

Case Laws with Answers of JIGL (New Syllabus – Dec 2018)

Case 1

Ramendra prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the Court that he received the arbitral award just 10 days back. Advise with reasons –

(i) Whether Ramendra will succeed in his prayer; and

(ii) Whether the law of limitation will not be a bar?

(5 marks)

Legal Provisions

According to Section 34(2) of Arbitration and Conciliation Act, 1996 states that an arbitral award may be set aside by the Court if the party making the application furnishes proof that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case

Section 34 (3) provides that an application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award.

Facts of Case given in question

- Ramendra furnishes sufficient proof that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case.
- Ramendra received the arbitral award just 10 days back.

Conclusion

- Ramendra will succeed in his prayer
- Law of limitation will not be a bar as he received the arbitral award just 10 days back.

Case 2

On 30th November, 2008, Mohan took a loan of 20,000 from Sohan. He paid 5,000 to him on 31st August, 2011, towards part-payment. After that, Sohan did not receive any amount from Mohan. Subsequently, Sohan instituted a suit for recovery of the dues from Mohan after the expiry of 2 years from the date of last part-payment. Advise, whether

(i) the suit is maintainable; and

(ii) the part-payment is an acknowledgment of payment. (6 marks)

Legal Provisions

As per Section 19 of Limitation Act 1963, where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

In case of Debt, period of limitation is 3 years.

Facts of Case given in question

- Mohan took a loan of 20,000 from Sohan on 30th Nov, 2008.
- He paid Rs. 5,000 to him on 31st August, 2011, towards part-payment (within 3 years).
- Sohan instituted a suit for recovery of the dues from Mohan after the expiry of 2 years from the date of last part-payment.

Conclusion

- Suit instituted by Sohan is maintainable as a fresh period of limitation shall be computed from the time when the part-payment was made i.e from 1st Sep, 2011 and Sohan instituted a suit for recovery of the dues from Mohan after the expiry of 2 years from the date of last part-payment (before 3 years)
- Yes, as per Section 19 of Limitation Act 1963, the part-payment is an acknowledgment of payment.

Case 3

A Magistrate of the First Class passed a sentence of imprisonment for a term of three years with a fine of 6,000 and in lieu of non-payment thereof, an additional imprisonment for another one year. The aggrieved party, Anshul, wants to prefer an appeal against the order of the Magistrate. Will he succeed? Advise with reasons. (5 marks)

Legal Provisions

- According to Section 29 of Criminal Procedure Code, 1973, a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding 3 years or of a fine not exceeding Rs. 5,000, or of both.
- According to Section 30 of Criminal Procedure Code, 1973, the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law provided that the term:
 - (i) is not in excess of the powers of the Magistrate under Section 29; and
 - (ii) where imprisonment has been awarded as part of the substantive sentence, it should not exceed 1/4th of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Facts of Case given in question

- A Magistrate of the First Class passed a sentence of imprisonment for a term of three years with a fine of 6,000
- In lieu of non-payment of fine, an additional imprisonment for another one year.

Conclusion

- A Magistrate of the first class cannot impose fine exceeding Rs. 5000
- Where a Magistrate pass order for imprisonment in default of payment of fine, it shall not exceed 1/4th of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
- Thus Anshul will succeed in preferring an appeal against the order of the Magistrate.

Case 4

A real estate company has its head office at Delhi and branch offices at Ahmedabad, Patna and Indore. A dispute cropped up between Sorabh and the company in respect of a transaction through Ahmedabad office. Sorabh files a suit in respect of this dispute against the company in a court at Patna. How will the court decide? (6 marks)

Legal Provisions

According to Section 16 of Civil Procedure Code, 1908, a suit respecting immovable property can be instituted either in a local Court within whose local limits of jurisdiction the property is situated or in the Court within whose local limits of jurisdiction the defendant voluntarily resides or carries on business or personally works for gain.

Facts of Case given in question

- The company given in the question is a real estate company, therefore the dispute between Sorabh and the company might be w.r.t immovable property situated in Ahmedabad.
- Company voluntarily carries on business in Patna also.
- Sorabh files a suit in respect of this dispute against the company in a court at Patna.

Conclusion

- According to Section 16 of Civil Procedure Code, 1908, Patna Court may entertain the suit filed by Sorabh.

Case 5

Ramu is accused of a crime. He suddenly left his house after commission of the crime. He explained to the court that he had sudden and urgent business at the place to which he had gone. He also gave the details of his business there. Discuss, what facts are relevant and not relevant in this case. (5 marks)

Legal Provisions

According to Section 8 of Indian Evidence Act, 1872,

- the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

According to Section 9 of Indian Evidence Act, 1872, following facts are relevant:

- Facts necessary to explain or introduce a fact in issue or relevant fact, or
- which support or rebut an inference suggested by a fact in issue or relevant fact, or
- which establish the identity of anything or person whose identity is relevant, or
- fix the time or place at which any fact in issue or relevant fact happened, or
- which show the relation of parties by whom any such fact was transacted

Conclusion

Relevant Facts

- The fact that, soon after the commission of the crime, Ramu absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.
- The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

Not Relevant Fact

- The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

Case 6

A suit was instituted by the plaintiff company alleging infringement by the defendant company by using name of medicine and selling the same in wrapper and carton of identical design with same colour combination, etc., as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company against the plaintiff company with same allegations. Can the decision be given by both the courts in the respective suits? (6 marks)

Legal Provisions

Section 10 of Civil Procedure Code, 1908 provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Conclusion

In a similar case, M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals and others, AIR 1999, Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical.

Case 7

Amrit executed a gift deed in his life time in favour of Bhanu. The gift deed was not registered during the life time of Amrit. Bhanu, after death of Amrit, presented the gift deed before the Registrar for its registration. Rakshit, brother of Amrit, raised an objection for the registration of gift deed on the ground of fake signature of Amrit. Both the witnesses to the gift deed contended that the signatures were made in their presence by the donor at the time of execution of gift deed. Whether the gift deed will be treated valid for registration under the Registration Act, 1908? (6 marks)

Legal Provisions

According to Section 17 of Registration Act, 1908, it is compulsory to register the instruments of gift of immovable property.

In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution.

Facts of the Case given in question

- Amrit executed a gift deed in his life time in favour of Bhanu.
- The gift deed was not registered during the life time of Amrit.
- At the time of registration, Rakshit, brother of Amrit, raised an objection for the registration of gift deed on the ground of fake signature of Amrit.
- But both the witnesses to the gift deed contended that the signatures were made in their presence by the donor at the time of execution of gift deed.

Conclusion

- Gift deed shall be valid for registration because may be presented for registration even after the death of the donor.
- Objection of Rakshit shall not be entertained as both the witnesses to the gift deed contended that the signatures were made in their presence by the donor
- On registration the deed of gift operates as from the date of execution.

Case 8

An instrument bears a stamp of sufficient amount, but of improper description. Can it be certified as duly stamped? How the instrument can be rectified and what would be the date of its execution?

Under Section 37, opportunity is given to a party, of getting a mistake rectified when a stamp of proper amount, but of improper description has been used. Under this section, the State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, the instrument may, on payment of the duty with which the stamp is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Case 9

Ragini told Rajendra in the year 2007 that she had committed theft of the jewellery of her neighbour Asha. Thereafter, Ragini and Rajendra were married in the year 2008.

In the year 2009, criminal proceedings were instituted against Ragini in respect of the theft of the said jewellery. Rajendra is summoned to give evidence in the said criminal proceedings.

Decide whether Rajendra can disclose the communication made to him by Ragini in the year 2007, in the criminal proceedings in respect of the theft of the jewellery. (5 marks)

Legal Provisions

Under Section 122 of the Indian Evidence Act, 1872, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced.

Facts of the Case given in the question

- Ragini told Rajendra in the year 2007 that she had committed theft of the jewellery of her neighbour Asha.
- That time Ragini and Rajendra were not married to each other.

Conclusion

- Yes, Rajendra can disclose the communication made to him by Ragini in the year 2007, in the criminal proceedings in respect of the theft of the jewellery.

Case 10

Mohan and Sohan are jointly tried for the murder of Rohan. It is proved that Mohan said, “Sohan and I murdered Rohan” Can the court consider the effect of this confession as against Sohan ? Give reasons. (5 marks)

Legal Provisions

Sections 24 to 30 of Indian Evidence Act deal with confessions. The confession is evidence only against its maker and against another person who is being jointly tried with him for an offence.

Conclusion

In the given case, court **may** consider the effect of confession of Mohan that “Sohan and I murdered Rohan” as against Sohan.



Working Area

Deep Gyan Classes