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FROM THE DESK OF CHIEF EDITOR

The doing of Justice is a serious business. Judges do what others refuse to do. Cool minds. Positive minds. Objective minds. Detached minds. Happy minds. They do quality justice. How to achieve such a blend. Angry minds. Stressed minds. Negative minds. They are difficult judges. They damage justice. **Humour in every domain is a good recipe. Courts are not divorced from humour. Humour in Black Robes is so well known. Black Robes and Humour are twins.** In-separable. Minus humour, the business of courts will be dull and drab. The lawyers and the judges are partners in court. They are also partners in court humour. Wit and wisdom go together. The lighter moments in court make all the difference. They are the spice of court life.

The Punjab High Court had the last English Judge, Donald Falshaw, ICS to serve the Indian High Courts. It was early in 1960s. He was hearing a criminal appeal. The counsel had difficulty in expressing himself in English language. He fumbled for words. Justice Falshaw hurriedly went through the district court judgment. The counsel was asked, what have you done! You gave such a deadly blow! There was no provocation. The counsel said, there was sudden provocation, my lord. He took away my 'she - dog'. The judge asked, she-dog! What do you mean. The counsel fumbled. He explained: He-dog (male), She-dog (female). The judge said, oh you mean a bitch. The counsel said, yes, the same thing. The judge said, even then, it was just a bitch. The counsel said, it was not just a bitch, it was not an ordinary one. The judge thundered, what, it was not an ordinary bitch. He said, my lord, it was a 'foreign-bitch'. In fact, it was of my lord's 'nationality'. Justice Falshaw put away the file and left the courtroom.

Justice H.R.Khanna was the bench partner with CJ Falshaw. Justice Khanna in his autobiography: *Neither Roses Nor Thorns* has recorded that the judges used to meet in the Judges Conference Room. There was a big square table. Justice Falshaw occasionally would come out with some witty remark. The other judges would crack a joke or talk about other matters. One or two judges were real good conversationists. They would regale with spicy talk. I may add that this was a good way to relax.

I recall that during my sojourn with National Judicial Academy, Bhopal, Dr. Justice S. Murlidhar, (then a judge of Delhi High Court and now of Punjab & Haryana High Court) used to come as a resource person in different programmes. We used to share different court happenings. He was full of them. I was equally fond of them. He suggested that in the High Court Judges programme, we must have a close door session where judges would share and regale with interesting happenings/anecdotes. They are the spice of black robes life.

In 1966, the state of Haryana came into existence. Consequently, it became High Court of Punjab and Haryana. The lawyers and judges hail from both the states. I represented M.D. University, Rohtak for number of years. There was prolonged litigation between Mr. Malik and Mr. Dahiya as its Registrar from time to time. Sometime Mr. Malik. Sometime Mr. Dahiya. There were number of rounds of litigation. On one occasion, the Hon'ble Judge asked; M.D. stands for what? The answer was, Maharishi Dayanand University. The judge observed, I thought it was; Malik and Dahiya University. It was a bench of Justice M.S. Liberhan and Justice H.S. Brar. Justice Liberhan was from Haryana and Justice Brar from Punjab. Ms. Kiran Chaudhary, advocate had come from Delhi to argue a matter. The opposite counsel wanted an adjournment. When the matter was called, the counsel stood up and told the court that he had taken the consent of the learned counsel, Kiran Chaudhary, please adjourn the matter. Justice Liberhan coolly retorted, you have taken her consent! I have been trying for her consent for the last ten years. The case was adjourned. Once a Haryanvi Jat appeared in person before the Division Bench of JJ M.M. Punchhi and M.R. Agnihotri. He was arguing in typical Haryanvi dialect. He was trying to convince the bench that injustice had been done to him by the authorities. He repeatedly reiterated that he was 'robbed' and 'looted'. No violation of law was pointed out. Justice Punchhi observed: "*Dekh Chaudhry! Tumhari baat hamarey samajh main nahi aai, tum vakeel kar lo*" The Haryanvi reacted – "*Judge sahib baat to apke samajh main naa aaye, vakeel main karloon*". The bench without a flicker passed the order: Notice of motion. Stay as prayed for meanwhile.

Punjabis can never be left behind. Mr. Kuldip Singh, Senior Advocate (as he then was) had a matter before the Chief's Division Bench. His instructing counsel informed the court that Mr. Kuldip Singh was on his legs before another bench. Please adjourn it to some other date. The Chief said, call Mr. Kuldip Singh, we would like to finish this matter today itself. Mr. Kuldip Singh somehow managed to rush to Chief's court. As he entered, the Chief said, yes Mr. Kuldip Singh. The Chief's court in Chandigarh is one of its own kind. Mr. Kuldip Singh looked back. There was a big watch clock on the back wall. Both the needles were dot at 12.

Mr.Kuldip Singh looked towards the Chief. Smilingly, he asked, my lord really wants me to argue at this hour. Who else would know my limitations than my lord. There was laughter. The Chief said, how we can suffer you at this hour. The case was adjourned. A leading Punjabi lawyer was fond of drinking. Understandably. Professionally, he was very good. He was called by the Chief Justice. The Chief enquired how much income tax he was paying. He replied, "My lord, I may not be paying huge amount of income tax. But I do compensate by paying a substantial amount of excise-duty". The Chief smiled. He recommended his name for elevation. A Professor was arguing his own case. There was some tension in court. Justice K.S.Grewal asked the Professor, where are you teaching? What is your specialized field? The judge was in for a shock. I have no subject of specialization. I have never taught anywhere. Then, how are you called a Professor? He responded, it is just like the word Hon'ble with your lordship's name. It does not mean anything. A lawyer from south of India and known for his ability appeared before a bench presided over by Justice J.L.Gupta. He referred to a decision of the House of Lords. Justice Gupta told him, you wear a dhoti and yet you rely upon House of Lords. They wear morning trousers. Yes, I wear a dhoti. My lord wears the morning trouser. I have to cater to my lords requirements. In any case, the underlying idea is the same.

A good judge is one who can control his anger. It happened in Justice G.R.Majithia's court in early 1990's. A senior counsel was arguing. Suddenly, the tempers went high. Justice Majithia lost his cool. He told the counsel, he would send him straight to Burail Jail (Jail in Chandigarh). I was waiting for my case. I got up and said, please do not. Who are you to advice me? Not me, my lord. It was Shakespeare who said, he is a fool who cannot get angry but he is wise, who will not. I added, my lord, you will not prove Shakespeare wrong. Thank you, Dr. Gupta, I will not. The situation got defused.

The Punjab & Haryana High Court has made rich contribution in developing sound service law jurisprudence. Kuldip Singh, J.L.Gupta and M.R.Agnihotri, Senior Advocates (later all three were elevated as Judges) were known as three service chiefs. On a given day, J.L.Gupta was arguing a service matter before the 1st Division Bench presided over by late Chief Justice P.C.Jain. The bench was not agreeing with Mr.Gupta. Mr.Gupta was trying to persuade the bench with all his skills at his command. Slowly, gradually and even aggressively. The Chief Justice retorted, Mr.Gupta, we have suffered you for one full hour. Mr.Gupta's response was, believe me, my lord, the suffering has been mutual. The Chief smiled. The bench was generous. In that case, we must grant you the stay. This is the beauty of openness of judicial minds.

Humour in Black Robes is unique. The lawyers fight battles every day. Judges deal with disputes of human beings. Often, tense situations do arise. They need to be laced with lighter touch. It is the lighter moments in court which help in filtering difficult situations. The coparcenary of Black Robes of Punjab & Haryana High Court has always handled hard situations with light touch.

Balram K. Gupta

LATEST CASES : CIVIL

"The rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental."

— *S. Ravindra Bhat, J. in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 86*

L&T Housing Finance Ltd. vs. Trishul Developers:2020 SCC OnLine SC 800: Trivial Procedural Lapses Not A Ground To Nullify SARFAESI Proceedings Initiated By Secured Creditor If No Substantial Prejudice Was Caused To Borrower: SC-HELD-The Supreme Court has observed that proceedings initiated under the SARFAESI Act by the Secured Creditors cannot be nullified merely on the ground of technical defects and procedural lapses unless substantial prejudice was caused to the defaulter. In appeal filed by Secured Creditor, the Apex Court noted that the borrower (in its correspondence with the secured creditor) did not deny advancement of loan, execution of Facility Agreement, their liability and compliance of the procedure being followed by the secured creditor prescribed under the SARFAESI Act. The court also observed that the objection raised by the borrower was trivial and technical in nature and the secured creditor has complied with the procedure prescribed under the SARFAESI Act.

Suganshi (Dead) V. P. Rajkumar:2020 SCC OnLine SC 795:[Order 8 Rule 1A(3) CPC] Court Should Take A Lenient View While Considering Defendant's Application To Produce Additional Documents: SC-HELD-The Supreme Court has observed that the courts should take a lenient view when an application is made by defendant for production of the document which he was not able to produce along with the written statement. The court was considering an appeal against High Court judgment which dismissed the revision petition filed by the defendants in a suit challenging the refusal to entertain an application under Order 8 Rule 1A(3) of the Code of Civil Procedure seeking leave of the court to produce additional documents. It was stated by

defendants that they had recently traced these documents related to the suit property and that was why they could not produce them along with the written statement. Referring to Rule 1A of Order 8 of C.P.C, the bench also noted that it mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement.

Shri Ram Sahu (Dead) Vs. Vinod Kumar Rawat :2020 SCC OnLine SC 896: Powers Of Review U/s 114 CPC Cannot Be Exercised As An Inherent or Appellate Power: Supreme Court-HELD-The Supreme court has observed that the powers of review under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure cannot be exercised as an inherent power or an appellate power. In appeal, the bench comprising discussed the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 CPC. Referring to various precedents in this regard, the court held that *"To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed*

grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to 34 the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review"

Shanti Devi Alias Shanti Mishra v Union of India and others:2020 SCC OnLine SC 908: For Writ Against Stoppage Of Pension, Part Of Cause Of Action Arises Where Pensioner Is Getting Pension : Supreme Court-HELD-As per a significant judgment delivered by the Supreme Court, a retired employee can file a writ petition against stoppage of pension at the place where she is residing and need not approach the High Court where the pension authority is located. A three-judge bench held that part of cause of action under Article 226(2) of the Constitution of India for filing writ arises at the place where the pensioner is residing and drawing pension.

Vetindia Pharmaceuticals Limited Vs. State Of Uttar Pradesh: 2020 SCC OnLine SC 912: Blacklisting Orders May Cause Civil Death of Institutions: SC Sets Aside Indefinite Blacklist Order Issued Against A Pharma Company-HELD-The Supreme Court has set aside an indefinite blacklisting order issued in the year 2009 against VETINDIA Pharmaceuticals Limited. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organization/institution for all times to come described as a civil death.

C. BRIGHT vs. THE DISTRICT COLLECTOR :2020 SCC OnLine SC 909: Time Limit Stipulation For District Magistrates To Deliver Possession of Secured Asset Is Not Mandatory:

Supreme Court-HELD-The Supreme Court has held that time limit stipulation in Section 14 of the SARFAESI Act mandating the District Magistrate to deliver possession of a secured asset, is directory and not mandatory and that the inability to take possession within time limit does not render the District Magistrate Functus Officio. The bench upheld a judgment of Division Bench of High Court which held that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days upon reasons recorded in writing, is a directory provision.

Imperia Structures Ltd. Vs. Anil Patni :2020 SCC OnLine SC 894: Consumer Complaint By Allottee Against Builder Not Barred By RERA Act: Supreme Court-HELD-The Supreme Court has held that a complaint before Consumer Fora by allottees against builders is not barred by the Real Estate (Regulation and Development) Act, 2016. The court noticed the following Statutory provisions in RERA: Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law, while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. It also noted that *Malay Kumar Ganguli vs. Dr. Sukumar Mukherjee*, it was held that a consumer forum/commission is not a civil court and therefore observed that Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint.

LATEST CASES : CRIMINAL

"Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years."

— S. Ravindra Bhat, J. in *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, para 87

M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence: 2020 SCC OnLine SC 867: Courts cannot adopt a rigid or formalistic approach while interpreting Section 167(2) CrPC-HELD-Interpreting Section 167(2) CrPC the Supreme Court said that the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21. It said, *"The history of the enactment of Section 167(2), CrPC and the safeguard of 'default bail' contained in the Proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law."*

Going into the legislative intent, the Court noticed that Section 167(2) was enacted providing for time limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. *"... the intent of the legislature was to balance the need for sufficient time limits to complete the investigation with the need to protect the civil liberties of the accused."*

The Court, hence, concluded as follows:

- Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.
- The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent

filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

- Where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.
- Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.

Tofan Singh v. State of Tamil Nadu: 2020 SCC OnLine SC 882:Officers designated under Section 53 of the NDPS Act are "Police Officer" within the meaning of section 25 of the Evidence Act-HELD-The Supreme Court has held that

- That the officers who are invested with powers under section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) are "police officers" within the meaning of section 25 of the Evidence Act, 1872, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.
- That a statement recorded under section 67 of the NDPS Act cannot be used as a

confessional statement in the trial of an offence under the NDPS Act.

Rajesh v. State of Haryana: 2020 SCC OnLine SC 900:Two men walk free after 12 years in prison as SC holds that conviction cannot be based solely on refusal to undergo a Test Identification Parade-HELD-The Supreme Court has summarised the principles relating to conduct of a Test Identification Parade (TIP) and has held that "... the identification in the course of a TIP is intended to lend assurance to the identity of the accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade."The Principles are:

1. The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime;
2. There is no specific provision either in the CrPC or the Indian Evidence Act, 1872 which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP;
3. Identification parades are governed in that context by the provision of Section 162 of the CrPC;
4. A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held;
5. The identification of the accused in court constitutes substantive evidence;
6. Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act;
7. A TIP may lend corroboration to the identification of the witness in court, if so required;
8. As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration;
9. Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible;
10. The weight that is attached to such identification is a matter to be determined by

the court in the circumstances of that particular case;

11. Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence; and
12. The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused.

Shatrughna Baban Meshram v. State of Maharashtra: 2020 SCC OnLine SC 901:When the act of the accused falls under clause fourthly of section 300 IPC, usually death sentence is not awarded. SC commutes sentence under Section 376A IPC-HELD-In the

present case, when the crime was committed, the victim was about two and half years of age and the Ordinance which was holding the field. However, the sentence prescribed by Section 376(2) as amended by the Amendment Act, provided that the imprisonment for life "shall mean imprisonment for the remainder of that person's natural life". In such a case, the Court was posed with the question that whether such ex-post facto prescription would be consistent with the provisions of sub-Article (1) of Article 20 of the Constitution."

The Court explained, "An imposition of life sentence simpliciter does not put any restraints on the power of the executive to grant remission and commutation in exercise of its statutory power, subject of course to Section 433A of the Code. But, a statutory prescription that it "shall mean the remainder of that person's life" will certainly restrain the executive from exercising any such statutory power and to that extent the concerned provision definitely prescribes a higher punishment ex-post facto. In the process, the protection afforded by Article 20(1) of the Constitution would stand negated."

It was further held that since Section 376A as amended by the Ordinance being gender neutral so far as victim was concerned, naturally covered cases where a victim was a woman, hence, the ex-post facto effect given to Section 376A by the Amendment Act from the day the Ordinance was promulgated, would not in way be inconsistent with the provisions of sub-Article (1) of Article 20 of the Constitution.

Thus the court awarded 25 years of sentence to meet the ends of justice".

LATEST CASES : FAMILY LAW

"Law has to cater to wide variety of situations as appear in society. Law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as are called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between competing forces—justice being the end—and also because the process of fresh legislation could take a long time, which would mean failure of justice, and with it erosion of public confidence and trust in the justice delivery system."

— Navin Sinha, J. in *Varinder Kumar v. State of H.P.*, (2020) 3 SCC 321, para 13

Ritika Sharan v. Sujoy Ghosh: 2020 SCC OnLine SC 878: Does the custody of a child gets transferred from the mother to grand parents if they are assisting in looking after the child? **-HELD** In a case dealing with the custody of a 7-year-old, the Supreme Court has said that *mere fact that a mother is looking after the child with the assistance of her parents, does not detract from her role and responsibility as a mother.*

The Court was of the opinion that ***the fact that the parents of the appellant have moved to Bengaluru to help their daughter, does not transfer the custody of the child, either as a matter of law or fact, from the appellant to the maternal grand-parents.*** The Court further said that *"While the child is attached to the respondent, he has indicated, in no uncertain terms, his desire to live with his mother. The appellant is gainfully employed in Singapore and her desire that she should be allowed to take the child with her is not an artifice. The appellant, as the mother of the child, has been continuously with the child since his birth, despite the demands of her employment."* Noticing that the interests of the child are best subserved by ensuring that both the parents have a presence in his upbringing, the Court said that the respondent, as the father, is entitled to have adequate rights of access and visitation as a balance has to be drawn so as to ensure that in a situation where the parents are in a conflict, the child has a sense of security.

Rajnish v. Neha: 2020 SCC OnLine SC 903—Maintenance in matrimonial disputes| Supreme Court frames extensive

guidelines; Resolves issue of overlapping jurisdiction under different Laws-HELD—The directions came in a case which revealed that *the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and there have been difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time.* The Guidelines issued are:

a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, the Court issued the following directions in order to ensure uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Maintenance/Interim Maintenance

(a) the Affidavit of Disclosure of Assets and Liabilities shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

[Note: The judgment has the Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III.]

(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks.

- The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent.
- If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings.
- On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the applicant and the pleadings on record;

(d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of

the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC. On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so.

The income of one party is often not within the knowledge of the other spouse. Hence, the Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court.

(i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned 37 order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

(k) A professional Marriage Counsellor must be made available in every Family Court

Permanent alimony

(i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.

(ii) In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony

to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

(iii) Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

(iv) If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

The financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living.

Serious disability or ill health of a spouse, child / children from the marriage / dependant

relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

Maintenance in all cases will be awarded from the date of filing the application for maintenance before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

(e) Enforcement/Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

Shruti Kaushal Bisht v. Kaushal R. Bisht: 2020 SCC OnLine SC 913 –Seeking transfer of petition for restitution of conjugal rights under Section 21-A(2)(b) of the Hindu Marriage Act, 1955 cannot be done:**SC-HELD**-In a case where the husband and wife both sought transfer of cases filed against by both of them against one another, the single judge bench allowed the transfer petition filed by the wife and transferred the divorce case instituted by the husband in Pune to Delhi on ground wife having no independent source of income. The bench held that the phrase “the petition presented later” under Section 21-A(2)(b) of the Hindu Marriage Act, 1955 does not include a petition filed under Section 9 of the Act for restitution of conjugal rights.

WEBINARS OF THE MONTH

| S. No. | Date | Topic | Speaker |
|--------|--------------------|---|--|
| 1 | November, 26, 2020 | Constitution Day Address | Dr. Balram K Gupta, Director (Academics) |
| 2 | November, 28 2020 | Computation of Compensation in Acquisition of Land-II | Dr. Gopal Arora, Faculty Member |

FORTHCOMING EVENT

Online Training Programme of HCS (EB) Officers of State of Haryana during December 7-11, 2020.

NOTIFICATION

Arbitration and Conciliation (Amendment) Ordinance, 2020: Stakeholder get opportunity to seek unconditional stay of enforcement of arbitral awards induced by fraud or corruption:

Amendment of Section 36

In Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in sub-section (3), after the proviso, the following shall be inserted and shall be deemed to have been inserted with effect from 23rd day of October, 2015, namely:—

“Provided further that where the Court is satisfied that a prima facie case is made out,—

- (a) that the arbitration agreement or contract which is the basis of the award; or
- (b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.”.

Explanation.— For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

Substitution of new Section for Section 43J

For section 43J of the principal Act, the following section shall be substituted, namely:—

Norms for accreditation of arbitrators

“43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.”

Omission of Eighth Schedule

The Eighth Schedule to the principal Act shall be omitted.¹

¹<http://egazette.nic.in/WriteReadData/2020/222941.pdf>