

NEWSLETTER

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Distinction between Matrimonial Cruelty & Legal Cruelty Explained

Court: Bombay High Court
Applicant: Anonymous
Respondent: State of Maharashtra
Case No.: Cri. Appeal No. 555/2016

The Bombay High Court in the above case was to decide a bail Application of the Accused convicted of offences punishable under Sections- 498A (Cruelty by husband and his relatives), 306 (abetment to suicide) r/w 34 (common intention) of the Indian Penal Code. The Bombay High Court in the above case outlined difference between matrimonial cruelty and legal cruelty (as enumerated in Sec. 498A). The deceased in this case had committed suicide following a trivial domestic fight. The Court after observing the facts in detail observed that hyper sensitivity of a wife, and ordinary petulance and discord in matrimonial life does not amount to the offence of cruelty as defined under Section 498A. Similarly, since there was no active stimulation from the Accused persons leading to abetment, the offence under Section 306 could not be made out as it lacked mens rea. The Court accordingly granted bail to the Accused and suspended the sentence awarded by trial court.

Nomination of Shares Under Companies Act not to run Contrary to Law of Succession

Court: Bombay High Court
Appellants: Shakti Dezdani and Ors.
Respondents: Jayanand Jayant Salgaonkar and Ors.
Case No.: Appeal No. 313/2015

In this case the Court ruled on the question, whether or not a nominee of a holder of shares or securities appointed under Section 109 A of the Companies Act, 1956 is entitled to beneficial ownership of the shares or securities at the exclusion of all other persons who inherit the estate of the of the holder under law of succession. While dismissing the appeal and deciding the above question in negative, the Court observed that the provisions of Section 109 A and 109 B of

the Companies Act, 1956 do not create a third mode of succession and as such Companies Act has no relation with the law of succession. The provisions of Section 109A (nomination of shares) and 109B (transmission of shares) do not create a third mode of succession. Companies Act has no relation with the law of succession. Section 109 B does not suggest that upon nomination being made by a deceased shareholder, the nominee becomes the owner of the shares at the exclusion of all other legal heirs.

Mere allegation of Fraud does not nullify the Arbitration Agreement

Court: The Supreme Court of India

Appellants: A. Ayyasamy

Respondents: A. Paramasivam and Ors.

Case No.: Civil Appeal No. 8245-8246/2016

The Supreme Court in the above case while deciding the maintainability of a civil suit in light of Application made under Section 8 (Power to refer parties to arbitration where there is an arbitration agreement) of the Arbitration Act, set aside the order of the High Court wherein such Application was not allowed. The parties in this case had entered into an arbitration agreement however subsequently one of the parties filed a civil suit seeking certain declaration. The court while allowing the appeal expressed its opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It explained that only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration Clause or the validity of the arbitration Clause itself.

Court: High Court of Uttarakhand

Appellants: Satish Kumar Chauhan & Ors.

Respondents: Uttarakhand Forest Development Corporation & Ors.

Case No.: Special Appeal No. 319/2016

The Appellants in the case were employed as seasonal workers subject to availability of work. Subsequently they were retrenched on account of non-availability of work and were awarded one month's wage in lieu of notice and as retrenchment compensation. The termination when challenged before the Labor Court and was set aside and the appellants were reinstated with 25 % back wages after adjusting the retrenchment compensation. This Order was further challenged before the High Court wherein Respondents were directed to pay Rs. 1, 50, 000 to the Appellants while the demand of the Appellants claiming reinstatement or re-employment as a matter of right was not accepted. This order was confirmed in the current appeal.

Legal Updates

1. The Ministry of Corporate Affairs issued Notification dated 26th December 2016 prescribing rules the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Click [here](#) for copy of the Notification.
2. As per circular No. RBI/2016-17/216 A.P. (DIR Series) Circular No. 28 dated January 25, 2017 issued by the Reserve Bank of India prohibition has been imposed on an Indian Party from making direct investment in an overseas entity (set up or acquired abroad directly as JV/ WOS or indirectly as step down subsidiary) located in the countries identified by the FATF as "non co-operative countries and territories" as per list available on FATF website www.fatf-gafi.org or as notified by the Reserve Bank of India from time to time. Click here for copy of the Notification.
3. Ministry of Labor and Employment vide [Notification dated 20.01.2017](#) has notified Employees' State Insurance (Central) Amendment Rules, 2017. The amended Rules incorporate a separate definition of Insured Woman. Further, the term "Insured Woman" includes a commissioning mother and an adopting mother who legally adopts a child of upto 3 months of age. The Rules have also extended maternity benefits to an Insured Woman from 12 weeks to 26 weeks
4. Ministry of Women and Child Development vide *Notification dated 04.01.2017* has notified The New Adoption Regulations, 2017 framed by

'Central Adoption Resource Authority' (CARA) under section 68 (c) of Juvenile Justice (Care and Protection of Children) Act, 2015 to regulate adoptions across India. The Regulations have been made effective from 16.01.2017.

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