Civil Minor Acts

LO 0808

LL.B. II

(2017 Pattern)

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MODULE 1

THE INTEREST ACT, 1978

The concept of interest.

Before we discuss the law on the subject, it is desirable to make certain general observations about the concept of interest and its relationship to uusury Interest is a return on a loan or other monetary obligation. To the lender, it is the difference between the money now and money in the future, seen as a profit.

Interest is, in general terms, the return or consideration or compensation for the use or retention by one person of a sum of money, belonging to, in a colloquial sense, or owed to, another. There may be other essential characteristics of interest, but they are not material here for our present purpose. People have different preference as between money now and money in the future. Hence a "natural" rate of interest on loan arises. Ordinarily, the lender will take advantage of the present necessity of the borrower, in contrast with the future need of the lender, to take a higher rate than is reasonable; and this he will do regardless of the prevailing economic conditions

Market rate and agreed rate.

The market rate of interest may not be necessarily the same as that which is agreed upon between an individual lender and borrower. As has been stated by a writer on the subject:

"The market rate of interest, as economists now commonly agree, is determined by

conditions of time preference investment opportunity, and liquidity preference. This rate expresses the common estimate of buyers and sellers of the price of loanable funds, or the present exchange ratios of funds available at different points of time...."

After stating that the market rate is determined by competitive conditions, he says:

"The competitive conditions assumed above apply particularly to the money and capital markets. The assumption is likely to be less realistic in loans for consumption. Here the danger of usury in the modern sense is greatest. Yet, in this instance, interest payments will include, in addition to pure interest, charges to cover operating costs and risks of non-repayment. In the field of small money lending, some protection to borrowers against usurious rates is afforded by both federal and State legislation in the United States and similar laws in other countries

OBJECT OF ACT

Object of this Act is to consolidate and amend the law relating to the allowance of interest in certain cases by court including tribunals and arbitrators.

DEFINITIONS

In this Act, unless the context otherwise requires,—

(a) “court” includes a tribunal and an arbitrator;

(b) “current rate of interest” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking

companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation.—In this clause, “scheduled bank” means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);

(c) “debt” means by liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;

(d) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

(e) all other words and expressions used herein but not defined and defined in the Reserve Bank of India Act, 1934 (2 of 1934), shall have the meanings respectively assigned to them in that Act

POWER OF COURT TO ALLOW INTEREST

Section 3 of the said Act provides that

In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or

to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

Where, in any such proceedings as are mentioned in sub-section,

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

Nothing in this section,—

(a) shall apply in relation to—

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect—

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.

Section 4 of the Act provides that

Interest payable under certain enactments.

(1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there

are special reasons why interest should not be allowed, namely:—

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.

Section 5 of the Act provides that

Section 34 of the Code of Civil Procedure, 1908 to apply.—Nothing in this Act shall affect the provisions of section 34 of the Code of Civil Procedure, 1908 (5 of 1908).

Section 34 of Civil Procedure Code, 1908 confers a discretion on the Court to award interest at such rate as the Court deems reasonable from the date of the suit to the date of the decree with further reasonable interest on the aggregate sum till date of payment

SECTION 34 of CPC 1908 provides

INTEREST.

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the

suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I-In this sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability

POWER OF ARBITRATOR TO AWARD INTEREST

The Arbitrator's power to grant post-award interest on the total sum of principal plus interest awarded has had a chequered history in courts, dating back to decisions under Arbitration Act, 1940 ("1940 Act"). In the recent three-judge bench decision, Hyder Consulting (UK) Ltd. v. State of Orissa the Supreme Court was called upon to decide the correctness of its earlier decision in State of Haryana v. S.L. Arora and Company.2 The issue in these two cases was whether the word 'sum' in section 31(7)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter "1996 Act") can be interpreted to

include pre-award interest within the principal sum in the arbitral award, for the purposes of granting post-award interest.While SL Arora had held that it did not, the three judge bench (by a majority of 2:1) has held that it does, such that post-award interest can run on the composite sum of principal and pre-award interest.

In this note, we will first briefly examine the power of arbitrators to award 'interest on interest' or compound interest. We then analyze the decision in S.L. Arora, and finally, we examine the new position of law in this regard following the decision in Hyder Consulting.

Power to Grant Interest

Section 31(7) of the 1996 Act, which is the relevant provision with regard to granting of interest by the arbitrator, provides as follows:

"(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

From a reading of the above provision, it is clear that the section has demarcated the period for granting of interest into two stages: from the date when the cause of action

arose to the date of award and, from the date of award to the date of payment. The issue that has come up for debate was whether, under section 31(7)(b), the arbitrator may grant interest from the date of award till the date of payment on the principal sum together with interest awarded under section 31(7)(a).

Section 34 of the CPC empowers the court to grant interest for three distinct periods: prior to institution of suit, pendete lite interest, and interest running from the date of the decree. Through various judicial pronouncements, it has been long-settled that Section 34 of the CPC does not grant power to award compound interest or interest on interest.5 However, a controversy regarding whether post-decree interest could run on the interest allowed pre-decree – contention being that allowing such interest would amount to allowing 'interest on interest' – was resolved by holding that the pre-decree interest is to be considered to have been subsumed in the principal sum and therefore, post award interest could run on it.

Once the 1996 Act came into force, it was widely understood that section 31(7) of the 1996 Act was simply a codification of the S. 34 CPC powers as interpreted by courts over time and applied to arbitrators. However, in the S.L. Arora case, the Apex Court held that S. 31(7) was a conscious departure and an exhaustive provision with respect to power of arbitrators; and that decisions rendered under the 1940 Act were irrelevant to its interpretation.

MODULE 2

THE MAHARASHTRA CIVIL COURTS ACT, 1869

Preamble of Act states that -

An Act to consolidate and amend the law relating to the District and othersubordinate Civil Courts in the Presidency of Bombay. Whereas it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay;

This Act extends to the whole of the State of Maharashtra.

State Government may from time to time, by a notificationin the Official Gazette, alter the limits of existing zillas(which shall hereafter be called districts) and create new districts for the purposes ofthis Act.

State Government may also from time to time, by notification in the Official Gazette, alter the position of the sadr station in any district, and fix the position of the sadr station in any new district.

DISTRICT COURTS

There shall be in each district a District Court presided over by a Judge to be called the District Judge

The District Judge shall ordinarily hold the District Court at the sadr station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.

The District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning of the Code of CivilProcedure. Except as provided in sections 16,17 and 26 the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary. The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

The District Judge shall obey all writs, orders or processes issued to him by the High Court, and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require. He shall further furnish such reports and returns and copies of proceedings as may be called for by the High Court or the State Government

The District Judge shall use a circular seal, two inches in diameter, which shall bear thereon the Asoka Capital Motif, with the following inscription in English and the principal language of the district

JOINT DISTRICT JUDGES

The State Government may appoint in any District a Joint District Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint District Judge by order of the High Court.

The State Government may appoint the District Judge or the Additional District Judge in any district to be also a Joint District Judge in another district. Such Joint District Judge may hold his Court and transact civil business at such place or places in either district as he may deem fit.

All Regulations and Acts now or hereafter in force and applying to a District Judge shall be deemed to apply also to the Joint District Judge and the seal of the Joint District Judge shall be the same as is used by the District Judge.

ADDITIONAL DISTRICT JUDGES

The State Government may appoint one or more Aditional District Judges to the District Judge

An Additional District Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the district, whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

The District Judge may refer to any Additional District Judge subordinate to him any original suits and proceedings of a civil nature, applications or references under special Acts, and

miscellaneous applications.

The Additional District Judge shall have jurisdiction to try such suits and to dispose of such applications or references.

When the Additional District Judge's decrees and orders in suchcases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds one crore rupees.

An Additional District Judge shall have jurisdiction to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge and as may be referred by him to the Additional District Judge. Decrees and orders passed under this section by an Additional District Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge

The State Government may, by notification in the Official gazette, invest an Additional District Judge with all or any of powers of a District Judge within a particular Part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

The jurisdiction of an Additional District Judge so invested shall protanto exclude the jurisdiction of the District Judge from within the said limits.

Every Additional District Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the State Government, and may, with the previous sanction of the High Court hold it at any other place within such limits.

Every Additional District Judge shall use the seal of the District Judge to whom he is Additional District Judge.

CIVIL JUDGES

There shall be in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct :

Provided that for special reasons it shall be lawful for the State Government at any time to close temporarily any such Subordinate Court

The Judges of such Subordinate Courts shall be appointed by the State Government and shall be called Civil Judges.

The State Government may, by notification in the Official Gazette, fix, and, by a like notification, from time to time, alter the local limits of the ordinary jurisdiction of the Civil Judges.

The Civil Judges shall hold their Courts at such place or places as the State Government may from time to time appoint within the local limits of their respective jurisdiction

Provided that for special reasons it shall be lawful for the State Government to order that a Civil Judge shall hold his Court at a place outside the local limits of his jurisdiction. Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Civil Judge shall hold his Court at each of such places, and the Civil Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

The same person may be the Judge of more than one subordinate Court and may dispose of the civil business of any one of his Courts at the headquarters of any other of his Court and in such cases the District Judge shall, subject to the control of the High Court, presecribe rules for regulating the time during which the Civil Judge shall sit in each Court. For the purpose of assisting the Judge of any subordinate Court in the disposal of the civil business on his file, the High Court may appoint to such Court from the members of the Subordinate Civil Judicial Service of the State one or more Joint Civil Judges or the District Judge may, with the previous sanction of the High Court, depute to such Court the Judge of another subordinat Court within

the district. A Civil Judge thus appointed or deputed to assist in the Court of another Civil Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by Judge of such Court. He may also dispose of the Civil business of his Court at the place of his deputation subject to the general or special orders of the High Court in this behalf.

For the purpose of this section the provisions of the Act applicable to Civil Judges shall be and shall be deemed always to have been applicable to Joint Civil Judges

Provided that no such Joint Civil Judge shall hear and determine any suit instituted under section 4 of the 'Dekkhan Agriculturists' Relief Act, 1879, unless the value of the said suit falls within the limits of the pecuniary jurisdiction conferred on him by that Act The Civil Judges shall be of two classes.

The jurisdiction of a Civil Judge (Senior Division) extends to all original suits and proceedings of a civil nature. The jurisdiction of a Civil Judge (Junior Division) extends to all original suits and proceedings of a civil nature where in the subject matter does not exceed its amount or value five lakh rupees

Provided that the State Government may increase the limit of five lakh rupees to seven lakh fifty thousand rupees in the case of any Civil Judge (Junior Division) of not less than ten years' standing and specially recommended in this behalf by the High Court. A Civil Judge so empowered shall continue to exercise this power so long and as often as he may fill the office of a Civil Judge (Junior Division) without reference to the District in which he may be employed, unless the powers are withdrawn by the State Government.

A Civil Judge (Senior Division) in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature, as may arise within the local jurisdiction of the Courts in the district presided over by Civil Judge (Junior Division) and wherein the subject-matter exceeds the pecuniary jurisdiction of the Civil Judge (Junior Division)

as defined by section.

In districts to which more than one Civil Judge (Junior Division) have been appointed, the District Judge to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds one crore rupess the appeal from his decision shall be direct to the High Court.

State Government may invest any Civil Judge (Senior Division) or any Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, in any place to which this section extends with power to hear appeals from such decrees and orders of Subordinate Courts as may be referred to him by the Judge of the district.

Decrees and orders so passed in appeal by a Civil Judge (Senior Division) or Judge of a Court of Small Causes shall have the same force as if passed by a district Judge.

TEMPORARY VACANCIES

In the event of the death of the District Judge or of his absence from his district on leave or of his becoming incapable of acting, the first in rank of the Joint District Judge in the district, or in the absence of any Joint District Judge the first in rank of the Additional District Judge in the district, or in the absence of any Joint District Judge and Additional District Judge the first in rank of the Civil Judges in the district, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and while so in charge, shall perform the duties of a District Judge with respect to the filing of suits and appeals, receiving pleadings, execution processes, return of writs and the like and shall also dispose off any urgent suit, appeals and other proceedings (including any applications or references under any special Acts) which are

or may be filed or pending before the District Judge. The Judge performing such duties and exercising such powers shall be designated Joint District Judge, Additional Judge or Civil Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of the District Judge may be resumed or assumed by an officer duly appointed thereto.

Any District Judge leaving the said station and proceeding on duty to any place within his district may where on Joint District Judge is available delegate to an Additional District Judge, or in the absence of an Additional District Judge to Civil Judge at the said station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated, Additional District Judge or Civil Judge, as the case may be, in charge of the said station.

In the event of the death, suspension or temporary absence of any Civil Judge, the District Judge may empower the Judge of any Subordinate Court of the same district to perform the duties of the Judge of the vacated Subordinate Court, either at the place of such court or his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.

MODULE 3

THE SUITS VALUATION ACT, 1887

Object

The principal object of this Act is to prescribe a simple mode of valuing suits relating to land for the purpose of determining the jurisdiction of the Courts with respect to them. Most of those suits are of course cognisable exclusively by Civil Courts.

It was brought to the notice of the Government that, while the Civil Courts Acts of the several Provinces, with the exception of that in force in the Presidency of Madras, prescribe no special rules for fixing the value for jurisdiction of the subject- matter of land-suits, but simply define the limit of the jurisdiction of each grade of Court by the money value of the subject matter in suit thus leaving the market- value to be the strictly legal criterion, a practice has sprung up generally in the inferior Courts, of accepting in the absence of any express provision of law to the contrary the court-fee valuation as laid down in S. 7, para. (v). of Act VII of 1870, for purposes of jurisdiction also.

The generally admitted result is that land suits are undervalued and disposed of by Courts not strictly competent to try them. In order to remedy this state of things the present Bill has been prepared. It empowers (S. 2) the Local Government to frame rules, subject to the sanction of the Governor- General in Council, for determining the value of land in the territories under its administration for purposes of jurisdiction in the suits mentioned inS. 7, paras. (v) and (vi). and para. (x) Cl. (d) of the Court-fees Act. 1870. namely, suits for possession of land to enforce a right of pre-emption, and for specific performance of an award relating to land. These rules are to be made after consultation with the High Court; and the Bill provides (S. 7) a procedure for the publication of proposed rules, so that the Courts and the public may hive an opportunity of

preferring any objections which they may have to them before the rules are made. The Bill further declares (S. 3) that where a suit mentioned in para. Civ) ofS. 7, orArt. 17 of Sch. II of the Court-fees Act, relates to land. the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land to which the suit relates as determined by the rules under the Act.

In addition to the foregoing provisions which relate exclusively to land-suits S. 4provides that in other suits in which court fees are payable ad valorem, the value for purposes of jurisdiction shall be estimated in accordance with the rules which regulate the value for court-fee purposes. Section 5of the Bill is taken from Sections 206-208 of the North-Western Provinces Rent Act, 1881, and has been inserted at the suggestion of Sir Charles Turner, late Chief Justice of Madras, It lays down a special procedure for cases in which the objection that a suit was not properly valued for purposes of jurisdiction is taken in an appellate Court, an objection which the Act declares may not be entertained unless it was taken in the Court of first instance.

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto

EXTENT AND COMMENCEMENT

This Act extent to whole of India including state of Jammu and Kashmir, but does not extent to territories which immediately before 1 November 1956 were included in part B states.

This Act comes into force on such date on which State Government by notification in official Gazette directs.

RULE MAKING POWER

The State Government may make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870 (7 of 1870), section 7, paragraphs v and vi, and paragraph x, clause (d)

The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

VALUATION OF SUITS RELATING TO LAND

It should be remembered that the value of a suit for the purposes of the Court-fees Act, 1870, and its value for the purposes of jurisdiction are not necessarily iden- tical, and are frequently very different. The value for the purposes of court-fee is determined by the Court-fees Act, 1870 (as amended), and for purposes of jurisdiction by the Suits Valuation Act, 1887, and the rules made thereunder. In certain classes of suits the value for the purposes of court-fee also can be fixed by rules under section 9 of the Suits Valuation Act

Part I of the Act was extended to this State by Central Government, Home Department, Notification No. 210, dated the 20th February, 1889, and the Punjab Government has made rules under section 3 of the Act determining the value of land and of certain interests therein, for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraph (v) and (vi) and paragraph (x), clause (d), which are republished in Part D of this Chapter.

No restrictions under section 3, sub-section (2),of Suits Valuation Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply, therefore to all land generally throughout the State, whether assessed to land revenue or not.

Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-fees Act, section 7, paragraph (iv), or Schedule II, Article 17 or 22, relates to land or an interest in land, of

which the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules

The suits falling under the Court-fees Act, section 7, paragraphs (i, ii, iii, iv, vii, viii, x) (a), (b), and (c), and (xi), (a) to (f), inclusive, are either such as arebsubject to an ad valorem court-fee, in regard to which the value for the purposes of computing the court-fee and the value for the purpose of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under section 9 of the Suits Valuation Act.

Section 8 of the Suits Valuation Act gives the general rule as stated above, but when the value of a suit for purposes of jurisdiction and court-fees is determined by rules under section 9, (ibid) the value as determined by the rules must be accepted.

In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

Special care is necessary with respect to cases falling under the provisions of section 7, paragraph (iv) and Schedule II, Article 17, of the Court-fees Act, in valuing suits for the purposes of jurisdiction and court-fees. A table showing the value of different classes of suits for purposes of jurisdiction and court- fees, following the classification of suits in the Court fees Act, has been prepared and attached to this Chapter. It must be clearly understood, however, that this table in itself has no legal force, and that it is merely intended for ready reference be

the Courts in dealing with questions of value.

VALUATION OF SUITS

Suit for the purposes of the Court-fees Act, 1870, and its value for the purposes of jurisdiction are not necessarily identical and are frequently very different. A suit to be valued for following two purposes:

(1) for determining the pecuniary jurisdiction of the court in which the Suit shall be filed, and (2) for fixation of court fee to be paid.

Valuation for Jurisdiction regulated by –Suit Valuation Act 1887

In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint unless he consents to amend it then and there.

Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-fees Act, section 7, paragraph (iv), or Schedule II, Article 17 or 22, relates to land or an interest in land, of which the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules.

VALUATION OF SUITS IN APPEALS

Appellate Court : Notwithstanding anything in [section 99 of the Code of Civil Procedure, 1908,] an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless-

(a) the objection was taken in the Court of the first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under 2[section 115 of the Civil Procedure Code, 1908,] or other enactments for the time being in force

MODULE 4

THE MAHARASHTRA COURT FEES ACT 1959

An Act to consolidate and amend the law relating to fees taken in courts and public offices and fees taken in respect of certain matters in the State of Bombay, other than fees falling under entries 77 and 96 of List I in the Seventh Schedule to the Constitution of India.

Whereas it is expedient to consolidate and amend the law relating to fees taken in the courts and public offices and fees taken in respect of certain matters in the State of Bombay, other than fees falling under entries 77 and 96 of List I in the Seventh Schedule to the Constitution of India;

It extends to the whole of the State of Maharashtra

It shall come into force on such [date] as the State Government may, by notification in the Official Gazette, appoint.

The provisions of this Act shall not apply to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government.

In the absence of any specific provision to the contrary, nothing in this Act shall affect any special law now in force relating to fees taken in the courts and public offices.

DEFINITIONS

In this Act, unless the context otherwise requires:-

(a) "Chief Controlling Revenue Authority" means such officer as the State Government may, by notification in the Official Gazette, appoint in this behalf for the whole or any part of the State of

Maharashtra

(b) "Collector" includes any officer authorised by the Chief Controlling Revenue Authority to perform the functions of a Collector under this Act

(c) "plaint" includes a written statement pleading, a set-off or counter-claim

MEANING OF COURT FEES

Court costs (also called law costs in English procedure) are the costs of handling a case, which, depending on legal rules, may or may not include the costs of the various parties in a lawsuit in addition to the costs of the court itself. Court costs can reach very high amounts, often far beyond the actual monetary worth of a case. Cases are known in which one party won the case, but lost more than the monetary worth in court costs. Court costs may be awarded to one or both parties in a lawsuit, or they may be waived.

BASIC RULES FOR COURT FEES CALCULATION

The drafting of this Act is somewhat unscientific and its interpretation certainly gives some difficulty. The following rules of construction are deduced from decided cases :-

1. A fiscal statute, like the Court-fees Act, must be strictly construed. Liability or additional liability cannot be imposed on the subject except by clear and unambiguous terms. In other words, unless the language of the Act is clear and unambiguous so as to entitle the Courts to levy higher duty on a relief, it must be construed very strictly, and not in a manner that would result in demanding more court-fee for a less valuable claim.

2. In case of doubt, a taxing statute should be construed in favour of the subject.

3. If two constructions of a final enactment are equally possible and reasonable, the

construction more favourable to the subject be enforced.

In New India Sugar Mills Ltd. v. Commr. Sales Tax Bihar, AIR 1963 SC 1207, it was observed - It is also a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature.

3-A. The provisions of the Court-fees Act must be interpreted strictly and any demand of court-fee which must necessarily be deemed to be in furtherance of the provisions of the Act must be strictly scrutinised.

In Collector of Customs, Baroda v. Digvijay Singh Ji Spinning & Weaving Mills, AIR 1961 SC 1549, it was observed - In construing a statute, there are two well-established rules -

(i) Where the words of a statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense. The words themselves in such case best declare the intention of the legislature.

(ii) Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system, which the statute purports to be regulating, and that alternative is to be rejected, which will introduce uncertainty, friction, or confusion into the working of the system

QUESTION AS TO COURT FEES

The question of court-fee should be determined at the earliest possible opportunity. If, on examining the plaint, the Court finds that the relief claimed is under-valued, it should require the plaintiff to correct the valuation within a time to be fixed by the Court, and if he fails to do so, the plaint should be rejected under Order 7, Rule 11 of the Code of Civil Procedure. If the matter requires investigation, the Court should record the evidence of the parties bearing on the point

and if it finds that the court-fee paid is insufficient, it should stay further proceedings in the suit and require the plaintiff to make good the deficiency within a specified time and on his failure to do so, it should dismiss the suit under Section 10, Court-fees Act.

Determination of the nature of suits. - It is the allegation in the plaint that determines the court-fee payable in a suit. It is not to be determined upon the pleas taken by the defendant, but upon the frame, the scope, the intention and the object of the plaintiff. While valuing a suit, attention is to be confined to the plaint alone and should not be paid to other circumstances subsequently influencing the judgment of the Court, as to the value of the relief sought.

For purposes of calculation of court-fee, the Court must take the allegations in the plaint to be prima facie correct, and a plaintiff is entitled to insist that the court-fee should be assessed on the basis on which he has framed his plaint although there might be room for suspicion that the plaint has been so drafted as to avoid inconvenient facts and the payment of a higher court-fee.

Supreme Court in S. Chettiar v. R. Chettiar, AIR 1958 SC 245 has observed that question of court -fee must be considered in the light of allegations made in the plaint and its decision cannot be influenced by either the plea in written statement or the final decision of the suit on merits.

MODES OF COMPUTATION OF COURT FEES

mode of computation of the court-fees payable in the various classes of suits and appeals mentioned in it. It contemplates three modes of valuation of the subject-matter of a suit, which are as follows :-

1) Valuation according to its actual or market value, in other words, the market value of the subject-matter determines the amount of court- fee payable.

2) By ascribing to the subject-matter an artificial value based simply on certain fixed rules of calculation.

3) Notional valuation, or valuation at the option of the plaintiff, that is to say, by requiring the plaintiff himself to value the relief he seeks.

Section 7 has to be read along with the Schedules. Schedules I and II endeavour to give a comprehensive classification of the various kinds of suits with reference to these heads of classification. These Schedules also provides that the proper fees payable on some documents shall vary according to the courts in which they are filed and that in regard to others there shall be no such variance. Again, in Schedule II, it is mentioned that plaints and appeals in the suits therein specified shall bear the fixed fees prescribed, while in Schedule I are specified various suits in which the plaints and appeals shall bear an ad valorem fee. Section 7 is a handle for the application of the Schedules of the Act.

COMPUTATION OF COURT FEES

No document of any of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded, in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

(2) When any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises in the High Court, be referred to the taxing officer whose decision thereon shall be final, subject to revision, on an application, made within 1[thirty days] from the date of the decision, by the suitor or his pleader or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

(3) When any such difference arises in the City Civil Court, Bombay, the question shall be referred to the Registrar of the City Civil Court whose decision shall be final, subject to revision, on an application, made within 1[thirty days] from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Principal Judge or such other Judge of the said Court as the Principal Judge shall appoint either generally or specially in this behalf.

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :—

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)— according to the amount claimed ;

(ii) In suits for maintenance (with or without a prayer for the creation of a charge) and for annuities or other sums payable periodically according to the value of the subject matter of the suit, and such value shall be deemed to be, in the case of a suit for maintenance, the amount claimed to be payable for one year and in any other case, ten times such amount :

Provided that if in a suit for maintenance the plaintiff obtains a decree for maintenance the defendant shall be liable to make good the deficit, if any, between the fee payable on ten times the amount awarded for one year and the fee already paid by the plaintiff ; and the amount of such deficit shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue ;

(iii) In suits for moveable property other than money, where the subject matter has a market-value—according to such value at the date of presenting the plaint ;

(iv) (a) In suits for declaration to obatin adjudication against recovery of money from the plaintiff, whether the recovery is as land revenue or arrears of land revenue or tax or duty or cess or fee or fine or penalty or under any decree or order of a court or any certificate or award other than under the Arbitration Act, 1940, or in any other manner-one fourth of ad valorem fee

leviable on the amount sought to be recovered according to the scale prescribed under Article 1 of Schedule I with minimum fee of sixty rupees) In suits for declaration similar to those falling under sub-paragraph (a) in respect of moveable property—one fourth of ad valorem fee leviable on the value of the moveable property subject to the minimum fee as under sub-paragraph (a) :

Provided that when in addition any consequential relief other than possession is sought, the amount of fee shall be one-half of ad valorem fee leviable on the value of such property :

Provided further that when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee leviable on such value ;

(c) In suits for declaration of the status of plaintiff, to which remuneration, honorarium, grant, salary, income, allowance or return is attached, one-fourth of ad valorem fee leviable on the emoluments or value of return for one year : Provided that, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee on such emoluments or value of return :

Provided further that when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee on such emoluments or value of return ;

(d) In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non- liability to, attachment with or without sale or other attributes, of immoveable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community—one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of one hundred rupees

MODE OF LEVY COURT FEES

All fees shall be charged and collected under this Act at the rate in force on the date on which

the document chargeable to court-fee is or was presented.. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps or e-payment.]

The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed or partly adhesive, as the State Government may, by notification in the Official Gazette from time to time, direct.

The State Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act ;

(b) the number of stamps to be used for denoting any fee chargeable under this Act ;

(c) the renewal of damaged or spoiled stamps, 2[* * *] ;

(d) the keeping accounts of all stamps used under this Act,

The manner of payment of court-fee and refund thereof bye-payment] :

Provided that in the case of stamps used under section 3 in the High Court, such rules shall be made, with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped. But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance. Where any such document is amended in order merely to correct a mistake and to make it conform to the

original intention of the parties, it shall not be necessary to impose a fresh stamp.

No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled. Such officer as the Court or the head of office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed :

Provided that, where court-fee is paid by e-payment, the officer competent to cancel stamp shall verify the genuineness of the payment and after satisfying himself that the court-fee is paid, shall lock the entry in the computer and make an endorsement under his signature on the document that the court-fee is paid and the entry is locked.

PROCESS FEES

The High Court shall make rules as to the following matters :—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Court established within the local limits of such jurisdiction ;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts, established within such limits in the case of offences other than offences for which police officers may arrest without a warrant ; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes. The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the State Government, be published in the Official Gazette, and shall thereupon have the force of law.

A table in the English and regional languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Subject to rules to be made by the High Court and approved by the State Government, every District Judge, the Principal Judge of the Bombay City Civil Court and every Magistrate of a District shall fix, and may from time to time alter the number of peons necessary to be employed for the service and execution of processes issued out of his Court, and each of the Courts subordinate thereto, and for the purposes of this section, every Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, shall be deemed to be subordinate to the Court of the District Judge.

MULTIFARIOUS SUIT

Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suit embracing separtely each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908, Schedule I, Order II, rule 6.

MODULE 5

THE REGISTRATION ACT 1908

The Registration Act, 1908 is a Consolidating Act and not an Amending Act. It extends to the whole of India except the State of Jammu and Kashmir . The Preamble of the Act states "An Act to consolidate that enactments relating to the Registration of Documents". The object of such consolidation is the reduction in to a systematic form of the whole provisions contained in number of statues relating to the Registration of documents. Registration system was almost unknown to the Indian people due to the lofty ethics. But time gradually began to change and the need for compulsory registration was felt, especially in the declining Moghul period of the 18 th Century so that no one could claim any interest on any forged document or Sanad during or on the eve of the British Rule. Provincial laws were passed from time to time for the establishment of offices of registration.

By Act VIII of 1871, the office of the Registrar General was abolished under the altered designation of "Inspector General of Registration" as an office of record and registry and the limitation of the duties to Inspection and General Superintendence.

After several amendments, the present Registration Act (XVI of 1908) came into force on 1 st January 1908 . The provisions relating to the registration of documents were scattered about in seven enactments and the object of passing of this Act was to collect these provisions and incorporate them in one Act. Even after that it has gone through several amendments and the Registration Act,1908 was adapted with some changes finally.

The objects of the law of registration are :

1) to provide conclusive guarantee of the genuineness of document

2) to afford publicity to transactions

3) to prevent frauds

4) to afford facility of ascertaining whether a property has already been dealt with and

5) to afford security of title deeds and facility of proving titles in case the original deeds are lost or destroyed. But registration does not effect to the following :-

6) Registration is not by itself absolute proof of the execution of a document

7) mere registration does not prove title nor prove bonafides;

8) registration does not confer validity upon an instrument which is otherwise ultravires or illegal or fraudulent. There are XV parts and 91 sections in the Registration Act, which deals with the Registration Establishment, registrable documents – compulsory & optional registration, time for presentation of documents; presenting documents for registration, enforcing the appearance of the executants and witnesses, presenting wills and authorities to adopt, deposit of wills, effects of registration and non-registration, the duties and powers of Registering officers, refusal to register etc.

AUTHORITIES UNDER REGISTRATION ACT

- Inspector – General of Registration –

The State Government shall appoint an officer to be the Inspector- General of Registration for the territories subject to such Government;

Provided that the State Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the State Government appoints in this behalf.

Any Inspector-General may hold simultaneously any other officer under the Government.

The State Government may appoint one or more Additional Inspectors General of Registration

and Deputy Inspectors-General of Registration for the territories subject to such Government and may prescribe the duties of such officers and authorise them to exercise and perform all or any of the powers and duties of the Inspector-General of Registration.

- District and sub-district –

For the purposes of this Act, the State Government shall form districts and sub – districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette. Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

- Registrars and Sub Registrars -

The State Government may appoint such persons whether public officers or not, as it thinks proper, to be Registrar of the several districts and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Provided that the State Government may delegate, subject to such restrictions and conditions as it thinks fit, to the Inspector-General of Registration, the Power of appointing, Sub-Registrars.)

- Additional Registrar.

The State Government may, by order, also appoint any public officer as an Additional Registrar, to assist to Registrar, or any two or more Registrars, specified in the order and may authorise such Additional Registrars to exercise and perform all or any of the powers and duties of the Registrar under this Act.)

- Offices of Registrar and Sub Registrar

The StateGovernment shall establish in very district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub Registrar or the offices of the Joint Sub-Registrars.

The State Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

- Assistant Inspector-General of Registration

The State Government may also appoint officers, to be called (Assistant Inspector- General of Registration), and may prescribe the duties of such officers.

Every such (Assistant Inspector-General) shall be subordinate to the Inspector-General

ABSENCE IN OFFICE

Absence of Registrar or vacancy in his office. – (1) When any Registrar, other than the Registrar of a district including a presidency town, is absent otherwise that on duty in his district or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the State Government fills up the vacancy.

When the Registrar of a district including a presidency town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General

appoints in this behalf shall be the Registrar during such absence, or until the State Government fills up the vacancy.

Absence of Registrar on duty in his district. – When any Registrar is absent from his office on duty in his district he may appoint and Sub-Registrar or other person in his district to perform during such absence, all the duties of a Registrar except those mentioned in Sections 68 and 72.

Absence of Sub Registrar or vacancy in his office. – When any Sub Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until, the vacancy is filled up

SEAL AND REGISTER BOOKS

Seal of registering officers

The several Registrars and Sub Registrars shall use a seal bearing the following inscription in English and in such other language as the State Government directs:

"The seal of the Registrar (or of the Sub Registrar) of ....."

Register-books and fire proof boxes.

The State Government shall provide for the office of every registering officer the books necessary for the purposes of this Act. The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of the State Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the officer by whom such books are issued.

The State Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district

COMPULSORY REGISTRATION OF DOCUMENT

Documents of which registration is compulsory

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

PROVIDED that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court 13[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;] or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered

OPTIONAL REGISTRATION OF DOCUMENT

Registration lends inviolability and importance to certain types of documents. At the time of registration, it is very essential to see that the officer is duly competent to register a document and that the document is not presented to unqualified or a wrong registration circle, as otherwise such registration would be of no use or validity. If the language in the document is not understood by the registering officer, he shall refuse to register the document. Also, no non-testamentary deed relating to immovable property would be accepted for registration, unless it contains a description of such property sufficient to identify the same.

If an instrument is compulsorily registrable, it should be presented for registration before an officer who is competent to register such document which can be read under Section 17 of the Act. However, in case of an instrument which is not compulsorily registrable, it is complete without registration.

At this juncture, it is very essential to refer Section 18 of the Act, 1908 which deals with "Documents of which registration is optional".

Section 18 of the Registration Act, 1908- Documents of which registration is optional

Any of the following documents may be registered under this Act, namely:

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less then one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under Section 17;

(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by Section 17 to be registered.

TIME OF PRESENTATION

Section 23 of Indian Registration Act 1908. Time for presenting documents

Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

Section 23A. Re-registration of certain documents

Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and

such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

PROVIDED that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.

Section 24. Documents executed by several persons at different times

Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Section 25. Provision where delay in presentation is unavoidable

Section 25(1) If ,owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Section 25(2) Any application for such direction may be lodged with Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Section 26. Documents executed out of India

When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied-

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in India may, on payment of the proper registration-fee, accept such document for registration.

Section 27. Wills may be presented or deposited at any time A will may at any time be presented for registration or deposited in manner hereinafter provided.

PLACE OF REGISTRATION

Section 28. Place for registering documents relating to land

Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), 19[(d) and (e), section 17, sub-section. (2), insofar as such document affects immovable property, and section 18, clauses (a), (b) 20[(c) and (cc)], shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Section 29. Place for registering other documents

Section 29 (1) Every document (not being a document referred to in section 28 or a copy of a decree or order), may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

Section 29 (2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

Section 30. Registration by Registrars in certain cases

Section 30 (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Section (2) (The Registrar of a district in which a Presidency-Town is included and the Registrar of the Delhi district) may receive and register any document referred to in section 28 without regard to the situation in any part of of the property to which the document relates.

Section 31. Registration or acceptance for deposit at private residence

In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit:

PROVIDED that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PROCEDURE FOR REGISTRATION

Who can apply for registration?

According to Section 32 of The Registration Act, 1908, every document (except in cases of Sections 31, 88 and 89 of The Registration Act, 1908) shall be presented for registration or deposited in a proper registration office by:-

some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

the representative or assignee of such a person, or

the agent of such a person, representative or assign, duly authorized by power-of-attorney

executed and authenticated in the manner hereinafter mentioned.

Every person presenting a document for registration shall affix his passport size photograph along with fingerprints to the document. In a case where a document is related to transfer of ownership of immovable property, passport size photographs and fingerprints of all the buyers and sellers mentioned in the document shall be affixed (Section 32A of The Registration Act, 1908).

In case of a will or authority to adopt, the testator or after his death any executor may or a donor or after his death the donee or adoptive son may present it to the Registrar or Sub-Registrar for registration respectively (Section 40 and Section 41 of The Registration Act, 1908). It shall be registered if it is satisfied that:-

The will or authority to adopt was executed by the executor or donor;

The testator or donor is dead;

The person presenting the will or authority to adopt is entitled to present the same

FEES

The prescribed fees for registration of documents shall be paid on presentation of documents (Section 80 of The Registration Act, 1908).

CASE LAWS

In Narinder Singh Rao v. Air Vice Marshal Mahinder Singh Rao (2013) settled by Supreme Court, the Appellant's father wrote on a piece of paper that his wife would inherit the property on his death. It was signed by a single witness and was not registered. After the father's death, his widow executed a will, transferring the entire property to only one of her nine children. The aggrieved siblings challenged the mother's will in court, stating that she had not inherited the entire property because the father's will was invalid. The argument was accepted, stating that for a will to be valid, it must be attested by two witnesses. Besides, it could not be held as a

valid transfer of property as it was not registered under the Indian Registration Act, 1908.

So, the Supreme Court held that the rule of succession would apply in dividing the property as the father's will was invalid. This case recapitulated two rules which have been clearly set out in legislation. They are:

The proper attestation of wills and

The registration of documents.

In Satya Pal Anand v. State of M.P. & Ors. (Civil Appeal No. 6673 of 2014), the Supreme Court held that once a document is registered then authority is not open to cancel its registration.

For this case, an application was moved by a man before the Sub-Registrar (Registration) to cancel the registration of extinguishment deed executed by the Society cancelling an allocation of the plot. Persecuted by the rejection of his application, on the ground that Sub Registrar has no domain to cancel the enrollment of a registered document being referred to, he moved toward Inspector General (Registration) which was in vain.

The High Court, on its writ petition, held that, since the Registering Officer selected the deed acquainted with him for registration, his ability is exhausted and he would then advance towards becoming functus officio (an officer or agency whose mandate has expired either because of the arrival of an expiry date or because an agency has accomplished the purpose for which it was created. When used in relation to a court, it may also mean whose duty or authority has come to an end) and no vitality to appropriate the report under Section 33 of the Act. This decision by the High Court was condemned in the Supreme Court.

The appeal in Part XII especially under Section 72 limits just to the refusal of Registering Officer to register a document. It was similarly held that power given to Registrar under Section 68 can't be used to cross out registration of a registered document.

Moreover, the court observed that there is no express course of action in the Registration Act or Rules bound by the State of Madhya Pradesh nor any circular issued by the competent authority of the State of Madhya Pradesh with the goal that the extinguishment deed should bear the characteristics of both the vendor and the buyer and both must be accessible before the Registering Officer when the document is presented for registration. (See Here)

WHAT ARE THE BENEFITS OF REGISTERING DOCUMENTS?

Registration of a document gives a more transparent deal. Even if a registered document is lost or damaged, the registration records prove the authenticity of the document. A document stating that a Power of Attorney has been revoked should also be registered so that there is no misuse after revocation. Easy access also helps in finding the owner who has the title and right to the property and whether there is any case against him or an existing liability before someone decides to buy it. Registration also prevents forgeries or fraud in transactions specifically in tax, stamp duty etc.

Even though some documents are registered on an optional basis, it is still advised to register them as this will prove the authenticity of the document and set aside any doubts arising because of it.

REGISTRATION OF WILL

Procedure for will registration

Having understood this, let’s look at the procedure for registering a will.

a. Registration of the will happens at the office of the sub-registrar. You will have to produce address proof, photographs and the witnesses who will sign the will. The witnesses have to bring their photographs and address proofs as well. Note that you will have to pay stamp duty during registration.

b. Once the will is drafted, a witness should accompany the testator to the registrar for registration.

c. Once it's registered, it can be kept in safe custody in a bank locker or with the lawyer. The registrars also has authority to hold in deposit wills. If you opt for the registrar for safekeeping of your will, you will have to submit the will in a sealed cover by the testator or by a person duly authorised by the testator. On satisfying the identity of the testator or the person authorised by the testator, the registrar will hold the cover containing the will.

d. If you decide to change your mind and want to withdraw the will from the registrar, you can personally send your request or do it through an authorised agent. If the registrar is satisfied, the will be delivered to the person.

e. In case you want to revise or modify certain clauses in your will, it can be done through Codicil, a document

enlisting the amended parts of the will. It is then attested by the testator in the presence of two witnesses and kept along with the will with the registrar.

f. If the person, whose will is with the registrar, dies, any person could apply to the registrar for opening of the cover containing the will of the deceased. However, only after the registrar is satisfied that the testator is dead, the registrar will open the cover in the presence of the applicant and provide a copy to the applicant. The original will continue to be in the custody of the registrar till a court orders the official to produce the original will.

Advantages of Registering a Will

a. The will cannot be tampered, destroyed, lost or stolen.

b. The will is kept in safe custody by the registrar.

c. No person can access or examine the will without the express permission in writing of the testator until his/ her death.

d. If a registered will is uncontested, it may be possible to get the leasehold property mutated in the name of the legal heirs without obtaining a probate of the will.

Disadvantages of Registering a Will

a. Revocation of a registered will is cumbersome when compared to the revocation of an unregistered will.

b. If a registered will is revoked, the subsequent will made by the person should also be a registered will.

INDEX REGISTRATION

Indexes to be made by registering officers, and their contents.—

(1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs. State Amendments Goa: In section 55,—

(a) in sub-section (2), for the words “document entered or memorandum filed”, the words “document of which a true copy or a memorandum, is filed” shall be substituted;

(b) in sub-section (4), for the words “authority entered”, the words “authority of which a true copy is filed” shall be substituted;

(c) in sub-section (5), for the words “document entered”, the words “document of which a true copy is filed” shall be substituted. [Vide Goa Act 24 of 1985, sec. 8 (w.e.f. 5-12-1985)]. Gujarat: Same as in Maharashtra. [Vide Act 11 of 1960, sec. 87 and Gujarat A.L.O., 1960]. Karnataka: Amendments to section 55 are the same as in Kerala. [Vide Karnataka Act 55 of 1976, sec. 9 (w.e.f. 24-10-1976)]. Kerala: In section 55,—

(i) in sub-section (2), for the words “documents entered or memorandum filed”, substitute the words “document of which a true copy or a memorandum is filed”;

(ii) in sub-section (4), for the words “authority entered”, substitute the words “authority of which a true copy is filed”;

(iii) in sub-section (5), for the words “document entered”, substitute the words “document of which a true copy is filed”. [Vide Kerala Act 7 of 1968, sec. 10 (w.e.f. 22-2-1968)]. Maharashtra: In section 55,—

(a) for sub-section (1), the following was substituted, namely:— “(1) Six such indexes shall be made in all registration offices and shall be named, respectively Index No. 1, Index No. IA, Index No. II, Index No. IIA, Index No. III and Index No. IV.”;

(b) after sub-section (2), the following sub-section was inserted, namely:— “(2A) Index No. IA

shall contain the names including the father's name, or, in the case of persons usually described by their mother's name, the mother's name, and the places of residence of all persons executing, and of all persons claiming under, the documents of which copies are filed under sub-section (1) or (3) of section 89.";

(c) after sub-section (3), the following sub-section was inserted, namely:— "(3A) Index No. IIA shall contain such particulars mentioned in section 21 as the Inspector-General may, from time to time, prescribe in this behalf in regard to every copy filed under sub-section (1) or (3) of section 89.";

(d) after the words "and additions" wherever they occur, the words "including the father's name, or in the case of persons usually described by their mother's name, the mother's name and the places of residence" were substituted. [Vide Bombay Acts 5 of 1929, sec. 9 (w.e.f. 22-5-1929) read with 35 of 1958, sec. 2 (w.e.f. 24-4-1958)]. Orissa: In its application to the State of Orissa, in section 55,—

(i) sub-section (2), for the words "document entered or memorandum filed", substitute "document of which a true copy or a memorandum is filed";

(ii) in sub-section (4), or the words "authority entered", substitute "authority of which a true copy is filed"; and

(iii) in sub-section (5), for the words "document entered", substitute "document of which a true copy is filed". [Vide Orissa Act 14 of 1989, sec. 9 (w.e.f. 19-9-1989). Pondicherry: With reference to documents specified in the Rules made under section 52(3) as obtaining in Pondicherry, section 55 shall stand modified as under:—

(i) in sub-section (2), for the words "every document entered or memorandum filed", words "every document of which a true copy or a memorandum is filed" shall stand substituted;

(ii) in sub-section (4), for the words "every will and authority entered in Book No. 3", words "every will and authority of which a true copy is filed in Book No. 3" shall stand substituted;

(iii) in sub-section (5), for the words “documents entered”, words “document of which a true copy is filed” shall stand substituted. [Vide Pondicherry Act 17 of 1970, Sch., Item 5]. Tripura: In section 55,—

(i) in sub-section (2), for the word “entered” substitute the words “of which a true copy pasted”;

(ii) in sub-section (4), for the words and figure “every will and authority entered in Book No. 3” substitute the words and figure “every will and authority of which a true copy is pasted in Book No. 3”;

(iii) in sub-section (5), for the word “entered” substitute the words “of which a true copy is pasted”. [Vide Tripura Act 7 of 1982, sec. 9 (w.e.f. 1-1-1983)]. West Bengal: Same as in Pondicherry. [Vide West Bengal Act 17 of 1978, sec. 7 and Sch.]. Section 55A West Bengal: For section 55A, which was inserted by the Indian Registration (West Bengal Amendment) Act, 1950 (29 of 1950), sec. 3, substitute the following, namely:— “55A. Copies of books and indexes to be as good as original books and indexes in certain cases.—Notwithstanding anything contained in any other law for the time being in force, copies of any of the books mentioned in sub-section (1) of section 51, and of any of the indexes mentioned in section 55, relating to documents registered on or before the 14th day of August, 1947, in registration offices situate in district or sub-districts which as a result of the award of the Boundary Commission appointed under section 3 of the Indian Independence Act, 1947, have fallen partly within West Bengal and partly within East Bengal, shall, on being authenticated in such manner as may be prescribed by the Inspector-General, be deemed for the purposes of this Act to have taken the place of, and to be, the original books and indexes from which such copies were made and all references in this Act to books and indexes shall be construed as including references to such copies.” [Vide West Bengal Act 31 of 1951, sec. 2 (w.e.f. 2-11-1951)].

EFECT OF REGISTRATION AND NON REGISTRATION

Section 47. Time from which registered document operates

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Section 48. Registered documents relating to property when to take effect against oral agreements

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force:

PROVIDED that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

Section 49. Effect of non-registration of documents required to be registered

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

PROVIDED that an unregistered document affecting immovable property and required by this

Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

Section 50. Certain registered documents relating to land to take effect against unregistered documents

Section 50 (1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Section 50 (2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation : In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

REFUSAL TO REGISTER DOCUMENT

Registration of documents of immovable properties is compulsory according to Section 17 of the Indian Registration Act,1908 and Section 54 of the Transfer of Property Act,1882. However, there are certain circumstances under which the registering authority can refuse registration of

documents. Both the Indian Registration Act, 1908 and the Karnataka Registration Rules, 1965, provide for refusal to register the documents under certain circumstances. The refusal could be on the ground of jurisdiction of the sub-registrar or for non-compliance of rules and procedure. Some of the grounds on which there could be a refusal by the sub-registrar to register a document are listed below:

1. The document is in a language not understood by the registering officer, or a language not commonly used in the district; and translated version of the same is not produced along with the document.

2. The document has corrections, alterations, erasures, interlineations blanks, which are not attested by the executant.

3. The description of the property is insufficient to identify and the document is not accompanied by a copy of the map, plan as required under the relevant provisions.

4. The document is presented after prescribed time limit.

5. The document is presented by a person who has no right to present it.

6. The executants or their authorized representative, assigns, agents did not attend to registration within the prescribed time.

7. The sub-registrar is not satisfied as to the identity of the person appearing before him as executant or he is not identified to the satisfaction of the sub-registrar.

8. The date of execution is not mentioned in the document or correct date is not possible to be ascertained or the date of execution is altered making it impossible to ascertain.

9. The Sub-registrar is not satisfied as to the right of person appearing as agent or representative or assignee.

10. The execution is not admitted by person said to have executed or his agent.

11. The person supposed to have executed the document is a minor, idiot, lunatic, not competent to contract.

12. In case where the executant is dead and the execution by such deceased person is denied by his representative or assignee.

13. In case of more than one representative of the deceased and when some of them admit the execution and others deny the execution, it will be treated as refusal and registration may be refused.

14. The death of the person who is supposed to have executed is not conclusively proved when the document is presented by his representatives or assignees.

15. The sub-registrar is not satisfied as to the fact of execution of Will presented after the death of the testator or donor.

16. The prescribed fee, penalty under any other law in force for time being has not been paid

Refusal Endorsement

If the refusal is on grounds other than denial of execution, the Sub-registrar is required to endorse the document “Registration refused” and also record his reasons in prescribed books. The person executing the document or any person claiming under such document may request the sub-registrar to provide him a copy of the reasons for refusal, which shall be furnished without unnecessary delay and no fee shall be charged. In this connection, Section 71(1) of the Indian Registration Act is relevant and is reproduced below:

“71(1). Every Sub-registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No.2 and endorse the words Registration refused on the document and on application made by any person executing or claiming under

the document shall without payment and unnecessary delay give him a copy of the reasons so recorded. “

When a document is refused to be registered and endorsed accordingly, the recourse open to the aggrieved person is to file an appeal to higher authorities and orders thereon obtained.

APPEAL TO THE REGISTRAR [Sec. 72]

When the registration of a document is refused on grounds other than want of jurisdiction or on denial of execution, the aggrieved party may appeal in writing to Registrar of the District or Officer in charge, District Registrars office, along with a copy of refusal order and the document. The appeal may be presented by the appellant himself or agent or through his advocate. The appeal shall be preferred within 30 days from the date of refusal order. If the document is in possession of some other person, other than appellant and requires time to present such documents the registrar will grant time.

Further, in cases where the sub-registrar is satisfied that the executant is deliberately keeping away to avoid registration or has gone to a distant place and not likely to return within prescribed time to admit registration, the sub-registrar may refuse to register the document treating the absence of the executant as denial of execution. In case the sub-registrar refuses registration for reasons of denial of execution the persons claiming under such document or their agents may appeal in writing to the registrar within 30 days of the order of refusal supported by a copy of the reasons for refusal and the document along with verification of the statements made in the appeal. as is done in the case of plaints. In the case of denial of execution, only the claimant under such document or his agents shall appeal and the application shall be duly verified. In other cases the appeal may be filed by the executant or claimant or his agent. In the case of refusal to register the Will after the death of the testator by the sub-registrar, the appeal can be filed by the executor of the will before the Registrar.

Enquiry of the Registrar

The Registrar will cause enquiry as to the execution of the document, compliance of the requirement under the various laws, payment of appropriate stamp duty etc. The Registrar may waive the requirement of enclosing a copy of the reasons for refusal to register a document by sub-registrar along with the appeal or application and decide the matter on merits either agreeing with the decision of the Sub-registrar or by reversing the decision of the sub-registrar. However, in respect of appeals filed on the grounds of insufficient details to identify the property, Registrar has no authority to call for further description of the property.

On being ordered by the Registrar for registration of the document in reversal of the order of the sub registrar, such document are required to be presented for registration within 30 days of such order. Upon such presentation of document for registration, the concerned sub registrar shall proceed to register such document. The registration of such document shall be operative from the date on which it was first presented for registration and refused and not from the date of actual registration.

Appeal against the order of the Registrar

The Registrar shall record his reasons for refusal and furnish a copy of such reasons to the appellant. There lies an appeal against the decision of the Registrar to the Civil Court within whose limits the Registering Authority’s office is located. Such an appeal is to be filed within 30 days of the Order of refusal by the Registrar.

MODULE 6

THE MAHARASHTRA STAMP ACT 1958

APPLICABILITY

The Maharashtra Stamp Act,1958 applies to the entire State of Maharashtra. Only the instruments specified in the Schedule I to the Act are covered by this Act. All other instruments are either chargeable under the Indian Stamp Act (e.g., transfer of shares) or are not chargeable at all (i.e., if they are not specified under the Act as well as under the Indian Stamp Act).

II. CHARGE OF STAMP DUTY

2.1 It is very important to note that stamp duty is on an instrument and not on a transaction.

2.2 S. 3 of the Act levies stamp duty at the rate provided in Schedule I on any instrument executed in the State. Even instruments executed outside the State are liable to duty only on their receipt in the State, provided it relates to a property situated in the State or a matter or thing to be done in the state.

2.3 An instrument covering or relating to several distinct matters is chargeable with the aggregate amount of duty with which each separate instrument would have been chargeable.

2.4 In case an instrument is so drafted that it is covered within the ambit of more than one

Article under Schedule I, then it shall be taxed by that Article which levies the highest amount of stamp duty.

2.5 The term “Instrument” has been defined to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.

However, it does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt."

III. CERTAIN DEFINITIONS

3.1 “Conveyance” has been defined to include:

A conveyance on sale,

Every instrument,

Every decree or final order of any Civil Court,

Every order made by the High Court u/s. 394 of the Companies Act, 1956 in respect of amalgamation of companies; by which property, whether movable or immovable or any estate or interest in any property is transferred to, or vested in any other person inter vivos and which is not otherwise specifically provided for by Schedule I.

The Explanation to the definition provides that any instrument by which one co-owner transfers his property to another co-owner would be deemed to be a conveyance provided that it is not an instrument of partition.

3.2 “Instrument of gift” has been defined to include, in case of an oral gift any instrument recording its making or acceptance, whether by way of declaration or otherwise.

3.3 “Instrument of partition” means any instrument whereby co-owners of any property divide or agree to divide such property and includes:

any final order for effecting a partition passed by any revenue authority or any civil court,

an award by an arbitration directing a partition, and

when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.

The expression 'co-owners' includes all kinds of co-ownership such as joint tenancy, tenancy in common, coparcenary, membership of HUF, etc. and the partnership.

3.4 “Immovable Property” includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. The two leading decisions on this definition are those of the Supreme Court in the case of Sirpur Paper Mills (1998) 1 SCC 400 and the case of Duncan’s Industries (2000) 1 SCC 633.

IV. PAYMENT OF STAMP DUTY

4.1 S.17 of the Act provides that all instruments chargeable with duty and executed in

Maharshtra should be stamped before or at the time of execution or immediately thereafter or on the next working day following the date of execution.

4.2 Instrument executed only out of Maharashtra may be stamped within three months after it is first received in India.

4.3 Duty can be paid by way of adhesive or impressed stamps on the instruments. Adhesive Stamps affixed should be cancelled at the time of execution so that they are not available for reuse.

4.4 Further, s.14 prohibits writing of a second instrument chargeable with duty on a stamp paper on which an instrument chargeable with duty has already been written.

4.5 The stamp papers must be in the name of one of the parties to the transaction. They cannot be in the name of the Chartered Accountant or Lawyer of the parties.

4.6 The date of issue of the stamp paper must not be more than 6 months older than the date of the transaction.

4.7 Who bears and pays the stamp duty is a matter of agreement between the parties. In the absence of any such agreement, the Act provides that in the case of a Conveyance, duty is to be paid by a buyer and by the lessee in case of a lease. In cases of Bonds, Release, Settlement, it is

to be paid by the person making or drawing the instrument. In case of exchange, it is to be paid by the parties in equal shares and in case of partition, by the parties in proportion to their respective shares. In all other cases, it is to be paid by the person executing the instrument.

4.8 Stamp duty is payable at rates mentioned in Schedule I. Depending upon the Instrument, it may be based upon the Market Value, Area, or various other criterion. In case of instruments which are based upon Market Value of the property, the term in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on date of execution of such instrument or consideration stated in the instrument whichever is higher.

The stamp office determines the market value of the property by referring to an Annual Statement of Rates (commonly known as Stamp Duty Ready Reckoner) which gave the Market Values of various immovable properties in Mumbai. The Reckoner divides the immovable property into various categories such as developed land, undeveloped land, residential units, industrial units/office, shops, etc., and fixes their market value accordingly.

4.9 Any person can apply to the Collector of Stamps for adjudication of the stamp duty payable on the instrument who shall determine the duty, if any with which the instrument shall be chargeable. It may be noted that now adjudication is compulsory in all cases where an instrument requires registration as the Registrar of Sub-Assurances insists upon the same. The instrument should be brought to the Collector within 1 month of execution of such instrument in the State and within 3 months from date of receipt of such instrument in the State.

V. UNDERSTAMPED DOCUMENT

5.1 Under s. 34 of the Act, any instrument which is inadequately /not stamped, then it shall be inadmissible in evidence for any purpose, e.g., in a Civil Court. Such instruments can be admissible in evidence on payment of the requisite amount of duty and a penalty @ 2% per month on the deficient amount of duty calculated from the date of execution. However, the maximum penalty cannot exceed four times the amount of duty involved.

5.2 Further, any public officer can impound such improperly stamped instruments if it comes to his notice. Such impounded instruments must be sent to the Collector who would then determine the amount of duty and penalty, if any, payable on the same. Any party to an instrument can also suo moto submit an instrument for adjudication by the Collector u/s. 31.

5.3 A person can be punished with rigorous imprisonment for up to 6 months (not less than 1 month) and with fine up to ₹ 5,000, if it is proved that the instrument was undervalued or short payment of duty was made with intention to evade duty.

LIABILITY OF INSTRUMENTS OF DUTY

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in Schedule I, which, not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act ;

(b) every instrument mentioned in Schedule I, which, not having been previously executed by any

person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State

Provided that a copy or extract, whether certified to be a true copy or not and whether a fascimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid

Provided further that no duty shall be chargeable in respect of—

(1) any instrument executed by or on behalf of, or in favour of,the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty.

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958

(1) Where, in the case of any development agreement, sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, development agreement, lease, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.

(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the

principal instrument

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Subject to the provisions of section 5, an instrument so framed as to come within two or more of the descriptions in Schedule I shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties : Provided that nothing in this Act contained shall render chargeable with duty exceeding 1[one hundred rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

7. (1) Notwithstanding anything contained in section 4 or 6 or in any other enactment, unless it is proved that the duty chargeable under this Act has been paid,—

(a) on the principal or original instrument, as the case may be, or

(b) in accordance with the provisions of this section, the duty chargeable on an instrument of sale, mortgage or settlement, other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in this State have been chargeable under this Act with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence unless the duty chargeable under this section has been paid thereof : Provided that any Court before which any such instrument, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon and may then receive it in

evidence.

(3) The provisions of this Act and the rules made thereunder, in so far as they relate to the recovery of duties chargeable on instruments under section 3 shall, so far as may be apply to the recovery of duties chargeable on a counterpart, duplicate or a copy of an instrument under sub-section (1).

STAMPS AND MODES OF USING THEM

Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps,—

(a) according to the provisions herein contained ; or

(b) when no such provision is applicable thereto, as the State Government may, by rules, direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instrument, the description of stamps which may be used ;

(b) in the case of instruments stamped with impressed stamps, the number of stamps which may be used.

(2-1A) From the date of coming into force of the Bombay Stamp (Amendment) Act, 2003, in the case of instruments, stamped with impressed stamps, such stamps shall bear the stamp and signature with date, of the authorised officer of the Treasury, Sub-Treasury or the General Stamp Office in the State, or of the proper officer appointed by the Chief Controlling Revenue Authority, Superintendent of Stamps or Collector of Stamps in the State :

Provided that, the Chief Controlling Revenue Authority may, by notification in the Official Gazette, from the specified date, do away withsuch requirement.

(2A) The Chief Controlling Revenue Authority may, subject to such conditions as he may deem fit to impose, authorise use of franking machine or any other machine specified under sub-clause (iv) of clause (k) of section 2, for making impressions on instruments chargeable with duties to indicate payment of duties payable on such instruments.

Notwithstanding anything contained in section 10, the State Government may, by notification in the Official Gazette, direct that, in case of the bodies owned or controlled by the State or Central Government, Insurance Companies and Nationalised Banks, the duty may be paid by their Head Office or Regional Office or Zonal Office by way of cash, or by demand draft or by pay order, in any Government Treasury or Sub-Treasury or General Stamp Office, Mumbai and the proper officer, not below the rank of Branch Manager, so notified by the Chief Controlling Revenue Authority, shall make an endorsement on the instrument.

Notwithstanding anything contained in this Act, in case of transactions through stock exchange or an association as defined in clause(a) of section 2 of the Forward Contracts (Regulation) Act, 1952, the stockexchange or, as the case may be, an association, shall collect the due stamp duty by deducting the same from the trading member’s account at the time of settlement of such transactions. The stamp duty so collected shall be transferred to the Government Treasury, Sub-Treasury or General Stamp Office in the manner specified by the Chief Controlling Revenue Authority.

Nothwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, direct that any State Government Department, institution of local self-government, semi Government organization, banking or non-banking financial institution or the body owned, controlled or substantially financed by the State Government or any class of them, shall ensure that the proper duty is paid to the State Government through Government Receipt Accounting System (G.R.A.S.) or by any other system of payment as may be notified by the State Government in this behalf, in respect of such instruments, as may be specified in the

notification in which such Department or body is a party which create right in favour of such department.

instruments may be stamped with adhesive stamps.

VALUATION OF STAMP

Whoever affixes any adhesive stamp to any Instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again.

No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written.

Where due to material alterations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument shall require a fresh stamp paper according to its altered character.

Where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of India, such duty shall be calculated on the value of such money in the currency of India according to the current rate of exchange on the day of the date of the instrument.

Illustrations

1. A owes B Rs. 1,000. A sells a property to B, the consideration of the property being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

2. A sells a property to B for Rs. 500. The property is subject to a mortgage to C for Rs. 1,000 and unpaid interest of Rs. 200. The sale is subject to the mortgage. Stamp duty is payable on Rs.

1,700.

3. A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage

Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that which it would have been chargeable had no mention of interest been made therein.

Where any property is transferred to any person—

(a) in consideration, wholly or in part, of any debt due to him ; or

(b) subject either certainly or contingently to the payment or transfer (to him or any other person) of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock, shall be deemed to be the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty

Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the market value shall be apportioned in such manner as the parties think fit, provided that a distinct market value for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with ad-valorem duty in respect of such distinct market value.

WHO TO PAY DUTY

In the absence of an agreement to the contrary, the expense of providing the proper stamp shall

be borne,—

(a) in the case of any instrument described in any of the following articles of Schedule I, namely :—

No. 2 (Administration Bond),

No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),

No. 13 (Bond),

No. 14 (Bottomry Bond),

No. 28 (Customs Bond),

No. 33 (Further Charge),

No. 35 (Indemnity Bond),

No. 40 (Mortgage Deed),

No. 52 (Release),

No. 53 (Respondentia Bond),

No. 54 (Security-Bond or Mortgage-Deed),

No. 55 (Settlement),

No. 5[59 (a)] (Transfer of debentures, being marketable securities whether the debentures is liable to duty or not, except debentures provided for by section 8 of the Indian Stamp Act, 1899),

No. 59(b) (Transfer of any interest secured by a bond or mortgage deed or policy of insurance by the person drawing or making such instrument ;

(b) in the case of a conveyance (including a re-conveyance of mortgaged property) by the grantee ; in the case of a lease or agreement to lease by the lessee or intended lessee;

(c) in the case of a counterpart of a lease by the lessor;

(d) in the case of an instrument of exchange by the parties in equal shares ;

(e) in the case of a certificate of sale by the purchaser of the propertyto which such certificate relates ;

(f) in the case of an instrument of partition by the parties thereto in proportion to their respective share in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue authority or Civil Court or arbitrator, in such proportion as such authority, Court or 2[arbitrator directs ;

(f-a) in case of instruments of works contract as provided in Article 63 of SCHEDULE-I, by the person receiving the contract

Notwithstanding anything contained in section 30, where any instrument referred to in clauses (a) to (g) of section 30, is executed on or after the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 2013, in favour of or by any financial institution such as Bank, Non-banking Finance Company, Housing Finance Company or alike, which creates any right in favour of any such financial institution, the liability to pay proper stamp duty shall be on such financial institution concerned without affecting their right, if any, to collect it from the other party 7[if the other party fails to pay the proper stamp duty.

ADJUDICATION AS TO STAMPS

When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, by one of the parties to the instrument and such person] applies to have the

opinion of that officer as to the duty (if any) with which or the Article of Schedule I under which it is chargeable and pays a fee of one hundred rupees] in case not involving stamp duty on ad valorem basis, and one rupee for every Rs. 1,000 or part thereof, subject to a minimum of five rupees and maximum of twenty-five rupees in cases involving stamp duty on ad valorem basis, the Collector shall determine the duty (if any) with which, 3[or the Article of Schedule I under which in his judgement, the instrument is chargeable.

For this purpose the Collector may require to be furnished with a true copy or an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon such application until such true copy or abstract] and evidence have been furnished accordingly.

When an instrument brought to the Collector under section 31, is in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such sum as with the duty already paid in respect of the instrument, is equal to the duty, so determined has been paid, the Collector shall certify by endorsement on such instrument that the full duty 4[(stating the relevant Article of Schedule I and the amount)] with which it is chargeable has been paid.

When such instrument is, in his opinion, not chargeable with duty, e Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of assignment 2[and also any other instruments mentioned in SCHEDULE I chargeable with duty on the basis of market value of the property], presented for registratio

under the provisions of Registration Act, 1908, shall be accompained by a true copy thereof

INSTRUMENTS NOT DULY STAMPED

Subject to the provisions of section 32A, every person] having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same 4[irrespective whether the instrument is or is not valid in law.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed

When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be original of such instrument.

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped..

When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the

Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

OFFENCES PENALTY AND PROCEDURE

Any person who, with the intention to evade the duty, executes or signs otherwise than as a witness any instrument chargeable with duty without the same being duly stamped shall, on conviction, for every such offence be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may extend to five thousand rupees

If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, isthe managing director or secretary or other principal officer of the company, shall, on conviction, be punished with fine which may extend to five hundred rupees.

No person shall be prosecuted under section 59, in respect of aninstrument which was produced in Court and which was admitted after a decision by the Court that the said instrument was duly stamped or that no stamp was required

Any person who in a clearance list makes a declaration which is false or which he either knows or believes to be false, shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may extend to five thousand rupees

Any person who, before the date of commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 1997 (hereinafter, in this section, referred to as " the said date

”), has collected or any time after the said date collects, from any person, any sum purporting to be towards the payment of stamp duty, shall within 120 days from the said date or, as the case may be, within 30 days from the date of collection of such amount, remit the same in Government Treasury or General Stamp Office, Mumbai, or any other place as the State Government may, by notification in the Official Gazette, specify in this behalf.

Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with a fine which may extend to five thousand rupees. No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially, authorises in that behalf.

The Chief Controlling Revenue Authority or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

The amount of any such composition shall be recoverable in the manner provided by section 46.

Every offence under this Act committed in respect of any instrument may be tried in any district or a Metropolitan area in which such instrument is executed or found or where such offence is triable under the Code of Criminal Procedure, 1973

MODULE 7

THE NEGOTIABLE INSTRUMENTS ACT, 1881

Negotiable Instruments are written contracts whose benefit could be passed on from its original holder to a new holder. In other words, negotiable instruments are documents which promise payment to the assignee (the person whom it is assigned to/given to) or a specified person. These instruments are transferable signed documents which promises to pay the bearer/holder the sum of money when demanded or at any time in the future.

As mentioned above, these instruments are transferable. The final holder takes the funds and can use them as per his requirements. That means, once an instrument is transferred, holder of such instrument obtains a full legal title to such instrument.

Types of Negotiable Instruments

Promissory notes

A promissory note refers to a written promise to its holder by an entity or an individual to pay a certain sum of money by a pre-decided date. In other words, Promissory notes show the amount which someone owes to you or you owe to someone together with the interest rate and also the date of payment.

For example, A purchases from B INR 10,000 worth of goods. In case A is not able to pay for the purchases in cash, or doesn't want to do so, he could give B a promissory note. It is A's promise to pay B either on a specified date or on demand. In another possibility, A might have a promissory note which is issued by C. He could endorse this note and give it to B and clear of his dues this way.

However, the seller isn't bound to accept the promissory note. The reputation of a buyer is of great importance to a seller in deciding whether to accept the promissory note or not

Bill of exchange

Bills of exchange refer to a legally binding, written document which instructs a party to pay a predetermined sum of money to the second(another) party. Some of the bills might state that money is due on a specified date in the future, or they might state that the payment is due on demand.

A bill of exchange is used in transactions pertaining to goods as well as services. It is signed by a party who owes money (called the payer) and given to a party entitled to receive money (called the payee or seller), and thus, this could be used for fulfilling the contract for payment. However, a seller could also endorse a bill of exchange and give it to someone else, thus passing such payment to some other party.

It is to be noted that when the bill of exchange is issued by the financial institutions, it's usually referred to as a bank draft. And if it is issued by an individual, it is usually referred to as a trade draft.

A bill of exchange primarily acts as a promissory note in the international trade; the exporter or seller, in the transaction addresses a bill of exchange to an importer or buyer. A third party, usually the banks, is a party to several bills of exchange acting as a guarantee for these

payments. It helps in reducing any risk which is part and parcel of any transaction.

Cheques

A cheque refers to an instrument in writing which contains an unconditional order, addressed to a banker and is signed by a person who has deposited his money with the banker. This order, requires the banker to pay a certain sum of money on demand only to to the bearer of cheque (person holding the cheque) or to any other person who is specifically to be paid as per instructions given.

Cheques could be a good way of paying different kinds of bills. Although the usage of cheques is declining over the years due to online banking, individuals still use cheques for paying for loans, college fees, car EMIs, etc. Cheques are also a good way of keeping track of all the transactions on paper. On the other side, cheques are comparatively a slow method of payment and might take some time to be processed.

Major features of negotiable instruments are;

Easy Transferability- A negotiable instrument is freely transferable. Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument. The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order). Further, while transferring it is also not required to give a notice to the previous holder.

Title- Negotiability confers absolute and good title on the transferee. It means that a person who receives a negotiable instrument has a clear and undisputable title to the instrument. However, the title of the receiver will be absolute, only if he has got the instrument in good faith and for a consideration. Also the receiver should have no knowledge of the previous holder having any defect in his title. Such a person is known as holder in due course.

Must be in writing- A negotiable instrument must be in writing. This includes handwriting, typing, computer print out and engraving, etc.

Unconditional Order- In every negotiable instrument there must be an unconditional order or promise for payment.

Payment- The instrument must involve payment of a certain sum of money only and nothing else. For example, one cannot make a promissory note on assets, securities, or goods.

The time of payment must be certain- It means that the instrument must be payable at a time which is certain to arrive. If the time is mentioned as ‘when convenient’ it is not a negotiable instrument. However, if the time of payment is linked to the death of a person, it is nevertheless a negotiable instrument as death is certain, though the time thereof is not.

The payee must be a certain person- It means that the person in whose favor the instrument is made must be named or described with reasonable certainty. The term ‘person’ includes individual, body corporate, trade unions, even secretary, director or chairman of an institution. The payee can also be more than one person.

Signature- A negotiable instrument must bear the signature of its maker. Without the signature of the drawer or the maker, the instrument shall not be a valid one.

Delivery- Delivery of the instrument is essential. Any negotiable instrument like a cheque or a promissory note is not complete till it is delivered to its payee. For example, you may issue a cheque in your brother’s name but it is not a negotiable instrument till it is given to your brother.

Stamping- Stamping of Bills of Exchange and Promissory Notes is mandatory. This is required as per the Indian Stamp Act, 1899. The value of stamp depends upon the value of the pronote or bill and the time of their payment.

Right ot file suit- The transferee of a negotiable instrument is entitled to file a suit in his own name for enforcing any right or claim on the basis of the instrument.

Notice of transfer- It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.

Presumptions- Certain presumptions apply to all negotiable instruments, for example consideration is presumed to have passed between the transferor and the transferee.

Procedure for suits- In India a special procedure is provided for suits on promissory notes and bills of exchange.

Number of transfer- These instruments can be transferred indefinitely till they are at maturity.

Rule of evidence- These instruments are in writing and signed by the parties, they are used as evidence of the fact of indebtness because they have special rules of evidence.

Exchange- These instruments relate to payment of certain money in legal tender, they are considered as substitutes for money and are accepted in exchange off goods because cash can be obtained at any moment by paying a small commission.

Parties to Bill of Exchange

1. Drawer: The maker of a bill of exchange is called the ‘drawer’.

2. Drawee: The person directed to pay the money by the drawer is called the ‘drawee’,

3. Acceptor: After a drawee of a bill has signed his assent upon the bill, or if there are more

parts than one, upon one of such pares and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the ‘ acceptor’.

Payee: The person named in the instrument, to whom or to whose order the money is directed to be paid by the instrument is called the ‘payee’. He is the real beneficiary under the instrument. Where he signs his name and makes the instrument payable to some other person, that other person does not become the payee.

5. Indorser: When the holder transfers or indorses the instrument to anyone else, the holder becomes the ‘indorser’.

6. Indorsee: The person to whom the bill is indorsed is called an ‘indorsee’.

7. Holder: A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a ‘holder’. He is either the riginal payee, or the indorsee. In case the bill is payable to the bearer, the person in possession of the negotiable instrument is called the ‘holder’.

8. Drawee in case of need: When in the bill or in any endorsement, the name of any person is given, in addition to the drawee, to be resorted to in case of need, such a person is called ‘drawee in case of need’. In such a case it is obligatory on the part of the holder to present the bill to such a drawee in case the original drawee refuses to accept the bill. The bill is taken to be dishonoured by non-acceptance or for nonpayment, only when such a drawee refuses to accept or pay the bill.

9. Acceptor for honour: In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honour of any party liable on the bill. Such an acceptor is called ‘acceptor for honour’.

Parties to a Promissory Note

1. Maker. He is the person who promises to pay the amount stated in the note. He is the debtor.

2. Payee. He is the person to whom the amount is payable i.e. the creditor.

3. Holder. He is the payee or the person to whom the note might have been indorsed.

4. The indorser and indorsee (the same as in the case of a bill).

Parties to a Cheque

1. Drawer. He is the person who draws the cheque, i.e., the depositor of money in the bank.

2. Drawee. It is the drawer's banker on whom the cheque has been drawn.

3. Payee. He is the person who is entitled to receive the payment of the cheque.

4. The holder, indorser and indorsee (the same as in the case of a bill or note).

NEGOTIATION

Negotiation may be defined as the process by which a third party is bconstituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name. According to section 14 of the Act, 'when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated.' The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of. Negotiation thus requires two conditions to be fulfilled, namely:

1. There must be a transfer of the instrument to another person; and

2. The transfer must be made in such a manner as to constitute the transferee the holder of the instrument. Handing over a negotiable instrument to a servant for safe custody is not

negotiation; there must be a transfer with an intention to pass title.

Modes of negotiation

Negotiation may be effected in the following two ways:

1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

2. Negotiation by endorsement and delivery (Sec. 48): A promissory note, a cheque or a bill of exchange payable to order can be negotiated only be endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

ENDORSEMENT

The word 'endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.

Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called allonage. It should usually be in ink.

2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.

3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.

4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an

endorsement. But intention to transfer must be present.

When in a bill or note payable to order the endorsee's name is wrongly spelt, he should when he endorses it, sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.

5. It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus, where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the latter gets no right on the instrument.

6. It must be an endorsement of the entire bill. A partial endorsement i.e. which purports to transfer to the endorse a part only of the amount payable does not operate as a valid endorsement

If delivery is conditional, endorsement is not complete until the condition is fulfilled.

Who may endorse?

The payee of an instrument is the rightful person to make the first endorsement. Thereafter the instrument may be endorsed by any person who has become the holder of the instrument. The maker or the drawer cannot endorse the instrument but if any of them has become the holder

thereof he may endorse the instrument. (Sec. 51). The maker or drawer cannot endorse or negotiate an instrument unless he is in lawful possession of instrument or is the holder there of.

A payee or indorsee cannot endorse or negotiate unless he is the holder there of.

Classes of endorsement

An endorsement may be:

(1) Blank or general.

(2) Speical or full.

(3) Partial.

(4) Restrictive.

(5) Conditional.

(a) Blank or general endorsement (Sections 16 and 54).

It is an endorsement when the endorser merely signs on the instrument without mentioning the name of the person in whose favour the endorsement is made. Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement. A negotiable instrument even though payable to order becomes a bearer instrument if endorsed in blank. Then it is transferable by mere delivery. An endorsement in blank may be followed by an endorsement in full. Special or full endorsement (Section 16)

When the endorsement contains not only the signature of the endorser but also the name of the person in whose favour the endorsement is made, then it is an endorsement in full. Thus, when endorsement is made by writing the words “Pay to A or A’s order,” followed by the signature of the endorser, it is an endorsement in full. In

such an endorsement, it is only the endorsee who can transfer the instrument.

Partial endorsement (Section 56)

A partial endorsement is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. Such an endorsement does not operate as a negotiation of the instrument.

Restrictive endorsement (Section 50)

The endorsement of an instrument may contain terms making it restrictive. Restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.

Conditional or qualified endorsement

It is open to the endorser to annex some condition to his owner liability on the endorsement. An endorsement where the endorsee limits or negatives his liability by putting some condition in the instrument is called a conditional endorsement. A condition imposed by the endorser may be a condition precedent or a condition subsequent. An endorsement which says that the amount will become payable if the endorsee attains majority embodies a condition precedent. A conditional endorsement unlike the restrictive endorsement does not affect the negotiability of the instrument. It is also some times called qualified endorsement. An endorsement may be made conditional or qualified in any of the following forms:

(i) ‘Sans recourse’ endorsement: An endorser may be express word exclude his own liability thereon to the endorser or any subsequent holder in case of dishonour of the instrument. Such an endorsement is called an endorsement sans recourse (without recourse). Thus ‘Pay to A or order sans recourse, ‘pay to A or order without recourse to me,’ are instances of this type of endorsement. Here if the instrument is dishonoured, the subsequent holder or the indorsee cannot look to the indorser for payment of the same. An agent signing a negotiable instrument may exclude his personal liability by using words to indicate that he is signing as agent only. The same rule applies to directors of a company signing instruments on behalf of a company. The intention to exclude personal liability must be clear. Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him .Facultative endorsement: An endorsement where the endorser extends his liability or abandons some right undera negotiable instrument, is called a facultative endorsement.

“Pay A or order, Notice of dishonour waived” is an example of facultative endorsement.

(iii) ‘Sans frais’ endorsement: Where the endorser does not want the endorsee or any subsequent holder, to incur any expense on his account on the instrument, the endorsement is ‘sans frais’.

(iv) Liability dependent upon a contingency: Where an endorser makes his liability depend upon the happening of a contingent event, or makes the rights of the endorsee to receive the amount depend upon any contingent event, in such a case the liability of the endorser will arise only on the happening of that contingent event. Thus, an endorser may write ‘Pay A or order on his marriage with B’. In such a case, the endorser will not be liable until the marriage takes place and if the marriage becomes impossible,

the liability of the endorser comes to an end.

The legal effect of negotiation by endorsement and delivery is:

(i) to transfer property in the instrument from the endorser to the endorsee.

(ii) to vest in the latter the right of further negotiation, and

(iii) a right to sue on the instrument in his own name against all the other parties (Section 50).

INSTRUMENTS WITHOUT CONSIDERATION

A person cannot pass a better title than he himself possesses. A person who is a mere finder of a lost goods or a thief or one who obtains any article by fraud or for an unlawful consideration does not get any title to the thing so acquired. The true owner can recover it not only from him but from any person to whom he may have sold it. But there is a difference between the transfer of ordinary goods and negotiation of negotiable instruments. The Negotiable Instruments Act provides protection to those persons who acquire the instruments in good faith and for valuable consideration. A holder in due course who has no means to discover the defect of title in an instrument of any previous holder when the instrument may have passed through several hands must be protected if he obtains the instrument for value and in good faith.

Section 58 of the Act provides that no person in possession of an instrument with a defect of title can claim the amount of the instrument unless he is a holder in due course. The moment an instrument come into the hands of a holder in due course, not

only does he get a title which is free from all defects, but having passed through his hands the instrument is cleaned of all defects.

Lost instruments

Where the holder of a bill or note loses it, the finder gets no title to it. The finder cannot lawfully transfer it. The man who lost it can recover it from the finder. But if the instrument is transferable by mere delivery and there is nothing on its face to show that it does not belong to the finder, a holder obtaining it from the finder in good faith and for valuable consideration and before maturity is entitled to the instrument and can recover payment from all the parties thereof. If the instrument is transferable by endorsement, the finder cannot negotiate it except by forging the endorsement. The holder of the instrument when it is lost must give a notice of loss to all the parties liable on it and also a public notice by advertisement. The holder of a lost bill remains owner in law and as such on maturity can demand payment from the acceptor, and if is dishonoured he must give notice of dishonour to prior parties. The owner of the lost bill has a right to obtain the duplicate from the drawer and on refusal he can sue the drawer for the same.

Stolen instrument

The position of thief of an instrument is exactly the same as that of a finder of lost instruments. A thief acquires no title to an instrument if he receives payment on it the owner can sue him for the recovery of the amount. But if an instrument payable to bearer is stolen and if transferred to a holder in due course, the owner must suffer.

Forged endorsement

The case of a forged endorsement is slightly different. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. If an endorsement is forged, the endorsee acquires no title to the instrument even if he is a bonafide purchaser. On the other hand, if the instrument is a bearer instrument or has been endorsed in blankand there is a forged endorsement the holder gets a good title because holder in such a case derives title by delivery and not by endorsement. Bankers are specially protected against forged endorsement under section 85 of the Act.

Instrument without consideration

Sections 43 to 45 of the Negotiable Instrument Act deal with the consequences of failure or absence of consideration in negotiable instruments. In the case of negotiable instruments consideration is presumed to exist between the parties unless the contrary is proved. As between immediate parties, if an instrument is made, drawn or endorsed without consideration, or for a consideration which subsequently fails, it is void. As between immediate parties, failure of consideration has the same effect as the absence of consideration. For instance if a promissory note is delivered by the maker to the payee as a gift, it cannot be enforced against such maker.

HOLDER IN DUE COURSE

Section 9 of the Act defines 'holder in due course' as any person who

(i) for valuable consideration,

(ii) becomes the possessor of a negotiable instrument payable to bearer or the indorsee or payee thereof,

(iii) before the amount mentioned in the document becomes payable, and

(iv) without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title. (English law does not regard payee as a holder in due course). The essential qualification of a holder in due course may, therefore, be summed up as follows:

1. He must be a holder for valuable consideration. Consideration must not be void or illegal, e.g. a debt due on a wagering agreement. It may, however, be inadequate. A donee, who acquired title to the instrument by way of gift, is not a holder in due course, since there is no consideration to the contract. He cannot maintain any action against the debtor on the instrument. Similarly, money due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by a suit.

2. He must have become a holder (passessor) before the date of maturity of the negotiable instrument. Therefore, a person who takes a bill or promissory note on the day on which it becomes payable cannot claim rights of a holder in due course because he takes it after it becomes payable, as the bill or note can be discharged at any time on that day.

3. He must have become holder of the negotiable instrument in good faith. Good faith implies that he should not have accepted the negotiable instrument after knowing about any defect in the title to the instrument. But, notice of defect in the title received subsequent to the acquisition of the title will not affect the rights of a holder in due course. Besides good faith, the Indian Law also requires reasonable care on the part of the holder before he acquires title of the negotiable instrument. He should take the instrument without any negligence on his part. Reasonable care and due caution will be the proper test of his bona fides. It will not be enough to show that the holder acquired the instrument honestly, if in fact, he was negligent or careless. Under conditions of sufficient indications showing the existence of a defect in the title of the transferor, the holder will not become a holder in due course even though he might have taken the instrument without any suspicion or knowledge.

Example:

(i) A bill made out by pasting together pieces of a tom bill taken without enquiry will not make the holder, a holder in due course. It was sufficient to show the intention to cancel the bill. A bill should not be taken without enquiry if suspicion has been aroused.

(ii) A post-dated cheque is not irregular. It will not preclude a bonafide purchase instrument from claiming the rights of a holder in due course. It is to be noted that it is the notice of the defect in the title of his immediate transferor which deprives a person from claiming the right of a holder in due course. Notice of defect in the title of any prior party does not affect the title of the holder.

4. A holder in due course must take the negotiable instrument complete and regular on the face of it. Privileges of a holder in due course

1. Instrument purged of all defects: A holder in due course who gets the instrument in good faith in the course of its currency is not only himself protected against all defects of title of the person from whom he has received it, but also serves, as a channel to protect all subsequent holders. A holder in due course can recover the amount of the instrument from all previous parties although, as a matter of fact, no consideration was paid by some of the previous parties to instrument or there was a defect of title in the party from whom he took it. Once an instrument passes through the hands of a holder in due course, it is purged of all defects. It is like a current coin. Who-so-ever takes it can recover the amount from all parties previous to such holder (Sec. 53).

It is to be noted that a holder in due course can purify a defective title but cannot create any title unless the instrument happens to be a bearer one.

Rights not affected in case of an inchoate instrument:

Right of a holder in due course to recover money is not at all affected even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker. (Sec. 20)

3. All prior parties liable: All prior parties to the instrument (the maker or drawer, acceptor and intervening indorers) continue to remain liable to the holder in due course until the instrument is duty satisfied. The holder in due course can file a suit against the parties liable to pay, in his own name (Sec. 36)

4. Can enforce payment of a fictitious bill: Where both drawer and payee of a bill are fictitious persons, the acceptor is liable on the bill to a holder in due course. If the latter can show that the signature of the supposed drawer and the first indorser are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must indorse the bill before he can negotiate it. (Sec. 42).

5. No effect of conditional delivery: Where negotiable instrument is delivered conditionally or for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed and he acquired good title to it. (Sec. 46).

Example: A, the holder of a bill indorses it "B or order" for the express purpose that B may get it discounted. B does not do so and negotiates it to C, a holder in due course. D acquires a good title to the bill and can sue all the parties on it.

6. No effect of absence of consideration or presence of an unlawful consideration: The plea of absence of or unlawful consideration is not available against the holder in due course. The party responsible will have to make payment (Sec. 58).

7. Estoppel against denying original validity of instrument:The plea of original invalidity of the instrument cannot be put forth, against the holder in due course by the drawer of a bill of exchange or cheque or by an acceptor for the honour of the drawer. But where the instrument is void on the face of it.

DISHONOUR OF A NEGOTIABLE INSTRUMENT

When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to makethem liable. A negotiable

instrument can be dishonoured either by non-cceptance or by non-payment. A cheque and a promissory note can only be dishonoured by non-payment but a bill of exchange can be dishohoured either by non-acceptance or by non-payment.

Dishonour by non-acceptance (Section 91)

A bill of exchange can be dishonoured by non-acceptance in the following ways:

1. If a bill is presented to the drawee for acceptance and he does not accept it within 48 hours from the time of presentment for acceptance. When there are several drawees even if one of them makes a default in acceptance, the bill is deemed to be dishonoured unless these several drawees are partners. Ordinarily when there are a number of drawees all of them must accept the same, but when the drawees are partners acceptance by one of them means acceptance by all.

2. When the drawee is a fictitious person or if he cannot be traced after reasonable search.

3. When the drawee is incompetent to contract, the bill is treated as dishonoured.

4. When a bill is accepted with a qualified acceptance, the holder may treat the bill of exchange having been dishonoured.

5. When the drawee has either become insolvent or is dead.

6. When presentment for acceptance is excused and the bill is not accepted. Where a drawee in case of need is named in a bill or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Dishonour by non-payment (Section 92)

A bill after being accepted has got to be presented for payment on the date of its maturity. If the acceptor fails to make payment when it is due, the bill is dishonoured by non-payment. In the case of a promissory note if the maker fails to make payment on the due date the note is dishonoured by non-payment. A cheque is dishonoured by non-payment as soon as a banker refuses to pay An instrument is also dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec 76).

Effect of dishonour: When a negotiable instrument is dishonoured either by non acceptance or by non-payment, the other parties thereto can be charged with liability. For example if the acceptor of a bill dishonours the bill, the holder may bring an action against the drawer and the indorsers. There is a duty cast upon the holder towards those whom he wants to make liable to give notice of dishonour to them. Notice of dishonour: Notice of dishonour means the actual notification of the dishonour of the instrument by non-acceptance or by non-payment. When a negotiable instrument is refused acceptance or payment notice of such refusal must immediately be given to parties to whom the holder wishes to make liable. Failure to give notice of the dishonour by the holder would discharge all parties other than the maker or the acceptor (Sec. 93).

Notice by whom: Where a negotiable instrument is dishonoured either by non-acceptance or by non-payment, the holder of the instrument or some party to it who is liable thereon must give a notice of dishonour to all the prior parties whom he wants to make liable on the instrument (Section 93). The agent of any such party may also be givennotice of dishonour. A notice given by a stranger is not valid. Each party receiving notice of dishonour must, in order to render any prior party liable give notice of

dishonour to such party within a reasonable time after he has received it. (Sec. 95)

When an instrument is deposited with an agent for presentment and is dishonoured, he may either himself give notice to the parties liable on the instrument or he may give notice to his principal. If he givesnotice to his principal, he must do so within the same time as if he were the holder. The principal, too, in his turn has the same time for giving notice as if the agent is an independent holder. (Sec. 96)

Notice to whom?: Notice of dishonour must be given to all parties to whom the holder seeks to make liable. No notice need be given to a maker, acceptor or drawee, who are the principal debtors (Section 93).

Notice of dishonour may be given to an endorser. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given. In case of the death of such a person, it may be given to his legal representative. Where he has been declared insolvent the notice may be given to him or to his official assignee (Section 94). Where a party entitled to a notice of dishonour is dead, and notice is given to him in ignorance of his death, it is sufficient.

Mode of notice: The notice of dishonour may be oral or written or partly oral and partly written. It may be sent by post. It may be in any form but it must inform the party to whom it is given either in express terms or by reasonable intendment that the instrument has been dishonoured and in what way it has been dishonoured and that the person served with the notice will be held liable thereon. What is reasonable time?: It is not possible to lay down any hard and fast rule for determining what is reasonable time. In determining what is reasonable time, regard shall be had to the nature of the

instrument, the usual course the dealings with respect to similar instrument, the distance between the parties and the nature of communication between them. In calculating reasonable time, public

holidays shall be excluded (Section 105)

Section 106 lays down two different rules for determining reasonable time in connection with the notice of disnonour (a) when the holder and the party to whom notice is due carry on business or live in different places, (b) when the parties live or carry on business in the same place. In the first case the notice of dishonour must be dispatched by the next post or on the day next after the day of dishonour. In the second case the notice of dishonour should reach its destination on the day next after dishonour.

Place of notice: The place of business or (in case such party has no place of business) at the residence of the party for whom it is intended, is the place where the notice is to given. If the person who is to give the notice does not know the address of the person to whom the notice is to be given, he must make reasonable efforts to find the latter's address. But if the party entitled to the notice cannot after due search be found, notice of dishonour is dispensed with.

Duties of the holder upon dishonour

(1) Notice of dishonour. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment the holder must give notice of dishonour to all the parties to the instrument whom he seeks to make liable thereon. (Sec. 93)

(2) Noting and protesting. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each (Sec. 99). The holder may also within a reasonable time of the dishonour of the note or bill, get the instrument protested by notary public (Sec. 100).

(3) Suit for money. After the formality of noting and protesting is gone through, the holder may bring a suit against the parties liable for the recovery of the amount due on the instrument. Instrument acquired after dishonour: The holder for value of a negotiable instrument as a rule, is not affected by the defect of title in his transferor. But this rule is subject to two important exceptions (i) when the holder acquires it after maturity and (ii) when he acquires it with notice of dishonour.

The holder of a negotiable instrument who acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transfer. (Sec. 59).

NOTING AND PROTESTING

When a negotiable instrument is dishonoured the holder may sue his prior parties i.e the drawer and the indorsers after he has given a notice of dishonour to them. The holder may need an authentic evidence of the fact that a negotiable instrument has been dishonoured. When a cheque is dishonoured general1y the bank who refuses payment returns back the cheque giving reasons in writing for the dishonour of the cheque. Sections 99 and l00 provide convenient methods of authenticating the fact of dishonour

of a bill of exchange and a promissory note by means of ‘noting’ and ‘protest’.

Noting

As soon as a bill of exchange or a promissory note is dishonoured, the holder can after giving the parties due notice of dishonour, sue the parties liable thereon. Section 99 provides a mode of authenticating the fact of the bill having been dishonoured. Such mode is by noting the instrument. Noting is a minute recorded by a notary public on the dishonoured instrument or on a paper attached to such instrument. When a bill is to be noted, the bill is taken to a notary public who represents it for acceptance or payment as the case may be and if the drawee or acceptor still refuses to accept or pay the bill, the bill is noted as stated above. Noting should specify in the instrument,

(a) the fact of dishonour,

(b) the date of dishonour,

(c) the reason for such dishonour, if any

(d) the notary’s charges,

(e) a reference to the notary’s register and

(f) the notary’s initials.

Noting should be made by the notary within a reasonable time after dishonour. Noting and protesting is not compulsory but foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. Cheques do not require noting and protesting. Noting by itself has no legal effect. Still it has some advantages. If noting is done within a reasonable time protest may be drawn later on. Noting without protest is sufficient to allow a bill to be accepted for honour.

Protest

Protest is a formal certificate of the notary public attesting the dishonour of the bill by non-acceptance or by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration on the bill or a copy thereof. The chief advantage of protest is that the court on proof of the protest shall presume the fact of dishonour. Besides the protest for non-acceptance and for non-payment the holder may protest the bill for better security. When the acceptor of a bill becomes insolvent or suspends payment before the date of maturity, or when he absconds the holder may protest it in order to obtain better security for the amount due. For this purpose the holder may employ a notary public to make the demand on the acceptor and if refused, protest may be made. Notice of protest may be given to prior parties. When promissory notes and bills of exchange are required to be protested, notice of protest must be given instead of notice of dishonour. (Sec. 102)

Inland bills may or may not be protested. But foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn (Sec. 104).

Where a bill is required to be protested under the Act within a specified time, it is sufficient if it is ‘noted for protest’ within such time.

The formal protest may be given at anytime after the noting (Sec. 104A)

Contents of protest

Section 101 of the Act lays down the contents of a regular and perfect protest which are as follows:

1. The instrument itself or a literal transcript of the instrument; and of everything written or printed thereupon.

2. The name of the person for whom and against whom the instrument has been protested.

3. The fact of and reasons for dishonour i.e. a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public from the person concerned and he refused to give it or did not answer or that he could not be found.

4. The time and place of demand and dishonour.

5. The signature of the notary public.

6. In the case of acceptance for honour or payment for honour the person by whom or for whom such acceptance or payment was offered and effected.

PRESENTMENT

Presentment is a demand by which the holder of a negotiable instrument is required to do something as per the directives of the instrument. It is the showing of the instrument to the drawee, acceptor or maker for acceptance, sight or payment.

The Negotiable instruments Act 1881, (hereinafter referred to as the Act) has exhaustively and elaborately dealt with this aspect. A whole procedure has been outlined as to how the negotiable instrument has to be presented.

Kinds of Presentment

There are different modes in which presentment can happen. They are:

Presentment for acceptance

Presentment of promissory notes for sight

Presentment for payment

Presentment for acceptance

There are only certain types of bills of exchange which require acceptance. A bill gets accepted when the drawee affixes his signature on the instrument signifying his consent to the order of the drawer that he will pay the bill when it becomes due. The drawee is not liable until he accepts the bill. He signifies his acceptance by signing his name on the bill.

A drawee may also write accepted but it is not necessary. Once the drawee accepts the bill he comes to be known as the acceptor.

The following are the essentials of a valid acceptance:

It must be in written form on the bill. A drawee inserts the words accepted either across the bill's face or its back and then affixes his signature below the words.

The drawee must sign the bill on his own or his authorised agent must do it. The drawee becomes only liable when he accepts the bill and not before. He cannot be made liable

before acceptance since he is not a party to the instrument.

Once the bill is accepted it must be delivered to the holder. Acceptance will be of no use until the bill has been delivered to the holder.

If a bill is drawn in sets then the acceptance must be put on part only. In case he puts his acceptance on more than one part then he will become liable for all the parts.

A bill which is payable on demand or after a number of days from the date or on a certain fixed date may not be presented for acceptance unless it is expressly mentioned in the instrument that needs to be presented for acceptance. But in certain cases a bill needs to be presented for acceptance; which are:

A bill which stipulates that it must be presented for acceptance before it is presented for payment;

A bill payable after sight or after presentment in order to fix its maturity.

One should get a bill presented for acceptance even if it’s optional to do so. This helps in getting extra security and also makes a right to take recourse in case it gets dishonoured.

A bill may be accepted by:

General Acceptance

An acceptance is general or absolute where the drawee, when he accepts the bill, does not attach any condition or qualification to it. If the acceptance is not absolute, the holder may treat the bill as dishonoured due to non acceptance.

Qualified Acceptance:

When a condition is imposed to in order to accept the presentment then it is called a qualified acceptance. A qualified acceptance in express terms varies the effect of a bill. In such cases the holder may refuse to accept the condition and treat the bill as dishonoured by way of non acceptance.However, if he accepts then he does that at his risk and he discharges all the previous parties unless he obtains the consent of those parties.

Thus a qualified acceptance is:

Conditional, eg: Accepted payment when goods consigned to me are sold;

Partial, i.e., only for a part of the bill. Eg: the bill was for 500 and it is accepted for only 200.

Qualified as to place i.e., it is only payable at a certain place. Eg: accepted payable at Royal Bank of Scotland only.

Qualified as to time i.e., to pay at a time other than the stipulated time in the bill. Eg: the bill was payable after a certain date. Accepted payable after six months from date.

Acceptance by some of the drawees but not all. Eg A bill drawn on Z,C and Y but accepted by Z only.

Presentment for acceptance is made to:

Drawee;

All or some of several drawees;

Drawee in case of need;

All the drawees, if there are several drawees unless they are partners or agents of one another;

Duly authorised agent of the drawee;

Legal representative if the drawee has dies;

His official receiver or assignee it the drawee has been declared insolvent.

Presentment to be made when and where

If a time is specified in a bill then it must be presented for acceptance at any time before payment. If the bill is payable at sight then presentment is obligatory within a reasonable time after the same has been drawn

The bill should be presented for acceptance at the place which is specified in the bill for presentment. If no place has been specified then the bill is to be presented at the place where drawee has his business or residence.

As per sec 63 of the Act, the holder must provide at least 48 hours for acceptance of the bill.

If the bill is not presented for acceptance then all the endorsers and the drawer is absolved of liability.

Cases where presentment for acceptance is excused

Presentment for acceptance is excused when:

The drawee cannot be found after a reasonable search;

Where the drawee is dead or insolvent. Sec 75 of the act contemplates that the instrument may be presented to the legal representatives of the deceased drawee or assignee of the insolvent however it is not compulsory;

The drawee is a fictitious person or one incapable of contracting;

Where, although presentment has been irregular, acceptance has been refused due to some other ground.

Presentment for Sight

Sec 62 of the act contemplates that in cases of promissory notes no question of acceptance arises since the maker is himself liable for it. However, a note which is payable at a certain period after sight must be presented to the maker for sight in order to get its maturity fixed. If the maker is not found presentment is excused and the instrument may be treated as dishonoured.

Presentment for Payment

Sec 64 of the act contemplates that promissory notes, bills of exchange and cheque must be presented to the maker, acceptor or drawee on behalf of the holder. If the same is not done then the parties to the instrument are not liable to the holder. If authorised by agreement or usage, a presentment by way of post is sufficient.

Presentment for payment when not necessary

Sec 76 contemplates as to when presentment is not necessary:

The maker, drawee, or acceptor intentionally prevents presentment of the instrument;

The instrument is payable at a certain place of business and this place of business is closed during the usual business hours thereby not letting the presentment to go through. It will be presumed that the person liable to pay is evading payment;

The instrument is payable at a certain place and neither the maker, acceptor or drawee or any authorised person to pay is present during the usual business hours;

The instrument is not payable at a certain place and the payer cannot be found;

There is a promise to pay without presentment;

Presentment for payment has been waived either expressly or impliedly before or after maturity by the party entitled to presentment;

Presentment becomes impossible;

Drawee and drawer is the same person;

Bill gets dishonoured for non-accepatnce;

Drawer is a fictitious person;

In all the above the instrument is deemed to be dishonoured on the due date of presentment.

Presentment of cheque to charge drawee bank

A cheque must be presented for payment during the banking hours and at the bank upon which it has been drawn and also within a reasonable time after it is received by the holder.

Presentment of truncated cheque

Sec 64 (2) of the act contemplates that if an electronic image of a truncated cheque has been presented for payment then the bank can ask for information regarding the truncated cheque from the bank holding the truncated cheque if there is suspicion about such a cheque. It can also demand verification of such a cheque.

A truncated cheque which is so demanded by the drawee bank shall be retained by it if the payment gets made.

Caselaws

In the case of Nenu Ram v Shivkishen AIR 1950 Raj 55, it was held that sec 64 of the contemplates that promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee either by the holder or by someone else on his behalf in the manner provided in the act.

In case of default of presentment the other parties are not liable to the holder. Once the bill is accepted it has to be presented for payment.

In the case of Pachkauri Lal v Mulchand March, 1922 66 Ind Cas 503,it was held that the drawer and drawee were one and same therefore no presentment was required in this case.

In the case of Kanhyalal v Ramkumar AIR 1956 Raj 129, it was held that a contract which is embodied in a bill of exchange is that the drawer says to the payee that on the bill being presented to the drawee at the due time, that is, on maturity, the latter shall honour it. Therefore presentment for payment by the holder of an instrument is an essential step for fixing liability for non-payment on the drawer.

It was further held that presentment for acceptance is a requirement which is not to be insisted upon however, presentment for payment must be done.

In the case of Phul Chand v Ganga Ghulam (1899) ILR 21 All 450, it was held that as per sec 64 if there is default in presentment then the other parties are not liable to such holder. It is clear that that section only exempts from liability to the holder in default of presentment parties other than the maker, acceptor or drawee of a promissory note, bill of exchange and cheque, respectively.

CROSSING OF CHEQUE

Cheque crossing is recognized in the Negotiable Instruments Act of 1881.

Crossing a cheque means drawing two parallel transverse lines between the lines on the cheque with or without additional words such as “& CO.” or “Account Payee” or “Not Negotiable.”

In accordance with the Sec. 125 of the Negotiable Instruments Act, the following persons are authorized to cross the cheque, apart from the drawer:

The Holder

The holder of a cheque is authorized to cross a cheque, either in general or in particular if the cheque is not crossed.

He is also entitled to cross a cheque, especially if the same is generally crossed.

He can also add the words “non- negotiable” to crossed cheques in general and in particular.

The Banker

The banker in whose favour a cheque is crossed in particular can also cross it in favour of another banker or his agent for collection purposes. Such a crossing is called Special Double-crossing.

Different Types Of Crossing of Cheque

A crossing of cheques is basically of 2 types:

General Crossing

Special Crossing of cheques.

General Crossing

Section 123 of the Negotiable Instruments Act deals with the general crossing of cheque, In the following cases, a cheque is generally considered to be crossed:

If two parallel transverse lines are marked across the cheque face.

If the cheque has an abbreviation “& C” between the two parallel transverse lines.

If the cheque is written between the two parallel lines, the words “Not Negotiable”.

When the cheque comes with the words “A / C. Payee” between the two parallel transverse lines.

Special Crossing

According to section 124 of the Negotiable instruments Act,

For a cheque to be deemed to have been crossed, the banker’s name had to be added across the face of the cheque.

In case of a special crossing, a cheque must not be crossed by drawing two parallel lines.

Section 124 of The Negotiable Instruments Act, 1881 defines Special Crossing as: “Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that in addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker.”

Also known as Restricted Crossing.

Two transverse lines must not necessarily be drawn.

The banker’s name is added across the face of the cheque.

The banker’s name may or may not carry the abbreviated word’ & Co.’

Payment can only be made through the bank of the crossing. The banker mentioned at the crossing can appoint another banker to collect such cheques as his agent. Therefore, it is safer than ‘generally’ crossed cheques.

Specially Crossed Cheques are not convertible into General Crossing.

Double Crossing

Section 127 of The Negotiable Instruments Act, 1881

“Where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.”

A double-crossed cheque shall be paid by the banker if the second banker acts only as of the agent of the first collecting banker and this is clearly stated on the cheque. i.e., Crossing must specify that the banker to whom it was particularly crossed again acts as the first banker’s agent for the purpose of collecting the cheque.

OF BILLS IN SETS

132.Set of bills

Set of bills. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set ; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.-When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133 Holder of first acquired part entitled to all.

.Holder of first acquired part entitled to all. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

PENALTY AND PROCEDURE

Punishment for dishonour of cheque – two recourses are there for such offence-

In Civil- Payee may initiate recovery procedure in a jurisdictional court apart from criminal proceedings.

In Criminal- Dishonour of cheque attracts section 138 of Negotiable Instrument Act which provides imprisonment which may extend up to 2 years or fine which may extend up to twice of the cheque amount or both. This offence is bailable, compoundable and non cognizable.

Procedure-

Issuance of cheque for Discharge of any debt or any other liability

Presentation of Cheque

Dishonour of cheque

Notice to the drawer

Failure to pay by drawer

Filing of complaint

Jurisdiction –

The court where the bank in which the payee has his account is located.

Where more than one case against one drawer by different payees, all cases will be tried at one court

Filing of complaint

Punishment

Section 139 of Negotiable Instrument Act says that it will always be presumed that the holder must be bonafide person holding the check for any whole or partial payment of any debt or liability.

Section 140 of Negotiable Instrument Act says that a drawer cannot take the defence that he has no idea actually that the cheque drawn by him may get dishonoured for the reason given in section 138.

Section 141 of Negotiable Instrument Act says that in case that the offence is committed by some company, every person who was in-charge for the company's conduct at the time of committing the offence will be liable to punished.

Provided if the person proves that he had no knowledge of such offence or he exercised all his due diligence to prevent the offence, he shall not be liable for punishment.

Provided further that a person who was nominated as the director of a company because he was associated with state or central government in the past he cannot be made liable under this section.

It further provides that if it is proved that the offence was committed with the consent, neglect or knowledge of high officials like manager, director, secretary or other officers, they also be deemed to be guilty and shall be liable to be punished under this section.

Company means anybody corporate and includes a firm or other association of individuals.

Director means a partner in a firm.

Section 142 of Negotiable Instrument Act says that for taking the cognizance by court under section 138 it is important that written complaint to be made by payee or the holder within one month from the date on which cause of action arise. No inferior court to that of magistrate or judicial magistrate first class can try the offence punishable under section 138 of this Act.

Section 142 of Negotiable Instrument Act talks about the power of courts to try cases summarily.

Case Laws

i. Pankaj Mehta vs. State of Maharashtra

In this case it was held by the Supreme Court of India that if the petition was presented for winding up of the company before the notice for payment by the payee to company cheque amount, company cannot take the defence and escape from the liability.

TomyJacob Kattikaran vs. Thomas Manjaly

In this case Supreme Court held that if the appellant did not serve the notice on drawer within the prescribed period as per the section 138 of Negotiable Instrument Act, 1881 acquittal of drawer in such case is justified.

iii. Kumaresan vs. Ammerappa

It was held that due care and caution should be taken while sending the notice on dishonour of cheque. it is essential that the notice should be perfect and in conformity with law any mistake regarding this can bring a great loss.

iv. Saketh India Ltd. vs. India Securities Ltd

It was held by the Supreme Court that limitation period of the filing complaint should be calculated as given in section but first day should be excluded.