

SUMMARY

Of

Business Conducted at Workshop dt. 17.01.2016

on

Jurisdiction of Civil Courts and section 9A of

Code of Civil Procedure, 1908,

And

Misappropriation and Defalcation

As per directions of Honourable High Court of Judicature, Bombay, the last workshop for the academic year was conducted as per the changed procedure. The judicial officers of Wardha District were divided in two groups for submitting paper on civil and criminal topics. Accordingly, each officer had submitted paper on civil and criminal topic, as assigned to him/her. The Judicial Officers in the district had also suggested recent pronouncements of Honourable Supreme Court and Honourable Bombay High Court, for discussion at workshop.

The Workshop Committee, comprising five judges including Honourable Principal District and Sessions Judge, Wardha, had prepared a summary of papers of judicial officers on the topics. The summaries of civil and criminal topics were circulated before workshop to each of the judicial officers in the district. The softcopies of the same were circulated through respective emails. Out of suggested recent pronouncements, Workshop Committee had selected few pronouncements for discussions. Softcopies of those pronouncements were circulated before workshop to each judicial officer.

As per new pattern of workshop, administrative problems were called from every officer. The problems which are to be addressed, were shortlisted.

For the third and last workshop of this year, ***Honourable Smt. Justice Vasanti Naik***, Judge, Bombay High Court and Guardian Judge of Wardha District, has selected topic of '***Jurisdiction of Civil Courts and section 9A of Code of Civil Procedure, 1908***' and '***Misappropriation and Defalcation***'. The workshop was scheduled on 17th January 2016, at Conference Hall of District Court Wardha.

The Workshop was inaugurated by lightening of traditional lamp and *Saraswati Poojan*. The Principal District and Sessions Judge, Madam Sandhya Raikar, had delivered the Welcome Speech on the topic. As both the topics were related to daily work and usual nature of litigation, Madam Sandhya Raikar, the Principal District and Sessions Judge, Wardha, had explored niceties of the topics in her brief welcome speech. The authoritative speech had set the tone and platform for the remaining sessions of the Workshop.

Thereafter, *Mr. Anup Jaiswal* [CJD and JMFC, Arvi] had read out the Summary on Civil Topic. The summary was projected on screen using projector, simultaneously while it was read. Each judicial officer was reading the summary personally, on his laptop.

After the summary was read out, the Civil topic was put to discussion. The discussion was live and energetic. Starting from kinds of jurisdiction, the discussion about error within and without jurisdiction had taken place. The discussion about preliminary issue, its reconsideration and its necessity was helpful for all the judicial officers. The difference in between preliminary issue under section 9A of Code of Civil Procedure, 1908 and preliminary issue under order XIV Rule 2 of Code of Civil Procedure, 1908 was impressed upon the participants. Similarly, the express bars to the jurisdiction of Civil Courts were discussed with the help of relevant provisions and relevant judicial pronouncements.

Thereafter, recent civil pronouncements were discussed amongst all. Those recent pronouncements on civil side can be enlisted as

CIVIL SIDE		
1.	2015 (5) Mh.L.J. 350	<i>Shrimant Chhatrapati Udayanraje Pratapsinh Maharaj Bhosale and another versus Shrimant Chhatrapati Vijayaraje Shahumaharaj Bhosale</i> <u>On topic of partial jurisdiction:</u> Mere fact that a portion of claim is excluded from jurisdiction of civil courts is not a bar to trial, particularly of remaining portion of same suit, which is not so excluded. Jurisdiction of Civil Court is not ousted, unless entire suit, as brought, is barred.
2.	2015(6) Mh.L.J. 496	<i>Om Agrawal versus Haryana Financial Corporation and others,</i> <u>On topic of jurisdiction and rejection of plaint:</u> For rejection of plaint when a suit is barred by any law, for deciding the question averments in plaint are only relevant. Question as to whether suit is barred by any law or not would always depend upon facts and circumstances of each case. Such question can be raised at any time by the defendant by taking recourse of Order 7 Rule 11 of CPC.

3.	2015(6) Mh.L.J. 487 (SC)	<i>Pemmada Prabhakar and others versus Youngmen's Vysya Association and others,</i> <u>On topic of Specific Performance of Contract:</u> Plaintiff vendee seeking relief must approach Court with clean hands.
4.	2015 (6) Mh.L.J. 96 (SC)	<i>Shri Gangai Vinayagar Temple and another versus Meenakshi Ammal and others</i> <u>On topic of framing of issues:</u> Obligation and duty to frame issues is casted solely on Court.

While discussing these pronouncements, the earlier views on the respective subjects were also discussed. Then, the importance and binding nature of these pronouncements were impressed upon. The discussion of facts and ratio of these cases was useful and energetic.

Then, (in the second segment of the workshop) *Mr. Nilesh Bansal*, [CJJD and JMFC, Seloo] had read out the Summary on criminal side. In the discussion followed thereto, many judicial officers had expressed views on the topic. The discussion in this segment was also energetic and lively. The necessity of framing correct charge in cases of Misappropriation and Defalcation was impressed upon.

Then, following recent criminal pronouncements were discussed.

CRIMINAL SIDE		
1.	2015 Cr.L.J. 3181	<i>Ultratech Cement versus Rakesh Kumar Singh and another,</i> <u>On Topic of territorial jurisdiction and ordinance:</u> Proceeding under 138 initiated and evidence was recorded at post-summoning stage, as envisaged under section 145(2) prior to 01.08.2014, i.e. prior to Dashrath Rupsing Rathod's case; such proceedings would not be dislodged.
2.	2015 Cr.L.J. 4488	<i>CBI vs. Ratin Dandapath and others,</i> <u>On Topic 167 and 309 of Cr.P.C.:</u> It is permissible to grant police custody of an accused who is arrested subsequent to the filing of charge-sheet, when he was shown as absconding previously.
3.	2015 (6) Mh.L.J. 248	<i>Abdul Rashid Abdul Latif Musalman versus Zilla Parishad, Jalgaon and others,</i>

		<p><u>On evidentiary value of evidence in Departmental Proceedings:</u> Probative value of evidence in criminal proceedings cannot be equated with evidence recorded in departmental proceeding. Departmental proceedings are conceptually distinct and different from criminal trial. An employer may arrive at a finding of holding delinquent guilty, if the charges are proved in the inquiry.</p>
4.	<p>Cri. Appeal 1557 of 2015 Decided on 24.11.2015</p>	<p><i>Bridgestone India Pvt. Ltd. versus Inderpal Singh,</i> <u>On territorial jurisdiction of 138 case and ordinance:</u> The judgment in case of Dashrath Rathod has no effect in view of the Amendment and new ordinance.</p>
5.	<p>2015 Cr.L.J. 4186</p>	<p><i>Jogendra Yadav and others versus State of Bihar,</i> <u>On discharge plea of additionally summoned accused:</u> Person summoned as additional accused under section 319 of Cr.P.C. cannot avail remedy of discharge under section 227 of Cr.P.C. on ground that there is no sufficient material against him.</p>

While discussing these pronouncements, the earlier views on the respective subjects were also discussed. Then, the importance and binding-ness of these pronouncements were impressed upon.

Thereafter, practical problems and practical solutions for Case Management were addressed by The Principal District and Sessions Judge, Madam Sandhya Raikar.

Then, *Ms. Apoorva Bhasarkar*, [Extra Joint CJD and JMFC, Wardha] had expressed Vote of thanks. It concluded the third and last workshop of judicial officers in Wardha District. *Mr. Santosh Garad*, [IInd Joint CJD and JMFC, Wardha] had anchored this workshop.