



# MONTHLY NEWSLETTER

The Law Desk

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**DELAY OR LACHES- NO  
DEFENSE FOR GRANTING  
COMPENSATION**  
- MEGHA JOSHI

The Hon'ble Supreme Court vide its Judgment dated 06.04.2022 passed in *Sukh Dutt Ratra and Anr. vs. State of Himachal Pradesh & Ors.* held that the state cannot shield itself behind the ground of delay and laches as there cannot be a 'limitation' to doing justice.

The brief facts of the case are that the State of Himachal Pradesh used the subject area to construct a road in the year 1972-73, however, no land acquisition process were allegedly undertaken, and no compensation was allegedly paid to the land owners-Appellants.



In 2001, an Order passed was passed by the Hon'ble High Court of Himachal Pradesh in a Writ Petition directing the State to pay fair compensation to the land owners whose land is acquired by the State. Consequently, a notification under Section 4 of the Land Acquisition Act, 1894 was issued by the State an award was passed fixing compensation at 30,000 per Bigha to land owners against whom the State has commenced land acquisition proceedings.

With a view to get some relief in light of the Order passed by the Hon'ble High Court granting relief to the land owners, the Appellants approached the High Court in 2011, seeking compensation for the subject land. The Full Bench of the High Court held that the issue before it is a contested questions of law and fact for determination on the starting point of limitation that could not be addressed in writ proceedings. On the basis of the said reasoning, Writ Petition was dismissed with the liberty to initiate a civil suit in line with the law.

The Hon'ble Court after considering the facts of the case, set aside the Hon'ble High Court's Order and observed that the State has actively tried to limit the disbursement of compensation as required by law and only to those for whom it was specifically prodded by the courts, the State has allowed the compensation. As such, the State rather than

allowing compensation to all those who are entitled, in a clandestine and arbitrary manner, has not allowed the same. This arbitrary action, which also violated the Appellants then prevailing Article 31 Right (at the time of the cause of action), deserved the High Court's attention and intervention under its Article 226 jurisdiction.

The Hon'ble Supreme directed the State to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the Appellants and in order to ensure that the appropriate Land Acquisition Collector computes and disburses compensation to the appellants within four months.

#### **ANALYSIS:**

While the right to property is no longer a fundamental right, it is important to highlight that it was still included in Part III of the Constitution in form of Article 300A i.e. the right against deprivation of property unless in compliance with legal procedure.

When it comes to private property, this Hon'ble Court has affirmed the high legal barrier that must be satisfied in order to deprive an individual of their property, especially when done by the State.





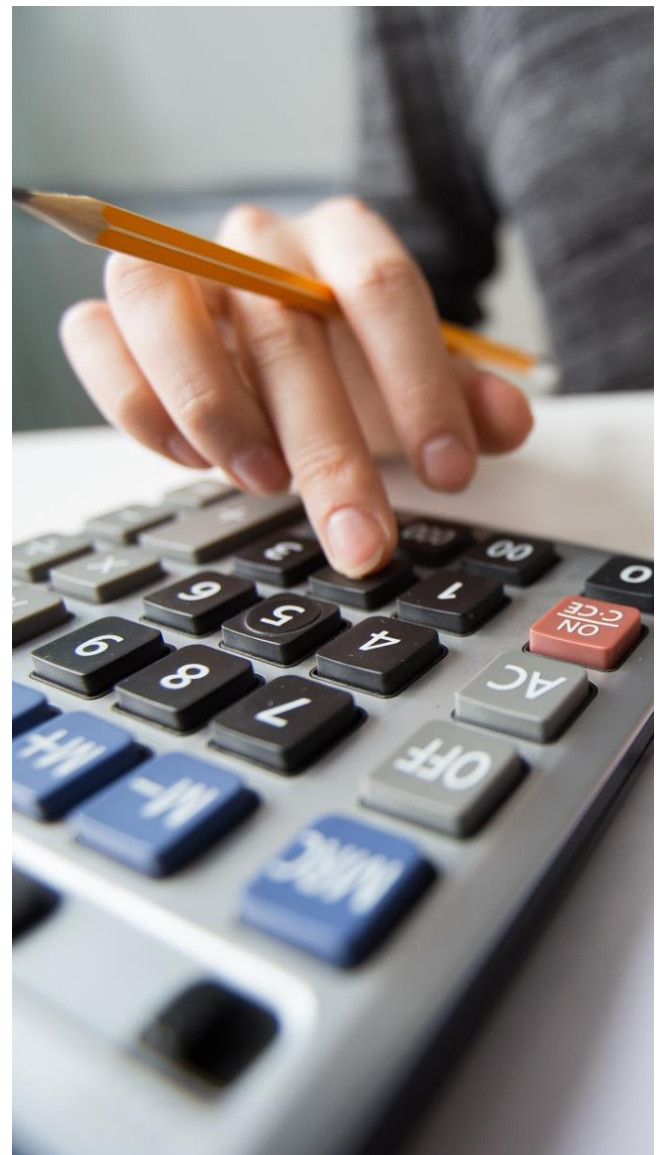
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## REMUNERATION PAID DURING CIRP - DEBT OR CIRP COSTS ? - TANMAY MANGAL

The Hon'ble Apex Court in *Sunil Kumar Jain & Ors. vs. Sundaresh Bhatt & Ors.*<sup>1</sup>, vide its Order dated 19.04.2022 has decisively/finally cleared the conundrum related to inclusion of wages and salaries being paid to the workmen or employees in the Corporate Insolvency Resolution Process (*For brevity "CIRP"*) as Costs under Section 5(13) of the Insolvency and Bankruptcy Code, 2016 (*For brevity "IB Code"*) at the time of liquidation. Furthermore, the Hon'ble Court has given findings concerning the exclusion of Pension, Gratuity and the Provident Fund of the employees /workmen from the Liquidation Estate Assets during liquidation due to the operation of Section 36 of the IB Code.

The Brief facts of the case are that the workmen/employees of the Corporate Debtor i.e. M/S ABG Shipyard filed an application before the National Company Law Tribunal, Ahmedabad Bench (*For brevity "Adjudicating Authority"*) praying for/seeking inclusion of wages/salary due as CIRP Costs during the

CIRP Period for getting priority in payment among other stakeholders. The said Application was dismissed and aggrieved by the same, an appeal was preferred before the Appellate Tribunal which upheld the decision passed by the Adjudicating Authority. Against the said order, the present Appeal was filed before the Hon'ble Supreme Court.



<sup>1</sup> Civil Appeal No. 5910 of 2019, available at [https://main.sci.gov.in/supremecourt/2019/24173/3/24173\\_2019\\_12\\_1510\\_35076\\_Judgement\\_19-Apr-2022.pdf](https://main.sci.gov.in/supremecourt/2019/24173/3/24173_2019_12_1510_35076_Judgement_19-Apr-2022.pdf).

The Hon'ble Court after considering various provisions of the IB Code *inter alia* including Section 2(13), 2(20) 36, 53 and analysing various provisions of the Company Act, 2013, has held that the wages / salary of a workmen / employee is to be included in the CIRP Costs under Section 53(1)(a) only in case of satisfaction of two conditions *Firstly*, the Corporate Debtor was operating as a going concern by the Resolution Professional. *Secondly*, concerned workmen/employee actually worked and played some role in assisting the liquidator run the Corporate Debtor as a going concern during the CIRP. Therefore, the workmen/employees that have not worked at all during the CIRP shall not be included in CIRP Costs and they will be paid as per the provisions of Section 53(1)-(B)/(C) of IB Code. Furthermore, the Court observed that the Pension, Gratuity and the Provident Fund earmarked for the workmen/employees are outside the liquidation process as the same are excluded from the list of Liquidation Estate Assets due to the application of Section 36(4) (iii) of the IB Code. Therefore, the said funds are not subjected to Section 53(1) of the IB Code.

## ANALYSIS

In a significant ruling, the Hon'ble Court has partly allowed the Appeal in favour of the Employees / Workmen by directing the Liquidator to keep aside the amount to be paid

to the employees/workmen once their claims of actually working during the CIRP is established. It was further directed by the Apex Court that the employees/workmen be given priority in the payment paid once their claim is admitted. The Hon'ble Court has opted for a balanced approach by giving priority to the interest of the employees / workmen on one hand and giving due consideration to the interest of the already stressed Corporate Debtor & interests of other stakeholders on the other hand.



### 3 FCRA AMENDMENTS: UPHOLDING SOVEREIGNTY OR THROTTLING DEMOCRACY? - VARNALI PUROHIT

In the case of *Noel Harper v. Union of India*<sup>2</sup>, certain Non-Governmental Organizations (NGOs) assailed the constitutional validity of the amendments made in the Foreign Contribution (Regulation) Act, 2010 (*for brevity "FCRA"*) vide the Foreign Contribution (Regulation) Amendment Act, 2020 by challenging Sections 7, 12(1A), 12A and 17(1) for being manifestly arbitrary, unreasonable and impinging upon the fundamental rights guaranteed to the NGOs under Articles 14, 19 and 21 of the Constitution.

The FCRA was enacted to regulate foreign donations and to ensure that such contributions do not undermine or pose a threat to the internal security of the nation. Enacted in 1976, FCRA was later amended in 2010 when a slew of new measures were adopted by the Central Government to regulate the inflow of Foreign Contribution by Associations, Organisation, etc. Consequently stringent restrictions were imposed on accepting or receiving foreign contribution. Furthermore, the organizations utilizing the funds received as foreign contribution for

carrying out activities that pose threat to national interest were penalized. In 2020, considering the misuse of the then existing provisions, FCRA was further amended to prevent malpractices and diversion of funds by the NGOs which are reproduced below -

1. Section 7 forbids the recipient of a foreign contribution from transferring it to any other entity.
2. Under Section 11(2), the Central Government can now restrain an organization from utilizing foreign contributions pending an inquiry on suspected violations of the provisions of FCRA.
3. Newly inserted Sections 12 & Section 17 made it mandatory to deposit all the foreign contributions in the FCRA account maintained & operated in accordance with the provisions of FCRA.

The changes made by 2020 Amendment in the FCRA were challenged on the ground that these amendments will directly hamper the implementation of social upliftment schemes carried out by various non-for profit organizations as it will indirectly restrict receipt of foreign contributions, thus affecting the functioning of the said organizations at the grass root level.

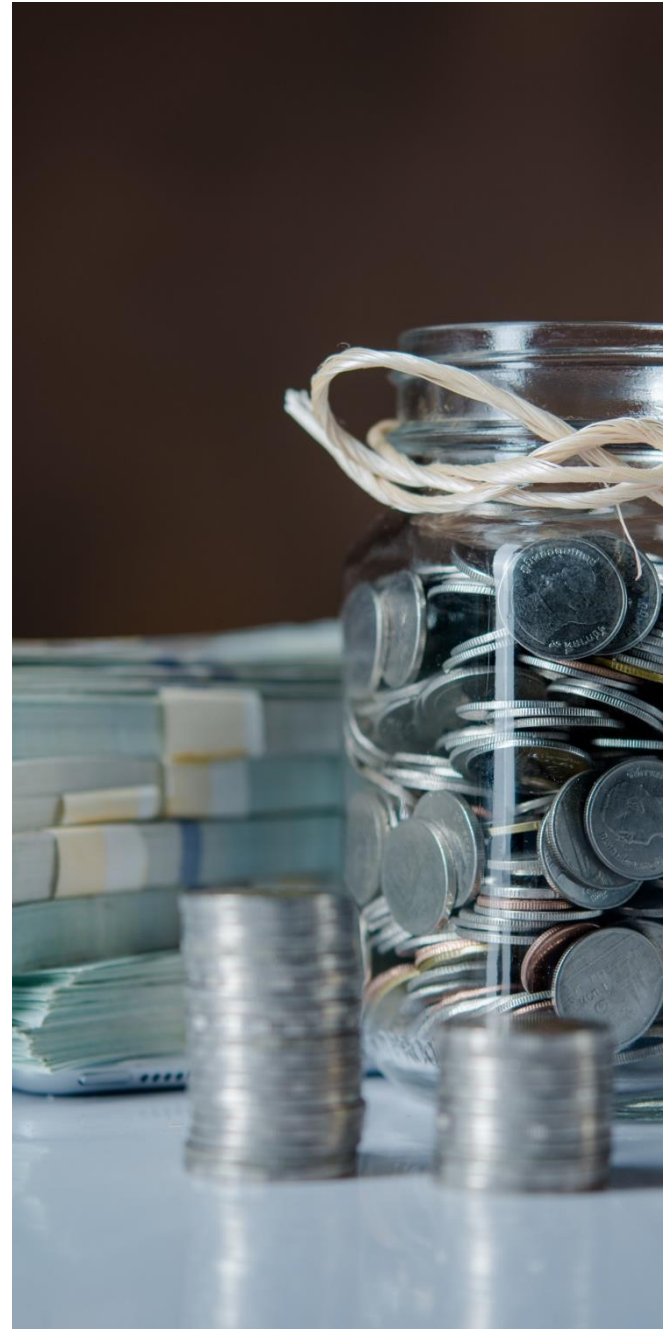
<sup>2</sup> 2022 SCC OnLine SC 434.

The Apex court upheld the constitutional validity of the 2020 Amendment by opining that there is no absolute right to receive foreign donations. The Hon'ble Court observed that sovereign and democratic countries may put a blanket ban on the foreign donations on the ground that these donations undermine the constitutional morality of the nation as it reflects that a nation is incapable of looking after the needs of its citizens. While observing that foreign aid can create presence of a foreign contributor and influence the policies of the country, Apex Court also directed the charitable associations to focus on donors within the country, to obviate influence of foreign country owing to foreign contribution.

### ANALYSIS

Non-Profit Organizations and voluntary organizations have been working at ground level, in many cases just to make sure that basic necessities of lower strata including (Education, Shelter, Healthcare, Food etc) are met. Contributions made by these organizations in providing livelihood to millions in India through their social welfare activities is highly commendable. While the Hon'ble Court has upheld the amendments to FCRA, various NGOs have described this as a “death blow” to India's non-profit sector. Though, it is important to maintain transparency in the inflow of foreign contributions, it is also equally

important to make sure functioning of NGOs in nation building remains unaffected because *restraining a Non-Profit Organization is akin to restraining Democracy.*





## 4 ANCESTRAL PROPERTY OF HUF CAN ONLY BE GIVEN FOR PIOUS PURPOSES : SUPREME COURT - NIKITA AUDICH

The Hon'ble Supreme Court in *KC Laxmana vs. KC Chandrappa Gowda*<sup>3</sup> has father or manager of an HUF has the power to make a gift of the ancestral held that a Hindu father or any other controlling member of a Hindu undivided Family has the authority to make a gift of the ancestral property only for 'pious purpose'. According to the Hon'ble court, a gift of ancestral property made 'out of love and affection does not fall under the definition of 'pious purpose,'.

### FACTUAL MATRIX

The brief facts of the case are that the Plaintiff sued his father (Defendant No.1), and Defendant No. 2 for partition and separate possession of his one- third share in the subject matter of the suit, (Hereinafter, referred to as the scheduled property) as well as seeking declaration from the Apex Court that the gift/settlement executed by the first defendant, in favour of the second defendant, is null and void.

<sup>3</sup> *KC Laxmana vs. KC Chandrappa Gowda* CIVIL APPEAL NO. 2582 OF 2010.





The joint family of the plaintiff, Defendant No. 1, and K.C. Subraya Gowda (son) owns the said scheduled property. Plaintiff contended that Defendant No. 2 being neither a coparcener nor a member of Plaintiff's family, had no authority to transfer the scheduled property to him. Defendant No. 1 indicated in his written statement that Defendant No. 2 was raised by Defendant No. 1 and that he settled the suit property in favour of Defendant No. 2 out of 'love and affection'. The suit was dismissed by Trial Court. Later, the Appellate Court reversed the decision and ordered the suit to be dismissed. The Karnataka High Court dismissed the defendants' second appeal, which maintained the appellate court's decision.



## **CONTENTIONS**

Defendant raised two contentions-(a) Property transferred for 'pious purpose' is permissible in law (b) the present case is barred by Article 58 of the Limitation Act, 1963 whereas the plaintiff contended that (1) The first defendant's alienation of gifting a joint family property in favour of the second defendant was void. Under Article 109 of the 4, Second Schedule, the limitation period for challenging such alienation is 12 years.

## **COURT'S OBSERVATION**

Article 58 has no application in the present case- Article 109 is a special article to apply where the alienation is challenged by the son and property being ancestral property where parties are governed by Mitakshara law. Generally, where a statute contains both general provision and specific provision for such a dispute, the latter must prevail. In the present case, the suit was filed within 12 years of the Limitation.

The word 'Alienation' herein includes 'gift'- In pursuant to applying Article 109, the following three conditions must be fulfilled (a) The parties must be Hindus governed by Mitakshara Law; (2) the suit is for setting aside the alienation by the father at the instance of the son; (3) the property relates to ancestral property; and (4)

the alienee has taken over possession of the property alienated by the father.

Karta can alienate joint family property only when there is (i) a legal necessity (ii) alienation is for the benefit of the estate (iii) alienation is done with the consent of all the coparceners.

It is a well settled law that a Hindu Property only for a 'pious purposes' -Term 'pious purpose' includes a gift given for charitable and/or religious purpose. Hence, a deed of gift regarding ancestral property executed out of 'love and affection does not come within the scope of that term.

### **DECISION**

The gift deed in the instant case was not for any charitable or religious purpose, and hence the bench dismissed the appeal.

### **ANALYSIS**

This Judgement has precisely made it clear in what circumstances an ancestral property can be alienated to an outsider. Further, the scope of limitation in such cases has been fairly well settled in the pretext of Hindu law. The only way the transfer of ancestral property from the

father or any other managing member of a HUF is valid is when it has been made for the 'pious purpose'.

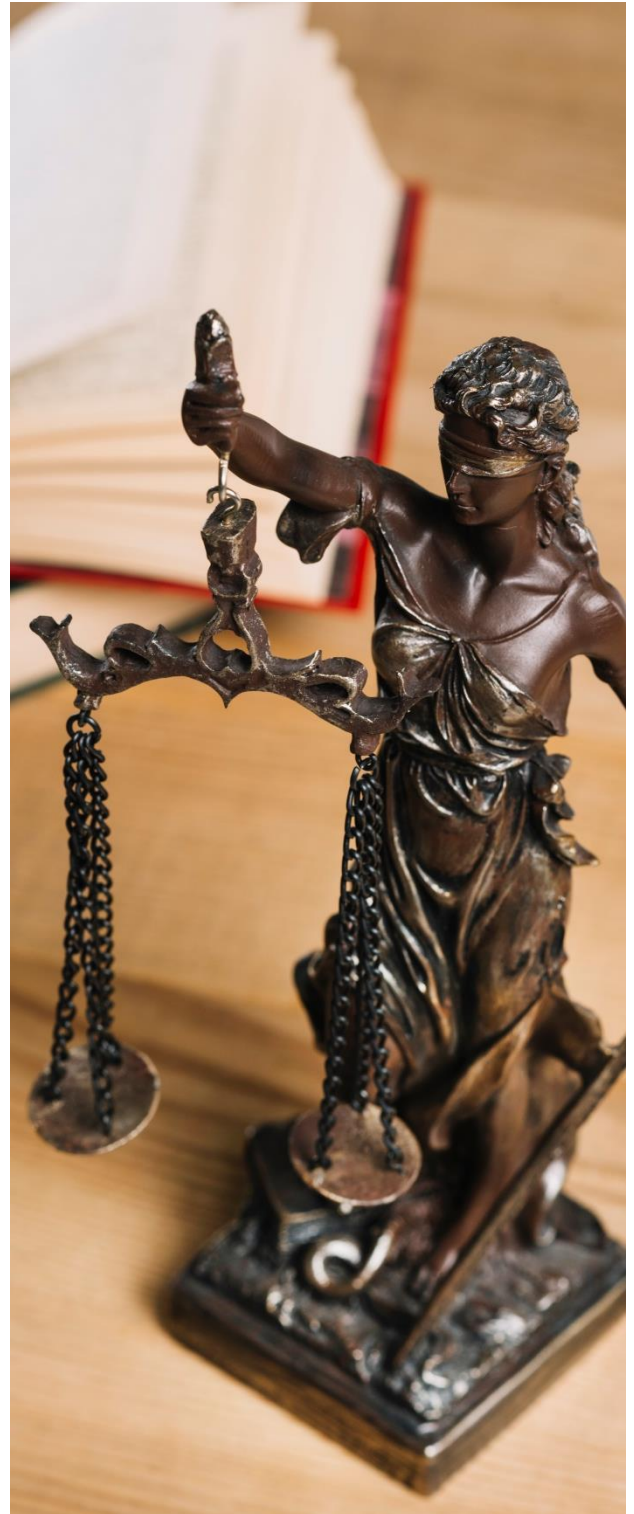
However, such power has its limitations, and the requirement of approval of all the coparceners before alienating HUF property is a more effective manner of preventing illegal alienation.



## 5

LEGAL NEWS AND  
UPDATES

1. High Court can exercise inherent powers under Section 482 of the CrPC to modify the conditions of bail as Section 362 is no bar held Madhya Pradesh High Court.
2. Madras High Court held that the victim cannot simultaneously sought compensation under Workmen's Compensation Act as well as the Motor Vehicles Act.
3. Time spent in the mediation process excluded for the purpose of calculating the limitation period for invoking arbitration: Delhi High Court
4. Consumer forums can pass orders without president, holds Bombay High Court while upholding validity of Section 29A of the Consumer Protection Act, 1986.
5. Rajasthan High Court: A lawyer cannot insist on the transfer of the case to another bench or recusal of a judge from a particular matter.
6. A Resolution Professional has no power to decide the eligibility under Section 29 A of the IBC: NCLAT, Delhi.



7. Sexual intercourse on the basis of “Genuine promise” to marry the victim, which ultimately didn’t fructify cannot be said to rape: Delhi High Court.
8. A suit cannot be rejected partially under Order VII Rule 11 of the CPC: Delhi High Court.
9. Appellate Court can exercise powers under Order 41 Rule 33 of the CPC only in rare cases: Supreme Court.
10. Mere similarities in one’s work do not attract Section 14 of the Copyright Act: Madras High Court.
11. Denial to convict-prisoner to perform conjugal relationship especially for the purpose of progeny would adversely affect the rights of his wife holds Rajasthan High Court.
12. Supreme Court observes that the Limitation Period for filing application under Section 12 of the Domestic Violence Act is one year from the date of commission of the act of domestic violence.
13. Mere death of parties does not automatically discharges Arbitration Agreement as the same can be enforceable against legal representatives held Calcutta High Court.
14. Divorced woman eligible to claim maintenance from her husband under Section 125 of CrPC as long as she doesn’t remarry held Allahabad High Court.
15. Delhi High Court directs Parle Biscuits to modify two disparaging advertisements in response to the trademark infringement suit filed by Britannia cookies.
16. Fresh Resolution Plan u/s 61 of IBC cannot be considered by a Committee of Creditors once it has already approved a resolution plan observes NCLAT.
17. Rajasthan High Court observed that the Prosecution is not required to seek corroboration in form of motive and recovery in a murder trial where ocular testimony is convincing observes Rajasthan High Court.







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