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Contents

From the Editor's Desk

The concept of Judicial reforms encompasses a conglomerate of several intertwined and interrelated elements and experience has shown that technological advances, as a key component thereof, can assist phenomenally in improving institutional reforms and enhancing their impacts. The underlying object of embracing ICT by the Judicial institutions across all jurisdictions is to increase effectiveness, efficiency, transparency, and standardization of processes. The unique challenges generated by the pandemic vis a vis inter-personal communication and accessibility, significantly encouraged adoption and usage of 1CT tools and platforms in the judicial system to promote interface and ensure access to justice with better outcomes. From futuristic point, the judges are challenged to change dramatically the way in which they make decisions. Use of ICT makes it possible for most of their activities to take place remotely through e-mode. In the foreseeable future, the technology holds the promise of making developments in machine learning and artificial intelligence which may potentially; further challenge the role and work of judges, as the "third impartial decision maker". In the words of Richard Susskind, significant transformation has taken place in the judiciary in the recent past from being a "place to function as a service" for example, video conferencing tools used by the Courts to foster participation in hearing, introduction of e-Courts Mission Mode Project and so on and so forth. The use of ICT in justice delivery system has the backing of judicial precedence viz; *Meters and Instruments Pvt. Ltd. Vs. Kanchan Mehta; Grid Corporation of Orissa Ltd. Vs. AES Corporation and Ors; and Central Electricity Regulatory Commission Vs. National Hydroelectric Power Corporation Ltd.* Judiciary is constantly revisiting policies and chasing for ways and solutions which will enhance the growth and development of usage of ICT in Court rooms and productive discussions are being held from time to time to ease the transition of Courts from physical to virtual. Hon'ble Dr. Justice Dhananjaya Y. Chandrachud, Judge Supreme Court of India and Chairperson e-Committee, Supreme Court of India remarked, quote, *"judiciary could not but fulfil its special responsibility of adopting technological advancements and creating a robust infrastructure required to meet expectations of highly tech-savvy youngsters."* Unquote. However, at the same time, His Lordship has also struck a note of caution quote *"technology must be understood as the facilitator of change, but the driver of change has been and must be the human mind. The only limitation on the human mind is human commitment to change and adopt"*. Therefore, attributes like application of mind and decision-making process which are the hallmarks of a judge cannot be surrendered to the machine while making its use to advance the cause of justice. Undeniably, technology has been embedded so deep into the system and so also in our day to day working that we, as judges cannot afford to stand aloof from the hurricane of change that is sweeping every sphere of our lives, rather we have to rise to the occasion and must become the harbinger of reforms in the justice delivery system by making pragmatic use of ICT.

LEGAL JOTTINGS

"Law cannot ever be a combination of meaningless and purposeless combination of words. The judicial system reaches its pinnacle when it serves the ultimate object of all laws i.e. delivering justice to the recipient who deserves it, not shackled by pitfalls and landmines of technicalities. Within the four corners of legal framework, the reliefs can be moulded to achieve the ultimate objective, that is to deliver justice."

Dr Arijit Pasayat, J. in Angrej Kaur v. Union of India, (2005) 4 SCC 446: 2005 SCC (Cri) 1054, para 3

CRIMINAL

SUPREME COURT JUDGEMENTS

Criminal Appeal No. 378 of 2015
Chandrapal (Earlier M.P.) v. State Of Chhattisgarh
Decided on: May 27, 2022

Hon'ble Supreme Court Bench of Justices DY Chandrachud and Bela M. Trivedi observed that extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. It was also observed that in absence of any substantive evidence against the accused, the extra-judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI & Ors. Vs. Paltan Mallah & Ors. 3 , the extra judicial confession made by the coaccused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

Criminal Appeal Nos. 248-250 of 2015
Manoj & Ors v. State of Madhya Pradesh
Decided on: May 20, 2022

` Hon'ble Supreme Court bench comprising Justices Uday Umesh Lalit, S Ravindra Bhat and Bela M Trivedi while deciding three appeals preferred by three accused persons convicted under Section 302 of Indian Penal Code (IPC) (3 counts) imposed with death penalty by the judgment and orders of the First Additional Sessions Judge which was confirmed by a Division Bench of the High Court of Madhya Pradesh at Indore, issued a set of practical guidelines to ensure that the mitigating circumstances of the accused are properly

considered at the trial stage itself and there is no "concrete framework" to measure and evaluate the possibility of reformation and that the inconsistencies in the approach of trial courts contribute to a "patchwork jurisprudence on capital sentencing", and in turn "undermines the equality principle and due process protection*"."213. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage."*To do this, the trial court must elicit information from the accused and the state, both and State must produce materials disclosing the psychiatric and psychological evaluation of the accused and further State must collect additional information relating to family background, education, socio-economic background of the accused. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances. Information regarding the accused's jail conduct should be called for, including psychiatric and psychological reports. Further, Courts can call for additional information also.

Criminal Appeal No. 807 of 2022
M/S Knit Pro International v. The State of NCT of Delhi & Anr
Decided on: May 20, 2022

Hon'ble Supreme Court bench comprising Justices MR Shah and BV Nagarathna has held that the offence of copyright infringement under Section 63 of the Copyright Act is a cognizable and non - bailable offence and further that If the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. It was observed*," 5.3 Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned counsel appearing on behalf of respondent no. 2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever."*

Criminal Appeal No. 900 of 2017
Nanjundappav & Anr v. The State of Karnataka
Decided on: May 17, 2022

Hon'ble Supreme Court Bench comprising CJI NV Ramana, Justices Krishna Murari and Hima Kohli while acquitting two persons accused under Section 304A of Indian Penal Code for causing death by negligence noted that the doctrine of res ipsa loquitur strict sensu would not apply to a criminal case. It was also observed that for bringing home the guilt of the accused, prosecution has to firstly prove negligence

and then establish direct nexus between negligence of the accused and the death of the victim. Hon'ble Court referred to *Syad Akbar Vs. State of Karnataka 1979 CriLJ 1374, S.L .Goswami Vs. State of M.P 1972 CRI.L.J.511 (SC) and observed ,""9. Here it would be useful to advert to the dictum in the case of Syad Akbar Vs. State of Karnataka in which this Court proceeded on the basis that doctrine of res ipsa loquitur strictosensu would not apply to a criminal case as its applicability in an action for injury by negligence is well known."*

Criminal Appeal No. 511 of 2022
Prabha Tyagi v. Kamlesh Devi
Decided on: May 12, 2022

Hon'ble Supreme Court Bench comprising Justice MR Shah and Justice BV Nagarathna in an appeal assailing judgment passed by the High Court of Uttarakhand at Nainital expanded the meaning of expression "joint family" to beexpansively read as "persons living together jointly as a family". It was observed *"43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act."*

Further, it was also observed by the Hon'ble Bench that when an aggrieved person files an application by herself or with the assistance of an advocate and not with the assistance of the Protection Officer or a service provider, in such a case, the role of the Protection Officer or a service provider is not envisaged. It was also held that a victim of domestic violence can enforce her right to reside in a shared household, irrespective of whether she actually lived in the shared household.

"Even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act."

Criminal Appeal No. 767 of 2022
Dilip Hariramani v. Bank of Baroda
Decided on: May 09, 2022

Hon'ble Supreme Court bench of Justice Ajay Rastogi and Justice Sanjiv Khanna while deciding an appeal challenging the conviction of the appellant for the dishonour of a cheque issued by a firm in which he was a partner and the cheque being signed by another partner and the firm not made an accused in the complaint, held that a person cannot be convicted for the offence of dishonour of cheque under Section 138 of the Negotiable Instruments Act merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. It was observed that vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of

the civil liability - Vicarious liability arises only when the company or firm commits the offence as the primary offender - Unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable.

"14. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person (s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in Sharad Kumar Sanghi v. Sangita Rane, 17 Himanshu v. B. Shivamurthy and Another, 18 and Hindustan Unilever Limited v. State of Madhya Pradesh. 19 The exception carved out in Aneeta Hada (supra), 20 which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent."

Criminal Appeal No. 1307 Of 2019
Ravinder Singh @ Kaku v.
State of Punjab
Decided on: May 4, 2022

Hon'ble Supreme Court Bench of Justices U.U. Lalit and Vineet Saran while deciding appeals arising out of the judgment passed by the High Court of Punjab & Haryana observed that Certificate required u/s 65-B(4) Evidence Act is a condition precedent to admissibility of evidence by way of electronic record and oral evidence in place of such certificate cannot possibly suffice as the section is a mandatory requirement of law. Hon'ble Court referred to Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal [(2020)7 SCC 1] and observed that, "21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law."

HIGH COURT OF JAMMU & KASHMIR AND LADAKH JUDGEMENTS

Crl R No.02/2020
Mohammad Ismail Chazilla v. Mst. Zubaida
Decided on: May 11, 2022

Hon'ble Single Bench in petition challenging order passed by Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar, in a petition filed by respondent against him under Section 488 of J&K Cr. P. C has observed that so far as the proceedings under Section 488 Cr. P. C are concerned, neither in the said provision nor in any other provision contained in Chapter XXXVI of the Jammu and Kashmir Cr. P. C, under which Section 488 falls, any such procedure of admitting evidence by way of affidavit, has been provided and Courts, therefore cannot accept the evidence of a party by way of affidavits and rely upon the

same." *11) Section 510-A of the Cr. P. C provides that the evidence of any person whose evidence is of formal character may be given by affidavit. Similarly, Section 145 of the Cr. P. C, which falls under Chapter X of the Code, makes a provision for putting in affidavits by way of evidence during the course of inquiry proceedings. Again, in Section 539-A of the J&K Cr. P. C, a provision has been made for giving evidence by way of an affidavit regarding allegations made respecting conduct of any public servant. But so far as the proceedings under Section 488 Cr. P. C are concerned, neither in the said provision nor in any other provision contained in Chapter XXXVI of the Jammu and Kashmir Cr. P. C, under which Section 488 falls, any such procedure of admitting evidence by way of affidavit, has been provided. Therefore, the learned counsel for the petitioner is right in his submission that it was not open to the learned Magistrate to accept the evidence of respondent by way of affidavits and rely upon the same. The procedure adopted by the learned Magistrate in this regard is unknown to law. Therefore, the impugned order passed by the learned Magistrate on the basis of inadmissible material/evidence is not sustainable in law."*Hon'ble Court also reiterated that affidavits and affirmations to be used before a Court are required to be sworn and affirmed either before such Court or before any Magistrate or other Court

CM(M) No. 30/2020
Jabeena Afroz & Ors v. Authorized Officer, Impaired Assets, Portfolio Management Department & Ors.
Decided on: May 09, 2022

Hon'ble Division Bench while considering a Petition assailing the Order passed by the learned Chief Judicial Magistrate, Srinagar, on an application filed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, has appointed the Station House Officer of the concerned Police Station to take possession of the immoveable property/ secured asset and submit the report on the next date with prior information to the Authorized Officer of the Bank to remain present on spot on the scheduled date, has explained the mandate of the scheme of law governing the subject as enshrined in the Act under sec 13(3-A) & 14. It was explained that if on the receipt of the notice under sub-section 2, the borrower makes any representation or raises any Objection, the secured creditor has to consider such representation or Objection and communicate the decision thereon to the borrower within fifteen days. Thereafter, the application of the secured creditor, under Section 14, has to be accompanied by an Affidavit duly affirmed by the Authorized Officer of the secured creditor declaring that the Objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such Objection or representation had been communicated to the borrower and that, on receipt of the affidavit from the Authorized Officer, the concerned Magistrate has to satisfy itself qua the contents of the Affidavit and pass suitable orders for the purpose of taking possession of the secured assets.

Bail App No.05/2022
Rayees Ahmad Dar v. Union Territory Of J&K
Reserved on: May 09, 2022

Hon'ble Single Bench while considering an application for grant of bail under Section 439 of the Cr. P. C seeking bail in FIR No. 50/2021 for offenses under

Section 8/21, 29 of NDPS Act registered with Police Station, Bijbehara, observed that it is only a Judicial Magistrate of first class or a Metropolitan Magistrate who is empowered to record confessions the expression „Magistrate" appearing in Section 26 of the Evidence Act refers only and only to a Judicial Magistrate of first class or a Metropolitan Magistrate. Referring to case law in *Kartik Chakraborty and Ors. vs. State of Assam, (2018) 2 Gauhati Law Reports and State of Assam v. Anupan Das, (2008) 1 GLR 681*, it was observed." *23) From the foregoing enunciation of law on the subject, there is no room for doubt to construe that the expression „Magistrate" appearing in Section 26 of the Evidence Act refers only to a Judicial Magistrate of first class or a Metropolitan Magistrate and 20 Bail App No. 05/2022 no other class of Magistrates. Giving it any other construction would defeat the provisions contained in Section 164 of the Cr. P. C, which provides for safeguards for ensuring recording of confessions of the accused in a free and fair environment."*

Crl R No. 15/2021
Zubair Ahmad Teli & Anr v. Union Territory of J&K & Anr.
Decided on: April 28, 2022

Hon'ble Single Bench of High Court of Jammu & Kashmir and Ladakh while granting bail to juveniles in conflict with the law for their alleged involvement in a murder case, observed that judges should not proclaim they are playing the role of lawmakers merely for the exhibition of judicial valor. Hon'ble Court made the observation in revision petition moved in terms of Section 102 of The Juvenile Justice (Care and Protection of Children) Act, 2015, seeking setting aside the judgment passed by the court of learned Principal Sessions Judge, Kulgam whereby the order dated 01.06.2021 passed by the Juvenile Justice Board, Kulgam, granting interim bail to the petitioners under Section 12 of Juvenile Justice Act, 2015 was set aside. It was further observed that Juvenile Justice Act is a special legislation and had been enacted by the Legislature to ensure the rights of the children in conflict with law and the provision of bail contained under Section 12 of the J.J. Act, cannot be stretched to deny bail, by borrowing irrelevant principles and construction of statute in such a way that the very aim and object of the Act is defeated. Hon'ble Court while placing reliance of judgment of Single Judge of Allahabad High Court in a case *Jiya-uddin (minor) Thru. His... Vs. State of U.P &Anr. (Cr.Rev. No. 1234/2018)*and other case law on the pointdiffered with *Radhika(juvenile) Vs. State of U.P. D.O.D. 05.08.2019*and held that there was no such requirement to consider social investigation report before consideration of bail. It was accordingly observed," *33. On a close scrutiny of the provisions contained in Section 12 of the J.J. Act with regard to bail and Section 15 of the J.J. Act with regard to assessment report in the cases of heinous offences having regard to the age of the juveniles more than 16 years, both the provisions seem to be conveying in clear terms the intent of the legislature, where words are clear, there being no obscurity or ambiguity and the intent of the legislature is clearly conveyed. There is no scope for the courts to innovate or take upon themselves the task of amending or altering the statutory provisions. In such a situation, the judges should not proclaim that they are playing the role of law-makers merely for exhibition of judicial valor. The thin-line which separates adjudication from legislation should not be crossed or erased."*

"Social justice, equality and dignity of person are cornerstones of social democracy. The concept 'social justice', which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. 'Social justice' is thus an integral part of 'justice' in the generic sense. Justice is the genus, of which social justice is one of its species.(…) The concept of social justice embeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results."

K. Ramaswamy, J. In Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42, para 18 & 19

"There is no scope for the courts to innovate or take upon themselves the task of amending or altering the statutory provisions. In such a situation, the judges should not proclaim that they are playing the role of law-makers merely for exhibition of judicial valor. The thin-line which separates adjudication from legislation should not be crossed or erased."

M.A. Chowdhary, J. In Zubair Ahmad Teli & Anr v. Union Territory of J&K & Anr., on 28 April, 2022

CIVIL

SUPREME COURT JUDGEMENTS

Civil Appeal No. 5894 of 2019
Munni Devi Alias Nathi Devi (Dead) Thr Lrs. & Ors v. Rajendra Alias Lallu Lal (Dead) Thr Lrs. & Ors.
Decided on: May 18, 2022

Hon'ble Supreme Court Bench of Justices Ajay Rastogi and Bela M. Trivedi observed that settled exclusive possession of a property of Hindu Undivided Family (HUf) by a widow would create a presumption that such property was earmarked for the realization of her pre-existing right of maintenance more particularly when the surviving coparcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. Referring to the judgments in *V. Tulasamma and other vs. Sesha Reddy (Dead) [(1977) 3 SCC 99]* and *Raghubar Singh & Ors vs Gulab Singh & Ors [(1998) 6 SCC 314*. It was observed, *"20. As stated earlier, Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance".*

Civil Appeal No. 3641 & 3642 of 2022
Sudhir Ranjan Patra (Dead) Thr. Lrs. & Anr v. Himansu Sekhar Srichandan & Ors.
Decided on: May 17, 2022

Hon'ble Supreme Court bench comprising Justices M R Shah and B V Nagarathna observed that when an ex -parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex -parte. On facts, the defendants who were set ex parte in a suit, filed an application under Order IX Rule 13 of CPC to set aside the ex-parte decree and also prayed to allow the filing of written statement. The Trial Court allowed the said application setting aside the ex parte decree. While disposing the petition challenging this order, the High Court, though upheld the Trial Court order, held that the defendants cannot be permitted to file their written statement and that they can only take part in the hearing of the suit without propounding their own case. Hon'ble Court referred to *Sangram Singh Vs. Election Tribunal, Kotah and another AIR 1955 SC 425 and Arjun Singh Vs. Mohindra Kumar and others AIR 1964 SC 993 and observed, "However, it is true that as per the law laid down by this Court in the case of Sangram Singh (supra) and Arjun Singh (supra) when an ex-parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex-parte. He would be debarred from filing any written statement in the suit, but then he can participate in the hearing of the 4 suit inasmuch cross-examine the witness of the plaintiff and address arguments."*

Civil Appeal No. 1973 of 2022
M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District Sehore And Others v. M/S. Modi Transport Service
Decided on: May 11, 2022

Hon'ble Supreme Court Bench of Justices Sanjiv Khanna and Bela M. Trivedi observed that a court-appointed commissioner's report is only an opinion or noting and are 'non-adjudicatory in nature'. It was further observed that the parties can contest an expert opinion/ commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/commissioner's report. It was observed, *"When a court issues such a commission to such a person, it can direct the commissioner to make such an investigation, examination and adjustment and submit a report thereon to the court. The commissioner so appointed does not strictly perform a 'judicial act which is binding' but only a 'ministerial act'. Nothing is left to the commissioner's discretion, and there is no occasion to use his judgment or permitting the commissioner to adjudicate and decide the issue involved; the commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission. Hence, there is neither abdication nor delegation of the powers of functions of the court to decide the issue. Sometimes, on examination of the commissioner, the report forms part of the record and evidence. 28 The parties can contest an expert opinion/ commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/commissioner's report. Even if the court relies upon the same, it will merely aid and not bind the court. In strict sense, the commissioners' reports are 'non-adjudicatory in nature', and the courts*

adjudicate upon the rights of the parties".

Civil Appeal No. 3788 of 2022
Bharat Kalra v. Raj Kishan Chabra
Decided on: May 09, 2022

Hon'ble Supreme Court Bench comprising Justices Hemant Gupta and V. Ramasubramanian while deciding an appeal challenging an order passed by the High Court whereby delay of 193 days in filing of the written statement was not condoned reiterated that the time limit for filing of the written statement under Order VIII Rule 1 of Code of Civil Procedure is not mandatory. It was observed," *Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash V. Nankhu & Ors.' reported in (2005) 4 SCC 480. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable."*

Civil Appeal No. 3680 of 2022
Sathyanath & Anr v. Sarojaman
Decided on: May 06, 2022

Hon'ble Supreme Court Bench of Justices Hemant Gupta and V. Ramasubramanian while deciding an appeal challenging order passed in revision petition whereby, the trial court was directed to frame preliminary issue as to whether the suit is barred by res judicata observed that a plea of res judicata cannot be determined as a preliminary issue when it is a mixed question of law and fact. It was observed *"20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext."*

One day Orientation Programme on ICT: E-Courts Concept, functioning & Procedure , National Judicial Data Grid (NJDG)-Access and Information, Case management through CIS , E-Filing and Court Proceedings , Virtual Courts-Concept and Working , Recording of Electronic Evidence- admissibility, and relevance, Sensitization and Key Issues relating to Cyber Laws and Cybercrimes

A One day Orientation Programme on ICT: E-Courts Concept, functioning & Procedure, National Judicial Data Grid (NJDG)-Access and Information, Case management through CIS, E-Filing and Court Proceedings, Virtual Courts-Concept and Working, Recording of Electronic Evidence- admissibility, and relevance, Sensitization and Key Issues relating to Cyber Laws and Cybercrimes was organized by J&K Judicial Academy through virtual mode on 21st May, 2022 for all Civil Judges (Jr. Division) of UT of J&K and UT of Ladakh.

The Online Orientation Programme was moderated by Sh. Shahzad Azeem, Director, J&K Judicial Academy and Sh. Anoop Kumar Sharma, Central Project Coordinator e-Courts High Court of J&K and Ladakh was the resource person in the programme.

In his introductory remarks, Sh. Shahzad Azeem, Director, J&K Judicial Academy emphasised that technological advances can assist in improving institutional reforms and enhancing their impacts. He also stated that in the foreseeable future, machine-learning and artificial intelligence shall work as "third impartial decision maker". He also cited judicial precedents backing the use of ICT in justice delivery system and also advised the participants to make pragmatic use of ICT and contribute productively as harbingers of reforms in the justice delivery system.

Sh. Anoop Kumar Sharma , resource person in his deliberations, dealt with the topics in-detail and updated the knowledge as well as skill of the Judicial Officers by making them aware of usage of all ICT initiatives launched under e-Courts mission mode project. The trainee Judicial Officers were advised to keep themselves abreast of all technological advancements particularly those related with e-Courts initiatives. He also underlined the importance of incorporating the knowledge into their day-to-day court functioning, in order to effectively handle the case load and ensure efficient delivery of justice. The resource person also gave a live demonstration pertaining to the handling and usage of National Judicial Data Grid (NJDG), Case Information System (CIS), and e-Filing for the benefit of trainee judicial officers.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource person.

One day Sensitization Programme on "Contemporary Issues in Mediation and Role of Referral Judges in the Process of Mediation"

A one day Sensitization Programme on "Contemporary Issues in Mediation and Role of Referral Judges in the Process of Mediation" was organized by Mediation & Conciliation Committee, High Court of J&K and Ladakh in association with J&K Judicial Academy and J&K Legal Services Authority at Judicial Academy Complex, Jammu for referral Judges and Advocate mediators on 21st May, 2022. The sensitization programme was inaugurated by Hon'ble Ms. Justice Sindhu Sharma, Judge, High Court of J&K and Ladakh and Member, Mediation &

Conciliation Committee, High Court of J&K and Ladakh.

Sh. J.M. Sharma and Sh. Rakesh Khanna, Senior Advocates & Trained Mediators, Hon'ble Supreme Court of India were the resource persons in the programme.

In her inaugural address, Justice Sindhu Sharma highlighted the significance of Mediation as an effective instrument for ensuring resolution of disputes. She stated that settlement of disputes in an amicable way is the hallmark of civilization and in this context, the concept of Mediation has now become a global phenomenon. She further underlined the importance of mediation as a structured and party centric mechanism where litigants arrive at a mutual settlement with a sense of satisfaction. She further emphasised the need for a comprehensive legislation related to mediation for the larger benefit and satisfaction of the litigating parties and society at large. She also underscored the need to continuously train judges in fundamentals of Mediation mechanisms and to promote synergy between judges and advocate mediators for effective and amicable resolution of disputes.

Sh. J.M. Sharma, Senior Advocate & Trained Mediator, Hon'ble Supreme Court of India in his special remarks, said that mediation is a great responsibility and described mediators as warriors of peace. He also underscored the significance of mediation and exhorted the legal practitioners to undertake mediation as an effective tool for dispute resolution.

Sh. Rakesh Khanna, Senior Advocate & Trained Mediator, Hon'ble Supreme Court of India in his special remarks, said that mediation is a germane concept in present day context of dispute resolution which fosters peaceful and healthier inter-personal relationships. He urged the judges to promote mediation and also laid stress on undertaking the e-mediation initiatives in bringing settlement to the litigation.

Mr. M.K. Sharma, Member Secretary,

J&K Legal Services Authority in his welcome address described mediation as a voluntary, party centred and structured negotiation process for peaceful resolution of disputes. While giving an overview of the programme, he said that it intends to sensitize and aware all stakeholders including referral judges and advocate mediators in creating an atmosphere for effective practice of mediation

Mr. Amit K. Gupta, Coordinator Incharge, Mediation & Conciliation Committee, High Court of J&K and Ladakh proposed Vote of thanks and the proceedings were conducted by Ms. Swati Gupta, Civil Judge (Sr. Division), J&K Judicial

Academy.

In the first technical session, resource persons educated the participants on the concept of mediation and conflict situations which was followed by second technical session wherein covering the concept of role

of referral judges in mediation mechanism. In the third and fourth technical sessions, the resource persons explained the relevance of mediation in present times and the concept of mediation in criminal jurisprudence respectively.

The technical sessions were followed by an interactive session during which the participants deliberated and discussed various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.

One day Special training program on: Civil Courts Act, Court Fees Act, and Suits Valuation Act. Computation techniques, payment modes, and effects of non-payment and deficiency.

A One-day Special Training Programme on "Civil Courts Act, Court Fees Act, and Suits Valuation Act inclusive of Computation techniques, payment modes and effects of non-payment and deficiency" was organized at Judicial Academy Complex, Mominabad, Srinagar for Civil Judges (Sr. and Jr. Division) of Kashmir province on 28th May, 2022. The special training programme was inaugurated by Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge, High Court of J&K and Ladakh and Hon'ble Mr. Justice Hakim Imtiyaz Hussain, Former Judge, High Court of J&K was the resource person in the programme.

In his inaugural address, Justice Dhiraj Singh Thakur highlighted the significance of holding the training programme on the subject topics in view of its extensive use and application in the working of Civil Courts. He also emphasised the paramount importance of procedural and substantive laws in the process of administration of justice and also advised the participants to derive utmost benefits from the rich knowledge imparted during training programmes in order to clarify any hovering doubts on the practical usage of the law during Court proceedings.

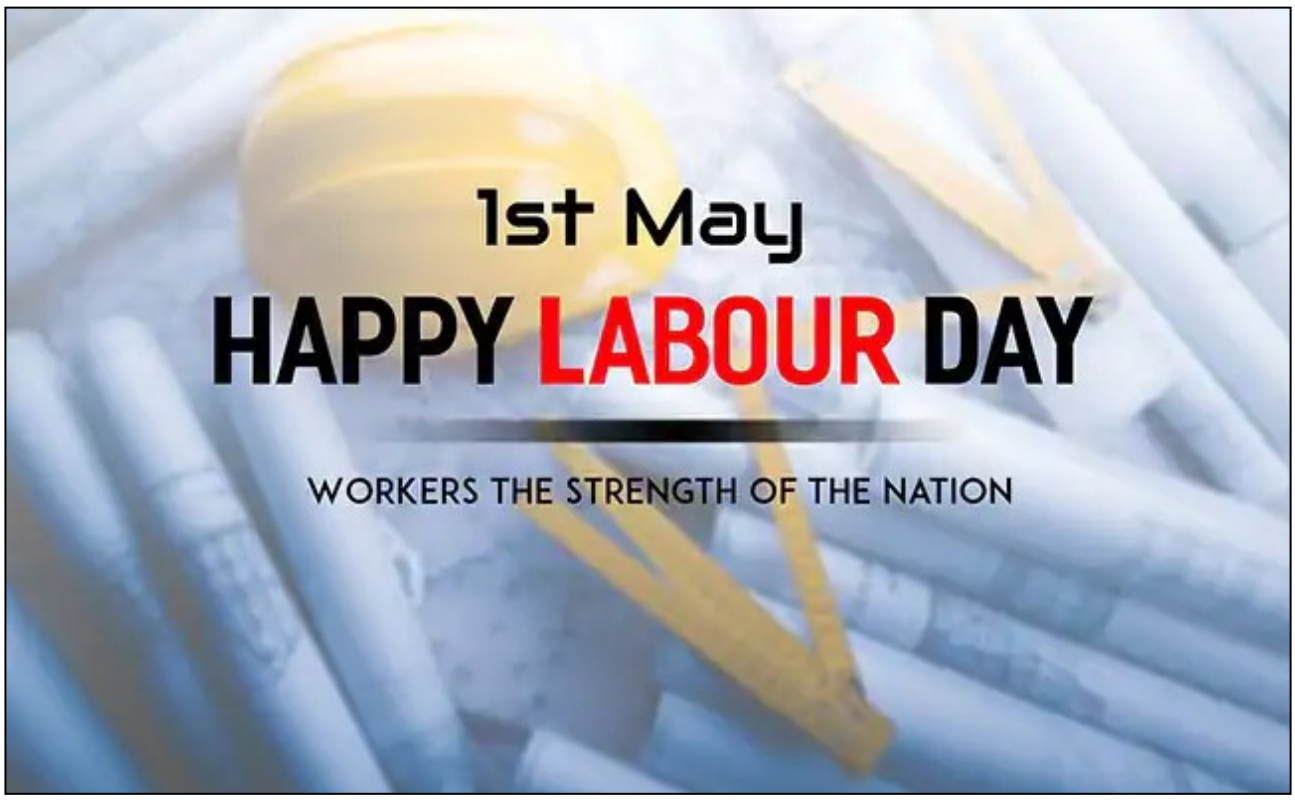
Hon'ble Mr. Justice Hakim Imtiyaz Hussain, Former Judge, High Court of J&K in his special remarks, apprised the participants of the glorious past of the J&K Judicial Academy as being one of the oldest Academies in the country. While reminiscing his directorial days at the Academy, he expressed happiness and satisfaction on the state-of-art facilities being provided by the Academy in present time for providing quality education and

training. He also gave a brief overview of the provisions of the Civil Courts Act, Court Fees Act, Suits Evaluation Act and described them as indispensable enactments during civil proceedings.

Mr. Shahzad Azeem, Director, J&K Judicial Academy in his welcome address described Judicial institutions as sentinels of Justice charged with the responsibility of protecting the freedom of people and ensuring their right to justice. He also underscored the multi latitudinal purpose and object of fiscal enactments as that of prescribing and regulating the uniform levy of fees, and revenue collection along with minimizing multiplicity of litigation.

In the first technical session,, resource person Justice Hakim Imtiyaz Hussain elaborately explained the classification and hierarchy of courts and also dealt with jurisdictions and powers assigned to the civil courts under the Civil Courts Act. Provisions relating to appeals as well as bar against trial of certain suits and appeals was also explained in detail. In the second technical session, the provisions and procedure under the Court Fees Act and Suits Evaluation Act along with the computation techniques involved, the different payment modes in usage and the effects of non-payment and deficiency was also elaborately discussed.

The technical sessions were followed by an interactive session during which the participants deliberated various aspects of the subject topic and raised queries which were satisfactorily settled by the resource person.



ONLINE DISPUTE RESOLUTION (ODR) SYSTEM

The rise of internet, digital commerce, strong push by the Governments across the globe for digital economy and ease of doing business has created altogether a new variety of disputes of different nature. The new economic reality driven by the power of technology had created disputes ranging from few rupees to millions, online fraud, hacking, surveillance and issues of privacy and online promise from any team or organization operating from remote location and did not deliver what it had promised. Technological revolution and mass adoption of internet for day to day affairs had created significant impact on social, cultural, economic and legal affairs of human race.

It is very true that there are disputes which can be resolved only our traditional dispute resolution system but the advancement digital technology has created a world which is amalgamation of physical world and virtual world; where the transactions and relationships have become more complex, novel and sophisticated. This new reality has brought with it, the need to design more powerful dispute resolution systems, which shall not only resolve problems and disputes but also prevent the generation of disputes.

Rigidity and inbuilt operational and structural pitfalls of our traditional dispute resolution system lead to the advent of the alternative dispute resolution system (A.D.R), where emphasis is not only on greater flexibility but also better means of dispute resolution. One of the basic theme that runs through the Indian constitution is that it promises to its citizens, Justice- Social, economic and political and this theme can't be realized unless the dispute resolution system is robust and responsive to the changing needs of the society.

Prof. Ethan Katsh, who is widely recognized as the father of Online Dispute Resolution (O.D.R) had said that the power of technology to resolve disputes is exceeded by the power of technology to generate disputes. Recognizing the potential of technology in generating and resolving disputes, the Government of India took number of initiatives under its flag ship campaign of "Digital India" for uplifting the use of technology in various Government services.

In 2020, NITI Aayog set up a committee of experts under the Chairmanship of Hon'ble Justice (retired) A. K. Sikri, with mandate of preparing of policy plan for "online Dispute Resolution." The Committee after consultations with all the stakeholders published the final policy plan for ODR in Nov. 2021.

The Committee in its report titled "Designing the future of Dispute Resolution: The O.D.R policy Plan for India" observed that O.D.R simply means the use of information and Communication technology (ICT) in resolving disputes. The committee in its report observes that O.D.R system is still in its nascent stages of development in India and it is important that the governance framework encourages the growth of innovation both in the Government and in the private sector.

The report of the Committee says that the concept of ODR is still evolving. At a preliminary level, ODR refers to the usage of ICT tools to enable parties to resolve their disputes. This includes using simple to complicated communication technologies such as audio-visual tools ranging from telephones to smart phones to LED screens, spread sheets, e-mails and messaging applications, with the crux of it being to enable dispute resolution without physical congregation of the parties. O.D.R in other words means resolution of disputes by using digital technology and techniques of A.D.R, such as arbitration, conciliation and mediation. e-Lok- adalat, e- arbitration, e-conciliation, e-mediation and technologically assisted negotiations are

some of the tools of ODR system at its primary level, which can make the existing processes of A.D.R more feasible, convenient and cost effective for the litigating parties.

Sama, Agami, Centre for Alternate Dispute Resolution Excellence (CADRE), Centre for Online Dispute Resolution (CODR) are some of the organizations and platforms, which are building ODR system for safe, quick, cost effective and convenient approach to resolve disputes with real practical solutions. O.D.R system besides being cost effective, convenient, efficient can also limit the unconscious bias in judicial decision making by limiting the human interaction with automated and curated platforms for specific categories of disputes.

The report points out that ODR doesn't just mean e-ADR, but at a more advanced stage, it can work as the fourth party through the use of algorithmic assistance tools, which shall help the parties to find resolutions. Such technology can take the form of intelligent decision support system, smart negotiation tools, automated resolution and machine learning and has the potential to become a comprehensive system for access to justice with mandate of not only dispute resolution but also dispute avoidance and dispute containment, which in turn can improve the overall legal health of the society. The report recognizes the immense potential of ODR for providing efficient and effective dispute resolution platform and its integration in the mainstream dispute resolution ecosystem.

The report had also pointed out various challenges, which need to be addressed for the success of ODR. The report recommends measures at three levels to tackle challenges in adopting ODR framework in India.

At the structural level, it suggests actions to increase digital literacy, improve access to digital infrastructure and development of human resource by imparting training to professionals as neutrals to deliver ODR services. Robust technology is pre-condition for the success of ODR. In India digital literacy varies across age, ethnicity and geography. Divide in access to technology across gender, geography, class and age is a challenge for mass adoption of ODR.

At the behavioral level, the report recommends adoption of ODR to address disputes involving Government departments and ministries, as the adoption of ODR to resolve inter and intra disputes shall create an environment of trust and confidence in its process. Since the Government is the biggest litigant in the country and recourse to ODR for Government related disputes shall effectively and significantly reduce burden on the courts.

At the regulatory level, the report recommends a soft-touch approach to regulate ODR platforms and services. This involves laying down design and ethical principles to guide ODR service providers to self-regulate while fostering growth and innovations in the ecosystem.

The report also stresses on strengthening the existing legislative framework for ODR by introducing necessary amendments to statutes. The report offers a comprehensive plan for phased implementation framework for ODR in India.

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