AJMANI & LAW PARTNERS

NEWSLETTER - 2021 (ISSUE - III)

Dear Readers, Greetings!

With the decline of second wave, and growing vaccination speed, we once again are moving towards normalcy. This time the functioning of the courts, quasi-judicial bodies, and other related institutions have recovered faster, and resumed in a short span of time. Moreover, even during the horrendous 2-3 months of second wave, the courts have continued to take up urgent matters smoothly via virtual hearings.

At this juncture of hope, we 'Ajmani & Law Partners' continue our endeavor to contribute, inter alia, by covering key developments of law by way of regular blogs, research articles, videos, quarterly newsletters, etc.

Ergo, on these lines, we have come up with this quarterly newsletter covering notable updates in the chosen areas of law occurred. The newsletter briefly deals with the recent important updates in Civil and Commercial laws, Defamation Laws & Matrimonial Laws.

We sincerely hope that you all will be benefited by this humble attempt of ours.

Yours Truly,

ADV. LALIT AJMANI
Managing Principal | F/M Partner
AJMANI & LAW PARTNERS, NEW DELHI

Glimpse:-

- 1. Civil & Commercial Law
- 2. Defamation Law
- 3. Matrimonial Law
- 4. GNCTD (Amendment) Act
- 5. Disclaimer

CIVIL AND COMMERCIAL LAW

IS LETTER OF INTENT (LOI) A CONTRACT?

South Eastern Coal Fields Ltd v. M/s S.Kumar Associates AKM (Supreme Court, 2021)

In commercial transactions, Letter of Intent (LOI) is widely used, especially in big projects. LOI is, fundamentally, an introductory document pertaining to the subject matter in question where intention/commitments of the parties are being noted down.

However, the same is different from a contract/agreement, as the LOI merely records the intention of the parties to enter into an agreement, and doesn't envisage/capture the terms and conditions of the issue(s) in question fully. Therefore, a lot of times the enforceability of LOI becomes a disputed question.

A similar issue i.e., whether LOI forms a contract or not came up before the Hon'ble Supreme Court in the case titled South Eastern Coal Fields Ltd v. M/s S.Kumar Associates AKM (Supreme Court, 2021). The Hon'ble Apex Court held the LOI doesn't form a contract as the same merely reflects the intention of the parties to enter into a future contract.

CIVIL AND COMMERCIAL LAW

ENFORCEABILITY OF LOI BINDING CONTRACTUAL OBLIGATIONS

Contractual Obligations Exception in LOI

However, the Hon'ble Court clarified that in some cases, the same can be construed as a contract where the terms of the LOI binds the parties with contractual obligations.

CAN A FIRM BE ACQUITTED MERELY BECAUSE OF THE OMISSION OF A SALUTATION I.E., M/S?

N. Raveendran vs. Shahaja & Anr (Kerala High Court, 2021)

In the case of 'N. Raveendran vs. Shahaja & Anr' (Kerala, 2021), the Hon'ble Kerala High Court was referred with a revision against the judgment dated 04.05.2006 passed by a Ld. Magistrate pertaining to section 138 of the NI Act, 1881 complaint.

In the case, the Ld. Magistrate dismissed the complaint and acquitted the accused firm because the cheque was drawn in favour of the accused firm's name and the accused firm's name was not preceded by the requisite salutation i.e., M/s.

The Hon'ble High Court vide judgment dated 06.09.2021 held that merely not writing a requisite salutation like M/s or Mr. doesn't allow a court to acquit an accused person/firm. Consequently, the court restored the complaint and set aside the judgment of the ld. Magistrate.

CIVIL AND COMMERCIAL LAW

CAN A DOCTOR BE HELD LIABLE FOR CRIMINAL MEDICAL NEGLIGENCE IN THE ABSENCE OF MENS REA?

Prabhat Kumar Singh vs. The State of Bihar (Supreme Court, 2021)

These days various issues pertaining to medical negligence are turning up, and the liability of the doctors and hospitals are being discussed at length.

On one hand, repercussions of medical negligence must be addressed, but on the other hand most of the times, doctors have no mens rea (ill intention) to cause any harm.

On these lines, Hon'ble Supreme Court in the case titled Prabhat Kumar Singh vs. The State of Bihar (Supreme Court, 2021) succinctly held that in a case of medical negligence, mens rea is not a sine qua non to constitute an offence of medical negligence.

P.S- In this case, the criminal medical negligence is being discussed where the punishment is given to the accused (doctor/hospital staff); compensation for medical negligence can be decided by the consumer courts.

DEFAMATION LAW

CAN A PARTY LEADER FILE A PRIVATE COMPLAINT FOR DEFAMATION?

Tamilisai Soundararajan vs. D.K. Karthikeyan (MANU/TN/6965/2021)

In the case of: Tamilisai Soundararajan vs. D.K. Karthikeyan (MANU/TN/6965/2021), the Hon'ble Madras High Court, inter alia, observed that the respondent had filed a criminal defamation case as a party leader without clarifying the point of authorization, and how the alleged derogatory remarks affected him or his party.

Consequently, the court quashed the summons and a private complaint of criminal defamation filed by the respondent before a Magistrate under section 190 r/w 200 of the CrPC.

DEFAMATION CASE AND JOLLY LLB 2

Akshay Kumar vs. State of Rajasthan & Anr. (Rajasthan High Court, 2021)

In 2017, a defamation complaint was filed against Jolly LLB 2 in Rajasthan, thereafter the concerned Ld. Magistrate issued a summons in that case. However, Mr. Akshay Kumar challenged the same in the Rajasthan High Court, Jaipur.

DEFAMATION LAW

MAGISTRATE CANNOT ISSUE SUMMONS BY RELYING ON TRAILER ALONE WITHOUT WATCHING FILM

Akshay Kumar vs. State of Rajasthan & Anr. (Rajasthan High Court, 2021)

Now, in August, 2021, the Hon'ble Rajasthan High Court in the case titled Akshay Kumar vs. State of Rajasthan & Anr. (Rajasthan, 2021) held that the complaint in question didn't make a prima facie case of criminal defamation.

Moreover, the Court held that the Magistrate issued a summons by relying upon the trailer only instead of watching the whole film. Consequently, the court set aside the criminal defamation complaint.

ACQUITTAL QUA DEFAMATORY STATEMENTS FURNISHED BEFORE SUB-DIVISIONAL MAGISTRATE

Maroti & Ors. vs. Ramkrushna & Ors. (MANU/MH/2149/2021)

This interesting query came up before the Hon'ble High Court of Bombay (Nagpur Bench) in the case of: 'Maroti & Ors. vs. Ramkrushna & Ors.' (MANU/MH/2149/2021).

The Hon'ble Court observed that an accused can't be acquitted merely because of the fact that the alleged derogatory statements are furnished before a public authority.

It was decided that an accused person must prove 'good faith' in order to take the aforesaid defense. (Refer Section 499 of the Indian Penal Code, and its 8th exception.)

MATRIMONIAL LAW

WHETHER HUSBAND LIABLE FOR BIGAMY WHERE APPEAL OF FIRST DIVORCE IS PENDING ADJUDICATION?

Manoj v. State of Kerala & Ors. (Cr. M.C. No. 2077/2017)

The Kerala High Court in the case titled 'Manoj v. State of Kerala & Ors.' (Cr. M.C. No. 2077/2017) was referred with the query of liability of a husband in a case where he enters into a second marriage during the pendency of the appeal of his divorce case with his first wife.

The court noted that the husband has already procured the decree of the divorce prior to entering into his second marriage. Moreover, the appeal against the divorce with his previous wife confirmed the decree of the divorce.

In such situation, the decree of divorce will be operated from the date of judgment of the Family court, and not from the date of the appellate court judgment. In light of the aforesaid, the Hon'ble Court held the husband can't be held liable for the offence of bigamy under section 494 of the Indian Penal Code, 1860.

OBLIGATIONS OF A FATHER TOWARDS HIS MAJOR CHILDREN

Urvashi Aggarwal & Ors. vs. Inderpaul Aggarwal (Delhi High Court, Cr. Rev P 549/2018)

The Hon'ble Delhi High Court in the case titled 'Urvashi Aggarwal & Ors. vs. Inderpaul Aggarwal' (Cr. Rev P 549/ 2018) was referred with a query of magnitude of the responsibilities of a father qua the maintenance towards his major children where the wife is a working/earning person.

MATRIMONIAL LAW

FATHER CANNOT BE ABSOLVED FROM CHILD MAINTENANCE MERELY BECAUSE CHILD ATTAINED MAJORITY

Urvashi Aggarwal & Ors. vs. Inderpaul Aggarwal (Delhi High Court)

In this case, the respondent has filed an application under section 482 of the CrPC seeking review of the order of the court where the interim monthly maintenance of Rs 15,000/- was awarded in favour of the petitioners till the son completes his education, and starts earning.

The Hon'ble Court after referring to various precedents, observed that a father can't be absolved from his obligations towards his child merely because he has attained the age of majority or/and the wife is a working lady.

GNCTD (AMENDMENT) ACT & DISCLAIMER

WHETHER THE GNCTD (AMENDMENT) ACT, 2021 IS CONSTITUTIONALLY VALID?

Government of National Capital Territory of Delhi (Amendment) Act, 2021

Recently, the Government of National Capital Territory of Delhi (Amendment) Act, 2021 ('the New Act') has brought substantial and bold amendments to the Government of National Capital Territory of Delhi Act, 1991 (for brevity 'the Principal Act') whereby the powers granted to the Delhi Assembly and the Chief Minister, who get elected by free and fair elections, are now transferred to the Lt. Governor of Delhi who is appointed by the President of India by the aid and advice of the Central Govt.

The New Act has been challenged by various litigants before the Hon'ble Delhi High Court, and the cases are still pending adjudication.

On these lines, our firm has analysed the relevant provisions of law in order to comprehend the constitutional validity and the probable fate of this New Act.

DISCLAIMER

This newsletter has been drafted/ prepared for informative purposes only. Ergo, the contents of this newsletter shall not be construed as a legal advice or legal opinion. Moreover, this Newsletter doesn't create any attorney-client relationship. No direct or indirect solicitation or advertisement is done or intended to be done by the means of this newsletter. Lastly, our firm acknowledges that we do not claim any ownership rights over the pictures/photos used in this newsletter. These pictures/photos are included solely for educational purposes to enhance the content and provide visual context.