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M/s Siemens Aktiengesellschaft & S. Ltd. v. DMRC Ltd. & Ors. 824

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(See under: Code of Civil Procedure, 1908) 656

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written replies adopted stand contrary to documents relied upon by rival parties - Number of documents not mentioned by appellant in the dispute case relied upon by respondent - Held: Arbitrator recorded his findings in the award not only on the pleadings including rejoinder but also on the basis of evidence led in support of said pleadings - Arbitrator acted in accordance with law and thus, exclusion from consideration of factual position asserted by appellant in her rejoinder by tribunal and High Court wholly unjustified.

Pratima Chowdhury v. Kalpana Mukherjee & Anr. 656

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administrative action - Process by which the bids were evaluated and eventually accepted was transparent, fair and reasonable, thus, does not call for interference - Judicial review - Judicial restraint.

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PREVENTION OF CORRUPTION ACT, 1988:

(i) Purpose of enactment - Held: Although IPC provided for punishment for the offence of bribery and corruption even against the public servants, Parliament, in its wisdom, noticed that the Code was not adequate to meet the exigencies of time and a need was felt to introduce a special legislation with a view to eradicate the evil of bribery and corruption from the society -Consequently, the Prevention of Corruption Act was enacted - Penal Code, 1860.

(ii) s.3(1) - Jurisdiction of Special Judge to proceed against a non-public servant - Held: Special Judge appointed u/s.3(1) of the PC Act has got jurisdiction to proceed exclusively against a public servant and exclusively against a non-public servant as well, depending upon the nature of the offence referred to in Chapter III of the PC Act - Junction of a public servant is not a must for the Special Judge to proceed against a non-public servant for any offence alleged to have been committed by him under Chapter III of the PC Act.

(iii) s.3(1) - Non-framing of charge against the public servant and private persons u/s.3(1), while public servant was alive - Held: In such a situation, the Special Judge had no occasion to "try any case" u/s.3(1), either against a public servant or a private person, so as to try any offence other than an offence specified in s.3, meanin

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PC offences against private person - Special Judge appointed u/s.3(1) could exercise the powers under sub-section (3) to s.4 to try non-PC offence - Therefore, trying a case by Special Judge u/s.3(1) is a *sine qua non* for exercising jurisdiction by the Special Judge for trying an offence other than an offence specified in s.3 - "Trying any case" u/s.3(1) is, thus, a jurisdictional fact for the Special Judge to exercise powers to try non-PC offence.

(iv) s.4(3) - 'Trying any case' - Interpretation of - Held: It means trying any case relating to the offences referred to in ss.3(1)(a) and (b) of Act for which exclusive jurisdiction is conferred on the Special Judge - A Special Judge, while exercising, exclusive jurisdiction, that is, when trying any case relating to offences u/ss.3(1)(a) and (b) of the Act, may also try any offence other than the offence specified in s.3, with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial - An accused person, either a public servant or non-public servant, who has been charged for an offence u/s.3(1), could also be charged for an offence under IPC, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant - Code of Criminal Procedure, 1973.

(v) ss. 4(1), 4(3) - Obligation on the part of Special judge to try non-PC cases - Held: Exclusion of the jurisdiction of ordinary criminal court, so far as offences under the PC Act are concerned, has been explicitly expressed u/s.4(1), which does not find a place in respect of non-PC offences in sub-section (3) of s.4 of the PC Act - It is not obligatory on the part of a Special Judge to try non-PC offences - Expression "may also try" gives an element of discretion on the part of the Special Judge which

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will depend upon the facts of each case and the inter-relation between PC offences and non-PC offences.

(vi) s.4(3) - Death of public servant and charges framed against public servant and private person - Held: Once the power has been exercised by the Special Judge u/s. 4(3) to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers u/s. 4(3), will not divest the jurisdiction of Special Judge or vitiate the proceedings pending before him - Trying of any case under the PC Act against a public servant or a private person is a sine-qua-non for exercising powers u/s. 4(3) of the Act.

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RAJASTHAN SALES TAX ACT, 1994:

(i) s. 2 (27) - 'Manufacture' - 'Surgical cotton' processed from cotton - Assessment Year 1992-93 - Entry no. 16 - All kinds of cotton, indigenous or imported, ginned or unginned, baled, pressed or otherwise including Cotton waste - Assessee purchasing raw cotton on payment of 4 per cent tax - Processing it into 'surgical cotton' - Held: "Surgical cotton" is a separately identifiable and distinct commercial commodity manufactured out of raw cotton and, thus, ceases to be cotton under Entry 16 - In the instant case, after going through the various steps that are carried out by assessee for getting surgical cotton from raw cotton, the cotton has undergone a change into a new commercially identifiable commodity which has a different name, different character and different use - Process of transformation is not merely processing to improve quality or superficial attributes of the raw cotton -

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exemption from levy of tax.

(ii) s.2(27) - 'Manufacture' - Held: "Manufacture" can be said to have taken place only when there is transformation of raw materials into a new and different article having a different identity, characteristic and use - While mere improvement in quality does not amount to manufacture, when the change or a series of changes transform the commodity such that commercially it can no longer be regarded as the original commodity but recognised as a new and distinct article.

(iii) Entry No. 16 - Surgical cotton' -Assessment Years 1993-94 to 1998-99 - Held: In the year 1993, by an amendment notification F.4 (56) FD/Gr.IV/82-2 (S.O. No. 8) dated 12.04.1993, legislature has consciously included "absorbent cotton wool I.P." in Entry 16 and it was retained for all subsequent years till Assessment Year 1998-99 - Commodity "absorbent cotton wool I.P." as included in the relevant entries is the same as "surgical cotton" which the assessee manufactures - Absorbent cotton wool I.P. is a technical name of the cotton which is sold in the market and commonly known as surgical cotton - By introducing the word "including" immediately after detailing the definition of cotton, legislature has expanded the meaning of expression "cotton" for the purposes of the Act - While the natural import suggests and prescribes only unmanufactured cotton in all forms, commodities "absorbent cotton wool I.P." and "cotton waste" manufactured out of "cotton" are intentionally and purposefully included in the relevant entries alongwith cotton in its ordinary meaning - "Surgical cotton/absorbent cotton wool I.P." is also "cotton" for the purposes of relevant entries in the notifications for assessment years 1993-94 to 1998-99 and, thus, liable to exemption

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from levy of tax under the Act - Judgment and order passed by High Court for assessment years 1993-1994 to 1998-1999 set aside.

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RECOVERY OF DEBTS DUE TO BANKS AND FINANCES INSTITUTIONS ACT, 1993:
(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 736

SALES TAX:
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SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992:
(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 736

SECURITIES CONTRACTS (REGULATION) ACT, 1956:
(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 736

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(i) s.13(1) - Held: Any secured creditor may be entitled to enforce the secured asset created in its favour on its own without resorting to any court proceedings or approaching the tribunal, however, such enforcement should be in conformity with the other provisions of the SARFAESI Act.

(ii) s.13(8) - Right of borrower - Held: There is a valuable right recognized and asse

the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected - Such an ownership right is a constitutional right protected under Article 300A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law - Therefore, de hors, the extent of borrowing made and whatever costs, charges were incurred by the secured creditor in respect of such borrowings, when it comes to realizing the dues by bringing the property entrusted with the secured creditor for sale to realize money advanced without approaching any court or tribunal, the secured creditor as a trustee cannot deal with the said property in any manner it likes and property can be disposed of only in the manner prescribed in the SARFAESI Act - Constitution of India, 1950 - Article 300A.

(iii) s.13(8) - Conflict with r.15(1) of- Held: r.15 of the 1962 Rules does not in any way conflict with either s.13(8) of the SARFAESI Act or rr.8 and 9 of the Security Interest (Enforcement) Rules, 2002 - Sub-rule (1) of r.15 only deals with the discretion of the Tax Recovery Officer to adjourn the sale by recording his reasons for such adjournment - Under sub-rule (2) it is clear that a sale of immovable property once adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale should be made unless the defaulter consents to waive it - Income Tax Rules, 1962 - Security Interest (Enforcement) Rules, 2002.

(iv) s.35 - Non obstante clause - Held: s.35 states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time

being in force - Therefore, reading s.35 and s.37 together, in the event of any of the provisions of RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, SARFAESI Act and RDDB Act, would be complementary to each other - Effect of s.37 is that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in s.37, namely, Companies Act, 1956, Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992, Recovery of Debts Due to Banks and Finances Institutions Act, 1993, or any other law for the time being in force - Recovery of Debts Due to Banks and Finances Institutions Act, 1993 - Companies Act, 1956 - Securities Contracts (Regulation) Act, 1956 - Securities and Exchange Board of India Act, 1992.

(Also see under: Security Interest (Enforcement) Rules, 2002)

Mathew Varghese v. M. Amritha Kumar & Ors.

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SECURITY INTEREST (ENFORCEMENT) RULES, 2002:

(i) rr.8 and 9 - Procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings u/s.13(1) to (4) of the SARFAESI Act - Held: Requirement u/r.8(6) and r.9(1) contemplates a clear 30 days individual notice to the borrower for effecting any sale of immovable secured asset and also a public notice by way of publication in the newspapers - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

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(ii) rr.8 and 9 - Sale effected in favour of appellant without complying with the mandatory requirement of 30 days notice to the borrower - High Court set aside the sale and passed interim order directing the borrower to furnish demand draft of Rs.2 crores in favour of appellant and in case of non-payment directed to confirm sale in favour of appellant - Payment not made by borrowers - Request by borrowers for six weeks time to arrange money - By another interim order, High Court extended time and permitted 8th respondent to deposit Rs.2.03 crores and on such deposit to cancel sale in favour of appellant - Held: Since very valuable rights of the appellant were at stake, High Court not justified in interfering with the ownership right accrued in favour of appellant in such a casual manner by passing interim orders on flimsy grounds raised by borrowers.

(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002)

Mathew Varghese v. M. Amritha Kumar & Ors.

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TRANSFER OF PROPERTY ACT, 1882:

(i) Housing Society - Transfer of membership/flat - Validity of - Flat given on rent to the son of the respondent - Letters written by appellant to Society for transferring the said flat in favour of respondent on account of close relationship between them - Transfer was without consideration - Arbitrator held the letters of transfer invalid - Tribunal and High Court held that approach of arbitrator was erroneous - Held: In view of the factual position determination rendered by the arbitrator in his award upheld and the order passed by the tribunal and High Court set aside.

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(ii) Housing Society - Transfer of membership/flat - Revocation of - Withdrawal letter revoking letters of transfer sent by appellant before the transfer of membership/flat had attained finality - Still, Society did not consider the withdrawal letter - Non-consideration clearly invalidated the resolution of transfer passed by society.

(iii) Transfer of membership/flat - Validity of - Fiduciary relation - Held: When parties are in fiduciary relationship, the manner of examining the validity of a transaction specifically when there is no reciprocal consideration has to be based on parameters which are different from those applicable to an ordinary case.

(iv) Transfer of membership/flat without consideration - Relationship of faith, trust and confidence - Letters written by appellant to Housing Society for transferring her flat in the name of the respondent - Held: There was no justification for the appellant to transfer her flat to respondent free of cost specially when she has no direct intimate relationship with respondent - Thus, the onus of substantiating the validity and genuineness of the transfer of flat by the appellant rested squarely on the shoulders of the respondent which she miserably failed to discharge.

Pratima Chowdhury v. Kalpana Mukherjee & Anr.

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WORDS AND PHRASES:

(1) 'Trying any case' - Interpretation of.

(See under: Prevention of Corruption Act, 1947)

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(2) Word "include" - Meaning of - Explained.

M/s Mamta Surgical Cotton Industries, Rajasthan v. Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan