



SAGA LEGAL

COMMUNIQUE

JUNE 2022



TABLE OF CONTENTS

Courts this Month	1
Notifications/Amendments Insight	8
Deals of the Month	10



COURTS THIS MONTH

- The Supreme Court in the case of *Somakka (Dead) By Lrs. vs. K.P. Basavaraj (Dead) By Lrs. (Civil Appeal No. 1117 of 2009)* has set aside the order passed by the Karnataka High Court and held that as per Section 96 read with Order 41 Rule 31 of the Civil Procedure Code, 1908 (“**CPC**”) it is the duty of the first appellate court to consider evidence on record, in particular the evidence that is relied upon by the trial court to arrive at a decree. The Bench comprising of Justice S. Abdul Nazeer and Justice Vikram Nath reinstated the decree passed by the trial court and opined that as per Order 41 Rule 31 of the CPC, “... *the judgement of the Appellate Court shall be in writing and would include the points for determination, the decision thereon, the reasons for the decision and where the decree is reversed or varied, the relief to which the appellant is entitled*”.... “*From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record...*”
- The Supreme Court in the case of *Bharat Bhushan Gupta vs. Pratap Narain Verma And Anr. (Civil Appeal No. 4577 of 2022)* held that the market value does not become a decisive factor in determining suit valuation merely because the subject matter involves immovable property. In the present case, the Bench comprising of Justice Dinesh Maheshwari and Justice Vikram Nath was hearing an Appeal filed against the order passed by the Delhi High Court. The Court observed that Section 7(iv)(d) of the Court Fees Act, 1870, clearly states that for an injunction suit, the computation of fee payable has to be in accordance with the amount at which the relief sought is valued in the plaint or memorandum of appeal and in all such suits the plaintiff shall state the amount at which he values the relief sought. In furtherance of the aforesaid, the Court opined “...*that the High Court has totally omitted to consider the applicable provision of law i.e., Section 7(iv)(d) of the Court Fees Act as also the principles of law stated in the very same decision being referred to and relied upon in the impugned order itself...*”
- In the case of *The Oriental Insurance Co Ltd vs. K. Narasimha Reddy (Civil Appeal No. 7694 Of 2013)*, the Supreme Court has rejected the insurance company’s insistence to produce a driving license that was destroyed/burnt in an accident. The Bench comprising Justice M.R. Shah and Justice Aniruddha Bose was hearing an appeal filed by the insurance company against the order passed by the National Consumer Disputes Redressal Commission (“**NCDRC**”). As per the said order of the NCDRC, the insurance company was directed to release the claim amount to the claimants. In regards to



the aforesaid, the Bench observed *"..From the material on record, it emerges that the Insurance Company repudiated the claim on the ground that the Driving Licence was not produced. However, it is required to be noted that there are concurrent findings and even the Surveyor's Report also suggests that the Driving Licence was burnt in the accident. Still, the Insurance Company insisted on producing the document, which was beyond the control of the insured."*

- The Supreme Court in the case of *Saud Faisal vs. State of Uttar Pradesh & Anr. (Special Leave to Appeal (Crl.) No(s). 5647/2022)* has ruled that the witness cannot be recalled under Section 311 of the Code of Criminal Procedure, 1973, ("Cr.P.C.") solely on the ground that a different statement was given by the same prosecution witness in another case relating to the same incident. The Bench comprising of Justice C.T. Ravikumar and Justice Sudhanshu Dhulia affirming the trial court's view held that *"...the trial court has rejected this application and in our view rightly so, for the reasons that merely because a different statement was given by the same prosecution witness in another case that itself would not be a reason for recalling the witness and that too, after a period of seven years. It is not a case where a contradictory statement was given by some other witnesses in the present trial."*
- The Supreme Court in the matter of *Manoj Pratap Singh vs. The State Of*

Rajasthan (Special Leave Petition (Crl.) Nos. 7899 - 7900 Of 2015) while confirming the death sentence of a convict for committing rape and murder of a seven-and-a-half-year-old girl who was mentally and physically challenged, stated that the judiciary has never tried to avoid awarding capital punishment in deserving cases. The Bench comprising of Justice A.M. Khanwilkar, Justice Dinesh Maheshwari and Justice C.T. Ravikumar observed that *"...it has never been the effort of the Courts to somehow make this punishment (sentence of death) redundant and non-existent for all practical purposes. The quest for justice in such cases, with death sentences being awarded and maintained only in extreme cases, does not mean that the matter would be approached and examined in the manner that death sentence has been avoided, even if the matter indeed calls for such a punishment. The judicial process, in our view, would be compromising on its objectivity if the approach is to nullify the statutory provision carrying death sentence as an alternative punishment for major offences (like that of Section 302 IPC), even after it has passed muster of judicial scrutiny and has been held not unconstitutional..."*

- In the matter of *Zakia Ahsan Jafri vs. State Of Gujarat & Anr. (Diary No. 34207/2018)*, the Supreme Court held that conspiracy cannot be readily concluded merely on the basis of the inaction or failure of the state administration. The Bench comprising



Justice A.M. Khanwilkar, Justice Dinesh Maheshwari and Justice C.T. Ravikumar had dismissed the appeal filed by Zakia Jafri challenging the clean chit given by the Special Investigation Team to Prime Minister, Narendra Modi and 63 (sixty-three) other state functionaries in the 2002 Gujarat riots case. The Bench held that “...inaction or failure of some officials of one section of the State administration cannot be the basis to infer a pre-planned criminal conspiracy by the authorities of the State Government or to term it as a State sponsored crime (violence) against the minority community...” “...to make out a case of larger criminal conspiracy, it is essential to establish a link indicative of meeting of minds of the concerned persons for commission of the crime(s), committed during the relevant period across the State...”

- The Supreme Court in the matter of *Ex. Ct. Mahadev vs. Director General, Border Security Force (Civil Appeal No. 2606 Of 2012)* observed that the Accused who has taken the plea of self-defence is not required to prove his/ her action beyond a reasonable doubt, only dominance of probabilities is sufficient to show. The Bench comprising of Justice B.R. Gavai and Justice Hima Kohli observed that “*On a broad conspectus of the events as they had unfolded, we are of the opinion that the right of private self-defence would be available to the appellant keeping in mind preponderance of probabilities that leans in favour of the appellant. In*

fact, in a situation where he was suddenly confronted by a group of intruders, who had come menacingly close to him, were armed with weapons and ready to launch an assault on him, he was left with no other option but to save his life by firing at them from his rifle and in the process two of the shots had pierced through the deceased, causing his death. We are therefore of the opinion that the appellant ought not to have been convicted for having committed the murder of the deceased. Rather, the offence made out is of culpable homicide not amounting to murder under Exception 2 to Section 300 IPC, thereby attracting the provisions of Section 304 IPC.”

- The High Court of Delhi in the case of *Pink City Expressway Private Limited versus National Highways Authority of India & Anr. (FAO(OS) (COMM) 158/2022)*, held that an order under Section 9 of the Arbitration & Conciliation Act, 1996 should not provide for specific performance under the contract. The Division Bench comprising of Justice Jyoti Singh and Justice Anoop Kumar Mendiratta held that any grant of extension of the time period of the contract is nothing but a grant of specific relief under the garb of interim measures. The same is beyond the scope and powers of the Court under the said section.
- The High Court of Orissa in the case of *Subash Mohapatra & Ors. vs. State of Odisha & Anr. (W.P.(C) No. 14286 of 2016)* has ruled that the General



Administration ('Vigilance Department') of the Government of Odisha cannot enjoy blanket immunity from the applicability of the Right to Information Act, 2005 ("RTI Act"). A Division Bench comprising Chief Justice Dr. S. Muralidhar and Justice R.K. Pattanaik was dealing with the petitions challenging a 2016 government notification that kept the Vigilance Department outside the purview of the RTI Act. In light of the same, the Court observed that *"...the notification insofar as it prevents disclosure of information concerning the General Administration (Vigilance) Department even when it pertains to allegations of corruption and human rights violations would be contrary to the first proviso to Section 24 (4) of the RTI Act and, by that yardstick, would be unsustainable in law. If under the RTI Act disclosure is the norm, and non-disclosure the exception, then the impugned notification seeks to take away what is provided by the RTI Act and is therefore ultra-vires the RTI Act."*

- The High Court of Kerala in the case of *Vijay Babu vs. State of Kerala & Anr. (Bail Appl. No. 3475 Of 2022)* held that an application for pre-arrest bail can be filed even by a person residing outside India provided that the accused must be present in India before the final hearing. A Single-Judge Bench of Justice Bechu Kurian Thomas while granting the anticipatory bail to the actor in a rape case opined that *"Section 438 of the Criminal Procedure Code, 1973, does not contain a*

restrictive mandate that a person residing outside the country cannot file an application for anticipatory bail. It is possible that a person can apprehend arrest even outside the country for an offence that occurred in India. With the advancement in investigative technology and communication, the various agencies of investigation could even be deployed to arrest a person outside the country. An apprehension of arrest can arise even while the applicant is residing outside the country. Thus, when a bonafide apprehension exists, the statute confers power on such a person to seek protection from arrest. In the absence of any restrictive clauses in S.438, restricting the right of a person residing outside the country from filing an application for pre-arrest bail, the court cannot read into the provision such a restriction which the legislature did not incorporate."

- The High Court of Allahabad in the matter of *M/S SJS Gold Pvt. Ltd. Thru. Director Sunil Jaihind Salunkhe and Another vs. State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Civil Secrtr. Lko and Others (Criminal Misc. Writ Petition No. - 3511 Of 2022)* has held that non-reporting of the seizure of a bank account by the Police under Section 102(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C.") immediately to the magistrate concerned doesn't render such seizure as ipso facto illegal. The Division Bench comprising of Justice Ramesh Sinha and Justice Saroj Yadav heavily relied on the case



of c wherein the Court has held that *“Section 102 (3) Cr.P.C. is not mandatory but it is directory...” “...non-reporting of the seizure forthwith, as provided under Section 102 (3) Cr.P.C., shall not ipso facto render the seizure illegal particularly as no period is specified and its consequences have not been provided.”*

- In the case of *Harjit Singh vs. State of Punjab and Others (CRM-M-25289 of 2022)*, the High Court of Punjab and Haryana held that Section 482 of the Code of Criminal Procedure (**“Cr.P.C.”**) cannot be invoked wherein the limitation period for invoking proceedings under Section 138 of the Negotiable Instruments Act, 1881 (**“NI Act”**) had elapsed. A Single-Judge Bench of Justice Vinod S. Bharadwaj opined that *“...the submission of the representation and approaching this Court is apparently an attempt on the part of the petitioner to arm twist the respondents to issue fresh cheques as the time period for institution of the complaint pursuant to the earlier cheques having been dishonoured has already expired since then. The process of law cannot be taken recourse to circumvent the due procedure prescribed in law.”*
- The High Court of Madras in the case of *Dinesh vs. State (Criminal Appeal No.737 of 2018)* has ruled that a man cannot be convicted solely on the basis of an extra-judicial confession unless it is fully corroborated by some other evidence of clinching nature. In the

present case, the Division Bench comprising of Justice Paresh Upadhyay and Justice A.D. Jagdish Chandira has set aside the order of conviction and sentence of a man who was accused of murdering his friend and thereafter burying his dead body. The Bench observed that *“...Of course, an extra-judicial confession attains greater credibility and evidentiary value only if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. The entire chain of circumstances, on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. It is also the settled law that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession.”*

- In the case of *Sunku Vasundhara vs. State Bank of India (W.P. Nos.14398 of 2022)*, the High Court of Madras held that Article 226 of the Indian Constitution cannot be invoked if an effective statutory remedy lies before the Appellate Authority i.e. National Company Law Appellate Tribunal (**“NCLAT”**). The Division Bench comprising of Justice T. Raja and Justice K. Kumaresh Babu was dealing with a writ of certiorari filed challenging



the order passed by the NCLAT that had directed the Resolution Professional to file an Interim Application under Section 106 of the Insolvency and Bankruptcy Code, 2016. The Bench further held that *“Since the petitioners are having effective and statutory remedy before the Appellate Authority, they cannot come to this Court invoking Article 226 of the Constitution of India. If they are aggrieved, they have to work out their remedy by filing an Appeal before the Appellate Authority.”*

- The Bombay High Court in the matter of *The Board of Control for Cricket in India vs. Regional Director Employees State Insurance Corporation and Anr. (First Appeal St No.25980 Of 2021)* ruled that the Employee State Insurance Act, 1948 (“**ESI Act**”) shall be applicable to the Board of Control for Cricket in India (“**BCCI**”) as the nature of activities conducted by BCCI are commercial activities under the ESI Act making the regulatory body liable to pay its employer’s contribution to the ESI Corporation (“**ESIC**”). A Single-Judge Bench of Justice Bharti Dangre observed that *“It can be seen that the BCCI is carrying out a business, commercial activity and earning money out of the said activity. Furthermore, its activities are not only restricted to providing entertainment, but TV broadcasting rights are also sold by the Board to TV companies by auction, which is again a systematic commercial activity. By conducting Indian Premier League (IPL) and exercising control*

over this tournament, founded by the BCCI in the year 2007, which is the most attended cricket league in the world and ranked 6th by average attendance amongst all sports leagues is the major sporting event in the world to be broadcast live on various channels...” “I have no hesitancy to hold that the nature of activities conducted by the Board are commercial in nature and hence, covered under the term ‘shop’ for the purpose of ESI Act and notification issued thereunder.”

- The High Court of Gujarat in the case of *Ena W/O Ashish Jain vs. State Of Gujarat (R/Special Criminal Application No. 6490 Of 2022)* has ruled that the Surrogacy Regulation Act, 2021 does not envisage any provisions within itself that would require the custody of a new-born child to be retained by the surrogate mother for the purpose of breastfeeding. In the present matter, the Division Bench comprising of Justice Vipul Pancholi and Justice Sandeep N. Bhatt opined that *“...clauses provided in the agreement entered into between the parties and the provisions of Act of 2021, it is clear that after giving birth to the child, the respondent no.5 is required to hand over the custody of the newly born child to the present petitioners who are intended parents and child born out of the surrogacy procedure shall be deemed to be the biological child of the intended couple and the said child shall be entitled to all the rights and privileges available to a natural child under any law for the time being in*



force.” “In absence of any provision contained in the Act of 2021 providing that for the purpose of breastfeeding, the custody of the child is to be retained by the surrogate mother for a particular

period, this Court is of the view that the custody of the corpus i.e. newly born child is required to be handed over to the present petitioners.”



NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Circular No. 12 of 2022 and F. no. 370142 / 27 / 2022 - TPL dated 16.06.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued guidelines for removal of difficulties under sub-section (2) of section 194R of the Income Tax Act, 1961 (“**IT Act**”). The Finance Act, 2022 inserted a new section 194R in the IT Act with effect from 1.07.2022. The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% (Ten percent) of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite may or may not be convertible into money but should arise either from carrying out of business, or from practising a profession, by such resident.
- Vide Circular No. 14 of 2022 and F. no. 370142 / 29 / 2022 - TPL dated 28.06.2022, the CBDT has issued Order under Section 119 of the IT Act in relation to tax deduction at source under Section 194S of the IT Act for transactions other than those taking place on or through an Exchange. The Finance Act, 2022 inserted a new section 194S in the IT Act with effect from 1.07.2022. The new section mandates a person, who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, to deduct an amount equal to 1% (One percent) of such sum as income tax thereon. The tax deduction is required to be made at the time of credit of such sum to the account of the resident or at the time of payment, whichever is earlier.
- Vide Circular no. SEBI / HO / MIR SD / DoP / P / CIR / 2022 / 089 dated 24.06.2022, the Securities and Exchange Board of India (“**SEBI**”) has issued a circular for Implementation of Circular on ‘Guidelines in pursuance of amendment to SEBI KYC (Know Your client) Registration Agency (KRA) Regulations, 2011. The said Circular is in pursuance of the guidelines for amendment of SEBI KYC (Know Your Client) Registration Agency (KRA) Regulations, 2011. SEBI through the present Circular has decided that KYC record of all existing clients shall be validated within a period of 180 (One Hundred Eighty) days from 01.08.2022. The validation of all KYC records, both new and existing shall commence from 01.08.2022. The circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 17 of the SEBIKYC (Know Your Client) Registration Agency) Regulations, 2011 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
- The Ministry of Corporate Affairs (“**MCA**”) vide Notification dated 09.05.2022, has inserted Rule 4(a), 4(b), 4(c) of the Companies (Removal of names of Companies from the Register of Companies) Rules, 2016. These Rules may be called the



Companies (Removal of names of Companies from the Register of Companies) Amendment Rules, 2022. The said rules shall come into force on the date of their publication in the official gazette. The Notification provides for resubmission and call for additional information by the Registrar in cases of defects at the time of submission of the Form STK-2. The said Notification also stipulates certain modifications to Form No. STK-1, Form No. STK-5 and Form No. STK-5A.

- Vide Notification no. RBI/2022-2023/75 dated 23.06.2022, the Reserve Bank of

India (“**RBI**”) has designated 7 (Seven) individuals as ‘Terrorists’ under Section 35 (1) (a) of the Unlawful Activities (Prevention) Act, 1967 (“**UAPA**”) and the same has been listed under Schedule IV of the said Act. The notification further stated that in terms of Section 53 of our Master Direction on Know Your Customer dated 25.02.2016 as amended on 10.05.2021, *“The procedure laid down in the UAPA Order dated February 2, 2021 (Annex II of this Master Direction) shall be strictly followed and meticulous compliance with the Order issued by the Government shall be ensured.”*



DEALS THIS MONTH

- Industrial automation firm Cybernetik Technologies has acquired an 87.5% (Eighty-Seven point Five percent) stake in a US-based Buffalo Extraction Systems founded in 2019 offering state-of-the-art extraction solutions for an undisclosed sum. The acquisition will help Cybernetik in providing turnkey industrial automation solutions to firms engaged in extraction of medicinal plants, herbs, spices and essential oils and expand its presence to more markets around the world, the company said in a statement. The acquisition will open new networking avenues for Cybernetik in countries like Africa, India, Thailand, USA and South America.
- TTK Prestige Limited acquires a majority 51% (Fifty-One percent) stake by investing Rs. 30 Crores in Ultrafresh Modular Solutions which has 120+ studios and has manufactured 5000 kitchens across the country. The acquisition will help the leading kitchen appliances company into the fast-growing modular kitchen solutions segment. Pertinently, Ultrafresh Modular Solutions will continue to operate autonomously with the current leadership.
- Online Food Delivery Platform Zomato to acquire up to 33,018 equity shares of Gurgaon based- Quick Commerce Start-up Blinkit Commerce Private Limited which is an instant delivery service founded in December, 2013 for the consideration amount of Rs. 4,447 Crore at a price of Rs. 13,45,000/- (Thirteen Lakh Forty-five Thousand only) per equity share. Further Zomato intends to buy the warehousing and ancillary services business from Blinkit's parent company Grofers International for a value of Rs. 60.7 Crores.
- Singaporean multinational banking and financial services corporation DBS Bank Limited local unit has acquired a 9.9% (Nine point Nine percent) stake in the micro businesses-focused non-banking finance company Svakarma Finance that aims to support Micro, Small and Medium enterprises (MSMEs) for an undisclosed sum. The acquisition will help DBS Bank India in delivering relevant financial solutions to the micro-enterprises and consumer businesses through a combination of direct lending and co-lending.
- Indian multinational corporation Wipro Limited merges its commercial lighting and seating solutions to create a combined business unit in order to offer wider solutions to the customers in the B2B (business-to-business) space and deliver more value. The new organisation has been created to enable greater synergies and accelerate growth by leveraging Wipro's common dealership network, as well as servicing customers. The merger will also give the Company opportunities to make more investments in the existing markets, while opening up newer segments and markets.



- Lenskart, an eyewear retailer giant backed by Japan's SoftBank that has over 1,100 stores across India, Singapore, and Dubai has acquired a majority stake in Japanese direct-to-consumer eyewear brand Owndays for the consideration amount of Rs. 400 million. The acquisition will expand Lenskart's presence to 13 markets in Asia,

including India, Singapore, Thailand, Taiwan, Philippines, Indonesia, Malaysia, and Japan. According to the company, its 300-strong engineering team will be scaled to 500 people in the current financial year and that will help it strengthen online and omnichannel experience for both Owndays and Lenskart.



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