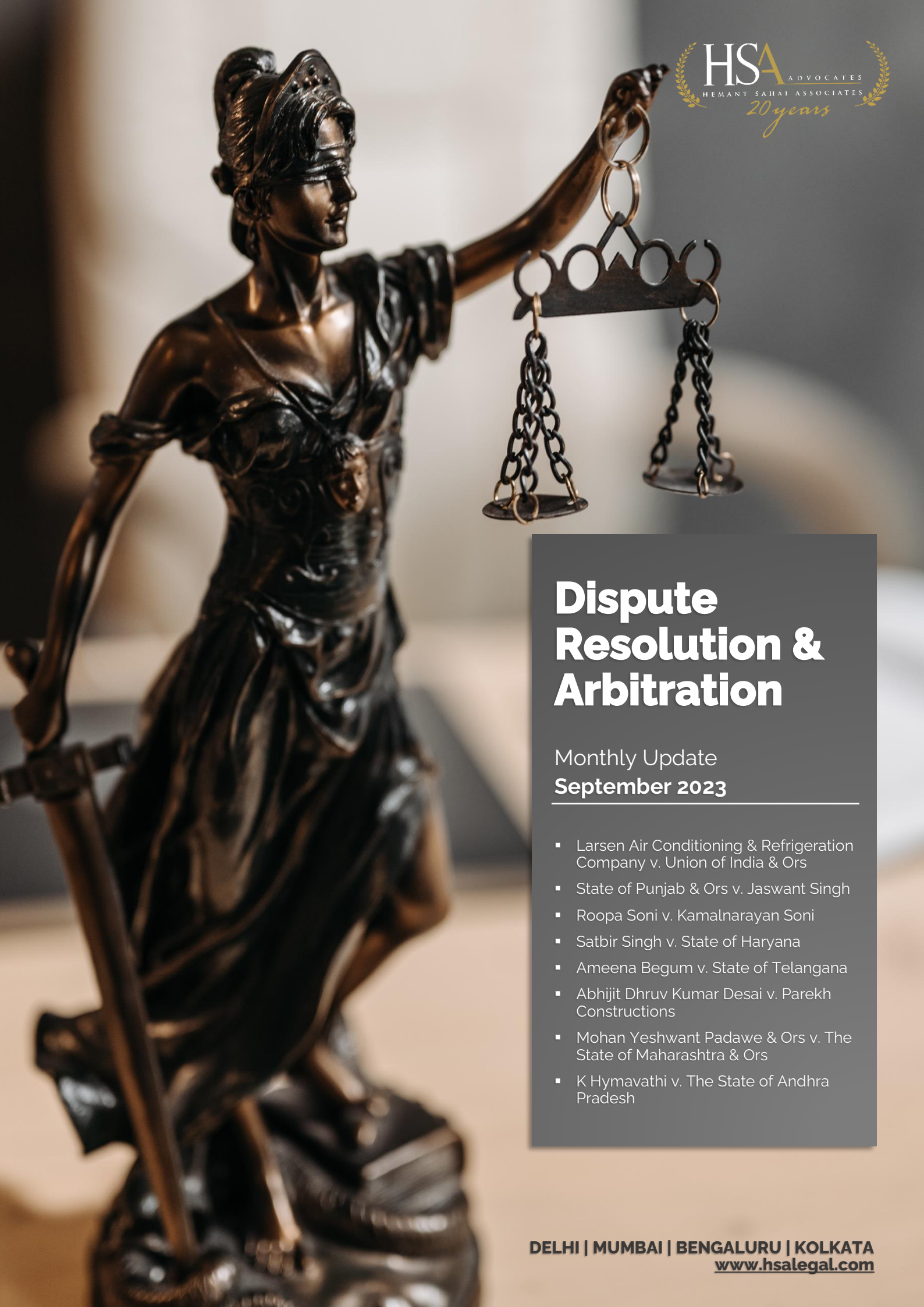

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Dispute Resolution & Arbitration

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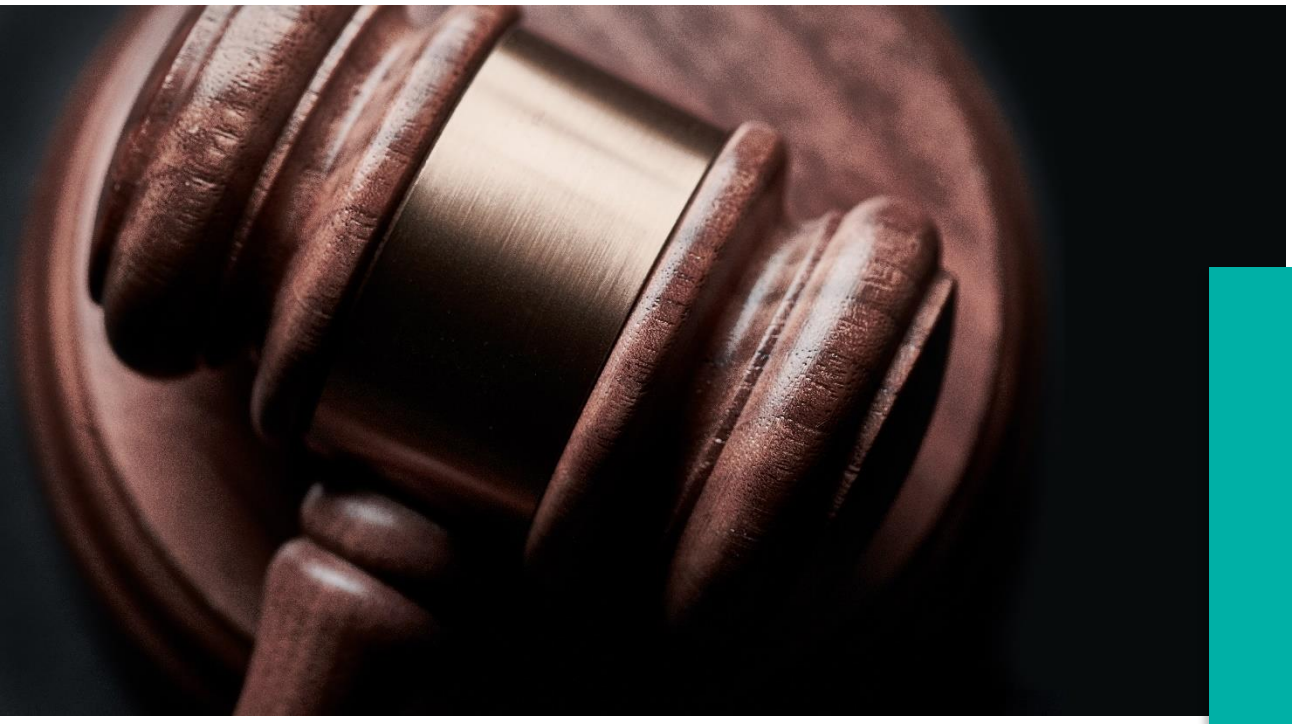
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Larsen Air Conditioning & Refrigeration Company v. Union of India & Ors

Supreme Court of India | 2023 SCC Online SC 982

Background facts

- The dispute in this case arose from a contract entered into between the Appellant and the Union of India & Ors, pursuant to a tender. During the course of the work to be carried out under the contract, disputes arose between the parties and on April 22, 1997, the Union of India referred the matter to arbitration, where the proceedings closed on October 24, 1998. The Arbitral Tribunal issued its award on January 21, 1999, thereby directing the Respondent to pay 18% pendente lite and future compound interest rates on claims.
- The Union of India challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**) before the District Court, which vide its judgment dated March 06, 2003 rejected the challenge, stating that the Union of India failed to provide any proof on their alleged grounds. Aggrieved, the Union of India preferred an appeal to the Allahabad High Court in 2003.
- Vide judgment dated July 17, 2019, the High Court partially allowed the appeal, disagreeing with the award on one claim 'impugned judgment'. It also ruled that the proceedings were not governed by the Arbitration Act, 1940 and reduced the interest rate from 18% to 9%.
- Aggrieved by the impugned judgment passed by the High Court, the Appellant approached the Supreme Court by way of the present appeal.

Issue at hand?

- Whether the High Court erred in modifying the arbitral award to the extent of reducing the interest from compound interest of 18% to 9% simple interest per annum?

Decision of the Court

- At the outset, the Supreme Court examined the provisions of the amended Section 31(7)(b) of the Act which came into effect on October 23, 2015. Before the amendment, the provision allowed the Arbitrator to award interest both before and after the award was made and specified that the awarded sum would carry an interest rate of 18% per annum, unless provided otherwise, from the date of the award till the date of payment.

- In furtherance of the aforesaid, the Court placed its reliance on the decision in the matter of ***Shahi & Associates v. State of UP***[1], which had a similar factual context to the present case. In the said decision, the Court emphasized that the amended Section 31(7)(b) of the Act clearly mandated that in cases where the Arbitrator did not specify the interest rate, the amount awarded would automatically carry interest at a rate of 18% per annum from the date of the award until payment. It was further clarified that the Act had expressly repealed the Arbitration Act, 1940, including any state amendments, except for cases where proceedings had already commenced thereunder, and all parties agreed to its application.
- In the current case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on August 22, 1996, the Arbitrator, and the award passed by them, would be subject to this statute. Under this Act, specifically Section 31(7), the statutory rate of interest was set at 18% per annum in cases where the award did not specify a different interest rate. Therefore, there was little reason for the High Court to interfere with the Arbitrator's decision regarding interest accrued and payable.
- Unlike the previous Arbitration Act of 1940, the Court is powerless to modify the award and can only set aside an award, partially or wholly, on a finding that the conditions under Section 34 of the Act have been established. The scope of the Court's interference in arbitration awards was well-defined and established in legal precedents such as ***Associate Builders v. Delhi Development Authority***[2], ***SsangYong Engineering Construction Co Ltd v. National Highways Authority of India (NHAI)***[3], and ***Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation Ltd***[4].
- With regards to the Union of India's reliance placed on the decision in the matter of ***Post Graduate Institute of Medical Education and Research, Chandigarh v. Kalsi Construction Company***[5], given that the Supreme Court had exercised its Article 142 jurisdiction in light of 3 pertinent factors - the award had been passed 20 years prior, related to construction of a Pediatrics Centre in a medical institute, and that the parties in that case had left the matter to the discretion of the Court. Similarly, in the matter of ***Oriental Structural Engineers Pvt Ltd v. State of Kerala***[6], the Court determined that because the contract did not specify the interest rate for delayed payments, the tribunal should have applied the principles established in GC Roy. In this case, the Court, exercising its Article 142 jurisdiction, reduced the interest rate awarded by the tribunal on the unpaid sum.
- In summary, it was held that a Court's jurisdiction under Section 34 of the Act is limited and tightly circumscribed. It allows interference with an award only on grounds of patent illegality or denial of natural justice. Section 37 of the Act further narrows the scope of appellate review if the award has been upheld or substantially upheld under Section 34.
- Accordingly, the impugned judgment was set aside to the extent that it modified the rate of interest. The Supreme Court reinstated the 18% per annum rate of interest, as originally awarded by the Arbitrator on January 21, 1999.
- As a result, the present appeal and any pending applications were disposed of accordingly, with no order regarding costs.

HSA
Viewpoint

In this case, the Supreme Court reaffirmed the limited authority of Courts to modify arbitration awards under the Act. The Supreme Court highlighted that Parliament intentionally omitted the power to modify awards in the new Act, emphasizing that a Court's role is primarily restricted to setting aside an award or remanding the matter under specific circumstances. This reflects a departure from the old Arbitration Act of 1940 which allowed for modifications. The Supreme Court also cited several previous decisions affirming this limited judicial interference and stressed that the Act aligns with the UNCITRAL Model Law on International Commercial Arbitration, emphasizing minimal Court involvement in award modifications. This ruling underscore the principle that Courts should exercise restraint when dealing with petitions under Section 34 of the Act.

State of Punjab & Ors v. Jaswant Singh

Supreme Court of India | 2023 SCC OnLine SC 1111

Background facts

- The Respondent in the present case was recruited as a constable with Punjab Police and was appointed on probation. During training, he was sent for special duty along with other trainee or recruited constables. After the completion of the deputation, while the other 7 trainee constables reported back to the Training Centre and joined, the Respondent-Plaintiff neither reported back nor gave any intimation for his non-reporting. During probation, he was discharged from the services by Senior Superintendent of Police, Amritsar (**SSP**) in the exercise of power under Rule 12.21 of Punjab Police Rules, 1934 (**PPR**).
- Challenging the same, the Respondent-Plaintiff filed a suit which was partly decreed by the Trial Court. The discharge order was held to be illegal on the grounds that it was passed in violation of the principles of natural justice. Against the decree, the Appellants and State preferred an appeal before the Additional District Judge, Amritsar.

[1] (2019) 11 SCR 640
[2] (2014) 13 SCR 895
[3] (2019) 7 SCR 522
[4] (2021) 5 SCR 984
[5] (2019) 8 SCC 726
[6] (2021) 4 SCR 137

- The Respondent-Plaintiff also filed a first appeal and sought relief of mandatory injunction on the ground that since the order discharging him from services was not found legally sustainable, he should be allowed to join duty and should be granted all the consequential benefits.
- The First Appellate Court by common judgment dismissed the appeal filed by the State and allowed the appeal of the Respondent-Plaintiff holding him entitled to receive all service benefits as accrued. Against the order of the First Appellate Court, two regular second appeals were filed before the High Court by the State Government. The first one was against the judgment dismissing its appeal passed by the First Appellate Court and the second was against the grant of mandatory injunction granting all service benefits to the Respondent-Plaintiff. Both the appeals were dismissed by the impugned judgment, against which the present appeals were filed.
- **Submission on behalf of the Appellant:**
  - The order of discharge against the Respondent was simpliciter and not punitive or stigmatic in nature. The High Court committed a grave error in law by affirming the judgment and decree of the lower Courts. Reliance was placed on the judgments in the cases of ***State of Punjab & Ors v. Sukhwinder Singh***[7] and ***State of Punjab & Ors v. Constable Avtar Singh***[8] to support their contention.
  - They argued that the discharge order was based on the recommendation of the supervisory authority of the Training Centre due to prolonged absence from training without any intimation, and not on any serious allegation or act of misconduct.
- **Submission on behalf of the Respondent:**
  - The Respondent contended that the impugned order of discharge is not simpliciter, but it is punitive. It is urged that a recommendation made by SP, Training Centre, indicates that the foundation of such recommendation is based on an allegation of misconduct. Therefore, it was mandatory to conduct an inquiry following the procedure contemplated under Rule 16.24 of PPR, and for the said reason, the Courts below have rightly set aside the order of discharge.

Issues at hand?

- Whether the SSP Chandigarh rightly exercised his power of discharging the respondent in accordance with power under Rule 12.21 of the PPR?
- Whether the discharge was in accordance with Rule 16.24 of the PPR which mandates the conduct of an enquiry following the procedure contemplated under the said Rules?

Decision of the Court

- The Respondent was discharged from service under Rule 12.21 of PPR as the Appellants were of the opinion that the probationer constable was not likely to become an efficient police officer. Under the said Rule, it is apparent that in case a probationary constable is found unlikely to prove an efficient police officer, he may be discharged by the Senior Superintendent of Police at any time within 3 years from the date of enrolment. There is no foundation of misconduct alleged in the order and it is an order of simpliciter discharge of a probationer constable.
- While relying on the judgment of ***Ravindra Kumar Misra 12 v. UP State Handloom Corporation Ltd & Anr***[9], the Apex Court enunciated the difference between simpliciter termination and punitive termination applying the test of motive and foundation. It was held that in simpliciter termination, the order of termination is based on the assessment of the employee's suitability for a particular job or the need to determine whether the employee should be confirmed in their appointment. The motive behind the termination is not to find any misconduct on the part of the employee. Whereas in punitive termination, the order of termination is founded upon the employee's misconduct. The purpose of the enquiry is to find out if the employee is guilty of any misconduct, negligence, inefficiency, or other disqualification. The termination is considered punitive in nature when the misconduct is the motive or foundation of the termination.
- It was held that the allegation of serious misconduct is common, unlike in the instant case, wherein the foundation of discharge is not on any serious allegation or act of misconduct. The discharge order was passed on the recommendation of the concerned supervisory authority of the Training Centre due to prolonged absence from training without any intimation. The authority found that the probationer constable has no interest in training, and no sense of responsibility, hence, he cannot prove himself a good and efficient police officer. As such, the view taken by the High Court and the Lower Courts was completely erroneous in law and therefore set aside.

HSA
Viewpoint

While the Apex Court rightly held that the order of termination is simpliciter termination and not punitive termination, the distinction brought out by it between the two is the very foundation of parameters on which to adjudicate challenge to termination from services

[7] Appeal (crl.) 1 of 1994
[8] Appeal (crl.) 2082 of 1996
[9] 1987 (Supp) SCC 739

Roopa Soni v. Kamalnarayan Soni

Supreme Court of India | 2023 SCC OnLine SC 1127

Background facts

- The background of the case involves a marriage that took place in 2002 between the Appellant-wife and Respondent-husband. However, disputes arose between them after the birth of their child in 2006. The Appellant-wife filed a complaint under Section 498A of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961, alleging cruelty and harassment for dowry.
- In his defense, the Respondent-husband questioned the character of the Appellant-wife alleging she was living in adultery and had given birth to a child during the period of non-cohabitation and demanded a medical examination, alleging adultery. The High Court nullified the request for a medical examination. For a decade and half, the parties were living separately. As fairly stated at the Bar, the marriage does not survive any longer, and the relationship is terminated otherwise except by a formal decree of divorce.
- The case highlights the breakdown of the marriage and the allegations made by both parties against each other. The Appellant-wife sought legal remedies for the alleged cruelty and dowry harassment, while the Respondent-husband raised questions about the Appellant-wife's character and fidelity.
- The Trial Court had rejected the divorce petition that had been filed by the Appellant-wife on the ground of cruelty, which was affirmed by the High Court.

Issue at hand?

- Whether the decree of divorce has to be granted to the parties to case by the Court of law in the present facts and circumstances?

Decision of the Court

- Grant of divorce on the ground of irretrievable breakdown of marriage is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established.
- The Court held that the Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the decree of divorce. It is not as if the Respondent-husband is willing to live with the Appellant–wife. The allegations made by him against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together.
- The judgment of the Trial Court as confirmed by the High Court of Chhattisgarh in FA(M) No. 115 of 2011 was set aside and the appeal allowed granting a decree for divorce.

HSA
Viewpoint

The Court emphasized the need for a 'social context adjudication' approach in cases involving maintenance, which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. The law of a society is a living organism that must adapt to changing social realities, and the Court's role is to understand the purpose of the law in society and help it achieve its purpose. The Court rightly clarified the burden of proof in a matrimonial case alleging cruelty is not beyond reasonable doubt, but rather preponderance of probability.

Satbir Singh v. State of Haryana

Supreme Court of India | 2023 SCC OnLine SC 1086

Background facts

- Satbir Singh (**Appellant**) filed a complaint against the Accused, alleging that they had stolen company data and used it to manufacture equipment. During the trial, the Appellant's evidence was recorded before the report from the Central Forensic Sciences Laboratory (**CFSL**) could come. However, there was no reference to whether the data found on the accused's hard disks were comparable to what was allegedly stolen.
- The Appellant had filed an application under Section 311 of the Code of Criminal Procedure (**CrPC**) seeking his recall as a witness in order to present the report from the CFSL regarding the data found on the accused's hard disks. The Appellant argued that the comparison of the data found on the hard disks was the main essence of the complaint and without it, the trial would be reduced to a farce.
- The Trial Court and the High Court rejected the Appellant's application, stating that he was indulging in dilatory tactics and that he had the opportunity to make submissions during the ongoing arguments. The Courts viewed the application as an attempt to fill up the lacunae left in the earlier round at the current stage.

- **Submission of the Appellant:**
  - The submission of the Appellant was that the comparison of the data found on the accused's hard disks was the main essence of the complaint and without it, the trial would be reduced to a farce. The Appellant argued that there was no previous occasion for him during the course of the trial to put any question regarding the comparison of the data, as the CFSL expert had not submitted any report on the comparison. The Appellant contended that he should be recalled as a witness to present the CFSL report.
- **Submission of the Respondent:**
  - The submission of the Respondent was that the Appellant was indulging in dilatory tactics and that he had the opportunity to make submissions during the ongoing arguments. The respondent argued that the Appellant's application for recall as a witness was an attempt to fill up the lacunae left in the earlier round at the current stage. The Respondent contended that the Appellant should not be allowed to delay the proceedings by seeking his recall as a witness.

Issue at hand?

- Whether the Trial Court and the High Court erred in rejecting the Appellant's application for recall as a witness to present the CFSL report, considering the importance of the data comparison in the complaint and the potential impact on the trial?

Decision of the Court

- The Court relied on the judgment of ***Harendra Rai v. State of Bihar***[10], in which a 3-Judge Bench of the Apex Court was of the opinion that Section 311 of the CrPC should be invoked when '... it is essential for the just decision of the case.' The Court finds that a case for interference has been made out. Under the peculiar facts of the present case, the request for recall of the Appellant under Section 311 of the CrPC was justified, as at the relevant point of time in his initial deposition, there was no occasion for Appellant to bring the relevant facts relating to similarity of data before the Court, which arose after the CFSL expert was examined.
- The Court further held that if opportunity is given for re-examination, Respondents No. 2 to 9 will not be prejudiced as they will have ample opportunity to cross-examine the Appellant. In view of the above, the appeal was allowed, and the orders of the Courts below set aside. The application of the Appellant under Section 311 of the CrPC for his recall was ordered to be further examined as a witness allowed.

HSA
Viewpoint

The Court upheld the legal position that the power conferred under Section 311 of the CrPC should be invoked by the Court only to meet the ends of justice. The Court has the power to recall witnesses for re-examination or further examination, but it should be exercised with caution and only for strong and valid reasons. The power should not be exercised if the Court views the application as an abuse of the process of law.

Ameena Begum v. State of Telangana

Supreme Court of India | 2023 SCC Online SC 1106

Background facts

- Ameena Begum (**Appellant**) filed a writ petition seeking a writ of habeas corpus for the release of her husband, who had been detained under the Telangana Prevention of Dangerous Activities Act.
- The Detention Order was passed by the Commissioner of Police, stating that the Appellant's husband is a habitual offender and a threat to public order.
- The Appellant's representation seeking revocation of the Detention Order was rejected by the Advisory Board and the Government. The High Court dismissed the Appellant's writ petition, leading to the present appeal in the Supreme Court of India wherein the Apex Court was sized of the issue of purpose of preventive detention, the requisites of a valid detention order, and the scope of judicial reviewability.
- **Submission of the Appellant:**
  - The Appellant's counsel argued that the Detention Order was invalid and should be quashed due to errors in the impugned judgment. The Appellant's contended that the Government of Andhra Pradesh had directed the detention of the Appellant's husband for the maximum period of 12 months without proper application of mind or providing reasons for the necessity of such detention.
  - The Appellant raised the contention that the activities attributed to the Appellant's husband, such as selling liquor to consumers, cannot be considered prejudicial to the maintenance of public order.
  - The Appellant also argued for the release of the detenu from illegal detention and sought interference by the Supreme Court to address the errors in the impugned judgment.

[10] 2023 SCC OnLine SC 1023

- **Submission of the Respondents:**
  - The Respondent's counsel argued that the satisfaction of the detaining authority cannot be subjected to objective tests and that the Courts are not supposed to exercise appellate powers over such authorities. They contended that an order, proper on its face, passed by a competent authority in good faith is a complete answer to negate a claim challenging the detention.
  - The Respondent's counsel cited several authoritative decisions on preventive detention cases to support their argument that the appeal deserved to be dismissed. They emphasized that the Detention Order was defensible based on the grounds for detention as assigned by the Commissioner and the order of the Government.

Issue at hand?

- Whether the detention order passed by the Commissioner of Police is invalid and liable to be dismissed?

Decision of the Tribunal

- The Supreme Court quashed the Detention Order and ordered the release of the detainee, the Appellant's husband. The Court held that the activities attributed to the Appellant's husband, such as selling liquor to consumers, cannot be considered prejudicial to the maintenance of public order. The Court emphasized that personal liberties cannot be restricted by legislation that does not satisfy the constitutional principles of equality Article 14 and freedom Article 19 of the Indian Constitution.
- The Apex Court concluded that the Detention Order was invalid and should be quashed due to errors in the impugned judgment. The Court further stated that the satisfaction of the detaining authority cannot be subjected to objective tests, and an order passed by a competent authority in good faith is not a complete answer to negate a claim challenging the detention.
- The Apex Court laid down comprehensive guidelines for constitutional Courts to consider when assessing the legality of preventive detention orders.
- These guidelines include ensuring that the detaining authority:
  - Has the necessary subjective satisfaction based on facts or laws.
  - Has considered all relevant circumstances and not relied on extraneous material.
  - Has exercised the power for the intended purpose and not for an unauthorized one.
  - Has acted independently without external influence.
  - Has not disabled itself from applying its mind.
  - Has relied on evidence of rational probative value.
  - Has established a link between past conduct and the need for detention.
  - Has provided clear, relevant, and precise grounds for detention.
  - Has adhered to statutory timelines.
- The Court's decision was based on a thorough examination of the provisions of the Telangana Prevention of Dangerous Activities Act and the requisites of a valid detention order. The Court quashed the Detention Order and ordered the release of the detainee, the Appellant's husband.

HSA
Viewpoint

The Court's commitment to strike down illegal detention and its insistence on strict compliance with the law in cases of preventive detention are in accordance with established legal principles and the Apex Court emphasized the guidelines which form a ready reckoner while adjudicating the issue of illegality perpetrated in certain cases on the premise of preventive detention.

Abhijit Dhruv Kumar Desai v. Parekh Constructions

Bombay High Court I 2023: BHC-OS:8439-DB

Background facts

- In the present case, two buildings on two different lands were undertaken for redevelopment. The first land is owned by Darshana Kapadia (**Darshana Kapadia's Land**) and the second land is owned by a Charitable Trust (**Trust Land**) (collectively referred to as **said Lands**). The building standing on Darshana Kapadia's land is called Parvati Building and the building standing on the Trust's land is called Rantash, (collectively called as **said Buildings**). However, since the said Buildings on the said Lands were in a dilapidated condition, Parekh Constructions Ltd was appointed as the developer for the composite redevelopment of the said Buildings. Nishcon Realty Pvt Ltd (**Nishcon Realty**) later entered into a joint arrangement with Parekh Constructions and formed Parekh Constructions LLP (Parekh Constructions Ltd, Nishcon Realty and Parekh Constructions LLP shall collectively be referred to as **Developers**).
- In pursuance of this project, the redevelopment commenced, and Parvati building was pulled down in the year 2012 and Rantash building is untouched till date. The residents shifted elsewhere and as agreed were required to be given relocation rent.

- Whilst the redevelopment projects were in progress, there were some persisting disputes between Nishcon Realty and Parekh Constructions resulting in, inter alia, no reconstruction work initiated on Darshana Kapadia's Land. It is pertinent to note that as per the records of Maharashtra Housing and Area Development Authority (**MHADA**), they were not aware of Nishcon Realty's involvement in the project.
- Meanwhile, as per the arrangement between the two constituent parties of Parekh Constructions LLP, a liability of INR 4.33 crore was of Parekh Construction and the financial responsibilities beyond that, including the payment of the transit rent was the responsibility of Nishcon Realty. However, owing to persisting disputes between the Parekh Construction and Nishcon Realty no transit has been paid for a period of almost 11 years i.e., till date.
- Aggrieved by such circumstances, 5 petitions were filed before Bombay High Court (**Court**) by 65 petitioners. It was submitted before the Court that the amount due to the residents, as per the petitioners, was around INR 11 crore. It was specified that this figure was without calculating annual increases, interests or penalty.
- On a rough calculation, Nishcon Realty was ready to accept that there was an arrears of transit rent from the year 2020, the total amount being near to INR 7 crore. Nishcon Realty was ready to deposit an amount of INR 1 Crore in a few days and the remaining in the form of instalments.
- On August 7, 2023, the Court informed Nishcon Realty to deposit 50% of the amount that it thinks it is in arrears of, i.e., INR 3.5 crore by August 11, 2023. The directions to deposit INR 3.5 crore was not just against Nishcon Realty, but also directed against Parekh Constructions and Parekh Constructions LLP jointly and severally.
- The Court stated that it shall consider the payment of the rest of INR 3.5 crore plus any additional amount in tranches or instalments only after first payment of INR 3.5 crore was complied with. The Court stayed any proceedings initiated by MHADA under Section 91 A of the MHADA Act till the next date of hearing i.e., August 11, 2023. However, on the next date of the hearing too no direction of the Court was complied with.

Issues at hand?

- If developers had a right to default and therefore, could it be condoned?
- If it was possible for MHADA to appoint another builder for redevelopment of both buildings?

Decision of the Court

- The Court held that the developers shall be entitled to withdraw themselves entirely from the site including all their machinery, equipment, personnel before August 15, 2023.
- The Court further directed the authority of MHADA to initiate fresh proceedings or vide its pending proceedings to furnish certified amount of arrears that may be required to be instituted as may be found appropriate and owed by the Developers. This amount shall be considered as an order of the Court and would have to be paid and complied with by the Developer within 30 days from the date of order issued by the officer of MHADA. Pursuant to expiry of period of 30 days, interest shall accumulate at the rate of 6% per annum until payment or realization.
- The Court conclusively held that it shall be taken on record that Darshana Kapadia has not objected to the cancellation of the NOC and that the consent given by Darshana Kapadia for the joint venture of limited Liability partnership - namely Parekh Constructions LLP - was withdrawn on April 25, 2023. Further, since the NOC was granted for a composite redevelopment of the said Buildings which did not take place 'the building on Trust Land was not pulled down', the owner of the Trust Land also did not object to the cancellation of the NOC either.

HSA
Viewpoint

It has become inevitable that the Developers understand that they cannot default from completion of projects and escape the consequences with no liabilities or obligations. It has become significant that a clear message is passed on to every developer that if a developer takes development project in the city, the developer assumes a significant responsibility and financial element or aspect of it which shall not be overlooked. Further, it is the basic entitlement of residents to avail the transit rents in the redevelopment projects, the default of which is not acceptable as the residents are left at the mercy for an untold suffering, prejudice and hardships on the streets of Mumbai.

Mohan Yeshwant Padawe & Ors v. The State of Maharashtra & Ors

Bombay High Court I Bombay WP No. 2737 of 2018

Background facts

- In May 2018, four Petitioners moved the Vacation Bench of the Bombay High Court and alleged that they had been given notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (**MMC**) asking for the structure that they occupied to be pulled down. Pursuant to this, the Municipal Corporation of Greater Mumbai (**MCGM**) had cut down their electricity and water supply.
- Due various reasons, the petitioners were able to get the interim order from the Vacation Bench, asking the MCGM to restore the water and electricity supply. However, the Petitioners could continue to stay there at their own risk. The Order was passed on May 25, 2018.

- On September 29, 2022, an interim application was moved before the Division Bench comprising of Justice GS Patel and Justice Gauri Godse wherein the MCGM sought to vacate the Order dated May 25, 2018. However, the said interim application was dismissed by the Bench.
- The 4 Petitioners approached the Court after their water and electricity connections to their building were abruptly disrupted following a notice under Section 354 of MMC. The notice was for pulling down the structure due to it being dilapidated.
- The petitioners had obtained an Order in May, 2018 for restoration of water and electricity by the municipal authorities and the Court had allowed them to occupy the building at their own risk.
- This Interim Order was not challenged for many years, up until September, 2022 when the MCGM challenged the order following which more facts emerged that these occupants were not occupying the original structure, instead they were occupying the transit building.
- There were originally 103 Tenants or Occupants. Not all of them occupied the ceased premises. 4 Petitioners along with 14 other occupants continued to occupy the building. 63 were in off-site MHADA camps, whereas 10 has made their own private arrangements and 12 non-ceased tenants stayed in alternate accommodation 'without transit rent'.
- Jankie developers was the original developer. The Respondent No. 4 was a co-developer. The Development Agreement was terminated by the owners, the Nagwekars.
- The MMC Act provides for the provision of a structural audit in Section 353B. The Maharashtra Co-operative Society Byelaw 75 also compulsorily provides for every society to undergo structural audit after the mandated number of years. In light of the same, permission was sought to carry out structural audit after being referred to the Technical Advisory Committee (**TAC**).
- Pertinently, the provisions of Section 353B of the MMC Act make provisions for Structural Audit. The above Section provides for an Engineer of the MCGM to conduct an audit of a Society after relevant period 'provided for in the Section' and provide a Structural Stability Certificate certifying that the building is fit for Human Habitation. Model No. 75 says as follows about structural audit:
  - For buildings aged between 15 to 30 years once in 5 years
  - For buildings aged more than 30 years once in 3 years

Issues at hand?

- Can repairs to Transit buildings be made permanent?
- Can it be referred to the Technical Advisory Committee?
- Should the 18 occupants be allowed to stall the redevelopment project indefinitely?

Decision of the Court

- With respect to Transit Buildings, as the name suggests, they are temporary in nature, and do not have life beyond 3-5 years. Any policy, circular or judgement for structural audit or referral to TAC cannot be applied to transit buildings. Transit buildings are by the very nature of their construction and by structural design temporary and not meant to last beyond 3 to 5 five years. There is no question of repairs or of these buildings being made permanent. Even the planning permissions that are granted for transit buildings are not granted in the same manner or subject to the same stringent requirements as they are for permanent constructions.
- The small number of occupants should not be allowed to indefinitely delay the process of redevelopment neither they should force the majority of other tenants to stay elsewhere with an uncertain time frame.
- The Court fixed the date to vacate the premises as on September 26, 2023. Further, the Court asked that there be a workable solution as to how the tenants were to be vacated and where else they would stay. The Court directed the 18 occupants to vacate the premises latest by September 26, 2023 failing which the Court Receiver, Police and Municipal Authorities shall be directed to take appropriate measures.

HSA
Viewpoint

The building was constructed in 2006 with a life expectancy of only 3-5 years. It already existing much beyond its estimated life, exceeding by over 10 years. Any further repairs allowed on it would not be logical. Court's viewpoint on not allowing major repairs on a structure that is temporary in nature, to make it permanent is indeed correct. The Court has rightly demarcated the difference between a temporary-transit structure and a permanent building. By allowing it to be repaired, referring to the TAC and making it permanent would not only be a way to twist the law but also a way to break the law because the procedure to sanction a permanent building is much stricter and elaborate as compared to a temporary structure. The Court came down heavily on the petitioners for sitting on an ad-interim order since 2018 and not allowing the work to go ahead. This is necessary since many redevelopment projects face this same issue of a small number of people stalling projects where most of the other members have been cooperating thereby leaving them helpless and at many times homeless.

K Hymavathi v. The State of Andhra Pradesh

Supreme Court of India I 2023 SCC Online 1128

Background facts

- The aforesaid Appeal filed before the Supreme Court of India by one K. Hymavathi (**Appellant**) against the State of Andhra Pradesh and Padala Veera Venkata Satynarayana Reddy (**Respondents**) challenged the decision of the High Court of Andhra Pradesh (High Court) that while allowing the petitions, quashed the criminal proceedings against Respondent No. 2, being C. No.681 of 2017 on the file of II Additional Chief Metropolitan Magistrate at Visakhapatnam.
- That the Appellant and the Respondent No. 2 were acquainted with each other. The Respondent No. 2 approached the Appellant to borrow a sum of INR 20 lakh, stating that he needed the money for his son's medical education and domestic expenses. Further to ensure repayment,

Respondent No. 2 executed a promissory note on July 25, 2012, agreeing to repay the amount along with 2% interest per month by December, 2016.

- However, Respondent No. 2 failed to meet the conditions of the Promissory Note. Therefore, on April 28, 2017, he issued a cheque for INR 10 lakh to the Appellant drawn from Vijaya Bank, JP Marg, Visakhapatnam, as a partial payment of the debt. The Bank returned the cheque on May 15, 2017 due to insufficient funds. Subsequently, the Appellant sent a legal notice dated May 24, 2017, to which the Respondent No. 2 replied on June 01, 2017. The Appellant sent a Rejoinder dated June 03, 2017, and the Respondent No. 2 replied to the said Rejoinder on June 07, 2017.
- Following these exchanges, Appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (**NI Act**) on July 11, 2017 against the Respondent No. 2 before the Special Magistrate, Vishakhapatnam in CC No. 681 of 2017. The Special Magistrate, Vishakhapatnam, took cognizance of the Complaint vide Order dated September 14, 2018 and issued summons.
- Aggrieved, the Respondent No. 2 subsequently filed a Petition bearing No.12675 of 2018 before the High Court under Section 482 of the Code of Criminal Procedure 1973, (**CrPC**) seeking quashing of the proceedings. The High Court allowed the said Petition vide Order dated February 12, 2019. Aggrieved by the Order dated February 12, 2019 of the High Court, the Appellant filed Special Leave Petition SLP(C) No. 7455/2019 which was registered on August 19, 2019 as Criminal Appeal 2743 of 2023, thereby challenging the High Court Order that quashed the criminal proceedings against the Respondent No. 2 in CC No. 681 of 2017.
- **Submission of the Appellant:**
  - The High Court erred in quashing the criminal proceedings against Respondent No. 2. The Respondent No. 2 had issued a cheque that was dishonored due to insufficient funds, thereby committing an offense under Section 138 of the NI Act. The Appellant further contended that the High Court's decision to quash the proceedings was based on an incorrect interpretation of the law and that the criminal proceedings should be allowed to continue.
- **Submission of the Respondent:**
  - The High Court correctly quashed the criminal proceedings against Respondent No. 2. The complaints filed seeking prosecution were not in respect of a legally recoverable debt, as the limitation for enforcing the promissory notes had expired prior to the issuance of the cheques in question. The Respondents relied on various judgments by the Supreme Court and High Courts to support their contention that the complaints were not maintainable.

Issue at hand?

- Whether the High Court erred in quashing the criminal proceedings against Respondent No. 2, who had issued a dishonoured cheque, on the grounds that the complaints were not maintainable due to the expiration of the limitation period for enforcing the promissory notes?

Decision of the Court

- The Apex Court, in its observations, made it clear that it considered the nature of proceedings under NI Act and emphasized that a cheque, even if issued for a time-barred debt, still constitutes a promise to pay. The Supreme Court referred to Section 25(3) of the Indian Contract Act, 1872 (**Contract Act**) 'it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits'. The Apex Court further held that in cases where the question whether a debt or liability is time-barred or not is required to be determined, it should be decided based on the evidence presented by the parties since the same involves both legal and factual aspects.
- The Court stressed that only in cases where an amount is completely unrecoverable, and a criminal action is initiated for its recovery, should the question of jurisdiction arise. In such cases, the High Court, under Section 482 of CrPC, can interfere and determine the question of liability in case of dishonor of cheque issued for a time barred debt.
- Referring to a 2021 decision related to Expeditious Trial of Cases Under Section 138 of NI Act, (2021) SCC OnLine SC 325, the Apex Curt held that in cases where a Trial Court is informed that it lacks jurisdiction to issue process for complaints under Section 138 of the NI Act, the proceedings must be stayed, thereby implying that the Trial Court still has the power to determine its jurisdiction. If a cheque is issued for a debt that is not legally recoverable, the presumption under Section 139 of NI Act 'presumption in favor of Holder' would not apply.
- The Supreme Court further held that the High Court had misdirected itself in the case at hand by considering the Promissory Note from 2012 and the Cheque from 2017 as time barred. The Apex Court clarified that the cause of action for recovery of the amount, in the present case, arose in December, 2016 when the Respondent No. 2 failed to pay the debt under the promissory note and the Cheque dated April 28, 2017 got dishonored in 2017. As per Article 34 of the Limitation Act 1963, the limitation period of 3 years would expire in December 2019-2020. But the Complaint was filed in July, 2017, i.e., well within the limitation period.

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Viewpoint

This case highlights the importance of determining the legal enforceability of a time-barred debt based on evidence and facts of every case. Maintaining the sanctity of a legal instrument such as a cheque issued for discharge of a debt, though time-barred, is still a promise to pay.

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