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SUPPLEMENT
EXECUTIVE PROGRAMME

(This supplement covers Amendments/Developments from August, 2021 to May, 2024)

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

MODULE 1

PAPER 1

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Lesson 2 – Constitution of India

1. Skill Lotto Solutions v. Union of India, 2020 SCC OnLine SC 990

In present case, the constitutional validity of levying of taxes on lottery, betting and gambling was challenged in the Court. The Supreme Court held that the taxation of lottery tickets and prize money as constitutionally lawful. The SC ruled that gaming and lotteries fall under the Goods and Services Tax's purview and are therefore legitimate under the law. It was stated as follows:

"The value of taxable supply is a matter of statutory Regulation and when the value is to be transaction value which is to be determined as per Section 15 of Central Goods And Services Tax Act, 2017, it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the Petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST."

2. Swapnil Tripathi and Ors. vs. Supreme Court of India and Ors. (26.09.2018 - SC) : AIR 2018 SC 4806

In this case, Petitioners have sought a declaration that Supreme Court case proceedings of "constitutional importance having an impact on the public at large or a large number of people" should be live streamed in a manner that is easily accessible for public viewing. The three judge bench held that live-streaming of court proceedings are important so as to enable administration of justice especially owing to the effect it has on public at large. It is important to re-emphasise the significance of live-streaming as an extension of the principle of open justice and open courts. it was stated in this case as follows:

"*Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the litigant. Access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. Apart from this, live-streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice.*"

3. Municipal Corporation of Gr. Mumbai vs. Ankita Sinha (25.10.2021 - SC) 2021 SCC OnLine SC 897

In this case, the principal issue as to whether the National Green Tribunal (in short "the Tribunal") can exercise *suomotu* jurisdiction or initiate *suomotu* action. It was decided that the Tribunal may initiate *suo moto* action. However, same is subject to opportunities of being heard. The Court in the Judgement stated that:

"the judgment rendered by this Court predicates that even if the Tribunal intends to initiate suomotu action, must give opportunity to the parties likely to be affected before passing any

adverse order against them. Viewed thus, the ex parte preemptory order(s) passed by the Tribunal without giving opportunity to the person(s) likely to be affected by such order(s), be treated as effaced from the record."

4. ***Satender Kumar Antil vs. Central Bureau of Investigation and Ors. (11.07.2022 - SC)***

In this case, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar (supra)*. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts.

The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

5. ***CBI vs. R. R. Kishore (Supreme Court decided on 11.09.2023)***

In this case, *the Supreme Court decided on the point that* whether declaration made in the case of *Subramanian Swamy vs. Director, Central Bureau of Investigation and another* (2014) 8 SCC 682, that Section 6A of the Delhi Special Police Establishment Act, 1942 being unconstitutional, can be applied retrospectively in context with Article 20 of the Constitution.

The Supreme Court has decided that it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void *ab initio*, still born, unenforceable and *non est* in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. Thus, the declaration made by the Constitution Bench in the case of Subramanian Swamy will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.

6. ***PHR Invent Educational Society v. UCO Bank and Others decided by Supreme Court on 12.04.2024***

High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person. However, it is subject to certain exceptions

This case can be referred to for understanding and give more clarity of the law relating to entertaining writ petition by the High Courts under Article 226 of the Constitution of India.

In the instant case the Hon'ble Supreme Court has that it could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
(ii) it has acted in defiance of the fundamental principles of judicial procedure;
(iii) it has resorted to invoke the provisions which are repealed; and
(iv) when an order has been passed in total violation of the principles of natural justice

Further it was clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

Lesson 3: Interpretation of Statutes

1. The Authority for clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd. (Order dated 12.01.2022)

The Supreme Court in its order dated 22.01.2022 has *inter alia* said that when the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry.

The court in para 11 of the Order has mentioned that as noticed, the Entry in question, as inserted into the Fourth Schedule to the Act, is clear and specific that is, "Hank Yarn"; it carries neither any ambiguity nor any confusion. Undoubtably, the yarn in the hank form (which is a unit of measure), has come for exemption under the said Entry 44; and obviously, that exemption enures to the benefit of the handloom industry too. However, for that matter, if the benefit of this broad and unambiguous entry also goes to any other industry, there is absolutely no reason to deny such benefit. In other words, we find no reason to restrict the Entry in its operation to the handloom industry alone or to any particular class of hank yarn like "Cotton Hank Yarn" only. The exemption Entry being clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment.

Lesson 5: Administrative Laws

1. Rule of Law

Rule of Law was developed by British Jurist A.V. Dicey. He derived this term from French Principle '*La principle de legalite*' which means the principle of legality. It states that the government should be governed by Rule of Law instead of Rule of Individual. Any dictator, monarch or one particular person should not govern the functioning of any nation. Each country should follow legality of law.

Dicey was highly influenced by the French concept of administrative law' (*droit administratif*) or the 'administrative tribunals' (*tribunaux administratifs*). According to this, a citizen's lawsuit against a public servant for a wrongdoing done in that capacity will be handled by a special court rather than a regular court of law. Droit administratif contains a regulation that was created by the judges of the administrative court rather than laws and rules created by the French parliament.

Three major principles given by Dicey in his book "Rule of Law" are –

1. Supremacy of law: It means that ordinary or regular laws shall remain supreme. Supremacy here means absolute and pre-dominance of regular laws as against arbitrary or wide discretionary powers.

2. Equality before the law: According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. He states that there should be equality between people. According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. It provides that all are equal before law and everyone will be subjected to the same law.

3. The predominance of a legal spirit: Legal Spirit refers to the judicial precedents upon any dispute raised by any individual. The judgment given in any case will be the legal spirit of that particular case. It basically refers to the law as set by the precedents that have evolved over time.

Few jurists have criticized his rule of law theory being not clear between administrative discretion with arbitrary discretion, emphasising on equality before law and feels that specific tribunals should not exist, opposition between ordinary courts and special courts, failed to recognise the need of specific laws and bodies etc.

Rule of Law in India

The evolution of Rule of Law in India can be traced to British concept but the modern concept of Rule of Law was introduced, only after the drafting of Constitution of India. Constitution of India laid the very foundation of rule of law in India and is the essence of it. Rule of Law is embedded in Constitution under multiple parts, important aspects are as under:

1. Preamble – the Preamble to the Constitution of India upholds the basic structure of the Constitution. It talks about the justice, equality, liberty and dignity to all individuals. All of these aspects ensure Rule of Law in the country.

2. Part III- Fundamental Rights – These are the rights and fundamental or core of the Constitution of India. They imply a duty on the state towards ensuring the welfare of its citizens. It helps to keep a check on the actions of administrative authorities and legislature.

3. Part IV- Directive Principles of State Policy (DPSP) – These are the basic guidelines to be followed by all especially the government of India to ensure smooth functioning of the country. They are not enforceable by court of law. Few examples of Laws made under DPSP includes law relating to wages, labor laws etc.

2. Airport Authority of India vs. Centre for Aviation Policy, Safety and Research and Ors. (30.09.2022 - SC) : CIVIL APPEAL NOS. 6615-6616 OF 2022

In this case, the Supreme Court observed that the Court has erred in interfering with the administration/policy decision of the tender making authority in exercise of powers Under Article 226 of the Constitution of India even deciding it on merits. The Court observed that –

"as per the settled position of law, setting of terms and conditions of invitation to tender are within the ambit of the administration/policy decision of the tender making authority and as such are not open to judicial scrutiny unless they are arbitrary, discriminatory or mala fide. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted"

Lesson 7: Limitation Act, 1963

1. S.M. Ghogbhai vs. Schedulers Logistics India Pvt. Ltd. (23.05.2022 - NCLAT) :2022 SCC OnLine NCLAT 216

In this case, the Appeal was filed against the Order dated 16th November, 2021 passed by National Company Law Tribunal, Mumbai Bench, Court-III by which the Application C.P. No. 3857/I & B/2019 filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 was rejected as barred by time.

Tribunal dismissed the appeal stating - "We are satisfied that for the limitation for filing Section 9 application it is Article 137 of the Limitation Act, 1963 which is attracted. Under Article 137, time from which period begins to run is "when the right to apply accrues" the right to apply accrues when invoices issued by the Appellant to the Corporate Debtor were not paid. Invoices on the basis of which payment is claimed are more than three years earlier from the date of filing of Section 9 Application which is the basis for rejection of the Application of the Appellant by the Adjudicating Authority."

2. ***Ajay Dabra vs. Pyare Ram and Ors. (31.01.2023 - SC)***

In this case the impugned order of High Court of Himachal Pradesh dismissed the delay condonation applications filed Under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. This was not found to be a sufficient reason for the condonation of delay as the Appellant was an affluent businessman and a hotelier.

The Supreme Court has said that we do not have a case at hand where the Appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the Appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the Appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the Appellant filed an appeal in terms of Section 149 Code of Civil Procedure and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

3. A. Valliammai vs. K.P. Murali and Others decided by Supreme Court on 11th September, 2023

In this case the Supreme Court has referred to the provisions of Article 54 of Part II of the Schedule to the Limitation Act, 1963 which stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.

The Supreme Court referred to the case earlier decided in *Pachanan Dhara and Others v. Monmatha Nath Maity (2006) 5 SCC 340*. The Supreme Court in referred case had held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract.

4. Purni Devi & Anr. V. Babu Ram & Anr. decided by Supreme Court on 02.04.2024

In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant should be excluded

Facts

The genesis of the case at hand dates back to 01.06.1984, wherein the predecessors in interest of the Appellant ("Plaintiff") filed a suit for possession against the Respondents ("Defendants") herein. On 10.12.1986, this suit was decreed by learned Munsiff, First Class Hiranagar, in favour of the Plaintiff, and the Defendants were directed to deliver vacant and peaceful possession of the property to the Plaintiff. This decree was challenged by the Respondents before the learned District Judge, Kathua, in First Appeal, which came to be dismissed on 09.02.1990. Thereafter, the Respondents preferred a Second Appeal before the High Court of Jammu and Kashmir which came to be dismissed *vide* Order dated 09.11.2000. No further appeal was preferred. Therefore, the decree of the learned Munsiff Court attained finality on 09.11.2000.

The present *lis* arises from the application for execution filed by the predecessor in interest of the Plaintiff, before the learned Tehsildar (Settlement), Hiranagar on 18.12.2000. This application came to be rejected on 29.01.2005, whereby the learned Tehsildar observed that the Plaintiff had not applied before the Court with appropriate jurisdiction.

The Plaintiff thereafter, on 03.10.2005 preferred a fresh application for execution before the Court of Munsiff, Hiranagar. This application resulted in the order dated 28.11.2007, whereby, the learned Munsiff Court dismissed the application as being barred by limitation, which has come to be confirmed vide the impugned order.

Issue

Whether the time spent in wrong forum be excluded from the Period of Limitation?

Decision

The principles pertaining to applicability of Section 14, were extensively discussed and summarised by Supreme Court in Consolidated Engg. Enterprises (Supra), wherein while

holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-

"Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and

(5) Both the proceedings are in a court."

This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.
(ii) The failure of the execution proceedings was due to a defect of jurisdiction.
(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.
(iv) Both the proceedings are in a court.

More recently, in Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.6 (2-Judge Bench), Supreme Court followed the dictum in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.

The Hon'ble Supreme Court has said that we do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter bonafidely and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.

For details: https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=244892018&type=j&order_date=2024-04-02

Lesson 8: Civil Procedure Code, 1908

1. Jitendra Kumar Khan and Ors. vs. The Peerless General Finance and Investment Company Limited and Ors. (07.08.2013 - SC) : 2013 ALL SCR 3259

The court stated that equitable set-off is different from legal set-off. Equitable set-off is based on principle of justice, equity and good conscience.

It was stated in the judgement: *"that equitable set-off is different than the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the mutual debts and credits or cross-demands must have arisen out of the same transaction or to be connected in the nature and circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not."*

2. Dalpat Kumar and Ors. vs. Prahlad Singh and Ors. (16.12.1991 - SC) : AIR 1993 SC 276

The Court held that three main requirements are to be satisfied while granting temporary injunction

1. There should be Prima facie case
2. If injunction not granted, it would lead to irreparable loss and,
3. Balance of convenience

It was stated by the Court in the Judgement that:
"satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury. The third condition also is that "the balance of convenience" must be in favor of granting injunction."

3. B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation and Ors. (18.01.2022 - SC) : (2022) 3 SCC 294

Supreme Court held that leave to defend (In case of summary suits) should only be granted in exceptional cases. The leave to defend shall be denied only on the grounds that there is no fair or reasonable defence. It was stated in the Judgement that:

"application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the Rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the Defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave."

4. Yashpal Jain v. Sushila Devi & Others decided by Supreme Court on 20th October, 2023

In this case, in the preface of the Judgement, Hon'ble Supreme Court has stated that:
Even after 41 years, the parties to this *lis* are still groping in the dark and litigating as to who should be brought on record as legal representative of the sole plaintiff. This is a classic case and a mirror to the fact that litigant public may become disillusioned with judicial processes due to inordinate delay in the legal proceedings, not reaching its logical end, and moving at a snail's pace due to dilatory tactics adopted by one or the other party.
Further in this case, the Supreme Court has issued the following 12 directions for Speedy Trial of Civil Cases:

i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.
ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under *proviso* to sub-Rule (1) of Order VIII of CPC.
iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and *the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89* and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.
iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.
v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.
vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.
vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).
ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.
x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.
xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.
xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

5. Pathapati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA) decided by Supreme Court on 08.04.2024

Merits of the case are not required to be considered in condoning the delay. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time

This case can be referred to understand the law relating to condonation of delay under the Limitation Act, 1963.

The present Special Leave Petition was filed challenging the judgment and order whereby the High Court has dismissed the application of the petitioners for condoning the delay of 5659 days in filing the proposed appeal.

The moot question before the Hon'ble Supreme court was whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

The Supreme Court has said that on a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

> (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
>
> (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

For details:
https://main.sci.gov.in/supremecourt/2017/14596/14596_2017_15_1502_52056_Judgement_08-Apr-2024.pdf

Lesson 10: Criminal Procedure Code, 1973

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

The Supreme Court observed that:
"the need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive".
".....we believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so....."

Lesson 12 - Special Courts, Tribunals under Companies Act & other Legislations

1. Section 58 of the Companies (Amendment) Act, 2020 has amended Section 410 of the Companies Act, 2013 w.r.t. "Constitution of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

(i) in the opening portion, the words "not exceeding eleven" is omitted;

Details of Changes:

The restriction on the appointment of the number of judicial and technical members in the Appellate Tribunal by the Central Government has been removed.

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" is substituted.

Details of Changes:

The NCLAT constituted under Section 410 of the Companies Act, 2013 is empowered to hear appeals against any direction, decision or order referred to in Section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open

2. Benches of Appellate Tribunal (inserted by The Companies Amendment Act 2020 Amendment Effective from 22nd January 2021)

The Companies Amendment Act 2020 inserted section 418A in the Companies Act, 2013. It provides as under:

The powers of the NCLAT may be exercised by the Benches thereof to be constituted by the Chairperson. Further, it has been provided that a Bench of the NCLAT shall have at least one Judicial Member and one Technical Member.

The Benches of the NCLAT shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify. Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the NCLAT, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

Impact

The said amendment inserted the provisions related to constitution, powers, sitting place, jurisdiction etc. of National Company Law Appellate Tribunal (NCLAT).

For more details visit:
https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open

3. The Companies (Amendment) Act, 2020 amends the provision of section 435 of the Companies Act, 2013 related to establishment of Special Courts (effective from 22nd January 2021)

Section 435 (1)

Old Provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification establish or designate as many Special Courts as may be necessary.

New provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, except under section 452, by notification establish or designate as many Special Courts as may be necessary.

Impact

The new provision has exempted the offence under section 452 i.e. Punishment for wrongful withholding of property out of the jurisdiction of Special Courts.

For more details visit:
https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open

Lesson 13 - Arbitration and Conciliation Act, 1996

1. The Arbitration and Conciliation (Amendment) Act, 2021 amends the Arbitration and Conciliation (Amendment) Act, 2021

Hon'ble President of India promulgated 'The Arbitration and Conciliation (Amendment) Ordinance, 2020' on November 04, 2020 with an objective to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award are induced by fraud or corruption.

Amendments in the ordinance *inter-alia* include amendments to Section 43J of **Arbitration and Conciliation Act, 1996**, which prescribes qualification, experience and norms for accreditation of arbitrators, is substituted with the following section.

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the Regulations.

Accordingly, the qualifications for appointment as arbitrators, which were earlier prescribed in the principal Act, will now be through Regulations.

Impact

The provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2020 were adopted in the principal Act by virtue of the Arbitration and Conciliation (Amendment) Act, 2021.

For more details visit:
https://egazette.nic.in/WriteReadData/2021/225832.pdf

2. The Oriental Insurance Company Limited vs. Dicitex Furnishing Limited

The Supreme Court has decided the case of the Oriental Insurance Company Limited vs. Dicitex Furnishing Limited on 13th November, 2019. The details of the case are as follows:

For deciding the application under Section 11(6) of Arbitration Act, 1996, the court is required to ensure that an arbitrable dispute exists and has to be prima facie convinced about the genuineness or credibility of the plea and not be too particular about the nature of the plea, which necessarily has to be made and established in the substantive proceeding

Facts of the Case:

Dicitex (Respondent) obtained a Standard Fire and Special Peril Policy from the Oriental Insurance Company Limited (Appellants). A fire broke out which spread to the first floor of the building and completely engulfed all of the appellant's three godowns. Respondent informed the appellant about

the fire and the consequential loss. The appellant appointed M/s. C.P. Mehta & Co. as Surveyors and Assessors to survey the loss suffered. The Surveyor appointed by the insurer filed a FinalSurvey Report recommending that the clai m be settled for a net amount of `12,28,60,369/ be paid over to Respondent. Respondent addressed various letters to the appellant's chairman, informing him of the financial distress that it was facing, requesting for settlement of the claim on priority basis. Apparently, the appellant appointed a Chartered Accountant (M/s Naveen Jhand & Associates) to carry out a resurvey of the claim made by Respondent. Respondent received an email from the appellant stating that a discharge voucher for the balance amount of the claim payable as described was being enclosed. Respondent placed on record that its total claim was approximately `15 crores and the surveyor had assessed the same at approximately `12.93 crores. Respondent stated that the basis for arriving at the figure of `7.16 crores was not explained by the appellant. Respondent submitted along with the discharge voucher for a full and final settlement of their claim due to urgent need of funds to meet its mounting liabilities. Respondent placed on record their objection that the same was signed due to pressure of the respondents and applied to Bombay High Court under Section 11(6) of Arbitration Act, 1996. Bombay High Court has allowed the application under Section 11(6) of said act. The appellant filled the appeal to the Supreme Court in present case.

Decision:

The Hon'ble Supreme Court held that an overall reading of respondent's application under Section 11(6) of Arbitration Act, 1996 clearly shows that its grievance with respect to the involuntary nature of the discharge voucher was articulated. The court is conscious of the fact that an application under Section 11(6)is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. The high court- which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea, which necessarily has to be made and established in the substantive proceeding. The Supreme Court opinioned that the reasoning in the impugned judgment cannot be faulted. The appeal was held to be dismissed without order as to costs.

For more details:
https://main.sci.gov.in/supremecourt/2015/39792/39792_2015_4_1501_18110_Judgement_13-Nov-2019.pdf

3. Brahmani River Pellets Limited vs. Kamachi Industries Limited

The Supreme Court has decided the case of the Brahmani River Pellets Limited vs. Kamachi Industries Limited on 25th July, 2019. The details of the case are as follows:

Parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction

Facts of the Case:

The appellant entered into an agreement with the respondent for sale of 40,000 WMT (Wet Metric Tonne) of Iron Ore Pellets. Dispute arose between the parties regarding the price and payment terms and the appellant did not deliver the goods to the respondent. The respondent claimed for damages and the appellant denied any liability. Clause 18 of the agreement between the parties contains an arbitration clause. The respondent invoked arbitration clause and the appellant did not agree for the appointment of arbitrator. Hence, the respondent filed petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Madras High Court. The appellant contested the petition challenging the jurisdiction of the Madras High Court on the ground that the parties have agreed that Seat of arbitration be Bhubaneswar. The Madras High Court vide impugned order appointed a former judge of the Madras High Court as the sole arbitrator. The appellant preferred the appeal to the Supreme Court.

Decision:

The Hon'ble supreme court observed that Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 (the Act) defines the "Court" with reference to the term "subject-matter of the suit". As per Section 2(1)(e) of the Act, if the "subject-matter of the suit" is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para (96) of BALCO, the Supreme Court held that the term "subjectmatter" in Section 2(1)(e) of the Act is to identify the court having supervisory control over the arbitral proceedings. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction. The Supreme Court observed that when the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act. The impugned order was liable to be set aside.

For more details:
https://main.sci.gov.in/supremecourt/2019/9962/9962_2019_7_1501_15263_Judgement_25-Jul-2019.pdf

4. Oil and Natural Gas Corpn. Ltd v. Saw Pipes Ltd AIR 2003 SC 262

In this case the court decided how "Public Policy" should be interpreted for the purpose of section 34 of the Arbitration and Conciliation Act, 1996 which deals with Application for setting aside arbitral award. It was decided in this case that 'public policy' should not be interpreted in narrow terms with respect to just the Indian Laws, it should be interpreted in a way that aims at broadening public interest and fairness. It was stated by court that:

"Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. It must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to

(i) fundamental policy of Indian law; or
(ii) the interests of India; or
(iii) justice or morality.

If the arbitral tribunal does not dispense justice, a Court would be well within its right in upholding the challenge to the award on the ground that it is in conflict with the public policy of India."

5. Union of India v. Om Vajrakaya Construction Company (dated 20.12.2021) in OMP (COMM) 299/2021

In this case, the High Court of Delhi held unlike the tribunal's ability to award interest, the court's ability to award costs within the meaning of section 31A of the Arbitration and Conciliation Act, 1996 is unrestricted, and any agreement between the parties that forbids the awarding of costs would be irrelevant unless they do so after a dispute has already arisen.

6. BCC Developers & Promoters Ltd v. DMRC (dated 28.10.2021 in ARB.P 813/2021)

In this case, it was observed that just because the appointed arbitrators happen to be ex-employees of one of the parties, it shall not make them ineligible for such appointment.

"the plea urged by petitioner seeking appointment of sole Arbitrator and disqualification of panel of proposed/nominated Arbitrators by the respondent being hit by provision of Section12 of the Act, is not maintainable."

7. Chloro Controls (I) P. Ltd v. Severn Trent Water Purification Inc and Ors 2012(9) N SCALE 595

In this case, court observed on the rule of kompetenz kompetenz.

Court held that "challenge to the existence or validity of the arbitration agreement will not prevent the arbitral tribunal from proceeding with hearing and ruling upon its jurisdiction. The negative effect of the kompetenz kompetenz principle is that arbitrators are entitled to be the first to determine their jurisdiction which is later reviewable by the court, when there is action to enforce or set aside the arbitral award. Where the dispute is not before an arbitral tribunal, the Court must also decline jurisdiction unless the arbitration agreement is patently void, inoperative or incapable of being performed."

8. Cholamandalam Investment and Finance Company Ltd. vs. Amrapali Enterprises and Ors. (14.03.2023 - CALHC)

This case has given a clarification on unilateral appointment of Arbitrator.

Calcutta High Court decided that in light of the aforementioned judicial precedents(mentioned in the Judgement), it can be said with unambiguous certainty that the unilateral appointment of Arbitrator by the award holder is illegal and void. However, what still remains to be determined is the impact of the aforesaid illegality on the arbitral award and the present execution petition.

The Court further stated that ……. It is a settled principle of law that compliance with Section 12(5) read with Schedule VII is *sine qua non* for any arbitral reference to gain recognition and validity before the Courts. In the present facts in hand, an arbitral reference which itself began with an illegal act has vitiated the entire arbitral proceedings from its inception and the same cannot be validated at any later stage. Thus, it would be a logical inference to consider the aforesaid arbitral proceedings as void ab initio.

9. Can court exercising power under Section 37 of the Act modify the orders of the arbitral tribunal to protect the subject matter of the arbitration?
Asian Hotels (North) Ltd. vs. Sital Dass Sons and Ors. (22.12.2022 - DELHC)

The High Court of Delhi has said in the Judgment of this case that this Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral Tribunal.

10. Application of Fundamental Rights while passing of Awards by Arbitrators
The Chairman Board of Trustees for Shyama Prasad Mookherjee Port Kolkata vs. Universal Sea Port Private Ltd. (03.11.2022 - CALHC)

In this case, the Calcutta High Court has said in my understanding, the respondent seems to have had found favour with the arbitrator's sympathies, but unfortunately, they do not find favour with my sympathies and most unfortunately, they do not find favour with the law. It is evident that considerations of discrimination and want of state functionaries to act in due conformance to Article 14 of the Constitution swayed the arbitrator's contractual interpretation. The aforesaid inference can be gauged from paragraph 5(e) of this judgement. Firstly, arbitrators cannot apply the rights envisaged under the fundamental rights of the Constitution of India or equity while granting arbitral awards, and if they do, such awards must be set aside as being patently illegal under Section 34(2A) of the Act. The arbitrator is a creature of contract and must act within the powers granted by it…..

11. Types of Arbitration

1. Ad hoc Arbitration - This is a type of arbitration that is not handled by a formal organisation rather the number of arbitrators, mode of selection, and how the arbitration will be conducted, may be decided by the parties. The procedural aspects should also be decided by the parties.

2. Domestic Arbitration - The arbitration in which the disputes are subject to Indian laws and the cause of action is entirely based in India are called Domestic arbitration.

3. International Arbitration - It is an arbitration relating to disputes where at least one of the parties is:

(i) an individual who is a national of, or habitually resident in, any country other than India; or
(ii) a body corporate which is incorporated in any country other than India; or
(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or
(iv) the Government of a foreign country.

4. Institutional arbitration - In Institutional arbitration, the matter is to be administered by established arbitration institutions.

12. Essentials of Arbitral Process

1. Seat of Arbitration – The parties are free to select any location as the arbitration's seat.
2. Venue of Arbitration – The Venue or location, for the sessions of the arbitral proceedings may be decided by the parties.
3. Arbitral Institution – The parties may select the arbitral institution for conducting the proceedings. The rules of such arbitration institution will apply to proceedings.
4. Law – The parties may by agreement choose any law .
5. Language – The parties may also agree on the language of the arbitration proceedings.
6. Number of arbitrators – The parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, failing the determination, the arbitral tribunal shall consist of a sole arbitrator.
7. Cost – The Court or arbitral tribunal have the discretion to determine the cost which includes the decision as to:

(a) whether costs are payable by one party to another;
(b) the amount of such costs; and
(c) when such costs are to be paid

13. M/s Obulapuram Mining Company Pvt. Ltd. v. R.K. Mining Private Limited decided by High Court of Andhra Pradesh on 12th September, 2023

In this case, the essential objection before the court was raised that after the Commercial Courts Act, 2015 came into force an Award can only be executed before the Commercial Court and that the regular District Judge did not have the jurisdiction to entertain this case. He points out that initially by virtue of G.O.Ms.No.74, dated 10.06.2016, the Principal District and Sessions Courts in all the districts of the State of Andhra Pradesh were designated as Commercial Courts.

The contention of the respondents on the other hand, as far as jurisdiction is concerned, was that the Commercial Courts do not have the power to execute an Arbitration Award. Learned senior counsel contends that the execution of an Award, even if the same relates to a dispute of commercial value and commercial industry, can only be before a regular Civil Court as per the provisions of Order 21 of the Code of Civil Procedure, 1908.

The Hon'ble High Court of Andhra Pradesh in the Judgement stated that with reference to the provisions of Arbitration and Conciliation Act, 1996, Commercial Courts Act and Code of Civil Procedure that *"A reading of these sections and amendments in seriatim shows that the intention of the legislature was only to modify and streamline the procedures and practices relating to suits and applications in suits etc., which are pending for disposal."*

The silence or failure to refer to Order 21 does not mean that the Commercial Court cannot execute a decree. A purposive interpretation has to be given to the provisions of the Act. If it is not so interpreted the Commercial Courts will be powerless in many aspects.

14. *Chennai Metro Rail Limited Administrative Building v. M/s Transtonnelstroy Afcons (JV) & Anr. decided by Supreme Court on 19th October, 2023*

In this case, Chennai Metro Rail Limited("Chennai Metro"), a joint venture between the Central Government and the Government of Tamil Nadu, had awarded the contract to the respondent ("Afcons").

The tribunal recorded the agreement of parties, that the hearing fee for each arbitrator was fixed at ₹ 1,00,000/- per session of hearing date. A member of tribunal was substituted. Further, in the 10th Meeting, the tribunal sought to revise the fee payable from ₹ 1,00,000/- to ₹ 2,00,000/. Chennai Metro objected to this revision and Afcons requested the tribunal to keep its direction for modification of fee, in abeyance till the decision of this court.

Later, Afcons informed Chennai Metro that it had paid the revised fee for five hearings but Chennai Metro filed an application before the Madras High Court. In this proceeding under Section 14, the relief sought was a declaration that the mandate of the tribunal was terminated in respect of the disputes referred to them.

All three members of the tribunal filed affidavits, in response to the Section 14 petition acknowledging that Supreme Court's judgment in *ONGC v. AFCONS Gunasa JV2* (hereafter "ONGC") had decided the issue and thus members of the tribunal decided to revert back to the originally agreed fee i.e., ₹1,00,000.

Initially, the High Court granted an interim order, staying the proceedings. However, after hearing counsel for the parties, and considering the materials on the record, the court dismissed the application, filed by Chennai Metro through the impugned judgment.

In the present SLP filed before Hon'ble Supreme Court, it was decided that the attempt by Chennai Metro to say that the concept of *de jure* ineligibility because of existence of justifiable doubts about impartiality or independence of the tribunal on unenumerated grounds [or other than those

outlined as statutory ineligibility conditions in terms of Sections 12 (5)], therefore cannot be sustained. We can hardly conceive of grounds other than those mentioned in the said schedule, occasioning an application in terms of Section 12(3). In case, this court were in fact make an exception to uphold Chennai Metro's plea, the consequences could well be an explosion in the court docket and other unforeseen results. Skipping the statutory route carefully devised by Parliament can cast yet more spells of uncertainty upon the arbitration process….

15. ***NBCC (India) Limited versus Zillion Infra Projects Pvt. Ltd. decided by Supreme Court on 19.03.2024***

Reference in one contract to the terms and conditions of the other contract would not ipso facto make the arbitration clause applicable unless there is a specific mention/reference thereto

Facts

The appellant, NBCC (India) Limited is a Government of India undertaking, engaged in construction of power plants and other infrastructure projects. The respondent, M/s Zillion Infraprojects Pvt. Ltd. is engaged in the construction and infrastructure sector. The appellant issued an Invitation to tender majorly for Construction of the Weir. The Respondent submitted the bid and appellant awarded the contract for Construction of the Weir to the respondent. A dispute arose and the respondent issued a notice invoking arbitration and further seeking consent for the appointment of a former Judge of a High Court, as Sole Arbitrator. The appellant did not respond so the respondent filed an application at the High Court under Section 11(6) of the Arbitration Act. The High Court confirmed the proposed appointment of the former Judge of the Delhi High Court, as the Sole Arbitrator. Aggrieved by the orders, the appellant filed the appeals before Supreme Court.

Issue

Learned Senior Counsel *inter alia* submitted before the Supreme Court that a mere reference to the terms and conditions without there being an incorporation in the L.O.I. would not make the *lis* between the parties amenable to the arbitration proceedings. Relying on the judgment of Supreme Court in the case of *M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited*, he submitted that unless the L.O.I. specifically provides for incorporation of the arbitration clause, a reference to the arbitration proceedings would not be permitted in view of the provisions of sub-section (5) of Section 7 of the Arbitration Act.

Decision

The Hon'ble Supreme Court held that:

"when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

For details: *https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=127472021&type=j&order_date=2024-03-19*

Lesson 14 - Indian Stamp Act, 1899

1. Finance Act, 2019 amends Indian Stamp Act, 1899

Implementation of Amendments in the Indian Stamp Act, 1899 and Rules made from 1st July, 2020 for Rationalized Collection Mechanism of Stamp Duty across India with respect to Securities Market Instruments

The Amendments in the Indian Stamp Act, 1899 brought through the Finance Act 2019 and Rules made thereunder have come into effect from 1st July, 2020 vide notifications dated 30th March, 2020.

Impact

This system will help develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development.
To achieve the rationalization of stamp duty structures, the amendments, *inter-alia*, provide for the following structural reforms —

i. The stamp-duty on sale, transfer and issue of securities shall be collected on behalf of the State Government by the collecting agents who then shall transfer the collected stamp-duty in the account of the concerned State Government.
ii. In order to prevent multiple incidences of taxation, no stamp duty shall be collected by the States on any secondary record of transaction associated with a transaction on which the depository / stock exchange has been authorised to collect the stamp duty.
iii. In the extant scenario, stamp duty was payable by both seller and buyer whereas in the new system it is levied only on one side (payable either by the buyer or by the seller but not by both, except in case of certain instrument of exchange where the stamp duty shall be borne by both parties in equal proportion).
iv. The collecting agents shall be the Stock Exchanges or authorized Clearing Corporations and the Depositories.
v. For all exchange based secondary market transactions in securities, Stock Exchanges shall collect the stamp duty; and for off-market transactions (which are made for a consideration as disclosed by trading parties) and initial issue of securities happening in demat form, Depositories shall collect the stamp duty.
vi. The Central Government has also notified the Clearing Corporation of India Limited (CCIL) under the jurisdiction of RBI and the Registrars to an Issue and/or Share Transfer Agents (RTI/STAs) to act as a collecting agent. The objective is to bring OTC derivative transactions reported to CCIL and physical space (non-demat) transactions in mutual funds handled through RTI/STAs under the ambit of stamp duty regime so as to avoid any tax arbitrage.
vii. The collecting agents shall within three weeks of the end of each month transfer the stamp-duty collected to the State Government where the residence of the buyer is located and in case the buyer is located outside India, to the State Government having the registered office of the trading member or broker of such buyer and in case where there is no such trading member of the buyer, to the State Government having the registered office of the participant.

viii. The collecting agent shall transfer the collected stamp-duty in the account of concerned State Government with the Reserve Bank of India or any scheduled commercial bank, as informed to the collecting agent by the Reserve Bank of India or the concerned State Government.

ix. The collecting agent may deduct 0.2 per cent of the stamp-duty collected on behalf of the State Government towards facilitation charges before transferring the same to such State Government.

x. For many segments, there is reduction in duty. For example, the rate prescribed is lower for issue of equity/debentures and for transfer of debentures (including re-issue) to aid capital formation and to promote corporate bond market.

xi. For equity cash segment trading (both delivery and non-delivery-based transactions) and options, since rates are to be charged only on one side in line with the new scheme, it can be stated that there is an overall reduction in tax burden.

xii. Secondary market transfer of instruments which are traded with differences in a few basis points, like interest rate / currency derivatives or corporate bonds are being charged at a very lower rate from the existing rates. For the newly introduced 'repo on corporate bonds', a far lower rate is specified, since similarly positioned repo on Government Securities is not subject to duty.

xiii. No stamp duty shall be chargeable in respect of the Instruments of transaction in stock exchanges and depositories established in any International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005.

xiv. Tax arbitrage is avoided by providing the same rate of stamp duty for issue or re-issue or sale or transfer of securities happening outside stock exchanges and depositories.

xv. Mutual funds, being delivery-based transactions in securities, were supposed to have been paying the duty as per various State Acts. All mutual fund transactions are thus liable for stamp duty and the new system has only standardized the charges across states and the manner of collection of stamp duty.

The Regulators (RBI & SEBI) have been authorized by the Central Government under the Indian Stamp Act, 1899 to issue clarificatory circulars/ operational guidelines on specific issues so as to ensure smooth implementation from 1st July, 2020.

For more details visit:
https://pib.gov.in/PressReleasePage.aspx?PRID=1635399
http://egazette.nic.in/WriteReadData/2019/209695.pdf

Lesson 16: Right to Information Act, 2005

1. HN Malviya vs. CPIO, Department of Personnel and Training on 31st October, 2022 (Central Information Commission)

The Appellant filed an RTI application dated 27.01.2021 seeking the information related to seniority of employees.

The Chief Information Commission in Second Appeal decided that the Commission based on a perusal of the facts on record observes that the information sought for in the RTI Application is in the form of mere conjecture and even futuristic query, neither of which conforms to Section 2(f) of the RTI Act, yet the CPIO & FAA have tried to facilitate the Appellant adequately in keeping with the spirit of the RTI Act. The Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act.

2. Mr. Raj Kumar vs. CPIO Guru Teg Bahadur Hospital dated 31st October, 2022 (Central Information Commission)

The Complainant vide his RTI application sought information relating to salary records and DA implementation.

The CPIO furnished a pointwise reply to the Complainant. Dissatisfied with the reply received from the PIO, the Complainant filed a First Appeal, which was not adjudicated by the First Appellate Authority. Thereafter, the Complainant filed a Complaint before the Commission.

The Complainant remained absent during the hearing despite notice. The Respondent present during the hearing submitted that a suitable response in accordance with the provisions of the RTI Act, 2005, had already been furnished to the Complainant. The respondent further stated that the information sought in respect of point no. 01 will be furnished in due course.

The Central Information Commission decided that Keeping in view the facts of the case and the submissions made by the respondent and after perusal of the documents available on record, the Commission directs the Respondent to furnish complete and correct information to the Complainant, in accordance with the spirit of transparency and accountability as enshrined in the RTI Act, 2005 within a period of 21 days from the date of receipt of this order under the intimation to the Commission. The Commission cautions the then CPIO to be more careful in the future while dealing with the RTI application so that no such lapse would recur and the provisions of the RTI Act are complied with in letter and spirit.

Lesson 17 - Information Technology Act, 2000

1. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

Data privacy and protection in today's world has become a matter of Individual rights. The right to privacy is recognized as a fundamental right under Article 21 of the Indian constitution which was held in the historic verdict by the Supreme Court in the case of Justice *KS Puttaswamy v. Union of India*. India's digital transformation requires the law to transform as well. Information Technology Act, 2000 ('the IT Act') and Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, commonly known as SPDI Rules, is one of the key legislations in this area.

Under Section 87(2) read with Section 43 – A of the IT Act, "SPDI Rules" were issued on 13th of April 2011 which govern the Sensitive Personal Data or information and apply to body corporate or any person located in India.

The rules define sensitive personal data under the Rule 3 that the following types of data or information shall be considered as personal and sensitive:

- o Passwords,
- o Bank Account details,
- o Credit/debit card details,
- o Present and past health records,
- o Sexual orientation,
- o Biometric data.

An information provider is a person who provides information to the body corporate and under these rules, he has certain rights over the sensitive personal information, this information cannot be collected without the providers' consent and he or she has the right to abstain from giving consent and can withdraw the consent by writing to the body corporate.

i. Privacy Policy

Rule 4 requires a body corporate to provide a privacy policy on their website, which is easily accessible, provides for the type and purpose of personal, sensitive personal information collected and used, and Reasonable security practices and procedures.

ii. Consent

Rule 5 requires that prior to the collection of sensitive personal data, the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information.

iii. Collection Limitation

Rule 5 (2) requires that a body corporate should only collect sensitive personal data if it is connected to a lawful purpose and is considered necessary for that purpose.

iv. Notice

Rule 5(3) requires that while collecting information directly from an individual, the body corporate must provide the following information:

- The fact that information is being collected
- The purpose for which the information is being collected
- The intended recipients of the information
- The name and address of the agency that is collecting the information
- The name and address of the agency that will retain the information.

v. Retention Limitation

Rule 5(4) requires that body corporate must retain sensitive personal data only for as long as it takes to fulfil the stated purpose or otherwise required under law.

vi. Purpose Limitation

Rule 5(5) requires that information must be used for the purpose that it was collected for.

vii. Right to Access and Correct:

Rule 5(6) requires a body corporate to provide individuals with the ability to review the information they have provided and access and correct their personal or sensitive personal information.

viii. Right to 'Opt Out' and Withdraw Consent

Rule 5(7) requires that the individual must be provided with the option of 'opting out' of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time.

ix. Grievance Officer

Rule 5(9) requires that body corporate must designate a grievance officer for redressal of grievances, details of which must be posted on the body corporate's website and grievances must be addressed within a month of receipt.

x. Disclosure with Consent, Prohibition on Publishing and Further Disclosure

Rule 6 requires that body corporate must have consent before disclosing sensitive personal data to any third person or party, except in the case with Government agencies for the purpose of verification of identity, prevention, detection, investigation, on receipt of a written request. Also, the body corporate or any person on its behalf shall not publish the sensitive personal information and the third party receiving the sensitive personal information from body corporate or any person on its behalf shall not disclose it further.

xi. Requirements for Transfer of Sensitive Personal Data

Rule 7 requires that body corporate may transfer sensitive personal data into another jurisdiction only if the country ensures the same level of protection and may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

xii. Security of Information

Rule 8 requires that the body corporate must secure information in accordance with the ISO 27001 standard or any other best practices notified by Central Government, which must be audited annually or when the body corporate undertakes a significant up gradation of its process and computer resource.

2. Syed Asifuddin and Ors. vs. The State of Andhra Pradesh and Ors. Andhra Pradesh High Court, 2006 (1) ALD Cri 96, 2005 Cri. LJ 4314

In this case it was contended that Insofar as the offence under Section 65 of Information Technology Act is concerned, a telephone handset is not a computer nor a computer system containing a computer programme. Alternatively, in the absence of any law which is in force requiring the maintenance of "computer source code", the allegation that the petitioners concealed, destroyed or altered any computer source code, is devoid of any substance and therefore the offence of hacking is absent.

It was observed by the court that the essential functions in the use of cell phone, which are performed by the MTSO, is the central antenna/central transmitter and other transmitters in other areas well coordinated with the cell phone functions in a fraction of a second. All this is made possible only by a computer, which simultaneously receives, analyses and distributes data by way of sending and receiving radio/electrical signals.

3. *Google India Private Limited vs. Visakha Industries and Ors. (10.12.2019 - SC)*

In this case the Supreme Court decided that Section 79 of Information Technology Act, 2000 as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the

dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision…..

4. Law of Personal Data Protection

Digital Personal Data Protection Act, 2023 has got the assent of the Hon'ble President of India on 11th August, 2023. This law will be supplemented by delegated Legislation by way of rules to be made by Central Government.

The purpose of this law is to provide the law relating to the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

Important Definitions

- "Board" means the Data Protection Board of India established by the Central Government.

- "Data" means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means;

- "Data Principal" means the individual to whom the personal data relates and where such individual is—

  (*i*) a child, includes the parents or lawful guardian of such a child;

  (*ii*) a person with disability, includes her lawful guardian, acting on her behalf;

- "Data Processor" means any person who processes personal data on behalf of a Data Fiduciary.

- "Personal data" means any data about an individual who is identifiable by or I n relation to such data;

- "Personal data breach" means any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data;

- "Processing" in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;

- "Data Fiduciary" means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data; and "person" includes—

    (i) an individual;
    (ii) a Hindu undivided family;
    (iii) a company;
    (iv) a firm;
    (v) an association of persons or a body of individuals, whether incorporated or not;
    (vi) the State; and
    (vii) every artificial juristic person, not falling within any of the preceding sub-clauses

Application of the Act

According to section 3, subject to the provisions of this Act, it shall-
(a) apply to the processing of digital personal data within the territory of India where the personal data is collected—
    (i) in digital form; or
    (ii) in non-digital form and digitised subsequently;
(b) also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;
(c) not apply to—
(i) personal data processed by an individual for any personal or domestic purpose; and
(ii) personal data that is made or caused to be made publicly available by—
    (A) the Data Principal to whom such personal data relates; or
    (B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

Illustration. X, an individual, while blogging her views, has publicly made available her personal data on social media. In such case, the provisions of this Act shall not apply.

Digital Data Protection Act, 2023 will come into force only after notification in the Official Gazette by the Central Government which is yet to be notified.

5. Impact of Jan Vishwas (Amendment of Provisions) Act, 2023 on Information Technology Act, 2000

The Jan Vishwas (Amendment of Provisions) Act, 2023 has amended section 33, 44, 45, 46, 67C, 68, 69B, 70B, 72 and 72A of the Information Technology Act, 2000(the Act). Further section 66A has also been omitted. These amended sections have come into effect from 30th November, 2023.

Few important sections are discussed hereunder:

Penalty for failure to furnish information, return, etc. (Section 44)

If any person who is required under this Act or any rules or regulations made thereunder to–

(a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding fifteen lakh rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding fifty thousand rupees for every day during which such failure continues;

(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding one lakh rupees for every day during which the failure continues.

Residuary penalty (Section 45)

Whoever contravenes any rules, regulations, directions or orders made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a penalty not exceeding one lakh rupees, in addition to compensation to the person affected by such contravention not exceeding—

(a) ten lakh rupees, by an intermediary, company or body corporate; or

(b) one lakh rupees, by any other person.

Power to adjudicate (Section 46)

(1) For the purpose of adjudging under this Act whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation, the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for damage does not exceed rupees five crore:

Provided that the jurisdiction in respect of the claim for damage exceeding rupees five crores shall vest with the competent court.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 58, and–

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;
(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973;
(c) shall be deemed to be a civil court for purposes of Order XXI of the Civil Procedure Code, 1908.

Further, students are advised to read entry 32(Page no. 60-62) with reference to the amendments in Information Technology Act, 2000 by virtue of The Jan Vishwas (Amendment of Provisions) Act, 2023 from the link mentioned below.

For details: https://egazette.gov.in/WriteReadData/2023/248047.pdf

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Note: Students appearing in December, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by ICSI, MCA, SEBI, RBI & Central Government upto 31st May, 2024.