



DSK Legal
True Value, True Values



Refresher Course for Commercial Court

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SESSION 1

Part 1

Jurisprudential Charter of Commercial Courts

OBJECTIVES OF ESTABLISHING COMMERCIAL COURTS

- In 2003, the Law Commission of India *suo moto* took up the issue of proposing the constitution of Commercial Divisions in High Courts in view of:
 - change in economic policies of the country post 1991;
 - the perception that Indian judicial system had "*collapsed*" due to inordinate delays;
 - the need for fast disposal of high value commercial disputes; and
 - the need for providing assurance to domestic and foreign investors.

OBJECTIVES OF ESTABLISHING COMMERCIAL COURTS

- In view of the global economic environment becoming increasingly competitive and to attract business at international level, it became imperative to provide speedy resolution of commercial disputes to promote ease of doing business.
- Speedy, convenient and efficient dispute resolution of commercial disputes of even smaller values is essential for creating a positive image amongst investors about the strong and responsive Indian legal system.

OBJECTIVES OF ESTABLISHING COMMERCIAL COURTS

- The Act is aimed at increasing Ease of Doing Business, which is an index of World Bank *inter alia* referring to the dispute resolution environment in a country which facilitates the investors in deciding for setting up of and operation of a business. A high Ease of Doing Business ranking would mean the regulatory environment is more conducive to the starting and operation of business in such a country.
- The World Bank's '*Ease of Doing Business*' report for 2018 depicted India has emerged as one of the top ten improver and has for the 1st time, jumped 30 positions and reached 100th rank amongst 190 countries.

COMMERCIAL COURTS IN OTHER COUNTRIES

- **UK:** Commercial Courts were established in 1895 and were recognised as a Division of High Court in 1970. A Commercial Court Committee monitors adaptation of procedures to continually changing need of commercial community.
- **USA (New York):** Commercial Division was established in 1995. A remarkable feature is the use of state of the art technology such as flat-screen monitors in jury boxes and at the counsel-table; electronic blackboards; real time court reporting; electronic projector, computer docking stations for counsel; video capability etc. New York County branch of Commercial Division includes court-annexed dispute resolution programme, which has seen immense success.
- **USA:** Commercial Courts have also been established in Delaware, Philadelphia, Maryland,

COMMERCIAL COURTS IN OTHER COUNTRIES

- **France:** There are 134 Commercial Courts in France with jurisdiction over disputes between merchants, disputes over commercial acts, controversies involving commercial corporations as well as bankruptcy proceedings. A unique feature is the Judges are elected traders, elected for terms of 2 or 4 years by an electoral college of current and former judges of commercial courts and traders delegates.
- **Scotland:** Commercial Courts deal with a wide range of cases which may include any transaction/ dispute of a commercial/ business nature including disputes about building contracts, partnership agreements and business property.
- **Other Countries:** Commercial Courts also exist in Philippines, Pakistan, Poland, Ukraine, Kenya.

SESSION 1

Part 2

Commercial Courts: Contours of Jurisdiction

JURISDICTION OF COMMERCIAL DIVISIONS OF HIGH COURTS

- **Section 6 - Jurisdiction of Commercial Court**

- The Commercial Courts shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.
- *Explanation.*-- For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908) ("**CPC**").

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JURISDICTION OF COMMERCIAL DIVISIONS OF HIGH COURTS

- Suits and applications relating to commercial disputes of a specified value filed before High Courts having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court.
 - Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court.
- Further, all suits and applications transferred to the High Court by virtue of Section 22(4) of the Designs Act, 2000 or Section 104 of the Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court.

SPECIFIED VALUE – UNIFORMITY ACROSS ALL STATES

- The Act stipulates a uniform pecuniary value of Rupees Three Lakhs, which was reduced from a value of Rupees One Crore by the 2018 Amendment to the Act.
- This amendment was brought about with an intention to enable parties to approach the lowest level of subordinate Courts for speedy resolution of commercial disputes.

DETERMINATION OF SPECIFIED VALUE

- The Specified Value shall be determined in the following manner:
 - in cases for recovery of money: the money sought to be recovered, including the interest, if any, computed up to the date of filing;
 - in cases relating to moveable property: the market value of the moveable property as on date of filing;
 - in cases relating to immovable property: the market value of the immovable property as on date of filing; and
 - in cases of any other tangible right: the market value of the said right as estimated by the Plaintiff.

COMMERCIAL DISPUTE

- A 'Commercial Dispute' has been defined in a wide manner in Section 2(c) of the Act. The list is exhaustive.
- Further, a Commercial Dispute would not cease to be one merely because:
 - It involves action for recovery of immovable property, or for realization of monies out of immovable property given as security, or any other relief involving immovable property;
 - One of the contracting parties is the State or its agencies or instrumentalities, or a private body carrying out public functions.

BAR AGAINST REVISION APPLICATIONS OR PETITIONS AGAINST INTERLOCUTORY ORDERS

- No civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction.
- Any such challenge, subject to Section 13 of the Act, shall be raised only in an appeal against the decree of the Commercial Court.
- As per the 253rd Law Commission Report, the purpose here is to prevent the time frames stipulated for case management hearing from becoming redundant by the frequent filing of civil revision applications and petitions against every interlocutory order. By removing a potential source of bottleneck of cases, the Act seeks to ensure expedited disposal of cases.

STRICT TIMELINES

- The legislative intent of enforcement of strict timelines under the Act has been upheld by the Delhi High Court in *Oku Tech Private Limited vs. Sangeet Agarwal & Ors.* and in the case of *Gulf DTH FZ LLC vs. DishTV India Limited*. It was upheld that Commercial Courts do not have discretionary power to grant additional time in excess of what has been provided under the Act to file a Written Statement *viz.* 120 days. It was emphasized that provisions of the Act must be strictly complied with and any additional delay cannot be condoned by the Court.

STRICT TIMELINES

- The Hon'ble Delhi High Court has recently in *Roland Corporation vs Sandeep Jain* laid down a time limit for completing oral arguments by the Plaintiff.
- This power is derived from Order XV-A, Rule 2 (a) and (g).

SESSION 2

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

COSTS

- Section 35 of the Code of Civil Procedure, 1908 has been substituted by the Amendment of 2018.
- In relation to any commercial dispute, the Court has the discretion to determine:
 - whether costs are payable by one party to another;
 - the quantum of the costs; and
 - when they are to be paid.

COSTS

- “*Costs*” shall mean reasonable costs relating to fees/ expenses of witnesses incurred; legal fees/ expenses incurred; and any other expenses incurred in connection with the proceedings.
- If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

COSTS

- In making an order for payment of costs, the Court shall have regard to:
 - the conduct of parties;
 - whether the party has succeeded on part of its case even if that party has not been wholly successful;
 - whether the party has made a frivolous counter claim leading to a delay in the disposal of the case;
 - whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and
 - whether the party made a frivolous claim and instituted vexatious proceeding wasting the Court's time.

COSTS

- The orders which the Court may make under this provision include an order that a party must pay:
 - a proportion of another party's costs;
 - a stated amount in respect of another party's costs;
 - costs from or until a certain date;
 - costs incurred before proceedings have begun;
 - costs relating to particular steps taken in the proceedings;
 - costs relating to a distinct part of the proceedings; and
 - interest on costs from or until a certain date.

DISCLOSURE, DISCOVERY AND INSPECTION

- The Plaintiff shall file a list of all documents and photocopies in its power, possession, control or custody pertaining to the suit, specifying whether such documents are original, office copies or photocopies and must state in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.
- The plaintiff shall also contain a Statement of Truth from the plaintiff that all documents in the power, possession, control or custody pertaining to the facts and circumstances of the proceedings have been disclosed and copies thereof annexed with the plaint and that the plaintiff does not have any other documents in its possession.

DISCLOSURE, DISCOVERY AND INSPECTION

- In case of urgent filings, the plaintiff may seek leave to rely on additional documents and shall file them within 30 days of filing the suit, along with a declaration on oath.
- No plaintiff will be allowed to rely on documents which were not disclosed, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for such non-disclosure.
- The plaint shall set out details of documents which the plaintiff believes to be in its power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof.

DISCLOSURE, DISCOVERY AND INSPECTION

- The same rules apply to the defendants in relation to the written statement/ counter claim.
- The duty to disclose documents continues till the disposal of the suit.
- The plaint shall set out details of documents which the plaintiff believes to be in its power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof.
- Parties have the option to, with leave of the court, deliver interrogatories in writing for the examination of opposite parties.

DISCLOSURE, DISCOVERY AND INSPECTION

- Parties must complete inspection of documents within 30 days of filing written statement. This time limit may be extended by the Court.
- A party may seek direction at any stage, for the inspection/ production of documents by the other party of which inspection has been refused or documents have not been produced despite of notice to produce. Such an application must be disposed within 30 days of its filing.
- If such an application is allowed, inspection and copies of the documents must be provided within 5 days of such order.

DISCLOSURE, DISCOVERY AND INSPECTION

- Every party, within 15 days of completion of inspection must file a statement of admission and denial pertaining to the correctness of contents, existence, execution issuance/ receipt and custody of the document, alongwith an affidavit in support thereof.
- Reasons for denial of a document must be provided by a party.
- In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance. At the discretion of parties, copies of electronic records may even be furnished in electronic form in lieu of or addition to printouts.

DISCLOSURE, DISCOVERY AND INSPECTION

- Where electronic documents form part of documents on record, the declaration of oath filed by the party must specify:
 - Parties to the electronic record;
 - Manner in which such record was produced and by whom;
 - Date and time of preparation/ storage/ issuance/ receipt of such record;
 - Source of such record and date and time when the record was printed;
 - In case of email ids, details of ownership, custody and access to such email ids;
 - In case of document stored on computer/ computer resource, details of ownership, custody and access to such computer/ computer resource;
 - Deponent's knowledge of contents and correctness of contents;
 - Whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored.

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SUMMARY JUDGEMENT- SCOPE, STAGE, GROUNDS

- Certain claims may be decided by the Court without recording oral evidence (including part of claim, question on claim, or a counter claim).
- An application for summary judgement cannot be made in a suit in respect of any commercial dispute originally filed under Order 37 of the CPC. The application may be made at any time after service of summons but not after framing of issues.
- The Court may give summary judgment if it considers:
 - plaintiff/ defendant has no real prospect of succeeding on/ defending the claim, as the case may be;
 - there is no other compelling reason why the claim should not be disposed of before recording oral evidence.

SUMMARY JUDGEMENT- PROCEDURE

- The Act lays down the procedure for making a summary judgment application and sets out in details the contents that such an application must contain.
- When the hearing for a summary judgment is fixed, the respondent is to be given 30 days notice of the date of hearing and claim that is proposed to be decided during the hearing.
- The respondent may file a reply within 30 days of receipt of notice *inter alia* precisely disclosing material facts, identifying the point of law, and stating the reasons why no relief under should be granted.

SUMMARY JUDGEMENT- EVIDENCE AND ORDERS

- The respondent may file additional documents and the applicant may also file additional documents in reply to respondent's additional documentary evidence.
- The Court may make reasoned orders on an application including:
 - judgment on the claim;
 - conditional order as per Order XIII A- Rule 7;
 - dismissing the claim;
 - striking out pleadings;
 - directions to proceed with case management hearing.
- The Court has further powers to pass conditional orders and impose costs in such applications.

SUMMARY JUDGEMENT IN SANDISK

- The Delhi High Court in *Sandisk Llc vs. Memory World*, allowed a suit for permanent injunction restraining use of the plaintiff's registered trademark. The Court in this case, was of the opinion that the defendant had no real prospect of defending the claim and no other compelling reason appeared as to why the claim of the plaintiff should not be disposed of. An order was accordingly passed under Order XIII A of the Act without recording evidence.

CASE MANAGEMENT HEARING- ORDERS & TIME LIMITS

- Within 4 weeks of filing affidavit of admission/ denial by parties, the Court shall hold Case Management Hearing. The Court after hearing parties, and on finding that issues of fact and law are required to be tried, may pass an order:
 - framing issues;
 - listing witnesses to be examined;
 - Fixing dates for filing of affidavit of evidence, recording of evidence, filing of written arguments, conducting oral arguments and setting time-limits to address oral arguments.
- Court must ensure arguments are closed within 6 months of 1st Case Management Hearing. Recording of evidence must be on a daily basis.

CASE MANAGEMENT HEARING- POWERS OF COURT

- The Court has been given extensive powers for managing Case Management Hearing to ensure a speedy trial.
- Case Management Hearings shall not be adjourned in the event advocate for a party is not present without seeking advance adjournment.
- Failure to comply with orders gives the Court power to:
 - condone non compliance by payment of costs;
 - foreclose party rights to file affidavit, conduct cross examination, file written submissions, address oral arguments or address further arguments in trial;
 - dismiss/ allow suit where default is wilful, repeated and cost imposition is not adequate to ensure compliance.

SESSION 3

Part 1

Interplay between Commercial Courts Act, 2015 and Arbitration and Conciliation Act, 1996

JURISDICTION IN ARBITRATION MATTERS

- Where subject matter of an arbitration is a commercial dispute of specified value and:
 - in case of international commercial arbitration, appeals/ applications filed under A&C Act in a High Court shall be heard and disposed of by Commercial Division of such High Court;
 - in cases other than international commercial arbitration, appeals/ applications filed under A&C Act in the original side of the High Court shall be heard and disposed of by Commercial Division of such High Court;
 - in cases other than international commercial arbitration, appeals/ applications under A&C Act that would ordinarily lie before principal civil court of original jurisdiction in a district shall be filed in, heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where Commercial Court has been constituted.

APPEALS

- Appeal from an order of Commercial Court below District Judge level will lie before Commercial Appellate Division and must be filed within 60 days of such order.
- Appeal from an order of Commercial Court at District Judge level exercising original civil jurisdiction or as the case may be, Commercial Division of the High Court will lie before Commercial Appellate Division of that High Court and must be filed within 60 days of such order.
- No appeal shall lie from any order/ decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Act.
- The Commercial Appellate Court and Commercial Appellate Division shall endeavour to dispose appeals within 6 months from date of filing such appeal.

APPEALS

- Pre 2018, the Supreme Court had in *Kandla Export Corporation & Anr. Vs. M/s OCI Corporation & Anr.*, re-affirmed its commitment to the enforcement of foreign awards by reiterating that an appeal in cases of foreign awards would only apply on the grounds set out in Section 50 of the A&C Act and specifically, no appeal would proceed to the Commercial Appellate Division if it is against an order rejecting the objections to enforcement.

TRANSFER OF PENDING CASES

- All suits/ applications (including those pending under A&C Act) pertaining to commercial disputes of a specified value pending in a High Court where Commercial Division has been constituted or in any Civil Court in any district/ area in respect of which Commercial Court has been constituted, shall be transferred to such Commercial Division or Commercial Court respectively,
 - Provided that no suit/ application where final judgement has been reserved by the by the Court prior to constitution of the Commercial Division/ Commercial Court, shall be so transferred.
- In case of such a transfer, provisions of the Act shall apply to those procedures that were not complete at the time of such transfer.

TRANSFER OF PENDING CASES

- For speedy and efficacious disposal of a transferred suit/ application, the Commercial Division/ Commercial Court may hold case management hearings to prescribe new timelines or issue further necessary directions;
 - provided that Order V Rule1(1) of the CPC shall not apply to such transferred suits/ applications and the Court may, at its discretion, prescribe new timelines for filing written statement.
- In the event a suit/ application is not so transferred, the Commercial Appellate Division of the High Court may on application by any party, withdraw such pending suit/ application and transfer the same for trial/ disposal to the Commercial Division/ Commercial Court, as the case maybe, having territorial jurisdiction over such suit. Such an order for transfer shall be final and binding.

SESSION 3

Part 2

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018

2018 AMENDMENT- OBJECTIVES

- The Amendment of 2018 sought to achieve the following:
 - to reduce specified value of commercial disputes from Rs. One Crore to Rs. Three Lacs, and to enable parties to approach the lowest level of subordinate courts for speedy resolution of commercial disputes;
 - to enable the State Governments, with respect to High Courts having ordinary original civil jurisdiction, to constitute commercial courts at District Judge level and to specify such pecuniary value of commercial disputes which shall not be less than Rs. Three Lacs and not more than the pecuniary jurisdiction of the district courts;

2018 AMENDMENT- OBJECTIVES

- to enable the State Governments, except the territories over which High Courts have ordinary original civil jurisdiction, to designate such number of Commercial Appellate Courts at District Judge level to exercise appellate jurisdiction over the commercial courts below the district judge level; and
- to provide for compulsory mediation before institution of a suit, where no urgent relief is contemplated and for this purpose, to introduce Pre-Institution Mediation and Settlement Mechanism and Settlement Mechanism and to enable State Governments to authorise authorities constituted under the Legal Services Authorities Act, 1987 for this purpose.

THANK YOU

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