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SUBJECT-INDEX

ADOPTION:

Juvenile Justice Act enables adoption of children irrespective of religion.

(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 1101

ARBITRATION AND CONCILIATION ACT, 1996:

(i) s.45 r/w s.16 - International Commercial Arbitration - Suit for declaration that Intellectual Property Licence Agreement was not concluded contract and correspondingly there was no arbitration agreement therein - Application by respondent u/s 45 - Held: Parties have irrevocably agreed to resolve all the disputes through arbitration - Parties cannot be permitted to avoid arbitration, without satisfying the court that it would be just and in the interest of all the parties not to proceed with arbitration - Application filed by respondents for reference of dispute to arbitration u/s 45 correctly allowed by appellate court as well as High Court - Issue as to whether there is a concluded contract between the parties and disputes arising between the parties in relation to the various agreements referred to arbitral tribunal for adjudication - UNCITRAL Model Law.

(ii) s.16 - Separability of arbitration clause from underlying contract - Held: Concept of separability of arbitration clause/agreement from the underlying

contract is a necessity to ensure that the intention of parties to resolve disputes by arbitration does not get frustrated with every challenge to legality, validity, finality or breach of the underlying contract - S.16 accepts the concept that the main contract and the arbitration agreement form two independent contracts - Therefore, it cannot be accepted that Arbitration Agreement will perish as Intellectual Property Licence Agreement has not been finalised - Rule of necessity.

(iii) Arbitration clause - Seemingly unworkable arbitration clause - Held: It would be the duty of court to make the same workable within the permissible limits of law - Common sense approach has to be adopted to give effect to the intention of parties to arbitrate - Arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute - Arbitration clause as it stands cannot be frustrated on the ground that it is unworkable - Unworkability in the case is attributed only to the machinery provision - Arbitration agreement, otherwise, fulfils the criteria laid down u/s 44 - When omission is obvious, the court can legitimately supply the missing line - In the circumstances, the court would apply the officious bystander principle.

(iv) International Commercial Arbitration - Held: In International Commercial Arbitration, venue can often be different from the seat of arbitration - In the instant case, the law governing the substantive contract; the agreement to arbitrate and the

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performance of that agreement; and law governing the conduct of the arbitration, are Indian Laws - Thus, parties have designated India as the seat - Parties being Indian and German, except for London being chosen as a convenient place/venue for holding the meetings of arbitration, there is no other factor connecting the arbitration proceedings to London - In such circumstances, hearing of arbitration will be conducted at the venue fixed by the parties, but this would not bring about a change in the seat of arbitration - Therefore, seat would remain in India.

(v) Concurrent jurisdiction - International Commercial Arbitration - Held: Once the seat of arbitration has been fixed in India, it would be in the nature of exclusive jurisdiction to exercise the supervisory powers over the arbitration - High Court having fixed the seat in India, committed an error in concluding that Courts in England would have concurrent jurisdiction.

(vi) Anti suit injunction - International Commercial Arbitration - Suit in Daman court (India) for declaration that substantial contract was not a concluded contract and correspondingly there was no arbitration agreement therein - Anti suit injunction granted by Daman Court against proceedings initiated in English High Court - Held: Conclusion of Bombay High Court that anti-suit injunction granted by Daman trial court correctly vacated by Daman appellate court, overruled.

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CODE OF CIVIL PROCEDURE, 1908:

O. 21, r.58 - Execution proceedings - Suit for recovery of money sought to be realized on a property covered by agreement for sale - Claim based on stipulation in the contract that double the amount of earnest money would be payable in the event the contract was not performed - Suit decreed ex parte - Objection by appellant-objector before executing court that in respect of the said property a registered power of attorney in 2006 was already executed between objector and wife of Judgment Debtor (JD) and possession was handed over to objector - Objection dismissed - Held: Power of Attorney executed in favour of objector was a genuine transaction - Ex-parte decree was obtained by Decree Holder (DH) to get over the registered power of attorney executed in favour of objector - DH could not disprove the title of objector - Documents purportedly in favour of DH were unregistered and alleged payment made by JD was in cash - Also, objector was in possession of said property since 2006 - Imposition and recovery of penalty on breach of contract is legally impermissible under the Contract Act - No evidence led by DH that claim for twice the amount of earnest money was a fair estimate of damages - Conjoint reading of O. 21 r. 58 and the fasciculus of O. 21 comprising rr. 97 to 104 would show that all

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questions raised by the objector should have been comprehensively considered on their merits - Decree from which the execution proceedings emanated was not one for delivery of possession, but was a simple money decree - Objector was a third party and was brought into the lis as her property was sought to be attached with the intention of satisfying a decree in which she was not directly or intrinsically concerned - Objections ought to have been allowed without disturbing the decree, leaving all other remedies open to the DH including proceedings against the estate of the JD - Contract Act, 1872.

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CODE OF CRIMINAL PROCEDURE, 1973:

(i) s.482 - Quashing of proceedings - Complaint u/ ss.498A, 406 - Quashed on the ground that while no offence u/s.498A was made out against either of the appellants, the offence u/s.406, as alleged, was *prima facie* made out against the appellant No. 2 alone - Held: Complaint should not have been rejected at the threshold - The facts, as alleged, have to be proved which can only be done in the course of a regular trial - Appreciation, even in a summary manner, of averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it - This is the core test that has to be applied before summoning the accused - Once the said stage is overcome, the facts alleged have

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to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence - On facts, it cannot be said that the complaint filed by respondent was shorn of the necessary allegations to *prima facie* sustain the case of commission of the offence u/ss. 498A and 406 - Penal Code, 1860 - ss. 498A and 406.

(ii) s.125 - Maintenance granted u/s.125 by trial court - Writ petition u/Art. 32 for service of notice on the husband and for payment of the arrears of maintenance as also the current monthly maintenance - Maintainability of - Held: Order of maintenance u/s.125 can be executed by following the provisions of sub-section (3) of s.125 - When the enforcement and execution of an order passed under a statute is contemplated by the statute itself, normally, an aggrieved litigant has to take recourse to the remedy provided under the statute - Wife already initiated proceeding for execution of the order of maintenance granted in her favour - The fact that the husband against whom the order of maintenance is required to be enforced lives outside the territory of India cannot be a reasonable basis for invoking the extra-ordinary remedy u/Art 32 - Remedy for summoning a person residing outside the territory of India is available to wife u/ s.105 Cr.P.C. and resort to such remedy has already been made, thus, jurisdiction u/Art 32 cannot be invoked - Constitution of India, 1950 - Article 32.

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COMPENSATION:

Retrenchment compensation.

(See under: Industrial Disputes Act, 1947) 955

CONSTITUTION OF INDIA, 1950:

(1) Art. 14.

(See under: Industrial Disputes Act, 1947) 955

(2) Arts. 14 and 16 - Process of appointment of ad hoc Stipendiary Engineers - Whether arbitrary.

(See under: Orissa Service of Engineers (Validation of Appointment) Act, 2002) 1031

(3) Art. 32 - Writ petition under - Maintainability.

(See under: Code of Criminal Procedure, 1973) 990

(4) Art. 44 - Uniform Civil Code - Juvenile Justice Act, small step towards fulfillment of Art. 44.

(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 1101

CONTRACT ACT, 1872:

Breach of contract - Imposition and recovery of penalty under the Act - Permissibility of.

(See under: Code of Civil Procedure, 1908) 1129

CRIMINAL TRIAL:

Appreciation, even in a summary manner, of averments made in a complaint petition or FIR not permissible at the stage of quashing - Facts as alleged to be proved to be done in the course of a regular trial.

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(See under: Code of Criminal Procedure, 1973) 990

DECREE:

Ex parte decree.

(See under: Code of Civil Procedure, 1908) 1129

DOCTRINES/PRINCIPLES:

(i) Rule of Necessity.

(ii) Officious bystander principle.

(See under: Arbitration and Conciliation Act, 1996) 855

INDUSTRIAL DISPUTES ACT, 1947:

(i) s.25-F - Termination without any notice or pay in lieu of notice or retrenchment compensation - Terminated workers worked for more than 240 days continuously preceding their disengagement/termination - Held: Mandatory pre-condition of retrenchment in paying the dues in accordance with s.25-F having not been complied with, thus, termination was illegal.

(ii) s.25-F - Reinstatement - Entitlement - Held: Relief of reinstatement cannot be granted to the persons who were engaged as daily wagers and whose services were terminated in a distant past and where termination was held to be illegal only on a technical ground of not adhering to the provisions of s.25-F.

(iii) Power of Labour Court/Industrial Adjudicator - Scope of - Held: Explained.

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(iv) Regularization of daily wagers - Claim for - Held: When there are posts available, in the absence of any unfair labour practice the labour court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years - If no posts available, direction for regularization would be impermissible - In these circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 - Such direction would not be given when the concerned worker does not meet the eligibility requirement of the post as per the Recruitment Rules - However, wherever it is found that similarly situated workmen are regularized by employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left out workers, would be violative of Art.14 - Constitution of India, 1950 - Art. 14.

(v) Termination of daily wagers - Circular issued by employer whereby any temporary worker employed for more than 90 days was entitled for regularization of his service and following the said circular, the company regularized the services of 70-75 similarly situated casual workers - Claim for regularization by daily wagers - Held: Appellant no.1 was not in service on the date when the scheme was

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promulgated as his services were dispensed with, 4 years before that circular - Thus, relief of monetary compensation in lieu of reinstatement would be more appropriate in his case - However, in so far as appellant no.2 was concerned, when the Circular was issued, he was in service and within few months of the issuing of that Circular he had completed 240 days of service - Non-regularization of appellant No.2, while giving the benefit of that Circular to other similar situated employees and regularizing them would, thus, be discriminatory.

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INJUNCTION:

Anti suit injunction.

(See under: Arbitration and Conciliation Act, 1996) 855

INTERNATIONAL COMMERCIAL ARBITRATION:

(See under: Arbitration and Conciliation Act, 1996) 855

INTERPRETATION OF STATUTES:

Title of enactment.

(See under: Orissa Service of Engineers (Validation of Appointment) Act, 2002) 1031

JUDGMENTS/ORDERS:

Specific objection before Special Judge - However, order not indicating any inquiry by court - Effect. (See under: Prevention of Corruption Act, 1988)

JURISDICTION:

Concurrent jurisdiction.

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JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

ss.41 to 44, 68 - Writ petition u/Art 32 - Prayer to lay down law about adoption as a fundamental right and in alternate to lay down guidelines about adoption of children irrespective of religion, caste and seeking direction to the UOI to enact optional law on the subject - Held: JJ Act of 2000 is a secular law that enable adoption irrespective of religion and meets prayers made with petition - Muslim Personal Law Board claimed that Islamic law does not recognize that adopted child is at par with a biological one; that it allows Kafala system under which adopted child remains descendent of biological parents - 2000 Act allows choice of personal law and is an optional legislation and is a small step towards fulfillment of Art. 44 - Choice will remain open till a Uniform Civil Code is made to sink conflicting faiths and prevalent beliefs - Question of adoption to be declared a fundamental right is not ripe and must wait its evolution till different group reach maturity - Till then restrain must be maintained - Juvenile Justice (Care and Protection of Children) Rules, 2007 - r.33(2) - Constitution of India, 1950 - Art. 44.

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JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007:

r.33(2).
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 1101

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(See under: Industrial Disputes Act, 1947) 955

LEGISLATION:

Writ petition seeking enactment of optional law on adoption of children.
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 1101

MADHYA PRADESH MUNICIPAL CORPORATION ACT, 1956:

ss. 58 and 424.
(See under: Prevention of Corruption Act, 1988) 1116

MAINTENANCE:

(See under: Code of Criminal Procedure, 1973) 990

MUSLIM LAW:

Adoption of children - Recognition.
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 1101

ORISSA SERVICE OF ENGINEERS (VALIDATION OF APPOINTMENT) ACT, 2002:

(i) Nature and purpose of the Act - Held: The Act

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cannot be said to be a validating enactment - Enactment deals with the law relating to regularisation of incumbents holding public office on *ad hoc* or temporary basis, much in the same way as regularisation of such temporary appointments is ordered in terms of a scheme for that purpose - Interpretation of statutes - Title of enactment.

(ii) Act granting regularisation of ad hoc Stipendiary Engineers - Constitutional validity of - Held: Legislation does not suffer from any constitutional infirmity.

(iii) Regularisation of ad hoc Stipendiary Engineers - Held : Appointment process of unemployed degree holders started with the resolution passed by State Government - Resolution further envisaged their absorption in service after a period of two years - Appointments made on the basis of a selection process and on the basis of merit - Appointment of Stipendiary Engineers on ad hoc basis came pursuant to the direction from High Court - Their appointment were made pursuant to a notification by which everyone who was unemployed and held an Engineering degree in any discipline was free to make an application - Process of appointment at no stage questioned before the court - Thus, appointments not violative of Arts. 14 and 16 - Constitution of India, 1950 - Arts. 14 and 16.

(iv) Regularisation of *ad hoc* Stipendiary Engineers - Degree holder Junior Engineers - Held: They were

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qualified for appointment as Assistant Engineers as they possessed degrees from recognised institutions, they were appointed against the sanctioned posts - Each one of them has worked for more than 10 years ever since his appointment as *ad hoc* Assistant Engineer - Thus, appointments not illegal - Legislative enactment does not call for interference at this late stage when those appointed or regularised have already started retiring having served their respective departments.

(v) Regularisation of degree holder Junior Engineers - Held: Writ petitioners cannot be said to be similarly situated as Stipendiaries only because they were also working as ad hoc Assistant Engineers - Challenge based on "under inclusion" is not readily accepted by courts - However, degree holder Junior Engineers currently working as ad hoc Assistant Engineers entitled to relief of regularisation in service, having regard to the fact that they have rendered long years of service as Assistant Engineers on ad hoc basis.

(vi) s.3(2) and 3(3) - Seniority - Granted to Stipendiary Assistant Engineers from the date of their ad hoc appointment as such - Held: To this extent the court can suitably mould the relief - In the circumstances, degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis entitled to the relief of regularisation with effect from the same date as the Validation Act granted such regularisation to Stipendiary Engineers - There is no illegality or constitutional

infirmity in the provisions of s. 3(2) or s. 3(3) - Similarly, degree holder Junior Engineers promoted as Assistant Engineers on ad hoc basis, who have been held to be entitled to regularisation on account of their length of service should also be given a similar benefit.

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PARTY:

Third party - When to be brought to the lis.
(See under: Code of Civil Procedure, 1908) 1129

POWER OF ATTORNEY:

Power of Attorney - Nature of transaction.
(See under: Code of Civil Procedure, 1908) 1129

PREVENTION OF CORRUPTION ACT, 1988:

(i) s. 19(1)(c) r/w 13(1)(d) and 13(2) - Previous sanction - Competent Authority - Assistant Engineer appointed when Corporation was ruled by Administrator - Sanction accorded by Standing Committee of Corporation - Held: Administrator is only an ad hoc arrangement made by Government u/s 424 of Municipal Corporation Act when an elected committee is superseded or dissolved - Standing Committee being appointing authority of appellant, was the competent authority to accord sanction - Madhya Pradesh Municipal Corporation Act, 1956 - ss. 58 and 424.

(ii) s. 19 - Previous sanction for prosecution - Application of mind by competent authority - Held:

Authority has to be apprised of all the relevant materials, and on such materials, it has to take a conscious decision as to whether the facts would reveal the commission of an offence - Decision making on relevant materials should be reflected in the order and if not, it should be capable of proof before the court - On facts, though appellant made a specific objection before Special Judge, order does not indicate any inquiry by court in this regard - Orders passed by High Court and trial court set aside.

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REMEDY:

Remedy available under the statute - Litigant to take recourse to the same.
(See under: Code of Criminal Procedure, 1973) 990

SERVICE LAW:

(1) Regularisation of ad hoc Stipendiary Engineers.
(See under: Orissa Service of Engineers (Validation of Appointment) Act, 2002) 1031
(2) (See under: Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000) 1003

SIKKIM POLICE FORCE (RECRUITMENT, PROMOTION AND SENIORITY) RULES, 2000:
r.9(iv) - Integration of three different services viz. Police Force, Armed Police and Vigilance Police in the State of Sikkim - In Vigilance Police and

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Armed Police, though the members therein got accelerated promotion to the post of inspector, there was no further promotion available to them - Promotion to the post of Deputy Superintendent of Police (DSP) available only to members of the Police Force - This inequality sought to be remedied by integration of three services - Feeder category for promotion to the post of DSP is inspector - Date of promotion/direct recruitment to the post of sub-inspector taken as determining factor for fixation of seniority for promotion to the post of DSP and grant of deemed/notional promotion to the members of Police Force from the date their compeers in the other two services got promotion to the post of inspector - Writ petition alleging that on account of the retrospective promotion granted to the members of the Police Force based on the date of appointment/promotion as sub-inspector in the case of the other two services, respondent became junior to them, affecting his chances of promotion to the post of DSP, allowed by High Court - Held: High Court erred in holding that the acquired or accrued rights of writ petitioner had been affected by the fixation of seniority at the level of sub-inspector of Police - The very purpose of integration was to remove the inequality and provide them with the opportunity for promotion to the post of DSP - If length of continuous service in the highest cadre of some similar services is taken as basis of fixing seniority and for further promotion that would certainly result

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in deeper injustice to the members of the other services - r.9(iv) is just, fair and equitable in the given circumstances without which the integration of services would have resulted in graver inequality and injustice to the members of the major service - Service law.

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(1) (See under: Arbitration and Conciliation Act, 1996) 855

(2) Suit for recovery of money.
(See under: Code of Civil Procedure, 1908) 1129

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(See under: Arbitration and Conciliation Act, 1996) 855