



SAGA LEGAL

COMMUNIQUE
AUGUST 2023



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *M. Sivadasan (Dead) through LRs vs. A. Soudamini (Dead) through LRs and others (Civil Appeal No. 254 of 2010)* has reiterated that within the meaning of Section 14 of the Hindu Succession Act 1956, a Hindu female has to be in possession of the property in order to claim rights over the same. The Bench comprising of Justice CT Ravikumar and Justice Sudhanshu Dhulia observed that *"the authority in Raghubar Singh case [(1998) 6 SCC 314] can be of no assistance to the respondent. As has been held by this Court, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be 5 possessed of the property but she must have acquired the property. Such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or by her own skill or exertion, or by purchase or by prescription..."*
- The Hon'ble Supreme Court in the case of *Dr. Prakasan MP and Others vs. State of Kerala and Another (Civil Appeal No. 7580 of 2012)* has held that the retired employees cannot claim a vested right to apply the extended age of retirement retrospectively. The Bench comprising of Justice Hima Kohli and Justice Rajesh Bindal was hearing an Appeal filed by a group of teachers in Homeopathic Medical Colleges seeking retrospective implementation of the Kerala government's decision to increase their retirement age from 55 years to 60 years. The Court observed that *"It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad; nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide...."*
- In the case of *Mukesh Singh vs. The State (NCT of Delhi) (Criminal Appeal No. 1554 of 2015)*, the Hon'ble Supreme Court while upholding conviction of a man in murder case, has ruled that during an investigation, the accused is under an obligation to go through the Test Identification Parade ("TIP") under the Code of Criminal Procedure, 1973 and the same is not violative of Article 20(3) of the Indian Constitution. The Bench comprising of Justice M.M. Sundresh and Justice J.B. Pardiwala observed that *"...the accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the*



accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP.”

- The Hon'ble Supreme Court in the case of *Thangjam Arunkumar vs. Yumkham Erabot Singh & Ors. (Civil Appeal Nos. 4179-4180 of 2023)* has stated that the requirement to file an Affidavit under the provisions of Section 83(1)(c) of the Representation of People Act, 1951 (“**the Act**”) is not mandatory if substantial compliance exists. The Bench comprising of Chief Justice DY Chandrachud and Justice PS Narasimha was dealing with an Appeal arising out of an election petition filed by an unsuccessful candidate for alleged violations under Sections 80, 80A, 81, 84, 100(1)(d)(iv) and 101 of the Act. The Bench noted that “...*the election petition contained on affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act.*”
- The Hon'ble Supreme Court in the matter of *Hind Offshore Pvt. Ltd. vs. IFFCO – Tokio General Insurance Co. Ltd. (Civil Appeal No. 7228 of 2015)* has ruled that in cases of Marine

Insurance Policy, there is no implied warranty that the ship shall be seaworthy at any stage but where with the privity of the assured, if the ship is sent to sea in an unseaworthy state, the insurer is not responsible for any losses attributable to unseaworthiness. The Bench comprising of Justice A.S. Bopanna and Justice M.M. Sundresh observed that “...*in the instant facts as noted the unseaworthiness alone is not the issue but the non-reporting of the damage/defects to the Classification Society before issue of the certificate and the same rendering the Class Certificate invalid though issued earlier is the issue and in that circumstance whether the owner is to inform this aspect or as to whether the verification by the insurer is warranted.*”

- The Hon'ble Supreme Court in the matter of *Commissioner of Service Tax, Mumbai- vs. M/s 3I Infotech Ltd. (Civil Appeal No. 4007 of 2019)* has observed that the principle of natural justice requires that adjudication be made only based on the classification of the notice and therefore an Assessee cannot be subjected to a penalty on the basis of a show cause notice containing a completely erroneous category of service. The Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol was hearing an Appeal challenging the order of the Custom, Excise, and Service Tax Appellate Tribunal (“**CESTAT**”). The Court observed that “...*CESTAT was right in holding that the first show cause was illegal. Elementary principles of natural justice required that the adjudication on*



the basis of show cause notice should be made only on the basis of classification stated in the show cause notice. Assessee cannot be subjected to a penalty on the basis of a show cause notice containing a completely erroneous category of service. Therefore, the demand made on the basis of the first show cause notice was illegal.”

- The High Court of Kerala in the case of *Chandi Samuval vs. Saimon Samuval (MAT.Appeal No. 782 of 2022)* has stated that the absence of statutory provision under the Indian Christian Marriage Act, 1872 does not restrict the Courts from allowing past maintenance claims in favor of senior citizens. The Division Bench comprising of Justice A. Muhamed Mustaque and Justice Sophy Thomas added that *“If the law entitles a senior citizen in old age the claim for maintenance prospectively, it does not mean the law negates the claim for past maintenance. A man with self-respect might have resisted himself in approaching the court at first instance on a belief that his children would respect his needs. His patience and respect for the children cannot be encashed to deny his claim for past maintenance. The social order that gives rise to the legal order in this country carefully narrates the traditional practice. Even without any positive aid of law the court could have recognized the right of the elder irrespective of the religion to claim the past maintenance and future maintenance. Merely for the reason that the legislation had only provided measures for the award of*

prospective maintenance, that cannot result in denial of the claim for past maintenance.”

- In the case of *Saubhagya Bhagat vs. State of Uttarakhand & Anr. (Anticipatory Bail Application No. 76 of 2021)* with other connected matters, the High Court of Uttarakhand has by a 2:1 majority, held that the application for ‘Anticipatory Bail’ under Section 438 of the Code of Criminal Procedure, 1973 (“**CrPC**”) can be entertained even after the submission of charge-sheet in lower court. The Full Bench comprising of Chief Justice Vipin Sanghi, Justice Manoj Kumar Tiwari, and Justice Ravindra Maithani while settling a long-debated question regarding the stage at which an anticipatory bail application can be maintained, has opined that *“...at times, an accused person, who has extended full cooperation during investigation, may have to suffer ignominy of being sent to judicial custody without any fault of his own. Since the language of Section 438 CrPC does not permit of any such limitation or restriction, therefore, such limitation cannot be read into the statute so as to whittle down the scope of Section 438.”*
- While dismissing the Appeal with delay condonation of 498 (Four hundred ninety- eight) days filed by the Income Tax Department the High Court of Delhi in the case of *Principal Commissioner of Income Tax 4 vs. M/s National Fertilizers Ltd. (ITA 401 of 2023 & CM No. 37496 of 2023)*, has remarked that even in this hi-tech “click of mouse”



age, some government officials are yet to come out of their love for “snail pace” style of working. A Division Bench comprising of Justice Rajiv Shakhder and Justice Girish Kathpalia added that *“Despite anguish expressed by courts at all levels through various judicial pronouncements, no change in work attitude of officials of some of the government departments has taken place. Largely, behind such delays on the part of government agencies in initiating appropriate legal proceedings lies extreme laxity, negligence and dereliction of duties on the part of government officials...Worst is when such delays are aimed at simply completing formalities so that the government appeals get dismissed on the grounds of limitation, to the designed benefit of the other party.”*

- In the case of *Manasa vs. The Managing Director, The Development Credit Bank Ltd. (Writ Petition No. 6111 of 2014)*, the High Court of Karnataka has ruled that the permanent registration under the Foreign Contribution (Regulation) Act, 2010 (“**FCRA**”) does not create any right in favor of a person or organization to get the foreign donation amount credited in their bank account without prior clearance from the Ministry of Home Affairs. A Single-Judge Bench comprising of Justice KS Hemalekha highlighted that *“The object of the FCR Act, 2010 (42 of 2010) that an Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or*

companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”

- The High Court of Allahabad in the matter of *Abu Talib Husain and Another vs. State of U.P. and Another (Application u/S 482 No. - 18824 of 2023)* has held that a Mutawalli of the Wakf Board, despite being deemed to be a public servant, cannot be entitled to protection under Section 197 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”). A Single-Judge Bench comprising of Justice Arun Kumar Singh Deshwal noted that *“In the present case, though by a deeming provision of Section-101 of the Act, 1995 mutawalli was declared as public servant but to satisfy the second condition of Section-197 Cr.P.C., the word 'Government' was not replaced by wakf board, therefore, despite the fact that mutawalli was declared to be public servant by Section 101 of the Act, 1995. All condition for applicability of Section-197 Cr.P.C. are not fulfilled, therefore mutawalli of wakf board despite being deemed to be a public servant are not entitled to protection under Section 197 Cr.P.C.”*
- The High Court of Bombay in the case of *Kolhapur Zilla Sahakari Doodh vs. State of Maharashtra & Ors. (Writ Petition No. 5873 of 2023)* has held that if the society committee fails to submit the audit rectification report to the concerned Registrar and to the annual



general body meeting, then all its members shall be liable under Section 146 of the Maharashtra Cooperative Societies Act, 1960. The Division Bench comprising of Justice Nitin Jamdar and Justice Manjusha Deshpande noted that *“Section 82 provides for the Rectification of defects in accounts. It states that if the result of the audit held under Section 81 discloses any defects in the working of a society, the society shall, within three months from the date of the audit report, explain to the Registrar the defects or the irregularities pointed out by the Auditor, and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. Thereafter, if the committee of society fails to submit the audit rectification report to the Registrar and to the annual general body meeting, all the committee members shall be deemed to have committed an offence under Section 146.”*

- The High Court of Delhi in the case of *Karan S. Thukral vs. The District & Sessions Judge & Ors. (W.P.(C) 6082 of 2019)* has directed all the district courts in the national capital to adopt a “standardized online filing system” by centralizing all filings related to ongoing and pending cases, providing each submission with a unique filing number, and issuing an acknowledgment receipt to the party or attorney submitting the documents. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Sanjeev

Narula emphasized that *“Transparency and accountability are paramount in judicial proceedings. To that end, every application, pleading, document, or any other submission to the Court should be duly acknowledged with a unique filing number, ensuring traceability and preventing any potential disputes or discrepancies related to their submission. Given the strict timelines, especially in criminal proceedings, commercial courts, and other time sensitive matters, an accurate recording of the filing date is of utmost importance. Absence of concrete acknowledgement threatens the very foundation of procedural fairness and efficiency.”*

- The High Court of Madras in the case of *P. Yasotha vs. The Government of Tamil Nadu and Ors. (W.P.No. 23983 of 2022)* has ruled that maternity leaves cannot be claimed as a matter of right for a third biological child if the state policy restricts such benefits to only two surviving children. A Single-Judge Bench comprising of Justice N. Sathish Kumar while dismissing the petition filed by a government school lab assistant observed that *“...when the State has taken a policy decision that the Fundamental Rules is applicable to the Government servants, the Petitioner cannot claim any benefit under the Benefit Act, which is not applicable to the Government servants, except to the employees employed in the “Establishment” as defined under the Maternity Benefit Act, 1961.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- With reference to the Reserve Bank of India (“**RBI**”) circular CO.DPSS.POLC. No. S1264 / 02-14-003/2021-2022 dated 03.01.2022 on “Framework for Facilitating Small Value Digital Payments in Offline Mode”. The RBI vide Notification Ref. no. RBI/2023-24/57 of CO.DPSS.POLC.No.S526/02-14-003/2023-24 dated 24.08.2023, has enhanced the transaction limits for Small Value Digital Payments in Offline Mode. Accordingly, the upper limit of an offline payment transaction has been increased to Rs. 500/- (Rupees Five Hundred).
- Vide Notification Ref. no. RBI / 2023-24/53 of DoR.MCS.REC.28 / 01.01.001 / 2023-24 dated 18.08.2023, the Reserve Bank of India (“**RBI**”) has issued various guidelines to the Regulated Entities to ensure reasonableness and transparency in the disclosure of penal interest. Under the extant guidelines, lending institutions have the operational autonomy to formulate board-approved policy for the levy of penal rates of interest. The intent of levying penal interest/charges is essentially to inculcate a sense of credit discipline and such charges are not meant to be used as a revenue enhancement tool over and above the contracted rate of interest.
- Vide Circular no. SEBI / HO / MIRSD / FATF / P / CIR / 2023 / 0144 dated 11.08.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has simplified the know your client (“**KYC**”) process and rationalization of Risk Management Framework at KYC Registration Agencies (“**KRAs**”). Accordingly, the records of all existing clients whose KYC has been completed based on official valid documents other than Aadhaar shall be verified within a period of 90 (ninety) days from 01.09.2023.
- Taking into account recommendations of the Alternative Investments Policy Advisory Committee, the Securities and Exchange Board of India, 1992, (“**SEBI**”) vide Circular no. SEBI / HO / AFD / PoD / CIR / P / 2023/137 dated 04.08.2023, has decided to reduce the time limit for making overseas investments by Alternative Investment Funds (“**AIFs**”) and Venture Capital Funds from six months to four months so that the allocated limit is utilized efficiently and, if unutilized, the same is again available to the AIF industry in a shorter time span.
- Vide Circular no. SEBI/HO/IMD/IMD-PoD-2 / P / CIR / 2023 / 142 dated 11.08.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has prescribed the procedure for a change in control of an Asset Management Companies based on the recommendations of Mutual Funds Advisory Committee. Accordingly, *“The unitholders are given an option to exit on the prevailing Net Asset Value (NAV) without any exit load within a time period not less than 15 calendar days from the date of communication. However, in case of change in control resulting in consolidation or merger of*



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schemes, the unitholders are given an option to exit on the prevailing Net Asset Value (NAV) without any exit load

within a time period not less than 30 calendar days from the date of communication.”



DEALS THIS MONTH

- Svatantra Microfin Private Limited, a Microfinance institution led by Ananya Birla is all set to acquire Sachin Bansal-led Navi Group's subsidiary, Chaitanya India Fin Credit Private Limited for a sum of Rs. 1,479 crore. On completion of this acquisition, Svatantra will become the second-largest microfinance entity in the country with a reach of more than 3.6 million active customers through 1,517 branches across 20 states and a combined asset under management of Rs 12,409 crores.
- Xpressbees, a logistics services provider has acquired the New Delhi-based supply chain firm Trackon in an all-cash deal. Founded in 2015, Xpressbees provides end-to-end supply chain solutions and currently runs its delivery operations across 21,000 pin codes, and around 3,000 cities and towns in the country. The acquisition will help XpressBees enter the SME courier space and leverage its existing network to scale up Trackon across the country.
- A wholly-owned subsidiary of London-based venture capital firm Trapping Holdings, AnotherAcquisition has acquired an AI-powered email solutions provider Nyxion.ai for an undisclosed amount. Nyxion.ai is an Intelligent Mass Sender for Marketing, Transactional, and Promotional Emails. The acquisition by AnotherAcquisition will help Nyxion tap into a wealth of knowledge, market insights, strategic guidance, and business acumen.
- Travel tech firms Holidify, launched in 2014, and Mumbai-based TripCrafters, founded in 2011 have announced their merger claiming to be the largest travel marketplace in the Country. Holidify offers holiday packages, travel guides, and curated hotel listings from various online travel agencies across destinations. While, TripCrafters enables travelers to compare and book packages from multiple travel agents, and book packages by directly engaging with the travel agents. Both firms have been working closely since 2016.
- Singapore-based venture capital fund, Jungle Ventures has announced its merger with HealthXCapital, a healthcare-focused venture capital firm. Following the merger, HealthXCapital will lead the firm's healthcare investments in India and Southeast Asia.



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