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Pendency Of Criminal Case For Indefinite Period Violative Of Article 21: Delhi HC

The Hon'ble Delhi High Court in its judgement dated 29/03/2016 pronounced in the matter of *Joginder Singh* v. *State* [CRL.M.C. 770/2016] observed that keeping a criminal case pending for indefinite period amounts to violation of constitutional rights of the accused recognized under Article 21 of the Constitution of India. Quashing the criminal cases against the accused which were pending since 1998, Justice Suresh Kait stated that "the petitioner is facing the trial since 1998 although there is no delay on his part. More than 17 years have already been passed but charges are not framed till date". The petitioner in this case was arrested on the basis of a disclosure statement made by one Daljeet Singh. Two other accused persons have been declared as proclaimed offenders. Relying on the case of *Vakil Prasad Singh* v. *State of Bihar*, AIR 2009 SC 1822, the Court held that "Nothing material has been brought in the notice of this Court that delay in framing charge is caused by the petitioner. Thus, keeping the case pending for indefinite period amounts to violation of constitutional rights of the petitioner recognized under Article 21 of the Constitution of India. Moreover, a case could not have been registered against the petitioner only on the basis of disclosure statement of co-accused without any supporting material."

Jurisdiction For Dishonour Of Cheque

The Hon'ble Gujarat High Court ("**Court**") in the matter of *Brijendra Enterprise* v. *State of Gujarat,* [Cr.M.A. No. 13062 of 2011], has elaborated the principle relating to territorial jurisdiction for filing of complaint of dishonour of cheques under Section 138 of the Negotiable Instruments (Amendment) Act, 2015. The Court observed that when a cheque is delivered for collection through an account, the complaint is to be filed before the court where the bank branch where the payee or the holder maintains his account is situated or when a cheque is presented for payment over the counter, the complaint is to be filed before the court where the drawer maintains his account. The Court further stated that once a complaint for dishonour of cheque is filed in one particular court at a particular place, then subsequently, if there is any other cheque of the same party (drawer) which

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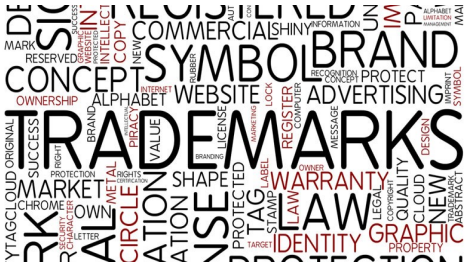
has also been dishonoured, then all such subsequent complaints for dishonour of the cheques against the same drawer will also have to be filed in the same court where the first complaint was filed (even if the person presents the cheques in some other bank/area/city).

CBDT Issues Revised Guidelines For Stay Of Demand

The Central Board of Direct Taxes ("**CBDT**") has revised the guidelines for stay of demand i.e. Instruction No. 1914 vide its *CBDT (Office Memorandum) F. No. 404/72/93-ITCC*, dated 29th February 2016 ("**Revised Instruction**") revising its earlier *Instruction no. 1914* dated 21st March 1996 ("**Original Instruction**"). According to the Original Instruction, a demand was to be stayed only if there were valid reasons for doing so. Mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of the demand. However, after the revisions of the Original Instruction, in cases where the outstanding demand is disputed before the Commissioner of Income Tax (Appeals), the assessing officer shall grant stay of demand till the disposal of the first appeal, on payment of 15 per cent of the disputed demand, unless the case falls within the categories mentioned in the Revised Instruction. In addition to the above, the guidelines also provide specific timelines to dispose of the application for the stay of demand and the related review petition.

Delhi High Court Stayed Abandoned Trade Mark Applications



The Delhi High Court ("**Court**") in writ petition of *Intellectual Property Attorneys Association* v. *The Controller General of Patents, Designs and Trade Marks & Anr.* [W.P.(C) 3067/2016] stayed the order of Registrar of Trade Marks abandoning 2,46,122 Trade Mark applications filed after 20th March, 2016, on the ground of non-delivery of notice to effected party before abandoning of Trade Mark applications. The Court further ordered that till further order is not passed by the Court, the Registrar of Trade Marks shall not treat any Trade Mark applications as abandoned without proper notice to an effected party as provided under Sections 21, 128 and 132 of the Trade Marks Act, 1999.

Stamping Of Similar Orders Passed By Two Different High Courts

The Hon'ble Bombay High Court, in the case of *Chief Controlling Revenue Authority, Pune* v. *Reliance Industries Ltd. Mumbai*, [(2016) 68 taxmann.com 140 (Bombay)] has resolved the issue of stamping the order approving the scheme of amalgamation between companies of two different states. In the present case, the transferee company, having its re-

-gistered office in the State of Maharashtra entered into the scheme of amalgamation with the transferor company , having its registered office in the State of Gujarat. As per provisions of Section 391 read with Section 394 of Companies Act, 1956 ("**CA**"), both the transferor and the transferee company had to obtain order from the court sanctioning the Scheme of Amalgamation so that, such a scheme must bind the dissenting members and all the creditors of both the companies.

The court was of the view that stamp duty is chargeable on the instruments executed in the state covered under Schedule I of the Bombay Stamp Act, 1958 ("**BSA**") and hence, order of Bombay High Court, and not the scheme of amalgamation, sanctioning the scheme is an instrument executed on 7.6.2002. Also, the interpretation that only a document, which 'creates right or obligation' as specified u/s 2(1) of BSA alone constitutes an 'instrument', is not correct, as is apparent from the definition clause itself. Thus, even when the two orders of two different high courts are pertaining to same scheme, they are independently different instruments and cannot be said to be same document especially when the two orders of different high courts are upon two different petitions by two different companies.

The orders of the court, sanctioning the scheme of amalgamation are not just incidental orders even in accordance with the scheme of the CA laid down by Section 391 read with Section 394. Only after the orders are passed by the court, sanctioning the scheme of amalgamation, such a scheme becomes operational and effective. Thus, the duty needs to be paid on the order of the Bombay High Court without waiting for the order of the Gujarat High Court.

Therefore, the transferee company was liable to pay full stamp duty on the order dated 7-6-2002 passed by Bombay High Court in as much as on the order, no stamp duty was ever paid by anybody either in the State of Gujarat or in the State of Maharashtra as Section 19 has no applicability and hence no rebate shall be made available for the duty paid on the order of Gujarat High Court.

Government Enacts Real Estate Act

The Real Estate (Regulation and Development) Act, 2016 ("**Act**") received the President's assent on 25th March, 2016 and is now in force. Under the provisions of the Act, all developers of commercial as well as housing projects will have to register their projects with a real estate regulator of the state (to be established within 1 (one) year from the commencement of the Act) or else they shall not be permitted to launch the project. The developers will also not be permitted to sell properties by showcasing the super area. Instead, the developers will have to disclose the carpet area before putting any advertisements.

One of the key features of the Act is that the developers will have to deposit 50 % (fifty per cent) of the amounts collected from buyers in a separate bank account within 15 (fifteen) days to ensure that they complete the project on time failing which, the developers will have to pay refund with interest to buyers in case they fail to deliver projects on time. Any alteration to the project plan, structural design and specifications of the plot, apartment or a building, shall only be permitted in cases where the developer receives the consent of a minimum of two-third allottees (buyers) after the necessary disclosures to be provided under the Act. The developers are also required to mention all the details of the contractors, architects, structural engineers, etc. associated with the project. The Act also establishes a forum for dispute resolution along with an appellate authority for the same.

RAJASTHAN MONEY LENDERS ACT, 1963

By Ruchika Agarwal, Advocate

Meaning of the term Money Lending:

The legal dictionary defines the term "*money lending"* as the act or occupation of lending business. For a person who is not from a legal background should understand that the term "money lending" would mean and include only those person/organization/entity who is engaged in the "business" of lending money to any third party. Such lending of money to third party may be with or without interest, which is at the sole discretion of money lender. The detailed analysis of money lender and who can lend money has been dealt herein below.

Requirement of registration under the Rajasthan Money Lenders Act, 1963

As per Section 5 of the Rajasthan Money Lenders Act, 1963 ("**Act**"), **a "money lender" shall not carry on or continue to carry on the "business of money lending"** unless it has been granted a license under the Act to carry on the business of money lending. Further, as per Section 6 of the Act, the application for the grant or renewal of such license has to be made by the money lender to the Assistant Registrar of the area where the money lender intends to carry out the "business of money lending". The relevant Section 5 of the Act is reproduced herein below for your ready reference:-

> ***"Sec. 5: Money-lenders not to carry on business of money-lending except for area under licence and except in accordance with terms of licence-*** *Save as provided in section 49, no money-lender shall, after the expiration of six months from the date on which this Act is brought into force, carry on or continue to carry on, the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence."*

Applicability of the Rajasthan Money Lenders Act, 1963

Thus, evidently, to address the issue at hand, first, it is essential to understand as to who shall be termed as 'money-lender' in terms of the Act and what shall constitute the 'business of money

lending'. As per Section 2(10) of the Act, "money lenders" mean and include any person, HUF, a company or unincorporated body of individuals who are engaged in the business of money lending in Rajasthan. As per Section 2(2) of the Act, 'business of money-lending' means the business of advancing loans whether or not in connection with or in addition to any other business. The relevant Sections 2(10) & 2(2) of the Act are reproduced herein below for your ready reference:-

"Sec. 2(10): 'money-lender' means:

(i) an individual, or

(ii) an undivided Hindu family, or

(iii) a company (not being a banking company as defined in Section 5 of the Banking Regulation Act, 1949), body or institution other than such of them as may, by notification in the Official Gazette, be exempted from the provisions of this Act by the State Government on being satisfied that it is necessary or expedient so to do in public interest, or

(iv) an un-incorporated body of individuals, who or which,—

(a) carries on the business of money-lending in the State: or

(b) supplies, as a trader or dealer, goods other than agricultural goods on credit on condition of payment of interest by the-buyer at a rate higher than that prescribed in Section 29 in case the payment of sale price is not made within the stipulated period; or

(c) has his or its principal place of such business in the State."

Sec. *2(2): 'business of money-lending'* *means the business of advancing loans whether or not in connection with or in addition to any other business;"*

Scope of the Rajasthan Money Lenders Act, 1963

Thus, for determining as to whether a person is required to take the license under the Act, the moot question to be answered is that whether the activity being carried out by such person falls within the ambit of 'business of money-lending' as defined above in the Act. In this regard, it is worthwhile to mention that in the case of *Mangu Singh* v *Mehra Ram*[1], the Hon'ble High Court of Rajasthan held that the term "business" would imply that the person is in continuous business of money lending. The Court, relying upon the interpretation given by various courts, with regard to the term "business" was of the view that merely the advancing of money on more than one occasion would not mean that such person is in the business of money lending and that the same would require a license in terms of the Act. The relevant extract from the judgment is reproduced herein below for your ready reference:-

"Thus, the word "business" imports the notion of system, repetition and continuity. The fact that money was advanced in interest for more than one occasion will not bring the plaintiff within the mischief of the word "money-lender" The burden is on defendant to establish that the person from whom he has taken the loan is engaged in the business of advancing loan and he has been carrying on the said business systematically and there is a continuity therein. The person advancing the loan will not fall within the definition of "money-lender" simply because on one or few isolated occasions he lent money to a stranger."

Based on the information available at our disposal and in light of the abovementioned law, it can be

1. *Mangu Singh* v. *Mehra Ram,* AIR 2002 Raj 231

stated that the lender is in fact not engaged in any such business of money lending and is therefore not required to obtain any license under the Act.

Receipt forming part of promissory note:

After the above analysis, the second issue that arises is "*whether any document given by the borrower as an acknowledgment of the receipt of money advanced by the lender shall be construed to be a promissory note*". In this regard, reference shall be made to Sec 4 of the Negotiable Instruments Act, 1881 ("**NI Act**") which defines the "promissory note" as:

> "*A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."*

Thus, in light of the above, following are the essentials of a promissory note[2]:-

1. It must be an instrument in writing
2. It should contain an unconditional undertaking, signed by the maker, to pay a certain sum of money.
3. Money is payable to the person in whose favour the promissory note is executed or to the order of a certain person or to the bearer of the instrument. It should be signed by the maker.

Therefore, it becomes apparent that if the instrument in question in the present case confirms to all the aforesaid requirements, then the said instrument would fall within the purview of "promissory note" as defined hereinabove. As already mentioned above, the borrower has executed an instrument in writing (acknowledging the receipt of a certain sum of money) which contains an unconditional undertaking to repay. Needless to say, the instrument is executed by the borrower and as per the instrument, money shall be payable to the lender (i.e. the person in whose favour the promissory note is executed). Thus, in light of the abovementioned law, in our view, such instrument executed by the borrower as an acknowledgment of the receipt of money advanced by the lender shall be construed to be a promissory note in terms of Section 4 of NI Act.

At this juncture, I would like to reiterate that under the Act, the requirement to obtain registration is with respect to the 'business of money lending' and not just with respect to 'money lending'. In other words, if a person is engaged in 'money lending' and not in the 'business of money lending', then such person shall not be required to obtain a license in terms of the Act. Needless to say that advancing money either once or twice by a lender shall not fall within the definition of business of money lending on account of the reasons explained hereinabove. Accordingly, in all fairness, it is reasonable to say that a one-off activity of lending money by a person (whether through a promissory note or otherwise) would not, by itself, be the sole criteria to determine whether such person is required to obtain a license under the Act.

To conclude, it would be worth mentioning that money lending is an informal source of borrowing. Therefore, before the commencement of the Act, in 1963, there were no law/regulation/rules/notification to regulate the transaction(s) undertaken between the money lender and the debtor. Thereafter, in 1963, after the commencement of the Act, certain provisions were made for regulating and controlling the transactions of money lending in the State of Rajasthan. The Act provides certain requirements that are required to be fulfilled to start the business of money lending, as well as the duties of the money lender. The Act also provides for penal provisions in the event the money lender contravenes with any of the provisions under this Act.

2. *Bhismat Pandey* v. *Phoola & Ors.,* AIR 2010 MP 147

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