

IMPORTANT DECISIONS

Ad interim injunction - Police assistance to implement - Can be provided even when order is not made absolute. (H.P.) 800

Additional evidence at appellate stage - Once a witness is examined, his testimony cannot be allowed to be replaced by another set of facts in order to remove a lacuna. (Delhi) 408

SC Agreement to sell - So long as suit for specific performance is filed within period of limitation, delay cannot be put against the plaintiff. (S.C.) 622

Agreement to sell - Once sale deed is executed, agreement to sell pales into insignificance - However, in a particular case where unimpeachable evidence comes, Court can examine validity of sale deed while making reference to the agreement to sell. (P&H) 074

SC Agreement to sell - Property valued at Rs.6 lakhs agreed to be sold for Rs.3.65 lakhs - Parties can negotiate price - Nothing can be derived from the erroneous assumption that a valuable property had been sold at a throwaway price. (S.C.) 622

Amendment of written statement - Additional grounds to resist eviction - Application cannot be rejected by entering into merits of amendment. (Rajasthan) 668

SC Appeal - Cross objections filed in appeal - Dismissal of appeal though on merits, yet by itself would not result in dismissal of cross objection also. (S.C.) 810

Application U.O.11.Rr.12, 14 r/w S.151 CPC - Can be moved in proceedings relating to temporary injunction. (Rajasthan) 415

SC Bar of O.2.R.2 - Ancestral property - Two sale deeds executed on different dates - Both the sale deeds challenged in two suits - At the time when first suit was filed second alienation could be challenged - Second suit is barred U.O.2.R.2 CPC. (S.C.) 480

SC Benami transaction - Merely because some financial assistance was given by father to his sons to purchase the properties, transactions cannot be said to be benami in nature. (S.C.) 511

SC Benami - Merely because husband contributed part sale consideration, it cannot be inferred that sale deed in favour of wife was benami transaction and for and at behalf of joint family. (S.C.) 653

SC Civil Suit - Contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law - A decision rendered by Courts in an unsatisfactory conducting of trial of suit is not legally sustainable. (S.C.) 117

Comparison of signatures - Admission of execution of agreement - Not open to seek verification of thumb impression and signatures. (Karnataka) 207

SC Compromise - Order to record compromise does not amount to a decree - Court at first has to pass an order as to recording of compromise and then simultaneously pass a decree in accordance with the order. (S.C.) 574

Compromise/consent decree - Separate suit to challenge - Bar to maintainability of suit U.O.23.R.3-A CPC is only with respect to decrees passed on the basis of compromise and not on the basis of consent. (P&H) 132

Condonation of delay - Delay to be condoned when it is not inordinate delay and other party can be monetarily compensated. (H.P.) 521

SC Consumer complaint - Dismissal of complaint on technical ground - Such dismissal only add to the burden of litigation and defeat the purpose of ensuring justice in the consumer fora - Complaint restored. (S.C.) 275

SC Consumer - Booking of four flats by an individual - By itself not conclusive that flats were booked for commercial resale. (S.C.) 748

SC Consumer - Condoning marginal delays - It is harsh to penalise a bona fide litigant for marginal delays. (S.C.) 275

SC Consumer - Disclosure of previous insurance policy - However, claims lodged and settlement of claims not disclosed in defiance of specific clause in the proposal form - Claim repudiated - Complaint dismissed. (S.C.) 523

SC Consumer - Medical negligence - Commission cannot order constitution of a medical board to collect evidence on behalf of complainant. (S.C.) 562

SC Consumer - Mediciclaim policy - Repudiation - Failure of insured to disclose past history of cardiovascular disease is a good ground for repudiation. (S.C.) 419

SC Consumer - Order passed by State Commission in execution proceedings - Revision thereagainst in National Commission - Not maintainable. (S.C.) 321

SC Consumer - Respondent no.2 not unconnected with project or impleaded as a party without any reason or basis - Order deleting respondent no.2 from array of parties set aside. (S.C.) 796

Costs - Non payment - It is mandatory on the part of Court to disallow further prosecution of the suit or the defence as the case may be. (P&H) 709

Counter claim to include some properties in suit for partition - Permissible. (Karnataka) 751

Court decree - Not compulsorily registerable - Option lies with the party - Time limit stipulated u/s 23 of Registration Act has no application to a Court decree. (Madras) 328

Cross examination - Opposite party whether a proforma party or necessary party has right to cross examine the witness. (T&A) 172

Cross-examination - Right to cross examine witness cannot be closed by merely on the ground of asking irrelevant questions. (H.P.) 266

Dishonour of cheque - Accused in a complaint u/s 138 N.I. Act is entitled to lead evidence on affidavit. (Gujarat) 137

Dishonour of cheque - Accused not entitled to give evidence on affidavit - Affidavit of examination-in-chief is no examination-in-chief of accused - Evidence given by accused in cross examination also cannot be acted upon. (Kerala) 752

Dishonour of cheque - Alteration of payee's name - Amounts to material alteration - Makes the instrument void and no criminal action lie on the basis of such an instrument. (Kerala) 752

SC Dishonour of cheque - Amendment of provision of S.148 coming into force on 01.09.2018 is applicable to a complaint u/s 138 of the Act filed even prior to coming into force of the amended provision. (S.C.) 001

Dishonour of cheque - Appeal against conviction - (i) Appellate Court can impose minimum of 20% and maximum amount can go to any extent; (ii) Order to

deposit minimum of 20% of fine/compensation is mandatory and not discretionary;
 (iii) Accused in stringent financial condition directed to deposit 20% instead of
 25% of the fine amount. (Kerala) 808

Dishonour of cheque - Cheque issued towards share of profit of joint
 business - No proof of business or accrual of profit - Accused acquitted.
 (Rajasthan) 422

SC **Dishonour of cheque** - Delay in filing complaint - Complainant indicated
 adequate and sufficient reasons for not being able to institute complaint within
 stipulated period - Impugned order of quashing complaint set aside. (S.C.) 203

Dishonour of cheque - Issuance of cheque when admitted, existence of
 legal debt follows - It is for the accused to prove that cheque was not for legal debt
 or liability. (P&H) 124

Dishonour of cheque - Liability admitted - Accused prayed that his salary
 be attached - Order accordingly - Trial Court to ensure that for delayed payments
 complainant is compensated by appropriate lawful interest. (Rajasthan) 301

Dishonour of cheque - Notice not replied - It automatically means that
 accused admitted his liability and he did not chose to contest the legal notice.
 (P&H) 528

Dishonour of cheque - Notice - Omission or error in mentioning nature of
 debt or liability in notice does not render notice invalid. (Kerala) 403

SC **Dishonour of cheque** - Order of acquittal rightly reversed as presumption
 was not taken into consideration - Moreover trial Court committed an error in
 placing heavy burden on the complainant to prove debt. (S.C.) 708

Dishonour of cheque - Petition for quashing summoning order on the
 basis of some technical defect is clear cut abuse of the process of law - Petition
 dismissed. (P&H) 528

Dishonour of cheque - Pre mature complaint - Not a valid complaint.
 (Allahabad) 262

Dishonour of cheque - Presumption - Unrebutted plea that cheque was
 issued to discharge liability or that it was issued towards legally recoverable debt
 has to be believed - Accused convicted. (P&H) 519

SC **Dishonour of cheque** - Provision of S.143-A is prospective in nature -
 Interim compensation can be ordered to be paid if offence was committed after
 introduction of said provision. (S.C.) 613

Dishonour of cheque - Provisions of S.143-A & 148 of NI Act -
 Retrospective or prospective - (i) Substantive laws - Applicability is prospective in
 nature unless prescribed to be retrospective; (ii) Procedural laws - Applicable to all
 cases pending immediately on their coming into operation; (iii) S.143-A casts a
 substantive obligation, as such, provision is applicable prospectively; (iv) S.148 is
 the Act is purely procedural in nature and shall govern all appeals pending on date
 of enforcement of the provision or filed thereafter; (v) If there is no order of fine
 or compensation then there cannot be any order of deposit of any amount at appellate
 stage; (vi) Order of Appellate Court to deposit 20% of amount of fine or
 compensation is recoverable u/s 421 Cr.P.C. (P&H) 688

Dishonour of cheque - Sole Proprietorship firm - Petitioner made an
 accused through firm and not in her individual capacity - As petitioner is sole
 proprietor and she had issued cheque is liable to be proceeded u/s 138 of the Act.
 (Rajasthan) 282

Divorce by mutual consent - Petition for divorce filed before expiry of period of one year from date of separation of parties - High Court has power to waive cooling period of one year - Marriage dissolved by mutual consent with immediate effect. (Rajasthan) 687

SC **Divorce by mutual consent** - Consent terms - Wife can give up her right of maintenance or permanent alimony or stridhan but she cannot give up rights which vest in the daughter insofar as maintenance and other issues are concerned. (S.C.) 533

Divorce - Counter claim to seek relief under Hindu Marriage Act - No period of limitation is prescribed for filing counter claim. (Bombay) 716

Divorce - Cruelty - Allegation of illicit relations and love affairs of husband raised by wife in her written statement but no evidence led - Amounts to cruelty even when such plea is not taken in the divorce petition but such allegations are made by wife in her written statement. (Bombay) 009

Divorce - Forcible sex, unnatural or natural, is an illegal intrusion in the privacy of the wife and amounts to cruelty against her. (Allahabad) 760

Divorce - In favour of husband - Appeal at the instance of wife is maintainable even after death of husband. (P&H) 670

Divorce - Wife filed appeal within time - Summons of appeal not served on husband - Husband remarried - Husband did not make any effort to find out as to whether any appeal had been filed or not - Conduct of husband amounts to civil contempt. (P&H) 630

Domestic Violence Interim maintenance - Jurisdiction - Material adduced on record by husband not looked into - Wife served in the present case at a address in a different district - Impugned order granting interim maintenance set aside and matter remitted for decision of issue of jurisdiction afresh. (H.P.) 468

SC **Domestic violence** - Mere passing of an order u/s 125 Cr.P.C does not preclude respondent from seeking appropriate reliefs under Domestic Violence Act. (S.C.) 852

Domestic Violence - Proceedings u/s 12 or S.23(2) of the Act - Court in its discretion can allow evidence on affidavit and permit cross examination to test veracity of the evidence. (Kerala) 496

SC **Domestic violence** - Wife entitled to claim residence in shared household only if she establishes domestic violence. (S.C.) 041

Domestic Violence - Interim maintenance - Normally to be awarded from date of application - For awarding maintenance from date of order there have to be compelling circumstances. (Delhi) 536

Equitable mortgage - Can be created by deposit of either original title deed or certified copies or Photostat copies of title deeds. (A.P.) 590

Ex parte decree - Setting aside - Counsel pleading no instructions - Notice to defendant not given - Ex parte decree set aside. (P&H) 619

Ex parte decree set aside - O.9.R.13 CPC cannot be made for retrieving lost opportunity to file written statement. (Orissa) 853

SC **Ex parte decree** - Setting aside - Counsel could not appear due to boycott of Courts by Advocates - Sufficient cause shown for non appearance - Ex parte decree set aside. (S.C.) 298

SC **Ex parte decree** - Setting aside - In execution sale deed executed - Summons

received by mother but mother did not bring the receipt of summons to the notice of defendant - Ex parte decree set aside by putting defendant on terms.

(S.C.) 310

SC Ex parte divorce decree - Husband remarried thereafter - Ex parte decree set aside in appeal - Second wife not made party in appeal - Impugned order is wholly without jurisdiction - Matter remanded. (S.C.) 447

Exchange of immovable property - Has to be through registered deed of exchange. (Jharkhand) 120

Execution - Objections by third party in execution of a decree for specific performance - Not maintainable. (Rajasthan) 706

Exparte decree - Setting aside - Application is not maintainable at the instance of a person not party to the suit. (Allahabad) 267

SC Injunction order - Disobedience - Has to be not mere 'disobedience' but it should be 'willful disobedience'. (S.C.) 720

SC Injunction - Co-sharer - Plaintiff not entitled to injunction against other co-sharers - Possession of one co-sharer is possession of all co-sharers - It cannot be adverse to them, unless there is denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period. (S.C.) 134

Injunction - Once it is proved that plaintiff is in possession, then regardless of title of property or capacity in which plaintiff is holding property, he would normally be entitled to an injunction. (H.P.) 787

SC Insurance against personal accident - Death due to malaria - It was not a peril insured against in the policy of accident insurance. (S.C.) 066

Interim injunction - Disobedience - Respondent No.2 not a party in the suit - Not established on record that he was working on behalf of defendant - Application rightly dismissed. (Rajasthan) 759

Interim maintenance - Second application - Not barred by constructive res judicata when in the first application wife had claimed only litigation expenses. (Allahabad) 340

Jurisdiction - Agreement conferring exclusive jurisdiction in one Court having jurisdiction not in violation of S.28 of Contract Act and S.62 of Copyright Act, when intention of parties is clearly discernible from agreement itself. (Delhi) 042

Lease - Without specifying terms of lease - Such lease can be terminated and properties can be recovered back. (Kerala) 148

Maintenance pendente lite - Order that there shall be set off regarding the amount of maintenance received by wife under any other provision of law - No interference warranted in the impugned order. (Rajasthan) 840

Maintenance to children u/s 125 Cr.P.C. - Working wife - Under obligation to contribute in maintenance. (Rajasthan) 212

Maintenance to minor child - Earning mother - Mother should contribute towards the expenses of the child but expenses cannot be divided equally between the two. (Delhi) 399

Marriage - Third party questioning marriage - Petition at the instance of third party not maintainable before Family Court. (Gauhati) 115

SC **Medical negligence** - Surgery not the only life saving option at that time - Action to operate upon patient cannot be said to be prudent decision - Surgeon not absolved from the allegation of medical negligence. (S.C.) 728

SC **Notice u/s 106 TPA** - Once lease stood determined by efflux of time, there is no necessity for a notice of termination. (S.C.) 818

Notice u/s 80 CPC issued to Chief Secretary of State - Same is substantial compliance of S.80(1) CPC. (Orissa) 063

Notice u/s 80 CPC - Non service of notice - Objection can be raised by only that party for whose benefit the provision is enacted. (Rajasthan) 109

Plaintiff as defendants witness - Not permissible. (Bombay) 532

Pleadings - Unamended pleadings do not lose its significance after amendment of pleadings - Admission made in the unamended written statement can be used by Court unless it has been successfully explained to be erroneous in the subsequent pleadings and evidence. (P&H) 074

Power of attorney, having knowledge of entire facts, examined - Defendant thereafter cannot be allowed to be examined as a witness. (Karnataka) 198

Rejection of plaint - Frivolous litigation - Plaint can be rejected u/s 151 CPC even in the absence of available grounds U.O.7.R.11 CPC. (Rajasthan) 160

Rejection of plaint - Limitation - O.7.R.11 CPC is applicable when limitation can be ascertained in unambiguous terms from plaint and not when something additional is necessary to ascertain limitation. (H.P.) 214

SC **Rejection of plaint** - Plaint can be rejected as a whole and not in part - Also not permissible to reject plaint qua some of the defendants. (S.C.) 583

SC **Rent & Eviction** - Tenant - Death of person who created tenancy having life interest under Will - Such inducted person is a tenant - Tenancy cannot be disrupted or brought to an end except on grounds specified in the enactment. (S.C.) 383

SC **Rent & Eviction** - Landlord not necessarily owner of property - A person who held a life interest under Will would fall under the definition of landlord, as expression landlord is relatable to an entitlement to receive rent in respect of any building or rented land. (S.C.) 383

SC **Rent & Eviction** - Law as to : (i) Tenancy whether solely for residential or commercial or for composite purpose - Question is required to be pleaded first and then proved by adducing evidence; (ii) Question as to maintainability of eviction petition not raised in written statement as such Prescribed Authority rightly did not decide this question either way; (iii) Maintainability of petition neither raised in trial Court nor in First Appellate Court - First Appellate Court was right in not deciding this question either way; (iv) Plea as to maintainability of eviction petition cannot be raised for the first time in appeal, revision or writ, as the case may be, for want of any factual foundation and finding; (v) If tenancy is for composite purpose because some portion of tenanted premises was used for residence and some portion for commercial purpose i.e., residential and commercial, then landlord has right to seek eviction of tenant for his residential need or commercial need, as the case may be; (vi) Concurrent findings of two Courts - High Court exceeded its jurisdiction in interfering with the concurrent findings of fact of two Court below while allowing writ appeal entirely on new ground of maintainability of application without examining the legality and correctness of the concurrent findings of two Courts below; (vii) Concurrent findings of facts of two Courts below - Binding on

Writ Court because these findings were based on appreciation of evidence and therefore did not call for any interference in the writ jurisdiction. (S.C.) 258

Replication - Non-filing of replication - Does not amount to deemed admission of fact in written statement. (H.P.) 054

Restoration of suit dismissed in default - Statutory period for filing restoration application is the date of order and not knowledge of order. (H.P.) 232

SC **Second appeal** - Framing of substantial question of law in second appeal is not mandatory so far as State of Punjab is concerned. (S.C.) 606

Secondary evidence - Non filing of reply or to make any objection to the application filed u/s 65 of the Act - Court to take a liberal view in allowing application. (Rajasthan) 733

Secondary evidence - Vague averment that document is not traced - Not sufficient to allow secondary evidence. (H.P.) 665

Senior Citizen - Gift deed - Mother forced to leave house - Vague denying of allegations - Tribunal has no option but to accept pleadings on record - Requirement of formal evidence arises only if pleadings warranting it had been made. (Kerala) 722

Senior Citizen - Property of senior citizen - Word "transfer of property" by way of gift or otherwise, would not include partition, as it is not a transfer. (Karnataka) 813

Senior Citizens - Settlement deed executed by parents in favour of son before Act came into force - Cancellation of settlement deed by exercising power under the Act - Impugned order set aside. (Madras) 170

Senior Citizens - Word parent includes step father and step mother. (Chhattisgarh) 610

Senior Citizens - 'Permission to occupy' includes in the expression 'Transfer of Property' as it tantamount to creating an interest in immovable property. (Karnataka) 163

Service of summons - Defendant not residing in India - Service of summons on defendant can be effected by means of Electronic Mail Service on e-mail address. (P&H) 784

Specific performance - Enforcement of agreement through Court - Not dependent on a clause in the agreement to that effect. (P&H) 146

SC **Stay of proceedings** - Vacation of stay on expiry of six months unless extension is granted - Not applicable to interim orders granted by Supreme Court. (S.C.) 785

Succession certificate - Vehicle permit under Motor vehicle Act is not a debt or security - Succession certificate in respect of the same is not mandatory. (Calcutta) 376

Suit for mandatory injunction - Limitation - Three years when right to sue accrues. (P&H) 197

Suit for mandatory injunction - When efficacious remedy in the form of suit for recovery is available then filing of suit for mandatory injunction is hit by S.41(h) of Specific Relief Act. (P&H) 842

Suit for possession - Sale effected by defendant not assailed - In absence of any declaration such sale could not be set aside - Relief of possession does not include the relief of declaration. (H.P.) 354

SC **Transposition of defendant as plaintiff** - Withdrawal or abandoning of suit - Transposition is permissible for effectual and comprehensive adjudication of all the matters in controversy in the suit, only when defendant seeking transposition is having an interest in the subject matter of suit. (S.C.) 452

Will - Attesting witnesses not from the village of testator - Not a suspicious circumstance - Testator would definitely choose a person upon whom he could trust and place confidence. (H.P.) 564

Will - Exclusion of natural heir not lends suspicion to a Will, but it will constitute one if it goes unexplained. (Madras) 824

Will - Mere participation of beneficiary or his relation in execution of Will - Not a suspicious circumstance as beneficiary not put any suggestion about any undue pressure, influence having been put by him on the testator for executing the Will. (H.P.) 564

Will - When both attesting witnesses are not present at same time, still Will can be validly executed and attested, as it is not necessary that both the attesting witnesses must be present at one point of time. (P&H) 155

Will - First page of Will not signed by testator or attesting witnesses - One of attesting witness did not acknowledge that he had appended signatures or signed on direction/dictation of testator, which is one of requirements as per S.63(c) of Succession Act - Will rightly discarded. (P&H) 208

Will - Suspicious circumstances - Recital in Will that testator is having no close relation - Father and sister alive - Renders Will suspicious. (Allahabad) 543

SC **Will** - There is no express prescription in the statute that testator must necessarily sign the Will in presence of attesting witnesses only or that two attesting witnesses must put their signatures on the Will simultaneously at the same time in presence of each other and testator. (S.C.) 634

Withdrawal of suit - Omission to implead a necessary party - Not a formal defect. (H.P.) 283

Wrong provision of law - An application cannot be dismissed solely on the ground that wrong provision of law has been mentioned. (H.P.) 860
