

Civil Side :-

- 1) Issuance of succession certificate, heir ship certificate and Probate.
- 2) Ex-parte and temporary injunction.
- 3) Stay of suit under Section 10 of the Code of Civil Procedure and res-Judicata.

Criminal Side:-

- 1) Scheme for grant of compensation under section 357 of the Code of Criminal Procedure and disposal of seized property.
- 2) Recording of statement under Section 164 of the Code of Criminal Procedure.
- 3) Bail in default and bail by Magistrate.

2. As per direction given in the High Court letter, I have formed two groups of Judicial Officers, one for Civil side and second for Criminal side. Subjects are assigned to the Judicial Officers by dividing in three subgroups in each groups. From the each groups Workshop committee has formed.

3. All Judicial Officers submitted their papers on allotted subjects to them and latest Case Laws for discussion. The Workshop committee has scrutinized all papers of Judicial Officer and prepared Summary and fixed case laws for discussion.

4. The Workshop began with the traditional lighting of lamp and inaugural speech of the Chair person. The papers reading of each group was followed by the discussion of important questions relating to the subjects and Important decisions of the Hon'ble High Court and the Supreme Court were also discussed. There was an effective and informative discussion on the important questions. Some of them are reproduced below.

Que. No.1 :- What is the difference between res judicata and re sub judice?

Ans. :- The doctrine of res judicata differs from res sub judice in two aspects:

(I) Whereas re judicata applies to a matter adjudicated upon, re sub judice applies to a matter pending trial.

(II) Res judicata bars the trial of a suit or an issue which has been decided in a former suit, res sub judice bars trial of a suit which is pending decision in a previously instituted suit.

Que No .2 :- What is constructive Res-judicata?

Ans. :- When any matter which might and ought to have been made a ground of defense or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.

Illustration :- (I) A sues B for possession of property on the basis of ownership. The suit is dismissed. A can not thereafter claim possession of property as mortgagee as that ground ought to have been taken in the previous suit as a ground of attack.

Que No .3 :- What is the difference between constructive res judicata and order 2 rule of cpc?

Ans :- Res judicata relates to the plaintiffs duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in single suit. The two pleas are different and one will not include the other.

Que. No. 4 :- Whether prohibitory temporary injunction can be granted to restrain a husband from contracting second marriage?

Ans :- It has been discussed that though Order 39 Rules 1 and 2 of C.P.C. Would not apply to restrain a spouse from marrying, yet a temporary injunction can be issued by the court in the interest of justice in exercise of its inherent power if a proper case is made out therefor.

Que.No. 5 :- How the period of 90 days or 60 days are to be calculated while considering application for default bail?

Ans. :- Period of 90 days or 60 days is to be considered from day of first production of an accused before the court. However the day of first remand is to be excluded and day of filing charge sheet is to be included.

Que.No.6 :- Whether subsequent filing of the charge-sheet defeats the indefeasible right of the accused?

Ans. :- If charge-sheeted is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the magistrate, but the Magistrate

erroneously refuses the same and rejects the application and then accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail.

Que.No.7 :- In which cases ex-parte injunction is to be granted ?

Ans :- Rule 3 of Order 39 required the applicant to issue a notice to the opposite party before an injunction is granted. Though the court has the power to grant an ex-parte injunction without issuing a notice or granting a hearing to the party who will be affected by such order the said power is to be exercised sparingly and under exceptional circumstances. The case of *Morgan Stanley Mutual Fund vs. Kartick Das* (1994) 4 SCC 225 was referred to streamline the discussion.

Que. No.8 :- Whether an application seeking action for disobedience or breach of an order of injunction is to be clubbed with the suit or tried separately?

Ans. :- it was discussed that such application is not to be clubbed and tried separately.

Que. No.9 :- Whether injunction can be granted in the circumstances not covered in rule 39 of CPC ?

Ans. :- Rule 1 of Order 39, no doubt, enumerates circumstances in which a court may grant interim injunction. It, however, nowhere provides that no temporary injunction can be granted by the courts unless the case falls within the said provision. Hence, where the case is not covered by order 39, interim injunction can be granted by the court in exercise of inherent powers under section 151 of CPC.

Que. No.10:- Whether court fee is required for grant of succession certificate ?

Ans. :- Court fees is necessary as per Bombay Court Fees Act.

5. Thereafter, following latest case laws are discussed.

- 1) Dallah Albarakha investment com. Ltd. V. Zinnia Mehepnoosh Khajotia and others 2014(3) MH.L.J., 683.**
- 2) State of Tamilnadu V. State of Kerala & Anr. AIR 2014 SC 2407.**
- 3) Bharat Petroleum corporation Ltd. V. Videocon Properties Ltd. 2014(6) Mh. L.J. 289.**
- 4) Gurudayalsing Mehersing Bindra and others V. Basant singh Mehersingh Bindra and another.2014(6) Mh.L.J.186.**
- 5) Rame Gowda (D) by L.Rs. V.M.Vardappa Naidu (D) by L.Rs. and Anr.2014 All SCR 257.**
- 6) Punjabrao Ramrao Ingle & ors.V. Himmatrao Devrao Dhondge 2014(5) Mh.L.J.815.**
- 7) Ganapati Vinayak Achwal V. State, 2014(6) Mh.L.J.683.**
- 8) Therakan D. Josheph V. Dolphin Developers 2014(4) Mh. L.J. 391.**
- 9) AIR 2014 Supreme Court 3036 " Union of India through C.B.I. -Vs- Nirala Yadav"**
- 10) 2014(2) Mh.L.J. (Cri) 619 " Padmabai Dattatraya Bhojne- Vs- State of Maharashtra"**

- 11) 2014 (2) Mh.L.J. (Cri.) 528 "Salman @ Baba s/o Harun Khan -Vs- State of Maharashtra."
- 12) 2014(4) Mh.L.J. (Cri.) 47 " Arnesh Kumar -Vs- State of Bhihar "
- 13) 2014 Cri. L.J.2170 "Mohd. Haroon -Vs- Union of India"

6. All Judicial Officers actively participated and expressed their views. The Senior Judicial Officers guided the Junior ones. The Workshop was quite informative and helped every one. The Workshop was successfully concluded. I am also submitting herewith soft copies of papers circulated amongst the Judges by **E-mall**.

Submitted with due respects.

Yours faithfully,


(P.L.Gajbhiye)

o/l In-charge Principal District and Sessions Judge,
Buldana.

Copy submitted with respect to the Hon'ble Registrar (Legal & Research), High Court, Appellate Side Mumbai- 400 032, for favour of information.


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