



SAGA LEGAL

COMMUNIQUE

MAY 2022



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COURTS THIS MONTH

- The Supreme Court in the case of *Gurukanwarpal Kirpal Singh vs. Surya Prakasam & Ors (SLP.(Crl.)5485/2021)* has ruled that Section 405 of Indian Penal Code, 1860 (“**IPC**”) which deals with criminal breach of trust, would not be attracted if there is no entrustment of the property with the accused. In this matter, the Supreme Court was dealing with an appeal filed against the judgement passed by the Bombay High Court. The Bench comprising of Justice Indira Banerjee and Justice C.T. Ravikumar reiterated the High Court’s order for quashing FIRs filed under Section 285, 405, 420 and 427 read with Section 34 of IPC against the accused and observed that *“The FIR in the present case does not show anything done by the accused with fire or any combustible matter. The act of recycling plastic waste material or supply of plastic waste material for recycling by the Petitioner could not be said to be an act done with fire or any combustible matter. The act of the respondents of supplying material for testing and the recycling plant could not be said to be a negligent or rash act done to endanger human life. Thus, the essential ingredients of the offence were absent.”*
- The Supreme Court in the case of *Prabha Tyagi vs. Kamlesh Devi (Cr.A. 511 of 2022)* gave a broad interpretation with respect to the ‘right to reside in a shared household’ under the Protection of Women from Domestic Violence Act, 2005 (“**DV Act**”) and held that the same is not limited only to a woman's matrimonial home. In the present matter, the Bench comprising of Justice M.R. Shah and Justice B.V. Nagarathna was hearing a plea for a right of a widow to live in the ‘shared household’ of her late husband. The Court observed that *“In the Indian societal context, the right of a woman to reside in the shared household is of unique importance. The reasons for the same are not far to see. In India, most women are not educated nor are they earning; neither do they have financial independence so as to live singly. She may be dependent for residence in a domestic relationship not only for emotional support but for the aforesaid reasons. The said relationship may be by consanguinity, marriage or through a relationship in the nature of marriage, adoption or is a part of or is living together in a joint family. A majority of women in India do not have independent income or financial capacity and are totally dependent vis-à-vis their residence on their male or other female relations who may have a domestic relationship with her.”*
- The Supreme Court in the case of *Gurmel Singh vs. Branch Manager, National Insurance Co. Ltd (CA 4071 OF 2022)* has observed that the insurance companies should not be very technical in their approach while settling claims and asking for documents that the Claimant is not in a position to produce due to circumstances beyond his control. The Bench of Justice M.R. Shah and Justice B.V. Nagarathna was hearing an



appeal filed against the order of the National Consumer Disputes Redressal Commission (“**NCDRC**”), that had dismissed a complaint by observing that the Claimant had not filed the relevant documents for settlement of its claim. However, the Apex Court upheld the Order of the NCDRC and opined that *“The insurance company has become too technical while settling the claim and has acted arbitrarily. The appellant has been asked to furnish the documents which were beyond the control of the appellant to procure and furnish. Once, there was a valid insurance on payment of huge sum by way of premium and the Truck was stolen, the insurance company ought not to have become too technical and ought not to have refused to settle the claim on non-submission of the duplicate certified copy of certificate of registration, which the appellant could not produce due to the circumstances beyond his control. In many cases, it is found that the insurance companies are refusing the claim on flimsy grounds and/or technical grounds...”*

- The Supreme Court in the case of *Sudhir Ranjan Patra (Dead) through their Legal Representatives & Anr. vs. Himansu Sekhar Srichandan & Ors.* (CA 3641 Of 2022) has observed that under Order IX Rule 13 of the Civil Procedure Code, 1908, (“**CPC**”), the Trial Court can consider the prayer of defendants to permit filing of written statement after setting aside an ex-parte decree. The Bench comprising of Justice M.R. Shah and Justice B.V.

Nagarathna in a petition filed against the Order passed by the High Court of Orissa opined that, *“...it is true that as per the law laid down by this Court in the case of Sangram Singh (supra) and Arjun Singh (supra) when an ex-parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex-parte. He would be debarred from filing any written statement in the suit, but then he can participate in the hearing of the 4 suit inasmuch cross-examine the witness of the plaintiff and address arguments...”* *“...once the ex-parte decree is set aside and the suit is restored to file and even as per the decisions of this Court in the case of Sangram Singh (supra) and Arjun Singh (supra) the defendants cannot be relegated back to the position prior to the date of hearing of the suit in that case also, it should have been left to the learned Trial Court to consider the prayer of defendant Nos. 2 and 3 whether to allow them to file written statement or not...”*

- The Supreme Court in *Indian Overseas Bank vs. M/s RCM Infrastructure Limited and Anr.* (CA 4750 Of 2021) held that proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) against the Corporate Debtor cannot be continued once the Corporate Insolvency Resolution Process (“**CIRP**”) is initiated and moratorium is ordered. In the



present case, the Bench presiding of Justice L.N. Rao and Justice B.R. Gavai whilst hearing an appeal against the Order passed by the National Company Law Appellate Tribunal. The Court referring to Section 14 and Section 238 of The Insolvency and Bankruptcy Code, 2016, observed that *“...after the CIRP is initiated, there is moratorium for any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act. It is clear that once the CIRP is commenced, there is complete prohibition for any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property. The words “including any action under the SARFAESI Act” are significant. The legislative intent is clear that after the CIRP is initiated, all actions including any action under the SARFAESI Act to foreclose, recover or enforce any security interest are prohibited.”*

- The Apex Court in the case of *Budhadev Karmaskar vs. State of West Bengal And Ors. (Criminal Appeal No. 135 of 2010)* has directed the police forces of all the states and union territories to treat sex workers with dignity and not to abuse them, verbally or physically, ensuring that the basic protection of human decency and dignity extends to them. A Bench comprising of Justice L. Nageswara Rao, Justice B.R. Gavai and Justice A.S. Bopanna further held that *“...the*

newly introduced Section 354C of Indian Penal Code (“IPC”), which makes voyeurism a criminal offence, should be strictly enforced against electronic media, in order to prohibit telecasting photos of sex workers with their clients in the garb of capturing the rescue operation”. The Court also directed the state governments to conduct a survey of shelter homes so that cases of adult women who are detained against their will can be reviewed and processed for release in a time-bound manner.

- The Supreme Court in the case of *Manoj & Ors. vs. State of Madhya Pradesh (CrA 248-250 OF 2015)* has ruled that in all criminal cases, the prosecution shall furnish a list of statements, documents, material objects & exhibits which are not relied upon by the investigating officer. In the present case the Bench comprising of Justice Uday Umesh Lalit, Justice S. Ravindra Bhat and Justice Bela M. Trivedi was dealing with an appeal filed by accused convicted under Section 302 of the IPC challenging the order death penalty passed by the High Court of Madhya Pradesh. In furtherance of the same, the Court held that *“A public prosecutor (appointed under Section 24 CrPC) occupies a statutory office of high regard. Rather than a part of the investigating agency, they are instead, an independent statutory authority who serve as officers to the court. The role of the public prosecutor is intrinsically dedicated to conducting a fair trial, and*



not for a ‘thirst to reach the case in conviction.’

- The High Court of Karnataka in the case of *Nethra vs. State of Karnataka (Criminal Petition No. 2306 Of 2022)* granted bail to a woman accused of murdering her husband under Section 437 of the Code of Criminal Procedure (“**Cr.P.C.**”). In the present case, the Single Bench of Justice M. Nagaprasanna observed that “...*It is not the law that bail should always be denied in a case where the offence punishable is of death or life imprisonment. In exceptional cases, if the statute permits and the facts not being so gory and grave criminal antecedents shrouding the culprit, the consideration in such cases would be different.*” The Court further held that, “...*the facts in the case at hand are not those that would not entitle consideration of the case under Section 437 of the Cr.P.C. particularly, looking at the conduct of the petitioner for having surrendered before the Police on commission of the alleged murder. The petitioner has no criminal antecedents except the present sword hanging on the head, and on release would not be a threat to society, coupled with the fact that the police have completed the investigation and have filed the charge sheet at the case on hand.*”
- In the matter of *Ketan Ribbons Pvt. Ltd. vs. National Faceless Assessment Centre Delhi, (W.P.(C) 5846/2021 & C.M. No.18310/2021)* the High Court of

Delhi has held that it is a statutory right of the taxpayers to file a reply to the show cause notice and draft assessment orders. The Division Bench comprising of Justice Manmohan and Justice Manmeet Preetam Singh Arora was dealing with a writ petition challenging the assessment order and notice of demand issued under Section 156 of the Income Tax Act, 1961 on grounds that the same was passed due to inability of the taxpayer to reply to the said notice and draft order. In light of the same, the Court observed that “...*there has been violation of principle of natural justice as the Petitioner was unable to reply to the show cause notice and draft assessment order due to Covid-19 pandemic. The Petitioner’s Chartered Accountant has filed a sworn affidavit confirming that he was unable to provide the Petitioner with the Login Credentials of the Income Tax E-Portal and the official records as they were maintained in his office and he was unable to access them due to Covid-19 pandemic*”. The Court further directed National Faceless Assessment Centre to pass a fresh assessment order.

- In the case of *The National Highway Projects in the State of Bihar vs. State of Bihar (Civil Writ Jurisdiction Case No.8900 of 2020)*, the Patna High Court has urged the state government, the National Highways Authority of India (“**NHAI**”) and Oil Marketing Companies (“**OMCs**”) to consider setting up public toilets on highways across the state. The Bench comprising of Chief Justice Sanjay Karol and Justice S. Kumar



observed that right to sanitation comes within the right to life and that it is the state's responsibility to provide adequate sanitation and personal care services on highways. The Court further observed that *"The equitable distribution of essential commodities, such as petroleum, is a positive obligation on the State, and must continually take steps to ensure that this obligation is met. In this regard, a periodical survey for updating is absolutely necessary. Numerous benefits accrue when the same is fulfilled" "...easy access to petrol will go a long way in curbing blackmarketing practices an evil of society."*

- The Punjab & Haryana High Court in the case of *Amit vs. State of Haryana and Anr. (CRM-M-5820/2020)* has observed that Section 482 of Cr. P.C. confers extraordinary powers on the High Court and empowers it to entertain applications that are not contemplated in Cr.P.C., in case the ends of justice require. A Single Judge Bench comprising of Justice Vivek Puri further added that, *"The inherent power vested in this Court under Section 482 of the Code is not to be invoked as a matter of routine but to prevent the abuse of process of Court and to secure ends of justice. This section gives the power to this Court to entertain applications which are not contemplated in the Code of Criminal Procedure, in the event, it is felt that the ends of justice will require that the Court can invoke the extraordinary powers which are to be exercised with restraint and not lightly."*

In the event, the Court is satisfied that in order to secure the ends of justice, it should interfere under its inherent powers, it ought to do so."

- The Punjab & Haryana High Court in the case of *Novex Communications Private Limited vs. Union of India & Anr. (CWP No. 28758 of 2019 (O&M))* has held that granting permission to play sound recordings during religious ceremonies and wedding processions without obtaining a licence from the copyright owner violates the protections granted under the Copyright Act, 1957. In the present case, the Single Judge Bench of Justice Raj Mohan Singh whilst quashing a public notice issued by the Registrar of Copyrights opined that *"The question whether certain acts would fall within the exempted categories as enumerated under Section 52(1) of the Act has to be decided according to facts of each case. In view of aforesaid, there cannot be general interpretation to the provision as given in the impugned public notice/letter..." "...The public notice seeks to impinge upon the fundamental rights and protections granted by the Constitution of India and is violative of Articles 13 and 14 of the Constitution. The protections granted by the Copyright Act are sought to be abridged by the public notice which is unsustainable."*
- The High Court of Delhi in the case of *A-One Realtors Pvt. Ltd. vs. Energy Efficiency Services Ltd. (CS(COMM) 610/2019 & I.A. 15338/2019)* has ruled



that the plaintiff cannot be entitled for a refund of court fees in the event of an application under Section 8 of the Arbitration and Conciliation Act, 1996 is allowed and the parties are referred for arbitration. A Single Judge Bench of Justice Amit Bansal held that the benefit of Section 16 of the Courts Fees Act, 1870 is only applicable in terms of Section 89 of CPC, when the parties are referred for settlement of the issues in dispute by the Court. The Court further held that *“It is settled law that a litigant is not entitled to refund of court*

fees in case of rejection of plaint under Order VII Rule 11 of the CPC where the plaint does not disclose a cause of action. On the same analogy, the plaintiff cannot be entitled for refund of court fees in the event of an application under Section 8 of the Arbitration and Conciliation Act being allowed and the parties being referred for arbitration. The rationale being that the plaintiff has invoked a wrong remedy of filing the suit when it should have invoked the arbitration proceedings.”



NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Circular no. 9 of 2022 and F. no. 370142/2/2022-TPL dated 09.05.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued guidelines under clause (23FE) of Section 10 of the Income-tax Act, 1961 (“**IT Act**”) to provide exemption to the wholly owned subsidiaries of Abu Dhabi Investment Authority, Sovereign Wealth Funds and Pension Funds on their income accrued in the nature of dividend, interest and long-term capital gains as a result of the investment made in infrastructure projects in India. The exemption will come into effect from 01.04.2020 to 31.03.2024 subject to fulfilment of certain conditions.
- Vide Circular no. SEBI / HO / DDHS / P / CIR / 2022 / 0063 dated 13.05. 2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued certain relaxations from compliance with respect to few provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, for entities with listed non-convertible securities. The relaxations pertain to dispatch of hard copy of Annual Report to debenture holders, pursuant to relaxations granted by the Ministry of Corporate Affairs (**‘MCA’**). The said relaxation has been extended up to 31.12. 2022 which earlier was extended to 15.01.2022.
- The MCA vide Notification dated 20. 05. 2022, has amended Rule 14 and Form no. PAS-4 of the Companies (Prospectus and Allotment of Securities) Rules, 2014. In Rule 14 of the said rules, the following proviso has been inserted, *“Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.”*
- Vide Notification no. RBI/2022-2023/57 dated 25.05. 2022, the Reserve Bank of India (“**RBI**”) under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (“**FEMA**”) has issued guidelines on import of gold by qualified jewellers as notified by the International Financial Services Centres Authority (“**IFSCA**”) which shall come into force with immediate effect. The said guidelines are for the sole purpose of facilitating physical import of gold through Indian International Bullion Exchange or any similar exchange authorised by IFSCA, by the qualified jewellers in India.
- Vide Circular no. SEBI / HO / MIRSD / DoR / P / CIR / 2022 / 61 dated 13.05.2022, the SEBI has issued guidelines for seeking no-objection certificate by Stock Brokers / Clearing Members for setting up of wholly owned subsidiaries, step down subsidiaries, joint ventures in GIFT IFSC. As per the said guidelines, Stock Brokers and



Clearing Members shall apply through a Stock Exchange where the applicant is a member, along with the required information. Moreover, SEBI has issued

a format of applications along with a list of supporting documents for seeking the no-objection certificate in the said circular.



DEALS THIS MONTH

- Adani Group has acquired a controlling stake in Holcim AG's cement businesses in India for USD 10.5 billion deal to become the second largest cement producer in the country. Holcim, through its subsidiaries, holds 63.11(Sixty-Three point Eleven) per cent in Ambuja Cements and 54.53 (Fifty Four point Fifty Three) per cent in ACC. The Adani family, through an offshore special purpose vehicle, has entered into definitive agreements for the acquisition of Holcim Ltd's entire stake in Ambuja Cements and ACC.
- Larsen & Toubro Infotech is entering into a scheme of amalgamation with Mindtree which will result in the creation of a USD 3.5 (Three point Five) billion IT service provider entity. The merger is expected to enable the combined business to derive benefits by way of creating more opportunities for growth in customer relationships through enhanced attention to brand building. Consequently, it will also enable the the combined business to cross-sell and up-sell opportunities, achieve a higher number of active clients, cater to a wider customer base and diversify the revenue profile with reduced concentration risk.
- Bengaluru based Honasa Consumer Private Ltd. (**HCPL**), the parent company of Mamaearth and The Derma Co., has acquired Dr Sheth's, a dermatologist-formulated premium skincare brand to help scale its business digitally. Dr Sheth's has over 30 (Thirty) skincare product offerings and caters to over 2 (Two) lakhs consumers. Through this acquisition, HCPL will acquire a majority stake in Dr. Sheth's at a valuation of Rs. 28 (Twenty-Eight) Crores.
- Actis, a global investor in sustainable infrastructure, has acquired Rx Propellant, a platform focused on providing real estate solutions to tenants in the life sciences and related sectors in India. Currently, Rx Propellant is involved in development and marketing of several real estate projects in design-development stages across Hyderabad and Bangalore targeted at life sciences sector users. Actis investors are planning to make an initial investment of USD 200 (Two-Hundred) million into Rx Propellant to expand its operations under its buy and build program targeting both greenfield and brownfield assets with an emphasis on sustainability.
- PhonePe which is a part of the Walmart Inc-controlled Flipkart group is all set to acquire two investment technology platforms that is WealthDesk and OpenQ for a total enterprise value of USD 75 (Seventy Five) million. The acquisitions are a part of PhonePe's business plan to open new revenue streams and diversify its offerings for users of its payment services.



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- 📍 DELHI OFFICE: A - 55, FIRST FLOOR, HAUZ KHAS, NEW DELHI - 110 016.
 - 📍 CHAMBER: 238, M.C. SETALVAD CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS RD, NEW DELHI - 110 001.
 - 📍 BENGALURU OFFICE: 88 BOREWELL ROAD, OPP. WHITEFIELD POST OFFICE, WHITEFIELD, BENGALURU - 560 066.
- ☎ +91 11 41066969 | +91 11 41076969 ✉ office@sagalegal.in | admin@sagalegal.in 🌐 www.sagalegal.in

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