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CODE OF CIVIL PROCEDURE, 1908:

O.2, r.2 - Applicability of - In respect of two suits filed by respondent - Held: Object of O.2, r.2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process - In the instant case, the facts on the basis of which subsequent suit was filed, existed on the date on which earlier suit was filed - No fresh cause of action arose in between two suits - When first suit for recovery of dues was filed for alleged relief, damages sought for in subsequent suit could have also been sought for - Respondent not entitled to split the cause of action into parts by filing separate suits - It omitted certain reliefs which were available to it at the time of filing of first suit and after having relinquished the same, it could not have filed a separate suit.

State Bank of India v. Gracure Pharmaceuticals Ltd. 617

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.197 - Previous sanction for prosecution of public servant - Held: s.197 clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of Government - Clauses (a) and (b) of r.825 of Jharkhand Police Manual confer power on Inspector General of Police or Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector, without obtaining prior approval of State Government - High Court has rightly held that since competent authority had removed appellant from service, sanction u/s

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197 was not warranted - Jharkhand Police Manual - rr.825(a) and (b).

Fakhruzamma v. State of Jharkhand & Anr. 824

(2) s.227 - Discharge - Order of Sessions Judge discharging the relatives of husband of deceased and ordering continuance of proceedings against husband u/ss 498-A and 306 IPC - Held: At this stage, in discharging the accused, Sessions Judge had necessarily to have come to conclusion that on a perusal of material, no prima facie case against them had been disclosed - High Court has rightly held that material and evidence on record sufficiently support trial of husband, father-in-law, mother-in-law and brother-in-law of deceased - High Court has also rightly upheld the decision of Sessions Judge in holding that material on record was insufficient to even prima facie indicate complicity of sister-in-law of deceased in alleged offences of cruelty and abetment of suicide - Penal Code, 1860 - ss.498-A and 306.

Sherish Hardenia & Ors. v. State of M.P. & Anr. 844

(3) s.340 r/w s.195(1)(b) - Perjury in judicial proceedings - Allegations of - Application filed by appellant to proceed against respondent u/s.340 r/w s.195(1)(b) - Dismissed by High Court - Held: Justified - In order to initiate prosecution for perjury, court must prima facie reach a conclusion after holding preliminary inquiry that there was a deliberate and conscious effort to misguide the court and interfere in administration of justice - On facts, a mere impression or perception of appellant

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would not make the deposition on affidavit by respondent to be false as being a deliberate and conscious act - There was no deliberate perjury to misguide the court while making such statement or filing the affidavit.

Ashok Kumar Aggarwal v. Union of India & Ors. 607

(4) s.438 r/w s.82 - Anticipatory bail - Respondents, accused of offences punishable u/ss 302 and 120-B r/w s.34 IPC - Declared absconders - Granted anticipatory bail by High Court - Subsequently released on regular bail by CJM - Held: If anyone is declared as an absconder/proclaimed offender in terms of s. 82, he is not entitled to relief of anticipatory bail - In the instant case, confessional statements of co-accused reveal that respondents administered poisonous substance to deceased - It is supported by statements of other witnesses and medical report - Further, proclamation u/s 82 was issued against respondents - All these materials were neither adverted to nor considered by High Court while granting anticipatory bail - Impugned order of High Court set aside - Consequently, subsequent order of CJM releasing the accused on bail after taking them into custody in compliance with impugned order of High Court is also set aside.

State of Madhya Pradesh v. Pradeep Sharma 772

(5)(i) ss. 468 and 469 r/w s. 473 - Bar to take cognizance after lapse of period of limitation -

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Commencement of period of limitation and extension thereof - Held: For the purpose of computing the period of limitation u/s 468, relevant date is date of filing of complaint or date of institution of prosecution and not the date on which Magistrate takes cognizance - In view of s. 469, period of limitation in relation to an offence shall commence either from date of offence or from date when offence is detected - If complaint is filed after period of limitation, complainant can make an application for condonation of delay u/s 473 - Court will have to issue notice to accused and after hearing the accused, and the complainant, decide whether to condone the delay or not - If complaint is filed within period of limitation and court takes cognizance after period of limitation then complainant cannot be expected to make an application for condonation of such delay - s.473 postulates condonation of delay caused by the complainant in filing the complaint - It is the date of filing of the complaint which is material - ss. 468 and 469 will have to be read with s. 473 - Interpretation of statutes - Legislative intent - Limitation.

(ii) Chapter XXXVI - s.468 r/w ss. 469 and 473 - Bar to take cognizance after lapse of period of limitation - Taking of 'cognizance' - Connotation of - Held: 'Cognizance' is entirely an act of the court - Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed - This is the special connotation acquired by the term

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'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI - The only harmonious construction which can be placed on ss. 468, 469 and 470 is that Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period - He would, however, be entitled to exclude such time as is legally excludable - Besides, Cr.P.C. is a procedural law to be construed liberally to serve justice - There is no scope for application of doctrine of casus omissus - Interpretation of statutes - Harmonious construction - Liberal construction - Doctrine of casus omissus.

Mrs. Sarah Mathew v. The Institute of Cardio Vascular Diseases by its Director - Dr. K.M. Cherian & Ors. 674

CONSTITUTION OF INDIA, 1950:

(i) Arts. 14 and 16.

(ii) Art. 136 - Exercise of jurisdiction under - Explained - Held: In the instant case, appellants having acted unreasonably and illegally, are not entitled to relief before the Court.

(Also See under: Service Law).

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COSTS:

(See under: Service Law) 783

CRIMES AGAINST WOMEN:

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

(2) (See under: Penal Code, 1860) 573

DOCTRINES/PRINCIPLES:

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(See under: Code of Criminal Procedure, 1973: and Interpretation of Statutes) 674

EVIDENCE ACT, 1872:

s.113B.

(See under: Penal Code, 1860) 573

HARYANA WAKF ACT, 1995:

s.7 r/w s.85 - Interpretation of - Jurisdiction of Tribunal to determine disputes regarding wakfs - Held: In respect of disputes mentioned in sub-s.(1) of s.7, exclusive jurisdiction vests with Tribunal, having jurisdiction in relation to such property - Jurisdiction of civil court is barred in respect of any dispute or other matter relating to any wakf, wakf property for other matter, which is required by or under the Act, to be determined by a tribunal - There is however an exception made u/s.7(5) viz., those matters which are already pending before civil court, even if the subject matter is covered u/sub-s.(1) of s.6, civil court would continue and the tribunal would not have the jurisdiction to determine those matters - Suit was instituted in 2000 i.e. after the Act came into force - Therefore, case not covered by exception to s.7(5) - On a plain reading of s.7 r/w s.85, it is manifest that wherever there is a dispute regarding the nature of property, namely whether suit property is Wakf property or not, it is Tribunal which has exclusive jurisdiction to decide the same.

Haryana Wakf Board v. Mahesh Kumar 596

INCOME TAX ACT, 1961:

s.132B(4)(b) - Payment of interest on delayed assessment - Search conducted in house of appellant - Cash amount recovered - Order passed u/s.132(5) on 31.5.1990 - Assessing Officer (A.O.) calculated tax liability, and cash seized in search from appellant's house appropriated - Order of A.O. set-aside by Tribunal - Appellant got refund of seized amount alongwith interest from 4.3.1994 (date of last of the regular assessments by A.O.) until the date of refund - Claim of appellant-assessee for interest u/s.132B(4)(b) for the period from expiry of period of six months from the date of order under s.132(5) to the date of regular assessment order - Held: Order u/s.132(5) having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, therefore, appellant entitled to claim simple interest u/s.132B(4)(b) from 1.12.1990 to 4.3.1994 at the rate of 15% per annum.

Chironjilal Sharma Huf v. Union of India and Ors.

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INTERPRETATION OF STATUTES:

(1) Harmonious construction - Held: In case of apparent conflict between two provisions, they should be so interpreted that effect is given to both - Bank of Baroda (Employees) Pension Regulations, 1995 - Regulation 22 - Bipartite Settlement - Clause 6(b).

(Also See under: Service Law).

Bank of Baroda v. S.K. Kool (d) through Lrs. and Anr.

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(2)(i) Purposive construction - Held: There is no ambiguity in the provisions of Chapter XXXVI of Cr.P.C. - But, the word 'cognizance' has not been defined in Cr.P.C. - Rule of purposive construction can be applied in such a situation - If in a case literal interpretation appears to be in any way in conflict with legislative intent or is leading to absurdity, purposive interpretation will have to be adopted - Code of Criminal Procedure, 1973 - Chapter XXXVI.

(ii) Doctrine of reasonable construction - Court would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution.

(iii) Heading of Chapter - Held: 'Heading' or 'title' prefixed to sections or group of sections have a limited role to play in construction of statutes - They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control meaning of sections if meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions.

(iv) (a) Harmonious construction

(b) Liberal construction

(c) Doctrine of casus omissus.

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JHARKHAND POLICE MANUAL:

rr. 825(a) and (b).

(See under: Code of Criminal Procedure, 1973)

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LAND ACQUISITION ACT, 1894:

(i) s.18 - Reference - Limitation - Expression, "the date of the award" - Connotation of - Held: The expression "the date of the award" used in proviso (b) to s.18(2) must be understood to mean the date when award is either communicated to party or is known by him either actually or constructively - In the instant case, it is for the first time on the date of order u/s 30 that appellants came to know that they were entitled to compensation and the quantum thereof - Reference u/s 18 was made within 6 weeks from the said date - Therefore, the view taken by High Court that reference u/s 18 was barred by limitation cannot be sustained - Order of High Court set aside and award of enhanced compensation made by reference court u/s 18 restored.

(ii) ss. 18 and 30 - References under - Distinction between - Explained - Limitation for filing reference u/s 18 - Held: The two Sections operate in entirely different circumstances - While s.18 applies to situations where apportionment made in award is objected to by a beneficiary thereunder, s.30 applies when no apportionment whatsoever is made by Collector on account of conflicting claims - In such a situation one of the options open to Collector is to make a reference of question of apportionment to court u/s 30 - The other is to

relegate the parties to remedy of a suit - In either situation, right to receive compensation under award would crystallize after apportionment is made in favour of a claimant - It is only thereafter that a reference u/s 18 for enhancement of compensation can be legitimately sought by claimant in whose favour the order of apportionment is passed either by the court in reference u/s 30 or in civil suit, as may be.

Madan & Anr. v. State of Maharashtra 761

LEGISLATIVE INTENT:

(See under: Code of Criminal Procedure, 1973) 674

LIMITATION:

(See under: Code of Criminal Procedure, 1973) 674

LIMITATION ACT, 1963:

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MAHARASHTRA SCHEDULED CASTES, SCHEDULED TRIBES, DE-NOTIFIED TRIBES, (VIMUKTA JATIS) NOMADIC TRIBES, OTHER BACKWARD CLASSES AND SPECIAL BACKWARD CATEGORY (REGULATION OF ISSUANCE AND VERIFICATION OF) CASTE CERTIFICATE ACT, 2000:

ss.2(a) and 10.
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MAXIMS:

Relevance of legal maxims in interpreting a provision - Held: Though legal maxims are not mandatory rules, but they serve as guiding principles.

(i) '*nullum tempus aut locus occurrit regi*',

(ii) '*vigilantibus et non dormientibus, jura subveniunt*',

(iii) '*actus curiae neminem gravabit*' - Applicability of.

Mrs. Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director - Dr. K.M. Cherian & Ors. 674

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 - Dishonour of cheque - Legal notice not sent within 30 days of the knowledge of such dishonor - Held: The right to present the same cheque for second time is available to complainant - However, period of limitation is not to be counted from the date when cheque in question was presented in the first instance or legal notice was issued in that regard inasmuch as the cheque was presented again - After cheque is returned unpaid, notice has to be issued within 30 days of receipt of information in this behalf - Complaint was not maintainable as legal notice was not issued within 30 days from the date of information.

Kamlesh Kumar v. State of Bihar & Anr. 793

(2) s.138 - Dishonour of cheque - Reversal of acquittal by High Court - Held: Not justified - In

order to draw presumption u/s.118 r/w s.139, burden was heavily upon respondent-complainant to have shown that he had the required funds for having advanced money to appellant; that issuance of cheque in support of payment advanced was true and that appellant was bound to make the payment as had been agreed while issuing the cheque in favour of respondent - Various defects in the evidence of respondent, as noted by trial court were simply brushed aside by High Court without assigning any valid reason - Serious lacuna in evidence of respondent which strikes at the root of complaint u/s.138 - This factor not examined by High Court while reversing the judgment of trial court - Conviction of appellant set aside.

John K. Abraham v. Simon C. Abraham & Another 753

PENAL CODE, 1860:

(1) ss.304B and 498A - Sister-in-law of appellant committed suicide within few years of marriage - Allegations of dowry death - Conviction of appellant - Held: Not justified - Appellant deserves acquittal since there is no evidence inculcating him - No definite allegation made by any of the witnesses including deceased's father or anybody from his family that appellant had demanded any additional dowry or had treated the deceased with cruelty or in a humiliating manner so as to make him complicit in dowry death - Presumption u/s.113-B of Evidence Act to conclude that deceased's death was a dowry death cannot be stretched to implicate all and sundry in the family of deceased's husband in demanding additional dowry from deceased's

family and harassing her and treating her with such cruelty that she had to resort to taking her life - In absence of the prosecution proving the ingredients of s.304-B, initial burden cast on it not discharged - Appellant acquitted - Evidence Act, 1872 - s.113B.

Bhola Ram v. State of Punjab 573

(2) s.420 r/w s.34 - Case initiated by Magistrate on a protest complaint filed by first respondent - Two accused - Second accused being divorced wife of first accused - Summons issued against second accused - Held: The statement of complainant clearly indicates that money was entrusted to first accused and not to second accused - Police investigation revealed that during the period when money was entrusted to first accused, he was separated from second accused - No reason to prosecute second accused considering the fact that she had no role, even according to complainant - Magistrate did not consider this vital aspect when protest petition was considered by him - Summons issued against second accused quashed - However, Magistrate may proceed against first accused.

B. Chandrika v. Santhosh & Anr 588

(3) ss.498-A and 306 - Consideration of plea of accused based on limitation - Discussed.

Sherish Hardenia & Ors. v. State of M.P. & Anr. 844

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

s. 59 - Chief Commissioner - Functions of - Explained - Complaint by respondent-physically handicapped (PH) person for not providing him reservation in promotion - Chief Commissioner directing to include Telecom Operating Assistants (TOA) cadre in the list of notified jobs and to prepare 100 point reservation register for PH persons and to consider claim of respondent - Held: Promotion in physically handicapped quota was limited to certain categories of posts as identified by High Powered Committee constituted for the purpose - TOA was not identified for the purpose of reservation for physically handicapped persons - Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit - He exceeded the powers conferred on him u/s 59 - Order of Chief Commissioner, as confirmed by High Court, is set aside - Service law - Reservation in promotion for physically handicapped persons.

Bharat Sanchar Nigam Limited and another v. G. Sarvothaman 563

PRECEDENT:

Three-Judge Bench - Not overruling two-Judge Bench decisions - Precedent value of such judgments and rule of per incuriam - Discussed.

Shalini v. New English High Sch. Assn. & Ors. 807

RES JUDICATA:

(See under: Service Law) 629

SERVICE LAW:

(1) Pay protection - Transfer - Of appellant from CBI to NCRB by executive order - Subsequently, appellant came to know that he was not given revised pay scale as received by his batchmate who remained at CBI - Application of appellant for grant of pay scale at par with his CBI batchmate - Dismissed by Tribunal - Order upheld by High Court - Held: When appellant was transferred from CBI to NCRB, he had no option but to join wherever he is placed - Until appellant retired from service, no separate service rules were framed for officers in NCRB - He continued to be governed by the rules framed for officers of CBI - Tribunal ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Art. 309 of the Constitution - It would amount to discrimination for no justifiable reasons - Direction given that pay of appellant be appropriately corrected as sought by him and his pension and other service benefits also be corrected on that basis.

S.K. Rattan v. Union of India & ors. 743

(2) Reservation in promotion for physically handicapped persons.

(See under: Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 563

(3) (i) Suspension - Renewal of, after suspension order quashed by Tribunal - Legality of - Held: It was not permissible for appellants to pass any fresh order of suspension till the commencement of trial before criminal court - Tribunal and High Court were right that appellants had not followed directions of Tribunal and mandate of Department's O.M. dated 7.1.2004 - The terms of said O.M. were required to be observed - Subsequent order of suspension was a nullity - More so, issue could not have been re-agitated by virtue of application of doctrine of res judicata - It is a clear case of legal malice - Constitution of India, 1950 - Arts. 14 and 16 - Administrative law - Legal malice - O. M. dated 7.1.2004 - Res judicata.

(ii) Suspension order - Held: Should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.- CCS (CCA) Rules, 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified - Central Civil Services (Classification, Control and Appeal) Rules, 1965 - r. 10(6).

(iii) Suspension order - Judicial review of - Held: Long period of suspension does not make the order of suspension invalid - Whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed

by disciplinary authority concerned and ordinarily court should not interfere with orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

(iv) Suspension - Connotation and effect of - Explained.

(v) Representation - Held: May be considered by competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the authority.

Union of India & Anr. v. Ashok Kumar Aggarwal

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(4) Termination/Removal/Dismissal: Removal of bank employee from service 'with superannuation benefits' - Held: In view of Regulation 22 of Pension Regulations and Clause 6(b) of Bipartite Settlement, such of the employees who are otherwise entitled to superannuation benefits under the Regulation, if visited with penalty of removal from service with superannuation benefits, shall be entitled for those benefits, and such of the employees though visited with the same penalty but not eligible for superannuation benefits under Regulation, shall not be entitled to that - In the instant case, employee's heirs are entitled to superannuation benefits with interest at the rate of

6% per annum - Bank of Baroda (Employees) Pension Regulations, 1995 - Regulation 22 - Bipartite Settlement - Clause 6(b) - Costs.

Bank of Baroda v. S.K. Kool (d) through Lrs. and Anr. 783

SOCIAL STATUS CERTIFICATE:

(i) Caste certificate - Appointment made on the basis of caste certificate, which was subsequently found invalid - Cessation of employment or employee entitled to protection and its extent - Principles emerging from various judgments of Supreme Court - Culled out.

(ii) Scheduled Tribe - "Halba" - "Gadwal Koshti" - Appellant appointed on a post earmarked for Scheduled Tribe on the basis of caste certificate issued by competent authority - Caste certificate - Subsequently found invalid by Caste Scrutiny Committee - Held: A person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class, should not be visited with termination of his/her employment and rigours of s. 10 of 2000 Act would not apply to his/her case - It is, therefore, directed that appellant be reinstated in service without any back wages - As regards her appointment as Headmistress of the School, further directions given - Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification

of) Caste Certificate Act, 2000 - ss.2(a) and 10 - Government of Maharashtra Resolution dated 15.6.1995 - Office Memorandum dated 10.8.2010 of Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training.

Shalini v. New English High Sch. Assn. & Ors. 807

SUIT:

(See under: Code of Civil Procedure, 1908) 617

TRADE AND MERCHANDISE MARKS ACT, 1958:

ss. 46 and 56 - Trade mark registered in favour of respondent - Application of appellant for rectification of registered Trade Mark - Dismissal of - On the ground of delay - Held: On facts, not justified - It prejudiced the rights of appellant to have the case adjudicated on merits - Appellant was pursuing its remedy with due diligence, without brooking any delay - Appellant had pursued his remedy in a bonafide manner and if it was filed in a wrong court and if he pursued his remedy wrongly by filing it in Delhi High Court, instead of Madras High Court, principles enshrined in s.14 of Limitation Act clearly get attracted - Matter remitted back to IPAB to decide rectification application on merits - Limitation Act, 1963 - s.14.

Lakha Ram Sharma v. Balar Marketing Private Limited & Ors. 735

TRANSFER OF PROPERTY ACT, 1882:

s.100 r/w s.59 - Charge - Undertaking given against loan that properties mentioned therein shall not be

disposed of during the currency of loan - Documents not registered - Held: A conjoint reading of s.100 with s.59 makes it clear that if by act of parties, any immovable property is made security for payment of money to another and it does not amount to mortgage, then all provisions which apply to a simple mortgage, as far as may be, apply to such charge - Consequently, in view of s.59, when there is a mortgage other than a mortgage by deposit of title deeds, it can be effected only by a registered instrument - The mere undertaking that the party will not dispose of the properties mentioned in the said undertaking, during the currency of loan, will not create any charge over those properties, unless charge is created by deposit of title deeds or through a registered document - A mere undertaking to create a mortgage is not sufficient to create an interest in an immovable property - In the instant case, no registered mortgage deed was executed by first respondent and no title deed of property was handed over by him to Corporation - Therefore, there is no error in the judgment of first appellate court as affirmed by High Court that the loan taken by first respondent was not subject to charge over the property covered by the decree in favour of second respondent.

Haryana Financial Corporation v. Gurcharan Singh & Anr. 832

WAKFS:

(See under: Haryana Wakf Act, 1995) 596

WORDS AND PHRASES:

Expression "as would be due otherwise", occurring in Clause 6(b) of Bipartite Settlement - Connotation of.

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