

CIVIL COURT CASES

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Civil Court Cases 2021(2) IMPORTANT DECISIONS

Ad interim injunction - Partition suit - In a suit for partition, right and status of a co-sharer should be maintained - Parties to maintain status quo with regard to possession. (2021(2) Civil Court Cases 017 (Calcutta))

Adoption - Child born in a live-in-relationship has to be construed as a child born to a married couple. (2021(2) Civil Court Cases 580 (Kerala))

Adoption - Declaration as to valid adoption - Can be made by civil court on appreciation of evidence and not by Revenue Court. (2021(2) Civil Court Cases 407 (Rajasthan))

Adoption by Hindu Male - Consent of wife - Mere estrangement between man and wife without disruption of marital status in accordance with law which may either be by a decree for divorce or annulment or by death of wife, would not take case out of mischief of S.7 Proviso of the Act, requiring wife's consent to adoption. (2021(2) Civil Court Cases 544 (Allahabad))

SC Agreement to sell - Does not by itself create any right in the property, except the right of obtaining sale deed on that basis. (2021(2) Civil Court Cases 245 (S.C.))

Agreement to sell - First two pages of agreement to sell not signed - Does not make agreement to sell per se invalid. (2021(2) Civil Court Cases 406 (P&H))

Amendment of plaint - Subsequent developments - Denial of amendment would lead to multiplicity of proceedings, application for amendment rightly allowed. (2021(2) Civil Court Cases 133 (Rajasthan))

Amendment of pleadings - Irrespective of specific objection by opposite party, it is duty of Court to satisfy itself that applicant inspite of due diligence, could not have filed the application at an earlier stage. (2021(2) Civil Court Cases 384 (Kerala)

Amendment of pleadings - Leave to amend may be refused if it introduces a totally different, new and inconsistent case or challenges fundamental character of suit. (2021(2) Civil Court Cases 396 (Allahabad)

Amendment of pleadings at the instance of defendant transposed as plaintiff - None other than the author has right to seek leave to amend original pleadings, no matter it was not objected to by original plaintiffs - However, such party can pursue contentions in written statement in support of suit claim treating as part of original plaint. (2021(2) Civil Court Cases 632 (Kerala)

Amendment of written statement - Premises taken on rent - Defendant is estopped denying title of plaintiff. (2021(2) Civil Court Cases 804 (H.P.)

Appeal by a stranger - Not permissible unless he satisfies Court that he falls within category of aggrieved person. (2021(2) Civil Court Cases 663 (J&K)

SC Bank locker - Banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker - Banks should not have liberty to impose unilateral and unfair terms on consumers - RBI to lay down comprehensive directions within six months and till such rules are issued, principles stated in this judgment shall remain binding upon banks. (2021(2) Civil Court Cases 001 (S.C.)

SC Bank locker - Proper procedure for operating and allotting lockers be followed - Analysed. (2021(2) Civil Court Cases 001 (S.C.)

SC Bar of O.2.R.2 CPC - Has to be pleaded and satisfactorily established - Court should not suo moto decide plea. (2021(2) Civil Court Cases 671 (S.C.)

Compromise - To be read as a whole - A portion of compromise cannot be totally ignored, which would render the part of contents of compromise otiose. (2021(2) Civil Court Cases 446 (Rajasthan)

SC Consent decree - Family settlement by a Hindu female with her nephews (brothers sons) - Such family settlement is not with strangers to the family - Consent decree passed on basis of family settlement, upheld. (2021(2) Civil Court Cases 183 (S.C.)

SC Consent decree - Relating to subject matter of suit - Does not require registration. (2021(2) Civil Court Cases 183 (S.C.)

SC Consent decree - Would not serve as an estoppel, where compromise was vitiated by fraud, misrepresentation or mistake. (2021(2) Civil Court Cases 074 (S.C.)

SC Consumer - Bank locker - Locker broken open by bank for non payment of rent dues - However, rent dues were cleared before breaking open locker - Gold ornaments found missing - Appellant to file a civil suit - Act of Bank in breaking open locker amounts to gross negligence in service - Costs of Rs.5 lakhs and litigation costs of Rs.1 lakh imposed on bank which shall be payable to appellant. (2021(2) Civil Court Cases 001 (S.C.)

SC Consumer - Pronouncement of operative order but delay in passing reasoned judgment - Reasoned judgment be made available to litigating parties positively within a period of two months. (2021(2) Civil Court Cases 216 (S.C.)

Custody of child - It is trite law that custody of child at least till the age of five needs to be with

mother. (2021(2) Civil Court Cases 319 (Gujarat)

Custody of minor - Writ jurisdiction - Question of welfare of minor can be examined by High Court in exercise of its jurisdiction to issue a writ - However where decision requires elaborate and careful sifting of evidence, parties may be asked to approach Civil Court. (2021(2) Civil Court Cases 359 (Allahabad)

De-exhibiting a document - Document exhibited without any objection - Application to de-exhibit the document, rightly dismissed. (2021(2) Civil Court Cases 727 (Delhi)

Decree of specific performance and in the alternative defendant was to pay double of the earnest money - No consensus ad idem on language of sale deed - Executing Court rightly allowed alternative relief of monetary payment in favour of decree holder. (2021(2) Civil Court Cases 410 (Delhi)

Delay in filing first appeal - Appellate Court cannot decide appeal unless application for condonation of delay is decided in favour of appellant. (2021(2) Civil Court Cases 765 (M.P.)

Dishonour of cheque - Civil suit and prosecution u/s 138 of N.I. Act - Amount found not recoverable on merits by civil Court - Amount cannot be recovered in a prosecution u/s 138 of N.I. Act. (2021(2) Civil Court Cases 067 (Kerala)

SC **Dishonour of cheque** - Joint liability - Cheque issued by husband - Prosecution of husband and wife - Wife cannot be convicted with aid of S.141 of NI Act as S.141 of the act relate to offence by companies and it cannot be made applicable to individuals - A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque - Complaint against wife quashed. (2021(2) Civil Court Cases 276 (S.C.)

Dishonour of cheque - Loan - Oral evidence not sufficient to prove the plea of discharge. (2021(2) Civil Court Cases 367 (Kerala)

Dishonour of cheque - Notice - Sent by speed post - Not received back - Notice is deemed to be served at best within a period of thirty days from the date of issuance thereof - In the instant case notice issued on 18.12.2017 - Notice is deemed to be sufficiently served upto 17.01.2018 - Payment not made within fifteen days - Complaint filed thereafter within 30 days - Held, complaint is not time barred. (2021(2) Civil Court Cases 432 (Allahabad)

Dishonour of cheque - Partners of a firm arrayed in their individual capacity - However, in body of complaint they were mentioned as partners - Lapse to make a proper mention in the cause title of complaint - Immaterial. (2021(2) Civil Court Cases 095 (Chhattisgarh)

Dishonour of cheque - Practicing Advocate advancing loan to his client - Practicing Advocate is barred from having any business transactions or loan transactions with his client - Complaint liable to be quashed. (2021(2) Civil Court Cases 471 (Madras)

SC **Dishonour of cheque** - Presumption - Rebuttal - Statement of accused recorded u/s 313 Cr.P.C. is not a substantive evidence of defence. (2021(2) Civil Court Cases 348 (S.C.)

SC **Dishonour of cheque** - Proceedings are quasi criminal in nature - Principles which apply to acquittal in other criminal cases are not applicable in the cases instituted under the Act. (2021(2) Civil Court Cases 348 (S.C.)

Dishonour of cheque - Sentence - Substantive sentences can be made as concurrent only if transaction is single transaction - If transaction is different transaction, said concession cannot be given

to accused. (2021(2) Civil Court Cases 786 (Karnataka)

Dishonour of cheque - Sole proprietorship firm - Complaint filed against sole proprietor without impleading firm - Complaint is maintainable. (2021(2) Civil Court Cases 156 (Allahabad)

Divorce - Cruel acts by husband - Wife still lived with husband but with a forgive and forget attitude - Does not amount to condonation of cruel acts - Wife entitled to divorce. (2021(2) Civil Court Cases 794 (Delhi)

Divorce - Cruelty - False, baseless, scandalous, malicious and unproven allegations made in written statement may amount to cruelty. (2021(2) Civil Court Cases 029 (Delhi)

Divorce - Cruelty upon husband - Failure of wife to cross examine husband in respect of specific incidents of cruelty alleged by him - Wife also failed to lead any evidence to substantiate her own allegations against husband - Decree of divorce, upheld. (2021(2) Civil Court Cases 777 (Delhi)

Divorce - Mental cruelty - Wife failing to cross examine husband in support of her own case or to challenge his allegations of cruelty - Court was thus justified in accepting unrebutted testimony of husband - Decree of divorce, upheld. (2021(2) Civil Court Cases 085 (Delhi)

SC Divorce - Mental cruelty - Wife made several defamatory complaints to husbands superiors - Husband suffered adverse consequences in his life and career on account of allegations made by wife - Legal consequences must follow and those cannot be prevented only because, no Court has determined that allegations were false. (2021(2) Civil Court Cases 130 (S.C.)

Divorce by mutual consent - Appeal against decree of divorce by mutual consent - Not maintainable. (2021(2) Civil Court Cases 117 (Delhi)

Divorce by mutual consent - Law as to - (i) There need not be a serious impute between a married couple for seeking divorce by mutual consent; (ii) Parties may seek divorce by mutual consent even when there is no quarrel or dispute between them but their actions and behaviour are not compatible with each other for living a happy and peaceful married life; (iii) If an application is duly constituted and properly presented before Court, it is not for Court to search for a ground or a reason, which has compelled the parties to seek divorce by mutual consent. (2021(2) Civil Court Cases 569 (Chhattisgarh)

Divorce by mutual consent - Once parties agree to file a joint petition, pursuant to an agreement/ compromise in pending proceedings, then parties are estopped from resiling from the agreement - Unilateral withdrawal of consent by wife, especially after husband performed his part of terms in the memorandum of agreement is unsustainable in law. (2021(2) Civil Court Cases 019 (Kerala)

Divorce by mutual consent - Withdrawal of matrimonial case u/s 12 of the Act does not preclude the Court to entertain petition u/s 13-B of the Act. (2021(2) Civil Court Cases 601 (Patna)

DNA test - Partition suit - Paternity disputed - DNA test is essential to decide whether plaintiff is son of defendant - Application for DNA test allowed. (2021(2) Civil Court Cases 305 (Madras)

Domestic Violence - Maintenance - Granted from date of order - Reasons not assigned for not granting maintenance from date of application - Wife entitled to get maintenance from date of application. (2021(2) Civil Court Cases 443 (Madras)

Domestic Violence - Order passed u/s 19 of the Act - Court to consider report of Protection Officer if same available on record - In same not available on record then Magistrate is not under any obligation to call for the same before passing any orders on an application u/s 19 of the Act. (2021(2) Civil Court Cases 389 (Allahabad)

Domestic Violence - Order passed u/s 19 of the Act - Non-consideration of domestic incident

report - Objection cannot be raised for the first time before High Court in proceedings u/s 482 Cr.P.C. (2021(2) Civil Court Cases 389 (Allahabad))

Evidence - Document admitted by opposite party, does not require to be proved by way of evidence. (2021(2) Civil Court Cases 064 (P&H))

Ex parte decree - Setting aside - Condonation of delay of 2698 days - Summons not issued to defendant personally - Knowledge of ex parte decree - Court not satisfied with explanation of defendant - Defendant having serious contentions - Ex parte decree set aside. (2021(2) Civil Court Cases 403 (Kerala))

Ex parte decree - Setting aside - Further proceedings in Execution Petition are to be kept pending till interlocutory applications are disposed of. (2021(2) Civil Court Cases 566 (A.P.))

Ex parte decree passed U.O.8.R.10 CPC - Not a case covered U.O.9.R.13 CPC - Court has no jurisdiction to set aside ex parte decree in a case which does not fall within four corners of O.9.R.13 CPC. (2021(2) Civil Court Cases 355 (Calcutta))

Ex parte injunction order - Police aid - Court cannot straight away order police aid without disposing of interim injunction petition. (2021(2) Civil Court Cases 416 (Telangana))

Examination of a party by another as a witness - There is no absolute bar. (2021(2) Civil Court Cases 344 (Orissa))

Execution - Warrant of possession - By breaking open the locks with police assistance - Bailiff broke open the locks without police assistance in due haste - Possession be handed back to defendant forthwith subject to deposit of Rs.6 Lakhs which shall not be disbursed till disposal of appeal. (2021(2) Civil Court Cases 024 (Rajasthan))

Family settlement - Oral family settlement is permissible. (2021(2) Civil Court Cases 661 (P&H))

Fraud - Fact vitiated by fraud - Limitation to challenge that fact starts from date of knowledge of fraud. (2021(2) Civil Court Cases 749 (Telangana))

SC Fraud - Required to be pleaded and established by leading evidence - Mere allegation that there was fraud is not sufficient. (2021(2) Civil Court Cases 608 (S.C.))

Immovable property - Sketch map - Not bearing signature of any person - Map not considered by both the Courts below - No interference warranted in concurrent findings of Courts below. (2021(2) Civil Court Cases 375 (Bombay))

Interim injunction - Restraining change of nature of ancestral unpartitioned property - Trial Court directed to decide the application for interim injunction within a period of three months - Parties shall maintain status quo till application for interim injunction is decided by trial Court. (2021(2) Civil Court Cases 590 (Allahabad))

Interim maintenance - Court, at this stage, not to delve deep into disputed questions of act. (2021(2) Civil Court Cases 139 (Allahabad))

Interim maintenance - Non payment - Issuance of conditional warrants of arrest, upheld. (2021(2) Civil Court Cases 530 (P&H))

Interim maintenance in a petition filed u/s 125 Cr.P.C. - It is subject to final adjudication of main petition. (2021(2) Civil Court Cases 812 (Allahabad))

Interim maintenance u/s 125 Cr.P.C. - For the same period for which interim maintenance

has been awarded under Domestic Violence Act is maintainable - However, Court would bear in mind the interim maintenance awarded in other proceeding while considering merits of application. (2021(2) Civil Court Cases 393 (Delhi)

SC **Jurisdiction** - Objection thereto - Passing of interim orders - Analysed. (2021(2) Civil Court Cases 502 (S.C.)

SC **Limitation** - Extension of limitation due to COVID-19 virus. (2021(2) Civil Court Cases 331 (S.C.)

Local Commissioner - Can be appointed to note down physical features and also to ascertain encroachment if any. (2021(2) Civil Court Cases 736 (Madras)

Maintenance - Neglected ones surviving somehow or being maintained by someone - Not a ground to deny maintenance. (2021(2) Civil Court Cases 240 (Kerala)

Maintenance pendente lite - Non disclosure of income by husband - Court to draw an inference against husband - Interim maintenance of Rs. 10,000/- per month granted from the date of application. (2021(2) Civil Court Cases 531 (Bombay)

Maintenance pendente lite - Wife cannot be denied maintenance pendente lite, even if she being a medical practitioner is earning something. (2021(2) Civil Court Cases 531 (Bombay)

Maintenance u/s 125 Cr.P.C does not finally determine status, rights and obligations of parties. (2021(2) Civil Court Cases 800 (Allahabad)

Minor - Sale of property of minor by de facto guardian - Void ab initio - Once sale is void ab initio, plaintiff can ignore the same and seek partition of his share in the suit property. (2021(2) Civil Court Cases 324 (Madras)

Muslim marriage - Muslim man may get married more than once without divorcing his earlier wife, but same does not apply to a Muslim lady. (2021(2) Civil Court Cases 199 (P&H)

Mutation - Mere mutation in Nagar Palika records is not a proof of title. (2021(2) Civil Court Cases 204 (Uttarakhand)

Mutation - On the basis of Will - Not permissible because revenue authorities have no jurisdiction to decide question of correctness of Will - Petitioner is at liberty to file a suit for declaration of title and permanent injunction. (2021(2) Civil Court Cases 311 (M.P.)

Oral agreement - There cannot be an oral agreement between two companies as per Companies Act. (2021(2) Civil Court Cases 668 (Telangana)

Partition - Suit for partition can be proceeded only if relationships are admitted between parties. (2021(2) Civil Court Cases 134 (Madras)

SC **Partition suit** - Seeking relief of declaration against agreement set up by defendants - Suit for partition is maintainable without seeking declaration against agreement to sell. (2021(2) Civil Court Cases 245 (S.C.)

Permanent injunction - Co-owners - Preventing other co-owners from altering nature of property is always in the nature of interim relief - There cannot be any permanent injunction for ever to keep other co-owners from enjoying suit property - Permanent injunction cannot be granted. (2021(2) Civil Court Cases 080 (Madras)

Permanent injunction - On basis of title - Once plaintiffs have failed to prove title, suit for injunction based on title has necessarily to be dismissed. (2021(2) Civil Court Cases 146 (Madras)

Police aid - To implement ex parte ad interim injunction order - Courts not to usually order grant of police aid to implement order of ex parte ad interim injunction order. (2021(2) Civil Court Cases 083 (A.P.)

SC Private out of Court settlement - By parties during pendency of appeal - Appellant is entitled to refund of Court fee. (2021(2) Civil Court Cases 042 (S.C.)

Production of documents - Order to take documents on record not to be construed that such documents are admissible in evidence. (2021(2) Civil Court Cases 143 (M.P.)

Public trust - Once a property is dedicated for public charity and merely for reason that same is being used by one of trustees or his legal heirs for personal use, it will not become their own property and will remain a public property. (2021(2) Civil Court Cases 204 (Uttarakhand)

Recall of witnesses for further cross examination - Not permissible merely on change of counsel. (2021(2) Civil Court Cases 323 (Karnataka)

SC Rejection of plaint - Claim in suit based on an agreement executed through power of attorney holder - It is open to Court to read terms of Power of Attorney alongwith plaint in the same manner as documents appended to the plaint, which form part of the plaint. (2021(2) Civil Court Cases 554 (S.C.)

Rejection of plaint - Contents of plaint does not disclose that suit is barred by limitation - Lack of specific date of knowledge does not disentitle plaintiff to an opportunity to prove his case - Application dismissed. (2021(2) Civil Court Cases 702 (Delhi)

Rejection of plaint - Correctness of averments not to be weighed by Court, at this stage. (2021(2) Civil Court Cases 436 (P&H)

Rejection of plaint - Dismissal of application without considering objections raised by defendants - Impugned order set aside. (2021(2) Civil Court Cases 217 (Rajasthan)

SC Rejection of plaint - Entitlement to sue or locus standi is an integral part of cause of action. (2021(2) Civil Court Cases 313 (S.C.)

SC Rejection of plaint - Existence of triable issues - Entire base of filing of suit is pre-emption agreement executed by Power of Attorney holder - In the absence of valid Power of Attorney, no right will accrue to the plaintiff - Order rejecting plaint, upheld. (2021(2) Civil Court Cases 554 (S.C.)

Rejection of plaint - Filing of a plaint on a cause qua which there is an arbitration clause, per se does not mean that plaint is barred by any law. (2021(2) Civil Court Cases 038 (H.P.)

Rejection of plaint - One out of several prayers beyond jurisdiction of trial Court - Plaint cannot be rejected on this ground. (2021(2) Civil Court Cases 234 (P&H)

Rejection of plaint - Order allowing application - It is appeal and not revision which lies thereagainst - However, where application is rejected it is revision which lies against such an order. (2021(2) Civil Court Cases 441 (Allahabad)

Rejection of plaint - Plaint can not be rejected on ground of subsequent event having taken place. (2021(2) Civil Court Cases 072 (J&K)

SC Rejection of plaint - Provision of O.7.R.11 CPC is not exhaustive - Court has inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of Court. (2021(2) Civil Court Cases 554 (S.C.)

Rejection of plaint - Vexatious claim should be thrown out at the threshold. (2021(2) Civil

Court Cases 534 (Uttarakhand)

Replication - Filing of documents alongwith replication - There is no complete bar on production of documents alongwith replication at a later stage - Requirement is one of seeking leave of Court - Procedures are handmade of justice and cannot be used to deny the same. (2021(2) Civil Court Cases 727 (Delhi)

Return of admitted document - Any person desirous of receiving back any document produced by him in the suit shall, unless the document is impounded is entitled to receive back the same. (2021(2) Civil Court Cases 243 (Telangana)

Return of plaint - Court when determines, at any stage, that it lacks jurisdiction, then plaint is to be returned and no determination can be made on merits of case. (2021(2) Civil Court Cases 327 (Allahabad)

Revenue entries - Partition suit - Entries in revenue records do not amount to severance of status - It is for parties to establish by credible evidence that there was an equitable partition. (2021(2) Civil Court Cases 479 (Karnataka)

Sale deed - Misdescription of field Gat number and boundaries - It is boundaries which would prevail over field Gat number. (2021(2) Civil Court Cases 211 (Bombay)

Sale deed - Mistake in description of properties or boundaries - It is duty of both parties to take care while mentioning description of properties in the sale-deed - If there is any mistake in description of properties or boundaries in sale deed the same cannot be said to be a mistake of one party and not of both the parties to such contract. (2021(2) Civil Court Cases 211 (Bombay)

Sale deed - Mistake in description of properties or boundaries - Not a mistake of one party - Either party may institute a suit for correcting the description of suit property. (2021(2) Civil Court Cases 211 (Bombay)

Secondary evidence - Power of attorney - Plaintiff successfully proved existence of power of attorney - Defendants denied not in possession of any such power of attorney - Order granting permission to plaintiff to prove the same by way of secondary evidence, upheld. (2021(2) Civil Court Cases 040 (P&H)

Senior citizen - Seeking cancellation of transfer of property - Restraining alienation during pendency of proceedings - To be construed to be in exercise of inherent power u/s 23 of the Act itself. (2021(2) Civil Court Cases 401 (P&H)

Senior citizen or parent can seek order of maintenance - It is not necessary that a parent must be a senior citizen - In the case of a senior citizen, he or she can file an application against a relative or children, as the case may be - However, in case of a parent, relief can be granted only against children. (2021(2) Civil Court Cases 806 (Kerala)

Settlement - Unilateral revocation of settlement deed by donor is impermissible in law. (2021(2) Civil Court Cases 172 (Madras)

Specific performance - Balance sale consideration remained with plaintiff throughout - Decree of specific performance modified that plaintiff shall pay balance consideration alongwith interest @ 9%. (2021(2) Civil Court Cases 597 (P&H)

Specific performance - Condition put by plaintiff beyond terms of agreement - This disentitles plaintiff to the relief of specific performance. (2021(2) Civil Court Cases 641 (Uttarakhand)

SC **Specific performance** - Court after amendment of S.10 of Specific Relief Act is obliged to

enforce specific performance of a contract subject to provisions of Ss.11(2), 14, 16 of the Act - Relief of specific performance of contract is no longer discretionary after amendment. (2021(2) Civil Court Cases 671 (S.C.)

Specific performance - Decree for specific performance cannot be granted merely on proof of execution of agreement - Court is bound to look upon real intent of parties at the time of execution of agreement. (2021(2) Civil Court Cases 746 (Chhattisgarh)

Specific performance - Readiness and willingness - Readiness implies financial capacity to discharge one's part of contract - Whereas, willingness refers to psychological or mental inclination to go ahead with contract. (2021(2) Civil Court Cases 619 (Allahabad)

SC **Specific performance** - Subsequent purchaser can challenge readiness and willingness on the part of plaintiff. (2021(2) Civil Court Cases 219 (S.C.)

Stay of subsequent suit - Absolute identity of parties in both the suits is not a consideration. (2021(2) Civil Court Cases 127 (P&H)

Stay of subsequent suit - It is trial and not institution of subsequent suit which is barred. (2021(2) Civil Court Cases 127 (P&H)

Suit barred U.O.9.R.9 and S.11 CPC - Any finding in a suit which is not maintainable has no bearing in law. (2021(2) Civil Court Cases 049 (Karnataka)

Summoning as a witness of erstwhile lawyer of predecessor-in-interest of defendant as regards factual information as to whether his client entered into compromise in his presence or signed the same etc. - This cannot be termed as privileged information. (2021(2) Civil Court Cases 635 (P&H)

SC **Transfer of a case** - Second application - Dismissal of petition for transfer does not operate as res judicata when a fresh petition is filed on change of circumstances. (2021(2) Civil Court Cases 108 (S.C.)

Transfer of divorce petition - Merely because short dates are given to parties, no malice can be attributed on Court. (2021(2) Civil Court Cases 062 (M.P.)

Withdrawal of suit - Non-joinder of parties does not fall in term 'formal defect'. (2021(2) Civil Court Cases 767 (Chhattisgarh)