



NOVEMBER 2024

RESILIENCE LAW ACADEMY

LAW TIMES

MONTHLY
CONSOLIDATION

1. **Limitation Period of Suit for Title Declaration**

A bench comprising of Justice Pankaj Mithal and Justice Ujjal Bhuyan held that if in a suit for declaration of title, a further relief of recovery of possession is also sought, then the limitation period for filing the suit would be governed by the limitation period prescribed for filing a suit for recovery of possession (i.e., 12 years as per Article 65 of Limitation Act) and not the one prescribed for seeking declaration of title (i.e., 3 years as per Article 58 of the Limitation Act) .

The Supreme Court held this **in the case of N. Thajudeen v. Tamil Nadu Khadi & Village Industries Board.**

2. **SC guidelines regarding legal aid to poor**

A bench comprising of Justice B.R. Gavai and Justice K.V. Viswanathan held that "awareness is the key" and to create awareness adequate measures should be taken to display the address and contact number of the nearest legal aid officer in public places such as police stations, bus stands and post offices, and railways.

The Supreme Court held this **in the case of Suhas Chakma v. Union of India & Ors.**

3. **Different grade pay for artificers in Navy**

The Supreme Court of India recently upheld the Armed Forces Tribunal's ruling regarding the grade pay disparity between Navy Artificers and Chief Petty Officers. The court concluded that differences in grade pay are justified due to the distinct promotional hierarchy within the Navy's technical branch, and the notion that promotional pathways and command structures can influence pay grades despite equivalent seniority rankings.

Justices Abhay S Oka and Ujjal Bhuyan held **in the matter of Manish Kumar Rai v. Union of India & Ors.**

4. **Matrimonial Dispute Cannot Bar Spouse's Right to Education**

Recently, the Bombay High Court in the matter of Doctor v. State of Maharashtra has held that the state cannot have policies that adversely affect citizens' pursuit of education, especially for those in employment.

5. Government entity and arbitral award

A bench of Chief Justice Dr. DY Chandrachud, Justice JB Pardiwala and Justice Manoj Misra held that there cannot be any special treatment given to the party because it is a government entity.

The Supreme Court held this **in the case of International Seaport Dredging Pvt Ltd v. Kamarajar Port Limited.**

6. Constitutional courts

The Kerala High Court in the matter of Indian Broadcasting and Digital Foundation v. The Telecom Regulatory Authority of India ruled that while only Constitutional Courts can enforce fundamental rights, specialized tribunals like the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) can exercise judicial review over those rights. This distinction arose during a challenge to the Telecommunication (Broadcasting and Cable) Services regulations and tariff order.

The court stated that while constitutional courts have the power to enforce rights, tribunals can assess whether decisions align with those rights, thus directing the petitioners to seek redress before TDSAT.

7. Preliminary Inquiry into Sexual Assault Allegations

Recently, the Allahabad High Court in the matter of XXX v. State of U.P. has held that the present case where the allegations were of sexual assault and molestation directing the police for making preliminary inquiry and relying on the police report in favor of the accused is neither desired nor lawful.

8. Opinion of Judges in Property Owners Association v. State of Maharashtra

The Supreme Court, in a 7:2 majority ruling clarified that not all private properties qualify as "material resources of the community" under Article 39(b) of the Constitution. The Court overruled the 1983 Sanjeev Coke case, which had allowed the State to redistribute all private properties for the common good, also states that only properties meeting specific criteria as "material resources" and "of the community" can be subject to redistribution. This decision limits the scope of state intervention in private property.

9. Protest petition

Recently, the Supreme Court in the matter of Subrata Choudhury @ Santosh Choudhury & Ors. v. The State of Assam & Anr. has held that a second complaint is maintainable when the final report is found negative but only when the second complaint has some core difference.

10. Judgement per incuriam

A bench of Chief Justice Dr. DY Chandrachud, Justice Hrishikesh Roy, Justice PS Narsimha, Justice Pankaj Mithal and Justice Manoj Misra laid down the principles when a judgment can be declared as per incuriam.

The Supreme Court held this **in the case of M/s Bajaj Alliance General Insurance Co. Ltd v. Rambha Devi & Ors.**

11. No compromise in POCSO case

The Supreme Court overturned the Rajasthan High Court's decision **in Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors** that had quashed a sexual assault case against a teacher accused of rubbing a student's breast, based on a compromise between the victim's father and the teacher. The Court observed that such offenses, particularly under the POCSO Act the Protection of Children from Sexual Offences Act, 2012, cannot be treated as private matters for compromise due to their serious societal impact.

Court ruled that sexual assault cases must proceed in the interest of justice, affirming that such crimes against children are heinous and cannot be settled privately.

12. Section 482 of BNSS

A bench of Justice Kirti Singh held that once first anticipatory bail application is denied on merits the second application for same relief cannot be entertained by introducing new circumstances, development or material.

The Punjab and Haryana High Court held this **in the case of Sikander Singh v. State of Punjab and Another.**

13. Section 11(6-A) of the Arbitration & Conciliation Act, 1996

Recently, the Supreme Court in the matter of Aslam Ismail Khan Deshmukh V. Asap Fluids Pvt. Ltd. & Anr. has held that arbitral tribunal has the authority to impose cost on the party who refrains the other party to participate in the arbitration proceedings by taking advantage of the minimum interference of the courts at referral stage.

14. Regular recruitment process

A bench of Chief Justice Devendra Kumar Upadhyaya and Justice Amit Borkar held that merely because the initial appointment orders issued to the petitioners mentioned that the appointment was made on contractual basis, it cannot be said that the petitioners' appointment was not made on regular basis.

The Bombay High Court held this **in the case of Rakesh Lal Meena and others v. Union of India through the Secretary, Ministry of Home Affairs and Others.**

15. Institution of national importance

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16. Rule of law

Recently, the Supreme Court in the matter of In Re Manoj Tibrewal Akash has denounced the "Bulldozer Justice" trend and the same is against the rule of law.

17. Condition of pre-deposit

A bench of Justice Arun Monga held that condition of pre-deposit under Section 148 of Negotiable Instruments Act, 1881 is not mandatory in nature.

The Rajasthan High Court held this **in the case of Asha Devi v. Narayan Keer & Anr.**

18. House trespass

Recently, the Supreme Court in the matter of Sonu Choudary v. State of NCT Delhi has held that a restaurant cannot be said to be a place which fulfills the requirement of house trespass.

19. Sharing of outgoing partner

The Supreme Court in M/s Crystal Transport Private Limited & Anr. v. a Fathima Fareed Unisa & Ors. has ruled that an outgoing partner of a dissolved firm has the right to seek accounts, and a share of the profits earned from the firm's assets, even if the assets are taken over by another entity without the partner's consent.

- The bench, led by Chief Justice DY Chandrachud, emphasized that profits derived from the firm's assets should be proportionally distributed to the outgoing partner.
- This ruling came in a dispute over the dissolution and settlement of accounts of the Crystal Transport Service partnership.

20. Cross examination in show-cause proceedings

Recently, the Madras High Court **in the matter of Nalin Gupta v. Commissioner of Customs** has held that the court emphasized that proper procedure is required i.e. response to Show Cause Notice on merits and then any procedural requests like cross-examination can be made. This sequence cannot be bypassed or reversed.

21. Hindu succession act, 2005

The Madras High Court recently discussed the impact of the 2005 amendment to the Hindu Succession Act, which granted daughters equal rights in ancestral property. Justice N. Seshasayee observed that while this empowered daughters, it reduced the shares of the widow and mother of the deceased, who are also Class I heirs.

- The court ruled that the amendment aimed to balance the interests of female heirs without altering the core principles of coparcenary or ancestral property.
- The court further noted that the notional partition introduced by the amendment affected both the rights of surviving coparceners and the overall distribution of property.

22. Nomination of Justice Surya Kant as Chairperson of Supreme Court Legal Services Committee

Recently, the Supreme Court Justice Surya Kant has been nominated as the chairperson of the Supreme Court legal Services Committee (SCLSC) by the CJI (Chief Justice of India) of India.

23. Oath of 51st Chief Justice of India

Justice Sanjiv Khanna has officially assumed the office as the 51st Chief Justice of India, succeeding Justice DY Chandrachud. He was sworn in by President Droupadi Murmu in a ceremony at Rashtrapati Bhavan. Justice Sanjiv Khanna's tenure as Chief Justice will last until May 2025. He is known for his significant contributions to various landmark judgments, including in cases involving the RTI Act, hate speech regulation, the Central Vista project, and politically sensitive bail applications, among others.

24. Compassionate appointment

A bench of Justice Abhay S Oka, Justice Ahsanuddin Amanullah and Justice Augustine George Masih held that compassionate appointment is not a vested right.

The Supreme Court held this **in the case of Tinku v. State of Haryana.**

25. Invocation of Article – 14

The Supreme Court ruled that a person cannot claim equal treatment based on an illegal benefit granted to someone else, emphasizing that Article 14 of the Constitution of India, 1950 (COI) cannot be invoked to perpetuate illegality. The case involved a petitioner seeking a compassionate appointment after the Haryana Government rejected his claim due to a time-bar under the 1999 policy. The petitioner argued that others in similar situations had been granted appointments despite being time-barred, but the Court upheld the rejection, citing the need to adhere to legal policies.

26. Enquiry Limits of Referral Courts in Case of Arbitration Agreement

In a recent ruling, the Supreme Court observe that courts under Section 11(6) of the Arbitration & Conciliation Act, 1996, must limit their role to determining the prima facie existence of an arbitration agreement, without delving into the factual details of the dispute. The Court criticized the High Court for conducting a detailed factual analysis and dismissing the arbitration application. This decision reinforces the legislative intent behind the 2015 amendment, which restricted judicial scrutiny at the Section 11 stage.

Additionally, the Court observes the possibility of imposing costs on parties misusing arbitration.

27. Forcing wife to leave job amounts to cruelty

A bench of Chief Justice Suresh Kumar Kait, Justice Sushrut Arvind Dharmadhikari held that forcing wife to leave job amounts to cruelty.

The Madhya Pradesh High Court held this in the case of X v. Y.

28. Consensual Sexual Intercourse with Minor Wife Is Rape

Recently, the Bombay High Court in the matter of S v. State of Maharashtra has essentially reinforced the principle that marriage cannot be used as a defense in cases involving sexual offenses against minors, regardless of consent or marital status.

29. SC's order on AIR pollution

The Supreme Court of India has directed strict adherence to preventive health measures, including wearing masks, as air quality in Delhi-NCR deteriorates. The Court order the implementation of Stage-IV measures under the Graded Response Action Plan (GRAP) due to the AQI crossing 450. Court criticized the Commission for Air Quality Management (CAQM) for delaying the enforcement of GRAP protocols, observed that preventive actions should have been taken earlier, even before the AQI crossed critical thresholds.

30. Impact of NDPS on young generation

The Bombay High Court in the case of Kailas Pawar v. State of Maharashtra stated the strict implementation of the Narcotic Drugs and Psychotropic Substances (NDPS) Act to combat drug trafficking and abuse. Justice Govind Sanap, hearing a case involving 39 kilograms of ganja, warned that unchecked drug use could harm society and destroy the future of the younger generation.

- The court urged all stakeholders to ensure diligent enforcement to protect societal well-being.

31. Adverse possession of state can not be claimed on private property

A bench of Justice Vikram Nath and Justice PB Varale held that plea of adverse possession cannot be raised by the State against private citizens.

- The Supreme Court held this **in the case of State of Haryana v. Amit Lal (Since Deceased) Through Lrs.**

32. Water pollution

Recently, the Delhi High Court **in the matter of Court on its Own Motion v. Govt. of NCT of Delhi & Ors** has issued directions that have been issued in pursuance of ensuring proper environmental standards and public health safety in the NCT of Delhi.

33. Section 195 of CrPC

Recently, the Supreme Court in the matter of Mr. Ajayan v. The State of Kerala and Ors has held that

- Section 195 (1) of the Code of Criminal Procedure, 1973 (CrPC) does not bar the investigation when directed by the High Court.
- The Supreme Court emphasized that Section 195 of CrPC should not be a technical barrier preventing the investigation of serious allegations of judicial process interference.
- The provision's primary purpose is to maintain the integrity of judicial proceedings while protecting individuals from frivolous complaints.

34. Estoppel

The Kerala High Court recently ruled on a review petition in a custody dispute, clarifying that a party is not estopped from challenging an order if the error was made by the court itself. The court ordered its duty to correct its own mistakes and stated that custody orders can be varied if circumstances change.

- The case involved a father seeking custody of his child, but the court had initially granted permanent custody to the mother, subject to the father's visitation rights, based on a mediation settlement.

35. Sale of immovable property to be treated as capital gains

A bench of Justice AK Jayasankaran Nambiar and Justice KV Jayakumar held that income from sale of immovable property is to be treated as 'Capital gains' and not 'business income'.

- The Kerala High Court held this **in the case of M/s Knowell Realtors India Pvt Ltd v. Assistant Commissioner of Income Tax.**

36. Presumption in rape cases

Recently, the Bombay High Court in the matter of Aman Tagade v. State of Maharashtra has held that it is always presumed that the rape allegations made by the victim and her family are true and not fabricated as no family would indulge the name of their daughter for any purpose.

37. Right to be forgotten

A bench of Justice Amit Mahajan held that right to be forgotten is a part of right to live with dignity guaranteed under Article 21 of the Constitution of India, 1950 (COI).

- The Delhi High Court held this in the case of ABC v. State & Anr.

38. Life interest of women

The Supreme Court clarified that under Section 14(2) of the Hindu Succession Act, 1956, a Hindu woman with a restricted estate in property cannot claim absolute ownership or transfer such property through a Will. The ruling came while dismissing a case where the defendants claimed ownership of land bequeathed by their mother, whose limited life interest in the property prevented her from becoming its absolute owner.

- This judgment observes the distinction between Sections 14(1) and 14(2) regarding property rights for Hindu women.

39. Confession made to police officer is inadmissible

The Supreme Court clarified that under Section 27 of the Evidence Act only the portion of an accused's statement directly linked to the discovery of evidence is admissible, excluding any confession of guilt. It expressed concerns over trial courts being influenced by inadmissible confessions included in the prosecution's examination-in-chief. This ruling arose during an appeal in a murder case where the investigating officer improperly included the accused's confession while testifying.

40. Direct evidence

Recently, the Jharkhand High Court in the matter of Jay Prakash Yadav v. The State of Jharkhand has held that the testimony of an eyes witnesses who has directly seen or heard the incident constitutes direct evidence.

41. Section 303(2) of BNS

Recently, the Madras High Court in the matter of Jebaraj @ Jeyaraj v. The State of Tamil Nadu has held that in non-cognizable and bailable offences it is required to take the prior permission of the magistrate to file a complaint.

42. No amendment of plaint

The Jharkhand High Court states that amendments to pleadings that alter the fundamental nature of a suit or prejudice accrued rights of the opposing party are impermissible, especially after the conclusion of evidence. Justice Subhash Chand observed that such amendments, including changes to the source of title claimed by the plaintiff, are prejudicial to the defendant.

- The case involved a suit seeking the cancellation of a sale deed allegedly executed in violation of Section 46(1)(b) of the Chota Nagpur Tenancy Act.

43. Section 19(b) of specific relief act, 1963

A bench of Justice JB Pardiwala and Justice R Mahadevan held that if a person fails to conduct proper inquiries about the title, they cannot be deemed to be bona fide purchaser under Section 19 (b) of Specific Relief Act, 1963.

The Supreme Court held this **in the case of Manjit Singh & Anr v. Darshana Devi & Ors.**

44. Application of res-judicata

A bench of Justice Ranjan Roy and Justice Om Prakash Shukla held that since the cause of action in both the petitions is different the same would not be barred by res judicata.

- The Allahabad High Court held this in the case of X v. Y.

45. Doctrine of caste eclipse

The Supreme Court ruled that individuals born as Christians cannot claim caste-based benefits by invoking the doctrine of caste eclipse, as Christianity does not recognize the caste system.

- This doctrine applies only to those born in caste-based religions who convert to caste-less faiths and later reconvert.
- The ruling came while dismissing an appeal seeking a Scheduled Caste certificate, as the appellant failed to prove her conversion to Hinduism.