AJMANI & LAW PARTNERS

NEWSLETTER - 2023 (ANNUAL REVIEW)

Dear Readers,

As we are heading towards the new year, we find ourselves in a world with constant and significant changes. In the legal realm, adaptation, and evolution are paramount. At Ajmani & Law Partners, we are committed to navigating these shifting sands; ensuring in keeping our endeavours to make us all well-informed and empowered. And this newsletter is one among many bricks of such endeavours.

With our latest newsletter of this year of 2023, we have tried to revisit the significant developments in Civil and Commercial laws, Matrimonial laws, and Defamation laws among others that happened over the last 12 months.

The jurisprudence of 2023 is significantly enormous, which can easily cover various journals and tomes, thus it's infeasible to cover everything important, yet we tried to pick a handful of legislative and judicial instances that can't be ignored.

We hope this newsletter serves as a valuable resource, offering a quick recap of the significant milestones that occurred over the last 12 months of 2023.

Thank you for being part of the Ajmani & Law Partners community. Together, we face the future with knowledge, insight, and determination.

Warm regards,

Adv. Lalit Ajmani

Managing Principal | F/M Manager

AJMANI & LAW PARTNERS, NEW DELHI

Glimpse:-

- Civil & Commercial Laws
- Matrimonial Laws
- Defamation Laws
- Miscellaneous Laws
- Disclaimer

CIVIL AND COMMERCIAL LAWS

AUTHORIZED SIGNATORY NOT A DRAWER, NOT LIABLE TO PAY INTERIM COMPENSATION

Lyka Labs Limited & Anr. vs. State of Maharashtra & Anr. (Bombay High Court)

In the case "Lyka Labs Limited & Anr. vs. State of Maharashtra & Anr." the Bombay High Court clarified that a company's authorized signatory, signing a cheque, is not considered as the 'drawer' under section 143A of the Negotiable Instruments Act, exempting the authorized signatory from the interim compensation responsibility in case of cheque dishonor. The court emphasized that the term 'drawer' explicitly refers to the issuer.

PRESENCE OF AN ARBITRATION CLAUSE NOT A BAR TO THE JURISDICTION OF THE CONSUMER FORUM

Dr. Satpal Kaur Nalwa & Anr. vs. M/S. Emaar MGF Land Limited (NCDRC)

The National Consumer Dispute Redressal Commission (NCDRC) recently dealt with a case of "Dr. Satpal Kaur Nalwa & Anr. vs. M/S. Emaar MGF Land Limited & Anr." where there were claims of failure to deliver a villa despite payment of installments. The Commission ruled that the consumer court has the authority to address such complaints even if there is an arbitration clause in the agreement.

CIVIL AND COMMERCIAL LAWS

DEPOSIT OF MINIMUM 20% AMOUNT IS NOT AN ABSOLUTE RULE; CAN BE RELAXED IF EXCEPTIONAL CASE MADE OUT

Jamboo Bhandari vs. MP State Industrial Development Corporation Ltd (Supreme Court)

The Supreme Court in "Jamboo Bhandari vs. MP State Industrial Development Corporation Ltd" has ruled that the mandatory deposit of 20% of the fine/compensation amount under Section 148 of the Negotiable Instruments Act is not an absolute rule. The Appellate Court can consider whether it's an exceptional case justifying suspension of sentence without imposing the 20% deposit condition, recording brief reasons.

LEGAL NOTICE UNDER SECTION 138 OF THE NI ACT IS NOT INVALID IF OTHER AMOUNT IS SEPARATELY INDICATED

Prashant Chandra vs. State Of U.P. Thru. Prin. Secy. Home (Allahabad High Court)

The Allahabad High Court in "Prashant Chandra vs. State Of U.P." ruled that a demand notice under section 138 of the Negotiable Instruments Act, 1881 is valid even if it includes an additional amount asunder from the cheque amount, as long as those amounts are specified separately in the notice. The High Court stated that the notice should be read as a whole.

CIVIL AND COMMERCIAL LAWS

IN PARTITION SUIT, EVERY INTERESTED PARTY DEEMED TO BE A PLAINTIFF; NO BAR IN PASSING NUMEROUS PRELIMINARY DECREES

A. Krishna Shenoy vs. Ganga Devi G. & Ors. (Supreme Court)

In a recent case of "A. Krishna Shenoy vs. Ganga Devi G. & Ors.", the Hon'ble Supreme Court held that in a partition suit, all interested parties are considered plaintiffs, and multiple preliminary decrees can be issued. The case involved a dispute over a supplementary preliminary decree in favor of the appellant's sisters.

ARBITRATION CLAUSES IN UNSTAMPED AGREEMENTS ARE ENFORCEABLE: 7-JUDGE CONSTITUTION BENCH

In Re: Interplay between Arbitration Agreements and Indian Stamp Act (Supreme Court)

In a significant ruling in "re: interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act 1899", the 7-Judge Constitutional Bench of Supreme Court declared that arbitration clauses in agreements with insufficient stamping are enforceable, though deemed inadmissible in evidence until stamped. The decision emphasizes that non-stamping is a curable defect.

CIVIL AND COMMERCIAL LAWS

TITLE CANNOT BE TRANSFERRED THROUGH AGREEMENT TO SELL OR GENERAL POWER OF ATTORNEY

Shakeel Ahmed vs. Syed Akhlaq Hussain (Supreme Court)

The Supreme Court in "Shakeel Ahmed vs. Syed Akhlaq Hussain" clarified that no title can be transferred qua immovable properties based on an Agreement to Sell or a General Power of Attorney unless duly registered. The court emphasized that the Registration Act, 1908 mandates registration for conveyancing title.

THE PERSON RESPONSIBLE FOR THE CONDUCT OF THE COMPANY'S AFFAIRS AT THE TIME OF CHEQUE DISHONOUR IS LIABLE

Siby Thomas vs. Somany Ceramics Ltd. (Supreme Court)

In the recent landmark case of "Siby Thomas vs. Somany Ceramics Ltd.", the Supreme Court of India clarified the liability of a company director in dishonored cheque cases. The judgment emphasized the stringent criteria outlined in Section 141(a) of the Negotiable Instruments Act, highlighting the necessity for specific averments in complaints to establish vicarious liability.

CIVIL AND COMMERCIAL LAWS

IN COMMERCIAL CASE, PLAINTIFF HAS NO ABSOLUTE CHOICE TO AVOID PRE-LITIGATION MEDIATION

Yamini Manohar vs. TKD Keerthi (Supreme Court)

The Supreme Court's judgment in "Yamini Manohar vs. TKD Keerthi" delves into Section 12A(1) of the Commercial Courts Act, 2015, asserting that the plaintiff's right to urgent interim relief should not undermine mandatory pre-litigation mediation. The court must evaluate genuine necessity for urgent relief to prevent bypassing mediation.

A BLANK CHEQUE LEAF ATTRACTS PRESUMPTION U/S 139 NI ACT IF VOLUNTARILY SIGNED AND GIVEN FOR PAYMENT

P K Uthuppu vs. N J Varghese (Kerala High Court)

In the case of "P K Uthuppu vs. N J Varghese", the Kerala High Court upheld the presumption under Section 139 of the Negotiable Instruments Act, ruling that voluntarily signing and handing over a blank cheque invokes the presumption that it was issued to discharge a debt. The onus to rebut lies with the accused.

MATRIMONIAL LAWS

HOUSEWIFE HAS AN EQUAL SHARE OVER HER HUSBAND'S PROPERTY: MADRAS HIGH COURT

Kannaian Naidu (Died) vs. Kamsala Ammal @ Banumathi (Madras High Court)

In a significant ruling, the Madras High Court in "Kannaian Naidu vs. Kamsala Ammal" observed that a homemaker spends 24 hours per day towards family welfare, and her untiring managerial and caregiving contributions entitle her to an equal share in the properties of her husband, regardless of whether properties stand in husband's or wife's name.

SUPREME COURT CAN GRANT DIVORCE UNDER ARTICLE 142 OF THE CONSTITUTION OF INDIA

Shilpa Sailesh vs. Varun Sreenivasan (Supreme Court Constitution Bench)

The Supreme Court's Constitution Bench delivered a landmark verdict in "Shilpa Sailesh vs. Varun Sreenivasan", ruling that the Apex Court has the power under Article 142 to grant divorce based on the irretrievable breakdown of a marriage, doing complete justice without waiting for statutory waiting periods.

MATRIMONIAL LAWS

RIGHT OF UNMARRIED MAJOR DAUGHTER TO MAINTENANCE FROM FATHER UNDER SECTION 125(1) CRPC

Gireesh Kumar vs. Rajani KV & Anr. (Kerala High Court)

The Kerala High Court in "Gireesh Kumar vs. Rajani KV" emphasised that under Section 125(1) CrPC, an unmarried daughter who has reached majority cannot seek maintenance from her father solely on the basis that she lacks the means to provide for herself; she must show physical or mental abnormality or injury.

NON-CONSUMMATION OF MARRIAGE DOES NOT AMOUNT TO CRUELTY UNDER 498A OF THE IPC

ABC & Ors. vs. State of Karnataka & Anr. (Karnataka High Court)

The Karnataka High Court in "ABC & Ors. vs. State of Karnataka" held that non-consummation of marriage may amount to cruelty under the Hindu Marriage Act, 1955; however, the same does not amount to criminal cruelty as per Section 498-A of the Indian Penal Code.

MATRIMONIAL LAWS

BEING DISRESPECTFUL TOWARDS SPOUSE'S FAMILY AMOUNTS TO CRUELTY

Santosh Meena vs. Siddharth B.S. Meena (Madhya Pradesh High Court)

The Madhya Pradesh High Court in "Santosh Meena vs. Siddharth B.S. Meena" noted that a spouse's persistent lack of respect for the partner or members of their family constitutes mental cruelty, upholding the decree of dissolution of marriage.

HINDU MARRIAGE CAN BE DISSOLVED THROUGH CUSTOMARY DIVORCE IF CUSTOM IS ESTABLISHED

Sanjana Kumari vs. Vijay Kumar (Supreme Court)

The Supreme Court in "Sanjana Kumari vs. Vijay Kumar" clarified that a Hindu marriage can be dissolved through a customary divorce deed if the party establishes the existence of such an ancient customary right under Section 29(2) of the Hindu Marriage Act, 1955, backed by specific pleadings and evidence.

MATRIMONIAL LAWS

RAPE IS RAPE, BE IT PERFORMED BY A HUSBAND AGAINST HIS OWN WIFE

Anjanaben Modha vs. State of Gujarat (Gujarat High Court)

The Gujarat High Court in "Anjanaben Modha vs. State of Gujarat" criticized the marital rape exception under Section 375 of the IPC, emphasizing that non-consensual sexual violence remains rape irrespective of the perpetrator being a husband, referencing international human rights jurisprudence.

A WIDOW CAN CLAIM MAINTENANCE FROM HER FATHER-IN-LAW

Dhanna Sahu vs. Sitabai Sahu (Chhattisgarh High Court)

The Chhattisgarh High Court in "Dhanna Sahu vs. Sitabai Sahu" held that under Section 19 of the Hindu Adoptions and Maintenance Act, 1956, a widow can claim maintenance from her father-in-law if she is unable to maintain herself from her own earnings or from her husband's or parents' estate.

MATRIMONIAL LAWS

AD VALOREM FEES NOT REQUIRED IN MAINTENANCE DISPUTES BEFORE FAMILY COURT

Sucheta Garg and ors. vs. Vineet Garg and ors. (Punjab & Haryana High Court)

The Punjab and Haryana High Court in "Sucheta Garg vs. Vineet Garg" ruled that petitioners in Family Court disputes related to marital property and maintenance are not obligated to pay ad valorem court fees, emphasizing the summary nature of proceedings before the Family Court.

FATHER'S SECOND MARRIAGE AFTER FIRST WIFE'S DEATH DOESN'T PER SE DISQUALIFY HIM FROM BEING CHILD'S NATURAL GUARDIAN

Mohd. Irshad & Anr. vs. Nadeem (Delhi High Court)

The Delhi High Court in "Mohd. Irshad & Anr. vs. Nadeem" ruled that a father's remarriage does not disqualify him from guardianship of his child, stating that differences in financial status between parents and maternal grandparents cannot deprive the natural parent of custody.

DEFAMATION LAWS

WHETHER FAMILY COURT HAS JURISDICTION TO ENTERTAIN DEFAMATION CLAIM FILED BY WIFE AGAINST HUSBAND?

Rarima R. vs. Rejulal K.V. & Ors. (Kerala High Court)

The Kerala High Court in "Rarima R. vs. Rejulal K.V." held that defamatory statements give rise to an independent civil tort of defamation. The marital relation is immaterial; therefore, a defamation suit does not attract Section 7 of the Family Courts Act, and Family Courts lack jurisdiction to try defamation.

CAN AN ADVOCATE BE HELD LIABLE FOR DEFAMATION QUA STATEMENTS FURNISHED BEFORE A COURT OF LAW?

Pankaj Oswal vs. Vikas Pahwa (Delhi High Court)

The Delhi High Court in "Pankaj Oswal vs. Vikas Pahwa" held that statements made by an advocate before a court during a hearing are protected under absolute privilege. An advocate cannot be held liable for civil defamation for arguments presented, safeguarding independent courtroom advocacy.

DEFAMATION LAWS

BAIL DENIED WHERE PERSON ALLEGED TO SPREAD LETTER CONTAINING DEROGATORY REMARKS AGAINST RELIGION

Surendra Kumar Jain vs. State of Madhya Pradesh (Madhya Pradesh High Court)

The High Court of Madhya Pradesh in "Surendra Kumar Jain vs. State of MP" denied bail where the accused was alleged to have circulated letters containing derogatory remarks against a religious community, emphasizing the preservation of communal harmony.

MERELY WRITING NEGATIVE GOOGLE REVIEW ABOUT SERVICES RECEIVED DOESN'T CONSTITUTE DEFAMATION

VP Sarathi vs. Kiruthigha (Madras High Court)

The Madras High Court in "VP Sarathi vs. Kiruthigha" ruled that expressing honest consumer opinions on platforms like Google Reviews about services received falls under Article 19(1)(a) freedom of speech and does not constitute criminal defamation against a service provider.

DEFAMATION LAWS

ALLEGATIONS IN COMPLAINT MADE IN GOOD FAITH TO LAWFUL AUTHORITY DON'T ATTRACT DEFAMATION

Kishore Balkrishna Nand vs. State of Maharashtra (Supreme Court)

The Supreme Court in "Kishore Balkrishna Nand vs. State of Maharashtra" quashed a defamation case where allegations were submitted in a good-faith complaint to the Sub Divisional Magistrate regarding land encroachment, falling under the lawful authority exception to Section 499 IPC.

MAGISTRATE CAN DISMISS DEFAMATION COMPLAINT BY APPLYING EXCEPTIONS U/S 499 IPC BEFORE ISSUANCE OF SUMMONS

Iveco Magirus Brandschutztechnik Gmbh vs. Nirmal Kishore Bhartiya (Supreme Court)

The Supreme Court in "Iveco Magirus Brandschutztechnik vs. Nirmal Kishore Bhartiya" held that a Magistrate is empowered to dismiss a defamation complaint at the pre-summoning stage by applying Section 499 IPC exceptions if allegations are frivolous, recording brief reasons.

DEFAMATION LAWS

MERE FACT THAT A DEFAMATORY STATEMENT WAS EARLIER MADE IN A PLEADING IS NO DEFENCE FOR ITS REPETITION

Serum Institute of India Pvt. Ltd. vs. Yohan Tengra & Ors. (Bombay High Court)

The Bombay High Court in "Serum Institute of India vs. Yohan Tengra" ruled that privilege applies only to fair reporting of judicial proceedings. Repeating defamatory statements simply because they appeared in a judicial pleading is not a defense; each republication constitutes an independent tort.

CRITICISM OF PRODUCTS NOT DEFAMATION UNDER SECTION 499 IPC

Ayub H.H. v State of Kerala (Kerala High Court)

The Kerala High Court in "Ayub H.H. v State of Kerala" clarified that Section 499 IPC pertains to defamation against individuals and does not extend to public criticism of products or commercial services on social media, quashing charges under Section 500 IPC.

MISCELLANEOUS LAWS

THE RAJASTHAN ADVOCATES PROTECTION BILL, 2023 ENACTED

State Legislature of Rajasthan

Rajasthan became the first state in India to pass the Advocates Protection Bill, providing statutory protection to practicing lawyers against assault, grievous hurt, criminal intimidation, and ensuring compensation mechanisms.

CAN CITIZENS DIRECTLY FILE A PETITION BEFORE THE PARLIAMENT? SUPREME COURT CLARIFIES

Karan Garg vs. Union of India (Supreme Court)

The Supreme Court in "Karan Garg vs. Union of India" held that the Apex Court under Article 32 of the Constitution cannot issue writs or directives commanding Parliament to permit citizens to directly table legislative petitions.

MISCELLANEOUS LAWS

PSU AND GOVT. COMPANIES CANNOT VIOLATE COMPETITION ACT

Coal India Ltd vs. Competition Commission of India (Supreme Court)

The Supreme Court in "Coal India Ltd vs. CCI" held that State Monopolies and Public Sector Undertakings cannot engage in anti-competitive or abusive market practices in violation of the Competition Act 2002, despite state monopoly status under nationalisation acts.

BAR COUNCIL OF INDIA CAN PRESCRIBE CONDITION ON ENROLLMENT OF ADVOCATES

Bar Council Of India vs. Rabi Sahu & Anr (Supreme Court)

The Supreme Court in "Bar Council Of India vs. Rabi Sahu" upheld the validity of BCI regulations mandating that law graduates must pass from recognized, BCI-approved institutions to be eligible for state bar enrollment.

MISCELLANEOUS LAWS

ARTICLE 370; A TEMPORARY PROVISION: SUPREME COURT CONSTITUTION BENCH

In Re: Article 370 of the Constitution (Supreme Court Constitution Bench)

The Supreme Court Constitution Bench unanimously upheld the Parliament's decision to revoke Jammu and Kashmir's special status under Article 370, affirming it was a temporary provision, while directing restoration of statehood and elections.

SAME-SEX MARRIAGE IS STILL NOT LEGAL IN INDIA: PARLIAMENT'S DOMAIN

Supriyo vs. Union of India (Supreme Court Constitution Bench)

The Supreme Court in "Supriyo vs. Union of India" declined to grant legal recognition for queer marriages under the Special Marriage Act, affirming the right of couples to cohabit free from violence while deferring statutory recognition to the legislature.

MISCELLANEOUS LAWS

LEGAL SAFEGUARDS AGAINST CYBER CRIMES IN INDIA

Information Technology Act & Together Thrive Foundation

An overview of statutory protections against cyber offences under IPC Sections 354A, 354C, 354D and IT Act Sections 66C and 66E. Chambers research work on cyber security was featured by the Together Thrive Foundation.

MATERNITY LEAVE IS A FUNDAMENTAL RIGHT: HIMACHAL PRADESH HIGH COURT

State of HP vs. Sita Devi (Himachal Pradesh High Court)

The Himachal Pradesh High Court in "State of HP vs. Sita Devi" held that every working woman, regardless of employment status or contractual tenure, possesses a constitutional right to maternity leave under Articles 14, 15, 21, and 42.

CRIMINAL LAW REFORMS & DISCLAIMER

PRESIDENT GIVES NOD TO REVOLUTIONARY CRIMINAL LAW BILLS

Enactment of Bharatiya Nyaya Sanhita, BNSS & Bharatiya Sakshya Act

The President of India granted assent to the three landmark criminal law statutes - Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) - modernizing India's criminal jurisprudence and replacing colonial codes.

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