State through the Inspector of Police CBI/ACB/Chennai v. S. Murali Mohan

- **TOPIC :** Oral Dying Declaration Made To Close Relatives Requires Cautions Assessment Before Being Used To Convict Accused : SC
- **BENCH :** Justice CT Ravikumar and Justice Sudhanshu Dhulia

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding the oral dying declaration.
- **OBSERVATIONS**
  - The Supreme Court has observed that when the conviction was based on the deceased's oral dying declaration to a close relative, the courts must exercise due caution in believing the testimony of the close relative to convict the accused.
  - The bench comprising Justice CT Ravikumar and Justice Sudhanshu Dhulia heard a case where the prosecution tried to prove the guilt of the accused based on the oral dying declaration made by the deceased to her mother.
  - The trial court convicted the accused in a murder case based on the deceased's mother's testimony deposing that her son (deceased) had made an oral dying declaration pointing out the names of the accused.
  - However, the conviction was set aside by the High Court after noting a material discrepancy in the deceased mother's version because the mother, who was the informant in the case, had not averred anything in Section 161 Cr.P.C. statements about a dying declaration made to her by her son.
  - However, at the stage of the trial, she testified before the court about an oral dying declaration being made by the deceased to her.
  - Affirming the High Court's finding, the judgment authored by Justice Ravikumar observed that: ‘‘Through the evidence of PW8, the mother of the deceased, who is also the informant, the prosecution has attempted to establish the existence of an oral dying declaration. It is to be noted that the dying declaration itself is not a strong piece of evidence and therefore, when it is verbal and that too, allegedly made to a close relative (in this case allegedly to the mother), evidence of the mother about the oral dying declaration was to be treated with care and caution.’’
  - The Court said that even though the FIR is not meant to be an encyclopedia containing a chronicle of all intricate and minute details, it could be used to corroborate its maker under Section 157 of the Evidence Act or to contradict its maker, viz., the informant, under Section 145 of the Evidence Act to establish whether he is a trustworthy witness or not.
  - ‘‘The undisputed and indisputable position obtained from the evidence on record is that the defence had brought out that neither in Ext. P12 FIR nor in Ext. D3 statement of PW8 (deceased mother) recorded under Section 161, Cr.P.C., PW8 stated about the oral dying declaration made to her by the deceased.
  - That apart, the prosecution had failed to establish that when PW8 reached the place of occurrence the deceased was in a fit state of mind to speak or talk relevantly. Except the statement of PW8 in the Court there is no scrap of evidence in that regard in the case on hand.
  - There can be no doubt that an oral dying declaration should be of such a nature as to inspire full confidence of the court in its correctness.
  - In the contextual situation revealed as above, we have no hesitation to hold that the High Court was perfectly justified in considering the oral testimony of PW8 and taking serious note of the serious omission brought out from her, on being confronted with Ext. P12 FIR and Ext. D3, which is her previous statement made to the police, that she had not stated anything about such an oral dying declaration made by her deceased son.’’, the court said.
  - Thus, finding the ocular (hearsay) evidence of the deceased mother (PW 8) unreliable and not trustworthy, the court gave the benefit of doubt to the accused.
  - Accordingly, the appeal filed by the State against the respondent's acquittal was dismissed.

The State of Maharashtra, through Directorate of Medical Education and Research & Anr v. Smt. Sunita Shankar Vraohatkar & Ors.

- **TOPIC** : Permanency of Post Not To Be Granted Merely On the Completion of Certain Days of Service; But To Be Considered If Scheme Present For The Same : Bombay High Court
- **BENCH :** Justice Sandeep V Marne

- **FORUM**: Bombay High Court
- **MAIN ISSUE**
  - Whether permanency of post will be granted or not merely on the completion of certain days of service
- **BACKGROUND**
  - The petitioner in this case was the Directorate of Medical Education and Research, who had given the staffing pattern for Rajshri Government Medical College (''the College''), under which certain regular and contract posts were sanctioned. The contract posts included academic, technical and administrative posts. Next, the Government had constituted a committee for the selection process for the filling of contractual posts.
  - These posts were sanctioned by the Government in May 2003, but the College had started making contractual appointments for technical categories back in January. The names of some of these employees (''respondents'') were sponsored by the Regional Employment Exchange. Thus, before the Selection Committee was constituted, the respondents had already been selected via appointment orders issued in January 2003.
  - The employees had approached the Industrial Court to seek the benefit of permanency on completion of 240 days of service as well as to restrain the petitioners from discontinuing their services. The Industrial Court directed the grant of permanency. Aggrieved by the same, Directorate of Medical Education and Research filed a petition with the Bombay High Court, against the respondents, the employees.
- **OBSERVATIONS**
  - The Bombay High Court Bench of Justice Sandeep V Marne considered a petition against an order passed by the Industrial Court allowing Respondents grant of permanency as well as other benefits.
  - The Court ordered that simply completion of 240 days of service is not enough to mandate permanent post, however, in case creation of permanency was in consideration, via scheme provision or otherwise, then the case of employees must be considered fairly.
  - The Court referred to Municipal Council Tirora V/s. Tulsidas Baliram Bindhade 2016 (6) Mh.L.J. 867 which had held that permanency cannot be granted in the services of the Government and its Instrumentalities in accordance with Clause 4(C) of the Model Standing Orders and that the Industrial Adjudicator cannot indirectly create posts on establishment of the Government and its Instrumentalities by issuing order for permanency.
  - Thus, the Court ordered that in view of Municipal Council, permanency cannot be granted to employees merely on the strength of completion of 240 days of service.
  - However, it was also noted that evidence indicates that petitioners themselves were considering regularizing services of employees working on contract basis in the college.
  - Considering this, Justice Sandeep V Marne noted the case of respondents for grant of regularization needs to be considered by the State Government.
  - Further, the Court highlighted the case of Hari Nadan Prasad V/s. Employer I/R to Management of FCI & Anr. (2014) 7 SCC 190, where the Supreme Court had held that an Industrial Adjudicator can direct regularization in the services of Government and its instrumentalities if there is a scheme formulated for such regularization.
  - Thus, while disposing of the Writ Petitions, the Court decided that though the Industrial Court order directing permanency is not sustainable, the employees cannot be denied the opportunity of having their cases considered for regularization. Hence, the petitioners were directed to forward employees' proposals 'of consideration of grant of regularization by converting the posts occupied by them on contract basis as regular posts'

UOI vs. COL (TS) SHYAMA NAND JHA (RETD.)

- **TOPIC :** Disabilities Can Be Attributed to Service In Army Due to Stressful work Condition, Delhi HC Grants Disabilities Pension
- **BENCH :** Justices Navin Chawla and Shalinder Kaur FORUM: Delhi High Court

- **MAIN ISSUE**
  - Whether Disabilities can be attributed to service in the army due to stressful work conditions or not.
- **BACKGROUND**
  - The Respondent, an armed forces personnel, was enrolled in Army Service in December, 1981. He was granted disability pension by the Armed Forces Tribunal, Principal Bench, New Delhi by an Order dated 12.05.2023. In deciding the Respondent's case, the Tribunal relied on the ratio laid down in Dharamvir Singh v. Union of India & Ors.
  - The Tribunal observed that the Respondent had been in military service for long and his disabilities started after 24 years of the Army Service. Relying on the judgement in Dharamvir Singh v. Union of India & Ors., (2013) 7 SCC 316, the Tribunal gave the Respondent the benefit of doubt since his poor lifestyle was not noted.
  - It was observed that in view of judgment mentioned above and settled law on the point of attributability/aggravation, the disabilities of the applicant would be held attributable to/aggravated by the military service.
  - Dissatisfied with the reasoning by the Review Medical Board in considering the diseases non-attributable to Service and having occurred in peace station, the Tribunal held that such reason could not be accepted.
  - Acknowledging the pressure of rigorous military training and associated stress and strain of the service an Army personnel goes through during the Service, the Tribunal observed that considering it as a 'metabolic disorder' without explanation, could not sustain.
  - The Tribunal further delved into the intricacies of Army service and held that the stressful and hostile work environment, difficult weather conditions and strict disciplinary norms indicated that the disabilities of the Respondent could be attributed to the Military Service. Accordingly, the Respondent was granted relief by the Tribunal.
  - Aggrieved by the order of the Tribunal, the Petitioners(UOI) approached the High Court.
- **OBSERVATIONS**
  - A Division Bench of the Delhi High Court comprising Justices Navin Chawla and Shalinder Kaur attributed the disabilities of the Respondent to his Service considering that an Army Personnel undergoes rigorous work stress and strain.
  - It upheld the order of the Armed Forced Tribunal stating that the Army personnel worked in a stressful and hostile environment and thus, presumably, his disabilities could ordinarily be attributed to such conditions of service.
  - The Court held that as per the Medical Board Proceedings, the submission of the Counsel for Petitioner that the Respondent was posted in a peace area from 1993 was factually incorrect.
  - The Bench considered that the posting of the respondent involved severe/exceptional stress and strain, as was also acknowledged by the Medical Board. Satisfied with the contentions of the Counsel for Respondent, the Court rejected the stand of the Petitioners that the disease was non-attributable to service since it was first noticed when the respondent was not working in the field. It was further held that the Tribunal had given a persuasive explanation based on which the decision was taken.
  - Making these observations, the Court upheld the judgment of the Tribunal and dismissed the petition.

Sarita Tekriwalla v. Srawan Kumar Gutgutia and Ors

- **TOPIC :** S.47 CPC | Co - owner cannot Object To Execution Merely Because He wasn't Made party To Eviction Suit By Landlord : Jharkhand HC
- **BENCH :** Justice Subhash Chand
- **FORUM:** Jharkhand High Court
- **MAIN ISSUE**
  - Whether the co-owner can object to execution or not merely because he wasn't made party to eviction suit by the landlord.

❖ **OBSERVATIONS**

- The Jharkhand High Court has ruled that a co-owner of a property cannot object to the execution of a decree simply because they were not included as a party in the eviction suit initiated by one of the co-owners. This decision underscores the limitations of a co-owner's rights in such proceedings.
- The Court clarified that such an objection under Section 47 of the Civil Procedure Code (CPC) is not maintainable, as alternate legal remedies are available to the co-owner to protect their rights.
- The Court differentiated between a landlord and a co-owner. Notably, a landlord has the legal authority to lease property and enforce eviction against a tenant; whereas a co-owner merely shares ownership of the property without necessarily having the same legal control over the lease or eviction process.
- A single bench of Justice Subhash Chand, explained, ‘‘There is a material difference between the landlord and the owner with regard to the property in question.
- If there are more co-owners of any property and any one of the co-owner, who has received the rent from the tenant or to whom the rent had been paid would be the landlord.
- If in a rent eviction suit, the tenant has been evicted and the plaintiff/landlord has been directed to handover the possession of the same, the right, title or interest of co-ownership of the petitioner is not extinguished from the same."
- The above ruling was delivered in a civil miscellaneous petition filed to quash an order passed by a Civil Judge (Sr. Division)-I, Madhupur, whereby the petitioner's application filed under Section 47 CPC in an ongoing execution proceeding was rejected.
- The petitioner contended that the eviction suit, decreed in January 2015 by the Civil Judge (Senior Division)-IV, Deoghar, was initiated by a co-owner without including the petitioner as a party.
- Furthermore, the petitioner contended that this omission violated their rights as a co-owner, and thus, the objection under Section 47 CPC should have been upheld.
- The Court observed in its ruling that in the eviction suit filed by the plaintiff against the tenant, the relationship of landlord and tenant was adjudicated by the trial court. After the determination of this relationship and the establishment of grounds for eviction, the suit was decreed, the Court said.
- The Court further observed that the petitioner was neither the decree holder nor the judgment debtor in the eviction suit. His claim was based on being a co-owner of the property in question, against which eviction was sought by one of the co-owners/plaintiffs.
- The Court said, ‘‘If after delivery of the possession to the decree holder of the property in question any right, title or interest in the very property of the petitioner being a co-owner is being prejudiced or adversely affected for the same there is alternate remedy to file application under Order XXI Rule 97 or 99 of the CPC for the right, title and interest against the another co-owner; but the very objection under Section 47 CPC against the impugned decree execution of which is pending before the learned trial court is not at all maintainable.Thus, the learned trial court has rightly rejected the application under Section 47 CPC moved on behalf of the petitioner.’’
- Thus, the Court held that the trial court rightly rejected the application under Section 47 CPC filed by the petitioner.
- The Court concluded that the trial court did not err in dismissing the petitioner's application under Section 47 CPC, and accordingly, the High Court dismissed the Civil Miscellaneous Petition.

XXX v State of Kerala and Others

❖ **TOPIC :** CWC’s order Cannot Be based on Personal Moral Values, Must Protect Child’s Interests : Kerala HC Gives Custody of Infant to Breastfeeding Mother

❖ **BENCH :** Justice V. G. Arun

❖ **FORUM:** Kerala High Court

❖ **MAIN ISSUE**

- Whether an order of the Child Welfare Committee (CWC) can give the custody or not of a one-year child to the father observing that the Committee did not even consider that the child was being breastfed by the mother.

❖ **BACKGROUND**

- The mother and father of the child are living separately. As per the wife, she left her husband due to constant mental and physical harassment. Initially, the wife was living with her mother. One day, she eloped with the step-father of her husband. On coming to know this, the husband filed a missing person complaint before the police. After investigation, police produced the wife before the 1st Class Judicial Magistrate.
- The wife was set free after the Magistrate recorded that the wife had voluntarily chosen to live with the person she eloped with. However, the Court asked the police to produce the child before the Child Welfare Committee. The Committee gave the custody of the child to the father saying that the child is unsafe with the mother and her companion.
- Aggrieved by this order, she approached the High Court to get custody of the child for at least half an hour every day to breastfeed the baby. Later she amended her prayer and sought to quash the order of CWC.

❖ **OBSERVATIONS**

- The Kerala High Court quashed an order of the Child Welfare Committee (CWC) giving the custody of a one-year child to the father observing that the Committee did not even consider that the child was being breastfed by the mother. Justice V. G. Arun gave the custody of the child to the mother.
- The CWC had awarded custody to the father after observing that the mother had chosen to stay with a man other than her husband after birth of the child.
- The Court noted that the order of CWC violated the right of the mother to breastfeed the baby and right of the baby to be breastfed which is protected under the right to life under Article 21 of the Constitution. The Court further said that breastfeeding is implicitly supported by the Constitution as the Constitution imposes a duty on the State to raise the level of nutrition.
- The High Court held that the order of the CWC was based on the predilection of the members.
- The Court held that the Committee should only consider the welfare of the child. The Court added that the mother chose to live with someone other than her husband is not the concern of the Committee. The Court held that personal moral values give rise to biased judgments.
- ''Judged by the moral standards of the members, the petitioner may not be a good person, but that does not make her a bad mother. Personal moral values always result in biased judgments. Unfortunately, the order reflects nothing other than the moral bias of the committee members.'' The Court added that the CWC should follow the general principles mentioned in Section 3 of the Juvenile Justice (Care and Protection of Children) Act and treat all persons with equal dignity keeping the best interest of the child in mind. The Court said that if the Committee follows these principles, there will be a marked difference in the decision-making process and the decision.
- The High Court noted that for CWC to invoke its powers, the child must be a ''child in need of care and protection'' as defined in Section 2(14) of Juvenile Justice (Care and Protection of Children) Act, 2015. The Court concluded that the CWC might have considered the child in need of care and protection under the ground mentioned in Section 2(14)(v).
- The Court observed that for that section to attract, the parent or guardian should be found unfit or incapacitated.
- The Court held that the parens patriae power of the CWC can be invoked only when both the parents are not in a position to take care of the child. The Court observed that in this case, both the parents are willing and capable to look after the child.
- The Court lamented that due to the order of CWC, the baby had to be separated from her mother for almost one month. The Court quashed the order of CWC holding it to be violative of the principles of natural justice.

AVENUES SEASONS PROPERTIES LLP VS. NISSA HOOSAIN NENSEY & ORS

❖ **TOPIC:** Arbitration Proceedings can't Be commenced Against Third Parties who Are Not Parties To Agreement : Bombay High Court

❖ **BENCH :** Justice A. S. Chandurkar and Justice Rajesh S. Patil

❖ **FORUM:** Bombay High Court

❖ MAIN ISSUE

- Whether arbitration proceedings can be commenced against third parties who have not signed the Arbitration Agreement or not.

❖ BACKGROUND

- The Respondents are owners of independent Bungalows. They had filed civil suits before the court, seeking injunctive relief against the Co-operative Housing Society. In both civil suits, the respondents preferred an Interim Application seeking to stay the resolutions passed by the Co-operative Housing Society and not to take steps to evict them from the Bungalows during the pendency of suit.
- The Appellant/developer had filed an interim application under Section 8 of the Arbitration and Conciliation Act, 1996. The developer sought the return of plaint to proper court and referral of the entire dispute to arbitration.
- The Appellant preferred a petition under Section 9 of the Arbitration Act, seeking interim measures pending the commencement of arbitration proceedings. On 23.09.2021, the Court dismissed the Section 8 Interim Applications and Section 9 Arbitration Petition.
- The Appellants filed the appeals under Section 37 of the Arbitration Act, challenging the impugned judgment and order dated 23.09.2021.

❖ OBSERVATIONS

- The Bombay High Court bench of Justice A. S. Chandurkar and Justice Rajesh S. Patil has held that arbitration proceedings cannot be commenced against third parties who have not signed the Arbitration Agreement. The court observed that either the developer or the society, who has signed the Development Agreement can invoke the arbitration agreement in case of dispute. A party who is not mentioned in the Development Agreement and has not signed the contract cannot be referred to arbitration.
- The court noted that the Respondents neither signed the agreement nor were their names mentioned in the Development Agreement. It had to be seen whether the clauses of the Development Agreement would bind the Respondents.
- The court observed that section 7(4) (a) of the Arbitration Act mentions that the Development Agreement must be signed by the parties. The court observed that either the developer or the society, who has signed the Development Agreement can invoke the arbitration agreement in case of dispute. A party who is not mentioned in the Development Agreement and who has not signed the contract cannot be referred to arbitration.
- The court noted that the impugned order, which allowed the developer to redevelop the property belonging to the society (other than two bungalows) would continue till the disposal of the suits filed by the respondents.
- The court dismissed the appeals.