



MONTHLY NEWSLETTER

The Law Desk

JULY 2022 / TLD-15

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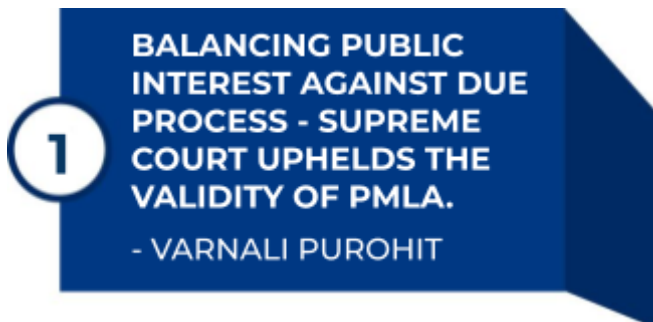
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The Apex Court in the case of Vijay Madanlal Choudhary & Ors. Versus Union of India & Ors¹ upheld various provisions of the Prevention of Money Laundering Act, 2002 (*The Act of 2002*) or PMLA, 2002 and affirmed the vast powers the Act confers on the Directorate of Enforcement. A bunch of Petitions were filed wherein various provisions of the 2002 Act and the vast powers bestowed on the ED including the procedure followed by it while investigating the offences under the 2002 Act were challenged.

HISTORY OF THE TRANSPIRED FACTS

In the year 2017, the Apex Court in the landmark verdict of Nimesh Tarachand Shah versus UOI & Anr.² declared section 45 (1) of the Act of 2002 unconstitutional for violating Articles 14 and 21 of the Constitution. It is pertinent to state that the Impugned provision made getting bail in a Money Laundering Provision extremely difficult.

¹ SPECIAL LEAVE PETITION (CRIMINAL) NO. 4634 OF 2014

As per the said provision, before a person can be released on bail in a Money Laundering

Offence, the court is to be convinced that a person is innocent and that there are reasonable grounds to believe that a person has not committed an offence. The twin conditions for granting bail to a person charged with the offence under the Act of 2002 imposed a very high threshold for grant of bail as at the time of bail the person charged with the offence had to prove his/her innocence which is unheard of in Criminal Law jurisprudence.

The Apex Court vide its judgment in the Nimesh Tarachand Shah Case struck down section 45 of the PMLA, 2002 but the reasoning could not be taken to other Legislations concerning/ pertaining to Socio-Economic offences which imposed a similar high threshold on bail.

THE APEX COURT VERDICT AND THE RATIONALE BEHIND IT

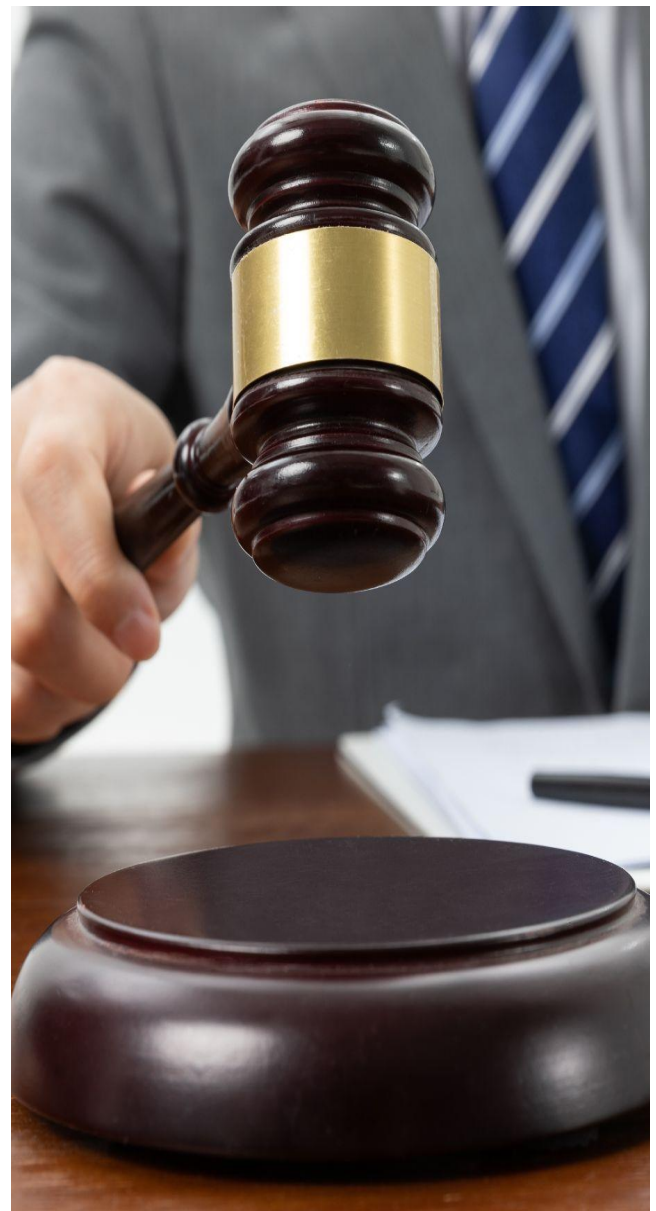
While upholding the various provisions of the 2002 Act, the Apex Court opined as mentioned herein

1. Section 3 of the 2002 Act defines the offence of Money Laundering and the said section was amended in the year 2012 and then in 2019. As a result of the said amendments the definition of the offence of Money Laundering was expanded to include not only the proceeds of

the crime but also concealment, possession, acquisition etc. and till the time a person is getting fruits of activities related to money laundering, he/she will be considered to be involved in the offence defined under the said provision. The Apex Court held that section 3 of the 2002 has a wider reach and captures every process and activity, directly or indirectly dealing with the proceeds of crime and Explanation to a section merely does not expand the purpose of the section which it is explaining but clarifies the said Section.

2. Section 5 of the 2002 Act enables the concerned officers of ED to attach property involved in Money Laundering, the Apex Court upheld the provision while stating that it takes care of the fact that interests of the persons are secured and proceeds of crime remain available to be dealt with in the manner provided by the PMLA,2002. Further on the contentions raised by the Petitioner that there are no procedural restraints on the powers to be exercised by the ED, the Apex Court Opined that there are inbuilt procedural safeguards in place like the ED has to satisfy itself that the person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of proceeds of crime.

3. Further the Apex Court upheld the powers of ED to carry out search, seizure and arrest under section 17,18 and 19 respectively while



stating that the concerned provisions have stringent safeguards and are not arbitrary.

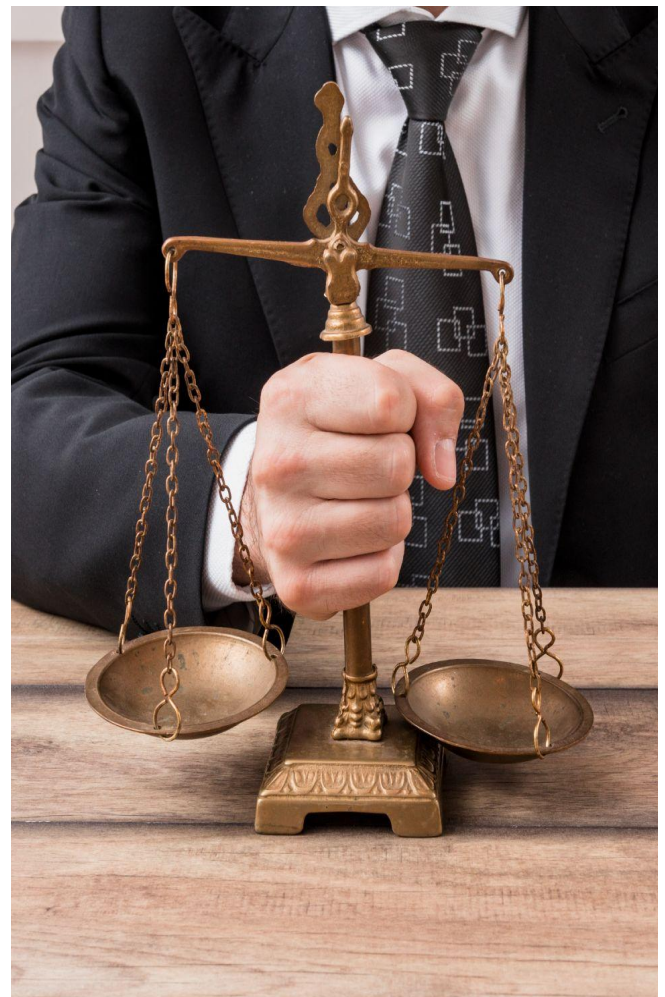
4. The validity of section 50 of the PMLA, 2002, the Apex Court held that the ED officials are not Police Officials and hence the statements which are recorded by them under section 50 are not hit by Article 20(3) of the Constitution and the punishment of fine or arrest for giving false information cannot be construed as a compulsion to give statement.

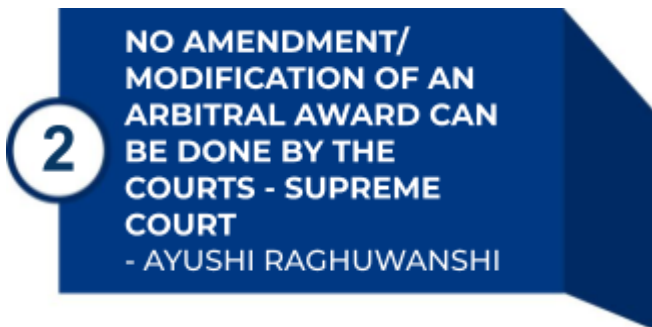
5. Further, ED records an internal document called the Enforcement Case Information Report (ECIR), the contents of which are recorded without informing the accused and the acts for which he is being investigated. The Apex Court held that ECIR cannot be equated with an FIR as it is only an internal document of the ED and therefore, CrPC provisions relating to the FIR will not apply to ECIR.

ANALYSIS

The instant verdict of the Apex Court gave rise to many issues like the Directorate of Enforcement (ED) despite having wide powers of investigation is not classified as a police agency and is therefore not bound by the procedural safeguards prescribed by the Criminal Procedure Code, 1973. Furthermore, since ED is not deemed as a police agency, the statements made by the accused during the

course of investigation can be used against them in judicial proceedings, thereby violating the very principle of Right against Self Incrimination envisaged under the Constitution. When such wide powers are conferred, it becomes equally important to have proper safeguards in place to make sure that there is no misuse.





INTRODUCTION

Arbitration along with other Alternative Dispute Resolution (ADR) mechanisms is in its development stage; new developments can be seen with the Judgments of the Courts and Legislations by the State. The emphasis on resorting to ADR mechanisms is predominantly for procuring speedy justice. The provisions are also in line with this Objective. Judicial interference has been minimized as the contrary would defeat the very purpose of the ADR mechanisms.

On 11th July, 2022, Supreme Court in the case of **National Highways Authority of India v. Sri P. Nagaraju @ Cheluvaiah & Anr³** reinforced the aforementioned objective of ADR by holding that the Court cannot amend/modify the Arbitral Award passed by the Arbitrator while exercising jurisdiction under section 34 and 37 of the Arbitration and Reconciliation Act, 1996,

it can instead set aside the award and remand the matter.

FACTS

In the instant matter, National Highways Authority of India filed a Special Leave Petition before the Supreme Court being aggrieved by the award of the Arbitral Tribunal regarding the determination of compensation for the lands acquired from the Respondents. The Arbitral Tribunal had taken into consideration a different guideline for the determination of compensation which was fixed after the acquisition had taken place and applied a guideline value for 'city greens' and 'Zunadu' which was applied automatically without assigning reasons.

JUDGMENT

The court held that the Arbitrator did not assign any reasons for reaching to the conclusions in the award which is indicative of patent illegality. The court held that the arbitral award could not be modified and can only be set aside and remanded under Section 34 and Section 37. The court observed that-

"That being the fact situation and also the position of law being clear that it would not be open for the court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be

³ Civil Appeal No. 4671 OF 2022

adopted in such event is to set aside the award and remit the matter to the learned Arbitrator in terms of Section 34(4) to keep in view these aspects of the matter”.

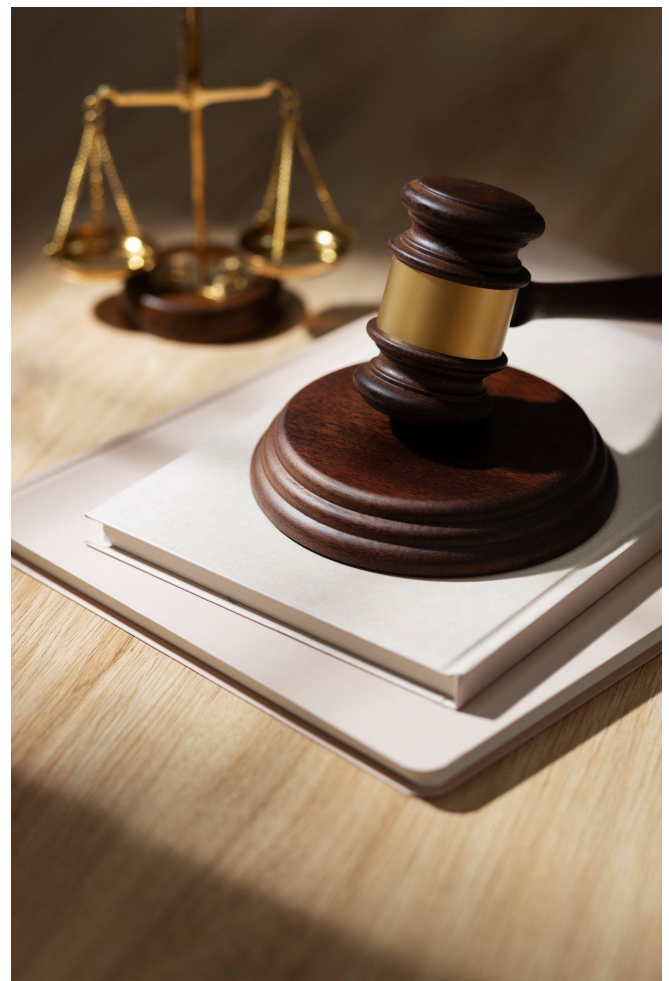
ANALYSIS

The object of Arbitration Proceedings is to provide convenient, inexpensive and speedy justice to the people as well as to lessen the existing burden of cases on Courts and reduce the backlog of cases. Thus, the act incorporates the principle of minimal judicial interference expressly through Section 5. The judgment in ***National Highways Authority of India v. Sri P. Nagaraju @ Cheluvaiah & Anr*** upholds the basic objective of Arbitration.

*This judgment is in line with the judgment passed in **The Project Director, National Highways Authority of India V M. Hakeem & Anr**⁴*

“As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34.

In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.”



⁴ 2021 SCC Online SC 473

3 SUPREME COURT EXPLAINS ABOUT THE BINDING NATURE OF THE EXTRADITION TREATIES -SHUBHAM SONI

The Hon'ble Supreme Court in the Judgment of Abu Salem Abdul Kayyum Ansari versus State of Maharashtra⁴ held that the Central Government is bound to advise the President of India in the exercise of his powers under Article 72 of the Constitution and release the Appellant in furtherance of national obligation as well as principles of judicial propriety. A bench of the Apex Court comprising Justices Sanjay Kishan Kaul and M.M. Sundresh emphasized on the binding nature of extradition treaties.

BACKGROUND OF THE CASE :

Abu Salem was tried and convicted for offences under Section 302, 307, 452, 506(ii) r/w 120-B of Indian Penal Code, 1860 r/w Section 5.27 of the Arms Act, 1959 r/w Section 3(2)(i), 3(2)(ii), 3(5) and 5 of the Terrorist and Disruptive Activities (prevention) Act, 1987. He was also involved in the Mumbai bomb blast case for smuggling explosives, AK-57 rifles.

He later fled to the Republic of Portugal with a fake Pakistani passport. In order to extradite him from Portugal, the Indian Government made the necessary changes to the Extradition Act by adding Portugal to the list of countries with which extradition treaty could be entered into.

On behalf of the Government of India, the then Deputy Prime Minister, Shri Lal Krishna Advani assured the Portuguese Government that Salem's could not be sentenced to more than 25 years. The Portuguese Court pronounced sentence to Abu Salem for the following offences which is as follows- Section 120B, section section302, section 307, section 435, section 436 IPC r/w Section 3(2), Article 3(3) of the TADA Act; Section 3 of the Explosives Act 1908 and Section 4 of the Prevention of Damage to Public Property Act. The Indian ambassador gave further assurances that



⁵ CRIMINAL APPEAL NO 679 OF 2015

a) he would not be prosecuted for any offence other than that for which extradition was sought and that

b) he would not be extradited to any third country.

SUPREME COURT ANALYSIS :

The Apex Court noted that there is a separation of powers between the executive and the judiciary and the court is not bound by the sovereign assurance given by the state to the Portuguese Republic. However, the Executive is obliged to fulfill the International Obligation under the Extradition Act and is bound to follow the principle of *comity of court or judicial comity* as per which Courts of a particular Jurisdiction recognizes and give effect to the Judgments of a court of a different Jurisdiction. Under the Portuguese law, an offender cannot be extradited to the requesting country if the crime(s) for which a person is charged is punishable with death or Indeterminate Imprisonment of more than 25 years.

PROBLEMS IN ENFORCING THE EXTRADITION TREATY

As per the principles of International Law governing the extradition treaty, an offender can be extradited to the requesting country only if he is charged with those crimes for which extradition is sought and which are described in the treaty, and not with any other crime not mentioned in the treaty. This principle is called *Specialty Rule*.

For the application of this principle, certain conditions are observed-

- Nation's credibility across other nations.
- Faith in the Administration of Justice.
- Established Judicial Procedures.
- Gained confidence in the international organisation

Also, laws across the nations are not the same and it is not practically possible to have the same punishments for the same offences across countries. It is compulsory in the Extradition Process that the offence for which extradition is sought must be criminalized in both the countries.

CONCLUSION

According to a Report published by the Ministry of External Affairs, India has extradition treaties with 48 countries and extradition arrangements with 12 countries. Different countries have different laws and it is arduous to conduct court proceedings, call witnesses and present evidence. It is important that the offence for which extradition is sought must also be an offense in the requesting state. It is one of the main loopholes in extradition.

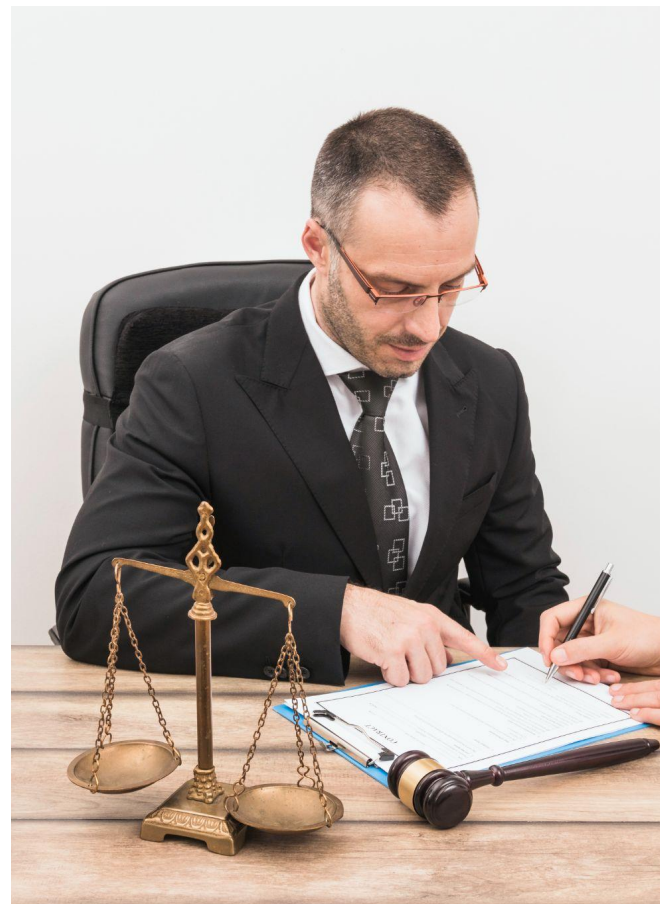


“Justice delayed will not only be justice denied, it will also destroy the Rule of law, - a basic feature of our Constitution. However, let us gird up the loins to protect and preserve it.” - Mr. Soli Sorabjee, former Attorney General of India

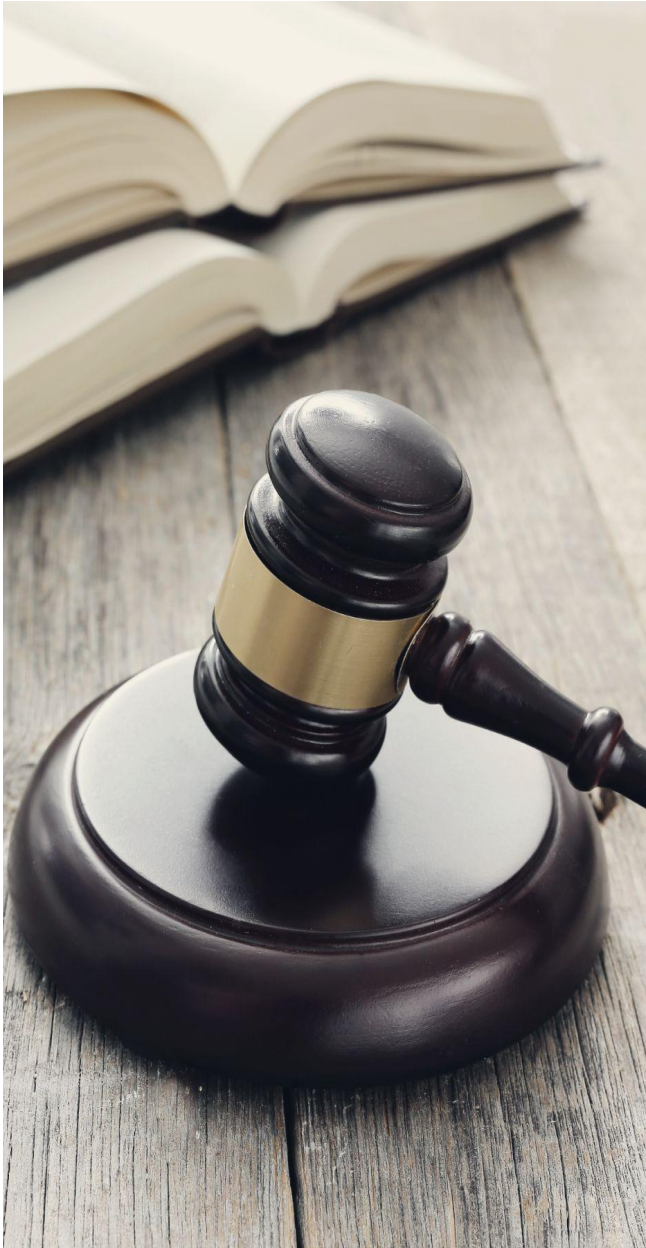
INTRODUCTION

In India, the Administration of Justice is overburdened with lots of undecided cases. If we look into this then we can find the number of reasons which contribute to delay and over burdening of cases and amendment of Pleading is one of the main reasons for the same⁶. Order VI Rule1, Civil Procedure Code,1908 defines pleading to only include “Written Statement” or “Plaint”. Plaint can be defined as a statement of claim wherein the Plaintiff tries to establish its case on the basis of

material facts whereas through the Written Statement, Respondent denies the Claims of the Petitioner and establishes his own claim with respect to the same. Through Order VI Rule17 of the CPC,1908, the pleadings can be amended but the same can only be done by the court by exercising the discretionary power judiciously on the basis of sound principles of law and jurisprudence.



⁶ O.VI R.17 of Code of Civil Procedure.



In the instant case of Asian Hotels (North) Ltd. Versus Alok Kumar Lodha led by the Bench of Justice MR Shah and Justice BV Nagarathna held that the Court would not be justified in allowing the amendment of Plaint if the nature of suit is likely to get changed.

FOCUS :

When the matter was filed before the Delhi High Court, the learned High Court had permitted the original Plaintiff to amend the suits. The plaintiffs had sought a decree of declaration that the license in favour of the plaintiff in respect of shop/ premises is irrevocable and perpetual and also sought a declaration that it had unfettered right to use that land.

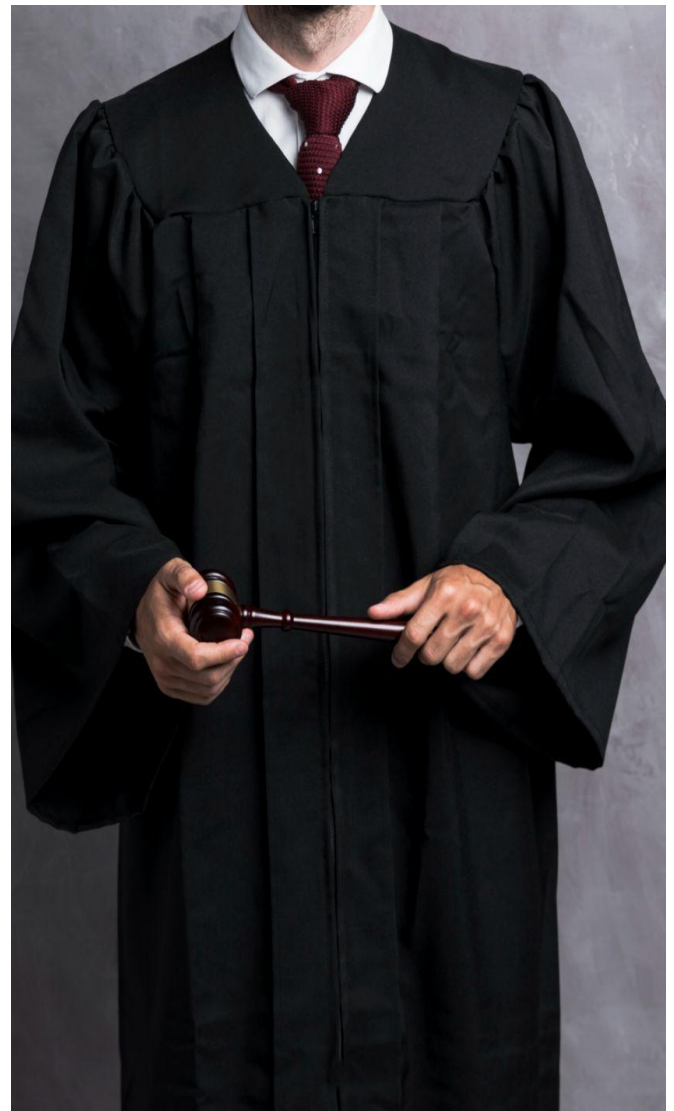
The plaintiff has proposed to amend the suit challenging mortgages created by the defendant. This proposal to amend the suit was allowed by the Hon'ble High Court. Respondent also filed an application under Order 1 Rule 10 of CPC, 1908 seeking to add the banks and other Financial Institutions as Defendants in the case. Hon'ble High Court of Delhi allowed both the applications i.e., an application under Order 6 Rule 17 of the Code of Civil Procedure and application under Order 1 Rule 10 of the Code of Civil Procedure by a Common Order which was challenged before the Apex Court.

The Apex Court explicitly stated that the Delhi High Court had made a significant error in permitting the Application under Order VI Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure. It was held by the Apex Court that merely because parties to the suit are considered as master of suit, “dominus litus”, does not imply that they are authorised to add any party as a Respondent/Defendant in the suit.

REASONING OF THE JUDGMENT

“As per the settled proposition of law, if, by permitting plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed, in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action...”

... The principle that the plaintiffs is the dominus litus shall be applicable only in a case where parties sought to be added as defendants are necessary and / or proper parties. Plaintiffs cannot be permitted to join any party as a defendant who may not be necessary and / or proper parties at all on the ground that the plaintiffs is the dominus litus”



A blue banner with a white circle containing the number '5' on the left. To the right of the circle, the text 'LEGAL NEWS AND UPDATES' is written in white, uppercase, sans-serif font.

5 LEGAL NEWS AND UPDATES

1. Droupadi Murmu was recently elected as the 15th President of India. She is scheduled to take oath on July 25, 2022. Droupadi Murmu (BJP-led NDA candidate) and Yashwant Sinha (Joint Opposition Candidate) were contesting for the President's position.

Lesser-known facts about Draupadi Murmu- Droupadi Murmu, Aged 64, has become the first tribal President of India.

2. Indian Antarctic Bill, 2022 was passed in Lok Sabha on July 22, 2022. The bill is aimed at broadening the application of domestic laws to research stations in Antarctic region that have been established by India. It is applicable to both Indian citizens and foreign citizens.

3. On July 20, 2022, the Union government restricted the import of human embryos in accordance with the Surrogacy (Regulation) Act, 2021 and Assisted Reproductive Technology (Regulation) Act, 2021. Before this, such imports were restricted or prohibited except for research purposes.

4. On July 20, 2022, The Supreme Court of India accepted the report of Jayant Kumar Banthia Commission and directed the

Maharashtra State Election Commission to hold elections in Accordance with the report. It also directed to take steps for holding the stalled elections in the state, on urgent basis and asked the SEC to announce the Election schedule for Election in next two weeks.

5. Chairman of NALSA, Uday Umesh Lalit, launched India's First AI-powered, end-to-end digital Lok Adalat in Rajasthan. The AI-based Lok Adalat was launched during the 18th All India Legal Services Authorities' Meet.

6. On 18 July, Jagriti Mascot was launched by the Department of Consumer Affairs (DoCA), in a bid to empower consumers and generate awareness on their rights. Jagriti Mascot will help in empowering consumers and generating awareness among them about "consumer rights". The Mascot will be presented as an empowered consumer, mushrooming awareness on consumer rights and addressing solutions for the problems faced by consumers. It will raise consumer awareness on several themes of the Department such as, Hallmarking, provisions of Consumer Protection Act 2019, provisions of weights & measures Act, National Consumer Helpline toll free number 1915, decisions of Central Consumer Protection Authority besides the consumers' testimonials on grievance redressal. Jagriti mascot will be displayed along with tagline "Jago Grahak

Jago” across all the media campaigns. Jagriti Mascot and “Jago Grahak Jago tagline” are synonymous with young, aware consumers. Both of these seek to bring sharp focus towards consumer rights knowledge and movement.

7. The Lok Sabha Secretariat released a list of “unparliamentary words” on July 13, 2022. Some of the unparliamentary words include ‘Jumlajeevi, Covid spreader, Snoopgate, Baal buddhi”. It also includes expressions like “ashamed, betrayed, hypocrisy. Abuse, drama, and incompetent”.

8. Draft “Drug, Medical Devices & Cosmetics Bill-2022” was released recently by the Union Health Ministry. Highlights This draft bill 2022 will replace the Drugs and Cosmetics Act, 1940, and other sets of Rules through which industry is currently run. It seeks to regulate medical devices as a separate entity, comprises of provision for fines & imprisonment

9. On July 6, 2022, four new nominations were made to the Rajya Sabha.

The four nominations are- **Ilaiyaraaja**, Music maestro from Tamil Nadu, **P T Usha**, sports icon from Kerala, **V Vijayendra Prasad**, acclaimed screenwriter from Karnataka, **Veerendra Heggade**, philanthropist and spiritual leader.

10. (CDRI) as an “International Organization”. Highlights The Headquarters Agreement (HQA) was also signed with CDRI. This agreement will grant it the exemptions, immunities and privileges in accordance with the United Nations (Privileges & Immunities) Act, 1947.





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