

Summary of business conducted in the workshop
dated 15-03-2015

1. The workshop held on 15-03-2015 was on two topics, one of civil and another was criminal topic. The civil topic was on "Law of injunctions:- Temporary Injunction including ex parte Temporary Injunction, Perpetual Injunction and Mandatory Injunction" and the criminal topic was "Sex determination with reference to PCPNDT Act 1994".

2. The Hon'ble Lordship Shri.Justice A.R. Joshi Saheb inaugurated the workshop by performing pooja of Goddess Sarswati and by lighting the traditional lamp. Thereafter the workshop continued by Welcome and Introductory speech by Hon'ble Principal District Judge Shri.B.U.Debadwar followed by the valuable inaugural speech by Hon'ble Lordship Shri.Justice A.R.Joshi Saheb. Thereafter the business of the workshop commenced.

3. In the first phase Shri.R.D.Deshpande Jt. Civil Judge, Senior Division Ratnagiri read over the summary on civil subject. Thereafter Shri.S.D.Indalkar Jt.Civil Judge, Junior Division and Judicial Magistrate First Class Ratnagiri read over the ratios laid down by Hon'ble Supreme Court and Hon'ble Bombay High Court in different ruling referred in summary. Thereafter discussion was held on the civil subject, various questions were raised during the discussion and answers of these questions were given by the Judicial Officers. Some of these questions and answers are as follows:-

Q.1) What are the requirements to be proved prima facie while granting injunction?

Ans :-

1. Existence of prima facie case.
2. Balance of convenience.
3. The injury must be of an irreparable loss that cannot

be compensated in terms of money.

Q.2) What are other factors to be considered while granting injunction?

Ans:- In Morgan Stanley Mutual Fund Vs.Kartik Das, (1994) 4 SCC 225.

The principles regarding grant of ex-parte injunction are laid down. It lays down that as a Principle, Ex-parte injunction could be granted only under exceptional circumstances and the factors which should weight with the Court in the grant of Ex-parte injunctions are,

(A) Where irreparable or serious mischief will cause to the plaintiff.

(B) Whether the refusal of ex-parte injunction would involve greater injustice than the grant of it involve.

(C) the Court will also considered the time at which the plaintiff first had noticed of the act complained so that the making of improper order against a party in his absence is prevented.

(D) The Court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex-parte injunction.

(E) The Court would expect a party apply for ex-parte injunction to show utmost good faith in making the application.(F) Even if granted, the ex-parte injunction would be for limited period of time.

(G) General principles like prima-facie case, balance of convenience and irreparable loss would also be considered.

Q.3) Whether ad-interim ex-parte mandatory injunction can be granted?

Ans :- In case of essential commodities like cutting of water supply, electricity, Telephone mandatory injunction can be granted at interim stage, where there is extreme hardship and

compelling circumstances.

Q.4) In what cases injunction can be refused?

Ans :- Section 41 of Specific Relief Act provides various contingencies in Sub-section (a) to (j) in which the injunction cannot be granted. These contingencies are -

(a) to restrain any person from prosecuting a judicial proceeding when such a restraint is necessary to prevent a multiplicity of the proceeding.

(b) to restrain any person from withdrawing or prosecuting any proceeding in a Court not to subordinate to that from which the injunction is sought.

(c) to restrain any person from applying to any legislative body

(d) to restrain any person from withdrawing or prosecuting any proceedings in criminal matter.

(e) to prevent a breach of the contract the performance of which would not be specifically enforced.

(f) to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance.

(g) to prevent a continuing breach in which the plaintiff has acquiesced.

(h) when equally efficacious relief can certainly be obtained by any other mutual mode of proceeding except in case of breach of trust

i) when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court.

j) when the plaintiff has no personal interest in the matter.

Q.5) What is the remedy against disobedience of injunction order?

Ans :- As per order 39 Rule 2 A of The Code of Civil Procedure in case of disobedience of injunction 3 months civil

imprisonment is provided and if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under the attachment and compensate the affected party from such sale proceeds. In other words, attachment only continues till the breach continues or the disobedience persists, subject to a limit of one year period.

So also, under Order XXXIX Rule 11 of the Civil Procedure Code remedy for disobedience is given.

Q.6) Whether injunction can be granted against co-sharer for cutting trees from joint family property?

Ans :- If any co-sharer is causing damage or permanent alteration to the joint family property without the consent of other co-sharers. In such case injunction can be granted.

Q.7) Under which provision the order of status quo in respect of subject matter of suit can be granted?

Ans :- Under the provision of Order 39 Rule 2 of C.P.C. the Court can order status quo in respect of subject matter of suit.

Q.8) Whether injunction can be granted to protect possession without having title of suit property?

Ans :- As held in the case of Rame Gowda (D) by Lrs v/s M.Vanadappa Navdus (D) by LRs AIR 2004 SC 4609 'if a person is in settled possession though not owner his settled possession can be protected.'

So also questions brought by Judicial Officers were also discussed on civil topic.

4. In the second phase Shri.A.M.Patankar Civil Judge (J.D.) and J.M.F.C. Khed read over the Summary of criminal topic "Sex determination with reference to PCPNDT Act 1994". Thereafter Shri. G.M.Sadhale Assistant Charity Commissioner Ratnagiri read over the ratios laid down by Hon'ble Supreme Court

and by Hon'ble Bombay High Court in different rulings. Thereafter discussion was held on the aforesaid criminal subject. Various questions were raised during the discussion and answers to those questions were given by Judicial Officers. Some of those questions and answers are as under:-

Q.1) What is the object of PCPNDT Act?

Ans:- Preamble of the PCPNDT Act:- "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

Q.2) What are the salient features of the PCPNDT Act?

Ans :- (1) Use of Pre-natal diagnostic techniques are allowed only on medical grounds for detecting abnormalities and anomalies and not for sex determination.

(2) No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of foetus by words, signs or in any other manner (Sec.5)

(3) All clinics conducting ultrasound must be registered and certificate displayed- No of machines, qualification of person conducting sonography and period of registration (Sec.19(4))

(4) All clinics should display prominently 'disclosure of sex of the foetus is prohibited under the law' in English as well as local language (Rule 17(1))

(5) All clinics should have available copy of the Act (Rule 17(2))

- (6) Doctors or clinics advertising sex determination test in any form are liable for punishment(section 22)
- (7) Woman is exempt from punishment- Presumption in case of conduct of pre-natal diagnostic techniques (Section 24)
- (8) Every offence under this Act is cognizable, non-bailable and non-compoundable (Section 27)
- (9) Implementing Authority under the Act is Appropriate Authority (Section 17)
- (10) Under Act Appropriate Authority has power to search, seize and seal clinics (Section 30)
- (11) Act has made it mandatory to maintain records of every scan done (Section 29 and Rule 9) Section 5 and Rule 10(1A)

Q.3) What machinery has been constituted for effective implementation of the Act?

Ans :- Certain structures are constituted which include:-

- 1) Central Supervisory Board
- 2) State /UT Supervisory Board
- 3) State Appropriate Authority/ State Advisory Committee
- 4) District Appropriate Authority / District Advisory Committee.

Q.4) What is the nature of offence under the PCPNDT Act?

Ans :- As per Section 27 of the Act, every offence under this Act shall be cognizable, non-bailable and non-compoundable. Cases under this Act are instituted not on police report but on complaints. They are supposed to be conducted as warrant cases on a complaint other than on police report. Hence evidence has to be recorded before framing of charge. The case of Dr.Ravindra s/o. Shivappa Karmudi Vs. State of Maharashtra clarifies this issue.

5. The anchoring of the workshop was done by Shri. R.N.Majgaonkar Civil Judge, Senior Division Ratnagiri. After having successful discussion on above two subjects the business of workshop came to an end with the votes of thanks expressed by Smt.R.M. Shinde,Jt.Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Ratnagiri.
