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— Invocation of letter of credit — Short supply of goods . . . . . (see *Letter of Credit*)

### **I (2007) CLT 71 (Calcutta HC) (DB)**

— Specific Performance — Possession — Restraining disturbance of possession will not be granted in favour of plaintiff who is not found in possession — Appellants failed to prove they were in possession of disputed lands — Both appellants and respondents claiming disputed land as area appurtenant to building — Lower Appellate Court concluded boundary wall was constructed by respondents and not appellants — That appellants had no direct access to land in question — There was lane running between appellant’s house and disputed land in question — That appellants were not using disputed land as his *sehan* from time of their ancestors whereas respondents had been in possession of land in dispute for several years — Suit dismissed by lower Appellate Court — High Court upheld findings of lower Appellate Court — This Court would not like to interfere on findings of facts — No reason to reverse concurrent findings — Suit filed by appellants is only for permanent injunction — Lower Appellate Court should have confined itself to its dismissal only on ground that appellants failed to show they were in possession — Declaration that appellants are not owners, not necessary.

Specific Relief Act, 1963 — Section 38 — Civil Procedure Code, 1908 — Order 39 Rules 1, 2.

### **I (2007) CLT 63 (SC)**

**INTEREST** — Payment of — Execution of money decrees or award decrees . . . . . [See *Execution of Money Decrees*]

### **I (2007) CLT 87 (SC)**

**INTERPRETATION OF STATUTES** — Definition of term in one statute cannot be used as guide for construction of same term in another statute particularly in case where statutes enacted for different purposes.

### **I (2007) CLT 132 (SC)**

— First and foremost principle of interpretation of statute in every system of interpretation is

literal rule of interpretation — Once there is departure from literal rule, then any number of interpretation can be put to statutory provision, each Judge having free play to put his own interpretation as he likes — This would be destructive of judicial discipline and also basic principle in democracy that it is not for Judge to legislate as that is task of elected representatives of people — Even if literal interpretation results in hardship or inconvenience, it has to be followed.

### **I (2007) CLT 245 (SC)**

*S.B. Sinha, J.*

- Ordinary rule of construction is where there are two *non obstante* clauses, latter shall prevail — But it is equally well settled ultimate conclusion would depend upon limited context of statute.

### **I (2007) CLT 40 (SC)**

- Literal Rule of Interpretation — Means there should be no interpretation — We should read statute as it is, without distorting or twisting its language — Literal rule of interpretation not only followed by Judges and lawyers, but also by lay man in his ordinary life.

### **I (2007) CLT 1 (SC)**

- Resort can be had to legislative intent for purpose of interpreting provision of law when language employed by Legislature is doubtful or ambiguous or leads to some absurdity.

### **I (2007) CLT 1 (SC)**

**INTERIM ORDER** — Entitlement — Disputant is entitled to interim order, provided he is party thereto.

### **I (2007) CLT 195 (SC)**

“**JUDGMENT**” — Requirement of — Decree in undefended suit — Judgment should be self-contained document showing what was controversy and in what manner it is being settled by Court — Reasoning of Court to be reflected clearly in judgment of Court

Civil Procedure Code, 1908 — Section 2(9), Order 8 Rule 10, Order 20 Rule 4(2).

### **I (2007) CLT 29 (Bombay HC) (DB)**

**LAND ACQUISITION** — Appropriation — Rule regarding in case of award decree under Land Acquisition Act — Ratio of *Prem Nath Kapur, I* (1996) CLT 220 (SC), on aspect of appropriation approved by this Court — Question of appropriation would be at different stages — Decree holder would not be entitled to reopen entire transaction to claim reappropriation of amounts already received by him and appropriated at that particular stage — Reliance on doctrine of merger does not enable decree-holder to get over scheme adopted by Act.

Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 23, 23(1), 23(1A), 23(2), 28, 34.

### **I (2007) CLT 87 (SC)**

- Compensation — Award of, at different stages — First stage occurs when award is passed — Second stage occurs on reference under Section 18 of Act — Third stage occurs when in appeal, High Court enhances compensation — Fourth stage may be when Supreme Court enhances compensation and at that stage too, same rule would apply.

Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 18, 23(1), 23(1A), 23(2), 27, 28, 31, 34.

### **I (2007) CLT 87 (SC)**

- Compensation — Enhancement — Appropriation of amounts — On payment or deposit of

amount awarded by Collector in terms of Section 11 r/w Section 31, Land Acquisition Act, claimant cannot thereafter claim any interest on that part of compensation paid to him or deposited for payment to him once notice of deposit given to him — Enhancement of compensation with solatium and interest under Section 23(1A) of Act by Reference Court and interest on enhanced compensation in terms of Section 28 of Act — Claimant/decree holder can seek appropriation of amounts deposited pursuant to that award decree, only towards enhanced amount so awarded by reference Court.

Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Section 11 r/w Section 31, Sections 23(1A), 28, 34.

#### **I (2007) CLT 87 (SC)**

- Compensation — Enhancement — Challenge against — Appreciation of evidence — Evidence of witnesses as well as documents on record sufficient to conclude land belonging to claimant is *bharad* type of land without any encumbrances of Mundkars or tenants and trees, suitable for construction — It has all amenities and facilities and lie nearby residential locality — Land also connected to public road — Valuation of expert witness cannot be accepted as he visited land after about 11 years from date of publication of notification under Land Acquisition Act — Lower Court below took into account all relevant aspects while holding market rate of property at relevant date was Rs. 100 per square metre — No interference required.

Land Acquisition Act, 1894 — Sections 4 and 18.

#### **I (2007) CLT 79 (Bombay HC)**

- Compensation — Reference to Collector by person interested, if not satisfied with amount of compensation awarded by Collector, entitled to receive amount under protest and could apply to Collector requiring him to refer matter to Court in terms of Section 18 of Act.

Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 11, 12, 16, 18, 23, 24, 25, 26, 27, 28, 53, 54.

#### **I (2007) CLT 87 (SC)**

- Impleadment in Reference Proceedings — Expression — “Person interested” — Scope of.

Land Acquisition Act, 1894 — Sections 3(b) — Civil Procedure Code, 1908 — Order 1 Rule 10(2).

#### **I (2007) CLT 195 (SC)**

- Impleadment of Party — Appellant given opportunity to file application under Sections 30 and 31 of Act — She did not avail said opportunity — Having not availed opportunity, she was not entitled to be impleaded as party.

#### **I (2007) CLT 195 (SC)**

- Interest on Solatium — Grant of interest on these amounts is consequential and automatic — High Court bound to award interest on additional amount payable under Section 23(1A) and solatium payable under Section 23(2) of Land Acquisition Act, 1894.

#### **I (2007) CLT 185 (SC)**

- Interest on solatium in execution — Claim by awardee/decree holder, though it is not specifically granted by decree — Execution Court cannot go behind decree — If claim for interest on solatium made and negated either expressly or by necessary implication by judgment or decree of Reference Court or of Appellate Court, Execution Court will have necessarily to reject claim for interest on solatium based on *Sunder v. UOI*, VI (2001) SLT 641=IV (2001) CLT 18 (SC), on ground that Execution Court cannot go behind decree.

Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Section 23.

#### **I (2007) CLT 87 (SC)**

- Reference — Application barred by limitation, *viz.*, made after 6 weeks from date of award — Reference Court has no jurisdiction to consider question whether reference application submitted to Land Acquisition Officer within period of limitation — Such inquiry is beyond scope of inquiry by Reference Court — Purpose of reference is to resolve disputes as to amount of compensation, whether person is entitled to get apportionment of compensation etc. — Power to decide that question conferred only on Reference Court and not on Land Acquisition Act — Jurisdiction to decide question whether reference application submitted within time prescribed is on Land Acquisition Officer and not on Court — Court below not justified in embarking upon inquiry as to whether reference application made within prescribed time, whether claimant present before Collector and whether Clauses (a), (b) of Section 18(2) of Act applies — Reference Court not justified in passing judgment and decree, dismissing reference on ground of limitation.

Land Acquisition Act, 1894 — Sections 12, 12(2), 18, 18(2), 18(2) proviso, 19, 19(1), 19(2), 20 and 21.

### **I (2007) CLT 81 (Kerala HC)**

**LETTER OF CREDIT** — Invocation of — Injunction against contract for supply of goods — Short supply of goods, cannot be ground to restrain invocation of letter of credit — Order refusing grant of injunction proper.

Contract Act, 1872.

### **I (2007) CLT 71 (Calcutta HC) (DB)**

*Majority view:*

**LETTERS PATENT APPEAL** — Maintainability — After insertion of amended Section 100A in C.P.C. by Act 22 of 2002, L.P.A. not maintainable against judgment rendered by Single Bench in appeal arising out of special enactment — Section 173 of Motor Vehicles Act, 1988 provides for appeal against award made by Motor Accident Claims Tribunal under Section 166 of Act, Section 54 of Land Acquisition Act provides for appeal against award of Reference Court — Section 30 of Workmen's Compensation Act, provides for appeal against order made by Commissioner — Similar provisions available in other enactments for appeal against award or order passed by Competent Authority or Court — No provision in these enactments under which appeal can be preferred against judgment rendered by Single Bench in matter arising out of award or order made by Competent Authority or Court.

[Pg. 122, 123 [Paras 40, 41 and 42]]

Civil Procedure Code, 1908 — Section 100A (as amended by Central Act 22 of 2002 *w.e.f.* 1.7.2002) — Motor Vehicles Act, 1973 — Section 173 — Letters Patent Appeal — Clause 15.

### **I (2007) CLT 107 (Andhra Pradesh HC) (LB)**

- Maintainability — CMP preferred by company, not for correction of any clerical mistake but for modifying/recalling order amounting to review of order in question — Such application for review and modification of order can be passed by Court only in exercise of power conferred under Article 226 of Constitution — CMP filed by company to be construed as petition under Article 226 of Constitution for modification/recall of order — Impugned order construed to be order passed by Single Judge in exercise of power under Article 226 of Constitution — Appeal under Clause 10 of LPA maintainable.

Letters Patent Appeal — Clause 10.

### **I (2007) CLT 2 (Jharkhand HC) (DB)**

**LIMITATION** — Claim Barred by Limitation — Bye-laws of National Stock exchange of India provide 6 months period for filing of complaint in case of dispute.

### **I (2007) CLT 193 (SC)**

- Condonation of Delay — Declaration seeking joint ownership or half ownership in

properties scheduled to petition — Petition filed by appellant-wife against respondent-husband — Delay of 62 days in filing application by appellant — Earlier divorce granted to parties under Sections 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act in petition filed by respondent — Appellant pursued her proceedings for declaration and injunction relating to properties — No doubt time for filing appeal is only 30 days from date of judgment of Family Court in view of Section 19 of Family Courts Act — No objection that Section 5 of Limitation Act not applicable — High Court made cursory examination of merits of claim of appellant before dismissing application for condonation of delay — In view of varying stands adopted by appellant, appropriate to grant her opportunity only by putting her on terms — Considering prior relationship between parties, costs to be paid by appellant to respondent in this Court need not be very substantial sum though it could not be insignificant sum — Orders of High Court set aside — Delay in filing appeal by appellant before High Court condoned subject to appellant depositing in High Court sum of Rs. 10,000/- towards costs thrown away within 6 weeks — Further directions issued.

Limitation Act, 1963 — Section 5.

### **I (2007) CLT 59 (SC)**

- Condonation of delay in filing application for final decree proceedings — Delay of 2283 days — Suit for redemption of mortgage . . . . . (see *Limitation Act, 1963 — Section 5, Article 137*)

### **I (2007) CLT 90 (Madras HC)**

- Period of limitation for raising counter claim in respect of wrongful detention of goods — Suit filed by respondent No. 1 against appellant for declaration of title in regard to their residential house — Appellant had put up lock in one of room where respondent No. 1 used to stay on 16.3.1987 — Suit filed by appellant to which counter claim filed by respondent No. 1 claiming damages for wrongful detention of her belongings on 24.6.1992 — High Court allowed claim as same not barred by limitation — Challenge against — Article 91 provides for period of limitation in respect of suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property — Time for which period begins to run would be when property wrongfully taken or injured or when detainer's possession become unlawful — In peculiar facts and circumstances, if Article 91 would not apply, residuary provision would — Respondent No. 1 should have filed suit within period of 3 years — Furthermore, respondent No. 1 knew about alleged wrongful act on part of appellant — She filed application in nature of *pro intersse suo* in earlier suit, same was rejected — Her cause of action different and distinct from her brother — Only because in another legal proceeding by and between appellant and respondent No. 2, Advocate Commissioner appointed and inventory of goods of said room prepared — Same would not give rise to fresh cause of action for laying claim for damages — Impugned judgment unsustainable and set aside.

Limitation Act, 1963 — Section 22, Articles 68, 69, 91.

### **I (2007) CLT 19 (SC)**

- RDDBFI — Transfer of Execution Proceedings to DRT — Claim time barred — Bank responsible for not getting decree executed well in time . . . . . [See *Banking Law — RDDBFI*]

### **I (2007) CLT 245 (SC)**

- Reference — Land Acquisition — Reference Court has no jurisdiction to consider question whether reference application submitted to Land Acquisition Officer within period of limitation.

### **I (2007) CLT 81 (Kerala HC)**

**MALICIOUS PROSECUTION** — Suit for Damages — Requirements to be satisfied by prosecution — Plaintiff not able to say before whom and in what manner his reputation lowered — No motive to falsely implicate plaintiff — No malice in case either on part of defendant or deceased — Simply acquittal in criminal case of accused not sufficient to entitle him to decree in his favour wherein damages claimed — Trial Court committed error of law and misread evidence while decreeing suit.

**I (2007) CLT 55 (Rajasthan HC)**

**MAXIM** — “*dura lex sed lex*” — Law is hard, but it is the law — Equity can only supplement law but it cannot supplant or override it.

**I (2007) CLT 1 (SC)**

**MESNE PROFITS** — Recovery of — Suit for Possession by Ejectment — Suit not disposed as whole — Impleadment of necessary party, *i.e.* DFC as second defendant in suit — Application filed by DFC seeking closure of case on plea that all disputes settled and no question of payment of any *mesne* profits — In terms of undertaking filed in form of affidavit by Senior Manager, DFC at stage when arguments on landlords’ application under Order 12 Rule 6, CPC praying for decree for possession on admission were heard, order dated 13.1.2006 did not put quietus to issue of *mesne* profits — Suit as a whole not disposed of and issue of *mesne* profits still remained to be decided — Undertaking given by learned Counsel for landlord that notwithstanding fact that defence of UOI struck off, landlords, will not stand in way of UOI raising plea of settlement between landlords and DFC and affidavit filed by DFC on clear and distinct “understanding” as alleged by DFC in these proceedings — Landlords shall remain bound by said undertaking — Impugned judgment does not suffer from any infirmity warranting interference.

Civil Procedure Code, 1908 — Order 12 Rule 6.

**I (2007) CLT 130 (SC)**

**MOTOR VEHICLES** — Agency business — Required to obtain licence . . . . . (*see Motor Vehicles Act, 1988 — Section 93*)

Motor Vehicles Act, 1988 — Section 93 — Bihar Motor Vehicles Rules — Rules 102 to 112.

**I (2007) CLT 84 (Jharkhand HC)**

**OFFENCE BY COMPANY** — Dishonour of Cheque — Liability of Agent . . . . . [*see Negotiable Instruments Act, 1881 — Sections 138, 141, 141(1), 141(2)*]

**I (2007) CLT 89 (Delhi HC)**

— Dishonour of Cheque — Penal liability of Directors/Other persons falling within description of Section 141, Negotiable Instruments Act, after company ordered to be wound up . . . . . (*see Negotiable Instruments Act, 1881 — Sections 138, 141*)

**I (2007) CLT 97 (Delhi HC)**

**PLEADINGS** — Striking out Pleadings — Applicability of Order 6 Rule 16, CPC to election petition — General principles as to pleadings in civil suits apply to election petitions as well, pleadings which are required to be struck off under Order 6 Rule 16, CPC in suit can also be ordered to be struck off in election petition — In appropriate cases, election Tribunal (H.C.) may invoke power under Order 6 Rule 16, CPC.

Civil Procedure Code, 1908 — Order 6 Rule 16.

**I (2007) CLT 66 (SC)**

— Striking out Pleadings — Powers of Court under Order 6 Rule 16, CPC — Object of Order 6 Rule 16, CPC — Circumstances to be taken into consideration while ordering striking off pleadings.

Civil Procedure Code, 1908 — Order 6 Rule 16.

**I (2007) CLT 66 (SC)**

**POSSESSION** — Adverse Possession — Claim of title — Permissible possession cannot be treated as adverse possession — Burden is on plaintiff to show as to when his possession became adverse to interest of true owner.

**I (2007) CLT 92 (Karnataka HC)**

**POWER BY APPELLATE COURT OR HIGH COURT** — Exercise of — Dishonour of Cheque — Compensation . . . . . (see *Negotiable Instruments Act, 1881 — Section 138*)

**I (2007) CLT 32 (Madras HC)**

**POWER OF ARBITRATOR** — Award of Interest . . . . . (see *Arbitration*)

**I (2007) CLT 200 (SC)**

**POWER OF ATTORNEY** — Person can represent party to suit or proceeding as GPA — However, such GPA or special power of attorney holder cannot depose on behalf of party, whom he/she is representing but can depose as separate witness speaking to facts, which is personally aware of.

**I (2007) CLT 21 (Andhra Pradesh HC)**

**PRACTICE AND PROCEDURE** — If impleadment application not maintainable, same to be dismissed *in limine* — It could not have been entertained only for pressing interim order — Law does not contemplate exercise of such jurisdiction by Court of Law — Any such order passed is *coram non judice*.

**I (2007) CLT 195 (SC)**

— Provision is mandatory if there is penal consequences flowing from its non-compliance.

**I (2007) CLT 18 (Allahabad HC)**

— Procedural law cannot be permitted to trample proceedings with such force that real controversy between parties buried under its dust or weight.

**I (2007) CLT 78 (Allahabad HC)**

**PRECEDENT** — Election Law — If nomination paper of person is not in consonance with relevant provisions of law, he could not be said to be candidate having *locus standi* to challenge election of President — *Charan Lal Sahu v. Neelam Sanjeeva Reddy, Charan Lal Sahu v. Giani Zail Singh, Charan Lal Sahu v. Dr. APJ Abdul Kalam & Ors.*, VII (2002) SLT 221.

**I (2007) CLT 66 (SC)**

**PRINCIPLE OF LIS PENDENS** — Transferee *pendente lite* is bound by decree just as much as he was party to suit — Alienation on will in no manner affect rights of other party under any decree passed in suit unless property alienated with permission of Court.

**I (2007) CLT 126 (SC)**

**PRODUCTION OF WITNESSES WITHOUT SUMMONS** — Sufficient cause to be shown by party producing said witness — Provision of Order 16 Rule 1(1) directory.

Civil Procedure Code, 1908 — Order 16 Rule 1, Order 16 Rule 1A and Order 16 Rule 3(3).

**I (2007) CLT 18 (Allahabad HC)**

**QUASHING OF SUMMONING ORDER** — Dishonour of Cheque — Offence by company — Agent of company does not come within purview of Section 141 of N.I. Act

**I (2007) CLT 89 (Delhi HC)**

**RDDDBFI ACT VIS-A-VIS COMPANIES ACT** — RDDDBFI Act has overriding effect over provisions of Companies Act.

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34.

**I (2007) CLT 1 (SC)**

**RECALL OF WITNESS FOR RE-CROSS EXAMINATION** — Order 18 Rule 17, CPC does not empower Court to call for witness already examined and cross-examined for purpose of re-cross examination — Section 165 of Evidence Act is also of no help to case of petitioner — It only empowers Court to put questions to any witness — Plaintiff has no right to re-cross examine witness already examined and cross-examined on two occasions .

**I (2007) CLT 85 (Gauhati HC)**

**REDEMPTION OF MORTGAGE** — Condonation of delay in filing application . . . . . (see *Limitation Act, 1963 — Section 5, Article 137*)

**I (2007) CLT 90 (Madras HC)**

**REMAND OF MATTER** — Will — Suspicious circumstances surrounding Will — High Court remanded matter to Trial Judge permitting parties to adduce fresh evidence — Remand of matter in its entirety by High Court not proper — — Remand of matter to adduce additional evidence — Onus of proof wrongly placed on plaintiff — Additional evidence required to be adduced upon reframing issue — Proper for High Court not to remit matter in its entirety, which could have been done by Court in exercise of its jurisdiction under Order 41 Rule 23 or Order 41 Rule 23A, CPC — Impugned judgment modified and trial Judge directed to allow parties to adduce evidence.

Civil Procedure Code, 1908 — Order 41 Rules 23, Order 41 23A, Order 41 Rule 25.

**I (2007) CLT 21 (SC)**

— Will — Legality of — Challenge on ground of suspicious circumstances surrounding execution of Will — Onus of proof was on person who was beneficiary thereunder.

**I (2007) CLT 21 (SC)**

**RES JUDICATA** — Applicability — Execution — When two persons litigate separately or litigate in same suit in respect of two different items of property, principle has no application.

Civil Procedure Code, 1908 — Section 11, Order 21 Rule 97.

**I (2007) CLT 21 (Andhra Pradesh HC)**

**RESTITUTION OF SUIT** — Inherent powers — Exercise of — To avoid miscarriage . . . . . (see *Civil Procedure Code, 1908 — Sections 141 and 151*)

**I (2007) CLT 21 (Andhra Pradesh HC)**

**RULE OF APPROPRIATION** — As set out in Halsbury's Laws of England and Chitty on Contracts — Rule of appropriation as applied in India summed up by *Mr. Justice T.L. Venkatarama Aiyer*.

**I (2007) CLT 87 (SC)**

*S.B. Sinha, J.*

**SICA** — Distinction — Suspension of proceeding and initiation and/or continuance thereof — In former case statutory impact would be automatic, in latter Court required to apply its mind having regard to facts and circumstances of each case.

Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22, 22(3).

**I (2007) CLT 40 (SC)**

*S.B. Sinha, J.*

— Expression "award, standing orders or other instruments" does not refer only to contractual obligation which is binding on company, but also liabilities thereunder.

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(3).

**I (2007) CLT 40 (SC)**

*S.B. Sinha, J.*

- Suspension of Award Pending Proceedings — Section 22(3), SICA provides for specific power in Board — Said provision contemplates larger public interest — In event arbitral award held outside purview of Section 22(3) thereof, it may be difficult to frame scheme or implement same under SICA — Parliament presumed suspension of award shall not be for long period — Party to award may face some hardship owing to its suspension — It would always be open to it to bring same to notice of Board — Board under Section 22(3) of SICA may pass such order or may not do so — If order is passed by Board, appeal lies thereagainst.

Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3) — Arbitration and Conciliation Act, 1996 — Section 5.

**I (2007) CLT 40 (SC)**

*P.K. Balasubramanyan, J.*

- Suspension of award pending proceedings — Reservation on propriety of order passed by Division Bench of High Court — In exercise of jurisdiction in writ petition challenging order of Board for BIFR, approached by respondent, Division Bench of High Court brushed aside valid order passed by Company Court, order to maintain *status quo* by AAIFR and various DRTs — It permitted asset of respondent to be sold as proposed by respondent — Orders made by competent Tribunals or Court binding on respondent — No reason given by High Court to hold order of AAIFR not binding on BIFR or BIFR could ignore it — High Court not dealt with question properly with reference to nature of relevant orders and context in which made — High Court also not considered how far it will be appropriate to permit sale of assets of company which is before BIFR for scheme of revival — Scrupulous debtors approach BIFR frequently to stall proceedings and keep their creditors at bay — Delay before BIFR sought to be taken advantage of — Parliament repealed SICA by SICA Repeal Act, 2003 — Vacuum filled by amendment to Companies Act.

**I (2007) CLT 40 (SC)**

*S.B. Sinha, J.*

- Winding up of Company— Provisions of SICA would prevail over provisions of Arbitration and Conciliation Act, 1996 — Provisions of SICA made to seek to achieve higher goal and would be applicable despite *non obstante* clause in Section 5 of 1996 Act — It has limited application aiming at extent of judicial intervention — Its application attracted only when order under Section 22(3) required to be passed — Once arbitral award having force of decree put into execution, Section 22(1) of SICA would come on its way from being enforced — Contention that Board would have no jurisdiction having regard to provisions of Section 5 of 1996 Act, has no force — Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3) — Arbitration and Conciliation Act, 1996 — Sections 5, 34.

**I (2007) CLT 40 (SC)**

**SECOND APPEAL** — Dismissal of — Consideration of matter by High Court in absence of Counsel for appellant — Legality — Undisputed when matter taken up before High Court there was no representation — Because of circumstances beyond control of appellants, there was no appearance and matter decided against them — Normally when appellant not represented, High Court would dismiss matter for default and not go into merits in detail — This has not been done in present case — Order of High Court set aside and matter remitted back to High Court.

Civil Procedure Code, 1908 — Section 100.

**I (2007) CLT 39 (SC)**

- Maintainability — Appeal is vested right but such right can be taken away by subsequent enactment either expressly or by necessary intendment — By amending Act 22 of 2002 *w.e.f.* 1.7.2002 Parliament took away letters patent power of High Court in matter of appeal against order of Single Judge to Division Bench — When appeal decided from original order by Single Judge, no further appeal provided — Power which used to be there under letters patent of High Court, subsequently withdrawn.

Civil Procedure Code, 1908 — Section 100A (amended by Act 22 of 2002 *w.e.f.* 1.7.2002).

#### **I (2007) CLT 107 (SC)**

- Maintainability — Condition required — Substantial question of law.

Civil Procedure Code, 1908 — Sections 100, 100(5) proviso.

#### **I (2007) CLT 179 (SC)**

- Maintainability — Substantial question of law not formulated by High Court, second appeal not maintainable.

Civil Procedure Code, 1908 — Section 100.

#### **I (2007) CLT 24 (SC)**

- Possession — Refusal relief of declaration . . . . . (see *Civil Procedure Code, 1908 — Section 100*)

#### **I (2007) CLT 92 (Karnataka HC)**

- Reversal of concurrent finding of fact — Question of fact involved — Inference drawn by Single Judge on appreciation of evidence not correct — It is erroneous, unsustainable and set aside — Order passed by Trial Court and affirmed by First Appellate Court affirmed.

#### **I (2007) CLT 182 (SC)**

**SENTENCE** — Imposition of, by Magistrate — Dishonour of cheque . . . . . (see **Negotiable Instruments Act, 1881 — Sections 138 and 143**)

#### **I (2007) CLT 17 (Rajasthan HC)**

**SPECIAL APPEAL** — Maintainability — Execution of Will — Doubt regarding — First appeal by respondent No. 1 dismissed by Single Judge holding execution of Will doubtful — Special appeal filed by respondent No. 1 before Division Bench of High Court maintainable — Section 100A of CPC does not have retrospective effect so as to bring within its fold even appeal preferred prior to coming into force of said Act.

Civil Procedure Code, 1908 — Section 100A.

#### **I (2007) CLT 12 (SC)**

**SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES)** — “Notified Persons” — “Forfeiture of Earnest Money” — Auction sale of properties — Interim order — Bid not accepted finally — Forfeiture of earnest money could not be directed.

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

#### **I (2007) CLT 148 (SC)**

**SPECIFIC PERFORMANCE OF CONTRACT** — Injunction — Transferee *pendente lite* . . . . .  
. . . . . [See *Impleadment of Party*]

#### **I (2007) CLT 126 (SC)**

**STRIKING OUT PLEADINGS** — Election — Challenge against — Allegation regarding ante-dating electoral rolls not incomplete and vague . . . . . [See *Corruption in Election Law*]

#### **I (2007) CLT 66 (SC)**

**SUCCESSION** — Execution of Will — Doubt regarding — First appeal by respondent No. 1 dismissed by Single Judge holding execution of Will doubtful — Special appeal filed by respondent No. 1 before Division Bench of High Court maintainable — Section 100A of CPC does not have retrospective effect so as to bring within its fold even appeal preferred prior to coming into force of said Act.

Civil Procedure Code, 1908 — Section 100A.

**I (2007) CLT 12 (SC)**

— Will — Distinction between where suspicions well founded and where there are only suspicions alone — Existence of suspicious circumstances alone may not be sufficient — Court may not start with suspicion and it should not close its mind to find truth.

**I (2007) CLT 159 (SC)**

— Will — Grant of Probate — Owner of property is paternal uncle of plaintiffs' father — Dispute between parties revolves on execution of Will by owner-deceased in favour of plaintiffs and execution of purported deed of gift — Trial Judge decreed suit on premise that G did not have any legal right to convey suit land in favour of HM by virtue of sale deed — Consequently defendant-respondents did not derive any right, title and interest pursuant to and in furtherance of deed of sale or deed of exchange — First Appellate Court reversed said judgment holding suit land and lands described in Will could not be correlated by plaintiffs but concluded that deed of gift not proved — Findings of first Appellate Court contrary to records as properties mentioned in Will ignored by first Appellate Court — It should have recorded findings on basis of materials on records, plaintiffs had given full description of properties in plaint *vis-a-vis* properties, subject-matter of Will — It only refers to deposition of witnesses examined on behalf of plaintiff that Suit lands as described in Schedule 'Ka' did not tally with lands subject matter of Will — High Court failed to determine question in proper perspective — Impugned judgment set aside — Matter remitted back to High Court for fresh consideration.

Civil Procedure Code, 1908 — Section 100.

**I (2007) CLT 36 (SC)**

— Will — Probate of — Suspicious circumstances surrounding Will — Burden of proof as to genuineness and validity of Will — Testator suffering from cancer — Will executed within 24 hours of hospitalisation — Witnesses of Will interested persons — Propounder take prominent part in execution of Will — Manner of issue of death certificate of deceased suspicious — Conduct of appellant in executing deed of assignment in favour of S even before filing application for grant of probate cannot be appreciated as appellant had no legal authority — No case made out to interfere with findings of both Single Judge and Division Bench of High Court.

**I (2007) CLT 159 (SC)**

— Will — Proof of Will required not as ground of reading document but to afford Judge reasonable assurance of it as being what it purports to be.

**I (2007) CLT 159 (SC)**

**SUMMONS** — Written Statement — Filing of Written Statement — When service of summons not accompanied by copy of plaint, period of 90 days, as contemplated under Order 8 Rule 1, would not begin to run — Court not disempowered to accept in appropriate case written statement filed beyond period of 90 days of service of summons on defendant.

Civil Procedure Code, 1908 — Order 8 Rule 1, Order 8 Rule 10, Order 5 Rule 1, Order 5 Rule 2 — Constitution of India, 1950 — Article 227.

**I (2007) CLT 135 (Gauhati HC)**

**SUPERVISORY JURISDICTION** — Exercise of . . . . . (see *supervisory jurisdiction*)

**I (2007) CLT 35 (Gauhati HC)**

- Mere error of fact or law, not amenable to supervisory jurisdiction of High Court under Article 227 of Constitution unless error causes manifest injustice.

Constitution of India, 1950 — Article 227.

**I (2007) CLT 35 (Gauhati HC)**

**TERRITORIAL JURISDICTION** — Cause of Action — Writ Petition — Dismissal of — Not justified — Chief of Army Staff may be sued anywhere in country — High Court in placing reliance only on cause of action *i.e.* Summary Court Martial proceedings conducted in State of Punjab and orders also passed in Punjab by Western Command, this Court got territorial jurisdiction to entertain writ petition, not justified — Order under Appeal is set aside and writ petition restored.

**I (2007) CLT 62 (SC)**

**TRAI** — Cable Television Network — “Consumers ” — Members of appellants’-Associations are “Consumers” — Members of Associations take TV Signals either from respondents-broadcasters under their respective contracts or agreements or through cable operators — Whereas in former case, there exists privity of contract between broadcasters and owners of hotels, owners of hotels would not come within purview of definition of MSOs (Multi System Operators) — Owner of hotel provides various amenities to its customers *i.e.* beds, meals, fans, television, etc. — This would not constitute sale by owner to guest — Owners of hotels take TV signals from broadcasters in same manner as they take supply of electrical energy from licensees — They do not have any privity of contract with broadcasters or cable operators — Identity of guests not known to broadcasters or cable operators — Guest may not watch TV or room may remain unoccupied but amount under contract by hotel owners whether with broadcasters or cable operators remains unchanged — Members of appellants’-associations are consumers.

Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 2(1)(k) Proviso, 11, 11(1), 11(2), 14, 14(a)(ii), 14(a)(iii), 18 —Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A, 4A(9).

**I (2007) CLT 132 (SC)**

- Cable Television Network — “Commercial Cable” — Subscribers not outside purview of regulatory jurisdiction of TRAI — TDSAT not correct in opining that regulators should consider whether it is necessary or not to fix tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard — While exercising its original jurisdiction, TDSAT should not have made such observations — Well settled power required to be exercised in particular manner, same has to be exercised in that manner or not at all — TDSAT having not exercised its appellate jurisdiction, neither could have issued any direction nor TRAI could abide thereby.

Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 11, 14(a)(ii), 18 - —Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A

**I (2007) CLT 132 (SC)**

- Directions to members taking signals through cable operators to disclose details as directed by TDSAT — If TDSAT directs, Cable Operators may be impleaded as parties and/or some of them in representative capacities — Until appropriate order passed by TDSAT, by way of interim measure, members appellants and Hotel Association taking supply through cable operators shall pay in terms of order dated 7.3.2006 but subject to ultimate order passed by TDSAT.

**I (2007) CLT 132 (SC)**

- Jurisdiction of TDSAT — TDSAT entitled to entertain complaint by group of consumers

against service provider — What is excluded is complaint of individual consumer and not group of consumers.

Consumer Protection Act, 1986 — Section 2(1)(d) — Telecom Regulatory Authority of India Act, 1997 — Section 14(a).

#### **I (2007) CLT 132 (SC)**

— Jurisdiction of TRAI — Its jurisdiction is not only to fix tariff but also laying down terms and conditions for providing services — *Prima facie*, it can fix norms and mode and manner in which consumer would get services — While laying down new tariff, it must take into consideration all pros and cons of matter.

#### **I (2007) CLT 132 (SC)**

— Tariff orders issued by TRAI on 15.1.2004, 1.10.2004 and 7.3.2006 — Applicability to members of appellants-Associations — Tariff Order of 2004 which came into force from 15.1.2004 whereby price prevalent as on 26.12.2003 was to be ceiling in respect of charges payable by cable subscribers to cable operator, cable operators to multi service operators/broadcasters and multi service operators to broadcasters — Whereas members of Hotel and Restaurant Association protected thereby, Tariff Order dated 7.3.2006 protects all as in terms thereof Clause 2(f) of Telecommunication and (Broadcasting and Cable) Services (Second) Tariff Order, 2004 was substituted — In event TRAI frames tariffs, members of appellants-Association would be entitled to prefer appeals thereagainst.

Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 11, 14(a)(ii), 18 — Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A.

#### **I (2007) CLT 132 (SC)**

**TRANSFER OF PROPERTY** — *Lis pendens* — Transferee *pendente lite* is bound by decree just as much as he was party to suit — Principle of *lis pendens* embodied in Section 52, Transfer of Property Act being principle of public policy, no question of good faith or *bona fide* arises — Section 52, T.P. Act only postulates condition that alienation will in no manner affect rights of other party under any decree passed in suit unless property alienated with permission of Court.

Transfer of Property Act, 1882 — Section 52.

#### **I (2007) CLT 126 (SC)**

— Transferee *pendente lite* — Impleadment of party — Respondents being transferees *pendente lite* without leave of Court cannot as of right seek impleadment in suit pending for very long time — There is no rule that transferee *pendente lite* without leave of Court should in all cases contest pending suit . . . . . [See *Impleadment of Party*]

#### **I (2007) CLT 126 (SC)**

**WORDS AND PHRASES** — “Appropriation” — Meaning of.

#### **I (2007) CLT 87 (SC)**

— “Consumer” — Meaning of.

#### **I (2007) CLT 132 (SC)**

— “Forfeiture” — Meaning.

#### **I (2007) CLT 148 (SC)**

*S.B. Sinha, J.*

— “Judicial Authority” — Meaning.

Arbitration and Conciliation Act, 1996 — Section 2(e).

#### **I (2007) CLT 40 (SC)**

— “Reason” — As given/explained in Bachawat’s Law of Arbitration and Conciliation.

**I (2007) CLT 200 (SC)**

**WRIT JURISDICTION** — After disposal of case, including writ petition, under Article 226, Court becomes *functus officio*.

**I (2007) CLT 2 (Jharkhand HC) (DB)**

— Exercise of — Amendment of Plaint . . . . . (see *Civil Procedure Code, 1908 — Order 6 Rule 17, Order 6 Rule 18; Order 1 Rule 10*)

**I (2007) CLT 35 (Gauhati HC)**

**WRIT PETITION** — Maintainability — Written Statement — Failure to file — Setting aside *ex parte* decree — Against decree passed under Order 8 Rule 10, CPC for failure of defendant to file written statement, petition under Order 9 Rule 13, CPC maintainable.

Civil Procedure Code, 1908 — Order 8 Rule 10, Order 9 Rule 13/

**I (2007) CLT 44 (Kerala HC)**

**WRITTEN STATEMENT** — Filing of — Condonation of delay — Decree in undefended suit . . . . . [see *Civil Procedure Code, 1908 — Section 4(2)*]

**I (2007) CLT 29 (Bombay HC) (DB)**

— Service of summons — Mere service of summons on defendant would not make period of 90 days as envisaged under Order 8 Rule 1, CPC, start running.

**I (2007) CLT 135 (Gauhati HC)**

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**Advocates Act, 1961**

— Advocates — Liability of — Advocates not entrusted any duty to verify document, as may be produced by party — It is only in case of misconduct, if any committed by Advocate, he can be punished — Advocate cannot be warned by Court for fault of his client in producing forged and fabricated document — Party who has sworn affidavit, can be held responsible for enclosing any forged document — No allegation against appellant-Advocate that he participated in commission of preparation of forged document — If any misconduct committed, power is there with State Bar Council and Bar Council of India to punish erring Advocate.

**I (2007) CLT 2 (Jharkhand HC) (DB)**

**Arbitration Act, 1940**

— Arbitration Law — Powers of Court under 1940 Act and 1996 Act — Grounds for setting aside Award and duty to assign reasons — Discussed — **Arbitration Act, 1940 — Sections 30, 33** — Arbitration and Conciliation Act, 1996 — Sections 2(1)(b), 16, 34, 37.

**I (2007) CLT 200 (SC)**

**Arbitration and Conciliation Act, 1996**

— Arbitration Law — Powers of Court under 1940 Act and 1996 Act — Grounds for setting aside Award and duty to assign reasons — Discussed — Arbitration Act, 1940 — Sections 30, 33 — **Arbitration and Conciliation Act, 1996 — Sections 2(1)(b), 16, 34, 37.**

**I (2007) CLT 200 (SC)**

— Arbitration Law — Award — Determination of actual loss — Arbitrator applied Emden Formula while calculating amount of damages having regard to books of account and other

documents maintained by MII appellant — He insisted sufferance of actual damages must be proved by bringing on record books of account and other relevant documents — Sections 55 and 73 of Contract Act does not lay down mode and manner as to how and in what manner computation of damages or compensation to be made — Nothing in Indian Law to show any of formulae adopted in other countries is prohibited in law or same inconsistent with law prevailing in India — As computation depends on circumstances and methods to compute damage, determination of quantum to be determined by Arbitrator — No reason to interfere with that part of award as Emden Formula evolved over years, is accepted internationally and not contrary to provisions of Indian Law — **Arbitration and Conciliation Act, 1996 — Sections 2(c), 16, 33, 44 — Contract Act, 1872 — Sections 55, 73.**

**I (2007) CLT 200 (SC)**

*S.B. Sinha, J.*

— Words and Phrases — “Judicial Authority” — Meaning — **Arbitration and Conciliation Act, 1996 — Section 2(e).**

**I (2007) CLT 40 (SC)**

*S.B. Sinha, J.*

— Suspension of Award Pending Proceedings — Section 22(3), SICA provides for specific power in Board — Said provision contemplates larger public interest — In event arbitral award held outside purview of Section 22(3) thereof, it may be difficult to frame scheme or implement same under SICA — Parliament presumed suspension of award shall not be for long period — Party to award may face some hardship owing to its suspension — It would always be open to it to bring same to notice of Board — Board under Section 22(3) of SICA may pass such order or may not do so — If order is passed by Board, appeal lies thereagainst — Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3) — **Arbitration and Conciliation Act, 1996 — Section 5.**

**I (2007) CLT 40 (SC)**

*S.B. Sinha, J.*

— Winding up of Company— Provisions of SICA would prevail over provisions of Arbitration and Conciliation Act, 1996 — Provisions of SICA made to seek to achieve higher goal and would be applicable despite *non obstante* clause in Section 5 of 1996 Act — It has limited application aiming at extent of judicial intervention — Its application attracted only when order under Section 22(3) required to be passed — Once arbitral award having force of decree put into execution, Section 22(1) of SICA would come on its way from being enforced — Contention that Board would have no jurisdiction having regard to provisions of Section 5 of 1996 Act, has no force — Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3) — **Arbitration and Conciliation Act, 1996 — Sections 5, 34.**

**I (2007) CLT 40 (SC)**

— Appointment of Arbitrator by High Court — Power of High Court — In case appointment not made in time on request made by contracting party, power of High Court to appoint Arbitrator under Section 11 of Act will not be denuded — This Court cannot allow Administrative Authorities to sleep over matter and leave citizens without any remedy — Authorities shall be vigilant — Their failure shall give rise to cause to affected party — In case, General Manager, Railway does not appoint arbitral Tribunal after expiry of notice of 30 days or before party approaches High Court, in that case, High Court will be fully justified in appointing Arbitrator under Section 11 of Act — It is discretion of High Court to appoint any Railway Officer or any High Court Judge according to given situation — Directions given to General Manager, Railway to appoint arbitral Tribunal within 30 days from date of receipt of certified copy of this order — **Arbitration and Conciliation Act, 1996 — Section 11.**

### I (2007) CLT 176 (SC)

- Arbitration Law — Uninvoiced Claims — Arbitrability — No legal warrant for proposition that invoice is only base whereunder claim can be made — Claim can also be made through correspondence or in meetings — Invoice is drawn only in respect of claim made in terms of contract — For raising claim based on breach of contract, no invoice required to be drawn — Claim for damages made prior to invocation of arbitration — It became dispute within meaning of provisions of 1996 Act — While claiming damages, amount therefor not required to be quantified — Quantification of claim is merely matter of proof — Respondent never raised any plea before Arbitrator that said claim was arbitrary or beyond its authority — Such objection required to be raised by respondent before Arbitrator in terms of Section 16 of 1996 Act — **Arbitration and Conciliation Act, 1996 — Section 16.**

### I (2007) CLT 200 (SC)

- Arbitration Law — Interest — Reduction of — Power of Arbitrator to award interest for pre-award period, interest *pendente lite* and interest post-award period is not in dispute — Section 31(7)(a) provides arbitral tribunal may award interest at such rate as it deems reasonable, on whole or any part of money, for whole or any part of period between date on which cause of action arose and date on which award is made *i.e.* pre-award period — This is subject to agreement as regard rate of interest on unpaid sum between parties — 1996 Act provides for award of 18% interest — Arbitrator in his wisdom granted 10% interest both for principal amount as also for interim — Due to long lapse of time, in furtherance of justice rate of interest reduced to 7½% — Constitution of India, 1950 — Article 142 — **Arbitration and Conciliation Act, 1996 — Section 31(7)(a).**

### I (2007) CLT 200 (SC)

- Arbitration Law — “Partial Award” — Validity of — 1996 Act does not use expression “partial award” — It uses interim award or final award — Partial award not akin to preliminary decree — Some Arbitrators use expression “partial award” in place of “interim award” — Nature and character of award not changed — BSCL (respondent) not prejudiced in any way — Both partial award and final award are subject matter of challenge under Section 34 of Act — **Arbitration and Conciliation Act, 1996 — Sections 33(4), 34, 31(6), 2(c).**

### I (2007) CLT 200 (SC)

- Arbitration Law — Setting aside Award — ‘Public Policy’ — Violation of — Applicability of expression considered on touchstone of Section 23, Contract Act and Article 14 of Constitution in *ONGC case*, III (2003) SLT 324=II (2003) CLT 242 (SC) — Public policy violation should be so unfair and unreasonable to shock conscience of Court — What would constitute public policy is matter dependent upon nature of transaction and nature of statute — Law laid down in *ONGC case* lays down correct principles of law — **Arbitration and Conciliation Act, 1996 — Section 34** — Constitution of India, 1950 — Art. 14 — Contract Act, 1872 — Section 23.

### I (2007) CLT 200 (SC)

*S.B. Sinha, J.*

- Expression “Award” — It has distinct connotation — It envisages binding decision of judicial or quasi-judicial authority — Award under 1996 Act stands on different footing *vis-a-vis* award made under Arbitration Act, 1940 — Award is to be treated to be decree even without intervention of Court only for purpose of its enforceability — **Arbitration and Conciliation Act, 1996 — Sections 34, 36** — Arbitration Act, 1940.

### I (2007) CLT 40 (SC)

**Bihar Motor Vehicles Rules**

- **Rules 102 to 112** — Agency Business — Requirement to obtain licence — Violation of

provision of law . . . . . (see *Motor Vehicles Act, 1988* — Section 93)

**I (2007) CLT 84 (Jharkhand HC)**

**Cable Television Networks (Regulation) Act, 1995**

— Sections 2, 2(aa), 2(b), 2(c), 4A, 4A(9) . . . . . [See *Telecom Regulatory Authority of India Act, 1997* — Sections 2(1)(j), 2(1)(k), 2(1)(k) Proviso, 11, 11(1), 11(2), 14, 14(a)(ii), 14(a)(iii), 18]

**I (2007) CLT 132 (SC)**

**Civil Procedure Code, 1908**

— Section 2(9), Order 8 Rule 10, Order 20 Rule 4(2) — “Judgment” — Requirement of — Decree in undefended suit — Compensation for defective supply of medical equipments — Claim of — No written statement filed within given time and matter transferred to undefended list — Plaintiff filed affidavit of evidence and compilation of documents — Suit decreed by Court under Order 8 Rule 10, CPC — Challenge against — Impugned judgment does not meet requirement of Section 2(9) and Order 8 Rule 10 as laid down by Supreme Court — Judgment as per Apex Court should be self-contained document showing what was controversy and in what manner it is being settled by Court — Reasoning of Court to be reflected clearly in judgment of Court — There being no evidence by plaintiff, claim for damages could not be said to be proved by him — Judgment liable to be set aside on this ground alone — Further, there is justifiable cause for delay in filing written statement — Opportunity may be given to defendants for filing written statement so that case be directed on merits.

**I (2007) CLT 29 (Bombay HC) (DB)**

— Section 11, Order 21 Rule 97 — Execution — *Res judicata* — Applicability . . . . . (see Execution)

**I (2007) CLT 21 (Andhra Pradesh HC)**

— Succession — Will — Grant of Probate — Owner of property is paternal uncle of plaintiffs’ father — Dispute between parties revolves on execution of Will by owner-deceased in favour of plaintiffs and execution of purported deed of gift — Trial Judge decreed suit on premise that G did not have any legal right to convey suit land in favour of HM by virtue of sale deed — Consequently defendant-respondents did not derive any right, title and interest pursuant to and in furtherance of deed of sale or deed of exchange — First Appellate Court reversed said judgment holding suit land and lands described in Will could not be co-related by plaintiffs but concluded that deed of gift not proved — Findings of first Appellate Court contrary to records as properties mentioned in Will ignored by first Appellate Court — It should have recorded findings on basis of materials on records, plaintiffs had given full description of properties in plaint *vis-a-vis* properties, subject-matter of Will — It only refers to deposition of witnesses examined on behalf of plaintiff that Suit lands as described in Schedule ‘Ka’ did not tally with lands subject matter of Will — High Court failed to determine question in proper perspective — Impugned judgment set aside — Matter remitted back to High Court for fresh consideration — **Civil Procedure Code, 1908** — Section 100.

**I (2007) CLT 36 (SC)**

— Second Appeal — Dismissal of — Consideration of matter by High Court in absence of Counsel for appellant — Legality — Undisputed when matter taken up before High Court there was no representation — Because of circumstances beyond control of appellants, there was no appearance and matter decided against them — Normally when appellant not represented, High Court would dismiss matter for default and not go into merits in detail — This has not been done in present case — Order of High Court set aside and matter remitted back to High Court — **Civil Procedure Code, 1908** — Section 100.

**I (2007) CLT 39 (SC)**

- **Section 100** — Second Appeal — Possession — Refusal of relief of declaration — Second Appeal filed by L.Rs. of plaintiff — Plaintiff is in continuous possession since 1951 — Any length of permissive possession cannot be treated as adverse possession — Plaintiff's possession traceable to settlement deed itself — Averments relating to hostile animus totally absent in pleadings — Ist Appellate Court justified in holding that plaintiff's possession since inception is permissive one — Burden is on plaintiff to show as to when his possession became adverse to interest of true owner — First Appellate Court also justified in confirming decree of injunction as defendants not in possession of property — No reason to interfere in judgment and decree passed by First Appellate Court.

#### **I (2007) CLT 92 (Karnataka HC)**

- Second Appeal — Substantial question of law not formulated by High Court — Proviso to Section 100(5), CPC applicable only when any substantial question of law already formulated — It empowers High Court to hear appeal on any other substantial question of law, for recording reasons for same — Expression "on any other substantial question of law" shows there must be some substantial question of law already formulated, then only another substantial question of law not formulated earlier, can be taken up by High Court for reasons to be recorded, if case involves such question — Impugned judgment set aside — Matter remitted to High Court for disposal in accordance with law — **Civil Procedure Code, 1908 — Sections 100, 100(5) proviso.**

#### **I (2007) CLT 179 (SC)**

- Appeal — Special Appeal — Right of appeal under Code is statutory — Such right of appeal also conferred under Letters Patent of High Court or statutes creating High Court — Appeal is right of entering superior Court invoking its aid and interposition to redress error of Court below — Appeal is continuation of original proceedings — Such right not taken away by Section 100A, CPC — **Civil Procedure Code, 1908 — Section 100A.**

#### **I (2007) CLT 12 (SC)**

- Special Appeal — Maintainability — Execution of Will — Doubt regarding — First appeal by respondent No. 1 dismissed by Single Judge holding execution of Will doubtful — Special appeal filed by respondent No. 1 before Division Bench of High Court maintainable — Section 100A of CPC does not have retrospective effect so as to bring within its fold even appeal preferred prior to coming into force of said Act — **Civil Procedure Code, 1908 — Section 100A.**

#### **I (2007) CLT 12 (SC)**

- Second Appeal — Maintainability — Appeal is vested right but such right can be taken away by subsequent enactment either expressly or by necessary intendment — By amending Act 22 of 2002 *w.e.f.* 1.7.2002 Parliament took away letters patent power of High Court in matter of appeal against order of Single Judge to Division Bench — When appeal decided from original order by Single Judge, no further appeal provided — Power which used to be there under letters patent of High Court, subsequently withdrawn — **Civil Procedure Code, 1908 — Section 100A** (amended by Act 22 of 2002 *w.e.f.* 1.7.2002).

#### **I (2007) CLT 107 (SC)**

- Appeal — Power of High Court in exercising letters patent in appeal decided by Single Judge from original order, has been taken away — There is no two opinions in matter that when CLB exercises its power under Sections 397 and 398 of Act, it exercised its quasi-judicial power as original authority — It may not be Court but it has all trappings of Court — CLB while exercising its original jurisdiction under Sections 397 and 398 of Act passed order — Against that order appeal lies to Single Judge of High Court and thereafter no further appeal could be filed — Companies Act, 1956 — Sections 10F, 397, 398 — **Civil Procedure Code, 1908 — Section 100A** (amended by Act 22 of 2002 *w.e.f.* 1.7.2002).

#### **I (2007) CLT 107 (SC)**

*Majority view:*

- **Section 100A** — Amended of Section 100A — Effect of . . . . . (see *Letters Patent Appeal — Clause 15*)

**I (2007) CLT 107 (Andhra Pradesh HC) (LB)**

- **Sections 141 and 151** — Inherent Powers — Exercise of — Restitution of suit — Inherent jurisdiction can be exercised to order restitution to avoid prejudice to party who suffered by reason of orders passed by Civil Court — If it is ultimately found such orders passed under mistake of fact or such orders are vitiated by fraud or misrepresentation — Trial Court considered evidence on record with great caution and care and has drawn correct inferences in arriving at unimpeachable conclusion that petitioner delivered property belonging to S — Respondent suffered prejudice due to this — Fit case to order restitution directing petitioner to deliver back possession of property.

**I (2007) CLT 21 (Andhra Pradesh HC)**

- Constitution of India, 1950 — Article 227 — **Civil Procedure Code, 1908 — Section 151, Order 18 Rule 17** — Evidence Act, 1872 — Sections 135, 137, 138 and 165 — Inherent Powers — Exercise of — Recall of witness for re-cross examination — Section 151, CPC can only be invoked if there is no express provision dealing with particular situation — As to methodology and procedure for examining, cross-examining and re-examining witnesses, specific provisions in both CPC and Evidence Act provided — Under Section 151, CPC party cannot be permitted to re-cross examine particular witness who has already been examined and cross-examined — Such power of Court is subject to law of evidence — Order 18 Rule 17, CPC does not empower Court to call for witness already examined and cross-examined for purpose of re-cross examination — Section 165 of Evidence Act is also of no help to case of petitioner — It only empowers Court to put questions to any witness — Plaintiff has no right to re-cross examine witness already examined and cross-examined on two occasions — No infirmity in order passed by Civil Judge warranting any interference under Article 227 of Constitution.

**I (2007) CLT 85 (Gauhati HC)**

- **Order 1 Rule 10(2)** — Impleadment in Reference Proceedings . . . . . [See *Land Acquisition Act, 1894*]

**I (2007) CLT 195 (SC)**

- **Order 1 Rule 10(2)** — Contract for sale of immovable property . . . . . (see *Impleadment of Necessary Party*)

**I (2007) CLT 35 (Gauhati HC)**

- Impleadment of party — Transferee *pendente lite* — Suit for Specific Performance of Contract — Injunction — Transfer of portion of suit land by defendants in favour of M.K., S.K. and respondent No. 1 by Sale Deed — Application filed under Order 1 Rule 10, CPC by respondents for impleadment to contest suit and to permit them to file written statement — Trial Court held property purchased without obtaining leave of Court and transfer is *pendente lite* and clearly hit by Section 52 of T.P. Act — Trial Court rejected prayer for impleadment — High Court held respondents' vendors were not parties to suit and there was no body to present and safeguard their interest — They are required to be added as parties in suit for ends of justice — Respondents being transferees *pendente lite* without leave of Court cannot as of right seek impleadment in suit pending for very long time — There is no rule that transferee *pendente lite* without leave of Court should in all cases contest pending suit — High Court's view clearly indefensible and set aside — Transfer of Property Act, 1882 — Section 52 — **Civil Procedure Code, 1908 — Order 1 Rule 10(2), Order 39 Rules 1 and 2 r/w Section 151.**

**I (2007) CLT 126 (SC)**

- **Order 6 Rule 7 r/w Sections 151 and 153** — Amendment of Pleadings — Object and scope

of — Amendment cannot be claimed as a matter of right under all circumstances — But Courts while deciding such prayers should not adopt hypertechnical approach — Technicalities of law should not be permitted to hamper Courts in administration of justice — Power to allow amendment is very wide and can be exercised at any stage of proceedings in interest of justice.

**I (2007) CLT 64 (Uttaranchal HC)**

- Pleadings — Striking out Pleadings — Applicability of Order 6 Rule 16, CPC to election petition — General principles as to pleadings in civil suits apply to election petitions as well, pleadings which are required to be struck off under Order 6 Rule 16, CPC in suit can also be ordered to be struck off in election petition — In appropriate cases, election Tribunal (H.C.) may invoke power under Order 6 Rule 16, CPC — **Civil Procedure Code, 1908 — Order 6 Rule 16.**

**I (2007) CLT 66 (SC)**

- Pleadings — Striking out Pleadings — Powers of Court under Order 6 Rule 16, CPC — Object of Order 6 Rule 16, CPC — Circumstances to be taken into consideration while ordering striking off pleadings — **Civil Procedure Code, 1908 — Order 6 Rule 16.**

**I (2007) CLT 66 (SC)**

- **Order 6 Rule 17** — Constitution of India, 1950 — Article 227 — Amendment of Plaintiff — Suit for permanent prohibitory injunction — Right of easement by prescription over plaintiff schedule property — Laches and negligence on part of petitioner to take out Commission and file application for amendment — Circumstances of case reveal it was not fault of petitioner but of Counsel for petitioner who framed suit — That is why amendments necessitated in plaintiff — By amendment application properties sought to be described properly, which is necessary for proper disposal of disputes — When right to easement by prescription sought to be established, it is necessary actual lie of pathway is fixed before considering question whether plaintiff has right of easement by prescription over that way — Amendment will not alter nature and character of suit — Permission to amend plaintiff as sought should have been allowed without rejecting it on ground of delay — Delay could be compensated by cost.

**I (2007) CLT 1 (Kerala HC)**

- **Order 6 Rule 17** — Amendment of plaintiff — Suit for partition — Plaintiff/petitioner sought to change year of marriage of his father as mistake found out subsequently — Application for amendment filed before commencement of trial of suit — Pre-trial amendment should be allowed liberally in order to avoid multiplicity of proceedings when it does not alter basic structure of suit out only nature of relief is changed correcting factual mistakes — By allowing amendment, no new case sought to be introduced — Impugned orders set aside.

**I (2007) CLT 44 (Madras HC)**

- **Order 6 Rule 17, Order 6 Rule 18; Order 1 Rule 10** — Constitution of India, 1950 — Article 227 — Amendment of Plaintiff — Impleadment of Party — Amendment shall not ordinarily take effect until time amended plaintiff, as directed by Court filed in terms of Order 6 Rule 18 — Prayer of plaintiffs to make amendment allowed — It is not case of plaintiff that amendments, allowed to be made or incorporated, would not be made by plaintiff, it should be too technical for this Court, sitting in writ jurisdiction under Article 227, to interfere with directions of Court to implead respondent-bank as defendant No. 9 in suit.

**I (2007) CLT 35 (Gauhati HC)**

- **Order 7 Rule 14(1), Order 5 Rule 1, Order 5 Rule 2, Section 151** — Document — Production of document on which plaintiff sues — Inherent powers — Annexing of copy of plaintiff with summons is condition precedent for effective service of summons on defendant furnishing of copy of document, based on which plaintiff institutes suit, or

document on which plaintiff relies in support of his claim, need not be furnished to defendant — But Court in appropriate case not powerless to direct plaintiff to furnish copies of documents based on which he instituted suit or copies of documents on which plaintiff relies to support his claim.

**I (2007) CLT 135 (Gauhati HC)**

- **Order 8 Rule 1, Order 8 Rule 10, Order 5 Rule 1, Order 5 Rule 2** — Constitution of India, 1950 — Article 227 — Written Statement — Service of summons — Mere service of summons on defendant would not make period of 90 days as envisaged under Order 8 Rule 1, CPC, start running — When period does not begin to run, question of period having come to end does not arise at all — When service of summons not accompanied by copy of plaint, period of 90 days, as contemplated under Order 8 Rule 1, would not begin to run — Court not disempowered to accept in appropriate case written statement filed beyond period of 90 days of service of summons on defendant — Plaintiff-respondent failed to furnish to defendant copies of documents, could not have legally objected to acceptance of written statement.

**I (2007) CLT 135 (Gauhati HC)**

- **Order 8 Rule 10, Order 9 Rule 13** — Writ petition — Maintainability — Written Statement — Failure to file — Setting aside *ex parte* decree — Against decree passed under Order 8 Rule 10, CPC for failure of defendant to file written statement, petition under Order 9 Rule 13, CPC maintainable.

**I (2007) CLT 44 (Kerala HC)**

- *Mesne Profits* — Recovery of — Suit for Possession by Ejectment — Suit not disposed as whole — Impleadment of necessary party, *i.e.* DFC as second defendant in suit — Application filed by DFC seeking closure of case on plea that all disputes settled and no question of payment of any *mesne* profits — In terms of undertaking filed in form of affidavit by Senior Manager, DFC at stage when arguments on landlords' application under Order 12 Rule 6, CPC praying for decree for possession on admission were heard, order dated 13.1.2006 did not put quietus to issue of *mesne* profits — Suit as a whole not disposed of and issue of *mesne* profits still remained to be decided — Undertaking given by learned Counsel for landlord that notwithstanding fact that defence of UOI struck off, landlords, will not stand in way of UOI raising plea of settlement between landlords and DFC and affidavit filed by DFC on clear and distinct "understanding" as alleged by DFC in these proceedings — Landlords shall remain bound by said undertaking — Impugned judgment does not suffer from any infirmity warranting interference — **Civil Procedure Code, 1908 — Order 12 Rule 6.**

**I (2007) CLT 130 (SC)**

- **Order 16 Rule 1, Order 16 Rule 1A and Order 16 Rule 3(3)** — Production of Witnesses Without Summons — Sufficient cause to be shown by party producing said witness — Provision directory — Witness could be produced by party at any stage without applying for summons from Court — Embargo under Order 16 Rule 1(1), *viz.*, list of witnesses shall not be supplied not later than 15 days after settlement of issues does not mean no new witness could be examined after submission of list — Only requirement is application must contain reasons for producing witness — No error in order passed by Court below.

**I (2007) CLT 18 (Allahabad HC)**

- Execution of Money Decrees — Provisions in CPC — Rule of appropriation in respect of amounts deposited in Court or in respect of payment into Court, is contained in Order 24, CPC at pre-decretal stage and in Order 21 Rule 1, CPC at post-decretal stage — **Civil Procedure Code, 1908 — Order 21 Rule 1, Order 21 Rule 1(2), Order 24 Rule 1, Order 24 Rule 2, Order 24 Rule 3, Order 24 Rule 4.**

**I (2007) CLT 87 (SC)**

— Order 32 Rule 15 — Scope of . . . . . (see *Appointment of Guardian*)

**I (2007) CLT 65 (Allahabad HC)**

— Execution of Money Decrees — Scope of Order 34, CPC — Applicability of provisions of Order 34, CPC — Discussed — **Civil Procedure Code, 1908 — Order 34 Rule 10, Order 34 Rule 11, Order 34 Rule 12, Order 34 Rule 13.**

**I (2007) CLT 87 (SC)**

— Injunction — Specific Performance — Possession — Restraining disturbance of possession will not be granted in favour of plaintiff who is not found in possession — Appellants failed to prove they were in possession of disputed lands — Both appellants and respondents claiming disputed land as area appurtenant to building — Lower Appellate Court concluded boundary wall was constructed by respondents and not appellants — That appellants had no direct access to land in question — There was lane running between appellant's house and disputed land in question — That appellants were not using disputed land as his *sehan* from time of their ancestors whereas respondents had been in possession of land in dispute for several years — Suit dismissed by lower Appellate Court — High Court upheld findings of lower Appellate Court — This Court would not like to interfere on findings of facts — No reason to reverse concurrent findings — Suit filed by appellants is only for permanent injunction — Lower Appellate Court should have confined itself to its dismissal only on ground that appellants failed to show they were in possession — Declaration that appellants are not owners, not necessary — Specific Relief Act, 1963 — Section 38 — **Civil Procedure Code, 1908 — Order 39 Rules 1, 2.**

**I (2007) CLT 63 (SC)**

— Injunction — Interim Injunction — Grant of — Restraining party from enforcing obligations arising out of contract — Not sustainable — Plaintiff executed hypothecation and created charge to secure loan advanced by 1st defendant to IInd defendant — Loan advanced to enable IInd defendant to fulfil terms of contract entered into with APTRANSCO — IInd defendant sub-contracted part of work to plaintiff — 1st defendant advanced monies to IInd defendant for work and plaintiff *prima facie* secured loan by hypothecation and charge — Order claimed against plaintiff before DRT in enforcement of its rights by 1st defendant — Single Judge rightly held that 1st defendant initiated proper proceeding for enforcement of its rights before Tribunal exclusively competent to deal with such claim — It was not for Civil Court to intervene with interim order of injunction as sought for by plaintiff — Competent proceedings instituted before Tribunal by financial institution seeking to enforce its claimed rights — Mere fact that plaintiff rushed to Civil Court on receipt of notice from 1st defendant to thwart enforcement of obligations allegedly incurred, does not justify grant of interim order of injunction restraining enforcement of rights arising out of alleged hypothecation and charge created by plaintiff in favour of first defendant — Order of injunction now granted could be granted only in exceptional cases — Order of Division Bench set aside and that of Single Judge restored dismissing application for interim injunction — **Civil Procedure Code, 1908 — Order 39 Rules 1, 2.**

**I (2007) CLT 190 (SC)**

— **Order 39 Rules 1 and 2 . . . . . (see *Copyright*)**

**I (2007) CLT 6 (Kerala HC)**

— Remand of Case — Will — Suspicious circumstances surrounding Will — High Court remanded matter to Trial Judge permitting parties to adduce fresh evidence — Remand of matter in its entirety by High Court not proper — — Remand of matter to adduce additional evidence — Onus of proof wrongly placed on plaintiff — Additional evidence required to be adduced upon reframing issue — Proper for High Court not to remit matter in its entirety, which could have been done by Court in exercise of its jurisdiction under Order 41 Rule 23 or Order 41 Rule 23A, CPC — Impugned judgment modified and trial

Judge directed to allow parties to adduce evidence — **Civil Procedure Code, 1908 — Order 41 Rules 23, Order 41 23A, Order 41 Rule 25.**

**I (2007) CLT 21 (SC)**

— **Order 43 Rule 1(k)** . . . . . (*see Appeal*)

**I (2007) CLT 78 (Allahabad HC)**

**Companies Act, 1956**

— Appeal — Power of High Court in exercising letters patent in appeal decided by Single Judge from original order, has been taken away — There is no two opinions in matter that when CLB exercises its power under Sections 397 and 398 of Act, it exercised its quasi-judicial power as original authority — It may not be Court but it has all trappings of Court — CLB while exercising its original jurisdiction under Sections 397 and 398 of Act passed order — Against that order appeal lies to Single Judge of High Court and thereafter no further appeal could be filed — **Companies Act, 1956 — Sections 10F, 397, 398** — Civil Procedure Code, 1908 — Section 100A (amended by Act 22 of 2002 *w.e.f.* 1.7.2002).

**I (2007) CLT 107 (SC)**

— Oppression and Mismanagement — Denial of shares for supply of medical equipments worth Rs. 3.5 crores to appellant-NRI — Ousting from Chairman and Directorship of Company — Fool proof case of oppression of member — Material change in management of Company brought about to detriment of interest of main promoter — It is covered under Section 398(1)(b) of Act — Company which is floated by elder brother and run by younger brother in absence of elder brother, younger brother manages whole Company and that M.D. totally ousted and shares are being cornered substantially so as to have full control of Company, is oppression squarely covered by Section 397(1)(b) of Act — No proper notice served on appellant No. 1, major shareholder of Company or to appellant No. 2 — Board meeting cannot be said to be valid — Respondent No. 2 without permission of Board of Directors filed application with RBI seeking withdrawal of permission granted for allotment of 30,55,329 equity shares to appellant No. 1 — RBI restored approval for allotment of equity shares to appellant No. 1 with further directions — Persistent effort made by respondents by filing writ petitions to reduce shareholding of appellant No. 1 — This was at expense of Company and adversely affected interest of Company — This is case of oppression of member as well as amount to bringing about material change in management of Company — Impugned order passed by Single Judge of High Court set aside — Directions issued — **Companies Act, 1956 — Sections 397, 398, 399.**

**I (2007) CLT 107 (SC)**

— Negotiable Instruments Act, 1881 — Sections 138, 141 — **Companies Act, 1956 — Section 536** — Dishonour of Cheque — Offence by Company — Liquidation of Company — Penal liability of Directors/Other persons falling within description of Section 141, Negotiable Instruments Act, after company ordered to be wound up — Complaint not maintainable — Actual offence has to be committed by company and then alone Directors can become liable for offence — When company goes into liquidation and cheque presented thereafter, it cannot be said that company committed offence as it is because of legal bar that it is precluded from making payment — Once dishonour of cheque by Bank and failure to make payment of amount by company is beyond its control, Directors (ex-Directors) can also not be held liable — Complaint not maintainable when cheque presented after company ordered to be wound up — Account closed by Official Liquidator and cheque was dishonoured — Erstwhile Directors seize to be Directors as on date of presentation of cheque, they are not incharge of day-to-day affairs of Company — Offence under Section 138 of Negotiable Instruments Act committed only on dishonour of cheque and issuance of notice for demand to pay amount — No notice could be issued to Company in liquidation and creditors to be paid as per scheme of Companies Act — Liability of Directors also cannot be fastened under Section 141, Negotiable Instruments Act.

### **I (2007) CLT 97 (Delhi HC)**

#### **Conduct of Election Rules, 1961**

- Corruption — Striking out pleadings — Allegation regarding ante-dating electoral rolls not incomplete and vague — Averments made in para 12 of election petition in this regard cannot be deleted — When it was alleged that names of certain electors were wrongly deleted and all particulars relating to excluded electors numbering 586 placed in Schedule 'A' along with election petition, it could not be said particulars were incomplete or vague — Allegations in election petition clear that first respondent was guilty of corrupt practice of obtaining assistance of Gazetted Officer, who was Returning Officer as well as Electoral Registration Officer — Material facts and particulars as required by Section 83 r/w Section 123(7) set out in election petition — High Court wrong in deleting para 13(a) of election petition — In para 11(a), election petitioner stated that one H.K. respondent No. 5 in election petition filed his nomination paper as independent candidate and it was required to be subscribed by ten proposers — That nomination paper was thumb marked by 4 proposers, which were neither identified nor attested — Wrongful acceptance of nomination paper of HK materially affected result of election — Similar averments made in para 11(b) about independent candidate-HS — High Court not right in deleting para 11 relying on *Shivcharan* and *Santosh Yadav* cases — High Court not wrong in rejecting averments in para 17 as out of 22 postal ballot papers, 20 did not contain requisite declaration envisaged by Rule 54A — Rejection of Para 17 not contrary to law — **Conduct of Election Rules, 1961 — Rule 54A** — Representation of the People Act, 1951 — Sections 30, 33, 36, 36(8), 37, 38, 79, 80, 80A, 81, 82, 83, 86, 87, 100, 100(1)(d)(iii), 117, 123, 123(8).

### **I (2007) CLT 66 (SC)**

#### **Constitution of India, 1950**

- Arbitration Law — Setting aside Award — 'Public Policy' — Violation of — Applicability of expression considered on touchstone of Section 23, Contract Act and Article 14 of Constitution in *ONGC* case, III (2003) SLT 324=II (2003) CLT 242 (SC) — Public policy violation should be so unfair and unreasonable to shock conscience of Court — What would constitute public policy is matter dependent upon nature of transaction and nature of statute — Law laid down in *ONGC* case lays down correct principles of law — Arbitration and Conciliation Act, 1996 — Section 34 — **Constitution of India, 1950 — Art. 14** — Contract Act, 1872 — Section 23.

### **I (2007) CLT 200 (SC)**

- Arbitration Law — Interest — Reduction of — Power of Arbitrator to award interest for pre-award period, interest *pendente lite* and interest post-award period is not in dispute — Section 31(7)(a) provides arbitral tribunal may award interest at such rate as it deems reasonable, on whole or any part of money, for whole or any part of period between date on which cause of action arose and date on which award is made *i.e.* pre-award period — This is subject to agreement as regard rate of interest on unpaid sum between parties — 1996 Act provides for award of 18% interest — Arbitrator in his wisdom granted 10% interest both for principal amount as also for interim — Due to long lapse of time, in furtherance of justice rate of interest reduced to 7½% — **Constitution of India, 1950 — Article 142** — Arbitration and Conciliation Act, 1996 — Section 31(7)(a).

### **I (2007) CLT 200 (SC)**

- **Article 226** — Writ Jurisdiction — After disposal of case, including writ petition, under Article 226, Court becomes *functus officio* — It has no jurisdiction to modify judgment/order till appropriate petition for review of such judgment/order filed — Court can only correct clerical mistake, if any occurred in judgment/order but cannot modify or vary judgment/order already delivered.

### **I (2007) CLT 2 (Jharkhand HC) (DB)**

- Civil Procedure Code, 1908 — Order 8 Rule 1, Order 8 Rule 10, Order 5 Rule 1, Order 5

Rule 2 — **Constitution of India, 1950 — Article 227** — Written Statement — Service of summons — Mere service of summons on defendant would not make period of 90 days as envisaged under Order 8 Rule 1, CPC, start running — When period does not begin to run, question of period having come to end does not arise at all — When service of summons not accompanied by copy of plaint, period of 90 days, as contemplated under Order 8 Rule 1, would not begin to run — Court not disempowered to accept in appropriate case written statement filed beyond period of 90 days of service of summons on defendant — Plaintiff-respondent failed to furnish to defendant copies of documents, could not have legally objected to acceptance of written statement.

**I (2007) CLT 135 (Gauhati HC)**

— **Article 227** . . . . . (see *Supervisory Jurisdiction*)

**I (2007) CLT 35 (Gauhati HC)**

**Consumer Protection Act, 1986**

— Jurisdiction of TDSAT — TDSAT entitled to entertain complaint by group of consumers against service provider — What is excluded is complaint of individual consumer and not group of consumers — **Consumer Protection Act, 1986 — Section 2(1)(d)** — Telecom Regulatory Authority of India Act, 1997 — Section 14(a).

**I (2007) CLT 132 (SC)**

— “Consumer” — Submission that in terms of Section 2(1)(d) of 1986 Act ‘consumer’ does not include person who obtains goods or services for any commercial purpose, hotels would not come within definition of ‘consumer’, not accepted — **Consumer Protection Act, 1986 — Section 2(1)(d)**.

**I (2007) CLT 132 (SC)**

**Contract Act, 1872**

— Arbitration Law — Setting aside Award — ‘Public Policy’ — Violation of — Applicability of expression considered on touchstone of Section 23, Contract Act and Article 14 of Constitution in *ONGC* case, III (2003) SLT 324=II (2003) CLT 242 (SC) — Public policy violation should be so unfair and unreasonable to shock conscience of Court — What would constitute public policy is matter dependent upon nature of transaction and nature of statute — Law laid down in *ONGC* case lays down correct principles of law — Arbitration and Conciliation Act, 1996 — Section 34 — Constitution of India, 1950 — Art. 14 — **Contract Act, 1872 — Section 23**.

**I (2007) CLT 200 (SC)**

— Contract — Delay and disruption in conclusion of contract — Contract provided for extension of its term and payment of damages in case of delay in execution of contract — Second part of Section 55 of Contract Act attracted and not its first part — Parties did not intend that time was to be essence of contract on expiry whereof contract became voidable at instance of one of parties, but by reason thereof parties shall never be deprived of damages — **Contract Act, 1872 — Section 55**.

**I (2007) CLT 200 (SC)**

— Arbitration Law — Award — Determination of actual loss — Arbitrator applied Emden Formula while calculating amount of damages having regard to books of account and other documents maintained by MII appellant — He insisted sufferance of actual damages must be proved by bringing on record books of account and other relevant documents — Sections 55 and 73 of Contract Act does not lay down mode and manner as to how and in what manner computation of damages or compensation to be made — Nothing in Indian Law to show any of formulae adopted in other countries is prohibited in law or same inconsistent with law prevailing in India — As computation depends on circumstances and methods to compute damage, determination of quantum to be determined by Arbitrator — No reason to interfere with that part of award as Emden Formula evolved over years, is

accepted internationally and not contrary to provisions of Indian Law — Arbitration and Conciliation Act, 1996 — Sections 2(c), 16, 33, 44 — **Contract Act, 1872 — Sections 55, 73.**

**I (2007) CLT 200 (SC)**

- Contract — Construction of contract agreement is within jurisdiction of Arbitrators having regard to wide nature, scope and ambit of arbitration agreement — Terms of contract can be express or implied — Conduct of parties also relevant factor in construction of contract — Once it is held Arbitrator had jurisdiction, no further question shall be raised and Court will not exercise its jurisdiction unless there exists any bar on face of award — **Contract Act, 1872 — Sections 55, 73 — Arbitration and Conciliation Act, 1996.**

**I (2007) CLT 200 (SC)**

- Injunction against Invocation of Letter of Credit — Contract for supply of goods — Short supply of goods — Letter of Credit is separate contract and same has nothing to do with dispute with supplier and purchaser — Banker has duty to honour Letter of Credit as and when goods were delivered — Claim on account of short supply — Petitioner/appellant has right to take steps in proper proceedings and cannot be ground or can act as special equity to have order of injunction restraining bank to honour Letter of credit — No reason to interfere with order passed by First Court.

**I (2007) CLT 71 (Calcutta HC) (DB)**

**Copyright Act, 1957**

- **Section 13(1)(a)** — Law Reports and Law Reporting — Report of judgment by law reporter is composite document and not to be sliced into head-note on one hand and main text of judgment on other, for purpose of appreciating it as literary work to determine whether reporter has copyright on it — Report is whole document and copyright will have to rest on report as a whole — Reporter-plaintiff has copyright over reports of judgments which are published in its publications either in name KLT or otherwise — Law report is composite document and its head-notes, editorial comments, foot-note, setting, layout, presentation, etc. and even skill and labour involved in choosing as to whether judgment should be reported, lead to reporter and publisher acquiring copyright over such report as composite document including text of judgment as so published by reporter.

**I (2007) CLT 6 (Kerala HC)**

- **Sections 16, 17(d) and 52(1)(q)(iv)** — Civil Procedure Code, 1908 — Order 39 Rules 1 and 2 — Copyright — Injunction — Strong *prima facie* case — Product of defendants proved to contain verbatim copy of head-notes, short notes, etc. of plaintiff's publication, though defendants merely changed manner in which case number, names of parties, appearing Counsel, etc. shown — Grammatical error in head-note of plaintiff's publication carried over to version of defendants — Plaintiff established strong *prima facie* case and it is entitled to injunction — Impugned order not liable to be interfered with.

**I (2007) CLT 6 (Kerala HC)**

- **Sections 16, 17(d) and 52(1)(q)(iv)** — Copyright over Judgments of Courts — Act does not entitle any person even Judge, to claim copyright over judgments of Courts — Judgment of Court is affirmation, by authorised societal agent of State, speaking by warrant of law and in name of State — In law, it is affirmation by law of legal consequences attending proved or admitted state of facts.

**I (2007) CLT 6 (Kerala HC)**

**Court Fees Act, 1870**

- **Section 7(iv)(e)** — *Ad valorem* Court fee — Amount of Rs. 3 lacs credited in petitioner's account, wrongly debited by Bank on instructions of drawer of cheque . . . . . (see *Court Fee*)

**I (2007) CLT 74 (Chhattisgarh HC)**

**Evidence Act, 1872**

- Will — Proof of execution — Mode and manner in which proof of execution of document required by law to be attested — Execution of Will must be proved at least by one attesting witness, if alive, subject to process of Court and capable of giving evidence — Will is to prove primary evidence except where proof permitted by leading secondary evidence — **Evidence Act, 1872 — Sections 63, 68.**

**I (2007) CLT 159 (SC)**

**Indian Penal Code, 1860**

**Section 19** — Expression — “Judge” — Meaning — Section 19, IPC denotes, not only every person who is officially designated as Judge, but also every person who is empowered to give such judgment.

**I (2007) CLT 6 (Kerala HC)**

**Land Acquisition Act, 1894**

**Sections 4 and 18** — Compensation — Enhancement — Challenge against — Appreciation of evidence . . . . . (see *Land Acquisition*)

**I (2007) CLT 79 (Bombay HC)**

- Compensation — Enhancement — Appropriation of amounts — On payment or deposit of amount awarded by Collector in terms of Section 11 r/w Section 31, Land Acquisition Act, claimant cannot thereafter claim any interest on that part of compensation paid to him or deposited for payment to him once notice of deposit given to him — Enhancement of compensation with solatium and interest under Section 23(1A) of Act by Reference Court and interest on enhanced compensation in terms of Section 28 of Act — Claimant/decree holder can seek appropriation of amounts deposited pursuant to that award decree, only towards enhanced amount so awarded by reference Court — **Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Section 11 r/w Section 31, Sections 23(1A), 28, 34.**

**I (2007) CLT 87 (SC)**

- Compensation — Reference to Collector by person interested, if not satisfied with amount of compensation awarded by Collector, entitled to receive amount under protest and could apply to Collector requiring him to refer matter to Court in terms of Section 18 of Act — **Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 11, 12, 16, 18, 23, 24, 25, 26, 27, 28, 53, 54.**

**I (2007) CLT 87 (SC)**

- **Sections 12, 12(2), 18, 18(2), 18(2) proviso, 19, 19(1), 19(2), 20 and 21** — Reference — Application barred by limitation, *viz.*, made after 6 weeks from date of award — Reference Court has no jurisdiction to consider question whether reference application submitted to Land Acquisition Officer within period of limitation — Such inquiry is beyond scope of inquiry by Reference Court

**I (2007) CLT 81 (Kerala HC)**

- Compensation — Award of, at different stages — First stage occurs when award is passed — Second stage occurs on reference under Section 18 of Act — Third stage occurs when in appeal, High Court enhances compensation — Fourth stage may be when Supreme Court enhances compensation and at that stage too, same rule would apply — **Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 18, 23(1), 23(1A), 23(2), 27, 28, 31, 34.**

**I (2007) CLT 87 (SC)**

- Interest on solatium in execution — Claim by awardee/decree holder, though it is not specifically granted by decree — Execution Court cannot go behind decree — If claim for

interest on solatium made and negated either expressly or by necessary implication by judgment or decree of Reference Court or of Appellate Court, Execution Court will have necessarily to reject claim for interest on solatium based on *Sunder v. UOI*, VI (2001) SLT 641=IV (2001) CLT 18 (SC), on ground that Execution Court cannot go behind decree — **Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Section 23.**

#### **I (2007) CLT 87 (SC)**

- Appropriation — Rule regarding in case of award decree under Land Acquisition Act — Ratio of *Prem Nath Kapur*, I (1996) CLT 220 (SC), on aspect of appropriation approved by this Court — Question of appropriation would be at different stages — Decree holder would not be entitled to reopen entire transaction to claim reappropriation of amounts already received by him and appropriated at that particular stage — Reliance on doctrine of merger does not enable decree-holder to get over scheme adopted by Act — **Land Acquisition Act, 1894 [as amended by Act No. 68 of 1984] — Sections 23, 23(1), 23(1A), 23(2), 28, 34.**

#### **I (2007) CLT 87 (SC)**

- Interest on Solatium — High Court bound to award interest on additional amount payable under Section 23(1A) and solatium payable under Section 23(2) of Act — Grant of interest on these amounts is consequential and automatic and involves only arithmetical calculation and not application of judicial mind or exercise of judicial discretion — During pendency of appeals before High Court law laid down in *Prem Nath Kapoor*, I (1996) CLT 200 (SC), held field and it would have been futile for appellants to claim interest — Judgment in *Sunder* case and impugned judgment in appeals preferred by State before High Court pronounced on same day — In interest of justice appeals preferred by appellants allowed and they are entitled to interest on amounts payable to them under Section 23(1A) and 23(2) of Act — **Land Acquisition Act, 1894 — Sections 23(1A), 23(2).**

#### **I (2007) CLT 185 (SC)**

##### **Letters Patent Appeal**

*Majority view:*

- **Clause 15** — Letters Patent Appeal — Maintainability — After insertion of amended Section 100A in C.P.C. by Act 22 of 2002, L.P.A. not maintainable against judgment rendered by Single Bench in appeal arising out of special enactment — Section 173 of Motor Vehicles Act, 1988 provides for appeal against award made by Motor Accident Claims Tribunal under Section 166 of Act, Section 54 of Land Acquisition Act provides for appeal against award of Reference Court — Section 30 of Workmen's Compensation Act, provides for appeal against order made by Commissioner — Similar provisions available in other enactments for appeal against award or order passed by Competent Authority or Court — No provision in these enactments under which appeal can be preferred against judgment rendered by Single Bench in matter arising out of award or order made by Competent Authority or Court. [Pg. 122, 123 [Paras 40, 41 and 42]]

#### **I (2007) CLT 107 (Andhra Pradesh HC) (LB)**

- **Clause 10** — Appeal — Maintainability — CMP preferred by company, not for correction of any clerical mistake but for modifying/recalling order amounting to review of order in question — Such application for review and modification of order can be passed by Court only in exercise of power conferred under Article 226 of Constitution — CMP filed by company to be construed as petition under Article 226 of Constitution for modification/recall of order — Impugned order construed to be order passed by Single Judge in exercise of power under Article 226 of Constitution — Appeal under Clause 10 of LPA maintainable.

#### **I (2007) CLT 2 (Jharkhand HC) (DB)**

**Limitation Act, 1963**

- Condonation of Delay — Declaration seeking joint ownership or half ownership in properties scheduled to petition — Petition filed by appellant-wife against respondent-husband — Delay of 62 days in filing application by appellant — Earlier divorce granted to parties under Sections 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act in petition filed by respondent — Appellant pursued her proceedings for declaration and injunction relating to properties — No doubt time for filing appeal is only 30 days from date of judgment of Family Court in view of Section 19 of Family Courts Act — No objection that Section 5 of Limitation Act not applicable — High Court made cursory examination of merits of claim of appellant before dismissing application for condonation of delay — In view of varying stands adopted by appellant, appropriate to grant her opportunity only by putting her on terms — Considering prior relationship between parties, costs to be paid by appellant to respondent in this Court need not be very substantial sum though it could not be insignificant sum — Orders of High Court set aside — Delay in filing appeal by appellant before High Court condoned subject to appellant depositing in High Court sum of Rs. 10,000/- towards costs thrown away within 6 weeks — Further directions issued — **Limitation Act, 1963 — Section 5.**

#### **I (2007) CLT 59 (SC)**

- **Section 5, Article 137** — Condonation of delay in filing application for final decree proceedings — Delay of 2283 days — Suit for redemption of mortgage — Plaintiff failed to file application for final decree without delay as defendant filed application for setting aside preliminary decree and it was pending for long time — Plaintiff's son co-plaintiff, died in accident and she was not in proper frame of mind — Application for condonation of delay filed putting forth said reasons — First respondent prevented by sufficient cause in not preferring application within reasonable time — Proceedings not governed by Article 137 of Limitation Act — First respondent was aged 60 years at time of filing of application in 2002 and now 64 years old — Delay in filing application condoned.

#### **I (2007) CLT 90 (Madras HC)**

- Period of limitation for raising counter claim in respect of wrongful detention of goods — Suit filed by respondent No. 1 against appellant for declaration of title in regard to their residential house — Appellant had put up lock in one of room where respondent No. 1 used to stay on 16.3.1987 — Suit filed by appellant to which counter claim filed by respondent No. 1 claiming damages for wrongful detention of her belongings on 24.6.1992 — High Court allowed claim as same not barred by limitation — Challenge against — Article 91 provides for period of limitation in respect of suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property — Time for which period begins to run would be when property wrongfully taken or injured or when detainer's possession become unlawful — In peculiar facts and circumstances, if Article 91 would not apply, residuary provision would — Respondent No. 1 should have filed suit within period of 3 years — Furthermore, respondent No. 1 knew about alleged wrongful act on part of appellant — She filed application in nature of *pro interse suo* in earlier suit, same was rejected — Her cause of action different and distinct from her brother — Only because in another legal proceeding by and between appellant and respondent No. 2, Advocate Commissioner appointed and inventory of goods of said room prepared — Same would not give rise to fresh cause of action for laying claim for damages — Impugned judgment unsustainable and set aside — **Limitation Act, 1963 — Section 22, Articles 68, 69, 91.**

#### **I (2007) CLT 19 (SC)**

##### **Motor Vehicles Act, 1988**

- **Section 93** — Bihar Motor Vehicles Rules — Rules 102 to 112 — Agency Business — Requirement to obtain licence — Violation of provision of law — Offices of petitioners sealed on alleged violation of Section 93 — Admittedly, petitioners are agents between persons intending to transport their goods and persons transporting their goods — Such

transaction includes collecting, forwarding or distributing goods carried by goods carriage — Petitioners engaged in agency business — Required to take licence under Section 93 of Motor Vehicles Act and Rules 102 to 112.

### **I (2007) CLT 84 (Jharkhand HC)**

#### **Negotiable Instruments Act, 1881**

**Section 138** — Dishonour of Cheque — Compensation — Exercise of power by Appellate Court or High Court or Court of Session in revision — No drawer of cheque can be allowed to take dishonour of cheque issued by him lightheartedly — In spite of notice and during pendency of trial, accused not chosen to deposit amount — By imposing sentence of imprisonment alone, complainant cannot recover money from accused — Accused directed to pay compensation of Rs. 75,000 to complainant.

### **I (2007) CLT 32 (Madras HC)**

— **Section 138** — Dishonour of Cheque — Cause of action, when arises . . . . . (*see Dishonour of Cheque*)

### **I (2007) CLT 97 (Delhi HC)**

— **Sections 138, 141** — Companies Act, 1956 — Section 536 — Dishonour of Cheque — Offence by Company — Liquidation of Company — Penal liability of Directors/Other persons falling within description of Section 141, Negotiable Instruments Act, after company ordered to be wound up — Complaint not maintainable — Actual offence has to be committed by company and then alone Directors can become liable for offence — When company goes into liquidation and cheque presented thereafter, it cannot be said that company committed offence as it is because of legal bar that it is precluded from making payment — Once dishonour of cheque by Bank and failure to make payment of amount by company is beyond its control, Directors (ex-Directors) can also not be held liable — Complaint not maintainable when cheque presented after company ordered to be wound up — Account closed by Official Liquidator and cheque was dishonoured — Erstwhile Directors seize to be Directors as on date of presentation of cheque, they are not incharge of day-to-day affairs of Company — Offence under Section 138 of Negotiable Instruments Act committed only on dishonour of cheque and issuance of notice for demand to pay amount — No notice could be issued to Company in liquidation and creditors to be paid as per scheme of Companies Act — Liability of Directors also cannot be fastened under Section 141, Negotiable Instruments Act.

### **I (2007) CLT 97 (Delhi HC)**

— **Sections 138, 141, 141(1), 141(2)** — Quashing of Summoning Order — Dishonour of Cheque — Offence by company — Agent of company does not come within purview of Section 141 of N.I. Act — It is restricted to officer of company or director or manager or secretary — Petitioner neither director, manager, secretary or other officer of company — Petitioner even otherwise not incharge of or responsible to accused No. 1 company for conduct of business of said company — As an agent, petitioner may have handled transactions for and on behalf of company in India but that does not bring petitioner within purview of Section 141 of Act — Summoning order *qua* petitioner quashed.

### **I (2007) CLT 89 (Delhi HC)**

— **Sections 138 and 142** — Dishonour of Cheque — Quashing of proceedings — Scope of provisions of Sections 138 and 142 of Act — Presentation of cheque cannot be repeated after issuance of statutory notice — Complainant has not only suppressed presentation of cheque and issuance of statutory legal notice, but also failed to comply with said provisions by representing cheque after issuance of statutory legal notice for reasons best known to him — In view of failure on part of complainant to avail remedy available under Section 142 of Act on earlier occasion, when he issued statutory legal notice calling upon petitioner to pay amount, complainant cannot invoke provisions of Section 138 r/w Section 142 of Act

once again, inasmuch as same is not impermissible under provisions of Act — Fit case wherein proceedings initiated against petitioner accused quashed.

#### **I (2007) CLT 67 (Andhra Pradesh HC)**

- **Sections 138 and 143** — Dishonour of cheque — Sentence which Magistrate may pass — Accused sentenced to one year's simple imprisonment and to pay fine of Rs. 1,25,000 — Out of which Rs. 1.20 lakh to be paid to non-petitioner No. 1 as compensation — Challenge against — Section 143 of Negotiable Instruments Act and Section 29, Cr.P.C. clearly provides Court of Magistrate of First Class may pass sentence of imprisonment for a term not exceeding 3 years, or of fine not exceeding 5,000 rupees or of both — Order passed by Trial Court and affirmed by Appellate Court to extent of passing sentence of fine beyond Rs. 5,000 is without jurisdiction and deserves to be modified — Fine of Rs. 5,000 imposed on petitioner, however sentence maintained.

#### **I (2007) CLT 17 (Rajasthan HC)**

- **Sections 138 and 143** — Dishonour of Cheque — Summary Trial — Evidence recorded by one Magistrate in case under Section 138, Negotiable Instruments Act, when he ceases to have jurisdiction on account of his retirement or transfer and succeeded by another Magistrate, can be acted upon by successor Magistrate/predecessor and proceed further from stage at which he takes over and decides case as contemplated under Section 326(1), Cr.P.C. — *De novo* trial not required to be conducted by succeeding Magistrate.

#### **I (2007) CLT 46 (Bombay HC)**

##### **Recovery of Debts Due to Banks and Financial Institutions Act, 1993**

- Transfer of Execution Proceedings to DRT — Claim time barred — While equity is in favour of respondent Bank, law is in favour of appellant — Impugned order of High Court clearly in violation of Section 31 of RDDBFI Act — Claim is time-barred in view of Art. 136 of Limitation Act read with Section 24 of RDDBFI Act — Bank is responsible for not getting decree executed well in time, *i.e.*, within 12 years from date when decree becomes enforceable — Limitation Act, 1963 — Article 136 — **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Sections 24, 31.**

#### **I (2007) CLT 1 (SC)**

- Transfer of Suit pending before Court to DRT — Recovery barred by limitation — Only those suits or proceeding pending before Court shall stand transferred to Tribunal which were pending on date when Tribunal was established — Third execution petition transferred by impugned order, filed by respondent Bank on 11.11.99, *i.e.* much after Tribunal established — Tribunal established in 1993 and no proceeding was pending before it on date when it was established — No transfer could take place under Section 31 of RDDBFI Act — Literal rule applies and other rules have no application to interpret Section 31 as language of Section 31 is plain and clear and not ambiguous or resulting in some absurdity — Recovery in question time-barred and quashed — Impugned order of High Court set aside — **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31** — Limitation Act, 1963 — Article 136.

#### **I (2007) CLT 1 (SC)**

- "Inherent powers" of High Court — Transfer of Suit or Proceedings to RDDBFI — High Court has no inherent powers of transferring execution proceedings to DRT apart from Section 31 of RDDBFI Act — **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31.**

#### **I (2007) CLT 1 (SC)**

- RDDBFI Act *vis-a-vis* Companies Act — Transfer of Suit or Proceeding — Section 446, Companies Act has no application once RDDBFI Act applies because Section 34 expressly gives overriding effect to provisions of RDDBFI Act — Also RDDBFI Act is special law and

will prevail over general law in Companies Act — Section 446(3), Companies Act was omitted by Companies (Second Amendment) Act, 2002 — Evidently High Court overlooked this amendment — **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34.**

### I (2007) CLT 1 (SC)

#### Representation of the People Act, 1951

- Corruption — Striking out pleadings — Allegation regarding ante-dating electoral rolls not incomplete and vague — Averments made in para 12 of election petition in this regard cannot be deleted — When it was alleged that names of certain electors were wrongly deleted and all particulars relating to excluded electors numbering 586 placed in Schedule 'A' along with election petition, it could not be said particulars were incomplete or vague — Allegations in election petition clear that first respondent was guilty of corrupt practice of obtaining assistance of Gazetted Officer, who was Returning Officer as well as Electoral Registration Officer — Material facts and particulars as required by Section 83 r/w Section 123(7) set out in election petition — High Court wrong in deleting para 13(a) of election petition — In para 11(a), election petitioner stated that one H.K. respondent No. 5 in election petition filed his nomination paper as independent candidate and it was required to be subscribed by ten proposers — That nomination paper was thumb marked by 4 proposers, which were neither identified nor attested — Wrongful acceptance of nomination paper of HK materially affected result of election — Similar averments made in para 11(b) about independent candidate-HS — High Court not right in deleting para 11 relying on *Shiocharan* and *Santosh Yadav* cases — High Court not wrong in rejecting averments in para 17 as out of 22 postal ballot papers, 20 did not contain requisite declaration envisaged by Rule 54A — Rejection of Para 17 not contrary to law — Conduct of Election Rules, 1961 — Rule 54A — **Representation of the People Act, 1951 — Sections 30, 33, 36, 36(8), 37, 38, 79, 80, 80A, 81, 82, 83, 86, 87, 100, 100(1)(d)(iii), 117, 123, 123(8).**

### I (2007) CLT 66 (SC)

- Non-joinder of Party — Effect of — Non-joinder of 'substituted candidate' (not duly nominated candidate) of same political party could not be accepted and he could not become duly nominated candidate, once nomination paper of duly nominated candidate scrutinized and accepted — **Representation of the People Act, 1951 — Section 79(b).**

### I (2007) CLT 66 (SC)

- Corrupt Practice — Assistance sought from Gazetted Officer in certain cases — Such assistance may be sought either by candidate, or his agent or any person with consent of candidate or his election agent for furtherance of prospects of candidate's election — Consent of candidate required only in those cases where such assistance sought by 'any other person', *i.e.* other than candidate himself (or his election agent) — In this case allegation of election petitioner is first respondent himself obtained assistance of Gazetted Officer "for furtherance of prospects of his election" — High Court legally wrong in ordering deletion of para 13(a) on basis of construction of Section 123(7) of Act — **Representation of the People Act, 1951 — Section 123(7).**

### I (2007) CLT 66 (SC)

#### Sick Industrial Companies (Special Provisions) Act, 1985

*S.B. Sinha, J.*

- Winding up of Company— Provisions of SICA would prevail over provisions of Arbitration and Conciliation Act, 1996 — Provisions of SICA made to seek to achieve higher goal and would be applicable despite *non obstante* clause in Section 5 of 1996 Act — It has limited application aiming at extent of judicial intervention — Its application attracted only when order under Section 22(3) required to be passed — Once arbitral award having force of decree put into execution, Section 22(1) of SICA would come on its way

from being enforced — Contention that Board would have no jurisdiction having regard to provisions of Section 5 of 1996 Act, has no force — **Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3)** — Arbitration and Conciliation Act, 1996 — Sections 5, 34.

### I (2007) CLT 40 (SC)

*S.B. Sinha, J.*

- Suspension of Award Pending Proceedings — Section 22(3), SICA provides for specific power in Board — Said provision contemplates larger public interest — In event arbitral award held outside purview of Section 22(3) thereof, it may be difficult to frame scheme or implement same under SICA — Parliament presumed suspension of award shall not be for long period — Party to award may face some hardship owing to its suspension — It would always be open to it to bring same to notice of Board — Board under Section 22(3) of SICA may pass such order or may not do so — If order is passed by Board, appeal lies thereagainst — **Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22(1), 22(3)** — Arbitration and Conciliation Act, 1996 — Section 5.

### I (2007) CLT 40 (SC)

*S.B. Sinha, J.*

- Expression “award, standing orders or other instruments” does not refer only to contractual obligation which is binding on company, but also liabilities thereunder — **Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(3)**.

### I (2007) CLT 40 (SC)

*S.B. Sinha, J.*

- Distinction between suspension of proceeding and initiation and/or continuance thereof — In former case statutory impact would be automatic, in latter Court required to apply its mind having regard to facts and circumstances of each case — **Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 22, 22(3)**.

### I (2007) CLT 40 (SC)

**Specific Relief Act, 1963**

- Injunction — Specific Performance — Possession — Restraining disturbance of possession will not be granted in favour of plaintiff who is not found in possession — Appellants failed to prove they were in possession of disputed lands — Both appellants and respondents claiming disputed land as area appurtenant to building — Lower Appellate Court concluded boundary wall was constructed by respondents and not appellants — That appellants had no direct access to land in question — There was lane running between appellant’s house and disputed land in question — That appellants were not using disputed land as his *sehan* from time of their ancestors whereas respondents had been in possession of land in dispute for several years — Suit dismissed by lower Appellate Court — High Court upheld findings of lower Appellate Court — This Court would not like to interfere on findings of facts — No reason to reverse concurrent findings — Suit filed by appellants is only for permanent injunction — Lower Appellate Court should have confined itself to its dismissal only on ground that appellants failed to show they were in possession — Declaration that appellants are not owners, not necessary — **Specific Relief Act, 1963 — Section 38** — Civil Procedure Code, 1908 — Order 39 Rules 1, 2.

### I (2007) CLT 63 (SC)

**Telecom Regulatory Authority of India Act, 1997**

- Cable Television Network — “Consumers ” — Members of appellants’-Associations are “Consumers” — Members of Associations take TV Signals either from respondents-broadcasters under their respective contracts or agreements or through cable operators —

Whereas in former case, there exists privity of contract between broadcasters and owners of hotels, owners of hotels would not come within purview of definition of MSOs (Multi System Operators) — Owner of hotel provides various amenities to its customers *i.e.* beds, meals, fans, television, etc. — This would not constitute sale by owner to guest — Owners of hotels take TV signals from broadcasters in same manner as they take supply of electrical energy from licensees — They do not have any privity of contract with broadcasters or cable operators — Identity of guests not known to broadcasters or cable operators — Guest may not watch TV or room may remain unoccupied but amount under contract by hotel owners whether with broadcasters or cable operators remains unchanged — Members of appellants'-associations are consumers — **Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 2(1)(k) Proviso, 11, 11(1), 11(2), 14, 14(a)(ii), 14(a)(iii), 18 — Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A, 4A(9).**

#### **I (2007) CLT 132 (SC)**

- Cable Television Network — “Commercial Cable” — Subscribers not outside purview of regulatory jurisdiction of TRAI — TDSAT not correct in opining that regulators should consider whether it is necessary or not to fix tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard — While exercising its original jurisdiction, TDSAT should not have made such observations — Well settled power required to be exercised in particular manner, same has to be exercised in that manner or not at all — TDSAT having not exercised its appellate jurisdiction, neither could have issued any direction nor TRAI could abide thereby — **Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 11, 14(a)(ii), 18 — Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A.**

#### **I (2007) CLT 132 (SC)**

- Tariff orders issued by TRAI on 15.1.2004, 1.10.2004 and 7.3.2006 — Applicability to members of appellants-Associations — Tariff Order of 2004 which came into force from 15.1.2004 whereby price prevalent as on 26.12.2003 was to be ceiling in respect of charges payable by cable subscribers to cable operator, cable operators to multi service operators/broadcasters and multi service operators to broadcasters — Whereas members of Hotel and Restaurant Association protected thereby, Tariff Order dated 7.3.2006 protects all as in terms thereof Clause 2(f) of Telecommunication and (Broadcasting and Cable) Services (Second) Tariff Order, 2004 was substituted — In event TRAI frames tariffs, members of appellants-Association would be entitled to prefer appeals thereagainst — **Telecom Regulatory Authority of India Act, 1997 — Sections 2(1)(j), 2(1)(k), 11, 14(a)(ii), 18 — Cable Television Networks (Regulation) Act, 1995 — Sections 2, 2(aa), 2(b), 2(c), 4A.**

#### **I (2007) CLT 132 (SC)**

- Jurisdiction of TDSAT — TDSAT entitled to entertain complaint by group of consumers against service provider — What is excluded is complaint of individual consumer and not group of consumers — Consumer Protection Act, 1986 — Section 2(1)(d) — **Telecom Regulatory Authority of India Act, 1997 — Section 14(a).**

#### **I (2007) CLT 132 (SC)**

##### **Transfer of Property Act, 1882**

- Principle of *lis pendens* — Transferee *pendente lite* is bound by decree just as much as he was party to suit — Principle of *lis pendens* embodied in Section 52, Transfer of Property Act being principle of public policy, no question of good faith or *bona fide* arises — Section 52, T.P. Act only postulates condition that alienation will in no manner affect rights of other party under any decree passed in suit unless property alienated with permission of Court — **Transfer of Property Act, 1882 — Section 52.**

#### **I (2007) CLT 126 (SC)**

- Impleadment of party — Transferee *pendente lite* — Suit for Specific Performance of

Contract — Injunction — Transfer of portion of suit land by defendants in favour of M.K., S.K. and respondent No. 1 by Sale Deed — Application filed under Order 1 Rule 10, CPC by respondents for impleadment to contest suit and to permit them to file written statement — Trial Court held property purchased without obtaining leave of Court and transfer is *pendente lite* and clearly hit by Section 52 of T.P. Act — Trial Court rejected prayer for impleadment — High Court held respondents' vendors were not parties to suit and there was no body to present and safeguard their interest — They are required to be added as parties in suit for ends of justice — Respondents being transferees *pendente lite* without leave of Court cannot as of right seek impleadment in suit pending for very long time — There is no rule that transferee *pendente lite* without leave of Court should in all cases contest pending suit — High Court's view clearly indefensible and set aside — **Transfer of Property Act, 1882 — Section 52** — Civil Procedure Code, 1908 — Order 1 Rule 10(2), Order 39 Rules 1 and 2 r/w Section 151.

**I (2007) CLT 126 (SC)**

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