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Weekly Legal Current Affairs

13–19 July 2026

This week at a glance

- Plaintiff answering a counter-claim in a commercial suit gets the same 120-day guillotine as a defendant — Rule 6G makes sure of it.
- Children's Court skipped the s.19(1) JJ Act order before trying a 16-year-old as an adult — entire trial vitiated, murder conviction gone.
- Section 68 Evidence Act has nothing to do with sale deeds — and a second appeal decided without framed questions is dead on arrival.
- Twenty-eight ex parte 'foreigner' declarations from Assam set aside — s.9 burden on the proceedee never excuses the Tribunal from actually adjudicating.

In this issue

Judgments of the week

1. A.K. Ghosh and Company v. Biman Bose (Civil / CPC)

2026 INSC 684 · Sanjay Kumar & K. Vinod Chandran, JJ. · 13 July 2026

Facts. The plaintiffs sued to recover Rs 74,65,527 for printing paper supplied; the contesting defendants filed a written statement with a counter-claim, served on the plaintiffs' Advocate-on-Record on 18.07.2023. The plaintiffs sought leave to file their written statement to the counter-claim only after 238 days. A Single Judge of the Calcutta High Court refused leave, and the Division Bench dismissed the appeal as not maintainable and on merits.

Issue. Does the mandatory 120-day time frame in the proviso to Order VIII Rule 1 CPC, as amended by the Commercial Courts Act 2015, apply to a plaintiff's written statement to a defendant's counter-claim? Also, is an appeal under Section 13(1A) of the CC Act maintainable against an order refusing leave to file it belatedly?

Held. A counter-claim is treated as a plaint under Order VIII Rule 6A(4), so the plaintiff's reply is a written statement, and Rule 6G applies all rules relating to a defendant's written statement — including the 120-day forfeiture in the CC Act proviso to Rule 1 — to it; the Bombay High Court's view in Dattaram Krishnanath Pednekar that Rule 6G covers only contents, and the Madras High Court's view in CSCO LLC that only Rule 6A(3) governs, were disapproved. If the Court fixes no time under Rule 6A(3), Rule 6G kicks in and the plaintiff must file ordinarily within 30 days, extendable for reasons recorded and on costs up to 120 days from service of summons/receipt of the counter-claim, as SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited, (2019) 12 SCC 210, settled for defendants. On maintainability, following BGS SGS SOMA JV v. NHPC Limited, (2020) 4 SCC 234, and Kandla Export Corporation v. OCI Corporation, (2018) 14 SCC 715, an appeal under Section 13(1A) lies only against orders enumerated in Order XLIII CPC or Section 37 of the Arbitration and Conciliation Act, 1996; an Order VIII order is neither, so the appeal failed on both counts.

> ***Why it matters.*** *Don't confuse Rule 6A(3)'s court-fixed time with an open-ended liberty — in commercial suits the 120-day forfeiture bites the plaintiff too; in ordinary suits the limit stays directory.*

Provisions: Code of Civil Procedure 1908, O.VIII rr.1, 6A, 6E, 6G, 9, 10; O.XLIII; Commercial Courts Act 2015, ss.13, 16; Arbitration and Conciliation Act 1996, s.37

2. Sagar v. The State of Haryana Criminal Law

2026 INSC 692 · Justice Aravind Kumar, Justice Prasanna B. Varale · 13 July 2026

Facts. Sagar, aged 16½, allegedly struck the deceased on the temple with an iron pipe in a 2018 group attack near Kaithal; the FIR ran under ss.302, 323, 341 read with 148, 149 IPC. The JJ Board conducted a s.15 preliminary assessment, opined he could be tried as an adult, and committed the case to the Children's Court under s.18(3). That Court convicted him under s.302 IPC and awarded 14 years' RI — but the record showed no order under s.19(1) deciding whether to try him as an adult; the High Court of Punjab and Haryana affirmed.

Issue. Can a conviction and sentence by the Children's Court stand when it tried a child in conflict with law as an adult without passing an order under s.19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015?

Held. The Court held that after committal under s.18(3), the Children's Court's first duty on taking cognizance is a reasoned order under s.19(1) deciding whether the child needs trial as an adult; the word 'may' reads as 'shall' because the two paths carry different procedures (Sessions trial versus summons-case inquiry as a Board) and different punishments, relying on Sarla Goel v. Kishan Chand (2009) 7 SCC 658, Ajeet Gurjar v. State of Madhya Pradesh (2023) 15 SCC 678 and Barun Chandra Thakur v. Master Bholu (2023) 12 SCC 401. Rule 13(6) of the JJ Model Rules, 2016 requires recorded reasons, making s.19(1) substantive, not procedural. Following Thirumoorthy v. State (2024) 12 SCC 307, non-compliance vitiates the entire trial; since the appellant is now 24 and has served over six years, remand would be futile, so the conviction and 14-year sentence were set aside and he was acquitted. A direction went to all Children's Courts: pass the s.19(1) order before proceeding further.

> ***Why it matters.*** *Keep the sequence straight — s.15 assessment by the Board, s.18(3) transfer, then a separate s.19(1) decision by the Children's Court; compliance at stage one does not cure silence at stage three.*

Provisions: Juvenile Justice (Care and Protection of Children) Act 2015, s.15; Juvenile Justice (Care and Protection of Children) Act 2015, s.18(3); Juvenile Justice (Care and Protection of Children) Act 2015, s.19(1); Juvenile Justice (Care and Protection of Children) Model Rules 2016, r.13; Indian Penal Code 1860, s.302

3. R. Veronica & Anr. v. Rudrayani Devaki (D) Through LRs. S. Satha Kumar & Ors. Evidence

2026 INSC 703 · J.B. Pardiwala and Manoj Misra, JJ. · 14 July 2026

Facts. Rajeswari sold her 6.5 cents to Vanajakshi in 1978; Vanajakshi and co-owners then sold the full 13 cents to the plaintiff in 1979. In 1996 Rajeswari sold the same 6.5 cents again to defendant no. 1, who took possession and built on it, prompting a suit for declaration, recovery and cancellation. The trial court decreed the suit, the First Appellate Court reversed on disbelief of the 1978 deed's proof, and the Kerala High Court restored the decree in second appeal using the proviso to Section 68 of the Evidence Act.

Issue. Whether a High Court can hear and allow a second appeal under Section 100 CPC without formulating any substantial question of law; and whether Section 68 of the Evidence Act, with its proviso requiring 'specific denial' of execution, applies to a registered sale deed at all.

Held. Relying on Nazir Mohamed v. J. Kamala, (2020) 19 SCC 57 and Kondiba Dagadu Kadam, the Court held formulation of substantial questions of law under Section 100 CPC read with Order XLII Rule 2 is mandatory, and the High Court's judgment rendered without it cannot stand. It then corrected the High Court's reading of Section 68: under Section 54 of the Transfer of Property Act, 1882 a sale deed needs registration, not attestation, so Section 68 — which governs proof of documents required by law to be attested — simply does not apply, as held in Hans Raji v. Yosodanand, (1996) 7 SCC 122 and Bayanabai Kaware v. Rajendra, (2018) 1 SCC 585. The proviso, being an exception carved from the main provision (Ram Narain Sons Ltd. v. STO, (1955) 2 SCC 64; Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128), cannot create an independent 'specific denial' rule for documents outside Section 68. Matter remitted for de novo hearing within three months; copies ordered to be sent to all High Courts.

> ***Why it matters.*** *Attestation is mandatory for wills, gifts and mortgages — not sale deeds; if a paper pairs s.68 Evidence Act with a sale deed, that pairing itself is the trap.*

Provisions: Code of Civil Procedure 1908, s.100; Code of Civil Procedure 1908, O.XLII r.2; Indian Evidence Act 1872, s.68; Transfer of Property Act 1882, s.54; Transfer of Property Act 1882, s.123

4. Sabitri Dey @ Swasthi Dey v. Union of India Constitution

2026 INSC 694 · Vikram Nath and Sandeep Mehta, JJ. · 13 July 2026

Facts. A batch of appellants had been declared foreigners by Foreigners Tribunals in Assam (some by the erstwhile Illegal Migrants (Determination) Tribunals), with the Gauhati High Court affirming. In every case the opinion was ex parte or had become effectively ex parte — some appellants never appeared despite service, some appeared and then defaulted midway, and in two matters the High Court itself appreciated documents for the first time in writ proceedings. The Court grouped the appeals into these three categories and heard them together.

Issue. Whether an opinion declaring a person a foreigner under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 can stand where the Tribunal proceeding was ex parte or effectively ex parte, without meaningful examination of service, the main grounds, the State's evidence and the material on record.

Held. Section 9 of the Foreigners Act, 1946 places the burden on the proceedee notwithstanding the Indian Evidence Act, 1872, but it does not authorise a mechanical declaration or convert absence into proof — Paragraph 3 of the 1964 Order requires service of the 'main grounds', an effective opportunity, evidence from the Superintendent of Police under Para 3(10), and a reasoned opinion with a concise statement of facts under Para 3(16). Following Md. Rahim Ali v. State of Assam, 2024 INSC 511, the authority must have some material basis and the proceedee must know the substance of the case; Articles 14 and 21 protect 'any person', not just citizens (Louis De Raedt, NHRC v. State of Arunachal Pradesh, Maneka Gandhi). Where the Tribunal's inquiry was ex parte, the High Court cannot become the first forum for factual appreciation of documents in writ jurisdiction. All High Court judgments and Tribunal opinions were set aside and the references remitted for fresh decision, with appellants to appear within four weeks, no coercive steps meanwhile, and a six-month target for disposal.

> ***Why it matters.*** *Pair this with Md. Rahim Ali (2024): s.9 reverses the burden of proof, never the duty to adjudicate — an answer built on both wins the mains question.*

Provisions: Foreigners Act 1946, s.9; Foreigners (Tribunals) Order 1964, para 3; Constitution of India, arts. 14, 21; Illegal Migrants (Determination by Tribunals) Act 1983

In brief — also on the docket this week

5 Najma Khatun v. The State of West Bengal `Service / Admin`

2026 INSC 691 · Dipankar Datta and Augustine George Masih, JJ. · 13 July 2026

Issue. Whether any of the 13 projected appointees was validly appointed under NOTIFICATION-I or NOTIFICATION-II during the interregnum, and whether appointments made after this Court stayed the Division Bench judgment on 14 March 2016 could survive without its leave.

Held. Applying Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (1992) 3 SCC 1, the Court held that the stay of 14 March 2016 rendered the High Court judgments inoperative, so NOTIFICATION-I and NOTIFICATION-II, which owed their existence to those judgments, could not remain operational — as a stream cannot rise above its source. A Court-appointed Ad hoc Managing Committee confined to day-to-day administration cannot recruit to permanent vacancies, and clause 6 of NOTIFICATION-I, a 10% management quota with no advertisement, was declared wholly unconstitutional because aid without accountability offends Articles 14 and 16, a burden Article 30(1) does not shield. Pleas for regularisation on Jaggo v. Union of India 2024 SCC OnLine SC 3826 and Sukhendu Bhattacharjee v. State of Assam 2026 SCC OnLine SC 909 were rejected: those liberal views stand confined to their facts, while State of Karnataka v. Umadevi (3) (2006) 4 SCC 1 and Official Liquidator v. Dayanand (2008) 10 SCC 1, being larger Bench rulings, bind under Article 141. One test case even revealed ante-dated appointment papers, which the Court branded manifest fraud polluting the stream of public employment.

6 Union of India v. Bali Ram `Service / Admin`

2026 INSC 689 · Dipankar Datta and Augustine George Masih, JJ. · 13 July 2026

Issue. Whether the Single Judge rightly enforced the employer's duty under Section 47 of the PwD Act despite the respondent never pleading it, and whether the 10 September 2002 notification exempting combatant CPMF personnel saved the 1998 invalidation.

Held. Following Kunal Singh v. Union of India (2003) 4 SCC 524, Section 47 casts a mandatory, unqualified obligation: the employer must shift the disabled employee to an equivalent post or keep him on a supernumerary post till superannuation, whether or not the disability is attributable to service. Delegated legislation is ordinarily prospective (Federation of Indian Mineral Industries v. Union of India (2017) 16 SCC 186; Union of India v. Kartick Chandra Mondal (2010) 2 SCC 422), and an exemption notification carving cases out of beneficial legislation is strictly construed (Mohinder Lal v. Saroj Kumari Verma (2000) 2 SCC 6), so the 2002 notification had no bearing on a 1998 invalidation; Union of India v. Dileep Kumar Singh (2015) 4 SCC 421 was distinguished as the employee there was relieved after 2002. The waiver plea failed because waiver is intentional relinquishment of a known right and the respondent never knew of Section 47. The Court also laid down that under Article 226 a High Court may, in exceptional cases, grant relief beyond deficient pleadings where the record clearly shows entitlement and the opponent uses technicality to shield its own statutory breach.

7 Lakshmi v. Gopi & Ors. `Civil / CPC`

2026 INSC 709 · Sanjay Karol and Vipul M. Pancholi, JJ. · 15 July 2026

Issue. Whether a first appellate court under Section 96 CPC can reverse a trial decree by a cryptic, unreasoned order without framing points for determination; and whether the adverse remarks and training direction against the trial judge were justified.

Held. Drawing on Santosh Hazari v. Purushottam Tiwari and the line of cases on Section 96 and Order 41 Rule 31 CPC, the Court restated that the first appeal is a re-hearing on facts and law, that the first appellate court is the final court of fact, and that in a reversal it must engage with the trial court's appraisal of evidence and give its own reasons. Citing Kranti Associates (P) Ltd. v. Masood Ahmed Khan and CCT v. Shukla Bros., it reiterated that reasons are the lifeblood of adjudication; the High Court merely extracted the trial court's reasoning and brushed it aside. On proving a Will, the Court listed the requirements under Sections 67 and 68 of the Evidence Act 1872 and Sections 59 and 63 ISA, following H. Venkatachala Iyengar v. B.N. Thimmajamma and Meena Pradhan v. Kamla Pradhan. Applying State of U.P. v. Mohd. Naim and S.K. Viswambaran v. E. Koyakunju, it set aside the training direction, the whole judgment, and remanded RFA No. 298 of 2019 for fresh hearing.

8 Manash Kamal Bezboruah v. M/s Bokahola Tea Company Private Limited & Ors. Arbitration

2026 INSC 701 · K.V. Viswanathan and Vijay Bishnoi, JJ. · 14 July 2026

Issue. Whether a High Court can entertain an Article 227 petition against an Arbitral Tribunal's order rejecting a Section 16 jurisdictional objection, or must the objector wait and challenge the final award under Section 34.

Held. Following SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618, Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706 and Punjab State Power Corpn. Ltd. v. Emta Coal Ltd., (2020) 17 SCC 93, the Court held that Section 5 of the Arbitration and Conciliation Act, 1996 cannot oust Article 227, but interference is confined to orders suffering a patent lack of inherent jurisdiction — a perversity needing no argument. The High Court recorded no such finding, so entertaining the revision and staying the Tribunal's notices was unjustified; the challenge to a Section 16 rejection lies under Section 34 after the final award. Applying Cox and Kings Ltd. v. SAP India Pvt. Ltd., 2024 (4) SCC 1, whether a non-signatory is a veritable party is for the Tribunal itself under kompetenz-kompetenz. Since issues on the non-signatories' status stood framed, the Tribunal was directed to decide it independently and finish the arbitration expeditiously.

9 Brajesh Kumar @ Birjesh Kumar Singh v. The State of Bihar Criminal Procedure

2026 INSC 695 · Sanjay Kumar and K. Vinod Chandran, JJ. · 13 July 2026

Issue. Whether cognizance and trial against 15 accused based on a closure report finding no fresh evidence, and the conduct of two split trials on the same FIR, vitiated the conviction; and whether the prosecution proved dowry death when an exculpatory dying declaration and substantive defence evidence stood uncontroverted.

Held. Relying on Abhinandan Jha v. Dinesh Mishra, H.S. Bains, Ram Naresh Prasad and Ramswaroop Soni, the Court held that on a closure report the Magistrate has three options — accept it, take cognizance under Section 190(1)(b) CrPC on the material in the report, or direct further investigation — and here cognizance could not be faulted as the first charge-sheet itself found the offence made out against all accused. The S.P.'s direction to charge only two accused and continue investigation against the rest was without authority, there being no Section 158 order of the State Government; but per H.N. Rishbud, an invalid investigation does not nullify cognizance or trial absent miscarriage of justice (Section 465 CrPC), and per Banwari v. State of U.P. the split trials caused no prejudice. On merits, the prosecution's bland, identical testimonies of a Rs.50,000 dowry demand were belied by joint-name investments, an LIC policy naming the wife, treatment receipts, and the SDM-recorded dying declaration describing an accidental gas-stove fire; applying Sharad Birdhichand Sarda and Swaran Singh, the Court acquitted, holding trial courts must give defence evidence the same attention as prosecution evidence, without distrust or scepticism.

10 State of Maharashtra v. Monika Kiran Suryawanshi Evidence

2026 INSC 685 · Sanjay Karol and Prasanna B. Varale, JJ. · 13 July 2026

Issue. Whether the circumstantial evidence — motive, last-seen testimony, call records, and recoveries under s.27 of the Evidence Act — formed a complete chain proving murder and conspiracy beyond reasonable doubt.

Held. Applying Sharad Birdhichand Sarda v. State of Maharashtra, the Court held the circumstances must unerringly point to guilt and exclude every hypothesis of innocence. The alleged affair was at best a one-sided infatuation of accused no. 2; the call logs showed no outgoing call from Monika's phone that night, contradicting the FIR. Following Ashraf Hussain Shah v. State of Maharashtra and Salim Akhtar alias Mota v. State of Uttar Pradesh, the failure to seal the grinding stone and clothes at the spot rendered the CA reports (Exhibits 50 and 56) doubtful, and no blood was found on the bedding where the murder supposedly occurred. The s.201 read with s.34 IPC conviction of accused 2 and 3 stood, since carrying the tied body at 5 a.m. proved they knowingly caused evidence to disappear to screen the offenders.

11 Asia Sugar & Chemical Co., Devangere v. State of Karnataka Constitution

2026 INSC 693 · Aravind Kumar and Prasanna B. Varale, JJ. · 13 July 2026

Issue. Whether imported sugar fell within the pre-2001 exemption entry for "sugar", and whether the retrospective insertion of "produced or manufactured in India" by Karnataka Act No. 5 of 2001 is valid and enforceable in full, including penalty and interest for past periods.

Held. The entry describing "sugar as described" in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 borrowed a commodity description, not an origin-based limitation, so imported sugar was covered before 2001 — adding "in India" by implication would breach the strict-construction rule in Mathuram Agrawal v. State of Madhya Pradesh, (1999) 8 SCC 667. The 2001 amendment is not clarificatory but a substantive retrospective withdrawal of exemption; it is nonetheless within legislative competence, on the strength of Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667 and Kasinka Trading v. Union of India, (1995) 1 SCC 274. Applying R.C. Tobacco (P) Ltd. v.

Union of India, (2005) 7 SCC 725 and D. Cawasji & Co. v. State of Mysore, 1984 Supp SCC 490, the Court held retrospectivity cannot assume a punitive character against dealers who never collected tax under a completed exemption regime: principal tax may be reassessed, penalty is barred for the pre-amendment period, and interest runs only from the post-judgment demand. Inter-State liability must be recomputed strictly under the Central Sales Tax Act, 1956, including s.8(2).

12 Alok Kotahwala v. Jaipur Metro Rail Corporation Ltd. Service / Admin

2026 INSC 682 · Dipankar Datta and Satish Chandra Sharma, JJ. · 13 July 2026

Issue. Whether the LAO's failure to fix a fresh hearing date after the landowners' absence amounted to colourable or substantial non-compliance with s.5A of the LA Act, and whether the objections were duly considered by the LAO and the State Government.

Held. The Court held that once objections are filed under s.5A(1), it is the Collector's duty to fix a hearing and intimate the landowner, expressly disagreeing with Sam Hiring Co. v. A.R. Bhujbal, (1996) 8 SCC 18, that a hearing must be asked for, and relying on the 3-Judge dictum in Farid Ahmed v. Municipal Corporation of Ahmedabad, (1976) 3 SCC 719. But the right carries responsibilities: the appellants' unexplained absence on 9 April 2012 and their silence till the 18 May 2012 report showed they abandoned the hearing, and the LAO — an administrative, not quasi-judicial, authority — was not bound to grant another date; a mere indiscretion is not malice in law. The phrase 'objections are not being considered' in the report, read whole, meant the objections were weighed but not accepted; brevity of reasons is not absence of reasons since a s.5A report need not be a speaking order. On merits, choice of land is for the acquiring authority (State of Punjab v. Gurdial Singh), and following Naveen Solanki v. Rail Land Development Authority, 2026 SCC OnLine SC 45, later tree growth cannot convert land into 'deemed forest' unless the Master Plan or statutory records so recognise it.

Statutes, appointments & policy

NEW LAWS, AMENDMENTS & KEY BILLS

- **Monsoon Session legislative agenda published: 7 Bills listed, including Supreme Court (Number of Judges) Amendment Bill, 2026.** On 17 July 2026 the government's legislative agenda for the Monsoon Session (20 July-13 August 2026) was published in the Lok Sabha bulletin. Five new Bills are listed for introduction, including the Supreme Court (Number of Judges) Amendment Bill, 2026 -- to replace the 16 May 2026 Ordinance that raised the strength of SC judges from 33 to 37 (excluding the CJI, total 38) -- and the Income-tax (Amendment) Bill, 2026, replacing the June Ordinance exempting interest/capital gains of notified foreign funds on government securities. Two pending Bills are listed for consideration and passing: the Foreign Contribution (Regulation) Amendment Bill, 2026 and the Viksit Bharat Shiksha Adhishthan Bill, 2025. **— 17 July 2026 · aninews.in**

POLICY & JUSTICE ADMINISTRATION

- **Supreme Court issues notice to all High Courts on SOP for 24x7 access in life-and-liberty matters.** On 14 July 2026 a Bench of CJI Surya Kant and Justices Joymalya Bagchi and V. Mohana issued notice on a PIL by Advocate Maheravish Rein seeking round-the-clock judicial access for urgent matters (arrests, demolitions, deportations occurring after court hours). The Court asked all High Courts to respond on framing a Standard Operating Procedure for after-hours urgent listings, with the CJI cautioning that any such mechanism must be confined strictly to genuine threats to life and personal liberty. **— 14 July 2026 · verdictum.in**
- **Nationwide Special Lok Adalat for cheque-bounce (Section 138 NI Act) cases.** On 18 July 2026, NALSA and the State/District Legal Services Authorities held a special Lok Adalat across the country exclusively for pending Negotiable Instruments Act (cheque dishonour) cases, which account for roughly 33 lakh pending matters. Settlements in Lok Adalat carry the force of a civil-court decree under Section 21 of the Legal Services Authorities Act, 1987; a second round is scheduled for 21 November 2026. **— 18 July 2026 · deccanchronicle.com**
- **Delhi High Court recalls its decision to sit on first and third Saturdays.** On 17 July 2026 the Delhi High Court notified that its Full Court (meeting of 9 July 2026) has deferred/recalled the 22 December 2025 resolution declaring the first and third Saturdays of every month as court sitting days, after objections from the Bar. A committee constituted by Chief Justice D.K. Upadhyaya will re-examine the issue of Saturday sittings aimed at reducing pendency. **— 17 July 2026 · livelaw.in**

Clear Concepts — textbook revision of two core concepts

Closure Report or Chargesheet: The Magistrate's Three Choices

Criminal Procedure (CrPC / BNSS)

Ss. 169, 173 & 190(1)(b) CrPC 1973; s.173 CrPC = s.193 BNSS 2023, s.190 CrPC = s.210 BNSS, s.156(3) CrPC = s.175(3) BNSS

Investigation ends when the officer in charge forwards a report to the Magistrate under s.173(2) CrPC (s.193 BNSS): a chargesheet where the evidence justifies trial, or a closure (final) report under s.169 where it does not. That report carries only the opinion of the police; taking cognizance under s.190(1)(b) CrPC (s.210(1)(b) BNSS) is the Magistrate's independent judicial function. In Brajesh Kumar v. State of Bihar (2026 INSC 695) the Supreme Court restated the three settled courses open on a closure report.

Three courses on a closure report. The Magistrate is never bound by the police opinion; he may:

- Accept the final report and close the proceeding, striking off the case.
- Disagree, holding the investigation incomplete, and direct further investigation under s.156(3) CrPC (s.175(3) BNSS); the police may then file a chargesheet or a fresh closure.
- Take cognizance under s.190(1)(b) on the statements and materials accompanying the report, notwithstanding the closure, without needing any protest petition or the complaint route of ss.200-202.
- What he cannot do is compel the police to change their opinion and submit a chargesheet; forming that opinion is exclusively a police function (Abhinandan Jha).

The informant's right and the protest petition.

- Bhagwant Singh: if the Magistrate is inclined to accept the closure and drop the case, he must give notice to the informant and hear him; the accused gets no notice at this stage.
- A protest petition against the closure may be treated as a complaint if it contains a complaint's ingredients; the Magistrate then examines the complainant under s.200 and issues process (s.204), orders inquiry (s.202) or dismisses it (s.203).
- H.S. Bains: where a complaint was first sent to police under s.156(3) and a closure returns, cognizance on the police-collected material is cognizance under s.190(1)(b), so prior examination under s.200 is not required.
- Alternatively, the Magistrate may ignore the closure and take cognizance on the original complaint under s.190(1)(a), then follow ss.200-202.

Further investigation is not re-investigation.

- Under s.173(8) the police may investigate further even after their report and forward supplementary reports on fresh evidence, without any order of the Magistrate (Saldanha).
- The Magistrate equally has power to direct further investigation into a closure report; refusing for want of power is a failure to exercise jurisdiction (Papaiah).
- Further investigation only continues and supplements the earlier one; it is not a fresh probe that wipes out the first, and each further report is processed like the s.173(2) report.
- BNSS adds a proviso to s.193 requiring the Court's permission for further investigation during trial.

Leading cases.

- Abhinandan Jha v. Dinesh Mishra (1968) — chargesheet or closure reflects the police opinion; the Magistrate cannot direct the police to file a chargesheet.
- H.S. Bains v. State (1980) — cognizance taken after disagreeing with a closure rests on s.190(1)(b); no s.200 examination needed.
- Bhagwant Singh v. Commissioner of Police (1985) — notice and hearing to the informant are mandatory before a closure report is accepted.
- State of Bihar v. J.A.C. Saldanha (1980) — police power of further investigation under s.173(8) survives submission of the report.
- Brajesh Kumar v. State of Bihar (2026) — Supreme Court restates the Magistrate's three options on a closure report.

Exam tip. Notice on a closure goes only to the informant, never the accused; and cognizance despite the closure is still cognizance on a police report under s.190(1)(b), not on a complaint.

Damages for Breach: Remoteness under s.73 & the s.74 Penalty Rule

Contract

Sections 73–74, Indian Contract Act 1872

Section 73 entitles the injured party to compensation for loss that arises naturally in the usual course of things from the breach, or that the parties knew when contracting was likely to result; remote and indirect loss is excluded. Section 74 governs sums named in the contract: whatever the clause is labelled, the court awards only reasonable compensation, never exceeding the amount stipulated.

Remoteness: s.73 codifies Hadley v. Baxendale.

- The first limb allows loss arising naturally in the usual course of things; the second allows special loss only if both parties contemplated it as the likely result when they made the contract.
- In Hadley the carrier delayed a broken mill shaft but was never told the mill stood idle without it, so the lost profits were not recoverable.
- The Supreme Court confirmed in Pannalal Jankidas v. Mohanlal that s.73 enacts the Hadley rule, so the English refinements need not be imported.
- The Explanation to s.73 builds mitigation into the measure: the means of remedying the inconvenience that existed must be taken into account.

Section 74: one rule for stipulated sums. India deliberately departed from the English penalty doctrine.

- English law enforced liquidated damages but struck down penalties; s.74 abolishes the distinction and directs reasonable compensation not exceeding the amount named, so the stipulated sum is a ceiling, not an entitlement.
- Fateh Chand extends s.74 to every stipulation in the nature of penalty, including forfeiture of money already paid, and forbids courts from simply enforcing the clause.
- Maula Bux holds that where loss can be calculated in money, the claimant must prove it; the words 'whether or not actual damage is proved' cover only cases where assessment is impossible, when a genuine pre-estimate may serve as the measure.
- Saw Pipes adds that a clear, unambiguous pre-estimate agreed between commercial parties is payable without proof of loss unless the court finds it a penalty or that no loss was likely, the breaching party bearing the burden of showing unreasonableness.

Earnest money & mitigation.

- Earnest money is part of the consideration paid in advance to show the party is serious; forfeiture of a reasonable earnest deposit does not amount to a penalty and falls outside s.74 (Maula Bux; Hanuman Cotton Mills).
- But a forfeiture that operates as a penalty attracts s.74: in Fateh Chand the seller who proved no loss had to refund the Rs 24,000 forfeited beyond the Rs 1,000 earnest.
- The injured party must take all reasonable steps to reduce the loss and cannot recover damage attributable to its own neglect to mitigate (British Westinghouse).
- Mitigation gives the defaulter no independent right; it is a factor the court weighs while assessing damages (M. Lachia Setty v. Coffee Board).

Leading cases.

- Hadley v. Baxendale (1854) — loss of mill profits too remote where the carrier was never told the mill would stay shut; both limbs of remoteness stated.
- Fateh Chand v. Balkishan Dass (1963) — s.74 covers sums payable and sums already paid liable to forfeiture; courts award only reasonable compensation up to the named amount.
- Maula Bux v. Union of India (1970) — where loss is capable of calculation it must be proved; reasonable earnest-money forfeiture is not a penalty.
- Hanuman Cotton Mills v. Tata Aircraft (1970) — a reasonable earnest deposit stands forfeited on the depositor's breach without importing the s.74 test.
- ONGC v. Saw Pipes (2003) — an unambiguous genuine pre-estimate agreed by expert parties is recoverable without proof of loss unless no loss was likely.

Exam tip. Read s.74 as ceiling plus measure: the named sum caps recovery, reasonable compensation is the yardstick, and proof of loss is excused only where loss is genuinely incapable of assessment (Maula Bux, as adjusted by Saw Pipes).

Revision capsule — one-line recap of every ruling

- **Najma Khatun:** All 49 petitions dismissed — none of the 13 test cases showed a valid appointment under NOTIFICATION-I/II, and every madrasah appointment made after the 14 March 2016 stay without this Court's express permission is ex facie illegal, since the stayed judgments were the very source of those notifications; interim salary-protection orders vacated.

- **Union of India:** Medical invalidation of the CRPF driver on 11 March 1998 was void as ultra vires s.47 PwD Act read with Articles 14 and 21 — the 10 September 2002 exemption notification for combatant CPMF personnel operates only prospectively and cannot legitimise a breach already committed; reinstatement being impossible at his age, Rs 1.25 crore awarded inclusive of back wages, interest and costs.
- **A.K. Ghosh and Company:** In a commercial suit, Order VIII Rule 6G CPC extends the proviso to Order VIII Rule 1 to a plaintiff's written statement to a counter-claim — beyond 120 days from service/receipt the right stands forfeited even if the Court fixed no time under Rule 6A(3); no appeal lies under s.13(1A) CC Act since an Order VIII order is not enumerated in Order XLIII CPC.
- **Lakshmi:** A first appellate court reversing a decree must re-hear facts and law, frame points for determination and record its own reasons — a cryptic two-paragraph reversal violates Order 41 Rule 31 CPC and cannot stand; the strictures against the trial judge also fall for want of the Mohammad Naim safeguards.
- **Sagar:** Section 19(1) JJ Act 2015 is mandatory — 'may' must be read as 'shall' — and a Children's Court that tries a 16-18-year-old as an adult without a reasoned s.19(1) determination vitiates the whole trial; conviction set aside and appellant acquitted, remand refused as he is now 24.
- **Manash Kamal Bezboruah:** Article 227 interference with a Tribunal's rejection of a Section 16 objection is barred absent a patent lack of inherent jurisdiction staring one in the face — the remedy lies under Section 34 after the award; both High Court orders set aside.
- **R. Veronica & Anr.:** A second appeal decided without formulating substantial questions of law under s.100 CPC is vitiated; Section 68 Evidence Act applies only to documents required by law to be attested — a sale deed is not one, so its proviso never comes into play.
- **Sabitri Dey @ Swasthi Dey:** Section 9's burden on the proceedee operates within the legal process, not in place of it — even an ex parte Tribunal must verify service, disclose the main grounds, weigh the State's evidence and record reasons; all opinions set aside and matters remitted for one final adjudication.
- **Brajesh Kumar @ Birjesh Kumar Singh:** Cognizance on a closure report was valid because the first charge-sheet found offences made out against all 17 and the Magistrate is not bound by the police opinion; split trials were an irregularity without prejudice, not an illegality; on merits the husband stands acquitted since defence evidence and the exculpatory dying declaration raised a reasonable hypothesis of innocence.
- **State of Maharashtra:** Acquittal under ss.302/34 and 120B IPC upheld — the chain of circumstances broke on a one-sided motive, weak last-seen evidence, contradicting call records, and unsealed s.27 recoveries; conviction of accused 2 and 3 under s.201/34 IPC confirmed as they were caught red-handed transporting the body.
- **Asia Sugar & Chemical Co., Devangere:** Imported sugar was exempt before 2001; Karnataka Act 5 of 2001 retrospectively withdrawing that exemption is valid under Entry 54 List II, but no penalty can be levied for pre-amendment transactions and interest runs only from the fresh demand after reassessment, not from the original transactions.
- **Alok Kotahwala:** Section 5A hearing is a mandatory safeguard the Collector must offer suo motu — the landowner need not ask for it — yet owners who abandon the opportunity by their own absence and silence cannot plead denial of hearing; there was substantial compliance and the acquisition stands.

Prelims Q&A — real past questions, with old→new code mapping

Q1. Where, after inquiry under Section 15 of the Juvenile Justice (care and protection of children) Act, 2015, the Juvenile Justice Board is satisfied that a child above 16 years of age, has committed a heinous offence and should be tried as an adult, it may:

1. Commit the case to the Sessions Court concerned for trial of the child as an adult.
2. Try the child as per the procedure provided in Cr.P.C
3. Return the charge-sheet to the Investigating Officer for presentation in the Court concerned.
4. Transfer the case to the Children Court for trial of the child as an adult.

> **Ans: D.** Under Section 18(3) of the JJ Act, 2015, where the Board, after the preliminary assessment under Section 15, concludes that there is a need for trial of the child (above 16, heinous offence) as an adult, it passes an order transferring the trial of the case to the Children's Court having jurisdiction. The Board itself neither tries the child as an adult nor commits the case to a Sessions Court as such. This very route was in focus this week in Sagar v. State of Haryana, 2026 INSC 692, where the Supreme Court stressed that even after transfer, the Children's Court must independently apply its mind under Section 19(1) before trying the child as an adult. The JJ Act, 2015 continues unchanged under the new criminal codes. **[Rajasthan Judiciary Prelims 2017]**

Q2. In its ruling in R. Veronica v. Rudrayani Devaki (D) through LRs, 2026 INSC 703, the Supreme Court examined whether a registered sale deed can be proved only by examining an attesting witness under Section 68 of the Indian Evidence Act, 1872. The Court held that —

1. a sale deed, like a will, can be proved only by calling at least one attesting witness under Section 68
2. the proviso to Section 68 applies to a sale deed, so an attesting witness must be examined once its execution is specifically denied
3. Section 68 applies only to documents required by law to be attested; a sale deed is not such a document, so neither Section 68 nor its proviso applies to it at all
4. a registered sale deed requires no proof of execution in any circumstance because registration is conclusive proof

> **Ans: C.** Section 68 opens with the words 'if a document is required by law to be attested'. The Court held that the proviso cannot be construed independently of the main provision: it carves out an exception only for documents whose attestation is mandatory in law (e.g., wills, gifts, mortgages over Rs.100). A sale deed is not required by law to be attested, therefore Section 68 — and equally its proviso about 'specific denial' — has no application to it; its execution is proved like any ordinary document. The Court set aside the High Court's contrary reading and remitted the second appeal for fresh hearing. (Old: s.68 Indian Evidence Act, 1872 — the same rule is carried into the Bharatiya Sakshya Adhiniyam, 2023 provision on proof of documents required by law to be attested.) **[This week's ruling: R. Veronica v. Rudrayani Devaki (D) thr. LRs]**

Q3. When a suit, in which defendant raised counter claim, is dismissed for default of plaintiff:

1. Counter claim also stands dismissed.
2. Counter claim may be proceeded with.
3. Counter claim is to be returned for its representation as a separate suit.
4. Counter claim may be proceeded only when suit is restored

> **Ans: B.** Order VIII Rule 6D CPC (Effect of discontinuance of suit): 'If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.' A counter-claim has the status of a cross-suit (O.VIII R.6A(2)), so the fate of the plaintiff's suit does not control it. The CPC applies as such under the new criminal codes regime — no renumbering is involved. **[Karnataka Judiciary Prelims 2021]**

Q4. In A.K. Ghosh and Company v. Biman Bose, 2026 INSC 684, the Supreme Court settled the time limit for a plaintiff in a commercial suit governed by the Commercial Courts Act, 2015 to file a written statement in answer to the defendant's counter-claim. The Court held that such a written statement —

1. is governed only by Order VIII Rule 6A(3) CPC, so it may be filed within whatever time the Court fixes, with no outer limit
2. may be filed at any time before the framing of issues, since the 120-day bar binds only defendants
3. must ordinarily be filed within 30 days of receipt of the counter-claim, extendable for reasons recorded and on costs, but not beyond 120 days — by virtue of Order VIII Rule 6G read with the amended proviso to Order VIII Rule 1 CPC
4. need not be filed at all, as a counter-claim stands admitted unless the plaintiff amends the plaint

> **Ans: C.** Answering the question 'in the affirmative', the Bench (Sanjay Kumar and K. Vinod Chandran, JJ.) held that a reply to a counter-claim partakes the character of a written statement, and Order VIII Rule 6G CPC — 'the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim' — extends the strict 120-day outer limit of the Commercial Courts Act regime to the plaintiff as well, reckoned from receipt of the counter-claim. The contrary Bombay and Madras High Court views were disapproved. The Court also held that an order refusing leave to file a belated written statement is not appealable under Section 13(1A) of the CC Act, as it figures neither in Order XLIII CPC nor in Section 37 of the Arbitration Act. **[This week's ruling: A.K. Ghosh & Co. v. Biman Bose]**

Q5. Consider the following statements about first appeals under S.96 CPC. Which are correct? 1. The first appellate court is the final court of facts and is bound to consider all the evidence on record. 2. The first appellate court may interfere with the findings of the trial court only on a substantial question of law. 3. If the first appellate court reverses the findings of the trial court, it must record its own reasons. 4. A first appeal can be heard both on questions of law and on questions of fact.

1. 1, 3 and 4 only
2. 2, 3 and 4 only
3. 1 and 4 only
4. 1, 2 and 3 only

> **Ans: A.** Statements 1, 3 and 4 are correct: a first appeal lies both on facts and on law; the first appellate court is the final court of facts; and it must give its own reasons if it reverses the trial court (Shasidhar v. Ashwini Uma Mathad; State Bank of India v. Emmsons International). Statement 2 confuses the first appeal with a second appeal — the 'substantial question of law' restriction applies only to S.100, not to S.96. Under O.41 R.31 CPC the appellate judgment must state the points for determination, the decision thereon, and the reasons — the very first-appeal duty the Supreme Court re-emphasised in this week's rulings on S.96. **[LawMock bank]**

Q6. An order refusing to refer the parties to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 is appealable under:

1. Section 34 of the Act
2. Article 227 of the Constitution of India
3. Section 37 of the Act
4. Section 11 of the Act

> **Ans: C.** After the 2015 Amendment, Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 expressly makes an order 'refusing to refer the parties to arbitration under section 8' appealable — and appeals lie from the enumerated orders 'and from no others'. Article 227 is a distractor: given Section 5 (minimal judicial intervention) and the arbitral tribunal's own competence to rule on its jurisdiction under Section 16 (kompetenz-kompetenz), the supervisory jurisdiction of the High Court over arbitral proceedings is exercised only in exceptionally rare cases — a limit the Supreme Court reiterated again this week. **[Rajasthan Judiciary Prelims 2017]**

Q7. Match list-I with list-II and select the correct answer using the code given below the lists — List-I: (A) Anticipatory Bail (B) Cognizance on complaint (C) Language of Court (D) Security of good behaviour from habitual offender List-II: 1. Section 272 Cr.P.C. 2. Section 110 Cr.P.C. 3. Section 438 Cr.P.C. 4. Section 190 Cr.P.C. Code:

1. (A)-2, (B)-4, (C)-1, (D)-3
2. (A)-1, (B)-3, (C)-4, (D)-2
3. (A)-4, (B)-2, (C)-3, (D)-1
4. (A)-3, (B)-4, (C)-1, (D)-2

> **Ans: D.** Anticipatory bail is s.438 CrPC; cognizance of offences by Magistrates (including on complaint) is s.190 CrPC; language of Courts is s.272 CrPC; security for good behaviour from habitual offenders is s.110 CrPC. It is under s.190 read with s.173 CrPC that a Magistrate receiving a police closure report has three options: accept it and drop proceedings, take cognizance on the report, or order further investigation. New-code mappings — Old: s.438 CrPC → New: s.482 BNSS, 2023; Old: s.190 CrPC → New: s.210 BNSS, 2023; Old: s.272 CrPC → New: s.307 BNSS, 2023; Old: s.110 CrPC → New: s.129 BNSS, 2023; Old: s.173 CrPC → New: s.193 BNSS, 2023. **[UP Judiciary Prelims 2023]**

Q8. When the defendant is proceeded ex parte after filing written statement:

1. the defendant cannot participate in future proceedings.
2. the defendant can participate in future proceedings.
3. the defendant to participate in future proceedings must ask for setting aside of the ex parte order.
4. the plaintiff has the option to allow the defendant to participate.

> **Ans: B.** Since Sangram Singh v. Election Tribunal (1955), the settled position is that a defendant against whom the court has proceeded ex parte may appear at any subsequent hearing and participate from that stage onwards as of right; an application under O.IX R.7 CPC to set aside the ex parte order is needed only if he wants to be relegated back to the earlier stage (to cross-examine witnesses already examined, etc.). Even rejection of such an application does not debar participation in later proceedings. Natural justice is thus preserved without reopening completed stages — the same audi alteram partem logic the Supreme Court applied to ex parte adjudication this week. CPC — no renumbering involved. **[Delhi Judiciary Prelims 2018]**

Q9. In which of the following cases, It was contended that the preamble to our Constitution should be the guiding star In Its Interpretation and hence any law made under the Article 21 should be held as void If it offended against the principles of natural justice?

1. Gopalan v. State of Madras
2. Kesavananda Bharati v. State of Kerala
3. Bhim Singh v. Union of India
4. Excel Wear v. Union of India

> **Ans: A.** In A.K. Gopalan v. State of Madras (AIR 1950 SC 27), the petitioner contended that 'law' in Article 21 means law embodying the principles of natural justice, so a statute offending natural justice would be void. The majority rejected this, holding that 'procedure established by law' means State-made (enacted) law, not natural justice in the abstract — a view diluted only decades later in R.C. Cooper and Maneka Gandhi. Natural justice — the right to be heard before adverse ex parte action — remains a live theme in this week's Supreme Court rulings on Foreigners Tribunal and land-acquisition hearings. Constitution — no renumbering involved. **[Bihar Judiciary Prelims 2016]**

Q10. In view of Article 265 of the Constitution of India:

1. taxes cannot be levied with retrospective effect.
2. double or multiple taxation is illegal and prohibited.
3. cess in addition to tax cannot be imposed.
4. an executive order cannot impose a tax without express statutory authority.

> **Ans: D.** Article 265: 'No tax shall be levied or collected except by authority of law' — 'law' means a validly enacted statute, so the executive cannot impose or collect any tax (including a duty, cess or fee) without express statutory authority (Chhotabhai Jethabhai Patel v. UOI). The other options are settled distractors: the legislature CAN tax retrospectively (criminal laws under Art. 20(1) are the exception, not tax laws); there is no constitutional bar on double taxation; and a cess may validly be imposed by law. Retrospective validation of an invalid levy by the legislature is equally permissible — the principle underlying this week's retrospective-taxation ruling. **[Delhi Judiciary Prelims 2018]**

Mains Q&A — real state mains questions, with model answers

Mains Q1. — Kerala Judicial Service Mains, 2020 · Evidence — Confessions and Discovery under s.27

Explain the scope of S.27 of the Indian Evidence Act, 1872. Specifically refer to the law laid down in P. Kottayya v. Emperor (AIR 1947 PC 67).

The Evidence Act treats confessions to the police with deep distrust: s.25 declares that no confession made to a police officer shall be proved against an accused, and s.26 excludes a confession made by any person while in police custody unless it is made in the immediate presence of a Magistrate. Section 27 lifts this ban partially. When a fact is deposed to as discovered in consequence of information received from a person accused of any offence while in police custody, so much of that information as relates distinctly to the fact thereby discovered may be proved, whether or not it amounts to a confession. The rationale, explained in State of U.P. v. Deoman Upadhyaya (AIR 1960 SC 1125), is that the discovery assures the truth of that portion of the statement, which may then be presumed untainted; the Supreme Court describes this as the doctrine of confirmation by subsequent events (Pawan Kumar v. State of U.P., AIR 2015 SC 56).

The classic exposition is Pulukuri Kottayya v. Emperor (AIR 1947 PC 67). The Privy Council warned that it is fallacious to treat the 'fact discovered' as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and only the information that relates distinctly to that fact is admissible. Thus a statement that the accused would produce a knife concealed in the roof of his house is provable, but the added words that he stabbed the deceased with it must be excluded, for they relate to the past use of the weapon and not to its discovery. The section is therefore concerned essentially with the authorship of concealment (State of U.P. v. Jogeshwar, AIR 1983 SC 349), and the mere fact of recovery is not substantive evidence of guilt.

Judicial construction has fixed its operative limits. Custody is not formal arrest; any restriction or surveillance by the police suffices (Chandra Prakash v. State of Rajasthan), and custody in connection with another case will do (Mohan Lal v. State of Rajasthan, AIR 2015 SC 2098). A recovery made before the accused was in custody, or one not made in pursuance of the disclosure, falls outside the section. Recovery from an open or accessible place is not fatal if the article lay hidden from ordinary visibility, as with contraband buried by a roadside (State of H.P. v. Jeet Singh, AIR 1999 SC 1293). And where a first information report is itself confessional, the whole of it is hit by s.25 except the portion saved by s.27 (Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119).

The settled position, then, is that s.27 is a narrowly tailored proviso to ss.25 and 26. It admits only the exact information that led to the discovery, treats the discovery as proof of the accused's knowledge of the thing concealed, and leaves the prosecution to connect that knowledge with guilt through independent evidence.

Mains Q2. — Maharashtra Judicial Service Mains, 2019 · Civil Procedure — Execution: Executing Court Cannot Go Behind the Decree

Whether in all circumstances an executing court can not go behind decree ? [16 Marks]

Execution is the stage at which a decree is translated into fruit, and the Code entrusts it to the executing court under Part II (Sections 36 to 74) read with Order XXI, Section 47 requiring all questions relating to execution, discharge or satisfaction of the decree to be decided by that court itself and not by a separate suit. The cardinal rule, affirmed in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman (AIR 1970 SC), is that the executing court must take the decree as it finds it. It cannot entertain an objection that the decree is incorrect in law or on facts, because even an erroneous decree binds the parties until it is set aside in appeal or revision; nor can it question the correctness of the directions (State Bank of Travancore v. Indexport Registered, AIR 1992 SC) or alter, vary or add to the terms of the decree, even with the consent of parties.

But the rule does not hold 'in all circumstances'. Section 47 presupposes a valid decree, and where the decree is a nullity there is, in law, no decree at all. In Kiran Singh v. Chaman Paswan (AIR 1954 SC) the Supreme Court held that a decree passed by a court without jurisdiction is a nullity, and its invalidity can be set up wherever and whenever it is sought to be enforced, whether in execution or in collateral proceedings. Sunder Das v. Ram Parkash (AIR 1977 SC) explains why this is no heresy: in refusing to execute a void decree the court does not go behind the decree, for the decree being null and void, there is really no decree to go behind. Thus a decree passed by a court lacking inherent jurisdiction over the subject matter, or against a dead person without bringing his legal representatives on record, is inexecutable.

The true line, drawn in Harkishan Das v. Gulab Das (AIR 1956), lies between a decree that is a nullity and one that is merely invalid, improper or erroneous — only the former can be resisted in execution. Objections of territorial or pecuniary jurisdiction fall within the saving of Section 21 CPC and Section 11 of the Suits Valuation Act and cannot ordinarily be raised at this stage, while pleas of fraud must be agitated in independent proceedings. Where the decree is ambiguous, the executing court may construe it in the light of the pleadings and the judgment, but cannot, under the guise of interpretation, make a new decree.

The settled position, therefore, is that the prohibition is the general rule securing finality, subject to the narrow nullity exception; and as Ravinder Kaur v. Ashok Kumar (AIR 2004 SC) cautions, courts must see through cantankerous objections raised by judgment-debtors merely to deny the decree-holder the fruits of his decree.

Mains Q3. — Andhra Pradesh Judicial Service Mains, 2021 · Specific Relief — Injunctions, Personal Bars, Rectification & Cancellation

Write a note on - (a) Interim mandatory injunction (b) Personal bars to relief under the Specific Relief Act (c) Rectification of an instrument (d) When cancellation of an instrument can be ordered. (4 x 2 ½ = 10 Marks)

Preventive relief under the Specific Relief Act, 1963 is administered through Sections 36 to 42, and Section 39 permits a mandatory injunction compelling performance of acts necessary to prevent breach of an obligation. At the interim stage such an injunction is exceptional, for it disturbs rather than preserves the status quo and grants at the threshold substantially the final relief. Courts therefore demand a case stronger than the ordinary prima facie standard, irreparable injury, and a decisively tilted balance of convenience. Its familiar field is the licensor suing soon after the licence ends: Sant Lal Jain v Avtar Singh (AIR 1985 SC 857) and Joseph Severance v Benny Mathew ((2005) 7 SCC 667) sustain such suits, while delay that turns the licensee into a trespasser requires a prayer for recovery of possession instead.

Section 16 houses the personal bars. Where Section 14 looks to the subject matter of the contract, Section 16 looks to the plaintiff, whose conduct must be without blemish (Aniglase Yohannan v Ramlatha, AIR 2005 SC 3503). Relief is denied to one who has obtained substituted performance under Section 20 (the bar introduced by the 2018 Amendment), to one who has become incapable of performing, violates an essential term or acts in fraud of the contract, and to one who fails to prove readiness and willingness under Section 16(c). Readiness denotes financial capacity and willingness the plaintiff's conduct (JP Builders v A Ramdas Rao, (2011) 1 SCC 429). The 2018 Amendment deleted "aver and" from clause (c), so a formal averment is not indispensable if readiness and willingness emerges from a holistic reading of the plaint, though proof remains essential.

Rectification under Section 26 corrects the document, never the bargain. Where through fraud or the mutual mistake of the parties an instrument fails to express their real intention, either party or a representative in interest may have it rectified, even by way of defence, provided the relief is specifically claimed; the court then rewrites the instrument to reflect the true common intention, without prejudice to rights acquired in good faith and for value by third persons, and may enforce it as rectified. A merely unilateral mistake will not suffice.

Cancellation under Section 31 is protective, quia timet justice: one against whom a written instrument is void or voidable, and who reasonably apprehends serious injury if it stays outstanding, may have it adjudged void and delivered up; for registered instruments the decree is noted by the registering officer. Section 32 permits partial cancellation, and Section 33 obliges restoration of benefits with equitable compensation. The settled position is that a decree of specific performance itself displaces a subsequent sale, making its separate cancellation unnecessary (Lala Durga Prasad v Lala Deep Chand, AIR 1954 SC 75), whereas a plaintiff whose own agreement was cancelled before suit must first have that cancellation set aside.

Mains Q4. — Goa Judicial Service Mains, 2010 · Criminal Procedure — FIR Registration & Remedies for Non-Registration

A Criminal complaint, disclosing cognizable offences is filed at the police station: (a) Do the police have to register the FIR. (b) Can the police delay the registration of the FIR. If the FIR is not registered, what options under the Code of Criminal Procedure, 1973, are available to the complainant.

Section 154 CrPC (now s.173 BNSS 2023) is cast in the imperative: every information disclosing a cognizable offence, given to the officer in charge of a police station, "shall" be reduced to writing, read over to the informant, signed and entered in the prescribed book. Registration of the FIR is therefore a statutory duty, not a discretion, and the genuineness or credibility of the information is no condition precedent to it; those are matters for the investigation that follows. The Constitution Bench in Lalita Kumari v. Government of U.P., (2014) 2 SCC 1 put the controversy to rest, holding registration mandatory wherever the information discloses a cognizable offence.

For the same reason the police cannot delay registration in order to first test the truth of the allegations. Lalita Kumari permits a preliminary inquiry only in a narrow class of cases, such as corruption charges against public servants, matrimonial and commercial disputes and medical negligence, and even then only to ascertain whether a cognizable offence is disclosed at all, an approach foreshadowed in P. Sirajuddin v. State of Madras, AIR 1971 SC 520. Want of territorial jurisdiction is no ground for refusal either: the information must be recorded and forwarded to the competent police station, the zero-FIR principle that s.173 BNSS now states expressly, while also codifying a time-bound preliminary enquiry, with a Deputy Superintendent's permission, for offences punishable with three years or more but less than seven.

If the officer in charge still refuses, the Code builds a graded ladder of remedies. The informant may send the substance of the information in writing to the Superintendent of Police under s.154(3), who may investigate himself or direct a subordinate officer to do so. Failing that, he may move the Magistrate under s.156(3) CrPC (now s.175(3) BNSS) at the pre-cognizance stage; such a direction obliges the police first to register the FIR and then investigate (Suresh Chand Jain v. State of M.P., AIR 2001 SC 571), and carries the implied power to direct and monitor that investigation (Sakiri Vasu v. State of U.P., AIR 2008 SC 907).

Alternatively, the informant may bypass the police and file a complaint under s.200 CrPC (now s.223 BNSS); the Magistrate takes cognizance under s.190(1)(a) (now s.210 BNSS), examines the complainant and witnesses and proceeds under Chapters XV and XVI (Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986), though s.156(3) itself is available only before cognizance is taken (Tula Ram v. Kishore Singh, AIR 1977 SC 1). A writ of mandamus also lies, non-registration being dereliction of a mandatory duty. The settled position is thus threefold: registration is obligatory, delay for verification is impermissible save in the excepted categories, and the informant is never remediless.

Prelims answer key: 1-D 2-C 3-B 4-C 5-A 6-C 7-D 8-B 9-A 10-D

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