

CLT*Subject Index (Topic Wise)*

ADMINISTRATION OF JUSTICE — Court should act in such manner so as to do substantial justice between parties — Effort should always be to appreciate grievances on merits and decide them in accordance with law.

IV (2006) CLT 408 (Himachal Pradesh HC)

ADMINISTRATIVE LAW — Power of judicial review may not be exercised unless administrative decision is illogical or suffers from procedural impropriety or it shocks conscience of Court that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved — It is settled, scope of judicial review limited to deficiency in decision-making process and not the decision.

IV (2006) CLT 181 (SC)

ADVOCATES — Enrolment of — Eligibility criteria — Power of Bar Council of India — Prescription of necessary educational qualification for enrolment as Advocate — Bar Council has independent power to prescribe which degree and academic qualifications to be considered equivalent to graduate degree — This is an independent power — Merely because Bombay University recognised LCEH as equivalent to BHMS, it cannot be held that Bar Council must recognise same as academic qualification equivalent to graduate degree.

Advocates Act, 1961 — Sections 24, 24(1)(c)(iii), 49, 7, 1(h) and 1(i).

IV (2006) CLT 343 (Bombay HC) (DB)

— Right to Practise — Restriction on acquiring necessary qualification — Not violative of fundamental right guaranteed under Article 19 of Constitution — Further, it is duty of person who wants to exercise his right to practise, to find out requirement to obtain that right — It cannot be said it is duty of Council to make it known to him and ask him to show cause why he should not be denied right to practise — Further, Bar Council cannot object to acquisition of academic qualification.

Advocates Act, 1961 — Section 24 — Constitution of India, 1950 — Articles 14 and 19.

IV (2006) CLT 343 (Bombay HC) (DB)

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IV (2006) CLT 379 (Rajasthan HC)

— Existence of — Where elections conducted in accordance with provisions of statute and statute also provides remedy of settlement of election disputes by filing election petition before Tribunal, that remedy alone should be availed of — Recourse cannot be taken to proceedings.

IV (2006) CLT 171 (SC)

AMENDMENT OF JUDGMENT, DECREE OR ORDERS — Correction of Clerical or Arithmetical Mistake — Power of Trial Court — Applicability of doctrine of merger — Appellate Court only disposed of matter by holding ID had no right to file appeal since no decree passed against him — Doctrine of merger does not apply — Section 153A, CPC not attracted — Mere fact that appeal decided after notice and not *in limine* would not take away jurisdiction of Trial Court to amend its judgment and decree because of fact that there was no decision on case by District Judge.

Civil Procedure Code, 1908 — Sections 152 and 153, 153A.

IV (2006) CLT 408 (Himachal Pradesh HC)

- Correction of Clerical or Arithmetical Mistakes — Scope of provisions of Sections 152 and 153, CPC — Limitation to exercise of power — Only fetter to this power of Court, if it is inequitable or inexpedient to do so, especially where third parties have acquired rights — One of reasons why Courts held no limitation can be placed for correcting mistake is no party should suffer because of mistake of Court.

Civil Procedure Code, 1908 — Sections 152, 153.

IV (2006) CLT 408 (Himachal Pradesh HC)

AMENDMENT OF PLAINT

- Controversy relating to right of plaintiff to free flow of water from his land through item No. 3 of plaintiff schedule property and whether defendant justified in denying same by causing obstruction as alleged — Points to be determined by Court and matters to be resolved for arriving at finding on question of prohibitory injunction as well as mandatory injunction are common — Not just to disallow amendment sought for — Impugned order set aside — Relief granted subject to condition of payment of Rs. 2,500 as costs to respondent/defendant by petitioner/plaintiff.

Civil Procedure Code, 1908.

IV (2006) CLT 289 (Kerala HC)

- Court would be liberal in allowing amendments in cases where suit would be defeated on any specific bar of law being applied on ground that portion of claim is omitted to be included or relief not claimed or for any other similar reason — Multiplicity of suits to be avoided — Litigant should not be penalised for omission or for lack of astuteness in pleadings — Astuteness in pleadings would not enable person to get relief to which he is not really entitled — Similarly lack of astuteness in pleadings should not deprive party of relief to which he is really entitled to.

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 289 (Kerala HC)

- If granting of amendment subserves ultimate cause of justice and avoids further litigation same should be allowed.

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 289 (Kerala HC)

- If plaintiff omits to sue or relinquishes any portion of his claim, as per Order 2 Rule 2, CPC, Court cannot grant leave to institute fresh suit — Where plaintiff is entitled to more than one relief and he omits to sue for some of reliefs, he may obtain leave of Court and institute fresh suit on same cause of action — Court does not lack power to allow amendment under Order 6 Rule 17, CPC in case where plaintiff filed application for amendment to include one of several reliefs omitted to be included in plaint.

Civil Procedure Code, 1908 — Order 2 Rule 2, Order 6 Rule 17.

IV (2006) CLT 289 (Kerala HC)

- Rejection of plaint — Suit for partition — Both plaintiff and defendant stand on same footing — There was cause of action for filing suit by plaintiff for partition, even though both plaintiff and defendants possessing land separately by amicable arrangement, which can never be termed as partition by metes and bounds — For better adjudication of suit by competent Court, parties are at liberty to approach Court at any stage of proceeding by way of filing application for amendment of pleadings under Order 6 Rule 17, CPC — In case plaintiff's prayer allowed, defendant, shall be given liberty to file his additional written statement to amended plaint — Defendant is always at liberty to state all his grievances to plaint in written statement — Written statement filed by defendant challenging order of Civil Judge allowing prayer of plaintiff for amendment of plaint and

rejecting prayer of defendant in petition under Order 7 Rule 11, CPC, suffer from no illegality, irregularity or manifest error of law.

Civil Procedure Code, 1908 — Order 6 Rule 17, Order 7 Rule 11(a).

IV (2006) CLT 385 (Orissa HC)

- Test to be applied — Whether plaintiff could originally include in plaint relief sought to be added by way of amendment, on foot of averments contained in plaint — If such relief could be made at time of filing suit, plaintiff could be allowed to incorporate such relief by way of amendment if he omits to make such relief in plaint.

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 289 (Kerala HC)

- Typographical error — Amendment clerical and will not change nature of suit or controversy involved in suit — Amendment allowed.

Civil Procedure Code, 1908 — Order 6 Rule 17, Proviso.

IV (2006) CLT 415 (Allahabad HC)

AMENDMENT OF PLEADINGS — Prayer of probate sought to be amended by prayer of grant of Letters of Administration — Amendment application does not change title and character of application (See *Succession*)

IV (2006) CLT 273 (Allahabad HC)

AMENDMENT OF WRITTEN STATEMENT — Fact of registered Will sought to be introduced by way of amendment — Amendment allowed as authenticity of registered document cannot be doubted.

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 386 (Punjab & Haryana HC)

- Plea available at time of filing of written statement cannot be allowed by way of amendment

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 386 (Punjab & Haryana HC)

APPOINTMENT OF COMMISSIONER — To record evidence of witness — Permissible to appoint Commission to examine witness, even if he resides within local limits of jurisdiction — Only requirement is reasons must be recorded while doing so — With introduction of Rule 4A in Order 26, CPC inherent restrictions placed upon Courts in matter of appointment of Commissions to summon witness stand relaxed — This provision introduced as corollary to Rule 4 of Order 18, CPC to save time of Courts.

Civil Procedure Code, 1908 — Order 26 Rule 4A, Order 16 Rule 19, Order 18 Rule 4.

IV (2006) CLT 242 (Andhra Pradesh HC)

ARBITRATION LAW — Appeal against setting aside award — Appellate Courts functions — Scope — Discussed.

IV (2006) CLT 267 (Orissa HC)

- Appointment of Arbitrator — Admitted case of petitioner that for first time claim was made on 18.5.2002 before retired Engineer-in-Chief followed by another representation dated 29.10.2002 wherein request made for referring matter in dispute to Committee of Arbitrator — Petitioner not disputed that scheme was closed as far back as June 2000 — Nothing brought on record by petitioner to show it ever approached adjudicator requesting him to give his decision as contemplated under Clause 24.1 of Contract — Petitioner not exhausted procedure provided under Clause 25 of contract agreement —

Petitioner filed representation only after two years of closure of scheme, and moved instant application under Section 11(6) of Act for appointment of independent Arbitrator — Application under Section 11(6) belated one and barred by limitation — Application not maintainable because of non-compliance of procedure provided under Clauses 24 and 25 of Court.

Arbitration and Conciliation Act, 1996 — Section 11(6).

IV (2006) CLT 228 (Jharkhand HC)

- Appointment of Arbitrator — Challenge against — Writ petition filed under Article 226 of Constitution questioning order of Designate Judge appointing Arbitrators — In view of Supreme Court observations made in *Patel Engg. Ltd.* case VIII (2005) SLT 405=IV (2005) CLT 236 (SC), objection raised before Designated Judge regarding non-existence of arbitration clause, jurisdiction, merits of claim, etc. to be agitated only before Arbitrator/Arbitral Tribunal.

Constitution of India, 1950 — Article 226 — Arbitration and Conciliation Act, 1996 — Section 11(6).

IV (2006) CLT 262 (Madras HC) (DB)

- Appointment of Arbitrator — Forfeiture of right to refer dispute to Arbitrator *i.e.*, Standing Committee — Forfeiture cannot be revived unless forfeiture held wrong — Exercise of administrative discretion for appointment of same Arbitrator, even after forfeiture of right reference of dispute to Arbitrator, not correct — Discretion available only in case right of forfeiture of reference to Standing Committee set aside.

Arbitration and Conciliation Act, 1996 — Section 11.

IV (2006) CLT 393 (Rajasthan HC) (DB)

- Appointment of Arbitrator — Judicial Review by Writ Court — Decision given under Section 11 of Act — Directing matter to be placed before Chief Justice — Cannot be questioned by invoking writ jurisdiction — Decision of Arbitral Tribunal, ruling on its own jurisdiction not open to judicial review — Case would be different if the decision of the Arbitral Tribunal been open to judicial review by Writ Court — Further, petitioner failed to avail alternative statutory remedy — Petitioners not entitled for relief.

Arbitration and Conciliation Act, 1996 — Sections 11 and 16.

IV (2006) CLT 381 (Calcutta HC)

- Appointment of Arbitrator — Works contract — Reference of dispute to Arbitrator for adjudication — Dispute pertaining to bill amount — Existence of arbitration clause and validity of reference shall only be decided by Arbitrator — It is also within domain of Arbitrator to decide whether claim of petitioners already settled on full satisfaction.

Arbitration and Conciliation Act, 1996 — Section 11(6).

IV (2006) CLT 284 (Jharkhand HC)

- Appointment of Independent Arbitral Tribunal — Specific clause in contract that claims or disputes of value of more than 20% of value of contract not arbitrable — Amount claimed by applicant is more than 20% — In view of exclusionary clause contained in special condition of contract, disputes raised in applications cannot be referred under Clauses 63 and 64 to Arbitral Tribunal.

Arbitration and Conciliation Act, 1996 — Section 11.

IV (2006) CLT 233 (Rajasthan HC)

- Arbitration agreement would not be enforced against persons who are not parties thereto.

IV (2006) CLT 233 (SC)

- Arbitral Tribunal — Arbitral Tribunal not bound by procedure as contained in CPC or Evidence Act — Parties free to agree on procedure to be followed.

Arbitration and Conciliation Act, 1996 — Section 19.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- Award — Objection againsts — Absence of escalation clause in contract — Revision of wages by Government during subsistence of contract — Respondent-claimant awarded contract for carrying out work of clearing, forwarding, stevedoring, etc. from Ports — Sharp increase in wages of workmen during currency of contract consequent upon settlement arrived under Section 12(3), Industrial Disputes Act — Arbitrator had jurisdiction to go into this question and pass award — FCI barred by *res judicata* from raising same issue again as SLP filed by FCI dismissed by this Court by Order dated 5.5.89 — Argument of FCI that there is no escalation clause in contract to reimburse expenses and Arbitrator exceeded his jurisdiction has no substance — Said issue already concluded in earlier proceedings arising out of application filed by claimant under Section 20 of Arbitration Act for appointment of Arbitrator — High Court correctly dismissed objection raised by FCI on issue of absence of any escalation clause in contract — Arbitrator not misconducted himself and award passed in consonance with principles of natural justice — Lapse of 23 years and odd since contract period — Contractor prevented by FCI to receive monies spent by him as awarded by Arbitrator — Once it is found Arbitrator had jurisdiction to find delay in execution of contract due to conduct of FCI, Corporation liable for consequences of delay, *viz.*, increase in statutory wages — Award rightly made Rule of Court.

Arbitration Act, 1940 — Sections 20, 30, 33.

IV (2006) CLT 196 (SC)

- Interest — Rate of — Reduction — Just and proper to award interest @ 9% p.a. throughout instead of 12%, as awarded by Arbitrator for period in question — Bank guarantee furnished by respondent-contractor shall stand discharged.

IV (2006) CLT 196 (SC)

- Reference of Dispute to Arbitrator — Partnership business — Dispute between parties — Suit for permanent injunction restraining defendant from interfering in running and working and necessary affairs of firm — Respondent filed application to dismiss suit as same barred under provisions of Arbitration and Conciliation Act in view of arbitration clause between parties — Revision against rejection of application — In application giving rise to present revision, there was no request to refer matter to arbitration as per arbitration clause — Prayer to dismiss suit in view of arbitration clause would not satisfy fourth requirement of Section 8(1) of Act.

Arbitration and Conciliation Act, 1996 — Section 8.

IV (2006) CLT 213 (Allahabad HC)

- Reference of dispute to Arbitrator — Requirements and ingredients of Section 8 — Discussed.

IV (2006) CLT 213 (Allahabad HC)

- Setting Aside Award — Appellate Court would only interfere where it is found that Civil Court acted unreasonably in exercise of its discretion or ignored relevant facts — Both parties afforded ample opportunity of being heard before Arbitrator as well as Court below.

Arbitration and Conciliation Act, 1996 — Sections 34 and 37.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- Setting Aside Award — Conditions to be satisfied — Discussed.
Arbitration and Conciliation Act, 1996 — Sections 34, 34(2)(b)(i), 34(2)(b)(ii) and 37.

IV (2006) CLT 267 (Orissa HC)

- Setting Aside Award — Misconduct — All documents analysed by Arbitrators minutely — Court not supposed to sit as Court of Appeal on arbitration award — It can only interfere if case is made out as per provisions of Section 34 of Act of 1996.
Arbitration and Conciliation Act, 1996 — Section 34.

IV (2006) CLT 376 (Punjab & Haryana HC)

- Setting Aside Award — No allegation that Arbitrator failed to follow mandatory procedure prescribed under Section 24, 28 or 31 of Act affecting rights of parties — Court below rightly declined to set aside award.
Arbitration and Conciliation Act, 1996 — Sections 24, 28, 31, 34 and 37.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- Setting Aside Award — Void Contract — Compensation — Award of — Jurisdiction of Arbitral Tribunal — Under Section 28(1)(a) of Act, Arbitral Tribunal to decide dispute in accordance with substantive law for time being in force — Substantive law would include Contract Act — It is open to Arbitral Tribunal to invoke provisions of Section 70 of Contract Act and grant compensation even after concluding contract was void.
Contract Act, 1872 — Section 70 — Arbitration and Conciliation Act, 1996 — Sections 28(1)(a), 34 and 37.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- COMMISSIONS** — Commissioner's Report — Evidentiary value — Right to seek re-inspection — Commissioner appointed and inspected suit property at instance of defendant No. 3 (respondent No. 1), required to re-inspect property merely on ground that memo dated 31.3.2004 submitted by him not noted by Commissioner — Not disputed that parties cannot lay their hands only with support of Commissioner's report or plan — It is for them to specifically allege and substantiate same by oral or documentary evidence — Commissioner's report may be one piece of evidence in support of their case — Application for re-appointment of Commissioner to re-inspect property rejected.
Civil Procedure Code, 1908 — Order 26 Rule 1.

IV (2006) CLT 342 (Madras HC)

- CONSENT DECREE** — Effect of — Enforceability — Consent decree in terms of Order 23 Rule 1, CPC need not be confined only to reliefs prayed for — It remains valid unless it is set aside — It would be binding on parties — Although principles of *res judicata stricto sensu* not applicable, principles of estoppel would apply.
Civil Procedure Code, 1908 — Order 23 Rule 3.

IV (2006) CLT 157 (SC)

- Suit for Injunction — Maintainability — Compromise/consent decree passed between parties — For all intent and purport it was preliminary decree passed in suit for partition — Fresh proceeding could not be initiated for giving effect thereto even if respondents' contention that their right to possess under consent decree not found enforceable by Revenue Authorities, to be accepted.
Civil Procedure Code, 1908 — Order 23 Rule 3.

IV (2006) CLT 157 (SC)

- CONSTITUTIONAL LAW** — Right to equality — If action on part of State is violative of equality clause contained in Article 14 of Constitution — Writ petition maintainable even in

contractual field.

Constitution of India, 1950 — Articles 226, 14.

IV (2006) CLT 245 (SC)

- Right to freedom of trade — Restriction on acquiring necessary qualification — Enrolment of Advocates — Not violative of fundamental right guaranteed under Article 19 of Constitution — Further, it is duty of person who wants to exercise his right to practise, to find out requirement to obtain that right (See *Advocates*)

IV (2006) CLT 343 (Bombay HC) (DB)

CONTEMPT OF COURT — Appeal — Maintainability of — Where right of appeal not conferred by Legislature under Act of 1971 — Section 19 of Act does not give right of appeal to person, who has brought motion for initiating contempt proceeding against order/judgment holding no contempt is made out — Right of appeal is creature of statute and unless such right given in statute, person feeling aggrieved by such decision or order has no right to appeal — Since Hon'ble Judge refused to entertain contempt petition, appeal under Chapter VIII, Rule 5 of Rules of Court not maintainable.

Contempt of Courts Act, 1971 — Sections 12 and 19.

IV (2006) CLT 255 (Allahabad HC) (DB)

- In contempt petition, Court should have concentrated on question as to whether there had been any wilful violation of Court's order and not dealt with matters not directly in issue in Contempt Petition — In view of apology tendered by respondent, Single Judge directed refund of money to third party and closed contempt petition — Direction issued for refund without any specific application — Not appropriate on part of Single Judge to issue such direction which did not arise out of contempt proceeding.

IV (2006) CLT 304 (Madras HC) (DB)

CONTRACT — Escalation is normal and routine incident arising out of gap of time in this inflationary age in performing any contract of any type — In this case there was escalation by way of statutory wage revision and found reasonable to allow escalation under claim.

IV (2006) CLT 196 (SC)

- Non-completion of work — Recovery Suit — Work in question extra work or covered by contract not examined by High Court (See *Review*)

IV (2006) CLT 148 (SC)

- Void Contract — Award of compensation — Person whose contract is void entitled to compensation under Section 70 of Contract Act if he establishes his claim that other person enjoyed benefit of thing delivered and said thing never intended to be delivered gratuitously.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- Writ petition maintainable in contractual matter — Scope of judicial review — Contract between parties for supply of iron ore by September 2003 — In regard to supplies made from March 2003 to September 2003 there was no complaint on part of appellant about breach of contract — However, for subsequent period respondent No. 2 State Corporation unable to supply ore for reasons *viz.* rise in international price — State Corporation subsequently invited tender for supply of iron ore — Appellant filed writ seeking directions for supply of contract quantity — It is trite, if action on part of State is violative equality clause contained in Article 14 of Constitution, writ petition maintainable even in contractual field — Distinction indisputably must be made between matter which is at threshold of contract and breach of contract — While exercising contractual powers, Government bodies may be subjected to judicial review in order to prevent arbitrariness or

favouritism on its part — Indisputably inherent limitations exist in this regard — Public interest may be one of factors to exercise power of judicial review — Having regard to law laid down in *ABL International Ltd.* case, I (2004) SLT 381=I (2004) CLT 443 (SC) this Court unable to accept contention of respondents' Counsel that only because there exists disputed question of facts or an alternative remedy is available, same by itself would be sufficient for High Court to decline its jurisdiction — This Court notice decision not to supply iron ores fines prior to expiry of contractual period taken by OMC — Its effect to be determined keeping in view fact as to whether appellant suffered any loss thereby — Reasons for non-supply of iron ore may constitute breach of contract but having regard to conduct of parties, it cannot be said that same was so arbitrary so as to attract wrath of Article 14, Constitution — This Court is of opinion although approach of High Court not entirely correct, its ultimate decision to refuse to exercise its discretionary jurisdiction cannot be faulted with — Open to appellant to take recourse to other remedy available in law.

Constitution of India, 1950 — Articles 226, 14.

IV (2006) CLT 245 (SC)

CORRECTION OF CLERICAL OR ARITHMETICAL MISTAKE (*See Amendment of judgment, decree or order*)

IV (2006) CLT 408 (Himachal Pradesh HC)

COUNTER CLAIM — Amendment of Order 8 Rule 6A, CPC — Effect of — For maintaining counter-claim, cross action need not even arise out of same cause of action or be intrinsically connected with cause of action sued upon — Any right or claim in respect of cause of action accruing to defendant against plaintiff can be made subject matter of counter-claim.

Civil Procedure Code, 1908 — Order 8 Rule 6A (as amended).

IV (2006) CLT 189 (SC)

COURT FEES — Payment of — Extension of time for payment of deficit Court fees — Application not filed within time — Court has power to extend time for payment of Court fees.

IV (2006) CLT 244 (Andhra Pradesh HC)

DECLARATION — Suit for declaration — Plaintiff-respondents claim to be lawful heirs entitled to bequests under Will — Decree of mandatory injunction for restoration of property — Title to property limited — Non-joinder of parties — Embargo put on defendant No. 1's son inheriting property — In absolute terms to transfer property to any other person — Sale deed could not be executed — Embargo created under Will on defendant No. 1 could not be removed if his son is impleaded — In terms of Will, question of his son's inheriting property from original defendant No. 1 did not arise — Suit was premature as no cause of action arose for plaintiffs for obtaining decree to set aside sale deed — Cause of action arose on death of original defendant No. 1 which took place during pendency of suit — Suit could not be dismissed on ground of being barred under law of limitation — Under Order 7 Rule 7, CPC, Appellate Court could take subsequent events into consideration — High Court not acted illegally and without jurisdiction in passing impugned judgment — No case made out for exercise of discretionary jurisdiction of this Court under Article 136 of Constitution.

Constitution of India, 1950 — Article 136 — Hindu Succession Act, 1956 — Sections 4, 8 — Civil Procedure Code, 1908 — Order 7 Rule 7 — Limitation Act, 1963 — Articles 59, 60.

IV (2006) CLT 236 (SC)

DISTINCTION — "Heirs" and "Children" — P. Ramanatha Aiyar's Advanced Law Lexicon.

IV (2006) CLT 236 (SC)

- “Omission” and “Intentional relinquishment”.

IV (2006) CLT 289 (Kerala HC)

DOCTRINE OF MERGER — Applicability — Execution of *ex parte* decree (See *Execution*)

IV (2006) CLT 346 (Madhya Pradesh HC)

DOCUMENTS — Construction of — Mere nomenclature of document by itself, is not factor to decide its nature and much would depend upon contents of documents.

IV (2006) CLT 280 (Andhra Pradesh HC) (DB)

- Evidentiary Value — When document is not uncertain or does not contain ambiguous expression it should be given its literal meaning — Only when contents are not clear question of taking recourse to application of principles of construction of document may be applied.

IV (2006) CLT 236 (SC)

ELECTION LAWS — Election of Members of Executive Board of Delhi Sikh Gurdwara Management Committee — Challenge against validity of election held on 19.12.2005 — Disputed question of fact — Writ petition not appropriate remedy — Relief sought by appellant to quash minutes of meeting dated 19.12.2005 and issue writ of *mandamus* directing respondents to hold fresh election of Executive Board — Alleged confusion regarding date of meeting — Writ petitioner appellant specifically averred he was keen to contest for office of President but could not participate on account of alleged confusion — Dispute raised purely factual in nature as to whether some confusion created regarding date fixed for holding of meeting of Committee for electing office bearers of Executive Board — Dispute could more appropriately be resolved by examination of oral evidence to be led by parties — Proper remedy for petitioner was to file election petition under Section 31 of Act to enable other parties to lead oral evidence — No exceptional or extraordinary circumstances disclosed to justify recourse to extraordinary remedy under Art. 226 of Constitution and not availing statutory remedy — Further as members of newly elected Executive Board not impleaded to present their case and lost their office they were holding without affording them opportunity to present their case — This is clearly impermissible in law — Writ petitions liable to be dismissed on this ground as well.

Delhi Sikh Gurdwaras Act, 1971 — Sections 2(c), 3, 4, 4(a), 5, 16(5), 16(6), 31, 33, 40 — Delhi Municipal Corporation Act, 1957 — Sections 15, 16, 17, 22.

IV (2006) CLT 171 (SC)

- Election to Post of President of Anand Municipality — Power of Judicial Review of Court — Setting aside election of appellant by High Court justified — Depositions of two Councillors in their affidavits affirm they would have voted in favour of first respondent — Two Councillors arrested few minutes before election meeting with sole object to prevent both of them from casting their vote at elections for posts of President and Vice-President as B.J.P. leaders unable to win over any of 21 independent candidates and resorted to unfair means and abuse of Government machinery for getting false FIRs registered — High Court thus set aside election of appellant — Court directed votes of said Councillors be treated as having been cast in favour of 1st respondent and declared him elected as President of Anand Municipality — Failure to take into account relevant factor by Presiding Officer not only offends against procedural propriety, it makes his decision to go ahead with election meeting perverse and irrational, warranting interference under Article 226 of Constitution — High Court not committed any error of law and/or jurisdiction in setting aside election of appellant as President of Anand Municipality.

Gujarat Municipalities Act, 1963 — Sections 31, 32, 32(4) read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — Constitution of India,

1950 — Article 226.

IV (2006) CLT 181 (SC)

- Election to Post of President of Anand Municipality — Declaration of respondent No. 1 as President — Both candidates got equal number of votes polled and appellant declared elected on basis of draw of lots, held as per prescribed procedure — Controversy did not relate to counting of votes — Direction of High Court that votes of two arrested Councillors be treated as having been cast in favour of 1st respondent, based on pure speculation that they would have definitely voted for him — High Court erred on this aspect of matter and to that extent impugned judgment cannot be sustained — Order of High Court declaring first respondent as President of Anand Municipality set aside.

Gujarat Municipalities Act, 1963 — Section 32 read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — Constitution of India, 1950 — Article 226.

IV (2006) CLT 181 (SC)

- Principle of *Res Ipsa Loquitur* — Applicability — Election to post of President of Anand Municipality (*See Election Law*)

IV (2006) CLT 181 (SC)

- Statutory Remedy/Alternative Remedy — Availability — Where elections conducted in accordance with provisions of statute and statute also provides remedy of settlement of election disputes by filing election petition before Tribunal, that remedy alone should be availed of — Recourse cannot be taken to proceedings under Art. 226 of Constitution.

Constitution of India, 1950 — Art. 226.

IV (2006) CLT 171 (SC)

- ELECTRICITY LAW** — Bills — Writ Jurisdiction — Vacation of *ad interim ex parte* stay order — Dispute as to demand raised by petitioner regarding electricity bills — Under Section 111(1) of Electricity Act any person aggrieved by order made by Adjudicating Officer or by appropriate Commission may prefer appeal to Appellate Tribunal for electricity — Petitioners have got alternative efficacious remedy under Section 111(1) of Act — Appeal can be filed either against order of Ombudsman or order of Rajasthan Electricity Regulatory Commission before Appellate Tribunal for Electricity — Application under Article 226(3) of Constitution allowed and stay granted by this Court vacated — Further observations made accordingly.

Constitution of India, 1950 — Article 226(3) — Electricity Act, 2003 — Section 111(1).

IV (2006) CLT 379 (Rajasthan HC)

- Electricity Connection — Cannot be refused by Board on ground that dues of previous owner not cleared — Fresh electricity connection to petitioner's establishment cannot be denied in case petitioners are willing to comply with all requisite requirement for seeking new or fresh connection — Orders passed by respondent/Board quashed and it is directed to grant fresh electricity connection to petitioner's establishment on petitioner making payment of requisite amount and complying with requirements for grant of said connection.

IV (2006) CLT 247 (Madhya Pradesh HC)

- EVIDENCE** — Admissibility of unregistered document creating or taking away right in respect of immovable property (*See Registration*)

IV (2006) CLT 387 (Andhra Pradesh HC)

- Execution of Document — Proof of — Execution must be proved by at least one attesting witness if attesting witness is alive and subject to process of Court and capable of giving

evidence.

Evidence Act, 1872 — Section 68.

IV (2006) CLT 208 (SC)

- Expert Opinion — Comparison of disputed signatures — Sending Xerox copy of document for opinion of handwriting expert unknown to law — There can be effective comparison and verification of signatures if only another document containing undisputed signatures of contemporary period made available to expert — Opinion of handwriting expert involves analysis of slant, which a person uses in matter of putting his signature — This analysis possible only *vis-a-vis* original signature — Signature mark on Xerox copy of document can never constitute basis.

Evidence Act, 1872 — Section 45

IV (2006) CLT 211 (Andhra Pradesh HC)

- Proof of execution of gift deed (*See Transfer of Property*)

IV (2006) CLT 286 (Karnataka HC)

- Secondary Evidence — Admissibility — Suit for recovery of possession — Plaintiff producing photo-copy of sale deed issued by Sub-Registrar — Nothing to show certified photocopy forged or fabricated — Certified extract of public document established correctness of certified photocopy of sale deed — Said document admissible as secondary evidence.

Evidence Act, 1872 — Section 63.

IV (2006) CLT 283 (Bombay HC)

- Will — Proof of

IV (2006) CLT 218 (SC)

EXAMINATION-IN-CHIEF OF SUMMONED WITNESSES — Exercise of discretion by Civil Court in appropriate cases to meet ends of justice — Order 18 Rule 19 as well as Order 26 Rule 4A, CPC do not limit power of Commissioner to any extent — No requirement for obtaining affidavit as prelude for cross-examination.

Civil Procedure Code, 1908 — Section 151, Order 18 Rule 4, Order 18 Rule 19, Order 26 Rule 4A.

IV (2006) CLT 390 (Kerala HC)

EXECUTION — Cross cases/cross claims under same decree — Applicability of Order 21 Rules 18 and 19, CPC — Neither application made for execution of cross decrees in separate suits for payment of moneys in between parties nor application is for execution of decree in which parties entitled to recover sums of money from each other — Applications are in respect of two awards in same arbitration case — Provisions of Order 21 Rules 18 and 19, CPC not applicable — Court below observed one award was interim and another final award and petitioner's application not maintainable under provisions of Order 21 Rules 18 and 19 — No illegality or material irregularity in impugned order.

Civil Procedure Code, 1908 — Order 21 Rule 18 and Order 21 Rule 19.

IV (2006) CLT 325 (Jharkhand HC)

- Decree — Consent decree between parties also binding on Revenue Authorities — Second suit for declaration filed on refusal to mutate names of respondents, not maintainable in view of provisions contained in Section 47, CPC — Respondents could initiate proceeding for preparation of final decree.

Civil Procedure Code, 1908 — Section 47.

IV (2006) CLT 157 (SC)

- Decree — Limitation — Consent decree drawn on 19.9.1986 — Thereafter petitioner-objectors filed special civil suit and respondent No. 3 original defendant, judgment debtor, filed regular civil suit — Suit dismissed for non-prosecution on 20.3.2001 — Present Darkhast filed on 19.8.2002 — Executing Court held it is filed within period of limitation — This Court finds no error in said conclusion of learned Judge of Executing Court.

Civil Procedure Code, 1908 — Order 21 Rule 34 — Limitation Act, 1963.

IV (2006) CLT 218 (Gujarat HC)

- Decree — Recording of obstruction — Decree obtained in 1999 and execution petition pending from 2000 and petitioners are only tenants under judgment debtor — This Court is in entire agreement with subordinate Judge that decree has reached its finality, petitioners became tenants of second respondent judgment debtor and there is no merit in their obstruction — No error or infirmity in impugned order — Reasonable time of 4 weeks granted to petitioners to hand over possession.

Civil Procedure Code, 1908 — Order 21 Rule 9 r/w Section 151.

IV (2006) CLT 234 (Madras HC)

- Decree — Suit for specific performance decreed — Decree obtained on basis of agreement to sell — So long decree subsists in favour of person who is in possession, he cannot be evicted in execution of decree for eviction— Just, fair and equitable that so long as decree for specific performance not finally set aside or affirmed by higher Courts, both petitioner and respondent shall not be entitled to execute decree either for seeking delivery of possession or for seeking direction for execution and registration of sale deed.

Civil Procedure Code, 1908 — Order 21 Rules 97 and Order 21 Rule 99 r/w Sections 57 and 151.

IV (2006) CLT 252 (Jharkhand HC)

- *Ex parte* decree — Limitation — Doctrine of merger not applicable — After *ex parte* decree application under Order 9 Rule 13, CPC formed subject matter of appeal and not *ex parte* decree itself — Doctrine of merger does not apply as they were collateral proceedings only — Article 136 of Limitation Act provides execution application to be moved within 12 years from enforceability and not from executionability — *Ex parte* decree became enforceable right at time when it was passed — Application for execution moved beyond 12 years from date of passing thereof, same barred by time and doctrine of merger not applicable, limitation not saved.

Civil Procedure Code, 1908 — Order 9 Rule 13 — Limitation Act, 1963 — Article 136.

IV (2006) CLT 346 (Madhya Pradesh HC)

- Objection — Anomalies in boundaries of decretal land and land described in sale deed in absence of any survey — Appointment of Commissioner for measurement of decretal land — No steps taken for issuance of writ of commission — No application made before Court below to recall said order — Court below was of view boundaries of decretal land and land contained in sale deed in question not in conflict and objection to that effect rejected — Said finding recorded on consideration of data available on record — This Court sitting in revision not inclined to re-appraise same to substitute its findings for those of Court below — Impugned order not vitiated by any illegality far less error of jurisdiction.

Civil Procedure Code, 1908 — Section 47 r/w Section 151.

IV (2006) CLT 400 (Gauhati HC)

- EXPRESSION** — “Cause of Action” — Not always referable to particular date — To constitute cause of action for plaintiff, there may arise several alleged offending acts on part of defendant, each of which or all of them together may constitute cause of action.

IV (2006) CLT 289 (Kerala HC)

EXTRAORDINARY JURISDICTION — Exercise of — Writ petition filed under Article 226 of Constitution questioning order of Designate Judge appointing Arbitrators
(See Arbitration Law)

IV (2006) CLT 262 (Madras HC) (DB)

FAMILY SETTLEMENT — Conditions restraining alienation — Section 10 of Transfer of Property Act not applicable to family settlement which only recognizes pre-existing rights — Family settlement may not confer any fresh rights which person has in property.

IV (2006) CLT 306 (Allahabad HC)

— Division of property — Family settlement — Division of property — Termination of agency business — Allotment of house to respondents who owned majority shares in respondent No. 1-company to ensure parties live separately in harmony and peace — Decree of High Court is based upon settlement reached between parties — Parties well aware of strained relationship which existed and unfortunate events that occurred between branch of appellant No. 2 and remaining family members — Despite this, it was agreed by all of them portion in occupation of appellant No. 2 shall be allotted to him and value thereof adjusted against his share — Respondents cannot be heard to say it would be inconvenient for them to reside with appellant No. 2 and his family members in same house, though in separate portions — Settlement made *bona fide* by parties to resolve all their disputes and all facts known to parties when they reached settlement — At stage of implementation of settlement respondents cannot avoid covenant in settlement solemnly incorporated with their consent on pretext of practical inconvenience of living in same house — Said issue decided in favour of appellants.

IV (2006) CLT 163 (SC)

— Documents — Registration of — Documents do not have effect of bringing about alteration in rights of parties in respect of immovable properties and not compulsorily registrable

IV (2006) CLT 280 (Andhra Pradesh HC) (DB)

— Essentials of and principles governing existence of same — Halsbury's Laws of England.

IV (2006) CLT 163 (SC)

FRAMING OF ADDITIONAL ISSUE — Justification — Suit for decree of mandatory injunction — Case reserved for judgment after hearing learned Counsel for parties — It was noticed by learned Judge while writing judgment that issues framed by his predecessor not based on pleadings of parties — Under Order 14 Court can at any point of time recast issues if issues framed by Court required to be changed — Whenever additional issues framed by Court at stage of judgment, it is duty of Court to hear parties on additional issues and proceed further in matter — No Court is expected to proceed for judgment without giving opportunity to parties as it amounts to infringement of principles of natural justice — Such procedure not followed — Judgment and decree of Trial Court set aside — Matter to be reconsidered by Court accordingly.

Civil Procedure Code, 1908 — Order 14 Rule 5.

IV (2006) CLT 264 (Karnataka HC)

GUARDIANSHIP — Custody of minor daughter — Compromise between parties *vide* decree dated 27.7.1992 — Marriage of appellant and respondent dissolved — Parties agreed child shall remain in custody of mother with visitation right to father — Appellant's application for custody of child after 9 years of grant of divorce, rejected — No evidence, appellant made any attempt to send any money or to pay expenses for study of minor during this period — No case made out for interference.

Guardians and Wards Act, 1890.

IV (2006) CLT 340 (Punjab & Haryana HC)

INJUNCTION — Compromise/consent decree passed between parties — For all intent and purport it was preliminary decree passed in suit for partition — Fresh proceeding could not be initiated for giving effect thereto even if respondents' contention that their right to possess under consent decree not found enforceable by Revenue Authorities, to be accepted — Respondents could not disclaim consent decree by filing suit for declaration — Their right in relation to *abadi* land could not be denied — Submission of learned Counsel for respondents that suit for declaration filed in view of refusal on part of Revenue Authorities to mutate their names, not correct keeping in view provisions of Section 47, CPC — Subsequent suit clearly barred — High Court failed to consider error apparent on face of record — Second suit filed by respondent not maintainable — Question of directing appellant to give portion of land to respondent No. 1 inconsistent with judgment and decree passed in earlier suit holding them to be owner in possession of land measuring area 7191.94 sq.mtrs. — Respondents at liberty to file appropriate application for measurement of lands in question and division of lands in terms of consent decree.

Civil Procedure Code, 1908 — Section 47, Order 23 Rule 3.

IV (2006) CLT 157 (SC)

— Violation of — Attachment of Property — Correctness of injunction order not within competence of this Court while hearing appeal against order passed under Order 39 Rule 2A, CPC — This Court will only examine whether injunction order has or has not been violated.

IV (2006) CLT 232 (Allahabad HC) (DB)

INHERITANCE — Right of Inheritance by Married Daughter — Family settlement
. (See *Second Appeal*)

IV (2006) CLT 306 (Allahabad HC)

INTERPRETATION OF STATUTES — Interpretation of statutory provision — Court cannot assume role of Legislature, nor can it appropriate to itself legislative powers, nor can, under guise of interpretation, prescribe procedure different from one prescribed under statute for conduct of trial in civil proceedings.

IV (2006) CLT 326 (Bombay HC) (DB)

JOINT TRIAL — Powers of Court — Joint trial can be ordered by Court if common question of law or fact arises in both proceedings or right to relief claimed in them are in respect of or arise out of same transaction or series of transactions — It will save expenses of two Counsel and witnesses — Trial Judge will be enabled to try two actions at same time and take common evidence in respect of both claims — If claim made by company can be tried as counter claim by DRT, Court can order joint trial — Exercise of power by Court and benefits of joint trial — Discussed.

IV (2006) CLT 189 (SC)

JUDICIAL REVIEW — Exercise of power in contractual matter [See *Contract*]

IV (2006) CLT 245 (SC)

— Power of Court to set aside election (See *Election Law*)

IV (2006) CLT 181 (SC)

— Scope of — Although terms of invitation of tender may not be open to judicial scrutiny, but Courts can scrutinize award of contract by Government or its agencies in exercise of their power of judicial review to prevent arbitrariness or favouritism — Reliance on *Educomp Datamatics Ltd.* case — However, Court may refuse to exercise its jurisdiction, if it does not involve any public interest.

IV (2006) CLT 245 (SC)

- Scope of — Appointment of Arbitrator — Decision of Arbitral Tribunal, ruling on its own jurisdiction not open to judicial review.

IV (2006) CLT 381 (Calcutta HC)

- Scope of — Interference in administrative decision — Limited to deficiency in decision-making process and not the decision.

IV (2006) CLT 181 (SC)

JURISDICTION OF CIVIL COURT — Order of attachment passed under Order 39 Rule 2A, for violation of injunction order — Alleged that order of attachment without jurisdiction — Correctness of injunction order not within competence of this Court while hearing appeal against order passed under Order 39 Rule 2A, CPC — This Court will only examine whether injunction order has or has not been violated — Contention of appellant beyond domain of this Court.

Civil Procedure Code, 1908 — Order 39 Rule 2A.

IV (2006) CLT 232 (Allahabad HC) (DB)

LEGAL REPRESENTATIVE — Determination — Adoption — Question irrelevant — Suit for permanent injunction restraining appellant from interfering with possession and cultivation of suit land — No issue framed nor could be framed as to whether requirements of Sections 7 and 8 of Hindu Adoptions and Maintenance Act complied with or not — Trial Judge opined that status of respondent as adopted son of deceased could not be looked into in this case — Submission of learned Counsel for appellant that adoption of respondent *per se* illegal, rightly held by Trial Judge irrelevant for determination of issue in suit — Question as to who is legal representative of party to suit who had expired, required to be determined in terms of Order 22 Rule 5, CPC — If respondent could represent estate of original defendant and despite opportunity of appellant to raise said issue at stage of determination of question envisaged under Order 22 Rule 5, CPC, same having not been done such question cannot be permitted to be raised in S.A. or before this Court for first time — Once respondent substituted in place of J-deceased original defendant, question reopening said question by this Court does not arise.

Civil Procedure Code, 1908 — Order 22 Rule 5 — Hindu Adoptions and Maintenance Act, 1956 — Sections 7, 8.

IV (2006) CLT 194 (SC)

- Substitution of — Death of sole defendant on 17.12.2004 — No substitution application filed by legal representative even after expiry of 14 months — Second appeal stands abated.

Civil Procedure Code, 1908 — Section 100, Order 22 Rule 3.

IV (2006) CLT 235 (Allahabad HC)

LIMITATION — Condonation of Delay — Delay of 25 days in filing appeal — Appeal against dismissal of suit for possession filed by petitioner by Trial Court holding defendant-respondents are *bona fide* purchasers — Explanation given by petitioner for condoning delay in filing appeal, reasonable and satisfactory and not due to gross negligence or deliberate inaction or lack of *bona fides* — Impugned order set aside.

Limitation Act, 1963 — Section 5.

IV (2006) CLT 236 (Punjab & Haryana HC)

- Condonation of Delay — Delay of 288 days in filing appeal by petitioner-society — In any petition filed by petitioner to condone delay, there is always bound to be some lapse on part of petitioner — Courts have to decide disputes on merits by way of complete and full adjudication instead of declining relief on technicalities — Hardship caused to other side also to be taken into consideration — Award suffered by petitioner-society is for sum of Rs.

59,84,530 on 29.1.1997 — This Court inclined to impose cost of Rs. 10,000 payable by petitioner to 2nd respondent within 4 weeks from date of receipt of this order — Further directions issued in this regard.

Limitation Act, 1963 — Section 5.

IV (2006) CLT 299 (Madras HC)

— Condonation of delay for setting aside *ex parte* decree (See *Setting aside ex parte decree*)

IV (2006) CLT 377 (Madras HC)

— Condonation of delay is matter of discretion of Court — Criterion for allowing petition is acceptability of reasons given by defaulting party — Words “sufficient cause” under Section 5 of Act should receive liberal consideration — Primary function of Court is to do substantial justice by adjudicating dispute between parties — What is “sufficient cause” will depend upon facts and circumstances of every case — Courts should not adopt hyper-technical view in its own over jubilation of disposing of case.

Limitation Act, 1963 — Section 5.

IV (2006) CLT 377 (Madras HC)

— Execution of Decree (See *Execution*)

IV (2006) CLT 218 (Gujarat HC)

— Execution of *ex parte* decree — Article 136 of Limitation Act provides execution application to be moved within 12 years from enforceability and not from executionability (See *Execution*)

IV (2006) CLT 346 (Madhya Pradesh HC)

— Setting aside *ex parte* decree — Condonation of delay of 365 days — Sufficient reasons given to condone delay — Delay condoned.

Civil Procedure Code, 1908 — Section 115, Order 9 Rule 13 — Limitation Act, 1963 — Section 5.

IV (2006) CLT 383 (Madras HC)

— Suit for recovery of price of goods sold and delivered — Limitation of 3 years would commence from last date of purchase/sale and delivery of goods on credit and not from date of last payment.

Limitation Act, 1963 — Article 14.

IV (2006) CLT 302 (Bombay HC)

— Suit for Specific Performance — Agreement to sell — Limitation for filing suit — Cause of action for filing such suit arises when defendant specifically refused to execute sale deed — Trial Court as well as Appellate Court referred to evidence on record and concluded in August 1980, defendant refused to execute sale deed — Suit should be filed within 3 years from date of such refusal — Suit barred by limitation.

Limitation Act, 1963 — Article 54.

IV (2006) CLT 309 (Madras HC) (DB)

MAINTENANCE — Will — True and genuine document — Appellants and 1st respondent wife entitled to properties respectively allotted to them under said Will — Alleged adopted son KB has no right or any interest in any of suit properties — As 1st respondent PS has been given some properties under Will under Section 22, Hindu Adoptions and Maintenance Act, she is not entitled to any maintenance.

Hindu Adoptions and Maintenance Act, 1956 — Section 22.

IV (2006) CLT 218 (SC)

MAXIM — *‘Expressio unius est exclusio alterius’* — Expression of one is exclusion to another.

IV (2006) CLT 238 (Madras HC)

MITAKSHARA COPARCENARY PROPERTY (See *Succession*)

IV (2006) CLT 151 (SC)

NON-APPEARANCE OF PARTIES — Effect of — Both things may simultaneously take place, *i.e.*, on same date order for proceeding *ex parte* may be passed and *ex parte* hearing may be held — Only order passed on date fixed was suit should proceed *ex parte* and another date fixed for *ex parte* hearing — Said order may be taken fixing date for hearing — Even if it is assumed under Order 9 Rule 6, CPC, it is essential that firstly date on which defendant is absent shall be date of hearing and secondly on said date only order to proceed *ex parte* shall be passed and some future date for *ex parte* hearing should be fixed till under Order 17 Rule 2, CPC it is not mandatory — Revisional Court rightly held hearing means application of mind by Court and not final hearing — Course adopted by Trial Court while decreeing suit *ex parte* was inconsonance with Order 17 Rule 2, CPC.

Civil Procedure Code, 1908 — Order 9 Rule 6, Order 17 Rule 2, Order 9 Rule 7 — Specific Relief Act, 1963 — Section 6.

IV (2006) CLT 404 (Allahabad HC)

PARTITION — Suit for partition of notional share — Death of coparcener leaving behind female or male relative — His undivided interest in Mitakshara coparcenary property would not devolve upon surviving coparcener, by survivorship but upon his heirs by intestate succession — For purposes of finding out undivided interest of deceased coparcener, notional partition to be assumed immediately before his death — Same shall devolve upon his heirs by succession which include surviving coparcener, who would be entitled to undivided interest of deceased by succession and also in coparcenary property which he could get in notional partition — Each of plaintiffs not entitled to 1/3rd share in suit properties but 1/6th and remaining property would go to adopted son-NC — Suit properties in hands of deceased-NM ancestral, in which his son NC got interest equal to NM after his adoption — From date of adoption, coparcenary constituted between father and adopted son — Upon his death, half undivided interest of NM devolved by rule of succession upon his three heirs and each of daughters entitled to 1/6th share in suit properties and remaining to heirs of NC, since deceased — Impugned judgments set aside — Suit for partition decreed to extent of 1/6th share in each of two plaintiffs and defendants.

Hindu Succession Act, 1956 — Section 6.

IV (2006) CLT 151 (SC)

— Valuation of property — Suit for partition of immovable property decreed — Share of plaintiff-respondent determined in 6/20 share in property — Plaintiff sought valuation of property and to direct respondent-plaintiff to execute registered sale deed in favour of petitioner — Advocate Commissioner suggested Rs. 9,00,000 to be fixed as market value of property — Trial Court by its order fixed value of 6/20 share at Rs. 3,30,000 taking into consideration market value of property at Rs. 11,00,000 *i.e.* highest offer as per Commissioner’s report — Respondent valued property at particular value *i.e.* Rs. 10 lakh and offered to buy revision-petitioner’s share in property and filed affidavit containing such offer — In considering market value regard must be had to ensure there is no unjust enrichment by either party — Though evidence of Advocate Commissioner and report submitted by Counsel cannot be taken into consideration directly but affidavit filed by respondent can be taken into consideration — This Court is of view that aforesaid affidavit by respondent before Trial Court quite reasonable and binding on him — Market value of

6/20 share of respondent at Rs. 3,00,000 just and reasonable

Indian Partition Act, 1893 — Section 4.

IV (2006) CLT 335 (Madras HC)

POWERS OF BAR COUNCIL OF INDIA — Prescription of necessary educational qualification for enrolment as Advocate (*See Advocates*)

IV (2006) CLT 343 (Bombay HC) (DB)

POWERS OF COURT — Extension of time for payment of deficit Court fees (*See Rejection of Complaint*)

IV (2006) CLT 244 (Andhra Pradesh HC)

— Succession — Appointment of Administrator *Pendente Lite* (APL) — Even if no application is made, if conditions satisfied, power conferred upon Court can be exercised *suo motu*.

IV (2006) CLT 351 (Calcutta HC)

— To order joint trial — Benefit of joint trial (*See Joint Trial*)

IV (2006) CLT 189 (SC)

PRACTICE AND PROCEDURE — Agreement to sell does not create any interest in immovable property — It is right in personance which right can be enforced by obtaining decree for specific performance.

IV (2006) CLT 252 (Jharkhand HC)

— Evidentiary value of document — Document said to be received in evidence, if only Court had occasion to address itself to admissibility of document and mark of exhibit assigned to it — *Ad hoc* and provisional identification mark, if any, given to document, when presented along with affidavit, *in lieu* of chief-examination cannot be treated as step taken by Court, receiving it in evidence — O.P. entitled to raise objection at stage of cross-examination.

IV (2006) CLT 387 (Andhra Pradesh HC)

— Judgment when not precedent — When judgment rendered without having regard to law enunciated by Supreme Court.

IV (2006) CLT 335 (Madras HC)

— Remand — High Court remanded matter to Trial Court with specific directions to apply particular judgment of Supreme Court — Trial Court cannot follow principle of *per incurium* on ground that High Court did not refer to latest judgment of Supreme Court on such issue and to decide it in terms of order of High Court lest it amounted to contempt.

IV (2006) CLT 335 (Madras HC)

— Rules of procedures are handmaiden of justice — Rules of procedures should not be used to thwart ends of justice and to avoid adjudication on merits.

IV (2006) CLT 408 (Himachal Pradesh HC)

— Terms of settlement reached between parties shall ordinarily not be modified except with consent of parties.

IV (2006) CLT 163 (SC)

PRINCIPLES OF ESTOPPEL — Applicability — Consent Decree (*See Consent Decree*)

IV (2006) CLT 157 (SC)

PRINCIPLES OF NATURAL JUSTICE — Compliance of — Award passed by Arbitrator considering increase in wages of workmen [*See Arbitration Law*]

IV (2006) CLT 196 (SC)

PRINCIPLES OF *RES IPSA LOQUITUR* — Applicability — Election to post of President of Anand Municipality — Police officials acted in highhanded and arbitrary manner at behest of two local BJP MLAs with *mala fide* intention to help BJP, party in power in State and their official candidate in election — It is unnecessary to comment on conduct of police officials, which does not commend this Court.

IV (2006) CLT 181 (SC)

RECALL OF ORDER — Maintainability — Appearance of defendant on day of adjourned hearing and assigning good cause for previous non-appearance — Suit for recovery of arrears of rent and ejection — Defendant did not appear after service of summons and hearing proceeded *ex parte* — Application for recall of order for *ex parte* hearing, rejected — Ground — *Ex parte* hearing was over and application under Order 9 Rule 7, CPC not maintainable — Evident from record Court below has only date fixed for delivery of judgment — It is meaningless for purposes of application under Order 9 Rule 7 — Defendant should be given opportunity to contest suit — Justifiable and proper for Trial Court, instead of now delivering *ex parte* judgment, should afford opportunity of hearing to applicant-revisionist strictly in accordance with law and should entertain defence, if same permissible within framework of procedure provided for purposes.

Civil Procedure Code, 1908 — Order 9 Rule 7.

IV (2006) CLT 301 (Allahabad HC)

RECORDING OF EVIDENCE — Drafting and presentation of affidavit for evidence — Single Judge prescribed procedure for preparation of affidavit by Advocate, maintenance of original draft thereof, parties right or use such draft in Court at time of cross-examination of deponent — Challenge against — These modalities if accepted will nullify object of Order 18 Rule 4 — It would rather than helping Court in disposing of proceedings expeditiously, would assist unscrupulous litigants in delaying proceedings — Procedure can also invite undue hardship to members of Bar — Decisions of Supreme Court clearly lays down procedure to be followed in matter of preparation of filing of affidavit as well as filing thereof in Court as part of evidence by parties — There cannot be any occasion for this Court to issue directions contrary to law laid down by Apex Court — Further, once Legislature prescribes specific procedure for purpose of preparation of affidavit and filing thereof in Court, Courts cannot assume role of Super Legislature to prescribe totally different procedure — Bar Council completely justified in challenging judgment of Single Judge — Impugned judgment of Single Judge so far as it relates to observations and directions pertaining to method of preparation of affidavit and filing thereof under Order 18 Rule 4, CPC liable to be set aside.

Civil Procedure Code, 1908 — Order 18 Rule 4.

IV (2006) CLT 326 (Bombay HC) (DB)

RECOVERY OF DEBTS DUE TO BANKS & FINANCIAL INSTITUTIONS — Joint trial — Transfer of suit before DRT — Suit in nature of counter claim to claim of appellant bank and arose out of same cause of action — Suit filed by respondent-company for recovery of amount as damages with interest on account of losses suffered by it because of delay on part of bank in fulfilling its obligations — Bank moved application for transfer of suit to DRT for joint trial with O.A. pending before Tribunal, since both proceedings arose out of grant of loan and providing of cash credit facility by bank to company — Decree to one or other would depend upon ascertainment of rights and obligations arising out of loan transaction and state of loan account — Two claims inextricably inter linked — Same basic evidence to be taken in both proceedings — If decree is granted to bank on basis of its accounts and damages, if any, decreed in favour of company, set-off could be directed — Fit case to order joint trial — Trial Court and High Court failed to exercise jurisdiction

vested in them by law in refusing to transfer suit to DRT — Impugned orders set aside with direction to transfer money suit from file of Subordinate Judge to DRT.

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Sections 19(1), 19(6) to 19(11) — Civil Procedure Code, 1908 — Order 8 Rule 6A.

IV (2006) CLT 189 (SC)

RECOVERY SUIT — Contract — Non-completion of work (*See Review*)

IV (2006) CLT 148 (SC)

RECOVERY SUIT FOR GOODS SOLD AND DELIVERED (*See Limitation*)

IV (2006) CLT 302 (Bombay HC)

REGISTRATION — Family arrangement and family settlement — Documents do not have effect of bringing about alteration in rights of parties in respect of immovable properties and not compulsorily registrable — Where document provides for execution of separate document and registration at later point of time, it cannot be treated as one conferring any rights or creating interests in parties and thereby registered— No basis to interfere with finding of Trial Court.

Registration Act, 1908 — Section 17(1)(b).

IV (2006) CLT 280 (Andhra Pradesh HC) (DB)

— Relinquishment Deed — Unregistered — Admissibility — Suit for partition and separate possession of suit schedule property — Petitioner relinquished share in definite item of immovable property, on receiving consideration — Transaction compulsorily registrable — Since it was not registered, document not admissible in evidence — Relationship of parties to documents does not have any bearing on requirement as to registration.

Registration Act, 1908 — Sections 17(1)(b) and 47.

IV (2006) CLT 387 (Andhra Pradesh HC)

— Security — Necessity — Principle regarding — Registration would be necessary when immovable property is pledged security — But when solvent security by creating equitable mortgage upon title deeds, etc. furnished, registration not required.

Registration Act, 1908.

IV (2006) CLT 403 (Rajasthan HC)

REJECTION OF PLAINT — Application for amendment of plaint allowed by Civil Judge — Required for better adjudication of suit (*See Amendment of Plaint*)

IV (2006) CLT 385 (Orissa HC)

— Extension of time for payment of deficit Court fees — Application not filed within time — Court has power to extend time for payment of Court fee — Three applications filed for extension of time for payment of Court fee — Order of Court not complied with — Condonation petition filed seeking condonation of delay of 146 days in representing plaint, accompanied by affidavit explaining reasons for delay, *i.e.* bundle being mixed up with records of cases in office — Trial Court satisfied there are valid grounds for condonation of delay — That it was reason for non-payment of Court fee within time — No grounds to interfere with order dismissing petition filed by revision petitioner.

— Civil Procedure Code, 1908 — Section 149, Order 7 Rule 11.

IV (2006) CLT 244 (Andhra Pradesh HC)

RES JUDICATA — Principle of *res judicata* also applies in different stages of same proceedings — Reliance on *Bhanu Kumar Jain* case, I (2005) SLT 137 and *Ishwar Dutt* case, V (2005) SLT 632=III (2005) CLT 168 (SC).

IV (2006) CLT 194 (SC)

- Question as to jurisdiction of Arbitrator already decided, same issue not to be raised again in SLP [See *Arbitration Law*]

IV (2006) CLT 196 (SC)

REVIEW — In garb of review, litigant can neither seek for re-hearing appeal nor can ask that Court deciding review should sit as appellate authority over earlier decision.

IV (2006) CLT 348 (Madras HC) (DB)

- Maintainability — Contract — Non-completion of work — Recovery Suit — Agreement between original respondent and Executive Engineer for construction of Dam — Respondent alleged to have not completed work and did not participate in measurement — Work assigned to another contractor — Writ petition filed by respondent questioning decision — Suit for recovery of amount with *pendente lite* and future interest — Certain stands not highlighted in First Appeal sought to be introduced by appellant in review petition — Several relevant factors not considered by High Court, *viz.*, letter purported to have been written by respondent — High Court made no effort to find out as to whether work in question was extra work and/or covered by agreement — Further if work was to be completed by given date, as claimed by respondents, question of any payment made for idle work beyond said date does not arise — This aspect not analysed by High Court — In fitness of nature, High Court should re-examine matter on said aspects and decide matter in accordance with law — In connected appeal High Court rightly held case of review not made out on grounds apart from those dealt with in connected appeal and it was rightly dismissed by High Court.

IV (2006) CLT 148 (SC)

- Order — Claim of interest on valuation of machinery for first time in review application — Claim not maintainable — Such claim, not raised before Arbitrator nor before Single Judge and Division Bench, cannot be permitted to be raised for first time in review application.
Civil Procedure Code, 1908 — Section 114.

IV (2006) CLT 348 (Madras HC) (DB)

- Scope — Declaration under Section 6 of L.A. Act made beyond prescribed period — Said contention not raised before Single Judge though petitioner/appellant duly represented by Counsel — Said contention considered and rejected by Judge — When Division Bench disposed of appeal, same was once again verified and based on materials available and taking note of fact that local publication of suit of Section 4(1) notification made on 21.2.1994 and declaration made on 20.2.1995, is well within period of 1 year, dismissed writ appeal — In absence of no such objection before learned Judge, no need to consider same in Review application.
Civil Procedure Code, 1908 — Order 47 Rule 1 — Land Acquisition Act, 1894 — Sections 4(1) and 6.

IV (2006) CLT 324 (Madras HC) (DB)

- REVISION** — Scope — Plea that decree is obtained by fraud — Contention to this effect cannot be entertained in revision application because scope of revision application does not permit same.
Civil Procedure Code, 1908 — Section 115.

IV (2006) CLT 218 (Gujarat HC)

SECOND APPEAL — Abetment of — Limitation — Legal representative — Substitution of — Death of sole defendant on 17.12.2004 — No substitution application filed by legal representative even after expiry of 14 months — Second appeal stands abated.

Civil Procedure Code, 1908 — Section 100, Order 22 Rule 3.

IV (2006) CLT 235 (Allahabad HC)

- Right of Inheritance by Married Daughter — Family settlement — Not against public policy — Married daughter was not in line of succession under then existing unamended Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 — After amendment of Section 171, married daughter given right to succeed to her father over agricultural land — Parties understood law as it was on 31.3.1961, date when family settlement arrived at — Family settlement on that date when entered into by parties, not against public policy — No substantial question of law raised in Second Appeal to be decided by Court.

Civil Procedure Code, 1908 — Section 100 — Transfer of Property Act, 1882 — Section 10 — Contract Act, 1872 — Section 23.

IV (2006) CLT 306 (Allahabad HC)

- Substantial question of law — High Court while disposing of second appeal must confine itself to questions of law framed — High Court failed to take notice of question of law framed at time of admission of second appeal — Decided same as it was hearing first appeal — Judgment unsustainable and set aside — Matter remitted to High Court — High Court directed to dispose of matter expeditiously.

Civil Procedure Code, 1908 — Section 100.

IV (2006) CLT 235 (SC)

- Substantial question of law — Question concerning applicability of Section 60, Easements Act to case when construction with hook stones of permanent character has been put up on suit wall raises substantial question of law — Second appeal maintainable.

Civil Procedure Code, 1908 — Section 100 — Easements Act, 1882 — Section 60.

IV (2006) CLT 235 (SC)

- SETTING ASIDE EX PARTE DECREE** — Condonation of Delay — Reason given by revision petitioner in affidavit filed in support is that due to old age, sickness, poor eyesight, deafness, knee pain, etc. he was not able to move out of his house without escort and meeting with his Advocate delayed due to said reasons — Delay condoned.

Civil Procedure Code, 1908 — Section 115, Order 9 Rule 13 — Limitation Act, 1963 — Section 5.

IV (2006) CLT 383 (Madras HC)

- Condonation of delay of 488 days in filing application under Order 9 Rule 13, CPC — Suit for specific performance of agreement decreed *ex parte* in favour of respondent and against petitioner in respect of suit schedule property — Petitioner pleaded illness and produced medical certificate to that effect — But trial Judge observed that doctor who issued certificate not examined and medical certificate easily procurable — This is not correct and Trial Court proceeded in matter with tendency of finding fault with cause shown by petitioner — Trial Court felt delay could be condoned by imposing cost but did not condone delay as petitioner did not file petition immediately after he came to know about execution proceedings — Reasons given by petitioner to condone delay in filing petition to set aside *ex parte* decree, accepted with direction to pay sum of Rs. 3,000 towards cost to respondent for loss in execution of decree — Directions issued.

Civil Procedure Code, 1908 — Sections 115, Order 9 Rule 13 — Limitation Act, 1963 — Section 5.

IV (2006) CLT 377 (Madras HC)

- SOCIETIES** — Succession — Grant of Letters of Administration — Cannot be granted to estate of deceased to registered society — Society registered under Societies Registration Act,

1860 is not body corporate — It may enjoy status of legal entity apart from its members and may be capable of suing or be sued but not corporate body having perpetual succession and common seal (See *Succession*)

IV (2006) CLT 273 (Allahabad HC)

SOCIETIES REGISTRATION — Society including club not registered under provisions of Societies Registration Act, does not come under category of “living person” as per Section 5, Transfer of Property Act — Such unregistered society or Club cannot validly acquire immovable property by purchase — Purchase of immovable property made by unregistered Club showing Secretary alone as purchaser in deed of purchase not valid.

Transfer of Property Act, 1882 — Section 5 — Societies Registration Act, 1860 — Section 5.

IV (2006) CLT 312 (Calcutta HC) (DB)

— Vesting of movable and immovable property belonging to registered society — Societies Registration Act only recognises legal existence of society registered under Acts by express provisions of statutes — Society which is not registered under Acts and claims to be society cannot claim its legal existence — Simply because Section 5 of T.P. Act does not require society to be registered in order to claim its legal existence does not lead to conclusion that Section 5 recognises legal existence of society not registered.

Societies Registration Act, 1860 — Section 5 — Transfer of Property Act, 1882 — Section 5.

IV (2006) CLT 312 (Calcutta HC) (DB)

SPECIFIC PERFORMANCE OF CONTRACT — Agreement to sell — Limitation for filing suit — Cause of action for filing such suit arises when defendant specifically refused to execute sale deed (See *Limitation*)

IV (2006) CLT 309 (Madras HC) (DB)

— Maintainability of writ petition — Ordinarily, specific performance of contract would not be enforced by issuing writ of or in nature of *mandamus*, particularly when keeping in view provisions of Specific Relief Act, 1963 damages may be an adequate remedy for breach of contract.

Specific Relief Act, 1963.

IV (2006) CLT 245 (SC)

— Readiness and willingness to execute sale deed — Compliance with readiness and willingness has to be in spirit and substance and not in letter and form — Careful perusal of pleadings, evidence and documents filed show that respondent No. 1 was ever ready and willing to perform his part of obligation under agreement — Decree passed by High Court confirming decree of lower Courts does not suffer from any infirmities — Court not inclined to go into submission in regard to valuation of suit property — To some extent, delay also attributable to respondent — Appellant-defendant to be suitably compensated — Respondent directed to pay to appellant sum of Rs. 1 lac within 3 months failing which suit filed by respondent for specific performance shall be dismissed automatically — Further necessary directions issued in this regard.

Specific Relief Act, 1963 — Section 16(c).

IV (2006) CLT 155 (SC)

— Sale deed — Validity — Plaintiff failed to prove execution of agreement for sale by deceased — Plaintiff does not have any subsisting right to challenge any subsequent transaction between defendant No. 2 and deceased — Not necessary for Trial Court to record finding on validity of sale deed — It is not proper to take up issue of validity of sale deed without considering proof of status of substituted defendant — While contesting suit substituted defendant of defendant No. 1 did not advance any counter claim — Issue as to

validity of sale deed cannot be decided — This Court has not determined right, title, interest or possession of defendant No. 2 over suit property.

Specific Relief Act, 1963.

IV (2006) CLT 397 (Orissa HC)

STAMP DUTY — Admission of Instruments — Marking of document in interlocutory proceedings not bar for objecting its marking at stage of trial of suit invoking Section 36 of Act — Marking of document during interlocutory proceedings is different from marking of document at stage of trial — Court not expected to and does not mark documents in interlocutory proceedings — Respondents have right to object to marking of document on ground that it is not properly stamped — Revision petitioner can file petition before Trial Court to send document to Collector for determination under proper stamp duty and penalty payable thereon.

Stamp Act, 1899 — Section 36.

IV (2006) CLT 259 (Andhra Pradesh HC)

— Demand for differential amount — Registering Authority not only applied guidelines issued for fixation of rent for buildings taken by Government on lease in context of registering document but evaluated property under three separate heads, *viz.*, commercial premises, residential buildings and site — For arriving at value of premises for commercial and residential building, he proceeded as though structure exists in air, and separately determined value of land — Whole exercise of power under Section 47 of Act by 2nd respondent arbitrary, irrational and contrary to very letter and spirit of very activity of registration — Such lopsided implementation of provisions of Registration and Stamp Act cannot be countenanced — No finding that petitioners suppressed actual value of property — Registering Authority directed to register and release sale deed in favour of petitioners without insisting on payment of any additional stamp duty.

Stamp Act, 1899 — Sections 47 and 47A.

IV (2006) CLT 321 (Andhra Pradesh HC)

— Payment of — If instruments fall within two or more of articles in Schedule 1 or 1A of Act — It shall be chargeable with highest of duties payable.

Stamp Act, 1899 — Section 6.

IV (2006) CLT 259 (Andhra Pradesh HC)

— Undervaluation of sale deed — Recovery of deficient Court-fee and imposition of penalty — District Judge examined entire evidence and came to conclusion that Collector justified in concluding that sale deed had been undervalued and said order passed in accordance with law after affording due opportunity to vendee — But District Judge held order imposing penalty not sustainable and order *qua* imposition of penalty set aside — Observation made by District Judge suffers from no legal infirmity.

Stamp Act, 1899 — Section 47A.

IV (2006) CLT 246 (Punjab & Haryana HC)

SUCCESSION — Adoption — Evidence falls short of required proof in law — Respondents have heavy onus to discharge — Burden lies on them to prove factum of adoption — Respondent KB seeks to exclude natural line of succession to property by alleging adoption — Alleged adoptive father himself filed written statement denying adoption — No date of adoption is given nor venue of ceremony given in plaint — No specific custom pleaded — No adoption deed executed for such important event — None of witnesses deposed date of alleged adoption — Two witnesses who allegedly attended adoption ceremony not examined — Alleged adoption is not true and valid and alleged adopted son has no right in suit property and *mesne* profits — Suit property belongs to appellant — Question of

paying *mesne* profits does not arise — Appellants are at liberty to claim *mesne* profits and recover same from respondents.

IV (2006) CLT 218 (SC)

- Appointment of Administrator *Pendente Lite* (APL) — Act and conduct of executor contrary to law — Executor without applying for any probate took steps to mutate register in company involved in his name on ground that he was permitted to do so by articles of association of Company — Such hasty action not benefiting executor — Such provision in articles contrary to Sections 213 and 214 of Indian Succession Act — He did not make any efforts to find other assets and movables left by lady — Criminal charges levelled against him is personal charge and related to and in connection with breach of trust — This Court does not know wherefrom executor is meeting litigation expenses — Bundle of facts and law supported by documents, constitute absolute necessity for appointment of APL, at least for brief period.

Indian Succession Act, 1925 — Sections 211, 213, 214 and 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Mismanagement of estate not a factor for appointment of APL.

Indian Succession Act, 1925 — Section 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Necessity of — Criminal prosecution against executor — Executor to defend criminal prosecution as he is one of accused persons — He is facing trials before Appropriate Court — Court cannot allow person who is accused, to control and manage huge and vast estate of deceased when he is facing charge of criminal breach of trust, not *qua* executor — Sitting in Probate Court, this Court does not think tainted person should be allowed to manage or handle estate — It is one of instances of necessity.

Indian Succession Act, 1925 — Section 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Powers of Court — Provision of Section 247 enabling one — Even if no application is made, if conditions satisfied, power conferred upon Court can be exercised *suo motu* — Apart from Indian Succession Act and CPC, probate Court has inherent power to take measure to protect estate and properties of deceased whenever Court thinks fit and proper.

Indian Succession Act, 1925 — Section 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Probate of Will — Applications not without merit or lack *bona fide* — Mutual wills by husband and wife — Husband predeceased wife — Wife not trying to obtain any probate of Will or Letters of Administration — Properties mixed up with assets and properties of lady — Absolutely difficult to segregate or identify exclusive properties of M.P. Birla — L cannot be incharge of M.P.'s estate on face of mutual Will — Estate of M.P. is absolutely in 'medio', meaning none is entitled to take control lawfully — Mere taking of physical control and management of estate by executor not legally valid ground to resist applications for appointment of APL — Mere initiation of company proceedings unsuccessfully does not disentitle two ladies to apply for appointment of APL.

Indian Succession Act, 1956 — Sections 217, 222 and 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Suit for obtaining probate and letters of administration — Discretion of Court to appoint APL must be exercised with restraint and prudence — Condition precedent — Discussed.

Indian Succession Act, 1925 — Sections 211, 213, 214 and 247.

IV (2006) CLT 351 (Calcutta HC)

- Appointment of Administrator *Pendente Lite* (APL) — Will and codicil seriously challenged on ground of undue influence, suspicious circumstances and lack of testamentary capacity, etc. — Ground of contest not without foundation of law — Documentary evidence filed in support — Documents produced show mind of lady and her husband was of charitable disposition — Executor alleged to be taking substantial benefit under Will — Defence not sham and not likely to succeed — APL should be appointed.

Indian Succession Act, 1925 — Section 247.

IV (2006) CLT 351 (Calcutta HC)

- Devolution of interest in coparcenary property — Notional partition — Scope of Section 6, Hindu Succession Act — Death of coparcener leaving behind female or male relative — His undivided interest in Mitakshara coparcenary property would not devolve upon surviving coparcener, by survivorship but upon his heirs by intestate succession — For purposes of finding out undivided interest of deceased coparcener, notional partition to be assumed immediately before his death — Same shall devolve upon his heirs by succession which include surviving coparcener, who would be entitled to undivided interest of deceased by succession and also in coparcenary property which he could get in notional partition — Each of plaintiffs not entitled to 1/3rd share in suit properties but 1/6th and remaining property would go to adopted son-NC — Suit properties in hands of deceased-NM ancestral, in which his son NC got interest equal to NM after his adoption — From date of adoption, coparcenary constituted between father and adopted son — Upon his death, half undivided interest of NM devolved by rule of succession upon his three heirs and each of daughters entitled to 1/6th share in suit properties and remaining to heirs of NC, since deceased — Impugned judgments set aside — Suit for partition decreed to extent of 1/6th share in each of two plaintiffs and defendants.

Hindu Succession Act, 1956 — Section 6.

IV (2006) CLT 151 (SC)

- Evidence — Will — Circumstances not suspicious at all — Once Will is duly proved, it has to be given effect to — According to PW 1 testator and AK living together as man and wife — Nothing wrong if Will refers to AK as wife of testator — Testator referred to appellants as his children in Will — Ample evidence to prove testator treated appellants as his children and solemnized their marriages — DW 4's evidence prove this factor — Testator, sole surviving coparcener and property would be his absolute property — There cannot be any doubt over testator's capacity to bequeath : Mere presence of DW 4-appellant No. 1 would not make it suspicious circumstance — Assuming his presence does not mean undue influence exercised and prominent role played — Will duly proved by appellants.

Evidence Act, 1872 — Sections 68, 63, 114.

IV (2006) CLT 218 (SC)

- Evidence — Will — Proof of — Section 68 of Evidence Act deals with proof of execution of document required by law to be attested — Word 'execution' in Section 68 includes attestation as required by law — Clear and satisfactory evidence led by propounders — Unequivocal admission of Will in written statement filed by testator — He specifically averred that he executed Will and described appellants as his sons and AK as his wife — Case of appellants cannot be thrown out — Document also contains signatures of attesting witnesses and scribe — Burden of proof to prove Will duly and satisfactorily discharged by

appellants — Onus is discharged by propounder adducing *prima facie* evidence proving competence of testator and execution of Will in manner contemplated by law.

Evidence Act, 1872 — Sections 68, 63, 114.

IV (2006) CLT 218 (SC)

— Expression “Heirs” and “Children” — Meaning discussed.

IV (2006) CLT 236 (SC)

— Letters of Administration — Cannot be granted to estate of deceased to registered society — Society registered under Societies Registration Act, 1860 is not body corporate.

Indian Succession Act, 1925 — Section 236 — Societies Registration Act, 1860 — Sections 5, 6 — Civil Procedure Code, 1908 — Order 6 Rule 17 r/w Section 151.

IV (2006) CLT 273 (Allahabad HC)

— Letters of Administration — Grant of — Will dated 20.7.1983 is last Will and testament of J — Will property No. H-38, Kailash Colony, New Delhi fallen into share of petitioner and petitioner is ready to administer same — Affidavits given by two witnesses relating to execution of Will — No objection given by all legal heirs of deceased — No impediment to grant of probate.

Indian Succession Act, 1925 — Section 276.

IV (2006) CLT 406 (Delhi HC)

— Proof of suspicious circumstances — Circumstances of depriving natural heirs should not raise any suspicion because whole idea behind execution of Will is to be interfered in normal line of succession and natural heirs would be debarred in every case of Will.

Evidence Act, 1872 — Sections 68, 63, 114.

IV (2006) CLT 218 (SC)

— Succession Certificate — Grant of — Validity of marriage — Ist appellant named as nominee of deceased, certificate could safely be issued in her favour — Respondents not precluded from laying claim to same in appropriate proceedings — Trial Court palpably erred in granting certificate in favour of respondents 1, 2 and 3 who were not even parties before Trial Court and former not applicant — Such grant was without jurisdiction, wholly irregular and not permissible in law.

Indian Succession Act, 1925 — Section 372.

IV (2006) CLT 341 (Karnataka HC)

— Unmarried Daughter entitled to equal share in coparcenary property in view of Section 29A of Hindu Succession Act.

IV (2006) CLT 230 (Madras HC)

— Will — Grant of Probate — Execution of Will not duly proved — Proof of Will shall strictly be in terms of provisions of Section 63, Indian Succession Act — It is, however, well settled compliance of statutory requirements itself not sufficient — Division Bench of High Court entirely wrong in proceeding on premise that compliance of legal formalities as regard proof of Will would sub-serve purpose and suspicious circumstances surrounding execution thereof not of such significance — Suspicious circumstances pointed out by District Judge and Single Judge of High Court, glaring on face of records — They could not be ignored by Division Bench — Division Bench should be slow in interfering with findings of fact arrived at by said Court — Impugned judgment applied wrong legal test and came to erroneous decision — Unsustainable — Set aside.

Indian Succession Act, 1925 — Sections 63, 295.

IV (2006) CLT 208 (SC)

- Will — Proof of genuineness — Suit for declaration claiming possession of subject property — First Appellate Court reversed finding and dismissed suit after observing that Will is surrounded by more than one suspicious circumstance including glaring instance, *i.e.*, spacing between initial 15 lines is more than spacing in last 6-7 lines — That Will has been fabricated on some signed blank piece of paper — Both marginal witnesses closely related to appellant — No such Will produced by appellant or his father at earliest opportunity, when mutation of subject property sanctioned as per natural succession at instance and in presence of appellant's father — No extraordinary circumstances pleaded by appellant to show deceased would have preferred to deprive his brother and sister from subject property in preference to appellant who is son of another brother — Findings of facts recorded by 1st Appellate Court neither perverse nor contrary to law.

IV (2006) CLT 310 (Punjab & Haryana HC)

- Will — Proof of testator as father of appellants — Documents issued by School Headmaster are true copies and prove D1 as father of appellants.

IV (2006) CLT 218 (SC)

- Will — What is necessary for true, proper and effective construction of Will is to give effect to intention of propounder of Will.

IV (2006) CLT 236 (SC)

- SUIT TO INCLUDE WHOLE CLAIM** — Amendment of plaint — Where plaintiff is entitled to more than one relief and he omits to sue for some of reliefs, he may obtain leave of Court and institute fresh suit on same cause of action.

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Income Tax Act, 1961 — Companies Act, 1956 — Sections 100 to 104.

IV (2006) CLT 163 (SC)

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IV (2006) CLT 238 (Madras HC)

- TRANSFER OF PROPERTY** — Conditions restraining alienation — Family settlement recognizing pre-existing rights and which does not amount to transfer of property by deed at time of execution, does not require registration — D did not deny his thumb impression on certified copy of family settlement — It was arrived between parties before consolidation officer — Section 10 of Transfer of Property Act not applicable to family settlement which only recognizes pre-existing rights — Family settlement may not confer any fresh rights which person has in property — In this case family settlement only

recognized pre-existing rights — In such case person could respect himself from alienation of property during his life time.

Transfer of Property Act, 1882 — Section 10.

IV (2006) CLT 306 (Allahabad HC)

— Expression — “Living Person” — Meaning.

IV (2006) CLT 312 (Calcutta HC) (DB)

— Gift deed — Proof of execution — Suit for possession of suit schedule property — Incumbent upon plaintiff to examine one of attesting witnesses to gift deed — Donor grand-mother and donee grand-daughter — Suit filed by donees on attaining majority — Resistance by possessor, father of donees challenging gift deed — When defendant admits execution of gift deed and put in possession on behalf of his minor daughter-plaintiffs, it is not open to him to deny execution of gift deed — Executant not denied execution of gift deed and defendant in his evidence admitted its execution, question of examining attesting witness does not arise — Finding of Courts below that gift deed proved in accordance with law, justified and gives rise to no substantial question of law to be decided in appeal.

Transfer of Property Act, 1882 — Evidence Act, 1872 — Section 68.

IV (2006) CLT 286 (Karnataka HC)

— “Living person” — Society including club not registered under provisions of Societies Registration Act, does not come under category of “living person” as per Section 5, Transfer of Property Act — Such unregistered society or Club cannot validly acquire immovable property by purchase — Purchase of immovable property made by unregistered Club showing Secretary alone as purchaser in deed of purchase not valid.

Transfer of Property Act, 1882 — Section 5 — Societies Registration Act, 1860 — Section 5.

IV (2006) CLT 312 (Calcutta HC) (DB)

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IV (2006) CLT 312 (Calcutta HC) (DB)

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Transfer of Property Act, 1882 — Section 41.

IV (2006) CLT 236 (SC)

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- **Section 34** — Setting aside Award — Misconduct — Assessment of loss for goods/material lost in fire, by Arbitrator — Goods lying in premises of respondent No. 1, insured by appellant — Before pronouncing award, both Arbitrators looked into and analysed all documents on record in very minute manner — Dissenting decision given by Sh. Sanjiv Duggal, Arbitrator cannot be relied upon, as he assessed loss caused to respondent No. 1 even less than and amount by Surveyor, appointed by appellant — This Arbitrator gave too much importance to minor discrepancies which two other Arbitrators looked in detailed manner — Court not supposed to sit as Court of Appeal on arbitration award — It can only interfere if case is made out as per provisions of Section 34 of Act — Appellant failed to show misconduct of Arbitrators or award passed not in terms and conditions of insurance policy — No case made out for interference in pure findings of fact.

IV (2006) CLT 376 (Punjab & Haryana HC)

- **Sections 34, 34(2)(b)(i), 34(2)(b)(ii) and 37** — Appeal against order setting aside award — Award could be set aside if it is against public policy of India — Conditions to be satisfied to set aside award under Section 34 of Act — Appellate Court cannot sit in appeal over conclusion of Arbitrator by re-examining and re-appraising evidence considered by Arbitrator and hold conclusion reached by Arbitrator wrong — Merely saying that subject matter of dispute is not arbitral not enough — State utterly failed to allow anything from record that subject matter of dispute could not be arbitrated — Observation of District Judge that award is against public policy of India, not clearly indicated in reasons in support of conclusion — Impugned judgment passed by District Judge liable to be set aside.

IV (2006) CLT 267 (Orissa HC)

- Contract Act, 1872 — Section 70 — **Arbitration and Conciliation Act, 1996** — **Sections 28(1)(a), 34 and 37** — Setting Aside Award — Void Contract — Compensation — Award of — Jurisdiction of Arbitral Tribunal — Under Section 28(1)(a) of Act, Arbitral Tribunal to decide dispute in accordance with substantive law for time being in force — Substantive law would include Contract Act — It is open to Arbitral Tribunal to invoke provisions of Section 70 of Contract Act and grant compensation even after concluding contract was void — Person whose contract is void entitled to compensation under Section 70 of Contract Act if he established his claim that other person enjoyed benefit of thing delivered and said thing never intended to be delivered gratuitously.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

- **Sections 34 and 37** — Setting aside Award — Appellate Court will not review decision of Arbitrator given on points referred for arbitration — It would only see whether award of Arbitrator vitiated on account of excess of jurisdiction, incompleteness or misconduct — Appellate Court would only interfere where it is found that Civil Court acted unreasonably in exercise of its discretion or ignored relevant facts — Both parties afforded ample opportunity of being heard before Arbitrator as well as Court below.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

Civil Procedure Code, 1908

- Execution of Decree — Consent decree between parties also binding on Revenue Authorities — Second suit for declaration filed on refusal to mutate names of respondents, not maintainable in view of provisions contained in Section 47, CPC — Respondents could initiate proceeding for preparation of final decree — **Civil Procedure Code, 1908 — Section 47.**

IV (2006) CLT 157 (SC)

- **Section 47 r/w Section 151** — Execution — Objection — Anomalies in boundaries of decretal land and land described in sale deed in absence of any survey — Appointment of Commissioner for measurement of decretal land — No steps taken for issuance of writ of commission — No application made before Court below to recall said order — Court

below was of view boundaries of decretal land and land contained in sale deed in question not in conflict and objection to that effect rejected — Said finding recorded on consideration of datas available on record — This Court sitting in revision not inclined to re-appraise same to substitute its findings for those of Court below — Impugned order not vitiated by any illegality far less error of jurisdiction.

IV (2006) CLT 400 (Gauhati HC)

- Suit for Injunction — Maintainability — Compromise/consent decree passed between parties — For all intent and purport it was preliminary decree passed in suit for partition — Fresh proceeding could not be initiated for giving effect thereto even if respondents' contention that their right to possess under consent decree not found enforceable by Revenue Authorities, to be accepted — Respondents could not disclaim consent decree by filing suit for declaration — Their right in relation to *abadi* land could not be denied — Submission of learned Counsel for respondents that suit for declaration filed in view of refusal on part of Revenue Authorities to mutate their names, not correct keeping in view provisions of Section 47, CPC — Subsequent suit clearly barred — High Court failed to consider error apparent on face of record — Second suit filed by respondent not maintainable — Question of directing appellant to give portion of land to respondent No. 1 inconsistent with judgment and decree passed in earlier suit holding them to be owner in possession of land measuring area 7191.94 sq.mtrs. — Respondents at liberty to file appropriate application for measurement of lands in question and division of lands in terms of consent decree — **Civil Procedure Code, 1908 — Section 47, Order 23 Rule 3.**

IV (2006) CLT 157 (SC)

- Second Appeal — Substantial question of law — High Court while disposing of second appeal must confine itself to questions of law framed — High Court failed to take notice of question of law framed at time of admission of second appeal — Decided same as it was hearing first appeal — Judgment unsustainable and set aside — Matter remitted to High Court — High Court directed to dispose of matter expeditiously — **Civil Procedure Code, 1908 — Section 100.**

IV (2006) CLT 235 (SC)

- Second Appeal — Substantial question of law — Question concerning applicability of Section 60, Easements Act to case when construction with hook stones of permanent character has been put up on suit wall raises substantial question of law — Second appeal maintainable — **Civil Procedure Code, 1908 — Section 100** — Easements Act, 1882 — Section 60.

IV (2006) CLT 235 (SC)

- **Section 100** — Transfer of Property Act, 1882 — Section 10 — Contract Act, 1872 — Section 23 — Second Appeal — Right of Inheritance by Married Daughter — Family settlement — Not against public policy — Married daughter was not in line of succession under then existing unamended Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 — After amendment of Section 171, married daughter given right to succeed to her father over agricultural land — Parties understood law as it was on 31.3.1961, date when family settlement arrived at — Family settlement on that date when entered into by parties, not against public policy — No substantial question of law raised in Second Appeal to be decided by Court.

IV (2006) CLT 306 (Allahabad HC)

- **Section 100, Order 22 Rule 3** — Second Appeal — Abetment of — Limitation — Legal representative — Substitution of — Death of sole defendant on 17.12.2004 — No substitution application filed by legal representative even after expiry of 14 months — Second appeal stands abated.

IV (2006) CLT 235 (Allahabad HC)

- **Section 114** — Review of Order — Claim of interest on valuation of machinery for first time in review application — Claim not maintainable — Such claim, not raised before Arbitrator nor before Single Judge and Division Bench, cannot be permitted to be raised for first time in review application.

IV (2006) CLT 348 (Madras HC) (DB)

- **Section 115** — Revision — Scope — Plea that decree is obtained by fraud — Contention to this effect cannot be entertained in revision application because scope of revision application does not permit same.

IV (2006) CLT 218 (Gujarat HC)

- **Sections 115, Order 9 Rule 13** — Limitation Act, 1963 — Section 5 — Setting aside *ex parte* decree — Condonation of delay of 488 days in filing application under Order 9 Rule 13, CPC — Suit for specific performance of agreement decreed *ex parte* in favour of respondent and against petitioner in respect of suit schedule property — Petitioner pleaded illness and produced medical certificate to that effect — But trial Judge observed that doctor who issued certificate not examined and medical certificate easily procurable — This is not correct and Trial Court proceeded in matter with tendency of finding fault with cause shown by petitioner — Trial Court felt delay could be condoned by imposing cost but did not condone delay as petitioner did not file petition immediately after he came to know about execution proceedings — Reasons given by petitioner to condone delay in filing petition to set aside *ex parte* decree, accepted with direction to pay sum of Rs. 3,000 towards cost to respondent for loss in execution of decree — Directions issued.

IV (2006) CLT 377 (Madras HC)

- **Section 115, Order 9 Rule 13** — Limitation Act, 1963 — Section 5 — Condonation of Delay — Setting aside *ex parte* decree — Only reason given by revision petitioner in affidavit filed in support is that due to old age, sickness, poor eyesight, deafness, knee pain, etc. he was not able to move out of his house without escort and meeting with his Advocate delayed due to said reasons — Perusal of documents filed in support of submissions — In every case of delay it is always some lapses on part of litigant — That does not mean lapse is deliberate and intentional — Delay of 365 days should be condoned to permit revision-petitioner to contest suit on merits — He is also directed to pay sum of Rs. 2,000 to respondent towards cost.

IV (2006) CLT 383 (Madras HC)

- **Section 149, Order 7 Rule 11** — Rejection of Complaint — Extension of time for payment of deficit Court fees not filed within time — Court has power to extend time for payment of Court fee — Three applications filed for extension of time for payment of Court fee — Order of Court not complied with — Condonation petition filed seeking condonation of delay of 146 days in representing complaint, accompanied by affidavit explaining reasons for delay, *i.e.* bundle being mixed up with records of cases in office — Trial Court satisfied there are valid grounds for condonation of delay — That it was reason for non-payment of Court fee within time — No grounds to interfere with order dismissing petition filed by revision petitioner.

IV (2006) CLT 244 (Andhra Pradesh HC)

- **Section 151, Order 18 Rule 4, Order 18 Rule 19, Order 26 Rule 4A** — Examination-in-chief of summoned witnesses — Exercise of discretion by Civil Court in appropriate cases to meet ends of justice — Order 18 Rule 19 as well as Order 26 Rule 4A, CPC do not limit power of Commissioner to any extent — No requirement for obtaining affidavit as prelude for cross-examination.

IV (2006) CLT 390 (Kerala HC)

- **Sections 152, 153** — Amendment of judgment, decree or orders — Correction of Clerical or Arithmetical Mistakes — Scope of provisions of Sections 152 and 153, CPC — Limitation

to exercise of power — Only fetter to this power of Court, if it is inequitable or inexpedient to do so, especially where third parties have acquired rights — One of reasons why Courts held no limitation can be placed for correcting mistake is no party should suffer because of mistake of Court.

IV (2006) CLT 408 (Himachal Pradesh HC)

- **Sections 152 and 153, 153A** — Amendment of judgment, decree or orders — Correction of Clerical or Arithmetical Mistake — Power of Trial Court — Applicability of doctrine of merger — Appellate Court only disposed of matter by holding ID had no right to file appeal since no decree passed against him — Doctrine of merger does not apply — Section 153A, CPC not attracted — Mere fact that appeal decided after notice and not *in limine* would not take away jurisdiction of Trial Court to amend its judgment and decree because of fact that there was no decision on case by District Judge.

IV (2006) CLT 408 (Himachal Pradesh HC)

- **Order 2 Rule 2, Order 6 Rule 17** — Suit to include whole claim — Amendment of plaint — If plaintiff omits to sue or relinquishes any portion of his claim, as per Order 2 Rule 2, CPC, Court cannot grant leave to institute fresh suit — Where plaintiff is entitled to more than one relief and he omits to sue for some of reliefs, he may obtain leave of Court and institute fresh suit on same cause of action — Court does not lack power to allow amendment under Order 6 Rule 17, CPC in case where plaintiff filed application for amendment to include one of several reliefs omitted to be included in plaint.

IV (2006) CLT 289 (Kerala HC)

- **Order 6 Rule 17** — Amendment of Plaint — Relief barred by limitation — No ground to deny relief — Discretion in such cases depends on facts and circumstances of case — If granting of amendment subserves ultimate cause of justice and avoids further litigation same should be allowed.

IV (2006) CLT 289 (Kerala HC)

- **Order 6 Rule 17** — Amendment of Plaint — Court would be liberal in allowing amendments in cases where suit would be defeated on any specific bar of law being applied on ground that portion of claim is omitted to be included or relief not claimed or for any other similar reason — Multiplicity of suits to be avoided — Litigant should not be penalised for omission or for lack of astuteness in pleadings — Astuteness in pleadings would not enable person to get relief to which he is not really entitled — Similarly lack of astuteness in pleadings should not deprive party of relief to which he is really entitled to.

IV (2006) CLT 289 (Kerala HC)

- **Order 6 Rule 17** — Amendment of Plaint — Test to be applied — Whether plaintiff could originally include in plaint relief sought to be added by way of amendment, on foot of averments contained in plaint — If such relief could be made at time of filing suit, plaintiff could be allowed to incorporate such relief by way of amendment if he omits to make such relief in plaint.

IV (2006) CLT 289 (Kerala HC)

- **Order 6 Rule 17** — Amendment of Written Statement — Plea that parties were being governed by customs before coming into force of Hindu Succession Act, very much available to petitioners when written statement filed earlier — Said plea cannot be allowed by way of amendment.
- **Order 6 Rule 17** — Amendment in Written Statement — To bring on record fact that registered Will was executed in favour of their predecessor, by deceased — Authenticity of registered document cannot be doubted at this stage — Open to Trial Court to look into validity of Will as per law, during trial — Existence of Will was very much within notice of respondent No. 1 as he had moved one application earlier with prayer to produce on

record said Will — In interest of justice and for proper adjudication of *lis* between parties, petitioners allowed to incorporate factum regarding execution of Will by deceased in favour of predeceased by amending their written statement.

IV (2006) CLT 386 (Punjab & Haryana HC)

- **Order 6 Rule 17, Order 7 Rule 11(a)** — Amendment of plaint — Rejection of plaint — Suit for partition — Both plaintiff and defendant stand on same footing — There was cause of action for filing suit by plaintiff for partition, even though both plaintiff and defendants possessing land separately by amicable arrangement, which can never be termed as partition by metes and bounds — For better adjudication of suit by competent Court, parties are at liberty to approach Court at any stage of proceeding by way of filing application for amendment of pleadings under Order 6 Rule 17, CPC — In case plaintiff's prayer allowed, defendant, shall be given liberty to file his additional written statement to amended plaint — Defendant is always at liberty to state all his grievances to plaintiff in written statement — Written statement filed by defendant challenging order of Civil Judge allowing prayer of plaintiff for amendment of plaint and rejecting prayer of defendant in petition under Order 7 Rule 11, CPC, suffer from no illegality, irregularity or manifest error of law.

IV (2006) CLT 385 (Orissa HC)

- **Order 6 Rule 17, Proviso** — Amendment of Plaint — Cancellation of sale deed dated 29.6.1998 and not with regard to cancellation of sale deed dated 29.8.1998 — Typographical error in plaint as well as in prayer clause of plaint — Court below committed error in holding entire basis of suit would be changed if amendment carried out — Amendment sought only clerical in nature — Amendment will not change nature of suit or controversy involved in suit — Proviso to Order 6 Rule 17, CPC cannot place any impediment in allowing amendment application if otherwise liable to be allowed — Amendment application can be allowed at any stage of proceedings, even after commencement of trial, if necessary for determining real question in controversy between parties.

IV (2006) CLT 415 (Allahabad HC)

- Indian Succession Act, 1925 — Section 236 — Societies Registration Act, 1860 — Sections 5, 6 — **Civil Procedure Code, 1908 — Order 6 Rule 17 r/w Section 151** — Letters of Administration — Cannot be granted to estate of deceased to registered society — Society registered under Societies Registration Act, 1860 is not body corporate — It may enjoy status of legal entity apart from its members and may be capable of suing or be sued but not corporate body having perpetual succession and common seal — Legal title of properties vests in trust or Board of Governors and equitable title in society — Prayer of probate sought to be amended by prayer of grant of Letters of Administration — Amendment application also does not change title and character of application — Legal bar created under Section 236 of Act does not allow Court to proceed to consider validity of Will and to decide other issue.

IV (2006) CLT 273 (Allahabad HC)

- Suit for declaration — Plaintiff-respondents claim to be lawful heirs entitled to bequests under Will — Decree of mandatory injunction for restoration of property — Title to property limited — Non-joinder of parties — Embargo put on defendant No. 1's son inheriting property — In absolute terms to transfer property to any other person — Sale deed could not be executed — Embargo created under Will on defendant No. 1 could not be removed if his son is impleaded — In terms of Will, question of his son's inheriting property from original defendant No. 1 did not arise — Suit was pre-mature as no cause of action arose for plaintiffs for obtaining decree to set aside sale deed — Cause of action arose on death of original defendant No. 1 which took place during pendency of suit — Suit could not be dismissed on ground of being barred under law of limitation — Under Order 7 Rule 7, CPC, Appellate Court could take subsequent events into consideration — High Court not acted illegally and without jurisdiction in passing impugned judgment —

No case made out for exercise of discretionary jurisdiction of this Court under Article 136 of Constitution — Constitution of India, 1950 — Article 136 — Hindu Succession Act, 1956 — Sections 4, 8 — **Civil Procedure Code, 1908 — Order 7 Rule 7** — Limitation Act, 1963 — Articles 59, 60.

IV (2006) CLT 236 (SC)

- **Order 8 Rule 1** — Written Statement — Filing of — Extension of time — Rejection of application on ground that written statement not filed within time as prescribed under Order 8 Rule 1, CPC — Court in appropriate case can extend time and accept written statement even beyond period prescribed by Order 8 Rule 1, CPC — Court below erroneously rejected petitioners application and debarred them from filing written statement against settled principle of law — Impugned order unsustainable in law set aside.

IV (2006) CLT 300 (Jharkhand HC)

- Joint trial — Transfer of suit before DRT — Suit in nature of counter claim to claim of appellant bank and arose out of same cause of action — Suit filed by respondent-company for recovery of amount as damages with interest on account of losses suffered by it because of delay on part of bank in fulfilling its obligations — Bank moved application for transfer of suit to DRT for joint trial with O.A. pending before Tribunal, since both proceedings arose out of grant of loan and providing of cash credit facility by bank to company — Decree to one or other would depend upon ascertainment of rights and obligations arising out of loan transaction and state of loan account — Two claims inextricably inter linked — Same basic evidence to be taken in both proceedings — If decree is granted to bank on basis of its accounts and damages, if any, decreed in favour of company, set-off could be directed — Fit case to order joint trial — Trial Court and High Court failed to exercise jurisdiction vested in them by law in refusing to transfer suit to DRT — Impugned orders set aside with direction to transfer money suit from file of Subordinate Judge to DRT — Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Sections 19(1), 19(6) to 19(11) — **Civil Procedure Code, 1908 — Order 8 Rule 6A.**

IV (2006) CLT 189 (SC)

- Counter Claim — Amendment of Order 8 Rule 6A, CPC — Effect of — For maintaining counter-claim, cross action need not even arise out of same cause of action or be intrinsically connected with cause of action sued upon — Any right or claim in respect of cause of action accruing to defendant against plaintiff can be made subject matter of counter-claim — **Civil Procedure Code, 1908 — Order 8 Rule 6A (as amended).**

IV (2006) CLT 189 (SC)

- **Order 9 Rule 6, Order 17 Rule 2, Order 9 Rule 7** — Specific Relief Act, 1963 — Section 6 — Restoration Application — Suit under Section 6 of Specific Relief Act — Failure of defendant to appear on date fixed — Effect of — Both things may simultaneously take place, *i.e.*, on same date order for proceeding *ex parte* may be passed and *ex parte* hearing may be held — Only order passed on date fixed was suit should proceed *ex parte* and another date fixed for *ex parte* hearing — Said order may be taken fixing date for hearing — Even if it is assumed under Order 9 Rule 6, CPC, it is essential that firstly date on which defendant is absent shall be date of hearing and secondly on said date only order to proceed *ex parte* shall be passed and some future date for *ex parte* hearing should be fixed till under Order 17 Rule 2, CPC it is not mandatory — Revisional Court rightly held hearing means application of mind by Court and not final hearing — Course adopted by Trial Court while decreeing suit *ex parte* was inconsonance with Order 17 Rule 2, CPC.

IV (2006) CLT 404 (Allahabad HC)

- **Order 9 Rule 7** — Recall of Order — Maintainability — Appearance of defendant on day of adjourned hearing and assigning good cause for previous non-appearance — Suit for

recovery of arrears of rent and ejection — Defendant did not appear after service of summons and hearing proceeded *ex parte* — Application for recall of order for *ex parte* hearing, rejected — Ground — *Ex parte* hearing was over and application under Order 9 Rule 7, CPC not maintainable — Evident from record Court below has only date fixed for delivery of judgment — It is meaningless for purposes of application under Order 9 Rule 7 — Defendant should be given opportunity to contest suit — Justifiable and proper for Trial Court, instead of now delivering *ex parte* judgment, should afford opportunity of hearing to applicant-revisionist strictly in accordance with law and should entertain defence, if same permissible within frame work of procedure provided for purposes.

IV (2006) CLT 301 (Allahabad HC)

- **Order 9 Rule 13** — Limitation Act, 1963 — Article 136 — Execution of *ex parte* decree — Limitation — Doctrine of merger not applicable — After *ex parte* decree application under Order 9 Rule 13, CPC formed subject matter of appeal and not *ex parte* decree itself — Doctrine of merger does not apply as they were collateral proceedings only — Article 136 of Limitation Act provides execution application to be moved within 12 years from enforceability and not from executionability — *Ex parte* decree became enforceable right at time when it was passed — Application for execution moved beyond 12 years from date of passing thereof, same barred by time and doctrine of merger not applicable, limitation not saved.

IV (2006) CLT 346 (Madhya Pradesh HC)

- **Order 14 Rule 5** — Framing of Additional Issue — Justification — Suit for decree of mandatory injunction — Case reserved for judgment after hearing learned Counsel for parties — It was noticed by learned Judge while writing judgment that issues framed by his predecessor not based on pleadings of parties — Under Order 14 Court can at any point of time recast issues if issues framed by Court required to be changed — Whenever additional issues framed by Court at stage of judgment, it is duty of Court to hear parties on additional issues and proceed further in matter — No Court is expected to proceed for judgment without giving opportunity to parties as it amounts to infringement of principles of natural justice — Such procedure not followed — Judgment and decree of Trial Court set aside — Matter to be reconsidered by Court accordingly.

IV (2006) CLT 264 (Karnataka HC)

- **Order 18 Rule 4** — Recording of Evidence — Object and scope of Order 18 Rule 4 — Drafting and presentation of affidavit for evidence — Single Judge prescribed procedure for preparation of affidavit by Advocate, maintenance of original draft thereof, parties right or use such draft in Court at time of cross-examination of deponent — Challenge against — These modalities if accepted will nullify object of Order 18 Rule 4 — It would rather than helping Court in disposing of proceedings expeditiously, would assist unscrupulous litigants in delaying proceedings — Procedure can also invite undue hardship to members of Bar — Decisions of Supreme Court clearly lays down procedure to be followed in matter of preparation of filing of affidavit as well as filing thereof in Court as part of evidence by parties — There cannot be any occasion for this Court to issue directions contrary to law laid down by Apex Court — Further, once Legislature prescribes specific procedure for purpose of preparation of affidavit and filing thereof in Court, Courts cannot assume role of Super Legislature to prescribe totally different procedure — Bar Council completely justified in challenging judgment of Single Judge — Impugned judgment of Single Judge so far as it relates to observations and directions pertaining to method of preparation of affidavit and filing thereof under Order 18 Rule 4, CPC liable to be set aside.

IV (2006) CLT 326 (Bombay HC) (DB)

- **Order 21 Rule 9 r/w Section 151** — Execution of decree by High Court — Recording of obstruction — Decree obtained in 1999 and execution petition pending from 2000 and petitioners are only tenants under judgment debtor — This Court is in entire agreement

with subordinate Judge that decree has reached its finality, petitioners became tenants of second respondent judgment debtor and there is no merit in their obstruction — No error or infirmity in impugned order — Reasonable time of 4 weeks granted to petitioners to hand over possession.

IV (2006) CLT 234 (Madras HC)

- **Order 21 Rule 18 and Order 21 Rule 19** — Execution in case of cross decrees/cross claims under same decree — Applicability of Order 21 Rules 18 and 19, CPC — Neither application made for execution of cross decrees in separate suits for payment of moneys in between parties nor application is for execution of decree in which parties entitled to recover sums of money from each other — Applications are in respect of two awards in same arbitration case — Provisions of Order 21 Rules 18 and 19, CPC not applicable — Court below observed one award was interim and another final award and petitioner's application not maintainable under provisions of Order 21 Rules 18 and 19 — No illegality or material irregularity in impugned order.

IV (2006) CLT 325 (Jharkhand HC)

- **Order 21 Rule 34** — Limitation Act, 1963 — Execution of Decree — Limitation — Consent decree drawn on 19.9.1986 — Thereafter petitioner-objectors filed special civil suit and respondent No. 3 original defendant, judgment debtor, filed regular civil suit — Suit dismissed for non-prosecution on 20.3.2001 — Present Darkhast filed on 19.8.2002 — Executing Court held it is filed within period of limitation — This Court finds no error in said conclusion of learned Judge of Executing Court.

IV (2006) CLT 218 (Gujarat HC)

- **Order 21 Rules 97 and Order 21 Rule 99 r/w Sections 57 and 151** — Execution of decree — Suit for specific performance decreed — Decree obtained on basis of agreement to sell — So long decree subsists in favour of person who is in possession, he cannot be evicted in execution of decree for eviction— Just, fair and equitable that so long as decree for specific performance not finally set aside or affirmed by higher Courts, both petitioner and respondent shall not be entitled to execute decree either for seeking delivery of possession or for seeking direction for execution and registration of sale deed.

IV (2006) CLT 252 (Jharkhand HC)

- Determination — Adoption — Question irrelevant — Suit for permanent injunction restraining appellant from interfering with possession and cultivation of suit land — No issue framed nor could be framed as to whether requirements of Sections 7 and 8 of Hindu Adoptions and Maintenance Act complied with or not — Trial Judge opined that status of respondent as adopted son of deceased could not be looked into in this case — Submission of learned Counsel for appellant that adoption of respondent *per se* illegal, rightly held by Trial Judge irrelevant for determination of issue in suit — Question as to who is legal representative of party to suit who had expired, required to be determined in terms of Order 22 Rule 5, CPC — If respondent could represent estate of original defendant and despite opportunity of appellant to raise said issue at stage of determination of question envisaged under Order 22 Rule 5, CPC, same having not been done such question cannot be permitted to be raised in S.A. or before this Court for first time — Once respondent substituted in place of J-deceased original defendant, question reopening said question by this Court does not arise — **Civil Procedure Code, 1908 — Order 22 Rule 5** — Hindu Adoptions and Maintenance Act, 1956 — Sections 7, 8.

IV (2006) CLT 194 (SC)

- Consent Decree — Effect of — Enforceability — Consent decree in terms of Order 23 Rule 1, CPC need not be confined only to reliefs prayed for — It remains valid unless it is set aside — It would be binding on parties — Although principles of *res judicata stricto sensu* not apply, principles of estoppel would apply — **Civil Procedure Code, 1908 — Order 23 Rule 3.**

IV (2006) CLT 157 (SC)

- **Order 26 Rule 1** — Commissions — Commissioner's Report — Evidentiary value — Right to seek re-inspection — Commissioner appointed and inspected suit property at instance of defendant No. 3 (respondent No. 1), required to re-inspect property merely on ground that memo dated 31.3.2004 submitted by him not noted by Commissioner — Not disputed that parties cannot lay their hands only with support of Commissioner's report or plan — It is for them to specifically allege and substantiate same by oral or documentary evidence — Commissioner's report may be one piece of evidence in support of their case — Application for re-appointment of Commissioner to re-inspect property rejected.

IV (2006) CLT 342 (Madras HC)

- **Order 26 Rule 4A, Order 16 Rule 19, Order 18 Rule 4** — Appointment of Commissioner — To record evidence of witness — Permissible to appoint Commission to examine witness, even if he resides within local limits of jurisdiction — Only requirement is reasons must be recorded while doing so — With introduction of Rule 4A in Order 26, CPC inherent restrictions placed upon Courts in matter of appointment of Commissions to summon witness stand relaxed — This provision introduced as corollary to Rule 4 of Order 18, CPC to save time of Courts.

IV (2006) CLT 242 (Andhra Pradesh HC)

- **Order 39 Rule 2A** — Jurisdiction of Civil Court — Order of attachment passed under Order 39 Rule 2A, for violation of injunction order — Alleged that order of attachment without jurisdiction — Correctness of injunction order not within competence of this Court while hearing appeal against order passed under Order 39 Rule 2A, CPC — This Court will only examine whether injunction order has or has not been violated — Contention of appellant beyond domain of this Court.

IV (2006) CLT 232 (Allahabad HC) (DB)

- **Order 47 Rule 1** — Land Acquisition Act, 1894 — Sections 4(1) and 6 — Review — Scope — Declaration under Section 6 of L.A. Act made beyond prescribed period — Said contention not raised before Single Judge though petitioner/appellant duly represented by Counsel — Said contention considered and rejected by Judge — When Division Bench disposed of appeal, same was once again verified and based on materials available and taking note of fact that local publication of suit of Section 4(1) notification made on 21.2.1994 and declaration made on 20.2.1995, is well within period of 1 year, dismissed writ appeal — In absence of no such objection before learned Judge, no need to consider same in Review application.

IV (2006) CLT 324 (Madras HC) (DB)

Companies Act, 1956

- Capital Gains — Imposition — Transfers made under settlement — High Court was of view that *prima facie* transfers may attract capital gains tax — That deduction of anticipated capital gains tax liability from total value of assets justified — Since no demand of capital gains tax made so far — If any such demand made in future in respect of transfer of assets under settlement for which 20% deducted by Chartered Accountants — Respondent company shall challenge demand provided appellants shall place at its disposal necessary funds for purpose — Further observations made by this Court in this regard and necessary directions issued accordingly — Income Tax Act, 1961 — **Companies Act, 1956 — Sections 100 to 104.**

IV (2006) CLT 163 (SC)

Constitution of India, 1950

- Election to Post of President of Anand Municipality — Power of Judicial Review of Court — Setting aside election of appellant by High Court justified — Depositions of two Councillors in their affidavits affirm they would have voted in favour of first respondent —

Two Councillors arrested few minutes before election meeting with sole object to prevent both of them from casting their vote at elections for posts of President and Vice-President as B.J.P. leaders unable to win over any of 21 independent candidates and resorted to unfair means and abuse of Government machinery for getting false FIRs registered — High Court thus set aside election of appellant — Court directed votes of said Councillors be treated as having been cast in favour of 1st respondent and declared him elected as President of Anand Municipality — Failure to take into account relevant factor by Presiding Officer not only offends against procedural propriety, it makes his decision to go ahead with election meeting perverse and irrational, warranting interference under Article 226 of Constitution — High Court not committed any error of law and/or jurisdiction in setting aside election of appellant as President of Anand Municipality — Gujarat Municipalities Act, 1963 — Sections 31, 32, 32(4) read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — **Constitution of India, 1950 — Article 226.**

IV (2006) CLT 181 (SC)

- Election to Post of President of Anand Municipality — Declaration of respondent No. 1 as President — Both candidates got equal number of votes polled and appellant declared elected on basis of draw of lots, held as per prescribed procedure — Controversy did not relate to counting of votes — Direction of High Court that votes of two arrested Councillors be treated as having been cast in favour of 1st respondent, based on pure speculation that they would have definitely voted for him — High Court erred on this aspect of matter and to that extent impugned judgment cannot be sustained — Order of High Court declaring first respondent as President of Anand Municipality set aside — Gujarat Municipalities Act, 1963 — Section 32 read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — **Constitution of India, 1950 — Article 226.**

IV (2006) CLT 181 (SC)

- Statutory Remedy/Alternative Remedy — Availability — Where elections conducted in accordance with provisions of statute and statute also provides remedy of settlement of election disputes by filing election petition before Tribunal, that remedy alone should be availed of — Recourse cannot be taken to proceedings under Art. 226 of Constitution — **Constitution of India, 1950 — Art. 226.**

IV (2006) CLT 171 (SC)

- **Article 226** — Arbitration and Conciliation Act, 1996 — Section 11(6) — Extraordinary Jurisdiction — Appointment of Arbitrator — Challenge against — Writ petition filed under Article 226 of Constitution questioning order of Designate Judge appointing Arbitrators — In view of Supreme Court observations made in *Patel Engg. Ltd.* case, objection raised before Designated Judge regarding non-existence of arbitration clause, jurisdiction, merits of claim, etc. to be agitated only before Arbitrator/arbitral Tribunal.

IV (2006) CLT 262 (Madras HC) (DB)

- Writ Petition — Maintainability — Contractual matter — Scope of judicial review — Writ petition maintainable even in contractual matter — Contract between parties for supply of iron ore by September 2003 — In regard to supplies made from March 2003 to September 2003 there was no complaint on part of appellant about breach of contract — However, for subsequent period respondent No. 2 State Corporation unable to supply ore for reasons *viz.* rise in international price — State Corporation subsequently invited tender for supply of iron ore — Appellant filed writ seeking directions for supply of contract quantity — It is trite, if action on part of State is violative equality clause contained in Article 14, Constitution, writ petition maintainable even in contractual field — Distinction indisputably must be made between matter which is at threshold of contract and breach of contract — While exercising contractual powers, Government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part — Indisputably inherent limitations exist in this regard — Public interest may be one of factors to exercise power of

judicial review — Having regard to law laid down in *ABL International Ltd. case*, I (2004) SLT 381=I (2004) CLT 443 (SC) this Court unable to accept contention of respondents' Counsel that only because there exists disputed question of facts or an alternative remedy is available, same by itself would be sufficient for High Court to decline its jurisdiction — This Court notice decision not to supply iron ores fines prior to expiry of contractual period taken by OMC — Its effect to be determined keeping in view fact as to whether appellants suffered any loss thereby — Reasons for non-supply of iron ore may constitute breach of contract but having regard to conduct of parties, it cannot be said that same was so arbitrary so as to attract wrath of Article 14, Constitution — This Court is of opinion although approach of High Court not entirely correct, its ultimate decision to refuse to exercise its discretionary jurisdiction cannot be faulted with — Open to appellants to take recourse to other remedy available in law — **Constitution of India, 1950 — Articles 226, 14.**

IV (2006) CLT 245 (SC)

- **Article 226(3)** — Electricity Act, 2003 — Section 111(1) — Writ Jurisdiction — Vacation of *ad interim ex parte* stay order — Dispute as to demand raised by petitioner regarding electricity bills — Under Section 111(1) of Electricity Act any person aggrieved by order made by Adjudicating Officer or by appropriate Commission may prefer appeal to Appellate Tribunal for electricity — Petitioners have got alternative efficacious remedy under Section 111(1) of Act — Appeal can be filed either against order of Ombudsman or order of Rajasthan Electricity Regulatory Commission before Appellate Tribunal for Electricity — Application under Article 226(3) of Constitution allowed and stay granted by this Court vacated — Further observations made accordingly.

IV (2006) CLT 379 (Rajasthan HC)

Contempt of Courts Act, 1971

- **Sections 12 and 19** — Rules of Court — Chapter VIII, Rule 5 — Appeal — Maintainability of Special Appeal where right of appeal not conferred by Legislature under Act of 1971 — Section 19 of Act does not give right of appeal to person, who has brought motion for initiating contempt proceeding against order/judgment holding no contempt is made out — Right of appeal is creature of statute and unless such right given in statute, person feeling aggrieved by such decision or order has no right to appeal — Since Hon'ble Judge refused to entertain contempt petition, appeal under Chapter VIII, Rule 5 of Rules of Court not maintainable.

IV (2006) CLT 255 (Allahabad HC) (DB)

Contract Act, 1872

- Civil Procedure Code, 1908 — Section 100 — Transfer of Property Act, 1882 — Section 10 — **Contract Act, 1872 — Section 23** — Second Appeal — Right of Inheritance by Married Daughter — Family settlement — Not against public policy — Married daughter was not in line of succession under then existing unamended Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 — After amendment of Section 171, married daughter given right to succeed to her father over agricultural land — Parties understood law as it was on 31.3.1961, date when family settlement arrived at — Family settlement on that date when entered into by parties, not against public policy — No substantial question of law raised in Second Appeal to be decided by Court.

IV (2006) CLT 306 (Allahabad HC)

- **Section 70** — Arbitration and Conciliation Act, 1996 — Sections 28(1)(a), 34 and 37 — Setting Aside Award — Void Contract — Compensation — Award of — Jurisdiction of Arbitral Tribunal — Under Section 28(1)(a) of Act, Arbitral Tribunal to decide dispute in accordance with substantive law for time being in force — Substantive law would include Contract Act — It is open to Arbitral Tribunal to invoke provisions of Section 70 of Contract Act and grant compensation even after concluding contract was void — Person

whose contract is void entitled to compensation under Section 70 of Contract Act if he established his claim that other person enjoyed benefit of thing delivered and said thing never intended to be delivered gratuitously.

IV (2006) CLT 222 (Andhra Pradesh HC) (DB)

Delhi Municipal Corporation Act, 1957

- Election of Members of Executive Board of Delhi Sikh Gurdwara Management Committee — Challenge against validity of election held on 19.12.2005 — Disputed question of fact — Writ petition not appropriate remedy — Relief sought by appellant to quash minutes of meeting dated 19.12.2005 and issue writ of *mandamus* directing respondents to hold fresh election of Executive Board — Alleged confusion regarding date of meeting — Writ petitioner appellant specifically averred he was keen to contest for office of President but could not participate on account of alleged confusion — Dispute raised purely factual in nature as to whether some confusion created regarding date fixed for holding of meeting of Committee for electing office bearers of Executive Board — Dispute could more appropriately be resolved by examination of oral evidence to be led by parties — Proper remedy for petitioner was to file election petition under Section 31 of Act to enable other parties to lead oral evidence — No exceptional or extraordinary circumstances disclosed to justify recourse to extraordinary remedy under Art. 226 of Constitution and not availing statutory remedy — Further as members of newly elected Executive Board not impleaded to present their case and lost their office they were holding without affording them opportunity to present their case — This is clearly impermissible in law — Writ petitions liable to be dismissed on this ground as well — Delhi Sikh Gurdwaras Act, 1971 — Sections 2(c), 3, 4, 4(a), 5, 16(5), 16(6), 31, 33, 40 — **Delhi Municipal Corporation Act, 1957 — Sections 15, 16, 17, 22.**

IV (2006) CLT 171 (SC)

Delhi Sikh Gurdwaras Act, 1971

- Election of Members of Executive Board of Delhi Sikh Gurdwara Management Committee — Challenge against validity of election held on 19.12.2005 — Disputed question of fact — Writ petition not appropriate remedy — Relief sought by appellant to quash minutes of meeting dated 19.12.2005 and issue writ of *mandamus* directing respondents to hold fresh election of Executive Board — Alleged confusion regarding date of meeting — Writ petitioner appellant specifically averred he was keen to contest for office of President but could not participate on account of alleged confusion — Dispute raised purely factual in nature as to whether some confusion created regarding date fixed for holding of meeting of Committee for electing office bearers of Executive Board — Dispute could more appropriately be resolved by examination of oral evidence to be led by parties — Proper remedy for petitioner was to file election petition under Section 31 of Act to enable other parties to lead oral evidence — No exceptional or extraordinary circumstances disclosed to justify recourse to extraordinary remedy under Art. 226 of Constitution and not availing statutory remedy — Further as members of newly elected Executive Board not impleaded to present their case and lost their office they were holding without affording them opportunity to present their case — This is clearly impermissible in law — Writ petitions liable to be dismissed on this ground as well — **Delhi Sikh Gurdwaras Act, 1971 — Sections 2(c), 3, 4, 4(a), 5, 16(5), 16(6), 31, 33, 40** — Delhi Municipal Corporation Act, 1957 — Sections 15, 16, 17, 22.

IV (2006) CLT 171 (SC)

Easements Act, 1882

- Second Appeal — Substantial question of law — Question concerning applicability of Section 60, Easements Act to case when construction with hook stones of permanent character has been put up on suit wall raises substantial question of law — Second appeal maintainable — Civil Procedure Code, 1908 — Section 100 — **Easements Act, 1882 — Section 60.**

IV (2006) CLT 235 (SC)

Electricity Act, 2003

- Constitution of India, 1950 — Article 226(3) — **Electricity Act, 2003 — Section 111(1)** — Writ Jurisdiction — Vacation of *ad interim ex parte* stay order — Dispute as to demand raised by petitioner regarding electricity bills — Under Section 111(1) of Electricity Act any person aggrieved by order made by Adjudicating Officer or by appropriate Commission may prefer appeal to Appellate Tribunal for electricity — Petitioners have got alternative efficacious remedy under Section 111(1) of Act — Appeal can be filed either against order of Ombudsman or order of Rajasthan Electricity Regulatory Commission before Appellate Tribunal for Electricity — Application under Article 226(3) of Constitution allowed and stay granted by this Court vacated — Further observations made accordingly.

IV (2006) CLT 379 (Rajasthan HC)

Evidence Act, 1872

- **Section 45** — Expert Opinion — Comparison of disputed signatures — Sending Xerox copy of document for opinion of handwriting expert unknown to law — There can be effective comparison and verification of signatures if only another document containing undisputed signatures of contemporary period made available to expert — Opinion of handwriting expert involves analysis of slant, which a person uses in matter of putting his signature — This analysis possible only *vis-a-vis* original signature — Signature mark on Xerox copy of document can never constitute basis.

IV (2006) CLT 211 (Andhra Pradesh HC)

- **Section 63** — Secondary Evidence — Admissibility — Suit for recovery of possession — Plaintiff producing photo-copy of sale deed issued by Sub-Registrar — Nothing to show certified photocopy forged or fabricated — Certified extract of public document established correctness of certified photocopy of sale deed — Said document admissible as secondary evidence.

IV (2006) CLT 283 (Bombay HC)

- Execution of Document — Proof of — Execution must be proved by at least one attesting witness if attesting witness is alive and subject to process of Court and capable of giving evidence — **Evidence Act, 1872 — Section 68.**

IV (2006) CLT 208 (SC)

- Transfer of Property Act, 1882 — **Evidence Act, 1872 — Section 68** — Suit for possession of suit schedule property — Gift deed — Proof of execution — Incumbent upon plaintiff to examine one of attesting witnesses to gift deed — Donor grand-mother and donee grand-daughter — Suit filed by donees on attaining majority — Resistance by possessor, father of donees challenging gift deed — When defendant admits execution of gift deed and put in possession on behalf of his minor daughter-plaintiffs, it is not open to him to deny execution of gift deed — Executant not denied execution of gift deed and defendant in his evidence admitted its execution, question of examining attesting witness does not arise — Finding of Courts below that gift deed proved in accordance with law, justified and gives rise to no substantial question of law to be decided in appeal.

IV (2006) CLT 286 (Karnataka HC)

- Succession — Evidence — Will — Proof of — Section 68 of Evidence Act deals with proof of execution of document required by law to be attested — Word 'execution' in Section 68 includes attestation as required by law — Clear and satisfactory evidence led by propounders — Unequivocal admission of Will in written statement filed by testator — He specifically averred that he executed Will and described appellants as his sons and AK as his wife — Case of appellants cannot be thrown out — Document also contains signatures of attesting witnesses and scribe — Burden of proof to prove Will duly and satisfactorily discharged by appellants — Onus is discharged by propounder adducing *prima facie*

evidence proving competence of testator and execution of Will in manner contemplated by law — **Evidence Act, 1872 — Sections 68, 63, 114.**

IV (2006) CLT 218 (SC)

- Succession — Will — Proof of suspicious circumstances — Circumstances of depriving natural heirs should not raise any suspicion because whole idea behind execution of Will is to be interfered in normal line of succession and natural heirs would be debarred in every case of Will — **Evidence Act, 1872 — Sections 68, 63, 114.**

IV (2006) CLT 218 (SC)

- Succession — Evidence — Will — Circumstances not suspicious at all — Once Will is duly proved, it has to be given effect to — According to PW 1 testator and AK living together as man and wife — Nothing wrong if Will refers to AK as wife of testator — Testator referred to appellants as his children in Will — Ample evidence to prove testator treated appellants as his children and solemnized their marriages — DW 4's evidence prove this factor — Testator, sole surviving coparcener and property would be his absolute property — There cannot be any doubt over testator's capacity to bequeath : Mere presence of DW 4-appellant No. 1 would not make it suspicious circumstance — Assuming his presence does not mean undue influence exercised and prominent role played — Will duly proved by appellants — **Evidence Act, 1872 — Sections 68, 63, 114.**

IV (2006) CLT 218 (SC)

Guardians and Wards Act, 1890

- Custody of minor daughter — Compromise between parties *vide* decree dated 27.7.1992 — Marriage of appellant and respondent dissolved — Parties agreed child shall remain in custody of mother with visitation right to father — Appellant's application for custody of child after 9 years of grant of divorce, rejected — No evidence, appellant made any attempt to send any money or to pay expenses for study of minor during this period — No case made out for interference.

IV (2006) CLT 340 (Punjab & Haryana HC)

Gujarat Municipalities Act, 1963

- Election to Post of President of Anand Municipality — Power of Judicial Review of Court — Setting aside election of appellant by High Court justified — Depositions of two Councillors in their affidavits affirm they would have voted in favour of first respondent — Two Councillors arrested few minutes before election meeting with sole object to prevent both of them from casting their vote at elections for posts of President and Vice-President as B.J.P. leaders unable to win over any of 21 independent candidates and resorted to unfair means and abuse of Government machinery for getting false FIRs registered — High Court thus set aside election of appellant — Court directed votes of said Councillors be treated as having been cast in favour of 1st respondent and declared him elected as President of Anand Municipality — Failure to take into account relevant factor by Presiding Officer not only offends against procedural propriety, it makes his decision to go ahead with election meeting perverse and irrational, warranting interference under Article 226 of Constitution — High Court not committed any error of law and/or jurisdiction in setting aside election of appellant as President of Anand Municipality — **Gujarat Municipalities Act, 1963 — Sections 31, 32, 32(4)** read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — Constitution of India, 1950 — Article 226.

IV (2006) CLT 181 (SC)

- Election to Post of President of Anand Municipality — Declaration of respondent No. 1 as President — Both candidates got equal number of votes polled and appellant declared elected on basis of draw of lots, held as per prescribed procedure — Controversy did not relate to counting of votes — Direction of High Court that votes of two arrested Councillors be treated as having been cast in favour of 1st respondent, based on pure speculation that

they would have definitely voted for him — High Court erred on this aspect of matter and to that extent impugned judgment cannot be sustained — Order of High Court declaring first respondent as President of Anand Municipality set aside — **Gujarat Municipalities Act, 1963 — Section 32** read with Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964 — Constitution of India, 1950 — Article 226.

IV (2006) CLT 181 (SC)

Gujarat Municipalities (President and Vice-President) Election Rules, 1964

- Election to Post of President of Anand Municipality — Power of Judicial Review of Court — Setting aside election of appellant by High Court justified — Depositions of two Councillors in their affidavits affirm they would have voted in favour of first respondent — Two Councillors arrested few minutes before election meeting with sole object to prevent both of them from casting their vote at elections for posts of President and Vice-President as B.J.P. leaders unable to win over any of 21 independent candidates and resorted to unfair means and abuse of Government machinery for getting false FIRs registered — High Court thus set aside election of appellant — Court directed votes of said Councillors be treated as having been cast in favour of 1st respondent and declared him elected as President of Anand Municipality — Failure to take into account relevant factor by Presiding Officer not only offends against procedural propriety, it makes his decision to go ahead with election meeting perverse and irrational, warranting interference under Article 226 of Constitution — High Court not committed any error of law and/or jurisdiction in setting aside election of appellant as President of Anand Municipality — Gujarat Municipalities Act, 1963 — Sections 31, 32, 32(4) read with **Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964** — Constitution of India, 1950 — Article 226.

IV (2006) CLT 181 (SC)

- Election to Post of President of Anand Municipality — Declaration of respondent No. 1 as President — Both candidates got equal number of votes polled and appellant declared elected on basis of draw of lots, held as per prescribed procedure — Controversy did not relate to counting of votes — Direction of High Court that votes of two arrested Councillors be treated as having been cast in favour of 1st respondent, based on pure speculation that they would have definitely voted for him — High Court erred on this aspect of matter and to that extent impugned judgment cannot be sustained — Order of High Court declaring first respondent as President of Anand Municipality set aside — Gujarat Municipalities Act, 1963 — Section 32 read with **Rules 3, 4 of Gujarat Municipalities (President and Vice-President) Election Rules, 1964** — Constitution of India, 1950 — Article 226.

IV (2006) CLT 181 (SC)

Hindu Adoptions and Maintenance Act, 1956

- Maintenance — Will — True and genuine document — Appellants and 1st respondent wife entitled to properties respectively allotted to them under said Will — Alleged adopted son KB has no right or any interest in any of suit properties — As 1st respondent PS has been given some properties under Will under Section 22, Hindu Adoptions and Maintenance Act, she is not entitled to any maintenance — **Hindu Adoptions and Maintenance Act, 1956 — Section 22.**

IV (2006) CLT 218 (SC)

Hindu Succession Act, 1956

- Suit for declaration — Plaintiff-respondents claim to be lawful heirs entitled to bequests under Will — Decree of mandatory injunction for restoration of property — Title to property limited — Non-joinder of parties — Embargo put on defendant No. 1's son inheriting property — In absolute terms to transfer property to any other person — Sale deed could not be executed — Embargo created under Will on defendant No. 1 could not be removed if his son is impleaded — In terms of Will, question of his son's inheriting

property from original defendant No. 1 did not arise — Suit was pre-mature as no cause of action arose for plaintiffs for obtaining decree to set aside sale deed — Cause of action arose on death of original defendant No. 1 which took place during pendency of suit — Suit could not be dismissed on ground of being barred under law of limitation — Under Order 7 Rule 7, CPC, Appellate Court could take subsequent events into consideration — High Court not acted illegally and without jurisdiction in passing impugned judgment — No case made out for exercise of discretionary jurisdiction of this Court under Article 136 of Constitution — Constitution of India, 1950 — Article 136 — **Hindu Succession Act, 1956** — **Sections 4, 8** — Civil Procedure Code, 1908 — Order 7 Rule 7 — Limitation Act, 1963 — Articles 59, 60.

IV (2006) CLT 236 (SC)

- Partition — Devolution of interest in coparcenary property — Notional partition — Scope of Section 6, Hindu Succession Act — Death of coparcener leaving behind female or male relative — His undivided interest in Mitakshara coparcenary property would not devolve upon surviving coparcener, by survivorship but upon his heirs by intestate succession — For purposes of finding out undivided interest of deceased coparcener, notional partition to be assumed immediately before his death — Same shall devolve upon his heirs by succession which include surviving coparcener, who would be entitled to undivided interest of deceased by succession and also in coparcenary property which he could get in notional partition — Each of plaintiffs not entitled to 1/3rd share in suit properties but 1/6th and remaining property would go to adopted son-NC — Suit properties in hands of deceased-NM ancestral, in which his son NC got interest equal to NM after his adoption — From date of adoption, coparcenary constituted between father and adopted son — Upon his death, half undivided interest of NM devolved by rule of succession upon his three heirs and each of daughters entitled to 1/6th share in suit properties and remaining to heirs of NC, since deceased — Impugned judgments set aside — Suit for partition decreed to extent of 1/6th share in each of two plaintiffs and defendants — **Hindu Succession Act, 1956** — **Section 6**.

IV (2006) CLT 151 (SC)

- **Sections 7, 8** — Legal Representative — Determination — Adoption — Question irrelevant — Suit for permanent injunction restraining appellant from interfering with possession and cultivation of suit land — No issue framed nor could be framed as to whether requirements of Sections 7 and 8 of Hindu Adoptions and Maintenance Act complied with or not. [See *Civil Procedure Code, 1908* — *Order 22 Rule 5*]

IV (2006) CLT 194 (SC)

- **Section 29A** — Unmarried Daughter — Share — Entitlement — Insertion of Section 29A *w.e.f.* 25.3.1989 — Effect of — It grants equal rights to unmarried daughter in coparcenary property treating her as coparcener in her own right as son — Though this provision is prospective in nature, unmarried daughter shall become coparcener by birth.

IV (2006) CLT 230 (Madras HC)

Indian Partition Act, 1893

- **Section 4** — Valuation of property — Suit for partition of immovable property decreed — Share of plaintiff-respondent determined in 6/20 share in property — Plaintiff sought valuation of property and to direct respondent-plaintiff to execute registered sale deed in favour of petitioner — Advocate Commissioner suggested Rs. 9,00,000 to be fixed as market value of property — Trial Court by its order fixed value of 6/20 share at Rs. 3,30,000 taking into consideration market value of property at Rs. 11,00,000 *i.e.* highest offer as per Commissioner's report — Respondent valued property at particular value *i.e.* Rs. 10 lakh and offered to buy revision-Petitioner's share in property and filed affidavit containing such offer — In considering market value regard must be had to ensure there is no unjust enrichment by either party — Though evidence of Advocate Commissioner and

report submitted by Counsel cannot be taken into consideration directly but affidavit filed by respondent can be taken into consideration — This Court is of view that aforesaid affidavit by respondent before Trial Court quite reasonable and binding on him — Market value of 6/20 share of respondent at Rs. 3,00,000 just and reasonable

IV (2006) CLT 335 (Madras HC)

Indian Succession Act, 1925

- Will — Grant of Probate — Execution of Will not duly proved — Proof of Will shall strictly be in terms of provisions of Section 63, Indian Succession Act — It is, however, well settled compliance of statutory requirements itself not sufficient — Division Bench of High Court entirely wrong in proceeding on premise that compliance of legal formalities as regard proof of Will would sub-serve purpose and suspicious circumstances surrounding execution thereof not of such significance — Suspicious circumstances pointed out by District Judge and Single Judge of High Court, glaring on face of records — They could not be ignored by Division Bench — Division Bench should be slow in interfering with findings of fact arrived at by said Court — Impugned judgment applied wrong legal test and came to erroneous decision — Unsustainable — Set aside — **Indian Succession Act, 1925 — Sections 63, 295.**

IV (2006) CLT 208 (SC)

- **Sections 211, 213, 214 and 247** — Appointment of Administrator *Pendente Lite* (APL) — Suit for obtaining probate and letters of administration — Discretion of Court to appoint APL must be exercised with restraint and prudence — Condition precedent for Appointment of Administrator *Pendente Lite* (APL) is there must be suit touching validity of Will of deceased person or any proceeding for obtaining or revoking any probate or grant of letters of administration must be pending — In spite of vesting of possession, control and management of estate vested with executor on death of testator/testatrix, provision of appointment of APL under Section 247 of Act provided for — Executor cannot have absolute right to manage and control of estate left by testator/testatrix — Courts in our country consistently of view that when proceedings either in nature of suit or for obtaining probate or letters of administration are there and Will seriously challenged as also appointment of executor, *bona fide* serious dispute shall be presumed — Court may consider question of appointment of APL displacing named executor — Ordinarily named executor not displaced before and after granting probate of Will.

IV (2006) CLT 351 (Calcutta HC)

- **Sections 211, 213, 214 and 247** — Appointment of Administrator *Pendente Lite* (APL) — Act and conduct of executor contrary to law — Executor without applying for any probate took steps to mutate register in company involved in his name on ground that he was permitted to do so by articles of association of Company — Such hasty action not benefiting executor — Such provision in articles contrary to Sections 213 and 214 of Indian Succession Act — He did not make any efforts to find other assets and movables left by lady — Criminal charges levelled against him is personal charge and related to and in connection with breach of trust — This Court does not know wherefrom executor is meeting litigation expenses — Bundle of facts and law supported by documents, constitute absolute necessity for appointment of APL, at least for brief period.

IV (2006) CLT 351 (Calcutta HC)

- **Sections 217, 222 and 247** — Appointment of Administrator *Pendente Lite* (APL) — Probate of Will — Applications not without merit or lack *bona fide* — Mutual wills by husband and wife — Husband predeceased wife — Wife not trying to obtain any probate of Will or Letters of Administration — Properties mixed up with assets and properties of lady — Absolutely difficult to segregate or identify exclusive properties of M.P. Birla — L cannot be incharge of M.P.'s estate on face of mutual Will — Estate of M.P. is absolutely in 'medio', meaning none is entitled to take control lawfully — Mere taking of physical control and

management of estate by executor not legally valid ground to resist applications for appointment of APL — Mere initiation of company proceedings unsuccessfully does not disentitle two ladies to apply for appointment of APL.

IV (2006) CLT 351 (Calcutta HC)

- **Section 236** — Societies Registration Act, 1860 — Sections 5, 6 — Civil Procedure Code, 1908 — Order 6 Rule 17 r/w Section 151 — Letters of Administration — Cannot be granted to estate of deceased to registered society — Society registered under Societies Registration Act, 1860 is not body corporate — It may enjoy status of legal entity apart from its members and may be capable of suing or be sued but not corporate body having perpetual succession and common seal — Legal title of properties vests in trust or Board of Governors and equitable title in society — Prayer of probate sought to be amended by prayer of grant of Letters of Administration — Amendment application also does not change title and character of application — Legal bar created under Section 236 of Act does not allow Court to proceed to consider validity of Will and to decide other issue.

IV (2006) CLT 273 (Allahabad HC)

- **Section 247** — Appointment of Administrator *Pendente Lite* (APL) — Powers of Court — Provision of Section 247 enabling one — Even if no application is made, if conditions satisfied, power conferred upon Court can be exercised *suo motu* — Apart from Indian Succession Act and CPC, probate Court has inherent power to take measure to protect estate and properties of deceased whenever Court thinks fit and proper.

IV (2006) CLT 351 (Calcutta HC)

- **Section 247** — Appointment of Administrator *Pendente Lite* (APL) — Necessity of — Criminal prosecution against executor — Executor to defend criminal prosecution as he is one of accused persons — He is facing trials before Appropriate Court — Court cannot allow person who is accused, to control and manage huge and vast estate of deceased when he is facing charge of criminal breach of trust, not *qua* executor — Sitting in Probate Court, this Court does not think tainted person should be allowed to manage or handle estate — It is one of instances of necessity.

IV (2006) CLT 351 (Calcutta HC)

- **Section 247** — Appointment of Administrator *Pendente Lite* (APL) — Will and codicil seriously challenged on ground of undue influence, suspicious circumstances and lack of testamentary capacity, etc. — Ground of contest not without foundation of law — Documentary evidence filed in support — Documents produced show mind of lady and her husband was of charitable disposition — Executor alleged to be taking substantial benefit under Will — Defence not sham and not likely to succeed — APL should be appointed.

IV (2006) CLT 351 (Calcutta HC)

- **Section 247** — Appointment of Administrator *Pendente Lite* (APL) — Mismanagement of estate not a factor for appointment of APL.

IV (2006) CLT 351 (Calcutta HC)

- **Section 276** — Letters of Administration — Grant of — Will dated 20.7.1983 is last Will and testament of J — Will property No. H-38, Kailash Colony, New Delhi fallen into share of petitioner and petitioner is ready to administer same — Affidavits given by two witnesses relating to execution of Will — No objection given by all legal heirs of deceased — No impediment to grant of probate.

IV (2006) CLT 406 (Delhi HC)

- **Section 372** — Succession Certificate — Grant of — Validity of marriage — Ist appellant named as nominee of deceased, certificate could safely be issued in her favour — Respondents not precluded from laying claim to same in appropriate proceedings — Trial

Court palpably erred in granting certificate in favour of respondents 1, 2 and 3 who were not even parties before Trial Court and former not applicant — Such grant was without jurisdiction, wholly irregular and not permissible in law.

IV (2006) CLT 341 (Karnataka HC)

Land Acquisition Act, 1894

- Civil Procedure Code, 1908 — Order 47 Rule 1 — **Land Acquisition Act, 1894 — Sections 4(1) and 6** — Review — Scope — Declaration under Section 6 of L.A. Act made beyond prescribed period — Said contention not raised before Single Judge though petitioner/appellant duly represented by Counsel — Said contention considered and rejected by Judge — When Division Bench disposed of appeal, same was once again verified and based on materials available and taking note of fact that local publication of suit of Section 4(1) notification made on 21.2.1994 and declaration made on 20.2.1995, is well within period of 1 year, dismissed writ appeal — In absence of no such objection before learned Judge, no need to consider same in Review application.

IV (2006) CLT 324 (Madras HC) (DB)

Limitation Act, 1963

- **Section 5** — Condonation of Delay — Delay of 288 days in filing appeal by petitioner-society — In any petition filed by petitioner to condone delay, there is always bound to be some lapse on part of petitioner — Courts have to decide disputes on merits by way of complete and full adjudication instead of declining relief on technicalities — Hardship caused to other side also to be taken into consideration — Award suffered by petitioner-society is for sum of Rs. 59,84,530 on 29.1.1997 — This Court inclined to impose cost of Rs. 10,000 payable by petitioner to 2nd respondent within 4 weeks from date of receipt of this order — Further directions issued in this regard.

IV (2006) CLT 299 (Madras HC)

- **Section 5** — Condonation of Delay — Delay of 25 days in filing appeal — Appeal against dismissal of suit for possession filed by petitioner by Trial Court holding defendant-respondents are *bona fide* purchasers — Explanation given by petitioner for condoning delay in filing appeal, reasonable and satisfactory and not due to gross negligence or deliberate inaction or lack of *bona fides* — Impugned order set aside.

IV (2006) CLT 236 (Punjab & Haryana HC)

- Civil Procedure Code, 1908 — Sections 115, Order 9 Rule 13 — **Limitation Act, 1963 — Section 5** — Setting aside *ex parte* decree — Condonation of delay of 488 days in filing application under Order 9 Rule 13, CPC — Suit for specific performance of agreement decreed *ex parte* in favour of respondent and against petitioner in respect of suit schedule property — Petitioner pleaded illness and produced medical certificate to that effect — But trial Judge observed that doctor who issued certificate not examined and medical certificate easily procurable — This is not correct and Trial Court proceeded in matter with tendency of finding fault with cause shown by petitioner — Trial Court felt delay could be condoned by imposing cost but did not condone delay as petitioner did not file petition immediately after he came to know about execution proceedings — Reasons given by petitioner to condone delay in filing petition to set aside *ex parte* decree, accepted with direction to pay sum of Rs. 3,000 towards cost to respondent for loss in execution of decree — Directions issued.

IV (2006) CLT 377 (Madras HC)

- **Section 5** — Condonation of delay is matter of discretion of Court — Criterion for allowing petition is acceptability of reasons given by defaulting party — Words “sufficient cause” under Section 5 of Act should receive liberal consideration — Primary function of Court is to do substantial justice by adjudicating dispute between parties — What is “sufficient cause” will depend upon facts and circumstances of every case — Courts should not adopt

hyper-technical view in its own over jubilation of disposing of case.

IV (2006) CLT 377 (Madras HC)

- Civil Procedure Code, 1908 — Section 115, Order 9 Rule 13 — **Limitation Act, 1963 — Section 5** — Condonation of Delay — Setting aside *ex parte* decree — Only reason given by revision petitioner in affidavit filed in support is that due to old age, sickness, poor eyesight, deafness, knee pain, etc. he was not able to move out of his house without escort and meeting with his Advocate delayed due to said reasons — Perusal of documents filed in support of submissions — In every case of delay it is always some lapses on part of litigant — That does not mean lapse is deliberate and intentional — Delay of 365 days should be condoned to permit revision-petitioner to contest suit on merits — He is also directed to pay sum of Rs. 2,000 to respondent towards cost.

IV (2006) CLT 383 (Madras HC)

- **Article 14** — Suit for recovery of price of goods sold and delivered — Limitation of 3 years would commence from last date of purchase/sale and delivery of goods on credit and not from date of last payment — Account closed on 11 December, 1989 — Suit filed on 4.10.1995 and it is beyond period of limitation.

IV (2006) CLT 302 (Bombay HC)

- **Article 54** — Suit for Specific Performance — Agreement to sell — Limitation for filing suit — Cause of action for filing such suit arises when defendant specifically refused to execute sale deed — Trial Court as well as Appellate Court referred to evidence on record and concluded in August 1980, defendant refused to execute sale deed — Suit should be filed within 3 years from date of such refusal — Suit barred by limitation — Plea that possession taken on part performance of agreement, 3 years period of limitation would not be applicable — Such plea taken by learned Counsel for appellant untenable — No reason to differ from conclusion arrived at by Courts below.

IV (2006) CLT 309 (Madras HC) (DB)

- **Articles 59, 60** [See *Hindu Succession Act, 1956 — Sections 4, 8*]

IV (2006) CLT 236 (SC)

- Civil Procedure Code, 1908 — Order 9 Rule 13 — **Limitation Act, 1963 — Article 136** — Execution of *ex parte* decree — Limitation — Doctrine of merger not applicable — After *ex parte* decree application under Order 9 Rule 13, CPC formed subject matter of appeal and not *ex parte* decree itself — Doctrine of merger does not apply as they were collateral proceedings only — Article 136 of Limitation Act provides execution application to be moved within 12 years from enforceability and not from executionability — *Ex parte* decree became enforceable right at time when it was passed — Application for execution moved beyond 12 years from date of passing thereof, same barred by time and doctrine of merger not applicable, limitation not saved.

IV (2006) CLT 346 (Madhya Pradesh HC)

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

- Joint trial — Transfer of suit before DRT — Suit in nature of counter claim to claim of appellant bank and arose out of same cause of action — Suit filed by respondent-company for recovery of amount as damages with interest on account of losses suffered by it because of delay on part of bank in fulfilling its obligations — Bank moved application for transfer of suit to DRT for joint trial with O.A. pending before Tribunal, since both proceedings arose out of grant of loan and providing of cash credit facility by bank to company — Decree to one or other would depend upon ascertainment of rights and obligations arising out of loan transaction and state of loan account — Two claims inextricably inter linked — Same basic evidence to be taken in both proceedings — If decree is granted to bank on basis of its accounts and damages, if any, decreed in favour of company, set-off could be directed — Fit case to order joint trial — Trial Court and High Court failed to exercise

jurisdiction vested in them by law in refusing to transfer suit to DRT — Impugned orders set aside with direction to transfer money suit from file of Subordinate Judge to DRT — **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Sections 19(1), 19(6) to 19(11)** — Civil Procedure Code, 1908 — Order 8 Rule 6A.

IV (2006) CLT 189 (SC)

Registration Act, 1908

- **Section 17(1)(b)** — Suit for declaration of title and recovery of possession — Production of two documents, viz., family arrangement and family settlement — Objection as to registration and stamp duty — Documents do not have effect of bringing about alteration in rights of parties in respect of immovable properties and not compulsorily registrable — Where document provides for execution of separate document and registration at later point of time, it cannot be treated as one conferring any rights or creating interests in parties and thereby registered— No basis to interfere with finding of Trial Court.

IV (2006) CLT 280 (Andhra Pradesh HC) (DB)

- **Sections 17(1)(b) and 47** — Relinquishment Deed — Unregistered — Admissibility — Suit for partition and separate possession of suit schedule property — Petitioner relinquished share in definite item of immovable property, on receiving consideration — Transaction compulsorily registrable — Since it was not registered, document not admissible in evidence — Relationship of parties to documents does not have any bearing on requirement as to registration.

IV (2006) CLT 387 (Andhra Pradesh HC)

Societies Registration Act, 1860

- Transfer of Property Act, 1882 — Section 5 — **Societies Registration Act, 1860 — Section 5** — Society including club not registered under provisions of Societies Registration Act, does not come under category of “living person” as per Section 5, Transfer of Property Act — Such unregistered society or Club cannot validly acquire immovable property by purchase — Purchase of immovable property made by unregistered Club showing Secretary alone as purchaser in deed of purchase not valid.

IV (2006) CLT 312 (Calcutta HC) (DB)

- **Section 5** — Transfer of Property Act, 1882 — Section 5 — Vesting of movable and immovable property belonging to registered society — Societies Registration Act only recognises legal existence of society registered under Acts by express provisions of statutes — Society which is not registered under Acts and claims to be society cannot claim its legal existence — Simply because Section 5 of T.P. Act does not require society to be registered in order to claim its legal existence does not lead to conclusion that Section 5 recognises legal existence of society not registered.

IV (2006) CLT 312 (Calcutta HC) (DB)

- Indian Succession Act, 1925 — Section 236 — **Societies Registration Act, 1860 — Sections 5, 6** — Civil Procedure Code, 1908 — Order 6 Rule 17 r/w Section 151 — Letters of Administration — Cannot be granted to estate of deceased to registered society — Society registered under Societies Registration Act, 1860 is not body corporate — It may enjoy status of legal entity apart from its members and may be capable of suing or be sued but not corporate body having perpetual succession and common seal — Legal title of properties vests in trust or Board of Governors and equitable title in society — Prayer of probate sought to be amended by prayer of grant of Letters of Administration — Amendment application also does not change title and character of application — Legal bar created under Section 236 of Act does not allow Court to proceed to consider validity of Will and to decide other issue.

IV (2006) CLT 273 (Allahabad HC)

Specific Relief Act, 1963

- Civil Procedure Code, 1908 — Order 9 Rule 6, Order 17 Rule 2, Order 9 Rule 7 — **Specific Relief Act, 1963 — Section 6** — Restoration Application — Suit under Section 6 of Specific Relief Act — Failure of defendant to appear on date fixed — Effect of — Both things may simultaneously take place, *i.e.*, on same date order for proceeding *ex parte* may be passed and *ex parte* hearing may be held — Only order passed on date fixed was suit should proceed *ex parte* and another date fixed for *ex parte* hearing — Said order may be taken fixing date for hearing — Even if it is assumed under Order 9 Rule 6, CPC, it is essential that firstly date on which defendant is absent shall be date of hearing and secondly on said date only order to proceed *ex parte* shall be passed and some future date for *ex parte* hearing should be fixed till under Order 17 Rule 2, CPC it is not mandatory — Revisional Court rightly held hearing means application of mind by Court and not final hearing — Course adopted by Trial Court while decreeing suit *ex parte* was inconsonance with Order 17 Rule 2, CPC.

IV (2006) CLT 404 (Allahabad HC)

- Readiness and willingness to execute sale deed — Compliance with readiness and willingness has to be in spirit and substance and not in letter and form — Careful perusal of pleadings, evidence and documents filed show that respondent No. 1 was ever ready and willing to perform his part of obligation under agreement — Decree passed by High Court confirming decree of lower Courts does not suffer from any infirmities — Court not inclined to go into submission in regard to valuation of suit property — To some extent, delay also attributable to respondent — Appellant-defendant to be suitably compensated — Respondent directed to pay to appellant sum of Rs. 1 lac within 3 months failing which suit filed by respondent for specific performance shall be dismissed automatically — Further necessary directions issued in this regard — **Specific Relief Act, 1963 — Section 16(c)**.

IV (2006) CLT 155 (SC)

Stamp Act, 1899

- **Section 6** — Payment of — If instruments fall within two or more of articles in Schedule 1 or 1A of Act — It shall be chargeable with highest of duties payable.

IV (2006) CLT 259 (Andhra Pradesh HC)

- **Section 36** — Admission of Instruments — Marking of document in interlocutory proceedings not bar for objecting its marking at stage of trial of suit invoking Section 36 of Act — Marking of document during interlocutory proceedings is different from marking of document at stage of trial — Court not expected to and does not mark documents in interlocutory proceedings — Respondents have right to object to marking of document on ground that it is not properly stamped — Revision petitioner can file petition before Trial Court to send document to Collector for determination under proper stamp duty and penalty payable thereon.

IV (2006) CLT 259 (Andhra Pradesh HC)

- **Sections 47 and 47A** — Stamp Duty — Demand for differential amount — Registering Authority not only applied guidelines issued for fixation of rent for buildings taken by Government on lease in context of registering document but evaluated property under three separate heads, *viz.*, commercial premises, residential buildings and site — For arriving at value of premises for commercial and residential building, he proceeded as though structure exists in air, and separately determined value of land — Whole exercise of power under Section 47 of Act by 2nd respondent arbitrary, irrational and contrary to very letter and spirit of very activity of registration — Such lopsided implementation of provisions of Registration and Stamp Act cannot be countenanced — No finding that petitioners suppressed actual value of property — Registering Authority directed to register and release sale deed in favour of petitioners without insisting on payment of any additional stamp duty.

IV (2006) CLT 321 (Andhra Pradesh HC)

- **Section 47A** — Sale Deed Undervalued — Recovery of deficient Court-fee and imposition of penalty — District Judge examined entire evidence and came to conclusion that Collector justified in concluding that sale deed had been under valued and said order passed in accordance with law after affording due opportunity to vendee — But District Judge held order imposing penalty not sustainable and order *qua* imposition of penalty set aside — Observation made by District Judge suffers from no legal infirmity.

IV (2006) CLT 246 (Punjab & Haryana HC)

Transfer of Property Act, 1882

- **Section 5** — Societies Registration Act, 1860 — Section 5 — Society including club not registered under provisions of Societies Registration Act, does not come under category of “living person” as per Section 5, Transfer of Property Act — Such unregistered society or Club cannot validly acquire immovable property by purchase — Purchase of immovable property made by unregistered Club showing Secretary alone as purchaser in deed of purchase not valid.

IV (2006) CLT 312 (Calcutta HC) (DB)

- Societies Registration Act, 1860 — Section 5 — **Transfer of Property Act, 1882 — Section 5** — Vesting of movable and immovable property belonging to registered society — Societies Registration Act only recognises legal existence of society registered under Acts by express provisions of statutes — Society which is not registered under Acts and claims to be society cannot claim its legal existence — Simply because Section 5 of T.P. Act does not require society to be registered in order to claim its legal existence does not lead to conclusion that Section 5 recognises legal existence of society not registered.

IV (2006) CLT 312 (Calcutta HC) (DB)

- Civil Procedure Code, 1908 — Section 100 — **Transfer of Property Act, 1882 — Section 10** — Contract Act, 1872 — Section 23 — Second Appeal — Right of Inheritance by Married Daughter — Family settlement — Not against public policy — Married daughter was not in line of succession under then existing unamended Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 — After amendment of Section 171, married daughter given right to succeed to her father over agricultural land — Parties understood law as it was on 31.3.1961, date when family settlement arrived at — Family settlement on that date when entered into by parties, not against public policy — No substantial question of law raised in Second Appeal to be decided by Court.

IV (2006) CLT 306 (Allahabad HC)

- **Section 10** — Conditions restraining alienation — Family settlement recognizing pre-existing rights and which does not amount to transfer of property by deed at time of execution, does not require registration — D did not deny his thumb impression on certified copy of family settlement — It was arrived between parties before consolidation officer — Section 10 of Transfer of Property Act not applicable to family settlement which only recognizes pre-existing rights — Family settlement may not confer any fresh rights which person has in property — In this case family settlement only recognized pre-existing rights — In such case person could respect himself from alienation of property during his life time.

IV (2006) CLT 306 (Allahabad HC)

- Will — Inheritance — Sale deed — Son of original defendant No. 1 was not party but he is party before this Court — He did not challenge deed of sale — Interest in property may be claimed by appellants having regard to principles contained in Section 41, Transfer of Property Act — **Transfer of Property Act, 1882 — Section 41.**

IV (2006) CLT 236 (SC)
