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NEWSLETTER

ANA/MAY/2018

CRIMINAL AND NOT CIVIL CHARGES TO BE FRAMED AGAINST BUILDERS FOR 'CHEATING'

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| Petitioner: Liberty Garden Co-op Housing Society | Court: Bombay High Court |
| Respondents: KT Group & Others | Date of Order: 04.05.2018 |
| | Citation: Contempt Petition No. 20 of 2018 in Arbitration Petition No. 247 of 2017 |

In the said matter, the Respondent failed to finish a residential construction project within stipulated time and also failed to pay the compensation, agreed to be paid in this regard. The Petitioner Society thereafter approached the Local Police who in turn refused to take any action stating that the said dispute was Civil in nature.

The Bench comprising of Justice S. J. Kathawalla observed that such disputes which involve 'cheating' on the part of the Builder are Criminal in nature. The Bench stated that in case of disputes by builders are serious offences wherein it is for the local Police to guide the complainant.

**RETROSPECTIVE RECOVERY POST-RETIREMENT/
SUPERANNUATION BAD IN LAW**

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| Petitioner: Grace George Pampoorickal | Court: Bombay High Court |
| | Date of Order: 20.04.2018 |
| Respondents: Municipal Corporation of Gr. Mumbai and Ors. | Citation: WP No. 1010 of 2015 |

In the present matter, the Petitioner after retirement, while being handed over the pension book, noticed that her last drawn pay was reduced to a sum of Rs. 7,410/- (INR). This was done considering the fact that such a salary which was mistakenly offered to her, could only be offered to a trained graduate teacher. Therefore, her salary was retrospectively reduced to a sum of Rs. 7,410/- (INR). In this regard, Rs. 1,40,030/- (INR) was ordered to be recovered from her retirement benefits in lieu of the extra payment made available to her against her services.

The Court disallowed this retrospective change in the remuneration of the petitioner. The Court held that, *“recovery at the fag end of the career of an employee or after his superannuation is not at all permissible in law.”*

**HIGH COURTS NOT TO ENTERTAIN PETITIONS AGAINST RBI
CIRCULAR ON “PROHIBITION ON DEALING IN VIRTUAL
CURRENCIES”**

The Supreme Court has asked High Courts across the country not to entertain any petition relating to the circular issued by the Reserve Bank of India on “Prohibition on dealing in Virtual Currencies’. A bench headed by the Chief Justice of India Dipak Misra issued this order while staying further proceedings pending before Delhi and Calcutta High courts.

LABOUR COURT/INDUSTRIAL TRIBUNAL IS NOT FUNCTUS OFFICIO AFTER THE AWARD HAS BECOME ENFORCEABLE

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| Petitioner: Haryana Suraj Malting Limited | Court: The Supreme Court of India |
| Respondent: Phool Chand | Date of Judgement: 23rd May, 2018 |
| | Citation: Civil Appeal No. 5650 of 2018 |

The Supreme Court in this matter has held that labour court/industrial tribunal is not functus officio after an award has become enforceable as far as setting aside an ex-parte award is concerned.

The Hon'ble Court observed as follows, *"It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law"*.

HIGH COURT CAN FRAME ADDITIONAL QUESTIONS OF LAW IN SECOND APPEAL BUT ONLY DURING HEARING

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| Petitioner: Vijay Arjun Bhagat | Court: The Supreme Court of India |
| Respondent: Nana Laxman Tapkire | Date of Judgement: 23rd May, 2018 |
| | Citation: Civil Appeal No. 6272 of 2010 |

A bench comprising of Justice AM Sapre and Justice S Abdul Nazeer observed that though the High Court in the present matter had rightly framed six substantial questions of law at the time of admission of the appeal but erred in not answering these questions, instead allowed the appeal on the two additional questions, which were framed in the judgment itself. The Court reproduced the provision stating that *“The proviso to subsection (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under subsection (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal”*.

Prepared By:

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