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NEWSLETTER

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INVESTORS IN CONSTRUCTION FIRM NOT PROTECTED IN CASES FORGING AND FABRICATING THE DEVELOPMENT PERMISSION

Court: High Court of Bombay

Date of Judgment: 05.04.2017

Case Number: Anticipatory Bail Application No.1886 Of 2016

Applicants in this case invested money into one construction firm. Partners of said construction firm have been charged of forging and fabricating the commencement certificate and other related documents and thereby constructed unauthorized and illegal buildings. Applicants submitted that the applicants are only investors in the said project and the applicants have no concern with the said permission received by construction firm on the basis of any forged documents. The Court observed from the records that the applicants are the beneficiaries from the profits of the construction, inter alia proceeds of the crime. The record clearly reveals that the applicants have accepted benefits of the construction. After taking into consideration the gravity of the offence, facts of the case and the serious allegations against the applicants, Hon'ble Bombay High Court held that the applicants do not deserve to be protected by way of rearrest bail.

HUSBAND CANNOT BE HELD GUILTY FOR A DISHONoured CHEQUE SIGNED BY THE WIFE

Court: Hon'ble High Court of Gujarat at Ahmedabad

Date of Judgment: 04.04.2017

Case No. : Criminal Misc. Application (for quashing & set aside Fir/order) no. 19938 of 2016

By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant herein (original accused) seeks to invoke the inherent powers of this Court, praying for quashing of the proceedings pending before the learned Metropolitan Magistrate. The indisputable fact of the case being that the applicant herein has not signed the cheque. The cheque has been signed by the wife of the applicant herein. The Court observed that when a cheque is issued by more than one person it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the N.I. Act. It is settled law that strict interpretation is required to be given to penal statutes. Under Section 138 of the Negotiable Instrument Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the Negotiable Instrument Act that is "Offence by Companies" which would have no application in the case on hand. Therefore, the Court observed that husband is not liable for cheque signed by wife which got dishonored.

DOCTORS COMMITTING ERROR OF JUDGMENT CANNOT BE HELD GUILTY FOR CRIMINAL NEGLIGENCE

Court: Hon'ble Supreme Court of India

Date of Judgment: 06.04.2017

Case No.: Criminal Appeal No. 636 of 2017 (Arising out of SLP (Crl.) No. 7186 of 2014)

The Appellant herein is a doctor and has challenged the Order dated 18.06.2014 passed by the High Court of Judicature of Bombay, Nagpur Bench in Criminal Application (APL) No. 354 of 2012, whereby the petition filed by the Appellant under Section 482 Code of Criminal Procedure for quashing the criminal proceedings initiated against her Under Section 304-A Indian Penal Code was dismissed. The only allegation against the Appellant is that she left the patient. The Court observed that the Appellant was a Surgeon on call. She came to the hospital when she was called and examined the patient. As per her judgment, she could find no evidence of bleeding or injury and, therefore, she had noted that a Physician be called. The Hon'ble Court in this case has applied the ratio of the Jacob Matthew v/s State of Punjab and observed that the acts of the Appellant may be an error in judgment but is definitely not a rash and negligent act contemplated under Section 304-A Indian Penal Code and hence held that in the facts and circumstance of this case, it cannot be said that the Appellant is guilty of criminal negligence. At best it is an error of judgment.

STATE AND NATIONAL CONSUMER FORUMS ARE JUDICIARY AND ISSUES ATTAINING FINALITY BEFORE SUCH FORUMS ATTRACT PRINCIPLE OF RES JUDICATA

Court: Hon'ble High Court of Calcutta

Date of Judgment: 03.04.2017

Case No. : CS 175 of 2010

The Hon'ble High Court of Calcutta when deciding the suit for Declaration and Injunction with respect to an amount shown as debit balance by the Defendant bank

in the cash credit account of the Plaintiff maintained with the Defendant Bank has held that:

- The State/National Forums have trappings of Courts and are adjudicatory bodies, though not in strict sense Courts, which decide and settle the consumers disputes and matter connected therewith by adhering to the provisions of Civil Procedure Code and these consumer Courts are judiciary set up by the government to protect the consumer rights and would fall within the meaning of Section 3 of Indian Evidence Act.
- The issues involved in this suit were substantially the issues before the State Consumer Disputes Redressal Commission which stood decided by the judgment dated 31.3.2008 which attained its finality with the merger of judgment and order of the National Consumer Dispute Redressal Commission.
- On critical examination of the judgments of the said forums and considering the nature of the litigation and the issues raised and decided therein being similar to the facts and circumstances of the instant case, the issues now cannot be reopened and re-agitated as the suit is barred by the principle of res judicata within the meaning of Section 11 of Code of Civil Procedure.

OVERSTAYING IN ALLOTTED RESIDENTIAL QUARTER CANNOT BE A GROUND FOR WITHHOLDING OF GRATUITY

Court: Hon'ble High Court Chhattisgarh at Bilaspur

Date of Judgment: 17.03.2017

Case No. : Writ Appeal No. 56 of 2017

The Appellant was denied gratuity benefits by his employer against which the appellant made an application before Controlling Authority as provided in the Payment of Gratuity Act of 1972. The Appellant prayed for Gratuity amount along with interest. The Opponent when summoned cited reason for non-payment of Gratuity as failure to obtain no dues certificates and continuing possession of allotted

accommodation in an unauthorized manner even after his superannuation. The Controlling Authority partly allowed the application and ordered payment of gratuity amount. Feeling aggrieved, the Appellant appealed before the Appellate Authority which dismissed the Application. Further, the High Court declined to entertain the Writ Petition under Article 226 of the Constitution. Hence, the Applicant has preferred the current intra-court appeal before the Apex Court. Relying on earlier judgment in State of Kerala and others v. M. Padmanabhan Nair in which Apex Court held that: Pension and gratuity are no longer any bounty to be disbursed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment, the Hon'ble High Court Chhattisgarh At Bilaspur has held that since there is no leave granted under the proviso to sub-section (3-A) of Section 7 of the Act of 1972 attributing the delay of payment of gratuity to the employee, payment of statutory interest as incorporated under Section 7(3) cannot be denied as held by their Lordships of the Supreme Court that overstaying in allotted residential quarter cannot be a ground for withholding of gratuity.

While deciding the rate of interest the High Court has ordered interest at the rate of 8% per annum to the appellant after one month from the date of his superannuation, failing which respondent No. 1 would be liable to pay interest at the rate of 10% per annum.

Legal Update:

- Rules for merger of amalgamation of a foreign company with a company and vice versa are pronounced and Companies (Compromise, Arrangements, and amalgamations), Rules, 2016 to that effect vide notification dated 13th April 2017. Click here to read and download the said [Notification](#).

- The Ministry of Corporate Affairs vide general circular No. 1/2017 has clarified that provisions of section 391(2) of the Companies Act, 2013 (closure of place of business of a foreign company) would apply only in case of a foreign company which has issued prospectus or IDRs pursuant to provisions of Chapter XXII of the Companies Act, 2013. Click here to read and download the said [Clarification](#).
 - Companies need to disclose in the balance sheet details of specified bank notes held and transacted during 8th November 2016 to 30th December 2016 as per format prescribed the notification dated 30th March 2017. Click here to read and download the said [notification](#).
 - Maternity Benefit (Amendment) Act, 2017 has come into force on 27th March 2017. Click here to read and download [notification](#).
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