

NATIONAL JUDICIAL ACADEMY



REFRESHER COURSE FOR COMMERCIAL COURTS [P-1151]

8th to 10th February, 2019

Programme Report

PROGRAMME CO-ORDINATOR

Mr. Shashwat Gupta, Law Associate

The Academy organized a three day Refresher Course for Commercial Courts which was attended by 27 judicial officers from across the country. The objective of the refresher course was to accrete knowledge base and skills of the participants in the spheres of Intellectual Property Rights, Construction and Infrastructure agreements; and Joint Venture Agreements. The course was designed to facilitate discussion on issues arising during adjudication of commercial disputes and to evolve strategies for expeditious disposal of cases.

DAY I

Session 1

Theme–Jurisprudential Charter of Commercial Courts & Commercial Courts: Contours of Jurisdiction

Speaker – Mr. Anand Desai

Chair– Justice R.C. Chavan

The speaker stated that delay in adjudicating commercial disputes has an adverse impact on the economy since it impedes flow of money in the market affecting the financial strength of the nation. Hence, the judges were advised to dispose the cases expeditiously as envisaged by the Commercial Courts Act, 2015. The speaker discussed that legislature has recently brought major changes for enhancing ease of business in India which includes:

- Enactment of the Commercial Courts Act, 2015 (hereinafter CCA) and Insolvency and Bankruptcy Code, 2016
- Amendment of the Arbitration and Conciliation Act, 1996 and Specific Relief Act, 1963

It was stated that these changes would build confidence in foreign investors and they would invest in the country with the belief that their disputes would be adjudicated within a given timeframe. The speaker also highlighted the recent increase in India's ease of doing business rankings which would be a major boost for investment in India. The speaker also discussed the system in Germany where the courts are strict while dealing with frivolous appeals in commercial matters. One of the major concerns raised during the session was that judicial officers have also been designated as the

presiding officers of a large number of other special courts which hampers quick disposal of commercial cases.

Session 2

Theme-Amendments to the Code of Civil Procedure, 1908 under Commercial Courts Act, 2015

Speaker – Mr. Anand Desai

Chair– Justice R.C. Chavan

The speaker advised the participants to strictly adhere to the timelines and to effectively implement provisions relating to interrogatories and summary judgment provided under the Code of Civil Procedure, 1908, (hereinafter CPC) as amended by the CCA. The speaker also discussed judgments of Delhi High Court wherein it was held that timelines provided under the CCA should be strictly complied. Thereafter, the speaker elaborated upon case management hearing provided under Order VA of CPC and stated that court is authorized to pass a variety of orders at such a hearing to ensure smooth and effective disposal of the suit. The speaker advised that judges should refrain from granting adjournments and should not favour advocates with the intention to become a popular judge. It was also stated that judges should impose exemplary cost if frivolous issues are raised by the parties to deter them from wasting precious time of the court.

Session 3

Theme- Interplay between Commercial Courts Act, 2015 and Arbitration and Conciliation Act, 1996 and The Commercial Courts, Commercial Division and Commercial Appellate Division Of High Courts (Amendment) Act, 2018

Speaker – Mr. Anand Desai

Chair– Justice R.C. Chavan

The speaker discussed major changes brought by the 2018 amendment in the structure of the Act including reduction in pecuniary jurisdiction of the court. The speaker also discussed the case of *Kandla Export Corporation v. OCI Corporation* [(2018) 1 SCC 742] and highlighted that an appeal would not be maintainable under CCA if it is not maintainable under Section 50 of the

Arbitration and Conciliation Act, 1996. Thereafter, the participants raised a concern regarding the pre-institution mediation process and stated that most of the mediators are not trained in mediating commercial disputes. Another concern which was highlighted in the session was that reduction in the pecuniary jurisdiction of the commercial courts has opened floodgates and the commercial courts are now facing a huge influx of cases which normally used to be filed before the civil courts.

DAY II

Session 4

Theme– Copyright and Design Disputes

Speakers – Justice Prathiba M. Singh

The speaker highlighted and discussed different intellectual property rights which permeates daily life. Subsequently, the speaker discussed the development of intellectual property rights regime and highlighted various international conventions which govern the field of intellectual property rights. The speaker focused upon the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which is the most comprehensive treaty governing intellectual property rights in the world. Thereafter, the speaker highlighted the definition of ‘literary work’, ‘musical work’, ‘performance’, ‘producer’ and ‘work’ provided under the Copyright Act, 1957 and discussed various examples which constitute infringement like downloading pirated songs, creating and selling copies of a work without authorization and performing a copyright work in public for commercial gain without payment of appropriate royalties. She also discussed the judgment of the Delhi High Court in *University of Oxford v. Rameshwari Photocopy Services* [235 (2016) DLT 409]. In response to a query, the speaker discussed the case of *Eastern Book Company v. D.B. Modak* [(2008) 1 SCC 1] and stated that there is no copyright on a judgment of a court. The speaker opined that mediation has been very successful in IPR disputes and therefore the judges should promote mediation in such matters.

Session 5

Theme– Trademark and Patent Disputes

Speakers –Justice Prathiba M. Singh and Justice Manmohan Singh

The speaker stated that trademarks distinguish the goods or services of a seller from his competitors and signify existence of a quality which is usually attributed to that seller. The speaker focused upon the definition of ‘mark’ and ‘trademark’ provided under the Trademark Act, 1999 and gave examples of numerals and colour combination which are also capable of trademark protection. Thereafter, the speaker discussed the Common Law remedy of passing off and the difference between trademark infringement and passing off. It was highlighted that in case of trademark infringement the court has to only determine whether the infringing mark is deceptively similar to the registered trademark. The territorial jurisdiction of courts in case of trademark infringement was also subject of intense deliberation during the course of the session. The speaker also discussed several cases on intermediary liability for sale of counterfeit goods. Lastly, the speaker discussed the conditions to be fulfilled by a product or process for patent protection.

Session 6

Theme – Joint Venture Agreements

Speaker – Mr. Lalit Kumar

The speaker expounded upon the concept of joint venture and the rationale behind formation of a joint venture. Thereafter, he discussed different forms of joint ventures i.e. unincorporated and incorporated joint venture. The speaker also highlighted various important terms in joint venture agreements and their relevance. The terms which were discussed included composition of board, appointment of CEO, distribution of profits, funding, deadlock resolution etc. The clause relating to role and contribution of Joint Venture partners was discussed and it was stated that the contribution of partners may include sharing of technology, management services, marketing expertise, distribution channels or financial support. It was opined that majority of disputes arising out of joint venture agreements are related to transferability of shares, non-compete clauses and

breach of representations and warranties. Thereafter, the speaker discussed various terms related to transferability of share including rights of first offer; right of first refusal; tag along rights; drag along rights; call option and put option. He also focused on clauses relating to non-solicitation and non-disclosure and highlighted their importance in an agreement.

DAY III

Session 7

Theme– Construction and Infrastructure Contracts

Speakers – Justice G.S. Kulkrani and Mr. Mohit Saraf

The speaker stated that infrastructure development is vital for growth of the economy and huge infrastructure projects generate employment for a large number of people. It was further stated that now majority of infrastructure projects are undertaken by the government under public private partnership (PPP) model. Thereafter, the speaker highlighted different types of PPP models like Build-Operate-Transfer; Build-Own-Operate-Transfer; Build-Transfer-Operate; Build-Own-Operate and Design-Build-Finance-Operate. It was also discussed that specific legislations like Airports Authority of India Act, 1994 and National Highways Act, 1956 provide for private participation. The speaker opined that the process of allowing private participation should be fair, reasonable and non-discriminatory and should satisfy the requirements of Article 14 of the Constitution. The speaker discussed that the tender process is frequently embroiled in litigation with the award of contract being challenged before the court. It was also highlighted that currently most of the banks in India have a high exposure to Non-Performing Assets and most of the large infrastructure companies are in huge debt with their projects stalled due to litigation. The speaker also focused upon the 2018 amendment to the Specific Relief Act, 1963 which prohibits granting of injunctions in situation wherein such an injunction would cause delay or impediment in the progress or completion of specified categories of infrastructure project.

Session 8

Theme– Adjudication of Disputes under the Act: Challenges and Solutions

Speaker– Justice G.S. Kulkarni

The session involved intense deliberations on various challenges faced by presiding officers of commercial courts. The major issues and suggestions which were highlighted during the course of the session were:

- Lack of ICT enablement in areas like service of summon and issue of notices.
- Lack of adequate infrastructure in commercial courts.
- Huge influx of cases due to reduction in pecuniary jurisdiction.
- Transfer of large number of cases to commercial courts.
- Failure in establishment of commercial courts in various states.
- It was suggested that lawyers should be sensitized about the procedures under the act
- Designation of existing courts as commercial courts in certain states rather than establishment of exclusive commercial courts for handling commercial matters.
- The mediators in many states are not adequately trained to resolve commercial disputes.

The speaker stated that it is important to train court staff and provide adequate hardware support for ICT enablement of courts. The speaker also discussed the issue regarding notification to be issued by State Governments for change in pecuniary jurisdiction under the CCA. It was stated that until the necessary notification is made by the concerned State Government there is no necessity for the courts to entertain cases below 1 crore. The speaker stressed upon the objective of the establishment of commercial courts and stated that even if judges face protest from the Bar, they should stick to the timelines. Lastly, the speaker opined that the participants should undertake expeditious settlement of disputes so that the image of the judiciary among the masses is changed and that there is more inflow of investment into India.
