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ADMINISTRATION OF JUSTICE:

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APPEAL:

Appeal against discretionary order - Jurisdiction of appellate court - Explained.

(Also see under: Interim Orders)

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ARBITRATION AND CONCILIATION ACT, 1996:

(i) ss. 11(1)(b) and (6) - Existence of arbitration agreement - Held: An arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void - By virtue of s.16(1)(b), the arbitration clause continues to be enforceable, notwithstanding a declaration that the contract was null and void.

(ii) s. 11(6) - Application for appointment of arbitrator - Issues to be decided by Chief Justice or his designate - Explained - Held: Designate Judge was not required to undertake a detailed scrutiny of merits and de-merits of the case, almost as if he was deciding a suit - He was only required to decide preliminary issues - By the impugned order, much more than what is contemplated u/s 11(6) was sought to be decided, without any evidence being adduced by the parties - Impugned order of designate Judge is set aside, and matter

remitted to be considered *de novo*.

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BAIL:

(See under: Code of Criminal Procedure, 1973) 493 and 547

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s. 309.
(See under: Criminal Trial) 563

(2) s.313.
(See under: Penal Code, 1860) 478 and 563

(3) s.401.
(See under: Penal Code, 1860; as also Contempt of Court) 392

(4) ss.439 and 173(8) - Bail - Economic offences - Charge-sheets filed against appellant and others for offences punishable u/ss 420, 409 and 477-A IPC and s.13(2) read with s. 13(1)(c) of Prevention of Corruption Act - Further investigation u/s 173(8) pending - Held: Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail - In the status report, it is claimed that CBI has to examine various persons from different organizations to ascertain the facts related to the case - Taking note of all these aspects, appellant cannot be released at this stage - However, CBI is directed to complete the investigation and file charge sheet(s) as early as possible.

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(5) ss.439 and 173(8) - Bail - Economic offences - Factors to be taken into consideration while granting bail - Explained - Charge-sheets filed against appellant and others for offences punishable u/ss 420, 409 and 477-A IPC and s.13(2) read with s. 13(1)(c) of Prevention of Corruption Act - Charges relating to amassing of huge ill-gotten wealth, allotment of lands on relaxed norms, abuse of public office, laundering bribe money through investment in bogus companies etc. - Further investigation in progress - Held: Economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and being a class apart they need to be visited with a different approach in the matter of bail - Release of appellant at this stage would hamper investigation as it may influence the witnesses and tamper with the material evidence - However, CBI is directed to complete the investigation expeditiously and file the charge sheet(s).

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COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971:

ss. 10, 13 and 16.

(See under: Constitution of India, 1950)

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CONSTITUTION OF INDIA, 1950:

(1) (i) Art. 32 - Writ petition challenging approval granted by Government of India for acquisition of majority stake in CIL and for a direction to ONGC to exercise its right of pre-emption over sale of

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shares of CIL - Held: The decision taken by ONGC not to exercise its RoFR was taken after elaborate and due deliberations - Court cannot sit in judgment over the commercial or business decision taken, unless the same is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives - On facts, as well as on law, ONGC and Government of India have taken a prudent commercial and economic decision in public interest - It cannot be said that the decision is mala fide or actuated by any extraneous or irrelevant considerations or improper motive - Public interest litigation.

(ii) Arts. 298 and 299 - Power of Union or States to carry on trade and to enter into contracts - Held: State and its instrumentalities can enter into various contracts which may involve complex economic factors - If the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong one, that itself is not a ground to hold that the decision was mala fide or taken with ulterior motives.

(iii) Art. 151 - Reports of Comptroller and Auditor General of India - Status of - Explained - In the instant case, it is factually and legally incorrect to suggest that any exploration carried out beyond the stated date was beyond the provision of PSC - CAG's views on that aspect cannot be accepted - Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 - ss. 10, 13 and 16.

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(2) Art.136 - Scope of - Held: The width and plenitude of powers available under Art.136 would permit a reappraisal at the apex stage in cases of manifest injuries.

(Also see under: Penal Code, 1860)

Khairuddin & Ors. v. State of West Bengal 478

(3) Art. 136 - Scope of - Held: When a conclusion is arrived at by courts below which is manifestly erroneous and unsupported by evidence on record, Supreme Court, in exercise of power under Art. 136, can re-evaluate evidence and interfere.

Gurnaib Singh v. State of Punjab 563

CONTEMPT OF COURT:

(1) Judgment and order passed by a particular Court, especially the Supreme Court if alleged not to have been complied with, will have to be taken care of and addressed by the Court which passed the order - In the instant case, petitioner wrongly approached High Court for initiating contempt proceedings related to a direction of Supreme Court and the same was rightly not entertained by High Court.

M/s Rajureshwar & Associates v. State of Maharashtra & Ors. 461

(2) Life convict filed writ of Habeas Corpus for his immediate release stating that he had already undergone full sentence of 20 years with remission - Supreme Court directed State of West Bengal to consider the claim and proceed to conclude the sentence for the purpose of consideration of remission - Contempt petition filed by the life convict contending that inspite of the order of

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Supreme Court and W.B. Act, respondents had not granted remission and had not released him - Held: In West Bengal, there is a duly constituted Sentence Review Board for consideration of applications for premature release made by life convicts - On facts, State Sentence Review Board, after careful consideration of all the aspects, had declined to recommend petitioner's premature release - State Government accepted the recommendation of State Sentence Review Board and communicated its decision to petitioner - There was no violation of the order of Supreme Court - West Bengal Correctional Services Act, 1992 - Code of Criminal Procedure, 1973 - s.432.

(Also see under: Penal Code, 1860)

Life Convict Bengal @ Khoka @ Prasanta Sen v. B.K. Srivastava & Ors. 392

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 449
and 563

CRIMINAL TRIAL:

Conducting of trial - Adjournments - Held: A criminal trial has its own gravity and sanctity - Trial courts shall keep in mind the statutory provisions and their interpretation by Supreme Court - They should not become mute spectators when a trial is being conducted by allowing the control to counsel for parties - They are required to monitor - Besides, dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar as well - In the instant case, trial was conducted in an extremely haphazard and piecemeal manner - Court expresses its concern

about the manner in which trial had been conducted
- Administration of justice - Criminal justice - Code
of Criminal Procedure, 1973 - s. 309 - Advocates.
(Also see under: Penal Code, 1860)

Gurnaib Singh v. State of Punjab 563

DECREE:

Execution of decree - Petition for execution of
decree entitling the plaintiff to possession of a plot
- Rejected on the ground that decree was not
executable because of contradictory reports - Held:
Judgment in favour of plaintiff was delivered by
considering a report dated 17.9.1989 and a sketch
of land in question, which were made by local
commissioner and both are part of record - Once
decree was made in favour of plaintiff, in pursuance
of judgment delivered by District Judge, executing
court should not have looked into other reports
which had been submitted to it afterwards - Local
Commissioner's report dated 17.9.1989 along with
sketch clearly describes land in question -
Executing court ought to have considered it - Orders
of executing court and High Court set aside -
Executing court directed to do the needful for
execution of decree taking into account local
commissioner's report dated 17.9.1989.

Satyawati v. Rajinder Singh and Anr. 471

DELAY / LACHES:

Delay in execution of decree - Execution petition
filed in 1996 - However, decree not executed till
date - Held: There should not be unreasonable
delay in execution of a decree - Executing court
will do the needful at an early date so as to see
that the long drawn litigation which was decided in

favour of appellant is finally concluded and he gets
effective justice.

(Also see under: Decree)

Satyawati v. Rajinder Singh and Anr. 471

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(See under: Penal Code, 1860) 449

ECONOMIC OFFENCES:

Bail.

(See under: Code of Criminal Procedure,
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INJUNCTION:

Interim mandatory injunction.

(See under: Interim Orders) 359

INTERIM ORDERS:

(1) Judgment of Supreme Court - Decreeing suit
for specific performance and directing execution
of sale deed - Interim applications seeking
impleadment and clarification of judgment - Held:
In some applications facts on the basis of which
modification/clarification sought, not brought to the
notice of the court at the time of hearing of appeal
or the judgment and in other applications facts and
events forming basis for their claim occurred
subsequent to the judgment - Therefore,
applications are not maintainable - Applicants'
endeavour to reopen the concluded issues and
alteration of consequential directions not
permissible - Parties have the option to seek
remedies for their rights as may be open in law.

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(Also see under: Supreme Court Rules, 1966)

*Satya Jain (D) & Ors. v. Anis Ahmed
Rushdie (D) Tr. Lrs. & Ors.* 347

(2) Grant of interim order - Principles, the courts must follow in this regard, explained - Held: Interim relief granted to plaintiffs by appellate court, in the instant case is a mandatory direction to handover possession to plaintiffs - Grant of mandatory interim relief requires highest degree of satisfaction, much higher than a case involving grant of prohibitory injunction - When trial court was of the view that entitlement of plaintiffs to an order of interim mandatory injunction was in serious doubt, appellate court could not have interfered with the exercise of discretion by trial judge unless such exercise was found to be palpably incorrect or untenable - Interim Mandatory Injunction.

*Mohd. Mehtab Khan & Ors. v. Khushnuma
Ibrahim & Ors.* 359

JUDICIARY:

Strictures against judicial officer - Propriety of - Held: Legal system acknowledges fallibility of the Judges, and provides for appeals and revisions - Remarks/observations and strictures against judicial officers should be avoided, particularly, when the officer has no occasion to put forth his reasonings - In the instant case, in view of the facts, strictures against the judicial officer not justified.

*Awani Kumar Upadhyay v. Hon'ble High
Court of Judicature at Allahabad and Ors.* 416

LIMITATION ACT, 1963:

s. 15(5) - Limitation for filing suit - The period of absence of defendant from India has to be excluded

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while computing limitation for filing of suit - Suit in the instant case was filed well within time.

*Satya Jain (D) Thr. Lrs. & Ors. v. Anis
Ahmed Rushdie (D) Tr. Lrs. & Ors.* 319

PENAL CODE, 1860:

(1) s.57 - Life imprisonment - Meaning and effect of - Remission - Entitlement to - Held: Once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life - s.57 does not, in any way, limit the punishment of imprisonment for life to a term of 20 years - In absence of subsequent order of remission by competent Government, life convict cannot be released - Neither s.57 IPC nor Explanation to s.61 of W.B. Act lays down that a life convict has to be released after completion of 20 years - On facts, if the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the Explanation and even s.57 IPC and seek for pre-mature release - West Bengal Correctional Services Act, 1992 - ss. 2(c) and 61, Explanation - Code of Criminal Procedure, 1973 - s.401.

(Also see under: Contempt of Court)

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(2) ss. 302/149,148 and 323/149 - Death of two persons and injuries to others as a result of attack by accused persons - Held: Conviction of four of the appellants who have been named in FIR and attributed specific role and the fifth appellant who

though not named in FIR but attributed specific role and also stated in his statement u/s.313 about his presence at the place of occurrence and participation, upheld - Remaining appellants acquitted giving them benefit of doubt - Code of Criminal Procedure,1973 - s.313.

(Also see under: Constitution of India, 1950)

Khairuddin & Ors. v. State of West Bengal 478

(3) (i) s.304-B, s.306 r/w s.498-A - 'Cruelty' - Abetment of suicide - Death of a young bride in her matrimonial home - Conviction and sentence of 7 yrs. RI u/s 304-B by courts below - Held: Evidence of witnesses shows that they have only made a bald statement that accused persons were not satisfied with the dowry and were asking the bride to bring the stated amount - Thus, the finding of courts below that there was demand of dowry and harassment pertained to such a demand cannot be countenanced - However, it has come in evidence that there was ill-treatment by mother-in-law and husband - This aspect has been established beyond doubt - It is a case where the bride was totally insensitively treated with cruelty and harassed because of which she put an end to her life - Therefore, conviction u/s. 304-B converted to one u/s. 306 - Thus, basic ingredients of offence u/s 306 have been established by prosecution - Accordingly, conviction from one u/s. 304-B is converted to that u/s. 306 - As accused has spent almost five years in custody, sentence is limited to period already undergone - Code of Criminal Procedure, 1973 - s.313.

(ii) s.304-B, s.306 read with s.498-A - Held: Though charge has not been framed u/s 306 yet, it is

evident that accused were aware that they were facing a charge u/s 304B IPC which related not to administration of poison but to consumption of poison by deceased because of demand of dowry and harassment - It is major offence in comparison to s.306 which deals with abetment to suicide by a bride in the context of clause (a) of s. 498A.

(Also see under: Criminal Trial)

Gurnaib Singh v. State of Punjab 563

(4) ss. 304B and 498A - Death of married woman - Conviction of appellant-husband u/ss.304B and 498A - Held: Not justified - Demand, if at all made by appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of s.2 of Dowry Prohibition Act - In any case, prosecution witnesses made general allegations of harassment by appellant towards the deceased and did not bring in evidence any specific acts of cruelty or harassment by appellant on deceased - On the other hand, from the evidence of appellant, it is clear that the deceased wrote the chit according to her free will saying that nobody was responsible for her death and that her parents and family members had harassed her husband and she was taking the step as she was fed up with her life because of the quarrels that were taking place - It casts a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry - Since the prosecution was not able to prove beyond reasonable doubt ingredient of harassment or cruelty, neither of the offences u/ss.498A and 304B, IPC have been

made out - Dowry Prohibition Act, 1961 - s.2.

*Vipin Jaiswal (A-I) v. State of A.P. Rep.
by Pub. Prosecutor* 449

PUBLIC INTEREST LITIGATION:

Writ petition - Held: In the instant case, writ petition was filed without appreciating or understanding the scope of the decision or the decision making process concerning economic and commercial matters which gives liberty to State and its instrumentalities to take appropriate decision after weighing advantages and disadvantages of the same - Constitution of India, 1950 - Art.32.

(Also see under: Constitution of India, 1950)

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PUNJAB HOME GUARD, CLASS-I RULES, 1988:

r.8.

(See under: Service Law) 376

RAJASTHAN STATE ROAD TRANSPORT CORPORATION EMPLOYEES PENSION REGULATIONS, 1989:

Clause 3.

(See under: Service Law) 464

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(See under: Supreme Court Rules, 1966) 347

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992:

(See under: Securities and Exchange Board
of India (Credit Rating Agencies) Regulations,
1999) 426

SECURITIES AND EXCHANGE BOARD OF INDIA (CREDIT RATING AGENCIES) REGULATIONS, 1999:

Regulations 3, 4(e), 6, 7 and First Schedule, Form A - Application under Regulation 3 by company, to SEBI seeking registration as a Credit Rating Agency (CRA) - Rejected by SEBI for failure of the company to produce accounts of its promoter for two years after the date of application - Held: The information sought by SEBI with regard to additional two years was beyond the scope of the Regulations and Form A, therefore, without jurisdiction - However, SEBI was within its power to ask for Audited Accounts for five years preceding the date of application - Net Worth Certificate for five years did not conform to the provisions contained in Regulation 4(e) as the certificate did not categorically state that it was based on the audited account - Therefore, under Regulation 6, it was duty of SEBI to have rejected the application - SEBI delayed the rejection of the application by granting time to remove the objections even beyond the permissible time - The company taking advantage of the liberty, provided the audited accounts for five years preceding the date of application - It has also produced audited accounts for subsequent two years - Since SEBI extended the time, impugned order of SAT not modified - Securities and Exchange Board of India Act, 1992.

*Securities and Exchange Board of India v.
M/s. Informetcs Valuation and Rating
Pvt. Ltd.* 426

SERVICE LAW:

(1) Pension - Respondents-employees of appellant-State Road Transport Corporation - Held: Not

eligible to claim pensionary benefits under Pension Scheme in view of non-compliance with essential conditions stipulated in Regulations governing the Pension Scheme - Rajasthan State Road Transport Corporation Employees Pension Regulations, 1989 - Clause 3.

Rajasthan State Road Transport Corporation & Ors. v. Madu Giri (D) Thr Lrs. & Anr. 464

(2) (i) Promotion - On the basis of seniority-cum-merit - Case of appellant was considered alongwith other eligible candidates, but a person junior to him was promoted to the said post after considering his past five years' ACR and other records - Held: Where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone - Like the instant case, a person lower in seniority list, can be promoted, ignoring the claim of senior person, who failed to achieve the benchmark i.e. minimum requisite merit - Furthermore, appellant did not approach the court with clean hands, clean mind and clean objective - He had faced criminal prosecution u/ss.7 and 13(ii) of the PC Act and ss.467/468/471/120-B IPC, but did not disclose this fact either before High Court or Supreme Court - Claim of appellant for promotion therefore rightly rejected - Punjab Home Guard, Class-I Rules, 1988 - r.8.

(ii) Promotion - "Seniority-cum-merit" and "merit-cum-seniority" - Distinction between - Held: The principles of "seniority-cum-merit" and "merit-cum-seniority" are conceptually different - In the case of former, there is greater emphasis upon seniority even though the same is not the deciding factor,

while in the case of latter, merit is the deciding factor.

Balbir Singh Bedi v. State of Punjab & Ors. 376

SPECIFIC PERFORMANCE:

(i) Agreement to sell - Suit by purchaser, for specific performance of agreement - Decreed by trial court - High Court reversed the decree - Held: Purchaser was, at all times, ready and willing to perform his part of the contract - It was the seller who defaulted in execution of sale deed - Insistence of seller on further payments by purchaser directly to him and not to Income Tax Authorities was not justified - Purchaser was not obliged to make any further payment to seller apart from payment of earnest money - Purchaser entitled to decree of specific performance - However, due to efflux of time and escalation of price of property, seller is entitled to additional compensation i.e. a price higher than what was stipulated in the agreement - Direction to execute the sale deed for the market price of suit property as on date - Trial court directed to ascertain the market price.

(ii) Suit for specific performance - Test of readiness and willingness of plaintiff - Held: No straitjacket formula can be laid down on the basis of which the readiness and willingness of plaintiff is to be judged - It would depend on overall conduct of plaintiff in the light of conduct of defendant.

(Also see under: Specific Relief Act, 1963)

Satya Jain (D) Thr. Lrs. & Ors. v. Anis Ahmed Rushdie (D) Tr. Lrs. & Ors. 319

SPECIFIC RELIEF ACT, 1963:

(1) s. 6 - Scope of - Held: Proceeding u/s. 6 is

summary proceeding to afford immediate remedy in cases of illegal dispossession - Questions of title or better rights of possession do not arise for adjudication.

Mohd. Mehtab Khan & Ors. v. Khushnuma Ibrahim & Ors. 359

(2) (i) s. 20 - Parameters for exercise of discretion under - Held : Cannot be entrapped within any precise expression of language and the contours thereof would depend on the facts and circumstances of each case - Discretion to direct specific performance of an agreement and that too after lapse of a long period, has to be exercised on sound, reasonable, rational and acceptable principles - The ultimate guiding test would be the principles of fairness and reasonableness - Efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance.

(ii) Principle of 'Business Efficacy' - Applicability of - The test of business efficacy requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended - If the contract makes business sense without the term, courts will not imply the same - In the instant case, invocation of the principle by High Court, notwithstanding the clear language of agreement, not correct.

(Also see under: Specific Performance)

Satya Jain (D) Thr. Lrs. & Ors. v. Anis Ahmed Rushdie (D) Tr. Lrs. & Ors. 319

SUPREME COURT RULES, 1966:

Interim applications - Suit for specific performance - Decreed by Supreme Court in its final order, setting aside the judgment of High Court - Defendants directed to execute the sale deed in favour of plaintiffs at the market price as on date of judgment - Interim applications and review petition by plaintiffs - Held: An application for modification/clarification of judgment passed by Supreme court not permissible - It is not contemplated by provisions of Supreme Court Rules - Rules provide only the remedy of review - Grounds on which the modification/clarification are sought, were not before the Court at the time of final hearing, therefore, those facts cannot be legitimate basis for any modification even if interim applications are construed to be applications for review - The direction in the judgment to execute the sale deed at the market price came to be recorded as per "offer" made on behalf of appellants/plaintiffs and there was no material available in this regard - It is, therefore, clear that the Court did not intend to lay down any law of general application while issuing the said direction - Typographical errors corrected - It is open to parties to avail remedies against determination of market price which would be done by trial court - Review.

Satya Jain (D) & Ors. v. Anis Ahmed Rushdie (D) Tr. Lrs. & Ors. 347

WEST BENGAL CORRECTIONAL SERVICES ACT, 1992:

ss. 2(c) and 61, Explanation.

(See under: Penal Code, 1860; as also Contempt of Court) 392