LAWBY 26
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FROM THE HOUSE OF ORIGIN LAW LABS

LAWBY WRITES

WHAT'S INSIDE?

WHY PAY THE JUNIOR LAWYER OR LAW STUDENT INTERN?

NOT DISABLED, BUT DIFFERENTLY ABLED

ADDITION OF DOCUMENTS AFTER CLOSURE OF EVIDENCE IN CIVIL CASES

WHAT CONSTITUTES EGREGIOUS FRAUDS?

ENTERTAINMENT TAX CANNOT BE LEVIED ON UNSOLD TICKETS

UNCLAIMED BANK DEPOSITS

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EDITORIAL

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Founder

Why Pay the Junior Lawyer or the Law Student Intern?

A lawyer's life is probably the best case of a Catch-22 situation. To earn more, you have to earn less first. Every lawyer who intends to defy the above principle has either perished or is frowned upon and isolated by the legal community for divergent opinions. I suspect that is about to change.

Vidhi Centre for legal policy, a legal think tank, surveyed 2800 advocates across eight various High Courts in India revealing that 79 percent of practicing advocates with an experience of two years or less, earn not more than Rs.10000 a month. Voices are heard, echoed, reposted, and even commented on for better reach (CFBR) throughout LinkedIn, requesting proper or at least bare minimum payment for interns and junior lawyers.

Let there be no ounce of doubt when I say if you hire an intern or junior lawyer, one MUST PAY. The issue arises as to how much to pay. Recently the Madras High Court, in the case of Farida Begum vs. The Puducherry Government and Others [W.P. No.17976 of 2019], ordered the advocates and senior advocates in Tamilnadu and Puducherry to pay Rs.15000 to Rs.20000 to junior advocates further directing the Bar Council of Tamil Nadu and Puducherry in ensuring compliance of the same.

If we make it mandatory to pay junior lawyers and interns a certain pre-determined sum, will it de-motivate law firms and independent legal practitioners from hiring more juniors or providing internship opportunities to law students? It is to be prudent to be practical rather than pass comments from moral high grounds. Our reasoning must be based on the understanding that legal fees differ from one law firm to another and affordability of seniors (if they have any personal life circumstance that demands priority) and volume of cases, getting paid by the client on time (sometimes it never happens), all play a role in minds of those running the firm.

Junior lawyers expect to be paid and seek respect for their efforts. On the contrary, while training fresh hands, the seniors take a huge risk and have to use a significant amount of their time in informing about the procedure and improving the skill set of the junior. It is here where one must clearly outline the very disappointing nature of theoretical knowledge provided to law students from law colleges. I think it would be prudent if the colleges that charge about a lakh or more per year pay for the students to be trained by law firms or independent practitioners in the field by entering into MoUs with them.

Whatever the number that must be paid, this is a case where we must, as a fraternity, win. I rest my case with the following words: -

"Let them be paid generously so that they can know the true value of pro bono"

LEGAL CRISPS

Not Disabled, But Differently Abled

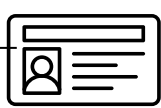
-Anoushka Samyuktha A

Can a person with a physical disability get a driving license? Any person driving on the road should be mentally and physically fit to drive. In the case of a differently abled person, a certificate from a registered medical practitioner will be sufficient to obtain a driving license. The regulations for requirements for a certificate differ from state to state.

Recently, in ***Rudranath A S v. State of Kerala [WPC No. 23297/2024],*** a differently abled person was denied a driving license by the RTO in spite of getting the necessary medical clearance. The petitioner was 40% differently abled. He had differences in his right hand. He is eligible to get a license if he has made the necessary modifications to his vehicle. However, the RTO did not agree and stated that a vehicle cannot be modified to anyone's convenience and that road safety standards have to be maintained.

Section 2(17) of the Motor Vehicles Act, 1988, clearly mentions that an "invalid carriage" is one that is specially designed and not merely adapted for the use of a differently abled person. Therefore, a set of standard rules for modification cannot be agreeable as each person's disability is different. The petitioner also stated that his right of freedom to move freely, and right to life, and personal liberty as under Article 19&21 were denied. It also is violative of **Article 14**, which is right to equality and that it was not a valid ground in which he was denied the opportunity to obtain a driving license.

The **Motor Vehicles (Amendment) Bill, 2019**, speaks specifically about the rights of the differently abled people to obtain a license. The law is pretty clear about their rights, it's the society that still alienates them.



Addition of Documents After Closure of Evidence in Civil Cases

-Sowmiya R K

Order VII Rule 14(3) of the Code of Civil Procedure, 1908, states that:

"*A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit*."

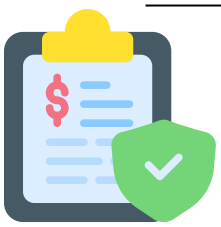
The rule establishes a presumptive bar against the admission of documents not initially produced with the plaint. However, it simultaneously vests the Court with the discretionary power to grant leave for the subsequent production of such documents. The failure to produce documents as mandated by **Order VII Rule 14** does not ipso facto result in the rejection of the plaint or dismissal of the suit.

In the case of ***Diljith Singh Vs Mohinder Singh CM(M) No. 32/2022, CM No. 5643/202, CM No. 2145/2022,*** the High Court of Jammu & Kashmir and Ladakh exercised its discretionary power under Article 227. They directed the Trial Court to reconsider the application of the plaintiff to place a document on record during the proceeding of the case after the closure of evidence on both sides.

The sole consequence of non-production is the requirement to obtain the court's leave for subsequent admission of the documents into evidence.

In exercising its discretion, the court may consider various factors, including but not limited to:

a) The relevance and materiality of the documents to the case at hand
b) The reasons for the delayed production
c) Any prejudice that may be caused to the opposing party
d) The stage of the proceedings at which the application is made
e) The overall interests of justice



CASE CHRONICLE

What constitutes Egregious Fraud?

-Sri Sai Kamalini M S

The term “Egregious”, according to Black’s Law Dictionary, means something that is remarkably or extremely bad. In Indian Law, Egregious fraud is a standard that plays a crucial role in determining whether the invocation of the bank guarantee can be restricted. This type of fraud is, of a higher degree, one that would impair the basis of the bank guarantee provided. Various vital principles can be used to determine whether to use this as a defence for restraining the invocation of bank guarantees. The fraud must have proper proof, and the banks must take notice of such frauds to use them as a defence in the later stages.

In the recent case of ***Tata Projects Ltd vs. Power Grid Corporation of India, FAO (COMM) 93/2024 CM APPL. 29905/2024,*** the concept of Egregious fraud was discussed. In the present appeal filed u/s 37(1)(b) of the Arbitration & Conciliation Act, 1996(Act), there was an issue regarding restraining the respondent from invoking a bank guarantee. The Commercial Court rejected the petition filed by the appellant u/s 9 of the Act, and they stated that they had approached the Court with unclean hands and a similar petition had already been filed in the Commercial Court, Saket, which was withdrawn later.

The Commercial Court stated that the appellant obtained protection for a similar case and interim orders of protection concerning another bank guarantee. The appellant got protection and later withdrew this case. Hence, the Commercial Court stated that the petitioner had not disclosed this fact in its petition and rejected the petition. The appellant had a proper explanation for withdrawing the case, and the non-disclosure of a similar petition in another similar matter cannot be termed egregious fraud.

BEYOND THE OBVIOUS

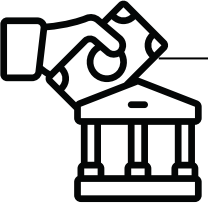
Entertainment Tax Cannot Be Levied On Unsold Tickets

-Seethala B

In the case of ***JTPAC v Maradu Municipality [2024/KER/43994],*** the Kerala High Court directed Maradu Municipality to reimburse the entertainment tax levied on unsold tickets for a music concert held by the Jose Thomas Performing Arts Center (JTPAC). The Court ruled that u/s **3 of the Kerala Local Authorities Entertainment Tax Act,1961**, entertainment tax could only be charged on sold tickets and not on unsold ones. JTPAC had paid an entertainment tax of Rs.1,24,080 for 1020 tickets but only sold 265 tickets. The petitioner returned the 755 unsold tickets to the Municipality and requested a refund of the entertainment tax paid on them. While the security deposit was refunded, the entertainment tax was transferred to the Chairperson's Distress Relief Fund, which JTPAC challenged.

The Court referred Section 3 of the Act and Section 2(1) and (2), which defines 'admission' and 'admission to an entertainment', indicating that tax is payable only on the number of tickets that had actually been sold. The ruling relied on the precedent set by a full bench in ***Municipal Council, Kottayam v. K.Mahadeva Iyer [1970 KLT 577]*** and Rule 19 of the Kerala Local Authorities Entertainment Tax Rules, 1962, which allows refunds for unsold, unused entertainment tax stamps.

The Court further stated that under Article 265 of the Indian Constitution, no taxes shall be levied or collected except by authority of law. Thus, the Municipality had no authority to transfer the tax paid on unsold tickets to the Chairperson's Distress Relief Fund. Hence, the Court directed the Municipality to refund the entertainment tax on the 755 unsold tickets to JTPAC after deducting Rs.10,000 that had been paid towards the Chairperson's Distress Relief Fund as JTPAC had committed to pay for it in advance.



Unclaimed Bank Deposits

-Nithyaparvathy R G

Savings or current accounts that have been dormant for more than ten years or term deposits that have not been claimed within ten years of their maturity date are designated "Unclaimed Deposits." Banks transfer such funds to the Reserve Bank of India's Depositor Education and Awareness (DEA) Fund.

Empower yourself by using the UDGAM portal to identify unclaimed deposits with banks. By filling in the necessary details of the account holder, you can take control of your finances. Similarly, unclaimed shares and dividends can be searched for by visiting the Investor Education and Protection Fund Authority’s (IEPF) website and entering the relevant details of the shareholder.

To search for unclaimed deposits, a user must provide the account holder's name, the bank's name, and one of the following details: PAN, driving license, voter ID, passport number, and date of birth.

The RBI has given banks guidelines on unclaimed deposits. It asked them to conduct annual reviews of accounts that have not had transactions in over a year. Regarding term deposits, the RBI stated that if there is no mandate for renewal, the bank should check to see if the customer has taken the proceeds post-maturity or transferred them to a savings or current account.

Banks must notify account holders if their account or deposit has not been used in a year. The notification can be sent through email, letter, or SMS. The message should tell the customer that the account or deposit will be considered 'inoperative' if not used within the following year. After that, renewal would necessitate the submission of new KYC documents.

Unclaimed Deposit Reference Number (UDRN) is a unique number issued by banks using Core Banking Solution (CBS) and allocated to each unclaimed account or deposit sent to the RBI's DEA fund. This number ensures that no third party identifies the account holder or the bank branch where the account is held.

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