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INDEX OF CASES

APPELLATE DIVISION

Abandoned Buildings (Supplementary Provisions) Ordinance, 1985

Section—5(2)

Section 5(2) of the Ordinance creates a statutory presumption as to the character of the building so listed as abandoned building. Persons whose buildings have been so listed have all equally been burdened with the special type of onus to establish that the buildings listed are not abandoned. All such persons being placed in the similar and equal situation it can not be said that persons of the same group or position in similar situation have been discriminated by section 5(2) of the Ordinance. (Dr. Fakir Anjuman Ara v. Bangladesh & Ors.)

(AD)121

Bangladesh Agriculture Development Corporation Regulation Service Rules, 1967

BADC Recruitment and Promotion Procedure, 1970.

Sudden introduction of viva voce examination was not approved by the Ministry of Agriculture. The persistence of BADC not to review their previous decision of promoting certain persons inspite of the decision of the Ministry clearly indicates that sudden change in the procedure of promotion to the post of General Manager was made to give undue advantage to certain persons. (Bangladesh Agricultural Development v. Giasuddin Ahmed & ors.)

(AD)125

Bangladesh Citizenship Temporary Order, 1972

(P.O. 149 of 1972)

The respondents though filed nationality certificate and the power of attorney to show that they are citizens of Bangladesh which had not been controverted by any tangible material on record, the birth right of any one to become a citizen of any particular country can not be brushed aside in the absence of any positive contrary intention manifested. (Bangladesh v. Mrs. Rehana Kamal & ors.)

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Code of Civil Procedure, 1908 (V of 1908)

Order 39 Rule 1 and 2

Section—151

Banks cannot be made to act as policemen to “police” upon any kind of fraud in international commercial transaction. No reimbursement shall be stopped by any court of law when an authorised or negotiating bank makes any payment to a third party on the basis of papers appearing to be correct. (Standard Bank Ltd. v. Tripos Engineering and Trading Company & ors.)

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Code of Criminal Procedure, 1898 (V of 1898)

Sections—561A, 241A

The question as to whether the accused was a sleeping partner or whether she was liable for payment are questions of fact which can be decided only on the basis of evidence. There is no scope for quashing the proceeding on such ground. (Mosammat Hosne-Ara Islam v. Haji Md. Rafiqul Islam, Proprietor of M/s. Suman Trading and another)

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Constitution of People's Republic of Bangladesh, 1972

Article—102

Preservation of the lake and to maintain a walkway with reasonable slope around the lake is a public purpose and thus the land inside the periphery of the lake should be acquired in public interest. (Professor Dr. Niaz Zaman v. Rajdhani Unnayan Kartipakhy & Ors.)

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HIGH COURT DIVISION

Admiralty Act

Admiralty Rules, 1912

Rule—35

Admiralty Suit is an action in rem generally and cause of action arises due to collusion of ships in the seas and/or for causing damage to cargo. When a bank guarantee is furnished the decreetal amount is satisfied out of the bank guarantee itself. In a case if the decreetal amount exceeds the guarantee and or in the absence of any guarantee, the decree in an Admiralty Suit can be executed in Bangladesh if the defendants are within the jurisdiction of this court and they have properties in Bangladesh. (Sonali Bank v. Bengal Liner Ltd. & ors.)

(HCD) 253

Code of Criminal Procedure, 1898 (V of 1898)

Sections—497 (1),(2), 498, 497(5)

Bail is granted to a person accused of non bailable offence entirely at the discretion of the court having regard to facts and circumstances of each case and provision of law laid down in section 497 Sub-section (1) and (2) of the Code of Criminal Procedure. The concurrent power given to the High Court Division or Sessions Judge to admit any person to bail under section 498 of the Code of Criminal Procedure by recording in writing his or its reason for so doing is absolutely unfettered and High Court Division or Court of Sessions in exercise of discretion may also re-consider prayer for bail after rejection or cancellation of bail. (Shamim @ Kazi Shamim v. The State)

(HCD) 243

Section—498

Anticipatory bail is an Extra-ordinary remedy and an Exception to the general law of bail which can be granted only in Extraordinary and Exceptional circumstances upon a proper and intelligent exercise of discretion where it can be demonstratively established that proposed accusation appear to stem not from the motive furthering ends of justice but from some ulterior motive, political or otherwise, the object being to harass, injure or humiliate the accused person. (Marufa Siddiqi @ Baby v. The State)

(HCD) 228

Limitation Act, 1908 (IX of 1908)

Section—5

Condonation of delay

Condonation of delay is essentially a matter of discretion for the Court. When the applicant fails to offer any reasonable explanation justifying the delay covering a long period, the Court is fully justified in refusing condonation of the delay. If the applicant is found indolent and wanting in vigilance in prosecuting his case, the Court is usually reluctant to exercise its discretion in favour of the indolent applicant. (Tafazzal Hossain v. The State)

(HCD) 235

Section—5

There is a long practice being followed since the days of Dhaka High Court that a revisional application is to be filed within the period of ninety days, prescribed by law for an appeal, and that the High Court Division may in its discretion entertain an application beyond that period in a suitable case where there is no negligence or latches on the part of the petitioner. (Md. Afzal Molla v. Government of Bangladesh & ors.)

(HCD) 240

Ordinance No. 54 of 1985

Section—4

To Justify inclusion of any building in the lists of abandoned buildings published in the official Gazette the government must show that the possession of the building was taken

over at same point of time as an abandoned property. Subsequent inclusion of the house in the list of abandoned property under Ordinance No. 54 of 1985 without issuance of any notice as contemplated under section 4 of the Ordinance is illegal. (Mrs. Shahida Begum v. Government of Bangladesh & ors.) (HCD) 232

Stamp Act, 1899(II of 1899)

Sections—18, 33 & 35

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(HCD) 249

Transfer of Property Act, 1882 (IV of 1882)

Section—69 clause (b)

Artha Rin Adalat Ain, 2003

Section—12

Under section 69 of the Transfer of Property Act in clause (b) it has been provided that where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage deed, the mortgagee shall have the power to sell the property in default of payment of mortgage money without intervention of the court. (Overseas Garments Industries (Pvt.) Ltd. v. Bangladesh & ors.) (HCD) 237

Union Parishad (election) Rules, 1983

Rule 6

The act of setting up of the polling stations is absolutely controlled by Union Parishads (Election) Rules, 1983 and the instructions issued from time to time by the Election Commission. As per rule 6 of the Election Rules, 1983, it is the Returning officer who has the authority to set up polling stations and publish the list of such stations at least 15 days before the polling day locally at some prominent places in the wards concerned. And after publication of the polling stations it shall not be changed without the approval of the Election Commission. (Md. Sazzadul Haque Liku & Ors. v. Sarder Anwar Hossain & ors.) (HCD) 245

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