

# COMMERCIAL COURTS ACT

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Prathiba M. Singh

Judge, Delhi High Court

[prathiba@pmsingh.in](mailto:prathiba@pmsingh.in)

# Issues!

- Disputes-Commercial and Non-commercial
- Pendency rates in courts continues to remain very high
- Reasons:
  - Complex procedures for adjudication
  - Lack of any deterrent against seeking adjournments
  - Easy grant of adjournments
  - Timelines not adhered to at various stages of the case viz., filing of defense, filing of documents, filing of evidence, cross examination, raising of frivolous and vexatious objections etc.,

# Commercial Courts in India

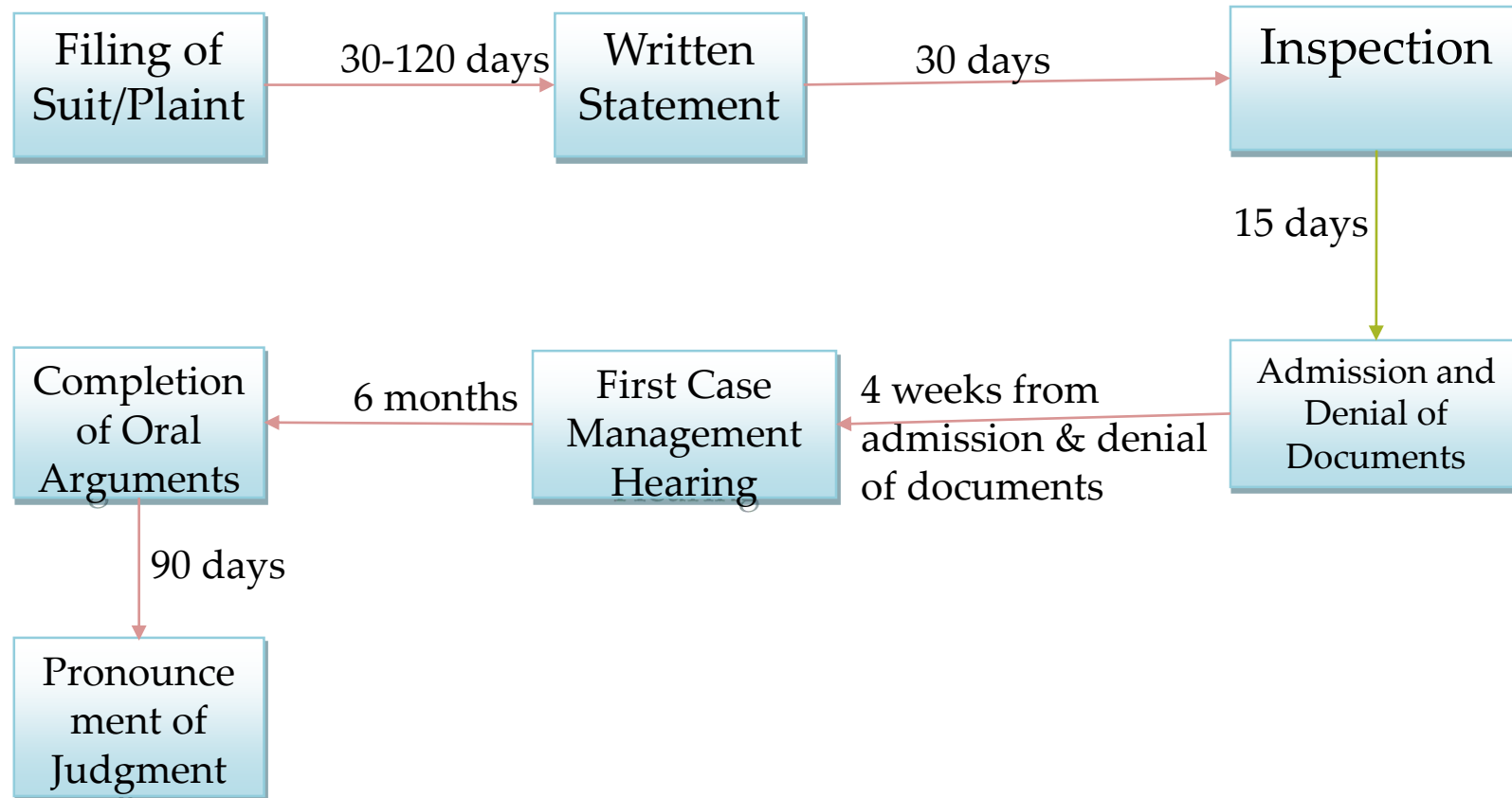
- Establishment of commercial courts not only ensures specialization in such Courts but also ensures that only one part of the judicial system deals with such cases while leaving the major resources for deciding non-commercial cases and private rights of citizens
- The 253<sup>rd</sup> Report of the Law Commission & subsequent interaction and consultation with stake holders resulted in the Commercial Court Ordinance, 2015 being promulgated
- The Act was notified w.e.f. 1<sup>st</sup> January, 2016.
- In the last one year Commercial Courts have been notified by 19 High Courts including Delhi, Bombay, Madhya Pradesh, Andhra Pradesh and Telangana, Gujarat, North-Eastern States except Sikkim, Punjab and Haryana, Chhatisgarh, Himachal Pradesh, Rajasthan, Jharkhand and Goa

# The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2016

1. Strict Timelines
2. Payment of Costs
3. Streamlined process
4. Introduction of case management hearing
5. Summary Judgment



# The Commercial Courts Act : Strict timelines



# The Commercial Courts Act: Streamlined process

- New and detailed procedures regarding:
- Payment of costs (Section 35)
- Disclosure & discovery of documents(Order XI, Rule 1,)
- Discovery by interrogatories(Order XI, Rule 2)
- Inspection of documents(Order XI, Rule 3)
- Admission and denial of documents (Order XI, Rule 4)
- Production of documents(Order XI rule 5)
- Electronic Records(Order XI rule 6)
- No adjournments for the purpose of filing written arguments (Order XVIII, Rule 3E)

# The Commercial Courts Act: Case management hearing (Order XVA)

- Court to mandatorily hold a meeting between the parties to decide upon a timeline for most important stages in a proceeding like recording of evidence, filing of written arguments, commencement and conclusion of oral arguments
- Court is authorized to pass a wide variety of orders at such case management hearing to ensure smooth and effective disposal of the suit
- Court empowered to dismiss a petition, foreclose the right to make certain pleadings or submissions or order payment of costs in the event of non-compliance of the orders passed in a Case Management Hearing.

# The Commercial Courts Act: Summary Judgment

- Akin to the existing procedure of Summary Suits (Order XXXVII, CPC)
- Principal difference : ability of parties to request for summary judgments in all commercial disputes of Specified Value irrespective of the nature of relief sought and ability to request for such summary judgment at any stage prior to framing of issues
- To ensure that all facets of natural justice are met with, both litigants are asked to provide their individual explanations including documentary evidence as to why a summary judgment should or should not be passed.
- When a Court believes that a claim or defence may succeed but it is improbable for it to do so, it can pass a conditional order against that litigant including but not limited to deposit of a sum of money



# Steps to simplify procedure & minimize delays

- Doing away with the practice of filing original documents
- Lawyers should either seek inspection or file statements to admit or deny documents
- Imposition of exemplary costs/reprimand in case frivolous arguments/issues are raised.
- Summary procedure needs to be revisited in view of the lack of discretion vested in a Judge to pass a summary judgment

# Issues and Trial

- At the stage of framing of issues, Court need not go by what is suggested by the lawyers
- Examine the issue briefly
- Frame only such issues which seriously arise
- If a party insists on a frivolous or an unmerited issue – costs can be imposed issue wise if it is decided finally against the said party on whom onus is cast
- Recordal of evidence by Local Commissioner
- Number of witnesses should be examined – too many witnesses should not be permitted
- Time limits can be fixed on cross examination
- Time limits can also be fixed for oral arguments.

# Other steps for reducing delays

- Service of summons can be undertaken by email and at last publicly known address
- Recording of statement of a party under Order X
- Admission/Denial – Before issues are framed, parties ought to be made to admit/deny documents. Frivolous denials should be treated strictly.
- Publicly available documents ought to be permitted to be exhibited unless there are serious objections.
- Marking of exhibits can be done of most documents – cut short trial
- Expert witnesses should be permitted in technical matters
- Before framing issues, mediation ought to be explored

# Other steps for reducing delays

- Since 2013, in the DHC mediation centre, 430 IPR suits have been mediated and settled.
- If an ex parte injunction is granted, when a O.39 R.4 is filed, it is not compulsory to give time to file a reply. It can be disposed off on the first day, unless court feels there is a need for reply.
- If there is gross suppression, injunction can be suspended;
- Timelines for filing Written Statement are mandatory – no extension beyond 120 days

## Gulf DTH FZ LLC v Dish TV India Ltd. & Ors (CS (OS) 3355/2015) &



## Telefonaktiebolaget LM Ericsson v. Lava International Limited

- The Delhi High Court has held in both these cases that the time for written statement is not extendible beyond the 120 days given in the Act
- Kailash Vs. Nankhu has been considered in the light of the new provisions and hence it has been held that the time is non-extendible.
- the time for filing the written statement in a commercial suit, notwithstanding the amendment to the proviso to Order V Rule 1 and the proviso to Order VIII Rule 1 of the CPC, will not get extended beyond the disposal of the application under Order VII Rules 10 & 11 CPC.

## Filing of written statement

- There is no automatic presumption that the time for filing the written statement in a commercial suit is extended up to 120 days even if the Defendant had filed an application before the Court seeking extension of time beyond 30 days. The normal time period for filing written statement even in a commercial suit is 30 days from the date of service of summons. It is only upon filing an application before a Court furnishing valid reasons can the Commercial Court extend the time for filing written statement beyond 30 days.

# Hubtown Limited v. IDBI Trusteeship Service Limited (Commercial Appeal No. 7 of 2016)

- The Appeal under Section 13 of the Commercial Courts Act is maintainable, once the Suits, Petitions Applications and Appeals are transferred and treated as commercial disputes having specified value, where the learned Commercial Division Judge has taken the decision and/or passed the "judgment" and/or "order" or "decree".
- This includes that the subject matter must be commercial dispute having valuation of more than one crore and falls within the territorial and pecuniary jurisdiction of the respective Court and/or Division and/or subject to the specific provisions like the Arbitration and Conciliation Act, read with the special statutes and the provisions so required, referred under umbrella of "commercial dispute" so defined.

# Havells Private Ltd Vs. QRG

- Division Bench of Delhi High Court has held that the provisions of Section 13 allow appeals only against such orders as mentioned in Order 43 Rule 1 CPC.
- Appeals against other orders are not maintainable in view of Section 13 (2).
- Shah Babulal Khimji of the SC where it was held that it is a matter of moment and appeals would lie against those orders which have the character of a judgement would therefore not apply to CC Act.



THE END!