

SC **Equity** - If a party intend to invoke equity he must also do equity. (*Rani Aloka Dudhoria Vs Goutam Dudhoria*) 2009(3) Civil Court Cases 577 (S.C.)

Equity - Indulging in violation of laws obviously for the purpose of saving of stamp duty and income tax - Equity is not in favour of such party and such party is barred from any relief. (*M/s.Kusum Enterprises & Ors. Vs Vimal Kochhar & Anr.*) 2014(3) Civil Court Cases 023 (Delhi)

Equity - Injunction is an equitable relief - A person who seeks equity must do equity - he must also come to the Court with clean hands. (*D.T.T.D.C. Vs D.R.Mehra & Sons*) 1997(1) Civil Court Cases 54 (Delhi)

SC **Equity** - On equitable consideration Court cannot ignore or overlook the provisions of the statute - Equity must yield to law. (*Shamsu Suhara Beevi Vs G.Alex & Anr.*) 2004(3) Civil Court Cases 555 (S.C.)

Equity - Petition filed u/s 18 Hindu Adoptions and Maintenance Act, 1956 treated to be one u/s 125 Cr.P.C. - Nomenclature of a petition cannot stand in the way of a Court which has authority and jurisdiction to grant relief - The label placed on a cause is not conclusive and does not ordinarily affect the jurisdiction of the Court to allow the label to be corrected and grant such relief as is permissible under the law to a person who has approached the Court. (*Laxman Murmu Vs Smt.Dummi Murmu*) 2001(1) Civil Court Cases 608 (Orissa)

DB **Equity** - There can be no equity in favour of a dishonest person. (*V.N.Verma Vs Veena Mahajan*) 2012(3) Civil Court Cases 359 (Delhi) (DB)

Equity - Where law is clear, no equitable relief is warranted - Equity comes into operation where the area is not covered by the statutory provisions. (*Chivukula Ranjithkumar & Ors. Vs Santhilal Nemichand & Anr.*) 2000(1) Civil Court Cases 191 (A.P.)

Equity - Collusive allotment of land - Person holding such possession has no right to say that he has been in possession of premises nearly for 11 or 12 years as such his possession should be protected - Equity is not in favour of protecting possession of such person. (*Ram Das Vs The Addl. Collector (Adm.)*) 1999(3) Civil Court Cases (Raj.)

Equity - The person who flouts or does not carry out the directions of the Court cannot claim equity and thus discretionary relief from the Court. (*M/s Goel Flour and Oil Mills Vs Haryana State Electricity Board*) 1997(2) Civil Court Cases 175 (P&H)

Equity - Where law is clear, no equitable relief is warranted - Equity comes into operation where the area is not covered by the statutory provisions. (*Chivukula Ranjithkumar & Ors. Vs Santhilal Nemichand & Anr.*) 2000(1) Civil Court Cases 191 (A.P.)

ERROR OF COURT

SC **Error of Court** - No party should be allowed to suffer for the error of Court. (*Subhash Chandra Sen (D) Thr. LRs. Vs Nabin Sain (D) Thr. LRs.*) 2018(Suppl.) Civil Court Cases 631 (S.C.)

of proof is on the person who alleges so. (*Badugu Venkata Durga Rao & Anr. Vs Surneni Lakshmi*)
2001(1) Civil Court Cases 404 (A.P.)

Ss.101-102 - Forged document - Burden of proof - Is on the person who alleges such forgery. (*Natabar Behera Vs Batakrushna Das*)
2000(1) Civil Court Cases 109 (Orissa)

Ss.101, 102 - Burden of proof - Dispute as to identification of property with reference to boundaries - Burden is on defendant to prove that property which plaintiff is claiming is different from property based on boundaries. (*J.Venkataeswara Rao Vs Smt.Vijaya Lakshmi*)
2018(1) Civil Court Cases 499 (T&A)

SC Ss.101, 102 - Burden of proof - If a plea of undue influence is taken, then onus thereof is on the objector and not on the offender. (*Babu Singh & Ors. Vs Ram Sahai @ Ram Singh*)
2008(3) Civil Court Cases 509 (S.C.)

SC Ss.101, 102 - Burden of proof - it is always open to a party not to lead evidence where the onus is upon the other party but if he has led evidence, he cannot ask the Court to ignore it. (*Lakhan Sao Vs Dharamu Chaudhary*)
1991 Civil Court Cases 343 (S.C.)

Ss.101, 102 - Burden of proof - Where evidence is adduced, nature of transaction be decided on materials on record and probabilities of the case instead of laying much stress on burden of proof. (*Md.Usman Vs Md.Anwar*)
1996(2) Civil Court Cases 701 (A.P.)

SC Ss.101, 102 - Burden of proof and onus of proof - Burden of proof lies upon a person who has to prove the fact and which never shifts - Onus of proof shifts - Such a shifting of onus is a continuous process in the evaluation of evidence. (*Sebastiao Luis Fernandes (Dead) Through Lrs. & Ors. Vs K.V.P.Shastrri (Dead) Through Lrs. & Ors.*)
2014(1) Civil Court Cases 558 (S.C.)

Ss.101, 102 - Burden of proof and onus of proof - Distinction - Burden of proof lies upon the person and never shifts but the 'onus' shifts - Shifting of onus is a continuous process in the evaluation of evidence. (*Haridwar Vs Smt.Kulwant*)
2013(3) Civil Court Cases 856 (Allahabad)

Ss.101, 102 - Burden of proof and onus of proof - Distinction - Legal burden never shifts, but onus of proof that is burden to introduce evidence shifts from side to side during course of trial. (*Venkataiah Vs Lakshmiddevamma*)
2018(2) Civil Court Cases 140 (T&A)

SC Ss.101, 102 - Burden of proof and onus of proof - Distinction - Right to begin follows onus probandi - It assumes importance in the early stage of a case - Question of onus of proof has greater force, where the question is which party is to begin - Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others - The elementary rule is S.101 is inflexible - In terms of S.102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus

(Kalapatapu Lakshmi Bharati Vs Kalapatapu Sai Kumar)

2017(Suppl.) Civil Court Cases 088 (T&A) (DB)

SC S.13(1)(ia) - Cruelty - Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. (*Gurbux Singh Vs Harminder Kaur*)

2010(4) Civil Court Cases 724 (S.C.)

DB S.13(1)(ia) - Cruelty - May be mental or physical, intentional or unintentional - It is the conduct in relation to or in respect of matrimonial duties and obligations - Conduct complained of must be "grave and weighty" so as to come to a conclusion that spouse cannot be reasonably expected to live with the other spouse - It must be more serious than "ordinary wear and tear of married life. (*M Vs R*)

2014(2) Civil Court Cases 702 (Bombay) (DB)

S.13(1)(ia) - Cruelty - Meaning - Cruelty is nothing but inflicting mental or physical injury to the other spouse in the matrimonial home. (*Gurjit Singh Sandhu Vs Rupinder Kaur*)

1989 Civil Court Cases 119 (P&H)

SC S.13(1)(ia) - Cruelty - Mental cruelty - Does not depend upon numerical count of such incidents or only on the continuous course of such conduct - It goes by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home. (*Vijaykumar Ramchandra Bhate Vs Neela Vijaykumar Bhate*)

2003(2) Civil Court Cases 487 (S.C.)

DB S.13(1)(ia) - Cruelty - Mental torture or abnormal behaviour may amount to cruelty. (*Pooja Vs Naresh Kumar*)

2016(4) Civil Court Cases 761 (P&H) (DB)

SC S.13(1)(ia) - Cruelty - Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty - Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. (*Gurbux Singh Vs Harminder Kaur*)

2010(4) Civil Court Cases 724 (S.C.)

DB S.13(1)(ia) - Cruelty - Must be strictly proved. (*K.Kannusamy Vs T.Sumathi*)

2017(4) Civil Court Cases 474 (Madras) (DB)

DB S.13(1)(ia) - Cruelty - Nuptial knot cannot be allowed to be severed on the grounds/incidents/conduct which are ordinary wear and tear of matrimonial life. (*Latesh Subhash Kadam Vs Neesha Latesh Kadam*)

2010(2) Civil Court Cases 519 (Bombay) (DB)

S.13(1)(ia) - Cruelty - Once finding that wife has not treated the husband with cruelty is reversed then husband is not entitled to seek dissolution of marriage on ground of desertion. (*Radha Rani Vs Har Bhagwan*)

2004(3) Civil Court Cases 544 (P&H)

DB S.13(1)(ia) - Cruelty - Parties living separately for 14 years - No possibility of reunion of the parties to live together - Since marriage has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives - Divorce granted. (*Kalapatapu Lakshmi Bharati Vs Kalapatapu Sai Kumar*)

2017(Suppl.) Civil Court Cases 088 (T&A) (DB)

S.13(1)(ia) - Cruelty - Parties started living together on the basis of compromise

their difference/disputes - In view the age of the parties and that continuation of spoiled marriage would have bad effect on prospectus of remarriage and enable them to settle independently it would be in the interest of justice to waive the statutory period of six months. (*Niti Arora Vs Rohit Vij*)

2009(2) Civil Court Cases 803 (P&H)

S.13B - Divorce by mutual consent - Waiving of waiting period of six months - Petition supported by affidavits of both parties - Decree u/s 9 of the Act not complied with - Decree of divorce granted by waiving waiting period of six months. (*Santosh Vs Kishan*)

2010(2) Civil Court Cases 109 (Raj.)

SC S.13B - Divorce by mutual consent - Waiving of waiting period of six months - Question as to whether Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution can waive waiting period of six months referred to a Bench of three judges in order to have a clear ruling on the issue for future guidance. (*Neeti Malviya Vs Rakesh Malviya*)

2010(3) Civil Court Cases 030 (S.C.)

S.13B - Divorce by mutual consent - Waiving of waiting period of six months - Waiting period of six months can be waived keeping in view the special circumstances of a case. (*Niti Arora Vs Rohit Vij*)

2009(2) Civil Court Cases 803 (P&H)

SC S.13B - Divorce by mutual consent - Waiving waiting period of six months - Waiting period of six months can only be waived by Supreme Court exercising power under Article 142 of the Constitution which no other Court can exercise such power. (*Manish Goel Vs Rohini Goel*)

2010(2) Civil Court Cases 442 (S.C.)

SC S.13B - Divorce by mutual consent - Wife later on seeking to set it aside on the ground that it was on paper so that her husband could marry a USA citizen and then divorce second wife and remarry her - Wife is guilty of abetment - Wife was patently and latently involved herself in the alleged fraud committed upon Court - Wife is disentitled for any equitable relief - Damages suffered by consent is not a cause of action. (*Inderjit Singh Grewal Vs State of Punjab & Anr.*)

2011(4) Civil Court Cases 0241 (S.C.)

Ss.13-B, 13 - Divorce by mutual consent - Compromise during pendency of appeal filed against dismissal of petition for divorce - Petition for divorce by mutual consent filed - Appeal ordered to be converted into petition for divorce by mutual consent - Statement of parties recorded - Six months waiting period waived in view of the fact that marriage has broken beyond repair and there seems no possibility of parties living together - Marriage between parties dissolved by mutual consent. (*Susheel Vs Anju*)

2018(4) Civil Court Cases 548 (H.P.)

Ss.13-B, 14 - Divorce by mutual consent - One of the conditions for grant of divorce by mutual consent is that parties are living separately for a period of one year or more before presentation of petition for divorce by mutual consent - The statutory period of one year cannot be waived by applying S.14 Proviso of the Act as the same is applicable to divorce proceedings only - Parties not entitled to divorce as statutory period of one year had not elapsed. (*Sunny Vs Sujata*)

2013(1) Civil Court Cases 335 (Delhi)

DB Ss.13-B, 14 - Proviso - Petition u/s 13-B of the Act - Filing of petition before expiry of one year of marriage - Court can grant leave to present the petition before expiry of one year of marriage when ingredients of the proviso to S.14 are satisfied - If at the hearing it appears that leave was obtained by misrepresentation or concealment

SC Ss.31, 18, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S.24(2) - Acquisition of land - Proceedings under 1894 Act - Lapse of - Held, u/s.24(2) of 2013 Act, acquisition proceedings initiated under 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to commencement of 2013 Act and possession of land is not taken or compensation has not been paid - Legal fiction u/s.24(2) comes into operation as soon as conditions stated therein are satisfied. (*Pune Municipal Corporation & Anr. Vs Harakchand Misirimal Solanki & Ors.*)
2014(1) Civil Court Cases 669 (S.C.)

SC S.34 - Expression 'awarded amount' occurring in S.34 of the Act - Meaning of - It means amount of compensation worked out in accordance of provision of S.23 of the Act - Thus interest is payable on compensation and solatium. (*Nadirsha Shapurji Patel (D) By Lrs. & Ors. Vs Deputy Collector & La & Ors.*)
2011(1) Civil Court Cases 0307 (S.C.)

SC Ss.34, 18, 12, 19 & 11 - Valuation report by an expert - Court to act upon such report for determination of compensation, if the data or the material on the basis of which such report is based is produced before the Court and the authenticity of the same is made good and the method of valuation adopted therein is correct. (*The Special Land Acquisition Officer Vs Sri Sidappa Omanna Tumari*)
1995(1) Civil Court Cases 541 (S.C.)

SC Ss.34, 18, 12, 19 & 11 - Valuation report of acquired land made by an expert when prepared on the basis of prices fetched or to be fetched by sale deeds or agreements to sell relating to the very acquired lands or the lands in the vicinity - Court to examine and be satisfied about the authenticity of such documents and the truth of their contents and the normal circumstances in which they had come into existence and further the correct method adopted in preparation of that report, before acting on such report for determining the market value of the acquired land. (*The Special Land Acquisition Officer & Anr. Vs Sri Sidappa Omanna Tumari & Ors.*)
1995(1) Civil Court Cases 541 (S.C.)

SC Ss.34, 18, 12, 19 & 11 - Market value of large extents - Court not to be guided by the price fetched by small extents. (*The Special Land Acquisition Officer & Anr. Vs Sri Sidappa Omanna Tumari & Ors.*) 1995(1) Civil Court Cases 541 (S.C.)

SC S.48 - Land acquisition - Once possession is taken Government cannot withdraw from the acquisition. (*Mandir Shree Sitaramji @ Shree Sitaram Bhandar Vs Land Acquisition Collector & Ors.*) 2006(1) Civil Court Cases 255 (S.C.)

SC S.48 - Land acquisition - Release of land from acquisition - State Govt. can exercise this power and to exercise this power no condition is prescribed except that it must be exercised before possession of acquired land is taken - There is no prescribed procedure for exercise of this power. (*Hari Ram Vs State of Haryana*)
2010(Suppl.) Civil Court Cases 141 (S.C.)

SC Ss.48, 4, 6 - Land acquisition - Release of land - Even if the lands of other similarly situated persons has been released, the society must satisfy the court that it is similarly situated in all respects, and has an independent right to get the land released.

title, extinguishment of right of title holder to recover possession of such an immovable property, would not confer title on person, who is in adverse possession of such property. (*Treesa Mohanan @ Lilly Vs O.V.Alexander*)

2017(Suppl.) Civil Court Cases 344 (Kerala)

SC **S.27** - Extinguishment of right to property - A right in property once extinguished by operation of law, cannot be revived unless law itself provides for its revival in a particular situation. (*M/s.Eureka Builders Vs Gulabchand s/o Veljee Dand Since Deceased by L.Rs.*) 2018(4) Civil Court Cases 539 (S.C.)

SC **S.27** - Extinguishment of right to property - Original holders of suit land failed to file civil suit against plaintiff claiming possession of suit land on the strength of their new title, i.e re-grant in relation to suit land, within 12 years from date of re-grant - By virtue of S.27 of the Act, all rights, title and interest of original holders in suit land got extinguished. (*M/s.Eureka Builders Vs Gulabchand s/o Veljee Dand Since Deceased by L.Rs.*) 2018(4) Civil Court Cases 539 (S.C.)

S.27 - Adverse possession - Notice dated 11.8.1964 alleging trespass - Suit filed on 09.09.1980 - Plaintiff for 12 years not sought possession - Second notice issued on 20.10.1978 by that time his right to seek possession of suit property has got extinguished - When suit was presented on 09.09.1980 it was beyond period of limitation as per S.27 of Limitation Act. (*Maragathammal Vs M.Kandasamy (deceased)*) 2018(3) Civil Court Cases 107 (Madras)

SC **S.27, Transfer of Property Act, 1882, S.58** - Mortgage - On expiry of period of limitation prescribed under the Limitation Act, the mortgagor would lose his right to redeem and the mortgagee becomes entitled to continue in possession as the full owner. (*Prabhakaran & Ors. Vs M.Azhagiripillai (Dead) by Lrs. & Ors.*) 2006(2) Civil Court Cases 353 (S.C.)

S.27, Transfer of Property Act, 1882, S.106 - Tenancy - Termination - If earlier notice is not legal and valid then subsequent suit on basis of another termination notice is not barred - When cause of action for filing second suit is totally different then second suit is not barred by limitation. (*Hindustan Petroleum Corporation Ltd. Vs Dilip Prabhakar Dingorkar & Anr.*) 2006(3) Civil Court Cases 261 (Bombay)

S.27, Art.65 - Suit for possession - Time limit by which one can claim possession of immovable property is 12 years from the date when such possession of the defendants becomes adverse to the plaintiff. (*Agasti Vs Cherukuri*) 1999(3) Civil Court Cases 205 (A.P)

S.27, Schedule Article 65 - Implications of S.27 - Suit for possession - Right to such property extinguishes if suit is not filed within the prescribed period of 12 years - Section 27 and Article 65 be read together. (*Smt.Ahalya Bai Vs Gangapur Shankaraiah*) 1997(1) Civil Court Cases 330 (A.P)

S.29 - If a statute provides a period of limitation, the period so prescribed would prevail over the period of limitation prescribed by the Limitation Act, 1963. (*Om Parkash & Ors. Vs Sarjo & Ors.*) 2014(3) Civil Court Cases 017 (P&H)

to natural causes or due to negligence of surgeon - Surgeon is liable only when it is due to his negligence - In absence of proof of negligence, surgeon cannot be held liable to pay compensation - State, then, cannot be held vicariously liable. (*State of Haryana & Ors. Vs Raj Rani*) 2006(1) Civil Court Cases 136 (S.C.)

SC **Medical negligence** - Burden is on the claimant to prove breach of duty, injury and causation - The injury must be sufficiently proximate to the medical practitioner's breach of duty - In the absence of evidence to the contrary adduced by the opposite party, an inference of causation may be drawn even though positive or scientific proof is lacking. (*Post Graduate Institute of Medical Education & Research, Chandigarh Vs Jaspal Singh*) 2009(4) Civil Court Cases 560 (S.C.)

SC **Medical negligence** - Civil and criminal law - For civil law term negligence is used for the purpose of fastening the defendant with liability of the amount of damages - To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. (*Post Graduate Institute of Medical Education & Research, Chandigarh Vs Jaspal Singh*) 2009(4) Civil Court Cases 560 (S.C.)

Medical Negligence - Compensation - Death of house wife - Even on a modest estimation income of a house wife is to be taken as Rs.3000/- per month. (*Sobhag Mal Jain Vs State of Rajasthan & Ors.*) 2006(1) Civil Court Cases 550 (Rajasthan)

SC **Medical negligence** - Compensation - Hospital is vicariously liable for the acts of its doctors. (*V.Krishnakumar Vs State of Tamil Nadu & Ors.*) 2015(3) Civil Court Cases 557 (S.C.)

SC **Medical negligence** - Compensation - In medical negligence cases, compensation cannot be calculated by using the multiplier method. (*V.Krishnakumar Vs State of Tamil Nadu & Ors.*) 2015(3) Civil Court Cases 557 (S.C.)

SC **Medical negligence** - Compensation - Liability of State - State is vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees. (*V.Krishnakumar Vs State of Tamil Nadu & Ors.*) 2015(3) Civil Court Cases 557 (S.C.)

SC **Medical negligence** - Compensation - Newly born baby became blind due to gross negligence of Doctors - Compensation awarded as : Rs.41.37 lacs incurred on past medical expenses - Rs.1.50 lacs in lieu of financial hardship undergone, particularly by mother, and Rs.1.38 crores future medical expenses and apportioning for inflation and thus a total compensation as Rs.1,80,87,921/- by indicating apportionment of liability in between the State and doctors. (*V.Krishnakumar Vs State of Tamil Nadu & Ors.*) 2015(3) Civil Court Cases 557 (S.C.)

SC **Medical negligence** - Compensation - Principle of 'restitutio in integrum' - Means aggrieved person should get that sum of money, which would put him in the same position if he had not sustained the wrong - It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due