

AIR 1983 BOM 1
Om Prakash Berlia v/s. Unit Trust of India
Bharucha, J

The Court had to consider the admissibility of certain documents and the proof of the contents of certified copies of Annual Reports filed by a limited company with the Registrar of Companies (ROC).

Held: Under S. 63 of the Indian Evidence Act, 1872, secondary evidence includes an oral account of the contents of a document by a person who has seen it. He gives evidence only of what he saw. Hence, he does not give evidence of the truth of the contents of the document. "The contents of the document" means only what the document states. The contents may be proved by primary or secondary evidence under S. 61 of the Act. The writer of the document must depose to the truth of its contents.

If the original document is not available, secondary evidence may be given by production of the copy. This is to prove what the document states. Upon this, the document becomes admissible. If it is signed, the signature must be proved. If it is hand written, partly or fully, the handwriting must be proved.

The production of a certified copy of a public document only proves what the document states and no more. It does not prove whether what the document states is true.

(See AIR 1945 BOM 319 and AIR 1954 BOM 305)

AIR 1983 BOM 25
Sukhdev Prasad v/s. Rambhujarat Kshampati
C.S. Dharmadhikari & Kurdukar, JJ

The Plaintiff sued for eviction of his tenant. The Defendant applied to amend the written statement challenging the Plaintiff's title to the suit property. That was allowed. Therefore, the Plaintiff filed an application to amend the plaint seeking possession also on the ground that the Defendant has denied his title. The said application was rejected.

Held: All rules of Court are nothing but the provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be exercised liberally. The amendment sought was only consequential and hence permissible.

(1983) 1 BOM. C.R. 374

Venkat Dharmaji v/s. Vishwanath Sambhaji
S.J. Deshpande, J

In a suit for specific performance of the contract, the Plaintiff sought the relief of temporary injunction restraining the Defendant from causing obstruction to his possession in certain portion of the property which was given to him on the basis of Agreement of Sale. The Defendant claimed that no possession was given and the Plaintiff was in illegal possession.

Held: A person obtaining possession under an Agreement of Sale cannot be said to be a person in wrongful possession. The question of possession cannot be confused with the question of title. Such a person is entitled to protect his possession during pendency of the suit, either under O.39 R.1 & 2 or ever under S. 151 CPC. The recitals of delivery of possession in the Agreement are sufficient prima facie proof of possession entitling the plaintiff to temporary injunction to protect his possession.

(1983) 2 BOM. C.R. 558

Lt. Col. Bhimrao Raghunath v/s. Advocate Madhukar
P.S. Shah & Kantharia, JJ

This Petition was filed for quashing a Private Criminal Case filed by the Respondent in the Court of JMFC Pune. Malicious accusations were made against two sitting Judges of the High Court therein. The Respondent challenged the maintainability of the Petition on the ground that the Judges who were accused in the Criminal case were not joined in this Petition.

Held: The criminal complaint as filed by Respondent no.1 against Judges of the Court was thoroughly frivolous, vexatious and devoid of any merits whatsoever. Hence it deserved to be quashed.

In view of the malicious and false allegations made in the said complaint by the Respondent no.1 against two sitting Judges of the High Court which were per se defamatory and contemptuous, Respondent no.1 was held guilty of Criminal contempt of the Court and directed to undergo simple imprisonment for three months and fine of Rs.2000/- in default S.I. For three months. Warrant of Arrest was issued immediately against the accused and he was taken custody to serve the sentence.

(1983) 2 BCR 580

Ananthasubramaniam Jagadesan v/s. T.V.Parwani
Kurdukar, J

A licence agreement was executed between the parties. The Defendant contended that the document was camouflaged as a Licence, but the real intention of the parties was to have the relationship of landlord and tenant. The question before the High Court about the true nature of relationship.

Held: In order to determine the true nature of the transaction the intention of the parties is of a paramount importance. The distinction between the two lies in the nature of possession. If it is a right to exclusive possession it will amount to lease.

(1983) 52 STC 117
CST v/s. Agarwal & Co.
Madon & Sujata Mahonar, JJ

The Respondents are resellers in tea, coffee and skimmed milk powder. The milk powder was taxed by the Sales Tax Officer rejecting the Respondents' contention that it was covered by Entry No.36 of Schedule A to the Bombay Sales Tax Act, 1959 and exempt thereunder. The Court had to consider whether skimmed milk powder fell within the entry "milk".

Held: Under S. 5 of the Bombay Sales Tax Act, 1959 the sale and purchase of goods specified in Schedule A is free from all taxes. Entry 36 thereunder is for "milk - whole or separated or reconstituted". Powder milk is obtained by a process of dehydrating the milk so that it can be preserved longer. It does not cease to be milk. The end use of milk powder is exactly the same as that of milk, therefore, milk – whole or separated – would include milk in powder form as much as liquid form.

1984

AIR 1984 BOM 19
Shiolalsing Gannusing v/s. Shankar Nale
Joshi, J

The Plaintiff filed suit for possession. The Defendant resisted the suit on the ground that he was owner and in support his contention filed a certified copy of sale deed which was more than 30 years old. The Court had to consider its admissibility and presumption under S. 90 of the Indian Evidence Act, 1872.

Held: The presumption regarding old documents as laid down in S. 90 of Evidence Act is not available in respect of a certified copy.

AIR 1984 BOM 114

M/s. Nav Digvijaya CHS Ltd. v/s. M/s. Sadhana Builders
Sujata Manohar, J

The Defendants had filed a caveat under S. 148 A of CPC in an application for execution made by the Plaintiff under O. 21 R 54 and O 21 R 43 of the CPC, 1976.

Held: The provisions of S. 148 A of the CPC are only attracted in proceedings where the caveator is entitled to be heard in the ordinary course or where the Court in its discretion hears the party which has filed the caveat before passing an order. An application for execution under O 21, R 43 or R 54 is not a proceeding where the judgment debtor has a right to be heard. Hence the Defendants are not entitled to file a caveat in such proceedings.

AIR 1984 BOM 208

Waman Govind v/s. Gopal Baburao
Chandurkar Ag. CJ, Pendse & Kurdukar, JJ

The Court had to consider the effect and scope of S. 18 of Hindu Succession Act, 1956.

Held: If the nature of relationship is the same in all respects, then irrespective of gender, i.e., male or female, the relations of whole blood are to be preferred to those of half blood.

AIR 1984 BOM 319

Anant Goplr Rao v/s. Jankibai Gopal Rao
Waikar, J

The Plaintiff filed a suit for partition of a dwelling house against her son. The son resisted the suit in view of S. 23 of Hindu Succession Act claiming that the Plaintiff being female she has no legal right to ask for her share by partition of the dwelling house.

Held: Where Hindu male dies intestate leaving only one male heir and other female heirs, the right of female heirs to claim partition in dwelling house is not barred under S. 23 of the Hindu Succession Act, because in the case of single or sole male heir there is no joint family and no dwelling of joint family. Hence the devolution of interest upon the female heirs cannot be kept in abeyance.

AIR 1984 BOM 338

Anandrao v/s. Govindrao Zingraji

Joshi, J

The Respondent was the step brother of the Petitioner. Their father, during his life time, had partitioned his property between himself and two sons by a registered partition deed and certain properties were allotted to them. After the partition father had purchased another property. The Respondent claimed a half share in the properties of his father by inheritance.

Held: After the death of the father, the interest in his separate property would devolve on his widow and the two sons equally i.e. $1/3^{\text{rd}}$ to each. The widow died after the father. On her death succession to her $1/3^{\text{rd}}$ interest in the property would be governed by S. 15 (c) of Hindu Succession Act. The expression "sons and daughter" used in sub clause (a) of S. 15(1) does not include stepsons and stepdaughters. The Respondent being her stepson was not entitled to inherit equally with his brother. He would get $1/3^{\text{rd}}$ share and remaining $2/3^{\text{rd}}$ share would be inherited by the brother.

AIR 1984 BOM 434

Shivaji v/s. The Chairman, MPSC

Jahagirdar & Kotwal, JJ

The Petitioners succeeded in the Examination for the post of Tahsildar. 25 posts were to be filled. 80% of total posts i.e., 20 posts were reserved for economically weaker section. 10% additional marks were allotted to the people coming from rural area. The Petitioners got the benefit of the reservation. The Petitioners were confirmed in the post of Tahsildar. In a Writ Petition the criteria of 10% additional marks was set aside. A new list of qualified candidates was prepared in which the names of Petitioners didn't appear. The Petitioners challenged the additional reservation to the extent of 46% made by the State for economically weaker section.

Held: Under clause (4) of Art. 16 of the Constitution appointments to posts could be made in favour of only backward class. Such reservation could be made only if in the opinion of the State that backward class was not adequately represented in the services under the State. Reservation should be such as to obliterate the equality of opportunity that is guaranteed to citizens under cl.1 of Article 16 of the Constitution. Such reservation should not be unreasonable, viz., it should not exceed 50% of total number of posts. Backwardness which is mentioned in Article 16(4) is social and educational backwardness. The reservation to the extent of 80% has destroyed the equality of opportunity. Hence, MPSC was directed to prepare a revised list of candidates.

1985

(1985) 2 BOM. C.R. 119

M/s. Vernekar Industries v/s. Starit Engineering Co.

Masodkar, J

The Plaintiff sued for recovery of a sum of Rs.10500/-. The suit was dismissed for default. The Plaintiff took out Notice of Motion for restoration of the suit, which was made absolute subject to payment of costs of Rs.500/-. The Plaintiff did not abide by the condition. Therefore, the Defendants took out the present Notice of Motion for inclusion of the costs of Rs.500/- in the Bill of Costs of Notice of Motion.

Held: The statutory object behind S.35 CPC is to secure to the litigant the expenses incurred by him in the prosecution of the matter and not to punish the party against whom the costs are awarded nor to enable a given party to make a gain or profit out of the litigation by having costs. The provision of costs provides a sort of indemnity against the expenses to which the litigant is put. The provision of S.35-B CPC applies during hearing of the suit. It does not apply to Notice of Motion for restoration of suit.

(1985) 2 BOM. C.R. 267

Amina Mohammedali v/s. Mohammedali Ramjanali

Kantharia, J

The husband's petition for Restitution of conjugal rights was ex-parte decreed. The Court had to consider whether the wife's petition for maintenance would then survive and whether it can be said that husband had refused to and neglected to maintain her within the meaning of S.125 of Cr.PC, 1973.

Held: The ex-parte decree would not show that the husband had made any genuine, honest and sincere efforts to bring his wife back. Hence it would not be proper to refuse maintenance allowance to wife.

(1985) 2 BOM. C.R. 399
National Hotel v/s. Rukaiyabai
P.S. Shah, J

The Small Causes Court fixed the standard rent of the premises under S.11 of the Rent Act, 1947 at the rate of 1017/- per month on the basis of the estimated costs of construction. Thereafter the landlord filed an application of review of the said order on the ground that he had discovered further evidence on the basis of which he wanted to prove the actual expenses of construction of the building. Maintainability of the review application was challenged in the absence of any provision of law conferring jurisdiction on the Small Causes Court to review an Order passed under S. 11 of the Act.

Held: Review was not permitted. Rule 16 of Bombay Rent Act does not ipso facto extend the provisions for review contained in the CPC, 1976 to the proceedings under the Act nor does it have the effect of overriding the provisions framed by the High Court under S.9 of the Presidency Small Causes Court Act, 1882 which are expressly made applicable to the proceedings under the Rent Act. The power of review cannot be exercised even under inherent power under S. 151 CPC, 1976.

(1985) 22 ELT 334
ITC Limited v/s. M.K. Chipkar
Lentin & P.B. Sawant, JJ - on dissent
P.S. Shah, J

The Petitioner sold its products to wholesalers, who sold them to secondary wholesalers, who sold them to retailers who in turn sold them to the consumers. The sales were bona fide in the usual course of business, on principal-to-principal basis, without deriving any extra benefit. The Petitioner followed the 'self removal procedure' under Chapter VIII-A of the Central Excise Rules. They were removing their goods after paying Excise Duty on the basis of prices charged by the wholesalers. As per an earlier Judgement in the Voltas case, excess amounts came to be paid as Excise Duty. The Petitioners applied for refund.

Held: The amounts were paid under a mistake of law. The recovery was, therefore, without authority of law. The knowledge started from the discovery of mistake. The Department cannot claim the ground of Unjust Enrichment against the Petitioner when no extra benefit has accrued. The Department must refund the amount of excess tax paid.

(1985) 88 BLR 355
Apar Pvt. Ltd. v/s. Union of India
Madhava Reddy, CJ, C.J. Shah & Sujata Manohar, JJ

The Court had to consider when goods can be said to be imported into India and at what stage they become chargeable to Customs Duty under Ss. 12 and 25 of the Customs Act, 1962

Held: The combined effect of the definitions of the words “import” and “India” under S. 2(23) and (27) of the Act, is that the import can take place as soon as goods are brought into the territorial waters of India since “India” includes its territorial waters. Hence, the taxable event occurs as soon as the goods enter the territorial waters of India and is not postponed till they are actually off-loaded on the land mass or valued or stored in bonded warehouse.

Customs Duty is not leviable if the goods are wholly exempt from Customs Duty even if the exemption is withdrawn under S. 25(1) of the Act, before the goods are released for home consumption.

If the goods are exempt from basic Customs Duty, they would be exempt even if they are not exempt from levy of additional Duty, wholly or partially.

Withdrawal of exemption from levy of additional Duty will not affect the levy of basic Customs Duty. Likewise, withdrawal of exemption of basic Customs Duty will not affect levy of additional Duty.

(1985) 57 Company Cases 241
Escorts Limited v/s. Union of India
Madhava Reddy, CJ & Rege, J

The Government liberalized the Policy of Foreign Investment in Indian industries by companies under Foreign Exchange Regulation Act, 1973 (FERA). 51% of the ownership was to be with NRIs. Applications were received seeking purchase of shares in the Petitioner Company. Several illegalities were alleged. Transfer of shares of Indian Companies for NRIs to other persons required RBI sanction. RBI issued a press

release that Foreign Investment was to be allowed up to 60% by NRIs. To qualify for permission, NRIs should hold at least 60% interest in the Company. Each overseas body may invest up to 1% of the paid-up equity capital.

The shares were purchased by 13 NR Companies without RBI permission and violating the provisions of Ss. 19 and 29 of FERA. The Company rejected the transfer of shares.

Nine Directors were sought to be removed by LIC by requisition and other Directors sought to be appointed.

Held: FERA was to be interpreted such as to advance its object – not merely to attract Foreign Investment but to regulate, monitor, control and limit the in-flow of foreign remittances and out-flow of investment and profits from India and conserve foreign exchange. S. 29 was mandatory. None can purchase shares without RBI sanction.

Right of hearing and making representation is implicit in S. 284 of the Companies Act, 1956 for removal of a Director. The shareholders' interest is to be secured. Reasons must be given by the requisitioner. The requisition is invalid.

LIC, as an investor, can protect its interest but not take over and administer the company.

If the proposal of merger of the company with another company is linked with the registration of transfer, then alone it would demonstrate mala-fides. The decision not to register the transfer by the Board of the Company is valid subject only to the appeal under S. 111 of the Companies Act.

None of the 9 Directors shall vacate their office. None of the new Directors shall assume office.

(1985) 21 ELT 72
Glaxo Laboratories (India) Ltd. v/s. Union of India
Sujata Manohar, J

The Petitioner imported Plasdone of pharmaceutical grade. It contended that it was imported under Tariff item 28 or residuary item 87 and not 82(3).

Held: For the purpose of classification of goods, the end use is irrelevant unless the entry specifies the end use.

1986

AIR 1986 BOM 46

Nishit Prabhu v/s. Chandranath Vinayak

Couto & Kamat, JJ

The Appellants had filed a suit for declaration. Summons was issued to the Defendants. They raised the objection to the maintainability of the suit without filing Written Statement. The plaint was rejected under O7 R 10 of the CPC, 1976.

Held: Once a summons for settlement of issues is served on the Defendants, they are bound to file their Written Statement and there is no provision whatsoever in the CPC, 1976 which provides that the Defendant can raise any objection to the maintainability of the suit by any application before filing his defence. If such piecemeal applications are permitted they may lead to undesirable results.

AIR 1986 BOM 101

Federal Bank Ltd. v/s. Smt. Indiradevi Kunjamma

Couto, J

The bank obtained a decree in a suit for the recovery of an amount. The question was whether monies payable under an insurance policy on the life of the judgment debtor after the latter's death can be attached.

Held: An insurance policy is meant for security of the heirs of the deceased and hence, can never be attached.

AIR 1986 BOM 147

Vidharbha Nagarpalika Parishad v/s. State of Maharashtra

Madhava Reddy CJ, Mohta & Puranik, JJ

This was reference made to a larger bench to reconsider the Constitutional validity of sec 48A of the Maharashtra Municipality Act, 1965 giving power to the State Government to supersede Municipal Councils.

Held: S. 48A does not violate the Fundamental right guaranteed to the Citizens under Article 14. The power vested in the State Government is not arbitrary. There are sufficient guidelines laid down in the Act itself for the exercise of power by the State. The councillor's right to continue in Office until fresh elections are held is not a fundamental right. It is subject to power exercisable under S. 48A of the Act.

AIR 1986 BOM 184

Ratanlal Chandiprasad v/s. Raniram Darkhan

Madhava Reddy CJ, Gadgil & Pratap, JJ

The Court had to consider whether a statutory tenant governed by the Bombay Rent Act, 1947 retains heritable or transferable interest in the premises

And could have created a valid license before 1973.

Held: A statutory tenant governed by the Bombay Rent Act retains a heritable interest in the premises only to the extent provided by S. 5(11)(c) of the Act. A statutory tenant retains a transferable interest in the premises only if he had such transferable interest as a contractual tenant and tenant could have created valid license only if original contract of tenancy had given him the right to transfer his leasehold rights.

AIR 1986 BOM 262

Raoji v/s. State of Maharashtra

Mohta & Cazi, JJ

The Petitioners were all non-tribals who had purchased occupancies from the tribals. In view of S. 36A of the Maharashtra Land Revenue Code the transactions were declared as invalid. Hence the validity of S. 36A imposing restriction on transfer of land by Tribal in favour of Non-tribal and vesting of land in State Government on such transfer was challenged before the High Court.

Held: The restriction on transfer of the land by a tribal in favour of a non tribal under S. 36A of the Maharashtra Land Revenue Code does not violate of Articles 14, 15, 19 and 31 of the Constitution as the tribals belong to weaker sections of the society and promoting their interest is one of the major items of our national goals. Hence discrimination made in favour of these sections of society by S. 36 A cannot be termed arbitrary.

1987

AIR 1987 BOM 123

Gopalkrishna Ramchandra v/s. State of Maharashtra

Lentin, Kurdukar & Jamdar, JJ

The question raised for consideration was of the validity and /or interpretation of Government Resolutions making reservation for Scheduled Castes, Schedules Tribes and Denotified Tribes/Nomadic Tribes in the category of Inspectors of Police and promotion from that category to that of Assistant Commissioners of Police in the Greater Bombay Police Force.

Held: Though members of the Schedule Caste renounce Hinduism and embrace Buddhism, they continue to live in the same social and economical condition of backwardness, for whom Government is entitled to make reservation. Hence the Resolutions were held to be valid, subject to the limit that percentage of reservation in any particular year must not exceed 50%.

AIR 1987 BOM 182

Shantaram Tukaram v/s. Smt.Dagubai Tukaram

Jahagirdar & C. Agarwal, JJ

The suit was for a declaration that the Defendants were not the legal heirs. The question was whether the children of a void marriage are legitimate for the purpose of succession to the property of the family in which they are born.

Held: A child of void marriage can only succeed to the property of its parents in accordance with provision of S.8 or S.15 of the Hindu Succession Act, 1956. They cannot claim share in the coparcenary property in which the parent has a share. The property to which such a child can lay the claim must be the separate property of the parent and not the coparcenary property.

AIR 1987 BOM 220

Jaishree Mohan v/s. Mohan Govind

Sharad Manohar, J

A Petition for divorce was filed by wife on the ground of cruelty. Husband in his written statement made unwarranted allegations of adultery against her. The question raised was whether unauthorized and unfounded allegations in written statement themselves amounted to grave mental cruelty so as to form basis for decree of divorce.

Held: Allegations of adultery against wife by husband in his Written Statement amount to cruelty provided those allegations are unwarranted and unfounded. They themselves can form basis for decree of divorce on the ground of cruelty.

AIR 1987 BOM 283

Percy Jal Pardiwalla v/s. The Bar Council of India

Kania, CJ & Sujata Manohar, J

Validity of Part IV of Rule 1(1)(d) of Bar Council of India Rules 1975, classifying students of law into two classes, namely students having regular employment during the course of study and students undergoing other course of instruction like Chartered Accountant, was challenged on the ground that it was discriminatory and hence violative of Article 14 of the Constitution.

Held: Rule 1(1)(d) of Bar Council of India 1975, was clearly excessive and beyond the powers given to the Bar Council of India. The restriction imposed by the Bar Council was discriminatory and violative of Article 14 of the Constitution.

AIR 1987 BOM 354

Devidas Baburao v/s. State of Maharashtra

Pratap & Kantharia, JJ

The Petitioners claimed that they belonged to Gadi-Lohar community which is included in the list of the Nomadic Tribes. The question was whether the caste certificates of blood relations can become a conclusive proof.

Held: The caste certificates of blood relatives can't become conclusive proof. At the most such caste certificates of blood relations can be used as a guideline and/or circumstances to be taken into consideration along with other evidence on record.

(1987) 1 BOM (Cri) 499

M.S. Dubal v/s. State of Maharashtra

P.B. Sawant & Kolse-Patil, JJ

The Petitioner challenged the constitutional validity of S.309 of the IPC which makes attempt to commit suicide a criminal offence for being violative of fundamental rights such as “right to life” guaranteed under Constitution of India.

Held: The Court held that “right to life” under Article 21 of the Constitution includes the ‘right to die’. One’s life, one’s body with all its limbs is certainly one’s property and he is the sole master of it. He should have the freedom to dispose it off as and when he desires. S. 309 of the IPC is ultra vires the Constitution being violative of Art.21 and it must be struck down.

(1987) MLJ 49

Vijay Valia v/s. State of Maharashtra
Kantharia & P.B. Sawant, JJ

The Court had to consider the role of a prosecutor under Ss. 24 and 25 of the Cr.PC, 1973. Whilst so doing, the Court considered the aspect of victim representation in a criminal trial.

Held: Criminal prosecutions are launched not only by the State but also by private parties. The role of the prosecutor in any criminal trial whether at the instance of the State or a private party is to safeguard the interests of both the complainant and the accused. The right to be heard includes the right to be represented by an able spokesman of one’s confidence. This right belongs both to the accused and the complainant. It is not only the accused who is in need of assistance, and protection of his rights but also the complainant.

The Court must safeguard the interests of the accused and the complainant. The Court is not a silent spectator to the proceedings but an active participant in it. It has to hold the scales even between the complainant and the accused.

1988

AIR 1988 BOM 248

Pandurang Chimaji v/s. New India Life Insurance Co. Ltd.
P.B. Sawant, Kolse-Patil & Guttal, JJ

The death of the deceased took place in a motor accident in a factory compound. The legal heirs of the deceased applied for compensation under Motor Vehicles Act, 1914. The claim was resisted by the insurance company on the ground that the place where the accident took place was within the compound of factory and hence it was not a 'Public place' within meaning S. 95 of the Act.

Held: All the places where members of the public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever would be covered by the definition of 'public place' in S. 2(24) of the Act to make the Insurance company liable.

AIR 1988 BOM 278

Ramanlal Lalbhai v/s. Central Board of Film Certification

Daud, J

This petition was under Article 226 challenging the decision of the Respondent refusing a certificate for exhibiting the feature film titled 'Bedroom story" produced by the petitioner. The film revolved around 4 characters, a professional photographer with an artistic bent of mind; the heroine, who was a model by profession, a villain of film and his mother. The film contained some scenes showing long exposure of the heroine's body, not connected in any way with the film or story. The film also depicted some superstitious practices. The certificate of exhibition was denied.

Held: The display of the heroine and long exposure of heroine's body, not in any connected with film or story was violating the prohibition contained in the guidelines issued by Central Government forbidding scenes of vulgarity, obscenity and depravity offending human sensibilities. Hence the refusal of certification was proper. However, there was nothing in the guidelines or the Cinematograph Act, 1952 to justify the distinction between permissible superstition and impermissible superstition and hence refusal to give certification on that ground was liable to be quashed.

(1988) 1 BOM. C.R. 11

Habibulla Saudagar v/s. The State of Maharashtra.

Tipnis, J

The Petitioner was arrested on 12.7.1987 for the offence of committing murder under S.302 of the IPC, 1860. On expiration of the period of 90 days he moved an application for bail under S. 167(2) of the Cr.PC at about 11.00 o'clock on 12.10.1987. The Magistrate waited for whole day but chargesheet was not filed. He rejected the application. The Petitioner applied for bail in this Court. In the meanwhile a chargesheet was filed in the Trial Court. Hence the question before the High Court was whether it can still extend the benefit of S. 167(2) of the Cr.PC to the Petitioner.

Held: The Accused has an absolute right to be released on bail on expiry of 90 days which cannot be defeated by mere filing of chargesheet before his application is considered though the Prosecution may apply for cancellation of bail.

(1988) 1 BOM. C.R. 48

Municipal Corporation of Greater Bombay v/s. Jog Constructions
Suresh, J

This Petition was filed for setting aside the Award passed by the Arbitrator in respect of the contract of execution of civil works given by the Petitioner to the Respondent after inviting tenders. The ground raised for challenging the Award was that Arbitrator had not decided the question of law properly.

Held: The Court cannot set aside Award even if there is an error of law apparent on face of it and even though the decision of Arbitrator may not accord with law as understood by the Court. The Court can interfere in the Award only under S. 30 of the Arbitration Act, 1940.

(1988) BRC 158

Hoshang Dotiwala v/s. Rustomji Dotiwala
Tated, J

The parties are son and father. The father was the tenant of the premises. The son lived with him. The parties had serious disputes. The father prayed that the son be removed from his family house as he has become a nuisance to him. The son claimed tenancy under S. 5(11)(c) of the Bombay Rent Act, 1947 as his grandfather was a tenant before his father and he lived in the premises since his time.

Held: The son lives in the premises as a member of the family of the Respondent. He has no independent right to continue staying in the suit premises. He has no right as a tenant as there has been no succession. There is no question of succession to the tenancy and the creation of any right under S. 5(11)(c) of the Act.
(See AIR 1995 BOM 210)

(1988) 90 BLR 22
Eknath Ogale v/s. Mansukhlal Jain
P.B. Sawant & Guttal, JJ on dissent
Pendse, J

The Plaintiff sued in the Civil Court for protection of his possession against the disturbance of the Defendant in the suit premises licensed to him.

Held: The suit is relating to recovery of possession of the licensed premises. Only the Special Court would have jurisdiction as specified in S. 41 of the Presidency Small Cause Court Act, 1882 as amended in 1976. The Bombay City Civil Court has no jurisdiction to try the suit which is by a licensee against his licensor. The words “relating to” in the section are very wide. They include suits, not only for recovery of possession, but also with regard to recovery of possession.

The plaint must be read as a whole.

(See AIR 1980 BOM 123)
[See also (2007) 5 BCR 1 relating to suits by licensor of a gratuitous licence]

1989

(1989) 1 BCR 99
Krishna Bajaj v/s Dorab Warden
H. Suresh, J

The Plaintiff was the co-owner with his brother in a family house constructed on the land purchased by them. After the brother's death, his wife sold his undivided half share in the property to an outsider. The purchaser came into possession of the ground floor and the Plaintiff continued in possession of the first floor. On the case of extreme inconvenience of a co-owner, the Plaintiff obtained an order of mandatory injunction virtually ousting the purchaser from his flat.

Held: The parties always lived separately. The premises could not be considered a dwelling house so as to disentitle the purchaser as stranger under S. 44 of the Transfer of Property Act, 1882. The Plaintiff was not entitled to a mandatory order of injunction.

AIR 1989 BOM 17

Chandrakant Vassudev v/s. Vaman Mahadev

Couto, J

The Plaintiff filed a suit for possession, declaration and injunction and claimed alternative relief of demarcation and partition of the properties. The Defendant contended that as the Plaintiff was claiming alternate relief, Court fee has to be paid on the larger value of both the reliefs. After giving opportunity, the Plaintiff failed to pay Court fee. Therefore, an order of partial rejection of the plaint was passed by Trial Judge under O7 R11 of the CPC, 1976.

Held: The Plaint should be rejected in toto. It cannot be rejected only partially in respect of the alternative prayer. As no cause was shown to justify extension of time for payment of Court fees, no discretion was left for the Court to reject the plaint under the mandatory provisions of O7 R11.

AIR 1989 BOM 138

M. S. Malathi v/s. The Commissioner Nagpur Division

Mookerjee, CJ, Dharmadhikari & Kurdukar, JJ

The Petitioner got the provisional admission in the Government Dental Medicine and Surgery Course. She belonged to the Adi Dravida caste which was specified as a scheduled caste in Tamil Nadu. But was not specified in Maharashtra as a scheduled caste. Hence authorities for caste verification refused her claim as of scheduled caste. She challenged it in the High Court.

Held: A member belonging to a schedule caste would be of scheduled caste only in the State in relation to which his caste is specified as a scheduled caste. In a State in relation to which his caste has not been specified as scheduled caste under Article 341, for the purpose of the Constitution, the said caste would not be deemed to be a scheduled caste.

AIR 1989 BOM 247

Baban Narayan v/s. Mahadu Bhikaji

V. A. Mohta, J

The question for consideration was whether a Civil Court has jurisdiction to issue at an interlocutory stage a mandatory injunction so as to restore the status quo anterior to the date of institution of suit.

Held: Injunctions are a form of equitable relief and they have to be adjusted and moulded in aid of equity and justice to the facts and circumstances of each particular case. The Civil Court has, therefore, undoubted jurisdiction under Order 39 Rule 1 & 2 to grant temporary mandatory injunction at interlocutory stage. Such jurisdiction can also be inferred under S. 151 CPC. However, such power is not to be executed lightly or commonly. Order in maintaining of status quo as on the date of suit as an interim measure is rare and rarer still is the order of maintenance of status quo as on the date anterior to the institution of the suit.

AIR 1989 BOM 267

Suresh Govind v/s. Raghunath Moreshwar

P.B. Sawant & Kolse-Patil, JJ

A Hindu male executed a will on 27/11/1947 and bequeathed the property to his widow for her life stipulating that after her death the property was to go to the Plaintiff. Before her death she executed a will on 15/1/1971 and bequeathed the property to the Defendant no.2. The Plaintiff challenged the will on the ground that she was not a full owner and hence could not alienate it in any manner she liked.

Held: As the widow was in possession of the property when the Hindu succession Act, 1956 came into force, she had become an absolute owner of it under S. 14 of the Act. She had, therefore, the right to alienate it in any manner she liked. The will merely recognized her pre-existing right of maintenance and even if it was not recognized it would have prevailed.

AIR 1989 BOM 331

Garware Plastics v/s.M/s. Telelink

Sujata Manohar, J

The Plaintiffs had an assignment of Video Copyright in respect of Cinematograph Films over Cable TV Network. The contention of the Defendants was that those films were to be shown only to the members of the subscribers' household or his guests and such viewing cannot be considered as broadcasting to the public.

Held: The entire audience taken together cannot be treated as members of a common household or family members. They can only be viewed as a portion of public. Hence showing video films over cable TV Network to subscribers amounts to infringement of copyright.

AIR 1989 BOM 410

Amrutlal Weljibhai v/s. Vishwasrao Devrao

Ratnaparkhi, J

On 9/9/1981 a quit notice was sent on the address of the Defendant which was refused by him and returned on 12/09/1981. On the same date the Plaintiff sent a notice determining the tenancy under certificate of posting. The question for determination was whether the quit notice was served on the Defendant.

Held: The presumption under S. 114 of Evidence Act, 1872 must be stretched to its logical extent and the Court would be justified in presuming that the letter once posted had reached the addressee when there was no evidence in rebuttal.

1990

AIR 1990 BOM 84

Smita Dilip v/s. Dilip Dattaram

C. S. Dharmadhikari & Chaudhary, JJ

The husband's petition for divorce on the ground of cruelty was decreed. During the pendency of the appeal the husband married a second wife.

Held: Though the marriage of the parties may have irretrievably broken down, the husband cannot be allowed to take advantage of his own wrong in marrying. It is well settled that what cannot be granted directly cannot be achieved indirectly. By distorting the passage and reading certain observations of the Supreme Court torn from context, a new ground of irretrievable breakdown of marriage cannot be made out for getting a divorce when the Law does not provide for it.

AIR 1990 BOM 343

Kisan Bhagwan v/s. The State of Maharashtra
V. A. Mohta & Cazi, JJ

Grazers of Kathewadi region were grazing their cattle on license basis in the government forest. The state of Maharashtra and its forest officers took a policy decision not to grant such licenses to any Kathewadi grazer and totally excluded that class for grant of license in future. This policy decision was challenged.

Held: Only because some members of the class of the grazers were indulging in illegal grazing in the past, the Respondent cannot exclude the whole class of persons from the grant of license. The policy decision of the State Government in that regard was held to be not valid.

(See also 1878 ILR 2)

AIR 1990 BOM 344

Siraj Sahebji v/s/. Smt. Roshan Siraj
Sugla, J

A Muslim wife with her children filed a suit inter alia for divorce and claimed maintenance for her two children who were more than two years of age. The question for determination was whether a Muslim husband is having limited obligation to pay maintenance to children maintained by the divorced wife upto two years from the date of their respective births.

Held: Under the Muslim Law the father's obligation to maintain the minor children is absolute in terms. S. 3(1)(b) of The Muslim Women (Protection of rights on Divorce) Act,1986 has nothing to do with the independent right of children to be maintained by the father under S. 370 of The Mohammedan Law. It does not affect the children's independent right to get maintenance from their father even after they become more than two years of age and are staying with their mother. At the most father may claim custody of children but if he has not done so, he cannot deny his liability to pay maintenance to them.

AIR 1990 BOM 355

Lucy D'Souza v/s. The State of Goa
V. A. Mohta & Couto, JJ

A petition was filed challenging S. 53(1)(vii) of the Goa, Daman and Diu Public Health Act, 1985 empowering the State Government to isolate persons found to be positive for AIDS. It was challenged on the ground that it was unreasonable and violative of rights under Articles 14, 19(1)(d) and 21 of The Constitution of India

Held: An individual's right has to be balanced with the public interest. Even if there is conflict between the right of an individual and public interest, the former must yield to the latter. Sec 53(1)(vii) was accordingly held to be reasonable and not violative of the Articles 14, 19(1)(d) and 21 of the Constitution of India, as it was found that isolation of the patient suffering from AIDS was not wholly unscientific or counter productive, but was in the interest of the Society. Further it was held that the power to examine correctness of policy decision has to be exercised very cautiously as the Court would be too ill equipped to doubt the correctness of the legislative wisdom.

(1990) 3 BCR 57

State of Maharashtra v/s. Editor, Nagpur Times
Cazi , J

On the basis of a report published in the local daily 'Nagpur Times' dated 12/7/1989 under caption 'Alleged rape on Minor girl-Police lenient towards accused', some businessmen were charged for committing rape on a minor girl from a brothel run in a posh residential locality. When the application for bail came for hearing before the Court, the Public Prosecutor failed to assist the Court in the true sense.

Held: The Public Prosecutor is the officer of the Court and he is expected to protect the interest of the State to the best of his ability. He is also supposed to assist the Court in dispensing justice. He cannot throw the entire burden on the Court.

[1990] 184 ITR 580

CGT v/s. Seth Arvind Mafatlal
Sujata Manohar & Sugla, JJ

The assessee took two insurance policies on his life nominating his wife for the benefit of his two sons. He paid premia from each year.

Held: The premia paid by the assessee in respect of policies of insurance on his life which were taken out by him under the provisions of the Married Women's Property Act for the benefit of his sons are in discharge of an obligation in a contract of insurance and do not amount to gifts made by the assessee to the beneficiaries of the policies.

The policy of insurance is deemed to be a trust and the payment of premium to keep alive the policy cannot be gifts to the beneficiaries each time they are paid.

1991

AIR 1991 BOM 145

Krishankant Dattaram v/s. Dy. Charity Commissioner
Ashok Agarwal, J

In a proceeding under S. 19 of the Bombay Public Trusts Act, 1950 an application for abatement of proceedings before the Charity Commissioner on the ground of death of the Respondent was rejected.

Held: The provisions of O22 R 4 of the CPC do not apply to proceedings under S. 19 of Bombay Public Trusts Act. The inquiry contemplated under S. 19 of the Act is in public interest and the same cannot be thwarted on such technical pleas as abatement. It is incumbent upon the Charity Commissioner to continue these proceedings as if these proceedings were initiated on his own motion.

AIR 1991 BOM 164

Alka Bakre v/s. Bhaskar Bakre
Ashok Agarwal, J

The husband's petition for divorce under S. 13(1)(ia) and 13(1)(ib) of The Hindu Marriage Act, 1955 was decreed on the ground of cruelty and desertion as the wife had refused to join him by leaving her job on his transfer to another place.

Held: The parties to a marriage are equal partners in all respects and there is no justification to hold that it is only the place of posting or the original place of the residence of the husband that will be the matrimonial home. The wife has an equal right of having a say in the matter of determining the place of their matrimonial home and if there has been an estrangement between the parties on that score, the husband is wholly responsible. The wife had, on two earlier occasions, resigned her job and accompanied her husband at the place of his service. There was reasonable cause for her to refuse to join him or to reside with her in-laws in his absence. This conduct of the wife neither amounts to desertion nor cruelty.

(1991) 4 BCR 251

Shriram Narayan v/s. Demu Surya

Da Silva, J

The Respondent filed a civil suit for permanent injunction. He made an application for temporary injunction. The application was rejected. That order was not challenged. The Respondent filed another civil suit for permanent injunction with regard to the same property in which temporary injunction was allowed.

Held: The scope of the principle of res judicata is not limited only to suits only under S. 11 of the CPC, 1976. It would apply even to different stages of the same suit.

(1991) 3 BCR 229

Mary Dowling v/s. Margaret Merwan

Variava, J

The Respondent, who was a step daughter, filed a petition for Succession Certificate claiming that she is the only heir of the deceased. Her Petition was allowed. The Petitioner, who was real sister of the deceased, challenged the same contending that she and one other sister were the only heirs of the deceased and the Respondent being a step daughter would not be an heir to succeed to estate of the deceased.

Held: Part IV of the Indian Succession Act, 1925 lays down that for the purposes of succession there must be a relationship by blood. S. 27 of the Act also makes no difference to this rule. Therefore, where S.27(b) refers to a relationship, it must be understood as reference to relationship by full blood or half blood. The step daughter, not being related to the deceased either by full blood or half blood, would not be entitled to succeed to the estate of her deceased step father.

1991 AIR 301 BOM

Bombay Environment Action Group v/s. State of Maharashtra

Gokhale & Devadhar, JJ

Large scale illegal construction activities and deforestation work was going on in hill stations like Mahabaleshwar and Panchgani which had been declared as eco-sensitive area. It resulted in widespread ecological problems. The Bhatia committee submitted its report and identified more than 100 buildings of illegal construction and many other violations in hill station.

Held: No one can carry out illegal construction activities and deforestation on hill stations which are declared as eco-sensitive area. The Court directed the

Mahabaleshwar Municipal Council to take action against illegal construction and deforestation.

[1991] 188 ITR 293

CIT v/s. Himalayan Tiles & Marbles (P.) Ltd.

Bharucha & Sugla, JJ

The assessee took over a business of another person as sole proprietor of the assessee's concern for consideration. A suit was pending against the firm. An award was made in favour of the firm against Union of India.

Held: Purchase of a claim pending arbitration is a business venture. Where the assessee took over claims from a person against a company in respect of which an arbitration suit was pending and on settlement of the claim made a profit, the said profit was assessable as income accruing to the assessee from an adventure in the nature of trade.

(1991) 189 ITR 774

Sadhichha Chitra V. CIT

Sujata Manohar & D.R. Dhanuka, JJ

The Court had to consider under what circumstances a subsidy (or similar financial assistance) given by the government is taxable as a revenue in the hands of the recipients. The assessee was a producer of motion pictures in Marathi language.

By a Government resolution bearing No. ENT 1075-F dated February 19, 1975, the Government of Maharashtra sanctioned its subsidy scheme for grant of financial assistance to Marathi film producers for their ensuing ventures. By the said resolution, it was decided by the Government of Maharashtra that its total receipts on account of entertainment duty on Marathi films exhibited in the previous year shall be earmarked for implementation of the said scheme.

Held: The Court laid down the test thus : " *We are of the view that the answer to the question whether the receipt of a particular subsidy amounts to a capital receipt or a revenue receipt would depend upon the nature and content of the subsidy, the scheme, its objectives and the purpose for which the subsidy is granted...*" Applying this test, the subsidy was held to be a capital receipt.

1992

(1992) 2 BCR 56

Rama Sidram v/s. State of Maharashtra

B.N. Deshmukh & Dani, JJ

The Petitioner, who was committed to jail sent an application to the Court raising grievance of ill-treatment at the hands of jail authorities. His main grievance was that while fixing the scale of ration, the requirement of each individual prisoner was not taken into consideration in respect of diet. The food provided on the basis of general scale is violative of Article 21 of the Constitution of India.

Held: A prisoner has right to get more diet as per his requirement by approaching the medical officer. He can avail extra or special diet on the recommendation of the medical officer. The Maharashtra Prison (Diet for prisoners) Rules prescribing general scale of diet therefore, do not offend Article 21 of the Constitution of India.

(1992) 2 BCR 478

Narendra Govinda v/s. The Inspector of Police

Pendse & Mane, JJ

The Police found the Petitioner in possession of a country revolver and 3 live cartridges without license. The Police registered an offence under S. 25(1)(C) of Indian Arms Act, 1959. His bail application was rejected as Police had also invoked the provisions of S. 5 of TADA Act, 1987. The Petitioner then challenged the Constitutional validity of S. 5 and S. 2(f) of the said Act.

Held: For the offence under S. 5 of TADA, the classification of persons within a Notified area cannot be treated as reasonable. Mere possession of unauthorized arms in the notified area is not sufficient to invoke provisions under S. 5 of the Act. It is attracted only when such possession relates to the terrorist acts or the disruptive activities. It is not necessary that a person in possession of unauthorized arms in a notified area should be personally involved in such activities. However, if it is found that there is any material indicating that person found in possession of unauthorized arms in a Notified area has previous history of indulging in terrorist acts or disruptive activities, then the invocation of S. 5 of the Act cannot be faulted.

(1992) 2 BCR 58

V. M. Bhandari v/s. State of Maharashtra

Sukumaran & Dr. Saraf, JJ

A public grievance was raised concerning allotment of the Cross Maiden for conduct of an exhibition of Adivasi Seva Samiti headed by a Cabinet Minister.

Held: As Exhibition was aimed at promoting the welfare of a down trodden community and otherwise legal. It did not incur any infirmity just because a Minister happened to be a Chairman of the organization. The practice of filing frivolous petitions in name of public interest was deprecated by the High Court.

(1992) 1 BCR 85

Chagunabai Chanoo v/s. Khatau Makanji Mills

P.D. Desai, CJ & Sukumaran, JJ

The Petitioner was employed in the Respondent Company. She remained absent due to strike. The strike was declared as illegal. The Chief Minister made an appeal to the employees to resume duty. The petitioner was not allowed to resume though she reported for duty. The Petitioner was dismissed.

Held: It is necessary to determine whether there is actual participation of the workman in the illegal strike before taking any disciplinary action. If her participation is passive, even if the strike is held illegal, the dismissal of employee is not legal. The dismissal of an employee without holding individual inquiry would not be just and proper.

(1992) 1 BCR 514

Meena Anilkumar v/s. Anilkumar Govind

Cazi, J

The parties were married at Pune and later resided at Thane. Subsequently they went to the USA. The husband filed a petition for divorce on the ground of cruelty in the Court at Thane. The wife raised question of jurisdiction of Thane Court on the ground that they had last resided together in the USA.

Held: S. 19 of the Hindu Marriage Act, 1955 confers jurisdiction on the Court within whose ordinary local jurisdiction the parties last resided together. It was not the intention of the Act to confer jurisdiction on a foreign Court. As before moving to the USA, the parties had last resided together at Thane, the Court at Thane had jurisdiction.

AIR 1992 BOM 375
Minoos Balsara v/s. Union of India
Bharucha & Srikrishna, JJ

The Petitioners challenged the constitutional validity of the Public Premises (eviction of Unauthorised Occupants) Act, 1980 [PP Act] under Article 14 of the Constitution of India as it discriminates between two classes of tenants, the tenants of private landlords and tenants of government companies.

It is liable to abuse as it confers unfettered power and unguided discretion upon the Estate Officer. The Estate Officer was to form an opinion about unauthorized occupation. There was no defence to eviction.

The Petitioners challenged the Act as violative of Article 19(1)(f) of the Constitution as there is repugnancy between the Bombay Rent Act 1947 and the PP Act. The Rent Act would prevail to the extent of the repugnancy.

Held: There is no discrimination under Article 14. The two Acts operate in respect of different tenants.

The President's assent was sought to overcome repugnancy between the Transfer of Property Act and the Rent Act. It is not the basis for according precedence to Rent Act over PP Act. The Rent Act cannot prevail over the PP Act. The Act is not ultra vires Article 19(1)(f) of the Constitution. The constitutionality should not be adjudicated, except when necessary. Hence, the challenge to constitutionality was not considered.

The Act was read considering the words as they stood. It was neither reading down the legislation nor reading words into them.

1993

(1993) 201 ITR 348
Commercial Corporation of India Ltd. v/s. ITO
G.D. Kamat & Dr. DeSilva

The petitioner is a company having its registered office at Manipal. The company entered into an agreement with the Government of Goa to organize lotteries on behalf of the State of Goa on All-India basis except within the State. Under that agreement, the company is required to cause the lottery tickets to be printed at its own cost against payment of guaranteed profit to the Government. The company is to deposit the prize money and the cost of the draw. The company conducted the lotteries for a

considerable period without any difficulty under the agreement when, all of a sudden, the Ex-officio Director of Lotteries, Government of Goa demanded a sum of Rs.2,53,78,080 by way of Income Tax.

The petitioner-company claimed that what is credited to the petitioner under clause 15 of the agreement is nothing but return of monies deposited with the Government towards prize monies on lottery tickets remaining unsold with the company. There is no purchase of the lottery tickets or participation in the draws.

Held: A lottery is a chance for a prize against a price. Hence, an element of purchase is present. The purchaser of a lottery ticket must have a right to participate in the draw. That is sale of goods. The income is liable to tax.

AIR 1993 BOM 87

State Bank of India v/s. Javed Akhtar Hussain
Mutalik, J

The suit of the Petitioner Bank was decreed. The Bank filed an execution application. Thereafter, the Judgment debtor deposited a sum in a FDR in another branch of the Petitioner in the joint names of himself and his wife. He also had a joint Recurring Deposit account. The Petitioner enforced lien on both these accounts without exhausting any remedy against the Respondent. An order releasing the lien was challenged.

Held: It is not proper for a bank in whose favour a decree is passed to unilaterally enforce a lien on the amount deposited subsequently by defaulter by way of fix deposits in joint account with his wife in another branch of Petitioner bank.

(1994) 1 Mh.LJ 21

Goa Foundation v/s. Konkan Railway Corporation
Pendse & G.D. Kamat, JJ

The Petitioner challenged the proposed alignment of the Konkan Railway Project passing through the State of Goa as having been planned and undertaken without any environmental clearance from the Ministry of Environment and Forests under the Environment Protection Act (EPA), 1986. The Petitioner also claimed that the proposed alignment was wholly destructive of the environment and the ecosystem and violated his Right to Life under Article 21 of Constitution of India.

Held: The environmental clearance was not required under the Railways Act, 1989. Development of the country is not possible without some adverse effect on the

environment and ecology. The project of public utility cannot be abandoned even if there are some adverse effects. It is equally important to adjust the interest of the people and to maintain the environment.

(1993) 204 ITR 93 (BOM)
CIT v/s. Lallubhai Nagardas & Sons
Dr. Saraf & U.T. Shah, JJ

The assessee, a firm of stock brokers claimed that its firm carried on a profession as distinguished from business.

Held: Stock-broking is not a profession. A stock broker cannot be said to be engaged in the practice of a profession. The real job of a stock broker is to make arrangements for sale of the shares or securities of others. Such activity clearly falls within the expression 'business' and not 'profession'.

'Profession' has to be distinguished even from 'occupation' which tantamounts to 'business' viz., an occupation which is substantially the arrangement for sale of commodities. This is much like the distinction between a 'dealer' and a 'broker'. A dealer sells his own goods whereas a broker sells or arranges the sale of the goods of others through there may be cases where the same person does both the acts.

(1993) 2 BCR 301
Bomi Mistry v/s. Kesharwani CHS
Daud, J

The agreement of the original owners contained two restrictive covenants; vertical expansion on the land and a free central passage. The Defendant society building was constructed in breach of the covenants. Their agreement was ante dated for the purpose of evasion of tax. It violated the rights of the covenantee as a citizen and a tax payer. The agreement was registered. The Plaintiff sued for cancellation of the agreement more than 3 years after its registration but within 3 years of it having been first used against him. The Court had to consider, inter alia, whether the Plaintiff sued within limitation and whether the agreement could be cancelled as not bona fide.

Held: Ante dating an agreement for defrauding the Revenue is forbidden by law and against public policy. The object of an agreement is its purpose and design. S. 23 of the Indian Contract Act, 1872 relates to only the object or consideration and not the reasons or motive which prompted it.

A cloud on title is created by a party impairing the value of the property.

The period of limitation begins when an ante dated document is first used against the Plaintiff, that is, when the right to sue first accrues under Article 58 of the Limitation Act, 1963 though the registration of the document would be notice to “the wide world”.

The ante dated document put up to evade tax is declared ineffective.

(1993) Cr.LJ 977

Abdul Wahid v/s. State of Maharashtra
Saldanha & Daud, JJ

The accused raped his 7 year old daughter. She was sleeping with his other children last in a hut. He went to the bathroom to wash his clothes. The CA report showed the blood group and the semen matched on the clothes of the victim child. The medical report showed her vagina being swollen, inflamed on touch and her hymen being tender. The report was that she was subjected to recent sexual intercourse.

Held: The offence of rape is an affront to a woman’s dignity. It has to be dealt with ruthlessly as it is abhorrent, heinous and atrocious, especially when committed on a minor girl. The crime must be punished severely for deterrence to be achieved.

Yet, the Court took a view of the complete circumstances. The accused was in the weakest strata of society. He was a hutment dweller. He had no place to sleep. His wife had left him. He cared for his children and sent them to school. It was a crime of passion on an irresistible impulse.

The imprisonment for life was converted to imprisonment for 10 years for rape under S. 376 of the IPC and for 1 year under the Bombay Children Act, 1948.

[See also (2001) Cri.LJ 1579]

1994

(1994) 2 BCR 219

Hari Om v/s. State of Maharashtra
Kantharia & Moharir, JJ

The Accused was convicted for the offence of robbery punishable under S. 392 read with S.397 of IPC in several cases. It was found that accused had indulged in several acts of endangering property and even human life. An order of concurrent sentence in all those cases was challenged.

Held: Order of concurrent sentence should not be passed casually as otherwise it would make sentences ineffective and crimes inconsequential. If habitual and hardened criminals are awarded concurrent sentences they escape punishment and dangerous criminals may be let loose on the Society.

(1994) 2 BCR 480

Arun Shankarrao v/s. District & Session Judge, Akola.
Dhabe & Chavan, JJ

The Petitioner offered to voluntarily retire. His application was accepted. Thereafter he applied for withdrawal of his application. That was rejected. The rejection was challenged under Rule 66(5) of the Maharashtra Civil Services (Pension) Rules, 1981.

Held: Rule 66(5) of said Rules is not unconstitutional. Its object is to confer upon benefit upon Government employees. The Rule is to prevent its abuse. The notice cannot be withdrawn.

(1994) 4 BCR 51

Abdul Hamid v/s. State of Maharashtra.
Ashok Agrawal & I.G. Shah, JJ

The Petitioner file the writ petition invoking extraordinary jurisdiction of the High Court for quashing the proceeding initiated against him under the Terrorist And Destructive Activities Act, 1987 contending that there was no sufficient material against him to satisfy the ingredients of S. 3 of the Act except for the allegation that he was found in possession of AK56 rifles and 12 empty magazines.

Held: Issuance of writs is a prerogative right of the High Court. It cannot be controlled or taken away by any enactment. However, this power of High Court to issue Writs is to be exercised sparingly and not as an alternative remedy for reliefs which may be obtained by the mode prescribed in a statute. As there was no sufficient material to prove the ingredients of S. 3(1)(3) of TADA, it was fit case to quash the proceedings initiated against the Petitioner under the said Act.

(1994) 3 BCR 321

Gangabai Bala v/s. Jagannath Parashram

V.A. Mohta, J

A widow sued for declaration of title to the half portion of house property where she was residing and three acres of agricultural land which were in her cultivation.

Held: Physical possession of the property by Hindu female is not a sine qua non for attracting S. 14(1) of the Hindu Succession Act, 1956. As the field in question was given to the widow in lieu of her pre-existing right of maintenance, she had acquired absolute ownership over the same under S. 14(1) of the Act.

(1994) 3 BCR 53

Prakash Totaram v/s. Union of India

Dr. Saraf, J

The Petitioner was the owner of the certain premises given on lease for the period of 5 years to the Respondent. After completion of 5 years the petitioner sent notice to the Respondent inquiring whether the Respondent wanted to continue the lease. In reply to the Notice, the Respondent stated it was interested in continuing the lease but offered the rent which was not as per the contract.

Held: Under Article 226 Writ Courts do not entertain disputes arising out contractual obligations even if one party happens to be the State. However, if the State acts arbitrarily, which it is not supposed to do, then even in contractual obligations the power of Judicial Review cannot be denied to the citizen. The attitude of the Government Officers to persist with litigation like ordinary citizens was deprecable.

1995

(1995) 216 ITR 376

CIT v/s. Hilla Wadia

Sujata Manohar & U.T. Shah, JJ

The assessee paid for the cost of construction of a new house. The Court had to consider whether the assessee could claim exemption under S.54 of the Income-tax Act, 1961 even if the construction is not completed within the period specified therein.

Held: If the assessee has acquired substantial domain over the new house and has made substantial payment towards the cost of construction within the specified period for claiming exemption of Capital Gains Tax, the assessee can be said to have complied with the requirements of the section even if the construction of the building was not completed within the stipulated time.

(1995) 4 BCR 263

Rekha Kholkar v/s. State of Goa

Da Silva & A.P. Shah, JJ

On the complaint of theft the Petitioner, a domestic servant, was called in the police station for inquiry. There she was subjected to ill-treatment. She was undressed and beaten mercilessly. She was admitted to the hospital due to injuries sustained. She filed writ petition claiming compensation

Held: As the Police had violated the fundamental right guaranteed under Articles 21, 14 and 22 of the Constitution, an action can be taken in light of departmental Inquiry. Compensation of Rs.30000/- was granted to the petitioner. The provision of S.160 (1) of the Cr.PC be strictly complied in all cases involving interrogation of women.

(1995) 1 BCR 358

Bhalchandra Narayan v/s. State of Maharashtra

Vishnu Sahai, J

The Petitioners were convicted of offences punishable under Ss. 324, 147 and 148 of the IPC. The conviction and sentence was upheld by the Appeal Court. Being aggrieved by the said order, the Petitioners filed this appeal.

Held: As only one common statement was recorded of 7 accused, it was held that this was not a proper way of recording statement under S.313 of the Cr.PC. It was further held that this was a most casual unsatisfactory perfunctory and wholly illegal way of recording statement; this infirmity has introduced illegality in the conviction. Accordingly, convictions were set aside.

(1995) 97 BLR 957

Bayer (India) Ltd. v/s. State of Maharashtra

Kantharia & Saldanha, JJ

There was dispute over a land situated in the industrial zone. The land was designated for industrial use by Thane Municipal Corporation. The Developers proposed construction of multistoried residential buildings in the industrial zone. It was rejected by Thane Municipal Corporation.

Held: No residential development projects within the radius of 1km around industrial zone can be put up. Thane Municipal Corporation could not to permit any residential development within that zone.

AIR 1995 BOM 210
Conrad Dias v/s. Joseph Dias
Vaidyanathan, J

A father sued for injunction to restrain his son from entering into his residential premises on the ground of nuisance created by the son. The son defended the action claiming tenancy, licence, adverse possession and joint possession.

Held: The sn had none of those rights. The premises belonged exclusively to the father. The son lived there only as a member of his family, nothing more and nothing less. Hence, the son had to vacate, when called upon.
(See 1998 BRC 158)

1996

(1996) Cr. L.J. 1419
Ibrahim v/s. State of Maharashtra
Vishnu Sahai, J

The accused in this case was a hardened criminal involved in 22 cases. On account of this reason his application for bail in a case for offence punishable under S. 395 of the IPC was rejected.

Held: Criminal history of the accused could not be a sole ground to refuse bail. The accused has been in jail for over 9 years and 4 months. His trial had not yet commenced. Therefore, detaining him further in jail was infraction of his fundamental right to an expeditious and speedy trial implicit in Article 21 of Constitution of India. He was entitled to bail.

(1996) 4 BCR 264

Basantibai v/s Narayan

Lodha, J

A widow transferred her tenancy rights in her land by executing a will in favour of a distant nephew.

Held: The statutory tenancy is a personal right. It can be transferred only as per S.54 of the Bombay Tenancy and Agricultural Act, 1948. Therefore it cannot be transferred by Will.

(1996) 3 BCR 743

State of Maharashtra v/s. Kiran @ Karna

Vishnu Sahai, J

The accused arrested for the offence punishable under S.302 of IPC was released on bail by the Metropolitan Magistrate on the ground that he was aged only 17 years and his confinement in jail would be an obstacle in his education.

Held: In view of the provision of S.437(1) of the Cr.PC the Magistrate had no jurisdiction to grant bail as the offence was punishable with death or imprisonment for life and accused was neither below the age of 16 years, a woman, sick or infirm. If the order is sustained, it would be setting a bad precedent and providing an impetus for judicial anarchy. Under Article 227 of the Constitution of India, as the High Court is the guardian of the subordinate Courts, if it sustains the orders which are without jurisdiction it would be abdicating the function as guardian. Order of bail had to be set aside.

(1996) 1 BCR 22

Vasant Dagdu v/s. State of Maharashtra

Majithia & Vishnu Sahai, JJ

Accused was convicted for the murder of his wife for the offence punishable under S. 302 of IPC. The daughter testified.

Held: As the witness was the own daughter of the accused she would be the last person to falsely implicate the accused, her own father. The circumstances that the own daughter of the accused was deposing against him speaks volumes in favour of the truthfulness of Prosecution's case. Her evidence was also corroborated on material aspects. Hence it was held that her testimony cannot be rejected merely because she is an interested witness.

(1996) 1 BCR 28

Khandu Pandu v/s. State of Maharashtra

Majithia & Vishnu Sahai, JJ

The accused was convicted on the basis of circumstantial evidence for the offence punishable under S.302 of the IPC.

Held: Circumstantial evidence must unerringly point to the guilt of accused and should be wholly incompatible with the innocence of the accused and must be incapable of being explained on any other hypothesis except of the guilt of the accused.

AIR 1996 BOM 304

Sopan Maruti Thopte v/s. Pune Municipal Corporation

M.B. Shah, CJ & A.V. Savant, J

The scope of personal hearing for demolition of unauthorized structures under S. 351 of the Bombay Municipal Corporation Act, 1888 and the Bombay Provincial Municipal Corporation Act, 1949 was considered. Ex-parte ad-interim injunctions were granted.

Held: Directions for demolition procedure were laid down: personal hearing was not a must in every case; *audi alteram partem* cannot be applied when it would cause injustice to parties. The Corporation must give notice of 15 days to reply. The Corporation must consider the reply. If no sufficient cause is shown, the Corporation may give short reasons for not accepting the reply and demolish the unauthorized structure 15 days thereafter. If any assistance is required, the Corporation may grant oral hearing. If construction is in progress, the Corporation may demolish after 24 hours' notice. If any demolished structure is re-constructed, the Corporation may demolish after 24 hours' notice.

The practice of granting ex-parte ad-interim injunctions was deprecated.

1997

(1997) Cr. L.J. 3489

Nana Chormale v/s State of Maharashtra

Mane & Barde, JJ

The Accused was convicted for the offence punishable under S.302 of the IPC and was sentenced to death. The order was maintained upto the Supreme Court. His mercy petition before the President of India was granted and sentence of death was commuted to life imprisonment. After completion of 14 years in jail, the petitioner filed this petition for premature release under "Fourteen Years" rule as laid down under the government Letter No. RLP/1092/13/352/RPS- 13 dated 11th May, 1992.

Held: Remission Rules have a limited scope and do not acquire significance until the sentence is remitted under S.432. As per the revised guidelines of the Government which are in consonance with S. 433A of the Cr.PC the period of imprisonment to be undergone by the prisoner whose death sentence is commuted to life imprisonment is 30 years including remissions. Therefore, his application of release on completion of 14 years imprisonment being immature was rejected.

AIR 1997 Bom 406

X v/s Y

Tipnis & Trivedi, JJ

An employee was tested HIV+ve by his employer, a public sector corporation, prior to being regularized to a permanent position. The employee, though otherwise fit, was rejected from being regularized and his contract was terminated. He challenged his termination.

Held: A Government/public sector employer cannot deny employment or terminate the service of an HIV+ve employee solely because of his medical status, and any act of discrimination towards an employee on the basis of his HIV+ve status is a violation of his fundamental rights.

The name of the employee may be concealed.

AIR 1997 BOM 349:

Pragati Varghese v/s. Cyril George Varghese

Ashok Agarwal, A.V. Savant & Patankar, JJ

The Indian Divorce Act, 1869 denied a Christian woman the right to dissolve marriage on grounds of cruelty even when the marital relations were ugly. It required the ground of adultery to be coupled with the grounds of desertion or cruelty.

Held: S. 10 of the Indian Divorce Act violates Article Article 14 (Right to Equality), Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and Article 21 (Right to Life) of Constitution and hence is ultravires. The Court ordered the Legislature to intervene and carry out suitable amendments.

1997 AIR 342 BOM

Dr. Navin Kumar v/s. The Bombay Municipal Corporation
M.B. Shah, CJ & Patel, J

The issue is whether the Municipal Corporation should be permitted to construct toilet blocks near 'Gateway of India'. The Petitioners have prayed prevention for constructing toilet blocks, which violates the provisions of Coastal Regulation Zone.

Held: Toilet blocks could be constructed as they provide a facility indispensable to human beings at a place which is visited by thousands of persons every day. It also prevents nuisance arising because of unauthorized use of the open space to answer natural calls by people visiting the area.

1997 (4) Bom. C. R. 171

Public at Large v/s. State of Maharashtra.
M.B. Shah, CJ & Rebello, J

The Court took suo moto notice of an article appearing in the daily Indian Express disclosing a very shocking and alarming state of affairs regarding sex workers in the city of Mumbai, highlighting that minor girls were illegally confined and were forced to be sex workers and 65% of them were already infected with AIDS and had been tested HIV +ve. Based on this article Show Cause notices were issued to various authorities and thereafter the directions were issued.

Held: Though Immoral Traffic Prevention Act, 1986 contains provisions for closing down brothels, no attempts had been made to do so, though they are functioning to the knowledge of the Government Authorities. Directions were given to the Government to shrug off its lack of interest and tackle the problem of immoral trafficking seriously by keeping a strict vigil to prevent forcible sale and purchase of girls. The Government was

also directed to carry out AIDS awareness programmes, set up Advisory Committees and Rehabilitation Homes, helping the inmates therein to acquire alternative skills to eradicate child prostitution.

AIR 1997 BOM 79
Centre of Indian Trade Unions v/s. Union of India
Dr. Saraf & Rane, JJ

The Petitioners challenged the original Power Project Agreement (PPA), Dabhol on the ground that it was unreasonable, against public interest and fraught with fraud.

Held: The Court cannot determine policy or go into the policy decision. It cannot lightly assume that the Government's action is unreasonable or against public interest. A Petition filed many years after obtaining knowledge of the agreement cannot be entertained. Parameters of Judicial Review considered.

AIR 1997 BOM 225
Central Bank of India v/s. Tarseema Compress Wood Mfg. Co.
Vaidyanathan, J

The Plaintiff sued for recovery of amounts under a loan granted by the Plaintiff Bank upon a Promissory Note and other documents executed by the Defendant. The Defendant denied the liability under the Negotiable Instrument and challenged the rate of interest charged by the Bank as also the competence of the witness of the Bank.

Held: There is a presumption of the passing of consideration under the Negotiable Instrument. The onus lies on the executants to rebut the presumption. The Bank can charge interest at quarterly, yearly or half-yearly rate as agreed upon between the parties. Any officer of the Bank can give evidence of the transaction.

1998

(1998) 2 BCR 815
Pramod v/s. State of Maharashtra
Mane & Marlapalle, JJ

The Court had to consider who would have preferential right of admission to the reserved seat in the D.Ed. course for Project affected people's wards - a son or a grandson.

Held: While considering a seat for reservation, the closest relation should be taken into consideration. Hence the son has got preferential right over a grandson.

(1998) 5 BCR 265

Manjula v/s Shivshakti Enterprises

Lodha, J

The question involved was whether a lady litigant is exempted from payment of Court fees in a suit for specific performance of contract.

Held: The Government Notification issued under Article 7 of Schedule I of the Bombay Court Fees Act, 1959 exempts women from payment of Court fees for obtaining any substantive relief. A suit for specific performance is a suit to obtain substantive relief capable of being evaluated in terms of money and as such covered by the Residuary Article 7. Hence the Petitioner is exempted from payment of Court Fees for the suit for specific performance.

(See also AIR 2000 BOM 474 which granted exemption only to the extent of the benefit to females).

(This position in law has been altered in (2008) 110 BLR 1524 consequent upon a further clarificatory Notification).

(1998) 3 BCR 9

Sandhya Kulkarni v/s. Union of India

A.A. Desai & Parkar, JJ

The Petitioners in this case were prevented from taking in adoption a female child for the second time in view of S. 11(i)(ii) of the Hindu Adoption and Maintenance, 1956. They challenged the validity of the said section. The Court had to consider whether the restriction on adoption of only one male or female child violates the fundamental rights under Article 14 and 21 of the Constitution.

Held: Right to life has many facets but every personal desire, even if laudable, could not be included therein. A person has right to family. But the Constitution does not provide the right to have unlimited families; that too by adoption. A person may have any number of biological children, but a person is not entitled to adopt as many children as he can. Such right is not recognized by Hindu Law also. Moreover, it being a State

policy it is for the Parliament to find the solution and judicial interference is not justified.

(It may be noted that the restriction was put to avoid adoptions of 2 male children).

(1998) 3 MLJ 940

Meher Singh v/s. Deepak Sawhny
M.B. Shah, CJ & Y.S. Jahagirdar, J

An issue of jurisdiction came to be framed. It was to be decided as a preliminary issue under S. 9A of the CPC, 1976. The Court had to consider how the preliminary issue could be decided.

Held: The determination of such issue would require adjudication as per procedure of law. This would mean that it would be after giving an opportunity to the parties to lead evidence.

AIR 1998 BOM 102

Essel Packaging Ltd. v/s Essel Tea Exports Ltd.
Kapadia, J

The Plaintiffs applied for injunction against the Defendant from using the word or mark “Essel” in its corporate name or products to pass off its goods as that of the Plaintiff’s. The Plaintiffs used the word “Essel world” and “Essel vision” in the course of their business. The Defendants claimed that the parties did not operate in a common field of activity.

Held: The Plaintiffs were entitled to an injunction if confusion or deception resulted by any misrepresentation. That was the test to be applied in the interest of fair trading. The law of ‘common field of activity’ had undergone a change and extended to use of names in different fields of activities also if it resulted in confusion or deception.

AIR 1998 BOM 118

Bombay Gas Co. Ltd. v/s. Parmeshwar Mittal
A.P. Shah, J

The Defendant filed an application for stay of proceedings under S. 34 of the Arbitration Act, 1940. Thereafter, Arbitration & Conciliation Act, 1996 came into force. The Defendant applied for reference to arbitration under S. 8 of the new Act. The Plaintiff contended that the first application commenced arbitration proceedings under the old Act. Hence the second application was not maintainable.

Held: The application under S. 34 of the old Act did not amount to notice of arbitration. Therefore, arbitration proceedings could not have commenced under S. 21 of the new Act. The parties could be referred to arbitration.

The 'vested right' theory under S. 6 of the General Clauses Act, 1904 did not apply because there was a material difference between S. 34 of the old Act and S. 8 of the new Act.

1999

AIR 1999 BOM 120

Ganesh v/s. Mithalal

Gundewar, J

The Plaintiff had advanced amounts to the Defendant. The Defendant contended that the Plaintiff is a Money lender and the suit was hit by S.10 of the Bombay Moneylenders Act, 1946 as the Plaintiff was not having the Money Lending Licence.

Held: Mere one or two casual money lending transactions do not make a person a professional money lender. The burden lies on the person who alleged the other person to be a money lender to prove the said fact.

AIR 1999 BOM 379

Bhimabai Eknath v/s. Suresh Dayanand.

Vagyani, J

In a suit for recovery of loan amount, the Court ignored the damaging admissions given by the Defendant in the matter of outstanding dues on the presumption that the Defendant being a School Teacher would not tell a falsehood.

Held: The respectability and veracity of a witness does not depend upon his status in life. A school teacher cannot be presumed to be telling the Gospel truth. The credibility of the witness is not to be decided on his status or profession, otherwise people of low status or having no status will not find any place in the temple of justice. The quest of the Court should be for the truth rather than the status of a person. Weight of witness is to be considered on the basis of his cross examination and yardstick of probability.

(1999) 1 BCR 574

Shri Pratapsingh Rane v/s. Governor of Goa
Batta & J.A.Patil, JJ

The Speaker of State Legislative Assembly, Goa had expelled 10 MLA's from the house as they were disqualified having defected from the parent party. Immediately thereafter the Chief Minister of Goa obtained a vote of confidence. He had the vote of 16 MLAs, whereas 13 MLAs were in his opposition. On the same day the Governor issued a letter to the Petitioner dismissing him as the Chief Minister and appointed another Chief Minister in exercise of the powers vested in him under Article 164(1) of the Constitution and administered oath to him. This Order of the Governor was challenged. Hence the question involved was whether the discretion of the Governor of the State in the matters like appointment and dismissal of Chief Minister is subject to Judicial Review.

Held: Though the Governor acts on the advice of the Chief Minister and his council of Ministers, the power of appointing or dismissing the Chief Minister lies with the Governor. It is the purely Constitutional job of the Governor. Hence the matters falling within the discretionary powers of the Governor cannot be subject to Judicial Review even if malafides is proved because there are other effective remedies of approaching the President against Governor's action and the Ministry will fall if it fails to command the majority in the Legislative Assembly.

(1999) 1 BCR 660

Sangli Bank v/s. Kanishka Investment
Deshpande, J

The suit was filed by a Bank. It was contended that plaint is not signed by a duly authorized person. Evidence was produced showing that the officer of the Bank was authorized by a resolution of the Board of Directors and a power of attorney was signed by two directors in his favour.

Held: As per the Power of Attorney Act, 1882, the instrument a creating Power of Attorney is to be deposited with the District Court. The person depositing will have to file an affidavit about its execution and declaration. The District Court, after satisfying itself about it, will take a note of it in a separate register and then issue a certified copy bearing its seal on the Power of Attorney and such document shall be treated as evidence in any Court.

AIR 1999 BOM 385

Ramagauri Virani v/s. Om Walkeshwar Triveni Co-op HSL

D.G. Deshpande, J

The Builder sold a common terrace to a buyer. Two bedrooms of another buyer's flat had their opening on the terrace. That buyer sued for the security of their flat and the enjoyment of the other members over the common terrace.

Held: The terrace is for the benefit of all the members of the society and the builder cannot allot the terrace to anyone as it would curb the other members' right over the common terrace.

AIR 1999 BOM 291

Rekha Malhotra v/s. Deepak Malhotra

Nijjar, J

The Plaintiff sued for maintenance under S. 18 of the Hindu Adoptions and Maintenance Act, 1956.

Held: The amount of maintenance would have to be fixed by taking a rational and balanced view of various factors. The Court has to be guided by the relevant provisions of the Act and the object of Ss.s 18 and 23.

The Court has to bear in mind the status of the parties, reasonable wants of the claimant, the income and property of the claimant and the number of persons whom the husband has to maintain.

Whilst it is important to ensure that the maintenance amount is sufficient to enable the wife to live in somewhat the same degree of comfort, as in the matrimonial home, the amount of maintenance should not be so exorbitant that the husband is unable to pay. By adoption of such a course, no purpose would be served. In other words, the amount of maintenance should not be punitive in nature. It should aid the wife to live in a similar style as she enjoyed in the matrimonial home. It should not expose the husband to unjustified contempt or other coercive proceedings.

On the other hand the amount of maintenance should not be so low, as to make the order meaningless.

There can be no mathematical exactitude, in these matters. The Court has to take a general view, and try to fix an amount which would be by and large acceptable to both the husband and the wife.

From the life style of the parties seen from the "restaurants visited and the shops frequented" the Court observed what could be the possible income of the parties. "The

husband could not be enjoying such a high standard of living unless he was earning extremely well. On the other hand the wife could not possibly afford to keep a chauffeur if her income was only Rs. 12,500/-. It would however be difficult to put a figure on the income of both the parties”.

The Court granted maintenance though the wife was seen to have her own income also and lived in style in her parental home such as to put the parties on par.

AIR 1999 BOM 25

Irfan Shaikh v/s. Mumtaz w/o Abdul Karim Sarfani
Kochar, J

A mother had custody of her minor child. She re-married a stranger unknown to the child. The father claimed custody on the ground that the mother dis-entitled herself to custody under Mohammedan Law. The Court interpreted the provisions of Mohammedan Law on the subject.

Held: This principle in the Mohammedan law is based on practical experience based on considerations which are conducive to the proper growth of the child. It cannot be disputed that a child of that tender age would feel psychologically most secure in the company of the mother rather than the father. No one can compete with the mother in that respect ordinarily.

The Mohammedan Law does not take any pedantic view of the matter. It does not lay down that in any circumstance and at any cost the mother would be disqualified for the custody of a child, the moment she gets remarried. The underlying principle of Mohammedan Law like any other law is kindness towards the human being. It can never be expected that any personal law would be so harsh to ignore the welfare of the minor child. The underlying principles of Mohammedan Law on this aspect are also the welfare of child. There is no dogmatic insistence that the child must remain with the father even against the wishes of the child the moment the mother gets remarried to a stranger.

Hence the minor's interest is the paramount law.

WRIT PETITION NO.1762 OF 1999

Bombay Environmental Action Group v/s. Municipal Corporation of Greater Bombay
Various benches - Sabharwal, CJ & Kapadia, J to Mohit Shah, CJ & Jamdar, J

The Petition was filed for relief against pollution in the city of Mumbai. This was from garbage and dumping grounds as also vehicular pollution.

Various orders were passed from time to time.

These related to conversion of diesel taxis and buses into the CNG taxis by use of green engines, the establishment and maintenance of CNG stations, having the vehicular Euro compliant and later Bharat Stage (I) to (IV) compliant engines.

The orders have been passed since 15th December, 1999 for violation of emission norms. Various directions have been given to the monitoring commissions of the State Authorities. Road Transport Officers (RTOs) have been set up. Under the order dated 2nd February, 2003 emission norms came to be prescribed and fines to vehicles which did not comply with the emissions norms were sought to be levied. Directions were passed on 20th October, 2000 to constitute a flying squad to ensure compliance of the directions. Directions for imposing fines were passed on 20th August, 2002.

Various other parties sought to be joined in. They were heard as the order affected them. Consequently the Bombay Electricity Supply and Transport undertaking (BEST) Taxi Men Union, Fire Brigade, Truck Owners, Bombay Port Trust (BPT) etc came to make applications and were heard and directions passed on those applications also.

An application was taken out for directions with regard to car pulling or elimination of certain car on certain dates of the week. This yet to be heard and disposed off.

2000

(2000) 5 BCR 116

Bhau Shankarrao v/s. State of Maharashtra

Barde & Vagyani, JJ

The petitioner has filed a case under S. 295 A of IPC contending that the photographs of God and Goddess of Hindu Religion are printed on the coverings of the Fire Crackers and when the Fire Crackers burst those photographs are destroyed and this causes mental agony to the Hindu community.

Held: The printing of photographs of God and Goddess on crackers is a common state of affairs as in different newspapers and invitation cards. However, there is no intention of disrespecting them. If Petitioner feels that by bursting of fire crackers on which such photographs are printed his feelings are hurt, he may stop himself using such fire crackers because only his feelings are being hurt. But he should not take upon himself the responsibility of whole society.

(2000) 1 BCR 142

Sunil Mirchandani v/s. Reena Mirchandani

Lodha, J

Husband sued under S. 12 (1) (a) of the Hindu Marriage Act, 1955 for nullity of marriage on the ground that his wife did not allow him consummation of marriage on one pretext or another. The wife had denied the allegation, but did not enter the witness box.

Held: The evidence on record showed that both of them had stayed together for five months and the husband had written long letter to her requesting her to return to matrimonial home forgetting her differences with her mother-in-law. This evidence belied the inference of non consummation of marriage.

(2000) 4 BCR 207

Sanjay Chandrakant v/s. Malaben Sanjay.

A.P. Shah & J.A. Patil, JJ

The Appellant had filed a Petition of divorce on the ground of cruelty under S. 13(2) of Hindu Marriage Act. As there was variance between the pleadings and proof, Family Court rejected the Petition. Hence he had filed the Appeal before the High Court.

Held: The evidence showed that acts of cruelty alleged in the Petition were not at all deposed by the Petitioner in the Court. What was stated before the Court was altogether a different story. Hence it was held that as there was total variance between the pleadings and proof. In view of the basic law of pleading that what is sought to be proved must first be pleaded, the Petition was held to be rightly dismissed.

(2000) 5 BCR 288

Anand Vithoba v/s. State of Maharashtra

Sinha, J

The accused had pleaded guilty to the charges for the offence under S. 4, 5 and 12 of Bombay Prevention of Gambling Act, 1887. He was convicted and sentenced by the Trial Court without explaining the particulars of the offence separately and properly in the language understood by him.

Held: Even though accused had pleaded guilty, the Magistrate should have framed separate charges against him and explained the particulars of the offences to him in the language understood by him. As it was not done in this case, conviction was held to be illegal and case was remanded.

(2000) 5 BCR 758

Karim Shaikh v/s. Shehnaz Shaikh

A.P. Shah, Ranjana Desai & J.A. Patil, JJ

A question arose whether a Muslim woman could apply for maintenance during iddat period and even post iddat period.

Held: A Muslim divorced woman may apply for maintenance under S. 3 of Muslim Women Act, 1986. Maintenance is payable to her only during iddat but such as would take care of her needs, if she is unable to maintain herself, by way of a permanent settlement in the post iddat period.

[See also a similar view since 1976 in (1976) 78 BLR 240]

(2000) 1 ALL MR 39

Manuel & Lourdes D'Souza & Gordon & Jane Tone - Petitioners

Rebello, J

Two Christian couples applied to the Court for being appointed guardians of children under the Guardian & Wards Act, 1890. They amended their petition to seek the prayer for adoption. There was no law under which they could adopt.

Held: Every abandoned, orphaned, destitute or similarly situated child had the right to be adopted as a part of its fundamental Right to Life. The Preamble to the Constitution, as also Article 14, ensured equality before the Law to all citizens. The International Conventions on the rights of a child gave the children their basic rights, the right to a home, name and nationality was implicit in these. The right to be adopted is, therefore, guaranteed under Article 21 of the Constitution.

The Court had to see the welfare of the child. A period of two years must elapse after a guardian is appointed to enable the Court to see the financial position, the home study report and the progress report of the child before passing the final order of adoption.

AIR 2000 BOM 1

Tabassum Shaikh v/s. S.J. Shaikh
Nijjar, J

A wife alleged acts of cruelty and demand for dowry. She left the matrimonial home and applied for maintenance under the Dissolution of Muslim Marriages Act, 1939.

Held: A Mohammedan husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders (Article 277). The refusal of the wife to obey must be unjustified and that she does not leave her husband's home on account of cruelty (Article 278).

Hence, just as the wife does not have an absolute right to maintenance, the husband also does not have the licence to treat the wife with cruelty. If he neglects or refuses to maintain her, the wife may sue for maintenance.

She may sue for past maintenance only under an agreement.

2001

(2001) 3 BCR 14

Jyotsna v/s. Suresh
Srikrishna & A.P. Shah, JJ.

The petition was under S. 10 Indian Divorce Act, 1869 for divorce on the ground of cruelty coupled with adultery. The Family Court decreed the petition but sent it for confirmation to High Court.

Held: In view of S.7(1)(a), 8 and 20 of Family Courts Act, 1984, after coming into force of the said Act, the decrees passed by the Family Court under Indian Divorce Act, would not require confirmation as it would operate as final decree subject to appeal under S.19 of Family Courts Act.

(2001) (Supp) BCR 546

Nandkishor v/s. State of Maharashtra
Kulkarni, J

The question was whether private complaint made under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was to be made to the Court of J.M.F.C or to the Special Court.

Held: As the cognizance of the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is to be taken by the Special Court, complaint has to be filed in the Special Court only. If it is filed in the Magistrates Court then it should be returned to the Complainant for presentation before the Special Court.

(2001) 1 BCR 390
Gulab Babusaheb v/s. Executive Engineer, MSEB
Chandrashekhar Das, J

The Petitioner sought certain reliefs relating to disconnection of electricity supply to his premises. Some persons were allowed to be impleaded as Defendants as the electricity meter was standing in their names. The Petitioner contended that he was the dominus litus and so without his concurrence no party should be allowed to be impleaded in the suit.

Held: The concept of locus standi and natural justice are closely intertwined. One cannot be separated from another as the opportunity of being heard is the main attribute of locus standi. When a third party approaches the Court with the contention that he is interested in the subject matter, the Court shall ordinarily give an opportunity to such party to put his case. This course is naturally consistent with principles of natural justice and fairplay. Hence the Court will not refuse his impleadment, unless the Court feels that he is totally a stranger and employing delaying tactics. As the Electricity meter was standing in the names of Respondent no.3 and 4, they were essential parties to the suit.

(2001) 1 BCR 406
Narendra Kumar v/s. S. Gopalkrishnan
B.P. Singh, CJ & Radhakrishnan, J

Petitioner who was working as Deputy General Manager in the Bank and as Chief Executive Officer at Tokyo, Japan was held guilty by Competent Court of Law in Japan for molesting and committing rape on his sub-ordinate female employees and directed to pay damages. Disciplinary proceedings were initiated against him in India, calling upon him to show cause as to why the major penalty of dismissal from service should not be imposed upon him in view of the findings of the Court in Japan. He challenged the same in High Court, contending that the Foreign decree passed by the Court in Japan and making him liable to pay damages was not conclusive because the procedure adopted by the Court in Japan was different in as much as it allowed re-examination and cross examination of the Plaintiff's witnesses even after the defence had closed the case.

Held: Even if the procedure adopted by Courts in Japan is not exactly the same as in our Country, it is not the requirement of S. 13 of CPC that the procedure followed by the foreign Court which has rendered the Judgment must be identical as the procedure followed in our country. It is also not shown to be opposed to Principles of Natural Justice. It also cannot be said that it has resulted into unfair trial or miscarriage of justice. It is also not shown that Judgment is contrary to International or Indian law. Hence mere difference in procedure will not take away the conclusiveness of foreign Judgment, especially when it is complying with all other requirements laid down in S.13 of CPC.

(Consider the Lex fori that applies to matters of procedure in private International law).

(2001) 1 BCR 423

Afcons Infrastructure v/s. Babu Fakira

Nijjar, J

The Respondent was working in the Petitioner Company as an employee. He was denied permanency in the service on the ground that he was declared HIV positive by Dr. Palia of M/s. Clinical Diagnostic Centre. However, thereafter the report of J.J. Hospital declared him HIV negative. Even then as Petitioner Company refused to grant him permanency in the job. He approached the Industrial Court which directed the Petitioner Company not to insist on the Petitioner to be medically reexamined again by Dr. Palia of M/s. Clinical Diagnostic Centre.

Held: The attitude adopted by the Petitioner Company was totally unbecoming, unjustified and unwarranted, betraying total ignorance about the condition of being HIV positive status. It is surprising that a person who is merely to work on a construction site is sought to be denied permanency on a job on the ground that he is HIV positive. The attitude is based on a fear psychosis and has to be deprecated in strong terms. After the J. J. Hospital had declared the Respondent to be free from the disease, the Petitioner had absolutely no justification in not making him permanent.

(2001) Cri.LJ 1579

Ramesh Jagtap v/s. State of Maharashtra
Vishnu Sahai & Chandrashekhar Das, JJ

The accused, a 28 year old man, was known to the family of the victim child as their neighbor. He took the child out for a Pepsi drink. They returned with blood stains on his shirt and her frock and legs. She was crying. The medical report showed no external injury except injury to the vagina. The report was that it was possible by a hard object, like a finger. The CA report matched the blood group of the victim with the blood on the shirt of the accused. The sentence of 10 years rigorous imprisonment was challenged. No appeal for enhancement was filed by the State.

Held: There can be no soft pedaling policy for an offence upon a victim child. The punishment was not reduced, but it was observed that though suo motu notice could have been issued, it was not so done at a belated stage. Hence, the conviction and sentence were confirmed.

[See also (1993) Cri.LJ 977]

(2001) 3 BCR 31

Ganpat Waghmare Vs. Anjalibai Waghmare
Khanwilkar, J.

The Respondent had disobeyed order of the Court. Her defence was struck off under O. 39 R. 1 of the CPC. She sought to cross examine the Petitioner.

Held: O. 39 R. 11 (1) entitles the Court to dismiss the suit or to strike off the defence for non compliance of any directions of order of the Court. Such a party cannot be get any indulgence from the court. That would include his right to cross examine the witness of the other side. The Court may condone the default and permit the party to persue remedy only if sufficient cause is shown. When that has not been done, the party in breach of the order cannot cross examine the other side when the defence is struck off.

2002

(2002) 1 BCR 57

Anand Chintamani v/s. State of Maharashtra
B.P. Singh, CJ, Radhakrishnan & Dr. Chandrachud, JJ

The Petitioner has challenged the action taken by the State Government banning the performance of play “Mee Nathuram Godse Boltay” and forfeiting the scripts of the said play on the ground that it would create hatred between different communities and is likely to disturb public tranquility.

Held: The Government's action has to be in strict compliance of the conditions laid down under S.95 (1) of Cr.PC and has to be subject to strict safeguards like setting out grounds for the Government's opinion, which may stand scrutiny of Judicial review. It must appear to the Government that printed material is such as could be punishable under Ss.124-A, 153-A, 153-B, 292, 293, 295-A of the IPC. The Government has not shown which words and which part of the play was offensive and likely to cause disharmony or disturb public tranquility. The power under S.95 (1) and 96 (2) of the Cr.PC is of drastic nature and has to be strictly conditioned. A society wedded to the rule of law cannot trample upon the rights of those who assert views that are contrary to the views of majority. Hence Government's action was ultra vires and illegal as violating the right of freedom of Expression under Article 19 (1) of the Constitution.

(2002) 1 BCR 152

Pushpa Suresh v/s. Subhash Bansilal

Khanwilkar, J

The dispute was essentially between sisters on one side and brothers and mother on the other. It was for declaration and partition of family properties. In view of this, the parties were told to explore the possibility of settlement. However, the Respondents had taken a stand that they were not interested in settling the matter with the Appellants. The Court therefore expressed opinion that it would refer the matter to Lok Adalat so that an independent forum manned by experienced men would make an attempt to persuade the parties and educate them to accept some workable arrangement which would be in the interest of all including expeditious disposal of their suit at lesser cost. The Respondents, however, objected on the ground that unless there is a possibility of settlement, the Court cannot refer the matter to Lok Adalat nor the Lok Adalat can take cognizance of the case.

Held: The plain language of S. 20 of the Legal Services Authority Act, 1987 makes it clear that the Court before whom the case is instituted and pending shall refer the case to the Lok Adalat for settlement if the parties agreed. Even if one of the parties agrees then also Court shall refer the dispute for settlement provided it is satisfied that there are chances of such settlement. Clause ii of S. 20(1) enables the Court to refer the case to Lok Adalat on its own, if it is satisfied that the matter is an appropriate one to be taken cognizance by the Lok Adalat. The only requirement is that the Court shall give reasonable opportunity to both the parties of being heard. It is wholly unnecessary for the Court to investigate whether there are chances of a settlement. In the present case it was held that it was the bounden duty of the Court to explore the possibility of settlement by sending the matter to Lok Adalat. Such approach alone would serve the legislative intent of creating Lok Adalats.

(2002) 1 BCR 586

Yeshaswinee Merchant v/s. Air India Ltd.

A.P. Shah & Vazifdar, JJ

A Circular was issued by Air India directing grounding of female air hostesses at the age of 50 years, whereas male cabin crew was allowed upto the age of 58 years to carry on flight duties. The distinction was also made between the air hostesses in Air India and Indian Airlines in respect of retirement age.

Held: Difference in age of retirement between the air hostesses in Air India and Indian Airlines was obviously discriminatory and hence forbidden by Article 14 and 15 of Constitution of India. Similarly it was held that increasing the age of retirement of female air hostesses to 58 years but not allowing them to carry on flight duties after the age of 50 years, whereas male cabin crew was allowed to do so, was a classification not satisfying the twin tests, viz., intelligible differentia and differentia having rational nexus to the object sought to be achieved.

(2002) 5 BCR 596

Nirav Deepak v/s. State of Maharashtra

Radhakrishnan & Bhosale, JJ

The Petitioners were students who had appeared for MH-CET 2002 entrance test for Medical admission. As they were not satisfied with the result. They sought the direction to provide them the question papers of the said test with further direction to correct the marks of the Petitioners after ascertaining the correct model answers and key fed into the computer.

Held: There is nothing irrational and arbitrary on the part of the Respondents declining to provide question papers. Students do not have right to demand question paper and they also do not have the right to be a part of the evaluation system of their performance or to verify the correctness of evaluation made by the Examiners. Certain amount of secrecy and confidentiality will have to be maintained. When almost 83000 students have appeared, if there is no finality in such examination, it may lead to gross and indefinite uncertainty which would be a cause for chaotic state of affairs.

AIR 2002 BOM 449

Bank of India v/s. Harshad Odecha
Bobde, J

The Plaintiff bank obtained a decree from an English Court against the defendant. It sought to execute the decree in this Court under S. 44(A) of the CPC as the decree was passed in UK being a reciprocating territory. When the execution application was pending, the Debt Recovery Tribunal (DRT) was constituted. The bank suits were to be transferred to the DRT. The question before Court was whether the decree could be executed under S. 44(A) or under the Recovery of Debts due to Banks and financial Institutions Act, 1993 (DRT Act).

The Court considered the definition of debt as any liability claimed to be due from any person by a bank during the course of its business, secured or otherwise. It also considered the jurisdiction, powers and authority of the tribunal U/s.17 and the overriding effect of the Act S.34 thereof.

Held: Both the laws are special laws governing execution of decrees. The principle that the later law must prevail must be applied. S. 17 of the DRT Act is the later law. That would prevail in execution since it would have overriding effect.

AIR 2002 BOM 502

Rhodia Ltd. v/s. Neon Laboratories Ltd.
Khanwilkar, J

The parties to an international contract were an English and Indian companies. It was agreed that the agreement would be governed by English laws and any dispute that may arise will be triable by English Courts. The agreement was signed in France. A civil suit was filed in Panvel where the respondent's plant was situated. The Court had to consider the proper law of contract.

Held: The parties are governed by the laws of the country chosen by them in terms of the agreement executed by them. Proper law is the law which the parties have expressly or impliedly chosen. The agreement between the parties provided that the language of the agreement would be English. It further provided that the formation and

performance under the agreement would be governed by English law. That is the proper law of contract. Foreign law ought to be pleaded like any other fact and must be proved in evidence by an expert in that law.

2003

(2003) 260 ITR 491
Chaturbhuj Kapadia v/s. CIT
Kapadia & Devadhar, JJ

The assessee had an undivided 44/192 share in an immovable property consisting of land and 10 buildings. One building was not tenanted. The assessee sold his share to develop the property under the MHADA. The assessee gave a limited power of attorney to the developer to develop subject to MMC, ULC and CRZ permissions. Upon the developer obtaining these, he granted an irrevocable licence to the developer to enter upon the land. The Court had to consider whether the assessee was to be charged Capital Gains in the year when the contract was executed or in the year when the irrevocable licence was granted.

Held: Under the terms of the development agreement between the assessee and the developer, a limited power of attorney was intended to be given. The contract, read as a whole, indicated the passing or transferring complete control over the property in favour of the developer, the date of the contract would decide the year of chargeability.

2003 AIR 316 BOM
Dhawal Chotai v/s. Union Of India
Gokhale & Deshpande, JJ

Petitioner who was a physically disabled candidate suffering from 'Cerebral Palsy' (Paralysis resulting from brain damage before or after birth) sought permission for three extra hours to write the C.A examination.

Held: Under the Persons with Disabilities (Equal opportunities, protection of right and full participation) Act, 1995 the directions were given to the Respondent institution to permit the petitioner to write his C.A exam with extra three hours time, subsequent to the scheduled time in continuity on same day.

2003 AIR 75 BOM
Fathema Hussain Sayed v/s. Bharat Education Society
Lodha & Bhosale, JJ

The petitioner studied in exclusive girls section. The principal directed her not to sit in class and attend lectures if she wore a scarf or covered her head.

Held: It is not obligatory by Muslim religion that an Islamic girl studying in all girls section must wear head scarf. It does not violate Article 25 of the Constitution which guarantees the Right to practice any Religion. It is not inconsistent with the verses of Holy Quran.

(2003) 1 Bom. C.R. 740
Dagdu Pathan v/s. Rahimbi Dagdu
Marlapalle, Dabholkar & J.A. Patil, JJ

A Muslim wife filed an application for maintenance under S.125 of Cr.PC for herself and her three children. The Petitioner husband put up the plea of Talaq alleging that he has already divorced her. His plea was rejected by the Magistrate and maintenance order was passed against the Petitioner. He challenged it. The Court considered the procedure prescribed for giving Talaq and the essential requisites of a valid Talaq.

Held: Under Mohammedan Law the process of reaching to the marital tie is certainly a civil contract, but once the marriage is solemnized, it becomes a lifelong institution for both, the husband and wife. The husband cannot throw out his wife at his whim and caprice and without assigning any reason. Mere existence of documents called as Talaqnama or mere statement made in writing before the Court in any form or in oral depositions regarding Talaq having been pronounced sometimes in the past is not sufficient to hold that husband has divorced his wife. Such a divorce is not in keeping with the dictates of Islam. For a Talaq to become valid it must be for a reasonable cause and it must be preceded by a process of reconciliation by two Arbitrators, one from wife and one from husband's side. The stage of conciliation with the intervention of arbitrators is a condition precedent for effecting Talaq. Even in case of irrevocable Talaq in presence of Kazi or wife's father or two witnesses the factum of this form of Talaq is required to be proved.

(2003) 2 Mh. L. J. 105
Prerna v/s. The State of Maharashtra
A.P. Shah & Ranjana Desai, JJ

The Petitioner which is a registered organization working in the red light areas of Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution, had filed this Public Interest Litigation to protect children and minor girls rescued from the flesh trade against pimps and brothel keepers keen on re-acquiring possessions of those girls. Considering the plight of minor girls caught in the flesh trade, the Court has issued several directions to protect them.

Held: As in almost all the cases where the girls are rescued from the brothel, it is found that they are forced to prostitution by brothel keepers. Such girls, if minor, more aptly fall under S. 2(b)(v) of the Juvenile Justice (Care and Protection of Children) Act, 2000 as children in need of care and protection and hence they have to be produced before the Child Welfare Committee. The provisions of Juvenile Justice Act will have to be followed strictly. Their reformation and rehabilitation must be the object. The Magistrate before whom such minor girls are produced must transfer the said girls before Child Welfare Committee after ascertaining their age. Such Juveniles should only be released under the custody of their genuine parent or guardian. No advocate can appear before CWC or JJB to represent those girls. Only the parents or guardians of such Juveniles would represent them. The Advocate appearing for the Pimp or Brothel keeper should be barred from appearing in the same case for the victims rescued under the Act.

(Further directions setting out the entire process of rescue and rehabilitation came to be passed again in 2006 in the same Petition)

AIR 2003 BOM 355
Bharat Mithaiwala v/s. Union of India
Bobde, J

The petitioner was in occupation of an unauthorized structure on the railway line since 1978. S. 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was brought into force from 20.12.1980. The petitioner's structure was sought to be removed as an unauthorized construction. It was contended that the Act would apply in respect of the structure which was unauthorizedly constructed after the Act came into force.

Held: S. 5A (2) relates to the structure which 'has been erected'. The Estate Officer is empowered to remove the structure after issuing notice if the occupant does not comply. He is empowered to remove all existing unauthorized structures on that date. There is no warrant for construing the section in such a manner that it empowers the Estate Officer to remove only unauthorized structures brought into existence after the section was brought into force. The rule against retrospective construction is not applicable to the statute merely because a part of the requisite for its action is drawn from a time antecedent to its passing. A legislature is entitled to take note of

antecedent facts and enforce the law in the present. That would not be characterized as retrospective in operation. Retrospectivity would mean operation with regard to past time.

2004

(2004) 1 BCR 300

Rajendraprasad v/s. Municipal Corporation of Gr. Bombay
Karnik, J

The Court had to consider whether an ad interim order was appealable.

Held: There is no qualitative difference between interim and ad-interim order except the period for which they operate and stage at which they are passed. Hence order refusing ad-interim injunction is as much appealable as the order refusing interim injunction. As sometimes an order declining to grant ex-parte ad-interim injunction may virtually amount to denial of justice as suit may be rendered infructuous.

(2004) 5 BCR 214

Ramesh Pimple v/s. Central Board of Film Certification
A.P. Shah & S.C. Dharmadhikari, JJ

The petitioner, an activist and filmmaker, had produced a documentary named 'Aakrosh' revealing the communal riots that took place in Gujarat in the year 2002 and applied for 'U' Certificate for unrestricted exhibition of film. The permission was rejected by Central Board on the the ground that the film was one sided version of one particular community and would provoke communal feelings.

Held: The right of freedom of expression guaranteed under Article 19(1) of the Constitution is of cardinal value in Democratic Government. It was held that the yardstick which is to be applied is of the standard of a reasonable, strongminded, firm and courageous man and not of weak or hypersensitive man. After viewing the Documentary it was held that it will not incite further violence but the Documentary was a message of peace, co-existence and of compassion for those who suffered in the riots.

(2004) 3 BCR 226

Nirabai J. Patil v/s. Narayan

Oka, J

Police protection for the implementation of order of temporary injunction was refused on the ground that there was no provision in the CPC, 2002 for granting of police aid.

Held: S.151 of the CPC, 2002 saves the inherent powers of the civil Court to make such orders as may be necessary for meeting the ends of justice. Hence it was held that the Court had the power to direct the Police Authorities to give necessary aid for implementation of order of temporary injunction under S. 151 of the CPC.

(2004)1 BCR 821

Suresh Balkrishna v/s. State of Maharashtra

Kochar & Kharche, JJ

The post of sarpanch was reserved for the women of general category. As no candidate was available the Petitioner applied for the post. The question raised was whether de-reservation is possible in absence of eligible candidate in view of Rule 4-A of proviso of Bombay Village Panchayat Election Rules.

Held: The said Rules do not make provision for such contingency. No male candidate can take the place of a female candidate of general category even if she was not available for election to the said post. De-reservation of such post can only be done by the Legislature.

(2004) 1 BCR. (Cri.) 657

Ramchandra Ram Reddy v/s. The State of Maharashtra

Palshikar & Kakade, JJ

The Petitioner contended that certain physical tests such as narco analysis, polygraph, finger printing and brain mapping are not only unknown to law but also not acceptable to it and violate the fundamental right against self-incrimination under Art.20 (3) of Constitution of India which enjoins that no person accused of any offence shall be compelled to be a witness against himself.

Held: Certain physical tests involving minimal body harm like narco analysis and brain mapping does not violate Article 20(3) or compromise the constitutional protection against self- incrimination.

AIR 2004 BOM 345

Geeta Satish v/s. Satish Shankarrao

Rebello & Sathe, JJ

The marriage between the Petitioner and the Respondent was dissolved by mutual consent under S. 13B of Hindu Marriage Act, 1955. In the consent terms the Petitioner wife agreed not to claim alimony but thereafter she filed an application under S. 25 of the Act for permanent maintenance. The said application was resisted by the husband on the ground that she had already relinquished her right of maintenance and hence she was not entitled to get it. The Family Court rejected his contention and allowed the application. The question before the High Court was whether under S.25 (1) of the Act a party who has been divorced is entitled to maintenance even if in the consent terms she had agreed not to claim it.

Held: The language of S. 25 shows that it is a power conferred on the Court at the time of passing of the decree or at any time subsequent thereto on an application made to award alimony or maintenance. This is a jurisdiction to be exercised by the Court. The parties, therefore, cannot by an agreement between themselves, agree to oust the jurisdiction of the Court which otherwise Parliament has conferred. Permanent alimony and maintenance are a larger part of the right to life. Therefore, any clause in a contract or consent terms providing to the contrary would be against public policy. Hence such contract or agreement cannot be legal, valid or binding.

2005

(2005) 5 BCR 52

Inamdar v/s. State of Maharashtra

A.P. Shah, Dr. Chandrachud, JJ

The Government of Maharashtra issued a resolution by which the management quota for all minority run educational institutions in the State was fixed at 50% for academic year 2004. Many Petitions were filed for the enhancement of the management quota. Meanwhile Pravesh Niyantaran Samiti (established by the govt. of Maharashtra) arrived at a decision on 10th June 2005 and declined to enhance the management quota for admissions at professional institutions established and administered by minorities for the academic year 2005.

Held: The Court set aside the decision taken by the Samiti which was directed to reconsider the matter and render its decision as soon as possible since admissions have to be completed at an early date.

(2005) Cri. L.J. 3408
Vinod Soni v/s. Union of India
Palshikar & Daga, JJ

The Petitioners, who were a married couple, challenged the Constitutional validity of Preconception Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. It was contended that Article 21 includes Right to Personal Liberty which in turn includes the liberty of choosing the sex of the offspring and to determine the nature of the family. Hence a couple is entitled to undertake any such medical procedure which provides for determination or selection of sex. The Act which prohibits the couple from doing so, is therefore, violative of Article 21.

Held: The right to liberty even expanded to the extremes of the possible elasticity of the provisions of Article 21 cannot include right to selection of sex, whether pre-conception or post conception. A child conceived is entitled to full development under Article 21, whatever be the sex of that child and the Act was enacted to further the right of the child to full development.

(2005) 279 ITR 377 (Bom)
CIT v/s. Behram B. Dubash
Daga & Aguiar, JJ

Under a decree of divorce Rs.550000 came to be settled upon Trust for the benefit of the minor child of the parties. On the minor completing the age of thirty years, the trustees were to deliver the entire trust fund to her. The income generated by the trust was paid by the Trustees as per the directions of the settlor. This came to be assessed by the Income-tax Officer under S. 64(1)(vii) of the Income-tax Act, 1961.

Held: As per the divorce decree, the assessee created a trust for the benefit of the minor child. The income from the trust was not includible in total income of assessee.

(2005) 6 BCR 574
Bombay Environment Action Group v/s. State of Maharashtra
Radhakrishnan & S.C. Dharmadhikari, JJ

The Petitioners challenged the validity of Ruls 58 of the Development Control Regulations, 2001 as violative of Article 14, 21 and 48A of Constitution of India. Rule 58 was violative of S. 37 of the Maharashtra Regional & Town Planning Act, 1966.

Rule 58 was enacted to facilitate revival of sick / closed mills by utilizing their undeveloped and surplus land.

The Petitioners challenged the Government clarification that open lands were restricted to existing open space and not space becoming open subsequently. This resulted in substantial reduction in the land to be surrendered by the mills.

Environmental clearance under the Environmental Protection Act, 1986 was not obtained by most mills before construction on the mill lands. Hence, 'stop work' notice was issued by the Municipality.

Held: Upon the principle of harmonious construction, Rule 58 is not required to be struck down.

The Government as well as the environmental authority exhibited a lackadaisical approach.

Open lands include lands becoming open after demolition of existing structures. Thus the clarification relating to open lands was invalid.

The surrender of mill land to MHADA and MMC was to be for each mill out of the land of such mill itself and not some other mill. Hence, the integrated scheme approved by the MMC is contrary to the sanctioned scheme.

AIR 2005 BOM 172

Nanik Alimchandani v/s. Savitri Mirchandani

A.P. Shah & Vazifdar, JJ

The Appellant challenged the consent decree on the ground that he signed the consent decree pursuant to the certain observations made by the Judge.

Held: Even if the Judge strongly expressed an opinion adverse to the appellant, the appellant would be required to convince the Judge to the contrary or await the judgment and challenge the same in appeal. Judges make observation and express their views during the course of hearing. Till the judgment is delivered and pronounced the Judge is entitled to change his mind. A litigant cannot challenge a consent order as that would lead to disastrous consequences.

2006

(2006) 6 ALL MR 48
Rupali Mehta v/s. Tina Mehta
D.K. Deshmukh, J

In a Testamentary Petition for grant of probate the parties had dispute with regard to the immovable property forming a part of the estate of the deceased. An application for interim reliefs for injunction and appointment of Court Receiver was made.

Held: A Testamentary Petition is only concerned with the grant or refusal of probate. That would be the only ultimate relief in the suit. The title of the parties cannot be gone into. Hence, pending that relief, no injunction can be granted and Court Receiver cannot be appointed.

[See also AIR 2011 BOM 136]

(2006) 3 BCR 705
Indian Hotel & Restaurants Association (AHAR) v/s. State of Maharashtra
Rebello & Roshan Dalvi, JJ.

The Maharashtra State Legislature amended the Bombay Police Act, 1951, which banned dance performances in eating houses, permit rooms and beer bars but allowed hotels of three stars and above, gymkhanas and clubs to hold such performances to 'promote culture' and 'boost tourism' due to which an estimated 75,000 girls, mainly from the lower economic strata, lost their means of livelihood and challenged the amendment .

Held: The Amendment against the dance bar ban was struck down as unconstitutional as being violative of Articles. 14 and 19 of Constitution of India. The exemption given to certain categories of hotels as well as clubs is arbitrary and demonstrated that the purpose was not to curb the exploitation of women or avoid vulgarity, but which violated the right to equality and fundamental freedom of the bar owners and the bar dancers to practice any occupation or profession of their choice.

However, since the statistics showed that several minors hailing from other parts of the country were dancers, they would be taken to have been trafficked in the trade. All minors found or rescued had to be rehabilitated.

(2006) 4 MHLJ 834
Manjit Singh v/s. Maharashtra Assembly
Palshikar, Radhakrishnan & Kanade, JJ

The Petitioner challenged the 90 days jail term for breach of privilege of the House and the procedure adopted thereat.

Held: The Fundamental Right under Article 19(1)(a) of Constitution of India cannot override the right given to the Legislature under Article 194. The Court can examine whether order which is passed is ex facie malafide or utterly capricious, though it cannot consider the correctness of the decision taken by the House in view of the express bar laid down under Article 212 as the procedure followed in the House cannot be subject matter of inquiry in any Court of law.

2006(4) BCR 478, 2006(2) MHLJ 654
Sunil Eknath Trambake v/s. Leelavati Sunil Trambake
Bhosale, J

In a Divorce Petition filed under S. 13 of the Hindu Marriage Act, 1955 the wife pleaded that the husband performed a second marriage. The paternity of child born after the second marriage had to be proved by DNA test.

Held: DNA test is useful to determine the question of disputed paternity. Though the Court was empowered it cannot order a person to submit to such a test as a matter of routine. The Court is expected to exercise such discretion/power, in, matrimonial cases, only when such a test in the best interest of the child. The Courts should exercise this discretion to find out the truth. However, in the event of refusal it was open for the Court to draw an adverse inference.

(2006) 280 ITR 136
BASF (India) Ltd. v/s. CIT
Daga & Devadhar, JJ

The assessee entered into a collaboration agreement with M/s. BASF AG, Germany for increasing the capacity of its existing plant. The assessee, was required to pay a running royalty at 2 % on the domestic net sale price. The royalty was remitted and tax thereon was deducted and claimed to have been deposited. Thereafter, the assessee realised that during the period the production was not in excess as contemplated in the contract and, therefore, claimed refund of the royalty which was, subsequently, received. The assessee, therefore, had sought refund of the TDS amount as per the circular for the later period.

Held: Only the circulars which are in force during the relevant Assessment Year are applicable. Subsequent circulars, either withdrawing or modifying the earlier circular, have no application.

AIR 2006 BOM 111
Savitri Gaonkar v/s. Jaganath Bhomkar
Kanade, J

An auction sale was held. The suit property was not the matter of sale and the auction. The maintainability of the suit was challenged under O.21 R.92 (3) of the CPC, 2002.

Held: In a suit challenging confirmation of sale of wrong property the Court was bound to consider that issue upon evidence. The Court could not consider maintainability as a preliminary issue. Rules 89, 91 or 92 would not at all apply and the executing Court would not be justified in including a property which was not auctioned or sold in auction in the order of confirmation of sale. The order is non est.

PIL (WP) 142 OF 2006
Project Smita v/s. State of Maharashtra
Gokhale & Kanade, JJ

The Petitioners filed the petition consequent upon the torrential rains in Mumbai on 26th July, 2005 resulting in unprecedented floods. The Petitioners alleged failure on the part of State machinery to take adequate steps which ought to have been taken to avoid such situation. The Petitioner alleged that Ward-wise Disaster Management Plan for Mumbai (DMP) was not activated which resulted in floods. The Petition was filed so that the same scenario is not repeated in future. It was contended by the Respondent that the DMP is in place and adequate steps are taken against spread of diseases and epidemic and for compensation to the victims.

The Court passed directional orders from time to time. Report was called for relating to the compensation payable and the steps taken. Ultimately on 15th February, 2007 the Court passed the order setting out that the reply of the government was filed by the Joint Secretary, Rehabilitation, State of Maharashtra placing on record as to who had not given compensation and who had been given compensation and for what reason. It was also stated that the government had taken appropriate measures which were necessary to be taken immediately. But it was possible that there was might have been some errors. The petitioners were directed to make representation, if required to the concerned officer in rehabilitation department who would look into grievance of the petition. The Court made reference to a related petition having been filed being Writ Petition No.2116 of 2005. The Court observed that that was not a matter in which the Court would interfere on the judicial side.

PIL – WP No.2116 of 2006 (along with WP No.37 of 2006)
Kirit Somaiya v/s. State of Maharashtra
Dalveer Bhandari, CJ & Dr. Chandrachud to Lodha & Anoop Mohta, JJ

The Petition was filed by a social worker to redress the problem of pollution and degeneration of Mithi River against by discharge of Industrial Effluents, Industrial Manufacturing and processing units, oil processors, solid waste, illegal diversion of solid waste, encroachments by hutments, bottlenecks by unauthorised construction, de-silting of the river bed and illegal diversion of the river made by Airport Authority of India, MMRDA and private developers. Mithi River which starts in Vihar Lake Mumbai and falls into Arabian Sea within the Mahim Bay went into spate due to the torrential rains since the water could not smoothly flow into the sea.

The Petition set out the various grievance redressal measures and the action plan to be implemented by the various authorities.

The Court passed the directional orders from time to time and called for various progress reports for deepening, widening and de-silting Mithi river and for resettlement and rehabilitation of the project affected persons. The court took on record and accepted various progress reports of the Mithi River Development works.

On 17th January, 2007 the Court passed its ultimate order setting out that the affidavit of the officer and Member Secretary of Mithi River Development and protection authority that debris to the tune of 12,98,000 cubic meters was removed. The bottlenecks in the river and the Vakola Nala were also removed. 3984 illegal residential and commercial structures were demolished. The carrying capacity of the river has since been increased upto 3 times. Thereafter beautification and consolidation measures were taken at the banks of the river. The first stage was completed. A court hoped that the second stage would be completed in due course and accordingly the Petition was disposed off.

(2006) 286 ITR 596
CIT v/s. Associated Cables Pvt. Ltd.
Gokhale & Kingaonkar, JJ

The question for consideration was whether retention money would be income of the assessee in the year in which it is retained.

Held: Retention money accrues to a contractor only when obligations under the contract are met. Therefore it would not amount to an income in the year in which the amount was retained.

2007

(2007) 3 BCR 134

Surupsingh Naik v/s. State of Maharashtra

Rebello & Savant, JJ

The Supreme Court had imposed imprisonment of one month on the petitioner in contempt proceedings. During the period of imprisonment petitioner was admitted to J.J. Hospital on account of suspected heart problem, low sugar and blood pressure. The petitioner though being a convict was admitted in an air conditioned room. The Respondent No.5 filed application to the Public Information Officer of the hospital seeking information as to why convict/petitioner was allowed to stay in air conditioned comfort. This application was allowed. Hence the Petitioner challenged it on the ground that it being private information it should not be furnished to anyone without his consent.

Held: The confidentiality required to be maintained of medical records of a patient including a convict under the Regulations framed by the Medical Council of India cannot override the provisions of the Right to Information Act, 2005. The medical records of a person sentenced or convicted or remanded to police or judicial custody, maintained by the State or Public Authority, should normally be made available to person asking for such information. Only in rare and exceptional cases and for good and valid reasons recorded in writing such information may be denied. In this case as the order was passed without hearing Petitioner same was set aside and matter was remitted for taking a decision after giving opportunity of hearing to the petitioner.

(2007) 5 BCR 47

Sonali Chandak v/s. NIL

Chaudhari, J

The Petitioners filed a petition for divorce by mutual consent under S. 13B of the Hindu Marriage Act, 1955 and an application to waive the statutory period of six months to pass decree of divorce by mutual consent.

Held: Waiver of the statutory period could be allowed when the application was made by both the spouses, who were aged 29 and 33 years in this case, and their decision was mature and well considered and not arrived at by any external influence.

(2007) 1 BCR (Cri) 26
Sherbahadur Khan v/s. The State of Maharashtra
Palshikar & Nishita Mhatre, JJ

The Accused were arrested under S. 143 to 149, 202 and 34 of IPC, 1860 as well as S. 23(2) of Maharashtra Control of Organised Crime Act, 1999. Some of the accused were not seen to have obtained any pecuniary or undue economic or other advantage, either for the accused himself or for any other person.

Held: Merely stating that a person was a gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gangs by violence, intimation and other coercive means is not sufficient to maintain a prosecution under the MCOC Act. The accused can only be prosecuted under the general law.

(2007) 4 BCR 345
Surendra Kapoor v/s. Prabir Kumar
Khandeparkar & Karnik, JJ

Parties had disputes. They had not agreed to refer their dispute to arbitration. They, nevertheless, appeared before an Arbitral Tribunal and participated in arbitration proceedings before the Tribunal. An award came to be passed which was challenged on the ground of lack of jurisdiction.

Held: When a party proceeds to participate in arbitration proceedings before the Tribunal even in the absence of an agreement to refer his dispute to arbitration, he is deemed to have waived his right to raise an objection either to the jurisdiction or to the plea of absence of agreement under Ss. 16(2) and 4 of the Arbitration & Conciliation Act, 1996 and loses his right to raise such an issue subsequently.

(2007) 4 Mah.LJ 517
Jyotsna Valia v/s. T.S. Parekh & Co.
Rebello, Vijaya Tahilramani & Oka, JJ

The Court had to consider whether a Summary Suit would lie under Order 37, Rule 2 on:

- (i) a settled account duly confirmed by the Defendants;
- (ii) a settled account which is not confirmed by the Defendants;
- (iii) an acknowledgment of liability;
- (iv) an honoured cheque; and
- (v) a mere writing or a receipt

Held, summary suit would not lie on a settled account, which is not confirmed by the Defendant and "on honoured cheque".

A Summary suit lies where a concluded contract exists in writing containing express or implied promise to pay. The written contract as contemplated in Order 37 need not be signed by both parties, but the writing between parties must reflect an agreement. Where document is not duly stamped and defect is curable, summary suit will be maintainable.

- (1) There must be a concluded contract;
- (2) The contract must be in writing;
- (3) The contract must contain an express or implied promise to pay i.e. an implied term in a written contract.

A Summary Suit lies on a settled account duly confirmed by the Defendants.

A Summary Suit would lie on an acknowledgement writing or receipt. That would depend firstly on the document itself, the practice, usage and customs of the trade as also the facts of each case.

The Defendant would have leave to defend thus :

- (a) If the Defendant satisfies the Court that he has a good defence to the claim on merits, the Defendant is entitled to unconditional leave to defend.
- (b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the Defendant is entitled to unconditional leave to defend.
- (c) If the Defendant discloses such facts may be sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the Plaintiffs claim the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment in to Court or furnishing security.
- (d) If the Defendant has no defence, or if the defence is sham or illusory or practically moon-shine, the Defendant is not entitled to leave to defend.
- (e) If the Defendant has no defence or the defence is illusory or sham or practically moon-shine, the Court may show mercy to the Defendant by enabling him to try to prove a defence but at the same time protect the Plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

(2007) 5 BCR 1

Prabhudas Damodar Kotecha v/s. Manharbala Damodar
Radhakrishnan, Bhosale & Vijaya Tahilramani, JJ

The Plaintiff permitted the Defendant to use and occupy his premises without consideration. The Plaintiff called upon the Defendant to vacate. The Defendant held over. The Plaintiff sued on trespass in Civil Court.

Held: The Plaintiff has sued upon a gratuitous licence. The suit is not on trespass since the entry into the suit property was permitted. Only the Bombay Small Causes Court has jurisdiction to try the suit.

[See also (1988) 90 BLR 22 relating to suit by a licensee for protection of possession]

2008

AIR 2008 BOM 29

Vijay Sharma v/s. Union of India

Swatanter Kumar, CJ & Ranjana Desai, JJ

The petitioners were married couple having two daughters. They filed the present petition seeking permission to select the sex of their next child on the ground that they wanted to enjoy the love and affection of both a son and daughter so that their daughters can also enjoy growing in the company of their own brother. It was contended that the provisions of the Pre-Conception Pre-Natal Diagnostic Techniques Act, 2003 (PCPNDT Act) was not permitting them to do so. It was further contended that though Medical Termination of Pregnancy Act, 2003 permits termination of pregnancy under certain circumstances, there is no reason why PCPNDT Act does not allow it. Hence it violates Article 14 of Constitution.

Held: Sex selection insults and humiliates womanhood. It violates the women's right to life and it is also against the spirit of the Law and Constitution of India and affects the dignity of women.

(See also 2005 CrLJ 3408)

(2008) 1 BCR 196

Prakash Jayawant v/s. State of Maharashtra

Swatanter Kumar, CJ & Dr. Chandrachud, J

The petitioner claimed that he belonged to Mahadeo Koli caste. The Caste Certificate was issued when he was 10 years old. The petitioner was appointed without verification of Caste Certificate. The promotion was granted subject to verification of Caste Certificate. On the Scrutiny of the Caste Certificate the Committee appointed for the purpose, his services were terminated. Hence he approached the High Court.

Held: A person, who has obtained the benefit of employment on the basis of an incorrect certificate or a certificate obtained by misrepresentation or fraud, cannot be permitted to avail the benefit thereof once it comes to the notice of the concerned authorities. Mere fact that there is some delay in noticing the said fraud or mistake would not give the petitioner any advantage. Hence his termination was held to be proper.

(2008) 1 BCR 422

Rajaram Waman v/s. Lokmanya Shikshan Prasarak Mandal.
Swatanter Kumar, CJ & S.C. Dharmadhikari, J

Reference in this case was made on the legal issue as to whether in a Contempt Petition Order of dismissal for default of Petitioner can be recalled.

Held: Though Contempt of Court Rules framed by Bombay High Court are silent as to Restoration of petitions dismissed for default, the Court can evolve or adopt its own procedure which may not be strictly confirming to Civil or Cr.PCs and restore the Petition. Even otherwise the power of High Court to punish for contempt is de hors the Rules of Contempt Proceedings. The High Court has also inherent powers to see that its dignity is not undermined, which is the essence of contempt proceedings. The jurisdiction of High Court in this respect is pervasive in its scope.

(2008) 1 BCR 815

Raghunath Narayanl v/s. Vithal Sawala
Kanade, J

A tenant accepted half portion of the land of which he claimed tenancy and gave up his claim in respect of the remaining half portion.

Held: The Tenant, having accepted in writing the claim of the landlord in respect of half portion and claiming only remaining half portion of the land, cannot re-agitate the issue by filing second application under S. 37 of Bombay Tenancy and Agricultural Lands Act, 1948.

(2008) 4 BCR 820

Margappa Shethappa v/s. Proctor and Gamble India

Oka, J

The wife of the Appellant was carrying a 28 weeks old foetus when she succumbed to the injuries sustained in an accident. Compensation on account of the demise of his wife and the unborn child. The question was whether compensation can be granted for the loss of foetus as a result of an accident arising out of the use of motor vehicle.

Held: S.165 of the Motor Vehicles Act, 1988 refers to a 'person' which means a human being which exists in this world. A foetus or a child in the womb becomes a human being or a 'person' only after he or she is born. A foetus may have signs of life but the same is not born. Therefore, the claim petition filed by father on account of loss/death of foetus in the womb of the mother is not maintainable under the provisions of the Act.

(2008) 6 BCR 1

Arati Gavandi v/s. Tata Metaliks Limited

Ranjana Desai & Dr. Chandrachud, JJ

The Petitioner challenged inadequate compliance of the Respondent-company to the law laid down by Supreme Court with regard to constitution of Complaints Mechanism for probing allegation of sexual harassment meted out to Petitioner at the Respondent-Company workplace. The Company had appointed an Advocate to probe the allegations of sexual harassment meted out to the Petitioner.

Held: Every employer in the territory of India is bound to abide by the Judgment of the Supreme Court which is the law under Article 141 of the Constitution. Appointing an Advocate as an Enquiry Officer does not constitute valid or adequate compliance with the Judgment of the Supreme Court. The employer at the work place must constitute a complaints mechanism to deal with complaints of victims. Any breach of the requirement constitutes a violation of Gender Equality under Articles 15 and 21 of Constitution of India. The right to life comprehends the right to live with dignity. A dignified existence includes the right to earn one's livelihood in conditions that are fair and gender neutral.

(2008) 110 BLR 1238

Dr. Celsa Pinto v/s The Goa State Information Officer

Bobde, J

A citizen applied under The Right to Information Act, 2005 for supply of the seniority list of a Department and why the post of a Curator was not filled up and why a particular Librarian was not considered for promotion. The Petitioner answered the three requisitions, as "N.A." (not available). She explained that that meant "I don't know". An order was passed against her imposing penalty under the Act for furnishing incorrect, incomplete, misleading and false information.

Held: Information under S. 2(f) of the Act does not include answers to questions why a particular thing was not done. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification, because a citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot be classified as information.

(2008) 110 BLR 1524

Girish Munshi v/s. Sudha Munshi
Radhakrishna & Anoop Mohta, JJ

The Respondent applied for probate of a will claiming exemption from payment of Court Fee upon a notification issued by the State allowing women litigants exemption in case of suits or applications relating to maintenance and matrimonial property. She claimed her right to probate the will as analogous to her right to maintenance.

Held: The initial circular allowed the women to sue in respect of all properties. The amended circular restricted her right only to claims relating to maintenance. The petition for probate or letters of administration falls outside the amended notification. She is not exempt from payment of Court Fee.

{See (2001) 4 All MR 1 in which Succession Certificate was granted to a widow when the estate was employment benefit meant for her maintenance.

See also Testamentary Petition Lodging No.455 of 2011 in which the Succession Certificate was not granted when the estate was shares and securities not meant for her maintenance}

2009

(2009) 1 BCR 501

People for Elimination of Stray Troubles v/s. State of Goa

Radhakrishnan, Bhosale & Vijaya Tahilramani, JJ

The Animal Birth Control (Dogs) Rules, 2001 had been enacted under Prevention of cruelty to Animals Act (POCA), 1960 with a scheme to reduce the dog population by sterilization and minimization of stray dogs and provided for controlling and killing of only incurably ill, mortally wounded and rabid dogs. Bombay, Maharashtra and Goa Municipalities Acts provided for killing of all the stray dogs. The Petitioner challenged the Rule 9 and 10 of the aforesaid Rules, 2001. The question raised was whether the danger posed and the menace caused by the stray dogs can be rid of by killing them or whether the killing of stray dogs has to be totally prohibited.

Held: Stray dogs which are critically ill, mortally wounded and rabid or dogs which are source of nuisance can be killed in lethal chambers and it would not amount to an offence under S. 11(1) of the Prevention of Cruelty to Animals Act, but it cannot be done so with other dogs.

The civic chiefs of Mumbai and the Municipalities in Maharashtra and Goa could use their discretionary powers to kill dogs which are found or reported to be a source of public 'nuisance.' But the Judgment did not specify what 'nuisance' would be, in the context of dogs.

(2009) 3 BCR 301

Subhash Narsappa v/s. Sidramappa Jagdevappa
Anoop Mohta, J

The Respondent filed a complaint against the Petitioner under S. 138 of the Negotiable Instruments Act, 1881. The said complaint was transferred to Lok-adalat and a compromise was affected there. Therefore, the Respondent filed an execution proceeding. The Petitioner objected to the maintainability on the ground that Darkhast is not maintainable in respect of a criminal matter.

Held: As per S. 21 of the Legal Services Authority Act, 1987 every award passed by the Lok-adalat is deemed to be the decree of civil Court. It is final and binding on the parties and is executable in the manner provided by the CPC, 2002. Hence a Darkhast was maintainable.

(2009) 3 BCR 347

Manager, Solapur Municipal Corporation v/s Devidas Potdar
Dr. Chandrachud, J

The Pensioners moved the Court on the ground that the pension which accrued to them has not been released on time and generally there was an inordinate delay in the

disbursal of their pension payments.

Held: Pension is a vital aspect of social security and that the right to receive it constitutes a right to life under the Constitution. It was also held that pensions must be paid regularly in the first week of the month. The pensioners cannot be left to the mercy of the administration to receive what is a matter of right.

(2009) 317 ITR 47
Sind Co-op. Housing Society v/s. ITO
Rebello & Bhatia, JJ

The question before the Court was whether transfer fees received by a Co-operative Housing Society from its outgoing and incoming members would be liable to tax. The Court had to consider the principle of mutuality.

Held: Bye Laws 38 and 40 show the rate fixed by the Society for charging transfer fees which is subject to the circular of the Department of Co-operation. A transferee is entitled to the rights of membership subject to the Maharashtra Co-operative Societies Act, 1960 and the Rules, 1961. Transfer fee can be charged from the transferor as well as transferee. Such transfer fee is not liable to tax on the ground of mutuality.

(2009) 313 ITR 340
CIT v/s. Reliance Utilities and Power Limited
Rebellow & Mohite, JJ

The assessee invested partly from its own funds and partly from borrowed funds in other companies. The assessee was in the sector of generation of power. The companies in which investments were made were in the energy sector.

The question was whether the assessee had sufficient funds of its own for investment without the use of interest bearing funds, even if its Balance Sheet showed no funds or reserves and borrowed funds were utilized.

Held: If there were funds available, both interest-free and overdraft and loans were taken, a presumption would arise that the investment would be out of interest-free funds generated or available with the company.

(2009) All MR (Cri.) 1047
Tejram v/s. State of Maharashtra
Sinha & Bhangale, JJ

The accused returned home drunk and poured kerosene on his wife and set her on fire. Her mother was at her home at that time. She tried to pull her daughter. She also sustained burn injuries. Both were hospitalized. The victim wife gave a Dying Declaration stating these facts.

Held: The acceptability of the Dying Declaration depends on the circumstances of each case. The fact that the victim's mother also sustained burn injuries is a strongest corroborative evidence to accept the Dying Declaration. The victim must be in a fit condition. Even if that fact is not mentioned in the Dying Declaration, but is seen from other evidence, the Dying Declaration must be accepted. The Dying Declaration may even be recorded by a Police Officer. When the victim has no hope of living, what she states must be taken as the truth.

[See also (1998) 5 BCR 178]

2010

(2010) 3 BCR (Cr) 761

New India Assurance Company v/s. Mona Girish
Pangarkar, J

The husband of the Respondent had expired in an accident. She claimed compensation of Rs.6,00,000/-. The Insurance Company urged that lesser multiplier should be applied for deciding the claim as the Respondent had remarried within 4-5 years of the accident.

Held: The claim arises out of tort. As soon as the tort is committed, the person against whom such tort is committed becomes liable to pay compensation. Therefore, if on the date the tort was committed the claimant was entitled to certain compensation, the subsequent act cannot deprive him or her of the said entitlement. The provision in the form of S. 166 of the Motor Vehicles Act, 1988 is a social legislation. Hence it must be interpreted to further the objective of the said section. The law does not prohibit a widow from remarrying. Remarriage cannot be an impediment in claiming the compensation to which the widow is otherwise, entitled to nor can it be a ground to reduce the compensation by applying lesser multiplier.

(2010) 1 BCR (Cri.) 497

Rajendra Shrivastava v/s. State of Maharashtra

Marlapalle, Oka & Ganoo, JJ

The Petitioner argued that if a lady belonging to the schedule caste/schedule tribe, has married a person belonging to forward caste, and then is abused in the name of her caste by her husband or his relatives, it does not constitute any offence under the provisions of the Prevention of Atrocities Act, 1989.

Held: A woman born into a Scheduled caste or a scheduled tribe, on marrying a person belonging to a Forward caste, is not automatically transplanted into the caste of the husband by virtue of her marriage.

(2010) 1 Bom. C. R. 434

In the matter of adoption of Payal alias Sharene Vinay Pathak
Dr. Chandrachud, J

The Petitioners were Hindus having a daughter of their own. They wanted to take another female child in adoption. One of the essential conditions of Hindu Adoption and Maintenance Act, 1956 is that if the adoption is of a daughter, the father or mother who wishes to adopt a child must not have a daughter or a son's daughter living at the time of adoption. The question was whether Petitioners could be permitted in such a situation to take a female child in adoption when they were already having a daughter.

Held: Adoption is a facet of the right to life under Article 21 of the Constitution. This is the right of parents who seek to adopt a child to give meaning and content to their lives and it is also the right of the children who are in need of special care and protection to be rehabilitated and one of the ways of rehabilitation is being given in adoption. Hence Juvenile Justice (Care and Protection of Children) Act, 2006 which is a secular law enabling rehabilitation of orphaned, abandoned and surrendered children through adoption and which permit the adoption of the child of the same sex, would prevail over the Hindu Adoption and Maintenance Act, a personal law that has placed certain restrictions on adoption.

(2010) Cri. L. J. 751

Archana Naik v/s. Urmilaben Naik
Oka, J

An application was made under S.12 of the Protection of Women from Domestic Violence Act, 2005 against female Respondents who were the mother-in-law and sister-in-law of the Petitioner. The Respondents contended that the order under S.12 and 19 can be passed only against the husband or male partner but not against female relatives.

Held: In view of the proviso to S.2(q) of the Act the aggrieved wife or female living in relationship in the nature of marriage can file a complaint against female relatives of her husband or male partner as the proviso refers to a relative and not a male relative. A narrow interpretation would make the provision meaningless.

(2010) 323 ITR 59

Commissioner of Income Tax 4 v/s. Techno Shares and Stocks Limited
Daga & Devadhar, JJ

The assessee contended that the BSE card acquired by him on or after 1st April, 1998 is covered under the expression "licences" enumerated under S. 32(1)(ii) of the Income-tax Act, 1961. The Income Tax department contended that it is only a personal privilege granted to a member to trade in shares and cannot be equated with licences or any other business or commercial right of similar nature in S. 32 of the Act.

Held: The expression "licence" is a very wide term and includes permission to carry on any trade, business, profession, etc. including the right to acquire the intellectual property rights. A BSE card is not a business or commercial right and, therefore, not entitled to depreciation under S. 32(1)(ii) of the Act which is restricted to a class of tangible/ intangible assets being intellectual properties and will not cover all categories of business or commercial rights.

(2010) 322 ITR 246

Breach Candy Hospital Trust v/s. CCIT
Rebello & Karnik, JJ

Till the year 2001-02 the petitioner-trust was exempted from payment of Income Tax as an institution existing solely for philanthropic purpose. It filed an application to the Chief Commissioner for renewal of the approval under S. 10(23C)(via) of the Income-tax Act, 1961. The application was rejected on the grounds that: (i) after comparing the total receipts of the hospital and the total expenses incurred for the years 2001 to 2008 the Chief Commissioner found that only for one year, the expenses exceeded the receipts. For very other year, the receipts exceeded the expenses and the excess of receipts over the expenditure was between 2.58% to 22.08% of the total receipts. The Chief Commissioner also noticed that the assets of the petitioner had increased during this period and, therefore, he deduced that the petitioner had used the excess of receipts over expenses for creating the assets and thereby strengthening its capacity to earn more. Therefore, he inferred that the petitioner did not exist solely for philanthropic purpose but there existed some profit motive; and (ii) concessional treatment provided to the staff members could not be regarded as philanthropic purpose.

Held: Philanthropy is not restricted to giving a free treatment only to the extreme poor but also to giving treatment at a concessional rate to those who are not poor but cannot afford normal cost. Further, there is also no bar on the concessional treatment to staff members. The application for exemption cannot be rejected on such grounds.

(2010) 329 ITR 126

Vodafone International Holdings B.V. v/s. Union of India
Dr. Chandrachud & Devadhar, JJ

Vodafone, a UK listed company bought 67% stake in Hutchison Essar which was a mobile operator in India. The company was further renamed as Vodafone Essar. The Income Tax Department contended that the sale was taxable as the assets acquired by Vodafone are based in India and the company failed to deduct capital gains tax during purchase.

Held: The transaction had significant nexus with India and essence of the transaction was a change in controlling interest which constituted a source of income in India. A controlling interest does not, for the purpose of the Income-tax Act, 1961 constitute a distinct capital asset. A genuine transaction within the framework of law cannot be impeached.

The business, undertaking and assets of a corporation is not the business, undertaking and assets of its shareholders.

The jurisdiction of the State to tax non-residents is based on the existence of a nexus connecting the person sought to be taxed with the jurisdiction which seeks to tax. The nexus of a non-resident with the taxing jurisdiction arises where the source of income originates in the jurisdiction. A need for apportioning income arises when the source rule applies and the income can be taxed in more than one jurisdiction. Given a sufficient territorial connection or nexus between the person sought to be charged and the country seeking to tax him, Income Tax may extend to that person in respect of his foreign income.

(2010) 1 Mah.LJ 402

Harish Kulkarni v/s. Pradeep Sabnis
Swatanter Kumar, CJ, Khanwilkar & Mridula Bhatkar, JJ

The Court had to consider the parameters of the procedure for recording evidence on commission under O.18 R.4 of the CPC, 2002.

Held: The reference by the Court to a commissioner for recording the cross examination in a suit upon the Affidavit of Examination-in-Chief being filed is entirely in

the judicial discretion of the Court. No straight-jacket formula can be laid down for such reference.

AIR 2010 BOM 53

Puran Maharashtra Automobiles v/s. Sub-Divisional Magistrate
Nishita Mhatre & Gavai, JJ

The Bank had granted a loan to a customer. The loan was not repaid. The bank invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). The bank issued notice and required the Chief Metropolitan Magistrate to take possession of the properties of the borrower. The pervue of S. 14 of the Act came up for consideration.

Held: S. 14 is purely executionery in nature. The authority is only required to take action of taking possession. He has to assist the secured creditor to take possession of the secured assets. If the two conditions in that section are satisfied there is no other option but to take possession. Hence, S. 14 action does not involve any quasi judicial function and does not require application of mind.

(See also AIR 2010 BOM 150).

AIR 2010 BOM 150

Union Bank of India v/s. State of Maharashtra
Sinha & Mridula Bhatkar, JJ

The bank granted a loan to the borrowers who defaulted in repayment. They were called upon to deliver possession. That not having been done, symbolic possession was taken. The notice was issued U/s.13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The borrower applied for stay of the proposed action. The auction notice was issued and just before the auction the relevant Magistrate pass an order directing Petitioner to cancel the public auction as the lands were agricultural lands and could not have been auctioned.

Held: The powers were in excess of jurisdiction of the Magistrate. Under S. 14 of the Act he had no power to adjudicate any claim in respect of any title to the land. No adjudication of any kind is permissible by law by the Magistrate. He has to only verify whether the notice under S. 13 has been given or not. He cannot adjudicate any issue of any kind pertaining to secured assets. S. 14 is merely procedural in nature to assist the secured creditor to take possession of the secured assets.

(See also AIR 2010 BOM 52)

AIR 2010 BOM 131
Vijendra Singh v/s. Uma Singh
Oka, J

A decree of restitution of conjugal rights was passed against husband. He failed to obey. The decree was sought to be executed under O. 21 R. 33 of the CPC.

Held: Aside from the execution under O. 21 R. 32 it can be executed also under R. 33 of the CPC by making periodical payments as may be just. The nature of payment contemplated under the rule is not a penalty. Hence the quantum of payment must be to compensate the wife Decree-holder on account of non-compliance of the decree. If the decree were implemented she would have enjoyed the status of the husband. Under execution she cannot obtain amount such that after payment to her the husband retains a lesser amount.

2011

(2011) 4 BCR 293
Dr. Suhasini Umesh v/s. Kolhapur Municipal Corporation
Mohit Shah, CJ, Dr. Chandrachud & Karnik, JJ

The Petitioner was a Gynaechologist running a Maternity and Surgical Hospital at Kolhapur with an Ultra Sound clinic. On the complaint that the Petitioner was using the said machine for conducting sonography on pregnant women for determination of sex of foetus, the Appropriate Authority seized and sealed the said machine. The seizure was challenged on the ground of lack of authority under S.30 of the PC and PNDDT Act.

Held: S. 30 of the Act has to be read with Rule 12 framed under the Act, which clearly provides that the Appropriate Authority has power to seize 'any other material object' which includes a Sonography machine.

(See also AIR 2011 BOM 171 in which the right to install a device called 'silent observer' in sonography machines was upheld to enhance the objects of the Act circumscribing the right to privacy by compelling public interest.)

(2011) 5 BCR 198
Oil and Natural Gas Corporation Limited, v/s. Oil Country Tubular Limited
Anoop Mohta, J

The award of damages for breach of contract was challenged.

Held: The Court's power and the scope under S. 34 are limited. A reasoned award after due scrutiny of the evidence and the documents and in accordance with law cannot be interfered with. An arbitrator must decide according to law.

(2011) 333 ITR 289

CIT v/s. Brahma Associates

Devadhar & Mridula Bhatkar, JJ

The assessee developed a residential cum commercial project of fifteen residential buildings and two commercial buildings under the plan approved by the Municipality. The percentage of the commercial area to the total area of the plot was 20.83%. The assessee claimed special deduction in respect of the profits. The Income Tax Department contended that deduction under S. 80-IB(10) would be allowable only if the total built-up area used for residential units in the project was 90% or more, where the commercial user was more than 10% of the total built-up area and the profits of the residential units can be worked out on stand alone basis, the deduction under S. 80-IB(10) would be allowable only on the residential units.

Held: Prior to A.Y. 05-06, a project approved as "housing project" by local authority is eligible for deduction under S. 80-IB(10) irrespective of extent of commercial user.

(2011) 1 Mah.LJ 641

Madhuvihar CHS v/s. Jayantilal Investments

Gavai, J

The developer developed the plot of land on which the Appellant society building was constructed under a layout plan revised from time to time. The plan had initially 5 wings in one building and later amendments putting up additional wings and additional floors upon additional FSI. Agreements with flat purchasers were entered into between 1986 and 2001. The Society was registered in 1993. Plans were amended in 1994, 1997 and 2001. Conveyance was not executed in favour of the Society.

The question before the Court was the applicability of S.7 (1)(ii) or S.7-A of the Maharashtra Ownership Flats Act, 1963.

Held: The object of S.7-A was to give maximum weightage to exploitation of development rights. The Court is required to balance the rights of the promoter to make additions and alterations in accordance with the layout plan vis-à-vis the obligation of full disclosure. The concept of developability is to be harmoniously read with the requirement of the registration of the Society and the conveyance to the Society.

The model agreement must comply with Ss.3 and 4 of the Act. The promoter must disclose the FSI made available after the registration of the Society for the entire project.

No additional utilization of FSI which is not a part of the layout shown to the flat purchaser can be made without the written consent of all the flat purchasers/Society.

No blanket consent given in the agreement is valid.

Consent cannot be implied by conduct, acquiescence or circumstance. It must be positive consent for specific work.

(2011) 113 BLR 2117
Sanjiv Punalekar v/s. Union of India
Mohit Shah, CJ & Karnik, J

The Petitioner challenged the “merit–cum–means scholarship scheme for students of minority communities” dtated 1st April, 2008 as discriminatory on the ground of religion and, therefore, unconstitutional. The scheme is for students from minority community who secured at least 50% marks in the previous final examination and whose parent/guardian’s income does not exceed Rs.1 Lakh, 30% being reserved for girl students. Similar scheme is for professional degree at post graduate level with the income criteria being Rs.2.5 Lakhs.

It is available for all students who are from socially and exconomically backward class. The weightage for selection is given to poverty rather than marks but it is available to poor and meritorious students.

The Respondent contended that the main objective of the scheme is for inclusive growth. It is not based only on grounds of religion. It is an effective affirmative action on the grounds of poverty, merit, gender, minority status and State-wise population distribution. Unlike cases of reservation for admissions, it has no impact on students of other communities.

The Court took into account aspect of the Sachar Committee Report showing inter alia, the reasons why Muslims in India are socially and economically backward, being ghettoism, identity related concerns, security and poor access to schools, employment, educational and economic conditions.

Held: The schemes are special provision made under Article 15(4) of Constitution of India. Articles 14, 15 and 16 ae part of a string of constitutionally guaranteed rights and together form a comprehensive scheme to ensure equality in all spheres. Articles 15(4) and 16(4) are not exceptions to Articles 15(1) and 16(1). Hence, classification can be

made even apart from those Articles. Articles 14 and 15(1) constitute reasonable classification between two classes upon intelligible differentia having a nexus to the object of the scheme. Under Article 15(4) only when a special provision is made for the benefit of one class at the cost of or to the detriment of another class, can it be discriminatory. The schemes do not take away any benefits or cause any adverse impact on the majority community.

Out of Rs.33954 crores spent on education, only Rs.446 crores would be used by the schemes. Out of Rs.15402 crores for higher education, only Rs.229 crores would be used by the schemes.

Hence, the schemes are covered under by the permissible classification under Article 14 and 15(1) and not under Article 15(4). The discrimination is not only on the ground of religion. The backwardness is also not only attributable to religion. The student would qualify not only on the ground of religion but on all the above grounds taken together. The schemes fall within Article 46 as they promote educational and economic interests of weaker sections of the people, who may be more specially, the Muslims because of their backwardness as compared with other minority communities. The outlay under the schemes is also proportionate, the total number of scholarships granted being 1084, 617, 112, 23 and 4 for Muslims, Buddhists, Christians, Sikhs and Parsis, respectively.

(2011) 2 Mah.LJ 953

Vatsala Srinivasan v/s. Narisimha Raghunathan (Deceased)

Dr. Chandrachud & Anoop Mohta, JJ

An Executor of a will applied for probate of a will. After the caveat was filed, the suit proceeded to trial. Several witnesses were examined by the Executor as well as the Caveatrix. The Executor died. The Caveatrix contended that the Petition abated and the beneficiary under the will cannot amend the Petition and prosecute it further.

Held: The sole beneficiary under a will can seek substitution in place of the Executor who died pending a Testamentary proceeding. This would guard against multiplicity of proceedings and the consequent delay and expense if the beneficiary is enjoined to file a fresh Petition for Letters of Administration with the will annexed thereto and proceed de novo.

Criminal Appeal No.991 of 2011

Balasaheb Rangnath Khade v/s. State of Maharashtra

Kanade & Thipsay, JJ on dissent,

Roshan Dalvi, J

The question referred to Court was whether a victim of crime can file an appeal under S. 372 in Chapter 29 of the Cr.PC without obtaining leave of Court.

Held per Majority: The Court considered the Heydon's Rule and the Mischief Rule. The Court must consider the settled principles of interpretation of Statutes for reading a clear provision as per its own terms, reading it along with every other provision in the Chapter in which it appears, reading the Statute as a whole and deciphering the intention of the Legislature that propelled the enactment seeing the state of affairs that prevailed, the mischief that was apparent and how the Legislature sought to remedy it.

The Court considered the right of the victim under S.372 alongside that of the accused under S. 374, that of the State under S. 378(1) and that of the complainant under S.378(4) of the Cr.PC. The Court also considered the definition of the victim and the rights of victims being victim protection, victim representation and victim rehabilitation which constitute the jurisprudence of victimology.

The Court observed that it was time the victims are given their due share of criminal prosecution when the State has often failed to prosecute the crime on behalf of the victims satisfactorily or successfully.

Held per Minority: A victim cannot be put on a higher pedestal than the State as the State prosecutes all crimes. Such a position has never been envisaged in the criminal jurisprudence. The victim cannot be put on par with the accused, though put on par with the State and may, at best, be put on par with the complainant, in a private complaint, who requires special leave to file an appeal. This is though a complainant himself is a victim of a crime, sometimes.

The Court also considered the requirement of having to obtain the presence of the accused under S. 390 of the Cr.PC. The Court also considered the plurality of appeals which would be the consequence.

Writ petition (L) No.2866 of 2011
Jagrut Nagrik Manch v/s The State of Maharashtra
Majumdar & Mridula Bhatkar, JJ

The Petitioner challenged MMRDA's decision asking them to pay Rs 1.13 lakh per day as rent for the venue of Anna Hazare's proposed three-day fast and applied for its waiver as a direction to open all the gates of Azad Maidan to accommodate more than 50,000 protesters to uphold their constitutional right to protest.

Held: The Court cannot allow 'Parallel Canvassing' when parliament is debating the issue.

AIR 2011 BOM 58

Varsha Maheshwari v/s. Bhushan Steel Ltd.
Bobde & Vijaya Tahilramani

The husband of the petitioner sought to appear in Court and argue on behalf of his wife under a power of attorney which empowered him “to act and appear” on her behalf. The Court considered whether that constituted the conformant of the right of audience. It was contended that pleading is included in the expression “appear” or “act”.

Held: There was no right of audience conferred upon an attorney. Pleading includes the right of audience, the right to address the Court, the right to examine and cross-examine the witness. Order 3 of the CPC does not deal with these aspects at all. It deals with restricted class of acts and permits the agents to be appointed only for such acts.

AIR 2011 BOM 119

Prakash Kalandari v/s. Jahnvi Kalandari
Khanwilkar & Mridula Bhatkar, JJ

The parties had dispute. The wife had filed a complaint under S. 498-A of the IPC. The husband was committed to prison. The parties filed a petition for divorce by mutual consent. The wife acted on the consent terms and gave up her rights to maintenance as also her stridhan. The husband withdrew the consent as he was not granted access to his children.

Held: Consent can be only withdrawn for just cause. The access was not denied to the husband by his wife. It was because he was in prison and the children were unwilling to meet him. Hence there was not sufficient and just cause to permit him to withdraw the consent.

2012

(2012) 3 Mah.LJ 841

Jet Airways India Ltd. v/s. Municipal Corporation of Greater Mumbai
Bobde & Dhanuka, JJ

The Petitioners imported and brought into Mumbai certain aircrafts. They obtained registration of the aircrafts in Delhi. The aircrafts were parked at Mumbai airport until the registration was obtained. Thereafter, they were flown out of Mumbai according to the schedule of Air Transport Service. The Respondent levied Octroi since the aircrafts

had entered the Municipal limits. It claimed that the entry was a first time entry of the aircraft and was for use or consumption of the aircrafts.

It was contended by the Petitioners that the aircrafts were not meant for being located within Mumbai but only for transit through Mumbai and there is no repose within Mumbai.

The Court considered that the aircrafts were used for transport of passengers by flight from Mumbai to outside Mumbai in various places. They were not used for flying within Municipal limits. The use was by way of disembarkation of passengers, fueling, servicing, transport of new passengers and their flight outside Mumbai.

The question before the Court was whether the entry or the import of aircrafts within Mumbai was for use, consumption or sale therein so as to be liable to Octroi.

Held: Mere entry of goods is not enough to attract Octroi. The entry must be for consumption, use or sale. The argument that the aircrafts were consumed was fanciful and rejected. It was not contended that it was for sale. Use of the aircraft cannot be for a transient period of time while not flying which is what it is designed and meant for. When it is landed and parked, the aircraft ceases to be used for flying. The use is much like a railway train entering or leaving a railway station. The fundamental test of the use is the repose for an indefinite period or permanently. The intent of the Legislature and the object to be accomplished was to tax goods used within the city.

S. 192 of the Municipal Corporation Act, 1888 is for entry of articles into Brihan Mumbai for consumption, use or sale therein. Hence, it must be shown that the aircrafts were used for the purpose for which it was meant, viz., flying within Mumbai that not being so, it was not liable to Octroi.

(2012) Manu/MH 189

Sanjay Dinanath Tiwari v/s. Director General of Police (Anti-Corruption)
Mohit Shah, CJ & Roshan Dalvi, J

The Petitioner sought investigation into the financial affairs of a Minister and members of his family under the Prevention of Corruption Act, 1988, Money Laundering Act, 2002, Income-tax Act, 1961 and IPC, 1860. The Minister had amassed a vast fortune after he was elected Minister in his name and in the name of various members of his family. Despite a lot of information provided by the Petitioner, satisfactory investigation was not carried out. Explanation was sought from the Minister and his family members. The explanation was accepted. The extent of disproportion was shown to be only 11.69% of his known source of income. FIR was not lodged.

Held: When the authorities have not acted as per procedure of law, despite the citizen's information and entreaties, investigation must be ordered by the Court. The report of

ACB was rejected. A special Officer was appointed. The Petition was treated as the FIR. The officer was directed to calculate the disproportion based upon the properties of the Minister and his families, seize and attach his movable and immovable properties, obtain sanction to prosecute him and report back to Court.

(2012) 4 Mah.LJ 431

Baburao Aglawe v/s. State of Maharashtra
Bobde & Varale, JJ

Four tigers sneaked into a banana field and caused damage to the banana crop spread over five acres land. The Petitioner, a farmer, applied for getting compensation but his application was rejected by the State Finance department stating that they have no such policy. The Petitioner argued that when he could get compensation when a tiger killed his cow, why would the same policy not apply to his crops?

Held: Wild animals including tiger should be treated as 'Government property for all purposes' and any damage caused by them should be compensated by the Government. If a wild animal causes loss to an agriculturist or a citizen, it would be the responsibility of the appropriate Government to make good the loss. Hence damages were payable.

(2012) 1 BCR 127

Gajanan Lasure v/s The Central Board of Film Certification
Sinha, J

The validity of the Censorship Certificate issued under the Cinematograph Act, 1952 to the film, Aarakshan was challenged on the ground that it would create a law and order problem without any reference to any incident in the film. The Petition was filed without seeing the film. The Censorship Board followed the prescribed procedure which included comments from distinguished experts and members of the SC/ST community.

Held: Democratic form of government itself demands from its citizens an active and intelligent participation in the affairs of the community. Democracy can neither work, nor prosper unless people share their views. It is for the Petitioner to establish that the individual citizen or class of citizens while exercising their fundamental right of freedom of speech and expression have affected the sovereignty and integrity of India, security of the State, etc.

The Cinematograph Act and the Rules therein is a comprehensive enactment which provides a well drawn procedure before certificate of public exhibition of the film is given and censorship is permitted. The Censor Board is the only appropriate authority

which has the right to Judge the film in light of objectives of the Act of 1952 and the Rules of 1983.

(2012) 3 BCR (Cri.) 121
Indian Harm Reduction Network v/s. Union of India
Khanwilkar & Bhangale, JJ

The Petitioner challenged the constitutional validity of S. 31 A of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 which prescribes a mandatory death sentence for certain drug offences upon subsequent conviction as it takes away the discretion from the Judge on sentencing the convict.

Held: S. 31A of the Narcotics Drugs and Psychotropic Substances (NDPS) Act is violative of Article 21 of the constitution granting the Right to Life. Hence a second conviction need not be death penalty.

(2012) Manu/MH 1090
Pramila Ghante v/s. Shanker Ghante
Khanvilkar & A.R. Joshi, JJ

The husband filed a Petition for nullity of his marriage under S. 12 and for cruelty and desertion under S. 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955. After 16 years of marriage and unsuccessful medical treatment, the parties had no issue. However, their marriage was consummated.

Held: Non-consummation of marriage may be due to several circumstances to make the marriage a practical impossibility. The husband and wife may be unable to be party to normal coitus. However, after the medical treatment, the parties continued their relationship. Hence, cruelty was condoned. There is a distinction between impotency and infertility. They cannot be put on par. The marriage cannot be annulled on the ground of infertility.

Writ Petition No.977 of 2010
Judgment dated 11th May, 2012
Bombay Dyeing & Manufacturing Co. Ltd. v/s. The Monitoring Committee through Member Secretary, Municipal Corporation of Greater Mumbai
Mohit Shah, CJ & Roshan Dalvi, J

The Petitioner was a cotton textile mill which was putting up development and construction of the open land and FSI of the mill and which was modernizing its other

mill. The Petitioner was issued notice under S. 354A of the Mumbai Municipal Corporation Act, 1888 to stop the work of construction because the Petitioner had not handed over the part of its land upon approval of the layout under which the construction was put up. The notice was challenged.

It was contended that the Petitioner needs to hand over any part of its land under regulation 58(1) of the Development Control Regulations, 1991 (DC Rules) only after its construction exceeded 30% of the open land and balance FSI.

It was contended by the BMC that the interpretation put by the Petitioner cannot be accepted as then the Petitioner would never hand over any part of its land though the entire layout has been sanctioned under a plan to defeat the rights of the beneficiaries under the DC Rules.

The Court had to consider the object and import of DC Rule 58(1)(a) & (b) note VII read with Rule 58(2).

Held: The DC Rules must be interpreted to enhance its object which was to maintain a balance between the rights of the mill owners to develop its land or modernize the mill vis-à-vis the rights of the city in having open spaces and the rights of the mill workers in obtaining residential accommodation.

The Court held that the expression “immediately after approval of layout” in Note VII of Rule 58(1) read with Rule 58(2) implied that when the mill chose to develop its land under the DC Rules by exploiting its open land and the available FSI and was allowed to develop that under a sanctioned layout plan, the mill must first hand over the specified extent of the land to MHADA for housing the mill workers and to the MMC as recreational ground. Until possession of that land is handed over, no development can commence.

E&OE

SCHEDULE – IA

HON'BLE CHIEF JUSTICES OF THE BOMBAY HIGH COURT

1. Sir Mathew Richard Sausse
2. Sir Richard Couch
3. Sir Michael Roberts Westropp
4. Sir Charles Sargent
5. Sir Charles Frederick Farran
6. Sir Louis Addin Kershaw
7. Sir Lawrence H. Jenkins
8. Sir Basil Scott
9. Sir Norman Cranstoun Macleod
10. Sir Amberson Barrington Marten
11. Sir John William Fisher Beaumont
12. Sir Leonard Stone
13. Mr. M. C. Chagla
14. Mr. H. K. Chainani
15. Mr. Y. S. Tambe
16. Mr. S. P. Kotval
17. Mr. K. K. Desai
18. Mr. R. M. Kantawala
19. Mr. B. N. Deshmukh
20. Mr. V. S. Deshpande
21. Mr. D. P. Madon
22. Mr. M. N. Chandurkar
23. Mr. K. M. Reddy
24. Mr. M. H. Kania
25. Mr. Chittatosh Mookerjee
26. Mr. P. D. Desai
27. Mr. M. K. Mukherjee
28. Mrs. S. V. Manohar
29. Mr. A. A. Bhattacharjee
30. Mr. M. B. Shah
31. Mr. Y. K. Sabharwal
32. Mr. B. P. Singh
33. Mr. C. K. Thakker
34. Mr. D. C. Bhandari
35. Mr. K. R. Vyas.
36. Mr. H. S. Bedi
37. Mr. Swatanter Kumar
38. Mr. Anil Dave
39. Mr. Mohit Shah

Schedule I-B

PUISNE JUDGES OF THE BOMBAY HIGH COURT

Name of Judge	Period
Sir Joseph Arnould	1862-1869
Sir Richard Couch	1862-1866
Mr Henry Herbert	
Mr Claudius James Erskine	1862-1865
Mr Alexander Kinloch Forbes	1862-1866
Mr Henry Newton	1862-1871
Mr Augustus Brooke Warden	1863-1871
Mr Henry Pendock St George Tucker	1863-1869
Sir Michael Roberts Westropp	1863-1870
Mr J. S. Hore	
Mr T. C. Anstey	
Mr Janardhan Wassodewji	
Mr James Gibbs	1866-1871
Sir Charles Sargent	1866-1882
Mr Francis Lloyd	1869-1873
Sir Lyttelton Holyoake Bayley	1869-1895
Sir Maxwell Melvill	1871-1884
Mr Charles Gordon Kemball	1871-1885
Sir Raymond West	1873-1887
Mr J. P. Green	1873-1881
Mr R. H. Pinhey	1873-1885
Mr Nanabhai Haridas	1883-1889
Mr John Marriott	
Mr Baron De H Larpent	
Mr G. Atkinson	
Mr F. D. Melvill	
Mr F. L. Latham	
Sir John Scott	1882-1890
Mr H. M. Birdwood	1885-1892
Mr W. E. Hart	
Sir W. Wedderburn	
Sir John Jardine	1885-1897

Name of Judge	Period
Sir Charles Farran	1890-1895
Mr H. J. Parsons	1887-1900
Mr E.T. Candy	1892-1903
Mr K.T. Telang	1889-1893
Mr E. M. H. Fulton	1897-1902
Mr M. H. Starling	
Mr M. G. Ranade	1893-1901
Mr A. Strachey	1895-1908
Mr. Baddrudin Tyabji	1895-1906
Mr E. Hosking	
Mr L. P. Russell	1898-1912
Mr W. H. Crowe	1900-1904
Mr H. Batty	1902-1908
Mr G. C. Whitworth	
Sir Narayan Ganesh Chandavarkar	1901-1913
Mr V. J. Kirtikar	
Mr H. F. Aston	1902-1906
Mr J. Jacob	
Sir Stanley Batchelor	1904-1918
Sir Basil Scott	1906-1908
Sir Dinshaw D. Davar	1906-1916
Sir Frank C. O. Beaman	1907-1918
Sir Joseph J. Heaton	1908-1920
Mr M. P. Khareghat	
Mr R. Knight	
Sir Norman C. Macleod	1910-1919
Sir Mahadev Bhaskar Chaubal	
Mr L. J. Robertson	
Mr G. S. Rao	
Sir Lallubhai Asharam Shah	1913-1926
Sir Amberson B. Marten	1916-1926
Sir Maurice Hayward	1918-1920
Mr E. M. Pratt	1918-1925
Mr A. M. Kajiji	1919-1926
Mr C. G. Hill Fawcett	1920-1929
Mr L. C. Crump	1921-1929
Sir Chimanlal Harilal Setalvad	
Sir Jamshedji Byramji Kanga	
Mr Norman Wright Kemp	1923-1931

Name of Judge	Period
Mr Charles Augustus Kincaid	
Mr Hormazdiar Cuvajji Coyajee	
The Rt Hon'ble Sir Dinshaw Mulla	
Mr V. F. Taraporwala	
Sir Govind D. Madgavkar	1925-1931
Mr Mirza Ali Akbar Khan	1926-1934
Mr P. E. Percival	
Sir Patrick Blackwell	1926-1942
Mr F. S. Talyarkhan	
Sir Sitaram S. Patkar	1927-1933
Sir William Baker	1929-1933
Sir Sajba Rangnekar	1929-1938
Mr J. D. Davar	
Mr K. Mc I Kemp	
Mr K. M. Jhaveri	
Sir Bomanji Wadia	1931-1941
Sir Stephen Murphy	1929-1935
Mr Balak Ram	
Mr A. C. Wild	
Mr F. W. Allison	
Sir Robert Broomfield	1930-1942
Diwan Bahadur P. B. Shingne	
Sir Kenneth Barlee	1931-1937
Sir Harilal Jekisondas Kania	1933-1946
Mr D. D. Nanavati	
Mr F. B. Tyabji	
Sir Nawroji Wadia	1933-1944
Sir Harshadbhai Divatia	1934-1946
Sir Albert Macklin	1935-1947
Mr K. C. Sen	1941-1948
Mr A. A. Chitre	
Mr K. B. Wassoodew	1937-1943
Mr N. P. Engineer	
Mr M. A. Somjee	1938-1942
Mr D. R. Norman	
Mr G. N. Thakore	
Mr N. S. Lokur	1942-1947
Mr Indranarayan Brijmohanlal	
Mr M. C. Chagla	1942-1948

Name of Judge	Period
Mr Eric Weston	1943-1950
Mr N. H. C. Coyajee	1943-1957
Mr J. B. Blagden	
Mr K. A. Somjee	
Mr G. S. Rajadhyaksha	1944-1955
Mr N. H. Bhagwati	1946-1957
Mr R. S. Bavdekar	1946-1957
Mr P. B. Gajendragadkar	1947-1957
Mr Y. V. Dixit	1947-1958
Mr S. R. Tendolkar	1947-1958
Mr M. V. Desai	
Mr R. A. Jahagirdar	
Mr K. T. Mangalmurti	1956-1957
Mr H. K. Chainani	1948-1958
Mr J. C. Shah	1949-1959
Mr J. R. Mudholkar	1956-1960
Mr D. V. Vyas	1950-1958
Mr M. C. Shah	1956-1957
Mr S. T. Desai	1956-1965
Mr Y. S. Tambe	
Mr B. N. Gokhale	1955-1961
Mr S. Palnitkar	1956-1957
Mr S. P. Kotval	1956-1966
Mr K. G. Datar	1957-1961
Mr K. T. Desai	1957-1960
Mr J. M. Shelat	1957-1960
Mr N. A. Mody	1957-1972
Mr N. M. Miabhoy	1957-1960
Mr G. B. Badkas	1957-1961
Mr V. M. Tarkunde	1957-1969
Mr D. V. Patel	1957-1969
Mr V. S. Desai	1958-1969
Mr K. K. Desai	1958-1972
Mr V. A. Naik	1959-1967
Mr V. B. Raju	
Mr S. G. Patwardhan	
Mr S. M. Shah	
Mr N. L. Abhyankar	1960-1969
Mr M. G. Chitale	1960-1972

Name of Judge	Period
Mr Y. V. Chandrachud	1961-1972
Mr D. P. Shikhare	
Mr D. G. Palekar	1961-1971
Mr R. M. Kantawala	1962-1972
Mr V. G. Wagle	1962-1972
Mr H. R. Gokhale	1962-1966
Mr L. M. Paranjpe	1962-1967
Mr V. D. Tulzapurkar	1963-1977
Mr B. D. Bal	1964-1970
Mr B. S. Deshmukh	1965-1978
Mr D. B. Padhey	1965-1975
Mr M. V. Paranjape	
Mr G. A. Thakker	
Mr J. R. Vimadalal	1967-1977
Mr V. S. Deshpande	1967-1980
Mr N. P. Nathwani	1967-1975
Mr J. L. Nain	1967-1973
Mr D. P. Madon	1967-1983
Mr M. N. Chandurkar	1967-1984
Mr D. G. Gatne	1968-1972
Mr M. S. Apte	1969-1978
Mr R. R. Bhole	1969-1975
Mr G. N. Vaidya	1970-1978
Mr N. D. Kamat	1970-1976
Mr S. B. Bhasme	1970-1978
Mr M. H. Kania	1970-1976
Mr S. K. Desai	1972-1990
Mr M. A. R. Khan	
Mr S. M. Hajarnavis	1972-1977
Mr P. S. Malvankar	1972-1974
Mr P. K. Joshi	1972-1977
Mr B. A. Masodkar	1972-1986
Mr C. S. Dharmadhikari	1972-1989
Mr P. M. Mukhi	1973-1976
Mr P. S. Shah	1973-1988
Mr G. G. Bhojraj	
Mr B. M. Sapre	1974-1978
Mr N. B. Naik	1974-1979
Mr D. M. Rege	1974-1985

Name of Judge	Period
Mr J. M. Gandhi	1974-1977
Mr C. L. Dudhia	
Mr R. L. Aggarwal	1975-1987
Mr B. Lentin	1975-1989
Mr P. B. Sawant	1975-1989
Mr A. R. Shimpi	1974-1978
Mr R. P. Bhatt	
Mr U. R. Lalit	
Mr C. T. Dighe	1974-1978
Mr P. R. Mridul	
Mr B. C. Gadgil	1976-1985
Mr M. D. Kamble	1976-1980
Mr A. A. Ginwala	1976-1984
Mr R. A. Jahagirdar	1976-1990
Mr S. C. Pratap	1977-1991
Mr M. P. Kanade	1977-1983
Mr S. P. Bharucha	1977-1992
Mr R. D. Tulpule	1978-1983
Mr V. V. Joshi	1978-1983
Mrs Sujata V. Manohar	1978-1994
Mr M. L. Pendse	1978-1996
Mr S. P. Kurdukar	1978-1994
Mr D. N. Mehta	1979-1990
Mr V. S. Kotwal	1979-1991
Mr M. S. Jamdar	1981-1986
Mr M. R. Waikar	1981-1984
Mr S. G. Manohar	1982-1990
Mr D. B. Deshpande	1982-1984
Mr R. S. Padhye	
Mr V. A. Mohta	1982-1995
Mr B. J. Rele	
Mr N. K. Parekh	1982-1988
Mr R. S. Bhonsale	
Mr A. N. Mody	
Mr P. G. Palshikar	
Mr S. W. Puranik	1982-1993
Mr K. Sukumaran	1992-
Mr S. J. Deshpande	1982-1986
Mr M. M. Qazi	1982-1992

Name of Judge	Period
Mr G. M. Khandekar	1982-1986
Dr G. F. Couto	1982-1990
Mr S. N. Khatri	1982-1989
Mr H. W. Dhabe	1983-1995
Mr A. D. Tated	1983-1989
Mr H. H. Kantharia	1983-1994
Mr G. A. Paunikar	1983-1986
Mr H. D. Patel	1983-1993
Mr V. V. Vaze	1983-1988
Mr G. D. Kamat	1983-1997
Mr M. S. Deshpande	1984-1992
Mr B. G. Deo	1985-1989
Mr R. R. Jahagirdar	1985-1986
Mr S. M. Daud	1985-1993
Mr V. P. Salve	1985-1988
Mr G. G. Loney	1985-1989
Mr B. G. Kolse-Patil	1985-1988
Mr M. S. Ratnaparkhi	1985-1990
Mr T. D. Sugla	1986-1991
Mr Hosbet Suresh	1987-1991
Mr A. C. Agarwal	1987-1999
Mr B. N. Deshmukh	1987-1997
Mr S. N. Variava	1987-1999
Mr W. N. Sambre	1987-1994
Mr A. A. Desai	1987-1999
Mr G. H. Guttal	1988-1994
Mr P. V. Nirgudkar	1989-1990
Mr K. N. Patil	1988-1992
Mr M. P. Kenia	1989-1999
Mr V. P. Tipnis	1989-1999
Mr G. R. Majithia	1994-1996
Mr M. B. Ghodeswar	1989 -2000
Mr B. P. Saraf	1991 - 2001
Mr M. G. Chaudhari	1989-1994
Mr V. H. Bhairavia	1994-1998
Mr A. A. Cazi	1989-1993
Mr D. J. Moharir	1989-1993
Mr I. G. Shah	1989-1994
Mr A. D. Mane	1989-1999

Name of Judge	Period
Mr M. L. Dudhat	1989-1997
Mr V. V. Kamat	1989-1999
Mr B. U. Wahane	1989-1996
Mr B. V. Chavan	1989-1993
Mr A. A. Halbe	1989-1994
Mr R. G. Sindhakar	1989-1992
Mr L. Manoharan	1994-1997
Mr N. P. Chapalgaonkar	1990-1999
Mr K. G. Shah	1994-1997
Mr N. U. Arumugham	1997-1999
Mr N. J. Pandya	1997-2000
Mr M. S. Vaidya	1990-1994
Mr D. R. Dhanuka	1990-1996
Mr A. V. Savant	1990-2000
Mr Dr. E. D. S. DaSilva	1990-1995
Mr S. M. Jhunjunwala	1990-1996
Mr B. N. Srikrishna	1990-2001
Mr M. F. Saldanha	1990-1994
Mr G. D. Patil	1990-2003
Mr S. S. Dani	1990-1998
Mr P. S. Patankar	1991-2002
Mr N. D. Vyas	1991-1996
Mr S. H. Kapadia	1991-2003
Mr Vijay Bahuguna	1994-1995
Mr S. G. Mutalik	1992-1997
Mr B. N. Naik	1992-1994
Mr V. S. Sirpurkar	1992-1997
Mr M. S. Rane	1992-1999
Mr A. P. Shah	1992-2005
Mr D. K. Trivedi	1994-2001
Mr V. G. Palshikar	2001-2007
Mr H. L. Gokhale	1999-2011
Mr J. G. Chitre	2001-2004
Mr R. M. Lodha	1994-2007
Mr Vishnu Sahai	1994-2002
Mr R. G. Vaidyanatha	1994-1997
Mr T. K. Chandra Shekhar Das	1994-2001
Smt K. K. Baam	1994-2002
Mr S. C. Malte	1994

Name of Judge	Period
Mr A. S. Venkatachala Moorthy	1994
Mr Bilal Nazki	
Mr S. P. Kulkarni	1995-2001
Mr V. R. Datar	1995-1999
Mr V. K. Barde	1995-2002
Mr R. K. Batta	1995-2003
Dr (Mrs) P. D. Upasani	1996-2002
Mr J. N. Patel	1996-2010
Mr D. G. Deshpande	1996-2007
Mr S. S. Nijjar	1996-2000
Mr S. S. Parkar	1996-2005
Mr R. G. Deshpande	1996-2003
Mr S. B. Mhase	1996-2009
Mr S. Radhakrishan	1996-2008
Mr R. M. S. Khandeparkar	1996-2008
Mr F. I. Rebello	1996-2010
Mrs Ranjana P. Desai	1996-2011
Mr D. K. Deshmukh	1996-2012
Mr D. D. Sinha	1996
Mr A. Y. Sakhare	1997
Mr Y. S. Jahagirdar	1997
Mr B. H. Marlapalle	1997
Mr J. A. Patil	1997-2003
Mr A. B. Palkar	1997-2003
Mr S. D. Gundewar	1997-2003
Mr B. B. Vagyani	1997-2004
Mr R. J. Kochar	1997-2003
Mr P. B. Majmudar	2008
Mr S. G. Mahajan	1999-2004
Mr P. S. Brahme	1999-2007
Mr S. K. Shah	1999-2007
Mr N. V. Dabholkar	1999-2009
Mr A. S. Bagga	1999-2007
Mr D. S. Zoting	1999-2006
Mr V. C. Daga	1999-2011
Mr P. V. Kakade	1999-2008
Mr S. A. Bobde	2000
Mr A. M. Khanwilkar	2000
Dr D. Y. Chandrachud	2000

Name of Judge	Period
Mr A. B. Naik	2001-2005
Mr A. P. Deshpande	
Mr D. B. Bhosale	
Mr S. J. Vazifdar	2001
Smt N. N. Mhatre	2001
Mr A. S. Aguiar	2001-2005
Mr P. V. Hardas	2001
Mrs V. K. Tahilramani	2001
Mr D. G. Karnik	2001-2012
Mr J. P. Devadhar	2001
Mr R. S. Mohite	2001
Mr V. M. Kanade	2001
Mr N. H. Patil	2001
Mr S. T. Kharche	2002-2006
Mr V. G. Munshi	2002-2007
Mr P. B. Gaikwad	2002-2006
Mr S. B. Deshmukh	2003
Mr A. S. Oka	2003
Mr K. J. Rohee	2003-2009
Mr S. R. Sathe	2003-2007
Mr M. G. Gaikwad	2003-2007
Mr A. V. Mohta	2003
Mr S. C. Dharmadhikari	2003
Mr B. R. Gavai	2003
Mr A. P. Lavande	2004
Mr A. H. Joshi	2004
Mr B. P. Dharmadhikari	2004
Mr S. U. Kamdar	
Mr N. A. Britto	2004
Mr S. P. Kukday	2005
Mrs V. A. Naik	2005
Mr J. H. Bhatia	2005-2012
Mr R. C. Chavan	2005
Mrs Roshan S. Dalvi	2005
Mr S. R. Dongaonkar	2006-
Mr V. R. Kingaonkar	2006-
Mr A. B. Chaudhari	2006
Mr R. M. Borde	2006
Mr R. V. More	2006

Name of Judge	Period
Mr R. M. Savant	2006
Mr P. R. Borkar	2006
Mr C. L. Pangarkar	2006
Mr A. A. Sayed	2007
Mr S. S. Shinde	2008
Mr A. P. Bhangale	2008
Mr A. V. Nirgude	2008
Mr R. Y. Ganoo	2008
Mr N. D. Deshpande	
Smt R. P. SondurBaldota	2008
Mr K. U. Chandiwai	2008
Mr S. C. Bora	
Mr A. A. Kumbhakoni	
Mr K. K. Tated	2008
Mr P. B. Varale	2008
Mr S. J. Kathawalla	2008
Mr P. D. Kode	2009
Mr U. D. Salvi	2009
Mr S. P. Davare	2009
Mr A. R. Joshi	2009
Mrs Mridula R. Bhatkar	2009
Mr A. V. Potdar	2009
Mr F. M. Reis	2009
Mr R. G. Ketkar	2009
Mr R. K. Deshpande	2009
Mr S. V. Gangapurwala	2010
Mr T. V. Nalawade	2011
Mr M. N. Gilani	2011
Mr M. T. Joshi	2011
Mr M. L. Tahaliyani	2011
Mr A. M. Thipsay	2011
Mr U. V. Bakre	2011
Mr G. S. Godbole	2011
Mr M. S. Sanklecha	2012
Mr R. D. Dhanuka	2012
Mr S. P. Deshmukh	2012
Mr N. M. Jamdar	2012
Mrs S. S. Jadhav	2012

SCHEDULE - II

LIST OF STATUTES

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Justice Roshan Dalvi

18th August, 2012