

Major Laws

All Judiciary Exam

Tansukh Paliwal (Linking Sir)

9:15 PM

2021 Civil Judgment



Set Aside

9/13

Order IX Rule 13 CPC : Supreme Court Holds Defendant Who Refused

Summons Not Entitled To Seek Setting Aside Of Ex-Parte Decree

[Case: Vishwabandhu v. Sri Krishna and another; Citation: LL 2021 SC 517]

विश्वबन्धु बनाम श्रीकृष्ण और अन्य

The Supreme Court set aside judgment of the High Court, which had allowed the setting aside of an ex-parte decree under Order IX Rule 13 of the Code of Civil Procedure. The bench comprising Justices Uday Umesh Lalit and S Ravindra Bhat noted that Sub-Rule (5) of Order V Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant.

audi
alter
partem

Consumer Protection Act - Onus To Prove Deficiency In Service Is On The

Complainant : Supreme Court

IEA
S.101

SGS India v. Dolphin International Ltd; [2021 SC 544]

The Supreme Court observed that in a consumer case, the onus of proof that there was deficiency in service is on the complainant. Without any proof of deficiency, the opposite party cannot be held responsible for deficiency in service.

Section 138 NI Act: Complaint Cannot Be Proceeded With Once The Accused
And Complainant Enter Into A Settlement Agreement

Gimpex Private Limited v. Manoj Goel; LL 2021 SC 553]

Additional Point :

Non-compliance of the terms of the settlement agreement or dishonour of cheques
issued subsequent to it, would then give rise to a fresh cause of action attracting
liability under Section 138 of the NI Act and other remedies under civil law and
criminal law.

2022
MAR

Non Comply.

Drawer

Settlement

Drawer

(A)

Jan. 2022

(B)

CHG

3.138
NI

Civil Court Lacks Jurisdiction To Entertain A Suit Structured On Provisions Of
Industrial Disputes Act

Milkhi Ram v. Himachal Pradesh State Electricity Board

(मिल्खी राम बनाम हिमाचल प्रदेश राज्य विद्युत बोर्ड)

Citation: LL 2021 SC 557

- Additional Point : *When a litigant opts for common law remedy, he may choose either the civil court or the industrial forum."*

Order VIII Rule 1 CPC - Period For Filing Of Written Statement Is Directory

In Civil Suits; But Mandatory In Commercial Suits

Directory

Shoraj Singh v. Charan Singh

(शोराज सिंह बनाम चरण सिंह)

Citation: [2021 SC 573]

Mandatory

The Supreme Court observed that the period of 90 days for filing of written statement under Order VIII Rule 1 of Code of Civil Procedure in civil suits is directory. The provisions of Order VIII Rule 1 CPC are mandatory in the Commercial Courts under the Commercial Courts Act, 2015.

Civil Court Cannot Declare Orders Passed Under Urban Land Ceiling Act As

X ~~Illegal & Non Est~~

State of Madhya Pradesh v. Ghisilal

(मध्य प्रदेश राज्य बनाम घीसीलाल)

Citation: LL 2021 SC 671

The Supreme Court held that the civil courts have no jurisdiction to try suit relating to land which is the subject-matter of ceiling proceedings, Urban Land (Ceiling and Regulation) Act, 1976. "The Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate, and revisional authorities.

Writ Of Mandamus Cannot Be Issued Directing Competent Authority To
Grant Relaxation In Qualifying Service For Promotion

परमादेश

State of U.P. v. Vikash Kumar Singh

(यू.पी. राज्य v. विकास कुमार सिंह)

Citation: 2021 SC 672

No Limitation Period In Case Of A Usufructuary Mortgage

Ram Dattan (Dead) by LRs v. Devi Ram and others

Citation: 2021 SC 562]

Fact :- A Two Judges bench was dealing with an appeal filed by a mortgagee, who claimed ownership of the mortgaged property on the ground that 45 years had elapsed after the mortgage.

Refund Of Stamp Duty Cannot Be Denied On Ground Of Delay If

Application Got Belated Due To Judicial Proceedings

Rajeev Nowhar v. CCRA, Maharashtra Pune [Citation: 2021 SC 569]

- **Fact :-** delay in making the application was due to the delay in deciding his consumer case before the National Consumer Disputes Redressal Commission.
- The Court decided to exercise the powers under **Article 142**, after noting that there was no provision in the relevant statute, the **Maharashtra Stamp Act**, barring refund of stamp duty when the application for the same was belated due to judicial delay.
- The Court expressed the view that when the application was delayed due to the prolonged judicial proceedings, the refund cannot be denied on the ground of delay.



**Insurer Should Indemnify If Insured Suffers Sudden
Sickness Or Ailment Which Is Not Expressly Excluded
Under The Policy: Supreme Court**

Manmohan Nanda v. United India Assurance Co. Ltd. & Anr.;

2021 725

The Supreme Court observed that if the insured suffers a sudden sickness or ailment which is not expressly excluded under the policy, a duty is cast on the insurer to indemnify the insured for the expenses incurred thereunder.

Onus Is On Propounder To Remove All Suspicious

Circumstances About Execution Of Will: Supreme Court

Murthy v. C. Saradambal; Citation: 2021 SC 726

- The Supreme Court observed that onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.
- Merely because Will was a registered one, that by itself would not mean that the statutory requirements of proving the Will need not be complied with.

Difference Between 'Parole' and 'Furlough'

State of Gujarat v. Narayan Sai; Citation: 2021 SC 577

The Supreme Court discussed the differences between 'furlough' and 'parole' and the principles relating to grant of them.

- (i) Furlough and parole envisage a short-term temporary release from custody;
- (ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;



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41

2021

Landmark Judgment

15/3/22 : Cr LAW: 2021

Landmark

YT

+

Spl. Clm



Bar Under Order XXIII Rule 3A Attracted If Compromise On The Basis Of Which Decree Was Passed Was Void Or Voidable

[Case: R. Janakiammal v. SK Kumarasamy (Deceased) आर
जानकीअम्मल बनाम एसके कुमारसामी (मृत);

Citation: 2021 SC 280]

- A bench comprising Justices Ashok Bhushan and R. Subhash Reddy held that the Bar under Rule 3A shall be attracted if compromise on the basis of which decree was passed was void or voidable.
- It observed that only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable.

Filing Of Caveat By Itself Does Not Entitle Caveators To Be Treated As A Party To The Proceeding

[Case: Sanjay Prakash v. Union of India

संजय प्रकाश बनाम भारत संघ;

Citation: 2021 SC 283]

- The Supreme Court observed that filing of Caveat by itself does not entitle caveators to be treated as a party to the proceeding.
- Justice Aniruddha Bose observed thus while considering a plea of Central Indian Police Service Association to intervene in a Special Leave Petition on the strength of caveat applications lodged by them.
- However, the Association had not filed any application for impleadment or intervention before the High Court, but they were heard in the case.

'Judges Must Not Behave Like Emperors': Supreme Court Strongly Condemns High Courts' Practice Of Summoning Of Public Officers Unnecessarily

[Case: State of Uttar Pradesh v. Dr. Manoj Kumar Sharma

उत्तर प्रदेश राज्य बनाम डॉ. मनोज कुमार शर्मा;

Citation: 2021 SC 289]

- The Supreme Court reiterated that public officers should not be called to court unnecessarily.
- Summoning of officers frequently is not appreciable at all and is liable to be condemned in the strongest words, 2 Judges bench observed while disapproving the practice in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure.
- The Bench was considering an appeal against Allahabad High Court judgment as it noticed that the High Court summoned the Secretary, Medical Health in the Court.

Compromise Decree In Respect Of Land Which Is Not Subject-matter Of Suit But Is Part Of Family Settlement Does Not Require Compulsory Registration

[Case: Ripudaman Singh v. Tikka Maheshwar Chand

रिपुदमन सिंह बनाम टिक्का महेश्वर चन्द ;

Citation: . 2021 SC 293]

- The Supreme Court has observed that a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members does not require compulsory registration.
- 2 Judges bench observed that a compromise decree entered into between the parties in respect of land which was not the subject matter of the suit is valid and a legal settlement.
- The issue in appeal was whether a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members requires compulsory registration in terms of Section 17(2)(vi) of the Registration Act.

Ex-Parte Decree Against Minor Not Represented By A Duly Appointed Guardian A Nullity

[Case: KP Natarajan and another v. Muthalammal and others

केपी नटराजन और अन्य बनाम मुथलम्मल और अन्य;

Citation: 2021 SC 301]

- The Supreme Court has upheld a judgment of the Madras High Court which held that an ex-parte decree passed against a minor not represented by a guardian who is duly appointed is a nullity.
- 2 Judges bench was considering an appeal filed against the High Court judgment, which had set aside the ex-parte decree passed against a minor on the ground that he was not represented by a guardian appointed in terms of procedure contemplated under Order XXXII, Rule 3 of the Code of Civil Procedure.
- The Court also held that the failure to appoint guardian ipso facto will result in prejudice to the minor and it need not be specially established.

Supreme Court Disapproves Practice Of Delayed Filing Of Review Petition After Judges Retire

[Case: Vedanta Ltd. v. The Goa Foundation

वेदांता लिमिटेड बनाम गोवा फाउंडेशन;

Citation: 2021 SC 307]

- The Supreme Court has disapproved the practise of delayed filing of review petitions after waiting for judges to retire. "*Such practice must be firmly disapproved to preserve the institutional sanctity of the decision making of this Court*", the bench comprising 2 Judges bench remarked while dismissing the review petitions filed against the judgment in *Goa Foundation v. Sesa Sterlite Limited*.

Court Cannot Grant Liberty To Amend Plaint While Rejecting It Under Order VII Rule 11(d) CPC

[Case: Sayyed Ayaz Ali v. Prakash G Goyal

सैय्यद अयाज अली बनाम प्रकाश जी गोयल ;

Citation: 2021 SC 314]

- The Supreme Court held that while rejecting a plaint under Order 7 Rule 11(d) of Code of Civil Procedure, the Court cannot grant liberty to the plaintiff to amend the plaint. The proviso to Rule 11 covers the cases falling within the ambit of clauses (b) and (c) and has no application to a rejection of a plaint under Order 7 Rule 11(d), 2 Judges bench observed.

Letter Of Intent Is Not A Binding Contract Unless Such An Intention Is Evident From Its Terms

[Case: South Eastern Coalfields Ltd v. S. Kumar's Associates AKM (JV) साउथ ईस्टर्न कोलफील्ड्स लिमिटेड बनाम एस कुमार एसोसिएट्स एकेएम (जेवी);
Citation: 2021 SC 325]

- A Letter of Intent (LOI) is not a binding contract unless such an intention is evident from its terms, the Supreme Court observed while dismissing an appeal filed by South Eastern Coalfields Ltd, a Government company.
- 2 Judges bench observed that such intention must be clear and unambiguous as LOI normally indicates a party's intention to enter into a contract with the other party in future.

Second Appeal, After Its Admission With Formulation Of Substantial Question Of Law, Cannot Be Disposed Of Summarily

[Case: Ramdas Waydhan Gadlinge (Since Deceased) v. Gyanchand Nanuram Kriplani (Dead)

रामदास वेधन गाडलिंग बनाम ज्ञानचंद नानूराम कृपलानी;

Citation: 2021 SC 340]

- A second appeal, after its admission with formulation of substantial question of law, cannot be disposed of summarily, the Supreme Court has observed.
- 2 Judges bench observed that once a second appeal is admitted, on the High Court being satisfied that a substantial question of law is involved in the case and with formulation of that question, the appeal is required to be heard in terms of Order XLII of Code of Civil Procedure.

Order XLI Rule 22 CPC- Cross Objection Not Necessary To Challenge Adverse Findings

[**Case:** Saurav Jain v. A. B. P. Design

सौरव जैन बनाम ए.बी.पी. डिजाइन;

Citation: 2021 SC 354]

- The Supreme Court has observed that a party in whose favour a court has decreed the suit can challenge an adverse finding before the appellate court without a cross objection.
- *"It is not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection"*, 2 Judges bench observed.
- The Court also observed that it can entertain new grounds raised for the first time in an appeal under Article 136 of the Constitution if it involves a question of law which does not require adducing additional evidence.

Not Much Scope For Considering 'Territorial Jurisdiction' Issue In A Transfer Petition U/s 25 CPC

[Case: Naivedya Associates v. Kriti Nutrients Ltd

नैवेद्य एसोसिएट्स बनाम कृति न्यूट्रिएंट्स लिमिटेड;

Citation: 2021 SC 356]

- The Supreme Court has observed that there is not much scope of going into the question of 'territorial jurisdiction' of a court in a Transfer Petition under Section 25 of the Code of Civil Procedure.
- This point is required to be urged before the Court in which the suit is pending,
- Justice Aniruddha Bose observed while dismissing a transfer petition.
- In this case, the petitioner is a defendant in a suit instituted in the Court of District Judge, Shahdara, Karkardooma Court, New Delhi alleging infringement of trade mark and copyright.



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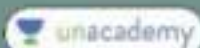
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