



# CJA e-NEWSLETTER

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Monthly Newsletter of  
Chandigarh Judicial Academy of Punjab & Haryana High Court  
For circulation among the stakeholders in Judicial Education

## FROM THE DESK OF CHIEF EDITOR

In India, till virtually the close of the 20<sup>th</sup> century, **the Judges were Shaped in the Laboratory of Courts.** At all levels. I have grown seeing all this since the year 1955. The advent of Punjab High Court in Chandigarh.

**Legal Education is different from Judicial Education.** The judges also get their legal education along with others in law schools. In fact, the **shaping of the judges** has not been actually the concern of Legal Education. Even now. The selection of judicial officers at the threshold used to be made by State Public Service Commission till the close of the 20<sup>th</sup> century. Now the selection process has been taken over by the High Courts. The task of shaping the judges is now the concern of the judicial academies across the country. Through the medium of continued Judicial Education. The hangover of the law schools has continued. The first three Directors of National Judicial Academy were pure legal academics from the field of Legal Education. The first two Directors (Academics) at Chandigarh Judicial Academy were also academicians from the field of Legal Education. This seems to be the position in other judicial academies as well. In any case, the faculty of judicial academies was dependent upon the law teachers of the law schools. As if it was in continuation of Legal Education. From law schools to judicial academies. How sad! Equally, how true. Judicial Educators need to have good exposure and practical experience of Bar & Bench or of the Bench in particular. Sans this exposure, they are total misfits as Judicial Educators. **We need to convert the class rooms of judicial academies into court rooms.** Only then, the continued Judicial Education is possible. The senior judges and senior advocates with strong academic background must come to the judicial academies. They need to share their experiences with young trainee judicial officers. Interact with them. The task of **shaping the judges** is a serious exercise. In fact, the same is the challenge of continued Judicial Education. **Judicial Education is not contained in books.** The autobiographies and

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biographies of judges and advocates contain the life journeys and experiences of the legal and judicial coparcenary. If we look back, we will find that very few have shared their life experiences in print. Resultantly, the senior judges and advocates need to be the real judicial educators. They must actively and frequently take part in different training programmes of judicial academies. If they share their experiences with the judicial officers, the same would be a rich resource material of continued Judicial Education.

The continued Judicial Education and judicial academies are interwoven. Often the summit court as also judges have been urging and focusing on the role of judicial academies in shaping the judicial minds. The sound legal knowledge base of judicial officers is a limited role of judicial academies. The continued Judicial Education has to focus on the practical application of different laws to different human dispute situations. The lecture methodology is not any more relevant. The power-point presentations would also no more serve the real purpose of Judicial Education. During the attachment of trainee judicial officers with the judicial academies, they need to be given a real practical exposure. CJA has introduced the system of mock trials during the period of institutional training. The propositions for mock trials in different fields of law are prepared. Each proposition is prepared by two faculty members. The proposition would include disputable issues in a specific factual background, say in the field of NDPS Act. The trainee officers are assigned different roles. The proposition is given in advance. Each officer devotes time to understand the dispute involved in a given situation. Each judicial officer examines the matter from the point of view of the role assigned to him or her. Before the trainee officers actually participate in the trial, the two faculty members explain the different aspects of law involved in a particular trial. Once this is clear, the trial takes place. The officers play their different roles. Even during the trial, the officers get their doubts cleared on different issues. Ultimately, all the different officers are required to write the judgment separately and independently. In this process, the entire exercise becomes interesting and absorbing. The officers develop different skills which are required for performance of judicial functions. The factual canvas to be clearly recorded. The evidence is analyzed and appreciated. The law as interpreted by the top court and the high court is applied. The developing of the skill of writing reasoned judgment is the real object of Judicial Education.

The judicial academies have to play a significant role in the process of **change from students of law to judges**. This is a vital change. A responsible change. How to conduct the court. As also how to conduct themselves in court and outside the court. The judicial academies must provide the nuts and bolts. The tips to new judges. Judicial Academies must nurture their mind set. How to enjoy their work! How to feel good about their work! How not to treat the work as burden! How not to feel stressed! How to be relaxed and perform! How to feel good about doing their work! They must know the file. They must know the law. Good communication. Good in dress. Good in appearance. Good in body language. Above all, good in conducting the court. Good in managing

the lawyers. Good in keeping the environment of the court comfortable. This is important to extract the maximum from the lawyers. Quick and effective handling of cases. You contribute more. You achieve more. You feel good and happy. If you are happy, it will help in rendering justice better! Equally, doing justice, will give you happiness! It is two way traffic. The goal is common. If you are happy, you do wholesome justice. If you do wholesome justice, you are more happy. The judicial academies have been urged to nurture happy minds. This is the best recipe.

**Judicial academies must irrigate judicial minds into happy minds.**

Judicial Academies are being urged to sensitize Trial and High Court Judges. Regarding Gender and Family Court matters. Crimes against women. Domestic Violence. Matters under POCSO and Juvenile Justice Acts. Those who man these special courts must be trained to develop specific mind-set. Approach. Attitude. Sensitivity. After all, Judges are social engineers. Social engineering requires special skills. These are domains where mere computerized justice is not the solution. Purely technical justice is not the right approach. These are areas which involve human rights. More particularly the right to '**human dignity**' and the right to '**reputation**'. The Judges need to be sensitive that without these rights, the right to 'life' is meaningless. Therefore, judges need to be sensitized by Judicial Academies as to how best these rights can be protected. The academies need to expose the trainee judges to live situations coming before courts. How meaningfully these situations need to be handled. The academies need to structure specially designed capsule programmes. They need to involve social scientists. The psychologists. Above all, humanists. Special lectures to be organized. Workshops to be conducted. Plug all corners. Aggressive sensitization is required. Not only of TJOs. Even judges already in service need to be retrained. Refresher courses need of the hour. All this is part of continued Judicial Education. The sensitization of judges is ultimately the Shaping of Judges.

The life journey of a judge is a mixed bag. Sometimes a judge is faced with a challenging situation. Therefore, the judicial academies need to prepare the judicial officers to face such challenges. Cases like *Nirbhaya*, *Dera Sacha Sauda* and *Disha Ravi* exemplify such challenging situations. The Additional District & Sessions Judges in these three cases have come out as decorated soldiers of this institution. They have re-enforced the trust and confidence of the people in the judicial institution. Judges must continue to illuminate the same courage.

**Constitutional Morality, Values and Vision constitute part of the Basic Structure of the Constitution.** Judges at all levels are committed to the Constitution. Judges take oath in the name of the Constitution. They owe allegiance to the Constitution. Therefore, they must follow the Constitution in letter and spirit. This, in fact, is part of continued judicial education. This is part of their training. The Constitution is supreme. It is the king of kings. It is the holy book. It must find its place on every judge's table. Judges must keep company of the Constitution.

## LATEST CASES: CIVIL

*"The object of causing the delay in such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. The purpose of coming to the Supreme Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. In none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that Court will condone the delay."*

*- Sanjay Kishan Kaul, J. in State of M.P. v. Bherulal, (2020) 10 SCC 654, para 6*

### **Amitabha Dasgupta vs. United Bank of India & Ors.: 2021 SCC OnLine SC 124 - HELD-**

The Apex Court observed that the banks owe a duty of care to exercise due diligence in maintaining and operating the locker or safety deposit systems and that they cannot contract out of the minimum standard of care in this regard. The Supreme Court has laid down a procedure for operating and maintaining the same.

**The High Court of Judicature at Madras Rep. by its Registrar General v. M.C. Subramaniam & ors. 2021 SCC OnLine SC 109 -HELD-**The Supreme Court held that the parties who privately agree to settle their dispute outside the modes contemplated under Section 89 of the Code of Civil Procedure are also entitled to refund of Court fees.

**Nawal Kishore Sharma v. Union of India : 2021 SCC OnLine SC 74: Heart Ailment Not A 'Disability' Covered Under Rights of Persons with Disabilities Act: Supreme Court-HELD-**that a heart ailment (Dilated Cardiomyopathy condition) is not covered within the definition of disability in the Rights of Persons with Disabilities Act.

The observation was made while dismissing an appeal against High Court judgment which upheld the order of a Shipping Corporation of India that rejected a seaman's Claim for disability compensation. In his appeal challenging this judgment, one of the contentions raised before the Apex Court was that his heart ailment should be understood as a disability under the Disability Act and consequential benefits be accorded to him. *"The dilated Cardiomyopathy condition*

*of the appellant is neither a specified disability nor is the same relatable to the broad spectrum of impairments, which hinders his full and effective participation in society."* The bench observed.

### **A Subramanian v. R. Pannerselvam: 2021 SCC OnLine SC 66**

**: Even A Trespasser In Established Possession Can Obtain Injunction: Supreme Court-HELD-**while upholding High Court judgment decreeing an injunction suit, held that even a trespasser, who is in established possession of the property could obtain injunction. The bench observed that the principle that plaintiff cannot seek for a bare permanent injunction without seeking a prayer for declaration will not apply when the plaintiff's possession over the property is 'admitted and established'.

### **Joginder vs State of Haryana: 2021 SCC OnLine SC 59: Illegal Occupants Of Government/Panchayat Land Cannot Claim Regularization As A Matter Of Right: Supreme Court-HELD-**

The Supreme Court observed that persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. *"Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization"*. In this case, the applicants who were in illegal possession

of the land belonging to Gram Panchayat, made an application under Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964. This application was rejected by the competent authority by holding that applicants were in illegal occupation of area more than the required area up to a maximum of 200 square yards. The High Court dismissed the writ petition challenging the order passed by the authority. The bench in appeal held that the applicants were found to be in illegal occupation of the area of more than 200 square yards and therefore one of the conditions mentioned in Rule 12(4) is not satisfied.

**Daddy's Builders Pvt. Ltd. v. Manisha Bhargava: 2021 SCC OnLine SC 82: Consumer Fora Has No Power To Accept Written Statement Beyond Period Of 45 Days, Reiterates Supreme Court—HELD**—that Consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days. In this case, the National Consumer Disputes Redressal Commission, confirmed the order passed by the Karnataka State Consumer Disputes Redressal Commission rejecting an application seeking condonation of delay in filing the written version/written statement to the consumer complaint. The rejection was on the ground that the written version/written statement was filed beyond the prescribed period of limitation provided under the Consumer Protection Act, 1986.

**Vikash Kumar v. UPSC: 2021 SCC OnLine SC 84: Supreme Court Judgment Which Excluded Persons With Over 50% Visual/Hearing Impairment From Judicial Service No Longer Binding Precedent: Supreme Court—HELD**—that the decision in V Surendra Mohan v. State of Tamil Nadu would "not be a binding precedent", after the coming into force of the Rights of Persons with Disabilities Act, 2016. The Bench in the same judgment also held that facility of scribe can be provided for persons with disabilities other than those having benchmark disabilities. In Surendra

Mohan, a two-judge bench of the Supreme Court had held that stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post of a judicial officer is a legitimate restriction. The court had dismissed the appeal filed by a V. Surendra Mohan, who was held ineligible for the post of judicial officer (civil judge) as it was found that he was having 70% disability on account of blindness. *"The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them."* The bench held.

**Phoenix Arc Private Limited v. Spade Financial Services Limited: 2021 SCC OnLine SC 51: Collusive Commercial Transactions With Corporate Debtor Will Not Constitute 'Financial Debt' Under IBC : Supreme Court—HELD**— that collusive or sham transactions with a corporate debtor will not amount to "financial debt" within the meaning of the Insolvency and Bankruptcy Code 2016(IBC). The Supreme Court was hearing appeals challenging the orders of the NCLAT and the NCLT which excluded two entities(AAA & Spade) from the Committee of Creditors constituted for the insolvency resolution of a corporate debtor. The Bench also held that a financial creditor which is not a "related party" to the corporate debtor at present can also be excluded from the Committee of Creditors (CoC) if it is found that its removal of the "related party" label was a part of strategy to bypass the bar under Section 21(2), first proviso of the Insolvency and Bankruptcy Code(IBC).

## LATEST CASES: CRIMINAL

*"The power of judicial review discharged by constitutional courts under Article 226 or 32 of the Constitution, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome."*

*- Surya Kant, J. in Pravin Kumar v. Union of India, (2020) 9 SCC 471, para 25*

**Union of India v. K.A. Najeed:2021 SCC OnLine SC 50: Violation Of Fundamental Right To Speedy Trial Is A Ground For Constitutional Court To Grant Bail In UAPA Cases: Supreme Court-HELD-**that Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on ground of violation of Fundamental Right to Speedy Trial."The presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonized. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

The court observed while dismissing the appeal filed by National Investigation Agency against the Kerala High Court order granting bail to the accused in palm chopping of Thodupuzha Newman College professor T J Joseph in 2011.

**State of Gujarat v. BhalchandraLaxmishankar Dave:2021 SCC OnLine SC 52:Corruption Is An Offence Against Society: Supreme Court**

**Sets Aside Gujarat HC Judgment Acquitting An Accused-HELD-**that Offences under the Prevention of Corruption Act are offences against the society. The bench made the observation while setting aside a Gujarat High Court judgment acquitting an accused in a corruption case.

*"An Appellate Court while dealing with an appeal against acquittal passed by the Learned trial Court, is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. **Firstly**, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. **Secondly**, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Therefore, while dealing with the cases of acquittal by the trial Court, the Appellate Court would have certain limitations."*The bench held.

**N.Vijayakumar v. State of Tamil Nadu:2021 SCC OnLine SC 53:Mere Recovery Of Currency Notes From Public Servant Does Not Constitute Offence U/s 7 Of Prevention Of Corruption Act: Supreme Court-HELD-**Supreme Court has observed that mere possession or recovery of currency notes is not sufficient to constitute an offence under Section 7 of the Prevention of Corruption Act.

To prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe, the bench comprising Justices Ashok Bhushan, R. Subhash Reddy and MR Shah

observed while setting aside a High Court judgment which convicted an accused in a corruption case.

In this case, the accused, a Sanitary Inspector of Madurai Municipal Corporation, was acquitted in a corruption case by the Trial Court. The High Court, allowing the appeal filed by the State, reversed the Trial Court judgment and convicted the accused.

In appeal, taking note of the evidence on record, the bench observed that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt.

**OPTO Circuit India Ltd. v. Axis Bank:2021 SCC OnLine SC 55: 'Belief Of Commission Of Act Of Money Laundering' Has To Be Recorded Before Directing Freezing Of Bank Accounts Under PMLA: Supreme Court-HELD**-that before directing freezing of bank accounts under Prevention of Money Laundering Act, the Authority has to record the belief of commission of the act of money laundering.

The observation came while dealing with the case of Deputy Director, Directorate of Enforcement who had, through the communication addressed to the Anti Money Laundering Officer of some Banks, instructed them that the accounts maintained by the a company be 'debit freed/stop operations' until further orders, with immediate effect. The High Court had upheld this, while disposing the writ petitions filed by the Company.

The Apex Court referring to sec. 17 of the PMLA observed that *"It certainly is not the requirement that the communication addressed to the Bank itself should contain all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of PMLA before the communication is issued and thereafter the requirement of Section 17(2) of PMLA after the freezing is made is complied. There is no other material placed before the Court to indicate compliance of Section 17 of PMLA, more particularly recording the belief of commission of the act of money laundering and placing it before the Adjudicating Authority or for filing*

*application after securing the freezing of the account to be made. In that view, the freezing or the continuation thereof is without due compliance of the legal requirement and, therefore, not sustainable."* Holding this, the bench directed to defreeze of the accounts of the company.

**Neelam Manmohan Attavar vs Manmohan Atavar (D) through LRs:2021 SCC OnLine SC 58: Litigant Cannot Seek Recusal Of A Judge On The Ground That He/She May Not Get A Favourable Order: Supreme Court-HELD**-that a litigant cannot seek recusal of a judge from hearing his/her case on the ground that he/she may not get a favourable order. *"We see no valid and good ground for recusal by one of us. Merely because the order might not be in favour of the applicant earlier, cannot be a ground for recusal. A litigant cannot be permitted to browbeat the Court by seeking a Bench of its choice. Therefore, the prayer of the applicant petitioner in person that one of us (Dr. Dhananjaya Y Chandrachud, J.) should recuse from hearing the present miscellaneous application is not accepted and the said prayer is rejected."* The bench observed.

**M/s. Kalamani Tex v. P. Balasubramanian:2021 SCC OnLine SC 75: Dishonour Of Cheques- Blank Cheque Would Attract Presumption U/s 139 NI Act If Signatures Are Admitted: Supreme Court-HELD**-that 'reverse onus' clauses under Section 118 and Section 139 of the Negotiable Instruments Act become operative once the signature(s) of an accused on the cheque are established. The Court went ahead to observe that even a blank cheque leaf would attract presumption under Section 139 of the Negotiable Instruments Act when signatures are admitted by the accused.

*"Though the presumptions raised under Section 118 and Section 139 are rebuttable in nature, a probable defence needs to be raised, which must meet the standard of "preponderance of probability", and not mere possibility."* The bench observed.

## IMPORTANT CASES ON SPECIFIC PERFORMANCE OF CONTRACT

*"The constitutional courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority."*

*- Surya Kant, J. in Pravin Kumar v. Union of India, (2020) 9 SCC 471, para 28*

### **Ambalal Sarabhai Enterprise Ltd vs KS Infraspace LLP and another & Haryana Containers Ltd vs KS Infraspace LLP and another: 2020 SCC OnLine SC :Plaintiff Seeking Temporary Injunction in Specific Performance Suit Has To Show Strong Prima Facie Case on Undisputed Facts-HELD-**

The Court was hearing an appeal filed by defendants in a specific performance suit against the interim order passed by the trial court (and affirmed by High Court) restraining them from executing sale deed or any other documents creating charge with respect to the property. The defendants contended that there was no concluded contract for sale, and that the agreement was only in the negotiation stage. When the talks fell out, the advance amount was also refunded to the plaintiff, submitted the defendants. The Supreme Court held that-"Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily"

**Atma Ram vs. Charanjit Singh:2020 SCC OnLine SC 162:Conduct Of A Plaintiff Is Very Crucial In A Suit For Specific Performance-HELD-**The plaintiff in this case was a party to agreement for

sale dated 12.10.1994. The date for performance of the contract was fixed under the agreement as 07.10.1996. After more than three years, the plaintiff filed a suit only for the relief of mandatory injunction, which he valued only at Rs.250 and paid a fixed court fee of Rs.25. On an application filed by defendant challenging the maintainability of the suit, the Trial Court held that the suit was in fact one for specific performance of an agreement of sale and that the technical objection regarding the maintainability could be overcome by directing the petitioner/plaintiff to pay the requisite court fee. Thereafter plaintiff paid the deficit court fee and the trial court chose to treat the suit as one for specific performance, which was ultimately decreed by it. This decree was later set aside by the First Appellate Court. The High Court, affirming judgment held the suit as time barred."A shortcut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963".

"The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who institutes a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not

be entitled to the discretionary relief of specific performance. "

**R Lakshmikantham vs. Devaraji:2019 SCC OnLine SC 907: Delay To File Suit for Specific Performance Not A Ground To Deny Relief If It Was Filed Within Limitation Period-HELD**-In this case, the date of the agreement i.e. 22.09.2002 and suit was filed on 11.02.2005. There the high court dismissed the suit observing that "it has not been explained by the plaintiff as to why she should wait till 11.02.2005 to lay the suit for specific performance, after coming to know that the defendant had not responded to the notice sent by her. This would only go to show that in as much as the plaintiff had not been ready and willing to perform her part of the contract."*The High Court was incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff"*

**(SMT. Narayamma& ANR. Etc. Etc. vs. SRI Govindappa& ORS. Etc. Etc : (2020) 4 SCC (Civ) 363:Specific Performance-Illegal Agreement To Sell Can't Be Enforced In Favor Of Plaintiff-HELD**-The issue in the suit for specific performance was whether the agreement to sell dated 15.05.1990 executed by defendant in favor of the plaintiff would be enforceable in law or not. It was found that the agreement to sell dated 15.05.1990, was clearly hit by Section 61 of the Reforms Act. On this ground, the suit was dismissed.If both the parties are equally guilty and the fraud intended by them had been carried out, the position would be that, the party raising the defence is not asking the Court's assistance in any active manner. It has been held, that all the defence suggested is that a confederate in fraud shall not be permitted to obtain a decree from the Court because the documents of title, on which the claim is based really conveys no title at all. In the facts of the said case, it

was held, that though the result thereof would be assisting the defence therein to retain their possession, for such an assistance would be purely of passive character and all that the Court would do in effect is that on the facts proved, it proposes to allow possession to rest where it lies. It has been held that, latter course appears to be less injurious to public interest than the former one. It could thus be seen that, although illegality is not pleaded by the defendant nor is relied upon by him by way of defense, yet the court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action ex turpi causa non oritur actio. It has been held, that no polluted hand shall touch the pure fountain of justice. It has further been held, that where parties are concerned in illegal agreements or other transactions, courts of equity following the rule of law as to participators in common crime will not interpose to grant any relief, acting upon the maxim in pari delicto potior est conditio possidentis.

**Sucha Singh Sodhi v Baldev Raj Walia:2018 SCC OnLine SC 373:Plaintiff Can't Seek Specific Performance of agreement against defendant on a cause of action on which he has claimed permanent injunction-HELD**-In this case, first suit seeking an injunction against the defendant was withdrawn with leave of the court. Later, when a suit for specific performance was filed, the defendant objected to it, invoking Order 2 Rule 2, which states that the relief of specific performance ought to have claimed along with the relief of injunction in the earlier suit, which was withdrawn. The Trial Court and the High Court found favor with the defendant on this contention. On appeal filed by the court found that such a relief of specific performance could not have claimed along with the suit for injunction, for the reasons:

1. A plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of

- action on which he has claimed a relief of permanent injunction.
2. The cause of action to claim temporary/permanent injunction against the defendants is governed by Order 39 Rule 1 (c) of the Code which deals with the grant of an injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff, On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed when the plaintiff has noticed that performance is refused by the defendant. The limitation to file such suit is three years from such date.
  3. when the causes of action to sue are separate, when the factual ingredients necessary to constitute the respective causes of action for both the reliefs/claims are different and lastly, when both the reliefs/claims are governed by separate articles of the Limitation Act, then, in our opinion, it is not possible to claim both the reliefs together on one cause of action.

**Surinder Kaur (D) vs. Bahadur Singh (D):2019 SCC OnLine SC 1167:Relief Of Specific Performance Can Be Refused For Non Performance Of An Essential Promise In Contract-HELD-**The vendee by not paying the rent for 13 long years to the vendor Mohinder Kaur, even when he had been put in possession of the land on payment of less than 18% of the market value, caused undue hardship to her. The land was agricultural cultivable land. He must have been earning a fairly large amount from this land which measured about 9½ acres. He by not paying the rent did not act fairly."In our opinion, he did not act in a proper manner. Equity is totally against him.

In our considered view, he was not entitled to claim the discretionary relief of specific performance of the agreement having not performed his part of the contract even if that part is held to be a distinct part of the agreement to sell."

**Surinder Pal Soni vs. Sohan Lal :2019 SCC OnLine SC 900: Specific Performance Decree Not To Be Rescinded Merely Because Plaintiff Deposited Balance Sale Consideration After Appeal -HELD-**The plaintiff deposited the balance sale consideration soon after the appeal against the trial court decree was dismissed by the High Court. The defendant objected to the execution on the ground that the deposit by plaintiff was belated as the trial court had directed the execution of sale deed within two months. The plaintiff pointed out that the appeal against trial court judgment was pending in the High Court for three years, and it was dismissed only in 2015. The execution court rejected the objections of the defendant. Against this, the defendant filed revision in the High Court, The High Court allowed the revision, Aggrieved, the plaintiff approach the Supreme Court."In the present case, once the Appellate Court confirmed the judgment of the Trial Court, there was evidently a merger of the judgment of the Trial Court with the decision of the Appellate Court. Once the Appellate Court renders its judgment, it is the decree of the Appellate Court which becomes executable. Hence, the entitlement of the decree holder to execute the decree of the Appellate Court cannot be defeated". The court added that the HC could not have modified the decree in a civil revision petition arising out of execution proceedings."The High Court impermissibly substituted the decree for specific performance with an order for refund of the sale consideration, beyond the earnest money of Rs. 2,00,000/- to the decree holder. The reasons which weighed with the High Court in doing so as well as its ultimate directions are unsustainable. In a Civil Revision arising out of an execution proceeding, the High Court has modified the decree. Such a course was not open in law".

## EVENTS

The Trainee Judicial Officers from the states of Punjab and Haryana (50 in number) are undergoing foundation training. In order to give the practical exposure, CJA has structured 8 mock trials in different branches of civil and criminal law from February 8 to March 10, 2021. Each proposition is prepared by two faculty members. Each mock trial is carried out for three days by the two faculty members. Different points of law are explained in the light of factual issues. Different TJOs are assigned different roles to be played during the mock trial. The mock trial takes place under the supervision of the two faculty members. The doubts are clarified by the faculty members during the trial also. At the end of the trial, each TJO writes a separate an independent judgment. The whole idea is that the TJOs must be given a practical exposure and experience of a trial. This methodology is certainly found to be a better option to deal with different branches of law.

## NOTIFICATIONS

1. **Centre notifies Nationalised Banks (Management and Miscellaneous Provisions) Amendment Scheme, 2021:** Central Government, after consultation with the Reserve Bank, hereby makes the following Scheme further to amend the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970:

Nationalised Banks (Management and Miscellaneous Provisions) Amendment Scheme, 2021.

In the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, after paragraph 14, the following paragraph shall be inserted, namely:—“**14A. Special provision.—**Where a nationalised bank is required by law to do any act or thing and in order to do so the recommendations or determination of, or resolution of grievances of security holders by, or in respect of any appointment, approval or review by any Committee of the Board of the bank is required, and if the Board is satisfied that quorum for meeting of such Committee cannot be met on account of either existence of any vacancy in such Committee or recusal by member thereof, the Board may do that act or thing.”<sup>1</sup>

2. **Centre establishes National Consumer Disputes Redressal Commission to be known as National Commission under Consumer Protection Act, 2019:**

### **National Consumer Disputes Redressal Commission**

Central Government establishes a National Consumer Disputes Redressal Commission to be known as the National Commission.

The President and every other member of the National Commission appointed immediately before the commencement of the Consumer Protection Act, 2019 shall continue to hold office as the President and Member of the National Commission as provided in Section 56 of the said Act.<sup>2</sup>

<sup>1</sup><https://financialservices.gov.in/sites/default/files/5.pdf>

<sup>2</sup><http://egazette.nic.in/WriteReadData/2021/224350.pdf>