

LAWGIST

(A Quarterly Legal Newsletter)

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"Democratic interests that secure the well-being of the masses cannot be judicially aborted to preserve the unfettered freedom to conduct business, of the few." **Hon'ble Mr. Justice Dr. D.Y. Chandrachud (Judge, Supreme Court of India)**



"Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself" Latin maxim quoted by **Hon'ble Mrs. Justice B. V. Nagaratna (Judge, Supreme Court of India)**

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From the Editor's Desk:

Make Hybrid Functioning of Courts a New Normal:

We are happy to bring the post covid issue of Lawgist as our humble attempt to share legal updates and increase awareness of developments in law for all. Simultaneously we have tried to keep it useful for the lawyers by bringing them the latest updates handy. The last two years of pandemic has been calamitous to us all in different ways. However this pandemic has forced a huge technological leap and a paradigm shift in the field of government and corporate functioning and more particularly in administration of justice ushering us to virtual courts through online hearings and e-filings. System of virtual functioning and now hybrid functioning is a very welcome development much needed to be carried forward and developed further for ease and access of justice. This would not only save precious judicial time and resources of the government as well as the litigants across the nation but also will increase accessibility of the higher courts to the common people placed in otherwise disadvantageous positions i.e. geographically or financially or otherwise. We, though, need to find out ways as to how to introduce depositions and other complicated judicial proceedings to be conducted online with efficiency and effectiveness.

This forced leap needs to be carried forward and made a new normal. We hope and strive for the best. Wishing you a happy reading-

Dr. Sarvam Ritam Khare

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LEGISLATIVE NEWS

FROM UNION LEGISLATURE:

1. The Consumer Protection (Jurisdiction of the district commission, the state commission and the national commission) Rules 2021 revised the **pecuniary jurisdiction**:

District Commission	Upto 50 Lakhs
State Commission	Upto 2 Crores
National Commission	More than 2 Crores

2. Insurance Regulatory and Development Authority of India has published the **IRDAI (Surety Insurance Contracts) Guidelines, 2022** on January 3, 2022, which shall come into force on April 1, 2022 laying down guidelines for **Surety Insurance Contracts**.

3. **Section 403 of Companies Act, amended: (Default In filings)**

In section 403 of the principal Act, in sub-section (1), for the third proviso, the following proviso shall be substituted, namely:—

"Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of such document, fact or information, as may be prescribed, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee, as may be prescribed."

4. **Surrogacy law introduced:** Government passed Surrogacy (Regulation) Act, 2021 and Assist Reproductive Technology (Regulation) Act, 2021 to come into force w.e.f January 25, 2022 to regulate surrogacy in India.

5. **Central Motor Vehicle (Motor vehicle Accident Fund) 2022**, notified to **Increase the compensation** to the kins of the motor vehicle accident victims (to be enforced on 1.4.2022)

6. **Procedure for detailed investigation of road accidents** and Detailed Accident Report laid down vide **Central Motor Vehicles (fifth Amendment) Rules, 2022**.

7. **Drone Rules, 2022**

The Ministry of Civil Aviation has notified the Drone (Amendment) Rules, 2022 to amend the Drone Rules, 2021. to amend the provisions regarding **registration of existing drones and the licenses**.

FROM STATE LEGISLATURES:

1. **Chhattisgarh government implemented One Nation One Ration Card Plan (ONRCP)** to enable nation-wide portability of the National Food Security

Act (NFSA) ration cards

2. **Andhra Pradesh Government notified Andhra Pradesh Factories (Amendment) Rules, 2022** to minimise the compliance burden for Factories

SUPREME COURT JUDGEMENTS:

1. ARBITRATION LAW:

(Compiled by Shweta Chaurasia, Advocate)

(i) "Under guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the Arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the Arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award."

I-Pay Clearing Services Private Limited v. ICICI Bank Limited, 2022 SCC OnLine SC 4

(ii) The decision of S.L. Arora's case had been overruled in **Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189**, now, **post-award interest can be granted by an Arbitrator on the interest amount awarded.**

(iii) Is the unstamped Arbitration Agreement enforceable?

"...until the larger Bench decides on the interplay between Sections 11(6) and 16 - the Courts should ensure that arbitrations are carried on, unless the issue before the Court patently indicates existence of deadwood".

Intercontinental Hotels Group (India) Pvt. Ltd. v. Waterline Hotels Pvt. Ltd., Arbitration Petition © No. 12 of 2019

(iv) When the arbitration clause is found to be foul with present section 12(5) of the Act, the appointment of the arbitrator would be beyond the pale of the arbitration agreement, empowering the Court to appoint such an arbitrator as may be permissible. As observed, the Arbitral Tribunal-Stationery Purchase Committee consisted of officers of the respondent-State, therefore, as per Amendment Act, 2015, Section 12 (5) they had become ineligible to act as arbitrators.

Ellora Paper Mills Ltd. v. State of Madhya Pradesh, C.A. No. 7697 of 2021

2. CIVIL LAW:

(Compiled by Akash Shukla, Advocate)

(I) Leave to Defend: Leave to defend should not be denied as a general rule. Generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court. Court explained the four eventualities where leave to defend may be granted:

1. if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend

2. where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend.

3. where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe

orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security.

4. where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest

BL Kashyap v. JMS Steels and Power Corporation, 2022 SCC OnLine SC 59 (20.1.2022)

(ii) If a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property

inherited from her husband or father-in-law would go to the heirs of the husband. However, if she dies leaving behind her husband or any issue, then Section 15(1)(a) of the Hindu Succession Act, 1956 comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.

Arunachala Gounder v. Ponnusamy, 2022 SCC OnLine SC 72 (24.1.2011)

(iii) Gift deed by an old illiterate woman: SC approves not legalistic but holistic approach by lower courts to determine validity of deed.

Keshav v. Gian Chand, 2022 SCC OnLine SC 81 (27.1.2022)

(iv) Mere writing the word "cancelled" or drawing a line would not render Power of Attorney null and void as there must be cancellation and it must further be brought to the notice of the third party at any rate.

Amar Nath v. Gian Chand, 2022 SCC OnLine SC 102

(v) An independent suit questioning the Compromise Decree would not be maintainable. the plaint in exercise of powers under Order VII Rule 11 of CPC to challenge the Compromise Decree would be barred under Order XXIII Rule 3-A of CPC and the party to a consent decree based on a compromise has to approach the same court, which recorded the compromise to challenge a decree based on compromise.

Sree Surya Developers v. N. Sallelsh Prasad, C.A. No. 439 of 2022

3. COMPASSIONATE EMPLOYMENT:

Compassionate Appointment cannot be denied to children born from the second wife of a deceased employee.

Mukesh Kumar v. Union of India, 2022 SCC OnLine SC 229

4. CONSUMER PROTECTION LAW:

(I) Builder is responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent (builder) to obtain the occupation certificate is a deficiency in service for which the respondent is liable. The members of the appellant society are well within their rights as "consumers" to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd, 2022 SCC OnLine SC 35

(ii) Cheque gets deposited to the account of account holder with strikingly similar name. Bank held responsible for the goof up.

Sunil Kumar Malty v. State Bank of India, 2022 SCC OnLine SC 77

(iii) An insurance Company cannot repudiate a claim merely on the ground that there was a delay in informing it about the occurrence of the fact of events.

5. CRIMINAL LAW:

(Compiled by Nihar Ranjan Singh, Advocate)

(I) "It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum."

Brijmani Devi v. Pappu Kumar, 2021 SCC OnLine SC 1280

(ii) Though it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystallised as such, however, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

Manoj Kumar Khokhar v. State of Rajasthan, 2022 SCC OnLine SC 30

(iii) Sub-section (3) of Section 401 Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though the High Court has revisional power to examine whether there

is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court and/or the first appellate Court, as the case may be.

Joseph Stephen v. Santhanasamy, 2022 SCC OnLine SC 90 (27.1.2022)

(iv) Negotiable Instruments Act: Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. Such acts of bank/post office employees, when done during their course of

employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. (Section 82 of NI Act)

Pradeep Kumar v. Post Master General, 2022 SCC OnLine SC 154 (8.2.2022)

6. GOVT GOVERNANCE:

(I) By purchasing power at higher rate, Andhra Pradesh DISCOMS have acted contrary to public interest:

Southern Power Distribution Power Co. Ltd. of A.P. v. Hinduja National Power Corpn. Ltd., 2022 SCC OnLine SC 133

(ii) Provenly traffic blocked due to agitation. The consignment could not be delivered within validity period of e-way bill; SC imposes cost of Rs. 59000 on Sales Tax Officer for illegally imposing penalty.

CST v. Satyam Shivam Papers (P) Ltd., SLA © No(s). 21132 of 2021

(iii) The evidence of trafficked children to be recorded virtually even after the Covid situation as a regular feature. Standard Operating Procedure for such recording issued.

Children In Street Situations, In Re, SMW (G) No(s). 6 of 2021

(iv) OBC Reservation:

"to determine the percentage of reservation for OBC candidates, one would have to undertake an exercise of determining the percentage of seats to be reserved for SC and ST candidates, all within the four corners of the second proviso inserted in Section 3 of the Parent Act. Any other interpretation sought to be assigned to the second proviso to Section 3 inserted post-amendment, would make the proviso itself unworkable a n d redundant and is, therefore, impermissible."

Shri Kshetrimayum Maheshkumar Singh v. Manipal University, 2022 SCC OnLine SC 12

7. INSOLVENCY LAW:

(I) Section 29-A(h) had to be literally interpreted to the extent that a personal guarantor is barred from submitting a resolution plan only when the creditor invoking the jurisdiction of the adjudicating authority has invoked a personal guarantee executed in favour of said creditor by the resolution applicant at the time of application.

Bank of Baroda v. Mbl Infrastructures Ltd., 2022 SCC OnLine SC 48

8. MATRIMONIAL LAW:

Separation, per se, not a conclusive proof of desertion. Separation accompanied with no endeavor to restitution is.

Debananda Tamuli V. Kakumony Katak, 2022 SCC OnLine SC 187

9. SERVICE LAW:

(I) Right to be Represented in Disciplinary Proceedings: The only requirement is that delinquent officer must be given fair opportunity to represent his case and that there is no absolute right in his favour to be represented through the

agent of his choice. However, at the same time, if the charge is severe and complex nature, then request to be represented through a counsel can be considered keeping in mind Regulation 44 of Regulation, 2010 and if in a particular case, the same is denied, that can be ground to challenge the ultimate outcome of the departmental enquiry. However, in each and every case, irrespective of whether charges is severe and complex nature or not, the employee as a matter of right cannot pray that he may be permitted to represent through the agent of his choice.

Rajasthan Marudhara Gramin Bank v. Ramesh Chandra Meena, 2022 SCC OnLine SC 9

(ii) The amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

Punjab State Cooperative Agricultural Development Bank Ltd v. Registrar, Cooperative Societies, 2022 SCC OnLine SC 28 (21.1.2022)

(iii) Minor penalties, without cumulative effect, are still a proof of tainted service record; Benefit of Selection Grade can't be claimed as a right

Rajasthan State Road Transport Corporation v. Sadhu Singh, 2022 SCC OnLine SC 181