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(1) O. 6, rr.16 and 17 and O. 8, r.9 - Suit for declaration of title and for perpetual injunction - Petition filed by defendants-appellants u/O. 6, r.17 seeking amendment of written statement - Held: The relief sought for by defendants in petition u/O. 6 r.17 was elaborately dealt with in two earlier petitions filed by defendants u/O. 6, r.16 and O. 8, r.9 which came to be rejected - Filing of petition by defendants u/O. 6, r.17 after about 13 years when hearing of suit had already commenced and some of the witnesses were examined, was wholly misconceived - Filing of subsequent application for the same relief was an abuse of process of

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court - Administrative Law - Abuse of process of court.

(ii) O. 6, r.16 and O. 6, r.17 - Distinction between - Discussed.

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(2) (i) O. 9 r. 13 r/w. s.151 - Land acquisition proceedings - Land in joint ownership of two persons, acquired - Reference u/s. 18 of Land Acquisition Act for enhancement of compensation by one of the owners - Without impleading the other owner as party - Grant of enhanced compensation by reference court - Application by the other owner u/O. 9 r.13 r/w.s.151 - Maintainability of - Held: Application u/O. 9 r.13 not maintainable by a non-party to the proceedings - However, such relief can be given in exercise of inherent powers u/s. 151. if the order has been obtained by playing fraud upon the court - But, the same is not maintainable if the fraud is committed upon the party - In such eventuality, aggrieved party can seek remedy by filing independent suit - In the instant case, reference court could not have permitted application u/O. 9, r.13 - It could not have permitted application even in exercise of powers u/s. 151, because fraud was played upon party and not court - Land Acquisition Act, 1894.

(ii) s.151 - Inherent powers of court - Nature and scope of - Discussed.

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(3) (i) O. 23, r.3 - Civil suits against original owner of suit land and purchaser-housing society - By plaintiffs claiming to be purchasers of suit land - In, 'out of court settlement', one of the plaintiffs by virtue of Power of Attorney accepting certain amounts for himself and other 4 plaintiffs - Plaintiff-Power of Attorney holder filing pursis on his behalf and on behalf of other plaintiffs except the third plaintiff - Trial court disposing of the suits accepting the pursis - Order of trial court set aside by High Court - Held: There was no illegality in disposing of the suits under O. 23, r.3 accepting the pursis - Compromise between parties was prior to cancellation of Power of Attorney by the third plaintiff, therefore he was bound by compromise - Legal heirs of fourth plaintiff are also bound by the compromise - Abatement.

(ii) ss. 24 and 151.

(Also See under: Suits)

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CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.482 - Jurisdiction - Scope of -Criminal proceedings u/ss.420, 468/471 IPC against respondent's husband, and three other accused - All accused, without prejudice to their claim, deposited money with appellant - Case against husband of respondent stood abated on his death - Other three accused acquitted - They were granted relief of refund of money deposited -

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Similar claim by respondent on behalf of her late husband - Allowed by High Court in exercise of jurisdiction u/s.482 CrPC - Held: Evidence on record makes it clear that the money was deposited by husband of respondent on his own volition - Deposition of any sum as a condition of bail and a deposit with the Agency on one's own, even if to avoid arrest would stand on a different footing - The later action has nothing to do with the proceedings in the court - Jurisdiction u/s.482 CrPC could not have been exercised as the action taken by appellant was absolutely an administrative action and, therefore, the same could only be challenged by way of a writ petition and not by seeking relief invoking the inherent power u/s.482 - Liberty granted to appellant to approach the High Court by way of writ petition - Penal Code, 1860 - ss.420, 468/471.

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CONTEMPT OF COURTS ACT, 1971:

s.12 - Contempt of court - Accused (a litigant) using loud threatening utterances and using unparliamentary language for Judicial Officer, while he was conducting court - High Court did not accept the apology and convicted the accused u/s.12 and sentenced him to suffer simple imprisonment for one month with a fine - Held: Judicial proceedings have its own solemnity and sanctity - It is obligation of everyone to behave with propriety when judicial proceedings are conducted - The apology was rightly rejected as the same was neither prompt nor genuine - Conviction and sentence upheld - However, Court expressed its displeasure on the issue that High Court took a lenient view in sentencing the accused.

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CONTRACT ACT, 1872:

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EDUCATION / EDUCATIONAL INSTITUTIONS:

Educational institution for visually impaired students - At University level - Special needs of such students - Requirement of sensitivity - Held: Grievances

raised by appellant-organisation relating to visually impaired students require more focus and sensitive approach - Legislative intendment relating to comprehensive education scheme is crystal clear - s.30(f) of the 1995 Act lays down suitable modification in the examination system and sub-s.(g) requires restructuring of curriculum for benefit of children with disabilities - Said mandate of the statute to be given due weightage - A visually impaired student is entitled to receive special treatment - Appellant-organisation permitted to submit representation indicating its grievances and views to Empowered Committee of the University - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - ss. 30 and 31 - United Nations Convention on the Rights of Persons with Disabilities - Art. 24 - Constitution of India, 1950 - Arts. 21 and 41.

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(See under: Penal Code, 1860) 108

FAMILY LAW:

Custom - Adoption - Validity - Plea of plaintiff-appellant that he had been adopted by defendant - Parties belonged to Jat community in Haryana - At the time of alleged adoption, plaintiff was about 23 years old and a married man having children - Held: Question with regard to custom prevalent amongst Jats to take in adoption a married man having children not required to be gone into -

Evidence brought on record goes against plaintiff and on that basis it cannot be held that there was a valid adoption - Defendant filed written statement asserting that he never took plaintiff in adoption, and also denied that plaintiff resided with him or helped him in cultivating the land - Further during pendency of case, when defendant died, plaintiff did not even perform the last ritual and other ceremonies - On facts, evidence goes against appellant and, therefore, it cannot be held that there was perversity in the judgments passed by two appellate courts - Hindu Adoption and Maintenance Act, 1956 - ss. 10 and 11.

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(1) (i) s.23 - Compensation - Determination of, on basis of market value of comparable lands - Passage of time between different acquisitions - Held: On facts, compensation accordingly enhanced from Rs.280/- per sq. yard to Rs.325/- per sq. yard.

(ii) s.23 - Compensation - Land falling within

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municipal limits - Deduction towards development costs - Held: On facts, deduction of 40% unjustified - Cut of 33-1/3 per cent more realistic.

(iii) s.23 - Compensation - Land under acquisition already developed to some extent - Held: On facts, cut of 50% on the value is excessive - At best a standard cut of 1/3rd would have been sufficient.

(iv) s.23 - Compensation - Land under acquisition already within developed municipal limits - Held: On facts, cut of 60%, as imposed by High Court, inappropriate - Cut of one-third the value would be appropriate.

(v) s.23 - Compensation - Land under acquisition divided into belts - Held: On facts, having regard to potentiality of acquired lands, belting system should not have been resorted to.

(vi) s.23 - Compensation - Land under acquisition having substantial potential - Sharp increase in value of lands - Held: On facts, although, High Court had allowed a yearly increase of 12%, taking 1983 as a base-year, such increase was not commensurate with yearly escalation of prices and that was required to be calculated on a cumulative basis - Compensation directed to be reassessed by applying the cumulative rate of increase at the rate of 12% per annum with the base year being the date of Notification u/s.4, together with statutory benefits.

Ashrafi and Ors. v. State of Haryana and Ors. 148

(2) Reference court - Jurisdiction of - A person

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

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NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

s.42 - Scope and applicability of - Search, seizure and arrest carried out by Sub-Inspector in temporary charge as Station House Officer - Whether can be held to be carried out by unauthorized officer and, therefore, violative of s.42 - Held: As per Government Notification a Sub-Inspector can be posted as Station House Officer - The officer in the instant case (a Sub-Inspector) was posted as Station House Officer at the relevant time - Therefore, search, seizure and arrest by the officer not violative of s.42 - Notification No. F1(3)FD/Ex/85-1 dated 16.10.1986.

State of Rajasthan v. Bheru Lal 252

PENAL CODE, 1860:

(1) ss. 376 and 302 - Rape and murder of 4 years old child - Conviction and death sentence by courts below - Held: It is established that child was in possession of accused soon after she was sexually abused - Therefore, presumption is invoked against accused for causing the injuries on private parts of victim leading to her death - Since accused failed

to rebut this presumption, his conviction is justified - However, in view of deficiencies in investigation, absence of forensic evidence, lapses in trial proceedings and the fact that accused did not have sufficient resources to get himself defended upto his satisfaction, death sentence is converted to life imprisonment, which would be not less than 18 years - His case for remission would be considered only after 18 years of imprisonment - Evidence Act, 1872 - s.114 - Code of Criminal Procedure, 1973 - Remission of sentence.

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(2) ss. 420, 468/471.

(See under: Code of Criminal Procedure, 1973) 285

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

ss. 30 and 31.

(See under: Education/Educational Institutions) 271

PLEA:

New Plea.

(See under: Practice and procedure) 86
and 199

PRACTICE AND PROCEDURE:

(1) New plea - Permissibility to raise before Supreme Court - Held: New plea in the case of preventive detention is permissible.

(Also see under: Preventive detention)

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(2) New plea - Raising of - Permissibility - Held: A plea on legal ground can be raised even at appellate stage.

(Also see under: Contract Act, 1872)

U.P. Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma 199

(3) Writ petition - Challenging validity of provision of law - Held: In such cases, it is imperative to examine at the threshold, by applying the principle of lifting of veil as to whether such challenge is bona fide or there is any hidden agenda in perpetrating such litigation - Writ court should also keep in mind certain criteria for the purpose of entertaining such challenge and also while granting interim relief in such cases

(Also see under: Stock Exchange Board of India Act, 1992).

M/s. P.G.F. Limited & Ors. v. Union of India & Anr. 32

PREVENTIVE DETENTION:

Detention u/s. 3(1) of COFEPOSA - Detention order assailed on two grounds: (i) there was no independent consideration of representation of detenu; and (ii) delay in disposal of representation and delay in transmitting the representation to detaining authority by jail authority - Held: The plea of lack of independent consideration is without any basis - Any unexplained delay would

constitutional imperative provided under Art.22(5)
 - But it does not mean that everyday's delay has to be explained - Explanation must be reasonable indicating that there was no slackness or indifference - Detaining authority, and sponsoring authority have properly explained the time lag between receipt of representation and date of communication of rejection to detenu - But, delay in transmitting the representation to detaining authority by jail authority is not explained - Therefore, continued detention of detenu is illegal - However, delay has not vitiated the detention order - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - s.3(1) - Constitution of India, 1950 - Art. 22(5).

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SECURITIES AND EXCHANGE BOARD OF INDIA

ACT, 1992:

(i) ss.11AA - Constitutional validity of - Held: The provision is constitutionally valid - It does not intrude into the specific activities of sale of agricultural land and development - The provision cannot be struck down on the ground of legislative competence, being in conflict with Entry 18 of List II of Seventh Schedule to the Constitution - Constitution of India, 1950 - Schedule VII, List II, Entry 18.

(ii) s.2(ba) and 11AA(2) - Collective Investment Scheme - Whether covers appellants-Company's

business activity of sale and development of agricultural land - Held: The activity of the company is nothing but a scheme/arrangement in the guise of sale and development of agricultural land - The agreement between investors and company shows that it was one-sided and arbitrary and there was uncertainty in transactions to disadvantage of investors - Therefore, the business activity squarely fell within the definition of Collective Investment Scheme u/s. 2(ba) r/w. s.11AA(2) - In view of the fact that the whole attempt of Company was vexatious, and it perpetuated litigation with evil intention, exemplary cost of Rs.50 lakhs imposed - Appropriate inquiry and investigation directed to be conducted by CBI and Income Tax Department apart from the inquiry by second respondent.

M/s. P.G.F. Limited & Ors. v. Union of India & Anr.

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SENTENCE/SENTENCING:

(1) Death sentence - Imposition - Criteria - Held: Nature of offence alone may not in all cases be the determining factor for bringing the case in the 'rarest of rare' category to impose death penalty - Quality of evidence is also a relevant factor.

(Also see under: Penal Code, 1860)

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(2) (See under: Contempt of Courts Act, 1971)

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SPECIFIC RELIEF ACT, 1963:

s.34.

(See under: Contract Act, 1872) 199

SUITS:

(i) Consolidation of suits - Purpose of - Held: Purpose of consolidation of suits is for meeting the ends of justice as it saves parties from multiplicity of proceedings, delay and expenses - Code of Civil Procedure, 1908 - s.151.

(ii) Transfer and consolidation of suits - Effect of - Held: Transfer of suits will not take away the right of parties to invoke O. 23 r.3 CPC - Suits always retain their independent identity - Even after consolidation, court can independently dispose of a suit, if ingredients of O. 23 r.3 are satisfied - Code of Civil Procedure, 1908 - s.24, O. 23 r.3. (Also see under: Code of Civil Procedure, 1908)

Mahalaxmi Co-operative Housing Society Ltd. & Etc. v. Ashabhai Atmaram Patel (D) Th. Lrs. and Ors. 1

UTTAR PRADESH AVAS EVAM VIKAS PARISHAD ADHINIYAM, 1965:

s.88(2) - Suit against Housing Board - Without issuing notice - Maintainability of suit - Held: Notice u/s. 88(2) is mandatory - Suit instituted without issuing notice, not maintainable.

(Also see under: Contract Act, 1872)

U.P. Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma 199

UTTAR PRADESH AVAS EVAM VIKAS PARISHAD (DELEGATION OF POWERS BY THE BOARD

AND THE HOUSING COMMISSIONER) RULES,
1968:

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(See under: Contract Act, 1872) 199

WORDS AND PHRASES:

'Collective Investment Scheme' - Meaning of, in the context of s. 11AA of Securities and Exchange Board of India Act.

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Writ petition.

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