ARBITRATION

Ref: 01/09/2002

Arbitration *– Mode of commencement of arbitration proceedings, discussed.*

L.B.Finance Ltd. v Daniel

SC(Appeal) No. 2/2001
SC.LA(HC) No. 33/200
HC/ARB/484/2000

Decided by Bandaranayake, J., Yapa, J. and De silva, J. on 25th May, 2002.

The Petitioner-Appellant moved the High Court for the enforcement of an Arbitral Award in terms of Section 31(1) of the Arbitration Act, No. 11 of 1995. The Respondent based his objections on the grounds that (a) he did not receive Notice of the appointment of an Arbitrator; (b) there was no Notice of the Arbitral sittings; and (c) no Notice of an Arbitral Award, and therefore the Arbitral proceedings are a nullity. Their Lordships, having examined the material placed before them pertaining to the delivery of Notice to the Respondent, condiered the provisions of Section 18 of the Arbitration Act, where a communication from one party informing the intention to resort the dispute to arbitration which has arisen between the parties, would amount to the ' notice of arbitration' for the commencement of the arbitration proceedings.

BILLS OF EXCHANGE

Ref: 02/09/2002

Bills of Exchange- *When presentment for payment becomes necessary, analysed – General and qualified acceptance, distinguished –Point at which bill is discharged, discussed.*

Vanik Incorporation Ltd. v Hettiarachchi

SC (CHC) (Appeal) No. 38/98
HC No. 221/97 (1)

Decided by Silva,C.J., Bandaranayake, J. and Yapa, J. on 14th June, 2002.

The Plaintiff-Appellant, in the course of a bill discounting facility lent and advanced certain sums of money to the Defendant-Respondent. On the failure of the Respondent to repay the sums due on the bills, the Appellant filed Action in the High Court. The learned Judge of the High Court dismissed the Action as the bills on which the said Action was filed cannot be deemed to be dishonoured, as the Respondent had issued cheques to meet payment of the bills. However their Lordships held that the criminal action that was pending in respect of said dishonoured cheques cannot be considered as another action in respect of the same matter. Their Lordships analysed sections 19, 46, 52 and 59 of the Bills of Exchange Ordinance and discussed the questions pertaining to the presentment of a Bill of Exchange, the point of time when it can be considered discharged and how payment by cheque is to be treated.

CIVIL PROCEDURE

Ref: 03/09/2002

Civil Procedure Code- *section 147 – Raising of preliminary issues, discussed – Whether registration of Deed in respect of condominium property under the Apartment Ownership Law necessary, analysed – Consequences on non registration of condominium property, discussed .*

Mallika Fernando v Nagesh Fernando

C.A.Application No. 979/97
D.C.Colombo No. 16894/L

Decided by Jayawickrama, J. on 15th May, 2001.

The Plaintiff instituted Action against his Step-mother seeking, inter alia, for declaration of title in respect of two floors of a three storied building. Three issues raised by the defendant as questions of law were answered in favour of the Plaintiff. The questions of law centered on the matter of the validity of the Deed of Gift on which the Plaintiff was relying on. The validity of the said Deed was challenged on the ground that it was not registered under the provisions of the Apartment Ownership Law, No. 11 of 1973. His Lordship examined the provisions of law regarding the validity of the said Deed, and at which point of time the Court should rule on its validity. His Lordship considering the ratio in two reported judgements, emphasized that if an issue of law arises in relation to a fact or factual position in regard to which parties are at variance, that issue cannot and ought not to be tried as a preliminary issue of law. For a case to be disposed of on a preliminary issue, it should be a pure question of law which goes to the root of the case.

PREROGATIVE WRITS

Ref: 04/09/2002

Writ of Certiorari *– Article 140 of the Constitution - General Election – Rejection of nomination paper –Validity of multiple nomination papers, discussed – Parliamentary Elections Act and Presidential Elections Act, compared*

Saheed v Chandrananda De Silva & three Others

C.A.Application No. 18/89

Decided by Anandacoomaraswamy, J. on 02nd January, 1989

The authorized agent of the Sri Lanka Muslim Congress for the Electoral District of Anuradhapura, accompanied by one of the candidates contesting the Parliamentary General Elections whose name appeared on the list, went to the Anuradhapura Kachcheri to hand over the Nomination paper to the Returning Officer. Thereafter the delivery of the said Nomination paper took place. The Returning Officer having received the said Nomination Paper mentioned that he would be rejecting it on the ground that it was not handed over to him by the authorized person. Request to return the Nomination Paper so as to enable the proper person to hand over the Nomination paper was of no avail. The crux of the Application

Why is the man who invests all your money called a "Broker"?

for a writ of Certiorari was whether more than one Nomination paper could be tendered. In this regard the provisions of the Parliamentary Elections Act and Presidential Elections Act were compared.

EMPLOYEES' PROVIDENT FUND

Ref: 05/09/2002

Employees' Provident Fund Act *– Prosecution by Commissioner of Labour – Validity of certificate filed by Commissioner without particulars of the sum claimed, discussed – Right to challenge certificate.*

City Carriers Ltd. v The Attorney General

SC Appeal No. 7/01
C.A.Application No.126/85
MC Mt.Lavinia No. 7086

Decided by Bandaranayake, J., Kulatunga, J. and Dheeraratne, J. on 06th May, 1992.

The Deputy Commissioner of Labour filed a document purporting to be a certificate in terms of Section 38(2) of the Employees' Provident Fund Act, No. 16 of 1958 as amended by Act No. 8 of 1971 against the Respondent-Petitioner in the Magistrate's Court of Mount Lavinia for the recovery of a sum of money due as contributions and surcharges. The Magistrate allowed evidence to be led to challenge the purported certificate on the footing that the Respondent had not been duly assessed. The Magistrate also permitted evidence to be led to show that the assessment was not duly made. The Attorney-general moved the Court of Appeal in Revision against the said decisions of the Magistrate, and the Court of Appeal revised the said Magisterial Orders after comparing the decisions in the implementation of the Land Reform Laws and the Co-operative Societies Laws. However the Supreme Court, after discussing the provisions in the Income Tax Laws, overturned the Judgement of the Court of Appeal, and held that one had the right to challenge the certificate of the Commissioner on certain specified grounds.

LABOUR TRIBUNAL

Ref: 06/09/2002

Labour Tribunal *– Jurisdiction – Transfer of employee- Right of Labour Tribunal to examine reasonableness of termination- Constructive termination.*

Ceylon Ceramics Corporation v Iranganie Wickrema

C.A.Application No. 114/85
Lt/1/22308/82

Decided by Weerasekera, J. on 21st March, 1991.

The Applicant-Respondent invoked the jurisdiction of the Labour Tribunal for relief against the unlawful termination of her services. The tribunal had to decide whether the transfer which was the reason of the termination could be held to be constructive termination. The tribunal had also to decide whether the transfer was reasonable, particularly when considering whether the person suffered financially, or whether it was bona fide or whether it was in the interests of the employer or whether there was a reduction of the rank of the employee. The employer challenged the jurisdiction of the Labour Tribunal to consider the Employee's Application on the above grounds. The Court of Appeal held otherwise and held that the Labour Tribunal had jurisdiction, and determine whether the circumstances amounted to constructive termination of employment.

BAIL

Ref: 07/09/2002

Bail *– Bail pending appeal- Exceptional circumstances – Manner of exercising discretion of Courts, discussed.*

Thamotherampillai v The Attorney General

S.C.Application No. 141/75
H.C.Jaffna Case No. 53/74
M.C.Point Pedro Case No. 10990

Decided by Vythialingam, J., Sharvananda, J. and Gunasekera, J. on 03rd April, 1975

The Petitioner moved the Supreme Court to revise the Order of the High Court, Jaffna, refusing to grant him bail pending his appeal to the Supreme Court against his convinction and sentence in the High court. He was charged on two counts of murder and one of attempted murder along with eight others and was convicted on the charge of attempted murder and sentenced to seven years' rigorous imprisonment and a fine of Rs. 1,000/- in default, one year's rigorous imprisonment. The grounds on which the petitioner relied for the grant of bail were (a) he had to make arrangements to retain Counsel to argue his appeal and to attend to other relevant matters; (b) he is a father of six school going children; (c) he is 55 years old and suffering from various ailments; (d) he is a farmer; and (e) he has not been convicted or even charged in any Court of law prior to this.

Their Lordships, in considering the Revision Application, extensively discussed the powers of the various Courts in granting bail, how Judges should exercise their discretion and how the plea of exceptional circumstances should be looked at. Even though this is Judgement delivered in 1975 when the AJL was in operation, it provides insight in the argument of bail applications.

EVENTS

Technology & Infrastructure Committee in collaboration with Hameedias launched a special "Hameedias" promotional Package for Lawyers at a ceremony held on 18th September, 2002 at the BASL Auditorium with the participation of a large number of members. This special offer is valid till 30th November and more details can be obtained from Mr. Binara Gunasekara or Mr. Prasantha Lal De Aliwis convenor and chairman of the Committee, respectively.