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IV (2006) CLT 46 (Madras HC)

ARBITRATION LAW — Appointment of Arbitrator — Challenge against — Ground for challenge enumerated under Section 12 of Act — Conjoint reading of Sections 12(3), 13 and 16 of Act demonstrates that question of impartiality of Arbitrator to be raised before Arbitrator himself, who is competent to decide such question.

Arbitration and Conciliation Act, 1996 — Sections 11(6), 12, 12(3), 13 and 16.

IV (2006) CLT 53 (Rajasthan HC)

— Appointment of Arbitrator — Challenge against — Grounds of challenge — Doubt as to independence or impartiality of Arbitrator and Arbitrator does not possess requisite qualification — None of these grounds exist — Having participated in arbitration proceedings without questioning authority of Arbitrator at any stage, in course of arbitration proceedings petitioner acquiesced in appointment of Arbitrator.

Arbitration and Conciliation Act, 1996 — Section 12(3).

IV (2006) CLT 196 (Calcutta HC)

— Appointment of Arbitrator — If one of Arbitrators is retired Judge, Presiding Arbitrator also has to be retired Judge — No such provision exists in law — Parties entered into contract after fully understanding import of terms so agreed to from which there cannot be any deviation — Courts held that parties are required to comply with procedure of appointment as agreed to and defaulting party cannot be allowed to take advantage of its own wrong — Order passed setting aside appointment of Presiding Arbitrator by High Court and for said appointment procedure contemplated under contract agreement to be followed and IRC be approached.

Arbitration and Conciliation Act, 1996 — Sections 15(1), 15(2), 11(6).

IV (2006) CLT 135 (SC)

— Appointment of Arbitrator — Jurisdiction of Arbitral Tribunal cannot be equated with jurisdiction of Court or Tribunal set up by and/or under statute — Arbitral Tribunal does not derive jurisdiction from any statute but from agreement between parties — No reason why parties cannot relax by their conduct any of conditions agreed to in relation to

appointment of Arbitrator.

Arbitration and Conciliation Act, 1996 — Section 12.

IV (2006) CLT 196 (Calcutta HC)

- Appointment of Arbitrator — Ouster of jurisdiction and confining jurisdiction to particular Court by agreement to parties — Parties cannot by consent ouster jurisdiction of any Court but can restrict jurisdiction to one of Courts where cause of action arises, within territorial jurisdiction of several Courts and parties choose to confine their actions before one such Court to exclusion of other Courts — Such agreement binds parties to agreement and Courts will honour it — Though petition under Section 11(6) of Act is not petition for adjudication of dispute itself, it is in context of some dispute between parties arising under agreement, particularly parties having failed to agree on common Arbitrator and related to agreement and not independent or *de hors* agreement — If parties agreed to restrict jurisdiction of Court, it is for petitioner to move agreed Court with jurisdiction.

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

IV (2006) CLT 12 (Karnataka HC)

- Appointment of Arbitrator — Proceeding in arbitration is neither suit under Section 22(1) of SICA nor proceedings thereunder — There is no prohibition under Section 22, SICA to take up arbitration proceedings to adjudicate liability of parties to arbitration proceedings — Section 22 of SICA does not debar arbitration proceedings under Arbitration and Conciliation Act — Objections to arbitration proceedings raised by respondent rejected — Arbitrator appointed by this Court accordingly.

Arbitration and Conciliation Act, 1996 — Sections 11(6), 11(6)(c), 15, 15(1)(a) — Sick Industrial Companies (Special Provisions) Act, 2002 — Sections 22(1), 22.

IV (2006) CLT 1 (SC)

- Appointment of Arbitrator — Under Section 11(6) of Act, Court has jurisdiction to make appointment only when person including institution, fails to perform any function entrusted to it under that procedure — Relief claimed by respondents by invoking Section 11(6) wholly erroneous — Prior to order dated 1.7.2005, respondents only sought clarification from IRC and without making reference to them immediately filed petition under Section 11(6) of Act on purported ground that IRC failed to make appointment within stipulated time.

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

IV (2006) CLT 135 (SC)

- Appointment of Arbitrator — Waiver of right — Contract between parties subjected to provisions of 1996 Act — In terms of Clause 25 of contract Arbitrator appointed by Managing Director to act as arbitral Tribunal — Appellants consented to appointment of B as arbitral Tribunal, apart from failure of M.D. to appoint Arbitrator within time — Hence appellants waived their right to appoint Arbitrator — Person may have legal right but if same waived enforcement thereof cannot be insisted — Submission of appellant Counsel that Counsel who consented to appointment of B was Junior Counsel and had no instructions in this behalf, cannot be accepted — In terms of Order III Rule 1, CPC litigant represented by Advocate — Concession made by such Advocate binding on party whom he represents — Matter is however different if concession made on question of law — Wrong concession on legal question may not be binding on his client — Appellant never contended before High Court that Counsel had no authority to make such concession — Advocate consented to appointment of person as Arbitrator by High Court in exercise of its jurisdiction under Section 11 of 1996 Act, cannot now be permitted to resile from it — Further allegations contained in application not supported by affidavit — No error committed by High Court — High Court's decision held to be final — Not fit case to

exercise discretionary jurisdiction.

Civil Procedure Code, 1908 — Order III Rule 1 — Arbitration and Conciliation Act, 1996 — Section 11.

IV (2006) CLT 37 (SC)

- Appointment of Substitute Arbitrator — Named Arbitrator refused to act as Arbitrator — Arbitration agreement itself does not come to end — Remedy provided under Section 15 of Act for appointment of another Arbitrator, when Arbitrator appointed by parties as provided in agreement refuses to act as Arbitrator — Next appointment could be made as agreed by parties — But where no such procedure prescribed authorising appointment of another Arbitrator then agreement clause cannot operate — No stipulation in contract entered into between parties specifically debarring appointment of fresh Arbitrator if named Arbitrator refuses to act and perform his function as Arbitrator.

Arbitration and Conciliation Act, 1996 — Sections 11(6), 11(6)(c), 11(12), 15, 15(1)(a).

IV (2006) CLT 1 (SC)

- Appointment of Arbitrator nominee on behalf of non-applicants — Prior to applicant moved application under Section 11 of Act, no arbitral Tribunal was appointed by non-applicants — Non-applicant's right to appoint Arbitrator ceased — Under Section 11(6) of Act this Court empowered to issue necessary directions for appointment of Arbitrator nominee on behalf of non-applicant.

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

IV (2006) CLT 188 (Rajasthan HC)

- Arbitration Act, 1940 *vis-a-vis* Arbitration and Conciliation Act, 1996 — Provisions as to time limit — 1996 Act neither sets any time limit for completion of arbitration proceedings nor contains any provisions for extension of time by Court for completion of arbitration proceedings — Whereas Arbitration Act, 1940 provided specific time limit for conclusion of arbitration proceedings.

Arbitration and Conciliation Act, 1996.

IV (2006) CLT 196 (Calcutta HC)

- Arbitration petition can be filed in Court having jurisdiction, *i.e.* principal Civil Court of original jurisdiction in District and High Court in exercise of its original civil jurisdiction having jurisdiction to decide questions forming subject matter of arbitration if same had been subject matter of suit.

IV (2006) CLT 7 (SC)

- Award — Objections against — Arbitrator is creature of contract between parties — If he ignores specific terms of contract, it would be question of jurisdictional error — Where fundamental terms of agreement between parties ignored by Arbitrator, such Arbitrator exceeds his jurisdiction — Arbitrator can act only within four corners of agreement and not beyond thereto.

Arbitration Act, 1940 — Section 30.

IV (2006) CLT 145 (Karnataka HC) (DB)

- Award — Objections against — Ground — Award not passed within stipulated time limit — 1996 Act neither sets any time limit for completion of arbitration proceedings nor contains any provisions for extension of time by Court for completion of arbitration proceedings — Whereas Arbitration Act, 1940 provided specific time limit for conclusion of arbitration proceedings.

Arbitration and Conciliation Act, 1996.

IV (2006) CLT 196 (Calcutta HC)

- Award — Objections against — This Court does not sit in appeal over award made by Arbitral Tribunal — It is not for this Court to reappraise evidence on record — Scope of interference limited — Arbitrator being creature of agreement bound by agreement between parties — Arbitrator cannot ignore agreement or traverse beyond agreement or make award *ex facie*, Contrary to any provision of agreement — Award cannot be interfered just because this Court finds other interpretation more acceptable — Vague assertions made against Arbitrator of having ignored contractual provisions and claims allowed on insufficient evidence on record — It is not for this Court to weigh sufficiency of evidence on record.

Arbitration and Conciliation Act, 1996 — Section 34.

IV (2006) CLT 196 (Calcutta HC)

- Award — Objections against — Unreasoned award — Award backed by intelligence reasons — Arbitrator discussed reasons which led him to make award in respect of various claims — It is not necessary for Arbitrator to give detailed reasons discussing each and every document and averment in respective pleadings of parties — No grounds made out for interference with award.

Arbitration and Conciliation Act, 1996 — Section 34.

IV (2006) CLT 196 (Calcutta HC)

- Finding of fact recorded by Arbitrator and same made Rule of Court by District Judge — Justifiability — Single Judge erroneously acted as Court of Appeal, disturbed this finding of fact — Said finding of Single Judge unsustainable — Grievance of Corporation that retreaded tyres used on its buses could not achieve guaranteed kms. as per warranty clause resulting in loss to Corporation to tune of Rs. 1,19,53, 430.92 paise with 18% interest — Corporation claimed said amount together with Rs. 25 lacs towards damages from respondent-company — Average performance of new tyres with retreaded tyres to be taken on basis of roads available in Rajasthan — Average running of new tyres on these road conditions with that of retreaded tyres to be compared to find out whether performance of retreaded tyres was up to 95% average or not — After assessing comparative assessment and going through materials on record Arbitrator recorded his finding — At this stage not open to company to bring factual controversy that retreaded tyres were not used in similar conditions — All materials considered by Arbitrator and after taking into consideration average of each tyre in each region of Corporation worked out that performance of retreaded tyres was not to extent of 95% — Said finding of fact cannot be set aside by Single Judge of High Court.

IV (2006) CLT 48 (SC)

- Interest — Award of — Claim of 18% interest p.a. on ground that Government itself is charging and recovering interest @ 18% on mobilization advance given by it while contractors required to borrow at higher rates of interest — Arbitrator has granted interest @ 18% p.a., accepted by Court below — Award of interest @ 18% p.a. just and reasonable and calls for no interference.

Arbitration Act, 1940 — Section 29.

IV (2006) CLT 145 (Karnataka HC) (DB)

- Interest — Reduction in rate — Awarding interest @ 12% p.a. from date of award *i.e.* 4.4.97 till realisation of amount too excessive — Looking to peculiar facts and circumstances of case, rate of interest reduced from 12% to 6% p.a. — Judgment passed by Single Judge set aside.

IV (2006) CLT 48 (SC)

- Jurisdiction of Arbitral Tribunal — Plea that Arbitral Tribunal has no jurisdiction to be raised not later than submission of statement of defence — Party not precluded from raising such plea merely because he has appointed or participated in appointment of Arbitrator — No application filed and no statement recorded for want of jurisdiction in terms of Act despite notice — It cannot be said Arbitral Tribunal committed any error in passing Arbitral Award in absence of plea of want of jurisdiction — No reason to rule impugned award is void on ground of Section 16(5) without referring to Section 16(2).

Arbitration and Conciliation Act, 1996 — Sections 16, 16(2), 16(5).

IV (2006) CLT 36 (Karnataka HC) (DB)

- Reference of dispute to Arbitration — Condition precedent — Non-compliance of — Plea as to limitation — Whether request for arbitration is barred by limitation is question to be considered by Arbitrator and it cannot be considered by Court — I.A. filed by petitioner is in violation of Section 8 of Act — In written statement, it is mentioned that there is arbitration clause — Court fee was paid — Thereafter application under Section 8 of Act made — Rejection of application is correct.

Arbitration and Conciliation Act, 1996 — Section 8.

IV (2006) CLT 141 (Kerala HC)

- Reference of Dispute — Stay of Suit — Dispute regarding agreement of sale — Stay of suit in view of arbitration clause in application under Section 8 of Act — Parties to suit alleged to be not parties to concerned agreement — Plaintiff not only wanted to assert his rights under agreement for sale but also based his claim only on basis of said agreement and agreement only — Although plaintiff made allegation as against other defendants at end did not pray for any relief against them — Court below did not have any other option but to stay suit as it came within mischief of Section 8 of Act — Controversy between parties already existing when plaintiff entered into agreement for sale with D — Existence of agreement of V also there — Keeping their eyes wide open plaintiff entered into agreement for sale coupled with arbitration clause — Despite controversy plaintiff agreed to refer disputes to arbitration — It is not open for plaintiff to resist such order of stay.

Arbitration and Conciliation Act, 1996 — Section 8.

IV (2006) CLT 205 (Calcutta HC)

- Setting aside Award — Applicability of Section 5 of Limitation Act — Section 5 of Limitation Act not applicable to proceedings under Section 34 of Arbitration and Conciliation Act for setting aside Award — Application under Section 5 of Limitation Act not maintainable.

Arbitration and Conciliation Act, 1996 — Section 34 — Limitation Act, 1963 — Section 5.

IV (2006) CLT 36 (Karnataka HC) (DB)

- Setting aside award — Court does not sit in appeal over award of Arbitrator — Court will not even reappreciate evidence — Arbitral Tribunal is domestic Tribunal of choice of parties.

Arbitration Act, 1940 — Section 30.

IV (2006) CLT 145 (Karnataka HC) (DB)

- Substitution of Arbitrator — Termination of mandate of Presiding Arbitrator — Jurisdiction of Court under Section 11(6), Act to appoint Arbitrator — Under Section 15(2) of Act, on termination of mandate of Presiding Arbitrator, two nominated Arbitrators required to reach consensus — On their failure to arrive at consensus only respondent No. 2 authorised to make appointment — Unless respondent No. 2 failed to exercise its jurisdiction, High Court could not assume jurisdiction under Section 11(6) of Act — No cause of action arisen to seek appointment from High Court under Section 11(6) of Act —

Said petition premature.

Arbitration and Conciliation Act, 1996 — Sections 15(1), 15(2), 11(6).

IV (2006) CLT 135 (SC)

— Waiver of Right to Object — Participation without objection would amount to waiver of right to object.

Arbitration and Conciliation Act, 1996 — Section 4.

IV (2006) CLT 196 (Calcutta HC)

CHEQUE DISHONoured — Maintainability of summary suit — Cheque is Bill of Exchange and suit based on dishonoured cheque is maintainable as summary suit

Civil Procedure Code, 1908 — Order 37 Rules 1(2) — Negotiable Instruments Act, 1881 — Section 6.

IV (2006) CLT 18 (Bombay HC)

COMPANY LAW — Winding-up Petition — Verification of Affidavit — Due compliance of provisions of Rule 21 of Companies (Court) Rules — Careful perusal of affidavit filed by respondent and Form No. 3 as prescribed under Rule 21, shows substantial compliance of said Rule — Technical plea by respondent regarding defective affidavit raised after 7 years of filing petition — Appellant is raising defence of technical plea to protect himself from consequence of his default — This plea cannot be considered effective enough to review order of advertisement — Order passed by Division Bench confirming order passed by Company Judge calls for no interference by this Court — Interim order granting stay of order under challenge vacated — Company Court at liberty to proceed further in accordance with Company Rules to dispose of petition expeditiously.

Companies (Court) Rules, 1959 — Rules 18, 21.

IV (2006) CLT 43 (SC)

COMPROMISE OF SUIT — After amendment of CPC by Act of 1976, compromise of suit can be effected and *imprimatur* of Court obtained thereon leading to decree, only if agreement or compromise presented in Court is in writing and signed by parties and also by their Counsel as per practice — When compromise is to be recorded and decree is to be passed, Order 23 Rule 3, CPC insists that terms of compromise should be reduced to writing and signed by parties — After 1.2.77, compromise decree can be passed only on compliance with requirements of Order 23 Rule 3, CPC and unless decree is passed in terms thereof, it may not be possible to recognise same as compromise decree — In this case, decree passed on 10.10.80 after amendment of Code and it was not in terms of Order 23 Rule 3, CPC — It was one on admission of pre-existing arrangement.

Civil Procedure Code, 1908 — Order 23 Rule 3.

IV (2006) CLT 27 (SC)

CONSENT DECREE — Modification of one clause of consent terms filed pursuant to which consent decree is passed, not maintainable under Order 23 Rule 3, CPC — ADJ justified in dismissing application — Not fit case to exercise jurisdiction under Article 227 of constitution to set aside impugned order.

Civil Procedure Code, 1908 — Section 152, Order 23 Rule 3 — Constitution of India, 1950 — Article 227.

IV (2006) CLT 105 (Bombay HC)

CONSTITUTIONAL LAW — Right to Information recognised as fundamental rights under Article 19 of Constitution of India.

IV (2006) CLT 166 (Kerala HC)

- Special Leave to Appeal — Electricity-distribution — This Court in exercise of its discretionary jurisdiction under Art. 32 of Constitution shall not interfere — It would exercise judicial restraint — It may not be illegal but erroneous — It may not be just and proper for one of State Boards, but for other — Not fit case to exercise its extraordinary jurisdiction under Art. 32 of Constitution.

Constitution of India, 1950 — Art. 32 — M.P. Reorganisation Act, 2000 — Section 58.

IV (2006) CLT 110 (SC)

CONTRACT — Agreement without consideration is void — It is act which forms consideration—In executed consideration, liability is outstanding on one side only — In executory consideration liability is out-standing on both sides — Where promise is made by one party to other party to contract, each promise is consideration to other party such as case for agreement of sale.

Contract Act, 1872 — Sections 2(d), 2(e), 25.

IV (2006) CLT 122 (Gauhati HC)

- Effect of acceptance of contract other than agreed upon — Time was essence of contract subject to supply of cement — Suit for Recovery of Amount — Delay in construction work — Non-availability of cement in open market — Rest of work cannot be completed in time by respondent — Fresh agreement executed — Cement supplied by appellant even after expiry of period of contract for completing first phase and appellant asked respondent to give consent for completing work for higher amount even after expiry of completing agreement.

Contract Act, 1872 — Section 55.

IV (2006) CLT 178 (Punjab & Haryana HC)

COUNTER-CLAIM — Filing of — Order 8 Rule 6A does not bar filing of counter claim after filing of written statement not barred provided cause of action accrued before defendant delivered his defence and period of limitation fixed for raising such claim not expired.

Civil Procedure Code, 1908 — Order 8 Rule 6A, Order 8 Rule 9, Order 47 Rule 1 — Constitution of India, 1950 — Article 226

IV (2006) CLT 189 (Kerala HC)

DEATH OF ONE OF SEVERAL DEFENDANTS — Object and scope of Order 22 Rule 4(2) — Amendment and counter-claim in written statement at instance of deceased defendant already rejected — Legal representative bound by it, cannot be allowed to re-agitate same, otherwise there would be inconsistent pleas — Further amendment finalised during life-time of deceased cannot be allowed to be re-agitated.

Civil Procedure Code, 1908 — Order 22 Rule 4(2).

IV (2006) CLT 84 (Rajasthan HC)

DESERTION — Essential Ingredients — Dismissal of earlier petition filed by petitioner on ground of cruelty and desertion — Petition barred by principles of *res judicata* — There was no occasion for respondent to take conscious decision of withdrawing from company of appellant, from day first petition dismissed till second petition filed — Respondent lacked necessary *animus deserendi* and there is no fresh cause of action for filing petition — Finding that respondent-wife not deserted appellant confirmed right upto highest Court — Parties have child and appellant seems to be in hurry to snap ties as appears from his filing fresh petition for divorce at the same time filing second appeal — Mere proof of period of separation of respondent would not give rise to cause of action — Both Courts justified in holding that petition was barred by principles of *res judicata* — Since respondent-wife had no opportunity for resuming cohabitation during period appellant was fighting with her in hierarchy of Courts there is no question of respondent bearing

animus deserendi, ruling out any cause for appellant to seek divorce on ground of desertion.

Hindu Marriage Act, 1955 — Section 13(1)(ib) — Civil Procedure Code, 1908 — Section 11.

IV (2006) CLT 2 (Bombay HC)

— While separation of spouses can be said to be continuing act, “desertion” requires not just separation of respondent but also mental state of abandoning matrimonial home.

Hindu Marriage Act, 1955 — Section 13(1)(ib).

IV (2006) CLT 2 (Bombay HC)

DISTINCTION — Executed consideration and executory consideration — In executed consideration, liability is outstanding on one side only — In executory consideration liability is out-standing on both sides

IV (2006) CLT 122 (Gauhati HC)

— Scope of CPC and Letters Patent — Letters Patent and CPC operate in separate fields, *i.e.*, Letters Patent specifically conferring jurisdiction on Chartered High Courts and CPC, conferring jurisdiction on all other Courts — Civil Procedure Code, 1908 — Sections 16, 17, 20, 120 — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

DISCOVERY OF DOCUMENTS — Prayer made by petitioner for discovery of original appointment letter — Certified copy of which could not be obtained — Tribunal should not have rejected prayer of petitioner for discovery and production of appointment letter by respondent No. 1 as Mutwali — Respondent Nos. 1 and 2 directed to file original copy of appointment letter before Tribunal — Further direction issued.

Civil Procedure Code, 1908 — Order 11 Rule 12, Order 11 Rule 13, Order 11 Rule 14.

IV (2006) CLT 1 (Allahabad HC)

DOCUMENTS — Production of — Applicability of Principles of *Res Judicata* — Earlier application for production of documents rejected as it was found vague and casual — Order passed cannot operate as *res judicata* in making fresh application — Plaintiffs could be permitted to produce these documents — Trial Court committed illegality in refusing to grant leave for production of documents — Inconvenience caused to defendant can be compensated by awarding cost of Rs. 2,500.

Civil Procedure Code, 1908 — Section 11, Order 7 Rule 14(3).

IV (2006) CLT 182 (Bombay HC)

ELECTRICITY LAW — Apportionment of assets and liabilities between two successor Boards — Rationality of approach — Apportionment of current assets and liabilities made on basis of power consumption ratio of States — Any other variable might not have rational nexus with apportionment of current assets and liabilities — Long term assets and liabilities divided in ratio of 90:10 and overall, MPSEB given 85% of assets and 84% of liabilities — Action on part of Central Government not irrational — Revenue generation capacity has rational nexus with current assets and liabilities — Fixing current liabilities on basis of revenue generation capacity not arbitrary or irrational — Population ratio as defined under Section 2(h) not relevant for application of Section 58 — Central Government maintained two other criteria, *viz.* geographical constitution and fixed assets.

M.P. Reorganisation Act, 2000 — Sections 2(h), 42, 43, 58.

IV (2006) CLT 110 (SC)

— Cut-off date — Illegality committed by CSEB in taking over assets of M.P. Electricity Board — Cut-off date fixed by Central Government cannot be said to be so

arbitrary to attract wrath of Article 14 of Constitution — Said date fixed in supersession of earlier orders.

Constitution of India, 1950 — Art. 14 — M.P. Reorganisation Act, 2000 — Sections 58(2), 58(3), 58(4) — Electricity (Supply) Act, 1948.

IV (2006) CLT 110 (SC)

- Distribution of assets and liabilities of MSEB and CSEB — State of M.P. alleges illegal collection of revenue by CSEB — Notification by Government approves constitution of successor Boards w.e.f. 15.4.2001 — It laid down guidelines in regard to division of assets, rights, liabilities, contracts and employees as also arrangement for distribution of power — By virtue of Section 58(4) of 2000 Act, States are enabled to constitute separate State Electricity Boards and to take over functions of erstwhile Board — In terms of Section 58(4) of 2000 Act, Central Government may pass provisional order directing new Board or Corporation to take over from existing Board or Corporation assets, rights and liabilities, subject to its final decision under Section 58(3) of Act — Central Government obliged to resolve dispute when States differ in their approach and arrive at independent decision — Central Government could choose respective dates *viz.* provisional and final dates when Boards came into being for determining dispute between Boards — Upon dissolution of existing Board, assets, rights and liabilities instead of vesting or continuing to vest in State shall vest in new Board — Central Government passed impugned orders in terms of its undertaking before High Court of Delhi and upon compliance of principles of natural justice, it cannot be said Central Government failed to apply its mind.

M.P. Reorganisation Act, 2000 — Sections 37, 43, 58, 58(1), 58(2), 58(3), 58(4) — Electricity (Supply) Act, 1948.

IV (2006) CLT 110 (SC)

- Grant of Load Factor Rebate in terms of provisions of 2004 Tariff of Board in respect of high tension consumers — Petitioner deposited amounts with board and amount — Amounts kept in abeyance/stayed fully secured under security amounts lying with Board and Bank guarantees furnished by petitioner — Learned Counsel for Board submitted petitioner must keep Bank guarantee alive till decision of cases as petitioner's connection finally disconnected — Directions issued to respondents accordingly to grant Load Factor Rebate in terms of provisions of 2004 Tariff of Board — Petitioner to keep Bank guarantees alive till disposal of writ petitions.

Constitution of India, 1950 — Article 226.

IV (2006) CLT 195 (Jharkhand HC)

EVIDENCE — Presumption — Adverse inference — Plea of co-ownership raised by defendant but failure to examine herself as witness — Adverse inference could be drawn against defendant on non-examination as witness.

Evidence Act, 1872 — Section 114.

IV (2006) CLT 99 (Madras HC)

- Public document — Admissibility as secondary evidence for adjudication of claims and objections — Discussed.

IV (2006) CLT 99 (Madras HC)

- Relevancy and effect of judgments, orders or decrees — Judgment and decree passed in earlier litigation in respect of same property although not inter-parties would be relevant to determine question raised in later dispute albeit between different parties — No vital piece of documentary evidence or admission excluded from consideration — Jurisdiction of this Court under Section 100, CPC cannot be exercised in these circumstances.

Evidence Act, 1872 — Section 42 — Civil Procedure Code, 1908 — Section 100.

IV (2006) CLT 143 (Punjab & Haryana HC)

- Thumb Impression — Comparison of — To decide dispute in question — If expert wants fresh thumb impressions are required, same cannot be denied on ground that earlier thumb impressions were taken — In interest of justice every party should be given full opportunity to prove his case — Comparison of thumb impression of respondent with thumb impression on agreement is relevant and material issue in suit.

Constitution of India, 1950 — Article 227

IV (2006) CLT 97 (Punjab & Haryana HC)

- Unregistered partition deed — Admissible piece of evidence.

IV (2006) CLT 39 (Punjab & Haryana HC)

EXAMINE OF WITNESS — Issuance of summons (See *Summons*)

IV (2006) CLT 21 (Madras HC)

EXECUTION PETITION — Amendment in — Additional claims made by decree holder — Entitlement — Decree holder had gone much beyond scope of decree while seeking for amendment in execution petition — Decree holder cannot go beyond purview of decree while making any claim — Order passed by Civil Judge (Sr. Division) set aside allowing petition for amendment filed by Decree holder.

Civil Procedure Code, 1908 — Order 21 Rule 11(2).

IV (2006) CLT 64 (Orissa HC)

EXPRESSION — “Court” — Meaning of — Arbitration and Conciliation Act, 1996 — Section 2(e) — Arbitration Act, 1940 — Section 2(c).

IV (2006) CLT 7 (SC)

- “Guardian” — Meaning of

IV (2006) CLT 134 (Madras HC)

HINDU LAW — Alienation for legal necessity — Alienee to prove existence of necessity — Not obligatory on him to prove necessity was fulfilled by proper application of sale proceeds since he cannot effectively control and direct actions of vendor.

IV (2006) CLT 158 (Madras HC)

- Alienation of minor’s share not for benefit of family — Absence of any proof of utilization of sale consideration of Rs. 25,000 in purchase of some other property for minors — Immaterial whether minor’s share retained with vendee, viz., third defendant — Sale deed in respect of minor’s 3/8 shares not binding on plaintiffs and liable to be cancelled — Plaintiffs entitled to partition and separate possession of 3/8 shares in suit properties.

IV (2006) CLT 158 (Madras HC)

- Joint Hindu Family property — Where Manager of joint Hindu family blends his self-acquired property with property of joint family, effect is all properties so blended become joint family property — Further, property acquired by Manager in his name in course of management of joint family properties would be treated as joint family properties — Onus lies on Manager to prove such properties purchased by him from and out of his funds — It is alleged by 1st defendant that he purchased suit properties out of his self-earned funds — Onus lies on him to prove, but he failed to prove same.

IV (2006) CLT 78 (Madras HC)

IMPLEADMENT AS PARTY — Will — Petition for grant of probate of Will dated 9.9.1997 pending — One of sons of testator R propounded another Will dated 30.10.1997 and executed sale deed in favour of A, who further entered into agreement to sell one of

properties with respondent No. 1 — Neither any probate nor any 'no objection certificate' obtained by R — Application filed by respondent for impleadment in probate allowed by Trial Court — Challenge against — *Lis* in respect of probate of Will dated 9.9.1997 pending — R has no authority at that stage to unilaterally execute document for sale on basis of Will dated 30.10.1997 without obtaining probate of same or no objection of legal heir — Though probate not mandatory in territory of Delhi — Property can be dealt if other legal heirs grant their no objections or Will proved in some collateral proceedings — None of these things happened in present case — Purchaser A and thereafter respondent got into speculative purchase of litigated property — Respondent No. 1 cannot hide behind plea of *bona fide* purchaser since purchaser itself cannot be said to be *bona fide* — Evidence of petitioners' stand almost concluded respondent cannot be permitted to delay probate proceedings — Respondent No. 1 not permitted to intercede in probate proceedings filed by legal heirs of late testator.

Civil Procedure Code, 1908 — Order 1 Rule 10.

IV (2006) CLT 112 (Delhi HC)

INJUNCTION — *Ad interim* injunction — Appeal against — Where mandate of Order 39 Rule 3A flouted, aggrieved person is entitled to right of appeal notwithstanding pendency of application for grant of vacation of temporary injunction against order remaining in force — Even though discretion of Single Judge in extending *ex parte* order of injunction not found fault with, posting of matter to date about 45 days beyond date of such extension inappropriate, keeping in view provisions of Order 39 Rule 3A, CPC — Appellants justified in filing appeal — Direction issued to Single Judge regarding disposal of appeal.

Civil Procedure Code, 1908 — Order 39 Rule 3A, Order 43 Rule 1.

IV (2006) CLT 114 (Madras HC) (DB)

— *Ad interim* Injunction — Infringement of trade mark — "Glucon D" and "Glucose D" — Appellants using word "Glucon D", respondents have used two common English words, *viz.*, "Glucose" and letter "D" — This cannot mean to be infringement because under Section 29 of Trade and Merchandise Marks Act, registered trade mark is infringed by person who uses trade mark which is identical with or deceptively similar to registered trade mark of somebody else — While respondents used common English word, *viz.*, "Glucose", and letter "D" on their packet, they have taken sufficient care to mention words "Dabur" making it clear that it is product of their Company — No *prima facie* case for grant of *ad interim* injunction.

Civil Procedure Code, 1908 — Order 39 Rules 1 and 2 — Trade and Merchandise Marks Act, 1958 — Section 29.

IV (2006) CLT 154 (Punjab & Haryana HC)

— Appellate Court's jurisdiction to interfere with orders of Trial Judge — Grant of interlocutory injunction is in exercise of discretionary power — Appellate Courts will usually not interfere with it except where discretion exercised arbitrarily, capriciously, perversely or where Court ignored settled principles of law regulating grant or refusal of interlocutory injunctions — Appellate Court may not reassess material and seek to reach conclusion different from one reached by Court below if one reached by that Court was reasonably possible on material.

IV (2006) CLT 75 (SC)

— *Ex parte ad interim* order of injunction *ipso facto* not appealable under Letters Patent as it is not judgment within meaning of Clause 15.

IV (2006) CLT 114 (Madras HC) (DB)

— Grant of — Courts would pass order thereupon having regard to *prima facie*, case, balance of convenience and irreparable injury — Finding on '*prima facie* case' would be finding of

fact.

Civil Procedure Code, 1908 — Order 39 Rules 1, 2.

IV (2006) CLT 54 (SC)

- Jurisdiction of Appellate Courts — Interference with order of Trial Court — Appellate Court may not reassess material and seek to reach conclusion different from one reached by Court below if one reached by that Court was reasonably possible on material.

IV (2006) CLT 75 (SC)

- Perpetual Suit for Declaration — Perfection of title by adverse possession — Person who is in possession shall not be thrown out except by due course of law — It is for plaintiff to seek his possession by recourse to law — Piece of land admittedly belongs to defendant which as per Commissioner report plaintiff is in lawful possession — No fault found with order of lower Appellate Court in granting order of permanent injunction against defendant — It is for defendant to have recourse to law by issuance of legal notice to plaintiff and seek for *mesne profits* — In event plaintiff resists possession, defendant can file suit seeking possession and for *mesne profits*.

Specific Relief Act, 1963 — Sections 38 and 41(j).

IV (2006) CLT 109 (Karnataka HC)

- Rejection of plaint — At stage of grant of injunction, effect of dismissal of application under Order 7 Rule 11, CPC not of much significance — Plaint in question could not be rejected under Order 7 Rule 11, CPC — Disputed question of fact could not be gone into at stage of passing order of grant of injunction — Court could take into consideration extent of plaintiff's share in property, if any — Courts below not applied their mind as regards balance of convenience and irreparable injury which may be suffered by appellants — *Prima facie* their share is not more than 1/8th in suit properties.

IV (2006) CLT 54 (SC)

- Restraining appellants from dealing with properties in any manner — Appellants not able to enjoy fruits of development agreements — Properties not sold for long time — Commercial property not put to any use — Condition of properties being wholly unused could deteriorate — Courts below did not go into relevant issues and misdirected themselves in law — Plaintiffs in such situation could not be asked to furnish security in event of dismissal of suit in respect of any properties — Neither appellants ready and willing to furnish any security — Question whether plaintiffs pre-varicated their stand from stage to stage, not adverted to by Courts below — To subserve interest of justice Courts issued various directions accordingly.

IV (2006) CLT 54 (SC)

- Temporary — Order directing issue of notice on temporary injunction application under Order 39 Rule 1, CPC is not an order — Though it may come within ambit of 'case decided' would not amount to disposal of injunction application or terminate proceedings of temporary injunction — Revision against not maintainable.

IV (2006) CLT 72 (Allahabad HC)

- Trade Mark, Infringement, Passing off, Deceptive similarity — Restraining respondents from using trade mark "RAMDEV", in their label, packing materials, advertising materials, in respect of goods covered under registration of plaintiff's mark (*See Trade Mark*)

IV (2006) CLT 75 (SC)

- **INSURANCE** — Right of nominee — Nominee of LIC does not get absolute right to amount due — Nomination only indicates hand which is authorised to receive amount —

Nomination does not have effect of conferring a nominee beneficial interest in amount payable under LIC policy on death of assured.

IV (2006) CLT 27 (Karnataka HC)

INTERROGATORIES — Non-compliance with order of discovery — Striking off defence — In so far as interrogatories concerned — Law provides for three stages — In first stage, plaintiff or defendant has to obtain leave of Court for delivering interrogatories in writing on defendant/s or petitioner/s, separately on each person requiring to answer — Person receiving interrogatories required to answer by way of affidavit — In second stage, if person served interrogatories, does not comply with by filing affidavit in answer to interrogatories, petitioner or defendant with leave of Court to file application under Order 10 Rule 11, CPC — At that stage, Court can compel person to answer interrogatories — In case such order not complied with, same would result in penal consequences which is either by dismissal of suit or striking off defence under Order 11 Rule 21, CPC — As condition precedent for exercising power under Order 11 Rule 21, CPC, there ought to be order under Rule 11 — While passing order either dismissing suit or striking off defence Trial Court bound to issue notice to parties and afford reasonable opportunity of being heard — Without noticing legal position, Trial Court passed order striking off defence of Ist defendant — Impugned order suffers from grave error apparent on face of record and sustainable.

Civil Procedure Code, 1908 — Order 11 Rules 1, Order 11 Rules 11, Order 11 Rules 21.

IV (2006) CLT 170 (Andhra Pradesh HC)

“JUDGMENT” — Meaning of (See *Letters Patent vis-a-vis Civil Procedure Code*)

IV (2006) CLT 114 (Madras HC) (DB)

JUDGMENT ON ADMISSION — Discretionary power of Court — Unless and until admission is unequivocal and unconditional, no judgment can be rendered.

Civil Procedure Code, 1908 — Order 12 Rule 6.

IV (2006) CLT 94 (Calcutta HC)

— Plea of limitation in written statement — Mixed question of fact and law — Can be decided only by way of evidence — No case made out under Order 12 Rule 6, CPC for passing a decree.

Civil Procedure Code, 1908 — Order 12 Rule 6

IV (2006) CLT 94 (Calcutta HC)

JURISDICTION OF ARBITRAL TRIBUNAL — Relaxation of condition in appointment of Arbitrator (See *Appointment of Arbitrator in Arbitration Law*)

IV (2006) CLT 196 (Calcutta HC)

JURISDICTION OF COURT — Appointment of Arbitrator — Parties cannot by consent ouster jurisdiction of any Court but can restrict jurisdiction to one of Courts (See *Arbitration Law*)

IV (2006) CLT 12 (Karnataka HC)

— Interference with Arbitral award (See *Award in Arbitration Law*)

IV (2006) CLT 196 (Calcutta HC)

LAND ACQUISITION — Compensation for loss of earnings — Award of — Covered by Section 23(1) Clause (4) of Act — Sum of Rs. 10,200 awarded for loss of earnings from building and Rs. 4,080 from loss of rent on account of advertisement boards of agencies justified — Interest award.

Land Acquisition Act, 1894 — Section 23(1) Clause (4).

IV (2006) CLT 17 (Uttaranchal HC) (DB)

- Correction of clerical errors — Notice — Authority of Collector — Scope of Section 13A of Act — Complete error in calculating value of building and age of building — Correction was only arithmetical error — Mistake noted by P.W.D. authorities and reported to second respondent, who subsequently corrected same within period of 6 months — Collector authorised to correct clerical error or arithmetical mistakes or errors only after giving notice to and after hearing affected persons — Same not legally done — Affixture of notice not sufficient — Award passed by second respondent set aside with direction to dispose of matter after hearing writ petitions basing on their objections if any.

Land Acquisition Act, 1894 — Section 13A — Civil Procedure Code, 1908 — Section 152.

IV (2006) CLT 91 (Kerala HC)

- Reference — Condonation of delay — Powers of land acquisition officer — Application under Section 18 of Land Acquisition Act filed beyond prescribed period of 6 weeks from service of notice under Section 12(2) of Act — Application filed under Section 5 of Limitation Act giving explanation for delay — Special Land Acquisition Officer had no power to condone delay in filing application under Section 18, Land Acquisition Act — No infirmity in impugned order dismissing application of petitioner under Section 18 as time-barred.

Land Acquisition Act, 1894 — Sections 12(2), 18 — Limitation Act, 1963 — Section 5.

IV (2006) CLT 55 (Uttaranchal HC) (DB)

- “Solatium” — Quantum — Enhancement of — Challenge against — Solatium @ 30% payable in those cases only where award made after April 30, 1982 and before September 24, 1984 — Award of Land Acquisition Officer made on 2.3.1981 — Reference Court fell into error in awarding solatium @ 30% in place of 15% — Impugned judgment modified to that extent.

Land Acquisition Act, 1894 — Section 54.

IV (2006) CLT 17 (Uttaranchal HC) (DB)

LEAVE TO DEFEND — Recovery Suit — Condition of pre-deposit of money (See *Summary Suit*)

IV (2006) CLT 127 (SC)

LEGAL REPRESENTATIVES — Impleadment of — Death of one of several defendants — Limitation — 90 days from date of knowledge of death — Ignorance of death not sufficient cause for setting aside abatement, when application to bring L.Rs. of deceased on record made after expiry of period of limitation — Law imposed obligation on person applying for bringing L.Rs. of deceased on record and he had to show absence of want of care.

Civil Procedure Code, 1908 — Order 22 Rule 4 — Limitation Act, 1963 — Article 120, Section 5.

IV (2006) CLT 7 (Madras HC)

- Right to make amendment in written statement — L.Rs. of deceased-defendant have same right as possessed by deceased-defendant — Had defendant been alive, he would have same right to seek amendment in Written Statement — Said right cannot be declined to L.Rs. — Challenge in suit is to mutation on basis of Will and consent decree suffered by B.S. in favour of his son — Impugned order passed by Trial Court set aside — Petitioner permitted to amend Written Statement as prayed so that issue regarding inheritance of PK on basis of Will adjudicated upon in civil suit.

Civil Procedure Code, 1908 — Order 6 Rule 17.

IV (2006) CLT 132 (Punjab & Haryana HC)

LETTERS PATENT APPEAL — Revocation of Leave — Averments for granting leave under Clause 12 — Statements and averments of the plaint — Constitutes part cause of action — Arisen within the jurisdiction of Court — On demurrer action leave can not be revoked.

IV (2006) CLT 94 (Calcutta HC)

LETTERS PATENT VIS-A-VIS CIVIL PROCEDURE CODE — Expression — “Judgment” — Meaning of — Appealable order under Order 43 Rule 1, CPC can be held appealable under Clause 15 of Letters Patent — Other interlocutory orders which decides matters of moment or affect vital and valuable rights of parties and which work serious injustice to parties concerned, can be considered as judgment to be appealable under Letters Patent — *Ex parte ad interim* order of injunction *ipso facto* not appealable under Letters Patent as it is not judgment within meaning of Clause 15.

Letters Patent, Clause 15 — Civil Procedure Code, 1908 — Order 43 Rule 1.

IV (2006) CLT 114 (Madras HC) (DB)

LIMITATION — Applicability — Setting aside award (See *Arbitration Law*)

IV (2006) CLT 36 (Karnataka HC) (DB)

— Condonation of delay — Belated application under Section 18, Land Acquisition Act (See *Land Acquisition*)

IV (2006) CLT 55 (Uttaranchal HC) (DB)

— Condonation of Delay by Court — Changing trend — Previously Courts did show lenience and latitude in dealing with applications for adjournments and condonation of delay — It is high time changed perspective and attitude adopted, since Courts are already overburdened with cases resulting in inordinate delay in disposal of cases.

Limitation Act, 1963 — Section 5.

IV (2006) CLT 176 (Allahabad HC)

— Condonation of delay — Sufficient cause — Petition to condone delay under Order 41 Rule 3A, CPC filed with affidavit of Counsel stating file was misplaced is sufficient cause explain delay — Affidavit need not be filed by appellant himself — Delay condoned.

Civil Procedure Code, 1908 — Order 41 Rule 3A.

IV (2006) CLT 60 (Kerala HC)

— Condonation of Delay — Sufficient cause — Restoration of appeal — Appellant failed to apply for restoration of appeal within prescribed period of 30 days — No specific reason given for seeking condonation of delay, that under what compulsions appellant could not apply for restoration of appeal within time — Reasons given by appellant for adjournment of appeal as also subsequently for condonation of delay wholly unsustainable, hazy and inadequate — It was not mentioned in adjournment application as to why arguments could not be prepared in appeal — Mere cursory statement that appellant remained busy in his school work cannot be considered sufficient reason for condonation of delay — P.O. not wrong in dismissing appellant’s application.

Limitation Act, 1963 — Section 5.

IV (2006) CLT 176 (Allahabad HC)

— Judgment on admission — limitation is mixed question of fact and law — Can be decided only by way of evidence.

IV (2006) CLT 94 (Calcutta HC)

— Sale Deed — Applicability of Article 109 *vis-vis* Section 59 of limitation Act — Sale deed executed on 11.5.1972 — Suit filed in 1981 for cancellation of sale deed in 1981, within 12

years from date of sale, is within time — Section 59 of Limitation Act not applicable and Article 109 of Limitation Act applicable.

Limitation Act, 1963 — Section 59, Article 109.

IV (2006) CLT 158 (Madras HC)

— Setting aside *ex parte* decree — Condonation of delay to deposit amount required under Proviso to Section 17 of Act. (See *Setting aside ex parte decree*)

IV (2006) CLT 69 (Uttaranchal HC)

— Setting aside abatement — Impleadment of legal heirs to be done within 90 days from date of knowledge of death (See *Legal Representatives*)

IV (2006) CLT 7 (Madras HC)

LOK ADALAT — Award of — In view of provisions of Section 21 of Legal Services Authority Act, award of Lok Adalat to be taken as decree of Civil Court which referred case to Lok Adalat.

Legal Services Authorities Act, 1987 — Sections 20, 20(5) and 21

IV (2006) CLT 184 (Kerala HC)

MAXIM — “*Expressio unius est exclusio alterius*” — Meaning of — Expression of one is exclusion of another.

IV (2006) CLT 136 (Rajasthan HC)

PARTITION — No prohibition recognised by law about oral partition — Memorandum of past oral partition not required to be registered — Such document is admissible piece of evidence — There is no necessity for everyone of co-sharer to thumb mark, sign and acknowledge such memorandum.

Registration Act, 1908 — Section 17(1).

IV (2006) CLT 39 (Punjab & Haryana HC)

PECUNIARY JURISDICTION — Valuation for purpose of Court fee as shown in plaint is Rs. 85,000 — Munsiff Court has pecuniary jurisdiction to try suit — Jurisdiction is to be taken note of only for purpose of adjudication and not for execution.

Civil Procedure Code, 1908 — Sections 5, 6, 38 and 39(3).

IV (2006) CLT 184 (Kerala HC)

POWERS OF APPELLATE COURT — Interfere with judgment and decree only when appellants can show evidence adduced by plaintiff is not sufficient to establish case to pass decree.

IV (2006) CLT 28 (Gauhati HC)

POWERS OF LAND ACQUISITION OFFICER — Condonation of delay — Special Land Acquisition Officer had no power to condone delay in filing application under Section 18, Land Acquisition Act.

IV (2006) CLT 55 (Uttaranchal HC) (DB)

PRACTICE AND PROCEDURE — Deed and documents — Construction of — Document to be read as a whole and deed to be construed keeping in view existing law and having regard to terms and conditions.

IV (2006) CLT 75 (SC)

— Family settlement — Court would not easily disturb family settlement arrived between parties to resolve disputes.

IV (2006) CLT 75 (SC)

- Rules of procedure cannot be tool to circumvent justice — Rules are laid to help for speedy disposal of justice.

IV (2006) CLT 43 (SC)

PRECEDENT — Intention of parties to instruments must be gathered from terms thereof examined in light of surrounding circumstances — Reliance on *Sohan Lal* case.

IV (2006) CLT 75 (SC)

- Judgment is an authority for what it decides in particular context and cannot be read shorn of its context.

IV (2006) CLT 2 (Bombay HC)

- Lower Appellate Court is best Judge of fact and law as held by Supreme Court in *Santosh Bazari* case

IV (2006) CLT 13 (Punjab & Haryana HC)

- Substantial compliance of Rules is enough — Rules are undoubtedly statutory and forms are to be adopted wherever they are applicable — Rules relating to affidavit and verification cannot be ordinarily brushed aside, but then what is required to be seen is whether petition substantially complies with requirements and secondly, even when there is some breach or omission, whether it can be fatal to petition.

IV (2006) CLT 43 (SC)

PRELIMINARY ISSUE — Framing of — Discretionary power of Court.

Civil Procedure Code, 1908 — Order 14 Rule 2(2).

IV (2006) CLT 122 (Gauhati HC)

- Framing of — Refusal of — Maintainability of revision petition (*See Revision*)

IV (2006) CLT 122 (Gauhati HC)

PRINCIPLE OF ACQUIESCENCE — Applicability — Acquiescence is facet of delay — Defence of acquiescence when satisfied — Discussed.

IV (2006) CLT 75 (SC)

PRINCIPLE OF ESTOPPEL — Applicability — Parties mutually dependent — It was stipulated that while also competing with each other they would not harm other while exporting materials — Not a case where appellant having taken advantage of terms of MOU resiled therefrom — Principle of estoppel not applicable.

IV (2006) CLT 75 (SC)

PRINCIPLES OF NATURAL JUSTICE — Compliance of — Right to be heard — Single Judge allowed revision petition without issuing notice to appellant (*See Revision*)

IV (2006) CLT 73 (SC)

- Inseparable ingredients of fairness and reasonableness, deeply rooted in tradition and conscience — It is to be read into unoccupied interstices of Statute, unless clearly mandate to contrary — Purpose of following principles of natural justice is prevention of miscarriage of justice.

IV (2006) CLT 73 (SC)

PRINCIPLES OF RES JUDICATA — Applicability— Application for production of documents rejected as it was found vague and casual — Order passed cannot operate as *res judicata* in making fresh application — Plaintiffs could be permitted to produce these documents — Trial Court committed illegality in refusing to grant leave for production of documents —

Inconvenience caused to defendant can be compensated by awarding cost of Rs. 2,500.

Civil Procedure Code, 1908 — Section 11, Order 7 Rule 14(3).

IV (2006) CLT 182 (Bombay HC)

— Applicability — Dismissal of earlier petition filed by petitioner on ground of cruelty and desertion (See *Desertion*)

IV (2006) CLT 2 (Bombay HC)

PRINCIPLE OF STARE DECISIS — Judgment of this Court will not be referred for reconsideration by subsequent Coordinate Bench merely because subsequent Bench may have arrived at different conclusion had there been earlier judgment — Law is principle of *stare decisis* adopted and followed in Indian Courts.

IV (2006) CLT 7 (SC)

READMISSION OF APPEAL DISMISSED FOR DEFAULT — Sufficient cause — When question arises about sufficient grounds for restoration of appeal, Court would be inclined to restore appeal unless there has been gross negligence on part of party concerned — Application for restoration filed within 1 month — Appellate Court failed to exercise its jurisdiction to restore appeal on unsustainable ground that on day appeal was dismissed in default, appellant was not present — Impugned order passed by ADJ set aside.

Civil Procedure Code, 1908 — Order 41 Rule 19.

IV (2006) CLT 203 (Punjab & Haryana HC)

RECOVERY SUIT — Earnest money along with interest — Suit maintainable and agreement to sell could be read for collateral purposes (See *Specific Performance of Contract*)

IV (2006) CLT 13 (Punjab & Haryana HC)

— — (See *Setting aside ex parte decree*)

IV (2006) CLT 173 (Bombay HC)

REGISTRATION — Decree on admission based on family settlement — Enforceability — Decree was of pre-existing right set up by plaintiffs as created by co-owner — Decree by itself did not create any right in immovable property — It only recognised right set up by plaintiffs in respect of property involved in that suit — As a result of family arrangement relinquishment followed by defendant in favour of plaintiff and his brother — Decree in earlier suit recognising that arrangement did not require registration — Suit filed by respondent No. 1 for recovery of possession of suit property in enforcement of right of pre-emption claimed by him, rightly decreed by Trial Court — High Court justified in answering substantial question of law formulated by it in favour of plaintiff and against contesting defendants — Judgments and decrees under appeal confirmed — Registration Act, 1908 — Sections 17(1)(b), (c), 17(2)(vi) — Transfer of Property Act, 1882 — Sections 53A, 54, 107, 123.

IV (2006) CLT 27 (SC)

— Documents which require registration — Decree or order of Court and compromise decree relating only to subject matter of suit need not be registered on ground that it is non-testamentary instrument which purports to or operates to create, declare, assign, limit or extinguish any right to or in immovable property or which acknowledges receipt or payment of any consideration on account of transaction which brings about said results — But if suit is decreed on basis of compromise taking property that is not subject matter of suit such compromise decree requires registration — There is no exemption in respect of Clauses (a), (d) and (e) of Section 17(1) so that if decree brings about gift of immovable property, or lease of immovable property from year to year or for term exceeding one year or reserving early rent or transfer of decree or order of Court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that

requires to be registered.

Registration Act, 1908 — Sections 17(1)(a), 17(1)(b), 17(1)(c), 17(1)(d), 17(1)(e), 17(2), 17(2)(vi).

IV (2006) CLT 27 (SC)

— Memorandum of past oral partition not required to be registered — Such document is admissible piece of evidence.

IV (2006) CLT 39 (Punjab & Haryana HC)

REJECTION OF PLAINT — Injunction — At stage of grant of injunction, effect of dismissal of application under Order 7 Rule 11, CPC not of much significance.

IV (2006) CLT 54 (SC)

RESTORATION OF APPEAL — Condonation of Delay — No sufficient reason given for condonation of delay — P.O. not wrong in dismissing application.

IV (2006) CLT 176 (Allahabad HC)

REVIEW APPLICATION — Maintainability — Error apparent on face of record — Detection of apparent error or mistake on face of record calls for reconsideration or recall of the order — Stand taken by Single Judge appears to be incorrect.

Civil Procedure Code, 1908 — Section 114, Order 41 Rule 1.

IV (2006) CLT 75 (Calcutta HC) (DB)

REVIEW PETITION — Maintainability — Prayer for allotment of shed in name of petitioner — Petitioner claimed to be tenant/licensee of original allottee in respect of said shed — Estate Officer directed eviction — Eviction order became final against both petitioner and original allottee — Prayer for allotment incapable of being granted — Further contention, Court permitted him to pay to DSIDC, amount towards allotment of shed — Said payment without prejudice to rights and contentions of parties — Mere fact of Court ordering payment to DSIDC, cannot create any right in question — Open to petitioner to seek return of deposited amount — No ground to review/recall of earlier order.

Civil Procedure Code, 1908 — Section 114 r/w Order 47.

IV (2006) CLT 88 (Delhi HC) (DB)

— Maintainability — Rules governing filing of — Applications though designed as that for recall, really are petitions seeking review of that order — Petitioner unable to show any provision in CPC or Rules that permits application for recall — Present applications do not satisfy mandatory pre-conditions, for review petition to be considered — By labelling applications as that of 'recall', petitioners sought to avoid procedure outlined in relevant provisions of CPC — Same sufficient to dismiss present applications.

Civil Procedure Code, 1908 — Section 114 r/w Order 47.

IV (2006) CLT 88 (Delhi HC) (DB)

REVISION — Maintainability — Order directing issue of notice on temporary injunction application under Order 39 Rule 1, CPC is not an order — Though it may come within ambit of 'case decided' would not amount to disposal of injunction application or terminate proceedings of temporary injunction — Revision against not maintainable.

Civil Procedure Code, 1908 — Section 115 [as amended by CPC (Amendment) Act, 1999], Order 39 Rules 1 and 2.

IV (2006) CLT 72 (Allahabad HC)

— Maintainability — Principles of natural justice — Compliance of — Right to be heard — Suit for declaration of title and injunction — Single Judge allowed revision petition without issuing notice to appellant — Application for review rejected by High Court — Perusal of

order of High Court itself shows adjudication adverse to appellant was done by disposal of civil revision without issuance of notice before such adverse injunction — Clearly violative of principles of natural justice — Order passed by Single Judge in civil revision and review application set aside — Matter remitted to High Court for fresh consideration.

Civil Procedure Code, 1908 — Section 115.

IV (2006) CLT 73 (SC)

- Maintainability — Revision petition against order refusing to frame preliminary issue not maintainable.

Civil Procedure Code, 1908 — Section 115 proviso, Order 14 Rule 2(b).

IV (2006) CLT 122 (Gauhati HC)

RIGHT TO INFORMATION — Information regarding minutes of various meetings of Managing Committee — Information sought for is not pertaining to commercial confidence, trade secrets or intellectual property — Petitioner entitled to obtain information under Item No. 3 — Item No. 4 is copy of reference file in respect of inquiry ordered by Assistant Registrar of Co-operative Societies — Petitioner to make request to Assistant Registrar for obtaining said information.

Right to Information Act, 2005 — Sections 3, 2(f), 8 and 8(1)(d) — Constitution of India, 1950 — Article 19.

IV (2006) CLT 166 (Kerala HC)

- Object of enactment of Act — To ensure greater and more effective access to information, Act was introduced for providing effective frame work for effectuating right of information recognized under Article 19 of Constitution — Scope of provisions — Discussed.

Right to Information Act, 2005 — Sections 2(f) and 8, 8(1)(d) — Constitution of India, 1950 — Article 19.

IV (2006) CLT 166 (Kerala HC)

SICA — Appointment of Arbitrator — Proceeding in arbitration is neither suit under Section 22(1) of SICA nor proceedings thereunder — There is no prohibition under Section 22, SICA to take up arbitration proceedings to adjudicate liability of parties to arbitration proceedings — Section 22 of SICA does not debar arbitration proceedings under Arbitration and Conciliation Act.

Arbitration and Conciliation Act, 1996 — Sections 11(6), 11(6)(c), 15, 15(1)(a) — Sick Industrial Companies (Special Provisions) Act, 2002 — Sections 22(1), 22.

IV (2006) CLT 1 (SC)

- Winding up of Company — Proceedings which have shape and effect of coercive nature would come within ambit of Section 22(1) of SICA — For taking up such proceedings permission of BIFR required — By virtue of amendment to Section 22 of SICA, no suit for recovery of money or for enforcement of any security against industrial company or of any guarantee in respect of any loans or advances granted to industrial company shall lie — Adjudication is prohibited of liability of industrial company or guarantor — Section 22 further prohibits taking up of proceedings of coercive nature for recovery of money against sick undertaking.

Sick Industrial Companies (Special Provisions) Act, 2002 — Sections 22(1), 22.

IV (2006) CLT 1 (SC)

SECOND APPEAL — Grounds for interference — Once Court comes to conclusion that important piece of evidence has been illegally discarded or inadmissible piece of evidence taken into consideration — Then after evaluating admissible evidence this Court can

always consider effect of such evidence on finding of fact — No blanket prohibition with regard to interference in finding of fact by this Court under Section 100, CPC — If finding shown to be perverse, then it would be question of law.

Civil Procedure Code, 1908 — Section 100 — Second Appeal.

IV (2006) CLT 39 (Punjab & Haryana HC)

- No vital piece of documentary evidence or admission excluded from consideration — Concurrent finding of both Courts regarding title of property — Jurisdiction of this Court under Section 100, CPC cannot be exercised.

IV (2006) CLT 143 (Punjab & Haryana HC)

- Plea of benefit of provision of Section 14(1), Hindu Succession Act raised at appellate stage for first time, maintainable — *Vide Mahesh Chand Sharma* case, I (1996) CLT 165 (SC).

Civil Procedure Code, 1908 — Section 100 — Hindu Succession Act, 1956 — Section 14(1).

IV (2006) CLT 66 (Madras HC)

- Substantial question of law — Consent decree — Challenge against — Non-joinder of parties — High Court allowed second appeal without framing question of law, clearly contrary to mandate of Section 100, CPC — Categorical observation of Trial and Appellate Court, resolution adopted by trustees including chief trustee and advocate for trust who himself a trustee clearly established earlier suit filed with knowledge and consent of all trustees — Factual finding that suit filed with knowledge and consent of all trustees not disputed — If trustees had no knowledge of suit they could not have adopted resolution for compromise in particular mode indicating three alternatives — They specifically authorised chief trustee and advocate who was also trustee to enter into compromise — High Court not justified in holding suit maintainable — Judgment of High Court indefensible and set aside.

Civil Procedure Code, 1908 — Section 100.

IV (2006) CLT 70 (SC)

- Substantial question of law — Suit for Possession and Permanent injunction — Will executed by testator, deceased husband of plaintiff, surrounded by suspicious circumstances and not proved to be duly executed by testator during his lifetime — Question as to whether Section 14(1) or Section 14(2) of Hindu Succession Act applies is only of academic interest — Nothing shown that findings with regard to Will recorded by two Courts below suffer from any infirmity or contrary to record — No question of law, much less any substantial question of law, arises in appeal.

Hindu Succession Act, 1956 — Sections 14(1), 14(2) — Civil Procedure Code, 1908 — Section 100.

IV (2006) CLT 82 (Punjab & Haryana HC)

SETTING ASIDE ABATEMENT — Impleadment of legal heirs (*See Legal Representatives*)

IV (2006) CLT 7 (Madras HC)

SETTING ASIDE EX PARTE DECREE — Appeal against *ex parte* judgment and decree cannot be converted into proceedings for setting aside decree with concomitant duty of affording party opportunity of adducing evidence on any ground raised in support under Order 9 Rule 13, CPC — Nor can such appeal be converted into appeal under Order 43 Rule 1(d), CPC — It is essential for this Court to satisfy itself as to whether appellants have made out case for setting aside judgment and decree.

Civil Procedure Code, 1908 — Section 96(2) — Order 9 Rule 13, Order 43 Rule 1(d).

IV (2006) CLT 28 (Gauhati HC)

- Condonation of delay to deposit amount required under Proviso to Section 17 of Act — No sufficient ground to condone delay as defendant remained slept over matter for two years and did not make any deposit under Section 17 of Act, which was mandatory requirement to be complied with, with application under Order 9 Rule 13, C.P.C.

Civil Procedure Code, 1908 — Order 9 Rule 13.

IV (2006) CLT 69 (Uttaranchal HC)

- Imposition of condition — Justifiability — Furnishing of security — Application under Order 9 Rule 13, CPC filed by defendant- respondent No. 1 for setting aside judgment and decree, upon admission for sum of Rs. 37,26,428/- along with interest, passed in favour of appellant-plaintiff — Single Judge exercised its discretion unreasonably in directing securing of entire sum of Rs. 37 lacs in form of bank guarantee or deposit sum in cash — Interest of justice would be sub-served if respondent No. 1 directed to furnish security to extent of Rs. 5 lacs to satisfaction of Single Judge — Further observations made and directions issued.

Civil Procedure Code, 1908 — Order 9 Rule 7, Order 9 Rule 13.

IV (2006) CLT 64 (SC)

- It is lawful for Court to pronounce *ex parte* judgment, if despite opportunity, defendant files no written statement and said judgment and decree can be challenged under Section 96(2), CPC — Appellate Court can interfere with judgment and decree only when appellants can show evidence adduced by plaintiff is not sufficient to establish case to pass decree.

Civil Procedure Code, 1908 — Section 96(2) — Order 8 Rule 13, Order 43 Rule 1(d).

IV (2006) CLT 28 (Gauhati HC)

- Scope of Order 9 Rule 13, CPC — Interpretation of provision by High Court — Discretionary jurisdiction of High Court — Sufficient cause for non-appearance by defendant to be proved when decree passed — Court not denuded of its power to put defendants to terms — Such terms should not be unreasonable or harshly excessive — Appellate Court has power to interfere when unreasonable or harsh conditions imposed — Division Bench committed no error in holding that Single Judge did not possess such power — Single Judge exercised its discretionary jurisdiction keeping in view matter disposed of finally at interim stage at back of defendant and directing to secure entire sum of amount involved in decree in form of Bank Guarantee or cash.

Civil Procedure Code, 1908 — Order 9 Rule 7, Order 9 Rule 13.

IV (2006) CLT 64 (SC)

- Suit for recovery of amount — Separate suit to set aside *ex parte* decree not maintainable except in case of fraud or collusion — Order 9 Rule 13, CPC, act as implied bar against fresh suit.

Civil Procedure Code, 1908 — Order 9 Rule 13.

IV (2006) CLT 173 (Bombay HC)

SPECIAL MARRIAGE — Will made by Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

Special Marriage Act, 1954 — Sections 18 and 21 — Indian Succession Act, 1925 — Sections 213 and 213(2).

IV (2006) CLT 192 (Bombay HC)

SPECIFIC PERFORMANCE OF PART OF CONTRACT — Requirement of — Section 12(3) of

specific Relief Act — Permits filing of suit only when plaintiff relinquishes all claims to performance of remaining part of same contract which cannot be specifically performed

Specific Relief Act, 1963 — Sections 12(3), 12(3)(a)(b)(ii) — Civil Procedure Code, 1908 — Section 100.

IV (2006) CLT 13 (Punjab & Haryana HC)

STRIKING OFF DEFENCE — Grounds — Non-compliance with order of discovery
(See *Interrogatories*)

IV (2006) CLT 170 (Andhra Pradesh HC)

SUCCESSION — Hindu Woman's Right to Property — Enlargement of limited life estate into full ownership — Conditions to be fulfilled — Property acquired by widow under gift deed — To invoke benefit of Section 14(1) of Act it is necessary Hindu female should be in possession of property on day Act came into force and acquisition of property may be before or after Act — Where properties are sold before enforcement of Hindu Succession Act, widow could not be said to be in possession of property under Section 14(1) of Act — Section 14(1) of Act cannot be invoked — Once it is invalid in eyes of law, same need not be set aside by due process of law by filing another suit.

Hindu Succession Act, 1956 — Section 14(1).

IV (2006) CLT 66 (Madras HC)

— Hindu Woman's right to property — Plea of benefit of provision of Section 14(1), Hindu Succession Act raised at appellate stage for first time, maintainable.

IV (2006) CLT 66 (Madras HC)

— Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

Special Marriage Act, 1954 — Sections 18 and 21 — Indian Succession Act, 1925 — Sections 213 and 213(2).

IV (2006) CLT 192 (Bombay HC)

— Right to inheritance — Adoption, not proved — N, not adopted by O, one of sons of owner of property — This is evident from deed of gift executed by him — Even in transfer deed executed by K, N described as foster daughter of O and not as adopted daughter — She would inherit only property which fell to share of K on partition — N, as daughter of K can claim interest in his share in properties only — As K died in 1961, she will have 1/8th share — Extent of K's property would inevitably depend upon effect of deed of partition executed by parties in 1954.

Hindu Succession Act, 1956 — Section 8.

IV (2006) CLT 54 (SC)

— Succession Certificate — Grant of — Nominee of LIC does not get absolute right to amount due — Nomination only indicates hand which is authorised to receive amount — Nomination does not have effect of conferring a nominee beneficial interest in amount payable under LIC policy on death of assured — Amount, however, can be claimed by heirs of assured in accordance with law of succession governing them.

Succession Act, 1925 — Sections 372 and 373(4) — Insurance Act, 1938 — Section 39.

IV (2006) CLT 27 (Karnataka HC)

SUIT TO INCLUDE WHOLE CLAIM — return of plaint — Suit filed by plaintiffs against defendants for substantive relief of injunction, not to disturb their possession without due

process of law — If plaintiffs failed to seek leave Under Order 2 Rule 2, CPC, that does not mean plaintiffs are seeking relief of recovery of amount which is due and payable to them — If that leave is not sought, consequences will follow but that does not mean suit instituted by plaintiffs will become one for recovery of amounts due and payable to plaintiffs — Reason recorded by lower Court that as plaintiffs failed to take leave under Order 2 Rule 2, CPC, it will be assumed it was suit for claim of certain amounts, is inappropriate — Impugned judgment and order set aside.

Civil Procedure Code, 1908 — Order 2 Rule 2, Order 7 Rule 10.

IV (2006) CLT 168 (Bombay HC)

SUMMARY SUIT — Maintainability — Cheque dishonoured — Cheque is Bill of Exchange and suit based on dishonoured cheque is maintainable as summary suit

Civil Procedure Code, 1908 — Order 37 Rules 1(2) — Negotiable Instruments Act, 1881 — Section 6.

IV (2006) CLT 18 (Bombay HC)

— Leave to defend, unconditionally — Condition of pre-deposit of money — Quantum raised by Trial Court — Justifiability — Respondent filed suit for recovery along with interest from date of filing suit till realisation of amount — Defendant sought leave to defend — High Court directed deposit of Rs. 20,00,000/- with Trial Court to show his *bona fide* that he was entitled to leave to defend — Trial Court further directed deposit of Rs. 50 lakhs for grant of leave to defend — High Court on appeal held that discretion of Trial Court cannot be termed to be perverse or totally erroneous is view matter pending for 4 years and original claim was for Rs. 98,81,426.63 — Legality — Bare reading of order of High Court shows that High Court wanted quantum to be pinned at Rs. 20 lakhs and not more than that, no indication if amount more than that then appellant would pay differential amount — Further High Court directed refund in case Trial Court on consideration of merits come to conclusion that amount to be deposited less than Rs. 20 lakhs — Trial Court not right in directing further deposit of 50 lakhs — Order of Trial Court as well as High Court set aside.

Civil Procedure Code, 1908 — Order 37 Rule 3(5).

IV (2006) CLT 127 (SC)

SUMMONS — Issuance of — Examination of witness — Object and purposes of Order 16 Rule 1 — Necessity — Suit for recovery of amount based on mortgage deed — If purpose is not stated then Court is competent to deny demand, refuse to issue summons which cannot be questioned.

Civil Procedure Code, 1908 — Order 16 Rule 1(2), Order 16 Rule 1(3).

IV (2006) CLT 21 (Madras HC)

— Issuance of — Party to appear as witness — If party desirous of examining another party as witness, has no conflicting interest, whereas party to be summoned is supporting other party, who is seeking aid of Order 16 Rule 21, C.P.C., Court could issue summons and not in case where there is conflicting interest or no defence at all as in this case.

Civil Procedure Code, 1908 — Order 16 Rule 21.

IV (2006) CLT 21 (Madras HC)

SUPERVISORY JURISDICTION — Exercise of — Modification of one clause of consent terms (See *Consent Decree*)

IV (2006) CLT 105 (Bombay HC)

TERRITORIAL JURISDICTION — Applicability of Section 20, CPC — Letters Patent — Principles of Section 20, CPC cannot be made applicable to Clause 12, Letters Patent — Civil Procedure Code itself by Section 120 specifically excludes applicability of Section 20,

CPC to Chartered High Courts — Judgment of this Court in *Sarguja Transport* case cannot apply to present case — Reasons — Discussed — Jurisdiction of Civil Court under Section 20, CPC is different from jurisdiction of High Court under Clause 12 of Letters Patent.

Civil Procedure Code, 1908 — Sections 16, 17, 20, 120 — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Cause of action against respondents arisen within ordinary original jurisdiction of Bombay High Court — Reasons — If Court has no territorial jurisdiction (but otherwise competent to hear matter), matter should be heard and decided by such Court without demur, judgment will be valid and not void or *non est* — Insofar as territorial jurisdiction is concerned, relevant time to determine existence of jurisdiction would be when matter is heard.

Civil Procedure Code, 1908 — Section 20 — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Forum conveniens — Jurisdiction of Bombay High Court — Submission of appellant that Bombay High Court was not convenient Forum totally fallacious — Arbitration hearings are conducted at Bombay as per agreement — 8 full days hearing already held before this appeal heard — Record comprises of several thousand pages of documents compiled in over 12 voluminous box files all available in Mumbai — Appellants Directors and Senior Officers are in Mumbai — Evidence recorded and closed by parties in arbitration — Parties agreed on Mumbai as convenient location for conduct of arbitration — Contention of learned Counsel for respondent is that appellant indulging in Forum shopping to vest jurisdiction at Bellary, Karnataka with ultimate objective of challenging award before Civil Court at Bellary rather than Bombay High Court — Both judgments in *Rameshwar and Ors.* and *Shri Kishan* cases clearly distinguishable and do not apply to this case — Bombay High Court has jurisdiction to entertain Section 9 application of respondents — Directions issued to Bombay High Court to proceed on merits to determine matter in accordance with law.

Arbitration and Conciliation Act, 1996 — Section 9 — Civil Procedure Code, 1908 — Section 20.

IV (2006) CLT 7 (SC)

- In *Food Corporation of India* case, II (1999) SLT 119=II (1999) CLT 30 (SC), this Court pointed out that as per Section 20, CPC, suit can be filed where cause of action arises or where principal office is situated — Submission by learned Counsel for appellant that such observation was merely *obiter* in seeing out what Section 20, CPC stated and formed no part of judgment and *ratio decidendi* — Only ground on which appellant seeks reconsideration of *FCI* case is interpretation of Section 20, CPC in *FCI* case is erroneous and contrary to Supreme Court Judgment in *Patel Roadways* case — Even assuming appellant is correct, said statement of *FCI* purely *obiter qua* issue to be decided and reason behind it therein can never be basis for subsequent Bench to refer same for reconsideration — Appellant lost sight of fact that judgment in *Patel Roadways* is clearly distinguishable on facts since Court was dealing with jurisdiction of 3rd Asstt. City Civil Judge, governed by CPC and Section 20 and not by Letters Patent.

Civil Procedure Code, 1908 — Sections 20, 120 — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Munsiff Court — Award passed by Lok Adalat — If amount granted in award passed by Lok Adalat is within pecuniary jurisdiction of Munsiff Court for purpose of filing suit, execution shall be before Munsiff Court and if not, before Sub-Court — Territorial jurisdiction is to be determined as per Section 19(5)(ii), with reference to Court for which Adalat is organised.

Legal Services Authorities Act, 1987 — Section 19(5)(ii).

IV (2006) CLT 184 (Kerala HC)

- Rejection of plaint — Contention, clause in agreement provides that all legal matters pertaining to terms and conditions of employment shall be subject to exclusive jurisdiction of only Delhi Courts — Clause not qualified by words “exclusive”, “only”, “alone” — Appointment letter issued at Jaipur — Appointment made at Jaipur, interview held at Jaipur — Part of cause of action available to respondent-plaintiff at Jaipur — Suit triable at Jaipur — Application under Order 7 Rule 11 rightly rejected — No interference required. Civil Procedure Code, 1908 — Sections 20, 21, Order 2 Rule 2, Order 7 Rule 11.

IV (2006) CLT 136 (Rajasthan HC)

- Rejection of plaint — Suit for mandatory injunction, Infringement of trade mark, Passing off and unfair competition — Appellant/defendant is selling its goods in and around Delhi — Section 134 of Trade Marks Act does not override provisions of Section 20, CPC — It does not whittle down provisions of Section 20, CPC but only provide Additional Forum and place for filing suit in case of any trade mark violation — Inclusion of expression in statutory provision, viz. Section 134 of Trade Marks Act “notwithstanding anything contained in CPC”, means said provision to be read in addition to provisions of Section 20, CPC — On examination of provisions in facts of case, provisions of Sections 20(a) and 20(b), CPC not attracted but provision of Section 20(c), CPC attracted — Said provisions enable plaintiff to file suit in all such places where cause of action arises either wholly or in part — Single Judge rightly held this Court will have territorial jurisdiction to try and entertain suit — Order passed by Single Judge does not suffer from any infirmity. Trade Marks Act, 1999 — Section 134 — Civil Procedure Code, 1908 — Sections 20(a), 20(b), 20(c), Order 7 Rule 11.

IV (2006) CLT 127 (Delhi HC) (DB)

TRADE MARK & GOODWILL — Doctrine of Passing Off — Common law remedy whereby person is prevented from trying to wrongfully utilise reputation and goodwill of another by trying to deceive public through ‘passing off’ his goods — Concept of passing off as stated in Kerly’s Law of Trade Marks and Trade Names — Discussed.

IV (2006) CLT 75 (SC)

- Infringement — Acquiescence — Time gap between issuance of notice and filing of application for grant of injunction was not voluntary act on part of appellant — It had to wait for outcome of various proceedings pending before different Courts — Respondents having themselves taking recourse to judicial proceedings cannot now be permitted to set up defence of acquiescence on part of appellant.

IV (2006) CLT 75 (SC)

- Infringement — Burden of proof — Onus would be on defendants to show he is entitled thereto either by reason of acquiescence on part of owner of registered trade mark or he himself acquired right thereto.

IV (2006) CLT 75 (SC)

- Infringement, Passing off, Deceptive similarity — Injunction — Restraining respondents from using trade mark “RAMDEV”, in their label, packing materials, advertising materials, in respect of goods covered under registration of plaintiff’s mark — First respondent is rival trader of appellant-company — It did not in law have any right to use said trade mark, except by reason of terms contained in MOU or continuous user — Proprietor of registered trade mark has statutory right thereto — Respondents not restrained from manufacturing spices in their own factory and they started same under brand name of ‘swad’ — Respondents adopted part of appellant’s registered trade mark as part of its corporate name — They had been permitted merely to trade from seven outlets, had limited right under MOU and not permitted to start manufacturing of spices under name and style of ‘Ramdev Masala’ — In absence of any express licence or agreement to use appellant’s label, respondent’s use of self-same trade mark would not only lead to confusion but also cause deception — This Court cannot subscribe to views of Trial Judge

and High Court that although first respondent would be at liberty to carry on business of manufacture of spices, it can use mark 'Ramdev' only in seven outlets — What is registered is logo wherein words 'Ramdev' and 'Masala' are prominent — In terms of statutory provisions, respondents not legally permitted to sell its products in packages or labels deceptively similar to that of registered owner of trade mark — After MOU entered into parties having separated ceased to be members of joint family — MOU essential for determining rights of parties — Registration of trade mark and user *per se* lead to conclusion that plaintiff has *prima facie* case — Appellants able to establish existence of legal right in itself and violation of registered mark on part of respondents — When *prima facie* case is made out and balance of convenience is in favour of appellant, it may not be necessary to show more than loss of goodwill and reputation to fulfil condition of irreparable injury — Concurrent finding of both Courts that packing material and wrapper of both parties phonetically and visually similar and creates deception as well as confusion in mind of customers — Respondents restrained from using trade mark 'Ramdev Masala' in any of their products, however entitled to carry business in any other name — Appellant shall supply spices product by it for retail sale to seven outlets belonging to respondents with specification as to minimum permissible size of pouches and product having no relationship with Ramdev Food Products Pvt. Ltd. — Directions given by this Court.

Trade and Merchandise Marks Act, 1958 — Sections 2(d), 2(j), 2(q), 15(1), 15(2), 17, 18, 20, 22, 23, 27, 28, 29, 30(1)(b), 33 — Prevention of Food Adulteration Act, 1954 — Standards of Weights and Measures Act.

IV (2006) CLT 75 (SC)

— Infringement — Suit for *Ad interim* injunction — "Glucon D" and "Glucose D" — Appellants using word "Glucon D", respondents have used two common English words, *viz.*, "Glucose" and letter "D" — This cannot mean to be infringement because under Section 29 of Trade and Merchandise Marks Act, registered trade mark is infringed by person who uses trade mark which is identical with or deceptively similar to registered trade mark of somebody else — While respondents used common English word, *viz.*, "Glucose", and letter "D" on their packet, they have taken sufficient care to mention words "Dabur" making it clear that it is product of their Company — No *prima facie* case for grant of *ad interim* injunction.

Civil Procedure Code, 1908 — Order 39 Rules 1 and 2 — Trade and Merchandise Marks Act, 1958 — Section 29.

IV (2006) CLT 154 (Punjab & Haryana HC)

— Injunction — Grant of — General Test — Kerly's Law of Trade Marks and Trade Names.

IV (2006) CLT 75 (SC)

— Passing off/Infringement — Test — Likelihood of confusion or deception arising from similarity of marks is same both in infringement and passing off actions.

IV (2006) CLT 75 (SC)

— Purpose — To establish connection between goods and source thereof which would suggest quality of goods — Right to user of trade mark cannot have two origins — Proprietor of registered trade mark indisputably has statutory right thereto.

Trade and Merchandise Marks Act, 1958 — Section 21.

IV (2006) CLT 75 (SC)

— Trade mark considered inseparable part of goodwill of business — Sale of trade mark without sale of goodwill to some buyer is considered null and void.

IV (2006) CLT 75 (SC)

— Trade Mark *vis-a-vis* Civil Procedure Code— Section 34 of Trade mark Act and Section

20(c) of CPC — Suit for mandatory injunction, Infringement of trade mark, Passing off and unfair competition — Appellant/defendant is selling its goods in and around Delhi — Section 134 of Trade Marks Act does not override provisions of Section 20, CPC — It does not whittle down provisions of Section 20, CPC but only provide Additional Forum and place for filing suit in case of any trade mark violation — Inclusion of expression in statutory provision, viz. Section 134 of Trade Marks Act “notwithstanding anything contained in CPC”, means said provision to be read in addition to provisions of Section 20, CPC — On examination of provisions in facts of case, provisions of Sections 20(a) and 20(b), CPC not attracted but provision of Section 20(c), CPC attracted — Said provisions enable plaintiff to file suit in all such places where cause of action arises either wholly or in part — Single Judge rightly held this Court will have territorial jurisdiction to try and entertain suit — Order passed by Single Judge does not suffer from any infirmity.

Trade Marks Act, 1999 — Section 134 — Civil Procedure Code, 1908 — Sections 20(a), 20(b), 20(c), Order 7 Rule 11.

IV (2006) CLT 127 (Delhi HC) (DB)

— Waiver of right — First respondent expressly waived his right on trade mark registered in name of appellant-company, he could not claim said right indirectly.

IV (2006) CLT 75 (SC)

TRANSFER OF PROPERTY — Applicability of provisions of Sections 54, 107 and 123 of Transfer of Property Act to State of Punjab *w.e.f.* 1.4.55 *vide* Notification dated 23.3.55 — Scope of provisions — Introduction of Section 17(1A) of Registration Act made prospective from date of coming into force of Registration and Other Related Laws (Amendment) Act, 2001 — It insists that documents containing contracts to transfer for consideration any immovable property for purpose of Section 53A of Transfer of Property Act, shall be registered if created after commencement of Section 17(1A) of Registration Act.

Transfer of Property Act, 1882 — Sections 54, 107, 123 — Registration Act, 1908 — Section 17(1A).

IV (2006) CLT 27 (SC)

— Decree on admission based on family settlement — Enforceability (*See Registration*)

IV (2006) CLT 27 (SC)

— Termination of tenancy — Service of notice — Appellate Court allowed application filed under Order 6 Rule 17, CPC and permitted defendant-tenants to take plea relating to non-termination of tenancy by landlord by serving notice under Section 106, Transfer of Property Act — Justifiability — High Court allowed appeal keeping in view principle laid down in *Fateh Lal's* case — In view of this Court, appropriate for High Court to re-hear matter keeping in view principles laid down in *Jaswant Raj Soni's*, VII (2005) SLT 156=IV (2005) CLT 68 (SC), case — Matter remitted for fresh consideration.

Transfer of Property Act, 1882 — Section 106 — Civil Procedure Code, 1908 — Order 43 Rule 1(U), Order 6 Rule 17.

IV (2006) CLT 133 (SC)

UNIFORMITY RULE — Rule of uniformity cannot be applied between unlikes — There is no question of uniformity rules applying since Section 2(e) of 1996 Act expressly recognises that not only District Courts but also High Courts exercising original civil jurisdiction would have jurisdiction under 1996 Act — Appellant seeks to apply such uniformity rule between Subordinate Courts (governed by CPC) and High Courts (governed by Letters Patent) — Judgments cited by appellant in *Globe Cogeneration Power Ltd.* and *Kamal Pushp Enterprises*, 56 (1994) DLT 259 case, not applicable — Reasons discussed.

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

IV (2006) CLT 7 (SC)

WILL — Probate of — Not mandatory in territory of Delhi — Property can be dealt if other legal heirs grant their no objections or Will proved in some collateral proceedings

IV (2006) CLT 112 (Delhi HC)

— Probate — Will made by Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

Special Marriage Act, 1954 — Sections 18 and 21 — Indian Succession Act, 1925 — Sections 213 and 213(2).

IV (2006) CLT 192 (Bombay HC)

WORDS AND PHRASES — “Waiver” — Meaning of.

IV (2006) CLT 75 (SC)

WRIT JURISDICTION — Exercise of — Electricity — Grant of Load Factor Rebate in terms of provisions of 2004 Tariff of Board in respect of high tension consumers (See *Electricity Law*)

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Arbitration Act, 1940

— Expression — “Court” — Meaning of — Arbitration and Conciliation Act, 1996 — Section 2(e) — **Arbitration Act, 1940 — Section 2(c).**

IV (2006) CLT 7 (SC)

— **Section 29** — Interest — Award of — Claim of 18% interest p.a. on ground that Government itself is charging and recovering interest @ 18% on mobilization advance given by it while contractors required to borrow at higher rates of interest — Arbitrator has granted interest @ 18% p.a., accepted by Court below — Award of interest @ 18% p.a. just and reasonable and calls for no interference.

IV (2006) CLT 145 (Karnataka HC) (DB)

— **Section 30** — Award — Objections against — Court does not sit in appeal over award of Arbitrator — Court will not even reappreciate evidence — Arbitral Tribunal is domestic Tribunal of choice of parties.

IV (2006) CLT 145 (Karnataka HC) (DB)

— **Section 30** — Award — Objections against — Arbitrator is creature of contract between parties — If he ignores specific terms of contract, it would be question of jurisdictional error — Where fundamental terms of agreement between parties ignored by Arbitrator, such Arbitrator exceeds his jurisdiction — Arbitrator can act only within four corners of agreement and not beyond thereto.

IV (2006) CLT 145 (Karnataka HC) (DB)

Arbitration and Conciliation Act, 1996

— Uniformity Rule — Rule of uniformity cannot be applied between unlikes — There is no question of uniformity rules applying since Section 2(e) of 1996 Act expressly recognises that not only District Courts but also High Courts exercising original civil jurisdiction would have jurisdiction under 1996 Act — Appellant seeks to apply such uniformity rule

between Subordinate Courts (governed by CPC) and High Courts (governed by Letters Patent) — Judgments cited by appellant in *Globe Cogeneration Power Ltd. and Kamal Pushp Enterprises*, 56 (1994) DLT 259 case, not applicable — Reasons discussed — **Arbitration and Conciliation Act, 1996 — Section 2(c)**.

IV (2006) CLT 7 (SC)

- Expression — “Court” — Meaning of — **Arbitration and Conciliation Act, 1996 — Section 2(e)** — Arbitration Act, 1940 — Section 2(c).

IV (2006) CLT 7 (SC)

- **Section 4** — Waiver of Right to Object — Participation without objection would amount to waiver of right to object.

IV (2006) CLT 196 (Calcutta HC)

- **Section 8** — Reference of dispute to Arbitration — Condition precedent — Non-compliance of — Plea as to limitation — Whether request for arbitration is barred by limitation is question to be considered by Arbitrator and it cannot be considered by Court — I.A. filed by petitioner is in violation of Section 8 of Act — In written statement, it is mentioned that there is arbitration clause — Court fee was paid — Thereafter application under Section 8 of Act made — Rejection of application is correct.

IV (2006) CLT 141 (Kerala HC)

- **Section 8** — Reference of Dispute — Stay of Suit — Dispute regarding agreement of sale — Stay of suit in view of arbitration clause in application under Section 8 of Act — Parties to suit alleged to be not parties to concerned agreement — Plaintiff not only wanted to assert his rights under agreement for sale but also based his claim only on basis of said agreement and agreement only — Although plaintiff made allegation as against other defendants at end did not pray for any relief against them — Court below did not have any other option but to stay suit as it came within mischief of Section 8 of Act — Controversy between parties already existing when plaintiff entered into agreement for sale with D — Existence of agreement of V also there — Keeping their eyes wide open plaintiff entered into agreement for sale coupled with arbitration clause — Despite controversy plaintiff agreed to refer disputes to arbitration — It is not open for plaintiff to resist such order of stay.

IV (2006) CLT 205 (Calcutta HC)

- Territorial jurisdiction — Forum conveniens — Jurisdiction of Bombay High Court — Submission of appellant that Bombay High Court was not convenient Forum totally fallacious — Arbitration hearings are conducted at Bombay as per agreement — 8 full days hearing already held before this appeal heard — Record comprises of several thousand pages of documents compiled in over 12 voluminous box files all available in Mumbai — Appellants Directors and Senior Officers are in Mumbai — Evidence recorded and closed by parties in arbitration — Parties agreed on Mumbai as convenient location for conduct of arbitration — Contention of learned Counsel for respondent is that appellant indulging in Forum shopping to vest jurisdiction at Bellary, Karnataka with ultimate objective of challenging award before Civil Court at Bellary rather than Bombay High Court — Both judgments in *Rameshwar and Ors.* and *Shri Kishan* cases clearly distinguishable and do not apply to this case — Bombay High Court has jurisdiction to entertain Section 9 application of respondents — Directions issued to Bombay High Court to proceed on merits to determine matter in accordance with law — **Arbitration and Conciliation Act, 1996 — Section 9** — Civil Procedure Code, 1908 — Section 20.

IV (2006) CLT 7 (SC)

- Appointment of Arbitrator — Waiver of right — Contract between parties subjected to provisions of 1996 Act — In terms of Clause 25 of contract Arbitrator appointed by Managing Director to act as arbitral Tribunal — Appellants consented to appointment of B as arbitral Tribunal, apart from failure of M.D. to appoint Arbitrator within time — Hence

appellants waived their right to appoint Arbitrator — Person may have legal right but if same waived enforcement thereof cannot be insisted — Submission of appellant Counsel that Counsel who consented to appointment of B was Junior Counsel and had no instructions in this behalf, cannot be accepted — In terms of Order III Rule 1, CPC litigant represented by Advocate — Concession made by such Advocate binding on party whom he represents — Matter is however different if concession made on question of law — Wrong concession on legal question may not be binding on his client — Appellant never contended before High Court that Counsel had no authority to make such concession — Advocate consented to appointment of person as Arbitrator by High Court in exercise of its jurisdiction under Section 11 of 1996 Act, cannot now be permitted to resile from it — Further allegations contained in application not supported by affidavit — No error committed by High Court — High Court's decision held to be final — Not fit case to exercise discretionary jurisdiction — Civil Procedure Code, 1908 — Order III Rule 1 — **Arbitration and Conciliation Act, 1996 — Section 11.**

IV (2006) CLT 37 (SC)

- Appointment of Arbitrator — Under Section 11(6) of Act, Court has jurisdiction to make appointment only when person including institution, fails to perform any function entrusted to it under that procedure — Relief claimed by respondents by invoking Section 11(6) wholly erroneous — Prior to order dated 1.7.2005, respondents only sought clarification from IRC and without making reference to them immediately filed petition under Section 11(6) of Act on purported ground that IRC failed to make appointment within stipulated time — **Arbitration and Conciliation Act, 1996 — Section 11(6).**

IV (2006) CLT 135 (SC)

- **Section 11(6)** — Appointment of Arbitrator — Ouster of jurisdiction and confining jurisdiction to particular Court by agreement to parties — Parties cannot by consent ouster jurisdiction of any Court but can restrict jurisdiction to one of Courts where cause of action arises, within territorial jurisdiction of several Courts and parties choose to confine their actions before one such Court to exclusion of other Courts — Such agreement binds parties to agreement and Courts will honour it — Though petition under Section 11(6) of Act is not petition for adjudication of dispute itself, it is in context of some dispute between parties arising under agreement, particularly parties having failed to agree on common Arbitrator and related to agreement and not independent or *de hors* agreement — If parties agreed to restrict jurisdiction of Court, it is for petitioner to move agreed Court with jurisdiction.

IV (2006) CLT 12 (Karnataka HC)

- **Section 11(6)** — Appointment of Arbitrator nominee on behalf of non-applicants — Prior to applicant moved application under Section 11 of Act, no arbitral Tribunal was appointed by non-applicants — Non-applicant's right to appoint Arbitrator ceased — Under Section 11(6) of Act this Court empowered to issue necessary directions for appointment of Arbitrator nominee on behalf of non-applicant.

IV (2006) CLT 188 (Rajasthan HC)

- **Sections 11(6), 12, 12(3), 13 and 16** — Appointment of Arbitrator — Challenge against — Ground for challenge enumerated under Section 12 of Act — Conjoint reading of Sections 12(3), 13 and 16 of Act demonstrates that question of impartiality of Arbitrator to be raised before Arbitrator himself, who is competent to decide such question.

IV (2006) CLT 53 (Rajasthan HC)

- Appointment of Arbitrator — Proceeding in arbitration is neither suit under Section 22(1) of SICA nor proceedings thereunder — There is no prohibition under Section 22, SICA to take up arbitration proceedings to adjudicate liability of parties to arbitration proceedings — Section 22 of SICA does not debar arbitration proceedings under Arbitration and Conciliation Act — Objections to arbitration proceedings raised by respondent rejected — Arbitrator appointed by this Court accordingly — **Arbitration and Conciliation Act, 1996**

— **Sections 11(6), 11(6)(c), 15, 15(1)(a)** — Sick Industrial Companies (Special Provisions) Act, 2002 — Sections 22(1), 22.

IV (2006) CLT 1 (SC)

— Appointment of Substitute Arbitrator — Named Arbitrator refused to act as Arbitrator — Arbitration agreement itself does not come to end — Remedy provided under Section 15 of Act for appointment of another Arbitrator, when Arbitrator appointed by parties as provided in agreement refuses to act as Arbitrator — Next appointment could be made as agreed by parties — But where no such procedure prescribed authorising appointment of another Arbitrator then agreement clause cannot operate — No stipulation in contract entered into between parties specifically debarring appointment of fresh Arbitrator if named Arbitrator refuses to act and perform his function as Arbitrator — **Arbitration and Conciliation Act, 1996** — **Sections 11(6), 11(6)(c), 11(12), 15, 15(1)(a)**.

IV (2006) CLT 1 (SC)

— **Section 12** — Appointment of Arbitrator — Jurisdiction of Arbitral Tribunal cannot be equated with jurisdiction of Court or Tribunal set up by and/or under statute — Arbitral Tribunal does not derive jurisdiction from any statute but from agreement between parties — No reason why parties cannot relax by their conduct any of conditions agreed to in relation to appointment of Arbitrator.

IV (2006) CLT 196 (Calcutta HC)

— **Section 12(3)** — Appointment of Arbitrator — Challenge against — Grounds of challenge — Doubt as to independence or impartiality of Arbitrator and Arbitrator does not possess requisite qualification — None of these grounds exist — Having participated in arbitration proceedings without questioning authority of Arbitrator at any stage, in course of arbitration proceedings petitioner acquiesced in appointment of Arbitrator.

IV (2006) CLT 196 (Calcutta HC)

— Substitution of Arbitrator — Termination of mandate of Presiding Arbitrator — Jurisdiction of Court under Section 11(6), Act to appoint Arbitrator — Under Section 15(2) of Act, on termination of mandate of Presiding Arbitrator, two nominated Arbitrators required to reach consensus — On their failure to arrive at consensus only respondent No. 2 authorised to make appointment — Unless respondent No. 2 failed to exercise its jurisdiction, High Court could not assume jurisdiction under Section 11(6) of Act — No cause of action arisen to seek appointment from High Court under Section 11(6) of Act — Said petition premature — **Arbitration and Conciliation Act, 1996** — **Sections 15(1), 15(2), 11(6)**.

IV (2006) CLT 135 (SC)

— Appointment of Arbitrator — If one of Arbitrators is retired Judge, Presiding Arbitrator also has to be retired Judge — No such provision exists in law — Parties entered into contract after fully understanding import of terms so agreed to from which there cannot be any deviation — Courts held that parties are required to comply with procedure of appointment as agreed to and defaulting party cannot be allowed to take advantage of its own wrong — Order passed setting aside appointment of Presiding Arbitrator by High Court and for said appointment procedure contemplated under contract agreement to be followed and IRC be approached — **Arbitration and Conciliation Act, 1996** — **Sections 15(1), 15(2), 11(6)**.

IV (2006) CLT 135 (SC)

— **Sections 16, 16(2), 16(5)** — Jurisdiction of Arbitral Tribunal — Plea that Arbitral Tribunal has no jurisdiction to be raised not later than submission of statement of defence — Party not precluded from raising such plea merely because he has appointed or participated in appointment of Arbitrator — No application filed and no statement recorded for want of jurisdiction in terms of Act despite notice — It cannot be said Arbitral Tribunal committed

any error in passing Arbitral Award in absence of plea of want of jurisdiction — No reason to rule impugned award is void on ground of Section 16(5) without referring to Section 16(2).

IV (2006) CLT 36 (Karnataka HC) (DB)

- **Section 34** — Limitation Act, 1963 — Section 5 — Setting aside Award — Condonation of delay in making application — Section 5 of Limitation Act not applicable to proceedings under Section 34 of Arbitration and Conciliation Act for setting aside Award — Application under Section 5 of Limitation Act not maintainable.

IV (2006) CLT 36 (Karnataka HC) (DB)

- **Section 34** — Award — Objections against — This Court does not sit in appeal over award made by Arbitral Tribunal — It is not for this Court to reappraise evidence on record — Scope of interference limited — Arbitrator being creature of agreement bound by agreement between parties — Arbitrator cannot ignore agreement or traverse beyond agreement or make award *ex facie*, Contrary to any provision of agreement — Award cannot be interfered just because this Court finds other interpretation more acceptable — Vague assertions made against Arbitrator of having ignored contractual provisions and claims allowed on insufficient evidence on record — It is not for this Court to weigh sufficiency of evidence on record.

IV (2006) CLT 196 (Calcutta HC)

- **Section 34** — Award — Objections against — Unreasoned award — Award backed by intelligence reasons — Arbitrator discussed reasons which led him to make award in respect of various claims — It is not necessary for Arbitrator to give detailed reasons discussing each and every document and averment in respective pleadings of parties — No grounds made out for interference with award.

IV (2006) CLT 196 (Calcutta HC)

Civil Procedure Code, 1908

- **Sections 5, 6, 38 and 39(3)** — Pecuniary Jurisdiction — Valuation for purpose of Court fee as shown in plaint is Rs. 85,000 — Munsiff Court has pecuniary jurisdiction to try suit — Jurisdiction is to be taken note of only for purpose of adjudication and not for execution.

IV (2006) CLT 184 (Kerala HC)

- Hindu Marriage Act, 1955 — Section 13(1)(ib) — **Civil Procedure Code, 1908 — Section 11** — Desertion — Essential Ingredients — Dismissal of earlier petition filed by petitioner on ground of cruelty and desertion — Petition barred by principles of *res judicata* — There was no occasion for respondent to take conscious decision of withdrawing from company of appellant, from day first petition dismissed till second petition filed — Respondent lacked necessary *animus deserendi* and there is no fresh cause of action for filing petition — Finding that respondent-wife not deserted appellant confirmed right upto highest Court — Parties have child and appellant seems to be in hurry to snap ties as appears from his filing fresh petition for divorce at the same time filing second appeal — Mere proof of period of separation of respondent would not give rise to cause of action — Both Courts justified in holding that petition was barred by principles of *res judicata* — Since respondent-wife had no opportunity for resuming cohabitation during period appellant was fighting with her in hierarchy of Courts there is no question of respondent bearing animus deserendi, ruling out any cause for appellant to seek divorce on ground of desertion.

IV (2006) CLT 2 (Bombay HC)

- **Section 11, Order 7 Rule 14(3)** — *Res Judicata* — Applicability — Production of documents — Earlier application for production of documents rejected as it was found vague and casual — Order passed cannot operate as *res judicata* in making fresh application — Plaintiffs could be permitted to produce these documents — Trial Court committed

illegality in refusing to grant leave for production of documents — Inconvenience caused to defendant can be compensated by awarding cost of Rs. 2,500.

IV (2006) CLT 182 (Bombay HC)

- Territorial Jurisdiction — Applicability of Section 20, CPC — Letters Patent — Principles of Section 20, CPC cannot be made applicable to Clause 12, Letters Patent — Civil Procedure Code itself by Section 120 specifically excludes applicability of Section 20, CPC to Chartered High Courts — Judgment of this Court in *Sarguja Transport* case cannot apply to present case — Reasons — Discussed — Jurisdiction of Civil Court under Section 20, CPC is different from jurisdiction of High Court under Clause 12 of Letters Patent — **Civil Procedure Code, 1908 — Sections 16, 17, 20, 120** — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Distinction — Scope of CPC and Letters Patent — Letters Patent and CPC operate in separate fields, *i.e.*, Letters Patent specifically conferring jurisdiction on Chartered High Courts and CPC, conferring jurisdiction on all other Courts — **Civil Procedure Code, 1908 — Sections 16, 17, 20, 120** — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Territorial jurisdiction — Cause of action against respondents arisen within ordinary original jurisdiction of Bombay High Court — Reasons — If Court has no territorial jurisdiction (but otherwise competent to hear matter), matter should be heard and decided by such Court without demur, judgment will be valid and not void or *non est* — Insofar as territorial jurisdiction is concerned, relevant time to determine existence of jurisdiction would be when matter is heard — **Civil Procedure Code, 1908 — Section 20** — Letters Patent — Clause 12.

IV (2006) CLT 7 (SC)

- Territorial jurisdiction — Forum conveniens — Jurisdiction of Bombay High Court — Submission of appellant that Bombay High Court was not convenient Forum totally fallacious — Arbitration hearings are conducted at Bombay as per agreement — 8 full days hearing already held before this appeal heard — Record comprises of several thousand pages of documents compiled in over 12 voluminous box files all available in Mumbai — Appellants Directors and Senior Officers are in Mumbai — Evidence recorded and closed by parties in arbitration — Parties agreed on Mumbai as convenient location for conduct of arbitration — Contention of learned Counsel for respondent is that appellant indulging in Forum shopping to vest jurisdiction at Bellary, Karnataka with ultimate objective of challenging award before Civil Court at Bellary rather than Bombay High Court — Both judgments in *Rameshwar and Ors.* and *Shri Kishan* cases clearly distinguishable and do not apply to this case — Bombay High Court has jurisdiction to entertain Section 9 application of respondents — Directions issued to Bombay High Court to proceed on merits to determine matter in accordance with law — Arbitration and Conciliation Act, 1996 — Section 9 — **Civil Procedure Code, 1908 — Section 20.**

IV (2006) CLT 7 (SC)

- **Sections 20, 21, Order 2 Rule 2, Order 7 Rule 11** — Territorial Jurisdiction — Rejection of plaint — Contention, clause in agreement provides that all legal matters pertaining to terms and conditions of employment shall be subject to exclusive jurisdiction of only Delhi Courts — Clause not qualified by words “exclusive”, “only”, “alone” — Appointment letter issued at Jaipur — Appointment made at Jaipur, interview held at Jaipur — Part of cause of action available to respondent-plaintiff at Jaipur — Suit triable at Jaipur — Application under Order 7 Rule 11 rightly rejected — No interference required.

IV (2006) CLT 136 (Rajasthan HC)

- Territorial jurisdiction — In *Food Corporation of India* case, II (1999) SLT 119=II (1999) CLT 30 (SC), this Court pointed out that as per Section 20, CPC, suit can be filed where cause of

action arises or where principal office is situated — Submission by learned Counsel for appellant that such observation was merely *obiter* in seeing out what Section 20, CPC stated and formed no part of judgment and *ratio decidendi* — Only ground on which appellant seeks reconsideration of *FCI* case is interpretation of Section 20, CPC in *FCI* case is erroneous and contrary to Supreme Court Judgment in *Patel Roadways* case — Even assuming appellant is correct, said statement of *FCI* purely *obiter qua* issue to be decided and reason behind it therein can never be basis for subsequent Bench to refer same for reconsideration — Appellant lost sight of fact that judgment in *Patel Roadways* is clearly distinguishable on facts since Court was dealing with jurisdiction of 3rd Asstt. City Civil Judge, governed by CPC and Section 20 and not by Letters Patent — **Civil Procedure Code, 1908 — Sections 20, 120 — Letters Patent — Clause 12.**

IV (2006) CLT 7 (SC)

- Trade Marks Act, 1999 — Section 134 — **Civil Procedure Code, 1908 — Sections 20(a), 20(b), 20(c), Order 7 Rule 11** — Territorial Jurisdiction — Rejection of plaint — Suit for mandatory injunction, Infringement of trade mark, Passing off and unfair competition — Appellant/defendant is selling its goods in and around Delhi — Section 134 of Trade Marks Act does not override provisions of Section 20, CPC — It does not whittle down provisions of Section 20, CPC but only provide Additional Forum and place for filing suit in case of any trade mark violation — Inclusion of expression in statutory provision, *viz.* Section 134 of Trade Marks Act “notwithstanding anything contained in CPC”, means said provision to be read in addition to provisions of Section 20, CPC — On examination of provisions in facts of case, provisions of Sections 20(a) and 20(b), CPC not attracted but provision of Section 20(c), CPC attracted — Said provisions enable plaintiff to file suit in all such places where cause of action arises either wholly or in part — Single Judge rightly held this Court will have territorial jurisdiction to try and entertain suit — Order passed by Single Judge does not suffer from any infirmity.

IV (2006) CLT 127 (Delhi HC) (DB)

- **Section 96(2) — Order 8 Rule 13, Order 43 Rule 1(d)** — Setting aside *ex parte* decree — It is lawful for Court to pronounce *ex parte* judgment, if despite opportunity, defendant files no written statement and said judgment and decree can be challenged under Section 96(2), CPC — Appellate Court can interfere with judgment and decree only when appellants can show evidence adduced by plaintiff is not sufficient to establish case to pass decree.

IV (2006) CLT 28 (Gauhati HC)

- **Section 96(2) — Order 9 Rule 13, Order 43 Rule 1(d)** — Setting aside *ex parte* decree — Appeal against *ex parte* judgment and decree cannot be converted into proceedings for setting aside decree with concomitant duty of affording party opportunity of adducing evidence on any ground raised in support under Order 9 Rule 13, CPC — Nor can such appeal be converted into appeal under Order 43 Rule 1(d), CPC — It is essential for this Court to satisfy itself as to whether appellants have made out case for setting aside judgment and decree.

IV (2006) CLT 28 (Gauhati HC)

- Second Appeal — Substantial question of law — Consent decree — Challenge against — Non-joinder of parties — High Court allowed second appeal without framing question of law, clearly contrary to mandate of Section 100, CPC — Categorical observation of Trial and Appellate Court, resolution adopted by trustees including chief trustee and advocate for trust who himself a trustee clearly established earlier suit filed with knowledge and consent of all trustees — Factual finding that suit filed with knowledge and consent of all trustees not disputed — If trustees had no knowledge of suit they could not have adopted resolution for compromise in particular mode indicating three alternatives — They specifically authorised chief trustee and advocate who was also trustee to enter into compromise — High Court not justified in holding suit maintainable — Judgment of High Court indefensible and set aside — **Civil Procedure Code, 1908 — Section 100.**

IV (2006) CLT 70 (SC)

- Specific Relief Act, 1963 — Sections 12(3), 12(3)(a)(b)(ii) — **Civil Procedure Code, 1908 — Section 100** — Suit for specific performance of part of contract, or alternative relief for recovery of earnest money along with interest — Suit maintainable and agreement to sell could be read for collateral purposes — Under Section 12(3) of Act filing of such suit permitted only when plaintiff relinquishes all claims to performance of remaining part of same contract which cannot be specifically performed — Lower Appellate Court rightly rejected claim of plaintiff-respondent for specific performance — Lower Appellate Court is best Judge of fact and law as held by Supreme Court in *Santosh Bazari* case, I (2001) SLT 933=II (2001) CLT 270 (SC).

IV (2006) CLT 13 (Punjab & Haryana HC)

- **Section 100** — Second Appeal — Grounds for interference — Once Court comes to conclusion that important piece of evidence has been illegally discarded or inadmissible piece of evidence taken into consideration — Then after evaluating admissible evidence this Court can always consider effect of such evidence on finding of fact — No blanket prohibition with regard to interference in finding of fact by this Court under Section 100, CPC — If finding shown to be perverse, then it would be question of law.

IV (2006) CLT 39 (Punjab & Haryana HC)

- **Section 100** — Hindu Succession Act, 1956 — Section 14(1) — Second Appeal — Plea of benefit of provision of Section 14(1), Hindu Succession Act raised at appellate stage for first time, maintainable — *Vide Mahesh Chand Sharma* case, I (1996) CLT 165 (SC).

IV (2006) CLT 66 (Madras HC)

- Hindu Succession Act, 1956 — Sections 14(1), 14(2) — **Civil Procedure Code, 1908 — Section 100** — Second Appeal — Substantial question of law — Suit for Possession and Permanent injunction — Will executed by testator, deceased husband of plaintiff, surrounded by suspicious circumstances and not proved to be duly executed by testator during his lifetime — Question as to whether Section 14(1) or Section 14(2) of Hindu Succession Act applies is only of academic interest — Nothing shown that findings with regard to Will recorded by two Courts below suffer from any infirmity or contrary to record — No question of law, much less any substantial question of law, arises in appeal.

IV (2006) CLT 82 (Punjab & Haryana HC)

- Evidence Act, 1872 — Section 42 — **Civil Procedure Code, 1908 — Section 100** — Second Appeal — Relevancy and effect of judgments, orders or decrees — In earlier litigation defendant-respondent failed to prove he was adopted son of original owner of property or Will executed in his favour — Judgment and decree passed in earlier litigation in respect of same property although not inter-parties would be relevant to determine question raised in later dispute albeit between different parties — No vital piece of documentary evidence or admission excluded from consideration — Jurisdiction of this Court under Section 100, CPC cannot be exercised in these circumstances.

IV (2006) CLT 143 (Punjab & Haryana HC)

- **Section 114, Order 41 Rule 1** — Review application — Maintainability — Error apparent on face of record — Detection of apparent error or mistake on face of record calls for reconsideration or recall of the order — Stand taken by Single Judge appears to be incorrect.

IV (2006) CLT 75 (Calcutta HC) (DB)

- **Section 114 r/w Order 47** — Delhi High Court Rules and Orders — Volume V Chapter I Part A(a) — Review Petition — Maintainability — Rules governing filing of — Applications though designed as that for recall, really are petitions seeking review of that order — Petitioner unable to show any provision in CPC or Rules that permits application for recall — Present applications do not satisfy mandatory pre-conditions, for review

petition to be considered — By labelling applications as that of 'recall', petitioners sought to avoid procedure outlined in relevant provisions of CPC — Same sufficient to dismiss present applications.

IV (2006) CLT 88 (Delhi HC) (DB)

- **Section 114 r/w Order 47** — Review Petition — Maintainability — Prayer for allotment of shed in name of petitioner — Petitioner claimed to be tenant/licensee of original allottee in respect of said shed — Estate Officer directed eviction — Eviction order became final against both petitioner and original allottee — Prayer for allotment incapable of being granted — Further contention, Court permitted him to pay to DSIDC, amount towards allotment of shed — Said payment without prejudice to rights and contentions of parties — Mere fact of Court ordering payment to DSIDC, cannot create any right in question — Open to petitioner to seek return of deposited amount — No ground to review/recall of earlier order.

IV (2006) CLT 88 (Delhi HC) (DB)

- Revision — Maintainability — Principles of natural justice — Compliance of — Right to be heard — Suit for declaration of title and injunction — Single Judge allowed revision petition without issuing notice to appellant — Application for review rejected by High Court — Perusal of order of High Court itself shows adjudication adverse to appellant was done by disposal of civil revision without issuance of notice before such adverse injunction — Clearly violative of principles of natural justice — Order passed by Single Judge in civil revision and review application set aside — Matter remitted to High Court for fresh consideration — **Civil Procedure Code, 1908 — Section 115.**

IV (2006) CLT 73 (SC)

- **Section 115 [as amended by CPC (Amendment) Act, 1999], Order 39 Rules 1 and 2** — Revision — Maintainability — Order directing issue of notice on temporary injunction application under Order 39 Rule 1, CPC is not an order — Though it may come within ambit of 'case decided' would not amount to disposal of injunction application or terminate proceedings of temporary injunction — Revision against not maintainable.

IV (2006) CLT 72 (Allahabad HC)

- **Section 115 proviso, Order 14 Rule 2(b)** — Revision — Maintainability — Revision petition against order refusing to frame preliminary issue not maintainable.

IV (2006) CLT 122 (Gauhati HC)

- Land Acquisition Act, 1894 — Section 13A — **Civil Procedure Code, 1908 — Section 152** — Correction of clerical errors — Notice — Authority of Collector — Scope of Section 13A of Act — Complete error in calculating value of building and age of building — Correction was only arithmetical error — Mistake noted by P.W.D. authorities and reported to second respondent, who subsequently corrected same within period of 6 months — Collector authorised to correct clerical error or arithmetical mistakes or errors only after giving notice to and after hearing affected persons — Same not legally done — Affixture of notice not sufficient — Award passed by second respondent set aside with direction to dispose of matter after hearing writ petitions basing on their objections if any.

IV (2006) CLT 91 (Kerala HC)

- **Section 152, Order 23 Rule 3** — Constitution of India, 1950 — Article 227 — Consent Decree — Modification of one clause of consent terms filed pursuant to which consent decree is passed, not maintainable under Order 23 Rule 3, CPC — ADJ justified in dismissing application — Not fit case to exercise jurisdiction under Article 227 of constitution to set aside impugned order.

IV (2006) CLT 105 (Bombay HC)

- **Order 1 Rule 10** — Impleadment as Party — Will — Petition for grant of probate of Will

dated 9.9.1997 pending — One of sons of testator R propounded another Will dated 30.10.1997 and executed sale deed in favour of A, who further entered into agreement to sell one of properties with respondent No. 1 — Neither any probate nor any 'no objection certificate' obtained by R — Application filed by respondent for impleadment in probate allowed by Trial Court — Challenge against — *Lis* in respect of probate of Will dated 9.9.1997 pending — R has no authority at that stage to unilaterally execute document for sale on basis of Will dated 30.10.1997 without obtaining probate of same or no objection of legal heir — Though probate not mandatory in territory of Delhi — Property can be dealt if other legal heirs grant their no objections or Will proved in some collateral proceedings — None of these things happened in present case — Purchaser A and thereafter respondent got into speculative purchase of litigated property — Respondent No. 1 cannot hide behind plea of *bona fide* purchaser since purchaser itself cannot be said to be *bona fide* — Evidence of petitioners' stand almost concluded respondent cannot be permitted to delay probate proceedings — Respondent No. 1 not permitted to intercede in probate proceedings filed by legal heirs of late testator.

IV (2006) CLT 112 (Delhi HC)

- **Order 2 Rule 2, Order 7 Rule 10** — Suit to include whole claim, return of plaint — Suit filed by plaintiffs against defendants for substantive relief of injunction, not to disturb their possession without due process of law — If plaintiffs failed to seek leave Under Order 2 Rule 2, CPC, that does not mean plaintiffs are seeking relief of recovery of amount which is due and payable to them — If that leave is not sought, consequences will follow but that does not mean suit instituted by plaintiffs will become one for recovery of amounts due and payable to plaintiffs — Reason recorded by lower Court that as plaintiffs failed to take leave under Order 2 Rule 2, CPC, it will be assumed it was suit for claim of certain amounts, is inappropriate — Impugned judgment and order set aside.

IV (2006) CLT 168 (Bombay HC)

- Appointment of Arbitrator — Waiver of right — Contract between parties subjected to provisions of 1996 Act — In terms of Clause 25 of contract Arbitrator appointed by Managing Director to act as arbitral Tribunal — Appellants consented to appointment of B as arbitral Tribunal, apart from failure of M.D. to appoint Arbitrator within time — Hence appellants waived their right to appoint Arbitrator — Person may have legal right but if same waived enforcement thereof cannot be insisted — Submission of appellant Counsel that Counsel who consented to appointment of B was Junior Counsel and had no instructions in this behalf, cannot be accepted — In terms of Order III Rule 1, CPC litigant represented by Advocate — Concession made by such Advocate binding on party whom he represents — Matter is however different if concession made on question of law — Wrong concession on legal question may not be binding on his client — Appellant never contended before High Court that Counsel had no authority to make such concession — Advocate consented to appointment of person as Arbitrator by High Court in exercise of its jurisdiction under Section 11 of 1996 Act, cannot now be permitted to resile from it — Further allegations contained in application not supported by affidavit — No error committed by High Court — High Court's decision subject to just exception held to be final — Not fit case to exercise discretionary jurisdiction — **Civil Procedure Code, 1908** — **Order 3 Rule 1** — Arbitration and Conciliation Act, 1996 — Section 11.

IV (2006) CLT 37 (SC)

- **Order 6 Rule 17** — Amendment of written Statement — Tracing of title to suit property — Though proposed amendment is belated one, amendment aims to supply more materials to existing plea and does not change existing defence or introduce totally new plea — Order of Subordinate Judge set aside and amendment allowed.

IV (2006) CLT 46 (Madras HC)

- **Order 6 Rule 17** — Amendment of pleadings — Object — Minimize litigation.

IV (2006) CLT 46 (Madras HC)

- **Order 6 Rule 17** — Amendment in Written Statement — L.Rs. of deceased-defendant have same right as possessed by deceased-defendant — Had defendant been alive, he would have same right to seek amendment in Written Statement — Said right cannot be declined to L.Rs. — Challenge in suit is to mutation on basis of Will and consent decree suffered by B.S. in favour of his son — Impugned order passed by Trial Court set aside — Petitioner permitted to amend Written Statement as prayed so that issue regarding inheritance of PK on basis of Will adjudicated upon in civil suit.

IV (2006) CLT 132 (Punjab & Haryana HC)

- **Order 6 Rule 17 Proviso** — Amendment of Pleadings — Condonation of delay — Amendment application filed after period of 9 months — Proviso to Order 6 Rule 17, CPC, states once trial has been commenced, no application for amendment of pleadings can be allowed unless Court concludes in spite of due diligence, party could not have raised matter before commencement of trial — If really defendant trespassed into property and in possession of property, plaintiff would have brought it to notice of Court — When trial already commenced, amendment petition filed without giving any valid reason for not filing amendment before commencement of trial — Lower Court correctly applied proviso and came to correct conclusion that plaintiff not stated any reason in amendment petition for belated filing — No error or infirmity in order of lower Court — No improper exercise of discretion in dismissal of Amendment petition — Impugned order upheld.

IV (2006) CLT 57 (Madras HC)

- **Order 8 Rule 6A, Order 8 Rule 9, Order 47 Rule 1** — Constitution of India, 1950 — Article 226 — Counter-claim — Filing of — Counter-claim after filing of written statement not barred provided cause of action accrued before defendant delivered his defence and period of limitation fixed for raising such claim not expired — Court has discretion to permit written statement containing plea of counter-claim being filed belatedly — Counter-claim can be permitted to be introduced by way of amendment or by way of subsequent pleadings, under Order 8 Rule 9, CPC.

IV (2006) CLT 189 (Kerala HC)

- Setting aside *Ex parte* Decree — Imposition of condition — Justifiability — Furnishing of security — Application under Order 9 Rule 13, CPC filed by defendant- respondent No. 1 for setting aside judgment and decree, upon admission for sum of Rs. 37,26,428/- along with interest, passed in favour of appellant-plaintiff — Single Judge exercised its discretion unreasonably in directing securing of entire sum of Rs. 37 lacs in form of bank guarantee or deposit sum in cash — Interest of justice would be sub-served if respondent No. 1 directed to furnish security to extent of Rs. 5 lacs to satisfaction of Single Judge — Further observations made and directions issued — **Civil Procedure Code, 1908 — Order 9 Rule 7, Order 9 Rule 13.**

IV (2006) CLT 64 (SC)

- Setting Aside *ex parte* Decree — Scope of Order 9 Rule 13, CPC — Interpretation of provision by High Court — Discretionary jurisdiction of High Court — Sufficient cause for non-appearance by defendant to be proved when decree passed — Court not denuded of its power to put defendants to terms — Such terms should not be unreasonable or harshly excessive — Appellate Court has power to interfere when unreasonable or harsh conditions imposed — Division Bench committed no error in holding that Single Judge did not possess such power — Single Judge exercised its discretionary jurisdiction keeping in view matter disposed of finally at interim stage at back of defendant and directing to secure entire sum of amount involved in decree in form of Bank Guarantee or cash — **Civil Procedure Code, 1908 — Order 9 Rule 7, Order 9 Rule 13.**

IV (2006) CLT 64 (SC)

- **Order 9 Rule 13** — Provincial Small Causes Courts Act, 1887 — Section 17 proviso — Setting aside *ex parte* decree — Condonation of delay to deposit amount required under Proviso to Section 17 of Act — No sufficient ground to condone delay as defendant remained slept over matter for two years and did not make any deposit under Section 17 of Act, which was mandatory requirement to be complied with, with application under Order 9 Rule 13, C.P.C.

IV (2006) CLT 69 (Uttaranchal HC)

- **Order 9 Rule 13** — Setting aside *ex parte* decree — Suit for recovery of amount — Separate suit to set aside *ex parte* decree not maintainable except in case of fraud or collusion — Order 9 Rule 13, CPC, act as implied bar against fresh suit.

IV (2006) CLT 173 (Bombay HC)

- **Order 11 Rules 1, Order 11 Rules 11, Order 11 Rules 21** — Interrogatories — Non-compliance with order of discovery — Striking off defence — In so far as interrogatories concerned — Law provides for three stages — In first stage, plaintiff or defendant has to obtain leave of Court for delivering interrogatories in writing on defendant/s or petitioner/s, separately on each person requiring to answer — Person receiving interrogatories required to answer by way of affidavit — In second stage, if person served interrogatories, does not comply with by filing affidavit in answer to interrogatories, petitioner or defendant with leave of Court to file application under Order 10 Rule 11, CPC — At that stage, Court can compel person to answer interrogatories — In case such order not complied with, same would result in penal consequences which is either by dismissal of suit or striking off defence under Order 11 Rule 21, CPC — As condition precedent for exercising power under Order 11 Rule 21, CPC, there ought to be order under Rule 11 — While passing order either dismissing suit or striking off defence Trial Court bound to issue notice to parties and afford reasonable opportunity of being heard — Without noticing legal position, Trial Court passed order striking off defence of Ist defendant — Impugned order suffers from grave error apparent on face of record and sustainable.

IV (2006) CLT 170 (Andhra Pradesh HC)

- **Order 11 Rule 12, Order 11 Rule 13, Order 11 Rule 14** — Discovery of Documents — Prayer made by petitioner for discovery of original appointment letter — Certified copy of which could not be obtained — Tribunal should not have rejected prayer of petitioner for discovery and production of appointment letter by respondent No. 1 as Mutwali — Respondent Nos. 1 and 2 directed to file original copy of appointment letter before Tribunal — Further direction issued.

IV (2006) CLT 1 (Allahabad HC)

- **Order 12 Rule 6** — Judgment on Admission — Discretionary power of Court — Plaintiff sought permission for pronouncing final judgment on admission — Unless and until admission is unequivocal and unconditional, no judgment can be rendered.

IV (2006) CLT 94 (Calcutta HC)

- **Order 12 Rule 6** — Judgment on admission — Plea of limitation in written statement — Mixed question of fact and law — Can be decided only by way of evidence — No case made out under Order 12 Rule 6, CPC for passing a decree.

IV (2006) CLT 94 (Calcutta HC)

- **Order 14 Rule 2(2)** — Preliminary issue — Framing of — Discretionary power of Court — By Civil Procedure Code (Amendment) Act, 1976, existing word “shall” replaced by word “may” is whether to frame preliminary issue or not in particular case — There should not be any piecemeal trial in single suit, when any evidence required to be recorded or gone through in support or against such prayer — Refusal of Trial Court to frame preliminary issue cannot be said to be unjust or illegal exercise of power.

IV (2006) CLT 122 (Gauhati HC)

- **Order 16 Rule 1(2), Order 16 Rule 1(3)** — Summons to examine witness — Object and purpose — Necessity — Suit for recovery of amount based on mortgage deed — If purpose is not stated then Court is competent to deny demand, refuse to issue summons which cannot be questioned.

IV (2006) CLT 21 (Madras HC)

- **Order 16 Rule 21** — Summons to party to appear as witness — If party desirous of examining another party as witness, has no conflicting interest, whereas party to be summoned is supporting other party, who is seeking aid of Order 16 Rule 21, C.P.C., Court could issue summons and not in case where there is conflicting interest or no defence at all as in this case.

IV (2006) CLT 21 (Madras HC)

- **Order 21 Rule 11(2)** — Amendment in Execution Petition — Additional claims made by decree holder — Entitlement — Decree holder had gone much beyond scope of decree while seeking for amendment in execution petition — Decree holder cannot go beyond purview of decree while making any claim — Order passed by Civil Judge (Sr. Division) set aside allowing petition for amendment filed by Decree holder.

IV (2006) CLT 64 (Orissa HC)

- Evidence Act, 1872 — Section 65, 74 — **Civil Procedure Code, 1908** — **Order 21 Rule 58(1)(b)** — Adjudication of claims and objections — Public document — Admissibility as secondary evidence — Suit for declaration of title to suit property and permanent injunction against appellants — Plaintiff relied upon partition deed evidencing partition between his vendor and defendants — Said partition deed filed by defendant in earlier proceedings to raise attachment — Petition dismissed — Rejection of application does not render partition deed not reliable to prove partition of family properties — Certified copy of said partition deed as public document admissible as secondary evidence — No illegality in judgment rendered by first Appellate Court.

IV (2006) CLT 99 (Madras HC)

- **Order 22 Rule 4** — Limitation Act, 1963 — Article 120, Section 5 — Setting Aside Abatement — Impleadment of legal heirs — Limitation to file application — 90 days from date of knowledge of death — Ignorance of death not sufficient cause for setting aside abatement, when application to bring L.Rs. of deceased on record made after expiry of period of limitation — Law imposed obligation on person applying for bringing L.Rs. of deceased on record and he had to show absence of want of care.

IV (2006) CLT 7 (Madras HC)

- **Order 22 Rule 4(2)** — Death of one of several defendants — Object and scope of Order 22 Rule 4(2) — Amendment and counter-claim in written statement at instance of deceased defendant already rejected — Legal representative bound by it, cannot be allowed to re-agitate same, otherwise there would be inconsistent pleas — Further amendment finalised during life-time of deceased cannot be allowed to be re-agitated.

IV (2006) CLT 84 (Rajasthan HC)

- Compromise of Suit — After amendment of CPC by Act of 1976, compromise of suit can be effected and *imprimatur* of Court obtained thereon leading to decree, only if agreement or compromise presented in Court is in writing and signed by parties and also by their Counsel as per practice — When compromise is to be recorded and decree is to be passed, Order 23 Rule 3, CPC insists that terms of compromise should be reduced to writing and signed by parties — After 1.2.77, compromise decree can be passed only on compliance with requirements of Order 23 Rule 3, CPC and unless decree is passed in terms thereof, it may not be possible to recognise same as compromise decree — In this case, decree passed on 10.10.80 after amendment of Code and it was not in terms of Order 23 Rule 3, CPC — It was one on admission of pre-existing arrangement — **Civil Procedure Code, 1908** — **Order**

23 Rule 3.

IV (2006) CLT 27 (SC)

- **Order 37 Rules 1(2)** — Negotiable Instruments Act, 1881 — Section 6 — Summary Suit — Maintainability — Cheque dishonoured — Recovery of amount — Cheque is Bill of Exchange and suit based on dishonoured cheque is maintainable as summary suit.

IV (2006) CLT 18 (Bombay HC)

- Summary Suit — Leave to defend, unconditionally — Condition of pre-deposit of money — Quantum raised by Trial Court — Justifiability — Respondent filed suit for recovery along with interest from date of filing suit till realisation of amount — Defendant sought leave to defend — High Court directed deposit of Rs. 20,00,000/- with Trial Court to show his *bona fide* that he was entitled to leave to defend — Trial Court further directed deposit of Rs. 50 lakhs for grant of leave to defend — High Court on appeal held that discretion of Trial Court cannot be termed to be perverse or totally erroneous is view matter pending for 4 years and original claim was for Rs. 98,81,426.63 — Legality — Bare reading of order of High Court shows that High Court wanted quantum to be pinned at Rs. 20 lakhs and not more than that, no indication if amount more than that then appellant would pay differential amount — Further High Court directed refund in case Trial Court on consideration of merits come to conclusion that amount to be deposited less than Rs. 20 lakhs — Trial Court not right in directing further deposit of 50 lakhs — Order of Trial Court as well as High Court set aside — **Civil Procedure Code, 1908 — Order 37 Rule 3(5).**

IV (2006) CLT 127 (SC)

- Injunction — Grant of — Courts would pass order thereupon having regard to *prima facie*, case, balance of convenience and irreparable injury — Finding on '*prima facie* case' would be finding of fact — **Civil Procedure Code, 1908 — Order 39 Rules 1, 2.**

IV (2006) CLT 54 (SC)

- **Order 39 Rules 1 and 2** — Trade and Merchandise Marks Act, 1958 — Section 29 — *Ad interim* Injunction — Infringement of trade mark — "Glucon D" and "Glucose D" — Appellants using word "Glucon D", respondents have used two common English words, *viz.*, "Glucose" and letter "D" — This cannot mean to be infringement because under Section 29 of Trade and Merchandise Marks Act, registered trade mark is infringed by person who uses trade mark which is identical with or deceptively similar to registered trade mark of somebody else — While respondents used common English word, *viz.*, "Glucose", and letter "D" on their packet, they have taken sufficient care to mention words "Dabur" making it clear that it is product of their Company — No *prima facie* case for grant of *ad interim* injunction.

IV (2006) CLT 154 (Punjab & Haryana HC)

- **Order 39 Rule 3A , Order 43 Rule 1** — Appeal against order of *ad interim* injunction — Where mandate of Order 39 Rule 3A flouted, aggrieved person is entitled to right of appeal notwithstanding pendency of application for grant of vacation of temporary injunction against order remaining in force — Even though discretion of Single Judge in extending *ex parte* order of injunction not found fault with, posting of matter to date about 45 days beyond date of such extension in- appropriate, keeping in view provisions of Order 39 Rule 3A, CPC — Appellants justified in filing appeal — Direction issued to Single Judge regarding disposal of appeal.

IV (2006) CLT 114 (Madras HC) (DB)

- **Order 41 Rule 3A** — Condonation of delay — Sufficient cause — Prayer to condone delay in filing the appeal — Delay of 162 days — Reason stated by Advocate, file misplaced — Affidavit filed in support — Rejected as appellant did not file his affidavit — Delay occurred due to Counsel — Best person to file affidavit — Delay deserved to be condoned.

IV (2006) CLT 60 (Kerala HC)

- **Order 41 Rule 19** — Readmission of Appeal dismissed for default — Sufficient cause — When question arises about sufficient grounds for restoration of appeal, Court would be inclined to restore appeal unless there has been gross negligence on part of party concerned — Application for restoration filed within 1 month — Appellate Court failed to exercise its jurisdiction to restore appeal on unsustainable ground that on day appeal was dismissed in default, appellant was not present — Impugned order passed by ADJ set aside.

IV (2006) CLT 203 (Punjab & Haryana HC)

- Letters Patent — Clause 15 — **Civil Procedure Code, 1908** — **Order 43 Rule 1** — Expression — “Judgment” — Meaning of — Appealable order under Order 43 Rule 1, CPC can be held appealable under Clause 15 of Letters Patent — Other interlocutory orders which decides matters of moment or affect vital and valuable rights of parties and which work serious injustice to parties concerned, can be considered as judgment to be appealable under Letters Patent — *Ex parte ad interim* order of injunction *ipso facto* not appealable under Letters Patent as it is not judgment within meaning of Clause 15.

IV (2006) CLT 114 (Madras HC) (DB)

- Termination of tenancy — Service of notice — Appellate Court allowed application filed under Order 6 Rule 17, CPC and permitted defendant-tenants to take plea relating to non-termination of tenancy by landlord by serving notice under Section 106, Transfer of Property Act — Justifiability — High Court allowed appeal keeping in view principle laid down in *Fateh Lal's* case — In view of this Court, appropriate for High Court to re-hear matter keeping in view principles laid down in *Jaswant Raj Soni's*, VII (2005) SLT 156=IV (2005) CLT 68 (SC), case — Matter remitted for fresh consideration — Transfer of Property Act, 1882 — Section 106 — **Civil Procedure Code, 1908** — **Order 43 Rule 1(U), Order 6 Rule 17.**

IV (2006) CLT 133 (SC)

Companies (Court) Rules, 1959

- Winding-up Petition — Verification of Affidavit — Due compliance of provisions of Rule 21 of Companies (Court) Rules — Careful perusal of affidavit filed by respondent and Form No. 3 as prescribed under Rule 21, shows substantial compliance of said Rule — Technical plea by respondent regarding defective affidavit raised after 7 years of filing petition — Appellant is raising defence of technical plea to protect himself from consequence of his default — This plea cannot be considered effective enough to review order of advertisement — Order passed by Division Bench confirming order passed by Company Judge calls for no interference by this Court — Interim order granting stay of order under challenge vacated — Company Court at liberty to proceed further in accordance with Company Rules to dispose of petition expeditiously — **Companies (Court) Rules, 1959 — Rules 18, 21.**

IV (2006) CLT 43 (SC)

Constitution of India, 1950

- Cut-off date — Illegality committed by CSEB in taking over assets of M.P. Electricity Board — Cut-off date fixed by Central Government cannot be said to be so arbitrary to attract wrath of Art. 14 of Constitution — Said date fixed in supersession of earlier orders — **Constitution of India, 1950 — Art. 14** — M.P. Reorganisation Act, 2000 — Sections 58(2), 58(3), 58(4) — Electricity (Supply) Act, 1948.

IV (2006) CLT 110 (SC)

- Right to Information Act, 2005 — Sections 3, 2(f), 8 and 8(1)(d) — **Constitution of India, 1950 — Article 19** — Information regarding minutes of various meetings of Managing Committee — Information sought for is not pertaining to commercial confidence, trade secrets or intellectual property — Petitioner entitled to obtain information under Item No. 3

— Item No. 4 is copy of reference file in respect of inquiry ordered by Assistant Registrar of Co-operative Societies — Petitioner to make request to Assistant Registrar for obtaining said information.

IV (2006) CLT 166 (Kerala HC)

— Right to Information Act, 2005 — Sections 2(f) and 8, 8(1)(d) — **Constitution of India, 1950** — **Article 19** — Object of enactment of Act — To ensure greater and more effective access to information, Act was introduced for providing effective frame work for effectuating right of information recognized under Article 19 of Constitution — Scope of provisions — Discussed.

IV (2006) CLT 166 (Kerala HC)

— Special Leave to Appeal — Electricity-distribution — This Court in exercise of its discretionary jurisdiction under Art. 32 of Constitution shall not interfere — It would exercise judicial restraint — It may not be illegal but erroneous — It may not be just and proper for one of State Boards, but for other — Not fit case to exercise its extraordinary jurisdiction under Art. 32 of Constitution — **Constitution of India, 1950** — **Art. 32** — M.P. Reorganisation Act, 2000 — Section 58.

IV (2006) CLT 110 (SC)

— Civil Procedure Code, 1908 — Order 8 Rule 6A, Order 8 Rule 9, Order 47 Rule 1 — **Constitution of India, 1950** — **Article 226** — Counter-claim — Filing of — Counter-claim after filing of written statement not barred provided cause of action accrued before defendant delivered his defence and period of limitation fixed for raising such claim not expired — Court has discretion to permit written statement containing plea of counter-claim being filed belatedly — Counter-claim can be permitted to be introduced by way of amendment or by way of subsequent pleadings, under Order 8 Rule 9, CPC.

IV (2006) CLT 189 (Kerala HC)

— Civil Procedure Code, 1908 — Section 152, Order 23 Rule 3 — **Constitution of India, 1950** — **Article 227** — Consent Decree — Modification of one clause of consent terms filed pursuant to which consent decree is passed, not maintainable under Order 23 Rule 3, CPC — ADJ justified in dismissing application — Not fit case to exercise jurisdiction under Article 227 of constitution to set aside impugned order.

IV (2006) CLT 105 (Bombay HC)

— **Article 227** — Evidence — Thumb Impression — Comparison of — To decide dispute in question — Suit for possession by way of specific performance on basis of agreement of sale filed by petitioner — Respondent in written statement denied execution of said agreement and receipt of earnest amount — On direction of Court, specimen thumb impressions of respondent taken and compared by Handwriting and Finger Prints Expert — He submitted report with request that specimen thumb impressions of respondent be taken again to make proper report regarding comparison of both thumb impressions — If expert wants fresh thumb impressions are required, same cannot be denied on ground that earlier thumb impressions were taken — In interest of justice every party should be given full opportunity to prove his case — Comparison of thumb impression of respondent with thumb impression on agreement is relevant and material issue in suit — Petitioner should be provided full opportunity to prove his case.

IV (2006) CLT 97 (Punjab & Haryana HC)

— **Article 226** — Writ Jurisdiction — Exercise of — Grant of Load Factor Rebate in terms of provisions of 2004 Tariff of Board in respect of high tension consumers — Petitioner deposited amounts with board and amount — Amounts kept in abeyance/stayed fully secured under security amounts lying with Board and Bank guarantees furnished by petitioner — Learned Counsel for Board submitted petitioner must keep Bank guarantee alive till decision of cases as petitioner's connection finally disconnected — Directions

issued to respondents accordingly to grant Load Factor Rebate in terms of provisions of 2004 Tariff of Board — Petitioner to keep Bank guarantees alive till disposal of writ petitions.

IV (2006) CLT 195 (Jharkhand HC)

Contract Act, 1872

- **Sections 2(d), 2(e), 25** — Agreement without consideration is void — It is act which forms consideration—In executed consideration, liability is outstanding on one side only — In executory consideration liability is out-standing on both sides — Where promise is made by one party to other party to contract, each promise is consideration to other party such as case for agreement of sale.

IV (2006) CLT 122 (Gauhati HC)

- **Section 55** — Effect of acceptance of contract other than agreed upon — Time was essence of contract subject to supply of cement — Suit for Recovery of Amount — Delay in construction work — Non-availability of cement in open market — Rest of work cannot be completed in time by respondent — Fresh agreement executed — Cement supplied by appelland even after expiry of period of contract for completing first phase and appelland asked respondent to give consent for completing work for higher amount even after expiry of completing agreement.

IV (2006) CLT 178 (Punjab & Haryana HC)

- **Section 55** — Effect of acceptance of contract other than agreed upon — Time was essence of contract subject to supply of cement — Suit for Recovery of Amount — Delay in construction work — Non-availability of cement in open market — Rest of work cannot be completed in time by respondent — Fresh agreement executed — Cement supplied by appelland even after expiry of period of contract for completing first phase and appelland asked respondent to give consent for completing work for higher amount even after expiry of completing agreement.

IV (2006) CLT 178 (Madhya Pradesh HC)

Evidence Act, 1872

- **Section 42** — Civil Procedure Code, 1908 — Section 100 — Second Appeal — Relevancy and effect of judgments, orders or decrees — In earlier litigation defendant-respondent failed to prove he was adopted son of original owner of property or Will executed in his favour — Judgment and decree passed in earlier litigation in respect of same property although not inter-parties would be relevant to determine question raised in later dispute albeit between different parties — No vital piece of documentary evidence or admission excluded from consideration — Jurisdiction of this Court under Section 100, CPC cannot be exercised in these circumstances.

IV (2006) CLT 143 (Punjab & Haryana HC)

- **Section 65, 74** — Civil Procedure Code, 1908 — Order 21 Rule 58(1)(b) — Adjudication of claims and objections — Public document — Admissibility as secondary evidence — Suit for declaration of title to suit property and permanent injunction against appellands — Plaintiff relied upon partition deed evidencing partition between his vendor and defendants — Said partition deed filed by defendant in earlier proceedings to raise attachment — Petition dismissed — Rejection of application does not render partition deed not reliable to prove partition of family properties — Certified copy of said partition deed as public document admissible as secondary evidence — No illegality in judgment rendered by first Appellate Court.

IV (2006) CLT 99 (Madras HC)

- **Section 114** — Presumption — Adverse inference — Plea of co-ownership raised by defendant but failure to examine herself as witness — Adverse inference could be drawn against defendant on non-examination as witness.

IV (2006) CLT 99 (Madras HC)

Hindu Adoptions and Maintenance Act, 1956

- **Section 9 explanation (ia), 9(4) and 9(5)** — Expression — “Guardian” — Meaning of — Persons capable of giving in adoption — Foster Home can maintain application under Section 9(4) of Act — Original parents abandoned minor child and surrendered her to Cradle Baby Illam and minor child transferred to petitioner Home for custody and protection by State Government — Petitioner is guardian under Section 9 of Act and they can give minor child in adoption with permission of Court — Additional City Civil Judge without considering Explanation (ia) of Section 9 of Act, *i.e.*, expression ‘guardian’ erroneously held petitioner institution has no right to give minor child in adoption as they have not obtained any declaration from Court to act as guardian for minor child — To that extent order of Additional City Civil Judge set aside by holding that petitioner-Home can maintain application under Section 9(4) of Act.

IV (2006) CLT 134 (Madras HC)

Hindu Marriage Act, 1955

- **Section 13(1)(ib)** — Civil Procedure Code, 1908 — Section 11 — Desertion — Essential Ingredients — Dismissal of earlier petition filed by petitioner on ground of cruelty and desertion — Petition barred by principles of *res judicata* — There was no occasion for respondent to take conscious decision of withdrawing from company of appellant, from day first petition dismissed till second petition filed — Respondent lacked necessary *animus deserendi* and there is no fresh cause of action for filing petition — Finding that respondent-wife not deserted appellant confirmed right upto highest Court — Parties have child and appellant seems to be in hurry to snap ties as appears from his filing fresh petition for divorce at the same time filing second appeal — Mere proof of period of separation of respondent would not give rise to cause of action — Both Courts justified in holding that petition was barred by principles of *res judicata* — Since respondent-wife had no opportunity for resuming cohabitation during period appellant was fighting with her in hierarchy of Courts there is no question of respondent bearing animus deserendi, ruling out any cause for appellant to seek divorce on ground of desertion.

IV (2006) CLT 2 (Bombay HC)

- **Section 13(1)(ib)** — Desertion — While separation of spouses can be said to be continuing act, “desertion” requires not just separation of respondent but also mental state of abandoning matrimonial home.

IV (2006) CLT 2 (Bombay HC)

Hindu Succession Act, 1956

- N, not adopted by O, one of sons of owner of property — This is evident from deed of gift executed by him — Even in transfer deed executed by K, N described as foster daughter of O and not as adopted daughter — She would inherit only property which fell to share of K on partition — N, as daughter of K can claim interest in his share in properties only — As K died in 1961, she will have 1/8th share — Extent of K's property would inevitably depend upon effect of deed of partition executed by parties in 1954 — **Hindu Succession Act, 1956** — **Section 8.**

IV (2006) CLT 54 (SC)

- **Section 14(1)** — Hindu Woman's Right to Property — Enlargement of limited life estate into full ownership — Conditions to be fulfilled — Property acquired by widow under gift deed — To invoke benefit of Section 14(1) of Act it is necessary Hindu female should be in possession of property on day Act came into force and acquisition of property may be before or after Act — Where properties are sold before enforcement of Hindu Succession Act, widow could not be said to be in possession of property under Section 14(1) of Act — Section 14(1) of Act cannot be invoked — Once it is invalid in eyes of law, same need not be

set aside by due process of law by filing another suit.

IV (2006) CLT 66 (Madras HC)

- Civil Procedure Code, 1908 — Section 100 — **Hindu Succession Act, 1956 — Section 14(1)** — Second Appeal — Plea of benefit of provision of Section 14(1), Hindu Succession Act raised at appellate stage for first time, maintainable — *Vide Mahesh Chand Sharma* case, I (1996) CLT 165 (SC).

IV (2006) CLT 66 (Madras HC)

- **Sections 14(1), 14(2)** — Civil Procedure Code, 1908 — Section 100 — Second Appeal — Substantial question of law — Suit for Possession and Permanent injunction — Will executed by testator, deceased husband of plaintiff, surrounded by suspicious circumstances and not proved to be duly executed by testator during his lifetime — Question as to whether Section 14(1) or Section 14(2) of Hindu Succession Act applies is only of academic interest — Nothing shown that findings with regard to Will recorded by two Courts below suffer from any infirmity or contrary to record — No question of law, much less any substantial question of law, arises in appeal.

IV (2006) CLT 82 (Punjab & Haryana HC)

Indian Succession Act, 1925

- **Sections 18 and 21** — Indian Succession Act, 1925 — Sections 213 and 213(2) — Will made by Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

IV (2006) CLT 192 (Bombay HC)

- Special Marriage Act, 1954 — Sections 18 and 21 — **Indian Succession Act, 1925 — Sections 213 and 213(2)** — Will made by Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

IV (2006) CLT 192 (Bombay HC)

Insurance Act, 1938

- Succession Act, 1925 — Sections 372 and 373(4) — **Insurance Act, 1938 — Section 39** — Succession Certificate — Grant of — Nominee of LIC does not get absolute right to amount due — Nomination only indicates hand which is authorised to receive amount — Nomination does not have effect of conferring a nominee beneficial interest in amount payable under LIC policy on death of assured — Amount, however, can be claimed by heirs of assured in accordance with law of succession governing them.

IV (2006) CLT 27 (Karnataka HC)

Land Acquisition Act, 1894

- **Sections 12(2), 18** — Limitation Act, 1963 — Section 5 — Reference — Condonation of delay — Powers of land acquisition officer — Application under Section 18 of Land Acquisition Act filed beyond prescribed period of 6 weeks from service of notice under Section 12(2) of Act — Application filed under Section 5 of Limitation Act giving explanation for delay — Special Land Acquisition Officer had no power to condone delay in filing application under Section 18, Land Acquisition Act — No infirmity in impugned order dismissing application of petitioner under Section 18 as time-barred.

IV (2006) CLT 55 (Uttaranchal HC) (DB)

- **Section 13A** — Civil Procedure Code, 1908 — Section 152 — Correction of clerical errors — Notice — Authority of Collector — Scope of Section 13A of Act — Complete error in

calculating value of building and age of building — Correction was only arithmetical error — Mistake noted by P.W.D. authorities and reported to second respondent, who subsequently corrected same within period of 6 months — Collector authorised to correct clerical error or arithmetical mistakes or errors only after giving notice to and after hearing affected persons — Same not legally done — Affixture of notice not sufficient — Award passed by second respondent set aside with direction to dispose of matter after hearing writ petitions basing on their objections if any.

IV (2006) CLT 91 (Kerala HC)

- **Section 23(1) Clause (4)** — Compensation for loss of earnings — Award of — Covered by Section 23(1) Clause (4) of Act — Sum of Rs. 10,200 awarded for loss of earnings from building and Rs. 4,080 from loss of rent on account of advertisement boards of agencies justified — Interest awarded @ 9% by reference Court affirmed.

IV (2006) CLT 17 (Uttaranchal HC) (DB)

- **Section 54** — “Solatium” — Quantum — Enhancement of — Challenge against — Solatium @ 30% payable in those cases only where award made after April 30, 1982 and before September 24, 1984 — Award of Land Acquisition Officer made on 2.3.1981 — Reference Court fell into error in awarding solatium @ 30% in place of 15% — Impugned judgment modified to that extent.

IV (2006) CLT 17 (Uttaranchal HC) (DB)

Legal Services Authorities Act, 1987

- **Sections 20, 20(5) and 21** — Award of Lok Adalat — Under deeming provisions of Section 21 of Legal Services Authority Act, award of Lok Adalat to be taken as decree of Civil Court which referred case to Lok Adalat.

IV (2006) CLT 184 (Kerala HC)

- **Section 19(5)(ii)** — Territorial Jurisdiction — If amount granted in award passed by Lok Adalat is within pecuniary jurisdiction of Munsiff Court for purpose of filing suit, execution shall be before Munsiff Court and if not, before Sub-Court — Territorial jurisdiction is to be determined as per Section 19(5)(ii), with reference to Court for which Adalat is organised.

IV (2006) CLT 184 (Kerala HC)

Letters Patent

- **Clause 12** — Revocation of Leave — Averments for granting leave under Clause 12 — Statements and averments of the plaintiff — Constitutes part cause of action — Arisen within the jurisdiction of Court — On demurrer action leave can not be revoked.

IV (2006) CLT 94 (Calcutta HC)

- **Clause 15** — Civil Procedure Code, 1908 — Order 43 Rule 1 — Expression — “Judgment” — Meaning of — Appealable order under Order 43 Rule 1, CPC can be held appealable under Clause 15 of Letters Patent — Other interlocutory orders which decides matters of moment or affect vital and valuable rights of parties and which work serious injustice to parties concerned, can be considered as judgment to be appealable under Letters Patent — *Ex parte ad interim* order of injunction *ipso facto* not appealable under Letters Patent as it is not judgment within meaning of Clause 15.

IV (2006) CLT 114 (Madras HC) (DB)

Limitation Act, 1963

- Civil Procedure Code, 1908 — Order 22 Rule 4 — **Limitation Act, 1963 — Article 120, Section 5** — Setting Aside Abatement — Impleadment of legal heirs — Limitation to file application — 90 days from date of knowledge of death — Ignorance of death not sufficient cause for setting aside abatement, when application to bring L.Rs. of deceased on record made after expiry of period of limitation — Law imposed obligation on person applying

for bringing L.Rs. of deceased on record and he had to show absence of want of care.

IV (2006) CLT 7 (Madras HC)

- Arbitration and Conciliation Act, 1996 — Section 34 — **Limitation Act, 1963 — Section 5** — Setting aside Award — Condonation of delay in making application — Section 5 of Limitation Act not applicable to proceedings under Section 34 of Arbitration and Conciliation Act for setting aside Award — Application under Section 5 of Limitation Act not maintainable.

IV (2006) CLT 36 (Karnataka HC) (DB)

- Land Acquisition Act, 1894 — Sections 12(2), 18 — **Limitation Act, 1963 — Section 5** — Reference — Condonation of delay — Powers of land acquisition officer — Application under Section 18 of Land Acquisition Act filed beyond prescribed period of 6 weeks from service of notice under Section 12(2) of Act — Application filed under Section 5 of Limitation Act giving explanation for delay — Special Land Acquisition Officer had no power to condone delay in filing application under Section 18, Land Acquisition Act — No infirmity in impugned order dismissing application of petitioner under Section 18 as time-barred.

IV (2006) CLT 55 (Uttaranchal HC) (DB)

- **Section 5** — Condonation of Delay — Sufficient cause — Restoration of appeal — Appellant failed to apply for restoration of appeal within prescribed period of 30 days — No specific reason given for seeking condonation of delay, that under what compulsions appellant could not apply for restoration of appeal within time — Reasons given by appellant for adjournment of appeal as also subsequently for condonation of delay wholly unsustainable, hazy and inadequate — It was not mentioned in adjournment application as to why arguments could not be prepared in appeal — Mere cursory statement that appellant remained busy in his school work cannot be considered sufficient reason for condonation of delay — P.O. not wrong in dismissing appellant's application.

IV (2006) CLT 176 (Allahabad HC)

- **Section 5** — Condonation of Delay — Previously Courts did show lenience and latitude in dealing with applications for adjournments and condonation of delay — It is high time changed perspective and attitude adopted, since Courts are already overburdened with cases resulting in inordinate delay in disposal of cases.

IV (2006) CLT 176 (Allahabad HC)

- **Section 59, Article 109** — Sale deed executed on 11.5.1972 — Suit filed in 1981 for cancellation of sale deed in 1981, within 12 years from date of sale, is within time — Section 59 of Limitation Act not applicable and Article 109 of Limitation Act applicable.

IV (2006) CLT 158 (Madras HC)

M.P. Reorganisation Act, 2000

- Apportionment of assets and liabilities between two successor Boards — Rationality of approach — Apportionment of current assets and liabilities made on basis of power consumption ratio of States — Any other variable might not have rational nexus with apportionment of current assets and liabilities — Long term assets and liabilities divided in ratio of 90:10 and overall, MPSEB given 85% of assets and 84% of liabilities — Action on part of Central Government not irrational — Revenue generation capacity has rational nexus with current assets and liabilities — Fixing current liabilities on basis of revenue generation capacity not arbitrary or irrational — Population ratio as defined under Section 2(h) not relevant for application of Section 58 — Central Government maintained two other criteria, viz. geographical constitution and fixed assets — **M.P. Reorganisation Act, 2000 — Sections 2(h), 42, 43, 58.**

IV (2006) CLT 110 (SC)

- Distribution of assets and liabilities of MSEB and CSEB — State of M.P. alleges illegal collection of revenue by CSEB — Notification by Government approves constitution of successor Boards w.e.f. 15.4.2001 — It laid down guidelines in regard to division of assets, rights, liabilities, contracts and employees as also arrangement for distribution of power — By virtue of Section 58(4) of 2000 Act, States are enabled to constitute separate State Electricity Boards and to take over functions of erstwhile Board — In terms of Section 58(4) of 2000 Act, Central Government may pass provisional order directing new Board or Corporation to take over from existing Board or Corporation assets, rights and liabilities, subject to its final decision under Section 58(3) of Act — Central Government obliged to resolve dispute when States differ in their approach and arrive at independent decision — Central Government could choose respective dates *viz.* provisional and final dates when Boards came into being for determining dispute between Boards — Upon dissolution of existing Board, assets, rights and liabilities instead of vesting or continuing to vest in State shall vest in new Board — Central Government passed impugned orders in terms of its undertaking before High Court of Delhi and upon compliance of principles of natural justice, it cannot be said Central Government failed to apply its mind — **M.P. Reorganisation Act, 2000 — Sections 37, 43, 58, 58(1), 58(2), 58(3), 58(4)** — Electricity (Supply) Act, 1948.

IV (2006) CLT 110 (SC)

- Special Leave to Appeal — Electricity-distribution — This Court in exercise of its discretionary jurisdiction under Art. 32 of Constitution shall not interfere — It would exercise judicial restraint — It may not be illegal but erroneous — It may not be just and proper for one of State Boards, but for other — Not fit case to exercise its extraordinary jurisdiction under Art. 32 of Constitution — Constitution of India, 1950 — Art. 32 — **M.P. Reorganisation Act, 2000 — Section 58.**

IV (2006) CLT 110 (SC)

- Cut-off date — Illegality committed by CSEB in taking over assets of M.P. Electricity Board — Cut-off date fixed by Central Government cannot be said to be so arbitrary to attract wrath of Art. 14 of Constitution — Said date fixed in supersession of earlier orders — Constitution of India, 1950 — Art. 14 — **M.P. Reorganisation Act, 2000 — Sections 58(2), 58(3), 58(4)** — Electricity (Supply) Act, 1948.

IV (2006) CLT 110 (SC)

Negotiable Instruments Act, 1881

- Civil Procedure Code, 1908 — Order 37 Rules 1(2) — **Negotiable Instruments Act, 1881 — Section 6** — Summary Suit — Maintainability — Cheque dishonoured — Recovery of amount — Cheque is Bill of Exchange and suit based on dishonoured cheque is maintainable as summary suit.

IV (2006) CLT 18 (Bombay HC)

Registration Act, 1908

- **Section 17(1)** — Partition — No prohibition recognised by law about oral partition — Memorandum of past oral partition not required to be registered — Such document is admissible piece of evidence — There is no necessity for everyone of co-sharer to thumb mark, sign and acknowledge such memorandum.

IV (2006) CLT 39 (Punjab & Haryana HC)

- Decree on admission based on family settlement — Enforceability — Decree was of pre-existing right set up by plaintiffs as created by co-owner — Decree by itself did not create any right in immovable property — It only recognised right set up by plaintiffs in respect of property involved in that suit — As a result of family arrangement relinquishment followed by defendant in favour of plaintiff and his brother — Decree in earlier suit recognising that arrangement did not require registration — Suit filed by respondent No. 1

for recovery of possession of suit property in enforcement of right of pre-emption claimed by him, rightly decreed by Trial Court — High Court justified in answering substantial question of law formulated by it in favour of plaintiff and against contesting defendants — Judgments and decrees under appeal confirmed — **Registration Act, 1908 — Sections 17(1)(b), (c), 17(2)(vi)** — Transfer of Property Act, 1882 — Sections 53A, 54, 107, 123.

IV (2006) CLT 27 (SC)

- Documents which require registration — Decree or order of Court and compromise decree relating only to subject matter of suit need not be registered on ground that it is non-testamentary instrument which purports to or operates to create, declare, assign, limit or extinguish any right to or in immovable property or which acknowledges receipt or payment of any consideration on account of transaction which brings about said results — But if suit is decreed on basis of compromise taking property that is not subject matter of suit such compromise decree requires registration — There is no exemption in respect of Clauses (a), (d) and (e) of Section 17(1) so that if decree brings about gift of immovable property, or lease of immovable property from year to year or for term exceeding one year or reserving early rent or transfer of decree or order of Court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered — **Registration Act, 1908 — Sections 17(1)(a), 17(1)(b), 17(1)(c), 17(1)(d), 17(1)(e), 17(2), 17(2)(vi).**

IV (2006) CLT 27 (SC)

- Applicability of provisions of Sections 54, 107 and 123 of Transfer of Property Act to State of Punjab *w.e.f.* 1.4.55 *vide* Notification dated 23.3.55 — Scope of provisions — Introduction of Section 17(1A) of Registration Act made prospective from date of coming into force of Registration and Other Related Laws (Amendment) Act, 2001 — It insists that documents containing contracts to transfer for consideration any immovable property for purpose of Section 53A of Transfer of Property Act, shall be registered if created after commencement of Section 17(1A) of Registration Act — Transfer of Property Act, 1882 — Sections 54, 107, 123 — **Registration Act, 1908 — Section 17(1A).**

IV (2006) CLT 27 (SC)

Right to Information Act, 2005

- **Sections 2(f) and 8, 8(1)(d)** — Constitution of India, 1950 — Article 19 — Object of enactment of Act — To ensure greater and more effective access to information, Act was introduced for providing effective frame work for effectuating right of information recognized under Article 19 of Constitution — Scope of provisions — Discussed.

IV (2006) CLT 166 (Kerala HC)

- **Sections 3, 2(f), 8 and 8(1)(d)** — Constitution of India, 1950 — Article 19 — Information regarding minutes of various meetings of Managing Committee — Information sought for is not pertaining to commercial confidence, trade secrets or intellectual property — Petitioner entitled to obtain information under Item No. 3 — Item No. 4 is copy of reference file in respect of inquiry ordered by Assistant Registrar of Co-operative Societies — Petitioner to make request to Assistant Registrar for obtaining said information.

IV (2006) CLT 166 (Kerala HC)

Sick Industrial Companies (Special Provisions) Act, 2002

- Appointment of Arbitrator — Proceeding in arbitration is neither suit under Section 22(1) of SICA nor proceedings thereunder — There is no prohibition under Section 22, SICA to take up arbitration proceedings to adjudicate liability of parties to arbitration proceedings — Section 22 of SICA does not debar arbitration proceedings under Arbitration and Conciliation Act — Objections to arbitration proceedings raised by respondent rejected — Arbitrator appointed by this Court accordingly — Arbitration and Conciliation Act, 1996 — Sections 11(6), 11(6)(c), 15, 15(1)(a) — **Sick Industrial Companies (Special Provisions) Act,**

2002 — Sections 22(1), 22.

IV (2006) CLT 1 (SC)

- Winding up of Company — Proceedings which have shape and effect of coercive nature would come within ambit of Section 22(1) of SICA — For taking up such proceedings permission of BIFR required — By virtue of amendment to Section 22 of SICA, no suit for recovery of money or for enforcement of any security against industrial company or of any guarantee in respect of any loans or advances granted to industrial company shall lie — Adjudication is prohibited of liability of industrial company or guarantor — Section 22 further prohibits taking up of proceedings of coercive nature for recovery of money against sick undertaking — **Sick Industrial Companies (Special Provisions) Act, 2002 — Sections 22(1), 22.**

IV (2006) CLT 1 (SC)

Special Marriage Act, 1954

- **Sections 18 and 21** — Indian Succession Act, 1925 — Sections 213 and 213(2) — Will made by Muslim married under Special Marriage Act needs to be probated — Muslim married under Special Marriage Act entitled to bequeath his entire property — All rigours of Indian Succession Act applicable — Defendant No. 1 would have to establish his right only after obtaining probate of Will of deceased — Conclusions drawn by Court.

IV (2006) CLT 192 (Bombay HC)

Specific Relief Act, 1963

- **Sections 12(3), 12(3)(a)(b)(ii)** — Civil Procedure Code, 1908 — Section 100 — Suit for specific performance of part of contract, or alternative relief for recovery of earnest money along with interest — Suit maintainable and agreement to sell could be read for collateral purposes — Under Section 12(3) of Act filing of such suit permitted only when plaintiff relinquishes all claims to performance of remaining part of same contract which cannot be specifically performed — Lower Appellate Court rightly rejected claim of plaintiff-respondent for specific performance — Lower Appellate Court is best Judge of fact and law as held by Supreme Court in *Santosh Bazari* case, I (2001) SLT 933=II (2001) CLT 270 (SC).

IV (2006) CLT 13 (Punjab & Haryana HC)

- **Sections 38 and 41(j)** — Perpetual injunction — Suit for Declaration — Perfection of title by adverse possession — Person who is in possession shall not be thrown out except by due course of law — It is for plaintiff to seek his possession by recourse to law — Piece of land admittedly belongs to defendant which as per Commissioner report plaintiff is in lawful possession — No fault found with order of lower Appellate Court in granting order of permanent injunction against defendant — It is for defendant to have recourse to law by issuance of legal notice to plaintiff and seek for *mesne profits* — In event plaintiff resists possession, defendant can file suit seeking possession and for *mesne profits*.

IV (2006) CLT 109 (Karnataka HC)

Succession Act, 1925

- **Sections 372 and 373(4)** — Insurance Act, 1938 — Section 39 — Succession Certificate — Grant of — Nominee of LIC does not get absolute right to amount due — Nomination only indicates hand which is authorised to receive amount — Nomination does not have effect of conferring a nominee beneficial interest in amount payable under LIC policy on death of assured — Amount, however, can be claimed by heirs of assured in accordance with law of succession governing them.

IV (2006) CLT 27 (Karnataka HC)

Trade and Merchandise Marks Act, 1958

- Infringement, Passing off, Deceptive similarity — Injunction — Restraining respondents from using trade mark “RAMDEV”, in their label, packing materials, advertising materials,

in respect of goods covered under registration of plaintiff's mark — First respondent is rival trader of appellant-company — It did not in law have any right to use said trade mark, except by reason of terms contained in MOU or continuous user — Proprietor of registered trade mark has statutory right thereto — Respondents not restrained from manufacturing spices in their own factory and they started same under brand name of 'swad' — Respondents adopted part of appellant's registered trade mark as part of its corporate name — They had been permitted merely to trade from seven outlets, had limited right under MOU and not permitted to start manufacturing of spices under name and style of 'Ramdev Masala' — In absence of any express licence or agreement to use appellant's label, respondent's use of self-same trade mark would not only lead to confusion but also cause deception — This Court cannot subscribe to views of Trial Judge and High Court that although first respondent would be at liberty to carry on business of manufacture of spices, it can use mark 'Ramdev' only in seven outlets — What is registered is logo wherein words 'Ramdev' and 'Masala' are prominent — In terms of statutory provisions, respondents not legally permitted to sell its products in packages or labels deceptively similar to that of registered owner of trade mark — After MOU entered into parties having separated ceased to be members of joint family — MOU essential for determining rights of parties — Registration of trade mark and user *per se* lead to conclusion that plaintiff has *prima facie* case — Appellants able to establish existence of legal right in itself and violation of registered mark on part of respondents — When *prima facie* case is made out and balance of convenience is in favour of appellant, it may not be necessary to show more than loss of goodwill and reputation to fulfil condition of irreparable injury — Concurrent finding of both Courts that packing material and wrapper of both parties phonetically and visually similar and creates deception as well as confusion in mind of customers — Respondents restrained from using trade mark 'Ramdev Masala' in any of their products, however entitled to carry business in any other name — Appellant shall supply spices product by it for retail sale to seven outlets belonging to respondents with specification as to minimum permissible size of pouches and product having no relationship with Ramdev Food Products Pvt. Ltd. — Directions given by this Court — **Trade and Merchandise Marks Act, 1958 — Sections 2(d), 2(j), 2(q), 15(1), 15(2), 17, 18, 20, 22, 23, 27, 28, 29, 30(1)(b), 33** — Prevention of Food Adulteration Act, 1954 — Standards of Weights and Measures Act.

IV (2006) CLT 75 (SC)

- Purpose — To establish connection between goods and source thereof which would suggest quality of goods — Right to user of trade mark cannot have two origins — Proprietor of registered trade mark indisputably has statutory right thereto — **Trade and Merchandise Marks Act, 1958 — Section 21.**

IV (2006) CLT 75 (SC)

- Civil Procedure Code, 1908 — Order 39 Rules 1 and 2 — **Trade and Merchandise Marks Act, 1958 — Section 29** — *Ad interim* Injunction — Infringement of trade mark — "Glucon D" and "Glucose D" — Appellants using word "Glucon D", respondents have used two common English words, *viz.*, "Glucose" and letter "D" — This cannot mean to be infringement because under Section 29 of Trade and Merchandise Marks Act, registered trade mark is infringed by person who uses trade mark which is identical with or deceptively similar to registered trade mark of somebody else — While respondents used common English word, *viz.*, "Glucose", and letter "D" on their packet, they have taken sufficient care to mention words "Dabur" making it clear that it is product of their Company — No *prima facie* case for grant of *ad interim* injunction.

IV (2006) CLT 154 (Punjab & Haryana HC)

Trade Marks Act, 1999

- **Section 134** — Civil Procedure Code, 1908 — Sections 20(a), 20(b), 20(c), Order 7 Rule 11 — Territorial Jurisdiction — Rejection of plaint — Suit for mandatory injunction, Infringement

of trade mark, Passing off and unfair competition — Appellant/defendant is selling its goods in and around Delhi — Section 134 of Trade Marks Act does not override provisions of Section 20, CPC — It does not whittle down provisions of Section 20, CPC but only provide Additional Forum and place for filing suit in case of any trade mark violation — Inclusion of expression in statutory provision, *viz.* Section 134 of Trade Marks Act “notwithstanding anything contained in CPC”, means said provision to be read in addition to provisions of Section 20, CPC — On examination of provisions in facts of case, provisions of Sections 20(a) and 20(b), CPC not attracted but provision of Section 20(c), CPC attracted — Said provisions enable plaintiff to file suit in all such places where cause of action arises either wholly or in part — Single Judge rightly held this Court will have territorial jurisdiction to try and entertain suit — Order passed by Single Judge does not suffer from any infirmity.

IV (2006) CLT 127 (Delhi HC) (DB)

Transfer of Property Act, 1882

- Decree on admission based on family settlement — Enforceability — Decree was of pre-existing right set up by plaintiffs as created by co-owner — Decree by itself did not create any right in immovable property — It only recognised right set up by plaintiffs in respect of property involved in that suit — As a result of family arrangement relinquishment followed by defendant in favour of plaintiff and his brother — Decree in earlier suit recognising that arrangement did not require registration — Suit filed by respondent No. 1 for recovery of possession of suit property in enforcement of right of pre-emption claimed by him, rightly decreed by Trial Court — High Court justified in answering substantial question of law formulated by it in favour of plaintiff and against contesting defendants — Judgments and decrees under appeal confirmed — Registration Act, 1908 — Sections 17(1)(b), (c), 17(2)(vi) — **Transfer of Property Act, 1882 — Sections 53A, 54, 107, 123.**

IV (2006) CLT 27 (SC)

- Applicability of provisions of Sections 54, 107 and 123 of Transfer of Property Act to State of Punjab *w.e.f.* 1.4.55 *vide* Notification dated 23.3.55 — Scope of provisions — Introduction of Section 17(1A) of Registration Act made prospective from date of coming into force of Registration and Other Related Laws (Amendment) Act, 2001 — It insists that documents containing contracts to transfer for consideration any immovable property for purpose of Section 53A of Transfer of Property Act, shall be registered if created after commencement of Section 17(1A) of Registration Act — **Transfer of Property Act, 1882 — Sections 54, 107, 123 — Registration Act, 1908 — Section 17(1A).**

IV (2006) CLT 27 (SC)

- Termination of tenancy — Service of notice — Appellate Court allowed application filed under Order 6 Rule 17, CPC and permitted defendant-tenants to take plea relating to non-termination of tenancy by landlord by serving notice under Section 106, Transfer of Property Act — Justifiability — High Court allowed appeal keeping in view principle laid down in *Fateh Lal's* case — In view of this Court, appropriate for High Court to re-hear matter keeping in view principles laid down in *Jaswant Raj Soni's*, VII (2005) SLT 156=IV (2005) CLT 68 (SC), case — Matter remitted for fresh consideration — **Transfer of Property Act, 1882 — Section 106 — Civil Procedure Code, 1908 — Order 43 Rule 1(U), Order 6 Rule 17.**

IV (2006) CLT 133 (SC)
