



SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 4, Issue 3

March, 2011

Topic of the Month

Chief Patron

Hon'ble Dr. Justice
Aftab H. Saikia
Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
Hakim Imtiyaz Hussain

Editor

Rajeev Gupta
I/c Director SJA

Contents

Topic of the Month.....	1
News & Views.....	2
Legal Jottings	3
Regional Judicial Conference	
(Some Reflections)	7
Case Comments	8
Legal Mind -Teaser	8

SUBSCRIPTION RATES

Single Copy : Rs. **20.00**

Annual : Rs. **240.00**

(Payment only through D.D. in favour of the
Jammu & Kashmir State Judicial Academy)

The Editor

SJA Newsletter
Jammu & Kashmir
State Judicial Academy
Janipur, Jammu-180001
Ph: Jammu: 0191-2530871
Srinagar: 0194-2472078
Fax: Jammu: 0191-2530783
Srinagar: 0194-2472078
E-mail: jkja@nic.in

Compiled, Composed & Layout by :

Pankaj Kumar Gupta
Deputy Registrar

“Access to Justice” is a curious phrase as it implies that the system of justice is not in fact available to all and that there are obstacles in the way. Is it true? In a civilized society, the State guarantees that each citizen approach the permissible and prescribed grievance redressal forum and obtain his rights whether against his fellow citizens or against the State. However, the truth is that civil justice has been beyond the reach of most of disputants, though they in turn by no means are beyond the reach of the criminal justice system. So it is profitable to remember that it is only in recent years that an assumption that access to justice as a universal right was made and even more recently have we begun to recognize it as a fundamental right, a right which is political, economic and social as adumbrated in the Preamble to our Constitution.

The right of access to justice, it is true to say, is characterized as the most fundamental of all fundamental rights. The Universal Declaration of Human Rights mandates in Article 10 that, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Until the arrival of legal aid, granted not as charitable indulgence to the weakest and the most sympathetic petitioners but as a matter of right, the theory was that the courts and legal services were available to all. Anybody could enter the court halls; all he needed was money.

However, our society is founded upon the Rule of Law. Consequently, if the people without using force or trying to obtain extra-legal remedies, approach the courts of law for redressal of their grievances, society must do everything at its command to see that they have real access to the courts. If the doors of the courts are not wide open to the disputants, we would be mocking at the rule of law. The economically weak citizens, in a society governed by the rule of law must be able to fight with the economically strong in the courts which would mean that they have to be enabled not access to get into the courts, but to say, if necessary, to the bitter end. For the said purpose, it is necessary to ensure that the legal services available to the poor litigant is of good quality as that available to his opponent.

[Excerpts taken from “Access to Justice and Judicial Reforms” an article written by Hon'ble Mr. Justice S.B. Sinha, Former Judge, Supreme Court of India]

Supreme Court warns police against custodial violence

The Supreme Court warned the police that acts of custodial violence will not be tolerated as they cannot behave like the “oppressors of the people”.

An Apex Court Bench of Justice Markandey Katju and Justice Gyan Sudha Misra, while warning the police, said: “Policemen must learn how to behave as public servants in a democratic country and not as oppressors of the people”.

The Court directed that a copy of its order be sent to home secretaries and directors general of police of all states and union territories. They shall circulate the same to all police officers up to the level of station house officers with a directive that they should desist from indulging in custodial violence, the Court said.

Police should know that custodial violence was against the directions of the Apex Court and would “entail harsh punishment”.

The Court said this in a case in which police wrongfully confined Nandagopal in police custody in Annamalai Nagar in Tamil Nadu on suspicion of theft from May 30, 1992 till June 6, 1992 and beat him to death there with canes, and also gang-raped his wife. The accused also confined several other persons and beat them in the police station.

Describing the conduct of police as barbaric, the Court said: “The graphic description of the barbaric conduct of the accused in this case shocks our conscience.....If ever there was a case which cried out for death penalty it is this one, but it is deeply regrettable that not only was no such penalty imposed but not even a charge under Section 302 IPC (murder) was framed against the accused by courts below”.

The Apex Court order while dismissing the appeal by accused policemen, said that both the trial Court and the High Court have found the appellants policemen guilty and we see no reason to disagree with their verdict. (March 31, 2011)

Retirement sought on health grounds can be withdrawn : Court

Voluntary retirement sought on medical grounds could be withdrawn if the doctor gives hope for early recovery, the Gujarat High Court has ruled.

The Court gave the ruling in the case of Mahendra Trivedi, a Bank of India employee. The Court, however, said that the discretion rested with the bank not to permit the withdrawal of the notice seeking voluntary retirement and that it needs to be exercised only if there are cogent and valid grounds available

The Court noted that even after giving a notice for voluntary retirement and it is accepted by the employer, it is open for the employee to seek the

withdrawal of the notice before the actual date of his retirement. “Even if the discretion is vested with the employer, it cannot be exercised arbitrarily and the same has to be exercised reasonably”.

Trivedi joined the bank in 1966 as typist-cum-clerk. While on duty, he met with an accident in 1983 and badly damaged a knee joint. The injury affected his health, and he decided to opt for voluntary retirement. However, after the notice was given, his hopes for recovery were revived after consultations with a surgeon who is an expert in knee replacement.

Trivedi decided to withdraw the retirement notice, but the bank refused to accept his request.

According to Trivedi’s lawyer, the bank did not provide reasons for denying the withdrawal of the notice. The bank’s counsel, claimed that the bank was well within its rights to refuse permission to withdraw. The employee has no right to withdraw the notice once it was accepted by the authority.

(March 26, 2011)

Child witness’s testimony carries weight : SC

The courts can rely on evidence tendered by a child if it inspires its confidence and there was no embellishment or improvement in it, the Supreme Court has said.

“The law on the issue (child’s evidence) can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires confidence of the court and there is no embellishment or improvement therein, the court may rely on his evidence,” said the Apex Court bench of Justice P. Sathasivam and Justice B.S. Chauhan.

The Court said, “The evidence of a child must be evaluated more carefully with greater circumspection because he is susceptible to tutoring... Only in the case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, the inference as to whether a child has been tutored or not, can be drawn from the content of his deposition”.

The Court said, “part of the statement of child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence”.

The Court said this in connection with a case in which a trial court based its conviction on the evidence given by an eight-year-old daughter of a murdered man.

The Apex Court set aside a Madhya Pradesh High Court verdict and restored the Sessions Court verdict sentencing accused to life imprisonment for conspiracy and murder. The trial court convicted and sentenced the duo by relying on the evidence given by

victim's daughter.

The trial Court in its judgment said that "her (Rannu Bai) deposition being precise, concise, specific and vivid without any improvement or embroidery is worth acceptance in toto", however, the High Court quashed the trial Court judgment.

Referring to its earlier verdicts, the Apex Court said: "There is no principle of law that it is inconceivable that a child of tender age will not be able to recapitulate the facts in his memory."

"A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in future," the Court observed.

"In case, a child explains relevant events at the crime (scene) without improvement or embellishment, and the same inspire the confidence of the Court, his deposition does not require corroboration whatsoever. The child at tender age is incapable of having any malice or ill-will against any person," the Court said.

(March 22, 2011)

Merit seat reserved for women can be given to men: Court

If requisite merit is not available for the seats reserved for women, the seat can be given to male candidates, the Gujarat High Court has ruled.

The Court ruled that reservation for women is horizontal and not vertical. 'In respect of seats for women, the merit will be at par with the male candidates. Under these circumstances, if the requisite merit is not available, the conversion of posts, reserved for women, in the respective category cannot be said to be arbitrary,' the Court noted.

The Court ruling came on a petition filed by an unsuccessful candidate challenging a Single Bench order which rejected her plea regarding the test she took for a Government job.

The Division Bench rejected the petitioner's counsel's contention that when a post was reserved for female candidates for the purpose of selection, the select-list was required to be prepared accordingly.

He contended that the seats of the women candidates remained unfilled and the Government converted these posts for male candidates, which was arbitrary. Petitioner had good marks in the written test, but not in the viva-voce. Since no reason was given for giving seat to male candidate, the action of the Authorities was illegal.

The Court said it cannot order for reassessment unless bias or prejudice is alleged with cogent reliable material and that there was no allegation of any bias or prejudice in the petition.

(March 09, 2011)

(Source : Legal India Portal)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Cr. Appeals No.611 & 612 of 2011)

M. Mohan v. State represented by the Dy.S.P.

Date of Judgement : 01-03-2011.

Judge(s): Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Indian Penal Code, 1860 - Sections 304-B, 498A and 306 - dowry death, cruelty upon women by her husband and his relatives, abetment to suicide - chargesheet filed for the commission of offences under - the deceased wanted to use the family car to go to the Theme Park along with other family members but she was denied the permission to use the car. At that juncture A-3 taunted the deceased that if she wanted to go around in a car, she has to get a car from her parents. These words deeply hurt the deceased and she committed suicide at her matrimonial home - the High Court observed that the complainant had not made a whisper about the demand of dowry on the part of the appellants but harped upon the ill treatment to his daughter at the hands of A-1 and A-3, therefore, while quashing the charges under Sections 498-A and 304-B I.P.C. against the appellants, partly allowed their petition and held that they have to face trial for the offence under Section 306 I.P.C. - Appeal - whether the conviction of the appellants under Section 306 I.P.C. is sustainable - whether the High Court was justified in not quashing the proceedings against the appellants under its inherent powers - Held - No - the Supreme Court found no proximate link between the incident of 14.01.2005 when the deceased was denied permission to use the car with the factum of suicide which took place on 18.01.2005, thus, concluded that the appellants are not even remotely connected with the offence under Section 306 of the I.P.C. - charges against the Appellants quashed - impugned judgment of the Learned Single Judge set aside.

(Case No. Cr. Appeal No(s). 1209 of 2007)

Prahalad Patel v. State of M.P.

Date of Judgement : 02-03-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice H.L. Gokhale.

Subject Index: Indian Penal Code, 1860 - Section 302 - punishment of murder - conviction and sentence under - there was an altercation between the deceased and the accused due to which the accused developed a grudge against the deceased. When the deceased was working in the mine, the accused inflicted several injuries to the deceased with an axe the injured victim succumbed to his injuries - the High

Court upheld the conclusion arrived at by the Sessions Judge and confirmed the conviction and sentence of the accused - appeal - PW-1 narrated the earlier incident about throwing bushes on the path-way to the agricultural field and the altercation between the accused and the deceased and also of the fact that he accompanied the deceased to the mine, there is no reason to disbelieve his version - the evidence of PW-1 and the corroborative statements of PWs 2 and 7 support the prosecution case. Moreover, the weapon of offence, was seized at the instance of the accused - the Supreme Court held that the prosecution has proved its case beyond doubt against accused - appeal dismissed.

(Case No. Civil Appeal No(s). 2269 of 2011)

Kusum & others v. Satbir and others

Date of Judgement : 02-03-2011.

Judge(s): Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Kumar Ganguly.

Subject Index: Claim petition - motor accident - the victim was hit by a vehicle from behind as the vehicle was driven rashly and negligently. The victim succumbed to his injuries - claim lodged - the Tribunal found that the involvement of the offending vehicle has not been proved and hence, no compensation was awarded. The High Court affirmed the finding of the Tribunal - appeal - evidence come on record from the deposition of one Dheeraj Kumar, who clearly proved the number of the vehicle however, the name of Dheeraj Kumar was not mentioned in the FIR - the Supreme Court opined - when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, his first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Driver did not stop at the spot after the accident - impugned judgments of the Tribunal and the High Court set aside - Insurance Co. directed to pay Rs.6 lacs as compensation to the claimants with interest @ 7% p.a. - Appeal allowed.

(Case No: Civil Appeal No(s). 6956 of 2004)

H. Siddiqui (Dead) By Lrs. v. A. Ramalingam

Date of Judgement : 04-03-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Civil Procedure Code, 1908 - Order XLI, Rule 31 - mandatory provisions - non-compliance of - specific performance of contract - suit filed for - parties entered into the agreement to sell the suit property - although entire consideration was paid by the appellant/plaintiff, sale deed was not executed - the trial Court decreed the suit in favour of plaintiff /

appellant, however, the High Court allowed the decree in favour of the respondent - appeal - the Supreme Court opined that the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment, rather it must give reasons for its decision on each point independently - Held that the courts below have not proceeded to adjudicate upon the case strictly in accordance with law - impugned judgement set aside, matter remitted to the High Court to decide afresh in accordance with law - appeal disposed - no costs.

(Case No. Civil Appeal No(s). 2334 & 2335 of 2011)

Dev Sharan & others v. State of U.P. & Ors.

Date of Judgement : 07-03-2011.

Judge(s): Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ahsok Kumar Ganguly.

Subject Index: Land Acquisition Act - Sections 4, 6 and 17A - acquisition of agricultural lands for the construction of the district jail of Shahjahanpur in challenge - the State Government issued notifications under Sections 4(1) and 17 - However, inquiry u/s 5 A was dispensed with in view of the pressing urgency in the matter - writ petition filed - dismissed - appeal - whether in the admitted facts of the case, invoking the urgency clause under Section 17 (4) is justified - Held no - the valuable right of the appellants under Section 5A of the Act cannot be flattened and steamrolled on the 'ipsi dixit' of the executive authority - the Supreme Court found that the time which elapsed between publication of impugned notifications and Section 6 declaration, is almost one year. Slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17 (4) of the Act - Held - State Government was not justified, in the facts of the case, to invoke emergency provision of Section 17(4) - impugned notifications relating to appellants lands quashed.

(Case No. Cr. Appeal No(s). 1450 of 2008)

Jagdish Rai v. State of Punjab

Date of Judgement : 11-03-2011.

Judge(s): Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: NDPS Act, 1985 - Section 18 - conviction and sentence for commission of the offence under - the appellant was intercepted by the police party. Riding with the appellant on the pillion

of the motorcycle was the other accused who had a bag slung from his shoulder carrying 4 kgs. of opium - whether the appellant can be said to be in conscious possession of the contraband - the High Court held and found that the conscious possession of the contraband by the appellant was fully established - orders of the lower Courts upheld - appeal dismissed.

(Case No: Civil Appeal No(s). 2419 of 2011)

Rajesh Kumar Srivastava v. State of Jharkhand

Date of Judgement : 10-03-2011.

Judge(s): Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Mr. Justice Anil R. Dave.

Subject Index: Discharge from service on the ground of unsatisfactory service - writ petition filed - dismissed - appellant was appointed as a Probationer Munsiff. In the course of adjudging his suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not - the Supreme Court held it to be a case of termination of service simpliciter and not a case of stigmatic termination - no infirmity in the impugned order of the High Court - appeal dismissed.

(Case No. Cr. Appeal No(s). 581 - 584 of 2003)

Haricharan v. State of Madhya Pradesh & Ors.

Date of Judgement : 09-03-2011.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Indian Penal Code, 1860 - Sections 304 Part II, 330 - culpable homicide not amounting to murder and voluntary causing grievous hurt to extort confession - conviction and sentence for commission of the offence under - the victim Mathura was suspected of having committed theft and picked up for interrogation. Whilst at the police station, he was subjected to third degree torture. As his condition deteriorated, he was released but he died during treatment in the hospital - the High Court reversed the findings of acquittal recorded by the trial Court - appeals - the High Court correctly concluded that there is sufficient evidence on record to prove that Mathura had been taken into an illegal custody - fact that Mathura had been tortured and subjected to electric shock in police custody is established by medical evidence, evidence on the record clearly shows that the death was a direct consequence of inexcusable and inhuman torture by the police - appeals dismissed.

(Case No: Civil Appeal No(s). 5861 of 2007)

State Bank of Bikaner & Jaipur v. Nemi Chand
Date of Judgement : 01-03-2011.

Judge(s): Hon'ble Mr. Justice R.V. Raveendra and Hon'ble Mr. Justice A.K. Patnaik.

Subject Index: Dismissal from service - punishment of - to the respondent clerk of the appellant Bank by the disciplinary Authority - complaint filed - the criminal court acquitted the respondent holding that charges were not proved beyond doubt - the Division Bench also held that no misappropriation, wilful or fraudulent conduct with intention to cause loss to the Bank, was made out, therefore, set aside the order of dismissal and directed reinstatement with back-wages & consequential benefits - appeal - the Supreme Court opined that the fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. An employee who allows the findings in the enquiry and the punishment to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him - impugned judgments of the High Court set aside - the finding of guilt recorded by the disciplinary authority upheld, but modified the punishment from 'dismissal' to 'compulsory retirement' - appeal allowed.

Legal briefs from High Court of J&K

(Case No. LPA(SW) 73 of 2008)

Raj Kumar v. State of J&K & Ors.

Date of Judgment: 28-03-2011

Judge(s): Hon'ble Dr. Justice Aftab H. Saikia, Hon'ble Mr. Justice F.M. Ibrahim Kalifulla.

Subject Index: Service Law - Compassionate appointment - appellant's father working as shepherd died in harness on 12-02-1996 and appellant was minor at that time - appellant attained majority in 2005 and moved application for appointment on compassionate grounds - application rejected in May 2006 - writ petition filed - dismissed - further challenge - Held - under Rule 3 of SRO 43, a person eligible for seeking compassionate appointment must be eligible and qualified within a period of six months from the death of the Govt. employee - appellant became eligible after ten years of father's death - not qualified under Rules - LPA dismissed.

(Case No. LPA(SW) 462 of 2002)

Union of India & Ors. v. Kasturi Lal

Date of Judgment: 23-03-2011

Judge(s): Hon'ble Dr. Justice Aftab H. Saikia, Hon'ble Mr. Justice Hasnain Massodi.

Subject Index: Army Pension Regulations, 1961 - Regulation No. 267 - respondent joined Army service in 1965, transferred to Reserve with Reserve Pension w.e.f. May, 1973 - re-enrolled in Defence Security Corps in February, 1976 - discharged on January, 1988 - again enrolled in Second spell with Defence Security Corps and discharged on February 1999 - Respondent sought pension and other allowances for total 27 years service - rejected - writ petition - allowed - challenged by Union of India - record showed respondent continued to draw earlier pension and agreed not to count former service towards enhanced rate of pension - respondent would have been entitled to receive pension at enhanced rate if previous pension drawn by him was kept in abeyance - that was not done - as such, respondent found not entitled to enhanced pension - LPA dismissed.

(Case No. SWP 2117 of 2007)

Gulshan Kumar Sharma v. Union of India & Ors.

Date of Judgment: 11-03-2011

Judge(s): Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: Service Law - Adhoc service - petitioners appointed with Kendriya Vidhyalya Sangathan as Physical Education Teacher for six months in 1992 - before completion of six months, they filed writ petition - ordered to be continued in service till regular appointment was made - by way of various interim orders in writ petitions at different times, they continued on service - in writ petition SWP-995 of 1999 order passed on 17-04-2001 - petitioners directed to be considered sympathetically under existing scheme for regularisation - considered by KVS and claim rejected - challenged before Central Administrative Tribunal - dismissed - writ petition - after the initial order of appointment in 1992, till the petitioners were relieved in November, 1999, their continuance beyond March, 1993 was only pursuant to interim orders of the Court - in one regular selection process they were unsuccessful, in another they did not participate - there was no scheme of regularisation of universal application - scheme prepared by KVS, Gauhati was pursuant to order of Gauhati High Court - said scheme has no application to present case - even conditions under scheme not fulfilled - no illegality found with decision of CAT - petition dismissed.

(Case No. LPA(SW) 46 of 2010)

Renu Bala v. State of J&K & Ors.

Date of Judgment: 24-03-2011

Judge(s): Hon'ble Mr. Justice Virender Singh, Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Selection to Govt. Service by PSC - Wait list - life of - in pursuant to selection process by Public Service Commission for appointment as

Lecturers in different disciplines of Higher Education Department, petitioner also applied - selection list issued in August, 2007 - petitioner named in wait list at no. 2 in physics discipline - out of selected persons, one did not join - Govt. called for wait list from PSC - person named in wait list at no. 1 appointed in July 2008 - another person, having joined the service, resigned - petitioner represented to be appointed against the post falling vacant on the resignation - petition filed in September 2008 - Held - after the selection and appointments are made, if a person so appointed does not join, appointing authority can consider candidate from the wait list as per merit in the wait list, within one year from the date of issue of selection list - however, in case some person resigns after joining the service, such vacancy cannot be supplied by wait list candidates - such vacancy becomes available for fresh selection - petitioner held not entitled to vacancy arising on resignation.

(Case No. CIMA 232 of 2010)

Umar Hayat Khan v. Talat Sarver Khan

Date of Judgment: 09-12-2010

Judge(s): Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index: Code of Civil Procedure - Order 39 Rule 1&2 - conduct of parties - plaintiffs filed suit alongwith application for interim injunction, for specific performance of agreement of sale with further relief of injunction - defendants resisted the suit on the grounds that no agreement of sale was executed, they were owners and in possession of suit land and that plaintiffs had filed a suit for prohibitory injunction alongwith application for interim injunction - application was dismissed, which fact has not been brought on record - trial court rejected the application for interim injunction - appeal against - Held - a person who seeks equity must do equity. He has to disclose all the facts for and against - In the instant case plaintiffs have not done so and have withheld the material particulars of filing of earlier suit, dismissal of interim application and prima facie finding of the court that plaintiffs were not in possession - order of trial court upheld.

(Case No. C. Rev. 03 of 2010)

Darbari Lal & Ors. v. Madan Lal & Ors.

Date of Judgment: 15-03-2011

Judge(s): Hon'ble Mr. Justice J.P. Singh.

Subject Index: Code of Civil Procedure - Section 115 - Revision - Transfer of Property Act - Section 92 - suit filed by sister against her brother & other seeking declaration of suit land being joint family property and brother had no right to transfer it and to restrain him from raising construction - brother denied joint-ness of suit property - regarding land under survey no. 198/7min, it was contended the

same to have been acquired through decree of court - trial and appellate courts found it to be prima facie - case of plaintiff, regarding brother's claim under court decree, it was held that brother had got only imperfect title in terms of Section 92 of Transfer of Property Act, his right to land was only that of mortgagee - revision petition against - objection regarding maintainability - Held - scope of revision has been narrowed by way of latest amendments, however, restrictions do not apply to order passed by appellate court in cases arising out of interim or incidental matters - revision maintainable - further Held - trial and appellate Courts misconstrued the import of decree of court on which brother based his claim - contents of decree and order passed by Collector in 1981, suggest it to be decree for possession - order of trial and appellate Courts modified to the extent of injunctive direction pertaining to land under survey no. 198/7min to be inoperative - revision partly allowed.

(Case No. Civil Revision 09 of 2011)
Abdul Rehman Mir v. Mst. Rifat Ara
Date of Judgment: 24-02-2011
Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Guardians and Wards Act, 1890 - petitioner appointed guardian for the property of minor in terms of order passed by Principal District Judge - after attaining majority Rifat Jan filed an application for release of the property which was entrusted to the guardian (petitioner) - application allowed - Principal District Judge, Anantnag vide order impugned directed concerned Tehsildar to go on spot and had over property to the respondent challenged by way of revision - Held - it is the duty of guardian to handover and deliver the possession of the property to the minor of which he has taken charge - petition dismissed - petitioner directed to deliver possession of the property in question to respondent.

**Regional Judicial Conference (North Zone) February 25-27, 2011
on "Enhancing Quality of Adjudication"
(Some Reflections)**

Regional Judicial Conference - 2011: A Summary

The bounties of Almighty cannot be counted, they can be realised to an extent and selfish as the man is, doesn't realise them till he feels the need. Although God has given him beyond the limits of his needs, man has not been able to express his gratitude even within the circumference of those needs. Among these is something that makes a phenomenal difference between those that walk on four and those who walk on two. A field that makes us harvest non exhaustive and renewable crop of understanding, care, thought, fear, courage and other valuables according to the situation. A treasure that springs more and more every time something is fetched out of it. And it has come to be called as 'Mind'; teeming with reason of life and filled with colours of imagination. But mind has a dual personality. At its best, mind is solitary. But on many occasions, congregation of minds often leads to an alliance of an idea. Blending of ideas often provokes a thought and a cluster of thoughts often leads to better management of turbulent future.

National Judicial Academy had a similar purpose and the subject this time, "Enhancing Quality of Adjudication", proved more than perfect. These programs over the years have not only proved to be distinct nourishment for the entire legal fraternity but also have acted as a forum of avenues and expressions. To relive and have a window glance about the whole function it becomes necessary to present a brief synopsis of what happened at the conference from 25th to 27th of February, 2011.

Organised by State Judicial Academy, it brought together some of the luminaries of legal

Fraternity on a single dais. Mr. A.M. Sagar, Hon'ble Minister of Law and Parliamentary Affairs inaugurated the conference that was attended by judicial officers from across the six Northern India States. It formally took off with Director NJA, Dr. G. Mohan Gopal addressing the audience. The analytical speech was categorised into four board points by Dr. Gopal which he strongly stressed upon:

- A) Access to courts;
- B) Court excellence;
- C) Meaning, monitoring and enhancing public trust and confidence in the courts in discharge of constitutional mandate; and
- D) Adherence to court values, efficiency and efficacy.

Introspective as always, the topic of conference was split into above four branches by Dr. Gopal to make every one realise the importance and depth of it. The day came to an end with a fruitful discussion amongst the breakout groups with Hon'ble Justice Siddarth Mirdul, Judge, Delhi High Court in chair, who shared his valuable ideas.

The second day too was eventful. After the introduction of the dignitaries by Dr. Gopal, the Conference was addressed by Justice Dr. B.S. Chauhan, Judge, Supreme Court, who spoke about the divine functions of a judge and revival of section 89 of CPC. The worthy Judge while sharing his rich experience with the participants laid emphasis on the role of judiciary while applying judicial mind. The afternoon session was attended by a galaxy of legal intellectuals that include Justice S.B.Sinha, former Judge, Supreme Court, Justice K.S. Radhakrishnan, Justice Swatanter Kumar, Judges of Supreme Court, Justice N.A. Kakroo and Justice F.I. Rebello, Chief

Justices, Andhra Pradesh and Allahabad High Courts respectively, Justice F.M. Ibrahim Kalifulla, Justice Virender Singh, Justice Hakim Imtiyaz Hussain, Justice J.P. Singh, Justice M.H. Attar, Justice Hasnain Massodi, Judges of the High Court of Jammu & Kashmir among others. The occasion was graced by some brilliant speeches by Justice K.S. Radhakrishnan, Justice Swatanter Kumar, Justice N.A. Kakroo and Justice J.P. Singh.

Valedictory session was attended by Mr. Justice Altamas Kabir, Judge, Supreme Court of India, Hon'ble the Chief Minister and other esteemed Judges.

It was more than heart warming to see that the present was delivering treasures while as the future was listening carefully. The newly selected brood of young Munsiffs were felicitated with certificates.

Great minds have always proved to be guides as also motivators. Justice Hakim Imtiyaz Hussain over the years has been the same. In this Conference too His Lordship's inspirational efforts resulted in the grand success of the Conference that would be remembered for a long time.

(Mohammad Shafi Khan)
Principal District & Sessions Judge
Ganderbal.

CASE COMMENTS

Jt. Commissioner of IT, Surat versus Saheli Leasing & Industries Ltd. (2010) 6 SCC 384

Hon'ble Supreme Court in the above noted Judgement, has emphasized the need to structure the judgment on well founded guidelines given by the Hon'ble Supreme Court from time to time. The guidelines have been summed up as follows:

“7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/ order;

b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion;

c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader;

d) Appropriate care should be taken not to load it

with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative;

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author;

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society;

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.”

LEGAL MIND - TEASER

Following response has been received to the mind-teaser published in January, 2011 Issue :

“The basic principle of law of limitation is that once the limitation starts running it would not stop. But, period of limitation provided for appeals and applications can be condoned under Section 5 of Limitation Act and it is settled law that the said provision does not apply to suits. As such, in normal circumstances the court shall reject the plaint under Order VII Rule 11(d) CPC because it is the onerous duty on the courts to reject the plaint if it is hit by any of the clauses of Order VII Rule 11 CPC, so as to ensure that the suits which entail dismissal after trial of the suit, shall be dismissed at the threshold stage.

However, before rejecting a plaint under Order VII Rule 11(d) CPC, the court has to ensure that the grounds of exemption from limitation law as envisaged under Order VII Rule 6 CPC have not been taken in the plaint.

Since, the purpose of procedural law is to further the ends of justice and not to hamper it. Therefore, if the plaintiff is able to satisfy the Court that due to any sufficient cause, he was unable to present the plaint in the Court within the limitation period prescribed there for, then the court has ample powers under Order VII Rule 6 CPC to condone the delay. In this regard, guidance can be taken from law laid down in case titled '*Altaf Ahmad Hakim v. State of J&K & Ors.*' reported as 2009 (1) SLJ 181.”

(Amit Kumar Gupta)

Munsiff, Chenani.