurisdiction : *M.P. Spectro Engineering Corporation, Engineers & Contractors, Bhopal Vs. State Of M.P., I.L.R. (1989) M.P. 97 (D.B.)*

– **Section 39** – Appeal under – Award – Dealing with an award which is not properly stamped or unstamped court is competent to impound it and sent it to the collector stating the amount of duty and penalty levied thereon : *Santosh Jain Vs. Smt. Vimla Bai, I.L.R. (1999) M.P. 493*

– **Section 39** – Withdrawal of part claim by contractor while accepting payment of final bill – Does not amount to substitution of new contract – Absence of reasons in award – No error of law on the face of record – Scope of Court before whom the award filed, explained : *Unioin Of India Vs. Prithipal Singh & Co., Nagpur, I.L.R. (1989) M.P. 365 (D.B.)*

– **Sections 39, 33 and 2(a)** and Limitation Act, Indian (XXXVI of 1963), Articles 137 and 119 – Trial Court passing composite order dismissing application under sections 14 and 17 of the Act and allowing application under section 33 declaring the award illegal – Such order is appealable under section 39 – Limitation for filing application under section 33, governed by Article 137 of Limitation Act Section 2(a) – Arbitration agreement signed by broker – Trial Court recording finding that broker was not the agent of the respondent without affording opportunity to the parties to lead evidence – Finding is rendered illegal : *M/S Foods, Fats And Fertilisers Ltd. Taedpalligudem, Andhra Pradesh Vs. M/s Ramkishandas Radhakishan, Ambikapur, I.L.R. (1985) M.P. 689 (D.B.)*

– **Sections 39, 30, 33, 14, 16, 17, 19** – Award – No action taken for setting aside award under Section 33 read with Section 30 – Award valid even though not made the rule of the Court – Court not fixing time for passing of the award while remitting to arbitrator, but does so later on – No illegality committed – Time fixed may be

extended both before and after the expiry of time – Jurisdiction of arbitrator – Ordinarily becomes functus officio after passing of the award – Exception provided in Section 16 – Scope of Section 19 explained – Absence of reason in award – No error of Law on the face of award - Award of interest after making of award – Can be made only if question relating interest referred – Analogy of Section 34, Civil Procedure Code applicable – Rate of interest cannot go beyond permissible under section 34, Civil Procedure Code : *State Of M.P. Vs. Vijay Raj Kankariya, I.L.R. (1988) M.P. 437 (D.B.)*

– **Section 39(1)(i)** – Appeal – Expression “superseding an arbitration” – Meaning of – Order of trial Court merely declaring that no arbitration agreement exists between the parties – Does not amount to an order superseding the arbitration or an interim award – Such order not appealable : *M/S Uttam Singh Dural & Co. (P) Ltd., New Delhi Vs. M/s Hindustan Steel Ltd., Bhilai, I.L.R. (1983) M.P. 269 (D.B.)*

– **Sections 39(1) (vi), 14, 30**–Appeal against 'Rule of Court' –Failure to deposit amount as per clause of agreement–Finding of Arbitrator that contractor was not required to deposit more money as inspite of receiving substantial amount material to that extent not supplied to Contractor–Sales Tax Collected not deposited with Revenue–Award passed within parameters of contract–Cannot be questioned on ground of error apparent on face of record–Award rightly made 'Rule of Court'–Interest–Neither claimed before Arbitrator nor cross–Objection filed–Prayer for interest cannot be accepted : *Madhya Pradesh State Electricity Board Vs. M/s Mangalam Petro Chemicals; I.L.R. (2005) M.P. 412*

– **Section 39(1)(IV), 20** – Suit for reference and for filling of agreement – Section 20 - Jurisdiction of Civil Court – Requisites – There has to be an agreement between the parties and dispute must have arisen from that – No agreement or contract between the appellant and the plaintiff – Trial Court erred in assuming jurisdiction to that extent – Order of Trial Court modified : *M/S N.G.E.F. Limited, Transformer Divion, Banglore Vs. M/s Raipur Alloys And Steel Limited, I.L.R. (2001) M.P. 224 (D.B.)*

– **Section 41** – Words “arbitration proceeding” in – Do not refer only to proceedings held by Court in pursuance of arbitration agreement : *Daulatram Vs. Shriram , I.L.R. (1964) M.P. 436 (D.B.)*

– **Section 41(b), Schedule II** – Empowers court to pass orders for preservation of property during pendency of arbitration proceedings before arbitrators : *Daulatram Vs. Shriram, I.L.R. (1964) M.P. 436*

– **Section 47, Proviso** – Consent to the award must be before the court – Does not refer to anterior Consent : *Bishnath Vs. Seth Bastimal, I.L.R. (1969) M.P. 873*

– **Section 47, Proviso** – Scope and Essentials of : *Bishnath Vs. Seth Bastimal, I.L.R. (1969) M.P. 873*

– **Section 47, Proviso and Civil Procedure Code (V of 1908)** – Order 23, rule 3 – Section 47, Proviso – Scope and Essentials of – Consent to the Award must be before the Court – Does not refer to anterior consent : *Bishnath Vs. Seth Bastimal, I.L.R. (1969) M.P. 873*

– **Section 85** – Repeal and saving – Proceedings under the Act of 1940 commenced prior to coming into force of the new act of 1996 when arbitrator applied its mind – Shall continue to be governed by the 1940 Act by virtue of section 85(2)(a) of the 1996 act : *Mohd. Akil Khan Vs. M.P. Film Development Corporation, I.L.R. (2001) M.P. 1229 (D.B.)*

Arbitration and Conciliation Act (XXVI of 1996)

– **Sections 2(1)(e), 9 & 37** – Agreement for sale and supply of industrial gases – Termination of contract – Arbitration clause – Application for interim measures filed before District Judge – Application rejected for want of jurisdiction – Order of rejection appealed against – Application is to be filed before the District Judge who is principal Civil Court of Original Jurisdiction in district and not before the High Court – Rejection improper – Appeal allowed : *Industrial Gases Limited Vs. Kusum Ingots And Alloys Limited, I.L.R. (2002) M.P. 943*

– **Section 2(9)** – Counter claims are equally arbitrable as claims – Arbitration Act, Indian 1940 - “Dispute” – If one party asserts and other party repudiates the same, that is a “Dispute” – Arbitrator entertained counter claim not contemplated by the order of reference – Order of Court below that arbitrator exceeded its authority, cannot be sustained – It is the duty of the Arbitrator to consider claim and counter claims – Allegation that arbitrator has failed to take a note of the other legal question and factual matrix besides alleged bias – For decision on objection : *M/s Western Coalfields Ltd, Coal Estate, Nagpur Vs. M/s Narbada Constructions, Jabalpur, I.L.R. (1999) M.P. 683 (D.B)*

– **Section 8(1) – Suit for recovery** – Objection as to maintainability on good that dispute is covered by arbitration agreement conditions of section 8(1) present – Trial Court ought to have referred the dispute to arbitration – Impugned order set aside : *Mukesh Chandra Vs. Naushad Ahmad; I.L.R. (2003) M.P. 708*

– **Section 9** – “Court” means the principal civil court of original jurisdiction in a district – High Court does not exercise any original jurisdiction for purpose : *Nepa Ltd., East Nimar (M.P.) Vs. Manoj Kumar Agrawal, I.L.R. (1999) M.P. 1062*

– **Sections 9, 11 and 38** – Delay – Cause of delay shown is legal advice – Delay condoned – Section 9 – Interim measures by the Court - “Court” means the principal civil court of original jurisdiction in a district – High Court does not exercise any original jurisdiction for purposes of section 9 – It can not be included in the definition of “court” merely because valuation of subject matter is more than 25 lacs – Specific Relief Act, 1963 – Section 41(c) – Appellant is a sick company Proceedings pending for rehabilitation – Provisions of specific relief act cannot be made applicable – Parties restored to section 11 for appointment of Arbitrator – Court held that looking to the poor financial condition of appellant company it is necessary to safe guard and preserve the subject matter of the contract and security amount furnished by the contractor and passed the impugned orders – Just and fair – No scope for interference : *Nepa Ltd., East Nimar (M.P.) Vs. Manoj Kumar Agrawal, I.L.R. (1999) M.P. 1062*

– **Sections 9 and 37** – Application for ex parte injunction – Rejection – Appeal – Maintainability – Civil Procedure Code, 1908 – Section 2(13), 2(14) and 20 – “Order” – Means the formal expression of any decision of a civil Court which is not a decree – Refusal to grant ex parte injunction is an order indicating reasons for not exercising jurisdiction under section 9 of the act – Order is appealable – Under section 37 of the Act – General Clauses act, 1897, Section 3(26), 3(36) and section 2(13), CPC and sale of goods act, 1930, Section 2(7) – Definition clauses – Immovable Property, movable property and “Goods” – Agreement for licence to transmit signals issued in the form of energy containing information in coded form after decoding by the Cable operators – Is an agreement for sale of movable property – Section 20, CPC – Jurisdiction of Civil Court – Deciding factor – Agreement signed also at Jabalpur where one of the necessary parties resides – On non payment devices deactivated stopping transmission of signals at Jabalpur – Cause of action arising at Jabalpur – Court at Jabalpur has jurisdiction in the matter – Contract Act, Indian, 1872, Sections 52, 54 – Damages – Despite right to terminate contract not rescinded – No clauses in agreement for damages in consequence of non payment – Party claiming damages not suffered any loss – Provisions of Section 52, 54 not attracted – Specific Relief Act, 1963, Sections 7, 10, 14, 39, 40 and 41 – Signals are not ordinary articles of commerce – Loss on breach of contract not ascertainable – Contract for specific performance enforceable under section 10 of 1963 Act – Section 39 Specific Relief Act and section 9 of 1996 act – Parties agree to refer the dispute to Arbitrator and appellant willing to pay the charges for services liable to be rendered by respondent – Looking to the interest of general public Injunction granted in favour of appellant subject to certain conditions : *Jabalpur Cable Network Pvt. Ltd., Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd., New Dehli, I.L.R. (2001) M.P. 846*

– **Section 11** – Agreement for mining operation – For appointment of arbitrator procedure specified arbitration clause of agreement – Dispute raised – Notice served for appointment of arbitrator within 30 days – Arbitrator appointed but not within 30 days – Section 11(6) – Since parties agreed on procedure for appointment of Arbitrator, sub section (6) – applicable – No time limit prescribed under sub section (6) of section 11 – No inordinate delay in appointment – Prayer for appointment of another arbitrator rejected : *M/S Chhatisgarh Mines And Minerals Vs. The Managing Director, I.L.R. (2001) M.P. 564*

– **Section 11 and the scheme for appointment of Arbitrators by the chief justice of M.P., 1996** – Application for appointment of arbitrator – Contract for Transporting coal providing Arbitration clause – Section 11(2) – would operate as both the parties are in agreement with regard to appointment of arbitrator – Sub section (3), (4) and (5) of section 11, provisions of, not attracted where procedure for appointment of arbitrator already fixed – Section 11(6) – Non applicant's failure to appoint arbitrator despite notice of applicant – Instead non-applicant chose to reply to the notice through advocate refusing to appoint arbitrator - Procedure adopted by non-applicant not proper – Total non-application of mind – Words : *M/S Ashok Coal Depot, Bilaspur, M.P. Vs. South Eastern Coal Field, Ltd., Bilaspur, M.P. I.L.R. (2000) M.P. 635*

– **Section 11(2)** would operate as both the parties are in agreement with regard to appointment of arbitrator : *M/S Ashok Coal Depot, Bilaspur, M.P. Vs. South Eastern Coal Field, Ltd., Bilaspur, M.P. I.L.R. (2000) M.P. 635*

– **Sections 11(3), (4) and (5)** – Provisions of, not attracted where procedure for appointment of arbitrator already fixed : *M/S Ashok Coal Depot, Bilaspur, M.P. Vs. South Eastern Coal Field, Ltd., Bilaspur, M.P. I.L.R. (2000) M.P. 635*

– **Section 11(6)** – Non-applicant's failure to appoint arbitrator despite notice of applicant – Instead non-applicant chose to reply to the notice through advocate refusing to appoint arbitrator – Procedure adopted by non applicant not proper – Total non-application of mind – Direction issued to the competent authority under the contract accordingly: *M/s Ashok Coal Depot, Bilaspur, M.P. Vs. South Eastern Coal Field, Ltd., Bilaspur, M.P. I.L.R. (2000) M.P. 635*

– **Sections 11, 12** – Arbitrator – Pecuniary jurisdiction – Assets worth Rs. 37 Lakhs – Arbitrator required to decide share of each partners in assets of partnership firm – Subject matter cannot be confined to ¼th share claimed by separating partner – Chief justice or his designate has jurisdiction to decide the matter – Prior procedure fixed for appointment of arbitrator – Applicant already submitted to the jurisdiction of District Judge – Cannot by pass that procedure and directly file an application before

the chief justice or the person or institution designated by him : *Muskesh Kumar Agrawal Vs. Raj Kumar Agrawal, I.L.R. (1999) M.P. 1199*

– **Sections 11 and 34** and Sick Industrial Companies (Special Provision) Act, 1985 as amended by Act No. (XII of 1994), Section 22 – Word ‘suit’ used does not include arbitration proceedings – Appeal rightly dismissed by the High Court : *Nepa Limited Vs. M/s H.S. Bagga, I.L.R. (2005) M.P. 1138 (D.B.) (SC)*

– **Sections 11 and 34** – Appointment of sole arbitrator made during pendency of proceedings – Is no ground to hold that the appointment and award passed were illegal – Whether such sole arbitrator has acted fairly and independently – Can be raised only by way of challenge to the arbitration award on the ground available under section 34 of the Act – In a case covered by sub section (2) of section 11, in exercise of powers under sub section (6) designate of chief justice has merely to take necessary measures for enforcement of the arbitration clause containing the agreed procedure for appointment of arbitrator – This is a case covered by sub sections (2) and (6) of section 11 of the Act to which provision of service of notice for appointment within 30 days as laid down in sub section (4) of the said section has no application – The contention of applicant cannot be accepted that right of the non applicant to appoint an arbitrator was lost : *M/s Subhash Projects And Marketing Ltd., New Delhi Vs. S.E.C.L. Bilaspur, I.L.R. (1999) M.P. 168*

– **Section 11(6)** – Since parties agreed to procedure for appointment of Arbitrator, sub section (6) applicable – No time limit prescribed under sub section (6) of Section 11 – No inordinate delay in appointment – Prayer for appointment of another arbitrator rejected : *M/S Chhatisgarh Mines And Minerals Vs. The Managing Director, I.L.R. (2001) M.P. 564*

– **Section 11(6)** – Writ petition – Matter adjudicated by SCDRC and liberty granted to petitioner to get quantum adjudicated by Arbitrator in terms of conditions of insurance policy–Application for appointment of arbitrator is correct and maintainable : *United India Insurance Co. Ltd. Vs. M/S Rukmani Solvex (P) LTD. I.L.R. (2004) M.P. 831*

– **Section 11(6)**–Petition for appointment of Arbitral Tribunal–Notice of 30 days clearly seeking appointment of arbitrator is mandatory requirement of law–Notice given demanding claims and right reserved to demand appointment of arbitrator on failure–Cannot be said to be notice for constituting arbitral tribunal–Arbitrator already appointed–Petition dismissed : *Raj Kumar Dua Vs. M/s. Caltex Lubricants India Ltd., Chennai; I.L.R. (2005) M.P. 650*

- **Sections 20, 39** – Jurisdiction of Arbitrator – Clause 10 of insurance Policy provides for arbitration if any difference shall arise as to the quantum to be paid under

the police – The moment insurance company refuses to accept the liability the matter can not be referred to the arbitrator – Respondent was required to plead and prove that insurance company has otherwise admitted its liability – In absence of that material plea, arbitration clause would not be applicable – Application under Section 20 rejected: *United Indian Insurance Company Ltd. Raipur Vs. P.K.G.K. Panikar, Durg, M.P., I.L.R. (1999) M.P. 369*

– **Section 34 and 11** and Sick Industrial Companies (Special Provision) Act, 1985 (as amended by Act No. XII of 1994), Section 22 – Word ‘suit’ used does not include arbitration proceedings – Appeal rightly dismissed by the High Court : *Nepa Limited Vs. M/s H.S. Bagga, I.L.R. (2005) M.P. 1138 (SC) (D.B.)*

– **Section 34 and 11** – Appointment of sole arbitrator made during pendency of proceedings – Is no ground to hold that the appointment and award passed were illegal – Whether such sole arbitrator has acted fairly and independently – Can be raised only by way of challenge to the arbitration award on the ground available under section 34 of the Act – In a case covered by sub section (2) of section 11, in exercise of powers under sub section (6) designate of chief justice has merely to take necessary measures for enforcement of the arbitration clause containing the agreed procedure for appointment of arbitrator – This is a case covered by sub sections (2) and (6) of section 11 of the Act to which provision of service of notice for appointment within 30 days as laid down in sub section (4) of the said section has no application – The contention of applicant cannot be accepted that right of the non applicant to appoint an arbitrator was lost : *M/s Subhash Projects And Marketing Ltd. Vs. S.E.C.L. Bilaspur, I.L.R. (1999) M.P. 168*

Arbitrator

- **Jurisdiction of** : *M/S Uttam Singh Dural & Co. (P) Ltd., New Delhi Vs. M/s Hindustan Steel Ltd., Bhilai, I.L.R. (1983) M.P. 269 (D.B.)*

Arms Act, Indian, 1955

- **Section 25(1)(a)** Penal Code, Indian (XLV of 1860), Section 302, and Criminal Procedure Code (II of 1974) Section 374(2), 154 – Murder–Conviction and Sentence–Appeal–Evidence specifying role of appellant causing gun shot injury–Corroborated by independent witnesses–Seizure of gun proved–Pellets recovered from body of deceased were fired by the gun seized–Mere non-mention of names of witnesses in FIR–Not in itself a ground to discredit entire case of prosecution–Finding of Trial Court based on proper appreciation of evidence–Conviction upheld : *Girbal Vs. State of M.P.; I.L.R. (2003) M.P. 456 (D.B.)*

- **Section 27 and Penal**, Code Indian (XLV of 1860)–Sections 294, 307 and Criminal Procedure Code, 1973–Sections 397, 401–Revision–Order of Acquittal recorded by trial court–Cannot be over turned on ground that another view is possible–Serious injury sustained by accused–Necessary for prosecution to explain such injury–Non–explanation–No error committed in acquitting the accused : *Smt. Maya Bai Vs. Bhajan Lal; I.L.R. (2004) M. P. 1181 (D.B.)*

Arms Act, Indian (LIV of 1959)

- **Sections 3, 13, 14, 15 and 22 and Arms Rules, 1962 framed under, Rule 46** – Grant of Arms licence – Considerations for its renewal or refusal under – Sections 13(2-A), 14 and 15 – Refusal of renewal of licence by licensing authority on the ground of pendency of some criminal cases against the petitioner without suspending the running licence or without taking the same ground while issuing the no objection certificate to the petitioner for importing certain arms and ammunition – Amounts to violation of the provisions of these sections – Section 22 and Rule 46 of the Arms Rules, 1962 – Search and seizure of arms and ammunition – Requirements of : *Amrik Chand Saluja Vs. State Of M.P., I.L.R. (1990) M.P. 149 (D.B.)*

- **Sections 3, 25, 39** – Fire Arms – Possession of arms and ammunition without license – No evidence produced in respect of obtaining sanction of District Magistrate for prosecution under Act – Held – Prosecution has to prove that the authority after applying mind granted sanction for prosecution – In absence of sanction accused can not be convicted : *Sukhalal & anr. Vs. State of M.P., I.L.R. (1997) M.P. 580*

- **Sections 13(2A), 14 and 15** – Refusal of renewal of licence by licensing authority on the ground of pendency of some criminal cases against the petitioner without suspending the running licence or without taking the same ground while issuing the no objection certificate to the petitioner for importing certain arms and ammunitions – Amounts to violation of the provisions of these sections : *Amrik Chand Saluja Vs. State Of M.P., I.L.R. (1990) M.P. 149 (D.B.)*

- **Section 22 and Arms Rules, 1962, Rule 46** – Search and seizure of arms and ammunition – Requirements of : *Amrik Chand Saluja Vs. State Of M.P., I.L.R. (1990) M.P. 149 (D.B.)*

- **Section 25 and Arms Rules Indian, 1962, Rule 3**–Writ petition–Possession of fire arm–Weapon found to be prohibited one–Only Central Govt. empowered to grant licence–State Government–Granted license for rimless category–Weapon found to be of rimmed category and prohibited one – Petitioner has absolutely no right to retain the weapon even for a moment : *Deepak Saxena Vs. State Of M.P.; I.L.R. (2005) M..P. 40*

- **Sections 25, 27** – Possession of Deshi Katta or live cartridges – Intention to use them for any unlawful purpose has to be gathered from surrounding circumstances as direct evidence of such intention not possible – Accused found guilty for an offence under Section 27, Arms Act – Court has powers to convict and sentence him for an offence under Section 25 of the Arms Act also : *Dayalsingh Vs. State, I.L.R. (1986) M.P. 532*

– **Sections 27 and 25** – Offences thereunder – Proof of – Evidence of Investigating Officer found to be trustworthy – Corroboration not necessary – Possession of Deshi katta or live cartridges – Intention to use them for any unlawful purpose has to be gathered from surrounding circumstances as direct evidence of such intention not possible – Accused found guilty for an offence under section 27, Arms Act – Court has power to convict and sentence him for an offence under section 25 of the Arms Act, also : *Dayalsingh Vs. State, I.L.R. (1986) M.P. 532*

- **Sections 25, 27**, Criminal Procedure Code, 1974, Section 374(2) and Penal Code, Indian (XLV of 1860)–Sections 148,147,149,302–Unlawful assembly and Murder–Conviction and Sentence –Appeal–Unless it is shown that there was some participation or other act towards commission of the offence it is difficult to held that the others present had formed an unlawful assembly–Death caused by gun shot on the exhortation by another accused–Conviction under Section 302 and 302/109 IPC affirmed : *Hari Singh Vs. State Of Madhya Pradesh; I.L.R. (2004) M.P. 1157 (D.B.)*

– **Section 25(1)(a)** – Seizure of fire arms and cartridge – Evidence of police officer not cogent and convincing – Police Officer could not ever tell the place where he found and took the accused in custody – Independent witness not supporting prosecution case – Recovery of fire arms and cartridge not proved : *Vinod Kumar Shukla Vs. State, I.L.R. (2002) M.P. 346*

– **Section 39 – Requirement of** : *Satyanarain Patidar Vs. State Of M.P., I.L.R. (1981) M.P. 76*

Arms Rules Indian, 1962

- **Rule 3 and Arms Act Indian, (LIV of 1959), Section 25** –Writ petition– Possession of fire arm–Weapon found to be prohibited one–Only Central Govt. empowered to grant licence–State Government–Granted license for rimless category– Weapon found to be of rimmed category and prohibited one– Petitioner has absolutely no right to retain the weapon even for a moment : *Deepak Saxena Vs. State Of M.P. and others.; I.L.R. (2005) M..P. 40*

Army Act (XLVI of 1950)

– **Section 69** – Word “Charged” in – Used in the sense of “accused” and not in the sense of “charge sheeted” – Complaint regarding civil offence registered by Magistrate – Offence is triable by Court – Martial as offence deemed to be offence under Army Act – Commanding Officer in pursuance of notice issued to him stating that accused is to be tried by Court – Martial – Magistrate has no power to proceed with case – Proper procedure is to stay trial and hand over accused to military authorities with prescribed statement : *Major Gopinathan, Military Medical Specialist, Military Hospital, Jabalpur Vs. The State Of M.P., I.L.R. (1963) M.P. 157*

- **Section 120 – Army Rules (1954), Rule 22 (2), Rule 180** – Before convening Summary Court–martial Commanding Officer has discretion whether to proceed with charge – During Court of Enquiry, Commanding Officer duty-bound to follow procedure U/r 180 – In case of non compliance of mandatory provisions of Rule, 180, he ought not have proceeded with the charge : *R.P. Shukla & ors. Vs. Central Officer Commanding-In-Chief, Lucknow & ors., I.L.R. (1996) M.P. 68 (D.B.)*

– **Sections 191, 120 – Army Rules (1954), Rule 180** – Presence of accused at Court of Enquiry – Mandatory under Rule 180 – Accused absent – All subsequent proceedings would be void ab initio : *R.P. Shukla Vs. Central Officer Commanding-In-Chief, Lucknow, I.L.R. (1996) M.P. 68 (D.B.)*

– **Sections 191, 192, 193 – Regulations made under section 193** – Have the same statutory force as if enacted in the Act : *Devlal Vs. Union Of India, I.L.R. (1999) M.P. 734*

– **Sections 192 and 193** – Regulation 170 provides for character ranking and also for re assessment in parity of appellate power – Once the character has been reassessed it would replace the original assessment for all practical purposes : *Devlal Vs. Union Of India, I.L.R. (1999) M.P. 734*

Army Instructions (India), 1949

- **Instruction No. 212** – Provide the same safeguard as is provided by Article 311 : *Sardar Kapoor Singh Vs. Union Of India, I.L.R. (1959) M.P. 397*

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– **Appendix ‘A’, Part I, D.S.R. 866** – Fixation of tenure of an Army Officer at a particular station – Nature of, whether directory or mandatory – Exigencies of the

service and administrative convenience – Consideration of – Discretion of the higher authorities : *Major K. D. Gupta Vs. Union Of India, I.L.R. (1983) M.P. 423 (D.B.)*

– **Appendix ‘A’, Part I, D.S.R. 866** – Petitioner placed in lower medical category S-2 (Permanent) – Transfer to NEFA forbidden by ‘employability limitations’ and functional capacity not considered – Such transfer of petitioner to NEFA invalid : *Major K. D. Gupta Vs. Union Of India, I.L.R. (1983) M.P. 423 (D.B.)*

– **Appendix ‘A’, Part 1, D.S.R. 866** – Question of posting and transfer of Army Officer – When open to Judicial Review : *Major K. D. Gupta Vs. Union Of India, I.L.R. (1983) M.P. 423 (D.B.)*

– **Appendix ‘A’, Part 1, D.S.R. 866** – Vires of – No ground urged challenging it – Not necessary to decide its vires – Fixation tenure of an Army Officer at a particular station – Nature of, whether directory or mandatory – Exigencies of the service and administrative convenience – Consideration of – Discretion of the higher authorities – Question of posting and transfer of Army Officer – When open to judicial Review – Petitioner placed in lower medical category S-2 (Permanent) – Transfer to NEFA forbidden by ‘employability limitations’ and ‘functional capacity’ not considered – Such transfer of petitioner to NEFA invalid – Constitution of India – Article 14 – Arbitrary exercise of discretion – Liable to be struck down as violative of this Article : *Major K. D. Gupta Vs. Union Of India, I.L.R. (1983) M.P. 423 (D.B.)*

Army Rules 1954

- **Rule 22 (2), Rule 180** - Army Act (XLVI of 1950) Section 120 — Before convening Summary Court –martial Commanding Officer has discretion whether to proceed with charge – During Court of Enquiry, Commanding Officer duty-bound to follow procedure U/r 180 – In case of non compliance of mandatory provisions of Rule, 180 he ought not have proceeded with the charge : *R.P. Shukla & ors. Vs. Central Officer Commanding-In-Chief, Lucknow & ors., I.L.R. (1996) M.P. 68 M.P. (D.B.)*

- **Rule 180 – Army Act (XLVI of 1950) Sections 120, 191** –Presence of accused at Court of Enquiry – Mandatory under Rule 180 – Accused absent – All subsequent proceedings would be void ab initio : *R.P. Shukla Vs. Central Officer Commanding-In-Chief, Lucknow, I.L.R. (1996) M.P. 68 (D.B.)*

Ashaskiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ke Sanday) Adhiniyam, M. P., 1978

– **Rule 14(1)** – Rules framed thereunder – Requires selection of teachers by committee under chairmanship of Kulpati – Their appointment not made according to

it – They are not entitled to be included in teachers electoral roll : *Radheshyam Tripathi Vs. Awadhesh Pratap Singh, Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736 (F.B.)*

– **Sections 6, 10** – Imposition of Condition of prior approval for transfer of an employee is for examination of viability in context of the grant – Grant to an institution is made available for benefit of the employee – Without regulatory measure a transfer may result in denial of protection : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481*

– **Section 6, 10** and Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 – Regulatory provisions – Object is to ensure payment of the amount to teachers or other employees to obviate misappropriation of funds : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481*

– **Section 6 (a)** and Ashaskiya Shikshan Sanstha Adhyapakon Tatha Anya Karmachari Appeal Rules, M. P., 1978, Rule 10–Provision for appeal against order of removal–Includes an order passed without obtaining approval of competent authority–Appeal provided not preferred and the suit also was filed beyond the period of limitation–Suit rightly dismissed : *Smt. Vinod Shrivastva Vs. Laxminarayan Sharma & others; I.L.R. (2003) M.P. 1084 (D.B.)*

– **Section 6(a)(iii)** and Madhya Pradesh ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 – Conditional grant of leave for taking job in a foreign company – So called Termination order not served on plaintiff – Effect – Services not validly terminated – Consequential benefits – Effect of adjudication of Civil Court is to declare that person had been wrongfully presented bear attending to his duties as Government servant – Person entitle to remuneration which he would have been earned had he been permitted to work – Re instatement with consequential benefits allowed : *Zafar Hussain Siddique Vs. Principal, Safia College, Bhopal, I.L.R. I.L.R. (2002) M.P. 108*

– **Section 6(a) (iii) as substituted by Act No. 24/81** – Educational institutional run by religious and linguistic minorities – Disciplinary control over employees – Completely vest in management – Applicability and extent of – Interpretation of Statute – Effect of proviso does not in all cases mean an exception to the main section or main provision : *Mehdibai Fouzdar Vs. State Of M.P., I.L.R. (1998) M.P. 739*

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– **Rule 10** – Imposition of conservancy tax under – Rental assessment could be a valid basis for determining the same – Person using private latrine – Liability to pay conservancy tax : *Munshi Surajprasad Vs. Corporation Of The City Of Jabalpur*, 669 I.L.R. (1960) M.P. (D.B.)

– **Rule 11** – Imposition of compulsory tax under clause (i) of section 66(1) of Municipalities Act on garages and godowns – Not ultra vires : *Munshi Surajprasad Vs. Corporation Of The City Of Jabalpur*, 669 I.L.R. (1960) M.P. (D.B.)

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– **Acceptance of bid** – Does not involve any judicial or quasi judicial process : *Ram Ratan Gupta Vs. State Of M.P.*, I.L.R. (1975) M.P. 377 (F.B.)

– **Clause 6** – Excise Commissioner can reject the highest bid – Excise Commissioner exercised option under clause 6 and not under clause 12 in ordering re auction – Petition Challenging re auction dismissed : *Janardan Prasad Sharma Vs. State Of M.P.*, I.L.R. (1991) M.P. 146 (D.B.)

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- **Award filed in Court** – Court, power of, to pass decree in the absence of application by a party to that effect : *Sheoram Prasad Vs. Pt. Gopal Prasad*, I.L.R. (1958) M.P. 570 (D.B.)

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– **Inclusion of agreement in; between parties regarding devolution** – Does not amount to bonafide compromise or family settlement – Compromise between widow and other members – When binding on reversioners : *Moti Singh Vs. Fateh Singh*, I.L.R. (1960) M.P. 815 (D.B.)

– **Question of law not specifically referred to arbitrator** – Power of court to examine legal aspect to ascertain whether the error is apparent on face of Award : *Pannalal Vs. The State Of M.P., I.L.R. (1964) M.P. 752 (D.B.)*

– **Two out of three arbitrators giving the award without any notice to the third arbitrator about proceedings after a particular date** – Award not binding on parties – Power of High Court to interfere with the award : *Aftab-E-Jadid Vs. Bhopal Shramjivi Patrakar Sangh, I.L.R. (1984) M.P. 605 (D.B.)*

– **Award for entitlement of negotiated wages bad** – Principal for present wage structure stated : *Steel Authority Of India, Bhilai Vs. Shri Vs. Yadav & ors., (1988) M.P. 152 (D.B.)*

– **Desai Award – Clause 17** – Suspended employee is entitled to be paid all increments and quarterly allowances also during period of suspension : *Madhav Vs. State Bank Of India, I.L.R. (1986) M.P. 94 (D.B.)*

Ayurvedic, Unani, Prakratic Chikitsa Adhiniyam, M.P. 1970 (as amended), 1970 (V of 1971)

– **Sections 24, 25, 34 and 37** – Petitioner holding degree of “Vaid Visharad” (Ayurved Ratna) From Hindi Sahitya Sammellan Allahabad – Degree was obtained prior to amendment but Registration applied for after Hindi Sahitya Sammellan was deleted from the entry by Amending Act No. 21 of 1989–Refusal to grant Registration–Not arbitrary : *Kartik Chandra Mandal & Ors. Vs. State & Ors.; I.L.R. (2003) M.P.18*

Bailor and Bailee

– **Bailee in possession of goods even after decree for possession** – Goods destroyed – Bailee liable to pay price of goods : *Firm Dhanraj Nathmal Vs. Firm Maniklal Kanhaiyalal, I.L.R. (1960) M.P. 293 (D.B.)*

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Bal Adhiniyam, M.P. (XV of 1970)

– **Scheme of the Act** – Words “Enquiry” and “Trial” – Must be construed with regard to particular extent and with regard to the scheme and provision under consideration : *The State Of M.P. Vs. Ramesh Nai & Ors., I.L.R. (1976) M.P. 386 (F.B.)*

– **Jurisdiction of Juvenile Court is exclusive and extends to all cases irrespective of gravity of offence** – Overrides provisions of Criminal Procedure Code : *Rupsingh Vs. State Of M.P., I.L.R. (1977) M.P. 466 (D.B.)*

– **Scheme indicates that child charged with any offence** – Child to be dealt with under this Adhiniyam by Juvenile Court : *Rupsingh Vs. State Of M.P., I.L.R. (1977) M.P. 466 (D.B.)*

– **Section 2 (1)** – Magistrate First Class to exercise power in Juvenile Court established : *Rupsingh Vs. State Of M.P., I.L.R. (1977) M.P. 466 (D.B.)*

– **Sections 2 (c), 4 and 6**, Criminal Procedure Code, 1973 (II of 1974), Sections 4, 5 and 27 and Constitution of India, Article 254 and Schedule 7, List III, entry 2 – Child delinquents – Trial of offences – Jurisdiction of Juvenile Courts – Repugnancy between state law and law made by Parliament in relation to subject matter pertaining to concurrent list – Provisions of Bal Adhiniyam to the extent of repugnancy void – For offences punishable with death or imprisonment for life – Child delinquents must be tried by Court of Session – Exclusive jurisdiction of Juvenile Court for all offences except those punishable with death or imprisonment for life – Continues after the new code of criminal Procedure, 1973 : *Devisingh Vs. State Of M.P., I.L.R. (1979) M.P. 393 (F.B.)*

– **Section 2 (C) (f) and (i)** – Definitions in – Indicate that child committing the offence is governed by provisions of Adhiniyam unless exception expressly made – **Section 2 (1)** – Magistrate first Class to exercise power in Juvenile Court, established – Bal Adhiniyam, M.P. – Scheme indicates that child charged with any offence – Child to be dealt with under this Adhiniyam by Juvenile Court – Jurisdiction of Juvenile Court is exclusive and extends to all cases irrespective of gravity of offence - Overrides provisions of Criminal Procedure Code – Section 3 – Inquiry started during childhood of offender – Inquiry to be continued under the Adhiniyam even though he attained majority during intervening period : *Rupsingh Vs. State Of M.P., I.L.R. (1977) M.P. 466 (D.B.)*

– **Section 3** – Inquiry Started during childhood of offender – Inquiry to be continued under the Adhiniyam even though he attained majority during intervening period : *Rupsingh Vs. State Of M.P., I.L.R. (1977) M.P. 466 (D.B.)*

– **Section 4** – Overrides Section 27 of Criminal Procedure Code, 1973 : *The State Of M.P. Vs. Ramesh Nai & ors., I.L.R. (1976) M.P. 386 (F.B.)*

– **Section 4 and 6** – Contravene Sections 4, 26 and 27 of Criminal Procedure Code, 1973 – Provision void to the extent of repugnancy : *The State Of M.P. Vs. Ramesh Nai & ors., I.L.R. (1976) M.P. 386 (F.B.)*

- **Section 6** & Criminal Procedure Code, 1973 (II of 1974), Section 27 – No conflict between two provisions: *The State Of M.P. Vs. Ramesh Nai & Ors., I.L.R. (1976) M.P. 386 (F.B.)*

– **Section 6 (1)** – Does not exclude offences punishable with death or imprisonment for life : *The State Of M.P. Vs. Ramesh Nai & ors., I.L.R. (1976) M.P. 386 (F.B.)*

– **Section 26** – Plea of accused that he is “Child” as defined in the Adhinyam can be permitted to be raised before appellate Court : *Khalilullah Vs. State Of M.P., I.L.R. (1984) M.P. 713 (D.B.)*

– **Section 67** – Suspends operation of Section 29-B, Criminal Procedure Code, 1898 : *The State Of M.P. Vs. Ramesh Nai & ors., I.L.R. (1976) M.P. 386 (F.B.)*

Banking Ombudsman Scheme, 1995

– **Clauses 13 (a) (v), 18 and 20** – Letters of credit dishonoured by petitioner Bank – Matter falls within jurisdiction of the ‘Ombudsman’ – Award under Clauses 20 (4) of the Scheme – Only decision making process if illegal can be called in question – No fault found with the process adopted by the ‘Ombudsman’ : *Syndicate Bank Vs. Banking Ombudsman, I.L.R. (2000) M.P. 535*

- **Clause 20 (4)** – Only decision making process if illegal can be called in question – No fault found with the process adopted by the ‘Ombudsman’ : *Syndicate Bank Vs. Banking Ombudsman, I.L.R. (2000) M.P. 535*

Banking Practice

– **Debtor & Creditor** – Account settled – Cannot be reopened except on ground of fraud, mis-representation etc. pleaded and proved – Account settled and acknowledged by debtor – Statement of creditor in the Court demolishing his case cannot be over – looked : *Laxman Vs. Shankerlal, I.L.R. (1988) M.P. 499*

Banking Regulation Act (10 of 1949) (As inserted by Banking Law (amendment) Act 1984)

- **Section 45-F & 45-E**, Indian Succession Act, 1925, Section 370 & 381 – Question whether succession certificate is necessary to be obtained for having excess of valuables lying in the Bank locker – Held – The requirement to have a succession certificate vis-à-vis articles lying in the Bank locker had been envisaged by Section 370 of Indian Succession Act – It is not necessary to obtain a succession certificate and it may be possible that cases may arise whether there is a serious dispute as to who represent the estate of the deceased – Therefore depending upon the facts & circumstances of the case, the Bank would be within its right to contend that letter of administration, if necessary : *Sharda Chopra Vs. State Bank of India, I.L.R. (1996) M.P. 503*

Bar Council Election Rules

– **Entire election challenged** – Election Petition not proper remedy – Bar Council proper but not necessary party to the petition : *B.K. Jain Vs. Y.S. Dharmadhikari & ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 21** – Provision not mandatory and strict compliance necessary : *B.K. Jain Vs. Y.S. Dharmadhikari & ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 21** – Voting paper to be scrutinized as a whole and not to be led away by the figure : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 23 to 30** – Mention functions to be performed by Returning Officer – Rules framed by Bar council of India – Empowers secretary to perform functions of returning Officer in his absence – These functions can be performed by persons in-charge of elections : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 30 (1)** – “Completion of the Count in” – Meaning of : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 31 (8)** – Election not challengeable on ground of rejection of nomination paper or omission of voter’s name from voters list – Result not materially affected : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 32** – Expression – “Except otherwise provided in these rules” in – Capable of two interpretation : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

– **Rules 32** – Returning Officer not appointed – Secretary can perform all functions of Returning Officer : *B.K. Jain Vs. Y.S. Dharmadhikari & Ors, I.L.R. (1978) M.P. 103 (D.B.)*

Benami Transaction (Prohibition) Act (XLV of 1988)

Benami – Burden of proof – Strictest evidence necessary : *M/S Mishrabandhu Karayalaya, Jabalpur Vs. Sheo Ratanlal Koshal, I.L.R. (1973) M.P. 88 (D.B.)*

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– **Burden on person asserting the transaction to be benami** - Consideration paid by person other than ostensible owner – Not sufficient to establish the transaction to be benami – Circumstances to be considered in deciding whether transaction is benami or not – person who is beneficial owner – Is actual owner : *Daryao Singh Vs. Smt. Halkibai, I.L.R. (1978) M.P. 267 (D.B.)*

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– **Consideration paid by person other than ostensible owner** – Not sufficient to establish the transaction to be benami : *Daryao Singh Vs. Smt. Halkibai, I.L.R. (1978) M.P. 267*

– **Source of money** – Cardinal test in determining nature of transaction – Burden of proof regarding benami nature – Differs according to contesting parties – Evidence of both parties not convincing – Surrounding circumstances, position of parties and their relation to one another, motive governing the actions and subsequent conduct are factors to be taken into consideration in the determination of transaction – Fraud – Proof of positive character not possible – Circumstantial evidence is the only way – Each circumstance not to be explained away – Total effect of all circumstances to be taken into consideration : *Shamsher Ali Vs. Smt. Shirin Bai, I.L.R. (1963) M.P. 878 (D.B.)*

– **Section 2 (a), 3(2) and 4** – Suit for declaration on the ground that the property belongs to plaintiff and cannot be attached for Income Tax dues of firm of which her

husband is partner – Trial Court held that property was purchased benami therefore Income Tax Deptt. Was within its right to attach – Held – Benami Transaction Prohibition Act came into force during the pendency of suit – Defence raised by Deptt. Was prohibited on coming into force of Act – Income Tax Authorities have no jurisdiction to attach the property of the appellant in order to recover dues against the partnership firm of her husband – Appeal allowed : *Khateeja Bai Vs. Union Of India, I.L.R. (1993) M.P. 599*

- **Section 4** - Applicability of the act lie- Suit filed before coming into force of the Benami transactions (Prohibition) Act shall not be hit by Section 4 of the Act – Thus view taken by the learned judge that the suit is hit by section 4 of the act is not correct : *Namdeo Devangan Vs. Seetaram, I.L.R. (1997) M.P. 516*

- **Section 4 (1) and 4 (2)** – Not proper – Trial Court ought to have considered merit of the case on basis of evidence available on record : *Abdul Hameed Khan Vs. Abdul Waheed Khan, I.L.R. (2001) M.P. 62*

- **Section 4 (1) and 4 (2)** – Provision can only have limited operation – Would not affect pending suit in respect of transactions held prior to coming into force of the Act – Judgment and decree set aside – Case remanded to trial Court for trial afresh : *Abdul Hameed Khan Vs. Abdul Waheed Khan, I.L.R. (2001) M.P. 62*

- **Sections 4(1), 4(2) and 4(3)** - Land purchased in the name of Karta of the family before partition–Plea that land was purchased for the whole family–Not barred : *Ramgopal Kushwaha Vs. Rampratap; I.L.R. (2003) M. P 437*

- **Sections 4(1), 4(2) and 4(3)** - Suit as also the written statement filed in the year 1975–Act came in force on 5.9.1988–Bar of any suit, claim or action and the defence that the property was purchased benami–Did not apply : *Ramgopal Kushwaha Vs. Rampratap; I.L.R (2003) M. P 437*

- **Sections 4(1), 4(2) and 4(3)** – Second Appeal New question–Neither pleaded before nor dealt with by Courts below–Cannot be allowed to be raised– Civil Procedure Code (V of 1908)–Suit as also the written statement filed in the year 1975–Act came in force on 5.9.1988–Bar of any suit, claim or action and the defence that the property was purchased benami–Did not apply–Land purchased in the name of Karta of the family before partition–Plea that land was purchased for the whole family–Not barred : *Ramgopal Kushwaha Vs. Rampratap; I.L.R (2003) M. P 437*

Bhopal Civil Procedure Code

– **Section 49** – Court, power of, to limit rate of rent or interest paid by one party to the other – Does not create a vested right : *Mst. Mohammadi Begam Vs. Abdul Majid Khan, I.L.R. (1962) M.P. 689 (D.B.)*

Bhopal Debt Conciliation Act

– **Section 9 (2) – Proviso** – Revival of debt – Which Court can revive - Execution – Test to be applied in deciding the question of revival of execution : *Bhanwarji Vs. Phoolchand, I.L.R. (1960) M.P. 879*

Bhopal Gas Leak Disaster (Processing of claim) Act, 1985

- **Section 6 and Constitution of India**, Articles 226,14 and Bhopal Gas Leak Disaster (Registration and Processing of Claim) Scheme, 1985–Paragraph 8 and 13(3)–*Suo motu* power of revision–When exercised on an application is the result of Commissioner's deciding to exercise power of revision *suo motu*–Claimant has no right to seek revision–Rejection of revision petition–Order not prejudicial to claimant's interest or right–Opportunity to show cause before rejection not needed–Authority vested with *suo motu* power of revision–Has to act judiciously–Absence of provision as to limitation in the scheme–Not permissible for the authority entrusted with the power to prescribe a period of limitation–Rejection on ground of limitation–Order set aside–Matter remitted back to consider explanation for delay : *Smt. Birjis Khatun Vs. The Welfare Commissioner, Bhopal Gas Victim, Bhopal, Through The Registrar; I.L.R. (2005) M.P. 706*

Bhopal Gas Leak Disaster, (Registration and Processing of Claim) Scheme, 1985

– **Paragraph 8 and 13(3)** – Authority vested with *suo motu* power of revision–Has to act judiciously–Absence of provision as to limitation in the scheme–Not permissible for the authority entrusted with the power to prescribe a period of limitation : *Smt. Birjis Khatun Vs. The Welfare Commissioner, Bhopal Gas Victim Bhopal Through The Registrar & anr. I.L.R. (2005) M.P..706 (D.B.)*

Bhopal Income Tax Act, 1936

– **Sections 34, 37-A and 40** – Taxation Laws (Extension to Marged States and Amendment) Act, 1949 – Section 7(1), Proviso – Starting of proceedings for assessment on escaped income of 1946-47 after Indian Income tax act, 1922 made

applicable – Order making assessment upheld by appellate assistant commissioner – Second appeal against appellate order – Maintainability : *Maula Irshad Ali Vs. The Commissioner Of Income Tax, M.P., Bhopal & Nagpur I.L.R. (1961) M.P. 1059 (D.B.)*

Bhopal Merger Agreement

– **Nawab of Bhopal ceased to have any power from 1-6-49** – Merged States (Laws) Act, 1949 – Acts mentioned in schedule became applicable to Bhopal which became Chief Commissioner's province – Came into force on 1-1-50 – Patta granted after 1-1-50, by Nawab of Bhopal is illegal – Bhopal State Land Revenue Act, 1932 – Sections 51, 181 and 182 – Confer power on Nazim to dispose of unoccupied land : *State Of M.P. Vs. F.R. Qureshi, I.L.R. (1976) M.P. 461*

Bhopal Pre-emption Act (III of 1934)

- **Section 6 AND 15** – Word “Right” used indiscriminately in section 15 – Right of Pre-emption arises only when sale complete according to section 54, Transfer of Property Act – Suit for specific performance by vendee – Sale in favour of pre-emptor during the intervening period – Specific performances cannot be refused : *Mulla Qamruddin Vs. Brijmohandas, I.L.R. (1961) M.P. 97 (D.B.)*

- **Section 11 (6)** – Constitution, Article 19 (f) – Section 11 (6) – Vires of – Distinction between agricultural land and urban property in approaching question of validity of statutory provision giving a right of pre-emption on basis of vicinage : *Mulla Haji Yusufali Vs. Laxminarayan, I.L.R. (1961) M.P. 718 (D.B.)*

Bhopal State Agricultural Income Tax Act, 1953

– **Section 2 (11) and 2 (15)** – Bhopal state Land Revenue Act, 1932, Section 2(3) - what is assessment year – What is previous year – Stated : *The State Of M.P. Vs. M/S Jethmal Girdharilal, I.L.R. (1960) M.P. 351 (D.B.)*

– **Section 6** – Losses in the accounting year 1952-53 – Not liable to be set off in the accounting year 1953-54 – Section 6 (b) (v) – Deduction for expenditure over repairs of machinery allowed – Further deduction on account of depreciation of machinery not liable to be set off : *The State Of M.P. Vs. The Bhopal Sugar Industries, Ltd., Bhopal, I.L.R. (1960) M.P. 539 (D.B.)*

– **Section 6 (b) (v)** – Deduction for expenditure over repairs of machinery allowed – Further deduction on account of depreciation of machinery not liable to be

set off : *The State Of M.P. Vs. The Bhopal Sugar Industries, Ltd., Bhopal, I.L.R. (1960) M.P. 539 (D.B.)*

Bhopal State Land Revenue Act, 1932

– **Section 2 (3)** – What is assessment year – what is previous year – Stated : *The State Of M.P. Vs. M/sJethmal Girdharilal, I.L.R. (1960) M.P. 351 (D.B.)*

– **Section 2 (15)** – Definition of occupant – Includes Muafidar Interpretation to be put on words in statute unless context otherwise directs – Expression used in a statute – Not to be interpreted by reference to another statute enacted for different purpose – Land Revenue Code, M.P., 1959 – Recognises only one type of tenure – holders, Viz. Bhumi swami : *Khushilal Moolchand Kachhi Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1970) M.P. 712 (D.B.)*

– **Sections 51, 181 and 182** – Confer power on Nazim to dispose of unoccupied land : *State Of M.P. Vs. F.R. Qureshi, I.L.R. (1976) M.P. 461*

Bhopal State Municipalities Act, 1955 (III of 1956)

– **Rules Regarding dismissal, removal or reduction in rank framed thereunder** – appointment not valid and legal – Reversion to substantive post by competent authority – Does not amount to punishment – compliance with rules not required : *Abdul Hafeez Khan Vs. Government Of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Section 2 (16) and (17)** – Land owned by Government but vested in the Board for management – Land does not become public place or public street : *Moulvi Sadruddin Vakil Vs. The Municipal Board, Bhopal, I.L.R. (1975) M.P. 1068*

– **Section 48 (e)** – Words “all other duties, powers and function of the Board” in – Imply that President cannot exercise powers in regard to matters mentioned in clauses (a) to (d) of the section : *Abdul Hafeez Khan Vs. Government Of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Section 55(1)** – Octroi Superintendent – Not “an assessment or Revenue Officer” – Meaning of “an Assessment or Revenue Officer” – Section 55 (3) – Appointment to posts under – Can be made by the Board and not by the President or

the Government – Section 48 (e) – Words “all other duties, powers and function of the Board” in – Imply that President cannot exercise powers in regard to matters mentioned in clauses (a) to (d) of the section – Rules regarding dismissal, removal or

reduction in rank – Appointment not valid and legal – Reversion to substantive post by competent authority – Does not amount to punishment – Compliance with rules not required – M.P. Municipalities Act, M.P., 1961 – Section 94 (1) and (4) – Octroi Superintendent not a Revenue Officer for the Purpose of those provisions – Section 94 (6) – Power of Standing Committee to appoint Octroi Superintendent – Power of Standing Committee to decide legality of appointment and revert the person to substantive post : *Abdul Hafeez Khan Vs. Government Of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Section 55(3)** – Appointment to posts under – Can be made by the Board and not by the President or the Government : *Abdul Hafeez Khan Vs. Government Of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Sections 149 and 152** – Suit for refund of tax illegally recovered – Suit maintainable – No provision in Act for revision of assessment – Distinction between octroi tax and other taxes – Octroi tax assessed by moharir at the time goods enter municipal limits – Civil Suit – bar of, when act provides remedy – Section 335 – Applicability : *Bata Shoe Co. (P) Ltd., Calcutta Vs. The Municipal Board, Bhopal, I.L.R. (1963) M.P. 279 (D.B.)*

- **Section 174** – Board Issuing notice without considering whether erection of building is offence under section 174 – Notice and direction in the notice are unauthorized – Statutory discretion how to be exercised : *Moulvi Sadruddin Vakil Vs. The Municipal Board, Bhopal, I.L.R. (1975) M.P. 1068*

– **Section 330** – Order or direction in excess of statutory power of Board – Such order or direction can be challenged in a suit and the section will not apply : *Moulvi Sadruddin Vakil Vs. The Municipal Board, Bhopal, I.L.R. (1975) M.P. 1068*

– **Sections 335** – Applicability : *Bata Shoe Co. (P) Ltd., Calcutta Vs. The Municipal Board, Bhopal, I.L.R. (1963) M.P. 279 (D.B.)*

Bhopal State Sub tenants (of Occupants) Protection Act, 1954 (I of 1955)

– **Section 3-A** – Applicable to agreements subsisting on 1-6-54 - Section retrospective in operation, but retrospectivity limited to agreement subsisting on 1-6-54 – Interpretation of Statutes – Duty of Court to harmonies various provisions of Act – Cannot stretch words to fill in gaps and omissions revealed by the Act : *Mohammad Manzar Hussain Vs. Chand Khan, I.L.R. (1964) M.P. 711 (D.B.)*

Bhopal State Town Area Act, 1954

– **Section 20 (1) (C)** - Provision in – Indicates subjective approach – Provision for reasonable opportunity to furnish explanation – Not conclusive test of subjective approach – Constitution, article 226 – Administrative order or action – Not amenable to writ of certiorari – Sufficient opportunity given in preliminary enquiry before framing charge – After charge, explanation called – explanation referring to evidence given in preliminary enquiry – principles of natural justice not violated – Rules of natural justice differ with varying provisions of statute and rules framed thereunder : *Abdul Quadar Vs. The State Of M.P., I.L.R. (1960) M.P. 216 (D.B.)*

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– **bye law 2** – What constitutes business of society – Business of society – Not the same thing as the affairs of a society or the administration and management of the society : *Gokul Prasad Vs. Laxmansingh, I.L.R. (1963) M.P. 620 (D.B.)*

– **bye law 37** – Expression “business of the Bank” – Does not include election of a chairman of board of Directors : *Gokul Prasad Vs. Laxmansingh, I.L.R. (1963) M.P. 620 (D.B.)*

– **bye law 52** – Word “touching” – Meaning of – Has no bearing on the meaning of words “business of a co operative society” – Wider than “any dispute as regards the business of a co operative society” : *Gokul Prasad Vs. Laxmansingh, I.L.R. (1963) M.P. 620 (D.B.)*

– **bye law 52** – Co operative Society Act – Rule 26 – Essential requisites for applicability – Bye law 52 – Word “touching” – Meaning of – Has no bearing on the meaning of words “business of a co operative society” – Wider than “any dispute as regards the business of a co operative society”- Bye law 2 – What constitutes business of society – Business of society – Not the same thing as the affairs of a society or the administration and management of the society – Bye law 37 – Expression “business of the Bank” – Does not include election of a chairman of Board of Directors – Dispute or validity of election of Chairman cannot be referred to Registrar under Rule 26 or Bye Law 52 : *Gokul Prasad Vs. Laxmansingh, I.L.R. (1963) M.P. 620 (D.B.)*

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– **Chapter IX, Regulation 2 (c)** – Expression “all matters arising out of conduct of examination” – Wide enough to include matter of language of question papers : *Kumari Meena Chitle Vs. The Board Of Secondary Education, M.P., Bhopal, I.L.R. (1970) M.P. 737 (D.B.)*

– **Chapter IX, Regulation 2 (c)** – matter regarding language or languages in which question papers are to be set up – Belongs to province of Examination Committee and not other committees : *Kumari Meena Chitle Vs. The Board Of Secondary Education, M.P., Bhopal, I.L.R. (1970) M.P. 737 (D.B.)*

– **Regulation No 126** – Admission secured by suppression of fact – Admission to school is invalid : *Pramod Kumar Agrawal Vs. Board Of Secondary Education, M.P., BHOPAL, I.L.R. (1972) M.P. 61 (D.B.)*

– **Regulation No 126** – Admission to examination by suppression of fact – Admission to examination effected by fraud or improper conduct – Admission to examination liable to be cancelled : *Pramod Kumar Agrawal Vs. Board Of Secondary Education, M.P., Bhopal, I.L.R. (1972) M.P. 61 (D.B.)*

– **Regulation No 126** – Order of Uttar Pradesh Board debarring student from admission of 1966 academic session – Bars not only his appearance for 1966 examination but also forbids his admission in Xth class in that year : *Pramod Kumar Agrawal Vs. Board Of Secondary Education, M.P., Bhopal, I.L.R. (1972) M.P. 61 (D.B.)*

– **Regulation No 126** – Student appearing from school affiliated to board – Cannot appear for XIth examination unless completion of studies for IXth, Xth and XIth classes : *Pramod Kumar Agrawal Vs. Board Of Secondary Education, M.P., Bhopal, I.L.R. (1972) M.P. 61 (D.B.)*

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– **Regulation No 126** – Student debarred from appearing for 1966 Examination by Board of Uttar Pradesh - Student not eligible for admission to 10th Class in 1966 in School affiliated to M.P. Board – Admission secured by suppression of fact – Admission to school is invalid – Admission to examination by suppression of fact – Admission to examination effected by fraud or improper conduct – Admission to examination liable to be cancelled – Student appearing from school affiliated to Board – Cannot appear for XIth examination unless completion studies for IXth, Xth and XIth Classes – Order of Uttar Pradesh Board debarring student from admission of 1966 academic session – Bars not only his appearance for 1966 examination but also forbids his admission in Xth class in that year – Student debarred from appearing for Board Examination of a particular session – Its order has to be given effect to by Secondary Board throughout the country : *Pramod Kumar Agrawal Vs. Board Of Secondary Education, M.P., Bhopal, I.L.R. (1972) M.P. 61 (D.B.)*

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– **Section 3 (13) (a) and 14 (e)** – Contractor supplying material for packing bales – Person serving under such contractor not an “employee” in the industry under the Act or its specific provisions – Supplying material for packing is incidental only – Such work is outside the industrial undertaking and not a part thereof : *Hakim Singh Vs. J.C. Mills Ltd., Birla Nagar, Gwalior, I.L.R. (1964) M.P. 354 (D.B.)*

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- **Section 82** – Number of employees reduce in particular department – Complaint filed by representative Union – Representative- Union not a person **Aggrieved** – Complaint not maintainable – Complaint under – To state all facts constituting offence : *Pyarelal Vs. The Secretary, Indore Millmazdoor Sangh, Indore, I.L.R. (1957) M.P. 63 (D.B.)*

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- **Section 21 and Constitution of India, Arts. 50, 21 and 14** – Section 21 confers power on Executive Magistrates to try offences under Act – Executive Magistrates is also Chairman of the Vigilance Committee – Therefore apprehension of bias in trial by Executive Magistrate is reasonable – Violative of Articals 50, 14 and 21 of the Constitution – Therefore Section 21 of the Act struck down : *Hanumantsing Kubersing Vs. State Of M.P., I.L.R. (1995) M.P. 526 (F.B.)*

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– **Clause 13** – Provides no period for communication of record: *Smt. V.K. Singh Vs. State Of M.P. & Ors, I.L.R. (1978) M.P. 925 (D.B.)*

– **Clause 13** – Promotion committee considering question of promotion – Not required to give notice of adverse remark and give opportunity to explain : *Smt. V.K. Singh Vs. State Of M.P. & Ors, I.L.R. (1978) M.P. 925 (D.B.)*

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- **Sections 19, 31 and Prison Rules, M.P., 1968, Rule 30(e)** –Constitution of India, Article 226–Writ Petition–Pro bono publico – Allotment of land for educational institution in close proximity of Borstal–Provision of Rule 30 of the Prison Rules not made applicable to Borstal institution–Borstal institution is not a jail–Contention that land being within 201 metres of Borstal could not be allotted for non-agricultural purposes has no substance–Petition dismissed : *Dr. S.V. Chandurkar Vs. State Of M.P., I.L.R. (2004) M.P. 569*

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- **Rule 22–D-2 - Excise Act, M. P., 1915, Sections 62(2)(h), (g) & (e), 27, 18** - Licence for manufacture of IMFL by blending, reducing and compounding IMFL concentrate–Licence issued under the Distillery & Warehouse Rules–Breweries Rules not applicable as the unit is not brewery–State Government entitled to accept payment in addition to duty leviable on terms and conditions of the licence deed–Condition 8

empowering State Government to recover the actual cost of supervisory staff posted at the premises of licensee—Levy constitutes price for consideration for parting with the privilege and granting licence—Recovery not illegal—Condition 8 not ultra vires—Order of High Court set aside : *State Of Madhya Pradesh Vs. M/S. K. C. T. Drinks Ltd.*; *I.L.R. (2003) M. P. (SC). 478 (F.B)*

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- **36, Clauses (v) and (xxi) and Bye law 37, clause (9)** framed by the Dubey co operative Commercial Bank Ltd., Bilaspur – Board of directors delegating power to working committee regarding dismissal etc. of servant – Working committee suspending servant – Suspension operates as suspension of contract of service – No right to servant to claim pay for the period of suspension : *Krishna Chandra Gupta Vs. Registrar, Co Operative Societies, M.P., Indore, (1964) M.P. 891 (D.B.)*

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– **Bye laws 1 to 7 – Validity** – Municipalities Act, M.P., 1961 – Section 358, Clause 7 (f) – Scope of – Section 358 (7) (m) – Does not empower Municipal Committee to impose fees – Motor vehicles Taxation Act, 1947 – Section 6 – Prohibits imposition of tax, toll or fees in respect of Motor Vehicle – Motor Vehicles Act – Section 68 (2) (r) - Power of competent authority to fix or alter location of Bus stand – Is overriding power and not controlled by Municipal Act : *Sindhi Sahiti Multipurpose Transport Co Operative Society Ltd., Bairagarh, Bhopal Vs. Municipal Council, Bhopal, I.L.R. (1970) M.P. 234 (D.B.)*

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– **Bye law 9** – Member elected to managing committee of stores – Members are primary co operative societies and not individuals representing them : *Basant Kumar Mishra Vs. The Assistant Registrar Co Operative Society, Jabalpur, I.L.R. (1974) M.P. 415 (D.B.)*

– **Bye law 12 (a) and (b)** – Does not contemplate individuals as members – Society can act as member of general body or managing committee of the stores through its representative – bye law 9 – Contemplates representation of society through representative – Representative does not himself become member of general body or managing committee – Is representative of Co operative Society which is real member – Member elected to managing committee of store – Members are primary co operative societies and not individuals representing them – Co operative Societies Rules, M.P., 1962, Rule 44 and Bye law 12-A of the Bye laws of the Jabalpur Wholesale Co operative Store – Word “person” in – includes society – Interpretation of statute – Principle – Particular clause containing disqualification – Wide to include body individuals and Societies – Restricted meaning not to be given to that clause – Rule 44 (h) and Bye law 12-A (1) (e) – Disqualification arising out of – Applicable to a society : *Basant Kumar Mishra Vs. The Assistant Registrar Co Operative Society, Jabalpur, I.L.R. (1974) M.P. 415 (D.B.)*

- **Bye-law 12-A(1)(f)** - Expression "Is interested directly or indirectly in any contract" in-Meaning of: *Brij Bihari Gupta Vs. Shri L.S. Khare I.L.R. (1980) M.P. 551 (D.B.)*

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– **Bye law 30 (VI)** – Bank Inspector placed in charge of current duties of Assistant Registrar – Not authorized to exercise powers of Assistant Registrar : *Satna Central Co Operative And Land Mortgage Bank, Ltd., Satna Vs. Puranlal Agarwal, I.L.R. (1974) M.P. 580 (D.B.)*

– **Bye law 35** – Words “2/5th of the members of the Board” in – Mean 2/5th of the directors constituting the Board for the time being : *Satna Central Co Operative And Land Mortgage Bank, Ltd., Satna Vs. Puranlal Agarwal, I.L.R. (1974) M.P. 580 (D.B.)*

C.P. States Land Tenure Order, 1949

- **Second schedule, item 1** - Limitation Act-Suit by raiyat for possession against person in possession without title-Suit not governed by this Article, but by Limitation Act. *Munshiram Vs. Atmaram, I.L.R. (1959) M.P. 991*

Cantonments (Extension of Rent Control Laws) Act (XLVI of 1957)

- **Section 3**-Authority with delegated power of legislation-Has no power to give retrospective operation to an enactment : *Mangilal Vs. Shivprasad, I.L.R. (1966) M.P. 938*

- **Section 3**-Authorises Central Government to extend enactments relating to control of rent and regulation of house accommodation with restrictions and modifications-Action of Central Government applying State Act to particular cantonment amounts to exercise of delegated legislative function-Authority with delegated power of legislation-Has no power to give retrospective operation to an enactment-Interpretation of Statutes-Repeal-Repeal of an Act by another-Provision regarding repeal and savings only attracted-Act expiring by efflux of time-Act cannot be invoked for any purpose after it comes to an end-Accommodation Control Act, Madhya Pradesh,1961-Applicable to pending proceedings it section 52(2) thereof omitted for purposes of Cantonments Act,1957-Accommodation Control Act, Madhya Pradesh,1961-Section 12(1)-Applicable to pending proceedings-Landlord has to allege grounds mentioned in the section : *Mangilal V. Shivprasad, I.L.R. (1966) M.P. 938*

- **Section 3** and Notification dated 13-6-64 issued thereunder-Does not make Accommodation Control Act, Madhya Pradesh, 1961-Applicable to suits pending on the date of notification-Vested Right to continue duly instituted suit-Accommodation Control Act, Madhya Pradesh-Section 12(1)-Not applicable to suits already pending when Act came into force-Is prospective and not retrospective-Interpretation of Statute-Statute depriving person of right to sue or affect that right-Retrospective character to be clearly express : *Gokuldas Pagaria Vs. Paramanand Chaurasia, I.L.R. (1969) M.P. 657(D.B.)*

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- **Offer of compensation** - Not to be arbitrary and capricious : *Bajrang Prasad Sangal Vs. Union Of India I.L.R. (1977) M.P. 551 (D.B.)*

- **Rule 43** - Expressions "A candidate at the election" and "A candidate for the election" -Used in the Act without any distinction but synonymously - Used in the rules framed under the Act to denote the candidate at the election-"Candidate at the

election" in rule 43- Includes candidate whose nomination paper has been rejected-Difference in address of a candidate in nomination paper and Electoral Roll-Identity of candidate sufficiently established-No valid reason for rejecting nomination paper-Nomination improperly rejected - Presumption that election is materially affected : *Ramnarayan Vs. Vishnu, I.L.R. (1957) M.P. 80 (D.B.)*

- **Section 8, 18 and 24 and General Clauses Act (X of 1897)** - In matter of resumption - Successor functionary is Central Government Cantonment Code, 1912 - Expression "Local Government" in - To be construed with reference to form and provision re-enacted - To be replaced by expression "Central Government" - Cantonments Act, 1924 - Functionary under - Empowered to enforce rights and obligations under old Act - Fixing of valuation to be paid to lessee - Lessee to be given notice about assessment of value - Offer of compensation - Not to be arbitrary and capricious : *Bajrang Prasad Sangal Vs. Union Of India I.L.R. (1977) M.P. 551(D.B.)*

- **Section 60**, Notification, dated 19-12-79. Municipalities Act, Madhya Pradesh (XXXVII of 1961), Section 127 and Motor Vehicles Taxation Act, M.P. (VI of 1947), Section 6, 7 – Entry tax imposed by Cantonment board by notification – Entry tax impossible by Board only if municipality could have imposed the said tax on that date – Bar created on Municipalities by section 6 of Motor Vehicles Taxation Act, 1947 in the matter of levy of entry tax on motor vehicles – Not open to Cantonment Board to levy the said entry tax – Notification quashed : Madhya Pradesh State Road Transport Corporation, Habib Ganj Bhopal, Through Divisional Manager, M.P.S.R.T.C., Indore *Vs. Cantonment Board, Mhow, I.L.R. (1988) M.P. 654, (D.B.)*

-**Sections 181, 183, 185**-Sanction for construction-Sanction accrues to benefit of not only person in whose favour it is granted but also to persons who are lawfully claiming under him-Order revoking sanction must be passed after due compliance of principles of natural justice-Order revoking sanction quashed : *S.N. Awasthi V. Union Of India; I.L.R. (1994) M.P. 101(D.B.)*

-**Sections 181, 185, General Clauses Act, 1897**, Section 21-Revocation of sanction for construction-Board can revoke sanction as Section 21 of General Clauses Act clothes authority issuing order with power to rescind the said order : *S.N. Awasthi Vs. Union Of India; I.L.R. (1994) M.P. 101(D.B.)*

-**Section 210-Constitution, Article 19(1)** (g)-No provision for hearing applicant for license-No provision reasons for giving for order -Absence of provision regarding appeal-No imposition of unreasonable restriction-Law not rendered invalid. *Babulal Gupta Vs. The Cantonment Board, Jabalpur, I.L.R. (1959) M.P. 705(D.B.)*

-Section 210 (I)-Word "vegetable" in - Does not include betel leaves - Words and phrases-Word "food"-Does not include betel leaves : *The State Of Madhya Pradesh Vs. Abdul Rashid, I.L.R. (1960) M.P. 534*

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- Section 9- Loss occurred while goods were in transit-Owner entitled to a decree : *Oriental Insurance Company Vs. Mukesh & Company and another; I.L.R. (2000) M.P. 1118 (D.B.)*

- Section 9- Proof of negligence- After entrustment of goods to transporter owner is absolved of burden of proving negligence on the part of transporter- Suit can be filed by the owner on the basis of loss, damages or non-delivery of goods : *Oriental Insurance Company Vs.. Mukesh & Company and another; I.L.R. (2000) M.P.1118 (D.B.)*

- Section 10, Evidence Act, 1872, Section 115 – Waiver – Suit for recovery against carrier without giving prior notice of 6 months – Objection raised belatedly i.e. after filing of written statement – Held – Objection of non issuance of notice would be deemed to have been waived – Revision dismissed. *M/S Auto Trade And Transport Vs. National Insurance Company, I.L.R. (1997) M.P. 620*

- **Section 10** – Interpretation - Loss or damage to property - Notice by plaintiff to carrier – Notice not only issued but was even posted at proper address under postal receipt- Documents not only presented to the defendant but copies of the same were also sent- Personal service was refused and registered letter returned un- served - Word “given” in Section 10 means “sent” and served – Section 10 does not provide particular form of notice – Refusal to accept, amounts to its service : *M.P. Rajya Beej Avam Farm Vikas Nigam Vs. M/s. Shri Durga Transport Service, Banapura, District, Hoshangabad, M.P., I.L.R. (1995) M.P. 591.*

- **Section 10** and Constitution of India, Articles 226, 227–Consumer Protection Act, 1986, Section 11 -Writ Petition challenging orders passed by District Consumer Forum and its confirmation in appeal-Contract for transportation-Jurisdiction of District forum-Contractual obligation to deliver goods at Rewa-Breach of contract by carrier due to non-performance-The District forum at Rewa has jurisdiction Goods lost due to negligence of carrier-Negligence need not be proved in case claim of damages for lost goods-Carrier can be absolved from liability-Notice to carrier claiming damages-No objection against non-service of notice raised before-Right deemed to have been waived : *Lucky Forwarding Agency Vs. Smt. Binder Devi; I.L.R. (2002) M.P. 849*

Cattle Trespass Act (I of 1871)

-**Section 22**-Nature of orders passed under-Order not one of conviction or acquittal-Order not appealable-Physical delivery of complaint to Superintendent of the Office of District Magistrate-Presentation valid-Criminal Procedure Code, Section 439-Revisonal jurisdiction, exercise of, to correct error of Magistrate : *Shankarlal Vs. Ramshanker, I.L.R. (1962) M.P. 746 (D.B.)*

Cause of action

-**Cause of action arising in favour of adoptive mother**-Subsequent adoption-No fresh cause of action arises in his favour : *Lalchand Vs. Dharamchand & Ors., I.L.R. (1965) M.P. 320*

- **Absence of cause of action different from plaint not disclosing cause of action** - Distinction between two positions has to be drawn State Of Madhya Pradesh V Gangacharan (1976) M.P. 355 -Case of deposit-Cause of action arises when demand for return of deposit is made-Civil Procedure Code-Section 20-In case of deposit-Relation of creditor and debtor comes into existence-Duty cast on debtor to find creditor-Court of the place of creditor will have jurisdiction to try suit : *Brij Mohandas Vs. Narsinghdas, I.L.R. (1975) M.P. 903 (D.B.)*

Ceiling on Agricultural Holdings (Amendment) Act, (VII of 1989)

- **Section 11-A, 11-B, 41 and 42, Sub-Section (2) and (3)**, Proviso to Proviso to - Ceiling on Agricultural Holdings Act, M.P. (XX of 1960) as amended by- Provisions contained therein - Are violative of Rule of law - Constitutionally invalid and are struck down as such - Section 46 - Cannot be held to be invalid : *Smt. Basant Kumari Vs. State Of M.P., I.L.R. (1990) M.P. 27 (D.B.)*

Ceiling on Agricultural Holdings Act, M. P. (XX of 1960)

- **Competent Authority under** - Has no jurisdiction to adjudicate upon question of ownership : *Her Highness Mehr Taj Nawab Sajeda Sultan, Ruler Of Bhopal, Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 452(D.B.)*

- **As amended by Acts Nos. 13 of 1974** - Provision introduced for payment of additional compensation for trees by Act No. 13 of 1974 - Not retrospective in operation : *State Of M. P. Vs. Board Of Revenue, M. P. I.L.R. (1983) M.P. 302, (D.B.)*

- **As amended by M.P. Ceiling on Agricultural Holdings (Amendment) Act, (VII of 1989), Section 11-A, Sub-Section (2) and (3), Section 11-B, Proviso to Section 41, Proviso to Section 42 and Section 42-A** - Provisions contained therein - Are violative of Rule of law - Constitutionally invalid and are struck down as such - Section 46 - Cannot be held to be invalid : *Smt. Basant Kumari Vs. State Of M.P., I.L.R. (1990) M.P. 27(D.B.)*

- **Sections 2(b), (h) and (gg) and 3 (c)** - Lands held by private trusts or endowed in favour of deities in private temple - Not exempted - - Section 2 (gg) - Word "family" in - Restricted to living persons only - Deities cannot constitute "family" - Hindu Law - Idol- Idol as representing the religious purpose of donor is the juristic person recognized by law and not the material image of Idol - Donor dedicating separately lands situated in two villages to two separate deities installed in two separate temples - More than one deity installed in each temple - Each individual deity cannot be a separate holder: *Idol Of Shri Radhaji Vs. State Of M. P., I.L.R. (1981) M.P. 814 (D.B.)*

-**Section 2(e)(iii)**-Competent Authorities under the Act-Land Revenue Code, Madhya Pradesh, 1959-Section 44(1)-Competent Authority other than a Revenue Officer-Not a revenue officer-Appeal lies to Board of Revenue-Competent Authority is revenue officer-Appeal lies to authority competent to hear appeals under this provision-Words "Persona-designata"-Meaning of-Ceiling on Agricultural Holdings Act, Madhya Pradesh, 1960-Section 41(1)-Person hearing appeal under Ceiling Act-Cannot function as "Persona-designata" -Similar is case with revisional authority-

Appeal provided to an established Court-No provision made limiting further right of appeal-Appellate judgment under special statute-Held appealable under general law-Appeal or revision available in cases arising under Ceiling Act-Orders passed under Sections 41 and 42 of Ceiling Act not final but are subject to appeal or revision-Land Revenue Code, Madhya Pradesh, 1959-Section 44-Words "any order passed in first appeal" in -Are wide enough and include any appellate order whether passed under sub-section (1) or (2)-Conditions under which right of second appeal is available-Order passed in appeal under section 41, Ceiling Act by officers mentioned in sub-section 2) of section 44 of Code-Appealable under that provision-Order passed in revision under section 41, Ceiling Act-Revisable under section 50 of the Code : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P. 943 (F.B.)*

Section 3 and 7-Effect of-Expression "following lands shall be exempted" in Section 3-Does not connote that person holding only exempted land is not required to file return-Words "ceiling area" in Section 9-Have not the same meaning as given in definition clause-Only means 25 acres-Every holder holding more than 25 acres including exempted land has to file return-Section 3, clauses (f) and (h)-Competent authority, jurisdiction of, to enquire regarding exempted land : *M/S Bhopal Sugar Indursies Ltd, Sehore Vs. The State Of M.P., I.L.R. (1970) M.P. 392 (D.B.)*

- **Sections 3 (c), 2(b), (h) and (gg)** - Donor dedicating separately lands situated in two villages to two separate deities installed in two separate temples - More than one deity installed in each temple - Each individual deity cannot be a separate holder : *Idol Of Shri Radhaji Vs. State Of M. P., I.L.R. (1981) M.P. 814(D.B.)*

- **Section 4** - as amended by Acts Nos. 13 and 20 of 1974 - Object of amendments : *Narbada Prasad Vs. State Of M. P. I.L.R. (1982) M.P. 205. (F.B.)*

- **Section 4** - as amended by Acts Nos. 13 and 20 of 1974 - Effect of amendments - Section 4 - Part of - Social Welfare legislation Rules of construction as regards expropriatory legislation - Not applicable - Heading of section - Cannot control its plain language - Substitution of date 24th January 1971 by 1st January 1971 by Act No. 13 of 1974 - Has reasonable basis - Object of amendments - Sub - Section (1) - Expressions "in anticipation of" and "to defeat the provisions of the Act" - Meaning and connotation of - Sub section (2) - Transfer of land after 1-1-1971 by persons holding lands within ceiling limit under principal Act but more than ceiling area fixed by Act No. 13 of 1974 - Transfer is hit by new sub-section (1) - Transfer of land permitted under section 5 (3) of principal Act - Also hit by new section 4 - Sub-section (4) - Expressions "in regard to every transfer to which this section applies" and "in any other manner" - Meaning and connotation of - Includes partitions also covered by sub-section (1) - Burden of proof thereunder - Is on the transferor - Not a negative burden - Offering plausible explanation for making transfer - Not sufficient

to discharge burden - Should be proved by evidence and preponderance of possibilities : *Narbada Prasad Vs. State Of M. P. I.L.R. (1982) M.P. 205. (F.B.)*

- **Section 4 (1)**, 11 (4), 11 (5), 46 and Land Revenue Code, M.P. (XX of 1959), Section 257 (c) – Title of the holder to be decided by Civil Court of competent jurisdiction – Competent Authority has jurisdiction to declare any transfer void if made in anticipation of or to defeat the provisions of the Ceiling Act – Suit barred to declare conferral of Bhumiswami rights, both under Ceiling Act and Land Revenue Code *State Of Madhya Pradesh Vs. Phulchand, I.L.R. (1988) M.P. 316,*

- **Section 4 (3)** - The provision is a provision to the contrary - Appeal against order of competent Officer lies to Board of Revenue : *Niranjan Singh Vs. The Board Of Revenue, M. P., Gwalior, I.L.R. (1977) M.P. 731(D.B.)*

- **Section 9**-Words "ceiling area" in section 9-Have not the same meaning as given in definition clause-Only mean 25 acres-Every holder holding more than 25 acres including exempted land has to file return : *M/S Bhopal Sugar Industries Ltd, Sehore Vs. The State Of M.P., I.L.R. (1970) M.P. 392(D.B.)*

- **Section 9, 10 and 11** - "Holder"- Meaning of - Agricultural lands constituting "Private properties" - of Ex-ruler by covenant of merger - Ex-ruler would be "holder" - Entry in Revenue record is the basis - Competent Authority under - Has no jurisdiction to adjudicate upon question of ownership - Land Revenue Code, M. P., 1959 - Section 57 (1) - Effect of - Section 57 (1), proviso - Nature of "Rights" preserved thereunder - Subsequent memorandum issued by State Government merely exempt Land Revenue - Constitution of India - Article 363 - Competent Authority and Board of Revenue acting within their limited jurisdiction by deciding question of "Holder" on the basis of Revenue Records - Writ petition challenging their orders not competent - Article 226 (3) - Alternative remedy - No remedy provided in statute - Bar not attracted : *Her Highness Mehr Taj Nawab Sajeda Sultan, Ruler Of Bhopal, Vs. State Of Madhya Pradesh I.L.R (1981) M.P. 452 (D.B.)*

- **Section 11** – Suit for specific performance of contract to sell – Decree for specific performance passed – Execution for possession – Collector holding that decree-holder held land in excess of ceiling limit – Decree for possession not executable so long as order of Collector is not varied or reversed in appeal or revision – Land Revenue Code, Madhya Pradesh, 1959 – Section 16 (4)(a) – Not applicable since no ceiling limit fixed by the rules framed under the code *Jagan Vs. Harakchand, I.L.R. (1978) M.P. 288*

- **Sections 11(4)**, 11 (5), 46 and Civil Procedure Code (V of 1908), Section 9 – Order Passed u/s 11 (4) of the Act – Order final and conclusive subject to decision in civil suit filed u/s 11 (5) of the Act – Civil Court's jurisdiction barred u/s 46 except as

provided in the Act – Stranger to the proceedings not entitled to challenge the Order u/s 11 (4) – Stranger entitled to bring civil suit under general law against the holder, not to offer the land claimed by him, in compliance with the order u/s 11 (4) – Adverse possession – Person claiming must show the assertion of hostile title against recorded owner : *Ramlal Vs. State Of M.P., I.L.R. (1988) M.P. 519,*

- **Sections 11(4), 11 (5), 46** – Civil Procedure Code, 1908, Section 9 – Ceiling of Land – Jurisdiction of Civil Court in deciding the title of the Land – The plaintiff has never filed an objection before the competent authority which may be said to be covered by section 11 (4) of the Act, and therefore the applicability of Section 11 (5) would not arise, the Civil Court would have no jurisdiction in view of proceedings contained in Section 46 of the Act. *Bhaiya Lal Vs. State Of M.P., I.L.R. (1997) M.P. 501*

- **Section 11(5)** and Section 4 and Specific Relief Act (I of 1877), Section 34 and Succession Act, Indian (XXXIX of 1925), Section 51 - Parsi owning 718 - 20 acres of lands dying intestate leaving behind his widow, 3 sons and daughters - Each daughter inherits 1/10th share therein - Objection by daughters before competent authority claiming their shares in the lands - Rejection of - Suit for mere declaration of title maintainable - Court-fees Act, 1870 - Schedule II, Article 17 (iii) - Ad - Valorem Court-fees not payable in suit for declaration of title - Civil Procedure Code - Order 8, rule 5 - Denial for want of knowledge - Amounts to admission - Plaintiff not entering witness-box - Examining other witnesses to prove her case - Adverse inference not liable to be drawn : *Smt. Dhanbai Vs. State Of M. P., I.L.R. (1981) M.P. 48 (D.B.)*

-**Section 15** Application for option to retain particular land and question of filing revised return would only arise after petitioner's acquiring any particular land, if in excess of the limit provided under the law-Order of Court below patently illegal and without jurisdiction : *Smt. Khom Bai and others v. First Addl. District Judge, Raipur, Link Court, Mahasammund and ors., ILR (2000) M.P. 1038 - Section 16(2) - Rule 3-A of the Rules framed under and Form A - 2 of the appended to these rules - Object of - Not beyond rule making power of State - Not violative of Article 14 of the Constitution - Also protected from attack under Article 31 - A : *State Of M. P. Vs. Board Of Revenue, M. P., I.L.R. (1983) M.P. 302. (D.B.)**

- **Section 16(2)(ii)**, as amended by Act No. 13 of 1974, Sections 5 (1) and 11. Rule 3 - A of the Rules framed under and Form A-2 and Constitution of India, Articles 14 and 31 - A Construction of welfare legislation for securing Social Justice - Principles of - Section 16 (2) (ii) - The word 'trees' in - Signifies trees planted by the holder of land and not trees of spontaneous growth - Additional compensation payable only for trees planted by the holder of land - Rule 3-A and Form A-2-Object of - Not beyond rule making power of State - Not violative of Article 14 of the

Constitution - Also protected from attach under Article 31 - A - Provision introduced for payment of additional compensation for trees by Act No. 13 of 1974 - Not retrospective in operation - Sections 5 (1) and 11 - Statutory bar on transfer and sub-divisions - Public Policy - Collector's written permission for transfer and sub-division - Mandatory - Transfers and sub-divisions without Collector's written permission is void - Powers of High Court to interfere in public interest and for protecting State Exchequer even when orders not challenged by way of appeal : *State Of M.P. Vs. Board Of Revenue, M. P. I.L.R. (1983) M.P. 302, (D.B.)*

- **Section 41** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 44(2)-Order passed in appeal under section 41, Ceiling Act by officers mentioned in sub-section (2) of section 44 of Code-Appealable under that provision : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P., 943(F.B.)*.

- **Section 41** and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 50-Order passed in revision under Section 41, Ceiling Act-Revisable under Section 50 of the Code : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P., 943 . (F.B.)*.

-**Section 41 and 42**-Orders passed under-not final but are subject to appeal or revision : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P., 943 . (F.B.)*

-**Section 41(1)**-Appeal provided to an established Court-No provision made limiting further right of appeal : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P., 943(F.B.)*.

-**Section 41(1)**-Person hearing appeal under Ceiling Act-Cannot function as persona designata-Similar is case with revisional authority : *Ravishankar Vs. Board Of Revenue, I.L.R. (1973) M.P., 943 . (F.B.)*.

-**Section 44**-Limitation-Does not apply to suo motu exercise of revisional power-Record reveals that Competent authority himself sought permission to review the order in question-Permission though not granted on ground of delay but collector placed the matter before Commissioner for consideration-Suo motu exercise of power by Commissioner in such case- Not arbitrary : *Babulal & anr. Vs. Board Of Revenue, Gwalior & anr., I.L.R. (2000) M.P.1410*

- **Section 46**, 4 (1), 11 (4), 11 (5) and Land Revenue Code, M.P. (XX of 1959), Section 257 (c) – Title of the holder to be decided by Civil Court of competent jurisdiction – Competent Authority has jurisdiction to declare any transfer void if made in anticipation of or to defeat the provisions of the Ceiling Act – Suit barred to declare conferral of Bhumiswami rights, both under Ceiling Act and Land Revenue Code : *State Of Madhya Pradesh Vs. Phulchand, I.L.R. (1988) M.P. 316,*

- **Sections 46, 11 (4) and 11 (5)** – Civil Procedure Code, 1908, Section 9 – Order Passed u/s 11 (4) of the Act – Order final and conclusive subject to decision in civil suit filed u/s 11 (5) of the Act – Civil Court’s jurisdiction barred u/s 46 except as provided in the Act – Stranger to the proceedings not entitled to challenge the Order u/s 11 (4) – Stranger entitled to bring civil suit under general law against the holder, not to offer the land claimed by him, in compliance with the order u/s 11 (4) – Adverse possession – Person claiming must show the assertion of hostile title against recorded owner : *Ramlal Vs. State Of M.P., I.L.R. (1988) M.P. 519*

Central Civil Service (Pension) Rules 1972

- **Rules 6(6) and 9(3)**- Limitation for taking cognizance of offence alleged- Deleted before the date of framing of charge-Can be of no help to applicant : *Badri Prasad Vs. State, I.L.R. (2000) M.P.1316,*

- **Rule 8 and Administrative Tribunals Act, 1985**, Section 19 and Constitution of India, Article 227–Writ petition–Service Law–Pension–Under Regulations employee is entitled to pension subject to future good conduct –Future misconduct can be with respect to misconduct committed during service leading to conviction after retirement–Employee copulsorily retired on ground of pendency of Criminal Case–Conviction after retirement – Withholding of pension–Can only be on sound foundation based on evidence–But cannot be reduced below Rs. 375/-per mensem–Appeal against conviction pending before High Court–Employee entitled to pension in terms of Rule 8(1) (b) of Pension Rule–Impugned orders set aside : *Shri Bhagwati Prasad Tiwari Vs. Union of India, I.L.R. (2004) M.P. 246 (D.B.)*

- **Rules 9(3) and 6(6)**- Limitation for taking cognizance of offence alleged- Deleted before the date of framing of charge-Can be of no help to applicant : *Badri Prasad Vs. State, I.L.R. (2000) M.P.1316 .*

Central Civil Services (Classification, Control and Appeal) Rules, 1965

- **Rule 11** –Setting aside order of punishment the Tribunal directed to reconsider the quantum of punishment–Employee reinstated in service with imposition of lesser punishment–FR 54-A not applicable in such a case : *Battilal Vs. Union Of India & ors., I.L.R. (2005) M.P. 580 (D.B.)*

Central Civil Services (Leave) Rules 1972

- **Rule 44(1)** –Special disability leave–Dispute between two employees connected to their duties in school–Injury sustained while performing official duties–Disability due to injuries received as consequence of official position and while on duty, established–Employee entitled to special disability leave : *Kendriya Vidyalaya Sangathan New Delhi & Ors. Vs. Sant Kumar Nahar & anr., I.L.R. (2005) M.P. 1142 (D.B.)*

Central Excise and Salt Act (I of 1944)

-**Essence of Excise duty-Stages during which tax can be levied:** *M/S Kalekhan Mohammad Hanif, Bhopal Vs. Union Of India, I.L.R. (1974) M.P. 647 (D.B.)*

- **No provision made in Act for refund of duty properly levied:** *M/S Kalekhan Mohammad Hanif, Bhopal Vs. Union Of India, I.L.R. (1974) M.P. 647(D.B.)*

- **Covers only case of breach of rule made under Section 37(2)(iii)** *Malkhansingh Vs. Inspector Of Central Excise, Jabalpur I.L.R. (1962) M.P. 197(D.B.)*

- **Item No. 14 - 1 (2) (iii)** of the First Schedule to the Act- Pigment slurry made by mixing pigment powders like titanium dioxide with water containing chemical wetting agents - No change in chemical properties and characteristic of pigment powder - Duty under Item No. 14-I(2) (iii) of the First Schedule not leviable : *Tata Exports Limited, Dewas Vs. Union Of India, I.L.R. (1986) M.P. 425 (D.B.)*

- **Item No. 14 (III) (i)** of the First Schedule - Nitrocellulose lacquer prepared by mixing certain chemicals - Resultant product is something different from ingredients used for making them - Item No. 14 (III) (i) of the First Schedule attracted - Clearance value - Calculation of and exemption : *Tata Exports Limited, Dewas Vs. Union Of India, I.L.R. (1986) M.P. 425(D.B.)*

- **As amended by amending Act (II of 1973)** which came into force on 1-10-1975, Sections 3(2), 4 and First Schedule, item 14 (a) – Levy of excise duty – Tariff value of sulphuric acid fixed on the basis of weighted averages of price collected from manufacturers in through out India valid for the period after amendment in Section 4 i.e. with effect from 1-10-1975, but not for the period before that date : *M/S Gwalior Rayon Silk Mfg. Co. Ltd., Nagda Vs. Union Of India, I.L.R. (1989) M.P. 596 (D.B.)*

-**Section 1** -Merged States (Laws) Act, 1949-Section 3-Central Excise and Salt Act--Section I-Contemplates issue of one notification for bringing the Act into force-

Merged States (Laws) Act, 1949--Section 3-Notification issued under--Effect is to bring into force the Act in force in Bhopal-"Varnish"- Meaning of-Commodity known as "French Polish" -Included in "Varnish" and liable for payment of tax-Interpretation of Statutes-Fiscal statutes-To be constructed strictly--Words used in-Must be given natural meaning : *Akhtar Abbas Vs. Assistant Collector, Central Excise, Bhopal, I.L.R. (1960) M.P. 408(D.B.)*

-Section 2(f)-Definition of manufacture-Includes processes which are incidental and ancillary to the completion of a manufactured produce : *M/s Kalekhan Mohammad Hanif, Bhopal Vs.. Union Of India, I.L.R. (1974) M.P. 647(D.B.)*

- Section 2 (f) - Word 'manufacture' - Meaning of - Burden of proof - Pigment slurry made by mixing pigment powders like titanium dioxide with water containing chemical wetting agents - No change in chemical properties and characteristics of pigment powder - Duty under Item No. 14 – I (2) (iii) of the First Schedule not leviable - Nitrocellulose lacquer prepared by mixing certain chemicals - Resultant product is something different from ingredients used for making them - Item No. 14 III (i) of the First Schedule attracted - Clearance value - Calculation of and exemption - Finance Act, 1982, Section 51 and Excise Rules, 1944, Rules 9 and 49 - Giving retrospective effect to Rules - Is not violative of Article 19 (1) (g) of the Constitution of India - Constitution of India - Article 226 - Alternative remedy - When bars the petition : *Tata Exports Limited, Dewas Vs. Union Of India, I.L.R. (1986) M.P. 425. (D.B.)*

-Section 3-Tax validly levied and collected-Tax cannot be treated as advance-Tax not liable to be refunded : *M/s Kalekhan Mohammad Hanif, Bhopal Vs. Union Of India, I.L.R. (1974) M.P. 647(D.B.)*

- Sections 3 (1), 4, 37 (1) and 38 and Central Excise Rules, 1944, Rule 9-A - Point of time when excised duty may be imposed - Date of manufacture or production not relevant - May be levied at the stage article reaches the retailer - Rule 9 - A Permitting levy and collection of excise duty at the rate enforced at the time of removal of goods, is not ultra-vires or void - Does not suffer from excessive delegation - Not inconsistent with intention of Parliament - Interpretation of Statutes - Rules - Can be used to interpret an ambiguous provision - Words and Phrases - "Excise duty" - Meaning of - "Levy" and "Imposition" Meaning of and distinction between : *Shree Synthetics Limited, Ujjain Vs. Union Of India, I.L.R. (1982) M.P. 706. (D.B.)*

- Section 4 - Excise Authorities - In assessing Excise Duty - Authorities perform quasi - judicial power - Can fix valuation only according to Section 4 of the Act and directions of Board regarding valuation not binding on them : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Section 4 (a)** - Assessable value how to be determined : *Universal Cables Ltd. Satna V Union Of India Vs. (1978) M.P. 406 (D.B.)*

- **Section 4 (a)** - Sales of defective rods - Could not be basis for finding whole sale cash price of good quality rods - Things to be considered in determining assessable value of proper rods : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Section 4 (1) (b)** and Central Excise Valuation Rule, 1975, Rule 6(b)(1) – No inconsistency between the two provision, *The Gwalior Rayon Mfg. (Wvg.) Co. Vs. Union Of India I.L.R. (1982) M.P. 768. (D.B.)*

- **Section 11-A** and Central Excise Rules, 1944, Rule 10 - Rule framed under Act - Is a part of the Act - Provision contained in Rule under the Act - Shifted to the Act itself without break - Neither amounts to repeal nor omission of an enactment - Provision contained in Rule 10 included in the Act by Section 11 - A - Effect of - Central Excise Valuation Rules, 1975, Rule 6 (b) (i) - Words "comparable goods" occurring in - Meaning of - Central Excises and Salt Act, 1944 - Section 4 (1) (b) - Expression "nearest as certainable equivalent thereof" - Connotation of - Central Excises and Salt Act, 1944, Section 4 (1) (b) and Central Excise Valuation Rules, 1975 - Rule 6 (b) (i) - No inconsistency between the two provisions - Central Excise and Valuation Rules, 1975 - Rule 6 (b) (i) - Not arbitrary - Contains sufficient guidelines - Rule 6 (b) (i) and (ii) - Scheme thereunder - Not unreasonable - Central Excise Rules, 1944 - Rule 173 - C (i) and 173 - G (3) - Penalty proceedings - Price list mentioning its filing under Rule 6 (b) (ii) - Proper officer accepting it and approved it under Rule 173 - C (3) and assessment accordingly - Later on proper officer holding that Rule 6 (b) (i) was attracted for revising assessable value - Not sufficient to initiate penalty proceedings - Constitution of India - Article 226 - Existence to alternative remedy of appeal - When creates a bar : *The Gwalior Rayon Mfg. (Wvg.) Co. Vs. Union Of India I.L.R. (1982) M.P. 768. (D.B.)*

- **Section 11-B** – Application for refund – Proceeding before the Assistant Collector for adjudicating the claim for refund of excise duty are of quasi-judicial nature – Cannot be controlled by directions as per standing orders : *Rewa Gases Private Limited Works and Head Office, Sidhi v. Asstt. Collector, Central Excise, Division-Satna, I.L.R. (2001) MP 1630,*

- **Section 11-B** – Claim for refund of duty paid in excess – Award by Appellate Authority – Delay in payment without interest – At the relevant time no provision in the act existed for payment of interest on amounts wrongfully levied or withheld by Department : *M/s. Hope Textiles Ltd. Vs. Union of India, I.L.R. (2001) MP 1299,*

– **Section 11-B** – Culpable delay and equity – On the principle of equity a party who suffered loss on account of wrongful withholding of amount is entitled to be compensated by way of interest : *M/s. Hope Textiles Ltd. Vs. Union of India, I.L.R. (2001) MP 1299,*

-Sections 33 and 37-Proceedings for breach of rules framed under the Act-Principles of natural justice to be followed -Principles of natural justice, Requirements of : *Malkhansingh V Inspector Of Central Excise, Jabalpur I.L.R. (1962) M.P. 197(D.B.)*

- **Section 35 (2)** - Does not prohibit taking of original proceedings *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Section 35 (2)** - Word "Final" in - Meaning of : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406(D.B.)*

- **Sections 37 (1), 3 (1), 4 and 38** and Central Excise Rules, 1944, Rule 9-A - Point of time when excised duty may be imposed - Date of manufacture or production not relevant - May be levied at the stage article reaches the retailer - Rule 9 - A Permitting levy and collection of excise duty at the rate enforced at the time of removal of goods, is not ultra-vires or void - Does not suffer from excessive delegation - Not inconsistent with intention of Parliament - Interpretation of Statutes - Rules - Can be used to interpret an ambiguous provision - Words and Phrases - "Excise duty" - Meaning of - "Levy" and "Imposition" Meaning of and distinction between : *Shree Synthetics Limited, Ujjain Vs. Union Of India, I.L.R. (1982) M.P. 706. (D.B.)*

-Section 40-Suit fully covered by the provision-Jurisdiction of Civil Court not barred-No provision made in Act for refund of duty properly levied-Section 2(f)-Definition of manufacture-Includes processes which are incidental and ancillary to the completion of a manufactured produce-Essence of Excise duty-Stages during which tax can be levied-Constitution of India-Article 32-Does not confer appellate jurisdiction-Jurisdiction-Quasi-judicial authority deciding matter-Jurisdiction not lost by coming to wrong conclusion-Civil Court when can interfere with decision of special Tribunals-Central Excise and Salt Act-Section 3-Tax validly levied and collected-Tax cannot be treated as advance -Tax not liable to be refunded-Section 40-Action of the authorities within statutory powers-Application for refund has to be made to appropriate authority *M/S Kalekhan Mohammad Hanif, Bhopal Vs. Union Of India, I.L.R. (1974) M.P. 647(D.B.)*

- **Section 40 (2)** - Expression "other legal proceedings" in - Ambit and scope of : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406(D.B.)*

- **Section 40 (2)** - Provision not applicable to proceedings taken under Rule 173 - Q read with Section 33 of the Act : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Section 40 (2)** and Rule 173 (c) and Rule 173 (Q) - Conditions under which rule applies : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406(D.B.)*

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- **155/A, Rule I-Provisions Penal**- None to be brought under it except by express Language : *Rajaram Richharia Vs. State Of M.P., I.L.R. (1957) M.P. 415(D.B.)*

Central Excise Rules, 1944

- **Provision contained in Rule 10 included in the Act by Section 11 - A - Effect of** : *The Gwalior Rayon Mfg. (Wvg.) Co. Vs. Union Of India I.L.R. (1982) M.P. 768. (D.B.)*

-**Modvat Credit** – Claim of–on Explosives used by manufacturers in the mines and on grinding media balls–Credit can be admissible on both the items–Question no longer res integra–Reference answered in the affirmative in favour of assessee : *Commissioner Of Central Excise Vs. M./S New Vikram Cement Ltd., I.L.R. (2004) M.P. 184 (D.B.)*

- **Rule 8** - Notification No. 46/83, as amended by Notification No. 133/83 issued thereunder by Central Govt. prescribing concessional rate of Excise duty on manufacture of paper - Petitioners running paper Mill in Rayagada with plant attached for manufacturing bamboo and woods pulp and another paper mill at Bhopal using pulp for manufacture of paper - Production of paper from both the mills has to be added up for deciding question of benefit of concessional rate of the Mill at Bhopal using unconventional raw material : *Straw Products Ltd., Bhopal Vs. Assistant Collector Of Central Excise, Bhopal, I.L.R. (1984) M.P. 387, (D.B.)*

- **Rule 10** and Central Excise and Salt Act (I of 1944), Section 11 - A - Rule framed under Act - Is a part of the Act - Provision contained in Rule under the Act, shifted to the Act itself without break - Neither amounts to repeal nor omission of an enactment - Provision contained in Rule 10 included in the Act by Section 11 - A - Effect of - Central Excise Valuation Rules, 1975, Rule 6 (b) (i) - Words "comparable goods" occurring in - Meaning of - Central Excises and Salt Act, 1944 - Section (1) (b) - Expression "nearest as certainable equivalent thereof" - Connotation of - Central Excises and Salt Act, 1944, Section 4 (1) (b) and Central Excise Valuation Rules,

1975 - Rule 6 (b) (1) - No inconsistency between the two provisions - Central Excise and Valuation Rules, 1975 - Rule 6 (b) (i) - Not arbitrary - Contains sufficient guidelines - Rule 6 (b) (i) and (ii) - Scheme thereunder - Not unreasonable - Central Excise Rules, 1944 - Rule 173 - C (1) and 173 - G (3) - Penalty proceedings - Price list mentioning its filing under Rule 6 (b) (ii) - Proper officer accepting it and approved it under Rule 173 - C (3) and made assessment accordingly - Later on proper officer holding that Rule 6 (b) (i) was attracted for revising assessable value - Not sufficient to initiate penalty proceedings - Constitution of India - Article 226 - Existence to alternative remedy of appeal - When creates a bar : *The Gwalior Rayon Mfg. (Wvg). Co. Vs. Union Of India, I.L.R. (1982) M.P. 768. (D.B.)*

- **Rules 57 and 218**—MODVAT Credit—Claim of—On Explosives used by manufacturers in the mines and on grinding media balls—Credit can be admissible on both the items—Question no longer res integra—Reference answered in the affirmative in favour of assessee : *Commissioner Of Central Excise Vs. M./s New Vikram Cement Ltd., I.L.R. (2004) M.P. 184(D.B.)*

- **Rule 173 (c)** - Does not make a person liable to penalty when information supplied is false : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406(D.B.)*

- **Rule 173 (C) and 173 (Q)** - Omission to enter correct price - Is not contravention of rule 173 - C within meaning of Rule 173 – Q : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Rule 173 (Q) and 173 (C)** - Rule 173 (Q) (1) (a) and (d) - Conditions necessary for applicability : *Universal Cables Ltd. Satna Vs. Union Of India I.L.R. (1978) M.P. 406(D.B.)*

- **Rules 218 and 57** – MODVAT Credit—Claim of—On Explosives used by manufacturers in the mines and on grinding media balls—Credit can be admissible on both the items—Question no longer res integra—Reference answered in the affirmative in favour of assessee : *Commiiisionr Of Central Excise Vs. M./S New Vikram Cement Ltd., I.L.R. (2004) M.P. 184 (D.B.)*

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- **Rule 6 (b) (i)** - Not arbitrary - Contains sufficient guidelines : *The Gwalior Rayon Mfg. (Wvg). Co. Vs. Union Of India, I.L.R. (1982) M.P. 768. (D.B.)*

- **Rule (6) (b) (i)** - Words "comparable goods" occurring in - Meaning of : *The Gwalior Rayon Mfg. (Wvg). Co. Vs. Union Of India, I.L.R. (1982) M.P. 768. (D.B.)*

- **Rule 6 (b) (i) and (ii)** - Scheme thereunder - Not unreasonable : *The Gwalior Rayon Mfg. (Wvg). Co. Vs. Union Of India, I.L.R. (1982) M.P. 768. (D.B.)*

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- **Rule 19**-Purpose of rule is mandatory-No preservative specifically prescribed-Rule not providing preservative for particular food stuff-Appropriate preservative should be used-The word "Analysis" in-Is general-Not restricted to analysis at first instance : *Municipal Corporation, Gwalior Vs. Premchandra, I.L.R. (1971) M.P. 591*

- **Rule 19**-Rule not providing preservative for particular food stuff-Appropriate Preservative should be used : *Municipal Corporation, Gwalior Vs. Premchandra, I.L.R. (1971) M.P. 591.*

- **Rule 19**-The word "Analysis" in-Is general-Not restricted to analysis at first instance : *Municipal Corporation, Gwalior Vs. Premchandra, I.L.R. (1971) M.P. 591.*

Central Province & Berar Letting of Houses & Rent Control Order, 1949

- **Dismissal for default for non-appearance** – Restoration – Permissibility – Held – There is nothing in the Act to prevent the officer from suo moto restoring a case, dismissed in default. *S.S. Dharamchand Vs. E.A.C., Jabalpur, I.L.R. (1956) M..P. 5.* ...

- **Clause 22(1)(b) & 24** – Allotment of the house – Ex parte decision – Permissibility – Petitioner did not inform within seven days that house had fallen vacant – The authority was empowered to allot house under clause 24 without intimating the landlord as he failed to intimate within seven days that house had fallen vacant. *Seth Motilalsa Vs. Rupchand, I.L.R. (1956) M..P. 7.* ...

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- **Rules** - Rules framed there under-Contain no provision giving authority issuing certificate of registration to restrict number of goods-Section 7(3) and 8(3) Words "goods of the class or classes" in -Do not imply specification of goods by the number of the goods in the registration certificate-Amendment of Registration Certificate-Effective from the date on which it is made or from the date of application for amendment-Date of application for amendment-Is the date of effectiveness of the amendment if it is allowed : *M/s Orient Paper Mills Ltd., Amlai Vs. The Commissioner Of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 70(D.B.)*

- **Section 3 (1)** - Sale - Whether inter-State or otherwise - Determination of : *Central Provinces Manganese Ore Co. Ltd., Balaghat Vs. The Commissioner Of Sales-Tax, M. P., I.L.R. (1983) M.P. 112. (D.B.)*

-**Section 5(1)**-Purchase must occasion export to constitute purchase in course of export : *Kanhiram Ramgopal, Seoni Vs. The Commissioner Of Sales Tax, M.P. I.L.R. (1970) M.P. 517(D.B.)*

-**Section 5(1)**-Purchase-tax leviable on transaction between assessee and the vendors-Latter part of Section not attracted-Purchase must occasion export to constitute purchase in course of export : *Kanhiram Ramgopal, Seoni Vs. The Commissioner Of Sales Tax, M.P. I.L.R. (1970) M.P. 517(D.B.)*

- **Section 7(1)** and (2) and Section 15 and General Sales Tax Act, M.P., 1958 (II of 1959), Section 18(6) and Notification No. 3326-3081 – VST dated 11.10.1977 published in M.P. Gazette Extraordinary dated 11.10.1977 at page 1478 – Dealer obtaining registration under section 7(2) but not under section 7(1) indulging in inter-State sales – Renders himself liable for penalty under section 8(6) – Registration under section 7(2) – Cannot be deemed to be one under section 7(1) – Section 7(1) – Requirement of – Is mandatory – Section 15 – Assessee purchasing goods from registered dealer on payment of tax at full rate without giving declarations in the prescribed form though under mistaken notion – Not entitled to relief under this section – Is liable to pay sales tax in respect of declared goods so purchased – Notification dated 11.10.1977 issued under the General Sales Tax Act, M.P., 1958 – Exemption from payment of tax under – Can be claimed by assessee only after compliance of condition contained therein – General Sales Tax Act, M.P. 1958 – Section 18(6)(a) – Quantum of penalty payable under, by the assessee willfully failing to apply for registration : *Birendra Singh And Company, New Delhi Vs. Regional Assistant Commissioner Of Sales Tax, Bhopal, I.L.R. (1990) M.P. 189(D.B.)*

– **Section 7 (3) and 8 (3)** – Words “goods of the class or classes” in – Do not imply specification of goods by the number of the goods in the registration certificate : *M/S Orient Paper Mills Ltd., Amlai V. The Commissioner Of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 70 (D.B.)*

- **Section 7(3) and 8(3)**-Amendment of Registration Certificate-Effective from the date on which it is made or from the date of application for amendment-Date of application for amendment-Is the date of effectiveness of the amendment if it is allowed : *M/S Orient Paper Mills Ltd., Amlai Vs. The Commissioner Of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 70(D.B.)*

-Section 8(1) - Condition under which provision comes into operation-Sales Tax (Central) Rules, Madhya Pradesh, 1957-Rule 8(2)-Validity-Provision not mandatory-Section 8(4)-Declaration for claiming benefit of lower rate of tax-Declaration to be produced before assessment-Words and Phrases-"In manner and Form" -Meaning of : *M/S. K.M. Chopra And Co, Nagpur Road, Jabalpur Vs. The Additional Commissioner Of Sales Tax, M.P., Indore, I.L.R. (1970) M.P. 31(D.B.)*

- Section 8(1) To claim benefit of - From C marked "original" necessary to be produced - Production of Form and Marked "duplicate" not sufficient : *The Commissioner Of Sales Tax Madhya Pradesh Vs. M/s C. L.Rajnandgaon I.L.R. (1976) M.P. 730(D.B.)*

- Section 8 (1) and (4) - Circumstances in which benefit of section 8 (1) is available - To claim benefit of - Form C marked "original" necessary to be produced - Production of Form and Marked "duplicate" not sufficient - Central Sales Tax Rules, Madhya Pradesh, 1957 - Rule 8 (5-A), clauses (iii), (iv) and (v) - Duplicate of Form C in - Implication of : *The Commissioner Of Sales Tax Madhya Pradesh Vs. M/S C. L. Rajnandgaon I.L.R. (1976) M.P. 730 (D.B.)*

-Section 8(3)(b)- Benefit not available to a registered dealer who merely manufactures goods and does not resell-Manufacturing or processing of goods-Cannot be separated from sale of goods-Dealer contravening provision of Section 8(3)(b)-Dealer cannot escape liability from paying penalty : *The Commissioner Of Sales Tax, M.P. Vs. M/s. Sheocharan Radheshyam, I.L.R. (1974) M.P. 179(D.B.)*

-Section 8(3)(b)- Dealer contravening provision of Section 8(3)(b)-Dealer cannot escape liability from paying penalty : *The Commissioner Of Sales Tax, M.P. Vs.. M/s. Sheocharan Radheshyam, I.L.R. (1974) M.P. 179(D.B.)*

-Section 8(3)(b)- Manufacturing or processing of goods-Cannot be separated from sale of goods : *The Commissioner Of Sales Tax, M.P. Vs. M/s. Sheocharan Radheshyam, I.L.R. (1974) M.P. 179 (D.B.)*

- Rule 8 (5-A), clauses (iii) (iv) and (v) - Duplicate of Form C in - Implication of : *The Commissioner Of Sales Tax Madhya Pradesh Vs. M/s C. L.Rajnandgaon, I.L.R. (1976) M.P. 730 (D.B.)*

- Section 15 – Assessee Purchasing goods from registered dealer on payment of tax at full rate without giving declarations in the prescribed form though under mistaken notion – Not entitled to relief under this section – In liable to pay sales tax in respect of declared goods so purchased : *Birendra Singh And Company, New Delhi V. Regional Assistant Commissioner Of Sales Tax, Bhopal, I.L.R. (1990) M.P. 189 (D.B.)*

Charges of corrupt practices

-Quasi-criminal in character -Allegations must be clear and precise-Success not to be lightly interfered-Purity of election to be maintained : *Maganlal Bagdi Vs. Shri Hari Vishnu Kamath, I.L.R. (1959) M.P. 893(D.B.)*

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- Rules 3, 4, 5 and 6 and Cinema (Regulations) Act, Madhya Pradesh (XVII of 1952), Sections 3, 5(1), 5(2), 9 – Grant of no objection certificate by Licensing Authority Without previous permission of State Govt. is invalid – Delegation of power by State Govt. to Licensing Authority retrospectively, not permissible – Invalid no objection certificate for first camping site of the touring cinema cannot form basis for grant of second no objection certificate by Licensing Authority without prior sanction of State Govt. : *Saki & Sirajuddin Vs. State Of M.P., I.L.R. (1990) M.P. 661(D.B.)*

- Rule 20, Cinemas (Regulation) Act, M.P. (XVII of 1952), Section 5(3), Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 and M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983, Rule 1 and circulars dated 30.7.1987 and 28.12.1987 issued by Govt. of M.P. – Rules silent about dimension of screen of picture to be used for exhibition of films by V.C.R. – Separate screens integral part of system – Directions issued by the State Government to District Magistrate in circulars dt. 30.7.1987 and 28.12.1987 in absence of any provision as to dimensions of the screen of picture tube in the rules of governing grant of license, unconstitutional and violative of the fundamental right guaranteed under Article 19(1)(g) of the Constitution – Circulars dated 30.7.1987 and 28.12.1987 struck down – Exhibition of films through V.C.R. in Video parlour is governed by V.C.R. Rules, 1963 – Cinemas (Regulation) Rules, M.P. 1972 not applicable – Appeal against order refusing to renew licence – Refusal to grant licence includes refusal to grant renewed and hence such order is appealable – No appeal is provided against cancellation of licence : *Anand Jaiswal Vs. District Magistrate, Shahdol, I.L.R. (1991) M.P. 531(D.B.)*

- Rules 100, 105, 103, 120 and Cinemas (Regulations) Act, M.P. (XVII of 1952), Sections 3,5(2), Constitution of India, Article 226 – Scheme of Act and Rules – Control and exhibition of cinema business by licensing authority and State Govt. – Renewal of licence – Dispute arising regarding right and ownership of premises – Danger to law and order – Order to get the dispute regarding right and ownership decided by Civil Court before applying for renewal – Order just and proper : *Roop Singh Vs. Licensing Authority, Tikamgarh, I.L.R. (1989) M.P. 410(D.B.)*

- **Rules 102, 103, 105 and 120** and Cinema (Regulation) Act, M. P., (XVII of 1952), Section 5 - Grant of Cinema Licence - Safety of public at large is primary consideration - District Magistrate has absolute discretion in the matter - Executive Engineer finding building in dangerous condition Executive Magistrate refusing renewal of licence finding on evidence building to be dangerous condition - Finding not based on extraneous consideration - Rule 105 - Filing of 'No Objection Certificate' - Even in case of renewal of Licence, District Magistrate can direct filing of 'no objection certificate' from landlord of the building - Rules 120 and 103 - Licence comes to an end on death of licensee - Legal Representatives have no right to apply for its renewal - Remedy is for fresh licence : *Murlidhar Vs. State Of M.P., I.L.R. (1985) M.P. 346. (D.B.)*

- **Rules 103 and 120** - Licence comes to an end on death of licence - Legal Representative have no right to apply for its renewal - Remedy is for fresh licence : *Murlidhar Vs. State Of M. P., I.L.R. (1985) M.P. 346. (D.B.)*

- **Rule 105** - Filing of 'No objection Certificate' - Even in case of renewal of Licence, District Magistrate can direct filing of 'no objection certificate' from landlord of the building : *Murlidhar Vs. State Of M. P., I.L.R. (1985) M.P. 346. (D.B.)*

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against cancellation of licence : *Anand Jaiswal Vs. District Magistrate, Shahdol, I.L.R. (1991) M.P. 531(D.B.)*

- **Rule 10** – Screen on a television set is a component of a picture tube – Existing rules silent about the size of such screen – Licensee under the rules can use – Television set with a picture tube having screen of any dimension – Licensee cannot, however, use separate screen apart from the screen of picture tube to enlarge the image – Entertainments Duty and Advertisement s Act, M.P. (XXX of 1936) as amended by M.P. Act No . 34 of 1983 – Section 3 – Petitioners having licence for exhibition of television playing pre-recorder – Petitioners liable to pay duty as Prescribed under Section 3 of the Act – Duty on admission of each person to exhibition is illegal and wholly unjustified-Rule 18 of Licencing Rules, 1983 – Opportunity to show cause before suspending or canceling licence for alleged contravention of rules – Necessary – No such opportunity given – Order liable to be quashed : *Anand Jaiswal Vs. State Of M.P., I.L.R. (1988) M.P. 4, (D.B.)*

- **Rule 18** – Opportunity to show cause before suspending or canceling licence for alleged contravention of rules – Necessary – No such opportunity given – Order liable to be quashed : *Anand Jaiswal Vs. State Of M.P., I.L.R. (1988) M.P. 4, (D.B.)*

Cinemas (Regulation) Act, M. P. (XXXVII of 1952)

- **Sections 2 (a) and 3** and Constitution of India, List II, Entry 32 - Exhibition of movies with help VCR and TV in restaurants falls within ambit of 'cinema' in Entry 32 and is governed by regulatory provisions of M. P. Cinemas (Regulation) Act - Video Cassettes Recorder used for playing pre-recorded cassettes of movies on TV screen comes within definition of "Cinematograph" defined in section 2 (a) - Exhibiting movies by playing pre-recorded cassettes with the help of VCR and TV set in restaurants comes within ban on section 3 - Section 5 (b) - Provision requiring licensing authority to see before granting licence that adequate safety precautions have been taken applies to restaurant also - Licensing of Wireless Receiving Apparatus Rules, 1965 and Indian Wireless Telegraphy (Possession) Rules, 1965 - Commercial licence granted thereunder - Does not permit use of VCR and TV for playing pre-recorded cassettes of movies - Entertainments Duty Act, C. P. and Berar, 1936 - Sections 2 (b) and 3 - Exhibition of films with the help of VCR and TV in restaurants - Question whether customers are admitted for payment - Is a question of fact - Relevant considerations for determination of - Charging any amount for tea, coffee are snacks and not separately charging for viewing film in restaurants - Provisions of the Act cannot be evaded - Interpretation of Statutes - Language used in Constitution or modern statue in general terms - Should be construed to include new scientific inventions : *Restaurant Lee, Jagdalpur Vs. State Of M.P., I.L.R. (1983) M.P. 606, (D.B.)*

- **Sections 3, 5(1), 5(2), 9 and M.P. Cinema (Regulations) Rules, 1972, Rules 3,4,5 and 6** – Grant of no objection certificate by Licensing Authority Without previous permission of State Govt. is invalid – Delegation of power by State Govt. to Licensing Authority retrospectively, not permissible – Invalid no objection certificate for first camping site of the touring cinema cannot form basis for grant of second no objection certificate by Licensing Authority without prior sanction of State Govt. : *Saki & Sirajuddin Vs. State Of M.P., I.L.R. (1990) M.P. 661(D.B.)*

- **Sections 3, 5(2), Cinemas (Regulations) Rules, M.P., 1972, Rules 120, 105, 103, 100 and Constitution of India, Article 226** – Scheme of Act and Rules – Control and exhibition of cinema business by licensing authority and State Govt. – Renewal of licence – Dispute arising regarding right and ownership of premises – Danger to law and order – Order to get the dispute regarding right and ownership decided by Civil Court before applying for renewal – Order just and proper : *Roop Singh Vs. Licensing Authority, Tikamgarh, I.L.R. (1989) M.P. 410(D.B.)*

- **Section 5 and Cinema (Regulation) Rules, M. P., 1972 - Rules 102, 105, 120 and 103** - Grant of Cinema Licence - Safety of public at large is primary consideration - District Magistrate has absolute discretion in the matter - Executive Engineer finding building in dangerous condition Executive Magistrate refusing renewal of licence finding on evidence building to be dangerous condition - Finding not based on extraneous consideration - Rule 105 - Filing of 'No Objection Certificate' - Even in case of renewal of Licence, District Magistrate can direct filing of 'no objection certificate' from landlord of the building - Rules 120 and 103 - Licence comes to an end on death of licensee - Legal Representatives have no right to apply for its renewal - Remedy is for fresh licence : *Murlidhar Vs. State Of M.P., I.L.R. (1985) M.P. 346. (D.B.)*

- **Section 5 (b)** - Provision requiring licensing authority to see before granting licence that adequate safety precautions have been taken *Applies To Restaurants Also : Restaurant Lee, Jagdalpur Vs. State Of M. P., I.L.R. (1983) M.P. 606, (D.B.)*

- **Section 5(3), Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983, Cinemas (Regulations) Rules, M.P. 1972, Rule 20 and M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983, Rule 1 and circulars dated 30.7.1987 and 28.12.1987 issued by Govt. of M.P.** – Rules silent about dimension of screen of picture to be used for exhibition of films by V.C.R. – Separate screens integral part of system – Directions issued by the State Government to District Magistrate in circulars dt. 30.7.1987 and 28.12.1987 in absence of any provision as to dimensions of the screen of picture tube in the rules of governing grant of license, unconstitutional and violative of the fundamental right guaranteed under Article 19(1)(g) of the Constitution – Circulars dated 30.7.1987 and 28.12.1987 struck down – Exhibition of films through V.C.R. in Video parlour is

governed by V.C.R. Rules, 1963 – Cinemas (Regulation) Rules, M.P. 1972 not applicable – Appeal against order refusing to renew licence – Refusal to grant licence includes refusal to grant renewed and hence such order is appealable – No appeal is provided against cancellation of licence : *Anand Jaiswal Vs. District Magistrate, Shahdol*, I.L.R. (1991) M.P. 531(D.B.)

Cinematograph (Certification) Rules, 1983

– **Rule 30(1)** – Retrospective operation of penal consequences for violation of the provision of Rule 30(1) will ensue only if it is proved that after the proviso to Rule 30(1) came into force a person failed to do that which is required by the proviso – Proviso to Rule 30(1) not ultra vires : *Music Centre, Mandasaur Vs. State Of M.P.*, I.L.R. (1991) M.P. 612 (D.B.)

- **Rules 30(1)**, Cinematograph Act (XXXVII of 1952), Sections 6-A, 8 and Constitution of India, Articles 14, 19(1)(g), 20, 226, Proviso – Requiring compliance of Section 6-A by passing part I of the certificate on every cassette as well as on its case – Not ultra-vires – If provisions of Section 6-A are held to be valid, and not outside legislative competence of the Parliament – A rule framed from the purpose of carrying into effect the provision of Section 6-A cannot be held to be invalid – Not violative of Article 14, 19(1)(g), of the Constitution – ‘Copy’ means a document prepared from the original – ‘Exhibit’ means public display – Petitioners running video libraries cannot be held immune to Rule 30(1), Article 20 – Retrospective operation of penal consequences for violation of the provision of Rule 30(1) will ensue only if it is proved that after the proviso to Rule 30(1) came into force a person failed to do that which is required by the proviso – Proviso to Rule 30(1) not ultra vires : *Music Centre, Mandasaur Vs. State*, I.L.R. (1991) M.P. 612(D.B.)

Cinematograph Act (37 of 1952)

- **Sections 6-A, 8 and Cinematograph (Certification) Rules 1983, rules 30(1), Constitution of India, Articles 14, 19(1)(g), 20, 226, Proviso** – Requiring compliance of Section 6-A by passing part I of the certificate on every cassette as well as on its case – Not ultra-vires – If provisions of Section 6-A are held to be valid, and not outside legislative competence of the Parliament – A rule framed from the purpose of carrying into effect the provision of Section 6-A cannot be held to be invalid – Not violative of Article 14, 19(1)(g), of the Constitution – ‘Copy’ means a document prepared from the original – ‘Exhibit’ means public display – Petitioners running video libraries cannot be held immune to Rule 30(1), Article 20 – Retrospective operation of penal consequences for violation of the provision of Rule 30(1) will ensue only if it is proved that after the proviso to Rule 30(1) came into

force a person failed to do that which is required by the proviso – Proviso to Rule 30(1) not ultra vires : *Music Centre, Mandasaur Vs. State, I.L.R. (1991) M.P. 612(D.B.)*

Circular No. 13 of 1908 of former Holkar State and Land Revenue and Tenancy Act (I of 1931)

-Clause 5 of Circular 13 and Land Revenue and Tenancy Act, 1931, Sections 45 and 50-Person in possession of agricultural holding in pursuance of agreement of sale prior to Act of 1931-His position is of sub-tenant-Provision of Land Revenue and Tenancy Act not retrospective-Interpretation of Statute- Principle – Preamble not to control the Act : *Motilal Jagannath Nima Vs. Gopal Tunyaji Sutar, I.L.R. (1957) M. P. 573 (D.B.)*

Citizenship Rules, 1956

-Schedule III, Clause 1-Implies that a citizen has acquired Pakistan Citizenship voluntarily : *Nasiruddin Vs. Union Of India I.L.R. (1969) M.P. 386(D.B.)*

-Schedule III, Rule 30-Lays down rules of evidence and manner in which question has to be determined : *Nasiruddin Vs. Union Of India I.L.R. (1969) M.P. 386 (D.B.)*

-Schedule III, Rule 30-Prescribes authority competent to determine question mentioned in Section 9(2) of the Citizenship Act, 1955-Lays down rules of evidence and manner in which question has to be determined-Question of citizenship right-To be determined in quasi-judicial manner-Question whether authority has to act in quasi-judicial manner-Dependent upon, various factors-Principles of natural justice-High Court, Power of, to examine whether principles of natural justice have been followed-Schedule III, Clause 1-Implies that a citizen has acquired Pakistan Citizenship voluntarily : *Nasiruddin Vs. Union Of India I.L.R. (1969) M.P. 386(D.B.)*

-Schedule III, Rule 30-Question of citizenship right-To be determined in quasi-judicial manner-Question whether authority has to act in quasi-judicial manner-Dependent upon various factors : *Nasiruddin Vs. Union Of India I.L.R. (1969) M.P. 386(D.B.)*

City of Jubbulpore Corporation Act, 1948 (III of 1950)

-Rules 3 and 9 framed for imposition of water rate -Water not supplied through independent private pipe connection from service pipe-Private pipe connection from service pipe left in well-Building liable to be taxed for water rate under

Rule 9 : *Babu Mukund Das Malpani Vs. The City Of Jabalpur Corporation, Jabalpur, I.L.R. (1962) M. P. 530(D.B.)*

- **Octroi Rules - Rule 14(b)** - Agent bringing goods into Corporation limits and not paying Octroi duty - Principal is liable for duty-Rule 6(b)-Octroi duty imposed on the basis of current market value of goods imported-Validity-Jurisdiction-Special tribunals or authority acting in excess of powers conferred by law-Action is in excess of jurisdiction-Action can be challenged in civil Court : *Singhai Tantilal Vs. The City Of Jabalpur Corporaton, I.L.R. (1959) M.P. 286(D.B.)*

- **Section 120(1)(a)-Rules 3 and 9** framed for imposition of water rate-Water not supplied through independent private pipe connection from service pipe - Private pipe connection from service pipe left in well -Building liable to be taxed for water rate under Rule 9-Section 120(1)(d)-For imposition of water rate--Requirement of supply of water to premises not necessary - Making of arrangement for supply of water sufficient ;*Babu Mukund Das Malpani Vs.. The City Of Jabalpur Corporation, Jabalpur, I.L.R. (1962) M. P. 530(D.B.)*

-**Section 120(I)(d)**-For imposition of water rate- Requirement of supply of water to premises not necessary--Making of arrangement for supply of water sufficient : *Babu Mukund Das Malpani Vs. The City Of Jabalpur Corporation, Jabalpur, I.L.R. (1962) M. P. 530 (D.B.)*

- **Section 175 (3)**-Suit for refund-Conditions necessary for the maintainability : *National Tobacco Co., Of India Ltd. Jabalpur Vs. City Of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

- **Section 415 (3)**-Rules framed under Section 25(6) of C. P. & Berar Municipalities Act (II of 1922)-Rules cannot abrogate right of appeal granted under the Act : *V. S. Jasani Vs. The City Of Jabalpur Corporation, I.L.R. (1958) M.P. 799(D.B.)*

- **Section 456**-Additional District Judge-Power of, to try election petition : *Sohan Choudhary Vs. Shri R. D. Doongaji, I.L.R. (1959) M. P. 196 (D.B.)*

Civil Courts (Amendment and Validation) Act (VII of 1980)

- **Section 8 and 10**- The Court of A.D.J. being the Judge of principal Civil Court of original jurisdiction and has power to entertain application for grant of probate proceeding-Separate suit is Permissible in the court of A. D. J.-A.D.J. Will be the District Judge within the meaning of Section 264 of the Act-Held-The contentions are misconceived and rejected : *Medibai Fouzdar Vs. State Of M.P. and other, I.L.R. (1998) M.P. 739*

Civil Courts Act, Madhya Pradesh (XIX of 1958)

- as amended by Ordinance No. 9 of 1978, Section 15 (3) and Civil Procedure Code (V of 1908), Order 7 rule 10 - Suit, appeal or proceedings found to be beyond the pecuniary jurisdiction of the Court according to Distribution Memo - Proper procedure is to submit records of such cases before the District Judge for appropriate orders - Order returning such cases for presentation to proper Court patently erroneous - Order set aside and directions issued : *Genda Bai Vs. Kundanlal Jain, ILR I.L.R. (1986) M.P. 667.*

- **Additional District Judge**-Not part of the Court of the District Judge-It is district Court-Can hear appeals which are assigned to him and exercises powers of District Judge regarding them-Civil Procedure Code-Order 41 rule 1-Presentation of appeal to a Court without authority-Is no valid presentation : *Uma Sharan Saxena Vs. Mansaram, I.L.R. (1971) M.P. 754*

- **Section 3** - Court of Additional District Judge - Is a separate court for all purposes : *Balmukand Vs. Rameschand I.L.R. (1978) M.P. 84 (D.B.)*

- **Sections 6 and 7** - Power of Additional District Judge - Co-extensive with powers of District Judge, but rider added by Section 7 (2) - Position different under Courts Act, C. P. and Berar, 1917 : *Firm Nannulal Kishanlal, Registered Partnership Firm, Madhogajn, Vidisha Vs. The New Malwa Transport Co., Indore I.L.R. (1977) M.P. 811*

- **Section 6 and 7** - Court of Additional District Judge - Distinct from the Court of District Judge - District Judge is Principal Court of original jurisdiction - Power of additional District Judge - Co-extensive with powers of District Judge, but rider added by Section 7(2) - Position different under Courts Act, C.P. and Berar, 1917 : *Firm Nannulal Kishanlal, Registered Partnership Firm, Madhogajn, Vidisha Vs. The New Malwa Transport Co., Indore I.L.R. (1977) M.P. 811*

- **Sections 6, 7 and 8** – Powers of Additional Judge to the Court of District Judge – Same powers as District Judge in the District – Entitled to exercise functions of principal Civil Court Jurisdiction – Suit of value of more than Rs. 20,000/- can be originally instituted in such Court Powers of Additional Judge to the Court of District Judge could be curtailed only by general or special order of State Govt. : *Vinod Kumar Jajodia Vs. Brij Bhushan Agarwal, I.L.R. (1989) M.P. 305*

- **Section 6(1)(c)** - Pecuniary jurisdiction of Court - The Suit was valued less than Rs. 50,000/- instituted in the Court of Additional District Judge - Subsequently an amendment came which conferred the jurisdiction to Civil Judge Class I to try Suits having value upto Rs.50,000/- - Held - The provision of Clause (c) of Section 6

empowers District Judge or Additional District Judge to hear and decide the suits of any value. *Pt. Gopalkrishna Vs. Pt. Bhagirath Prasad, I.L.R. (1997) M.P. 275*

- **Section 7**, Civil Courts (Amendment and Validation) Act (VII of 1980), Section 7(2) and Public Trusts Act, M.P. (XXX of 1961), Section 26 – District Judge, Power of, to transfer reference under section 26 of the Trusts Act to the Additional Judge to his court – Interpretation of Statutes – Rule of harmonious construction – Applicability of, to the provisions of both the Act : *Ravi Prakash Pujari Vs. Hemraj Aliash Hemram, I.L.R. (1990) M.P. 289*

- **Sections 7 and 15** - Distribution Memo issued under - Has force of law : *Balmukand Vs. Rameschand I.L.R. (1978) M.P. 84(D.B.)*

- **Section 7, 15 and Civil Procedure Code (V of 1908)** – Section 15 – Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, CPC and is operative in respect of valuation of suit – Powers of an Additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R. (2001) M.P. 690*

- **Section 7 (2)** - Additional District Judge - Functions as principal Court of original jurisdiction provided function assigned by District Judge : *Kesumal V M/S Bhagwandas Bhojraj, Raipur I.L.R. (1978) M.P. 582 (D.B.)*

-**Section 7(2)** and Hindu Marriage Act (XXV of 1958)-Section 3(b) -The power conferred by section 7(2),Civil Courts Act-Is in addition to power conferred on State Government under Section 3(b) of Hindu Marriage Act : *Laxmansingh V. Kesharbai I.L.R. (1966) M.P. 115 (D.B.)*

-**Section 7(2)**-Additional District Judge-Can be empowered to perform functions of principal civil Court of original jurisdiction if empowered by District Judge : *Laxmansingh Vs. Kesharbai I.L.R. (1966) M.P. 115 (D.B.)*

-**Section 7(2)**-Functions which Additional District Judge can perform *Abdul Salam Vs. Laxmi Singh I.L.R. (1969) M.P. 104*

-**Section 7(2)**-Additional District Judge-Can be Court of original jurisdiction if empowered by general or special order by District Judge : *New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546(D.B.)*

- **Section 7 (2)** - Additional District Judge empowered to discharge functions of District Judge assigned to him by General or Special Order : *Anup Vs. Baboolal, I.L.R. (1980) M.P. 269,*

- **Section 7 (2)** - Election Petition presented to District Judge outside the Revenue District - Such Courts has no jurisdiction to entertain or try - It has also no jurisdiction to transfer the petition to Additional District Judge : *Anup Vs. Baboolal, I.L.R. (1980) M.P. 269,*

-**Section 7(2)**-Statutory powers conferred on District Judge-Can be delegated to Additional District Judge : *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412(F.B.)*

-**Section 7(2)**-Words "any of the functions of a District Judge including the functions of the Principal Civil Court of original jurisdiction" in-Wide enough to authorise District Judge to delegate power under M.P. Municipalities Act, Madhya Pradesh, 1961 : *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412 (F.B.)*

- **Section 8** – Powers of Additional Judge to the Court of District Judge could be curtailed only by general or special order of State Government : *Vinod Kumar Jajodia Vs. Brij Bhushan Agarwal, I.L.R. (1989) M.P. 305*

-**Section 9**-Notification of 1-1-59 issued by High Court -Additional District Judge invested with powers of Small Causes - Jurisdiction to try small cause suits below Rs. 1000/- : *Ramkaran Vs. Munshi I.L.R. (1966) M.P. 682*

-**Section 15**, as amended-Assistant or Additional District Judge are subordinate to the District Judge for purposes of Section 24 of the Code-District Judge has jurisdiction to entertain such an application even though the proceeding in question are pending before himself-Impugned order set-aside and suit transferred from the Trial Court to another Court of competent jurisdiction : *Union Carbide Corporation Vs. Union Of India, I.L.R. (1992) M.P. 121*

-**Section 25**-Lis pending in existing Court-Courts to which it is transferred are "deemed courts" under Section 25 having jurisdiction *Alamchand Birumal Vs. Motilal Balchand, I.L.R. (1969) M.P. 674 (D.B.)*

-**Section 25 and 27**-Combined effect of : *Alamchand Birumal Vs. Motilal Balchand, I.L.R. (1969) M.P. 674(D.B.)*

-**Section 25 and 27**-Words "Existing Courts" in Section 27-Refer to Courts mentioned in Section 25-Lis pending in existing court-Courts to which it is transferred are "deemed courts" under Section 25 having jurisdiction-Suit below Rs. 5000/- -Gets transferred to Civil Judge, Class II under Section 27 of the Act-

Combined effect of Sections 25 and 27-Provincial Small Cause Courts Act, 1887-Section 16-Court invested with power of Small Causes-Jurisdiction of Court to which suit stands transferred by Section 25 of the M.P. Civil Courts Act-Only prevents ordinary Court from exercising jurisdiction where Court of Small Cause in existence-Does not oust jurisdiction of ordinary Court-Civil Procedure Code-Order 7 Rule 10-Small Cause Court not in existence at the time suit is filed -Such Court coming into existence during pendency-Ground to return plaint for presentation to proper Court not available : *Alamchand Birumal Vs. Motilal Balchand*, I.L.R. (1969) M.P. 674 (D.B.)

-**Section 27** -Suit below Rs. 5000/- Gets transferred to Civil Judge, Class II under Section 27 of the Act : *Alamchand Birumal Vs. Motilal Balchand*, I.L.R. (1969) M.P. 674 (D.B.)

Civil Courts Ordinance (No. 36 of 1908)

- **Section 3** and Madhya Bharat Civil Courts Act (No. 43 of 1949), Sections 3 and 36 - Orders passed by Courts prior to merger-Orders are valid and binding on parties – “Proceedings disposed of the Courts” in Section 3 of Ordinance No. 36/48-Does not mean proceedings which have been finally disposed of, but also refers to orders passed during pendency of suits disposing of particular stages of trial-The Ordinance No. 36/48 and Madhya Bharat Civil Courts Act No. 43/49-Effect is to maintain continuity of Courts and give validity to orders passed by Courts before replacement : *Mujtabai Begum & ors. Vs. Mehboob Rehman & ors.*, I.L.R. (1959) M.P. 256 (D.B.)

Civil Courts Rules, M. P., 1961

- **Rules 176, 523 and 526** and Civil Procedure Code (V of 1980), Sections 151 and 152 - "Cases undefended" and "decision on merits" - Distinction - Discretion of trial Judge to award more or less Legal Practitioner's fees than as prescribed, "according to circumstances of each case" - Trial Court dismissing plaintiff's suit after hearing arguments and upholding preliminary objection regarding jurisdiction by writing an elaborate order and awarding full costs to the defendant - Plaintiff not objecting to correctness of the decree under Rule 176 - Decree not liable to be corrected by restore to Section 152 or 151, C. P. Code : *Virendra Singh Bhandari V M/S Nandlal Bhandari & Sons Pvt. Ltd.*, I.L.R. (1983) M.P. 513

Civil Pensions and Commutation Rules, Madhya Bharat

-**Grant of pension is ex-gratia and not justiciable** : *Vishwanath Vinayak Vaishampayan Vs. The State* , (1969) M.P. 986 (D.B.)

-Rule 91 as amended-Applicability to servants joining service before its operation-Constitution of India-Does not bar Government or legislature from modifying terms of service-Any action under new rule-Cannot affect what had taken earlier-Constitution of India-Article 311(2)-Pre-mature retirement-Not a punishment-Retirement without blemish-Does not amount to removal -Grant of leave-Surely within discretion of Government-Is not justiciable-No power in Court to interfere-Grant of pension is ex-gratia and not justiciable : *Vishwanath Vinayak Vaishampayan Vs. The State, (1969) M.P. 986(D.B.)*

Civil Procedure Code (Amendment) Act - (CIV of 1976)

- **Clause (1)** - Not limited to pending appeals only : *Lakhmichand Vs. Mitthu, I.L.R.I.L.R. (1984) M.P. 111*

- **Order 9, Rule 13**-Legislative intention-Embargo-Remedy of this provision cannot be resorted to when an appeal against such ex parte decree has been disposed of except by way of withdrawal : *Smt. Archana Kumar v. Purendu Prakash Mukherjee, I.L.R. (2000) M.P. 309 (FB),*

- **Order 21 rule 100** - Civil Procedure Code (V of 1908) as amended by Amendment Act (CIV of 1976) - Object and effect of amendment made therein - Imperative on the part of the Executing Court to investigate about right, title or interest of an objector thereto - Interpretation - of Statutes - Retrospective operation of Statute - Rules of - Mere rights under law relating to procedure - Are not "rights accrued" - Rights relating to procedure - Are not vested rights - Alternative in law relating to procedure - Are generally retrospective - Civil Procedure Code, as amended - Section 97 (2) (q) and (3) - Pending suits are saved - Objection relating to wrongful dispossession in execution of a decree pending investigation on the day amended provisions came into force - Has to be decided according to amended provision : *Modibai Vs. Nagraj, I.L.R. (1982) M.P. 260*

- **Section 97 (2)**, Clause (1) and Civil Procedure Code (V of 1908), Section 96, as amended, General Clauses Act (X of 1897), Section 6 and Interpretation of Statute - Right of appeal - Accrues on the date of institution of suit according to law then in force - Subsequent change in law - Presumption - Right of appeal according to unamended provision not affected - Clause (1) - Not limited to pending appeals only - Appeal under section 96 of the Code against judgment and decree arising out of suits below Rs. 3000/- instituted before Amendment Act came into force - Grounds of appeal cannot be restricted to questions of law only : *Lakhmichand Vs. Mitthu, I.L.R. (1984) M.P. 111*

Civil Procedure Code (M.P. Amendment) Act (XXIX of 1984)

– **1st Schedule** – Legislative competence of the State Government to make amendment in the Civil Procedure Code Including first schedule cannot be challenged : *Prakash Chand Vs. Kanhaiyalal, I.L.R. (1989) M.P. 8(D.B.)*

- **Order I Rule 3-B, Civil Procedure Code (V of 1908) and Section 99** -Suit for declaration of title over agriculture land- No need to join State Government as party on the date of institution of Suit of Appeal- Subsequent change in law Defect can be cured later on at the stage when the defect is pointed out or detected- Non-compliance does not lead to jurisdictional incompetence in the Court hearing Suit or Appeal. : *Sona Vs. Rudro, I.L.R. (1998) M.P. 599*

Civil Procedure Code (V of 1908)

– **Award passed without notice, enquiry and evidence** – No award in the eye of law – Recovery officer was not entitled to proceed under Rule 66 – Civil Court had jurisdiction to entertain suit : *Sitaram Vs. Chandra Shekhar, I.L.R. (1989) M.P. 351*

- **Governs presentation of Election Petition** - Presentation of petition is integral part of trial - Requirement of election law - To be strictly complied : *Ramanlal Premy Vs. Shiv Pratap Singh I.L.R. (1978) M.P. 569*

- **Operation of** - Subject to election law - Presentation of election petition - To be made by candidate himself : *Ramanlal Premy Vs. Shiv Pratap Singh I.L.R. (1978) M.P. 569*

-**Does not prevent private arrangement being arrived at**-Nor is there any bar to a proceeding under Section 14 read with Section 17 of Arbitration Act for making Award a rule of Court : *Divyanand Saraswati Vs. Gopaldas, I.L.R. (1970) M.P.672*

-**Applicability of, to proceedings under Chapter 4 of Motor Vehicles Act** : *M/S Bundelkhand Motor Transport Company, Nowgaon, Vs. The State Transport Appellate Authority, M.P., Gwaliorm, I.L.R. (1969) M.P. 901(F.B.)*

- **Errors of fact or of law cannot be corrected unless they have relation to the jurisdiction of the Court to try dispute itself:** *Kymore Cement Mazdoor Congress, Vs. The Industrial Court, M.P. Indore, I.L.R. (1968) M.P. 356(D.B.)*

-Word "suit" in-Has definite meaning-Proceedings commenced on application or otherwise-Does not become suit-Proceedings for decrees on award-Proceedings not a

suit -Sanction of Central Government not necessary : *Nawab Usmanali Khan Vs. Sagarmal, I.L.R. (1961) M.P. 304 (D.B.)*

Court fees – Court fees Act, (VII of 1870) –Sections 7(iv)(c), 7(iv)(d), 7(v)(e) and Article 17(iii) – Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration– Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect orderset aside : *Shabbir Hussain & others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

Section 9- Suit for refund of sale-tax illegally recovered-Maintainability : *State Of M.P. Vs. Khoda Bhai, I.L.R. (1970) M.P. 529 (F.B.)*

- **Decree creating a charge upon certain specific property for recovery of decretal amount** - Execution of - Decree holder not obliged to first proceed against the property charged - Order 34 rule 15 (2) - Provision not attracted in case of charged created on movables : *Satish Minocha Vs. Punjab National Bank, I.L.R. (1982) M.P. 1080*

- **Principle underlying the Code** - Applicable to petition under Article 226 of the Constitution of India - court - fees Act - Section 17 (4) - Person having distinct causes of action filing one petition - Separate Court fees to be paid by each petitioner - Industrial employees can join in petition - Relief claimed the same - Cause of action same - One Court - fee of Rs. 25/- sufficient : *Heavy Electrical Employees Union Bhopal Vs. State Industrial Court, M. P. Indore, I.L.R. (1977) M.P. 762,*

-**Section 2**-Growing crops do not pass to purchaser of land-What passes by sale-Dependent upon various facts-Question what was sold-Is a question of fact: *Chhatradharilal Vs. Shyamabai, I.L.R. (1967) M.P. 523 (D.B.)*

-**Section 2**-"Movable property"-Includes growing crops : *Chhatradharilal Vs. Shyamabai I.L.R. (1967) M.P. 523(D.B.)*

- **Sections 2, 65, 115** and Order 21 rules 34, 95 and 96, partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380*

-**Section 2(2)**-Order rejecting memo of appeal for being insufficiently stamped-Order not appealable--Revision proper remedy : *Gyasiram Vs. Brij Bhushan Das & anr.*, *I.L.R. (1964) M.P. 316*

- **Section 2 (2)** - Suit dismissed for failure to supply particulars - Does not amount to adjudication - Amounts to a dismissal for default - Does not amount to a decree : *Mst. Chamarin Vs. Sukhram I.L.R. (1979) M.P. 723, (D.B.)*

- **Section 2 (2)** - "Dismissed for default" in - Refers only to non-appearance of parties and does not include any other default : *Budhulal V Chhotelal, I.L.R. (1977) M.P. 1153, (F.B.)*

- **Section 2(2)** - Order dismissing suit for non-payment of costs-Order is appealable : *Budhulal V Chhotelal I.L.R. (1977) M.P. 1153 (F.B.)*

- **Section 2(2)** – Decree – Obtained in a collusive suit to avoid execution of sale agreement – Vendee not a party – Decree not binding on vendee – Decree for specific performance cannot be refused : *Babulal Agrawal Vs. Smt. Jyoti, I.L.R. I.L.R. (2001) M.P. 192(D.B.)*

-**Sections 2(2)** and Constitution of India, Articles 226/227–Writ Petition–Sick Industrial Companies (Special Provisions) Act, 1985–Sections 15 and 22–Section provides for suspension of legal proceedings against assets of companies claiming sickness–Does not operate as absolute bar against all proceedings–Idea is to freeze any coercive action against such companies until their revival or rehabilitation–Consent decree–A product of an agreement between the parties–Does not amount to coercive action nor barred under Section 22. *Kedia Distilleries Ltd. Vs. Appellate Authority for Industrial and Financial Reconstruction, I.L.R. (2002) M.P. 1(D.B.)*

- **Section 2(2)** – Decree – Suit filed for declaration and possession – Suit decreed by Trial Court – Appeal filed by defendant allowed by First Appellate Court – High Court Remanding the case back to First Appellate Court for writing judgment in accordance with law – Plaintiff filed objection before First Appellate Court regarding maintainability of appeal due to non-joinder of State – Appeal dismissed as not maintainable – Dismissal of appeal does not amount to decree – Second appeal maintainable. *Omkar Singh Vs. Nansing, I.L.R. (1993) MP 201*

- **Section 2 (2)**- Decree-Rejection of plaint by the trial court under order VII Rule 11 on the ground that the suit is not maintainable – Trial Court is duty bound to draw up decree in view of definition of decree as contained in section 2 (2)-Civil Procedure Code,1908,Order XX Rule 6-A-Appeal preferred against judgment of trial Court which failed to draw up decree-Appeal cannot be dismissed on the ground that memo of Appeal does accompany decree –Appellate Court instead of dismissing the appeal

ought to direct the Trial Court to draw up the decree failing which the appellant can take benefit of Order XX, Rule 6-A : Maxims : Actus curiea Neminem Gravabit (an Act of the Court shall not prejudice no man. Lex non degit ad impossibilia. (the law dose not compel a man to do that which he cannot possibly perform). *Jai Narain Cheritable Registered Socity Vs. Smt. Kumud Verma, I.L.R. (1998) M.P. 227*

- **Section 2 (2)** - "Decree-Essentials of - Order striking out names of certain persons from array of parties to the suit - Order does not amount to a 'decree' - Suit not liable to be proceeded against some of the parties - Proper course to be adopted - Person not a party to the decree, but adversely affected by it - Right of appeal can be exercised with leave of Court - Court granting such leave on finding that the decree and order striking out the names of those persons prejudicially affected their interest in the subject matter of suit - Order perfectly within jurisdiction of the Court - Not liable to be interfered with in revision : *Anjani Kumar Vs. Ishwardin, I.L.R. (1982) M.P. 159.*

- **Section 2 (2)** - Order not deciding matter in dispute - Order does not amount to a decree - Order 7 rule 11, Civil Procedure Code - Order rejecting plaint under - Amounts to a decree - Order rejecting plaint on grounds other than those enumerated therein - Does not amount to a decree - Suit dismissed for failure to supply particulars - Does not amount to adjudication - Amounts to a dismissal for default - Does not amount to a decree : *Mst. Chamarin Vs. Sukhram, I.L.R. (1979) M.P. 723(D.B.)*

- **Section 2 (2)** and Order 1 rule 10 - Order striking out names of certain persons from array of parties to the suit - Order does not amount to a 'decree' - Suit not liable to be proceeded against some of the parties - Proper course to be adopted : *Anjani Kumar Vs. Ishwardin, I.L.R. (1982) M.P. 159*

- **Section 2 (2)** and Order 1 rule 10 - Person not a party to the decree, but adversely affected by it - Right of appeal can be exercised with leave of Court - Court granting such leave on finding that the decree and order striking out the names of those persons prejudicially affected their interest in the subject - matter of suit - Order perfectly within jurisdiction of the Court - Not liable to be interfered with in revision : *Anjani Kumar Vs. Ishwardin, I.L.R. (1982) M.P. 159.*

- **Section 2(ii)** and Order 22, Substitution or legal representative – Distinction between legal heir and legal representative – Two cannot be same in all cases – No legal substitution – Order illegal and without jurisdiction : *Mahant Murlidhardas Vs. Ramcharandas, I.L.R. (1989) M.P. 175*

- **Section 2 (2)** and Section 96, Section 115, Order 6 rule 5, 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 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 : *M.P. State Co Operative Development Bank Limited, Bhopal Vs. J.L. Chouksey, I.L.R. (1980) M.P. 1176*

- **Sections 2(2)**, 100, Order 41 Rules 3A (1), (2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge in appellate decree – Second appeal maintainable against such decree. *Maniram Vs. Mst. Fuleshwar, I.L.R. (1995) M.P. 518 (F.B.)*

- **Section 2 (4)** - "District Court" in - Means District Judge : *Kesumal V M/S Bhagwandas Bhojraj, Raipur, I.L.R. (1978) M.P. 582(D.B.)*

- **Section 2(4)** – Definition of ‘District’ – Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction – A District Court is the principal Court of original jurisdiction of any district : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R. (2001) M.P. 690*

-**Section 2(4)**, 15, Order VII Rule 10 and Order 43 Rule 1(r) and Civil Courts Act, M.P. (XIX of 1958), Sections 7, 15– Return of plaint by Additional District Judge at the stage of final argument – Appeal against – Section 2(4), C.P.C. – Definition of ‘District’ – Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction – A District Court is the Principal Court of original jurisdiction of any district – Sections 7 and 15 of 1958 Act & Section 15, C.P.C. – Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, C.P.C. and is operative in respect of valuation of suit – Powers of an additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge – Order 7 Rule 10, CPC – Suit for divorce by muslim wife filed before then IIIrd ADJ as per distribution memo – Both parties contested and led evidence – Return of plaint at the stage of final argument on the objection as to jurisdiction – Not maintainable in law as the ADJ himself had Jurisdiction to try and decide the matter as per distribution memo prepared by the District Judge – Impugned order set aside – Case remanded back to the trial Court for decision on merits : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R. (2001) M.P. 690*

- **Section 2(9)**- Order 20 rules 1, 3 and 4- -When can decision of a judge be said to be a judgment : *Chowaram Vs. Thanuram, I.L.R. (1959) M.P. 440 (D.B.)*

-**Section 2(13)** and General Clauses Act (X of 1897)-Section 3(26)-Definition of immovable property-Supercedes the definition given in Section 3(26), General Clauses Act-Civil Procedure Code, Section 2-"Movable Property"-Includes growing crops-Growing crops do not pass to purchaser of land-What passes by sale - Dependent upon various facts-Question what was sold-Is a question of fact-Transfer of Property Act-Section 8-Not applicable to Court sales-Letters Patent Appeal-Objection not raised before learned Single Judge-Objection not allowed to be raised in Letters Patent Appeal : *Chhatradharilal Vs. Shyamabai, I.L.R. (1967) M.P. 523(D.B.)*

-**Section 3** and Order 21 Rule 5-Additional District Judge not subordinate to District Judge-Is not a Civil Court of a grade inferior to that of District Court-Order 21 Rule 5 - Non-compliance with provisions of-A mere irregularity-Irregularity curable-Does not affect jurisdiction of Court : *Gourishankar Vs. Firm Dulichand Laxmi-Narayan, I.L.R. (1958) M.P. 122*

-**Section 4**-Saving-Rules framed by High Court are saved under Section 4 of the Code and will have overriding effect on any other law : *Jai Bhan Pawaiya Vs. Shri Madhavrao & ors., I.L.R. (2000) M.P. 1103*

- **Section 5** and Order 9 Rule 13 Limitation Act (XXXVI of 1963)-Application for condonation of delay not filed nor prayed for-Lack of factual foundation as well as legal ingredients-Ex-parte judgment and decree does not warrant interference : *Hari Ram Keer Vs. State Bank Of India, I.L.R. (2005) M.P. 957*

-**Section 9**- One trustee can file suit only after obtaining approval of other co-trustees : *Laxman Prasad V. Shrideo Janki Raman, I.L.R. (1979) M.P. 368, (D.B.)*

-**Section 9**- Order of special tribunal erroneous because of error of fact - Civil Court, Power of, to interfere : *The State Of M.P. Vs. Ramrijhawan, I.L.R. (1960) M.P. 481*

- **Section 9**-Special Act providing for summary remedy for collection of money - Jurisdiction of Civil Court not barred unless specifically ousted : *Gram Panchayata, Kaudia Vs. Datooolal, I.L.R. (1962) M.P. 734*

-**Section 9**- Suit on behalf of deity to recover possession against stranger- All Shebaites or Trustees must joint as plaintiffs : *Laxman Prasad Vs. Shrideo Janki Raman, I.L.R. (1979) M.P. 368, (D.B.)*

- **Section 9** - Jurisdiction of Civil Court to decide validity of the order passed by Deputy commissioner : *Kallu Vs. Munna I.L.R. (1976) M.P. 159*

- **Section 9**-Service matter of secretary of market Committee – Civil Court has jurisdiction of entertain it : *Krashi Upaj Mandi Samti Mhow Vs. Shri Ram Choudhary and others, I.L.R. (1998) M.P. 961*

- **Section 9** - Civil Court has jurisdiction to decide all suits of Civil nature unless jurisdiction is barred : *Administrator Of Corporation City Of Jabalpur Vs. M/s Sekseria Sons And Co. Jabalpur I.L.R. (1978) M.P. 1140*

- **Section 9** - Civil Suit when lies to challenge the imposition of octroi Duty : *Administrator Of Corporation City Of Jabalpur Vs. M/s Sekseria Sons And Co. Jabalpur Vs. (1978) M. P. 1140*

-**Section 9**-Suit based on title-Defendant can plead its invalidity : *Sukhsen Vs. Sharvan Kumar, I.L.R. (1975) M.P. 328*

- **Section 9** - Criminal Court, Jurisdiction of, to question validity of assessment order : *State Of Madhya Pradesh Vs. Ramswaroop I.L.R. (1978) M.P. 787(D.B.)*

- **Section 9** - Exclusive jurisdiction of Civil Court - When can be inferred : *Sirajjuddin Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 486(D.B.)*

- **Section 9** - Statute imposing liability and creating an effective machinery for deciding questions of law and fact involved therein - Remedy of civil suit is barred : *Sirajjuddin Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 486(D.B.)*

- **Section 9**- Jurisdiction of Civil Court to entertain suit asking for relief of restraining defendants from recovering amount by coercive process : *The Gwalior Forest Products Limited Company, Shivpuri Vs. State Of Madhya Pradesh I.L.R. (1968) M.P. 789(D.B.)*

-**Section 9**-Suit for declaration of title and possession against persons who do not claim to be representatives of judgment-debtors in the prior suit-Maintainability : *Jasraj Vs. Kamruddin, I.L.R. (1974) M.P. 779, (D.B.)*

- **Section 9** - Exclusion of Jurisdiction of Civil Courts - Not to be readily inferred : *Hiralal Vs. Hatesingh, I.L.R. (1984) M.P. 55,*

-**Section 9**- Land Acquisition Act, 1894-Sections 18 & 30-Exclusion of jurisdiction of Civil Court not to be readily inferred-Suit for declaration of share in the acquired property and consequently share in compensation amount-Jurisdiction of

Civil Court not barred-Suit Maintainable. *Ram Salone Vs. Ram Ashrya; I.L.R. (2002) M.P.1021*

– **Section 9** – Civil Court’s jurisdiction barred u/s 46 except as provided in the Act – Stranger to the proceedings not entitled to challenge the order u/s 11 (4) : *Ramlal Vs. State Of M.P., I.L.R. (1988) M.P., 519*

-**Section 9** - Jurisdiction of Civil Courts in respect of a suit or application involving question of prohibited transaction if loan - Extent of - Proper course to be adopted by Civil Courts indicated : *Hiralal Vs. Hatesingh, I.L.R. (1984) M.P. 55,*

– **Section 9** and Land Acquisition Act (I of 1894), Sections 4 and 6 – Notification issued and Compensation also paid – Subsequent suit for setting aside acquisition proceedings – Barred under Section 9 of the C.P.C. – Civil suit not maintainable – Trial Court rightly dismissed the suit : *Pashu Chikitsa Visbhagiya Sahkari Nirman Samiti Maryadit, Bhopal Vs.State, I.L.R. (2001) MP 819(D.B.)*

– **Section 9** – Jurisdiction of Civil Court – Dispute arising out of contract containing arbitration clause – Power conferred by the parties on an authority to appoint arbitrator can only be overridden by a statute or by declaring them null and void – Civil Court assuming jurisdiction on ground that the arbitrator resigned and vacancy created thereby amounts to abdication of power by Administrative head – Not proper : *Union of India Vs. M/s. Raju Construction Company, I.L.R. (2001) MP 109*

- **Section 9** –Ceiling on Agricultural Holdings Act, M.P., (20 of 1960), Sections 11 (4), 11 (5), 46 –Ceiling of Land – Jurisdiction of Civil Court in deciding the title of the Land – The plaintiff has never filed an objection before the competent authority which may be said to be covered by section 11 (4) of the Act, and therefore the applicability of Section 11 (5) would not arise, the Civil Court would have no jurisdiction in view of proceedings contained in Section 46 of the Ac : *Bhaiya Lal Vs.State Of M.P., I.L.R. (1997) M.P. 501*

– **Section 9** and M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, Rule 10 – Departmental Enquiry – Jurisdiction of Civil Court – Suit by respondent working as Ranger for restraining appellants from recovering Rs. 3000/- as directed in Departmental Enquiry – Civil Court cannot act as a Court of Appeal on findings and penalty imposed in departmental enquiry – No challenge to jurisdictional competency of disciplinary authority or on the ground of mala fide – Suit not maintainable – Appeal allowed : *State Of M.P. Vs. Shyamsunder Shivnarayan, (1993) MP 222*

- **Section 9** and Land Revenue Code, M. P. (XX of 1959), Sections 257 (V), 210 and 211 - Exclusion of jurisdiction of Civil Court - When can be assumed - Confirmation of consideration scheme by the Collector and preparation of records under section 211 of the Code - Civil suit claiming a declaration as to being co-owner and in joint possession of the suit lands alongwith defendants and alternatively claiming joint possession, not barred by section 257 (V) of the Code : *Chandrabhan Vs. Sarjoo, I.L.R. (1984) M.P. 521*

- **Section 9** - Statute imposing liability - Creating effective machinery for deciding question of law and fact arising regarding that liability - Civil suit in respect of that liability is barred - Criminal Court, Jurisdiction of, to question validity of assessment order - General Sales Tax Act, Madhya Pradesh, 1958 - Mens era has not been either expressly or by necessary implication excluded : *State Of Madhya Pradesh Vs. Ramswaroop I.L.R. (1978) M.P. 787(D.B.)*

- **Section 9** and Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 95, 82, Co-operative Societies Rules, M.P., 1962, Rules 66, 66(6)(iv) – Rule 66(6)(iv) ultra-vires Section 95 of the Act – Exclusion of jurisdiction of Civil Court – Could be done only by enacting a law for the purpose – Subordinate or delegated legislation like Rule cannot take away the jurisdiction – Jurisdiction of Civil Court barred only when matter covered by section 82 of the Act – A ward passed without notice, enquiry and evidence – No award in the eye of law – Recovery officer was not entitled to proceed under Rule 66 – Civil Court had jurisdiction to entertain suit : *Sitaram Vs. Chandra Shekhar And Others, I.L.R. (1989) M.P. 351*

-**Section 9**-Presumption that a person having grievance of a civil nature has right to file suit in Court-Exclusion of jurisdiction of civil Court not to be readily inferred- Jurisdiction of Civil Court must be expressly or impliedly barred-Provision of law excluding jurisdiction to be strictly construed – Municipal Act – Imposition of tax by council which has no power under statute-Imposition illegal and ultra vires - Municipalities Act, C.P. and Berar, 1922 - Section 85 or Municipalities Act, Madhya Pradesh, 1961, Section 133-Relates to taxes which council has power to impose but have been imposed in an irregular manner-Section 48-Not applicable to a case where action of council is prohibited by law-Words and phrases-Words "Purporting to be done under the Act"-Do not include an act which is wholly outside the provisions of the Act and thus ultra vires : *Municipal Committee/Council, Balaghat Vs. Meghraj, I.L.R. (1966) M.P. 475*

- **Section 9** and Order 7 rule 7 - Declaratory decree can also be granted under : *Modi Bai Vs. Nagraj, I.L.R. (1982) M.P. 260*

-Section 9, Order 7 Rule 10, order 43 Rule (1) (a) and Companies Act, 1956 Section 257, 284—Company Law—Notice for Substituting Director for the unexpired period due to be held by removed director—Returned without allowing how the notice is not in accordance with law—Civil suit—Jurisdiction of Civil Court—Rule is that the remedy provided in the Act is the exclusive remedy with regard to a right—Right of suit not taken a way expressly or impliedly—Suit must be held to be maintainable—Order of trial court/retraining plaint set aside : *Sir J.P. Srivastava & Sons (Rampur) Pvt.Ltd. Vs. M/s Gwalior Sugar Co.Ltd., I.L.R. (2003) M.P. 634*

-Sections 9, 20, Order 7 Rule 10—Jurisdiction—Suit for declaration and injunction—Suit based on tortious action of Finance Company in illegally taking possession of truck and causing loss to plaintiff—Local Civil Court has jurisdiction—Impugned order set aside : *Ram Bahori Vs. Tata Finance Ltd., I.L.R. (2005) M.P. 752*

-Sections 9, 23, 28 - Contract - Jurisdiction - Held - It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the code - But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy - Such an agreement does not contravene Section 28 of the Contract Act - The word 'only' has to be given due weightage and on proper construction of the clause it can be stated with certitude that jurisdiction of other courts have been excluded. Use of the word only gains significance and there is no iota of doubt that it is an 'exclusive word' which excludes the jurisdiction of all other courts except the competent court at Jabalpur : *M/S Rajaram Maize Products Vs. M.P.Electricity Board, Jabalpur, I.L.R. (1997) M.P. 196*

- Sections 9 and 96 and Land Acquisition Act (I of 1894), Sections 4, 6 – Acquisition of land – Suit for quashing acquisition proceedings – Sections 4, 6 of the Act – Collector alone is competent to deal with the matters under the Land Acquisition Act which is a complete Code Section 9 C.P.C. and Sections 4 and 6 Land Acquisition Act – Notification issued and compensation also paid – Subsequent suit for setting aside acquisition proceedings – Barred under Section 9 of the CPC – Civil suit not maintainable- Trial Court rightly dismissed the suit : *Pashu Chikitsa Visbhagiya Sahkari Nirman Samiti Maryadit, Bhopal Vs. State, I.L.R. (2001) MP 819 (D.B.)*

-Sections 9, 100, Order 21 Rule 11 and Administrative Tribunals Act,(XIII of 1985) Sections 2(9), 15 and 29—Service matter—Suit decreed in favour of plaintiff—Civil Court has jurisdiction to execute its own decree : *Dr. S.K. Mathur Vs. State, I.L.R. (1992) M.P. 901 (D.B.)*

-Sections 9, 100, Order 21 Rule 11 and Constitution of India–Article 227–Administrative Tribunals Act,1985 Sections 2(9), 15 and 29– Writ Petition–Against Civil Court's report to execute decree in service matter–Service matter–Suit decreed in favour of plaintiff–Civil Court has jurisdiction to execute its own decree–Power of Civil Court not taken away by Section 29 of Administrative Tribunals Act–Impugned order set aside–Execution case restored to file. *Dr. S.K. Mathur Vs. State; I.L.R. (1992) M.P. 901 (D.B.)*

– Sections 9 and 115 – Revision – Jurisdiction of Civil Court – Dispute arising out of contract containing arbitration clause – Power conferred by the parties on an authority to appoint arbitrator can only be overridden by a statute or by declaring them null and void – Civil Court assuming jurisdiction on ground that the arbitrator resigned and vacancy created thereby amounts to abdication of power by Administrative head – Not proper – Arbitration Act, 1940 – Section 4,8 and 20 – Parties already abdicated their rights by consent and conferred powers of appointing arbitrator to an authority specifically named in the agreement – Even if for a short period vacancy is created by resignation of the arbitrator till appointment of his successor that by itself would not make an application to the Civil Court maintainable : *Union of India Vs. M/s. Raju Construction Company, I.L.R. (2001) MP 109*

-Section 10 –Condition to be fulfilled for ordering stay of subsequent suit not enough to attract this provision, *A.C. Naha Roy V. National Coal Development Corporation Ltd., Ranchi (Bihar), I.L.R. (1978) M.P. 1077, (D.B.)*

-Section 10–Prescribes procedure–Procedure can be waived : *Shanti Swaroop Vs. Abdul Rehman Farooqui, I.L.R. (1965) M.P. 608 (D.B.)*

- Section 10–Suit for declaration of title pending–Subsequent ejectment suit–Stay of later suit–Permissibility– The object of Section 10, CPC is to avoid conflict of judicial decisions by preventing courts of concurrent jurisdiction from simultaneously adjudicating upon two parallel suits in which the matter in issue is directly and substantially the same : *Brij Mohan Vs. Pooranlal, I.L.R. (1998) M.P. 981*

- Sections 10 and 115–Revision–Suit for specific performance subsequent to the suit for eviction–The issue relating to the agreement of sale and its enforceability against the vendor and subsequent transferee is not necessary in eviction suit–Material in both suits is not directly and substantially same–Suit can not be stayed. *Prakash Chand Soni Vs. Anita Jain; I.L.R. (2002) M.P. 996*

- Sections 10, 115–Suit for recovery of 'Streedhan' and damages–Written statement filed and issues already framed–Cannot be said that proceeding in Civil Suit would embarrass and prejudice the defendants in criminal appeal against their

conviction and sentence–Stay of suit–Suffers from material irregularity : *Smt. Sudharani Agrawal Vs. Surendra and others, v (2003) M.P. 1224*

–**Sections 10, 115 and 151**–Stay of suit–Revision–Dowry death–Suit for recovery of 'Streedhan' and damages–Written statement filed and issues already framed–Cannot be said that proceeding in Civil Suit would embarrass and prejudice the defendants in criminal appeal against their conviction and sentence–Stay of suit–Suffers from material irregularity–Order set aside : *Smt. Sudharani Agrawal Vs. Surendra and others, I.L.R. (2003) M.P. 1224*

–**Section 11**–Objection not raised before confirmation of sale–Objection barred by constructive res judicata : *Akhechand Vs. Motilal, I.L.R. (1974) M.P. 972*

–**Section 11**–Decision between objector and one set of creditors not defending in representative capacity–Subsequent suit between same objector and another set of creditors–Previous decision not res judicata in subsequent suit: *Radhabai Vs. Kamalchand, I.L.R. (1965) M.P. 637*

- **Section 11** - Constructive res-judicata - Findings in Civil Suit duly confirmed an appeal holding that there were sales within the area of Independent Mining Board - Operate as constructive res-judicata in later writ proceedings: *The Amalgamated Coalfields Ltd. Calcutta Vs. The Janpad Panchayat, Chhindwara I.L.R. (1981) M.P. 8 (D.B.)*

– **Section 11** – In earlier suit title of present defendants negated and only conditional decree of permanent injunction was granted – No appeal filed by either parties – Finding and decree attained finality- Question of title cannot be raised by defendants in subsequent suit as principle of res judicata attracted : *Ratan & anr. Vs. Shaligram and anr., I.L.R. (2001) MP 1178, (D.B.)*

–**Section 11** and Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dane Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M.P., 1976, Sections 3,4,7,11 and 14–Application for cancellation of sale deed being prohibited transaction: *Seth Ratilal Vs. Smt. Gangabai; I.L.R. (2002) M.P. 200, (D.B.)*

– **Section 11** – Res-Judicata – Competency of the former Court to decide subsequent suit – Determining factors – Decision of former Court – Whether operates as res judicata in subsequent suit based on succession under Hindu Succession Act : *Premabai Vs. Hukum Chand Surana, I.L.R. (1988) M.P., 255*

- **Section 11** - Res-Judicata Principles of - Court not having jurisdiction, giving erroneous decision - Cannot operate as res-judicata in subsequent litigation : *Shri Ram Soni Vs. Collector, Sagar, I.L.R. (1984) M.P. 708, (D.B.)*

- **Section 11**—Principles of res-judicata—Suit dismissed by Civil Court for want of—Jurisdiction—Application filed before competent authority within the extended period of limitation—Dismissal of suit for declaring sale deed invalid on ground of limitation would not attract principle of res-judicata as there was no adjudication on merits : *Seth Ratilal Vs. Smt. Gangabai; I.L.R. (2002) M.P. 200, (D.B.)*

–**Section 11**—Proper value—In absence of any evidence of the market value the sum actually paid is taken to be proper value: *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

–**Section 11**—Omission to raise plea of pre-emption in written statement would operate res-judicata : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

-**Section 11**- Decision of Civil Court given earlier - Operates as res judicata in a suit before Rent Controlling Authority : *Krishna Rao Vs. Waman Rao, I.L.R. (1963) M.P. 347*

-**Section 11**- Order of remand-Res judicata in subsequent appeal before the same Court : *Budhilal & Anr. Vs. Mahant Jagannathdas, I.L.R. (1965) M.P. 471 (D.B.)*

-**Section 11**-Principle of res judicata applicable to interlocutory orders : *Budhilal & anr. Vs. Mahant Jagannathdas, I.L.R. (1965) M.P. 471(D.B.)*

-**Section 11** -Principle of constructive res judicata-Applicable to execution proceeding : *Kashiram Vs. Firm Metal Prading Co. Through Partner Kapoorchand, Shop-Keeper, Sarafa Bazar, Durg I.L.R. (1968) M.P. 306*

-**Section 11**-Res-judicata-Party failing to raise objection at appropriate time-Party debarred from raising objection on ground of constructive res judicata : *Kashiram Vs.. Firm Metal Prading Co. Through Partner Kapoorchand, Shop-Keeper, Sarafa Bazar, Durg I.L.R. (1968) M.P. 306*

-**Section 11**-Res judicata-Dismissal of suit or proceeding -Does not operate as res judicata : *Employees State Insurance Corporation Vs. Harcharan Singh, I.L.R. (1970) M.P. 324*

-**Section 11**-Res judicata-Previous suit by two sisters for damages for defamation -Subsequent suit by other two sisters for similar relief-Decision in previous suit-Not res judicata in subsequent suit : *Kumari Rashida Vs. Abdul Samad, I.L.R. (1970) M.P. 498*

-Section 11-Judgment against judgment-debtor in previous suit in which decree-holder not party-Judgment not res judicata : *Indra Kumar Vs. Sheobagas, I.L.R. (1972) M.P. 922*

- **Section 11** - Decision on issue of fact or of mixed law and fact or on issue of law operates as constructive res judicata in subsequent writ petition, if cause of action is the same : *Jagannath Prasad Mishra Vs. Collector, Bilaspur, I.L.R. (1986) M.P. 339. (D.B.)*

- **Section 11** - Res-judicata - Principle and application of, in the proceedings before the Rent Controlling Authority : *Gobindram Vs. Smt. Jhimbai I.L.R. (1987) M.P. 567.*

-Section 11, Explanation VI-Is a deeming provision-To bring case within purview of the provision it is not, necessary to prove that son's claim through their father--Partition decree against father-Son cannot, get it set aside merely on ground that it is prejudicial apart from fraud : *Harcharan & ors. Vs. Deokinandan & ors., I.L.R. (1960) M.P. 644 (D.B.)*

-Section 11 - Res-judicata-Former Court must be competent to try whole of subsequent suit and not merely as issue : *Mst. Pilononi Vs. Anandsingh, I.L.R. (1960) M.P. 285 (D.B.)*

-Section 11-Suit by landlord for rent and ejection-Court holding plaintiff to be landlord and passing decree for rent and ejection-Appeal by tenant only regarding ejection-Finding regarding relationship of landlord and tenant is res judicata : *Deepchand Vs. Narendra Prasad, I.L.R. (1973) M.P., 325*

- **Section 11** and Representation of People Act, (XLIII of 1951)-Sections 80, 81, 100-Election Petition-Interlocutory application-Res-judicata-Application for permission to produce additional witnesses-Rejected earlier by a detailed order after vigorous and searching examination-Non interference though in another case but both the cases tagged together-Earlier order operates res judicata : *Anandilal Ahirwar Vs. Satya Vrat Chatruvedi, I.L.R. (2003) M.P. 298*

- **Section 11**-Res judicata-Petitioner an employee of co-operative society dismissed from service-finding of Deputy Registrar upholding misconduct of petitioner-held-Tribunal constituted under the Societies Act is given special jurisdiction-finding of Deputy Registrar constitute as res judicata : *R.C. Tiwari Vs. M.P. State Co-Operative Marketing Federation Ltd. & Ors., I.L.R. (1997) M.P. 30 (D.B.)*

- **Section 11** - Res Judicata and constructive res judicata - Principles of - Applicable to Industrial adjudication also - Former application claiming setting aside termination and reinstatement - Dismissal of - Latter application claiming re-employment as a retrenched employee - Not barred by the principles of res-judicata or constructive res-judicata : *Bharat Heavy Electricals Ltd., Bhopal Vs. R. D. Saxena, I.L.R. (1983) M.P. 44, (D.B.)*

-**Section 11**-Res-judicata-Two Acts operate in different fields-One provides for declaring the sale transaction null and void while the other provides only for scaling down the amount of debt and interest-Present proceedings not barred even if in the previous proceedings there was a specific finding that the deed was not a mortgage deed : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & others, I.L.R. (2004) M.P. (SC) 1 (D.B.)*

- **Section 11** and Anusuchit Jati Tatha Jan Jati Rin Sahayata Adhiniyam, M. P. (XII of 1967) - Res - judicata - Decision under the Adhiniyam of 1967 cannot operate as res-judicata or constructive res - judicata in proceedings under the Adhiniyam of 1976 : *Shri Ram Soni Vs. Collector, Sagar, I.L.R. (1984) M.P. 708, (D.B.)*

- **Section 11**-Decree under appeal-During pendency of appeal decree not to operate as res judicata-Appeal dismissed on whatever grounds-Decree of lower Court thereafter operates as res judicata : *Mst. Annapurnabai Vs. Mst. Pyaribai, I.L.R. (1959) M. P. 522 (D.B.)*

-**Section 11**-Part of decree appealed from-Rest of the decree becomes final and operates as res judicata-Suit by landlord for rent and ejection-Court holding plaintiff to be landlord and passing decree for rent and ejection-Appeal by tenant only regarding ejection-Finding regarding relationship of landlord and tenant is res judicata : *Deepchand Vs. Narendra Prasad, I.L.R. (1973) M.P., 325*

-**Section 11**- "Litigating under the same title"--Test to be applied for determining the same-Defence set up not material for determining title of party in two suits-Previous decision-Interpretation of entries in-Not strictly res judicata between parties but binding on parties as judicial precedent : *Syed Hafiz Mir Vs. Abdul Nayeemkhan, I.L.R. (1959) M. P. 887 (D.B.)*

-**Section 11**-Decision of High Court inter-partes-Decision though erroneous-Decision still binding on parties -Defence ought or might have been taken but not taken-Defence barred by constructive res judicata : *Dr. Om Prakash Mishra Vs. National Fire And General Insurance Co. Ltd., Jabalpur, I.L.R. (1963) M.P. 699 (D.B.)*

-Section 11 - Finding on issue not directly and substantially in issue in previous suit-Finding not res judicata - Finding against a party-Decision in his favour-Finding not res judicata-Conditions necessary to be satisfied for a finding to be res judicata between co defendants-Evidence Act, Section 32- Opinion regarding relationship- Opinions of persons having special means of knowledge or members of family admissible - Evidence regarding general reputation not admissible : *Draboo Vs. Bansilal, I.L.R. (1961) M.P. 143*

- Section 11, Constitution of India, Article 141 and Contempt of Courts Act (LXX of 1971), Section 12 – Decision of Supreme Court – Binding on all Courts – Decision of Revenue Court – Confirmed by High Court and Supreme Court in writ petition – Operate as res judicata to the subsequent suit – Disobeying the order of Supreme Court – Amounts to contempt of Supreme Court – Party liable to be punished: *Ashfaq Ahmad Vs. Nehru Singh, I.L.R. (1991) M.P. 552 (D.B.)*

-Section 11-Ex parte decision in previous suit-Operates as res judicata in subsequent suit though subsequent suit outside pecuniary jurisdiction of Court deciding previous suit : *Dulichand Vs. Nandibai, I.L.R. (1964) M.P. 266 (D.B.)*

-Section 11-Some inherent conflict between co-defendants-Conflict not brought to notice of parties and not specifically decided-Decision does not operate as res judicata - Decision between objector and one set of creditors not defending in representative capacity-Subsequent suit between same objector and another set of creditors-Previous decision not res judicata in subsequent suit-States Reorganisation Act-Sections 49 to 69 - Decision of Madhya Bharat High Court, Vindhya Pradesh Judicial Commissioner's Court or Bhopal Judicial Commissioner's Court-Not binding as a judicial precedent on Madhya Pradesh High Court --Decision of Madhya Bharat High Court, Vindhya Pradesh Judicial Commissioner's Court or Bhopal Judicial Commissioner's Court only entitled to respect -Hindu Law--Adoption--Ante-adoption agreement-Test to be applied to test its validity : *Radhabai Vs. Kamalchand, I.L.R. (1965) M.P. 637*

- Section 11 and Constitution of India, Article 226 - Constructive res judicata - Plea not raised in writ petition but could well have been raised - Dismissal of writ petition in limine with a speaking order - Subsequent proceedings before the Labour Court under the Industrial Disputes Act raising that plea - Whether barred by res judicata: *M.P. State Co-Operative Marketing Federation Ltd., Bhopal Vs. Labour Commissioner, Madhya Pradesh, Indore, I.L.R. (1987) M.P. 217 (D.B.)*

-Section 11-Person obtaining decree against another-Decree-holder does not claim through judgment-debtor-Person seeking to attach judgment-debtors property-Person exercises his right under Civil Procedure Code and does not claim through judgment-debtor-Judgment against judgment-debtor in previous suit in which decree-

holder not party-Judgment not res judicata : *Indra Kumar Vs. Sheobagas, I.L.R. (1972) M.P. 922*

- **Section 11**, Explanation VI and Order 1 Rule 8 – Res-judicata – Essence of explanation VI – Earlier litigation bona fide and private right claimed must be common to all who are sought to be bound: *Brij Bihari Vs. State Of M.P., I.L.R. (1988) M.P., 596 (D.B.)*

-**Section 11**, Order 1 Rule 8, Expln. 6 - Representative suit – Without leave of the Court under Order 1 Rule 8 of C.P.C. - Effect - Eviction suit against unregistered body through its Manager, President and Member - All three duly represented in the suit – Neither suit was collusive nor a shadow of negligence traceable - Decree passed in suit became final with the dismissal of S.L.P. – Decree can not be treated as nullity - Decree binding on all members of body and operates as res judicat : *Singhai Lal Chand Jain (Dead) Vs. Rashtriya Swayam Sewak Sangh, Panna, I.L.R. (1996) M.P. 5 (D.B.)*

- **Section 11 and Order 2, rule 2** - Dismissal of the first suit on technical ground without decision on merits – No bar to second suit on merits either on ground of res judicata or under Order 2, Rule 2 – Second suit not liable to be thrown out on ground of abuse of process of court: *Bhuwan Vs. Chhitar, I.L.R. (1961) MP 1025,*

- **Section 11 and Order 2 rule 2, Explanation IV**-Questions which could and ought to have been raised in prior suit not raised therein-Subsequent suit regarding those questions is barred : *Jasraj Vs. Kamruddin I.L.R. (1974) M.P. 779 (D.B.)*

-**Section 11, Order 22 Rule 3(4), 4, 11**, Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976 (III of 1977) – Sections 2(f), 3, 6, 7 and Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967 (XII of 1967) – Two Acts operate in different fields–One provides for declaring the sale transaction null and void while the other provides only for scaling down the amount of debt and interest–Present proceedings not barred even if in the previous proceedings there was a specific finding that the deed was not a mortgage deed–Prohibited transaction–Sale deed executed with distinct oral understanding that sale shall not be acted upon if the loan was repaid–Market value of the land at the relevant time much higher than loan amount–Appellant member of the Scheduled Tribe–Entitled to the benefit under the Act of 1977–Order of SDO for handing over possession of land to appellant–Not erroneous on facts–Abatement–Sale deed executed in favour of Respondent No. 2–Question involved declaration of Sale-deed to be null and void–Can be decided even without bringing on record other LRs of deceased Respondent No. 1–No abatement : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & others, I.L.R. (2004) M.P. (SC) 1 (D.B.)*

–**Sections 11 and 100**–Second Appeal–Succession Act, 1925, Sections 372 and 387–Proceedings for grant of succession certificate are summary proceedings–Judgment of succession case does not amount to res-judicata–Parties are not precluded to establish right in regular civil suit–Testimony of wife and daughter found trustworthy–Finding of lower appellate Court upheld : *Har Prasad Vs. Smt. Rajrani*; I.L.R. (2002) M.P. 318

- **Section 11** – Second appeal - Section 100-Principle of *res-judicata*-Judgment in earlier suit placed on record gives sufficient indication of case of the parties-Principle of *res-judicata* can be invoked in absence of Plea, written Statement, issues in earlier suit- *ex-parte* decree is a decree on merit-Cannot be ignored in a subsequent suit-Reasonings given by lower appellate Court found erroneous-Judgment & Decree of Lower appellate Court set aside : *Sakribai Vs. Kailash Chandra*, I.L.R. (1999) M.P. 676

- **Section 11, 100**, Explanation VIII, Order XIII Rules 1 and 2 and Order XLI Rule 27–Suit for eviction–Second Appeal–Application for taking additional document on record–Rejection of prayer by trial Court–Affirmed in revision by the District Judge–Not binding on the High Court nor operates res judicata when appeal is filed against the decree : *Nawab Saheb Vs. Firoz Ahmed*, I.L.R. (2003) M.P. 222

– **Section 11, 100**, Explanation VIII, Order XIII Rules 1 and 2 and Order XLI Rule 27–Suit for eviction–Second Appeal–Application for taking additional document on record–Rejection of prayer by trial Court–Affirmed in revision by the District Judge–Not binding on the High Court nor operates res judicata when appeal is filed against the decree–Accommodation Control Act, M. P. 1961–Sections 12(1)(e), 23 and Evidence Act, 1872 Section 74–Public document–Certified copy of registered sale-deed–Sought to be brought as additional evidence–Document essential to put the controversy at rest–Document can be accepted as evidence–Defendant tenant admitted that he paid rent to plaintiff–Landlord-tenant relationship established–bona-fide requirement found proved by the trial Court–Suit for eviction decreed : *Nawab Saheb Vs. Firoz Ahmed*, I.L.R. (2003) M.P. 222

–**Sections 11, 100** Order 1 Rule 9 and Order 8 Rule 6-A, as amended by C.P.C. (Amendment) Act (CIV of 1976) and Hindu Succession Act (XXX of 1956), Section 22–Second Appeal–Suit for partition and possession–Plea of pre-emption on the basis of alleged sale–Section 100, C.P.C.–Finding of Trial Court that sale was fraudulent and no title passed– Essentially a finding of fact cannot be re-opened in Second Appeal–Order 8 Rule 6-A–Counter-claim–By its nature is a cross-suit–Would not be affected by dismissal of plaintiff's suit–Order 1 Rule 9, C.P.C.–Non-joinder of necessary party–Fatal for maintaining the suit–Suit dismissed–Hindu Succession Act–

Section 22–Right of pre-emption–Not a right to the thing sold but a right to offer of a thing about to be sold–Can be claimed by setting up counter claim in the written statement–Section 11 of the Code–Omission to raise plea of pre-emption in written statement would operate res judicata–Proper value–In absence of any evidence of the market value the sum actually paid is taken to be proper value : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

–**Sections 11, 100, Order 7 Rule 11** – Second Appeal–Suit for perpetual injunction simplicitor–Plea of res-judicata–Can be considered before filing written statement–Any contrary view may defeat the object and purpose of Section 11 CPC–Earlier suit by plaintiff's predecessor for possession of the suit property dismissed–Subject matter, parties and jurisdiction of courts same–Requisites for application of res-judicata established–Courts below justified in dismissing the suit : *Ambika Prasad Bakshi Vs. Prabhu Dayal Mali, I.L.R. (2005) M.P. 1187*

– **Section 11, 115 – Revision** – Guardian and Wards Act – Sections 7 and 10 – Application for custody of minor by second wife Earlier a similar application ended in a compromise – Husband later married for third time but third wife died under suspicious circumstances – Married again for the fourth time – Application moved by second wife – Rejected by Trial court holding principle of res-judicata applies – Not proper because earlier decision was not on merits and also because the change in circumstances particularly welfare of the minor should be of paramount consideration – Impugned order set aside – Matter remanded to the trial Court : *Smt. Rehana Parveen Vs. Niamuddin, I.L.R. (2001) M.P. 255,*

– **Section 12 (1) (f)** – Requirement of law is that land lord must be owner of reasonably suitable alternative accommodation–Plot owned by plaintiff's husband–Cannot be an alternative suitable accommodation as envisaged under Section 12 (1) (f) of the Act : *M/S. Hindustan Petroleum Corporaion Ltd. Vs. Smt. Kamal Vasini Agrawal & anr., I.L.R. (2005) M.P. 862*

– **Section 12(1) (f)** – Bonafide –It is choice of plaintiff and tenant is no body to direct plaintiff to start business at a particular place–Merely because he joined service in an hospital would not overshadow genuiness–Mesne profit–Tenant continued in occupation even after expiry of extended period lease–Oil Company can avail only one right of renewal–Right of renewal availed–Possession became unauthorized from the date on which renewed period expired–Trial Court rightly granted decree of eviction and mesne profit : : *M/S. Hindustan Petroleum Corporaion Ltd. Vs. Smt. Kamal Vasini Agrawal & anr., I.L.R. (2005) M.P. 862*

– **Section 15 and Civil Courts Act, M.P. (XIX of 1958)** – Section 7, 15–Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, CPC and is operative in respect of

valuation of suit – Powers of an Additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R. (2001) M.P. 690*

- **Section 15, 2(4)**, Order VII Rule 10 and Order 43 Rule 1(r) and Civil Courts Act, M.P. (XIX of 1958), Sections 7, 15– Return of plaint by Additional District Judge at the stage of final argument – Appeal against – Section 2(4), C.P.C. – Definition of ‘District’ – Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction – A District Court is the Principal Court of original jurisdiction of any district – Sections 7 and 15 of 1958 Act & Section 15, C.P.C. – Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, C.P.C. and is operative in respect of valuation of suit – Powers of an additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge – Order 7 Rule 10, CPC – Suit for divorce by muslim wife filed before then IIIrd ADJ as per distribution memo – Both parties contested and led evidence – Return of plaint at the stage of final argument on the objection as to jurisdiction – Not maintainable in law as the ADJ himself had Jurisdiction to try and decide the matter as per distribution memo prepared by the District Judge – Impugned order set aside – Case remanded back to the trial Court for decision on merits : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R. (2001) M.P. 690*

-**Section 16**-Partition suit-Existence of property constitutes cause of action in a partition suit-Court within whose jurisdiction property to be partitioned situated has jurisdiction-Decree-Court passing decree without notice to defendants-Decree is nullity but ex-parte decree passed after erroneously holding service of notice good-Decree can be set aside if Court's finding regarding service of notice shown to be incorrect -Civil Courts Ordinance (No. 36 of 1948), Section 3 and Madhya Bharat Civil Courts Act (No. 43 of 1949), Sections 3 and 36-Orders passed by Courts prior to merger-Orders are valid and binding on parties “Proceedings disposed of by the Courts” in section 3 of Ordinance No. 36/48-Does not mean proceedings which have been finally disposed of, but also refers to orders passed during pendency of suits disposing of particular stages of trial-The Ordinance No. 36/48 and Madhya Bharat Civil Courts Act No. 43/49 - Effect is to maintain continuity of Courts and give validity to orders passed by Courts before replacement-Civil Procedure Code, Order 1, rule 1o--Plaintiff at liberty to put his case as he likes and cannot be forced into controversies with persons whom he does not wish to implead-Burden of proof-Plea of advancement-Burden on person advancing the plea : *Mujtabai Begum Vs. Mehboob Rehman, I.L.R. (1959) M.P. 256 (D.B.)*

– **Section 20** – Specific Joint property – May be decreed to the extent of vendor's share – Plaintiff in possession as tenant – Suit decreed : *Govind Prasad Vs. Gajanand & ors., I.L.R. (2005) M.P. 884*

-**Section 20**, Explanation II - Applies to Railway Administration : *Maniklal Vs. the Union of India I.L.R. (1967) M.P. 136*

- **Section 20** - Suit based on contract - Where can be filed - Binding contract with Government - When comes into existence : *Associated Commercial Engineers, Tawanagar Vs. State Of Madhya Pradesh, I.L.R. (1981) M.P. 409 (D.B.)*

-**Section 20** - Parcels and goods conveyed from Dhamnod to Indore and vice versa - Cause of action in part arises at Indore - Also because bills for payment were submitted through station-master, Indore and payment made through State Bank at Indore : *Maniklal Vs. The Union Of India I.L.R. (1967) M.P. 136*

-**Section 20** - Sending account of transaction or sending money by draft to principal - Does not give jurisdiction to Court within whose jurisdiction the principal resides : *Ballabhdas Vs. Firm Brindaban Purwar, Mirzapur I.L.R. (1970) M.P. 131*

-**Section 20** - In case of deposit - Relation of creditor and debtor comes into existence - Duty cast on debtor to find creditor - Court of the place of creditor will have jurisdiction to try suit : *Brij Mohandas Vs. Narsinghdas, I.L.R. (1975) M.P. 903(D.B.)*

– **Section 20** – Jurisdiction of Civil Court – Deciding factor – Agreement signed also at Jabalpur where one of the necessary parties resides – On non-payment divides de-activated stopping transmission of signals at Jabalpur – Cause of action arising at Jabalpur – Court at Jabalpur has jurisdiction in the matter : *Jabalpur Cable Network Pvt. Ltd., Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd., New Delhi & Ors., I.L.R. (2001) M.P. 846,*

- **Section 20** — Jurisdiction — Parties executed an agreement to resolve any disputes between parties, by any competent Court located at place specified in agreement – Suit filed in Court situated within civil district of place specified in agreement — Not maintainable – Court where suit is filed, cannot be said to be Court situated as specified place : *Divisional Engineer (G AND M), M.P Electricity Board, Katni Vs. Daltak Carbide Chemicals Pvt Ltd, I.L.R. (1995) M.P. 599,*

- **Section 20** and Insurance Act (VI of 1938), Sections 46 and 2 (9) (b) - Insurance policy providing particular forum - Jurisdiction of competent Court not ousted - Agreement between the parties ousting jurisdiction of a competent Court - When effective - Convenience of parties and interest of jurisdiction of a competent court - When effective - Convenience of parties and interest of justice in deciding question of

jurisdiction - Consideration : *Punjab National Bank, Seoni Vs. The National Insurance Co. Ltd., Calcutta, I.L.R. (1984) M.P. 435,*

- **Section 20** - Suit against agents and against commission agents or pucca adatia - Court which can have jurisdiction to try such suits-Sending account of transaction or sending money by draft to principal-Does not give jurisdiction to Court within whose jurisdiction principal resides : *Ballabhdas Vs. Firm Brindaban, Purwar, Mirzapur, I.L.R. (1970) M.P. 131*

- **Section 20**-Suit for accounts against agent-Talk between agent and principal regarding agency does not form part of cause of action Court within whose jurisdiction agent carries on business has jurisdiction to try suit for accounts : *Shah Ganpat Pasu & Co. Vs. Gulzarilal, I.L.R. (1957) M. P. 654*

-**Section 20**-Place of business of railway administration-is a place where Head Office is situated-Section 20, Explanation II-Applies to Railway Administration-Section 20-Parcels and goods conveyed from Dhamnod to Indore and vice versa - Cause of action in part arises at Indore-Also because bills for payment were submitted through station-master, Indore and payment made through State Bank at Indore : *Maniklal Vs.The Union Of India I.L.R. (1967) M.P. 136*

- **Section 20** - Place of filing suit - Essentials of - World "actually and voluntarily resides" - Do not apply to Union of India or State Government - Refer not to legal entities but to natural persons - Suit against Government - When can be filed - Suit based on Contract - When can be filed - Binding contract with Government - When comes into existence - Arbitration Act, 1940 - Section 20 - Application under - Can be filed only in a Court within whose jurisdiction cause of action arises - Court, power of, to exercise jurisdiction in proceedings under section 20 : *Associated Commercial Engineers, Tawanagar Vs. State Of Madhya Pradesh, I.L.R. (1981) M.P. 409(D.B.)*

-**Sections 20, 9, Order 7 Rule 10**-Jurisdiction-Suit for declaration and injunction-Suit based on tortious action of Finance Company in illegally taking possession of truck and causing loss to plaintiff-Local Civil Court has jurisdiction-Impugned order set aside : *Ram Bahori Vs. Tata Finance Ltd., I.L.R. (2005) M.P. 752*

- **Section 20, 115, Order 7 Rule 10, 10-A and Succession Act, Indian (XXXIX of 1925)**- Section 371- Revision- Jurisdiction of succession Court- Section 371 of the Act is special enactment, it would not be governed by Section 20 of the Code- trial Court rejected the petition holding that it has no jurisdiction but has not observed provisions of Rule 10 and Rule 10-A of Order VII of the Code- Trial Court directed to observe provisions of Rule 10 and 10-A of Order Vii of the Code : *Smt. Chandra Kala Doble Vs. Shyam Rao Doble, I.L.R. (1999) M.P. 881*

- **Section 21** - Decision rendered by Court on merits after trying a case - Not liable to be upset on technical ground : *Sheo Bhagwan Vs. Mst. Durgadevi, I.L.R. (1979) M.P. 349, (D.B.)*

- **Section 21** – Objections as to jurisdiction has to be taken at the first available opportunity – No objection should be entertained at appellate or revisional stage unless taken in the Court of first instance : *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani, I.L.R. (2001) MP 809, (D.B.)*

- **Section 21** - Words "Unless there has been a failure of justice" in - Implication of - Policy underlying sections 21 and 99 analogous to that contained in section 11 of Suits Valuation Act, 1887 - Decision rendered by Court on merits after trying a case - Not liable to be upset on technical ground - Order XX rule 17 - Taking of accounts - Accounts to be taken on basis of books of partnership - But entries cannot be treated as correct - Mere balancing in a book of accounts - Does not amount to account stated, much less account settled - Deed - Rule of construction - Term of a deed not clear and unambiguous - Extrinsic evidence to ascertain meaning can be considered - Limitation Act, 1908 - Article 106 - Suit for accounts - Starting point of limitation : *Sheo Bhagwan Vs. Mst. Durgadevi, I.L.R. (1979) M.P. 349, (D.B.)*

- **Section 21** and 99 and Suits Valuation Act (VII of 1887), Section 11 - Policy underlying sections 21 and 99 analogous to that contained in section 11 of Suits Valuation Act, 1887 : *Sheo Bhagwan Vs. Mst. Durgadevi, I.L.R. (1979) M.P. 349, (D.B.)*

-**Section 21 (2)**, Suits Valuation Act, 1887, Section 11-Pecuniary Jurisdiction-Appellant/Plaintiff claimed exclusive title to suit property on the basis of will-Suit valued at Rs. 300 and fixed court fee of Rs. 30/- paid for declaration and Rs. 30/- for permanent injunction-Trial Court held that suit has been properly valued and it has jurisdiction and decreed the suit-Appellate Court set aside judgment and decree on the ground that trial court had no pecuniary jurisdiction and Court Fee paid was not proper-Held-Appellate Court did not direct itself as to the question whether undervaluation of suit has prejudicially affected the disposal of suit on merits-Matter remanded back to Appellate Court to decide the question of jurisdiction afresh : *Brihaspati Bai Vs. Mohanlal Chintaram Swarnkar; I.L.R. (1994) M.P. 199*

- **Section 22 and 23** - Order of Single Judge transferring suit from one Court to another under - Not a 'Judgment' - Not appealable under clause 10 of Letters Patent : *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswar Shri Swami Swaroopanand Saraswati Vs. Shri Ramji Tripathi @ Swami Shantanand Saraswati Allahabad, I.L.R. (1980) M.P. 231, (D.B.)*

- **Section 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 : *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswar Shri Swami Swaroopanand Saraswati Vs. Shri Ramji Tripathi @ Swami Shantanand Saraswati, Allahabad I.L.R. (1980) M. P. 231(D.B.)*

- **Section 22, 23 and 24** - Transfer of suit from one Court to another - Preponderance of balance of convenience - Is prime consideration : *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswar Shri Swami Swaroopanand Saraswati Vs. Shri Ramji Tripathi @ Swami Shantanand Saraswati Allahabad I.L.R. (1980) M.P. 231(D.B.)*

- **Section 23 and Order 12 Rule 8 and Order 23 Rule 3**- Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty Not Proper : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R. (2001) M.P. 379*

- **Sections 23, 9 and 28** - Contract - Jurisdiction - Held - It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the code - But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy - Such an agreement does not contravene Section 28 of the Contract Act - The word 'only' has to be given due weightage and on proper construction of the clause it can be stated with certitude that jurisdiction of other courts have been excluded. Use of the word only gains significance and there is no iota of doubt that it is an 'exclusive word' which excludes the jurisdiction of all other courts except the competent court at Jabalpur : *M/S Rajaram Maize Products Vs. M.P.Electricity Board, Jabalpur, I.L.R. (1997) M.P. 196*

-**Section 23, 100 and Order 12 Rule 8, Order 23 Rule 3 and Contract Act, Indian (IX of 1872)** – Nominal sale deed executed without consideration to avoid possible impact of law of ceiling on urban property – Possession not delivered – Executant even after sale deed exercised right of ownership – Suit for declaration by executant of Sale Deed that he be declared owner of such property – Claims admitted by defendant – Suit dismissed alleging to be collusive in nature – Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty – Not proper – Section 100 – Second Appeal – Question of avoiding stamp duty does not arise as no instrument was executed which required stamp duty - Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R. (2001) M.P. 379*

- **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 : *Anup Vs. Baboolal, I.L.R. (1980) M.P. 269,*

- **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 : *Anup Vs. Baboolal, I.L.R. (1980) M.P. 269,*

- **Section 24** - Transfer of suit by Court on administrative grounds - No notice to parties necessary - Procedure as to notice - Becomes imperative when any party applies for transfer thereof : *M/s Decom Marketing Ltd., Bombay Vs. Kallubhai I.L.R. (1987) M.P. 756*

- **Section 24** - 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 : *Anup Vs. Baboolal, I.L.R. (1980) M.P. 269,*

-**Section 24**-Application for recusal-In fact is an application for transfer of the case-Can be made to the District Judge before whom the proceedings are pending-Approach cannot be said to demeaning or degrading the Court by use of word 'recuse' : *Union Carbide Corporation Vs. Union Of India, I.L.R. (1992) M.P. 121*

- **Section 24** - District Judge ordering transfer of a suit without notice to defendant and also directing transferee Court not to issue any summon to defendant - Acts illegally : *M/s Decom Marketing Ltd., Bombay Vs. Kallubhai I.L.R. (1987) M.P. 756*

- **Section 24** - Jurisdiction - Judgment and decree for eviction passed on the basis of evidence recorded by Civil Judge Class, II having no jurisdiction - Liable to be set aside : *M/s Decom Marketing Ltd., Bombay Vs. Kallubhai I.L.R. (1987) M.P. 756*

- **Section 24** - Transfer of case - Powers of Court - Discretionary - When to be exercised : *Smt. Sudha Vs. Ramnarain Jaiswal, I.L.R. (1990) M.P. 237*

-**Section 24**-Transfer of lis litigation from Wakf Tribunal- Suit stood transferred to wakf Tribunal by virtue of Section 83 of the Wakf Act, 1995- Section 85- Prohibition-Civil Court shall not decide the dispute of the nature triable by the Wakf Tribunal-Petitioner not disclosing to which authority the lis should be transferred-Prayer cannot be acceded to in view of express statutory prohibition : *M.P. Wakf Board, Bhopal Vs. State, I.L.R. (2000) M.P. 207*

- **Section 24** - Transfer of pending suit - Can only be ordered if a party has reasonable apprehension that he might not get justice in the Trial Court apart from

interest of justice and convenience of the parties – Petitioner successful in getting the ex-parte decree set aside – Case of reasonable apprehension not made out – Prayer refused : *Smt. Kirti Mishra Vs. Smt. Krishna Mishra, I.L.R. (2001) M.P. 130,*

- **Section 24** and Contempt of Courts Act (LXX of 1970), Section 15(2)– Defendant sought transfer of Civil Suit on the ground of “likelihood of bias” of District Judge on account of interim order passed earlier – District Judge dismissing application but High Court, in revision allowing application and ordered transfer of case from the Court of District Judge to senior most Additional Judge to District Judge – In view of findings in revisions, no case for taking action for contempt made out – Notices issued discharged : *State Vs. Union Carbide Corporation, U.S.A., I.L.R. (1990) M.P. 59(D.B.)*

- **Section 24** and Order VII rule 10 - Plaintiff after amendment going beyond pecuniary jurisdiction of that Court-Proper procedure is to return plaint for presentation to proper Court and not to entertain an application under Section 24 of the Code for its transfer or to order transfer on it : *M/S Decom Marketing Ltd., Bombay Vs. Kallubhai I.L.R. (1987) M.P. 756*

- **Section 24, 22 and 23** - 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 : *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswar Shri Swami Swaroopanand Sarswati Vs. Shri Ramji Tripathi @ Swami Shantanand Saraswati (1980) M.P. 231(D.B.)*

- **Section 24, 22 and 23** - Transfer of suit from one Court to another - Preponderance of balance of convenience - Is prime consideration : *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswar Shri Swami Swaroopanand Sarswati Vs. Shri Ramji Tripathi @ Swami Shantanand Saraswati I.L.R. (1980) M.P. 231 (D.B.)*

- **Section 24 (1) (b) (i)** – Suo-Motu powers of withdrawal of suit to its file to be exercised by the division bench – Not a fit case to exercise such powers : *Union Carbide Corporation Vs. Union Of India Through Secretary Ministry Of Industry Department Of Chemicals And Petrochemicals, New Delhi, I.L.R. (1989) M.P. 438 (D.B.)*

- **Section 25** and Motor Vehicles Act, Sections 165 and 169 – Transfer of case from one Motor Accident Claims Tribunal to other Motor Accident claims Tribunal – Jurisdiction of High Court – There is no conflict between the procedure of the tribunal prescribed in the Act and Civil Procedure Code – In the Motor Vehicles Act or Rules framed there under, there is no provision like section 24 of C.P.C. to transfer the case – Held – The High Court has jurisdiction to transfer the case exercising powers under

section 24 of *C.P.C. Vishnoo Kumar Budhan Vs. Liladhar Hari Ram Agarwal; I.L.R. (1993) MP 700*

- **Sections 28, 9 and 23** - Contract - Jurisdiction - Held - It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the code - But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy - Such an agreement does not contravene Section 28 of the Contract Act - The word 'only' has to be given due weightage and on proper construction of the clause it can be stated with certitude that jurisdiction of other courts have been excluded. Use of the word only gains significance and there is no iota of doubt that it is an 'exclusive word' which excludes the jurisdiction of all other courts except the competent court at Jabalpur. *M/S Rajaram Maize Products Vs. M.P.Electricity Board, Jabalpur, I.L.R. (1997) M.P. 196*

- **Section 34** - Applicable to mortgage decrees : *Rajaram V Nandkishore, I.L.R. (1980) M.P. 149, (D.B.)*

- **Section 34** – Principale sum for computing interest – Held – Amount found due as on the date of filing of suit is principal sum. *Bank Of India Vs. Harish Chandra Shrivastava, I.L.R. (1997) M.P. 360 (D.B.)*

-**Section 34**-Not applicable to award of interest in land acquisition cases: *State Of M.P. Vs. Man Mohan Swaroop I.L.R. (1966) M.P. 746(D.B.)*

– **Section 34** – Interest – Arbitrator can award interest on principles of Section 34, Civil procedure Code : *Union Of India Vs. M/S. Prithipal Singh And Co., Nagpur, I.L.R. (1989) M.P. 365(D.B.)*

– **Section 34** – Two Banking Acts do not affect the jurisdiction of the Court under section 34 C.P.C.: *Punjab National Bank, Bilaspur Vs. Juktar Singh, (1989) M.P. 53*

- **Section 34** - Normal rule is costs to follow event - Rule can be departed according to circumstances : *E Nageshwar Rao Vs. Dinesh Chandra Verma I.L.R. (1978) M.P. 679(D.B.)*

-**Section 34**-Interest from date of suit till realization-Payable even on unliquidated damages-Claims tribunal. Power of, to grant pendente lite and future interest : *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra, I.L.R. (1974) M.P. 121(D.B.)*

– **Sections 34** – Interest on the principal sum – No law that such interest could be awarded as compensation – Transaction between the parties not commercial one –

Rate of interest pendent lite cannot exceed 8%—Decree of trial Court modified : *Banshilal Kharakwar Vs. Narbad Prasad Chourasia I.L.R. (2004) M.P. 763*

- **Section 34** – Award of interest after making of award – Can be made only if question relating to interest referred – Analogy of Section 34, Civil Procedure Code applicable – Rate of interest cannot go beyond permissible under section 34, Civil Procedure Code: *State Of M.P. Vs. Vijay Raj Kankariya, I.L.R. (1988) M.P. 437 (D.B.)*

–**Section–34**–Interest–Trial Court not awarding interest–No cross objection filed–Plaintiff not entitled to interest as claimed in suit : *Union Of India, Through General Managers Vs. M/S. Jaikumar Rajkumar & Company, Jabalpur, I.L.R. (1992) M.P. 833*

- **Section 34** – Pendente Lite and future Interest – Appellant Bank filed suit for recovery together with interest at contractual rate – Borrower remained ex parte – Interest awarded to appellant @ 6% on ground that interest charged was heavy and borrower suffered heavy losses – Held – Discretion of court to award interest below contractual rate in commercial transaction – Since borrower remained ex parte and no ground was ascribed for use of discretion – Grant of interest @ 6% i.e. below contractual rate untenable – Appellant Bank entitled to get interest @ 12% - Appeal allowed : *Bank Of India Vs. Harish Chandra Shrivastava, I.L.R. (1997) M.P. 360 (D.B.)*

- **Section 34** (as amended by C.P.C. (Amendment) Act 66 of 1956 & C.P.C. (Amendment) Act 1976, Reserve Bank of India Act (II of 1934) and Banking Regulation Act (X of 1949), Sections 20, 21 – Award of interest from the date of suit till realization – Entirely within judicial discretion of the Court – Discretion to be exercised judicially to advance cause of justice – Two Banking Acts do not affect the jurisdiction of the Court under section 34 C.P.C.: *Punjab National Bank, Bilaspur Vs. Juktar Singh, I.L.R. (1989) M.P. 53*

- **Section 34** - Not applicable to arbitration proceedings - View modified in some respect - Arbitration Act, Indian - Award separable - Bad portion can be separable from good portion - Portion of Award defective because of error apparent on face of record - Bad portion separable - No power in Court to examine merits of whole award - Section 30 - Award not to be set aside because of mistake of law or fact committed by arbitrators - Can be set aside if error in law appears on face of award - Arbitration - Parties entering into fresh or subsidiary contract in addition to original into fresh or subsidiary contract not governed by arbitration clause in original contract : *M/S Umrao Singh And Co., Contractors, Lucknow, (U.P.) Vs. State Of M. P., I.L.R. (1979) M.P. 695, (D.B.)*

– **Sections 34**, 96 and Evidence Act Indian, 1872 Section 103–First Appeal–Suit for recovery–Money advanced to defendant executing document–Execution proved–No evidence that plaintiff in regular course of business advances loan–Contention that plaintiff is a money-lender and cannot file a suit without obtaining valid money-lender's certificate cannot be accepted–Burden of proving that plaintiff is a money-lender was on the defendant–Interest on the principal sum–No law that such interest could be awarded as compensation–Transaction between the parties not commercial one–Rate of interest pendent lite cannot exceed 8%–Decree of trial Court modified–Interest on principal amount reduced to 6% p.a. from the date of suit till realization : *Banshilal Kharakwar Vs. Narbada Prasad Chourasia*, I.L.R. (2004) M.P. 763

- **Sections 34**, 96 and Railways Act, Indian (IX of 1890), Sections 73, 78(d)–Suit for damages due to delayed transit of goods on the ground that price had fallen at the destination–Suit decreed–First appeal by Railways–Such an action is not barred u/s 78 (d) of the Act–Interest–Trial Court not awarding interest–No cross objection filed–Plaintiff not entitled to interest as claimed in suit–Reappreciation of evidence–Damages suffered by plaintiff re-assessed at Rs. 30/-Perquintal–Damages decreed by Trial Court reduced accordingly with interest at the rate of 6% per annum as provided under Section 34, Cpc.: *Union Of India, Through General Managers Vs. M/s. Jaikumar Rajkumar & Company, Jabalpur*, I.L.R. (1992) M.P. 833

– **Section 34** (1) (Proviso) – Damages by way of interest – Cannot be awarded in absence of usage or contract : *M/S Ganga Prasad Saligram Vs. M/s. Durga Prasad Rajaram*, I.L.R. (1990) M.P. 627

– **Section 34** (1) (proviso) – Rate of interest may exceed 6% per annum in case of commercial transactions – Commercial transaction – Meaning of – Damages by way of interest – Cannot be awarded in absence of usage or contract : *M/S Ganga Prasad Saligram Vs. M/S. Durga Prasad Rajaram*, (1990) M.P. 627

- **Section 35**-Cost of suit etc.- Cost of suit and appeal awarded to plaintiff with Counsel's fee as per schedule : *State & anr. Vs. Harishchand*, I.L.R. (2000) M.P. 1432, (D.B.)

- **Section 35-A** - Costs - Suit for possession of church building etc. - Defendant a priest/pastor unnecessarily indulging himself into litigation arising out of an objection as to valuation of suit - Suit filed in year 1986 - No written statement filed as yet - Exemplary costs of Rs. 1,000/- awarded against defendant : *Rev. Theodore Ekka Vs. Evangelical Church of India*, I.L.R. (1995) M.P. 258,

-**Sections 36 and 37** Order 21 rule 11 and Order 41, rule 5-Stay Order in appeal staying confirmation of Sale-Stay Order directing furnishing security for mesne profits determinable by trial Court -Security to be furnished within one month of the

date of trial Court's order-Application for recovery of mesne profits-Maintainability-Heading-Heading of petition not conclusive-Substance to be looked into : *Kheduram Vs. Mst. Supetkaur, I.L.R. (1971) M.P. 80 (D.B.)*

- **Section 37**, Order 21 Rule 10 - Execution of decree-Court passing decree abolished - Pending cases transferred to another Court - Such transferee Court acquires inherent jurisdiction to execute the decree. *Indra Vs. Ramcharan; I.L.R. (2002) M.P. 738*

- **Section 39 and 42**- Decree not transferred by the Court of Small Causes-Transferee Court cannot assume power of the Court of Small Causes under Section 42 as the decree having not been transferred to it by the Court of Small Causes : *Pyarelal Vs. Ratan Chand and anr., I.L.R. (2000) M.P. 1024*

-**Section 42**- Transferee Court, jurisdiction of, to determine whether execution can proceed against certain properties - Order 21 Rule 26-Does not place any limitation on powers of transferee Court-Applies in many cases even when wide powers given to transferee Court-Decree-Charge decree-Decree-holder to enforce charge first before proceeding against other property-Order 21 Rule 26(3)-Applicable when request made by judgment-debtor : *The Allahabad Bank Limited, Calcutta Vs. Chaitram Choudhari, I.L.R. (1963) M.P. 259 (D.B.)*

-**Section 42** and Order 21 rule 6 and Limitation Act, Indian (IX of 1908), Article 182 (5) - Limitation for execution of decree - Application for transfer of a decree - Is a step - in - aid of execution - Application to the transferee Court for execution - Is a continuation of the previous pending proceedings for transfer of decree - Limitation not liable to be computed on the date of application in transferee Court : *Hemchand Vs. Premchand, I.L.R. (1985) M.P. 436*

-**Section 47**-Executing Court, Power of, to decide question of executability of decree : *Pyarelal Vs. Bhagwati Prasad, I.L.R. (1970) M.P. 949 (D.B.)*

-**Section 47**-Application for setting aside sale confirmed and interest of third party came into existence-Application does not fall under this provision : *Akhechand Vs. Motilal, I.L.R. (1974) M.P. 972*

-**Section 47**-Covers objection regarding sale ability of the property : *Akhechand Vs. Motilal, I.L.R. (1974) M.P. 972*

-**Section 47**-Persons not representatives of the judgment-debtors-No relief can be sought against them in execution : *Jasraj Vs. Kamruddin I.L.R. (1974) M.P. 779(D.B.)*

-Section 47-"Parties" in-Do not mean parties ranged on opposite side-May include parties ranged on same side provided there is conflict of interest and judgment-debtor continues to be interested in conflict : *Bhikibai Vs. Mangtibai I.L.R. (1966) M.P. 791*

-Section 47-Fresh application for execution after previous execution closed-Amounts to revival of previous execution : *Daulatrao Vs. Shafi Ahmad, I.L.R. (1969) M.P. 1006*

-Section 47-Restitution proceedings are execution proceedings-Suit can be converted into application under this provision : *Ramchandra Vs. Anantram, I.L.R. (1970) M.P. 314*

-Section 47-Title of auction-purchaser not affected, on the order of executing Court being set aside : *Pyarelal Vs. Bhagwati Prasad, I.L.R. (1970) M.P. 949 (D.B.)*

- **Section 47** - Special remedy provided - Recourse to section 47 not available : *M/S Supreme General Films Exchange Private Ltd. Joint Stock Company Registered Under The Indian Companies Act, 1913, Through The Manager, Plaza Talkies, Jabalpur Vs. Her Highness Tej Kunwar Suryavanshi Ji, I.L.R. (1980) M P. 1155,*

- **Section 47** - EXECUTION - DECREE - WORDS AND PHRASES - Suit for possession of the properties - High Court ordered that compensation to the plaintiff can be granted for properties in 'appropriate proceeding' - Execution of decree - Application seeking compensation not tenable - Words 'appropriate proceeding' mean separate independent proceeding and not the execution proceeding of very same decree - Decision of Madhya Pradesh High Court, Reversed : *M. P. Electricity Board, Rampur Vs. M/s. Central India Electric Supply Company Ltd., I.L.R. (1995) M.P. 1 (D.B.)*

-Sections 47-Decree for delivery of possession of specific property-Decree to be satisfied only by delivery of possession-Order 21, rule 16-Right of purchaser of a portion of decree from decree-holder-Purchaser not making an application for execution - No occasion for executing Court to enquire whether purchaser has acquired any right by purchase : *Sheochand Vs. Nekiram, I.L.R. (1971) M.P. 678 (D.B.)*

-Section 47-Question between parties to suit or their representatives relating to execution-To be decided by executing Court and not by separate suit-Section 9-Suit for declaration of title and possession against persons who do not claim to be representatives of judgment-debtors in the prior suit-Maintainability-Section 47-Persons not representatives of the judgment-debtors-No relief can be sought against them in execution-Landlord and tenant-Suit between-Question of title immaterial-

Decree-When can be challenged as a nullity-Order 2 rule 2 and Section 11, Explanation IV-Questions which could and ought to have been raised in prior suit and not raised therein-Subsequent suit regarding those questions is barred : *Jasraj Vs. Kamruddin I.L.R. (1974) M.P. 779 (D.B.)*

-Section 47-Conflict between joint Decree-holders arising in execution-Judgment-debtor not interested in conflict-There is no right of appeal-"Parties" in-Do not mean parties ranged on opposite side-May include parties ranged on same side provided there is conflict of interest and judgment-debtor continues to be interested in conflict : *Bhikibai Vs. Mangtibai I.L.R. (1966) M.P. 791*

-Section 47-Order dismissing the application of decree-holder-purchaser under Order 21 Rule 95-Order is one passed in execution between decree-holder-purchaser and persons claiming from judgment-debtor and is appealable-The words "execution closed"-Do not amount to dismissal of execution-Fresh application for execution after previous execution closed-Amount to revival of previous execution : *Daulatrao Vs. Shafi Ahmad, I.L.R. (1969) M.P. 1006*

-Section 47-Applicability-Order 21 rule 58-Objection of judgment-debtor that attached property not asset of deceased - Objection falls under section 47, Civil Procedure Code and not under Order 21 rule 58, Civil Procedure Code : *Mst. Karimunnisa Vs. Alfuddin, I.L.R. (1959) M.P. 552 (D.B.)*

-Section 47-Circumstances in which only the executing Court can go behind the decree and refuse to execute it-Judgment-debtor not raising objection at the earlier stage of suit-Has no right to challenge it at the stage of execution : *Bheru Singh Vs. Ramgopal, I.L.R. (1972) M.P. 333 .*

- **Section 47** and Order 21 rules 2 and 3 - Decree for eviction - Execution Objection by tenant - judgment debtor alleging compromise giving up right of eviction under decree in return for promise to pay enhanced rent - Alleged compromise not recorded as certified - Compromise being adjustment of decree and not recorded as certified - Objection to execution not sustainable in view of rule 2 - Interpretation of Statute - Salutary rule of - Two statutory provisions - Not to be so construed as to encourage frivolous litigation *Or Render One Of Them Otiose : Rajeev Khandelwal Vs. Arun Pannalal, I.L.R. (1987) M.P. 670 (F.B.)*

-Section 47, Order 21 Rule 90-Sale of property by Collector-Authority of Collector not recalled-Executing Court, Power of, to set aside sale-Application to civil Court for setting aside sale by Collector-Maintainability : *Kesarimal Vs. Keshar Singh, I.L.R. (1970) M.P. 824*

-Section 47, Order 43 Rule 1(j)-Order confirming sale after application under Order 21 rule 90 is dismissed for default of appearance-Order not appealable -Order dismissing application under Order 21 Rule 90 for default of appearance or order dismissing the application for restoration of original application-Order not appealable-Order 43, Rule 1(j)-Does not provide for appeal against order confirming sale-Appeal lies against order under Order 21 Rule 92 setting aside or refusing to set aside sale-Words and Phrases-Word "refusal"-Meaning of : *Gopilal Vs. Sitaram* , *I.L.R. (1970) M.P. 615(D.B.)*

- Section 47, Order 43 Rule 1(j) -Order dismissing application under Order 21, Rule 90 for default of appearance or order dismissing the application for restoration of original application-Order not appealable : *Gopilal Vs. Sitaram, I.L.R. (1970) M.P. 615 (D.B.)*

-Sections 47, 115-Civil revision-Suit for recovery of money-Ex-parte decree-Samaj Ke Kamjor Vargon Ke Krishi Sambandhi Bhumi Dharkon Ka Uधार Dene Walon Ke Bhumi Hadpane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P. 1976, Sections 2,12 and 14 and M.P. Gramin Rin Vimukti Adhinyam, 1982, Section 7-Objection regarding bar of jurisdiction of Civil Court in execution proceedings-Plaint does not show any admission of transaction being with holder of agricultural land-Executing Court can not go behind the decree-Order of Executing Court upheld. *Waman Vs. Baldevdas; I.L.R. (2002) M.P. 364*

-Section 48(1)(b) - Order recording compromise-Order a valid subsequent order-Decree not barred even though original decree passed more than 12 years prior to it-Execution-Decree-holder asked to produce Dakhla from compensation case to show what steps were being taken in compensation proceedings- Production of Dakhla not necessary for further progress- Decree holder failing to produce such Dakhla - Execution case dismissed-Dismissal is only for statistical purpose-Fresh execution application - Amounts to continuation of the original execution petition-No question of limitation arises-Whether particular execution is continuation of earlier execution-Question is one to be decided having regard to entire circumstances in which previous execution was dismissed : *Ganpat Vs. Gendalal, (1964) M.P. 938*

-Section 48 (2)-"Fraud" in- To be interpreted in a wider sense -Delay in execution due to untenable objections-Amounts to fraud : *Firm Radhakisan Vs. Kalicharan, I.L.R. (1957) M.P. 3*

- Sections 51 and 115-Revision-Execution of money decree-Mode of execution-Judgment debtor to get rid of decretal liability carrying on business in the new name-By his dishonest conduct Judgment debtor liable for imprisonment in execution of decree. *Prakash Bhagwani Vs. Sammati Food Products Pvt. Ltd., Sagar (M.P.); I.L.R. I.L.R.(2002) M.P.1001*

-Section 60, Proviso-Agreement about attachment of salary which is exempt from attachment-Agreement is against law and public policy-Salary is unattachable : *Sardarsingh Vs. Bhanwar Singh, I.L.R. (1975) M.P., 919(D.B.)*

- **Section 60(1)** - Exempts all "implements of husbandry" : *Narsingh Vs. Kamandas I.L.R. (1981) M.P. 534(F.B.)*

- **Section 60 (1)**, - Proviso (b) - Exemption from attachment - Expression "as may, in the opinion of the Court be necessary to enable him to earn his livelihood" in - Does not qualify the words "implements of husbandry" - Exempts all "implements of husbandry" are exempted - Term "implements of husbandry" - Meaning of - Electric motor pump fitted in well situated in the field of an agriculturist - is an implement of husbandry exempted from attachment - Cart though an agricultural implement but not proved to be used for agricultural purposes - Cannot be held to be "implement of husbandry" - Not exempted from attachment - Word "Agriculturist" - Meaning of - Interpretation of Statutes - True meaning of a phrase in a Statute has to be judged from the context : *Narsingh Vs. Kamandas I.L.R. (1981) M. P. 534 (F.B.)*

- **Section 60 (1) (b)** - Electric motor pump fitted in well situated in the field of an agriculturist - is an implement of husbandry exempted from attachment : *Narsingh Vs. Kamandas I.L.R. (1981) M.P. 534 (F.B.)*

- **Section 60 (1) (b)** - Expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" in-Does not qualify the words "implements of husbandry": *Narsingh Vs. Kamandas I.L.R. (1981) M.P. 534 (F.B.)*

-Section 60(1)(h) - Gratuity payable to a labourer after retirement-Included in "wages"-Is exempt from attachment : *Badluprasad Vs. Tirjuji, I.L.R. (1965) M.P. 597(D.B.)*

-Section 60(g)-Privy Purse-Liability to attachment: *Nawab Usmanali Khan Vs. Sagarmal, I.L.R. (1961) M.P. 304 (D.B.)*

-Section 64-Attachment does not create any interest-Only prohibits judgment-debtor from alienating property-Alienation contrary to attachment-Alienation void as against all claims enforceable under attachment : *Anandrao Vishnupant Bagdare Vs. Motilal Pandurang Mahajan & ors., I.L.R. (1963) M.P. 135*

-Section 65 - Not applicable to sales under Displaced Persons (Compensation and Rehabilitation) Act : *Motandas & ors. Vs. Gopaldas, (1961) M.P. 1045*

- **Sections 65, 2, 115** and Order 21 rules 34, 95 and 96, partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380*

-**Section 66** -Court sale-Benami transaction prohibited-Section to be strictly construed-Persons jointly interested in the property under sale, as partners-Sale knocked down in the name of one partner-Other partners can claim either in respect of their shares-No prohibition under Section 66, Civil Procedure Code : *Ratanlal Vs. Seth Laxminarayan, I.L.R. (1960) M.P. 854(D.B.)*

– **Section 66**, Order 4 Rule 15 – Notice produce to the party in possession of original – The word “appears” in third proviso has to be governed by the law of pleadings – Plaintiff neither pleaded nor adduced any evidence that the original is possessed by the defendant by force or fraud – Plaintiff cannot be granted exemption from giving notice as envisaged under Order 4 Rule 15, C.P.C. : *Ram Sahu Vs. Ramdayal, I.L.R. (2001) MP 258*

-**Section 73**-Members of Joint Hindu Family judgment-debtors-Certain members fully represent family-Difference in number of members in cases will not make the section inapplicable : *Tarachand Vs. Jagannath, I.L.R. (1964) M.P. 960*

-**Section 73**-Date of receipt of assets by executing Court-Whether it is date of attachment or date of payment out order-Decree holders applying for execution of money decree and claiming rateable distribution before payment out order-Decree-holders entitled to rateable distribution-Civil Procedure Code, Section 64-Attachment does not create any interest-Only prohibits judgment-debtor from alienating property-Alienation contrary to attachment-Alienation void as against all claims enforceable under attachment : *Anandrao Vs. Motilal, I.L.R. (1963) M.P. 135*

-**Section 73**-Order 21 Rules 11 and 30- Test to be applied to determine whether execution application is according to law - Order 21 Rule 11(j)(v)-Words "otherwise as the nature of the relief granted may require" are wide - Relief by way of rateable distribution is one of the modes of execution-Is within the ambit of this provision : *Mst. Sarswatibai Vs. Govindrao, I.L.R. (1960) M.P. 945(F.B.)*

-**Section 73(1)** - Decrees passed against the same judgment -debtors- All the judgment-debtors need not be identical - Members of Joint Hindu Family judgment-debtors -Certain members fully represent family-Difference in number of members in different cases will not make the section inapplicable : *Tarachand Vs. Jagannath, I.L.R. (1964) M.P. 960*

-Section 80- Notice by the firm-Suit by Firm and the Partners-Notice not in-valid : *Union Of India Vs. Gendal & ors., (1957) M.P. 504 (D.B.)*

- Section 80-Combined notice under Section 77, Railways Act, and Section 80-Validity : *Union Of India Vs. Gangaji, I.L.R. (1958) M.P. 691(D.B.)*

-Section 80-Notice mandatory in cases where State or public servant sued in official capacity : *Babulal Vs. Smt. Dwarkabai & Ors., I.L.R. (1964) M.P. 388(D.B.)*

-Section 80-Notice not to be construed as a pleading-Common sense to be imported into notices given under the section: *Firm Dhanraj Samrathmal, Balaghat Vs. Union Of India & ors., I.L.R. (1959) M.P. 18(D.B.)*

- Section 80 - Notice no part of cause of action : *Firm Sitaram Shyamsunder, Janjgir Vs. Ganpatlal I.L.R. (1978) M.P.699 (D.B.)*

-Section 80 -Misdescription in notice-Notice received by right person - Notice valid-Object of notice-Notice to be liberally construed and in the light of common sense : *Chunnilal Vs. Union Of India, I.L.R. (1962) M.P. 566*

-Section 80-Notice does not become bad because relief claimed has not been expressly mentioned in the notice : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Section 80-Notice before filing writ-Not necessary especially when petitioner is not seeking enforcement of private rights or contractual obligations : *Kailash Narayan Vs. M.P.S.R.T.C., I.L.R. (1992) M.P. 15*

- Section 80-Notice not mentioning name of duly authorised officer - Name of duly authorised officer mentioned in plaint -No change in description-Suit not bad : *The Union Of India Through Central Railway Administration & Anr. Vs. The Imperial Tobacco Company Of India, Calcutta, I.L.R. (1958) M.P. 836(D.B.)*

- Section 80 - Issuing of statutory notice under this provision from a particular place or is sent to some other place - Does not confer jurisdiction on Courts of those places - Notice no part of cause of action : *Firm Sitaram Shyamsunder, Janjgir Vs. Ganpatlal I.L.R. (1978) M.P. 699 (D.B.)*

-Section 80-Essentials of Notice-Notice not to be scrutinized in pedantic manner divorced from common sense-Notice does not become bad because relief claimed has not been expressly mentioned in the notice-Constitution of India-Article 311(2)-Delinquent given opportunity to adduce evidence and to cross-examine witnesses-

Opportunity not availed of-No grievance can be made at later stage-Civil Services (Classification, Control and Appeal) Rules, Madhya Bharat, 1956-Rule 15(4)-Holding of oral enquiry not mandatory-Circumstances when it becomes mandatory-Words "authority concerned" in-Means appointing authority-Rule 15(6), Proviso-State Government not disagreeing with findings of enquiry officer-No question of furnishing with the "points of disagreement together with the brief statement of the grounds therefore" arises-Rule 26, Proviso-Right to file memorial is in the nature of review-Such right when can be exercised : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Section 80 and Order VII Rule 11 (d)-First part of Section 80-Mandatory-No notice served-No suit maintainable-The provision regarding inclusion of fact of service of notice-Procedural-The omission can be supplied by amendment-The opening words "No suit shall be instituted" in section 80-Qualify first part of Section and not second-Construction of the section to be liberal : *M. C., Sagar Vs. Mis Chhotabhai Jethabhai, I.L.R. (1957) M.P.262 (D.B.)*

-Sections 80 and 100- Second Appeal-Suit within Limitation adding period of notice- Notice not served or new defendant-Suit barred by Limitation as against newly added defendants : *R. R. Naidu Vs. State. I.L.R. (1999) M.P. 576*

– Section 80 and 115, Municipal Corporation Act, M.P. (XXIII of 1956), Sections 68(1), 393 and 401 and Foreign Liquor Rules, M.P., 1996 – Application for renewal of licence inform under FL-3 – Suit for declaration and mandatory injunction – Permission of the Court to dispense with notice – Sections 68(1) and 401 of the Act – Municipal Corporation derives its authority under the Act – Delegation of powers to renew licence under 'the Rules of 1996' can not be apart from the powers of the Municipal Corporation under the Act – Conferral of power to grant or renew licence is covered by Section 68(1) of the Act – Section 401 (1) applicable – No suit could be filed without serving notice – No provision in Section 401 for taking permission of Court for relaxation of notice – Complaint filed without prior notice rejected in revisional jurisdiction by High Court : *Municipal Corporation, Murwara, Katni Vs. Lalchand Jaiswal, I.L.R. (2001) M.P. 555,*

-Sections 86(1) and 87 -B-Provisions mandatory-Protection conferred -Not capable of being waived-No limitations on powers of Central Government to grant sanction for suing. the Ruler-Submission to jurisdiction expressly or by implication-Can be taken into consideration in considering grant of sanction : *Nawab Usmanali Khan Vs. Sagarmal, I.L.R. (1961) M.P. 304 (D.B.)*

-Sections 86(1), 87(b) and 141-Provisions of Sections 86(1) and 87(b) not attracted-Consent of Central Government not necessary-Section 141 also not applicable-Section 86(1) deals with substantial right while Section 141 deals with

matter of Procedure : *Prabhakar Parashramji Pandit Vs. Vikram Sugar Mills Ltd., I.L.R. (1959) M.P. 804*

-Section 92-Relief of damages against stranger to the trust- Relief does not fall under Section 92, Civil Procedure Code-Relief capable of valuation- Ad valorem Court-fees payable : *Chaudhari Kanhaiyalal V Shankaprasadji & Ors., I.L.R. (1964) M.P. 632*

-Section 92-Scope and object of Arbitration Act : *Divyanand Saraswati Vs. Gopaldas I.L.R. (1970) M.P. 672*

-Section 92 and Court fees Act, Section 7(iv) (f)-Suit for accounts-Grounds on which accounts can be claimed under Section 92Accounts not claimed on the basis of Section 92-Same claimed against stranger of the Trust-Claim falls under Section 7(iv)(c) of Court-fees Act : *Chaudhari Kanhaiyalal Vs. Shankaprasadji & Ors., I.L.R. (1964) M.P. 632*

– **Section 92** – ‘Subject matter of Trust’ – Situate in State of Uttar Pradesh – Subsequent accretion to Trust Property situate in Katni – Court at Murwara (Katni) has no territorial jurisdiction to entertain and try suit under Section 92, Civil Procedure Code in relation to such Trust and its properties : *Shri Venkatesh Bhagwan, Faizabad Vs. Janki Prasad ChoudhA, I.L.R. (1990) M.P. 342*

– **Section 92**, Public Trusts Act, M.P. (XXX of 1951), Section 5 and Trust Act, Indian (II of 1882) – Jurisdiction of Court to entertain suit under Section 92, Civil Procedure Code – Deciding factors – ‘Subject matter of the Trust’ – Meaning and scope of as distinguished from ‘subject matte of suit’ – Public Trust situate outside M.P. – Not required to be registered under M.P. Public Trusts Act, 1951 – ‘Subject matter of Trust’ situate in State of Uttar Pradesh Subsequent accretion to Trust property situate in Katni – Court at Murwara (Katni) has no territorial jurisdiction to entertain and try suit under Section 92, Civil Procedure Code in relation to such Trust and its properties : *Shri Venkatesh Bhagwan Vs. Janki Prasad Choudha, I.L.R. (1990) M.P. 342,*

- **Section 96**- Appeal under Section 96 not entertained by appellate Court as not filed by any of the parties to the decree-Such dismissal of the appeal would not create a bar to an application for setting aside ex parte decree under Order 9, Rule 13, CPC : *Laliya Vs. Bhagwan and Ors. I.L.R. (2000) M.P. 627 .*

- **Section 96** – First Appeal – Ancestral Property – Partition effected by drawing lots –Plaintiff cannot allege that father kept good quality land – Partition rightly held to be just and equitable : *Ram Gulam Vs. Mathura Prasad (Deceased) Through L.R. Ramvati Alias Jamvati, I.L.R. (2001) MP 1719,*

-Section 96 and General Sales Tax Act, M.P., 1958, Section 33-C-First Appeal-Suit for recovery of loan-Property hypothecated and mortgaged prior to coming into force of section 33-C-Even then charge created in favour of state in respect of Sales Tax dues shall prevail over the charge in favour of *Bank. State of M.P. V. Canara Bank; I.L.R. (2002) M.P. 949*

- Section 96 - Appeal under - Against judgment and decree arising out of suits below Rs. 3000/- instituted before Amendment Act came into force - Grounds of appeal cannot be restricted to questions of law only : *Lakhmichand Vs. Mitthu I.L.R. (1984) M.P. 111.*

-Section 96-Appeal under-Not barred because of application under Order 9 Rule 13-Setting aside ex parte decree-Permissible till decision of appeal : *Ramlal Vs. Rewa Coafields Ltd., Calcutta And Umaria, I.L.R. (1969) M.P. 58 (D.B.)*

-Section 96 and Evidence Act, Indian, 1872 Section 34-First Appeal-Suit for recovery of amount-Plaintiff's failure to prove that account books were kept in regular course of business-Entries in account book also not proved by calling scribe in evidence-Defendant could not be fastened with liability-Decree of trial Court set-aside : *Mahavir Prasad Vs. Vasudeva Prashad, I.L.R. (2003) M.P. 58*

- Section 96 and Specific Relief Act of 1963, Section 10 – First appeal-Possession-Suit for specific performance-Dispute with regard to delivery of possession-Cannot be ascertained from oral evidence-Name of defendants recorded in mutation proceedings over suit land-Finding of Trial Court that possession was delivered to plaintiff cannot be upheld : *Kanhiya Alias Kaniram Vs. Siddhnath, I.L.R. (2005) M.P. 736*

- Section 96-Appeal-Suit for possession and perpetual injunction-Compensation in lieu of possession-Plaintiff allowed construction believing statement of defendants that there was no encroachment-After demarcation came to know about encroachment by defendant-Granting compensation in lieu of property would not be proper-Ownership not specifically claimed by defendants-Title of plaintiffs rightly found : *Vishnu Kumar Vs.Smt. Jankibai, I.L.R. (2005) M.P. 976*

- Section 96 and Motor Vehicles Act, (IV of 1939)- The Insurance cover used to be over after sale of the vehicle unless there was a transfer endorsement from the Insurance Company in favour of new purchaser- The new purchaser would be having the choice of having Insurance cover for extended period : *Hussain Khan Vs. National Insurance Co. Ltd, Indore, I.L.R. (1998) M.P. 677*

-Section 96 and Limitation Act Indian, (XXXVI of 1963)(Amended)- Article 65-Suit filed after amendment in the limitation Act-Suit for possession based on title under Article 65 of the limitation Act- Plaintiff is required to prove his title and need not further prove possession within 12 years of suit-Suit cannot be dismissed unless defendant proves adverse possession- Mere possession howsoever long- Not adverse possession : *Smt. Shakuntalabai & other Vs. Bhagwandas and other, I.L.R. (1998) M.P. 855*

-Section 96 and Specific performance Act, 1963, Section 16(c)-Suit for specific performance of sale-Nature of transaction and intention of parties can be proved by evidence-In such a suit plaintiff if not required to prove availability of liquid money but he is definitely required to prove his potential to raise the requisite sum of consideration-Burden not discharged-Plaintiff rightly non-suited : *Ramesh Chand Vs. Kishan Chand, I.L.R. (2005) M.P. 980*

- Section 96 – Ancestral Property – Gift received by co-sharer would not form a part thereof – Gift property not liable to be included in ancestral property at the time of partition – Joint family – Father as a Karta has power to effect partition – Consent of sons not required for exercise of that power : *Ram Gulam Vs. Mathura Prasad (Deceased) Through L.R. Ramvati Alias Jamvati, I.L.R. (2001) MP 1719,*

-Section 96 and Foreign Exchange Regulation Act, 1973, Section 31-First Appeal-Suit for partition-Plaintiff foreign national-Right of inheritance cannot be curtailed-General permission granted by RBI in 1993-Cause of action in 1998-Question of notification having retrospective effect does not arise-Judgment and decree of Trial Court upheld : *Dr. (Mrs.) Geeta Reinboth Vs. Mrs. J. Clairs Brohier Through Lrs. Mrs.Cheryl Brohier Gosens, I.L.R. (2005) M.P. 428*

-Section 96-First Appeal-Suit for eviction from mortgaged premises-Accommodation Control Act, M. P., 1961-Sections 2 and 12-Parties fall within the meaning of landlord and tenant as defined under the Act-None of the grounds envisaged in the Act made a ground for eviction under Section 12 of the Act-Suit of plaintiff-respondent dismissed. *State Vs. Pradeep Kumar, (Dead) His Lrs. Smt. Meena, I.L.R. (1992) M.P. 555*

-Section 96 and Evidence Act, Indian, 1872, Sec.45, 114 – First Appeal-Suit for damages-Death of cattle alleged due to electrocution and negligence of defendants is not repairing the electric wire-FIR lodged but not produced in evidence-Lead to an adverse inference that if filed the document would have been unfavourable to plaintiff-Medical opinion that cattle were electrocuted-No reason given for such opinion-Bald opinion cannot be accepted as expert opinion-Trial Court rightly disbelieved the evidence of expert opinion : *Brajlal Vs. M.P.E.B. I.L.R. (2004) M.P. 668*

- **Section 96** and Evidence Act, Indian (I of 1872) – Section 67 – First Appeal— Suit for specific performance– Agreement for sale–Death of executor–Fact of execution–can be proved in one of the modes provided in Section 67 of the Evidence Act–Signature of Scribe not obtained on the document–Attesting witness not examined–Signature of executor disputed–Incumbent upon plaintiff to examine Hand writing Expert–Hand writing Expert not examined–Document not proved–Hazardous to accept bald statement of plaintiff–No error in dismissal of the suit : *Mahendra Kumar Vs. Amar* , I.L.R. (2004) M.P. 378

- **Section 96**– First Appeal–Evidence Act, 1872, Section 115–Suit for declaration and injunction –An employee of State orally given assurance of construction of shopping complex at particular location–Authority of employee not pleaded and proved–Advertisement not showing construction at particular location–In such type of matter there cannot be oral proposal –"Estoppel"–No particular description provided alongwith requisite form–No pleading of any action on the alleged belief–Provision not attracted–Civil Suit rightly dismissed : *Santosh Bharti Vs. State*, I.L.R. (2004) M.P. 754

- **Section 96** – Appeal – Appeal under Section 96 – Maintainability – Held – Section 96 of the Code provides for appeal from decree by Court exercising original jurisdiction – The revisional Court has exercised the original Jurisdiction to reject the plaint – Section 96 of the Code Provides for appeal from a decree of a Court exercising original jurisdiction and not the decree of the original Court – The original jurisdiction of rejection of plaint has been exercised by the revisional Court, appeal under Section 96 of the Code shall lie : *Namdeo Devangan Vs. Seetaram*, I.L.R. (1997) M.P. 516

- **Section 96** and Indian Contract Act, Section 28–Suit for recovery of amount under Bank guarantee–As per clause of agreement claim was to be raised within 6 months from the date mentioned–Notice invoking bank guarantee issued within specified period–Rights under the agreement continued to exist–Clause limiting of time within which rights are to be enforced hit by Section 28–Suit filed within 3 years is within limitation–Suit rightly decreed by Trial Court. *State Bank of India Vs. Madhya Pradesh Electricity Board, Jabalpur*; I.L.R. (2002) M.P. 953

–**Section 96**–Appeal–Suit for declaration and injunction–Sale in favour of an outsider by one of co-owner–Compromise between co-owners subsequent to sale deed–Evidence Act, Indian–Section 18–Admission is relevant only if it is made during subsistence of right–Compromise after parting with the interest can not be said to be relevant–Joint Hindu Family property–Purchaser can right in joint family property though he may not claim and also enjoyment jointly–Purchaser has right to obtain

partition of the property to the extent of share purchased. *Sunil Bajpai Vs. Vivek Bajpai, I.L.R. (2002) M.P. 113 (D.B.)*

– **Section 96** – First Appeal – Suit for partition – Hindu Law – Joint Hindu Family–Strong presumption in favour of Hindu brothers constituting it–Burden of proving severance is on the party who alleges it–But two brothers coming and settling at different place separate from their father and other brothers–Cannot be a case of continuation of joint Hindu Family–No presumption in favour of re-union–Burden to prove reunion is on the party who pleaded it–Execution will by ancestor–A circumstance against any reunion and continuation joint family–Property not coparcenary property–Decree of partition set aside : *Purshottam Vs. Bhagwat Sharan, I.L.R. (2003) M.P. 416 (D.B.)*

–**Section 96**–First Appeal–Suit for damages on ground of defamation–News Paper publication–Item published in newspaper after verification through Police Station and public rumour–Word used in news item is "Studio Owner"–When the word referred to a group the imputation and not to a particular individual the libel is not actionable–Pleading not showing that the news item was false–News item flashed in the rumour para–Not directed at the plaintiff–Case for defamation not made out. *Dainik Bhaskar Vs. Madhusudan Bhargava, I.L.R. (1992) M.P. 332*

–**Section 96**–First Appeal–Suit for recovery of loan amount–Decreed against borrower and guarantor severally and jointly–Usurious Loans Act, 1918–Section 3 and Contract Act, Indian, 1872, Sections 139, 141 and 176 and Banking Regulation Act, 1949, as amended in 1984, Section 21-A–Suit decided by the Court after coming into force of Section 21-A of the Act–Suit transaction cannot be re-opened on the ground that rate of interest is excessive–Security remained in possession of borrower as per Hypothecation agreement–Creditor can either file a suit or proceed against the security–Accounts were settled and acknowledged by the borrower–No infirmity in the impugned judgment and decree–Appeal failed. *Kamla Prasad Jaiswal Vs. Punjab National Bank, I.L.R. (1992) M.P. 634*

- **Section 96** and Motor Vehicles Act(IV of 1939)- Information was given by the appellants after 15 days of the accident to the duly appointed insurance inspector-Record proves that insurance policy certificate in favour of appellants was handwritten by insurance Inspector-It is the duty of Insurance Inspector to communicate the same to officer-The Insurance Company has to blame its agent of such default appellants would be Entitled to get compensation of 28000 with the interest of the rate of 12% per annum from the date of filing of the suit-Civil Procedure Code, Section 96 and Motor Vehicles Act, 1939- The Insurance cover used to be over after sale of the Vehicles unless there was a transfer endorsement from the Insurance Company in favour of new purchase- The New purchaser would be having the choice of having

Insurance cover for extended period. *Hussain Khan Vs. National Insurance Co. Ltd, Indore, I.L.R. (1998) M.P. 677*

– **Section 96** and Accommodation Control Act, M. P. 1961–Sections 12(1)(e) and 12(1)(i)–Suit for evidence decreed–First Appeal–Tenant's right as a society–Co-operative Societies Act, M. P., 1960–Sections 64 and 80–Bar of Civil Court's Jurisdiction–Only with regard to disputes touching Constitution, Management, Business or Liquidation of society–Dispute between landlord and society which is a tenant–Bar not attracted–Bonafide need for residence/non-residential purpose–While in Government service one cannot claim decree of eviction for non-residential purpose bonafide–Bonafide need for residential purpose–Accommodation let out for business of defendant–Used as guest house–Cannot be said to be residential use–Eviction cannot be sought for residential need–Tenant acquiring another accommodation for his business–Not a ground enumerated in Section 12(1)(i) of the Act–Not applicable to accommodation let out for composit purpose–Decree of eviction set aside : *Madhya Pradesh Handloom Corporation Federation Vs. Krishna Kant, I.L.R. (2004) M.P. 850*

–**Section 96**–First Appeal–Suit for declaration of title, partition, possession and injunction for maintenance from co-parcener of the joint family–Gwalior Qanoon Mal Samvat, 1983, Section 253, Land Revenue Code, M. P., 1959, Section 178, 259, 261, Hindu Women's Right to Property Act, 1937–Hindu Succession Act, 1956, Section 14(1) and Hindu Adoption and Maintenance Act, 1956, Sections 21 and 22–Widow inheriting deceased husband's share of interest in the joint family property–Name mentioned in revenue record on the date of coming into force of Land Revenue Code, 1959–She is a Bhumiswami–Devolution of property on widow in absence of son, grand son, and great grand son–Right to hold property inherited in exclusive Bhumiswami rights acquired under Section 253 of Gwalior Qanoon Mal–Not affected by 1937 Act as it was not adopted by erstwhile Gwalior State–Suit filed after coming into force of 1956 Act–Plaintiff right to hold the devolved share in joint family property as full owner saved by Section 14(1) of the Act of 1956–Can maintain a suit for declaration partition and possession and for permanent injunction–Plaintiff in actual physical possession of her share in full owner ship rights since the death of her husband–Dispossessed forcibly and kept out of possession by defendant–Plaintiff entitled to initiate separate proceedings for *mense* profit–Maintenance–Hindu widow's right to maintenance from coparcenary property is a statutory right–Plaintiff entitled to maintenance–Suit decreed partly. *Smt. Gulab Bai Vs. Badri, I.L.R. (1992) M.P. 392*

–**Section 96**– Reappreciation of evidence- Damages suffered by plaintiff reassessed at Rs. 30/- Perquintal-Damages decreed by Trial Court reduced accordingly with interest at the rate of 6% per annum as provided under Section 34, *Cpc, Union Of India Through General Managers Vs. M/s Jaikumar Rajkumar & Company, Jabalpur, I.L.R. (1992)M.P. 833, .*

– Section 96 and Specific Relief Act (XLVII of 1963), Section 10 – First appeal–Suit for specific performance–Dispute with regard to delivery of possession–Cannot be ascertained from oral evidence–Name of defendants recorded in mutation proceedings over suit land–Finding of Trial Court that possession was delivered to plaintiff cannot be upheld–No step taken by plaintiff within one month of the date of agreement although as per his own witness sale-deed was to be registered within one month after payment of rest of the amount–Granting a decree of specific performance would not be appropriate–Judgment and decree of trial Court set aside : *Kanhiya Alias Kaniram Vs. Siddhnath, I.L.R. (2005) M.P. 736*

–**Section 96-** First Appeal–Suit for specific performance–Specific Relief Act, 1963, Section 20–Condition stipulated in agreement tampered with by the plaintiff–No condition in agreement for demolition of the home and removal of material for the suit land–Such insistence can only be regarded that plaintiff was not his part of the contract–Prayer for relief of specific performance has to fail–No prayer in plaint for refund of earnest money–Amendment allowed in appeal–Decree for earnest money granted : *Shivam Gupta Vs. Kamta Prasad, I.L.R. (2003) M.P. 629 (D.B.)*

–**Section 96-**First Appeal–Suit for recovery of amount paid in excess due to mistake–Limitation Act, 1908–Article 96–Limitation for suit based on mistake is 3 years from date when such mistake is detected–Limitation Act, Indian, 1963–Section 17 and Residuary Article 113– Commencement of period of limitation of 3 years in a suit of this nature would commence from the date when such mistake comes to the knowledge of plaintiff–Date of refusal by defendant to pay the amount cannot be held to be the date of cause of action–Suit filed beyond three years from date of knowledge of such mistake–Clearly barred by limitation– Impugned judgment and decree set aside : *B. Viplav Prasad Vs. State Bank of India, I.L.R. (2000) M.P. 597*

– **Section 96** – First Appeal – Suit for declaring sale-deed not binding on plaintiffs – Suit property ancestral and jointly held–Sale-deed executed to secure loan and rent-note to secure interest – Actual possession not delivered coupled with defendant’s ignorance about the nature of the suit property and value of the suit house found to be much more than that of the loan amount – Trial Court justified in holding that sale was not intended to alienate the property but to secure loan transaction – Evidence Act, Indian, 1872, Section 92 – Proving of recital of a deed – When there is dispute as to real character of the document evidence dehors can be led to show that document was executed with an intention other than contained in the document – Order 41, Rule 22, C.P.C. cross-appeal or cross –objection – Respondent not precluded from challenging an adverse finding of trial Court even though he may not have appealed against any part of the decree – Rent note executed to secure interest on the amount – As the sale was not intended to actual sale defendant never became land lord – Hence not entitled to any benefit of rent note – Decree of trial Court confirmed : *Sajan Kumar Rasia Vs. Roopsingh, I.L.R. (2001) MP 822,*

– **Section 96** – First Appeal – Suit for declaration that plaintiff being brothers entitled to receive the Death cum Retirement benefit of defendant's husband – On the basis of documentary and oral evidence it is not established that deceased was married at the time of marriage with defendant – Evidence Act, Indian 1872, Section 108, 114 – Husband of defendant renounced the world and not heard of for more than 10 years – Presumed to be dead since not heard of for more than 7 years by those who would have normally heard him – Deceased and defendant no. 1 living together for long time as husband and wife and children having born to them legal presumption regarding valid marriage would arise – Children born of a valid marriage are entitled to receive payment due – Plaintiffs rightly non-suited : *Bhagwat Prasad Shrivastava Vs. Smt. Pranbai, I.L.R. (2001) M.P. 1024,*

– **Section 96** – First Appeal – Suit for partition and separate possession of joint family property – Ancestral property – Partition effected by drawing lots – Plaintiff cannot allege that father kept good quality land – Partition rightly held to be just and equitable – Indian Stamp Act, 1899 as amended in Madhya Pradesh – Section 2(15) and 36 – Instrument of partition – Tendered in evidence by witness during deposition – Document admitted in evidence by trial Court for Collateral purpose of proving possession – Admissibility of document cannot be questioned in appeal on ground that document is unstamped - Ancestral property – Gift received by co-sharer would not form a part thereof not liable to be included in ancestral property at the time of partition – Joint family – Father as a Karta has power to effect partition – Consent of sons not required for exercise of that power : *Ram Gulam Vs. Mathura Prasad (Deceased) Through L.R. Ramvati Alias Jamvati, I.L.R. (2001) M.P. 1719*

– **Section 96** – Suit for partition of house purchased jointly in the names of plaintiff and defendant – Defence that suit house was purchased exclusively by the defendant from his funds and name of plaintiff came to be recorded in Sale-deed out of love & affection – Trial Court decreeing the suit only on ground that Benami Transaction (Prohibition) Act, 1988 was applicable – Not proper – Trial Court ought to have considered merit of the case on basis of evidence available on record – Benami Transaction (Prohibition) Act, 1988 – Section 4(1) and 4(2) – Provision Can only have limited operation – Would not affect pending suit in respect of transactions held prior to coming into force of the Act – Judgment and decree set aside – Case remanded to trial Court for trial afresh : *Abdul Hameed Khan Vs. Abdul Waheed Khan, I.L.R. (2001) M.P. 62*

– **Section 96** – First Appeal – Suit for partition of property jointly held by father and two sons – Property purchased by registered Sale-deed obtaining loan from Bank by Plaintiff – Agreement for Sale shows money was advanced by plaintiff – Plaintiff's investment proved and remained un-rebutted – Transfer of Property Act – Section 45 – Presumption – Defendant as a manager of family executed the Sale-deed

– Added names of his wife and sons in sale deed by fraud – Plea that property was purchased by his own income, stridhan of his wife and with help of wife's relative – Not proved – Presumption under Section 45 Transfer of Property Act not attracted – Trial Court rightly decreed the suit for not attracted – Trial Court rightly decreed the suit for plaintiff : *Smt. Rajeshwari Vs. Balchand Jain, I.L.R. (2001) M.P. 695 (D.B.)*

– **Section 96** – First Appeal – Suit for possession of the house agreed to be sold on ground of failure of proposed purchaser to perform his part within time stipulated in the contract containing condition of forfeiture of advance amount – Defendant/appellant not filing document favourable to him though in his possession at the time of filing written statement – New clause added by interpolation – Cannot be treated as part of the original agreement not could be entered enforced by law – Such interpolation or alteration would have the effect of canceling the deed – Specific performance of contract- Failure on part of defendant/appellant – Plaintiff acquired right to forfeit the advance amount – Trial Court rightly granted decree in favour of plaintiff to recover back possession of the house with damages @ 10/- per day : *Guruvachan Vs. Manjit, I.L.R. (2001) M.P. 50*

– **Section 96** – First Appeal – Suit for recovery of loan – Promissory note alleged to be executed – Oral evidence regarding loan inconsistent and mutually contradictory – Averments in plaint that parties are friends not established as there was dispute between parties regarding mutation of land before this suit – Signatures in document do not tally with the admitted signatures of defendant – Evidence Act, Indian, 1872 – Sections 67 and 73, Evidence Normally the Court should not embark on the exercise of comparison of hand writing on signature, but the Court is not precluded from doing so – Trial Court justified in disbelieving promissory note : *Kuber Prasad Vs. Mst. Sukharajua, I.L.R. (2001) M.P. 1013*

– **Section 96** – First Appeal – Suit for specific performance of agreement to sale – Specific Relief Act, 1963 – Section 16(c) – Purchaser present in Sub-Registrar's office with balance amount – Stamp papers purchased and subsequently returned by purchaser – Unequivocal pleadings in plaint – Readiness and willingness of purchaser explicitly proved – Pleadings though differently worded not militate the fact of plaintiff's readiness and willingness to perform her part of contract – Decree of Specific performance by Trial Court unassailable : *Ashok Kumar Adalia Vs. Smt. Munnibai, I.L.R. (2001) M.P. 1536*

- **Sections 96**- Appeal- Suit by plaintiff- For declaration and injunction on recovery- So long as threat persists there is continuing cause of action- Suit filed within three years- Within limitation- Plaintiff also sought refund of earnest money and interest thereon quantified sum- Plaintiff has to pay Court tee *ad-valorem*: *Jagdish Tiwari Vs. State, I.L.R. (1999) M.P. 953 (D.B.)*

– **Section 96** – First Appeal – Tortious liability – Electrocutation and death – Compensation – Liability – Electricity Act, Indian, 1910 - Electricity (Supply) Act, 1948 and Electric Supply Rules, 1956 – M.P. Electricity Board engaged in generation and supply of electricity – Obligated to see that the same is transmitted in a manner not dangerous to life – Naked live wire hanging from electric pole – Deceased cyclist died of electrocution as the live wire touched his bicycle – Negligence of MPEB in safe keeping of live wires carrying energy – Claimants not required to prove beyond re ipsa loquitur – Burden to disprove negligence is on the MPEB – Evidence revealing the knowledge about pilfering electricity line – Case proved against MPEB – Liable to compensate the claimants – Respondents No. 2 not proved to have fastened the live wire in the pole – Cannot be held liable – Order of Trial Court reversed : *Smt. Shail Kumari Vs. MPEB, I.L.R. (2001) MP 1214 (D.B.)*

- **Section 96** and Hindu Maintenance and Adoption Act (LXXVIII of 1956), Section 10(iv)-Suit for declaration, partition and possession of Joint Hindu Family properties- Will-No unnatural improbable or unfair circumstances noticed-Duly executed as enjoined under the Law – Not obtained under compelling circumstances- Testimony of scribe un-challenged-No reason to unsettle the finding of Trial Court that the will was voluntarily executed-Adoption-Protection of customs or usages-An Agrawal may adopt a person beyond 15years of age-Defendant more than 15 years of age at the time of adoption-Adoption proper-Joint family-Plaintiffs father separated from the family about 50 years before-pledged ornaments with the firm-All sons doing independent business-Go to show disruption of jointness-Until proved or admitted, no presumption that the Hindu Family was joint: *Uma Prasad Vs. Smt. Padmavati, I.L.R. (1999) M.P. 1042 (D.B.)*

– **Section 96**, Stamp Act, Indian, (II of 1899) – Section 29(i)(c) and Transfer of Property Act (IV of 1882) , Section 55(i)(d) – Suit for Specific performance of agreement for sale – Deficit of Court Fee – Agreement in suspicious circumstances – Fabricated document – Deficiency of fund – Plaintiff not in a position even to pay Court fee – Attestation not proved – Readiness and willingness not proved – Agreement can not be acted upon – Appeal Dismissed : *Sirumal Vs. Smt. Annapurna Devi, I.L.R. (2001) M.P. 520 (D.B.)*

- **Section 96**-First Appeal-Suit for recovery of prize on lottery ticket- Barred being in the nature of wagering contract-Not enforceable through Court-Contract Act, 1872-Section 30- Agreement by way of wager is void-Suit does not lie-Lotteries (Regulation) Act, 1998 and Lottery (Niyantaran Tatha Kar) Adhiniyam, M.P., 1973-Section 2(a) and 3-Lottery-Definition of and procedure laid down- Provisions not aimed at legitimizing or encouraging lotteries but ensuring fair play in conduct thereof - Central and State enactment would not take out lottery from the category of ‘wager agreement’ not enforceable through Court-Trial Court rightly dismissed the suit-Words and phrases-“Lotteries” Not a trade or business nor protected under

Article 19(1) (g) of the Constitution, but is a purely game of chance : *Subhash Kumar Manwani Vs. State, I.L.R. (2000) M.P. 854 (D.B.)*.

- **Section 96**-First Appeal-Suit for re-imbusement of compensation paid under the policy for loss due to accidental fire enroute-Section 69 of the Contract Act-Joint suit by insurer and owner-Document of subrogation-Insurance Company acquires right to raise claim on the pleas available to the owner-Carriers Act, 1865-Section 8-Fire broke out in transit due to negligence of carrier's employees- Transporter cannot escape liability-Section 9- Proof of negligence-After entrustment of goods to transporter owner is absolved of burden of proving negligence on the part of transporter-Suit can be filed by the owner on the basis of loss, damages or non-delivery of goods-Loss occurred while goods were in transit-Owner entitled to a decree-Suit decreed-Judgment of trial Court reversed : *Oriental Insurance Company Vs. Mukesh & Company, I.L.R. (2000) M.P.1118 (D.B.)*

- **Section 96**, Limitation Act, Indian (XXXVI of 1963), Section 15(1) and Article 52 and 113 and Accommodation Control Act, M.P. (XLI of 1961), Sections 7, 8, 31 & 32-First Appeal-Against dismissal of suit on the ground of limitation-Suit for recovery of arrears of rent-Would be governed by Article 52 or Article 113 and not by Section 15(1) of the Limitation Act-Suit filed after final adjudication by the appellate Courts but within 3 years-Not barred by limitation-Accommodation Control Act-Sections 7 and 8-Order of fixation of rent passed by R.C.A. is subject to decision on appeals, if filed, till then order of R.C.A. is not inchoate-Section 31 and 32-Appeal and Second Appeal against the order of R.C.A.-Pendency of appeals would be continuation of lis between the parties-Order of R.C.A. gets suspended even if stay is not granted as the amount is not certain till final adjudication of appeals-Cause of action-Arises only when ultimate appellate Court determines the rent-Judgment and Decree of Trial Court set aside-Suit decreed with costs : *Dr. Ashwani Trivedi Vs. Bhumi Vikas Bank, I.L.R. (2000) M.P. 62*

- **Section 96**-First Appeal-Suit by trust having Head Office at Bombay-Jurisdiction-Bombay Public Trust Act, 1950-Sections 79,80-Court having territorial jurisdiction where the property situate will have jurisdiction to try the lis- Court in Madhya Pradesh has jurisdiction by virtue of location of suit property subject to regulation framed presumed under the Bombay Act, 1950- Section 50 and 57 of the Bombay Act, 1950-Suit can be filed either by the Charity Commissioner or by a person having interest with consent of Charity Commissioner-Suit neither filed by Charity Commissioner nor with his consent-Suit not maintainable- Order of trial Court proper : *The United Church of Norther India Vs. Shantilal, I.L.R. (2000) M.P. 736*

- **Section 96**-First Appeal-Plaintiff Liquor vendors-Granted licence to sell liquor-For inadvertent mistake in the licence were required to close the shops half an hour

before scheduled time-Subsequent correction-Claim of damages and remission of proportionate licence fee-Excise Act, M.P., 1950-Section 32-Remission of licence fee-Permissible only when the Govt. itself withdraw licence during its currency-Trial Court's decree for proportionate remission of licence fee only on the basis of mistake in licence-Not proper-Damages-Grant of decree for-No evidence led by the state as to Periodical inspection showing that contractors did not close the shop half an hour before-Presumption has to be drawn in favour of plaintiff-Damages part of the decree upheld-Section 35, CPC-Cost of suit etc.- Cost of suit and appeal awarded to plaintiff with Counsel's fee as per schedule : *State Vs. Harishchand, I.L.R. (2000) M.P.1432*

- **Section 96**-First Appeal- Execution of will proved by the plaintiff by examining the two attesting witnesses-Examination of Advocate and typist neither necessary nor does it create any suspicion-Succession Act, Indian, 1925-Section 63- Valid execution of Will-Ingredients-Will has to be signed and executed by the testator in presence of two attesting witnesses with the intention to bequeath-Evidence Act, Indian, 1872-Section 68-Proof of valid execution- Atleast one attesting witness has to be examined for proving execution of such document-Plaintiff discharging the burden satisfactorily-Trial Court rightly relied on the Will and decreed the suit-Words and Phrases-'Attestation' means signing a document for the purpose of testifying to the signature of the executant : For the due execution of the Will (i) the testator shall sign and affix his mark to the will; *Ravi Shankar Vs. Rajendra Kumar Dubey, I.L.R. (2000) M.P. 163 .*

- **Section 96** – Who can appeal – Person aggrieved – Is a person prejudicially affected because of an order or decree – Need to be a party to the action : *Ramnarain Vs. Smt. Ram Kumari Devi, I.L.R. (1989) M.P. 485*

- **Section 96**, as amended, Civil Procedure (Amendment) Act (CIV of 1976), Section 97 (2), Clause (1) General Clauses Act (X of 1897), Section 6 and Interpretation of Statute - Right of appeal - Accrues on the date of institution of suit according to law then in force - Subsequent change in law - Presumption - Right of appeal according to unamended provision not affected - Clause (1) - Not limited to pending appeals only - Appeal under section 96 of the Code against judgment and decree arising out of suits below Rs. 3000/- instituted before Amendment Act came into force - Grounds of appeal cannot be restricted to questions of law only : *Lakhmichand Vs. Mitthu, I.L.R. (1984) M.P. 111,*

- **Section 96** – First Appeal against award of Lok Adalat – Suit by bank for recovery of loan – Case refund to Lok Adalat on both parties agreement –Award passed by Lok Adalat – Legal Services Authorities Act, 1987 – Sections 19,20,21,25 – On reference made by the Court as per Section 20 the Lok Adalat acquires jurisdiction to take cognizance – Section 25 – Provisions of the Act has overriding effect – Section 21(2) – compromise award passed by the Lok Adalat attached finality

to the lis –Appeal against such an award is barred alike u/s. 96(3) of the Code – Appeal not maintainable : *Punjab National Bank Vs. Shri Iaxmichand Rai, I.L.R. (2001) MP 209, (D.B.)*

– **Section 96** – Appeal – Suit for eviction – Evidence Act, Indian, 1872, Sections 109, 115 and 116 – Accommodation Control Act, M.P., 1961, Sections 12(1)(a), 12(1)(c) and 12(1)(f) – Arrears of rent, denial of landlord's title and bona fide need – Tenanted premises self acquired by original tenant – Plaintiff's suit based on alleged partition in the Joint Hindu Family – No evidence to show that father had thrown his property into common stock of the joint family – Share of property to other sons not allotted – Deed of partition held sham transaction to evict tenant – Plaintiff landlord's claim on then basis of derivative title – Relationship not accepted by tenant from the beginning – Estoppel not attracted because tenant not denying title of landlord who originally let him in – Tenant entitled to deny landlord tenant relationship with the plaintiff – Suit for eviction dismissed : *Sardar Harbans Vs. Shailesh Chand Gupta, I.L.R. (2001) MP 1887,*

– **Section 96** and Order 2 Rule 2 – First Appeal – Suit for damages dismissed on ground that relief sought for flowed from the same cause of action as in earlier suit – Order 2 Rule 2, C.P.C. – Appellant's omission to seek cost and return of boring machine in earlier suit on same cause of action – Amounts to relinquishment of such claim – Subsequent suit for such reliefs barred under Order 2 Rule 2, C.P.C. – Suit rightly dismissed by Trial Court : *Ayodhya Prasad Vs. Chhedilal, I.L.R. (2001) MP 371*

– **Section 96** and Order 6 Rule 2 – First Appeal – Suit for declaration that sale deed by defendant not binding –Family Partition- Suit house situated in plaintiff's Village – Greater probability that suit house was given in partition to plaintiff – Material fact must be pleaded–No pleading of will in written statement–Will not produced nor proved–Case developed at evidence stage cannot be accepted : *Awadh Bihari Asati & Ors. Vs. Shyam Bihari Asati & ors., I.L.R. (2004) M.P. 56*

–**Section 96** and Order VII Rules 10, 11(a) and 13–First Appeal–Suit for prohibitory injunction–Failure to disclose cause of action–Court cannot dismiss the suit under order VII Rule 11(a) CPC–Cause of action–Distinct from entitlement of plaintiff–Order VII Rule 11(a) C.P.C. not attracted if some evidence is required to ascertain cause of action–Plaintiff specifically pleaded that from the programme telecast by "DD-2 Metro" he has come to know that Defendant is launching mobile phones adopting a particular system of which plaintiff is claiming copy right under the Copy Right Act, 1957-Sufficient and material pleading constituting cause of action–Plaintiff entitled to file suit for prohibitory injunction–Onus is on the defendant to show that plaint does not disclose any cause of action–Order impugned set aside–Trial court directed to proceed with the suit : *Shyam Vs. GSM Association, I.L.R. (2004) M.P. 177*

–**Section 96** and Order 6 Rule 17, Order 18 Rule 1–First Appeal–Suit for recovery–Decree by trial Court saddling liability on appellant against whom no relief was sought and was also proceeded ex parte–Appeal against–Amendment sought to incorporate pleading at appellate stage–Limitation–No absolute rule where relief is barred by limitation amendment should not be allowed–Written statement not filed–Impugned judgment and decree set aside–Amendment allowed–Case remanded to trial Court with liberty to appellant to file written statement : *Mangalam Roshanpura Vs. State Bank Of India, I.L.R. (2005) M.P. 725*

–**Section 96**, Order 6 Rule 17 and Order 41 Rule 27–Additional evidence at first appellate stage–Documents already on record–Application mis-conceived–However the same has to be decided either way : *Smt. Gindia Bai Vs. Elfort Ltd. CO., I.L.R. (2005) M.P. 1146*

- **Section 96**, Order 6 Rule 17 and Order 41 Rule 27 and Constitution of India, Article 227–Additional evidence at first appellate stage–Documents already on record–Application mis-conceived–However the same has to be decided either way : *Smt. Gindia Bai Vs. Elfort Ltd. CO., I.L.R. (2005) M.P. 1146*

–**Section 96** and Order 7 Rule 11–Suit for declaration, partition, possession and perpetual injunction claiming inheritance as co-parcener of joint Hindu Family property–Being a Co-Owner plaintiff's father executed deed of relinquishment and had given his share to mother–Transaction took place prior to birth of plaintiff–Could not be challenged at subsequent stage–No error of jurisdiction in dismissing the suit under Order 7 Rule 11 C.P.C. : *Dilip Kumar Jain Vs. Smt. Shobharani @ Sabitri Bai Jain, I.L.R. (2005) M.P. 631 (D.B.)*

- **Section 96**, Order 7 Rule 11, Order 8 Rules 3, 5 & Order 23 Rule 1 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/S Agm Prakash Ramchandra Modi, I.L.R. (2004) M.P. 594*

- **Section 96**, Order 7 Rule 11, Order 8 Rules 3, 5 & Order 23 Rule 1 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it–Suit for recovery against supply of coal by a partnership firm–Burden of proof–When parties led evidence issue of burden to prove becomes secondary– Allegation of facts in plaint–Defendant must deal specifically each allegation of fact–In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted–Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest–Decree passed–Appears to be

a mutual decree—It would not be appropriate to interfere in appeal—Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R. (2004) M.P. 594*

- **Section 96**, Order 8 Rule 6-A, Limitation Act, 1963, Articles 64, 65—Appeal – Suit for declaration and injunction—Defendant's counter claim for possession—Adverse possession—Documentary and oral evidence not supporting plaintiff's plea of continuous possession—Revenue records showing defendant's possession—Pleadings nowhere indicate that plaintiff's possession was adverse from the inception or became so subsequently at any point of time—Plaintiff can not be said to be open, continuous and uninterrupted hostile possession—Judgment and decree of trial Court affirmed : *Khurshid Ali Vs. Kutubuddin, I.L.R. (2003) M.P. 825*

– **Section 96**, Order IX Rule 13 – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing ex-parte decree without affording defendant's to take part in future proceedings – Such a decree is assailable either under Order 9, Rule 13, CPC or in first appeal under Section 96, *C.P.C. : Sitabai Vs. Babulal, I.L.R. (2001) M.P. 1557*

-**Section 96** and Order 9 Rule 13-Confer two remedies-Neither operates in derogation of the other-Appeal under Section 96-Not barred because of application under Order 9 Rule 13-Setting aside ex parte decree-Permissible till decision of appeal -Sections 96 and 105-Appeal under Section 96-Interlocutory orders which are defective, erroneous and irregular can be challenged-Irregularity must be of law or procedure, and not of fact-Refusal of adjournment-Can be challenged in appeal-Appeal under Section 96(2) - Not convertible to a proceeding for setting aside ex parte decree-Nor to an appeal under Order 43, Rule 1(d) : *Ramlal Vs. Rewa Coalfields Ltd., Calcutta And Umaria, I.L.R. (1969) M.P. 58 (D.B.)*

– **Section 96** and Order 9 Rule 13 –When an application under Order 9 Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1– Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision : *Bhanu Kumar Jain Vs. Archana Kumar & anr., I.L.R. (2005) M.P. 1 (F.B.)*

–**Section 96** and Order 14 Rule 1–Suit for specific performance–Agreement for sale–Execution of–Defendant keeping good health yet not appeared in witness box to contradict–Trial Court rightly disbelieved defence story that it was not for sale but for profit sharing cultivation–Issue–Framing of–Plea not taken in written statement–Trial Court rightly not framed any issue on plaintiff readiness and willingness to perform their part of the contract–Conduct of parties and attending circumstances to be seen to infer readiness and willingness–Defendant sworn in affidavit to be submitted to the income tax Deptt.–Plaintiff's presence in Sub-Registrar's office with balance amount

and service of notice on defendant to execute sale deed—Proved—Readiness and willingness established—Judgment of trial Court perfectly legal—No interference : *Smt. Godavari Bai Vs. Pandit, I.L.R. (2004) M.P. 165 (D.B.)*

—**Section 96** and Order 14 Rule 2(2)—First Appeal—Suit for declaration—Plaintiff/appellant employee of University—Claim to the post of Deputy Registrar—A bar created by any law for the time being in force has to be kept in view—*Vishwa Vidyalaya Adhinyam, M. P., 1973—Section 59—Bar to any suit—Though cause of action shown to have arisen prior to coming into force of the Adhinyam Trial Court justified in dismissing the suit for want of jurisdiction—Plaintiff has a remedy of moving the Kuladhipati for making reference of dispute—No interference in impugned judgment called for : Ghanshyam Gautam Vs. Jiwaji Vishwavidhyalaya, Gwalior, I.L.R. (1992) M.P. 457*

—**Section 96** and Order XXI Rule 90—Suit for declaration and injunction—Suit Property attached and ultimately sold in auction to realize Sales Tax—Assessment order found to be without jurisdiction hence set aside—Auction sale cannot be allowed to stand—Partition—Joint Hindu Family property—Strangers cannot question—Memorandum acknowledging earlier partition—Not required to be registered—Defendant took part in auction sale without enquiring title of assessee—Cannot be said to be a bonafide purchaser—Auction sale set aside : *Moolchand Agrawal Vs. Babulal Agrawal, I.L.R. (2005) M.P. 623*

- **Section 96**, Order 22 Rule 4, 9 and Order 41 Rule 4 – First Appeal – Death of codefendant/respondent bound by the joint decree of declaration, possession and mense profit – Failure to bring on record legal representatives of deceased defendant despite knowledge – Delay not condoned – Effect – Appeal abates as a whole – Power to separate decree – Discretionary – Can be exercised at the time of drawing final decree and where presence of a party is not required – Decree indivisible and inseparable – Cannot be reversed only to the extent of appellant’s liability by separation – Whole appeal abates : *Ram Kishan Vs. Harbagas Ahirwar (Dead) Through His L.Rs. Smt. Vipta Bai, I.L.R. (2001) M.P. 1695*

- **Section 96** and Order 22 rule 9 - Order regarding abatement of first appeal - Cannot be treated as a decree - Letters Patent Appeal - Ad-valorem Court - fee - Not payable therein : *Yogeshwar Vs. Laxminarayan, I.L.R. (1987) M.P. 110 (D.B.)*

—**Section 96**, Order 33 Rule 3 and Order 44 Rules 1,4 –First Appeal—Forma pauperis—Appellant pardahnashin muslim lady aged about 75 years—Not possible for her to appear in person—Application to file suit or appeal in forma pauperis can be presented by agent—Ought to have been registered as MCC by the Registry—Appeal cannot be thrown merely on technical ground— Enquiry contemplated under Order 33 Rule 3 CPC directed : *Khatun BI Vs. Habib Khan, (2005) M.P. 64*

– **Section 96**, Order 41 Rule 1 and Accommodation Control Act, M.P., 1961, Sections 12(1) (c), 12(1) (f), and 12 (1) (h), Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act 1977, Section 7(3)–First appeal–Suit for eviction and mesne profits–Bonafide requirement of landlord to open clinic by her son–Resisted by tenant–Requirement of law is that land lord must be owner of reasonably suitable alternative accommodation–Plot owned by plaintiff's husband–Cannot be an alternative suitable accommodation as envisaged under Section 12 (1) (f) of the Act–It is choice of plaintiff and tenant is no body to direct plaintiff to start business as a particular place–Merely because he joined service in an hospital would not overshadow genuiness–Mesne profit–Tenant continued in occupation even after expiry of extended period lease–Oil Company can avail only one right of renewal–Right of renewal availed–Possession became unauthorized from the date on which renewed period expired–Trial Court rightly granted decree of eviction and mesne profit : *M/S. Hindustan Petroleum Corporation Ltd. Vs. Smt. Kamal Vasini Agrawal, I.L.R. (2005) M.P. 862*

–**Section 96**, Order 41 Rule 22–Energy line left un-insulated as a result stay wire got electrified–Death of 18 years old son due to electrocution–Suit for compensation–Appeal for enhancement and cross-objection by Electricity Board–Cantakerus attitude of the Board deprecated cross-objection dismissed : *Smt. Gindiya Bai Vs. Chairman, M.P.E.B., I.L.R. (1992) M.P. 278*,

–**Section 96**, Order 41 Rule 22–First Appeal and cross-objection–Energy line left un-insulated as a result stay wire got electrified–Death of 18 years old son due to electrocution–Suit for compensation–Appeal for enhancement and cross-objection by Electricity Board–Cantakerus attitude of the Board deprecated cross-objection dismissed–Fatal Accidents Act, Indian, 1855–Section 1A–Compensation is not limited to the cash payment which the deceased may be expected to make for support of the claimants–Multiplier–Out moded rule–Common Law of equity, Justice and good conscience should be applied in awarding compensation–Award enhanced suit decreed in toto : *Smt. Gindiya Bai Vs. Chairman, M.P.E.B., I.L.R. (1992) M.P. 278*

- **Section 96**, Order 41 Rule 22, Letter Patent, Clause X, XIII, Constitution of India Articles 227, 226–Intra–Court Appeal from writ Court order–Different from an LPA from First Appeal under Section 96 CPC–Cross-objection or cross-appeal–Not maintainable–Respondent cannot await service of notice to file cross appeal in LPA–Respondent may prefer LPA subject to Rule XIII for condonation of delay–May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order–Reference answered accordingly : *Jabalpur Development Authority Vs. Y.S. Sachan & ors., I.L.R. (2004) M.P. 231 (F.B.)*

– **Section 96** – First Appeal - Order 41 Rule 22 – Cross Objection – Challenge made to adverse finding and also the decree of refund of earnest money – Contract Act, 1872 – Schedule I, Article I-A – Cross-objection assailing decree of refund of calculated sum is infact a cross-appeal – Not Maintainable without payment of ad-valorem Court Fees – Order 6 Rule 1 and Order 8 Rule 2,3,4 and 5 – Written statement adopting written statement of other defendant without verification – Not a written statement in the eye of Law – Hindu Law – Joint Hindu Family Property – Alienation by father as Karta – Legal necessity – Vendee entered into agreement after through enquiry about legal necessity – Finding given by Trial Court as to legal interfered not intended with – Specific Relief Act, 1963 – Section 9,10 and 20 – Specific performance of contract – Suit for – Decree cannot be refund on ground that the property is in possession or that price of the property has increased during pendency of suit – Section 2(2) of C.P.C. – Decree – Obtained in a collusive suit to avoid execution of sale agreement – Vendee not a party – Decree not binding on vendee – Decree for specific performance cannot be refund : *Babulal Agrawal Vs. Smt. Jyoti Shrivatsava, I.L.R. (2001) M.P. 192 (D.B.)*

– **Section 96**, Order 41 Rule 23-A – First Appeal – Acquisition of agriculture land – Land Acquisition Act, 1894, Sections 4, 6, 9, 11, 23, 28, 351-A – Compensation – Reference for determination – Award based on sale deeds of land in the vicinity – Appeal for enhancement - Sale deeds can not be read in evidence in absence of examination of vendor or vendee to substantiate the sale-deed and to prove consideration thereunder – Award set aside – Case remitted for reconsideration – Court Fees Act, 1870, Section 13 – Refund of Court Fees on remand – Case remanded under Order 41 Rule 23–A in appeal arising from cases already disposed of – Direction for refund of Court fees cannot be made : *Ghanshyam Vs. State, I.L.R. (2001) MP 1707 (D.B.)*

– **Section 96**, Order 41 Rule 27 – First Appeal – Suit for eviction or ground of bona fide need and arrears of rent – Production of additional document – Defendant bank did no exercise due diligence to produce the document in the Trial Court – Prayer for taking additional document on record at appellate stage – Deserves rejection – Accommodation Control Act, M.P., 1961, Section 12(1)(a) and (f) – Bona fide need – Plaintiff Partner in another firm would not by itself be sufficient to negative the need of the suit accommodation for his own business – Non availability of reasonably suitable alternative accommodation – Plaintiff entitled to decree for eviction – Letters by landlord for reasonable rent – No bearing on the issue relating to bona fide need : *State Bank of Indore Vs. Satyanarayan Bajaj, I.L.R. (2001) M.P. 1903*

- **Section 96**, 2 (2) and Section, Order 6 rule 5, 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 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 : *M. P. State Co Operative Development Bank Limited, Bhopal V J. L. Chouksey, I.L.R. (1980) M.P. 1176*

- **Section 96**, 2 (g) – First Appeal–Suit for declaration and permanent injunction–An "agent" is a person employed to do any act for another or to represent another in dealing with third persons–"Principal" is, for whom such act is done–Earlier suit property held to be "common property" of all flat owners and "agent" of present plaintiff restrained from raising construction thereon–Construction already raised also directed to be demolished–Decree against agent is binding on the plaintiffs who are the principals and acting behind curtain–No force in appeal : *Ramlal Khurana & anr. Vs. G.P. Thakur & anr., I.L.R. (2004) M.P. 173*

– **Sections 96** and 9 and Land Acquisition Act (I of 1894), Sections 4, 6 – Acquisition of land – Suit for quashing acquisition proceedings – Sections 4, 6 of the Act – Collector alone is competent to deal with the matters under the Land Acquisition Act which is a complete Code Section 9 C.P.C. and Sections 4 and 6 Land Acquisition Act– Notification issued and compensation also paid – Subsequent suit for setting aside acquisition proceedings – Barred under Section 9 of the CPC – Civil suit not maintainable- Trial Court rightly dismissed the suit : *Pashu Chikitsa Visbhagiya Sakhari Nirman Samiti Maryadit, Bhopal Vs. State, I.L.R. (2001) MP 819 (D.B.)*

– **Sections 96, 34** and Railways Act, Indian (IX of 1890), Sections 73, 78(d)–Suit for damages due to delayed transit of goods on the ground that price had fallen at the destination–Suit decreed–First appeal by Railways–Such an action is not barred u/s 78 (d) of the Act–Interest–Trial Court not awarding interest–No cross objection filed–Plaintiff not entitled to interest as claimed in suit–Reappreciation of evidence–Damages suffered by plaintiff re-assessed at Rs. 30/-Perquintal–Damages decreed by Trial Court reduced accordingly with interest at the rate of 6% per annum as provided under Section 34, CPC.: *Union Of India, Through General Managers Vs. M/S. Jaikumar Rajkumar & Company, Jabalpur, I.L.R. (1992) M.P. 833*

– **Sections 96, 34** and Evidence Act Indian, 1872 Section 103–First Appeal–Suit for recovery–Money advanced to defendant executing document–Execution proved–No evidence that plaintiff in regular course of business advances loan–Contention that

plaintiff is a money-lender and cannot file a suit without obtaining valid money-lender's certificate cannot be accepted—Burden of proving that plaintiff is a money-lender was on the defendant—Interest on the principal sum—No law that such interest could be awarded as compensation—Transaction between the parties not commercial one—Rate of interest pendent lite cannot exceed 8%—Decree of trial Court modified—Interest on principal amount reduced to 6% p.a. from the date of suit till realization : *Banshilal Kharakwar Vs. Narbada Prasad Chourasia, I.L.R. (2004) M.P. 763*

—**Sections 96, 96** (2), Order 9 Rules 7, 13 and Order 43 Rule 1—Suit for partition—Counter claim by defendant—*Ex-parte* decree against defendant—Application for setting aside—Extent of limitations—When an application under Order 9, Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1—Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision—Right of defendant to assail judgment and decree on merit did not fall for consideration in any of the cases—Such a right shall not be curtailed unless statute expressly or by necessary implication say so—Case remitted back to High Court for consideration of merit : *Bhanu Kumar Jain Vs. Archana Kumar & anr., I.L.R. (2005) M.P. 1 (F.B.)*

- **Section 96 and 100** - Filing application under Order 9 rule 13 - No bar to appeal under section 96 or 100 : *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153, (F.B.)*

– **Section 96, 100**, Order IX Rules 6, 7 and 13 – Suit for possession on basis of alleged sale-deed – Plaintiff's evidence complete – Non-appearance of defendants on date of compromise or evidence – Counsel pleading no instruction – Court proceedings ex-parte-Ex parte proceedings – Meaning of – Is for on hearing and not for all future dates – Does not preclude defendants from taking part in proceedings on future dates – Not a case of striking of defence – Rejection of application without affording opportunity to prove sufficiency of reasons for non-appearance – Not proper – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing ex parte decree without affording defendant's to take part in future proceedings – Such a decree is assailable either under Order 9 Rule 13, C.P.C. or in first appeal under Section 96, C.P.C. – Second Appeal – Both Courts below not considering merits and pleadings or parties – Lower appellate Courts also confirming trial Court's Decree precluding defendants from taking part in proceedings on future dates – Not sustainable in law-Impugned judgment and decree set aside – Matter remanded to lower appellate Court for decision afresh on basis of observations made on merits and settled proposition of law : *Sitabai Vs. Babulal, I.L.R. (2001) M.P. 1557*

—**Sections 96, 100**, Order 41 Rules 22, 33 and Accommodation Control Act, 1961, Sections 12(1)(a), 12(1)(e)—Suit for eviction—Eviction decree passed—For

supporting the decree on other ground it is not necessary for plaintiff to file cross-objection—Appellate Court has power to substitute the ground of eviction—Eviction decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court—No illegality—Question answered against appellant : *Kamal Kumar Vs. Smt. Imartibai and others, I.L.R. (2003) M.P. 215*

– **Section 96**, Section 100, Section 104, Sub-Section (3), sub-section (2) – Order 43 Rule 1-A and Order 23 Rule 3-A – Maintainability of second appeal – Compromise decree passed by the trial Court between the original parties to the suit behind the back of the Vendees to this suit property – Provisions of Section 96 (3) of Civil Procedure Code bars a regular appeal – Right of appeal extends of under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtain. Appeal shall be construed to have been filed under Order 43 Rule 1-A, C.P.C. – However, Second Appeal does not lie under Section 104, Sub-section (2), hence not maintainable – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree – The words ‘Compromise’ and ‘Parties’ – Means & includes : *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R. (1991) M.P. 388*

- **Sections 96**, 104 and 115 - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad I.L.R. (1984) M.P. 365 (F.B.)*

- **Section 96**, 104 and 115, Order 22 rules 3 and 5, Order 43 rule 1 - A - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record - Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad, I.L.R. (1984) M.P. 364(F.B.)*

-**Section 96** and 105-Refusal of adjournment-Can be challenged in appeal : *Ramlal Vs. Rewa Coalfields Ltd., Calcutta And Umaria, I.L.R. (1969) M.P. 58 (D.B.)*

-**Section 96** and 105-Appeal under Section 96-Interlocutory orders which are defective, erroneous and irregular can be challenged-Irregularity must to be of law or procedure, and not of fact : *Ramlal Vs. Rewa Coalfields Ltd., Calcutta And Umaria, I.L.R. (1969) M.P. 58 (D.B.)*

- **Section 96**, 115 and Order 9 Rule 13-Revision against order setting aside *ex parte* decree passed in counter-claim-Appeal by third party dismissed-Order 9 Rule 13-Explanation append thereto-Would operate a bar when an appeal has been dismissed other than by way of withdrawal-Appeal under Section 96 not entertained by appellate Court is not filed by any of the parties to the decree. Such dismissal of the appeal would not create a bar to an application for setting aside *ex parte* decree under Order 9 Rule 13, CPC-Order V Rule 2-Service of summons- Notice of counter-claim not properly served on plaintiff for non-supply of copies of counter-claim-Order of Court below in conformity with settled position of law- No interference called for : *Laliya Vs. Bhagwan*, I.L.R. (2000) M.P.627

-**Section 96(2)**-Appeal under-Not convertible to a proceeding for setting aside *ex parte* decree-Nor to an appeal under Order 43, Rule 1(d) : *Ramlal Vs. Rewa Coalfields Ltd., Calcutta And Umaria*, I.L.R. (1969) M.P. 58 (D.B.)

- **Section 96(2)**, Order 9 rule 13-Appeal-No bar even if filed after exhausting remedy under Order 9 Rule 13, C.P.C.- Appeal maintainable-Even proceedings of Appeal under Section 96 and application under Order 9 Rule 13 of the Code can be prosecuted simultaneously-Reference answered accordingly : *Smt. Archana Kumar and another Vs. Purendu Prakash Mukherjee and another*, I.L.R (2000)M.P. 309 (F.B.)

-**Sections 96(2)**, 96, Order 9 Rules 7, 13 and Order 43 Rule 1—Suit for partition—Counter claim by defendant—*Ex-parte* decree against defendant—Application for setting aside—Extent of limitations—When an application under Order 9, Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1—Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision—Right of defendant to assail judgment and decree on merit did not fall for consideration in any of the cases—Such a right shall not be curtailed unless statute expressly or by necessary implication say so—Case remitted back to High Court for consideration of merit : *Bhanu Kumar Jain Vs. Archana Kumar & anr.*, I.L.R. (2005) M.P. 1 (F.B.)

- **Section 96 (3)** - The words "with the consent of parties" used in - Meaning of : *Thakur Prasad Vs. Bhagwandas*, I.L.R. (1985) M.P. 310. (D.B.)

- **Section 96(3)** – Appeal such an award is barred alike – Appeal not maintainable : *Punjab National Bank Vs. Shri Laxmichand Rai*, I.L.R. (2001) M.P. 209 (D.B.)

-**Section 96(3)** and Order 23 Rule 3—Compromise decree alleged to have been obtained by impersonation and fraud—Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan*, I.L.R. (1992) M.P. 756

- **Section 96 (3)**, Order 43 rule 1-A and Order 23 rule 3 and 3 A - Appeal in cases where compromise decree is passed - Tenability of - Effect of bar as regards appeal in

view of Sections 96 (3) - The words "with the consent of parties" used in Section 96 (3) - Meaning of - Interpretation of Statutes - Construction of two apparent conflicting provisions - Manner of resolving such conflict - Section 115 - Revision against compromise decree - Tenability of - Contract Act, Indian, 1872 - Section 23 - Compromise agreement affecting properties of other co-sharers - Unlawful : *Thakur Prasad, Vs. Bhagwandas, I.L.R. (1985) M.P. 310. (D.B.)*

–**Sections 96(3)**, 151, Order 23 Rule 3 and Order 43 Rule 1(u)–Appeal against Order of remand–Inherent power of the trial Court does not extend to reviewing its earlier order–Compromise decree alleged to have been obtained by impersonation and fraud–Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan, I.L.R. (1992) M.P. 756*

– **धारा 97**–भू अर्जन रेफरेन्स प्रकरण में पारित आदेश के विरुद्ध अपील–भू अर्जन अधिनियम 1894, धारायें 4,6, व 18 – अधिनियम की धारा 4 एवं 6 के अंतर्गत अधिसूचना –विवादित भूमि पर अपीलार्थिनी के स्वत्व पर विवाद के कारण मुआवजा नहीं – धारा 18 के अन्तर्गत न्यायालय को रेफरेन्स –रेफरेन्स–न्यायालय द्वारा अपीलार्थिनी के स्वत्व के संबंध में वाद प्रश्न निर्मित नहीं – भू अर्जन अधिनियम के अन्तर्गत रेफरेन्स प्रकरण में न्यायालय को प्रार्थी के स्वत्व के संबंध में तय करने का अधिकार है– रेफरेन्स न्यायालय का आदेश निरस्त–स्वत्व संबंधी वाद प्रश्न निर्मित करते हुए प्रकरण अधिनस्थ न्यायालय को संप्रेषित : *Pushp mala Raje Pawar Vs. State, I.L.R. (2001) M.P. 1368, (D.B.)*

- **Section 97** (2) (q) and (3) - Pending suits are saved - Objection relating to wrongful dispossession in execution of a decree pending investigation the day amended provisions came into force - Has to be decided according to amended provision : *Modi Bai Vs. Nagraj, I.L.R. (1982) M.P. 260.*

-**Section 99**-Error, defect or irregularity in proceedings-No ground for reversing or varying a decree in appeal and much less in revision : *Union Of India Vs. Punamchand, I.L.R. (1974) M.P. 1010*

- **Section 99**, Civil Procedure (M.P. Amendment) Act(XXIX of 1984) Order I Rule 3-B - Suit for declaration of title over agriculture land- No need to join State Government as party on the date of institution of Suit of Appeal- Subsequent change in law Defect can be cured later on at the stage when the defect is pointed out or detected- Non-compliance does not lead to jurisdictional incompetence in the Court hearing Suit or Appeal : *Sona Vs. Rudro, I.L.R. (1998) M.P. 599*

- **Section 99** and 21 and Suits Valuation Act (VII of 1887), Section 11 - Policy underlying sections 21 and 99 analogous to that contained in section 11 of Suits

Valuation Act, 1887 : *Sheo Bhagwan Vs. Mst. Durgadevi*, I.L.R. (1979) M.P. 349, (D.B.)

- **Section 100** - Recovery of Debt - Limitation - Question of Limitation is finding of fact which cannot be set aside by the High Court in exercise of power under section 100 of CPC. *Smt. Saraswatidevi Vs. Krishnaram Baldeo Bank LTD. & anr.*, I.L.R. (1997) M.P. 153

- **Section 100** - Lower Appellate Court's finding based on appreciation of oral evidence to the effect that adoption not proved - Binding in Second Appeal : *Tilokchand Vs. Bhagirath* I.L.R. (1981) M.P. 694

- **Section 100** and Transfer of Property Act (IV of 1882), Sections 111, 113 and 116 – Suit for eviction by Registered Public Trust – Decree refused – Second Appeal – Section 111 and 113, Illustration (a) of T.P. Act – Notice to quit served on the tenant but rent accepted even for the period after expiration of notice period – Intention of landlord explicit to treat the lease as subsisting – Section 116 T.P. Act – Acceptance of rent from tenant at sufferance amounts to existence of new tenancy and waiver of notice – Decree of eviction rightly refused: *Murli Shri Deo Radha Madhawalal Jee Geda Trust, Sagar Vs. Pradeep Kumar Nayak*, I.L.R. (2001) MP 533,

–**Section 100**–Finding based on irrelevant consideration–Deserves to be interfered with in Second Appeal : *Ramrao Vs. Dr. Prem Kumar Sinha*; I.L.R. (1992) M.P. 920

- **Section 100** - Sale - Plea of fraud - Finding that there was no fraud - Finding of fact - Not open to interference in Second Appeal : *Laxmi Prasad V Madan Mohan* I.L.R. (1981) M.P. 58

- **Section 100** - Mis - interpretation and mis-construction of document of title - Can be a ground for interference in Second Appeal : *Smt. Saguna Bai Vs. Dhanprasad* I.L.R. (1987) M.P. 509

–**Section 100**–Limitation Act Indian, 1908–Section 120 and Limitation Act Indian, 1963–Article 58–Second appeal–Suit for declaration–What is material for Computing limitation in the date when right to sue first accrues : *Smt. Kaushalya (Gidvani) Bhavnani v. Mithan Singh*, I.L.R. (2005) M.P. 137

-**Section 100**-Finding of Trial Court that sale was fraudulent and no title passed-Essentially a finding of fact cannot be re-opened in Second Appeal: *Smt. Shivkali Bai Vs.. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

- **Section 100** - Appeal admitted in motion and substantial question of law framed - Appeal has to be decided on merits : *Smt. Saguna Bai Vs. Dhanprasad I.L.R. (1987) M.P. 509*

- **Section 100** - Burden of proof regarding need - Question whether burden is discharged - Is a Question of fact : *Firm Panjumul Daulatram, Satna Vs. Sakhi Gopal, I.L.R. (1980) M.P. 672,*

- **Section 100** - Finding based on appreciation of evidence - Finding is binding in second appeal : *Firm Panjumul Daulatram, Satna Vs. Sakhi Gopal, I.L.R. (1980) M.P. 672,*

-**Section 100**-Finding that debt is a bad debt-Is a finding of fact : *Smt. Bimla Devi Sud Vs. The Controller Of Estate Duty, M.P., Nagpur And Bhandara, Nagpur, I.L.R. (1974) M.P. 868, (D.B.)*

- **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 : *Meerkhan Vs. Kutub Ali, ILR (1980) M.P. 977, (D.B.)*

- **Section 100** - Quality of purpose is question of law - Finding open to challenge in Second Appeal : *Moolchand Vs. Sheodutt Paliwal I.L.R. (1978) M.P. 1051*

- **Section 100** - Question whether burden of proof is discharged - Is also a question of fact : *Daulal Vs. M/s Indian Mill Stores, Ganjpara, Raipur, I.L.R. (1978) M.P. 373*

-**Section 100**-Finding about a person being a tenant-Is a finding of fact : *M/S Satyabhama Devi Choubey Vs. Shri Ram Kishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Section 100**-Finding of Benami-Is a finding of fact : *M/S Satyabhama Devi Choubey Vs. Shri Ram Kishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Section 100**-Finding of fact when not binding : *Gyasiram Vs. Gulkandi Bai, I.L.R. (1975) M.P. 133 .*

-**Section 100**-Grant of sanction-A mixed question of fact and law : *Sukhsen Vs. Shravan Kumar, I.L.R. (1975) M.P. 328*

-Section 100-Plea regarding non joinder of necessary party-Question is a mixed question of fact and law : *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

-Section 100 -Question of reasonable and probable cause-A mixed question of law and fact : *Shrimant Seth Rishabh Kumar Vs. Pandit K.C., I.L.R. (1960) M.P. 1008 (D.B.)*

-Section 100- Question whether fire was due to negligence-A question of fact-Question whether evidence sufficient to justify inference : *Sunderlal Vs. Firm Dayalal Meghji & Co., Raipur, I.L.R. (1962) M.P. 681 (D.B.)*

-Sections 100-Finding that premises bona fide required for business-Is a finding of fact : *Trilok Singh Vs. Ramprasad, I.L.R. (1971) M.P. 702*

-Section 100-Matters relating to assessment of damages-The questions are of fact : *Bhairodin Vs. Phulchand I.L.R. (1967) M.P. 590*

-Section 100-Mistake in the principle of assessment materially affecting compensation-Interference in second appeal necessary : *Bhairodin Vs. Phulchand I.L.R. (1967) M.P. 590*

-Section 100-Court ignoring important evidence-Finding not binding on High Court : *Abdul Raheem Khan Vs. Mamdu, I.L.R. (1973) M.P., 874 .*

-Section 100-Question of being a bona fide purchaser for value and without notice-Is a question of fact: *Smt. Attarbai Vs. Seth Mishrilalsa I.L.R. (1967) M.P. 773*

-Section 100-Whether the landlord genuinely requires the accommodation for continuing or starting his own business or that of any other person of his family-Is a question of fact: *Harnarain Vs. Kanhaiyalal I.L.R. (1967) M.P. 83*

- Section 100 - The question whether burden of proof has been discharged - Is a question of fact : *Narayan Vs. M/s Indian Mill Stores, Raipur, I.L.R. (1978) M.P. 280*

- Section 100 - The question whether tenant has unlawfully sub-let, assigned or otherwise parted with possession - Is a question of fact : *Narayan Vs. M/s Indian Mill Stores, Raipur I.L.R. (1978) M.P. 280*

-Section 100-Second Appeal-Suit for possession simplicitor-Suit property ancestral-Plaintiff dispossessed during pendency of suit-Plaint amended incorporating relief of possession-Plaintiff not required to seek cancellation of sale-deed-Suit

simplicitor for possession maintainable : *Smt. Bhagwanta Bai Vs. Abdul Gaffar, I.L.R. (2005) M.P. 493*

– **Section 100** and Specific Relief Act (XLVII of 1963), Section 20–Second Appeal–Suit for specific performance–Joint property–May be decreed to the extent of vendor's share–Plaintiff in possession as tenant–Suit decreed–Appeal allowed : *Govind Prasad Vs. Gajanand, I.L.R. (2005) M.P. 884*

–**Section 100**, Plea of sub-tenancy not taken in written statement–In absence of plea no amount of evidence can be looked into : *Bondar Singh & others Vs. Nihal Singh & Others, I.L.R. (2003) M.P. (SC) 355 (D.B.)*

–**Section 100**–Document though not properly stamped can be looked into for collateral purposes as to the nature of possession : *Bondar Singh & ors. Vs. Nihal Singh & ors., I.L.R. 2003) M.P. (SC) 355 (D.B.)*

–**Section 100**–Suit for declaration–Claim of title by adverse possession – Sale deed executed in favour of plaintiff – Document though not properly stamped can be looked into for collateral purposes as to the nature of possession – Initial Possession of plaintiffs not illegal or unauthorised – Other reliable evidence available on record showing continuous possession of the plaintiff – Notice requiring plaintiffs to hand over possession – An admission on part of defendants that plaintiffs were in possession – Plea of sub-tenancy not taken in written statement–In absence of plea no amount of evidence can be looked into – Adverse possession of plaintiffs established – Finding of lower appellate Court that defendants were in possession – Contrary to evidence on record – Perverse finding – High Court justified in setting aside the same : *Bondar Singh & ors. Vs. Nihal Singh & ors., I.L.R. (2003) M.P. (SC) 355 (D.B.)*

–**Section 100**–Second Appeal–Suit for eviction–Application for relieving against forfeiture of lease on non-payment of Rent–Transfer of Property Act, 1882–Sections 111(g) and 114–Provisions apply only to a case when suit is based on forfeiture : *Bhujjilal Vs. Ayoob Ali Beg; I.L.R. (1992) M.P. 911*

- **Section 100**-Second Appeal-Ex parte decree of Court of small Causes transferred to regular Civil Court by the District Judge under Section 24(4), C.P.C.- Sale of immovable property in execution by transferee executing Court-Illegal : *Pyarelal Vs. Ratan Chand, I.L.R. (2000) M.P.1024, .*

–**Section 100**–Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him : *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

–**Section 100**–Plaintiff claiming title through un-registered sale-deed–Revenue entries showing possession of plaintiff after execution of deed–Receipt of payment also duly proved by plaintiff–Lower appellate Court rightly decreed the suit : *Smt. Kali Vs. Ramadhar, I.L.R. (2004) M.P. 495*

–**Section 100** and Specific Relief Act, 1963, Section 34–Second appeal–Suit for declaration and injunction–Plaintiff owner in possession except over two rooms constructed by defendants–Suit could not have been dismissed for want of prayer for possession–Opportunity should have been given to amend the plaint–Suit decreed : *Ram Pramod Kachhi Vs. Gayadeen, I.L.R. (2004) M.P. 1085*

- **Section 100** - Finding of fact - No interference possible on ground that one set of witnesses should have been believed instead of other set of witnesses : *Rajendra Prasad Vs. Jagdish Prasad, I.L.R. (1977) M.P. 1001,*

–**Section 100**–Second Appeal–Suit for eviction by lessor after sale of suit house–Transfer of Property Act 1882, Section 109 and Accommodation Control Act, M. P. 1961, Section 12(1)–Suit for eviction by landlady/lessor–Prior to suit, she sold the house in question–Transfer by sale itself would not debar the landlady to terminate tenancy and bring a suit for eviction–It is exclusive right of lessor to evict lessee. *Hafiz Mohammad Vs. Masoodbi, I.L.R. (1992) M.P. 572*

–**Section 100**–Second Appeal–Accommodation Control Act, M.P., 1961–Section 12(1)(a)–Suit for recovery of plaintiffs share of rent in property held in joint ownership–Maintainable–Does not amount to division of tenancy–Earlier suit for plaintiffs ¼ share of rent decreed–Plaintiff cannot be forced to file repeated suit for one and the same reliefs. *Nawal Chand Vs. Dali Chand; I.L.R. (1992) M.P. 904.*

–**Section 100** –Second Appeal–Accommodation Control Act, 1961, Sections 3(2), 14(2)–Suit for eviction by lessee of trust–Notification exempting suit property from operation of the Accommodation Control Act, Section 3(2) and notification thereunder would alone apply to the property in suit and not affected by any contract between the lessee and sub lessee. *A.M. Qureshi Vs. M/S. Shakti Pictures Circuit Limited, Amrawati; I.L.R (2002) M.P. 328,*

–**Section 100**–Second Appeal–Suit for eviction–Accommodation Control Act, M.P., 1961–Sections 12(1) (a), 13(1) & 13(2)–Arrears of rent–Quit cum demand notice served–Not replied by tenant–Failure of appellant/tenant to prove payment–Rate of rent payable not in dispute–Non compliance of Section 13(1)–Decree under Section 12(1)(a)–Not assailable : *Vishwanath Vs. Krishnabal, I.L.R (2003) M.P. 641*

–**Section 100**, Easement Act, Indian, 1882, Sections 15,33–Second appeal–Suit for right of easement by prescription–Predecessor of plaintiff constructed house encroaching upon four feet wide conservancy lane–Purchase by appellants in 1969 and suit in 1984–Plaintiff failed to prove right of easement perfected by prescription for

continuous period of 20 years—Unless what is done amounts to nuisance there is no infringement of right—There must be invasion of legal right—Passage of sufficient light and air through the existing window and ventilators on each floor—Suit rightly dismissed by Lower Appellate Court : *Maman Chandra Agrawal Vs. Smt. Ram Dulari*, *I.L.R (2004) M.P. 964*

—**Section 100**—Second Appeal—Suit for eviction—Suit house rendered unsafe for human habitation—Accommodation Control Act, M.P., 1961—Sections 12 (1)(g), 12(1) (h) and 12(7)—Condition specified in sub-Section (7) of Section 12 are attracted in case of a decree under Section 12(1)(h) and not under Section 12(1)(g)—Both Courts below recorded categorical finding that the house is unsafe for human habitation—Courts ought to have granted decree of eviction subject to condition that tenant if willing shall be given to re-occupy the house after repair—Error of law committed by courts below—Interference in second appeal justifiably warranted. *Subhash Kumar Vs. Kanhaiyalal*; *I.L.R (1992) M.P. 914*

—**Section 100**—Second Appeal—New question—Neither pleaded before nor dealt with by Courts below—Cannot be allowed to be raised—Benami Transaction (Prohibition) Act, 1988, Sections 4(1), 4(2) and 4(3)—Suit as also the written statement filed in the year 1975—Act came in force on 5.9.1988—Bar of any suit, claim or action and the defence that the property was purchased benami—Did not apply—Land purchased in the name of Karta of the family before partition—Plea that land was purchased for the whole family—Not barred : *Ramgopal Kushwaha Vs. Rampratap*, *I.L.R (2003) M.P. 437*

—**Section 100**—Second Appeal—Suit for possession—Findings arrived at by Courts by discarding material evidence and misreading public document—Second appellate Court is entitled to interfere with the finding of fact—Limitation Act Indian, Articles 64,65—Adverse possession—Defendant and his predecessor shown to be in continuous possession from 1960 onward—Suit having been filed in 1976 defendants will be deemed to have perfected the title by adverse possession—Suit dismissed—Judgment and decree of Courts below set aside. *Alabux Vs. Budhsen*; *I.L.R (1992) M.P. 840*

- **Section 100** —Second Appeal—Land Revenue Code, M.P., 1959, Section 178 and Specific Relief Act, Section 34—Suit for declaration of share in agricultural land—Previously, in revenue proceedings under Section 178 parties directed to get title adjudicated by Civil Court—Suit property is agricultural land and thus partition would not be effected by Civil Court—Suit for declaration simplicitor maintainable—Judgement and decree of lower appellate Court upheld : *Shyam Sunder Vs. Bhailal*, *I.L.R (2004) M.P. 589*

–**Section 100**–Second Appeal–Suit for eviction–Accommodation Control Act, M.P., 1961, Section 12(1)(b)–Sub-letting–Defence that a partnership firm is tenant and the plaintiff received payment from the firm–Not established by defendant by filing account books or other documents–Defendant has parted with the possession can safely be presume–Plaintiff successfully proved sub-letting by defendant–Entitle for decree of eviction. *Kirti Narayan Vs. Mohanlal Rathi; I.L.R (1992) M.P. 850*

–**Section 100**–Second Appeal–Erection of High Tension Electricity tower by Electricity Board resulting in non-use of land–Holder entitled to compensation–Before erecting the tower it was necessary for the Electricity Board to approach the State Govt. for acquisition of land and pay compensation to the holder. *M.P.E.B. Jabalpur Vs. Rameshchandra; I.L.R (2002) M.P. 95*

–**Section 100**–Second Appeal–Suit for eviction–Accommodation Control Act, M. P., 1961, Section 12(1)(e)–Bona fide need–Alternate accommodation available on upper floor of the suit house–Plaintiff's explanation for not using the same for his requirement and subsequently letting it out–Case of bona fide need not made out–Plaintiff not entitled to the decree of eviction–Suit dismissed. *Sarju Prasad Patel Vs. Nanakchand, I.L.R (2002) M.P. 92*

–**Section 100**–Second Appeal–Suit for ejection from open plot–Accommodation Control Act, M. P., 1961, Section 12(1)(n)–Requirement of this Section is to establish that plaintiff would construct house on the open plot–Eviction of tenant sought from an open plot for constructing building for business of major sons–Plaintiff proved her intention by showing sufficiency of funds and by filing map sanctioned by *Municipal Council*–Suit decreed. *Leelawante Vs. Shrichand, I.L.R (1992) M.P. 653*

- **Section 100**–Second appeal–Indian Registration Act, 1908, Section 49 and Rewa Registration Act, 1917 –Suit for declaration and injunction–Plaintiff claiming title through un-registered sale-deed–Revenue entries showing possession of plaintiff after execution of deed–Receipt of payment also duly proved by plaintiff–Lower appellate Court rightly decreed suit : *Smt. Kali Vs. Ramadhar, (2004) M.P. 495*

– **Section 100** and Accommodation Control Act. M.P. (XLI of 1961) – Section 12(1)(b)–Second Appeal–Suit for eviction –Sub letting–Tenant entering into partnership and carrying on business in part of suit shop with partners–Does not amount to sub-tenancy–Appellant/Plaintiff realising rent from alleged sub-tenant and kept belongings in his house–Case of sub-tenancy not substantiated–Lower Appellate Court rightly dismiss the suit : *Basant Kumar Vs. Mukund Singh, I.L.R (2004) M.P. 959*

–**Section 100**–Second Appeal–Decree of ejection passed by two Courts below–Transfer of Property Act, 1882, Section 105 and Easement Act, Indian, 1882, Section

54–Appellant licensee or a lessee–Test–Exclusive possession is an important test–No evidence of plaintiff to show that possession given to the appellant/defendant was not exclusive or that the possession was restrictive one–Transaction between the parties cannot be said to be that of a licence–Question of law–Erroneous conclusion by Courts below on proved facts would certainly be a question of law–Decree of ejection reversed. *Sher Khan Vs. Abbas Bhai Janal, I.L.R (1992) M.P. 409*

–**Section 100**–Second Appeal–High Court cannot interfere with the conclusion of facts recorded by the lower appellate Court–A registered document is obtained with the intention that it represent a *bona fide* transaction and it would be valueless if it can be gone behind in every case by mere ascertain that what was stated before registrar was untrue : *Smt. Poonabai Vs. Jagdish Prasad, I.L.R (1992) M.P. 416*

–**Section 100**–Second Appeal–Suit for declaration and injunction–Remarriage of widow prior to coming into force of Hindu Succession Act, 1956 and Hindu Widow's Re-marriage Act, 1856–Section 2–A Hindu widow after Re-marriage forfeits her rights to her deceased husband's property–Sale deed by widow in respect of half share unobtainable in law–Legal position already settled by Full Bench–No substantial question of law involved–Judgment & Decree of lower appellate Court upheld. *Khumna Vs. Govind Das; I.L.R (2002) M.P. 314,*

– **Section 100** – Second Appeal – Both Courts below not considering merits and pleadings of parties – Lower appellate Court also confirming trial Court's Decree precluding defendants from taking part in proceedings on future dates – Not sustainable in law – Impugned judgment and decree set aside – Matter remanded to lower appellate Court for decision afresh on basis of observations made on merits and settled proposition of law : *Sitabai Vs. Babulal, I.L.R (2001) M.P. 1557*

–**Section 100**–Second Appeal–Suit for possession–Hindu Adoption and Hindu Succession Act, 1956, Sections 10,12,14–On death of her husband plaintiff inherited the property–Being Class I heir she has indefeasible right of full ownership–She will not be divested of her right by adoption subsequently–Defendant adopted by plaintiff after death of her husband–Oral adoption proved but that would not make the adoptee/defendant a co-owner of the property inherited by plaintiff–Possession of defendant permissive–Plaintiff entitled to decree of possession. *Smt. Chandrani Bai Vs. Pradeep Kumar; I.L.R (1992) M.P. 856*

–**Section 100**–Appeal–Limitation Act, Indian, 1963–Sections 5 & 14–Delay in filing appeal–Bona fide mistake–Means that the person was innocently carried away by an innocent mistake–Delay in even approaching the writ Court–The cleverness of choosing the erroneous forum of writ Court can not wash out the delay which was already to the dis-credit–Delay can be condoned when there is bona fide mistake and

delay is explained satisfactorily—Delay not condoned. *Manoramabai Vs. Municipal Council, Khargone; I.L.R (2002) M.P. 326*

-Section 100—Appeal—Service Law—Suit for declaration—Madhya Pradesh Ashaskiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka Sandaya) Adhinyam, 1978—Section 6(a)(iii) and Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983—Conditional grant of the leave for taking job in a foreign company—So called Termination order not served on plaintiff—Effect—Services not validly terminated—Consequential benefits—Effect of adjudication of Civil Court is to declare that person had been wrongfully presented bear attending to his duties as Government servant—Person entitle to remuneration which he would have been earned had he been permitted to work—Re-instatement with consequential benefits allowed : *Zafar Hussain Siddique Vs. Principal, Safia College, Bhopal, I.L.R (2002) M.P. 108*

-Section 100—Second Appeal—Decree of eviction confirmed by Lower Appellate Court—Accommodation Control Act, M. P., 1961, (as amended), Section 23-A, 23-C, 23-J and Accommodation Control (Amendment) Act, M. P. 1985—Section 9—On coming into force of the Amending Act all cases instituted by landlady other then covered under Section 23-J stood transferred to Civil Court—Even if in such a transferred case the tenant suffered consequences of Section 23-C, he would be entitled to opportunity to defend as envisaged in the Civil Procedure Code—Trial Court passed the decree without giving opportunity to tenant to defend—Decree of eviction set aside and case remanded to trial Court to decide the case giving opportunity to defendant to file written statement. *Baijnath Rajput Vs. Narayan Prasad Gupta, I.L.R (1992) M.P. 640*

-Section 100 and Accommodation Control Act, M. P. (XLI of 1961), Section 12(1)(a) and 12(1)(c)—Suit for eviction on ground of arrears of rent and disclaimer of title—Transfer of suit house in favour of present plaintiff/landlord during pendency of earlier suit—Plaintiff served notice on defendant/tenant but filed the suit before expiry of sixty days—Cannot take advantage of demand notice served by his predecessor—Section 12(1)(a)—Arrears of rent—Transferee not entitled to arrears of rent due before the transfer—It is a mere debt and cannot be recovered as arrears of rent by the assignee—Plaintiff not entitled to decree of eviction under section 12(1)(a) on the basis of demand notice served by his predecessor in title—Section 12(1)(c) of the Act—Disclaimer of title—By disclaimer of derivative title tenant does not fall within the mischief of Section 12(1)(c) of the Act—Plaintiff also not entitled to decree of eviction under this provision. *Iqbal Ahmad Vs. Mohd. Sami, I.L.R (1992) M.P. 191*

-Section 100- Scope of interference in Second Appeal is quite restricted after drastic amendment by Amendment Act, 1976-Finding based on appraisal of evidence

does not give rise to any question of law – Order 6 Rule 17-Amendment-True that at the stage of the consideration of the application for amendment, the Court is not required to go into the merits and demerits of the matter but the allegation must be prima facie acceptable and dependable to direct ‘Trial’ of the same Order 6 Rule 17-Amendment-Cannot be permitted at appellate stage by mere asking. *Sitaram Vs. Ram Gopal, I.L.R (1998) M.P. 481*

–**Section 100** –Second appeal–Suit for permanent injunction and in alternative for possession–Defence raised on basis of sale deed 30 years old–Document not containing details of the land nor read over to the executants who were illiterate–Name of purchaser also not mutated in revenue record–Document doubtful–Evidence Act, Indian, 1872–Section 90–Presumption as to execution of a document 30 years old–Defendants themselves lead evidence as to its execution and attestation–Question of presumption would not arise–Document not proved–Rightly held that document did not convey right or title–Appeal dismissed : *Sukhsen Vs. Kamtaiya, I.L.R (2004) M.P. 863*

- **Section 100** - For purchase of suit house funds came from ancestral property-It is a joint Family property-Plaintiff not party to sale deed cannot be permitted to contend that the sale-deed was sham as no consideration money was paid. *Smt. Purabai Vs. Prithwiraj, I.L.R (1999) M.P. 857*

– **Section 100**-Suit for possession-Suit land belongs to State Government-Plaintiff found in settled possession if dispossessed by third party and not the true owner can certainly maintain a suit against third party-Lower appellate Court justified in granting the decree of possession if favour of plaintiff: *Mangat Vs. Mangilal, I.L.R (1999) M.P. 958*

–**Section 100**–Second Appeal–Service Law–Suit for declaration–Reversion of workman without any notice–Industrial Disputes Act, 1947, Section 2(k) and 2-A–Jurisdiction of Civil Court–Relief claimed on the basis of general law and no specific provision of Industrial Disputes Act invoked–Suit maintainable–Admission of Respondent Bank that order of reversion was passed without any show cause notice–Suit filed within limitation–Order of reversion liable to be set aside–Order of lower appellate Court set aside : *Sudhir Kumar Vs. Bundel Khand Kshetriya Gramin Bank, Tikamgarh, I.L.R (2003) M.P. 445*

–**Section 100**–Second Appeal–Suit for possession–Land Revenue Code, M.P., 1959, Section 168 (2) (v) , 109, 120 and 250–Bhumiswami under physical or mental disability–Can lease out whole or any part of his holding–Pleading and proof of physical or mental disability required–In absence of evidence it cannot be held that plaintiff was subject to physical or mental disability–Land leased out unauthorisedly and the lessee also allowed to continue in possession–Lessee became Bhumiswami–

Lower Appellate Court rightly dismissed the suit : *Khadak Vs. Hulkar @ Chota* , *I.L.R (2003) M.P. 537*

- **Section 100**-Second Appeal-Suit for eviction-First Appellate Court reversing judgment of Trial Court decree the suit on ground that landlord has prepared the plans, estimates for reconstruction of the house-Not proper-Accommodation Control Act, M.P., 1961-Sections 12(1)(h) and 12(7)-Eviction on ground of reconstruction-Relevant factors and rider-Condition of the house is a relevant factor-Mere preparation of plans and estimates not sufficient-Plaintiff has to prove that the house is in dilapidated condition-Pleading and proof-Landlord himself not substantiating his plea by making statement as to condition of the house-Decree of lower appellate Court set aside-Suit dismissed : *Varalmal Vs. Manohar Chand Chopda, I.L.R (2000) M.P. 602* .

-**Section 100** – Limitation Act, Indian (XXXVI of 1963), Section 27 and Article 65 and Evidence Act, Indian (I of 1872), Section 33- Suit for partition of ancestral property- Suit land transferred by original holder by agreement of sale- Vendee's possession would be permissive possession- Section 27 and Article 65, Limitation Act- Adverse possession- Even by lapse of time permissive possession on basis of agreement of sale cannot become hostile- Vendee has to prove for which date his possession become hostile-Section 33 of Evidence Act- Applicable to evidence given by a witness in a judicial proceeding- Witness died before he could be examined – Section 33 not attracted- Second wife of original holder executed sale deed in favour of vendee- Sale deed not binding on plaintiff-Suit decreed to the extent of plaintiff's share in suit property : *Shreechand Vs. Dhannalal, I.L.R (2001) M.P., 537* , .

-**Section 100**-Onus is on the defendant to prove that sale deed was not actually a sale deed but a deed in the garb of mortgage deed-Sale deed for nominal consideration was not an issue before the trial Court or there after-Onus is on the defendant to prove that property was purchased for the benefit of members of joint Hindu family-Not proved by defendant-Concurrent findings of facts-No interference called for: *Smt. Poonabai Vs. Jagdish Prasad, I.L.R (1992) M.P. 416*

-**Section 100** and Accommodation Control Act, M.P.,(XLI of 1961), Section 12 (1) (e) and (f)-Suit for eviction by plaintiff landlord on the ground of *bona fide* need-Suit house falling in share of plaintiff-Defendant-Tenant admitting him to be landlord-Dismissal of suit on the ground that need is not *bona fide* though real-Finding based on irrelevant consideration-Deserves to be interfered with in Second Appeal-Plaintiff can not be non-suited merely because no suit has been filed for eviction of tenant's in his brother's share of the house-Judgment and decree of Courts below set aside-Suit decreed. *Ramrao Vs. Dr. Prem Kumar Sinha; I.L.R (1992) M.P. 920*

–**Section 100**–Second Appeal–Suit for specific performance of reconveyance–Plaint alleges the sale-deed to be a security of loan–Vendee also admitting in deposition that it was a loan transaction–Lower appellate Court erred in reversing the decree granted by trial Court–Evidence Act, Indian 1872, Sections 3 and 92–Fact proved means what a prudent man in given circumstances consider to have happened has to be taken as proved–Despite bar oral evidence is admissible to prove that a document was a nominal document or sham document. Suit house is situate in Hanuman, Phootatal Ward in Jabalpur City. Its size is 30'x5'3"=1506 Sq. feet. Some building was also there on such plot vide Ex. P-9 the market value of suit house could be about Rs. 41,200¼- in year 1965. Satish Kumar (P.W.-1) had proved such estimate in para 7 of his statement. There has been no effective cross examination on the point. On 20.2.95 the advocate for respondents admitted this estimate Ex. P-9 without any reservation whereupon the appellant closed their evidence : *Satish Kumar Vs. Shri Jagdamba Prasad, I.L.R (2003) M.P. 62*

–**Section 100**–Second Appeal–Service Jurisprudence–Termination–Constitution of India–Articles 12, 14 and 311 and Municipal Rules, M. P., 1968, Rules 13, 35, 38, 49 and 52–Municipalities are creation of statute and fall under Article 12 but its employees do not hold civil posts–In the matter of termination of its employee Article 311(2) not attracted–Termination of service as no longer required–Employee completed maximum period of probation–Rules do not prescribe extension of probation beyond the maximum–Continuance of such employee shall give rise to the presumption that they have been confirmed–Termination–One of the major punishments–Show cause notice alleging misconduct served but subsequently termination order passed without conducting any inquiry or proceeding further under the Rules–Termination is for an order of dismissal for misconduct–Court below rightly set aside the order of termination–Back wages–Employees out of employment for last 10 years–But nothing to show that they remained unemployed or the extent of loss suffered because of unemployment–50% back wages would be sufficient. *Municipal Council, Sabalgarh Vs. Munnalal, I.L.R (1992) M.P 744*

–**Section 100**–Second Appeal–Suit for eviction by purchaser–Another suit pending for sale of the suit house to wife of appellant by landlord–Accommodation Control Act, M. P., 1961, Section 12(1)(a)(c)(e)(i) and 12(4)–Arrears of rent paid by appellant–Plaintiff not entitled to decree under Section 12(1)(a)–Tenants challenging derivative title of purchaser/plaintiff–Not a ground under Section 12(1)(c)–Ground of *bonafide* need incorporated by way of amendment–On the date of institution of suit plaintiff did not plead *bona fide* need–Suit filed by purchaser land lord within one year and subsequently amended the plaint stating as one year has elapsed Court can try the issue of *bonafide* need–Amended pleading does not support *bona fide* need–Suit could not be decreed on ground of *bona fide* need in view of Section 12(4) of the Act–Suit dismissed. *Khuman Singh Vs. Nathuram, I.L.R (1992) M.P. 469*

- **Section 100** and Limitation Act, Indian (XXXVII of 1963), Section 12-Lower Appellate Court dismissed the appeal as barred by limitation by three days-Section 12 (1), (2), (3) and (4) of the Limitation Act-Time requisite for obtaining certified copy has to be excluded-The date on which the judgment impugned is delivered also to be excluded and also the date from which limitation starts and the date on which appeal is filed are to be excluded while computing limitation-To take advantage of exclusion of time for obtaining certified copy party must prove that there was no default on his part-Exclusion of time for preparing decree-Can only be availed if the decree is prepared after making application for certified copy and not otherwise-Appeal is barred by one day-Section 5 of Limitation Act-No application for condonation of delay filed before lower appellate court-Cannot be allowed to make such application at second appellate stage-Order 41 Rule 25, C.P.C.-Remand-Lapse of time likely to prejudice respondents- Not proper to remand the case-Words & Phrased 'time requisite'-Means time properly required-It would included only that time which the Court spend in preparing certified copy without any fault on the part of the party : *Khushal Prasad Vs. Moolchand Alias Mula Agrawal, I.L.R (2000) M.P.173*

-**Sectoin 100**-Suit for possession and *mesne* profits-Suit land purchased by registered sale deed-Sale consideration paid before registrar-Suit decreed-First appeal dismissed-Section 100-Second Appeal-High Court cannot interfere with the conclusion of facts recorded by the lower appellate Court-A registered document is obtained with the intention that it represent a *bona fide* transaction and it would be valueless if it can be gone behind in every case by mere ascertain that what was stated before registrar was untrue-Onus is on the defendant to prove that sale deed was not actually a sale deed but a deed in the garb of mortgage deed-Sale deed for nominal consideration was not an issue before the trial Court or there after-Onus is on the defendant to prove that property was purchased for the benefit of members of joint Hindu family-Not proved by defendant-Concurrent findings of facts-No interference called for. *Smt. Poonabai Vs. Jagdish Prasad, I.L.R (1992) M.P. 416*

- **Section 100** and Accommodation Control Act, M.P. (XLI of 1961), Section 12(1) (c) -Decree of eviction passed by trial court on ground of *bonafide* need-First appellate court should not lightly interfere with finding of trial Court unless unsound, perverse or based on reasons of material inconsistencies or inaccuracies-Co-owner of the Hindu undivided family/landlord can maintain the suit-Findings of trial Court are not found to be unsound, perverse or unsatisfactory-First appellate Court is in error in reversing the findings of trial Court-When first appellate Court upsets findings of trial Court illegally and illogically-Interference in Second Appeal is not only permissible but also desirable : *Jagdish Prasad Vs. Smt. Dropti Bai, I.L.R (1999) M.P. 485*

-**Section 100** and Accommodation Control Act, M.P., (XLI of 1961), Section 12(1) (a) and 12(1) (e)-Decree of eviction of tenant by first Appellate Court reversing judgment of Trial Court-Tenant in his statement on oath admitted his status as tenant-

Desired only to see the sale-deed for acceptance of ownership/Land Lordship and payment of rent-Title is relevant only as incidental point for proof or disproof of tenancy-Once conclusions are of facts, no substantial question can be said to arise-Decree is based on proper evaluation-No interference in Second Appeal : *Mohammed Ismail Vs. Mohammed Ibrahim, I.L.R (1999) M.P. 780*

- **Section 100**, Transfer of Property Act (IV of 1882), Sections 122, 123 and Evidence Act, Indian (I of 1872), Section 68-‘Gift’ of immovable property- Delivery of possession not necessary- Scribe corroborated acceptance- Acceptance of gift as also possession by donee- Such gift would be valid- Registered Gift deed- Execution and attestation- Proof of- Calling of attesting witness cannot be dispensed with- Cause of action- Arose when donor executed the sale-deed and purchaser dispossessed plaintiff- Words ‘specifically denied’ means specifically denied by the party against whom the document is sought to be used and not only by the executant : *Laxmi Bai Vs. Shyamabai, I.L.R (1999) M.P. 1052*

- **Section 100** – Second Appeal – Concurrent findings of fact – Has to be reversed if finding is arrived at by ignoring admissible evidence and on erroneous assumption of fact not borne on record – Trial Court proceeded on the assumption that plaintiff challenged the case of defendant as to purchase from plaintiff – Record nowhere shows such a pleading – Case of defendant discarded on ground that persons usually use neighbour’s land for crusher – Similar plea of plaintiff to show possession accepted – Evidence of parties dealt with on different standard – Procedure impermissible – Defendants possession over the suit property proved for over 20 years on the date of suit – Plaintiff could not succeed in his suit as framed and filed – Suit dismissed : *Surajmal Vs. Sidhnath Sewaram Kulmi, I.L.R (2001) M.P. 1913*

-**Section 100** – Defendants possession over the suit property proved for over 20 years on the date of suit – Plaintiff could not succeed in his suit as framed and filed – Suit dismissed : *Surajmal Vs. Sidhnath Sewaram Kulmi, I.L.R (2001) M.P. 1913*

-**Section 100** – Trial Court proceeded on the assumption that plaintiff challenged the case of defendant as to purchase from plaintiff – Record nowhere shows such a pleading – Case of defendant discarded on ground that persons usually use neighbour’s land for crusher – Similar plea of plaintiff to show possession accepted – Evidence of parties dealt with on different standard – Procedure impermissible : *Surajmal Vs. Sidhnath Sewaram Kulmi, I.L.R (2001) M.P. 1913*

- **Section 100** – Appeal against the confirmation of judgment and decree of eviction – Accommodation Control Act, M.P., 1961, Sections 12(1)(f) and 12(1)(h) – Suit house let out for non-residential purpose – Bona fide requirement for major sons – Requirement of ground floor for non-residential purpose bona fide – Evidence adduced by both parties on the question of alternative accommodation – It is not of

much significance that plea of alternative accommodation was not raised in plaint – Decree of Courts below confirmed – Landlord after obtaining possession can always rebuild or reconstruct the accommodation suiting to his needs : *Radheshyam Soni Vs. Kamta Prasad Shukla, I.L.R (2001) M.P. 1374*

- **Section 100** - Finding regarding bona-fide requirement and genuine need- Cannot be challenged in Second Appeal unless perverse - Landlord and Tenant - Heirs of tenant inheriting as tenants - in - common - But are joint tenants so far as landlord is concerned unless there has been renovation of contract - Transfer of Property Act - Section 106 - Service of notice on one joint tenant - Sufficient to terminate tenancy - Suit against one joint tenant in actual possession and control of premises - Suit is maintainable : *Shambhudayal Vs. Suleman, I.L.R (1979) M.P. 1114,*

- **Section 100** – Second Appeal – Allotment of shops by Municipal Corporation through tender bid – Contract is complete after acceptance or plaintiff’s tender by the Commissioner – Allotment could not be refused to plaintiff – Municipal Corporation Act, 1956 – Section 80(5) – Sanction from State Govt. – Not necessary in the present case as the allotment of shop is in the nature of transfer by lease – Decree of lower appellate Court affirmed : *Municipal Corporation, Satna Vs. Badri Prasad, I.L.R (2001) M.P. 72*

- **Section 100** – Second Appeal – Section 12(1)(f), M.P. Accommodation Control Act – Suit for eviction bonafide need – Shop required for running hotel for landlord’s son – Previous suit against other tenant of adjoining shop for eviction failed – Failure to justify how the can manage hotel in single room through his evidence – Plaintiff’s need not bona fide : *Sardar Jagat Vs. Gehimal, I.L.R (2001) M.P. 66*

- **Section 100**-Pure question of law patent on record based on admitted facts-Not raised in the two Courts below-Can be raised for the first time in Second Appeal being pure question of Law-Abolition of Jagirs Act, M.B., 1951-Section 4(a) & (b)-Right title or interest of every Jagirdar stood resumed to the State on the date of resumption-Would also include tenancy right created by Jagirdar in favour of his tenant subject to the provisions of Sections 19 and 20 of the Act-Section 2(viii)-‘Land Cultivated Personally’-Definition exhaustive and restrictive- Mortgage created by Jagirdar would also cease and the land resumed to the State free from all encumbrances-Suit land not personally cultivated by the plaintiff/mortgagor-No right of pacca tenant accrued-Suit not maintainable : *Balkrishna Vs. Mohsin Bhai, I.L.R (2000) M.P.494*

- **Section 100** – Second Appeal – Suit for declaration and partition – Joint Hindu Family property – Revenue records showing joint ownership of plaintiff and defendants – Plaintiff’s long possession on some of land – Land Revenue Code, M.P., 1959 – Section 117 – presumption of correctness – Self-serving statements of a party

can not rebut clear entries in revenue records – Plaintiff living separately – Partition of joint property can not be presume on ground that plaintiff is living separately – Decree of declaration and partition granted by trial Court restored : *Narayan Vs.Pannalal, I.L.R (2001) M.P. 1729*

– **Section 100** – Second Appeal – Suit for possession, compensation and mesne profit – Land Revenue Code, M.P., 1959 – Sections 168, 169, 185, 190(2A) – Occupancy Tenant rights accrues on a person's being in possession of a land under an agreement for cultivation for continuous two years – Entire land given to defendant for cultivation under Batai Arrangement for two years – Bhumiswami rights conferred on occupancy tenant/defendant with effect from the commencement of agriculture year next following the date on which the right of occupancy tenant accrued – Batai arrangement also covered under the term 'lease' – Plaintiff has no right to evict the defendant – Lower appellate Court no justified even in party decreeing the suit – Entire suit dismissed – Judgment & decree of Trial Court restored : *Mansingh Vs.Kalyansingh, I.L.R (2001) M.P. 1034*

- **Section 100**-Second Appeal-Finding of fact not to be disturbed in second appeal unless perverse-Accommodation Control Act, M.P., 1961-Section 12(1)(e)-Suit for eviction on ground of *bonafide* need-Plaintiff/Landlord residing in a small house seeks eviction of tenant for medical profession of his son and that other sons are to be married-Not a case of future need-*Bonafide* need-Court not supposed to objectively determine the need- Alternative accommodation-Though available but not suitable-Cannot disentitle plaintiff for getting a decree of eviction-Size of the family age of members and their status equally important to be considered-Decree of eviction rightly granted : *Subhash Chand Vs. Gyanchand, I.L.R (2000) M.P. 741,*

- **Section 100**-Second Appeal-Suit for eviction on ground of *bona fide* need-Accommodation Control Act, M.P., 1961-Section 12(1)(e)-*Bona fide* need- Has to be genuine need of Land lord and not a feigned need-Land lord acquiring alternative suitable accommodation during pendency of suit-Not entitled to decree for eviction : *Uttam Chand Vs. Purushottamdas Ji Patel, I.L.R (2000) M.P. 1450 .*

- **Section 100**-Second Appeal-Suit for eviction on grounds inter alia that the suit premises is required *bona fide* for starting business after repairs-Decree granted and confirmed in First Appeal-Accommodation Control Act, M.P., 1961-Sections 12(1) and 18-Election for re-entry-Plaintiff claiming eviction also on *bona fide* need to start business and that tenant is in arrears of rent as also on ground under Section 12(1)(g)-Question of re-entry does not arise- Section 18 not attracted : *Mohd. Sharif Vs. Keshar , I.L.R (2000) M.P.68 .*

- **Section 100**-Second Appeal-Suit for re-conveyance on ground that sale deed executed was sham and meant for securing loan-Factors for consideration-Plaintiff an

illiterate poverty stricken lady and vendee close relative of hers-Likelihood of approaching vendee for loan deserves weightage- Material available to show that at the time of transaction suit and valued double the consideration mentioned in Sale-deed-Payment also not made before Sub-Registrar-Finding of Courts below that Sale-deed was to secure loan-Proper-Not liable to be interfered with-Evidence Act, 1872-Section 92-Provision that parties are precluded from leading any evidence other than the recital of the Sale-deed-Not attracted to a case of Sale-deed executed for securing loan-Decree confirmed with modification : *Madhav Prasad Vs. Munnibai*, *I.L.R (2000) M.P. 1440*

- **Section 100**-Second Appeal-Suit for declaration and permanent injunction on the basis of will executed by plaintiffs' father-Hindu Succession Act, 1956- Section 30-A Hindu may dispose of by will any property which he is empowered to bequeath by testamentary right-Non-provision of maintenance for wife by testator-Does not affect execution of will after the Act of 1956 came into force-Hindu Maintenance and Adoption Act, 1956-Sections 18 and 19-Maintenance of a Hindu wife is secured even after death of her husband-Provision cannot be construed to put a bar on a Hindu male to bequeath his property by way of testamentary disposition-Order I, Rule 1 and 3- Wife of testator not a party to the suit-Plea that no provision for her maintenance has been made by-testator-Cannot be gone into-Succession Act, Indian, 1925-Section 63-'Will'-Proof of valid execution-Propounder of will examined the scribe and one of the attesting witnesses as required by law-No infirmity found in their testimony-Execution successfully proved-Will cannot be termed as suspicious or doubtful only on the ground that other persons have not been given share by the testator-Judgment & Decree of lower appellate Court proper-Not interference called for : *Karumu v. Rafal*, *I.L.R (2000) M.P. 1125* .

- **Section 100**-Second Appeal-Abatement-Order 22 Rule 9- Abatement for not bringing legal representatives on record-Application for setting aside abatement-Delay-Limitation Act, Indian, 1963-Section 5-15 months delay-Cause shown to be delayed communication by the Advocate as to necessity of bringing LR's. on record by filing application-Sufficient Cause-Abatement set aside : *Dolatram Vs. Kishan*, *I.L.R (2000) M.P. 858*,

- **Section 100**-Second Appeal-Accommodation Control Act, M.P.,1961-Section 12(1)(a)-Eviction suit on ground of non-payment of rent despite demand-Tenant's plea that there is an agreement for sale of the accommodation-Misconceived-Relationship of land lord-tenant does not come to an end even if there is an agreement for sale of suit accommodation-Order VIII, Rule 10 of the Code-No hard and fast rule for exercising power under, can be laid down-Tenant instead of depositing rent and filing written statement indulged in moving interlocutory application-Cannot be permitted to take benefit of Section 12(3) of the Act merely on his depositing rent

after passing the decree-No interference called for in the impugned judgment & decree : *Rajendra Kumar Rathore Vs. Anandi Bai, I.L.R (2000) M.P.1269* .

- **Section 100** - Second appeal - Substantial question of law - Meaning of - Appeal admitted in motion and substantial question of law framed - Appeal has to be decided on merits - Mis-interpretation and mis-construction of document of title - Can be a ground for interference in Second Appeal - The word ' Consideration' - Meaning of - Court on consideration of document reaching a conclusion - Aggrieved party cannot complain of its non-consideration : *Smt. Saguna Bai Vs. Dhanprasad I.L.R (1987) M.P. 509*

-**Section 100**-Burden of proving the genuine requirement of accommodation-Is a question of fact-Civil Procedure Code-Order 9 rules 8 and 9-Suit dismissed for default-Party precluded from bringing fresh suit on same cause of action-Suit on different cause of action-Not barred-Bar cannot be avoided by change of form of reliefs-Dismissal of suit of landlord for default-Fresh suit after fresh service of notice-Is maintainable : *Chhaganlal Vs. Smt. Parvati Bai, I.L.R (1974) M.P. 667*

- **Section 100** - Finding regarding bona-fide need for non-residential purpose - Is a finding of fact and cannot be interfered in second appeal - Burden to prove that landlord has no other accommodation of his own - Burden is on landlord- Question whether burden of proof is discharged - Is also a question of fact - Accommodation Control Act, Madhya Pradesh, 1961 - Act not meant to deprive the owner of beneficial enjoyment of his property - Practice - New plea-Plea whether partnership is registered or not - Is a mixed question of fact and law - Plea cannot be raised for first time in appeal - Accommodation Control Act, Madhya Pradesh, 1961 - Section 12 (1) (f) - Certain business could not be accommodated in part of suit accommodation - Does not mean that need is not bona fide : *Daulal Vs. M/s Indian Mill Stores, Ganjpara, Raipur, I.L.R (1978) M.P. 373*

- **Section 100** - Question whether need is bona fide - Is matter of inference of fact to be drawn from other facts - The question whether burden of proof has been discharged - Is a question of fact - The question whether tenant has unlawfully sub-let, assigned or otherwise parted with possession - Is a question of fact - Evidence - Sub -tenancy - Not provably by direct evidence - Inference to be drawn from circumstances and facts on record : *Narayan Vs. M/s Indian Mill Stores, Raipur I.L.R (1978) M.P. 280*

-**Section 100**-Interpretation of words having technical, scientific or other legal significance-Is a question of law-Consideration of grammatical meaning of words having no special significance-No question of law involved-Whether the landlord genuinely requires the accommodation for continuing or starting his own business or

that of any other person of his family-Is a question of fact : *Harnarain Vs. Kanhaiyalal I.L.R (1967) M.P. 83*

-Section 100-Finding recorded by lower appellate Court after approaching the case wrongly-Amounts to substantial defect of procedure affecting the decision-Interference with finding justified-Question of burden of proof-When becomes a question of law : *Premchand Vs. Laxmichand Parakh, I.L.R (1971) M.P. 108 .*

-Section 100 -Finding of lower appellate Court based on oral evidence contrary to recitals in deed-Question becomes a mixed question of law and fact-Easements Act, Indian, Section 15-Easement to drop rain water from a certain height-Height increased but other things remained the same-Burden on servient tenement cannot necessarily be said to have been increased Common land-No title deed with either party- Land enjoyed by both-Presumption that it is common property : *Mannalal Vs. Dalchand, I.L.R (1961) M.P. 117*

– **Section 100** – Second Appeal – Agreement for sale – Transfer of land by member of aboriginal tribe without permission of Collector – Possession delivered – Land Revenue Code, M.P. 1959, Section 165(6) and Contract Act, Indian 1872, Section 23, Transfer of Property Act, 1882 and 53-A – Use of the word “Transferable” brings an ‘agreement to sale’ within the purview of Section 165(6) – Vendee not member of aboriginal tribe – Agreement void being in violation of Section 165(6) –Past performance – On the basis of a void contract equity for protection of possession cannot be claimed : *Ram Kishore Vs. Smt. Battoo Bai, I.L.R (2001) M.P. 1225*

- **Section 100** - Question whether lease falls under Madhya Pradesh Accommodation Control Act, 1961 – Question is mixed question of law and fact-Question cannot be raised for first time in second appeal - Contract Act - Section 69 - Applicable to payments made bona fide for protection of ones own interest - Requires that person making payment must honestly believe that payment is necessary for protecting his own interest - Belief must be based on reasonable grounds even though belief may be unfounded - Section afford an indemnity in respect of payment against a person who ought to have made payment - Person whose lease has expired by lapse of time - Is not a person interested in making payment - Land Revenue Code, Madhya Pradesh, 1959 - Section 139 - Land Revenue not falling due - Notice of demand not served on Bhumiswami - There is no default in payment on the part of Bhumiswami : *Seth Kantilal Vs. Ramchandrarao, I.L.R (1977) M.P. 134,*

– **Section 100** – Second Appeal – Question of avoiding stamp duty does not arise as no instrument was executed which required stamp duty - Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to

execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao*, *I.L.R (2001) M.P. 379*

– **Section 100**, Order 6 Rule 17 – Second Appeal – Suit for eviction – Amendment in plaint – Ground for eviction for bona fide need of major son added – Court can always take subsequent event for just decision of a case – Transfer of Property Act, 1882, Section 109 and Evidence Act, Indian, 1872, Section 116 – Tenant paying rent to original landlord – Subsequent purchaser becomes landlord – Tenant estopped from questioning title of subsequent purchaser – Section 100, CPC – Second Appeal – Propriety of registration – Cannot be gone into in absence of framing question of law in this regard – Accommodation control Act, M.P., 1961 – Section 12(1)(f) – Bona fide need of accommodation for major sons established – Impugned judgment & decree of eviction passed by the Courts below confirmed – Constitution of India, Article 134-A – Certificate of fitness to appeal to Supreme Court – Case decide on the law laid down by the Supreme Court – Certificate of fitness of to appeal refused : *R.P. Tiwari Vs. Smt. Sulochana Choudhary*, *I.L.R (2001) MP 839*

–**Section 100**–Second Appeal – Propriety of registration – Cannot be gone into in absence of framing question of law in this regard : *R.P. Tiwari Vs. Smt. Sulochana Choudhary*, *I.L.R (2001) MP 839*

–**Section 100**, Order 6 Rule 17, Order 22, Rule 4 and Accommodation Control Act, M. P., 1961, Section 2(b), 12(1)(f)–Suit for eviction–Non-residential accommodation–Bona- fide need of landlord for carrying on his own business–Need has to be examined on date of institution of suit–Suit decreed by trial Court–Death of landlord during pendency of appeal by tenant–Will not make any difference as his heirs are fully entitled to defend the estate–Legal representatives brought on record–They also set up bona-fide need for carrying on business for their own livelihood–Suit has to be decided on the basis of amended pleadings–Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff–Judgment and decree passed by High Court set aside : *Shakuntala Vs. Narayan Das*, *I.L.R (2004) M.P. (SC) 714 (D.B.)*

– **Section 100**, Order 7 Rule 10 –Second Appeal–Suit for eviction and arrears of rent–Accommodation Control Act, M.P., 1961, Sections 11–A, 12 (1) (f), 23–A (b) and 23–J–Land lady widow–Covered under section 23–J- Requiring the non-residential accommodation bonafide for starting hotel business for her major son–Rent Controlling Authority alone has jurisdiction in the matter–Civil Court ought to have returned the plaint for presentation before RCA–Decree set aside–Matter remanded back to the trial Court for return of plaint : *Prahlad Vs. Smt.Kalabati bai*, *I.L.R (2003) M.P. 704*

– **Section 100**, Order 7 Rule 11(d) and Order 39 Rules 1 and 2 – Suit for partition and declaration that rival parties are in joint possession of the ancestral property – Order 7, Rule 11(d) – Rejection of plaint – Has to be based on the averments made in the plaint – Court cannot travel beyond the plaint averments – Rejection of plaint on basis of defendant's preliminary objection that there has been a Panch Faisla – Not proper – Arbitration Act, 1940 – Sections 14, 32 and 33 – Bar to suits contesting arbitration agreement or award – Provisions have got limited application – Applicable only where existence effect or validity of an arbitration agreement or enforceable award is challenged and not the contract itself – Genuineness of an arbitration agreement of award cannot be presumed by the Court by mere plea of defence – Order 7 Rule 11(d) and Section 14 of the Arbitration Act, 1940 – Panch Faisla pleaded and filed by defendant in preliminary objection not bearing signature of the Panchas – Not an award in the eye of law – Order rejecting plaint by Courts below assuming that there has been an award and is barred – Is an impermissible procedure – Courts should have insisted on complete written statement by the defendant – Order impugned set aside – Case remanded back to the trial Court : *Lukeshwar Vs. Dhebar* , *I.L.R (2001) M.P. 829*

–**Section 100**, Order 8 Rule 5, Evidence Act Indian, 1872, Section 116 and Accommodation Control Act, M.P., 1961, Sections 2(b), 12 (1) (f)–Eviction Suit–Second Appeal–Ownership–Landlord may even be devoid of ownership–Ownership not specifically devoid–To say that a defendant has no knowledge of a fact pleaded by plaintiff is not tantamount to denial of existence of that fact–Having taken the plea of agreement to sell the suit house to him by plaintiff, defendant is estopped from denying plaintiff's ownership : *Ram Pukar Singh Vs. Bhimsen* , *I.L.R (2005) M.P. 1176*

- **Section 100**, Order 21 rule 2 and Section 47 - Suit for eviction decreed by trial Court and confirmed by First Appeal Court-Second appeal by some of the legal representatives of the deceased judgment-debtors - Adjustment of decree passed by the First Appeal Court - Adjustment certified - Merger of decree into an adjustment order - Second Appeal not maintainable - Remedy of judgment - debtors lay under Section 47, Civil Procedure Code : *Smt. Freny Kaikkoshroo Cooper Vs. S. K. Chouksey*, *I.L.R (1979) M.P. 824* ,

–**Section 100**–Order 22 Rule 4–Steps for bringing L.Rs. on record–Stage–Scope–Parties are adiwasis–Far away from the sophisticated society or society having benefit of education and atmosphere of the Court–Court cannot be permitted to allow itself to remain aloof from reality of life–Taking broader view delay deserves to be condoned. *Tantiya Vs. Chander*; *I.L.R (2002) M.P. 324*

–**Section 100** and Order 23 Rule 3–Suit for specific performance–Second appeal disposed of by High Court on the basis of admission made by Counsel appearing for

the parties—No allegation made attributing any impropriety to their action—Judgment or decree passed as a result of consensus arrived at before the Court—Cannot always be one passed on compromise or settlement and adjustment—May at times be also a judgment on admission : *Jineshwardas (Dead) Through L.Rs. Vs. Smt. Jagrani, I.L.R (2003) M.P. (SC) 1114 (D.B.)*

-**Section 100** and Order 26 Rule 9—Second appeal—Suit for declaration and injunction—Necessity of appointing commissioner for spot inspection—Emphasized at the early stage of litigation when controversy is as to identification, location or measurement between the land or premises or object—Tin partition in existence between the two houses for last 50 Years—Parties treated themselves to be owner of respective portions partitioned by tin—No controversy means as to identification—Courts below justified in deciding the matter on the basis of evidence and without making an order under order 26 Rule 9 C.P.C : *Smt. Dwaraki Bai Vs. Raghunath, I.L.R (2004) M.P. 283*

-**Section 100** and Order 39 Rules 1 and 2—CPC—Plaintiff real brother of appellant—Allowed raising of construction joining his wall—Either consented or acquiesced—Grant of injunction for removal of the wall would be against principles of equity, justice and fairness—Judgment and decree impugned set aside : *Smt. Dhaniya Vs. Jiwan, I.L.R (2003) M.P. 71*

-**Section 100** and Order 39 Rules 1 and 2—Second appeal—Suit for injunction—Removal of contiguous thatching—Specific Relief Act, 1963 Section 41(g)—Plaintiff real brother of appellant—Allowed raising of construction joining his wall—Either consented or acquiesced—Grant of injunction for removal of the wall would be against principles of equity, justice and fairness—Judgment and decree impugned set aside : *Smt. Dhaniya Bai Vs. Jiwan, I.L.R (2003) M.P. 71*

- **as amended**—Section 100, Order 41 Rules 11, 21, 22 and Order 42 Rule 2—Cross-objection filed under Order 41 Rule 22 of the Code can only be heard on substantial question of law—Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him—Procedure provided in Rule 11 of Order 41 read with Order 42 Rule 2 of the Code—Mandatory—In absence of adherence cross-objection can not be entertained. *Vijay Prakash Vs. Sundar Lal, I.L.R (1992) M.P. 345*

-**Section 100**, Order 41 Rule 19—Appeal against rejection of application for re-admission of second appeal—Second appeal dismissed for want of prosecution—Order refusing re-admission not appealable under Clause X of Letters Patent : *Kamla Bajpai & ors Vs. Smt Sharda Devi Bajpai & ors., I.L.R (2003) M.P. 127 (D.B.)*

–**Section 100**, Order 41 Rule 22–Second Appeal and cross-objection–Ejectment suit – Accommodation Control Act, M. P., 1961–Sections 12(1)(c), 12(1)(e) and 12(1)(m) – Residential accommodation –Converted by tenant to run school–It is an act inconsistent with the purpose for which accommodation was let–Tenant incurred liability u/s. 12(1)(c) of the Act–Bonafide need of the landlady–Test–Availability or non-availability of suitable alternative accommodation–Plaintiff cannot be compelled to occupy a house which she does not feel to be suitable–Ground floor in occupation of landlady being used for running a school–Cannot be said to be alternative accommodation–Cross-objection allowed–Decree under Sections 12(1)(c) and 12(1)(e) granted in favour of plaintiff : *Rajendra Donald Vs. Smt. Violet Singh, I.L.R (1992) M.P. 564*

– **Section 100**, Order 41 Rule 22 – Second Appeal and Cross-objection - Suit for declaration of title possession and mesne profit – Land Revenue Code, M.P., 1959, Sections 158, 185, 189, 190 and Transfer of Property Act, 1882, Section 53-A – Bhumiswami rights – Land mutated on basis of an unregistered sale-deed – Unregistered sale-deed does not pass any title – Defendant does not claim to be occupancy tenant – Cannot be conferred bhumiswami rights as not covered under any of the clauses envisaged in Section 185 of M.P. Land Revenue Code – Order of mutation illegal – Has to be ignored – Part performance – Possession of defendant not proved to be in part performance of agreement of sale – Plea of part performance not tenable : *Ram Lal Vs. Mangal l, I.L.R (2001) M.P. 1542*

- **Section 100**, Order 41 Rules 23-A, 27 and Accommodation Control Act, M.P. (XLI of 1961) , Section 12(1)(b) and 12(1)(e) - Suit for eviction dismissed – Allowed by appellate Court taking additional evidence and appeal by purchaser of the property though not party to the suit in trial Court – Legality – Order 41, Rule 27(b) – Application under – Should be decided after hearing the case on merits – Discretionary power contend on the appellate court to admit additional evidence cannot be exercised without giving opportunity to the other side to rebut the same – Error committed by appellate Court while admitting additional evidence and pronouncing the judgment simultaneously – Impugned decreed set aside – Order 41 Rule 23-A – Matter remanded back to lower appellate Court to power in accordance with law : *Abhay Kumar Jain Vs. Santsoh Kumar, I.L.R (2001) MP 216*

–**Section 100** and Order 41 Rule 27–Second appeal–Samaj Ke Kamjor Wargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976–Section 4–Order passed by Sub-Divisional Magistrate in Revenue case–Is a public document–Came into existence during pendency of the second appeal–Cannot be overlooked–Document admitted in evidence–Nominal sale-deed executed to secure loan but possession continued with the plaintiffs–Revenue entries showing continuous possession of plaintiffs–Plaintiffs entitled to relief of declaration and injunction by virtue of Section

5–Judgment & decree of Courts below set aside–Plaintiff's suit decreed. *Mst. Sukhrani Vs. Chhotelal, I.L.R (1992) M.P. 465*

– **Section 100**, Order 41 Rule 33 and Transfer of Property Act, (XXI of 1929) – Section 52 and Limitation Act, Indian, 1963, Article 65 – Suit for possession Suit land sold during pendency of suit – Sale hit by doctrine of lis pendens as envisaged under Section 52 of the Act – Adverse possession – Defendants possession discontinued by virtue of execution of decree of Civil Court – Subsequent dispossession of plaintiff during second round of litigation – Possession of defendant not adverse so as to perfect title – Finding of trial Court proper – Order 41 Rule 33 – Plaintiff poor widow fighting for a just cause – Could not get possession even after succeeding in three civil suits – In exercise of discretionary power trial Court directed to issue warrant for delivery of possession to plaintiff – Order 41 Rule 33, C.P.C. – Power though discretionary should not be declined to be exercised solely because no appeal or cross-objection has been filed – Mesne profit awarded for the period plaintiff was kept out of possession – Impugned judgment and decree confirmed with modification : *Yashwant Rao Khogal Vs. Smt. Jahoobi, I.L.R (2001) M.P. 709*

- **Section 100**, Order 42 Rules 1 and 22–Respondent's right to challenge adverse finding in second appeal under Order 42 Rule 22–Is controlled by Section 100 read with Order 42 Rule 1 : *Lal Captanlal Vs.. Board Of Revenue & Ors., I.L.R (1999) M.P. 1*

–**Section 100**, Order 47 Rule 1–Second Appeal dismissed holding "no substantial question of law involved for adjudication"–No ground supplied–Can be a ground for appeal but not for Review–Recourse to Review–Misconceived : *Ratanlal Vs. Bardi Bai, I.L.R (2003) M.P. 1072 (F.B.)*

– **Sections 100**, 2(2), Order 41 Rules 3A (1), (2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge in appellate decree – Second appeal maintainable against such decree. *Maniram Vs. Mst. Fuleshwar, I.L.R (1995) M.P. 518 (F.B.)*

–**Sections 100**, 9, Order 21 Rule 11 and Administrative Tribunals Act,(XIII of 1985) Sections 2(9), 15 and 29–Service matter–Suit decreed in favour of plaintiff–Civil Court has jurisdiction to execute its own decree : *Dr. S.K. Mathur Vs. State, I.L.R (1992) M.P. 901 (D.B.)*

- **Sections 100**, 9, Order 21 Rule 11 and Constitution of India–Article 227–Administrative Tribunals Act,1985 Sections 2(9), 15 and 29– Writ Petition–Against Civil Court's report to execute decree in service matter–Service matter–Suit decreed in favour of plaintiff–Civil Court has jurisdiction to execute its own decree–Power of

Civil Court not taken away by Section 29 of Administrative Tribunals Act—Impugned order set aside—Execution case restored to file. *Dr. S.K. Mathur Vs. State; I.L.R (1992) M.P. 901 (D.B.)*

- **Section 100** – Second appeal - Section 11-Principle of *res-judicata*-Judgment in earlier suit placed on record gives sufficient indication of case of the parties-Principle of *res-judicata* can be invoked in absence of Plaintiff, written Statement, issues in earlier suit- *ex-parte* decree is a decree or merit-Cannot be ignored in a subsequent suit-Reasonings given by lower appellate Court found erroneous-Judgment & Decree of Lower appellate Court set aside : *Sakribai Vs. Kailash Chandra, I.L.R (1999) M.P. 676*

- **Section 100, 11, Explanation VIII, Order XIII Rules 1 and 2 and Order XLI Rule 27**—Suit for eviction—Second Appeal—Application for taking additional document on record—Rejection of prayer by trial Court—Affirmed in revision by the District Judge—Not binding on the High Court nor operates *res judicata* when appeal is filed against the decree—Accommodation Control Act, M. P. 1961—Sections 12(1)(e), 23 and Evidence Act, 1872 Section 74—Public document—Certified copy of registered sale-deed—Sought to be brought as additional evidence—Document essential to put the controversy at rest—Document can be accepted as evidence—Defendant tenant admitted that he paid rent to plaintiff—Landlord-tenant relationship established—bona-fide requirement found proved by the trial Court—Suit for eviction decreed : *Nawab Saheb Vs. Firoz Ahmed, I.L.R (2003) M.P. 222*

-**Sections 100, 11, Order 1 Rule 9 and Order 8 Rule 6-A, as amended by C.P.C. (Amendment) Act (CIV of 1976) and Hindu Succession Act (XXX of 1956), Section 22**—Second Appeal—Suit for partition and possession—Plea of pre-emption on the basis of alleged sale—Section 100, C.P.C.—Finding of Trial Court that sale was fraudulent and no title passed— Essentially a finding of fact cannot be re-opened in Second Appeal—Order 8 Rule 6-A—Counter-claim—By its nature is a cross-suit—Would not be affected by dismissal of plaintiff's suit—Order 1 Rule 9, C.P.C.—Non-joinder of necessary party—Fatal for maintaining the suit—Suit dismissed—Hindu Succession Act—Section 22—Right of pre-emption—Not a right to the thing sold but a right to offer of a thing about to be sold—Can be claimed by setting up counter claim in the written statement—Section 11 of the Code—Omission to raise plea of pre-emption in written statement would operate *res judicata*—Proper value—In absence of any evidence of the market value the sum actually paid is taken to be proper value : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R (1992) M.P. 26*

-**Sections 100, 11, Order 7 Rule 11** – Second Appeal—Suit for perpetual injunction simplicitor—Plea of *res-judicata*—Can be considered before filing written statement—Any contrary view may defeat the object and purpose of Section 11 CPC—Earlier suit by plaintiff's predecessor for possession of the suit property dismissed—

Subject matter, parties and jurisdiction of courts same—Requisites for application of res-judicata established—Courts below justified in dismissing the suit : *Ambika Prasad Bakshi Vs. Prabhu Dayal Mali, I.L.R (2005) M.P. 1187*

-Section 100, 23 and Order 12 Rule 8, Order 23 Rule 3 and Contract Act, Indian (IX of 1872) – Nominal sale deed executed without consideration to avoid possible impact of law of ceiling on urban property – Possession not delivered – Executant even after sale deed exercised right of ownership – Suit for declaration by executant of Sale Deed that he be declared owner of such property – Claims admitted by defendant – Suit dismissed alleging to be collusive in nature – Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty – Not proper – Section 100 – Second Appeal – Question of avoiding stamp duty does not arise as no instrument was executed which required stamp duty – Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R (2001) M.P. 379*

- Sections 100 and 80- Second Appeal-Suit within Limitation adding period of notice- Notice not served or new defendant-Suit barred by Limitation as against newly added defendants : *R. R. Naidu Vs. State. I.L.R (1999) M.P. 576*

– Section 100, 96, Order IX Rules 6, 7 and 13 – Suit for possession on basis of alleged sale-deed – Plaintiff’s evidence complete – Non-appearance of defendants on date of compromise or evidence – Counsel pleading no instruction – Court proceedings ex-parte-Ex parte proceedings – Meaning of – Is for on hearing and not for all future dates – Does not preclude defendants from taking part in proceedings on future dates – Not a case of striking of defence – Rejection of application without affording opportunity to prove sufficiency of reasons for non-appearance – Not proper – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing ex parte decree without affording defendant’s to take part in future proceedings – Such a decree is assailable either under Order 9 Rule 13, C.P.C. or in first appeal under Section 96, C.P.C. – Second Appeal – Both Courts below not considering merits and pleadings or parties – Lower appellate Courts also confirming trial Court’s Decree precluding defendants from taking part in proceedings on future dates – Not sustainable in law-Impugned judgment and decree set aside – Matter remanded to lower appellate Court for decision afresh on basis of observations made on merits and settled proposition of law : *Sitabai Vs. Babulal, I.L.R (2001) M.P. 1557*

–Sections 100, 96, Order 41 Rules 22, 33 and Accommodation Control Act, 1961, Sections 12(1)(a), 12(1)(e)–Suit for eviction–Eviction decree passed–For supporting the decree on other ground it is not necessary for plaintiff to file cross-objection–Appellate Court has power to substitute the ground of eviction–Eviction

decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court—No illegality—Question answered against appellant : *Kamal Kumar Vs. Smt. Imartibai and others, I.L.R (2003) M.P. 215*

– **Section 100, Section 96**, Section 104, Sub-Section (3), sub-section (2) – Order 43 Rule 1-A and Order 23 Rule 3-A – Maintainability of second appeal – Compromise decree passed by the trial Court between the original parties to the suit behind the back of the Vendees to this suit property – Provisions of Section 96 (3) of Civil Procedure Code bars a regular appeal – Right of appeal extends of under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtain. Appeal shall be construed to have been filed under Order 43 Rule 1-A, C.P.C. – However, Second Appeal does not lie under Section 104, Sub-section (2), hence not maintainable – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree – The words ‘Compromise’ and ‘Parties’ – Means & includes : *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R (1991) M.P. 388*

– **Sections 100, 101, 140**, Order 41 Rule 11 and Order 47 Rule 1– Review Application—Review of the Order of Single Bench—Placed before the Full Bench in peculiar fact situation—Power of Full Bench is limited to what the Single Bench could do while exercising power of Review—Review permissible only on three grounds specified—(i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of record and (iii) any other sufficient ground—"Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously—Second Appeal dismissed holding "no substantial question of law involved for adjudication"—No ground supplied—Can be a ground for appeal but not for Review—Recourse to Review—Misconceived : *Ratanlal Vs. Bardi Bai, I.L.R (2003) M.P. 1072 (F.B.)*

–**Sections 100, 144**, 151—Restitution of possession—High Court reversing the judgment and decree of first appellate Court restored that of Trial Court dismissing appellants suit for declaration of the injunction and possession—Section 144 C.P.C.—Application under for restitution—By nature is an application for execution—For its applicability there need not necessarily be a suit for possession—Court has power in ordinary course to direct restoration of *status quo ante* to the extent possible. *Indal Vs. Smt. Jamuna, I.L.R (1992) M.P. 752*

- **Section 100 (5)**, Second appeal – Plaintiff not a party to another Suit-Specific performance of contract : *Dr. M. C. Choubey Vs. Shri Narbadeshwer Prasad, I.L.R (1998) M.P. 90*

Section 102 – Suit instituted prior to amendment of section – Right of appeal – A vested right – Not affected by amendment – Limitation Act – Transaction entered into when Gwalior Limitation Act in force – Before expiry of Limitation – Indian Limitation Act made applicable – Madhya Bharat Adaptation Act – Section 4(2) providing period of 2 years for filing suit in cases barred by limitation under Indian Limitation Act – Suit filed after 2 years but before expiration of Limitation under Indian Limitation Act because of acknowledgment – Suit not barred: *Balchand Vs. Girja Shankar, I.L.R (1962) M.P. 119,*

– **Section 104**, Section 96, Section 100, Sub-Section (3), sub-section (2) – Order 43 Rule 1-A and Order 23 Rule 3-A – Maintainability of second appeal – Compromise decree passed by the trial Court between the original parties to the suit behind the back of the Vendees to this suit property – Provisions of Section 96 (3) of Civil Procedure Code bars a regular appeal – Right of appeal extends of under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtain. Appeal shall be construed to have been filed under Order 43 Rule 1-A, C.P.C. – However, Second Appeal does not lie under Section 104, Sub-section (2), hence not maintainable – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree – The words ‘Compromise’ and ‘Parties’ – Means & includes : *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R (1991) M.P. 388*

- **Sections 104, 96** and 115 - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad I.L.R (1984) M.P. 365. (F.B.)*

- **Section 104, 96** and 115, Order 22 rules 3 and 5 Order 43 rule 1 - A - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record - Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad, I.L.R (1984) M.P.364(F.B.)*

-**Sections 104, 115** first proviso and Order 43 - Final appellate order - Not an order in the course of a suit or other proceedings - Revision against - *Maintainable. Hanuman Datt Vs. State of M.P.; I.L.R (2002) M.P. 741*

-**Section 105**-Kinds of objections which can be taken in appeal on merits : *Holaram Vs. Pandey I.L.R (1968) M.P. 143*

- **Section 105 (2)** - Not applicable to Supreme Court : *M/S Chhotelal Keshavram Rajnandgaon Vs. Additional Assistant Commissioner Of Sales Tax, Raipur, I.L.R (1979) M.P. 123, (D.B.)*

-**Section 105(2)** and Letters Patent, Clause 10-Remand order by High Court-Not appealable-Bar of sub-section (2) of Section 105 not applicable to High Court in proceedings by way of appeal under Letters Patent after remand: *Budhilal & anr. Vs. Mahant Jagannathdas, I.L.R (1965) M.P. 471 (D.B.)*

-**Sections 107 and 153**, Order 41 Rules 15-A and 19-Peremptory order dismissing appeal for non-compliance-Application for restoration on affidavit-Court has power to restore : *Manohar Prasad Mishra Vs. Chandulal alias Jagdish, I.L.R (1957) M.P.648 (D.B.)*

- **Section 107** and Order 7 rule 11-Court finding that it has no jurisdiction - Proper course is to return memo of appeal for presentation to proper Court : *Balmukand Vs. Rameschand I.L.R (1978) M.P. 84 (D.B.)*

-**Section 110**-Judgment of affirmance, Meaning of : *Markandelal Vs. Madhya Pradesh Government, I.L.R (1958) M.P 127 (D.B.)*

- **Section 113**, Family Court Act 1984, Section 7 and Hindu Marriage Act, 1955, Section 19-Reference by Court-Territorial Jurisdiction-Petitioner resident of place beyond jurisdiction of family Court-Marriage solemnized and respondent resided at the time of marriage at Jabalpur-Place of resident of petitioner not material as case not covered under clause (iv) of Section 19-Family Court at Jabalpur would have jurisdiction-Reference answered accordingly. *Arjun al Vs. Pushpa Karwal; I.L.R (2002) M.P.1043*

- **Section 114**, Order 41 Rules 3-A(2), 11, 13 and Order 47 Rule 1 – Review – Limitation Act, 1963 – Section 5 – Condonation of delay – Opportunity for – First appeal filed without application for condonation of delay – Dismissed as barred by time – Second appeal also dismissed – Review on ground that opportunity should have been given to get the delay condoned even at final hearing stage – Not tenable – Order 41, Rule 3-A(2) – Application for condonation of delay – It is for the appellant to file the same along with memo of appeal or before admission of appeal – Order 41 Rules 11 and 13 – Provisions though directory in nature can not be construed give to opportunity to a party to get the delay condoned at the final hearing stage as the other party may not be able to dispute the facts after number of years : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R (2001) M.P. 278*

-Section 115-Revision lies against order holding the document a bond : *Sobhagmal Vs. Ramniwas & ors., I.L.R (1960) M.P. 728*

Section 115 - Revision against compromise decree - Tenability of : *Thakur Prasad, Vs. Bhagwandas, I.L.R, I.L.R (1985) M.P. 310. (D.B.)*

-Section 115-Finding based not on legal evidence-High Court can interfere in revision : *Janpad Sabha, Bilaspur & anr. Vs. Bhukhanlal & anr., I.L.R (1959) M.P. 1011*

- Section 115 - Order fixing maintenance amount-Not liable to be interfered with in revision : *Kailashnarayan Vs. Shardabai I.L.R (1987) M.P. 62*

-Section 115-Burden of proof wrongly placed-Interference in revision permissible : *Gurba & anr. Vs. Umrao, I.L.R (1964) M.P. 313,*

-Section 115-Demand of additional Court-fees on memo of appeal-Order revisable as question of jurisdiction involved : *Motilal Vs. Purshottam I.L.R (1967) M.P. 294*

- Section 115- Revision against award of MACT-Not maintainable on the face of provisions of appeal under the Act of 1988 : *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R (2000) M.P. 1174 (F.B.)*

-Section 115-Amendment allowed mechanically-Interference in revision justified : *Kumari Rashida Vs. Abdl Samad, I.L.R (1970) M.P. 498*

-Section 115-Order refusing to join a necessary party to the suit-Order revisable : *Kishor Singh Vs. Tej Singh I.L.R (1967) M.P. 808*

-Sections 115-High Court, Power of, to quash notification : *New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi, Satna, I.L.R (1971) M.P. 546 (D.B.)*

- Section 115 - Appeal before Lower Appellate Court incompetent - Powers under the provision can be exercised suo motu in appropriate cases : *Deputy Registrar, Co-Operative Societies, Bilaspur Division Bilaspur Vs. Narayan Prasad Mishra, I.L.R (1977) M.P. 1123,*

- Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R (1990) M.P. 380,*

- **Section 115** - Appellate Court ignoring reasonings contained in the order of the trial Court and reaching his own conclusion - High Court entitled to interfere : *Rama Rao Vs. Shantibai, I.L.R (1980) M.P. 352, ,*

- **Section 115** - Revisional jurisdiction is a part of the appellate jurisdiction as a superior court circumscribed by the limits under this section : *M. P. State Co-Operative Land Development Bank Limited, Bhopal, Vs. J. L. Chouksey, I.L.R (1980) M.P. 1176,*

- **Section 115**-Decree passed without jurisdiction-Decree is nullity-Question of filing appeal irrelevant-Record can be corrected in a revision : *Bisandas & ors. Vs. Nirmakur, I.L.R (1958) M.P. 753 (D.B.)*

- **Section 115**-Issue relating to bar created by law decided as preliminary issue and the suit dismissed-Purely question of law-Revision does not lie : *Smt. Shakuntala Soni Vs. State, I.L.R (2004) M.P. 525*

- **Section 115** - High Court disposing of writ petition without deciding controversy but merely making certain directions - Does not operate as res judicata in a suit for declaration by the plaintiff : *State Of M.P. Vs. Narpat Singh Dung, I.L.R (1988) M.P. 37*

-**Section 115**, Criminal Procedure Code, 1974, Section 125 and Family Courts Act of 1984, Sections 7,8,10,18 and 19-Application for maintenance under Section 125 Cr.P.C.-Power of J.M.F.C. exercised by Family Court while deciding such application-Revision arising out of such application flows from proceedings under the Cr.P.C.-Should be registered as Criminal Revision : *Rajesh Shukla Vs. Smt. Meena, I.L.R (2005) M.P. 686 (F.B.)*

- **Section 115** - Word 'Court' in - Used in a narrow sense - Means only a Civil Court : *Yeshwant Rao Vs. Sampat, I.L.R (1980) M.P. 708, (F.B.)*

- **Section 115**-Civil Revision-(Anusuchit Jati Tatha Anusuchit Jan Jati) Rini Sahayata Adhinyam, M.P. 1967, Section 7 and 8-Suit for recovery of debt-Transaction after appointed day-Act has no application-Suit for recovery maintainable-Decree passed in appeal executable : *Manmohan Panika Vs. Anand Kumar Tamrakar, I.L.R (2004) M.P. 522*

-**Section 115**-Manner of reaching conclusion erroneous-Amounts to irregularity in exercise of jurisdiction-Interference by High Court justified : *Jagannath Prasad Vs. Prag Narain, I.L.R (1962) M.P. 140*

-Section 115-Tribunal constituted under section 4, Displaced Persons (Debts Adjustment) Act-It is a 'Civil Court' Subordinate to the High Court-Presiding Officer a Court and not 'persona designata' -Revision against the Order of the Tribunal - maintainable-Test to be applied to determine whether the tribunal is a Civil Court : *Maghanmal Vs. Mulchand, I.L.R (1962) M.P. 476*

- **Section 115** - High Court not to interfere if lower Court has acted within jurisdiction : *Hindustan Steel Limited, Bhilai Vs. M/s Ramdayal Dau And Co. I.L.R (1976) M.P. 371*

- **Section 115**- Revision against appellate order passed by the District Judge under Section 9 of the Act is maintainable : *Jinda Ram Vs. Union of India, I.L.R (2000) M.P. 1300 (D.B.)*

- **Section 115** - Illegal decision conferring jurisdiction on some other person Decision liable to be set aside in revision : *Hindustan Steel Limited, Bhilai Vs. M/s Ramdayal Dau And Co. I.L.R (1976) M.P. 371*

- **Section 115**-Revision seeking enhancement of maintenance-While calculating wife's entitlement, benefit of only legally deductible amounts from salary is to be granted to the husband- Carry home salary re-assessed at Rs. 9,000/- per month- Husband living with his parents-Maintenance to wife enhanced to Rs. 1,500/- per month : *Smt. Reeta Sharan Vs. Shailendra Sharan, I.L.R (2000) M.P 754*

-Section 115-Enhancement of maintenance-While calculating wife's entitlement, benefit of only legally deductible amounts from salary is to be granted to the husband- Carry home salary reassessed at Rs. 9,000/- per month-Husband living with his parents-Maintenance to wife enhanced to Rs. 1,500/- per month : *Smt. Reeta Sharan Vs. Shailendra Sharan, I.L.R (2000) M.P. 754 .*

- **Section 115** - Revision under section 115, Civil Procedure code - Maintainable against order of District Judge under Section 139 (5) of Madhya Pradesh Municipalities Act : *Municipal Council Khandwa Vs. Santosh Kumar I.L.R (1976) M.P. 104 (F.B.)*

- **Section 115** – Findings whether suit is not premature and there is no deviation from notice under Section 80 of the Code and findings as to Justifiability of Annual Confidential Reports – Not liable to be interfered with in revision : *State Of M. P. Vs. Narpat Singh Dung, I.L.R (1988) M.P. 37*

- **Section 115** and Accommodation Control Act, M.P. (XLI of 1961) – Sections 7, 10, 31 and 32 – Revision–Rent Control Accommodation–Standard rent–Fixation of – Basis–Premises constructed prior to 1948–More than one assessment have been

there—Determination of standard rent should be on basis of Section 10(4)—Order impugned set aside : *Smt. Usharani Vs. Smt. Dharma Bai Thakur, I.L.R (2004) M.P. 1170*

- **Section 115**, Court Fees Act, 1870, Section 7 and Suits Valuation Act 1887, Section 9—Revision against direction to pay ad valorem court fees—Suit for declaration that plaintiff entitled to receive money—Money held by Government as retirement dues of husband—Plaintiff can put any reasonable valuation and pay fixed Court fee—Order of payment of ad-valorem court fees set-aside. *Smt. Shahista Qureshi Vs. State of M.P.; I.L.R (2002) M.P.1016*

- **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 : *Yashwant Rao Vs. Sampat, I.L.R (1980) M.P. 708 (F.B.)*

-**Section 115**—Court disregarding express provision of law—A good ground for interference in revision : *Sardar Nagendra Singh Vs. Jaidev Satpathy I.L.R (1968) M.P. 648*

-**Section 115**—Court not applying its mind in deciding the point—Ground For Interference : *Sardar Nagendra Singh Vs. Jaidev Satpathy I.L.R (1968) M.P. 648*

- **Section 115** - Revision - Expression 'Court acting illegally' and with material irregularity - Meaning of : *M/S Uttam Singh Dural & Co. (P) Ltd. New Delhi Vs. M/s Hindustan Steel Ltd., Bhilai, I.L.R (1983) M.P. 269 (D.B.)*

- **Section 115** - Trial Court not construing contract agreement fairly and broadly asking a wrong question - Applying wrong test - Misconstruing the meaning of a provision in law - High Court entitled to interfere with the order passed by trial Court in its revisional jurisdiction : *M/S Uttam Singh Dural & Co. (P) Ltd. New Delhi Vs. M/s Hindustan Steel Ltd., Bhilai, I.L.R (1983) M.P. 269, (D.B.)*

- **Section 115** (as amended by M.P. Acts 29 of 1984 and 4 of 1994) – Second revision – Order passed by District Judge in revision – By amended Act of 1994, restoration of Section 115 – Expression “any case which has been decided”– Expression includes any order made, or any order deciding an issue in course of suit or other proceeding does not include order passed in revision by District Judge – Held – Second revision to High Court not maintainable : *M/S.Universal Imp (U.S.S.R.) Electrical Ltd. Satna Vs. Shivbihari, I.L.R (1996) M.P. 517 (D.B.)*

– **Section 115** – Revision – Stamp Act, Indian (II of 1899) and Stamp Act (MP Second Amendment) Act, 1990, Sections 3,35 and Entry No. 23 of Schedule 1-A –

Agreement of sale – Possession delivered – Effect – Agreement of sale shall be deemed to be conveyance – Document not admissible in evidence unless proper stamp duty paid : *Smt. Vijaywanti Vs. Jiyanlal, I.L.R (2001) M.P. 738*

– **Section 115** – Revision – Suit for injunction for restraining defendant from flowing dirty water in lane – Property transferred by plaintiff during pendency of suit – Death of plaintiff – Order 22 Rule 10, CPC – Application for substitution on strength of assignment by purchaser – Deserves to be allowed because right to sue services by virtue of assignment of interest – No fresh suit need to be brought as the application is filed before the court could dismiss the suit for want of cause of action in favour of original plaintiff : *Sitaram Dua Vs. Sarswati Devi Sainy, I.L.R (2001) M.P. 121*

- **Section 115**- Ex-parte decree passed against which application under Order 9 Rule 13 made-Which was rejected- Against which Misc. Appeal preferred-Scope for interference u/s 115 is little and limited- Order 9 Rule 13-Liberal approach does not and cannot mean that erring applicants should have licence to disappear or appear at will-No sufficient cause was made out-Trial Court and appellate Court rightly rejected the application : *Om Prakash Vs. Iqbal Hussain, I.L.R (1998) M.P. 880*

–**Section 115**–Civil Revision–Refusal to grant maintenance *pendente lite*–Hindu Marriage Act, 1955, Sections 5, 9, 11, 24 and 25–Suit for restitution of conjugal rights–Prayer for maintenance *pendente lite*–Even if the marriage is void or voidable by reason of husband's subsisting first marriage interim alimony cannot be denied to second wife–Order of Trial Court set aside–Interim alimony granted : *Laxmi Bai Vs. Ayodhya Prasad, I.L.R (1992) M.P. 684,*

–**Section 115**–Civil Revision–Maintainability–Succession certificate granted but reversed in appeal–Revision therefrom–Value of lis more than Rs. 20,000/–Revision maintainable to correct the error, if any, committed by subordinate Court : *Lalibai Vs. Gulabai, I.L.R (1992) M.P. 217*

-**Section 115**, Land Acquisition Act, 1894, Section 18 – Acquisition of Land - Revision – Laches – Delay of 5 years in assailing rejection of reference under Section 18 of Land Acquisition Act – High Court declining to interfere in its discretionary jurisdiction – Supreme Court declined to interfere: *Mirza Majid Hussain Vs. State of M.P, I.L.R (1995) M.P. 23 (D.B.)*

- **Section 115** and Motor Vehicles Act (IV of 1939) as amended–Sections 92-A, 92-B(3), 93(ba), 95, 110-A and 110-B–Revision against award of no fault liability compensation exonerating Insurance Company–Section 92-A–Beneficial and ameliorative legislation for providing immediate help to the victim of motor accident–Enquiry summary in nature–Insurer may be exonerated only after making

detailed enquiry under Section 110-A and passing an award under Section 110-B—Liability of an insurer covers any liability arising out of the accident—Exonerating Insurance Company at the stage of no fault liability on the finding that deceased was travelling in the vehicle unauthorisedly—Not justified—Award modified accordingly. *Mohammad Ilias Vs. Badhani Bai, I.L.R (1992) M.P. 516*

—**Section 115**—Revision—Maintainance pendente lite—Hindu Marriage Act, 1955, Section 24—Application for interim alimony—Provision made for the benefit of poor spouse who is unable to maintain herself and contest the case—Delay in disposing the application not attributable to the applicant—She cannot be deprived of her right to get alimony from the date of application. *Smt. Indira Gangele Vs. Shailendra Kumar Gangele, I.L.R (1992) M.P. 808*

- **Section 115** and Constitution of India, Article 227—Order passed in exercise of Appellate power under Order 43, Rule 1(r), C. P. C.—Remedy into invoke High Court's power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984 : *Churamani Vs. Ramadhar, I.L.R (1992) M.P. 267 (D.B.)*

- **Section 115** and Motor Vehicles Act (IV of 1939), Section 110-D—Appeal would lie under, against an award of compensation made under Section 92-A and not a revision under Section 115 of the Code—Reference answered accordingly: *The Oriental Insurance Co. Ltd., Jabalpur, Vs. Pritamlal, I.L.R (1992) M.P. 363 (D.B.)*

- **Section 115**— Indian Succession Act, (XXXIX of 1925) Section 372 and M.P. Civil Services (Pension) Rules, 1976, Rules 45, 46—Government servant died issueless—Application for succession certificate by brother and sister—No nomination in favour of claimants—If there is no nomination or if made does not subsist, gratuity shall be paid to legal heirs—Being legal heirs claimants entitled to realize dues—Order dismissing application set-aside and the order granting succession certificate restored : *Dhannalal Vs. Director Deptt. of Agricultural, I.L.R (2004) M.P. 519*

- **Section 115**- Revision-Hindu Marriage Act, 1955-Section 9-Suit for Restitution of Conjugal rights-Decreed in favour of wife-L.P.A. pending arising out of First Appeal-Section 25 of the Act- Application for permanent alimony by wife to the court granting substantial relief-Section 19- Jurisdiction-By virtue of opening words of Section 25 'Any Court exercising jurisdiction' would decide jurisdiction to entertain the application for permanent alimony-Trail Court entertaining application for permanent alimony subsequent to grant of decree under Sec. 9 of the Act-Does not suffer from jurisdictional error : *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani, I.L.R (2000) M.P.1153*

– **Section 115** and Accommodation Control Act, M.P. (XLI of 1961), Section 12(1)(O) and Court-fees Act (VII of 1870), Section 7(xi)(cc) – Suit for eviction on ground of tenant’s encroaching upon a portion not let out to him – Valuation for purposes of Court Fees – High Court Rules & Orders, M.P. – Rules 9(2) – Reference to larger bench on the question of valuation of Court-fee – Section 12(1)(O) of 1961 Act and Section 7(xi)(cc) of Court-fees Act – No separate valuation for purposes of jurisdiction need be made nor separate Court-fees required to be paid for purposes of jurisdiction with regard to ejection from encroached portion as encroachment on appurtenant portion of the premises gave cause of action in favour of the landlord – Reference answered accordingly : *Madak Chand Jain Vs. Smt. Fatma Bai, I.L.R (2001) M.P. 409, (D.B.)*

– **Section 115** – Civil Revision – Suit for damages – Prayer for exemption from Court fee – Trial Court holding enquiry found that – Plaintiff not entitled to exemption from payment of Court fee – Court fee Act, 1870, Section 31 and notification there under granting exemption to person whose income is less than Rs. 6,000/- p.a. – Matter though relates to revenue yet enquiry into indulgency of plaintiff through Collector not mandatory – Order of trial Court based on sound reasonings – No interference in revisional jurisdiction : *Satya Prakash Jaiswal Vs. Smt. Premlata Jaiswal, I.L.R (2001) M.P. 1068*

- **Section 115**, Hindu Succession Act, 1956, Sections 15(1)(d) and 18 and Succession Act, Indian (XXXIX of 1925), Section 372–Revision–Hindu female dying intestate–Mother predeceased–Succession–Heirs related by full blood shall be preferred to heirs related by half blood if the nature of relationship is the same in every other respect–Applicant real (full blood) sister–Would alone inherit : *Smt. Jhugli Tekam Vs. Assistant Commissioner, I.L.R (2003) M.P. 453*

- **Section 115**–Revision–Succession certificate on basis of nomination made by deceased–Bank pass book or order in MACT case are not documents on point of applicant’s being legally married wife of deceased–Unsuccessful party may file a regular civil suit–certificate granted in favour of son–Finding not perverse or illegal–Cannot be interfered in revisional jurisdiction : *Tulsabai Vs. Dilip Kumar, I.L.R (2004) M.P. 196*

- **Section 115** and Evidence Act, Indian 1872 - Sections 63 and 65 - Civil Revision-Application to lead secondary evidence -Possession of document - Inconsistent and contradictory stand - Document neither photocopy nor true copy of original - Does not come under concept of secondary evidence - Not admissible in evidence - *Permission rightly refused. Sunil Kumar Vs. Smt. Anguri Choudhari; I.L.R (2002) M.P. 982*

–**Section 115** and Municipal Corporation Act, M.P. (XXIII of 1956) – Sections 135, 136, 147, 149– Revision – Property tax – Exemption – Educational institutions exempted–Not defined–Ascertained with reference to function and duties discharged– Board of Secondary Education is an educational institution–Administrative office building in actual use of Board–Not generating income by rent–Not liable for assessment/recovery of property tax : *Board Of Secondary Education, Bhopal Vs. Municipal Corporation, Bhopal, I.L.R (2004) M.P. 1174*

–**Section 115**–Revision–Arbitration Act, 1940, Section 34–Stay of suit for arbitration proceedings–Essential condition is the binding agreement between the parties to refer the dispute involved in the suit to arbitration–Agreement not produced in the Court–General and vague averment in plaint about agreement–Previous award not made rule of the Court–Further proceedings of suit can not be stayed. *Smt. Rakshawati Vs. Smt. Jasumati; I.L.R (2002) M.P. 355*

–**Section 115**–Civil Revision–Matrimonial proceedings–Refusal of permission to examine respondent by medical expert–Hindu Marriage Act, 1955, Section 12 and Evidence Act, 1872–Section 45–Petition for divorce by husband alleging pregnancy of wife by third person–Defence is of denial in toto while husband's allegations are in close proximity–Evidence of expert can be an important corroborating evidence–Trial Court acted with material irregularity in rejecting the application : *Vishambhar Vs. Smt. Buta Devi, I.L.R (2003) M.P. 84*

–**Section 115** and Court fees Act, 1870 Article 17(iii) and Sections 7(v)(e), 7(iv)(c), 7(iv)(d) –Suit for eviction, recovery of rents, declaration of ownership and permanent injunction against tenants who are claiming to be owners–Court fees payable– Accommodation Control Act, M. P. 1961, Section 12(1)(e) and (a)–Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect order set aside : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R (2003) M.P. 80*

- **Section 115**-Revision-Suit for injunction for restraining defendant/Board from disconnecting electricity supply on basis of additional bill of Rs. 2,14,747.00-Court fees Act, 1870-Sections 7(iv)(c) and 7 (iv) (d)-Ad *valorem* Court fees-Plaintiff though entitled to value his suit on his own but cannot be allowed to do so arbitrarily-Irrespective of nature of drafting the relief sought by plaintiff liable to pay ad *valorem* court fee on the bill amount-Order 7, Rule 11(b) of the Code-duty of Trial Court to correct valuation of relief and ask plaintiff to pay proper Court Fee else reject the plaint on his failing to do so- Order of trial Court proper-No interference called for : *Subhash Chand Jain Vs. The Chairman, M.P.E.B., I.L.R (2000) M.P. 903 (F.B.)*

–**Section 115** and Accommodation Control Act, M. P. 1961, Section 12(1)(a) and (e)–Suit for eviction, recovery of rents, declaration of ownership and permanent injunction against tenants who are claiming to be owners–Court fees payable–Court fees Act, 1870 Sections 7(iv)(c), 7(iv)(d), 7(v)(e) and Article 17(iii)–Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect order set aside : *Shabbir Hussain Vs. Naade Ali, I.L.R (2003) M.P. 80*

– **Section 115** – Civil Revision – Motor Accident Claims Tribunal entertaining claim petition after three years from the date of Motor Accident – Motor Vehicles Act, 1988 (as amended) sub-section (3) deleted omitting limitation for filing claim petition – Application filed after the amending not came in to force omitting limitation clause – Claim application not barred by limitation by virtue of retrospective effect intended to be given to the amending act – General Clauses Act, 1897 – Section 6 – Effect of Repeal – Duty cost upon the court to find out from the text and object if there is an intention not to apply provision of Section 6 – Limitation Act, Indian, 1863, Section 5 and Article 137 and Amending Act, 1994 – Effect – Legislature intended completely to cure the defect of limitation in filing claim petition arising out of Motor accidents and not to extend the period of limitation to three years – Hence provision of Section 5 or Article 137 of the Limitation Act, are not applicable to Motor Accident Claim case – Revision fails : *Oriental Insurance Company Vs. Balwant, I.L.R (2001) M.P. 725*

- **Section 115**- Revision-Maintainability-Reference to larger bench-Public Premises (Eviction of Unauthorised Occupants) Act, 1971- Sections 9 and 10-Appeal against order of Estate Officer provided before the ‘District Judge’ as ‘appellate authority’ as defined under Section 9(1) of the Act-District Judge means the District Judges constituting a class-‘Appellate authority’ so designated-Cannot be construed to be a *persona designate*- Section 10-‘Finality’ attaching to the order of appellate authority would not mean that power of superintendence of High “Court over the Court of District Judges is taken away- Court of District Judge exercising special power conferred by any Act other than the CPC would always be amenable to revisional jurisdiction of the High Court under Section 115 of the Code-revision against appellate order passed by the region Judge under Section 9 of the Act is maintainable : *Jinda Ram Vs. Union of India, I.L.R (2000) M.P. 1300, (D.B.)*.

-**Section 115** and Bhopal Gas Leakage Disaster (Processing of Claims) Act (I of 1985) Section 3 and Paragraphs 5(8), 10(3)(b)–Civil Revision–Against rejection of prayer to transfer the suit–Section 24, CPC–Application for recusal – In fact is an

application for transfer of the case—Can be made to the District Judge before whom the proceedings are pending—Approach cannot be said to demeaning or degrading the Court by use of word 'recuse'—District Judge earlier awarding interim compensation for the gas victims in huge sums—Cannot be said to have pre-judged the issues or made up—Merits of the case not considered while passing interim compensation—Improper—Though merged in the Revisional order of the High Court—Can be a ground for transfer as this approach could create a reasonable apprehension that the Trial Court was foreclosed as to merits of the case—Civil Courts Act, M. P., 1958—Section 15, as amended by Act of 1982—Assistant or Additional District Judge are subordinate to the District Judge for purposes of Section 24 of the Code—District Judge has jurisdiction to entertain such an application even though the proceeding in question are pending before himself—Impugned order set-aside and suit transferred from the Trial Court to another Court of competent jurisdiction—Words and phrases 'recuse'—Apart from dictionary meaning, is used in the sence of a Judge 'dissociating himself' or 'withdrawing himself' from a proceeding and nothing more than that. *Union Carbide Corporation Vs. Union Of India, I.L.R (1992) M.P. 121*

- **Section 115**-Revision-Certified copy not filed at the time of filing the revision-High court has ample power to suo-motu consider the impugned order from original record- Accommodation Control Act, MP, 1961-Sections 12,13-Defence and striking of defence for not depositing rent-Tenant claiming possession on the basis of contract of sale- Such defence can be taken under the General Law – General defence can not be struck off-Discretion - Court cannot exercised discretion in favour of a person who does not want to deposit rent-Defence under Section 12 is conditional on deposit of rent-Order impugned set aside-Two months time granted to tenant to deposit arrears of rent : *Shyamlal Agrawal Vs. Sardar Gurubachan Singh, I.L.R (1999) M.P. 699*

- **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 : *Rama Rao Vs. Shantibai, I.L.R (1980) M.P. 352,*

- **Section 115**, as amended by M. P. Act No. 29 of 1984 - Revision - No vested right to file revision - In view of Amendment by M. P. Amendment Act of 1984, no revision lies against revisional or appellate order of District Judge in suit or other proceedings valued below Rs. 20,000 irrespective of whether suit pending on 14.4.1984, or filed subsequently, or whether impugned order passed prior to or after 14.8.1984 : *Pirbux Vs. Babulal, I.L.R (1987) M.P. 451 (D.B.)*

-**Section 115**-Commisioner under Workmen's Compensation Act-Whether can be regarded as a Court subordinate to High Court for the purpose of this section : *Shaikh Amir Vs. Jardarbeg, I.L.R (1970) M.P. 333*

-Section 115-Order of Court dealing with reference under Land Acquisition Act-Remedy of person aggrieved by such order -Land Acquisition Act- Section 18(2)-Reference by Collector to District Judge-District Judge, Power of, to go behind reference : *Kaliyanchand Vs. Kanchanbai, I.L.R (1964) M.P.340 (D.B.)*

– **Section 115** – Revisional jurisdiction of High Court – Extent and scope of – High Court disposing of writ petition without deciding controversy but merely making certain directions – Does not operate as res judicata in a suit for declaration by the plaintiff – Findings whether suit is not premature and there is no deviation from notice under Section 80 of the Code and findings as to justifiability of Annual Confidential Reports – Not liable to be interfered with in revision – Order 14 rule 2 – Preliminary issue – Issue of res judicata – Mixed question of law and fact – Cannot be decided as preliminary issue : *State Of M.P. Vs. Narpat Singh Dung, I.L.R (1988) M.P. 37*

-Section 115-Revision against order of District Judge under section 12 of M. P. Accommodation Control Act-Maintainability -M. P. Accommodation Control Act-Section - 12"District Judge" in-Not a persona designata - Word "Final" in-Does not exclude revisional jurisdiction of High Court-District Judge does not exercise special jurisdiction under the section-Civil Procedure Code-Section 11-Decision of civil Court given earlier-Operates as res 'judicata in a suit before Rent Controlling Authority : *Krishnarao Vs. Waman Rao, I.L.R (1963) M.P.347*

-Section 115-Workers parties to original proceedings-Revision by a person describing himself as representative of workers Maintainability-Payment of Wages Act,1936-Section 2-Definition of wages-Includes good muster wages - Payment of Wages Act, 1936-Confers three rights Section 23--Contract of service modified as regards wages-Contract not hit by Section-Does not amount to contracting out-Parties can change scale of wages by mutual agreement-Payment of Wages Authority, jurisdiction of, to adjudicate upon subsistence of rival contracts set up by parties-Contract between management and union or unions-Contract binding on workers irrespective of the fact that they do not approve or ratify : *Madanlal Tiwari Vs. The Superintendent & Manager, The Bengal Nagpur Cotton Mills, Ltd., Rajnandgaon, I.L.R (1964) M.P. 145*

-Section 115-Revision against order in suit under Section 9, Specific Relief Act-Interference only in exceptional cases-Specific Relief Act-Section 9-Not concerned with legality of transaction under which possession obtained-Applicable only when person in possession dispossessed without his consent-Companies Act, 1956-Section 293(1) -Power to do an act mentioned in clause 1-Not taken from the powers of Directors-Super-Imposes a condition only-Want of consent of Company invalidates transaction-Does not make possession of transferee as one without the consent of

Company - True criterion is whether persons acting represented the directing mind and will of the Company - Possession given by persons representing the directing mind and will or Company - Possession can be regarded as being given with consent of Company - The question whether the transaction was in excess of their power - Immaterial - Board of directors and Manager to whom affairs of Company entrusted - Represent the directing mind and will of Company - Agreement to transfer undertaking by directors - Does not violate the Section - Is merely tentative subject to final approval by Company : *Shree Onama Glass Works Ltd. Gondia Vs. Ram Harak Pandey I.L.R (1967) M.P. 431*

- **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 : *Yashwant Rao Sampat, I.L.R (1980) M.P. 708 (F.B.)*

- **Section 115**, sub-sections (1) and (2) as amended by Amendment Act (CIV of 1976) - Sub-section (2) prevails over sub-section (1) - Impugned order either appealable before the Lower Court or before High Court - Remedy of revision barred against such orders - Subsequently Lower Court passing final judgment and decree - Impugned order merges in it and remedy of the aggrieved party is to challenge the order in appeal against final judgment and decree - Interpretation of Statute - Principles of : *Lala Lalsingh, Vs. Seth Shobhag Chand I.L.R (1985) M.P. 252.*

- **Section 115** and Order 1 Rule 10 - Suit by defaulter for possession of property from auction-purchaser in revenue sale for recovery of Government dues - Government if a necessary party - Section 115 - Order refusing to join a necessary party to the suit - Order revisable : *Kishor Singh Vs. Tej Singh I.L.R (1967) M.P. 808*

- **Section 115**, Order 2 Rule 2 and Order 7 Rule 11, Specific Relief Act, 1963, Section 10 and 39 - Agreement of sale - Breach of - Suit for injunction simpliciter - During pendency suit for specific performance also filed - Requirement is that every suit shall include whole claim arising from same cause of action and not that every suit shall include every claim or every cause of action - If evidence to support the claims are different then the causes of action are also different - Suit not identical - Suit for specific performance should not have been treated as barred under Order 2 Rule 2 C.P.C. - Impugned order set aside - Matter remitted back to trial Court : *Smt. Kavita Vs. Ajit Kumar Jain, I.L.R (2004) M.P. 804*

- **Section 115**, Order 6 Rule 17, Order 9 Rule 6 and Order 9 Rule 13 - Revision against refusal to set aside ex-parte decree - Suit fixed for limited purpose of application for amendment - Bi-parte proceedings ought to have been continued for

hearing on merits of the suit : *Ram Vishal Vs. Shobha Ram, I.L.R (2005) M.P. 1208*

–**Section 115**, Order 7 Rule 11 and Wakf Act, 1995 Sections 6, 40 and 85-Suit for declaration and injunction-Application for rejection of plaint dismissed-Revision against-Inclusion of property in the list of wakf Property-Only if opportunity of hearing is afforded by survey commissioner such person will have to file suit within one year of publication of list before the Tribunal and jurisdiction of Civil Court shall be excluded-Fact to be determined after filing of written statement and adducing evidence by parties-Application rightly rejected. *Amil Hakimuddin Vs. Abbas Husain; I.L.R (2002) M.P. 991*

–**Section 115** and Order 9 Rule 13–Revision–Setting aside ex-parte judgment and decree after 11 years 4 months–Delay not explained–No application for condoning delay filed–Trial Court erred in allowing application under Order 9 Rule 13 : *Ramdas Vs. Smt. Amrita, I.L.R (2005) M.P. 1202*

– **Section 115**, Order 11 Rules 12, 14, 21 and 22 – Civil Revision – Striking of defence – Discovery of documents – Affidavit for discovery of document has to be in the form prescribed and other type of affidavit should not be allowed to be filed – Procedural provision relating to discovery are power weapon as failure entails demolition of the case of an adversary – Defendant’s failure to produce document despite repeated adjournments – Trial Court justified in striking out defence : *I.D.A. Vs. Satyapal Anand, I.L.R (2001) M.P. 1579,*

– **Section 115**, Order 11 Rule 15 – Revision – Evidence Act, 1872 – Sections 63, 65 and 66 – Secondary evidence – Nature of Photocopy of original obtained through mechanical process insures authenticity hence can be produced in evidence as secondary evidence with permission of the Court – Sections 65 and 66 – Secondary evidence – Leading of Conditions precedent – Party desirous to lead secondary evidence by producing photo copy has to prove to the satisfaction of the Court that possession or original is obtained by opposite party by fraud or force – Section 66, Order 4 Rule 15, C.P.C. – Notice produce to the party in possession original – The word “appears” in third proviso has to be governed by the law of pleadings – Plaintiff neither pleaded nor adduced any evidence that the original is possessed by the defendant by force of fraud – Plaintiff cannot be granted exemption from giving notice as envisaged under Order 4 Rule 15, C.P.C. : *Ram Sahu Vs. Ramdayal, I.L.R (2001) M.P. 258,*

- **Section 115**–Order 14 Rule 2–Civil Revision–Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 88–Section bars suits or other legal proceedings against Registrar in respect of anything done in good faith–Issue relating to bar created by

law decided as preliminary issue and the suit dismissed—Purely question of law—Revision does not lie : *Smt. Shakuntala Soni Vs. State, I.L.R (2004) M.P. 525*

—**Section 115** and Order 16 Rule 5—Civil Revision—Rejection of application to lead secondary evidence—Evidence Act, Indian, 1872, Sections 62, 65, 66 and Succession Act, Indian, 1925, Section 63—Will—Original not filed—Certified copy sought to be admitted as secondary evidence—Rule of proving execution—At least one of the attesting witnesses is required to be examined—If both witnesses are dead execution may be proved by examining the scribe or any person acquainted with handwriting and signature of the testator—If the copy with the Sub-Registrar is a carbon copy the same may be presumed to be original and then proof of execution can be given as envisaged in Section 63 of Indian Succession Act : *Chhatrapratap Vs. Tulsi Prasad; I.L.R (2002) M.P. 360*

—**Section 115**, Order 21 Rules 2, 11—Execution proceeding in service matter—Administrative Tribunals Act, 1985, Section 29—Appeal pending in High Court having been saved necessarily the proceeding arising there from are also saved—Execution of such decree is not laible to be transferred to Tribunal. *M.L. Beohar Vs. Union Of India; I.L.R (1992) M.P. 948*

—**Section 115**, Order 21 and Rule 11—Revision—Execution proceedings—It is the duty of the executing court to find out exact meaning of the decree and give effective relief to the decree holder—Decree for specific performance of contract for sale—Itself implies delivery of possession—No error committed by executing court in directing the JDr to hand over possession : *Sunderlal Vs. Gopal Saran, I.L.R (2003) M.P. 1218*

- **Section 115**, Order 21 Rule 11—Plaintiff already reinstated in service and getting salary—Execution application contains prayer to recover payment of salary accrued in favour of plaintiff after the date of decree—Executing Court cannot go beyond the tenor of the decree and pass orders for recovery of future payment—Such future salary should be excluded from the warrant to recovery—Order or Executing Court maintained : *President, Shree Gujrati Samaj Higher Secondary School, Ratlam Vs. Rameshchandra, I.L.R. (2000) M.P. 402*

—**Section 115**, Order 21 Rule 11—Civil Revision—Execution Proceedings—Service matter—Administrative Tribunals Act, 1985, Section 29—Transfer of pending proceedings to Tribunal—Object of constituting tribunal is to provide for an exclusive adjudicatory and not executory forum—Execution proceedings in Service matters not being adjudicatory proceedings are saved—Other proceeding shall include only pending proceedings whose cause of action still required to be adjudicated and not such proceedings where all that remain to be done is execution—Executing Court directed to resume proceedings. *Kamlendra Singh Vs. State; I.L.R. (1992) M.P. 950*

- **Section 115** – Revision - Order 21 Rule 11- Execution of decree declaring removal of plaintiff null and void with direction to reinstate in service and with further relief of all service benefits-Objection of JDr as to recovery of back wages- Not tenable-Specific Relief Act, 1877, Section 42 and Specific Relief Act, 1963, Section 34-Words “further relief” includes consequential benefits of a declaratory decree-Executing Court has to execute the decree as it is-Objection of appellant rightly overruled-Plaintiff already reinstated in service and getting salary- Execution application contains prayer to recover payment of Salary accrued in favour of plaintiff after the date of decree-Executing Court cannot go beyond the tenor of the decree and pass orders for recovery of future payment-Such future salary should be excluded from the warrant of recovery-Order of Executing Court maintained : *President, Shree Gujrati Samaj Higher Secondary School, Ratlam Vs. Rameshchandra, I.L.R. (2000) M.P. 402*

-**Section 115**, Order 21 Rule 37-Application for sending judgment-Debtor to civil prison- Notice issued to show cause-Applicant submitted reply-without holding enquiry contemplated under Rule 40 Court ordered for detention in civil prison- Cannot be sustained : *Subhash Chand Jain Vs. Central Bank Of India, I.L.R. (1999) M.P. 787*

- **Section 115**, Order 22 Rule 4–Death during miscellaneous proceedings for restoration of suit–Provision of Order 22 are not applicable to proceedings under order 9 C.P.C.–Substitution allowed : *Shikhar Chandra Jain Vs. State, I.L.R. (2004) M.P. 517*

-**Section 115**, Order 22 Rule 4–Civil Revision–Death during miscellaneous proceedings for restoration of suit–Provision of Order 22 are not applicable to proceedings under order 9 C.P.C.–Substitution allowed : *Shikhar Chandra Jain Vs. State, I.L.R. (2004) M.P. 517*

- **Section 115**, Order 23 Rule 1(3)- Application for withdrawal of suit with liberty to file fresh suit- Requirements- Court has to be satisfied that the suit must fail because of some formal defects or in the alternative there exists sufficient ground-Erroneous demarcation of suit property- Suit linked with another in which substantial progress has been made- Application not to be liberally granted to enable plaintiff to come prepared to fight fresh legal battle: *Smt. Uma Devi Vs. Nagar Palika, Begumgunj, I.L.R. (1999) M.P. 1084*

- **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 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 : *Sheelchand Vs. Babulal, I.L.R. (1980) M.P. 1091,*

-Section 115, Order 37 Rule 3(4), 4–Civil Revision–Summary suit–Service on defendant in form 4-A is mandatory–Failure to comply is a fatal defect–Trial Court at no stage followed the procedure prescribed by Order 37, Rule 3(4) C.P.C. inasmuch as the summons for Judgment was not served on the defendant in form No. 4-A in Appendix-B–Decree passed without following the mandatory procedural requirements–Decree set aside–Suit restored–Matter remanded to trial Court : *Chunnilal Vs. Vinod Kumar, I.L.R. (2003) M.P. 1038*

– **Section 115** and Order 39 Rule 1 & 2–Suit for declaration and permanent injunction–Plaintiffs born after 1956 when Hindu Succession Act, 1956 already came in force–Plaintiffs can claim through their father–Father alive–Plaintiffs have no rights, title or share in the property–No prima facie case made out–Order of injunction vacated : *Kailash Singh Vs. Mewalal Singh Gond and ors., I.L.R. (2003) M. P.138*

–**Section 115**, Order 39 Rules 1 & 2 and Contract Act, 1872, Section 27–Suit for injunction–Agreement that franchisee shall not conduct similar courses within six months of termination of agreement–Agreement not in restraint but for advancement of trade–Not void–Agreement terminated by franchisee without prior notice–Interim injunction can be granted : *Manish Kane Vs. Sandeep Manudhane, I.L.R. (2003) M.P. 89*

– **Section 115** and Order 39 Rule 1 & 2, Order 43 Rule 1(r) and Hindu Succession Act, 1956, Section 2(1)(c) and 2(2)–Revision–Appellate Court reversing order of Temporary injunction–Law of inheritance–Plaintiff claiming right through a 'Gond' widow alleging full ownership–'Gond'–A Scheduled Tribe–Provision of Hindu Succession Act do not protanto apply to Scheduled Tribes–Whether according to customary Law widow was entitled to inherit the property of her husband as full owner–To be decided by pleading and proof of such custom–Absence of pleading–Plaintiff not entitled to temporary injunction–Appellate order not open to interference : *Kailash Singh Vs. Mewalal Singh Gond and ors., I.L.R. (2003) M. P.138*

- **Section 115**, Order 39 Rules 1 & 2, Order 43 Rule 1(r), Constitution of India, Article 227, Amending Act No. 29/1984, Land Revenue Code, M. P. (XX of 1959), Section 117 and Evidence Act, Indian (I of 1872), Section 114(e)–Ancestor property–Suit for injunction–Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants–Defendant though in possession can only seek order of injunction in an independent suit in a case covered by the provision of Order 39, Rule 1(c), C. P. C.–Order passed in exercise of Appellate power under Order 43,

Rule 1(r), C. P. C.–Remedy into invoke High Court's power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984–Section 114 of the Evidence Act and Section 117 of the M. P. L. R. Code–Presumption–Correctness of these entry can be presumed which are required to be made under the Law–Unless the law required an entry to be made presumption as to correctness of such entry cannot be made–Defendant can only seek injunction in an independent suit–Impugned order set aside to extent. *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

- **Section 115** – Revision – Order 40 Rule 1–Appointment of receiver by name – objection that first appeal was not maintainable as the order of appointment of named receiver was not challenged–Misconceived–Appointment of receiver holding that defendant admitted that property was not being properly maintained as it was under attachment–Subsequent final order of S.D.M. restoring possession of defendant– Sub-rule (2) of Rule 1 of Order 40 of the Code–Person in possession under some assumed right cannot be removed in the garb of appointment of receiver : *Smt. Kaveribai Vs. Smt. Dularin Bai, I.L.R. (2000) M.P.88, .*

- **Sections 115, 2, 65** and Order 21 rules 34, 95 and 96, partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380*

- **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 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 : *M. P. State Co Operative Development Bank Limited, Bhopal Vs. J. L. Chouksey, I.L.R. (1980) M.P. 1176*

– **Section 115 and 9** – Revision – Jurisdiction of Civil Court – Dispute arising out of contract containing arbitration clause – Power conferred by the parties on an authority to appoint arbitrator can only be overridden by a statute or by declaring them null and void – Civil Court assuming jurisdiction on ground that the arbitrator resigned and vacancy created thereby amounts to abdication of power by

Administrative head – Not proper – Arbitration Act, 1940 – Section 4,8 and 20 – Parties already abdicated their rights by consent and conferred powers of appointing arbitrator to an authority specifically named in the agreement – Even if for a short period vacancy is created by resignation of the arbitrator till appointment of his successor that by itself would not make an application to the Civil Court maintainable : *Union of India Vs. M/s. Raju Construction Company, I.L.R. (2001) MP 109*

- **Sections 115 and 10**-Revision-Suit for specific performance subsequent to the suit for eviction-The issue relating to the agreement of sale and its enforceability against the vendor and subsequent transferee is not necessary in eviction suit-Material in both suits is not directly and substantially same-Suit can not be stayed : *Prakash Chand Soni Vs. Anita Jain; I.L.R. (2002) M.P. 996*

-**Sections 115, 10** – Suit for recovery of 'Streedhan' and damages-Written statement filed and issues already framed-Cannot be said that proceeding in Civil Suit would embarrass and prejudice the defendants in criminal appeal against their conviction and sentence-Stay of suit-Suffers from material irregularity : *Smt. Sudharani Agrawal Vs. Surendra and others, I.L.R. (2003) M.P. 1224*

-**Sections 115, 10 and 151**-Stay of suit-Revision-Dowry death-Suit for recovery of 'Streedhan' and damages-Written statement filed and issues already framed-Cannot be said that proceeding in Civil Suit would embarrass and prejudice the defendants in criminal appeal against their conviction and sentence-Stay of suit-Suffers from material irregularity-Order set aside : *Smt. Sudharani Agrawal Vs. Surendra and others, I.L.R. (2003) M.P. 1224*

- **Section 115, 11** – Revision – Guardian and Wards Act – Sections 7 and 10 – Application for custody of minor by second wife Earlier a similar application ended in a compromise – Husband later married for third time but third wife died under suspicious circumstances – Married against for the fourth time – Application moved by second wife – Rejected by Trial court holding principle of res-judicata applies – Not proper because earlier decision was not on merits and also because the change in circumstances particularly welfare of the minor should be of paramount consideration – Impugned order set aside – Matter remanded to the trial Court : *Smt. Rehana Parveen Vs. Niamuddin, I.L.R. (2001) M.P. 255*

- **Section 115, 20**, Order 7 Rule 10, 10-A and Succession Act, Indian (XXXIX of 1925)- Section 371- Revision- Jurisdiction of succession Court- Section 371 of the Act is a special enactment, it would not be governed by Section 20 of the Code- Trial Court rejected the petition holding that it has no jurisdiction but has not observed provisions of Rule 10 and Rule 10-A of Order VII of the Code- Trial Court directed to observe provisions of Rule 10 and 10-A of Order VII of the Code : *Smt. Chandra Kala Doble Vs. Shyam Rao Doble, I.L.R. (1999) M.P. 881*

–**Sections 115, 47**–Civil revision–Suit for recovery of money–Ex-parte decree–Samaj Ke Kamjor Vargon Ke Krishi Sambandhi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadpane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P. 1976, Sections 2,12 and 14 and M.P. Gramin Rin Vimukti Adhinyam, 1982, Section 7–Objection regarding bar of jurisdiction of Civil Court in execution proceedings–Plaint does not show any admission of transaction being with holder of agricultural land–Executing Court can not go behind the decree–Order of Executing Court upheld : *Waman Vs. Baldevdas; I.L.R. (2002) M.P. 364*

- **Sections 115 and 51**–Revision–Execution of money decree–Mode of execution–Judgment debtor to get rid of decretal liability carrying on business in the new name–By his dishonest conduct Judgment debtor liable for imprisonment in execution of decree. *Prakash Bhagwani Vs. Sammati Food Products Pvt. Ltd., Sagar (M.P.) I.L.R. (2002) M.P.1001*

– **Section 115 and 80**, Municipal Corporation Act, M.P. (XXIII of 1956), Sections 68(1), 393 and 401 and Foreign Liquor Rules, M.P., 1996 – Application for renewal of licence inform under FL-3 – Suit for declaration and mandatory injunction – Permission of the Court to dispense with notice – Sections 68(1) and 401 of the Act – Municipal Corporation derives its authority under the Act – Delegation of powers to renew licence under ‘the Rules of 1996’ can not be apart from the powers of the Municipal Corporation under the Act – Conferral of power to grant or renew licence is covered by Section 68(1) of the Act – Section 401 (1) applicable – No suit could be filed without serving notice – No provision in Section 401 for taking permission of Court for relaxation of notice – Plaint filed without prior notice rejected in revisional jurisdiction by High Court : *Municipal Corporation, Murwara, Katni Vs. Lalchand Jaiswal, I.L.R. (2001) M.P. 555*

- **Section 115, 96** and Order 9 Rule 13–Revision against order setting aside *ex parte* decree passed in counter-claim–Appeal by third party dismissed–Order 9 Rule 13–Explanation append thereto–Would operate a bar when an appeal has been dismissed other then by way of withdrawal–Appeal under Section 96 not entertained by appellate Court is not filed by any of the parties to the decree. Such dismissal of the appeal would not create a bar to an application for setting aside *ex parte* decree under Order 9 Rule 13, CPC–Order V Rule 2–Service of summons– Notice of counter-claim not properly served on plaintiff for non-supply of copies of counter-claim–Order of Court below in conformity with settled position of law– No interference called for : *Laliya Vs. Bhagwan, I.L.R. (2000) M.P.627*

- **Section 115, 96** and 104, Order 22 rules 3 and 5, Order 43 rule 1 - A - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record -

Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad I.L.R. (1984) M.P. 365(F.B.)*

- **Sections 115, 104** first proviso and Order 43 - Final appellate order - Not an order in the course of a suit or other proceedings - Revision against - Maintainable. *Hanuman Datt v. State of M.P.; I.L.R. (2002) M.P. 741*

-**Sections 115, 151**-Revision-Objection dismissed by executing court attained finality after second appellate judgment-Exercising jurisdiction u/s 151 CPC cannot be set aside by the executing court-No interfere called for : *Dayal Singh Gour Vs. Evangelical Church Of India, I.L.R. (2005) M.P. 75*

-**Sections 115, 151**-Civil Revision-Stay of suit till conclusion of Criminal trial-Test-Whether the defendant shall be prejudiced in Criminal trial by the plea taken in Civil suit-Criminal procedure Code, 1973, Section 200, 204 and Penal Code, Indian, 1860, Section 420, 467 and 468-Complaint case filed by plaintiff during pendency of suit in relation to same transaction-Magistrate taking cognizance under Sections 200 and 204, Criminal Procedure Code-Plea taken by defendant in written statement likely to prejudice him in criminal trial- Stay of suit in exercise of power under Section 151, C. P. C.-Proper-No interference called for. *New Bank Of India Vs. Film M/S. Naramdeo Brothers, Indore, I.L.R. (1992) M.P. 429*

- **Sections 115, 151** and Constitution of India, Article 227, Municipalities Act, M.P., 1961, Section 20, 26 and Municipalities (Election Petition) Rules, M.P., 1962, Rule 19-Election Petition-Election of President, Nagar Palika Parishad-Recount of votes allowed by interlocutory order-Revision challenging interlocutory order dismissed by High Court as not maintainable and merits of the case not considered-Writ petition may be entertained-Recount of votes permissible only after recording evidence and a finding that recounting is necessary-Evidence yet to be adduced by election petitioner-Order cannot be sustained under the law-Order set aside-Matter remitted back to Trial Court for fresh decision after recording evidence : *Mubarak Master Vs. Hansraj Tanwar, I.L.R. (2004) M.P. 643*

- **Section 115** And Constitution of India, Article 227-Election of President, Nagar Palika Parishad-Recount of votes allowed by interlocutory order : *Mubarak Master Vs. Hansraj Tanwar, I.L.R. (2004) M.P. 643*

–**Sections 115, 151** and Order 1 Rule 10–Civil Revision–Scope of–The order needs to be maintained if it is passed by Trial Court remaining in the four corners of its jurisdiction–Joinder of parties–Addition of parties likely to widen dimensions of issues in controversy and give rise to multiplication of issues to be adjudicated–Trial Court would be left with the discretion to decide as to which are necessary parties–Addition of parties rightly refused by Trial Court. *Tansukhlal Vs. Smt. Vinita, I.L.R. I.L.R. (2002) M.P. 149*

–**Sections 115, 151**, Order 11 Rule 12 and Order 15 Rule 2–Civil Revision–Suit for eviction–Accommodation Control Act, M.P., 1961–Section 12 (1)(a) and (f)–Suit based on arrears of rent and bonafide need–Application for production of document–Plaintiff filed affidavit disclosing non–possession of document but filing some documents at belated stage–Two are different provision–Trial Court can in its discretion allow an application for production of documents under Order 13, Rule 2 of the Code at a belated stage–The plaintiff is only required to explain delay–Plaintiff making application in a casual manner–Finding of the Trial Court regarding good cause is mechanical–Impugned order set aside–Case remitted to Trial Court for deciding application under Order 13 Rule 2, C.P.C. afresh : *Jaikishan Das Vs. Rambabu Agrawal; I.L.R. (1992) M.P. 878*

- **Sections 115 and 151** and Order 21 rule 64 - Inherent powers of the Court - Exercise of - Executing Court directing sale of 4.98 Acres only but by mistake entire holding of 23.17 Acres sold - Court can set aside the sale under its inherent powers : *Gorelal Vs. Motilal I.L.R. (1986) M.P. 410.*

- **Sections 115, 151**, Order 23 Rule 3, 3-A and Order 43 Rule 1-A and Constitution of India, Articles 226/227– Compromise decree – Application for setting aside compromise decree allowed – Civil revision – Dismissed – Writ petition – Court is not helpless if compromise is obtained by perpetrating fraud on the Court – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R. (2001) M.P. 1450*

–**Sections 115, 151, 152** and Order 47–Civil Revision–Inherent power to correct clerical error–No Court can in the garb of exercise of such powers can modify alter or add to the terms of the judgment of decree–Finding in the judgment as to the liability of defendants is a finding arrived at on appreciation of evidence–Even if there be any error apparent on the face of record the proper course is to resort to Order 47 for review or a regular appeal–Order incorporating correction in the judgment and decree without jurisdiction. *Devakinandan Yadav Vs. State Bank of Indore, I.L.R. (2002) M.P. 153*

– **Sections 115,152**, Order 21 Rule 11, 50 and Order 47 Rule 1–Revision–Executing Court cannot go behind the decree–Application under Order 47 CPC could not be filed to require adjudication whether decree could be executable against a person not named and impleaded as a party to the suit : *Deepak Jain Vs. Century Textiles Industries Company*, I.L.R. (2005) M.P. 364

- **Section 115 (1) (c)** - Court exercising jurisdiction with material irregularity - High Court can interfere in revision : *Harish Chandra Batra Vs. Union Bank Of India, Jabalpur*, I.L.R. (1983) M.P. 225,

- **Sections 122, 123, 124** and Order 33, Constitution of India, Articles 227(2), 226, 235 and Court Fees Act (VII of 1870), Section 35– State Govt. Notification dated 1-4-83 to remit Court Fees for certain categories of persons – Memorandum of High Court dated 8-10-84 to District Judges to follow procedure prescribed for indigent persons – Memorandum not saved by Article 225 or Article 235 of Constitution – Constitution of Rule Committee, contemplated under Section 123, Civil Procedure Code but not vested with plenary powers of legislation – Legislative power under section 124, Civil Procedure Code or Article 227(2) of the Constitution, to be exercised by Full Court but only for regulating procedure of Civil Court – Provisions of Order 33 have no relevance in granting total exemption under the notification – Memorandum quashed : *Ramji Vs. High Court Of M.P., Jabalpur*, I.L.R. (1990) M.P. 550 (D.B.)

– **Section 123** – Constitution of Rule Committee, Contemplated under Section 123, Civil Procedure Code but not vested with plenary powers of legislation : *Ramji Vs. High Court Of M.P., Jabalpur*, I.L.R. (1990) M.P., 550, (D.B.)

– **Section 124** read with Constitution of India, Article 227 (2) – Legislative power under section 124, Civil Procedure Code or Article 227 (2) of the Constitution, to be exercised by Full court but only for regulating procedure of Civil Courts : *Ramji Vs. High Court Of M.P., Jabalpur*, I.L.R. (1990) M.P. 550, (D.B.)

-**Section 139(c)**-District Judge appointing Officers to administer oath on affidavits made under Civil Procedure Code-Officers cannot administer oath on affidavits under other statute: *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra* I.L.R. (1966) M.P. 501 (D.B.)

– **Sections 140, 100**, 101, Order 41 Rule 11 and Order 47 Rule 1– Review Application–Review of the Order of Single Bench–Placed before the Full Bench in peculiar fact situation–Power of Full Bench is limited to what the Single Bench could do while exercising power of Review–Review permissible only on three grounds specified-(i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of

record and (iii) any other sufficient ground—"Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously—Second Appeal dismissed holding "no substantial question of law involved for adjudication"—No ground supplied—Can be a ground for appeal but not for Review—Recourse to Review—Misconceived : *Ratanlal Vs. Bardi Bai*, *I.L.R. (2003) M.P. (FB) 1072 (F.B.)*

-Section 141-Right cannot be conferred by the section-Deals with procedure : *Shri Pooranchand Vs. Komalchand*, *I.L.R. (1962) M.P. 752 (D.B.)*

- Section 141 - Object and purpose of the provision of the Section : *Nathuprasad Vs. Singhai Kapoorchand*, *I.L.R. (1977) M.P. 1131, (F.B.)*

- Section 141 - Words "All proceedings" in - Is of wide import - To restrict its meaning - Will amount to violence to language - Procedure of suit - Applicable to proceedings under order 9 rule 9 - Object and purpose of the provision of Section 141, Civil Procedure Code - Civil Procedure Code - Section 151 - Application to restore application under Order 9 rule 9, Civil Procedure Code dismissed for default - Maintainability - Interpretation of statues - No words to be added unless provision rendered absurd or nugatory - Civil Procedure Code - Order 43 rule 1(c) Words "rejecting an application" in - include dismissal for default or rejection in any other situation whatever - Applicable to an order under Order 9, rule 7 rejecting the application - Interpretation of Statues - Principle to be followed in interpreting law - Court to give effect to intention of legislature as expressed in the words used - No outside consideration can prevail - Civil Procedure Code - Order 9, rule 9 - Application for restoration dismissed for default - Two remedies open - Four remedies available in case of ex parte decree - Civil Procedure Code - Section 96 and 100 - Filing application under Order 9 rule 13 - No bar to appeal under section 96 or 100 - Precedent - Subsequent Division Bench not agreeing with the decision of first Division Bench - Proper procedure to refer matter to larger Bench : *Nathuprasad Vs. Singhai Kapoorchand*, *I.L.R. (1977) M.P. 1131, (F.B.)*

- Section 141 and Order 9, rule 9-Procedure of suit - Applicable to proceedings under Order 9 rule 9 : *Nathuprasad Vs. Singhai Kapoorchand*, *I.L.R. (1977) M.P. 1131 (F.B.)*

- Section 141, Order 9 Rules 4, 9, Order 17 Rule 2 and Land Acquisition Act, Sections 18, 21 - Party making reference under Land Acquisition Act remained absent – Court dismissed the reference on merits – Application for restoration under order 9 rejected by Reference Court as not maintainable – Order rejecting application challenged – Court Should not have dismissed the claim on merits but under Order 17 Rule 2 – Application under order 9 for restoration maintainable – Matter remitted

back to reference court for deciding the application under Order 9 : *Nathmal Maheshwari Vs. State Of Mp, I.L.R. (1993) MP 302*

-Sections 141 and 86(1), 87(b) -Provisions of Sections 86(1) and 87(b) not attracted-Consent of Central Government not necessary-Section 141 also not applicable-Section 86(1) deals with substantial right while Section 141 deals with matter of Procedure : *Prabhakar Parashramji Pandit Vs. Vikram Sugar Mills Ltd., I.L.R. (1959) M.P. 804*

-Section 144-Question of restitution can arise even though reversed decree is not executed : *Inderan Vs. Ramdin, I.L.R. (1961) M.P. 603*

- Section 144 - Decree of Civil Court varied or reversed - Restitution can be only by Civil Court - Summary of conclusion : *Rajendra Bharti Vs. Shri M. P. Dube, Member, Board Of Revenue, M. P. Gwalior, I.L.R. (1977) M.P. 1176(D.B.)*

- Section 144 - Includes orders as may be passed in writ proceedings : *Dangalia Vs. Deshraj, I.L.R. (1977) M.P. 739, (D.B.)*

-Section 144-Litigation lasted for a long period of time-High Court rightly opined that interest at the rate of 24% p.a. would be excessive and it would meet the ends of justice if the rate is reduced to 12% p.a. if paid within six weeks : : *South Eastern Coalfields Ltd. Vs. State Of M.P. & Ors., I.L.R. (2004) M.P. (SC) 10 (D.B.)*

- Section 144-Remeby of applicants to file civil suit for compensation-No bar-Applicants earlier filed application-But did not claim Compensation cannot be permitted to raise the grounds in another application- Principle of esstoppel by conduct would apply: *Smt. Shakuntala Bai Sangewar and others Vs. Gopichand Gupta, I.L.R. (1999) M.P. 258*

-Section 144-Doctrine of restitution-Coalfields themselves are obliged to pay interest to the State on such amount-No one shall suffer by an act of the Court-Delay in payment due to interim order of the High Court restraining recovery of royalty at enhanced rate-Successful party finally held entitled to a relief assessable in terms of money is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court remained in operation : *South Eastern Coalfields Ltd. Vs. State Of M.P. & Ors., I.L.R. (2004) M.P. (SC) 10 (D.B.)*

-Section 144-Restitutions when can be ordered and when refused : *Karam Chand V. Smt. Kamlesh Kumari, I.L.R. (1974) M.P. 827 .*

-Section 144-Scope and applicability of-Application for restitution dismissed in default-Subsequent application not barred by res judicata : *Choudhary Hariram Vs. Pooransingh, I.L.R. (1959) M.P. 1006*

-Section 144-Costs, Payment of interest, damages, Compensation and mesne profits-Consequential on reversal of decree - Not necessary to claim in original suit-Section very wide and would include various relief's necessary to be granted on reversal of decree-Order 20, Rule 12 -Does not come into play where relief regarding mesne profits not claimed in suit-Difference between Order 20, Rule 12 and section 144-Question of restitution can arise even though reversed decree is not executed-Order 41, Rule 27-Additional evidence admissible when necessary to do complete justice : *Inderan Vs. Ramdin, I.L.R. (1961) M.P. 603*

- Section 144 and Order 20 Rule 12 -Difference between : *Inderan Vs. Ramdin, I.L.R. (1961) M.P. 603*

-Sections 144, 100, 151-Restitution of possession-High Court reversing the judgment and decree of first appellate Court restored that of Trial Court dismissing appellants suit for declaration of the injunction and possession-Section 144 C.P.C.-Application under for restitution-By nature is an application for execution-For its applicability there need not necessarily be a suit for possession-Court has power in ordinary course to direct restoration of *status quo ante* to the extent possible. *Indal Vs. Smt. Jamuna, I.L.R. (1992) M.P. 752*

-Section 144(1)-Transferee Court having no pecuniary jurisdiction executing the decree-Decree subsequently set aside in appeal-Application for mesne profits falls under this provision-Section 47-Restitution proceedings are execution proceedings-Suit can be converted into application under this provision : *Ramchandra Vs. Anantram, I.L.R. (1970) M.P. 314*

-Section 148-No automatic relating back of appeal after defects are removed : *Shri Mannalal Mandloi Vs. The Board Of Revenue, M.P. Gwalior, I.L.R. (1969) M.P. 743 (D.B.)*

- Section 148 - Power of Court to extend time allowed after per-emptory order became operative : *Nandlal Dhoot Vs. Parasram Dhoot I.L.R. (1976) M.P. 640*

- Section 148 - Compromise decree - Is in the nature of preliminary decree - Court retains seisin over the case - Does not become functus officio - Court has power to extend time for deposit of the amount even after the expiry of time originally fixed in compromise decree : *Thakur Nathu Singh Vs. Thakur Surat Singh, I.L.R (1982) M.P. 94.*

- **Section 148** - Scope of - Power of Court to extend time allowed after peremptory order became operative: *Nandlal Dhoot Vs. Parasram Dhoot I.L.R. (1976) M.P. 640*

-**Section 148**-Circumstances under which Court has jurisdiction to extend or not to extend time-Remedy in cases in which Court has no jurisdiction to extend time : *Sardar Buta Singh Vs. The State Of M.P., I.L.R. (1963) M.P. 531*

- **Section 148** and Contract Act Indian (IX of 1872), Section 74 - Suit for specific performance of a contract for sale of agricultural lands - Compromise decree passed subject to a condition that plaintiff would be entitled to obtain sale-deed from defendant on his failure to pay the requisite amount by stipulated time - Condition in the decree is by way of concession only and not by way of penalty - Section 74 of the Contract Act is not attracted - Such decree is in the nature of preliminary decree - Court retains seisin over the case - Does not become functus officio - Court has power to extend time for deposit of the amount even after the expiry of time originally fixed in compromise decree - Specific Relief Act - Section 28 - The expression "or such further period as the court may allow" in-Connnotation of : *Thakur Nathu Singh Vs. Thakur Surat Singh, I.L.R. (1982) M.P. 94.*

- **Section 148**, Order 21 Rule 11 and Constitution of India, Article 227, Specific Relief Act, 1963, Section 28 -Suit for Specific performance-Decreed ex- parte--JDr. noticed but remained ex-parte-Sale-deed drawn by Court and sent for registration-Being a sale through court Bhu Adhikar Rin Pustika ought not to have insisted upon by Registering authority-Objection as to late deposit of money -Not raised in first execution proceeding when sale-deed was drawn by court and only formality of registration remained-Objection after thought -Rightly rejected by revisional Court : *Hazarilal S/o Mulloo Vs. Manakchand S/o Ramchand Barkul; I.L.R. (2002) M.P. 862*

- **Section 148 and 149** - Confer power on Court to extend time - Power exercisable even if the order fixing time states that non-compliance within time will result in dismissal of suit - Direction acts only as in terrorem - Court still possesses power to extend time till order of dismissal is passed - Circumstances in which power can be exercised - Civil Procedure Code - Order 17, rule 3 - Word "default" in - Refers to nonpayment of amount directed to be paid - Section 2 (2)- "Dismissed for default" in - Refers only to non-appearance of parties and does not include any other default - Order dismissing suit for non - payment of costs - Order is appealable - Limitation Act, 1908 - Section 4 - Applicable to suits, appeal and applications - Other cases governed by General Clauses Act, Section 10 - Principle underlying these provisions applicable when act is to be done under order of the Court - Expiry on a day which is holiday - Act done on reopening day - Act is in time : *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153, (F.B.)*

-Section 149 and Court-fees Act, Sections 4 and 28-Extension of time for payment of court-fees permissible only on ground of mistake of party or Court or inadvertence-Discretion to extend time under section 144, Civil Procedure Code-Subject to provision of Sections 4 and 28 of Court-fees Act : *Ram Prakash Vs. Madanlal, I.L.R. (1961) M.P.744*

- Section 149 - Nature and scope of, in respect of payment of deficit Court - fees - Powers of the Court to review its previous order passed thereunder without notice to the opponent - Railways Act, 1890 - Section 76 - F - Statutory obligation of Railway Administration to disclose information about dealing with the consignment - Object of : *Union of India Vs. Ramwshwar Prasad, I.L.R. (1983) M.P. 101,*

- Section 149, Order XXXIII Rules 5 and 7, Order XLIII Rule I-Suit or appeal filed in forma pauperis Court-fees paid during pendency of lis or Court-fees paid after rejection of application-Absence of fraud or mala fides-Plaint or appeal deemed to be filed on the date on which application for permission to sue or to appeal was filed : *Ramchandra Vs. Motilal, I.L.R. (1958) M.P. 244 (D.B.)*

- Section 149 and Order XXXIII Rule 15-Application to sue in forma pauperis, rejected-Time to pay court-fees granted by the same order-Court-fees not paid within time-Court has power to extend time for payment of Court-fees : *Bhanu Vs. Dalmia & Co., I.L.R. (1958) M.P. 757 (D.B.)*

- Section 151 - Inherent powers - Exercise of : *Vasant Diwaker Patriker Vs. Union Of India, I.L.R. (1983) M.P. 160,*

- Section 151 - Inherent powers to order refund - When can be exercised : *M/S Kiran Electricals Maharani Road, Indore Vs. State Bank Of Indore, I.L.R. (1983) M.P. 596(D.B.)*

-Section 151-Registrar of Public Trust, jurisdiction of, to exercise inherent powers : *Umedibhai Vs. The Collector, Sehore, I.L.R. (1974) M.P. 609 (D.B.)*

-Section 151-Power under-When can be exercised : *Mohanlal Vs. Firm Shivilal Chunnilal, I.L.R. (1961) M.P. 641*

-Section 151-Consolidation of two suits -Amounts to really one suit - Total valuation of two suits exceeding pecuniary jurisdiction of Court -No bar to consolidation : *Kedarmal Vs. Gopaldas, I.L.R. (1962) M.P. 815 (D.B.)*

- Section 151 – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R. (2001) M.P. 1450,*

-Section 151-Not to be invoked to contravene the provisions of the Act-Can be used to supplement existing provision in Code : *Shrikishandas Vs. Radhabai, I.L.R. (1969) M.P. 492*

-Section 151-Stay of proceedings under-Court, Power of, to impose conditions for granting stay : *Mahadeo Prasad Vs. Mithulal, I.L.R. (1959) M.P.791*

- **Section 151** - Application to restore application under Order 9 rule 9, Civil Procedure Code, dismissed for default - Maintainability : *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131, (F.B.)*

- **Section 151** – Civil Suit & criminal proceedings both are arises on a same transaction and are pending – Defendant has already filed written statement – Defendant is not entitled to get the proceedings in Civil Suit stayed : *Central Bank Of India, Indore Vs. Laxmi Cotton Company, I.L.R. (1996) M.P. 500*

- **Section 151** - Court has power to revive an appeal in exercise of inherent powers under - It does not become functus - officio : *Chhitu Vs. Mathuralal, I.L.R. (1981) M.P. 777*

- **Section 151**-Court has power to grant injunction even when Order 39 rule 1, Civil Procedure Code does not apply : *Ramakant Gupta Vs. Union Of India, I.L.R. (1975) M.P. 527*

-Section 151–Inherent power of the trial Court does not extend to reviewing its earlier order: *Samant Singh Vs. Sadhu Khan, I.L.R. (1992) M.P. 756*

- **Section 151** – Order for stay of proceedings in Civil Suit pending the decision of criminal case – The same Court can rescind or modify stay order exercising powers u/s 151 CPC : *Central Bank Of India, Indore Vs. Laxmi Cotton Company, I.L.R. (1996) M.P. 500*

-Section 151 and Criminal Procedure Code, 1973 (II of 1974)–Sections 200, 204–Magistrate taking cognizance–Plea taken by defendant in written statement likely to prejudice him in criminal trial–Stay of suit in exercise of power under Section 151 C.P.C.–Proper–No interference called for : *New Bank Of India Vs. Film M/s. Naramdeo Brothers Indore, I.L.R. (1992) M.P. 429*

– **Section 151** and Court Fees Act (VII of 1870) – Sections 13, 14 and 15– It is well settled that the power of High Court to refund Court fee is not confined only to cases covered by section 13 to 15 of Court Fees Act, as section 151 of Code of Civil Procedure enables a High Court to order refund of Court fees paid in excess when

obvious injustice would be done if it is not refunded : *Harvilas Vs. Tulsiram, I.L.R. (1993) M.P. 708*

-Section 151, Constitution of India, Article 227–Registration Act, 1908, Sections 17,49, Stamp Act, Indian, 1899, Section 35, Evidence Act, Indian 1872, Section 65–Writ Petition–Secondary Evidence–Admissibility of–Document insufficiently stamped–Bar of Section 35 of Indian Stamp Act, 1899 attracted–Document cannot be admitted 'for any purpose' including Collateral one : *Chandrabhan Brahman Vs. Vijay Kumar Brahman, I.L.R. (2005) M.P. 302*

- Section 151 and Civil Courts Rules, M. P., 1961, Rule 176 - Trial Court dismissing plaintiff's suit after hearing arguments and upholding preliminary objection regarding jurisdiction by writing an elaborate order and awarding full costs to the defendant - Plaintiff not objecting to correctness of the decree under Rule 176 - Decree not liable to be corrected by restore to Section 152 or 151, C. P. Code : *Virendra Singh Bhandari Vs. M/s Nandlal Bhandari & Sons Pvt. Ltd., I.L.R. (1983) M.P. 513.*

- Section 151 and Constitution of India, Article 227, Hindu Marriage Act (XXV of 1955), Sections 13,24,25–Writ Petition–Petition for divorce by husband–Order of maintenance pendente lite in favour of wife–Recall of –Court has discretion but discretion has to be used keeping in view judicial conscience and fair play and not an arbitrary capricious manner–Court cannot introduce a condition and conceive that conduct can be taken note of while awarding interim maintenance–Conduct not a necessitous requirement for grant of interim maintenance : *Smt. Janki Bai Vs. Prem Narayan Kushwaha, I.L.R. (2005) M.P. 794*

- 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 : *Supreme General Films Exchange Private Ltd. Joint Stock Company Registered Under The Indian Companies Act, 1913, Through The Manager, Plaza Talkies, Jabalpur Vs. Her Highness Tej Kunwar Suryawanshi Ji, I.L.R. (1980) M.P. 1155*

-Section 151-Remand order under-Conditions under which it is appealable-practice-Court, Power of, to treat appeal as revision-Res judicata-Previous suit by two sisters for damages for defamation-Subsequent suit by other two sisters for similar relief-Decision in previous suit-Not res judicata in subsequent suit-Abatement-Joint tort-feasors-Death of one joint tort-feasor-Personal heirs not brought on record-Suit does not abate-Suit against some joint tort-feasors-Others discharged-Suit can

proceed-Civil Procedure Code-Section 115-Amendment allowed mechanically-Interference in revision justified : *Kumari Rashida Vs. Abdl Samad*, I.L.R. (1970) M.P. 498

- **Section 151** - Defendant's undertaking to pay in Court certain amount per month-On this condition order for appointment of receiver not passed-Defendant's failure to keep undertaking-Receiver appointed-Defence also struck off-Order striking out defence illegal-Section 151 not applicable-Definite provision for it in Civil Procedure Code, Order 11 Rule 21 and Order 9 rule 12 : *Nathulal Vs. Shantilal* I.L.R. (1962) M.P. 333

-**Section 151** and High Court Rules, Part I, Chapter 4, Rule 12-Revision decided ex parte-Provisions applicable to a petition for setting aside ex parte decision on showing sufficient reason : *Dulichand Vs. Chainsingh* I.L.R. (1966) M.P. 169

-**Section 151**-Appellate Court, power of, to revive the appeal got dismissed under misapprehension of the provisions of law : *Ganesh Vs. Goverdhandas*, I.L.R. (1965) M.P. 164

- **Section 151** – Plaintiff alleges entire consideration – Paid – Defendant admits receipts of substantial consideration – Plaintiff took possession of the house – Inherent powers cannot be invoked by the defendant to receive possession: *Smt. Sushila Singh Vs. Vijay Shanker Shukul*, I.L.R. (1991) M.P. 115

- **Section 151** and Order 1 rule 10 - Joinder of parties - Dominus Litis - Principles of - Suit by landlord against tenant on the basis of contract of tenancy - Persons claiming title to the suit accommodation cannot be joined as defendants in such suit - Accommodation Control Act, M. P., 1961 - Section 23, Proviso - Persons claiming independent title are not bound by the decree for eviction passed against tenant : *Sunil Vs. Satyanarayan Dubey*, I.L.R. (1986) M.P. 23. (D.B.)

Section 151 - Court, Power of, to impose conditions for granting stay : *Mahadeo Prasad Vs. Mithulal*, I.L.R. (1959) M.P. 791

- **Section 151** and Order 1 Rule 10, Order 41 Rule 20 -While first appeal pending respondent died- On application made in time legal representative's name ordered to be substituted-Necessary correction in record not made-Deceased person's name wrongly mentioned in judgement as respondent-In second appeal the same name continued as respondent-Application to join legal representative made on error being disclosed-Application maintainable : *Siddheshawar Vs. Nanuram* I.L.R. (1966) M.P. 323

- **Section 151** and Order 16 rules 1, 7-A - Court has jurisdiction to order direction for service of summons personally to witnesses : *Mohanlal Khetan Vs. Munnalal, I.L.R. (1988) M.P. 55*

- **Section 151** and Order 21 rules 12, 41, 105 (2) and 106 - Execution of decree by attachment of moveable property in possession of Judgment - debtor - No list of property is necessary - Court to issue warrant of attachment of such property as is in possession of Judgment - debtor - Procedure in case warrant comes back unexecuted - Decree - holder filed execution application and paid process - fee for issue of warrant to attachment of moveables of Judgment - debtor - Date fixed for awaiting report as to execution of warrant of attachment - Not a date of "hearing contemplated under rules 105 (2) and 106 - Dismissal of execution application in default of appearance on such date - Not under rule 105 (2) - Rule 106 not attracted - Such dismissal is under inherent powers - No time limit fixed for exercised of inherent powers for its restoration - Execution application ordered to be restored under inherent powers of payment of costs : *Khoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179*

- **Section 151** and Order 38 rule 5-Proceedings regarding injunction or appointment of receiver - Not proceedings in further trial in suit on merits : *Madanlal Agrawal Vs. Smt. Kamlesh Nigam I.L.R. (1978) M.P. 191 (D.B.)*

- **Section 151** and Order 38 rule 5-Court staying further proceedings in suit - Court ceases to have jurisdiction to take steps in furtherance of trial on merits - But Court has jurisdiction to deal with collateral matters - Court has jurisdiction to pass order of attachment before judgment - Proceedings regarding injunction or appointment of receiver - Not proceedings in further trial in suit on merits : *Madanlal Agrawal Vs. Smt. Kamlesh Nigam, I.L.R. (1978) M.P. 191 (D.B.)*

- **Section 151** & Order 47 Rule 1- Whether application under order 47 read with Section 151 - Civil Procedure Code maintainable after satisfaction of the decree-maintainable-Order 30 Rule 10- Suit Filed against the proprietor firm on the date of filing the suit proprietor was dead- Decree against firm nullity- Suit must be brought against his legal representative. *Smt. Chanderkanta Vs. Mahesh Brothers, I.L.R. (1998) M.P. 884*

-**Sections 151, 10 and 115**-Stay of suit-Revision-Dowry death-Suit for recovery of 'Streedhan' and damages-Written statement filed and issues already framed-Cannot be said that proceeding in Civil Suit would embarrass and prejudice the defendants in criminal appeal against their conviction and sentence-Stay of suit-Suffers from material irregularity-Order set aside : *Smt. Sudharani Agrawal Vs. Surendra and others, I.L.R. (2003) M.P. 1224*

–**Sections 151, 96(3)**, Order 23 Rule 3 and Order 43 Rule 1(u)–Appeal against Order of remand–Inherent power of the trial Court does not extend to reviewing its earlier order–Compromise decree alleged to have been obtained by impersonation and fraud–Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan, I.L.R. (1992) M.P. 756*

–**Sections 151, 100, 144**–Restitution of possession–High Court reversing the judgment and decree of first appellate Court restored that of Trial Court dismissing appellants suit for declaration of the injunction and possession–Section 144 C.P.C.–Application under for restitution–By nature is an application for execution–For its applicability there need not necessarily be a suit for possession–Court has power in ordinary course to direct restoration of status quo ante to the extent possible : *Indal Vs. Smt. Jamuna, I.L.R. (1992) M.P. 752*

–**Sections 151, 115**–Civil Revision–Stay of suit till conclusion of Criminal trial–Test–Whether the defendant shall be prejudiced in Criminal trial by the plea taken in Civil suit–Criminal procedure Code, 1973, Section 200, 204 and Penal Code, Indian, 1860, Section 420, 467 and 468–Complaint case filed by plaintiff during pendency of suit in relation to same transaction–Magistrate taking cognizance under Sections 200 and 204, Criminal Procedure Code–Plea taken by defendant in written statement likely to prejudice him in criminal trial– Stay of suit in exercise of power under Section 151, C. P. C.–Proper–No interference called for. *New Bank Of India Vs. Film M/s. Naramdeo Brothers, Indore, I.L.R. (1992) M.P. 429*

–**Sections 151, 115**–Revision–Objection dismissed by executing court attained finality after second appellate judgment–Exercising jurisdiction u/s 151 CPC cannot be set aside by the executing court–No interfere called for : *Dayal Singh Gour Vs.. Evangelical Church Of India, I.L.R. (2005) M.P. 75*

–**Sections 151, 115** and Constitution of India, Article 227, Municipalities Act, M.P., 1961, Section 20, 26 and Municipalities (Election Petition) Rules, M.P., 1962, Rule 19–Election Petition–Election of President, Nagar Palika Parishad–Recount of votes allowed by interlocutory order–Revision challenging interlocutory order dismissed by High Court as not maintainable and merits of the case not considered–Writ petition may be entertained–Recount of votes permissible only after recording evidence and a finding that recounting is necessary–Evidence yet to be adduced by election petitioner–Order cannot be sustained under the law–Order set aside–Matter remitted back to Trial Court for fresh decision after recording evidence : *Mubarak Master Vs.. Hansraj Tanwar, I.L.R. (2004) M.P. 643*

–**Sections 151, 115** and Order 1 Rule 10–Civil Revision–Scope of–The order needs to be maintained if it is passed by Trial Court remaining in the four corners of its jurisdiction–Joinder of parties–Addition of parties likely to widen dimensions of

issues in controversy and give rise to multiplication of issues to be adjudicated—Trial Court would be left with the discretion to decide as to which are necessary parties—Addition of parties rightly refused by Trial Court : *Tansukhlal Vs. Smt. Vinita, I.L.R. (2002) M.P. 149*

—**Sections 151, 115**, Order 11 Rule 12 and Order 15 Rule 2—Civil Revision—Suit for eviction—Accommodation Control Act, M.P., 1961—Section 12 (1)(a) and (f)—Suit based on arrears of rent and bonafide need—Application for production of document—Plaintiff filed affidavit disclosing non-possession of document but filing some documents at belated stage—Two are different provision—Trial Court can in its discretion allow an application for production of documents under Order 13 Rule 2 of the Code at a belated stage—The plaintiff is only required to explain delay—Plaintiff making application in a casual manner—Finding of the Trial Court regarding good cause is mechanical—Impugned order set aside—Case remitted to Trial Court for deciding application under Order 13 Rule 2, C.P.C. afresh. *Jaikishan Das Vs. Rambabu Agrawal; I.L.R. (1992) M.P. 878*

- **Sections 151 and 115** and Order 21 rule 64 - Inherent powers of the Court - Exercise of - Executing Court directing sale of 4.98 Acres only but by mistake entire holding of 23.17 Acres sold - Court can set aside the sale under its inherent powers : *Gorelal Vs. Motilal I.L.R. (1986) M.P. 410.*

-**Sections 151, 115**, Order 23 Rule 3, 3-A and Order 43 Rule 1-A and Constitution of India, Articles 226/227— Compromise decree – Application for setting aside compromise decree allowed – Civil revision – Dismissed – Writ petition – Court is not helpless if compromise is obtained by perpetrating fraud on the Court – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R. (2001) M.P. 1450*

- **Sections 151 and 115** and Order 39 rules 1 and 2 - Case not covered by Order 39, rules 1 and 2 - Court can grant temporary injunction under its inherent power : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730.*

- **Sections 151 and 115** and Order 39 rules 1 and 2 - Grant of temporary injunction - Discretionary relief - High Court would ordinarily be slow in interfering with the orders passed by the Courts below - However in exceptional cases interference can be made if it occasions a failure of justice - Temporary injunction can be granted even in favour of the defendant - Case not covered by order 39 rules 1 and 2 - Court can grant temporary injunction under its inherent powers - Statutory tenant entitled to protection of his right for quiet enjoyment of the tenancy premises - Interference in it by the landlord by raising construction over the chhat of the tenancy

premises - Temporary injunction can be granted against the landlord - Refusal of such injunction in a previous suit by the tenant - No bar for grant of injunction in subsequent suit : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730*

-**Sections 151, 115, 152** and Order 47-Civil Revision-Inherent power to correct clerical error-No Court can in the garb of exercise of such powers can modify alter or add to the terms of the judgment of decree-Finding in the judgment as to the liability of defendants is a finding arrived at on appreciation of evidence-Even if there be any error apparent on the face of record the proper course is to resort to Order 47 for review or a regular appeal-Order incorporating correction in the judgment and decree without jurisdiction. *Devakinandan Yadav Vs. State Bank of Indore, I.L.R. (2002) M.P. 153*

- **Sections 151 and 152** and Civil Courts Rules, M. P., 1961, Rules 526, 523 and 176 - "Cases undefended" and "decision on merits" - Distinction - Discretion of trial Judge to award more or less Legal Practitioner's fees than as prescribed, "according to circumstances of each case" - Trial Court dismissing plaintiff's suit after hearing arguments and upholding preliminary objection regarding jurisdiction by writing an elaborate order and awarding full costs to the defendant - Plaintiff not objecting to correctness of the decree under Rule 176 - Decree not liable to be corrected by restore to Section 152 or 151, C. P. Code : *Virendra Singh Bhandari Vs. M/S Nandlal Bhandari & Sons Pvt. Ltd., I.L.R. (1983) M.P. 513*

- **Sections 151 and 152** and Civil Courts Rules, M. P., 1961, Rules 526, 523 and 176 - Discretion of trial Judge to award more or less Legal Practitioner's fees than as prescribed, "according to circumstances of each case" : *Virendra Singh Bhandari Vs. M/S Nandlal Bhandari & Sons Pvt. Ltd., I.L.R. (1983) M.P. 513*

-**Sections 151, 152** and 153-Court-Power of, to allow correction of memo of appeal, judgment and decree : *Dr. Dwarka Prasad Vs. Mst. Safrabai, I.L.R. (1957) M.P.499 (D.B.)*

-**Section 152**-Correction liable to be made at any time provided other parties have not acquired interest in the intervening period : *Pema Vs. Dhanya, I.L.R. (1972) M.P. 601 .*

-**Section 152**-False description regarding subject-matter not leading to any confusion or mistake in mind of other party-Not affecting merits of decision-Can be corrected under this provision : *Pema Vs. Dhanya, I.L.R. (1972) M.P. 601 .*

-**Section 152**-Wording of the section, general-Covers both types of mistakes and slips and omissions-Mistake can be remedied subject to equities by other parties : *Pema Vs. Dhanya, I.L.R. (1972) M.P. 601 .*

-Section 152-Application under-No limitation is provided-Application to be made with diligence which is proper and sufficient-Correction liable to be made at any time provided other parties have not acquired interest in the intervening period-Wording of the section, general-Covers both types of mistakes and slips and omissions-Mistakes can be remedied subject to equities by other parties-False description regarding subject-matter not leading to any confusion or mistake in mind of other party-Not affecting merits of decision-Can be corrected under this provision : *Pema Vs. Dhanya, I.L.R. (1972) M.P. 601* .

- Sections 152, 115, Order 21 Rule 11, 50 and Order 47 Rule 1-Revision-Executing Court cannot go behind the decree-Application under Order 47 CPC could not be filed to require adjudication whether decree could be executable against a person not named and impleaded as a party to the suit : *Deepak Jain Vs. Century Textiles Industries Company, I.L.R. (2005) M.P. 364*

-Sections 152, 115, 151 and Order 47-Civil Revision-Inherent power to correct clerical error-No Court can in the garb of exercise of such powers can modify alter or add to the terms of the judgment of decree-Finding in the judgment as to the liability of defendants is a finding arrived at on appreciation of evidence-Even if there be any error apparent on the face of record the proper course is to resort to Order 47 for review or a regular appeal-Order incorporating correction in the judgment and decree without jurisdiction. *Devakinandan Yadav Vs. State Bank of Indore, I.L.R. (2002) M.P. 153*

- Sections 152 and 151 and Civil Courts Rules, M. P., 1961, Rules 526, 523 and 176 - "Cases undefended" and "decision on merits" - Distinction - Discretion of trial Judge to award more or less Legal Practitioner's fees than as prescribed, "according to circumstances of each case" - Trial Court dismissing plaintiff's suit after hearing arguments and upholding preliminary objection regarding jurisdiction by writing an elaborate order and awarding full costs to the defendant - Plaintiff not objecting to correctness of the decree under Rule 176 - Decree not liable to be corrected by restore to Section 152 or 151, C. P. Code : *Virendra Singh Bhandari Vs. M/s Nandlal Bhandari & Sons Pvt. Ltd., I.L.R. (1983) M.P. 513.*

-Order I Rules I and 3-Wife of testator not a party to the suit-Plea that no provision for her maintenance has been made by testator-Can not be gone into : *Karumu Vs. Rafel, I.L.R. (2000) M.P. 1125*

-Order 1 Rule 2 - Action in tort-Right of one out of many persons of the family suffering injury to file suit without joining other members of the family : *Radheshyam Vs. Jagat Narain & Ors., I.L.R. (1962) M.P. 404 (D.B.)*

-Order 1 Rules 2 and 3 -Suit on basis of composition scheme at instance of plaintiff alone-Suit proper and scheme enforceable -Other creditors are only proper or pro forma defendants *Mahadul Vs. Chironjilal & ors.*, I.L.R. (1964) M.P. 721 (D.B.)

-Order 1 rule 3-Non-joinder of necessary party-Suit liable to be dismissed : *Abdul Rahim Vs. Abdul Shakur*, I.L.R. (1971) M.P. 921 .

-Order 1 rule 3-Partition suit-All persons having share in the property-Are necessary parties : *Abdul Rahim Vs. Abdul Shakur*, I.L.R. (1971) M.P. 921 .

-Order 1 rule 3-Suits in which necessary parties left out are of two kinds-Partition suit-All persons having share in the property-Are necessary parties-Non-joinder of necessary party-Suit liable to be dismissed : *Abdul Rahim Vs. Abdul Shakur*, I.L.R. (1971) M.P. 921 .

-Order 1 Rule 3 and Order 1 Rule 10 -Power of Court to implead or strike out a party-When to be exercised-Test to be applied in determining Joinder or striking out a party-- Party not to be added for academic decision specially when no relief can be granted to that party : *Goverdhandas Vs. Choudhari Chaitram*, I.L.R. (1963) M.P.147

-Order 1 rule 3 and Order 39 rules 1 and 2 and Public Trusts Act, Madhya Pradesh (XXX of 1951), Section 8 - Registration of the trust as public trust and appointment of trustees for management of the trust property made by the Registrar under M. P. Public Trusts Act - Section 8 - Suit Challenging the order passed by the Registrar under - All trustees are necessary parties - However, only some of the trustees made defendants and trial Court granted temporary injunction against trustees defendants and not against Registrar - Order not against provision of law : *Munshilal Jain Vs. Kaushal Chand Patani*, I.L.R. (1985) M.P. 562.

-Order I Rules 3 and 1-Wife of testator not a party to the suit-Plea that no provision for her maintenance has been made by testator-Can not be gone into : *Karumu Vs. Rafel*, I.L.R. (2000) M.P. 1125

-Order I rules 3, 7 and 10-Amendment of plaint-Suit for ejectment against defendant who executed rent-note as per instructions of one Laxmichand who was already , in possession of suit premises and continued as such-Amendment to implead Laxmichand proper to enable Court to give finding whether Laxmichand or defendant in possession-Civil Procedure Code, section 115-Manner of reaching conclusion erroneous - Amounts to irregularity in exercise of jurisdiction-Interference by High Court justified : *Jagannath Prasad Vs. Prag Narain* I.L.R. (1962) M.P.140

– **Order 1 Rule 3-A** – State not impleaded as party – Court can direct the appellant to implead State as defect is a curable irregularity – Suit or appeal cannot be dismissed on this ground : *Omkar Singh Vs. Mansing, I.L.R. (1993) MP 201*

-**Order 1 rules 7, 3 and 10**-Amendment of plaint-Suit for ejectment against defendant who executed rent-note as per instructions of one Laxmichand who was already , in possession of suit premises and continued as such-Amendment to implead Laxmichand proper to enable Court to give finding whether Laxmichand or defendant in possession-Civil Procedure Code, section 115-Manner of reaching conclusion erroneous - Amounts to irregularity in exercise of jurisdiction-Interference by High Court justified : *Jagannath Prasad Vs. Prag Narain, I.L.R. (1962) M.P.140*

- **Order 1 rule 8** - Condition for applicability - Provision has to be liberally construed - Permission to sue unregistered society or committee through some members thereof can be granted - Things which should be considered before such permission can be granted : *Saraf And Swarnkar Samiti Morar Vs. Munnalal, I.L.R. (1979) M.P. 278, (D.B.)*

- **Order 1 rule 8** - Permission to sue unregistered society or committee through some members thereof can be granted - Things which should be considered before such permission can be granted : *Saraf And Swarnkar Samiti Morar Vs. Munnalal, I.L.R. (1979) M.P.278, (D.B.)*

- **Order 1 rule 8** - Provision has to be liberally construed : *Saraf And Swarnkar Samiti Morar Vs. Munnalal, I.L.R. (1979) M.P.278, (D.B.)*

-**Order 1 rule 8** - Denial of rights by several persons-Some persons could be sued as representing the whole body-Provision applicable to suit against inhabitants of town as well as village-Persons sued denying the right to be sued in representative capacity-Their unwillingness immaterial-Permission cannot be refused : *Ramkumar Dani Vs. Jeevanlal, I.L.R. (1960) M.P. 146*

- **Order 1 Rule 8, Section 11 and Explanation VI** – Res-judicata – Essence of explanation VI – Earlier litigation bona fide and private right claimed must be common to all who are sought to be bound : *Brij Bihari Vs. State Of M.P., I.L.R. (1988) M.P., 596 (D.B.)*

- **Order 1 Rule 8, Section 11, Explan. 6** - Representative suit – Without leave of the Court under Order 1 Rule 8 of C.P.C. - Effect - Eviction suit against unregistered body through its Manager, President and Member - All three duly represented in the suit – Neither suit was collusive nor a shadow of negligence traceable - Decree passed in suit became final with the dismissal of S.L.P. – Decree can not be treated as nullity - Decree binding on all members of body and operates as res judicata : *Singhai Lal*

Chand Jain (Dead) Vs. Rashtriya Swayam Sewak Sangh, Panna, I.L.R. (1996) M.P. 5 (D.B.)

- **Order 1 rule 9** - Not applicable in claims cases - Hence, claim petition cannot be dismissed for non-joinder of the owner of Vehicle - However, claim against insurer in the absence of owner of the Vehicle not maintainable as insurer's liability co-extensive with the owner under section 96 (1) of the Motor Vehicles Act : *B. D. Gupta Vs. Ratanlal, I.L.R. (1984) M.P. 456,*

-**Order 1 Rule 9** - Suit for pre-emption-Property sought to be preempted purchased in the name of two persons one of whom is minor-Both joined as parties to suit - Guardian for minor not appointed-Decree is nullity : *Hazarilal Vs. Nathmal, I.L.R. (1961) M.P. 139*

-**Order 1 rule 9**-Non-Joinder of necessary party-Fatal for maintaining the suit-Suit dismissed : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

- **Order 1 Rule 9 and Order 8 Rule 6-A**, Sections 11, 100, as amended by C.P.C. (Amendment) Act (CIV of 1976) and Hindu Succession Act (XXX of 1956), Section 22-Second Appeal-Suit for partition and possession-Plea of pre-emption on the basis of alleged sale-Section 100, C.P.C.-Finding of Trial Court that sale was fraudulent and no title passed- Essentially a finding of fact cannot be re-opened in Second Appeal-Order 8 Rule 6-A-Counter-claim-By its nature is a cross-suit-Would not be affected by dismissal of plaintiff's suit-Order 1 Rule 9, C.P.C.-Non-joinder of necessary party-Fatal for maintaining the suit-Suit dismissed-Hindu Succession Act-Section 22-Right of pre-emption-Not a right to the thing sold but a right to offer of a thing about to be sold-Can be claimed by setting up counter claim in the written statement-Section 11 of the Code-Omission to raise plea of pre-emption in written statement would operate res judicata-Proper value-In absence of any evidence of the market value the sum actually paid is taken to be proper value : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

- **Order 1 rule 10**-Proceedings for quashing the proceedings of Corporation - Corporation is necessary party : *Ram Sharan Bari, Municipal Councilor Jabalpur Vs. Dr. K. L. Dube, Mayor, Municipal Corporation, Jabalpur I.L.R. (1978) M.P. 126 (D.B.)*

-**Order 1 rule 10**-Plaintiff is *dominus litis*-Cannot be compelled to join any person as party against his wish : *Baijnath Vs. State Of Madhya Pradesh, I.L.R. (1974) M.P. 853*

-**Order 1 rule 10** and Limitation Act, Section 22-Suit by manager of joint Hindu family-Other members can be added as parties-Question of limitation does not arise : *Ghashilal & ors. Vs. Meer Inayatali, I.L.R. (1964) M.P 281*

-Order 1 rule 10-Plaintiff at liberty to put case as he likes and cannot be forced into controversies with persons whom he does not wish to implead : *Mujtabai Begum Vs. Mehboob Rehman, I.L.R. (1959) M.P. 256 (D.B.)*

-Order 1 rule 10-Party sufficiently represented from the beginning-Impleading of such party subsequently after limitation-Suit is not affected by bar of limitation : *Barkat Ali Vs. Shrimant Krishnajirao Pawar, I.L.R. (1971) M.P. 908 (D.B.)*

-Order 1 Rule 10-Joinder of parties-Addition of parties likely to widen dimensions of issues in controversy and give rise to multiplication of issues to be adjudicated-Trial Court would be left with the discretion to decide as to which are necessary parties-Addition of parties rightly refused by trial Court : *Tansukhlal Vs. Smt. Vinita, I.L.R. (2002) M.P.149*

-Order 1, Rule 10-Suit for partition-Persons having right of maintenance joined as defendants-Names of such defendants struck off-Order does not amount to final determination of their right-Appeal against the order not maintainable-Not a fit case for exercise of revisional powers : *Smt. Kaushaliya Devi Vs. Mata Prasad I.L.R. (1968) M.P. 396 (D.B.)*

-Order 1, Rule 10-Test to determine whether a party is a necessary party-Section 115-Court disregarding express provision of law-A good ground for interference in revision-Court not applying its mind in deciding the point-Ground for interference : *Sardar Nagendra Singh Vs. Jaidev Satpathy I.L.R. (1968) M.P. 648*

-Order 1 rule 10-Question of limitation when becomes materials in a case when a party is sought to be joined-Party sufficiently represented from the beginning-Impleading of such party subsequently after limitation- Suit is not affected by bar of limitation-Negotiable Instruments Act-Sections 8 and 78-Real owner not mentioned as holder in negotiable instrument-Has no right to bring a suit-Circumstances in which, however, he can bring a suit : *Barkat Ali Vs. Shrimant Krishnajirao Pawar, I.L.R. (1971) M.P. 908 (D.B.)*

-Order 1 rule 10-Court, Power of, to compel plaintiff to join a person as party-Practice-Relief-Power of Court to compel a party to seek particular relief-Proper relief not claimed-Suit liable to be dismissed-Court-fees Act, Section 7 (iv)(c)-Relief of declaration and consequential relief separate-Separate court-fees payable - Consequential relief flowing from declaration – Court fee payable on consequential relief only : *Muslim Wakf Board, Bhopal Vs. Municipal Board, Bhopal, I.L.R. (1959) M.P. 1015.*

-Order I Rule 10 - Tests to determine whether a Particular person is a necessary party-Constitution of India-Articles 226 and 227-High Court-Power of interference when and when not to be exercised : *Badshah Vs. The Board Of Revenue, Madhya Pradesh, I.L.R. (1961) M.P. 947 (D.B.)*

-Order 1, Rule 10 - Actions in personam-Heirs of deceased not necessary parties -Test to determine whether a person is necessary party - Distinction between necessary and proper parties-Civil Procedure Code, Order 2, Rule 2 - Separate transactions give rise to separate causes of action -Necessity of different evidence-Separate Suits-Subsequent suits not barred by Order 2 Rule 2-Civil Procedure Code, Section 151-Consolidation of two suits-Amounts to really one suit-Total valuation of two suits exceeding pecuniary jurisdiction of Court-No bar to consolidation -Will - Probate of Will obtained in foreign Court-Does not do away with proof of Will-Construction of Will-Surrounding circumstances not to be used to throw doubt on the meaning of the words used in that Will or to give its different meaning - Extrinsic evidence admissible when fictitious names used by living person -Limitation Act, Articles 49 and 145-Suit for return of deposit-Suit governed by Article 145 and not by Article 49-Evidence Act, Section 8 - Conduct of maker of statement admissible but not the statements--Section 11-Fact admissible but not statement--Section 32(2)--Statement made in due course of business admissible-Suits Valuation Act, Section 11-Objections to valuation before appellate Court-Can prevail when intimate connection between under valuation and wrong disposal of claim on merits established-Words and Phrases-Word "Vastu"-Wide enough to cover chattels, real and personal-Includes money in deposit but not immovable property : *Kedarmal Vs. Gopaldas, I.L.R. (1962) M.P. 815 (D.B.)*

-Order 1 Rule 10 - Who are necessary and proper parties--Limitation Act-Section 22-Applicable in case of joinder of necessary parties but not proper parties-Civil Procedure Code-Order 7 Rule 9-Facts stated and admitted by defendant-Plaintiff entitled to get relief on those facts-Trusts Act-Section 94-No express trust attached to property-Person holding property bound to hold the same for benefit of other person - Constructive Trust comes in existence-Trust does not fail even though Trustee not named-Civil Procedure Code-Order 2, Rule 2-Applicable to subsequently instituted suit-Two suits instituted the same day-Number assigned to suits will determine priority-Estoppel-Defendant challenging maintainability of suit on the ground of subsequent composition scheme-Defendant cannot turn round and challenge that the decree is not liable to be passed as suit not framed in that form -Civil Procedure Code-Order 1 Rules 2 and 3-Suit on basis of composition scheme at instance of plaintiff alone - Suit proper and scheme enforceable-Other creditors are only proper or pro forma defendants : *Mahadulal Vs. Chironjilal, I.L.R. (1964) M.P.721 (D.B.)*

- Order 1 Rule 10 and Section 115 -Suit by defaulter for possession of property from auction-purchaser in revenue sale for recovery of Government dues-Government

if a necessary party-Section 115-Order refusing to join a necessary party to the suit-Order revisable : *Kishor Singh Vs. Tej Singh I.L.R. (1967) M.P. 808*

- **Order 1 Rule 10** and Sections 115, 151-Civil Revision-Scope of-The order needs to be maintained if it is passed by Trial Court remaining in the four corners of its jurisdiction-Joinder of parties-Addition of parties likely to widen dimensions of issues in controversy and give rise to multiplication of issues to be adjudicated-Trial Court would be left with the discretion to decide as to which are necessary parties-Addition of parties rightly refused by Trial Court : *Tansukhlal Vs. Smt. Vinita, I.L.R. (2002) M.P. 149*

- **Order 1 rule 10** and Section 151 - Joinder of parties - Dominus Litis - Principles of - Suit by landlord against tenant on the basis of contract of tenancy - Persons claiming title to the suit accommodation cannot be joined as defendants in such suit - Accommodation Control Act, M. P., 1961 - Section 23, Proviso - Persons claiming independent title are not bound by the decree for eviction passed against tenant : *Sunil Vs. Satyanarayan Dubey, I.L.R. (1986) M.P. 23. (D.B.)*

-**Order 1 Rule 10** and Order 1 Rule 3 -Power of Court to implead or strike out a party-When to be exercised-Test to be applied in determining Joinder or striking out a party-- Party not to be added for academic decision specially when no relief can be granted to that party : *Goverdhandas Vs. Choudhari Chaitram, I.L.R. (1963) M.P.147*

-**Order 1 Rule 10**, Order 6 Rule 17 and Order 43 Rule 1-Appeal-Joinder of parties-Suit property ancestral-Suit for possession between heirs-Other heirs are necessary parties-Application rightly allowed : *Sukhram Vs. Sarjubai, I.L.R. (2005) M.P. 251*

- **Order 1 rule 10** and Order 22 rule 10 and Transfer of Property Act (IV of 1882), Section 53 - A - Suit for perpetual injunction - During pendency of the suit, plaintiff agreeing to sell the suit land and delivering possession thereof- Such acts amount to "creation of interest" for purposes of Order 22 rule 10 - On proof of agreement for sale and delivery of possession, such person entitled to leave of Court to prosecute the suit : *Roopchand Vs. Mangilal, I.L.R. (1980) M.P. 504*

-**Order 1, rule 10** and Order 30 rules 1, and 2-Limitation Act, Section 22 -Suit filed in firm's name-Names of some partners disclosed under Order 30 Rule 2, after the Limitation period-Suit not affected-Order 1, Rule 10, clause (5) contemplates addition of parties and not disclosure of names of partners-Limitation Act, section 22 -Not applicable to disclosure of names : *Firm Narain Das Mangal Sen Vs. Anand Behari Mishra, I.L.R. (1959) M.P. 121 (D.B.)*

-Order 1 Rule 10, Order 34 Rule 10- Transposition - Person to be transposed—
Not willing rather, opposed transposition - Under Order 1 Rule 10, or Order 23 Rule 10, defendant has no right to seek transposition - Plaintiff cannot be compelled to prosecute suit, specially when he is not willing to contest his suit to : *Mathura Bai Vs. Daryanamal*, I.L.R. (1995) M.P. 171

- Order 1 rule 10, Order 41, rule 20 and section 151 - While first appeal pending respondent died- On application made in time legal representative's name ordered to be substituted-Necessary correction in record not made-Deceased person's name wrongly mentioned in judgement as respondent-In second appeal the same name continued as respondent-Application to join legal representative made on error being disclosed-Application maintainable *Siddheshwar Vs. Nanuram* I.L.R. (1966) M.P. 323

-Order I rules 10, 3 and 7-Amendment of plaint-Suit for ejectment against defendant who executed rent-note as per instructions of one Laxmichand who was already , in possession of suit premises and continued as such-Amendment to implead Laxmichand proper to enable Court to give finding whether Laxmichand or defendant in possession-Civil Procedure Code, section 115-Manner of reaching conclusion erroneous - Amounts to irregularity in exercise of jurisdiction-Interference by High Court justified: *Jagannath Prasad Vs. Prag Narain*, I.L.R. (1962) M.P.140

-Order 1 rule 10(2)-Enjoins joinder of two classes of persons *Bajjnath Vs. State Of Madhya Pradesh*, I.L.R. (1974) M.P. 853

-Order 1 rule 10(2)-Person whose legal rights are likely to be affected by the litigation can be added as party : *Bajjnath Vs. State Of Madhya Pradesh*, I.L.R. (1974) M.P. 853

-Order 1 rule 10(2)-Persons whose presence before Court is necessary to settle the question completely-Such a person is a necessary party and ought to be joined-Indirect or incidental interest not enough or in his absence case cannot be defended by party adequately : *Bajjnath Vs. State Of Madhya Pradesh*, I.L.R. (1974) M.P. 853

-Order 1 rule 10(2) - Joinder of a person as party defendant-Test-Whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights *Sampatbai Vs. Madhusingh*, I.L.R. (1959) M.P. 786

- Order 2, rule 2 and Section 11 - Dismissal of the first suit on technical ground without decision on merits – No bar to second suit on merits either on ground of res judicata or under Order 2, Rule 2 – Second suit not liable to be thrown out on ground of abuse of process of court: *Bhuwan Vs. Chhitar*, I.L.R. (1961) MP 1025,

-Order 2 Rule 2-Breach of one contract-Relief's accruing there from cannot be split up *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State Of M.P. I.L.R. (1966) M.P. 913 (D.B.)*

-Order 2 Rule 2 - Separate transactions give rise to separate causes of action- Necessity of different evidence - Separate suits-Subsequent suits not barred by Order 2 Rule 2: *Kedarmal Vs. Gopaldas, I.L.R. (1962) M.P. 815 (D.B.)*

-Order 2 Rule 2 - Applicable to subsequently instituted suit-Two suits instituted the same day - Number assigned to suits will determine priority *Mahadulal Vs. Chironjilal, I.L.R. (1964) M.P.721 (D.B.)*

-Order 2 Rule 2-Several causes of action when cannot be joined *The Nava Samaj Ltd., Nagpur Vs. Civil Judge Class I, Rajnandgaon. I.L.R. (1968) M.P. 367 (D.B.)*

-Order 2 Rule 2-Requirement is that every suit shall include whole claim arising from same cause of action and not that every suit shall include every claim or every cause of action : *Smt. Kavita Vs. Ajit Kumar Jain & ors., I.L.R. (2004) M.P. 804*

- Order 2 Rule 2 – Appellants omission to seek cost and return of boring machine in earlier suit on same cause of action – Amount to relinquishment of such claim – Subsequent suit for such reliefs barred Order 2 Rule 2, C.P.C. – *Suit rightly dismissed by Trial Court Ayodhya Prasad Vs. Chhedilal, I.L.R. (2001) M.P. 371*

-Order 2 Rule 2-Cause of action for mesne profits accruing prior to the filing of suit for possession-Suit for possession without mesne profits filed and decreed-Subsequent suit for mesne profits for the period prior to the filing of the former suit barred, but not for subsequent mesne profits *Ramswaroop Vs. Jitmal I.L.R. (1966) M.P. 336*

-Order 2 rule 2 - First suit for possession of part of property-Second suit for injunction restraining defendants from disturbing possession and third suit for declaration of title regarding whole of the property and for declaration that the settlement between parties is binding-Cause of action for suits different-Suits not barred by Order 2, rule 2 *Murarilal Vs.Pandit Ramdeo, I.L.R. (1959) M.P. 278 (D.B.)*

-Order 2 rule 2 and Section 11, Explanation IV-Questions which could and ought to have been raised in prior suit not raised therein-Subsequent suit regarding those questions is barred : *Jasraj Vs. Kamruddin I.L.R. (1974) M.P. 779 (D.B.)*

-Order 2 Rule 2 and Section 96- First Appeal – Suit for damages dismissed on ground that relief sought for flowed from the same cause of action as in earlier suit – Order 2 Rule 2, C.P.C. – Appellant's omission to seek cost and return of boring

machine in earlier suit on same cause of action – Amounts to relinquishment of such claim – Subsequent suit for such reliefs barred under Order 2 Rule 2, C.P.C. – Suit rightly dismissed by Trial Court; *Ayodhya Prasad Vs. Chhedilal, I.L.R. (2001) MP 371*

– **Order 2 Rule 2** and Order 7 Rule 11, Section 115, Order Specific Relief Act, 1963, Section 10 and 39–Agreement of sale–Breach of–Suit for injunction simpliciter–During pendency suit for specific performance also filed–Requirement is that every suit shall include whole claim arising from same cause of action and not that every suit shall include every claim or every cause of action–If evidence to support the claims are different then the causes of action are also different–Suit not identical–Suit for specific performance should not have been treated as barred under Order 2 Rule 2 C.P.C.–Impugned order set aside–Matter remitted back to trial Court : *Smt. Kavita Vs. Ajit Kumar Jain, I.L.R. (2004) M.P. 804*

-**Order 2 Rule 2** and Order 22 Rule 9–Cause of action not substantially identical but different- Subsequent suit not barred : *Radhibai Vs. Dhannalal, I.L.R. (1961) M.P. 419*

– **Order 2 Rule 2** – Underlying Principle of – Defendant not to be vexed twice – Requirements for taking a plea of a bar by defendant under – Applicability of – Pleadings – Principles to be accepted by Court for reaching and interpreting the same – The words ‘encroachment and trespass’ – Distinction between, *Smt. Indubai Vs. Jawaharlal, I.L.R. (1990) M.P. 156*

- **Order 2 Rule 3** – Mis-Joinder of cause of actions and parties – Sales executed by father of plaintiff in favour of different persons, on different dates and of different portions of land – Composite Suit – Held – Suit would be bad on ground of misjoinder of cause of action – Trial Court directed to return plaint – Liberty granted to plaintiff to elect defendant against which he want to continue civil suit. *Pahelwan Singh Vs. Leela Bai, I.L.R (1997) M.P. 617*

-**Order 3 Rule 1**–Permits authorised agent to appear, apply and act–Does not allow him to plead in any Court *Vidyawati Vs. Fattilal, I.L.R. (1969) M.P. 109*

- **Order 3 Rule 1** - General rules of procedure in - When applicable *Anoop Vs. Baboolal, I.L.R. (1980) M.P. 269,*

- **Order 3 Rule 1** - Presentation of Election Petition by Counsel - Validity of *Anoop Vs. Baboolal, I.L.R. (1980) M.P. 269,*

-**Order 3 Rules 1 and 2**–Do not limit number of cases or number of parties on whose behalf a person can appear as recognised agent–Do not deal with qualifications of persons entitled to practise–Person can appear in number of cases on behalf of

parties on obtaining general power of attorney-Powers of recognised agent-Recognised agent not entitled to appear on special power - Order 3, Rule 2 and Legal Practitioners Act, Section 32-Person cannot make business of appearing as a mukhtyar under cover of power of attorney-Person making a business of mukhtyar-Person is punishable -Person appearing for several persons as recognised agent-Not decisive of the fact that he is carrying on business as Mukhtyar-Rules framed under Sections 6, 7 and 8 of Legal Practitioners Act-Power of District Judge to issue warning to a person found practising as a legal practitioner-Person ignoring the warning and persisting in his activities-Person liable to be punished *Badri Prasad Vs. District Jldge, Indore, I.L.R. (1965) M.P. 727 (D.B.)*

-Order 3 Rule 2 - Person appearing for several persons as recognised agent-Not decisive of the fact that he is carrying on business as Mukhtyar *Badri Prasad Vs. District Judge, Indore, I.L.R. (1965) M.P. 727 (D.B.)*

-Order 3 Rule 2 - Powers of recognised agent-Recognised agent not entitled to appear on special power *Badri Prasad Vs. District Judge, Indore, I.L.R. (1965) M.P. 727 (D.B.)*

-Order 3 Rule 2 and Legal Practitioners Act, 1879-Section 32-Person cannot make business of appearing as a Mukhtyar under cover of power of attorney-Person making a business of Mukhtyar-Person is punishable *Badri Prasad Vs. District Judge, Indore, I.L.R. (1965) M.P. 727 (D.B.)*

-Order 3 rule 2-Agent can appear and act on behalf of Principal-Cannot bring a suit for ejectment in his own name-Mohommedan Law-Mutawalli, Power of, to make arrangements for management of wakf property- De facto Mutawalli-Can manage property-Civil Procedure Code-Section 100-Court ignoring important evidence-Finding not binding on High Court *Abdul Raheem Khan Vs. Mamdu, I.L.R. (1973) M.P., 874*

-Order 3 Rules 2 and 1-Do not limit number of cases or number of parties on whose behalf a person can appear as recognised agent-Do not deal with qualifications of persons entitled to practise-Person can appear in number of cases on behalf of parties on obtaining general power of attorney-Powers of recognised agent-Recognised agent not entitled to appear on special power - Order 3, Rule 2 and Legal Practitioners Act, Section 32-Person cannot make business of appearing as a mukhtyar under cover of power of attorney-Person making a business of mukhtyar-Person is punishable -Person appearing for several persons as recognised agent-Not decisive of the fact that he is carrying on business as Mukhtyar-Rules framed under Sections 6, 7 and 8 of Legal Practitioners Act-Power of District Judge to issue warning to a person found practising as a legal practitioner-Person ignoring the

warning and persisting in his activities-Person liable to be punished *Badri Prasad Vs. District Jldge, Indore, I.L.R. (1965) M.P. 727 (D.B.)*

- **Order 3 rule 4** - Advocate's authority to withdraw the amount or receive payment on behalf of his client - Extent of - Client filing an application before the Tribunal praying for payment of the amount to her only - Still Tribunal directing payment to Advocate acts illegally - Order liable to be set aside - Directions for recovery of the amount from the Advocate and payment to client made - Strong disapproval of the acts of the Tribunal and Advocate recorded: *Smt. Umraji Vs. R. C. Bajpai, I.L.R. (1984) M.P. 721,*

- **Order 4 rule 1 (1)** - Clerk of Court is common agent of different Courts - He has to forward the papers to which they are addressed - Civil Courts Act, M. P. - Section 3 - Court of Additional District Judge - Is a separate Court for all purposes - Section 7 and 15 - Distribution Memo issued under - Has force of law - Civil Procedure Code, Section 107 and Order 7 rule 11 - Court finding that it has no jurisdiction - Proper course is to return memo of appeal for presentation to proper Court *Balmukand Vs. Rameshchand I.L.R. (1978) M.P. 84 (D.B.)*

- **Order 4 Rule 15, Section 66**- Notice produce to the party in possession of original - The word "appears" in third proviso has to be governed by the law of pleadings - Plaintiff neither pleaded nor adduced any evidence that the original is possessed by the defendant by force or fraud - Plaintiff cannot be granted exemption from giving notice as envisaged under Order 4 Rule 15, *C.P.C. Ram Sahu Vs. Ramdayal, I.L.R. (2001) MP 258*

-**Order V Rule 2**-Service of summons-Notice of counter claim not properly served on plaintiff for non-supply of copies of counter-claim-Order of Court below in conformity with settled position of law-No interference called for, *Laliya Vs. Bhagwan, I.L.R. (2000) M.P. 627*

- **Order 5 Rules 2, 12, 17, 20, Order 9 Rule 7 and 13, Arbitration Act Indian (X of 1940)**-Sections 14, 17, Limitation Act Indian, 1963, Section 13-Proviso (2), Order 43 Rule 1 (d)-Miscellaneous Appeal-Ex-Parte decree-Court should not proceed ex-parte unless satisfied that summons was duly served-Substituted service-Least satisfactory of all the modes of service-Reader could not have issued summons for appearance-No date for appearance mentioned-Substituted service ordered without fulfilling pre-requisites-Cannot be said to be proper service-Where there is no service of summons second proviso to Rule 13 of Order 9, CPC not attracted-Starting point of limitation would be the date of knowledge and not the date of publication-Absence of proper service-Ex-parte award set aside-Appeal allowed : *Chandra Agency Vs. Director Of State Lotteries, Madhya Pradesh, Bhopal, I.L.R. (2000) M.P. 514*

–**Order 5 Rule 9**–Service of Summons–Record not showing whether defendant was properly served or not–Service of summons in the ordinary manner cannot be dispensed with : *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

–**Order 5 Rules 9 and 19-A(2)** Substituted service–Additional mode of service–Cannot be deemed to 'due service' : *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

–**Order 5 Rules 9, 19-A(2), 21, 25, 25-A, Order 9 Rules 6, 13 and Order 43 Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123**–Order 5 Rule 9–Service of Summons–Record not showing whether defendant was properly served or not–Service of Summons in the ordinary manner cannot be dispensed with–Order 5 Rules 9 and 19-A(2) substituted service–Additional mode of service–Cannot be deemed to 'due service'–Order 9 Rule 6–Powers of proceeding *ex parte* against defendant–Cannot be invoked where defendant resides outside jurisdiction of the Trial Court–Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree–Rejection by Trial Court–Improper–Order 43 Rule 1(d) of the Code–Appeal under–Trial Court fell in error in rejecting the application as barred by limitation–Limitation Act–Section 5 and Article 123–In case where defendant is not properly served limitation starts from the date of knowledge–*Ex parte* judgment and decree set aside–And matter remitted back to the Trial Court for decision afresh : *M/s Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

- **Order 5 Rules 12, 2, 17, 20, Order 9 Rule 7 and 13, Arbitration Act Indian (X of 1940)–Sections 14,17, Limitation Act Indian, 1963, Section 13–Proviso (2), Order 43 Rule 1 (d)–Miscellaneous Appeal–Ex–Parte decree–Court should not proceed ex-parte unless satisfied that summons was duly served–Substituted service–Least satisfactory of all the modes of service–Reader could not have issued summons for appearance–No date for appearance mentioned–Substituted service ordered without fulfilling pre-requisites–Cannot be said to be proper service–Where there is no service of summons second proviso to Rule 13 of Order 9, CPC not attracted–Starting point of limitation would be the date of knowledge and not the date of publication–Absence of proper service–Ex-parte award set aside–Appeal allowed : *Chandra Agency Vs. Director Of State Lotteries, Madhya Pradesh, Bhopal, I.L.R. (2005) M.P. 514***

–Order 5 Rule 13–Substituted service ordered without fulfilling pre-requisites–Cannot be said to be proper service–Where there is no service of summons second proviso to Rule 13 of Order 9 CPC not attracted–Starting point of limitation would be the date of knowledge and not the date of publication–Absence of proper

service—Ex-parte award set aside—Appeal allowed : *Chandra Agency Vs. Director Of State Lotteries, Madhya Pradesh, Bhopal, I.L.R. (2005) M.P. 514*

-Order 5 rules 15, 16, 18 -Requirement of the law is otherwise-The person receiving the summons has to acknowledge the service of the summons with copy of the plaint-Rule 18- Though procedural, but is mandatory in nature : *Smt. Lilabai Vs. Triyoginarayan, I.L.R. (1998) M.P. 509*

-Order 5 Rules 15, 16, 18 - Statutory check to avoid the mischief, which may be played by unscrupulous plaintiff joining hands with a notorious bailiff : *Smt. Lilabai Vs. Triyoginarayan, I.L.R. (1998) M.P. 509*

- Order 5 Rule 17, Order 9 Rule 13, C.P.C. - Proof of Service of notice - The process server in his report stated that the son of the applicant told him that his father is not at home - The said person who identified house as the house of the applicant was not examined as a witness - Held - The ingredients of Order 5 Rule 17 have not been complied with and thus no proper service can be said to have been made : *Charanlal Patel Vs. Smt. Kavita Jain, I.L.R. (1997) M.P. 255*

-Order 5 Rules 17, 19 Order 9 Rule 13 and Order 43 Rule 1(d)—Ex-parte decree - Service by affixing summons - Service not verified either by affidavit of process server or by examining him - Mandatory provisions not followed - Period taken in obtaining certified copy of decree deserve to be exchanged even though certified copy was not necessary—Ex-parte decree set-aside - Appeal allowed : *Smt. Shakuntala Vs. Basant Kumar Thakur; I.L.R. (2002) M.P. 931*

-Order 5 Rules 19, 17 Order 9 Rule 13 and Order 43 Rule 1(d)—Ex-parte decree - Service by affixing summons - Service not verified either by affidavit of process server or by examining him - Mandatory provisions not followed - Period taken in obtaining certified copy of decree deserve to be exchanged even though certified copy was not necessary—Ex-parte decree set-aside - *Appeal allowed Smt. Shakuntala Vs. Basant Kumar Thakur; I.L.R. (2002) M.P. 931*

-Order 5 Rules 19-A(2) and 9 Substituted service—Additional mode of service—Cannot be deemed to 'due service' : *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

- Order 5 Rules 19-A(2), 9, 21, 25, 25-A, Order 9 Rules 6, 13 and Order 43 Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123—Order 5 Rule 9—Service of Summons—Record not showing whether defendant was properly served or not—Service of Summons in the ordinary manner cannot be dispensed with—Order 5 Rules 9 and 19-A(2) substituted service—Additional mode of service—Cannot be deemed to 'due

service'-Order 9 Rule 6-Powers of proceeding *ex parte* against defendant-Cannot be invoked where defendant resides outside jurisdiction of the Trial Court-Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree-Rejection by Trial Court-Improper-Order 43 Rule 1(d) of the Code-Appeal under-Trial Court fell in error in rejecting the application as barred by limitation-Limitation Act-Section 5 and Article 123-In case where defendant is not properly served limitation starts from the date of knowledge-*Ex parte* judgment and decree set aside-And matter remitted back to the Trial Court for decision afresh. *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

-**Order 5 Rule 20**-Substituted service-Least satisfactory of all the modes of service-Reader could not have issued summons for appearance-No date for appearance mentioned-Substituted service ordered without fulfilling pre-requisites-Cannot be said to be proper service : *Chandra Agency Vs. Director of State Lotteries, Madhya Pradesh, Bhopal, I.L.R. (2005) M.P. 514*

-**Order 5 rule 20** - Object of substituted service-Party served by substituted service-Party has right to show that substituted service not proper-Substituted service effected in a way and under circumstances as not to post the party with knowledge of suit -Does not amount to due service-Limitation Act, Article 164 -Application for setting aside *ex-parte* decree passed without due service of notice-Starting point of limitation-Date of knowledge of decree and not date of decree-Application filed within 30 days. of the date of knowledge of decree-Application not barred by time : *Kamalbai Vs. Bhula, I.L.R. (1959) M.P. 307*

-**Order 5 Rule 20**- Substituted Service-Provision are two fold- First regarding satisfaction of Court that Defendant is avoiding service and thereafter publication of summons in Newspaper and affixing the same in some conspicuous place of Court house- Rule 20(1) and (1a)- Provisions Mandatory-Non-compliance would make the defendant entitled to get the *ex-parte* decree set aside : *M/s Satish Construction Co. Vs. Allahabad Bank, I.L.R. (1998) M.P. 968*

- **Order 5 Rule 20** (1) and (1a)- Provisions Mandatory – Non compliance would make the defendant- Entitled to get the *ex – parte* decree set aside : *M/s Satish Construction Co. Vs. Allahabad Bank, I.L.R. (1998) M.P. 968*

- **Order 5 Rules 21, 9, 19-A(2), 25, 25-A**, Order 9 Rules 6, 13 and Order 43, Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123-Order 5 Rule 9-Service of Summons-Record not showing whether defendant was properly served or not-Service of Summons in the ordinary manner cannot be dispensed with-Order 5 Rules 9 and 19-A(2) substituted service-Additional mode of service-Cannot be deemed to 'due service'-Order 9 Rule 6-Powers of proceeding *ex parte* against defendant-

Cannot be invoked where defendant resides outside jurisdiction of the Trial Court—Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree—Rejection by Trial Court—Improper—Order 43 Rule 1(d) of the Code—Appeal under—Trial Court fell in error in rejecting the application as barred by limitation—Limitation Act—Section 5 and Article 123—In case where defendant is not properly served limitation starts from the date of knowledge—*Ex parte* judgment and decree set aside—And matter remitted back to the Trial Court for decision afresh. *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

-Order 5 Rules 25-A, 9, 19-A(2), 21, 25, Order 9 Rules 6, 13 and Order 43 Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123—Order 5 Rule 9—Service of Summons—Record not showing whether defendant was properly served or not—Service of Summons in the ordinary manner cannot be dispensed with—Order 5 Rules 9 and 19-A(2) substituted service—Additional mode of service—Cannot be deemed to 'due service'—Order 9 Rule 6—Powers of proceeding *ex parte* against defendant—Cannot be invoked where defendant resides outside jurisdiction of the Trial Court—Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree—Rejection by Trial Court—Improper—Order 43 Rule 1(d) of the Code—Appeal under—Trial Court fell in error in rejecting the application as barred by limitation—Limitation Act—Section 5 and Article 123—In case where defendant is not properly served limitation starts from the date of knowledge—*Ex parte* judgment and decree set aside—And matter remitted back to the Trial Court for decision afresh. *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

– **Order 6 Rule 1** and Order 8 Rules 2, 3, 4 and 5 – Written statement adopting written statement in the eye of law: *Babulal Agrawal Vs. Smt. Jyoti, I.L.R. (2001) M.P. 192, (D.B.)*

– **Order 6 Rule 2** – Pleadings – Must contain a concise statement of material facts – Vague and general averment – Ground of cruelty not established – Desertion proof of separation alone not sufficient – Intention to bring cohabitation permanently to an end has also to be proved : *Shrikant Vs. Smt. Saroj, I.L.R. (2001) M.P. 1202,*

– **Order 6 Rule 2** and Section 96 – First Appeal – Suit for declaration that sale deed by defendant not binding –Family Partition- Suit house situated in plaintiff's Village – Greater probability that suit house was given in partition to plaintiff – Material fact must be pleaded—No pleading of will in written statement—Will not produced nor proved—Case developed at evidence stage cannot be accepted : *Awadh Bihari Asati & Ors. Vs. Shyam Bihari Asati & ors., I.L.R.(2004) M.P. 56*

-Order 6 Rule 3-B, Order 6 Rule 4-A, Part X and the First Schedule, Civil Procedure Code (Madhya Pradesh Amendment) Act, 1984 – Constitutional validity – Rules 4-A and 3-B of Order 6 are valid – Legislative competence of the State Government to make amendment in the Civil Procedure Code including First Schedule cannot be challenged : *Prakash Chand Vs. Kanhaiyalal, I.L.R. (1989) M.P. 8 (D.B.)*

-Order 6 Rule 4-Plea regarding mis - representation- Details of mis-representation necessary to be given : *Firm M/s Gopal Company Ltd., Bhopal & anr. Vs. Firm Hazarilal & Company, Bhopal, I.L.R. (1965) M.P. 938 (D.B.)*

- 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 : *M. P. State Co-Operative Land Development Bank Limited, Bhopal Vs. J. L. Chouksey, I.L.R. (1980) M.P. 1176*

- 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 : *M. P. State Co-Operative Land Development Bank Limited, Bhopal Vs. J. L. Chouksey I.L.R. (1980) M.P. 1176*

-Order 6 rule 5-Particulars supplied at the instance of opposite party-To be treated as explanatory of the pleadings-Other party failing to reply to the particulars in the written statement filed after the supply of particulars-Appropriate inference can be drawn-Admission-Admission made in a separate and earlier litigation-Does not bind party in subsequent litigation, but is a piece of evidence-Value to be attached depends upon the content and the circumstances-Endowment-Elements which determine whether a person is a pujari or trustee-Distinction between ideal beneficiary and beneficiaries in practice-Estoppel-Basic principle of estoppel-Evidence Act-Sections 116 and 117-Do not give exhaustive list, but are merely illustrative -Licensee-Bailee-Servant holding property belonging to the employer-His position is that of licensee or bailee : *Balaram Vs. Durgalal, I.L.R. (1970) M.P. 624 (D.B.)*

- Order 6 rule 5 and Section 2 (2). 96 and Section 115, 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 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 : *M. P. State Co-Operative Land Development Bank Limited Vs. J. L. Chouksey I.L.R. (1980) M.P. 1176*

-Order 6 rule 8 and Order 8 rule 2-Question of fact not pleaded in written statement-Cannot be allowed to be raised for first time in appeal-Non-compliance with Article 299 of Constitution clear from pleadings of the parties-Court can go into question of validity of contract-Waiver-Requirements of Article 299 of Constitution mandatory-Contravention of provision cannot be waived-Waiver does not confer validity on invalid agreement-Constitution of India-Article 299(1)-Conditions for applicability-There can be no question of estoppel against fulfilment of requirements-Purpose and object of making provisions-Contract by tender and acceptance valid provided other requirements satisfied-Contract-Abandonment of contract by one party-Other party absolved from obligation of performance-Party must be deemed to have waived right to claim damages-Forest Financial Rules-Rule 125-Power of Chief Conservator of Forests to step in when interests of Government are discovered to be suffering : *The State of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa, I.L.R. (1974) M.P. 103 (D.B.)*

-Order 7 Rule 10-Small Cause Court not in existence at the time suit is filed-Such Court coming into existence during pendency-Ground to return plaint for presentation to proper Court not available : *Alamchand Birumal Vs. Motilal Balchand, (1969) M.P. 674 (D.B.)*

- Order 6 Rule 16 - Enables a party to ask for sticking out defence of the opponent which is unnecessary or scandalous - Which tends to prejudice or embarrass trial : *Singhai Karelal Kundanlal Trust, Sagar Vs. M/s Kesri Dal Mill, Sagar I.L.R. (1978) M.P. 391*

- Order 6 rule 17 - Amendment allowed in ignorance of question of limitation - Question of limitation can be considered later on : *Ganpatlal Vs. Surya Prasad, I.L.R. (1977) M.P.1119*

-Order 6 rule 17-Amendment formal adding a relief on facts which are already on record-Amendment does not entail fresh pleadings and fresh evidence : *Ramnarayan Vs. Puran Singh , I.L.R. (1970) M.P. 445*

-Order 6 rule 17-Delay alone-Not sufficient to defeat amendment if same is proper : *Ramnarayan Vs. Puran Singh , I.L.R. (1970) M.P. 445*

- **Order 6 rule 17** - Amendment seeking introduction of a new cause of action - Allowing of amendment resulting in fresh trial - Amendment not to be allowed : *Shyamlal Vs. Smt. Bhagwanti Bai (Deceased) Through L. Rs. Mangli, I.L.R. (1979) M.P. 1020,*

- **Order 6 rule 17** - Amendments in the plaint substituting a new cause of action can - not be allowed : *Rajlal Sindhi Vs. M/s Kaka & Co., Satna, I.L.R.(1984) M.P. 645,*

- **Order 6 rule 17** - Claim for damages based on 'conspiracy to injure' sought to be substituted as claim damages for defamation - Amendment cannot be allowed : *Rajlal Sindhi Vs. M/s Kaka & Co., Satna, I.L.R. (1984) M.P.645,*

-**Order VI Rule 17**-Prayer for amendment in Election petition to comply with the mandatory rules-Limitation for filing Election petition expired-Prayer cannot be granted-Petition has to fail : *Jai Bhan Pawaiya Vs. Shri Madhavrao, I.L.R. (2000) M.P. 1103*

- **Order 6 Rule 17** – Amendment of pleadings – Admission can be withdrawn if shown to be erroneous : *Brij Bihari Vs. State of M.P., I.L.R. (1988) M.P., 596 (D.B.)*

-**Order 6 Rule 17**- Amendment application – No. particulars mentioned- Rightly rejected : *Krishi Upaj Mandi Samiti, Mhow Vs. Shree Ram Choudhary and others., I.L.R. (1998) M.P. 961,*

-**Order 6 Rule 17**-Amendment of written statement-Amendment seeking to withdraw admission or setting up a new plea-Amendment can be allowed : *Sadashiv Vs. Jigdishchandra I.L.R. (1966) M.P. 954*

-**Order 6 Rule 17**- Amendment cannot be permitted at appellate stage by mere asking. *Sitaram and another Vs. Ramgopal, I.L.R. (1998) M.P. 481*

-**Order 6 Rule 17** - Amendment raising question relating to initial jurisdiction- Amendment though late to be allowed : *Badri Prasad & ors. Vs. Umashankar & ors., I.L.R. (1961) M.P. 1039*

-**Order 6 Rule 17** - Application for amendment of verification or for supplying verification clause-Tribunal allowing application--Discretion properly used : *Amichand Vs. Pratapsingh & Ors., I.L.R. (1964) M.P. 920 (D.B.)*

-**Order 6 rule 17**-Exception to general rules-Test which should be applied in determining the question of amendment : *Mst. Vidya Bai Vs. Lala Narayandas, I.L.R. (1974) M.P. 799*

-Order 6 rule 17-When can or cannot be allowed subsequent cause of action to be included in plaint by amendment : *Mst. Vidya Bai Vs. Lala Narayandas, I.L.R. (1974) M.P. 799*

– **Order 6 Rule 17** – Application for amendment at revisional stage – Points involved not relevant to the controversy – Prayer for amendment deserves to be rejected : *Ranjitnarayan Haksar Vs. Surendra Verma, I.L.R. (2001) M.P. 887,*

-Order 6 Rule 17 - Defect in verification or total want of verification - Amounts to irregularity in procedure-Petition not liable to rejection-Opportunity to cure defect to be given : *Amichand Vs. Pratapsingh & ors., I.L.R. (1964) M.P. 920 (D.B.)*

-Order 6 Rule 17- Amendment- True that at the stage of the consideration of the application for amendment, the Court is not required to go into the merits of the matter but the allegation must be prima facie acceptable and dependable to direct 'Trial' of the same : *Sitaram and another Vs. Ramgopal, I.L.R. (1998) M.P. 481*

- **Order 6 Rule 17**–Suit for declaration and permanent injunction– Possession illegally taken by defendant during pendency of suit– Amendment in plaint–Relief of possession and mesne profit sought to be added after about 10 years of dis-possession–Amendment can not be refused only on ground of delay : *Narmada Prasad & others. Vs. Bhanwar Ji & ors., I.L.R. (2004) M.P. 555*

–**Order 6 Rule 17**–Amendment sought to incorporate pleading at appellate stage–Limitation–No absolute rule that where relief is barred by limitation amendment should not be allowed : *Mangalam Roshanpura Vs. State Bank of India & ors., I.L.R. (2005) M.P. 725*

- **Order 6 Rule 17** – Amendment of plaint at appellate stage – Parties were alive to the facts to be introduced by amendment – Facts are necessary for complete adjudication of dispute – Amendment does not require further evidence because evidence is already on record – Held – Amendment allowed : *Ku. Chandan Vs. Longa Bai, I.L.R. (1997) M.P. 440*

- **Order 6 Rule 17**–Constitution of India, Article 227–Writ Petition–Suit for declaration and permanent injunction– Possession illegally taken by defendant during pendency of suit– Amendment in plaint–Relief of possession and mesne profit sought to be added after about 10 years of dis-possession–Amendment can not be refused only on ground of delay–Negligence in filing application–Relief of mesne profit can not be granted–Order of Trial Court modified : *Narmada Prasad & others. Vs. Bhanwar Ji & ors., I.L.R. (2004) M.P. 555*

– **Order 6 Rule 17** – Amendment of Pleadings – Maintainability of application for amendment after the case is fixed for deliver of judgment – Application rejected by Trial Court as not maintainable – Amendment application can be filed at any stage of proceeding – Delivery of judgment is a stage in a proceeding – Court is Competent to consider the application for amendment even after the case is reserved for deliver of judgment – Case remitted back for consideration of applications and decision in accordance with law. *Narendrasingh Sengar Vs. Maltidevi; I.L.R. (1993) MP 225*

- **Order 6 rule 17** - Amendment to elaborate the pleadings to be allowed - Accommodation Control Act, Madhya Pradesh, 1961 - Section 13 (2) - Enquiry thereunder is of summary nature by filing affidavits - Not obligatory to record oral evidence : *Ramnath Mahore Vs. Dr. Rakesh Kumar Gangil, I.L.R. (1985) M.P. 628*

- **Order 6 Rule 17** – Considerations for allowing the amendment - Amendment not allowed if it unnecessarily delays decision and causes in convenience to other party – Will – Construction of – Intention of the testator to be ascertained from the language of document itself – Document to be read as a whole to ascertain intention : *Sukhlal Vs. Smt. Dashodia, I.L.R. (1988) M.P. 268*

- **Order 6 rule 17** - Plaintiff applying for amendment of relief – Court cannot reject such application for amendments - Specific Relief Act, 1963 - Section 34 - Proviso - Plaintiff entitled to consequential relief directly flowing from declaration sought - Plaintiff must ask for such relief along with declaration - Plaintiff losing possession during pendency of suit - Plaintiff can amend and ask for that relief - Non - asking of relief - Suit cannot be dismissed - Ability to seek relief - Must exist at the time of filing of suit - Suit not to be dismissed on the happening of subsequent event - Hindu Law - Partition - Suit for partition - General rule that it must embrace all joint family properties and all parties - In cases of various branches - Only managers of branches should be joined - Words 'family arrangement' - Meaning of - Essential features of family arrangement : *Santoshchandra Vs. Smt Gyansundarbai, I.L.R. (1979) M.P. 641 (D.B.)*

-**Order 6 rule 17**-Suit for mesne profits-Future mesne profits not claimed-Amendment asking for inclusion there-of after substantial portion has become barred by time-Amendment cannot be allowed-Order 20 rule 12-Suit for declaration of title and possession-Mesne profits not claimed-No relief under this provision can be granted : *Deepchand Vs. S. Sukhlal, I.L.R. (1972) M.P. 320 (D.B.)*

-**Order 6 Rule 17**-Confers wide powers for allowing amendment-Change of character of suit not now an obstacle-Practice-Parties going to trial without specific issue and specific plea but with full knowledge-Absence of plea is mere irregularity not causing prejudice to the parties-Hindu Law-Migration-Mahars originally migrated

from Bombay-Presumption about migration of Mahars : *Hirabai Vs. Bhagirathibai I.L.R. (1969) M.P. 842*

- **Order 6 rule 17** - The expression "at any stage of the proceedings" - Connotation of - Court, competency of, to allow amendments of pleadings at any time before judgment is pronounced : *Badri Prasad Vs. Kripal Singh I.L.R. (1981) M.P. 980*

- **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 : *Municipal Council, Raigarh Through The Chief Municipal Officer Vs. Laxmandas, I.L.R. (1980) M.P. 770*

-**Order 6 rule 17**-Facts correctly stated in plaint-Mistake occurring in drawing proper legal inference resulting in failure to claim proper relief-Amendment to be normally allowed-Delay alone-Not sufficient to defeat amendment if same is proper- Words and phrases-"Cause of action"-Meaning of-Amendment formal adding a relief on facts which are already on record-Amendment does not entail fresh pleadings ad fresh evidence : *Ramnarayan Vs. Puran Singh, I.L.R. (1970) M.P. 445*

-**Order 6 Rule 17** - Amendment sought to remove technical defect Amendment not causing prejudice to other side and necessary in the interest of justice-Amendment necessitated on account of defence raised-Amendment to be allowed-Hindu Succession Act-Section 14- Partly retrospective and partly prospective "Whether acquired before or after the commencement of this Act" in-Qualifies phrase "any property"-Conditions to be fulfilled for acquiring absolute title in the property by the limited owner-Both conditions must co-exist-Not necessary that they must exist simultaneously : *Anandibai Vs. Sundarbai, I.L.R. (1965) M.P. 125*

- **Order 6 Rule 17**, Section 100- Second Appeal - Suit for eviction - Amendment in plaint - Ground for eviction for bona fide need of major son added - Court can always take subsequent event for just decision of a case - Transfer of Property Act, 1882, Section 109 and Evidence Act, Indian, 1872, Section 116 - Tenant paying rent to original landlord - Subsequent purchaser becomes landlord - Tenant estopped from questioning title of subsequent purchaser - Section 100, CPC - Second Appeal - Propriety of registration - Cannot be gone into in absence of framing question of law in this regard - Accommodation control Act, M.P., 1961 - Section 12(1)(f) - Bona fide need of accommodation for major sons established - Impugned judgment & decree of eviction passed by the Courts below confirmed - Constitution of India, Article 134-A - Certificate of fitness to appeal to Supreme

Court – Case decide on the law laid down by the Supreme Court – Certificate of fitness of to appeal refused : *R.P. Tiwari Vs. Smt. Sulochana Choudhary, I.L.R. (2001) MP 839*

–**Order 6 Rule 17**, Order 1 Rule 10 and Order 43 Rule 1–Appeal–Joinder of parties–Suit property ancestral–Suit for possession between heirs–Other heirs are necessary parties–Application rightly allowed : *Sukhram Vs. Sarjubai, I.L.R. (2005) M.P. 251*

–**Order 6 Rule 17**, Order 9 Rule 6 and Order 9 Rule 13 and Section 115–Revision against refusal to set aside ex-parte decree–Suit fixed for limited purpose of application for amendment–Bi-parte proceedings ought to have been continued for hearing on merits of the suit : *Ram Vishal Vs. Shobha Ram, I.L.R. (2005) M.P. 1208*

–**Order 6 Rule 17**, Order 9 Rule 13 and Order 43 Rule 1 (d) and Limitation Act Indian 1963, Section 5–Application for setting aside ex-parte decree–Subsequent amendment in plaint –Re-service on defendant is always desirable but every amendment does not entitle a defendant to re-service–Application for condonation of delay not filed nor prayed for–Lack of factual foundation as well as legal ingredients–Ex-parte judgment and decree does not warrant interference : *Hari Ram Keer Vs. State Bank of India, I.L.R. (2005) M.P. 957*

– **Order 6 Rule 17**, Order 18 Rule 1 and Section 96 –First Appeal–Suit for recovery–Decree by trial Court saddling liability on appellant against whom no relief was sought and was also proceeded ex parte–Appeal against–Amendment sought to incorporate pleading at appellate stage–Limitation–No absolute rule where relief is barred by limitation amendment should not be allowed–Written statement not filed–Impugned judgment and decree set aside–Amendment allowed–Case remanded to trial Court with liberty to appellant to file written statement : *Mangalam Roshanpura Vs. State Bank Of India, I.L.R (2005) M.P. 725*

–**Order 6 Rule 17**, Order 22 Rule 4 and Accommodation Control Act, M. P., 1961, Section, 12(1)(f)–Legal representatives brought on record–They also set up bona-fide need for carrying on business for their own livelihood–Suit has to be decided on the basis of amended pleadings–Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff–Judgment and decree passed by High Court set aside : *Shakuntala Vs. Narayan Das, I.L.R (2004) M.P. (SC) 714 (D.B.)*

- **Order 6 Rule 17**, Order 22 Rule 4 and Section 100, Accommodation Control Act, M. P., 1961, Section 2(b), 12(1)(f)–Suit for eviction–Non-residential accommodation–Bona- fide need of landlord for carrying on his own business–Need

has to be examined on date of institution of suit—Suit decreed by trial Court—Death of landlord during pendency of appeal by tenant—Will not make any difference as his heirs are fully entitled to defend the estate—Legal representatives brought on record—They also set up bona-fide need for carrying on business for their own livelihood—Suit has to be decided on the basis of amended pleadings—Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff—Judgment and decree passed by High Court set aside : *Shakuntala Vs. Narayan Das*, *I.L.R (2004) M.P. (SC) 714 (D.B.)*

- **Order 6 Rule 17** and order 41 Rule 33 - First appellate Court allowed the application under order 6 Rule 17, C.P. C.- Without opportunity to make consequential Amendment- To remove inaccuracy or omission in the interest of justice Appellate Court right in allowing Amendment application and decree for eviction u/o 41 Rule 33, C.P.C.: *Bhagwati Prasad Vs. Baleshwardayal*, *I.L.R (1998) M.P. 683*

- **Order 6 rule 17** and Order 41 rule 27, as amended - Scope for allowing an application for amendment of the written statement at the appellate stage - Production of additional evidence at the appellate stage - When liable to be allowed - Hindu Law and Evidence Act, 1872, Sections 101 and 104 - Plea of partition - Burden of proof - Scope for drawing reasonable inference where evidence obliterated by passage of time : *Jhangloo Vs. Tularam*, *I.L.R (1985) M.P. 550. (D.B.)*

- **Order 6 Rule 17** and Order 41 Rule 27 and Section 96, Constitution of India, Article 227—Additional evidence at first appellate stage—Documents already on record—Application mis-conceived—However the same has to be decided either way : *Smt. Gindia Bai Vs. Elfort Ltd. Co.*, *I.L.R (2005) M.P. 1146*

-**Order 7 Rule 2** (1) and Order VII Rule 11 (a) - Allegation of corrupt practices without full particulars and without requisite Affidavit with regard to such particulars render the petition devoid of cause of action and thus unworthy of being tried further- Election petition dismissed : *Rameshwer Dayal Vs. Nemichand Jain & others*, *I.L.R (1998) M.P. 933*

- **Order 7 rule 7** - Power of Court to award compensation though not specifically prayed for : *Firm Durgaprasad Magniram, Sagar Vs. Dr. Ganesh Prasad* *I.L.R (1982) M.P. 725.*

-**Order 7 Rule 7**-No specific claim under section 70, Contract Act, made-No amendment-Decree on the basis of section 70 can be granted : *The Cantonment Board, Mhow Vs. Chhajumal And Sons, Mhow*, *I.L.R (1968) M.P. 245 (D.B.)*

- **Order 7 rule 7** - Permits claiming of alternative inconsistent reliefs - Relief of specific performance and redemption in alternative can be claimed unless some statute prohibits it - Specific Relief Act, 1963 - Section 16 (c) and Explanation - Contract open to two constructions - Plaintiff can allege alternative constructions and claim relief - True construction is that which is accepted by Court - In such cases difficulties are likely to arise in proving readiness and willingness from the date of contract : *Bajranglal Vs. Purushottamdas, I.L.R (1977) M.P. 562, (D.B.)*

-**Order 7 Rule 7** - Suit not based on alternative cause of action-On facts pleaded, relief can be granted provided there is no surprise to other side : *Gorelal Vs. Ramjeelal, I.L.R (1961) M.P. 366*

- **Order 7 rule 7** and Section 9 - Declaratory decree can also be granted under : *Modi Bai Vs. Nagraj, I.L.R (1982) M.P. 260.*

-**Order 7 Rule 7** and 39 Rule 1 and 2 - Temporary injunction - Even in absence of specific prayer Court has power to issue injunction in suitable cases - Court can restore status-quo existing on the date of suit. *Ajra Habib v. B.K. Gupta; I.L.R (2002) M.P. 732*

-**Order 7 rule 9**-Alternative relief flowing from pleading of parties-Party entitled to that relief on alternative basis : *Kulsekarapatnam Hand-Made Match Workers Co-Operative Cottege Industrial Society Ltd. Vs. Firm Radhelal Lalloolal, Satna. I.L.R (1974) M.P. 636 (D.B.)*

-**Order 7 Rule 9** - Facts stated and admitted by defendant-Plaintiff entitled to get relief on those facts : *Mahadulal Vs. Chironjilal, I.L.R (1964) M.P.721 (D.B.)*

- **Order 7 Rule 10** – Endorsement on plaint when returned – Official act, presumed to have been done according to law – Party entitled to deduction of entire period upto the date of return of plaint : *Choudhary Khemraj Singh Alias, Sheokumar Vs. Bhagwat Singh, I.L.R (1988) M.P. 264*

– **Order 7 Rule 10** – Suit for divorce by muslim wife filed before the IIIrd ADJ, as per distribution memo – Both parties contested and led evidence – Return of plaint at the stage of final argument on the objection as to jurisdiction – Not maintainable in law as the ADJ himself had jurisdiction to try and decide the matter as per distribution memo prepared by the District Judge – Impugned order set aside – Case remanded back to the trial Court for decision on merits : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R (2001) M.P. 690*

– **Order 7 Rule 10**, Sections 9, 20–Jurisdiction–Suit for declaration and injunction–Suit based on tortious action of Finance Company in illegally taking

possession of truck and causing loss to plaintiff—Local Civil Court has jurisdiction—Impugned order set aside : *Ram Bahori Vs. Tata Finance LTD., I.L.R (2005) M.P. 752*

- **Order VII rule 10 and Section 24** - Plaint after amendment going beyond pecuniary jurisdiction of that Court—Proper procedure is to return plaint for presentation to proper Court and not to entertain an application under Section 24 of the Code for its transfer or to order transfer on it : *M/s Decom Marketing Ltd., Bombay Vs. Kallubhai I.L.R (1987) M.P. 756*

– **Order 7 Rule 10, Section 100**—Second Appeal—Suit for eviction and arrears of rent—Accommodation Control Act, M.P., 1961, Sections 11–A, 12 (1) (f), 23–A (b) and 23–J—Land lady widow—Covered under section 23–J- Requiring the non-residential accommodation bonafide for starting hotel business for her major son—Rent Controlling Authority alone has jurisdiction in the matter—Civil Court ought to have returned the plaint for presentation before RCA—Decree set aside—Matter remanded back to the trial Court for return of plaint : *Prahlad Vs. Smt. Kalabati bai, I.L.R (2003) M.P. 704*

-**Order VII Rule 10 and Order 43** Rule 1(r), Section 2(4), 15 and Civil Courts Act, M.P. (XIX of 1958), Sections 7, 15— Return of plaint by Additional District Judge at the stage of final argument – Appeal against – Section 2(4), C.P.C. – Definition of ‘District’ – Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction – A District Court is the Principal Court of original jurisdiction of any district – Sections 7 and 15 of 1958 Act & Section 15, C.P.C. – Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, C.P.C. and is operative in respect of valuation of suit – Powers of an additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge – Order 7 Rule 10, CPC – Suit for divorce by muslim wife filed before then IIIrd ADJ as per distribution memo – Both parties contested and led evidence – Return of plaint at the stage of final argument on the objection as to jurisdiction – Not maintainable in law as the ADJ himself had Jurisdiction to try and decide the matter as per distribution memo prepared by the District Judge – Impugned order set aside – Case remanded back to the trial Court for decision on merits : *Dr. Yasmin Khan Vs. Sami Ullah Khan, I.L.R (2001) M.P. 690*

- **Order 7 Rule 10, order 43 Rule (1) (a), Section 9 and Companies Act, 1956** Section 257, 284—Company Law—Notice for Substituting Director for the unexpired period due to be held by removed director—Returned without allowing how the notice is not in accordance with law—Civil suit—Jurisdiction of Civil Court—Rule is that the remedy provided in the Act is the exclusive remedy with regard to a right—Right of suit not taken a way expressly or impliedly—Suit must be held to be maintainable—

Order of trial court/retraining plaint set aside : *Sir J.P. Srivastava & Sons (Rampur) Pvt.Ltd. v. M/s Gwalior Sugar Co.Ltd., I.L.R (2003) M.P. 634*

- **Order 7 Rule 10**, 10-A, Section 20, 115 and Succession Act, Indian (XXXIX of 1925)- Section 371- Revision- Jurisdiction of succession Court- Section 371 of the Act is special enactment, it would not be governed by Section 20 of the Code- trial Court rejected the petition holding that it has no jurisdiction but has not observed provisions of Rule 10 and Rule 10-A of Order VII of the Code- Trial Court directed to observe provisions of Rule 10 and 10-A of Order Vii of the Code : *Smt. Chandra Kala Doble Vs. Shyam Rao Doble, I.L.R (1999) M.P. 881*

- **Order VII Rules 10**, 11(a) and 13 and Section 96-First Appeal-Suit for prohibitory injunction-Failure to disclose cause of action-Court cannot dismiss the suit under order VII Rule 11(a) CPC-Cause of action-Distinct from entitlement of plaintiff-Order VII Rule 11(a) C.P.C. not attracted if some evidence is required to ascertain cause of action-Plaintiff specifically pleaded that from the programme telecast by "DD-2 Metro" he has come to know that Defendant is launching mobile phones adopting a particular system of which plaintiff is claiming copy right under the Copy Right Act, 1957-Sufficient and material pleading constituting cause of action-Plaintiff entitled to file suit for prohibitory injunction-Onus is on the defendant to show that plaint does not disclose any cause of action-Order impugned set aside-Trial court directed to proceed with the suit : *Shyam Vs. Gsm Association, I.L.R (2004) M.P. 177*

- **Order 7 Rule 10(1)** -Question relating to inherent lack of jurisdiction - This issue can be decided at any stage-Court need not wait for filing of written statement - Words "at any stage of suit" will include the stage prior to filing of written statement: *Intazamiya Committee Id Gah, Morar Vs. M.P. Wakf Board, Bhopal, I.L.R (1995) M.P. 304*

- **Order 7 rule 11** - Order rejecting plaint on grounds other than those enumerated therein - Does not amount to a decree : *Mst. Chamarin Vs. Sukhram, I.L.R (1979) M.P. 723, (D.B.)*

- **Order 7 rule 11** - Order rejecting plaint under - Amounts to a decree : *Mst. Chamarin Vs. Sukhram, I.L.R (1979) M.P. 723, (D.B.)*

-**Order 7 Rule 11**-If evidence to support the claims are different them the causes of action are also different-Suit not identical-Suit for specific performance should not have been treated as barred under Order 2 Rule 2 C.P.C.-Impugned order set aside-Matter remitted back to trial Court : *Smt. Kavita Vs. Ajit Kumar Jain & ors., I.L.R (2004)M.P. 804*

- **Order 7 rule 11** - Rejection of claim for time barred arrears of rents-Expression "Whole of the arrears of rents legally recoverable" excludes time barred arrears of rents : *Smt. Mankunwar Bai Vs. Sunderlal Jain, I.L.R (1979) M.P. 676, (F.B.-5 JJ.)*

- **Order 7 Rule 11**, Sections 11, 100- Second Appeal-Suit for perpetual injunction simplicitor-Plea of res-judicata-Can be considered before filing written statement-Any contrary view may defeat the object and purpose of Section 11 CPC-Earlier suit by plaintiff's predecessor for possession of the suit property dismissed-Subject matter, parties and jurisdiction of courts same-Requisites for application of res-judicata established-Courts below justified in dismissing the suit : *Ambika Prasad Bakshi Vs. Prabhu Dayal Mali, I.L.R (2005) M.P. 1187*

- **Order 7 Rule 11** and Section 96 - Suit for declaration, partition, possession and perpetual injunction claiming inheritance as co-parcener of joint Hindu Family property-Being a Co-Owner plaintiff's father executed deed of relinquishment and had given his share to mother-Transaction took place prior to birth of plaintiff-Could not be challenged at subsequent stage-No error of jurisdiction in dismissing the suit under Order 7 Rule 11 C.P.C. : *Dilip Kumar Jain Vs. Smt. Shobharani @ Sabitri Bai Jain, I.L.R (2005) M.P. 631 (D.B.)*

- **Order 7 rule 11** and Section 107 -Court finding that it has no jurisdiction - Proper course is to return memo of appeal for presentation to proper Court : *Balmukand Vs. Rameschand, I.L.R (1978) M.P. 84 (D.B.)*

- **Order 7 Rule 11** and Section 115, Wakf Act, 1995 Sections 6, 40 and 85-Suit for declaration and injunction-Application for rejection of plaint dismissed-Revision against-Inclusion of property in the list of wakf Property-Only if opportunity of hearing is afforded by survey commissioner such person will have to file suit within one year of publication of list before the Tribunal and jurisdiction of Civil Court shall be excluded-Fact to be determined after filing of written statement and adducing evidence by parties-Application rightly rejected : *Amil Hakimuddin Vs. Abbas Husain; I.L.R (2002) M.P. 991*

- **Order 7 Rule 11** and Order 2 Rule 2, Section 115, Specific Relief Act, 1963, Section 10 and 39-Agreement of sale-Breach of-Suit for injunction simpliciter-During pendency suit for specific performance also filed-Requirement is that every suit shall include whole claim arising from same cause of action and not that every suit shall include every claim or every cause of action-If evidence to support the claims are different then the causes of action are also different-Suit not identical-Suit for specific performance should not have been treated as barred under Order 2 Rule 2 C.P.C.-Impugned order set aside-Matter remitted back to trial Court : *Smt. Kavita Vs. Ajit Kumar Jain, I.L.R (2004) M.P. 804*

- **Order 7 Rule 11**, Order 8 Rules 3, 5 & Order 23 Rule 1, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82—Bar of suits—Would depend on the nature of society and Rules and bye-laws governing it : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi*, I.L.R (2004) M.P. 594

- **Order 7 Rule 11**, Order 8 Rules 3, 5 & Order 23 Rule 1, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82—Bar of suits—Would depend on the nature of society and Rules and bye-laws governing it—Suit for recovery against supply of coal by a partnership firm—Burden of proof—When parties led evidence issue of burden to prove becomes secondary— Allegation of facts in plaint—Defendant must deal specifically each allegation of fact—In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted—Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest—Decree passed—Appears to be a mutual decree—It would not be appropriate to interfere in appeal—Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi*, I.L.R (2004) M.P. 594

—**Order 7 Rule 11**, Order 9 Rule 9, Order 43 Rule 1 (c) and Stamp Act Indian 1899, Section 35—Application for restoration of suit held not maintainable hence dismissed—Miscellaneous appeal against such dismissal also is not maintainable : *MUNNA, S/O Ganga Prasad Verma Vs. Bhageshwari Bai*, I.L.R (2005) M.P. 1080

- **Order VII Rules 11(a)** 10 and 13, Section 96 —First Appeal—Suit for prohibitory injunction—Failure to disclose cause of action—Court cannot dismiss the suit under order VII Rule 11(a) CPC—Cause of action—Distinct from entitlement of plaintiff—Order VII Rule 11(a) C.P.C. not attracted if some evidence is required to ascertain cause of action—Plaintiff specifically pleaded that from the programme telecast by "DD-2 Metro" he has come to know that Defendant is launching mobile phones adopting a particular system of which plaintiff is claiming copy right under the Copy Right Act, 1957—Sufficient and material pleading constituting cause of action—Plaintiff entitled to file suit for prohibitory injunction—Onus is on the defendant to show that plaint does not disclose any cause of action—Order impugned set aside—Trial court directed to proceed with the suit : *Shyam Vs. Gsm Association*, I.L.R (2004) M.P. 177

-**Order 7 Rule 11(b)**-Duty of Trial Court to correct valuation of relief and ask plaintiff to pay proper court fee else reject the plaint on his failing to do so- Order of trial court proper-No interference called for : *Subhash Chand Jain Vs. The Chairman*, M.P.E.B., I.L.R (2000) M.P. 903 (F.B.)

– **Order 7 Rule 11(d)** and Order 39 Rules 1 and 2, Section 100– Suit for partition and declaration that rival parties are in joint possession of the ancestral property – Order 7, Rule 11(d) – Rejection of plaint – Has to be based on the averments made in the plaint – Court cannot travel beyond the plaint averments – Rejection of plaint on basis of defendant’s preliminary objection that there has been a Panch Faisla – Not proper – Arbitration Act, 1940 – Sections 14, 32 and 33 – Bar to suits contesting arbitration agreement or award – Provisions have got limited application – Applicable only where existence effect or validity of an arbitration agreement or enforceable award is challenged and not the contract itself – Genuineness of an arbitration agreement of award cannot be presumed by the Court by mere plea of defence – Order 7 Rule 11(d) and Section 14 of the Arbitration Act, 1940 – Panch Faisla pleaded and filed by defendant in preliminary objection not bearing signature of the Panchas – Not an award in the eye of law – Order rejecting plaint by Courts below assuming that there has been an award and is barred – Is an impermissible procedure – Courts should have insisted on complete written statement by the defendant – Order impugned set aside – Case remanded back to the trial Court : *Lukeshwar Vs. Dhebar* , *I.L.R (2001) M.P. 829*

- **Order 8 rule 1** and Civil Procedure Code (Amendment) Act (CIV of 1976), Order 8 rule 1, Sub-rule (1), rule 5, sub-rule (2) and rule 10 - Failure of defendant to file written statement - Whether Court is obliged to decree the suit, without exercising any discretion to pass any other order : *Mathew Elengical Vs. The Nagpur Roman Catholic Diocesan Corporation (P) Ltd.* *I.L.R (1979) M.P.1008 (D.B.)*

- **Order 8 rule 1** (Amendment) Act (CIV of 1976), Order 8 rule 1, sub-rule (1), rule 5, sub-rule (2) and rule 10 - Rule of harmonious construction - Objects and reasons for amendments in Code of Civil Procedure indicated : *Mathew Elengical Vs. The Nagpur Roman Catholic Diocesan Corporation (P) Ltd.* *I.L.R (1979) M.P.1008 (D.B.)*

- **Order 8 rule 1** (Amendment) Act (CIV of 1976) - Order 8 rule 1, sub-rule (1), rule 5, sub-rule (2) and rule 10 - Word "or" in rule 10 is disjunctive indicating two distinct and separate powers leaving discretion to Court either to pronounce judgment or to pass any other order - Discretion to be exercised judicially : *Mathew Elengical Vs. The Nagpur Roman Catholic Diocesan Corporation (P) Ltd.* *I.L.R (1979) M.P.1008 (D.B.)*

- **Order 8 rule 1-** (Amendment) Act (CIV of 1976) - Order 8 rule 1 sub-rule (1), rule 5, sub-rule (2) and rule 10 - Effect of amendments - Filing of written statement is obligatory - Failure of defendant to file written statement - Whether Court is obliged to decree the suit, without exercising any discretion to pass any other order - Word "or" in rule 10 is disjunctive indicating two distinct and separate powers leaving discretion to Court either to pronounce judgment or to pass any other order -

Discretion to be exercised judicially - Rule of harmonious construction - Objects and reasons form amendments in Code of Civil Procedure indicated : *Mathew Elengical Vs. The Nagpur Roman Catholic Diocesan Corporation (P) Ltd. Nagpur, I.L.R (1979) M.P. 1008, (D.B.)*

– **Order 8 Rules 2, 3, 4 and 5 and Order 6 Rule 1**– Written statement adopting written statement in the eye of law : *Babulal Agrawal Vs. Smt. Jyoti, I.L.R (2001) M.P. 192 (D.B.)*

- **Order 8 Rules 3, 5 & Order 7 Rule 11**, Order 23 Rule 1, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it–Suit for recovery against supply of coal by a partnership firm–Burden of proof–When parties led evidence issue of burden to prove becomes secondary– Allegation of facts in plaint–Defendant must deal specifically each allegation of fact–In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted–Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest–Decree passed–Appears to be a mutual decree–It would not be appropriate to interfere in appeal–Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

– **Order 8 Rules 4, 2, 3 and 5 and Order 6 Rule 1**– Written statement adopting written statement in the eye of law : *Babulal Agrawal Vs. Smt. Jyoti, I.L.R (2001) M.P. 192 (D.B.)*

- **Order 8 Rule 5 - Denial for want of knowledge** - Amounts to admission : *Smt. Dhanbai Vs. State Of Madhya Pradesh, I.L.R (1981) M.P. 48 (D.B.)*

-**Order 8 Rule 5-Applicable where defendant resists the suit** : *The Tehsil Co-Operative Agricultural Association Ltd., Balod, District Durg, Vs. The Union Of India Representing The General Manager, South Eastern Railway, Calcutta I.L.R (1968) M.P. 300*

-**Order 8 Rule 5** - Allegation of fact-Not denied by other side-Issue however framed-Parties debarred from saying that it required no proof-Civil Procedure Code, Order 41 Rule 23-Fiction created by section 116-A (2) of Representation of the People Act-Order 41 Rule 23, Civil Procedure Code automatically attracted-Party can support order of tribunal on ground decided against him-Representation of the People Act-Section 123(7)-Explanation-Person acting with consent of candidate-Becomes an agent of candidate-Representation of the People Act, Section 123-Imputation against workers of a political party or political party itself-Cannot be taken as imputation

upon personal character or conduct of candidate : *Smt. Sarla Devi Pathak Vs. Shri Birendrasingh, I.L.R (1959) M.P.910 (D.B.)*

-Order 8, Rule 5-Specific denial-Meaning of-Power of Court to require a faith to be proved otherwise than by implied admission- Practice-Judgment- Appellate judgment not referring to statements of important witnesses-Judgment incomplete and not according to law-Inspection note-Should not mention any disputed portion of site as owned by one party or other-Can be used only for appraisal of situation and better understanding of case-Cannot be made basis of judgment : *Nilkanth Purshottam Bhawe Vs. Gopal Das, I.L.R (1961) M.P. 850*

– **Order 8 Rule 5**, Section 100, Evidence Act Indian, 1872, Section 116 and Accommodation Control Act, M.P., 1961, Sections 2(b), 12 (1) (f)–Eviction Suit–Second Appeal–Ownership–Landlord may even be devoid of ownership–Ownership not specifically devoid–To say that a defendant has no knowledge of a fact pleaded by plaintiff is not tantamount to denial of existence of that fact–Having taken the plea of agreement to sell the suit house to him by plaintiff, defendant is estopped from denying plaintiff's ownership : *Ram Pukar Singh Vs. Bhimsen, I.L.R (2005) M.P. 1176*

– **Order 8 Rules 5, 2, 3** and 4 and Order 6 Rule 1– Written statement adopting written statement in the eye of law : *Babulal Agrawal Vs. Smt. Jyoti, I.L.R (2001) M.P. 192 (D.B.)*

- **Order 8 Rules 5, 3** & Order 7 Rule 11, Order 23 Rule 1, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it–Suit for recovery against supply of coal by a partnership firm–Burden of proof–When parties led evidence issue of burden to prove becomes secondary– Allegation of facts in plaint–Defendant must deal specifically each allegation of fact–In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted–Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest–Decree passed–Appears to be a mutual decree–It would not be appropriate to interfere in appeal–Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

-Order 8 Rules 5 and 6-Plea of corrupt practice-Full particulars to be given : *Habib Bhai Vs. Pyarelal I.L.R (1966) M.P. 248 (D.B.)*

-Order 8 Rules 5 and 6-Plea in petition in general terms-Denial in written statement also in general term-Denial amounts to sufficient denial : *Habib Bhai Vs. Pyarelal I.L.R (1966) M.P. 248 (D.B.)*

-Order 8 Rule 6-Equitable set off-Not claimable as of right : *Motilal Vs. Purshottam I.L.R (1967) M.P. 294*

– **Order 8 Rule 6** – Counter claim is nothing but a reference of dispute in relation to same work contract by the opposite party : *P.K. Pande Vs. State, I.L.R (2001) M.P. 1244, (D.B.)*

– **Order 8 rule 6-A**–Counter claim–By its nature is a cross suit–Would not be affected by dismissal of plaintiff's suit : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R I.L.R (1992) M.P. 26*

- **Order 8, Rule 6-A** and Constitution of India, Article 227 –Writ Petition–Suit for injunction–Counter claim–Aimed at co-defendants–Cannot be entertained–Rightly rejected by Trial Court : *Smt. Prabha Devi Sharma Vs. Somdatt, I.L.R (2005) M.P. 399*

- **Order 8 Rule 6-A**, Accommodation Control Act, M.P., 1961, Section 12(1), 37 & 45 – Counterclaim – Suit for eviction – Counterclaim by amendment in written statement – Allegation of dismantle of kitchen and non fixing of doors – The act of dismantle of kitchen performed after filing of written statement – Cause of action accrued after filing of written statement – Counterclaim not permissible –Allegation of non-fixing of door from the beginning – Remedy is by way of petition u/s 37 as jurisdiction of civil court is barred u/s 45 – Counterclaim not permissible – Revision partly allowed : *Ramcharan Sukhlal Vs. Daulat Munniram, I.L.R (1996) M.P. 495*

- **Order 8 Rule 6-A**, Section 96, Limitation Act, 1963, Articles 64, 65–Appeal – Suit for declaration and injunction–Defendant's counter claim for possession–Adverse possession–Documentary and oral evidence not supporting plaintiff's plea of continuous possession–Revenue records showing defendant's possession–Pleadings nowhere indicate that plaintiffs possession was adverse from the inception or became so subsequently at any point of time–Plaintiff can not be said to be open, continuous and uninterrupted hostile possession–Judgment and decree of trial Court affirmed : *Khurshid Ali Vs. Kutubuddin, I.L.R (2003) M.P. 825*

– **Order 8 Rule 6-A** and Order 1 Rule 9, Sections 11, 100, as amended by C.P.C. (Amendment) Act (CIV of 1976) and Hindu Succession Act (XXX of 1956), Section 22–Second Appeal–Suit for partition and possession–Plea of pre-emption on the basis of alleged sale–Section 100, C.P.C.–Finding of Trial Court that sale was fraudulent and no title passed– Essentially a finding of fact cannot be re-opened in Second Appeal–Order 8 Rule 6-A–Counter-claim–By its nature is a cross-suit–Would not be affected by dismissal of plaintiff's suit–Order 1 Rule 9, C.P.C.–Non-joinder of necessary party–Fatal for maintaining the suit–Suit dismissed–Hindu Succession Act–

Section 22–Right of pre-emption–Not a right to the thing sold but a right to offer of a thing about to be sold–Can be claimed by setting up counter claim in the written statement–Section 11 of the Code–Omission to raise plea of pre-emption in written statement would operate res judicata–Proper value–In absence of any evidence of the market value the sum actually paid is taken to be proper value : *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R (1992) M.P. 26*

-**Order 8 Rule 10**–No hard and fast rule for exercising power under can be laid down : *Rajendra Kumar Rathore Vs. Anandi Bai, I.L.R (2000) M.P. 1269,*

-**Order 9–Applicable to suits–Remedy under Order 9 Rule 9**–Not a matter of procedure–Confers a substantive right - Right cannot be conferred by section 141–Deals with procedure–Order 9 Rule 9–Not applicable to proceedings for restoration of his application for restoring application for restoration of suit dismissed for default–Such application restorable under section 151–Limitation Act–Articles 163 and 181–Not applicable to application for restoration of an application for restoration of suit dismissed for default–Applicable to application under C.P. Code: *Shri Pooranchand Vs. Komalchand, I.L.R (1962) M.P.752 (D.B.)*

– **Order 9 Rules 4, 9, Order 17 Rule 2 and Section 141, Land Acquisition Act, Sections 18, 21** - Party making reference under Land Acquisition Act remained absent – Court dismissed the reference on merits – Application for restoration under order 9 rejected by Reference Court as not maintainable – Order rejecting application challenged – Court Should not have dismissed the claim on merits but under Order 17 Rule 2 – Application under order 9 for restoration maintainable – Matter remitted back to reference court for deciding the application under Order 9 : *Nathmal Maheshwari Vs. State of MP, I.L.R (1993) MP 302*

– **Order 9 Rule 6** – Ex-parte proceedings – Meaning of – Is for one hearing and not for all future dates – Does not preclude defendants from taking part in proceedings on future dates : *Sitabai Vs. Babulal, I.L.R (2001) M.P. 1557,*

-**Order 9 Rule 6**–Powers of proceeding *ex parte* against defendant–Cannot be invoked where defendant resides outside jurisdiction of the Trial Court–Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree–Rejection by Trial Court–Improper : *M/s. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R (1992) M.P. 197*

– **Order IX Rules 6, 7 and 13, Section 96, 100**– Suit for possession on basis of alleged sale-deed – Plaintiff’s evidence complete – Non-appearance of defendants on date of compromise or evidence – Counsel pleading no instruction – Court proceedings ex-parte–Ex parte proceedings – Meaning of – Is for on hearing and not for all future dates – Does not preclude defendants from taking part in proceedings on

future dates – Not a case of striking of defence – Rejection of application without affording opportunity to prove sufficiency of reasons for non-appearance – Not proper – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing ex parte decree without affording defendant's to take part in future proceedings – Such a decree is assailable either under Order 9 Rule 13, C.P.C. or in first appeal under Section 96, C.P.C. – Second Appeal – Both Courts below not considering merits and pleadings or parties – Lower appellate Courts also confirming trial Court's Decree precluding defendants from taking part in proceedings on future dates – Not sustainable in law–Impugned judgment and decree set aside – Matter remanded to lower appellate Court for decision afresh on basis of observations made on merits and settled proposition of law : *Sitabai Vs. Babulal*, *I.L.R (2001) M.P. 1557*

-Order 9 Rules 6 and 8–Pleader not conducting the case on behalf of the party engaging him though present–Does not amount to appearance within the meaning of these provisions : *Goverdhan & ors. Vs. Ganesh*, *I.L.R (1962) M.P. 766*

-Order 9 Rules 6, 13 and Order 5 Rules 9, 19-A(2), 21, 25, 25-A, Order 43 Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123–Order 5 Rule 9–Service of Summons–Record not showing whether defendant was properly served or not–Service of Summons in the ordinary manner cannot be dispensed with–Order 5 Rules 9 and 19-A(2) substituted service–Additional mode of service–Cannot be deemed to 'due service'–Order 9 Rule 6–Powers of proceeding *ex parte* against defendant–Cannot be invoked where defendant resides outside jurisdiction of the Trial Court–Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree–Rejection by Trial Court–Improper–Order 43 Rule 1(d) of the Code–Appeal under–Trial Court fell in error in rejecting the application as barred by limitation–Limitation Act–Section 5 and Article 123–In case where defendant is not properly served limitation starts from the date of knowledge–*Ex parte* judgment and decree set aside–And matter remitted back to the Trial Court for decision afresh : *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd.*, *I.L.R (1992) M.P. 197*

- Order 9 Rule 6, 13 and Order 6 Rule 17 and Section 115–Revision against refusal to set aside ex-parte decree–Suit fixed for limited purpose of application for amendment–Bi-parte proceedings ought to have been continued for hearing on merits of the suit : *Ram Vishal Vs. Shobha Ram*, *I.L.R (2005) M.P. 1208*

– Order 9 Rule 7 – Not a case of striking of defence – Rejection of application without affording opportunity to prove sufficiency of reasons for non-appearance – Not proper : *Sitabai Vs. Babulal*, *I.L.R (2001) M.P. 1557*,

–**Order 9 Rule 7**–Notice issued to defendant on wrong address–Good cause for setting aside ex-parte order–Does not warrant interference : *Shabnam Sultan Vs. Sazid Ali, I.L.R (2004) M.P. 566*

–**Order 9 Rule 7**–Setting aside ex-parte –Transferee Court cannot pass final order without hearing parties even if the earlier Court heard it finally–Therefore it cannot be said that the case was not fixed for hearing–Application for setting aside ex-parte filed before transferee Court on the first date of hearing–Law laid down in AIR 1964 SC 993 is not applicable : *Shabnam Sultan Vs. Sazid Ali, I.L.R (2004) M.P. 566*

- **Order 9 Rule 7**–Constitution of India, Article 227 and Setting aside ex-parte–Transferee Court cannot pass final order without hearing parties even if the earlier Court heard it finally–Therefore it cannot be said that the case was not fixed for hearing–Application for setting aside ex-parte filed before transferee Court on the first date of hearing–Law laid down in AIR 1964 SC 993 is not applicable–Notice issued to defendant on wrong address–Good cause for setting aside ex parte order–Does not warrant interference : *Shabnam Sultan Vs. Sazid Ali, I.L.R. (2004) M.P. 566*

– **Order 9 Rules 7, 13 and Order 43 Rule 1, Sections 96, 96 (2)**—Suit for partition–Counter claim by defendant–*Ex-parte* decree against defendant–Application for setting aside–Extent of limitations–When an application under Order 9, Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1–Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision–Right of defendant to assail judgment and decree on merit did not fall for consideration in any of the cases–Such a right shall not be curtailed unless statute expressly or by necessary implication say so–Case remitted back to High Court for consideration of merit : *Bhanu Kumar Jain Vs. Archana Kumar & anr., I.L.R. (2005) M.P. 1 (F.B.)*

- **Order IX Rule 8**-Party engaging a counsel-Counsel absent-Case dismissed-Absence of counsel-Sufficient cause for restoration : *Meharchand Vs. Vasharam, I.L.R. (1958) M.P. 377 (D.B.)*

-**Order 9 rule 8**-Date fixed for framing of issues-Is a date of hearing-Suit liable to dismissal for non-appearance : *Employees State Insurance Corporation Vs. Harcharan Singh I.L.R. (1970) M.P. 324*

-**Order IX Rule 8** - Case posted for filing Written Statement –Plaintiff and his counsel absent- Trial Court dismissed the suit under order IX Rule 8- Acts illegally and without jurisdiction because it is not a date for hearing so as to attract provision or order IX Rule 8. *Satish Saggur Vs. Managing Director, I.L.R. (1998) M.P. 337*

-Order 9 rule 8 - Date for framing issued-Is a date of hearing-Acts to be performed or might be performed on the date fixed for issued : *Khadau Vs. Lakhansao, I.L.R. (1970) M.P. 1011*

- Order 9 Rule 8 and Order 17 rule 2 - Date for framing issues - is a date of hearing within the meaning of these provisions - Order which Court can pass in the absence of either of the parties - Party not appearing on date of hearing - Party not entitled to fresh notice or intimation from Court - Court not framing issues on the date when parties appear or on next date and fixed therefore - Court dismissing suit or proceeding ex parte - Court acts arbitrarily or capriciously - Such course not judicious - Order 9 rule 9 or rule 13 - Application made for setting aside dismissal - Duty of Court to give each party reasonable opportunity to support or oppose application - Court can take recourse to Order 19 rule 1 - Affidavit takes place of evidence in that contingency : *Babulal Vs. Chhotekhan I.L.R. (1976) M.P. 1065*

-Order 9 Rules 8 and 6-Pleader not conducting the case on behalf of the party engaging him though present-Does not amount to appearance within the meaning of these provisions : *Goverdhan & ors. Vs. Ganesh, I.L.R. (1962) M.P. 766*

-Order 9 rules 8 and 9-Dismissal of suit of landlord for default-Fresh suit after fresh service of notice-Is maintainable : *Chhaganlal Vs. Smt. Parvati Bai, I.L.R. (1974) M.P. 667*

-Order 9 rules 8 and 9-Suit dismissed for default-Party precluded from bringing fresh suit on same cause of action-Suit on different causes of action-Not barred-Bar cannot be avoided by change of from of reliefs : *Chhaganlal Vs. Smt. Parvati Bai, I.L.R. (1974) M.P. 667*

-Order 9 Rules 8 and 9-No affidavit filed in support of application nor the plaintiff entered witness box to show sufficient causes for non-appearance-Approach of Trial Court proper-No interference called for : *Murti Shree Datta Mandir (Maharaj) Shankarji & Balaji Vs. Zamkabai, I.L.R. (2000) M.P. 610*

-Order 9 Rules 8 and 9 and Order 43 Rule 1(C)-Dismissal of suit for non-appearance of plaintiff and rejection of application for restoration-No affidavit filed in support of application nor the plaintiff entered witness box to show sufficient causes for non-appearance-Approach of Trial Court proper-No interference called for : *Murti Shree Datta Mandir (Maharaj) Shankarji & Balaji Vs. Zamkabai, I.L.R. (2000) M.P. 610*

-Order 9 Rule 9-Not applicable to proceedings for restoration of his application for restoring application for restoration of suit dismissed for default-Such application

restorable under section 151 : *Shri Pooranchand Vs. Komalchand, I.L.R. (1962) M.P. 752 (D.B.)*

- **Order 9 Rule 9** - Remedy under-Not a matter of procedure-Confers a substantive right : *Shri Pooranchand Vs. Komalchand, I.L.R. (1962) M.P. 752 (D.B.)*

- **Order 9 rule 9** - Application for restoration dismissed for default - Two remedies open - Four remedies available in case of ex parte decree : *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131, (F.B.)*

- **Order 9 rule 9** - Order of first Court taken in appeal - Order of appellate authority is operative order - Power of trial Court to set aside its order after appellate order - Immaterial whether appellate order confirms, modifies or reverses the original order - Order under Order 9 rule 9 - Appealability : *Komal Chand Vs. Pooranchand I.L.R. (1976) M.P. 546 (D.B.)*

- **Order 9 rule 9, Clause (i)** - The Expression "he may apply for an order to set the dismissal aside" in - Connotation of - Court omitting to serve application for restoration of suit on the opposite party - court commits material irregularity - Section 115 (1) (c) - Court exercising jurisdiction with material irregularity - High Court can interfere in revision : *Harish Chandra Batra Vs. Union Bank Of India, Jabalpur, I.L.R. (1983) M.P. 225.*

- **Order 9 rule 9 and Section 141** -Procedure of suit - Applicable to proceedings under Order 9 rule 9: *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131 (F.B.)*

- **Order 9 Rule 9, Order 7 Rule 11, Order 43 Rule 1 (c) and Stamp Act Indian 1899, Section 35**-Application for restoration of suit held not maintainable hence dismissed-Miscellaneous appeal against such dismissal also is not maintainable : *Munna, S/O Ganga Prasad Verma Vs. Bhageshwari Bai, I.L.R. (2005) M.P. 1080*

- **Order 9 Rule 9, Order 17 Rules 2 and 3 and Order 43 Rule 1(e)** - Appeal - Rejection of application for setting aside exparte dismissal of suit at evidence stage for non-appearance of party though counsel appeared and sought adjournment - Order 9 Rule 9 and Order 17 Rules 2 and 3 - Mere presence of counsel seeking adjournment would not mean presence of party as envisaged in clauses (a) and (b) of Rule 3 of Order 17 - Court can proceed only under Rule 2 and not under Rule 3 of Order 17 in case it refuses to grant adjournment - Order 9 Rule 9 applicable - Impugned Order set aside - Case remanded to the trial Court : *State Bank of India Vs. Nandram, I.L.R. (2001) M.P. 544*

– **Order 9 Rules 9, 4**, Order 17 Rule 2 and Section 141, Land Acquisition Act, Sections 18, 21 - Party making reference under Land Acquisition Act remained absent – Court dismissed the reference on merits – Application for restoration under order 9 rejected by Reference Court as not maintainable – Order rejecting application challenged – Court Should not have dismissed the claim on merits but under Order 17 Rule 2 – Application under order 9 for restoration maintainable – Matter remitted back to reference court for deciding the application under Order 9. *Nathmal Maheshwari Vs. State of MP*, I.L.R. (1993) MP 302

-**Order 9 Rules 9 and 8** and Order 43 Rule 1(C)-Dismissal of suit for non-appearance of plaintiff and rejection of application for restoration-No affidavit filed in support of application nor the plaintiff entered witness box to show sufficient causes for non-appearance-Approach of Trial Court proper-No interference called for : *Murti Shree Datta Mandir (Maharaj) Shankarji & Balaji Vs. Zamkabai*, I.L.R. (2000) M.P. 610

- **Order 9 rule 9 or rule 13** - Application made for setting aside dismissal - Duty of Court to give each party reasonable opportunity to support or oppose application - Court can take recourse to Order 19 rule 1 - Affidavit takes place of evidence in that contingency : *Babulal Vs. Chhotekhan*, I.L.R. (1976) M.P. 1065

-**Order 9 Rule 13**- Liberal approach does not and cannot mean that erring applicants should have licence to disappear or appear at will-No sufficient cause was made out- Trial court and appellate court rightly rejected the application : *Om Praksh Vs. Ikbal Hussain and others.*, I.L.R. (1998) M.P. 880

- **Order 9 rule 13** - Counsel busy in another Court - Not sufficient reason for his default of appearance when case called : *Smt. Sita Bai Vs. Smt. Vidyawati Bai*, I.L.R. (1978) M.P. 993 (D.B.)

-**Order 9 Rule 13**-Explanation appended thereto- Would operate a bar when an appeal has been dismissed other than by way of withdrawal : *Laliya Vs. Bhagwan*, I.L.R. (2000) M.P. 627,

–**Order 9 Rule 13** - Application for setting aside ex-parte Decree - Cannot be allowed merely on ground of irregularity in service of summons. *Ram Narayan Vs. State Bank of Indore*; I.L.R. (2002) M.P. 766 (D.B.)

- **Order 9 rule 13** - Court passing a decree on merits when defendant not present and not producing evidence - Decree cannot be set aside under this provision : *Smt. Sitabai Vs. Smt. Vidyawati Bai* I.L.R. (1978) M.P. 993 (D.B.)

-Order 9 Rule 13-Sufficient cause-Cause shown to be transport problem-Sufficient Cause-*Ex parte* decree set aside-Case remanded : *Tibabai Vs. Kadwa*, I.L.R. (2000) M.P. 747,

- **Order 9 rule 13** and Workmen's Compensation Rules, 1924, Rule 41 Ex-parte order against employer - Employer applying for setting it aside - On dismissal of such application, employer filing appeal against the award of compensation on merits - Tenability of : *General Manger Western Coal Fields Ltd., Kanhan Area Vs. Smt. Kalasia Bai, Junnardeo* I.L.R. (1987) M.P. 443

- **Order 9 Rule 13** – Suit for recovery by sale of mortgaged property – Ex-Parte preliminary decree – Decree finalized without notice to defendants – Held – Although CPC does not expressly require notice for final decree to be served upon person against whom decree is sought to be passed but having regard to fundamental right of judicial procedure notice of application must be issued before final decree – Ex-parte decree Set aside : *Nandlal Kanoria Vs. National Industrial Development Corporation Ltd.*, I.L.R. I.L.R. (1997) M.P. 468

–**Order 9 rule 13**–No finding as to from which date appellants stopped attending the Court–Presiding officer was also on leave prior to drawing of final decree–Replies etc. have been filed by the non-applicants–Amendment applications will pending decision evidence not led by the parties nor the parties were required to lead evidence–Order of Trial Court improper : *S.S. Ramchand Vs. Dhanendra Kumar*, I.L.R. (1992) M.P. 41

- **Order 9 Rule 13**, C.P.C., Limitation Act 1963, Article 123 - Limitation - The second requirement of Article 123 of the Limitation Act that "or were the summons or notice was not duly served, from the date when the applicant has knowledge or the decree - In the instant case, it is for the applicant to establish that when he got the knowledge of the decree - It is not the case where an application for condonation of delay under Section 5 has been filed or not, benefit under Section 5 of the Limitation Act has been extended : *Charanlal Patel Vs. Smt. Kavita Jain*, I.L.R. (1997) M.P. 255

–**Order 9 Rule 13** and Limitation Act, Indian, 1963–Section 5–Setting aside ex-parte decree–Application for–Delay of 24 days–Cannot be construed to be deliberate attempt not to take recourse to legal remedy –Delay condoned : *Khena Bai Vs. Mathura Prasad*, I.L.R. (2004) M.P. (SC) 820 (D.B.)

- **Order 9 rule 13** - Counsel engaged by a party for litigation - Counsel has no right to remain absent when case comes for hearing - Duty to inform Court by himself or through some other person about inability to attend the case at that point of time - Counsel busy in another Court - Not sufficient reason for his default of appearance when case called - Court passing a decree on merits when defendant not present and

not producing evidence - Decree cannot be set aside under this provision : *Smt. Sitabai Vs. Smt. Vidyawati Bai I.L.R. (1978) M.P. 993 (D.B.)*

- **Order 9 Rule 13** and Contract Act, Indian (IX of 1872), Section 229 – Service of Notice – Knowledge acquired by agent when attributed to principal – Doctrine when extended to a counsel : *Lalit Kumar Vs. Smt. Kiran Bala Alias Smt. Kirti Sharma, I.LR (1988) M.P. 279*

-**Order 9 Rule 13**- Ex-parte decree- The Second proviso reads no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of Summons - The plaintiff was duty bound to examine the bailiff to prove the tender of summons and to state it was in accordance with law- Cannot be permitted to take advantage of the Second proviso of Rule 13, Order 9 –Order 5 Rule 15, 16,18- Requirement of the law is otherwise – The person receiving the summons has to acknowledge the service of the summons with copy of the plaint – Rule -18 – Though procedural, but is mandatory in nature- limitation Act, 1963, Art. 123-Date of knowledge would be the date of commencement of the limitation in case where the defendant is not served or is not served in accordance with–law –Civil Procedure Code –Order 5 Rule 15, 16,18- Statutory check to avoid the mis –chief, which may be played by unscrupulous plaintiff joining hands with a notorious bailiff : *Smt. Lilabai Vs. Triyoginarayan, I.L.R. (1998) M.P. 509*

-**Order 9 Rule 13**-Setting aside Ex-parte decree-Suit filed by respondent/plaintiff in the year 1977 for declaration that he alone is entitled to succeed suit property-Suit fixed for recording of evidence on 13.4.1982-Suit adjourned for cross examination of plaintiff on several occasions-On 3.8.85 suit was adjourned to 7.10.85 on payment of cost by defendant-Counsel for defendant/appellant did not appear-Case adjourned to 7.10.85, 14.10.85 and 15.10.85-Exparte decree passed on 1.11.85-Application for setting aside exparte Decree filed on the ground that counsel for defendant wrongly noted the date as 20.10.85 instead of 7.10.85 and communicated the same to the defendants-Held-No sufficient cause for non appearance on the date fixed-Evidence of Counsel not accepted by Trial Court-Any of the defendant did not enter witness box to say that they received information-In absence of communication balance tilts in favour of plaintiff/respondent-Suit had been pending for number of years and number of adjournments were granted at the instance of defendants-No interference called for-Appeal dismissed : *Smt. Archana Kumar Vs.Purnendu Prakash Mukherjee; I.L.R. (1994) M.P. 194*

-**Order 9 rule 13** - Ex-parte decree set aside on condition of furnishing security on defendant's contention of non-service of summons-Litigant not to be burdened unless found to be at fault-Defendant not responsible for non-service of summonses-Order setting ex-parte decree on condition of security bad on principle-Order liable to be set aside--Facts necessary to be taken into consideration in Case of imposing of

Condition for setting aside ex-parte decree : *Ali Mohammad Vs. Manaklal, I.L.R. (1960) M.P. 134 (D.B.)*

– **Order 9 Rule 13**, Section 5 and Limitation Act (XXXVI of 1963)–Application for condonation of delay not filed nor prayed for–Lack of factual foundation as well as legal ingredients–Ex-parte judgment and decree does not warrant interference : *Hari Ram Keer Vs. State Bank Of India, I.L.R. (2005) M.P. 957*

– **Order 9 Rule 13** and Section 96 –When an application under Order 9 Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43, Rule 1– Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision : *Bhanu Kumar Jain Vs. Archana Kumar & anr., I.L.R. (2005) M.P. 1 (F.B.)*

– **Order IX Rule 13**, Section 96 – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing ex –parte decree without affording defendant’s to take part in future proceedings – Such a decree is assailable either under Order 9 Rule 13, CPC or in first appeal under Section 96,C.P.C. *Sitabai Vs. Babulal, I.L.R. (2001) M.P. 1557*

- **Order 9 Rule 13** and Section 96-Confer two remedies-Neither operates in derogation of the other-Appeal under Section 96-Not barred because of application under Order 9, Rule 13-Setting aside ex parte decree-Permissible till decision of appeal -Sections 96 and 105-Appeal under Section 96-Interlocutory orders which are defective, erroneous and irregular can be challenged-Irregularity must to be of law or procedure, and not of fact-Refusal of adjournment-Can be challenged in appeal-Appeal under Section 96(2)Not convertible to a proceeding for setting aside ex parte decree-Nor to an appeal under Order 43 Rule 1(d) : *Ramlal Vs. Rewa Coalfields Ltd., Calcutta And Umaria, I.L.R. (1969) M.P. 58 (D.B.)*

- **Order 9 Rule 13** and Section 96, 115 -Revision against order setting aside *ex parte* decree passed in counter-claim-Appeal by third party dismissed-Order 9 Rule 13-Explanation append thereto-Would operate a bar when an appeal has been dismissed other then by way of withdrawal-Appeal under Section 96 not entertained by appellate Court is not filed by any of the parties to the decree. Such dismissal of the appeal would not create a bar to an application for setting aside *ex parte* decree under Order 9 Rule 13, CPC-Order V Rule 2-Service of summons- Notice of counter-claim not properly served on plaintiff for non-supply of copies of counter-claim-Order of Court below in conformity with settled position of law- No interference called for : *Laliya Vs. Bhagwan, I.L.R. (2000) M.P.627*

- **Order 9 rule 13**, Section 96(2) -Appeal-No bar even if filed after exhausting remedy under Order 9 Rule 13, C.P.C.- Appeal maintainable-Even proceedings of

Appeal under Section 96 and application under Order 9 Rule 13 of the Code can be prosecuted simultaneously-Reference answered accordingly : *Smt. Archana Kumar and another Vs. Purendu Prakash Mukherjee and another, I.L.R. (2000)M.P. 309 (F.B.)*.

- **Order 9 Rule 13** and Section 115 - Revision-Setting aside ex-parte judgment and decree after 11 years 4 months-Delay not explained-No application for condoning delay filed-Trial Court erred in allowing application under Order 9 Rule 13 : *Ramdas Vs. Smt. Amrita, I.L.R. (2005) M.P. 1202*

- **Order 9 Rule 13**, Order 5 Rule 17, C.P.C. - Proof of Service of notice - The process server in his report stated that the son of the applicant told him that his father is not at home - The said person who identified house as the house of the applicant was not examined as a witness - Held - The ingredients of Order 5 Rule 17 have not been complied with and thus no proper service can be said to have been made : *Charanlal Patel Vs. Smt. Kavita Jain, I.L.R. (1997) M.P. 255*

- **Order 9 Rule 13**, Order 5 Rules 17, 19 and Order 43 Rule 1(d)-Ex-parte decree - Service by affixing summons - Service not verified either by affidavit of process server or by examining him - Mandatory provisions not followed - Period taken in obtaining certified copy of decree deserve to be exchanged even though certified copy was not necessary-Ex-parte decree set-aside - Appeal allowed : *Smt. Shakuntala Vs. Basant Kumar Thakur; I.L.R. (2002) M.P. 931*

- **Order 9 Rule 13** and Order 6 Rule 17, Order 43 Rule 1 (d) and Limitation Act Indian 1963, Section 5-Application for setting aside ex-parte decree-Subsequent amendment in plaint -Re-service on defendant is always desirable but every amendment does not entitle a defendant to re-service-Application for condonation of delay not filed nor prayed for-Lack of factual foundation as well as legal ingredients-Ex-parte judgment and decree does not warrant interference : *Hari Ram Keer Vs. State Bank of India, I.L.R. (2005) M.P. 957*

- **Order 9 Rule 13**, Order 9 Rule 6 and Order 6 Rule 17 and Section 115-Revision against refusal to set aside ex-parte decree-Suit fixed for limited purpose of application for amendment-Bi-parte proceedings ought to have been continued for hearing on merits of the suit : *Ram Vishal Vs. Shobha Ram, I.L.R. (2005) M.P. 1208*

- **Order 9 rule 13** and order 29 rule 2 (b) - Service of summons on Corporation - Employee of Corporation receiving summons at registered office - Clause (b) applies - Service is good - Ex parte decree not liable to be set aside in the absence of proof of sufficient cause for non-appearance : *M/s. Abdul Hussain H. M. Hasanbhai, Indore Vs. The Shalimar Rope Works, LTD., Calcutta, I.L.R. (1980) M.P. 72*

- **Order 9 Rule 13** and Order 41 Rule 5(2) -Summary Proceedings-Plaintiff/respondent filed suit for claim under Order 37 Rules 1 & 2 Civil Procedure Code-Summons served upon applicant but did not appear-Ex-parte decree passed-Applicant filed application for setting aside ex-parte decree-Executing Court declined to stay execution of decree during pendency of application under Order 9 Rule 13 C.P.C.-Applicants pleaded that though summons were served but were not obliged to appear as Court had no jurisdiction and decree is a nullity-Held-Plea not tenable as question of jurisdiction could have been raised before Trial Court-Provision of Order 41 Rules 5 C.P.C. not attracted as proceeding were not in appeal-However, Trial Court directed to decide application under Order 9 Rule 13 C.P.C. within two months and execution proceedings to remain in abeyance for 2½ months : *M/s. Cooltech Industries Vs. Dena Bank; I.L.R. (1994) M.P. 472*

-**Order 9 Rule 13**, Order 43 Rule 1 (a)-Appeal-Setting aside ex-parte decree-After availing repeated adjournments defendants allowed the case to proceed ex-parte-Apparent negligence, inaction and want of bonafide-Trial Court rightly dismissed the application : *R.D. Rubber Industries Vs. State, I.L.R. (2003) M.P. 903*

-**Order 9 Rule 13** and Order 43 Rule 1(d)-Appeal-Hindu Marriage Act, 1955-Section 13-Divorce petition by husband-Decreed *ex parte*-Application for setting aside *ex parte* decree- Rejection of-In case of village Ladies Court has to be considerate-Order 9 Rule 13, C.P.C. : Sufficient cause- Cause shown to be transport problem-Sufficient cause- *Ex parte* decree set aside-Case remanded : *Tibabai Vs. Kadwa, I.L.R. (2000) M.P. 747*

-**Order IX Rule 13** and Order XLIII Rule 1(d)-Appeal-Against order dismissing the application for setting aside *ex parte* decree-Order IX Rule 13-No finding as to from which date appellants stopped attending the Court-Presiding Officer was also on leave prior to drawing of final decree-Replies etc. have been filed by the non-applicants-Amendment applications will pending decision evidence not led by the parties nor the parties were required to lead evidence-Order of Trial Court improper-Order set aside and matter remitted to the Trial Court for fresh decision allowing respective parties to lead evidence : *S.S. Ramchand Vs. Dhanendra Kumar, I.L.R. (1992) M.P. 41*

- **Order 9 Rules 13, 6** and Order 5 Rules 9, 19-A(2), 21, 25, 25-A, Order 43 Rule 1(d), Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123-Order 5 Rule 9-Service of Summons-Record not showing whether defendant was properly served or not-Service of Summons in the ordinary manner cannot be dispensed with-Order 5 Rules 9 and 19-A(2) substituted service-Additional mode of service-Cannot be deemed to 'due service'-Order 9 Rule 6-Powers of proceeding *ex parte* against defendant-Cannot be

invoked where defendant resides outside jurisdiction of the Trial Court—Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree—Rejection by Trial Court—Improper—Order 43 Rule 1(d) of the Code—Appeal under—Trial Court fell in error in rejecting the application as barred by limitation—Limitation Act—Section 5 and Article 123—In case where defendant is not properly served limitation starts from the date of knowledge—*Ex parte* judgment and decree set aside—And matter remitted back to the Trial Court for decision afresh. *M/s. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

– **Order IX Rules 13, 6 and 7, Section 96, 100**— Suit for possession on basis of alleged sale-deed – Plaintiff’s evidence complete – Non-appearance of defendants on date of compromise or evidence – Counsel pleading no instruction – Court proceedings *ex-parte*—*Ex parte* proceedings – Meaning of – is for on hearing and not for all future dates – Does not preclude defendants from taking part in proceedings on future dates – Not a case of striking of defence – Rejection of application without affording opportunity to prove sufficiency of reasons for non-appearance – Not proper – Defendants pleaded that the sale-deed was got executed fraudulently not considered by Trial Court while passing *ex parte* decree without affording defendant’s to take part in future proceedings – Such a decree is assailable either under Order 9 Rule 13, C.P.C. or in first appeal under Section 96, C.P.C. – Second Appeal – Both Courts below not considering merits and pleadings or parties – Lower appellate Courts also confirming trial Court’s Decree precluding defendants from taking part in proceedings on future dates – Not sustainable in law—Impugned judgment and decree set aside – Matter remanded to lower appellate Court for decision afresh on basis of observations made on merits and settled proposition of law : *Sitabai Vs. Babulal, I.L.R. (2001) M.P. 1557*

– **Order 9 Rules 13, 7 and Order 43 Rule 1, Sections 96, 96 (2)**—Suit for partition—Counter claim by defendant—*Ex-parte* decree against defendant—Application for setting aside—Extent of limitations—When an application under Order 9, Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1—Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision—Right of defendant to assail judgment and decree on merit did not fall for consideration in any of the cases—Such a right shall not be curtailed unless statute expressly or by necessary implication say so—Case remitted back to High Court for consideration of merit : *Bhanu Kumar Jain Vs. Archana Kumar & anr., I.L.R. (2005) M.P. 1 (F.B.)*

-Order 10, Rule 4 - Conditions necessary to be satisfied before passing judgment against party not appearing—Judgment pronounced against him -Order wrong—Court has jurisdiction to review—Rejection of review—Revision against order rejecting review competent : *Sekadiya & ors. Vs. Fundibai, I.L.R. (1961) M.P. 164*

– **Order 11 Rule 12** – Discovery of documents – Object of and purpose behind it – The word ‘document’ in this context includes anything that is written or printed irrespective of material upon which it is inserted or imprinted – Even in admissible documents may throw light on the dispute involved in the case : *Smt. Hari Devi Vs. Smt. Krishna Devi, I.L.R. (1990) M.P. 385*,

– **Order 11 Rule 12** and Order 15 Rule 2, Sections 115, 151–Civil Revision–Suit for eviction–Accommodation Control Act, M.P., 1961–Section 12 (1)(a) and (f)–Suit based on arrears of rent and bonafide need–Application for production of document–Plaintiff filed affidavit disclosing non–possession of document but filing some documents at belated stage–Two are different provision–Trial Court can in its discretion allow an application for production of documents under Order 13 Rule 2 of the Code at a belated stage–The plaintiff is only required to explain delay–Plaintiff making application in a casual manner–Finding of the Trial Court regarding good cause is mechanical–Impugned order set aside–Case remitted to Trial Court for deciding application under Order 13 Rule 2, C.P.C. afresh. *Jaikishan Das Vs. Rambabu Agrawal; I.L.R. (1992) M.P. 878*

– **Order 11 Rules 12, 14, 21 and 22, Section 115**– Civil Revision – Striking of defence – Discovery of documents – Affidavit for discovery of document has to be in the form prescribed and other type of affidavit should not be allowed to be filed – Procedural provision relating to discovery are power weapon as failure entails demolition of the case of an adversary – Defendant’s failure to produce document despite repeated adjournments – Trial Court justified in striking out defence : *I.D.A. Vs. Satyapal Anand, I.L.R. (2001) M.P. 1579*

– **Order 11 Rule 15, Section 115– Revision** – Evidence Act, 1872 – Sections 63, 65 and 66 – Secondary evidence – Nature of Photocopy of original obtained through mechanical process insures authenticity hence can be produced in evidence as secondary evidence with permission of the Court – Sections 65 and 66 – Secondary evidence – Leading of Conditions precedent – Party desirous to lead secondary evidence by producing photo copy has to prove to the satisfaction of the Court that possession or original is obtained by opposite party by fraud or force – Section 66, Order 4 Rule 15, C.P.C. – Notice produce to the party in possession original – The word “appears” in third proviso has to be governed by the law of pleadings – Plaintiff neither pleaded nor adduced any evidence that the original is possessed by the defendant by force of fraud – Plaintiff cannot be granted exemption from giving notice as envisaged under Order 4 Rule 15, C.P.C. : *Ram Sahu Vs. Ramdayal, I.L.R. (2001) M.P. 258*

- **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 - Word "claiming under him" in - Is restricted in its meaning to claiming a right under the lessor : *Durga Prasad Vs. Mst. Parveen Faujdar, I.L.R. (1980) M.P. 448 (D.B.)*

- **Order 11 Rules 22, 12, 14** and 21, Section 115- Civil Revision – Striking of defence – Discovery of documents – Affidavit for discovery of document has to be in the form prescribed and other type of affidavit should not be allowed to be filed – Procedural provision relating to discovery are power weapon as failure entails demolition of the case of an adversary – Defendant’s failure to produce document despite repeated adjournments – Trial Court justified in striking out defence : *I.D.A. Vs. Satyapal Anand, I.L.R. (2001) M.P. 1579*

- **Order 12 rule 6** - Contemplates judgment on admission - Converse is also true - Defendants can confess judgment to a portion of plaintiff's claim : *The Arun General Industries Ltd. Calcutta Vs. The Rishab Manufacturers (Private) Ltd. , Katni I.L.R. (1976) M.P. 275*

- **Order 12 Rule 8**, Order 23 Rule 3 and Section 23, 100 and Contract Act, Indian (IX of 1872) – Nominal sale deed executed without consideration to avoid possible impact of law of ceiling on urban property – Possession not delivered – Executant even after sale deed exercised right of ownership – Suit for declaration by executant of Sale Deed that he be declared owner of such property – Claims admitted by defendant – Suit dismissed alleging to be collusive in nature – Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty – Not proper – Section 100 – Second Appeal – Question of avoiding stamp duty does not

arise as no instrument was executed which required stamp duty - Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R. (2001) M.P. 379,*

- **Order 13 Rule 1**, Representation of the People Act, 1951, Section 87 – Election Petition – Application for taking document on record before framing of issues – Held – Maintainable – Any party has right to file documents at or before settlement of issue. *Shashi Bhushan Bajpai Vs. Madhavrao Scindia, I.L.R. (1997) M.P. 396*

– **Order XIII Rules 1 and 2 and Order XLI Rule 27, Explanation VIII, Section 11, 100**–Suit for eviction–Second Appeal–Application for taking additional document on record–Rejection of prayer by trial Court–Affirmed in revision by the District Judge–Not binding on the High Court nor operates res judicata when appeal is filed against the decree–Accommodation Control Act, M. P. 1961–Sections 12(1)(e), 23 and Evidence Act, 1872 Section 74–Public document–Certified copy of registered sale-deed–Sought to be brought as additional evidence–Document essential to put the controversy at rest–Document can be accepted as evidence–Defendant tenant admitted that he paid rent to plaintiff–Landlord-tenant relationship established–bona-fide requirement found proved by the trial Court–Suit for eviction decreed : *Nawab Saheb Vs. Firoz Ahmed, I.L.R. (2003) M.P. 222*

–**Order 13 Rule 2**–Plaintiff making application in a casual manner–Finding of the Trial Court regarding good cause is mechanical–Impugned order set aside–Case remitted to Trial Court for deciding application under Order 13, Rule 2, C.P.C. afresh : *Jaikishan Das Vs. Rambabu Agrawal; I.L.R. (1992) M.P. 878*

- **Order XIII Rules 2 and 1, Explanation VIII, Section 11, 100 and Order XLI Rule 27**–Suit for eviction–Second Appeal–Application for taking additional document on record–Rejection of prayer by trial Court–Affirmed in revision by the District Judge–Not binding on the High Court nor operates res judicata when appeal is filed against the decree : *Nawab Saheb Vs. Firoz Ahmed, I.L.R. (2003) M.P. 222*

-**Order 13 Rule 4** - Certified copies of public documents admitted on record-Endorsement regarding admission not made -Document cannot be ignored : *Jadibai Vs. Har Singh & ors., I.L.R. (1962) M.P. 305*

– **Order 14 Rule 1 and Section 96** –Suit for specific performance–Agreement for sale–Execution of–Defendant keeping good health yet not appeared in witness box to contradict–Trial Court rightly disbelieved defence story that it was not for sale but for profit sharing cultivation–Issue–Framing of–Plea not taken in written statement–Trial Court rightly not framed any issue on plaintiff readiness and willingness to perform their part of the contract–Conduct of parties and attending circumstances to

be seen to infer readiness and willingness—Defendant sworn in affidavit to be submitted to the income tax Deptt.—Plaintiffs presence in Sub-Registrar's office with balance amount and service of notice on defendant to execute sale deed—Proved—Readiness and willingness established—Judgment of trial Court perfectly legal—No interference: *Smt. Godavari Bai Vs. Pandit, I.L.R. (2004) M.P. 165 (D.B.)*

- **Order 14 rule 2** - Distinction to be made between pure question of law, such as jurisdiction, Court-fees and maintainability of suit and disputed question of fact - Former can be tried as preliminary issue but in later case, discretion rests with Court : *M/s Ramsharandas Motiram Kanpur Vs. M/s Motilal Gopikishan Khandwa, I.L.R. (1978) M.P. 893,*

- **Order 14 Rule 2** – Preliminary – issue – Issue of res judicate – Mixed question of law and fact – Cannot be decided as preliminary issue : *State of M.P. Vs. Narpat Singh Dung, I.L.R. (1988) M.P. 37*

- **Order 14 rule 2**, as amended and Section 115 - Issue requiring recording of evidence for its decision - Issue is mixed question of law and fact - Cannot be tried as preliminary issue : *M/S Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R. (1980) M.P. 95 (F.B.)*

- **Order 14 rule 2**, as amended and Section 115- Proper course indicated - Preliminary issue to be taken first or not for decision - Does not decide rights of parties - Not a "case decided" – Interference under section 115, Civil Procedure Code not permissible : *M/S Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R (1980) M.P. 95 (F.B.)*

- **Order 14 rule 2** - Questions of law - To be tried as preliminary issue - Distinction to be made between pure question of law, such as jurisdiction, Court-fees and maintainability of suit and disputed question of fact - Former can be tried as preliminary issue but in later case discretion rests with Court : *M/s Ramsharandas Motiram Kanpur Vs. M/s Motilal Gopikishan Khandwa I.L.R. (1978) M.P. 893,*

- **Order 14 rule 2**, as amended and section 115 - Issue relating to jurisdiction - When can be tried as a preliminary issue - Issue requiring recording of evidence for its decision - Issue is mixed question of law and fact - Cannot be tried as preliminary issue - Proper course indicated - Preliminary issue to be taken first or not for decision - Does not decide rights of parties - Not a "case decided" - Interference under section 115, Civil Procedure Code not permissible : *M/s Ramdayal Umraomal, Raipur Vs. Mannalal Jagannathji, I.L.R. (1980) M.P. 95 (F.B.)*

- **Order 14 Rule 2** & Section 115—Civil Revision—Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 88—Section bars suits or other legal proceedings

against Registrar in respect of anything done in good faith—Issue relating to bar created by law decided as preliminary issue and the suit dismissed—Purely question of law—Revision does not lie : *Smt. Shakuntala Soni Vs. State, I.L.R. (2004) M.P. 525*

- **Order 14 Rule 2**- Eviction case based on non-residential purpose—Issue framed regarding both purpose – does not affect the case of jurisdiction when evidence regarding non-residential purpose is considered Accommodation Control Act, M.P., 1961—Section 23 E—Revision under—Powers - High Court are wider than under Section-115, Civil procedure Code—However such powers are lesser than appellate power—Finding not perverse—No interference can be made—Eviction case under—Requirement of landlord cannot be rationed by the Court : *Kailash Chandra And Brothers, Indore Vs. Dr. Kamla, I.L.R. (1998) M.P. 425*

- **Order 14 Rule 2(2)** and Section 96—First Appeal—Suit for declaration—Plaintiff/appellant employee of University—Claim to the post of Deputy Registrar—A bar created by any law for the time being in force has to be kept in view—*Vishwa Vidyalaya Adhinyam, M. P., 1973*—Section 59—Bar to any suit—Though cause of action shown to have arisen prior to coming into force of the Adhinyam Trial Court justified in dismissing the suit for want of jurisdiction—Plaintiff has a remedy of moving the Kuladhipati for making reference of dispute—No interference in impugned judgment called for : *Ghanshyam Gautam Vs. Jiwaji Vishwavidhyalaya, Gwalior, I.L.R. (1992) M.P. 457*

- **Order 6 rule 16 and Order 14 rule 5** - Issues wrongly framed on disputed evidentiary facts not necessary for suit - Such issues liable to be struck out : *Lekhraj Diddi Vs. Sardar Sawansingh, I.L.R. (1977) M.P. 1204, (D.B.)*

- **Order 6 rule 16 and Order 14 rule 5** - Pleadings not to be struck out because they are unnecessary : *Lekhraj Diddi Vs. Sardar Sawansingh, I.L.R. (1977) M.P.1204, (D.B.)*

- **Order 15 Rule 1 and Hindu Marriage Act, (XXV of 1955), Section 23(2)** – Word ‘appears’ in Order 15 Rule 1, Civil Procedure Code requires judicial satisfaction of the Court – Parties must be examined for this purpose – Endeavour for reconciliation by Court mandatory – Decree passed without complying Section 23(2) is nullity : *Shrimati Rajni Pachori Vs. Kamlesh Pachori, I.L.R. (1989) M.P. 115*

- **Order 15 Rule 2 and Order 11 Rule 12, Sections 115, 151**—Civil Revision—Suit for eviction—Accommodation Control Act, M.P., 1961—Section 12 (1)(a) and (f)—Suit based on arrears of rent and bonafide need—Application for production of document—Plaintiff filed affidavit disclosing non—possession of document but filing some documents at belated stage—Two are different provision—Trial Court can in its discretion allow an application for production of documents under Order 13 Rule 2 of

the Code at a belated stage–The plaintiff is only required to explain delay–Plaintiff making application in a casual manner–Finding of the Trial Court regarding good cause is mechanical–Impugned order set aside–Case remitted to Trial Court for deciding application under Order 13 Rule 2, C.P.C. afresh. *Jaikishan Das Vs. Rambabu Agrawal; I.L.R. (1992) M.P. 878*

– **Order 16 rules 1, 7-A and Section 151** – Court has jurisdiction to order direction for service of summons personally to witnesses : *Mohanlal Khetan Vs. Munnalal, I.L.R. (1988) M.P. 55*

– **Order 16 Rules 1(1) & (3)** – List of witnesses – Defendant not filing list of witnesses within 15 days of settlement of issues – Trial Court rejected application for summoning witnesses – Held – Trial Court was right in rejecting application – However, on showing sufficient cause for doing so at appropriate stage – Trial Court can summon the witnesses – Defendant permitted to file fresh application for said purposes : *Brij Mohan Gupta Vs. Premchand Jain, I.L.R. (1993) MP 92 (D.B.)*

– **Order 16 Rule 5 and Section 115**–Civil Revision–Rejection of application to lead secondary evidence–Evidence Act, Indian, 1872, Sections 62, 65, 66 and Succession Act, Indian, 1925, Section 63–Will–Original not filed–Certified copy sought to be admitted as secondary evidence–Rule of proving execution–At least one of the attesting witnesses is required to be examined–If both witnesses are dead execution may be proved by examining the scribe or any person acquainted with handwriting and signature of the testator–If the copy with the Sub-Registrar is a carbon copy the same may be presumed to be original and then proof of execution can be given as envisaged in Section 63 of Indian Succession Act : *Chhatrapratap Vs. Tulsi Prasad; I.L.R. (2002) M.P. 360*

– **Order 16 rules 7-A, 1 and Section 151** – Court has jurisdiction to order direction for service of summons personally to witnesses : *Mohanlal Khetan Vs. Munnalal, I.L.R. (1988) M.P. 55*

-**Order 16 Rule 14**- Power of Court to examine expert in case of disputed document : *Jageshwar Prasad Vs. Lappa, I.L.R. (1969) M.P. 319*

-**Order 17 rule 1** - Expert not summoned because of non-payment of process-fee by party-Party not acting with due diligence-Court right in refusing adjournment-Evidence-Burden of proof-Making of Hundi and consideration denied-Burden on plaintiff to establish both facts-Moment the execution of Hundi proved-Burden of proving want of consideration shifts on defendant-Burden can be discharged by producing account-books-Negotiable Instruments Act-Section 80-Grant of interest at 6% P.A. reasonable as that is normal rate allowed : *Ali Hussain Vs. Pessumal, I.L.R. (1973) M.P., 1081 .*

- **Order 17 rule 2** - Applicable to all cases of default - Hearing of the provision - To be used for limited purpose : *Rama Rao Vs. Shantibai, I.L.R (1978) M.P. 509, (F.B-5)*

- **Order 17 rule 2** - Expression "such other order as it thinks fit" in Rule 2 - Permits disposal of suit and not a decision thereon : *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509,(F.B.-5JJ.)*

- **Order 17 Rule 2**, Order 9 Rules 4, 9 and Section 141, Land Acquisition Act, Sections 18, 21 - Party making reference under Land Acquisition Act remained absent – Court dismissed the reference on merits – Application for restoration under order 9 rejected by Reference Court as not maintainable – Order rejecting application challenged – Court Should not have dismissed the claim on merits but under Order 17 Rule 2 – Application under order 9 for restoration maintainable – Matter remitted back to reference court for deciding the application under Order 9 : *Nathmal Maheshwari Vs. State of MP, I.L.R (1993) MP 302*

-**Order 17 rules 2 and 3**-Circumstances in which the different rules apply : *Smt. Sagar Bai Vs. Bhai Ratilal, I.L.R. (1972) M.P. 954 .*

- **Order 17 Rules 2 and 3 and Order 9 Rule 9, Order 43 Rule 1(e)** – Appeal – Rejection of application for setting aside exparte dismissal of suit at evidence stage for non-appearance of party though counsel appeared and sought adjournment – Order 9 Rule 9 and Order 17 Rules 2 and 3 – Mere presence of counsel seeking adjournment would not mean presence of party as envisaged in clauses (a) and (b) of Rule 3 of Order 17 – Court can proceed only under Rule 2 and not under Rule 3 of Order 17 in case it refuses to grant adjournment – Order 9, Rule 9 applicable – Impugned Order set aside – Case remanded to the trial Court : *State Bank of India Vs. Nandram, I.L.R. (2001) M.P. 544*

- **Order 17 rules 2 and 3** - Order 17 rule 3 - More stringent and requires strict construction - Order 17 rules 2 and 3 - Both applicable to an adjourned date of hearing - Expression "or to make such other order as it thinks fit" in Rule 2 - Enables Court to dispose of suit in a mode other than that provided by Order 9 - Order 17 rule 2 - Scope of Rule 3 - Ambit of this rule - Does not include that which is provided in rule 2 - Rule 3 - Does not include the case of default in appearance - Words "Dispose of" - Mean different from "decide" - Rule 2 - Applicable to all cases of default - Heading of the provision - To be used for limited purpose - Expression "such other order as it thinks fit" in Rule 2-Permits disposal of suit and not a decision thereon - Interpretation of Statutes - Construction which renders provision superfluous to be avoided - Rule 3 - Presupposes presence of all parties and failure of party to do an act,

necessary for further progress of suit - Stare decisis to be followed - "Appearance of a party" - Meaning of : *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509, (F.B.-5JJ.)*

- **Order 17 rule 3** - Word "default" in - Refers to non-payment of amount directed to be paid : *Budhulal Vs. Chhotelal, I.L.R. (1977) M.P. 1153 ,(F.B.)*

- **Order 17 rule 3** - Ambit of this rule - Does not include that which is provided in rule 2 : *Rama Rao V Shantibai, (1978) M.P. 509 C -Order 17 rule 3* - Does not include the case of default in appearance : *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509 (F.B.JJ-5)*

- **Order 17 rule 3** - More stringent and requires strict construction : *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509, (F.B.JJ-5)*

- **Order 17 rule 3**-Case posted for defendant's evidence- Defendant No. 1 present in person and other defendants through their counsel-Numerous applications to avoid leading of evidence - Recourse to Order XVII Rule 3 by the Trial Court-Held proper and justified : *Pratap Singh and others Vs. Sharad Chand and others., I.L.R. (1998) M.P. 491*

-**Order 17, Rule 3**-Words "the Court may, not with standing such default, proceed to decide the suit forthwith" in-Implication of -Trial Court wrongly dismissing the suit under Order 17, Rule 3-Appellate Court, power of, to set it aside by treating it as one passed under Order 17, Rule 2 read with Order 9,Rule 8-Distinction between an appellate Court treating the Order under Order 17, Rule 3 as one under Order 17, Rule 2 and setting it aside and appellate Court passing proper order which trial Court should have passed-Nature of the order to be passed in the circumstances : *Maruti Vs. Gangadhar I.L.R. (1966) M.P. 161*

-**Order 17 Rule 3** Conditions necessary to be satisfied for applicability of-Order 9 rules 6 and 8-Pleader not conducting the case on behalf of the party engaging him though present-Does not amount to appearance within the meaning of these provisions-Appeal-Right of party to be determined by what Court actually did and not by what it ought to have done : *Goverdhan Vs. Ganesh, I.L.R. (1962) M.P. 766*

- **Order 17 Rules 3** and 2 and Order 9 Rule 9, Order 43 Rule 1(e) – Appeal – Rejection of application for setting aside exparte dismissal of suit at evidence stage for non-appearance of party though counsel appeared and sought adjournment – Order 9 Rule 9 and Order 17 Rules 2 and 3 – Mere presence of counsel seeking adjournment would not mean presence of party as envisaged in clauses (a) and (b) of Rule 3 of Order 17 – Court can proceed only under Rule 2 and not under Rule 3 of Order 17 in case it refuses to grant adjournment – Order 9 Rule 9 applicable –

Impugned Order set aside – Case remanded to the trial Court : *State Bank of India Vs. Nandram, I.L.R. (2001) M.P. 544*

– **Order 18 Rule 1, Order 6 Rule 17 and Section 96** –First Appeal–Suit for recovery–Decree by trial Court saddling liability on appellant against whom no relief was sought and was also proceeded ex parte–Appeal against–Amendment sought to incorporate pleading at appellate stage–Limitation–No absolute rule where relief is barred by limitation amendment should not be allowed–Written statement not filed–Impugned judgment and decree set aside–Amendment allowed–Case remanded to trial Court with liberty to appellant to file written statement : *Mangalam Roshanpura Vs. State Bank of India, I.L.R. (2005) M.P. 725*

-**Order 18 rules 14 and 13**-Stresses importance of recording of memorandum of deposition of witnesses in non-appeal able cases since final adjudication of rights depends upon the evidence-Unless rigid compliance is insisted upon-Confidence in judiciary likely to be impaired-Civil Procedure Code-Section 99-Error, defect or irregularity in proceedings-No ground for reversing or varying a decree in appeal and much less in revision-Interpretation of Statutes-Construction of procedural law-Rule of construction : *Union of India Vs. Punamchand, I.L.R. (1974) M.P. 1010*

-**Order 19 rule 3 and High Court Rules, Chapter 3, rule 4**-Circumstances in which affidavit should be sworn on personal knowledge and on information received and belief-Constitution of India-Article 329(b) and Representation of the People Act-Section 80-Defeated candidate made respondent-Such candidate cannot be allowed to make allegation so as to convert written statement into election petition-Declaration sought that candidate has been elected-It becomes election petition-It has to comply with section 117 and 118 of the Representation of the People Act-Not permissible to raise plea regarding corrupt practice in the written statement of respondent-Election petition is statutory proceeding-Statutory requirements must be strictly complied with-Representation of the People Act-Section 123(3)-Symbol of Cow and Calf-Symbol not showing anything sacred or holy-Symbol does not become religious symbol-Worshipping cow as mother-Does not make it a religious symbol-Attribute of spiritual significance-Does not impart to its use on flag the character of religious symbol-Everything that is holy or sacred-Is not a religious symbol-Symbol of cow and calf-Does not point anything about its Godliness or holiness-Canvassing for voting for the symbol of cow and calf-Not covered within the mischief of this section-Section 123(2)(a)(ii)-Corrupt practice of undue influence-Meaning of-Speech containing offending part-Would amount to corrupt practice-Speech threatening electors that they will become or be rendered object of divine displeasure or spiritual censure-Amounts to interference with free electoral right-But the person making the speech must be capable of exercising spiritual undue influence-Corrupt practice-Is in the nature of quasi criminal charge-Standard of proof is that required in criminal case-Section 123(5) Hiring or procuring a conveyance for carrying elector to or from

polling booth by candidate or by agent with his consent -Is a corrupt practice-Proof of contract of hire of vehicle not necessary but fact of hiring has to be proved-Section 100-Proof of reception, rejecting or refusing a vote-Not sufficient for setting aside election-Result of election being affected has to be proved-Section 22-Requires reasonable opportunity to be given to the person whose name is to be struck out from electoral roll-Costs-Circumstances in which special costs can be granted : *Shri Bhartendra Singh Vs. Shri Ramsahai Pandey, I.L.R. (1972) M.P. 95*

- **Order 20 rules 1, 3 and 4** - Section 2(9)- -When can decision of a judge be said to be a judgment : *Chowaram Vs. Thanuram, I.L.R. (1959) M.P. 440 (D.B.)*

-**Order 20 rule 2** - Judgment written by a Judge after his transfer or when on leave, or when he had ceased to hold office or after reversion to another post or after the resignation or after he had ceased to have jurisdiction over the Court, and pronounced by successor-Validity : *Dammulal Vs. Shrimati Kala Wati Devi, I.L.R. (1959) M.P. 80 (D.B.)*

- **Order XX Rule 6-A**-Appeal preferred against judgment of trial Court which failed to draw up decree-Appeal cannot be dismissed on the ground that Memo of Appeal does not accompany decree Appellate Court instead of dismissing the appeal ought to direct the trial Court to draw up the decree failing which the appellant can take benefit of Order XX, Rule 6-A : *Jainarain Charitable Registered Society Vs. Smt. Kumud Verma and others., I.L.R. (1998) M.P. 227*

-**Order 20 Rule 7**-Decree not amended in substantial part-Appeal against amended decree-Starting point of limitation for appeal-Delay condonable under Section 5, Limitation Act: *Ram Singh Vs. Mst. Ramobai I.L.R. (1968) M.P. 446*

-**Order 20, Rule 7**-Decree substantially amended-Appeal filed against amended decree-Starting point for limitation for appeal-Decree not amended in substantial part-Appeal against amended decree-Starting point of limitation for appeal-Delay condonable under Section 5, Limitation Act-Order 41, Rule 1-Appeal presented by a person who is not guardian- ad-litem on behalf of minor-Appeal allowed to be decided without objection-Other side precluded from raising objection to the presentation of appeal : *Ram Singh Vs. Mst. Ramobai I.L.R. (1968) M.P. 446*

-**Order 20 rule 12**-Contemplates passing of preliminary decree when amount has to be ascertained-In case of mesne profits claimed is not necessary : *Kika Bhai Vs. Kamlakar, I.L.R. (1973) M.P. 626.*

-**Order 20 rule 12**-Suit for declaration of title and possession-Mesne profits not claimed-No relief under this provision can be granted : *Deepchand Vs. Sukhlal, I.L.R. (1972) M.P. 320 (D.B.)*

-Order 20 Rule 12 -Does not come into play where relief regarding mesne profits not claimed in suit : *Inderan Vs.Ramdin, I.L.R. (1961) M.P. 603*

-Order 20 rule 12-Statutory right exercised by the Sabha-Government has not farmed out the right to Sabha-Decree-holder has no right to realize more than what was fair and equitable-State Government not liable for account of rents realized : *State Of Madhya Pradesh v. Rao Subhag Singh, I.L.R. (1971) M.P. 134 .*

-Order 20 rule 12-Preliminary decree giving scope of enquiry-Court has no power to widen the scope-Statutory right exercised by the Sabha-Government has not farmed out the right to Sabha-Decree-holder has no right to realise more than what was fair and equitable-State Government not liable for account of rents realized : *State of Madhya Pradesh Vs. Rao Subhag Singh, I.L.R. (1971) M.P. 134 .*

-Order 20 Rule 12 and Section 144-Difference between : *Inderan Vs. Ramdin, I.L.R. (1961) M.P. 603*

-Order 20 Rules 12 and 18- Partition suit- Profits to be accounted for are not *mense* Profits-Rule 12 cannot at all apply- Partition suit is covered by Order 20 rule 18- Plaintiff is entitled to profit or rendition of income of his property right up to the delivery of possession and not up to 3 years: *Mishrilal & ors. Vs. Nathu & ors., I.L.R. (1999) M.P. 362*

-Order 20 rule 15-Empowers Court to pass a decree in favour of defendant if on account he is found entitled to any amount : *Wahid Ali Khan Vs. Yaqoob Bhai, I.L.R. (1975) M.P. 365*

- Order XX rule 17 - Taking of accounts - Accounts to be taken on basis of books of partnership - But entries cannot be treated as correct - Mere balancing in a book of accounts - Does not amount to account stated, much less account settled : *Sheo Bhagwan Vs. Mst. Durgadevi, I.L.R (1979) M.P. 349, (D.B.)*

- Order 21 rule 1 and Order 23 rule 3 - Compromise decree directing payment by instalments on particular dates - Due date being holiday, judgment - debtor applying to Court on the next day for accepting the amount - Court directing Nazir to receive the same but due to closing of accounts section of Nazarat amounts actually deposited in C. C. D. on the next day - Such deposit held to be sufficient compliance with the compromise decree - Order 21 rule 1 - Expression "Payable under a decree" in - Meaning of - Compromise decree directing specified amount to be paid in instalments - Money is "Payable under a decree" within the meaning of Order 21 rule 1 : *Girdhari Vs. Ramprasad, I.L.R. (1985) M.P. 43*

- **Order 21 Rule 2** - Executory agreement -Amounts to adjustment of decree : *S.S. Nirmalchand & anr. Vs. Shrmati Parmeshwari Devi & 6 Ors., I.L.R. (1957) M.P. 396 (D.B.)*

- **Order 21 rule 2** - Distinction between adjustment of decree and an agreement rendering decree unenforceable : *Mohammad Ali Vs. Bahadur Singh, I.L.R. (1977) M.P. 683,*

-**Order 21 rule 2**-Mere agreement to adjust on fulfillment of future condition- Decree continuing in existence pending fulfillment of condition-Agreement does not amount to adjustment : *Gyasiram Vs. Gul Kandi Bai, I.L.R. (1975) M.P., 133 .*

- **Order 21 rule 2** - Independent agreement subsequent to decree - Cannot be treated as adjustment of decree - Such an agreement or compromise is enforceable under section 47 : *Mohammad Ali Vs. Bahadur Singh, I.L.R. (1977) M.P. 683,*

-**Order 21 Rule 2** - Admission regarding agreement to adjust-Does not amount to certification of effectuated adjustment - Does not contemplate an enquiry-Contemplates voluntary certification to satisfaction of decree-holder -No jurisdiction to embark an enquiry regarding adjustment to satisfaction of decree-holder-Limitation Act Section 18-Applicable in a case of active and designed fraud : *Dwarka Prasad Naik Vs. Shyama Charan Naik, I.L.R. (1963) M.P. 434 (D.B.)*

-**Order 21 rule 2**-Decree adjustable by lawful compromise whether executed or executory-Adjustment must extinguish liability in full or in part-Mere agreement to adjust on fulfillment of future condition-Decree continuing in existence pending fulfillment of condition-Agreement does not amount to adjustment-Earnest Money-It is part of purchase price when transaction goes forward ; forfeited when transaction falls through-Forfeiture of Earnest money-Meaning and effect of-Civil Procedure Code-Section 100-Finding of fact when not binding : *Gyasiram Vs. Gul Kandi Bai, I.L.R. (1975) M.P. 133 .*

- **Order 21 rule 2, Section 100 and Section 47** - Suit for eviction decreed by trial Court and confirmed by First Appeal Court-Second appeal by some of the legal representatives of the deceased judgment-debtors - Adjustment of decree passed by the First Appeal Court - Adjustment certified - Merger of decree into an adjustment order - Second Appeal not maintainable - Remedy of judgment - debtors lay under Section 47, Civil Procedure Code : *Smt. Freny Kaikkoshroo Cooper Vs. S. K. Chouksey I.L.R. (1979) M.P. 824*

- **Order 21 rules 2 and 3 and Section 47** - Decree for eviction - Execution Objection by tenant - judgment debtor alleging compromise giving up right of eviction under decree in return for promise to pay enhanced rent - Alleged

compromise not recorded as certified - Compromise being adjustment of decree and not recorded as certified - Objection to execution not sustainable in view of rule 2 - Interpretation of Statute - Salutary rule of - Two statutory provisions - Not to be so construed as to encourage frivolous litigation or render one of them otiose : *Rajeev Khandelwal Vs. Arun Pannalal, I.L.R. (1987) M.P. 670 (F.B.)*

- **Order 21 Rules 2, 11, Section 115**—Execution proceeding in service matter—Administrative Tribunals Act, 1985, Section 29—Appeal pending in High Court having been saved necessarily the proceeding arising there from are also saved—Execution of such decree is not laible to be transferred to Tribunal. *M.L. Beohar Vs. Union Of India; I.L.R. (1992) M.P. 948*

- **Order 21 rule 2 (3)** Provision harsh and must be restrictively construed Order 21 rule 2 - Distinction between adjustment of decree and an agreement rendering decree unenforceable - Independent agreement subsequent to decree - Cannot be treated as adjustment of decree - Such an agreement or compromise is enforceable under section 47 : *Mohammad Ali Vs. Bahadur Singh I.L.R. (1977) M.P. 683,*

- **Order 21 Rule 5** and Section 3 -Additional District Judge not subordinate to District Judge-Is not a Civil Court of a grade inferior to that of District Court-Order 21 Rule 5 - Non-compliance with provisions of-A mere irregularity-Irregularity curable-Does not affect jurisdiction of Court : *Gourishankar Vs. Firm Dulichand Laxmi-Narayan, I.L.R. (1958) M.P. 122*

- **Order 21 rule 6** and Section 42 and Limitation Act, Indian (IX of 1908), Article 182 (5) - Limitation for execution of decree - Application for transfer of a decree - Is a step - in - aid of execution - Application to the transferee Court for execution - Is a continuation of the previous pending proceedings for transfer of decree - Limitation not liable to be computed on the date of application in transferee Court : *Hemchand Vs. Premchand, I.L.R. (1985) M.P.436.*

- **Order 21 Rule 10, Section 37-** Execution of decree-Court passing decree abolished - Pending cases transferred to another Court - Such transferee Court acquires inherent jurisdiction to execute the decree : *Indra Vs.. Ramcharan; I.L.R. (2002) M.P. 738*

- **Order 21, Rule 11, C.P.C.**-A decree can be executed only to the extent what it contains and not beyond-Order of two Courts below set aside, *Jawariya Vs. Addl. Judge to District Judge, Mandleshwar, I.L.R. (2000) M.P. 326,*

-**Order 21 Rules 11**-Defect as to the form in which columns 7 and 8 ought to be filled or slight error in calculation of interest-Not defect of substantial sort but only amounts to irregularity : *Indirabai Vs. Anokchand I.L.R. (1966) M.P. 966*

-Order 21 Rule 11 -Determination of the question whether execution is in accordance with law or not-Nature of defects has to be seen : *Indirabai Vs. Anokchand I.L.R. (1966) M.P. 966*

-Order 21 Rule 11-Execution proceeding for recovery of possession-Obtaining order from the Competent Authority as to entitlement of petitioner to hold the land-Not necessary : *Smt. Khom Bai Vs. First Addl. District Judge, Raipur, Link Court Mahasammund, I.L.R. (2000) M.P. 1038*

-Order 21 and Rule 11-Decree for specific performance of contract for sale-Itself implies delivery of possession-No error committed by executing court in directing the JDr to hand over possession : *Sunderlal and others Vs. Gopal Saran, I.L.R. (2003) M.P. 1218*

-Order 21 and Rule 11-Execution proceedings-It is the duty of the executing court to find out exact meaning of the decree and give effective relief to the decree holder : *Sunderlal and others Vs. Gopal Saran, I.L.R. (2003) M.P. 1218*

- Order 21 Rule 11, Sections 9, 100 and Administrative Tribunals Act,(XIII of 1985) Sections 2(9), 15 and 29-Service matter-Suit decreed in favour of plaintiff-Civil Court has jurisdiction to execute its own decree : *Dr. S.K. Mathur Vs. State, I.L.R. (1992) M.P. 901 (D.B.)*

- Order 21 Rule 11, Sections 9, 100, and Constitution of India-Article 227-Administrative Tribunals Act,1985 Sections 2(9), 15 and 29- Writ Petition-Against Civil Court's report to execute decree in service matter-Service matter-Suit decreed in favour of plaintiff-Civil Court has jurisdiction to execute its own decree-Power of Civil Court not taken away by Section 29 of Administrative Tribunals Act-Impugned order set aside-Execution case restored to file. *Dr. S.K. Mathur Vs. State; I.L.R. (1992) M.P. 901 (D.B.)*

- Order 21 and Rule 11, Section 115-Revision-Execution proceedings-It is the duty of the executing court to find out exact meaning of the decree and give effective relief to the decree holder-Decree for specific performance of contract for sale-Itself implies delivery of possession-No error committed by executing court in directing the JDr to hand over possession : *Sunderlal Vs. Gopal Saran, I.L.R. (2003) M.P. 1218*

- Order 21 and Rule 11, Section 115-Civil Revision-Execution Proceedings-Service matter-Administrative Tribunals Act, 1985, Section 29-Transfer of pending proceedings to Tribunal-Object of constituting tribunal is to provide for an exclusive adjudicatory and not executory forum-Execution proceedings in Service matters not

being adjudicatory proceedings are saved—Other proceeding shall include only pending proceedings whose cause of action still required to be adjudicated and not such proceedings where all that remain to be done is execution—Executing Court directed to resume proceeding : *Kamlendra Singh Vs. State; I.L.R. (1992) M.P. 950*

- Order 21 Rule 11 and Section 115- Execution of decree declaring removal of plaintiff null and void with direction to reinstate in service and with further relief of all service benefits—Objection of JDr as to recovery of back wages—Not tenable—Specific Relief Act, 1877, Section 42 and Specific Relief Act, 1963, Section 34—Words “further relief” includes consequential benefits of a declaratory decree—Executing Court has to execute the decree as it is—Objection of appellant rightly overruled—Plaintiff already reinstated in service and getting salary— Execution application contains prayer to recover payment of Salary accrued in favour of plaintiff after the date of decree—Executing Court cannot go beyond the tenor of the decree and pass orders for recovery of future payment—Such future salary should be excluded from the warrant of recovery—Order of Executing Court maintained : *President, Shree Gujrati Samaj Higher Secondary School, Ratlam Vs. Rameshchandra, I.L.R. (2000) M.P. 402*

-Order 21 Rule 11, Section 148 and Constitution of India, Article 227, Specific Relief Act, 1963, Section 28 -Suit for Specific performance—Decreed ex- parte--JDr. noticed but remained ex-parte—Sale-deed drawn by Court and sent for registration—Being a sale through court Bhu Adhikar Rin Pustika ought not to have insisted upon by Registering authority—Objection as to late deposit of money -Not raised in first execution proceeding when sale-deed was drawn by court and only formality of registration remained—Objection after thought -Rightly rejected by revisional Court. *Hazarilal S/o Mulloo Vs. Manakchand S/o Ramchand Barkul; I.L.R. (2002) M.P. 862*

-Order 21, Rule 11 and Section 148-Initial execution defective—Subsequently it is brought in order—The changed petition relates back to the date of original petition—Order 21, Rule 17—Power given by, not limited to curing of immaterial or formal defects—Extends to curing of defects of substantial character—Amendment effected in the original execution petition or fresh petition is filed—Makes no difference—Order 21 Rule, 15 and Section 146—Application by one heir of deceased decree-holder for execution—Application valid and is for benefit of all heirs—Order 21, Rule 11—Determination of the question whether execution is in accordance with law or not—Nature of defects has to be seen—Defect as to the form in which columns 7 and 8 ought to be filled or slight error in calculation of interest—Not defect of substantial sort but only amounts to irregularity : *Indirabai Vs. Anokchand I.L.R. (1966) M.P. 966*

- Order 21 rule 11 and Order 41 rule 5, Sections 36 and 37-Stay Order in appeal staying confirmation of Sale—Stay Order directing furnishing security for mesne profits determinable by trial Court -Security to be furnished within one month of the

date of trial Court's order-Application for recovery of mesne profits-Maintainability-Heading-Heading of petition not conclusive-Substance to be looked into : *Kheduram Vs. Mst. Supetkaur, I.L.R. (1971) M.P. 80 (D.B.)*

- **Order 21 Rules 11, 2, Section 115**-Execution proceeding in service matter-Administrative Tribunals Act, 1985, Section 29-Appeal pending in High Court having been saved necessarily the proceeding arising there from are also saved-Execution of such decree is not laible to be transferred to Tribunal. *M.L. Beohar Vs. Union Of India; I.L.R. (1992) M.P. 948*

- **Order 21 Rules 11 and 30** - Test to be applied to determine whether execution application is according to law : *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945 (F.B.)*

- **Order 21 Rules 11 and 30-Section 73** - Test to be applied to determine whether execution application is according to law - Order 21 Rule 11(j)(v)-Words "otherwise as the nature of the relief granted may require" are wide - Relief by way of rateable distribution is one of the modes of execution-Is within the ambit of this provision : *Mst. Sarswatibai Vs. Govindrao, I.L.R. (1960) M.P. 945 (F.B.)*

- **Order 21 Rule 11, 50 and Order 47 Rule 1, Sections 115,152**-Revision-Executing Court cannot go behind the decree-Application under Order 47 CPC could not be filed to require adjudication whether decree could be executable against a person not named and impleaded as a party to the suit : *Deepak Jain Vs. Century Textiles Industries Company, I.L.R. (2005) M.P. 364*

-**Order 21 Rule 11(j) (v)**-Words "otherwise as the nature of the relief granted may require" are wide : *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945 (F.B.)*

-**Order 21 Rule 11(2)** -Relief by way of rateable distribution is one of the modes of execution-Is within the ambit of this provision : *Mst. Saraswati Bai Vs. Govindrao, I.L.R. (1960) M.P. 945 (F.B.)*

- **Order 21 rule 11 (2)** - Execution application - To state all material particulars - Omission to mention in it about payment of the compensation to the Judgment - debtor- Whether a material defect - Omission to specify dismissal of first execution application in it - is an illegality : *M/S. Decom Marketing Ltd., Indore Vs. Kallubhai I.L.R. (1986) M.P. 731*

- **Order 21 rules 12, 41, 105 (2) and 106 and Section 151** - Execution of decree by attachment of moveable property in possession of Judgment - debtor - No list of

property is necessary - Court to issue warrant of attachment of such property as is in possession of Judgment - debtor - Procedure in case warrant comes back unexecuted - Decree - holder filed execution application and paid process - fee for issue of warrant to attachment of moveables of Judgment - debtor - Date fixed for awaiting report as to execution of warrant of attachment - Not a date of "hearing contemplated under rules 105 (2) and 106 - Dismissal of execution application in default of appearance on such date - Not under rule 105 (2) - Rule 106 not attracted - Such dismissal is under inherent powers - No time limit fixed for exercised of inherent powers for its restoration - Execution application ordered to be restored under inherent powers of payment of costs : *Khoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179.*

-Order 21 Rule 15 - Mortgage decree in favour of two sets of decree holders-Decree determining the shares of two sets of decree-holders-Decree still a joint decree-Execution of whole decree by one set of decree-holders Execution keeps alive decree for benefit of other set of decree-holders : *Dayaldas Vs. Tikamdas, I.L.R. (1959) M.P. 774*

-Order 21 Rule 15 - Composite decree-Costs not payable jointly as an entire sum-Provision not attracted-Conditions to be fulfilled for applicability : *Sakharam Vs. Sardar Madhav Rao, I.L.R. (1964) M.P.383 (D.B.)*

-Order 21 Rule 15 and Section 146-Application by one heir of deceased decree-holder for execution -Application valid and is for benefit of all heirs : *Indirabai Vs. Anokchand I.L.R. (1966) M.P. 966*

- Order 21 rule 15 and Order 30 rule 1 - Provisions not abrogated by Partnership Act : *Sajjan Singh V M/S Nadeali And Brothers, Through Ajaib Husain Yaseen Ali, Behind Bank Of Baroda, Vs. Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134*

- Order 21 rule 16-Decree-holder dying during execution-Legal representative becomes assignees by operation of law-Legal representative can carry on the pending execution : *Shrimati Ramkunwarbai Vs. Motiram, (1970) M.P. 602 (D.B.)*

-Order 21 rule 16 -Excludes operation of Section 146, Civil Procedure Code : *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (D.B.)*

-Order 21 rule 16-Local Amendment-Permits making of application to the Court passing the decree or to the Court where execution is transferred : *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (D.B.)*

-Order 21 rule 16 - Prayer to continue execution falls under the order : *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (D.B.)*

- Order 21 rule 16 - Decree - holder can execute decree even after assignment if assignee does not execute - Execution to be for benefit of assignee : *Brijlal Vs. Dulichand, I.L.R. (1977) M.P. 1009*

-Order 21 rule 16-Words "may apply in execution of the decree to the Court which passed it"-Do not imply an application de novo-Implications of those words : *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (D.B.)*

-Order 21 rule 16-Application to continue execution -Is not application for substitution -Such application is essential to be made *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (D.B.)*

-Order 21 rule 16-Right of purchaser of a portion of decree from decree-holder-Purchaser not making an application for execution-No occasion for executing Court to enquire whether purchaser has acquired any right by purchase : *Sheochand Vs. Nekiram, I.L.R. (1971) M.P. 678 (D.B.)*

-Order 21 rule 16 - Mere application for substitution of legal representatives or of assignee without an application for execution of decree-Not maintainable-Words "by operation of law" cover devolution of decree by inheritance : *Hemchand Vs. Tekchand, I.L.R. (1959) M.P. 89*

-Order 21 Rule 17-Power given by, not limited to curing of immaterial or formal defects-Extends to curing of defects of substantial character-Amendment effected in the original execution petition or fresh petition is filed -Makes no difference: *Indirabai Vs. Anokchand I.L.R. (1966) M.P. 966*

- Order 21 Rule 84, Order 21 Rule 90, Order 43 Rule 1(j), Civil Procedure Code (Amendment) Act, 1976 (CIV of 1976), Section 97(2) and Constitution of India, Article 227 – Auction in execution proceeding held after coming into force of amending Act – Order passed by District Judge on objection to the sale – Appeal lie to High Court – Letters Patent Appeal not maintainable against the order passed in appeal by single Judge – Provisions of Order 21 Rule 84, Civil Procedure Code mandatory – Court has no jurisdiction to disturb time scale statutorily prescribed – No excised of jurisdiction under Article 227 unless earlier order passed by High Court non est in law : *M/S. Gangavishan Heeralal Vs. M/S. Gopal Digambar Jain, I.L.R. (1990) M.P. 561, (D.B.)*

-Order 21 Rule 26 - Does not place any limitation on powers of transferee Court- Applies in many cases even when wide powers given to transferee Court : *The Allahabad Bank Ltd. Calcutta Vs. Chaitram Choudhari & ors., I.L.R. (1963) M.P. 259 (D.B.)*

-Order 21 Rule 26(3) -Applicable when request made by judgment-debtor : THE *Allahabad Bank Ltd. Calcutta Vs. Chaitram Choudhari & ors., I.L.R. (1963) M.P. 259 (D.B.)*

-Order 21 Rules 30 and 11-Section 73 – Test to be applied to determine whether execution application is according to law - Order 21 Rule 11(i)(v)-Words "otherwise as the nature of the relief granted may require" are wide - Relief by way of rateable distribution is one of the modes of execution-Is within the ambit of this provision : *Mst. Sarswatibai Vs., Govindrao, I.L.R. (1960) M.P. 945 (F.B.)*

- Order 21 rules 34, 95 and 96 read with Sections 2, 65 and 115 and partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380,*

-Order 21 Rule 35 - Symbolical possession against judgment-debtor-Equally good as actual possession: *Syed Abrar Ahmad Vs. Babulal, I.L.R. (1968) M.P. 318*

- Order 21 rules 35 and 36 and rules 95, 96, 97, 100 and Obstruction by third party in taking possession by decree -holder - Option for the decree - holder - Remedy of the third party : *Smt. Usha Jain Vs. Manmohan Bajaj I.L.R. (1982) M.P. 837.(F.B.)*

- Order 21 rule 35 (i) - Words "if necessary by removing any person bound by the decree who refuses to vacate the property" in - Does not contemplate inquiry - Third party at that stage has no right to make any application regarding mode of granting possession - Rule 95 and 96 - Position of auction purchaser is similar - Rule 97 - Decree - holder or auction - Purchaser not making application under this provision - No other has a right to make application to have his title and possession investigated - Inquiry can be made only on complaint of decree - holder or auction - purchaser and not the instance of third party - Rule 100 - Inquiry at the instance of third party contemplated, only after his dispossession : *Pandit Ramgulam Choubey Vs. Mahendra Kumar, I.L.R. (1977) M.P. 693,*

- Order 21 Rule 36, Transfer of Property Act (IV of 1882), Section 52 and Accommodation Control Act, M.P. (XLI of 1961), Section 12(a), 13(5) – Execution decree for delivery of immovable property in a partition suit – After preliminary decree – Decree-holder substituted himself in place of his benamidar – Judgment debtor inducted revisionist as tenant – Transfer of Property Act – Section 52 not attracted – Revisionist entitled to invoke aid or Rule 36 or Order 21 of the Code in

virtue of statutory entitlement ensured under Section 12(1)(a) and 13(5) of the Accommodation Control Act 1961 reads with clause (b) and (1) of the said Act – No eviction could be obtained in execution proceedings which did not emanate from the suit instituted under section 12(1)(a) of the Act 1961 – Protection of the tenant against his eviction extends to the stage of execution – Executing court exceeded in its jurisdiction in ordering eviction on the basis of a decree not passed under Section 12(1)(a) of the Act, 1961 : *Ramjidas Vs. Laxmi Kumar, I.L.R. (1991) M.P. 678*

- **Order 21 rules 36 and 35** and rules 95, 96, 97, 100 and Obstruction by third party in taking possession by decree -holder - Option for the decree - holder - Remedy of the third party : *Smt. Usha Jain Vs. Manmohan Bajaj I.L.R.(1982) M.P. 837. (F.B.)*

- **Order 21 Rule 37, Section 115** -Application for sending judgment-Debtor to civil prison- Notice issued to show cause-Applicant submitted reply-without holding enquiry contemplated under Rule 40 Court ordered for detention in civil prison- Cannot be sustained : *Subhash Chand Jain Vs. Central Bank Of India, I.L.R. (1999) M.P. 787*

-**Order 21 Rule 40**- Without holding enquiry contemplated under Rule 40- Court ordered for detention in civil prison- Cannot be sustained : *Subhash Chand Jain Vs. Central Bank Of India, I.L.R. (1999) M.P. 787*

- **Order 21 rules 41, 12, 105 (2) and 106 and Section 151** - Execution of decree by attachment of moveable property in possession of Judgment - debtor - No list of property is necessary - Court to issue warrant of attachment of such property as is in possession of Judgment - debtor - Procedure in case warrant comes back unexecuted - Decree - holder filed execution application and paid process - fee for issue of warrant to attachment of moveables of Judgment - debtor - Date fixed for awaiting report as to execution of warrant of attachment - Not a date of "hearing contemplated under rules 105 (2) and 106 - Dismissal of execution application in default of appearance on such date - Not under rule 105 (2) - Rule 106 not attracted - Such dismissal is under inherent powers - No time limit fixed for exercised of inherent powers for its restoration - Execution application ordered to be restored under inherent powers of payment of costs : *Khoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179*

- **Order 21 rule 46** - Attachment of debt –Future rent payable by tenant of judgment - debtor is not attachable being contingent debt : *Dharamveer Vs. Lala Narayandas, I.L.R. (1985) M.P. 566.*

- **Order 21 rule 46** - Decree providing recovery of decretal amount by sale of pledged goods in the first instance before proceeding against Judgment - debtor personally - Decree fixing time for payment of decretal amount - Judgment - debtor failing to pay - Decree - holder has a right to proceed against the Judgment-debtor

personally in execution proceedings and retaining the pledged goods as collateral security : *Central Bank Of India Vs. Santosh Kumar I.L.R. (1980) M.P. 685*

-Order 21 Rule 46 - Property attached before judgment and placed with Supratdar-Seizure by warrant of property from Supratdar-Legality-No notice necessary-Decretal amount paid by Supratdar to another decree-holder, saving seizure of property-Refund of amount cannot be claimed-Section 151-Power under-When can be exercised : *Mohanlal Vs. Firm Shivilal Chunnilal, I.L.R. (1961) M.P. 641*

- Order 21 Rule 50, 11 and Order 47 Rule 1, Sections 115,152–Revision–Executing Court cannot go behind the decree–Application under Order 47 CPC could not be filed to require adjudication whether decree could be executable against a person not named and impleaded as a party to the suit : *Deepak Jain Vs. Century Textiles Industries Company, I.L.R. (2005) M.P. 364*

- Order 21 rule 54 - For effecting legal and valid attachment - Strict compliance with provision of the Act necessary : *Brijkishore Vs. Kishore Singh, I.L.R. (1977) M.P. 1102*,

-Order 21 rule 58 - Objection of judgment-debtor that attached property not asset of deceased-Objection falls under section 47, Civil Procedure Code and not under Order 21 rule 58, Civil Procedure Code: *Mst. Karimunnisa Vs. Alfuddin, I.L.R. (1959) M.P. 552 (D.B.)*

- Order 21 Rule 58 – Hindu Law – Presumption of Jointness – Money decree passed against father – Land recorded in the name of father attached in execution proceedings – Son filing objection that property has already been partitioned and the land attached has fallen to his share – Held – Under Hindu law there is presumption of jointness unless partition proved by party claiming to his right – In absence of pleading and proof objection was rightly rejected by the Trial Court : *Ramesh Sukhlal Kulmi Vs. Tikam Gopalji Kulmi, I.L.R. (1993) MP 176*

-Order 21 Rules 58 and 63 - When order can be said to be "against" a party-Objection dismissed on ground that sale has already taken place and Court has no jurisdiction to interfere with objection-Order cannot be said to be "against" a party : *Gole Vs. Shri Kishandas Agarwal & Ors., I.L.R. (1965) M.P. 929 (D.B.)*

-Order 21 Rules 58 and 63- Limitation Act-Article 11- Essentials of a suit under Order 21 Rule 63 falling under Article 11 of the Limitation Act-When order can be said to be "against" a party-Objection dismissed on ground that sale has already taken place and Court has no jurisdiction to interfere with objection-Order cannot be said to be "against" a party : *Gole Vs. Shri Kishandas Agarwal, I.L.R. (1965) M.P.929 (D.B.)*

– **Order 21 Rule 58 (2)** – All questions ‘relevant to the adjudication of claim or objection shall be determine by the Court’ – The question whether an application is barred by time or not definitely relates to adjudication of the claim on merit : *Mohd. Yousuf Vs. Smt. Jyotsana Ben, I.L.R. (1996) M.P. 144*

– **Order 21 Rule 58 (2), Rule 58 (4)** – One part of order falls within Sub-Rule 1 of Order 21 Rule 58 and another under Sub-Rule 2 of Order 21 Rule 58 – Second part of the Order makes the rule a decree within the meaning of Rule 4 of Order 21 Rule 58 C.P.C. – Order appealable – No separate suit lies : *Mohd. Yousuf Vs. Smt. Jyotsana Ben, I.L.R (1996) M.P. 144*

- **Order 21 rule 63 - Suit under** - Decretal amount is value for determining jurisdiction of Court - Words and Phrases - "Decretal Amount" - Meaning of : *Ramchandra Vs. Seth Shrikishandas, I.L.R. (1977) M.P. 925,*

-**Order 21 Rules 63 and 58-** When order can be said to be "against" a party-Objection dismissed on ground that sale has already taken place and Court has no jurisdiction to interfere with objection-Order cannot be said to be "against" a party : *Gole Vs. Shri Kishandas Agarwal & Ors., I.L.R. (1965) M.P. 929 (D.B.)*

-**Order 21 Rules 63 and 58-** Limitation Act-Article 11- Essentials of a suit under Order 21 Rule 63 falling under Article 11 of the Limitation Act-When order can be said to be "against" a party-Objection dismissed on ground that sale has already taken place and Court has no jurisdiction to interfere with objection-Order cannot be said to be "against" a party : *Gole Vs. Shri Kishandas Agarwal, I.L.R. (1965) M.P.929 (D.B.)*

- **Order 21 rule 64** and Sections 115 and 151 - Inherent powers of the Court - Exercise of - Executing Court directing sale of 4.98 Acres only but by mistake entire holding of 23.17 Acres sold - Court can set aside the sale under its inherent powers : *Gorelal Vs. Motilal I.L.R. (1986) M.P. 410.*

-**Order 21 rule 66**-Issue of second sale notice-Necessity : *Rai Debi Prasad Vs. Deo Parasnathi, I.L.R. (1970) M.P. 994*

-**Order 21 rules 69 and 84,** Rule 69 not applicable to a re-sale under rule 84-The word “forthwith”in rule 84- Meaning of-Conclusions which emerge from reading Order 21 rules 69 and 84 together- Circumstances in which fresh sale proclamation is or is not necessary: *Vishan Swaroop Vs. Omprakash, I.L.R. (1975) M.P., 161*

-**Order 21 Rule 82-Sale** of immovable property by the transferee Court in execution of decree of Court of Small Causes-No maintainable in law-Substantial question answered in favour of plaintiff : *Pyarelal Vs. Ratan Chand, I.L.R. (2000) M.P. 1024,*

- **Order 21 rule 89** - Sale taking place on basis of satisfied judgment and decree duly certified - sale is void and ineffectual to pass title to bona fide purchaser for value without notice : *Smt Parwatibai Vs. Dr. Laxmi Devi I.L.R. (1976) M.P. 78*

-**Order 21 rule 89**-Local amendment-Application by one judgment-debtor for setting aside sale after deposit of decretal amount and commission-Validity : *Rikhilal Vs. Smt. Bittibai, I.L.R. (1971) M.P. 497 (D.B.)*

- **Order 21 rule 89** - Essentials for success of application by interested person - Sale taking place on basis of satisfied judgment and decree duly certified - Sale is void and in-effectual to pass title to bona fide purchaser for value without notice : In order that an application made by an interested person under Order 21, rule 89, Civil Procedure Code may succeed, the following conditions. must co- exist : *Smt Parwatibai Vs. Dr. Laxmi Devi, I.L.R. (1976) M.P. 78*

-**Order XXI Rule 90**-Defendant took part in auction sale without enquiring title of assessee-Cannot be said to be a bonafide purchaser-Auction sale set aside : *Moolchand Agrawal Vs. Babulal Agrawal, I.L.R. (2005) M.P. 623*

-**Order 21 rule 90**-Provisions of rules 84 and 85 disregarded-Application under Order 21 rule 90, Civil Procedure Code not necessary : *Nathuram Vs. District Co-Operative Bank Ltd., Shivpuri, I.L.R. (1975) M.P. 807 (D.B.)*

-**Order 21 rule 90**-Does not cover objection to attachment and sale of property-Section 47-Covers objection regarding saleability of the property-Limitation Act, Indian, 1908-Article 181-Application by a party for possession of property which has been taken delivery of under void execution sale-Application governed by this provision-Civil Procedure Code-Section 47-Application for setting aside sale confirmed and interest of third party came into existence-Application does not fall under this provision-Order 21 rules 90 and 92-Objection to sale limited only to material irregularity in conducting and publishing the sale-In its absence sale liable to be confirmed-Land Revenue Code, Madhya Pradesh, 1959-Section 165(7) No lack of jurisdiction in court to attach and sell even though case falls under this provision-Civil Procedure Code-Section 11-Objection not raised before confirmation of sale-Objection barred by constructive *res judicata* : *Akhechand Vs. Motilal I.L.R. (1974) M.P. 972*

- **Order 21 Rule 90, Section 47** - Sale of property by Collector-Authority of Collector not recalled-Executing Court, Power of, to set aside sale-Application to civil Court for setting aside sale by Collector-Maintainability : *Kesarimal Vs. Keshar Singh, I.L.R. (1970) M.P. 824*

- **Order XXI Rule 90 and Section 96** –Suit for declaration and injunction–Suit Property attached and ultimately sold in auction to realize Sales Tax–Assessment order found to be without jurisdiction hence set aside–Auction sale cannot be allowed to stand–Partition–Joint Hindu Family property–Strangers cannot question–Memorandum acknowledging earlier partition–Not required to be registered–Defendant took part in auction sale without enquiring title of assessee–Cannot be said to be a bonafide purchaser–Auction sale set aside : *Moolchand Agrawal Vs. Babulal Agrawal, I.L.R. (2005) M.P. 623*

- **Order 21 Rule 90, Order 21 Rule 24, Order 43 Rule 1(j), Civil Procedure Code (Amendment) Act, 1976 (CIV of 1976), Section 97(2) and Constitution of India, Article 227** – Auction in execution proceeding held after coming into force of amending Act – Order passed by District Judge on objection to the sale – Appeal lie to High Court – Letters Patent Appeal not maintainable against the order passed in appeal by single Judge – Provisions of Order 21 Rule 84, Civil Procedure Code mandatory – Court has no jurisdiction to disturb time scale statutorily prescribed – No excised of jurisdiction under Article 227 unless earlier order passed by High Court non est in law : *M/S. Gangavishan Heeralal Vs. M/s. Gopal Digambar Jain, I.L.R. (1990) M.P. 561, (D.B.)*

-**Order 21 rules 90 and 92**-Objection to sale limited only to material irregularity in conducting and publishing the sale-In its absence sale liable to be confirmed : *Akhechand Vs. Motilal I.L.R. (1974) M.P. 972*

-**Order 21 Rule 92**-Sale confirmed-Application for refund of purchase money by auction purchaser-Maintainability : *Syed Abrar Ahmad Vs. Babulal, I.L.R. (1968) M.P. 318*

- **Order 21 rule 92** - Purchaser gets right, title and interest of judgment debtor and purchases subject to all defects in title - Administration of Evacuee Property Act, 1950 - Section 46 - Jurisdiction of Civil Court barred in matters decided under section 7 - Refund of consideration of Auction Price - Tahsildar not acting as agent of State Government but exercising the statutory powers - State Government not liable to refund price : *The Custodian Of Evacuee Property, Madhya Pradesh, Jamnagar House, New Delhi Vs. Mannoolal, I.L.R. (1977) M.P. 993, (D.B.)*

- **Order 21 rule 92, Sections 11 and 47** - Principles of constructive res judicata - Its applicability to execution proceedings - Auction sale held after disposal of various objections raised by Judgment - debtors - After sale, Judgment - debtors raising objection that sale was void by virtue of M. P. Abolition of Proprietary Rights Act- Such an objection available and could have been raised by Judgment - debtors before sale but not raised - It is barred by principles of constructive res-judicata - Cannot be raised after period of limitation - Decree cannot be ignored at the option of judgment -

debtors till there is judicial determination that it is void : *Dayalchand Vs. Gajraj Singh, I.L.R. (1982) M.P. 66 (D.B.)*

- **Order 21 rules 95, 34** and 96 read with Sections 2, 65 and 115 and partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380*

- **Order 21 rules 95 and 96** - Position of auction purchaser is similar : *Pandit Ramgulam Choubey Vs. Mahendra Kumar, I.L.R. (1977) M.P.693,*

- **Order 21 rules 95 and 96** – Title of auction purchaser when complete – Right of auction purchaser to take possession of auctioned property under : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380,*

- **Order 21 rules 95, 96, 97, 100** and rules 35 and 36 - Obstruction by third party in taking possession by decree -holder - Option for the decree - holder - Remedy of the third party : *Smt. Usha Jain Vs. Manmohan Bajaj I.L.R. (1982) M.P. 837 (F.B.)*

- **Order 21 rule 96** - Application under, can be made only by the auction purchaser : *M/S Supreme General Films Exchange (Pvt.) Ltd., Jabalpur Vs. His Highness Yuvraj Govind Singh Maihar I.L.R. (1976) M.P. 475*

-**Order 21 rules 96, 34 and 95** read with Sections 2, 65 and 115 and partition Act (IV of 1893), Section 7 and 8 – Order for sale under section 8 – Deemed to be ‘decree’ under section 2 of the Code – Title of auction purchaser when complete – Order 21, Rules 95 and 96 – Right of auction purchaser to take possession of auctioned property under Section 115 – Jurisdiction of Court under – Effect of provisos after M.P. (Amendment) Act, 1984 : *Smt. Geeta Bai Vs. Babulal, I.L.R. (1990) M.P. 380*

- **Order 21 rules 96, 97 and 98** - Application by auction - purchaser regarding resistance to delivery of possession - Duty of Court to investigate - Order regarding re-issue of warrant of possession - Can be passed only after order under Order 21 rule 98 - Application under, can be made only by the auction - purchaser : *M/S Supreme General Films Exchange (Pvt.) Ltd., Jabalpur Vs. His Highness Yuvraj Govind Singh Maihar I.L.R. (1976) M.P. 475*

- **Order 21 rule 97** - Order binding of parties unless set aside by suit : *M/S Supreme General Films Exchange Private Ltd. Joint Stock Company Registered*

Under The Indian Companies Act, 1913, Through The Manager, Plaza Talkies, Jabalpur Vs. Her Highness Tej Kunwar Suryavanshi Ji, I.L.R. (1980) M.P. 1155,

- **Order 21 rule 97** - Order of Executing Court disposing of application passed after 1st February 1977 under - Order is appealable under the provisions of the amended Code : *Dattatraya Vs. Mangal, I.L.R. (1983) M.P. 49, Before (D.B.)*

- **Order 21 rule 97** - Decree - holder or auction - purchaser not making application under this provision - No other has a right to make application to have his title and possession investigated - Inquiry can be made only on complaint of decree - holder or auction - purchaser and not at the instance of third party : *Pandit Ramgulam Choubey Vs. Mahendra Kumar, I.L.R. (1977) M.P. 693,*

- **Order 21 rules 97, 95, 96, 100** and rules 35 and 36 - Obstruction by third party in taking possession by decree -holder - Option for the decree - holder - Remedy of the third party : *Smt. Usha Jain Vs. Manmohan Bajaj I.L.R. (1982) M.P. 837. (F.B.)*

- **Order 21 rules 97 and 103** - Order under Order 21 rule 97 - No appeal or revision can be preferred against such order as remedy or suit provided under Order 21 rule 103 : *M/S Supreme General Films Exchange Private Ltd. Joint Stock Company Registered Under The Indian Companies Act, 1913, Through The Manager, Plaza Talkies, Jabalpur Vs. Her Highness Tej Kunwar Suryavanshi Ji, I.L.R. (1980) M.P. 1155,*

- **Order 21 rules 97 and 103** and Section 97 (2) and (3) of the (Amendment) Act (CIV of 1976) - Effect of amendments and saving clause in section 97 (2) - Pendency of application under rule 97 on the date of commencement of the Amendment Act - No accrual of right of suit under Rule 103 - Order 21, rule 97 - Order disposing of application passed after 1st February 1977 under - Order is appealable under the provisions of the amended Code : *Dattatraya Vs. Mangal, I.L.R. (1983) M.P. 49, (D.B.)*

- **Order 21 rule 100** - Inquiry at the instance of third party contemplated only after his dispossession : *Pandit Ramgulam Choubey Vs. Mahendra Kumar, I.L.R. (1977) M.P. 693,*

- **Order 21 Rule 103**-Does not contemplate institution of an inutile suit specially when a previous suit is pending : *Syed Abrar Ahmad Vs. Babulal, I.L.R. (1968) M.P. 318*

-**Order 21 Rule 103**-Scope of-Does not contemplate institution of an inutile suit specially when a previous suit is pending-Order 21, Rule 92-Sale confirmed-Application for refund of purchase money by auction purchaser-Maintainability-

Order 21, Rule 35-Symbolical possession against judgment-debtor-Equally good as actual possession : *Syed Abrar Ahmad Vs. Babulal, I.L.R. (1968) M.P. 318*

- Order 21 rules 105 (2), 12, 41 and 106 and Section 151 - Execution of decree by attachment of moveable property in possession of Judgment - debtor - No list of property is necessary - Court to issue warrant to attachment of such property as is in possession of Judgment - debtor - Procedure in case warrant comes back unexecuted - Decree - holder filed execution application and paid process - fee for issue of warrant to attachment of moveables of Judgment - debtor - Date fixed for awaiting report as to execution of warrant of attachment - Not a date of "hearing contemplated under rules 105 (2) and 106 - Dismissal of execution application in default of appearance on such date - Not under rule 105 (2) - Rule 106 not attracted - Such dismissal is under inherent powers - No time limit fixed for exercised of inherent powers for its restoration - Execution application ordered to be restored under inherent powers of payment of costs : *Hoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179*

- Order 21 rules 105 (2) and 106 - Decree-holder filed execution application and paid process fee for issue of warrant of attachment of moveable of Judgment debtor - Date fixed for awaiting report as to execution of warrant of attachment - Not a date of "hearing" contemplated under rules 105 (2) and 106 : *Khoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179*

- Order 21 rules 105 (2) and 106 – Dismissal of execution application in default of appearance on such date - Not under rule 105 (2) - Rule 106 not attracted - Such dismissal is under inherent powers - No time limit fixed for exercise of inherent powers for its restoration - Execution application ordered to be restored under inherent powers on payment of cost : *Khoobchand Vs. Kashi Prasad, I.L.R. (1985) M.P. 179*

-Order 22 and Limitation Act, Articles 171 and 176-Applicability to proceedings under section 18, Land Acquisition Act : *Abdul Karim Vs. The State Of M.P. I.L.R. (1966) M.P. 237 (D.B.)*

-Order 22 -"Suit" in -means a suit instituted by a presentation of plaint: *Abdul Karim Vs. The State Of M.P. I.L.R. (1966) M.P. 237 (D.B.)*

-Order 22-Not applicable to proceedings regarding accident claims under Motor Vehicles Act-Legal Representatives can be brought on record at any time during pendency of proceedings : *Chuharmal Vs. Haji Wali Mohammed, I.L.R. (1971) M.P. 130 (D.B.)*

-Order 22 and Land Acquisition Act (I of 1894) - Section 54 - Provision of order 22 are applicable to an order under section 54 against an award made by the

Court under section 18; *The State Of M.P.Through Collector, Raipur Vs. Sakharam I.L.R. (1986) M.P. 486. (D.B.)*

-Order 22 rule 1 - Right to sue means right to seek relief - Plaintiff's suit decreed in trial Court-Lost in first appeal-He dies after second appeal filed-His claim does not survive, it being for compensation for loss of reputation and mental agony : *Ratanlal Vs. Baboolal & Ors., I.L.R. (1959) M.P. 994*

- Order 22 rule 1 - Respondent dying during pendency of appeal before Lower Appellate Court - Application made for substitution of Legal Representative - No order passed - Appeal heard and decided - Second appeal filed - Diseased respondent again shown as respondent - Appeal being against decree - Appeal was proper but decree of Lower Appellate Court liable to be set aside : *Phunsu Vs. Baret, I.L.R. (1978) M.P. 1130, (D.B.)*

-Order 22 Rules 1, 3 and 5-Plaintiff died during pendency of suit-Person who is not an heir but is in possession of property of deceased person can be brought on record as legal representative to defend but cannot continue suit as a plaintiff-Intermeddler has liabilities and obligations-Rank trespasser--No right to continue the suit : *The Kalyanmal Mills Ltd, Indore Vs. Valimohammad, I.L.R. (1964) M.P. 801*

-Order 22 rule 2-Word "survives" in-Comprehends not only cases of survivorship in strict or technical sense but also cases of devolution by succession and inheritance : *Mukundilal Vs. State Bank Of India, I.L.R. (1974) M.P. 475 (D.B.)*

- Order 22 and Section 2(ii) Substitution or legal representative – Distinction between legal heir and legal representative - Two cannot be same in all cases – No legal substitution – Order illegal and without jurisdiction : *Mahant Murlidhardas Vs. Ramcharandas, I.L.R. (1989) M.P. 175*

- Order 22 rules 2 and 3 - Word "alone" in - Meaning of - Whole suit does not abate - Remaining plaintiffs can continue the suit : *Raj Man Singh Vs. Ramvishal, I.L.R. (1979) M.P. 935*

- Order 22 rule 2 and 9 and Order 41 rules 25 - Appellate Court remitting case of Trial Court for remitting its findings on certain issues - Hereafter, defdt. died - Application for bringing his legal Representatives on record filed in Trial Court is legal and Order passed thereon enures for appeal - Such an application could legally be made before. Trial Court as well as Appeal Court. Trial Court trying issues remitted to it - Not acting as agent of appellate Court - Is separate entity distinct from Appellate Court : *Ramlal Vs. Ganesh Prasad I.L.R. (1987) M.P. 763*

-Order 22 Rules 3, 1 and 5-Plaintiff died during pendency of suit-Person who is not an heir but is in possession of property of deceased person can be brought on record as legal representative to defend but cannot continue suit as a plaintiff-Intermeddler has liabilities and obligations-Rank trespasser--No right to continue the suit : *The Kalyanmal Mills Ltd, Indore Vs. Valimohammad, I.L.R. (1964) M.P. 801*

- Order 22 rule 3 or 4 - Legal representatives can continue suit only on the same cause of action on which suit filed by the deceased - Cannot litigate personal rights as legal representatives : *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961,*

- Order 22 Rule 3, 4, 10-A and 11 and Limitation Act, Indian, 1963, Section 5 – Application for condonation of delay in filing application for setting aside of abatement – No evidence that appellant had knowledge of death of respondent who was the resident of interior village – Nothing to show that appellant was negligent or careless – ‘Sufficient Cause’ should not be interpreted in too technical manner – Application for setting aside abatement allowed – Matter remanded back to First Appellant Court for disposal of appeal on merits. *Hukumchand Vs. Biharilal (Deceased By Lrs.), I.L.R. (1993) MP 206*

- Order 22 Rules 3, 4 11 – Sale deed executed in favour of Respondent No. 2– Question involved declaration of Sale-deed to be null and void–Can be decided even without bringing on record other LRs of deceased Respondent No. 1–No abatement : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & Others, I.L.R. (2004) M.P. (SC) 1 (D.B.)*

-Order 22 Rules 3, 4 and 11-Provisions mandatory-Substitution not effected within time- -Lis abates wholly or partially according to nature of lis-Joint decree for possession -Appeal abates wholly-Joint and several money decree-Appeal will abate partially-Court-fees Act -Section 7 (xi)(cc)-Suit between landlord and tenant--Question of title not to be gone into-Can incidentally be determined for deciding contract of tenancy-Evidence Act, Section 116-Tenant estopped even when he was or was not in possession at the time of contract of tenancy : *Munna Lal Vs. Balchand, I.L.R (1961) M.P. 262 (D.B.)*

- Order 22 rules 3 and 5, Order 43 rule 1 - A and Section 96, 104 and 115 - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record - Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad, I.L.R (1984) M.P. 364 (F.B.)*

– **Order 22 Rules 3(4), 4 and 11**, Section 11, Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976 (III of 1977) – Sections 2(f), 3, 6, 7 and Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967 (XII of 1967) – Two Acts operate in different fields–One provides for declaring the sale transaction null and void while the other provides only for scaling down the amount of debt and interest–Present proceedings not barred even if in the previous proceedings there was a specific finding that the deed was not a mortgage deed–Prohibited transaction–Sale deed executed with distinct oral understanding that sale shall not be acted upon if the loan was repaid–Market value of the land at the relevant time much higher than loan amount–Appellant member of the Scheduled Tribe–Entitled to the benefit under the Act of 1977–Order of SDO for handing over possession of land to appellant–Not erroneous on facts–Abatement–Sale deed executed in favour of Respondent No. 2–Question involved declaration of Sale-deed to be null and void–Can be decided even without bringing on record other LR's of deceased Respondent No. 1–No abatement : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & Others, I.L.R (2004) M.P. (SC) 1 (D.B.)*

-**Order 22 Rule 4**-Substitution of Legal Representative-Application filed belated on the impression that while stay order of appellate Court is in fugue no such step could be taken- Court accepting erroneous impression to be sufficient cause for the delay and allowed substitution : *Mst. Gyanoda Vs. Kalipada, I.L.R (2000) M.P. 706*

- **Order 22 Rule 4** — Suit for declaration of right and title of Bhumiswami — One of the defendants died — Effective decree can still be passed in absence of deceased defendant and/or his heirs/ L.Rs. — Abatement of suit against claims of deceased-defendant— Would not result in abatement of whole suit : *Shyam Lal Vs. Shiv Dayal, I.L.R (1995) M.P. 175*

- **Order 22 Rule 4**- Scope of inquiry – Person claiming to be legal representative through will-Will challenged by other legal heirs- Genuineness of will can be decided while trying the suit and not in inquiry under Order XXII, rule-4-No piece-meal trial is permissible : *Surykant Gupta Vs. Rajaram Gupta, I.L.R. (1998) M.P. 788*

–**Order 22 Rule 4**–Section 100–Steps for bringing L.Rs. on record–Stage–Scope–Parties are adiwasis–Far away from the sophisticated society or society having benefit of education and atmosphere of the Court–Court cannot be permitted to allow itself to remain aloof from reality of life–Taking broader view delay deserves to be condoned. *Tantiya Vs. Chander; I.L.R (2002) M.P. 324*

- **Order 22 Rule 4**, Section 115–Death during miscellaneous proceedings for restoration of suit–Provision of Order 22 are not applicable to proceedings under

Order 9 C.P.C.–Substitution allowed : *Shikhar Chandra Jain Vs. State, I.L.R (2004) M.P. 517*

– **Order 22 Rule 4**, Order 6 Rule 17 and Section 100, Accommodation Control Act, M. P., 1961, Section 2(b), 12(1)(f)–Suit for eviction–Non-residential accommodation–Bona-fide need of landlord for carrying on his own business–Need has to be examined on date of institution of suit–Suit decreed by trial Court–Death of landlord during pendency of appeal by tenant–Will not make any difference as his heirs are fully entitled to defend the estate–Legal representatives brought on record–They also set up bona-fide need for carrying on business for their own livelihood–Suit has to be decided on the basis of amended pleadings–Wholly impermissible for the High Court to examine the question as to effect of death of original plaintiff–Judgment and decree passed by High Court set aside : *Shakuntala Vs. Narayan Das, I.L.R (2004) M.P. (SC) 714 (D.B.)*

– **Order 22 Rule 4, 3, 10-A and 11** and Limitation Act, Indian, 1963, Section 5 – Application for condonation of delay in filing application for setting aside of abatement – No evidence that appellant had knowledge of death of respondent who was the resident of interior village – Nothing to show that appellant was negligent or careless – ‘Sufficient Cause’ should not be interpreted in too technical manner – Application for setting aside abatement allowed – Matter remanded back to First Appellant Court for disposal of appeal on merits. *Hukumchand Vs. Biharilal (Deceased By Lrs.), I.L.R (1993) MP 206*

– **Order 22 Rules 4, 3(4) and 11**, Section 11, Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976 (III of 1977) – Sections 2(f), 3, 6, 7 and Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967 (XII of 1967) – Two Acts operate in different fields–One provides for declaring the sale transaction null and void while the other provides only for scaling down the amount of debt and interest–Present proceedings not barred even if in the previous proceedings there was a specific finding that the deed was not a mortgage deed–Prohibited transaction–Sale deed executed with distinct oral understanding that sale shall not be acted upon if the loan was repaid–Market value of the land at the relevant time much higher than loan amount–Appellant member of the Scheduled Tribe–Entitled to the benefit under the Act of 1977–Order of SDO for handing over possession of land to appellant–Not erroneous on facts–Abatement–Sale deed executed in favour of Respondent No. 2–Question involved declaration of Sale-deed to be null and void–Can be decided even without bringing on record other LRs of deceased Respondent No. 1–No abatement : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & Others, I.L.R (2004) M.P. (SC) 1 (D.B.)*

- **Order 22 Rule 4, 9** and Order 41 Rule 4, Section 96– First Appeal – Death of codefendant/respondent bound by the joint decree of declaration, possession and mense profit – Failure to bring on record legal representatives of deceased defendant despite knowledge – Delay no condoned – Effect – Appeal abates as a whole – Power to separate decree – Discretionary – Can be exercised at the time of drawing final decree and where presence of a party is not required – Decree indivisible and inseparable – Cannot be reversed only to the extent of appellant’s liability by separation – Whole appeal abates : *Ram Kishan Vs. Harbagas Ahirwar (Dead) Through His L.Rs. Smt. Vipta Bai, I.L.R (2001) M.P. 1695*

- **Order 22 rule 4 (4)** - Provision applicable to appeals as well - Power to exempt can be exercised at any time before delivery of judgment and even after abatement has taken place - Application in writing not necessary for such exemption - Effect of exemption from substitution of legal representatives of the deceased on judgment pronounced against the deceased : *Kanhaiyalal Vs. Mulla Abdul Hussain, I.L.R (1984) M.P. 393, D.B.)*

- **Order 22 Rule 5** – Court should state its finding on all issues unless finding on one or more issue is sufficient, *Narendra Singh Sengar Vs. Maltidevi, I.L.R (1993) MP 225*

-**Order 22 Rules 5, 1** and 3-Plaintiff died during pendency of suit-Person who is not an heir but is in possession of property of deceased person can be brought on record as legal representative to defend but cannot continue suit as a plaintiff-Intermeddler has liabilities and obligations-Rank trespasser--No right to continue the suit : *The Kalyanmal Mills Ltd, Indore Vs. Valimohammad, I.L.R (1964) M.P. 801*

- **Order 22 rules 5 and 3, Order 43 rule 1** - A and Section 96, 104 and 115 - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record - Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad, I.L.R (1984) M.P. 364(F.B.)*

-**Order 22 Rule 9**-Maintainability of suit-Plaintiff claiming property to be Joint Hindu Family Property-Earlier suits challenging alienation by some co-shares-Suits dismissed as abated-Subsequent suit challenging different alienation by another co-sharer-Suit not barred as is based on different cause of action. *Chakresh Kumar Modi Vs. Smt. Kamla Khare; I.L.R (2002) M.P.1013*

- **Order 22 rule 9** -Abatement-Coparcenary property - Suit by three brothers as joint owners suit property inherited after death of father-Death of one brother during pendency of appeal-Non-substitution of legal representatives-Held-There is nothing on record to show that eldest member of family was acting as 'Karta' of family-All brothers intended to exercise their right as co-owners-Appeal would abate in whole in absence of legal heirs of deceased : *Municipal Council, Mandsaur Vs. Fakirchand, I.L.R (1997) M.P. 13 (D.B.)*

- **Order 22 rule 9**-Mortgage suit-Partial abatement of appeal-whole appeal abates-Order 22 rule 2-Word "survives" in-Comprehends not only cases of survivorship in strict or technical sense but also cases of devolution by succession and inheritance-Order 34 rule 1-Karta joined in representative capacity-Other members are not necessary parties-Hindu Succession Act, 1956-Section 6, Explanation I-Notional Partition does not bring about disruption of co-parcenary so as to deprive Karta of representative capacity-Notional partition is only for purpose of computation of shares to be allotted to hers of deceased coparcener-Civil Procedure Code-Order 34 rule 1-Suit brought against individual member not in representative capacity-The interest of widow of deceased member not represented by other members of the family-Doctrine of representation applicable to a suit to enforce a mortgage : *Mukundilal Vs. State Bank Of India, I.L.R (1974) M.P. 475 (D.B.)*

-**Order 22 rule 9** - Suit against several wrongdoers-Some wrongdoers dying-Legal representatives not brought on record within time-Suit does not abate as a whole : *Swamiprasad Vs. Bada Rai, I.L.R (1959) M.P. 244 (D.B.)*

-**Order 22 Rule 9** -Three co-owners - who are members of joint Hindu family, filing appeal-One co-owner dying during pendency of appeal-No material on record for ascertaining their shares-Conflicting decrees possible-Abatement is complete and not partial : *Ramkishandas Vs. Kalicharan, I.L.R (1963) M.P. 921*

-**Order 22 Rule 9**-Appeal arising out of suit against joint family-Death of respondent member of joint family during pendency of appeal-Some legal representatives already on record-Others not brought on record-Estate sufficiently represented-Appeal does not abate : *Idol Shri Madhavnarayanji Temple Madanmohanlalji, Ujjain Vs. Narayan Das, I.L.R (1966) M.P. 125*

-**Order 22 Rule 9** - Suit against joint tort-feasors-Death of one tort feisor - Legal representations not brought on record - Action amounts to omission to sue rather than release-Suit does not abate as a whole : *Shri S. Chatterjee Vs. Dr. T. B. Sarwate, I.L.R. (1960) M.P. 448 (D.B.)*

- **Order 22 rule 9** and Section 96 - Order regarding abatement of first appeal - Cannot be treated as a decree - Letters Patent Appeal - Ad-valorem Court - fee - Not payable therein : *Yogeshwar Vs. Laxminarayan, I.L.R (1987) M.P. 110 (D.B.)*

-**Order 22 Rule 9 and Order 2 Rule 2** - Cause of action not substantially identical but different- Subsequent suit not barred : *Radhibai Vs. Dhannalal, I.L.R (1961) M.P. 419*

- **Order 22 rule 9 and 2 and Order 41 rules 25** - Appellate Court remitting case of Trial Court for remitting its findings on certain issues - Hereafter, deftd. died - Application for bringing his legal Representatives on record filed in Trial Court is legal and Order passed thereon enures for appeal - Such an application could legally be made before. Trial Court as well as Appeal Court. Trial Court trying issues remitted to it - Not acting as agent of appellate Court - Is separate entity distinct from Appellate Court : *Ramlal Vs. Ganesh Prasad I.L.R (1987) M.P. 763*

-**Order 22 Rule 9, 4** and Order 41 Rule 4, Section 96- First Appeal – Death of codefendant/respondent bound by the joint decree of declaration, possession and mense profit – Failure to bring on record legal representatives of deceased defendant despite knowledge – Delay no condoned – Effect – Appeal abates as a whole – Power to separate decree – Discretionary – Can be exercised at the time of drawing final decree and where presence of a party is not required – Decree indivisible and inseparable – Cannot be reversed only to the extent of appellant’s liability by separation – Whole appeal abates : *Ram Kishan Vs. Harbagas Ahirwar (Dead) Through His L.Rs. Smt. Vipta Bai, I.L.R (2001) M.P. 1695*

– **Order 22 Rules 9, 11 and Order 43 Rule 1(k)**– Appeal dismissed by First Appellate court as abated – Application for setting aside abatement and substitution of Legal Heirs dismissed as time barred – Appeal lies under Order 43 Rule1(k). *Hukumchand Vs. Biharilal (Deceased By Lrs.), I.L.R (1993) MP 206*

- **Order 22 Rule 10**- plaintiff transferring disputed property during pendency of suit-Transferee not inclined to join the suit having separately taken legal recourse- Plaintiff not entitled to continue such suit. *Dhulji Vs. Dr. Vijay Kumar, I.L.R (1998) M.P. 488*

– **Order 22 Rule 10** – Application for substitution on strength of assignment by purchaser – Deserves to be allowed because right to sue services by virtue of assignment of interest – No fresh suit need to be brought as the application is filed before the Court could dismiss the suit for want of cause of action in favour of original plaintiff : *Sitaram Dua Vs. Sarswati Devi Sainy, I.L.R (2001) M.P. 121,*

- **Order 22 rule 10** and Order 1 rule 10 and Transfer of Property Act (IV of 1882), Section 53 - A - Suit for perpetual injunction - During pendency of the suit, plaintiff agreeing to sell the suit land and delivering possession thereof- Such acts amount to "creation of interest" for purposes of Order 22 rule 10 - On proof of agreement for sale and delivery of possession, such person entitled to leave of Court to prosecute the suit : *Roopchand Vs. Mangilal, I.L.R (1980) M.P. 504*

- **Order 22 Rule 10-A**, 3, 4 and 11 and Limitation Act, Indian, 1963, Section 5 – Application for condonation of delay in filing application for setting aside of abatement – No evidence that appellant had knowledge of death of respondent who was the resident of interior village – Nothing to show that appellant was negligent or careless – ‘Sufficient Cause’ should not be interpreted in too technical manner – Application for setting aside abatement allowed – Matter remanded back to First Appellate Court for disposal of appeal on merits. *Hukumchand Vs. Biharilal (Deceased By Lrs.), I.L.R (1993) MP 206*

- **Order 22 Rules 11, 3(4)** and 4, Section 11, Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976 (III of 1977) – Sections 2(f), 3, 6, 7 and Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967 (XII of 1967) – Two Acts operate in different fields–One provides for declaring the sale transaction null and void while the other provides only for scaling down the amount of debt and interest–Present proceedings not barred even if in the previous proceedings there was a specific finding that the deed was not a mortgage deed–Prohibited transaction–Sale deed executed with distinct oral understanding that sale shall not be acted upon if the loan was repaid–Market value of the land at the relevant time much higher than loan amount–Appellant member of the Scheduled Tribe–Entitled to the benefit under the Act of 1977–Order of SDO for handing over possession of land to appellant–Not erroneous on facts–Abatement–Sale deed executed in favour of Respondent No. 2–Question involved declaration of Sale-deed to be null and void–Can be decided even without bringing on record other LRs of deceased Respondent No. 1–No abatement : *Bhavsingh (Dead) By Lrs. Vs. Keshar Singh & Others, I.L.R (2004) M.P. (SC) 1 (D.B.)*

-**Order 22 Rule 11 and Section 2(ii)**– Death of appellant – Lawful heir not applying for his substitution as Legal Representative to proceed with appeal – Intermeddler not related to deceased in any manner – Appeal abates : *Ramlal Vs. Smt. Indirabai, I.L.R (1990) M.P. 425,*

- **Order 22 Rules 11, 9 and Order 43 Rule 1(k)**– Appeal dismissed by First Appellate court as abated – Application for setting aside abatement and substitution of Legal Heirs dismissed as time barred – Appeal lies under Order 43 Rule 1(k). *Hukumchand Vs. Biharilal (Deceased By Lrs.), I.L.R (1993) MP 206*

– **Order 23 Rule 1** – Suit for eviction on ground of bona fide need with drawn – Fresh application under section 23-A of the Act not barred on ground that earlier suit was withdrawn without obtaining leave : *Smt. Saroj Thareja Vs. Smt. Tarabai, I.L.R (1989) M.P. 255*

–**Order 23 Rule 1**–Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest–Decree passed–Appears to be a mutual decree–It would not be appropriate to interfere in appeal–Appeal dismissed : *Madhya Pradesh Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s. Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

- **Order 23 rule 1** and Accommodation Control (Amendment) Act, M. P. (VII of 1983), Section 12 (2) - Suit for eviction under section 12 (1)(e) of M. P. Accommodation Control Act, 1961 dismissed by trial Court on merits - Landlady filing appeal and prayed for withdrawal of suit with liberty to file eviction proceedings before Rent Controlling Authority under Section 23 - A of the Act - Appellate Court granting such permission but did not set aside the Judgment and decree - Legality of - Impugned order revisable - Res-judicate - Principle and application of, in the Proceedings before the Rent Controlling Authority : *Gobindram Vs. Smt. Jhimibai I.L.R (1987) M.P. 567*

-**Order 23 Rule 1**, Order 8 Rules 3, 5 & Order 7 Rule 11, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

- **Order 23 Rule 1**, Order 8 Rules 3, 5 & Order 7 Rule 11, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it–Suit for recovery against supply of coal by a partnership firm–Burden of proof–When parties led evidence issue of burden to prove becomes secondary– Allegation of facts in plaint–Defendant must deal specifically each allegation of fact–In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted–Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest–Decree passed–Appears to be a mutual decree–It would not be appropriate to interfere in appeal–Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

– **Order 23 Rule 1** and Order 23 Rule 2 and 30, CPC applied when a suit has been adjusted wholly or in part and the parties or anyone of them seeks recording of such agreement, compromise or satisfaction, followed by a decree to be passed in accordance therewith – In the present case though application purportedly signed by both, the parties, it was pure and simple application under order 23 rule 1 of CPC seeking abandonment of the suit and consequently its dismissal – Order made by the trial court did not amount to decree within the meaning of section 2(2) of the Code of Civil Procedure – As such appeal before lower appellate court was itself not maintainable – The incompetent appeal has been allowed and an order or remand passed which being one without jurisdiction, is suitably capable of being challenged under article 227 of the Constitution – Petition allowed. *Vasant Kelkar Vs. Dr. P. Ahluwalia, I.L.R (1993) MP 501 (D.B.)*

- **Order 23 rule 1 (2)** - Does not prohibit filing of fresh suit until terms imposed are fulfilled - Non-fulfilment of terms - Effect is that suit cannot proceed - Does not bar jurisdiction to entertain the fresh suit - Non-fulfilment of terms amounts to mere irregularity - Suit is not rendered void ab - initio - Suit instituted within limitation - Suit not barred if terms complied after expiry of limitation for suit-No order of Court can take away jurisdiction - Provision of law interpreted by Court - Court is not making a new law - Effect of interpretation of law : *M/s Raja Traders, A Registered Firm Of Jagdalpur Vs. Unton Of India I.L.R (1979) M.P. 840 (D.B.)*

-**Order 23 rule 1(3)**-Previous suit on same cause of action unconditionally withdrawn-Fresh suit on that cause of action is precluded : *Temple Shri Jagannathji Public Trust, Champa Vs. Salharoo Prasad I.L.R (1971) M.P. 708 (D.B.)*

- **Order 23 Rule 1(3), Section 115**- Application for withdrawal of suit with liberty to file fresh suit- Requirements- Court has to be satisfied that the suit must fail because of some formal defects or in the alternative there exists sufficient ground-Erroneous demarcation of suit property- Suit linked with another in which substantial progress has been made- Application not to be liberally granted to enable plaintiff to come prepared to fight fresh legal battle: *Smt. Uma Devi Vs. Nagar Palika, Begumgunj, I.L.R (1999) M.P. 1084*

– **Order 23 Rule 2** and Order 23 Rule 1 and 30, CPC applied when a suit has been adjusted wholly or in part and the parties or anyone of them seeks recording of such agreement, compromise or satisfaction, followed by a decree to be passed in accordance therewith – In the present case though application purportedly signed by both, the parties, it was pure and simple application under order 23 rule 1 of CPC seeking abandonment of the suit and consequently its dismissal – Order made by the trial court did not amount to decree within the meaning of section 2(2) of the Code of Civil Procedure – As such appeal before lower appellate court was itself not maintainable – The incompetent appeal has been allowed and an order or remand

passed which being one without jurisdiction, is suitably capable of being challenged under article 227 of the Constitution – Petition allowed. *Vasant Kelkar Vs. Dr. P. Ahluwalia*, I.L.R (1993) MP 501 (D.B.)

-Order 23 Rule 3 - Compromise between parties subsequent to awards -Court, Power of, to give effect to compromise : *Nawab Usmanali Khan Vs. Sagarmal*, I.L.R (1961) M.P. 304 (D.B.)

-Order 23 Rule 3–Judgment or decree passed as a result of consensus arrived at before the Court–Cannot always be one passed on compromise or settlement and adjustment–May at times be also a judgment on admission : *Jineshwardas (Dead) Through L.Rs. And Others Vs. Smt. Jagrani & Another*, I.L.R (2003) M.P. (SC) 1114 (D.B.)

-Order 23 Rule 3-Condition necessary for recording compromise-Court to see whether it affects interest of Public Trust adversely : *Gokuldas Vs. Nandlal* I.L.R (1968) M.P. 237 (D.B.)

-Order 23 Rule 3–Eviction Suit–Counter claim of ownership-Parties closely related–Claiming ownership through one & the same person–Suggested to explore possibilities of settlement–Settlement arrived–Decree of High Court modified in terms of consent : *Fatima Bi (Dead) By L.Rs. Vs. Gulshan Bi (Dead) By L.Rs*, I.L.R (2005) M.P. (SC) 1038 (D.B.)

-Order 23 Rule 3–Petition by Husband for divorce within one year of marriage on ground of pregnancy at the time of marriage and illicit relationship with another person–Compromise decree passed annulling marriage between the parties–Illegal–Appeal under Section 28–Provision of Section 14 mandatory : *Smt. Rekha Jain Vs. Rajendra Jain*, I.L.R (1992) M.P. 179

- Order 23 Rule 3 – Both the parties filed a joint compromise application – Subsequently plaintiff filed a vague application that his signatures were obtained by fraud – Held – No circumstances and facts pleaded about fraud – Court otherwise found the compromise as legal – Court is not required to hold an enquiry on vague allegations of fraud – Application dismissed, suit decreed as per terms of compromise : *Kailash Narain Vs. Mahila Manbhota*, I.L.R (1996) M.P. 135

-Order 23 Rule 3 - Decree for dissolution of partnership and account - Parties compromising and agreeing to transfer shares of decree-holders to judgment-debtors for certain amount-Term not outside the scope of suit -Decree incorporating matters which are not subject-matter of suit-Decree not nullity-That amounts only to irregular exercise of jurisdiction-Objection cannot be raised in execution-Creating charge for

decretal amount on judgment-debtor's property - May relate to matter in suit : *Seth Kalyandas Vs. Smt. Gangabai. I.L.R. (1960) M.P. 1047*

-Order 23 Rule 3 - Does not make exception regarding suits under Section 92, Civil Procedure Code-Condition necessary for recording compromise-Court to see whether it affects interest of Public Trust adversely : *Gokuldas Vs. Nandlal I.L.R (1968) M.P. 237 (D.B.)*

- **Order 23 Rule 3** and Section 96(3)-Compromise decree alleged to have been obtained by impersonation and fraud-Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan, I.L.R (1992) M.P. 756*

- **Order 23 Rule 3 and Section 100**-Suit for specific performance-Second appeal disposed of by High Court on the basis of admission made by Counsel appearing for the parties-No allegation made attributing any impropriety to their action-Judgment or decree passed as a result of consensus arrived at before the Court-Cannot always be one passed on compromise or settlement and adjustment-May at times be also a judgment on admission : *Jineshwardas (Dead) Through L.Rs. Vs. Smt. Jagrani, I.L.R (2003) M.P. (SC) 1114 (D.B.)*

- **Order 23 rule 3** and Section 151 and Accommodation Control Act, M. P. (XLIII of 1961), Section 12 (1) (F) - Compromise decree based on admission of the defendant about plaintiff's bona fide non-residential requirement is legal and executable : *Kasturi Devi Vs. Ramswaroop, I.L.R (1984) M.P. 334*

- **Order 23 rule 3** and Section 151 and Accommodation Control Act, M. P. (XLIII of 1961), Section 12 (1)(F) - Compromise petition and decree reciting that suit shop vacated by the defendant and possession delivered to plaintiff - But possession not in fact delivered - Court in exercise of its inherent power can amend the decree directing delivery of possession: *Kasturi Devi Vs. Ramswaroop, I.L.R (1984) M.P. 334*

- **Order 23 rule 3** and Section 151 and Accommodation Control Act, M. P. (XLIII of 1961), Section 12 (1) (F) - Inherent powers of the Court - Must be exercised to secure the ends of justice - Compromise petition and decree reciting that suit shop vacated by the defendant and possession delivered to plaintiff - But possession not in fact delivered - Court exercise of its inherent power can amend the decree directing delivery of possession - Compromise decree based on admission of the defendant about plaintiff's bona - fide non - residential requirement is legal and executable : *Kasturi Devi Vs. Ramswaroop, I.L.R (1984) M.P. 334*

- **Order 23 Rule 3** and Order 12 Rule 8, Section 23, 100 and Contract Act, Indian (IX of 1872) - Nominal sale deed executed without consideration to avoid possible impact of law of ceiling on urban property - Possession not delivered - Executant

even after sale deed exercised right of ownership – Suit for declaration by executant of Sale Deed that he be declared owner of such property – Claims admitted by defendant – Suit dismissed alleging to be collusive in nature – Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty – Not proper – Section 100 – Second Appeal – Question of avoiding stamp duty does not arise as no instrument was executed which required stamp duty - Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R (2001) M.P. 379*

- Order 23 rule 3 and Order 21 rule 1 - Compromise decree directing payment by instalments on particular dates - Due date being holiday, judgment - debtor applying to Court on the next day for accepting the amount - Court directing Nazir to receive the same but due to closing of accounts section of Nazarat amounts actually deposited in C. C. D. on the next day - Such deposit held to be sufficient compliance with the compromise decree - Order 21 rule 1 - Expression "Payable under a decree" in - Meaning of - Compromise decree directing specified amount to be paid in instalments - Money is "Payable under a decree" within the meaning of Order 21 rule 1 : *Girdhari Vs. Ramprasad, I.L.R (1985) M.P. 43.*

- Order 23 Rule 3 and Order 43 Rule 1(u), Sections 96(3), 151–Appeal against Order of remand–Inherent power of the trial Court does not extend to reviewing its earlier order–Compromise decree alleged to have been obtained by impersonation and fraud–Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan, I.L.R (1992) M.P. 756*

-Order 23 rule 3 and 3-A, Order 43 rule 1-A and Section 96 (3) - Appeal in cases where compromise decree is passed - Tenability of - Effect of bar as regards appeal in view of Sections 96 (3) - The words "with the consent of parties" used in Section 96 (3) - Meaning of - Interpretation of Statutes - Construction of two apparent conflicting provisions - Manner of resolving such conflict - Section 115 - Revision against compromise decree - Tenability of - Contract Act, Indian, 1872 - Section 23 - Compromise agreement affecting properties of other co-sharers -Unlawful : *Thakur Prasad, Vs. Bhagwandas, I.L.R (1985) M.P. 310. (D.B.)*

- Order 23 Rule 3-A and Order 43 Rule 1-A – Section 96, Section 100, Section 104, Sub-Section (3), sub-section (2) –Maintainability of second appeal – Compromise decree passed by the trial Court between the original parties to the suit behind the back of the Vendees to this suit property – Provisions of Section 96 (3) of Civil Procedure Code bars a regular appeal – Right of appeal extends of under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtain. Appeal shall be construed to have been filed under Order 43 Rule 1-A, C.P.C. – However, Second Appeal does not lie under

Section 104, Sub-section (2), hence not maintainable – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree – The words ‘Compromise’ and ‘Parties’ – Means & includes : *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R (1991) M.P. 388*

- **Order 23 Rule 3, 3-A** and Order 43 Rule 1-A, Sections 115, 151 and Constitution of India, Articles 226/227– Compromise decree – Application for setting aside compromise decree allowed – Civil revision – Dismissed – Writ petition – Court is not helpless if compromise is obtained by perpetrating fraud on the Court – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R (2001) M.P. 1450*

- **Order 23 Rule 30** and 1 and Order 23 Rule 2, CPC applied when a suit has been adjusted wholly or in part and the parties or anyone of them seeks recording of such agreement, compromise or satisfaction, followed by a decree to be passed in accordance therewith – In the present case though application purportedly signed by both, the parties, it was pure and simple application under order 23 rule 1 of CPC seeking abandonment of the suit and consequently its dismissal – Order made by the trial court did not amount to decree within the meaning of section 2(2) of the Code of Civil Procedure – As such appeal before lower appellate court was itself not maintainable – The incompetent appeal has been allowed and an order or remand passed which being one without jurisdiction, is suitably capable of being challenged under article 227 of the Constitution – Petition allowed. *Vasant Kelkar Vs. Dr. P. Ahluwalia, I.L.R (1993) MP 501 (D.B.)*

– **Order 23-A Rule 3-A** – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree: *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R (1991) M.P. 388*

– आदेश 26, नियम 4 एवं 5 – न्यायालय को कमीशन निकालते वक्त ध्यान में रखने की बातें : *महावीर प्रसाद बनाम बारेलाल आई. एल. आर. I.L.R (1979) म. प्र. 546*

- **Order 26 rules 4 and 5** - Issuance of commission - Is within the discretion of Court - Is not mandatory - Necessary factors for consideration and guidance of Court for issuance of commission : *Mahavir Prasad Vs. Barelal, I.L.R (1979) M.P. 553*

-**Order 26 rule 4 (1), 19**-Appointment of Commission for examination of witness-Application filed by applicant/defendant for examination of witness by commission rejected on the ground that it does not disclose sufficient cause as to why the witness cannot come to Court-Held-Proviso to Rule 4(1) does not say that cause

should be shown-Requirement is that witness cannot be ordered to attend the Court in person and is considered necessary in the interest of justice-No such finding recorded by Trial Court-Matter remanded back for passing fresh order. *Amar Chand Vs. Laxmi Prasad; I.L.R (1994) M.P. 478*

- **Order 26 rule 9** - Cause of action - Issue of demarcation by itself - Cannot furnish any cause of action : *Durga Prasad Vs. Mst. Parveen Faujdar I.L.R (1980) M.P. 448 (D.B.)*

-**Order 26 Rule 9**-Job of the Court cannot be shifted to the Commissioner-Order issuing commission quashed : *Asutosh Dubey & Anr. Vs. Tilak Grih Nirman Sahakari Samiti Maryadit Bhopal & Anr., I.L.R (2004)M.P. 46*

- **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 : *Durga Prasad Vs. Mst. Parveen Faujdar, I.L.R. (1980) M.P. 448 (D.B.)*

-**Order 26 Rule 9** and Constitution of India, Article 227-Issue of commission-Scope of-Issuing commission for investigating which of the party is in possession-Beyond the scope of Order 26 Rule 9, C.P.C.-Question has to be decided by the Court after adducing evidence by the parties-Job of the Court cannot be shifted to the Commissioner-Order issuing commission quashed : *Asutosh Dubey & Anr. Vs. Tilak Grih Nirman Sahakari Samiti Maryadit Bhopal & Anr., I.L.R. (2004) M.P. 46*

- **Order 26 Rule 9 and Section 100**- Second appeal-Suit for declaration and injunction-Necessity of appointing commissioner for spot inspection-Emphasized at the early stage of litigation when controversy is as to identification, location or measurement between the land or premises or object-Tin partition in existence between the two houses for last 50 Years-Parties treated themselves to be owner of respective portions partitioned by tin-No controversy means as to identification-Courts below justified in deciding the matter on the basis of evidence and without making an order under order 26 Rule 9 C.P.C : *Smt. Dwaraki Bai Vs. Raghunath, I.L.R. (2004) M.P. 283*

- **Order 26 Rule 9 and Section 100**-Tin partition in existence between the two houses for last 50 Years-Parties treated themselves to be owner of respective portions partitioned by tin-No controversy as identification-Courts below justified in deciding the matter on the basis of evidence and without in making an order under order 26 Rule 9(I) C.P.C : *Smt. Dwaraki Bai Vs.Raghunath, I.L.R. (2004) M.P. 283*

-**Order 26 Rule 9 and 10**-Constitution of India Articles 226, 227-Writ Petition-Report of Commissioner for local investigation-Objections against-Report of

Commissioner and evidence taken by him shall be evidence and shall form part of record but the Court or with permission of the Court any party to the suit may examine Commissioner—No application for examination made before Trial Court—Trial Court directed to give opportunity to call and examine Commissioner if appropriate application is filed : *Shaman Das Vs. Smt. Annapurna Choubey, I.L.R. (2004) M.P. 477*

-Order 26 rule 19, 4 (1)-Appointment of Commission for examination of witness-Application filed by applicant/defendant for examination of witness by commission rejected on the ground that it does not disclose sufficient cause as to why the witness cannot come to Court-Held-Proviso to Rule 4(1) does not say that cause should be shown-Requirement is that witness cannot be ordered to attend the Court in person and is considered necessary in the interest of justice-No such finding recorded by Trial Court-Matter remanded back for passing fresh order. *Amar Chand Vs. Laxmi Prasad; I.L.R.(1994) M.P. 478*

- Order 29 rule 2 (b) and Order 9 rule 13 - Service of summons on Corporation - Employee of Corporation receiving summons at registered office - Clause (b) applies - Service is good - Ex parte decree not liable to be set aside in the absence of proof of sufficient cause for non-appearance : *M/s. Abdul Hussain H. M. Hasanbhai, Indore Vs. The Shalimar Rope Works, Ltd., Calcutta, I.L.R. (1980) M.P. 72*

- Order 30 rule 1 and Order 21 rule 15 - Provisions not abrogated by Partnership Act : *Sajjan Singh Vs. M/S Nadeali And Brothers, Through Ajai Husain Yaseen Ali, Behind Bank Of Baroda, Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134,*

-Order 30 Rules 1 and 2-Suit in the name of dissolved firm-Maintainable if firm in existence on the date of cause of action-Cause title of suit to mention only firm name and need not give name of any partner-Anyone partner can sign and verify plaint-Order 6 Rule 4 - Plea regarding misrepresentation-Details of misrepresentation necessary to be given-Contract-Agreement between two parties-Subsequent agreement between one of those partners and a stranger - Promise to do something under the first agreement-A good consideration for subsequent agreement-Consideration-Abandonment of disputed or doubtful claim-Forms valuable consideration-Test to determine whether consideration in good faith-Interest Act-Interest when can be allowed : *Firm M/S Gopal Company Ltd., Bhopal Vs. Firm Hazarilal & Company, Bhopal. I.L.R. (1965) M.P.938 (D.B.)*

-Order 30 rule 1 and 2, Order 1 rules 10 - Limitation Act, Section 22 -Suit filed in firm's name-Names of some partners disclosed under Order 30 Rule 2, after the Limitation period-Suit not affected-Order 1 Rule 10, clause (5) contemplates addition of parties and not disclosure of names of partners-Limitation Act, section 22 -Not

applicable to disclosure of names : *Firm Narain Das Mangal Sen Vs. Anand Behari Mishra, I.L.R. (1959) M.P. 121 (D.B.)*

- **Order XXX Rule 4** - Deals with forms of suit and not with whether legal representative of deceased party is or is not necessary party-Order XLI Rule 4 and Rule 33-Applicable only where legal representative is not necessary party-Order XXII Rules 3 and 9-Suit by partners of firm in their names-Partner dying-Legal representatives not brought on record-Suit abates wholly : *Pyarelal Vs. Modi Sikharchand, I.L.R. (1957) M.P.21 (D.B.)*

-**Order 30, Rule 4** - Contract Act, Section 45-Suit for recovery of loan advanced by unregistered firm-Suit not in firm's name but two partners-Suit dismissed-Appeal filed by both plaintiffs-One appellant died during pendency-Legal representatives not brought on record-Abatement whole or partial-Civil Procedure Code, Order 41, Rules 4 and 33-Applicable only when appeal properly presented : *Shrikishan Vs. Deokinandan, I.L.R.- (1961) M.P. 597*

- **Order 30 rule 10**- Suit filed against the proprietor firm- On the date of filing the suit proprietor was dead- decree against firm nullity- suit must be brought against this legal representative : *Smt. Chandrakanta Vs. Mahesh Brothers, I.L.R. (1998) M.P. 884*

-**Order 30 Rule 10** - Joint family carrying on business in a certain name -Can be sued in that name but cannot sue in that name-Railways Act-Section 77-Notice under - Can be by manager or by members but not in the name of business : *Union Of India, Through The General Manager, South Eastern Railway, Calcutta Vs. Satya Narain, I.L.R. (1963) M.P. 926*

- **Order 31 rule 1** - Suit by Sanchalak of a trust without joining all the trustees - Maintainability of : *Union Of India Vs. Swargashram Pili Kothi, Chitrakut, I.L.R. (1984) M.P. 654,*

- **Order 31 Rule 1**- Suit filed by Trustees on behalf of Trust- Death of Trustees- Joinder of newly elected trustees- Order 31 Rule 1, C. P. C. shall apply- Trust-Nature of- In case of Public Trust the general public has beneficial interest- Trustee is the owner in name- After filing of suit death of one of Trustees Trust would not fail- Rights and duties of trustees are not abrogated by death of one of trustees- No abatement : *Kapoor Chand Rajendra Kumar Jain Vs. Shri Parasnath Digamber Jain Bada Mandir And Others, I.L.R. (1999) M.P. 56*

- **Order 31 rule 1**, Public Trusts Act, M. P. (XXX of 1951), Section 36, Societies Registration Act, M. P. (XXI of 1860), Societies Registration Act, M. P. (I of 1959), Section 17 and Society Registrarian Adhiniyam, 1973, Section 22 Maintainability of

suit by a registered society - Secretary competent to file it - Registered society also registered under Public Trusts Act, M. P. - Society does not become a trust - Provisions of Societies Registration Act still applicable - Accommodation Control Act, M. P., 1961 - Section 20 (d) - Decree for eviction of tenant when can be passed thereunder : *Shri Nabhi Nondan Digamber Jain Hitopadeshani Sabha, Bina Itawa, Sagar Vs. Rameshchand, I.L.R. (1983) M.P. 387.*

-Order 32 rule 3 - Requirements of law contravened in respect of appointment of guardian-Natural guardian of minor not noticed-No effective representation of minors' interests at various stages of suit - Ex - parte decree against minor ineffective-Application to set it aside gratuitous-Minors' suit to set aside the decree competent : *Vijaykumar Vs. Madhavrao, I.L.R. (1964) M.P. 771*

-Order 32 Rule 7 - Applicability of, to adjustment in execution proceedings : *S.S. Nirmalchand & Anr. Vs. Shrmati Parmeshwari Devi & 6 Ors., I.L.R. (1957) M.P. 396 (D.B.)*

-Order 32, Rule 7 - Plaintiffs in subsequent suit, were minor defendants in earlier suit represented by Karta of family -Compromise effected outside resulting in dismissal of suit-Permission of Court for compromise not necessary-Compromise binding on minor defendants: *Gulab Chand Vs. Chhatar Singh, I.L.R.(1961) M.P. 867*

-Order 33-Impossibility of compliance with the provision-Inherent power to be brought into action : *Smt. Gayatri Devi Vs. Smt. Vidya Devi , I.L.R. (1973) M.P., 1116*

-Order 33 - Right to sue in forma pauperis- Is a personal right-Not available to legal representatives-Legal representatives have to prove their pauperism : *Smt. Gaytri Devi Vs. Vidhya Devi, I.L.R. (1973) M.P., 1116*

– **Order 33** – Provisions of Order 33 have no relevance in granting total exemption under the notification – Memorandum quashed : *Ramji Vs. High Court Of M.P., Jabalpur, I.L.R. (1990) M.P. 550, (D.B.)*

-Order 33 - Procedure prescribed by, not applicable when application to continue the suit as pauper filed after decision on point of court-fee-Right to sue in forma pauperis- Is a personal right-Not available to legal representatives-Legal representatives have to prove their pauperism-Order 33 rule 1-Application under-Is a composite application i.e. plaint plus prayer to be allowed to sue as a pauper-Petition operates as plaint till it is rejected-Impossibility of compliance with the provision-Inherent power to be brought into action : *Smt. Gaytri Devi Vs. Vidhya Devi, I.L.R. (1973) M.P., 1116*

- **Order 33**, Sections 122, 123, 124 and Constitution of India, Articles 227(2), 226, 235 and Court Fees Act (VII of 1870), Section 35– State Govt. Notification dated 1-4-83 to remit Court Fees for certain categories of persons – Memorandum of High Court dated 8-10-84 to District Judges to follow procedure prescribed for indigent persons – Memorandum not saved by Article 225 or Article 235 of Constitution – Constitution of Rule Committee, contemplated under Section 123, Civil Procedure Code but not vested with plenary powers of legislation – Legislative power under section 124, Civil Procedure Code or Article 227(2) of the Constitution, to be exercised by Full Court but only for regulating procedure of Civil Court – Provisions of Order 33 have no relevance in granting total exemption under the notification – Memorandum quashed : *Ramji Vs. High Court Of M.P., Jabalpur, I.L.R. (1990) M.P. 550 (D.B.)*

- **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 : *Sheelchand Vs. Babulal I.L.R. (1980) M.P. 1091*

-**Order 33 rule 1**- Application under-is a composite application i.e. plaint plus prayer to be allowed to sue as a pauper-Petition operates as plaint till it is rejected : *Smt. Gaytri Devi Vs. Vidhya Devi, I.L.R. (1973) M.P., 1116*

- **Order 33 Rule 1** – Indigent Person – Appellant a partnership firm – Application to sue as an indigent person- Trial Court dispaupered – Hence appeal – A firm is a person within the meaning of Rule 1 of Order 33 – Similar prayer rejected in another case could not be made the basis for rejection of application – Explanation III to Rule 1 – Plaintiff being in representative capacity – Question shall be determined with reference to the means possessed by him in such capacity : *M/S. Nandkishore Mohanlal, Raipur Vs. M/s. Jhunjhunwala And Co. Calcutta, I.L.R. (1991) M.P. 663*

- **Order 33 rule 1 and Section 115** - Revision - Maintainability of Subordinate Court permitting plaintiff to sue as an indigent person - Such decision cannot be equated with one relating to 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 : *Sheelchand Vs. Babulal, I.L.R. (1980) M.P. 1091*

-**Order 33 Rule 1** and Section 149-Application to sue in forma pauperis rejected- Court, Power of, to grant time to pay Court-fees by subsequent separate Order : *Ramdharlal Vs. Nagendra Prasad Sao, I.L.R. (1969) M.P. 163 (F.B.)*

–**Order 33 Rules 1, 5, 7 and Order 43 Rule 1 (na)**–Miscellaneous Appeal–Application to file suit as indigent person–Property owned by father of the appellant should not have been taken into consideration while deciding the application–Documentary evidence–Appellant living below poverty line and have no property or sufficient means to pay Court fee–Appellant is an indigent person–Permitted to sue as on indigent person–Order of Trial Court set aside : *Vijay Kumar Pandey Vs. Ashok Leylands, I.L.R. (2005) M.P. 418*

- **Order 33 Rule 1-A** Enquiry as to indigency done by Chief Industrial officer–further examination of person concerned depends upon the Court : *Gopal And Another Vs. Heeralal, I.L.R. (1998) M.P. 423*

– **Order 33 Rule 3** and Order 44 Rules 1, 4, Section 96–First Appeal–Forma pauperis–Appellant pardahnashin muslim lady aged about 75 years–Not possible for her to appear in person–Application to file suit or appeal in forma pauperis can be presented by agent–Ought to have been registered as MCC by the Registry–Appeal cannot be thrown merely on technical ground– Enquiry contemplated under Order 33 Rule 3 CPC directed : *Khatun Bi Vs. Habib Khan, I.L.R. (2005) M.P. 64*

-**Order XXXIII Rules 3** and 4–Suit filed in forma pauperis–Plaint returned for presentation to proper Court–Plaint must be represented by the applicant in person, whether plaint amended before being returned or after it is returned and before it is represented–Provisions are mandatory : *Atmaram Vs. Smt. Amola Bai, I.L.R. (1958) M.P. 899*

–**Order 33 Rules 5, 1, 7** and Order 43 Rule 1 (na)–Miscellaneous Appeal–Application to file suit as indigent person–Property owned by father of the appellant should not have been taken into consideration while deciding the application–Documentary evidence–Appellant living below poverty line and have no property or sufficient means to pay Court fee–Appellant is an indigent person–Permitted to sue as on indigent person–Order of Trial Court set aside : *Vijay Kumar Pandey Vs. Ashok Leylands, I.L.R. (2005) M.P. 418*

- **Order XXXIII Rules 5 and 7, Section 149, Order XLIII Rule I**–Suit or appeal filed in forma pauperis Court-fees paid during pendency of lis or Court-fees paid after rejection of application–Absence of fraud or mala fides–Plaint or appeal deemed to be filed on the date on which application for permission to sue or to appeal was filed : *Ramchandra Vs. Motilal, I.L.R. (1958) M.P. 244 (D.B.)*

- **Order 33 rule 6** - Expression "Government Pleader" and "Collector" - Means local Government Pleader and Collector of the same District : *Sheelchand Vs. Babulal I.L.R. (1980) M.P. 1091*

-Order XXXIII Rules 7 and 5, Section 149, Order XLIII, Rule I-Suit or appeal filed in forma pauperis Court-fees paid during pendency of lis or Court-fees paid after rejection of application-Absence of fraud or mala fides-Plaint or appeal deemed to be filed on the date on which application for permission to sue or to appeal was filed : *Ramchandra Vs. Motilal, I.L.R. (1958) M.P. 244 (D.B.)*

-Order XXXIII Rule 15 -Condition of payment of costs-Not mandatory-Can be enforced during pendency of suit or waived : *Gourishankar Vs. Dulichand, I.L.R. (1957) M.P.459 (D.B.)*

- Order XXXIII Rule 15 and Section 149 -Application to sue in forma pauperis, rejected--Time to pay court-fees granted by the same order-Court-fees not paid within time-Court has power to extend time for payment of Court-fees : *Bhanu Vs. Dalmia & Co., I.L.R. (1958) M.P. 757 (D.B.)*

-Order 34 rule 1-Karta joined in representative capacity-Other members are not necessary parties : *Mukundilal Vs. State Bank Of India, I.L.R. (1974) M.P. 475 (D.B.)*

-Order 34 rule 1-Suit brought against individual member not in representative capacity-The interest of widow of the deceased member not represented by other member of the family-Doctrine of representation to suit to enforce a mortgage : *Mukundilal Vs. State Bank Of India, I.L.R. (1974) M.P. 475 (D.B.)*

-Order 34 rule 1 - Suit by manager representing joint Hindu family firm-Suit propor-Order 1, rule 10 and Limitation Act, Section 22-Suit by manager of joint Hindu family-Other members can be added as parties - Question of limitation does not arise : *Ghasilal Vs. Meer Inayat Ali, I.L.R. (1964) M.P. 281*

-Order 34 Rules 4(1) and 11-Pre-decree not granting interest from date fixed for payment till realization-Interest to be considered as refused-Grant of this interest in the discretion of Court passing pre-decree : *Mishrilal Vs. Manik Chand, I.L.R. (1962) M.P. 111 (D.B.)*

- Order 34 Rule 10, Order 1 Rule 10 - Transposition - Person to be transposed—Not willing rather, opposed transposition - Under Order 1 Rule 10, or Order 23 Rule 10, defendant has no right to seek transposition - Plaintiff cannot be compelled to prosecute suit, specially when he is not willing to contest his suit to. *Mathura Bai Vs. Daryanamal, I.L.R. (1995) M.P. 171*

-Order 34 Rules 11 and 4(1) -Pre-decree not granting interest from date fixed for payment till realization-Interest to be considered as refused-Grant of this interest in the discretion of Court passing pre-decree : *Mishrilal Vs. Manik Chand, I.L.R. (1962) M.P. 111 (D.B.)*

- **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 : *Rajaram Vs. Nandkishore I.L.R. (1980) M.P. 149 (D.B.)*

- **Order 34 rule 15 (2)** - Provision not attracted in case of charge created on movables : *Satish Minocha Vs. Punjab National Bank I.L.R. (1982) M.P. 1080*

-**Order 37 Rule 1(B)**-Word "or" in-Disjunctive-District Judge has statutory jurisdiction-Does not depend upon empowering by State Government-Civil Courts Act, Madhya Pradesh, 1958-Section 7(2)-Functions which Additional District Judge can perform : *Abdul Salim Vs. Laxmi Singh, I.L.R. (1969) M.P. 104*

- **Order 37 rule 1 (b)** – Meaning of "District Court" in - Word "or" is distinctive - Contemplates trial of suit based on negotiable instrument - Trial by application of this provision - Trial can be by District Court or other Courts having jurisdiction and empowered by State Government - Section 2 (4) - "District Court" in - Means District Judge - Civil Courts Act, Madhya Pradesh, 1958 - Section 7 (2) - Additional District Judge - Function as principal Court of original jurisdiction provided function assigned by District Judge - Order 3, rule 1 (b) - Exercise by District Judge of power under- Not dependable on empowering by State Government - Words "specially empowered by State Government" - Qualify the words "other Courts" and not a "District Court" : *Kesumal Vs. M/s Bhagawandas Bhojraj Raipur, I.L.R. (1978) M.P. 582, (D.B.)*

- **Order 37 Rule 3** and Constitution of India Article 226–Summary suit for recovery–Where a part of the claim is admitted leave to defend shall not be granted unless the amount admitted is deposited–Court already granted leave unconditionally–On application by plaintiff only security can be considered in respect of securing payment of suit amount and not beyond it. : *Devendra Kumar Jain Vs. G.N. Goyal, I.L.R. (2005) M.P. 1058*

– **Order 37 Rule 3(4), 4, Section 115**–Civil Revision–Summary suit–Service on defendant in form 4-A is mandatory–Failure to comply is a fatal defect–Trial Court at no stage followed the procedure prescribed by Order 37, Rule 3(4) C.P.C. inasmuch as the summons for Judgment was not served on the defendant in form No. 4-A in Appendix-B–Decree passed without following the mandatory procedural requirements–Decree set aside–Suit restored–Matter remanded to trial Court : *Chunnilal Vs. Vinod Kumar, I.L.R. (2003) M.P. 1038*

- **Order 37 Rule 4** – “Special Circumstances” – Meaning of : *Bisundas Vs. Mangal Das, I.L.R. (1998) M.P. 703*

- **Order 37 Rule 4**- Application to set aside ex- parte Judgment- Limitation -3 years under Article 137- Order XXXVII Rule 4- “Special circumstances” –Meaning of : *Bisundas Vs. Mangal Das, I.L.R. (1998) M.P. 703*

- **Order 37 Rule 4, 3(4), Section 115**–Civil Revision–Summary suit–Service on defendant in form 4-A is mandatory–Failure to comply is a fatal defect–Trial Court at no stage followed the procedure prescribed by Order 37, Rule 3(4) C.P.C. inasmuch as the summons for Judgment was not served on the defendant in form No. 4-A in Appendix-B–Decree passed without following the mandatory procedural requirements–Decree set aside–Suit restored–Matter remanded to trial Court : *Chunnilal Vs. Vinod Kumar, I.L.R. (2003) M.P. 1038*

- **Order 38 Rule 5** - Application for attachment - Deposit in any branch of State Bank of India cannot be said to be deposit with separate body : *State Bank Of India Vs. M.P. Iron And Steel Works Pvt. Ltd., Raipur & Ors, I.L.R. [1997] M.P. 259*

- **Order 38 rule 5 and Section 151**-Court staying further proceedings in suit - Court ceases to have jurisdiction to take steps in furtherance of trial on merits - But Court has jurisdiction to deal with collateral matters - Court has jurisdiction to pass order of attachment before judgment - Proceedings regarding injunction or appointment of receiver - Not proceedings in further trial in suit on merits : *Madanlal Agarwal Vs. Smt. Kamlesh Nigam, I.L.R. (1978) M.P. 191 (D.B.)*

- **Order 38 rule 5 and Section 151**-Proceedings regarding injunction or appointment of receiver - Not proceedings in further trial in suit on merits : *Madanlal Agarwal Vs. Smt. Kamlesh Nigam, I.L.R. (1978) M.P. 191 (D.B.)*

- **Order 38 rule 5 (1)** - Order thereunder for furnishing security can be passed against the defendant even on the application of the co-defendant : *Gulam Haider Khan Vs. State Bank Of India, Bagbahra, I.L.R. (1986) M.P. 539*

-**Order 38 Rule 9** - Attachment before judgment-Suit dismissed - Appellate Court reversing decree-Attachment before judgment not revived-Letters Patent- Clause 10 - Leave restricted to certain points-No other point can be allowed to be raised-Point not argued before single Judge-Cannot be permitted to be urged in Letters Patent Appeal : *Madanlal Vs. Ramprakash, I.L.R. (1964) M.P. 901 (D.B.)*

- **Order XXXIX**- Temporary injunction- It is within the discretion of trial Court- Discretion exercised by the trial Court not open to interference simply because the appellate Court is of the opinion that a different view is also possible- Revision dismissed : *Mohd. Amin Khan Vs. Altaf Khan, I.L.R. (1998) M.P. 243*

-Order 39 rule 1-Court rightly appreciating facts and applying true principles to those facts-Appellate Court would not ordinarily interfere : *M.P. Colliery Workers Federation, Chirmiri Vs. The United Collieries Ltd., Calcutta, I.L.R. (1973) M.P., 664*

-Order 39 rule 1-Injunction can be issued against uttering words having tendency to lead to acts of violence : *M.P. Colliery Workers Federation, Chirmiri Vs. The United Collieries Ltd., Calcutta, I.L.R. (1973) M.P., 664*

– **Order 39 Rule 1** – Injunction against encashment of bank guarantee – The question of prima facie case or balance of convenience does not actually arise, if the court has to keep its hands off and is forbidden by law from interference with the commitment of Bank – Ordinarily the bank guarantees must be kept insulated from all disputes between the parties, unless special features are shown to be in existence – Revision allowed in part. *Mandovi Marine Pvt. Ltd. Vs. Project And Equipment Corporation; I.L.R. (1993) MP 641*

- **Order XXXIX Rule 1** - Suit for infringement of Trade Mark-Temporary injunction- When can be granted-Order XLI Rule 22 - Appeal against (appellate) order under Order XLIII Rule 1 - Cross-objection-Maintainability : *Beniprasad Bijay Kumar Vs. Lever Brothers (India) Ltd., I.L.R. (1957) M.P. 160*

-Order 39 rule 1-Grant of temporary injunction-A matter of discretion with Court-Court rightly appreciating facts and applying true principles to those facts-Appellate Court would not ordinarily interfere-Mines Act, 1952-Section 2(1)-Definition of "owner" in-Is inclusive-Managing agents brought within the ambit of the Act for observance of regulations framed under the Act-Owner not deprived of ownership and enjoyment of its property-Interest of managing Agent is only in the commission out of profits-Closure of mine-Owner directly affected as irreparable loss would result to owner-Trade Unions Act, 1926-Section 18-Act done in contemplation or furtherance of trade dispute otherwise than in contemplation of furtherance of strike or lock out declared illegal by Industrial Disputes Act-Action not actionable because it induced other persons to break a contract of employment or causes interference with other rights of some other person-If threats given or violence caused-Protection not available-Words "illegal means"-Meaning of-Expression "intimidation" and "coercion"-Effect of-Civil Procedure Code-Order 39 rule 1-Injunction can be issued against uttering words having tendency to lead to acts of violence-Constitution of India-Article 19-Liberty of individual not absolute-Must yield to common good-Nature of liberties of workmen-No fundamental right to hold meetings of any kind on private property or trespass on such property : *M.P. Colliery Workers Federation, Chirmiri Vs. The United Collieries Ltd., Calcutta, I.L.R. (1973) M.P. 664 .*

- **Order 39 rules 1 and 2** - Temporary injunction can be granted even in favour of the defendant : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730,*

- **Order 39 rules 1 and 2** - Irreparable injury - Requirements of : *M/S Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

- **Order 39 rules 1 and 2** - Prima facie case - Nature of - Suit contract not subsisting - No prima facie case made out : *M/S Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

- **Order 39 rules 1 and 2** - Temporary injunction granted by the trial Court - Jurisdiction of Appellate Court to interfere with the discretion of the trial Court - Extent of : *M/S Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

-**Order 39 Rule 1 & 2**-Except bare allegation in plaint nothing on record to show plaintiff's possession for 35 years-Order of Trial Court set aside-Defendant allowed to raise construction subject to furnishing undertaking : *Gurmeet Singh Sokhi Vs. Subhash Mallik, I.L.R. (2005) M.P. 611*

- **Order 39 rules 1 and 2** - Refusal of temporary injunction in a previous suit by the tenant - No bar for grant of injunction in subsequent suit : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730,*

- **Order 39 Rule 1 and 2** - Use of deceptively similar trademark and label on the product - Trial Court rightly granted temporary injunction : *Ramesh Bhai Shah Vs. Smithkline & French Laboratories Ltd., I.L.R. (2001) M.P. 1379*

-**Order 39 Rules 1, 2**-Purchaser not entitled to joint possession or other common or part enjoyment of the house-Withholding of interim mandatory injunction would carry a "greater risk of injustice"-Strong prima facie case-Plaintiff entitled to interim injunction : *Devendra Singh Thakur Vs. Smt. Shanti Bai & Others., I.L.R.(2004) M.P. 182*

-**Order 39 Rules 1 & 2** - Temporary injunction - Suit for declaration and injunction - Predecessor of appellant already separated from joint family - Relief of partition not sought - Injunction rightly rejected : *Mushamma Sarod Patnaha Vs. Harishankar; I.L.R. (2002) M.P. 715*

- **Order 39 rules 1 and 2** - Grant of temporary injunction - Material consideration - Principles to be observed therefore : *Shankerlal Vs. State Of M.P.I.L.R. (1979) M.P. 74*

– **Order 39 Rules 1 and 2** – Plaintiff made out prima facie case – Trial ought to have adjudicated other pre-requisites for grant of injunction – Order impugned set aside – Matter remanded to Trial Court : *Kinetic Engineering Limited Vs. M.P. Finance Corporation, I.L.R. (2001) M.P. 1744,*

- **Order 39 rules 1 and 2** - Statutory tenant entitled to protection of his right for quiet enjoyment of the tenancy premises - Interference in it by the landlord by raising construction over the chhat of the tenancy premises - Temporary injunction can be granted against landlord : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730,*

– **Order 39 Rules 1 and 2**– Ancestor property–Suit for injunction–Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants–Defendants though in possession can only seek order of injunction in an independent suit in a case covered : *Churamani Vs. Ramadhar, I.L.R.(1992) M.P. 267 (D.B.)*

- **Order 39 Rule 1 & 2, Easement Act (5 of 1882), Section 15** – Temporary Injunction – Suit claiming declaration of right of easement in respect of light and air passing from window and injunction restraining construction – It was incumbent upon the plaintiff to plead and prove peaceful enjoyment of right and air without interruption for 20 years – Plaintiff failed to plead right to easement being exercise against previous owner of defendant within 20 years – Suit filed when defendant constructed 5-6 feet high wall and made lot of expenses – No pleading that light and air shall be obstructed totally – Held – Plaintiff not entitled for temporary injunction restraining defendants from raising construction – Application rejected – Revision allowed. *Kanraj Khatri Vs. Nathuram Jain, I.L.R. (1996) M.P. 509*

-**Order 39 Rule 1 and 2**- Injunction - Property acquired by Government and award passed under provision of Indian Forest Act, Subsequently respondent's suit for declaration of title and compensation fraudulently compromised by officer of State-Execution of decree-Appellant's suit for declaration and to set-aside decree on ground of collusion and fraud -- application for injunction restraining respondents from executing decree-rejection -held-admittedly, appellant State was in possession when first suit was filed and decree challenged on ground of fraud and collusion-appellant entitled for injunction restraining respondent from executing decree-Appeal allowed : *State Of M.P. Vs. Brijesh Kumar Awasthi, I.L.R. (1997) M.P. 20 (SC) (D.B.)*

- **Order 39 Rules 1 and 2**-Transfer of Property Act, 1882, Section 53-A, and Evidence Act, Indian 1872, Sections 21, 31, 115 - Plaintiffs in possession under sale agreement - Entitled to temporary injunction restraining dispossession - Part-

performance - Transferee in possession - Can protect possession even if no suit is filed for specific performance of contract - Recital in agreement regarding delivery of possession coupled with payment of big amount - Strong circumstance that possession was delivered. *M/S Chetak Constructions Limited, Indore Vs. Om Prakash*; I.L.R. (2002) M.P. 689

- **Order 39 Rules 1 & 2** - Plaintiff, if succeeds in suit could adequately be compensated - Prima facie case alone would not entitle him to get relief of temporary injunction - Impugned order set aside : *M.P. Cancer Chikitsa Evam Seva Samiti Vs. Sanjeev Saxena*, I.L.R. (2004) M.P. 1088

- **Order 39 Rules 1 and 2** and Constitution of India, Article 227 - Scope - It is restricted to seeking that the Courts or tribunals function within the limits of their authority - Luculently, this extraordinary jurisdiction is available only in circumstances to prevent manifest miscarriage of Justice - Held - The appellate court unjustifiably entered the forbidden territory when it opted to examine merits at the infancy of the lis and to reverse the order on such meticulous scrutiny - Petition allowed., *Nathmal Sardarmal Jain Vs. Shantilal Sardarmal Jain*, I.L.R. (1993) M.P. 476 (D.B.)

- **Order 39 Rules 1 and 2** - Temporary Injunction - Suit filed for restraining the bank and other respondents from encashing bank guarantee - Ex-parte Temporary Injunction granted - Appellant Bank raising objections before Trial Court regarding jurisdiction to try the suit - Trial Court affirming the Ex-parte temporary injunction order without deciding the objections regarding jurisdiction - Order passed by Court having no jurisdiction will be null and void - Trial Court should decide the question of jurisdiction prior to confirming the order of Temporary Injunction - Matter remanded back to the Trial Court for decision on temporary injunction after deciding the jurisdictional competence. *State Bank Of India Vs. Vindhya Telelinks Ltd.*, I.L.R. (1993) MP 147

- **Order 39 rules 1 and 2** - Suit under Order 21 rule 63 dismissed - Second suit under Section 42, Specific Relief Act filed - Application for temporary injunction filed - Circumstances whether justify grant of temporary injunction : *Jasraj Vs. Smt. Gulabkunwarbai*, I.L.R. (1971) M.P. 946 .

- **Order 39 rules 1 and 2** - Temporary injunction - Principles for grant of - Temporary injunction granted by the trial Court - Jurisdiction of Appellate Court to interfere with the discretion of the trial Court - Extent of - Prima facie case - Nature of - Suit contract not subsisting - No prima facie case made out - Irreparable injury - Requirements of : *M/s Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar* I.L.R. (1982) M.P. 462

– **Order 39 Rules 1 and 2** – Cotenant – No injunction as a rule can be granted against him even if he is out of possession: *Abdul Latif Vs. Abdul Rajjak, I.L.R. (1989) M.P. 160,*

– **Order 39 Rules 1 and 2, Section 100** –Second appeal–Suit for injunction–Removal of contiguous thatching–Specific Relief Act, 1963 Section 41(g)–Plaintiff real brother of appellant–Allowed raising of construction joining his wall–Either consented or acquiesced–Grant of injunction for removal of the wall would be against principles of equity, justice and fairness–Judgment and decree impugned set aside : *Smt. Dhaniya Bai Vs. Jiwan, I.L.R (2003) M.P. 71*

– **Order 39 Rules 1 and 2 and Section 100**–CPC–Plaintiff real brother of appellant–Allowed raising of construction joining his wall–Either consented or acquiesced–Grant of injunction for removal of the wall would be against principles of equity, justice and fairness–Judgment and decree impugned set aside : *Smt. Dhaniya Vs. Jiwan, I.L.R. (2003) M.P. 71*

- **Order 39 Rule 1 & 2 and Section 115**–Suit for declaration and permanent injunction–Plaintiffs born after 1956 when Hindu Succession Act, 1956 already came in force–Plaintiffs can claim through their father–Father alive–Plaintiffs have no rights, title or share in the property–No *prima facie* case made out–Order of injunction vacated : *Kailash Singh Vs. Mewalal Singh Gond And Ors., I.L.R. (2003) M. P.138*

– **Order 39 Rule 1 & 2, Section 115** –Whether according to customary Law widow was entitled to inherit the property of her husband as full owner–To be decided by pleading and proof of such custom–Absence of pleading–Plaintiff not entitled to temporary injunction : *Kailash Singh Vs. Mewalal Singh Gond and Ors., I.L.R. (2003) M. P.138*

– **Order 39 Rules 1 & 2 and Section 115**, Contract Act, 1872, Section 27–Suit for injunction–Agreement that franchisee shall not conduct similar courses within six months of termination of agreement–Agreement not in restraint but for advancement of trade–Not void–Agreement terminated by franchisee without prior notice–Interim injunction can be granted : *Manish Kane Vs. Sandeep Manudhane, I.L.R. (2003) M.P. 89*

- **Order 39 rules 1 and 2 and sections 151 and 115** - Case not covered by Order 39 rules 1 and 2 - Court can grant temporary injunction under its inherent power : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730,*

- **Order 39 rules 1 and 2, and Sections 151 and 115** - Grant of temporary injunction - Discretionary relief - High Court would ordinarily be slow in interfering

with the orders passed by the Courts below - However in exceptional cases interference can be made if it occasions a failure of justice - Temporary injunction can be granted even in favour of the defendant - Case not covered by order 39 rules 1 and 2 - Court can grant temporary injunction under its inherent powers - Statutory tenant entitled to protection of his right for quiet enjoyment of the tenancy premises - Interference in it by the landlord by raising construction over the chhat of the tenancy premises - Temporary injunction can be granted against the landlord - Refusal of such injunction in a previous suit by the tenant - No bar for grant of injunction in subsequent suit : *Smt. Dr. Gulshan Vs. Smt. Sahdevi Pal, I.L.R. (1984) M.P. 730*,

-Order 39 rules 1 and 2 and Order 1 rule 3 and Public Trusts Act, Madhya Pradesh (XXX of 1951), Section 8 - Registration of the trust as public trust and appointment of trustees for management of the trust property made by the Registrar under M. P. Public Trusts Act - Section 8 - Suit Challenging the order passed by the Registrar under - All trustees are necessary parties - However, only some of the trustees made defendants and trial Court granted temporary injunction against trustees defendants and not against Registrar - Order not against provision of law : *Munshilal Jain Vs. Kaushal Chand Patani, I.L.R. (1985) M.P. 562*

- Order 39 Rule 1 and 2 and Order 7 Rule 7 - Temporary injunction - Even in absence of specific prayer Court has power to issue injunction in suitable cases - Court can restore status-quo existing on the date of suit. *Ajra Habib Vs. B.K. Gupta, I.L.R. (2002) M.P. 732*

- Order 39 Rules 1 and 2, Order 7 Rule 11(d) and Section 100- Suit for partition and declaration that rival parties are in joint possession of the ancestral property - Order 7, Rule 11(d) - Rejection of plaint - Has to be based on the averments made in the plaint - Court cannot travel beyond the plaint averments - Rejection of plaint on basis of defendant's preliminary objection that there has been a Panch Faisla - Not proper - Arbitration Act, 1940 - Sections 14, 32 and 33 - Bar to suits contesting arbitration agreement or award - Provisions have got limited application - Applicable only where existence effect or validity of an arbitration agreement or enforceable award is challenged and not the contract itself - Genuineness of an arbitration agreement of award cannot be presumed by the Court by mere plea of defence - Order 7 Rule 11(d) and Section 14 of the Arbitration Act, 1940 - Panch Faisla pleaded and filed by defendant in preliminary objection not bearing signature of the Panchas - Not an award in the eye of law - Order rejecting plaint by Courts below assuming that there has been an award and is barred - Is an impermissible procedure - Courts should have insisted on complete written statement by the defendant - Order impugned set aside - Case remanded back to the trial Court : *Lukeshwar Vs. Dhebar , I.L.R. (2001) M.P. 829*

- **Order 39 rules 1 and 2 and Order 41 rule 5 (1) and Section 151** - Whether powers by Appellate Court under Order 41 rule 5 (1) can be exercised in appeal against an order granting temporary injunction - Inherent powers - Exercise of : *Vasant Diwakar Patriker Vs. Union Of India, I.L.R. (1983) M.P.160.*

-**Order 39 Rules 1 & 2 and Order 43 Rule 1**-Order refusing to appointment of arbitrator and temporary injunction against recovery of telephone bills-Telegraph Act, Indian Section 7-B and Arbitration Act, Indian, 1940, Section 41-The bar of Civil Courts jurisdiction is to modify, remit and set aside the award or to make it a rule of the Court-Appointment of arbitrator is not barred and equally the Court has jurisdiction to grant temporary injunction-Application pending for arbitration-Appellant entitled to get order of temporary injunction. *Dr. J.N. Seth Vs. Union Of India, I.L.R. (1992) M.P. 576*

-**Order 39 Rules 1 & 2 and Order 43 Rule 1(r)**-Appeal-Order of injunction restraining appellant from raising pakka construction-Appellants in possession of the land by virtue of an agreement of sale-His suit for specific performance is also pending-Unless and until defendant appellant succeed in his suit for specific performance he cannot be allowed to raise construction even if he gives undertaking-Order of injunction cannot be faulted with. *Kishanlal Vs. Ramesh Chandra Gandhi, I.L.R. (1992) M.P. 661*

-**Order 39 Rules 1, 2 and order 43 Rule 1(r)**-Appeal-Temporary injunction-Dwelling house belonging to undivided family of two brothers-Sale deed executed by one brother without partition-second part of section 44 of the Transfer of Property Act becomes applicable-Object is to prevent intrusion of a stranger into family residence-Purchaser not entitled to joint possession or other common or part enjoyment of the house-With holding of interim mandatory injunction would carry a "greater risk of injustice"-Strong prima facie case-Plaintiff entitled to interim injunction : *Devendra Singh Thakur Vs. Smt. Shanti Bai & others., I.L.R. [2004] M.P. 182*

-**Order 39 Rule 1 & 2 and Order 43 Rule 1 (r)**-Temporary injunction-Suit for title declaration on ground of adverse possession-Land in question undisputably a Govt. land-Industrial area developing in the vicinity-Land leased out to Defendant-Except bare allegation in plaint nothing on record to show plaintiff's possession for 35 years-Order of Trial Court set aside-Defendant allowed to raise construction subject to furnishing undertaking : *Gurmeet Singh Sokhi Vs. Subhash Mallik, I.L.R. (2005) M.P. 611*

- **Order 39 Rule 1 and 2 and Order 43 Rule 1(r)** - Appeal - Suit for declaration and injunction - Taking over of industrial unit by financial institution for default of repayment of loan - Plaintiff's goods also taken over - State Financial

Corporation Act, 1951, Section 29 – Provision envisages adjudication of rights of parties – Plaintiff not party to loan agreement with financial institution nor its properties were pledged – Plaintiff has a right to file a suit for declaration and injunction as regards its own property – Plaintiff made out prima facie case – Trial Court ought to have adjudicated other pre-requisites for grant of injunction – Order impugned set aside – Matter remanded to trial Courts : *Kinetic Engineering Limited Vs. M.P. Finance Corporation, I.L.R. (2001) M.P. 1744*

– **Order 39 Rules 1 and 2 and Order 43, Rule 1(r)** – Appeal – Suit for injunction – Trade and Merchandise Act, 1958 – Section 29(1) – Defendant using labels so similar to that as plaintiff's product that innocent purchaser may be misled – In reply to notice defendant undertook to amend the label – Case of infringement of plaintiff's trade mark within the meaning of Section 29(1) of the Act made out – M.P. Foreign Liquor Rules, 1996 – Mere permission of Excise Commissioner under the Rules to use such labels on the product – Inconsequential – Because Excise Commissioner not concerned with the rights of the parties – Injunction order rightly granted – No interference in appeal : *Cox Distillery Vs. McDowell & Company Ltd., I.L.R. (2001) M.P. 79*

–**Order 39 Rule 1 and 2 and Order 43 Rule 1 (R)**–Temporary injunction on basis of possession of plaintiff immovable property by its nature incapable of movement–Cannot be put by one party into the hands or pocket of another–Possession is delivered by making declaration and such declaration is evidenced by some document–Clear unequivocal recital in the agreement about delivery of possession–Weight of such recital is not denuded by self serving documents–Transfer of Property Act Section 53-A–Part performance–In part performance of contract plaintiff placed in possession–Though no legal title is acquired plaintiff is entitled to protect possession by filing suit for injunction against vendors and the Court may grant temporary injunction to restrain dispossession of the plaintiff–On the date of suit plaintiff in possession–Plaintiff entitled to temporary injunction–Order of trial Court reversed–Temporary injunction granted : *M/s Chetak Constructions Limited, Indore Vs. Om Prakash, I.L.R. (2003) M.P. 687*

–**Order 39 Rules 1 & 2, Order 43 Rule 1(r), Section 115, Constitution of India, Article 227, Amending Act No. 29/1984, Land Revenue Code, M. P. (XX of 1959), Section 117 and Evidence Act, Indian (I of 1872), Section 114(e)**–Ancestor property–Suit for injunction–Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants–Defendant though in possession can only seek order of injunction in an independent suit in a case covered by the provision of Order 39, Rule 1(c), C. P. C.–Order passed in exercise of Appellate power under Order 43, Rule 1(r), C. P. C.–Remedy to invoke High Court's power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984–Section 114 of the Evidence Act and Section 117 of the M. P. L. R.

Code–Presumption–Correctness of these entry can be presumed which are required to be made under the Law–Unless the law required an entry to be made presumption as to correctness of such entry cannot be made–Defendant can only seek injunction in an independent suit–Impugned order set aside to extent. *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

– **Order 39 Rule 1 & 2** and Order 43 Rule 1(r), Section 115, and Hindu Succession Act, 1956, Section 2(1)(c) and 2(2)–Revision–Appellate Court reversing order of Temporary injunction–Law of inheritance–Plaintiff claiming right through a 'Gond' widow alleging full ownership–'Gond'–A Scheduled Tribe–Provision of Hindu Succession Act do not protanto apply to Scheduled Tribes–Whether according to customary Law widow was entitled to inherit the property of her husband as full owner–To be decided by pleading and proof of such custom–Absence of pleading–Plaintiff not entitled to temporary injunction–Appellate order not open to interference : *Kailash Singh Vs. Mewalal Singh Gond And Ors., I.L.R. (2003) M. P.138*

–**Order 39 Rules 1, 2, 3, 4** and Order 43 Rule 1 (r)–Misc. Appeal–Temporary injunction–Copy of despatch register and postal receipt prima facie cannot be disbelieved–Termination of service–Plaintiff, if succeeds in suit could adequately be compensated–Prima facie case alone would not entitle him to get relief of temporary injunction–Impugned order set aside : *M.P. Cancer Chikitsa Evam Seva Samiti Vs. Sanjeev Saxena, I.L.R. (2004) M.P. 1088*

- **Order 39 rule 2** - Envisages expression injury of any kind - Discharge of trade effluent without any treatment by setting up water treatment plant - Covered under this expression ; *M/S. Rajadhiraj Industries Pvt. Ltd. Seoni Vs. Nanhelal Baghel I.L.R. (1987) M.P. 176*

- **Order 39 rule 2** - Prima facie case made out - Court can grant injunction restraining discharge of trade effluent until provision for its treatment provided : *M/S. Rajadhiraj Industries Pvt. Ltd. Seoni Vs. Nanhelal Baghel I.L.R. (1987) M.P. 176*

-**Order 39 Rule 2**, Specific Relief Act, 1963, Sections 41 (e),(f),(h), 14 and 38- Temporary Injunction-Appellant invited tenders for long route transport work-Tenders were opened but none of the tenders were accepted and appellant decided to invite fresh tenders-Respondent filed suit-Temporary injunction granted by Court directing that without disposing the tender of plaintiff, defendants will neither call any other tender nor enter into such contract-Held-Temporary Injunction cannot be granted where no perpetual injunction could be granted in view of provisions of Section 41 of Act, 1963-Injunction cannot be granted where plaintiff can be compensated in terms of money-Appeal Allowed. *Food Corporation Of India Vs. D.K. Roadlines, Jabalpur; I.L.R.(1994) M.P. 186*

–**Order 39 Rules 2 & 1** - Temporary injunction - Suit for declaration and injunction - Predecessor of appellant already separated from joint family - Relief of partition not sought - Injunction rightly rejected. *Mushamma Sarod Patnaha Vs. Harishankar; I.L.R. (2002) M.P. 715*

- **Order 39 rules 2 and 1** - Prima facie case - Nature of - Suit contract not subsisting - No prima facie case made out : *M/S Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

- **Order 39 rules 2 and 1** - Irreparable injury - Requirements of : *M/s Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

–**Order 39 Rule 2 & 1**–Except bare allegation in plaint nothing on record to show plaintiff's possession for 35 years–Order of Trial Court set aside–Defendant allowed to raise construction subject to furnishing undertaking : *Gurmeet Singh Sokhi Vs. Subhash Mallik, I.L.R. (2005) M.P. 611*

–**Order 39 Rules 2, 1**–Purchaser not entitled to joint possession or other common or part enjoyment of the house–Withholding of interim mandatory injunction would carry a "greater risk of injustice"–Strong prima facie case–Plaintiff entitled to interim injunction : *Devendra Singh Thakur Vs. Smt. Shanti Bai & Others., I.L.R. (2004) M.P. 182*

– **Order 39 Rules 2 and 1** – Plaintiff made out prima facie case – Trial ought to have adjudicated other pre-requisites for grant of injunction – Order impugned set aside – Matter remanded to Trial Court : *Kinetic Engineering Limited Vs. M.P. Finance Corporation, I.L.R. (2001) M.P. 1744*

– **Order 39 Rule 2 and 1** – Use of deceptively similar trademark and label on the product – Trial Court rightly granted temporary injunction : *Ramesh Bhai Shah Vs. Smithkline & French Laboratories Ltd., I.L.R. (2001) M.P. 1379*

–**Order 39 Rules 2 and 1**– Ancestor property–Suit for injunction–Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants–Defendants though in possession can only seek order of injunction in an independent suit in a case covered : *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

- **Order 39 Rules 2 and 1**-Transfer of Property Act, 1882, Section 53-A, and Evidence Act, Indian 1872, Sections 21, 31, 115 - Plaintiffs in possession under sale agreement - Entitled to temporary injunction restraining dispossession - Part-performance - Transferee in possession -Can protect possession even if no suit is filed for specific performance of contract - Recital in agreement regarding delivery of

possession coupled with payment of big amount - Strong circumstance that possession was delivered. *M/s Chetak Constructions Limited, Indore Vs. Om Prakash; I.L.R. (2002) M.P. 689*

- **Order 39 Rules 2 and 1** – Temporary Injunction – Suit filed for restraining the bank and other respondents from encashing bank guarantee – Ex-parte Temporary Injunction granted – Appellant Bank raising objections before Trial Court regarding jurisdiction to try the suit – Trial Court affirming the Ex-parte temporary injunction order without deciding the objections regarding jurisdiction – Order passed by Court having no jurisdiction will be null and void – Trial Court should decide the question of jurisdiction prior to confirming the order of Temporary Injunction – Matter remanded back to the Trial Court for decision of temporary injunction after deciding the jurisdictional competence. *State Bank Of India Vs. Vindhya Telelinks Ltd., I.L.R. (1993) MP 147*

- **Order 39 Rule 2 and 1** - Injunction - Property acquired by Government and award passed under provision of Indian Forest Act, Subsequently respondent's suit for declaration of title and compensation fraudulently compromised by officer of State-Execution of decree-Appellant's suit for declaration and to set-aside decree on ground of collusion and fraud - application for injunction restraining respondents from executing decree-rejection -held-admittedly, appellant State was in possession when first suit was filed and decree challenged on ground of fraud and collusion-appellant entitled for injunction restraining respondent from executing decree-Appeal allowed : *State Of M.P. Vs. Brijesh Kumar Awasthi, I.L.R. (1997) M.P. 20 (SC) (D.B.)*

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- **Order 39 Rule 2 & 1**, Easement Act (5 of 1882), Section 15 – Temporary Injunction – Suit claiming declaration of right of easement in respect of light and air passing from window and injunction restraining construction – It was incumbent upon the plaintiff to plead and prove peaceful enjoyment of right and air without interruption for 20 years – Plaintiff failed to plead right to easement being exercise against previous owner of defendant within 20 years – Suit filed when defendant constructed 5-6 feet high wall and made lot of expenses – No pleading that light and air shall be obstructed totally – Held – Plaintiff not entitled for temporary injunction

restraining defendants from raising construction – Application rejected – Revision allowed : *Kanraj Khatri Vs. Nathuram Jain, I.L.R. (1996) M.P. 509*

– **Order 39 Rules 2 and 1** – Cotenant – No injunction as a rule can be granted against him even if he is out of possession : *Abdul Latif Vs. Abdul Rajjak, I.L.R. (1989) M.P. 160,*

- **Order 39 rules 2 and 1** - Temporary injunction - Principles for grant of - Temporary injunction granted by the trial Court - Jurisdiction of Appellate Court to interfere with the discretion of the trial Court - Extent of - Prima facie case - Nature of - Suit contract not subsisting - No prima facie case made out - Irreparable injury - Requirements of : *M/S Amar Talkies, Sagar, Vs. Apsara Cinema, Sagar I.L.R. (1982) M.P. 462*

– **Order 39 Rules 2 and 1**, Section 100 – Second appeal–Suit for injunction–Removal of contiguous thatching–Specific Relief Act, 1963 Section 41(g)–Plaintiff real brother of appellant–Allowed raising of construction joining his wall–Either consented or acquiesced–Grant of injunction for removal of the wall would be against principles of equity, justice and fairness–Judgment and decree impugned set aside : *SMT. Dhaniya Bai Vs. Jiwan, I.L.R (2003) M.P. 71*

–**Order 39 Rule 2 & 1 and Order 43 Rule 1 (r)**–Temporary injunction–Suit for title declaration on ground of adverse possession–Land in question undisputably a Govt. land–Industrial area developing in the vicinity–Land leased out to Defendant–Except bare allegation in plaint nothing on record to show plaintiff's possession for 35 years–Order of Trial Court set aside–Defendant allowed to raise construction subject to furnishing undertaking : *Gurmeet Singh Sokhi Vs. Subhash Mallik, I.L.R. (2005) M.P. 611*

-**Order 39 Rule 2(3)** - Disobedience of a temporary injunction order - Sentence-Criminal Court's order under section 145, Cr P.C. in his favour no defence - Finding of criminal Court thereunder of no consequence - Existence of injunction order, - Temporary OF permanent, implies a judicial finding that person restrained is not in possession - Injunction order continues binding on the person although his capacity is changed - Injunction is essentially a disability against the person : *Umraosingh Vs. Ramgopal, I.L.R. (1960) M.P. 1085*

- **Order 39 rule 3, Proviso** - Trial Court granting ex - parte temporary injunction restraining defendants from interfering with day to day management of partnership business by the plaintiffs, recording reasons therefore and applying its mind to them - Does not call for any interference by Appellate/Revisional court : *Bipin Chandra Vs. M/S Purshottam Bhai Dhoribhai & Co., Dhamtari, I.L.R. (1984) M.P. 222,*

- **Order 39 rule 3, Proviso** - Grant of ex parte temporary injunction - Powers of Appellate/Revisional Court to interfere with such order - Trial Court granting ex parte temporary injunction restraining defendants from interfering with day to day management of partnership business by the plaintiffs, recording reasons therefore and applying its mind to them - Does not call for any interference by Appellate/Revisional Court : *Bipin Chandra Vs. M/s Purshottam Bhai Dhoribhai & Co., Dhamtari, I.L.R. (1984) M.P. 222,*

-**Order 39 Rules 3, 1, 2, 4 and Order 43 Rule 1 (r)**-Misc. Appeal-Temporary injunction-Copy of despatch register and postal receipt prima facie cannot be disbelieved-Termination of service-Plaintiff, if succeeds in suit could adequately be compensated-Prima facie case alone would not entitle him to get relief of temporary injunction-Impugned order set aside : *M.P. Cancer Chikitsa Evam Seva Samiti Vs. Sanjeev Saxena, I.L.R. (2004) M.P. 1088*

-**Order 39 rule 10 and Contract Act, Indian (IX of 1872), Section 172** - Defendant admitting his signature on hypothecation bond but pleading fraud and obtaining of signature on blank forms - Does not tantamount to admission of fact of hypothecation - Order under Order 39 rule 10, C. P. C. cannot be made : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50,*

- **Order 39 rule 10 and Contract Act, Indian (IX of 1872), Section 172** - Exercise of jurisdiction under Order 10, C. P. C. directing deposit of hypothecated property in Court or to be delivered to the creditor - When can be made - Admission of fact of hypothecation necessary : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50,*

- **Order 39 rule 10 and Contract Act, Indian (IX of 1872), Section 172** - Contract of hypothecation - Rights of creditor thereunder - Exercise of jurisdiction under Order 39, rule 10, C. P. C. directing deposit of hypothecated property in Court or to be delivered to the creditor - When can be made - Admission of fact of hypothecation bond but pleading fraud and obtaining of signature on blank forms - Does not tantamount to admission of fact of hypothecation - Order under Order 39, rule 10, C. P. C. cannot be made : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50,*

-**Order 40 Rule 1** - Preliminary decree-Appeal against decree-During pendency of appeal an application filed for appointment of receiver in trial Court-Trial Court's jurisdiction continues till final decree-Trial Court does not lose power to deal with application for appointment of receiver : *Ramchandra Vs. Jeetmal, I.L.R. (1964) M.P. 296*

– **Order 40 rule 1** – Order appointing receiver – Does not operate as res-judicata while passing final order regarding claim of Mahant to be appointed as Trustee: *Mahant Govind Sharandas Guru Vs. Registrar, Public Trust, Raipur I.L.R. (1987) M.P. 425*

-**Order 40 rule 1**-Principles to be observed regarding appointment of receiver: Principles relating to appointment of receiver may be stated : *Bal Vyasi Vs. Mahila Ujjala, I.L.R. (1972) M.P. 756* .

- **Order 40 Rule 1**- Section 115- Revision - Appointment of receiver by name – objection that first appeal was not maintainable as the order of appointment of named receiver was not challenged-Misconceived-Appointment of receiver holding that defendant admitted that property was not being properly maintained as it was under attachment-Subsequent final order of S.D.M. restoring possession of defendant- Sub-rule (2) of Rule 1 of Order 40 of the Code-Person in possession under some assumed right cannot be removed in the garb of appointment of receiver : *Smt. Kaveribai Vs. Smt. Dularin Bai, I.L.R. (2000) M.P.88,*

-**Order 40 Rule 1(2)**- Person in possession under some assumed right cannot be removed in the garb of appointment of receiver : *Smt. Kaveribai Vs. Smt. Dularin Bai, I.L.R. (2000) M.P. 88,*

-**Order 41**-Distinction between right to file an appeal and the procedure to be followed : *Mst. Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Order 41**-Filing of cross-objection in, maintainability : *Mst. Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Order 41**-Applicable to Letters Patent Appeal-Filing of cross-objection in, maintainability-A distinction between right to file an appeal and the procedure to be followed-Order 41 rule 22-Cross-objection is in nature of appeal-For supporting judgment-Cross-objection not necessary to be filed against adverse finding-Letters Patent Appeal-Clause 10-Leave may be granted on restricted ground or without restriction-Permission necessary to file cross-objection in Letters Patent Appeal-Civil Procedure Code-Section 100-Finding about a person being a tenant-Is a finding of fact-Finding of Benami-Is a finding of fact-Accommodation Control Act, Madhya Pradesh, 1961-Section 12(1)(b)-“Possession”-Concept involves two important factors-Occasional use for limited purpose-Does not amount to concurrent user-When object is to help-Parting with possession-Meaning of-Parting with possession in the provision may be regarding part of accommodation-Section 14(1)-Deals with possession regarding sub-letting or assignment-Interpretation of Statute-Court has no power to alter language of Statute to supply meaning when meaning of Statute is

clear-Statute to be interpreted in a way so as not to render any portion redundant-Act confers protection to tenant personally and for limited purpose-Section 12(1)(b)-Parting with possession in manner other than sub-letting or assignment-Furnishes ground for eviction-There acts viz. sub-letting, assignment and otherwise parting with possession are included being unlawful when without landlord's consent-Transfer of Property Act-Sections 8 and 36-Liability of tenant for rent to the transferee landlord-Appointment of rent between the transferor and the transferee landlords-Accommodation Control Act, M.P., 1961-Section 12(1)(a)-Rent for entire month deemed to be in arrears when the tenant has not paid or deposited rent in case of transferee purchasing property in the middle of tenancy month : *Mst. Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

- **Order 41 Rule 33** and Order 6 Rule 17- First appellate Court allowed the application under order 6 Rule 17, C.P. C.- Without opportunity to make consequential Amendment- To remove inaccuracy or omission in the interest of justice Appellate Court right in allowing Amendment application and decree for eviction u/o 41 Rule 33, C.P.C.: *Bhagwati Prasad Vs. Baleshwardayal, I.L.R. (1998) M.P. 683*

-**Order 41 rule 1**-Appeal against order of tribunal-Appellate Court to follow rules of practice and procedure applicable to civil appeals : *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha I.L.R. (1970) M.P. 462 (D.B.)*

-**Order 41 rule 1**-Presentation of appeal to a Court without authority-Is no valid presentation : *Uma Sharan Saxena Vs. Mansaram , I.L.R. (1971) M.P. 754 .*

-**Order 41 Rule 1**-Appeal presented by a person who is not guardian-ad-litem on behalf of minor-Appeal allowed to be decided without objection-Other side precluded from raising objection to the presentation of appeals : *Ram Singh Vs. Mst. Ramobai I.L.R.(1968) M.P. 446*

- **Order 41 Rule 1**-Filing of decree with memo of appeal is mandatory - In absence of copy of decree - Appeal incomplete and defective - Court - fees Act - Article 17 (vi) of Schedule II - Two conditions for applicability - Both conditions must co-exist - Relief regarding appointment of new trustees under section 73 or 74 of the Trusts Act - Incapable of valuation in money - Covered by Schedule II of this Article - Article 18 (b) - Schedule II - Word "Application" in - Cannot be read as suit - Section 12 - Finality to decision by trial Court - Does not stand in plaintiff's way in questioning its correctness in appeal - Public trusts Act, Madhya Pradesh, 1951 - Section 2 (4), 26 and 27 (4) - Trust registered as public Trust - Suit for removal of trustees or appointment of New trustees under section 92, Civil Procedure Code barred - Remedy is under section 26 of the Act : *Gajadhar Vs. Mst. Rajrani, I.L.R. (1979) M.P. 152 (D.B.)*

-Order 41 Rule 1 - Decree against tenant-Tenant not filing appeal - Decree becoming final-Appeal by subtenant or licensee-Maintainability-Order 41 Rule 4-Not applicable to a case of subtenant or licensee when decree became final against tenant-Order 41 Rule 22-Respondent not preferring appeal or cross-objection-Respondent entitled to support decree on any ground decided against him but has no right to challenge decree-Circumstances in which one respondent can file cross objection against co-respondent : *Madanlal Kothari Vs. The Bank Of Maharashtra, Durg, I.L.R. (1965) M.P. 492*

- Order 41 Rule 1 and Section 96,s Accommodation Control Act, M.P., 1961, Sections 12(1) (c), 12(1) (f), and 12 (1) (h), Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act 1977, Section 7(3)-First appeal-Suit for eviction and mesne profits-Bonafide requirement of landlord to open clinic by her son-Resisted by tenant-Requirement of law is that land lord must be owner of reasonably suitable alternative accommodation-Plot owned by plaintiff's husband-Cannot be an alternative suitable accommodation as envisaged under Section 12 (1) (f) of the Act-It is choice of plaintiff and tenant is no body to direct plaintiff to start business as a particular place-Merely because he joined service in an hospital would not overshadow genuiness-Mesne profit-Tenant continued in occupation even after expiry of extended period lease-Oil Company can avail only one right of renewal-Right of renewal availed-Possession became unauthorized from the date on which renewed period expired-Trial Court rightly granted decree of eviction and mesne profit : *M/S. Hindustan Petroleum Corporation Ltd. Vs. Smt. Kamal Vasini Agrawal, I.L.R. (2005) M.P. 862*

- Order 41 Rule 3-A(2) – Application for condonation of delay- It is for the appellant to file the same along with memo of appeal or before admission of appeal : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R. (2001) M.P. 278*

-Order 41 rule 3-A(2) - As amended -The expression "shall be finally decided by the court before it proceeds to deal with the appeal under rule 11 or 13 as the case may be" in - Connotation and significance of - Limitation - Imperative for the Court to first decide the question of limitation - Court proceeding without doing so - Has no power to hear an appeal even for admission - Jurisdiction - Order passed without jurisdiction a nullity - Civil Procedure Code - Section 151 - Court has power to revive an appeal in exercise of inherent powers under - It does not become functus - officio : *Chhitu Vs. Mathuralal, I.L.R. (1981) M.P. 777*

- Order 41 Rules 3A (1), (2), Sections 100, 2(2) and Limitation Act, Section 5 – Maintainability of Second Appeal – First Appeal dismissed as barred by limitation after rejecting the application for condonation of delay – Order dismissing appeal on ground of limitation would amount to a decree and decree of trial court would merge

in appellate decree – Second appeal maintainable against such decree. *Maniram Vs. Mst. Fuleshwar, I.L.R. (1995) M.P. 518 (F.B.)*

– **Order 41 Rules 3-A(2), 11, 13 and Order 47 Rule 1, Section 114**– Review – Limitation Act, 1963 – Section 5 – Condonation of delay – Opportunity for – First appeal filed without application for condonation of delay – Dismissed as barred by time – Second appeal also dismissed – Review on ground that opportunity should have been given to get the delay condoned even at final hearing stage – Not tenable – Order 41 Rule 3-A(2) – Application for condonation of delay – It is for the appellant to file the same along with memo of appeal or before admission of appeal – Order 41 Rules 11 and 13 – Provisions though directory in nature can not be construed to give opportunity to a party to get the delay condoned at the final hearing stage as the other party may not be able to dispute the facts after number of years : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R. (2001) M.P. 278*

-**Order 41 Rule 4**-Not applicable to a case of sub-tenant or licensee when decree became final against tenant : *Madanlal Kothari Vs. The Bank Of Maharashtra, Durg & Anr., I.L.R. (1965) M.P. 492*

- **Order 41 Rule 4** and Order 22 Rule 4, 9, Section 96– First Appeal – Death of codefendant/respondent bound by the joint decree of declaration, possession and mense profit – Failure to bring on record legal representatives of deceased defendant despite knowledge – Delay no condoned – Effect – Appeal abates as a whole – Power to separate decree – Discretionary – Can be exercised at the time of drawing final decree and where presence of a party is not required – Decree indivisible and inseparable – Cannot be reversed only to the extent of appellant’s liability by separation – Whole appeal abates : *Ram Kishan Vs. Harbagas Ahirwar (Dead) Through His L.Rs. Smt. Vipta Bai, I.L.R. (2001) M.P. 1695*

-**Order 41, Rules 4 and 33** -Applicable only when appeal properly presented : *Shrikishan Vs. Deokinandan, I.L.R. (1961) M.P. 597*

-**Order XLI Rule 5** - Stay order--Time from which it comes into operation-Subsequent proceedings after the passing of the order-Validity-Civil Procedure Code, section 115-Decree passed without jurisdiction-Decree is nullity-Question of filing appeal irrelevant-Record can be corrected in a Revision : *Bisandas Vs. Nirmalkumar, I.L.R. (1958) M.P. 753 (D.B.)*

- **Order 41 rule 5** and Order 21 rule 11, Sections 36 and 37-Stay Order in appeal staying confirmation of Sale-Stay Order directing furnishing security for mesne profits determinable by trial Court -Security to be furnished within one month of the date of trial Court's order-Application for recovery of mesne profits-Maintainability-

Heading-Heading of petition not conclusive-Substance to be looked into : *Kheduram Vs. Mst. Supetkaur, I.L.R. (1971) M.P. 80 (D.B.)*

-Order 41 Rule 5(2) and Order 9 Rule 13-Summary Proceedings-Plaintiff/respondent filed suit for claim under Order 37 Rules 1 & 2 Civil Procedure Code-Summons served upon applicant but did not appear-Ex-parte decree passed-Applicant filed application for setting aside ex-parte decree-Executing Court declined to stay execution of decree during pendency of application under Order 9 Rule 13 C.P.C.-Applicants pleaded that though summons were served but were not obliged to appear as Court had no jurisdiction and decree is a nullity-Held-Plea not tenable as question of jurisdiction could have been raised before Trial Court-Provision of Order 41 Rules 5 C.P.C. not attracted as proceeding were not in appeal--However, Trial Court directed to decide application under Order 9 Rule 13 C.P.C. within two months and execution proceedings to remain in abeyance for 2 ½ months. *M/s. Cooltech Industries Vs. Dena Bank; I.L.R.(1994) M.P. 472*

– **Order 41 Rule 11** and Order 47 Rule 1, Sections 140, 100, 101 – Review Application–Review of the Order of Single Bench–Placed before the Full Bench in peculiar fact situation–Power of Full Bench is limited to what the Single Bench could do while exercising power of Review–Review permissible only on three grounds specified-(i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of record and (iii) any other sufficient ground–"Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously–Second Appeal dismissed holding "no substantial question of law involved for adjudication"–No ground supplied–Can be a ground for appeal but not for Review–Recourse to Review–Misconceived : *Ratanlal Vs. Bardi Bai, I.L.R. (2003) M.P. (FB) 1072 (F.B.)*

-Order 41 Rules 11 and 12-Provincial Small Cause Courts Act-Section 25 - Civil Practice-Revision or appeal admitted in motion hearing on a specific ground-In appeal or in revision the party cannot be restricted at the final hearing to only specific ground-All the grounds raised in revision or appeal are open-Matter different in case of revision on interlocutory matter - Letters Patent-Clause 10-Leave can be restricted to particular point : *Sukhdeo Vs. Gendalal, I.L.R. (1965) M.P. 335*

– **Order 41 Rules 11 and 13** – Provisions though directory in nature can not be construed to opportunity to a party to get the delay condoned at the final hearing stage as the other party was not be able to dispute the facts after number of year : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R. (2001) M.P. 278*

- **Order 41 Rules 11, 21, 22** and Order 42 Rule 2, Section 100–Cross-objection filed under Order 41 Rule 22 of the Code can only be heard on substantial question of

law–Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him–Procedure provided in Rule 11 of Order 41 read with Order 42 Rule 2 of the Code–Mandatory–In absence of adherence cross-objection can not be entertained. *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

– **Order 41 Rule 19**, Section 100–Appeal against rejection of application for re-admission of second appeal–Second appeal dismissed for want of prosecution–Order refusing re-admission not appealable under Clause X of Letters Patent : *Kamla Bajpai & Ors Vs. Smt Sharda Devi Bajpai & Ors., I.L.R. [2003] M.P. 127 (D.B.)*

-**Order XLI Rule 20** - Essential things to be considered in joining a party as respondent who was omitted-Limitation Act (IX of 1908)-Section 5-Provision to be liberally construed-Every advice of the counsel-Does not amount to sufficient cause-Advice given after due care and attention may amount to sufficient cause : *Bhojraj Vs. Dasru, I.L.R. (1958) M.P. 723*

- **Order 41 rule 20**, Order 1 rule 10 and section 151 -While first appeal pending respondent died- on application made in time legal representative's name ordered to be substituted-Necessary correction in record not made-Deceased person's name wrongly mentioned in judgement as respondent-In second appeal the same name continued as respondent-Application to join legal representative made on error being disclosed-Application maintainable : *Siddheshwar Vs. Nanuram I.L.R. (1966) M.P. 323*

- **Order 41 Rules 21, 11, 22 and Order 42 Rule 2**, Section 100–Cross-objection filed under Order 41, Rule 22 of the Code can only be heard on substantial question of law–Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him–Procedure provided in Rule 11 of Order 41 read with Order 42 Rule 2 of the Code–Mandatory–In absence of adherence cross-objection can not be entertained. *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

-**Order 41 rule 22**-Cross-objection is in nature of appeal : *Mst. Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Order 41 rule 22**-For supporting judgment-Cross-objection not necessary to be filed against adverse finding : *Mst. Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (D.B.)*

-**Order 41 Rule 22** - Circumstances in which one respondent can file cross-objection against co-respondent : *Madanlal Kothari Vs. The Bank Of Maharashtra, Durg & Anr., I.L.R. (1965) M.P. 492*

-Order 41 Rule 22 - Respondent not preferring appeal Or cross objection- Respondent entitled to support decree on any ground decided against him but has no right to challenge decree : *Madanlal Kothri Vs. The Bank Of Maharashtra, Durg & Anr., I.L.R. (1965) M.P. 492*

-Order 41 Rule 22—Cross-objection filed under Order 41 Rule 22 of the Code can only be heard on substantial question of law : *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

- **Order 41 Rule 22** and Motor Vehicles Act (59 of 1988) Section 173 – Cross objection – If an appeal is not tenable, the cross objections can neither be heard nor decided. *Ashok Kohli Vs. Prakash Chand, I.L.R. (1995) M.P. 586*

-Order 41 Rule 22 – Cross objection—As the appeal itself is not maintainable, the Prayer for withdrawal of the appeal, is of no assistance to respondents, who had preferred the cross-objections. *Ashok Kohli Vs. Prakash Chand, I.L.R. (1995) M.P. 586*

-Order 41 Rule 22- Cross appeal competent- Deceased 17 years of age at the time of accident-Award of Rs. 70,000 passed by Tribunal enhanced to Rs. 1,00,000/- on the ratio of recent trend of Courts : *M.P. State Road Transport Corporation Vs. Rajnikant, I.L.R. (2000) M.P. 863*

– **Order 41 Rule 22** – Cross-appeal or cross-objection – Respondent not precluded from challenging an adverse finding of trial Court even though he may not have appealed against any part of the decree – Rent note executed to secure interest on the amount – As the sale was not intended to actual sale defendant never became landlord – Hence not entitled to any benefit of rent note – Decree of trial Court confirmed : *Sajan Kumar Rasia Vs. Roopsingh, I.L.R. (2001) M.P. 822,*

-Order 41 Rule 22 – Cross objection by respondent against co respondent – Maintainability – Order 41 rule 33 – Non appealing respondent – When entitled to get relief – Motor Vehicles act, 1939, Section 96 – Insurer not disclosing material facts – Insurance Company entitled to avoid contract – Insurer exempted from liability – Decree becoming final against insurer – Insurance Company Is exempted from liability for payment--Words "a driver who was driving the motor vehicle on the insured's order or with his permission" in insurance policy-Scope and implications of : *The British India General Insurance Co. Ltd., Bombay Vs. Ramnath, I.L.R. (1960) M.P. 88 (D.B.)*

– **Order 41 Rule 22, Section 96**—Energy line left un-insulated as a result stay wire got electrified—Death of 18 years old son due to electrocution—Suit for

compensation—Appeal for enhancement and cross-objection by Electricity Board—Cantakerus attitude of the Board deprecated cross-objection dismissed : *Smt. Gindiya Bai Vs. Chairman, M.P.E.B., I.L.R. (1992) M.P. 278*

– **Order 41 Rule 22, Section 96**—First Appeal and cross-objection—Energy line left un-insulated as a result stay wire got electrified—Death of 18 years old son due to electrocution—Suit for compensation—Appeal for enhancement and cross-objection by Electricity Board—Cantakerus attitude of the Board deprecated cross-objection dismissed—Fatal Accidents Act, Indian, 1855—Section 1A—Compensation is not limited to the cash payment which the deceased may be expected to make for support of the claimants—Multiplier—Out moded rule—Common Law of equity, Justice and good conscience should be applied in awarding compensation—Award enhanced suit decreed in toto : *Smt. Gindiya Bai Vs. Chairman, M.P.E.B., I.L.R. (1992) M.P. 278*

- **Order 41 Rule 22, Section 96, Letter Patent, Clause X, XIII, Constitution of India Articles 227, 226**—Intra—Court Appeal from writ Court order—Different from an LPA from First Appeal under Section 96 CPC—Cross-objection or cross-appeal—Not maintainable—Respondent cannot await service of notice to file cross appeal in LPA—Respondent may prefer LPA subject to Rule XIII for condonation of delay—May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order—Reference answered accordingly : *Jabalpur Development Authority Vs. Y.S. Sachan & Ors., I.L.R. (2004) M.P. 231 (F.B.)*

– **Order 41 Rule 22 - Section 96 – First Appeal – Cross Objection** challenge made to adverse finding and also the decree of refund of earnest money – Contract Act, 1872 – Schedule I, Article I-A – Cross-objection assailing decree of refund of calculated sum is in-fact a cross-appeal – Not Maintainable without payment of ad-valorem Court Fees – Order 6, Rule 1 and Order 8 Rule 2,3,4 and 5 – Written statement adopting written statement of other defendant without verification – Not a written statement in the eye of Law – Hindu Law – Joint Hindu Family Property – Alienation by father as Karta – Legal necessity – Vendee entered into agreement after through enquiry about legal necessity – Finding given by Trial Court as to legal interfered not intended with – Specific Relief Act, 1963 – Section 9,10 and 20 Specific performance of contract – Suit for – Decree cannot be refund on ground that the property is in possession or that price of the property has increased during pendency of suit – Section 2(2) of C.P.C. – Decree – Obtained in a collusive suit to avoid execution of sale agreement – Vendee not a party – Decree not binding on vendee – Decree for specific performance cannot be refund : *Babulal Agrawal Vs. Smt. Jyoti Shrivastava, I.L.R. (2001) M.P. 192 (D.B.)*

– **Order 41 Rule 22, Section 100**— Second Appeal and Cross-objection - Suit for declaration of title possession and mesne profit – Land Revenue Code, M.P., 1959, Sections 158, 185, 189, 190 and Transfer of Property Act, 1882, Section 53-A –

Bhumiswami rights – Land mutated on basis of an unregistered sale-deed – Unregistered sale-deed does not pass any title – Defendant does not claim to be occupancy tenant – Cannot be conferred bhumiswami rights as not covered under any of the clauses envisaged in Section 185 of M.P. Land Revenue Code – Order of mutation illegal – Has to be ignored – Part performance – Possession of defendant not proved to be in part performance of agreement of sale – Plea of part performance not tenable : *Ram Lal Vs. Mangal I, I.L.R. (2001) M.P. 1542*

– **Order 41 Rule 22**, Section 100–Second Appeal and cross-objection–Ejectment suit – Accommodation Control Act, M. P., 1961–Sections 12(1)(c), 12(1)(e) and 12(1)(m) – Residential accommodation –Converted by tenant to run school–It is an act inconsistent with the purpose for which accommodation was let–Tenant incurred liability u/s. 12(1)(c) of the Act–Bonafide need of the landlady–Test–Availability or non-availability of suitable alternative accommodation–Plaintiff cannot be compelled to occupy a house which she does not feel to be suitable–Ground floor in occupation of landlady being used for running a school–Cannot be said to be alternative accommodation–Cross-objection allowed–Decree under Sections 12(1)(c) and 12(1)(e) granted in favour of plaintiff : *Rajendra Donald Vs. Smt. Violet Singh, I.L.R. (1992) M.P. 564*

- **Order 41 Rules 22, 11, 21** and Order 42 Rule 2, Section 100–Cross-objection filed under Order 41 Rule 22 of the Code can only be heard on substantial question of law–Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him–Procedure provided in Rule 11 of Order 41 read with Order 42 Rule 2 of the Code–Mandatory–In absence of adherence cross-objection can not be entertained. *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

– **Order 41 Rules 22, 33** and Sections 96, 100, Accommodation Control Act, 1961, Sections 12(1)(a), 12(1)(e)–Suit for eviction–Eviction decree passed–For supporting the decree on other ground it is not necessary for plaintiff to file cross-objection–Appellate Court has power to substitute the ground of eviction–Eviction decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court–No illegality–Question answered against appellant : *Kamal Kumar Vs. Smt. Imartibai and Others, I.L.R. (2003) M.P. 215*

- **Order 41 rule 22 (1)**, Explanation (as amended) and Court - fees Act (VII of 1870) - Cross-objection against a finding - Whether ad-vaiorem Court-fee is payable thereon under Article 1 of Schedule 1 of the Court - fees Act : *Ismail Khan Vs. Shankerlal Chourasia, I.L.R. (1984) M.P. 103, .*

-Order 41 Rule 22(4) -Appeal withdrawn or dismissed for default-Duty of Court to determine cross-objection even after happening of the event-Duty continues till cross objection disposed of- Right to have cross-objection decided not lost unless there is some overt act showing inclination to put an end to it-Word "default" in – Includes default of appearance or in doing some thing which would be necessary for enabling Court to hear appeal : *Bhavarsingh Vs. Sonibai, I.L.R. (1962) M.P. 648 (D.B.)*

-Order 41 Rule 23 - Decree on special oath-It is on preliminary point Remand order in appeal is under Order 41, Rule 23 and appealable : *Ratanlal Vs. Nathulal, I.L.R. (1962) M.P. 968*

-Order 41 rule 23 - Fiction created by section 116-A(2) of Representation of the People Act--Order 41, rule 23, Civil Procedure Code automatically attracted-Party can support order of tribunal on ground decided against him : *Smt. Sarla Devi Pathak Vs. Shri Birendrasingh & Ors., I.L.R. (1959) M.P. 910 (D.B.)*

- Order 41 Rule 23 and Section 11 -Order of remand-Not liable to challenge in appeal against the decree after remand -Order of remand-Res judicata in subsequent appeal before the same Court-Principle of res-judicata applicable to interlocutory orders-Section 105(2) and Letters Patent, Clause 10 - Remand order by High Court-Not appealable- Bar of sub-section (2) of Section 105 not applicable to High Court in proceedings by way of appeal under Letters Patent after remand- Powers of lower Court after remand - Dependent upon specification in the remand order - Cannot go outside and decide questions falling outside those limits-Practice-Subsequent events - Appellate Court, Power of, to take change of law into consideration-Abolition of Proprietary Rights Act, 1950, M.P.-Section 4-Transfer of possession of Sir land-Transferee does not become occupancy tenant-Suit by holder of Sir land-Maintainability - Jus tertii-No defence-Condition under which it is available-Suit in all stages to be tried on cause of action existing at the commencement of lis-Defendant cannot take advantage of transfer of plaintiff's right to third person : *Budhilal Vs. Mahant Jagannathdas, I.L.R. (1965) M.P. 471 (D.B.)*

– **Order 41 Rule 23-A** – Matter remanded back to lower appellate Court to powered in accordance with law : *Abhay Kumar Jain Vs. Santsoh Kumar, I.L.R. (2001) M.P. 216*

– **Order 41 Rule 23-A** and Court Fees Act (VII of 1870) – Section 13 – Refund of Court Fees on remand – Case remanded under Order 41 Rule 23-A an appeal arising from cases already disposed of – Direction for refund of Court fees cannot be made : *Ghanshyam Vs. State, I.L.R. (2001) M.P. 1707*

– **Order 41 Rule 23-A** – Remand of the case – High Court not expressing any view on merits – Trial Court acts within the direction in remand order and passes judgment – Appellate Court’s : *Ghasiram Vs. Kunjilal, I.L.R. (1990) M.P. 577,*

- **Order 41 rule 23 - A** and Court-fees Act (VII of 1870), Section 13 and Section 151 - Refund of Court-fees Remand of case by Appellate Court under Order 41, rule 23 - A Refund of Court - fees paid on memo of appeal cannot be ordered - Inherent powers to order refund - When can be exercised : *M/S Kiran Electricals Maharani Road, Indore Vs. State Bank Of Indore, I.L.R. (1983) M.P. 596 (D.B.)*

– **Order 41 Rule 23-A**, Section 96– First Appeal – Acquisition of agriculture land – Land Acquisition Act, 1894, Sections 4, 6, 9, 11, 23, 28, 351-A – Compensation – Reference for determination – Award based on sale deeds of land in the vicinity – Appeal for enhancement - Sale deeds can not be read in evidence in absence of examination of vendor or vendee to substantiate the sale-deed and to prove consideration thereunder – Award set aside – Case remitted for reconsideration – Court Fees Act, 1870, Section 13 – Refund of Court Fees on remand – Case remanded under Order 41 Rule 23–A in appeal arising from cases already disposed of – Direction for refund of Court fees cannot be made: *Ghanshyam Vs. State, I.L.R. (2001) MP 1707 (D.B.)*

- **Order 41 rule 23 - A** and Section 151 and Court-fees Act (VII of 1870), Section 13 - Refund of Court-fees Remand of case by Appellate Court under Order 41 rule 23 - A Refund of Court - fees paid on memo of appeal cannot be ordered - Inherent powers to order refund - When can be exercised : *M/S Kiran Electricals Maharani Road, Indore Vs. State Bank Of Indore, I.L.R. (1983) M.P. 596 (D.B.)*

- **Order 41 Rules 23-A**, 27 and Section 100, Accommodation Control Act, M.P. (XLI of 1961) , Section 12(1)(b) and 12(1)(e) - Suit for eviction dismissed – Allowed by appellate Court taking additional evidence and appeal by purchaser of the property though not party to the suit in trial Court – Legality – Order 41, Rule 27(b) – Application under – Should be decided after hearing the case on merits – Discretionary power contend on the appellate court to admit additional evidence cannot be exercised without giving opportunity to the other side to rebut the same – Error committed by appellate Court while admitting additional evidence and pronouncing the judgment simultaneously – Impugned decree set aside – Order 41 Rule 23-A – Matter remanded back to lower appellate Court to power in accordance with law : *Abhay Kumar Jain Vs. Santsoh Kumar, I.L.R. (2001) MP 216*

-**Order 41 Rule 25**-Remand lapse of time likely to prejudice respondents-Not proper to remand the case-Words & Phrases ‘time requisite’-Means time properly required- It would include only that time which the Court spent in preparing certified copy without any fault on the part of the party : *Khushal Prasad Vs. Mulchand, I.L.R. (2000) M.P. 173,*

- **Order 41 rule 25 and Order 22 rule 2 and 9** - Appellate Court remitting case of Trial Court for remitting its findings on certain issues - Hereafter, deftd. died - Application for bringing his legal Representatives on record filed in Trial Court is legal and Order passed thereon enures for appeal - Such an application could legally be made before Trial Court as well as Appeal Court. Trial Court trying issues remitted to it - Not acting as agent of appellate Court - Is separate entity distinct from Appellate Court : *Ramlal Vs. Ganesh Prasad I.L.R. (1987) M.P. 763*

-**Order 41 Rule 27**-Additional evidence - Condition when it is admissible : *Habib Bhai Vs. Pyarelal I.L.R. (1966) M.P. 248 (D.B.)*

- **Order 41 rule 27** - Admission of additional evidence in the appellate Court - When can be allowed : *Smt. Sundar Bai Jain Vs. Moolchand Agarwal, I.L.R. (1984) M.P. 593,*

-**Order 41 Rule 27** - Additional evidence admissible when necessary to do complete justice : *Inderan Vs. Ramdin & Ors., I.L.R. (1961) M.P. 603*

- **Order 41 rule 27** - No reason given for not producing insurance policy in lower Court - Policy not required to pronounce judgment - Policy cannot be admitted as additional evidence : *The "Ad Hoc Committee, The Indian Insurance Companies Association Pool, Bombay Vs. Smt. Radhabai, I.L.R. (1977) M.P. 61, (D.B.)*

- **Order 41 Rule 27** - Production of additional document – Defendant Bank did not exercise due diligence to produce the document in the Trial Court – Prayer for taking additional document on record at appellant State – Deserves rejection : *State Bank of Indore Vs. Satyanarayan Bajaj, I.L.R. (2001) M.P. 1903,*

-**Order 41 Rule 27**–Order passed by Sub-Divisional Magistrate in Revenue case–Is a public document–Came into existence during pendency of the second appeal–Cannot be overlooked–Document admitted in evidence : *Mst. Sukhrani Vs. Chhotelal, I.L.R. (1992) M.P. 465*

- **Order XLI Rule 27** - New clause added by Nagpur High Court-Not retrospective- Term "any other substantial cause" in - Confers wide discretion on appellate Court-Additional evidence admissible if ends of Justice so require-Condition necessary for admitting additional evidence : *Sobharam Vs. Rajkumar, I.L.R. (1957) M.P. 344 (D.B.)*

-**Order 41 rule 27** - Admissibility of Additional evidence-Not dependent upon relevancy or materiality of evidence but upon the requirement of Court in pronouncing judgment- To bring case under clause "any other sufficient cause" -

Requirement of the Court is still necessary : *Mst. Kashibai Vs. Tulsabai, I.L.R. (1960) M.P. 258 (D.B.)*

– **Order 41 Rule 27, Section 96** – First Appeal – Suit for eviction or ground of bona fide need and arrears of rent – Production of additional document – Defendant bank did not exercise due diligence to produce the document in the Trial Court – Prayer for taking additional document on record at appellate stage – Deserves rejection – Accommodation Control Act, M.P., 1961, Section 12(1)(a) and (f) – Bona fide need – Plaintiff Partner in another firm would not by itself be sufficient to negative the need of the suit accommodation for his own business – Non availability of reasonably suitable alternative accommodation – Plaintiff entitled to decree for eviction – Letters by landlord for reasonable rent – No bearing on the issue relating to bona fide need : *State Bank of Indore Vs. Satyanarayan Bajaj, I.L.R. (2001) M.P. 1903*

– **Order 41 Rule 27 and Section 100**–Second appeal–Samaj Ke Kamjor Wargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P., 1976–Section 4–Order passed by Sub-Divisional Magistrate in Revenue case–Is a public document–Came into existence during pendency of the second appeal–Cannot be overlooked–Document admitted in evidence–Nominal sale-deed executed to secure loan but possession continued with the plaintiffs–Revenue entries showing continuous possession of plaintiffs–Plaintiffs entitled to relief of declaration and injunction by virtue of Section 5–Judgment & decree of Courts below set aside–Plaintiff's suit decreed. *Mst. Sukhrani Vs. Chhotelal, I.L.R. (1992) M.P. 465*

- **Order 41 rule 27 and Order 6 rule 17, as amended** - Scope for allowing an application for amendment of the written statement at the appellate stage - Production of additional evidence at the appellate stage - When liable to be allowed - Hindu Law and Evidence Act, 1872, Sections 101 and 104 - Plea of partition - Burden of proof - Scope for drawing reasonable inference where evidence obliterated by passage of time : *Jhangloo Vs. Tularam, I.L.R. (1985) M.P. 550 (D.B.)*

- **Order 41 Rule 27** and Order 6 Rule 17 and Section 96, Constitution of India, Article 227–Additional evidence at first appellate stage–Documents already on record–Application mis-conceived–However the same has to be decided either way : *Smt. Gindia Bai Vs. Elfort Ltd. Co., I.L.R. (2005) M.P. 1146*

– **Order XLI Rule 27**, Order XIII Rules 1 and 2 and Explanation VIII, Section 11, 100–Suit for eviction–Second Appeal–Application for taking additional document on record–Rejection of prayer by trial Court–Affirmed in revision by the District Judge–Not binding on the High Court nor operates res judicata when appeal is filed against the decree–Accommodation Control Act, M. P. 1961–Sections 12(1)(e), 23 and

Evidence Act, 1872 Section 74—Public document—Certified copy of registered sale-deed—Sought to be brought as additional evidence—Document essential to put the controversy at rest—Document can be accepted as evidence—Defendant tenant admitted that he paid rent to plaintiff—Landlord-tenant relationship established—bona-fide requirement found proved by the trial Court—Suit for eviction decreed : *Nawab Saheb Vs. Firoz Ahmed, I.L.R. (2003) M.P. 222*

-Order 41 Rules 27, 23-A and Section 100, Accommodation Control Act, M.P. (XLI of 1961) , Section 12(1)(b) and 12(1)(e) - Suit for eviction dismissed – Allowed by appellate Court taking additional evidence and appeal by purchaser of the property though not party to the suit in trial Court – Legality – Order 41, Rule 27(b) – Application under – Should be decided after hearing the case on merits – Discretionary power contend on the appellate court to admit additional evidence cannot be exercised without giving opportunity to the other side to rebut the same – Error committed by appellate Court while admitting additional evidence and pronouncing the judgment simultaneously – Impugned decreed set aside – Order 41, Rule 23-A – Matter remanded back to lower appellate Court to power in accordance with law : *Abhay Kumar Jain Vs. Santsoh Kumar, I.L.R. (2001) MP 216*

-Order 41 rule 27(1)-Conditions under which appellate Court can admit additional evidence-Same principle governs disposal of application for amendment : *Khemchand Vs. The Government Of M.P., I.L.R. (1974) M.P. 353*

-Order 41 Rule 27(b) - "Ability to pronounce judgment"-Does not mean any judgment but one which is satisfactory to the Court delivering it-Limitation Act-Article 144 - Defendants claiming title by adverse possession - Article 144 applies to the suit-Article 142--Principle that possession follows title-Applicable in case of uncultivated grass lands- Jus-terti-A party cannot set up title of a person which is negated in a suit between that person and party in a suit in which that plea is raised : *Mulaimchand Vs. Baijnath Prasad, I.L.R. (1964) M.P.597*

-Order 41 rule 33-Not liable to be invoked by the insured-Would defeat the provision of the Act : *New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546 (D.B.)*

-Order 41 rule 33-Discretion under-Is very wide-Enables Court to exercise power to prevent justice being defeated-Can be exercised in favour of a party who has not appealed : *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha I.L.R. (1970) M.P. 462 (D.B.)*

-Order 41 rule 33-No unrestricted power to re-open decrees which have become final is conferred : *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha I.L.R. (1970) M.P. 462 (D.B.)*

-Order 41 rule 33 -Non-appealing respondent-When can take advantage of the provision and claim relief : *Bhawarlal Vs. Seth Mathuraprasad & Anr., I.L.R. (1960) M.P. 458 (D.B.)*

-Order 41 rule 33 - Non-appealing respondent-When entitled to get relief : *The British India General Insurance Co. Ltd., Bombay Vs. Ramnath, I.L.R. (1960) M.P. 88 (D.B.)*

– **Order 41 Rule 33** – Plaintiff poor widow fighting for a just cause – Could not get possession even after succeeding in three civil suits – In exercise of discretionary power trial court directed to issue warrant for delivery of possession to plaintiff : *Yashwant Rao Khogal Vs. Smt. Jahoorbi, I.L.R. (2001) M.P. 709,*

– **Order 41 Rule 33** – Power though discretionary should not be declined to be exercised solely because no appeal or cross-objection has been filed – Mesne profit awarded for the period plaintiff was kept out of possession – Impugned judgment and decree confirmed with modification : *Yashwant Rao Khogal Vs. Smt. Jahoorbi, I.L.R. (2001) M.P. 709,*

– **Order 41 Rule 33 and Section 100, Transfer of Property Act, (XXI of 1929)**
– Section 52 and Limitation Act, Indian, 1963, Article 65 – Suit for possession Suit land sold during pendency of suit – Sale hit byh doctrine of lis pendens as envisaged under Section 52 of the Act – Adverse possession – Defendants possession discontinued by virtue of execution of decree of Civil Court – Subsequent dispossession o plaintiff during second round of litigation – Possession of defendant not adverse so as to perfect title – Finding of trial Court proper – Order 41 Rule 33 – Plaintiff poor widow fighting for a just cause – Could not get possession even after succeeding in three civil suits – In exercise of discretionary power trial Court directed to issue warrant for delivery of possession to plaintiff – Order 41 Rule 33, C.P.C. – Power though discretionary should not be declined to be exercised solely because no appeal or cross-objection has been filed – Mesne profit awarded for the period plaintiff was kept out of possession – Impugned judgment and decree confirmed with modification : *Yashwant Rao Khogal Vs. Smt. Jahoorbi, I.L.R. (2001) M.P. 709*

– **Order 41 Rule 33 and Order 43 Rule 1(u)** - Appeal against order of remand-Deficit court fees-Counter claim- Rejection of, without affording opportunity to supply requisite stamp-paper-Remand- Power rightly exercised by appellate Court. *Mohanlal Vs. Saukhilal ; I.L.R.(2002) M.P. 725,*

-Order 41 Rules 33 and 4 -Applicable only when appeal properly presented : *Shrikishan Vs. Deokinandan, I.L.R. (1961) M.P. 597*

– **Order 41 Rules 33, 22** and Sections 96, 100, Accommodation Control Act, 1961, Sections 12(1)(a), 12(1)(e)–Suit for eviction–Eviction decree passed–For supporting the decree on other ground it is not necessary for plaintiff to file cross-objection–Appellate Court has power to substitute the ground of eviction–Eviction decree passed by trial Court under Section 12(1)(a) altered to one under Section 12(1)(e) in appeal by appellate Court–No illegality–Question answered against appellant : *Kamal Kumar Vs. Smt. Imartibai and others, I.L.R. (2003) M.P. 215*

- **Order 41 Rule 40** (as inserted by Amendment Act of 1976) - Application for joinder of party with an application for condonation of delay - Plea of inadvertent typing mistake - Party was impleaded in original suit and also interested in result of appeal - Omission shown to be inadvertent – Court should not resort to mere technicalities but advert to imparting substantial justice - Ought to have been made party to appeal in interest of justice, name of party directed to be joined. *Smt. Sugnibai Vs. State of M.P., I.L.R. (1995) M.P. 689*

- **Order 42 Rules 1 and 22**, Section 100-Respondent's right to challenge adverse finding in second appeal under Order 42 Rule 22-Is controlled by Section 100 read with Order 42 Rule 1 : *Lal Captanlal Vs. Board Of Revenue & Ors., I.L.R. (1999) M.P. 1*

- **Order 42 Rule 2**, Order 41 Rules 11, 21, 22 and Section 100–Cross-objection filed under Order 41 Rule 22 of the Code can only be heard on substantial question of law–Respondent can also attack the Decree in second appeal under Section 100 as against that part of the decree not favourable to him–Procedure provided in Rule 11 of Order 41 read with Order 42 Rule 2 of the Code–Mandatory–In absence of adherence cross-objection can not be entertained. *Vijay Prakash Vs. Sundar Lal, I.L.R. (1992) M.P. 345*

- **Order 42 Rules 22** and 1, Section 100-Respondent's right to challenge adverse finding in second appeal under Order 42 Rule 22-Is controlled by Section 100 read with Order 42 Rule 1 : *Lal Captanlal Vs. Board Of Revenue & Ors., I.L.R. (1999) M.P. 1*

-**Order 43 Rule 1**- Appeal- Injunction to manufacture labels/wrappers of Bidi deceptively similar as used by plaintiff- Deciding factor-Not the contents but design-Majority of bidi customers may not be literate- Great likelihood of purchaser being misled about the one being the other- Plaintiff justifiably aggrieved- Order of trial Court not legally or factually faulty : *M/S. Samrat Bidi Works, Rajnandgaon Vs. M/s Dayalal Maghji & Co., Raipur, I.L.R. (1999) M.P. 961*

–**Order 43 Rule 1**, Order 1 Rule 10 and Order 6 Rule 17–Appeal–Joinder of parties–Suit property ancestral–Suit for possession between heirs–Other heirs are

necessary parties—Application rightly allowed : *Sukhram Vs. Sarjubai, I.L.R. (2005) M.P. 251*

– **Order 43 Rules 1** and Order 9 Rule 7, 13, Sections 96, 96 (2)—Suit for partition—Counter claim by defendant—Ex-parte decree against defendant—Application for setting aside—Extent of limitations—When an application under Order 9, Rule 13 CPC is dismissed only remedy available is an appeal in terms of Order 43 Rule 1—Once such an appeal is dismissed appellants cannot raise same contention in first appeal as it may lead to conflict of decision—Right of defendant to assail judgment and decree on merit did not fall for consideration in any of the cases—Such a right shall not be curtailed unless statute expressly or by necessary implication say so—Case remitted back to High Court for consideration of merit : *Bhanu Kumar Jain Vs. Archana Kumar & Anr., I.L.R. (2005) M.P. 1 (F.B.)*

- **Order XLIII Rule I**, Order XXXIII Rules 5 and 7, Section 149 -Suit or appeal filed in forma pauperis Court-fees paid during pendency of lis or Court-fees paid after rejection of application-Absence of fraud or mala fides-Plaint or appeal deemed to be filed on the date on which application for permission to sue or to appeal was filed : *Ramchandra Vs. Motilal, I.L.R. (1958) M.P. 244 (D.B.)*

– **Order 43 Rule 1** and Order 39 Rules 1 & 2—Order refusing to appointment of arbitrator and temporary injunction against recovery of telephone bills—Telegraph Act, Indian Section 7-B and Arbitration Act, Indian, 1940, Section 41—The bar of Civil Courts jurisdiction is to modify, remit and set aside the award or to make it a rule of the Court—Appointment of arbitrator is not barred and equally the Court has jurisdiction to grant temporary injunction—Application pending for arbitration—Appellant entitled to get order of temporary injunction. *Dr. J.N. Seth Vs. Union Of India, I.L.R. (1992) M.P. 576*

-**Order 43 Rule 1-A** – Right of appeal extends under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtained – Appeal shall be construed to have been filed under Order 43, Rule 1-A, C.P.C. – However, Second Appeal does not lie under Section 104, Sub-section (2), hence not maintainable: *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R. (1991) M.P. 388*

-**Order 43 Rule (1) (a)**, Order 7 Rule 10, Section 9 and Companies Act, 1956 Section 257, 284—Company Law—Notice for Substituting Director for the unexpired period due to be held by removed director—Returned without allowing how the notice is not in accordance with law—Civil suit—Jurisdiction of Civil Court—Rule is that the remedy provided in the Act is the exclusive remedy with regard to a right—Right of suit not taken a way expressly or impliedly—Suit must be held to be maintainable—

Order of trial court/retraining plaint set aside : *Sir J.P. Srivastava & Sons (Rampur) Pvt.Ltd. Vs. M/s Gwalior Sugar Co.Ltd., I.L.R. (2003) M.P. 634*

-Order 43 Rule 1(a), Order 9 Rule 13 –Appeal–Setting aside ex-parte decree– After availing repeated adjournments defendants allowed the case to proceed ex-parte–Apparent negligence, inaction and want of bonafide–Trial Court rightly dismissed the application : *R.D. Rubber Industries Vs. State, I.L.R. (2003) M.P. 903*

- Order 43 rule 1 - A and Order 22 rules 3 and 5, Section 96, 104 and 115 - Application for substitution under Order 22 rule 3 on the basis of a will rejected without making any enquiry - Suit held to have abated and consigned to record - Order is not appealable - Revision lies against such an order - One part of the order not appealable but the other part is appealable as decree and second part is necessary consequence of first part - The former part merges into decree and is open to challenge in the appeal filed against the decree - Revision against earlier part not tenable : *Mitthulal Vs. Badriprasad, I.L.R. (1984) M.P. 364 (F.B.)*

-Order 43 rule 1-A and Order 23 rule 3 and 3 A and Section 96 (3) - Appeal in cases where compromise decree is passed - Tenability of - Effect of bar as regards appeal in view of Sections 96 (3) - The words" with the consent of parties" used in Section 96 (3) - Meaning of - Interpretation of Statutes - Construction of two apparent conflicting provisions - Manner of resolving such conflict - Section 115 - Revision against compromise decree - Tenability of - Contract Act, Indian, 1872 - Section 23 - Compromise agreement affecting properties of other co-sharers -- Unlawful : *Thakur Prasad, Vs. Bhagwandas, I.L.R. (1985) M.P. 310 (D.B.)*

-Order 43 Rule 1-A, Order 23 Rule 3, 3-A and Sections 115, 151 and Constitution of India, Articles 226/227– Compromise decree – Application for setting aside compromise decree allowed – Civil revision – Dismissed – Writ petition – Court is not helpless if compromise is obtained by perpetrating fraud on the Court – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R. (2001) M.P. 1450*

– Order 43 Rule 1-A and Order 23 Rule 3-A – Section 96, Section 100, Section 104, Sub-Section (3), sub-section (2) –Maintainability of second appeal – Compromise decree passed by the trial Court between the original parties to the suit behind the back of the Vendees to this suit property – Provisions of Section 96 (3) of Civil Procedure Code bars a regular appeal – Right of appeal extends of under Order 43 Rule 1-A, Civil Procedure Code against a compromise decree – Leave of the Appellate Court to file appeal obtain. Appeal shall be construed to have been filed under Order 43 Rule 1-A, C.P.C. – However, Second Appeal does not lie under

Section 104, Sub-section (2), hence not maintainable – Person who was not the parties to the suit and his rights have been affected by the compromise decree – May file a suit for setting aside the said decree – The words ‘Compromise’ and ‘Parties’ – Means & includes : *Sarswati Prasad Vs. Smt. Sukhmanti, I.L.R. (1991) M.P. 388*

- **Order 43 rule 1 (c)** - Words "rejecting an application" in - include dismissal for default or rejection in any other situation whatever : *Nathuprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131, (F.B.)*

- **Order 43 Rule 1 (c)**–Application for restoration of suit held not maintainable hence dismissed–Miscellaneous appeal against such dismissal also is not maintainable : *Munna, S/O Ganga Prasad Verma Vs. Bhageshwari & Ors. I.L.R. (2005) M.P. 1080*

- **Order 43 Rule 1(C)** and Order 9 Rules 8 and 9 -Dismissal of suit for non-appearance of plaintiff and rejection of application for restoration-No affidavit filed in support of application nor the plaintiff entered witness box to show sufficient causes for non-appearance-Approach of Trial Court proper-No interference called for : *Murti Shree Datta Mandir (Maharaj) Shankarji & Balaji Vs. Zamkabai, I.L.R. (2000) M.P. 610*

- **Order 43 Rule 1 (c)** and Order 9 Rule 9, Order 7 Rule 11, Stamp Act Indian 1899, Section 35–Application for restoration of suit held not maintainable hence dismissed–Miscellaneous appeal against such dismissal also is not maintainable : *Munna, S/O Ganga Prasad Verma Vs. Bhageshwari Bai, I.L.R. (2005) M.P. 1080*

–**Order XLIII Rule 1(d)**–Appeal under–Trial Court fell in error in rejecting the application as barred by limitation : *M/S. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

- **Order 43 Rule 1(d)**, Order 5 Rules 17, 19 and Order 9 Rule 13–Ex-parte decree - Service by affixing summons - Service not verified either by affidavit of process server or by examining him - Mandatory provisions not followed - Period taken in obtaining certified copy of decree deserve to be exchanged even though certified copy was not necessary–Ex-parte decree set-aside - Appeal allowed : *Smt. Shakuntala Vs. Basant Kumar Thakur; I.L.R. (2002) M.P. 931*

- **Order 43 Rule 1 (d)** and Order 6 Rule 17, Order 9 Rule 13 and Limitation Act Indian 1963, Section 5–Application for setting aside ex-parte decree–Subsequent amendment in plaint –Re-service on defendant is always desirable but every amendment does not entitle a defendant to re-service–Application for condonation of delay not filed nor prayed for–Lack of factual foundation as well as legal ingredients–Ex-parte judgment and decree does not warrant interference : *Hari Ram Keer Vs. State Bank Of India, I.L.R. (2005) M.P. 957*

- **Order 43 Rule 1(d)**, Order 9 Rules 6, 13 and Order 5 Rules 9, 19-A(2), 21, 25, 25-A, Civil Procedure Code (Amendment) Act (CIV of 1976) and Limitation Act, Indian (IX of 1908), Section 5 and Article 123–Order 5 Rule 9–Service of Summons–Record not showing whether defendant was properly served or not–Service of Summons in the ordinary manner cannot be dispensed with–Order 5 Rules 9 and 19-A(2) substituted service–Additional mode of service–Cannot be deemed to 'due service'–Order 9 Rule 6–Powers of proceeding *ex parte* against defendant–Cannot be invoked where defendant resides outside jurisdiction of the Trial Court–Application under Order 9 Rule 13 of the Code for setting aside *ex parte* decree–Rejection by Trial Court–Improper–Order 43 Rule 1(d) of the Code–Appeal under–Trial Court fell in error in rejecting the application as barred by limitation–Limitation Act–Section 5 and Article 123–In case where defendant is not properly served limitation starts from the date of knowledge–*Ex parte* judgment and decree set aside–And matter remitted back to the Trial Court for decision afresh. *M/s. Electric Construction And Equipment Co. Ltd., New Delhi Vs. Premali Wallace Ltd., I.L.R. (1992) M.P. 197*

- **Order 43 Rule 1(d)** and Order 9 Rule 13 -Appeal-Hindu Marriage Act, 1955-Section 13-Divorce petition by husband-Decreed *ex parte*-Application for setting aside *ex parte* decree- Rejection of-In case of village Ladies Court has to be considerate-Order 9 Rule 13, C.P.C. : Sufficient cause- Cause shown to be transport problem-Sufficient cause- *Ex parte* decree set aside-Case remanded : *Tibabai Vs. Kadwa, I.L.R. (2000) M.P. 747,*

- **Order XLIII Rule1(d)** and Order IX Rule 13–Appeal–Against order dismissing the application for setting aside *ex parte* decree–Order IX Rule 13–No finding as to from which date appellants stopped attending the Court–Presiding Officer was also on leave prior to drawing of final decree–Replies etc. have been filed by the non-applicants–Amendment applications will pending decision evidence not led by the parties nor the parties were required to lead evidence–Order of Trial Court improper–Order set aside and matter remitted to the Trial Court for fresh decision allowing respective parties to lead evidence. *S.S. Ramchand Vs. Dhanendra Kumar, I.L.R. (1992) M.P. 41*

- **Order 43 Rule 1(e)**, Order 9 Rule 9 and Order 17 Rules 2 and 3– Appeal – Rejection of application for setting aside *ex parte* dismissal of suit at evidence stage for non-appearance of party though counsel appeared and sought adjournment – Order 9 Rule 9 and Order 17 Rules 2 and 3 – Mere presence of counsel seeking adjournment would not mean presence of party as envisaged in clauses (a) and (b) of Rule 3 of Order 17 – Court can proceed only under Rule 2 and not under Rule 3 of Order 17 in case it refuses to grant adjournment – Order 9, Rule 9 applicable – Impugned Order set aside – Case remanded to the trial Court : *State Bank of India Vs. Nandram, I.L.R. (2001) M.P. 544*

-Order 43 rule 1(j)-Does not provide for appeal against order confirming sale- Appeal lies against order under Order 21, rule 92, setting aside or refusing to set aside sale : *Balaram Vs. Durgalal, I.L.R. (1970) M.P. 624 (D.B.)*

- Order 43 Rule 1(j)- Appeal under Order 21 Rules 66, 84, 85, 86- Auction sale in execution of decree for recovery of money- Auction purchaser not depositing 25% of the bid on spot- Court issuing notice to auction purchaser that he was to deposit money- Without jurisdiction- If the amount of 25 percent is not deposited in accordance with Rule 84- the property is required to be resold- Where the Code fixes time the court is not entitled to enlarge time in exercise of power under Section 148- Approach of the executing Court is wrong in rejecting objections on the ground that similar objections were earlier rejected- According to Rule 86 the Court is may forfeit the amount deposited by auction purchaser- Non-observance of Rules 84 and 85 of Order 21 makes an auction sale void- What is void cannot be accepted even if it is not challenged by any of the parties within the period of 60 days prescribed in article 127 of the Limitation Act- Court cannot close its eyes because it has to do complete justice between the parties-Impugned sale set aside-Amount deposited by auction purchaser directed to be refunded if an application is filed : *Prakash Chand Rai And Others Vs. State Bank Of Indore And Another, I.L.R. (1999) M.P. 240*

- Order 43 Rule 1(j), Section 47 - Order confirming sale after application under Order 21, rule 90 is dismissed for default of appearance-Order not appealable -Order dismissing application under Order 21 Rule 90 for default of appearance or order dismissing the application for restoration of original application-Order not appealable-Order 43 Rule 1(j)-Does not provide for appeal against order confirming sale-Appeal lies against order under Order 21 Rule 92 setting aside or refusing to set aside sale-Words and Phrases-Word "refusal"-Meaning of : *Gopilal Vs. Sitaram, I.L.R. (1970) M.P. 615 (D.B.)*

- Order 43 Rule 1(j), Order 21 Rule 24, Order 21 Rule 90, Civil Procedure Code (Amendment) Act, 1976 (CIV of 1976), Section 97(2) and Constitution of India, Article 227 – Auction in execution proceeding held after coming into force of amending Act – Order passed by District Judge on objection to the sale – Appeal lie to High Court – Letters Patent Appeal not maintainable against the order passed in appeal by single Judge – Provisions of Order 21 Rule 84, Civil Procedure Code mandatory – Court has no jurisdiction to disturb time scale statutorily prescribed – No excised of jurisdiction under Article 227 unless earlier order passed by High Court non est in law : *M/S. Gangavishan Heeralal Vs. M/S. Gopal Digambar Jain, I.L.R. (1990) M.P. 561 (D.B.)*

– Order 43 Rule 1(k) and Order 22 Rules 9, 11 – Appeal dismissed by First Appellate court as abated – Application for setting aside abatement and substitution of

Legal Heirs dismissed as time barred – Appeal lies under Order 43 Rule 1(k). *Hukumchand Vs. Biharilal (Deceased By Lrs.)*, I.L.R. (1993) MP 206

– **Order 43 Rule 1** (na) and Order 33 Rules 1, 5, 7–Miscellaneous Appeal– Application to file suit as indigent person–Property owned by father of the appellant should not have been taken into consideration while deciding the application– Documentary evidence–Appellant living below poverty line and have no property or sufficient means to pay Court fee–Appellant is an indigent person–Permitted to sue as on indigent person–Order of Trial Court set aside : *Vijay Kumar Pandey Vs. Ashok Leylands*, I.L.R. (2005) M.P. 418

- **Order 43 Rule 1(r)** - REVISION - Decision without jurisdiction - Effect - Party aggrieved by decision filed revision application for injunction instead of appeal - Decision in revision- It is without jurisdiction and unsustainable - Being so, observations made or findings recorded are totally ineffective - Cannot be in any sense regarded as adjudication of lis. *Rahmat Ali Vs. Abdul Razzak*, I.L.R. (1995) M.P. 178

- **Order 43 Rule 1(r)**, Order VII Rule 10 and Section 2(4), 15 and Civil Courts Act, M.P. (XIX of 1958), Sections 7, 15– Return of plaint by Additional District Judge at the stage of final argument – Appeal against – Section 2(4), C.P.C. – Definition of ‘District’ – Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction – A District Court is the Principal Court of original jurisdiction of any district – Sections 7 and 15 of 1958 Act & Section 15, C.P.C. – Distribution memo prepared by District Judge in exercise of statutory powers has the force of law overriding the provision of Section 15, C.P.C. and is operative in respect of valuation of suit – Powers of an additional District Judge with regard to original jurisdiction or appellate jurisdiction are exclusively derived from the distribution memo prepared by the District Judge – Order 7 Rule 10, CPC – Suit for divorce by muslim wife filed before then IIIrd ADJ as per distribution memo – Both parties contested and led evidence – Return of plaint at the stage of final argument on the objection as to jurisdiction – Not maintainable in law as the ADJ himself had Jurisdiction to try and decide the matter as per distribution memo prepared by the District Judge – Impugned order set aside – Case remanded back to the trial Court for decision on merits : *Dr. Yasmin Khan Vs. Sami Ullah Khan*, I.L.R. (2001) M.P. 690

– **Order 43 Rule 1(r) and Order 39 Rules 1 & 2**–Appeal–Order of injunction restraining appellant from raising pakka construction–Appellants in possession of the land by virtue of an agreement of sale–His suit for specific performance is also pending–Unless and until defendant appellant succeed in his suit for specific performance he cannot be allowed to raise construction even if he gives undertaking– Order of injunction cannot be faulted with. *Kishanlal Vs. Ramesh Chandra Gandhi*, I.L.R. (1992) M.P. 661

– **Order 43 Rule 1(r) and Order 39 Rules 1, 2**–Appeal–Temporary injunction– Dwelling house belonging to undivided family of two brothers–Sale deed executed by one brother without partition–second part of section 44 of the Transfer of Property Act becomes applicable–Object is to prevent intrusion of a stranger into family residence–Purchaser not entitled to joint possession or other common or part enjoyment of the house–With holding of interim mandatory injunction would carry a "greater risk of injustice"–Strong prima facie case–Plaintiff entitled to interim injunction : *Devendra Singh Thakur Vs. Smt. Shanti Bai & Others., I.L.R. (2004) M.P. 182*

– **Order 43 Rule 1 (r) and Order 39 Rule 1 & 2** - Temporary injunction–Suit for title declaration on ground of adverse possession–Land in question undisputably a Govt. land–Industrial area developing in the vicinity–Land leased out to Defendant–Except bare allegation in plaint nothing on record to show plaintiff's possession for 35 years–Order of Trial Court set aside–Defendant allowed to raise construction subject to furnishing undertaking : *Gurmeet Singh Sokhi Vs. Subhash Mallik, I.L.R. (2005) M.P. 611*

– **Order 43 Rule 1(r) and Order 39 Rule 1 and 2**– Appeal – Suit for declaration and injunction – Taking over of industrial unit by financial institution for default of repayment of loan – Plaintiff's goods also taken over – State Financial Corporation Act, 1951, Section 29 – Provision envisages adjudication of rights of parties – Plaintiff not party to loan agreement with financial institution nor its properties were pledged – Plaintiff has a right to file a suit for declaration and injunction as regards its own property – Plaintiff made out prima facie case – Trial Court ought to have adjudicated other pre-requisites for grant of injunction – Order impugned set aside – Matter remanded to trial Courts : *Kinetic Engineering Limited Vs. M.P. Finance Corporation, I.L.R. (2001) M.P. 1744*

– **Order 43 Rule 1(r) and Order 39 Rules 1, 2**–Temporary injunction on basis of possession of plaintiff immovable property by its nature incapable of movement–Cannot be put by one party into the hands or pocket of another–Possession is delivered by making declaration and such declaration is evidenced by some document–Clear unequivocal recital in the agreement about delivery of possession–Weight of such recital is not denuded by self serving documents–Transfer of Property Act Section 53-A–Part performance–In part performance of contract plaintiff placed in possession–Though no legal title is acquired plaintiff is entitled to protect possession by filing suit for injunction against vendors and the Court may grant temporary injunction to restrain dispossession of the plaintiff–On the date of suit plaintiff in possession–Plaintiff entitled to temporary injunction–Order of trial Court reversed–Temporary injunction granted : *M/s Chetak Constructions Limited, Indore Vs. Om Prakash, I.L.R. (2003) M.P. 687*

– **Order 43 Rule 1(r) and Order 39 Rules 1 and 2**– Appeal – Suit for injunction – Trade and Merchandise Act, 1958 – Section 29(1) – Defendant using labels so similar to that as plaintiff’s product that innocent purchaser may be misled – In reply to notice defendant under took to amend the label – Case of infringement of plaintiff’s trade mark within the meaning of Section 29(1) of the Act made out – M.P. Foreign Liquor Rules, 1996 – Mere permission of Excise Commissioner under the Rules to use such labels on the product – Inconsequential – Because Excise Commissioner not concerned with the rights of the parties – Injunction order rightly granted – No interference in appeal : *Cox Distillery Vs. Mcdowell & Company Ltd., I.L.R. (2001) M.P. 79*

- **Order 43 Rule 1(r), Order 39 Rules 1 & 2, Section 115 and Constitution of India, Article 227, Amending Act No. 29/1984, Land Revenue Code, M. P. (XX of 1959), Section 117 and Evidence Act, Indian (I of 1872), Section 114(e)**–Ancestor property–Suit for injunction–Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants–Defendant though in possession can only seek order of injunction in an independent suit in a case covered by the provision of Order 39, Rule 1(c), C. P. C.–Order passed in exercise of Appellate power under Order 43, Rule 1(r), C. P. C.–Remedy into invoke High Court’s power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984–Section 114 of the Evidence Act and Section 117 of the M. P. L. R. Code–Presumption–Correctness of these entry can be presumed which are required to be made under the Law–Unless the law required an entry to be made presumption as to correctness of such entry cannot be made–Defendant can only seek injunction in an independent suit–Impugned order set aside to extent. *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

– **Order 43 Rule 1(r), Order 39 Rule 1 & 2 and Section 115, and Hindu Succession Act, 1956, Section 2(1)(c) and 2(2)**–Revision–Appellate Court reversing order of Temporary injunction–Law of inheritance–Plaintiff claiming right through a 'Gond' widow alleging full ownership–'Gond'–A Scheduled Tribe–Provision of Hindu Succession Act do not protanto apply to Scheduled Tribes–Whether according to customary Law widow was entitled to inherit the property of her husband as full owner–To be decided by pleading and proof of such custom–Absence of pleading–Plaintiff not entitled to temporary injunction–Appellate order not open to interference : *Kailash Singh Vs. Mewalal Singh Gond And Ors., I.L.R. (2003) M. P.138*

– **Order 43 Rule 1 (r) and Order 39 Rules 1, 2, 3, 4** –Misc. Appeal–Temporary injunction–Copy of despatch register and postal receipt prima facie cannot be disbelieved–Termination of service–Plaintiff, if succeeds in suit could adequately be compensated–Prima facie case alone would not entitle him to get relief of temporary injunction–Impugned order set aside : *M.P. Cancer Chikitsa Evam Seva Samiti Vs. Sanjeev Saxena, I.L.R. (2004) M.P. 1088*

– **Order 43 Rule 1(u)**, Order 23 Rule 3 and Sections 96(3), 151–Appeal against Order of remand–Inherent power of the trial Court does not extend to reviewing its earlier order–Compromise decree alleged to have been obtained by impersonation and fraud–Appeal against such a decree not barred under Section 96(3) of the Code : *Samant Singh Vs. Sadhu Khan, I.L.R. (1992) M.P. 756*

– **Order 43 Rule 1(u)** and Order 41 Rule 33 - Appeal against order of remand-Deficit court fees-Counter claim- Rejection of, without affording opportunity to supply requisite stamp-paper-Remand- Power rightly exercised by appellate Court. *Mohanlal Vs. Saukhilal ; I.L.R.(2002) M.P. 725,*

- **Order 44 Rule 1,4** and Order 33 Rules 3, Section 96–First Appeal–Forma pauperis–Appellant pardahnashin muslim lady aged about 75 years–Not possible for her to appear in person–Application to file suit or appeal in forma pauperis can be presented by agent–Ought to have been registered as MCC by the Registry–Appeal cannot be thrown merely on technical ground– Enquiry contemplated under Order 33 Rule 3 CPC directed : *Khatun Bi Vs. Habib Khan, I.L.R. (2005) M.P. 64*

-**Order 45 Rule 15**-Provision of mandatory-Executing Court has no jurisdiction to execute till transmission of record by High Court-Order 45 rule 15(2)-Envisages situation when directions regarding Scope and effect executable part of decree are necessary ; *State Of Madhya Pradesh Vs. Firm Haji Sheikh Faizulla Allabux, Rewa, I.L.R. (1973) M.P., 884. .*

-**Order 46 rule 7**-Decree passed by High Court-Is effective by its own force : *Tikaram Vs. Bhaiyalal, I.L.R. (1972) M.P. 630 (F.B.)*

-**Order 46 rule 7**-High Court in control of the case-High Court can pass fresh decree-Even though original Court having no jurisdiction had passed the decree : *Tikaram Vs. Bhaiyalal, I.L.R. (1972) M.P. 630 (F.B.)*

- **Order 46 rule 7 (1)** - Power to make reference discretionary when no application made by party - But obligatory when application made - Condition to be satisfied before making reference - Reference can be made if opinion of subordinate Judge to be wrong - Provincial Small Cause Courts Act - Schedule II, Article 41 - Applicability : *Lala Ramnarayan Agrawal Vs. Shyamsunder Agrawal I.L.R. (1977) M.P.722*

– **Order 47 and Sections 115, 151, 152**–Civil Revision–Inherent power to correct clerical error–No Court can in the garb of exercise of such powers can modify alter or add to the terms of the judgment of decree–Finding in the judgment as to the liability of defendants is a finding arrived at on appreciation of evidence–Even if

there be any error apparent on the face of record the proper course is to resort to Order 47 for review or a regular appeal—Order incorporating correction in the judgment and decree without jurisdiction. *Devakinandan Yadav Vs. State Bank of Indore, I.L.R. (2002) M.P. 153*

- Order 47 Rule 1 and Constitution of India Article 227—writ petition—Service law—Administrative Tribunals Act, 1985—Sections 19, 22 -Review-Not permissible on the premises that a particular ground was not urged—Doctrine of merger—Order passed by the appellate authority accepted and not challenged—Appellate order becomes operative—Tribunal erred in granting review on ground that original order was not passed by competent authority—Order of Tribunal is vulnerable : *State Vs. Alok Nigam, I.L.R. (2003) M.P. 670 (D.B.)*

-Order 47 Rule1-Review- Complaint seem to be that revisional Court wrongly rejected the revision- Remedy lay elsewhere and not through review : *Ranjeet Singh V. Banwarilal, I.L.R. (1999) M.P. 794 (D.B.)*

-Order 47 rule 1-Review-Omission to advert and apply specific and material provision of law-Is an error apparent on the face of record or at least analogous to it-Review on this ground is permissible : *Bhailal Vs. Sualal, I.L.R. (1972) M.P.969*

-Order 47 Rule 1-Revision- While deciding Second Appeal Court not dealt with the substantial question of law-Mistake apparent on the face of record-Review granted-Judgment and decree set aside matter re-examined-Section 100-Second Appeal - *Ex parte* decree of court of Small Causes transferred to regular Civil Court by the District Judge under Section 24(4), C.P.C.- Sale of immovable property in execution by transferee executing Court-Illegal-Sections 39 and 42, C.P.C.-Decree not transferred by the Court of Small Causes- Transferee court cannot assume power of the Court of Small Causes under Section 42 as the decree having not been transferred to it by the Court of Small Causes-Order 21 Rule 82-Sale of immovable property by the transferee Court in execution of decree of Court of small causes-Not maintainable in law-Substantial question answered in favour of plaintiff : *Pyarelal Vs.Ratan Chand, I.L.R. (2000) M.P. 1024*

-Order 47 rule 1 - Court disposing of case without applying its mind to provision of law-Error analogous to one apparent on face of record-Civil Procedure Code, Order 10 rule 4-Conditions necessary to be satisfied before passing judgment against party not appearing - Judgment pronounced against him-Order wrong -Court has jurisdiction to review-Rejection of review-Revision against order rejecting review competent : *Sekadiya Vs. Fundibai, I.L.R. (1961) M.P. 164*

- Order 47 Rule 1 and Section 100—Second Appeal dismissed holding "no substantial question of law involved for adjudication"—No ground supplied—Can be a

ground for appeal but not for Review–Recourse to Review–Misconceived : *Ratanlal Vs. Bardi Bai, I.L.R. (2003) M.P. 1072 (F.B.)*

- **Order 47 Rule 1 & Section 151**- Whether application under order 47 read with Section 151 - Civil Procedure Code maintainable after satisfaction of the decree-maintainable-Order 30 Rule 10- Suit Filed against the proprietor firm on the date of filing the suit proprietor was dead- Decree against firm nullity- Suit must be brought against his legal representative : *Smt. Chanderkanta Vs. Mahesh Brothers, I.L.R. (1998) M.P. 884*

- **Order 47 Rule 1** and Order 21 Rule 11, 50, Sections 115,152–Revision–Executing Court cannot go behind the decree–Application under Order 47 CPC could not be filed to require adjudication whether decree could be executable against a person not named and impleaded as a party to the suit : *Deepak Jain Vs. Century Textiles Industries Company, I.L.R. (2005) M.P. 364*

- **Order 47 Rule 1**, Order 41 Rules 3-A(2), 11, 13 and Section 114– Review – Limitation Act, 1963 – Section 5 – Condonation of delay – Opportunity for – First appeal filed without application for condonation of delay – Dismissed as barred by time – Second appeal also dismissed – Review on ground that opportunity should have been given to get the delay condoned even at final hearing stage – Not tenable – Order 41, Rule 3-A(2) – Application for condonation of delay – It is for the appellant to file the same along with memo of appeal or before admission of appeal – Order 41 Rules 11 and 13 – Provisions though directory in nature can not be construed give to opportunity to a party to get the delay condoned at the final hearing stage as the other party may not be able to dispute the facts after number of years : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R. (2001) M.P. 278*

- **Order 47 Rule 1** and Order 41 Rule 11, Sections 140, 100, 101 – Review Application–Review of the Order of Single Bench–Placed before the Full Bench in peculiar fact situation–Power of Full Bench is limited to what the Single Bench could do while exercising power of Review–Review permissible only on three grounds specified-(i) Discovery of new and important matter of evidence which could not be produced when the decree or order was passed ,(ii) mistake apparent on the face of record and (iii) any other sufficient ground–"Any other sufficient ground" mean reasons sufficient on ground atleast analogous to those specified immediately previously–Second Appeal dismissed holding "no substantial question of law involved for adjudication"–No ground supplied–Can be a ground for appeal but not for Review–Recourse to Review–Misconceived : *Ratanlal Vs. Bardi Bai, I.L.R. (2003) M.P. 1072 (F.B.)*

Civil Rights Protection Act (XXII of 1955)

- **Section 15** as amended by Act No. 106 of 1976 and Criminal Procedure Code, 1973 (II of 1974), Section 320 - Whether offences under section 4 read with section 7 of the Act are compoundable: *State Of M.P. Vs. Kapure, I.L.R. (1982) M.P. 911*

Civil Service (Classification, Control and Appeal) Rules 1965

- **Rule 55**-Conditions under which oral enquiry is necessary : *K. Dhruva Rao Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 1015 (D.B.)*

-**Rule 55-A** and Civil Services (Classification, Control and Appeal) Rules Madhya Pradesh, 1965-Rule 13(1)(a)-Giving notice to servant to show cause why increment should not be withheld for misconduct-Sufficiency-Servant to be informed regarding allegations against him and the material on which they are based : *Lal Audhraj Singh Vs. State Of M.P., I.L.R. (1970) M.P. 910 (D.B.)*

Civil Service Regulations

- **Notification dated 21-8-58 and 22-8-58** - Not applicable to person appointed to public services and posts in connection with affairs of a State Article 351 A (old) - Department or Judicial proceedings against Officer - Could be instituted under this provision before retirement or from the date when the officer was last on duty - Even must be within one year of the last date of duty - Article 351 - A (new)-institution of Departmental or judicial proceedings - Event for which proceedings are started - Must have taken place within 4 years of the institution - "Judicial Proceedings" in old and New Article 351 - A - Include Criminal Prosecution - The Article deals with right of Government to with hold or withdraw pension or to recover by deduction - Article 351 - A (old), provision - 3 - Scope and extent of words "shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1)" - Presumption regarding proviso - Proviso going beyond subject matter covered by the main part of the section - Proviso becomes substantive enactment-Non-fulfilment of clauses (ii) and (iii) of Article 351 - A - Does not bar institution of judicial proceedings - Debars Government from making recovery from pension - Article 351 - A - Does not lay down rule of limitation for judicial proceedings - Prescribing period of limitation for taking penal action - Is not uncommon or unusual : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old)** - Departmental or Judicial proceedings against Officer - Could be instituted under this provision before retirement or from the date when the officer was last on duty - Event must be within one year of the last date of duty : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old)** - Does not lay down rule of limitation for judicial proceedings - Prescribing period of limitation for taking penal action - Is not uncommon or unusual : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old)** - Non fulfillment of clauses (ii) and (iii) of Article 351 - A - Does not bar institution of judicial proceedings - Debars Government from making recovery from pension : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old), Proviso 3** - Presumption regarding proviso - Proviso going beyond subject - matter covered by the main part of the section - Proviso becomes substantive enactment : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old), Proviso 3** - Scope and extent of words "Shall have been instituted in accordance with Sub-clauses (ii) and (iii) of clause (1)" : *Dr. (Shrimati) F. Choudhary Vs. State Of M. P. I.L.R. (1977) M.P. 372*

- **Article 351 - A (old and new)** - "Judicial proceedings" in old and new Article 351 - A - Include criminal prosecution : *Dr. (Shrimati) F. Choudhary Vs. State Of M.P.I.L.R. (1977) M.P. 372*

- **Article 351 - A (old and new)** - The Article deals with right of Government to withhold or withdraw pension or to recover by deduction : *Dr. (Shrimati) F. Choudhary Vs. State Of M.P.I.L.R. (1977) M.P. 372*

- **Article 351 - A (new)** - Institution of Departmental or judicial proceedings - Event for which proceedings are started - Must have taken place within 4 years of the institution : *Dr. (Shrimati) F. Choudhary Vs. State Of M.P.I.L.R. (1977) M.P. 372*

-**Rule 441**-Is enabling provision-Does not confer on Government power to retire a person : *S.P. Shrivastava Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 969 (D.B.)*

Civil Services (Classification, Control and Appeal) Rules, Madhya Bharat, 1956

-**Rules 8(2) and 55-B** -Do not provide for automatic confirmation after probationary period-Madhya Pradesh Government Servants (Temporary and quasi-permanent service) Rules, 1960-Status of quasi permanent servant-A creation of Statute-Rule 3-Requires a declaration conferring quasi-permanent status of servant-Constitution of India-Article 311(2)-Termination of services of servants on probation

according to rules-Termination does not amount to dismissal or removal -Termination of services due to opinion entertained regarding suitability-Termination does not amount to punishment-Termination of services during pendency of enquiry about charge-Does not amount to punishment-Civil Services (Classification, Control and Appeal) Rules – Rules 8(2) and 55-B - Rule 55-B -Termination of services of probationary servant to be according to this rule-Rule 8(2) does not exclude applicability of rule 55-B-Two rules to be read together-Services can be terminated only after holding enquiry-Petitioner to be given one month's notice before his services terminated: *D.K. Rai Vs. Excise Commissioner M.P. I.L.R.(1968) M.P. 38 (D.B.)*

-Rules 8(2) and 55-B-Rule 55-B - Termination of services of probationary servant to be according to this rule-Rule 8(2) does not exclude applicability of rule 55-B : *D.K. Rai Vs. Excise Commissioner M.P. I.L.R.(1968) M.P. 38 (D.B.)*

-Rules 8(2) and 55-B-Two rules to be read together -Service can be terminated only after holding enquiry-Petitioner to be given one month's notice before his services terminated : *D.K. Rai Vs. Excise Commissioner M.P. I.L.R.(1968) M.P. 38 (D.B.)*

-Rule 15-Circumstances in which person charged can be allowed to be heard through a counsel : *The State Of Madhya Pradesh Vs. Gopinath Shukla I.L.R. (1966) M.P. 404 (D.B.)*

-Rule 15(4)-Holding of oral enquiry not mandatory-Circumstances when it becomes mandatory : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Rule 15(4)-Words “authority concerned” in-Means appointing authority : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Rule 15(6), Proviso-State Government not disagreeing with findings of enquiry officer-No question of furnishing with the “points of disagreement together with the brief statement of the grounds therefore” arises : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Rule 26, Proviso-Right to file memorial is in the nature of review-Such right when can be exercised : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-Rules 55-B and 8(2) -Termination of services of probationary servant to be according to this rule-Rule 8(2) does not exclude applicability of rule 55-B : *D.K. Rai Vs. Excise Commissioner M.P. I.L.R.(1968) M.P. 38 (D.B.)*

-Rules 55-B and 8(2) -Two rules to be read together -Service can be terminated only after holding enquiry-Petitioner to be given one month's notice before his services terminated : *D.K. Rai Vs. Excise Commissioner M.P. I.L.R.(1968) M.P. 38 (D.B.)*

Civil Services (Classification, Control and Appeals) Rules, M. P., 1966

-Rule 9(1), Municipal Employees (Recruitment and Conditions of Service) Rules, 1968-Rule 53(1),(2),(3) and Nagar Palika Nigam Service (Classification, Control and Appeals) Bye-laws, 1971, Byelaw 7(1)(b)- Proviso is inserted by no-16, dated 3.8.96 effective from 17.4.96 in Rule 9(1) of M.P.C.S. Rules, 196- Provides that a Govt. Servant shall invariably be placed under suspension when a challan for Criminal offence involving corruption or other moral turpitude is filed against him-No such amendment is made so far in the aforesaid Rules or byelaw as the question is till one of discretion and not of compulsion-And discretion has to rest on gravity, if any, or nature of allegation only-Interest of Corporation and public should *reign* supreme, mere being is not enough-Rules 53(3)-Permits suspension when Criminal Charge is likely to embarrass in discharge of duties, Rule 53(1) and (2) also speak about discretion- Such order Byelaw 7(5) is capable of being modified or revoked “may” is not always “must” : *Nityanand Joshi Vs. Indore Municipal Corporation & Others., I.L.R. (1998) M.P. 805*

- Rule 10 and Civil Procedure Code (V of 1908) – Section 9– Departmental Enquiry – Jurisdiction of Civil Court – Suit by respondent working as Ranger for restraining appellants from recovering Rs. 3000/- as directed in Departmental Enquiry – Civil Court cannot act as a Court of Appeal on findings and penalty imposed in departmental enquiry – No challenge to jurisdictional competency of disciplinary authority or on the ground of mala fide – Suit not maintainable – Appeal allowed. *State Of M.P. Vs. Shyamsunder Shivnarayan, I.L.R. (1993) MP 222*

- Rules 10, 14 and 16 and Administrative Tribunals Act, (XIII of 1985), Sections 21, 19, Constitution of India, Article 227 Service Law–Departmental Enquiry–Withholding three increments with cumulative effect–A major punishment–Procedure provided under Rule 14 has not been followed–Tribunal rightly set aside the order : *State Vs. S.R. Sonwani, I.L.R. (2003) M.P. 265 (D.B.)*

- Rule 14 - Holding of inquiry discretionary with disciplinary authority in case of minor punishment : *T. C. Vs. Inspector General Of Prisons, Bhopal, I.L.R. (1980) M.P. 421, (D.B.)*

-**Rule 14** and Constitution of India, Article 227 –Disciplinary proceedings– Mis conduct–Delinquent a quasi-judicial authority–Protected under the umbrella of act done in good faith–Proceedings immediately started against bhumiswamis for illegally felling trees and fine was imposed–No ingredient of failure to perform duties–When law protects a bona fide act the concerned officer cannot be brought in the net of departmental enquiry–In absence of intention, a mere mistake or irregularity cannot be converted into a misconduct–Order of Tribunal maintained : *State Of Madhya Pradesh Vs. Shrinivas* , *I.L.R. (2005) M.P. 564 (D.B.)*

- **Rule 14** and Municipal Employees Recruitment and Conditions of Service Rules, M.P., 1968, Rule 52- Procedure laid down for imposing major penalty- Mandatory in nature-Cannot be sacrificed even assuming that the delinquent did not reply to the show causes notice-Major penalty of termination imposed in violation, of mandatory provision of law-Order cannot be sustained-Petition reinstated with all consequential benefits : *Shyam Sunder Prasad Vs. Municipal Council, Pathalgaon, I.L.R. (2000) M.P. 255*

-**Rules 14, 10** and 16 and Administrative Tribunals Act, (XIII of 1985), Sections 21, 19, Constitution of India, Article 227 Service Law–Departmental Enquiry– Withholding three increments with cumulative effect–A major punishment–Procedure provided under Rule 14 has not been followed–Tribunal rightly set aside the order : *State Vs. S.R. Sonwani, I.L.R. (2003) M.P. 265 (D.B.)*

- **Rule 14 (2) (3)** and Schedule referable to rule 7 – Director would be disciplinary authority in relation to petitioner who was working as surveyor in Agricultural Department – Petitioner convicted by trial court u/s 376, I.P.C. but in appeal High Court acquitted him holding that prosecutrix was subjected to sexual intercourse but not proved beyond doubt that it was committed without her consent – Departmental action against petitioner initiated on the charge of a conduct unbecoming of a Govt. Servant and indiscipline – Joint Director issuing charge sheet and appointing Enquiry Officer and after receipt of report of petitioner being guilty of the charge issuing show cause notice of the proposed punishment and after hearing, dismissing the petitioner from service – In appeal, Director apply his mind and approving the charge sheet and Enquiry proceeding the holding removal of petitioner the Joint Director not legal and ordered issue of a fresh show cause notice to the petitioner and upon receipt of his reply and after consideration passed an order dismissing him from service – Legality of – Consideration of Judgment of High Court by Enquiry Officer – Whether acts illegally – Petitioner’s conduct subversive of discipline and unbecoming of a Govt. Servant – Effect of : *Prabhu Dayal Umate Vs. State, I.L.R. (1986) M.P. 650,*

-**Rules 16, 10** and 14 and Administrative Tribunals Act, (XIII of 1985), Sections 21,19, Constitution of India, Article 227 Service Law–Departmental Enquiry– Withholding three increments with cumulative effect–A major punishment–Procedure

provided under Rule 14 has not been followed—Tribunal rightly set aside the order : *State Vs. S.R. Sonwani, I.L.R. (2003) M.P. 265 (D.B.)*

-**Rule 17** and Administrative Tribunals Act, 1985, Section 19, Constitution of India, Article 227—service Law—Departmental Enquiry—Punishment of reversion substituted by withholding 4 increments with commulative effect—Enquiry Officer recorded finding of guilt and submitted the report—Report not furnished to the employee—Grievances has to be accepted to the extent from which Rule 17 becomes applicable—Order of punishment set aside—Disciplinary authority may proceed from the stage it required to furnish the copy of the report and complete the enquiry in three months : *State Vs. R.K. Rai, I.L.R. (2003) M.P. 667 (D.B.)*

-**Rule 18**—Administrative Tribunal's Act, 1985—Section 19 and Constitution of India, Article 227—Writ Petition—Service law—Departmental enquiry—Punishment of Removal—Delinquent Police Head Constable—Allegation of demanding bribe and on non-payment causing arrest—Charge proved—Punishment of Removal—Not improper—Police Regulation M. P. Regulations 214 and 221—Power to impose punishment—Superintendent of Police has power to impose punishment of removal on a Head Constable—Punishment order is within jurisdiction—Common proceedings—Superintendent of Police passed an order and appointed SDOP to conduct enquiry against two persons and submit enquiry report—Rule 18 is satisfied—No illegality committed : *Rameshchandra Vs. State, I.L.R. (2003) M.P. 391 (D.B.)*

- **Rule 19** and Constitution of India, Articles 226, 227- Criminal Procedure Code, 1974, Section 389(i)—Writ challenging order of State Administrative Tribunal—Conviction of Government servant by trial Court - Termination - Competent authority can terminate services after conviction by criminal court - Stay of execution of sentence will not debar competent authority from doing so - Master and servant relationship terminates on termination order- Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court - Subsistence allowance cannot be granted for the period. *Jamna Prasad Vs. State of M.P. ; I.L.R. (2002) M.P. 809 (F.B.)*

- **Rule 19** - Government Servant convicted on a criminal charge - Whether liable to be dismissed from service without enquiry and notice - Expression "may consider the circumstances of the case" - Implications of : *Tikaram Windwar Vs. The Registrar, Co-Operative Societies, M. P., Bhopal, I.L.R. (1980) M.P. 624, (D.B.)*

- **Rule 19** – Criminal Procedure Code, 1973, Sections 387 and 374(2) – Penal Code Indian, 1860—Sections 326, 320 Administrative Tribunals Act, 1985 Section 19 and Constitution of India, Article 227—Service Law—Termination on ground of conviction in criminal case—Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend

execution of sentence—Stay of conviction can be ordered only in exceptional case—Competent authority can terminate the services after conviction by criminal Court—On termination master and servant relationship comes to an end—Filing of appeal or stay of execution of sentence does not revive the relationship—Employee cannot be taken to be under suspension till decision in appeal—Not entitled to suspension allowance : *Janna Prasad Vs. State, I.L.R. (2003) M.P. 368 (F.B.)*

-Rule 19(1) and Prevention of Corruption Act, 1988- Sections 7,13,(1)(d)- Conviction and sentence – Dismissal from service- Whether should be preceded by a hearing or opportunity- Absence of any such provision in rules- No opportunity need be given – 1978 M.P.L.J. 57 and 2003 (II) M.P.L.J. 485 overruled- Disciplinary authority on consideration of facts and circumstances may impose penalty- Conviction in corruption case – Dismissal is just and proper and excessive : *Laxmi Narayan Hayaran Vs. State Of M.P., I.L.R. (2004) M.P. 1012 (F.B.)*

- Rule 27 (2) and Constitution of India, Articles 226—Writ petition—Service Law—Disciplinary proceedings—Appeal against Order of punishment—Consideration of—Quasi judicial scrutiny—Irrefragably and indubitably more than basic content of judicial review—Must reflect that there has been application of judicial mind—Such reflection cannot be perceived unless some reasons are ascribed—No reason ascribed—Order of appellate authority quashed—Matter remitted back. : *Mohammad Idris Vs. Registrar General M.P. High Court, Jabalpur, I.L.R. (2005) M.P. 126*

- Rule 29 and Constitution of India, Article 226 –Service law—Disciplinary proceedings—One proceeding dropped and another initiated –Sustainability of later cannot be gone into—Reviewing authority can set aside order of recall and pass another order—No jurisdictional error : *Kuber Sharan Singh Chouhan Vs. State Of M.P., I.L.R. (2005) M.P. 331*

- Rule 29, clause 1, sub-clauses (i) to (iv) - Power of Governor to empower any other authority to review - Bar of second proviso not applicable - Applicable only to sub-clause (ii) of clause (i) of Rule 29 : *T. C. Vs. Inspector General Of Prisons, Bhopal, I.L.R. (1980) M.P. 421 (D.B.)*

- Rule 29 – Writ Petition and Appeal—Service law—Suspension—Suspension ordered in the wake of arrest in criminal case—Subsequently revoked—second suspension order passed on ground of pendency of criminal case—Not review—Order not passed by superior authority—Cannot be treated to be a review : *Chandra Pal Pundhir Vs. Madhya Pradesh of Board of Secondary Education, Bhopal, I.L.R. (2003) M.P. 521 (D.B.)*

- **Rule 29 (1), Proviso** - Prescribes holding of enquiry in these cases when no enquiry was held initially : *T. C. Vs. Inspector General Of Prisons, Bhopal, I.L.R. (1980) M.P. 421 (D.B.)*

- **Rule 29 (1), Second proviso** - Curtails power of review of Head of Department curtailed - Such power exercisable by him if the authority passing order as the appellate authority is subordinate - Rule 29, Clause 1, sub-clauses (i) to (iv) - Power of Governor to empower any other authority to review - Bar of second proviso not applicable - Applicable only to sub-clause (ii) of clause (i) of Rule 29 - Governor exercising powers under sub-clause (iv) of Clause (i) of Rule 29 - Does not act as persona-designate - Power exercisable by him with advice of Ministers and in accordance with rules of business - Rule 14 - Holding of inquiry discretionary with disciplinary authority in cases of minor punishment - Rule 29 (1), Proviso - Prescribes holding of enquiry in these cases when no enquiry was held initially - Constitution of India - Art. 20 (2) - Punishment awarded to Govt. Servant in departmental enquiry - Not to be deemed as prosecution and punishment for any offence : *T. C. Vs. Inspector General Of Prisons, Bhopal, I.L.R. (1980) M.P. 421 (D.B.)*

- **Rule 29 (1) (iv)** - Governor exercising powers under sub-clause (iv) of Clause (1) of Rule 29 - Does not act as persona - designata - Power exercisable by him with advice of Ministers and in accordance with rules of business : *T. C. Vs. Inspector General Of Prisons, Bhopal, I.L.R. (1980) M.P. 421 (D.B.)*

Civil Services (Commutation of Pension) Rules, M.P., 1976

- **Constitution of India, Articles 14, 16, 226 and 227**—Writ petition—Electricity (Supply) Act, 1948, Section 79—Voluntary retirement—By notification State Government amended provisions contained in rules—Number of years in respect of which pension could be commuted significantly reduced—Board adopted State Govt. Notification with retrospective effect—Arbitrary & unreasonable—Notification cannot be made retrospectively applicable—Pension was to be computed in accordance with the rules that was in vogue at the time of retirement—Employee already retired would be entitled to all the benefit as per unamended Rules—Notification operative with prospective effect—Retrospective application of Notification—Ultra vires : *N. L. Mandhan Vs. M. P. State Electricity Board, I.L.R. (2003) M.P. 112 (D.B.)*

Civil Services (Commutation of Pension) Rules, M.P. 1996

- **Rules 7, 11 and 44** – Constitution of India, Article 226—Writ petition—Service law—Retiral benefits—Release of commutation pension –Finality of commuted value of pension—Employee retired, below 70 years of age and has not completed 15 years from the date of retirement—Commutation of pension becomes final on the date of

application—Cannot be denied commuted value of pension. Date of employee not going to come in the way : *Balmiki Kachhi Vs. Municipal Corporation, Jabalpur, I.L.R. (2003) M.P. 611*

- **Rules 7, 11(2)** and Constitution of India, Article 226 - Petitioner nominee of deceased employee - Commuted value pension attained finality - Death of employee before obtaining commuted value is not going to come in the way of nominee—Petitioner entitled to get commuted value of pension. *Balmiki Kachhi Vs. Municipal Corporation, Jabalpur I.L.R.(2002) M.P. 470 (D.B.)*

Civil Services (Conduct)—Rules, M. P., 1965

- **Rule 22**—Government employee having a wife living cannot contract second marriage without permission of the Government—Appellant claims to be second wife—Whether she belonged to Gond tribe and how custom of second marriage is prevalent—Not satisfactorily proved—Cannot claim to be legally wedded wife : *Gyanti Bai Vs. Rampyari Bai & Ors. I.L.R. (2003) M.P. 430 (D.B.)*

Civil Services (Executive) Classification, Recruitment and Condition of Service Rules, M.P., 1975

- **Rule 3 and Civil Services (General Condition of Service) Rules, M.P. 1963—Rules 8,12** —Probation, Confirmation and seniority—Probation extended—Incumbent passed departmental examination beyond extended period—Appointing authority empowered to determine the date from which seniority is to be assigned—Seniority given on basis of date of passing departmental examination—CAT & High Court justified in rejecting petitioner's claim : *Om Prakash Shrivastava Vs. State Of M.P., I.L.R. (2005) M.P. (SC) 557 (D.B.)*

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- **Promotions not claimable as of right** : *Smt. V. K. Singh Vs. State Of Madhya Pradesh, I.L.R. (1978) M.P. 925, (D.B.)*

-**Civil Service Regulations applicable to police department**—Conflicts between Civil Service Regulations and Police Regulations—Police Regulations to prevail : *Premchandra Dhalpuria, Ex-Sub-Inspector, Police,Guna, M.P., Vs. The State Through The Inspector General Police, Bhopal I.L.R. (1970) M.P. 881 (D.B.)*

-**Are of general application**—Officer continuing in service after expiry of the period of probation -Services terminable on expiry of notice of one calendar month :

Premchandra Dhalpuria, Ex-Sub-Inspector, Police, Guna, M.P. Vs. The State Through The Inspector General Police, Bhopal I.L.R. (1970) M.P. 881 (D.B.)

– **Rule 2(c)** – Writ Petition – Service law – Judicial Magistrate passing order or acquittal though accused pleaded guilty – Conduct of Magistrate not a bona fide error but amounts to misconduct : *R.C. Bansal Vs. Hon'ble High Court of M.P., I.L.R. (2001) M.P. 1456,*

- **Rule 2(c)** and Constitution of India, Articles 226/227– Writ Petition – Service Law – Judicial Magistrate passing order of acquittal though accused pleaded guilty – Conduct of Magistrate not a bonafide error but amounts to misconduct – Departmental enquiry – Punishment of withholding of two increments – Subsequently name not considered for promotion – Representation given after 6 years – Plea of unawareness of punishment not justified since he was getting lesser pay : *R.C. Bansal Vs. Hon'ble High Court of MP, I.L.R. (2001) M.P. 1456*

- **Rule 8** - Not applicable to persons appointed as Assistant Director prior to coming into force of rules or to persons officiating as Assistant Directors : *J. C. Yadav Vs. State Of M. P. I.L.R. (1979) M.P.1055 (D.B.)*

- **Rules 8 and 12**-Probation and seniority- Appointing authority empowered to lower down seniority of a direct recruit only if probation period was extended –No such order passed by State Govt. extending probation period-Seniority of incumbent liable to be determined from the date of appointment and not from the date of confirmation- Order of the Tribunal upheld : *State Vs. Anand Kumar Jain, I.L.R. (2000) M.P. 699 (D.B.)*

- **Rule 8 (2) and Note** - Probationary period not extended - Servant ceases to be on probation - But continues in service on terms and conditions in the Note - Can be discharged from service by giving one month's notice - Rule 8 (4) (5) and (6)- Applicable to probationer, but not a servant who has ceased to be probationer - Provision of deemed confirmation - Not applicable to servant who continues in service under the Note - Original period of probation extended - Note not applicable - Servant continuing in service even after extended period of probation - Servant deemed to be confirmed - Servant continuing in service after expiry of 3 years under the note - Provision of deeming confirmation not applicable - Services terminable by one month's notice even after expiry of 3 years : *Maheshchandra Shrivastava Vs. State Of M. P. I.L.R. (1980) M.P. 105 (D.B.)*

- **Rule 8 (2) and (6)** - Note to Rub - rule (2) not applicable in the case of employee whose period of probation has been extended from time to time - Sub - rule (6) of Rule 8 applicable to such a case - When employee is deemed to be confirmed -

Services cannot be terminated without holding a departmental enquiry as required by Article 311 (2) of the Constitution : *Narayan Singh Thakur Vs. The Excise Commissioner, M. P., I.L.R. (1976) M.P. 703 (D.B.)*

- **Rule 8(6) and Constitution of India, Article 311 (2)** - When employee is deemed to be confirmed - Services cannot be terminated without holding a departmental enquiry as required by Article 311 (2) of the Constitution : *Narayan Singh Thakur Vs. The Excise Commissioner, M. P., I.L.R. (1976) M.P. 703 (D.B.)*

- **Rule 9**-Conditions of Services of Promotee District Judge age governed by Rule 9 : *D. R. Rahul Vs. High Court Of M.P., Jabalpur, I.L.R. (1998) M.P. 33 (D.B.)*

- **Rule 9** and Special Direct Recruitment of District and Session Judge rules 1964, Rule 10-Period of officiation of the promotee District Judge & period of probation of a District Recruited District Judge-Can not exceed beyond 2^{1/2} years-District Judge, whether promotee or directly recruited is confirmed automatically after 2^{1/2} years : *D. R. Rahul Vs. High Court Of M.P., Jabalpur, I.L.R. (1998) M.P. 33 (D.B.)*

-**Rule 9(5)**- In discriminatory and does not govern the conditions of Services of a promotee district Judge: *D. R. Rahul Vs. High Court Of M.P., Jabalpur, I.L.R. (1998) M.P. 33 (D.B.)*

- **Rule 12** - Preparation of seniority list of Lower Division Teacher division-wise - Not contrary to this Rule : *Ravindra Nath Tiwari Vs. Divisional Superintendent Of Education Jabalpur Division, Jabalpur I.L.R. (1981) M.P. 571 (D.B.)*

- **Rule 12**, Govt. Servants (Temporary and Quasi - Permanent Service) Rules, M. P., 1960, Rule 3, Revision of Pay Rules, M. P., 1983, Rule 2 (vi) and Fundamental **Rules, Rule 9 (19)** - Creation of separate cadre for Head Master w. e. f. 1-4-1981 according to Choudhary Pay Commission Report - Officiating Head Masters prior to 1-4-1981 cannot be treated as Head Masters in accordance with Choudhary Pay Commission Report - Education Authorities ordering such Head Master to join as U. D. T. and L. D. T. - Not violative of Articles 11, 14 or 16 of Rules of 1961 and other Rules : *M. P. Shikshak Sangh, Rewa Division, Rewa Vs. State Of M. P. I.L.R. (1986) M.P. 624. (D.B.)*

- **Rules 12 and 8**-Probation and seniority- Appointing authority empowered to lower down seniority of a direct recruit only if probation period was extended –No such order passed by State Govt. extending probation period-Seniority of incumbent liable to be determined from the date of appointment and not from the date of confirmation- Order of the Tribunal upheld : *State Vs. Anand Kumar Jain, I.L.R. (2000) M.P. 699 (D.B.)*

- **Rule 12(c)**, clause (c) and Constitution of India, Article 226 – Seniority – Petitioner senior to respondents as sales Tax Inspector – Promotion to the post of Asstt. Sales Tax Officer – Petitioner was found unfit in D.P.C. – Respondents were promoted – Petitioner subsequently promoted – Since promotions were after due selection, petitioner cannot claim seniority on the basis of seniority in substantive rank of sales tax Inspectors – Seniority to be fixed as per proviso to Rule 12(c) and not under clause (c) : *Krishna Kumar Dubey Vs. State Of M.P., I.L.R. (1989) M.P. 387 (D.B.)*

-**Rule 12 (C)** and Constitution of India, Articles 226, 14 and 16 - Officiating Govt. Servants - Normal rule for determining inter-se seniority - Seniority of persons promoted together to officiate in higher cadre would be the same as their substantive cadre and irrespective of the date of their joining service in the promoted cadre - Interpretation of Statute - Principles of : *Vasant Kumar Jaiswal Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 221*

- **Rule 13** - Provisional promotion on ad-hoc basis - Reversion is concomitant : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- **Rule 13** - Servant occupying higher post in substantive capacity - Cannot be reduced in rank without opportunity of being heard : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- **Rules 13** - Absence of statutory rules regulating promotions - Government can issue administrative instructions which are not violative of any rule or constitutional provision : *Smt. V. K. Singh Vs. State Of Madhya Pradesh, I.L.R. (1978) M.P. 925, (D.B.)*

Civil Services (General Condition of Service) Rules, M.P. 1963

–Rules 8, 12 and Civil Services (Executive) Classification, Recruitment and Condition of Service Rules, M.P., 1975, Rule3–Probation, Confirmation and seniority–Probation extended–Incumbent passed departmental examination beyond extended period–Appointing authority empowered to determine the date from which seniority is to be assigned–Seniority given on basis of date of passing departmental examination–CAT & High Court justified in rejecting petitioner's claim : *Om Prakash Shrivastava Vs. State Of M.P., I.L.R. (2005) M.P. (SC) 557 (D.B.)*

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- **Rule 9(4)**—Pendency of Disciplinary proceeding—Withholding of pension—Could not last for a period more than two years : *State Vs. S.R. Sonwani, I.L.R. (2003) M.P. 265 (D.B.)*

- **Rule 9(4)**—Administrative Tribunals Act (XIII of 1985), Section 19 and Constitution of India, Article 227—Service Law—Pension—Pendency of Disciplinary proceeding—Withholding of pension—Could not last for a period more than two years—Enquiry dropped by the Government itself—Non-payment of dues for further six years—Petitioner entitled to interest @ of 12% : *B. D. Dubey Vs. State of M. P., I.L.R. (2003) M.P. 267 (D.B.)*

- **Rules 12(2), 42(b)** —“Qualifying Service” – Premature retirement of employee after completing 25 years of qualifying service – Temporary or Officiating appointment to the post shall be “Qualifying Service” – Not necessary that employee is appointed to the post substantially. *Mahipal Singh Vs. Madhya Pradesh Grih Nirman Mandal, I.L.R. (1993) MP 109 (D.B.)*

–**Rule 19(v)**—Power to condone break in service for pensionary benefits—Representation made for condonation—Similarly situated employee given same benefit ignoring breaks in summer vacation—High Court rightly issued direction—No interference called for : *State Of M.P. Vs. P.C. Basu, I.L.R. (2004) M.P. (SC) 893 (D.B.)*

- **Rule 42** and Constitution of India, Article 226, (Work-charged and Contingency Paid Employee) Pension Rules, 1979 Rule 6(2) - Service law- Pension- Work-charged employees- Absorbed in a regular post - Service rendered in work charged establishment has to be counted as qualifying service for pension. *Gopi Pillai Vs. M.P.E.B. Jabalpur; I.L.R.(2002) M.P. 474 (D.B.)*

- **Rule 42**-Compulsory retirement-Petitioner serving as U.D.T.-Notice for compulsorily retire the petitioner was challenged being malafide and does not fall within public interest-Stand of Municipal Council that due to shortage of funds and reduction in strength of students petitioner was being compulsorily retired-Held-Nothing on record that Petitioner was unfit to be continued in service- Petitioner having wide experience of 25 years-Stand of shortage of fund and reduction in strength is afterthought as they do not find place in resolution or notice of retirement-Notice of compulsory retirement quashed. *Smt. Indira Saxena Vs. The Municipal Council, Bina, I.L.R. (1994) M.P. 331*

- **Rule 42 and Constitution of India, Article 226** - Compulsory retirement of public servant - When can be made - Order of compulsory retirement based on manipulation of confidential reports and character roll - Biased and not in 'public interest' - Liable to be quashed by issuing appropriate writ : *Dr. Shambhudayal Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 513 (D.B.)*

Rules 42, 92 and Municipal Employees (Recruitment and Condition of Service) Rules, M.P. 1968. Rule 29(1)(a)-Compulsory Retirement-Public Interest-Appointing authority has absolute power-Public interest signifies retention of honest and efficient employees and weeding of inefficient and dishonest employees-Subjective satisfaction that employee is no longer fit in public interest does not amount to punishment as it does not cast any stigma-Power to compulsorily retire an employee should not be exercised on extraneous, collateral, personal or political considerations. *Smt. Indira Saxena Vs. The Municipal Council, Bina, I.L.R. (1994) M.P. 331*

- **Rule 42 (1) and (2)** - Applicability of - Express permission of appointing authority prior to intended date of retirement necessary - Appointing authority not granting permission till the expiry of the intended date of retirement - Government has no power thereafter to act on the notice and order retirement of Government servant : *Mushtaq Ahmad Qureshi Vs. State Of M. P. I.L.R. (1982) M.P.495 (D.B.)*

- **Rules 42(b), 12(2)** - "Qualifying Service" - Premature retirement of employee after completing 25 years of qualifying service - Temporary or Officiating appointment to the post shall be "Qualifying Service" - Not necessary that employee is appointed to the post substantially. *Mahipal Singh Vs. Madhya Pradesh Grih Nirman Mandal, I.L.R. (1993) MP 109 (D.B.)*

- **Rules 45, 46, Succession Act, Indian (XXXIX of 1925)** - Section 372 and Civil Procedure Code, 1908, Section 115 - Government servant died issueless - Application for succession certificate by brother and sister - No nomination in favour of claimant - If there is no nomination or if made does not subsist, gratuity Shall be paid to legal heirs- Being legal heirs claimants entitled to realize dues- Order dismissing application set aside and the order granting succession certificate restored : *Dhannalal & ors. Vs. Director, Department Of Agriculture & Ors., I.L.R. (2004) M.P. 519*

- **Rule 57**-Constitution of India, Articles 227 and 226-Writ Petition-Delay in payment of retirement benefit-M. P. Civil Services (Pension) Rules, 1976, Rule 57-Head of office shall undertake the work of preparing pension papers two years before the date on which Government Servant is due to retire-Duty is cast on head of office-Delay caused by the respondents and not by the petitioner-Petitioner entitled to interest for delay in payment : *I.P. Malik Vs. State, I.L.R. (2003) M.P. 14 (D.B.)*

- **Rules 92, 42 and Municipal Employees (Recruitment and Conditions of Service) Rules, M.P. 1968, Rule 29(1)(a)-Compulsory Retirement-Public Interest-**Appointing authority has absolute power-Public interest signifies retention of honest and efficient employees and weeding of inefficient and dishonest employees-Subjective satisfaction that employee is no longer fit in public interest does not amount to punishment as it does not cast any stigma-Power to compulsorily retire an employee should not be exercised on extraneous, collateral, personal or political considerations : *Smt. Indira Saxena Vs. The Municipal Council, Bina, I.L.R. (1994) M.P. 331*

Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952

-**Rule 15**-Applicable not only to cases of dismissal, removal or reduction but also to a case of compulsory retirement : *Sardar Kapoor Singh Vs. Union Of India & Ors., I.L.R. (1959) M.P. 397*

Coal Bearing Areas (Acquisition and Development) Act (XX of 1957)

- **Claims** - The determination of the amount of compensation of items of claims : *Northern Coalfields Ltd. Singrauli Vs. Mata Prasad, I.L.R. (1997) M.P. 164 (D.B.)*

-**Section 7**-Words "The Central Government may..... by notification in the Official Gazette, give notice of its intentions to acquire" in-Meaning of-Sections 7(i) and 9-Circumstances when notice under Section 7(1) can be issued before declaration of intention to acquire can be made under Section 9-Section 28(3)-Contemplates issue of notification under Section 7 before any objections under Section 5-A of Land Acquisition Act could be made-Section 9-Declaration under-Can be made only after notification under Section 7-Notification under Section 9(1) before notification under Section 7-Validity-Notification under section 9(1) invalid-Central Government, Power of, to carry on depillaring operations-Constitution of India-Article 226-Matter of urgency-Alternate remedy of Civil Suit cannot be considered expeditious : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R.(1968) M.P. 684 (D.B.)*

-**Section 7(1) and 9**-Circumstances when notice under Section 7(1) can be issued before declaration of intention to acquire can be made under Section 9 : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R.(1968) M.P. 684 (D.B.)*

- **Section 7 (2), 9 and 13 (4)** - Rule 5-A (b) - Compensation payable to person whose lease is suspended by notification under section 4 till the time notice is rescinded or maximum period of 3 years when the notice ceases to have effect under section 7 (2) : *M/s Tata Iron & Steel Co. Bombay Vs. The Union Of India I.L.R. (1980) M.P. 592 (D.B.)*

-**Section 9**-Declaration under-Can be made only after notification under Section 7 : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R.(1968) M.P. 684 (D.B.)*

-**Section 9**-Notification under Section 9(1) before notification under Section 7-Validity : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R. (1968) M.P. 684 (D.B.)*

- **Section 9 and Section 13 (2) (i)** - Declaration made - Notice not rescinded nor will it cease to have effect so as to attract section 13 (4) : *M/s Tata Iron & Steel Co. Bombay Vs. The Union of India I.L.R. (1980) M.P. 592 (D.B.)*

-**Section 9(1)**-Notification under Section 9(1) invalid-Central Government, Power of, to carry on depillaring operations : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R.(1968) M.P. 684 (D.B.)*

- **Section 13 (1) and 13 (2) (i)** - Whatever claimed under Section 13 (1) would be admissible under this section : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India, I.L.R. (1980) M.P. 592, (D.B.)*

- **Section 13 (1) and 13 (2) (i)** - Person holding a prospecting licence - Entitled by way of compensation to a part of reasonable and bona fide expenditure incurred over obtaining licence and prospecting operation and that too according to proportion of land sought to be acquired - Same principles apply to mining lease : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India I.L.R. (1980) M.P. 592 (D.B.)*

- **Section 13 (1) (iv)** - Permits grant of expenses incurred over supervision and control and sifting of data regarding prospecting operations as compensation : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India, I.L.R. (1980) M.P. 592, (D.B.)*

- **Section 13 (2)** - Mine owner - Claimants entitled to compensation as is entitled under this provision - Cannot claim solatium under Section 13 (4) in addition : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India I.L.R. (1980) M.P. 592 (D.B.)*

- **Section 13 (2) (i)** - Contemplates reasonable and bona fide expenditure actually incurred in respect of land sought to be acquired - Section 13 (1) and 13 (2)(i) - Person holding a prospecting licence - Entitled by way of compensation to a part of reasonable and bona fide expenditure incurred over obtaining licence and prospecting operation and that too according to proportion of land sought to be acquired - Same principles apply to mining lease - Section 13 (1) and Section 13 (2)(i) - Whatever claimed under Section 13 (1) would be admissible under section 13 (2) (i) - Section 13 (4) - solatium permissible to claimant when acquisition not made under section 9 and when notification under section 4 ceases to have effect - Section 13 (2) - Mine-owner - Claimants entitled to compensation as is entitled under this provision - Cannot claim solatium under section 13(4) in addition - Section 7(2), 9 and 13 (4) - Rules 5-A (b) - Compensation payable to person whose lease is suspended by notification under section 4 till the time notice is rescinded of maximum period of 3 years when the notice ceases to have effect under section 7 (2) - Declaration made under section 9 - Notice not rescinded nor will it cease to have effect so as to attract section 13 (4) - Section 13 (1) (iv) - Permits grant of expenses incurred over supervision and control and sifting of data regarding prospecting operations as compensation : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India, I.L.R. (1980) M.P. 592, (D.B.)*

- **Section 13 (4)** - Solatium permissible to claimant when acquisition not made under section 9 and when notification under section 4 ceases to have effect : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India I.L.R. (1980) M.P. 592, (D.B.)*

- **Section 13 (4), 7 (2) and 9 - Rule 5-A (b)** - Compensation payable to person whose lease is suspended by notification under section 4 till the time notice is rescinded or maximum period of 3 years when the notice ceases to have effect under section 7 (2) : *M/S Tata Iron & Steel Co. Bombay Vs. The Union Of India I.L.R. (1980) M.P. 592 (D.B.)*

-**Sections 13(4) and 14** - Grant of Solatium - A bare reading of Section 13(2) and Section 14 it is clear that no provision has been made to award solatium in addition to determined compensation payable, therefore the Tribunal constituted under the Act had no jurisdiction to award solatium - It is also well settled that in the absence of any provision for payment of solatium in addition to determined compensation payable in a statute the solatium cannot be granted. *Northern Coalfields Ltd. Singrauli Vs. Mata Prasad, I.L.R. (1997) M.P. 164 (D.B.)*

-**Section 28(3)**-Contemplates issue of notification under Section 7 before any objections under Section 5-A of Land Acquisition Act could be made : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd., Kurasia Colliery, Chirimiri I.L.R.(1968) M.P. 684 (D.B.)*

Coal India Executives Conduct, Discipline and Appeal Rules, 1978

- **And Constitution of India, Article 14** -Non supply of copies of documents-Documents used against delinquent officer can not be withheld-However, documents made available to petitioner for inspection throughout enquiry-Prayer for supply of photo stat copies was rejected because petitioner was given access to those documents whenever he wanted-No breach of Principle of Natural Justice. *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

- **And Constitution of India, Article 14**-Issuance of charge sheet other than by Disciplinary authority-Chairman-cum-Managing Director declared to be Disciplinary authority-Nothing in Rules that Disciplinary authority must issue charge-sheet-Disciplinary proceedings not void. *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

- **And Constitution of India, Article 311**-Belated supply of enquiry report-Copy of enquiry report supplied to delinquent officer along with impugned order of punishment-Held-Court to ascertain whether any prejudice has been caused to delinquent by non-supply of report of enquiry officer-No punishment was recommended by enquiry officer in its enquiry report-No ground raised in memo of appeal that prejudice was caused to petitioner due to belated supply of copy of enquiry report-No violation of Principles of Natural Justice. *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

Coal-Mines (Nationalization) Act (XXVI of 1973)

- **Coal Mines (Taking Over of Management) Act (XV of 1973)** - Do not repeal Section 10-A of the Coal Mines Provident Fund and Bonus Schemes Act, 1948-Coal Mines (Taking Over of Management) Act-Section 7(4) and (5)-Does not provide exclusive remedy-Interpretation of Statute-Implied repeal not to be readily inferred-Additional remedy provided by new Act-Does not take away existing remedy-Coal Mines (Taking Over of Management) Act 1973, Section 7(4) and Coal Mines Provident Fund Act and Bonus Schemes Act, 1948, Section 10-A-Liability to pay contributions of Provident Fund incurred prior to Taking Over of Management Act-Recovery can be made under Section 10-A of Coal Mines Provident Fund Act-Coal Mines (Nationalization) Act-Section 21-Provides additional remedy for recovery of arrears of Provident Fund Contribution-Coal Mines Provident Fund and Bonus Schemes Act, 1948-Section 7-A-Dispute about correctness of amount-Notice regarding quantification of arrears necessary-Notice why damages should not be imposed is mandatory-Section 10-F-Prescribes maximum amount of damages-Discretion rests with Central Government regarding amount of damages to be imposed-Implies giving of hearing to a defaulting party before deciding to recover

damages-Proceeding under-Are quasi-judicial-Recovery as arrears of land revenue-Not to be made unless notice given to defaulting party : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

– **Section 2(h), Clauses (vi), (x) and (xii)** – Word – ‘mine’ – Definition and scope of – Fire extinguishing, plants pump and other machineries left over the premises of mines – Whether vests in Central Govt.: *Mines Authority Limited, Calcutta Vs. The Associated Cement Companies Ltd., Bombay, I.L.R. (1987) M.P. 701 (D.B.)*

–**Sections 2(h) and 3** and Coal Mines (Taking Over Management) Act, 1973 - Constitution of India, Articles 226 and 227–Writ petition–Claim of compensation for land covered in mining area–Petitioner lease holder of land covered in Coal mines owned by private company–Vesting of mines in Central Govt.–Land not acquired–Map showing land used by the Central Government for mining operation–Petitioner not a mine owner–Not entitled to compensation from Central Government–Land in possession of respondents for a long time–Petitioner entitled to compensation for compulsory acquisition of land from the date of occupation. *P.P. Chakravarti Vs. Coal India Ltd., I.L.R. (1992) M.P. 388 (D.B.)*

– **Section 14(1)** – Nationalisation of Coal mines – Provision for pension to existing employee – Subsequent amendment withdrawing benefit of pension – Cannot be applied with retrospective effect and would not affect person who already retired and received benefit of pension prior to such amendment : *Stanley Ward Vs. Coal India Limited, I.L.R. (2001) M.P. 15,*

-**Section 21**-Provides additional remedy for recovery of arrears of Provident Fund Contribution : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

Coal Mines (Taking Over of Management) Act, 1973

- **Section 2(h) and 3** - Coal Mines (Nationalisation) Act (XXVI of 1973)–Section 2(h) and 3–Petitioner lease holder of land covered in Coal Mines owned by private company–Vesting of mines in Central Govt.–Land not acquired–Map showing land used by Central Government for mining operation : *P.P. Chakravarti Vs. Coal India Ltd., I.L.R. (1992) M.P. 388 (D.B.)*

- **Section 2(h) and 3** - Coal Mines (Nationalisation) Act, (XXVI of 1973)–Section 2(h) and 3–Petitioner not a mine owner–Not entitled to compensation from Central Government–Land in possession of respondents for a long time–Petitioner

entitled to compensation for compulsory acquisition of land from the date of occupation : *P.P. Chakravarti Vs. Coal India Ltd., I.L.R. (1992) M.P. 388 (D.B.)*

- **Sections 2(h) and 3** And Coal Mines (Nationalisation) Act, 1973–Sections 2(h) and 3–Constitution of India, Articles 226 and 227–Writ petition–Claim of compensation for land covered in mining area–Petitioner lease holder of land covered in Coal mines owned by private company–Vesting of mines in Central Govt.–Land not acquired–Map showing land used by the Central Government for mining operation–Petitioner not a mine owner–Not entitled to compensation from Central Government–Land in possession of respondents for a long time–Petitioner entitled to compensation for compulsory acquisition of land from the date of occupation. *P.P. Chakravarti Vs. Coal India Ltd., I.L.R. (1992) M.P. 388 (D.B.)*

-**Section 7(4)** and Coal Mines Provident Fund and Bonus Schemes Act (XLVI of 1948)–Liability to pay contributions of Provident Fund incurred prior to Taking Over of Management Act–Recovery can be made under Section 10-A of Coal Mines Provident Fund Act : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

-**Section 7(4) and (5)**–Does not provide exclusive remedy : *M/s J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

- **Section 10-A** and Coal Mines (Nationalization) Act (XXVI of 1973)–Do not repeal Section 10-A of the Coal Mines Provident Fund and Bonus Schemes Act, 1948–Coal Mines (Taking Over of Management) Act–Section 7(4) and (5)–Does not provide exclusive remedy–Interpretation of Statute–Implied repeal not to be readily inferred–Additional remedy provided by new Act–Does not take away existing remedy–Coal Mines (Taking Over of Management) Act 1973, Section 7(4) and Coal Mines Provident Fund Act and Bonus Schemes Act, 1948, Section 10-A–Liability to pay contributions of Provident Fund incurred prior to Taking Over of Management Act–Recovery can be made under Section 10-A of Coal Mines Provident Fund Act–Coal Mines (Nationalization) Act–Section 21–Provides additional remedy for recovery of arrears of Provident Fund Contribution–Coal Mines Provident Fund and Bonus Schemes Act, 1948–Section 7-A–Dispute about correctness of amount–Notice regarding quantification of arrears necessary–Notice why damages should not be imposed is mandatory–Section 10-F–Prescribes maximum amount of damages–Discretion rests with Central Government regarding amount of damages to be imposed–Implies giving of hearing to a defaulting party before deciding to recover damages–Proceeding under–Are quasi-judicial–Recovery as arrears of land revenue–Not to be made unless notice given to defaulting party : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

Coal-Mines Provident Fund (Employees Recruitment) Rules, 1982

-**Rule 7(6)**-Probation and confirmation-In absence of specific order of confirmation employee cannot be deemed to be permanent employee : *Chatrapal Thakur Vs. Assistant Commissioner of Coalmines Provident Fund, I.L.R. (2002) M.P. 76 (D.B.)*

Coal Mines Provident Fund and Bonus Schemes Act (XLVI of 1948)

-**Recovery as arrears of land revenue**-Not to be made unless notice given to defaulting party : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

-**Section 7-A**-Dispute about correctness of amount-Notice regarding quantification of arrears necessary-Notice why damages should not be imposed is mandatory : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

- **Section 9** and Mines Act, 1952 – Section 2(1) – Directors neither immediate proprietors nor lessees nor occupiers – Not include in the definition of owner – Sanction given to prosecute company – Prosecution of Directors invalid : *The State Of Madhya Pradesh Vs. D.V. Parkhani, I.L.R. (1964) M.P.638*

-**Section 10 F**-Discretion rests with Central Government regarding amount of damages to be imposed-Implies giving of hearing to a defaulting party before deciding to recover damages : *M/s J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

-**Section 10 F**-Prescribes maximum amount of damages : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

-**Section 10 F**-Proceedings under-Are quasi judicial : *M/S J.A. Trivedi Brothers Chhindwara Vs. Union Of India, I.L.R. (1975) M.P. 657 (D.B.)*

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- **Regulation 102** - Requirement of - in case of fall - Presumptive evidence of breach of his regulation - Contravention of this provision - Sirdar, Overman, Assistant Manager become liable : *H. S. Sachdeo Vs. State Of Madhya Pradesh I.L.R. (1976) M.P. 173*

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-Power of, to remove Sarpanch or Up-Sir panch : *Balmik Pradas Vs. The State Of M.P. & 2 Ors., I.L.R. (1958) M.P. 790 (D.B.)*

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-Has force of law : *Dr. Umashanker Shukla Vs. B.R. Anand, Chairman, Governing Body, Arts And Commerce College, Harda.I.L.R. (1972) M.P. 249 (D.B.)*

-Clause 9 (iv)-Effect of the provision : *Dr. Umashanker Shukla Vs. B.R. Anand, Chairman, Governing Body, Arts And Commerce College, Harda, I.L.R. (1972) M.P. 249 f (D.B.)*

-Clause 8, sub-clauses (vi) and (vii).-Provisions not available to teachers who are not confirmed : *Vedraj Dua Vs. Damoh Arts College, Damoh, I.L.R. (1960) M.P. 962 (D.B.)*

-Provisions In-Prescribe conditions for continued extension of privileges of University to affiliated colleges -Cannot be availed of by teachers of those colleges against governing body-Clause 8, sub-clauses (vi) and, (vii)-Provisions not available to teachers- who are not confirmed : *Vedraj Dua Vs. Damoh Arts College, Damoh, I.L.R. (1960) M.P. 962 (D.B.)*

Colliery Control, 1945.

- Notification under – Table II and Clause 20 of the Notification – Imposition of 10% premium – Tantamount to additional price based on quality of coal : *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593. (D.B.)*

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-Motives impelling levy of tax is irrelevant and have no bearing : *Seth Devkumar Singhji Vs. The State Of M.P., I.L.R. (1970) M.P. 215 (D.B.)*

Commercial Tax Act, M. P. 1994 (V of 1995)

- Sections 9, 17, 68 and Constitution of India – Article 226– Notification under issued by State Govt. – Providing exemption in Sales-tax on basic drugs used as raw material – Use of words ‘when used as raw material for manufacture of medicines’ –

Not Superfluous – Benefit of exemption cannot be claimed nor available to drugs in general only on ground of capability of being used for manufacturing other drugs – Interpretation of Statute - Every word used in the statute by the legislature has its own importance and role to play in construction of sentence – Benefit of exemption only available to basic drugs when used as raw material for manufacturing some other medicine – No case for interference in the notification : *M/s. Lupin Laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*

– **Sections 9(2), 13, 81** and Constitution of India – Articles 226 and 227 – Writ Petition – General Sales Tax Act, M.P., 1958 (II of 1959) – Sections 12 and 17– Exemption in Sales Tax to dealers setting up Industrial units for manufacture of goods in backward districts – Subsequent withdrawal of exemption – Illegal – Saving provisions protect and persevere the rights accrued by way of previous exemption – Exemption granted as per previous notification shall continue for the notified period : *Jagdish Bhai Patel Vs. State, I.L.R. (2001) M.P. 1821*

– **Sections 17, 9, 68** and Constitution of India – Article 226– Notification under issued by State Govt. – Providing exemption in Sales-tax on basic drugs used as raw material – Use of words ‘when used as raw material for manufacture of medicines’ – Not Superfluous – Benefit of exemption cannot be claimed nor available to drugs in general only on ground of capability of being used for manufacturing other drugs – Interpretation of Statute - Every word used in the statute by the legislature has its own importance and role to play in construction of sentence – Benefit of exemption only available to basic drugs when used as raw material for manufacturing some other medicine – No case for interference in the notification : *M/s. Lupin Laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*

-Sections 27, 28–Holding of camps permissible–Not repugnant to Section 27 of the Act : *M.P. Tax Consultant Association & anr. Vs. State Of M.P. & ors., I.L.R. (2005) M.P. 103 (D.B.)*

-Section 27, 28 - Constitution of India, Article 226 –Tax laws–Assessment–Summary procedure–Holding of Camps permissible–Not repugnant to Section 27 of the Act.: *M.P. Tax Consultant Association Vs. State Of M.P., I.L.R. (2005) M.P. 103 (D.B.)*

- Sections 28, 27–Holding of camps permissible–Not repugnant to Section 27 of the Act : *Tax Consultant Association & anr. Vs. State Of M.P. & Ors., I.L.R. (2005) M.P. 103 (D.B.)*

- **Sections 57, 58** and Constitution of India, Seventh Schedule, List II Entry 54– Constitutional validity–Tax laws–Commissioner is empowered to call for information from clearing and forwarding agents–He can re-open the cases when fraud is detected–Heavy penalty is prescribed–Contravening the provision of Sections 57 and 58 clearing and forwarding agent becomes liable as he facilitates tax evasion–Reasonable and proximate connection of C&F agent is not lacking in the present case–Directly related to evasion of tax by the dealer–Provisions are ancillary to the levy of tax within the ambit of Entry 54 of List II–Provisions intra-vires Entry 54 of List II to the Seventh Schedule–Judgment of High Court set aside : *Commercial Tax Officer Vs. Swastik Roadways, I.L.R. (2004) M.P. (SC) 321 (D.B.)*

– **Sections 68, 9, 17** and Constitution of India – Article 226– Notification under issued by State Govt. – Providing exemption in Sales-tax on basic drugs used as raw material – Use of words ‘when used as raw material for manufacture of medicines’ – Not Superfluous – Benefit of exemption cannot be claimed nor available to drugs in general only on ground of capability of being used for manufacturing other drugs – Interpretation of Statute - Every word used in the statute by the legislature has its own importance and role to play in construction of sentence – Benefit of exemption only available to basic drugs when used as raw material for manufacturing some other medicine – No case for interference in the notification : *M/s. Lupin Laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*

– **Section 70(1)** – Reference – Question referred whether PVC covered insulated Winding Wire was a spare part of submersible pump sets and thus chargeable under entry 12 : *Commissioner of Commercial Tax, Madhya Pradesh Vs. M/s. Patidar Trading Corporation, Indore, I.L.R. (2001) M.P. 416, (D.B.)*

– **Section 81** – Savings Provisions protect and preserve the rights accrued by way of previous exemption – Exemption granted as per previous notification shall continue for the notified period : *Jagdish Bhai Patel Vs.State, I.L.R.(2001) M.P. 1821,*

– **Sections 81, 9(2), 13** and Constitution of India – Articles 226 and 227 – Writ Petition – General Sales Tax Act, M.P., 1958 (II of 1959) – Sections 12 and 17– Exemption in Sales Tax to dealers setting up Industrial units for manufacture of goods in backward districts – Subsequent withdrawal of exemption – Illegal – Saving provisions protect and persevere the rights accrued by way of previous exemption – Exemption granted as per previous notification shall continue for the notified period : *Jagdish Bhai Patel Vs. State, I.L.R. (2001) M.P. 1821*

Commercial Tax Act, M.P., 1994 (as amended)

- **Section 9**—Constitution of India, Article 226 –Writ Petition—Tax Laws—Nothing to show that sale was to be concluded in A.P.—Mere issuance of transit pass will not make it an inter-State Sale—Delivery could be taken only on payment of full price including M.P. Commercial Tax : *Andhra Pradesh Paper Mills Ltd. Vs. State Of Madhya Pradesh, I.L.R. (2005) M.P. 198 (D.B.)*

- **Sections 45-A, 45-C, 45-D** and Commercial Tax Rules, M.P. 1995, Rule 73-F, Constitution of India, Articles 14, 226, 341, 391—Inter State transportation of goods—Transporter to carry with him copy of declaration in respect of a notified goods—Officers of Commercial Tax Department vested with powers to verify documents—Prima facie material available to presume attempt being made to facilitate tax evasion—Only show cause notice issued—No interference called for at this stage. *M/s North Roadlines, Nagpur Vs. State of M.P.; I.L.R. (2002) M.P. 912*

– **Sections 68, 89** and Schedule I, Sections 89, 94—Constitution of India, Articles 226, 227—Writ Petition—Accessories—Foot Valve—Having no independent use but used in pump-sets below 10 H. P. run by electricity for its efficient use—Foot valves fall under the category of accessories—Exempt under Schedule I, Entry 89 of the Commercial Tax Act. *M/s. Perfact Engineering Company Vs. Commissioner of Commercial Tax, I.L.R. (2002) M.P. 46*

–**Section 69**, Constitution of India, Articles 202, 226 and Sthaniya Kshetra Me Mal Ke Pravesh Par kar Adhinyam, M.P. 1996—Section 13—Writ Petition—Tax Laws—Difference between tax assessed and that payable as per accounts—Penalty—Levy of—Finding that effort was made to evade tax—Finding not challenged—Provisions prevailing in relevant assessment period is determinative factor—Financial legislation—Subsequent amendment reducing amount of penalty—Not retrospectively applicable : *M/S Vinod Traders Vs. Divisional Deputy Commissioner Commercial Tax, I.L.R. (2004) M.P. 911 (D.B.)*

–**Sections 89, 68 and 94**—Constitution of India, Articles 226, 227—Writ Petition—Accessories—Foot Valve—Having no independent use but used in pump-sets below 10 H. P. run by electricity for its efficient use—Foot valves fall under the category of accessories—Exempt under Schedule I, Entry 89 of the Commercial Tax Act. *M/S. Perfact Engineering Company Vs. Commissioner of Commercial Tax, I.L.R. (2002) M.P. 46*

Commercial Tax Rules, M.P. 1995

- **Rule 73-F**, Commercial Tax Act, M.P. 1994 (as amended) Sections 45-D, 45-A, 45-C and Constitution of India, Articles 14, 226, 341, 391-Inter State transportation of goods-Transporter to carry with him copy of declaration in respect of a notified goods-Officers of Commercial Tax Department vested with powers to verify documents-Prima facie material available to presume attempt being made to facilitate tax evasion-Only show cause notice issued-No interference called for at this stage. *M/s North Roadlines, Nagpur Vs. State of M.P.; I.L.R. (2002) M.P. 912*

Commissions of Enquiry Act (LX of 1952)

-**Section 3**-Proceedings before the Commission-Not an enquiry by a civil or a criminal court-Proceedings not judicial proceedings of a court of law : *Puhupram Vs. The State Of M.P., I.L.R. (1972) M.P. 284 (D.B.)*

-**Section 3**-Statements recorded before commission-Not admissible in any civil or criminal proceedings except for prosecution for giving false evidence : *Puhupram Vs. The State Of M.P., I.L.R. (1972) M.P. 284 (D.B.)*

-**Section 3**-Evidence recorded or findings given by Commissioner-Has no bearing or relation to actual events-Statements recorded before Commission-Not admissible in any civil or criminal proceedings except for prosecution for giving false evidence-Proceedings before the Commission-Not an enquiry by a civil or a criminal court-Proceedings not judicial proceedings of a court of law : *Puhupram Vs. The State Of M.P., I.L.R. (1972) M.P. 284 (D.B.)*

- **Section 4, 5 and 8**, Vishwavidyalaya Adhinyam, M. P. (XXII of 1973), Sections 2(v), 15 (4) and 15 (5) and Constitution of India, Article 226 - Bias on the part of the Commission on the ground of relationship with a person involved - Exact relationship not stated - Commission only distantly related -- bias not made out - Question not referred to Commission - It has no jurisdiction to give a finding on such matter - Such finding liable to be quashed - Remarks by the Commission - Should not be unnecessarily intemperate and unjustified - Vishwavidyalaya Adhinyam, 1973 - Sections 2 (v) and 15 (4) - Resignation of an employee accepted by vice - Chancellor under Section 14 (4) of the University of Saugar Act, 1946 - Deemed to be under section 15 (4) of the Adhinyam - Resignation - When may be withdrawn - Emergency decision by Kulpati - Executive Council has a statutory duty to consider the action of Kulpati and decide whether it is approved or disapproved - While considering the action of Kulpati Executive Council not to be influenced by the report of Commission which is without jurisdiction - Constitution of India - Article

226 - Report of Commission - When may be quashed - Full opportunity to produce evidence made difficult - Finding not binding : *Dr. (Ku). Sneh Rani Jain Vs. State Of M. P., I.L.R. (1982) M.P. 233, (D.B.)*

Commodities Price Display Order, Madhya Pradesh, 1971

- **Clauses 3 to 5** - Contemplate fixation of price of goods for displaying in price list - Price not fixed by competent authority - Dealer to fix price according to his discretion - Dealer has to sell at the price fixed - Essential Articles (Exhibition of Prices and Distribution) Order, M. P., 1966 - Clause 4 (b) - Does not vest State Government with power to sub - delegate its functions : *P.L. Agrawal Vs. State Of Madhya Pradesh, I.L.R. (1976) M.P. 650 (D.B.)*

- **Clauses 5** -Requirements of : *State Vs. Chainkaran, I.L.R. (1976) M.P. 870, (D.B.)*.

Common intention

-**Facts from which it can be inferred** : *Shyamsingh Vs. The State, I.L.R. (1958) M.P. 395, (D.B.)*

- **Common intention** - Pellets powder having not been found on the spot clearly indicates that appellant No.2 was neither present on spot nor had partaken in incident - His conviction for murder thus set aside - Also mere presence of Appellant No.3 at spot would not indicate that he shared common intention to cause death of deceased - His conviction also thus set aside : *Rajendra Tiwari & ors. & State Of M.P., I.L.R. (1997) M.P. 214 (D.B.)*

Common Land

-No title deed with either party-Land enjoyed by both-Presumption that it is common property : *Mannalal Vs. Dalchand, I.L.R. (1961) M.P. 117*

Companies (Courts) Rules, 1959

-Form No. 48-Words "other person" in-Not limited to company, the Registrar, and the person authorised by Central Government in that behalf in a case falling under Section 243-Interpretation or Statutes-Construction-General words following particular and specified words-General words to be confined to things of same kind at those specified-Words and Phrases-"Ejusdem generis"-Idea on which it is based- Rule when has no application-Condition necessary for its application-Companies Act-Section 439-Every person likely to be affected-Right of, to support or oppose winding

up petition : *Gwalior Sugar Co. Ltd. Dabra Vs. Shyam Saran Gupta I.L.R. (1971) M.P. 502 (D.B.)*

Companies (Profit) Sur Tax Act (VII of 1964)

-Sections 5 and 9-Belated filing of return is permissible but before assessment and in such cases penal provisions are not attracted unlike the provisions of Income Tax Act-Reference answered accordingly : *Commissioner of Income Tax Vs. Jiwajirao Sugar Co. Ltd., I.L.R. (2000) M.P.209 (D.B.)*

-Section 18(1)(a)-Reference-Assessee failed to file return in respect of chargeable income in time-However submitted the same belated but before the assessment-Explanation that due to disallowance of gratuity subsequently there found to be positive income-Explanation satisfactory-Sections 5 and 9-belated filing of return is permissible but before assessment and in such cases penal provisions are not attracted unlike the provisions of Income Tax Act-Reference answered accordingly : *Commissioner of Income Tax Vs. Jiwajirao Sugar Co. Ltd., I.L.R. (2000) M.P.209 (D.B.)*

Companies Act , Indian (I of 1956)

- Power of Court -Power of Court to direct amendment of Articles of Association : *M/S Chunnilal Onkarlal Pvt. Ltd, Indore Vs. The Hukumchand Mills Ltd. Indore, I.L.R. (1973) M.P., 286 .*

-Section 2(ii) and 10-Particular Court specified or special tribunal created by the Act for determination of rights created by statute-Jurisdiction is exclusive-Person who has not under section 399, right to apply under section 398 - Cannot approach ordinary Court and nullify exclusive jurisdiction of Court under section 10-Place where cause of action arose immaterial regarding jurisdiction under section 10 regarding matters falling under the Act-Civil Procedure Code-Order 2, Rule 2-Several causes of action when cannot be joined : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon , I.L.R. (1968) M.P. 367 (D.B.)*

- Sections 2(II), 10, 237, 391, 394, 395 and 397 to 407 – Jurisdiction to entertain application under these Sections – Is of only that High Court within whose jurisdiction registered office of company is situated – Other High Courts do not have concurrent jurisdiction – Mere appearance of Company raising an objection about jurisdiction – Does not amount to waiver, acquiescence or submission to jurisdiction of High Court having no jurisdiction – Application not satisfying requirements of Section 397, 398 and 399 – Court may dismiss the application : *M/s Sanchayani*

Saving & Investment (I) Ltd. Calcutta Vs. Madhusudan Ghosh, I.L.R. (1987) M.P. 226 (D.B.)

-Section 10-Place where cause of action arose immaterial regarding jurisdiction under section 10 regarding matters falling under the Act : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon , I.L.R. (1968) M.P. 367 (D.B.)*

-Section 10- Appeal-Interim order by Company Law Board in Company petition-Section 403-C.L.B. competent to pass interim order in a petition for regulating conduct of company's affairs- Sections 397 to 407-Petition under-Direction for granting inspection of record to petitioner in such a petition-Cannot be said to be outside the scope of Section 403-Order impugned cannot be faulted with : *M/S. Kowa Spinning Ltd. Vs. M/s. Khandwala Securities Ltd, I.L.R. (2000) M.P. 866 (D.B.)*

-Section 10 and 2(ii) -Particular Court specified or special tribunal created by the Act for determination of rights created by statute-Jurisdiction is exclusive-Person who has not under section 399, right to apply under section 398-Cannot approach ordinary Court and nullify exclusive jurisdiction of Court under section 10-Place where cause of action arose immaterial regarding jurisdiction under section 10 regarding matters falling under the Act-Civil Procedure Code-Order 2 rule 2-Several causes of action when cannot be joined : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon , I.L.R. (1968) M.P. 367 (D.B.)*

– **Section 172(3)** – Misappropriation of funds of Company by a Director-Whether winding up order would be just and equitable in a sound concern : *Shekhar Mehra Vs. M/S. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

– **Section 172(3)** – Non-Service of notice to a member for General Meeting – Proceedings of meeting not invalidated : *Shekhar Mehra Vs. M/S. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

– **Section 172(3)** – Joint Managing Director neither attending meetings of Company nor inclined to purchase any shares of Company to meet Company's commitment – Not entitled to grumble over holding of disproportionate shares by the other group of share-holders : *Shekhar Mehra Vs. M/S. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

- **Section 175** and Criminal Procedure Code, 1973 (II of 1974), Section 482 – Neither the complaint allege nor the provisions of Companies Act provide Chairman and Deputy Chairman as persons directly in-charge of business of company – Prosecution of Chairman and Deputy Chairman not in accordance with law – Liable to be quashed in exercise of powers u/s 482, Criminal Procedure Code : *N.A. Palkhivala Vs. Madhya Pradesh Pradushan Niwaran Mandal, I.L.R. (1990) M.P. 466,*

-Section 184-Proceedings regarding settlement of contributories against sovereign of the State - Proceedings not in the nature of suit--Provisions of sections 87-B and 86(i) of Civil Procedure Code not attracted-Consent of Central Government not necessary-Section 141, C. P. Code also not applicable-Section 86(i) deals with substantial right while Section 141, C. P. Code deals with matter of procedure-Words and Phrases : -"Suit"- Meaning of : *Prabhakar Parashramji Pandit Vs. Vikram Sugar Mills Ltd., Alote, I.L.R. (1959) M.P.804*

-Section 235(1) and Constitution of India, Articles 20 (3), 226 –Writ Petition– Investigation into affairs of Company–Purely a fact finding enquiry and does not affect any of the rights–Rule of audi alterm partem inapplicable–A person called upon to give evidence cannot be said to be a person accused–Order not arbitrary : *M/S. Design Auto System Limited Vs. Union Of India, I.L.R. (2005) M.P. 699*

– **Sections 237, 2(II), 10, 391, 394, 395 and 397 to 407** – Jurisdiction to entertain application under these Sections – Is of only that High Court within whose jurisdiction registered office of company is situated – Other High Courts do not have concurrent jurisdiction – Mere appearance of Company raising an objection about jurisdiction – Does not amount to waiver, acquiescence or submission to jurisdiction of High Court having no jurisdiction – Application not satisfying requirements of Section 397, 398 and 399 – Court may dismiss the application : *M/S Sanchayani Saving & Investment (I) Ltd. Calcutta Vs. Madhusudan Ghosh, I.L.R. (1987) M.P. 226 (D.B.)*

-Section 237(b)-Appointment of Managing Director in contravention to sections 197-A and 269-Does not suggest fraud, misfeasance or misconduct : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Circumstance suggestive of misfeasance and/or misconduct-Order being an integral and indivisible order cannot be sustained : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Concentration of share-holding in one group-No ground for starting investigation into affairs of the company : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Does not cast obligation on the part of Government to prescribe manner in which report has to be submitted by the Inspectors : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Expression "the affairs of the Company" in-Wide enough to include contravention of any law for the time being in force : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b) -If circumstances relevant for inference specified in sub-clause (ii) of clause (b) did not exist or circumstances on which opinion of Government was formed were irrelevant to lead to the necessary conclusion-Opinion cannot be said to have been in accordance with law : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-If opinion cannot be reasonably formed on existing circumstances-Action under this section must fail : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Loan transaction and investments not justified by business or commercial expediency-Cannot be treated as suggestive of misconduct or misfeasance on the part of persons in management : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P. 999 (D.B.)*

-Section 237(b)-No warrant in the provision to read into it any limitation as regards period of affairs to be investigated or as regards persons in management or as regards the members of the Company : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Opinion of Government directing investigation-Opinion not open to scrutiny of Court-Basis for opinion can be examined : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Power of Government to take initiative-Power exercisable only if complaint, application or representation of person having stake is before it : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Transaction effected by the company with its subsidiary as not sound on grounds of commercial expediency-Cannot constitute a valid ground for making order under the section : *M/s Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

-Section 237(b)-Power of investigation into affair of company is discretionary-Discretion however is not complete and unexaminable- Precondition for exercising power is formation of opinion-Opinion to be founded on circumstances suggesting

inferences, described in three sub-clauses of clause (b)-Opinion of Government directing investigation-Opinion not open to scrutiny of Court-Basis for opinion can be examined-If opinion cannot be reasonably formed on existing circumstances-Action under the section must fail-If circumstances relevant for inference specified in sub-clause (ii) of clause (b) did not exist or circumstances on which opinion of Government was formed were irrelevant to lead to the necessary conclusion-Opinion cannot be said to have been in accordance with law-Power of Government to take initiative-Power exercisable only if complaint, application or representation of person having stake is before it-Concentration of share-Holding in one group-No ground for starting investigation into affairs of the company-Transactions effected by the company with its subsidiary as not sound on grounds of commercial expediency-Cannot constitute a valid ground for making order under the section-Loan transactions and investments not justified by business or commercial expediency-Cannot be treated as suggestive of misconduct or misfeasance on the part of persons in management-Circumstances suggestive of misfeasance and/or misconduct-Order being an integral and indivisible order cannot be sustained-Appointment of managing director in contravention to sections 197-A and 269-Does not suggest fraud, misfeasance or misconduct-Expression "the affairs of the company" in-Wide enough to include contravention of any law for the time being in force-No warrant in the provision to read into it any limitation as regards period of affairs to be investigated or as regards persons in management or as regards the members of the company-Does not cast obligation on the part of Government to prescribe manner in which report has to be submitted by the Inspectors : *M/S Jiyajeerao Cotton Mills Ltd., Gwalior Vs. The Chairman, Company Law Board Etc., I.L.R. (1973) M.P., 999 (D.B.)*

- **Section 257**, 284 and Civil Procedure Code (V of 1908), order 7 Rule 10, Order 43 Rule (1) (a), Section 9 –Company Law–Notice for Substituting Director for the unexpired period due to be held by removed director–Returned without allowing how the notice is not in accordance with law–Civil suit–Jurisdiction of Civil Court–Rule is that the remedy provided in the Act is the exclusive remedy with regard to a right–Right of suit not taken a way expressly or impliedly–Suit must be held to be maintainable–Order of trial court/retraining plaint set aside : *Sir J.P. Srivastava & Sons (rampur) Pvt.ltd. Vs. M/s Gwalior Sugar Co. Ltd., I.L.R. (2003) M.P. 634*

– **Section 283(1)(g)** – Director absenting himself from 3 consecutive meetings of the Board of Directors – Vacation of office automatic – No resolution necessary – No notice to Director for hearing also necessary: *Shekhar Mehra Vs. M/s. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

-**Section 293(1)**-Agreement to transfer undertaking by directors-Does not violate the Section-Is merely tentative subject to final approval by Company : *Shree Onama Glass Works, Ltd, Gondia Vs.Ram Harak Pandey I.L.R. (1967) M.P. 431*

-Section 293(1)-Boards of Directors and Manager to whom affairs of Company entrusted-Represent the directing mind and will of company : *Shree Onama Glass Works, Ltd, Gondia Vs. Ram Harak Pandey I.L.R. (1967) M.P. 431*

-Section 293(1)-Power to do an act mentioned in clause (1)-Not taken from the powers of Directors-Super-imposes a condition only : *Shree Onama Glass Works, Ltd, Gondia Vs. Ram Harak Pandey I.L.R. (1967) M.P. 431*

-Section 293(1)-Want of consent of Company invalidates transaction-Does not make possession of transferee as one without the consent of Company-True criterion is whether persons acting represented the directing mind and will of the Company : *Shree Onama Glass Works, Ltd, Gondia Vs. Ram Harak Pandey I.L.R. (1967) M.P. 431*

-Section 293(1)-Possession given by persons representing the directing mind and will of Company-Possession can be regarded as being given with consent of Company-The question whether the transaction was in excess of their power-Immaterial : *Shree Onama Glass Works, Ltd, Gondia Vs. Ram Harak Pandey I.L.R. (1967) M.P. 431*

– **Sections 391, 2(II), 10, 237, 394, 395 and 397 to 407 – 397 and 398** Mere appearance of company raising an objection about jurisdiction – Does not amount to waiver acquiescence or submission to jurisdiction of High Court having no jurisdiction : *M/S Sanchayani Saving & Investment (I) Ltd. Calcutta Vs. Madhusudan Ghosh, I.L.R. (1987) M.P. 226 (D.B.)*

– **Sections 391, 2(II), 10, 237, 394, 395 and 397 to 407 – Jurisdiction to entertain application under these Sections – Is of only that High Court within whose jurisdiction registered office of company is situated – Other High Courts do not have concurrent jurisdiction – Mere appearance of Company raising an objection about jurisdiction – Does not amount to waiver, acquiescence or submission to jurisdiction of High Court having no jurisdiction – Application not satisfying requirements of Section 397, 398 and 399 – Court may dismiss the application : *M/S Sanchayani Saving & Investment (I) Ltd. Calcutta Vs. Madhusudan Ghosh, I.L.R. (1987) M.P. 226 (D.B.)***

-Section 397-Circumstances and conditions in which provision comes into operation-Majority of members can also apply under this provision-Word "oppressive" in-Meaning of-Sections 397 to 399-Speak of right of member to make application-Scope of the order to be made not defined-Section 403-List is illustrative and not exhaustive-Power of Court to direct amendment of Articles of Association : *M/S Chunnilal Onkarlal Private Ltd., Indore Vs. The Hukumchand Mills Ltd, Indore., I.L.R. (1973) M.P., 286 .*

-Section 397 to 399-Speak of right of member to make application-Scope of the order to be made not defined : *M/s Chunnihal Onkarlal Private Ltd., Indore Vs. The Hukumchand Mills Ltd, Indore., I.L.R. (1973) M.P., 286*

-Sections 397 to 407- Petition under- Direction for granting inspection of record to petitioner in such a petition-Cannot be said to be out side the scope of Section 403-Order impugned cannot be faulted with : *M/S. Kowa Spinning Ltd. Vs. M/s. Khandwala Securities Ltd, I.L.R. (2000) M.P. 866 (D.B.)*

- Sections 397, 398 and 399 – Application not satisfying requirements of Court may dismiss the application : *M/S Sanchayani Saving & Investment (I) Ltd. Calcutta Vs. Madhusudan Ghosh, I.L.R. (1987) M.P. 226 (D.B.)*

- Sections 397, 398 and 433(f) – Requirements for making an order for winding up the company – Section 283(1)(g) – Director absenting himself from 3 consecutive meetings of the Board of Directors – Vacation of office automatic – No resolution necessary – No notice to Director for hearing also necessary – Section 172(3) – Non-Service of notice to a member for General Meeting – Proceedings of meeting not invalidated – Joint Managing Director neither attending meetings of Company nor inclined to purchase any shares of Company to meet Company’s commitment – Not entitled to grumble over holding of disproportionate shares by the other group of share-holders –Misappropriation of funds of Company by a Director – Whether winding up order would be just and equitable in a sound concern Section 402 – Powers of Court to regulate affairs of the Company : *Shekhar Mehra Vs. M/S. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

- Sections 398, 397 and 433(f) – Requirements for making an order for winding up the company – Section 283(1)(g) – Director absenting himself from 3 consecutive meetings of the Board of Directors – Vacation of office automatic – No resolution necessary – No notice to Director for hearing also necessary – Section 172(3) – Non-Service of notice to a member for General Meeting – Proceedings of meeting not invalidated – Joint Managing Director neither attending meetings of Company nor inclined to purchase any shares of Company to meet Company’s commitment – Not entitled to grumble over holding of disproportionate shares by the other group of share-holders –Misappropriation of funds of Company by a Director – Whether winding up order would be just and equitable in a sound concern Section 402 – Powers of Court to regulate affairs of the Company : *Shekhar Mehra Vs. M/S. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

-Sections 398 and 399-Person who has not under Section 399 right to apply under section 398-Cannot approach ordinary Court and nullify exclusive jurisdiction

of Court under Section 10 : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon, I.L.R. (1968) M.P. 367 (D.B.)*

-Section 399 and 398-Person who has not under Section 399 right to apply under section 398-Cannot approach ordinary Court and nullify exclusive jurisdiction of Court under Section 10 : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon, I.L.R. (1968) M.P. 367 (D.B.)*

– Section 402 – Powers of Court to regulate affairs of the Company : *Shekhar Mehra Vs. M/s. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

-Section 403-List is illustrative and not exhaustive : *M/S Chunnilal Onkarlal Private Ltd., Indore Vs. The Hukumchand Mills Ltd, Indore., I.L.R. (1973) M.P., 286 .*

-Section 403-C.L.B. competent to pass interim order in a petition for regulating conduct of company's affairs : *M/s. Kowa Spinning Ltd. Vs. M/s. Khandwala Securities Ltd, I.L.R. (2000) M.P. 866 (D.B.)*

- Section 433(1) - Maintainability of application for winding up of a Company - Filed by an employee of company on ground of nonpayment of salary – Not maintainable : *Pawan Kumar Khullar Vs. Kaushal Leather Board Limited, I.L.R. (1995) M.P. 251*

- Sections 433(f), 397 and 398 – Requirements for making an order for winding up the company – Section 283(1)(g) – Director absenting himself from 3 consecutive meetings of the Board of Directors – Vacation of office automatic – No resolution necessary – No notice to Director for hearing also necessary – Section 172(3) – Non-Service of notice to a member for General Meeting – Proceedings of meeting not invalidated – Joint Managing Director neither attending meetings of Company nor inclined to purchase any shares of Company to meet Company's commitment – Not entitled to grumble over holding of disproportionate shares by the other group of share-holders – Misappropriation of funds of Company by a Director – Whether winding up order would be just and equitable in a sound concern Section 402 – Powers of Court to regulate affairs of the Company : *Shekhar Mehra Vs. M/s. Kilpest Pvt. Ltd., Bhopal, I.L.R. (1987) M.P. 281 (D.B.)*

- Section 439-Every person likely to be affected -Right of, to support or oppose winding up petition : *Gwalior Sugar Co. Ltd. Dabra Vs. Shyam Saran Gupta I.L.R. (1971) M.P. 502 (D.B.)*

Companies Act, Indian (VII of 1913)

-Section 171-Not applicable to a suit against objectors for damages for fraud : *Shri S. Chatterjee Vs. Dr. K.L. Bhave & Ors., I.L.R. (1960) M.P. 265 (D.B.)*

-Section 171-Proceedings against company-Winding up order passed in winding up proceedings-Permission of winding up Court necessary to continue or institute proceedings against company-Permission not necessary for company to start proceedings or defend the proceedings against it : *Eastern Automobile Syndicate Ltd Vs. Babu Rajendra Kumar Singhji, I.L.R. (1959) M.P.106 (D.B.)*

-Section 184 - Winding up Court-Jurisdiction of, to correct list of contributories so as to rectify the register : *Chunnilal Onkarmal Vs. Shri Vikram Sugar Mills Ltd., Indore, I.L.R. (1964) M.P. 254 (D.B.)*

Company Law

- **Act or transaction ultra** - vires the Directors - Company not bound by it but company can ratify it : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Company not bringing action for wrong done to it** - A share - holder can bring representative action on behalf of company : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Court has no jurisdiction to interfere with internal management of the company** : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Feature which distinguishes derivative action from representative action** - When can act or transaction of company be said to be ultra vires : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **For wrong done to company** - Can bring action : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Minority of share holder over - borne by vote of majority** - Minority share - holder cannot complain of the act capable of being ratified by majority : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Fiduciary Character** - Settled rule of law about person bound in fiduciary character to protect interest of other person - He must not put himself in position when duty and interest conflict : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **Ultra vires act of company** - Does not bind company - Cannot be validated by assent of a general meeting, nor by consent judgment against company or even by estoppel : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

- **A share** - holder can bring suit in representative capacity on behalf of minority share - holders - One of three things to be established to bring a suit against company or majority share - holders : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore, I.L.R. (1976) M.P. 30 (D.B.)*

- **Winding up proceedings**-Creditor raising dispute regarding payment of full value of shares-Inquiry regarding matter necessary-Burden heavy upon persons seeking inquiry : . *Seth Heeralal Vs. Messrs The Alote Estate, I.L.R. (1969) M.P. 251 (D.B.)*

- **Right of share** - holder to bring personal action to enforce right which did not accrue to him - Court has no jurisdiction to interfere with internal management of the company - For wrong done to company - Company can bring action - Minority of share - holder over - borne by vote of majority - Minority share - holder cannot complain of the act capable of being ratified by majority - A share - holder can bring suit in representative capacity on behalf minority share - holders - One of three things to be established to bring a suit against Company or majority share - holders - Company not bringing action for wrong done to it - A share - holder can bring representative action on behalf of company - Feature which distinguishes derivative action from representative action - When can act or transaction of company be said to be ultra vires - Ultra vires act of company - Does not bind company - Cannot be validated by assent of general meeting nor by consent judgment against company or even by estoppel - Act or transaction ultra vires the Directors - Company not bound by it but company can ratify it - settled rule of law about person bound in fiduciary character to protect interest of other person - He must not put himself in position when duty and interest conflict - agent's remuneration fixed by agreement - Remuneration can be enhanced retrospectively by the principal - Limitation Act, 1908 - Article 89 - Applies to a suit for accounts : *Prakashchandra Vs. Firm Swarupchand Hukumchand And Co. Indore I.L.R. (1976) M.P. 30 (D.B.)*

Compensation

- Principles on which compensation to be paid in case of statutory acquisition of undertakings - Electricity Act 1910 - Does not permit grant of interest where franchise for a public utility is granted to private undertakers for limited period with a condition of handing over concern to public authority at the end of period - Distinction regarding method of valuation between a case where undertaking is taken over after revoking licence and where it is one after expiry of the period - Arbitration Act, 1940 - Schedule I, Rule 8 - Confers discretion upon umpire to grant costs - section - 29 - confers power on Court to grant interest on principal sum only from date of decree - Section 17 Award of umpire under Electricity Act - Subject to this provision - Decree in terms of Award under Section 7 - A (1) of Electricity Act - Cannot be only declaratory decree - Electricity (Supply) Act, 1948, Schedule 6, Clauses 11(3), V(2) and V A(4) - Casts duty on licensee to hand over certain reserves to the Board who has taken over the concern : *Madhya Pradesh Electricity Board, Jabalpur Vs. The Central India Electric Supply Co., Ltd., Bilaspur, I.L.R. (1976) M.P. 57 (D.B.)*

Computation

-Computation Of time in prosecuting with due diligence another civil proceeding-Time requisite for obtaining certified copy under section 12, Limitation Act, and period for filing appeal if can be taken into consideration-But if appeal filed earlier, time upto date of filing appeal can be taken into consideration : *Mst. Duliabai & Ors. Vs. Vilayatali & Ors., I.L.R. (1958) M.P. 695 (D.B.)*

Conduct of Election Rules, 1961

-Rule 94-A-Requirements of : *Pandit Dwarka Prasad Mishra Vs. Shri Kamal Narain I.L.R. (1966) M.P. 345 (D.B.)*

Confession

-Extra judicial confession -Can be used as corroboration to oral evidence : *Mana Vs. State, I.L.R. (1960) M.P. 1082*

-Admissibility -Confession otherwise Inadmissible but facts discovered in pursuance of confession-Confession may be accepted without hesitation-Statement leading to the discovery to be proved like any other fact : *Bhagirath & 6 Ors. Vs. The State Of M.P., I.L.R. (1958) M.P. 741*

Consideration

Challenge -Right to third party to challenge consideration of the deed : *Ramjilal Vs. Vijay Kumar, I.L.R. (1973) M.P., 306 (D.B.)*

-Abandonment of disputed or doubtful claim-Forms valuable consideration : *Firm M/s Gopal Company Ltd., Bhopal & Anr. Vs. Firm Hazarilal & Company, Bhopal, I.L.R. (1965) M.P. 938 (D.B.)*

-Test to determine whether consideration in good faith : *Firm M/s Gopal Company Ltd., Bhopal & Anr. Vs. Firm Razarilal & Company, Bhopal, I.L.R. (1965) M.P. 938 (D.B.)*

Consignor

- Consignor, Right of, to sue after the endorsement in favour of endorsee on the railway receipt-Notice given by endorsee under section 77-Suit by consignor after service of notice under section 80, Civil Procedure Code – Maintainability : *Union Of India Vs. Gangaji, I.L.R. (1958) M.P. 691 (D.B.)*

Consolidation of Holdings Act, Central Provinces (VIII of 1928)

-Section 12 (2) and C.P. Land Revenue Act, 1917, Section 80 (3)- Entries in record prepared by consolidation authorities-Entries presumed to be correct : *Sukhiram & Ors. Vs. Tarachand, I.L.R. (1961) M.P. 685 (D.B.)*

Constitution (Scheduled Tribes) Order 1950

- As amended-Kewat, Mallah, Dhimar, Nishad, Bhoi, Kahar not mentioned against the term Majhi-Contention that these communities are also Scheduled tribes as Majhi cannot be accepted : *Radhaballabh Choudhary Vs. Union Of India, I.L.R. (1992) M.P. 716 (D.B.)*

Constitution (Fourth Amendment) Act, 1955

- Inadequacy of compensation - Cannot be ground for challenging a statute : *Sardarmal Lalwani Vs. The Collector, Sehore I.L.R. (1976) M.P. 777 (D.B.)*

Constitution of India, Amendment Act (42 of 1976)

- **Section 38(3), Proviso, Section 58(2), Proviso** - Abatement of petition – Pending the Petition challenging proceedings for recovery of income-tax Constitution of India, Amendment Act (42 of 1976) came into force- Petition dismissed as abated on enforcement of Act - Petitioner cannot be left remediless - By him before Civil Court - Without indulging into controversy of limitation, Subsequent suit directed to be registered by Trial Court. *Smt. Kajala Devi Vs. Union of India, I.L.R. (1995) M.P. 252*

Constitution of India,

- **Terms Of Service** - Constitution Does not bar Government or legislature from modifying terms of service-Any action under new rule - Cannot affect what had taken earlier : *Vishwanath Vinayak Vaishampayan Vs. The State , I.L.R. (1969) M.P. 986 (D.B.)*

-**Validation of action**-To be regarded as ancillary and subsidiary to power to legislate : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 186 (D.B.)*

-**Validation of law**-Not affected because of its effect on judicial decision as likely to re-open past controversies : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 186 (D.B.)*

- **President's Power** - Constitution Does not empower President to suspend powers to issue writ of Habeas Corpus : *Shivakant Shukla Vs. Additional District Magistrate Jabalpur, I.L.R. (1978) M.P. 301, (D.B.)*

-**Legislative Lists**-Not to be read in a narrow or restricted sense-General word to be held to extend to all ancillary and subsidiary matters : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 186 (D.B.)*

- **Mandatory directions of Central Government** - Binding on State Government - Allotment in breach of directions - Is invalid : *M/s National Pesticides Company, Vidisha Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 182 (D.B.)*

- **Seventh Schedule, Entry 53 of List-II**—State has the competence to levy tax only on sale and consumption of electricity—Upkar Adhinyam, M.P. 1981, as amended by Upkar (Sanshodhan) Adhinyam, M.P. 2001 and that of 2003—Section 3(2)—Imposition envisaged on production of electricity units—A levy which the State admittedly was incompetent to impose—Explanation introduced to newly substituted

provision—Purpose of Section 3(2) continues to be levy on production—Explanation does not serve to change the character from an impermissible to a permissible levy—Provision ultra-vires—State/Respondents liable to refund the cess collected from appellant with interest @ 9% p.a : *M.P. Cement Manufacturers' Association Vs. State Of Madhya Pradesh, I.L.R. (2004) M.P. (Sc) 297 (D.B.)*

- Seventh Schedule, List II Entry 54 and Commercial Tax Act, M.P. 1994 (V of 1995) Sections 57, 58—Constitutional validity—Tax laws—Commissioner is empowered to call for information from clearing and forwarding agents—He can reopen the cases when fraud is detected—Heavy penalty is prescribed—Contravening the provision of Sections 57 and 58 clearing and forwarding agent becomes liable as he facilitates tax evasion—Reasonable and proximate connection of C&F agent is not lacking in the present case—Directly related to evasion of tax by the dealer—Provisions are ancillary to the levy of tax within the ambit of Entry 54 of List II—Provisions intra-vires Entry 54 of List II to the Seventh Schedule—Judgment of High Court set aside : *Commercial Tax Officer Vs. Swastik Roadway, I.L.R. (2004) M.P. (SC) 321 (D.B.)*

– **Notice to show cause** – Appellant appointed on 2 years training – On completion of training, he was terminated without any notice to show cause – Termination without notice cannot be challenged : *Deonarayan Patel Vs. M.P. Electricity Board, I.L.R. (1991) M.P. 438 (D.B.)*

-Writ of certiorari- When it can be issued—Central Provinces and Berar Revocation of Land Revenue Exemptions Act—Section 5(3)—Word "May" in—Has no compulsory force—Gives discretion to State Government to determine nature of grant and not a discretion to make a grant at all—Rules under the Act—Enquiry prescribed under rules meant for subjective satisfaction of State Government—Does not create any right in claimant for the grant of money or pension—Proceedings under section 5 - Not judicial or quasi-judicial in nature : *Sardar Govindrao Vs. The State Of Madhya Pradesh, I.L.R. (1959) M.P. 172 (F.B.)*

-State List, Entry 19—Disposal of Tendu leaves covered by—Does not require assent of President : *M/S Chhotabhai Jethabhai Patel And Co., Rajnandgaon Vs. The State Of M.P. I.L.R. (1967) M.P.721 (D.B.)*

- List I, Entry 52 and Entry 33, Entry 14 List II and Schedule VII - Central Government's scheme and directions regarding distribution of technical grade pesticides fall within Entry 52, List I and Entry 33, List II and not within Entry 14, List II : *M/S National Pesticides Company, Vidisha Vs. State Of Madhya Pradesh, I.L.R. (1981) M.P. 182, (D.B.)*

- **Entry 84, List I**-Entry 54, List II - Levy of Sales Tax on preparation containing alcohol by State Government-Validity : *M/S Alembic Distributors Ltd., Jabalpur & Ors. V Assistant Commissioner Of Sales Tax, Jabalpur, I.L.R. (1962) M.P. 219 (D.B.)*

- **List II, Entry 14, Schedule VII** - Has to be read with Entries 24, 26 and 27 of List II and corresponding entries relating to Scheduled Industry Entry 52, List I and Entry 33. List II : *M/S National Pesticides Company, Vidisha Vs. State Of Madhya Pradesh, I.L.R. (1981) M.P. 182, (D.B.)*

-**Entry No. 17, List II (State list), Schedule VII(II)**-Authorizes State Legislature to pass enactment on the subject-Legislature could make valid law and also give retrospective effect : *The Gwalior Agriculture Company Limited, Dabra Vs. State Of M.P., I.L.R. (1975) M.P. 599 (D.B.)*

- **List II, Entry 30, Schedule VII**- Interpretation of legislative lists - Lists should not be narrowly construed - Widest amplitude should be given : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120 (D.B.)*

- **List II, Entry 30, Schedule VII** - Word "Agriculture" in - To be interpreted to harmonise with money-lending and money-lenders - All debts incurred by agriculturist is covered by the entry : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120, (D.B.)*

- **List II, Entry 30, Schedule VII** - Covers - M. P. Gramin Rin Vimukti Tatha Rin Sthagan Adhinyam, 1975 - Word "Agriculture" in to be interpreted to harmonise with money-lending and money-lenders-All debts incurred by agriculturist is covered by the entry - Interpretation of legislative lists - Lists should not be narrowly construed - Widest amplitude should be given - Section 5 - A - Is also intra-vires - Does not confer power on collector or S. D. O. to institute proceedings before them - Constitution of India - Article 31 - "Property" in - Includes every possible interest and includes movable and immovable property - Article 31 (2-A) -Creditor not entitled to compensation as deprivation of property is by authority of law and Act does not provide for transfer of ownership or possession to the State or Corporation - Article 301 - Liquidation of debt - Does not obstruct or put barrier on the right of free trade or commerce : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120, (D.B.)*

-**List II, Entry 41**-Expression "State Public Services"-Wide enough to include integration of services-Power, however, subject to other provision of Constitution : *Narayan Chandra Mukherji Vs. The State Of M.P. I.L.R. (1969) M.P. 550 (D.B.)*

- **List II**, Entry 49 and Nagariya Sthawar Sampatti Kar Adhiniyam, M. P. (XIV of 1964), Section 5 (ii) (a) - The word 'factory' in Section 5 (ii) (a) - Connotation of : *The Municipal Council, Satna, Vs. M/s Birla Jute Manufacturing Co. Ltd. Satna, I.L.R. (1983) M.P. 366, (D.B.)*

-**List II-Item 5-Word "Power"** in-A large word and its meaning cannot be limited -Includes power of making laws and imposing taxes : *Achchelal Vs.The Janapada Sabha, Sihora & Anr., I.L.R. (1963) M.P. 777 (F.B.)*

-**Chapter III**-Applicability of, to Society : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, & 3 Ors., I.L.R. (1961) M.P. 673 (D.B.)*

- **Part IV**, Directive Principles of State Policy and Articles 47 and 37 and Evidence Act, Indian (I of 1872), Section 115 - Estoppel - Principle of - Whether available against Government - State Government's policy towards Improvement of Public Healths - State Govt. drawing up 'Minimum Needs Programme' and decided to open Mini Primary Health Centre - Such a centre in skeleton form functioning in village Rangarithoka - Subsequently State Govt. taking final decision for location of a fullfledged Primary Health Centre in village Rangarisafar at a distance of about 5 furlongs - Villagers of Rengarithoka cannot make a grievance of deprivation of medical facilities to them by the State - Shifting of Primary Centre cannot be said to be politically motivated - Master and servant - Liability of Govt. for the acts of its officers and agents acting beyond the scope of their authority : *Vitthal Rao Mahale Vs. State Of M. P., I.L.R. (1984) M.P. 210 (D.B.)*

- **Concurrent List (List III), Entry 7** - Dhan Parichalan Skeem (Pratishedh) Adhiniyam, Madhya Pradesh, 1975 - Falls under Entry 7 of List III - Is hence intra-vires : *M/S Sudarshan Finance Corporation Madras Vs. State Of M. P. I.L.R. (1979) M.P. 205 (D.B.)*

-**Fifth Schedule, para 5(2)**-Words "peace and good Government" in-Very wide-Justify forbidding of certain lines of business provided it is for protection of persons for whose benefit it is made : *Chandmal Vs. State Of M.P., I.L.R. (1969) M.P. 779 (D.B.)*

-**Fifth Schedule, para 5(2)(c) and 5(2)**-Purpose of para 5(2)-Sub-Heading "Business of Money-lending"-Is by way of illustration : *Chandmal Vs. State Of M.P., I.L.R. (1969) M.P. 779 (D.B.)*

-**Seventh Schedule** - Concurrent list, Entry 42-State legislature, Power of, to enact legislation depriving person of property right : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

-Statute 11-Screening Committee has to scrutinize the cases of employees and make report to the Board-Cannot select cases for being placed before the Board-Power to take decision to compulsory retire was never delegated-The Vice-Chancellor transgressed his power and usurped the powers of the Board in passing the impugned order of compulsory retirement of petitioner-Impugned order quashed with consequential monetary benefits to the petitioner as he attained the age of superannuation : *Dr. P.G. Najpande Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya And Other, I.L.R. (1999) M.P. 200*

-Article 1- What is included in the territory of State, *Manganese Ore (India) Limited, Nagpur-1 Vs. The Regional Assistant Commissioner Of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8, (D.B.)*

Article 5-Domicile of a dependent-Changes according to domicile of person on whom he is dependent-Cannot acquire domicile of his choice by his own Act-Remains unchanged till changed by his own act-Domicile of minor-Determined and changed with that of his father : *Usman Ali Vs. The State Of M.P. & Anr., I.L.R. (1963) M.P. 1049 (D.B.)*

-Article 12-The definition of "State" in-Includes society registered under Co-operative Societies Act : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, & 3 Ors., I.L.R. (1961) M.P. 673 (D.B.)*

- Article 12 - M. P. Electricity Board is 'State' within the meaning of Article 12 - Amenable to writ jurisdiction of High Court : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradedsh State Electricity Board, Jabalpur, I.L.R. (1984) M.P. 8, (D.B.)*

-Article 12-State-Govt. Companies of Central Govt. financed & controlled by said Govt.-They are 'State'-Amenable to writ jurisdiction. *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

- Articles 12 - Employer School run by Army Education Society registered under Societies Registrations Act -Society not directly or indirectly controlled by State-Society does not come within definition of 'State' : *Ms. Serbjeet Bhatia Vs. The Goc - In - C, H.Q. Central Command, Lucknow (U.P.), I.L.R. (2004) M.P. 460*

-Article 12-Private Educational Institution-Amenable to writ jurisdiction of High Court : *Mrs. Promilla Bais Vs. The Principal Daly College, Indore I.L.R. (2000) M.P. 1423 (D.B.)*

- Article 12-State-Whether Indian Council of Forestry Research and Education (ICFRE) is State-ICFRE established by Govt. of India to oversee activities relating to

forestry research and education-Subsequently autonomous status was given by getting ICFRE as Society- Memorandum of Association provides funds of society shall consists of lumpsum and recurring grant by Govt. of India-Contributions from other sources and income from investment- Board of Governors to function under the directives of Govt. of India- Board of Governors consists of different officers of Govt. of India-Powers of Society are subject to restrictions and guidelines issued by Govt. of India-Functions carried out by Society are of public importance - ICFRE is a State within meaning of Article 12 of Constitution of India - Writ Petition maintainable : *Harichand Vs. Union Of India; I.L.R. (1994) M.P. 359*

-Article 12 and Chapter III - The definition of "State" in Article 12- Includes society registered under Co-operative Societies Act -Chapter III-Applicability of, to society-Rules and Bye-Laws -Distinction-Both have force of law -Article 226-Writ can issue to co-operative societies-Bye-law 21, item 13-Confers no power on society to suspend servant during enquiry-Master and servant-No power to suspend employee in the absence of special contract-Order of suspension cannot be retrospective : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, I.L.R. (1961) M.P. 673 (D.B.)*

– **Articles 12 and 14** – State and their authorities falling under Article 12 – Not expected to be oblivious to their obligations under – Article 14 – Tender – Contract to be entered in to with private party by inviting Tenders – Requirements of – State and their authorities must act fairly and afford equal opportunity to all Tenderers to participate in negotiations : *Bhaiyalal Shukla Vs. Chairman, Special Area Development Authority, Singrauli, I.L.R. (1990) M.P. 308, (D.B.)*

- **Articles 12, 14 and 16** - Circular framed under the regulation - Validity of : *The State Bank Of India, Bombay Vs. R. K. Jain, I.L.R. (1982) M.P. 807, (D.B.)*

- **Articles 12, 14 and 16** - State Bank of India is "State" under Article 12 - Relaxation in matter of eligibility granted in favour of Scheduled Castes/Tribes employees - Does not offend fundamental rights of other employees : *The State Bank Of India, Bombay Vs. R. K. Jain, I.L.R. (1982) M.P. 807, (D.B.)*

– **Article 12, 14, 16** – Termination of Services by Chief Executive Officer without jurisdiction – In absence of rules termination could only be in accordance of rules of natural justice – Termination is violative of Articles 14 and 16 of Constitution : *M.D. Awasthy Vs. State Of M.P., I.L.R. (1991) M.P. 279 (D.B.)*

- **Article 12, 14 and 16** - Steel Authority of India Limited is a 'State' within the meaning of Article 12 - Fundamental Rights under Articles 14 and 16 enforceable against it - Steel Authority of India Limited laying new promotion policy providing uniform rule for all the units of the company - Extend of Judicial Review permissible

- New promotion policy resting on reasonable basis and bearing nexus with the object in view - Cannot be struck down as discriminatory or violative of Articles 14 and 16 - New promotion policy providing higher experience qualification for candidates not possessing requisite educational qualification for promotion from E-1 grade to E-2 grade and minimum educational qualification for promotion to E-3(a) and 2 years experience qualification for promotion from E -3 (a) to E-3 (b) grade not invalid - Allocation of 30% marks for interview - Not unreasonable : *Officers' Association, Bhilai Steel Plant, Bhilai Nagar Vs. Steel Authority Of India Ltd. I.L.R. (1983) M.P. 144, (D.B.)*

- **Articles 12, 14, 16** and Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973 (XXIII of 1973), Sections 30, 87(i) (c) (iv) – J.D.A. is an instrumentality of State – Employees of J.D.A. in public employment and have status – Transfer of petitioner to Katni Town Improvement Trust without jurisdiction – Termination of Services by Chief Executive Officer without jurisdiction – In absence of rules termination could only be in accordance of rules of natural justice – Termination is violative of Articles 14 and 16 of Constitution : *M.D. Awasthy Vs. State Of M.P., I.L.R. (1991) M.P. 279 (D.B.)*

– **Articles 12, 14, 16 and 226** – Aided schools are State Agency or instrumentality – Obligation of act reasonably and not arbitrarily, enforceable by any Court including High Court – Absence of reasons for termination of confirmed employee makes the order arbitrary – Res Judicata & Constructive re-judicata – Principles apply to writ proceedings : *President, Birla Education Society Vs. Director Of Public Instruction, M.P., Bhopal, I.L.R. (1988) M.P. 193*

– **Articles 12, 14 and 226** – Respondent No. 1 – Corporation is ‘State’ within meaning of Article 12 – Respondent No.1 issuing tender embodying a term therein that Tender may be accepted or rejected by it without assigning any reason – Validity of – Acceptance of Tender of Respondent No. 2 giving facilities of payment of price in two installments contrary to conditions of tender – Action of Respondent No. 1 is discriminatory and violative of Article 14 – Article 14 – Article 226 – Alternative remedy – Not an absolute bar – Acceptance of Tender quashed and re-tender directed : *Navranglal Mittal Vs. National Thermal Power Corporation Ltd., Korba, I.L.R. (1990) M.P. 299 (D.B.)*

–**Articles 12, 14 and 311** and Municipal, Rules, M.P., 1968, Rules 13, 35, 38, 49 and 52–Municipalities are creation of statute and fall under Article 12 but its employees do not hold civil posts–In the matter of termination of its employee Article 311(2) not attracted : *Municipal Council, Sabalgarh Vs. Munnalal, I.L.R. (1992) M.P. 744*

- **Articles 12, 226** – Indian Oil corporation amenable to writ jurisdiction of High Court : *Smt. Chinta Jaiswal Vs. Indian Oil Corporation Ltd., I.L.R. (1993) Mp 489 (D.B.)*

– **Articles 12 and 226** – Co-operative society when amenable writ jurisdiction : *Anant Purohit V. State Of M.P., I.L.R. (1987) M.P. 21 (D.B.)*

- **Articles 12 and 226** - National Textile Corporation is a 'State' within Article 12 : *Bhagwant Vs. National Textile Corporation Limited, New Delhi I.L.R. (1984) M.P. 547 (D.B.)*

– **Articles 12, 226** – Writ petition Challenging termination of School teacher–Employer School run by Army Education Society registered under Societies Registrations Act –Society not directly or indirectly controlled by State–Society does not come within definition of 'State'–Termination after show cause notice and payment of three months salary due to poor performance–Rules framed by society not statutory in nature–Termination within the scope of Rules can not amount to breach of public duty–Order of termination can not be said to be arbitrary or unreasonable : *Ms. Serbjeet Bhatia Vs. The Goc - In - C, H.Q. Central Command, Lucknow (U.P.), I.L.R. (2004) M.P. 460*

- **Articles 12, 226 and 300 (A)**, Evidence Act, Indian (1 of 1872), Section 115 and Electricity Act, Indian (IX of 1910), Section 2 (f) and 2 (n) - M. P. Electricity Board is 'State' within the meaning of Article 12 - Amenable to writ jurisdiction of High Court - Board entering into contract for purchase of conductors from the petitioners for performing its obligations to lay transmission lines for distribution of electricity - Not a statutory duty of the Board - Writ jurisdiction of the High Court cannot be invoked for seeking enforcement of contractual obligations - A bare contractual right does not constitute 'property' within the meaning of Article 300 (A) - Clause 4 (b) of the Contract giving an option to the Board to defer scheduled supplies of conductors if consideration essential - Exercise of such option by the Board - Does not amount to deprivation of property without any authority of law under Article 300 (A) - Evidence Act - Section 115 - Promissory estoppel - Exercise of option by the Board to defer scheduled supplies of conductors by the petitioners in pursuance of clause 4 (b) of the Contract - Principle of promissory estoppel not applicable : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)*

-**Article 14**-Land Acquisition (Madhya Pradesh Amendment) Act, 1959 not hit by this Article-- Vires of : *Satish Kumar Vs. The State Of M.P. & Ors., I.L.R. (1961) M.P. 810 (D.B.)*

-Article 14-Scheme brought into effect in one area, or on one route or on a portion thereof-Scheme not effected on ground of discrimination : *Premchand Jain Vs. The State Of M.P. I.L.R. (1967) M.P. 214 (D.B.)*

-Article 14-Things to be considered in determining whether statute contravenes Article 14 : *Mst. Shanti Bai Vs. Biharilal I.L.R. (1967) M.P. 34 (D.B.)*

-Article 14-Direction not discretionary and not hit by Article 14 of the Constitution : *Shri I.N. Saksena Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 216 (D.B.)*

-Article 14-Exclusion of cash grants-Exclusion on reasonable classification : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

- Article 14 - Arbitrary exercise of discretion - Liable to be struck down as violative of this Article : *Major K. D. Gupta Vs. Union Of India, I.L.R. (1983) M.P. 423, (D.B.)*

- Article 14 – Absence of reasons for termination of confirmed employee makes the order arbitrary: *President, Birla Education Society Vs. Director Of Public Instruction, M.P., Bhopal, I.L.R. (1988) M.P. 193*

- Article 14 - Principles of equality means right to equal treatment to persons similarly situated : *M/S Mohanlal Hiralal, Itarsi Vs. The Union Of India And Others I.L.R. (1986) M.P. 489. (D.B.)*

-Article 14 and Clause 4(2) of the Paddy Procurement(Levy) Order, 1965-Does not make distinction between dealers : *Bajjnath Prasad Gupta Vs. State Of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

- Article 14 – Any person not limited to bidders, strangers could also participate – Failure to give notice to bidders of such offer – Violation of Article 14 of Constitution : *Kishorilal Jaiswal Vs. Municipal Council, Sakti Distt. Bilaspur, I.L.R. (1988) M.P. 412 (D.B.)*

- Article 14 – State bound to grant remission for the periods shop remained closed : *Smt. Kalawati Bai Vs. State Of M.P., I.L.R. (1988) M.P. 386*

- Article 14–Businessmen taking lease for commercial purpose–Cannot fall in the category of 'Eminent Writers/ Poets' or 'Low income Group Citizens'–Does not amount to hostile discrimination : *Smt. Padma & Others Vs. The State Of Madhya Pradesh & Anr., I.L.R. (2004) M.P. 1025 (D.B.)*

- **Article 14** - Classification of dealers into those who had collected turnover tax or surcharge and those who had not - Is reasonable - Not violative of Article 14 : *M/S Mahesh Medical & General Agencies, Sagar Vs. The Commissioner Of Sales Tax, M. P. Indore, I.L.R. (1983) M.P. 486, (D.B.)*

- **Article 14**—Restoration—Reasonable opportunity—Not given to petitioner while rejecting application for restoration—Direction given to hear the petitioner afresh : *Surajsingh Vs. State, I.L.R. (1992) M.P. 379 (D.B.)*

-**Article 14**-Hostile discrimination to be established before Act is struck down under the Article : *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State Of M.P. I.L.R. (1975) M.P. 216 (F.B.)*

-**Article 14**-Law constitutional though affecting individual : *Krishi Upaj Vyavasai Mandal, Ujjain Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 186 (D.B.)*

-**Article 14**-Act applicable to urban immovable property-Creates no discrimination by itself : *Seth Devkumar Singhji Vs. The State Of M.P., I.L.R. (1970) M.P. 215 (D.B.)*

-**Article 14**-Discrimination arising from historical reasons or geographical classification based on historical reasons-Article 14 not contravened : *Ramchandra Kotassthane Vs. State Of M.P., I.L.R. (1970) M.P. 917 (D.B.)*

-**Article 14**-Legislature not affecting prior or closed transactions and affects only pending proceedings and post-enactment transactions-Law cannot be said to be discriminatory : *Gopichand Sarjuprasad Vs. Union Of India, I.L.R. (1973) M.P., 810 (D.B.)*

- **Article 14** - Cess - Is a tax on land and building under Entry 49, List II - Other properties not liable to tax-Act is hence not discriminatory and does not offend this Article : *Laxmidas Patel Vs. The Indore Municipal Corporation, I.L.R. (1980) M.P. 206, (D.B.)*

- **Article 14** - Violation of - Even if petitioner alone is affected by the Act, she would stand as a class different from other persons - No violation of the Article : *Smt. Padmavati Devi Vs. State Of M. P., I.L.R. (1981) M.P. 909 (D.B.)*

-**Article 14**-Authority not following the same policy or rules in case of all parties - Authority contravenes Article 14-Article 14 is admonition to State-Does not confer a right on any person : *Sudarshan Transport Services (P) Ltd., Bilaspur Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1960) M.P. 26 (D.B.)*

-Article 14-Discrimination-Except petitioner, land sought to be acquired released in favour of other persons and societies- Respondents do not plead that despite such release of land from purview of acquisition they shall be able to implement the scheme-Action of respondents amounts to hostile discrimination : *Burhani Griha Narman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342*

-Article 14- Criteria for passing of examination/test applied to all candidates- Petitioners cannot claim relaxation from appearing in the test on ground of apprenticeship training when they do not possess certificate of proficiency from the National Council-No violation of principles of equality : *Pramod kumar Vs. South Eastern Coalfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1232*

-Article 14-Different classes of tax-payers-Subjected to different systems of tax in connection with single type of tax-Tax does not manifest difference in treatment : *Shri Singhai Nathuram Shri Nandanlal Vs. The Commissioner Of Wealth-Tax Madhya Pradesh And Nagpur, Nagpur, I.L.R. (1971) M.P. 1087. (D.B.)*

-Article 14 and Financial Code, Rule 84-If the employer wants to change entry of date of birth it has to follow principles of natural justice-Direction issued to conduct inquiry within 4 months : *Baldeo Prasad Vs. State Of M.P., I.L.R. (2004) M.P. 731*

-Article 14-Enquiry and subsequent termination without offering opportunity of hearing-Action of respondents unfair and arbitrary-Order of termination quashed and Tribunal's order set aside : *Mata Prasad Sahu Vs. State, I.L.R. (2000) M.P. 823, (D.B.).*

- Article 14 – Admission to nurses Training School – Seats distributed district-wise – No nexus with the object short to be achieve – Petition allowed with the direction – Petitioner entitled to admission of the basis of joint merit list : *Shyla Nair Vs. State of M.P., I.L.R. (1995) M.P. 554*

-Article 14-Natural Justice-Long delay in initiating disciplinary action-Absence of satisfactory explanation for the delay-Disciplinary enquiry deserves to be and is quashed : *Shri Lavkush Prasad Gautam Vs. Food Corporation Of India , I.L.R. (2000) M.P. 815 .*

– Article 14 – Discrimination in charging premium only on A,B,C and D grade coal – In the nature of the case does not offend Article 14 of the Constitution : *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593, (D.B.)*

– **Article 14** – Principles of natural justice – Where interpretation of statutory provision is concerned the authority should pass a reasoned order – No reason shown – Order increasing levy of entertainment tax quashed : *Bharat Bhushan Vs. State*, I.L.R. (2001) MP 1446,

- **Article 14** – Order passed before issuance of show cause notice – Order sensitively susceptible – Order of supersession quashed : *The Chhatarpur Homeopathic And Biochemic Association Vs. State*, I.L.R. (2001) MP 801,

-**Article 14**-‘Retired Govt. Servant’ is a separate class itself-Such classification not hit by Article 14 of the Constitution of India-Reference answered accordingly : *Kunjulal Yadu Vs. Parasram* , I.L.R. (2000) M.P. 416 (F.B.)

- **Article 14** - Act not applying to certain transaction taking place before commencement of the Act - Not sufficient to hold that the law offends Article 14 : *Sardarmal Lalwani Vs. The Collector, Sehore* I.L.R. (1976) M.P. 777 (D.B.)

- **Article 14**–Service law–Equal pay for equal work–Laboratory attendant–Asked to officiate as Museum Assistant but actually worked as Museum Keeper till retirement–Recruitment Rules mention the post of Museum Keeper and not the post of Museum Assistant–Tribunal rightly held that the respondent worked as Museum keeper and entitled to notional pay of the post revised from time to time : *State And Another Vs. Maskey*, I.L.R. (2003) M.P. 206 (D.B.)

– **Article 14** – Enquiry by the appointing authority as to genuineness of the caste certificate produced by the petitioner – Discrepancy found that petitioner belongs to ‘Mahara’ caste – Enquiry conducted without giving any effective opportunity to petitioner – Not proper : *Krishna Das Mahar (Jharia) Vs. State*, I.L.R. (2001) M.P. 767,

-**Article 14**-Validity of agreement upheld by Hon’ble Supreme Court-Revision of rates for supply on different premises than mentioned in the agreement-Action of Govt. non fair-Violative of Article 14- Government directed to reconsider the matter as per agreement : *M/s. Bastar Oil Mills and Industries Ltd. Vs. State*, I.L.R. (2000) M.P. 681 .

– **Article 14** – One class of service having several categories with different attributes and incidents – Such category becomes separate class – No discrimination between such category and members of other class – Article 14 not attracted when equals and unequals treated differently *Anant Diwakar Deoras Vs. State Of M.P.*, I.L.R. (1989) M.P. 398 (D.B.)

– **Article 14** – Respondent No. 1 issuing tender embodying a term therein that Tender may be accepted or rejected by it without assigning any reason – Validity of – Acceptance of Tender or Respondent No. 2 giving facilities of payment of price in two installments contrary to conditions of Tender – Action of Respondent no. 1 is discriminatory and violative of Article 14 : *Navranglal Mittal Vs. National Thermal Power Corporation Ltd., Korba, I.L.R. (1990) M.P. 299, (D.B.)*

-**Article 14**-Discrimination-Grievance that similar societies permitted by the council to admit more students than the petitioner's college-Council rightly directed to re-examine the matter fairly and fix strength of students for petitioner society-No interference called for in that part of impugned judgments : *National Council For Teachers Education Vs. Chouhan Education Society, I.L.R. (2000) M.P. 569 (D.B.)*

- **Article 14**, Coal India Executives Conduct, Discipline and Appeal Rules, 1978- Non supply of copies of documents-Documents used against delinquent officer can not be withheld-However, documents made available to petitioner for inspection throughout enquiry-Prayer for supply of photo stat copies was rejected because petitioner was given access to those documents whenever he wanted-No breach of Principle of Natural Justice : *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

- **Article 14**, Coal India Executives Conduct, Discipline and Appeal Rules, 1978- Issuance of charge sheet other than by Disciplinary authority-Chairman-cum-Managing Director declared to be Disciplinary authority-Nothing in Rules that Disciplinary authority must issue charge-sheet-Disciplinary proceedings not void : *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

-**Article 14**-Taxation Laws-Not immune from equality clause-Legislature competent to classify persons or properties in different categories and impose tax differently-Classification made is rational-Act not challengeable because different rates prescribed for different categories of persons or subjects : *Shri Singhai Nathuram Shri Nandanlal Vs. The Commissioner Of Wealth-Tax Madhya Pradesh And Nagpur, Nagpur ,I.L.R. (1971) M.P. 1087 (D.B.)*

– **Article 14** – Plea of differential treatment by itself not sufficient – Burden on the person who assails the legislation discriminatory to establish discrimination not based on valid classification – No discrimination in treating contractors who obtain excisable article to sell and persons who obtain it for medicinal purposes on separate classes for payment of excise duty : *Ganesprasad Jaiswal Vs. State Of M.P., I.L.R. (1988) M.P. 243 (D.B.)*

– **Article 14** – Appointing authority always within rights to scrutinize caste certificate of an incumbent but after giving proper opportunity to petitioner – Respondents directed to keep a seat vacant and conduct an enquiry through a committee and take appropriate action depending upon the result of such enquiry in stipulated time : *Krishna Das Mahar (Jharia) Vs. State, I.L.R. (2001) M.P. 767*

- **Article 14** – M.P. Board of Secondary Education Regulations, Regulation, 119 – Does not expressly provide for Revaluation of Answer Papers – Board has taken all safeguards against errors and malpractices – There cannot be said to be any denial of fair play to the examinees – High Court refused to issue direction for making provision of Revaluation of Answer Papers in regulations and for production of Answer Papers in the Court for revaluation : *Ku. Sonal Vs. Board Of Secondary Education, Bhopal, I.L.R. (1996) M.P. 117*

- **Article 14** – New Assessment Rules – Assessment rates arbitrarily fixed – Rules unreasonable, invalid & violative of Article 14 of Constitution – Retrospective operation – Rules cannot be given retrospective effect : *M/s. Satna Stone Lime & Co. Calcutta Vs.State Of M.P., I.L.R. (1991) M.P. 200 (D.B.)*

- **Article 14** – Principles of natural justice – Can not be stretched to the ridiculous edge of opportunity at every stage – Correcting the date of birth on the basis of the report submitted by Lokayukt – Ample opportunity given to the respondent — Tribunal was grossly in error in directing that further opportunity be given to the respondent : *State Of M.P. Vs. R.P. , I.L.R. (1996) M.P. 269 (D.B.)*

– **Article 14**, Cinemas (Exhibition of Films by Video Cassette (Recorder) Licensing Rules, M.P., 1983 and Entertainment Duty and Advertisements Tax Amendment) Act, M.P. (XXXIV of 1983) – Not violative of Article 14 : *Central Circuit Cine Association, Bhusawal Vs. State Of Madhya Pradesh, I.L.R. (1987) M.P. 265 (D.B.)*

- **Article 14** – Government Policy - State Government issuing Policy for providing for supply at concessional rate with a further clause of renewal for promoting new industries in Backward areas – action challenged as discriminatory – Held – In the instant case, the State Government of M.P. framed industrial policy in 1979 and thereafter revised me same from Lime to lime according to felt need. There is no material on record from which it can be reasonably found that the same was not informed by any reason whatsoever – That apart, such policy has been taken into consideration by the High Court of M.P. and also by this Court in the earlier proceedings and the industrial policy has not been found to be arbitrary or capricious. On the contrary, the agreement made in favour of the appellant was struck down by

the High Court by indicating that unlike other class of industrial units like the respondents Bastar Oil Mills and Sal Udyog Pvt. Ltd. Which were entitled to special treatment under the industrial policy, the appellants were not entitled to any special treatment which was not given to other existing old industrial units in the state, similarly circumstanced – Although to ensure fair play and transparency in the state action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible – The distinctive features between the industrial units set up at the instance of the State Government and old existing units are based on objective criteria – Therefore, the said two classes of industries are not similarly circumstanced – Article 14 prohibits discrimination amongst the equals but it should be appreciated that Article 14 has inbuilt flexibility and it also permits different treatment to unequals : *M.P. Oil Extraction Vs. State Of M.P., I.L.R. (1997) M.P. 293 (Sc) (D.B.)*

- **Article 14** - Rules for admission to professional courses framed by M. P. Vyavsayik Pathyakram Pravesh Pareeksha Mandal - Rule 1.4(iii) providing for reservation only to those Freedom Fighters who are bonafide residents of M. P. - Whether discriminatory - The term “bonafide resident” in explanation 1 thereof - Meaning and scope of - Explanation 5 - Whether applies to living Freedom Fighters only - Power of State Government to frame rules confining benefit of reservation to Freedom fighters who are bonafide residents of M. P. only - Validity of - Rule about bonafide residents in M.P. not indicating availability of benefit of reservation to Freedom Fighters of erstwhile State of M. P. - Whether sufficient to strike it down as unreasonable - Concession by reservation - Whether can be obtained without fulfilling all conditions attached to it : *Ku. Madhu Mittal Vs. State Of M. P., I.L.R. (1984) M.P. 71 (D.B.)*

- **Article 14**, Electricity Duty Act, Madhya Pradesh (X of 1949), Section 3-B – Notification dated 13.3.1981 and Interpretation of Statute – Exemption granted to industries which have established after 10th December, 1980 – Classification made on the basis of a cut off date cannot be dubbed as arbitrary and violative of Article 14 of the Constitution – Notification is to be read as a whole : *The Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, Nagda, M.P. Vs. State Of M.P., I.L.R. (1991) M.P. 66 (D.B.)*

-**Article 14**- Teachers employed in Hindi Primary School and English Primary School doing same work and one not inferior to the other-Difference in pay of teachers in those two branches-Does not offend this article-Article 16-Qualifications, method of recruitment, avenues of promotion of Teachers of two types of Schools different-They form two distinct and separate classes-Between them there is no scope for predicating equality or inequality of opportunity in matters of promotion : *Bhilai Hindi Primary School Teachers, Association, Bhilai Vs. The General Manager, Hindustan Steel Ltd. Bhilai, Steel Project, Bhilai, I.L.R. (1972) M.P. 704 (D.B.)*

- **Article 14** - Memorandum No. 25065 - 3048/XXI - B, dated 13.7.64 - vires of : *S.M.A. Rizvi Vs. State Of Madhya Pradesh I.L.R. (1976) M.P. 1013 (D.B.)*

- **Articles 14, 12 and 16** - Circular framed under the regulation - Validity of : *The State Bank Of India, Bombay Vs. R. K. Jain I.L.R. (1982) M.P. 807 (D.B.)*.

- **Articles 14, 12 and 16** - State Bank of India is "State" under Article 12 - Relaxation in matter of eligibility granted in favour of Scheduled Castes/Tribes employees - Does not offend fundamental rights of other employees : *The State Bank Of India, Bombay Vs. R. K. Jain I.L.R. (1982) M.P. 807 (D.B.)*.

- **Articles 14 and 15** - Admission in postgraduate course in medical faculty - Reservation of seats for Assistant Surgeons, private medical practitioners and military Personnels - Has rational basis - Medical Council Regulations and Revised Rules - Are framed by State Govt. for selection of candidates for appointment as House Officers - Housemanship for the prescribed period in the subject once opted by the candidate - Requirement of - Fresh option to change subject - Scope of : *Dr. Rajesh Malik Vs. State Of M.P., I.L.R. (1987) M.P. 75 (D.B.)*

- **Articles 14, 15, 16, 226** - Writ petition - Equal pay for equal work - Teachers and Professor working in private colleges receiving 100% grant-in-aid - Discharging similarities and responsibilities and their counter part in Govt. institution - Govt. accepting recommendation of pay commission revised the pay of employees in Govt. Colleges - Denial of same pay to such employer of private 100% aided colleges without any rational basis - Violative of Articles 14, 16 of the Constitution of India : *State Of Madhya Pradesh Vs. Dr. P.K. , I.L.R. (2003) M.P. 801(D.B.)*

- **Articles 14, 15, 21, 226 and 227** - Writ petition - M. P. Krishi Upaj Mandi Adhinyam, 1972 and Krishi Upaj Mandi Samiti Bye laws, Clause 2(Ja) - Amendment in definition of Hammal - Introduction of 'Stri Hammal' - Hammal include a person who is also involved in the work of weighing and measurement - Any members of society can apply for licence to do any kind of work which find place in the definition - On compartmentalisation definition becomes purposive and avoids vice of discrimination - Amendment not ultra vires : *Galla Mandi Mahila Shramik Sangh Satna Vs. State, I.L.R. (2003) M.P. 499 (D.B.)*

- **Articles 14 and 16** - Policy of ad-hocism - Violates Articles 14 and 16 : *Dr. Satish Bhandari Vs. State Of M.P., I.L.R. (1987) M.P. 16*

- **Articles 14 and 16** - infringement of : *Dwaraka Dhish Bhargava Vs. State Of M. P., I.L.R. (1979) M.P. 486 (F.B.-5jj.)*

– **Articles 14 and 16** – Appointment of person not made in a regular manner but made to fill purely stop-gap or fortuitous vacuum without considering claims of other eligible persons – Such appointee not entitled to count her seniority on its basis over others : *Dr. (Smt.) Tejaswini Guha Vs. State Of M.P., I.L.R. (1987) M.P. 410*

- **Articles 14 and 16** - Principles of "equality of opportunity" - Applicable to members of same class of employee only - Does not prohibit prescription of reasonable rules for selection : *Dwaraka Dhish Bhargava Vs. State Of M. P. I.L.R. (1979) M.P. 486 (F.B.-5jj.)*

-**Article 14 and 16**-Counting of seniority from the time when powers of Civil Judge, Class I, are exercised not justified-Preparation of list on such basis ignoring the seniority in the cadre is not legal and not justified : *B.A. Nigam Vs. Registrar Of The High Court Of M.P., I.L.R. (1971) M.P. 651 (D.B.)*

-**Article 14 and 16** -Failure to consider claims of seniors-Amounts to violation of fundamental right : *B.A. Nigam Vs. Registrar Of The High Court Of M.P. I.L.R. (1971) M.P. 651 (D.B.)*

-**Article 14 and 16**-Omission to consider the claim of person senior in cadre because of preparation of special list-Amounts to a denial of fundamental right-Relief which can properly be granted in the circumstances of the case : *B.A. Nigam Vs.Registrar Of The High Court Of M.P. ,I.L.R. (1971) M.P. 651 (D.B.)*

-**Article 14 and 16**-Provisions of-Not violated if principle uniformly applied in all cases : *B.A. Nigam Vs. Registrar Of The High Court Of M.P. I.L.R. (1971) M.P. 651 (D.B.)*

-**Articles 14 and 16**-South Eastern Coalfield Limited-Not owned by state Government-Circular issued by State Govt. insisting criterion of domicile of Madhya Pradesh-Not a valid requirement for recruitment in SECL-Violative of Articles 14 & 16 of the Constitution-Such circulars have no application is SECL : *Shrawan Kumar Vs. South Eastern Coalfields Ltd. Bilaspur, I.L.R. (2000) M.P. 1066*

-**Articles 14, 16** - Consideration of statutory complaints-Petitioner had made statutory complaints against confidential reports for the year 1985-86 and 1986-87-Order dismissing statutory complaints only indicate that Central Govt. was satisfied that no injustice done to petitioner-Held-Central Govt. was under obligation to consider the grievance of petitioner objectively and dispose the same by reasoned order-Such obligation is there even while taking administrative decisions and assumes importance in context of our rule of law-Central Govt. directed to reconsider petitioner's statutory complaints and dispose the same by passing reasoned order-Petitioner may approach authorities for special review of his promotion if C.R.s are

reviewed-Petition allowed in part. *Lt. Col. (Ts) Sunil Bawa Vs. Union Of India; I.L.R. (1994) M.P. 65 (D.B.)*

-Articles 14, 16-Promotion-Petitioner posted as Major in Corps of Signals-Denied promotion to rank of Lt. Col. as he was found unfit-Held-Petitioner was considered by three different selection Board comprising of 5 different members-All the three selection Boards found petitioner unfit for promotion-No reasons to doubt that Selection Boards had not acted in accordance with guidelines laid down by Army Headquarters-No substance in complaint that petitioner has been arbitrarily superseded. *Lt. Col. (Ts) Sunil Bawa Vs. Union Of India; I.L.R. (1994) M.P. 65 (D.B.)*

- Articles 14 and 16 - After reorganization, Government making classification of lecturers; Post-graduates and graduates - Classification both reasonable and based on intelligible differentia : *Ghanshyam Lal Soni Vs. State Of Madhya Pradesh I.L.R. (1976) M.P. 955 (D.B.)*

- Articles 14 and 16 – Seniority – Normal rule for assessment of length of continuous officiation – Exception – Appointment of person not made in a regular manner but made to fill purely stop-gap or fortuitous vacuum without considering claims of other eligible persons – Such appointee not entitled to count her seniority on its basis over others : *Dr. (Smt.) Tejaswini Guha Vs. State Of M.P., I.L.R. (1987) M.P. 410*

- Articles 14 and 16 - Promotion policy of State Bank of India providing that in case of major misconduct, employees shall not be eligible for promotion during period of suspension - Neither arbitrary nor unreasonable Not hit by Article 14 or 16 - No other employee treated differently - No hostile discrimination - Shastry Award - Clause 521 (10-b)-Words 'suspension during enquiry' therein - Meaning of - Suspension order can be passed even before employee is charge-sheeted - Desai Award - Clause 17 - Suspended employee is entitled to be paid all increments and quarterly allowances also during period of suspension : *Madhav Anantrao Gore Vs. State Bank Of India Bhopal, I.L.R. (1986) M.P. 94 (D.B.)*

- Articles 14 and 16, M. P. P. W. D. (Gazetted) Recruitment Rules, 1969, Rules 7 (4), 15 and 19 (1), M. P. P. W. D. (Non-Gazetted) Recruitment Rules, 1972, Rules 14 (2) and (3) and M. P. Civil Services (General Conditions of Service) Rules, 1961, Rule 12 (c) - Appointment of Junior Engineers as Assistant Engineers purely on ad hoc basis for three months and without selection by Departmental Promotion Committee - Appointment continued as ad hoc even after three months - Nature and effect of such ad hoc appointment - Period of ad hoc service need not be counted for seniority in regular cadre of Assistant Engineers - Method of fixing seniority adopted by the State valid - Not violative of Articles 14 and 16 of the Constitution : *D. N. Agrawal Vs. State Of M. P. I.L.R. (1986) M.P. 325 (D.B.)*

- **Articles 14, 16, 19, 21, 33 and Army Act (XLVI of 1950)** – Court Martial – Procedure for trial need not satisfy provisions of Article 21 – Fundamental rights restricted or abrogated as provided in Article 33 – Validity of Army Act cannot be challenged on ground of contravention of Article 14, 16 or 19 – Constitution of India, Article 226 and Army Act, 1950 – High Court cannot review findings of general Court Martial – Remedy provided in sections 164 and 179 of Army Act : *Lt. Col. A.K. Handa Vs. Union Of India, I.L.R. (1988) M.P. 131 (D.B.)*

- **Articles 14, 16, 39(d)** – There cannot be estoppel against statute–Petitioner Assistant Journalist–Denial of protection of pay fixed by University on ground that he accepted appointment in lesser pay–Amounts to denial of protection of law. *Kalyan Thakur Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya Jabalpur ; I.L.R. (2002) M.P. 455 (D.B.)*

- **Articles 14, 16 and 39 (d)** - Declarations and acceptance of lower pay scale by Petitioner - Contrary to fundamental rights - Not enforceable : *Erstwhile National Fitness Corps Employees' Association, M. P. Vs. Union Of India, Through The Secretary To Govt. Of India, Ministry Of Education And Social Welfare, New Delhi, I.L.R. (1983) M.P. 551*

- **Article 14, 16 and 39 (d)** - Principle "equal pay for equal work" - Applicability of - Petitioners originally National Discipline Scheme. Instructors under Central Govt. absorbed in State Services in the cadre of Physical Instructor - Parity of qualifications agreed - Work being done by this is also the same - Giving of special pay scale lower than pay scale of Physical Instructor - offends Article 39 (d) and infringes Articles 14 and 16 - Declarations and acceptance of lower pay scale by petitioners - Contrary to fundamental rights - Not enforceable : *Erstwhile National Fitness Corps Employees' Association, M. P. Vs. Union Of India, Through The Secretary To Govt. Of India, Ministry Of Education And Social Welfare, New Delhi, I.L.R. (1983) M.P. 551*

- **Article 14, 16 and 226** – Petition challenging validity of Rules – Alternative remedy to raise industrial dispute no bar: *Karyabharit Evam Dainik Vetan Karmchari Sangh, Bargi Nagar, Jabalpur Vs. State Of M.P., I.L.R. (1989) M.P. 87 (D.B.)*

- **Articles 14, 16, 226**–Writ Petition–Equality–Equal pay for equal work–Office Assistants Working in Secretariat are a separate class/ cadre–They perform important duties in different administrative set up–Office Assistants working in Vishwavidyalaya are not entitled to the payscale meant exclusively for office Assistants working in the Secretariat : *G.P. Dubey Vs. Jawaharlal Nehru Krishi Vishwavidyalaya Jabalpur Through the Vice Chancellor Principal Executive Officer, I.L.R. (2005) M.P. 1171*

- **Articles, 14, 16, 226** –Service Law–Issue of regularisation decided in favour of petitioner holding him entitled to all consequential benefits–Cannot be construed to be a direction to grant promotion to next higher grade–Any claim as to further promotional benefits has to be separately agitated–Review petition raising issue as to correct date of promotion–Wholly mis-conceived : *Madhya Pradesh Electricity Board Vs. Dev Narayan Patel, I.L.R. (2004) M.P. (Sc) 813 (D.B.)*

- **Articles 14, 16 and 226** and Civil Services (General Conditions of Service) Rules, M. P., 1961, Rule 12 (C) - Officiating Govt. Servants - Normal rule for determining inter-se seniority - Seniority of persons promoted together to officiate in higher cadre would be the same as their substantive cadre and irrespective of the date of their joining service in the promoted cadre - Interpretation of Statute - Principles of : *Vasant Kumar Jaiswal Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 221*

- **Articles 14, 16, 226, 227**–Writ petition–Electricity (Supply) Act, 1948, Section 79 and Civil Services (Commutation of Pension) Rules, M.P., 1976–Voluntary retirement–By notification State Government amended provisions contained in rules–Number of years in respect of which pension could be commuted significantly reduced–Board adopted State Govt. Notification with retrospective effect–Arbitrary & unreasonable–Notification cannot be made retrospectively applicable–Pension was to be computed in accordance with the rules that was in vogue at the time of retirement–Employee already retired would be entitled to all the benefit as per unamended Rules–Notification operative with prospective effect–Retrospective application of Notification–Ultra vires : *N. L. Mandhan Vs. M. P. State Electricity Board, I.L.R. (2003) M.P. 112 (D.B.)*

- **Articles 14, 16, 226, 309** and 348 and M. P. Public Works Department Workcharged and Contingency - Paid Employees Recruitment and Conditions of Service Rules, 1976 - Hindi Version of the Rules framed by Governor under Article 309 to prevail over the translated version in English published under Article 348 - The word 'Chief Engineer' means 'Chief Engineer' and not Engineer-in-Chief-Appointment on a regular post 'temporarily' and 'until further orders' - Purpose of - Termination of such appointment on the ground of unsuitability of the employee - Does not amount to punishment- Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P., I.L.R. (1985) M.P. 415*

- **Article 14, 16, 246** – M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976, Section 7 (5) – Validity of Rule 7 (5) – The Hon'ble High Court held it to be ultra vires – Reversing the same the Hon'ble Apex Court held that Section 7(5) has to be construed to mean that the presumption contained therein is rebuttable and secondly the penalty of ten times the amount of entry tax stipulated

therein is only the maximum amount which could be levied and the assessing the authority has the discretion to levy lesser amount, depending upon the facts and circumstances of each case – Construing Section 7 (5) in this manner the decision of the High Court that Section 7 (5) is ultra vires cannot be sustained : *State Of M.P. Vs. Bharat Heavy Electricals, I.L.R. (1997) M.P. 340 (D.B.)*

- **Articles 14, 16 and 309** - Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P. I.L.R. (1985) M.P. 415*

-**Articles 14 and 16 and 309** and Vishwa Vidyalaya (Sanshodhan) Adhiniyam, M.P. (VI of 1996), Section 49-A-Rule making powers exercised by the legislature while enacting Section 49-A-No exception can be taken on ground that the provision has been given retrospective effect-Seniority list prepared as per newly amended provision-Does not suffer from the vice of any illegality : *Dr, Chain Panwar Vs. State, I.L.R. (2000) M.P. 1396 (D.B.)*.

-**Articles 14, 16 and 311**, Civil Services (General Conditions of Service) Rules, 1961 M. P., Rule 12, Govt. Servants (Temporary and Quasi - Permanent Service) Rules, M. P., 1960, Rule 3, Revision of Pay Rules, M. P., 1983, Rule 2 (vi) and Fundamental Rules, Rule 9 (19) - Prior to 1-4-1981 only one common cadre and one scale of pay each for ADIS/Head - Master UDT/Instructors etc for Middle School teachers and Head Master/LDT for Primary School teachers - Officiation by senior most teacher in a particular school as Head Master and given allowance for extra supervisory work - Nature of such officiation - Creation of separate cadre for Head Master w. e. f. 1-4-1981 according to Choudhary Pay Commission Report - Officiating Head Master prior to 1-4-1981 cannot be treated as Head Master in accordance with Choudhary Pay Commission Report - Educational Authorities ordering Such Head Masters to join as U. D. T. and L. D. T. - Not violative of Articles 311, 14 or 16 or Rules of 1961 and other Rules : *M. P. Shikshak Sangh, Rewa Division, Rewa Vs. State Of M. P. I.L.R. (1986) M.P. 624 (D.B.)*

-**Articles 14 and 16 (2)**-Cannot claim nor be granted such concession-Else there would occasion discrimination in violation of Articles 14 and 16(2) of the Constitution : *Niraj v. State, I.L.R. (2000) M.P. 218,*

- **Articles 14 and 16 (2)** - Petitioner appointed as Sub-teacher in Primary School in Tahsil Depalpur, District Indore on the basis of bona fide resident in Indore District - Selection for such appointment made on the basis of merit after interview by Selection Committee and preparation of merit list of candidates for the entire district of Indore - Petitioner's Service terminated for failure to submit in compliance with subsequent demand, a certificate from Tahsildar, Depalpur about her original

residence of Depalpur - Termination order, unreasonable, arbitrary and violative of Articles 14 and 16 (2) - Order quashed and direction for re-instatement with retrospective effect issued - Words and Phrases - 'Mool Niwasi' and 'Sthaniya Niwasi' in Madhya Pradesh - Meaning of - Domicile cannot be confined to any Tahsil or block of a District : *Ku. Gayatri Pancholi Vs. Government Of M. P. I.L.R. (1986) M.P. 386.*

-Articles 14 and 19-No fundamental right exists in a person to insist upon Government or any other individual doing business or entering into contract with them-Government like any individual has a right to enter or not to enter into contract with a particular person-Forest Act, 1927 and Rules made thereunder-Does not contain provision regarding the sale of forest produce or goods by public auction- Words and Phrases-Word "Auction"-Meaning of-Natural justice-Principle not applicable to administrative functions : *Sardar Ajit Singh Vs. The Chief Conservator Of Forests, M.P., Rewa I.L.R. (1967) M.P. 850 (D.B.)*

-Articles 14, 19, 20, 21, 22 and 226-Writ Petition-*Habeas Corpus*-Custodial death-Criminal Procedure Code, 1973, Sections 41, 109, 111 and 176-Production of persons arrested under preventive provisions before City Magistrate-Detenues directed to be produced the next day as the Magistrate was busy in meeting-Procedure adopted is improper-Magistrate cannot abdicate his duty on ground of being busy in meeting-Provisions of Chapter VIII of the Code are preventive in nature and not punitive-Had the authorities been little careful the incident of custodial death could be averted-Judicial Magistrates are more perfect in following the law in this respect-Legislators expected to consider vesting of such powers to judicial Magistrates as well-It is the duty of the Police to take care of the persons taken into custody-Police should not lose interest in the welfare and safety of the detenué-Custodial death-Dead body exhumed and further autopsy carried out-Two concurrent post mortem report confirming suicide by deceased-In absence of any other evidence inference of physical torture in custody cannot be drawn-Compensation-Relatives of deceased received Rs. 4,000/-No further compensation deemed necessary. *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- Articles 14, 19, 21, 226, Excise Act, M.P., 1915 (as amended) Section 59-A-Constitutional validity- Provision for bail changed on reasonable basis of classification- To root out rampant evil in dangerous or obnoxious trade legislature can put some reasonable restrictions - Amendments incorporated do not affect or evade fundamental rights - *Amendment intra vires. Mannu Vs. State of M.P.; I.L.R. (2002) M.P. 820 (D.B.)*

- Article 14, 19, 226 - Compulsory condition to purchase stock of outgoing licence on payment of price for stock, excise duty and permit fee - Claim for

adjustment on the basis of new excise policy : *State Vs. M/s. Swami Traders, I.L.R. (2001) M.P. 1495 (D.B.)*

-Articles 14 and 19 (1) (g)-Government or legislature-Power of, to lay down limit to create standard of efficiency for securing public comfort and convenience-Court-No power of, to scrutinize except when unreasonable or unrelated to public purpose : *Sardar Banta Singh Vs. The State Of M.P. & Ors., I.L.R. (1957) M.P. 117 (D.B.)*

-Articles 14, 19 (1) (g), M.P. Kashta Chiran (Viniyaman) Adhiniyam 13 of 1984, M.P. Transit (Forest Produce) Rules, 1961, Rule 27-Forest-Constitutional validity of Act and Rules-challenged on ground that licensee of saw mill or saw pit is made accountable to give particulars of wood purchased in auction from Government Depot-held-purpose of provision is to ensure that licensee is in law full possession of wood-provisions are not violative of article 14 and 19 (1) (g)-Appeal dismissed : *Madanlal Sethi Vs. State Of M.P., I.L.R. (1997) M.P. 24 (Sc) (D.B.)*

- Article 14 and 19 (1) (G) and 19 (6) and Kashtha Chiran (Viniyaman) Adhiniyam, Madhya Pradesh (XIII of 1984) State Legislature competent to enact M. P. Kashtha Chiran Adhiniyam, 1984, - Provision contained in sections 8 and 9 are not violative of either Article 14 or Articles 9 (1) (g) and 19 (6) of the Constitution - Adhiniyam and Rules framed thereunder are constitutionally valid : *Rameshwar Vs. State Of M. P. I.L.R. (1986) M.P. 16 (D.B.)*

- Articles 14, 19(1)(g), 20, 226, Cinematograph Act (XXXVII of 1952), Sections 6-A, 8 and Cinematograph (Certification) Rules 1983, rules 30(1), Proviso – Requiring compliance of Section 6-A by passing part I of the certificate on every cassette as well as on its case – Not ultra-vires – If provisions of Section 6-A are held to be valid, and not outside legislative competence of the Parliament – A rule framed from the purpose of carrying into effect the provision of Section 6-A cannot be held to be invalid – Not violative of Article 14, 19(1)(g), of the Constitution – ‘Copy’ means a document prepared from the original – ‘Exhibit’ means public display – Petitioners running video libraries cannot be held immune to Rule 30(1), Article 20 – Retrospective operation of penal consequences for violation of the provision of Rule 30(1) will ensue only if it is proved that after the proviso to Rule 30(1) came into force a person failed to do that which is required by the proviso – Proviso to Rule 30(1) not ultra vires: *Music Centre, Mandasaur Vs.State, I.L.R. (1991) M.P. 612 (D.B.)*

- Article 14 and 21 and Criminal Procedure Code, 1973 (II of 1974), Section 482– Speedy Trial in Criminal Prosecution – Constitutes essential and integral part of fundamental right implicit in Article 21 – Delay in – Amounts to denial of Criminal Justice – Violation of fundamental right – Consequence of – Principle of

reasonableness – Pervades Article 14 being element of equality and non-arbitrariness – Procedure contemplated by Article 21 – Must answer test of reasonableness as to be in conformity with Article 14 – Section 482 – Interference by High Court under – When called for : *Chandu @ Chandraprakash Vs. State Of M.P., I.L.R. (1990) M.P. 405,*

- **Articles 14 and 21**, Criminal Procedure Code, 1973 (2 of 1974), Sections 460, 432, 432(1), 433, 433-A, Penal Code, 1860, Sections 120-B, 224, 384-B (Dowry Death), 376, 377, 395, 396 & 498-A, M. P. Prisoner Release on Probation Act, 1954, Section 9, M. P. Prisoner Release on Probation Rules 1964 Rule 3 - Remission of Sentence - Held - Classification based on the nature of offence cannot be construed as illegal as it is based on reasonable justification - On completion of 14 years of imprisonment does not confer a right to the convict to be released - Remission are granted under special circumstances by the State and also with the object of reforming the prisoners after ensuring that there is no possibility of repeating the offence - Petition Dismissed : *Jagroop Prasad Mishra Vs. State Of M.P. & Anr., I.L.R. (1997) M.P. 88 (D.B.)*

- **Articles 14, 21**, 106, 226, 366 (17) and Entry 71 of VIIth Schedule – Public interest litigation – Writ Petition – Pension to Ex-Members of Parliament – Salary, Allowances and pension of Members of Parliament Act, 1954 – Section 8-A – Provision for pension to Ex-Members of Parliament – Not ultra vires – Constitutional validity- Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M. Ps. Under Article 246 read with Entry 71 of VIIth Schedule – Omission of word ‘pension’ in Article 106 can not be read as any bar, prohibition or restriction on the Parliament to make such law providing pension for Ex-Member of Parliament – Word ‘pension’ has wider meaning – Could not be restricted only to payment made to an employee by Government in lieu of his past services : *S.P. Anand Vs. Union of India, I.L.R. (2001) M.P. 914, (D.B.)*

- **Article 14, 21 and 226** – Writ Petition – Education – Admission to B.E./B.Arch. – Prayer for grant of admission – Interested candidates likely to be affected by such relief not joined as parties – Appeal deserves to be dismissed for non-joinder of parties : *Ku. Varsha Vs. State, I.L.R. (2001) M.P. 1003, (D.B.)*

- **Articles 14, 23 (2), 51-A(D)**, 226 and 309 and Fundamental Rules, Rule 11 - Provision under Rule 11 of fundamental Rules - Not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 14, 23 (2), 51 - A (D), 226 and 309 and Fundamental Rules, Rule 11** - 'Public purpose' under Article 23 (2) - Meaning of - Performance of duties relating to public purpose - State has a right to compel - Not violative of Article 23 - Words 'Public purpose' and 'national service' used in Article 51 - A(d) - Are synonymous - Performance of public purpose encroaching upon morality and modesty of woman - Cannot be compelled - Article 309 and Fundamental rules, Rule 11 - Performance of services towards census, election, preparation of ration card or family planning are 'for public purpose' - Provision under Rule 11 of Fundamental Rules is not unconstitutional : *Devendra Nath Gupta Vs. State Of M.P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 14, 32, 226** – Writ Petition – Purely administrative order–Though not subjective to judicial review yet exceptions have been admitted by Courts if constitutional rights are affected by the enforcement of such administrative order–Withdrawal of interest subsidy by the State in case of MLAs of IX Vidhan Sabha who did not contest or get re-elected to XIth Vidhan Sabha while allowing the same to those members of IXth Vidhan Sabha who were re-elected–Action vitiated being violative of fundamental rights and equitable doctrine of promissory estoppel : *Suresh Seth Vs. State; I.L.R. (2002) M.P. 227*

– **Article 14, 106** - Constitutional validity – Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the Parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M.Ps. under Article 246 read with Entry 71 of VIIth Schedule : *S.P. Anand Vs. Union of India, I.L.R. (2001) M.P. 914, (D.B.)*

- **Articles 14, 136, 226**–Mines and Minerals (Regulation and Development) Act (XLVII of 1957)–Sections 4, 9, 19–Mineral Concession Rules 1960, Rule 9, 31, 64-A, Sale of Goods Act, 1930, Section 61 and Civil Procedure Code, 1908, Section 114–Restitution–Demand of Interest at the rate of 24% on delayed payment of royalty–Liability of the lessee–No mining operation is permissible except in accordance with the terms and conditions of mining lease–Statutory rule providing payment of simple interest at the rate of 24% per annum on the amount of royalty or other sum which remains unpaid–One of the terms and conditions of obtaining mining lease–Coalfields/lessee are bound to pay the interest as per the terms of the mining lease–Sale of goods–Amount of royalty recovered by the lessee from the buyer is a part of the price–Recovery of interest by way of damages is permissible at a reasonable rate for the period for which it remained unpaid–Doctrine of restitution–Coalfields themselves are obliged to pay interest to the State on such amount–No one shall suffer by an act of the Court–Delay in payment due to interim order of the High Court restraining recovery of royalty at enhanced rate–Successful party finally held

entitled to a relief assessable in terms of money is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court remained in operation—Litigation lasted for a long period of time—High Court rightly opined that interest at the rate of 24% p.a. would be excessive and it would meet the ends of justice if the rate is reduced to 12% p.a. if paid within six weeks : *South Eastern Coal Fields Ltd. Vs. State of M.P.*, I.L.R. (2004) M.P. (SC) 10 (D.B.)

-Articles 14, 141, 226, 227—Writ petition—Service law—Extraordinary jurisdiction and power of superintendence—Greater the power or jurisdiction greater should be the caution and restraint in exercising such power or discretion—Law of precedent—What is binding as a precedent is the *ratio decidendi*—Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent—Without disturbing decision of Tribunal certain direction given to consider of the petitioner—Decision does not evolve any principle of law—Cannot be said to be a binding precedent—Order dated 4/11/2003 in W. P. No. 5238/02 overruled—Mere ad-hoc appointment for few months—Does not entitled petitioner to seek reinstatement after 16 years—Petition dismissed : *Jagdish Prasad Tripathi Vs. State Of Madhya Pradesh Through Secretary School Education Department Bhopal*, I.L.R. (2004) M.P. 1119 (F.B.)

- Articles 14, 154 and 162 and Entry No. 25 in List III to the Seventh Schedule - Constitution of M. P. ayik Pathyakram Pravesh Pareeksha Mandal by State Government under its executive powers to hold entrance examinations for professional courses in Medical and Engineering Colleges in the State - Validity of - Rule 1.8.10 framed by Mandal barring revaluation of examination papers - Vires and validity of : *Sahastra Pal Singh Vs. Vyavsayik Pathyakram Pravesh Pareeksha Mandal, M. P., Bhopal* I.L.R. (1984) M.P. 246 (D.B.)

-Articles 14, 166, 226, 227-Writ Petition-Acquisition of Land by Development Authority for implementing housing schemes- Article 14-Discrimination-Except petitioner, land sought to be acquired released in favour of other persons and societies-Respondents do not plead that despite such release of land from purview of acquisition they shall be able to implement the scheme -Action of respondents amounts to hostile discrimination-Land Acquisition Act, 1894-Sections 4, 5, 5-A, 6, 6-A, 11 and 11-A-Different procedures are laid sown in the Act at different stages for achieving the object of the Act-Sections 6 and 11-A-Acquisition of land and compensation-Time limit-Delay in making award owing to stay order passed by competent Courts-In computing stipulated time of making award of compensation the period of operative stay order, irrespective of its nature, has to be excluded- Article 166 and Section 5-A of the Act-Express delegation of power to the Collector is

mandatory-In absence of specific delegation of power under Section 5-A, the whole proceedings stand null and void and vitiated-Nagar Tatha Gram Nivesh Adhinyam, M.P. 1973-Sections 50 and 54-Final notification issued but no steps taken to implement the scheme within three years statutory period-Section 54 would be attracted and the scheme would stand laosed : *Burhani Griha Nirman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342 .*

- **Articles 14, 226** - Education - Admission to Bachelor of Pharmacy - Rules do not debar rounding of 49.77% as 50% - Petitioner B.Sc. with 53.99% marks-Wrongful deprivation - Authorities directed to grant admission. *Dharmendra Kumar Vs. Jiwaji University, Gwalior ; I.L.R. (2002) M.P. 513 (D.B.)*

- **Articles 14, 226** - Service Law - Compassionate appointment - Death in 1992 - Subsequent policy providing 5% vacancy introduced in 1998 - Petitioner should have been considered on basis of earlier policy. *T. Swamy Dass Vs. Union of India ; I.L.R.(2002) M.P. 467 (D.B.)*

- **Articles 14 and 226**-Writ petition-Short closing of tender-Supply of electronic push button telephone instrument-Contract executed-Subsequent fall in custom duty and resultant fall in price-Petitioner undertaking to remit all benefits deriving out of fall in custom duty-Department having accepted the same acted arbitrarily in foreclosing the tender to the extent of already supplied quantity. *S.R.V. Telecom Private Ltd. Vs. Bharat Sanchar Nigam Ltd.; I.L.R. (2002) M.P. 236*

-**Articles 14, 226** – Writs – Administrative action – Arbitrariness – While permitting the licensees to operate on ad hoc basis no steps whatsoever, have been taken by the Railway administration to select licensees on regular basis keeping in view the procedure laid down under the policy in vogue : *Mahendra Kumar Tiwari Vs. Union Of India, I.L.R. (1997) M.P. 418 (D.B.)*

- **Articles 14, 226**-Service law-Promotion-Representation against adverse ACR pending-DPC held and juniors promoted-Subsequently adverse ACRs expunged-Petitioner entitled to be considered for promotion from the date when juniors were promoted : *Baijnath Rajput Vs. State Of Madhya Pradesh Through The Secretary, Man Power Planning Deartment, Vallabh Bhawan, Bhopal, I.L.R. (2005) M.P. 815*

- **Articles 14, 226** and Workmen's Compensation Act, 1923, Sections 3,4,30, Third proviso-Award of compensation-Can only be challenged by way of an appeal and not otherwise-Provision for depositing award amount as precondition of appeal-Not violative of the Constitution : *Khemkaran Sanodiya Vs. Union Of India, Through The Secretary, Ministry Of Law, New Delhi, I.L.R. (2005) M.P. 568 (D.B.)*

- **Articles 14, 226**—Writ petition—Service law—Increment—Petitioner's services regularised—Formal order of continuity in service also passed—Related circular of 1993 for extending benefit of increment to ad-hoc employee not superseded—Order for recovery of increment given cannot be allowed to stand—Impugned order quashed : *Rajendra Giri Goswami Vs. State Of M.P., I.L.R. (2005) M.P. 789 (D.B.)*

- **Articles 14, 226** - Admission Rules, R.3.2.10(iii) of Medical College - For M.D. course - Transfer from one institute to another – Rules prohibiting transfer from one institute to another - On earlier occasion, other candidates were transferred under directions of High Court - Refusal merely on wording of Rule to transfer petitioner/student is discriminatory – For exceptional cases - Amendment of Rule suggested. *Dr. Sachin Deo Vs. Director of Medical Education, M.P., I.L.R. (1995) M.P. 200*

– **Articles 14 and 226** – Writ Petition – Adverse ACR not communicated but considered for purposes of promotion – Refusal by writ court to interfere with the ACR on ground of delay : *Madan Pal Vs. Chief of the Army Staff, I.L.R. (2001) M.P. 513, (D.B.)*

- **Articles 14 & 226** – Service Law—Principles of natural justice—Departmental enquiry—disciplinary authority disagreeing with the finding of the Inquiry Officer imposed penalty—The Disciplinary authority him-self in a different capacity conducted preliminary enquiry—Concept of bias cannot totally be ruled out—Justice does not appear to have been done : *Dr. J.N. Dubey Vs. Registrar, J.N. Krishi Vishwavidyalaya Jabalpur And Others, I.L.R. (2003) M.P. 400 (D.B.)*

-**Articles 14, 226**-Writ Petition-Service Law—Principles of natural justice in her in every administrative action having adverse civil consequence affecting the rights of others Assistant Sub-Inspector in Krishi Upaj Mandi-Terminated after 12 years on ground that he was not appointed before 31.12.1988—No opportunity or show cause notice given-Termination bad-Petitioner directed to be reinstated : *Rajesh Singh Vs. Madhya Pradesh Rajya Krishi Vipnan Board, Bhopal, I.L.R. (2003) M.P. 609*

- **Articles 14, 226** and Ayurvedic, Unani, Prakratic Chikitsa Adhiniyam, M. P. (as amended), 1970—Sections 24,25, 34 and 37—Application for Registration for practice—On the date of application candidate must possess recognized qualification—Any other interpretation would defeat the purpose sought to be achieved by Amending Act No. 21 of 1989—Petitioners holding degree of "Vaid Visharad" (Ayurved Ratna) from Hindi Sahitya Sammellan Allahabad—Degree was obtained prior to amendment but Registration applied for after Hindi Sahitya Sammellan was deleted from the entry by Amending Act No. 21 of 1989—Refusal to grant Registration—Not arbitrary : *Kartik Chandra Mandal Vs. State, I.L.R. (2003) M.P. 18 (D.B.)*

- **Articles 14 and 226** – Writ petition–Medical education–Admission to Medical Colleges –Medical and Dental Graduate Entrance Examination Rules, M.P., 2003–Rule 9.3– Constitutional validity–Admission to medical Colleges–Reservation of seats for other categories 50% and rest 50% reserved for general category–Privilege to opt for a seat in either category –Conferred on a reserved category candidate whose name appears also in the merit list of general category– Making more seats available for the reserved category than the law prescribes–An incurable dent created in the essential features of Rule 5.0–Provision constitutionally invalid–Declared ultra vires : *Mayank Jain Vs. State, I.L.R. (2003) M.P. 865 (D.B.)*

-**Articles 14, 226** –Writ petition–Service Law–Equal pay for equal work–Teachers of Non-Government institution– Entitled for similar pay and dearness allowances as paid to the Teachers of Government Schools of corresponding category : *Kanchan Kumar Adhamane Vs. State Of M.P., I.L.R. (2004) M.P. 546 (D.B.)*

-**Articles 14, 226**–Writ petition–Service law–Recovery of wages/salary for the elongated period of service after superannuating age–Petitioner actually worked–Interpolation in the entry of date of birth not by petitioner himself–No action taken against petitioner–Impugned order of recovery quashed–Retiral dues to be calculated from the actual date of retirement : *P. Narayan Vs. The State Of M.P., I.L.R. (2004) M.P. 1144*

– **Articles 14 and 226** – Writ petition – Challenging propriety of grant of escrow cover to successful bidders on least tariff basis after re-bidding as per direction of the Central Govt. Power Ministry – After finalization of contract petitioners participated in the rebidding on the basis of least tariff – Precluded from challenging the same or to seek enforcement of statutory contract by reason of acquiescence : *Bina Power Supply Company Ltd. Vs. State, I.L.R. (2001) M.P. 658, (D.B.)*

-**Articles 14, 226**, Nagar Tatha Gram Nivesh Adhinyam, M.P. 1973 Section 50(7)–Acquisition proceedings–Doing away with the requirement of publishing whole of the scheme in Gazette–Details of land etc. given in the notification with further notice to general public to inspect the scheme during office hours–Opportunity made available to all concerned to file objection–Challenge of vires on ground of violation of Section 50(7)–Not tenable : *Achlashrya Developers Vs. The Bhopal Development Authority, I.L.R. (2004) M.P. 487 (D.B.)*

- **Articles 14, 226** and Telegraph Act, 1885, Section 7-B-Arbitrator-Appoint of-Constitutional validity-Provision cannot be voided merely because no corrective machinery is provided-Award passed by arbitrator-Discussion in the award itself is

indication of existence of material - No interference called for : *Bhagwati Prasad Bajaj Vs. Union of India; I.L.R. (2002) M.P. 842 (D.B.)*

– **Articles 14 and 226** – Writ Petition – Education- Mass copying in examination – Regulations of Board of Secondary Education, Madhya Pradesh, Regulation No. 117 – If result of Examination has been affected by error, malpractice, fraud or other matter, the result committee shall have power to amend result – Petitioner involved in mass copying – Result rightly amended – Principles of natural Justice not applicable to the case of mass copying : *Vinod Kumar Pathak Vs. State, I.L.R. (2001) M.P. 938,*

- **Article 14, Article 226** - Cancellation of admission to Veterinary Sciences and Animal Husbandry College - Petitioner admitted -In reserved quota for 'agriculturist' - Pursued said course for three and half years - Admission cancelled, when found that he had submitted false certificate that his father was an 'agriculturist' - Petitioner not given any opportunity of hearing to before cancellation of admission — Principle of estoppel also applicable - Order of cancellation of admission quashed . *Mukund Prasad Khare Vs. State Of M.P., I.L.R. (1995) M.P. 563*

- **Articles 14, 226**, Homoeopathy Parishad Adhinyam, M.P., 1976, Sections 21, 22, 23, 24, 25, 26 and 51 and Homoeopathy Council (Publication of Register and Appeal) Rules, M.P., 2000, Rules 4 and 5 - Rule making power - Rules are subordinate to the Act - Rules cannot override any of the provisions of Principal Act - None of the provision of Principal Act speaks about renewal of registration of Homoeopathic medical practitioners and on failure cancellation of registration - Rule providing renewal of registration runs contrary to Article 14 of the Constitution of India - Rules 4 and 5 of the Rules, 2000 ultra vires. *Dr. Rajkumar Jain Vs. The State Of M.P.; I.L.R. (2002) M.P. 829 (D.B.)*

-**Articles 14 and 226**–Writ petition–Service law–Departmental enquiry and consequent 'dismissal'–State Bank of India (Supervisory Staff) Service Rules–Rules 32(1), 32(4), 49(g) and 49(h)–Misconduct–Position clarified by Deputy General Manager–Yet refusal to carry out work assigned on ground that he was in an innocuous position–Use of indecorous language–Disobedience exhibited lack of sense of responsibility–An act unbecoming of a Bank employee established–Petitioner guilty of dereliction of duty–No moral turpitude–Punishment should be commensurate to the proved misconduct–Justice must be tempered with mercy–Order of dismissal altered to "removal from service" : *Jaiprakash Kori Vs. State Bank Of India, I.L.R. (2003) M.P. 282*

– **Articles 14, 226** – Writ petition – Education – Admission – Vishwa Vidyalaya Adhinyam, 1973 – Sections 38, 39 – Powers of University to frame rules for admission- Universities are autonomous bodies created by different Acts – Can

provide their own guidelines for admission to respective courses – Ordinance in relation to Master of Computer Semester Examinations – Clause 13 Provision for disqualifying candidates who failed in two papers of preceding semester to take admission in next semester in the respondent University – Not arbitrary nor unconstitutional – Article 226 – Controversy involved is of academic character – Should be left to be decided by Universities and Court should not interfere : *Yashwant Birla Vs. Pt. Ravishanker Shukla University, I.L.R. (2001) M.P. 178, (D.B.)*

- **Articles 14, 226** and Bhopal Gas Leak Disaster (Processing of claim) Act, 1985, Section 6, and Bhopal Gas Leak Disaster (Registration and Processing of Claim) Scheme, 1985–Paragraph 8 and 13(3)–Suo motu power of revision–When exercised on an application is the result of Commissioner's deciding to exercise power of revision suo motu–Claimant has no right to seek revision–Rejection of revision petition–Order not prejudicial to claimant's interest or right–Opportunity to show cause before rejection not needed–Authority vested with suo motu power of revision–Has to act judiciously–Absence of provision as to limitation in the scheme–Not permissible for the authority entrusted with the power to prescribe a period of limitation–Rejection on ground of limitation–Order set aside–Matter remitted back to consider explanation for delay : *Smt. Birjis Khatun Vs. The Welfare Commissioner, Bhopal Gas Victim, Bhopal, Through The Registrar, I.L.R. (2005) M.P. 706 (D.B.)*

- **Articles 14 and 226** and Societies Registration Act, 1860, M.P. (XLIV of 1973), Sections 3(f), 33 and 40 – Supersession and appeal – Writ Petition – Section 3(f), as amended – ‘State aided society’ defined – ‘A society which receives aid’ and not a society which received aid – Section 3(f), 33 and 40 - Petitioner society received an assistance almost a decade back – Not a State aided society – Order of supersession of petitioner society treating it as a ‘State aided society’ – Illegal – Article 14 – Order passed before issuance of show cause notice – Order sensitively susceptible – Order of supersession quashed : *The Chhatarpur Homeopathic and Biochemic Association Vs. State, I.L.R. (2001) M.P. 801,*

-**Articles 14, 226**–Writ Petition–Excise Act, M. P. 1915–Section 62–Foreign liquor Rules 1996–New excise policy–Scope of interference–Court would be slow to interfere with policy for grant of licences for manufacture and sale of liquor–Grant of licence on the basis of application in place of public auction and fixing of minimum rate–To avoid cut-through competition and monopoly State implemented new policy–State well aware that liquor should not be sold below minimum price–Election Commission accorded its approval to implement the policy – policy not arbitrary, discriminatory or mala fide : *Mahesh Lavvanshi Vs. State, I.L.R. (2004) M.P. 737*

-**Articles, 14, 226** –Writ Petition–Service Law–Change of date of birth in Service book–Financial Code, Rule 84–Has to be given purposive and acceptable interpretation–Once the employee gives declaration and is signatory to it the same is

binding on him—It cannot be said that if the entry is vitiated employer would be estopped to rectify the same—If the employer wants to change entry of date of birth it has to follow principles of natural justice—Direction issued to conduct inquiry within 4 months : *Baldeo Prasad Vs. State Of M. P., I.L.R. (2004) M.P. 731*

- **Articles 14, 226**, Excise Act, M. P., 1915, Sections 18, 27, 62(2)(e), (g) & (h), Breweries Rules, M. P. 1970, Rule 22–D-2 Licence for manufacture of IMFL by blending, reducing and compounding IMFL concentrate—Licence issued under the Distillery & Warehouse Rules—Breweries Rules not applicable as the unit is not brewery—State Government entitled to accept payment in addition to duty leviable on terms and conditions of the licence deed—Condition 8 empowering State Government to recover the actual cost of supervisory staff posted at the premises of licensee—Levy constitutes price for consideration for parting with the privilege and granting licence—Recovery not illegal—Condition 8 not ultra vires—Order of High Court set aside : *State Of Madhya Pradesh Vs. M/s. K. C. T. Drinks Ltd., I.L.R. (2003) M.P. (Sc) 478 (F.B.)*

-**Articles 14, 226**-Writ Petition –Electricity Tariff-Advocates carrying on Legal profession-Not a trade or business-Not liable to pay Electricity tariff at commercial rates-Domestic Tariff applicable even if the office is situated at a place other than his residence-Electricity Supply Act, 1984-Section 49-classification of Advocates in legal profession as commercial as commercial activity-violative of Article 14- Notification of Electricity Board quashed-Words “Commerce” or “Commercial” necessarily has a concept of a trading activity “Legal Profession” involve certain amount of skill as against commercial activity when it is more of a matter of thing or business activity : *Shiv Narayan Vs. M.P.E.B., I.L.R. (2000) M.P. 796 (D.B.)*

- **Articles 14 and 226** – Limited financial resources available – Has to be distributed on a good criterion – High powered committee consisting of experts decided that Least Tariff to be good criterion for grant of escrow – Many factors and complicated process involved – Difficult for the Court in writ jurisdiction to enter into merits and demerits of Least Tariff basis – Once high powered committee taking into consideration all relevant factors found Least Tariff to be a good criterion – Grant of Escrow cover on that basis to successful bidders cannot be said to be arbitrary – Order of writ court set aside – State Govt. and M.P.E.B. left at liberty to proceed with the matter further on Least Tariff basis : *Bina Power Supply Company Ltd. Vs. State, I.L.R. (2001) M.P. 658 (D.B.)*

- **Articles 14, 226**, Road Transport Corporation Act (LXIV of 1950), Section 45, State Road Transport Corporation Employees Service Regulations, M.P., 1960, Regulation 59 and Industrial Relations Act, M.P. (XXVII of 1960)–Sections 31, 61–Retirement of petitioner at the age of superannuation of 58 years of age on the basis of wrong entry of date of birth–Objection of petitioner accepted on the basis of High

School Certificate—Order of retirement withdrawn by the Respondents/Corporation—Vigilance conducted without giving opportunity to the petitioner unilaterally—Petitioner again retired on the basis of date of birth shown in earlier Gradation list already superseded by subsequent gradation list of 1984 and 1989—Order of retirement is violative of Article 14 of the Constitution—Order of retirement quashed—Alternative remedy—Petitioner Depot Manager—When facts are clean and undisputed plea of alternative remedy should not be accepted as bar to writ jurisdiction on face of controversy as to whether his application under section 31 or 61 of the M.P.I.R. Act, 1960 would be tenable—Civil Procedure Code, 1908—Section 80—Notice before filing writ—Not necessary especially when petitioner is not seeking enforcement of private rights or contractual obligations. *Kailashnarayan Vs. M.P.S.R.T.C., I.L.R. (1992) M.P. 15*

- **Articles 14, 226** —Writ petition—Service law—Compulsory retirement—State Co-Operative Dairy Federation Limited Employees' (Recruitment, Classification and Conditions of Service) Regulation, M.P., 1985 (as amended), Regulation 13(1)—Compulsory retirement on completion of 20 years service in public interest—It is not interest of employer or of employee which is material but efficiency and integrity are of paramount considerations—Regulation amended in conformity with Rules applicable to Government servants—Criterion adopted cannot be said to be discriminatory—Marks given on grading in confidential reports—Not to be retired if average marks obtained are two or more—Formula ensures objectivity in evaluation of service record—Rules out chances of bias, prejudice or subjectivity—Only 1.05 marks obtained on an average of 20 years service—Really a deadwood and worthless—Decision of compulsory retirement bonafide : *Dr. Vishwanath Prasad Agnihotri Vs. M.P. State Cooperative Dairy Federation Limited, I.L.R. (2004) M.P. 134*

-**Articles 14, 226** and Stamp Act, Indian, 1899—Section 9, Articles 33 (a) (v) and 33(c)—Writ petition—Stamp duty—Constitutional validity—Fiscal legislation—Not confiscatory or expropriatory in nature—Cannot be challenged merely on ground of being excessive—Persons willing to pay high premium and rent to defeat competition or to secure advantage—Cannot have a grievance when it comes to payment of stamp duty—Section 33(a) (v) and 33(c) not ultravires—Businessmen taking lease for commercial purpose—Cannot fall in the category of 'Eminent Writers/ Poets' or 'Low income Group Citizens'—Does not amount to hostile discrimination : *Smt. Padma Vs. The State Of Madhya Pradesh, I.L.R. (2004) M.P. 1025 (D.B.)*

- **Articles 14, 226** – Recruitment – Reservation – Petitioner appeared in the Civil Judges examination as reserved candidate and figured in the select list – Article 14 – Enquiry by the appointing authority as to genuineness of the caste certificate produced by the petitioner – Discrepancy found that petition belongs to 'Mahar' and not 'Mahara' caste – Enquiry conducted without giving any effective opportunity to petitioner – Not proper – Article 14 – Appointing authority is always within rights to

scrutinize caste certificate of an incumbent but after giving proper opportunity to petitioner – Respondents directed to keep a seat vacant and conduct an enquiry through a committee and take appropriate action depending upon the result of such enquiry in stipulated time : *Krishna Das Mahar (Jharia) Vs. State, I.L.R. (2001) M.P. 767,*

-Article 14 and 226-Principles of natural Justice-Education-Cancellation of petitioner's admission to MBBS course on ground of production of forged caste certificate-Petitioner was not given any document while requiring her to show cause-No reflection either in the counter affidavit or documents annexed that petitioner's caste certificate has ever been cancelled-She was not apprised of the entire allegation to defend her stand-Order canceling petitioner's admission quashed : *Ku. Mradula Gupta Vs. State Of M.P., I.L.R (1999) M.P. 315*

-Article 14 and 226-Common Coal Cadre Revision of pay scales of executives below the Board Level 'Package Offer'- Changing the date of increment-Petitioner has also been benefited-As a part of the 'Package offer' has been accepted the other part cannot be refused-Petitioner and like others have to accept a marginal suffering so that a uniformity is maintained-One cannot conceive a perfect situation but at the most reasonable one-fixation of anniversary date of increment is reasonable, unarbitrary and purposive-View taken by learned Single judge concurred with : *Rabindranath Mukhopadhyay Vs. Coal India Ltd., Calcutta, I.L.R. (1999) M.P. 220 (D.B.)*

- Article 14, 226 and Indian Administrative Service (Pay) Rules, 1954, Rule 5 – District Judge in lower selection grade appointed in Ex-Cadre post carrying pay scale of Higher selection grade – On return from deputation placed in lower selection grade and subsequently selected in Higher selection grade – Period spent in deputation cannot be tagged for calculating increments in higher selection grade unless all his seniors and one junior were in that grade – One class of service having several categories with different attributes and incidents – Such category becomes separate class – No discrimination between such category and members of other class – Article 14 not attracted when equals and unequals treated differently : *Anant Diwakar Deoras Vs. State Of M.P., I.L.R. (1989) M.P. 398 (D.B.)*

- Articles 14, 226/227–Writ Petition–Police services– Allegation of mis conduct–Removing belt and cap and throwing at the time of visit of Inspector General–Departmental enquiry–Removal from service–Order confirmed by Administrative Tribunal–Punishment imposed must be commensurate to the gravity of the misconduct–Any punishment disproportionate to the gravity of misconduct violative of Article 14–Judicial Review–Punishment imposed shocks the conscience–It would be appropriate either to direct the authority to consider or in exceptional cases,

appropriate punishment can be imposed—Punishment of removal from service disproportionate to the gravity of misconduct alleged—Order set aside. *Arvind Vs. Director General of Police, M.P.; I.L.R. (2002) M.P. 244 (D.B.)*

- **Articles 14, 226 and 227**—Writ Petition—Restoration of appeal dismissed for non-prosecution—Urban Land (Ceiling and Regulation) Act, 1976—Section 33—Appellate Authority is provided with plenary powers even to dismiss an appeal under this provision for non-prosecution as the appeals are to be decided expeditiously and appeals under Section 33 have been expressly given short life—Restoration—Reasonable opportunity—Not given to petitioner while rejecting application for restoration—Direction given to hear the petitioner afresh. *Surajsingh Vs. State, I.L.R. (1992) M.P. 379 (D.B.)*

—**Articles 14, 226, 227** and Rules for Post Graduation (MD/MS Course) in Clinical, Para-Clinical and Non-Clinical Disciplines in Medical Colleges of Madhya Pradesh, 1984, Rule 9.6—Writ Petition—Education—Admission to post graduate courses in medical colleges—Petitioner already obtained post-graduation in M.D. (Radiology) before joining service as Assistant Surgeon—Prohibition that Asst. Surgeon and Private practitioners who have obtained post graduation in any subject shall not be allowed to take up Degree or diploma in another subject is made with a view to restrict competition for limited number of reserved seats—Challenge to Rule based on Article 14 of the Constitution—Without substance. *Dr. A.K. Gupta Vs. State, I.L.R. (1992) M.P. 311 (D.B.)*

- **Articles 14, 226, 227** and Administrative Tribunals Act, 1985—Section 19—Writ Petition—Service Law—Promotion—Pay fixation—Fundamental Rule 22-D—An employee is entitled to get his pay fixed in the pay scale of higher post—Rule Speaks of Promotion from lower post to higher post and not from one scale to another—Even if employee was getting same salary on lower post benefit of FR 22-D cannot be denied—Benefit granted to similarly situated employees by virtue of an earlier order—Subsequent challenge with no plausible explanation—Action discriminatory Attracts Article 14 of the Constitution : *State Of M.P. Vs. Dayaram Patidar, I.L.R. (2003) M.P. 614, (D.B.)*

-**Articles 14, 226, 227**, Recovery of Debts Due to Bank and Financial Institutions Act, 1993, Sections 17, 17-A, 18, 20, 22, Debts Recovery Tribunals (Procedure) Rules, 1993, Rule 12(6) and Debts Recovery Tribunals Regulation of Practice Rules 1998, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants—Rejection—Writ petition—Appeal—Word "an" and 'any'—There is no difference between the two terms—Expressions used in Sections 17 and 20 are not repugnant to each other—Order rejecting application for permission to cross-examine witnesses whose evidence was collected on affidavit—Appealable under Section 20 of the Act if substantially affects some rights or liabilities of a

party–Collection of evidence on affidavit and production of witness–If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has sworn an affidavit–Regulation 31, 32 are *intra vires*–Do not transgress the limits stipulated under Section 22–Rule 12(6)–Bar of jurisdiction–There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to–Availability of alternative remedy–No inflexible rules for exercise of discretion by High Court–Depends upon on facts of each case–In exceptional circumstances writ Court can exercise its jurisdiction–Orders impugned do not call for interference in extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India–Leave granted to petitioners to prefer an appeal before appellate tribunal within six weeks : *M/S P.C.C. Construction Co. Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172 (F.B.)*

– **Articles 14, 226 and 227** – Education – Admission to B.E. Course – Rules of conduct for Entrance Test and Rules of Admission – Separate Rules in 1988 and 1989 – Framed under Article 162 of the Constitution – Entrance Test 1989 – Petitioner secured 47 to 48.7% marks – Not included in the “Merit List” or even the “Waiting List” – Decision of Government to give admission to 1988 candidates during 1989, who had failed in “General English” though otherwise qualified – Not violative of judicial mandate in M.P. No. 299/88 or of any Rules – So called failed candidates of 1988 deserved protection – Article 166 of the Constitution – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category: *Rahul Vs. State, I.L.R. (1991) M.P. 595 (F.B.)*

- **Articles 14, 226, 299** – Writ petition–Tender–NIT by CPWD for store maintenance and cartage of cement–Huge bulk of cement on DGS &D rates to be lifted in fixed time–Condition of experience and ownership of trucks not unreasonable–Earnest money–Payable only on finalization of contract–Cannot be asked for as a pre-condition for issuance of tender form–Application for tender form is neither an offer nor a bond for any prospective offer–Condition arbitrary–Struck down : *Ajay Krishna Vs. Union Of India, I.L.R. (2005) M.P. 306*

- **Articles 14, 226, 341, 391**, Commercial Tax Act, M.P. 1994 (as amended) Sections 45-A, 45-C, 45-D and Commercial Tax Rules, M.P. 1995, Rule 73-F-Inter State transportation of goods-Transporter to carry with him copy of declaration in respect of a notified goods-Officers of Commercial Tax Department vested with powers to verify documents-Prima facie material available to presume attempt being made to facilitate tax evasion-Only show cause notice issued-No interference called for at this stage. *M/s North Roadlines, Nagpur Vs. State of M.P.; I.L.R. (2002) M.P. 912,*

- **Articles 14, 227** and Administrative Tribunal Act, 1985- Section 19–Service law–Equal pay for equal work–Laboratory attendant–Asked to officiate as Museum Assistant but actually worked as Museum Keeper till retirement–Recruitment Rules mention the post of Museum Keeper and not the post of Museum Assistant–Tribunal rightly held that the respondent worked as Museum keeper and entitled to notional pay of the post revised from time to time : *State And Another Vs. Maskey, I.L.R. (2003) M.P. 206 (D.B.)*

- **Article 14, 243-C** - M.P. Panchayat Raj Adhiniyam 1994, Section 21 - Removal of Sarpanch - By motion of no-confidence by elected Panchas - Not violative of Article 14. *Jagdish Prasad Bhunjwa Vs. State Of M.P., I.L.R. (1996) M.P. 100 (D.B.)*

- **Article 14 & 246**, Schedule 7, List 3, Entry 12A - M.P. Public Moneys (Recovery of Dues) Act, 1988, Section 1 - Vires of the Act challenged - Held - The act is essential for a summary procedure for speedy recovery of Debts due to the Government of the Corporation of the Banking Companies - The procedure would apply with reference to the date when the recovery is enforced and not with reference to the date of transaction - The act being in the nature of machinery for recovery, steps can be taken in accordance herewith even in relation to past transaction - Validity of the Act dismissed : *New Laxmi Oil Mills, Barwaha Vs. Bank Of India, Barwaha, I.L.R. (1997) M.P. 112 (D.B.)*

- **Articles 14, 254** seventh schedule, List III, Entry 35, Motor Vehicles Act, 1988, sections 66, 192-A and Motoryan Karadhan Adhiniyam, M.P. 1991 (as amended) sections 16 (6), 16 (7), 16 (8), 20-A and 20-B–Taxation on motor vehicles–subject covered under list III of seventh schedule–driving motor vehicle without permit in violation of section 66 read with section 192-A of the M.V. Act–Penalty of confiscation provided in state Law as a step for recovery of the tax–Validity–Union Law & State Law–Offences substantially identical but additional penalties imposed by state Law–would be inconsistent with the law of the Union and therefore invalid–Factor weighs with the authority for which the M.V. Act sets out nature and degree of punishment but does not include confiscation–Impinges upon Article 254 of the constitution–Provision of section 16 (6) and consequential provision of section 16 (7), 16 (8), 20-A and 20-B of the state Law invalid–Order of High Court set aside : *M.P.A.I.T. Permit Owners Assn. Vs. State Of Madhya Pradesh, I.L.R. (2004) M.P. (Sc) 102 (D.B.)*

- **Articles 14, 299** – Rejection of tender – Challenge on the ground – Control board rejected the tender without applying its mind – Held – Comparative table shows that rate quoted by the petitioner was on higher side, Control board has rejected the tender after due deliberation and application of mind, decision taken fairly and objectively – High Court refuse to interfere – Petition dismissed. *M/s. Akhtar Brothers Vs. State of M.P., I.L.R. (1995) M.P. 557*

-Article 15-Discrimination not founded on ground of sex along-Article not violated : *Mst. Thanwarin Vs. Naib Tahsildar, Fingeshwar I.L.R. (1967) M.P. 40 (D.B.)*

-Article 15(3)-State has power to make special provision for women-The case of widow is certainly a disadvantaged class-the case of a retired Govt. servant is different-Order of impugned cannot be sustained in law-Matter remanded to the R.C.A. for deciding the case according to law : *Smt. Vimladevi Vs. Gurindersingh, I.L.R. (1992) M.P. 51*

- Articles 15 (3) and 29 (2)-Effect of non-admission of male candidate in women's college-Right of women to admission in other colleges-Matter is regulated by authorities empowered to admit candidate : *Raghunath Vishnu Athawale Vs. The State Of M.P., I.L.R. (1961) M.P. 55 (D.B.)*

- Article 16 - Denial of equality of opportunity - The article infringed : *Laxminarayan Behre Vs. State of M. P. I.L.R. (1981) M.P. 378 (D.B.)*

- Article 16 - Govt. taking over institution and passing order prescribing terms and conditions for absorption of its staff - Order though not statutory has to be followed uniformly : *Laxminarayan Behre Vs. State Of M. P. I.L.R. (1981) M.P. 378 Before (D.B.)*

- Article 16 – Omission of word ‘pension’ in Article 106 cannot be read as any bar, prohibition or restriction on the Parliament to make such law providing pension for Ex-Member of Parliament : *S.P. Anand Vs. Union Of India, I.L.R. (2001) M.P. 914, (D.B.)*

- Article 16 - Relevant connection between test prescribed and interest of public service - No violation of this Article, *Dwaraka Dhish Bhargava Vs. State Of M. P. I.L.R. (1979) M.P. 486 (F.B.-5jj.)*

- Article 16 – Advance increments – Government issued orders that teacher who proceeded for training up to 22-10-1964 whether at his cost or at the govt. cost will eligible for two advance increments but those who proceeded on training on or after 23-10-1964 can get such increments only if the training is at his own cost – The order is neither arbitrary nor discriminatory : *State Of M.P. Vs. Badrinarayan Acharya, I.L.R. (1996) M.P. 263 (D.B.)*

-Article 16-Qualifications, method of recruitment, avenues of promotion of Teachers of two types of Schools different-They form two distinct and separate

classes-Between them there is no scope for predicating equality or inequality of opportunity in matters of promotion : *Bhilai Hindi Primary School Teachers, Association , Bhilai Vs. The General Manager, Hindustan Steel Ltd. Bhilai, Steel Project, Bhilai, I.L.R. (1972) M.P. 704 (D.B.)*

-Article 16-Discrimination on the ground of residence in the matter of employment under the State-Not permitted except under a law passed by the Parliament Post of Shiksha Karmi Grade I (Lecturer) for Government Higher Secondary School, Khasmi, advertised under O.B.C. category: The minimum qualification prescribed for the post was post Graduate Degree with second division with a condition that candidate having B. Ed. Degree shall be preferred to other candidates. Education Committee selected and appointed a resident of Gram Panchayat Kesala, Janpad Panchayat, Barghat ignoring the petitioner, who besides minimum qualification also B. Ed. Degree to his credit, only on the ground that he was a resident of Seoni and not the resident of area falling within the territory of Janpad Panchayat, Barghat- Action ultra vires of Article 16 of the Constitution of India : *Dinesh Kumar Saini Vs. Sabhapathi, Shiksha Sthayi Samiti, Seoni, I.L.R. (1998) M.P. 27*

-Articles 16 and 14-South Eastern Coalfield Limited-Not owned by state Government-Circular issued by State Govt. insisting criterion of domicile of Madhya Pradesh-Not a valid requirement for recruitment in SECL-Violative of Articles 14 & 16 of the Constitution-Such circulars have no application is SECL : *Shrawan Kumar Vs. South Eastern Coalfields Ltd. Bilaspur, I.L.R. (2000) M.P. 1066*

- Articles 16, 21 and 226 and Fundamental Rule 18 (2) - Departmental enquiries against petitioner pending but no suspension order passed - Still petitioner not permitted to join his duties - Such refusal is violative of Articles 16 and 21 - Directions allowing petitioner to join his duties issued : *Munshiram Vs. State Of M. P. I.L.R. (1986) M.P. 581*

- Articles 16, 309, M.P, Services (Gazetted) Recruitment Rules, 1966, Rule 2-Service Law-Appointment- Prior to amendment in rules channel of recruitment to Assistant Director, Veterinary service was through direct recruitment and promotion in proportion of one is to one-- Notification issued advertising posts-On the date of notification rule were not amended-Held -Selection and recruitment as per notification held valid. *Dr. P.N. Dubey Vs. State of M.P., I.L.R. (1997) M.P. 14 (SC) (D.B.)*

- Articles 16 and 311 - Character verification' of public servant - Necessity of its completion before appointment or soon thereafter - Termination of petitioner's service being arbitrary, punitive and violative of articles 16 and 311 liable to be quashed : *Deepak Kumar Pandey Vs. State Of M. P. I.L.R. (1986) M.P. 712*

- **Articles 16, 311**, Vishwavidyalaya Adhinyam M.P. 1973, Section 49., University Grants Commission Act, 1956, Section 12- Section 49 provides recruitment of Professors, Readers and Lecturers by way of direct recruitment— Unless suitable amendments provides other source of recruitment, mere recommendation by the Commission for adoption of merit promotion scheme, promotions on basis of merit promotion scheme is not legal—Promotion of Readers, Professors promoted under merit promotion scheme - Held ex-cadre posts form a distinct class from cadre employees, namely direct recruited Readers, Professors - For purposes of seniority and promotion—Direct recruit and promotee Readers and Professors cannot be treated equally — Inter-se seniority fixed on basis of continuous officiation – Illegal : *Dr. Rashmi Srivastava Vs. Vikram University, I.L.R. (1995) M.P. 102 (D.B.)*

- **Articles 16 and 311** and Local Authorities School Teachers (Absorption in Government Service) Rules, M. P., 1964, Rule 12 - Reduction in rank - Petitioner promoted as Upper Division Teacher on basis of seniority list prepared on wrong interpretation of Absorption Rules - Discovery of mistake and preparation of fresh seniority list according to Rules - Reversion of petitioner as Lower Division Teacher on its basis - Does not amount to reduction in rank - Article 311 not infringed - Civil Services (General Conditions of Service) Rules, M. P., 1961 - Rule 12 - Preparation of seniority list of Lower Division Teachers division-wise - Not contrary to this Rule - Powers of Government to keep the absorbed teachers in separate cadre by framing necessary Rules - Petitioner posted in Sagar Division - Order of Revision passed by Divisional Superintendent of Education, Jabalpur Division while retaining powers in respect of Sagar and Damoh Districts - Does not violate Article 311 - Precedent - High Court in some case interpreting certain Rules framed by Government - Petitioner not a party to that case - Judgment is binding as precedent regarding interpretation of Rule : *Ravindra Nath Tiwari Vs. Divisional Superintendent Of Education, Jabalpur Division, I.L.R. (1981) M.P. 571 (D.B.)*

- **Articles 16 and 311** and Labour Service (Class III Non-gazetted) Recruitment Rules, M. P., 1966 - Appointment of petitioner as Labour Sub-Inspector-Termination on the basis of character verification that police had instituted some criminal cases against him in the past - Validity of - Petitioner's involvement in some incidents pertaining to affairs of students' Union not singly but collectively and not ending in any conviction and also about 8 years old - Such antecedents cannot be the basis for termination of petitioner's services, Articles 18 and 311 Character verification' of public servant - Necessity of its completion before appointment or soon thereafter - Termination of petitioner's service being arbitrary, punitive and violative of articles 16 and 311 liable to be quashed : *Deepak Kumar Pandey Vs. State Of M. P. I.L.R. (1986) M.P. 712*

-Article 16(1)-Applicable to any matter relating to appointment or employment to any office under the Corporation : *Ras Bihari Pande, Vs. The Municipal Corporation, Jabalpur I.L.R. (1968) M.P. 904 (D.B.)*

- **Article 16(1)**-Satisfied- Sealed cover procedure cannot be applied in case of direct recruitment : *A. K. Roy Vs. Union Of India & Another, I. L.R. (1999) M.P. 180*

-Article 16(1)-Equality of opportunity for citizen regarding appointment or employment in any office- Applies not only to initial appointment but also to matter of promotion : *Ras Bihari Pande Vs. The Municipal Corporation, Jabalpur I.L.R. (1968) M.P. 904 (D.B.)*

-Article 16(1)-Guarantees application of same standard to all persons similarly situate : *Ras Bihari Pande Vs. The Municipal Corporation , Jabalpur I.L.R. (1968) M.P. 904 (D.B.)*

-Article 16(1)-Does not confer right to claim promotion to a higher grade as a matter of right: *B.A. Nigam Vs. Registrar Of The High Court Of M.P., I.L.R. (1971) M.P. 651 (D.B.)*

-Article 16(1)-Fundamental right of equality of opportunity -Available only when promotion made from same source or cadre: *B.A. Nigam Vs. Registrar Of The High Court Of M.P., I.L.R. (1971) M.P. 651 (D.B.)*

-Article 16(1)-Principle of equality of promotion not inconsistent with rules or provisions made relating to qualification for promotion so long as they have rational relation to nature of work on the post to which promotion is to be made : *B.A. Nigam Vs. Registrar Of The High Court Of M.P. ,I.L.R. (1971) M.P. 651 (D.B.)*

-Article 16(1) - Expression "equality of opportunity" in "matters relating to employment or appointment in any office" in-Not restricted to initial appointment-Is wide enough to embrace all matters relating to employment in any office both prior and subsequent to appointment including promotion to higher grade-Guarantees equality of opportunity-Does not confer equality of right-Does not confer right to claim promotion to a higher grade as a matter of right-Fundamental right of equality of opportunity-Available only when promotion made from same source or cadre-Principle of equality of Promotion not inconsistent with rules or provisions made relating to qualification for promotion so long as they have rational relation to nature of work on the post to which Promotion is to be made-Provisions of Articles 14 and 16- Not violated if principle uniformly applied in all cases-Principle of selection adopted by High Court not challengeable-Failure to consider claims of seniors-Amounts to violation of fundamental right-Article 233(1)-Representations made by Civil Judges concerning promotion-High Court bound to forward the same to State

Government who is the appointing authority -Article 14 and 16-Counting of seniority from the time when powers of Civil Judge Class I, are exercised not justified-Preparation of list on such basis ignoring the seniority in the cadre is not legal and not justified-Omission to consider the claim of person senior in cadre because of preparation of special list-Amounts to a denial of fundamental right-Relief which can properly be granted in the circumstances of the case : *B.A. Nigam Vs. Registrar Of The High Court Of M.P., I.L.R. (1971) M.P. 651 (D.B.)*

- **Articles 16 (1) (2) and 335** - Promotion of Scheduled Castes and Scheduled Tribes candidates beyond reservation quota in any grade cannot be made provided such candidates holding post by virtue of the reservation quota in the grade below - Appointment or promotion made in excess of reservation quota - To be adjusted towards future vacancies - Promotees not however to be demoted : *G. C. Jain Vs. Divisional Rail Manager, Jabalpur I.L.R. (1986) M.P. 150 (D.B.)*

- **Articles 16 (1) (2) and 335** - Reservation for Scheduled Caste and Scheduled Tribes - Quota fixed in the circulars of the Railway Board dated 20 - 4 - 1970, 29 - 4 - 1970 and 11-1-1973 - Is not the minimum but the maximum - Reservation is to the posts and not to the vacancies as and when they occur - Promotion of Scheduled Castes and Scheduled Tribes candidates beyond reservation quota in any grade - Cannot be made provided such candidates holding post by virtue of the reservation quota in the grade below - Appointment or promotion made in excess of reservation quota - To be adjusted towards future vacancies - Promotees not, however, to be demoted : *G. C. Jain Vs. Divisional Rail Manager, Jabalpur I.L.R. (1986) M.P. 150 (D.B.)*

- **Article 16 (4)** - Permits reservation of seats in favour of backward classes - Giving preference to candidates of scheduled caste and tribe - Is not violative of this Article : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

- **Articles 16(4), 355** – Recruitment in Defence services – Claim for age relaxation – Refusal – Circulars or office memoranda providing age relaxation to reserved category candidates are not applicable to defence services recruitment – Advertisement not providing for age relaxation- Action not violative of Articles 16(4) or 335 of the Constitution : *Ku. Veena Ambedkar Vs. Union of India, I.L.R. (2001) M.P. 1341,*

- **Article 19, Land Acquisition Act, 1894, Sections 4 & 6** – Whether acquisition of commercial land would violate Freedom of Trade – Held – If the action involves the acquisition of interest in an existing private commercial undertaking, the State can

compensate under clause 2 of Article 31 – Petition dismissed. *Kanta Bai (Mst.) Vs. The State, I.L.R. (1956) M.P.4*

-Article 19-Liberty of individual not absolute-Must yield to common good : *M.P. Colliery Workers Federation, Chirimiri Vs. The United Collieries Ltd., Calcutta., I.L.R. (1973) M.P. 664 .*

-Article 19-Nature of liberties of workmen-No fundamental right to hold meetings of any kind on private property or trespass on such property : *M.P. Colliery Workers Federation, Chirimiri Vs. The United Collieries Ltd., Calcutta., I.L.R. (1973) M.P., 664*

- **Article 19** - Does not forbid an alien from enforcing right which could be claimed under ordinary law of land : *M/s Bachomal Sadoromal Raipur Vs. Milkiram I.L.R. (1979) M.P. 162*

- **Article 19** - Fundamental right available only against State - Not for violation of any such right by private individual except - Where State supports such private action : *M/S Bachomal Sadoromal Vs. Milkiram I.L.R. (1979) M.P. 162*

- **Article 19** - Citizen has fundamental right to carry on liquor business - State can engage in liquor business : *M/s Doongaji And Company Katni Vs. State Of M. P. I.L.R. (1976) M.P. 207 (D.B.)*

- **Article 19** - Right of citizen to deal in liquor - Right can be restricted or prohibited : *M/S Doongaji And Company Katni Vs. State Of M. P. I.L.R. (1976) M.P. 207 (D.B.)*

- **Article 19** - Freedom of speech and expression under - Extent of : *Laxminarayan Singh Vs. Shriram I.L.R. (1984) M.P. 339*

- **Article 19** - Arbitrary refusal of solvency certificate - Infringes upon fundamental right guaranteed by this article : *Pt. Girjashanker Vs. Collector Hoshangabad I.L.R. (1978) M.P. 466 (D.B.)*

- **Articles 19, 14, 16, 21, 33 and Army Act (XLVI of 1950)** – Court Martial – Procedure for trial need not satisfy provisions of Article 21 – Fundamental rights restricted or abrogated as provided in Article 33 – Validity of Army Act cannot be challenged on ground of contravention of Article 14, 16 or 19 – Constitution of India, Article 226 and Army Act, 1950 – High Court cannot review findings of general Court Martial – Remedy provided in sections 164 and 179 of Army Act : *Lt. Col. A.K. Handa Vs. Union Of India, I.L.R. (1988) M.P. 131 (D.B.)*

-Articles 19 and 31-Right to vote -Not property-Central Provinces and Berar Municipalities Act, Section 18 as amended-Vires of-C.P. and Berar Municipalities Amendment Act, Section 7 -Election not completed prior to coming into force of Amending Act-Election stands annulled-Right to vote for election of President-Not a fundamental right : *Ramdas Alias Lallubhaiya Vs. The State Of M.P., I.L.R. [1959] M.P. 343*

-Article 19(1)(a) And (2) and Public Security Act, Madhya Pradesh (XXV of 1959), Section 12(1)(i)-Article 19(1)(a)-Freedom of Speech and expression-Includes freedom of Press-Freedom of Press-Higher than freedom of speech and expression-Subject to same limitations as are imposed by Article 19(2)-Freedom of Press-Freedom to be exercised with discretion-Press to observe self-imposed restriction-Restriction on publishing and distributing-Constitutes restriction on freedom of Press-Validity of restriction-To be tested by touch stone of reasonableness-For determining reasonableness, Court has to see certain things-Restriction must have reasonable relation to object sought to be achieved-Has to be viewed in an objective manner from the view of the interest of general public-For determining whether restriction is reasonable-Tests that have to be applied-Circumstance in which freedom of Press can be curtailed-Public Security Act, Madhya Pradesh, 1959-Section 12-Provisions in-Are reasonable and constitutional-Section 12(5)-Provides safe-guard against capricious and arbitrary exercise of power-Gives power to High Court to see whether order is justiciable and also the nature and extent of prohibitory order-Section 12(1)(i)-Prohibits only bringing into publication or its sale or distribution or circulation within State absolutely or for specific period-Words "bringing into" in-Refer to publication printed outside the State-Difference between clauses (i) and (ii) of sub-section (1) of section 12-Import or words "such matter" in clause (ii) of sub-section (1) of section 12 : *Ramnarayan Vs. State Of M.P., I.L.R.(1974) M.P. 614 (D.B.)*

-Articles 19 (1) (b) and 31 (2) - Former provides safeguards to Indian citizen-Later provides general safeguards to all : *Kanhaiyalal Vs. The Collector, Damoh & Ors., I.L.R. (1961) M.P. 450 (F.B.)*

-Article 19(1)(c)-Vires of Rule 32 of Madhya Pradesh Co-operative Central Bank Employees -Terms of Employment and Working Conditions Rules : *The Madhya Pradesh Bank Employees Association, Raipur Vs. The State Of Madhya Pradesh, I.L.R. (1970) M.P. 281 (D.B.)*

- Articles 19(1) (c), 19(4), 226, Vishwavidyalaya, Adhinyam, Section 37 and Ordinance 1- Decision of Co-ordination Committee to exclude UTD/SOS from purview of election - No Discrimination or wrong committed - Students have no fundamental right to compel University or Institution to make provision for forming students' Union by method of election. *Aditya Soni Vs. State of M.P.; I.L.R.(2002) M.P. 435 (D.B.)*

-Article 19 (1) (f)-Vires of : Bhopal Pre-emption Act, Section 11 (6). *Mulla Haji Yusufali & Anr. Vs.Laxminarayan, I.L.R. (1961) M.P. 718 (D.B.)*

-Article 19(1)(f)-Hits Section 3(1) of Abolition of Cash Grants Act : *Ranojirao Vs.The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

-Article 19(1)f-Provision in Section 11(d) of Opium Act regarding confiscation of property is expropriatory-Hit by the provision in Article 19(1)(f)-Provision imposing reasonable restriction-Provision saved by clause (5) of Article 19 -- Opium Act, Section 11(d)-Restriction in the form of confiscation of property-Is a reasonable restriction in interest of general public-Draws no distinction whether conveyance belongs to accused or to any other person-Section 11(d)-Vires of : *Mehtabsingh & Sons, Motors Hire Purchaser (Priv.) Ltd., New Delhi Vs. State Of Madhya Pradesh, I.L.R. (1965) M.P. 1007 (D.B.)*

- Article 19 (1)(f)-Guarantee given by the covenant between the Ruler and the State - Guarantee not absolute and does not go beyond what is guaranteed by the Article - Court of Wards Act - Section 4-Conditions necessary before action can be taken by Court of Wards-Section 5 (1) (c)-District Judge-Power to determine whether a person is land-holder-Section 2(c)-Notification issued under --Not embracing all Rulers of States-Notification assailable : *Raja Lalit Kumar Singh Vs. The State Of Madhya Pradesh, I.L.R. (1960) M.P. 993 (D.B.)*

- Article 19(1)(f) and (g)-Rules 3 and 4 framed under Indian Forest Act, 1927 not contrary to fundamental rights guaranteed under Article 19(1)(f) and (g) : *Virji Lalji Patel & Co., Jabalpur Vs. State Of M.P. & Ors., I.L.R. (1965) M.P. 540 (D.B.)*

-Article 19(1)(f) and 31(2)-Acquisition and requisitioning of property under Article 31(2)-Article 19(1)(f) not applicable : *Vasudeo Prasad Vs. The M.P. Housing Board, Bhopal,I.L.R. (1970) M.P. 943 (D.B.)*

-Article 19(1)(f)(g)-Act giving retrospective operation to the fixation of rates-In-sufficient to show that it imposes unreasonable restriction On fundamental right : *Narottamdas Vs. The State Of M.P. & Ors., I.L.R. (1965) M.P. 70 (D.B.)*

-Article 19(1)(f)(g)-Fixing of minimum wages-Does not constitute violation of fundamental right : *Narottamdas Vs. The State Of M.P. & Ors., I.L.R. (1965) M.P. 70 (D.B.)*

-Article 19(1) (g)-No provision for hearing applicant for license-No provision for giving reasons for order-Absence of provision regarding appeal-No imposition of

unreasonable restriction-Law not rendered invalid : *Babulal Gupta Vs. The Cantoment Board, Jabalpur, I.L.R. (1959) M.P. 705 (D.B.)*

- **Article 19 (1)(g)** - Recognizes a fundamental right on liquor contractor to deal in foreign liquor - Can be regulated by imposing reasonable restriction : *M/s Doongaji And Company Katni Vs. State Of M. P. I.L.R. (1976) M.P. 207 (D.B.)*

- **Article 19 (1) (g)** - Right to deal in liquor - Is not such an inherent right of a citizen which cannot be controlled or regulated by State : *M/s Doongaji And Company Katni Vs. State Of M. P. I.L.R. (1976) M.P. 207 (D.B.)*

- **Article 19 (1) (g)** - Right to do business in intoxicating liquor - Is inherent right of citizen - State has right to impose reasonable restriction : *M/s Doongaji And Company Katni Vs. State Of M. P. I.L.R. (1976) M.P. 207 (D.B.)*

- **Article 19 (1)(g)** and *Kashtha Chiran (Viniyaman) Adhiniyam, Madhya Pradesh, 1984* - Restrictions imposed by 1984 Adhiniyam do not contravene Article 19 (1) (g) of the Constitution : *Abdul Sattar Khan Vs. Divisional Forest Officer (Vikas), Seoni I.L.R. (1985) M.P. 522 (D.B.)*

- **Article 19(1)(g)**- Citizens of India are entitled to profess their own business or profession- As per clause(6) State can regulate this freedom for the benefit of general public-Looking to the growing tourism traffic in our country, internationally and domestically, there is need to regulate tourist industry- These are reasonable restrictions- Cannot be said to be violative of this Article : *Tourist Approved Guide Association And Others Vs. Union Of India And Others, I. L.R. (1999) M.P. 325 (D.B.)*

-**Articles 19(1)(g), 19(5), 19(6) and 226 and Kashtha Chiran (Viniyaman) Adhiniyam, M. P. (XIII of 1984), Sections 3, 4, 5 and 6**-Notification issued by State Government declaring certain areas to be prohibited areas and also imposing prohibition on running of saw mills in such areas-Refusal to grant renewal of licence to run saw mill-Writ Petition-Sections 3, 4, 5 and 6 of the Act-Prohibition imposed in public interest with a view to protect environment by conserving forest-Provision not *ultra vires* Article 19-Right to carry on business does not extend to "wherever he chooses"-The executive authority in public interest has right to impose reasonable restriction-Restriction imposed in broader public interest by State Govt. for a limited period-Restriction imposed is reasonable-Notification not liable to interfered with. *Kailash Chandra Vs. State, I.L.R (1992) M.P. 322 (D.B.)*

- **Articles 19(1)(g), 25 and 26 and Mahakaleshwar Mandir Adhiniyam, M.P. 1982** - Distribution of offerings to pujaries - Made in lieu of services rendered by them and not in recognition of any hereditary rights - None of the sections of Adhiniyam is ultra-vires of constitution - Reasonable restriction can be placed on dakshina paid by

devotee to the pujari even if the worshipping the deity considered a profession: *Ramchandra Vs. State Of M.P., I.L.R. (1991) M.P. 444 (D.B.)*

– **Articles 19 (1)(g), 301 and 304 (b)** – Fundamental right of freedom of trade – Guarantee to trade outside the State – Reasonable restrictions on the freedom of trade – Constitution of India, Articles 162 and 298 – Executive power of State – State carrying on any trade or business and making contracts – Restriction imposed, not by any law made by State legislature, violation of freedom guaranteed under Article 301 – No violation if restriction only regulatory or compensatory measure – Term either in tender notice or in the contract prohibiting transport of forest produce outside state is bad and liable to be struck down : *Saradar Dayal Singh Bagga Vs. State Of M.P., I.L.R. (1988) M.P. 183 (D.B.)*

-**Article 19 (5)**-Municipalities Act, Section 112 (2) imposes reasonable restriction - Provision not ultra vires : *The Municipality Committee, Mandasaur Vs. Ahmad Khan @ Chhote Khan, I.L.R. (1960) M.P. 139 (D.B.)*

-**Article 19(5)**-Reasonable restriction not determinable by abstract standard but by objective standard-Act purports to confiscate property, unrelated to the interest of general public or of any scheduled tribe-Not saved by clause (5) of the Article : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

-**Article 19(5)**-Reasonableness of restraint-To be judged by magnitude of evil sought to be curbed-To be determined from stand point of view of general public : *Bajinath Prasad Gupta Vs. State Of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

-**Article 19(5)**-Clause 4 of the Paddy Procurement (Levy) Order not unconstitutional -Clause made in the interest of general public : *Bajinath Prasad Gupta Vs. State Of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

-**Article 20**-Provisions when attracted : *Shri Chintamanrao Vs. Digram, I.L.R. (1959) M.P. 620*

- **Article 20** - Contemplates punishment for a criminal offence and not departmental punishment : *Factory Manager, Central India Machinery And Manufacturing Co. Ltd. Birla Nagar, Gwalior Vs. Abdul Rehman I.L.R. (1976) M.P. 19 (D.B.)*

- **Article 20** - No departmental enquiry where employee honourably acquitted of the same offence - This does preclude enquiry where parties are not the same : *Factory Manager, Central India Machinery And Manufacturing Co. Ltd. Birla Nagar, Gwalior Vs. Abdul Rehman I.L.R. (1976) M.P. 19 (D.B.)*

-Article 20-Recovery of tax as arrears of land revenue-Cannot be equated with commission of offence or with imposition of penalty : *M.P. Transport Co. (Private) Ltd. Vs. The Tax Officer-Cum-The Regional Transport Officer, Raipur, I.L.R. (1969) M.P. 198 (D.B.)*

-Article 20(1)-"Law in force" in-Means law in fact in existence and operation at the time of commission of act charged as an offence : *Madhya Pradesh Transport Company (Private) Ltd., Raipur & Ors. Vs. The State Of M.P. & Ors., I.L.R. (1964) M.P. 875 (D.B.)*

-Article 20(2)-Contemplates prosecution and punishment by criminal Court : *Benechand Vs. State Of M.P. I.L.R. (1968) M.P. 662*

-Article 20(2)-Every penalty-Not a punishment-Contemplates punishments awardable by a Court of law : *Benechand Vs. State Of M.P. I.L.R. (1968) M.P. 662*

-Article 20(2)-Proceeding for adjudging confiscation-Does not amount to prosecution : *Benechand Vs. State Of M.P. I.L.R. (1968) M.P. 662*

- Article 20 (2) - Punishment awarded to Govt. Servant in departmental enquiry - Not to be deemed as prosecution and punishment for any offence : T. C. Vs. Inspector General of Prisons, Bhopal, I.L.R. (1980) M.P. 421, (D.B.)

- Article 20 (2) and Criminal Procedure Code (V of 1898) - Section 403 - Disciplinary action - Not within purview of section 403, Criminal Procedure Code : Factory Manager, Central India Machinery And Manufacturing Co. Ltd. Vs. Abdul Rehman, I.L.R. (1976) M.P. 19 (D.B.)

- Article 20 (3)- testimonial compulsion – order passed u/s. 93 (1)of the Criminal Procedure Code order for general search in order to secure the document in question – Not violative of Article 20 (3) of the Constitution of India : Anil Kumar Vs. Thakur Indrajeet Singh, I.L.R. (1998) M.P. 431

- Article 20(3) and Criminal Procedure Code, 1973 (II of 1974), Section 93– Search of the premises of the accused – Accused not compelled to be a party to search – Search not violative of Constitution : Rajmal Vs. Manmal, I.L.R. (1990) M.P. 717,

-Article 20(3)-Sample taken from article purchased from person before being accused of offence-Action not hit by the Article-Prevention of Food Adulteration Act, Section 20(1)-Consideration of facts necessary before giving sanction - Complainant sanctioning authority-No separate sanction necessary : *Mohanlal Vs. Chief Executive Officer, Jabalpur Corporation, I.L.R. (1959) M.P. 1031*

- **Articles 20 (3)**, 226 and Companies Act, (1 of 1956)–Section 235(1)–Writ Petition–Investigation into affairs of Company–Purely a fact finding enquiry and does not affect any of the rights–Rule of audi alterm partem inapplicable–A person called upon to give evidence cannot be said to be a person accused–Order not arbitrary : *M/S. Design Auto System Limited Vs. Union Of India, I.L.R. (2005) M.P. 699*

– **Article 21** – Violation of fundamental right – Consequence of : *Chandu @ Chandraprakash Vs.S State Of M.P., I.L.R. (1990) M.P. 405*

- **Article 21** - Petitioner's arrest and detention on reasonable suspicion of his being involved in setting and accepting ransom within dacoity - Affected area for payment to abductors at Delhi - Is not in violation of Article 21 : *Gulab Chand Vs. State Of M. P., I.L.R. (1982) M.P. 919, (F.B.)*

– **Article 21** – Right to speedy trial – Accused also sustained injuries and appeal pending for about ten years – Appellate Court has power to reduce sentence in such a case – Conviction altered and sentence reduced to RI for one year on two counts both to run concurrently : *Dhaniram Vs. State, I.L.R. (2001) M.P. 874,*

- **Article 21** - Parts of National Highway passing through Municipal Corporation area vest in Municipal Corporation - State Govt. or authority authorised by it has power to regulate traffic on it : *Rajbandha Maidan Vyavasayee Samiti, Raipur Vs. Collector, Raipur I.L.R. (1986) M.P. 111 (D.B.)*

- **Article 21** - Legality of police surveillance of acquitted person involved in criminal offence - Police, for no reasons, maintained history sheet for 22 years and kept continuous surveillance – No evidence produced - Person not engaged in criminal activities - Public order not threatened - Action of police affects privacy and liberty - Violates fundamental rights as to movement and privacy- Police directed to act within the guidelines indicated by Supreme Court in the cases of Kharak & Govind : *Shyambabu Verma Vs. State Of M.P., I.L.R. (1996) M.P. 76*

- **Article 21**, Criminal Procedure Code, 1973 (II of 1974)-Section 482-Speedy Trial-Inordinate delay-Charge sheet filed in the year 1982-Prosecution evidence could not be concluded even after expiry of 10 years-Held-Citizen of India is entitled for fair & speedy trial-However instead of quashing proceedings, trial court directed to close prosecution case on next date of hearing to decide the case immediately after examination of accused and defence evidence, if any-Registry directed to fix-up responsibility for lax-handling of case by those who presided over court for such administrative action. *Radheshyam Vs. State Of M.P.; I.L.R. (1994) M.P. 272*

- **Article 21** – Right to speedy Trial – Covered under the guarantee of life and personal liberty – Penal Code, Indian, 1860 – Sections 218, 447/34, 465, 466 – Offences under – Not compoundable – Complaint case – Magistrate taking cognizance – Sessions Judge requisitioned record – 21 years elapsed thereafter – Record missing and complainant also dies – Prosecution liable to be quashed – Criminal procedure Code, 1973 – Sections 249 and 482 – Inherent power of High Court – Though by virtue of death of complainant in view of Section 249, Criminal Procedure Code, the complaint case cannot be quashed as the offences are not compoundable and absence of complainant not willful but for death, yet the inordinate delay amounts to miscarriage of justice and abuse of process of the Court – Prosecution quashed - Applicant awarded Rs. 5,000/- as compensation – Accused discharged : *Ramesh Chandra Vs. Kailash, I.L.R. (2001) M.P. 1261*

- **Article 21**, Criminal Procedure Code, 1973 (II of 1974)–Sections 133, 144–Public Nuisance–Air and water pollution by discharge of Industrial effluents–Right to live with human dignity becomes illusory in absence of human and healthy environment–Notice by Sub-Divisional Magistrate to close the Industrial units–Air (Prevention and Control of Pollution) Act, 1981 – Sections 18, 20 and 22 - A and Water (Prevention and Control of Pollution) Act, 1974, Sections 30, 32, 33–Characteristically special enactments–Relate to prevention and control of pollution and also provide for penal consequences in case of breach of statutory provisions–Fields of operation are different–Provisions of Section 133 Criminal Procedure Code, can be culled in aid to remove public nuisance caused by effluent of discharge and air discharge causing hardship to general public–High Court not justified in holding that there was any implied repeal of Section 133, Criminal Procedure Code by the Special enactments–Implied repeal–Can be inferred when provisions of two Acts are repugnant and cannot stand together : *State Of M.P. Vs. Kedia Leather And Liquor Ltd. And Others, I.L.R. (2003) M.P. (Sc) 1051 (D.B.)*

– **Article 21** – Criminal case – Fundamental right of free legal assistance at State cost – Not limited to ‘original trial’ but also extends to appeal – Petitioners not represented in Appellate Court by a counsel at the hearing of appeals – Effect : *Sekdiya Vs. State Of M.P., I.L.R. (1990) M.P. 399*

- **Article 21** and Criminal Procedure Code, 1973 (II of 1974), Section 482–Criminal Trial – Order passed therein by Trial Magistrate convicting the applicant – under section 120 of the Railways Act and Section 323, Indian Penal Code without informing him of his entitlement to free legal assistance at Govt. cost – Trial vitiated being violative of Article 21 – Application deserves to be allowed under section 482 : *Pascal Mendonza Vs. State Of M.P., I.L.R. (1990) M.P. 358,*

-**Article 21** and Criminal Procedure Code, 1973 (II of 1974), Sections 173, 207, 238 -Provisions and mandatory-Cannot be given a go bye furnishing illegible obscure copies to the accused and showing compliance on paper-Such paper compliance causes serious prejudice to accused-Court has to satisfy itself that necessary compliance are made in right spirit : *Ram Charan Vs. State, I.L.R. (1999) M.P.1195*

- **Article 21**- Right to speedy trial has become a mandate of Article 21 of the Constitution- No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21- Criminal Procedure Code, 1973-Section 439- Prayer for bail on ground of delay- Who is responsible or the delay- Realistic and practical approach should be adopted in such matter instead of a pedantic one- Stay granted by superior Court is by itself no proof that- Proceeding is not frivolous- Right to speedy trial is a fundamental right- If the trial is delayed it would amount to denial of justice and entitle an accused to be admitted to bail- But delay caused by accused would not entitle him to be released on bail- Cause of delay whether attributable to the accused- Trial commenced and almost all witnesses have been examined- Application filed for clubbing his case with counter case by petitioner- Absence of any role of the prosecution- Petitioner is not entitled to be released on bail : *Gokul Singh Vs. State Of M.P., I.L.R. (1999) M.P. 807*

- **Article 21** and Criminal Procedure Code, 1973 (II of 1974) – Section 439, 439(2), 482 – Bail – Cancellation of bail – Consideration of – powers of High Court and Sessions Court are concurrent – Sessions Court granting bail – High Court moved for its cancellation – Judicial Propriety of – Inherent power of High Court – When can be exercised : *State Of M.P. Vs. Dalipa, I.L.R. (1987) M.P. 524*

-**Articles 21, 31-C, 39(b), 226, 300-A, 301** and Hind Cycles Limited and Sen Releigh Limited (Nationalisation) Act, Indian (LXX of 1980) – Provisions of the Act intra vires – Protected under Article 31-C – Constitution of India – Enacted under directive principals contained in article 39(b) – Acquisition of undertaking to secure proper management and sub-serve the public interests – No liability of Central Govt. and Govt. Company prior to taking over of the company except for materials supplied – Material supplied – Meaning of – Cannot include services rendered – Claim before Commissioner for payments – Priority of claim categoried – Right of appeal if petitioner dissatisfied – Commission received by petitioner as agent – Does not come under definition of wages : *Kulbir Singh Vs. Union Of India, I.L.R. (1989) M.P. 703 (D.B.)*

– **Articles 21, 39-A and 215** – Powers under – Invoked to ensure that appellant is not deprived of the equal opportunity to secure justice – Senior Advocate engaged with a junior to assist him at the state expenses – Words and phrases: “Procedure

established by law” means the procedure which is just, fair and reasonable : *Azad Vs. State, I.L.R. (2001) M.P. 243, (D.B.)*

- **Articles 21, 47 & 226** – Public Interest Litigation– Duty of State towards every citizen of India – To provide pure drinking water – Water containing excessive fluoride contents – Thousand of persons who consumed water have suffered deformity of various nature like skeletal fluorosis or dental fluorosis – High Court not only given certain directions for providing pure drinking water but also given directions for providing free medical treatment to such sufferers : *Hamid Khan Vs. State Of M.P., I.L.R. (1996) M.P. 355 (D.B.)*

- **Articles 21 and 226** - Habeas Corpus - Constitution of India - Article 348 and Interpretation of Statute - Hindi version of statute for explaining ambiguity in the English Text - Use of – Madhya Pradesh Dakaiti Prabhavit Kshetra Adhyadesh, 1981 - Section 2 (f) - The term "specified offence" in - Meaning of - Section 2 (b) - The word 'dacoit' in - Explanation of - Act constituting offence mentioned in schedule must have a nexus with the commission of dacoity to become 'specified offence' - The word 'dacoity' has to be understood as defined in section 391, Indian Penal Code- Dacoity affected area - Commission of offence of dacoity within - Not necessary - Section 5 (2), proviso of the ordinance and Criminal Procedure Code, 1973, Section 41 (I) (a) and 167 - Arrest and detention under the Ordinance - Legality of - Right to be released on bail - Extent of - Petitioner's arrest and detention on reasonable suspicion of his being involved in setting and accepting ransom within dacoity - Affected area for payment to abductors at Delhi - Is not in violation of Article 21 : *Gulabchand Vs. State Of M. P., I.L.R. (1982) M.P. 919 (F.B.)*

-**Article 22**–Order extending the period of detention as a result of parole– Unconstitutional–State Govt. is left with no such power under the Act: *Sharad Dadu Vs. District Magistrate, Bhopal, I.L.R. (1992) M.P. 4 (D.B.)*

-**Article 22**-Detention of person against his will for more than 24 hours without being produced before Magistrate-Amounts to illegal detention : *Ramdhani Vs. State Of Madhya Pradesh, I.L.R. (1974) M.P. 841*

- **Articles 22 and 226** - Constitutional remedies cannot be barred by any legislation : *Shivkant Shukla Vs. Additional District Magistrate Jabalpur I.L.R. (1978) M.P. 301 (D.B.)*

- **Articles 22 and 226** - Power to issue writ of Habeas Corpus is neither a statutory right nor based upon common law or Natural Law : *Shivkant Shukla Vs. Additional District Magistrate Jabalpur, I.L.R. (1978) M.P. 301 (D.B.)*

–**Articles 22, 226, 227** and National Security Act (LXV of 1980), Sections 3(2), 3(3), 11,12,13 and 15–Writ Petition–Preventive detention under the Act for a period of twelve months confirmed by the appropriate Government/State Govt. on advice of the Advisory Board–Section 15–Temporary release of detenu on parole has to fail within the period of detention already fixed–Article 22–Order extending the period of detention as a result of parole–Unconstitutional–State Govt. is left with no such power under the Act–Sections 12, 13–Prevention detention is distinct for punitive detention–Underlying object is to prevent detenu from activities prejudicial to the maintenance of public order and not to punish him–Impugned order quashed : *Sharad Dadu Vs. District Magistrate, Bhopal, I.L.R. (1992) M.P. 4 (D.B.)*

-**Article 22 (5)** and National Security Act (LXV of 1980), Section 11 – Advisory Board not duty bound to ask detenu as to why representation not made to State Govt : *Hira Bai Vs. State Of M.P., I.L.R. (1988) M.P. 61 (D.B.)*

- **Articles 22 (5)** and 226 and National Security Act (XLV of 1980), Section 3 (2) - Right of a detenu to make representation against detention order and its consideration by the Govt. - Detenu detained by an order dated 31 - 3 - 1984 - His representation dated 3.5.1984 not considered at any point of time - Detenu deprived of his constitutional right - Order of detention liable to be quashed : *Amzad Khan Vs. The District Magistrate, Raipur I.L.R. (1984) M.P. 563 (D.B.)*

- **Article 23** - Performance of duties relating to public purpose - State has a right to compel - Not violative of the Article : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Article 23** - Payment of wages less than minimum - Violates this Article : *Metal And Engineering Workers Union (Aituc), Bhilai Vs. M/s Himmat Steel Foundry Ltd., Kumhari, I.L.R. (1983) M.P. 688,*

– **Article 23** – Right against exploitation – Enforcement of : *Sahdeo Sahu Vs. State Of M.P., I.L.R. (1990) M.P. 18 (D.B.)*

- **Articles 23 (2), 14, 51-A(D)**, 226 and 309 and Fundamental Rules, Rule 11 - Provision under Rule 11 of fundamental Rules - Not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 23 (2), 14, 51 - A (D)**, 226 and 309 and Fundamental Rules, Rule 11 - 'Public purpose' under Article 23 (2) - Meaning of - Performance of duties relating to public purpose - State has a right to compel - Not violative of Article 23 - Words 'Public purpose' and 'national service' used in Article 51 - A(d) - Are synonymous - Performance of public purpose encroaching upon morality and modesty of woman - Cannot be compelled - Article 309 and Fundamental rules, Rule 11 - Performance of

services towards census, election, preparation of ration card or family planning are 'for public purpose'-Provision under Rule 11 of Fundamental Rules is not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 23 (2), 51 - A (D)** - Words 'Public purpose' and 'national service' used in Article 51 - A (d) are synonymous - Performance of public purpose encroaching upon morality and modesty or woman - Cannot be compelled : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

-**Article 25**-Guarantee under, does not take away power of State to legislate and Act for maintenance of peace : *Ram Lal Puri, Vs. State Of Madhya Pradesh, ., I.L.R. (1973) M.P., 1 (F.B.)*

- **Articles 25 and 26**-Distinction between matters of religion and holding and management of property by religious institution-Matters of religion outside pale of municipal law, but not true of property : *State Of Madhya Pradesh Vs. Mother Superior Convent School And Anr., I.L.R. (1957) M.P. 599 (D.B.)*

Articles 25, 226-Writ Petition-Inter-religion marriage-One cannot be forced to change religion and perform remarriage-Matter set at rest with the assurance made: *Rajnish Kapoor Vs. State Of M.P.; I.L.R. (2004) M.P. 1053 (D.B.)*

-**Article 25 (I)**-Right to worship according to principles and forms of a particular religion - Is a fundamental right : *Tejraj, President Jain Sangh, Ratlam Vs. State (M.B.) & Collector & Tahsildar Of Ratlam, I.L.R. (1957) M.P. 658 (D.B.)*

- **Articles 29, 226, 344 & 351**, Schedule VIII, Public Interest Litigation, Constitutional Language Act, 1963, Official Language Resolution 1968, Official Language Rules, 1976 – Public Interest Litigation – Ministry of Home Affairs, National Language Department issued a circular that Hindi being a national language should be promoted – PIL filed that said circular be implemented and petitioner may be permitted to the answer the examination in Hindi and respondents also be directed to impart education in Hindi – Held – The circulars have been issued for promotion of official language squarely fall within the ambit of Article 315 of the Constitution – Thus, they have a statutory force and have binding on all concern. Respondents cannot shirk from responsibilities by not implementing the circulars – A direction given to the respondents to impart education in Hindi apart from English from the next session : *Amresh Kumar (Dr.) Vs. Lakshmbai National College Of Physical Education, Gwalior, I.L.R. (1996) M.P. 304 (D.B.)*

- **Articles 29 (2) and 15 (3)** -Effect of non-admission of male candidate in women's college-Right of women to admission in other colleges-Matter is regulated

by authorities empowered to admit candidate : *Raghunath Vishnu Athawale Vs. The State Of M.P., I.L.R. (1961) M.P. 55 (D.B.)*

– **Article 30** – Condition of prior approval of Government does not infringe rights guaranteed under Article 30 of the Constitution : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481,*

– **Articles 30, 226, 227** – Writ Petition - Transfer of employee – State aided Educational Society – Ashashkiya Shiksha Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vatanon Ke Sanday) Adhiniyam, M.P. 1978, Sections 6, 10 and Ashashkiya Shiksha Sanstha (Institutional Fund) Rules, 1983 – Regulatory provisions – Object is to ensure payment of the amount to teachers or other employees to obviate misappropriation of funds – Imposition of condition of prior approval for transfer of an employee is for examination of viability in context of the grant – Grant to an institution is made available for benefit of the employee – Without regulatory measure a transfer may result in denial of protection – Condition of prior approval of Government does not infringe right guaranteed under Article 30 of the Constitution : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481,*

- **Article 31 - "Property" in** - Includes every possible interest and includes movable and immovable property : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120, (D.B.)*

-**Article 31**-Acquisition for raising revenue-Acquisition not for public purpose-Acquisition for reducing State expenditure-Not a public purpose : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

-**Article 31**-Authorises Government to acquire land for public purpose-Existence of public purpose is open to judicial review-Matter is justiciable-Acquisition for construction of slaughter house-Acquisition is for public purpose-Land Acquisition Act-Sections 4 and 6-Notification under-Essential part of acquisition proceedings are in the nature of jurisdictional facts which give power to Land Acquisition authorities to act further-In its absence subsequent proceedings will be ultra vires : *Iftikhar Ahmad Vs. The State Of Madhya Pradesh, I.L.R. (1959) M.P. 697 (D.B.)*

-**Articles 31 and 19**-Right to vote -Not property-Central Provinces and Berar Municipalities Act, Section 18 as amended - Vires of-C.P. and Berar Municipalities Amendment Act, Section 7 -Election not completed prior to coming into force of Amending Act-Election stands annulled-Right to vote for election of President-Not a fundamental right : *Ramdas Alias Lallubhaiya Vs. The State Of M.P., I.L.R. (1959) M.P. 343 (D.B.)*

-Article 31(1) and (2)-Difference between two clauses : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

-Article 31(2)-Words “public purpose” in-Has no inflexible or rigid connotation enuring for all times-Has elastic concept : *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

-Article 31(2)-Removal of congestion from crowded and squalid localities-Is public purpose : *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

-Article 31(2)-Scheme providing for rehabilitation of persons required to be displaced from thickly populated area and for removing congestion, nuisance and insanitary conditions-Is in general interest of community and hence a public purpose : *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

- Article 31 (2) - Augmenting resources of State is not public purpose but utilisation of income for good of community by distributing material resources of community to subserve common good - Is a public purpose : *Smt. Padmavati Devi Vs. State Of M. P. I.L.R. (1981) M.P. 909 (D.B.)*

- Article 31 (2) - 'Public purpose' - Is of wide import and has to be construed in the light of Directive Principles embodied in Article 39 (a), (b) and Article 31 - C : *Smt. Padmavati Devi Vs. State Of M. P. I.L.R. (1981) M.P. 909 (D.B.)*

- Article 31-C – Act receiving assent only of Governor and not of President – Article 3 – C of Constitution not attracted : *Ganpatrao Vs. State Of M.P., I.L.R. (1988) M.P. 476 (D.B.)*

-Article 31(2-A)-"Acquisition" in-Includes deprivation of property where there is no transfer of title : *Ranojirao Vs. The State Of Madhya Pradesh I.L.R. (1966) M.P. 533 (D.B.)*

- Article 31 (2-A) - Creditor not entitled to compensation as deprivation of property is by authority of law and Act does not provide for transfer of ownership or possession to the state or corporation : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120, (D.B.)*

-Article 32-Does not confer appellate jurisdiction : *M/S Kalekhan Mohammad Hanif, Bhopal Vs. Union Of India, I.L.R. (1974) M.P. 647 (D.B.)*

–**Article 32**–Writ petition–Education–Admission against 15% All India quota in MBBS / BDS courses–Scheme framed by the Apex Court prescribing procedure to complete the process by September each year–Apprehension of seats falling vacant subsequently on allotment of seats of choice to candidates under State quota Interpretation or modification sought for–Education–Admission to MBBS/BDS–Not advisable to go on altering the scheme as and when seats are found vacant–No scope for admitting students midstream against the very spirit of statutes governing medical education : *Miss Neelu Arora Vs. Union Of India*; I.L.R.(2003) M.P. 663, (F.B.)

- **Articles 37 and 47** - State Govt. drawing up 'Minimum Needs Programme' and decided to open Mini Primary Health Centre - Such a centre in skeleton form functioning in village Rangarithoka - Subsequently State Govt. taking final decision for location of a full-fledged Primary Health Centre in village Rangarisafar at a distance of about 5 furlongs - Villagers of Rangarithoka cannot make a grievance of deprivation of medical facilities to them by the State - Shifting of Primary Centre cannot be said to be politically motivated : *Vitthal Rao Mahale Vs. State Of M. P.* I.L.R. (1984) M.P. 210 (D.B.)

– **Article 47** – Directive Principle envisaged under Article 47 no bar for imposition of excise duty on intoxicant obtained for medicinal purposes : *Ganeshprasad Jaiswal Vs. State Of M.P., I.L.R. (1988) M.P. 243 (D.B.)*

- **Article 47** - Contemplates total prohibition - Total prohibition on sale of liquor placed by State Government - Restriction cannot be said to be unconstitutional : *M/S Doongaji And Company Katni Vs. State Of M. P.* I.L.R. (1976) M.P. 207 (F.B.)

- **Article 58 (2) and 226 (3)** of the Constitution (42nd Amendment) Act, 1976 - Remedy of a Civil Suit contemplated by Section 150 (3) of the M. P. Land Revenue Code, 1959 - Is an alternative remedy : *Manoharlal Vs. State Of M. P.* I.L.R. (1978) M.P. 710 (F.B.)

-**Articles 74, 83, 85, 226**-Writ Petition– PIL–Issue of notice–Depends on whether petitioner has laid Issue foundation for a prima-facie case - House of the people - Entirely for the President to dissolve–Such exercise of discretion by the president -Not justiciable : *S.P. Anand Vs. Prime Minister & Head Of The Council Of Ministers, Namely Shri Atal Bihari Vajpai, I.L.R. (2004) M.P. 229 (F.B.-5jj.)*

- **Articles 79, 80** and Representation of People's Act, (XLIII of 1951), Sections 2 (f), 34(1)(a), 34(1)(b), 39(2) and 81– Election petition–Election to Rajya Sabha seat - Requirement of deposit alongwith nomination form–Not applicable to election to

Rajya Sabha—The allusion to the Parliamentary Constituency meant for the purpose of election to the House of (Lok Sabha)—Not applicable in respect of nomination for Rajya Sabha : *Ram Pratap Vs. Smt. Maya*, I.L.R. (2004) M.P. 582

- **Article 102** and Representation of the People Act, 1951, Section 32 and 36 (2) (a) - Expression "for being chosen", "to be chosen" and "chosen" used respectively in - Connotation of : *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936,

- **Article 106, 14** - Constitutional validity – Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the Parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M.Ps. under Article 246 read with Entry 71 of VIIth Schedule : *S.P. Anand Vs. Union of India*, I.L.R. (2001) M.P. 914, (D.B.)

- **Articles 106, 14, 21, 226, 366 (17)** and Entry 71 of VIIth Schedule – Public interest litigation – Writ Petition – Pension to Ex-Members of Parliament – Salary, Allowances and pension of Members of Parliament Act, 1954 – Section 8-A – Provision for pension to Ex-Members of Parliament – Not ultra vires – Constitutional validity- Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M. Ps. Under Article 246 read with Entry 71 of VIIth Schedule – Omission of word ‘pension’ in Article 106 can not be read as any bar, prohibition or restriction on the Parliament to make such law providing pension for Ex-Member of Parliament – Word ‘pension’ has wider meaning – Could not be restricted only to payment made to an employee by Government in lieu of his past services : *S.P. Anand Vs. Union of India*, I.L.R. (2001) M.P. 914 (D.B.)

-**Articles 132(1) and 133**-Decision of High Court on reference-High Court, Power of, to grant certificate for appeal to Supreme Court : *The Commissioner Of Sales Tax, M.P. Indore Vs. M/s Mohammad Hussain Rahim Bux*, I.L.R. (1967) M.P. 312 (D.B.)

-**Article 133** -"Civil Proceedings" in-Used in wider sense-Includes any proceedings of civil nature-Used in contradistinction to criminal proceedings : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra* I.L.R. (1966) M.P. 501 (D.B.)

- **Article 133** - Appeal - Interference in finding of fact - Concurrent finding of fact that execution of will was duly proved - Alleged suspicious circumstances were also examined by High Court - Declined to interfere with - Case decided basically on

facts - No interference required – Appeal dismissed : *Smt. Deokali Vs. Nand Kishore*, I.L.R. (1996) M.P. 54 (D.B.)

-Article 133-M.B. High Court of Judicature Act, 1945-Section 25-Judgment of Division Bench of High Court-Appeal to Full Bench under section 25 of M.B. High Court of Judicature Act, upholding judgment of Division Bench-Division Bench is Court immediately below Full Bench - Judgment one of affirmance -No leave can be granted : *Gulabchand Vs. Seth Kundilal*. I.L.R. (1960) M.P. 205 (F.B.)

-Article 133(1)(a) - Question regarding construction of proviso to section 83(1) of Representation of the People Act and Rule 94-A framed under that Act-Substantial question of law-Civil Procedure Code-Section 139(c)-District Judge appointing officers to administer oath on affidavits made under Civil Procedure Code -Officers cannot administer oath on affidavits under other statute - Constitution of India-Article 133-"Civil Proceedings" in-Used in wider sense-Includes any proceedings of civil nature-Used in contradistinction to criminal proceedings-Nature of proceedings-To be decided by the nature of proceedings-Article 226 - Nature of jurisdiction of High Court-Nature of proceedings before Election Tribunal-Not to be considered in determining nature of proceedings under this Article-Test to be applied in determining whether proceedings are civil proceedings-Finality of the order under the Article-To be determined with reference to effect of the order on proceedings in the High Court and not before Election Tribunal-Test to be applied in determining finality of the order : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra* I.L.R. (1966) M.P. 501 (D.B.)

-Article 133(1)(b) Value of property to the appellant-To be considered in matter of grant of leave : *Gulam Abbas Vs. Mulla Abdul Kadar*, I.L.R. (1969) M.P. 697 (D.B.)

– **Article 134-A** – Certificate of fitness to appeal to Supreme Court – Case decided on the law laid down by the Supreme Court – Certificate of fitness to appeal refused : *R.P. Tiwari Vs. Smt. Sulochana Choudhary*, I.L.R. (2001) M.P. 839,

-Article 134(1)(c)-Conditions in which order can be treated as final order-Criminal Procedure Code-Section 523(5)-Order under-Does not conclude rights of the parties-Section 525-To be read with Section 523 of the Code-Sale of perishable goods-Not imperative-Goods can be handed over to owner or person entitled with directions considered fit-Section 439-Power in revision-Same as that of Court of Appeal-High Court competent to alter or reverse order of lower Court or pass such orders as lower Court is competent to pass subject to provision in the Code : *The State Of Madhya Pradesh Vs. Rampratap*, I.L.R.(1974) M.P. 878 (D.B.)

-Article 136 - Petitioner made sweeping remarks about corruption in the country and that corrupt activities were being carried on in certain area - Various complaints made in different courts – Which were simply dismissed - No copies of such complaints brought on record – Hence, petitions dismissed. *Giani Devender Sant Sepoy Sikh Vs. Union of India, I.L.R. (1995) M.P. 4 (D.B.)*

- Article 136 – After considerable delay writ filed to claim arrears of pay - Claim held to be belated – Writ dismissed however review was allowed on merits – But, entitlement to arrears not adjudicated on merits - Appeal before Supreme Court - Claim requiring decision on merits - Tribunal directed to decide the matter afresh within 6 months : *State Of M.P. Vs. Sadashiv Zamindar, I.L.R. (1996) M.P. 52 (D.B.)*

- Article 136 - SUPREME COURT - Interference by Supreme Court - Allegations made in the petition against High Court Judge – Nothing has been brought on record to show as to how and in what manner said Judge has influenced other Judicial officers of State to pass impugned order - Allegations reflect utter confusion and obsessions of petitioner - Supreme Court declined to take serious view against member of judiciary. *Giani Devender Sant Sepoy Sikh Vs. Union of India, I.L.R. (1995) M.P. 4 (D.B.)*

- Articles 136, 14, 226–Mines and Minerals (Regulation and Development) Act (XLVII of 1957)–Sections 4, 9, 19–Mineral Concession Rules 1960, Rule 9, 31, 64-A, Sale of Goods Act, 1930, Section 61, and Civil Procedure Code, 1908, Section 114–Restitution–Demand of Interest at the rate of 24% on delayed payment of royalty–Liability of the lessee–No mining operation is permissible except in accordance with the terms and conditions of mining lease–Statutory rule providing payment of simple interest at the rate of 24% per annum on the amount of royalty or other sum which remains unpaid–One of the terms and conditions of obtaining mining lease–Coalfields/lessee are bound to pay the interest as per the terms of the mining lease–Sale of goods–Amount of royalty recovered by the lessee from the buyer is a part of the price–Recovery of interest by way of damages is permissible at a reasonable rate for the period for which it remained unpaid–Doctrine of restitution–Coalfields themselves are obliged to pay interest to the State on such amount–No one shall suffer by an act of the Court–Delay in payment due to interim order of the High Court restraining recovery of royalty at enhanced rate–Successful party finally held entitled to a relief assessable in terms of money is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court remained in operation–Litigation lasted for a long period of time–High Court rightly opined that interest at the rate of 24% p.a. would be excessive and it would meet the ends of justice if the rate is reduced to 12% p.a. if paid within six weeks : *South Eastern Coal Fields Ltd. Vs. State of M.P., I.L.R. (2004) M.P. (SC) 10 (D.B.)*

- **Article 136**- A matter between the Court and the Contemner-Private Party-Only an informer- No right to ask for the contempt power to be exercised according to his perception : *Satish Trading Company, Indore Vs. Divisional Manager, Indore, I.L.R. (1999) M.P. 945 (D.B.)*

- **Article 141** - Conflicting view of law by Supreme court - Later view to be accepted as correct view : *Samaru Das Banjare Vs. State Of M. P. I.L.R. (1985) M.P. 450 (F.B.)*

- **Article 141**-Motor Vehicles Act (LIX of 1988)-Sections 147,149,166,173-Motor Accident - Death - Claim for compensation-Liability and just compensation-Judgment of a Court not to be read as statute-It is a President for what is laid down-Private vehicle-Violation pertaining to taking passengers on fare-Cannot be equated with absence of valid driving licence-Deceased travelling in private vehicle paying fare-Sale of Vehicle by Ex-Owner-Sale is complete the moment price is paid and possession delivered-Immaterial whether in Registration Certificate whether name of purchaser is recorded or not-Ex-owner not liable : *M/S Ravi Borewell Services Vs. Smt. Chandra Prabha Saxena; I.L.R. (2004) M.P. 1077, (D.B.)*

- **Article 141**-Motor Vehicles Act (LIX of 1988)-Sections 141-Judgment of a Court not to be read as statute-It is a President for what is laid down : *M/S Ravi Borewell Services Vs. Smt. Chandra Prabha Saxena; I.L.R. (2004) M.P. 1077, (D.B.)*

- **Article 141**-Apex Court's decision-Conflicting decisions of Benches comprising equal number of Hon. Judges-Decision of earlier Bench is binding unless explained by the latter decision : *I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

- **Article 141**-Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts : *I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

- **Article 141**-High Court and subordinate Courts should lack competence to interpret decisions of Apex Court : *I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

- **Article 141**-Law of precedent-Conflict in two decisions of co-equal Benches-Decision rendered without considering earlier decision expressing contrary view-Have no value-Earlier decision is binding on the Bench of equal strength-Matter should be referred to the larger Bench in case of conflict. *I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

- **Article 141** - Binding precedent - The rule of precedent is that decision given by given by larger Bench of the Supreme Court should be followed in preference to

decisions by Smaller Benches of the court. *Balkishan Vs. State Of M.P.*, I.L.R. (1993) M.P. 667

- **Article 141** –Precedent–Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding: *Wali Mohd. Vs. Batul Bi*, I.L.R. (2004) M.P. 37 (F.B.)

- **Article 141** and Narcotic Drugs and Psychotropic Substances Act, (XLI of 1985)–Sections 18, 42, 50, 55 and 57–Precedent–A line or a word in a judgment cannot be read in isolation to impute a different meaning to the observation–Illegal possession of opium–Search and seizure–Intimation as to right of the person (suspect) to be searched in presence of a Magistrate or a Gazetted officer–Compliance of, by searching officer–Has to be decided on facts of each case–Stress is on the adoption of a reasonable, fair and just procedure–No specific words are necessary to be used to convey existence of the right–Option offered to the suspect to be searched by a Magistrate or a Gazetted officer–Searching officer had Section 50 in mind unaided by the interpretation made by the Constitutional Bench–Section 50 sufficiently complied with: *Prabha Shankar Dubey Vs. State Of Madhya Pradesh*; I.L.R. (2004) M.P. (SC) 112 (D.B.)

- **Article 141** – Law of precedent–What is binding as a precedent is the ratio decidendi–Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent : *Jagdish Prasad Tripathi Vs. State Of Madhya Pradesh Through Secretary School Education Department Bhopal*, I.L.R. (2004) M.P. 1119 (F.B.)

- **Article 141** – Precedent – Full Bench of High Court overruled decision of Division Bench— Decision of Supreme Court binding upon High Court – Court cannot take the view that it does not bind it –Even co-equal bench of Supreme Court cannot overruled it except referring it to reconsideration to Larger Bench : *Indian Oil Corporation Ltd. Vs. Municipal Corporation*, I.L.R. (1995) M.P. 83 (D.B.)

-**Article 141** - Precedent - When two judgments of Supreme Court are conflicting in nature - Effect - In a case where there is a direct conflict between two decisions of Supreme Court rendered by co-equal Benches, the High Court is bound to follow the judgments which appears to it to state the law more elaborately and accurately : *T.P. Naik Vs. Union Of India*, I.L.R. (1997) M.P. 105

-**Article 141**- Order/decision of Supreme Court binding on all subordinate Courts including High Court–Counsel for respondents cannot say High Court has jurisdiction to treat a Supreme Court judgment as *per incuria*–Supreme Court affirmed the order of High Court setting aside termination of petitioner with direction to keep watch on

him for 3 years-Direction of Supreme Court cannot be overlooked on administrative side : *Bhurelal Pagare Vs. State, I.L.R. (2000) M.P. 228*

- **Article 141**, Criminal Procedure Code, 1973, Sections 125, 127, 295 and 482 and Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5-Precedent-Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding-Interpretation of statute-Cardinal principle-Every statute is prima facie prospective unless expressly or by necessary implication made to have retrospective operation-More so when object is to affect vesting rights or to impose new burden or to impair existing obligation-Right to get maintenance from her husband is a vested right of a woman in any religion-No provision in the Act of 1986 so as to give it retrospective operation-Substantive law relating to vested rights-Such law are normally treated as prospective-Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C.-Talaq-Plea of divorce taken in written statement is no proof of divorce-Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law-Husband shall continue to remain liable until obligation comes to an end in accordance with law : *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37 (F.B.)*

- **Article 141**, Civil Procedure Code (V of 1908), Section 11 and Contempt of Courts Act (LXX of 1971), Section 12 - Decision of Supreme Court - Binding on all Courts - Decision of Revenue Court - Confirmed by High Court and Supreme Court in writ petition - Operate as res judicata to the subsequent suit - Disobeying the order of Supreme Court - Amounts to contempt of Supreme Court - Party liable to be punished : *Ashfaq Ahmad Vs. Nehru Singh, I.L.R. (1991) M.P. 552 (D.B.)*

- **Articles 141, 14, 226, 227**-Writ petition-Service law-Extraordinary jurisdiction and power of juperintendence-Greater the power or jurisdiction greater should be the caution and restraint in exercising such power or discretion-Law of precedent-What is binding as a precedent is the ratio decidendi-Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent-Without disturbing decision of Tribunal certain direction given to consider of the petitioner-Decision does not evolve any principle of law-Cannot be said to be a binding precedent-Order dated 4/11/2003 in W. P. No. 5238/02 overruled-Mere ad-hoc appointment for few months-Does not entitled petitioner to seek reinstatement after 16 years-Petition dismissed : *Jagdish Prasad Tripathi Vs. State Of Madhya Pradesh Through Secretary School Education Department Bhopal, I.L.R. (2004) M.P. 1119 (F.B.)*

- **Articles 141, 226 and 227**-Writ Petition-Law of precedent-Conflict in two decisions of co-equal Benches-Decision rendered without considering earlier decision expressing contrary view-Have no value-Earlier decision is binding on the Bench of

equal strength—Matter should be referred to the larger Bench in case of conflict—Apex Court's decision—Conflicting decisions of Benches comprising equal number of Hon. Judges—Decision of earlier Bench is binding unless explained by the latter decision—High Court and subordinate Courts should lack competence to interpret decisions of Apex Court—Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts : *Jabalpur Bus Operator Association And Ors. Vs. State, I.L.R. (2003) M.P. 1127 (F.B.-5jj.)*

- **Article 142** and Criminal Procedure Code, 1973 (II of 1974) – Section 320(9) – In view of express statutory bar under Section 320(9) Cri.P.C., High Court in exercise of inherent powers cannot grant such permission to compromise a non-compoundable offence what can be permitted by the Supreme Court in plenary jurisdiction under Article 142 of the Constitution of India : *Deepak Dewar Vs.State, I.L.R. (2001) M.P. 1269, (D.B.)*

- **Articles 154, 162, 14** and Entry No. 25 in List III to the Seventh Schedule - Constitution of M. P. ayik Pathyakram Pravesh Pareeksha Mandal by State Government under its executive powers to hold entrance examinations for professional courses in Medical and Engineering Colleges in the State - Validity of - Rule 1.8.10 framed by Mandal barring revaluation of examination papers - Vires and validity of : *Sahastra Pal Singh Vs. Vyavsayik Pathyakram Pravesh Pareeksha Mandal, M. P., Bhopal I.L.R. (1984) M.P. 246 (D.B.)*

- **Article 154 and 299**-Statutory functions conferred on authority subordinate to the Governor-Functions not performed in the name of Governor-Such functions to be performed in accordance with statute conferring the functions-Such power does not become executive power of the Governor-Contract by such authority does not fall under Article 299 : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

-**Article 162, Proviso**-Language wide enough to include within its limits matters regarding which State Legislature and parliament have concurrent power to make laws : *Narayan Chandra Mukherji Vs. The State Of M.P. I.L.R. (1969) M.P. 550 (D.B.)*

- **Article 162** - Absence of statutory rules - Appointments on basis of rules or instructions having executive status - Appointments perfectly valid : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

- **Article 162** - Executive can frame service rules - Government can adopt defunct rules as modified even though no action taken under section 120, States Re-

organisation Act : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

- **Article 162** - Executive power of State - Extends to matters in respect of which legislature has power to legislate : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

-**Article 162**, Proviso-Executive power of Central Government regarding matters covered by Reorganisation Act will have subordinating and impairing effect on executive power of the State Government-State Government has no exclusive power regarding integration of services : *Narayan Chandra Mukherji Vs. The State Of M.P. I.L.R. (1969) M.P. 550 (D.B.)*

- **Article 162** - No guidelines and procedure provided in the notification for grant or refusal of certificate - State Govt. is a competent to issue executive instructions for guide - lines and procedure in exercise of powers conferred under Article 162 of Constitution - Executive powers of the State are co-extensive with legislative powers : *M/S Jagdamba Industries, Kumbhraj Vs. State Of M.P., I.L.R. (1989) M.P. 502 (F.B.)*

-**Articles 162 and 246(3), List II, Entry 41**-Power of State Government to deal with its services-Article 309-Is merely an enabling provision-Does not impose any duty to legislate or make rules-Does not fetter power of State Government to exercise its executive power in matter of services-Article 320-Clause 3-Provision not mandatory-Non-compliance thereof does not furnish cause of action to civil servant-Article 226-Executive order not open to challenge by writ : *Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P., 60 (D.B.)*

-**Article 162 and 246(3)**-State Reorganisation Act-Section 115(3)(4)(5)-Executive power of State extends to matters enumerated in State list-Constitution of India-List II, Entry 41-Expression "State Public Services"-Wide enough to include integration of services-Power, however, subject to other provision of Constitution-Article 162, Proviso-Language wide enough to include within its limits matters regarding which State Legislature and Parliament have concurrent power to make laws-Executive power of Central Government regarding matters covered by Reorganisation Act will have subordinating and impairing effect on executive power of the State Government-State Government has no exclusive power regarding integration of services-State Re-organisation Act-Section 115(5)-Confers powers on Central Government to establish advisory committees for certain purposes-This power implies that Central Government authorised to do all those acts-Power given is not restricted but is wide and given for purposes of integration-Section 117-Confers additional power on Central Government for effectuating exercise of power given

under Section 115(5)-Interpretation of Statute-Doubt about meaning of the words in a Statute-Meaning to be determined by the subject or occasion on which they are used and object to be attained-Meaning ascertainable by reference to words which are associated with it-Associated words to be understood in cognate sense as they were taking their colour from each other-Sense and meaning of a statute-To be gathered by comparing one part with other and by viewing all parts together as a whole-States Re-organisation Act-Section 115(5)-Confers power only on Central Government to effectuate integration of services in New States and States of Andhra Pradesh and Madras-Central Government can take assistance from State Government for preparation of provisional gradation list-Section 115(5)(b)-Representation is against ultimate act done with the approval of Central Government-Right of representation-Not exhausted when one representation is made-Can be made from time to time-Reasonable opportunity of making effective representation-Includes a right to be supplied with service details of other servants included in the list-Refusal amounts to not giving reasonable opportunity-Natural Justice-Functions administrative-Reasons for order to be given if statute requires-Section 115(5)-Order of Central Government under-Is quasi- Judicial-Order must give reasons-Even if power is administrative-Action of Central Government should be a conformity with rules of natural justice-Question whether requirements of natural justice have been met-Depends upon facts and circumstances of the case and procedure adopted in the background of statute and the rules framed-Personal hearing not an essential postulate of natural justice : *Narayan Chandra Mukherji Vs. The State Of M.P. I.L.R. (1969) M.P. 550 (D.B.)*

– **Articles 162 and 298** – Executive power of State – State carrying on any trade or business and making contracts – Restriction imposed, not by any law made by State legislature, violation of freedom guaranteed under Article 301 – No violation if restriction only regulatory or compensatory measure: *Saradar Dayal Singh Bagga Vs. State Of M.P., I.L.R. (1988) M.P. 183 (D.B.)*

- **Article 163-Sanction**-Power of Governor-Normal rule is that Governor acts on aid and advice of the Council of Ministers-But there are exception-Governor can act in his own discretion-If the Governor cannot act in his own discretion there would be complete breakdown of rule of law and it would be open to Government to refuse sanction even if a prima facie case is made out : *M.P. Special Police Establishment Vs. State Of M.P. & Ors., I.L.R. (2005) M.P. (SC) 179 (F.B.-5jj.)*

- **Articles 163, 239 (2)**, Criminal Procedure Code, Section 197, Indian Penal Code, Section 120-B, Prevention of Corruption Act, Section 13(1) (d), 13(2)-Corruption-Prosecution of Ministers-Sanction-Power of Governor-Normal rule is that Governor acts on aid and advice of the Council of Ministers-But there are exceptions-Governor can act in his own discretion-If the Governor cannot act in his own discretion there would be complete breakdown of rule of law and it would be open to Government to refuse sanction even if a prima facie case is made out-Bias-

Lead to automatic disqualification–Lokayukta Office held by former Supreme Court Judge–Difficult to assume that Lokayukta would give report without any material whatsoever–Order of Governor sanctioning prosecution should be given effect to. : *M.P. Special Police Establishment Vs. State Of M.P. & Ors., I.L.R. (2005) M.P. (Sc) 179 (F.B.-5jj.)*

- **Article 166** - Requirement of authentication - Directory and not imperative : *Ali Ahmed And Sons, Rewa Vs. Brij Kishore Pateri I.L.R. (1976) M.P. 500 (D.B.)*

- **Article 166** – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category: *Rahul Vs. State Of M.P., I.L.R. (1991) M.P. 595 (F.B.)*

- **Article 166** - Order complying with provision - Immunity is given to order - Provision not complied with - Order not rendered nullity - Requirement of authentication - Directory and not imperative - Article 226 - Stay or ad interim order granted to maintain status quo - Not for bringing different state of things than those which existed at the date of the institution of proceedings : *Ali Ahmed And Sons, Rewa Vs. Brij Kishore Pateri I.L.R. (1976) M.P. 500 (D.B.)*

-**Articles 166, 14, 226, 227**-Writ Petition-Acquisition of Land by Development Authority for implementing housing schemes- Article 14-Discrimination-Except petitioner, land sought to be acquired released in favour of other persons and societies-Respondents do not plead that despite such release of land from purview of acquisition they shall be able to implement the scheme –Action of respondents amounts to hostile discrimination-Land Acquisition Act, 1894-Sections 4, 5, 5-A, 6, 6-A, 11 and 11-A-Different procedures are laid sown in the Act at different stages for achieving the object of the Act-Sections 6 and 11-A-Acquisition of land and compensation-Time limit-Delay in making award owing to stay order passed by competent Courts-In computing stipulated time of making award of compensation the period of operative stay order, irrespective of its nature, has to be excluded- Article 166 and Section 5-A of the Act-Express delegation of power to the Collector is mandatory-In absence of specific delegation of power under Section 5-A, the whole proceedings stand null and void and vitiated-Nagar Tatha Gram Nivesh Adhiniyam, M.P. 1973-Sections 50 and 54-Final notification issued but no steps taken to implement the scheme within three years statutory period-Section 54 would be attracted and the scheme would stand laosed : *Burhani Griha Narman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342 .*

-Article 166(1) and (2)-Provisions of directory-Order not made in accordance with clause 2-Can be proved by other evidence that it was validly made : *Premchand Jain Vs. The State Of M.P. I.L.R. (1967) M.P. 214 (D.B.)*

-Article 166(2)-Validity of order of Governor-Not challengeable if two conditions satisfied-Does not preclude challenge on any other ground : *Premchand Jain Vs. The State Of M.P. I.L.R. (1967) M.P. 214 (D.B.)*

-Article 166(3)-Business of Government of a State-Includes statutory and quasi-judicial functions of State, delegation of such functions to Ministers and other subordinate officers-Does not amount to delegation in the sense of divestiture of responsibility : *Premchand Jain Vs. The State Of M.P. I.L.R. (1967) M.P. 214 (D.B.)*

- Article 173 - Nomination paper not accompanied by oath or affirmation-Nomination paper is invalid : *Hariram Singh Vs. Kamta Prasad I.L.R. (1968) M.P. 68 (D.B.)*

-Article 173 and Representation of the People Act (XLIII of 1951)-Section 36(2)-Oath can be made only after presentation of nomination papers-Requirements of Article 173 to be satisfied on the date of scrutiny of nomination papers : *Hariram Singh Vs. Kamta Prasad I.L.R. (1968) M.P. 68 (D.B.)*

- Article 173(a) – The Word “according to the form” used in – Meaning of: *Ajeem Khan Vs. Mathura Prasad, I.L.R. (1987) M.P. 352*

- Articles 190 and 191 - Deal with disqualifications only and not vacation of seats : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

-Article 190 (3)(b), General Clauses Act, 1897, Section 3 (65)-By writing under his hand-Words By writing under his hand does not mean that member resigning must write the resignation in his own hand-By writing under his hand indicate that resignation cannot be oral but must be in writing and must bear signature-No infirmity in resignation of respondent no. 2 which is typewritten and bears his signature. *Vikram Vs. Shri Ram Ballabhji Kasat; I.L.R.(1994) M.P. 146, (D.B.)*

-Article 190 (3)(b) Proviso-Inquiry-Acceptance of resignation of member by Speaker-Provision does not stipulate any particular type of enquiry-Nature of enquiry would depend on facts and circumstances of each case-Respondent no. 2 personally tendered his resignation to Speaker and assured him about the voluntary nature-Speaker could not have any doubt on that score-No further enquiry was required--Judgment of Speaker cannot be said to be perverse or unreasonable. *Vikram Singh Vs. Shri Ram Ballabhji Kasat; I.L.R.(1994) M.P. 146 (D.B.)*

-Article 190 (3)(b)-Vacation of Seat-Resignation of elected member of Legislature-Section 190 (3)(b) is an independent provision and not limited to situations contemplated under sub-sections 1 and 2--No principle of democracy which compels an elected member to continue to be member even if he no longer desires to continue-Denial of such right to elected member would be destructive of principles of democracy-Elected member can resign independently of circumstances contemplated in sub-section 1 and 2--Tenability of resignation cannot be subjected to scrutiny either by Speaker or by any other authority. *Vikram Singh Vs. Shri Ram Ballabhji Kasat; I.L.R.(1994) M.P. 146 (D.B.)*

-Article 191-Essentials necessary to constitute an office as office of profit-Office of Honorary Family Planning District Education Leader-Not an office of profit : *Upendralal Vs. Shrimati Narainee Devi Jha I.L.R. (1967) M.P. 740*

- Articles 194 (3), 212 (1), 190, 191 and 208 (1) - Powers and privileges of Legislative Assembly - Powers of High Court to interfere with the decision of the House or its Speaker - Extent of - Limited jurisdiction only to enquire about existence of power or privilege - No jurisdiction to judge of the occasion or manner of its exercise - Breach of privilege alleged - High Court has no power to interfere with the decision of the House or Speaker - Legislative Assembly and its Secretary are amenable to the jurisdiction of High Court for limited purpose of enquiry into existence of power or privilege - Article 212 (1) - Proceedings of Legislative Assembly - Cannot be questioned on ground of denial of opportunity to explain the allegations - Articles 194 (3), 190, 191 and 208 (1) - Power of Assembly to expel a member rendering his seat vacant - Is the same as of a House of Commons of British Parliament - Privilege to control conduct of Assembly members - Includes power to expel a member - Expelled Assembly member does not incur disqualification - Expulsion of a member renders his seat vacant - Articles 190 and 191 - Deal with disqualifications only and not vacation of seats - Article 194 (3) - Operates independently of Articles 190 and 191 - Article 208 (1) - Absence of Rules about expulsion of a member - Not indicative of want of power to expel : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

-Articles 202, 226 and Commercial Tax, M.P., 1994 (as amended)-Section 69, Sthaniya Kshetra Me Mal Ke Pravesh Par kar Adhinyam, M.P. 1996-Section 13- Writ Petition-Tax Laws-Difference between tax assessed and that payable as per accounts-Penalty-Levy of-Finding that effort was made to evade tax-Finding not challenged-Provisions prevailing in relevant assessment period is determinative factor-Financial legislation-Subsequent amendment reducing amount of penalty-Not retrospectively applicable : *M/S Vinod Traders Vs. Divisional Deputy Commissioner Commercial Tax, I.L.R. (2004) M.P. 911 (D.B.)*

- **Article 208 (1)** - Absence of Rules about expulsion of a member - Not indicative of want of power to expel : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

- **Articles 208 (1), 190, 191, 194 (3) and 212 (1)** - Legislative Assembly and its Secretary are amenable to the jurisdiction of High Court for limited purpose of enquiry into existence of power or privilege : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

- **Articles 208 (1), 190, 191, 194 (3) and 212 (1)** - No jurisdiction to judge of the occasion or manner of its exercise - Breach of privilege alleged - High Court has no power to interfere with the decision of the House or Speaker : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

- **Articles 208 (1), 190, 191 and 194 (3)** - Privilege to control conduct of Assembly members - Includes power to expel a member : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

- **Article 212 (1)** - Proceedings of Legislative Assembly - Cannot be questioned on ground of denial of opportunity to explain the allegations : *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

- **Articles 212 (1), 190, 191, 194 (3) and 208 (1)** - Limited jurisdiction only to enquire about existence of power or privilege: *Yeshwant Rao Meghawale Vs. The Madhya Pradesh Legislative Assembly, Through The Speaker Of The Assembly, Bhopal I.L.R. (1979) M.P. 425 (D.B.)*

-**Article 213**-Satisfaction of Governor about existence of necessity-Not justiciable in Court of law : *Upendralal Vs. Shrimati Narainee Devi Jha I.L.R. (1967) M.P. 740*

- **Article 213(i), Clauses (a)(b) and (c)** – Adhyadesh prescribing the date of commencement of Adhinyam – Adhyadesh not ultra vires on ground that it had been promulgated without obtaining instructions from the President – None of the clauses (a) (b) and (c) of proviso to Article 213 (1) of the Constitution attracted in view of the nature of provision in Adhyadesh – Date of commencement of Adhinyam – Adhinyam replacing Adhyadesh No. 11 of 1983 which had come into force on 15-12-83 – No illegality infixing that very date as the date of commencement of

Adhiniyam : *Secretary, Timber Merchants Association, Navlakha, Indore (M.P.) Vs. State Of M.P., I.L.R. (1989) M.P. 333 (D.B.)*

-Article 213(1) - Ordinance promulgated by the Governor-Circumstances in which instructions of President necessary for its validation-Ordinance dated 11-5-65-Making amendments in the rules framed by Government under section 19 of the Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964-Rules have existence as independent legislation-Does not amend provision of the Act or rules thereunder with respect to matters falling in concurrent list- Tendu Patta (Vyapar Viniyaman) Niyamwali, 1964-Rule 7, sub-rule (7-A)-Does not pertain to items falling under items 7, 21 and 42 of concurrent list or to any matter falling under other items of that list-Ordinance dated 11-5-65-Section 3-Does not fall within clause (c) of proviso to Article 213(1) of the Constitution--State List, Entry 19-Disposal of Tendu leaves covered by-Does not require assent of President-Interpretation of Statute-Legislation within competence of legislature-Motive is irrelevant-Has no bearing on question of colourableness of legislation-Doctrine of colourable legislation-Does not involve question of bona fides or mala fides on part of legislature-Delegation-Legislature conferring power on subordinate agency to make rules and regulations-Legislature does not efface itself : *M/S Chhotabhai Jethabhai Patel And Co., Rajnandgaon Vs. The State Of M.P. I.L.R. (1967) M.P. 721 (D.B.)*

-Article 215- Power of High Court to draw contempt : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362 (D.B.)*

– **Articles 215, 21 and 39-A** – Powers under – Invoked to ensure that appellant is not deprived of the equal opportunity to secure justice – Senior Advocate engaged with a junior to assist him at the state expenses – Words and phrases: “Procedure established by law” means the procedure which is just, fair and reasonable : *Azad Vs. State, I.L.R. (2001) M.P. 243 (D.B.)*

-Articles 215, 227 and 235-Power of High Court to punish for contempt of itself and of subordinate Courts-Being a Court of record and having power of superintendence High Court has power to punish any contemner for its contempt : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096 (D.B.)*.

- Article 221 – Whether the fiction created by the Government of India’s decision that the salaries of Judges of the High Court and the Supreme Court were revised w.e.f. 01.01.1986 instead of the 01.04.1986 would extend to payment of terminal benefits on that basis to the Judges who retired between 01.01.1986 to 31.03.1986 or would confined only to payment of arrears of salary along upto the date of their retirement – Though in reality the Constitution revised the salary of the Judge w.e.f. 01.04.1986, the Government of India and the President created a fiction that they

were so increased w.e.f. 01.01.1986 – The purpose was to synchronize the date of grant of benefit with the date with effect from which the salaries of the Central Government employees were revised – The Government did not want to create a situation in which many Central Government employees would get higher salaries and total remuneration than the Judges at any point of time so as to maintain at least to some extent, a respectable difference between the salaries payable to the Judges and to Central Government employees – Petition allowed : *Ramkrishna Chhaganlalji Vijaywargiya Vs. Union Of India, I.L.R. (1993) M.P. 483 (D.B.)*

-**Articles 225, 329** and States Reorganization Act (XXXVII of 1956), Section 51-Rule framed by the High Court in exercise of powers under, for regulating proceeding in an Election petition-Provisions mandatory : *Jai Bhan Pawaiya Vs. Shri Madhavrao, I.L.R. (2000) M.P. 1103*

- **Article 226** and Sections 64 (1) and 64 (2) (v) - Alternative remedy - Dispute regarding election of Directors or President of Co-operative Bank covered under section 64 (2) (v) - Remedy of raising a dispute available to an aggrieved party under section 64 (1) - Writ petition not entertainable : *Anant Singh Vs. The Registrar, Co-Operative Societies, Bhopal, I.L.R. (1984) M.P. 622 (D.B.)*

-**Article 226** - Doing of an act in anticipation of an interim order - Does not furnish cause of action for final relief without determination of right of parties-High Court-Power under Article 226 - Limitations-Infringement of fundamental right of a person by a private individual-Remedy under ordinary law and not under Articles 32 and 226-Hindu Temple-Mere presence of Shivalinga in Jain temple and use of temple -by Hindu community-Not sufficient to constitute it a Hindu temple -Article 25 (I)-Right to worship according to principles and forms of a particular religion-Is a fundamental right -Article 226 - Power of High Court -Not limited to issue writs but extends to giving redress against alleged action infringing fundamental right : *Tejraj, President Jain Sangh, Ratlam Vs. State (M. B.) & Collector & T Ahsildar Of Ratlam, I.L.R. (1957) M.P. 658 (D.B.)*

- **Article 226** - Forbids arbitrariness also : - *A H. D. Soni Vs. State Of M. P. I.L.R. (1984) M.P. 179*

- **Article 226** - Latches - Not an inflexible and Universal rule of law for refusing discretionary relief : *Prasanna Kumar Vs. The Registrar, M. P. High Court, Jabalpur I.L.R. (1984) M.P. 44*

- **Article 226** - Patent injustice to the petitioner and grant of writ not affecting other parties - Writ can be issued : *Prasanna Kumar V The Registrar, M. P. High Court, Jabalpur I.L.R. (1984) M.P. 44*

- **Article 226** - Discretionary powers under - Cannot be invoked on a mere technicality : *M/s Suhag Hotels (Pvt) Ltd., New Dehli Vs. M. P. Housing Board, Bhopal I.L.R. (1984) M.P. 129 (D.B.)*

- **Article 226** - Special law providing special remedy for redress - Writ jurisdiction cannot be invoked : *Govind Arya Vs. Authorised Officer, Gram Panchayat Elections, Tehsil Mhow, Dist. Indore I.L.R. (1984) M.P. 98 (D.B.)*

- **Article 226** - Writ of certiorari - When can be issued : *Madhya Pradesh State Road Transport Corporation Bhopal Vs. State Of Madhya Pradesh I.L.R. (1984) M.P. 148*

-**Article 226**-Disputed question of fact-Cannot be assailed of in those proceedings for founding or sustaining the contention : *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. R.C.Roy Poddar I.L.R. (1968) M.P. 64 (D.B.)*

- **Article 226** - and Ceiling on agricultural Holdings Act, M.P. (XX of 1960), as amended by M.P. Ceiling on agricultural Holdings (Amendment) Act (VII of 1989), Section 46 – Cannot be held to be invalid : *Smt. Basant Kumari Vs. State Of M.P., I.L.R. (1990) M.P. 27 (D.B.)*

-**Article 226**-Error apparent on face of record-Can be corrected in writ proceedings : *Bhagwat Saran Vs. The Chancellor, University Of Jabalpur, Rajbhawan, Bhopal I.L.R. (1968) M.P. 554 (D.B.)*

-**Article 226**-High Court, Jurisdiction of, to investigate controversial questions of fact : *Mst. Sugandhi Vs. The Collector,Raipur I.L.R. (1968) M.P. 871 (D.B.)*

-**Article 226**- Jurisdiction of Court- In earlier petition, Division Bench only directing trial Court to consider right of defendant to pray for transposition was not passed- Trial Court allowed transposition by Subsequent order- Petition before single Judge against it- *Maintainable, Mathura Bai Vs. Daryanamal, I.L.R. (1995) M.P. 171*

-**Article 226**- Maintainability of the petition before High Court- Petition against denial of admission to nurses training school- Maintainability before the High Court and not before administrative tribunal- A Candidate after obtaining instruction in school would be come eligible for appointment to Government service in no ground to hold- The provision of administrative tribunal Act 1985 would be attracted- *Preliminary objection overruled, Vs. Shyla Nair State of M.P.,I.L.R. (1995) M.P. 554,*

-**Article 226-P.I.L.**- High Court treating Writ Petition to be a Public Interest Litigation- Duty of the High Court – Finding that prayer in petition is absurd, and the allegation that persons were carrying on nefarious activities according to petitioner

were more imaginary than real- Direction by High Court in general and Sweeping terms to sack erring officers and overhaul administration – Not justified, *Giani Devender Sant Sepoy Sikh Vs. Union of India, I.L.R. (1995) M.P. (SC) 4, (D.B.)*

-Article 226-Matter of urgency-Alternate remedy of Civil Suit cannot be considered expeditious : *Manmohan Mathur Vs. Additional Area General Manager, National Coal Development Corporation Ltd. Kurasia Colliery, Chirmiri I.L.R. (1968) M.P. 684 (D.B.)*

-Article 226-Test to be applied in determining finality of the order : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra I.L.R. (1966) M.P. 501 (D.B.)*

-Article 226-Test to be applied in determining whether proceedings are civil proceedings : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra I.L.R. (1966) M.P. 501 (D.B.)*

-Article 226-Validity of the Act even if it is executive can be challenged under Article 226 : *Shri Shanker Prasad Goenka Vs. State Of M.P. I.L.R. (1966) M.P. 871 (D.B.)*

-Article 226-Writ of certiorari-Does not lie to quash opinion of officer unless there is threat of action against petitioner in carrying on his business : *Rajmal Vs. Superintendent, Central Excise, Jabalpur I.L.R. (1966) M.P. 718 (D.B.)*

-Article 226-Writ of Mandamus-Not to issue for controlling discretion-But can be issued if authority fails to exercise discretion : *Shri Shanker Prasad Goenka Vs. State Of M.P. I.L.R. (1966) M.P. 871 (D.B.)*

- Article 226 – Price fixation – Jurisdiction of Court – Is a matter of policy – Necessarily has to be left to the judgment of the executive : *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593, (D.B.)*

-Article 226-Appointment of Shiksha Karmi Grade-I-Advertisement issued-Appointee not possessing post graduation in II Class as required in the advertisement : *R.S. Sisodiya Vs. State, I.L.R. (2000) M.P. 924*

- Article 226 - Interpretation of provision of Act involved - High Court can exercise discretionary power even though alternative remedy is available : *Babulal Vs. The Vice - Chancellor, Awadhesh Pratap Singh University, Rewa I.L.R. (1980) M.P. 735 (D.B.)*

-Article -226-Allegation made against particular officer-That officer alone should file return and an affidavit in support thereof-Affidavit of either subordinate or superior officer not sufficient : *Rajmal Surana Vs. State Of M.P. I.L.R. (1966) M.P. 893 (D.B.)*

-Article 226-Reservation of vacancies- Plea not taken in the petition-Cannot be gone into in absence of pleading and requisite proof : *Pramod Kumar Vs. South Eastern Coalfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1232,*

-Article 226-Decision of authority regarding equation of posts-Is an administrative decision-Cannot be interfered in writ proceedings: *Vinod Kumar Verma Vs. State Of M.P. I.L.R. (1966) M.P. 91 (D.B.)*

-Article 226-Writ Petition-Transfer during suspension by a common order-Absence of justification has to be punitive-Second limbs of impugned order quashed : *Dr. Ram Suman Pandey Vs. Chancellor Of Universities M.P. Rajbhawan, Bhopal, I.L.R. (2000) M.P. 1389*

-Article 226-Finality of the order under the Article-To be determined with reference to effect of the order on proceedings in the High Court and not before Election Tribunal : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra I.L.R. (1966) M.P. 501 (D.B.)*

- Article 226 - Petition maintainable at the instance of private persons, though he may not be personally aggrieved or interested : *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur Through Its Commissioner I.L.R. (1980) M.P. 536, (D.B.)*

– **Article 226** – Promotion is not a right of an employee and the same should be given by looking to various factors such as qualification, Seniority, Merit, Annual Confidential Report etc. No illegality or perversity in the recommendation made by *D.P.C.: G.N. Rao Vs. M.P. Laghu Udyog Nigam Ltd., I.L.R. (2001) M.P. 1291,*

– **Article 226** – Promissory Estoppel – Not strictly applicable as against State Policy – Oral promise cannot be equated with Statutory conditions – Claim of Rebate on basis of oral assurance of the Cabinet Sub-committee – Not incorporated in the rules – Have no statutory force : *State Vs. M/s. Swami Traders, I.L.R. (2001) M.P. 1495, (D.B.)*

-Article 226-Service matter-Status of Chief Municipal Officer of a Municipality-Whether an employee of the State Govt. or of the Municipality- Reference to larger Bench : *Suresh Chandra Vs. State, I.L.R. (2000) M.P. 645, (F.B.)*

-Article 226-Prayer confined only to direction to consider review application-Petitioner impliedly abandoned other relief-Cannot be allowed to re-agitate the matter in subsequent writ petition : *Ujjain Mill Mazdoor Sangh V. State, I.L.R. (2000) M.P. 1250 (D.B.)*

-Article 226- Office falling vacant due to resignation of President addressed to Chief Municipal Officer-Writ Petition- Single Judge directing fresh election of President : *Smt. Prabharani Vishwakarma Vs. State, I.L.R. (2000) M.P. 716 (D.B.)*

-Article 226- Petitioner making vague allegation against high dignitaries-Exemplary cost of Rs.10,000/- imposed : *Prof. Narendra Kumar Gouraha Vs. State, I.L.R. (2000) M.P. 558*

-Article 226- Writ Petition-Cost of Rs. 20,000/- imposed by learned single judge waived of as petitioner is not guilty of wrong rejection of nomination paper of other candidates : *Smt. Pramila Bai Vs. Sub Divisional Officer, Bareilly, I.L.R. (2000) M.P. 1115 (D.B.)*

-Article 226-Central Board of Secondary Education Scheme for examination-Paragraph 2.5 and 2.7-Cannot be read to mean compartment or supplementary exams are parts of main exam.-Petitioner rightly refused admission in P.P.T. exam. : *Kumari Kini Vs. State, I.L.R. (2000) M.P. 1044*

-Article 226-Non-exhaustion of remedy-Not a bar to exercise of power under Article 226 : *The Amalgamated Coalfields Ltd., Calcutta Vs. State Of Madhya Pradesh I.L.R. (1968) M.P. 709 (D.B.)*

- **Article 226** - Interest accrues from the date when claim for refund was disallowed till the date of refund was disallowed till the date of refund wrongfully : *M/s. Hope Textiles Ltd. Vs. Union of India, I.L.R. (2001) M.P. 1299,*

-Article 226-Nomination paper wrongly and arbitrarily rejected-Remedy by election petition not an efficacious remedy-Interference under this article if justified : *Vinod Kumar Vs. K.L. Jain (Block Development Officer) Returning Officer, Majhoulia I.L.R. (1967) M.P. 327 (D.B.)*

- **Article 226** - Order impugned requiring pre-audit without jurisdiction - Alternative remedy of appeal - Not a bar to writ proceedings : *Rewa Gases Private Limited Works and Head Office, Sidhi Vs. Asstt. Collector, Central Excise, Division-Satna, I.L.R. (2001) M.P. 1630,*

-Article 226-Objection not raised before Appellate Authority-Can be raised in writ petition if it goes to the root of the matter : *Messrs Suganchand Ramnarain, Ashoknagar Vs. State Transport Appellate Authority, M.P., Gwalior I.L.R. (1967) M.P. 46 (D.B.)*

- **Article 226** - Administrative Act of Public Authority - Done in excess of jurisdiction - Writ of certiorari can be issued : *Dr. Shrikrishna Rajoria Vs. State Of M. P., I.L.R. (1980) M.P. 11 (D.B.)*

- **Article 226** - Cannot be invoked in case of interlocutory orders of Tribunals - Tribunals acting in arbitrary manner - Order can be interfered under this jurisdiction : *Hindustan Steel Ltd. Bhilai Steel Plant Vs. The District Judge, Durg, I.L.R. (1980) 639, (D.B.)*

- **Article 226** - Failure of State Govt. to state reasons for exercise of powers under section 341 (1) (d) - Notification liable to be quashed : *Dr. Shrikrishna Rajoria Vs. State Of M. P., I.L.R. (1980) M.P. 11, (D.B.)*

- **Article 226** – Joinder of parties – Non-joinder of candidates as respondents – Not fatal to writ petition if such persons are not likely to be affected by order of the writ Court : *All India State Bank Group SC/ST Employees’ Welfare Federation, Bhopal Vs. The State Bank of India, Bombay, I.L.R. (2001) M.P. 1665,*

-Article 226-No interference by High Court in election matter when remedy by election petition available : *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

- **Article 226** - Report of Commission - When may be quashed - Full opportunity to produce evidence made difficult - Finding not binding : *Dr. (Ku.) Sneh Rani Jain V State Of M. P., I.L.R. (1982) 233, (D.B.)*

-Article 226-Administrative order or action-Not amenable to writ of certiorari : . *Abdul Quadar Vs. The State Of M.P. & Anr., I.L.R. (1960) M.P. 216 (D.B.)*

-Article 226-High Court-Circumstances when it can interfere : *Chunnihal Ken Vs. Radhacharan, I.L.R. (1958) M.P. 153 (D.B.)*

-Article 226-Existence of alternative remedy-Not absolute bar to exercise of direction under this article : *Col. Lal Rampal Singh Vs. State Of M.P., I.L.R. (1960) M.P. 934 (F.B.)*

- **Article 226** - Efficacious remedy available to petitioner - High Court not ordinarily entertain a petitioner under this provision: *B.K. Jain Vs. Y.S. Dharmadhikari I.L.R. (1978) M.P. 103 (D.B.)*

-**Article 226**-Reviewing or Appellate Authority-Possesses same powers as those possessed by authority passing the order : *The State Of M.P. Vs. The Board Of Revenue, M.P. Gwalior & Anr., I.L.R. (1965) M.P. 425 (D.B.)*

-**Article 226**-Special remedy under the Article-Not to supersede ordinary mode of obtaining relief : *The Amalgamated Coalfields Ltd. Parasia & Ors. Vs. The Janapada Sabha, Chhindwara, I.L.R. (1965) M.P. 915 (D.B.)*

-**Article 226**-Another remedy - Not absolute bar to grant of writ of certiorari-Another remedy must be legal remedy not less convenient, beneficial and effective in order to be bar to the issue of writ : *Municipal Committee Pandhuran Vs. M/S Shah Raisi Hirji & Co. & Ors., I.L.R. (1959) M.P. 734 (D.B.)*

- **Article 226** - Writ jurisdiction - High Court does not enter into controversial facts : *General Manager, Hindustan Steel Ltd. Bhilai Steel Plant Bhilai Vs. Santosh Singh I.L.R. (1979) M.P. 337 (D.B.)*

- **Article 226** - Point not raise before Tribunal - Point cannot be allowed to be argued in writ petition : *General Manager, Hindustan Steel Ltd. Bhilai Steel Plant, Bhilai Vs. Santosh Singh I.L.R. (1979) M.P. 337 (D.B.)*

- **Article 226** - Private operators keeping silence for 2 years after issue of permit to State undertaking - High Court not to exercise discretion in favour of petitioner : *Gulab Chand Gupta Vs. Regional Transport Authority Rewa I.L.R. (1979) M.P. 494 (D.B.)*

- **Article 226** - "Any other remedy" under - Includes remedy of Election Petition - Writ petition not entertainable : *Laxmansingh Vs. State Of M. P. I.L.R. (1979) M.P. 861 (D.B.)*

- **Article 226** - Custody of grand-child with grand-father - His illegal refused to give child to its parents - Amounts to illegal detention : *Smt. Usha Devi Vs. Kailash Narayan I.L.R. (1979) M.P. 41 (D.B.)*

-**Article 226**-Alternative remedy-No bar to exercise jurisdiction in appropriate cases : *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Rewa, I.L.R. (1973) M.P., 440 (D.B.)*

- **Article 226** - Petitioner has other remedy under Guardians and Wards Act - No ground to deny the right of custody to the parent : *Smt. Usha Devi Vs. Kailash Narayan I.L.R. (1979) M.P. 41 (D.B.)*

-**Article 226**-Order not giving reasons-Order not a speaking order-Order liable to be quashed : *Smt. Radha Devi V. The Union Of India, I.L.R. (1971) M.P. 53. (D.B.)*

-**Article 226**-Point not raised before Industrial Court-Cannot be raised in writ petition : *Jagat Singh Choudhury Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 272. (D.B.)*

-**Article 226**-Point regarding bar of limitation provided by section 149(1)(b) not raised before Income-tax officer-Point cannot be agitated in writ petition : *Deepchand Daga Vs.The Income Tax Officer, 'C' Ward, Raipur, I.L.R. (1971) M.P. 813 (D.B.)*

-**Article 226**-Provision of alternative remedy-Does not take away jurisdiction under this provision: *Smt. Sugandhi Vs. The Collector, Raipur, I.L.R. (1971) M.P. 842. (D.B.)*

-**Article 226**-Rule that statutory remedies to be exhausted before asking for a writ-Is not a rigid rule of law but merely a matter of discretion : *Smt. Sugandhi Vs. The Collector, Raipur, I.L.R. (1971) M.P. 842. (D.B.)*

- **Article 226** - Existence of alternative remedy - Can be a circumstances to be considered in exercising discretion - Does not take away jurisdiction of High Court to interference in suitable cases : *Universal Cables Ltd Satna Vs. Union Of India I.L.R. (1978) M.P. 406 (D.B.)*

- **Article 226** - Existence of alternative remedy - No bar to exercise of prerogative powers : *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R. T. O.) Bilaspur I.L.R. (1978) M.P. 857 (D.B.)*

- **Article 226** - Finding that prisoner committed breach of condition of licence recorded in the enquiry - Not open to challenge in Court of law either in exercise of ordinary civil jurisdiction or extraordinary writ jurisdiction : *Shibbu Vs. Superintendent, Central Jail, Jabalpur I.L.R. (1978) M.P. 639 (D.B.)*

- **Article 226** - High Court, Power of, to issue direction regarding refund of tax illegally recovered : *Home Decorators And Finance (Private) Ltd. Jabalpur Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 750 (D.B.)*

- **Article 226** - Order prima facie illegal - Granting of relief is sound exercise of judicial discretion : *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R. T. O.) Bilaspur I.L.R. (1978) M.P. 857 (D.B.)*

- **Article 226** - Rule of alternative remedy in writ jurisdiction - Is a rule of convenience - Remedy under this provision convenient to all - Petition not be thrown out : *B. K. Jain Vs. Y. S. Dharmadhikari I.L.R. (1978) M.P. 103 (D.B.)*

- **Article 226** - Rule of undue delay is not inflexible rule - Where principle involved, writ can be issued inspite of delay : *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R. T. O.) Bilaspur I.L.R. (1978) M.P. 857 (D.B.)*

-**Article 226**-Tribunal taking wrong view of law, but examining the merits of allegations about amendment and deciding them - High Court-No power to interfere : *K.C. Vs. The Election Tribunal, Chhatapur & Ors., I.L.R. (1958) M.P. 43 (D.B.)*

- **Article 226** - Infringement of fundamental right-Other remedy under special Act open-No bar to petition under the Article-Composite petition for quashing assessment order regarding several assessment years-Maintainability : *Mahabirprasad Vs. Shri B.S. Gupta Sales Tax Officer & Anr., I.L.R. (1957) M.P. 206 (D.B.)*

-**Article 226**-Decision regarding starting of proceedings under section 147 rests with Income-tax Officer-Not matter for High Court in writ jurisdiction : *Deepchand Daga Vs. The Income Tax Officer, 'C' Ward, Raipur, I.L.R. (1971) M.P. 813 (D.B.)*

-**Article 226**-Illegality patent on face of record-Petition maintainable even though other remedy available : *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Raipur, I.L.R. (1971) M.P. 227. (D.B.)*

-**Article 226**- Public Officer- The office of mayor is a public office-The test of public office whether the duties of officer are public in nature, the office must be substantive in character and must be created by statute or by the constitution itself : *Nandkishor Vs.. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539*

-**Article 226**- Equation of post-Purely administrative function : *M.L. Jinesh Vs. Union Of India, I.L.R. (1972) M.P. 78 (D.B.)*

- **Article 226** - Existence of alternative remedy of appeal - When creates a bar : *The Gwalior Rayon Mfg. (Wvg.) Co, Vs. Union Of India, I.L.R. (1982) M.P. 768, (D.B.)*

- **Article 226** - Stay or ad interim order granted to maintain status quo - not for bringing different state of things than those which existed at the date of the institution

of proceedings : *Ali Ahmed And Sons Rewa Vs. Brij Kishore Pateria I.L.R. (1976) M.P. 500 (D.B.)*

-Article 226-Point of jurisdiction not raised before Tribunal-Point can be raised in writ petition : *J.C. Rishi Vs. Union Of India, I.L.R. (1970) M.P. 897 (D.B.)*

-Article 226-Remedy provided by section 23(3) of the Jabalpur University Act-Not sufficient for non-exercise of discretion under this provision : *Bhagwati Dhar Bajpain Vs. The Jabalpur University, Jabalpur, I.L.R. (1970) M.P. 765 (D.B.)*

– **Article 226** – Writ Petition at belated stage – Inability of board to make arrangement in short period – Departure from the earlier orders warranted due to passage of time as a consistent approach is not possible at belated stage : *Amarnath Dwivedi Vs. State, I.L.R. (2001) M.P. 1333,*

– **Article 226** – Writ Petition – Challenging transfer on ground of malice – No sufficient material to sustain ill will – Petitioner can not be competitor of Chief General Manager thus allegation of personal competence can not be presumed : *Sarvjit Vs. Coal India Limited, I.L.R. (2001) M.P. 1692, (D.B.)*

-Article 226- Directions not issued for enforcing or preventing breach of rights or obligations contractual in character : *M/S United Excise, Ujjain Vs. State Of M.P., I.L.R. (1972) M.P. 32 (D.B.)*

-Article 226-Writ Petition-'Tamrakar' not included in as sub caste of 'Chhatri' scheduled Tribe in Madhya Pradesh-Court cannot exercise jurisdiction to declare 'Tamrakar' as scheduled Tribe : *Raj Kumar Tamrakar Vs. State, I.L.R. (2003) M.P. 922 (D.B.)*

-Article 226-Sabha contravening rules framed by it-No ground for issue of writ of certiorari-Sabha not constituted by or under a statute : *Gulabchand Gupta Vs. The Hitkarini Sabha, Jabalpur Etc. & Ors., I.L.R. (1964) M.P. 524 (D.B.)*

-Article 226-Writ can issue to co-operative societies : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, & 3 Ors., I.L.R. (1961) M.P. 673 (D.B.)*

-Article 226-Members of Sabha are not persons holding public office-No writ of Mandamus can be issued to such Sabha : *Gulabchand Gupta Vs. The Hitkarini Sabha, Jabalpur, I.L.R. (1964) M.P. 524 (D.B.)*

-Article 226-Persons holding market, Right of, to file petition challenging the validity of notification disestablishing market : *Sunderlal & Ors. Vs. The State Of M.P. & Ors., I.L.R. (1964) M.P. 359 (D.B.)*

-Article 226-State Government, Right of, to impugn order passed by Registrar under Madhya Pradesh Public Trusts Act : *State Of Madhya Pradesh Vs. Mother Superior Convent School And Anr., I.L.R. (1957) M.P. 599 (D.B.)*

-Article 226-Executive order not open to challenge by writ : *Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P., 60 (D.B.)*

-Article 226-Existence of alternative remedy-Does not necessarily bar remedy under this provision : *Gangadhar Vs. The Nirvachan Adhikari, Marketing Society, Jijaypur, I.L.R. (1975) M.P. 249 (D.B.)*

- Article 226, Commercial Tax Act, M.P., 1994, (V of 1995)-Section 27, 28 – Tax laws-Assessment-Summary procedure-Holding of Camps permissible-Not repugnant to Section 27 of the Act.: *M.P. Tax Consultant Association Vs. State Of M.P., I.L.R. (2005) M.P. 103 (D.B.)*

-Article 226-Nomination form illegally rejected-Jurisdiction of High Court to entertain petition not barred : *Mata Prasad Vs. Election Officer, Morena, I.L.R. (1975) M.P. 468 (D.B.)*

-Article 226-No writ of mandamus can be issued to private body : *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti, Korba, I.L.R. (1975) M.P. 638, (D.B.)*

-Article 226-Persons affected by unauthorised decisions of officers-Not to be directed to seek their remedy in civil Court as it would amount to giving effect to decisions without jurisdiction : *Sheo Kumar Vs. Shri N.P. Tripathi Etc., & 3 Ors., I.L.R. (1959) M.P. 191 (D.B.)*

-Article 226-Error patently manifest on face of order --Another remedy available but proverbially tortuous-Power of High Court to interfere : *Rewaram & Ors. Vs. The Registrar Public Trusts, Narsimhapur, I.L.R. (1962) M.P. 38 (D.B.)*

-Article 226-Order thereunder High Court, Power of, to review-Review is not a matter of procedure : *Narayansingh Vs. The Board Of Revenue, M.P., Gwalioir & Ors., I.L.R. (1962) M.P. 788*

-Article 226-Tribunal deciding jurisdictional fact erroneously and assuming jurisdiction-High Court can interfere-Existence of alternative remedy is no bar : *Sardar Mahinder Singh Vs. The Deputy Commissioner Of Sales Tax, Raipur, M.P., I.L.R. (1975) M.P. 624, (D.B.)*

-Article 226-Writ of Mandamus or certiorari to quash the resolution canceling the result can be issued : *Pretish Chandra Dutta Vs. University Of Saugar, Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

-Article 226-Challenge to action of Corporation-Members of Corporation not necessary parties to petition : *Gangaram Bandil Vs. Municipal Corporation, Gwalior, I.L.R. (1963) M.P. 603 (D.B.)*

-Article 226-Circumstances in which writ of quo-warranto can or cannot be refused : *Nauranglal Vs. Shri Bhanu Pratap I.L.R. (1969) M.P. 935 (D.B.)*

-Article 226-Issue of writ of quo warranto discretionary with the Court : *Nauranglal Vs. Shri Bhanu Pratap I.L.R. (1969) M.P. 935 (D.B.)*

-Article 226-Public authorities making statement of facts on personal knowledge - Statements to be believed by High Court for these proceedings : *Tejraj Vs. A.K. Saraswat, Block Development Officer, I.L.R. (1969) M.P. 736 (D.B.)*

-Article 226-Question of re-instatement-Is a question of fact : *Madhukar Vs. General Manager, Bhilai Steel Project, Hindustan Steel Ltd., Bhilai, M.P. , I.L.R. (1969) M.P. 965 (D.B.)*

-Article 226-Writ of quo-warranto-Cannot be denied on ground of delay or estoppel : *Hafiz Mohammad Anwar Khan Vs. State Of M.P. I.L.R. (1969) M.P. 183 (D.B.)*

-Article 226-Error required to be established by long drawn process of reasoning -And where two opinions can be possible-There hardly can be error apparent on face of record : *Gunda & Anr. Vs. The Workmen's Compensation Commissioner, District Panna & Anr., I.L.R. (1963) M.P. 222 (D.B.)*

- Article 226 - Revisional authority not dealing with the objection regarding effect of Nationalisation scheme - Order liable to be set aside : *Jairam Gaya Prasad Mishra Vs. The State Transport Appellate Tribunal, M. P. Gwalior I.L.R (1981) M.P. 559 (D.B.)*

- **Article 226** - Writ of certiorari when can be issued to quash order of Election Tribunal : *Deochand Vs. Raghuraj Singh I.L.R (1981) M.P. 367 (D.B.)*

-**Article 226**-Proceedings patently defective and without jurisdiction-Existence of alternative remedy, no bar to grant of relief : *Janta Hardware Stores, Raigarh & Ors. Vs. B.S. Parihar, Assistant Sales Tax Officer, Raigarh, I.L.R. (1963) M.P. 840 (D.B.)*

- **Article 226**—Prisoners Leave Rules, M.P. 1989, Rule 12(d) and Prison Rules, M.P. 1968—Rule 701—Writ Petition—Life convict—Granted Leave but failed to report—Conviction and Sentence u/s 224 I.P.C. read with Section 31—D of Prison Act, 1990—Conviction attained finality—Forfeiture of Remission earned—Does not amount to double jeopardy : *Dibbu Alias Devendra Vs. State Of M.P.; I.L.R. (2004) M.P. 925 (D.B.)*

- **Article 226**-Tax-payer, Right of, to file petition against an action causing financial loss to corporation : *Chokhe Singh Vs. The Mayor, Municipal Corporation, Gwalior & Ors., I.L.R. (1963) M.P. 13 (D.B.)*

- **Article 226** - Civil suit filed by Panchas challenging their resignation - Pendency thereof does not operate as a bar to decision of writ petition : *Rameshwar Dayal Vs. B. N. Tripathi I.L.R (1981) M.P. 292 (D.B.)*

- **Article 226** - Erroneous decision on a finding of fact - Cannot be quashed by a writ of certiorari : *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Indore, M. P., I.L.R (1981) M.P. 298 (D.B.)*

- **Article 226** - Writ of certiorari - Exercise of statutory power without complying with its mandatory requirements - Writ of certiorari may be issued : *Dr. Shrikrishna Rajoria Vs. State Of M. P. I.L.R (1980) M.P. 11 (D.B.)*

- **Article 226** - Writ of certiorari when issued : *Col. Sardar Chandroji Rao, Lashkar Vs. State Of M. P. I.L.R (1980) M.P. 827 (D.B.)*

- **Article 226** - Writ of mandamus - Conditions in which it is issued : *Col. Sardar Chandroji Rao, Lashkar Vs. State Of M. P. I.L.R (1980) M.P. 827 (D.B.)*

- **Article 226** - Writ of quo warranto - When can be issued - Requisites of : *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur Through Its Commissioner, I.L.R (1980) M.P. 536, (D.B.)*

- **Article 226**- Allotment of Nazul Land to Housing Society-Assessment of premium and annual lease rent- Rate prevailing in the previous year is relevant.

Vishveshwariya Rajdhani Pariyojna Sahkari Grah Nirman Samiti, Bhopal Vs. State of M.P.; I.L.R.(2002) M.P. 625 (D.B.)

– **Article 226** – Futile writs cannot be issued: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R (1987) M.P. 736 (F.B.)*

- **Article 226** – Imposition of penalty by Collector is discretionary – No interference by Court unless Shown to be arbitrary: *Ashok Jain Vs. State Of M.P., I.L.R (1987) M.P. 133 (D.B.)*

– **Article 226** – Interference by Courts in matters of discipline etc. of the University – When may be made: *Dr. S.L. Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal, I.L.R (1987) M.P. 558 (D.B.)*

- **Article 226** and Land Acquisition Act, 1894, Sections 4, 11- Acquisition of Land- Two notifications issued - Compensation is to be determined from the date of last notification. *Manoharlal Babbar Vs. State of M.P.; I.L.R. (2002) M.P. 637 (D.B.)*

- **Article 226** and Letters Patent Clause X– Writ Petition and appeal legal representative–Since allotment has not been made in his favour no cause of action survives : *Smt. Nirmala Vs. Oil Selection Board (Madhya Pradesh), I.L.R. (2002) M.P. 297, (D.B.)*

- **Article 226** and Public Liability Insurance Act, 1991, Sections 2(d), 3(2)- "Hazardous substance"-Electricity-Hazardous in any quantity-Notification by Central Govt. is not sine qua non to make a substance hazardous-Death due to electricity-Board cannot escape liability. *M.P. State Electricity Board, Jabalpur Vs. Collector, Mandla; I.L.R. (2002) M.P. 605 (D.B.)*

- **Article 226** and Industrial Disputes Act, 1947, Sections 2(kkk), 25-M - Lay off - Permission for - Accumulated stock is a ground covered under Section 2 (kkk) - Continuance of production would result in piling of stock - Permission granted for lay off justified. *Sae Mazdoor Union, Jabalpur Vs. Labour Commissioner, Indore; I.L.R. (2002) M.P. 416 (D.B.)*

- **Article 226**-Cancellation of quarry leases-Site falls in forest category-No mining operation is permissible : *Nandlal Rajak Vs. Collector, Damoh, I.L.R. (2002) M.P. 859 (D.B.)*

– **Article 226** – Interference with the conclusions reached by committee – When can be made : *Mohammad Yakub Ansari Vs. Devi Ahilya Vishwavidyalaya, Indore, I.L.R (1987) M.P. 617 (D.B.)*

- **Article 226**, Land Acquisition Act, 1894, Section 4 - First notification not challenged - Possession taken over and development already done by Housing Board after first notification - Petitioner's conduct is of acquiescence - Petitioners have no right to challenge the acquisition. *Ashok Sahkari Grih Nirman Samiti, Bhopal Vs. State of M.P.*; *I.L.R. (2002) M.P. 628 (D.B.)*

- **Article 226** - Jurisdiction of Tribunal conditioned by certain facts - Issue of writ of certiorari - Permissibility if facts conditioning jurisdiction found to be not existing : *Jabalpur Electricity Supply Co. Jabalpur Vs. The State Industrial Court, M.P. & 2 Ors.*, *I.L.R. (1959) M.P. 220 (D.B.)*

- **Article 226** - Alternative remedy - Ordinarily no bar to exercise discretion - Discretion not to be exercised where party deprived himself of remedy by his own fault : *Mahakoshal Transport Co-Operative Society Ltd., Raipur Vs. Regional Transport Authority, Raipur & Ors.*, *I.L.R. (1963) M.P. 420 (D.B.)*

- **Article 226** - Rule regarding exhaustion of statutory remedy - Is a rule of convenience and discretion rather than a rule of law : *Dadabhoys's New Chirimiri Ponri Hill Colliery Company Private Ltd. Vs. The State Of M.P.*, *I.L.R. (1970) M.P. 363 (D.B.)*

- **Article 226** - Petitioner entered into contract with all eyes open - Not open for them to seek enforcement of promissory estoppel against the State - Order impugned reversed : *State Vs. M/s. Swami Traders*, *I.L.R. (2001) M.P. 1495, (D.B.)*

- **Article 226** - Alternative remedy - Plea of - Matter pending for five years and directed for final hearing - Plea of alternative remedy not tenable at such stage : *S.K. Goyal Mill Vs. Krishi Upaj Mandi Samiti*, *I.L.R. (2001) M.P. 1122 (D.B.)*

- **Article 226** - Enquiry into show cause notice still pending - *Writ petition premature* : *Smt. Pushpavati Vs. Collector, Customs And Central Excise*, *I.L.R. (2001) M.P. 909 (D.B.)*

- **Article 226** and Land Acquisition Act (I of 1894) - Sections 3(b),(g), 11, 18, 28-A and 54 - Land Acquired and compensation awarded - No reference made under Section 18 of the Act : *Union Of India Vs. The Jt. Collector & Land Acquisition Officer*, *I.L.R. (2001) M.P. 998, (D.B.)*

- **Article 226** - Co-bidder incurred disqualification by subsequent order of Board of Revenue - Not to benefit the petitioner - Petitioner not entitled in law to question

validity of second auction at the instance of co-bidder : *M/S. Radhe Sharan Vs. State, I.L.R. (2001) M.P. 1312 (D.B.)*

– **Article 226** – Controversy involved is of academic character – Should be left to decided by Universities and Court should not interfere : *Yashwant Birla Vs. Pt. Ravishanker Shukla University, I.L.R. (2001) M.P. 178, (D.B.)*

– **Article 226** – Court can not go into merits of the controversy like an appellate authority : *Brijendra Mishra Vs. State, I.L.R. (2001) M.P. 1623(D.B.)*

- **Article 226** – Delay – Petition challenging notification filed after 3 years – Shows that initially petitioners were satisfied – Petition devoid of substance : *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593, (D.B.)*

Article 226 and Societies Registration Act, M.P. (XLIV of 1973), Section 33(4) - Supersession of Society – Administrator appointed – Section 33 – Powers of Administrator – Does not extend to admitting new members on the roll of Membership – In the event of election Administrator has to conduct election on the strength of membership on roll available on the date of supersession : *Sujit Kumar Banerjee Vs. State, I.L.R. (2001) M.P. 452, (D.B.)*

- **Article 226** and Municipal Corporation Act, M.P. 1956, Section 405- Inclusion of Gram Panchayat Area in Municipal Corporation- It is enough that provision of Municipal Corporation Act are followed- Legislative function -Not Necessary to give personal hearing. *Gram Panchayat Ghurdong Vs. State of M.P.; I.L.R.(2002) M.P. 641 (D.B.)*

- **Article 226** and Municipal Corporation Act, M.P., 1956, Section 222-Water Connection-Refusal of - Dispute regarding property tax pending-Refusal to supply water connection on ground of non-payment of property tax-Not justified. *Ashok Lalwani Vs. Municipal Corporation Jabalpur; I.L.R. (2002) M.P. 650 (D.B.)*

- **Article 226** and Municipalities Act, (XXXVII of 1961)–Section 41–A–Writ Petition–Removal of President–Notice of a date for recording evidence not served– Notice for earlier date cannot be accepted as notice for 23.2.2004 on which case was fixed for evidence and closed for decision–Order of removal patently illegal : *Mubarak Master Vs. State Of M.P., I.L.R. (2005) M.P. 393 (D.B.)*

- **Article 226**, National Coal Wage Agreement, 2001, Chapter 9, Clause 9.4.0 and 9.5.0–Writ petition–Labour Law–Workman retired as found medically unfit–Option to accept monetary benefit or employment–To be exercised by female dependent and

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- Article 226, Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993—Sections 3,10,125 and Panchayat (Alteration of Limits, Dis—Establishment or Change of Headquarters) Rules 1994—Alteration of limits or change of headquarters of gram panchayat—Legislative function of State—High Court cannot sit in appeal over such function : *Lal Singh Vs. The State Of Madhya Pradesh, I.L.R. (2005) M.P. 318 (D.B.)*

- **Article 226**, Penal Code, Indian (XLV of 1860)—Section 304-A and Mines Act, 1952, Section 72-C (1) (a)—Writ Petition—Mines safety—Violation of Regulations—Complaint case—Purpose and intendment is different than an offence under Section 304-A, IPC—Prosecution in complaint case cannot be quashed : *J.N. Uppal Vs. State (Govt. Of India), I.L.R. (2005) M.P. 485 (D.B.)*

- **Article 226** and Civil Services (Commutation of Pension) Rules, M.P., 1996, Rules 7, 11(2) - Petitioner nominee of deceased employee - Commuted value pension attained finality - Death of employee before obtaining commuted value is not going to come in the way of nominee- Petitioner entitled to get commuted value of pension : *Balmiki Kachhi Vs. Municipal Corporation, Jabalpur I.L.R.(2002) M.P. 470 (D.B.)*

—**Article 226**—Procurement of FAQ wheat—Average levy was 8000 MT whereas procurement reached 24000 MT—Quality also in dispute—Disputed question of fact are involved—Cannot be gone into in writ petition—Remedy of arbitration is efficacious one : *Mahila Bahu Uddeshiya Sahakari Samiti Maryadit Vs. State Of M.P., I.L.R. (2005) M.P. 26 (D.B.)*

– **Article 226** – Petitioner, a suspended Govt. servant, facing Departmental Enquiry at the instance of Lok Ayukt making allegations of corrupt practice against Cabinet Minister and Engineer-in-Chief and seeking writ against Chief Minister for advising governor to remove Cabinet Minister and Cabinet Minister to remove Engineer-in-Chief – Writ of mandamus cannot be issued – Petition is incompetent : *A.G. Prayagi Vs. State Of M.P., I.L.R (1987) M.P. 605 (D.B.)*

- **Article 226** and Rajya Suraksha Adhiniyam, M.P., 1990, Sections 5(a) and 5(b)—Extermment—Grounds employed did not form part of show cause notice—Order of externment quashed : *Shamsul Hassan @ Balli Vs. State Of M.P., I.L.R. (2005) M.P. 32 (D.B.)*

- **Article 226**—Writ petition—Dealer ship in SKO-LDO—Grant of—Disqualification only on ground of pendency of or conviction in criminal case involving moral turpitude or economic offence—Pendency of sales tax case—Cannot be a ground alike—

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Article 226–Writ Petition–Habeas corpus–Illegal detention–Army personnel detained–Stand taken medication for alcohol withdrawal syndrome–Type of ailment alleged never recoverable–One report showed 'no withdrawal syndromes' noticed–If such syndromes was there officer would not have been given posting–Case of illegal detention made out–Compensation Rs. 1 Lacs awarded to be recoverable from the officers responsible : *Varsha Bhardwaj Vs. Chief Army Staff*; I.L.R. (2004) M.P. 898, (D.B.)

- **Article 226**–Writ petition–Education–Admission–Principle of promissory estoppel–Cannot be invoked to home rules of College and Universities–Admission fee directed to be refunded : *Shailendra Gahlot Vs. State Of M.P.*, I.L.R. (2005) M.P. 296 (D.B.)

-**Article 226**–Circumstances in which writ of Mandamus can be issued even though alternative remedy is available : *M/s Shri Ganesh Trading Company, Sagar, Vs. State Of Madhya Pradesh*, I.L.R. (1973) M.P., 735 (D.B.)

-**Article 226**–Existence of alternative remedy–Not always a bar for issuance of writ of certiorari : *Sukhlal Vs. The Collector, Satna*, I.L.R. (1973) M.P., 271 (D.B.)

-**Article 226**–High Court, Jurisdiction of, to determine whether finding regarding character of land is correct or not : *Jagannath Prasad Vs. State Of M.P.*, I.L.R. (1973) M.P., 420 (D.B.)

–**Article 226**–Writ petition–Recruitment of Civil Judges–Process already over and hence no relief was granted in previously filed writ petition before Indore Bench–Petitioner cannot re-agitate the same question : *Prahlad Thakur Vs. M.P. Public Service Commission, Indore*, I.L.R. (2005) M.P. 792 (D.B.)

- **Article 226**–Writ petition–Suppression of material fact by petitioner–Petition dismissed with cost of Rs. 2000/- : *Sunil Kumar Rajak Vs. State Of M.P. Through The Secretary, Revenue Department, Govt. Of M.P.*, I.L.R (2005) M.P. 955 (D.B.)

-**Article 226**–Order patently in excess of jurisdiction–High Court can issue writ under this provision : *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Rewa*, I.L.R. (1973) M.P., 440 (D.B.)

-Article 226-Question of Bonus-To be decided as a whole and not region-wise : *The Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal Vs. President, Industrial Court, Madhya Pradesh, Indore, I.L.R. (1973) M.P., 205 (D.B.)*

-Article 226-Question of jurisdiction of Tribunal-To be first decided by Tribunal : *The Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal Vs. President, Industrial Court, Madhya Pradesh, Indore, I.L.R. (1973) M.P., 205 (D.B.)*

-Article 226-Rule regarding exhausting alternative remedy-Is not a rule of law, but is a rule of policy, convenience and discretion : *Sukhlal Vs. The Collector, Satna, I.L.R. (1973) M.P., 271 (D.B.)*

-Article 226-Decision of authority to confirm or not the auction sale which is held subject to its confirmation-Decision is administrative : *The State Of M.P. Vs. The Board Of Revenue, M.P. Gwalior & Anr., I.L.R. (1965) M.P. 425 (D.B.)*

-Article 226-Filing of revision and not an appeal - Does not amount to non-avail- ing of remedy provided by the Act : *Calcutta Company Ltd., Calcutta Vs. Comissisoner Of Sales Tax, M.P., Indore & Ors., I.L.R. (1965) M.P. 370 (D.B.)*

-Article 226-High Court, jurisdiction of, to evaluate merits : *Baluram Vs. The State Transport Appellate Authority, Gwalior & Ors., I.L.R. (1965) M.P. 923 (D.B.)*

-Article 226-Opinion of Tribunal on merits after holding that it had no jurisdic- tion-Opinion not a decision or an Award or adjudication binding on parties-Opinion liable to be quashed : *Chalchitra Karmachri Sangh Through Shri Tarasingh Viyogi, Gwalior Vs. Proprietor, Regal Talkies, Gwalior & Ors., I.L.R. (1965) M.P. 56 (D.B.)*

-Article 226-Order imposing penalty both arbitrary and capricious- Writ of certiorari cannot be refused because remedy against the order not followed : *M/s S.R. Kalani & Co., Indore Vs. Shri C.L. , Additioinal Asstt. Commissioiner Of Sales Tax, Indore, I.L.R. (1965) M.P. 591 (D.B.)*

-Article 226-Election matter - Dispute relating to controverted facts-Election petition proper remedy : *Sheo Kumar Vs. Shri M.A. Khan, Deputy Commissioner, Bilaspur & Ors., I.L.R. (1959) M.P., 527 (D.B.)*

- Article 226-Questions of fact - Not permissible to be disputed in petition under this article : *Babulal Vs. Basantilal & Anr., I.L.R. (1960) M.P. 262 (D.B.)*

- Article 226-Reasons persuading Deputy Commissioner to pass order-Cannot be enquired into in a petition under Article 226 of the Constitution : *M/s Vrijlal Manilal & Co., Sagar Vs. The State Of M.P. & Anr., I.L.R. (1960) M.P. 439 (D.B.)*

-**Article 226**-Breach of terms of mining lease--No relief can be granted under Article 226-Remedy lies in civil Court : *United Collieries Ltd. & Anr. Vs. Engineer-In-Chief, South Eastern Railway, Manindragarh & Ors., I.L.R. (1965) M.P. 18 (D.B.)*

- **Article, 226** and Minor Mineral Rules, 1961, Rules 6,7,8, 11 and 32-A – Application for grant of quarry lease – No orders passed by competent authority within one year – Application shall be deemed to have been refused – Deemed refusal not challenged by petitioner – No relief can be granted in writ petition : *Ku. Nandini Bamania Vs. State, I.L.R. (2001) M.P. 325 (D.B.)*

- **Article 226** – Writ petition – Scope of enquiry in – Limitation: *Straw Products Ltd., Jaykaypur, Rayagada, District Korapur (Orissa) Through General Manager (Works), Bhopal Vs. Union Of India, I.L.R. (1987) M.P. 147 (D.B.)*

- **Article 226** - Alternative remedy - When bars the petition : *Tata Exports Limited, Dewas Vs. Union Of India I.L.R. (1986) M.P. 425 (D.B.)*

- **Article 226** - Fundamentals for invoking writ jurisdiction : *M/s Babulal Agrawal, Barpali Vs. Commissioner Of Sales Tax, M. P. Indore I.L.R. (1986) M.P. 636 (D.B.)*

- **Article 226**–Refund or forfeiture of earnest money–Petitioner failed to inspect the Tendu leaves before offering bid–Subsequently inspected and did not lift the stock–Breach of contract–Forfeiture of earnest money proper : *Santosh Kumar Chopda Vs. State And Ors., I.L.R. (2003) M.P. 42 (D.B.)*

- **Article 226** – Powers conferred by second proviso, not discriminatory or arbitrary – Retirement was not in the interest of Bank – impugned order quashed: *Surendra Pratap Singh Kushwaha Vs. State Bank Of Indore, Indore, I.L.R. (1989) M.P. 392 (D.B.)*

- **Article 226** – Res-Judicata and Constructive re-judicata – Principles apply to writ Proceedings : *President, Birla Education Society, Satna Vs. Director Of Public Instructions, Satna, M.P., Bhopal, I.L.R. (1988) M.P. 193 (D.B.)*

- **Article 226** and Army Act (XLVI of 1950) – High Court cannot review findings of general Court Martial – Remedy provided in sections 164 and 179 of Army Act : *Lt. Col. A.K. Handa Vs. Union Of India, I.L.R. (1988) M.P. 131 (D.B.)*

–Article 226–Writ Petition–Arising out of proceeding before Commissioner dismissed in default–Non-appearance by counsel as he was busy in High Court–

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–**Article 226**–Compensation–Relatives of deceased received Rs. 4,000/–No further compensation deemed necessary : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- **Article 226** - No reasonable explanation for delay - Petition liable to be dismissed on ground of delay : *B. L. Shrivastava Vs. M. M. L. Shridhar I.L.R. (1977) M.P. 751 (D.B.)*

- **Article 226** - Right of franchise denied - Right is valuable right - High Court can interfere even though other remedy available - High Court not to interfere if enquiry into facts is necessary : *Sheodalay Vs. K. P. Rawat, Returning Officer And Tahsildar Narsinghpur I.L.R. (1977) M.P. 653 (D.B.)*

–**Article 226**–Custodial death–Dead body exhumed and further autopsy carried out–Two concurrent post mortem report confirming suicide by deceased–In absence of any other evidence inference of physical torture in custody cannot be drawn : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

–**Article 226**–Doctrine of estoppel–Not applicable to statutory entitlement: *Smt. Kamlabai Vs. The Secretary, M.P. Electricity Board, I.L.R. (1992) M.P. 618 (D.B.)*

–**Article 226**–Writ Petition–Compassionate appointment–Enquiry as envisaged in Circular of 1971 not conducted–Matter remitted for reconsideration. *Shivcharanlal Saxena Vs. State, I.L.R. (1992) M.P. 741 (D.B.)*

-**Article 226**-Existence of alternative remedy-Not a bar for exercise of discretion under this article : *The Modern Stores Vs. Shri Krishnadas Sha, Presiding Officer, Labour Court, Jabalpur, I.L.R. (1974) M.P. 229 (D.B.)*

– **Article 226** – Writ jurisdiction cannot be invoked – Writ of Habeas Corpus – When can be issued : *Raju Alias Rajkumar Vs. State Of Madhya Pradesh, I.L.R. (1990) M.P. 130 (D.B.)*

– **Article 226** – Alternative remedy – Not an absolute bar – Acceptance of Tender quashed and re-Tender directed : *Navranglal Mittal Vs. National Thermal Power Corporation Ltd., Korba, I.L.R. (1990) M.P. 299 (D.B.)*

- **Article 226** –Writ petition–Service law–Date of birth–Entry both in English and Hindi duly signed by employee–Employee estopped to contend that age is incorrectly recorded : *Rama Shankar Yadav Vs. Western Coalfields Ltd., I.L.R. (2005) M.P. 112 (D.B.)*

- **Article 226** - Writ of certiorari - When can be issued : *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Indore, M.P. I.L.R. (1981) M.P. 298 (D.B.)*

- **Article 226** - Alternative remedy of election petition - Is not an absolute bar to exercise of powers under Article 226: *Thaneshwar Mishra Vs. Zila Sahakari Kendriya Bank Maryadit, Mandla I.L.R. (1985) M.P. 275. (D.B.)*

- **Article 226** - Alternative remedy -When a bar to writ jurisdiction : *P. C. Adhikari Vs. The Manager, The Brait Waite Burn And Jossop Construction Co. Ltd, Bhilai I.L.R. (1985) M.P. 161*

- **Article 226** - Co-operative Central Bank Employees Service Rules, Madhya Pradesh, 1977 - Are constitutionally valid : *Bikal Bihari Soni Vs. State Of M. P. I.L.R. (1985) M.P. 762*

-**Article 226**-High Court when can interfere with decision of inferior tribunal on the ground of wrong decision on facts: *Anandji Kalyanji Idol Of Jain, Free Ganj, Ujjain Vs. Daulat Singh & Ors., I.L.R. (1963) M.P. 247 (D.B.)*

-**Article 226**-Breach of contract-Remedy in civil suit : *Dr. Shankar Dayal Chourishi Vs. The Administrator, Municipal Council, Dhamtari, I.L.R. (1970) M.P. 869 (D.B.)*

-**Article 226**-Case remanded to appellate Court-Only case of the petitioner has to be considered : *Shitaldas, Partner, Damodardas Shitaldas, Bus Operator, Rewa Vs. State Transport Appellate Authority, M.P., Gwalior. I.L.R. (1970) M.P.751 (D.B.)*

- **Article 226** – Writ issued to Corporation to allow petitioner to complete construction within one year – Compensation for illegal demolition by Corporation – Aggrieved party may take recourse to the remedy under the civil laws : *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631(D.B.)*

-**Article 226**-Grounds for challenging elections thereunder -Not any way higher than those under section 22 of Municipalities Act : *Govind Rao Vs. The State Of M.P., I.L.R. (1970) M.P. 207 (D.B.)*

-Article 226-Power under-High cannot go into the sufficiency or insufficiency of material but at most can go into question of existence of such material-Action of State Govt. upheld : *Prof. Narendra Kumar Gouraha Vs. State, I.L.R. (2000) M.P. 558*

- Article 226 - Conditions in which writ to quo warranto can be issued : *Rajendra Singh Vs. Shejwalker I.L.R. (1976) M.P. 836 (D.B.)*

- Article 226 - Delay no ground for refusing relief when representation made to Government and appeal is pending : *K. S. Gama Vs. State Of Madhya Pradesh I.L.R. (1976) M.P. 113 (D.B.)*

- Article 226 - Petition regarding matter before election process completed and result declared - Petition not barred on ground of alternative remedy : *Brij Bihari Gupta Vs. Shri L. S. Khare, Election Officer - Deputy Collector, Jabalpur I.L.R. (1980) M.P. 551 (D.B.)*

-Article 226-Nature of jurisdiction of High Court-Nature of proceedings before Election Tribunal-Not to be considered in determining nature of proceedings under this Article : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra I.L.R. (1966) M.P. 501 (D.B.)*

-Article 226-Rules for Conduct of Entrance Test for selection in Pre-Polytechnic Test 1998-Paragraph 2.4.1.-Requirement of passing main examination-Petitioner though scored 68.48% marks in PPT but failed to pass the main exam and could pass only in subsequent exam-Not entitled to admission in P.P.T. Course : *Kumari Kini Vs. State, I.L.R. (2000) M.P. 1044.*

-Article 226-High Court, Power of, to make declaration contemplated under Rule 6 : *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer, Karera, I.L.R. (1974) M.P. 260 (D.B.)*

- Article 226, Jurisdiction – Examination held in Jabalpur – Coordinator School situate at Jabalpur – Part of cause of action arising at Jabalpur – High Court at Jabalpur has jurisdiction to entertain the lis – On basis of a note appended a student cannot be asked to travel to Delhi to file a litigation for redressal of grievances : *Ku. Divya Tiwari Vs. Union of India, I.L.R. (2001) M.P. 1653 (D.B.)*

–Article 226–Petitioner denied promotion although meritorious–State Govt. directed to grant admission to petitioner in P. G. Diploma course without disturbing less meritorious candidate already given admission : *Dr. Ku. Meena Bathija Vs. State, I.L.R. (1992) M.P. 232 (D.B.)*

-Article 226-High Court, Power of, to issue quo warranto against person disqualified in holding office even if other alternative remedy open : *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer, Karera, I.L.R. (1974) M.P. 260 (D.B.)*.

-Article 226-Writ petition-Service law-Promotion-Class III & IV employees-Criteria is seniority subject to fitness-No document on record to show that petitioner was having ACR mark lesser than respondent no.5 -Petitioner directed to be promoted with all consequential benefits : *Badrilal Mandloi Vs. State Of M.P. Through Secretary, Forest Department, Govt. Of M.P., Bhopal, I.L.R. (2005) M.P. 696*

- Article 226, and Water (Prevention of Pollution) Act, 1974, Sections 25,26-Writ Petition-Consent for installing stone crusher-Grant and Cancellation thereof-Once consent is granted cannot be cancelled without affording opportunity of hearing-Impugned order quashed : *Ishant Sahu Vs. M.P. Pollution Control Board, I.L.R. (2005) M.P. 390 (D.B.)*

- Article 226-Writ Petition-Consumer Protection Act, 1986-Section 2(1)(a) and 12-Share transaction by charging Commission-Relationship between seller and broker is a relationship providing services for consideration-Services covered within the purview of the Act-Stop payment of cheque or increase in rate of share-Award of interest by District forum upheld. *Anand Kumar Jain Vs. District Consumer Disputes Redressal Forum, Bhopal; I.L.R. (2002) M.P. 254*

- Article 226 - Issue of writ of Mandamus - Whether can be issued against University for taking decision regarding grant of approval to the resolution of governing body of the college : *Jai Prakash Mudaliar Vs. A. C. Choubey, Pleader & President, Governing Body, Pt. Jawaharlal Nehru Science & Arts College I.L.R. (1976) M.P. 298 (F.B.)*

-Article 226-Allegations made against party to the petition-Duty of that party to acquaint Court with factual position by filing return : *Kishanchand V. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

-Article 226-Writ jurisdiction and alternative remedy of arbitration -Dispute arising out of excessive demand-Provision for arbitration by one of the authorities of the Government which is a party to the agreement-Remedy of arbitration not efficacious hence not a bar to writ jurisdiction : *M/s. Bastar Oil Mills and Industries Ltd. Vs. State, I.L.R. (2000) M.P. 681,*

- Article 226 and General Sales Tax Act, M. P., 1958 (II of 1959), Section 19(1)-Notice for re-assessment-Provision does not contemplate re-initiation of re-

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- **Article 226** – Once a particular fact is exposted and unless there is enormous error, legal significance cannot be marginalized – Prescribed authority in error in holding that the seat was reserved for woman candidates and further setting aside the election of returned candidate – Order of Election Tribunal reversed : *Ramnath Patel Vs. Sub-Divisional Officer (Revenue), I.L.R. (2001) M.P. 1348,*

-**Article 226**-Alternative remedy of appeal onerous-High Court has power to pass appropriate order : *Timber And Fuel Corporation, Orchha Vs. The Sales Tax Officer, Nowgong, I.L.R. (1974) M.P. 572 (D.B.)*

-**Article 226**-Powers of High Court under-Cannot be taken away except by amendment of Constitution : *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

-**Article 226**-Writ of certiorari-Can issue against arbitrator functioning under Section 10 of Industrial Disputes Act : *The Hindustan Steel Ltd, Bhilai Vs. The Presiding Officer, Industrial Tribunal-Cum-Labour Court. I.L.R. (1974) M.P. 43 (D.B.)*

-**Article 226**-Alternative remedy when not a bar to exercise of jurisdiction under this provision : *Naraindas Sindhwani Vs. Commissioner Of Sales Tax, M.P. Indore, I.L.R. (1974) M.P.770 (D.B.)*

- **Article 226**, Civil Services (Pension) Rules 1976, Rule 42 and (Work- charged and Contingency Paid Employee) Pension Rules, 1979 Rule 6(2) - Service law- Pension- Work-charged employees- Absorbed in a regular post - Service rendered in work charged establishment has to be counted as qualifying service for pension. *Gopi Pillai Vs. M.P.E.B. Jabalpur; I.L.R.(2002) M.P. 474 (D.B.)*

- **Article 226** and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 29—Service law—Disciplinary proceedings—One proceeding dropped and another initiated –Sustainability of later cannot be gone into—Reviewing authority can set aside order of recall and pass another order—No jurisdictional error : *Kuber Sharan Singh Chouhan Vs. State Of M.P., I.L.R. (2005) M.P. 331*

-**Article 226**-Arbitrator in section 10-A, Industrial Disputes Act- Is a person in any case and amenable to writ jurisdiction: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy , I.L.R. (1974) M.P. 208 (D.B.)*

-Article 226-Point not raised in petition-Point cannot be allowed to be urged : *Gopal Prasad Dubey Vs. The Registrar, High Court Of Madhya Pradesh, Jabalpur I.L.R. (1967) M.P. 713 (D.B.)*

-Article 226-Power not to be exercised in case of undue delay : *Bhagwat Prasad Vs. The State Of M.P. , I.L.R. (1967) M.P. 204 (D.B.)*

-Article 226-Power under, discretionary-Not claimable as of right when petition inordinately delayed-Conduct of party relevant consideration : *Bhagwat Prasad Vs. The State Of M.P. , I.L.R. (1967) M.P. 204 (D.B.)*

- Article 226 - High Court Jurisdiction of, to control executive action in matter of appointment to public office against statutory provision : *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur Through Its Commissioner ,I.L.R. (1980) M.P. 536, (D.B.)*

- Article 226-Administrative order based on extraneous matter-Liable to be quashed by a writ : *The Municipal Committee, Seoni Vs. The State Of M.P. & Ors., I.L.R. (1961) M.P. 252 (D.B.)*

-Article 226-Appellate order confirming order of Lower Tribunal-Appellate but not original tribunal made party-Petition liable to dismissal : *Mst. Laxmi Kumari Devi & Ors. Vs. Radhakishan & Ors., I.L.R. (1961) M.P. 821 (D.B.)*

-Article 226-Decision of authority erroneous-No ground of interference unless decision is mala fide : *Kanhaiyalal Vs. The Collector, Damoh & Ors., I.L.R. (1961) M.P. 450 (F.B.)*

-Article 226-High Court - Power of interference-No rule that certiorari to issue when there is no equally efficacious remedy : *Kaniram Vs. Regional Settlement Commissioner, Indore & Anr., I.L.R. (1961) M.P. 938 (D.B.)*

- 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 : *Janpad Panchayat, Rehli Vs. Collector Sagar I.L.R. (1980) M.P. 1 (D.B.)*

-Article 226-Nature of proceedings-To be decided by the nature of proceedings : *Shri Kamal Narain Vs. Pandit Dwarka Prasad Mishra I.L.R. (1966) M.P. 501 (D.B.)*

- Article 226, Arms Act, Indian, 1959, Section 25 and Arms Rules Indian, 1962, Rule 3-Writ petition-Possession of fire arm-Weapon found to be prohibited one-Only Central Govt. empowered to grant licence-State Government granted license for

rimless category—Weapon found to be of rimmed category and prohibited one—Petitioner has absolutely no right to retain the weapon even for a moment. : *Deepak Saxena Vs. State Of M.P., I.L.R. (2005) M.P. 40 (D.B.)*

-**Article 226**-Writ Petition-Service law-Promotion given to similarly placed persons on same consideration but not to the petitioner-Petition filed after a gap of 12 years-Delay-Persons affected in service matters should not be allowed to agitate such matters beyond a reasonable period of six months or one year-No interference due to delay and laches on the part of petitioners : *Naib-Subedar Vs. Union Of India, I.L.R. (2000) M.P. 550*

- **Article 226** - Writ Petition – Tender – Work order – Award of – Must be known to the contractor so that he can take effective steps to comply with the condition – A reasonable transit period has to be allowed – Cancellation of work order before expiry of reasonable transit period on ground of failure to comply with the condition – Action unjustified, arbitrary and illegal : *Rakesh Chandani Vs. M.P. Electricity Board, I.L.R. (2001) M.P. 1463,*

- **Article 226** – Writ petition – Re-auction of liquor shops – Petitioner participated and offered higher bid – Augmentation of revenue – Action of State in public interest – Co-bidder incurred disqualification by subsequent order of Board of Revenue – Not to benefit the petitioner – Petitioner not entitled in law to question validity of second auction at the instance of co-bidders : *M/s. Radhe Sharan Vs. State, I.L.R. (2001) M.P. 1312,*

-**Article 226**-Prerogative power-Not exercisable for enforcing contractual rights and obligation-Exercisable for enforcing contractual rights and obligation-Exercisable for enforcing fundamental right or statutory rights : *M/S Shri Ganesh Trading Company, Sagar, Vs. State Of Madhya Pradesh, ., I.L.R. (1973) M.P., 735 (D.B.)*

- **Article 226**, Regularisation of ad-hoc Appointment Rules, M.P., 1986, Rule 12–Writ petition–Service law–Seniority–Ad-hoc appointment and subsequent regularisation–Rules provide for seniority from date of regularisation–Rule allowed to go unchallenged has to have full play–Employee not entitled to seniority for ad-hoc period : *Dr. (Mrs.) Pushpa Chouhan Vs. State Of M.P., I.L.R. (2005) M.P. 489*

- **Article 226** and Samaj Ke Kamjor Vargon Ke Krishi Bhumi-dharon Ka Uddhar Dene Walon Ke Bhumi Hadapan Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M.P., 1976, Section 2(c), 4–Application for setting aside sale transaction–Applicant has to prove that he is 'holder of agricultural land' within the meaning of Section 2 (c)–No such averment in application–Dispute not maintainable. : *Vir Singh Vs. Collector, Sagar, I.L.R.(2005) M.P. 586*

– **Article 226** – Writ petition – Municipal Corporations Act, 1956 – Sections 173, 174 and 184 – Demand and Appeal against – Objection filed by petitioner against the demand revised by the Corporation kept undecided – Provisions for Appeal under Section 184 of the Act cannot be invoked – Corporation directed to decide the objection of petitioner : *Dhanya Kumar Vs. State, I.L.R. (2001) M.P. 160.*

– **Article 226** – Service law – Writ Petition – Petitioner appointed on contract basis - Number of show cause notices served alleging misconduct – Replies though not found satisfactory yet no enquiry held – Termination necessarily attaches stigma though the contract period ended – Order of termination set aside with all consequential benefit : *Rahul Tripathi Vs. Rajeev Gandhi Shiksha Mission, Bhopal, I.L.R. (2001) M.P. 1144,*

- **Article 226** - Delay - Petitioners making representations against their placement in the seniority list - Not replied to by the University which was itself in the process of organization - Petitioners expecting considerations of their grievance - Filing petition immediately after Juniors were promoted - Petition cannot be dismissed on the ground of delay : *Ganesh Prasad Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur I.L.R. (1984) M.P. 513*

- **Article 226** - Finding of fact as to whether it was a prohibited transaction and not an outright sale - Not liable to be interfered with in writ jurisdiction : *Shri Ram Soni Vs. Collector, Sagar I.L.R. (1984) M.P. 708 (D.B.)*

- **Article 226**, Evidence Act, Indian, 1872, Section 45 – Son of the Petitioner died in police custody – Number of injuries found on the body of the deceased – Team of Five Doctors did not give any opinion regarding cause of death – Held – Primary Object of forensic autopsy is to determine cause of death – Pathologists owe a duty even to the dead – In spite of findings the Doctors opined cause of death unascertainable – Exemplary cost of Rs. 1,00,000/- granted by way of compensation. *Abdul Ghaffar Vs. State Of M.P., I.L.R. (1993) M.P. 434 (D.B.)*

- **Article 226**–Writ Petition–Habeas Corpus–Preventive detention–Confirmation by State Govt.–National Security Act, 1980, Sections 10, 11, 12–Order confirming detention passed only on the basis of recommendation of Advisory Board and without considering the record of Advisory Board–Violation of mandatory requirement–*Order of confirmation illegal. Lala @ Ahmed Vs. State, I.L.R. (2002) M.P. 35 (D.B.)*

- **Article 226**–Writ Petition–Mandamus–Writ of Mandamus can be issued to a public authority to perform positive duty–Government is in a better position to decide

the question of taking over the management of a school—Court cannot usurp that function. *Ashasakiya Shastri Uchhtar Madhyamik Vidyalaya, Kari, Dist. Tikamgarh Vs. State; I.L.R. (2002) M.P. 193*

- **Article 226** – Departmental enquiry – Punishment of withholding of two increments – Subsequently name not considered for promotion – Representation given after 6 years – Plea of unawareness of punishment not justified since he was getting lesser pay : *R.C. Bansal Vs. Hon'ble High Court Of M.P., I.L.R. (2001) M.P. 1456*

- **Article 226** - Alternative remedy - Existence of arbitration agreement - Not an absolute bar : *Jiyajeerao Cotton Mills Ltd. Gwalior Vs. M. P. Electricity Board, Jabalpur, I.L.R. (1983) M.P. 193 (D.B.)*

- **Article 226** - Usurper in office continuous to be an usurper each day he remains in office - Inappropriate to dismiss petition on ground of delay : *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur Through Its Commissioner, I.L.R. (1980) M.P. 536, (D.B.)*

-**Article 226**-Member of University, right to move for a writ of mandamus to University to act according to provisions of Act Appointment of Vice-Chancellor void-Amounts to office remaining vacant and appointment of Vice Chancellor remains to be made-Issue of Writ of Mandamus in circumstances only proper remedy : *Dr. S.C. Barat & Ors. Vs. Shri H.V. Pataskar, Chancellor Of The University Of Jabalpur & Ors., I.L.R (1962) M.P. 360 (D.B.)*

- **Article 226** –Commercial Tax Act, M.P., 1994 (as amended), Section 9–Writ Petition–Tax Laws–Nothing to show that sale was to be concluded in A.P.–Mere issuance of transit pass will not make it an inter-State Sale–Delivery could be taken only on payment of full price including M.P. Commercial Tax : *Andhra Pradesh Paper Mills Ltd. Vs. State Of Madhya Pradesh, I.L.R. (2005) M.P. 198 (D.B.)*

- **Article 226** - Government not holding election for 3 years after dissolution of council but attributing cause of delay to emergency and its business in socio-economic programmes - Explanation acceptable - No breach of duty - No writ can issue : *Mukutdhari Vs. State Of Madhya Pradesh I. L. R. (1981) M.P.665 (D.B.)*

- **Article 226** - Natural Justice - Judicial practice - Nobody should be the Judge of his own cause - Alternative remedy lies before the officer who passed the impugned order - Petition should be entertained by High Court : *Thaneshwar Mishra Vs. Zila Sahakari Kendriya Bank Maryadit, Mandla I.L.R. (1985) M.P. 275 (D.B.)*

- **Article 226** - Remedy of election petition under section 20 available - Result of the election not shown to be materially affected if proper procedure would have been adopted - Discretion in the matter of entertaining writ petition challenging selection of councillors not exercised : *Shreekrishan Vs. State Of M.P., I.L.R. (1985) M.P. 660*

- **Article 226** - Sub-Registrar refusing to accept document for registration - Acts illegally - Writ issued directing Sub-Registrar to register document : *Kailash Vs. Sub-Registrar, Indore I.L.R. (1985) M.P. 144 (D.B.)*

- **Article 226** - Locus Standi to file writ petition challenging such selection and appointments - Whether confined to 'person aggrieved' only - Organization of employees having special interest in subject-matter-Right of, to challenge such selection and appointments : *Bikal Bihari Soni Vs. State Of M.P. I.L.R. (1985) M.P. 762*

- **Article 226** - Basis adopted by the Board of levy of normal tariff upto ceiling limit fixed under the Regulation order penal tariff for consumption in excess of ceiling limit - Whether reasonable : *Jiyajeerao Cotton Mills Ltd. Gwalior Vs. M.P.Electricity Board, Jabalpur, I.L.R. (1983) M.P. 193, (D.B.)*

- **Article 226** - Petitioner having sufficient interest can invoke jurisdiction of High Court even though Mayor and all councillors not made parties : *Mohammad Ali Khan Vs. State Of M. P., I.L.R. (1983) M.P. 560, (D.B.)*

- **Article 226** - Powers of High Court to interfere in public interest and for protecting State Exchequer even when orders not challenged by way of appeal : *State Of M.P. Vs. Board Of Revenue, M. P., I.L.R. (1983) M.P. 302, (D.B.)*

- **Article 226** and Judicial Service (Classification, Recruitment and Conditions of Service) Rules, M. P., 1955-Examination for selection of Civil Judges conducted by Public Service Commission - Errors and mistakes in question papers – Effect of - When may be interfered with under Article 226 - Mark sheets should be supplied to the candidates immediately after the result : *Anil Kumar Jain Vs. State Of Madhya Pradesh I.L.R. (1985) M.P.265 (D.B.)*

- **Article 226** and Municipalities Act M.P., 1961, Section 109-Writ Petition-Construction of hanging bridge over place of national importance-Built operate and Transfer Scheme-Objections regarding safety of public and place raised by various authorities-Agreement by Nagar Panchayat after nine years of offer that too without approval of State Government-Agreement void-No right conferred under void agreement. *Jaspal Oberoi Vs. State; I.L.R. (2002) M.P. 886 (D.B.)*

- **Article 226**—Appeal—Service—Termination from service after lapse of about 15 years—Alleged production of false Caste Certificate—Caste 'Panika' ceased to be a Scheduled Tribe after appointment—Caste Certificate not obtained by playing fraud—Order of termination quashed : *Lakhandas Manikpuri Vs. The Central Warehousing Corporation, New Delhi, I.L.R. (2002) M.P. 279 (D.B.)*

- **Article 226** and National Security Act (LXV of 1980), Section 3(2) – Preventive Detention – Detention facing in criminal cases for possessing explosives substances and indulging in criminal activities in an organized manner having effect of causing disturbance to public peace and order – Order of detention proper – No interference called for : *Smt. Rashida Begum Vs. State, I.L.R. (2001) M.P. 169, (D.B.)*

- **Article 226**, Advocate Act, 1961, Sections 3,8, 8-A and State Re-organization Act, M.P., 2000, Section 74- State Bar Council is a body corporate and a legal person- Does not mean members, Chairman and Vice-Chairman-Power conferred on body constituted under Central Act or Principal Act to exercise jurisdiction for a period of two years does not extend term of an elected member-Term of elected body expired-Direction issued to constitute Committee under Section 8-A and hold election as mandated in law. *Radhelal Gupta Vs. State Bar Council Of M.P.; I.L.R.(2002) M.P. 484*

- **Article 226** and Industrial Disputes Act, 1947, Sections 2(j), 2(o) and Section 25-F - Madhya Pradesh Rajya Van Vikas Nigam Limited engaged in business of forest produce - Covered under the definition of 'industry' - Retrenchment - Prerequisites of Section 25-F not followed - Retrenchment bringing in termination of service is void ab initio. *Madhya Pradesh Rajya Van Vikas Nigam Limited, Balaghat Vs. Q.M. Qureshi; I.L.R.(2002) M.P. 645*

- **Article 226**, Gram Nyayalaya, Adhinyam M.P. 1996, Sections 5,6,11 and Gram Nyayalaya Rules, M.P. 2001, Rule 52-Constitution of Gram Nyayalaya-Nomination-Framing of Rules-Section 11 mandatory provision-Nomination of less qualified persons prior to framing of Rules-No approval of State Govt.-Reconsideration of entire nomination directed. *Raghubar Patel Vs.. State of M.P.; I.L.R. (2002) M.P. 877 (D.B.)*

- **Article 226** and Electricity Duty Act, 1949, Section 3– Electricity Duty-Obligation of State to provide water to townships– Water pumping station built by State Government to provide water to township of BHEL - Township not declared as Industrial Township-Electricity consumed by PHE Deptt. of State Govt. and not by BHEL- Levy of duty on basis of non-public utility purpose- Not proper. *Bharat Heavy Electricals Ltd. Vs. State of M.P.; I.L.R.(2002) M.P. 563 (D.B.)*

- **Article 226** - Petitioner having knowledge of alteration in voters' list contrary to Rules participating in election and after being unsuccessful invoking jurisdiction of the High Court under Article 226 - Petitioner's conduct disentitles him to any relief : *Govind Arya Vs. Authorised Officer, Gram Panchayat Elections, Tehsil Mhow, Dist. Indore I.L.R. (1984) M.P. 98 (D.B.)*

- **Article 226**—Writ Petition—Industrial Disputes Act, 1947—Section 33—C(1)—Closure of Industry due to dispute with Bank—Permission for 'lay-off' or for 'closure' not taken—Recovery of wages during closure—Order by authority without notice to industry—No specific provision in Section for notice to employer—No provision in law by which workers can be deprived of wages in such circumstances—No prejudice caused to employer—Dispensing with notice not against the natural justice—Order of authority upheld. *Bilaspur Spinning Mills And Industries Limited, Bilaspur Vs. The Deputy Labour Commissioner Raipur; I.L.R. (2002) M.P. 196*

- **Article 226**—Writ Petition—No confidence motion—Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993, Section 21(3) and Panchayat (Gram Panchayat Ke Sarpanch Tatha Up Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994, Rule 5—No confidence motion—Meeting postponed on account of some dispute as to allowing one of the panchas who come late to participate in the meeting—Motion not considered—Such meeting would not create a bar envisaged in Section 21(3). *Babulal Baiga Vs. State; I.L.R. (2002) M.P. 262*

- **Article 226**—Writ Petition—Panchayat Election—Recounting of votes—Panchayat Raj Adhiniyam, M. P., 1993—Section 122 and Panchayat Nirvachan Niyam, M. P., 1995—Rule 80—Adequate and cogent evidence has to be adduced to make out a case for recounting—Application for recount of votes submitted to the Presiding Officer not authorised by Returning Officer—Not sufficient to order recounting of votes—Matter remanded for fresh decision on evidence to be adduced by the parties. *Smt. Sushila Vs. Shri Ram Prakash; I.L.R. (2002) M.P. 41*

- **Article 226**—Writ Petition—Panchayat Raj Adhiniyam, M. P., 1993 (I of 1994)—Section 40—Removal from office of Sarpanch—Petitioner's request to produce documents, oral evidence and examination of witnesses denied by S.D.O.—Charges against were of such nature which can be proved or disproved by evidence—Enquiry behind the back—Denial of fair hearing resulted in serious prejudice—Order of removal and disqualification is un-reasonable arbitrary and violative of principles of natural justice. *Kailash Kumar Dangi Vs. State, I.L.R. (2002) M.P. 9*

- **Article 226**—Writ Petition—Premature release on probation—Penal Code, Indian, 1860—Sections 149, 302 and Prisoner's Release on probation Rules, 1964, M.P.—Brutal murder committed by petitioner—Petitioner may be innocent before the crime

was committed but if the crime committed brutally the said circumstances is to be weighed in a proper manner—One of the petitioners caught hold of the deceased and the other pierced ballam in stomach region—Probation Board considering brutality rejected the application—No interference called for. *Sushil Kumar Vs. State, I.L.R. (2002) M.P. 61*

- **Article 226**—Writ Petition—Preventive detention—National Security Act, 1980, Sections 2 and 3—Maintenance of public order—Offence committed in the year 1985 as also the Rojnamcha report cannot be made foundation for preventive detention under the Act—If any serious offence is committed the same would be matter of Law and Order but not that of Preventive order—Case not proximate to the date of order—Could not be taken into consideration—Detenue acquitted in 13 out of 14 cases and only one criminal case pending against him—That fact was not placed before detaining authority—Order of detention bad. *Smt. Geeta Sahu Vs. District Magistrate, I.L.R. (2002) M.P. 26*

- **Article 226** and Cooperative Societies Act, M.P., 1960, Sections 52(1), 53-B and Cooperative Societies Rule 1962, Rules 43(5) and 45(1) – Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered – Opportunity of hearing – Not required before issue of a notice under – Section 53-B – President is to be heard in the meeting of the Committee of the society – Nominated members – Are members of the committee – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787*

- **Article 226**- alternative remedy – An election petition may or may not be an alternative remedy in an action of *quo-warranto* but court firstly would be required to appreciate whether the complaint is made against an action or is against a man, if the action is found to be illegal then a statutory remedy may be available, but if the action is against a man challenging his authority to act in a particular manner, then the alternative remedy would be not bar : *Nandkishor Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539*

– **Article 226** – General Policy Statement of Cabinet Sub-Committee – Unless incorporated in the Rules cannot be enforced through writ of mandamus particularly when they are made prior to amendment of the provisions for General Licence Conditions framed under the Rules : *State Vs. M/s. Swami Traders, I.L.R. (2001) M.P. 1495, (D.B.)*

- **Article 226**—Writ Petition—Recovery due to Bank and Financial Institutions Act, 1993, Sections 17 and 18 and Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki

Vasuli) Adhinyam, 1987, Section 3–Issuance of Land Revenue Recovery Certificate for recovery of loan under Lok Dhan Adhinyam–Provision of the two Acts are independent–There is no overlapping between the two Acts–Jurisdiction of Recovery of money by recovery officer under the Lok Dhan Adhinyam is not ousted. *M.L. Chaurasia Vs. Tahsildar, Balaghat; I.L.R. (2002) M.P. 276 (D.B.)*

- **Article 226**–Writ Petition–Industrial Relations Act, M.P. 1960, Sections 31(3), 61 and Limitation Act, Section 5–Adverse remarks in ACR and promotion–Limitation for application to Labour Court is 2 years–Proceedings can not be initiated after the prescribed period–Labour Court performs judicial function and hence in a court–Since Labour Court was not decided the issue of limitation–Case remanded– A proceeding before the Labour Court cannot be instituted after the period of limitation as prescribed is over. *Narayan Thakur Vs. Madhya Pradesh Electricity Board, Jabalpur; I.L.R. (2002) M.P. 269*

- **Article 226** – Maintainability of Writ Petition – Society not falling within the meaning of ‘State’ – Still amendable to writ jurisdiction to enforce statutory duty or duty imposed by charter, common law, custom or contract – Even if the respondents/Societies can not be characterized as ‘State’ within the meaning of Article 12 of the constitution and, as such, are not amendable to writ jurisdiction, if the society or its officers act in violation of statutory provisions and/or fail to discharge statutory public duty, a writ would lie for enforcement of statutory obligations and public duty. *Dinesh Kumar Vs. M.P. Dugdha Mahasangh Sahkari Maryadit, I.L.R. (1993) M.P. 53 (F.B.)*

- **Article 226** – Regularisation – Petitioner had applied for appointment on the post of Research Assistant and was not appointed in any cadre post and certainly not as an Assistant Professor – It is not disputed that on the date of appointment as Research Associate Petitioner was not possessed of the essential qualification which were pre-requisites to the seeking of appointment on the post of Assistant Professor – Petitioner claims regularization on the post of Assistant Professor – Held - An officer substantively holding one post merely allowed to hold charge of another post or allowed at times to discharge duties attaching with such other post cannot have any right of expectation built upon it – Petition dismissed., *Chandrabhan Sachan Vs. Jawaharlal Nehru Krishi Vishwavidyalaya Jabalpur, I.L.R. (1993) M.P. 507 (D.B.)*

- **Article 226**–Writ Petition–Recovery of land from money lender–Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dane Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M.P., 1976, Sections 3,4,7,11 and 14–Application for cancellation of sale deed being prohibited transaction–Civil Court's jurisdiction barred–Principles of res- judicata–Suit dismissed by Civil Court for want of jurisdiction–Application filed before competent authority within the extended period of limitation–Dismissal of suit for declaring sale

deed invalid on ground of limitation would not attract principle of res-judicata as there was no adjudication on merits—Prohibited transaction—Consideration for sale woefully inadequate—Finding as to inadequacy of consideration of sale deed is based on appreciation of evidence—Cannot be questioned in writ jurisdiction—Initial transaction was prohibited transaction—Subsequent sale cannot survive—Order of restoring possession rightly passed. *Seth Ratilal Vs. Smt. Gangabai*; I.L.R. (2002) M.P. 200 (D.B.)

- **Article 226** - Petitioner without being confirmed granted increment and earned leave under mistake - After termination of his services recovery sought to be made - High Court will not interfere : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh* I.L.R. (1984) M.P. 195 (D.B.)

-**Article 226**-Direction by High Court to appellate authority to re-hear revision after quashing its order-The question how the revisions were dismissed is immaterial-Appellate authority bound to carry out direction : *Haji Nazir Bhai Vs. The State Transport Authority, M.P., Gwalior* I.L.R. (1968) M.P. 588 (D.B.)

- **Article 226** and Civil Services (Classification Control and Appeal) Rules, M.P., 1966, Rule 27 (2)—Writ petition—Service Law—Disciplinary proceedings—Appeal against Order of punishment—Consideration of—Quasi judicial scrutiny—Irrefragably and indubitably more than basic content of judicial review—Must reflect that there has been application of judicial mind—Such reflection cannot be perceived unless some reasons are ascribed—No reason ascribed—Order of appellate authority quashed—Matter remitted back. : *Mohammad Idris Vs. Registrar General M.P. High Court, Jabalpur*, I.L.R. (2005) M.P. 126

- **Article 226** – Competitive Examination – Competitive Examination conducted by M.P.P.S.C. for recruitment in State Junior Judicial Service – Method of examination challenged on the ground that valuation of answer paper by computer may not be correct- Correctness of certain questions also challenged – Held – Valuation of answer sheet by computer not improper – Valuation was fair although key answer of 5 questions were not correct – Entire examination cannot be set aside on this ground only – All candidates entitled to get as many marks as they would have ordinarily obtained, had the key answers been correct – Petition disposed off. *Rashid Suhail Siddiqui, Jabalpur Vs. State Of M.P., I.L.R. (1993) M.P. 408 (D.B.)*

-**Article 226** – Fundamental Rule FR-56(a) – Public Interest Litigation – Technical Objection needs no consideration – Manner in which the extension was granted to private respondent does give rise to an apprehension that the private respondent was himself instrumental in securing extension and was favoured by the authorities concerned totally overlooking the regular and normal procedure laid down in FR-56 and the guidelines – Held – Administrative Power in granting extension has

been abused - Petition allowed. *Jai Shankar Prasad Vs. State Of M.P., I.L.R. (1993) M.P. 530 (D.B.)*

- **Article 226**, Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ko Padchyut Karne/Sewa Se Hatane Sambandhi Prakriya), Niyam, 1983, Rule 12(3)(b) – Petitioner working as Physical Instructor in the institution – Services terminated on the basis of certain charges without holding Departmental enquiry – Rule 12(3)(b) requires prior approval of competent authority – Termination order passed without seeking approval – Competent Authority granting approval during the pendency of petition – Approval should be prior in time and not after the issuance of termination order – Approval obtained after termination order is no approval – Order terminating services quashed – Petitioner reinstated with salary and other emoluments., *Dilip Vs. Prabandhak Samiti Maheshwari. Hss, I.L.R. (1993) M.P. 96 (D.B.)*

- **Article 226** – Appointment of Dealer – Respondent No. 3 suppressing the fact of having gainfully employed and was ineligible for appointment as Dealer – Fact of employment of respondent no. 3 not before Board at the time of consideration – When material condition is omitted whole consideration becomes bad – Appointment of respondent no. 3 as dealer set aside – Indian Oil Corporation to issue fresh advertisement considering application of Petitioner as well as those of others., *Smt. Chinta Jaiswal Vs. Indian Oil Corporation Ltd., I.L.R. (1993) M.P. 489 (D.B.)*

- **Article 226**–Private Educational Institution–Promotion effected subject to approval of the Commissioner–Superannuation of promotee intervened–Claim of salary for the promotional post–Relief clause in the petition not worded as such–Writ Court can mould the relief clause if the same flows from facts of the case independent of any other inference–Private Educational Institution (Promotion to Teachers and other Employees Working in Schools) Rules 1988–Rule 6(1)–Before conferring privilege of promotion prior approval of Commissioner is condition precedent–Prior approval not given by the Commissioner–Petitioners not entitled to get salaries from the State Govt : *Prakash Chand Jain Vs. State And Ors., I.L.R. (2003) M.P. 36 (D.B.)*

- **Article 226**–Writ Petition–Service Law–Private Educational Institution–Promotion effected subject to approval of the Commissioner–Superannuation of promotee intervened–Claim of salary for the promotional post–Relief clause in the petition not worded as such–Writ Court can mould the relief clause if the same flows from facts of the case independent of any other inference–Private Educational Institution (Promotion to Teachers and other Employees Working in Schools) Rules 1988–Rule 6(1)–Before conferring privilege of promotion prior approval of Commissioner is condition precedent–Prior approval not given by the Commissioner–Petitioners not entitled to get salaries from the State Govt.–Petitioners promoted by the Education Society and they worked on the promotional post–Entitled to receive

salaries from the society in the relevant pay-scale : *Prakash Chand Jain Vs. State And Ors., I.L.R. (2003) M.P. 36 (D.B.)*

- **Article 226** and State Co-operative Marketing Federation Ltd. Employees' Service Rules(...)-Rule 23-Continuation of departmental enquiry after superannuation-There has to be specific provision under the law to take action against a person who has ceased to be in the service-Chargesheet and order inflicting punishment quashed-Retiral dues directed to be paid with interest : *Radheshyam Khichroli Vs. M.P. State Co-Operative Marketing Federation Ltd, I.L.R. (2003) M.P. 107*

- **Article 226**-Writ Petition-Defence Services-Invalid Pension-Pension Regulations 1961, Regulation 173 and Appendix II thereto-Rule 7(b)-Disease which has led to an individuals discharge or death will ordinary be deemed to have arisen in service if no note of it was made at the time of acceptance in military service-No note of disease made at the time of petitioner's acceptance in service-Must be deemed that the disease has arisen in service-No reason given for the medical opinion-Petitioner entitled to invalid pension-Delay in filing writ petition-Petitioner not entitled to invalid pension till filing of the petition : *Raj Kumar Vs. Union Of India, I.L.R. (2003) M.P. 387*

- **Article 226**-Writ petition-Service law-Recruitment and termination on ground that there was no vacant post of driver and the Government circular for terminating daily wages employees appointed after 31.12.1988-Petitioner appointed in 1992-Worked as driver on daily wages for four years-Thereafter regularised on the post of driver-Work and conduct must have been found upto the mark-No need of forming selection committee or formality of interview-Termination-Against the rule of "fairness" of the administration-Order of termination quashed : *Pawan Kumar Vs. State, I.L.R.(2003) M.P. 396*

-**Article 226**-Letters Patent Clause X-Appeal-Writ petition challenging dismissal of appeal after 12 years-Competent authority concluded proceeding in 1990-Cannot be re-opened by filing writ petition in 2002-Urban Land (Ceiling and Regulation) Act, 1976, (Repealed by Act No. 15 of 1999), Sections 6(1) , 10(5) and 33 - Objection to Draft Statement-Appeal-Dismissal of notice-Nature of land-Finding of fact-Clear finding that the land was meant for housing purpose-Cannot be reagitated in appeal-Dismissal of petition justified on ground of laches : *Bhaiyaji Udayram Vs.. State, I.L.R. (2003) M.P. 621 (D.B.)*

-**Article 226** and Penal Code, Indian, 1860-Sections 149, 302-Life convict-Release on licence-Prisoners Release on Probation Act, M. P., 1958, Section 2 and Prisoner's Release on Probation Rules 1964, Rule 4, 6(2) and 6(3)-Law requires the Government to give reasons while accepting the recommendation of the Probation

Board – Co - accused released on probation but recommendation to reject petitioner's application accepted by the Government by one line order–No reason give–Matter remitted back for reconsideration : *Prabhat Vs. State of M.P., I.L.R.(2003) M.P. 508*

- **Article 226** and Letters Patent Clause X–Appeal –Co-operative State Marketing Society–Election of Board of Director–Co-operative Societies Act, M. P. 1980–Section 49 (7-A) and (7AA)–Tenure of Board of Director is five years–Term extended by twelve months in the work of re-organisation the society on creation of new State of Chhattisgarh–Outer limit of holding election is day before expiry of the term of office–Election conducted prior to expiry of extended term–No law to prohibit conduct of election prior to expiry of extended period or during statutory period of the tenure of Board of Directors–Going to election before expiry of term–Mere democratic and a better option–No illegality committed : *Akbar Mohd. Khan Vs. State, I.L.R. (2003) M.P. 516 (D.B.)*

–**Article 226**–Writ petition–Service Law–Departmental enquiry--Stay of–On ground that criminal trial is pending–What is required to be seen is whether DE would prejudice the defence at criminal trial-- petitioner posted as Nazir of 'Malkhana' in District court establishment–Criminal trial relates to missing foreign liquor bottles and other properties–Allegation levelled in DE relate to not handing over charge, not following order and not keeping articles in indentifiable condition–DE not likely to prejudice petitioner in criminal trial-- Enquiry officer justified in not staying enquiry proceedings : *M.P. Vs. District & Sessions Judge, I.L.R. (2003) M.P. 597 (D.B.)*

-**Article 226**–Writ petition- Service law–Retiral benefits–Release of commutation pension –Civil Services (Commutation of Pension) Rules, M.P. 1996–Rules 7, 11 and 44–Finality of commuted value of pension–Employee retired, below 70 years of age and has not completed 15 years from the date of retirement–Commutation of pension becomes final on the date of application–Cannot be denied commuted value of pension. Date of employee not going to come in the way : *Balmiki Kachhi Vs. Municipal Corporation, Jabalpur, I.L.R. (2003) M.P. 611*

-**Article 226** and Panchayat Raj Adhiniyam, M.P., 1993, Sections 92 and 122–Petition -Improper rejection of nomination paper–Candidate facing action in exercise of power to recover records, articles and money–Rejection of nomination paper rejected by Returning Officer–Correct and justified : *Uttam Vs. Bharat Lal Yadav, I.L.R. (2003) M.P. 747*

- **Article 226**–Writ Petition–Service Law– Departmental Enquiry proceedings qua criminal prosecution– Acquittal recorded in criminal case–No bar to imposition of penalty in departmental proceeding where standard of proof required is that of preponderance of probability and not beyond reasonable doubt–Punishment of removal from service imposed after departmental enquiry–Challenge before High

Court in Writ petition—Adequacy or reliability of evidence—Not a matter which could be permitted to be canvassed in writ proceeding if there is some legal evidence—Finding of enquiry officer based on appreciation of evidence—Not a case of 'no evidence' or 'perverse finding'—Petition dismissed : *Hari Shanker Malviya Vs. The High Court of Madhya Pradesh through Registrar, High Court of Madhya Pradesh at Jabalpur, I.L.R. (2003) M.P. 888*

—**Article 226**—Writ petition—Tender bid—Rejection of and forfeiture of earnest money—Value of work Rs. 16.24 lacs—To be completed in three months including rainy season—Financial capacity of tenderer does play a vital role—Notice inviting tender specific that tenderer has to be registered to do work upto Rs. 50 lacs—Failure to get so registered—Rejection of tender bid—No irregularity—Earnest money—Petitioner aware of the stipulation of forfeiture of earnest money—Not complying the requirement entailing rejection of tender—Forfeiture of earnest money—No illegality : *Ramlal Tripathi v. State, I.L.R. (2003) M.P. 753*

- **Article 226**, Municipalities Act, M.P., 1961, Section 56- Service Law—Compulsory retirement—Matter not decided by the President-in-Council—Cannot be added in General Council in the guise of confirmation of minutes of President-in-Council—Consideration of any other subject not on agenda—Proved—Entire service record not considered—No enquiry conducted into the allegation—Order manifestly illegal—Cannot become valid by supplying additional reason in the return : *Smt. Kamla Bai Vs. Nagar Panchayat, Jatara, I.L.R. (2003) M.P. 759 (D.B.)*

—**Article 226**—Acquisition of land by Development Authority—Reference to joint-Tribunal—Reference ended in compromise—Challenge made by legal heirs of original holder after lapse of two decades claiming that grievance still subsists as representation were made—Repeated representation cannot keep the cause of action alive—Petition sans vital because of delay and laches : *Abdul Rashid Vs. State, I.L.R. (2003) M.P. 916*

- **Article 226**- Service Law- Letters patent Appeal, clause X—Superannuation - Madhya Bharat Roadways—A unit of erstwhile State of Madhya Bharat—Taken over by State of Madhya Pradesh with effect from 1.11.1956- Appellant appointed on 1-3-1959—Governed by Fundamental Rules of the new state of M.P.—Not entitled to benefit of superannuation at the age of 60 years—No interference called for in the order of writ court : *Sultan Ahmad Vs.. Madhya Pradesh State Road Transport Corporation, I.L.R. (2003) M.P. 956 (D.B.)*

-**Article 226** and Civil Procedure Code (V of 1908) Order 47 rule 5 of the Code - Order Proprio vigore does not apply to petition under Article 226 - Provisions of Order 47, rule 5 not invocable in derogation of rules 3 and 4 of Chapter 1 of rules

framed by High Court : *Manoharlal Verma Vs. State Of Madhya Pradesh I.L.R. (1977) M.P. 86 (D.B.)*

-Article 226-Statutory appeal mechanically dismissed-Appellate Order liable to be quashed by writ : *Brigadier Gurdial Singh Vs. Union Of India, I.L.R. (1975) M.P., 431 Pandey And Mr. Justice Shiv*

-Article 226-Writ of mandamus - Not available for claiming refund after assessment order reversed in appeal-Cannot be issued for execution of decree or order-Does not confer jurisdiction to decide questions of fact-No power in High Court to issue writ in cases where party would be deprived of right to raise relevant pleas : *Suganmal Vs. The State Of Madhya Bharat & Ors., I.L.R. (1962) M.P. 48 (D.B.)*

- Article 226 - Petition challenging total ban on slaughter of bulls and bullocks - Question involved was “till what age the cattle in question are useful” - Is a question of fact – Data published in a book can not ipso facto be regarded as conclusive – It may be the only a view of the author based on data not collected scientifically from a reliable source - Writ Court should be heedful while accepting and relying upon such data – Specially when there is a bona fide dispute between parties : *Hasmatullah Vs. State Of M.P. & Ors., I.L.R. (1996) M.P. 57 (F.B.)*

-Article 226-Writ of certiorari - Not a writ of right-Discretionary remedy-Not granted as a matter of course-Not granted at the instance of a party at whose instance or in whose favour the error was made-Person taking chance of decision in his favour by adopting one basis-Cannot be allowed to question that basis when decision goes against him-High Court not to substitute its own judgment when tribunal has taken possible view on evidence : *The Jabalpur Bijlighar Karmachari Panchayat, Jabalpur & Anr. Vs. The Jabalpur Electric Supply Co. Ltd., Jabalpur And Anr., I.L.R. (1963) M.P. 56 (D.B.)*

-Article 226-Writ of certiorari - Question not raised before tribunal whose order is challenged-Question cannot be raised in High Court : *Manrakhantal Vs. Shri Chaturvedi, I.L.R. (1959) M.P.884 (D.B.)*

- Article 226, Municipal Corporation Act, M.P., 1956, Section 37 and Municipalities (Conduct of Business of Mayor-in-Council/President-in-Council and the Power and Functions of the Authorities) Rules M.P., 1998, Rule 3(2)-Concept of reservation in Rule 3(2)-Cannot be regarded as an encroachment-Does not supplant any provision of the Act abrogating essential features-Rule 3(2) intra vires : *Ram Dayal Prajapati Vs. State of M.P. I.L.R. (2002) M.P. 589 (D.B.)*

- **Article 226** and Land Acquisition Act (I of 1894) – Section 18 – Application for re-determination – Allowed by Collector – Writ Petition is the only remedy available to the Union of India as it could not avail remedies of either reference under Section 18 or Appeal under 54 as it is not an interested person as envisaged under Section 3(b) or the Act : *Union of India Vs. The Jt. Collector & Land Acquisition Officer, I.L.R. (2001) M.P. 998, (D.B.)*

- **Article 226** and Forest Act, Indian 1927-Sections 4 & 20-Cancellation of quarry lease-Area falls within forest area notified-Forest land-It includes not only forest as understood in dictionary sense but also area recorded as forest in Government record-Once Notification under Section 4 has been issued notwithstanding the fact that area has not been declared finally reserved under section 20 the area remains forest-Quarry operation can not be allowed. *Lampoo Gond Vs. State of M.P.; I.L.R. (2002) M.P. 894 (D.B.)*

-**Article 226**, Displaced Person (Compensation and Rehabilitation) Act 1954, Sections 2(b), 33 - Settlement Commissioner New Delhi ordered to give effect to the adjustment by issuing necessary sanad - Order attained finality-Order issued by Rehabilitation Department for issue of sanad - Also approved by Rehabilitation Minister - Petitioner in possession- Impugned Order of ejection without opportunity of hearing, illegal and in contravention of earlier orders. *Shankerdas Lohana Vs. Union of India; I.L.R.(2002) M.P. 620 (D.B.)*

- **Article 226** - Public Service Commission inviting applications for a particular post upto a particular date from candidates possessing necessary academic qualification - Relevant date for determination of eligibility of candidates with regard to academic qualification - Petitioner not eligible on the date of application though permitted to appear in written test - Public Service Commission not calling him in interview - Public Service Commission not estopped from challenging eligibility of petitioner : *Chandrakant Puranik Vs. M. P. Public Service Commission, Indore, I.L.R. (1982) M.P. 944, (D.B.)*

- **Article 226** - Petitioner unsuccessful examinee at LL. B. Examination of Saugor University - Awadhesh Pratap University permitting petitioner to appear in LL. B. Examination as Ex-student-Admission card issued - Subsequently University cancelling it and withholding result without notice to show cause - Rules of natural justice violated - Certiorari can issue : *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University Rewa I.L.R. (1979) M.P. 289 (F.B.)*

-**Article 226**-Statement of new facts in return to support orders-Not permissible - Misconstruction of deed-Amounts to error of law apparent on face of record-Filing of revision and not an appeal-Does not amount to non availing of remedy provided by

the Act-General Sales Tax Act -Section 39-Revisional order not enhancing, modifying or cancelling assessment-Does not give right of appeal to assessee - Consequently no right of reference under section 44 of the General Sales Tax Act : *Calcutta Company Ltd., Calcutta Vs. Commissioner Of Sales Tax, M.P., Indore & Ors., I.L.R. (1965) M.P. 370 (D.B.)*

- **Article 226** and Educational Services (Collegiate Branch) Recruitment Rules, M.P., 1990-Regularisation-Claimed from the date of actual joining-Initial appointment not made following procedure laid down by rules but appointee continued uninterrupted till regularisation as per rules-Respondents directed to consider petitioner's case for regularisation from the date of initial appointment. : *Smt. Abhilasha Sathe Vs. State Of M.P., I.L.R. (2005) M.P. 584*

- **Article 226**, General Sales Tax Act, M.P., 1958-Section 19-Writ petition-Tax laws-Reassessment proceedings based on flying squad report-Inter-State sale-No concealment of taxable turnover-Exempted from payment of tax by permitting deduction-Except for change of opinion no material to initiate proceedings-Authorities acted beyond jurisdiction-Re-assessment proceedings *and order of reassessment quashed* : *M/s. Eisher Motor Ltd. Vs. State Of M.P., I.L.R. (2005) M.P. 233*

- **Article 226**, Krishi Upaj Mandi Adhiniyam, M.P., 1972, Section 33 and Penal Code Indian, 1860, Section 420-Writ petition-Cancellation of Mandi Licence-Partnership firm-Petition in the name of firm will be deemed to have been filed by all the partners who are citizens of India-Petition maintainable-Criminal liability is in persona-All partners cannot be held liable-Cancellation of licence without opportunity of hearing-Violative of principles of natural justice-Deserves to be quashed-Petition allowed : *M/s Gangabishan Dwarikadas Agrawal Vs. State Of Madhya Pradesh, I.L.R. [2005] M.P. 217*

- **Article 226**-Writ petition-Higher Secondary Education-Re-admission to improve division-Status of regular student-Petitioner attended Classes and appeared in Board examination-School and its higher authorities recommended for grant of regular status to petitioner-Now estopped from taking contrary plea and play with future of a student-Even if last date for submitting form expired petitioner entitled for the relief-Attendance-Presumption-No allegation that petitioner had not attended class to the extent of 75%-Attendance can be presumed in his favour-Respondents directed to treat petitioner as regular student and issue marksheet certificate accordingly : *Adarsh Kumar Patel Vs. Board Of Secondary Education Madhya Pradesh, Bhopal, I.L.R. (2005) M.P. 591*

- **Article 226**-Writ Petition-Service law-Misconduct-Disciplinary action and punishment-Scope of interference-Court must record reasons for a conclusion that

punishment is shockingly disproportionate—Mere expression would not meet requirement of law—No reasons recorded as to how punishment is shockingly disproportionate—Bank officer—Unauthorised withdrawal of money for emergency—No defence available that there was no loss or profit resulted when acted without authority—Acting beyond authority itself is a breach of discipline and misconduct—Bonafides not proved—Writ petition dismissed—Appeal allowed : *Damoh, Panna, Sagar Rural Regional Bank Vs. Munna Lal Jain, I.L.R. (2005) M.P. (SC) 375 (D.B.)*

- **Article 226**—Writ Petition—Works Contract—Alleged excess payment and issuance of Revenue Recovery Certificate by the department—Can not be at the whims but should be of an ascertained amount—For ascertainment there should be an adjudication and for adjudication one has to go before an independent agency—Respondents cannot straightaway issue RRC for realization : *Bajinath Singh Vs. State Of M.P., I.L.R. (2005) M.P. 935*

- **Article 226** and Swatantrata Sangram Sainik Samman Nidhi, Niyam, M.P., 1972, Rules 2,3—Samman Nidhi to freedom fighters—Person imprisoned between the year 1919 to 1946 in connection with freedom movement even for a day has to be treated as freedom fighter under Rule 2—Word "dSn" used in certificate—Petitioner is entitled to receive Samman Nidhi : *Shiv Narain Johri Vs. State Government Of M.P. Through The Secretary, G.A.D., Vallabh Bhawan, Bhopal, I.L.R. (2005)M.P. 1053*

- **Article 226**—Writ petition—NIT—Rejection of application for tender documents—Partnership firm duly registered is a compendium of partners to carry on business through its constituents—Past experience of proprietor can be counted towards firm's experience—Order of refusal quashed—Fresh NIT directed to be issued : *M/s. C.K. Asati Vs. Union Of India, I.L.R. (2005)M.P. 50*

- **Article 226**—Writ petition—Regularisation—Candidate physically challenged—Working on regular vacant post on daily wages—Entitled for post of LDC—Cannot be rejected on ground that he has not passed typing examination or that he has not got registered with Employment Exchange : *Anil Kumar Vs. State Of M.P., Through Secretary, Deptt. Of Revenue, Mantralaya Vallabh Bhawan, Bhopal, I.L.R. (2005)M.P. 135*

-**Article 226**—Writ petition—Tender bid—Disputed question of fact—Writ course is not proper—Petitioner not fulfilling criteria—Ousted at pre-qualification stage—Cannot have any grievance : *M/S Triveni Prasad Mishra Vs. The State Of Madhya Pradesh, I.L.R. (2005)M.P. 819*

- **Article 226**—Service law—Compassionate appointment—Consideration under earlier scheme not challenged—Cannot be re-opened—Scheme propounded for compassionate appointment of heirs of deceased employee of appellants—Employer

themselves cannot deviate therefrom—Order impugned set aside : *State Bank Of India Vs. Vikas Dubey, I.L.R. (2005) M.P. (SC) 1132 (D.B.)*

- **Article 226**—Service law—Departmental enquiry—Dismissal—Distinct charges framed—Petitioner absented without obtaining permission and fled from the enquiry—Charges proved—Punishment of dismissal imposed by the disciplinary authority—Cannot be said to be grossly or shockingly disproportionate : *Yashpal Singh Vs. Commandant, Central Industrial Security Force, I.L.R. (2005) M.P. 805*

- **Article 226** and Land Revenue Code, M.P., (XX of 1939), Sections 35(2), 248 and Schedule I, Rules 14 and 15 – Exparte rejection of application for patta – Writ petition – Section 248 – Proceedings under – Application for grant of patta – Issuance of notice by Tehsildar – Schedule I, Rules 14 and 15 – Procedure for service of notice by affixture if notice refused to accept the same – Section 35(2) – Power of Tehsildar to proceed ex-part – Show –cause notice by Tehsildar directed to be affixed if notice refused to accept the same – Direction of Tehsildar and Rule 14 not complied with by process server – Ex-parte order by Tehsildar rejecting application under Section 35(2) of the code for grant of a patta stands vitiated – Impugned order and all subsequent proceedings quashed : *Resources Development Institute, Bhopal Vs. State, I.L.R. (2001) M.P. 468,*

– **Article 226** and M.P. Municipal Corporation Act, 1956 – Section 17(2)(c) – Disqualification of Mayor for being absent during six consecutive months from the meetings of corporation without leave of Corporation – Judicial review – Court can not go into merits of the controversy like an appellate authority – Sufficient material before the State Government to arrive at the decision – Evidence on record do not support petitioner’s contention of applying for leave – No interference in writ petition : *Brijendra Mishra Vs. State, I.L.R. (2001) M.P. 1623,*

– **Article 226** – Voters List – Objections to – Secretary himself cannot be objector – Returning Officer deleting names of 309 traders from Voters list on objection by Secretary and without hearing the traders – Such deletion is invalid and in breach of principles of natural Justice – Voters list and election quashed and directions for preparing valid voters list issued: *Rambilas Gour Vs. Tahsildar, Hoshangabad, I.L.R. (1987) M.P. 612 (D.B.)*

- **Article 226** & Protection of Human Rights Act (X of 1994), Ss. 29, 10(2), 16 and State Human Rights Commission (Procedure) Regulations, 1996, Regs. 8(6), 16, 18, Illegal detention and beating by police-Commission got the matter investigated properly-Accused avoiding to appear before commission deliberately-In absence of any infirmity no scope for interference in writ jurisdiction. *S.S. Udhawath Vs. M.P. Human Rights Commission; I.L.R.(2002) M.P. 447 (D.B.)*

- **Article 226**—Civil Services Classification Control and Appeal—Rules, M.P., 1966, Rule 29 and Letters Patent, Clause X—Writ Petition and Letters Patent Appeal—Service law—Suspension—Suspension ordered in the wake of arrest in criminal case—Subsequently revoked—second suspension order passed on ground of pendency of criminal case—Not review—Order not passed by superior authority—Cannot be treated to be a review : *Chandra Pal Pundhir Vs. Madhya Pradesh Of Board Of Secondary Education, Bhopal, I.L.R. (2003) M.P. 521 (D.B.)*

- **Article 226** and Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993, Section 52(1) (xii) and Panchayat Service (Recruitment and General Condition of Services) Rules 1999, Rules 27, 30, 34—Explanation—Panchayat Service—Transfer—Every Panchayat is a juristic person and has power to make appointment—Transfer of employee from one Panchayat to another cannot be effected by Zila Panchayat without consent of employee concerned. *Gopal Das Vs. State of M.P.; I.L.R.(2002) M.P. 428*

-**Article 226** and National Security Act 1980—Sections 2, 3, 10 & 12—Detention for one year confirmed by State Govt.—Accused involved in number of crimes like trying to outrage modesty of woman, teasing girl and woman, try to extort money from public, challenge in public to kidnap a girl—Crimes in quick succession—Endeavour is to see whether act relates to 'law and Order' or to 'Public Order'—It is degree of disturbance and its impact upon the even tempo of life of society on people of locality which determines whether the disturbance caused by activity amounts to breach of law and order or amount to public order—Acts of detenu affecting the even tempo of life of the community and maintenance of public order—Order of detention by District Magistrate upheld. *Charan Vs. Union of India; I.L.R. (2002) M.P. 215 (D.B.)*

-**Article 226** - High Court in writ jurisdiction cannot re-examine findings of fact arrived at after due consideration - Findings of subordinate tribunal that petitioner is not the holder of agricultural land and transactions are not prohibited transactions of loan - Not liable to be assailed : *Mirza Rashid Beg Vs. Inayatulla Khan I.L.R. (1986) M.P. 250 (D.B.)*

- **Article 226** - Illegal action of Vice-Chancellor challenged by some persons only - No bar to quash it - Benefit arising therefrom liable to be extended to others also : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur I.L.R. (1986) M.P. 565*

- **Article 226** - Locus Standi - Doctrine of - Every citizen has a right to challenge an issue of public importance : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur I.L.R. (1986) M.P. 565*

- **Article 226** - Pensionary benefits of retired employees - Desirability of prompt settlement and payment - State Govt. failing to do so - Writ of mandamus issued - Action against officers responsible for delay is desirable : *Smt. Rampyari Shukla Vs. Secretary, Central Social Welfare Board, Bhopal I.L.R. (1986) M.P. 645*

- **Article 226** - Petition filed in advance apprehending threat to right - Cannot be dismissed as premature : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur I.L.R. (1986) M.P. 565*

- **Article 226** - Post retirement benefits of Govt. servants - Necessity for its early settlement : *Mahila Kamlabai Gogate Vs. State Of M. P., I.L.R. (1986) M.P. 20*

- **Article 226** - Writ petition including points and relief covered under earlier writ petition pending in Supreme Court - Even though such points not pressed during hearing when objection raised - Amounts to abuse of the process of Court : *Birla Jute Industries Ltd., Calcutta & Anr. Vs. State & Ors., I.L.R. [1986] M.P. 447 (D.B.)*

- **Article 226**, Co-operative Societies Act, M.P., 1960, Sections 55, 64 and 65(3) and Letters Patent, Clause X-Co-operative service law-Termination-Dispute-Limitation-Termination order passed in 1974-Limitation of one month for raising dispute introduced in 1977-Not applicable to the present case-Termination of workman-Dispute-Cannot be shut merely on the question of limitation-Non obstante clause-Dispute filed belatedly-Can be entertained by Registrar if sufficient cause is shown-Registrar has power to condone the delay-Registrar and Tribunal held that the termination is illegal-A finding of fact-Court will not interfere in exercise of powers under Article 226 of the Constitution unless such findings are perverse-No material to show that the orders are based on "No evidence"-Order of writ Court set aside and that of Registrar restored : *Narayan Prasad Tamrakar Vs. M.P. State Co-Operative Land Development Bank Ltd., I.L.R. (2004) M.P. 154 (D.B.)*

-**Article 226** - Air Prevention and Control of Pollution Act, 1981, Section 20, Central Motor Vehicles Rules, 1989, Rules 115, 116 - Public Interest Litigation - Air Pollution - Smoke emitted by the vehicles - Direction of State Government ensuring the standard for emission of air pollutant from automobiles not strictly complied - Directions issued to reduce pollution by providing smoke meters, gas analyzers and instructions to authorities to comply legislative mandate. *Santosh Kumar Gupta Vs. Secretary, Ministry Of Environment, New Delhi, I.L.R. (1997) M.P. 429 (D.B.)*

- **Article 226** - Debt Relief Courts are quasi - Judicial tribunals - Orders of Debt Relief Court and Revisional Court not giving reasons - Courts did not apply their minds and failed to exercise jurisdiction - Order of Courts below quashed and case

sent back to Debt Relief Court for decision afresh : *Shrimati Phulmati Bai Vs. Man Bai*, I.L.R. (1989) M.P. 12 (D.B.)

– **Article 226** – House – Job of petitioner terminated – No opportunity of hearing given, Rules of Natural Justice not followed – Petitioner did not incur any disqualification for post graduating : *Dr. Ashish Vs. Union Of India*, I.L.R. (1988) M.P. 618 (D.B.)

-**Article 226**, M.P. Entertainment Duty and Advertisement Tax Act, 1936, Section 3- Entertainment duty-Cinema theater was run by petitioner-He stopped exhibiting film and let out theatre to his son for exhibiting video show-Son's business independents from father-On delivery of theatre back, father applied for permission to exhibit cinema film-Refused on ground of dues of entertainment duty against son-Held-Son was In-charge of business of exhibiting video show-Recovery cannot be made against petitioner-He could not be denied permission to exhibit cinema-Authority directed to consider application for permission-Petition allowed. *Phoolchand Surana Vs. State Of M.P.*, I.L.R. (1997) M.P. 57

- **Article 226**, Arbitration and Conciliation Act, 1996, Section 11(6)-Writ petition-Appointment of arbitrator-Matter adjudicated by SCDRC and liberty granted to petitioner to get quantum adjudicated by Arbitrator in terms of conditions of insurance policy-Application for appointment of arbitrator is correct and maintainable : *United India Insurance Co. Ltd Vs. M/s. Rukmani Solvex (P) Ltd.*, I.L.R. (2004) M.P. 831 (D.B.)

- **Article 226** and Letters Patent, Clause X -Appeal-Service law-Labour-Industrial Disputes Act, 1947-Section 10-Reference of dispute-No limitation prescribed-Refusal to make reference on ground of delay-Not Justified-Order set aside- Respondents directed to make the reference : *Ramadhar Tiwari Vs. Union Of India*, I.L.R. (2003) M.P. 618 (D.B.)

- **Article 226**-Claim of salary for the promotional post-Relief clause in the petition not worded as such-Writ Court can mould the relief clause if the same flows from facts of the case independent of any other inference : *Prakash Chand Jain Vs. State And Ors.*, I.L.R. (2003) M.P. 36 (D.B.)

- **Article 226** and Letters Patent Appeal Clause X, Panchayat Raj Adhiniyam, M.P. 1993, Section 122-Panchayat Election-Panchayat Election Rule -- Election Petition- Recount of votes-Electricity failed-Counting done candle light-Difference in form 15 and form 18-Discrepancy of 34 votes-Margin of 17 Votes between appelland and election petition-To remove the doubt recounting was necessary-Recount rightly granted : *Rakib Mohammad Vs. The District Collector And Specified Officer, Raisen*, I.L.R. (2003) M.P.941 (D.B.)

– **Article 226** – State Government or Probation Board not acting arbitrarily, capriciously or with mala fide – Order cannot be challenged in writ under Article 226 of Constitution : *Lalji Vs. State, I.L.R. (1989) M.P. 567 (F.B.)*

– **Article 226** – Persons not qualified of being appointed – Not a fit case for interference under Article 226 : *Director General Of Police, M.P., Bhopal Vs. Ravi Shankar, I.L.R. (1988) M.P. 374 (D.B.)*

- **Article 226**–Krishi Upaj Mandi Adhiniyam M. P., 1972, Section 55–Writ Petition–Removal of Chairman– Mis-conduct–Show cause notice–Report heavily relied upon but not supplied to petitioner–Order stands vitiated–Removal arbitrary–Order quashed : *Randhir Singh Vs. The Managing Director, M.P. State Agriculture Marketing Board, I.L.R. (2004) M.P. 933 (D.B.)*

-**Article 226**–Writ Petition–Co-operative Societies–Apex body–Disqualification–Co-operative Societies Act, M. P., 1960–Sections 19-AA, 53 and Co-Operative Societies Rules, M.P., 1962–Rules 44 and 45–Petitioner society suffering disqualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be a delegate. *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

- **Article 226** and Criminal Procedure Code, 1973 (II of 1974)–Sections 482,154,156, 200–Complaint laid before the Magistrate made over to the police for investigation–Police officer's power to investigate and quashing of FIR–FIR not disclosing commission of a cognizable offence–Surely not within the province of police to investigate–Investigation can be quashed in exercise of powers under Article 226 of the Constitution or Section 482 Cr.P.C.–Cheating–Guilty intention is essential ingredient of the offence of cheating : *Ajay Mitra Vs. State Of M.P. & Ors., I.L.R. [2003] M.P. (SC) 1 (F.B.)*

- **Article 226**, Co-operative Societies Act, M.P. 1960, section 16(3) and Co-operative Societies Rules, M.P. 1962, Rules 7, 8 and 11–Re-organization and merger of society–Opportunity before passing final order Not a mere formality–Society should be afforded opportunity for expressing its opinion about merger : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. & Ors., I.L.R. [2004] M.P. 259*

- **Article 226**, Co-operative Societies Act, M.P. 1960,(XVII of 1961)–Section 16(3) and Co-operative societies Rules, M.P. 1962, Rules 7, 8 and 11–Re-organization and merger of society–Opportunity before passing final order–Not a

mere formality—Society should be afforded opportunity for expressing its opinion about merger—without following procedure Registrar cannot pass any order for merger or amalgamation—Absence of following the procedure—Entire process vitiates—Order impugned quashed : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. And Ors., I.L.R. [2004] M.P. 259*

- **Article 226** and Krishi Upaj Mandi Adhiniyam, M.P., 1972 (XXIV of 1973), Section 61 as amended by M.P. Act No. (XXIV of 1986) – Notice of demand for recovery of dues towards market fees – Appeal to Director dismissed as time barred – Section 61, as amended by M.P. Act 1986 – Limitation of 30 days prescribed for appeal to Director – Appeal filed within 30 days from the date of coming into force of amending Act – Appeal within limitation as limitation would start from the date of commencement of Amending Act – Impugned order set aside – Matter remanded to Director for decision on appeal on merits : *Madhya Pradesh State Cooperative Marketing Federation Limited, Bhopal Vs. Director, Krishi Upaj Mandi Samiti, I.L.R. (2001) M.P. 776,*

- **Article 226**—Allotment of L.P.G. Distributorship to freedom fighters—Allottee getting Freedom Fighter's Pension by State Government—Eligibility of allotment not confined to only pensioners of Central Government—Allegation against chairman being bias due to relationship—Chairman not participated in Board meetings at the time of interview of allottee—No ground for interference in allotment: *Smt. Nirmala Vs. Oil Selection Board (Madhya Pradesh), I.L.R. (2002) M.P. 297 (D.B.)*

– Article 226 – Respondents complying with them giving due considerations to norms set in and to different clauses in tender notice in selecting purchasers of tendu leaves – Method found to be reasonable, just and free from bias favouritism and nepotism – petition dismissed : *Mukesh & Company Vs. M.P. Rajya Laghu Vanopaj (Vyapar Evam Vikas) Sahakari Sangh Limited, Bhopal & Ors., I.L.R. (1990) M.P. 481 (D.B.)*

–**Article 226**—Hire purchase scheme covered under Group Insurance Scheme of L. I. C.—Scheme in force at the time of purchase of home—Premium also charged by the Housing Board—Death of purchaser—Housing Board liable under the rules to honour their commitments being a statutory body : *Smt. P. Venkamma Vs. M.P. Housing Board, Bhopal, I.L.R. (1992) M.P. 69 (D.B.)*

-**Article 226**—Writ Petition—Education—Refusal to award Ph.D/Doctorate by University—Experts giving contradictory comments as to worthiness of accepting thesis of petitioner—Order appealable—Instead of appeal petitioner got registered himself with another University in violation of statutory provision—Suppression of facts—Petitioner not entitled to any relief. *Dr. Raghuvversinha Vs. Devi Ahilya Vishwavidhyalaya, Indore; I.L.R. (1992) M.P. 828 (D.B.)*

–**Article 226**–Writ Petition–Public interest litigation–Allegation about preparation of arms and ammunition made for defence of the country–Not the matters which could be gone into by a court of law–Petition dismissed in limine: *Gyan Prakash Vs. P.K. Mishra; I.L.R. (2004) M.P. 257, (D.B.)*

- **Article 226** – Without following procedure Registrar cannot pass any order for merger or amalgamation–Absence of following the procedure–Entire process vitiates–Order impugned quashed : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. And Ors., I.L.R. (2004) M.P 259*

-**Article 226**–Writ Petition–Compassionate appointment–Petitioner's marriage with deceased under challenge–But for purposes of compassionate appointment only the question of dependency is to be ascertained–Petitioner living with deceased as husband and wife for considerable time–Though her marriage is challenged it cannot be said that she was not dependant on deceased–Petitioner entitled to compassionate appointment. *Madhuri Rajput Vs. Food Corporation Of India, Gwalior; I.L.R. (1992) M.P. 820 (D.B.)*

–**Article 226**–Alternative remedy–Petitioner Depot Manager–When facts are clean and undisputed plea of alternative remedy should not be accepted as bar to writ jurisdiction on face of controversy as to whether his application under section 31 or 61 of the M.P. I. R. Act. 1960 would be tenable : *Kailashnarayan Vs. M.P.S.R.T.C., I.L.R. (1992) M.P. 15*

-Article 226, Ravi Shankar University Act and Vishwa Vidyalaya Adhiniyam, M. P. (XXII of 1973), Section 44, Clause 12 of Statute 29–Writ petition–University created by a statute is a statutory public authority and its action can be remedied by issue of prerogative writs of certiorari or mandamus–Disciplinary matters–Section 44(1) of the Adhiniyam and Clause 12(3) of Statute 29–Opportunity of hearing though not provided before passing any order but the University authorities must observe principles of natural justice as their disciplinary powers have been described as judicial or quasi-judicial–Natural justice–Petitioner debarred from being appointed as examiner, paper-setter, valuer of question paper etc. carrying remuneration for a period of 5 years on the allegation of leakage of question paper–Allegation casts slur and stigma–Enquiry report not supplied to the petitioner though demanded–Principles of natural justice violated as he could not exercise his right to defence effectively–Impugned order quashed. *Dr. N.G. Rathi Vs. Ravishankar University, Raipur, I.L.R. (1992) M.P. 246 (D.B.)*

-**Article 226** and Jawaharlal Nehru Krishi Vishwa Vidyalaya Adhiniyam, M.P. (XII of 1963), Sections 2(3), 2(x), 12, 49, Jawaharlal Nehru Krishi Vishwa Vidyalaya Statute, 1964, statute 6(a)(i), 6(a)(ii) and Shashkiya Sewak (Adhivarshiki Ayu)

Adhiniyam, M.P., (XXIX of 1967), As amended by Act No. XXVII 1998 – Retirement age of teachers revised to 62 years – Petitioner Lady Extension Teacher in the University – Merely imparts instructions to farmers by bringing them abreast with the development and the latest techniques in farming – Cannot be said that she was engaged to impart such instructions as a teacher – Section 2(x), 12 and 49 – Petitioner not appointed by University as per procedure laid down under Section 49 for appointment of teacher – She is not a teacher within the meaning of Section 2(X) – Not entitled to benefit of enhancement of retirement age 62 years : *Smt. Maya Verma Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (2001) M.P. 794,*

- **Article 226** and Income-Tax, Indian (XLIII of 1961), Sections 132, 132-A, 132-B, 234-E – Search and seizure in the premises of assessee - Enquiry pending as to liability of assessee – Prayer for adjustment of the seized amount towards advance tax turned down – writ petition – Section 132-A and 132-B of the Act – Provision for adjustment or refund of excess amount of tax paid with advance tax – Applicable only when the tax is paid by assessee voluntarily – Seizure of amount made during search in the premises of assessee by Income tax authorities –Amount or property so seized cannot said to be voluntary tender of tax – Petitioner not entitled to adjustment as prayed for particularly when no final order has been passed by the Income tax Officer Sections 234-B and 234-E – Assessee liable to pay interest in the event of determent in payment of tax irrespective of seizure of amount during search – Petitioner not entitled to any relief : *M/s. Ramjilal Jagannath, Raigarh Vs. Asstt. Commissioner of Income-Tax (Investigation), Circle II (1), Raipur, I.L.R. (2001) M.P. 474,*

- **Article 226** and Lok Abhikaranon Ke Madhya Se Bis Sutriya Karyakram Ke Karyanvayan Adhiniyam, M. P. (XXV of 1976)–Section 7(2) and 8(2)–Setting aside of order of S.D.O. by Collector in Revision on ground that Appeal was barred by limitation–Objection as to limitation not taken in appeal cannot be allowed to be raised in revision else it would amount to curtail the right to get the delay condoned–Revisional authority gets jurisdiction only when delay was rightly refused or wrongly allowed–Appeal filed much prior to notification fixing date for expiry of limitation–Appeal within time–Order of Revisional authority quashed. *Indra Singh Vs. State, I.L.R. (1992) M.P. 615 (D.B.)*

–**Article 226**–Writ Petition–Pension–Family Pension Scheme, 1971, Sections 6-A, 17 and 31-A–Even if exemption is there M.P.E.B. not barred from enrolling its employees as member of Family Pension Fund–The only embargo is age bar–'Option' to be exercised is not independent–The acquiescence of employee in continued deduction made from wages would be deemed exercised of option by employee to be a member of the Fund–Petitioner's deceased husband was member of the fund and had reckonable service–Petitioner poor illiterate lady–Accepted the refund–Would not disentitle her from receiving pension–Doctrine of estoppel–Not applicable to statutory

entitlement. *Smt. Kamlabai Vs. The Secretary, M.P. Electricity Board, I.L.R. (1992) M.P. 618 (D.B.)*

–**Article 226**–Writ Petition–Hire purchase scheme covered under Group Insurance Scheme of L. I. C.–Scheme in force at the time of purchase of home–Premium also charged by the Housing Board–Death of purchaser–Housing Board liable under the rules to honour their commitments being a statutory body. *Smt. P. Venkamma Vs. M.P. Housing Board, Bhopal, I.L.R. (1992) M.P. 69 (D.B.)*

–**Article 226**–Writ Petition–Tax laws–Income Tax Act, (XLIII of 1961), Sections 143(1)(a)(i), 143(2), 143(3), 156 and 246(1)(a)–Proceedings under Section 143(2) are in the nature of regular assessment–Can be taken even after intimation under Section 143(1)(a)(i)–Assessment under Section 143(2) would be deemed to be assessment under Section 143(3)–Hence appealable under Section 246(1)(a). *M/S. Kamal Textiles Vs. Income Tax Officer, Khandwa; I.L.R. (1992) M.P. 722 (D.B.)*

–**Article 226**–Habeas Corpus–National Security Act (LXV of 1980)–Sections 3 and 8 (2)–Preventive detention–Detenu has to be informed of the reason for his detention–If any statement recorded for subjective satisfaction that has also to be supplied to petitioner–Non compliance of mandatory provision–Statement recorded not supplied to petitioner–High Court constitutionally bound to set aside preventive detention howsoever notorious detenu may be. *Makkhan Vs. District Magistrate, Gwalior; I.L.R. (1992) M.P. 824 (D.B.)*

–**Article 226**–High Court has jurisdiction to entertain writ petition against an interim order : *Management, Dainik Naveen Duniya, Wright Town, Jabalpur Vs. Presiding Officer, Labour Court, Jabalpur, I.L.R. (1992) M.P. 166 (D.B.)*

- **Article 226** and Industrial Disputes Act (XIV of 1947), Sections 33, 33-A–Workmen transferred during pendency of dispute regarding fixation of wages before labour Court–Order of Transfer having no bearing on the pending of dispute–Conditions precedent as mentioned in Section 33 not presented–Sections 33 and 33-A not attracted–Order of Labour Court staying operation of Transfer order quashed for want of jurisdiction–Article 226–High Court has jurisdiction to entertain writ petition against an interim order. *Management, Dainik Naveen Duniya, Wright Town, Jabalpur Vs. Presiding Officer, Labour Court, Jabalpur I.L.R. (1992) M.P. 166 (D.B.)*

– **Article 226** and Commercial Tax Act, M.P., 1994 (V of 1995) – Sections 9, 17, 68 – Notification under issued by State Govt. – Providing exemption in Sales-tax on basic drugs used as raw material – Use of words ‘when used as raw material for manufacture of medicines’ – Not Superfluous – Benefit of exemption cannot be claimed nor available to drugs in general only on ground of capability of being used

for manufacturing other drugs – Interpretation of Statute - Every word used in the statute by the legislature has its own importance and role to play in construction of sentence – Benefit of exemption only available to basic drugs when used as raw material for manufacturing some other medicine – No case for interference in the notification : *M/s. Lupin Laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*,

- **Article 226**, M.P. Madhyamik Shiksha Adhiniyam, 1965, Section 28, Board of Secondary Education, Madhya Pradesh, Regulations, 1965, Regulations 41, 117- Education-Higher Secondary School Certificate Examination-On the report of valuers-Result committee decided to declare the result by awarding zero mark in one subject-After notice of petition, the Board got copies re-examined-Result modified of 20 students-Held-Authorities did not exercise power fairly and with sense of responsibility - *Students lost one year-Entitled for compensation of Rs. 10,000/- each. Sandeep Singh Sangar Vs. State Of M.P., I.L.R. (1997) M.P. 52*

- **Article, 226** – Public Interest Litigation – Locus standi – In a public interest litigation there must be involvement of sanguine and genuine public interest – A public spirited person approaching the Court of law has to act bona fide and is required to do sufficient research and collect adequate materials to agitate a grievance relating to public at large without being actuated by any private motive or any oblique consideration – While entertaining a public interest litigation in a Court has to be satisfied about the credentials of the person approaching the Court, the definiteness and correctness of the nature of information and allegations and the seriousness of the information relating to a public sphere – A busy body or an imposter or a meddlesome interloper, cannot elevate himself as a public spirited person and consume the Court's time in respect of issues which do not come within the sweep and ambit of public interest – In the case at hand, we find there were no materials to indicate that the application has been filed to gratify any personal revenge or to malign any person out of grudge or malice. *Mahendra Kumar Tiwari Vs. Union Of India, I.L.R. (1997) M.P. 418 (D.B.)*

-**Article 226**-Criminal Procedure Code, 1973-Sections 107, 111, 116 and 151-*habeas Corpus*-Detenue arrested under Section 151, Cr. P. C.-Brought before the Magistrate who passed order under Section 116 requiring bail bond to be furnished without any order under Sections 107 and 111 of the Code-Procedure adopted by Magistrate bad in law as also the detention order. *Centre Of Indian Trade Unions Through Secy. Distt. Committee C.I.T.U., Gwalior Vs. State, I.L.R. (1992) M.P. 539 (D.B.)*

-**Article 226** and Panchayat Raj Adhiniyam, M.P.(1 of 1994), Section 40 and Panchayat (Appeal and Revisions) Rules, M.P. 1995, Rules 3, 4, and 5 –Petitioner

Sarpanch-Removed from office by order of S.D.O.-Appeal-Collector reversing the order-Revision before Commissioner-Maintainable subject to embargo put under Rule 5(1) (b) of the Rules of 1995 : *Omkar Lal Asatkar Vs. The Sub-Divisional Officer (Revenue), Lanji, I.L.R. (2000) M.P. 440*

-Article 226-Alternative remedy-Controversy involved relates to interpretation of Statutory provision and a purely question of law-Availability of ;alternative remedy-Not a bar to writ jurisdiction-Payment of Gratuity Act, 1972, as amended- Section 4- Maximum limit of Gratuity enhanced to Rs. 1 lakh by amending-Employee retired prior to amendment-In absence of any specific intention expressed by the legislation, provision cannot be given retrospective effect : *District Co-operative Central Bank Ltd., Jabalpur Vs. The Controlling Authority, Under Payment of Gratuity Act, I.L.R. (2000) M.P. 114*

-Article 226-Amenability to writ jurisdiction-Depend upon notice of action complained : *Rajendra Vs. M.P. Stock Exchange, I.L.R. (2000) M.P. 844, (D.B.)*.

-Article 226-P.I.L.-Petitioner expressed individual interest claiming reliefs incapable of being granted-Dragged the proceedings for almost 14 years involving Courts valuable time and also the State machinery in misconceived litigation in garb of public interest- Cannot be allowed to go cost free-Exemplary cost of Rs. 10,000/-imposed : *Narendra Bajpai Vs. State, I.L.R. (2000) M.P. 556 (D.B.)*

– **Article 226** – Writ Petition – Appointment of Vice-Chairman of State Administrative Tribunal as Chairman thereof – Administrative Tribunals Act, 1985, as amended – Section 6 - Qualification for appointment as Chairman – At least two years in office of Vic-Chairman – Appointment not in contravention of Section 6(1)(b) of the Act – Cannot be said to be illegal : *Rakesh Pandey Vs. Union of India, I.L.R. (2001) M.P. 29, (D.B.)*

-Article 226-Writ Petition-Service- Disciplinary action-Alleged misconduct took place in the year 1980-Petitioner chargesheeted in 1997-Article 14-Nature justice-Long delay in initiating disciplinary action-Absence of satisfactory explanation for the delay-disciplinary enquiry deserves to be and is quashed : *Shri Lavkush Prasad Gautam Vs. Food Corporation Of India , I.L.R. (2000) M.P. 815*

-Article 226- Writ Petition-Maintainability-Respondent College affiliated to University and running course as per educational programme of the State-It is performing supplemental role to the State activity-Assumes character of a State agency amenable to writ jurisdiction-Writ Petition maintainable : *Mrs. Promilla Bais Vs. The Principal Daly College, Indore I.L.R. (2000) M.P. 1423 (D.B.)*

- **Article 226** – Writ Petition – Interveners granted admission against available seats on basis of higher marks obtained by them – Because of stay they already suffered loss of one semester – Family members of petitioners making communication to concerned authorities – Party indulging in unfair means cannot blame others to be unfair – Authorities directed to frame stringent rules to ensure fairness in admission to such courses : *Ku. Varsha Vs. State, I.L.R. (2001) M.P. 1003, (D.B.)*

- **Article 226** – Writ petition – Tax laws – General Sales Tax Act, M.P., 1958 – Sections 6,7,12, 42-B and 61-B – Notification issued exempting Niwars from payment of Sales – Tax – Claim for refund of tax paid in excess – Section 12 and Entry 25 (iv) of the notification issued there under – Niwars either made up of cotton yarn or any other yarn including mono filament exempted – Word ‘Niwar’ used in plural sense – Intention of legislature clear to exempt all kinds of Niwars whatever be the raw material – Niwar made of mono filament – Not liable to tax : *Ibrahim Haji Vs. Commissioner of Sales Tax, I.L.R. (2001) M.P. 1139,*

- **Article 226** - Writ petition – Education Petitioner having secured two degrees from University refused admission in Ph.D. on basis of executive instruction of ICAR – Jawaharlal Nehru Krishi Vishwa Vidyalaya Adhiniyam, 1963 – Sections 27(9), 56 and 57 – JNKVV is a creation of statutory and Governed by law – Board of the University alone has absolute power to make regulations for admissions – Denial of petitioner’s admission to Ph.D. on basis of an instruction issued by ICAR – Illegal : *Dr. Neelu Gupta Vs. Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (2001) M.P. 153,*

-**Article 226**-Delay-Slacks if the appointment of an officer is illegal, everyday his acts in that office give a cause of action afresh, therefore, there can be no question of delay in presenting a petition for *quo-warranto* in which the very right to act on such a responsible post has been questioned – delay in such would not prove fatal to an action of *quo-warranto* : *Nandkishor Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539*

- **Article 226** – Service Law – Transfer on request by in-charge of Training Institute – Transfer policy and guide lines show even inter-company transfer may be effected at any time on administrative ground – No bar under policy to transfer an employee from one subsidiary to another subsidiary – Vacancies in transferring department can not be held to be not based on administrative exigencies – No violation of transfer policy : *Saryjit Vs. Coal India Limited, I.L.R. (2001) M.P. 1692, (D.B.)*

- **Article 226** – Petitioner passed in all subjects excepts mathematics in C.B.S.E. Examination – Appearing in only one subject in National Open School Examination – Admit Card also issued to petitioner – Prospectus in Hindi Providing for transfer of credit marks from C.B.S.E. to Examination at National open School subject to availability of paper – Petitioner acting on such prospectus – Deserves the benefit provided in the prospectus : *Ku. Divya Tiwari Vs. Union of India, I.L.R. (2001) M.P. 1653,*

-**Article 226** and Panchayat Raj Adhiniyam, M.P., 1993 (1 of 1994), Sections 21(4),91-No-confidence motion against Sarpanch-Collector's order in dispute is final-Not appealable-Revision lies before the Commissioner under M.P. Panchayat (Appeal and Revision) Rules, 1995-Resolution carrying motion set aside for procedural defect-Motion can be reconsidered-Dispute under Section 21(4)-Collector could not decide it as an appeal : *Kandhilal Patel Vs. State, I.L.R. (2000) M.P. 49*

-**Article 226** and General Sales Tax Act, M.P.,1958 (II of 1959), Section 6 and Entry 5 of Part III of Schedule II-Petitioner dealing in leather caps as readymade garments-Notificaton reducing the rate of tax on all varieties of caps and hats to 3%-Word "Variety"-Would not only mean difference in name but also made of different material –Leather caps cannot be obstracized from exemption-Words and phrases 'Variety' not only mean different name but also include made of different material : *M/s. Leatherite Khajuraho Vs. State, I.L.R. (2000) M.P. 39,*

-**Article 226-** Writ Petition-Assessment of tax-General Sales Tax Act, M.P.-Section 17(3)-Plastic mono filament-Neither made of any fibre nor a thread prepared after spinning –Does not stand the test of ingredients of yarns envisaged in Entry 5, Part V, Schedule II-But covered within entry no. I, part VI, Schedule-II- of the Act-Petitioner rightly held liable to pay tax @ 10% and not 4%- Section 39(1)-Revision-Approach of the revisional authority proper-Given the stamp of approval : *M. M. Plastics Industries, Bhopal Vs. Additional Sales Tax Officer, Bhopal, Circle II, Bhopal , I.L.R. (2000) M.P. 1049,*

-**Article 226-** Writ Petition-Panchayat Election-Panchayat Raj Adhiniyam, M.P., 1993-Section 122-Election Petition-An Election under the Act can only be called in question by way of Election Petition in accordance with provision of the Act-Section 91 of the Act-Appeal or Revision under-Only lies against an order or proceeding of Panchayat and other authorities-Cannot be invoked to challenge Panchaya Election-Panchayat (Appeal and Revision)Rules, M.P., 1995- Revision and *suo-moto* power of revision-Does not extend to interfere in election matter under the Act-Order of Collector setting aside petitioner's election in exercise of *suo moto* revisional power-

Without jurisdiction-Not maintainable in law-Order quashed : *Amar Vs. State, I.L.R. (2000) M.P. 933*

-Article 226 and Judicial Service (classification, recruitment and Conditions of Service) Rules, M.P., 1955-Interview by M.P. Public Service Commission for recruitment of Civil Judges-Clause 3 providing concession of 5% marks to Green card holder-Petitioner's father a Green Card holder not the Petitioner himself- Cannot claim nor be granted such concession-Else there would occasion discrimination in violation of Article 16(2) of the Constitution : *Niraj Vs. State, I.L.R. (2000) M.P. 218*

-Article 226- Writ Petition-Award of 'Banking Ombudsman'-Scope for challenge-Banking Ombudsman Scheme, 1995- Clauses 13(a)(v), 18 and 20- Letters of credit dishonoured by petitioner Bank-Matter falls within jurisdiction of the 'Ombudsman'- Award under Clause 20(4) of the Scheme-Only decision making process if illegal can be called in question-No fault found with the process adopted by the 'Ombudsman'-Petition devoid of merit : *Syndicate Bank Vs. Banking Ombudsman, I.L.R. (2000) M.P. 535,*

-Article 226-Writ Petition-Tax Laws-Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, M.P., 1976-Sections 4, 4A and 10 - Notification issued reducing rate of Entry tax followed by another notification adding Explanation that no refund shall be made if a dealer has paid tax on basis of higher rate-Not *ultra vires*-If the tax has been paid no one is entitled to refund : *Century Textiles And Industries Ltd. Vs. State, I.L.R. (2000) M.P. 1419 (D.B.)*

-Article 226- Writ Petition-Police atrocities- Article 21 –Right to life in includes right to live with dignity-Petitioner subjected to third degree by police to extort confession-Applied electric shock, rendered important-Enquiry conducted and allegation found to be correct by the D.G.P.-Contravention of a fundamental right by the police officers- Welfare State has to suffer by paying compensation to the victim-Criminal Prosecution cannot brought in aid to escape the liability : *Shyamlal Soni Vs. State, I.L.R. (2000) M.P.445*

- Article 226 – Service Law – Promotion – Back log of reserved quote for SC/ST carried forward – In earlier writ petition employer Bank making statement that out of 200 vacancies 147 were meant for reserved quota yet granting promotion to only sixty reserved candidates – Departmental examination for promotion – Rule providing passing marks of 40% for general category and 35% for reserved category candidates –respectively – Action arbitrary, capricious : *All India State Bank Group SC/ST Employees' Welfare Federation, Bhopal Vs. The State Bank of India, Bombay, I.L.R. (2001) M.P. 1665,*

– **Article 226** – Writ Petition – Seizure of gold coins with foreign markings in income-tax raid – Kept in safe custody of Bank – Show cause notice by customs authorities for confiscation – Petitioner attributing fault on the part of Bank for not convert in the coins into gold bond – Gold Bonds (Immunities and Exemption) Ordinance, 1993, Section 4 – Conversion of Gold into Gold Bonds – Pre-requisites – Gold has to be tendered – Though the seized coins were in the Bank but they were in custody of Income-tax Authorities – Cannot be said to have been validly tendered by petitioner to the bank – Enquiry into show cause notice still pending – Writ Petition Premature : *Smt. Pushpaati Vs. Collector, Customs and Central Excise, I.L.R. (2001) M.P. 909*,

– **Article 226** – Writ petition – Entertainment tax – Entertainment Duty and Advertisement Tax Act, M.P., 1936 – Sections 2(cc), 4(2)(d), 29(1)(b) – Levy of entertainment tax on the basis of higher slab of population – For determining Municipal area it is necessary to refer to the meaning given in Section 2(cc) of the Act – Population of a colony in anon-municipal area cannot be dubbed with population of municipal area for purpose of Section 4(2)(d) of the Act – Principles of natural justice – Where interpretation of statutory provisions is concerned the authority should pass a reasoned order – No reason shown – Order increasing levy of entertainment tax quashed : *Bharat Bhushan Vs. State, I.L.R. (2001) M.P. 1446*,

– **Article 226** – Writ petition- Service Law – Life Insurance Corporation of India (Staff) Regulations 1960, Regulation 39 – Provision does not authorise disciplinary authority to direct re-enquiry – Petitioner having been exonerated in earlier enquiry in the same matter impugned order for re-enquiry is unsustainable – Regulation 39(3) – Alleged fraud by petitioner employee – Handwriting expert not examined – In the given case, Life Insurance Corporation permitted to proceed for further enquiry to the limited extent – Impugned order quashed : *Rajesh Kumar Dhimole Vs. Life Insurance Corporation of India, I.L.R. (2001) M.P. 1115*,

– **Article 226** – Writ Petition – Labour Law – Termination of service – Proceeding before labour Court – Limitation Act, Indian, 1963 and Industrial Relations Act, M.P., 1960, Sections 31(3), 61 and 62 – Labour Court is not a Court as is commonly understood in the eye of Law – Functions within the confines of the special statute – Vested with no power to condone delay in commencement of proceedings – Limitation prescribed is two years from the date of termination as envisaged in Section 61(A)(a) – Provisions of the Limitation Act not applicable to proceedings before the Labour Court – Proceedings commenced beyond the period of Limitation as stipulated in the statute – Appellate Court rightly dismissed the proceedings as time barred holding that workmen are not entitled to get benefit of

Limitation Act : *Vijay Kumar Vs. The Executive Engineer Public Health, Bilaspur, I.L.R. (2001) M.P. 1304,*

-Article 226- Writ Petition-Motion of no-confidence against Vice-President of Nagar Panchayat-Municipalities, Act, M.P.-Section 43-Provision mandatory-Notice to every councilor has to be issued- Word “Every” includes all types of councilor whether elected, nominated or *ex-officio* councilors- Non-compliance would render proceeding vitiated-Section 43-A-No-confidence-Motion held-Petitioner present- But choose to keep silent and not raising voice against the illegalities-Despite irregularities and illegalities petitioner cannot be granted relief on equitable jurisdiction of writ court : *Narayandas Vs. State, I.L.R. (2000) M.P. 771,*

-Article 226-Writ Petition-Service law-Seniority-Vishwa Vidyalaya (Sanshodhan) Adhiniyam, M.P., 1996-Section 49-A-Insertion of-Two methods of recruitment but no provision for interlacing seniority-Lacuna remedied by inserting Section 49-A providing for combined seniority of persons recruited directly and also those recruited by promotion-Not violative of Articles 14,16-Article 309-Rule making powers exercised by the legislature while enacting Section 49-A-No exception can be taken on ground that the provision has been given retrospective effect- Seniority list prepared as per newly amended provision-Does not suffer from the voice of any illegality : *Dr. Chain Panwar Vs.State, I.L.R. (2000) M.P. 1396, (D.B.)*

-Article 226-Writ Petition-Service law-Suspension and transfer during suspension-University Service Rules. M.P.,1982-Rule 28(1) and 28(3) and Civil Services (Classification, Control and Appeal) Rules, M.P.,1966-Rule 9(2-a)-Suspension-Recording of reasons for placing an incumbent under suspension-Not always necessary-Suspension order containing allegation of misconduct-Gravity of misconduct itself may constitute good reason to place an employee under suspension-Transfer during suspension by a common order-Absence of justification has to be held to be punitive-Second limbs of impugned order quashed : *Dr. Ram Suman Pandey Vs. Chancellor of Universities M.P. Rajbhawan, Bhopal, I.L.R. (2000) M.P. 1389*

- Article 226 – Writ Petition – Claim of interest Equity – Delayed refund of Excise Duty – Central Excise and Salt Act, 1944 – Section 11-B – Claim for refund of duty paid in excess – Award by Appellate Authority – Delay in payment without interest – At the relevant time no provision in the Act existed for payment of interest on amounts wrongfully levied or withheld by Department – Culpable delay and equity – On the principles of equity a party who suffered loss on account of wrongful withhold of amount is entitled to be compensated by way of interest – Interest accrues from the date when claim for refund was disallowed till the date of refund : *M/s. Hope Textiles Ltd. Vs. Union of India, I.L.R. (2001) M.P. 1299,*

- **Article 226** – Writ petition – Service Law – Promotion – Backlog of reserved quota for SC/ST carried forward – In earlier writ petition employer Bank Making statement that out of 200 vacancies 147 were meant for reserved quota yet granting promotion to only sixty reserved candidates – Departmental examination for promotion – Rule providing passing marks of 40% for general category and 35% for reserved category candidates – Contrary to rules out off point fixed at 60% and 41% for general category and reserved category candidates respectively – Action arbitrary, capricious – Reserved category candidates securing 35% marks in the examination deserved to be called for interview – Joinder of parties – Non joinder of candidates as respondents – Not fatal to writ petition of such persons are not likely to be affected by order of the Writ Court : *All India State Bank Group SC/ST Employees' Welfare Federation, Bhopal Vs. The State Bank of India, Bombay, I.L.R. (2001) M.P. 1665,*

- **Article 226** - Writ Petition – Settlement of disabled Ex-Serviceman – Second round of litigation – Petitioner rendered disabled while fighting for the motherland on Indo – Tibet border – Government issued circulars from time to time for their welfare and settlement – Such matters are expected to be expedited as per law provided – Allotment of land to disabled persons – Premium and ground rent increased subsequent to petitioner's application for allotment – Application pending since 1984 – Should be dealt with as per circular in vogue during time – Encroachment upon Govt. Land – Not expected of a disciplined person like petitioner – Rent to be determined from the date of occupation – Writ issued accordingly : *Ramesh Chandra Bhagat Vs. State, I.L.R. (2001) M.P. 949,*

- **Article 226** – Writ Petition – Education – Admission in post-graduate medical course – Filling up of seats falling vacant subsequently – Medical and Dental Post-graduate Entrance Examination Rules, M.P., 1998 – Rules X(ii), (iii) (iv), (v) and (viii)(1) – Provisions unambiguous – Candidates already exercised option whether to get admission to the available subject course or to run the risk of continuing in the waiting list in anticipation of seats of choice falling vacant subsequently – 'Subject' in Rule X (iii) would mean a 'Particular Course Subject' – Any other interpretation to it would run contrary and render the other provisions of the Rules redundant – Rule X (iv) – Candidates who chose to remain in waiting list at the time of counseling for want of availability of seats in the subject of choice can only be considered for filling up the seats falling vacant subsequently for any reason – Writ issued accordingly : *Dr. Sameer Harshe Vs. State, I.L.R. (2001) M.P. 749,*

- **Article 226** – Writ Petition - Education - Relief sought against National Open School – Jurisdiction – Examination held in Jabalpur – Coordinator School Situate at Jabalpur – Part of cause of action arising at Jabalpur – High Court at Jabalpur has

jurisdiction to entertain the lis – On basis of a note appended a student cannot be asked to travel to Delhi to file a litigation for redressal of grievances – Petitioner passed in all subjects except mathematics in C.B.S.E. Examination – Appearing in only one subject in National Open School Examination – Admit card also issued to petitioner – Prospectus in Hindi providing for transfer of credit marks from C. B. S. E. to Examination at National Open School subject to availability of paper – Petitioner acting on such prospectus – Deserves the benefit provided in the prospectus : *Ku. Divya Tiwari Vs. Union of India, I.L.R. (2001) M.P. 1653,*

– **Article 226**, Writ Petition – Notification imposing 10% premium of ‘A’ ‘B’ ‘C’ and ‘D’ grade coals under challenge – Essential Commodities Act, 1955, Section 16 and Colliery Control Order 1945 – By virtue of Sub-section (2) of Section 16 of the Act – The colliery Control order remains in force – Notification under control order imposing 10% premium on specific quality of coal which has something extra to offer to its consumers – Such premium is additional price – Article 14 – Discrimination in charging premium only on A,B,C and D grade coal – In the nature of the case does not offend Article 14 of the Constitution- Table II and Clause 20 of the Notification- Imposition of 10% premium – Tantamount to additional price based on quality of coal – Article 226 – Price fixation – Jurisdiction of Court – Is a matter of policy – Necessarily has to be left to the judgment of the executive – Article 226 – Delay – Petition challenging notification filed after 3 years – Shows that initially petitioners were satisfied – Petition devoid of substance : *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593, (D.B.)*

-**Article 226**-Writ Petition-Service Matter-Punishment for misconduct-Pecuniary loss caused to the bank due to ignorance of provision also recovered from salary of delinquent-Appeal against punishment-Kshetriya Gramin Bank Hoshangabad, Staff Service Regulations framed under the Regional Rural Bank Act, 1976-Regulations 30 and 31-Merely because the petitioner deposited the pecuniary loss, imposition of punishment as prescribed under Regulation 30 cannot be said to be double punishment-Appeal-Regulation 31(2) does not provide for any appeal by management to enhance the penalty-The word ‘adequate’ used in Regulation 31(2) cannot be construed to empower the Board to enhance the penalty appealed against-Order enhancing penalty without jurisdiction- Cannot be sustained : *Madhusudan Yadav Vs. Kshetriya Gramin Bank, Hoshangabad, I.L.R. (2000) M.P. 143*

-**Article 226**-Writ Petition-Service Matter-Status of Chief Municipal Officer of a Municipality-Whether an employee of the State Govt. or of the Municipality-Reference to larger Bench-Municipalities Act., M.P 1961- Sections 86, 87, 89, 90, 94 and Madhya Pradesh State Municipal Services (Executive) Rules, 1973-Appointments of C.M.O. are made by the State Govt. unlike other staff for which only confirmation by the State Govt. is required- Fundamental Rules 22-A and 22-B

are applicable-Testing on the anvil of legal position there is no difficulty in holding that Chief Municipal Officer are the servants of the State Government-Such Master & Servant relationship is not affected merely because salaries and allowances of such members are a charge on the Municipal funds-Reference answered accordingly : *Suresh Chandra Vs. State, I.L.R. (2000) M.P. 645 (F.B.)*.

-Article 226-Writ Petition-Service-Punishment for misconduct after department enquiry- Power of Judicial Review-Confined only to the extent of decision making process-State Bank of India (Supervisory Staff) Service Rules-Rule 50(2)(xvi)-Enquiry Officer empowered to take any material in evidence not included in the charge sheet-Rule 50(2)(iv)-Appointment of Enquiry Officer before receipt of reply of delinquent-Not sufficient to vitiate the whole enquiry proceedings unless some prejudice is caused to the delinquent-Rule 50(5) –Supply of enquiry report-Absence of procedure for, in Rule 50(2)-Inconsequential as the order of punishment is passed prior to cut of date laid down by the Supreme Court –Punishment-Petitioner an officer of the Bank-While occupying a position of trust betrayed the employer by making misutilisation of financial loans that too taken in fictitious name-Punishment of removal from service substituted in appeal-Neither disproportionate nor the appellate authority is required to give detailed reason therefore : *Mukul Vs. State Bank of India, I.L.R. (2000) M.P. 1076*

– **Article 226** – Education – Admission to Post Graduation Medical & Dental Courses – Eligibility – Medical and Dental Post- Graduate Entrance Examination Rules, M.P., 1999 – Rules (VI) (iv) – Eligibility criteria – A person admitted in previous year but not completing the Post-graduation course or a person who was allotted post-graduation seat in Madhya Pradesh at the time of counseling but later did not join the course shall not be eligible up to three years to take up the examination – Not applicable to candidates taking up both All India basis examination as also the examination under the M.P. Rules, 1999 in the same year – Interpretation of Statutes – The Rule in question is penal in nature and if two constructions are possible the Court should adopt that interpretation which does not effect a citizen’s fundamental and legal rights : *Ritwik Pandey Vs. Professional Examination, Board, M.P., Bhopal, I.L.R. (2001) M.P. 162,*

-Article 226-Writ Petition-Tax Laws-Assessee tendering Bank Draft for encashment to the Bank-Seizure of said Bank Draft from custody of the Bank by tax authorities on issuance of authorization for seizure-Validity-Income tax Act, Indian, 1961-Section 132-A - Provisions enacted to remove difficulties in adjudicating powers of seizure-Section 132-A (1)(C)-Tendering Bank Draft to the Bank for encashment is not a legal obligation of the assessee nor does the Bank take the same in custody in relation to any legal proceeding-Issuance of authorization for seizure of such Bank Draft and consequent seizure do not stand the test of ‘taken into custody’

as envisaged in Section 132-A of the Act-Authorization so issued and consequent proceedings-Without jurisdiction : *M/s Samta Construction Vs. Director of Income Tax (Investigation)*, I.L.R. (2000) M.P., 1339 .

- **Article 226** – Panchayat Service – Writ petition – Panchayat Raj Adhiniyam, M.P., 1993, Sections 69 and 70 and Panchayat Raj (Amendment) Act, 1996 – Appointment of Panchayat Secretary and Panchayat Karmis – By the Amending Act legislature incorporated prohibition on appointment of Panchayat Secretary if he happens to be relative of any of the office bearers of Panchayat – No distinction can be made between persons appointed prior to coming into force of Amending Act or thereafter – Panchayat Secretary and Panchayat Karmi – Separate entities – Amending Act not intended to affect the right of a person to continue in office of Panchayat Karmi as their removal can only be done by following procedure laid down in Panchayat Karmi Yojna – Decision of State Govt. as regard disqualification of Panchayat Secretary not liable to be interfere with : *Prahalad Patel Vs. State*, I.L.R. (2001) M.P. 1437,

-**Article 226**-Writ Petition-Termination- Unaided private Education Institution-If created under a statute and owes its existence to a statute writ can be issued-Respondent institution though governed by certain statutory provisions, but not creation of a statute-Not an authority within the purview of Article 12 of the Constitution-Not amenable to writ jurisdiction of High Court-No writ can be issued unless there is infringement of fundamental or legal rights guaranteed under the Constitution-Service Law Jurisdiction-Departmental enquiry under challenge-Delinquent has to be afforded opportunity of hearing and principle of natural justice must be followed-change of enquiry officer-Unless serious bias or prejudice is projected Enquiry Officer cannot be changed at the fancy of the delinquent : *Mrs. Promilla Bais Vs. The Principal, Daily College, Indore*, I.L.R. (2000) M.P.120 .

-**Article 226**- Writ Petition-NIT floated by Madhya Pradesh Electricity Board for Power Evacuation Project on the basis of bid already made by one of the competitors-Later called for negotiation alongwith tenderers-Not arbitrary-Discussion followed by negotiation and thereafter competitors were asked to submit fresh offer in sealed envelop in furtherance of the first tender-Does not amount to second tender-Cancellation of former is not required-Board genuinely acting in public interest has saved U S 18.3 Million- Action of the Board cannot be said to be *mala fide*-Application for calling of records-Investigation by Lokayukt under way-Application deserves to be rejected : *Hyundai Engineering & Construction Company Ltd. Vs. M.P.E.B.*, I.L.R. (2000) M.P. 1

-**Article 226** - A writ of *quo-warranto* may be issued in respect of an office- test of public office-Duties of the office are public in nature-In which the public are

interested whether it is or not remunerated, but payment of remuneration out of public funds will be a specific test –it must be substantive in character-It must have been created by statute or by the constitution itself : *Nandkishor Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539*

- **Article 226** - Writ Petition – Recruitment -Apprenticeship training imparted by the employer-Apprentices Act. 1961-Section 2(aa)-Definition-“Apprentice” means a person undergoing training under a contract-Sections 21 and 22-None of the petitioners, after apprenticeship training could obtain certificate of proficiency from National Council under Section 21(h)- Employer within his rights to hold examination for proficiency test in respective trades as envisaged under Section 22 of the Act-Article 14-Criteria for passing of examination/test applied to all candidates-Petitioners cannot claim relaxation from appearing in the test on ground of apprenticeship training when they do not possess certificate of proficiency form the National Council-No violation of principles of equality- Reservation of vacancies-Plea not taken in the petition-Cannot be gone into in absence of pleading and requisite proof : *Pramod kumar Vs. South Eastern Coalfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1232*

- **Article 226** and Land Acquisition Act (I of 1894)- Section 5A- Ground for challenge- A declaration can be challenged before the court of law on the ground that the land owner has been deprived of his right under Section 5A of the Act to object to the proposed acquisition by reason of vagueness, non-suitability of the land for public purpose or the grounds akin to it : *Shailendra Vs. State Of M.P. And Others., I.L.R. (1998) M.P. 820*

-**Article 226**- Writ Petition-Petitioner excise contractor-Country Spirit Rule, 1995-Rule 9 and Clause 33 of the General Condition of License-Statutory powers of Govt. to amend any condition of license during its currency-Petitioner participating in the bid expected to be aware of the condition of sale memorandum-Cannot turn back and make grievance later-Petitioner lifting liquor exceeding the quota-Required to pay duty thereon-Not entitled to get benefit of adjustment from date prior to amendment-Demand notice by Govt. - No interference in writ petition-Govt. directed to decide petitioners representation if any made : *Rajesh Kumar Jaiswal Vs. State, I.L.R. (2000) M.P. 462,*

- **Article 226** and Land Acquisition Act (I of 1894)-Sections 5A and 17-Urgency-Meaning-Application of Section 5A cannot be dispensed with unless it is a matter of urgency- The word “urgency” has not been defined under the Land Acquisition Act, but with its grammatical variation would mean that the matter was on felt need-Must appear from the attending circumstances- The urgency clause is to be applied after due application of mind- Final scheme was published in 1987 and notification under Section 4 was published on 23.12.94- Returns of respondents are beautifully vague

and conspicuously silent in explaining the delay of five years- The purpose for which the acquisition was to be made was just to frustrate- Acquisition proceedings are quashed: *Shailendra Vs. State Of M.P. And Others.*, I.L.R. (1998) M.P. 820

-Article 226- Writ Petition-Petitioner elected Sarpanch-Placed under suspension-Panchayat Raj Adhiniyam, M.P., 1993 as amended-Sections 39(1)(b) and 40-Report of suspension of Sarpanch to State Govt. within 10 days-Mandatory-Non-compliance-Suspension stand revoked automatically though charge sheet issued-Section 40-Repeal of-Effect-Intention of legislature is not to place an office bearer under suspension against whom chargesheet is issued-Provision of repealing act would have prospective effect by the very intention clearly expressed by the legislature while enacting the Repealing Act - General Clauses Act, M.P., 1957-Section 10-Word 'unless' different intention appears-Clear intention expressed by the legislature expressed by the Repeal Act-Suspension of petitioner cannot continue – Order of Suspension quashed : *Smt. Asha Dwivedi Vs. Sub-Divisional Officer, Sidhi*, I.L.R. (2000) M.P. 1033

– **Article 226** – Writ Petition – Panchayat Raj Adhiniyam, M.P., 1993 and Panchayat Raj (Sanshodhan) Adhiniyam, M.P., 2001, Sections 6, 7 – Constitutional Validity of Amending Act – Provision for Constitution of Gram Sabhas for every village of Panchayat introduced by way of amendment – Provision aims at discharging well defined functions in different area as envisaged in the Act of 1993 and to enable people to participate in development of village – Provision not ultra vires : *Jankidas Bairagi Vs. State*, I.L.R. (2001) M.P. 1490, (D.B.)

-Article 226- Writ Petition-Appointment- Articles 14 and 16-South Eastern Coalfield Limited- Not owned by State Government-Circular issued by State Govt. insisting criterion of domicile of Madhya Pradesh-Not a valid requirement for recruitment in SECL-Violative of Articles 14 & 16 of the Constitution- Such circulars have no application in SECL-Employment Exchange (Compulsory Notification of Vacancies) Act, 1959-Section 4-Does not oblige an employer to employ only those candidates sponsored by Employment Exchange-Action of Employer in not considering candidacy of petitioner on ground of place of Birth-Violative of Articles 14 and 16 of the Constitution : *Shrawan Kumar Vs. South Eastern Coalfields Ltd, Bilaspur*, I.L.R. (2000) M.P. 1066

-Article 226- Writ Petition-Appointment of Shiksha Karmi Grade-I Advertisement issued- Appointee no possessing post-graduation in II Class as required in the advertisement-Municipality Shiksha Karmi (Recruitment and Condition of Service) Rules 1998, M.P.-Rule 12-Alternative remedy of Appeal to Collector-Averment made in the petition that wife of appointee being President of Nagar Panchayat secured interview through Collector by under influence-Collector

himself is also a party to the petition-Remedy of appeal in such a case-Cannot be said to be efficacious-Hence not a bar to writ jurisdiction-Rule 5(7) of the Rules, 1998-Relaxation in educational qualification not provided in the advertisement-Appointment made relaxing prescribed qualification-Bad in law and quashed : *R.S. Sisodia Vs. State, I.L.R. (2000) M.P. 924*,

-Article 226- Public Interest Litigation- Grievance that construction of by-pass road is causing hindrances to petitioners in their daily activities-Petition filed after two years of commencement of construction work-Inconvenience if any is a temporary phase-Relief sought for quashing agreement aimed at stalling the construction of by-pass road-No public interest involved in the petition- No interference called for : *Smt. Manju palod Vs. Union of India, I.L.R. (2000) M.P. 941 (D.B.)*

-Article 226- Writ to committee appointed by Central Government in administrative capacity-Writ if can be issued to such body : *Messrs S.R. Kalani And Co., Indore Vs. The Iron And Steel Controller, Calcutta, I.L.R. (1972) M.P. 255 (D.B.)*

-Article 226-Writ Petition-Tender bid-Petitioner correcting clerical mistakes in his offer at the time of opening with consent of Co-tenders-Taken on record-Subsequent withdrawal of petitioner from the arena before accepting his offer-In absence of statutory force of the tender clauses petitioner's bid cannot be said to be complete offer-No contractual obligation created-Withdrawal of petitioner's bid offer would not entail forfeiture of Earnest Money-Contract Act, Indian, 1956-Section 5-Withdrawal of offer by offeree before acceptance-Offer invalid-Cannot be accepted : *R.S. Bansal Vs. M.P. Housing Board, Bhopal, I.L.R. (2000) M.P. 671*

-Article 226- Writ Petition-Education- Rules for Conduct of Entrance Test for Selection in Pre-Polytechnic Test, 1998-Paragraph 2.4.1.- Requirement of passing main examination-Petitioner though scored 68.48% marks in PPT but failed to pass the main exam and could pass only in subsequent exam-Not entitled to admission in P.P.T. course-Central Board of Secondary Education Scheme for examination-Paragraph 2.5. and 2.7-Cannot be read to mean compartment or supplementary exams are parts of main exam-Petitioner rightly refused admission in P.P.T. exam : *Kumari Kini Vs. State, I.L.R. (2000) M.P. 1044*

- Article 226 – Heabeas Corpus – National Security Act – Preventive detention – Can be sustained even on a right ground – Satisfaction based on FIR and statement of witness recorded by detaining authority himself – Detenue and others armed with Pharsa, Katta and gun stopped the vehicles, brought out the passengers and driver and gave them beating – Terrorised them to flee – Was an act of terror which affected

public order – No representation filed to security Board – Petition has no merit : *Chanchal Vs. State, I.L.R. (1991) M.P. 623 (D.B.)*

- **Article 226** and Land Acquisition Act, (I of 1894), Section 4-Purpose-Existence-Purpose for which the land was to be acquired was not in existence on the date of notification- No notification under Section 4 of Land Acquisition Act could be issued: *Shailendra Vs. State Of M.P. And Others., I.L.R. (1998) M.P. 820*

-**Article 226-** Writ Petition-Imposition of tax on export of cement outside the Municipalities-Revision of tax by State-Uniform rates levied all over the State-Sections 127,129 of the Municipalities Act, 1961 as amended by M.P. Act, 1995-Imposition of tax by the Municipalities-Rider-Subject to the approval of the State Government-The State Government has power to lay down the guidelines-Once the State Government exercises such power the council cannot make demand of tax fixed by it-Municipality is bound by the notification issued by the State Government : *Associated cement Companies Ltd. Bombay Vs. State, I.L.R. (2000) M.P. 136*

-**Article 226-** Writ Petition-Demand of property tax by Municipal Corporation on the preassessed value of the property-Municipal Corporation Act, 1956- Sections 143,146-Assessment-Procedure-Opportunity of hearing-In case of any alteration of assessment the authority is obliged to give opportunity of hearing by way of notice-Section 149-Dispute relating to assessment of property-Already put to rest by Hon. Supreme Court in the year 1976-No objection needs to be invited-Sections 173 & 174-Demand made on the basis of earlier assessment without any alteration- Cannot be said to be retrospective assessment-Corporation not required to follow the procedure *de novo* in absence of fresh assessment-Demand notice does not call for any interference in writ jurisdiction : *Smt. Ratnaprabha Dhanda Vs. Indore Municipal Corporation, I.L.R. (2000) M.P. 913*

-**Article 226-** Writ Petition-Contract Agreement for supply of oilseed at conventional rate for 12 years subject to revision in every block to two years subsequent to the date of agreement-Method of Revision laid down in the contract-Writ jurisdiction and alternative remedy of arbitration-dispute arising out of excessive demand-Provision for arbitration by one of the authorities of the Government which is a party to the agreement-Remedy of arbitration not efficacious hence not a bar to writ jurisdiction-Van Upaj Ke Karano Ka Punrikshan Adhinyam, 1987-Sections 3, 5-Agreement entered in to by the Govt. after coming into force of the Adhinyam but provision of Section 3 not invoked-Provision of the Adhinyam cannot be attracted after expiry of considerable period-Article 14-Validity of Agreement upheld by Hon'ble Supreme Court-Revision of rates for supply on different premises than mentioned in the agreement-Action of Govt. not fair-Violative of Article 14-Government directed to reconsider the matter as per agreement : *M/s. Bastar Oil Mills and Industries Ltd. Vs. State, I.L.R. (2000) M.P. 681,*

-Article 226- Writ Petition-Demand of Royalty by State Govt. on the quantity of slime exploited alongwith iron ore-Mines and Minerals (Regulation and Development) Act, 1957-Section 9- Royalty in respect of mining leases-Schedule II, Item 21- Royalty payable on iron ore prescribed-Slime exploited containing ferrous above 63.70 percent –Item falls within the second category of ‘fines’ i.e. Item No. 21(ii)(b) of schedule II under Section 9(1) of the Act-Even if used as commercial commodity it does not cease to be ‘ore’-Petitioner liable to pay royalty as per schedules-Word ‘Slime’-Is nothing but powdery form of ferrous-Exigible depending upon varied degree of ferrous contents-Demand of Royalty by the State justified : *National Mineral Development Corporation Ltd., Hyderabad Vs. State, I.L.R. (2000) M.P. 1220 (D.B.)*

-Article 226- Writ Petition against removal of Sarpanch by motion of no-confidence-Panchaya Raj Adhinyam, M.P., 1993-Section 2(xxi)-Words “prescribed authority”-Means the officer or authority as the State Government by notification direct to discharge the function of a prescribed authority-Motion of no-confidence-Meeting convened and resolution passed as required under Section 21(3) of the Act-Provision has nothing to so far as prescribed authority is concerned- Panchayat (Gram-Panchayat Ke Sarpanch Tatha Up-sanpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994-Rule 3(3)-Motion of no-confidence moved to the Sub-Divisional Officer/Prescribed authority who followed the procedure laid down-Not obliged to sign the notices himself-No illegality in the motion of no-confidence – S.D.O. present in court deserves appreciation for his promptitude in Court proceedings – Words “caused to be dispatched mean he has to remain vigilant that things are done properly and compliance of law is made : *Smt. Somvati Soni Vs. The Gram Panchayat Padwar (Barela), I.L.R. (2000) M.P. 213,*

- **Article 226** and Land Acquisition Act, (I of 1894) Section 4, 5A, 6-Dispensation of urgency clause-Enquiry is a rule and dispensation is an exception-For carrying out an exception the authority and the appropriate Government must satisfy the judicial conscience of the court that, if the urgency clause was not applied the purpose was to frustrate and there was likely-hood of the purpose being otherwise adversely affected- Nothing was shown by the authority-Proceedings are quashed: *Shailendra Vs. State Of M.P. And Others., I.L.R. (1998) M.P. 820*

-Article 226- Writ Petition-Co-operative society-Application for registration-Challenge made to registration of other societies in supersession of petitioner’s application-M.P. Co-operative Societies Act, 1960-Section 77-Appeal provided from such original order under the Act-Would not be proper to make interference in writ jurisdiction as adjudication of legality or propriety of such order would require fact finding enquiry-Section 2(3)-‘Society’ means a Co-operative society registered or

deemed to be registered under the Act-Section 9-Power of Registrar to refuse registration of a society-Limitation-Satisfaction of the Registrar that the applicant society is likely to be economically unsound or is likely to have an adverse effect upon any other society-*Sine-qua-non*-Section 9(ii)-Order not revealing reason for what the society could not be registered-Order quashed being patently illegal-Writ issued to register petitioner's society subject to legal requirements as on the date of application : *Akhil Chandra Mistri Vs. Deputy Registrar Co-operative Societies, Kanker, I.L.R. (2000) M.P. 1213*

- **Article 226** – Writ Petition – Panchayat election – Panchayat & Gram Swaraj Adhiniyam, M.P., 1993, Section 122, Panchayat Nirvachan Niyam, 1995, Rules 7 and 29-A and Panchayat (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P., 1995, Rules 3 and 7 – Election Petition – Filling of – Prerequisites – Deposit of Security amount along with Election petition – Provision Mandatory – Non-compliance fatal to maintainability of the Election Petition – Nirvachan Niyam Rules 7 and 29-A – Reservation chart under Rule 29-A attaches finality to the notification under Rule 7 – Election Petitioner made aware of the reservation of seat for backward classes by publication of notification under Rule 7 of the Rules, and not for woman candidates before filling nomination form – Once a particular fact is exposted and unless there is enormous error, legal significance cannot be marginalized – Prescribed authority in error in holding that the seat was reserved for woman candidates and further setting aside the election of returned candidate – Order Election Tribunal reversed : *Ramnath Patel Vs. Sub-Divisional Officer (Revenue), I.L.R. (2001) M.P. 1348*,

- **Article 226** and Land Acquisition Act, (I of 1894)- Section 4, 5A, 6-When the scheme regarding the land in dispute became unworkable, notification under Section 4 could not be issued for acquiring these lands-Enquiry under Section 5A could not be dispensed with and a declaration under Section 6 could not be made-The proceeding relating to acquisition are bad and quashed : *Shailendra Vs. State Of M.P. And Others., I.L.R. (1998) M.P. 820*

-**Article 226**-Panchayat Services-Appointment of Panchayat karmi and Panchayat Secretary-Panchayat Raj Adhiniyam, M.P. 1993-Sections 69, 70 and 95-Section 70(1) - Petitioner appointment as Panchayat Karmi as per instruction of prescribed authority-Cannot be invalidated as prior approval under Section 70(1) was already there-Section 95-Rule making power-Rules not framed-Panchayat Secretary – Appointment of-Can only be made by the State Govt. or the prescribed authority-‘Panchayat Karmi Yojna’-Clause 2.4-Scheme framed but not notified in the Gazette-Cannot be termed as Rules containing power to make appointment or the Rules prescribing qualification etc.-They are only executive institutions-Section 69(1)-Appointment of ‘Panchayat Secretary’ has to be made by the State Govt. or by the

prescribed authority-In absence of statutory approval petitioner's appointment as Panchayat Secretary cannot be sustained-General Clauses Act, M.P., 1957-Section 2(25) 'notification' means a notification published in the Gazette-Section 2(32)-'Prescribed' means prescribed by the Rules made under an enactment-Section 2(xxi) of the M.P. Act, 1993-'Prescribed authority' means such Officer or authority as the State Govt. may by notification direct to discharge the function of a prescribed authority under the provisions of the Act : *Ashok Kumar Kaurav Vs. State* , I.L.R. (2000) M.P. 1057

-Article 226-Recruitment examination-Candidature cancelled on basis of some letters of Divisional Employment Officer-No prohibition in getting names registered with more than one Employment Exchange-Impugned order relating to cancellation of candidature quashed : *Shailendra Kumar Khare Vs. Steel Authority Of India, Bhilai*, I.L.R. (1999) M.P. 831

- Article 226 - Discretion vesting in public authority - No writ of Mandamus can be issued to authority to exercise discretionary power : *Niranjanprasad Kesharwani Vs. The State Of M. P.* I.L.R. (1977) M.P. 1189 (D.B.)

-Article 226-Writ Petition-Entertainment tax-Entertainments Duty and Advertisement Tax Act, M. P., 1936, as amended by Entertainments Duties and Advertisements Tax (Amendment Act), M. P., 1983, Section 3 and 3-B-Exhibition of Films through Video Cassette Recorder is Cinema-Levy of licence fee on basis of population of town and availability of cinema-For levy of tax duty petitioner at liberty to approach the concerned authority-No interference in writ proceedings. *Madanlal Vs. State*, I.L.R. (1992) M.P. 711 (D.B.)

-Article 226-Writ Petition-Labour Law-Jurisdiction of Central Government Industrial Tribunal-Workers' claim for overtime-Industrial Disputes Act, 1947-Sections 2(j), 2(n), 2(S) and 33-C(2)-Application for overtime wages by employees of petitioner-Maintainability-Services in the Bank Note Press have been declared to be Public Utility Service for purpose of Industrial Disputes Act-Hence petitioner is an industry and its employees are workmen as envisaged in Section 2(j) and 2(S) respectively-Tribunal's order allowing the application for over time wages cannot be said to be perverse. *General Manager, Bank Note Press Dewas Vs. Chattar Singh Bank Note Press, Dewas*; I.L.R. (1992) M.P. 728 (D.B.)

- Article 226 - High Courts Jurisdiction conferred by provision - Power of doing such acts employing such means as are necessary for its execution are available - Confers power on High Court to issue directions, orders or writs, other than prerogative writs - Direction is wider than in England regarding issue of prerogative writs - Directions given : *M/s Agrawal Medical And General Stores, Jabalpur Vs. State Of Madhya Pradesh* I.L.R. (1977) M.P. 618 (D.B.)

- **Article 226** - Interference by High Court in election matters of panchayat : *Ramlakhan Sing Vs. Collector, Satna I.L.R. (1977) M.P. 639 (D.B.)*

-**Article 226**-Scope of-purpose to enforce established right-Is not to establish a legal right-High Court, no power to go into disputed questions of fact-Civil Suit proper remedy : *Ramdayal Purohit Vs. The State Of Madhya Radesh, I.L.R (1959) M.P. 873 (D.B.)*

- **Article 226** - Petitioner appointed temporarily as L. D. C. in High Court on 13 - 8 - 1965 and confirmed on 5 - 9 - 1977 - State Government under G. A. D. memo dated 19 - 4 - 1968 granting two advance increments and lump sum of Rs. 25/- to L. D. C. passing typewriting examination in Hindi from recognized agencies - No time limit fixed therefor in the G. A. D. memo - Petitioner passed such examination on 7 - 9 - 1969 - Condition in the appointment order relating to earning of such qualification within six months has no relevance being prior to G. A. D. memo - Petitioner entitled to two advance increments and lump sum of Rs. 25/- Constitution of India - Article 226 - Latches Not inflexible and Universal rule of law for refusing discretionary relief - Patent injustice to the petitioner and grant of writ not affecting other parties - Writ can be issued : *Prasanna Kumar Vs. The Registrar, M. P. High Court, Jabalpur I.L.R. (1984) M.P. 44*

- **Article 226** - Relevant date of fixation of seniority of an employee - Petitioners appointed as U. D. C. on 5.10.1971 - Condition in the appointment order about passing of examination not a condition precedent to their appointment but only a condition to their continuance in service - Petitioner though passing examination on 30 - 8 - 1972 but their appointment as U. D. C. cannot be construed as on 30 - 8 - 1972 - Petitioners entitled to seniority and promotion on the basis of their appointment as on 5-10-1971 - Delay - Petitioners making representation against their placement in the seniority list - Not replied to by the University which was itself in the process of organization - Petitioners expecting considerations of the grievances - Filing petition immediately after Juniors were promoted - Petition cannot be dismissed on the ground of delay : *Ganesh Prasad Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (1984) M.P. 513*

-**Article 226**-An error which is not self evident but can be established by long drawn argument-Error is not apparent on face of record - Two views possible-Tribunal taking one view-No error apparent on face of record : *Mohan Singh Vs. Bhawarlal Nahta, I.L.R. (1964) M.P. 31 (D.B.)*

-**Article 226**-Circumstance in which writ of certiorari can issue-Sabha contravening the rules framed by it-No ground for issue of writ of certiorari-Sabha Not constituted by or under a statute -Members of Sabha are not persons holding

public office-No writ of Mandamus can be issued to such Sabha : *Gulabchand Gupta Vs. The Hitkarini Sabha, Jabalpur, I.L.R. (1964) M.P. 524 (D.B.)*

-Article 226-Petition not stating facts candidly-Petition liable to be dismissed - - Motor Vehicles Act-Section 134(1)-Appellate Court, Power of, to vary operation of condition attached to permit-Rule 52-Order directing fulfilment of condition within certain time-Regional Transport Authority, Power of, to extend time : *The Berar Regular Motor Service Union, Achalpur Vs. The Regional Transport Authority, Bhopal, I.L.R. (1964) M.P. 496 (D.B.)*

-Article 226-Order passed by Inspector, Central Excise - High Court, Power to quash-Order passed by Inspector, Central Excise is administrative or executive-Theory of merger of order cannot be applicable-Even if theory of merger applied-Does not affect the operation of order even if affirmed in appeal or revision : *J. Harimal Oil Mills, Raipur Vs. The Assistant Collector, Central Excise, Jabalpur, I.L.R. (1960) M.P. 805 (D.B.)*

-Article 226-Person or body directly affected by statute or order-Has a right to apply for writ-Article 14-Authority not following the same policy or rules in case of all parties - Authority contravenes Article 19-Article 14 is admonition to State-Does not confer a right on any person : *Sudershan Transport Services (Private) Limited, Bilaspur Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior, I.L.R. (1960) M.P. 26 (D.B.)*

- Article 226-Ground not raised in Petition-Cannot be allowed to be raised in argument - Article 309-Proceedings in departmental enquiry-Do not amount to prosecution for commission or omission of act made punishable by any law for the time being in force - Article 20 (2)-Servant punished under departmental enquiry-Government serving show cause notice why higher punishment should not be imposed-Whole thing amounts to single punishment as a result of single departmental enquiry : *Sunderpyari Bai Shrivastava Of Morar Vs. The Chief Secretary, M.B. Govt., Gwalior, I.L.R.(1957) M.P. 243 (D.B.)*

-Article 226- Order of State Government merging in the confirming order of Central Government - Central Government situated outside the jurisdiction of the High Court-High Court-No power, to issue writ to quash the order of the Central Government-Even the order of State Government cannot be got rid of-Precedent-Obiter Dicta of Supreme Court - Binding on High Court-Two reasons given for conclusion-None can be regarded as Obiter : *Seth Surajmal Vs. State Of Mahdya Pradesh, I.L.R. (1957) M.P 507 (F.B.-5JJ.)*

- **Article 226**-Rejection of nomination paper by Returning Officer-High Court, Power of, to issue writ quashing the order : *Shanti Swaroop Vs. B. R. Mandal, I.L.R. (1957) M.P.322 (D.B.)*

- **Article 226** - Writ of certiorari not to be issued when specific remedy is provided by the statute and rules framed thereunder except for compelling reasons and in every special circumstances - Limitation Act, 1963 - Section 5 - Applicable to election petition : *Pancham Vs. The Collector, District Bhind I.L.R. (1977) M.P. 29 (D.B.)*

- **Article 226**-Instructions regarding admission are merely administrative or executive-Breach of instructions-Writ of certiorari or mandamus cannot issue-Return to contain facts showing petitioner not entitled to relief-Not to contain insinuation against petitioner : *Gokul Parsad Vs. Shri M. M. Sohani, District Inspector Of Schools, Betul, I.L.R. (1963) M.P. 22 (D.B.)*

- **Article 226** – Public Interest litigation – Writ jurisdiction of High Court – When can be invoked – Petitioner must act bona fide – Petitioner, a suspended Govt. servant, facing Departmental Enquiry at the instance of Lok Ayukt making allegations of corrupt practice against Cabinet Minister and Engineer-in-Chief and seeking writ against Chief Minister for advising Governor to remove Cabinet Minister and Cabinet Minister to remove Engineer-in-Chief - Writ of mandamus cannot be issued – Petition is incompetent : *A.G. Prayagi Vs. State Of M.P., I.L.R. (1987) M.P. 605 (D.B.)*

- **Article 226**-Petition challenging Board's action in accepting tender bid of respondent no. 3 for coal liasoning-Respondent No. 3 quoted lowest rate out of three tenderers, though not complying eligibility criteria of having full pledged office at places mentioned in tender form- Undertaking given to comply with said condition as may be required by the authorities-Board found it beneficial and awarded the contract for a short term-Not erroneous: *M/s Nair Coal Services (P) Ltd. Nagpur Vs. M. P. Ecectricity Board, I.L.R. (1999) M.P. 744*

- **Article 226**-Habeas Corpus- Subjective satisfaction should not be whimsical-The prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988-Section 3-Preventive Detention- Except alleged recovery and statements no material to manifest "illicit traffic" as a trend-No requisite and sufficient material to support subjective satisfaction- Detention illegal- Order quashed : *Nizamuddin Vs. Union Of India, I.L.R. (1999) M.P. 521 (D.B.)*

- **Article 226** and Land Acquisition Act (I of 1894), Sections 4 & 6 and Nagar Tatha Gram Nivesh Adhinyam, M. P. (XVIII of 1973), Sections 49 & 54-Scheme-Lapse-The scheme must provide for a particular purposes for which acquisition is to be made- It shall be implemented within 3 years otherwise it would lapse because of

non-action or inaction on the part of the Development authority-Constitution of India, Article 226 and Land Acquisition Act, 1894- Section 4-Purpose-Existence- Purpose for which the land was to be acquired was not in existence on the date of notification-No notification under Section 4 of Land Acquisition Act could be issued-Constitution of India, Article 226 and Land Acquisition Act, 1894-Sections 5A & 17- Urgency-Meaning-Application of Section 5A cannot be dispensed with unless it is a matter of urgency-The word “urgency” has not been defined under the Land Acquisition Act, but with its grammatical variation would mean that the matter was on felt need-Must appear from the attending circumstances-The urgency clause is to be applied after due application of mind-Final scheme was published in 1987 and notification under Section 4 was published in 23.12.1994>Returns of respondents are beautifully vague and conspicuously silent explaining the delay of five years-The purpose for which the acquisition was to be made was just to frustrate- Acquisition proceedings are quashed- Land Acquisition Act, Section 3(f) and M. P. Nagar Tatha Gram Nivesh Adhinyam, M. P., 1973, Section 55-Public purpose- Meaning - Must be a purpose by which the public or part of the public is to be benefited- The primary satisfaction of the Government regarding public purpose is the foundation for publication of the notification under Section 4 of the Land Acquisition Act- The word “satisfaction” is a term of considerable expensiveness –It has been understood to mean free from dishonesty, doubt, perplexity, suspicion or uncertainty- If from the admitted, undisputed and uncontroversial facts, it appears to the court that declaration was result of absolute non-application of mind Court can certainly interfere in the matter-Constitution of India, Article 226, and Land Acquisition Act, Section 5A- Ground for challenge- A declaration can be challenged before the court of law on the ground that the land owner has been deprived of his right under Section 5A of the Act to object to the proposed acquisition by reason of vagueness, non-suitability of the land for public purpose or the grounds akin to it-Constitution of India, Article 226-Land Acquisition Act, Sections 4, 5A 6- Dispensation of- Urgency clause-Enquiry is a rule and dispensation is an exception- For carrying out an exception the authority and the appropriate Government must satisfy the judicial conscience of the court that, if the urgency clause was not applied the purpose was to frustrate and there was likelihood of the purpose being otherwise adversely affected- Nothing was shown by the authority- Proceedings are quashed- Constitution of India, Article 226 and Land Acquisition Act, Sections 4, 5A, 6- When the scheme regarding the land in dispute became unworkable, notification under Sections 4 could not be issued for acquiring these lands- Enquiry under Section 5A could not be dispensed with and a declaration under Section 6 could not be made- The proceedings relating to acquisition are bad and quashed. : *Shailendra Vs. State Of M.P. And Others.*, I.L.R. (1998) M.P. 820

-Article 226-Firm not a legal entity-Firm cannot file a petition-Partner being a person aggrieved-Competent to file one-General Sales Tax Act, Madhya Pradesh-Section 19- Notice not giving reason for reopening assessment-Notice not according

to law-Does not give necessary protection to assessee : *Naraindas Sindhwani Vs. Commissioner Of Sales Tax, M.P. Indore, I.L.R. (1974) M.P. 774 (D.B.)*

– **Article 226** – Petitioner failed to secure 33 marks out of 100 in paper IV in M.H. Sc. (Previous) Examination – Revaluation – Clause 8 of Ordinance 71 of the University- Marks awarded by two examiners – Nearest to each other would be taken into consideration – Different standard fixed for passing examination in different disciplines – Unless demonstrated to be arbitrary no interference can be made : *Kumari Seema Shrotri Vs. Rani Durgawati Vishwavidyalaya, Jabalpur, I.L.R. (1991) M.P. 619 (D.B.)*

- **Article 226**-Compulsory Retirement at the age of 57 on the recommendation of Screening Committee- Jawaharlal Nehru Krishi Vishwa Vidhyalaya Act, 1963- Sections 25, 27-Board constituted is the Supreme Executive Body- Board delegated power of appointment to the Vice- Chancellor- Under Section 27 of the Act power to approve appointment etc. vests in the Board- Power to compulsorily retire is the power which could be read by implication of Section 16 of the General Clauses Act, 1957- Such power does not belong to Vice-Chancellor unless expressly delegated to him- Power to compulsorily retire is distinct from power to terminate simplicitor- Such power to compulsorily retire is quasi judicial having Civil consequences- Statute 11 - Screening committee has to scrutinize the cases of employees and make report to the Board-Cannot select cases for being placed before the Board-Power to take decision to compulsorily retire was never delegated- The Vice-Chancellor transgressed his powers and usurped the powers of the Board in passing the impugned order of compulsory retirement of petitioner-Impugned order quashed with consequential monetary benefits to the petitioner as he attained the age of Superannuation : *Dr. P.G. Najpande Vs. The Jawaharlal Nehru Krishi Vishwavidhyalaya, I.L.R. (1999) M.P. 200*

-**Article 226**-Conditions necessary for issue of a writ of certiorari- industrial Disputes Act, 1974-Section 25-F-Retrenchment-A managerial function- Management possess full power to take steps to carry on industrial undertaking efficiently and economically-Power of employer to terminate services of employee and to reorganize business-Re-organization resulting in discharge of some employees-Discharge cannot be said to be mala fide- requirements of section not fulfilled -Retrenchment per se invalid-Section 25-J-Permananency in employment- Is itself a benefit-Section 10(1)- Condition precedent for the validity of reference of dispute-Section 2(K)-Essential condition necessary for constituting a dispute to be an industrial dispute-Section 10-A(3)- First part obligatory but second part is directory and not imperative : *The Modern Stores Vs. Shri Krishnadas Sha, Presiding Officer, Labour Court, Jabalpur, I.L.R. (1974) M.P. 229 (D.B.)*

Article 226 - *Quo-warranto* – Means - Where is your warrant of appointment- Mere production of the warrant of appointment is sufficient, but the person holding the office has to satisfy the judicial conscience of the writ court that he is qualified to hold the office, his appointment is in accordance with the mandatory provision of law, the circular or the notification issued by the Govt. and it does not infringe the intention of law-A writ of *Quo-warranto* may be issued in respect of an office- Test of public office-Duties of the office are public in nature-In which the public are interested whether or not it is remunerated, but payment or remuneration out of public funds will be a specific test-It must be substantive in character- It must have been created by statute or by the constitution itself-Delay-Slacks if the appointment of an officer is illegal, everyday his acts in that office give a cause of action afresh, therefore there can be no question of delay in presenting a petition for *Quo-warranto* in which very right to act on such a responsible post has been questioned-Delay in such case could not prove fatal to an action of *Quo-warranto* – Alternative remedy – An election petition may or may not be an alternative remedy in an action of *Quo-warranto* but court firstly would be required to appreciate whether the complaint is made against an action or is against a man, if the action is found to be illegal then a statutory remedy may be available, but if the action is against a man challenging his authority to act in a particular manner, then the alternative remedy would be not bar- Public office – The office of Mayor is a public office – The test of public office is whether the duties of officer are public in nature, the office must be substantive in character and must be created by statute or by the Constitution itself-Articles 243-T & 226-If the office of the President is to go to the specified category, it would necessarily mean in the context of the parent Article 243-T of Constitution of India-Where the election is held in the very breach of the imperative provision of law, then the election in the eyes of law and this court would not refuse to interfere in the matter rather it is duty bound to issue a writ of *Quo-warranto*: *Nandkishor Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539*

-Article 226-Promotion of army Officer-High court does not sit as appellate Court over proceedings of Selection Board-Defence Service – Have their own peculiarities-Promotion-Individual Capacity and special qualities have to be found-Constitution of India-Article 16(1)-Expression “Appointment” used under includes provisions as to salary, increments, leave gratuity, pension, age of superannuation, promotion and even termination- Constitution of India –Article 226-Petition under-High Court can quash finding of selection board-Direct reconstitution of Special Selection Board of promotion-High Court entertaining writ petition under may direct fresh decision on statutory complaints-Statutory complaints rejected by one line order-Liable to be quashed : *Kulwant Singh Vs. Union Of India, I.L.R. (1998) M.P. 394*

- Article 226 - Powers of High Court to interfere with action of statutory authority - Public Service Commission inviting applications for a particular post upto

a particular date from candidates possessing necessary academic qualification - Relevant date for determination of eligibility of candidates with regard to academic qualification - Petitioner not eligible on the date of application though permitted to appear in written test - Public Service Commission not calling him in interview - Public Service Commission not estopped from challenging eligibility of petitioner : *Chandrakant Puranik Vs. M. P. Public Service Commission, Indore, I.L.R. (1982) M.P. 944, (D.B.)*

-Article 226-Income-tax Officer exercising discretion under Section 45, Income-tax Act, 1922 after taking into consideration the material before it-High Court, Power of, to interfere with discretion under this provision-The power of Income-tax Officer to treat the assessee as not being in default-Power is coupled with duty-Power to be exercised fairly and reasonably and not arbitrarily or capriciously-Assessee filing appeal against assessment order-Appeal not frivolous-Income-tax Officer ought to refrain from enforcing payment of tax and to grant extension of time till disposal of appeal : *M/S Badrilal Bholaram, Indore Vs. Shri B.K. Shrivastava, Income Tax Officer, Special Investigation Circle, Indore, I.L.R. (1971) M.P. 835. (D.B.)*

- Article 226 - Petitioner allowing time to run from the date of order impugned and the date of filing of petition - Opposite party spending money and doing substantial improvement - Order not liable to be challenged even if it suffers from procedural irregularity or is even erroneous : *Son Singh Vs. Board Of Revenue, Madhya Pradesh, Gwalior I.L.R. (1979) M.P. 865 (D.B.)*

- Article 226 - Strained relations between parents of the minor who are nature guardians - No ground for refusing them custody of the minor child - Minor aged 4½ years - His volition has not much significance - Natural guardian - In presence of parents - Grand-father has no legal right to custody of grand-child-Custody of grand-child with grand-father-His illegal refusal to give child to its parents - Amounts to illegal detention - Petitioner has other remedy under Guardians and Wards Act - No ground to deny the right of custody to the parents : *Smt. Usha Devi Vs. Kailash Narayan, I.L.R. (1979) M.P. 41 (D.B.)*

-Article 226-Appellate authority outside jurisdiction-Original authority within jurisdiction-Appellate order only dismissing appeal -High Court has jurisdiction to issue writ there being no merger-Central Excise and Salt Act - section 9-Covers only case of breach of rule made under section 37(2)(iii)-Sections 33 and 37-Proceedings for breach of rules framed under the Act, Principles of natural justice to be followed-Principles of natural justice--Requirements of : *Malkhansingh Vs. Inspector Of Central Excise, Jabalpur, I.L.R. (1962) M.P. 197 (D.B.)*

-Article 226-Tribunal, exercising judicial or quasi-judicial powers--Order of such tribunal-No merger if not interfered with by superior tribunal-High Court-Power of, to

issue writ to inferior tribunal when its order not interfered with by superior tribunal : *Masal Khan Vs. The Custodian Of Evacuee Property, Madhya Pradesh, Nagpur, I.L.R. (1958) M.P. 805 (D.B.)*

-Article 226-Civil servant-No inherent right to be promoted from lower rank to higher rank-Officer officiating in higher rank-In departmental enquiry, Officer sent down to his substantive post with direction that after certain period on good report of superior officer he will be promoted -At the end of the period officer not entitled to higher rank as of right-Crossing of efficiency bar in substantive rank-No criteria of his merit, ability or efficiency for promotion-Decision of authority about suitability for promotion-Open to review by administrative agency but not matter for judicial review : *B. C. Tiwari Vs. The State Of Madhya Pradesh, I.L.R. (1959) M.P. 858 (D.B.)*

-Article 226-Writ of mandamus -Not to be issued for execution of decision-Not available for enforcement of general law-Ordinary remedy available-Writ of mandamus not to issue - Special remedy under the Article-Not to supersede ordinary mode of obtaining relief : *The Amalgamated Coalfields Ltd., Parasia Vs. The Janapada Sabha, Chhindwara, I.L.R. (1965) M.P. 915 (D.B.)*

- Article 226 and Municipalities Act, M.P. (XXXVII of 1961), Section 19(2)-Termination of nomination as councilor-Use of the words “hold the office during the pleasure of the State Government”-Principles of natural justice impliedly ostracized-Question of show cause notice or opportunity does not arise : *Chand Khan Vs. State, I.L.R. (1999) M.P. 1138*

- Article 226 and Municipalities Act, M.P. (XXXVII of 1961), Section 41-A-Overriding power of State Government to remove an elected office bearer - Power is conferred on the State Government with no provision of appeal-Such powers could be invoked by the State sparingly on strong and weighty reason-Charges relate to construction of shops in place of public toilets near bus-stand, installation of hand pump on her own land for non-availability of Land, settlement and grant of sanction in anticipation of approval of the council, construction material for repairs of well stored in her house instead of work site, for safety, payment of bogus bill, but no enquiry made from the person to whom such payment was made and purchase of material without tender for providing electricity in mass marriage-Petitioner tried to met all the charges-Explanation plausible and acceptable-None of the charges are fully proved nor of such serious nature so as to warrant drastic action or removal-Order of removal quashed : *Smt. Kaushalya Bai Vs. State, I.L.R. (1999) M.P. 1028*

- Article 226 and Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic substances Act (LXI of 1985)-Section 3(i)-Preventive detention-Petitioners already in custody-Detaining authority according consideration to available material and

deriving satisfaction-Whether the charge under N.D.P.S. Act would sustain against petitioners had no bearing-Detention could be ordered taking in regard their past activities and likelihood of engaging in illicit traffic of narcotics-Delay-Not calculable from the date of a particular incident : *Amritlal Vs. Union Government, Through Seretary, Ministry Of Finance Deptt., Of Revenue, New Delhi, I.L.R. (1999) M.P. 729 (D.B.)*

- **Article 226** and Panchayat Raj Adhiniyam M. P. 1993 (I of 1994), Section 21, 91-No confidence motion against Sarpanch declared to have failed for want of requisite 3/4th majority- Dispute by Up-Sarpanch-Appeal and Second Appeal-Resolution of no-confidence motion has not been made appellate under the M. P. Panchyat (Appeal and Revision) Rules, 1995-Collector had no jurisdiction to consider the matter either in his appellate jurisdiction or power of revision-No reliance can be placed on the conclusion drawn by him-Order are totally without jurisdiction: *Ramnath Kaushik Vs. State, I.L.R. (1999) M.P. 835*

- **Article 226**, Panchayat Raj Adhinaiyam, M.P., 1993(I of 1994)-Panchayat Shiksha Karmi (Recruitment & Condition of Service)Rules, M.P. 1995 and Lok Seva (Anusuchit Jatiyon, Janjatiyon Aur Anya Pichda Vargo ke Liye Arakshan)Adhiniyam, 1994-Recruitment-Irregularity-Number of post increased and last date of application extended without public notice-Interpolation in the marks awarded to the candidates-Order of Collector annulling whole of the selection-Proper-Rule 12 of the Recruitment Rules-Decision of Janpad Panchayat appealable to the Collector-Collector can go into the question of validity of selection by Janpad Panchayat - Cancellation of appointments-Infirmitities found by the Collector renders entire selection striking-Members of Education committee were heard-Order of Collector cannot be faulted on ground that notices were not given to selectees-Principle of natural justice-Application depends on facts and circumstances of each case : *Smt. Parvati Ahirwar Vs. Collector, Panna, I.L.R. (1999) M.P. 936*

- **Article 226** and Panchayat Raj Adhiniyam M. P. 1993 (I of 1994) and Panchayat Election Rules, M.P., 1994- Petitioner elected President of Zila Panchayat-Correction of Voter's list-Jurisdiction-Registration officer has no jurisdiction to exclude a include names after the election is held unless bye-election or General Election is due to take place- If a particular authority lacks inherent jurisdiction he cannot assume jurisdiction on the ground that there has been manipulation-Principles of natural justice-Enquiry-Patwari; and Kotwari examined behind the back of the petitioner-Proceedings conducted cannot be given stamp of approval : *Anjana Mulkalwar Vs. State, I.L.R.(1999) M.P. 1112*

- **Article 226** and Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993, Sections 21-A(4) and Panchayat (Appeal and Revision) Rules, M.P., 1994, Rule 3-Writ Petition-Proposal for recalling-Dispute maintainable before Collector and at the

behest of a person against whom motion is passed—S.D.O. not competent—Order patently illegal—Cannot be allowed to stand : *Hario Jangde Vs. State Of Madhya Pradesh*; *I.L.R. (2004) M.P. 1043, (D.B.)*

-**Article 226** and Municipalities Act. M.P. (XXXVII of 1961)- Sections 34, 35 and 41-A-Disqualification and grounds of disqualification for a person seeking election as President-Section 41-A is applicable to an elected office bearer-Removal of President, Nagar Panchayat Words 'Public Interest' or 'in the interest of the council' are intended to cover a wide variety of situation incapable of clear delineation-Petitioner found gambling near the panchayat office - Conduct had to be held against public interest-Opinion framed by State Government cannot be held to be wholly unreasonable : *Rajendra Prasad Soni Vs. State, I.L.R. (1999) M.P. 844*

- **Article 226**, Municipal Corporation Act, (XXIII of 1956), Section 46, Nagarpalika Vidhi (Sanshodhan) Adhiniyam, M.P. (XX of 1998) and General Clauses Act, 1957 (III of 1958), Amending Act has to be given prospective effect-There cannot be an advisory committee with a chairman after enforcement of the Amending Act The Member of the Mayor-in-Council in the charge of the Department is authorized to convene and preside over the meeting of Advisory Committee : *Smt. Hemlatapathak Vs. State, I.L.R. (1999) M.P. 931*

-**Article 226** and Board of Secondary Education (Employees Pension) Regulation, M.P., 1991-Cut off date fixed from 1.4.1988-Petitioner was denied the benefit of the new pension Scheme as he had already retired on 1.11.1987-After working our necessary finance the cut-off date was fixed from 1.4.1988-This cut off date by the State cannot be said to be arbitrary-Order of learned Single Judge set aside : *Board Of Secondary Education, M.P. Vs. Shri Vasant Vadiya. I.L.R. (1999) M.P. 341 (D.B.)*

- **Article 226**, Municipal Corporation Act, M.P. 1956, Sections 5 (43-a), 10,11, 11-A and Municipalities (Reservation of Wards of Scheduled Caste, Scheduled Tribe, O.B.C., and women) Rules M.P. 1994, Rules 3 and 4-Reservation of wards in Municipal Election-Principle of rotation-Not Applicable in case of reservation of wards for S/C and S/T -Criteria for reservation will be population concentrated in wards and in descending order-Population-Means 'population' as ascertained at the preceding census of which relevant figures have been published-Authorities found scheduled caste population most concentrated as per 2001 census and have reserved wards in descending order-No error in the action taken: *Sunil Vs. State Of M.P.; I.L.R. (2004) M.P. 1055*

- **Article 226** and Municipal Corporation Act, (XXIII of 1956), Sections 17, 18-Resignation of councilor-Requirement is notice in writing indicating resignation to the Mayor-Letter addressed to the Commissioner of the Corporation and endorsed by

the Mayor-State Government refused to declare the seat vacant on the ground that resignation was not in accordance with mandate of Section 18 of the Act-Order of State Government does not require to be lanced in exercise of extra-ordinary jurisdiction : *Municipal Corporation, Bhopal Vs. State, I.L.R. (1999) M.P. 632*

- **Article 226**, Arms Act (LIV OF 1959), Sec. 2(1) (c) and Arms Rules 1962-Rule 3-Definition of-Section 17-Cancellation of licence of fire arms-Without proper finding whether the weapon is prohibited one-Unsustainable-Matter requires re-determination by the authority-Absence of conviction-Authority concerned has no jurisdiction to confiscate the weapon : *Kishorilal Agrawal Vs. State, I.L.R. (1999) M.P. 1132*

- **Article 226** and Sale of Goods Act, Indian, (III of 1930), Section 64-Writ Petition-Tax Laws-Sale of Goods-Unless there is a contract to the contrary liability to pay tax is on purchaser-Categorical stipulation in agreement-Purchaser cannot escape liability : *M/s A.O.P. Enterprises, Bidi Manufacturers Vs. State Of Madhya Pradesh; I.L.R. (2004) M.P. 1050, (D.B.)*

- **Article 226**-Writ Petition-Service-Army Act, Indian, 1950-Sections 191, 192, 193-Regulations made under Section 193-Have the same statutory force as if enacted in the Act-Regulation 170 provides for Character ranking and also for re-assessment in parity of appellate power-Once the character has been re-assessed it would Replace the original assessment for all practical purposes : *Devlal Vs. Union Of India, I.L.R. (1999) M.P. 734*

-**Article 226**-Transfer-An incidence of service-Unless effected *malafide* or in breach of mandatory rules does not deserve interference-It is for the management to decide how the service of a person can be utilized-Petitioner earlier filed writ petition and contempt petition-Petitioners cannot be allowed to refer to earlier proceedings to contend *malafide*-Action of the management found to be illegal in earlier proceedings will not lead to conclusion that every subsequent action of the management is *malafide* : *Ravi Pratap Singh Vs. Chairman And Managing Director, New Delhi, I.L.R. (1999) M.P. 553*

-**Article 226**-Petition under-Order of S.D.O. challenged in revision under Section 22 of the Madhya Pradesh Anusuchit Jati Tatha Anusuchit Jan jati Rini Sahayata Adhinyam 1967-Revision dismissed-Civil suit filed for declaration and possession by claimant dismissed for default-Does not operate *res-judicata*-No occasion for filing such suit-Jurisdiction of Civil Court barred under Section 26-Advocate who appeared in the case did not act properly-Required to be issued a caution to remain careful in future-In view of submission it cannot be said that revisional authority exercised jurisdiction not vested in it or failed to exercise jurisdiction vested in it by law : *Girdharilal Patel Vs. The Collector, Jabalpur, I.L.R. (1999) M.P. 191*

-Article 226-Transfer of petitioner by Employer Bank-Management received complaint that petitioner is indulging in benami business of agricultural equipment and pump sets and he granted loans to its purchasers-Reasonable apprehension of the bank that his continuance would be detrimental to the financial interests of the Bank cannot be questioned-No violation of statutory principle is alleged-Grounds of *malafide* are hardly made out-No details have been given in the petition or affidavit-No such document is on record-The practice that normally an assist. Manager of Bank would remain at a particular posting for a period of 3 years is not an inviolate statutory principle-Burden of proving *malafide* was on the petitioner-Courts does not look for justification but has to restrict itself to see if there is *malafide* or arbitrariness or violation of statutory principles-Petitioner failed to show any inherent injustice : *Rakesh Khatri Vs. Damoh-Panna-Sagar-Kshetriya Gramin Bank, Damoh, I.L.R. (1999) M.P. 120*

-Article 226-Writ Petition-Not open to the Court to question the validity of the President determination-Petitioner belonging to 'Baiswar Caste' notified Schedule Caste in U.P.-Not included in the list of Scheduled Caste for M.P.-Would not be entitled to any benefit in M.P.-Petitioner's land acquired in M.P. for Northern Coalfields limited-In absence of any law, agreement etc. he would not be entitled to employment simply because he is a land oustee : *Ramkhilawan Baiswar Vs. Northern Coalfields Ltd., Singholi, I.L.R. (1999) M.P. 824*

- Article 226-Writ petition-Education-Medical and Dental P.G. Entrance Examination-Medical and Dental Post Graduation Entrance Examination Rules, M.P., 2003-Rules 15.9, 15.10 and 15.11-Filling up of vacancy by reserve category student in the general category list vacated by reserved category candidate-Innovative attempt to enhance reservation-Contrary to law laid down by the Apex Court-Cannot withstand scrutiny-Has to be declared ultra-vires-Admission to PG courses-Counselling-Sequence of-(A) Unreserved (B) ST (C) SC (D) OBC-By the time seats fall vacant following Rule 15.10 the unreserved category candidate would not get chance as there is prohibition on change of subject and institution-Sequence does not stand in consonance with other rules-Cannot withstand scrutiny-Rule 15.9 and 15.11 invalid-Counselling is over-Direction to change sequence would usher in lot of disorderliness-State Government advised to frame proper rules in consultation with Medical Council of India-Petition disposed of : *Dr. Amit Kumar Aritwal Vs. State Of M.P., I.L.R. (2004) M.P. 635, (.D.B.)*

-Article 226-Writ Petition-Panchayat Raj Adhinyam, M.P., 1993-Secton 122-Election Petition on ground of improper acceptance, rejection and counting of votes-Procedure laid down-M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995-Rule 21-Election petition pending without progress though issues have been framed-Specified officer directed

recounting on ground to avoid delay-There was nothing beyond pleadings of parties to enable the Specified Officer to form an opinion that there was in fact an improper acceptance rejection and counting of votes-Indicates that Specified Officer had not formed any opinion but with a view to form such an opinion Specified Officer had passed the order for recounting-Secrecy of votes should be the paramount consideration-Order passed by Specified Officer suffers from patent illegality and impropriety of the procedure and deserves to be quashed : *Kailash Singh Vs. Narayan Singh, I.L.R. (1999) M.P. 441*

-Article 226-Taking over the management and powers of the University by the State Government-Vishwa Vidhyalaya Adhinyam, M.P. 1973-Sections 10, 13, 14, 16, 52-Provisions contained in Section 52 of the Act are akin and comparable to emergency provisions contained in Article 356 of the Constitution to meet an emergent situation which cannot otherwise be remedied-Opinion of Executive Council was sought-Aparently there was no allegation against the Executive Council-No specific allegation of commission of financial irregularities by the petitioner as Vice-Chancellor-Registrar alone was answerable so far as financial irregularities were concerned in terms of Section 16(4) of the Act-It would have been possible for the State Government to have waited for opinion of the executive council-Even Chancellor had not given opinion that action under Section 52 of the Act was warranted-Removal of Vice-Chancellor under Section 14 cannot be achieved by resort to the emergency provision under Section 52 of the Act-Some of the allegations personally made against the petitioner would have required show cause notice and grant opportunity of meeting the same of the petitioner-Petitioner was never given any such opportunity at any stage-A minimal act of fairness on the part of the State is expected for maintaining the dignity of the High office of Vice-Chancellor-The University as the seat of learning and an independent academic body has to be kept insulated from unhealthy political influence-Notification issued under Section 52 of the Act are quashed-Petitioner's appointment as Vice-Chancellor and appointment of other authorities and bodies of the University revived : *Prof. Narendra Kumar Gouraha V. State Of M.P., I.L.R. (1999) M.P. 292*

-Article 226-Municipal Employees (Recruitment & Condition of Service) Rules, M.P., 1968-Rule 12-Promotion-Recruitment by promotion-Municipal Services (Scale of Pay and allowances) Rules, M.P., 1967, Schedule III-Requirement of experience-Experience must be under the colour of title to the post-If the promotion order was quashed by High Court the period cannot be counted for the purposes of the experience-*De-facto* doctrine cannot be stretched : *Kishorilal Pandey Vs. The Municipal Corporation, Katni, I.L.R. (1999) M.P. 639*

- Article 226-Petition under-Minerals Concession Rules 1960-Rule 26(1)-Reduction of period of lease applied for-Opportunity of hearing has to be given to the applicant-By amendment dated 10.2.87 'after giving and opportunity of being heard'

was incorporated in Rule 26- Impugned orders set aside-Matter remanded to the State Govt. to reconsider the question after giving opportunity to petitioner : *Balkrishna Gupta Vs. State Of M. P., I.L.R. (1999) M.P. 194*

- **Article 226** and Money Lenders Act, C.P. and Berar (XII of 1934) – Section 2(f) – Petition under – Prohibited transaction means a transaction in which a Lender of money advance loan to a holder of the agricultural land against security of his interest in land – M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhara Dene Walon Ke Bhumi Hadapane Sambandhi Kuchkaron Se Paritran Tatha Mukti Adhinyam, M.P. 1976, Section 5 – Application under Section 2(d) – A person can be said to be lender of money only if he is found to be advancing loans to holders of agricultural land – A stray transaction of lone by a person will not make him a lender of money – Petitioner a teacher – Apart from transaction in question it has not been demonstrated that petitioner has advanced loan to any other person – Provision of the Act are not attracted – Impugned order set aside: *Bodhan Lal Vs. Additional Collector, Bilaspur, I.L.R. (1991) M.P. 626 (D.B.)*

- **Article 226** and Revision of Pay Rules, M.P., 1983 – New cadre of Head – Masters was created – No person can be promoted unless proper list is prepared and considered : *Kasturi Bai Vs. State Of Madhya Pradesh, I.L.R. (1991) M.P. 25 (D.B.)*

-**Article-226**-Material on which payment of bonus is dependent-Industrial Relations Rules, Madhya Pradesh, 1961-Rule 57-Labour Court, Industrial Court and Board-Possess power of joinder akin to Order 1 rule 10, Civil Procedure Code-Industrial Relations Act, Madhya Pradesh, 1960-Whether Industrial Court of Tribunal empowered to enlarge the scope of terms of reference for arbitration-Question of jurisdiction of Tribunal-To be first decided by Tribunal-Question of bonus-To be decided as a whole and not region-wise-Industrial Court-Has power to join other unions as parties : *The Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal Vs. President, Industrial Court, Madhya Pradesh, Indore, I.L.R. (1973) M.P., 205 (D.B.)*

-**Article 226**-Public interest litigation-Petitioner himself was Chief Secretary of the State Levelled allegation against Superintendent of Police, (S.P.E.) Lakayukt Karyalaya Bhopal-After issue of notice wide publicity made in various national press, levelling allegation against Lokayukt institution-Petitioner has a personal grievance because his complaint has not found favour-It is a petition with malicious intention to coerce the institution-To entertain such kind of public interest litigation is nothing but a totally abuse of the process of Court-Petition filed for personal vengeance-Self satisfaction and not for any actual public interest-Cost of Rs. 20,000/- imposed on petitioner: *B.K. Dubey Vs. Lokayukt, Bhopal, I.L.R. (1999) M.P. 459 (D.B.)*

-Article 226-Quashment of F.I.R. –Section 13(1) (d), 13(2), read with Section 15 of the Prevention of Corruption Act, 1988-F.I.R. drawn by Special Police Establishment against petitioner-erstwhile Minister of Housing and Environment-Section 15-Attempt to commit an offence within its connotative expansion would engulf intention to commit crime and failure to consummate because of some circumstances-Petitioner withdraw the earlier order and passed fresh order after coming to know that complaint has been lodged before the Lokayukt-One may put up his defence explaining his initial steps and withdraw later on-Facts as expounded do not warrant quashment of the prosecution-Whether the allegations constitute offence can be agitated by the petitioner at the appropriate stage-It would depend upon of what offence chargesheet is filled-it would be open to the petitioner to call in question the propriety of the charge-sheet : *Rajendra Kumar Singh Vs. State, I.L.R. (1999) M.P. 412*

- Article 226-Petition under-Municipalities Act, M.P. 1961, Section 41- Removal of Councillors- Show Cause Notice does not contain any charge-Petitioner participated in the meeting convened for his removal has no relevance-Word 'explanation' in sub-section (3) has got relevance-When a proper opportunity is not given to a person then he is certainly prejudiced-Impugned order quashed-Petitioner's status of a councilor restored : *Badri Prasad Chikwa Vs. State Of M.P., I.L.R. (1999) M.P. 287*

- Article 226 and Advocates Act (XV of 1961) , Section 7, 49 – Education – Power of Bar Council of India to prescribe minimum condition of eligibility for admission to law Course – Nothing prevents University prescribing higher condition of eligibility – Ordinance 22 Clause 2 – Requirement for admission in LL.B. Part I – Bachelor's Degree with atleast 40% marks – Guidelines of Government for relaxation of marks by 5% in case of SC/ST candidate – Contrary to ordinance 22 Clause 2 – Petitioners securing less than 40% marks in graduation – Admission to Law Course cancelled by the University – University has not condoned or acquiesced in the matter nor had delayed its decision – Rule of estoppel does not operate against statute – Petitioner not entitled to any relief. The University Made specific allegations that the Colleges, to inflate the strength of their classes or for other reasons best known to them, admitted those students who were not otherwise eligible. And the Prospectus of University also specifically refers to ordinance 22 and given information about conditions of Admission and Course which obviously is meant for candidates. Thus so far as the University is concerned, they have acted under the Statute (Ordinance and there is neither any acquiescence nor connivance. It is a well established principle that there cannot be as estoppel against the statute: *Mukesh Kumar Tiwari Vs. Registrar, Rani Durgawati Vishwavidyalaya, Jabalpur, I.L.R. (1991) M.P. 631 (D.B.)*

-Article 226-Public interest litigation for issue of writ of *Quo-warranto*-The office must be public, substantive in character, created by statute or the Constitution

and must be shown to have been held by the usurper without the authority-Petition for issue of writ of *quo-warranto-Locus-standi*-Petitioner has deep interest in the efficient functioning of the respondent no. 1 University-Although petitioner himself does not claim to gain any personal advantage, his interest in the affairs of the university governed by statutory provision cannot be undermined-For issue of writ of *quo-warranto*, no special kind of interest in the relator is needed nor it is necessary that any of his specific legal rights be infringed-Vishwa Vidhyalaya Adhinyam, M.P.1973-Statute 69-Framed in exercise of powers under Section 38-Merit promotion Scheme-Method of implementation-Clause 4-Restriction on such promotion to 1/3 of number of total permanent position and not more than two posts in a given plan period-Admission in return that two promotions had already been made-Respondents no. 1 and 2 had no authority to give promotion to respondent No. 4 in excess of limit-Promotion order or Respondent No. 4 dated 6.12.1996 quashed-Retirement of one of the Professor holding the post under merit promotion scheme will not validate illegal appointment of Respondent No. 4 from retrospective date-*Mandamus* for refund of money-Cannot be issued at the instance of petitioner who himself has no right to claim such refund : *Dr. Govind Prasad Mishra Vs. Rani Durgawati Vishwa Vidhyalaya, I.L.R. (1999) M.P. 81 (D.B.)*

- **Article 226**, Industrial Relations Act, M.P. (XXVII of 1960), Section 31(2), Industrial (Amendment) Act, M.P. (XLVI of 1960), Section 4 and Industrial (Amendment) Act, M.P. (XLI of 1981), Amendment of Section 62 – Right to approach Labour Court by giving approach notice remained unaffected by amendment – Application within time: *Dwarka Singh Thakur Vs. Industrial Court, Indore, I.L.R. (1991) M.P. 520 (D.B.)*.

- **Article 226** - Circumstance in which High Court will set aside an order of externment - Maintenance of Public Order Act, Madhya Pradesh, 1965 - Section 3 - Matter left to subjective satisfaction of District Magistrate - Objective examination by High Court on merits and propriety of order is prohibited - State possess two powers - One for punishing for crime and other to take preventive measure - Externment is preventive measure - Penal action and preventive action are exclusive recourses - Externment order does not extend beyond contiguous districts - Contemplates dispersal of each member of the gang : *Kashiram Vs. The District Magistrate, Sagar, I.L.R. (1977) M.P. 1091 (D.B.)*

-**Article 226**-Circumstances in which the rule of natural justice would operate in judicial or quasi Judicial proceedings--Test to be applied to determine it--Decision of authority to confirm or not the auction sale which is held subject to its confirmation--Decision is administrative-Reviewing or appellate Authority-Possesses same powers as those possessed by authority passing the order--Rules framed under Section 62(1)(c) of Excise Act--Rule 11 (c)--Appeal to Revenue Authority to whom powers delegated by State Government--Not an appeal to Government--Petition by State

Government for writ of certiorari-Maintainability : *The State Of Madhya Pradesh Vs. The Board Of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M P. 425 (D.B.)*

- **Article 226** and Civil Procedure Code, 1908, Order 37, Rule 3-Summary suit for recovery-Where a part of the claim is admitted leave to defend shall not be granted unless the amount admitted is deposited-Court already granted leave unconditionally-On application by plaintiff only security can be considered in respect of securing payment of suit amount and not beyond it. : *Devendra Kumar Jain Vs. G.N. Goyal, I.L.R. (2005) M.P. 1058*

- **Article 226**-Opportunity of hearing-Opportunity has to be efficacious and not a mere eye wash: *Arbind Kumar Pandey Vs. M.P. State Agriculture Marketing Board, I.L.R. (2004) M.P. 142,*

- **Article 226** and Krishi Upaj Mandi, Adhinyam, M.P. 1972 Section 55(1)-Removal of elected office bearer-Opportunity of hearing-Opportunity has to be efficacious and not a mere eye wash-Essential documents withheld-Opportunity not afforded to rebut-Independent finding required to be recorded as to alleged misconduct of office bearer-No such finding recorded by the authority-Removal improper-Order impugned set aside : *Arbind Kumar Pandey Vs. M.P. State Agriculture Marketing Board, I.L.R. (2004) M.P. 142,*

- **Article 226**-Petition challenging order of prescribed authority refusing to withdraw-Election Petition under the M.P. Panchayat Raj Adhinyam, 1993 – Madhya Pradesh Panchayat (Election Petitions, Corrupt Practices and disqualifications for Membership) Rules, 1991 would be applicable-Rule 13-Prescribed authority has not given any reason for refusing to grant the leave to withdraw the election petition-Parties are closely related, it was not a case of corrupt practices but a case of recounting of ballot papers-There is nothing which may entitle refusal to withdraw the election petition-Order impugned cannot be allowed to be sustained: *Smt. Meena Singh Vs. The Prescribed Authority-Cum-Collector, Sidhi, I. L.R. (1999) M.P. 407*

-**Article-226**-Petitioner's punishment set aside by High Court on earlier charges on merits-Similar charge-sheet on same facts given again and petitioner punished-Later proceedings liable to be quashed on ground of fair play and propriety : *Ramswaroop Vs. The Divisional Commercial Superintendent, Western Railway, Ratlam, I.L.R. (1965) M.P. 40 (D.B.)*

- **Article 226**-Petition under-Challenging restrictions imposed on the profession of tourist guide in Khajuraho- Khajuraho has been declared to be a protected monument-Ancient Monuments of Archaeological Sites and Remains Act, 1958- Rule 8 (d) of the rules framed under the Act provide no person unauthorized can conduct any tourist to protected monuments without licence- Guide lines issued by the

Government for training, age limit, licensing renewal of licence, issue of identity-cards disciplinary action-Article 19(1)(g) of the Constitution-Citizens of India are entitled to profess their own business or profession-As per clause (6) State can regulate this freedom for the benefit of general public-Looking to the growing tourism traffic in our country, internationally and domestically, there is need to regulate tourist industry-These are reasonable restrictions-Cannot be aid to be violative of Article 19(1)(g) of the Constitution: *Tourist Approved Guide Association Vs. Union Of India, I.L.R. (1999) M.P. 325 (D.B.)*

- **Article 226**-Petition under-Direction to employer to send names of petitioners and like others to Public Enterprises Selection Board for appointment to the post of Direction (operation & projects)- Petitioners visited with minor penalties- One of them facing criminal trial-Proceeding for imposing major penalty initiated against the petitioners-Also for non-availability of vigilance clearance names of petitioners were not sent-Letter of PESB specifically asked the employer to recommend persons whom it considers suitable-Ground which weighed with the employer for not forwarding names of petitioners cannot be said to be arbitrary-Candidature of petitioners considered-Article 16(1)- Satisfied-Sealed cover procedure cannot be applied in case of direct recruitment : *A. K. Roy Vs. Union Of India, I.L.R. (1999) M.P. 180*

-**Article 226**-Person charged not given opportunity to effectively cross-examine witnesses, examined before framing charges-Person holding enquiry himself examined as witness Amounts to violation of principles of natural justice -Article 311-Person not given opportunity to examine defence witnesses-Amounts to non-compliance with this Article : *Nandkishore Soni Vs. Commissioner, Jabalpur Division, Jabalpur, I.L.R. (1961) M.P. 932 (D.B.)*

-**Article 226**- Technicalities of law resulting in unjust enrichment of one party-Tribunal under the Special Act not giving effect to such technicalities-High Court-Power of, to exercise discretion under this Article : *Municipal Committee, Sagar Vs. Board Of Revenue, I.L.R. (1957) M.P.622*

-**Article 226**-Writ of quo warranto-When can be issued-Conduct of petitioner to be taken into consideration in issuing the writ of quo-warranto Madhya Bharat Vikram University Act (XVIII of 1955) -Sections 44 and 45 -The provision regarding office of Vice Chancellor and exercise of powers under Section 45 comes into immediate operation-The words "Notwithstanding anything contained in the Act, Statutes and Ordinances" in Section 44, Scope of : *Rajendrakumar Vs. The State Government Of Madhya Radesh, I.L.R. (1957) M.P. 188*

-**Article 226**-Election of Kendra Panch-Madhya Bharat Panchayat Vidhan, section 116-Rules 29(i) and 30 of rules thereunder-Defect in letter of appointment of Returning Officer cannot vitiate actual appointment so as to vitiate election -

Erroneous reference to name of Kendra for which election sought, not a mere clerical error but substantial one so as to justify rejection of nomination paper-No ground for issue of writ for declaring election invalid : *Ratanlal Vs. Kanhaiyalal, I.L.R. (1959) M.P. 374*

-Article 226 High Court, Power of, to go into disputed questions of fact, when another remedy open-Nomination form illegally rejected-Jurisdiction of High Court to entertain petition not barred-Panchayats Act Madhya Pradesh, 1962-Section 17(1) and (2)-Distinction between the two provisions-Words and Phrases-“Tax”, “toll”, “cess”, “fee” and “duty”-Meaning of-Section 17(1)(i)-Comes into play only when “all taxes due by him to the Gram Panchayat” are not paid by candidate : *Mata Prasad Vs. Election Officer, Morena, I.L.R. (1975) M.P. 468 (D.B.)*

-Article 286-Difference between sale “for the purpose of export” and sale “in the course of export”-Sale “for the purpose of Export”-Does not qualify for exemption-General Sales Tax Act, M.P., 1958-Section 24(5)-Notification dated 29-10-63-Not applicable to taxes levied before 29-10-63-Talk of refund arises when tax is paid-Liability to pay tax not affected-Refund claimable only when goods are proved to have been exported-Sales Tax Act, C.P. & Berar, 1947-Section 11(5)-Word “period”-Refers to quarter or quarters which is limit of assessment-Covers the case of dealer who does not apply for registration and does not file return-States Re-organization Act, 1956-Section 78-Scope of-Place of assessment for tax due before November 1956-Is place when tax could have been assessed before that date-Successor State in whose dominion that place is situated-Has a right to recover that tax-Burden on petitioner to prove that order of assessment was without jurisdiction-Section 120-Object behind the section-Power of adaptation-Does not confer power to make Laws inconsistent with specific provision made in this Act-Sales Tax Act, C.P. and Berar-Section 11-c-To be construed consistent with the right of successor State to recover arrears of taxes conferred by Section 78 of States Re-organization Act-Sales Tax Act, C.P. and Berar-Section 2(j)-Words “such period” in definition of taxable turnover-Refers to “prescribed period” in the definition of turnover-Rule 22 and Forms VI and IV-Words “such period or periods”- Refer to quarter or quarters as specified in notice-Rules 22, 32 and 34-Connote that quarter is period prescribed for the definition of turnover in the Act-“Prescribed period” and “such period” in Section 2(j)-Mean a quarter-Sales Tax Act, C.P. and Berar, 1947-Section 11(5)-Words “Within three calendar years from the expiry of such period” in-Mean three calendar years from expiry of such quarter for which dealer is liable to pay tax-Limitation of 3 years to be computed for each quarter separately and for the entire period within which he is liable to pay tax taken as a whole : *Shyama Charan Shukla Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

-Article 226-Writ of quo-warranto-Not a writ of right of right-Issue of writ of quo-warranto discretionary with the Court-Circumstances in which it can or cannot be refused : *Nauranglal Vs. Shri Bhanu Pratap I.L.R. (1969) M.P. 935 (D.B.)*

-Article 226-Circumstances in which High Court will interfere in election matters even though other remedy open-Gram Panchayat Election and Co-option Rules, Madhya Pradesh, 1963-Rule 78-Confers power on Collector to appoint President of the meeting to be held for election of Sar Panch or Up-Sarpanch-President-nominee appointed but written order followed next-day-There is no breach of any rule-Constitution of India-Article 226-Public authorities making statement of facts on personal knowledge-Statements to be believed by High Court for these proceedings : *Tejraj Vs.. A.K. Saraswat, Block Development Officer, I.L.R. (1969) M.P. 736 (D.B.)*

-Article 226-Deviation from administrative instructions-Not valid ground for issue of prerogative writ-Municipalities Act, Madhya Pradesh 1961-Section 32-Re formation of wards of Municipality-Assembly rolls relatable to those areas taken as basis for preparing new rolls-Madhya Pradesh Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councillors), Rules, Madhya Pradesh, 1962-Rule 4(2)-Reduction in period of limitation for filling objection-Not permissible-Objection not pursued by appeal or petition-Petitioner cannot be permitted to challenge election on that ground-Rules 4(1) and 8(1)-Collector alone has authority to publish preliminary and final rolls-Has no power to delegate these matters-Constitution of India-Article 226-Writ of quo-warranto-Cannot be denied on ground of delay or estoppel : *Hafiz Mohammad Anwar Khan Vs. State Of M.P. ,I.L.R. (1969) M.P. 183 (D.B.)*

-Article 226-Conditions necessary to be satisfied for relief under-M. B. Public Premises Eviction and Recovery of Rent Act-Section 3-Circumstances in which competent authority can take action for ejection from requisitioned premises-Vires of: *Dulhanmal Vs. Adam, I.L.R. (1962) M.P. 57 (D.B.)*

- Article 226 and Jawaharlal Nehru Krishi Vishwavidyalaya Act (XII of 1963), Sections 12, 14 (2) and Statute 6 (a) (i) - Requirement of All India Advertisement for filling up every post of Officers of Vishwa Vidyalaya detailed in section 12 and statute 3 and teachers - Purpose and legality of - Post not advertised - Appointment is illegal - Qualification of Ph. D. or published work of an equivalent high standard - Assessment of - Opinion of selection Board not final - Chancellor entitled to scrutinize and judge its legality - Chancellor holding that research papers published by the petitioner jointly with other cannot be equated with Ph. D. Degree - Interference by High Court - Scope of : *S. L. Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal I.L.R. (1985) M.P. 535*

- **Article 226** - Govt. Servant - Deemed fiction of promotion - Applicability of - Entitlement of Govt. Servant after reinstatement to be considered for promotion on the dates his juniors were promoted and of all money benefits of such promoted post - Consideration of : *Raghunandan Prasad Vs. State Of M. P., I.L.R. (1985) M.P. 671*

-**Article 226**-Original order prior to Constitution--Order in appeal and the review subsequent to Constitution-Order Liable to be quashed under Article 226- Interpretation of Statute - Presumption that statute is prospective-Does not affect vested right-Rule regarding vested rights extends to remedial rights, their nature and content - Right of appeal-Not a matter of procedure - Review-Right to- A creation of statute law-Could be exercised within defined limits-Order under Article 226-High Court, Power of, to review- Review is not a matter of procedure-C.P. and Berar Board of Revenue Act, Section 9-Powers of review under-Not restricted by provisions of Order 47 Rule 1, Civil Procedure Code-Specific Relief Act, Section 31-Latent ambiguity in description of property in deed-Suit for correction not necessary -C.P. Land Revenue Act, Sections 145 and 146-Sale void-Applications under the said sections not necessary-C. P. Land Revenue Act, Section 122(1)Arrears of Land Revenue-A paramount charge- Does not authorise revenue officer to adopt summary procedure for recovery by selling land-Section 127, Rule1-Notice for arrears of revenue on defaulter is compulsory-Purchaser of property having charge of arrears of land revenue-Becomes defaulter-Arrears can be recovered even personally from him : *Narayansingh Vs. The Board Of Revenue, Madhya Pradesh, Gwallor, I.L.R. (1962) M.P. 788*

- **Article 226**, Payment of Wages Act (IV of 1936), Section 15 and 17 (4) and Contract Labour (Regulation and Abolition) Rules, M. P., 1973, Rule 25 (2) (v) (a)- Claim of petitioners of payment of wages to them by the Contractor at par with wages being paid by principal employer for doing similar kind of work - Is not a claim for potential wages - Is a dispute relating to interpretation of a condition of employment and illegal deduction of wages - Adjudication on the nature of work being done by petitioners is an incidental matter - Authority under Payment of Wages Act has jurisdiction to decide the dispute - Labour Commissioner, under Rule 25 of Contract Labour (Regulation and Abolition) M.P., Rules, 1973, has no exclusive jurisdiction to decide it - Jurisdiction conferred on Authority by Act of Parliament - Cannot be taken away by Rules framed by the State-Rule 25 (2)(v)(a) - Validity of - Payment of Wages Act- Section 17 (4) - Industrial Court has no jurisdiction to pronounce upon validity of a law - Constitution of India - Article 226 - Alternative remedy - When a bar to writ jurisdiction : *P. C. Adhikari Vs. The Manager, The Brait Waite Burn And Jossip Construction Co. Ltd., Bhilai, I.L.R. (1985) M.P. 161*

- **Article 226** and M. P. Warehousing Staff Regulations 1962, Regulation 11 - Temporary employment of a Govt. Servant - Resignation by the employee - Appointment order and Regulation 11 provided for termination of service after the

expiry of period of probation by one month's notice on either side - Petitioner submitted his resignation w.e.f. 1-10-1975-Subsequently, petitioner not entitled to claim reinstatement : *Dussasan Prasad Sao Vs. Managing Director, M. P. State Warehousing Corporation, Habibgunj, Bhopal, I.L.R. (1985) M.P. 228*

- **Article 226**, Land Revenue Code, M. P. (XX of 1959), Section 230 and Rules framed thereunder - "Kotwar"- Selection of - Authorities making selection do not perform judicial functions - Not bound by rules of Evidence Act- General reputation of a candidate is a relevant factor - Authorities finding petitioner unsuitable for appointment as 'kotwar' on account of his general reputation - Order valid - High Court in exercise of its writ jurisdiction would not substitute its own opinion - Petition dismissed : *Ayodhya Prasad Vs. Board Of Revenue, M. P., Gwalior, I.L.R. (1985) M.P. 546*

- **Article 226** and Co-operative Societies Rules, Madhya Pradesh, 1960, Rule 41 (26), Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 64 and 51 - Provision in Rule 41 (26) for appointment of Returning Officer by Registrar - Is mandatory - Appointment by nominee of Registrar is invalid - Appointment made in breach of Rules invalidates appointments and all other consequential actions taken by such appointee - Registrar not taking objection to such appointment - Cannot validate the appointment under Section 51 - Article 226 - Alternative remedy of election petition - Is not an absolute bar to exercise of powers under Article 226 - Natural Justice - Judicial practice - Nobody should be the Judge of his own cause - Alternative remedy lies before the officer who passed the impugned order - Petition should be entertained by High Court : *Thaneshwar Mishra, Zila Sahakari Kendriya Bank Maryadit, Mandla, I.L.R. (1985) M.P. 275 (D.B.)*

- **Article 226** and Cinemas (Regulations) Act, M.P. (XVII of 1952), Sections 3,5(2), Cinemas (Regulations) Rules, M.P., 1972, Rules 120, 105, 103, 100 – Scheme of Act and Rules – Control and exhibition of cinema business by licensing authority and State Govt. – Renewal of licence – Dispute arising regarding right and ownership of premises – Danger to law and order – Order to get the dispute regarding right and ownership decided by Civil Court before applying for renewal – Order just and proper : *Roop Singh Vs. Licensing Authority, Tikamgarh, I.L.R. (1989) M.P. 410 (D.B.)*

– **Article 226** – Writ of certiorari – Principles of natural justice – Concept of - Respondent No. 3 – Father, a member of Public Service Commission and in-charge of relevant examination held by Commission – Respondent No. 6 – Son of respondent no. 3 being a candidate in such examination – Petitioners alleging – Various acts of favouritism by Respondent No. 3 to secure appointment of Respondent No. 6 to any post in category 1 – Likelihood of bias is the test and not the existence of actual bias or the result being factually partial, Examination result of Respondent no. 6 alone

quashed and not the entire State Service Examination of that year: *Hariharlal Bhargava Vs. Public Service Commission, M.P., Indore, I.L.R. (1987) M.P. 83 (D.B.)*

-Article 226 and Co-operative Societies Act, M. P., 1960 (XVII of 1961), Section 59 (4), 53 (1), 53 (2), 53 (7) - Supersession of a Society registered under the Co-operative Societies Act by the Registrar - Reasonable opportunity of showing cause against the action has to be given to the Societies - Show cause notice giving 15 days time - Impugned order passed on the 15th day itself - Amounts to denial of reasonable opportunity - Section 59 (4) - Communicating the result of inquiry under - Requirement of - Report of the inquiry - Meaning of - Assistant Registrar and Joint Registrar in their independent inquiries not found anything objectionable against the Society-Thereafter Inspector holding inquiry and reaching a contrary conclusion - Petitioner - Society entitled to the copy of the report of Inspector - Failure to supply the same - Amounts to violation of section 53 (2) - Section 53 (7) - Consultation with Finance Bank is mandatory - Impugned order superseding the society passed without such consultation - Legality of : *Ward No. 4 Primary Consumer Co-Operative Stores, Satna, Vs. State Of M. P. I.L.R. (1985) M.P. 741*

- Article 226 and Industrial Relations Act, M. P. (XXVII of 1960), Sections 31 (3) and 66 - Standard Standing Orders applicable to the employees of the M. P. State Road Transport Corporation - Clause 12 (1) (F) - Misconduct - 'Drunkenness' - Meaning of - Consumption of liquor by driver of a passenger bus without amounting to drunkenness without proof of his incapability of driving - Whether amounts to misconduct - The expression "conduct endangering the life or safety of any person"- Connotation of - Motor Vehicles Rules, 1974, M. P. - Rule 25 (1), clause (xix) - Prohibition against driving a passenger bus in a State of intoxication - Importance of - In domestic enquiry, respondent - Driver was found to be driving the passenger bus in a State of intoxication and amounting to major misconduct, resulting in termination of his service by the Corporation - Labour Court in exercise of its powers under Section 31 (3) of the M. P. Industrial Relations Act and Industrial Court in revision under section 66 of the Act, sitting aside the order of termination of service holding that mere consumption of liquor while on duty in the absence of any evidence about his incapability of driving does not amount to misconduct - Contrary conclusion reached by Labour Court and Industrial Court based on misreading and misconstruction of clause 12 (1) (F) of the Standard Standing Orders - Error apparent on the face of record - Orders liable to be quashed : *M. P. State Road Transport Corporation, Bhopal, Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

- Article 226 and Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 55 and 77 (2) - Jurisdiction of Registrar under section 55 - Extent of - Departmental enquiry - Rules of evidence not applicable - Deputy Registrar and Additional Registrar also not bound by strict rules of evidence - Section 77 (2) - Jurisdiction of Board of Revenue to interfere with the findings recorded by Deputy

Registrar and Additional Registrar holding the petitioner not guilty of charges levelled against him - Scope of - Domestic enquiry held to be vitiated - No finding that petitioner was guilty of the charges levelled - Petitioner entitled to relief of reinstatement : *Chandra Prakash Mishra Vs. M. P. Rajya Sahkari Bank Maryadit, Bhopal, I.L.R. (1985) M.P. 488*

- **Article 226** - Co-operative Central Bank Employees Services Rules, M. P., 1977, Rules 22 (IV), 10 and 23 (iii) and Co-operative Societies Act, M. P., 1960 (XVII of 1961), Section 55 (1) and General Clauses Act, M. P. 1957, Section 21 - Co-operative Central Bank Employees Service Rules, M. P., 1977 - Are constitutionally valid - Section 55 (1) - Powers of Registrar to issue orders to the Societies thereunder - Nature of - Such orders cannot amend, modify or repeal the Rules - Rules 22 (IV) and 23 (iii) - Selection and appointments of Manager of Banks - Rules requiring holding of written test and fixing quota of direct recruits - Selection and appointments made following the orders of Registrar without holding written test and without following quota Rule - Such selection and appointment illegal and liable to be quashed - Constitution of India - Article 226 - Locus Standi to file writ petition challenging such selection and appointments - Whether confined to 'person aggrieved' only - Organization of employees having special interest in subject matter - Right of, to challenge such selection and appointments : *Bikal Bihari Soni Vs. State Of M. P., I.L.R. (1985) M.P. 762*

- **Article 226** and Co-operative Societies Act, M. P., 1960 (XVII of 1961), Sections 57 and 60 - Enactment of Section 57 neither inconsistent with co-operative jurisprudence nor in derogation of fundamental rights - State legislature competent to legislate it - Grave illegalities and irregularities reported in the affairs of the petitioner Society inasmuch as membership found to be not genuine and proper producer in admitting members in accordance with terms and conditions of allotment order and Bye-laws of the society not followed - Action under section 57 and 60 justified - Natural Justice - Principles of - Its applicability to orders passed by Govt. in administrative capacity - State Govt. passing an order revoking allotment of land made in favour of the petitioner society earlier, without affording opportunity to society - Order violates principles of natural justice and cannot be sustained : *Awat Rahat Griha Nirman Sahkari Samiti Maryadit, Bhopal Vs. State Of M. P., I.L.R. (1984) M.P. 496 (D.B.)*

- **Article 226** and Panchayat Election and Co-option Rules, M. P., 1978, Rules 8 and 11 - Alteration in the voters' list-finalised under Rule 8 - When can be made - Special law providing special remedy for redress - Writ jurisdiction cannot be invoked - Petitioner having knowledge of alteration in voters' list contrary to Rules participating in election and after being unsuccessful invoking jurisdiction of the High Court under Article 226 - Petitioner's conduct disentitles him to any relief : *Govind*

Arya Vs. Authorised Officer, Gram Panchayat Elections, Tehsil Mhow, Dist. Indore, I.L.R. (1984) M.P. 98 (D.B.)

- **Article 226** and Civil Services (Pension) rules, Madhya Pradesh, Rule 42 - Compulsory retirement of public servant - When can be made - Order of compulsory retirement based on manipulation of confidential reports and character roll - Biased and not in 'public interest' - Liable to be quashed by issuing appropriate writ : *Dr. Shambhudayal Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 513 (D.B.)*

- **Article 226** - Petition for writ of Habeas Corpus - Criminal Procedure Code, 1973 - Sections 428 and 432 (1) - Benefit of set off, of the period of detention undergone - Available to life convicts also - Condition imposed in the impugned order of the State Govt. granting special remission to life convicts excluding benefit of undertrial period while computing period of detention undergone - Condition contrary to section 428 - Undertrial period liable to be included : *Rameshwar Vs. State Of M. P., I.L.R. (1986) M.P. 16 (D.B.)*

- **Article 226** - Rules framed by the State Govt. for admission to post graduate-studies in Medical Colleges - Rule 2.7 and 2.2 - Rules providing 5 seats to merit candidates in M. D. M. S. and 3 seats in Diploma courses in Gynaecology and obsterics - In Selection petitioner placed at S. No. 4 in Diploma Course in Gynaecology and obsterics - Candidate placed at S. No. 1 in Diploma Course was given admission in M. S. Course under orders of High Court in writ petition - Petitioner applied for her admission in Diploma Course being in the waiting list as seat for candidate No. 1 fell vacant - Whether petitioner can be denied her admission on the ground that by that time academic Session had expired and appeal against order in writ petition was pending in Supreme Court- Rights of such candidates even on expiry of academic session for which selection made : *Dr. Rekha Saxena, Vs. State Of M. P., I.L.R. (1986) M.P. 84 (D.B.)*

- **Article 226** and Civil Procedure Code (V of 1908), Section 11-Constructive res judicata - Applicability of, to writ petitions - Decisions on issue of facts or of mixed law and fact or on issue of law operates as constructive res judicata in subsequent writ petition, if cause of action is the same : *Jagannath Prasad Mishra Vs. Collector, Bilaspur, I.L.R. (1986) M.P. 339 (D.B.)*

- **Article 226** and Contract Act, Indian (IX of 1872), Sections 2 (b) and 4 - Completion of contract - General rule - Exception - Contract is complete only where its acceptance is put into a course of transmission by offeree by posting a letter or despatching a telegram correctly addressed to offer - Forest Authority accepting tender submitted by petitioner but not proving communication of such acceptance to petitioner - No binding contract - Clause 17 of tender notice specifying condition entitling Govt. to forfeit earnest money and recover loss from petitioner - Conditions

not fulfilled - Revenue Recovery certificate issued against petitioners liable to be quashed : *Kalluram Kesharvani Vs. State Of M. P., I.L.R. (1986) M.P. 307 (D.B.)*

-Article 226, Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, M. P. (III of 1977) Section 2 (c), 2 (b), 5, 8, 11, 4 and 44 and Land Revenue Code, M. P. (II of 1959), Section 17 (2) - Objection to jurisdiction of subordinate Tribunal not raised by respondent before subordinate Tribunal - Respondent not precluded from raising such objection in writ proceedings - High Court in writ jurisdiction cannot re-examine findings of fact arrived at after due consideration - Findings of subordinate Tribunal that petitioner is not the holder of agricultural land and transactions are not prohibited transactions of loan - Not liable to be assailed - Section 5 - Civil Suit filed by petitioner pending - S. D. O. has no jurisdiction to entertain and decide application - Land Revenue Code, M. P. - Section 17 (2) - Additional Collector also entitled to hear appeal under section 8 of Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhinyam, 1976 : *Mirza Rashid Beg Vs. Inayatulla, I.L.R. (1986) M.P. 250 (D.B.)*

– **Article 226** – Letter petition – Negligence of physician – Proofs of negligence stated – Accountability of the physician to his patient – Physician cannot escape in certain cases – Cases illustrated : *Ranchhod & Bhanta Vs. State Of M.P., I.L.R. (1988) M.P. 666 (D.B.)*

– **Article 226** – Liquor Contract – Licence containing a condition to lift minimum quantity and on failure to impose penalty – Minimum quantity no lifted penalty impose – Quasi Judicial proceeding – Order must contain reasons – Penalty to be imposed only if contractor found blame worthy on account of any act or omission – Show cause notice not stating the reason weighed with the authority for the short-fall in lifting liquor – Prejudice caused to the contractor : *Ratanlal Vs. State Of M.P., I.L.R. (1989) M.P. 456 (D.B.)*

- **Article 226** and Civil Services (General Conditions of Service) Rules, M.P. 1961, Proviso to Rule 12(c), clause (c) – Seniority – Petitioner senior to respondents as sales Tax Inspector – Promotion to the post of Asstt. Sales Tax Officer – Petitioner was found unfit in D.P.C. – Respondents were promoted – Petitioner subsequently promoted – Since promotions were after due selection, petitioner cannot claim seniority on the basis of seniority in substantive rank of sales tax Inspectors – Seniority to be fixed as per proviso to Rule 12(c) and not under clause (c) : *Krishna Kumar Dubey Vs. State Of M.P., I.L.R. (1989) M.P. 387 (D.B.)*

- **Article 226** and Departmental Enquiry and Central Industrial Security Force Rules, 1969, Rule 37(b) – Rule 37(b) dispenses with the inquiry in two eventualities –

Rule 37 not attracted for mis-conduct committed during the course of inquiry – Separate Departmental Action for such mis-conduct : *Narsingh Vs. Union Of India, I.L.R. (1989) M.P. 578 (D.B.)*

- **Article 226** and Educational Service (Collegiate Branch) Recruitment Rules, M.P., 1967, Rule 12, Schedule III-A, Clauses 6 and 9 – Absorption of teachers of private college in Govt. Service on taking over the college – Services automatically terminate with prior master – Past Services in private college cannot be taken into consideration for determining seniority or while fixing their pay – Clauses 6 and 9, Schedule III-A, neither discriminatory nor arbitrary nor opposed to public policy : *Madhya Pradesh Shashnadhin Mahavidyalaya Shikshak Sangh Vs. State Of M.P., I.L.R. (1989) M.P. 142 (D.B.)*

- **Article 226** and High Court Rules, Chapter 1, Rules 4 and 5 – Jurisdiction of Vacation Judge sitting alone in long vacation – Deemed to be exercising the jurisdiction of Division Bench by virtue of Rule 5 of Chapter 1 – No L.P.A. lies against judgment of Vacation Judge : *Sanjay Kumar Shrivastava Vs. State Of M.P., I.L.R. (1988) M.P. 303. (D.B.)*

- **Article 226** – Writ petition filed challenging rejection of nomination paper and declaration of respondent No. 4 as Sarpanch unopposed – Alternative remedy of election petition not only available but also availed of – Desirability of issuing directions for early disposal of election petition while dismissing petition on ground of alternative remedy : *Ramnarayan Devisingh Vs. Returning Officer, I.L.R. (1990) M.P. 369 (D.B.)*

- **Article 226** and Criminal Procedure Code, 1973 (II of 1974) – Section 167 (i), Proviso – Physical production of accused at the time of remand to custody is mandate of law – However absence of accused will not render remand order per se invalid if production of accused is beyond control – Non-availability of escort or guard – Not a sufficient ground for non-production of accused – Order of remand is a judicial order – Remedy of aggrieved person – Writ jurisdiction cannot be invoked – Writ of Habeas Corpus – When can be issued : *Raju Alias Rajkumar Vs. State Of Madhya Pradesh, I.L.R. (1990) M.P. 130 (D.B.)*

-**Article 226** and Wakfs Act (XXXIX of 1954), Section 11 - Requisite qualifications for appointment as a member of Board - Purpose of prescribing such qualificalional requirements - Appointment under clause (c) - Requirement of one of the three qualifications prescribed thereunder necessary - Mutawalli possessing qualifications and requirements under other clauses than (d) - Not prohibited from being appointed as member of Board - Members not possessing requisite qualifications - His appointment on Board is rendered invalid and liable to be quashed : *Mohammad Yahyah Ali Khan Vs. State Of M. P., I.L.R. (1983) M.P. 134, (D.B.)*

– **Articles 226 and 12** – Co-operative society when amenable writ jurisdiction : *Anant Purohit Vs. State Of M.P., I.L.R. (1987) M.P. 21 (D.B.)*

- **Articles 226, 12** – Indian Oil corporation amenable to writ jurisdiction of High Court. *Smt. Chinta Jaiswal Vs. Indian Oil Corporation Ltd., I.L.R. (1993) MP 489 (D.B.)*

- **Articles 226 and 12** - National Textile Corporation is a 'State' within Article 12 : *Bhagwant Vs. National Textile Corporation Limited, New Delhi I.L.R. (1984) M.P. 547 (D.B.)*

– **Articles 226,12** – Writ petition Challenging termination of School teacher–Employer School run by Army Education Society registered under Societies Registrations Act –Society not directly or indirectly controlled by State–Society does not come within definition of 'State'–Termination after show cause notice and payment of three months salary due to poor performance–Rules framed by society not statutory in nature–Termination within the scope of Rules can not amount to breach of public duty–Order of termination can not be said to be arbitrary or unreasonable : *Ms. Serbjeet Bhatia Vs. The Goc-In-C, H.Q. Central Command, Lucknow (U.P.), I.L.R. (2004) M.P. 460*

– **Articles 226, 12 and 14** – Respondent No. 1 – Corporation is 'State' within meaning of Article 12 – Respondent No. 1 issuing tender embodying a term therein that Tender may be accepted or rejected by it without assigning any reason – Validity of – Acceptance of Tender of Respondent No. 2 giving facilities of payment of price in two installments contrary to conditions of tender – Action of Respondent No. 1 is discriminatory and violative of Article 14 – Article 14 – Article 226 – Alternative remedy – Not an absolute bar – Acceptance of Tender quashed and re-tender directed : *Navranglal Mittal Vs. National Thermal Power Corporation Ltd., Korba, I.L.R. (1990) M.P. 299, (D.B.)*

– **Articles 226,12, 14 and 16** – Aided schools are State Agency or instrumentality – Obligation of act reasonably and not arbitrarily, enforceable by any Court including High Court – Absence of reasons for termination of confirmed employee makes the order arbitrary – Res Judicata & Constructive re-judicata – Principles apply to writ proceedings : *President, Birla Education Society Vs. Director Of Public Instruction, M.P., Bhopal, I.L.R. (1988) M.P. 193*

- **Articles 226, 12 and 300 (A)**, Evidence Act, Indian (1 of 1872), Section 115 and Electricity Act, Indian (IX of 1910). Section 2 (f) and 2 (n) - M. P. Electricity Board is ' State' within the meaning of Article 12 - Amenable to writ jurisdiction of High Court - Board entering into contract for purchase of conductors from the petitioners

for performing its obligations to lay transmission lines for distribution of electricity - Not a statutory duty of the Board - Writ jurisdiction of the High Court cannot be invoked for seeking enforcement of contractual obligations - A bare contractual right does not constitute 'property' within the meaning of Article 300 (A) - Clause 4 (b) of the Contract giving an option to the Board to defer scheduled supplies of conductors if consideration essential - Exercise of such option by the Board - Does not amount to deprivation of property without any authority of law under Article 300 (A) - Evidence Act - Section 115 - Promissory estoppel - Exercise of option by the Board to defer scheduled supplies of conductors by the petitioners in pursuance of clause 4 (b) of the Contract - Principle of promissory estoppel not applicable : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)*

- **Articles 226, 14** - Service Law - Compassionate appointment - Death in 1992 - Subsequent policy providing 5% vacancy introduced in 1998 - Petitioner should have been considered on basis of earlier policy. *T. Swamy Dass Vs. Union Of India ; I.L.R.(2002) M.P. 467 (D.B.)*

- **Articles 226 and 14** - Writ Petition - Adverse ACR not communicated but considered for purposes of promotion - Refusal by writ court to interfere with the ACR on ground of delay : *Madan Pal Vs.. Chief Of The Army Staff, I.L.R. (2001) M.P. 513 (D.B.)*

- **Articles 226, 14** and Telegraph Act, 1885, Section 7-B-Arbitrator-Appoint of-Constitutional validity-Provision cannot be voided merely because no corrective machinery is provided-Award passed by arbitrator-Discussion in the award itself is indication of existence of material - No interference called for. *Bhagwati Prasad Bajaj Vs. Union of India; I.L.R. (2002) M.P. 842 (D.B.)*

- **Articles 226 and 14**-Writ petition-Short closing of tender-Supply of electronic push button telephone instrument-Contract executed-Subsequent fall in custom duty and resultant fall in price-Petitioner undertaking to remit all benefits deriving out of fall in custom duty-Department having accepted the same acted arbitrarily in foreclosing the tender to the extent of already supplied quantity. *S.R.V. Telecom Private Ltd. Vs. Bharat Sanchar Nigam Ltd.; I.L.R. (2002) M.P. 236*

- **Articles 226, 14** - Writs - Administrative action - Arbitrariness - While permitting the licensees to operate on ad hoc basis no steps whatsoever, have been taken by the Railway administration to select licensees on regular basis keeping in view the procedure laid down under the policy in vogue : *Mahendra Kumar Tiwari Vs. Union Of India, I.L.R. (1997) M.P. 418 (D.B.)*

- **Articles 226, 14**—Writ petition—Service law—Increment—Petitioner's services regularised—Formal order of continuity in service also passed—Related circular of 1993 for extending benefit of increment to ad-hoc employee not superseded—Order for recovery of increment given cannot be allowed to stand—Impugned order quashed : *Rajendra Giri Goswami Vs. State Of M.P., I.L.R. (2005) M.P. 789 (D.B.)*

- **Articles 226, 14**—Service law—Promotion—Representation against adverse ACR pending—DPC held and juniors promoted—Subsequently adverse ACRs expunged—Petitioner entitled to be considered for promotion from the date when juniors were promoted : *Bajjnath Rajput Vs. State Of Madhya Pradesh Through The Secretary, Man Power Planning Department, Vallabh Bhawan, Bhopal, I.L.R. (2005) M.P. 815*

- **Articles 226, 14** and Workmen's Compensation Act, 1923, Sections 3, 4, 30, Third proviso—Award of compensation—Can only be challenged by way of an appeal and not otherwise—Provision for depositing award amount as precondition of appeal—Not violative of the Constitution : *Khemkaran Sanodiya Vs. Union Of India, Through The Secretary, Ministry Of Law, New Delhi, I.L.R. (2005) M.P. 568 (D.B.)*

- **Articles 226 & 14** – Service Law—Principles of natural justice—Departmental enquiry—disciplinary authority disagreeing with the finding of the Inquiry Officer imposed penalty—The Disciplinary authority him-self in a different capacity conducted preliminary enquiry—Concept of bias cannot totally be ruled out—Justice does not appear to have been done : *Dr. J.N. Dubey Vs. Registrar, J.N. Krishi Vishwavidyalaya Jabalpur And Others, I.L.R. (2003) M.P. 400 (D.B.)*

-**Articles 226,14**—Writ petition—Service law—Recovery of wages/salary for the elongated period of service after superannuating age—Petitioner actually worked—Interpolation in the entry of date of birth not by petitioner himself—No action taken against petitioner—Impugned order of recovery quashed—Retiral dues to be calculated from the actual date of retirement : *P. Narayan Vs. The State Of M.P., I.L.R. (2004) M.P. 1144*

- **Articles 226, 14**-Writ Petition-Service Law—Principles of natural justice in her in every administrative action having adverse civil consequence affecting the rights of others Assistant Sub-Inspector in Krishi Upaj Mandi-Terminated after 12 years on ground that he was not appointed before 31.12.1988—No opportunity or show cause notice given-Termination bad-Petitioner directed to be reinstated : *Rajesh Singh Vs. Madhya Pradesh Rajya Krishi Vipnan Board, Bhopal, I.L.R. (2003) M.P. 609*

- **Articles 226, 14** - Admission Rules, R.3.2.10(iii) of Medical College - For M.D. course - Transfer from one institute to another – Rules prohibiting transfer from one institute to another - On earlier occasion, other candidates were transferred under directions of High Court - Refusal merely on wording of Rule to transfer

petitioner/student is discriminatory – For exceptional cases - Amendment of Rule suggested. *Dr. Sachin Deo Vs. Director of Medical Education, M.P., I.L.R. (1995) M.P. 200*

-Articles 226, 14 - Education - Admission to Bachelor of Pharmacy - Rules do not debar rounding of 49.77% as 50% - Petitioner B.Sc. with 53.99% marks- Wrongful deprivation - Authorities directed to grant admission. *Dharmendra Kumar Vs. Jiwaji University, Gwalior ; I.L.R. (2002) M.P. 513 (D.B.)*

-Articles, 226,14–Writ Petition–Excise Act, M. P. 1915–Section 62–Foreign liquor Rules 1996–New excise policy–Scope of interference–Court would be slow to interfere with policy for grant of licences for manufacture and sale of liquor–Grant of licence on the basis of application in place of public auction and fixing of minimum rate–To avoid cut-through competition and monopoly State implemented new policy–State well aware that liquor should not be sold below minimum price–Election Commission accorded its approval to implement the policy – policy not arbitrary, discriminatory or malafide : *Mahesh Lavvanshi Vs. State, I.L.R. (2004) M.P. 737*

-Articles, 226,14–Writ Petition–Service Law–Change of date of birth in Service book–Financial Code, Rule 84–Has to be given purposive and acceptable interpretation–Once the employee gives declaration and is signatory to it the same is binding on him–It cannot be said that if the entry is vitiated employer would be estopped to rectify the same–If the employer wants to change entry of date of birth it has to follow principles of natural justice–Direction issued to conduct inquiry within 4 months : *Baldeo Prasad Vs. State Of M. P., I.L.R. (2004) M.P. 731*

- Articles 226,14 —Writ petition—Service law—Compulsory retirement—State Co-Operative Dairy Federation Limited Employees' (Recruitment, Classification and Conditions of Service) Regulation, M.P., 1985 (as amended), Regulation 13(1)—Compulsory retirement on completion of 20 years service in public interest—It is not interest of employer or of employee which is material but efficiency and integrity are of paramount considerations—Regulation amended in conformity with Rules applicable to Government servants—Criterion adopted cannot be said to be discriminatory—Marks given on grading in confidential reports—Not to be retired if average marks obtained are two or more—Formula ensures objectivity in evaluation of service record—Rules out chances of bias, prejudice or subjectivity—Only 1.05 marks obtained on an average of 20 years service—Really a deadwood and worthless—Decision of compulsory retirement bonafide : *Dr. Vishwanath Prasad Agnihotri Vs. M.P. State Cooperative Dairy Federation Limited, I.L.R. (2004) M.P. 134*

- **Articles 226,14** –Writ petition–Service Law–Equal pay for equal work–Teachers of Non-Government institution– Entitled for similar pay and dearness allowances as paid to the Teachers of Government Schools of corresponding category : *Kanchan Kumar Adhamane Vs. State Of M.P., I.L.R. (2004) M.P. 546 (D.B.)*

-**Articles 226 and 14**–Writ petition–Service law–Departmental enquiry and consequent 'dismissal'–State Bank of India (Supervisory Staff) Service Rules–Rules 32(1), 32(4), 49(g) and 49(h)–Misconduct–Position clarified by Deputy General Manager–Yet refusal to carry out work assigned on ground that he was in an innocuous position–Use of indecorous language–Disobedience exhibited lack of sense of responsibility–An act unbecoming of a Bank employee established–Petitioner guilty of dereliction of duty–No moral turpitude–Punishment should be commensurate to the proved misconduct–Justice must be tempered with mercy–Order of dismissal altered to "removal from service" : *Jaiprakash Kori Vs. State Bank of India, I.L.R. (2003) M.P. 282*

- **Article 226, Article 14** - Cancellation of admission to Veterinary Sciences and Animal Husbandry College - Petitioner admitted -In reserved quota for 'agriculturist' - Pursued said course for three and half years - Admission cancelled, when found that he had submitted false certificate that his father was an 'agriculturist' - Petitioner not given any opportunity of hearing to before cancellation of admission — Principle of estoppel also applicable - Order of cancellation of admission quashed . *Mukund Prasad Khare Vs. State of M.P., I.L.R. (1995) M.P. 563*

- **Articles 226 and 14** – Writ Petition – Education- Mass copying in examination – Regulations of Board of Secondary Education, Madhya Pradesh, Regulation No. 117 – If result of Examination has been affected by error, malpractice, fraud or other matter, the result committee shall have power to amend result – Petitioner involved in mass copying – Result rightly amended – Principles of natural Justice not applicable to the case of mass copying : *Vinod Kumar Pathak Vs. State, I.L.R. (2001) M.P. 938*

- **Articles 226,14**, Nagar Tatha Gram Nivesh Adhiniyam, M.P. 1973 Section 50(7)–Acquisition proceedings–Doing away with the requirement of publishing whole of the scheme in Gazette–Details of land etc. given in the notification with further notice to general public to inspect the scheme during office hours–Opportunity made available to all concerned to file objection–Challenge of vires on ground of violation of Section 50(7)–Not tenable : *Achlashrya Developers Vs. The Bhopal Development Authority, I.L.R. (2004) M.P. 487 (D.B.)*

-**Articles 226,14** and –Application for Registration for practice–On the date of application candidate must possess recognized qualification–Any other interpretation

would defeat the purpose sought to be achieved by Amending Act No. 21 of 1989 : *Kartik Chandra Mandal Vs. State, I.L.R. (2003) M.P. 18 (D.B.)*

-Articles 226,14 and Ayurvedic, Unani, Prakratic Chikitsa Adhiniyam, M. P. (as amended), 1970–Sections 24,25, 34 and 37–Application for Registration for practice–On the date of application candidate must possess recognized qualification–Any other interpretation would defeat the purpose sought to be achieved by Amending Act No. 21 of 1989–Petitioners holding degree of "Vaid Visharad" (Ayurved Ratna) from Hindi Sahitya Sammellan Allahabad–Degree was obtained prior to amendment but Registration applied for after Hindi Sahitya Sammellan was deleted from the entry by Amending Act No. 21 of 1989–Refusal to grant Registration–Not arbitrary : *Kartik Chandra Mandal Vs. State, I.L.R. (2003) M.P. 18*

– **Articles 226 and 14** and Societies Registrikaran Adhiniyam, M.P. (XLIV of 1973), Sections 3(f), 33 and 40 – Supersession and appeal – Writ Petition – Section 3(f), as amended – ‘State aided society’ defined – ‘A society which receives aid’ and not a society which received aid – Section 3(f), 33 and 40 - Petitioner society received an assistance almost a decade back – Not a State aided society – Order of supersession of petitioner society treating it as a ‘State aided society’ – Illegal – Article 14 – Order passed before issuance of show cause notice – Order sensitively susceptible – Order of supersession quashed : *The Chhatarpur Homeopathic and Biochemic Association Vs. State, I.L.R. (2001) M.P. 801*

- **Articles 226, 14**, Homoeopathy Parishad Adhiniyam, M.P., 1976, Sections 21, 22, 23, 24, 25, 26 and 51 and Homoeopathy Council (Publication of Register and Appeal) Rules, M.P., 2000, Rules 4 and 5 - Rule making power - Rules are subordinate to the Act - Rules cannot override any of the provisions of Principal Act - None of the provision of Principal Act speaks about renewal of registration of Homoeopathic medical practitioners and on failure cancellation of registration - Rule providing renewal of registration runs contrary to Article 14 of the Constitution of India - Rules 4 and 5 of the Rules, 2000 ultra vires. *Dr. Rajkumar Jain Vs. The State of M.P.; I.L.R. (2002) M.P. 829 (D.B.)*

– **Articles 226 and 14** – Writ petition – Challenging propriety of grant of escrow cover to successful bidders on least tariff basis after re-bidding as per direction of the Central Govt. Power Ministry – After finalization of contract petitioners participated in the rebidding on the basis of least tariff – Precluded from challenging the same or to seek enforcement of statutory contract by reason of acquiescence : *Bina Power Supply Company Ltd. Vs. State, I.L.R. (2001) M.P. 658, (D.B.)*

- **Articles 226 and 14** – Limited financial resources available – Has to be distributed on a good criterion – High powered committee consisting of experts decided that Least Tariff to be good criterion for grant of escrow – Many factors and complicated process involved – Difficult for the Court in writ jurisdiction to enter into merits and demerits of Least Tariff basis – Once high powered committee taking into consideration all relevant factors found Least Tariff to be a good criterion – Grant of Escrow cover on that basis to successful bidders cannot be said to be arbitrary – Order of writ court set aside – State Govt. and M.P.E.B. left at liberty to proceed with the matter further on Least Tariff basis : *Bina Power Supply Company Ltd. Vs. State, I.L.R. (2001) M.P. 658, (D.B.)*

- **Articles 226, 14** – Writ petition – Education – Admission – Vishwa Vidyalaya Adhinyam, 1973 – Sections 38, 39 – Powers of University to frame rules for admission- Universities are autonomous bodies created by different Acts – Can provide their own guidelines for admission to respective courses – Ordinance in relation to Master of Computer Semester Examinations – Clause 13 Provision for disqualifying candidates who failed in two powers of preceding semester to take admission in next semester in the respondent University – Not arbitrary nor unconstitutional – Article 226 – Controversy involved is of academic character – Should be left to be decided by Universities and Court should not interfere : *Yashwant Birla Vs. Pt. Ravishanker Shukla University, I.L.R. (2001) M.P. 178 (D.B.)*

-**Articles 226, 14** -Writ Petition –Electricity Tariff-Advocates carrying on Legal profession-Not a trade or business-Not liable to pay Electricity tariff at commercial rates-Domestic Tariff applicable even if the office is situated at a place other than his residence-Electricity Supply Act, 1984-Section 49-classification of Advocates in legal profession as commercial as commercial activity-violative of Article 14- Notification of Electricity Board quashed-Words “Commerce” or “Commercial” necessarily has a concept of a trading activity “Legal Profession” involve certain amount of skill as against commercial activity when it is more of a matter of thing or business activity : *Shiv Narayan Vs. M.P.E.B., I.L.R. (2000) M.P. 796 (D.B.)*

- **Articles 226,14** and Stamp Act, Indian, 1899–Section 9, Articles 33 (a) (v) and 33(c)–Writ petition–Stamp duty–Constitutional validity–Fiscal legislation–Not confiscatory or expropriatory in nature–Cannot be challenged merely on ground of being excessive–Persons willing to pay high premium and rent to defeat competition or to secure advantage–Cannot have a grievance when it comes to payment of stamp duty–Section 33(a) (v) and 33(c) not ultravires–Businessmen taking lease for commercial purpose–Cannot fall in the category of 'Eminent Writers/ Poets' or 'Low income Group Citizens'–Does not amount to hostile discrimination : *Smt. Padma Vs. The State Of Madhya Pradesh, I.L.R. (2004) M.P. 1025 (D.B.)*

– **Articles 226, 14** – Recruitment – Reservation – Petitioner appeared in the Civil Judges examination as reserved candidate and figured in the select list – Article 14 – Enquiry by the appointing authority as to genuineness of the caste certificate produced by the petitioner – Discrepancy found that petition belongs to ‘Mahar’ and not ‘Mahara’ caste – Enquiry conducted without giving any effective opportunity to petitioner – Not proper – Article 14 – Appointing authority is always within rights to scrutinize caste certificate of an incumbent but after giving proper opportunity to petitioner – Respondents directed to keep a seat vacant and conduct an enquiry through a committee and take appropriate action depending upon the result of such enquiry in stipulated time : *Krishna Das Mahar (Jharia) Vs. State, I.L.R. (2001) M.P. 767,*

- **Articles 226, 14**, Road Transport Corporation Act (LXIV of 1950), Section 45, State Road Transport Corporation Employees Service Regulations, M.P., 1960, Regulation 59 and Industrial Relations Act, M.P. (XXVII of 1960)–Sections 31, 61–Retirement of petitioner at the age of superannuation of 58 years of age on the basis of wrong entry of date of birth–Objection of petitioner accepted on the basis of High School Certificate–Order of retirement withdrawn by the Respondents/Corporation–Vigilance conducted without giving opportunity to the petitioner unilaterally–Petitioner again retired on the basis of date of birth shown in earlier Graduation list already superseded by subsequent graduation list of 1984 and 1989–Order of retirement is violative of Article 14 of the Constitution–Order of retirement quashed–Alternative remedy–Petitioner Depot Manager–When facts are clean and undisputed plea of alternative remedy should not be accepted as bar to writ jurisdiction on face of controversy as to whether his application under section 31 or 61 of the M.P.I.R. Act, 1960 would be tenable–Civil Procedure Code, 1908–Section 80–Notice before filing writ–Not necessary especially when petitioner is not seeking enforcement of private rights or contractual obligations. *Kailashnarayan Vs. M.P.S.R.T.C., I.L.R. (1992) M.P. 15*

- **Articles 226,14** and Bhopal Gas Leak Disaster (Processing of claim) Act, 1985, Section 6, and Bhopal Gas Leak Disaster (Registration and Processing of Claim) Scheme, 1985–Paragraph 8 and 13(3)–Suo motu power of revision–When exercised on an application is the result of Commissioner's deciding to exercise power of revision suo motu–Claimant has no right to seek revision–Rejection of revision petition–Order not prejudicial to claimant's interest or right–Opportunity to show cause before rejection not needed–Authority vested with suo motu power of revision–Has to act judiciously–Absence of provision as to limitation in the scheme–Not permissible for the authority entrusted with the power to prescribe a period of limitation–Rejection on ground of limitation–Order set aside–Matter remitted back to

consider explanation for delay : *Smt. Birjis Khatun Vs. The Welfare Commissioner, Bhopal Gas Victim, Bhopal, Through The Registrar, I.L.R. (2005) M.P. 706 (D.B.)*

- **Articles 226, 14**, Excise Act, M. P., 1915, Sections 18, 27, 62(2)(e), (g) & (h), Breweries Rules, M. P. 1970, Rule 22-D-2 Licence for manufacture of IMFL by blending, reducing and compounding IMFL concentrate—Licence issued under the Distillery & Warehouse Rules—Breweries Rules not applicable as the unit is not brewery—State Government entitled to accept payment in addition to duty leviable on terms and conditions of the licence deed—Condition 8 empowering State Government to recover the actual cost of supervisory staff posted at the premises of licensee—Levy constitutes price for consideration for parting with the privilege and granting licence—Recovery not illegal—Condition 8 not ultra vires—Order of High Court set aside : *State of Madhya Pradesh Vs. M/s. K. C. T. Drinks Ltd., I.L.R. (2003) M.P. (SC) 478 (F.B.)*

-**Articles 226 and 14** – Writ petition—Medical education—Admission to Medical Colleges -Medical and Dental Graduate Entrance Examination Rules, M.P., 2003—Rule 9.3— Constitutional validity—Admission to medical Colleges—Reservation of seats for other categories 50% and rest 50% reserved for general category—Privilege to opt for a seat in either category –Conferred on a reserved category candidate whose name appears also in the merit list of general category— Making more seats available for the reserved category than the law prescribes—An incurable dent created in the essential features of Rule 5.0—Provision constitutionally invalid--Declared ultra vires : *Mayank Jain Vs. State, I.L.R. (2003) M.P. 865 (D.B.)*

-**Article 226 and 14**-Principles of natural Justice-Education-Cancellation of petitioner's admission to MBBS course on ground of production of forged caste certificate-Petitioner was not given any document while requiring her to show cause-No reflection either in the counter affidavit or documents annexed that petitioner's caste certificate has ever been cancelled-She was not apprised of the entire allegation to defend her stand-Order canceling petitioner's admission quashed : *Ku. Mradula Gupta Vs. State Of M.P., I.L.R (1999) M.P. 315*

-**Article 226 and 14**-Common Coal Cadre Revision of pay scales of executives below the Board Level 'Package Offer'- Changing the date of increment-Petitioner has also been benefited-As a part of the 'Package offer' has been accepted the other part cannot be refused-Petitioner and like others have to accept a marginal suffering so that a uniformity is maintained-One cannot conceive a perfect situation but at the most reasonable one-fixation of anniversary date of increment is reasonable, unarbitrary and purposive-View taken by learned Single judge concurred with : *Rabindranath Mukhopadhyay Vs. Coal India Ltd., Calcutta, I.L.R. (1999) M.P. 220 (D.B.)*

- **Article 226, 14** and Indian Administrative Service (Pay) Rules, 1954, Rule 5 – District Judge in lower selection grade appointed in Ex-Cadre post carrying pay scale of Higher selection grade – On return from deputation placed in lower selection grade and subsequently selected in Higher selection grade – Period spent in deputation cannot be tagged for calculating increments in higher selection grade unless all his seniors and one junior were in that grade – One class of service having several categories with different attributes and incidents – Such category becomes separate class – No discrimination between such category and members of other class – Article 14 not attracted when equals and unequals treated differently : *Anant Diwakar Deoras Vs. State Of M.P., I.L.R. (1989) M.P. 398 (D.B.)*

- **Articles 226, 14, 15, 16** - Writ petition–Equal pay for equal work–Teachers and Professor working in private colleges receiving 100% grant-in-aid–Discharging similarities and responsibilities and their counter part in Govt. institution–Govt. accepting recommendation of pay commission revised the pay of employees in Govt. Colleges–Denial of same pay to such employer of private 100% aided colleges without any rational basis–Violative of Articles 14,16 of the Constitution of India : *State Of Madhya Pradesh Vs. Dr. P.K., I.L.R. (2003) M.P. 801(D.B.)*

-**Articles 226, 14, 15, 21 and 227**–Writ petition–M. P. Krishi Upaj Mandi Adhiniyam, 1972 and Krishi Upaj Mandi Samiti Bye laws, Clause 2(Ja)–Amendment in definition of Hammal–Introduction of 'Stri Hammal'–Hammal include a person who is also involved in the work of weighing and measurement–Any members of society can apply for licence to do any kind of work which find place in the definition–On compartmentalisation definition becomes purposive and avoids vice of discrimination–Amendment not ultra vires : *Galla Mandi Mahila Shramik Sangh Satna Vs. State, I.L.R. (2003) M.P. 499 (D.B.)*

-**Articles 226, 14, 16**–Writ Petition–Equality–Equal pay for equal work–Office Assistants Working in Secretariat are a separate class/ cadre–They perform important duties in different administrative set up–Office Assistants working in Vishwavidyalaya are not entitled to the payscale meant exclusively for office Assistants working in the Secretariat : *G.P. Dubey Vs. Jawaharlal Nehru Krishi Vishwavidyalaya Jabalpur Through The Vice Chancellor Principal Executive Officer, I.L.R. (2005) M.P. 1171*

- **Article 226, 14 & 16** – Petition challenging validity of Rules – Alternative remedy to raise industrial dispute no bar : *Karyabharit Evam Dainik Vetan Karmchhari Sangh, Bargi Nagar, Jabalpur Vs. State Of M.P., I.L.R. (1989) M.P. 87 (D.B.)*

- **Articles, 226, 14, 16** –Service Law–Issue of regularisation decided in favour of petitioner holding him entitled to all consequential benefits–Cannot be construed to be a direction to grant promotion to next higher grade–Any claim as to further

promotional benefits has to be separately agitated—Review petition raising issue as to correct date of promotion—Wholly mis-conceived : *Madhya Pradesh Electricity Board Vs. Dev Narayan Patel, I.L.R. (2004) M.P. (SC) 813 (D.B.)*

- **Articles 226, 14** and 16 and Civil Services (General Conditions of Service) Rules, M. P., 1961, Rule 12 (C) - Officiating Govt. Servants - Normal rule for determining inter-se seniority - Seniority of persons promoted together to officiate in higher cadre would be the same as their substantive cadre and irrespective of the date of their joining service in the promoted cadre - Interpretation of Statute - Principles of : *Vasant Kumar Jaiswal Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 221*

- **Articles 226, 14, 16, 227**—Writ petition—Electricity (Supply) Act, 1948, Section 79 and Civil Services (Commutation of Pension) Rules, M. P., 1976—Voluntary retirement—By notification State Government amended provisions contained in rules—Number of years in respect of which pension could be commuted significantly reduced—Board adopted State Govt. Notification with retrospective effect—Arbitrary & unreasonable—Notification cannot be made retrospectively applicable—Pension was to be computed in accordance with the rules that was in vogue at the time of retirement—Employee already retired would be entitled to all the benefit as per unamended Rules—Notification operative with prospective effect—Retrospective application of Notification—Ultra vires : *N. L. Mandhan Vs. M. P. State Electricity Board, I.L.R. (2003) M.P. 112 (D.B.)*

- **Articles 226, 14, 16, 309** and 348 and M. P. Public Works Department Workcharged and Contingency - Paid Employees Recruitment and Conditions of Service Rules, 1976 - Hindi Version of the Rules framed by Governor under Article 309 to prevail over the translated version in English published under Article 348 - The word 'मुख्य अभियंता' means 'Chief Engineer' and not Engineer-in-Chief—Appointment on a regular post 'temporarily' and 'until further orders' - Purpose of - Termination of such appointment on the ground of unsuitability of the employee - Does not amount to punishment- Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P., I.L.R. (1985) M.P. 415*

- **Article 226, 14, 19** – Compulsory condition to purchase stock of outgoing licence on payment of price for stock, excise duty and permit fee – Claim for adjustment on the basis of new excise police : *State Vs. M/s. Swami Traders, I.L.R. (2001) M.P. 1495 (D.B.)*

-**Articles 226, 14, 19, 21**, Excise Act, M.P., 1915 (as amended) Section 59-A—Constitutional validity- Provision for bail changed on reasonable basis of

classification- To root out rampant evil in dangerous or obnoxious trade legislature can put some reasonable restrictions - Amendments incorporated do not affect or evade fundamental rights - Amendment *intra vires*. *Mannu Vs. State of M.P.*; *I.L.R. (2002) M.P. 820 (D.B.)*

-**Articles 226, 14, 19, 20, 21** and 22-Writ Petition-Habeas Corpus-Custodial death-Criminal Procedure Code, 1973, Sections 41, 109, 111 and 176-Production of persons arrested under preventive provisions before City Magistrate-Detenués directed to be produced the next day as the Magistrate was busy in meeting-Procedure adopted is improper-Magistrate cannot abdicate his duty on ground of being busy in meeting-Provisions of Chapter VIII of the Code are preventive in nature and not punitive-Had the authorities been little careful the incident of custodial death could be averted-Judicial Magistrates are more perfect in following the law in this respect-Legislators expected to consider vesting of such powers to judicial Magistrates as well-It is the duty of the Police to take care of the persons taken into custody-Police should not lose interest in the welfare and safety of the detenué-Custodial death-Dead body exhumed and further autopsy carried out-Two concurrent post mortem report confirming suicide by deceased-In absence of any other evidence inference of physical torture in custody cannot be drawn-Compensation-Relatives of deceased received Rs. 4,000/-No further compensation deemed necessary. *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- **Articles 226, 14** and 19 (1) (g), Electricity Act, Indian (IX of 1910), Section 22 - B, Electricity Supply and Consumption Regulation Order, M. P., 1975 and Electricity Generation, Control and Consumption Order, M. P., 1975 - Clauses 3, 4 and 6 - Clause 3 - Does not suffer from the vice of impermissible delegation of essential function by State Govt. in favour of Divisional Engineer - Not *ultra vires* - expression "technically feasible" in clause 3 and requirement of consultation with Engineer in charge of generating set - Provide sufficient guidelines and excludes element of arbitrariness not violative of Articles 14 and 19 (1) (g) - Constitution of India - Article 226 - Alternative remedy - Existence of arbitration agreement - Not an absolute bar - Basis adopted by the Board of levy of normal tariff upto ceiling Limit fixed under the Regulation order and penal tariff for consumption in excess of ceiling limit - Whether reasonable : *Jiyajeerao Cotton Mills Ltd., Gwalior Vs. M. P. Electricity Board, Jabalpur, I.L.R. (1983) M.P. 193, (D.B.)*

-**Articles 226, 14, 19(1)(g), 20**, Cinematograph Act (XXXVII of 1952), Sections 6-A, 8 and Cinematograph (Certification) Rules 1983, rules 30(1), Proviso - Requiring compliance of Section 6-A by passing part I of the certificate on every cassette as well as on its case - Not *ultra-vires* - If provisions of Section 6-A are held to be valid, and not outside legislative competence of the Parliament - A rule framed from the purpose of carrying into effect the provision of Section 6-A cannot be held to be invalid - Not violative of Article 14, 19(1)(g), of the Constitution - 'Copy'

means a document prepared from the original – ‘Exhibit’ means public display – Petitioners running video libraries cannot be held immune to Rule 30(1), Article 20 – Retrospective operation of penal consequences for violation of the provision of Rule 30(1) will ensue only if it is proved that after the proviso to Rule 30(1) came into force a person failed to do that which is required by the proviso – Proviso to Rule 30(1) not ultra vires : *Music Centre, Mandasaur Vs. State, I.L.R. (1991) M.P. 612 (D.B.)*

-**Articles 226**, 14, 19(1)(g), 227 and Excise Act, M.P. 1915(As amended by Act No. XX of 2000), Sections 34,46,47, 47-A,47-B,47-C and 47-D and Criminal Procedure Code 1973, Section 389–Offences relating to liquor exceeding fifty bulk litres at the time of detection–Penal provisions made more condign and deterrent–Confiscation–Power of appellate and revisional Courts–Sessions Judge exercising power of revision can also pass orders which can be passed by the appellate authority–Power to pass order for preserving and keeping the seized articles in fact is thus saved–Restriction on the power to stay the order of confiscation–Cannot be held to be arbitrary irrational or unreasonable–Not ultra vires–Remedy of appeal and revision available–Petitioner may pursue the remedy : *Shrish Agrawal Vs. State, I.L.R. (2003) M.P. 6 579 (F.B.)*

- **Article 226**, 14 and 21 – Writ Petition – Education – Admission to B.E./B.Arch. – Prayer for grant of admission – Interested candidates likely to be affected by such relief not joined as parties – Appeal deserves to be dismissed for non-joinder of parties : *Ku. Varsha Vs. State, I.L.R. (2001) M.P. 1003 (D.B.)*

- **Articles 226**, 14, 21, 106, 366 (17) and Entry 71 of VIIth Schedule – Public interest litigation – Writ Petition – Pension to Ex-Members of Parliament – Salary, Allowances and pension of Members of Parliament Act, 1954 – Section 8-A – Provision for pension to Ex-Members of Parliament – Not ultra vires –Constitutional validity- Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M. Ps. Under Article 246 read with Entry 71 of VIIth Schedule – Omission of word ‘pension’ in Article 106 can not be read as any bar, prohibition or restriction on the Parliament to make such law providing pension for Ex-Member of Parliament – Word ‘pension’ has wider meaning – Could not be restricted only to payment made to an employee by Government in lieu of his past services : *S.P. Anand Vs. Union of India, I.L.R. (2001) M.P. 914 (D.B.)*

- **Articles 226, 14, 23 (2), 51-A (D) and 309** and Fundamental Rules, Rule 11 - Provision under Rule 11 of fundamental Rules - Not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 226, 14, 23 (2), 51-A (D) and 309** and Fundamental Rules, Rule 11 - 'Public purpose' under Article 23 (2) - Meaning of - Performance of duties relating to public purpose - State has a right to compel - Not violative of Article 23 - Words 'Public purpose' and 'national service' used in Article 51 - A(d) - Are synonymous - Performance of public purpose encroaching upon morality and modesty of woman - Cannot be compelled - Article 309 and Fundamental rules, Rule 11 - Performance of services towards census, election, preparation of ration card or family planning are 'for public purpose' - Provision under Rule 11 of Fundamental Rules is not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- **Articles 226, 14, 32** – Writ Petition – Purely administrative order–Though not subjective to judicial review yet exceptions have been admitted by Courts if constitutional rights are affected by the enforcement of such administrative order–Withdrawal of interest subsidy by the State in case of MLAs of IX Vidhan Sabha who did not contest or get re-elected to XIth Vidhan Sabha while allowing the same to those members of IXth Vidhan Sabha who were re-elected–Action vitiated being violative of fundamental rights and equitable doctrine of promissory estoppel. *Suresh Seth Vs. State; I.L.R. (2002) M.P. 227*

- **Articles 226,14,136**–Mines and Minerals (Regulation and Development) Act (XLVII of 1957)–Sections 4, 9, 19–Mineral Concession Rules 1960, Rule 9, 31, 64-A, Sale of Goods Act, 1930, Section 61, and Civil Procedure Code, 1908, Section 114–Restitution–Demand of Interest at the rate of 24% on delayed payment of royalty–Liability of the lessee–No mining operation is permissible except in accordance with the terms and conditions of mining lease–Statutory rule providing payment of simple interest at the rate of 24% per annum on the amount of royalty or other sum which remains unpaid–One of the terms and conditions of obtaining mining lease–Coalfields/lessee are bound to pay the interest as per the terms of the mining lease–Sale of goods–Amount of royalty recovered by the lessee from the buyer is a part of the price–Recovery of interest by way of damages is permissible at a reasonable rate for the period for which it remained unpaid–Doctrine of restitution–Coalfields themselves are obliged to pay interest to the State on such amount–No one shall suffer by an act of the Court–Delay in payment due to interim order of the High Court restraining recovery of royalty at enhanced rate–Successful party finally held entitled to a relief assessable in terms of money is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court remained in operation–Litigation lasted for a long period of time–High Court rightly opined that interest at the rate of 24% p.a. would be excessive and

it would meet the ends of justice if the rate is reduced to 12% p.a. if paid within six weeks : *South Eastern Coal Fields Ltd. Vs. State of M.P., I.L.R. (2004) M.P. (SC) 10 (D.B.)*

- **Articles 226, 14, 141, 227**–Writ petition–Service law–Extraordinary jurisdiction and power of superintendence–Greater the power or jurisdiction greater should be the caution and restraint in exercising such power or discretion–Law of precedent–What is binding as a precedent is the ratio decidendi–Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent–Without disturbing decision of Tribunal certain direction given to consider of the petitioner–Decision does not evolve any principle of law–Cannot be said to be a binding precedent–Order dated 4/11/2003 in W. P. No. 5238/02 overruled–Mere ad-hoc appointment for few months–Does not entitle petitioner to seek reinstatement after 16 years–Petition dismissed : *Jagdish Prasad Tripathi Vs. State Of Madhya Pradesh Through Secretary School Education Department Bhopal, I.L.R. (2004) M.P.1119 (F.B.)*

-**Articles 226, 14, 166, 227**-Writ Petition-Acquisition of Land by Development Authority for implementing housing schemes- Article 14-Discrimination-Except petitioner, land sought to be acquired released in favour of other persons and societies-Respondents do not plead that despite such release of land from purview of acquisition they shall be able to implement the scheme –Action of respondents amounts to hostile discrimination-Land Acquisition Act, 1894-Sections 4, 5, 5-A, 6, 6-A, 11 and 11-A-Different procedures are laid down in the Act at different stages for achieving the object of the Act-Sections 6 and 11-A-Acquisition of land and compensation-Time limit-Delay in making award owing to stay order passed by competent Courts-In computing stipulated time of making award of compensation the period of operative stay order, irrespective of its nature, has to be excluded- Article 166 and Section 5-A of the Act-Express delegation of power to the Collector is mandatory-In absence of specific delegation of power under Section 5-A, the whole proceedings stand null and void and vitiated-Nagar Tatha Gram Nivesh Adhiniyam, M.P. 1973-Sections 50 and 54-Final notification issued but no steps taken to implement the scheme within three years statutory period-Section 54 would be attracted and the scheme would stand laosed : *Burhani Griha Narman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342 .*

–**Articles 226, 14, 227** and Rules for Post Graduation (MD/MS Course) in Clinical, Para-Clinical and Non-Clinical Disciplines in Medical Colleges of Madhya Pradesh, 1984, Rule 9.6–Writ Petition–Education–Admission to post graduate courses in medical colleges–Petitioner already obtained post-graduation in M.D. (Radiology) before joining service as Assistant Surgeon–Prohibition that Asst. Surgeon and Private practitioners who have obtained post graduation in any subject shall not be allowed to take up Degree or diploma in another subject is made with a view to

restrict competition for limited number of reserved seats—Challenge to Rule based on Article 14 of the Constitution—Without substance. *Dr. A.K. Gupta Vs. State, I.L.R. (1992) M.P. 311 (D.B.)*

- **Articles 226, 14 and 227**—Writ Petition—Restoration of appeal dismissed for non-prosecution—Urban Land (Ceiling and Regulation) Act, 1976—Section 33—Appellate Authority is provided with plenary powers even to dismiss an appeal under this provision for non-prosecution as the appeals are to be decided expeditiously and appeals under Section 33 have been expressly given short life—Restoration—Reasonable opportunity—Not given to petitioner while rejecting application for restoration—Direction given to hear the petitioner afresh. *Surajsingh Vs. State, I.L.R. (1992) M.P. 379 (D.B.)*

-**Articles 226, 14, 227**, Recovery of Debts Due to Bank and Financial Institutions Act, 1993, Sections 17, 17-A, 18, 20, 22, Debts Recovery Tribunals (Procedure) Rules, 1993, Rule 12(6) and Debts Recovery Tribunals Regulation of Practice Rules 1998, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants—Rejection—Writ petition—Appeal—Word "an" and 'any'—There is no difference between the two terms—Expressions used in Sections 17 and 20 are not repugnant to each other—Order rejecting application for permission to cross-examine witnesses whose evidence was collected on affidavit—Appealable under Section 20 of the Act if substantially affects some rights or liabilities of a party—Collection of evidence on affidavit and production of witness—If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has sworn an affidavit—Regulation 31, 32 are *intra vires*—Do not transgress the limits stipulated under Section 22—Rule 12(6)—Bar of jurisdiction—There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to—Availability of alternative remedy—No inflexible rules for exercise of discretion by High Court—Depends upon on facts of each case—In exceptional circumstances writ Court can exercise its jurisdiction—Orders impugned do not call for interference in extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India—Leave granted to petitioners to prefer an appeal before appellate tribunal within six weeks : *M/S P.C.C. Construction Co. Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172 (F.B.)*

- **Articles 226, 14, 227** and Administrative Tribunals Act, 1985—Section 19—Writ Petition—Service Law—Promotion—Pay fixation—Fundamental Rule 22-D—An employee is entitled to get his pay fixed in the pay scale of higher post—Rule Speaks of Promotion from lower post to higher post and not from one scale to another—Even if employee was getting same salary on lower post benefit of FR 22-D cannot be denied—Benefit granted to similarly situated employees by virtue of an earlier order—Subsequent challenge with no plausible explanation—Action discriminatory Attracts

Article 14 of the Constitution : *State Of M.P. Vs. Dayaram Patidar, I.L.R. (2003) M.P. 614 (D.B.)*

– **Articles 226, 14 and 227** – Education – Admission to B.E. Course – Rules of conduct for Entrance Test and Rules of Admission – Separate Rules in 1988 and 1989 – Framed under Article 162 of the Constitution – Entrance Test 1989 – Petitioner secured 47 to 48.7% marks – Not included in the “Merit List” or even the “Waiting List” – Decision of Government to give admission to 1988 candidates during 1989, who had failed in “General English” though otherwise qualified – Not violative of judicial mandate in M.P. No. 299/88 or of any Rules – So called failed candidates of 1988 deserved protection – Article 166 of the Constitution – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category: *Rahul Vs. State, I.L.R. (1991) M.P. 595 (F.B.)*

- **Articles 226, 14, 299** – Writ petition–Tender–NIT by CPWD for store maintenance and cartage of cement–Huge bulk of cement on DGS &D rates to be lifted in fixed time–Condition of experience and ownership of trucks not unreasonable–Earnest money–Payable only on finalization of contract–Cannot be asked for as a pre–condition for issuance of tender form–Application for tender form is neither an offer nor a bond for any prospective offer–Condition arbitrary–Struck down : *Ajay Krishna Vs. Union Of India, I.L.R. (2005) M.P. 306*

-**Articles 226,14, 341, 391, Commercial Tax Act, M.P. 1994 (as amended) Sections 45-A, 45-C, 45-D and Commercial Tax Rules, M.P. 1995, Rule 73-F-Inter State transportation of goods-Transporter to carry with him copy of declaration in respect of a notified goods-Officers of Commercial Tax Department vested with powers to verify documents-Prima facie material available to presume attempt being made to facilitate tax evasion-Only show cause notice issued-No interference called for at this stage. *M/s North Roadlines, Nagpur Vs.. State of M.P.; I.L.R. (2002) M.P. 912***

- **Articles 226, 16 and 21 and Fundamental Rule 18 (2)** - Departmental enquiries against petitioner pending but no suspension order passed - Still petitioner not permitted to join his duties - Such refusal is violative of Articles 16 and 21 - Directions allowing petitioner to join his duties issued : *Munshiram Vs. State Of M. P. I.L.R. (1986) M.P. 581*

-**Articles 226, 16(4), 335** – Writ Petition – Recruitment in Defence Services – Claim for age relaxation – Refusal – Circulars or office memoranda providing age relaxation to reserved category candidates are not applicable to defence services recruitment – Advertisement not providing for age relaxation – Action not violative of

Articles 16(4) or 335 of the Constitution : *Ku. Veena Ambedkar Vs. Union of India*, I.L.R. (2001) M.P. 1341

- **Articles 226, 19(1) (c)**, 19(4), Vishwavidyalaya, Adhinyam, Section 37 and Ordinance 1- Decision of Co-ordination Committee to exclude UTD/SOS from purview of election - No Discrimination or wrong committed - Students have no fundamental right to compel University or Institution to make provision for forming students' Union by method of election. *Aditya Soni Vs. State of M.P.*; I.L.R.(2002) M.P. 435 (D.B.)

-**Articles 226, 19(1)(g)**, 19(5), 19(6) and *Kashtha Chiran (Viniyaman) Adhinyam*, M. P. (XIII of 1984), Sections 3, 4, 5 and 6-Notification issued by State Government declaring certain areas to be prohibited areas and also imposing prohibition on running of saw mills in such areas-Refusal to grant renewal of licence to run saw mill-Writ Petition-Sections 3, 4, 5 and 6 of the Act-Prohibition imposed in public interest with a view to protect environment by conserving forest-Provision not *ultra vires* Article 19-Right to carry on business does not extend to "wherever he chooses"-The executive authority in public interest has right to impose reasonable restriction-Restriction imposed in broader public interest by State Govt. for a limited period-Restriction imposed is reasonable-Notification not liable to interfered with. *Kailash Chandra Vs. State*, I.L.R (1992) M.P. 322 (D.B.)

-**Articles 226, 20 (3)** and Companies Act, (1 of 1956)-Section 235(1)-Writ Petition-Investigation into affairs of Company-Purely a fact finding enquiry and does not affect any of the rights-Rule of audi alteram partem inapplicable-A person called upon to give evidence cannot be said to be a person accused-Order not arbitrary : *M/S. Design Auto System Limited Vs. Union Of India*, I.L.R. (2005) M.P. 699

- **Articles 226 and 21** - Habeas Corpus - Constitution of India - Article 348 and Interpretation of Statute - Hindi version of statute for explaining ambiguity in the English Text - Use of - Madhya Pradesh Dakaiti Prabhavit Kshetra Adhyadesh, 1981 - Section 2 (f) - The term "specified offence" in - Meaning of - Section 2 (b) - The word 'dacoit' in - Explanation of - Act constituting offence mentioned in schedule must have a nexus with the commission of dacoity to become 'specified offence' - The word 'dacoity' has to be understood as defined in section 391, Indian Penal Code-Dacoity affected area - Commission of offence of dacoity within - Not necessary - Section 5 (2), proviso of the ordinance and Criminal Procedure Code, 1973, Section 41 (I) (a) and 167 - Arrest and detention under the Ordinance - Legality of - Right to be released on bail - Extent of - Petitioner's arrest and detention on reasonable suspicion of his being involved in setting and accepting ransom within dacoity - Affected area for payment to abductors at Delhi - Is not in violation of Article 21 : *Gulabchand Vs. State Of M. P.*, I.L.R. (1982) M.P. 919 (F.B.)

- **Articles 226**, 21, 31-C, 39(b), 300-A, 301 and Hind Cycles Limited and Sen Releigh Limited (Nationalisation) Act, Indian (LXX of 1980) – Provisions of the Act intra vires – Protected under Article 31-C – Constitution of India – Enacted under directive principals contained in article 39(b) – Acquisition of undertaking to secure proper management and sub-serve the public interests – No liability of Central Govt. and Govt. Company prior to taking over of the company except for materials supplied – Material supplied – Meaning of – Cannot include services rendered – Claim before Commissioner for payments – Priority of claim categorised – Right of appeal if petitioner dissatisfied – Commission received by petitioner as agent – Does not come under definition of wages : *Kulbir Singh Vs. Union Of India, I.L.R. (1989) M.P. 703 (D.B.)*

-**Articles 226**, 21 & 47 – Public Interest Litigation– Duty of State towards every citizen of India – To provide pure drinking water – Water containing excessive fluoride contents – Thousand of persons who consumed water have suffered deformity of various nature like skeletal fluorosis or dental fluorosis – High Court not only given certain directions for providing pure drinking water but also given directions for providing free medical treatment to such sufferers : *Hamid Khan Vs. State Of M.P., I.L.R. (1996) M.P. 355 (D.B.)*

- **Articles 226 and 22** - Constitutional remedies cannot be barred by any legislation: *Shivkant Shukla Vs. Additional District Magistrate Jabalpur I.L.R. (1978) M.P. 301(D.B.)*

- **Articles 226 and 22** - Power to issue writ of Habeas Corpus is neither a statutory right nor based upon common law or Natural Law : *Shivkant Shukla Vs. Additional District Magistrate Jabalpur I.L.R. (1978) M.P. 301 (D.B.)*

-**Articles 226**, 22, 227 and National Security Act (LXV of 1980), Sections 3(2), 3(3), 11,12,13 and 15–Writ Petition–Preventive detention under the Act for a period of twelve months confirmed by the appropriate Government/State Govt. on advice of the Advisory Board–Section 15–Temporary release of detenu on parole has to fail within the period of detention already fixed–Article 22–Order extending the period of detention as a result of parole–Unconstitutional–State Govt. is left with no such power under the Act–Sections 12, 13–Prevention detention is distinct for punitive detention–Underlying object is to prevent detenu from activities prejudicial to the maintenance of public order and not to punish him–Impugned order quashed. *Sharad Dadu Vs. District Magistrate, Bhopal, I.L.R. (1992) M.P. 4 (D.B.)*

- **Articles 226** and 22 (5) and National Security Act (XLV of 1980), Section 3 (2) - Right of a detenu to make representation against detention order and its consideration by the Govt. - Detenu detained by an order dated 31 - 3 - 1984 - His representation dated 3.5.1984 not considered at any point of time - Detenu deprived

of his constitutional right - Order of detention liable to be quashed : *Amzad Khan Vs. The District Magistrate, Raipur I.L.R. (1984) M.P. 563 (F.B.)*

-Articles 226, 29, 344 & 351, Schedule VIII, Public Interest Litigation, Constitutional Language Act, 1963, Official Language Resolution 1968, Official Language Rules, 1976 – Public Interest Litigation – Ministry of Home Affairs, National Language Department issued a circular that Hindi being a national language should be promoted – PIL filed that said circular be implemented and petitioner may be permitted to the answer the examination in Hindi and respondents also be directed to impart education in Hindi – Held – The circulars have been issued for promotion of official language squarely fall within the ambit of Article 315 of the Constitution – Thus, they have a statutory force and have binding on all concern. Respondents cannot shirk from responsibilities by not implementing the circulars – A direction given to the respondents to impart education in Hindi apart from English from the next session : *Amresh Kumar (Dr.) Vs. Lakshmbai National College Of Physical Education, Gwalior, I.L.R. (1996) M.P. 304 (D.B.)*

– Articles 226, 30, 227 – Writ Petition - Transfer of employee – State aided Educational Society – Ashashkiya Shiksha Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vatanon Ke Sanday) Adhinyam, M.P. 1978, Sections 6, 10 and Ashashkiya Shiksha Sanstha (Institutional Fund) Rules, 1983 – Regulatory provisions – Object is to ensure payment of the amount to teachers or other employees to obviate misappropriation of funds – Imposition of condition of prior approval for transfer of an employee is for examination of viability in context of the grant – Grant to an institution is made available for benefit of the employee – Without regulatory measure a transfer may result in denial of protection – Condition of prior approval of Government does not infringe right guaranteed under Article 30 of the Constitution : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481,*

-Articles 226, 74, 83, 85-Writ Petition– PIL–Issue of notice–Depends on whether petitioner has laid Issue foundation for a prima-facie case - House of the people - Entirely for the President to dissolve-Such exercise of discretion by the president -Not justiciable : *S.P. Anand Vs. Prime Minister & Head Of The Council Of Ministers, Namely Shri Atal Bihari Vajpai, I.L.R. (2004) M.P 229 (F.B.-5JJ.)*

- Articles 226, 141 and 227–Writ Petition–Law of precedent–Conflict in two decisions of co-equal Benches–Decision rendered without considering earlier decision expressing contrary view–Have no value–Earlier decision is binding on the Bench of equal strength–Matter should be referred to the larger Bench in case of conflict–Apex Court's decision–Conflicting decisions of Benches comprising equal number of Hon. Judges–Decision of earlier Bench is binding unless explained by the latter decision–

High Court and subordinate Courts should lack competence to interpret decisions of Apex Court—Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts : *Jabalpur Bus Operator Association And Ors. Vs. State, I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

- **Articles 226, 202 and Commercial Tax, M.P., 1994 (as amended)—Section 69, Sthaniya Kshetra Me Mal Ke Pravesh Par kar Adhinyam, M.P. 1996—Section 13—Writ Petition—Tax Laws—Difference between tax assessed and that payable as per accounts—Penalty—Levy of—Finding that effort was made to evade tax—Finding not challenged—Provisions prevailing in relevant assessment period is determinative factor—Financial legislation—Subsequent amendment reducing amount of penalty—Not retrospectively applicable : *M/S Vinod Traders Vs. Divisional Deputy Commissioner Commercial Tax, I.L.R. (2004) M.P. 911***

- **Articles 226/227** – Re-assessment – Demand of tax at enhanced rate – Merely arithmetical calculation required – Re-assessment not necessary – Enhanced Entry Tax justified : *Steel Authority of India Limited, Bhilai Steel Plant, Bhilai Vs. The Assistant Commissioner of Commercial Taxes, Durg, I.L.R. (2001) M.P. 1281.*

- **Articles 226/227** and Motor Vehicles Act (LIX of 1988), Sections 87, 103 and 104 - Application for temporary permit u/s. 104 of the Act – Route covered under the scheme – State Transfer undertaking operating on such route – Application rejected for non-fulfillment of condition under Section 87 – Order appealable – No interference in writ petition : *M/s. Kanker Roadways, Raipur Vs. State, I.L.R. (2001) M.P. 447.*

- **Articles 226/227** – Public interest litigation – Petition itself showing that private interest – Such practice should be deprecated as it creates impediment in administration of justice and restrict the speed in which needy persons deserve disposal of pending cases – PIL dismissed with cost : *Deelep Vs. State, I.L.R. (2001) M.P. 1643, (D.B.)*

- **Articles 226/227** – Writ Petition – Education – Grant of recognition and issue of examination from by Board of Secondary Education - Writ Petition at belated stage – Inability of board to make arrangement in short period – Departure from the earlier orders warranted due to passage of time as a consistent approach is not possible at belated stage : *Amarnath Dwivedi Vs. State, I.L.R. (2001) M.P. 1333.*

- **Articles 226/227** – Maintainability of writ – Challenging the award passed by reference court on the ground of non-issuance of notice to interested or aggrieved

person – Writ petition maintainable : *Central Railway, Through Its Genral Manager, Central Railway, Bombay-Vt Vs. Ramaiya, I.L.R. (1993) M.P. 444 (D.B.)*

– **Articles 226/227** – Writ Petition for quashing final order of Debt recovery Tribunal - Recovery of Debts Due to Bank and Financial Institution Act, 1993, Sections 18, 20, 21 – Appeal to Appellate Tribunal on deposit of 75% adjudicated amount – Bar of jurisdiction of other Courts except Supreme Court and High Court under Articles 226, 227 – Remedy of appeal before Appellate Tribunal is efficacious and adequate remedy – Can not be permitted to abandon the statutory remedy of appeal and to invoke the extra ordinary jurisdiction of High Court under Articles 226/227 – No interference Called for : *Shri Ganga Narayan Mishra Vs. State Bank of India, I.L.R. (2001) M.P. 1809.*

– **Articles 226/227** – Public Interest Litigation – Petition challenging the construction of Ring Road by order of a Minister – Writ Petition on same matter rejected and S.L.P. also dismissed by Apex Court – Petition itself showing that private interest involved – Such practice should be deprecated as it creates impediment in administration of justice and restrict the speed in which needy persons deserve disposal of pending cases – PIL dismissed with cost : *Deelep Vs. State, I.L.R. (2001) M.P. 1643, (D.B.)*

-**Articles 226/227** and Civil Services (General Conditions of Services) Rules, M.P. 1961, Rule 2(c) – Writ Petition – Service Law – Judicial Magistrate passing order of acquittal though accused pleaded guilty – Conduct of Magistrate not a bonafide error but amounts to misconduct – Departmental enquiry – Punishment of withholding of two increments – Subsequently name not considered for promotion – Representation given after 6 years – Plea of unawareness of punishment not justified since he was getting lesser pay : *R.C. Bansal Vs. Hon'ble High Court of MP, I.L.R. (2001) M.P. 1456.*

-**Article 226/227**, Municipal Corporation Act, 1956, Section 54 – Appointment of Commissioner – Vires of Section 54 of the Act challenged – Provision does not give arbitrary and uncanalised exercise of discretion to the State Govt. in appointment of Commissioner as sufficient guidelines are available – Not ultra vires of Articles 14 and 16 of Constitution of India, *Ram Pratap Dubey Vs. State Of M.P., I.L.R. (1993) M.P. 451 (D.B.)*

- **Articles 226/227** and Civil Procedure Code (V of 1908), Sections 115, 151, Order 23 Rule 3, 3-A and Order 43 Rule 1-A – Compromise decree – Application for setting aside compromise decree allowed – Civil revision – Dismissed – Writ petition

– Court is not helpless if compromise is obtained by perpetrating fraud on the Court – An application under Section 151 for setting aside the compromise decree on the allegation of being unlawful is also maintainable : *Babulal Vs. Smt. Chaturiya, I.L.R. (2001) M.P. 1450.*

– **Articles 226/227** – Writ Petition – Vesting of Proprietary right in tank to State Government – Abolition of Proprietary Rights (Estates, Mahals, Alienated, Lands) Act, 1950, Sections, 3, 4(1)(a), 5(f) and Land Revenue Code, M.P., 1959, Sections 22(2) and 251 – What was saved by Section 5(f) of the Act is non-proprietary rights of the ex-proprietor of the tank – By virtue of Section 251 of the Code all tanks vested exclusively in the State Government – Order recording tank in the name of State Government rightly passed by S.D.O. – Exercise of powers of Collector by S.D.O. – Notification issued vesting powers of Collector on S.D.O. in matters covered by Section 251 – Order of S.D.O. not without jurisdiction : *Chandrika Prasad Tiwari Vs. State, I.L.R. (2001) M.P. 1832.*

– **Article 226/227** – Writ Petition – Education – Mass copying – Principles of natural justice – After scrutiny result committee awarded zero marks to some students in certain subjects – Detailed enquiry in respect of each individual by Board not possible - In case of mass copying, principles of natural justice are not attracted : *Ramgopal Bhadoriya Vs. Secretary Board of Secondary Education, I.L.R. (2001) M.P. 1796.*

-**Articles 226/227**-Writ Petition-Public Premises-Eviction from-Unauthorised occupation-Lok Parisar (Bedhakhali) Adhiniyam, M.P., 1974 as amended-Section 2(g)-Provision not *ultra vires*-Use of word “reason” in the definition clause is antithesis of arbitrariness-There could be many reasons for which the authority may determine occupation of public premises-All such reasons cannot be mentioned in the provision- The very word ‘reason’ assumes sound exercise of reason-Sections 4 and 9-Order of eviction and appeal therefrom-Occupant has a remedy to show cause against proposed order of eviction with further remedy of Appeal under Section 9 against the order of eviction-Petitioners appeal pending –No interference called for at this stage : *Vinay Shukla Vs. State I.L.R. (2000) M.P. 937 (D.B.)*

– **Articles 226/227** – Writ Petition – Entry Tax – Sthaniya Kshetra-Me-Mal-Ke-Pravesh Per Kar Adhiniyam, M.P., 1976 – Section 4 – A – Enhancement of rate of Entry Tax on Lime Stone – In taxing statute the popular or common sense meaning has to be preferred to technical or scientific meaning – Lime Stone includes both low silica and high silica lime stone – Re-assessment – Demand of tax at enhanced rate – Merely arithmetical calculation required – Re-assessment not necessary – Enhanced

Entry Tax justified : *Steel Authority of India Limited, Bhilai Steel Plant, Bhilai Vs. The Assistant Commissioner of Commercial Taxes, Durg, I.L.R. (2001) M.P. 1281.*

-Articles 226/227, Land Revenue Code, M.P. (XX of 1959), Sections 164, 168, 170-B and 190 and Amending Act No. (XXXVIII of 1961) and No. (XIX of 1982) – Transfer of land by aboriginal tribe – Direction for restoration of possession – writ petition – Section 164 – Original landlord died prior to Amending Act, 1961, Whereby Section 164 was deleted – Succession opened on the death of original landlord – Succession has to be decide as per the unamended provision i.e. Section 164 as it then stood in the act – Revenue authorities erred in deciding the question of succession on the law prevalent after deletion of Section 164, M.P. Act, 1982 – Sections 3 and 170-B of the Code – Provisions cannot be read in piece meal – Mere failure to furnish information as required under this section would not necessarily render the transfer under invalid – Vendee has a further opportunity to explain the reasons of his failure – Orders of the lower Tribunals passed without apply correct law and without making any enquiry under Section 170-B(3) of the Code – Order set aside – Case remitted for decision afresh : *Dhanna Vs. Nanudi @ Nanki, I.L.R. (2001) M.P. 780.*

-Articles 226/227–Writ Petition–Civil Procedure Code, 1908–Sections 2(2) and Sick Industrial Companies (Special Provisions) Act, 1985–Sections 15 and 22–Section provides for suspension of legal proceedings against assets of companies claiming sickness–Does not operates as absolute bar against all proceedings–Idea is to freeze any coercive action against such companies until their revival or rehabilitation–Consent decree–A product of an agreement between the parties–Does not amount to coercive action nor barred under Section 22. *Kedia Distilleries Ltd. Vs. Appellate Authority For Industrial And Financial Reconstruction, I.L.R. (2002) M.P. 1 (D.B.)*

- Articles 226/227 and Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ke Uddhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchkaron Se Paritran Tatha Mukti Adhiniyam, M.P., 1976 (III of 1977), Section 5 – Application for declaring sale to be a nullity on ground that it was a prohibited transaction – Cannot be dismissed on ground of delay as the state Govt. has extended the period from time to time for marking application – Section 5 – Application for setting aside sale – Applicant must prove that he was a holder of agricultural land on the date of alleged transaction – Holdings of applicant on the date of application – Is of no consequence – Petitioner found to be in possession of 41.96 acres of land on the date of disputed purposes of the Adhiniyam, 1976 – Cannot be given any benefit : *Kunjilal Das Vs. Preetamchand, I.L.R. (2001) M.P. 1.*

-Articles 226/227 and Krishi Upaj Mandi Adhiniyam, M.P., 1972 (XXIV of 1973) and Krishi Upaj Mandi (Mandi Samiti Ka Nirvachan) Niyam, 1997, Rule 10 and Land Revenue Code, M.P. (XX of 1959) Sections 2(1)(u) and 50 – Rule 10 – Disposal of Claim and objection- Mandi Samiti election – Inclusion of petitioner's name in voter's list by prescribed authority and confirmed by appellate authority under the Nirvachan Rules – Order not revisable by Commissioner under Section 50 of the Land Revenue Code – Section 2(1)(u) – Revenue Officer defined as an officer by notification directed to discharge function under any provision of the Code – Section 50 of MPLRC – SDO while acting as Appellate authority under the Nirvachan Rules does not function as Revenue Officer and his order as such not revisable by Commissioner in revisional powers under Section 50 of the Code – Order impugned set aside : *Smt. Nirmlabai Vs. Hukan*, I.L.R. (2001) MP 790.

– **Articles 226/227** – Writ Petition – Challenging the order of reinstatement and issuance of Revenue recovery certificate – Industrial Disputes Act, 1947 – Sections 17-B, 25-FF, 33-C(2) – Termination of employee – Dispute raised before Labour Court – During pendency of the dispute establishment transferred to petitioner – Award of Labour Court to reinstate employee with back wages – Petitioner was joined as party first time made in proceedings under Section 33-C(2) – Section 17-B, Industrial Disputes Act – Comes into operation when proceedings are preferred before High Court or Supreme Court against award directing reinstatement – Section not applicable in present case because petitioner has challenged the order by which petitioner has to comply the award of reinstatement although he was not a party to the award – Section 25-FF, Industrial Disputes Act – Transferee neither liable to pay compensation nor to re-employment of workman whose employment stood automatically terminated or the transfer- Section 33-C(2), Industrial Dispute Act – Proceedings under Sections – Are akin to execution proceedings – Award not executable against the petitioner who was not a party to the dispute in which award was passed – Employee only entitled to benefit under Section 25-FF against the transferor – Order of Labour Court quashed : *Madhya Pradesh Laghu Udyog Ltd., Bhopal Vs. Mohd. Imran*, I.L.R. (2001) M.P. 975.

-Articles 226/227, Medical Council Act, Indian (XXVII of 1933), Sections 20, 33 and the Regulations made thereunder, Selection for Post Graduate (Clinical, Para Clinical and Non-clinical) Rules, M. P., 1984, Vishwavidyalaya Adhiniyam, M. P., 1973, Rani Durgawati Vishwavidyalaya, Jabalpur Ordinance nos. 57, 58–Writ Petition–Education–Admission in P. G. courses–Rules framed by the State Govt., for selection in Diploma and P. G. course should be understood and judged in the same manner as is provided in the Regulation framed by the Indian Medical Council in exercise of its regulatory powers–Criteria of house job is to equip the candidate with minimum practical experience in the concerned discipline–Requirement of doing house job in the same college–Not justified on a rational basis to allow a less

meritorious student to steal a march over a more meritorious student—Relevant clause of ordinance no. 58—Violative of Article 14 as such void and inoperative—Petitioner denied promotion although meritorious—State Govt. directed to grant admission to petitioner in P. G. Diploma course without disturbing less meritorious candidate already given admission. *Dr. Ku. Meena Bathija Vs. State, I.L.R. (1992) M.P. 232 (D.B.)*

- **Articles 226/227**, Co-operative Societies Act, M.P., 1960 Section 9 – Reference – Whether Co-operative Society constituted under Section 9 of M.P. Co-operative Societies Act is a State or not? – Entire share capital not held by State Government – No financial assistance by State Govt. to meet entire expenditure – No monopoly enjoyed – No deep and pervasive State Control – Society performing commercial function for betterment of its members – No Department of Govt. transferred to Society – Such Society not instrumentality of State – Not amenable to writ jurisdiction : *Dinesh Kumar Vs. M.P. Dugdha Mahasangh Sahkari Maryadit, I.L.R. (1993) M.P. 53 (F.B.)*

-**Articles 226/227**, Town Improvement Trusts Act, M. P. (XIV of 1961)—Sections 5, 6 and Development Authority Services (Officers and Servants) Recruitment Rules, M. P., 1987, Rules 6, 7, 8—Termination—Appointment made in utter disregard to the Recruitment Rules—Instead of cancelling appointment order termination in terms of service condition passed by the competent authority—Not open to challenge—Section 5—Notification issued under by the State Government appointing Collector by designation as the Chairman of Improvement Trust—Absence of name of appointee in notification should not withheld commencement of term of office—Ex-officio successor in office of Chairman of Trust by virtue of same notification—Not illegal nor invalid—Purpose of notification is to notify identity of the persona designata—Section 6(1)—Provisions director in nature—Order of termination of illegally appointed employers passed by successor-in-office of Collector in terms of service Rules—No interference called for in writ jurisdiction : *Rajendra Kumar Joshi Vs. Town Improvement Trust, Itarsi, I.L.R. (1992) M.P. 256 (D.B.)*

- **Articles 226/227** and Criminal Procedure Code, 1973 (II of 1974), Sections 24(8) and 301(2) and Penal Code, Indian (XLV of 1860) , Sections 302, 498-A, 304-B – Dowry Death – Section 24(8), Cr.P.C. – Application under, for appointment of Special Public Prosecutor – Allowed by State Govt. on the recommendation of District Judge – Articles 226/227 – Writ Petition – Merely because the crime is heinous – No ground for appointment of a Special Public Prosecutor – Sections 24(8) and 301(2) – Only in exceptional cases and for reasons to be recorded the State Govt. can exercise its power appointment Special Public Prosecutor – Order does not show

that the case is one of exceptional nature – Order quashed – Appointment Special Public Prosecutor permitted to assist the prosecution as envisaged under Section 301(2), Cr.P.C. : *Poonam Chand Jain Vs. State, I.L.R. (2001) M.P. 503.*

– **Articles 226/227** – Writ Petition – Shiksha Karmis (Recruitment and Condition of Service) Rules, M.P., 1997 (as amended) – Rule 5(7) and 5(8) – Appointment of Panchayat Karmi – Number of candidates for test and interview even if exceeded three times the post advertised yet candidates who have worked for at-least one session in school of Janpad Panchayat or Zila Panchayat are to be called in addition to the candidates qualified on merit – Inclusion of local MLA in selection committee not envisaged in the Rules – Clear violation of Rules – Selection list liable to be quashed – Order of Collector for selection in accordance with subsequent notification – Every statute or statutory rules are prospective unless it is expressly or by necessary implication made to have retrospective effect – Direction of Collector not sustainable : *Raja Bhaiya Tripathi Vs. State, I.L.R. (2001) M.P. 1843.*

– **Articles 226/227** – Writ Petition – Labour Law – Challenge to propriety of permission to lay-off – Locus Standi – Petitioner in capacity of General Secretary of labour union – Has locus Standi to challenge the order – Industrial Disputes Act, 1947, Sections 2-KKK, 25-K and 25-M – Due to want of adequate orders employer could not continue work – Situation falls within the scope of –Sections 2-KKK of Industrial Disputes Act, Section 25-M read with Rule 75-B of Madhya Pradesh Industrial Dispute Rules – Application for permission to lay-off to be made in prescribed manner and copy to be served to workman concerned – Since copy served to 2 other unions and a copy affixed on the Board - Provisions complied with – Order Commissioner confirmed – However liberty granted to raise dispute before appropriate authority : *Sai Mazdoor Union, Jabalpur Vs. The Labour Commissioner, Indore, I.L.R. (2001) M.P. 960.*

- **Articles 226/227**, Land Revenue Code, M.P. 1959, Section 50 – Proviso (ii) – Period of limitation –Exercise of suo motu powers of revision –Bar concerning period of limitation under proviso to section 50 does not operate against suo motu exercise of Revisional powers – Filing of appeal by a stranger does not fetter suo motu exercise of revisions power – However, suo motu Revisional powers should be exercised within reasonable period – Collector exercising powers as soon as the fact of mutation proceedings brought to his notice – Exercise of suo motu Revisional power was within reasonable period : *Murarilal Vs.State Of M.P., I.L.R. (1993) M.P. 430 (D.B.)*

- **Articles 226/227** and Industrial Disputes Act (XIV of 1947), Sections 10, 12– Writ Petition–Sections 10(1) and 12(5)–Reference by the appropriate Government to

the Labour Court–Section 10(4)–Question as to whether the employees are workman' whether the employees is an 'industry' and whether the dispute is an 'industrial dispute' are incidental matters within the purview of Section 10(4) of the Act–Labour Court alone has jurisdiction to decide such points–HighCourt would be slow in deciding such points on merits–Words and phrases–'Incidental thereto' implies a subordinate and subsidiary point concerning principal point requiring attention while considering the main point : *Rajya Gramin Vikash Sansthan Vs. State, I.L.R. (1992) M.P. 172 (D.B.)*

– **Articles 226/227** – Writ Petition – Service Law – Promotion – Laghu Udhog Nigam Recruitment and Promotion Rules, M.P. 1986, Rules 13,14 and Schedule 3 Entry 6 – Departmental Promotion Committee for selection of General Manager - Condition for Promotion merit-cum-Seniority – Petitioner locking in academic qualification – Certificates of petitioners not recognized by State Government – D.P.C. not found petitioner as eligible for promotion – Department not estopped from again looking into qualification which was accepted at the time of appointment promotion is not a right of an employee and the same should be given by looking to various factors such as qualification, Seniority, Merits, Annual Confidential Report etc. – No illegality or perversity in the recommendation made by D.P.C. : *G.N. Rao Vs. M.P. Laghu Udyog Nigam Ltd., I.L.R. (2001) M.P. 1291*

-**Articles 226/227**-Writ Petition-Transfer of Land by aboriginal after obtaining sanction from the Collector-Land Revenue Code, M.P., 1959, as amended-Sections 50, 51 and 170-B - Failure to furnish information by the transferee within stipulated period-Enquiry held and orders passed by S.D.O.-Review thereof-Sections 50 and 51 Land Revenue Code M.P.-Revision and review-Powers of-Should only be exercised within reasonable time and not after lapse of about nine years from the date of passing the order under review-Section 170-B(3)-Failure to furnish information by transferee-Land would not automatically revert back to the original holder in absence of a detailed enquiry in the matter-Section 51-Review-Enquiry conducted by S.D.O. earlier ended in an order in favour of petitioner that consideration was passed and sanction of Collector was obtained for the transfer-Review of said order by succeeding S.D.O. after nine years-Cannot be approved of-Words 'at any time'-Used in Section 50 of the Land Revenue Code, M.P. would not mean an indefinite period : *Ravi Narayan Vs. State, I.L.R. (2000) M.P. 1329*

- **Articles 226/227** and Urban Land (Ceiling and Regulation) Act (XXXIII of 1976), Sections 8, 9 and 33 – Writ Petition against dismissal of appeal on ground of limitation – Articles 226, 227 – When the order of a Tribunal is challenged the High Court exercise its powers of superintendence under Article 227 and not under Article 226 – High Court can only correct the errors or wrongs that are floating on the surface

– **Section 33 of the Act** – Provision for appeal within 30 days – Appeal filed beyond limitation – Rightly dismissed by appellate authority as statutory remedies are required to be availed within the limitation prescribed by the statute - Impugned order not interfered with : *Haji Yasin Vs. The Commissioner, I.L.R. (2001) M.P. 787*

-**Articles 226/227**, Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 and Municipal Employees Recruitment and Conditions of Service Rules, M.P., 1968- Writ Petition-Termination on charge of alleged misconduct – Ex Parte enquiry held, report prepared but no proper opportunity of hearing given to the petitioner – Second show cause notice issued adding fresh inquiry did not culminate into an enquiry report – Rule 14 of the 1966 Rules and Rule 52 of the 1968 Rules – Procedure laid down for imposing major penalty - Mandatory in nature – Cannot be sacrificed even assuming that the delinquent did not reply to the show cause notice – Major penalty of termination imposed in violation of mandatory provision of law – Order cannot be sustained – Petitioner reinstated with all consequential benefits : *Shyam Sunder Prasad Vs. Municipal Council, Pathalgaon, I.L.R. (2000) M.P. 255*

-**Articles 226/227**- Writ Petition-Service matter-Promotion-Sealed cover procedure -On the date when D.P.C. met for consideration of petitioner's case alongwith another, disciplinary action against petitioner was under active consideration-Sealed cover procedure adopted cannot be said to be illegal- Imposition of major penalty without holding regular departmental enquiry-On appeal punishment reduced to one of minor penalties for which a show cause notice is sufficient-Order of appellate authority cannot be faulted with-Petitioner found otherwise not fit for promotion under the new policy-Non-Promotion-Cannot be interfered with in writ jurisdiction : *Harbhajan Vs. M.P. Electricity Board, I.L.R. (2000) M.P. 222*

- **Articles 226/227** and Income Tax Act, India, (XLIII of 1961), Sections 131(1), 131(1A), 132, 133 – Information by petitioner in survey under Section 133 of the Act – Enquiry – Direction u/s. 131(1)(d) by Dy. Director to District Valuation Officer for investigation – Objection submitted on report of DVO – Writ Petition challenging the authority of Dy. Director to issue commission for investigation – Section 131(1)(d) – Powers under – Such power can be exercised by Dy. Director only in case of search and seizer u/s. 132 – Rule of last antecedent – The words in Section 131 (1-A) “referred to in sub-section (1) of Section 132 before he takes action under Clauses (i) to (v) of that Sub-section” do not qualify the words Director General Director, Deputy Director, but only qualify the words ‘the authorised officer – Order of Deputy Director of Income Tax authorizing DVO to conduct investigation justified – No interference in writ petition called for : *M/s. Classic Builder And Developers, Indore Vs. Union of India, I.L.R. (2001) M.P. 346.*

–**Articles 226/227**–Writ Petition–Recovery of debts due to Banks and Financial Institutions Act, 1993, Sections 2, 18 and M.P. Co-Operative Society Act, Sections 64 and 82– Jurisdiction of Debt Recovery Tribunal - Dispute regarding recovery of loan between Bank and loanee society -Amount of loan used in business of society - Dispute would touching the business of society --Section 2(9) R.D. B. Act, 1993 Debt means any liability claimed from any person– Person would include in its ambit and sweep the State–Dispute in between Bank on one hand and the society and the guarantor on the other–State stood as a guarantor is a third person–Dispute would not be covered under Section 64 of Co-Operative Act–Debt Recovery Tribunal has jurisdiction : *M/s M.P. State cooperative oilseeds growers federation limited Vs. Bank of baroda, I.L.R. (2003) M.P. 926*

- **Articles 226/227** and Panchayat Raj Adhinyam, M.P., 1993 (I of 1994), Section 122 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Election to the office of Sarpanch – Election petition – Specified Authority conducted recounting and declared Election petitioner elected – Validity – Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Recount of votes – Candidate or his agent or his election agent has to apply in writing to the returning officer or such officer authorised by him for recounting of all or any of the votes already counted –No such application filed by election petitioner under Rule 80 – Specified officer could not have passed the order of recounting of votes – Order impugned set aside : *Yograj @ Khanjar Wankhede Vs. State, I.L.R. (2001) M.P. 341*

-**Articles 226/227**-Writ Petition-Termination simplicitor of Civil Judges Class-II by the State Government on the recommendation of High Court on the decision taken in full Court meeting–Petitioners’ probation period extended time to time–Allowed to work for 5 years continuously even after expiry of extended period of probation–Article 309 and Government Servant (Temporary and Quasi-Permanent Service)Rules, M.P., 1965–Rule 3-A–Deemed confirmation on completion of probation period–Not applicable to the cases of Judicial Officers– Rule 12-A–Repository power of High Court–Mere mentioning thereof does not effect the impugned orders of termination simplicitor –Article 311(2)–Petitioners terminated while on probation on ground of unsuitability–Article 311 not attracted–Judicial Services (Classification, Recruitment and Conditions of Services)Rules, M.P., 1995, Rule 24(1)–Training period cannot be extended beyond six months–Yet grievance not raised within reasonable time but raised while challenging termination during probation period –Once accepted such challenge at belated stage is futile–Should not be entertained–Article 141– Order/decision of Supreme Court binding on all subordinate Courts including High Court–Counsel for respondents cannot say High Court has jurisdiction to treat a Supreme Court judgment as per incuria– Supreme Court affirmed the order of High Court setting aside termination of petitioner with direction to keep watch on him for 3 years–Direction of Supreme Court cannot be

overruled on administrative side-Article 311(2) attracted-Enquiry ought to have been conducted before termination-Words “Decision in context of per incuriam” mean only the reason for the previous order and not the operative part of such previous order – Operative part binding only inter partes : *Bhurelal Pagare Vs. State, I.L.R.(2000) M.P. 228*

- **Articles 226/227** and General Sales Tax Act, M.P., 1958 (II of 1959) – Sections 19(1), 39(2) – Writ Petition against order for re-assessment under Section 19(1) – Proceedings under – Dropped by Assessing Officer on the basis of single bench judgment of Board of Revenue – Judgment subsequently over-ruled by full Bench of Board – Interpretation of Statute – The Court in its jurisdiction interprets a particular law for the benefit of all and that interpretation would be adopted right from day one that is from the day of enforcement of the statute – Section 19(1) – Assessing Officer can re-open the assessment in relation to the turnover which had escaped from assessment – Section 39(2) – Commissioner authorised to examine records of any proceedings when he receives an information that some order against the interest of revenue is made – Section 19(1) and 39(2) – Income Tax Act – Closure of proceedings initiated under Section 19(1) is an order against the interest of revenue – Order revisable under Section 39(2) – Revision – Revisional authority remitting the case - Not justified in issuing mandatory direction against Assessing Officer affecting his discretion adversely – Impugned order modified : *M/s. Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur, I.L.R. (2001) M.P. 644*

- **Articles 226/227** and Urban land (Ceiling and Regulation) Act, 1976, Sections 20(1)(a) and (b) – Power of Government to exempt vacant land in excess of ceiling from provisions of the Act – Land holder permitted to hold excess land under the Act – Landholder seeking permission to sell some of the exempted land on the ground of “undue hardship” – Permission granted by the State Govt. challenged by Co-sharer-Permission to hold excess land was granted in “Public Interest” – Permission to Sell on the ground of “undue hardship” could not have been granted – Both provisions are separate and independent and cannot nullify the effect of other either by amending or curtailing its effectiveness., *Ravindra Bahadur Singh Vs. State Of M.P., I.L.R. (1993) M.P. 84 (D.B.)*

-**Article 226/227** and Pension Regulations 1961, Rule 173-Service claim for disability Pension Petitioner suffered mental disorder and 20% mental disability-For application of Rule 173 it must be proved to the satisfaction of the Court that the disability acquired by the petitioner is in fact attributable or was aggravated by military service-in absence of any nexus between disability and service condition Regulation 173 would not be applicable : *Gopal Das Maheshwary Vs. Union Of India, I.L.R. (1999) M.P. 1021*

- **Articles 226/227, 14**–Writ Petition–Police services– Allegation of mis conduct– Removing belt and cap and throwing at the time of visit of Inspector General– Departmental enquiry–Removal from service–Order confirmed by Administrative Tribunal–Punishment imposed must be commensurate to the gravity of the misconduct–Any punishment disproportionate to the gravity of misconduct violative of Article 14–Judicial Review–Punishment imposed shocks the conscience–It would be appropriate either to direct the authority to consider or in exceptional cases, appropriate punishment can be imposed–Punishment of removal from service disproportionate to the gravity of misconduct alleged–Order set aside. *Arvind Vs. Director General of Police, M.P.; I.L.R. (2002) M.P. 244 (D.B.)*

- **Articles 226/227** and 299, Forest Act, Indian (XVI of 1927) and Amendment Act, M.P. (IX of 1965), Section 82 – Quashing of RRC – NIT for disposal of Tendu leaves – Acceptance of offer communicated by Registered post – Refusal to accept – Amounts to service – Section 82 and Clause 11 of NIT – Effect – Creates a statutory liability for recover of amount – Statutory liability can be enforced even though there is no contract as envisaged under Article 299 of Constitution – Deficiency can be recovered as arrears of land revenue : *Girdharilal Kesharwani Vs. State, I.L.R. (2001) M.P. 489*

-**Articles 226/227 and 229** and High Court Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, M.P., Rules, 1996, Rules 19 and 20 (C)-Writ Petition- Order imposing punishment passed by Disciplinary Authority and confirmed in appeal by the appellate authority i.e. The Chief Justice –Rule 20(c) of the Rules-Chief Justice exercising appellate power under Rule 20(c) of the Rules acted not on administrative side but as a *quasi* judicial authority-Record of the appellate authority, if called for-Appellate authority not required to answer averments made in the writ petition-Joinder of appellate authority i.e. the Chief Justice in writ petition challenging the disciplinary action-Not necessary-Reference answered accordingly : *Smt. K. F. Anjum Ali Vs. High court of M.P., I.L.R. (2000) M.P. 32 (D.B.)*

-**Articles 226 and 227**-Non-Observance of mandatory provisions of law by the Revisional Authority-Impugned order quashed : *Paramjeet Vs. Principal Secretary, Revenue Ministry, Bhopal, I.L.R. (2000) M.P. 334*

-**Articles 226 / 227**-Writ Petition-Fixation of working hours-Prerogative of employer-In view of job requirement in different units working hours cannot be fixed in one yard-stick-Such action of employer is beyond judicial review unless arbitrary or in violation of statute-Claim of para-medical staff for over time at par with ministerial staff- Nothing to show that petitioners are required to work more than the

prescribed hours a week-Denial-Not discriminatory : *S.K . Dean Vs. Steel Authority of India Ltd., I.L.R. (2000) M.P. 434*

-Articles 226 and 227-Finding of fact fundamental to jurisdiction-No interference under Article 226 by issue of a writ of certiorari Interference permissible under Article 227 : *Sona Bai Vs. The Board Of Revenue, I.L.R. (1958) M.P. 137 (D.B.)*

-Articles 226 and 227-High Court --Power of interference when and when not to be exercised : *Badshah & Ors. Vs. The Board Of Revenue, M.P. & Ors., I.L.R. (1961) M.P. 947 (D.B.)*

-Articles 226 and 227-High Court, Power of, to enquire into question of fact : *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P.402 (D.B.)*

-Articles 226 and 227-Writ Petition-Maintainability : *Smt. Mani Jain Vs. Sub-Divisional Forest Officer, Mhow, I.L.R. (2000) M.P. 1257 (D.B.)*

- Articles 226, 227, Letters Patent, Clause X-Writ petition-Power under Article 227 of the Constitution can be suo motu exercised by High Court-A Public Trust-Appointment of Trustee-Issue of fresh proclamation-Appeal pending against judgment in Civil Suit-Not bar for writ jurisdiction. *Madanlal Soni Vs. State of Madhya Pradesh I.L.R. (2002) M.P. 659 (D.B.)*

- Articles 226 and 227 - Writ Petition under - Raising questions of vires of any enactment, rule, order or notification etc. - Hearing of - Can be done only at Jabalpur: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P. 1, (F.B.)*

-Articles 226 and 227-Point of jurisdiction not raised before the authority-That point cannot be raised in the proceedings under this provision : *Janta Motor Transport Co-Operative Society Ltd., Durg Vs. State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1965) M.P. 271 (D.B.)*

-Articles 226 and 227-Alternative and equally efficacious remedy open to a litigant-Discretionary power to issue writ not to be exercised : *Thakur Prasad V. V.S. Mehta, Block Development Officer And Returning Officer, Gram Panchayats Elections, Block Lanji I.L.R. (1967) M.P. 356 (D.B.)*

-Articles 226 and 227-High Court-Exercise of discretion by, to issue writ for quashing the order of Returning Officer rejecting a nomination paper : *Thakur Prasad Vs. V.S. Mehta, Block Development Officer And Returning Officer, Gram Panchayats Elections, Block Lanji I.L.R. (1967) M.P. 356 (D.B.)*

– **Article 226 and 227** – Appellate order rejecting appeal without due application of mind, quashed : *Ram Dhin Gupta Vs. The State Bank Of India, I.L.R. (1990) M.P. 538 (D.B.)*

– **Articles 226 and 227** – Interference by High Court in matters of transfer when permissible : *R.K. Dubey Vs. M.P. State Agro Industries Development Corporation, Bhopal, I.L.R. (1990) M.P. 363 (D.B.)*

– **Articles 226 and 227** – Court should be slow in entertaining the matter and staying proceedings when Revenue Recover involved : *S. A. E. (Indian) Limited Vs. Union Of India, I.L.R. (1988) M.P. 535*

-**Articles 226 and 227**-Provisions not to be invoked for adjudication of controverted questions of fact : *Hariprasad Vs. The State Of M.P. & 5 Ors., I.L.R. (1959) M.P. 154 (D.B.)*

– **Articles 226 and 227** – Deposit of amount a condition precedent to file appeal – Cannot be circumvented by coming to High Court in writ jurisdiction : *S. A. E. (Indian) Limited Vs. Union Of India, I.L.R. (1988) M.P. 535*

- **Articles 226, 227 and Income Tax Act, Indian, 1961, Sections 154, 245**–Refund and adjustment thereof–Separate notice and clear intimation required to be given before adjustment–Provision is mandatory–Theory of substantial compliance cannot taken aid of : *Madhya Pradesh Rajya Van Vikas Nigam Ltd. Bhopal Vs. Commissioner, Income Tax, Bhopal, I.L.R. (2005) M.P. 1151*

- **Articles 226 and 227 and Letters Patent Clause X–Mines & Mineral (Regulation and Development) Act 1957–Sections 5 (1) and 11(4)**-Mining lease–Grant of–Prior approval of Central Government–Obtained under Section 5(1) and not under Section 11(4)- It is the substance that is important and not the form–In substance approval was obtained–Authorities were satisfied regarding the requirement is a finding of fact–Jurisdiction of High Court under Articles 226 and 227 can not be invoked for setting aside finding of fact–Writ petition rightly dismissed : *M/s. M.P. Mineral Supply Co. Satna Vs. Government of India, I.L.R. (2003) M.P. 818 (D.B.)*

– **Articles 226 and 227** – Jurisdiction of High Court in exercise of extraordinary and discretionary powers under – Scope of – Permissibility of reappraisal of evidence under : *Devendra Kumar Vs. Satyanarayan Singh Thakur, I.L.R. (1990) M.P. 89 (D.B.)*

–**Articles 226 and 227**–Writ petition–Tender NIT–Condition relaxed as no one took part–Proposed work involved creation of durable public assests–Engineers and

Architects also allowed to be in the Pray–Cannot be said to be illegal or arbitrary : *Alok Tomar Vs. State Of M.P., I.L.R. (2005) M.P. 210*

-Article 226 and 227–Remedy by election petition open–High Court not to exercise powers under these articles–Circumstances in which election can be set aside–Does not absolutely debar interference with election even when alternative remedy open : *Idandas Vs. The Election Officer (Gram Panchayat Election), East Nimar, Khandwa I.L.R. (1968) M.P. 48, (D.B.)*

– **Articles 226, 227** – Writ petition – Service Law – Pension – Coal Mines Nationalisation Act, 1973 – Section 14(1) – Nationalisation of Coal Mines – Provision for pension to existing employees – Subsequent amendment withdrawing benefit of pension – Cannot be applied with retrospective effect and would not effect person who already retired and received benefit of pension who already retired and received benefit of pension prior to such amendment : *Stanely Ward Vs. Coal India Limited, I.L.R. (2001) M.P. 15.*

– **Articles 226, 227** – When the order of a Tribunal is challenged the High Court exercise its powers of superintendence under Article 227 and not under Article 226 – High Court can only correct the errors or wrongs that are floating on the surface : *Haji Yasin Vs. The Commissioner, I.L.R. (2001) M.P. 787.*

– **Articles 226 and 227** – Writ Petition – General Sales Tax Act, M.P., 1958 (II of 1959) – Sections 12 and 17 and Commercial Tax Act, 1994 – Sections 9(2), 13, 81 – Exemption in Sales Tax to dealers setting up Industrial units for manufacture of goods in backward districts – Subsequent withdrawal of exemption – Illegal – Saving provisions protect and persevere the rights accrued by way of previous exemption – Exemption granted as per previous notification shall continue for the notified period : *Jagdish Bhai Patel Vs. State, I.L.R. (2001) M.P. 1821.*

–**Articles 226, 227**–Writ Petition–Acquisition of land– Before award could be passed original holder died–Requisitioning and Acquisition of Immovable Property Act, 1952–Sections 8 and 19–On death of original holder and in case there is more than one legal heirs the arbitrator has jurisdiction to apportion the award amongst the persons found entitled–Jurisdiction of Civil Court in such matter is barred. *Bhag Chand Yadav Vs. The Arbitrator, I.L.R. (1992) M.P. 448, (D.B.)*

-Articles 226, 227–Writ Petition– Commercial Tax – Vanijyak Kar Adhinyam, M. P., 1994– Sections 68, 89 and Schedule I, Sections 89, 94–Accessories–Foot Valve–Having no independent use but used in pump-sets below 10 H. P. run by electricity for its efficient use–Foot valves fall under the category of accessories–Exempt under Schedule I, Entry 89 of the Commercial Tax Act. *M/S. Perfact Engineering Company v. Commissioner of Commercial Tax, I.L.R. (2002) M.P. 46*

-Article 226 and 227-Writ Petition-Power of Superintendence-Suit for possession decreed in favour of plaintiff-Return filed under the ceiling Act excluding the suit land being subjudice- Order XXI Rule 11, CPC-Execution proceeding for recovery of possession-Obtaining order from the competent Authority as to entitlement of petitioner to hold the land- Not necessary- Ceiling on Agriculture Holdings Act, M.P., 1960-Section 15-Application for option to retain particular land and question of filing revised return would only arise after petitioner's acquiring any particular land, if in excess of the limit provided under the law-Order of Court below patently illegal and without jurisdiction : *Smt. Khom Bai and others Vs. First Addl. District Judge, Raipur, Link Court, Mahasammund and ors., I.L.R.(2000) M.P. 1038 .*

- Articles 226, 227 - M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 - Rule 19 and Criminal Procedure Code, 1974, Section 389(i)-Writ challenging order of State Administrative Tribunal- Conviction of Government servant by trial Court - Termination - Competent authority can terminate services after conviction by criminal court - Stay of execution of sentence will not debar competent authority from doing so - Master and servant relationship terminates on termination order- Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court - Subsistence allowance cannot be granted for the period. *Jamna Prasad Vs. State of M.P. ; I.L.R. (2002) M.P. 809 (F.B.)*

- Articles 226, 227 – Writ Petition – Cancellation of allotment of land - Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973 – Sections 38, 76-BB and Nagar Tatha Gram Nivesh (Vikasit Bhoomiyon, Griho, Bhavno Tatha Anya Sanranchaon Ka Vyapan Niyam, M.P.), 1975, Rule 19 – General Order waiving requirement of prior approval of State Government on allotment of developed land on concessional rates to educational institutional on no loss no profit basis – Allotment caused huge loss to Development Authority – Criteria of no loss no profit not followed by keeping on record particulars of expenditure incurred in acquisition and development – State Govt. has power to hold enquiry into the working of Development Authority as it is a statutory authority – Allotment of land void as initio – Other persons application not considered for allotment – Opportunity of hearing not required for cancellation of such allotment : *Adhartal Shiksha Samiti (Sarswati Shishu Mandir) Vs. State I.L.R. (2001) M.P. 1470.*

- Articles 226 and 227, Entry 49 or 50 of State List I and II, 7th Schedule- Levy imposed by the Act is tax on minerals produced and not tax on land itself – Not covered by Entry 49 or 50 of State list II - Section 11 of the Act as amended is ultra vires: *M.P. Lime Manufacturers' Association, Katni Vs. State Of M.P., I.L.R. (1991) M.P. 1 (F.B.)*

- **Articles 226, 227** and Municipalities Act, M. P. (XXXVII of 1961), Sections 268, 357 and 358 and the bye laws framed thereunder—Regulation imposed on sale of vegetable ghee within Municipal limits—Challenge—Writ Petition—Licensing and conditions of sale of food within Municipal area and powers of Municipality to form by laws—Vegetable ghee is an article intended to be used for human food—Section 268 though deals with regulation in respect of sale in food and drinks yet in exercise of power under Section 358 Municipality empowered to make by laws regulating sale of Vegetable ghee within the Municipal areas. *Kirana Association, Datia Vs. State, I.L.R. (1992) M.P. 318 (D.B.)*

- **Articles 226, 227**—Consumer Protection Act, 1986, Section 11 and Carriers Act, 1865, section 10—Writ Petition challenging orders passed by District Consumer Forum and its confirmation in appeal—Contract for transportation—Jurisdiction of District forum—Contractual obligation to deliver goods at Rewa—Breach of contract by carrier due to non-performance—The District forum at Rewa has jurisdiction Goods lost due to negligence of carrier—Negligence need not be proved in case claim of damages for lost goods—Carrier can be absolved from liability—Notice to carrier claiming damages—No objection against non-service of notice raised before—Right deemed to have been waived. *Lucky Forwarding Agency Vs. Smt. Binder Devi; I.L.R. (2002) M.P. 849*

- **Articles 226, 227** and Industrial Disputes Act, (XIV, of 1947), Section 10—Reference of Disputes - Power of Appropriate Government—Dispute raised "Whether closure is *bonafide*, actual, real"—A question to be considered by the Labour Court—Labour Commissioner in exercise of powers of appropriate Government cannot adjudicate the question which are disputed—Reason employed by appropriate Government for not referring dispute amounts to decision on merit—Not permissible—Order quashed : *National Federation Of News Paper Employees Vs. M/s. Naveen Duniya, I.L.R. (2004) M.P. 470*

- **Article 226, 227** and Industrial Disputes Act, 1947, Section 33-C(2)—Writ petition—Labour law—Minimum wages—Employer duty bound to provide sufficient wages to its employees—Application filed by workman cannot be thrown merely on the ground of delay—Application for recovery of difference of wages/salary—No limitation provided in I.D.Act—Amount computable in terms of money—Limitation provided in the Minimum wages Act will not debar the court to enforce statutory liability : *Kishore Jaidka Vs. Persiding Officer, Labour Court, Sagar, I.L.R. (2004) M.P. 147*

- **Article 226 and 227** – Writ Petition – Voluntary disclosure of Income under VDIS – Actual investment not disclosed – Notice issued by Department for not disclosing true income – Finance Act, Indian, 1997 - Sections 62, 64 and Voluntary Disclosure of Income Scheme, 1997 – Power of IT department – Actual investment

not disclosed voluntarily Lesser amount of income shown in the declaration under VDIS – Income Tax Department within its jurisdiction to conduct investigation and issue notice therefore – Income Tax Act, 1961, Section 131(1)(d) – Notice under – Rightly issued to the assessee because Section 64 nowhere provides that declaration relating to explained income would also be taken correct : *Smt. Shashi Devi Vs. Income Tax Officer, Chhindwara, I.L.R. (2001) M.P. 310*

- **Article 226, 227** and Industrial Relations Act, M.P, (XXVII of 1960) Section 31(3) , 61, 62 and Limitation Act (XXXVI of 1963), Section 5,29–Labour Law–Dispute–Approach to the Labour Court belated–Powers of Labour Court and commencement of proceedings–For sufficient reasons labour Court may admit an application after expiry of the limitation prescribed under the State Act–Section 62(2) of the M.P.I.R. Act does meet the twin requisite ingredients to have the applicability of the limitation Act–workman filing application under Section 62 of M.P.I.R. Act beyond limitation can always file application under Section 5 of the Limitation Act for condonation of delay–Reference answered accordingly : *Mohamad Sagir Vs. Bharat Heavy Electricals, I.L.R. (2004) M.P. 338 (FB)*

- **Articles 226, 227**–Writ Petition–Civil Procedure Code, 1908 Order 26 Rule 9 and 10–Report of Commissioner for local investigation–Objections against–Report of Commissioner and evidence taken by him shall be evidence and shall form part of record but the Court or with permission of the Court any party to the suit may examine Commissioner–No application for examination made before Trial Court–Trial Court directed to give opportunity to call and examine Commissioner if appropriate application is filed : *Shaman Das Vs. Smt. Annapurna Choubey, I.L.R. (2004) M.P. 477*

–**Articles 226, 227** and Krishi Upaj Mandi Samiti Adhiniyam, 1972 M.P. (1973) Section 2(1) (b)–Election of Mandi Samiti eligibility–Candidate has to be an 'agriculturist' within the meaning of section 2(1)(b)–Otherwise the very purpose of amending provision shall get frustrated–Returned candidate *prima facie* involved in contractorship business–Tribunal committed an error in everlooking the outstanding bills brought on record by the petitioner–Finding of Tribunal perverse–Matter remanded to the Tribunal for decision afresh. *Bhaskar Singh Raghuvanshi Vs. Harveersingh Raghuvanshi; I.L.R. (1992) M.P. 1 (D.B.)*

–**Articles 226, 227**, and Urban Land (Ceiling and Regulation) Act (XXXIII of 1976), Sections 6, 19, 20 and Nagar Tatha Gram Nivesh Adhiniyam, M. P. (XXIII of 1973)–Compulsory acquisition of land by Development Authority–Agreement executed that in lieu of cash compensation developed plots shall be given to the petitioner society who is nominee of original holder–Authority refusing to handover

the agreement on the ground that ceiling proceedings are pending in respect of the land—Unjustified—Development Authority is an authority within the meaning of Section 19(1)(i) of the Act, 1976—The Provision of Ceiling Act, 1976 would not be applicable to the vacant land held by such Authority—Ceiling proceeding pending—Even if such land held by the holder is declared excess of ceiling limits the authority would continue to hold the land by virtue of proviso to sub-section (2) of Section 19 of the Act—Words & Phrases : 'held'—Expression held has wider connotation than 'owning' or 'possessing'. *Hind Griha Nirman Sahkari Samiti Maryadit, Jabalpur Vs. Jabalpur Development Authority, I.L.R. (1992) M.P. 159 (D.B.)*

-**Article 226 and 227**-Writ Petition-Challenge made to the order passed by Commissioner in exercise of power of revision on ground of delay-Ceiling on Agriculture Holdings Act, 1960, M.P.-Section 44-Limitation Does not apply to *suo motu* exercise of revisional power-Record reveals that Competent Authority himself sought permission to review the order in question-Permission though not granted on ground of delay but Collector placed the matter before Commissioner for consideration-*Suo motu* exercise of power by Commissioner in such case – Not arbitrary : *Babulal & anr. Vs. Board Of Revenue, Gwalior & anr., I.L.R.(2000)M.P.1410.*

- **Articles 226 and 227**—Writ petition—Claim of compensation for land covered in mining area—Coal Mines (Taking Over Management) Act, 1973 and Coal Mines (Nationalisation) Act, 1973—Sections 2(h) and 3—Petitioner lease holder of land covered in Coal mines owned by private company—Vesting of mines in Central Govt.—Land not acquired—Map showing land used by the Central Government for mining operation—Petitioner not a mine owner—Not entitled to compensation from Central Government—Land in possession of respondents for a long time—Petitioner entitled to compensation for compulsory acquisition of land from the date of occupation. *P.P. Chakravarti Vs. Coal India Ltd., I.L.R. (1992) M.P. 388 (D.B.)*

-**Article 226 and 227**—Writ petition-M.P. Panchayat Raj Adhiniyam, 1993, Section 91, M.P. Panchayat (Appeal and Revision) Rules, 1995, Rule 5 and 9 M.P. Panchayat Shiksha Karmi Recruitment and Condition of Service Rules, 1997, Rule 2(C) and 5-Selection of Shiksha Karmi Grade -III-Quashed by Collector-Order of Collector confirmed in revision by Commissioner—Second revision before State Minister—Constitution of selection committee and selection process-Major bulk of marks reserved at the discretion of Chairman of Education Committee—Total abdication of functions of members to one person—Long number of candidates interviewed in a single day— Relations of members of selection committee selected while members participated in interview—Provision of reservation not followed—Nature of irregularities goes to the root of selection-Entire selection process vitiated : *Smt. Mamta Pateria Vs. State, I.L.R. (2003) M.P. 764*

- **Articles 226, 227**–Writ Petition–Candidacy for dealership of L.P.G. with Bharat Petroleum Corporation–Qualification and Dis-qualification prescribed–Penal Code, Indian, 1860, Sections 294, 324, 341–Utterance of obscene words in public place–Act involves moral turpitude–A person who commits such offence is never regarded to be a man of good character–On the date of submission of application charges pending–Disqualification clause applies–Order granting dealership of L.P.G. quashed : *Arun Vs. Chairman & Managing Director Bharat Petroleum Corporation Ltd.*, I.L.R. (2003) M.P. 271

- **Articles 226, 227**–Writ petition–Master plan–Non inclusion of petitioner's land in draft statement–Urban Land Ceiling and Regulation Act, 1976–Section 4 and Urban Land (Ceiling and Regulation) Repeal Act, 1999–Sections 2, 3, 4 and 10–Draft statement issued–No appeal filed before competent authority–Writ petition after seventeen years–Not tenable–Abatement of proceedings–Land not taken over–Petitioner entitled to an opportunity to show that possession having not taken the proceedings are deemed to be abated–Disputed question of fact–Petitioner may raise such contention before competent authority. *Smt. Sunderbai Vs. State*, I.L.R. (2002) M.P. 54

- **Articles 226 and 227**–Writ Petition–Delay in payment of retirement benefit–**M. P. Civil Services (Pension) Rules, 1976, Rule 57**–Head of office shall undertake the work of preparing pension papers two years before the date on which Government Servant is due to retire–Duty is cast on head of office–Delay caused by the respondents and not by the petitioner–Petitioner entitled to interest for delay in payment : *I.P. Malik Vs. State*, I.L.R. (2003) M.P. 14 (D.B.)

- **Articles 226, 227 – Writ Petition – Service Law – Industrial Disputes Act, 1947, Sections 10 and 33 – C** and working journalists and other newspaper employment (Condition of Service) and Miscellaneous provision Act, 1955 as amended by Act No. 65 of 1962 – Section 17 – Application for recovery of dues towards differential salary and Gratuity under the Palekar Award – Stage of recovery would reach only after the amount due to employee is determined – Sections 10, 17(1) and 17(2) of I.D. Act – Deputy Labour Commissioner though an authority under the Industrial Disputes Act yet bereft of jurisdiction when an objection as to the employer employee relation is raised – matter would have been referred under Section 17(2) for adjudication to the competent Labour Court constituted under the Industrial Disputes Act – Order impugned quashed : *Nav Bharat Press (Private) Ltd. Vs. State*, I.L.R. (2001) M.P. 931,

-**Articles 226, 227**–Writ Petition–Service Law–Termination–Charge of theft misappropriation–Departmental Enquiry –Charge found proved–Industrial Relation

Act, M.P., 1960, Section 107-A and Industrial Relation Act, 1947–Section 11 A–Power of Labour Court to substitute punishment–Power discretionary–Nothing could be shown that the finding arrived at the enquiry was perverse or illegal–Trial Court and Industrial Court both found that the enquiry conducted and finding of guilt arrived at are proper–Exercise of discretion by labour court cannot substitute the order of punishment–Not proper : *M.P. State Road Transport Corporation Vs. Sudhkar Deshmukh, I.L.R. (2003) M.P. 601*

–**Articles 226 and 227–Writ Petition–Irrigation Act, M.P., 1931, Sections 27, 37, 40 and Irrigation Rules M. P., 1974–Rule 71-A**–Water can be supplied from river or natural stream for any industrial, urban or other purposes not connected with agriculture–Charges can be fixed in accordance with Rules–Rules can be made retrospective if the Act specifically states–Demand on the basis of Notification prior to Rules–Can not be given stamp of approval : *Century Textiles & Industries Ltd. Vs. State, I.L.R. (2003) M.P. 874 (D.B.)*

– **Articles 226, 227 – Writ Petition – Service Law – Panchayat Shiksha Karmi – Panchayat Raj Adhinyam, M.P., 1993 – Section 91, Panchayat (Appeal Revision) Rules M.P., Rule 5 and Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, M.P. 1997 – Rule 12 – Expression Appeal used in Rule 12 of the recruitment Rules has to be read to mean revision also – Revision does not lie against appeal-able order but lies against appellate order – Alternative order but lies against appellate order – Alternative remedy of revision available to petitioner – Liberty granted to avail remedy of revision in thirty days : *Jai Dinesh Verma Vs. State, I.L.R. (2001) M.P. 1103.***

– **Articles 226, 227 – Writ Petition – Tax Laws – Sales-tax – General Sales-tax Act, M.P., 1958 – Section 12 and Notification issued thereunder – Exemption Claimed under the notification exempting tapes, niwars and laces – Petitioner dealer in elastic tapes – Interpretation – Rule of – Words have to be understood in their common parlance – Expression used in Entry 25(iv) does not confine to any specific class of tapes made of particular raw material but would also include elastic tapes – Petitioner entitled for exemption under the notification : *M/s. Shyam Winding Factory, Indore Vs. State, I.L.R. (2001) M.P. 20.***

- **Articles 226, 227 and Administrative Tribunals Act, 1985, Sections 2 (q), 14**–Jurisdiction of Tribunal–Service matter–Incentive Bonus is nothing but an extra emolument for the extra effort put in by the employees–Will be a remuneration–Will fall under the wide definition of "service matter" –Tribunal has jurisdiction : *H.M. Awasthy Vs. Union Of India, Through The General Manager, Ordinance Factory, Katni, M.P., I.L.R. (2005) M.P. 575 (D.B.)*

- **Articles 226, 227 and Anusuchit Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhinyam, 1967, Section 8(3)**–Writ Petition–Challenge as to validity of ex-parte order of Debt Recovery Court (SDO)–Service of notice–Names of parties kept blank, name of Court not described–Cannot be regarded as due service of notice–Impugned orders quashed–Matter remitted back to Debt Relief Court (SDO) : *Hari Ram Soni Vs. Damdu Lal Ahirwal, I.L.R. (2005) M.P. 949*

- **Articles 226, 227** – Writ Petition – Refund of excise duty wrongly realized – Central Excise and Salt, Act, 1944 – Section 11-B – Application for refund – Proceeding before the Assistant Collector for adjudication the claim for refund of excise duty are of quasi-judicial nature –Cannot be controlled by directions as per standing orders – Order impugned requiring pre-audit without jurisdiction – Alternative remedy of appeal – Not a bar to writ proceedings : *Rewa Gases Private Limited Works and Head Office, Sidhi Vs. Asstt. Collector, Central Excise, Division-Satna, I.L.R. (2001) M.P. 1630,*

-**Articles 226, 227** and Employees Provident Fund and Miscellaneous Provisions Act, 1952 Sections 1(3), 2 (f)–Scope and definition of 'Employee'–Workmen engaged for loadings & unloading bamboo–Until and unless bamboos are brought in the premises paper cannot be manufactured–Persons who came in the truck and unloaded bamboos in the factory premises can be said to be employees defined in Section 2 (f) of the Act–They are employees for all practical purposes of the Act : *Orient Paper Mills Proprietor Orient Paper And Industries Ltd. Forest Organisation Shahdol, M.P. Vs. Regional Provident Fund Commissioner, Jabalpur, I.L.R. (2005) M.P. 1041*

- **Articles 226, 227**, Letters Patent, Clause X and Industrial Relations Act, M.P., 1960 Sections 31(3)–Misconduct–Appellant found guilty of carrying passengers without ticket–Concurrent findings of Labour Court and Industrial Court–Cannot be assailed in absence of perversity–Punishment of removal not disproportionate : *Pitambar Das Tiwari Vs. Madhya Pradesh State Road Transport Corporation, Through Managing Director, H.Q.–Habibganj, Bhopal., I.L.R. (2005) M.P. 600 (D.B.)*

- **Articles 226 and 227** – Writ Petition – Tender for Tendu Leaves lot wise – Petitioner not offering tender as per term of tender – Also moved application for withdrawal of tender before it was opened – Forfeiture of earnest money – Validity – As petitioner's tender did not fulfill the requisites of a valid tender cannot be treated as tender in the eye of law – Hence could neither be accepted nor rejected – Order forfeiting earnest money quashed : *Vijay Kumar Gupta Vs. M.P. Rajya laghu Vanopaj (Vyapar Avam Vikas) Sahkari Sangh Maryadit, I.L.R. (2001) M.P. 771.*

-Articles 226 and 227-Writ Petition-Against-Award passed by the Tribunal on reference under Section 51(1) of Industrial Relations Act M.P., 1960- Jurisdiction-Reference to larger, Bench-Tribunal constituted under the M.P.I.R. Act much prior to 42nd Amendment adding Articles 323-A and 323-B in the Constitution-Award passed by pre-existing Tribunals and not constituted under Articles 323-A or 323-B of the Constitution-Only single Bench has jurisdiction to adjudicate the writ Petition under Articles 226/227 of the Constitution arising from such an award-Direction of Hn'ble Supreme Court in L. Chandra Kumar's case confines to only orders passed by Tribunals constituted under ARTICLE 323-A or 323-B of the Constitution- Reference answered accordingly : *Kedia Distilleries Ltd. Vs. General Secretary, Chhattisgarh Chemical Mill Mazdoor Sangh, Rajnandgaon, I.L.R. (2000) M.P. 103 , (D.B.)*

- Articles 226 and 227 and Nagar Tatha Gram Nivesh Adhinyam, M.P. (XXIII of 1973), Section 50 (7) – Writ Petition – Acquisition of Land – Land Acquisition Act, 1894 Section 4 and 6 – Only when the land is included in final notification, proceeding for acquisition can be initiated – Petitioner's land not included in final notification – Even if included in the subsequent notification – Defect of non-inclusion in final notification would not stand cured or rectified – Section 54 – No steps taken to implement the scheme within the stipulated period – Scheme stand lapsed : *Sunderlal Gandhi Vs. State, I.L.R. (2000) M.P. 150*

- Articles 226, 227 and Vishwavidhyalaya Adhinyam, M.P. (XXII of 1973), Section 14, 52 (1) – Emergency provision – Though akin to Article 356 (1) not comparable to a situation when State Government exercises its powers under Section 52 (1) of the Act –Requirement is satisfaction as to whether or not sufficient material exists-Show cause notice also given to petitioner/Vice-Chancellor as to why he should not demit office-The Vice-Chancellor and Registrar found to be in head on collision resulting in chaos in the affairs of University detrimental to the interest of students and their studies-Sufficient to invoke emergency provision of the Act-Article 226-Power under-High Court cannot go into the sufficiency or insufficiency of material but at most can go into question of existence of such material-Action of State Govt. upheld-Petitioner making vague allegation against high dignitaries- Exemplary cost of Rs. 10,000/- imposed : *Prof. Narendra Kumar Gouraha Vs. State, I.L.R. (2000) M.P. 558*

-Articles 226 and 227-Writ Petition-Availability of alternative remedy-If an order is illegal and without jurisdiction, plea of alternative remedy would not come in the way of High Court's writ jurisdiction in granting relief –Land Revenue Code, M.P., 1959-Sections 42 and 50-*Suo motu revision*-Powers can only be exercised if error, omission or irregularity has in fact occasioned a failure of justice and while exercising such powers revisional authority is obliged to serve a notice on other party-Principle of “*Audi Alteram Partem*” is required to followed-Non-observance of

mandatory provisions of law by the Revisional Authority- Impugned order quashed : *Paramjeet Vs. Principal Secretary, Revenue Ministry, Bhopal, I.L.R. (2000) M.P. 334*

- **Articles 226, 227** and Municipalities Act, M.P. (XXXVII of 1961), Sections 127, 130, 172 – Writ petition – Imposition of show tax by Municipality – Sections 127, 130 – Power of Municipality to impose tax is subject to the general or special order passed by the State Govt. in this behalf – Order of State Govt. fixing maximum or minimum rate of tax already in vogue – Also binding on the prescribed authority under Section 130 – Municipality cannot enhance the rate of tax until the earlier order of State Govt. is withdrawn – Enhancement of tax and sanction by prescribed authority during subsistence of State Govt. order u/s. 127(1) – Without jurisdiction – Petitioner entitled to get refund of the amount paid in addition to the amount of tax fixed earlier : *M/s. Alpna Theatre, Raipur Vs. Nagar Palika Parishad, Raipur, I.L.R. (2001) M.P. 303.*

- **Articles 226, 227** – Writ Petition – Education – Admission to Post graduate course in Medical College – Refusal on ground that petitioner is already studying in M.D. (Skin, V.D.) in the same college – Medical and Dental Post-graduate Entrance Examination Rules, M.P, 1998 – Rule 3(vi)(iv) – Prohibition on admission of candidates already pursuing P.G. Courses in their university till they complete the course – Applicable only to those universities which have framed such prohibitory regulation or to those candidates who are selected in professional examination under the M.P. Rules – Bulletin of Information For Guidance for All India Pre. P.G. Examination 1999 – Petitioner selected in All India examination while pursuing P.G. Course in a collage of RDVV – Nothing to show that RDVV has framed any such regulation contemplated in clause 6(b) of bulletin – Petitioner cannot be denied admission to M.S. (Surgery) Course : *Dr. Vishal Madan Vs. State, I.L.R. (2001) M.P. 760.*

- **Articles 226, 227** – Writ Petition – Levy of market fee on “MAIDA” – Krishi Upaj Mandi Adhinyam, M.P., 1972 – Section 2(1)(a) – ‘Agricultural Produce’ defined to mean all produce whether processed or not – Section 2(1)(m) – ‘Notified agricultural produce’ defined to mean all such produce specified in the schedule – Schedule appended to the Act is a part of legislation and contains ‘wheat’ at Sl. No. 2 – Legislative intention clear to include ‘Maida’ in ‘agricultural produce’ as Maida is derived by powdering wheat i.e. by processing as defined under Section 2(1)(mmm) – Maida so derived from Wheat – Is an agricultural produce liable to levy of Market fee : *M/s. Damroolal Jagannath Prasad Pathak Vs. Krishi Upaj Mandi Samiti, Jabapur, I.L.R. (2001) M.P. 7.*

– **Articles 226, 227** – Writ Petition – Supersession of Society – Writ Petition in the name of the Society after Supersession – Not maintainable – Petition treated as one in individual capacity – Society Registrarian Adhinyam, M.P., 1973, Section 3(f) (as amended) and Section 33 – ‘State aided Society’ means a Society which received aid, grant or loans and land or building on concessional rates and other facilities from Central Government or State Govt. or any statutory body – Petitioner has received grant in aid or Rs. 2,00,000/- and land on concessional rates – It is a ‘State aided Society’ as defined under Section 3(f) of the Act – Section 33 – Supersession – Show cause notice given and reply considered before passing the impugned order – Number of irregularities in the working and financial management of the Society – Order of supersession reasonable – Appointment of Administrator not arbitrary or illegal : *Patrakar Bhawan Samiti, Bhopal Vs. State, I.L.R. (2001) M.P. 1110.*

- **Articles 226, 227**–Civil Procedure Code, 1908 Order 26 Rule 9 and 10–Writ Petition–Report of Commissioner for local investigation–Objections against–Report of Commissioner and evidence taken by him shall be evidence and shall form part of record but the Court or with permission of the Court any party to the suit may examine Commissioner–No application for examination made before Trial Court–Trial Court directed to give opportunity to call and examine Commissioner if appropriate application is filed : *Shaman Das Vs. Smt. Annapurna Choubey, I.L.R. (2004) M.P. 477*

-**Articles 226, 227**, Civil Procedure Code, 1908, Order 41 Rule 22, Section 96, Letter Patent, Clause X, XIII–Intra–Court Appeal from writ Court order–Different from an LPA from First Appeal under Section 96 CPC–Cross-objection or cross-appeal–Not maintainable–Respondent cannot await service of notice to file cross appeal in LPA–Respondent may prefer LPA subject to Rule XIII for condonation of delay–May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order–Reference answered accordingly : *Jabalpur Development Authority Vs. Y.S. Sachan & Ors., I.L.R. (2004) M.P. 231 (F.B.)*

– **Articles 226 and 227** – Writ Petition – Illegal demolition of structure by Municipal Corporations Act, 1956, Sections 6, 293, 300, 307, 308-A and 310 – Building permission – Conditions for – Construction to commence within one year and to complete in two years – On failure to commence and also to complete construction within time stipulated that the legal fiction ‘deemed lapse of sanction’ can be invoked – Interpretation of statute – ‘And’ used in Section 300 does not produce unintelligible or absurd result – Cannot be read as ‘or’ to hold that sanction shall be deemed to have lapsed on expiry of two years if construction is not complete within two years – Notice to show cause for removal of structure and for

compounding – Failure on part of the Corporation to communicate to petitioner of its right to apply for fresh sanction or for compounding – Two years not expired after sanction – Action of Corporation in demolishing the structure – Illegal and erroneous – Corporations are created for welfare of citizens – Expected to apprise citizens of their rights before taking harsh action of pulling down structure – writ issued to Corporation to allow petition to complete construction within one year – Compensation for illegal demolition by Corporation – Aggrieved party may take recourse to the remedy under the civil laws : *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631.*

- **Articles 226 and 227** - Proceedings under, not proceedings under the Industrial Relations Act - The proceedings are original proceedings - Persons affected can move under these provisions - Industrial Relations Act, Madhya Pradesh, 1960 - Section 33 - Not exhaustive of agreements contemplated by the Act- Section 98 - Contemplates an agreement between employer and Representative Union - Tribunal to be satisfied about the agreement being not in contravention of any provision of the Act and consent of either party not vitiated by mistake or fraud - Not necessary that agreement should finally determine the dispute - Does not exclude the possibility of parties referring to machinery to decide dispute : *Bhilai Steel Employees Association, Bhilai Vs. Shri A. W. Kanmadikar, Member Judge, Industrial Court, M. P. Indore, I.L.R. (1978) M.P. 909 (D.B.)*

-**Articles 226 and 227**-Madhya Pradesh Shops and Establishments Act, 1958, Section 30 and Payment of Wages Act, Section 15 - Advocate's clerk's application before Legal Authority under Payment of Wages Act, under Section 15 for arrears of pay-Advocate's office not premises where services are rendered to customers-Not a shop - Client not a 'customer' of advocate-M.P. Shops and Establishments Act not applicable : *Bishambar Nath Agarwal Vs. Ganesh Narain Kalekar, I.L.R. (1964) M.P. 846 (D.B.)*

-**Articles 226 and 227**-Ground not taken before the tribunal-Not possible for High Court to pass order on that ground-Court-fees Act-No special provision regarding Court-fees in Special Act-Court-fees Act prevails-Civil Procedure Code-Section 148-No automatic relating back of appeal after defects are removed : *Shri Mannal Mandloi Vs. The Board Of Revenue, M.P., Gwalior. I.L.R. (1969) M.P. 743 (D.B.)*

- **Articles 226, 227** – Change in date of birth of an employee – Circular providing, no application could be made within 5 years from the date of superannuation Circular valid – Change of date of birth by Labour Court, without jurisdiction : *Steel Authority Of India Ltd. Vs. Industrial Court, M.P., Indore, I.L.R. (1988) M.P. 489. (D.B.)*

- **Articles 226, 227** and Civil Procedure Code (V of 1908), Order 6 Rule 17, Section 11, Explanation VI and Order 1 Rule 8 and Registration Manual, Clause 27 and Paragraph 64(10) – Amendment of pleadings – Admission can be withdrawn if shown to be erroneous – Res-Judicata – Essence of explanation VI – Earlier litigation bona-fide and private right claimed must be common to all who are sought to be bound – Examination for selection of registration moharrirs held, list prepared – State Govt. Has power to cancel examination on account of mass copying & other unfair means – Individual not entitled to opportunity to defend – Doctrine of promissory Estoppel – Explained : *Brij Bihari Vs. State Of M.P., I.L.R. (1988) M.P., 596 (D.B.)*

-**Articles 226 and 227**-Stayorder or ad interim injunction when granted-Mandatory injunction on interlocutory application-Rarely granted-Appellate Authority, discretion of, whether To grant stay or ad interim order-Discretion to be according to settled legal principles and not arbitrary-Article 227-High Court, Power of, not restricted to cases of non- exercise or illegal exercise of jurisdiction but also extends to cases of obvious miscarriage of justice-Power of superintendence to be exercised sparingly-Decision of inferior Tribunal-High Court cannot only quash but also can issue further directions or pass substantive order under Article 227 : *Durg Transport Co. Private Ltd., Durg Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (D.B.)*

- **Articles 226 and 227** and State Bank of India (Supervisory Staff) Service Rules, Rule 51 – Departmental Enquiry – Order in appeal – Speaking order giving reasons, necessary – Speaking order meaning of – Appellate order rejecting appeal without due application of mind, quashed : *Ram Dhin Gupta Vs. The State Bank Of Indai, I.L.R. (1990) M.P. 538 (D.B.)*

- **Articles 226, 227** and Civil Procedure Code (V of 1908), Order 6 Rule 17, Section 11, Explanation VI and Order 1 Rule 8 and Registration Manual, Clause 27 and Paragraph 64(10) – Amendment of pleadings – Admission can be withdrawn if shown to be erroneous – Res-Judicata – Essence of explanation VI – Earlier litigation bona-fide and private right claimed must be common to all who are sought to be bound – Examination for selection of registration moharrirs held, list prepared – State Govt. Has power to cancel examination on account of mass copying & other unfair means – Individual not entitled to opportunity to defend – Doctrine of promissory Estoppel – Explained : *Brij Bihari Vs. State Of M.P., I.L.R. (1988) M.P., 596 (D.B.)*

- **Articles 226, 227 and 311** - Withdrawal of previous petition without any orders on merits - Subsequent petition on the same cause of action not barred : *Wincent Warnor Vs. M. P. S. R. T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

- **Articles 226, 227** and 311 and Industrial Relations Act, M. P. (XXVII of 1960), Sections 31 and 62 - Petitioner employed by General Manager of Central Provinces Transport Services a departmental undertaking of M. P. State Govt. - His services transferred to M. P. S. R. T. Corporation without prejudice to his conditions of service - Protection of Article 311 continues to be available to the petitioner - Termination of his service by Divisional Manager is illegal - Petitioner charge for remaining absent without leave and without reasonable cause - Charges held proved in domestic enquiry and punishment of termination of service ordered - Labour Court holding domestic enquiry not in accordance with law and proceeded to examine merits of the case - Labour Court has jurisdiction to decide the question of misconduct and also quantum and propriety of punishment - Labour Court finding that petitioner was absent without leave but not finding that it was without reasonable cause - Order of Labour Court directing re-instatement of the petitioner without back wages restored and order of Industrial Court set aside - Withdrawal of previous petition without any orders on merits - Subsequent petition on the same cause of action not barred : *Wincent Warnor Vs. M. P. S. R. T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

- **Articles 226, 227(2)**, 235 and Court Fees Act (VII of 1870), Section 35, Civil Procedure Code (V of 1908), Sections 122, 123, 124 and Order 33 - State Govt. Notification dated 1-4-83 to remit Court Fees for certain categories of persons - Memorandum of High Court dated 8-10-84 to District Judges to follow procedure prescribed for indigent persons - Memorandum not saved by Article 225 or Article 235 of Constitution - Constitution of Rule Committee, contemplated under Section 123, Civil Procedure Code but not vested with plenary powers of legislation - Legislative power under section 124, Civil Procedure Code or Article 227(2) of the Constitution, to be exercised by Full Court but only for regulating procedure of Civil Court - Provisions of Order 33 have no relevance in granting total exemption under the notification - Memorandum quashed : *Ramji Vs. High Court Of M.P., Jabalpur, I.L.R. (1990) M.P. 550 (D.B.)*

- **Articles 226, 229** NIT - Supply of Tender form - Intending tenderer satisfies eligibility criteria - Cannot be deprived of his right to participate. *Anil Kumar Grover Vs. Union of India; I.L.R.(2002) M.P. 460*

- **Articles 226, 230 and 234** and Judicial Service (Classification, Recruitment and Conditions of Service) Rules, M. P., 1955, Rule 21 - Appointment of Judicial Officers, Civil Judge, Class II - Written examination - Purpose of - Examination conducted by Public Service Commission - Errors and mistakes in question Papers - Effect of - When may be interfered with under Article 226 - Mark sheets should be supplied to the candidates immediately after the results - No written examination is provided for selection of candidates - Examination is held for screening purposes only - Legality of - Syllabus mentioning only certain Rules and Orders of Civil Procedure Code - Sections are not excluded thereby - Question asked from such laws - No

substantial effect on the result : *Anil Kumar Jain Vs. State Of Madhya Pradesh, I.L.R. (1985) M.P. 265 (D.B.)*

- **Articles 226, 235, 311 and 356** - Rules pertaining to Direct Recruitment of Additional District and Sessions Judges framed by the State Govt. under Notification No, 15706-6640-XXI-B, dated 25th April 1964 - Rule 10 and Civil Services (General Conditions of Services) Rules, M. P., 1961 - Rule 8 - Direct recruitment of Additional District and Sessions Judges under 1964 Rules - Provisions of sub-rules (6) and (7) of Rule 8 of 1961 Rules - Not applicable - A probationer under 1964 Rules cannot be deemed to be confirmed after the period of probation which is not extended under sub-rule (ii) of Rule 10 thereof - Such probationer does not become permanent or temporary employee also - Article 311-Powers of the High Court regarding confirmation or termination of probationer, under Rule 10 of 1964 Rules - Nature of - Termination of petitioner's services by the High Court under Rule 10 of 1964 Rules - Does not amount to penalty or punishment or causing stigma - Petitioner not entitled to invoke violation of Article 311 even if High Court has considered confidential roll and report of the District Judge - Article 356 - Proclamation issued thereunder - President of India authorising Governor to exercise certain powers exercisable by him - Effect of Governor does not become delegate of the President in exercise of those powers - Article 226 - Petitioner without being confirmed granted increment and earned leave under mistake - After termination of his services recovery sought to be made - High Court will not interfere : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh, I.L.R. (1984) M.P. 195 (D.B.)*

-**Articles 226, 243-O**, Panchayat Raj Adhiniyam, 1993 (I of 1994), Section 19, 23, 36 and 122, Panchayat (Sarpanch, Up-sarpanch, President, Vice-President) Nirvachan Niyam, 1995, Rules 16(7)(i), 17 and 22 and Panchayat (Election Petition, Corrupt practices and Disqualification for Membership) Rules, M.P., 1995 Rules 2(c) and 21 – Election of President, Zila Panchayat – Certificate issued by competent authority – Notification not issued – Section 122, Panchayat Raj Adhiniyam – Election petition – In absence of notification of election no Election petition can be filed – Election petition filed prior to notification under Rule 22 – Nirvachan Niyam not liable to be taken up for consideration as being incompetent – Rules 2(c), 17 and 22 – “Returned Candidate” means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected – Unless notification it issued there cannot be any returned candidate hence no election petition could be filed on the basis of certificate issued under Rule 17 of the Election Rules : *Chandra Bhan Vs. State, I.L.R. (2001) M.P. 291, (F.B.)*

- **Article 226 and 243-T** - If the office of the president is to go to the specified category, it would necessarily mean in the context of the parent article 243-T of Constitution of India- Where the election is held in the very breach of the imperative

provision of law, then the election is not an election in the eyes of law and this Court would not refuse to interfere in the matter rather it is duty bound to issue a writ of *quo-warranto* : *Nandkishore Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539* .

- **Articles 226 and 299** - Contract with Government not in accordance with Article 299 - Not enforceable by a writ petition - Writ of Mandamus - Cannot be issued for enforcing contractual rights - State Government laying down new policy before concluded contract comes into existence - Right of : *M/S Allied Oil Industries Private Ltd., Durg Vs. State Of M. P., I.L.R. (1983) M.P. 493, (D.B.)*.

-Articles 226, 299, 300–Writ Petition–Tender bid–Auction of Tendu leaves–Breach of contract–Re-auction–Demand notice for recovery of the amount of difference–Sale of Goods Act, 1930–Section 7–Petitioner himself negligent–Failed to inspect the tendu leaves put to auction–Cannot invoke Section 7 of Sales of Goods Act–Recovery of loss incurred in re-auction–Tendu leaves lost commercial value even on the date of first auction–Re-auction held highly belated–Respondent negligent in conducting re-auction–Allowed the condition of tendu leaves to deteriorate further–Respondent not entitled to recover the loss–Refund or forfeiture of earnest money–Petitioner failed to inspect the Tendu leaves before offering bid–Subsequently inspected and did not lift the stock–Breach of contract–Forfeiture of earnest money proper : *Santosh Kumar Chopda Vs. State, I.L.R. (2003) M.P. 42*

- **Articles 226, 300-A**, Nagar Tatha Gram Nivesh Adhinyam, M.P., (XXIII of 1973), Sections, 30, 73 and Gandhi Basti Chhetra (Sudhar Tatha Nirmulan) Adhinyam., M.P., 1976, Section 13- Sanction of lay out plan Power to impose condition-Only those conditions can be imposed as are envisaged in the Adhinyam-Condition to earmark 15% land for informal sector amounts to deprivation without authority of law – Condition violative of Article 300-A of the Constitution in absence of any law on the Subject-Government free to take steps under the Adhinyam of 1976 to acquire land to settle or rehabilitate slum dwellers : *Gulmohar Grih Nirman Sahakari Sanstha Samiti Vs. State, I.L.R. (1999) M.P. 913*

- **Articles 226 and 300-A** - Board entering into contract for purchase of conductors from the petitioners for performing its obligations to lay transmission lines for distribution of electricity - Not a statutory duty of the Board - Writ jurisdiction of the High Court cannot be invoked for seeking enforcement of contractual obligations : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)*

- **Articles 226, 309** and Police Executive (Non-Gazetted) Service Recruitment Rule, M.P., 1977, Rule 8–Writ petition–Service law–Recruitment and age relaxation–Once the Government frames rules under the proviso two Article 309 it must strictly

follow the same—Advertisement cannot travel beyond rules—Concept of relaxation in rule 8 applicable to many categories but does not include Central Government employees—Petitioner found not entitled to age relaxation hence deleted from the list—Petition devoid of merits : *Ashok Kumar Tripathi Vs. State Of M.P., I.L.R. (2005) M.P. 323*

- **Articles 226, 309, 311** and Special Area Development Authority, M. P., Rules, 1976, Rule 3(2)—Writ Petition—Petitioner working on the post of Upper Division Clerk in parental department—Selected and appointed afresh in another department as Head Clerk—His application for the post of Head Clerk was forwarded by the parental department—Both the authorities mutually agreed and the petitioner was absorbed on Head Clerk in the new department—No case of transfer on deputation—When the two authorities have mutually agreed, exercise of power by State Govt. under Rule 3(2) was not called for—Repatriation of petitioner to parent department on the post of UDC amounts to reversion and violative of Article 311 of the Constitution. *Parashu Ram Tiwari Vs. State, I.L.R. (1992) M.P. 73 (D.B.)*

- **Articles 226, 311**—Petitioner as a member of Civil Services safeguard under Article 311 of Constitution cannot be denied—Requirement of termination—One month's notice or pay plus allowances in lieu thereof—Not complied with—Order of termination not passed by appointing authority but an authority subordinate to him—Order of termination quashed : *Chatrapal Thakur Vs. Assistant Commissioner of Coalmines Provident Fund, I.L.R. (2002) M.P. 76 (D.B.)*

- **Article 226, 311 (2)** Non-proof of one of several charges if not affects the opinion and decision of Disciplinary Authority impugned order of termination will stand : *Surjit Singh Vs. New India Assurance Co. Ltd. I.L.R. (1990) M.P. 489 (D.B.)*

- **Articles 226** and 311 (2) and Vishwavidhyalaya Adhinyam, Madhya Pradesh (XXII of 1973), Statute 31, Clause 5 (1) - Petitioners appointed temporarily and put on probation - Govt. terminating service - Clause 5 (1) does not apply - Court, Power of - Order of termination ex-facie innocuous - Not founded on misconduct - No enquiry necessary - Court cannot embark on any enquiry for purposes of discovering motive : *Vishwanath Vs. Bhopal Vishwavidhyalaya, Bhopal, I.L.R. (1981) M.P. 93 (D.B.)*

- **Articles 226, 311(2)** and Departmental Enquiry – Second show cause notice done away by 42nd Amendment – No rule or law to furnish copy of Inquiry Officer's report before inflicting punishment – Previously recorded ex-parte statement of witness when can be taken into account – Scope of interference by High Court under Article 226 – Non-proof of one of several charges if not affects the opinion and decision of Disciplinary Authority impugned order of termination will stand : *Surjit Singh Vs. New India Assurance Co. Ltd., I.L.R. (1990) M.P.489 (D.B.)*

-**Articles 226** and 311(2) - Person raising certain defences during departmental enquiry-No opportunity to prove the defence given-Person entitled to notice after ultimate findings are recorded-Notice under Article 311 (2)-Constitutional protection-Cannot be whittled down on ground of immaterial irregularity or absence of prejudice : *Benimadhav Vs. The State Of Madhya Bharat Through The Chief Secretary, I.L.R. [1958] M.P. 435 (D.B.)*

- **Articles 226**, 330 and 332 – Voters list wrongly including co-opted panchas – Alternative remedy of election petition available – No interference in writ jurisdiction – Election when can be set aside in such cases : *Ramesh Rewatkar Vs. Returning Officer, Krishi Upaj Mandi, Pandhurna, I.L.R. (1987) M.P. 103 (D.B.)*

- **Articles 226**, 341, 342(1) and 342(2) – Application for grant of Schedule Caste/Tribe – Certificate being member of ‘Kosthis’ – Rejected – Writ Petition – Case ‘Halba/Halbi’ has been notified in Schedule Tribes list of Madhya Pradesh but not ‘Kosthis’ – Court can not give any declaration that the status with synonymous names of castes as claimed by party is conformable to the name specified in the Presidential notification issued under Article 341 of the Constitution – ‘Kosthis’ can not be declared as Scheduled Tribes by the Court in absence of entry in Presidential notification : *Dulichand Kosta Vs. State, I.L.R. (2001) M.P. 460*,

-**Article 226** and 342–Public Interest Litigation–"Majhi" Community recognised as Schedule Tribe in State of M. P.–Claim for inclusion of castes having analogous names–Constitution (Schedule Tribe) Order, 1950 as amended–Kewat, Mallah, Dhimar, Nishad, Bhoi, Kahar not mentioned against the term Majhi–Contention that these communities are also Scheduled tribes as Majhi cannot be accepted. *Radhaballabh Choudhary Vs. Union Of India, I.L.R. (1992) M.P. 716 (D.B.)*

- **Article 226 (1) (a) and (b)** - Impugned order resulting in reversion of petitioner resulting in substantial injury - Writ petition by such person - Maintainable : *Adarshkumari Bharti Vs. K. N. Sinha I.L.R. (1980) M.P. 297 (D.B.)*

- **Article 226 (3)** - Alternative remedy - No remedy provided in Statute - Bar not attracted : *Her Highness Mehr Taj Nawab Sajeda Sultan, Rules Of Bhopal Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 452 (D.B.)*

- **Article 226 (3)** and Section 58 (2) of the Constitution (42nd Amendment) Act, 1976 - Remedy of a Civil Suit contemplated by Section 150 (3) of the M. P. Land Revenue Code, 1959 - Is an alternative remedy : *Manoharlal Vs. State Of M. P. I.L.R. (1978) M.P. 710 (F.B.)*

– **Article 227** – Scope of interference under Article 227 limited – Explained – Mistakes of facts and law cannot be corrected under it : *Baijnath Kathal Vs. M.K. Qureshi, I.L.R. (1990) M.P. 670 (D.B.)*

-**Article 227**-Circumstances in which High Court can interfere : *Gunda & Anr. Vs. The Workmen's Compensation Commissioner, District Panna & Anr., I.L.R. (1963) M.P. 222 (D.B.)*

-**Article 227**-Party following other proceeding by way of abundant caution-Not debarred from challenging the order : *Shiv Narain Vs. The Tehsildar, Tehsildar Gwalior, & 2 Ors., I.L.R. (1961) M.P. 792 (D.B.)*

-**Article 227**-Substantial justice done-Order not entertained with but modified imposing cost on plaintiff for the delay : *Mst. Gyanoda Vs. Kalipada, I.L.R. (2000) M.P. 706*

-**Article 227**-Decision of inferior Tribunal-High Court cannot only quash but also can issue further directions or pass substantive order this under Article : *Durg Transport Co. Private Ltd., Durg Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (D.B.)*

-**Article 227**, Administrative Tribunals Act, (XIII of 1985), Sections 19, 21 and Civil Services (Classification, Control and Appeal) Rules, M. P., 1966, Rules 10, 14 and 16–Service Law–Departmental Enquiry–Withholding three increments with cumulative effect–A major punishment–Procedure provided under Rule 14 has not been followed–Tribunal rightly set aside the order : *State Vs. S. R. Sonwani, I.L.R.(2003) M.P. 265 (D.B.)*

- **Article 227** – Principle – Exercise of power – Writ Court does not enter into meticulous examination of fact and upsets the finding of the Subordinate Courts/Tribunals unless perversity is shown : *Ku. Archana Dey Vs. South Eastern Coalfields Ltd., I.L.R. (1996) M.P. 351*

- **Article 227** – Writ Court – A pure question of law can be raised on the basis of facts pleaded for the first time before Writ Court : *Ku. Archana Dey Vs. South Eastern Coalfields Ltd., I.L.R (1996) M.P. 351*

-**Article 227** – Jurisdiction of High Court - Scope of Supervisory powers - High Court cannot substitute its own judgment either on facts or law only because litigation is pending for long time or some of parties have also died and could not see result of litigation. *Rahmat Ali Vs. Abdul Razzak, I.L.R. (1995) M.P. 178,*

-Article 227-High Court, Power of, not restricted to cases of non-exercise or illegal exercise of jurisdiction but also extends to cases of obvious miscarriage of justice : *Durg Transport Co. Private Ltd., Durg Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (D.B.)*

-Article 227-Power of superintendence, to be exercised sparingly : *Durg Transport Co. Private Ltd., Durg Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (D.B.)*

- Article 227 - Power under, when can be exercised : *Ram Ratan Vs. Mathura Prasad I.L.R. (1976) M.P. 691 (D.B.)*

-Article 227-High court, Power of, to make declaration contemplated under rule 6 : *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer, Karera. I.L.R. (1974) M.P. 260 (D.B.)*.

- Article 227 and Administrative Tribunals Act, 1985, Section 19–Service law–ad hoc appointment of Additional Divisional Medical Officer in Railways Subsequent to 1/10/1984–Terminated by the apex Court giving liberty to apply for selection through UPSC–Petitioner granted age relaxation for facing UPSC–Not selected by the UPSC–Railways have no alternative but to relieve him and to appoint a person selected by UPSC–No illegality in termination : *Dr. Krishna Kumar Vs. The Union of India, I.L.R. (2004) M.P. 373 (D.B.)*

-Article 227-Power of Superintendence-Civil Procedure Code, 1908-Order 22 Rule 4- Substitution of Legal Representatives-Application filed belated on the impression that while order of appellate Court is in vogue on such step could be taken-Court accepting erroneous impression to be sufficient cause for the delay and allowed substitution- Substantial justice done-Order not entertained with but modified imposing cost on plaintiff for the delay : *Mst. Gyanoda Vs. Kalipada, I.L.R. (2000) M.P. 706*

- Article 227 – Service Law – Promotion, Seniority and consequential benefits – Fact of securing 5% less marks not communicated to incumbents – Because of less marks applicants not given promotion while on abolition of post of supervisor Grade ‘A’ others have been promoted to the post of Chargeman Grade II without gradation examination – Action discriminatory : *Union of India Vs. Shri Gopal Kar, I.L.R. (2001) M.P. 1646, (D.B.)*

-Article 227 - It is well settled that while exercising powers under Article 227 of the Constitution of India, the High Court does not act as a court of Appeal against finding recorded by the Subordinate Courts or Tribunal and interferes only when it is

found that finding is perverse - No interference called for - Petition Dismissed : *M.P. Electricity Board, Jabalpur Vs. Saugor Electric Supply Co. Ltd. Calcutta & Ors., I.L.R. (1997) M.P. 60*

- **Article 227** and Administrative Tribunals Act, (XIII of 1985)–Section 19 and 21–Service Law–Promotion–Supersession–Representation made rejected by State Government–In the matter of seniority and promotion one should be vigilant and delight to approach the Court in quite promptitude–Stale claims are not to be agitated–Approach to Administrative Tribunal after 7 years of rejection of Representation–No explanation for delay–Tribunal rightly refused to condone the delay–No interference in writ petition : *B.S.P. Gour Vs. State, I.L.R. (2003) M.P. 1199 (D.B.)*

–**Article 227**–Writ Petition–Invoking–Power of Superintendence of High Court–Accommodation Control Act, M. P., 1961–Sections 12(1)(a), 12(i)(e), 13(2) and 13(6)–Suit for eviction on ground of arrears of rent and *bona fide* need–Failure of tenant to deposit rent–Consequential striking of defence–Does not debar the defendant tenant to contest the issue as to arrears of rent–Else it would amount to condemning defendant without opportunity. *Kewal Kumar Vs. Satish Chandra, I.L.R. (1992) M.P. 547 (D.B.)*

- **Article 227**, Administrative Tribunals Act, 1985–Section 19 and Railway Servants (Discipline and Appeal) Rules 1968–Rule 9(9)(c)–Writ Petition–Service law–Departmental Inquiry–No Presenting Officer appointed–Inquiry Officer himself conducting as presenting officer–No man shall be a Judge in his own cause–Clear and real distinction between an Inquiry Officer acting as Presenting Officer, and an Inquiry Officer putting some question to any witness to clarify the evidence or ascertain the truth–While the first vitiates the inquiry the second would not–Tribunal rightly set aside orders passed by disciplinary authority–Principles of natural justice in departmental inquiry summarised : *Union Of India, Through Its Secretary, Ministry Of Railway, New Delhi. Vs. Mohd. Naseem Siddiqui, Bhopal, I.L.R. (2004) M.P. 821 (D.B.)*

- **Article 227**–Civil Procedure Code (V of 1908) Section 151, Registration Act, 1908, Sections 17,49, Stamp Act, Indian, 1899, Section 35, Evidence Act, Indian 1872, Section 65–Writ Petition–Secondary Evidence–Admissibility of–Document insufficiently stamped–Bar of Section 35 of Indian Stamp Act, 1899 attracted–Document cannot be admitted 'for any purpose' including Collateral one : *Chandrabhan Brahman Vs. Vijay Kumar Brahman, I.L.R. (2005) M.P. 302*

-**Article 227**–Administrative Tribunals Act, 1985, Section 19–Writ petition–Service Laws–Fixation of TRCA for EDAs–Recovery of excess payment–Received for a long period without knowing it to be in excess–Should not be made–Once put on

notice employee will have to refund excess amount effective from date of notice : *Union Of India Vs. All India Postal Extra Departmental Employees Union, I.L.R. (2004) M.P. 918 (D.B.)*

- **Article 227** and Administrative Tribunals Act, 1985, Section 19–Writ petition–Service Law– Recruitment– M.P. Secretariate Service Recruitment Rules 1976, Rules 5 & 8–English Stenographers–Subsequent to appointment condition for obtaining certificate in Hindi Shorthand imposed–Deleted by policy decision–When Rules do not cover any area or apply to a particular arena the Government can take policy decision–Vested rights of hindi Stenographers not affected–Tribunal erred in holding that appointments were made de hors the rules : *Vinod Kumar Zakariah Vs. State Of Madhya Pradesh, I.L.R. (2003) M.P. 739 (D.B.)*

- **Article 227**–Administrative Tribunal Act, 1985– Section 19 and Railway Servants (Discipline and Appeal) Rules 1968, Rule 6 and 11–Writ Petition–Service law–Disciplinary action and imposition of Minor penalty–Dispensing regular enquiry–Charge not admitted by employee–Negligence could not be inferred by disciplinary authority–Minor penalty to be imposed likely to affect either financially or careerwise–Not possible to dispense with regular enquiry–Order impugned set aside : *Union Of India Vs. C.P. Singh, I.L.R. (2004) M.P. 940 (D.B.)*

- **Article 227** and Administrative Tribunal Act, (III of 1985)–Section 19–Writ Petition–Service Law–Misconduct–Departmental Enquiry – Punishment–Discrimination–Three Employees charge sheeted for the same incident–Two others awarded lesser punishment and petitioner alone is awarded severe punishment of compulsory retirement–Disproportionate and discriminatory–Orders set aside –Case remitted back to Disciplinary authority for reconsideration : *Chain Jatt Vs. Union of India, I.L.R. (2004) M.P. 253 (D.B.)*

- **Article 227** and Administrative Tribunal Act, (XIII of 1985), Section 19–Service Law–Transfer–Relieving a constable from District Executive Force to work in the specially constituted HAWK Force is not a transfer to separate police force–A disciplined body of men cannot be a chooser as to posting–Issue of writ–High Court can refuse to issue a writ if it is satisfied that no failure of justice is there : *Vinay Verma Vs. State, I.L.R. (2003) M.P. 292 (D.B.)*

- **Article 227**, Administrative Tribunals Act, (XIII of 1985)–Section 19–Writ Petition–Service law–Prevention of Corruption Act, 1988, Sections 5(1)(d), 5(2) and Penal Code, Indian 1860, Section 161–Trap case–Prosecution for taking bribe–Conviction and sentence by Special Judge–Dismissal from service–Subsequent acquittal by High Court on appeal –Reinstatement–Back wages–Employer not responsible for bringing about the situation of dismissal–Employee not entitled to back wages : *Anoop Kumar Vs. State, I.L.R. (2003) M.P. 33 (D.B.)*

- **Article 227** and Administrative Tribunals Act, 1985–Section 19–Service law–House Rent allowance–Both of the spouses Government servants–Wife in Central Government Service–Petitioner-husband State Government employee entitled to HRA–Interpretation–When two words occur in a particular sentence and there is no reason to give distinctive meaning they should convey the same meaning–Word 'Government' used in M. P. Govt. Circular in the context means State Government only : *Dr. G. K. Kundlani Vs. State, I.L.R. (2003) M.P. 381 (D.B.)*

- **Article 227** and Administrative Tribunals Act (XIII of 1985), Section 19–Service Law–Pension–Civil Services (Pension) Rules M. P., 1976, Rule 9(4)–Pendency of Disciplinary proceeding–Withholding of pension–Could not last for a period more than two years–Enquiry dropped by the Government itself–Non-payment of dues for further six years–Petitioner entitled to interest @ of 12% : *B.D. Dubey Vs. State of M.P., I.L.R. (2003) M.P. 267 (D.B.)*

-**Article 227**, Evidence Act (I of 1872)–Sections 63,65 and Stamp Act, Indian (II of 1899)–Section 35, 37 and 38–Suit for partition–Photocopy of family settlement filed in defence–Secondary evidence–Admissibility of –A Party can only be allowed to rely on a document which is an instrument for purposes of Section 35 and 37 of the stamp Act–Original document of family settlement not duly stamped–On payment of duty chargeable may be certified to be duly stamped–Procedure not applicable to photocopy of a document–Document cannot be rectified–Cannot be received in secondary evidence : *Sugreeva Prasad Dubey Vs. Sitram Dubey, I.L.R. (2004) M.P. 265*

- **Article 227**–Rajya Suraksha Adhiniyam, M.P. 1990, Section 5(a) and Public Gambling Act of 1990, Section 6–Writ Petition–Maintenance of Law and order–Extermment–Cases referred not even reached stage of evidence–Names of witnesses alleged to have been threatened not mentioned–Cases of petty nature including one under Gambling Act–Reputation as 'Gambler' or 'Satoriya' is no ground under Section 5(a)–Order of Extermment quashed : *Kala Vs. State Of M.P., I.L.R. (2004) M.P. 1038*

- **Article 227** and Civil Procedure Code, (V of 1908)–Order 26 Rule 9 –Issue of commission–Scope of–Issuing commission for investigating which of the party is in possession–Beyond the scope of Order 26 Rule 9, C.P.C.–Question has to be decided by the Court after adducing evidence by the parties–Job of the Court cannot be shifted to the Commissioner–Order issuing commission quashed : *Asutosh Dubey & Anr. Vs. Tilak Grih Nirman Sahakari Samiti Maryadit Bhopal & Anr., I.L.R. (2004) M.P. 46*

-**Article 227** and Civil Procedure Code 1908, Order 47 Rule 1, Administrative Tribunals Act, 1985–Sections 22, 19 –writ petition–Service law–Review–Not permissible on the premises that a particular ground was not urged–Doctrine of

merger–Order passed by the appellate authority accepted and not challenged–Appellate order becomes operative–Tribunal erred in granting review on ground that original order was not passed by competent authority–Order of Tribunal is vulnerable : *State Vs. Alok Nigam, I.L.R. (2003) M.P. 670 (D.B.)*

– **Article 227** – Provisions of Order 21 Rule 84, Civil Procedure Code mandatory – Court has no jurisdiction to disturb time scale statutorily prescribed – No exercise of jurisdiction under Article 227 unless earlier order passed by High Court non est in law : *M/S. Gangavishan Heeralal, Gwalior Vs. M/S. Gopal Digambar Jain, Morerna, I.L.R. (1990) M.P. 561 (D.B.)*

-**Article 227**, Specific Relief Act, 1963, Section 28 and Civil Procedure Code, 1908, Section 148, Order 21 Rule 11-Suit for Specific performance-Decreed ex-parte--JDr. noticed but remained ex-parte-Sale-deed drawn by Court and sent for registration-Being a sale through court Bhu Adhikar Rin Pustika ought not to have insisted upon by Registering authority-Objection as to late deposit of money -Not raised in first execution proceeding when sale-deed was drawn by court and only formality of registration remained-Objection after thought -Rightly rejected by revisional Court. *Hazarilal S/o Mulloo Vs. Manakchand S/o Ramchand Barkul; I.L.R. (2002) M.P. 862*

- **Article 227** – Writ Petition – Service law – Payment of Gratuity Act, 1972 – Sections 7(3) and 7(7) – Appeal against order under Section 7(3) of the Controlling authority for grant of differential amount of Gratuity – Filed after 120 days rightly rejected as barred by limitation – Appellate authority can condone the delay beyond period of 60 days if sufficient cause is shown by extending the period of further sixty days – Authority being quasi-judicial can not condone delay or extend limitation beyond statutory period : *Western Coalfields Limited Vs. Controlling Authority, I.L.R. (2001) M.P. 927,*

- **Article 227** – Writ Petition – Service Law – Promotion, Seniority and consequential benefits – Fact of securing 5% less marks not communicated to incumbent – Because of less marks applicants not given promotion while on abolition of post of Supervisor Grade ‘A’ others have been promoted to the post of Chargeman Grade II Without gradation examination – Action discriminatory – Central Administrative Tribunal rightly directed award of notional seniority with consequential benefits to the incumbents : *Union of India Vs. Shri Gopal Kar, I.L.R. (2001) M.P. 1646, (D.B.)*

- **Article 227** and Administrative Tribunals Act (XIII of 1985), Section 19 – Writ Petition against order of Administrative Tribunal – Service Law – Promotion – Employee on deputation to Special Police Establishment holding promotional post of

Assistant Public Prosecutor Grade-I – Could not be considered for promotion in parent department because of deputation – Retirement from the same promotional post held by incumbent – Tribunal rightly granted pensionary benefit on the same scale of pay – No interference called for : *State Vs. Prafulla Chandra Bandopadhyaya, I.L.R. (2001) M.P. 1838, (D.B.)*

– **Article 227** – Writ Petition – Against order of State Administration Tribunal – Integrated Women and Child Development Project established, looked after and funded by the State Govt. – After abolition of the project employees absorbed in the Department of Panchayat and Social Welfare of the State – Such employees are employees of the State Government – On retirement entitled to benefit of services rendered in the project for purposes of pension etc. – Order of Tribunal proper : *State Vs. Smt. Champa Soni, I.L.R. (2001) M.P. 26, (D.B.)*

-**Article 227**-Writ Petition-Service-Seniority-Civil Services (General Conditions of Service) Rules, M.P., 1961-Rules 8 & 12-Probation and seniority-Appointing Authority empowered to lower down seniority of a direct recruit only if probation period was extended-No such order passed by State Govt. extending probation period-Seniority of incumbent liable to be determined from the date of appointment and not from the date of confirmation-Order of the Tribunal upheld : *State Vs. Anand Kumar Jain, I.L.R. (2000)M.P. 699 (D.B.)*.

-**Article 227**-Writ Petition-Service-Punishment order of dismissal invalidated by the Administrative Tribunal but without back wages-Scope for interference-No material to show whether petitioners was gainfully employed or not or that he was otherwise entitled or disentitled to the missed benefits-Difficult to adjudicate in writ jurisdiction in absence of any material-Question left for the competent authority to decide : *Kanhaiyalal Rawal Vs. State I.L.R. (2000) M.P. 693 (D.B.)*

-**Article 227** and Civil Procedure Code (V of 1908)–Section 115-Award passed by the Motor Accidents Claims Tribunal cannot be called in question by the insurer invoking either power of superintendence of the High Court under Article 227 or in revisional jurisdiction under Section 115 of the Code-Section 169 of the 1988 Act-MACT deemed to be Civil Court only for limited purposes contemplated in subsection (2) thereof-Would not make it subject to the revisional or superintending power of the High Court under the Code or the Constitution : *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174 (F.B.)*

-**Article 227**-Writ Petition-Power of Superintendence of High Court-Administrative Tribunals Act, 1985-Section 19-Original Application by Government servant in promotion matter-Death of applicant prior to filing of return-Return filed after six years-Abatement-Application for setting aside abatement by legal heirs-

Rejection on ground of delay-Improper-Sufficient Cause –Petitioners/legal heirs came to know of the pending *lis* only on receiving letter from counsel that rejoinder to the return is to be filed-Immediate steps taken-Sufficient cause made out-Delay condoned-Order of Tribunal set aside –Matter remanded to the Tribunal for decision on merits : *Purushottam Lal Tamrakar Vs. State, I.L.R. (2000) M.P. 1247 (D.B.)*

-Article 227-Power of Superintendence-Suit for specific performance of contract for sale-Suit decreed-Execution-Sale deed executed fully satisfying the decree in execution and no case pending-Subsequent application for delivery of possession before executing Court without disclosing whether plaintiff was in possession and when he was dispossessed-Not maintainable as there was no pleading or prayer in the plaint or direction in the decree for delivery of possession-Specific Relief Act. 1963-Section 22(2)-No relief shall be granted unless specifically claimed-Word ‘shall’ makes the provision of Section 22(2) of the Act mandatory-Power of Court to amend the decree or plaint at any stage-Can only be exercised if any proceeding is pending-Order XXI Rule 11, C.P.C.-A decree can be executed only to the extent what it contains and not beyond-Order of two Courts below set aside : *Jawariya Vs. Addl. Judge to District Judge, Mandleshwar, I.L.R. (2000) M.P. 326*

– **Article 227** – Writ Petition – Against order of Tribunal – Railway Servants (Discipline and Appeal) Rules 1968 – Rules 6, 25 – Power of Reviewing Authority – Delinquent charge sheeted but penalty imposed without holding departmental enquiry – Even if dissatisfied Reviewing Authority cannot – Appoint enquiry officer – Proper course is to remit the case to disciplinary authority to conduct enquiry for the stage immediately after charge sheet – Double jeopardy – Revising authority set aside the order on without enquiry punishment could not be imposed – Subsequent enquiry on remand for Revising Authority – Not a case of Double jeopardy or double enquiry in one charge Rule 6 of the Rules – Case of averted collision – Punishment provided is removal or dismissal – Disciplinary Authority has to conduct an enquiry : *Suresh Kumar Jatav Vs. Union of India, I.L.R. (2001) M.P. 181, (D.B.)*

-Article 227 – Writ Petition – Challenging the order of Session Judge confirming the order passed by Conservator of Forest – Confiscation proceedings dropped by Sub-Divisional Officer – Conservator of forest suo-motu called the record and set aside the order of SDO – Sessions Judge remanded the case – Forest Act, Indian, 1927, Section 52-A – Confers Power on the Appellate authority to initiate suo motu action within 30 days from the date of receipt of the copy of the order – Order of confiscation should be understood to convey the meaning the order passed in the confiscation proceedings – Appellate authority called for the records and notices were issued within 30 days of receipt of records – Appellate authority complied the provision : *Sohan Lal Kesari Vs. State, I.L.R. (2001) M.P. 919,*

-Article 227-Power of Superintendence of High Court-Writ Petition-Entertainment Duty and Advertisement Tax Act, M.P. (XXX of 1936)-Section 4-C and 4-D-Imposition of penalty and Appeal against before the Revenue Commissioner-Revision against appellate order to the Board of Revenue-Not barred-What is barred, is a further appeal-Land Revenue Code, M.P., 1959-Section 50-Revision-Jurisdiction of Board of Revenue-Not restricted to order passed under the Code but extends to order passed by Revenue Officers under any enactment-Section 51-Revisional Power of the Board is larger than normal revisional power-Board re-examined the whole matter while coming to conclusion-No scope for interference in writ petition-Section 4-D(1) and (2) of the Act-Barring of further appeal does not bestow finality to the appellate order-In absence of specific bar to revision appellate order is always susceptible to revision by the higher Courts-Board finding scope held imposition of penalty excessive as no intention to evade tax is there in the lapse of maintenance accounts-No interference called for in the writ jurisdiction : *State Vs. M/s. Triyug Talkies, Khandwa, I.L.R. (2000) M.P. 786* .

– **Article 227** – Writ Petition – Power of Superintendence of High Court – Termination of Services – Administrative Tribunal’s Act, 1985 - Section 19 – Petition challenging termination order dismissed by the tribunal – Petitioner appointed as Physical Education Teacher – Furnished wrong information that no criminal prosecution is pending against him – Petitioner studied in Hindi medium – Could not understand implication of the word ‘prosecution’ or ‘conviction’ – Explanation plausible – Section 323, 341, 294, 506-B and 34 of Indian Penal Code, 1860 – Mass agitation against Govt. for not taking up relief work for 1997 earthquake victims at Jabalpur – Few persons including petitioner though arrested but prosecution dropped as deemed not desirable – Act of petitioner should not be termed as misconduct as there is absence of motive to commit any serious offence – Termination – Offence alleged not involving moral turpitude – Cannot be taken to be so grave a misconduct warranting termination – Orders of Administrative Tribunal quashed – As also the order of petitioner’s termination quashed with all consequential benefits of continues service : *Ramratan Yadav Vs. Kendriya Vidyalaya Sangthan, New Delhi, I.L.R. (2000) M.P. 1243 (D.B.)*

- **Article 227** – Writ Petition – Service Law – Labour – Adjudication of dispute as to whether management was right in not regularizing contingent workers – Industrial Disputes Act 1947- Section 10 – Reference of dispute to Industrial Tribunal rightly made by the Central Government – Industrial Dispute – Existence of consent Award passed earlier related to regularization and retrenchment of Contingent Workers recruited prior to the year 1979 – Plea of Management that during operation of said award there remains no dispute referable to Tribunal – Not sustainable as the present dispute relates also to workers recruited thereafter – Compassionate appointment – Without ascertaining capacity of Management Tribunal not justified in passing award

of Compassionate appointment – Regularisation – Temporary employees engaged by Mineral Exploration Corporation Limited at different projects – Though continued for a long period but absence of Rules in Employer’s organization – Tribunal not justified in passing of award of regularization of temporary employees – Award of Tribunal set aside : *Mineral Exploration Corporation Ltd., Nagpur Vs. Mineral Exploration Corporation Employees Union, Aituc Nagpur, I.L.R. (2000) M.P. 1368*

-Article 227-Power of Superintendence of High Court in respect of Administrative Tribunals is saved only in respect of orders/judgments of the Tribunals deciding right and liabilities of the parties and not any order passed by a Tribunal in Contempt jurisdiction-Administrative Tribunal Act, 1985-Section 17-Contempt proceedings- Tribunal dropping contempt proceeding not amenable to writ jurisdiction of High Court-Contempt of Courts Act, 1971-Section 19-Appeal-Only lies in cases of conviction in contempt jurisdiction and not against an order discharging the contemnor-Contempt charge-Matter purely between the Court/Tribunal and the alleged contemnor-Third party cannot be allowed to pursue the matter any further, except on a fresh cause of action : *Takhat Vs. State, I.L.R. (2000) M.P. 339 (D.B.)*

- Article 227, Administrative Tribunals Act, 1985, Section 19 and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 Rule 17–service Law–Departmental Enquiry–Punishment of reversion substituted by withholding 4 increments with cumulative effect–Enquiry Officer recorded finding of guilt and submitted the report-Report not furnished to the employee–Grievances has to be accepted to the extent from which Rule 17 becomes applicable–Order of punishment set aside–Disciplinary authority may proceed from the stage it required to furnish the copy of the report and complete the enquiry in three months : *State Vs. R.K. Rai, I.L.R. (2003) M.P. 667 (D.B.)*

- Article 227-writ petition–Service law–Administrative Tribunals Act, 1985–Sections 19, 22 and Civil Procedure Code 1908, Order 47, Rule 1-Review-Not permissible on the premises that a particular ground was not urged–Doctrine of merger–Order passed by the appellate authority accepted and not challenged–Appellate order becomes operative–Tribunal erred in granting review on ground that original order was not passed by competent authority–Order of Tribunal is vulnerable : *State Vs. Alok Nigam, I.L.R. (2003) M.P. 670 (D.B.)*

- Article 227, Civil Procedure Code (V of 1908) Sections 115, 151 and Municipalities Act, M.P., 1961, Section 20, 26 and Municipalities (Election Petition) Rules, M.P., 1962, Rule 19–Election Petition–Election of President, Nagar Palika Parishad–Recount of votes allowed by interlocutory order–Revision challenging interlocutory order dismissed by High Court as not maintainable and merits of the case not considered–Writ petition may be entertained–Recount of votes permissible

only after recording evidence and a finding that recounting is necessary—Evidence yet to be adduced by election petitioner—Order cannot be sustained under the law—Order set aside—Matter remitted back to Trial Court for fresh decision after recording evidence : *Mubarak Master Vs. Hansraj Tanwar, I.L.R. (2004) M.P. 643*

- **Article 227**—Writ Petition—Civil Procedure Code 1908, Order 6 Rule 17—Suit for declaration and permanent injunction— Possession illegally taken by defendant during pendency of suit— Amendment in plaint—Relief of possession and mesne profit sought to be added after about 10 years of dis-possession—Amendment can not be refused only on ground of delay—Negligence in filing application—Relief of mense profit can not be granted—Order of Trial Court modified : *Narmada Prasad Vs. Bhanwar ji, I.L.R. (2004) M.P. 555*

- **Article 227**—Order 6, Rule 17—Negligence in filing application—Relief of mense profit can not be granted—Order of Trial Court modified : *Narmada Prasad Vs. Bhanwar ji, I.L.R. (2004) M.P. 555*

- **Article 227**, and Civil Procedure Code (V of 1908) Order 9 Rule 7—Setting aside exparte—Transferee Court cannot pass final order without hearing parties even if the earlier Court heard it finally—Therefore it cannot be said that the case was not fixed for hearing—Application for setting aside exparte filed before transferee Court on the first date of hearing—Law laid down in AIR 1964 SC 993 is not applicable—Notice issued to defendant on wrong address—Good cause for setting aside ex parte order—Does not warrant interference : *Shabnam Sultan Vs. Sazid Ali, I.L.R. (2004) M.P. 566*

- **Article 227** and Civil Procedure Code (V of 1908), Section 115—Order passed in exercise of Appellate power under Order 43, Rule 1(r), C. P. C.—Remedy into invoke High Court's power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984 : *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

- **Article 227**, Civil Procedure Code (V of 1908), Section 115, Order 39 Rules 1 & 2, Order 43 Rule 1(r), Amending Act No. 29/1984, Land Revenue Code, M. P. (XX of 1959), Section 117 and Evidence Act, Indian (I of 1872), Section 114(e)—Ancestor property—Suit for injunction—Appellate Court while reversing the order of Trial Court granted injunction in favour of defendants—Defendant though in possession can only seek order of injunction in an independent suit in a case covered by the provision of Order 39, Rule 1(c), C. P. C.—Order passed in exercise of Appellate power under Order 43, Rule 1(r), C. P. C.—Remedy into invoke High Court's power of Superintendence under Article 227 and not by revision under Section 115, C. P. C. in view of Amending Act No. 29 of 1984—Section 114 of the Evidence Act and Section 117 of the M. P. L. R. Code—Presumption—Correctness of these entry can be

presumed which are required to be made under the Law—Unless the law required an entry to be made presumption as to correctness of such entry cannot be made—Defendant can only seek injunction in an independent suit—Impugned order set aside to extent : *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267 (D.B.)*

—**Article 227**—Civil Procedure Code, 1908 Sections 9, 100, Order 21 Rule 11 and Administrative Tribunals Act, 1985 Sections 2(9), 15 and 29— Writ Petition—Against Civil Court's report to execute decree in service matter—Service matter—Suit decreed in favour of plaintiff—Civil Court has jurisdiction to execute its own decree—Power of Civil Court not taken away by Section 29 of Administrative Tribunals Act—Impugned order set aside—Execution case restored to file. *Dr. S.K. Mathur Vs. State; I.L.R. (1992) M.P. 901 (D.B.)*

—**Article 227** and Administrative Tribunals Act (XIII of 1985), Section 19—Service Law—Compassionate appointment—Provided by Railways only if an employee is medically decategorised—Father of petitioner not medically decategorised but voluntarily retired from the Railways—Petitioner not entitled to compassionate appointments : *Sunil Kumar Rai Vs. Union Of India Through The General Manager Central Railway, Bhopal, I.L.R. (2003) M.P. 1079 (D.B.)*

- **Article 227** and Central Civil Service (Pension) Rules 1972, Rule 8 and Administrative Tribunals Act, 1985, Section 19 —Writ petition—Service Law—Pension—Under Regulations employee is entitled to pension subject to future good conduct —Future misconduct can be with respect to misconduct committed during service leading to conviction after retirement—Employee compulsorily retired on ground of pendency of Criminal Case—Conviction after retirement — Withholding of pension—Can only be on sound foundation based on evidence—But cannot be reduced below Rs. 375/-per mensem—Appeal against conviction pending before High Court—Employee entitled to pension in terms of Rule 8(1) (b) of Pension Rule—Impugned orders set aside : *Shri Bhagwati Prasad Tiwari Vs. Union of India, I.L.R. (2004) M.P. 246 (D.B.)*

-**Article 227**, Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 Rule 17 and Administrative Tribunals Act, 1985, Section 19—service Law—Departmental Enquiry—Punishment of reversion substituted by withholding 4 increments with commulative effect—Enquiry Officer recorded finding of guilt and submitted the report—Report not furnished to the employee—Grievances has to be accepted to the extent from which Rule 17 becomes applicable—Order of punishment set aside—Disciplinary authority may proceed from the stage it required to furnish the

copy of the report and complete the enquiry in three months : *State Vs. R.K. Rai, I.L.R. (2003) M.P. 667 (D.B.)*

-Article 227-Magistrate acting under section 77(1) of C.P. Municipalities Act-Magistrate though a persona designata still amenable to jurisdiction of High Court under this provision : *The State Vs. Municipal Council, Harda, I.L.R. (1974) M.P. 518 (D.B.)*

-Article 227 and Administrative Tribunal Act (XIII of 1985)-Section 19-Service Law-Recruitment-Post of Assistant Surgeon advertised-Petitioner participated but could not be selected by the public Service Commission-After participation petitioner is estopped and cannot be permitted to turn around and challenge the procedure : *Dr. Manoj Tomar Vs. The State, I.L.R. (2003) M.P. 1082 (D.B.)*

- **Article 227** and Administrative Tribunals Act, (XIII of 1985)-Section 21-Approach to Administrative Tribunal after 7 years of rejection of Representation-No explanation for delay-Tribunal rightly refused to condone the delay-No Confidence in writ petition : *B.S.P. Gour Vs. State, I.L.R. (2003) M.P. 1199 (D.B.)*

- **Article 227** and Administrative Tribunals Act, (XIII of 1985), Section 19-Service Law-Transfer-When a Public officer is visited with a chargesheet on the basis of serious allegation the department may in its wisdom transfer him to another place-Revocation of suspension order does not confer a right to be retained at the same place-Order of stay obtained from Tribunal but by then employee relieved-Department directed not to initiate disciplinary proceeding for not obeying transfer order : *Union Of India Vs. Sri Vilas Ramesh Chand Tarhate, I.L.R. (2003) M.P. 491 (D.B.)*

- **Article 227** and Administrative Tribunals Act, 1985-Section 19-Writ Petition challenging order of Central Administrative Tribunal-Deputation for availing training in the United States of America SR 17 and 49-Hotel entitlement and daily allowances-Deputation abroad not in a representational visit but on training-Incumbent entitled to allowance for accommodation one step below his normal entitlement : *Director, Indian Veterinary Institute Vs. Dr. S.C. Dubey, I.L.R. (2003) M.P. 592 (D.B.)*

- **Article 227** and Civil Procedure Code, 1908, Section 96, Order 6 Rule 17 and Order 41 Rule 27-Additional evidence at first appellate stage-Documents already on record-Application mis-conceived-However the same has to be decided either way : *Smt. Gindia Bai Vs. Elfort Ltd. Co., I.L.R. (2005) M.P. 1146*

- **Article 227** and Administrative Tribunals Act, (XIII of 1985), Section 19–Service Law–Correction in father's name and date of birth in service record–Wrong entries–Came to knowledge on promotion to the post of Head Constable–School leaving certificate from Govt. School–Satisfactory piece of evidence–Has to be accepted–Reliance cannot be placed on Medical report being based on estimation–Entry cannot be treated conclusive as per Rule 84 of M. P. Financial Code–Order of Tribunal set aside : *Premlal Shrivastava Vs. State Of M.P.*, I.L.R. (2003) M.P. 1195 (D.B.)

-**Article 227**, Administrative Tribunals Act, 1985, Section 19 and Central Civil Services (Leave) Rules 1972, Rule 44(1)–Special disability leave–Dispute between two employees connected to their duties in school–Injury sustained while performing official duties–Disability due to injuries received as consequence of official position and while on duty, established–Employee entitled to special disability leave : *Kendriya Vidyalaya Sangathan Vs. Sant Kumar Nahar*, I.L.R. (2005) M.P. 1142 (D.B.)

- **Article 227**, Administrative Tribunal Act, (XIII of 1985)–Section 19 and F.R. 54–Writ Petition–Service Law–Departmental enquiry–Appellate authority while setting aside punishment totally exonerated the employee–Direction to treat the period as leave–Not justified–All benefits including salary component should be extended : *P.S. Deo Vs. State Of M.P.*, I.L.R. (2005) M.P. 239 (D.B.)

- **Article 227** and Administrative Tribunals Act (XIII of 1985), Section 19–Writ petition–Service Law–Fixation of pension–Non-practising allowance to be part of pay for post - 1.1.1996 retirees–Policy formulated by a decision of the President–Cannot be negated by a departmental clarification : *Union Of India Vs. The Central Administrative Tribunal Jabalpur Bench, Jabalpur*, I.L.R. (2005) M.P. 227 (D.B.)

-**Article 227**-Industrial Court is tribunal-Amenable to direction of High Court : *The Hindustan Steel Ltd, Bhilai Vs. The Presiding Officer, Industrial Tribunal-Cum-Labour Court*. I.L.R. (1974) M.P. 43 (D.B.)

- **Article 227**, Civil Procedure Code, 1908, Section 151 and Hindu Marriage Act (XXV of 1955), Sections 13,24,25–Writ Petition–Petition for divorce by husband–Order of maintenance pendente lite in favour of wife–Recall of –Court has discretion but discretion has to be used keeping in view judicial conscience and fair play and not an arbitrary capricious manner–Court cannot introduce a condition and conceive that conduct can be taken note of while awarding interim maintenance–Conduct not a necessitous requirement for grant of interim maintenance : *Smt. Janki Bai Vs. Prem Narayan Kushwaha*, I.L.R. (2005) M.P. 794

- **Article 227** and Civil Procedure Code, 1908 – Order 39 Rules 1 and 2 – Scope – It is restricted to seeking that the Courts or tribunals function within the limits of their

authority – Luculently, this extraordinary jurisdiction is available only in circumstances to prevent manifest miscarriage of Justice – Held – The appellate court unjustifiably entered the forbidden territory when it opted to examine merits at the infancy of the lis and to reverse the order on such meticulous scrutiny – Petition allowed., *Nathmal Sardarmal Jain Vs. Shantilal Sardarmal Jain, I.L.R. (1993) M.P. 476 (D.B.)*

- **Article 227** and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 Rule 14–Disciplinary proceedings–Mis conduct–Delinquent a quasi-judicial authority–Protected under the umbrella of act done in good faith–Proceedings immediately started against bhumiswamis for illegally felling trees and fine was imposed–No ingredient of failure to perform duties–When law protects a bona fide act the concerned officer cannot be brought in the net of departmental enquiry–In absence of intention, a mere mistake or irregularity cannot be converted into a misconduct–Order of Tribunal maintained : *State Of Madhya Pradesh Vs. Shrinivas, I.L.R. (2005) M.P. 564 (D.B.)*

- **Article 227** and Civil Services (Classification, Control and Appeal) Rules 1966–Rule 18–Administrative Tribunal's Act, 1985–Section 19 –Writ Petition–Service law–Departmental enquiry–Punishment of Removal–Delinquent Police Head Constable–Allegation of demanding bribe and on non-payment causing arrest–Charge proved–Punishment of Removal–Not improper–Police Regulation M. P. Regulations 214 and 221–Power to impose punishment–Superintendent of Police has power to impose punishment of removal on a Head Constable–Punishment order is within jurisdiction–Common proceedings–Superintendent of Police passed an order and appointed SDOP to conduct enquiry against two persons and submit enquiry report–Rule 18 is satisfied–No illegality committed : *Rameshchandra v. State, I.L.R. (2003) M.P. 391 (D.B.)*

- **Article 227**, Civil Procedure Code (V of 1908) Section 115–Election of President, Nagar Palika Parishad–Recount of votes allowed by interlocutory order : *Mubarak Master Vs. Hansraj Tanwar, I.L.R. (2004) M.P. 643*

-**Article 227** and Civil Services (Pension) Rules M. P., 1976, Rule 9(4)–Administrative Tribunals Act (XIII of 1985), Section 19–Service Law–Pension–Pendency of Disciplinary proceeding–Withholding of pension–Could not last for a period more than two years–Enquiry dropped by the Government itself–Non-payment of dues for further six years–Petitioner entitled to interest @ of 12% : *B. D. Dubey Vs. State of M. P., I.L.R. (2003) M.P. 267 (D.B.)*

- **Article 227** and Civil Services (Classification Control and Appeal) Rules 1966 Rule 19 – Criminal Procedure Code, 1973, Sections 387 and 374(2) – Penal Code Indian, 1860–Sections 326, 320 Administrative Tribunals Act, 1985 Section 19–

Service Law—Termination on ground of conviction in criminal case—Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend execution of sentence—Stay of conviction can be ordered only in exceptional case—Competent authority can terminate the services after conviction by criminal Court—On termination master and servant relationship comes to an end—Filing of appeal or stay of execution of sentence does not revive the relationship—Employee cannot be taken to be under suspension till decision in appeal—Not entitled to suspension allowance : *Jamna Prasad Vs. State, I.L.R. (2003) M.P. 368 (F.B.)*

- **Article 227**, Fundamental Rule 54-A and Central Civil Services (Classification, Control and Appeal) Rule 1965, Rule 11 –Setting aside order of punishment the Tribunal directed to reconsider the quantum of punishment—Employee reinstated in service with imposition of lesser punishment—FR 54-A not applicable in such a case : *Battilal Vs. Union Of India, I.L.R. (2005) M.P. 580 (D.B.)*

- **Article 227** and Administrative Tribunals Act, 1985, Section 19 and Central Civil Service (Pension) Rules 1972, Rule 8—Writ petition—Service Law—Pension—Under Regulations employee is entitled to pension subject to future good conduct – Future misconduct can be with respect to misconduct committed during service leading to conviction after retirement—Employee compulsorily retired on ground of pendency of Criminal Case—Conviction after retirement—Withholding of pension—Can only be on sound foundation based on evidence—But cannot be reduced below Rs. 375/-per mensem—Appeal against conviction pending before High Court—Employee entitled to pension in terms of Rule 8(1) (b) of Pension Rule—Impugned orders set aside : , *I.L.R. (2004) M.P. 246 (D.B.)*

- **Article 227** and Administrative Tribunal's Act, 1985—Section 19—Writ Petition—Service law—Departmental enquiry—Punishment of Removal—Delinquent Police Head Constable—Allegation of demanding bribe and on non-payment causing arrest—Charge proved—Punishment of Removal—Not improper—Police Regulation M. P. Regulations 214 and 221—Power to impose punishment—Superintendent of Police has power to impose punishment of removal on a Head Constable—Punishment order is within jurisdiction—Civil Services (Classification, Control and Appeal) Rules 1966—Rule 18—Common proceedings—Superintendent of Police passed an order and appointed SDOP to conduct enquiry against two persons and submit enquiry report—Rule 18 is satisfied—No illegality committed : *Rameshchandra Vs. State, I.L.R. (2003) M.P. 391 (D.B.)*

- **Article 227** and Administrative Tribunals Act, 1985 Section 19—Service Law—Termination on ground of conviction in criminal case—Claim of subsistence allowance till decision in appeal by High Court—Penal Code Indian, 1860—Sections 302, 326 and Criminal Procedure Code, 1973, Sections 374(2) and 387—Appellate Court or

revisional Court has power only to suspend execution of sentence—Stay of conviction can be ordered only in exceptional case—Civil Services (Classification Control and Appeal) Rules 1966 Rule 19—Competent authority can terminate the services after conviction by criminal Court—On termination master and servant relationship comes to an end—Filing of appeal or stay of execution of sentence does not revive the relationship—Employee cannot be taken to be under suspension till decision in appeal—Not entitled to suspension allowance : *Jamna Prasad Vs. State, I.L.R. (2003) M.P. 368 (F.B.)*

- **Article 227** and Co-operative Societies Act, M.P., 1960 (XVII of 1961), Sections 19-AA, 19-C and 64 and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45 – Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320,*

-**Article 227**-Kanoon Mal (Gwalior)-Section 409 and Limitation Act, Section 22 - Suit filed under Section 325, Kanoon Mal Gwalior - Mortgagee of suit property subsequently added as proper party beyond period of limitation-Suit not barred-Even erroneous decision on point of limitation given while considering the matter judicially, not open for the exercise of jurisdiction under Article 227 of the Constitution : *Champalal Vs. Manbhavan., I.L.R. (1959) M.P. 330 (D.B.)*

- **Article 227** and Civil Procedure Code (V of 1908), Order 21 Rule 24, Order 21 Rule 90, Order 43 Rule 1(j), Civil Procedure Code (Amendment) Act, 1976 (CIV of 1976), Section 97(2)– Auction in execution proceeding held after coming into force of amending Act – Order passed by District Judge on objection to the sale – Appeal lie to High Court – Letters Patent Appeal not maintainable against the order passed in appeal by single Judge – Provisions of Order 21 Rule 84, Civil Procedure Code mandatory – Court has no jurisdiction to disturb time scale statutorily prescribed – No exercise of jurisdiction under Article 227 unless earlier order passed by High Court non est in law : *M/S. Gangavishan Heeralal Vs. M/s. Gopal Digambar Jain, I.L.R. (1990) M.P. 561, (D.B.)*

- **Article 227**- Writ petition for *certiorari*- Based upon subsequent change in law- Plea of delay and *laches* by the party acquiring vested right- Discretionary relief can be refused : *M.P.S.R.T.C., Bhopal Vs. Bharatlal, I.L.R. (1998) M.P. 575*

- **Article 227**-Petitioner invoking jurisdiction of a particular Tribunal-Cannot be allowed to repudiate that jurisdiction-Question of jurisdiction not raised before the tribunal-Question not to be raised in a petition-Madhya Bharat Panchayat Vidhan, 1949, Section 89-The expression "Sessions Judge" in-Includes Additional Sessions Judge : *Ambaram Vs. Gumansingh, I.L.R. (1957) M.P. 57 (D.B.)*

- **Article 227** – Trial Court passing order in a suit relying on a decision of the High Court with respect to maintainability of the suit –Supreme Court taking different view in that matter – That part of the order is liable to be set aside as without jurisdiction and contrary to law in view of Supreme Court decision : *Jagdish Prasad Vs. The Managing Director, M.P. Rajya Bhumi Vikas Nigam, Bhopal, I.L.R. (1990) M.P. 618 (D.B.)*

- **Article 227**, Shops and Establishment Act, M.P. (XXV of 1958), Section 58 Sub-section (1)-Notice of dismissal-No notice of dismissal is required where an employee is dismissed for misconduct-Sub-section (2)- Appellate authority, power of-Appellate authority cannot seek justification of employer's act by allowing parties to lead evidence-Appellate authority has to confine to conclusion on the basis of matters on record-Bias-Party pleading bias need not prove actual bias-It is sufficient if he proves that he apprehended bias and that apprehension is reasonable-Enquiry Officer, who was standing counsel of petitioner establishment conducted the appeal before the appellate authority-The bias of enquiry officer became manifest when he appeared in appeal justifying his won enquiry report-Enquiry vitiated : *Bajaj Ecectricals Ltd., Raipur Vs. Nand Kishore Kanojia, I.L.R. (1999) M.P. 537*

- **Article 227** and Administrative Tribunals Act, 1985 Section 19–Service Law–Railways servant–Departmental enquiry–Re-appraisal of evidence–As a normal procedure never the job of a court or Tribunal and to come to its own conclusion–Disciplinary Authority is the best judge to examine the evidence–In rarest of rare cases it is permissible for the Court to substitute lesser punishment without remitting the case to Disciplinary Authority if the evidence so warrants–Conniving a barat party to travel in train without ticket–Finding of enquiry officer that charges are not proved beyond doubt–Not a case of no evidence–Disciplinary Authority inflicted punishment of removal from service disagreeing with the finding of enquiry officer–Modified by the appellate authority to compulsory retirement–No notice or reasons given why it differs from the enquiry report–Clearly indicates non-application of mind–Main witnesses not supported the prosecution–Two passengers apprehended without ticket and 38 were let off–Ground reality not taken into account that in Bihar and Madhya Pradesh marriage parties and political volunteers barge into trains ticketless and very

often the ticket checker is helpless and some times he is threatened by passengers—Element of doubt if the employee had any pecuniary advantage—Delinquent is entitled to benefit of doubt—Punishment of compulsory retirement—Harsh and shockingly disproportionate—Punishment substituted by withholding of three increments with cumulative effect but with continuity in service—Order of Tribunal modified : *Union Of India Vs. A.K. Mishra, I.L.R. (2004) M.P. 122 (D.B.)*

- **Articles 227, 14** and Administrative Tribunal Act, 1985- Section 19—Service law—Equal pay for equal work—Laboratory attendant—Asked to officiate as Museum Assistant but actually worked as Museum Keeper till retirement—Recruitment Rules mention the post of Museum Keeper and not the post of Museum Assistant—Tribunal rightly held that the respondent worked as Museum keeper and entitled to notional pay of the post revised from time to time : *State And Another Vs. Maskey, I.L.R. (2003) M.P. 206 (D.B.)*

- **Articles 227, 14, 15, 21** and 226—Writ petition—M. P. Krishi Upaj Mandi Adhiniyam, 1972 and Krishi Upaj Mandi Samiti Bye laws, Clause 2(Ja)—Amendment in definition of Hammal—Introduction of 'Stri Hammal'—Hammal include a person who is also involved in the work of weighing and measurement—Any members of society can apply for licence to do any kind of work which find place in the definition—On compartmentalisation definition becomes purposive and avoids vice of discrimination—Amendment not ultra vires : *Galla Mandi Mahila Shramik Sangh Satna Vs. State, I.L.R. (2003) M.P. 499 (D.B.)*

- **Articles 227, 14, 16, 226**—Writ petition—Electricity (Supply) Act, 1948, Section 79 and Civil Services (Commutation of Pension) Rules, M. P., 1976—Voluntary retirement—By notification State Government amended provisions contained in rules—Number of years in respect of which pension could be commuted significantly reduced—Board adopted State Govt. Notification with retrospective effect—Arbitrary & unreasonable—Notification cannot be made retrospectively applicable—Pension was to be computed in accordance with the rules that was in vogue at the time of retirement—Employee already retired would be entitled to all the benefit as per unamended Rules—Notification operative with prospective effect—Retrospective application of Notification—Ultra vires : *N. L. Mandhan Vs. M. P. State Electricity Board, I.L.R. (2003) M.P. 112 (D.B.)*

- **Articles 227, 14, 19(1)(g), 226** and Excise Act, M.P. 1915 (As amended by Act No. XX of 2000), Sections 34,46,47, 47-A,47-B,47-C and 47-D and Criminal Procedure Code 1973, Section 389—Offences relating to liquor exceeding fifty bulk litres at the time of detection—Penal provisions made more condign and deterrent—Confiscation—Power of appellate and revisional Courts—Sessions Judge exercising power of revision can also pass orders which can be passed by the appellate authority—Power to pass order for preserving and keeping the seized articles in fact is

thus saved—Restriction on the power to stay the order of confiscation—Cannot be held to be arbitrary irrational or unreasonable—Not ultra vires—Remedy of appeal and revision available—Petitioner may pursue the remedy : *Shrish Agrawal Vs. State, I.L.R. (2003) M.P. 579 (F.B.)*

- **Articles 227, 14, 141, 226**—Writ petition—Service law—Extraordinary jurisdiction and power of superintendence—Greater the power or jurisdiction greater should be the caution and restraint in exercising such power or discretion—Law of precedent—What is binding as a precedent is the ratio decidendi—Observation made not based on any discernible principle of law or dehors the merits of the case cannot be a binding precedent—Without disturbing decision of Tribunal certain direction given to consider of the petitioner—Decision does not evolve any principle of law—Cannot be said to be a binding precedent—Order dated 4/11/2003 in W. P. No. 5238/02 overruled—Mere ad-hoc appointment for few months—Does not entitle petitioner to seek reinstatement after 16 years—Petition dismissed : *Jagdish Prasad Tripathi Vs. State Of Madhya Pradesh Through Secretary School Education Department Bhopal, I.L.R. (2004) M.P. (FB) 1119 (F.B.)*

-**Articles 227, 14, 166, 226**—Writ Petition—Acquisition of Land by Development Authority for implementing housing schemes- Article 14—Discrimination—Except petitioner, land sought to be acquired released in favour of other persons and societies—Respondents do not plead that despite such release of land from purview of acquisition they shall be able to implement the scheme —Action of respondents amounts to hostile discrimination—Land Acquisition Act, 1894—Sections 4, 5, 5-A, 6, 6-A, 11 and 11-A—Different procedures are laid down in the Act at different stages for achieving the object of the Act—Sections 6 and 11-A—Acquisition of land and compensation—Time limit—Delay in making award owing to stay order passed by competent Courts—In computing stipulated time of making award of compensation the period of operative stay order, irrespective of its nature, has to be excluded- Article 166 and Section 5-A of the Act—Express delegation of power to the Collector is mandatory—In absence of specific delegation of power under Section 5-A, the whole proceedings stand null and void and vitiated—Nagar Tatha Gram Nivesh Adhiniyam, M.P. 1973—Sections 50 and 54—Final notification issued but no steps taken to implement the scheme within three years statutory period—Section 54 would be attracted and the scheme would stand laosed : *Burhani Griha Narman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342 .*

—**Articles 227, 14, 226** and Rules for Post Graduation (MD/MS Course) in Clinical, Para-Clinical and Non-Clinical Disciplines in Medical Colleges of Madhya Pradesh, 1984, Rule 9.6—Writ Petition—Education—Admission to post graduate courses in medical colleges—Petitioner already obtained post-graduation in M.D. (Radiology) before joining service as Assistant Surgeon—Prohibition that Asst. Surgeon and Private practitioners who have obtained post graduation in any subject shall not be

allowed to take up Degree or diploma in another subject is made with a view to restrict competition for limited number of reserved seats—Challenge to Rule based on Article 14 of the Constitution—Without substance. *Dr. A.K. Gupta Vs. State, I.L.R. (1992) M.P. 311 (D.B.)*

-**Articles 227, 14, 226**—Writ Petition—Restoration of appeal dismissed for non-prosecution—Urban Land (Ceiling and Regulation) Act, 1976—Section 33—Appellate Authority is provided with plenary powers even to dismiss an appeal under this provision for non-prosecution as the appeals are to be decided expeditiously and appeals under Section 33 have been expressly given short life—Restoration—Reasonable opportunity—Not given to petitioner while rejecting application for restoration—Direction given to hear the petitioner afresh. *Surajsingh Vs. State, I.L.R. (1992) M.P. 379 (D.B.)*

- **Articles 227, 14, 226** and Administrative Tribunals Act, 1985—Section 19—Writ Petition—Service Law—Promotion—Pay fixation—Fundamental Rule 22-D—An employee is entitled to get his pay fixed in the pay scale of higher post—Rule Speaks of Promotion from lower post to higher post and not from one scale to another—Even if employee was getting same salary on lower post benefit of FR 22-D cannot be denied—Benefit granted to similarly situated employees by virtue of an earlier order—Subsequent challenge with no plausible explanation—Action discriminatory Attracts Article 14 of the Constitution : *State Of M.P. Vs. Dayaram Patidar, I.L.R. (2003) M.P. 614 (D.B.)*

- **Articles 227, 14, 226**, Recovery of Debts Due to Bank and Financial Institutions Act, 1993, Sections 17, 17-A, 18, 20, 22, Debts Recovery Tribunals (Procedure) Rules, 1993, Rule 12(6) and Debts Recovery Tribunals Regulation of Practice Rules 1998, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants—Rejection—Writ petition—Appeal—Word "an" and 'any'—There is no difference between the two terms—Expressions used in Sections 17 and 20 are not repugnant to each other—Order rejecting application for permission to cross-examine witnesses whose evidence was collected on affidavit—Appealable under Section 20 of the Act if substantially affects some rights or liabilities of a party—Collection of evidence on affidavit and production of witness—If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has sworn an affidavit—Regulation 31, 32 are intra vires—Do not transgress the limits stipulated under Section 22—Rule 12(6)—Bar of jurisdiction—There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to—Availability of alternative remedy—No inflexible rules for exercise of discretion by High Court—Depends upon on facts of each case—In exceptional circumstances writ Court can exercise its jurisdiction—Orders impugned do not call for interference in extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India—Leave granted to petitioners to prefer an appeal before appellate

tribunal within six weeks : *M/S P.C.C. Construction Co. Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172 (F.B.)*

– **Articles 227, 14 and 226** - Education – Admission to B.E. Course – Rules of conduct for Entrance Test and Rules of Admission – Separate Rules in 1988 and 1989 – Framed under Article 162 of the Constitution – Entrance Test 1989 – Petitioner secured 47 to 48.7% marks – Not included in the “Merit List” or even the “Waiting List” – Decision of Government to give admission to 1988 candidates during 1989, who had failed in “General English” though otherwise qualified – Not violative of judicial mandate in M.P. No. 299/88 or of any Rules – So called failed candidates of 1988 deserved protection – Article 166 of the Constitution – Decision of the State Cabinet immune to challenge – The group of unsuccessful candidate of general category of 1989 batch cannot complain discrimination against their competitors of 1988 batch – Cannot claim admission in the diverted seats of the reserved category : *Rahul Vs. State, I.L.R. (1991) M.P. 595 (F.B.)*

–**Articles 227, 22, 226 and National Security Act (LXV of 1980), Sections 3(2), 3(3), 11,12,13 and 15**–Writ Petition–Preventive detention under the Act for a period of twelve months confirmed by the appropriate Government/State Govt. on advice of the Advisory Board–Section 15–Temporary release of detenu on parole has to fail within the period of detention already fixed–Article 22–Order extending the period of detention as a result of parole–Unconstitutional–State Govt. is left with no such power under the Act–Sections 12, 13–Prevention detention is distinct for punitive detention–Underlying object is to prevent detenu from activities prejudicial to the maintenance of public order and not to punish him–Impugned order quashed. *Sharad Dadu Vs. District Magistrate, Bhopal, I.L.R. (1992) M.P. 4 (D.B.)*

– **Articles 227, 30, 226** – Writ Petition - Transfer of employee – State aided Educational Society – Ashashkiya Shiksha Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vatanon Ke Sanday) Adhinyam, M.P. 1978, Sections 6, 10 and Ashashkiya Shiksha Sanstha (Institutional Fund) Rules, 1983 – Regulatory provisions – Object is to ensure payment of the amount to teachers or other employees to obviate misappropriation of funds – Imposition of condition of prior approval for transfer of an employee is for examination of viability in context of the grant – Grant to an institution is made available for benefit of the employee – Without regulatory measure a transfer may result in denial of protection – Condition of prior approval of Government does not infringe right guaranteed under Article 30 of the Constitution : *Punaram Kulesh Vs. The Secretary, Diocesan Education Society, Lalipur, Mandla, I.L.R. (2001) M.P. 1481,*

- **Articles 227, 141 and 226**–Writ Petition–Law of precedent–Conflict in two decisions of co-equal Benches–Decision rendered without considering earlier decision

expressing contrary view—Have no value—Earlier decision is binding on the Bench of equal strength—Matter should be referred to the larger Bench in case of conflict—Apex Court's decision—Conflicting decisions of Benches comprising equal number of Hon. Judges—Decision of earlier Bench is binding unless explained by the latter decision—High Court and subordinate Courts should lack competence to interpret decisions of Apex Court—Great value has to be attached to precedent for purpose of consistency and exactness in decisions of Courts : *Jabalpur Bus Operator Association And Ors. Vs. State, I.L.R. (2003) M.P. 1127 (F.B.-5JJ.)*

-Articles 227, 215 and 235-Power of High Court to punish for contempt of itself and of subordinate Courts-Being a Court of record and having power of superintendence High Court has power to punish any contemner for its contempt : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096 (D.B.)*.

-Articles 227-Power of Superintendence-Administrative Tribunal Act, 1985-Sections 15 and 19-Petition of House Guards-Voluntary force of Home Guards constituted under the statutory provision from amongst the willing persons possessing prescribed qualification to supplement ordinary policed in emergencies-Home Guards Act, C.P. and Berar, 1974- Section 7(2) and (2A) and Home Guards Rules, C.P. and Berar, 1947-Rules 4 & 5-Home Guards appointed for limited period of six months and discharged on expiry of period of service or the extended period of service- Do not enjoy regular scale of pay nor Civil Services Rule of State apply to them-Incumbents do not hold civil posts under the State-Tribunal has no jurisdiction to entertain petition of Home Guards : *Punpratap Vs. State, I.L.R. (2000) M.P. 1090 (D.B.)*

- Articles 227, 309 and Administrative Tribunal Act (XIII of 1985), Section 19 – Service Law – Writ Petition – Ordnance Factories and Ordnance Equipment Factories Group ‘C’ and Group ‘D’ (Industrial post) Recruitment Rules 1979 contained in SRO 357, framed under Article 309 of the Constitution – Not superseded at any time – Rules being statutory unless superseded cannot be given a go by – Pay Commission report beginning executive order does not supersede the Rules – Respondents have protection of Statutory Rules under Article 309 – Cannot be denied the pay scale available to them – No infirmity in the impugned order of Central Administrative Tribunal : *Union of India Vs. D.K. Jain, I.L.R. (2001) M.P. 945, (D.B.)*

- Article 228-Condition necessary for the transfer of the case to the High Court : *The District Transport Association, Motor Operators, Bhandara Vs. The Taxation Authority And Secretary, Regional Transport Authority Jabalpur, I.L.R. (1960) M.P. 536 (D.B.)*

- **Article 228** - A - Petition under Article 226 - Challenging the Constitutional validity of State law - Cannot be dismissed in motion by a Division Bench - Liable to be heard by a Bench of five Judges even at the admission stage for its dismissal : *Brij Gopal Vs. State Of M. P. I.L.R. (1979) M.P. 571 (F.B.5 jj.)*

- **Article 228** - A - Object of - Petition under Article 226 - Challenging the Constitutional validity of State law - Cannot be dismissed in motion by a Division Bench - Liable to be heard by a Bench of five Judges even at the admission stage for its dismissal - Words "Determining any question" - Connotation of - Construction of Statute - Principle of : *Brij Gopal Vs. State Of M. P. I.L.R. (1979) M.P. 571 (F.B.5 jj.)*

- **Article 228** - A (3) - Words "Determining any question" - Connotation of : *Brij Gopal Vs. State Of M. P. I.L.R. (1979) M.P. 571 (F.B.5 jj.)*

- **Article 229** and Amendment Act, M.P., (IX of 1965), Section 82 and Clause 11 of NIT – Effect – Creates a statutory liability for recovery of amount – Statutory liability can be enforcedj even though there is no contract as envisaged under Article 299 of constitute – Deficiency can be recovered as arrears of land revenue : *Girdharilal Kesharwani Vs. State, I.L.R. (2001) M.P. 489,*

- **Articles 229, 226 NIT** - Supply of Tender form - Intending tenderer satisfies eligibility criteria - Cannot be deprived of his right to participate. *Anil Kumar Grover Vs. Union of India; I.L.R.(2002) M.P. 460*

-**Articles 229** and 226/227 and High Court Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, M.P., Rules, 1996, Rules 19 and 20 (C)-Writ Petition- Order imposing punishment passed by Disciplinary Authority and confirmed in appeal by the appellate authority i.e. The Chief Justice –Rule 20(c) of the Rules-Chief Justice exercising appellate power under Rule 20(c) of the Rules acted not on administrative side but as a *quasi* judicial authority-Record of the appellate authority, if called for-Appellate authority not required to answer averments made in the writ petition-Joinder of appellate authority i.e. the Chief Justice in writ petition challenging the disciplinary action-Not necessary-Reference answered accordingly : *Smt. K. F. Anjum Ali Vs. High court of M.P., I.L.R. (2000) M.P. 32 (D.B.)*

-**Article 229(1)**-Provision mandatory-Meant to safe-guard interest of Government - Acceptance of bid by Government of its authorized servants-Binding contract with person offering bid is created-Power of Government to ratify contract : *Mulamchand Vs. The State Of M.P. & Ors., I.L.R. (1959) M.P. 513 (D.B.)*

-Article 233(1)-Representations made by Civil Judges concerning promotion-High Court bound to forward the same to State Government who is the appointing authority : *B.A. Nigam Vs. Registrar Of The High Court Of M.P. ,I.L.R. (1971) M.P. 651 (D.B.)*

- **Article 234** - Consultation with High Court and Public Service Commission essential for adopting rules and not for recruitment of person to judicial service : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

-Articles 235, 215 and 227-Power of High Court to punish for contempt of itself and of subordinate Courts-Being a Court of record and having power of superintendence High Court has power to punish any contemner for its contempt : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096 (D.B.)*.

- **Articles 239 (2), 163, Criminal Procedure Code, Section 197, Indian Penal Code, Section 120-B, Prevention of Corruption Act, Section 13(1) (d), 13(2)**-Corruption-Prosecution of Ministers-Sanction-Power of Governor-Normal rule is that Governor acts on aid and advice of the Council of Ministers-But there are exceptions-Governor can act in his own discretion-If the Governor cannot act in his own discretion there would be complete breakdown of rule of law and it would be open to Government to refuse sanction even if a prima facie case is made out-Bias-Lead to automatic disqualification-Lokayukta Office held by former Supreme Court Judge-Difficult to assume that Lokayukta would give report without any material whatsoever-Order of Governor sanctioning prosecution should be given effect to. : *M.P. Special Police Establishment Vs. State Of M.P. & Ors., I.L.R. (2005) M.P. (SC) 179 (F.B.-5JJ.)*

- **Articles 239 and 372 (2)**-Government of India Act 1935, Section 94 (3)-Essential Supplies (Temporary Powers) Act, 1946, Sections 3, 7 and 11 and Notification No. 132/29/170 (50) dated 5-1-51 under section 4 of the Essential Supplies (Temporary Powers) Act 1946-Order delegating authority by Governor General to Chief Commissioner to administer province-Is in the nature of legislative provision-Such order becomes law in force-Falls under Article 372 of Constitution-Notification No. 132/29/170 (50) dated 5-1-51-Validity-Contravention of such Notification -Punishable-Evidence Act, Indian-Section 57-Notification being law in force--Needs no proof-Court can take judicial notice-Essential Supplies (Temporary Powers) Act 1946-Section 11-Charge-sheet not mentioning all particulars' given in First Information Report-Does not amount to defect-Magistrate can take cognizance : *The State Vs. Gokulchand, I.L.R. (1957) M.P. 168 (D.B.)*

- **Article 243-C, Article 14** - M.P. Panchayat Raj Adhiniyam 1994, Section 21 - Removal of Sarpanch - By motion of no-confidence by elected Panchas - Not

violative of Article 14 : *Jagdish Prasad Bhunjwa Vs. State Of M.P., I.L.R. (1996) M.P. 100 (D.B.)*

- **Article 243-C(5)** - M.P. Panchayat Raj Adhiniyam 1994, Section 21 – Validity of Section 21 challenged - Gram Panchayat provided with method for election and removal of Sarpanch- Is within exclusive domain of State Legislature - Provision made cannot be struck down by Court only because better method of removal of Sarpanch could have been provided by Legislature : *Jagdish Prasad Bhunjwa Vs. State Of M.P., I.L.R. (1996) M.P. 100 (D.B.)*

- **Articles 243-O, 226**, Panchayat Raj Adhiniyam, 1993 (I of 1994), Section 19, 23, 36 and 122, Panchayat (Sarpanch, Up-sarpanch, President, Vice-President) Nirvachan Niyam, 1995, Rules 16(7)(i), 17 and 22 and Panchayat (Election Petition, Corrupt practices and Disqualification for Membership) Rules, M.P., 1995 Rules 2(c) and 21 – Election of President, Zila Panchayat – Certificate issued by competent authority – Notification not issued – Section 122, Panchayat Raj Adhiniyam – Election petition – In absence of notification of election no Election petition can be filed – Election petition filed prior to notification under Rule 22 – Nirvachan Niyam not liable to be taken up for consideration as being incompetent – Rules 2(c), 17 and 22 – “Returned Candidate” means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected – Unless notification it issued there cannot be any returned candidate hence no election petition could be filed on the basis of certificate issued under Rule 17 of the Election Rules : *Chandra Bhan Vs. State, I.L.R. (2001) M.P. 291, (F.B.)*

- **Article 243-T and 226**- If the office of the president is to go to the specified category, it would necessarily mean in the context of the parent article 243-T of Constitution of India- Where the election is held in the very breach of the imperative provision of law, then the election is not an election in the eyes of law and this Court would not refuse to interfere in the matter rather it is duty bound to issue a writ of *quo-warranto* : *Nandkishore Vs. Indore Nagar Palika Nigam, Indore, I.L.R. (1998) M.P. 539 .*

- **Article 243-ZA**-Elections to Municipalities- Preparation of voter's list - Control of preparation of voter's list vest in State Election Commission - All objections regarding voter list could have been raised before State Election Commission - Court declined to interfere. *Subodh Kumar Awasthy Vs. State Of Madhya Pradesh; I.L.R. (1994) M.P. 323 (D.B.)*

- **Article 246** - Subjection of State Legislature's power under clause (3) or to Clauses (1) and (2) - Effect of : *M/S Bombay Scooters, Chhindwara Vs. The Collector, Chhindwara, I.L.R. (1983) M.P. 618, (D.B.)*

- **Article 246 & 14, Schedule 7, List 3, Entry 12A** - M.P. Public Moneys (Recovery of Dues) Act, 1988, Section 1 - Vires of the Act challenged - Held - The act is essential for a summary procedure for speedy recovery of Debts due to the Government of the Corporation of the Banking Companies - The procedure would apply with reference to the date when the recovery is enforced and not with reference to the date of transaction - The act being in the nature of machinery for recovery, steps can be taken in accordance herewith even in relation to past transaction - Validity of the Act dismissed. *New Laxmi Oil Mills, Barwaha Vs. Bank Of India, Barwaha, I.L.R. (1997) M.P. 112 (D.B.)*

-**Article 246, 14, 16** – M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976, Section 7 (5) – Validity of Rule 7 (5) – The Hon'ble High Court held it to be ultra vires – Reversing the same the Hon'ble Apex Court held that Section 7(5) has to be construed to mean that the presumption contained therein is rebuttable and secondly the penalty of ten times the amount of entry tax stipulated therein is only the maximum amount which could be levied and the assessing the authority has the discretion to levy lesser amount, depending upon the facts and circumstances of each case – Construing Section 7 (5) in this manner the decision of the High Court that Section 7 (5) is ultra vires cannot be sustained. *State Of M.P. Vs. Bharat Heavy Electricities, I.L.R. (1997) M.P. 340 (D.B.)*

-**Articles 246(3) and 162, List II, Entry 41**-Power of State Government to deal with its services-Article 309-Is merely an enabling provision-Does not impose any duty to legislate or make rules-Does not fetter power of State Government to exercise its executive power in matter of services-Article 320-Clause 3-Provision not mandatory-Non-compliance thereof does not furnish cause of action to civil servant-Article 226-Executive order not open to challenge by writ : *Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P., 60 (D.B.)*

- **Article 248, Seventh Schedule, List III, Entry 42** – Legislation for acquisition of a grant which does not amount to property – Can be enacted only by parliament – Parliament not enacting the Act – Section 5 of the Act providing for acquisition of grant held to be ultra vires – Other provisions of the Act consequently becoming meaningless – whole Act struck down : *Ganpatrao Vs. State Of M.P., I.L.R. (1988) M.P. 476 (D.B.)*

- **Article 252** and Government of India Act, 1935, Section 103 - Difference between the two : *Dr. Prakash Chandra Tiwari Vs. State Of M. P.* I.L.R. (1980) M.P. 628 (D.B.)

-**Article 254**, clause I--Speaks of repugnancy between Union Law and State Law involving matter falling under concurrent list - Does not include a subject on which State Legislature competent to legislate-Article not attracted to the impugned provision as matter covered by Entry 18, List II, Seventh Schedule : *Mangilal Vs. The State Of M.P. & Ors.*, I.L.R. (1962) M.P. 152 (D.B.)

- **Article 254** - Applies only when competing legislations both pertain to concurrent list - Inherent supremacy of Parliament to legislate in respect of matters in Union list : *M. P. State Road Transport Corporation Vs. Heeralal*, I.L.R. (1982) M.P. 669, (F.B.5 jj.)

- **Articles 254**, 14 seventh schedule, List III, Entry 35, Motor Vehicles Act, 1988, section 66, 192-A andatoryan Karadhan Adhinyam, M.P. 1991 (as amended) section 16 (6), 16 (7), 16 (8), 20-A and 20-B–Taxation on motor vehicles–subject covered under list III of seventh schedule–driving motor vehicle without permit in violation of section 66 read with section 192-A of the M.V. Act–Penalty of confiscation provided in state Law as a step for recovery of the tax–Validity–Union Law & State Law–Offences substantially identical but additional penalties imposed by state Law–would be inconsistent with the law of the Union and therefore invalid–Factor weighs with the authority for which the M.V. Act sets out nature and degree of punishment but does not include confiscation–Impinges upon Article 254 of the constitution–Provision of section 16 (6) and consequential provision of section 16 (7), 16 (8), 20-A and 20-B of the state Law invalid–Order of High Court set aside : *M.P.A.I.T. Permit Owners Assn. Vs. State Of Madhya Pradesh*, I.L.R. (2004) M.P. (SC) 102 (D.B.)

-**Article 254(I)**-Section 10 of Protection of Children Act of Gwalior-Repugnant to provisions of Indian Penal Code made applicable to Gwalior by Act 3 of 1951-Section 10 void under Article 254(1) of Constitution : *Lalla Vs. The State*, I.L.R. (1959) M.P. 125 (D.B.)

- **Article 254 (1) and (2)** - Bal Adhinyam saved in case of repugnancy with the Central enactment in other case matter governed by Article 254 (1) - Circumstances in which Bal Adhinyam is saved and when not : *The State Of Madhya Pradesh Vs. Ramesh Nai* I.L.R. (1976) M.P. 386 (F.B.)

-**Article 254 (2)**- State law regarding matter in Concurrent List-Such law inconsistent with existing central law regarding same matter - State law not invalidated-Minimum Wages (M. P. Amendment and Validation) Act, 1961-Declares how certain provisions of the Principal Act shall have effect-Real character of Act not

determined by words used but by the effect--Act within competence of State Legislature and is valid-Fixation of minimum wages under central Act invalid-Can be validated only by central Act-Section 31-A-Does not fix rates quite independently of Notification of 1958-Violates fundamental Right-Section invalid-Legislature - Power of, to enact law nullifying decision-Does not amount to exercise of judicial power-Can enact law giving retrospective operation : *M/S Dayalal Meghji & Co., Raipur Vs. The State Of Madhya Pradesh, I.L.R. (1963) M.P. 985 (D.B.)*

- **Article 254 (2)** and Industrial Employment (Standing Orders) Act (XX of 1946), State Acts and Central Acts - Effect of State Act receiving assent of the President to Central Act- Standing orders made under the 1946 Central Act - Effect of enforcement of State Acts - Standing orders have the force of law : *Sakhrulla Khan Vs. State Industrial Court, Indore, I.L.R. (1982) M.P. 397, (D.B.)*

- **Article 258** and Nagariya Sthawar Sampatti Kar Adhiniyam. M. P. (XIV of 1964), Section 6 - Lands situated within that area vested in the Central Government till their assignment in favour of the petitioner on 27-8-1978 - Lands exempted from taxation under Article 258 of the Constitution and Section 6 of the Act - Petitioner liable to pay property tax on lands for the period after 27-8-1978 only : *Hindustan Steel Ltd. Ranchi Vs. State Of M. P. I.L.R. (1984) M.P. 218 (D.B.)*

-**Article 264(b)**-Meaning of "State" in clause (b) of Article 264-Restricted: *Commissioner Of Sales Tax, M.P., Indore, Vs. M/s Mohammad Hussain Rahim Bux Maihar I.L.R. (1967) M.P.148 (D.B.)*

-**Article 264 (b)**-Words "Requires" and "Context" -Implication of : *Commissioner Of Sales Tax, M.P., Indore, Vs. M/s Mohammad Hussain Rahim Bux Maihar I.L.R. (1967) M.P.148 (D.B.)*

-**Article 264(b) And 286**-Meaning of word "State" in clause (b) of Article 264-Restricted-The word "State" in Article 286-Does not include State specified in Part-C-To be read otherwise than as pointed out in clause (b) of Article 264-Article 264(b)-Words "Requires" and "Context" Implication of-Interpretation of Statutes-Principle-Meaning of the word in Statute-To be determined in the context of section of Act-True meaning to be determined in the context relating to the subject-matter dealt with by the section-Article 286-Word "State" in -To be read otherwise than as limited by Article 264(b) : *Commissioner Of Sales Tax, M.P., Indore, Vs. M/s Mohammad Hussain Rahim Bux Maihar I.L.R. (1967) M.P.148 (D.B.)*

- **Article 265** - Procedural Provision for assessment - Depends upon nature of tax or fee sought to be imposed by statute : *M/S Roopchand Phoolchand Oil Mill Raipur Vs. Krishi Upaj Mandi Samiti, Raipur I.L.R. (1976) M.P. 148 (D.B.)*

- **Article 265** - Word "levy" - Covers imposition and also assessment : *M/s Roopchand Phoolchand Oil Mill Raipur Vs. Krishi Upaj Mandi Samiti, Raipur I.L.R. (1976) M.P. 148 (D.B.)*

- **Article 265** - Words "levy" and "Collection" in - Used in comprehensive sense - Covers all steps beginning from imposition and ending with recovery : *M/s Roopchand Phoolchand Oil Mill Raipur Vs. Krishi Upaj Mandi Samiti, Raipur I.L.R. (1976) M.P. 148 (D.B.)*

- **Article 265**, Municipal Corporation Act, M.P. 1956, Sections 427, 430 and Bhopal Municipal Corporation Terminal Tax, Assessment and Collection Bye-laws, 1970, Bye-laws Nos. 12 and 12-A—Collection of terminal tax—Auctioning of right to collect tax not illegal—Bye-law framed for collection of tax by auction—Contractor collecting tax has to work under authority of local body—Bye-law cannot be said to be ultra vires Article 265 : *Sindhi Sahiti Multi Purpose & Transport Co-Operative Society Ltd. Bhopal, Vs. State of M.P., I.L.R. (1995) M.P. 149, (F.B.)*

- **Article 265** - Word "Tax" in-Includes any impost such as duties, cesses or fees - Words "levy" and "Collection" in-Used in comprehensive sense - Covers all steps beginning from imposition and ending with recovery - Word "levy" covers imposition and also assessment Procedural provision for assessment - Depends upon nature of tax or fee sought to be imposed by statute - Agricultural Produce Markets Act, Madhya Pradesh, 1960 - Section 20 read with Rule 56 framed thereunder – authorises markets committee to levy market fees - "Levy" includes assessment thereof - Rule 56 and Bye Law 84 - Authority to make assessment - To observe principles of natural justice : *M/s Roopchand Phoolchand Oil Mill Raipur Vs. Krishi Upaj Mandi Samiti, Raipur I.L.R. (1976) M.P. 148 (D.B.)*

- **Article 276** - Saves Haisiyat Tax which was being levied prior to coming into force of the Constitution : *Janardan Rao Vs. Municipal Council, Sausar I.L.R. (1977) M.P. 502*

- **Article 276(2)**, Sch.7, List 2, Entry 60 – Vires of Section 4 & 5 of M.P. Vriti Kar Adhinyam challenged - Taxes on professions, trades, callings and employment - Only because Parliament is empowered to legislate on that subject – It does not make the State to legislate on the same subject. *High Court Of M.P. Employees' Association Vs. State Of M.P., I.L.R (1996) M.P. 109 (D.B.)*

- **Article 277** - Municipal Committee, Power of, to raise the rate of tax as prevailing immediately before 1.11.1937 : *Janardan Rao Vs. Municipal Council I.L.R. (1977) M.P. 502*

- **Article 284** - Conflict between special Act and General Act - Circumstances in which special Act or general Act will prevail : *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. P. O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal - Cum - Labour Court, Jabalpur I.L.R. (1976) M.P. 905 (F.B.)*

-**Article 286**-Tax on sale of goods outside the State prior and subsequent to 26.1.50Validity : *M/S Mullaji Jmaluddin & Co. Vs. The State Of M.P. & Ors., I.L.R. (1957) M.P. 631 (F.B.)*

-**Article 286**-The word "State" in Article 286-Does not include State specified in Part -C-To be read otherwise than as pointed out in clause (b) of Article 264 : *Commissioner Of Sales Tax, M.P., Indore, Vs. M/s Mohammad Hussain Rahim Bux Maihar I.L.R. (1967) M.P.148 (D.B.)*

- **Article 286**, Explanation - Words "actually delivered" in - Implication of : *The Associated Cement Co. Ltd., Kymore, Vs. The Commissioner Of Sales Tax M. P. Indore I.L.R. (1980) M.P. 361 (D.B.)*

- **Article 286** - Sales between the vendors (undisclosed) from whom the Petitioner makes purchases - Are sales for export and not sales in the Course of export : *Organon (India) Ltd. Calcutta Vs. Collector Of Excise, Mandsaur I.L.R. (1981) M.P. 644 (D.B.)*

-**Article 286** as emended-Sales between 11th September 1956 to 4th January, 1957-Power of State of levy Sales Tax under Coal Acts : *The Amalgamated Coalfields Ltd., Calcutta V. State Of Madhya Pradesh I.L.R. (1968) M.P. 709 (D.B.)*

-**Article 286(1)**-Explanation-Burden of proof on assessee of proving that the goods were delivered outside the State for consumption therein : *M/S Ganpat Pannalal Of Harda Vs. The Commissioner Of Sales Tax, M.P., I.L.R. (1970) M.P. 522 (D.B.)*

-**Article 286(1)**-Explanation-Condition required to be satisfied for claiming exemption under this provision-Burden of proof on assessee of proving that the goods were delivered outside the State for consumption therein : *M/S Ganpat Pannalal Of Harda Vs. The Commissioner Of Sales Tax, M.P., I.L.R. (1970) M.P. 522 (D.B.)*

- **Article 286 (1)** - Explanation - Things necessary to be determined for application of explanation : *M/S Girdharilal Nanhelal, Burhanpur Vs. The Commissioner Of Sales Tax, Madhya Pradesh I.L.R. (1977) M.P. 934 (D.B.)*

-Article 286(1)-Every thing taking place in the State regarding transaction except delivery of goods for consumption which was to be outside State-Sales not liable to sales Tax of that State-Words and Phrases-Word "F. O. R."-Implication and incident of-Sale of Goods Act-Section 39(1)-Essentials for applicability : *C. P. Timber Works, Kanpur Vs. Commissioner Of Sales Tax, M. P., Indore, I.L.R. (1965) M.P. 762 (D.B.)*

-Article 286(1) (a)-Use of article for production of commercially different article-Amounts to consumption : *Messrs Mohanlal Hargovinddas Vs. The State Of M.P. & Ors., I.L.R. (1963) M.P. 637 (D.B.)*

-Article 286(1)(a)-Explanation-Words "actual delivery" in-Meaning of-Agency-Can be created by contract-Railway not an agent of consignee -Sales Tax Act, C.P. and Berar, 1947-Section 2(j)(a)(iii)-Goods used for generation and distribution of electric energy only exempted-Every other thing sold to Electricity Board-Not exempted-Constitution of India-Article 226-Existence of alternative remedy-Not a bar for exercise of discretion under this article : *Associated Cement Co. Ltd., Kymore, M.P. Vs. Assistant Commissioner Of Sales Tax, Jabalpur. I.L.R. (1974) M.P. 270 (D.B.)*

-Articles 291 and 362-Distinction between Pension and Privy Purse-Privy Purse is in nature of right and not bounty : *Nawab Usmanalikhan Vs. Sagar Mal I.L.R. (1961) M.P. 304 (D.B.)*

-Articles 291 and 362-Distinction between Pension and Privy Purse-Privy Purse is in nature of right and not bounty-Civil Procedure Code-Sections 60(g)-Privy Purse-Liability to attachment-Sections 86(1) and 87-B-Provisions mandatory-Protection conferred-Not capable of being waived-No limitations on power of Central Government to grant sanction for suing the Ruler Submission to jurisdiction expressly or by implication-Can be taken into consideration in considering grant of sanction-Civil Procedure Code-Word "suit" in has definite meaning-Proceeding commenced on application or otherwise-Does not become suit -Proceedings for decrees on award-Proceedings not a suit-Sanction of Central Government not necessary-Registration Act, Section 17-Award stating fact of a charge-Award does not require registration-Arbitration Act-Section 32-Civil Procedure Code, Order 23, rule 3-Compromise between parties subsequent to awards-Court, Power of, to give effect to compromise : *Nawab Usmanalikhan Vs. Sagar Mal I.L.R. (1961) M.P. 304 (D.B.)*

- Article 297 - Territory of India - Includes water in its ports and harbours and territorial waters : *Manganese Ore (India) Limited Nagpur Vs. The Regional Assistant Commissioner Of Sales Tax, Jabalpur Region Jabalpur I.L.R. (1978) M.P. 8 (D.B.)*

- Articles 298 and 162 – Executive power of State – State carrying on any trade or business and making contracts – Restriction imposed, not by any law made by

State legislature, violation of freedom guaranteed under Article 301 – No violation if restriction only regulatory or compensatory measure: *Saradar Dayal Singh Bagga Vs. State Of M.P., I.L.R. (1988) M.P. 183 (D.B.)*

-**Article 298 and 299**-Executive power in-Is the non-statutory executive power and not the statutory one : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

- **Article 299** - Contract with Govt. not in manner prescribed - Contract unenforceable : *Laxminarayan Behra Vs. State of M. P. I.L.R. (1981) M.P. 378 (D.B.)*

-**Article 299**-Executive power-Wide enough to include power derived from Statute : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377, (F.B.)*

-**Article 299**-Non-compliance with Article 299 of Constitution clear from pleadings of the parties-Court can go into question of validity of contract : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

- **Article 299** and Sale of Goods Act, Indian (III of 1930), Section 16 (1) and (2) - Contract for supply of articles by manufacturer or dealer - Implied condition or warranty as to fitness and merchantable quality - When arises : *State Of Madhya Pradesh Vs. M/s Mohanwi Corporation (Pvt.) Ltd., I.L.R. (1982) M.P. 137, (D.B.)*

-**Article 299**-Waiver-Requirements of Article 299 of Constitution mandatory-Contravention of provision cannot be waived-Waiver does not confer validity on invalid agreement : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

- **Article 299** and Sale of Goods Act, Indian (III of 1930), Section 16 (1) and (2) - Contract from correspondence - Contract may result if requisite conditions fulfilled - Validity and enforceability of : *State Of Madhya Pradesh Vs. M/s Mohanwi Corporation (Pvt.) Ltd., I.L.R. (1982) M.P. 137 (D.B.)*

-**Article 299**-Conditions to be satisfied for requirements of this provision-These also apply to a contract by tender and acceptance : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

- **Article 299**- Transfer of Property Act (IV of 1882), Section 106, 107, Registration Act, (XVI of 1908) – Sections 2(7), 17(2)(V) and Limitation Act, 1963, Section 3, Article 55 – Agreement – Breach of Terms – Suit for damages- Absence of any lease deed or a registered lease deed- Does not deprive plaintiff of damages for

breach of terms of agreement for which he performed his part creating liability against himself- Agreement to hire plinth- A promise definitely held out by F.C.I. for occupying the premises on rent @40 Paise per Sq. Ft. for a period of three years – Raising of Bank loans by Plaintiff for raising construction as per agreement – Tenancy terminated by F.C.I. before expiry of three years – One who holds out a promise backs out, will have to compensate the party who acted bonafide on basis of the promise – Non-execution of the contract in terms of Article 299- Does not militate against applicability of doctrine of promissory estoppel – Executory agreement – For securing another agreement of deed in future – Not an agreement creating rights in immovable property – Not compulsorily required to be registered Admissible in evidence though not registered – Plea of limitation – Desired to be raised at least at appellate stage Objecting party not supposed to keep quiet till the matter reaches the Apex Court – Defendant cannot escape liability damages for breach of the contract – No good reason to reduce the amount of damages – Judgment of High court set aside and that of Trial Court restored : *Food Corporation Of India Vs. M/s. Babulal Agrawal, I.L.R. (2004) M.P. (SC) 199 (D.B.)*

- **Article 299** - Is reproduction of Section 175 (3) of Government of India Act, 1935 - Requirement of - Sale of Goods Act, 1930 - Section 16 (1) and (2) - Contract from correspondence - Contract may result if requisite conditions fulfilled - Validity and enforceability of - Contract for supply of articles by manufacturer or dealer - Implied condition or warranty as to fitness and merchantable quality - When arises : *State Of Madhya Pradesh Vs. M/s Mohanwi Corporation (Pvt.) Ltd., I.L.R. (1982) M.P. 137 (D.B.)*

- **Articles 299, 14** – Rejection of tender – Challenge on the ground – Control board rejected the tender without applying its mind – Held – Comparative table shows that rate quoted by the petitioner was on higher side, Control board has rejected the tender after due deliberation and application of mind, decision taken fairly and objectively – High Court refuse to interfere – Petition dismissed : *M/s. Akhtar Brothers Vs. State of M.P., I.L.R. (1995) M.P. 557*

- **Articles 299, 14, 226** – Writ petition–Tender–NIT by CPWD for store maintenance and cartage of cement–Huge bulk of cement on DGS &D rates to be lifted in fixed time–Condition of experience and ownership of trucks not unreasonable–Earnest money–Payable only on finalization of contract–Cannot be asked for as a pre-condition for issuance of tender form–Application for tender form is neither an offer nor a bond for any prospective offer–Condition arbitrary–Struck down : *Ajay Krishna Vs. Union Of India, I.L.R. (2005) M.P. 306*

-**Article 299 and 154** -Statutory functions conferred on authority subordinate to the Governor-Functions not performed in the name of Governor-Such functions to be performed in accordance with statute conferring the functions-Such power does not

become executive power of the Governor-Contract by such authority does not fall under Article 299 : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

- **Articles 299 and 226** - Contract with Government not in accordance with Article 299 - Not enforceable by a writ petition - Writ of Mandamus - Cannot be issued for enforcing contractual rights - State Government laying down new policy before concluded contract comes into existence - Right of : *M/s Allied Oil Industries Private Ltd., Durg Vs. State Of M. P., I.L.R. (1983) M.P. 493 (D.B.)*

- **Articles 229** and 226/227, Forest Act, Indian (XVI of 1927) and Amendment Act, M.P. (IX of 1965), Section 82 – Quashing of RRC – NIT for disposal of Tendu leaves – Acceptance of offer communicated by Registered post – Refusal to accept – Amounts to service – Section 82 and Clause 11 of NIT – Effect – Creates a statutory liability for recover of amount – Statutory liability can be enforced even though there is no contract as envisaged under Article 299 of Constitution – Deficiency can be recovered as arrears of land revenue : *Girdharilal Kesharwani Vs. State, I.L.R. (2001) M.P. 489,*

- **Articles 299, 226, 300**–Respondent negligent in conducting re-auction–Allowed the condition of tendu leaves to deteriorate further–Respondent not entitled to recover the loss : *Santosh Kumar Chopda Vs. State, I.L.R. (2003) M.P. 42*

- **Articles 299, 226, 300**–Writ Petition–Tender bid–Auction of Tendu leaves–Breach of contract–Re-auction–Demand notice for recovery of the amount of difference–Sale of Goods Act, 1930–Section 7–Petitioner himself negligent–Failed to inspect the tendu leaves put to auction–Cannot invoke Section 7 of Sales of Goods Act–Recovery of loss incurred in re-auction–Tendu leaves lost commercial value even on the date of first auction–Re-auction held highly belated–Respondent negligent in conducting re-auction–Allowed the condition of tendu leaves to deteriorate further–Respondent not entitled to recover the loss–Refund or forfeiture of earnest money–Petitioner failed to inspect the Tendu leaves before offering bid–Subsequently inspected and did not lift the stock–Breach of contract–Forfeiture of earnest money proper : *Santosh Kumar Chopda Vs. State, I.L.R. (2003) M.P. 42*

- **Article 299 (I)** - Provision is mandatory - In case of non-compliance of the provision - Question of estoppel or ratification does not arise : *The Union Of India Vs. Chouthmal, I.L.R. (1980) M.P. 659 (D.B.)*

-**Article 299(1)**-Conditions for applicability-There can be no question of estoppel against fulfillment of requirements : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

-Article 299(1)-Contract by tender and acceptance valid provided other requirements of the Article are satisfied : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

-Article 299(1)-Purpose and object of making provisions of the Article : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

-Article 299(1)-Absence of valid contract as envisaged by the Article-No enforceable contract comes into existence : *Rajendra Kumar Verma Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 480 (D.B.)*

-Article 299(1)-Bid list signed by Bidder and Collector-Does not fulfill requirement of this provision : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

-Article 299(1)-Operation of, depends on question whether power exercised is executive-Not applicable to cases of excise contract : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

- Article 299 (1) - Conditions to be satisfied - Provision mandatory : *State Of Madhya Pradesh Vs. Ramansha Byramji I.L.R. (1978) M.P.768 (D.B.)*

- Article 299 (1) - Does not contemplate spelling out of implied contract, implied contract is ruled out - Sale conditions not satisfying the requirement of the Article - Contract cannot be enforced : *State Of Madhya Pradesh Vs. Sardar Hakim Singh I.L.R. (1977) M.P. 1198 (D.B.)*

- Article 299 (1) - Bid withdrawn before acceptance - No contract comes into being - Does not contemplate spelling out of implied contract - Implied contract is ruled out - Sale conditions not satisfying the requirement of the Article - Contract cannot be enforced : *State Of Madhya Pradesh Vs. Sardar Hakim Singh I.L.R. (1977) M.P. 1198 (D.B.)*

- Article 299 (1) - Requires fulfilment of 3 conditions - Provision is mandatory - In case of non-compliance of the provision - Question of estoppel or ratification does not arise : *The Union Of India Vs. Chouthmal, I.L.R. (1980) M.P. 659 (D.B.)*

-Article 299(1)-Provisions mandatory --Contract not complying with provisions of the Article-Contract not enforceable and binding on Government-Ratification of such contract by Government-Government bound by contract : *Kashiprasad Vs. The State Of Madhya Pradesh, I.L.R. (1959) M.P. 854 (D.B.)*

- **Article 300** - State Government when liable for tortious act of the servant - What are sovereign powers of the State : *State Of Madhya Pradesh Vs. Ram Pratap Singh I.L.R. (1977) M.P. 672 (D.B.)*

- **Article 300** - Servant not acting in discharge of delegated power - Secretary of state could be sued : *State Of Madhya Pradesh Vs. Ram Pratap Singh I.L.R. (1977) M.P. 672 (D.B.)*

- **Article 300** - Scope of Servant not acting in discharge of delegated power - Secretary of State could be sued - State Government when liable for tortious act of the servant - What are sovereign powers of the State - Tort - Vicarious liability - Truck of Public Works Department carrying material or officers - Cannot be said to be engaged in discharges of any sovereign function of the State : *State Of Madhya Pradesh Vs. Ram Pratap Singh I.L.R. (1977) M.P. 672 (D.B.)*

- **Articles 300, 226, 299**—Respondent negligent in conducting re-auction—Allowed the condition of tendu leaves to deteriorate further—Respondent not entitled to recover the loss : *Santosh Kumar Chopda Vs. State, I.L.R. (2003) M.P. 42*

- **Articles 300, 226, 299**—Writ Petition—Tender bid—Auction of Tendu leaves—Breach of contract—Re-auction—Demand notice for recovery of the amount of difference—Sale of Goods Act, 1930—Section 7—Petitioner himself negligent—Failed to inspect the tendu leaves put to auction—Cannot invoke Section 7 of Sales of Goods Act—Recovery of loss incurred in re-auction—Tendu leaves lost commercial value even on the date of first auction—Re-auction held highly belated—Respondent negligent in conducting re-auction—Allowed the condition of tendu leaves to deteriorate further—Respondent not entitled to recover the loss—Refund or forfeiture of earnest money—Petitioner failed to inspect the Tendu leaves before offering bid—Subsequently inspected and did not lift the stock—Breach of contract—Forfeiture of earnest money proper : *Santosh Kumar Chopda Vs. State, I.L.R. (2003) M.P. 42*

- **Article 300** - A bare contractual right does not constitute 'property' within the meaning of this Article : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)*

- **Article 300** - A - Contract - Clause 4 (b) of the Contract giving an option to the M. P. Electricity Board to defer schedule supplies of conductors if considered essential - Exercise of such option by the Board - Does not amount to deprivation of property without any authority of law under Article 300 (A) : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)*

- **Articles 300 (A)**, 12 and 226, Evidence Act, Indian (1 of 1872), Section 115 and Electricity Act, Indian (IX of 1910). Section 2 (f) and 2 (n) - M. P. Electricity Board is ' State' within the meaning of Article 12 - Amenable to writ jurisdiction of High Court - Board entering into contract for purchase of conductors from the petitioners for performing its obligations to lay transmission lines for distribution of electricity - Not a statutory duty of the Board - Writ jurisdiction of the High Court cannot be invoked for seeking enforcement of contractual obligations - A bare contractual right does not constitute ' property' within the meaning of Article 300 (A) - Clause 4 (b) of the Contract giving an option to the Board to defer scheduled supplies of conductors if consideration essential - Exercise of such option by the Board - Does not amount to deprivation of property without any authority of law under Article 300 (A) - Evidence Act - Section 115 - Promissory estoppel - Exercise of option by the Board to defer scheduled supplies of conductors by the petitioners in pursuance of clause 4 (b) of the Contract - Principle of promissory estoppel not applicable : *Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8. (D.B.)*

- **Articles 300-A**, 21, 31-C, 39(b), 226, 301 and Hind Cycles Limited and Sen Releigh Limited (Nationalisation) Act, Indian (LXX of 1980) – Provisions of the Act intra vires – Protected under Article 31-C – Constitution of India – Enacted under directive principals contained in article 39(b) – Acquisition of undertaking to secure proper management and sub-serve the public interests – No liability of Central Govt. and Govt. Company prior to taking over of the company except for materials supplied – Material supplied – Meaning of – Cannot include services rendered – Claim before Commissioner for payments – Priority of claim categorised – Right of appeal if petitioner dissatisfied – Commission received by petitioner as agent – Does not come under definition of wages : *Kulbir Singh Vs. Union Of India, I.L.R. (1989) M.P. 703 (D.B.)*

- **Articles 300-A**, 226, Nagar Tatha Gram Nivesh Adhinyam, M.P., (XXIII of 1973), Sections, 30, 73 and Gandhi Basti Chhetra (Sudhar Tatha Nirmulan) Adhinyam., M.P., 1976, Section 13- Sanction of lay out plan Power to impose condition-Only those conditions can be imposed as are envisaged in the Adhinyam-Condition to earmark 15% land for informal sector amounts to deprivation without authority of law – Condition violative of Article 300-A of the Constitution in absence of any law on the Subject-Government free to take steps under the Adhinyam of 1976 to acquire land to settle or rehabilitate slum dwellers : *Gulmohar Grih Nirman Sahakari Sanstha Samiti Vs. State, I.L.R. (1999) M.P. 913*

- **Articles 300 - A** and 226 - Board entering into contract for purchase of conductors from the petitioners for performing its obligations to lay transmission lines for distribution of electricity - Not a statutory duty of the Board - Writ jurisdiction of the High Court cannot be invoked for seeking enforcement of contractual obligations :

Smita Conductors Private Limited, Bombay Vs. Madhya Pradesh State Electricity Board, Jabalpur I.L.R. (1984) M.P. 8 (D.B.)

- **Article 301** - Scheme does not involve skill - Does not constitute trade, commerce or intercourse : *M/S Sudarshan Finance Corporation Vs. State Of M. P. I.L.R. (1979) M.P. 205 (D.B.)*

-**Article 301**-Pre-constitutional statutory provision continued as existing law- Rules and bye-laws framed under that provision not affected : *Virji Lalji Patel & Co., Jabalpur, Vs. State Of M.P. & Ors., I.L.R. (1965) M.P. 540 & Mr. Justice Nevaskar*

- **Article 301** - Term either in tender notice or in the contract prohibiting transport of forest produce outside State is bad and liable to be struck down : *Sardar Dayal Singh Bagga V. State Of M.P., I.L.R. (1988) M.P. 183 (D.B.)*

- **Article 301** - Liquidation of debt - Does not obstruct or put barrier on the right of free trade or commerce : *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120, (D.B.)*

- **Articles 301, 19 (1)(g) and 304 (b)** - Fundamental right of freedom of trade - Guarantee to trade outside the State - Reasonable restrictions on the freedom of trade - Constitution of India, Articles 162 and 298 - Executive power of State - State carrying on any trade or business and making contracts - Restriction imposed, not by any law made by State legislature, violation of freedom guaranteed under Article 301 - No violation if restriction only regulatory or compensatory measure - Term either in tender notice or in the contract prohibiting transport of forest produce outside state is bad and liable to be struck down : *Sardar Dayal Singh Bagga Vs. State Of M.P., I.L.R. (1988) M.P. 183 (D.B.)*

- **Articles 301, 21, 31-C, 39(b), 226, 300-A**, and Hind Cycles Limited and Sen Releigh Limited (Nationalisation) Act, Indian (LXX of 1980) - Provisions of the Act intra vires - Protected under Article 31-C - Constitution of India - Enacted under directive principles contained in article 39(b) - Acquisition of undertaking to secure proper management and sub-serve the public interests - No liability of Central Govt. and Govt. Company prior to taking over of the company except for materials supplied - Material supplied - Meaning of - Cannot include services rendered - Claim before Commissioner for payments - Priority of claim categorised - Right of appeal if petitioner dissatisfied - Commission received by petitioner as agent - Does not come under definition of wages : *Kulbir Singh Vs. Union Of India, I.L.R. (1989) M.P. 703 (D.B.)*

– **Articles 301** and 304 – No averment in petition that petitioners carry on inter – State trade – Effect of Articles 301 and 304 of Constitution, need not be gone into : *Monji Kalyanji & Ors Vs. State Of M.P., I.L.R. (1989) M.P. 133 (D.B.)*

- **Articles 301, 304, 366 (29-A), Entry 52, 54 of Schedule VII and Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam M.P. 1976, Section 2(2), 3(1)(b), Schedule III–Entry Tax–Levy of, under–Constitutional, since the nature of revenue earned was compensatory–Not open to challenge under Article 301–Entry of goods specified in Schedule III for consumption or use in execution of works–Hence liable to tax–If imported for purpose of sale they are not subject to tax–Taxing statute–While interpreting one must have regard to the strict letter of law–If the person/entity sought to be taxed comes within the letter of the law, he must be taxed–Section 3(1)(b) of Entry Tax Act, leaves out "execution of works contract" from definition of "sale"–Transfer of property involved in the execution of contract–Entry tax imposed–Justifiable–Appellants liable to pay entry tax : *M/s Geo Miller & Co. Pvt. Ltd. Vs. State Of M.P., I.L.R. (2004) M.P. (SC) 605 (D.B.)***

-**Articles 301** and 304(b), Proviso–Tax prohibitive or excessive if it hinders free flow of trade and commerce–Tax is prima facie compensatory–Does not come within purview of Article 301 so as to attract proviso to Article 304(b) : *Phoolchand Vs. The State Of M.P. I.L.R. (1968) M.P. 347 (D.B.)*

- **Articles 301, 304 (b) and 305** - Notification of State Government enhancing duty by amending Foreign Liquor Rules - Not an existing law within Article 305 - Also not covered under Article 304 (b) - Still such enhancement of duty not offending Article 301 - Scope of Article 301 and its applicability pointed out : *Lilasons Breweries (P) Ltd., Bhopal Vs. State Of M. P. I.L.R. (1984) M.P. 19 (D.B.)*

- **Article 304 (b)** - Requirements of : *M/S Sudarshan Finance Corporation Madras Vs. State Of M. P. I.L.R. (1979) M.P. 205 (D.B.)*

-**Article 304 (b)**–Imposition of tax does not in any way impede interstate trade or commerce : *M/S. Parbhudas Kishoredas Vs. State Of M.P., I.L.R. (1994) M.P. 307 (D.B.)*

-**Article 304(b)**–Tax hindering movement of trade–Tax can be regarded as restricting freedom of trade for purposes of this Article : *M/S Transport Corporation Of India, Indore Vs. The Chairman, Municipal Council, Municipal Corporation & Anr., I.L.R. (1965) M.P. 522 (D.B.)*

-**Article 304 (b)** and 301, Proviso–Tax prohibitive or excessive if it hinders free flow of trade and commerce–Tax is prima facie compensatory–Does not come within

purview of Article 301 so as to attract proviso to Article 304(b) : *Phoolchand Vs. The State Of M.P. I.L.R. (1968) M.P. 347 (D.B.)*

-Article 309-Removal of person without complying with rules framed under the Article-Person has no right of action : *Kailaschand Vs. The General Manager, Ordance Factory, Khamaria, Jabalpur I.L.R. (1967) M.P. 891 (D.B.)*

-Article 309-Rules framed there-under-Do not abridge or control the "tenure at pleasure" doctrine embodied in Article 310 : *Kailaschand Vs. The General Manager, Ordance Factory, Khamaria, Jabalpur I.L.R. (1967) M.P. 891 (D.B.)*

- Article 309 - Authorises Governor to frame service Rules : *Anant Prakash Polekar Vs. State Of Madhya Pradesh I.L.R. (1979) M.P. 776 (D.B.)*

- Article 309 - Appointment on a regular post 'temporarily' and 'until further orders' - Purpose of - Termination of such appointment on the ground of unsuitability of the employee - Does not amount to punishment : *Ratanlal Khare Vs. State Of M. P. I.L.R. (1985) M.P. 415*

- Article 309 - No rules on a particular subject framed under - State Govt. has powers to issue executive instructions lying down reasonable guide lines : *Dalpratap Singh Vs. State Of M. P. I.L.R. (1981) M.P. 547 (D.B.)*

- Article 309-Transfer - Petitioner working on the post of Head Clerk - Petitioner transferred from Jabalpur to Jorhat - Transfer challenged being malafide-Held-Seniority of employee is made at institute level and not central level-Petitioner due for promotion from 1993 - No one posted in place of petitioner-Order of transfer does not reflect that it is in exigency and requirement of work and administration and public interest-Transfer is normally resorted in same cadre without adversely affecting conditions of service- Seniority being an incidence of service which cannot be eroded or curtailed - Transfer of petitioner being malafide liable to be quashed-Petition allowed. *Harichand Vs. Union Of India, I.L.R. (1994) M.P. 359*

- Article 309 - M.P. Judicial Service (Classification, Recruitment and Condition of Services) Rules (1955), Rule 24(1) - Appointment on probation-Confirmation order not passed-During relevant period - Performance not found to be satisfactory - Subsequent good or bad performance meaningless - Discharged from duties during period of probation without charge sheet and enquiry-Not illegal : *Satya Narayan Athya Vs. High Court Of M.P., I.L.R. (1995) M.P. 457, (D.B.)*

- Article 309, Proviso, Article 14 - Service Law - Appointment - Candidate wrongly selected for appointment – Prescribed qualification not satisfied – Selection to undergo training is per se is illegal - Cancellation of such appointment - Proper –

The ratio of *Shrawan Kumar Jha v. State of Bihar* has no application to the present cases : *State of M.P. Vs. Shyama Pardhi, I.L.R. (1995) M.P. 452 (D.B.)*

-Article 309-Service Rules framed there under by appropriate Government- Cannot be read to put an embargo on prosecution of a Govt. Servant under the Penal statutes –Impugned order framing charge not interfered with : *Badri Prasad Vs. State, I.L.R. (2000) M.P.1316,*

-Article 309 and Government Servant (Temporary and *Quasi*-permanent Service) Rules, M.P., 1965, Rules 3-A and 12-A-Deemed confirmation on completion of probation period-Not applicable to the cases of Judicial Officers-Rule 12-A-Repository power of High Court- Mere mentioning thereof does not affect the impugned orders of termination simplicitor : *Bhurelal Pagare Vs. State, I.L.R.(2000) M.P. 228*

- Article 309 – Service Law - Appointment on probation - Employee continued in service - No order of extension - He could not be deemed to be confirmed automatically - Unless specific order is passed - Deemed to have continued on probation: *Satya Narayan Athya Vs. High Court of M.P., I.L.R. (1995) M.P. 457, (D.B.)*

-Article 309 – Respondents have protection of Statutory Rules under Article 309 – Cannot be denied the pay scale available to them – No infirmity in the impugned Order of Central Administrative Tribunal : *Union of India Vs. D.K. Jain, I.L.R. (2001) M.P. 945, (D.B.)*

- Article 309 and Fundamental Rules, Rule 11 - Performance of services towards census, election preparation of ration card of family Planning are for public purpose : *Devendra Nath Gupta Vs. State Of M. P. I.L.R. (1984) M.P. 36 (D.B.)*

- Article 309-Is merely an enabling provision-Does not impose any duty to legislate or make rules : *A. Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 60 (D.B.)*

-Article 309-Does not fetter power of State Government to exercise its executive power in matter of services : *A. Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 60 (D.B.)*

- Article 309 and Entry 41, List II - Power of Governor to make rules governing conditions of service - Stand curtailed to the extent of provision made in the Act of State legislation : *Rameshwar Dayal Pandey Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 466 (D.B.)*

- **Article 309** – M.P. Judicial Service (Classification, Recruitment and Condition of Services) Rules (1955), Rule 24 – Judicial Service – Probationer – Confirmation – The Rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely fall within the second line of case, namely, Dharam 's case (AIR 1968 SC 1210) and provision for maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. *Dayaram Dayal Vs. State Of M.P., I.L.R. (1997) M.P. 345 (D.B.)*

- **Article 309**, Education Department Technical Branch Class III (Non-Ministerial) Recruitment Rules, M.P., 1980 – Rules Framed by Governor – No lack of legislative competence – No infringement of fundamental rights and no colourable exercise of powers – Rules not ultra vires – Promotion – Legal principles stated – Rules hampering the chances of the promotion of some persons who were entitled consideration prior to coming into force of Rules – Rules held not ultra-vires on this Court : *Madhya Pradesh Class Iii Employees Association, Jabalpur Vs. The Director Of Technical Education Board, Satpula Bhavan, Bhopal, I.L.R. (1989) M.P. 151 (D.B.)*

- **Articles 309** and 14 and 16 and Vishwa Vidyalaya (Sanshodhan) Adhiniyam, M.P. (VI of 1996), Section 49-A-Rule making powers exercised by the legislature while enacting Section 49-A-No exception can be taken on ground that the provision has been given retrospective effect-Seniority list prepared as per newly amended provision-Does not suffer from the vice of any illegality : *Dr, Chain Panwar Vs. State, I.L.R. (2000) M.P. 1396 (D.B.)*.

- **Articles 309, 14 and 16** - Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P. I.L.R. (1985) M.P. 415*

- **Articles 309, 14, 16, 226 and 348** and M. P. Public Works Department Workcharged and Contingency - Paid Employees Recruitment and Conditions of Service Rules, 1976 - Hindi Version of the Rules framed by Governor under Article 309 to prevail over the translated version in English published under Article 348 - The word 'मुख्य अभियंता' means 'Chief Engineer' and not Engineer-in-Chief-Appointment on a regular post 'temporarily' and 'until further orders' - Purpose of - Termination of such appointment on the ground of unsuitability of the employee - Does not amount to punishment- Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P., I.L.R. (1985) M.P. 415*

- **Articles 309, 14, 23 (2), 51-A(D)** and 226 and Fundamental Rules, Rule 11 - Provision under Rule 11 of fundamental Rules - Not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P.* I.L.R. (1984) M.P. 36 (D.B.)

- **Articles 309, 14, 23 (2), 51-A(D)** and 226 and Fundamental Rules, Rule 11 - 'Public purpose' under Article 23 (2) - Meaning of - Performance of duties relating to public purpose - State has a right to compel - Not violative of Article 23 - Words 'Public purpose' and 'national service' used in Article 51 - A(d) - Are synonymous - Performance of public purpose encroaching upon morality and modesty of woman - Cannot be compelled - Article 309 and Fundamental rules, Rule 11 - Performance of services towards census, election, preparation of ration card or family planning are 'for public purpose' - Provision under Rule 11 of Fundamental Rules is not unconstitutional : *Devendra Nath Gupta Vs. State Of M. P.* I.L.R. (1984) M.P. 36 (D.B.)

- **Articles 309, 16, M.P, Services (Gazetted) Recruitment Rules, 1966, Rule 2-** Service Law-Appointment- Prior to amendment in rules channel of recruitment to Assistant Director, Veterinary service was through direct recruitment and promotion in proportion of one is to one-- Notification issued advertising posts-On the date of notification rule were not amended-Held -Selection and recruitment as per notification held valid : *Dr. P.N. Dubey Vs. State Of M.P., I.L.R. (1997) M.P. 14 (SC)* (D.B.)

- **Articles 309, 226** and Police Executive (Non-Gazetted) Service Recruitment Rule, M.P., 1977, Rule 8-Writ petition-Service law-Recruitment and age relaxation-Once the Government frames rules under the proviso two Article 309 it must strictly follow the same-Advertisement cannot travel beyond rules-Concept of relaxation in rule 8 applicable to many categories but does not include Central Government employees-Petitioner found not entitled to age relaxation hence deleted from the list-Petition devoid of merits : *Ashok Kumar Tripathi Vs. State Of M.P., I.L.R. (2005) M.P. 323*

- **Articles 309, 226, 311** and Special Area Development Authority, M. P., Rules, 1976, Rule 3(2)-Writ Petition-Petitioner working on the post of Upper Division Clerk in parental department-Selected and appointed afresh in another department as Head Clerk-His application for the post of Head Clerk was forwarded by the parental department-Both the authorities mutually agreed and the petitioner was absorbed on Head Clerk in the new department-No case of transfer on deputation-When the two authorities have mutually agreed, exercise of power by State Govt. under Rule 3(2) was not called for-Repatriation of petitioner to parent department on the post of UDC amounts to reversion and violative of Article 311 of the Constitution. *Parashu Ram Tiwari Vs. State, I.L.R. (1992) M.P. 73 (D.B.)*

- **Articles 309**, 227 and Administrative Tribunal Act (XIII of 1985), Section 19 – Service Law – Writ Petition – Ordnance Factories and Ordnance Equipment Factories Group ‘C’ and Group ‘D’ (Industrial post) Recruitment Rules 1979 contained in SRO 357, framed under Article 309 of the Constitution – Not superseded at any time – Rules being statutory unless superseded cannot be given a go by – Pay Commission report beginning executive order does not supersede the Rules – Respondents have protection of Statutory Rules under Article 309 – Cannot be denied the pay scale available to them – No infirmity in the impugned order of Central Administrative Tribunal : *Union of India Vs. D.K. Jain, I.L.R. (2001) M.P. 945, (D.B.)*

- **Articles 309 and 311**- Difference between a person who is appointed to officiate on higher post and a person who is appointed to be in charge of current duties of the post in addition to his own-Protection given by Article 311-Cannot be taken away by rules framed either under Article 309 or under any relevant statute : *Ramratan Vs. The State Of M.P. & Ors., I.L.R. (1964) M.P. 242 (D.B.)*

- **Articles 309, 311** - M.P. Civil Services (General Conditions of Service) Rules (1961), Rules 8, 12(a)(ii) – Relevant date for computation of Seniority - Direct recruit appointed on probation for such period as may be prescribed – Probationer to undergo such training and pass such departmental examination during the period of his probation as may be prescribed – Admitted fact that he passed the test later - He cannot claim seniority from date of initial appointment - Seniority would be counted from date of his passing said test. *M. P. Chandoria Vs. State Of M.P., I.L.R. (1996) MP 32 (D.B.)*

-**Article 310**-Words "except as expressly provided by this Constitution" in - Refers to cases of Judges etc : *Kailaschand Vs. The General Manager, Ordnance Factory, Khamaria, Jabalpur I.L.R. (1967) M.P. 891 (D.B.)*

-**Article 310**-President empowered to frame rules or regulations conferring protection similar to that granted by Article 311 : *Sardar Kapoor Singh Vs. Union Of India, I.L.R. (1959) M.P. 397*

-**Articles 310 and 311(2)**-Servants of Union-Hold office during pleasure of President-Pleasure however subject to restrictions under Article 311(2)-Procedure under Article 311(2) followed-Civil Court has no jurisdiction to decide correctness of decision of authorities dealing with them-Servants have no justiciable cause for relief in a Court of law-Principle that a prosecutor cannot be a Judge-Not applicable to departmental enquiries -Exception is when he is personally interested : *Rameshwar Singh Vs. The Union Of India, I.L.R. (1963) M.P. 499*

-Article 310(1)-Premature retirement on invalid pension-Not supportable on the doctrine of pleasure of Governor : *S.P. Shrivastava Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 969 (D.B.)*

- Article 311 - Applies to dismissal or removal of Government servant - But not to his compulsory retirement : *Ghanshyam Das Shrivastava Vs. Chief Conservator Of Forests (General), M. P. Bhopal, M. P. I.L.R. (1980) M.P. 1121 (D.B.)*

-Article 311-Employee holding civil post-Employee transferred to a corporate body subject to condition that conditions of service will remain unaffected-Employee not entitled to protection which cannot be subject-matter of contract : *S. Mazhar Hussain Vs. Divisional Managaer Of The M.P. State Road Transport Corporation, Jabalpur, I.L.R. (1965) M.P. 742 (D.B.)*

-Article 311 - Service Matter - Transfer - Court or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places - Courts or Tribunals not appellate forum to decide on transfers made on administrative grounds - Cannot go into posting of an officer at a particular place: *State of M.P. Vs. S.S. Kourav, I.L.R. (1995) M.P. 25 (D.B.)*

-Article 311-Adverse allegations in confidential report-Not contained in order or reversion-Order does not amount to punishment : *K. Dhruva Rao V. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 1015 (D.B.)*

-Article 311-Derogatory remark against employee passed behind his back-Civil Court, Power of, to declare it as illegal : *The State of Madhya Pradesh Vs. Gajrajsingh, I.L.R. (1971) M.P. 511. (D.B.)*

-Article 311-Dismissal based on several grounds good and bad-Good and bad grounds not inter-mixed-Grounds capable of separation-Dismissal still supportable on good grounds : *The State of Madhya Pradesh Vs. Gajrajsingh, I.L.R. (1971) M.P. 511. (D.B.)*

-Article 311-Order of reversion not containing stigma-Order does not amount to punishment : *K. Dhruva Rao Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 1015 (D.B.)*

-Article 311-Person officiating on particular post temporarily-Has no right to complain about abolition of post : *K. Dhruva Rao Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 1015 (D.B.)*

-Article 311-Procedure under-Has to be valid when servant dismissed with a black mark-Principle applicable even in the case of temporary or provisional employee : *The State Of Madhya Pradesh Vs. Gajrajsingh, I.L.R. (1971) M.P. 511. (D.B.)*

-Article 311-Servant liable to be dismissed or removed after holding Departmental Enquiry-Service cannot be terminated by notice by either party during pendency of enquiry : *V.P. Gidroniya Vs. State Of Madhya Pradesh , I.L.R. (1970) M.P. 249 (D.B.)*

- Article 311 - Condition necessary to be fulfilled to attract the provision : *Rudra Prasad Vs. State Of M. P. I.L.R. (1977) M.P. 38 (D.B.)*

- Article 311 - Loss of seniority - Does not amount to reduction in rank : *Ashok Kumar Mukherjee Vs. The Registrar Of High Court Of M. P. I.L.R. (1977) M.P. 1 (F.B.)*

- Article 311 - Article applicable when reversion is by way of punishment : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- Article 311 - Determination of the nature of order of reversion - Line of demarcation to be drawn on the foundation for order and motive for order : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- Article 311 - Form of order of termination - Not decisive, Court can look to surrounding circumstances - Motive behind reversion not relevant : *S. S. Dausage Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 726 (D.B.)*

- Article 311 - Order ex facie innocuous - Party contending it to be camouflage and in reality a punishment - Party has to plead and prove it : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- Article 311 - Reversion from a higher rank which is temporary or officiating - Order of reversion is not invalid for non-compliance of procedure under this provision : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- Article 311 - Reversion to substantive post - Order does not amount to penalty : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- Article 311 - Simple reversion from higher post which was not substantive - Is not punishment - But is accident of service : *Smt. V. K. Singh Vs. State Of Madhya Pradesh I.L.R. (1978) M.P. 925 (D.B.)*

- **Article 311** - Pay scale - Not the only criterion to ascertain whether person has been reduced in rank : *Ashok Kumar Mukherjee Vs. The Registrar Of High Court Of M. P. I.L.R. (1977) M.P. 1 (F.B.)*

- **Article 311** - Power of High Court to look to circumstances preceding or attendant on the order of termination - If termination is by way of punishment - Article 311 will be attracted : *A. M. Rode Vs. Principal, Government Degree College, Chhindwara I.L.R. (1977) M.P. 400 (D.B.)*

- **Article 311** - Departmental enquiry - Charges framed against Government Servant in - Not intending to hold him liable therefore - He cannot be held guilty on those counts - Government's order reverting him on the report of enquiry officer against such charges - Cannot be sustained : *Bhagwati Prasad Shrivastava Vs. State Of M. P. I.L.R. (1981) M.P. 216 (D.B.)*

- **Article 311** - Powers of Government to keep the absorbed teachers in separate cadre by framing necessary Rules - Petitioner posted in Sagar Division - Order of Revision passed by Divisional Superintendent of Education, Jabalpur Division while retaining powers in respect of Sagar and Damoh Districts - Does not violate the article : *Ravindranath Tiwari V Divisional Superintendent Of Education Jabalpur Division, Jabalpur I.L.R. (1981) M.P. 571 (D.B.)*

- **Article 311** - Quasi - permanent servant acquires security of tenure like a permanent Government Servant and premature termination of his service offends this provision : *A. D. Tannirwar Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 730 (D.B.)*

- **Article 311** - Rule providing for termination of permanent Government Servant - Is violative of this Article : *A. D. Tannirwar Vs. State Of Madhya Pradesh I.L.R. (1981) M.P. 730 (D.B.)*

- **Article 311** - Selection of Civil Judge Class II to Civil Judge Class I - Cannot be deemed to be promotion - Further promotion to Additional District Judge according to seniority - Does not create a new cadre or cadre within cadre of a superior type : *Ashok Kumar Mukherjee Vs. The Registrar Of High Court Of M. P. Jabalpur I.L.R. (1977) M.P. 1 (F.B.)*

- **Article 311** and Civil Services (Classification, Control and Appeal) Rules, M. P., 1966 - Reasons for reaching the conclusion not given and points urged in reply to show cause notice not considered - Whole enquiry and order of dismissal quashed : *Jodhraj Vs. State I.L.R. (1986) M.P. 519*

- **Article 311** and Civil Services (Classification, Control and Appeal) Rules, M. P., 1966 - Show cause notice reciting that decision to remove the employee from service is finally taken - Amounts to prejudging a cause - Whole enquiry and order of dismissal vitiated : *Jodhraj Vs. State I.L.R. (1986) M.P. 519*

- **Article 311**, Clause (3) and Proviso (b) - Clause (3) is applicable where requirement of proviso (b) are complied with : *P. K. Choudhury Vs. Union Of India, I.L.R. (1981) M.P. 822, (D.B.)*

- **Article 311** - Petitioner's involvement in some incidents pertaining to affairs of Students' Union not singly but collectively and not ending in any conviction and also about 8 years old - Such antecedents cannot be the basis for termination of petitioner's services: *Deepak Kumar Pandey Vs. State Of M. P. I.L.R. (1986) M.P. 712*

- **Articles 311** and Service Rules of Employees of M.P. Laghu Udyog Nigam, 1968, Rules 18, 33 and 35 - Natural Justice - Managing Director terminated service of petitioner without notice and enquiry and without the petitioner being heard - Order violates principles of natural justice - Order has to be quashed: *Kalika Prasad Shrivastava Vs. Madhya Pradesh Laghu Udyog Nigam Ltd., Bhopal, I.L.R. (1987) M.P. 211 (D.B.)*

- **Article 311**-Compulsory retirement not by way of punishment--Provisions not attracted : *Horace Ross V The State Of M.P., I.L.R. (1960) M.P. 59 (D.B.)*

- **Article 311** - Servant of Janpada Sabha - Not in Civil Service of Union or State- Article 311 not applicable to his case : *Dattatraya Vs. Janpada Sabha, Burhanpur, M.P., I.L.R. (1960) M.P. 7 (D.B.)*

- **Article 311**-Person not given opportunity to examine Defence witnesses- Amounts to non-compliance with this Article : *Nandkishore Soni Vs. Commissioner, Jabalpur Division, Jabalpur & Ors., I.L.R. (1961) M.P. 932 (D.B.)*

-**Article 311**-Answers given by a witness when cross examination done and completed on one day-Different from those given by him in piecemeal cross-examination made on different dates: *Surendra Kumar Raizada Vs. State Of M.P. I.L.R. (1967) M.P. 179 (D.B.)*

-**Article 311**-Cases not falling under-Pleasure of President or Governor to remove or dismiss person is uncontrolled : *Kailaschand V. The General Manager, Ordnance Factory, Khamaria, Jabalpur I.L.R. (1967) M.P. 891 (D.B.)*

-Article 311-Confirmation ordered to a post which does not exist or not vacant-Order void ab initio-Appointee cannot be said to be validity appointed to the post : *Gopal Prasad Dubey Vs. The Registrar, High Court Of Madhya Pradesh, Jabalpur I.L.R. (1967) M.P. 713 (D.B.)*

-Article 311-Cross examination done with aid of material document-Different in effect from cross-examination done at random and without help of documents : *Surendra Kumar Raizada Vs. State Of M.P. I.L.R. (1967) M.P.179 (D.B.)*

- **Article 311**, Civil Services, (Classification, Control and Appeal) Rules, M.P., 1966, Rules 2 (a), 2(d) and 9(1) (as amended by notification dated 8-8-1977)-Service matter-Disciplinary authority-Delinquent, a Naib Tehsildar-- Suspension by Commissioner during investigation after a trap-Competent Authority-The appointing authority or any authority to which it is sub ordinate or the disciplinary or any authority empowered in that behalf by general or special order may place government servant under suspension-Commissioner has been delegated powers by Governor under the Rules-Held-Order of suspension held valid-Appeal dismissed. *A.K. Jadhav Vs. State Of M.P., I.L.R. (1997) M.P. 21 (SC) (D.B.)*

- **Article 311** – Disciplinary Proceeding – Initiation – Competent Authority – Held – The legal position is well settled that it is not necessary that the authority competent to impose the Penalty must initiates the Disciplinary proceedings and the proceedings can be initiated by any superior authority who can be held to controlling authority who may be an officer subordinate to the appointing authority. *Steel Authority Of India Vs. Dr. R.K. Diwakar, I.L.R. (1997) M.P. 338 (D.B.)*

- **Article 311** - Service Matters - Transfer of officer during imposition of President's Rule - Approval of Governor - Does not mean that Governor should personally sign transfer order - Order signed by delegate of Governor legal and valid : *State Of M.P. Vs. S.S. Kourav, I.L.R. (1995) M.P. 25 (D.B.)*

-Article 311-Retirement does not amount to punishment of removal from service : *Ram Narain Pyasi Vs. State Of M.P., I.L.R. (1965) M.P. 719 (D.B.)*

-Article 311-Principle that person cannot both be prosecutor and a judge-Not applicable to departmental enquiries : *Rameshchandra Vs. The Union Of India I.L.R. (1969) M.P. 955 (D.B.)*

-Article 311-Not applicable to probationary Sub-Inspector unless confirmed-Probationary Sub-Inspector stamped with black-mark-Article applies: *Premchandra Dhalpuria, Ex-Sub-Inspector, Police, Guna, M.P., Vs. The State Through The Inspector General Police, Bhopal I.L.R. (1970) M.P. 881 (D.B.)*

- **Article 311**, Coal India Executives Conduct, Discipline and Appeal Rules 1978- Belated supply of enquiry report-Copy of enquiry report supplied to delinquent officer along with impugned order of punishment-Held-Court to ascertain whether any prejudice has been caused to delinquent by non-supply of report of enquiry officer-No punishment was recommended by enquiry officer in its enquiry report-No ground raised in memo of appeal that prejudice was caused to petitioner due to belated supply of copy of enquiry report-No violation of Principles of Natural Justice. *D.K. Saxena Vs. Coal India Limited; I.L.R. (1994) M.P. 71 (D.B.)*

- **Article 311** - Dismissal from service - Departmental Enquiry- Petitioner working on the post of Officer Grade II- Petitioner served with charge sheet containing 12 charges and statement of allegations - Petitioner could not submit his reply - Inquiring Authority instead of recording evidence of management recorded statement of Petitioner - General question without specifying charges was put that whether Petitioner admits his guilt or not - Petitioner admitted guilt - Statement of Petitioner was recorded in which the Petitioner gave his explanation and denied allegations - I.A. submitting his report on the basis of admission - Nothing on record that Disciplinary Authority considered the defence of Petitioner - Order of dismissal passed - Held - Admission of charges was not unqualified as petitioner had given his defence explaining each and every charge - Sole ground of admission in reply to sole general question enquiry was not obviated - Recording of reasons is one of requirement of principles of Natural Justice - Reasons excludes chance of arbitrariness and assures degree of fairness - Petitioner was not afforded fair opportunity - Enquiry quashed -However respondents are free to hold fresh enquiry in accordance with law. *B.N. Panigrahi Vs. Chairman & Managing Director, Union Bank Of India, I.L.R.(1994) M.P. 350*

- **Article 311** and Rules pertaining to Direct Recruitment of Additional District and Sessions Judges framed by the State Govt. under Notification No. 15706-6640-XXI-B, dated 25th April 1964, Rule 10 - Powers of the High Court regarding confirmation or termination of probationer, under Rule 10 of 1964 Rules - Nature of : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh I.L.R. (1984) M.P. 195 (D.B.)*

- **Article 311**, Rules pertaining to Direct Recruitment of Additional District and Sessions Judges framed by the State Govt. under Notification No. 15706-6640-XXI-B, dated 25th April 1964, Rule 10- Termination of petitioner's services by the High Court under Rule 10 of 1964 Rules - Does not amount to penalty or punishment or causing stigma - Petitioner not entitled to invoke violation of Article 311 even if High Court has considered confidential roll and report of the District Judge : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh I.L.R. (1984) M.P. 195 (D.B.)*

-Article 311-Employees of statutory corporations-Employees not holding civil posts -Article not applicable-Employee holding civil post - Employee transferred to a corporate body subject to condition that conditions of service will remain unaffected-Employee not entitled to protection which cannot be subject-matter of contract :

S. Mazhar Hussain Vs. Divisional Manager Of The M.P. State Road Transport Corporation, Jabalpur I.L.R- (1965) M.P.742 (D.B.)

-Article 311-Not applicable when servant discharged according to terms of contract-Servant liable to be dismissed or removed after holding Departmental Enquiry-Service cannot be terminated by notice by either party during pendency of enquiry-Word "suspension"-Does not end relationship of Master and Servant-Is not "termination of employment"-Madhya Pradesh Government Servants (Temporary and quasi-permanent) Service Rules, 1960-Rule 12-Pre-supposes existence of relationship of employer and employee-During period of suspension, there can be no termination of service by either party-Period of notice cannot be altered by either party : *V.P. Gidroniya Vs. State Of Madhya Pradesh , I.L.R. (1970) M.P. 249 (D.B.)*

-Article 311-Not applicable to servants of Electricity Board-Such servants can invoke aid of statutory Regulations governing their conditions of service-Person officiating on particular post temporarily-Has no right to complain about abolition of post-Order of reversion not containing stigma-Order does not amount to punishment-Adverse allegations in confidential report-Not contained in order of reversion-Order does not amount to punishment-Civil Services (Classification, Control and Appeal) Rules 1962-Rule 55-Conditions under which oral enquiry is necessary : *K. Dhruva Rao Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 1015 (D.B.)*

- Article 311 - Circumstances in which protection under this provision can be sought : *Suresh Chand Choubey Vs. Principal, Govt. Girls' Degree College, Khandwa I.L.R. (1977) M.P. 877 (D.B.)*

- Article 311, Civil Services (Classification, Control and Appeal) Rules, M. P., 1966, Rule 14 and Financial Code, Appendix 5, Rule 2 - Government Servant - Liability of - Departmental enquiry - Charges framed against Government Servant in - Not intending to hold him liable therefore - He cannot be held guilty on those counts - Governments order reverting him on the report of enquiry Officer against such charges Cannot be sustained - Treasury Code - Rule 397, II part - Does not require personal knowledge of Officer for endorsing certificate - Finding of enquiry officer based on misconstruction of Rule 397 - Order cannot be sustained : *Bhagwati Prasad Shrivastava Vs. State Of M.P. I.L.R. (1981) M.P. 216 (D.B.)*

- Article 311 - Revision of Civil Judge Class I to Civil Judge Class II - Whether amounts to reduction in rank - Whether it amounts to punishment - Is attracted where reduction amounts to punishment - "Reduction in rank" - Meaning of - Selection of

Civil Judge Class II to Civil Judge Class I - Cannot be deemed to be promotion - Further promotion to Additional District Judge according to seniority - Does not create a new cadre or cadre within cadre of a superior type - Word "Rank" - implication of - Pay scale - Not the only criterion to ascertain whether person has been reduced in rank - Loss of seniority - Does not amount to reduction in rank : *Ashok Kumar Mukherjee Vs. The Registrar Of High Court Of M. P. Jabalpur, I.L.R. (1977) M.P. 1 (F.B.)*

-Article 311-Person holding temporary post or in officiating capacity-Person has no right to hold that post-Person reverted to original post held by him-Order does not amount to punishment-Rules framed under Section 96-B, Government of India Act, 1915-Rules are laws in force are laws in force-Are kept alive under Article 313 of Constitution-Fundamental Rules 14 and 14-A (c)-Lien on substantive post-Circumstances in which it could be terminated-Could not be terminated even with the employees consent : *B.S. Birthare Vs. State Of M.P., I.L.R. (1972) M.P. 902 (D.B.)*

-Article 311 and Civil Services (General Conditions of Service) Rules, 1961-Applicability to Members of police force-Appointment of member of police force on probation-Termination of service by one month's notice-Validity-Civil Service Regulations applicable to police department-Conflicts between Civil Service Regulations and Police Regulations-Police Regulations to prevail-Constitution of India-Article 311-Not applicable to probationary Sub-Inspector unless confirmed-Probationary Sub-Inspector stamped with black-mark-Article applies-Civil Services (General Conditions of Service) Rules, 1961-Are of general application-Officer continuing in service after expiry of the period of probation-Services terminable on expiry of notice of one calendar month : *Premchandra Dhalpuria, Ex-Sub-Inspector, Police, Guna, M.P., Vs. The State Through The Inspector General Police, Bhopal I.L.R. (1970) M.P. 881 (D.B.)*

– **Article 311** and Service Rules of Employees of M.P. Laghu Udyog Nigam, 1968 – Rules 18, 33 and 35 – Removal of employee from service for absence without prior permission – Service rules contemplate disciplinary action – Employee cannot be visited with such penal consequences without being heard – Natural justice – Managing Director terminated service of Petitioner without notice and enquiry and without the Petitioner being heard – Order violates principles of natural justice – Order has to be quashed: *Kalika Prasad Shrivastava Vs. Madhya Pradesh Laghu Udyog Nigam Ltd., Bhopal, I.L.R. (1987) M.P. 211, (D.B.)*

-Article 311-Superior Officer present during police investigation Presence does not amount to his prejudging the issue or that he has personal interest in the matter-Principle that person cannot both be prosecutor and a judge-Not applicable to departmental enquiries-Evidence Act-Not applicable to departmental enquiry : *Rameshchandra Vs. The Union Of India I.L.R. (1969) M.P. 955 (D.B.)*

-Article 311-Proceedings in integration-Proceedings are administrative in nature - Absorption in course of these proceedings-Reduction in rank occurring-Servant cannot claim protection under this Article- Reduction of servant from a post which he held - Is only a test to determine whether he was or was not reduced in rank, as measure of punishment : *Gopal Pitre Vs. The State Of Madhya Pradesh, I.L.R. (1961) M.P. 42 (D.B.)*

-Article 311-Authority empowered to punish the servant delegating power to another-That other cannot delegate that power to somebody else-Sub-delegation only an irregularity - Does not vitiate enquiry unless prejudice caused - Enquiring Authority to record evidence in proof of charges though servant not desiring to adduce any evidence-Inferences drawn mere surmises-Enquiry is no proper enquiry-Obligation to make departmental enquiry cannot be said to have been duly carried out-Article 311 (2)-Further opportunity to show cause-Contemplates communication of reasons for holding servant guilty : *Anand Narain Shukla Vs. The State Of Madhya Pradesh, I.L.R. (1964) M. P. 231 (D.B.)*

-Article 311-Rules of natural justice-Do not include opportunity of personal hearing-Police Regulations-Have not the force and effect of statutory rules-Difference between a person who is appointed to officiate on higher post and a person who is appointed to be in charge of current duties of the post in addition to his own-Protection Given by Article 311-Cannot be taken away by rules framed either under Article 309 or under any relevant statute-Article 311(1)-Word "subordinate" in - - Refers to the rank and not to the function : *Ramratan Vs. The State Of Madhya Pradesh, I.L.R. (1964) M.P. 242 (D.B.)*

-Article 311-Not applicable to civilian servants connected with defence-Article 310 -President empowered to frame rules or regulations conferring protection similar to that granted by Article 311-Rules 6, 7 and 8 framed under Army Instructions (India), 1949, Instruction No. 212-Provide the same safeguard as is provided by Article 311 - Rule 6-Constitutionality-Rule 8-Several charges framed-Each charge to be considered-Punishment for each charge to be separately proposed-Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952-Rule 15-Applicable not only to cases of dismissal, removal or reduction but also to a case of compulsory retirement : *Sardar Kapoor Singh Vs. Union Of India, I.L.R. (1959) M.P. 397*

- Article 311-Appointment as a probationer or on officiating basis-Nature of service-Termination can be at any time-Object of such appointment-Termination does not give cause' of action-Holding of enquiry optional with appointing authority-Termination before expiry of period of probation-Not necessary to state grounds-University of Saugar Act, 1946, section 14(4)-Power to, decide existence of emergency with Vice-Chancellor -No power in Court to- enquire into existence of

emergency or propriety of action-Section 49(I) and (2)-Parties not invoking provisions of section 49 (1) -Suit for recovery of three months' salary not barred : *Shivnarayan Vs. The Vice - Chancellor, Saugar University, I.L.R. (1960) M.P. 37 (D.B.)*

-Article 311-Appropriate authority, Power of, to depute a responsible and competent official to enquire and report-Natural justice-Impartiality is essential characteristic-High Court, Power of, to decide whether requirements of the Article are satisfied or not : *Ramnetra Vs. The District Superintendent Of Police, Chhindwara, I.L.R. (1967) M.P. 879 (D.B.)*.

-Article 311-Order of confirmation passed by authority having no power-Order void-Does not amount to confirmation-Confirmation ordered to be a post which does not exist or not vacant-Order void ab initio-Appointee cannot be said to be validly appointed to the post-Incumbent given quasi-permanent appointment which is invalid-Termination of his service on discovery of mistake-Does not amount to punishment-Article 226-Point not raised in petition-Point cannot be allowed to be urged : *Gopal Prasad Dubey Vs. The Registrar, High Court Of Madhya Pradesh, Jabalpur I.L.R. (1967) M.P. 713 (D.B.)*

-Article 311-Protection given by, not available to a person who is not in civil service of Union, all India service or civil service of State-Words "Civil Post" in-Meaning of-Civilian in Defence Services (Classification, Control and Appeal) Rules, 1952-Rule 15-Lays down procedure for enquiry-Constitution of India-Article 310-Words "except as expressly provided by this Constitution" in - Refers to cases of Judges etc.-Rules framed under Article 309-Do not abridge or control the "tenure at pleasure" doctrine embodied in Article 310-Article 311-Cases not falling under-Pleasure of President or Governor to remove or dismiss person is uncontrolled-Removal of person without complying with rules framed under Article 309-Person has no right of action : *Kailaschand Vs. The General Manager, Ordnance Factory, Khamaria, Jabalpur I.L.R. (1967) M.P. 891 (D.B.)*

-Article 311-Supplying copies of complaints and statements of witnesses examined during preliminary enquiry just before examination of witnesses-Amounts to want of proper opportunity resulting in improper cross-examination-Cross-examination done with aid of material documents-Different in effect from cross-examination done at random and without help of documents-Answers given by a witness when cross-examination done and completed on one day- Different from those given by him in piecemeal cross-examination made on different dates : *Surendra Kumar Raizada Vs. State Of M.P., I.L.R. (1967) M.P. 179 (D.B.)*

– **Article 311** (Amended in 1976) – Removal from Service although second show cause notice was not necessary – Two reasonable opportunities were given to the

petitioner/Public Servant to meet out the charges – Findings recorded by the Inquiry Officer and concurring with the findings, the State Government issued show Cause Notice proposing the punishment of removal – Matter referred to the P.S.C. – P.S.C. concurred with the findings and the proposed punishment – Order of removal from service passed by the State Govt. – Order is held to be valid – No interference is required by the High Court under the circumstances: *Dr. R.C. Ralhan Vs. State Of M.P.*, I.L.R. (1991) M.P. 350 (D.B.)

- **Article 311** and Civil Services (Classification, Control and Appeal) Rules, M. P., 1966 - Departmental Enquiry - Reasonable opportunity to defend - Denial of - Departmental Enquiry is vitiated - Show cause notice reciting that decision to remove the employee from service is finally taken - Amounts to prejudging a cause - Whole enquiry and order of dismissal vitiated - Speaking order - Meaning of - Reasons for reaching the conclusion not given and points urged in reply to show cause notice not considered - Whole enquiry and order of dismissal quashed : *Jodhraj Vs. State I.L.R. (1986) M.P. 519*

-**Articles 311**, 12 and 14 and Municipal, Rules, M.P., 1968, Rules 13, 35, 38, 49 and 52–Municipalities are creation of statute and fall under Article 12 but its employees do not hold civil posts–In the matter of termination of its employee Article 311(2) not attracted : *Municipal Council, Sabalgarh Vs. Munnalal*, I.L.R. (1992) M.P. 744

-**Articles 311**, 14 and 16, Civil Services (General Conditions of Service) Rules, M. P., 1961, Rule 12 and Govt. Servants (Temporary and Quasi - Permanent Service) Rules, M. P., 1960, Rule 3-Officiation by senior most teacher in a particular School as Head Master and given allowance for extra supervisory work - Nature of such officiation : *M. P. Shikshak Sangh, Rewa Division, Rewa Vs. State Of M. P. I.L.R. (1986) M.P. 624 (D.B.)*

- **Articles 311**, 14 and 16, Civil Services (General Conditions of Service) Rules, 1961 M. P., Rule 12, Govt. Servants (Temporary and Quasi - Permanent Service) Rules, M. P., 1960, Rule 3, Revision of Pay Rules, M. P., 1983, Rule 2 (vi) and Fundamental Rules, Rule 9 (19) - Prior to 1-4-1981 only one common cadre and one scale of pay each for ADIS/Head - Master UDT/Instructors etc for Middle School teachers and Head Master/LDT for Primary School teachers - Officiation by senior most teacher in a particular school as Head Master and given allowance for extra supervisory work - Nature of such officiation - Creation of separate cadre for Head Master w. e. f. 1-4-1981 according to Choudhary Pay Commission Report - Officiating Head Master prior to 1-4-1981 cannot be treated as Head Master in accordance with Choudhary Pay Commission Report - Educational Authorities ordering Such Head Masters to join as U. D. T. and L. D. T. - Not violative of

Articles 311, 14 or 16 or Rules of 1961 and other Rules : *M. P. Shikshak Sangh, Rewa Division, Rewa Vs. State Of M. P. I.L.R. (1986) M.P. 624 (D.B.)*

-**Articles 311 and 16** - Character verification' of public servant - Necessity of its completion before appointment or soon thereafter - Termination of petitioner's service being arbitrary, punitive and violative of articles 16 and 311 liable to be quashed : *Deepak Kumar Pandey Vs. State Of M. P. I.L.R. (1986) M.P. 712*

- **Articles 311, 16**, Vishwavidyalaya Adhinyam M.P. 1973, Section 49., University Grants Commission Act, 1956, Section 12- Section 49 provides recruitment of Professors, Readers and Lecturers by way of direct recruitment— Unless suitable amendments provides other source of recruitment, mere recommendation by the Commission for adoption of merit promotion scheme, promotions on basis of merit promotion scheme is not legal—Promotion of Readers, Professors promoted under merit promotion scheme - Held ex-cadre posts form a distinct class from cadre employees, namely direct recruited Readers, Professors - For purposes of seniority and promotion—Direct recruit and promotee Readers and Professors cannot be treated equally — Inter-se seniority fixed on basis of continuous officiation – Illegal. *Dr. Rashmi Srivastava Vs. Vikram University, I.L.R. (1995) M.P. 102 (D.B.)*

- **Articles 311 and 16** and Local Authorities School Teachers (Absorption in Government Service) Rules, M. P., 1964, Rule 12 - Reduction in rank - Petitioner promoted as Upper Division Teacher on basis of seniority list prepared on wrong interpretation of Absorption Rules - Discovery of mistake and preparation of fresh seniority list according to Rules - Reversion of petitioner as Lower Division Teacher on its basis - Does not amount to reduction in rank - Article 311 not infringed - Civil Services (General Conditions of Service) Rules, M. P., 1961 - Rule 12 - Preparation of seniority list of Lower Division Teachers division-wise - Not contrary to this Rule - Powers of Government to keep the absorbed teachers in separate cadre by framing necessary Rules - Petitioner posted in Sagar Division - Order of Revision passed by Divisional Superintendent of Education, Jabalpur Division while retaining powers in respect of Sagar and Damoh Districts - Does not violate Article 311 - Precedent - High Court in some case interpreting certain Rules framed by Government - Petitioner not a party to that case - Judgment is binding as precedent regarding interpretation of Rule : *Ravindra Nath Tiwari Vs. Divisional Superintendent Of Education, Jabalpur Division, Jabalpur, I.L.R. (1981) M.P. 571, (D.B.)*

- **Articles 311 and 16** and Labour Service (Class III Non-gazetted) Recruitment Rules, M. P., 1966 - Appointment of petitioner as Labour Sub-Inspector-Termination on the basis of character verification that police had instituted some criminal cases against him in the past - Validity of - Petitioner's involvement in some incidents pertaining to affairs of students' Union not singly but collectively and not ending in

any conviction and also about 8 years old - Such antecedents cannot be the basis for termination of petitioner's services, Articles 18 and 311 Character verification' of public servant - Necessity of its completion before appointment or soon thereafter - Termination of petitioner's service being arbitrary, punitive and violative of articles 16 and 311 liable to be quashed : *Deepak Kumar Pandey Vs. State Of M. P. I.L.R. (1986) M.P. 712*

-Articles 311, 226–Petitioner as a member of Civil Services safeguard under Article 311 of Constitution cannot be denied–Requirement of termination–One month's notice or pay plus allowances in lieu thereof–Not complied with–Order of termination not passed by appointing authority but an authority subordinate to him–Order of termination quashed : *Chatrapal Thakur Vs. Assistant Commissioner of Coalmines Provident Fund, I.L.R. (2002) M.P. 76 (D.B.)*

- **Articles 311, 226 and 227** - Withdrawal of previous petition without any orders on merits - Subsequent petition on the same cause of action not barred : *Wincent Warnor Vs. M. P. S. R. T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

- **Articles 311, 226 and 227 and Industrial Relations Act, M. P. (XXVII of 1960), Sections 31 and 62** - Petitioner employed by General Manager of Central Provinces Transport Services a departmental undertaking of M. P. State Govt. - His services transferred to M. P. S. R. T. Corporation without prejudice to his conditions of service - Protection of Article 311 continues to be available to the petitioner - Termination of his service by Divisional Manager is illegal - Petitioner charge for remaining absent without leave and without reasonable cause - Charges held proved in domestic enquiry and punishment of termination of service ordered - Labour Court holding domestic enquiry not in accordance with law and proceeded to examine merits of the case - Labour Court has jurisdiction to decide the question of misconduct and also quantum and propriety of punishment – Labour Court finding that petitioner was absent without leave but not finding that it was without reasonable cause - Order of Labour Court directing re-instatement of the petitioner without back wages restored and order of Industrial Court set aside - Withdrawal of previous petition without any orders on merits - Subsequent petition on the same cause of action not barred : *Wincent Warnor Vs. M. P. S. R. T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

- **Articles 311, 226, 235 and 356** - Rules pertaining to Direct Recruitment of Additional District and Sessions Judges framed by the State Govt. under Notification No, 15706-6640-XXI-B, dated 25th April 1964 - Rule 10 and Civil Services (General Conditions of Services) Rules, M. P., 1961 - Rule 8 - Direct recruitment of Additional District and Sessions Judges under 1964 Rules - Provisions of sub-rules (6) and (7) of Rule 8 of 1961 Rules - Not applicable - A probationer under 1964 Rules cannot be deemed to be confirmed after the period of probation which is not extended under sub-rule (ii) of Rule 10 thereof - Such probationer does not become permanent or

temporary employee also - Article 311-Powers of the High Court regarding confirmation or termination of probationer, under Rule 10 of 1964 Rules - Nature of - Termination of petitioner's services by the High Court under Rule 10 of 1964 Rules - Does not amount to penalty or punishment or causing stigma - Petitioner not entitled to invoke violation of Article 311 even if High Court has considered confidential roll and report of the District Judge - Article 356 - Proclamation issued thereunder - President of India authorising Governor to exercise certain powers exercisable by him - Effect of Governor does not become delegate of the President in exercise of those powers - Article 226 - Petitioner without being confirmed granted increment and earned leave under mistake - After termination of his services recovery sought to be made - High Court will not interfere : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh, I.L.R. (1984) M.P. 195 (D.B.)*

- **Articles 311 and 309**- Difference between a person who is appointed to officiate on higher post and a person who is appointed to be in charge of current duties of the post in addition to his own-Protection given by Article 311-Cannot be taken away by rules framed either under Article 309 or under any relevant statute: *Ramratan Vs. The State Of M.P., I.L.R. (1964) M.P. 242 (D.B.)*

-**Article 311 and 311(2)**-Petitioner terminated while on probation on ground of unsuitability-Article 311 not attracted : *Bhurelal Pagare Vs. State, I.L.R. (2000) M.P. 228,*

-**Article 311(1)**-Word "subordinate" in-Refers to the rank and not to the function: *Ramratan Vs. The State Of Madhya Pradesh, I.L.R. (1964) M.P. 242 (D.B.)*

-**Article 311(1)**-Watch and Ward Department-Superintendent head of the department and appointing authority-Name of department changed-Chief Security Officer designated as head in place of Superintendent.-Employee dismissed by Assistant 'Security Officer-Dismissal not valid : *Balakdas Vs. Assistant Security Officer, I.L.R. (1959) M.P. 524 (D.B.)*

-**Article 311(2)**-Delinquent given opportunity to adduce evidence and to cross-examine witnesses-Opportunity not availed of-No grievance can be made at later stage : *State Of Madhya Pradesh Vs. Bhagwant Rao, I.L.R. (1975) M.P. 672 (D.B.)*

-**Article 311(2)**-Absence of service rule-Compulsory retirement on ground of physical incapacity-Is a punishment-If services are proposed to be terminated reasonable opportunity to servant should be given : *S.P. Shrivastava Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 969 (D.B.)*

-**Article 311(2)**-Further opportunity to show cause-Contemplates communication of reasons for holding servant guilty : *Anand Narain Shukla Vs. The State Of M.P., I.L.R. (1964) M.P. 231 (D.B.)*

-Article 311 (2) - Charge-sheet mentioning punishment proposed - No inference that Enquiry Officer had made up his mind regarding charge - Does not vitiate departmental enquiry : *Ramshakal Yadav Vs. The Chief Security Officer, Railway Protection Force, Bombay I.L.R. (1969) M.P. 972 (D.B.)*

-Article 311(2)- "Reasonable opportunity to defend"-Includes not only right to cross examine witnesses for department but to cross examine them effectively-Usefulness of previous statement of witness-Not to be determined by department-Document of which copies can be asked by the person charged and which ought to be supplied by department : *The State Of Madhya Pradesh Vs. Gopi Nath Shukla I.L.R. (1966) M.P. 404 (D.B.)*

-Article 311 (2)-Constitutional safe-guard should be substantial and not merely a show of opportunity : *Sursariprasad Vs. The State Of Madhya Pradesh, I.L.R. (1962) M.P. 288 (D.B.)*

-Article 311(2)-Reasonable opportunity for defending not given-Order of removal is a nullity-Is non-existent in the eye of law: *The Divisional Superintendent, Central Railway, Jabalpur Vs. Onkarnath Gupta I.L.R. (1968) M.P. 963*

-Article 311(2)-Attracted-Enquiry ought to have been conducted before termination : *Bhurelal Pagare Vs. State, I.L.R.(2000) M.P. 228,*

-Article 311(2)-Termination of services due to opinion entertained regarding suitability-Termination does not amount to punishment: *D.K. Rai, Vs. Excise Commissioner, M.P. I.L.R. (1968) M.P. 38 (D.B.)*

-Article 311(2)-Termination of services during pendency of enquiry about charge-Does not amount to punishment: *D.K. Rai, Vs. Excise Commissioner, M.P. I.L.R. (1968) M.P. 38 (D.B.)*

-Article 311(2)-Termination of services of servants on probation according to rules-Termination does not amount to dismissal or removal : *D.K. Rai, Vs. Excise Commissioner, M.P. I.L.R. (1968) M.P. 38 (D.B.)*

-Article 311(2)-Delinquent examined several times by Enquiry Officer-Enquiry cannot be said to be a fair enquiry and delinquent officer cannot be said to have reasonable opportunity : *Ramshakal Yadav Vs. The Chief Security Officer, Railway Protection Force, Bombay I.L.R. (1969) M.P. 972 (D.B.)*

-Article 311(2)-Elaborate cross-examination by Enquiry Officer from time to time-Constitutes serious infirmity in enquiry : *Ramshakal Yadav Vs. The Chief Security Officer, Railway Protection Force, Bombay . I.L.R. (1969) M.P. 972 (D.B.)*

-Article 311(2)-Grant of leave-Surely within discretion of Government-Is not justiciable -No power in Court to interfere : *Vishwanath Vinayak Vaishampayan Vs. The State* , I.L.R. (1969) M.P. 986 (D.B.)

-Article 311(2)-Retirement without blemish-Does not amount to removal : *Vishwanath Vinayak Vaishampayan Vs. The State* , I.L.R. (1969) M.P. 986 (D.B.)

-Article 311(2)-Pre-mature retirement-Not a punishment : *Vishwanath Vinayak Vaishampayan Vs. The State* , I.L.R. (1969) M.P. 986 (D.B.)

-Article 311(2) -Making of representation to show cause notice-Does not mean that Government servant can canvass only regarding sentence-Can also show that charges have not been proved : *Ghanshyamdas Shrivastava Vs. The State Of Madhya Pradesh*, I.L.R. (1971) M.P. 462. (D.B.)

-Article 311(2), as amended-Scope of : *Ghanshyamdas Shrivastava Vs. The State Of Madhya Pradesh*, I.L.R. (1971) M.P. 462. (D.B.)

- **Article 311 (2)** - Master and Servant - Servant accepting contractual appointment for fixed term - Master can re-employ him on same terms or on fresh terms or not employ at all - When service terminated by expiry of terms - Article 311 (2) of Constitution does not come into play : *Rudra Prasad Vs. State Of M. P.* I.L.R. (1977) M.P. 38 (D.B.)

- **Article 311 (2)** - Objection about non - examination of witness at inquiry not taken - Does not preclude him from raising objection subsequently where defect in inquiry is fatal : *Shri Shiam Babu Vs. State Of M. P.* I.L.R. (1977) M.P. 871 (D.B.)

- **Article 311 (2)** - Party given chance to cross-examination witness examined behind his back - Does not cure defect : *Shri Shiam Babu Vs. State Of M. P.* I.L.R. (1977) M.P. 871 (D.B.)

-Article 311(2)-Denial of assistance of lawyer in certain circumstances-May amount to denial of reasonable opportunity : *Harish Chandra Pathak Vs. The Registrar Of Co-Operative Society, M.P., Indore*, I.L.R. (1967) M.P. 872 (D.B.)

-Article 311(2)-Difficulty of proof -No substitute for proof necessary to establish charge-Cannot support conclusion grounded on suspicion: *Harish Chandra Pathak Vs. The Registrar Of Co-Operative Society, M.P., Indore*, I.L.R. (1967) M.P. 872 (D.B.)

-Article 311(2)-High Court, Power of, to decide whether requirements of the Article are satisfied or not : *Ramnetra Vs. The District Superintendent Of Police, Chhindwara, I.L.R. (1967) M.P. 879 (D.B.)*

-Article 311(2)-Incumbent given quasi-permanent appointment 'which' is invalid-Termination of his service on discovery of mistake-Does not amount to punishment : *Gopal Prasad Dubey Vs. The Registrar, High Court Of Madhya Pradesh, Jabalpur I.L.R. (1967) M.P. 713 (D.B.)*

- Article 311(2)-Provision mandatory and for benefit of Civil servant-Article contemplates giving of reasonable opportunity-Natural justice-Does not contemplate personal hearing at every stage-Personal hearing before issue of show cause notice-Necessity-"Reasonable opportunity" in-Whether includes personal hearing before notice : *C.A. D'souza Vs. State Of M.P., I.L.R. (1961) M.P. 202 (D.B.)*

-Article 311(2)-Copies of statement of witness not supplied-Amounts to not giving adequate opportunity to defend the charge-Officer charged entitled to copies of statements in pre -enquiry of those persons who have been subsequently examined during departmental enquiry : *Nand Vs. Superintendent, Gun Carriage Factory, Jabalpur, I.L.R. (1959) M.P. 500 (D.B.)*

-Article 311 (2)-Servant compulsorily retired before qualifying service for proportionate pension on ground of inefficiency-Does amount to punishment : *Mir Khurshed Ali Vs. Inspector General Of Police, M.P. Bhopal & 2 Ors., I.L.R. (1959) M.P. 351 (D.B.)*

- Article 311 (2) - Case falling under any of the three provisos - No enquiry is obligatory - Same principle applies to a case under Rule 14 : *P. K. Choudhury Vs. Union Of India I.L.R. (1981) M.P. 822 (D.B.)*

- Article 311 (2) - Disciplinary authority has to hold summary enquiry even in cases falling under clause (ii) of Rule 14 : *P. K. Choudhury Vs. Union Of India I.L.R. (1981) M.P. 822 (D.B.)*

-Article 311(2)-Termination of service brought about by exercise of contractual right and compulsory retirement in term of a specific rule-Does not tantamount to infliction of punishment-Does not attract this article : *S.P. Shrivastava Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 969 (D.B.)*

-Article 311 (2) – Condonation of Misconduct – The State Government could not have excluded the respondent from the zone of consideration, merely on the ground that a preliminary inquiry to enquire into allegations of misconduct attributed to him

was pending – In such a situation, the doctrine of condonation of misconduct cannot be applied as to was off the acts of misconduct which was the subject matter of preliminary enquiry – We are, therefore, of opinion that the promotion of the respondent to the post of Assistant Conservator of Forest would not amount to condonation of misconduct alleged against him which was the subject matter of preliminary inquiry. Consequently, the punishment imposed on the respondent by the State Government was valid and legal. *State Of M.P. Vs. R.N. Mishra, I.L.R. (1997) M.P. 353 (SC) (D.B.)*

-Article 311(2)-Show cause notice not mentioning that previous record is taken into consideration-Punishment not based solely on previous record-Proceedings not vitiated if notice about previous record not given to delinquent : *Nathuram Dansena Vs. The State Of M.P., I.L.R. (1970) M.P. 37 (D.B.)*

-Article 311(2)-Government servant failing to avail of the opportunity-No right to complain that no opportunity was given-Article 311(2), as amended-Scope of-Making of representation to show cause notice-Does not mean that Government servant can canvass only regarding sentence-Can also show that charges have not been proved : *Ghanshyamdas Shrivastava Vs. The State Of Madhya Pradesh, I.L.R. (1971) M.P. 462. (D.B.)*

- Article 311 (2) - Essential principles of natural justice - Party given chance to cross - examine witness examined behind his back - Does not cure defect - Objection about non-examination of witnesses at inquiry not taken - Does not preclude him from raising objection subsequently where defect in inquiry is fatal : *Shri Shiam Babu Vs. State Of M. P. I.L.R. (1977) M.P. 871 (D.B.)*

-Article 311(2)-Delinquent entitled to copies of statement of witnesses examined in preliminary enquiry if asked for in case those witnesses are examined in departmental enquiry : *Prabhakar Narayan Menjoge Vs. State Of M.P. I.L.R. (1969) M.P. 175 (F.B.)*

-Article 311(2)-Show cause notice failing to state that officer concurred with conclusion reached by Enquiry Officer-No ground to hold that there was no reasonable opportunity-Charge-sheet mentioning punishment proposed-No inference that Enquiry Officer had made up his mind regarding charge-Does not vitiate departmental enquiry-Delinquent examined several times by Enquiry Officer-Enquiry cannot be said to be a fair enquiry and delinquent officer cannot be said to have reasonable opportunity-Elaborate cross-examination by Enquiry Officer from time to time-Constitutes serious infirmity in enquiry : *Ramshakal Yadav Vs. The Chief Security Officer, Railway Protection Force, Bombay. I.L.R. (1969) M.P. 972 (D.B.)*

-Article 311(2)-Person appointed substantively to a permanent post in Government service-Termination of service of such servant-Is per se a punishment-Termination of service brought about by exercise of contractual right and compulsory retirement in term of a specific rule-Does not tantamount to infliction of punishment-Does not attract this article-Absence of service rule-Compulsory retirement on ground of physical incapacity-Is a punishment-If services are proposed to be terminated reasonable opportunity to servant should be given-Constitution of India-Article 310(1)-Premature retirement on invalid pension-Not supportable on the doctrine of pleasure of Governor-Civil Service Regulations-Rule 441-Is enabling provision-Does not confer on Government power to retire a person-Fundamental Rule 74 and Service Rule 17(b)-Do not permit State Government to refer a case of civil servant to Medical Board for purposes of invalidation-Does not permit Government to retire a servant on invalid pension-Service Rule 17(b) to be read in context of Fundamental Rule 74-Implication of Service Rule 17(b) : *S.P. Shrivastava Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 969 (D.B.)*

-Article 311(2)-Government servant compulsorily retired before reaching age of superannuation in the absence of rules framed under Article 309-Amounts to dismissal or removal-Memorandum of State Government-Directions in-Have all characteristics of a rule-Publication of direction in Gazette-Does not affect validity or effectiveness-Non publication of direction not fatal-Direction not discretionary and not hit by Article 14 of the Constitution : *Shri I.N. Saksena Vs. The State Of M.P. I.L.R. (1966) M.P. 216 (D.B.)*

-Article 311(2)-Departmental enquiry-Not giving of copies of relevant documents to persons charged-Amounts to not giving reasonable opportunity-"Reasonable opportunity to defend"-Includes not only right to cross examine witnesses for department but to cross-examine them effectively-Usefulness of previous statement of witness-Not to be determined by department-Document of which copies can be asked by the person charged and which ought to be supplied by department-Rule of natural justice-Requires giving opportunity to be heard-Casts no obligation to be heard through a pleader unless statute or statutory rule provides to that effect-Civil Services (Classification, Control and Appeal) Rules-Rule 15-Circumstances in which person charged can be allowed to be heard through a counsel : *The State Of Madhya Pradesh Vs. Gopi Nath Shukla I.L.R. (1966) M.P. 404 (D.B.)*

-Article 311(2)-Appointing authority-Delegation of power by, regarding enquiry-Validity-Denial of assistance of lawyer in certain circumstances-May amount to denial of reasonable opportunity-Difficulty of proof-No substitute for proof necessary to establish charge-Cannot support conclusion grounded on suspicion : *Harish Chandra Pathak Vs. The Registrar Of Co-Operative Society, M.P., Indore, I.L.R. (1967) M.P. 872 (D.B.)*

- **Article 311 (2)**-Expression "terminate" or "discharge" or "dispense With" in the order-Not Conclusive-Appropriate tests to be applied to determine whether they amount to dismissal or removal from service-Protection granted applies both to temporary and permanent servants -Mere termination of service per Se does not amount to punishment-Termination when amounts to punishment and when not-Holding of an enquiry of the servant not conclusive to determine whether termination was by way of penalty or not-To determine whether termination was by way of punishment or removal-Wording of order to be taken into consideration-Termination of service because of neglect in discharge of duties and because of suspicious character coupled with holding of pay-Amounts to punishment : *Babulal Vs. The Principal, Government Engineering College, Jabalpur, I.L.R. (1960) M.P. 235 (D.B.)*

-**Article 311(2)** - Central Excise Manual, Vo.1, Para 155-A, Rule I - Interpretation of Statute - Grammatical construction clear and manifest - It to prevail in the absence of strong and obvious reasons to contrary - Excise Manual Vol.1,Para 155-A, Rule 1 - Provisions penal-None to be brought under it except by express language-Article 311(2) - Reversion of servant from officiating post to his original substantive post - Amounts to penalty-Article 311 (2) attracted - Article 311(2)-Contemplates opportunity at two stages : *Rajaram Richharia Vs. State Of M.P., I.L.R. (1957) M.P. 415 (D.B.)*

-**Article 311(2)**, Proviso (a) and Rule 19 of Central Civil Services (Classification, Control and Appeal) Rules, 1965-Ground of action under -Is conduct and not conviction-No question of disqualification arises in such cases-Conviction can be considered as proof of the conduct-Obviates the enquiry into facts-Probation of Offenders Act-Section 12-Not applicable to cases of dismissal of servant on account of his conduct : *Premkumar Vs. The Union Of India, I.L.R., (1975) M.P., 274 (D.B.)*

- **Article 311 (2), 226** - Non-proof of one of several charges if not affects the opinion and decision of Disciplinary Authority impugned order of termination will stand : *Surjit Singh Vs. New India Assurance Co. Ltd. I.L.R. (1990) M.P. 489 (D.B.)*

- **Articles 311 (2)** and 226 and Vishwavidhyalaya Adhinyam, Madhya Pradesh (XXII of 1973), Statute 31, Clause 5 (1) - Court, Power of - Order of termination ex-facie innocuous - Not founded on misconduct - No enquiry necessary - Court cannot embark on any enquiry for purposes of discovering motive : *Vishwanath Vs. Bhopal Vishwavidyalaya, Bhopal, I. L. R. (1981) M.P. 93, (D.B.)*

- **Articles 311 (2)** and 226 and Vishwavidhyalaya Adhinyam, Madhya Pradesh (XXII of 1973), Statute 31, Clause 5 (1) - Petitioners appointed temporarily and put on probation - Govt. terminating service - Clause 5 (1) does not apply - Court, Power

of - Order of termination ex-facie innocuous - Not founded on misconduct - No enquiry necessary - Court cannot embark on any enquiry for purposes of discovering motive : *Vishwanath Vs. Bhopal Vishwavidhyalaya, Bhopal, I. L. R. (1981) M.P. 93, (D.B.)*

-Articles 311(2) and 226 - Person raising certain defences during departmental enquiry-No opportunity to prove the defence given-Person entitled to notice after ultimate findings are recorded-Notice under Article 311 (2)-Constitutional protection-Cannot be whittled down on ground of immaterial irregularity or absence of prejudice : *Benimadhav Vs. The State Of Madhya Bharat Through The Chief Secretary, I.L.R. (1958) M.P. 435 (D.B.)*

- Articles 311(2), 226 and Departmental Enquiry – Second show cause notice done away by 42nd Amendment – No rule or law to furnish copy of Inquiry Officer's report before inflicting punishment – Previously recorded ex-parte statement of witness when can be taken into account – Scope of interference by High Court under Article 226 – Non-proof of one of several charges if not affects the opinion and decision of Disciplinary Authority impugned order of termination will stand : *Surjit Singh Vs. New India Assurance Co. Ltd., I.L.R. (1990) M.P.489 (D.B.)*

-Article 311(2) and 311-Petitioner terminated while on probation on ground of unsuitability-Article 311 not attracted : *Bhurelal Pagare Vs. State, I.L.R.(2000) M.P. 228,*

- Article 315 and 320, 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 - Appointment in cases not covered by Regulations 3 and 5 - Direct recruitment can be made only in consultation with Public Service Commission : *Adarshkumari Bharti Vs. K. N. Sinha I.L.R. (1980) M.P. 297 (D.B.)*

- Article 315 and 320, 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 - 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 : *Adarshkumari Bharti Vs. K. N. Sinha I.L.R. (1980) M.P. 297 (D.B.)*

- Article 315 and 320, 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 : *Adarshkumari Bharti Vs. K. N. Sinha, I.L.R. (1980) M.P. 297 (D.B.)*

-Article 320-Clause 3-Provision not mandatory-Non-compliance thereof does not furnish cause of action to civil servant : *A Laxmandas Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 60 (D.B.)*

- Article 323-A, Administrative Tribunals Act, 1985, Sections 14, 15, and 28 – Reference – Petitions challenging the selection process filed before High Court – Objection raised by respondent regarding maintainability of writ petition in view of Sections 14, 15 and 28 of Administrative Tribunals Act, 1985 – Cleavage of opinion in two Division Bench Decisions in this regard – Matter placed before Full Bench – Pre-recruitment dispute is nothing but dispute concerning recruitment within meaning of Article 323-A or Constitution of India – Dispute lie within jurisdiction of Administrative Tribunal – Writ Petition not maintainable : *Usha Narawariya (Dr.) Vs. State of M.P., I.L.R. (1993) M.P. 66, (F.B.)*

-Article 323-A or 323-B-Award passed by pre-existing Tribunals and not constituted under Article 323-A or 323-B of the Constitution-Only Single Bench has jurisdiction to adjudicate the writ petition under Articles 226/227 of the Constitution arising from such an award-Directions of Hon'ble Supreme Court in L. Chandra Kumar's Case confines to only orders passed by Tribunal constituted under Article 323-A or 323-B of the Constitution-Reference answered accordingly : *Kedia Distilleries Ltd. Vs. General Secretary, Chhattisgarh Chemical Mill Mazdoor Sangh, Rajnandgaon, I.L.R. (2000) M.P. 103 (F.B.)*

- Article 324 - Representation of Peoples Act, 1951 - Sections 30, 57, 100, 153 - Election Postponed by the Election Commission on the ground fthat Election Petitioners father who was the Governor of Himachal Pradesh at the relevant time was present during the peak election period and his presence hindered free and fare elections - Action challenged - Held - There can be no doubt that within the scope of powers of Election Commission under Article 324 of the Constitution it is inherent power to postpone the election also, in certain exigencies, which need not be named or specified by Courts - It is for the Election Commission to consider whether an exigency is such which requires such a step - It is not that the order of postponement

is without jurisdiction - Such an order by Election Commission is not to be passed u/s 57 of Representation of the People Act 1951 - Section 57 gives certain authority in prescribed exigencies to returning officer or polling officer to only postpone the polling in a particular polling booth or booths - These situations are interruption of voting or obstruction to voting by riot or open violence or natural calamity or any other sufficient cause - This provision is restricted to exercise of powers by Presiding Officers of the polling stations or Returning Officers of that area - The powers of Election Commission are much wider and are exercised under Article 324 of the Constitution - The plenary nature of these powers has been fully accepted by Supreme Court of India - The question is whether it can be said that the type of exigencies due to which, the Election Commission postponed this election was such for which this power should have been exercised - As we have seen in detail, the situation was that the Election Commission felt that the purity of election was being jeopardised because Governor of another State was helping his son in the election, in view of the Election Commission - If that was his view and he took an inference that purity of election was being adversely affected, then in order to maintain the purity of elections, it cannot be said that the Election Commission abused its powers - The petitioner has failed to show in any manner that the result of the election has been materially affected regarding the returned candidate by postponement of elections of this constituency. *Sayed Ahmed V. Brijendra Nath Pathak, I.L.R. (1997) M.P. 124*

-Article 329-Special Rules framed by High Court relating to Election Petition-Provision to spare-Quarter margin on left side and ½ inch open space on top and at the bottom of the page- Provision mandatory- Not complied with- Petition filed in Hindi language-Election petition filed not in strict compliance of Special Rules framed by High Court for specific purpose- Petition cannot be entertained : *Badan Raghuvanshi Vs. B. Rajgopal Naidu, I.L.R. (2000) M.P. 830*

-Articles 329, 225 and States Reorganization Act (XXXVII of 1956), Section 51-Rule framed by the High Court in exercise of powers under, for regulating proceeding in an Election petition-Provisions mandatory : *Jai Bhan Pawaiya Vs. Shri Madhavrao, I.L.R. (2000) M.P. 1103 .*

-Article 329(b) and Representation of the People Act (XLIII of 1951)-Section 80-Defeated candidate made respondent-Such candidate cannot be allowed to make allegation so as to convert written statement into election petition : *Bhartendra Singh Vs.. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

- Article 329 (b)-Not offended by the provision of appeal in Section 116-A-Appeal against decision of Election Tribunal competent : *Ramakant Vs. Bhikulal & Ors., I.L.R. (1958) M.P. 661 (D.B.)*

- **Article 329 (b)**- "Election" in, meaning of-High Court-Power to interfere with order of Returning Officer : *Lal Chandra Bhan Shah Vs. The Returning Officer, (D. C.), Seoni, I.L.R. (1957) M.P. 150.*

- **Articles 330, 332 and 226** – Voters list wrongly including co-opted panchas – Alternative remedy of election petition available – No interference in writ jurisdiction – Election when can be set aside in such cases: *Ramesh Rewatkar Vs. Returning Officer, Krishi Upaj Mandi, Pandhurna, I.L.R. (1987) M.P. 103, (D.B.).*

- **Articles 335 and 16 (1) (2)** - Reservation for Scheduled Caste and Scheduled Tribes - Quota fixed in the circulars of the Railway Board dated 20 - 4 - 1970, 29 - 4 - 1970 and 11-1-1973 - Is not the minimum but the maximum - Reservation is to the posts and not to the vacancies as and when they occur - Promotion of Scheduled Castes and Scheduled Tribes candidates beyond reservation quota in any grade - Cannot be made provided such candidates holding post by virtue of the reservation quota in the grade below - Appointment or promotion made in excess of reservation quota - To be adjusted towards future vacancies - Promotees not, however, to be demoted : *G. C. Jain Vs. Divisional Rail Manager, Jabalpur I.L.R. (1986) M.P. 150 (D.B.)*

- **Articles 335, 16(4), 226** – Writ Petition – Recruitment in Defence Services – Claim for age relaxation – Refusal – Circulars or office memoranda providing age relaxation to reserved category candidates are not applicable to defence services recruitment – Advertisement not providing for age relaxation – Action not violative of Articles 16(4) or 335 of the Constitution : *Ku. Veena Ambedkar Vs. Union of India, I.L.R. (2001) M.P. 1341,*

-**Article 341**- "Dusadh" neither a Scheduled Tribe nor a Scheduled Caste-A member of a Tribe described as Scheduled Tribe in Bihar-Such person shifting to Madhya Pradesh-Such person cannot be regarded as member of Schedule Tribe in Madhya Pradesh : *Jyoti Bhushan Pratap Singh Vs. Bodhram Muritram ., I.L.R. (1973) M.P., 604*

- **Article 341** - Notification regarding scheduled caste and tribes issued under - Collector's power to countersign certificate granted under - Collector to countersign certificate only after his satisfaction - "Suriyabanshi" all over India - Not declared to be belonging to scheduled castes : *Dr. Mangat Ram Lalwani Vs. Collector Jabalpur I.L.R. (1978) M.P. 950 (D.B.)*

- **Articles 341, 14, 226, 391**, Commercial Tax Act, M.P. 1994 (as amended) Sections 45-A, 45-C, 45-D and Commercial Tax Rules, M.P. 1995, Rule 73-F-Inter State transportation of goods-Transporter to carry with him copy of declaration in

respect of a notified goods-Officers of Commercial Tax Department vested with powers to verify documents-Prima facie material available to presume attempt being made to facilitate tax evasion-Only show cause notice issued-No interference called for at this stage. *M/s North Roadlines, Nagpur Vs. State of M.P.*; I.L.R. (2002) M.P. 912

– **Articles 341, 226, 342(1) and 342(2)** – Application for grant of Schedule Caste/Tribe – Certificate being member of ‘Kosthis’ – Rejected – Writ Petition – Case ‘Halba/Halbi’ has been notified in Schedule Tribes list of Madhya Pradesh but not ‘Kosthis’ – Court can not give any declaration that the status with synonymous names of castes as claimed by party is conformable to the name specified in the Presidential notification issued under Article 341 of the Constitution – ‘Kosthis’ can not be declared as Scheduled Tribes by the Court in absence of entry in Presidential notification : *Dulichand Kosta Vs. State, I.L.R. (2001) M.P. 460,*

– **Articles 341 and 342** – Courts can not give any declaration that the status with synonymous names of castes as claimed by party is confirmable to the name specified in the Presidential notification issued under Article 341 of the Constitution – ‘Kosthis’ can not be declared as Scheduled Tribes by the Court in absence of entry in Presidential notification : *Dulichand Kosta Vs. State, I.L.R. (2001) M.P. 460,*

- **Article 341 (1)** - Advantages of the scheduled caste available to person of one district but residing in another district in both of which that community is declared as scheduled caste : *Joginder Singh Bhatti Vs. The Controller, Pre-Medical Examination Bhopal I.L.R. (1977) M.P. 423 (D.B.)*

- **Article 341 (1)** - The "Chamar" community in district Hoshiyarpur of Punjab and in District Durg of M. P. - Is a scheduled caste according to constitution (Scheduled Castes) Order, 1950 - Person not born in the District in which that community has been declared as scheduled tribe - But residing in that district - Is still a member of the scheduled caste : *Joginder Singh Bhatti Vs. The Controller, Pre-Medical Examination Bhopal I.L.R. (1977) M.P. 423 (D.B.)*

- **Article 341 (1)** - Notification issued by President - To be looked to determine whether particular caste is scheduled caste or not - The "Chamar" community in district Hoshiyarpur of Punjab and in District Durg of M. P. - Is a scheduled caste according to Constitution (Scheduled Caste) Order, 1950 - Person not born in the District in which that community has been declared as scheduled tribe - But residing in that district - Is still a member of the scheduled caste - Advantages of the scheduled caste available to person of one district but residing in another district in both of which that community is declared as scheduled caste - Pre - Medical Examination

Rules, Madhya Pradesh, 1975 - Rule 17 - Candidate belonging to the scheduled caste in relation to State of M. P. - To be treated as Scheduled Caste or tribe irrespective whether candidate originally belonged to that State or not - Only condition to be fulfilled is that he must be bona fide resident of that place - Pre-medical Examination Rules, Madhya Pradesh - Are executive instruction - Breach or non-compliance with such instructions - Does not confer legal right to claim enforcement in a court of law : *Joginder Singh Bhatti Vs. The Controller, Pre-Medical Examination Bhopal I.L.R. (1977) M.P. 423 (D.B.)*

-**Article 342 and 226**-Public Interest Litigation-"Majhi" Community recognised as Schedule Tribe in State of M. P.-Claim for inclusion of castes having analogous names-Constitution (Schedule Tribe) Order, 1950 as amended-Kewat, Mallah, Dhimar, Nishad, Bhoi, Kahar not mentioned against the term Majhi-Contention that these communities are also Scheduled tribes as Majhi cannot be accepted. *Radhaballabh Choudhary Vs. Union Of India, I.L.R. (1992) M.P. 716 (D.B.)*

- **Articles 344, 29, 226 & 351**, Schedule VIII, Public Interest Litigation, Constitutional Language Act, 1963, Official Language Resolution 1968, Official Language Rules, 1976 - Public Interest Litigation - Ministry of Home Affairs, National Language Department issued a circular that Hindi being a national language should be promoted - PIL filed that said circular be implemented and petitioner may be permitted to the answer the examination in Hindi and respondents also be directed to impart education in Hindi - Held - The circulars have been issued for promotion of official language squarely fall within the ambit of Article 315 of the Constitution - Thus, they have a statutory force and have binding on all concern. Respondents cannot shirk from responsibilities by not implementing the circulars - A direction given to the respondents to impart education in Hindi apart from English from the next session. *Amresh Kumar (Dr.) Vs. Lakshimibai National College Of Physical Education, Gwalior, I.L.R. (1996) M.P. 304 (D.B.)*

-**Article 345**-Empowers State Legislature to adopt language in use in State or Hindi to be used for all official purposes-Official Languages Act-Effect of-Section 3-Filing of complaint in Hindi-Not prohibited : *Narayan Vs. The State Of M.P. I.L.R. (1968) M.P. 333*

-**Article 345**- A State Legislation may adopt-Hindi as official language but that would not exclude the right of authorities to prescribe English as a subject in any examination. There is no bar with regard to medium of instruction-Official Languages Act 1963- Section 3, 4- Does not prohibit English to be regarded as a compulsory subject in any Departmental examination-Concept of discrimination is attracted if there is inequality between the equal- Industrial Disputes Act, 1947-Section 18-Promotuion policy brought into existence by way of settlement reached by majority of

Employee's Union with management-Binding on both parties unless revoked : *Raghvendra Prasad Goutam Vs. Union Bank Of India, I.L.R. (1999) M.P. 103 (D.B.)*

- **Article 348 and Interpretation of Statute** - Hindi version of statute for explaining ambiguity in the English Text - Use of : *Gulab Chand Vs. State Of M. P., I.L.R. (1982) M.P. 919, (F.B.)*

- **Articles 348, 14, 16, 226 and 309** and M. P. Public Works Department Workcharged and Contingency - Paid Employees Recruitment and Conditions of Service Rules, 1976 - Hindi Version of the Rules framed by Governor under Article 309 to prevail over the translated version in English published under Article 348 - The word 'Chief Engineer' means 'Chief Engineer' and not Engineer-in-Chief-Appointment on a regular post 'temporarily' and 'until further orders' - Purpose of - Termination of such appointment on the ground of unsuitability of the employee - Does not amount to punishment- Termination on the ground that Chief Engineer had no power to appoint when Chief Engineer had such power - Termination 'punitive' and violative of Articles 14 and 16 - Liable to be quashed : *Ratanlal Khare Vs. State Of M. P., I.L.R. (1985) M.P. 415*

-**Article 348(2)**- Provision for use of Hindu Language in proceedings before High Court-Expression 'all proceedings of the High Court' would not include an Election petition which cannot be equated with filing of ordinary plaint or appeal or application : *Jai Bhan Pawaiya Vs. Shri Madhavrao & Ors., I.L.R. (2000) M.P. 1103*

- **Articles 355, 16(4)** – Recruitment in Defence services – Claim for age relaxation – Refusal – Circulars or office memoranda providing age relaxation to reserved category candidates are not applicable to defence services recruitment – Advertisement not providing for age relaxation- Action not violative of Articles 16(4) or 335 of the Constitution : *Ku. Veena Ambedkar Vs. Union Of India, I.L.R. (2001) M.P. 1341,*

- **Article 356** - Proclamation issued thereunder - President of India authorising Governor to exercise certain powers exercisable by him - Effect of - Governor does not become delegate of the President in exercise of those powers : *Rampal Gupta Vs. Hon'ble The Chief Justice, High Court Of Madhya Pradesh, I.L.R. (1984) M.P. 195 (D.B.)*

-**Article 358**-Does not cover executive action taken in pursuance of legislation passed prior to Constitution : *Thakur Bharatshingh Vs. State Of M.P. & Anr., I.L.R. (1965) M.P. 778 (D.B.)*

-Article 361, Clause (I)-Immunity granted by clause (I)-Extends to the exercise and performance of powers and duties of office of Governor under Constitution- Words "Powers and duties of the office" in -Extends to powers of Governor conferred by Constitution as well as those conferred by any law or statutory rules-Protection given extends to exercise and performance of powers and duties done as qua Governor : *Dr. S. C. Barat Vs. Shri Hari Vinayak Pataskar, Chancellor Of The University Of Jabalpur, I.L.R. (1962) M.P. 226 (D.B.)*

-Article 361(1) and (4)-Immunity granted by clause (I)-Extends to the exercise and performance of powers and duties of office of Governor under Constitution- Words "Powers and duties of the office" in-Extends to powers of Governor conferred by Constitution as well as those conferred by any law as statutory rules-Protection given extends to exercise and performance of powers and duties done as qua Governor--Jabalpur University Act, 1956-Section 9-Indicates only that person who is Governor shall be Chancellor-Not Governor ex-officio to be Chancellor-Action of Chancellor under the Section-Action not as of Governor-Words "Personal capacity" in Article 361, clause 4 - Meaning of-Governor acting as Chancellor-Action is in public capacity and not in private capacity-Interpretation of Provision in Constitution-To be construed in the same way as any other statute-Interpretation carrying out intention of Constitution makers to be given effect : *Dr. S. C. Barat Vs. Shri Hari Vinayak Pataskar, Chancellor Of The University Of Jabalpur, I.L.R. (1962) M.P. 226 (D.B.)*

-Article 362-Covenants of Madhya Bharat Rulers, Article 13-Nature and enforceability of-Rulers of Indian States whether privileged to claim examination on commission when figuring as complainant-Criminal Procedure Code-Section 503- Confers discretion on magistrate to examine witness on commission-Magistrate in its discretion issuing commission for examination of witness - Superior Court not to interfere lightly with that discretion-Magistrate refusing to exercise discretion- Witness insisting that it is his privilege-Witness to show relevant provision of law : *Abdul Alim Khan Vs. Sagarmal, I.L.R. (1964) M.P. 971*

-Articles 362 and 291-Distinction between Pension and Privy Purse-Privy Purse is in nature of right and not bounty : *Nawab Usmanalikhan Vs. Sagar Mal I.L.R. (1961) M.P. 304 (D.B.)*

-Articles 362 and 291 -Distinction between Pension and Privy Purse-Privy Purse is in nature of right and not bounty-Civil Procedure Code-Sections 60(g)-Privy Purse-Liability to attachment-Sections 86(1) and 87-B-Provisions mandatory-Protection conferred-Not capable of being waived-No limitations on power of Central Government to grant sanction for suing the Ruler Submission to jurisdiction expressly or by implication-Can be taken into consideration in considering grant of sanction-Civil Procedure Code-Word "suit" in has definite meaning-Proceeding commenced

on application or otherwise-Does not become suit -Proceedings for decrees on award- Proceedings not a suit-Sanction of Central Government not necessary-Registration Act, Section 17-Award stating fact of a charge-Award does not require registration-Arbitration Act-Section 32-Civil Procedure Code, Order 23, rule 3-Compromise between parties subsequent to awards-Court, Power of, to give effect to compromise : *Nawab Usmanlikhan Vs. Sagar Mal I.L.R. (1961) M.P. 304 (D.B.)*

- **Article 363** - Competent Authority and Board of Revenue acting within their limited jurisdiction by deciding question of "Holder" on the basis of Revenue Records - Writ petition challenging their orders not competent : *Her Highness Mehr Taj Nawab Sajeda Sultan, Ruler Of Bhopal Vs. State Of Madhya Pradesh, I.L.R. (1981) M.P. 452, (D.B.)*

- **Articles 366 (17), 14, 21, 106, 226 and Entry 71 of VIIth Schedule** – Public interest litigation – Writ Petition – Pension to Ex-Members of Parliament – Salary, Allowances and pension of Members of Parliament Act, 1954 – Section 8-A – Provision for pension to Ex-Members of Parliament – Not ultra vires – Constitutional validity- Test for – Legislative competence in conformity with Articles 14 or 106 of the Constitution and existence of an entry in the Union List empowering the parliament to enact such a Law – Parliament otherwise empowered to make law providing for pension to Ex. M. Ps. Under Article 246 read with Entry 71 of VIIth Schedule – Omission of word ‘pension’ in Article 106 can not be read as any bar, prohibition or restriction on the Parliament to make such law providing pension for Ex-Member of Parliament – Word ‘pension’ has wider meaning – Could not be restricted only to payment made to an employee by Government in lieu of his past services : *S.P. Anand Vs. Union Of India, I.L.R. (2001) M.P. 914 (D.B.)*

- **Articles 366 (29-A), 301, 304, Entry 52, 54 of Schedule VII and Sthanिया Kshetra Me Mal Ke Pravesh Par Kar Adhinyam M.P. 1976, Section 2(2), 3(1)(b), Schedule III–Entry Tax–Levy of, under–Constitutional, since the nature of revenue earned was compensatory–Not open to challenge under Article 301–Entry of goods specified in Schedule III for consumption or use in execution of works–Hence liable to tax–If imported for purpose of sale they are not subject to tax–Taxing statute–While interpreting one must have regard to the strict letter of law–If the person/entity sought to be taxed comes within the letter of the law, he must be taxed–Section 3(1)(b) of Entry Tax Act, leaves out "execution of works contract" from definition of "sale"–Transfer of property involved in the execution of contract–Entry tax imposed–Justifiable–Appellants liable to pay entry tax : *M/S Geo Miller & Co. Pvt. Ltd. Vs. State Of M.P., I.L.R. (2004) M.P. (SC) 605 (D.B.)***

-**Article 369**-Words "Except as respects things done or omitted to be done before expiration thereof-Implication and meaning of : *The State Of M.P. Vs. Hiralal Sutwala, I.L.R. (1959) M.P. 97*

- **Article 372** - Preserves Opium Act being Pre-Constitutional Law - Principles to be applied to see whether delegation is arbitrary and excessive : *Organon (India) Ltd., Calcutta Vs. Collector Of Excise, Mandsaur, I.L.R. (1981) M.P. 644, (D.B.)*

-**Article 372**-Types of laws prevalent in former native States can be considered to have been continued under Article 372-Act of State-Refers both to public and private rights -Right of Municipal Court to investigate the rights and wrongs of transaction and to pronounce upon them-Expression of the sovereign in an agreement-Not enforceable in Municipal Courts of successor State-Order of sovereign ruler in exercise of statutory power-Can alone be treated as law-Can be enforced in Municipal Courts-Order of sovereign ruler directing delivery of possession of house-Ruler not exercising legislative function-Order if purely executive or administrative order-Cannot be enforced in Court of successor State until right recognised by it: *Govind Rao Vs. Major Krishna Rao, I.L.R. (1967) M.P. 75 (D.B.)*

- **Articles 372 (2)** and 239 - Government of India Act 1935, Section 94 (3)-Essential Supplies (Temporary Powers) Act, 1946, Sections 3, 7 and 11 and Notification No. 132/29/170 (50) dated 5-1-51 under section 4 of the Essential Supplies (Temporary Powers) Act 1946-Order delegating authority by Governor General to Chief Commissioner to administer province-Is in the nature of legislative provision-Such order becomes law in force-Falls under Article 372 of Constitution-Notification No. 132/29/170 (50) dated 5-1-51-Validity-Contravention of such Notification -Punishable-Evidence Act, Indian-Section 57-Notification being law in force--Needs no proof-Court can take judicial notice-Essential Supplies (Temporary Powers) Act 1946-Section 11-Charge-sheet not mentioning all particulars' given in First Information Report-Does not amount to defect-Magistrate can take cognizance : *The State Vs. Gokulchand, I.L.R. (1957) M.P. 168 (D.B.)*

-**Articles 391**, 14, 226, 341, Commercial Tax Act, M.P. 1994 (as amended) Sections 45-A, 45-C, 45-D and Commercial Tax Rules, M.P. 1995, Rule 73-F-Inter State transportation of goods-Transporter to carry with him copy of declaration in respect of a notified goods-Officers of Commercial Tax Department vested with powers to verify documents-Prima facie material available to presume attempt being made to facilitate tax evasion-Only show cause notice issued-No interference called for at this stage. *M/s North Roadlines, Nagpur Vs. State of M.P.; I.L.R. (2002) M.P. 912*

- **Article 395**-Letters Patent-Clause 10-Letters Patent not an enactment-Does not amend or supplement Government of India Act-Not repealed under express terms of Article 395-Letters Patent, clause 10 Order holding that decree was satisfied in terms of agreement between parties-Amounts to a decree-Order relates to satisfaction or discharge of decree-Order appealable under clause 10, Letters Patent-Hindu Law - -

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- **Principles for determining the scope of a proviso to a section** - Punctuation marks - Value of: *Harishankar Vs. Dalchand Agrawal I.L.R. (1985) M.P. 369*

- **Compromise decree** - Compromise decree as a whole to be considered for construing the terms : *Nonjibhai Vs. Seth Ramkishan, I.L.R. (1977) M.P. 795*

- **Provision making serious invasion on rights, privacy and freedom of taxpayer must be strictly construed** : *M/S Sampatlal And Sons, Katni Vs. Commissioner Of Income-Tax, Jabalpur I.L.R. (1984) M.P. 158 (D.B.)*

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- **Reference to statement of objects and reasons for construing the section - Permissibility of** : *Harishankar Vs. Dalchand Agrawal I.L.R. (1985) M.P. 369*

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–**Sections 2(1) (a) and 12**–Share transaction by charging commission–Relationship between seller and broker is a relationship providing services for consideration–Services covered within the purview of the Act–Stop payment of cheque or increase in rate of share–Award of interest by District Forum upheld : *Anand Kumar Jain Vs. District Consumer Disputes Redressal, Forum, Bhopal, I.L.R. (2002) M.P. 254,*

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-**Mens rea not essential to constitute contempt** : *In Re. Guljarilal I.L.R. (1970) M.P. 1024 (D.B.)*

-**Scandalising Court or attributing dishonesty, unfairness or ignorance to the Judge**–Amounts to contempt : *In Re. Guljarilal I.L.R. (1970) M.P. 1024 (D.B.)*

-**What is the essence of crime:** *Pranlal Thakkar Vs. State Of M.P. I.L.R. (1966) M.P. 665*

-**Contempt–Meaning of–Criminal Contempt**–What it means–Scandalising Court or attributing dishonesty, unfairness or ignorance to the Judge–Amounts to contempt–

Mens rea not essential to constitute contempt-Every statement or criticism defamatory of a Judge-Not contempt-Considerations which must be noticed to determine whether those statements amount to contempt-Libelous statement does not necessarily amount to contempt-Complaint or report about judicial officer about his conduct to superior authority-Does not amount to contempt if precautions are taken to keep it confidential : *In Re. Guljarilal I.L.R. (1970) M.P. 1024 (D.B.)*

-Section 2 - Holding of departmental enquiry during pendency of criminal prosecution in respect of same subject matter-Does not amount to contempt : *In Re : Shri Mehra, Senior Superintendent Of Post Offices, Jabalpur. I.L.R. (1959) M.P. 819 (D.B.)*

-Section 2 and 3-Power to punish for contempt-Bestowed for the purpose of preventing interference with course of justice and which likely to detract from the authority and influence of judicial determinations which are likely to impair confidence of public in Court: *In Re. Vinod Maheshwari, Printer And Publisher Of M.P. Chronicle, Bhopal I.L.R. (1968) M.P. 164 (D.B.)*

-Section 2 and 3-The Statement "यह इसलिये भी अधिक जरूरी हो जाता है क्योंकि वर्तमान जांच आयोग के सदस्य श्री पांडे मु.यमंत्री पं० द्वारका प्रसाद मिश्र के विरुद्ध चुनाव याचिका के एक प्रारंभिक मुद्दे में उनके पक्ष में निर्णय दिया था जो उच्च न्यायालय में रद्द हुआ" -Amounts to scandalizing the Court-Constitutes gross contempt-Power to punish for contempt-Bestowed for the purpose of preventing interference with course of justice and which are likely to detract from the authority and influence of judicial determinations which are likely to impair confidence of public in Court: *In Re. Vinod Maheshwari, Printer And Publisher Of M.P. Chronicle, Bhopal I.L.R. (1968) M.P. 164 (D.B.)*

-Section 3-Comment on a case and party involved in it coming before Court-Amounts to as much contempt as a comment on a case actually launched : *Asgharali Vs. Motilal, I.L.R. (1967) M.P. 1028 (D.B.)*

-Section 3-Proceedings against person imminent-Editor, publisher or printer knowing about it publishing matter falling within the mischief of contempt commits contempt : *Asgharali Vs. Motilal, I.L.R. (1967) M.P. 1028 (D.B.)*

-Section 3 - Notice demanding damages and a written apology unaccompanied by a demand for withdrawal of a plea -Does not amount to interference with administration of justice : *Nirbhayadas Vs. Rameshwar Agnibhoj, I.L.R. (1959) M.P. 312 (D.B.)*

-Section 3-Revenue Officer holding enquiry under section 247, Land Revenue Code, Madhya Pradesh, 1959-Not a Court subordinate to High Court : *Moolchand*

Deshlahara Vs. K.K. Naidu, Sub-Divisional Officer, Waraseoni I.L.R. (1969) M.P. 159 (D.B.)

-Section 3-Sub Divisional Officer ordering police officer to register a case for theft-Does not amount to starting parallel case when matter is sub judice-Does not amount to contempt of Court : *Moolchand Deshlahara Vs. K.K. Naidu, Sub-Divisional Officer, Waraseoni I.L.R. (1969) M.P., 159 (D.B.)*

-Section 3-Publication of material suggesting that medical report is not free from suspicion and creating among public mind definite opinion about accused-Amounts to interference with course of justice : *Asgharali Vs. Motilal ,I.L.R. (1967) M.P. 1028 (D.B.)*

-Section 3-Effect not given to decision of High Court on ground that appeal to Supreme Court is intended to be filed-So long as decision stands-Effect has to be given to it : *Dr. Shivnand Jha Vs. Shri R.K. Dubey, I.L.R. (1975), M.P., 180 (D.B.)*

-Section 3 - Revenue Officer to whom cases transferred for inquiry and report under Land Revenue Code-Is not a Court within the meaning of this section : *In Re : Keshrimal Gupta, I.L.R. (1971) M.P. 783. (D.B.)*

-Section-3 Application pointing some mistake or that certain points are not decided-Does not amount to contempt: *Pandit Dwarka Prasad Mishra Vs. Shri Kamal Narain I.L.R. (1966) M.P. 345 (D.B.)*

-Section 3-"Courts subordinate to High Court"-Meaning of-Revenue Officer to whom cases transferred for inquiry and report under Land Revenue Code-Is not a Court within the meaning of this section : *In Re: Keshrimal Gupta, I.L.R. (1971) M.P. 783 (D.B.)*

-Section 3-Threat of action to a magistrate amounts to interference with administration of justice-Action amounts to contempt-Intention or motive in doing and act wholly irrelevant-Words and Phrases-"Contempt"-Meaning of : *In Re: Kaluram I.L.R. (1966) M.P. 847 (D.B.)*

-Section 3-Publications during the course of proceedings or contemplated proceedings attributing motive and suggesting that evidence is being manipulated-Publication amounts to Contempt of Court-Proceedings against person imminent-Editor, publisher or printer knowing about it publishing matter falling within the mischief of contempt commits contempt-Comment on a case and party involved in it coming before Court-Amounts to as much contempt as a comment on a case actually launched-Publication of material suggesting that medical report is not free from

suspicion and creating among public mind definite opinion about accused-Amounts to interference with course of justice : *Asgharali Vs. Motilal, I.L.R. (1967) M.P. 1028 (D.B.)*

-Section 3 - Allegations scandalising the Court in such a way as to create distrust in people's mind and impair the confidence of people in Court-Amount to contempt - Contemner liable to be punished-Counsel signing the application without satisfying himself about prima facie existence of adequate grounds there for Liable for contempt : *Shri Acharya, A.D.M., Indore Vs. V.V. Kulkarni, Advocate, I.L.R.(1958)M.P. 902 (D.B.)*

-Section 3 -Considerations which should weigh in exercising summary powers in matter of contempt-Things to be considered in arriving at the conclusion about contempt-Power to punish For contempts to be sparingly exercised-Not to be used to vindicate private wrongs : *In Re Shri Amboo Bhai Patel, I.L.R. (1964) M.P. 335 (D.B.)*

-Section 3 - Magistrate or subordinate Judges acting unjustly etc. in execution of their duties and in a manner unwarranted by law-Action conveying disrespect to another Court and diverting course of justice-Action amounts to contempt-Apology-Tender of, must be unconditional, unreserved, unqualified and not halfhearted : *In Re Siyaram, I.L.R. (1964) M.P.181 (D.B.)*

-Section 3 - Transfer application containing mischievously twisted facts or reckless allegations against Court-Allegations amount to contempt of Court-Power to punish to be cautiously used while dealing with transfer applications-"Court of record"- Meaning of-Weight to be attached to the statement of Court-Distinction to be drawn regarding statement contained in record of Court and in the report : *In Re Bisram, I.L.R. (1964) M.P. 472 (D.B.)*

-Section 3-Words "Courts subordinate to High Court" in-Meaning of-Revenue Officer holding enquiry under Section 247, Land Revenue Code, Madhya Pradesh, 1959-Not a Court subordinate to High Court-Sub-Divisional Officer ordering police officer to register a case for theft-Does not amount to starting parallel case when matter is sub judice-Does not amount to contempt of Court : *Moolchand Deshlahara Vs. K.K. Naidu, Sub-Divisional Officer, Waraseoni . I.L.R. (1969) M.P. 159 (D.B.)*

-Section 3(1) - Prejudicing mankind in favour of or against a party amounts to contempt-Protection afforded when an effective step in prosecution of the case is taken - In civil matter step begins when notice is given-In Criminal case step in prosecution of case begins when complaint or first information is filed or made-To attract jurisdiction in contempt proceedings-Not necessary that committal proceedings must have been instituted-Criminal proceedings deemed to be pending when arrested

person produced before magistrate-Magistrate having seisin for directing investigation-Cause must be held to be pending in Court-Knowledge of pendency of a cause-Not a condition for incurring liability for contempt-Publication in good faith immaterial-Test to be applied is whether it is calculated or likely to interfere with course of justice : *Smt. Padmavati Devi Bhargava Vs. Shri R.K. Karania & ors., I.L.R. (1963) M.P. 952 (D.B.)*

- **Section 12** – Allegations about disobedience of the orders of the High Court not found to be correct – Allegations found to be frivolous – Rule nisi discharged and officer of petitioner found to be responsible for use of public funds in filing such petition are personally made liable for expenses of such litigation to be deducted from his salary – Suitable directions issued : *Western Coalfields Ltd., Nagpur Vs. Mahesh Prasad Tamrakar, I.L.R. (1987) M.P. 261, (D.B.)*

Contempt of Court Act (LXX of 1971)

- **Rule 7** of Rules for proceedings thereunder - No inconsistency between Rule 7 and the Act - Rule is for the benefit of the contemner : *Collector, Gwalior Vs. First Civil Judge, Class - I, Gwalior, I.L.R. (1983) M.P. 539, (D.B.)*

- **Rule 7** and Sections 10, 2 (a) and 15 and of the Rules for proceedings under the Act - Words "contempt of Courts" - Means Civil Contempt or Criminal Contempt - High Court empowered to punish both - Rule 7 - Civil Contempt - Same procedure to be followed as that of Criminal Contempt - Rule 7 - Not invalid - No inconsistency between Rule 7 and the Act - Rule is for the benefit of contemner : *Collector, Gwalior Vs. First Civil Judge, Class - I, Gwalior, I.L.R. (1983) M.P. 539, (D.B.)*

- **Sections 2 (a), 10 and 15 and Rule 7** of the Rules for proceedings under the Act - Words "contempt of Courts" - Means Civil Contempt or Criminal Contempt - High Court empowered to punish both - Rule 7 - Civil Contempt - Same procedure to be followed as that of Criminal Contempt - Rule 7 - Not invalid - No inconsistency between Rule 7 and the Act - Rule is for the benefit of contemner : *Collector, Gwalior Vs. First Civil Judge, Class - I, Gwalior, I.L.R. (1983) M.P. 539, (D.B.)*

-**Sections 2(b), 9 and 13**-Facts resulting in delay satisfactorily explained-Contemner cannot be held responsible for an act beyond his conduct-Apology accepted rule nisi discharged: *A.G. Prayagee Vs. Shri S.C. Gupta, I.L.R. (1992) M.P. 226 (D.B.)*

- **Section 2 (c)** - Advocate expressing 'regrets' only - Not sufficient to excuse him of the wrong done by him - Sentence of fine of Re. 1/- or in default S. I. for a week passed against the Advocate : *In Re : C. K. Saraf I.L.R. (1985) M.P. 380 (D.B.)*

- **Section 2 (c)** - Application for transfer of a case presented by the Advocate making unwarranted and defamatory aspersions upon the character and ability of the Judge - Advocate liable for committing Contempt of Court : *In Re. C. K. Saraf I.L.R. (1985) M.P. 380 (D.B.)*

- **Section 2 (c)** - Criminal Contempt - What is - Application for transfer of a case presented by the Advocate making unwarranted and defamatory aspersions upon the character and ability of the Judge - Advocate liable for committing contempt of Court - The words 'regrets' and 'apology' - Distinction between - Advocate expressing 'regrets' only - Not sufficient to excuse him of the wrong done by him - Sentence of fine of Re. 1/- or in default S. I. for a week passed against the Advocate : *In Re : C. K. Saraf I.L.R. (1985) M.P. 380 (D.B.)*

- **Section 2(e)**-Criminal contempt-Filing criminal complaint against the Magistrate who dismissed his case-Action apparently aimed at scandalizing and intimidating judicial system-Case of criminal complaint made out : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096, (D.B.)*

- **Section 2(e)**-Apology-Criminal Contempt-Contemnor already faced two similar contempt proceeding and tendered apology-Apology seems to be an outer form to avoid consequences of the contempt and not a sincere explanation from the heart-Contemnor should not be allowed to go scot free by accepting such apology : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096, (D.B.)*

- **Section 6**-Maintainability-Action of the Advocate does not fall within the meaning of 'good faith' as defined either under Section 52, I.P.C. or under Clause 22, Section 3 of the General Clauses Act, 1897-Privision of Section 6 not attracted : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362, (D.B.)*

-**Sections 9, 2(b) and 13**-Facts resulting in delay satisfactorily explained-Contemner cannot be held responsible for an act beyond his conduct-Apology accepted rule *nisi* discharged: *A.G. Prayagee Vs. Shri S.C. Gupta, I.L.R. (1992) M.P. 226 (D.B.)*

-**Section 10**-Contemnor not even expressed regrets nor apologised-Contemner found guilty-Punishment- Token fine of Rs. 1/- and in default to suffer imprisonment for a day and also to pay Rs. 500/- to defray office expenses : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362, (D.B.)*

-**Section 10**-Vigilance enquiry revealed the allegations to be false and vindictive-Complaint filed by Chief Justice as un-worthy of disciplinary action against concerned Judicial Officer-Not a bar to initiate contempt proceedings-Show cause

notice-Advocate failed to substantiate the allegations : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362, (D.B.)*

- **Section 10**, Penal Code, Indian 1860, Section 228 – Utterance amount to scandalising Court or offering any insult to Court is decisive factor to decide jurisdiction – Scandalising Court rather than a mere insult than jurisdiction of High Court is not ousted by reason of provision in section 3(2) of Act – If offering insult to Court – Court concern has power to take action u/s 229 IPC against contemnor, subsequent closer of case would not take away jurisdiction of that Court : *In Reference Vs. Ram Vishal, I.L.R. (1996) M.P. 542 (D.B.)*

-**Section 10**-Contemnor/ Advocate making wild allegations against Judicial Officer after his father's conviction and sentence under Section 336, 427/34, I.P.C.-Copies of complaint sent to Constructional Dignitaries like Chief Justice of India and Chief Justice of the State-Vigilance enquiry revealed the allegations to be false and vindictive-complaint filed by Chief Justice as un-worthy of disciplinary action against concerned Judicial Office-Not a bar to initiate contempt proceedings-Show Cause notice-Advocate failed to substantiate the allegations-Section 52 of the I.P.C.-Words "Goods faith"-A thing shall be deemed to have been done in good faith when it is infact done honestly irrespective of negligently done or not-Contempt proceedings-Section 6-Maintainability-Action of the Advocate does not fall within the meaning of 'good faith' as defined either under Section 52, I.P.C. or under clause 22, Section 3 of the General Clauses Act, 1897-Provision of Section 6 not attracted-Power of High Court to draw contempt in such cases is saved by Section 10 read with Section 22 of the Act and also under Article 215 of the Constitution being a Court of record-Contemnor not even expressed regrets nor apologised – Contemner found guilty-Punishment-Token fine of Rs. 1/- and in default to suffer imprisonment for a day and also to pay Rs. 500/- to defray office expenses : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362 (D.B.)*

– **Sections 10, 12** – Ex-parte interim order – Produced before the alleged contemner after interpretation – Had it not been interpolated case for contempt would not be there – No case the proceeding – Contemner discharged : *Rajkumar Vs. Collector, I.L.R. (2001) M.P. 652,*

– **Sections 10 and 15** – Exercise of Suo Motu Power – Jurisdiction – Scope – The High Court – The power of take suo motu cognizance of contempt of its subordinate courts under section 10 – On a harmonious construction of Provision section 10 and 15(1), the conclusion which inevitably follows is that the High Court may take cognizance even on its own motion of the Contempt – Mode of taking suo motu cognizance should be resorted to sparingly in grave and serious nature., *In Re- Jinendra Kumar Jain, I.L.R. (1993) M.P. 744 (D.B.)*

-Section 10, 22-Power of High Court to draw contempt in such cases is saved by Section 10 read with Section 22 of the Act and also under Article 215 of the Constitution being a Court of record : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362, (D.B.)*

-Section 12- Punishment-Contemner an advocate-Instead of sentence conditionally released on probation-Directed to execute bond for good behavior in the sum of Rs. 5000/- for two years : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096, (D.B.)*

-Section 12-Appellant Senior Police Officer-Tendered unqualified apology-Could have been accepted by High Court-Apology accepted and direction of High Court set aside : *Jasvir Singh Vs. Ayodhya Prasad Yadav, I.L.R. (2004) M.P. (SC) 885 (D.B.)*

- Section 12 – Direction issued in earlier writ petition to respondent to conclude – Departmental enquiry against applicant within six months–Applicant himself consuming about half of that period for nothing–Apology tendered at the very first instance by alleged contemner–Sections 2(b), 9 and 13–Facts resulting in delay satisfactorily explained–Contemner cannot be held responsible for an act beyond his conduct–Apology accepted rule *nisi* discharged. *A.G. Prayagee Vs. Shri S.C. Gupta, I.L.R. (1992) M.P. 226 (D.B.)*

- Section 12 - Application for cancellation of bail containing statement that accused had told villagers that he had given money to Sessions Judge for being released on bail - Constitutes contempt of Court - Liability of Advocate (Public Prosecutor) filing the application, persons filing affidavits and lodging police report to that effect and Advocate identifying the deponents of those affidavits and found to be author of the application for punishment under the Act : *Shri S. K. Malviya Vs. Shivcharan Kurmi I.L.R. (1984) M.P. 295 (D.B.)*

- Section 12 – Contemner I.A.S. Officer –Neither thoughtful nor careful passing the order of removal of appellant panch and declaring the seat Vacant – Expected to know plain English – Defence of ignorance not tenable – Apology tendered – First incident of disobedience on part of contemner – Increasing trend amongst the Executive to flout Court Orders not palatable to them – State Govt. advised to circulate the order to all its executive officers – Contemner discharged with warning taking lenient view : *Jamuna Prasad Jaisani Vs. Smt. Shikha Dubey, Collector, Harda, I.L.R. (2001) M.P. 1286,*

- Section 12 – Contempt proceedings for disobedience of High Court Order – Criminal Procedure Code, 1973 (II of 1974), Sections 374 (2) M 389 and 482 and

Panchayat Raj Adhiniyam, M.P, 1973, Section 41-A – Conviction of Panch rendering him disqualified to hold office in the Panchayat – Relying on apex court judgment High Court in appeal suspending conviction in exercise of powers under Sections 389 and 482 of the Criminal Procedure Code – Effect – Conviction having been suspended the incumbent would not incur any disqualification under the Act of 1993 – Contemner I.A.S. Officer Neither thoughtful nor careful while passing the order or removal of appellat Panch and declaring the seat vacant – Expected to know plain English – Defence of ignorance not tenable – Apology tendered – First incident of disobedience on part of contemner – Increasing trend amongst the Executives to flout Court Orders not palatable to them – State Govt. advised to circulate the order to all its executive officers – Contemner discharged with warning taking lenient view : *Jamuna Prasad Jaisani Vs. Smt. Shikha Dubey, Collector, Harda, I.L.R. (2001) M.P. 1286,*

-Section 12-Petitioner retired from service on 30.8.1980-Pension and other retiral benefits were denied to him-Petition filed by him allowed and respondents were directed to finalize the pension case within three months and to pay all dues within one month therefrom along with 12% interest-Copy of order communicated to respondents on 16.5.88--Notices of contempt petition issued to respondents but nobody appeared-Respondent no. 3 directed to remain present personally who made oral statement in court that it is the treasury which has to make payment and he is helpless in the matter-Held-Though pension was finalized on 1.11.1989 but arrears were not paid-Arrears of pension were paid only after the personal appearance of respondents was ordered-Respondents have shown little regard to the Court and persistently refused to obey the order even though they are bound by same-Clear case of contempt made out-Apology tendered by respondent no. 3 rejected and sentenced to a fine of Rs. 2000/- in default simple imprisonment of one month-Fine amount if recovered will be paid to petitioner. *Harishanker Bhandari Vs. Secretary, Public Health & Family Welfare Department, Vallabh Bhawan Bhopal; I.L.R. (1994) M.P. 267 (D.B.)*

-Section 12-Reference by JMIC-Contemner Advocate-Habitual in making scurrilous, scandalizing complaints against Judicial Officers-Section 2(e)-Criminal contempt-Filing criminal complaint against the Magistrate who dismissed his case-Action apparently aimed at scandalizing and intimidating Judicial system – Case of criminal complaint made out - Apology-Contemnor already facted two similar contempt proceeding and tendered apology-Apology seems to be an outer form to avoid consequences of the contempt and not a sincere explanation from the heart-Contemner should not be allowed to go scot free by accepting such apology-Articles 215, 227, 235 of the Constitution of India-Power of High Court to punish for contempt of itself and of subordinate Courts-Being a Court of record and having power of Superintendence High Court has power to punish any contemner for its

contempt-Section 12-Punishment-Contemner an advocate-Instead of sentence conditionally released on probation-Directed to execute bond for good behavior in the sum of Rs. 5,000/- for two years : *State Vs. Virendra Parihar, I.L.R. (2000) M.P. 1096, (D.B.)*

- **Section 12** and Constitution of India, Article 141, Civil Procedure Code (V of 1908), Section 11- Decision of Supreme Court – Binding on all Courts – Decision of Revenue Court – Confirmed by High Court and Supreme Court in writ petition – Operate as res judicata to the subsequent suit – Disobeying the order of Supreme Court – Amounts to contempt of Supreme Court – Party liable to be punished : *Ashfaq Ahmad Vs. Nehru Singh, I.L.R. (1991) M.P. 552 (D.B.)*

- **Section 12** - Duty of counsel and care to be taken by him in making representations on behalf of his client - Application for cancellation of bail containing statement that accused had told villagers that he had given money to Sessions Judge for being released on bail - Constitutes contempt of Court - Liability of Advocate (Public Prosecutor) filing the application, persons filing affidavits and lodging police report to that effect and Advocate identifying the deponents of those affidavits and found to be author of the application for punishment under the Act : *Shri S. K. Malviya Vs. Shivcharan Kurmi I.L.R. (1984) M.P. 295 (D.B.)*

- **Section 12 (1)** – Notice given by contemner to the Presiding Officer of the Court charging him with malice and favouritism amounting to interference with administration of justice – Calls for punishment under – Such act not to be countenanced – Despite filing of unconditional written apology, sentence of simple imprisonment till rising of the Court awarded to meet the ends of justice : *State Of M.P. Vs. Kailashchandra Tiwari, I.L.R. (1990) M.P. 403 (D.B.)*

-**Section 15**, Press and Registration of Books Act, Section 7-Criminal contempt-Terming judgments of High Court 'Rubbish' in public meeting-Publication notifying High Court judges in the garb of publishing news report covering scandalous speech delivered at public gathering and press interview-Presumption is that the Editor is responsible for every portion of the issue of the newspaper-Similar is the presumption with the act of Printer and publisher-Ample proof that the first contemner uttered these Contemptuous sentences-Alleged that one of the judges was bribed and he has property disproportionate to his income- Criminal contempt made out-Apology-Sub-Editor while tendering apology has offered explanation that he failed to perform his duty-Accepting apology of such person would amount to giving premium to non performance : *Madhya Pradesh High Court Bar Asso. Jabalpur Vs. Rajendra Sail, I.L.R. (2002) M.P. 380 (D.B.)*

-Section 15-Reference by Session Judge-Superintendent of Police showing scant regard to communication made by the court-Trial pending since 1984-IN 1996 High Court directed conclusion of trial within three months-Contemner did not co-operate-Summons returned unserved-Resulting in judgment of acquittal- Contemner did not show normal courtsey of explaining difficulties in effecting service of summons on the witness-Putting blame on staff cannot always be allowed to be offered as an excuse-Reply of the contemner reflects poor efficiency of the police administration-Apology offered is rejected-Punishment-Fine of Rs. 500/- or to suffer simple imprisonment of one day and also Rs. 500/- forcost of proceedings : *Jagdish Prasad Parashar Vs. Rajendra Kumar, I.L.R. (1999) M.P. 724*

- Section 15(2) and Civil Procedure Code (V of 1908), Section 24 – Defendant sought transfer of Civil Suit on the ground of “likelihood of bias” of District Judge on account of interim order passed earlier – District Judge dismissing application but High Court, in revision allowing application and ordered transfer of case from the Court of District Judge to senior most Additional Judge to District Judge – In view of findings in revisions, no case for taking action for contempt made out – Notices issued discharged : *State Vs. Union Carbide Corporation, U.S.A., I.L.R. (1990) M.P. 59 (D.B.)*

-Section 19-Appeal- Only lies in cases of conviction in contempt jurisdiction and not against an order discharging the contemner : *Takhat Vs. State, I.L.R. (2000) M.P. 339 (D.B.)*

-Section 19-Contempt charge-Matter purely between the Court Tribunal and the alleged contemner-Third party cannot be allowed to pursue the matter any further, except on a fresh cause of action : *Takhat Vs. State, I.L.R. (2000) M.P. 339, (D.B.)*

- Section 19, Administrative Tribunals Act, 1985, Sections 17, 19, Administrative Tribunal (Procedure) Rules, M.P. 1986 Rule 95 - Contempt of Tribunal– Allegation of violating order of the Tribunal–Proceedings of contempt quasi- criminal in nature - No proceedings in contempt would lie assuming that there is any dispute or vagueness in the language of the order–Mandate on the DPC was to consider and assess respondent's fitness for promotion–DPC complied with the order–If decision of DPC was incorrect it was for respondent to have challenged that decision–Respondent did not do so–Order of tribunal holding appellant guilty of contempt set aside–Question of maintainability of appeal to High Court kept open : *State Of M.P. Vs. Banwarilal Gupta, I.L.R. (2004) M.P. (SC) 527 (D.B.)*

– **Section 19**–Mandate on the DPC was to consider and assess respondent's fitness for promotion–DPC complied with the order–If decision of DPC was incorrect it was for respondent to have challenged that decision –Respondent did not do so–

Order of tribunal holding appellant guilty of contempt set aside: *State Of M.P. Vs. Banwarilal Gupta, I.L.R. (2004) M.P. (SC) 527 (D.B.)*

- **Section 19**– Proceedings of contempt quasi- criminal in nature–No proceedings in contempt would lie assuming that there is any dispute or vagueness in the language of the order : *State Of M.P. Vs. Banwarilal Gupta, I.L.R. (2004) M.P. (SC) 527 (D.B.)*

- **Section 22, 10**-Power of High Court to draw contempt in such cases is saved by Section 10 read with Section 22 of the Act and also under Article 215 of the Constitution being a Court of record : *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362, (D.B.)*

Contract

- The different ways in which it can be discharged-Contract comes to an end after discharge though may be alive for incidental matters : *Gourishankar Shastri Vs. Mayadhardas & Ors., I.L.R. (1958) M.P. 681 (D.B.)*

Contract Act, Indian (IX of 1872)

- Communication to other side or putting communication in transit - A necessary ingredient for creation of any right in favour of party sought to be communicated to : *Gajanan Saw Mill, Sagar Vs. The State Of Madhya Pradesh I.L.R. (1976) M.P. 123 (D.B.)*

- **Payment of rent to co-owner** – Rent paid to one of co-owner –Tenant cannot be asked to pay over again to other co-owner as it is neither just nor equitable – Co-owner may bring suit for recovery of his share – It is unjust to saddle the tenants to pay over the entire amount again to other co-owner – Suit for recovery of rent by co-owner against tenants dismissed – Appeal allowed. (*Hiralal Vs. Agarchand, I.L.R. (1956) M.P. page 1.*)

- **When can be inferred** : *Gajanan Saw Mill, Sagar Vs. The State Of Madhya Pradesh I.L.R. (1976) M.P. 123 (D.B.)*

- **Disclosure of material facts by assured** - Requirement of - Under-valuation of stock in trade - Whether amounts to material suppression of facts : *Hindustan General Insurance Society Ltd., Calcutta Vs. Khushiram, I.L.R. (1982) M.P.432,*

- **Insurance Agents** - Action of, in excess of apparent authority - Effect of : *Hindustan General Insurance Society Ltd., Calcutta Vs. Khushiram, I.L.R. (1982) M.P.432,*

-**Agreement between two parties**-Subsequent agreement between one of those partners and a stranger-Promise to do something under the first agreement-A good consideration for subsequent agreement : *Firm M/S Gopal Company Ltd., Bhopal & Anr. Vs. Firm Hazarilal & Company, Bhopal, I.L.R. (1965) M.P. 938 (D.B.)*

- Decree for specific performance not fixing any time limit for payment of purchase money contract should be performed within a reasonable time : *Kanhaiyalal Vs. Mulla Abdul Hussain I.L.R. (1984) M.P. 393 D.B.)*

- **Executed contract is a contract plus a conveyance** : *Union Of India Vs. Tarachand I.L.R. (1979) M.P.1100 (D.B.)*

- **Executory contract** - Is a contract pure and simple : *Union Of India Vs. Tarachand I.L.R. (1979) M.P.1100 (D.B.)*

-**Contract of service**-Contract to weave certain pieces of carpet at agreed prices-Not a contract to serve : *S.P. Nanavaty, Factory Manager, Satna Cement Works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19, (D.B.)*

-Contract comes into existence by virtue of statutory provision and the rules : *Ram Ratan Gupta Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 377 (F.B.)*

-**Contract - Contracts which can be separated** : *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State Of M.P. I.L.R. (1966) M.P. 913.*

-Abandonment of contract by one party-Other party absolved from obligation of performance-Party must be deemed to have waived right to claim damages : *State Of Madhya Pradesh Vs. Firm Gopichand Sarju Prasad, Rewa I.L.R. (1974) M.P. 103 (D.B.)*

- **Whether a particular clause in a contract is penal or not** - Has to be decided upon terms and inherent circumstances of each particular contract judge at the time of making the contract : *Nonjibhai Vs. Seth Ramkisnah I.L.R. (1977) M.P. 795*

- Clause 17 of tender notice specifying conditions entitling Govt. to forfeit earnest money and recover loss from petitioner - Conditions not fulfilled - Revenue Recovery certificate issued against petitioners liable to be quashed : *Kalluram Kesharvani Vs. State Of M. P. I.L.R. (1986) M.P. 307 (D.B.)*

-Contract not automatically discharged by breach -Breach gives right to injured party to treat contract as at an end : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Not terminable unilaterally-One party committing breach-Does not abrogate mutual obligation-Merely gives other party an option to ignore breach or to insist upon performance or to accept repudiation and treat himself free from further liability : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Right and obligation pertaining to agreement-Came into being by operation of contract : *M/s Shri Ganesh Trading Company, Sagar, Vs. State Of Madhya Pradesh, I.L.R. (1973) M.P., 735 (F.B.)*

- When parties contemplate execution of formal deed - matter remains at the stage of agreement though may have been reached finally : *Durga Prasad Vs. Mst. Praveen Foujdar I.L.R. (1980) M.P. 448 (D.B.)*

- Contract by guardian of minor for purchase of immovable property-Contract not valid : *Ramchandra Vs. Manikchand, I.L.R. (1970) M.P. 430 (D.B.)*

-Ratification-Person who can ratify the act done : *The Cantonment Board, Mhow, Vs. Chhajumal And Sons, Mhow I.L.R. (1968) M.P. 245 (D.B.)*

- Discharge regarding liability by one tenant - in - common - Validity : *The Amalgamated Coal Fields Ltd. Parasia Vs. Mst. Chhotibai I.L.R. (1978) M.P. 60 (D.B.)*

-Principle of British Common Law-Limitations under which it can be applied : *Seth Amolakchand (Firm), Sanawad Vs. Prahlad Singh, I.L.R. (1972) M.P. 365.*

- Time is essence when one party agrees to forego something to which he is entitled if other party undertakes to do certain things by a specified date : *Nonjibhai Vs. Seth Ramkishan I.L.R. (1977) M.P. 795*

- Schedule I, Article 1-A – Cross-objection assailing decree of refund of calculated sum is in-fact a cross-appeal – Not maintainable without payment of ad volarem court fee : *Babulal Agrawal Vs. Smt. Jyoti, I.L.R. (2001) M.P. 192, (D.B.)*

-Presumption that contract was with reference to existing state of law - Subsequent legislation nullifying contract-Contract frustrated - Promisor excused

from performing contract unless agreed to be bound with reference to future state of law : *Raja Hirdey Singh Ju Deo Vs. Seth Murlimanohar, I.L.R. (1962) M.P. 619*

-Earnest money-A part payment of consideration-Is a guarantee for due performance of the contract-Distinction between earnest money and part of the purchase price exists-Deposit whether earnest money or part of price-Depends upon proper construction of contract-Does not depend upon how parties chose to describe : *Jaykumar Jain Vs. Om Prakash, I.L.R. (1972) M.P. 173 (F.B.)*

- **Tender** - Tender floated by M. P. Electricity Board containing terms of the contract including general conditions of the contract containing Arbitration clause - Party making offer subject to terms and conditions in the tender and expressly excluding any other terms and conditions - Arbitration clause in General Conditions of contract cannot form part of contract : *M/s Chitram Company Private Ltd. Main Road, Foyapuram, Madras Vs. Madhya Pradesh Electricity Board, Rampur Jabalpur, I.L.R. (1983) M.P. 572,*

- **Civil Procedure Code (V of 1908), Order 12 Rule 8, Order 23 Rule 3 and Section 23, 100**- Nominal sale deed executed without consideration to avoid possible impact of law of ceiling on urban property – Possession not delivered – Executant even after sale deed exercised right of ownership – Suit for declaration by executant of Sale Deed that he be declared owner of such property – Claims admitted by defendant – Suit dismissed alleging to be collusive in nature – Compromise application rejected by Appellate Court alleging collusion to avoid stamp duty – Not proper – Section 100 – Second Appeal – Question of avoiding stamp duty does not arise as no instrument was executed which required stamp duty - Every person is entitled to arrange his affair as to minimize taxation – Suit for declaration as alternative to execution of a reconveyance – Could be decreed : *Smt. Pramila Vs. Shri Keshav Rao, I.L.R. (2001) M.P. 379*

-Bilty-cut contract - Price payable at the place of purchaser-Credit not given to the buyer' for the price, and payment is to be made against delivery of railway receipt-Payment of price to be made at the place Where bilty is to be sent-An important incident of biltycut contract : *Kanhaiyalal Vs. Abdul Aziz, I.L.R. (1960) M.P. 1018 (D.B.)*

-Agreement to reconvey - Time for reconveyance stipulated-Contract to be performed within stipulated period-General Clauses Act-Section 10-Applicability : *Pt. Krishna Chandra Vs. Pt. Ramgulam, I.L.R. (1957) M.P.330 (D.B.)*

- **Consent decree retains its character as contract** - Is subject to the incidents of contract - Contract Act, Indian - Section 74 - Forbids enforcement of penal

provision in contract - Contract - Whether a particular clause in a contract is penal or not - Has to be decided upon terms and inherent circumstances of each particular contract judge at the time of making the contract - Construction - Compromise decree - Compromise decree as a whole to be considered for construing the terms - Penalty and concession Distinction - Contract Act - Time is essence when one party agree to forego something to which he is entitled if other party undertakes to do certain things by a specified date : *Nonjibhai Vs. Seth Ramkishan, I.L.R. (1977) M.P. 795*

- **Test** -Test to be applied to determine validity of contract entered into by guardian of minor-Doctrine of mutuality not applicable to completed contract - - Transfer of Property Act-No provision disqualifying a minor represented by guardian from becoming a transferee-Section 127-Gift burdened with obligation in favour of minor-Gift is voidable and not void-Gift to a minor of property imposing obligation to pay Government revenue and public taxes - Gift cannot be regarded as void : *Rajendra Kumar Vs. The State Of Madhya Pradesh, I.L.R. (1965) M.P.498*

-**Contract without consideration-Contract is void**-Evidence Act, Indian-Section 92-Consideration-No term of the document-Oral evidence to prove want of consideration or different form of consideration-Admissibility : *Ram Ratan Prasad Vs. Ramtapeswar Dube I.L.R. (1968) M.P. 640*

- **Arbitration clause in contract-Clause distinct and separate**-Party in default can invoke it in aid -Parties setting dispute amicably-Arbitration clause ceases to exist-Parties substituting new contract-Arbitration clause in original contract abrogated-Alteration or modification of terms contract-Does not amount to rescission-Becomes part and parcel of original contract-Rescission oral or written-Need not be express-May be implied-Can be implied where original contract substituted by a new contract-Circumstance in which rescission can be inferred-Contract Act-Section 63-Remission of whole or any part of performance by promise-Consideration not necessary-Mere accord without satisfaction-Liability for breach of contract not wiped out-Possibility of accord being shown as satisfaction-Breach of substituted agreement-Original contract not revived-Rights to be worked on basis of substituted contract-Contract Act-Section 2(d)-Forbearance to sue-A good consideration : *Century Spinning And Manufacturing Co. Ltd., Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973 (D.B.)*

-**Contract by Tender**-Tender for purchase of Tendu leaves-Tenderer can withdraw tender before it is opened-Tender condition No. 10(b)(i) providing for condition of there being at least one valid Tender-It does not take away the legal right of withdrawal-Constitution of India-Article 299(1)-Absence of valid contract as envisaged by the Article-No enforceable contract comes into existence-Tendu Patta (Vyapar Viniyaman) Adhiniyam, Madhya Pradesh, 1964 – Section 12-Authorises Government to dispose of Tendu leaves-Terms in tender notice-Are executive

directions-Cannot have the status of law and as such not enforceable : *Rajendra Kumar Verma Vs. State Of Madhya Pradesh, I.L.R. (1975), M.P. 480 (D.B.)*

F.O.R. Contract -F.O.R. Contract Implication-Does not necessarily throw an obligation on buyer to secure wagons-No analogy with F.O.B. contract-Sale of goods Act, Section 23-Delivery to buyer when takes place-Evidence Act-Section 102 Burden of proof-Party not producing material evidence-Adverse inference when can be drawn : *Firm Jagannath Bhagwandas Vs. Firm M/S Khemraj Madanlal. I.L.R. (1958) M.P. 257 (D.B.)*

- **Sections 2 (b) and 4** - Forest Authority accepting tender submitted by petitioner but not proving communication of such acceptance to petitioner - No binding contract : *Kalluram Kesharvani Vs. State Of M. P. I.L.R. (1986) M.P. 307 (D.B.)*

-**Section 2(d)**-For-bearance to sue - Good consideration: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

-**Section 2(d)**-Fresh promise of fulfilling executory contract for sale-Can be a good consideration for a pro-note : *Indermal Vs. Ramprasad, I.L.R. (1972) M.P. 536 (F.B.)*

-**Sections 3, 4 & 6** – Acceptance of offer – Held – The general rule is that it is the acceptance of offer by the offeree and intimation of that acceptance to the offeror which results in a contract – Where the intimation of acceptance does not reach the offerer, it is to be shown by letter or telegram that acceptance was correctly addressed to the offerer otherwise it could not although posted or discharged be said to have been put in a course of transmission to him : *J.K. Enterprises (M/S.) Vs. State Of M.P., I.L.R. (1996) MP 313*

- **Section 4** - Communication of revocation of resignation - Complete when received by the authority addressed : *B. L. Shrivastava Vs. M. M. L. Shridhar I.L.R. (1977) M.P. 751 (D.B.)*

- **Sections 4 and 2 (b)** - Forest Authority accepting tender submitted by petitioner but not proving communication of such acceptance to petitioner - No binding contract : *Kalluram Kesharvani Vs. State Of M. P., I.L.R. (1986) M.P. 307 (D.B.)*

-**Section 5**-Withdrawal of offer by offeree before acceptance-Offer invalid-*Cannot be accepted* : *R.S. Bansal Vs. M.P. Housing Board, Bhopal, I.L.R. (2000) M.P. 671 .*

-Section 8-Common law rule “Debtor must seek creditor”-Not applicable where payment is to be made at the place where company carries on business : *Ramswaroop Vs. M/s Polsons Ltd., Bombay, I.L.R. (1974) M.P. 490*

-Section 8-Contract discharged by entering into new contract : *Ramswaroop Vs. M/S Polsons Ltd., Bombay, I.L.R. (1974) M.P. 490*

-Section 8-Proposal necessitating performance of condition-Proposal accepted when condition is fulfilled-Such proposal cannot be accepted by simply posting letter of acceptance : *Ramswaroop Vs. M/s Polsons Ltd., Bombay, I.L.R. (1974) M.P. 490*

-Section 8-Contract becomes complete at the place where letter of acceptance is posted-Proposal necessitating performance of condition-Proposal accepted when condition is fulfilled-Such proposal cannot be accepted by simply posting letter of acceptance Contract discharged by entering into new contract-Contract Act-Section 49-Pay, Fund and other benefits payable at a place where service is terminated-Common law rule “Debtor must seek creditor”-Not applicable when payment is to be made at the place where company carries on business : *Ramswaroop Vs. M/s Polsons Ltd., Bombay, I.L.R. (1974) M.P. 490*

- Section 17 and Special Marriage Act, (XLIII of 1954) Sections 24, 25 and 29–Fraud–Suit for a decree of nullity of marriage and appeal - Fact of earlier marriage suppressed by appellant–Iqrarnama executed that in view of dispute parties wish to obtain divorce–Non mention of cause of dispute in the document not by itself indicative that fact of earlier marriage was disclosed to husband--Fraud–It is not essential that there should be any misrepresentation by express words –Wife obliged to disclose fact of earlier marriage to husband–Active concealment - Husband entitled to decree : *Smt. Asha Qureshi Vs. Afaq Qureshi, I.L.R. (2003) M.P. 987*

- Section - 23 - Compromise agreement affecting properties of other co-sharers - Unlawful : *Thakur Prasad Vs. Bhagwandas I.L.R. (1985) M.P. 310 (D.B.)*

- Section 23 - Stipulation about forfeiture of variation in dearness allowance after three months - Stipulation opposed to public policy and is void : *Hardeosingh Vs. The Central Government, Industrial Tribunal-Cum-Labour Court, Jabalpur I.L.R. (1978) M.P. 662 (D.B.)*

- Section 23-Circumstances which render partnership illegal : *Messrs Dayabhai And Co., Barwani Vs. The Commissioner Of Income-Tax, M.P., Nagpur And Bhandara, Nagpur. I.L.R. (1968) M.P. 495 (D.B.)*

- **Section 23** - Agreement to pay part of the agreed lease money as rent till the loan remained unpaid - Is not against public policy : *Navnit Das Vs. Bhagwandas*, I.L.R. (1977) M.P. 227

-**Section 23**-Case of illegal contract-Plea of waiver not open : *Smt. Thakurain Dulaiya Vs. Shivnath Punjabi*, I.L.R. (1971) M.P. 691. (D.B.).

- **Section 23**-Presumption regarding legality of partnership : *Messrs Dayabhai And Co., Barwani Vs. The Commissioner Of Income-Tax, M.P., Nagpur And Bhandara*, I.L.R. (1968) M.P. 495 (D.B.)

- **Section 23** and Criminal Procedure Code, 1973 (II of 1974)-Sections 125, 127-Children's right to maintenance-Statutory right-Cannot be bartered or negated by the father by setting up an agreement to the contrary-Agreement whereby right of children to maintenance was relinquished cannot be given effect to : *Nizamul Haq Vs. Pholl Begum*, I.L.R. (2005) M.P. 1099

- **Section 23** - Mistress in consideration of past cohabitation was entitled to maintenance against estate of the deceased paramour : *Subhashchandra Vs. Smt. Narbadabai*, I.L.R. (1983) M.P.153

-**Section 23**, Specific Relief Act, 1963, Sections 16(c) & 20 – Champertous Agreement – Meaning – Held – It is an agreement to finance litigation and to share the fruits thereof. There is no special enactment in India barring such an agreement. For this reason, in our country, the champertous agreements have to be examined by the courts u/s 23 of the Contract Act. It is now settled law in India that these agreements, by themselves, are not illegal in the sense that they are immoral or opposed to public policy. However, if the court finds that a particular agreement is opposed to principle of equity and good conscience or unconscionable and extortionate in itself, then the courts would not enforce it. In other words, when such agreement is not made with a view to help persons to tide over their financial difficulties arising as a consequence of unequal litigation, but with a view to take advantage from the predicament of the persons involved in the litigation, the court may refuse to accept it – Appeal partly allowed : *Kamrunnisa Vs. Pramod Kumar Gupta*, I.L.R. (1996) MP 393

-**Section 23**- The transaction of mortgage unauthorised by objects of Association-Transaction not tainted with any illegality-Contract cannot be avoided nor ultra vires character prevent property from passing-Transfer of Property Act, Section 58-Pro-note debt agreed to be amalgamated with mortgage debt-Mortgage debt not augmented-No mortgage decree can be passed in respect thereof-C. P. Moneylenders Act - Section 2(vii) (b)-For exemption from operation of Act Society not required to

be registered in State of M. P.: *Radhasoami Satsang Sabha, Dayalbagh, Agra, U.P. Vs. Shri Hanskumar, I.L.R. (1958) M.P. 523 (D.B.)*

-Section 23-Forest Rules, Indian-Rule 33-Contract between forest contractor and his assignee, to work forest-Contract not void-Contract binding on parties though not on Government : *Harkaran Vs. Champalal, I.L.R. (1961) M.P. 741*

-Section 23-Offence compoundable without Court's permission-Agreement between parties to abandon prosecution-Does not amount to stifling of prosecution nor is against public policy-Section 23, Contract Act not applicable : *Jangaliya Vs. Mst. Gaya, I.L.R. (1961) M.P. 758*

- Section 23 - Mistress - Right of maintenance under an agreement with paramour - Not per se void or unenforceable - Agreement when becomes illegal and unenforceable - Mistress in consideration of past cohabitation was entitled to maintenance against estate of the deceased paramour - Penal Code, Indian - Section 497 - Adultery as defined in section 497 of the Code - Not proved - Agreement is not hit by Section 23 of the Contract Act- Hindu Adoptions and Maintenance Act, 1956 - Sections 4, 21 and 22 - Do not affect pre-existing rights - Provision not applicable where rights claimed under agreement - Registration Act - Section 17 - Agreement permitting mistress to occupy a room - Does not require registration : *Subhashchandra Vs. Smt. Narbadabai, I.L.R. (1983) M.P. 153,*

-Sections 23 and 25 - Contract to recover fees which are illegal-Consideration of agreement is illegal - Contract is void - Contract cannot be enforced-Decision-Judgment declaring certain tax as illegal – Effect : *Ramkrpal Vs. The Municipal Committee, Bilaspur, I.L.R. (1963) M.P. 94 (D.B.)*

-Sections 23 and 28-Two Courts having jurisdiction to try the suit-Agreement between parties that one particular Court will have jurisdiction-Agreement is valid and not affected by sections 23 and 28 of Contract Act : *Suleman Vs. Emandi Pydiraju, I.L.R. (1960) M.P.660 (D.B.)*

– Section 23, 151, 152, 160, 176 and Clause 9 of the pledge agreement – Contract of exemption from liability for any loss due to negligence or carelessness of staff – Binding on parties and not hit by section 23 of the Act – Loss or damage to goods entrusted to Bailee – Prima facie evidence of negligence – Burden to disprove negligence lies on Bailee – Clause 9 of the Pledge agreement does not exonerate bank from liability for negligence of its servants – In Case of claim of exemption by special contract also, care of prudent man of pledged goods is to be shown – Bank not in a position to return the goods and failed to mitigate loss – Not entitled to claim amount under purchased documentary bills : *Central Bank Of India Vs. M/s Grains And Gunny Agencies, Raigarh, I.L.R. (1988) M.P. 628 (D.B.)*

– **Sections 25, 134** – Consideration – Promise to pay past-debt, even it time barred, is good consideration – Bank obtaining new agreement on past consideration – Amounts to fresh contract binding only to the parties to the agreement – Would terminate the earlier contract and discharge the earlier guarantor – Borrower compelled to give fresh guarantee – Bank deemed to have released earlier guarantor : *Smt. Vimla Pradhan Vs. United Commercial Bank, I.L.R. (1990) M.P. 566*

-**Section 25(3)** - Deed acknowledging inability and promising payment of amount with interest-Deed falls under the Section : *Mannalal Vs. Sitambernath, I.L.R. (1961) M.P. 374*

-**Section 25(3)**-If an express promise has been made to pay certain debt which was time barred, the liability to pay survives-Categorical and unequivocal acceptance of liability of Rs. 29,603.50 by the defendant No. 1-Accounts book of the Bank not disputed-Defendant-Loanee not only made an express promise to pay the debt but also changed the guarantor-Liability created against the defendant No. 1 is to be accepted Commercial transaction-No justification to reduce the rate of interest than the agreed rate : *Raigarh Khetraiya Gramin Bank Vs.. Taliram Gupta, I.L.R. (1999) M.P. 132*

-**Section 27**-Suit for injunction-Agreement that franchisee shall not conduct similar courses within six months of termination of agreement-Agreement not in restraint but for advancement of trade-Not void : *Manish Kane Vs. Sandeep Manudhane, I.L.R. (2003) M.P. 89*

-**Section 27**-Circumstances in which legal and illegal part can be separated : *Hariprasad Vs. Mst. Beni Bai, I.L.R. (1970) M.P. 804*

-**Section 27**-Consideration paid under illegal contract-Consideration is refundable : *Hariprasad Vs. Mst. Beni Bai, I.L.R. (1970) M.P. 804*

-**Section 27**-Contract in restraint of trade-Contract is void unless brought within exception (1) : *Hariprasad Vs. Mst. Beni Bai, I.L.R. (1970) M.P. 804*

- **Section 27** – Civil Procedure Code (V of 1908) Section 115, Order 39 Rules 1 & 2 - Suit for injunction-Agreement that franchisee shall not conduct similar courses within six months of termination of agreement-Agreement not in restraint but for advancement of trade-Not void-Agreement terminated by franchisee without prior notice-Interim injunction can be granted : *Manish Kane Vs. Sandeep Manudhane, I.L.R. (2003) M.P. 89*

- **Section 28** - An agreement not to challenge award or order of High Court in earlier writ petition - Not a restraint on enforcement of rights in respect of any contract so as to fall under this provision : *Sone Singh Vs. State Industrial Court Indore I.L.R. (1979) M.P. 311 (D.B.)*

- **Section 28** - Compromise preventing further challenge to Award or order of High Court - Not an absolute restraint on legal proceedings - Agreement to fall under this provision - Must be one restraining enforcement of rights under or in respect of contract : *Sone Singh Vs. State Industrial Court Indore I.L.R. (1979) M.P. 311 (D.B.)*

-**Section 29**-Clause regarding renewal vague and uncertain-No valid contract of renewal comes into existence-Such contract not enforceable : *Hitkarini Sabha, Jabalpur Vs. The Corporation Of The City Of Jabalpur & anr., I.L.R. (1961) M.P. 543 (D.B.)*

- **Section 29** - Contract agreement providing that clause 32 of General Conditions of Contract would govern the parties subject to such variation as was expressly or impliedly agreed upon - Constitutes agreement in respect of clause 32 as a part of contract agreement : *M/S Uttam Singh Dural & Co. (P) Ltd. New Delhi Vs. M/S Hindustan Steel Ltd., Bhilai, I.L.R. (1983) M.P. 269, (D.B.)*

- **Section 29** – Agreement void on account of vagueness – Vagueness contemplated in relation to parties to agreement and reflected in agreement itself – Agreement could not hit if intention of parties to it is brought out – Hindu law – Family arrangement or family settlement – Concept brought from England – Made in the interest of family and with an intention to settle or avoid present or future disputes – Governed by special equity and if terms fair, Court makes every effort to recognise and sustain it – Justice lies in not disturbing family arrangement : *Balram Vs. Mansai, I.L.R. (1988) MP 214*

-**Section 30**-Agreement to pay amount lost on a wager-Agreement invalid and unenforceable: *Radheshyam Vs. Sitaram I.L.R. (1966) M.P. 655*

-**Section 30**-Irrecoverable wagering debt-Cannot be basis of a claim under the guise of account stated-Principles enunciated : *Radheshyam Vs. Sitaram I.L.R. (1966) M.P. 655*

-**Section 30**-Agreement by way of wager is void-Suit does not lie : *Subhash Kumar Manwani Vs. State, I.L.R. (2000) M.P. 854, (D.B.)*

- **Section 30**- Wagering contract void though not illegal- cannot be enforced : *Radheshyam Vs. Sitaram I.L.R. (1966) M.P. 655*

-Section 30-Wager implies bipartite agreement but not so a gaming contract- Wagering contract void though not illegal-Cannot be enforced-Agreement to pay amount lost on a wager-Agreement invalid and unenforceable-Irrecoverable wagering debt-Cannot be basis of a claim under the guise account stated-Principles enunciated : *Radheshyam Vs. Sitaram I.L.R. (1966) M.P. 655*

-Section 38-Conditions necessary to be fulfilled for offer being effective ad legal- Transfer of Property Act-Section 76(a)-Letting property by mortgagee-Action not against principles of the section--Mortgagor not entitled to demand vacant possession- Words and Phrases-Word "Tender"-Principle of : *Abdul Hamid Vs. Manilal I.L.R. (1968) M.P. 266 (D.B.)*

-Section 45- Death of holder of pronote-Right vests in all the heirs-Suit must be brought by all heirs-Some heirs not joining in suit-Those to be made defendant : *Champalal Vs. Padam Chand. I.L.R. (1969) M.P. 850*

-Section 45-Suit for recovery of loan advanced by unregistered firm - Suit not in firm's name but two partners-Suit dismissed-Appeal filed by both plaintiffs-One appellatant died during pendency-Legal representatives not brought on record- Abatement whole or partial : *Shrikishan Vs. Deokinandan & ors., I.L.R. (1961) M.P. 597*

– **Section 46** – Reasonable time for performing an act – Depends and varies from case to case – Money deposited within three days from the date of decree – No delay could be attributed to plaintiff in filing the suit – Trial Court rightly decreed the suit : *Ratan & anr. Vs. Shaligram and anr., I.L.R. (2001) M.P. 1178, (D.B.)*

- **Section 47** - In case of mutual obligations of the parties - Plaintiff has to show that he was ready and willing to perform his part of the contract : *State Of M. P. Vs. Sardar Bootasingh I.L.R. (1977) M.P. 317 (D.B.)*

- **Section 47** - Commercial Contract fixing time for performance of contract - Time is of the essence - In case of mutual obligations of the parties - Plaintiff as to show that he was ready and willing to perform his part of the contract - Forest Act, 1927 - Section 83 - Contemplates two stages - Where there is power of seizure, there is power of stoppage -Where there is power of seizure, there is power of stoppage of work also - Forest Contract Rules, 1961 - Rules 29 (2) - In case of default of payment of instalment - Conservator of Forests can terminate contract - Rule 21 (1) Provides for section wise working - Section - wise working has twofold purpose - Does not lothe contractor with any kind of right to work only one section leaving others untouched - Rule 29 (3)(e) - Power to re-sell when can be exercised - Rule 29 (2) - Confers discretion on officer either to recover the balance of money or to treat

contract as cancelled - Words and Phrases - "up set price" - Implication of : *State Of M. P. Vs. Sardar Bootasingh I.L.R. (1977) M.P. 317 (D.B.)*

-Section 49-Pay, Fund and other benefits payable at a place where service is terminated ; *Ramswaroop Vs. M/s Polsons Ltd., Bombay, I.L.R. (1974) M.P. 490*

-Section 50-Tender of arrears of rent by cheque-Amounts to good tender-Landlord not entitled to refuse it : *Parasram Vs. Damadilal, I.L.R. (1971) M.P. 117.*

-Section 50-Issuance of cheque does not operate as discharge unless encashed-Amounts to sufficient tender if not dishonoured : *Parasram Vs. Damadilal, I.L.R. (1971) M.P. 117.*

-Section-50-Obligations under this section-Modes in which they can be discharged-Issuance of cheque does not operate as discharge unless encashed-Amounts to sufficient tender if not dishonoured-Tender of arrears of rent by cheque-Amounts to good tender-Landlord not entitled to refuse it-Accommodation Control Act, Madhya Pradesh, 1961-Sections 12(1)(a) and 13(1)-Default under Section 12(1)(a)-Tenant carrying out carrying out requirement of section 13(2)-Dispute regarding rent-Court not bound to act suo motu-Section 12-Bona fide-Court has to be satisfied objectively : *Parasram Vs. Damadilal, I.L.R. (1971) M.P. 117.*

– **Sections 52, 54** – Damages – Despite right to terminate contract not rescinded – No clause in agreement for damages in consequence of non payment – Party claiming damages not suffered any loss - Provisions of Sections 52, 54 not attracted : *Jabalpur, Cable Network Pvt. Ltd., Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd., New Delhi, I.L.R. (2001) M.P. 846,*

- **Section 55 and Limitation Act, Indian (XXXVI of 1963), Section 54** – Land – Presumption that time is not the essence of contract – Time starts from the date fixed for performance of contract –Time fixed after six months – Time extended to another six months if the interest is paid – Time starts running after one year: *Sardar Gurdeep Singh Vs. Amiya Kumar Dutta, I.L.R. (1991) M.P. 571*

- **Section 55 and Specific Relief Act (XLVII of 1963), Section 22** – Contract regarding sale of immovable property – Time is not essence of contract – Presumption under – When stands rebutted – Specific Relief Act, 1963 – Section 22 – Court, power of, to grant relief to the plaintiff under : *Suraj Singh Vs. Smt. Nathi Bai, I.L.R. (1990) M.P. 96*

- **Section 56** - Doctrine of frustration of Contract - Whether applicable to a contract for sale of Bhumiswami lands - Subsequent legislative restrictions - Whether

parties are absolved from its performance : *Narain Prasad Vs. Premsingh, I.L.R. (1981) M.P. 137.*

-Section 62-Alteration or modification of terms of contract Does not amount to rescission-Becomes part and parcel of original contract: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

-Section 62-Insurantee policy-A personal contract of indemnity - Not assignable-Transfer of policy amounts to novation -Requisites to be satisfied for novation of contract : *Gyarsialal Vs. Pt. Sitacharan Dubey & Ors., I.L.R. (1964) M.P. 91 (D.B.)*

-Section 62-Rescission oral or written-Need not be express-May be implied-Can be implied where original contract substituted by a new contract-Circumstances in which rescission can be inferred: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

-Section 63-Breach of substituted agreement-Original contract not revived-Rights to be worked on basis of substituted contract: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

-Section 63-Extention of time for performance-Consent of both parties necessary-Communication of request of promisor to promisee necessary : *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) M.P. 405 (D.B.)*

-Section 63-Mere accord without satisfaction-Liability for breach of contract not wiped out-Possibility of accord being shown as satisfaction: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

- **Section 63**-Remission of whole or any part of performance by promise-Consideration not necessary: *Century Spinning Manufacturing Co. Ltd, Bombay Vs. Motilal Dhariwal, I.L.R. (1967) M.P. 973, (D.B.)*

-Section 63-Scope of : *Mangalsa Vs. State Of M.P. I.L.R. (1968) M.P. 613 (D.B.)*

- **Section 65** and Transfer of Property Act (IV of 1882), Section 58 - Mortgage of past debts - Forbearance to sue - Is a valid consideration : *Rameshwardas Vs. Jagannath I.L.R. (1979) M.P. 511 (D.B.)*

- **Section 65** and Transfer of Property Act (IV of 1882), Section 58 - Suit for refund of entire consideration - Maintainable : *Rameshwardas Vs. Jagannath I.L.R. (1979) M.P. 511 (D.B.)*

-Section 65-Transferee to restore what he got not what benefit he derived therefrom : *Smt. Janki & Anr. Vs. Atmaram, I.L.R. (1959) M.P. 1020*

-Section 65-Agreement by minor whose pretence to majority innocently accepted by other party-Agreement is void : *Seth Amolakchand (Firm), Sanawad, Vs. Prahlad Singh, I.L.R. (1972) M.P. 365 .*

- Section 65 - Agreement of sub-tenancy discovered to be void - Still sub-tenant liable to pay compensation to the tenant for use and occupation of the premises : *Firm Durgaprasad Magniram, Sagar Vs. Dr. Ganesh Prasad, I.L.R. (1982) M.P. 725,*

-Section 65-Section in terms not applicable-Doctrine of equitable restoration still applicable : *Seth Amolakchand (Firm), Sanawad, Vs. Prahlad Singh, I.L.R. (1972) M.P. 365*

-Section 65 and Specific Relief Act (I of 1877), Section 41-Basic principle underlying both the sections : *Seth Amolakchand (Firm), Sanawad, Vs. Prahlad Singh, I.L.R. (1972) M.P. 365*

-Section 65-Contract discovered to be void-Consideration has to be refunded : *Sukhsen Vs. Shravan Kumar, I.L.R. (1975) M.P. 328*

-Section 65-Contract not initially void-Becomes void subsequently -Transferee entitled to claim refund-Transfer of Property Act, Section 108-State acquiring property leased out in exercise of right-Lessees not entitled to refund-Not also entitled to sue lessor. for disturbance of possession : *Singhal Shrinandanlal Vs. Laxmansingh, LL.R. (1958) M.P. 879 (D.B.)*

-Section 65-Person having no right to transfer entering into contract to sell property - Vendee advancing money in pursuance of Contract-Suit by vendee for refund of money-Maintainability : *Shaikh Umar Vs. Shivdansingh, I.L.R. (1957) M.P.590 (D.B.)*

-Section 65-Phrases "discovered to be void" and "becomes void" in-Denote two different situations-Distinction between the two-Both parties knowing from the beginning that agreement is void-Either party not entitled to benefit of restoration of benefit-Basic principle underlying Section 65, Contract Act and Section 41 Specific Relief Act-Agreement by minor whose pretence to majority innocently accepted by other party-Agreement is void Principle of British Common Law-Limitations under which it can be applied-Section in terms not applicable-Doctrine or equitable

restoration still applicable : *Seth Amolakchand (Firm), Sanawad, Vs. Prahlad Singh, I.L.R. (1972) M.P. 365 .*

-Sections 65 and 73-Breach of contract to marry-Mangni ceremony took place for marriage of plaintiff and respondent-Appellant persuaded respondent to cohabit with him as they were going to be married soon-Respondent became pregnant and gave birth to child-Denial of Mangni and cohabitation by appellant with respondent-Suit for damages on ground of defamation, mental torture and physical discomfort-Evidence of Plaintiff witnesses reliable-Damages cannot merely be nominal but substantial-Mere acquittal in criminal case does not mean that no suit for damages can lie in tort-Grant of damages to the extent of Rs. 30,000 proper-Appeal dismissed. *Laxminarayan Chandanlal Lodhi Vs. Sumitra Bai; I.L.R. (1994) M.P. 182*

- **Section 66**-Receipt of premium and issue of cover-note - Revocation of proposal not communicated to the assured - Insurance company liable for the risk covered under the cover-note : *Hindustan General Insurance Society Ltd., Calcutta Vs. Khushiram, I.L.R. (1982) M.P. 432,*

- **Section 69** - Applicable to payments made - bona fide for protection of one's own interest : *Seth Kantilal Vs. Ramchandrarao I.L.R. (1977) M.P. 134*

- **Section 69** -Person whose lease has expired by lapse of time - Is not a person interested in making payment : *Seth Kantilal Vs. Ramchandrarao I.L.R. (1977) M.P. 134*

- **Section 69** - Requires that person making payment must honestly believe that payment is necessary for protecting his own interest - Belief must be based on reasonable grounds even though belief may be unfounded : *Seth Kantilal Vs. Ramchandrarao I.L.R. (1977) M.P. 134*

- **Section 69** - Section affords on indemnity in respect of payments against a person who ought to have made payment : *Seth Kantilal Vs. Ramchandrarao I.L.R. (1977) M.P. 134*

-Section 69-Joint suit by insurer and owner-Document of subrogation-Insurance Company acquires right to raise claim on the pleas available to the owner : *Oriental Insurance Company Vs. Mukesh & Company and another; I.L.R.(2000) M.P.1118 (D.B.)*

-Section 70-Proprietor paying assessment of Abadi site--No right to recover the same from the person occupying it : *Radheshyam Agrawal Vs. The State Of M.P. & ors., I.L.R. (1963) M.P.425 (D.B.)*

-Section 70-Proprietor paying assessment of Abadi site-No right to recover the same from the person occupying it-Land Revenue Act, C.P. and Berar, 1917-Section 56(1)"All land, to whatever purpose applied and wherever situate" in-Wide enough to include Abadi site-Land Revenue Code, M.P., 1954-Section 2(1)(i) and Section 52(3) - Abadi site used for commercial purpose -Amounts to diversion-Section 52(3) applies to the case : *Radheshyam Agrawal Vs. The State Of Madhya Pradesh, I.L.R. (1963) M.P. 425 (D.B.)*

- Section 70 - Three conditions to be satisfied for its applicability - Practice - Evidence - Adverse inference against party not producing best evidence in its possession - Registration Act, Indian Section 90-Lease by Government - Not compulsorily registrable: *State Of Madhya Pradesh Vs. Jhankar Singh, I.L.R. (1978) M.P. 165 (D.B.)*

-Section 73-Plaintiff suing for damages-Plaintiff has to prove that transaction was fair, just and reasonable : *K.R. Shah Vs. Municipal Committee, Dhamtari, . I.L.R. (1969) M.P. 294*

-Section 73-Person suffering loss due to breach of contract-Reasonable steps to mitigate damages to be taken by him-Not entitled to recover loss which is due to his not behaving reasonably after the breach-Burden of showing that he did not possess means of remedying inconvenience due to non performance on person complaining of breach of contract : *Pannalal Vs. The State Of M.P., I.L.R. (1964) M.P. 752 (D.B.)*

-Section 73-Plaintiff failing to adduce best evidence-Court not relieved of duty to assess damages on evidence and material on record : *The Union Of India, Ministry Of Railways, New Delhi Vs. Messrs Allauddin Aulia Sahib, I.L.R. (1962) M.P. 697 (D.B.)*

- Section 73 – Contractor committing breach for not commencing the work as per stipulated time – Department terminating contract but committing technical breach in terminating contract before expiry of fourteen days notice period fixed in agreement – Department justified in terminating contract – However, for technical breach committed by Department – Contractor held entitled to nominal damages only – Contractor failing to prove estimated loss of his profit due to termination of contract before expiry of notice period – Only nominal damages can be awarded – Nominal damages Assessment of : *State Of M.P. Vs. M/s. Recondo Limited, Bhopal I.L.R. (1990) M.P. 110 (D.B.)*

-Section 73-Measure of damages Plaintiff suing for damages-Plaintiff has to prove that transaction was fair, just and reasonable : *K.R. Shah Vs. Municipal Committee, Dhamtari, I.L.R. (1969) M.P. 294*

- **Section 73**-Contract of service for a certain period-Termination of service by one month's notice-Employee can claim salary for unexpired period of service by way of damages : *Trimbak Vs. The Akola Education Society, Akola, I. L. R. (1957) M.P.40, (D.B.)*

-**Section 74**-Measure of damages for breach of Contract : *Kulsekarapatnam Hand-Made Match Workers Co-Operative Cottege Industrial Society Ltd. Vs. Firm Radhelal Lalloolal, Satna. I.L.R. (1974) M.P. 636 (D.B.)*

- **Section 74** – Clause for forfeiture of security deposit in case of breach of contract – Nature of – Whether enforceable : *The Food Corporation Of India, Bhopal Vs. M/s Ramgopal Rambilas, Durg I.L.R. (1990) M.P. 265*

-**Section 74**-Essence of penalty is stipulation in terrorem : *Manaklal Vs. Bhagwandas I.L.R. (1968) M.P. 636*

- **Section 74** - Condition in compromise regarding whole amount becoming due on default of instalment - Condition not penal : *Bahadur Singh Vs. Smt. Gulabdevi I.L.R. (1979) M.P. 658*

- **Section 74** - Executing Court has powers to grant relief against penalty - Nature of penalty - Also includes stipulation to convey certain property in default of payment of defendant on a fixed date : *Smt. Parvati Bai Vs. Ayodhya Prasad, I.L.R. (1984) M.P. 526*

- **Section 74** - Provisions applicable to consent decrees also : *Smt. Parvati Bai Vs. Ayodhya Prasad, I.L.R. (1984) M.P. 526*

- **Section 74** -Power of Court to relieve party against forfeiture - Confers discretion on Court to relieve against penal clause : *Bahadur Singh Vs. Smt. Gulabdevi I.L.R. (1979) M.P. 658*

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-**Section 74** – Security deposit for due performance – Forfeiture of deposit for breach of conditions of tender notice – Not justified where no loss caused in consequence – Party only entitled to reasonable compensation : *Haji Abdul Sattar Vs.*

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– **Section 74** – Contract for milling paddy – Execution of agreement and deposit of security deposit – Valid and enforceable contract comes into being – Non-furnishing of Bank Guarantee as a condition for lifting paddy as a safeguard against misuse of paddy entrusted to contractor, does not make the contract invalid or unenforceable – Contractor committing breach, liable for penal consequences and damages : *The Food Corporation Of India, Bhopal Vs. M/s Ramgopal Rambilas, Durg, I.L.R. (1990) M.P. 265*

-**Section 74**-Condition in contract to convey property in case debt not paid within stipulated time -Condition is penal-Power of Court to relieve-Essence of penalty is stipulation in terrorem : *Manaklal Vs. Bhagwandas I.L.R. (1968) M.P. 636*

- **Section 74** - Applicable to compromise decree - Power of Court to relieve party against forfeiture - Confers discretion on Court to relieve against penal clause - Condition in compromise regarding whole amount becoming due on default of instalment - Condition not penal : *Bahadur Singh Vs. Smt. Gulabdevi I.L.R. (1979) M.P. 658*

- **Section 74** - Relief against penalty - Consent decree - Court entitled to grant relief against penal clause in a consent decree - Consent decree providing payment of rent by a certain date failing which decree holder entitled to evict the judgment-debtor from the property - Held to be a penal condition - Judgment-debtor entitled to be relieved against it : *Birbalsingh Vs. Chandrawatibai, I.L.R. (1982) M.P. 368,*

- **Section 74** - Equitable principles thereunder - Contract providing forfeiture of certain property as a result of breach is not unlawful - Whether or not it amounts to penalty is a question of law - Has to be decided on terms and circumstances at the time of making contract and not at the time of breach - Provisions applicable to consent decrees also - Executing Court has powers to grant relief against penalty - Nature of penalty - Also includes stipulation to convey certain property in default of payment of defendant on a fixed date - Consent decree providing transfer of certain land by defendant to plaintiff in default of payment of money in instalments on fixed date - Stipulation to transfer land is in the nature of penalty - Executing Court can relieve defendant against penalty : *Smt. Parvati Bai Vs. Ayodhya Prasad, I.L.R. (1984) M.P. 526*

– **Section 74** – Contract – Concluded contract when comes into being and enforceable – Contract for milling paddy – Execution of agreement and Deposit of security deposit – Valid and enforceable contract comes into being – Non-furnishing of Bank Guarantee as a condition for lifting paddy as a safeguard against misuse of

paddy entrusted to contractor, does not make the contract invalid or un-enforceable – Contractor committing breach, liable for penal consequences and damages – Damages – Contract not providing for any precise amount of damages in case of its breach – No proof of actual loss or damage – Adjustment or forfeiture of amount of security deposit not permissible – Failure of defendant to issue release order for lifting paddy – Not entitled to storage charges or interest – Clause for forfeiture of security deposit in case of breach of contract – Nature of – Whether enforceable : *The Food Corporation Of India, Bhopal Vs. M/s Ramgopal Rambilas, Durg, I.L.R. (1990) M.P. 265*

- **Section 87** - Illustration (before Sale of Goods Act) - Effect of : *Union Of India Vs. Tarachand I.L.R. (1979) M.P. 1100 (D.B.)*

- **Section 126** - Banker and Customer - Liability of Banker to honour irrevocable letter of credit - Exceptions –Only in case of fraud or when documents are defective: *M/S. Avn Tubes Limited. Vs. M/s. Steel Authority of India Limited, I.L.R. (1995) M.P. 280*

- **Section 126** - Bank guarantee given by purchaser of goods to supplier for supply made by him under a scheme - Purchaser seeking injunction against encashment on ground that supply was not made under the scheme - No evidence to show that supply was not under scheme or scheme has come to an end - Further plea of fraud that supplier encashed bank guarantee and is seeking payment for second time - Not established - Held, injunction restraining encashment of bank guarantee could not be granted: *M/S. Avn Tubes Limited. Vs. M/s. Steel Authority of India Limited, I.L.R. (1995) M.P. 280,*

- **Sections 126, 128** - The contract of guarantee is an independent contract, the surety cannot require the creditor to recover the 'debt' from principal debtor personally or from the securities furnished by the principal debtor for repayment of loan by way of hypothecation, pledge or mortgage–If this be permitted, then it would amount to trenching upon altogether different contract between the principal debtor and the creditor–This right is not vested in a surety ordinarily in a contract of guarantee–The use of word 'co-extensive' sometimes may create confusion–The extent mentioned in S. 128 of the Contract Act must be limited to the liability of the principal debtor and not to the manner of discharge of debt of the principal debtor–Therefore, right to recover a debt wholly or partially vests in a creditor till such time the debt of the principal debtor is discharged–Then only the liability of surety shall come to an end : *State Bank Of India Vs. M.P. Iron And Steel Works Pvt. Ltd., Raipur, I.L.R (1997) M.P. 259*

-**Sections 132 and 151** -Contract between Government and Motor Transport Company to carry mail bags and postal articles -Position of Motor Transport

Company is that of a bailee - Duties and responsibilities of the company -Similar to that of a carrier-Representation of the People Act-Section 7(d)-Conditions to be satisfied for disqualifying a person to be a member of either House of Parliament-Person having beneficial interest in a contract entered into by other person or body-Person not disqualified-Disqualification not attaching to share-holder of a company entering into Contract-Expression "execution of any works" in-Meaning of-Word "works" in-Used in the sense of "operations", "projects", "scheme", "plan"- "Any work"-Means any task or job or activity-"Execution of any work"-Means carrying out of any task or job or the undertaking of any activity-Essential requisite for holding office under Government required to incur disqualification-Interpretation of Statute - Principle-Nothing to be added or subtracted - Statute to be construed according to its plain meaning : *Satya Prakash Vs. Bashir Ahmad, I.L.R. (1965) M.P. 106 (D.B.)*

- **Sections 134, 25** – Consideration – Promise to pay past-debt, even it time barred, is good consideration – Bank obtaining new agreement on past consideration – Amounts to fresh contract binding only to the parties to the agreement – Would terminate the earlier contract and discharge the earlier guarantor – Borrower compelled to give fresh guarantee – Bank deemed to have released earlier guarantor : *Smt. Vimla Pradhan Vs. United Commercial Bank, I.L.R. (1990) M.P. 566*

-**Section 135, 137 and 139**-Additional security not given with idea of affecting original contract of security-Surety not discharged : *Princess Usha Devi Malhotra Vs. Rai Sahib Bhagwandas Tiwari, I.L.R. (1971) M.P. 1034. (D.B.)*

-**Section 135, 137 and 139**-Circumstances in which surety is discharged : *Princess Usha Devi Malhotra Vs. Rai Sahib Bhagwandas Tiwari, I.L.R. (1971) M.P. 1034. (D.B.)*

-**Section 135, 137 and 139**-Mere grant of time or acceptance of additional security-Does not discharge surety : *Princess Usha Devi Malhotra Vs. Rai Sahib Bhagwandas Tiwari, I.L.R. (1971) M.P. 1034. (D.B.)*

-**Section 135, 137 and 139**-Scope of-Circumstances in which surety is discharged-Mere grant of time or acceptance of additional security -Does not discharge surety-Additional security not given with idea of affecting original contract of security-Surety not discharged : *Princess Usha Devi Malhotra Vs. Rai Sahib Bhagwandas Tiwari, I.L.R. (1971) M.P. 1034. (D.B.)*

-**Section 137, 135 and 139**-Scope of-Circumstances in which surety is discharged-Mere grant of time or acceptance of additional security -Does not discharge surety-Additional security not given with idea of affecting original contract of security-Surety not discharged : *Princess Usha Devi Malhotra Vs. Rai Sahib Bhagwandas Tiwari, I.L.R. (1971) M.P. 1034. (D.B.)*

– **Section 151**, Clause 9 of the pledge agreement – Clause of the pledge agreement does not exonerate Bank from liability for negligence of its servants – In case of claim of exemption by special contract also, care of prudent man of pledged goods is to be shown – Bank not in a position to return the goods and failed to mitigate loss – Not entitled to claim amount under purchased documentary bill : *Central Bank Of India Vs. M/s. Grains And Gunny Agencies, Raigarh, I.L.R. (1988) MP 628 (D.B.)*

-Section 151-Duty of care by bailee includes duty to employ honest and competent servants-Loss caused by negligence and dishonesty of servants-Master is liable : *The Bilaspur Central Co-Operative Bank Ltd. Vs. The State Of Madhya Pradesh, I.L.R. (1958) M.P. 97 (D.B.)*

– **Section 151, 23, 152, 160, 176** and Clause 9 of the pledge agreement – Contract of exemption from liability for any loss due to negligence or carelessness of staff – Binding on parties and not hit by section 23 of the Act – Loss or damage to goods entrusted to Bailee – Prima facie evidence of negligence – Burden to disprove negligence lies on Bailee – Clause 9 of the Pledge agreement does not exonerate bank from liability for negligence of its servants – In Case of claim of exemption by special contract also, care of prudent man of pledged goods is to be shown – Bank not in a position to return the goods and failed to mitigate loss – Not entitled to claim amount under purchased documentary bills : *Central Bank Of India Vs. M/s Grains And Gunny Agencies, Raigarh, I.L.R. (1988) M.P. 628 (D.B.)*

-Sections 151 and 132 - Contract between Government and Motor Transport Company to carry mail bags and postal articles -Position of Motor Transport Company is that of a bailee - Duties and responsibilities of the company -Similar to that of a carrier-Representation of the People Act-Section 7(d)-Conditions to be satisfied for disqualifying a person to be a member of either House of Parliament-Person having beneficial interest in a contract entered into by other person or body-Person not disqualified-Disqualification not attaching to share-holder of a company entering into Contract-Expression "execution of any works" in-Meaning of-Word "works" in-Used in the sense of "operations", "projects", "scheme", "plan"- "Any work"-Means any task or job or activity-"Execution of any work"-Means carrying out of any task or job or the undertaking of any activity-Essential requisite for holding office under Government required to incur disqualification-Interpretation of Statute - Principle-Nothing to be added or subtracted - Statute to be construed according to its plain meaning : *Satya Prakash Vs. Bashir Ahmad, I.L.R. (1965) M.P. 106 (D.B.)*

– **Sections 151, 152 and 161** – Loss or damage to goods entrusted to Bailee – Prima facie evidence of negligence – Burden to disprove negligence lies on Bailee : *Central Bank Of India Vs. M/s. Grains And Gunny Agencies, Raigarh, I.L.R. (1988) MP 628 (D.B.)*

– **Sections 152, 151 and 161** – Loss or damage to goods entrusted to Bailee – Prima facie evidence of negligence – Burden to disprove negligence lies on Bailee : *Central Bank Of India Vs. M/s. Grains And Gunny Agencies, Raigarh, I.L.R. (1988) MP 628 (D.B.)*

- **Section 171** - Banker's lien - The application of under Section 171 of the Contract Act should be properly confined to cases where the papers, securities and other goods belonging to a debtor, are kept with the Bank for creating relationship of bailer and bailee : *State Bank Of India Vs. M.P. Iron And Steel Works Pvt. Ltd., Raipur, I.L.R (1997) M.P. 259*

-**Section 171**-‘Banker’s Lien’ on the amount invested in fixed deposit with the appellants/ Bank-Plaintiff/respondent made fixed deposits with the defendant/Bank-Maturity value payable were appropriated towards amount recoverable from plaintiff-Bank does not have Banker’s lien on the said amount-Unless there is implied or express agreement Bank had no general lien on the amount deposited with it as deposit-Cannot be inter mixed unilaterally without customer’s consent : If there is no codified law, the rules of justice, equity and good conscience is always useful. What the law is after all : *U.C.O. Bank, Indore Vs. Basantilal, I.L.R. (1999) M.P. 472*

- **Section 172** and Civil Procedure Code (V of 1908), Order 39 rule 10 - Defendant admitting his signature on hypothecation bond but pleading fraud and obtaining of signature on blank forms - Does not tantamount to admission of fact of hypothecation - Order under Order 39 rule 10, C. P. C. cannot be made : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50*

- **Section 172** and Civil Procedure Code (V of 1908), Order 39 rule 10 - Exercise of jurisdiction under Order 10, C. P. C. directing deposit of hypothecated property in Court or to be delivered to the creditor - When can be made - Admission of fact of hypothecation necessary : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50*

- **Section 172** and Civil Procedure Code (V of 1908), Order 39 rule 10- Contract of hypothecation - Rights of creditor thereunder - Exercise of jurisdiction under Order 39, rule 10, C. P. C. directing deposit of hypothecated property in Court or to be delivered to the creditor - When can be made - Admission of fact of hypothecation bond but pleading fraud and obtaining of signature on blank forms - Does not tantamount to admission of fact of hypothecation - Order under Order 39, rule 10, C. P. C. cannot be made : *Balkrishna Agrawal Vs. Central Bank Of India, Raipur, I.L.R. (1984) M.P. 50*

- **Section 176** - Rights of pledgee under - Concurrent and not accessory - Civil Procedure Code - Order 21, rule 46 - Decree providing recovery of decretal amount by sale of pledged goods in the first instance before proceedings against Judgment - debtor personally - Decree fixing time for payment of decretal amount - Judgment - debtor failing to pay - Decree - holder has a right to proceed against the judgment - debtor personally in execution proceedings and retaining the pledged goods as collateral security : *Central Bank Of India Vs. Santosh Kumar, I.L.R. (1980) M.P. 685*

- **Section 176, 23, 151, 152**, 176 and Clause 9 of the pledge agreement – Contract of exemption from liability for any loss due to negligence or carelessness of staff – Binding on parties and not hit by section 23 of the Act – Loss or damage to goods entrusted to Bailee – Prima facie evidence of negligence – Burden to disprove negligence lies on Bailee – Clause 9 of the Pledge agreement does not exonerate bank from liability for negligence of its servants – In Case of claim of exemption by special contract also, care of prudent man of pledged goods is to be shown – Bank not in a position to return the goods and failed to mitigate loss – Not entitled to claim amount under purchased documentary bills : *Central Bank Of India Vs. M/s Grains And Gunny Agencies, Raigarh, I.L.R. (1988) M.P. 628 (D.B.)*

- **Section 182** - Commission agents - Are agents but not agents pure and simple - Stand in a position of active confidence towards their principals - Beyond that they are not agents and the relationship between the parties from then on is one of debtor and creditor - Prevention of Food Adulteration Act, 1954, Section 19 (2) (i) and Proviso to Rule 12-A framed thereunder - Samples taken from sealed-tins bearing manufacturer's label guaranteeing purity - Vendors - Commission agents in possession of such goods and engaged in selling them - Such persons are protected under section 19 (2) (i) of the Act - he requirements of proviso to rule 12-A are also clearly fulfilled - Such persons are not liable to be convicted : *The Commissioner (Then Administrator), Municipal Corporation, Jabalpur Vs. M/s Satyanarain And Co. Jabalpur, I.L.R. (1977) M.P. 806 (D.B.)*

- **Section 186** and Evidence Act, Indian (I of 1872), Section 115 – Authority of Agent – May be expressed or implied – Doctrine of estoppel – There should be distinct pleadings – Party by his or her conduct induced the other to enter into a contract – Person aware of the true position – Cannot plead he was induced to hold erroneous belief : *Gunendra Nath Banerjee Vs. Smt. Sarojani Bai, I.L.R. (1988) MP 549*

- **Section 197** - Principle of ratification - Nature and scope of : *Jagnoo Vs. Rameshwar Narayan Singh, I.L.R. (1981) M.P. 231,*

-Section 208-Termination of Contract of agency in relation to third parties-Takes effect when third party has knowledge of it : *Kulsekarapatnam Hand-Made Match Workers Co-Operative Cottege Industrial Society Ltd. Vs. Firm Radhelal Lalloolal, Satna. I.L.R. (1974) M.P. 636 (D.B.)*

-Section 229-Intimation of rejection of goods to agent-Is intimation to principal: *Kulsekarapatnam Hand-Made Match Workers Co-Operative Cottege Industrial Society Ltd. Vs. Firm Radhelal Lalloolal, Satna. I.L.R. (1974) M.P. 636 (D.B.)*

-Section 229 and Civil Procedure Code (V of 1908), Order 9 Rule 13 – Service of Notice – Knowledge acquired by agent when attributed to principal – Doctrine when extended to a counsel : *Lalit Kumar Vs. Smt. Kiran Bala Alias Smt. Kirti , I.L.R. (1988) M.P. 279*

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- Rule 25 (2)(v)(a)-Validity of : *P. C. Adhikari Vs. The Manager, The Brait Waite Burn And Jossip Construction Co. Ltd., Bhilai I.L.R. (1985) M.P. 161*

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Co-operative Bank Employees Service Rules

- Rule 45 (3) - Petitioner's services terminated by an order dated 6-1-1975 without following the procedure laid down in rule 45 (3) and without any prior enquiry and without assigning any reasons - Dismissal in violation of statutory rule - Liable to be quashed with direction for reinstatement : *Sevaram Vs. Board Of Revenue, M. P. Gwalior, I.L.R. (1983) M.P.674, (F.B.)*

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- **Rules 10, 22 (IV) and 23 (iii)** and Co-operative Societies Act, M. P., 1960 (XVII of 1961), Section 55 (1) and General Clauses Act, M. P.1957, Section 21 - constitution of India - Article 226 - Co-operative Central Bank Employees Service Rules, M. P., 1977 - Are constitutionally valid - Section 55 (1) - Powers of Registrar to issue orders to the Societies thereunder - Nature of - Such orders cannot amend, modify or repeal the Rules - Rules 22 (IV) and 23 (iii) - Selection and appointments of Manager of Banks - Rules requiring holding of written test and fixing quota of direct recruits - Selection and appointments made following the orders of Registrar without holding written test and without following quota Rule - Such selection and appointment illegal and liable to be quashed - Constitution of India - Article 226 - Locus Standi to file writ petition challenging such selection and appointments - Whether confined to 'person aggrieved' only - Organization of employees having special interest in subject matter - Right of, to challenge such selection and appointments : *Bikal Bihari Soni Vs. State Of M. P., I.L.R. (1985) M.P. 762*

- **Rules 22 (v) and 23 (iii)** - Rules 22 (IV) and 23 (iii)-Selection and appointments of Manager of Banks - Rules requiring holding of written test and fixing quota of direct recruits - Selection and appointment made following the orders of Registrar without holding written test and without following quota Rule - Such selection and appointment illegal and liable to be quashed : *Bikal Bihari Soni Vs. State Of M. P., I.L.R. (1985) M.P. 762*

Co-operative Marketing Federation Ltd. Employees' Service Rules

-**Rule 23** and Constitution of India, Article 226 -Continuation of departmental enquiry after superannuation-There has to be specific provision under the law to take action against a person who has ceased to be in the service-Chargesheet and order inflicting punishment quashed-Retiral dues directed to be paid with interest : *Radheshyam Khichrolia Vs. M.P. State Co-operative Marketing Federation Ltd, I.L.R. (2003) M.P. 107*

Co-operative Societies Act (II of 1912)

-**Bye-laws**-Not providing any procedure for dismissal of servant Ordinary law of master and servant applicable in case of dismissal-Bye-law 36, clauses (v) and ,(xxi) and Bye-law 37, clause (9)-Board of directors delegating powers to working committee regarding dismissal etc. of servant-Working committee suspending servant-Suspension operates as suspension of contract of service-No right to servant to claim pay for the period of suspension-Servant of Bank - Holds office at pleasure-Liable to be dismissed at any time without assigning any cause or notice - Working

committee or Board of Directors not performing any quasi-judicial duty-Rules of natural justice not applicable-Registration of Bank-No authority conferred on Bank to decide questions of rights judicially : *Krishna Chandra Gupta Vs. Registrar, Co-Operative Societies, Madhya Pradesh, Indore, I.L.R. (1964) M.P. 891 (D.B.)*

-Bye-law 37(6) - Words "or to remove or, if necessary, proceed against any officer or servant of the Bank" - Not confined to paid officers and servants of the Bank-Wide enough to cover action taken against Secretary and joint secretaries : *Sunderlal Tiwari & ors. Vs. State Of M.P. & ors., I.L.R. (1963) M.P. 209 (D.B.)*

-Bye-laws-Bye law 38-Dismissal of manager by managing committee-Previous approval of Registrar when necessary-Approval by Joint Registrar-Validity - Section 3 and Notification No. 1203-627-XXIV, dated 13-6-1956 conferral on Joint Registrar of powers of Registrar-Does not confer power of Registrar under the bye-laws-Bye-laws-,weaning and scope-Distinction between bye-laws and rules framed under the Act-Dismissal, order of, effective from the date of suspension : *Dukhuram Gupta Vs. The Co-Operative Agricultural Association Ltd., Kawardha, I.L.R. (1959) M.P. 840 (D.B.)*

-Bye-law 44 - Secretary to act under the guidance and supervision of the Chairman in calling meeting of Board-Chairman by his very position is empowered to call meeting of Board : *Sunderlal Tiwari & Ors. Vs. State Of M.P. & ors., I.L.R. (1963) M.P. 209 (D.B.)*

-Bye law 53 - Persons who can refer question relating to validity or effect of the proceedings of the meeting of Board to the Registrar-Bye-law 44-Secretary to act under the guidance and supervision of the Chairman in calling meeting of Board-Chairman by his very position is empowered to call meeting of Board-Byelaw 37(6)-Words "or to remove or, if necessary, proceed against any officer or servant of the Bank" -Not confined to paid officer and servants of the Bank-Wide enough to cover action taken against Secretary and joint secretaries : *Sunderlal Tiwari Vs. State Of Madhya Pradesh, I.L.R. (1963) M.P. 209 (D.B.)*

-Rule 26-Essential requisites for applicability : *Gokul Prasad Vs. Laxmansingh & ors., I.L.R. (1963) M.P. 620 (D.B.)*

-Rule 26 and Bye-law 52 of Bilaspur Co-operative, Central and Land Mortgage Bank Ltd.-Dispute or validity of election of Chairman cannot be referred to Registrar under Rule 26 or Bye-law 52 : *Gokul Prasad Vs. Laxmansingh & ors., I.L.R. (1963) M.P. 620 (D.B.)*

-Rule 26 framed under section 43(1)-Dispute between committee and officer-Not referable to Registrar--Rule not applicable to stranger-Conditions necessary to be

satisfied for the applicability of the Rule-Registrar, Jurisdiction of, to decide dispute between society and its members concerning transaction touching business of society : *Seth Mishrimal Vs. The District Co-Operative Growers' Association Ltd., Balaghat, I.L.R. (1960) M.P. 632 (D.B.)*

-Section 3 and Notification No. 1203-627XXIV, dated 13-6-1956 Conferral on Joint Registrar of powers of Registrar -Does not confer power of Registrar under the bye-laws : *Dukhuram Gupta Vs. The Co-Operative Agricultural Association Ltd., Kawardha, I.L.R. (1959) M.P. 840 (D.B.)*

- Section 38-A (I)-Provision is of executive nature-Opportunity given to state objections-Action dissolving Board of Directors for a period of 2 years not justiciable-Principle of natural justice- Can be invoked when tribunal or authority exercising judicial authority passes orders prejudicially affecting rights of a party : *Madanmohan Vs. The State Of M.P., I.L.R. (1959) M.P. 354 (D.B.)*

-Section 42, subsections (1) and (2)-Action or inaction constituting gross-negligence or misconduct-Does not amount to deficiency or loss by gross negligence or misconduct -Intention to cause wrongful gain or wrongful loss of property in the mind of person sought to be surcharged, necessary : *Gokul Prasad Bharat Vs. The Board Of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1964) M.P. 680 (D.B.)*

-Section 42, subsection (2)-Order thereunder-Orders cannot be passed unless fraudulent retention or misappropriation of property of Bank proved : *Gokul Prasad Bharat Vs. The Board Of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1964) M.P. 680 (D.B.)*

-Section 42 (D) -Circumstances in which order under this provision can be made-Action or inaction constituting gross negligence or misconduct-Does not amount to deficiency or loss by gross negligence or misconduct -Intention to cause wrongful gain or wrongful loss of property in the mind of person sought to be surcharged, necessary-Order under subsection 2-Orders cannot be passed unless fraudulent retention or misappropriation of property of Bank proved : *Gokul Prasad Bharat Vs. The Board Of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1964) M.P. 680 (D.B.)*

-Section 55(2)-Functions of officers-Not Judicial but arbitral -Their action is quasi-judicial: *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*

-Section 55(2)-Decision of the mentioned in sub section -Decision appealable: *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*

-Section 55(2)-Scope of : *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*

-Section 55(2) and 77(1)-If rules framed under the Act-Terms of employment would be governed by those rules otherwise by general law of master and servant - Section 55(2)-Scope of -Decision of officer mentioned in sub-section-Decision of appealable-Words “shall be binding on society and its employees”-Is not an otherwise provision-Decision not final and conclusive-Decision subject to appeal- Functions of officers-Not judicial but arbitral-Their action is quasi-judicial : *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*.

-Section 55(2)- Words “shall be binding on society and its employees”-Is not an otherwise provision-Decision not final and conclusive-Decision subject to appeal-Functions of officers-Not judicial but arbitral-Their action is quasi-judicial : *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*.

-Section 63(1)-Word “caused” in-Meaning of-Distinction between negligence and gross-negligence-Condition necessary for imposing liability under the provision : *Nanhelal Vs. The Assistant Registrar, Co-Operative Societies, Narsinghpur, I.L.R. (1974) M.P. 40 (D.B.)*

-Section 77(1) and 55(2) -If rules framed under the Act-Terms of employment would be governed by those rules otherwise by general law of master and servant - Section 55(2)-Scope of -Decision of officer mentioned in sub-section-Decision of appealable-Words “shall be binding on society and its employees”-Is not an otherwise provision-Decision not final and conclusive-Decision subject to appeal- Functions of officers-Not judicial but arbitral-Their action is quasi-judicial : *Ramcharan Bille Vs. M.P. State Tad-Gud-Co-Operative Federation, Ltd, Ujjain, I.L.R. (1967) M.P. 509 (D.B.)*.

Co-operative Societies Act, M.P.1980

-Section 49(7-A) and (7-AA)-Tenure of Board of Directors is five years-Term extended by twelve months in the work of re-organisation the society on creation of new State of Chhattisgarh-Outer limit of holding election is day before expiry of the term of office-Election conducted prior to expiry of extended term-No law to prohibit conduct of election prior to expiry of extended period or during statutory period of the tenure of Board of Directors-Going to election before expiry of term-Mere democratic and a better option-No illegality committed : *Akbar Mohd. Khan Vs. State, I.L.R. (2003) M.P. 516 (D.B.)*

-Section 49 (7-A) and (7AA) –Constitution of India, Article 226 and Letters Patent Clause X–Appeal –Co-operative State Marketing Society–Election of Board of Director–Tenure of Board of Director is five years–Term extended by twelve months in the work of re-organisation the society on creation of new State of Chhattisgarh–Outer limit of holding election is day before expiry of the term of office–Election conducted prior to expiry of extended term–No law to prohibit conduct of election prior to expiry of extended period or during statutory period of the tenure of Board of Directors–Going to election before expiry of term–Mere democratic and a better option–No illegality committed : *Akbar Mohd. Khan Vs. State, I.L.R. (2003) M.P. 516 (D.B.)*

Co-operative Societies Act, C.P. and Berar (V of 1940)

-Rules and Bye-laws-Distinction-Both have force of law : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, & 3 ors., I.L.R. (1961) M.P. 673 (D.B.)*

- Bye law 21, item 13-Confers no power on society to suspend servant during enquiry : *Dukhooram Gupta Vs. Co-Operative Agricultural Association Ltd., Kawardha, & 3 ors., I.L.R. (1961) M.P. 673 (D.B.)*

Co-operative Societies Act, Madhya Bharat (IX of 1955)

-Section 77-Notice to Bank obligatory before suing it-When the Bank is not a necessary party but only a proper party no such notice necessary-suit cannot be dismissed for want of notice in such a case-Test to be applied to determine necessary or proper party : *Heeralal Vs. Dattatray, I.L.R. (1966) M.P. 766*

Co-operative Societies Act, M. P., 1960 (XVII of 1961)

-Exemption of society or class of societies from provisions of Act-Not a legislative policy : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187 (F.B.)*.

-Legislature possesses power to implement State policy to promote welfare of people and the aims of socioeconomic change : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187 (F.B.)*.

-Way in which modification in the frame-work in provisions of the Act can be made : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187 (F.B.).*

- Industrial Disputes Act (Central) (XIV of 1947) - Difference between the two : *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. P. O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal - Cum - Labour Court, Jabalpur I.L.R. (1976) M.P. 905 (F.B.)*

- Order 8 Rules 3, 5 & Order 7 Rule 11, Order 23 Rule 1, Section 96 and Co-operative Societies Act, M.P. 1960, Section 64 and 82—Bar of suits—Would depend on the nature of society and Rules and bye-laws governing it—Suit for recovery against supply of coal by a partnership firm—Burden of proof—When parties led evidence issue of burden to prove becomes secondary— Allegation of facts in plaint—Defendant must deal specifically each allegation of fact—In absence of definite and unambiguous denial it shall be presumed that the fact has been admitted—Plaintiff's sole witness stated that he is ready to accept the sum without interest and if decree to that effect is passed he is prepared to relinquish the claim of interest—Decree passed—Appears to be a mutual decree—It would not be appropriate to interfere in appeal—Appeal dismissed : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R (2004) M.P. 594*

-Section 2(3)—'Society' means a co-operative society registered or deemed to be registered under the Act : *Akhil Chandra Mistri Vs. Deputy Registrar Co-operative Societies, Kanker, I.L.R. (2000) M.P. 1213,*

- Section 3, 64 and 66 - Powers under sections 64 and 66 can be exercised by officers mentioned in section 3 if authorised by State Government - Decision under section 66 - Can be challenged in two appeals - Decision cannot be challenged in Civil Court on any ground – inconsistency between Awards under Arbitration Act and under Co-operative Societies Act - Section 82 (3) - Award of Registrar - Not challengeable by recourse to Arbitration Act - Civil Procedure Code - Section 115 - Appeal before Lower Appellate Court incompetent - Powers under the provision can be exercised suo motu in appropriate cases : *Deputy Registrar, Co-Operative Societies Bilaspur Divison Bilaspur Vs. Narayan Prasad Mishra I.L.R. (1977) M.P. 1123*

-Section 9—Power of registrar to refuse registration of a society—Limitation—Satisfaction of the Registrar that the applicant society is likely to be economically unsound or is likely to have an adverse effect upon any other society—*Sine qua non* : *Akhil Chandra Mistri Vs. Deputy Registrar Co-operative Societies, Kanker, I.L.R. (2000) M.P. 1213*

-Section 9, Constitution of India, Article 226/227– Reference – Whether Co-operative Society constituted under Section 9 of M.P. Co-operative Societies Act is a State or not? – Entire share capital not held by State Government – No financial assistance by State Govt. to meet entire expenditure – No monopoly enjoyed – No deep and pervasive State Control – Society performing commercial function for betterment of its members – No Department of Govt. transferred to Society – Such Society not instrumentality of State – Not amenable to writ jurisdiction : *Dinesh Kumar Vs. M.P. Dugdha Mahasangh Sahkari Maryadit, I.L.R. (1993) M.P. 53 (F.B.)*

-Section 9(ii)-Order 9 not revealing reason for what the society could not be registered-Order quashed being patently illegal-Writ issued to register petitioner's society subject to legal requirements as on the date of application : *Akhil Chandra Mistri Vs. Deputy Registrar Co-operative Societies, Kanker, I.L.R. (2000) M.P. 1213,*

- **Section 16(3)**, Constitution of India Article 226 and Co-operative Societies Rules, M.P. 1962, Rules 7, 8 and 11–Re-organization and merger of society– Opportunity before passing final order Not a mere formality–Society should be afforded opportunity for expressing its opinion about merger : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. & ors., I.L.R. (2004) M.P. 259*

-Section 16(3) and Co-operative societies Rules, M.P. 1962, Rules 7, 8 and 11, Constitution of India, Article 226–Re-organization and merger of society– Opportunity before passing final order–Not a mere formality–Society should be afforded opportunity for expressing its opinion about merger–without following procedure Registrar cannot pass any order for merger or amalgamation–Absence of following the procedure-Entire process vitiates–Order impugned quashed : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. and ors., I.L.R. (2004) M.P 259*

-Section 19-AA, 19-C and 64 and Co-operative Societies Rules, M.P., 1962, Rule 43(3), 45 – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320,*

-Sections 19-AA, 19-C and 64 and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45 and Constitution of India, Article 227– Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as

representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shabdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

-Sections 19-AA, 53 and Co-operative Societies Rules, M. P., 1962–Rules 44 and 45–Petitioner society suffering dis-qualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P.17*

-Sections 19-AA, 53 and Co-Operative Societies Rules, M.P., 1962–Rules 44 and 45–Constitution of India, Article 226–Writ Petition–Co-operative Societies–Apex body–Disqualification–Petitioner society suffering disqualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be a delegate. *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

- Sections 19-C, 19-AA and 64 and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45– Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society : *Zila Sahakari Kendriya Bank Naryadit, Shabdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320,*

- Sections 19-C, 19-AA and 64 and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45 and Constitution of India, Article 227– Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shabdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

-Section 48 (B), Madhya Pradesh Co-Operative Society Rules, 1961, Rules 23 (1)(I) – Reservation of seat in general body of co-operative society – Act provide for representation of S.C., S.T. and OBC by election – Rules creating reservation for

women also – Held – Rules being subordinate legislation and inconsistent with Act, is not valid – No reservation for seat for women in general body : *Ghanshyam Madhavrao Barhate Vs. State Of M.P., I.L.R. (1997) M.P. 434*

- **Section 49(8)** – Supersession of society – Utilisation of its funds – Purchases made by Officers of Society for enjoyment of officials of State Govt. – Amounts to abuse of utilisation of funds of society – Constitution of India – Articles 226 and 12 – Co-operative society when amenable to writ jurisdiction : *Anant Purohit Vs. State Of M.P., I.L.R. (1987) M.P. 21, (D.B.)*

- **Section 49 (B) (ii)** – Co-Operative Societies – Failure of Registrar to hold Election on Expiry of Term-Can he suo moto take the charge of the Bank – Held – The Managing Committee cannot be constituted without electing the members of the managing Committee from among the Board of Directors, as per the bye-laws – In view of the unbreakable inter-link, the Board cannot be saddled with the liability of statutory vacation of the office on expiry of the term, unless the Registrar had the elections conducted to the Central Banks or Apex Co-operative Societies, as the case may be – Preceding thereto, the election to the managing committee of Primary Societies is mandatory – Moreover under the bye-laws of the Apex Bank, there is no obligation or duty cast on it to have the elections to the managing committee or representation of the Central Bank or Apex Co-operative Society conducted – It is the power, the function and duty under the Act of the Registrar, on a request made by the respective committees of the Central banks or Apex Co-operative Society concerned to conduct elections – Under these circumstances, it is difficult to give acceptance to the contention of the respondents that on expiry of the term of the President, two vice-Presidents of the Board of Directors and the term of the managing committee which being co-terminus with the Board of Directors must be deemed to have vacated their offices – Thereby the Registrar is not entitled to assume office of the Board of the Directors and the managing committee – It is also difficult to visualize that President, two Vice-Presidents, the Board of Directors and the managing committee of Apex Bank should be saddled with the liability to vacate the office, on expiry of the term for non-conducting elections thereof, when they have no statutory obligation to ensure conduct of elections to primary societies and Central Banks – The Registrar does not in the above situation get the power to assume office as per the statutory obligation : *Rajendra Prasad Yadav Vs. State Of M.P., I.L.R. (1997) M.P. 312 (SC) (D.B.)*

-**Section 51**-Provision of, introduced as matter of policy and necessity to protect interests of public : *Satna Central Co-Operative And Land Mortgage Bank, Ltd. Satna Vs. Puralal Agrawal., I.L.R. (1974) M.P. 580 (D.B.)*

-Section 51 and Co-operative Societies Rules, Madhya Pradesh, 1962, Rule 41 (26) - Appointment by nominee of Registrar is invalid - Appointment made in breach of Rule-Invalidates appointment and all other consequential actions taken by such appointee - Registrar not taking objection to such appointment - Cannot validate the appointment under section 51 : *Thaneshwar Mishra Vs. Zila Sahakari Kendriya Bank Maryadit, Mandla I.L.R. (1985) M.P. 275 (D.B.)*

-Section 52-(1) – Nominated members – Are members of the committees – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787,*

- Sections 52(1), 53-B and Co-operative Societies Rule 1962, Rule 43(5) and 45(1) – Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787,*

-Sections 52(1), 53-B and Cooperative Societies Rule 1962, Rules 43(5) and 45(1) and Constitution of India, Article 226– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered – Opportunity of hearing – Not required before issue of a notice under – Section 53-B – President is to be heard in the meeting of the Committee of the society – Nominated members – Are members of the committee – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787*

-Section 53-Propviso-Relaxing of outside limit for supersession by State Government-Cannot be said to be ultra vires : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187 (F.B.).*

-Section 53 - Notification No. 6072 - 5118 - XV - 63 and Notification No. 1176 - 15173 - XV - 68 - Notifications confer power on Assistant Registrar and can exercise the powers of Registrar in respect of Primary farming Societies : *Gramonnati Krishi Sahkari Samiti Maryadit, Kajlana Vs. Assistant Registrar, Co-Operative Societies, Indore, I.L.R. (1978) M.P. 151.*

-Sections 53, 19-AA and Co-operative Societies Rules, M. P., 1962–Rules 44 and 45–Petitioner society suffering dis-qualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P.17*

-Sections 53, 19-AA and Co-Operative Societies Rules, M.P., 1962–Rules 44 and 45–Constitution of India, Article 226–Writ Petition–Co-operative Societies–Apex body–Disqualification–Petitioner society suffering disqualification for reason of

being defaulter—Requirement is that both the society and also its representative should not suffer from any disqualification—Delegate having no independent existence but only represents the society—If society ceases to be a member, the delegate will automatically cease to be a delegate. *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

-Section 53(i) - Word “Person”-To be read with the meaning ascribed in Section 3(42) of General Clauses Act-Includes a corporate body : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of M.P., I.L.R. (1975) M.P. 187 (F.B.)*.

- Section 53 (1), 53 (2), 53 (7) and 59 (4) and Constitution of India, Article 226 - Supersession of a Society registered under the Co-operative Societies Act by the Registrar - Reasonable opportunity of showing cause against the action has to be given to the Societies - Show cause notice giving 15 days time - Impugned order passed on the 15th day itself - Amounts to denial of reasonable opportunity - Section 59 (4) - Communicating the result of inquiry under - Requirement of - Report of the inquiry - Meaning of - Assistant Registrar and Joint Registrar in their independent inquiries not found anything objectionable against the Society-Thereafter Inspector holding inquiry and reaching a contrary conclusion - Petitioner - Society entitled to the copy of the report of Inspector - Failure to supply the same - Amounts to violation of section 53 (2) - Section 53 (7) - Consultation with Finance Bank is mandatory - Impugned order superseding the society passed without such consultation - Legality of : *Ward No. 4 Primary Consumer Co-Operative Stores, Satna, Vs. State Of M. P. I.L.R. (1985) M.P. 741*

-Section 53-B – Opportunity of hearing –Not required before issue of a notice under Section 53-B – President is to be heard in the meeting of the committee of the society : *Satish Kumar Upadhyaya Vs. State, I.L.R. (2001) M.P. 1787,*

- Section 53 (2) - Assistant Registrar and Joint Registrar in their independent inquiries not found anything objectionable against the Society - Thereafter Inspector holding inquiry and reaching a contrary conclusion - Petitioner society entitled to the copy of the report of Inspector - Failure to supply the same amount to violation of this section : *Ward No. 4 Primary Consumer Co-Operative Stores, Satna, Vs. State Of M. P. I.L.R. (1985) M.P. 741*

-Sections 53-B, 52 (1) and Co-operative Societies Rule 1962, Rule 43(5) and 45(1) – Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered : *Satish Kumar Upadhyaya Vs. State, I.L.R. (2001) M.P. 1787,*

-Sections 53-B, 52(1) and Cooperative Societies Rule 1962, Rules 43(5) and 45(1) and Constitution of India, Article 226– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered – Opportunity of hearing – Not required before issue of a notice under – Section 53-B – President is to be heard in the meeting of the Committee of the society – Nominated members – Are members of the committee – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhyaya Vs. State, I.L.R. (2001) M.P. 1787*

- Section 53 (2), 53 (1), 53 (7) and 59 (4) and Constitution of India, Article 226 - Supersession of a Society registered under the Co-operative Societies Act by the Registrar - Reasonable opportunity of showing cause against the action has to be given to the Societies - Show cause notice giving 15 days time - Impugned order passed on the 15th day itself - Amounts to denial of reasonable opportunity - Section 59 (4) - Communicating the result of inquiry under - Requirement of - Report of the inquiry - Meaning of - Assistant Registrar and Joint Registrar in their independent inquiries not found anything objectionable against the Society-Thereafter Inspector holding inquiry and reaching a contrary conclusion - Petitioner - Society entitled to the copy of the report of Inspector - Failure to supply the same - Amounts to violation of section 53 (2) - Section 53 (7) - Consultation with Finance Bank is mandatory - Impugned order superseding the society passed without such consultation - Legality of : *Ward No. 4 Primary Consumer Co-Operative Stores, Satna, Vs. State Of M. P. I.L.R. (1985) M.P. 741*

- Section 53 (7) - Consultation with Finance Bank - Is mandatory - Impugned order superseding the society passed without such consultation - Legality of : *Ward No. 4 Primary Consumer Co-Operative Stores, Satna, Vs. State Of M.P., I.L.R. (1985) M.P. 741*

- Section 53(10) – Interim order – Principles of natural Justice – Issue of show cause notice – Not necessary before passing an interim order: *Indrajeet Singh Vs. Joint Registrar, Co-Operative Societies, Sagar, I.L.R. (1987) M.P. 72, (D.B.)*

- Section 55 - Departmental Enquiry - Rules of evidence not applicable - Deputy Registrar and Additional Registrar also not bound by strict rules of evidence: *Chandra Prakash Mishra Vs. M. P. Rajya Sahkari Bank Maryadit, Bhopal, I.L.R. (1985) M.P. 488*

-Section 55 - Domestic enquiry held to be vitiated - No finding that petitioner was guilty of the charges levelled - Petitioner entitled to relief of re-instatement : *Chandra Prakash Mishra Vs. M. P. Rajya Sahkari Bank Maryadit, Bhopal I.L.R. (1985) M.P. 488*

-Section 55, Industrial Disputes Act 1947, Section 10 – Petitioner, an employee of co-operative society dismissed from service-Reference to labour court whether maintainable-Held-No-Where dispute relates to terms of employment, disciplinary action etc of society and its employee, the Registrar or Officer appointed by him, no below rank of assistant Registrar shall decide the dispute-Therefore, reference excluded in view of specific provision in societies Act-Order of High Court quashing order of labour court upheld-Petition dismissed : *R.C. Tiwari Vs. M.P. State Co-Operative Marketing Federation Ltd., I.L.R. (1997) M.P. 30 (SC) (D.B.)*

-Section 55-Sub-section (2) of Section 55 would cover a dispute relating to payment of difference of wages – In view of Judgment of Supreme Court it cannot be held that Labour Court had any jurisdiction : *Vindhyachal Super Thermal Power Project Vindhyanagar, Distt. Sidhi Vs. Presiding Officer, Labour Court, Sidhi, I.L.R. (1999) M.P. 1109*

-Section 55 and Sahakari Kendriya Bank Karamchari Seva Niyam, M.P., 1965, Rule 18 – Disciplinary proceedings dropped to avoid stigma and order terminating Service simpliciter passed – Such Order cannot be treated as of punishment – One month's pay in lieu of notice – Payment, not a condition precedent – Order not rendered illegal for non-payment : *Central Co-Operative Bank Ltd., Raisen Vs. Shibbulal, I.L.R. (1988) M.P. 1 (F.B.)*

- **Sections 55, 64, 65, 66**, - Service Law - Co-operative Societies employee - Quashing order of transfer reinstatement directed - Dispute raised regarding recovery of salary – Dispute within the meaning of Section 64 - Registrar is competent to condone delay. *Gwalior Dugdha Sangh Sahakari Maryadit Vs. Narendra Pal Rana; I.L.R.(2002) M.P. 518*

-Sections 55, 64 and 65(3) and Letters Patent, Clause X, Constitution of India, Article 226-co-operative service law-Termination-Dispute-Limitation-Termination order passed in 1974-Limitation of one month for raising dispute introduced in 1977-Not applicable to the present case-termination of workman-Dispute-Cannot be shut merely on the question of limitation-Non obstante clause-Dispute filed belatedly-Can be entertained by Registrar if sufficient cause is shown-Registrar has power to condone the delay-Registrar and Tribunal held that the termination is illegal-A finding of fact-Court will not interfere in exercise of powers under Article 226 of the Constitution unless such findings are perverse-No material to show that the orders are

based on "No evidence"—Order of writ Court set aside and that of Registrar restored : *Narayan Prasad Tamrakar Vs. M.P. State Co-Operative Land Development Bank Ltd., I.L.R. (2004) M.P. 154 (D.B.)*

- **Section 55, 64 and 65(3)**—Termination of Workman—Dispute—Cannot be shut merely on the question of limitation : *Narayan Prasad Tamrakar Vs. M.P. State Co-Operative Land Development Bank Ltd., I.L.R. (2004) M.P. 154 (D.B.)*

- **Section 55 and 77 (2) and Constitution of India, Article 226** - Jurisdiction of Registrar under section 55 - Extent of - Departmental enquiry - Rules of evidence not applicable - Deputy Registrar and Additional Registrar also not bound by strict rules of evidence - Section 77 (2) - Jurisdiction of Board of Revenue to interfere with the findings recorded by Deputy Registrar and Additional Registrar holding the petitioner not guilty of charges levelled against him - Scope of - Domestic enquiry held to be vitiated - No finding that petitioner was guilty of the charges levelled - Petitioner entitled to relief of re instatement : *Chandra Prakash Mishra Vs. M. P. Rajya Sahkari Bank Maryadit, Bhopal, I.L.R. (1985) M.P. 488*

- **Sections 55 and 95(2) (x)** - Registrar's power to issue order to the societies is not uncanalised or arbitrary : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694, (D.B.)*

- **Sections 55 and 95(2) (x)** - Rule making power conferred on Registrar is in the nature of legislative power : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694 (D.B.)*

- **Sections 55 and 95 (2) (x)** - Rule making power of Registrar - Does not suffer from excessive delegation - Registrar's power to issue order to the societies is not uncanalised or arbitrary - Industrial Disputes Act, 1947 - Section 9 - A, proviso - Nature of change in the conditions of employment - When liable to be given to the employee - Rule making powers of the Registrar – Not violative of section 9 - A - Natural Justice - Principles of - Not applicable to the exercise of legislative power - Rule making power conferred on Registrar is in the nature of legislative power : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694, (D.B.)*

-**Section 55 (1)** - Powers of Registrar to issue orders to the Societies thereunder - Nature of - Such orders cannot amend, modify or repeal the Rules : *Ward No. 4, Primary Consumer Co-Operative Stores, Satna Vs. State Of M. P., I.L.R. (1985) M.P. 741*

-Section 55 (1) and Co-operative Central Bank Employees Services Rules, M. P., 1977, Rules 10, 22 (IV) and 23 (iii) and General Clauses Act, M. P. 1957, Section 21 - constitution of India - Article 226 - Co-operative Central Bank Employees Service Rules, M. P., 1977 - Are constitutionally valid - Section 55 (1) - Powers of Registrar to issue orders to the Societies thereunder - Nature of - Such orders cannot amend, modify or repeal the Rules - Rules 22 (IV) and 23 (iii) - Selection and appointments of Manager of Banks - Rules requiring holding of written test and fixing quota of direct recruits - Selection and appointments made following the orders of Registrar without holding written test and without following quota Rule - Such selection and appointment illegal and liable to be quashed - Constitution of India - Article 226 - Locus Standi to file writ petition challenging such selection and appointments - Whether confined to 'person aggrieved' only - Organization of employees having special interest in subject matter - Right of, to challenge such selection and appointments : *Bikal Bihari Soni Vs. State Of M. P., I.L.R. (1985) M.P. 762,*

- Section 55 (1) and (2) - Rules framed under section 55(1) are statutory rules - Cannot be equated with bye-laws framed for internal management and working of the society - Co - operative Bank Employees Service Rules, M. P. - Rule 45 (3) - Registrar or his nominee hearing dispute under section 55 (2) has jurisdiction to direct reinstatement on finding dismissal or removal to be illegal being in contravention of the Act or statutory rules - Petitioner's services terminated by an order dated 6-1-1975 without following the procedure laid down in rule 45 (3) and without any prior enquiry and without assigning any reasons - Dismissal in violation of statutory rule - Liable to be quashed with direction for reinstatement : *Sevaram Vs. Board Of Revenue, M. P., Gwalior, I.L.R. (1983) M.P. 674, (F.B.)*

-Section 55(2)-Order under, whether subject to appeal : *Satna Central Co-operative And Land Mortgage Bank, Ltd. Satna Vs. Puralal Agrawal., I.L.R. (1974) M.P. 580 (D.B.)*

- Section 55 (2) and Sahkari Kendriya Bank Karamchari Sewa Niyam, M.P. 1977, Rule 47 – Dispute raised against dismissal from service – New Rules came into force from 1-4-77 repealing Rules of 1965 – Registrar or his nominee has power to direct reinstatement if the dismissal in violation of Act or statutory rules – Dismissal by approving authority of the punishing authority is not without jurisdiction : *The Central Co-Operative Bank Ltd., Raisen Vs. Board Of Revenue, I.L.R. (1988) M.P. 251 (F.B.)*

-Section 55(2)-Words “his decision shall be binding” in-Indicate that its binding effect is subject to decision of appeal taken from the decision-Order under, whether subject to appeal-Satna Central Co-operative and Land Mortgage Bank-Bye-law 35- Words “2/5th of the members of the Board” in-Mean 2/5th of the Directors constituting the Board for the time being-Co-operative Societies Act, M.P., 1960-

Section 51-Provision of, introduced as a matter of policy and necessity to protect interests of public-Bye-laws of the Satna Central Co-operative and Land Mortgage Bank Ltd-Bye-law 30(vi) Bank Inspector placed in charge of current duties of Assistant Registrar-Not authorized to exercise powers of Assistant Registrar-Section 77(2)-Power of, Board of Revenue to make direction in terms of section 55(2)-Words "Resignation"-Not a term of Art-Does not discharge Contract till accepted by Master-Interpretation of Statute-Rule of construction of statute, rule or bye-law-Use of different expressions-Connote different things or ideas-Two different interpretations possible-Interpretation which is just, reasonable and fair to be accepted : *Satna Central Co-Operative And Land Mortgage Bank, Ltd. Satna Vs. Puralal Agrawal., I.L.R. (1974) M.P. 580 (D.B.)*

- **Section 55 (2) and (1)** - Rules framed under section 55(1) are statutory rules - Cannot be equated with bye-laws framed for internal management and working of the society - Co - operative Bank Employees Service Rules, M. P. - Rule 45 (3) - Registrar or his nominee hearing dispute under section 55 (2) has jurisdiction to direct reinstatement on finding dismissal or removal to be illegal being in contravention of the Act or statutory rules - Petitioner's services terminated by an order dated 6-1-1975 without following the procedure laid down in rule 45 (3) and without any prior enquiry and without assigning any reasons - Dismissal in violation of statutory rule - Liable to be quashed with direction for reinstatement : *Sevaram Vs. Board Of Revenue, M. P., Gwalior, I.L.R. (1983) M.P. 674, (F.B.)*

- **Sections 57 and 60** and Constitution of India, Article 226 - Enactment of Section 57 neither inconsistent with co-operative jurisprudence nor in derogation of fundamental rights - State legislature competent to legislate it - Grave illegalities and irregularities reported in the affairs of the petitioner Society inasmuch as membership found to be not genuine and proper producer in admitting members in accordance with terms and conditions of allotment order and Bye-laws of the society not followed - Action under section 57 and 60 justified - Natural Justice - Principles of - Its applicability to orders passed by Govt. in administrative capacity - State Govt. passing an order revoking allotment of land made in favour of the petitioner society earlier, without affording opportunity to society - Order violates principles of natural justice and cannot be sustained : *Awat Rahat Griha Nirman Sahkari Samiti Maryadit, Bhopal Vs. State Of M. P., I.L.R. (1984) M.P. 496 (D.B.)*

- **Section 59 (4)** - Communicating the result of inquiry under - Requirement of : *Ward No. 4, Primary Consumer Co-Operative Stores, Satna Vs. State Of M. P. I.L.R. (1985) M.P. 741*

- **Section 59 (4)** - Report of inquiry - Meaning of : *Ward No. 4, Primary Consumer Co-Operative Stores, Satna Vs. State Of M.P., I.L.R. (1985) M.P. 741*

- **Section 59 (4)**, 53 (1), 53 (2), 53 (7) and Constitution of India, Article 226 - Supersession of a Society registered under the Co-operative Societies Act by the Registrar - Reasonable opportunity of showing cause against the action has to be given to the Societies - Show cause notice giving 15 days time - Impugned order passed on the 15th day itself - Amounts to denial of reasonable opportunity - Section 59 (4) - Communicating the result of inquiry under - Requirement of - Report of the inquiry - Meaning of - Assistant Registrar and Joint Registrar in their independent inquiries not found anything objectionable against the Society-Thereafter Inspector holding inquiry and reaching a contrary conclusion - Petitioner - Society entitled to the copy of the report of Inspector - Failure to supply the same - Amounts to violation of section 53 (2) - Section 53 (7) - Consultation with Finance Bank is mandatory - Impugned order superseding the society passed without such consultation - Legality of : *Ward No. 4, Primary Consumer Co-Operative Stores, Satna Vs. State Of M.P., I.L.R. (1985) M.P. 741*

-**Section 63(1)**- Registrar can order payment of money by way of compensation on certain conditions : *Smt. Krishna Kumari Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1975) M.P. 629 (D.B.)*

-**Section 63(1)**-Acts done before the formation of Society-Acts do not fall under misfeasance or breach of trust : *Smt. Krishna Kumari Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1975) M.P. 629 (D.B.)*

-**Section 63(1)**-Confers large powers and powers not precisely defined given to Registrar to impose liability for payment of any amount-Such powers in the Registrar to be very strictly construed : *Smt. Krishna Kumari Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1975) M.P. 629, (D.B.)*

-**Section 63(1)** No trust comes into existence unless there comes in existence binding relationship-Registration of Society does not create any interest in favour of Society : *Smt. Krishna Kumari Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1975) M.P. 629 (D.B.)*

-**Section 63(1)**-Scope and effect of-Acts done before the formation of Society-Acts do not fall under misfeasance or breach of trust-No Trust comes into existence unless there comes in existence binding relationship-Registration of Society does not create any interest in favour of Society-Confers large powers and powers not precisely defined given to Registrar to impose liability for payment of any amount-Such powers in the Registrar to be very strictly construed-Registrar can order payment of money by way of compensation on certain conditions : *Smt. Krishna Kumari Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1975) M.P. 629, (D.B.)*

-Section 64-Business of society-To be ascertained from the object for which it is constituted : *The State Bank Of India Employee's Housing Co-Operative Society Limited, Raipur Vs. Naval Shanker Dave, I.L.R. (1975) M.P. 538*

-Section 64-Encroachment by society-Cannot be regarded as any business transaction arising as a result of business that it had with its vendors : *The State Bank Of India Employee's Housing Co-Operative Society Limited, Raipur Vs. Naval Shanker Dave, I.L.R. (1975) M.P. 538*

-Section 64-Mention of name of society-Is mandatory when candidate contests election as representative of Society : *Gangadhar Vs. The Nirvachan Adhikari, Marketing Society, Vijaypur, I.L.R. (1975) M.P. 249 (D.B.)*

-Section 64-Trespass by society-Not to be treated as acquisition for purposes of providing residential accommodation : *The State Bank Of India Employee's Housing Co-Operative Society Limited, Raipur Vs. Naval Shanker Dave, I.L.R. (1975) M.P. 538*

-Section 64-Word "transaction" in-Suggests continued course of dealing : *The State Bank Of India Employee's Housing Co-Operative Society Limited, Raipur Vs. Naval Shanker Dave, I.L.R. (1975) M.P. 538*

-Section 64 -Authority which can decide dispute arising in connection with election of officer of society : *Narbada Prasad Tiwari Vs. Brijlal, I.L.R. (1969) M.P. 949 (D.B.)*

- **Section 64** - Election Dispute - Final Voters' List published- Election programme announced - Any irregularity in the process should be brought up before a Special Tribunal by means of an Election petition and not be made subject of a dispute in a Court while election is in process. *Bhopal Co-operative Wholesale Consumer Stores Ltd., Bhopal Vs. M. P. Co-operative Tribunal, Bhopal; I.L.R.(2002) M.P. 531*

- **Section 64** - Assistant Registrar transferring dispute under section 64 to S. D. O. by making reference to a Govt. circular and without passing a judicial order - Proceedings taken in pursuance of such order are without jurisdiction and liable to be quashed : *Sunderlal Vs. Sub-Divisional Officer, Katni I.L.R. (1984) M.P. 487 (D.B.)*

-Section 64-No jurisdiction in presiding officer or election tribunal to decide the dispute : *Narbada Prasad Tiwari Vs. Brijlal, I.L.R. (1969) M.P., 949 (D.B.)*

- **Section 64** - Jurisdiction of Registrar to deal with dispute relating to matter before election process completed and result of election declared : *Brij Bihari Gupta Vs. Shri L. S. Khare, Election Officer - Deputy Collector, Jabalpur I.L.R. (1980) M.P. 551 (D.B.)*

- **Section 64** – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320,*

-**Section 64**-Dispute-Respondent was awarded contract for construction of cold storage-Contract was rescinded-Respondent filed civil suit for damages-Held-Construction of Cold Storage of Co-operative Society is a dispute touching business of Society-Any matter relating or concerning business of society will be covered by word touching-Civil suit claiming damages of such contract barred-Civil Suit not maintainable. *Kisan Sahkari Sheetgrah Evam Vary Factory Ltd. Vs. R.C. Gupta; I.L.R.(1994) M.P. 475*

- **Section 64, 3 and 66** - Powers under sections 64 and 66 can be exercised by officers mentioned in section 3 if authorised by State Government - Decision under section 66 - Can be challenged in two appeals - Decision cannot be challenged in Civil Court on any ground - Inconsistency between Awards under Arbitration Act and under Co-operative Societies Act - Section 82 (3) - Award of Registrar - Not challengeable by recourse to Arbitration Act - Civil Procedure Code - Section 115 - Appeal before Lower Appellate Court incompetent - Powers under the provision can be exercised suo motu in appropriate cases : *Deputy Registrar, Co-Operative Societies Bilaspur Division Bilaspur Vs. Narayan Prasad Mishra I.L.R. (1977) M.P. 1123*

- **Sections 64, 19-AA, 19-C** and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45 – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320,*

- **Sections 64, 19-AA, 19-C** and Co-operative Societies Rules, M.P., 1962 – Rules 43(3), 45 and Constitution of India, Article 227– Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as

representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

–**Sections 64 and 80**–Bar of Civil Court's Jurisdiction–Only with regard to disputes touching Constitution, Management, Business or Liquidation of society–Dispute between landlord and society which is a tenant–Bar not attracted : *Madhya Pradesh Handloom Corporation Federation Vs. Krishnakant & ors. I.L.R. (2004) M.P. 850*

- **Section 64 and 82** and Civil Procedure Code (V of 1908), Order 23 Rule 1, Order 7 Rule 11, Order 8 Rules 3, 5 & Section 96–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R. (2004) M.P. 594*

- **Sections 64 and 82**–Recovery of debts due to Banks and Financial Institutions Act, 1993, Sections 18, 2 and Constitution of India–Articles 227/226–Writ Petition–and Jurisdiction of Debt Recovery Tribunal -- Dispute regarding recovery of loan between Bank and loanee society --Amount of loan used in business of society - Dispute would touching the business of society --Section 2(9) R.D. B. Act, 1993 Debt means any liability claimed from any person– Person would include in its ambit and sweep the State–Dispute in between Bank on one hand and the society and the guarantor on the other–State stood as a guarantor is a third person–Dispute would not be covered under Section 64 of Co-Operative Act–Debt Recovery Tribunal has jurisdiction : *M/s M.P. State Cooperative Oilseeds Growers Federation Limited Vs. Bank Of Baroda, I.L.R. (2003) M.P. 926*

- **Section 64 and 82 (c)** - Civil Courts - Jurisdiction - Not barred for recovery of balance due against society : *The Bharat Co-Operative Transport Society Ltd. Bairagarh Vs. Punjab National Bank Bhopal I.L.R. (1979) M.P. 1027*

- **Section 64 and 82 (c)** - Phrase "dispute touching the business of a society" - Meaning of - Civil Courts - Jurisdiction - Not barred for recovery of balance due against society - Section 64 (d) - "Surety of a member"- Meaning of : *The Bharat Co-Operative Transport Society Ltd. Bairagarh Vs. Punjab National Bank Bhopal I.L.R. (1979) M.P. 1027*

- **Sections 64 and 82 (1) (c)** Pledge of grain by a member of Society with the Society in lieu of loan - Loss caused due to mistake of Society in selling grain - Claim by member against the society for price of Grain - Is a dispute covered under section

64 - No Civil Suit lies in respect of such claim - Interpretation of Statutes - Definition clause - Word 'include' - Use of - Makes the definition extensive but not exhaustive : *Gurudayal Singh Vs. Shri Faqirchand Member, Board Of Revenue, Gwalior, I.L.R. (1981) M.P. 26, (D.B.)*

- **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 : *Brij Bihari Gupta Vs. Shri L. S. Khare, Election Officer, Deputy Collector, Jabalpur, I.L.R. (1980) M.P. 551 (D.B.)*

- **Sections 64 (1) and 64 (2) (v)** and Constitution of India, Article 226 - Alternative remedy - Dispute regarding election of Directors or President of Co-operative Bank covered under section 64 (2) (v) - Remedy of raising a dispute available to an aggrieved party under section 64 (1) - Writ petition not entertainable : *Anant Singh Vs. The Registrar, Co-Operative Societies, Bhopal, I.L.R. (1984) M.P. 622 (D.B.)*

- **Section 64 (2), Proviso and Section 66** - Dispute under section 64 entertained before election of Chairman and Vice-Chairman of Board of Directors was complete according to election programme notified - It is without jurisdiction and liable to be quashed - Section 66 - Contemplates a judicial order to be passed for transferring dispute for disposal to a nominee of Board of Nominees - Assistant Registrar transferring dispute under section 64 to S. D. O. by making reference to a Govt. circular and without passing a judicial order - Proceedings taken in pursuance of such order are without jurisdiction and liable to be quashed : *Sunderlal Vs. Sub-Divisional Officer, Katni, I.L.R. (1984) M.P. 487 (D.B.)*

- **Section 64 (2), proviso** - Entertainment of dispute by Registrar before elections are held and passing of interlocutory order staying the elections - Are contrary to law - Impugned order and all proceedings in the dispute quashed : *Rejandra Shukla Vs. A. B. Qureshi, I.L.R. (1985) M.P. 202, (D.B.)*

- **Section 64 and 51**, Co-operative Societies Rules, Madhya Pradesh, 1960, (XVII of 1961), Rule 41 (26) and Constitution of India, Article 226 - Provision in Rule 41 (26) for appointment of Returning Officer by Registrar - Is mandatory - Appointment by nominee of Registrar is invalid - Appointment made in breach of Rules invalidates appointments and all other consequential actions taken by such appointee - Registrar

not taking objection to such appointment - Cannot validate the appointment under **Section 51 - Article 226** - Alternative remedy of election petition - Is not an absolute bar to exercise of powers under Article 226 - Natural Justice - Judicial practice - Nobody should be the Judge of his own cause - Alternative remedy lies before the officer who passed the impugned order - Petition should be entertained by High Court : *Thaneshwar Mishra, Zila Sahakari Kendriya Bank Maryadit, Mandla, I.L.R. (1985) M.P. 275 (D.B.)*

- **Sections 65, 55, 64, 66**, - Service Law - Co-operative Societies employee - Quashing order of transfer reinstatement directed - Dispute raised regarding recovery of salary – Dispute within the meaning of Section 64 - Registrar is competent to condone delay. *Gwalior Dugdha Sangh Sahakari Maryadit Vs. Narendra Pal Rana; I.L.R.(2002) M.P. 518*

- **Section 65(3)**–Non obstante clause–Dispute filed belatedly–Can be entertained by Registrar if sufficient cause is shown–Registrar has power to condone the delay : *Narayan Prasad Tamrakar Vs. M.P. State Co-Operative Land Development Bank Ltd., I.L.R. (2004) M.P. 154 (D.B.)*

- **Section 66** - Contemplates a judicial order to be passed for transferring dispute for disposal to a nominee of Board of nominees : *Sunderlal Vs. Sub-Divisional Officer, Katni, I.L.R. (1984) M.P. 487 (D.B.)*

- **Section 66** - Decision under section 66 - Can be challenged in two appeals - Decision cannot be challenged in Civil Court on any ground : *Deputy Registrar, Co-Operative Societies Bilaspur Divison Bilaspur Vs. Narayan Prasad Mishra I.L.R. (1977) M.P. 1123*

-**Section 67**-The word “Award” in-Meaning of : *Gangadhar Vs. The Nirvachan Adhikari, Marketing Society, Vijaypur, I.L.R. (1975) M.P. 249 (D.B.)*

- **Section 67 (2)** - Registrar acts in quasi - judicial authority under this provision - Discretion conferred by this provision - Discretion is judicial and not administrative : *Tikamchand Vs. The Joint Registrar, Co-Operative Societies, M. P. Bhopal, I.L.R. (1978) M.P. 158 (D.B.)*

- **Section 67(2)** and Advocates Act (XXV of 1961), Section 30-Section 67(2) of Co-operative Societies Act not repugnant to Section 30, Advocates Act which is not in force - Argument not open - Right to be represented by Advocate - Not a fundamental right - Right based on law of agency and principles of natural justice - When substantial rights of a person involved - Representation by counsel is according

to natural justice - Condition in which representation by counsel can be given - Section 67 (2) - Registrar acts in quasi - Judicial authority under this provision - Discretion conferred by this provision - Discretion is judicial and not administrative : *Tikamchand Vs. The Joint Registrar, Co-Operative Societies, M. P. Bhopal, I.L.R. (1978) M.P. 158 (D.B.)*

- **Section 69(1)** and Vindhya Pradesh Co-operative Societies Ordinance, Section 39(1)-A notice of winding up based on Section 39(1) of ordinance of Section 69(1) of New Act-Not a valid notice: *The Panna Multipurpose Co-Operative Society, Ltd. Panna Vs. The Government Of M.P. I.L.R. (1968) M.P. 16 (D.B.)*

- **Section 69(1)** and (2) and Vindhya Pradesh Co-operative Societies Ordinance, Section 39(1)- Giving of reasonable opportunity for showing cause and for making representation-Essential for validity of order under those provisions-A general notice not effective-A notice of winding up based on Section 39(1) of Ordinance or Section 69(1) of New Act-Not a valid notice : *The Panna Multipurpose Co-Operative Society, Ltd. Panna Vs. The Government Of M.P. I.L.R. (1968) M.P. 16 (D.B.)*

-**Section 77**-Order under, is appealable : *Gangadhar Vs. The Nirvachan Adhikari, Marketing Society, Vijaypur, I.L.R. (1975) M.P. 249 (D.B.)*

-**Section 77**-Appeal provided from such original order under the Act-Would not be proper to make interference in writ jurisdiction as adjudication of legality or propriety of such order would require fact finding enquiry : *Akhil Chandra Mistri Vs. Deputy Registrar Co-operative Societies, Kanker, I.L.R. (2000) M.P. 1213*

- **Section 77 (2)** - Jurisdiction of Board of Revenue to interfere with the findings recorded by Deputy Registrar and Additional Registrar holding the petitioner not guilty of charges levelled against him - Scope of : *Chandra Prakash Mishra V M. P. Rajya Sahakari Bank Maryadit, Bhopal, I.L.R. (1985) M.P. 488*

-**Section 77(2)**-Power of Board of Revenue to make direction in terms of section 55(2) : *Satna Central Co-Operative And Land Mortgage Bank, Ltd. Satna Vs. Puralal Agrawal., I.L.R. (1974) M.P. 580 (D.B.)*

- **Section 77 (2)** and 55 and Constitution of India, Article 226 - Jurisdiction of Registrar under section 55 - Extent of - Departmental enquiry - Rules of evidence not applicable - Deputy Registrar and Additional Registrar also not bound by strict rules of evidence - Section 77 (2) - Jurisdiction of Board of Revenue to interfere with the findings recorded by Deputy Registrar and Additional Registrar holding the petitioner not guilty of charges levelled against him - Scope of - Domestic enquiry held to be vitiated - No finding that petitioner was guilty of the charges levelled - Petitioner

entitled to relief of re instatement : *Chandra Prakash Mishra Vs. M. P. Rajya Sahkari Bank Maryadit, Bhopal, I.L.R. (1985) M.P. 488*

-Section 80-Power of State Government to dispose of application pending since 1953 : *Nathuram Vs. District Co-Operative Bank Ltd., Shivpuri, I.L.R. (1975) M.P. 807 (D.B.)*

- Section 80- Interference with election process during election by BOR in purported exercise of Revisional powers- Not permissible in view of Section 64 (2) (V) : *Shiv Narayan Pandey Vs. Satish Tiwari, I.L.R. (1998) M.P. 632*

-Sections 80 and 64–Bar of Civil Court's Jurisdiction–Only with regard to disputes touching Constitution, Management, Business or Liquidation of society–Dispute between landlord and society which is a tenant–Bar not attracted : *Madhya Pradesh Handloom Corporation Federation Vs. Krishnakant & ors. I.L.R.(2004) M.P. 850*

- Section 82 – Jurisdiction of Civil Court barred only when matter covered by section 82 of the Act : *Sitaram Vs. Chandra Shekhar And Others, I.L.R. (1989) M.P. 351*

- Section 82 and 64 and Civil Procedure Code (V of 1908), Order 23 Rule 1, Order 7 Rule 11, Order 8 Rules 3, 5 & Section 96–Bar of suits–Would depend on the nature of society and Rules and bye-laws governing it : *M.P. Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s Agm Prakash Ramchandra Modi, I.L.R. (2004)M.P. 594*

-Sections 82 and 64–Recovery of debts due to Banks and Financial Institutions Act, 1993, Sections 18, 2 and Constitution of India–Articles 227/226–Writ Petition–and Jurisdiction of Debt Recovery Tribunal -- Dispute regarding recovery of loan between Bank and loanee society --Amount of loan used in business of society - Dispute would touching the business of society --Section 2(9) R.D. B. Act, 1993 Debt means any liability claimed from any person– Person would include in its ambit and sweep the State–Dispute in between Bank on one hand and the society and the guarantor on the other–State stood as a guarantor is a third person–Dispute would not be covered under Section 64 of Co-Operative Act–Debt Recovery Tribunal has jurisdiction : *M/s M.P. State cooperative oilseeds growers federation limited Vs. Bank of baroda, I.L.R. (2003) M.P. 926*

- Section 82, 95, Co-operative Societies Rules, M.P., 1962, Rules 66, 66(6)(iv) and Civil Procedure Code (V of 1908), Section 9 – Rule 66(6)(iv) ultra-vires Section 95 of the Act – Exclusion of jurisdiction of Civil Court – Could be done only by enacting a law for the purpose – Subordinate or delegated legislation like Rule cannot

take away the jurisdiction – Jurisdiction of Civil Court barred only when matter covered by section 82 of the Act – A ward passed without notice, enquiry and evidence – No award in the eye of law – Recovery officer was not entitled to proceed under Rule 66 – Civil Court had jurisdiction to entertain suit : *Sitaram Vs. Chandra Shekhar And Others, I.L.R. (1989) M.P. 351*

- **Section 82 (1) (c)** and 64 Pledge of grain by a member of Society with the Society in lieu of loan - Loss caused due to mistake of Society in selling grain - Claim by member against the society for price of Grain - Is a dispute covered under section 64 - No Civil Suit lies in respect of such claim - Interpretation of Statutes - Definition clause - Word 'include' - Use of - Makes the definition extensive but not exhaustive : *Gurudayal Singh Vs. Shri Faqirchand Member, Board Of Revenue, Gwalior I.L.R. (1981) M.P. 26 (D.B.)*

- **Section 82 (3)** - Award of Registrar - Not challengeable by recourse to Arbitration Act : *Deputy Registrar, Co-Operative Societies Bilaspur Divison Bilaspur Vs. Narayan Prasad Mishra I.L.R. (1977) M.P. 1123*

-**Section 82 (c) and 64** - Civil Courts - Jurisdiction - Not barred for recovery of balance due against society : *The Bharat Co-Operative Transport Society Ltd. Bairagarh Vs. Punjab National Bank Bhopal I.L.R. (1979) M.P. 1027*

- **Section 82 (c) and 64** - Phrase "dispute touching the business of a society" - Meaning of - Civil Courts - Jurisdiction - Not barred for recovery of balance³ due against society - Section 64 (d) - "Surety of a member"- Meaning of : *The Bharat Co-Operative Transport Society Ltd. Bairagarh Vs. Punjab National Bank Bhopal, I.L.R. (1979) M.P. 1027*

-**Section 85 (a)**-Execution of order/award/decision of Registrar by Civil Court- Certificate issued by Dy. Registrar deemed to be decree of Civil Court-Can be executed by *Civil Court. M.D. Bopche v. Darshan Agrawal, I.L.R. (2002) M.P. 1023*

- **Section 88**–Civil Procedure Code (V of 1908)–Order 14 Rule 2, Section 115– Civil Revision–Section bars suits or other legal proceedings against Registrar in respect of anything done in good faith–Issue relating to bar created by law decided as preliminary issue and the suit dismissed–Purely question of law–Revision does not lie: *Smt. Shakuntala Soni Vs. State, I.L.R. (2004) M.P. 525*

- **Section 91**-Words “such provisions shall apply to such society or class of societies with such modification” followed by “as may be specified in the order” Confer widest discretion : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 187 (F.B.)*

-Section 91-Does not lay down any criteria or standards for passing an order under the section regarding exemption or modification : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 187 (F.B.)*

-Section 91-Empowers State Government to exempt any society or class of societies from provisions of Act and to apply to such societies or class of societies such provision with modification-Words “such provisions shall apply to such society or class of societies with such modification” followed by “as may be specified in the order”-Confer widest discretion-Does not lay down any criteria or standards for passing an order under the section regarding exemption or modification-Court not to invalidate a statute on ground of abdication of legislative power or excessive delegation-Legislature possesses power to implement State police to promote welfare of people and the aims of socio-economic change-Delegation-Essential legislative functions cannot be delegated-Non-essential legislative functions can be delegated-Exemption of society or class of societies from provisions of Act-Not a legislative policy-Way in which modification in the frame-work in provisions of the Act can be made-Section 53-Proviso-Relaxing of outside limit for supersession by State Government-Cannot be said to be ultra vires-Retrospective Enactment-Sovereign legislature enacts law with retrospective operation-Delegation of power-Delegation of power to authority-Authority cannot exercise power with retrospective effect-Section 53(i)-Word “Person”-To be read with the meaning ascribed in Section 3(42) of General Clause, Act-Includes a corporate body-Summary of the principles : *The Collective Farming Society, Ltd., Lilakheri Vs. State Of Madhya Pradesh, I.L.R. (1975) M.P. 187 (F.B.)*

-Section 93-Omission of reference to industrial Disputes Act, 1947 in-Does not imply that Act will apply to societies registered under Societies Act, 1960 : *The Sagarmotor Transport Karmachari Union , Sagar, Vs. The Amar Kamgar Passenger Transport Company Co-Operative Society, Sagar, I.L.R. (1972) M.P. 989 (D.B.)*

- **Section 95** and Co-operative Societies Rules, M.P., 1962, Rule 50-A – Amendment made in the Rules must be laid on the table of Legislative Assembly – Rules not laid on the table of Legislative Assembly cannot be enforced : *The Hukumchand Mills Karmchhari Paraspar Sahkari Sanstha Maryadit, Indore Vs. State Of M.P. I.L.R. (1991) M.P. 134 (D.B.)*

- **Sections 95 (2) (x) and 55** - Registrar's power to issue order to the societies is not uncanalised or arbitrary : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694 (D.B.)*

-Sections 95 (2) (x) and 55 - Rule making power conferred on Registrar is in the nature of legislative power : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694 (D.B.)*

-Sections 95 (2) (x) and 55 - Rule making power of Registrar - Does not suffer from excessive delegation - Registrar's power to issue order to the societies is not uncanalised or arbitrary - Industrial Disputes Act, 1947 - Section 9 - A, proviso - Nature of change in the conditions of employment - When liable to be given to the employee - Rule making powers of the Registrar – Not violative of section 9 - A - Natural Justice - Principles of - Not applicable to the exercise of legislative power - Rule making power conferred on Registrar is in the nature of legislative power : *Hemant Kumar Gupta Vs. The President, District Co-Operative Central Bank Ltd., Ambikapur, District Sarguja, I.L.R. (1982) M.P. 694 (D.B.)*

-Section 96(2)(ii)-Expression “so far as may be”-Qualifies word “deemed”-Purpose of creating fiction-Phrase “so far as may be”-Meaning of-Section 80-Power of State Government to dispose of application pending since 1953-Rule 48-Does not limit the power of revision conferred by statute-Transfer of Property Act, 1882-Section 55-Transfer pendente lite by transfer-or-Transferor still has interest to challenge decree-Civil Procedure Code-Order 21 rule 90-Provisions of rules 84 and 85 disregarded-Application under Order 21,rule 90, Civil Procedure Code not necessary : *Nathuram Vs. District Co-Operative Bank Ltd., Shivpuri, I.L.R. (1975), M.P. 807 (D.B.)*

Co-operative Societies Adoption Act (XLV of 1949)

-Rule 48 of the Rules framed thereunder-Does not limit the power of revision conferred by statute : *Nathuram Vs. District Co-Operative Bank Ltd., Shivpuri, I.L.R. (1975), M.P. 807 (D.B.)*

Co-operative Societies Rules, Madhya Pradesh, 1962

- Rules 7, 8 and 11 and Constitution of India, Article 226, Co-operative Societies Act, M.P. 1960,(XVII of 1961)–Section 16(3) –Re-organization and merger of society–Opportunity before passing final order–Not a mere formality–Society should be afforded opportunity for expressing its opinion about merger–without following procedure Registrar cannot pass any order for merger or amalgamation–Absence of following the procedure-Entire process vitiates–Order impugned quashed : *Prafulla Kumar Jain Vs. State Through the Secy. To Govt. Co-operative Department, Bhopal, M.P., I.L.R. (2004) M.P. 259*

- **Rule 41 (26)** - Provision in, for appointment of Returning Officer by Registrar - Is mandatory : *Thaneshwar Mishra Vs. Zila Sahakari Kendriya Bank Maryadit, Mandla, I.L.R. (1985) M.P. 275, (D.B.)*

- **Rule 41 (26)** and Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 51 - Appointment by nominee of Registrar is invalid - Appointment made in breach of Rule-Invalidates appointment and all other consequential actions taken by such appointee - Registrar not taking objection to such appointment - Cannot validate the appointment under section 51: *Thaneshwar Mishra Vs. Zila Sahakari Kendriya Bank Maryadit, Mandla I.L.R. (1985) M.P. 275 (D.B.)*

-**Rules 43(3), 45** and Co-operative Societies Act, M.P., 1960 (XVII of 1961), Sections 64, 19-AA, 19-C– Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

- **Rules 43(3), 45** and Co-operative Societies Act, M.P., 1960 (XVII of 1961), Sections 19-AA, 19-C and 64 and Constitution of India, Article 227– Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

- **Rule 43(5) and 45(1)** and Co-operative Societies Act, M.P., 1960 (XVII of 1961) – Sections 52(1), 53-B– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787*

- **Rules 43(5) and 45(1)** and Cooperative Societies Act, M.P., 1960, Sections 52(1), 53-B and Constitution of India, Article 226– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered – Opportunity of hearing – Not required before issue of a notice under – Section 53-B – President is to

be heard in the meeting of the Committee of the society – Nominated members – Are members of the committee – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhyaya Vs. State, I.L.R. (2001) M.P. 1787*

-Rule 44 and Bye-law 12-A of the Bye-laws of the Jabalpur Wholesale Co-operative Store-Word “person” in-Includes society : *Basant Kumar Mishra Vs. The Assistant Registrar, Co-Operative Societies, Jabalpur, I.L.R. (1974) M.P. 415 (D.B.)*

-Rules 44 and 45–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be delegate : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

-Rules 44 and 45 and Co-operative Societies Act, M. P., 1960 (XVII of 1961)–Sections 19-AA, 53–Petitioner society suffering dis-qualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P.17*

-Rules 44 and 45 and Co-operative Societies Act, M. P., 1960–Sections 19-AA, 53–Constitution of India, Article 226–Writ Petition–Co-operative Societies–Apex body–Disqualification–Petitioner society suffering disqualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be a delegate : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

-Rule 44(h) and Bye-law 12-A (1)(e) of the Jabalpur wholesale Co-operative Store-Dis-qualification arising out of-Applicable to a society : *Basant Kumar Mishra Vs. The Assistant Registrar, Co-Operative Societies, Jabalpur, I.L.R. (1974) M.P. 415 (D.B.)*

-Rules 45, 43(3) and Co-operative Societies Act, M.P., 1960 (XVII of 1961), Sections 64, 19-AA, 19-C– Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

– **Rules 45**, 43(3) and Co-operative Societies Act, M.P., 1960 (XVII of 1961), Sections 19-C, 19-AA and 64 and Constitution of India, Article 227– Order removing President of defaulter society from the office of Director of apex society – Set aside by the Board of Revenue – Writ Petition – Section 19-AA, 19-C and Rule 43(3) – Provisions and procedure for removal of an office bearer or disqualification for being elected as representative of the root society to the apex society – Root society itself in default – Dispute under Section 64 of the Act also pending in subject matter of default – President of defaulting society not liable to be removed or declared disqualified from holding the office of Director of apex society as he in person is not a defaulter and dispute under Section 64 is already pending : *Zila Sahakari Kendriya Bank Maryadit, Shahdol Vs. Jagdish Saraf, I.L.R. (2001) M.P. 320*

–**Rules 45 and 44**–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be delegate : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P.17,*

–**Rules 45 and 44** and Co-operative Societies Act, M. P., 1960 (XVII of 1961)– Sections 19-AA, 53–Petitioner society suffering dis-qualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P.17*

–**Rules 45 and 44** and Co-operative Societies Act, M. P., 1960–Sections 19-AA, 53–Constitution of India, Article 226–Writ Petition–Co-operative Societies–Apex body–Disqualification–Petitioner society suffering disqualification for reason of being defaulter–Requirement is that both the society and also its representative should not suffer from any disqualification–Delegate having no independent existence but only represents the society–If society ceases to be a member, the delegate will automatically cease to be a delegate : *Arjun Lal Patel Vs. State, I.L.R. (2002) M.P. 17*

–**Rule 45(1) and 43(5)** and Co-operative Societies Act, M.P., 1960 (XVII of 1961) – Sections 52(1), 53-B– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered : *Satish Kumar Upadhyaya Vs. State, I.L.R. (2001) M.P. 1787*

- **Rules 45(1) and 43(5)** and Cooperative Societies Act, M.P., 1960, Sections 52(1), 53-B and Constitution of India, Article 226– Meeting for considering disqualification of president for holding that office – Erring president cannot preside over a meeting in which allegations against him are to be considered – Opportunity of hearing – Not required before issue of a notice under – Section 53-B – President is to be heard in the meeting of the Committee of the society – Nominated members – Are

members of the committee – Not prevented from voting – Proceedings rightly rendered invalid : *Satish Kumar Upadhayaya Vs. State, I.L.R. (2001) M.P. 1787*

- **Rule 50-A** and Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 95– Amendment made in the Rules must be laid on the table of Legislative Assembly – Rules not laid on the table of Legislative Assembly cannot be enforced : *The Hukumchand Mills Karmchhari Paraspar Sahkari Sanstha Maryadit, Indore Vs. State Of M.P. I.L.R. (1991) M.P. 134 (D.B.)*

- **Rules 66, 66(6)(iv)** and Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 95, 82, Civil Procedure Code (V of 1908), Section 9 – Rule 66(6)(iv) ultra-vires Section 95 of the Act – Exclusion of jurisdiction of Civil Court – Could be done only by enacting a law for the purpose – Subordinate or delegated legislation like Rule cannot take away the jurisdiction – Jurisdiction of Civil Court barred only when matter covered by section 82 of the Act – A ward passed without notice, enquiry and evidence – No award in the eye of law – Recovery officer was not entitled to proceed under Rule 66 – Civil Court had jurisdiction to entertain suit : *Sitaram Vs. Chandra Shekhar And Others, I.L.R. (1989) M.P. 351*

- **Rules 66(6)(iv)**, 66 and Co-operative Societies Act, M.P. 1960 (XVII of 1961), Section 95, 82, Civil Procedure Code (V of 1908), Section 9 – Rule 66(6)(iv) ultra-vires Section 95 of the Act – Exclusion of jurisdiction of Civil Court – Could be done only by enacting a law for the purpose – Subordinate or delegated legislation like Rule cannot take away the jurisdiction – Jurisdiction of Civil Court barred only when matter covered by section 82 of the Act – A ward passed without notice, enquiry and evidence – No award in the eye of law – Recovery officer was not entitled to proceed under Rule 66 – Civil Court had jurisdiction to entertain suit : *Sitaram Vs. Chandra Shekhar And Others, I.L.R. (1989) M.P. 351*

- **Rules 8, 7 and 11**, Co-operative Societies Act, M.P. 1960,(XVII of 1961)– Section 16(3) and Constitution of India, Article 226–Re-organization and merger of society–Opportunity before passing final order–Not a mere formality–Society should be afforded opportunity for expressing its opinion about merger–without following procedure Registrar cannot pass any order for merger or amalgamation–Absence of following the procedure–Entire process vitiates–Order impugned quashed : *Prafulla Kumar Jain Vs. State Through The Secy. To Govt. Co-Operative Department, Bhopal, M.P. and ors., I.L.R. (2004) M.P 259*

-Rule 18(2)-Even if member expelled from society -Can be admitted after one year by society in his discretion : *Kampta Prasad Vs. The Registrar Co-Operative Societies, M.P., Bhopal I.L.R. (1970) M.P. 585 (D.B.)*

-Rule 18(2)-Member held to be "liar" or "trickster" or a "swindler" or a "cheat" rendering him liable for expulsion -Can be a ground for expulsion from all societies of which he is member : *Kampta Prasad Vs. The Registrar Co-Operative Societies, M.P., Bhopal I.L.R. (1970) M.P. 585 (D.B.)*

-Rule 18(2)-Circumstances under which action under this provision can be taken against a member-Member held to be "liar" or "trickster" or a "swindler" or a "cheat" rendering him liable for expulsion-Can be a ground for expulsion from all societies of which he is member-Even if member expelled from society-Can be admitted after one year by society in his discretion-Word "opportunity" in-Does not necessarily mean personal hearing : *Kampta Prasad Vs. The Registrar Co-Operative Societies, M.P., Bhopal I.L.R. (1970) M.P. 585 (D.B.)*

- Rule 41 (26), Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 64 and 51 and Constitution of India, Article 226 - Provision in Rule 41 (26) for appointment of Returning Officer by Registrar - Is mandatory - Appointment by nominee of Registrar is invalid - Appointment made in breach of Rules invalidates appointments and all other consequential actions taken by such appointee - Registrar not taking objection to such appointment - Cannot validate the appointment under Section 51 - Article 226 - Alternative remedy of election petition - Is not an absolute bar to exercise of powers under Article 226 - Natural Justice - Judicial practice - Nobody should be the Judge of his own cause - Alternative remedy lies before the officer who passed the impugned order - Petition should be entertained by High Court : *Thaneshwar Mishra, Zila Sahakari Kendriya Bank Maryadit, Mandla, I.L.R. (1985) M.P. 275 (D.B.)*

Co-owners

-Becomes agent by contract express or implied : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Can enter upon property and take possession of the whole subject to equal right of other co-owner : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Circumstance in which a co-owner can ask for accounts from a co-owner in exclusive possession : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Holds property by several and distinct titles but by unity of possession : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Implication of the principle of fructus naturals : *Mst. Vidya Bai Vs.. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Is not a trustee for other co-owners : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Possession of co-owner-Not prima facie adverse against another co-owner but is on behalf of all : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Right of co-owner in property belonging to all co-owners : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Right to possess essential element : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-What constitutes ouster-No right to mesne profits in the absence of ouster-Remedy which a co-owner can seek in case of his ouster : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Arrangement binding on purchaser of one co-owner's interest-Purchaser can take advantage of the like enjoyment of common property : *Dattatraya Vs. Smt. Anusuyabai, I.L.R. (1970) M.P. 660*

-Suit by one co-owner against person in wrongful possession-Suit regarded as on behalf of all co-owners : *Mst. Pilononi Vs. Anandsingh, I.L.R. (1960) M.P. 285 (D.B.)*

- Co-owners of individual property not living in jointness -Co-owners can be in exclusive possession and enjoyment of different parts of property without definition or severance of interest-Arrangement binding on purchaser of one Co-owner's interest-Purchaser can take advantage of the like enjoyment of common property : *Dattatraya Vs. Smt. Anusuyabai, I.L.R. (1970) M.P. 660*

-Not agent of other co-owners-Becomes agent by contract express or implied- Is not a trustee for other co-owners-Holds property by several and distinct titles but by unity of possession-Right to possess essential element-Can enter upon property and take possession of subject to equal right of other co-owner-Possession of co-owner-Not prima facie adverse against another co-owner but is on behalf of all-Right of co-owner in property belonging to all co-owners-What constitutes ouster-No right to mesne profits in the absence of ouster-Remedy which a co-owner can seek in case of

his ouster-Circumstance in which a co-owner can ask for accounts from a co-owner in exclusive possession-Implication of the principle fructus naturals-Civil Procedure Code-Order 6 Rule 17-When can or cannot be allowed subsequent cause of action to be included in plaint by amendment-Exception to general rules-Test which should be applied in determining the question of amendment : *Mst. Vidya Bai Vs. Lala Ranayandas, I.L.R. (1974) M.P. 799*

-Suit for joint possession-Principles when joint possession should or should not be granted laid down : *Brijlal Vs. Dau Mohanlal, I.L.R. (1957) M.P. 354 (F.B.)*

-Possession of one co-owner for a considerable period of time exclusively and prima facie to the exclusion of other-Presumption that possession of one co-owner referable to title of other unless there is ouster-Not applicable-Practice-Parties having full knowledge of case set up by each-Absence of plea and issue-Merits not affected-No interference : *Ishak All Vs. Mst. Unnasbi and others, I.L.R. (1958) M.P. 168 (D.B.)*

Copy right Act, Indian (III of 1914)

-Breach of agreement between author and publisher preventing substantial performance-Is a cause of discharge : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal ., I.L.R. (1973) M.P. 88 (F.B.)*

-Fair dealing with material which is common property-Work not affected by copy-right : *M/s Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-For assignment of copy right or exclusive licence to publish-Writing is essential : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-For infringement of copy-right-Colourable imitation of author essential : *M/s Mishrabandhu Aryalaya, Jabalpur Vs. Sheoratanlal Koshal., I.L.R. (1973) M.P., 88 (D.B.)*

-Question whether work is colourable imitation-Is a question of fact-Burden to prove it lies on plaintiff : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal ., I.L.R. (1973) M.P., 88 (F.B.)*

-Compiler of work in which originality is excluded-Is entitled to make use of preceding work, but must bestow mental labour upon what has been taken and must subject it to revision or correction to produce original result : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Author or assignee has a copy-right in it-Can enter into publishing contract in respect thereof : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Failure to register-Does not deprive artist of copy-right : *M/s Ishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal ., I.L.R. (1973) M.P., 88 (F.B.)*

-For deciding whether there was complete or partial assignment or a mere licence-Real meaning of agreement to be looked into and not mere choice of words : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Non-registration of copy-right-Suit for infringement of copy-right was not liable to dismissal : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Registration of copy-right-Author acquires proprietary rights on book : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Test to be applied to determine originality of work-"Saral Middle School Ank Ganeet" is original work : *M/S Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Section 1, Schedule 1-Original thought or original research-Not essential for literary work to be original : *M/s Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

-Contains no provisions for registration of copy-right-Non-registration of copy-right-Suit for infringement or copy-right was not liable to dismissal-Failure to register-Does not deprive artist of copy-right-Registration of copy-right-Author acquires proprietary rights on book-Section 1, Schedule 1-Original thought or original research-Not essential for literary work to be original-Test to be applied to determine originality of work-"Saral Middle School Ank Ganeet" is original work-Author or assignee has a copy-right in it-Can enter into publishing contract in respect thereof-For deciding whether there was complete or partial assignment or a mere licence-Real meaning of agreement to be looked into and not mere choice of words-Benami-Burden of proof-Strictest evidence necessary-Is not a matter of presumption-Has to be pleaded and proved by legal evidence including circumstantial evidence-Test to be applied to determine benami transaction-Deed-Construction-Intention of parties to be gathered from words used, unless they do not convey intention correctly-Estoppel-Dealing with plaintiff as owner-Deriving benefit of contract-This conduct amounts to

estoppel-Copy-right-For assignment of copy-right or exclusive licence to publish-Writing is essential-Words and phrases-"Copy"-Meaning of-Copy-right-Compiler of work in which originality is excluded-Is entitled to make use of proceeding work, but must bestow mental labour upon what has been taken and must subject it to revision or correction to produce original result-Question whether work is colourable imitation-Is a question of fact-Burden to prove it lies on plaintiff-Fair dealing with material which is common property-Work not affected by Copy-right Act-For infringement of copy-right-Colourable imitation of author essential-Account-Author entitled to account from publisher because of fiduciary relationship-Right of author or his assignee after termination of licence of publisher-Right is not for account but for damages-Copy-right-Breach of agreement between author and publisher preventing substantial performance-Is a cause of discharge-Contract-Not terminable unilaterally-One party committing breach-Does not abrogate mutual obligation-Merely gives other party an option to ignore breach or to insist upon performance or to accept repudiation and treat himself free from further liability-Contract not automatically discharged by breach-Breach gives right to injured party to treat contract as at an end-Measure of damages after revocation of licence-Loss of business profits claimable-Imperial Copy-right Act, 1911-Section 6-Remedy given under-Not alternative to those given by section 7-Damages under Section 6 recovered-Nothing can be recovered under Section 7-Damages recoverable under sections 6 and 7 are cumulative and not alternative : *M/s Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P., 88 (F.B.)*

Corporation

-Power to make bye-laws for regulating its own actions and concerns and right and duties amongst members and for regulating employment of its officers and servants-Is one of its legal incidents : *Dattatraya Vs. State Bank Of India, I.L.R. (1973) M.P., 229 (D.B.)*

Correction

-Correction of electoral roll for urban circle can be made in cases where the elections to the Municipality are held after the preparation of the roll and before the election : *Murlidhar & Anr. Vs. The Collector, Raigarh & ors., I.L.R. (1959) M.P. 506 (D.B.)*

Corrupt Practice

- Has to be specifically pleaded – Standard of proof required for proving corrupt practice : *Sada Ram Vs. Bhaiyya Sahib, I.L.R. (1989) M.P. 27*

Costs

Costs-Circumstances in which special costs can be granted : *Bhartendra Singh Vs. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

Cotton Control Order, 1950

-Clause 4-Not operative on ready contracts in cotton : *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) M.P. 405 (D.B.)*

- Clauses 5, 7(1), 14(A) and (B)-Clauses 7(1) and 14(A)-Specification of maximum quantity of cotton-Necessary for application for allotment - Clause 14(B)-Prohibits only acquisition and not entering into contract-Contract Act-Section 63-Extension of time for performance-Consent of both parties necessary-Communication of request of promisor to promisee necessary-Cotton Control Order, 1950-Clause 4-Not operative on ready contracts in cotton-Clause 7(1)-Allotment order not necessary condition for entering into contract : *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) 405 (D.B.)*

-Clause 7(1)-Allotment order not necessary condition for entering into contract: *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) M.P. 405 (D.B.)*

-Clauses 7(1) and 14(A)-Specification of maximum quantity of cotton-Necessary for application for allotment : *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) M.P. 405 (D.B.)*

-Clause 14(B)-Prohibits only acquisition and not entering into contract : *The Indore United Malwa Mills, Indore Vs. Basantilal I.L.R. (1968) M.P. 405 (D.B.)*

Counsel signing

- Counsel signing the application without satisfying himself about prima facie existence of adequate grounds there for-Liable for contempt : *Shri Acharya, A.D.M., Indore Vs. V.V. Kulkarni, Advocate & Rewashankar, I.L.R. (1958) M.P. 902 (D.B.)*

Country Sprit Rule, 1995

-Rule 9 and Clause 33 of the General Condition of License-Statutory Powers of Govt. to amend any condition of license during its currency-Petitioner participating in the bid expected to be aware of the condition of sale memorandum-Cannot turn back and make grievance later-Petitioner lifting liquor exceeding the quota-Required to pay duty thereon-Not entitled to get benefit of adjustment from the date prior to

amendment-Demand notice by Govt.-No interference in writ petition-Govt. directed to decide petitioners representation if any made : *Rajesh Kumar Jaiswal Vs. State, I.L.R. (2000) M.P. 462,*

Court of Wards Act, Central Provinces (XXIV of 1899)

- **Section 2(c)**-Notification issued under-Not embracing all Rulers of States-Notification assailable: *Raja Lalit Kumar Singh Vs. The State Of M.P., I.L.R. (1960) M.P. 993 (D.B.)*

- **Section 4**-Conditions necessary before action can be taken by Court of Wards : *Raja Lalit Kumar Singh Vs. The State Of M.P., I.L.R. (1960) M.P. 993 (D.B.)*

- **Section 5 (1)(c)**-District Judge-Power to determine whether a person is land-holder : *Raja Lalit Kumar Singh Vs. The State Of M.P., I.L.R. (1960) M.P. 993 (D.B.)*

- **Section 12** - Applicable only to money claims-Term "Liabilities" in Section 16-Does not include claim for partition or future maintenance : *Onkar Bahadur Singh Vs. Raghuraj Singh, I.L.R. (1957) M.P.500 (D.B.)*

Court-fees (Amendment) Act, M. P. (XXIV of 1975)

- **Section 2** and Court-fees Act (VII of 1870), Article 1-A, as amended - Enhancement of Court-fee on slab system with the rate tapering off as the value of subject matter increases - Is reasonable : *D. & H. Secheron Electrodes (Pvt.) Ltd. Indore Vs. State Of Madhya Pradesh, I.L.R. (1983) M.P. 20, (D.B.)*

Section 2 and Court Fees Act (VII of 1870), Article 1-A, as amended and constitution of India, Schedule VII, List II, Entry 3 and Article 226- Power of State Government to levy Court -fee- Nature of such levy- It is a fee for services rendered to suitor- Fee charged must bear correlation with expenses over administration of Civil Justice- Substantial portion of such charge must be spent for rendering services to suitor-Expenses with exactitude not necessary- Phrase 'quid pro quo'- Principles of, and its application to justify charge of court fee- Enhancement of Court-fee on slab system with the rate tapering off as the value of subject matter increases - Is reasonable - State furnishing figures showing required relationship to support enhancement of Court-fees by 1975 Act Amendment Act- Validity of : *D. & H. Secheron Electrodes (Pvt.) Ltd. Indore Vs. State Of Madhya Pradesh I.L.R. (1983) M.P. 20, (D.B.)*

Court-fees Act (VII of 1870)

- **Court fees not paid within time granted by court-Court has power to extend time for payment of court-fees** : *Bhanu Vs. Dalkmia & Co. & anr., I.L.R. (1958) M.P. 757 (D.B.)*

- **Court-fees paid during pendency of lis or Court-fees paid after rejection of application**-Absence of fraud or mala-fides-Plaint or appeal deemed to be filed on that date on which application for permission to sue or to appeal was filed : *Ramchandra Vs. Motilal & ors., I.L.R. (1958) M.P. 244 (D.B.)*

-**No special provision regarding Court-fees** in Special Act-Court-fees Act prevails : *Shri Mannalal Mandloi Vs. The Board Of Revenue, M.P., Gwalior, I.L.R. (1969) M.P. 743 (D.B.)*

-**For purposes of determining Court-fees**-Subject matter involved and not abstract question of law raised for consideration in appeal to be seen : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India , I.L.R. (1973) M.P., 330 (F.B.)*

-**Anomalies in Act-Remedy** : *Balu Vs. Amichahd, I.L.R. (1972) M.P. 1 (F.B.)*

-**Suit for ejectment by landlord**-Tenant setting up ownership in himself and also claiming compensation for improvements Defendant's claim neither amounts to counter-claim nor set off-No Court-fee is payable : *Ranchod Vs. Dashrath, I.L.R. (1971) M.P. 1078, .*

- **Court-fees** - Appeal about costs alone or specific sum relating to costs - Court - fees has to be paid ad-valorem : *Kudau Vs. Halkai, I.L.R. (1981) M.P. 750,*

-**Appeal filed subsequent to the Act but proceedings filed before**-Amended Act does not apply-Hindu Marriage Act-Petition under-Not plaints-To be treated as petitions for purposes of Court fees-Proceedings under the Act-Can be considered as suit, as term "suit" not defined under the Act-Such suit not referable to original civil jurisdiction-Appeal under Hindu Marriage Act- Court fees on such appeal governed by Schedule II, Article 17- Clause (vi) of the Court-fees Act : *Nandkishore Vs. Parwatibai, I.L.R. (1967) M.P. 555.*

- **Article 1**, Schedule 1 and Section 4- Land Acquisition Act (I of 1894)-Section 54 -Appeal against award-Money in deposit in Bank by order of Court-Party declared owner becomes entitled-Money no longer in custodia legis-Ad valorem court-fee to be paid on memo of appeal : *Chhogalal Vs. Thakore Uttamsingh, I.L.R. (1959) M.P. 750 (D.B.)*

- **Article 1**, Schedule 1 and Schedule II, Article 11- Is a fiscal statute- Case covered by specific provision-Cannot be regarded as so covered by analogy-For purposes of determining Court-fees-Subject matter involved and not abstract question of law raised for consideration in appeal to be seen-Schedule 1, Article 1-Court-fees on memo of appeal against order rejecting the plaint-Governed by this provision-Subject-matter in dispute in appeal-Is the same as that in Court of first instance : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India* , I.L.R. (1973) M.P., 330 (D.B.)

-**Amendment Act, 1997**- Article 1-A and Section 5 of Schedule I-Change in Court fee-Effect-The right of appeal is a vested right which accrues from the date his commences such right is to be governed by the law prevailing at the time of institution of suit for proceeding-Amendment shall not have retrospective effect-Pre-amendment rate of Court fee shall apply to appeals filed prior to amendment-Order of Taxing Officer confirmed. *The Chairman Vidyut Sahkari Samiti, Maryadit, Rewa Vs. Rajesh Kushwaha*, I.L.R. (2002) M.P. 102

- **Article 1-A and** Court-fees (Amendment) Act, Madhya Pradesh (XXIV of 1975), Section 2, as amended and Constitution of India, Schedule VII, List II, Entry 3 and Article 226 - Power of State Government to levy Court -fee - Nature of such levy - It is a fee for service rendered to suitor - Fee charged must bear correlation with expenses over administration on Civil Justice - Substantial portion of such charge must be spent for rendering services to suitor - Expenses with exactitude not necessary - Phrase 'quid pro quo' - Principles of, and its application to justify charge of court-fee-Enhancement of Court-fee on slab system with the rate tapering off as the value of subject-matter increases- Is reasonable - State furnishing figures showing required relationship to support enhancement of Court-fee by 1975 Act-Amendment Act - Validity of : *D D. & H. Secheron Electrodes (Pvt.) Ltd. Indore Vs. State Of Madhya Pradesh* I.L.R. (1983) M.P. 20 (D.B.)

- **Article 1 (b) and Schedule II** - Application for permission to deposit under Section 13, Accommodation Control Act, 1961 - Court-fees is not payable thereon : *Dayaldas Vs. Moorajmal* I.L.R. (1978) M.P. 796

- **Article 17 and Schedule II, Section 7 (iv)(c)**-Suit for declaration and injunction-Suit falls under Section 7(iv)(c) and not Article 17, Schedule II-Suits Valuation Act-Section 8 - Valuation for jurisdiction-Value of property or decretal amount whichever is less : *Idol Shri 'Shriji' Vs. Chaturbhai*, I.L.R. (1964) M.P. 429

-**Article 17, Section 7 (iv)(C)**, Schedule II and Specific Relief Act (XLVII of 1963) – Plaintiff party to the Sale-deed – Relief of declaration simplicitor not

available – Consequential relief of cancellation of the sale-deed is necessary: *Kunti Devi Vs. Roshanlal, I.L.R. (1991) M.P. 488*

- **Article 17, Article 17 (iii)** and Sections 7(iv)(d),7(iv)(c) 7(v)(e)–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fees should be as per Section 7 (iv) (c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d) : *Shabbir Hussain & others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

-**Article 17(1)**-Suit for cancellation of certificate-Suit falls under Article 17(1) of the Court-fees Act-Fixed court fee payable on plaint: *Mangalsa V. State Of M.P. I.L.R. (1968) M.P. 613 (D.B.)*

- **Article 17 (iii) and Schedule II**- Ad valorem Court fees not payable in suit for declaration of title: *Smt. Dhanbai Vs. State Of M. P., I.L.R. (1981) M.P. 48, (D.B.)*

– **Article 17(iii)**, Sections 7(iv)(c), 7(iv)(d), 7(v)(e) and Civil Procedure Code (V of 1908) —Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect orderset aside : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

-**Article 17(iii)** and Sections 7(v)(e), 7(iv)(c), 7(iv)(d) - Civil Procedure Code (V of 1908)–Section 115 and–Suit for eviction, recovery of rents, declaration of ownership and permanent injunction against tenants who are claiming to be owners–Court fees payable– Accommodation Control Act, M. P. 1961, Section 12(1)(e) and (a)–Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect order set aside : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

- **Article 17 (iii)**, Article 17 and Sections 7(iv)(d),7(iv)(c) 7(v)(e)–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fees should be as per Section 7 (iv) (c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d) : *Shabbir Hussain & others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

- **Article 17 (iii)** of Schedule II and Section 7 (iv)(c) - Suit for declaration that sale deed was obtained fraudulently and without payment of any consideration -

Fraudulent misrepresentation alleged not merely as to contents of the sale-deed but also its character - Such relief does not imply relief of cancellation of sale-deed-Ad-valorem Court-fee-Not payable under section 7 (iv)(c) of the Act : *Smt. Linmat Vs. Purushottam, I.L.R. (1985) M.P. 122*

-Article 17(vi)- Test to be applied to determine whether suit falls under this Article : *Chaudhari Kanhaiyalal Vs. Shankarprasadji, I.L.R. (1964) M.P. 632*

- Article 17 (vi) of Schedule II - Relief regarding appointment on new trustees under section 73 or 74 of the Trusts Act- Incapable of Valuation in money - Covered by Schedule II of this Article : *Gajadhar Vs. Mst. Rajrani, I.L.R. (1979) M.P. 152, (D.B.)*

- Article 17 (vi) of Schedule II -Two conditions for applicability - Both conditions must co-exist : *Gajadhar Vs. Mst. Rajrani, I.L.R. (1979) M.P. 152, (D.B.)*

- Article 17(vi), Schedule 2, (as amended in M.P.) - Valuation of property for the purposes of court-fee - Suit for possession of church building and also parsonage building in possession of pastor - Suit valued at Rs. 300/- for church building -As under Art.17 it could not have any market value and parsonage building valued on basis of yearly rent - Valuation proper - Remaining open plot need not be valued separately :*Rev. heodore Ekka Vs. Evangelical Church of India, I.L.R. (1995) M.P. 256*

- Article 17(4) and Schedule 2-Appeal against final decree for foreclosure - Amount not in dispute-Court-fee payable Rs.20/- and not ad valorem -Civil Procedure Code-Section 2(2)-Order rejecting memo of appeal for being insufficiently stamped-Order not appealable- Revision proper remedy : *Gyasiram Vs. Brij Bhushan Das, I.L.R. (1964) M.P.316*

-Article 17(vi)-Reliefs claimed in suit strictly falling under Section 92, Civil Procedure Code-Reliefs incapable of valuation-Suit falls under the article-Test to be applied to determine whether suit falls under Article 17(vi)-Civil Procedure Code-Section 92-Relief of damages against stranger to the trust-Relief does not fall under Section 92, Civil Procedure Code-Relief capable of valuation-Ad valorem Court-fee payable -Civil Procedure Code, Section 92 and Court- fees Act, Section 7(iv)(f)-Suit for accounts-Grounds on which accounts can be claimed under Section 92 - Accounts not claimed on the basis of Section 92 - Same claimed against stranger of the Trust - - Claim falls under Section 7(iv)(c) of Court-fees Act : *Chaudhari Kanhaiyalal Vs. Shankarprasadji, I.L.R. (1964) M.P. 632*

- Article 17 (vi) - Schedule II- Suit for partition-Defendant claiming separation of his share-Defendant not liable to pay courtfees - Amended Court-fees Act coming

into force during pendency of lis-Court-fees Act in force at the time of commencement of lis will apply : *Sajjad Hussain Vs. Mst. Amina Khatunbi, I.L.R.(1961) M.P. 760*

- **Article 18 (b)** - Schedule II - Word "application" in - Cannot be read as Suit : *Gajadhar Vs. Mst. Rajrani, I.L.R. (1979) M. P. 152, (D.B.)*

- **Item 17**, Schedule II and Section 7 (iv) and Suits Valuation Act (VII of 1887), Section 4 and Rules framed under Section 3 thereof - Suits for declaration in respect of land separately assessed to Land Revenue Valuation for purposes of jurisdiction - Court-fees payable thereon : *Moolchand Vs. Mst. Khushed Bi, I.L.R. (1983) M.P. 714 (D.B.)*

-**Schedule 1, Article 1**-Court fees on memo of appeal against order rejecting the plain- Governed by this provision : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India, I.L.R. (1973) M.P., 330 (F.B.)*

-**Schedule 1, Article 1**-Mortgage suit-Item claimed on taking account-No court-fees payable on that item-Set off or counter claim made-No relation with mortgage contract-Claimed on a different contract-Counter claim or set-off liable to payment of Court-fees-Civil Procedure Code-Section 115-Demand of additional Court-fees on memo of appeal-Order revisable as question of jurisdiction involved -Civil Procedure Code-Order 8, Rule 6-Equitable set off-Not claimable as of right : *Motilal Vs. Purshottam, I.L.R. (1967) M.P. 294,.*

-**Schedule 1, Article 1**- Set off or counter claim made-No relation with mortgage contract-Claimed on a different contract-Counter claim are set off liable to payment of Court-fees : *Motilal Vs. Purshottam, I.L.R. (1967) M.P. 294,.*

-**Schedule 1, Article 1**-Subject matter in dispute in appeal- is the same as that in court of first instance : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India, I.L.R. (1973) M.P., 330 (F.B.)*

-**Schedule 1, Article 1** and Schedule II, Article 11-Case covered by specific provision-Cannot be regarded as so covered by analogy : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India , I.L.R. (1973) M.P., 330 (F.B.)*

-**Schedule 1, Article 1**-Not applicable to claim of adjustment-Distinction between payment and adjustment : *The State Of Madhya Pradesh Vs. Raja Balbhadra Singh, I.L.R. (1964) M.P. 270 (D.B.)*

- **Schedule 1, Article 1** and Schedule II, Article 11 - Is a fiscal statute - Case covered by specific provision-Cannot be regarded as so covered by analogy-For purposes of

determining Court-fees-Subject matter involved and not abstract question of law raised for consideration in appeal to be seen-Schedule 1, Article 1-Court-fees on memo of appeal against order rejecting the plaint-Governed by this provision-Subject-matter in dispute in appeal-Is the same as that in Court of first instance : *M.G. Tipnis Vs. The Secretary, Ministry Of Commerce, Union Of India, I.L.R. (1973) M.P., 330 (D.B.)*

- **Schedule 1**, Article 1 and Section 4 and Land Acquisition Act (I of 1894)-Section 54 -Appeal against award-Money in deposit in Bank by order of Court-Party declared owner becomes entitled-Money no longer in custodia legis-Ad valorem court-fee to be paid on memo of appeal : *Chhagalal Vs. Thakore Uttamsingh, I.L.R. (1959) M.P. 750 (D.B.)*

- **Schedule II**, Article 1 (b) - Application for permission to deposit under Section 13, Accommodation Control Act, 1961 - Court-fees is not payable thereon : *Dayaldas Vs. Moorajmal I.L.R. (1978) M.P. 796*

- **Schedule II**, Article 17 and Section 7(iv)(c)-Suit for declaration and injunction-Suit falls under Section 7(iv)(c) and not Article 17, Schedule II-Suits Valuation Act-Section 8 - Valuation for jurisdiction-Value of property or decretal amount whichever is less : *Idol Shri 'Shriji' Vs. Chaturbhai, I.L.R. (1964) M.P. 429*

- **Schedule II**, Item 17 and Section 7 (iv) and Suits Valuation Act (VII of 1887), Section 4 and Rules framed under Section 3 thereof - Suits for declaration in respect of land separately assessed to Land Revenue Valuation for purposes of jurisdiction - Court-fees payable thereon: *Moolchand Vs. Mst. Khushed Bi, I.L.R. (1983) M.P. 714 (D.B.)*

- **Schedule II**, Article 17 (iii) - Ad valorem Court fees not payable in suit for declaration of title: *Smt. Dhanbai Vs. State Of M. P. I.L.R. (1981) M.P. 48 (D.B.)*

- **Schedule 2**, Article 17(4) -Appeal against final decree for foreclosure - Amount not in dispute-Court-fee payable Rs. 20/- and not ad valorem -Civil Procedure Code-Section 2(2)-Order rejecting memo of appeal for being insufficiently stamped-Order not appealable- Revision proper remedy : *Gyasiram Vs. Brij Bhushan Das, I.L.R. (1964) M.P.316*

- **Schedule II**-Article 17 (vi)-Suit for partition-Defendant claiming separation of his share-Defendant not liable to pay courtfees - Amended Court-fees Act coming into force during pendency of lis-Court-fees Act in force at the time of commencement of lis will apply : *Sajjad Hussain Vs. Mst. Amina Khatun BI, I.L.R.(1961) M.P. 760*

- **Section 4**, Article 1 and Schedule 1 - Land Acquisition Act (I of 1894)-Section 54 -Appeal against award-Money in deposit in Bank by order of Court-Party declared owner becomes entitled-Money no longer in custodia legis-Ad valorem court-fee to be paid on memo of appeal : *Chhogalal Vs. Thakore Uttamsingh, I.L.R. (1959) M.P. 750 (D.B.)*

- **Section 4**, Schedule 1 and Article 1 - Land Acquisition Act (I of 1894)-Section 54 -Appeal against award-Money in deposit in Bank by order of Court-Party declared owner becomes entitled-Money no longer in custodia legis-Ad valorem court-fee to be paid on memo of appeal : *Chhogalal Vs. Thakore Uttamsingh, I.L.R. (1959) M.P. 750 (D.B.)*

- **Section 5 and Article 1**-A of Schedule I-Change in Court fee-Effect-The right of appeal is a vested right which accrues from the date his commences such right is to be governed by the law prevailing at the time of institution of suit for proceeding-Amendment shall not have retrospective effect-Pre-amendment rate of Court fee shall apply to appeals filed prior to amendment-Order of Taxing Officer confirmed. *The Chairman Vidyut Sahkari Samiti, Maryadit, Rewa Vs. Rajesh Kushwaha, I.L.R. (2002) M.P. 102*

- **Section 6**, Section 19(I) and Section 19(K) - Mandatory provision of Section 6 for advance payment of fee is not applicable to a case of probate or letters of administration- But the Certificate cannot be issued in favour of the person unless he has paid or deposited the necessary Court fee after enquiry. *Raja Amarsingh Vs. State Of M.P., I.L.R. (1998) M.P. 617*

-**Section 7** and Civil Procedure Code (V of 1908), Section 115, Suits Valuation Act 1887, Section 9-Revision against direction to pay ad valorem court fees-Suit for declaration that plaintiff entitled to receive money-Money held by Government as retirement dues of husband-Plaintiff can put any reasonable valuation and pay fixed Court fee-Order of payment of ad-valorem court fees set-aside. *Smt. Shahista Qureshi Vs. State of M.P.; I.L.R. (2002) M.P.1016*

- **Section 7**-Set off explained-Defendant denying plaintiff's claim and pleads over-payment without claiming decree therefore - Mere narration of facts showing what are plaintiff's dues and what over-payment made-No question of set off or counter claim arises : *The State Of M.P. Vs. Narayan Prasad, I.L.R.(1961) M.P. 915*

-**Section 7(1)**-Suit for mesne profits-Plaintiff has to state approximately value of his claim - Court -fees Payable on such value -Cannot be valued as a suit for accounts : *Ambika Prasad & Anr. Vs. Shiv Shankar Dayal Choubey, I.L.R. (1962) M.P. 557 (D.B.)*

-Section 7(iv)-Party made liable under a deed or decree for specified amount-Party seeking to avoid that liability-Value of relief is extent of loss which party seeks to avoid : *Badrilal Bholaram Vs. The State Of M.P. I.L.R. (1966) M.P. 108 (D.B.)*

-Section 7 (iv)-Value of relief sought can be objectively determined-That value is value of relief : *Badrilal Bholaram Vs. The State Of M.P. I.L.R. (1966) M.P. 108 (D.B.)*

-Section 7(iv)-Suit for declaration of title to property sold in execution of decree and the sale confirmed-The value for Court-fees and jurisdiction-Is the value of the shares of plaintiffs which have been sold : *Sharad Chand Vs. Laxman Prasad, I.L.R. (1975) M.P., 931*

- Section 7 (iv) - Enables a party seeking to value the relief claimed by him- value of relief sought can be objectively determined- That value is value of relief-Party made liable under a deed or decree for specified amount-Party seeking to avoid that liability- Value of relief is extent of loss which party seeks to avoid : *Badrilal Bholaram Vs. The State Of M.P. I.L.R. (1966) M.P. 108 (D.B.)*

- Section 7 (iv) and Schedule II, Item 17 and Suits Valuation Act (VII of 1887), Section 4 and Rules framed under Section 3 thereof - Suits for declaration in respect of land separately assessed to Land Revenue Valuation for purposes of jurisdiction - Court-fees payable thereon : *Moolchand Vs. Mst. Khushed BI, I.L.R. (1983) M.P. 714, (D.B.)*

-Section 7(iv)(c)-Declaration sufficient when the person not a party to decree : *Smt. Comolata Dutt Vs. The Ishwar Industries Ltd, Niwar, Katni I.L.R. (1966) M.P. 755 (D.B.)*

-Section 7(iv)(c)-Party valuing relief for declaration and injunction in one lump sum-Court-fees payable on that lump sum : *Smt. Comolata Dutt Vs. The Ishwar Industries Ltd, Niwar, Katni I.L.R. (1966) M.P. 755 (D.B.)*

- Section 7 (iv)(c) - Ad-valorem Court-fee - Not payable under : *Smt. Linmat Vs. Purushottam, I.L.R. (1985) M.P. 122*

-Section 7 (iv)(c)-Relief of declaration and consequential relief separate - Separate court-fees payable-Consequential relief flowing from declaration-Court-fee payable on Consequential relief only : *Muslim Wakf Board, Bhopal Vs. Municipal Board, Bhopal, I.L.R. (1959) M.P. 1015*

- **Section 7 (4) (C)** - Suit for declaration for avoiding pecuniary liability – Suit valued for jurisdiction at a certain figure – Same will be valuation for court fees : *Nathuram Vs. The State Of M.P. Through Secretary, Forest Department, Bhopal, I.L.R. (1961) M.P. 427*

-**Section 7(iv) (c)**-Valuation of suit-Plaintiff at liberty to value the relief, but it should not be arbitrary-Suit challenging sale deed on the ground that area mentioned therein exceeds what was agreed upon and consideration was Rs. 25,000/- and Rs. 50,000/- mentioned as sale consideration-Valuation of suit at Rs. 25,000/- --Plaintiff wants to be relieved of excess amount mentioned in sale deed-Suit properly valued. *Ram Prasad Agrawal Vs. Bhagwandas, I.L.R. (2002) M.P. 1019*

-**Section 7(iv)(c)**-Person a party to decree-Suit for only declaration that decree not binding-Relief is in substance to set aside decree-Declaration sufficient when the person not a party to decree-Party valuing relief for declaration and injunction in one lump sum-Court-fees payable on that lump sum : *Smt. Comolata Dutt Vs. The Ishwar Industries Ltd, Niwar, Katni I.L.R. (1966) M.P. 755 (D.B.)*

-**Section 7 (iv)(c)**-Suit for declaration and injunction restraining defendants from executing the decree against property attached by plaintiff before judgment and who was not party to decree-Court-fee payable-Court-fee of Rs. 20/- held sufficient : *Malji Vs. Kesrimal, I.L.R. (1962) M.P. 979*

-**Section 7(iv)(c)**-Permits plaintiff to put his own valuation on relief claimed - - Relief having money value which Can be ascertained -Suit to be valued for court-fees at that value - Value for relief of injunction-Is the amount the liability for which is sought to be avoided : *Badrilal Bhola Ram Vs. The State Of M.P., I.L.R. (1965) M.P. 485 (D.B.)*

- **Section 7 (iv)(c)** - Suit for declaration regarding void transaction - Ad valorem Court-fees under this proviso not payable - Whether suit is for declaration with consequential relief or not-Allegation in the plaint only to be looked to - Transaction void ab initio - Transaction has no existence - Misrepresentation regarding and character of document-Transaction is wholly void : *Pratap Vs. Smt. Puniya, I.L.R. (1977) M.P. 354*

-**Section 7(iv)(c)**-Suit for declaration to avoid decree, agreement, document or liability-Ad valorem Court-fees when required to be paid : *Santosh Chandra Vs. Smt. Gyansundarbai, I.L.R. (1972) M.P. 412 (F.B.)*

- **Section 7 (iv)(C)**, Schedule II, Article 17 and Specific Relief Act (XLVII of 1963) – Plaintiff party to the Sale-deed – Relief of declaration simplicitor not

available – Consequential relief of cancellation of the sale-deed is necessary: *Kunti Devi Vs. Roshanlal, I.L.R. (1991) M.P. 488*

-Section 7 (iv)(c) and Article 17 (iii) of Schedule II - Suit for declaration that sale deed was obtained fraudulently and without payment of any consideration - Fraudulent misrepresentation alleged not merely as to contents of the sale-deed but also its character - Such relief does not imply relief of cancellation of sale-deed-Ad-valorem Court-fee-Not payable under section 7 (iv)(c) of the Act : *Smt. Linmat Vs. Purushottam, I.L.R. (1985) M.P. 122,*

- Sections 7(iv)(c) and 7 (iv) (d)-Ad valorem Courts fees-Plaintiff though entitled to value his suit on his own but cannot be allowed to do so arbitrarily-Irrespective of nature of drafting the relief sought by plaintiff has real ascertained money value-Plaintiff liable to pay ad valorem court fee on the bill amount : *Subhash Chand Jain Vs. The Chairman, M.P.E.B., I.L.R. (2000) M.P. 903 (F.B.)*

- Sections 7(iv)(c), 7(iv)(d) 7(v)(e) and Article 17, Article 17(iii)–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fees should be as per Section 7 (iv) (c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d) : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

-Sections 7(v)(c), 7(iv)(d), 7(iv)(e) and Article 17(iii) - Civil Procedure Code (V of 1908)–Section 115 and–Suit for eviction, recovery of rents, declaration of ownership and permanent injunction against tenants who are claiming to be owners–Court fees payable– Accommodation Control Act, M. P. 1961, Section 12(1)(e) and (a)–Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect order set aside : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

- Sections 7(iv)(c), 7(iv)(d), 7(v)(e) and Article 17(iii) – Civil Procedure Code (V of 1908) –Basis of valuation is the value of reliefs sought–Reliefs prayed are not independent–Relief of injunction flows from the relief of declaration–Valuation of the suit for purposes of Court Fee should be as per section 7(iv)(c) and not according to Article 17(iii) of Schedule II and Section 7(iv)(d)–Order trial court to value the suit on basis of market value of the house is incorrect orderset aside : *Shabbir Hussain & Others Vs. Naade Ali & others, I.L.R. (2003) M.P. 80*

-Section 7(iv)(f)- Appeal arising out of suit for accounts- Appellant entitled to put his own valuation : *Thakur Sooratsingh Vs. Deepchand and anr., I.L.R. (1967) M.P. 299,*

-Section 7(iv)(f)-Applicable to a suit for accounts or appeal arising therefrom- Court-fees payable according to the amount at which relief sought is valued-Appeal arising out of suit for accounts-Appellant entitled to put his own valuation-Suit for accounts –Final decree dismissing plaintiff’s suit but declaring plaintiff liable to pay a certain sum to defendant- Appeal by plaintiff-Relief claimed is reversal of decree and decree in his favour for such amount as may be found due – Memo of appeal valued at the amount for which decree passed and Court- fees paid thereon- Court fees paid is proper and sufficient to cover both reliefs : *Thakur Sooratsingh Vs. Deepchand and anr., I.L.R. (1967) M.P. 299,*

Section 7(iv)(f)-Suit for accounts-Final decree dismissing plaintiff’s suit but declaring plaintiff liable to pay a certain sum to defendant-Appeal by plaintiff-Relief claimed is reversal of decree and decree in his favour for such amount as may be found due-Memo of appeal valued at the amount for which decree passed and Court-fees paid thereon-Court-fee paid is proper and sufficient to cover both reliefs: *Thakur Sooratsingh Vs. Deepchand and anr., I.L.R. (1967) M.P. 299,*

Section 7(iv)(f)-Suit for account-Court fee payable on the amount at which relief sought is valued-Plaintiff can put his own valuation-Defendant can also do the same in cross-claim : *Wahid Ali Khan Vs. Yaqoob Bhai, I.L.R. (1975) M.P. 365,*

- Section 7 (iv) (f) - Expression "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal with a minimum fee of Twenty Rupees' in - Governs not only clause (f) but all preceding sub-clauses in clause (iv) of Section 7-Valuation of suits falling in sub-clauses (a) to (e) of clause (iv) of Section 7-Court-fee to be computed according to the amount at which relief sought is valued - Implication of aforesaid expression - Appeal against preliminary decree for dissolution of partnership and accounts - Valuation of appeal to be same as made in plaint except where the Court has determined valuation on objection raised by defendant : *Smt. Rambati Vottery And Others Vs. Shivprasad Vottery, I.L.R. (1977) M.P. 191 (D.B.)*

- Section 7 (iv) (f) - Implication of Expression "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal with a minimum fee of Twenty Rupees" in - Appeal against preliminary decree for dissolution of partnership and accounts - Valuation of appeal to be same as made in plaint except where the Court has determined valuation on objection raised by defendant : *Smt. Rambati Vottery And Others Vs. Shivprasad Vottery, I.L.R. (1977) M.P. 191 (D.B.)*

-Section 7(v)(b)-The word "Land" in-Used in restricted sense-Used in contract-distinction to a house or a garden : *Laxminarayan Vs. Shiv Narayan I.L.R. (1968) M.P. 472*

- Section 7(v)(b) - Suit for possession of revenue paying land after demolition of superstructure-Suit to be valued on the basis of 20 times the land revenue-The word "land" in-Used in restricted sense-Used in contra-distinction to a house or a garden : *Laxminarayan Vs. Shiv Narayan I.L.R. (1968) M.P. 472*

-Section 7(v)(b) and (d) and rule under Section 35-Scope and implication of Words "Definite share" in-Meaning of-Anomalies in Act-Remedy-Interpretation of Statutes-Taxing provision to be strictly construed in a manner favourable to citizen : *Balu Vs. Amichahd, I.L.R. (1972) M.P. 1 (F.B.)*

-Section 7 (Xi) (cc)-Suit between landlord and tenant-Question of title not to be gone into-Can incidentally be determined for deciding contract of tenancy : *Munnalal & Anr. Vs. Balchand & anr., I.L.R. (1961) M.P. 262 (D.B.)*

- Section 7(xi)(cc) and Civil Procedure Code (V of 1908) – Section 115 and Accommodation Control Act, M.P. (XLI of 1961), Section 12(1)(O) – Suit for eviction on ground of tenant’s encroaching upon a portion not let out to him – Valuation for purposes of Court Fees – High Court Rules & Orders, M.P. – Rules 9(2) – Reference to larger bench on the question of valuation of Court-fee – Section 12(1)(O) of 1961 Act and Section 7(xi)(cc) of Court-fees Act – No separate valuation for purposes of jurisdiction need be made nor separate Court-fees required to be paid for purposes of jurisdiction with regard to ejection from encroached portion as encroachment on appurtenant portion of the premises gave cause of action in favour of the landlord – Reference answered accordingly : *Madak Chand Jain Vs. Smt. Fatma Bai, I.L.R. (2001) M.P. 409 (D.B.)*

-Section 7(xi) (cc)-Expression “a tenant-holding-over”-Includes a tenant-at-sufferance-Meaning of-Expression not to be construed in a restricted sense : *Harishchandra Golcha Vs. M./S. Jiwaji Rao Cotton Mills Ltd., Birla Nagar Gwalior, I.L.R. (1974) M.P. 155*

-Section 7 (xi)(cc)-Provision in, wide- Applies to a suit based on relationship of land-lord and tenant and comes into play whether lease determined or not- M. P. Court- fees Act, section 17(3)-Alternative reliefs based on same cause of action claimed-Court- fees payable on higher of those reliefs : *Shankarlal Vs. Rai Saheb Richpal Rungta, I.L.R. (1962) M.P. 761*

-Section 8-Order of Court on reference under section 30 of the Land Acquisition Act-Is a decree-What Court-fees payable on memo of appeal and the amount on

which Court-fee is payable : *Rishiraj Singh Vs. Raghubar Singh I.L.R. (1969) M.P. 981 (D.B.)*

- **Section 10 (ii), 12 (ii) and 28 - A**, as amended - Court - fee paid on plaint as also on memo of appeal insufficient - Demand for additional Court - fee - Liability of the party to pay deficient fee - Defendant / Appellant not liable to pay deficient Court-fee on plaint - Plaintiff/Respondent refusing to pay-Recovery can be made from him as arrears of Land Revenue : *Chandrika Prasad Vs. Smt. Kanchan, I.L.R. (1979) M.P. 1121.*

- **Section 12** - Finality to decision by trial court - Does not stand in plaintiff's way in questioning its correctness in appeal : *Gajadhar Vs. Mst. Rajrani I.L.R. (1979) M.P. 152 (D.B.)*

- **Section 13** - Case remanded for trial no merits by order in Second Appeal - Court-fees paid in first and second appeals are to be refunded : *M/s Bachomal Sadoromal Raipur Vs. Milkiram, I.L.R. (1979) M.P. 162,*

- **Section 13** - Amount of refunded Court - fees cannot be included in schedule of costs : *State Of Madhya Pradesh Vs. Gangacharan I.L.R. (1976) M.P. 355*

- **Section 13** - Applies to a case where the plaintiff is called upon to pay Court - fees when the order of the trial Court dismissing the suit is set aside : *State Of Madhya Pradesh Vs. Gangacharan I.L.R. (1976) M.P. 355*

- **Section 13** and Civil Procedure Code (V of 1908) – Order 41 Rule 23-A– Refund of Court Fees on remand – Case remanded under Order 41 Rule 23-A an appeal arising from cases already disposed of – Direction for refund of Court fees cannot be made : *Ghanshyam Vs. State, I.L.R. (2001) M.P. 1707 (D.B.)*

- **Section 13** - Inherent power of Court to refund Court - fee *State Of Madhya Pradesh Vs. Gangacharan I.L.R. (1976) M.P. 355*

- **Section 13** - Words "appellate Court" in - Refer to the Court in which court - fee was paid and which court - fee is to be refunded : *State Of Madhya Pradesh Vs. Gangacharan, I.L.R. (1976) M.P. 355*

- **Section 13** and Civil Procedure Code (V of 1908), Order 41 rule 23 - A and Section 151 - Refund of Court-fees Remand of case by Appellate Court under Order 41 rule 23 - A Refund of Court - fees paid on memo of appeal cannot be ordered - Inherent powers to order refund - When can be exercised : *M/S Kiran Electricals Maharani Road, Indore Vs. State Bank Of Indore, I.L.R. (1983) M.P. 596 (D.B.)*

- **Sections 13, 14 and 15** and Civil Procedure Code, 1908 – Section 151 – It is well settled that the power of High Court to refund Court fee is not confined only to cases covered by section 13 to 15 of Court Fees Act, as section 151 of Code of Civil Procedure enables a High Court to order refund of Court fees paid in excess when obvious injustice would be done if it is not refunded. *Harvilas Vs. Tulsiram, I.L.R. (1993) M.P. 708*

- **Section 17 (4)** - Industrial employees can join in petition - Relief claimed the same Cause of action same - One Court-fee of Rs. 25/- sufficient : *Heavy Electrical Employees Union, Bhopal Vs. State Industrial Court, M. P. Indore I.L.R. (1977) M.P. 762*

- **Section 17 (4)** - Person having distinct causes of action filing one petition - Separate Court fees to be paid by each petitioner : *Heavy Electrical Employees Union, Bhopal Vs. State Industrial Court, M. P. Indore I.L.R. (1977) M.P. 762*

-**Section 17 (iv)**, sub-clauses (a) to (e) - Valuation of suits falling in sub-clauses (a) to (e) of clauses (iv) of section 7-Court-fee to be computed according to the amount at which relief sought is valued : *Smt. Rambati Vottery And Others Vs. Shivprasad Vottery, I.L.R. (1977) M.P. 191 (D.B.)*

- **Section 19(I), Section 19(K) and Section 6**- Mandatory provision of Section 6 for advance payment of fee is not applicable to a case of probate or letters of administration- But the Certificate cannot be issued in favour of the person unless he has paid or deposited the necessary Court fee after enquiry. *Raja Amarsingh Vs. State Of M. P., I.L.R. (1998) M.P. 617*

- **Section 19(K), Section 19(I) and Section 6**- Mandatory provision of Section 6 for advance payment of fee is not applicable to a case of probate or letters of administration- But the Certificate cannot be issued in favour of the person unless he has paid or deposited the necessary Court fee after enquiry. *Raja Amarsingh Vs. State Of M. P., I.L.R. (1998) M.P. 617*

- **Section 28-A**, as amended - Defendant/ Appellant not liable to pay deficient Court-fee on plaint - Plaintiff/ Respondent refusing to pay - Recovery can be made from him as arrears of Land Revenue : *Chandrika Prasad Vs. Smt. Kanchan, I.L.R. (1979) M.P. 1121,*

- **Section 35**- Notification for exemption from payment of Court fess- Certificate showing Income as Rs. 15,000/- p.a. exemption rightly not granted- Civil Procedure Code, 1908- Order 22, Rule 1A- Enquiry as to indigency done by Chief Industrial Officer-Further examination of person concerned depends upon the Court. *Gopal Vs. Heeralal, I.L.R. (1998) M.P. 423*

- **Section 35** and notification thereunder granting exemption to persons – Whose income is less than Rs. 6,000/- p.a. – Matter though relates to revenue yet enquiry into indulgency of plaintiff through Collector not mandatory – Order of trial Court based on sound reasoning – No interference in revisional jurisdiction : *Satya Prakash Jaiswal Vs. Smt. Premlata Jaiswal, I.L.R. (2001) M.P. 1068,*

- **Section 35**, Constitution of India, Articles 226, 227(2), 235 and Civil Procedure Code (V of 1908), Sections 122, 123, 124 and Order 33 – State Govt. Notification dated 1-4-83 to remit Court Fees for certain categories of persons – Memorandum of High Court dated 8-10-84 to District Judges to follow procedure prescribed for indigent persons – Memorandum not saved by Article 225 or Article 235 of Constitution – Constitution of Rule Committee, contemplated under Section 123, Civil Procedure Code but not vested with plenary powers of legislation – Legislative power under section 124, Civil Procedure Code or Article 227(2) of the Constitution, to be exercised by Full Court but only for regulating procedure of Civil Court – Provisions of Order 33 have no relevance in granting total exemption under the notification – Memorandum quashed : *Ramji Vs. High Court Of M.P., Jabalpur, I.L.R. (1990) M.P. 550 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-Consequential relief not claimed because it was implicit or because relief prayed for involved consequential relief-Does not affect question of Court-fees though may affect maintainability of suit : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P., 264 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-Plaintiff sole judge to decide whether to claim simple declaration of declaration with consequential relief : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P., 264 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-Relief asking for declaration that sale-deed as a whole is void-Relief involves setting aside and cancellation of sale-deed-Declaration restricted to the right of the person suing-Relief of setting aside sale not involved : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P. 264 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-To determine Court-fees, not language but substance of claim has to be looked into : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P. 264 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-To determine nature of suit-Plaint as a whole has to be considered : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P. 264 (D.B.)*

- **Section 42** and Specific Relief Act (I of 1877) Section 42-Question of Court-fees-Distinct from the question of maintainability of suit-Plaintiff sole judge to decide

whether to claim simple declaration or declaration with consequential relief-To determine nature of suit-Plaint as a whole has to be considered -Consequential relief not claimed because it was implicit or because relief prayed for involved consequential relief-Does not affect question of Court-fees though may affect maintainability of suit-To determine court-fees, not language but substance of claim has to be looked into-Relief asking for declaration that sale-deed as a whole is void-Relief involves setting aside and cancellation of sale-deed-Declaration restricted to the right of the person suing-Relief of setting aside sale not involved-Hindu Law-Nature of right of Karta to alienate property-Minor coparcener suing for declaration that his right not affected by sale-deed-Not necessary to ask for cancellation of sale-deed-Possession of property passing out of joint family-Consequential relief necessary to be asked-Party to a deed asking for declaration that deed not binding on him-Implies consequential relief of cancellation : *Baldeo Singh Vs. Gopal Singh I.L.R. (1969) M.P. 264 (D.B.)*

Court-fees Act, Madhya Pradesh (XXXVIII of 1950)

-Section 17(3)-Alternative reliefs based on same cause of action claimed -Court-fees payable on higher of those reliefs : *Shankarlal Vs. Rai Saheb Richpal Rungta, I.L.R. (1962) M.P. 761*
