AJMANI & LAW PARTNERS

NEWSLETTER - 2023 (ISSUE - II)

Greetings,

In 2023, we have witnessed the advent of the economic slowdown, as well as the arrival of artificial intelligence in the mainstream like never before. Resultantly, the market and businesses across the sectors have observed notable shifts and changes.

In the meantime, the legislative body is trying to bring new laws to cope up with the changes, whereas the courts are continuously focusing on protecting the rights of the individuals and corporations under the existing regime and thereby maintaining the law and balance.

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

Ergo, on these lines, we have summed up the notable updates in the chosen areas of law via this Newsletter. The newsletter briefly deals with the recent important updates of the second quarter of 2023 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:-

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

CIVIL AND COMMERCIAL LAWS

ARBITRATION CLAUSE DOESN'T BAR THE JURISDICTION OF A CONSUMER FORUM

Army Welfare Housing Organisation v. Chief Administrator, Huda & Anr. (NCDRC, 2023)

The National Consumer Dispute Redressal Commission (NCDRC) recently in a case titled 'Army Welfare Housing Organisation v. Chief Administrator, Huda & Anr.' (NCDRC, 2023) held that a consumer court has the authority to address complaints, even if there is an arbitration clause in the agreement. The Commission has relied upon the ruling of the Hon'ble Apex Court where the Supreme Court in the case of M/s Emaar MGF Land Limited vs. Aftab Singh - I (2019) CPJ 5 (SC), had observed that the Arbitration clause in the Agreement does not bar the jurisdiction of the Consumer Fora to entertain the Complaint.

CHALLENGE TO RECOVERY NOTICE UNDER SARFAESI ACT WILL LIE BEFORE DRT ONLY

Regional Manager, Union Bank of India and Anr. vs. M/S Punya Coal Road Lines and Ors. (Bombay High Court)

The Bombay High Court in the case of 'Regional Manager, Union Bank of India and Anr. vs. M/S Punya Coal Road Lines and Ors.' ruled that once a secured creditor issues a demand notice under section 13(2) of the SARFAESI Act, then any challenge to such notice may be raised before a Debts Recovery Tribunal (DRT). The court also observed that the jurisdiction of civil courts is barred in such cases, and only DRT has sole and exclusive jurisdiction to entertain challenges pertaining to such demand notice.

CIVIL AND COMMERCIAL LAWS

FAILURE TO OBJECT UNILATERAL APPOINTMENT OF ARBITRATOR DOESN'T EXTINGUISH SECTION 12 RIGHT

Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat (Delhi High Court)

The Delhi High Court in 'Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat' held that the failure to object to the unilateral appointment of a sole arbitrator does not extinguish the right under section 12(5) of the Arbitration and Conciliation Act, 1996. The court also observed that an award rendered by an ineligible arbitrator cannot be enforced. At this juncture, the following excerpt of this judgment deserves a quick reference:

'A party can waive its right to object to the ineligibility of an arbitrator under Section 12(5) of the A&C Act but the same is subject to two conditions. First, that the waiver is required to be by and done by an express agreement in writing; and second, that such agreement is entered into after the disputes have arisen. Unless both the aforesaid conditions are satisfied, there can be no waiver of the ineligibility of an arbitrator.'

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

Prashant Chandra vs. State of U.P. Thru. Prin. Secy. Home, Lko. & Ors. (Allahabad High Court, 2023)

The Allahabad High Court in 'Prashant Chandra vs. State Of U.P. Thru. Prin. Secy. Home, Lko. & Ors. (ALL HC, 2023)' ruled that a demand notice under section 138 of the Negotiable Instruments Act, 1881 is valid even if it includes an additional amount(s) asunder from the cheque amount, as long as those amounts are specified separately in the said notice. The High Court stated that the notice should be read as a whole, and if another amount is claimed, then all the amounts should be clearly indicated.

MATRIMONIAL LAWS

HOUSEWIFE HAS AN EQUAL SHARE OVER HER HUSBAND'S PROPERTY

Kannaian Naidu (Died) and others v Kamsala Ammal @ Banumathi and others (Madras High Court)

In a significant ruling, the Madras High Court in 'Kannaian Naidu (Died) and others v Kamsala Ammal @ Banumathi and others' has observed that a homemaker/housewife spends 24 hours per day towards the family welfare and her untiring efforts and multi-tasks including her managerial skills - planning, organizing, budgeting, running errands, etc. entitle her equal share in the properties of her husband.

Though, currently, there is no legislation acknowledging the contributions of a wife, the court has emphasized the wife's role as a homemaker, and her uncountable sacrifices for the family's welfare, and established her rights over the properties regardless of fact whether the properties are in the husband's or wife's name.

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

Shilpa Sailesh v. Varun Sreenivasan (Supreme Court, 2023)

The Supreme Court's Constitution Bench has delivered a significant verdict in 'Shilpa Sailesh v. Varun Sreenivasan (Supreme Court, 2023)'. The Apex Court stated that it has the power to grant divorce based on the irretrievable breakdown of a marriage, even though it is not recognized as a statutory ground.

The court emphasized that the court has the requisite power to do 'complete justice' under Article 142 of the Constitution of India. The court also observed that this power must be exercised with caution and after considering various factors, ensuring complete justice is done to the parties.

MATRIMONIAL LAWS

WHETHER THE LAW OF LIMITATION APPLIES TO THE DV ACT?

Kamatchi vs. Laxmi Narayan (Supreme Court, 2022) | LiveLaw Article by Lalit Ajmani

The Hon'ble Supreme Court in the case of Kamatchi vs. Laxmi Narayan (Supreme Court, 2022) has held that an application under section 12 of the DV Act is not a complaint as per section 2 of the CrPC. Therefore, section 468 of the CrPC is not applicable to complaints/applications filed under section 12 of the DV Act. Thus, the law of limitation of one year is not applicable to the applications filed under section 12 of the DV Act.

Our F/M Partner Adv. Lalit Ajmani has written a detailed piece on this issue and the same is covered by Live Law.

NON-CONSUMMATION OF MARRIAGE NOT CRUELTY UNDER 498A IPC

ABC & Ors. vs. State of Karnataka & Anr. (Karnataka High Court, 2023)

The Karnataka High Court in the case of 'ABC & Ors. vs. State of Karnataka & Anr. (KAR HC, 2023)' held that the non-consummation of marriage amounts to cruelty under Hindu Marriage Act, 1955; however, the same doesn't amount to cruelty as per section 498-A of the IPC.

DEFAMATION LAWS

PRINCIPLES QUA SUSPENSION OF CONVICTION IN CRIMINAL DEFAMATION

Rahul Gandhi vs. Purnesh Ishwerbhai Modi (Gujarat High Court, 2023)

The Hon'ble High Court of Gujarat in the case of 'Rahul Gandhi vs. Purnesh Ishwerbhai Modi (Guj HC 2023)' has refused to set aside the trial court order wherein the ld. trial court had convicted the petitioner for defaming the respondent. The High Court has also laid down the following principles qua suspension of the order for a conviction:

1. It should be in rare and exceptional circumstance. 2. Court should examine 'seriousness of offence' and/or 'offence of moral turpitude' over and above 'serious offence' and shall not invoke the jurisdiction. 3. Criminal antecedents of the accused will be a relevant consideration, even in the case of suspension of sentence as per the decision of the Hon'ble Supreme Court in the case of Kanaka Rekha Nayak (supra). 4. The Court should not be impressed by the fact that the accused being sitting MLA/MP even in staying the sentence. 5. A public servant losing his job is not a consideration/ground to exercise the discretion u/s. 389(1) of the Cr.P.C. (K.C. Sareen). 6. A right to be elected is neither a fundamental right nor common law right, but at the best it is pure and simple statutory right (Jyoti Basu 14). 7. Further, the judgments of other the High Court relied upon by the applicant are not applicable or contrary to the law laid down by the Hon'ble Supreme Court and this Hon'ble Court, as above.

DEFAMATION LAWS & DISCLAIMER

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

Serum Institute of India Pvt. Ltd. & Anr. Vs Yohan Tengra & Ors. (Bombay High Court, 2023)

The Bombay High Court in 'Serum Institute of India Pvt. Ltd. & Anr. Vs Yohan Tengra & Ors. (BOM HC 2023)' has ruled that privilege against defamation applies to fair reporting of proceedings by 'news papers'. Only documents read/recorded during the course of the judicial proceedings can be repeated.

The court also observed that publishing a defamatory statement based on its mention in a judicial pleading is not a valid defense for its repetition. The court emphasized that the republication of a defamatory statement is itself defamatory, and each publisher is accountable to the same extent as if the defamatory statement originated with him.

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