

NATIONAL JUDICIAL ACADEMY



P-1293: REFRESHER COURSE FOR COMMERCIAL COURT JUDGES

16th & 17th April, 2022

Coordinators

**Dr. Amit Mehrotra, Assistant Professor & Mr. Yogesh Pratap Singh, Research Fellow
Faculty, National Judicial Academy**

PROGRAMME REPORT

The National Judicial Academy organized a two-day *online* Refresher Course for Commercial Court Judges on 16th & 17th April, 2022 for capacity building of judges to facilitate expeditious disposal of commercial disputes. The programme was conceived to facilitate deliberations among participant judges on contemporary issues and recent developments in commercial disputes. It provided a forum for discussing normative issues pertaining to the Jurisprudential Charter of commercial Courts, Interplay between Commercial Courts Act, 2015 and the Arbitration and Conciliation Act, 1996, Joint Venture Agreements and on IPR Disputes under Commercial Courts. The course facilitated discussion on issues and problems arising during adjudication of commercial disputes and identified measures to deal with them. A brief snapshot of the scheme of the course spread over the duration of 2 days was:

Day-1

Session 1 - Commercial Courts: The Policy Framework and Operative Challenges.

Session 2 - Commercial Courts vis-à-vis Arbitration & Interpretation of Contracts under the Act.

Day-2

Session 3 - Joint Venture Agreements: Definition, Disputes & Resolution

Session 4 - IPR Disputes under Commercial Courts

Day 1

16th April 2022

Session 1

Theme:

Commercial Courts: The Policy Framework and Operative Challenges

Panel: Justice Senthilkumar Ramamoorthy & Mr. Mohit Saraf

The policy objectives of setting up of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (herein after the CC Act) was discussed. It was delineated that delays and pendency of economic cases are high and mounting in the Supreme Court, High Courts, Economic Tribunals, and Tax Department, which is taking a severe toll on the economy in terms of stalled projects, mounting legal costs, contested tax revenues, and reduced investment more broadly. It was emphasized that ease of doing business and enforcement of contracts are very relevant for economic growth. Efficient enforcement of contracts will make the society law abiding and reduce frivolous litigation. It was stated that the aim of the CC Act is to provide for speedy disposal of high value commercial disputes. The other objective of the CC Act is to accelerate economic growth and improve the international image of Indian justice delivery system. It was emphasized that disposal of the commercial dispute within a reasonable time frame is very important for ease of doing business.

It was highlighted that commercial courts were set up to expedite the disposal of commercial dispute and intended to be a pilot project. It was emphasized that if such a step is successful, it may be extended to other civil disputes. However, it was iterated that the judges of the civil courts are transferred to the commercial court for some time period and then gets reverted to its original civil courts. It was opined and suggested that the limited resources of court system are to be distributed equitably and proportionally.

Section 2 (1) (c) which defines the nature of commercial disputes was discussed. It was stated that Share purchase agreement will not come under the ambit of commercial dispute. It was stated that the amendment to the CC Act deters the parties to come up with frivolous and vexatious claims by empowering judges to impose heavy actual costs on the unsuccessful party. Consequences of deliberately delaying and not filling of written statement were deliberated upon in the light of *Salem Advocate Bar Assn. (II) v. Union of India*, (2005) 6 SCC 344. It was iterated that if a party seeks to file additional documents, then court has to examine the reasonable cause.

Section 12A of the CC Act, Pre-Institution Mediation and Settlement was discussed during the discourse. It was emphasized that settlement agreement resulting out of such mediation will have force of a consent based arbitral award. However, it was iterated that CC Act allows the parties to essentially bypass pre-institution mediation by filing applications for urgent interim relief. The conflicting judgments of various High Courts as to whether pre-institution mediation under section 12-A is mandatory or not was discussed. The circumstances under which the summary judgments were pronounced without recording oral evidence was deliberated upon. With reference to the mandatory disclosure, it was iterated that plaintiff is required to go through all the documents in their possession pertaining to the subject matter of the suit, whether in support of or adverse to his case and make a declaration with respect thereto on oath. With regard to verification and statement of truth it was emphasized every pleading in a Commercial Dispute shall be verified by an affidavit as prescribed in the Appendix to the Schedule to the CC Act, which contains the "Statement of Truth". It was highlighted that where a pleading is not verified in the manner provided, the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

It was delineated that CC Act recognizes strict timeline as essence to justice delivery. It was emphasized that dispensation of justice should be cost effective. The intricacies, nuances and benefits of case management hearing was discussed. It was iterated that case management hearing required to be held by the Court within 4 weeks of filing of Statement of Admission & Denials. It was emphasised that if case management hearings are followed meticulously, it would help courts use their time more efficiently. It was delineated that the Court can deliver early judgment on agreed, admitted or uncontested questions wherever possible, thereby greatly reducing the caseload.

It was mentioned that there is no civil revision application/petition lies against any interlocutory order of a Commercial Court and any such grievance against the order may only be raised in appeal against the final decree but such interlocutory orders can still be assailed under Article 227 of the Constitution, under which a High Court can exercise superintendence powers over all courts and tribunals under its territorial jurisdiction. However, it was also remarked that it is a settled principle of law that the power of High Court under Article 227 cannot be used to alter findings or rulings of a subordinate court or tribunal, merely because the High Court might have arrived at a different conclusion. Comparison between Real Estate Regulatory Authority (“RERA”), Adjudicating Officer, Consumer Courts, and Commercial Courts was discussed during the discourse. The judgements *Hindustan Unilever Limited Ponds House v. S. Shanthi*, 2021 SCC OnLine Mad 5428, *Shah Babulal Khimji v. Jayaben D. Kania*, (1981) 4 SCC 8, *SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. and Ors*, (2019) 12 SCC 210 and *Salem Advocate Bar Assn. v. Union of India*, (2003) 1 SCC 49 were also formed the part of the discussion.

Session 2

Theme:

Commercial Courts vis-à-vis Arbitration & Interpretation of Contracts under the Act.

Panel: Justice M. Sundar & Mr. Tejas Karia

Deliberating on determination of jurisdiction under the CC Act, attention was drawn to sections 6 & 7 of the CC Act. It was stated that the interpretation of the phraseology in sections 6 and 7 indicates that 'Commercial Dispute' and 'Specified Value' should be read conjunctively and both conditions under section 2(1)(c) 'Commercial Dispute' and section 2(1)(i) 'Specified Value' have to be fulfilled. The meaning of commercial disputes within the scope of section 2 (1) (C) of the CC Act was further examined & discussed. It was pointed out that the Act adopted an expansive definition of the term 'commercial dispute' through an exhaustive list of 22 standard commercial transactions that may form the subject of commercial disputes. Section 12-A of the CC Act was examined & discussed. Aims & objectives of the CC Act *viz.* to ensure speedy disposal of high value disputes, accelerate economic growth and to improve the faith of investor world in the legal culture of the nation were also discussed. Following important Amendments to Civil Procedure Code and its impact were highlighted in the session;

Order V- Issue and Service of Summons

Order VI- Pleadings

Order VII- Plaint

Order VIII- Written Statement

Order XI- Fully Substituted Discovery, Disclosure and Inspection of documents and etc

Order XIII A- Inserted Summary Judgment

Order XVA- Inserted Case Management Hearing

Order XVIII- Certain Rules have been amended/inserted Hearing of suits and Examination of Witnesses

Order XIX- Inserted new Rules Affidavits and Order

XX- Substituted Judgment and Decree.

Challenge to the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after AC Act) was discussed. It was iterated that an application under Section 34 of the AC Act is mere a challenge and will not come under the ambit of appeal or review. Appointment of the arbitrator and arbitration agreement was discussed in the light of *Datar Switchgears Ltd. v. Tata Finance Ltd.*, (2000) 8 SCC 151. Salutary principles and sublime philosophy underlying Section 34 was further elaborated. The CC Act with respect to IPR disputes was also discussed. Determination of jurisdiction to try Trade Mark suits by the Commercial Court under Section 6 read with section 2(1)(xvii) and section 2(1)(i) of the CC Act was discussed under following heads;

Classification of Goods and Services under Trade Mark Law;

Infringement and passing off;

Legal User Certificate; and

Well Known Trade Marks.

A number of judicial precedents were refereed and formed part of the discussion.¹ The session concluded with Q&A and discussion.

¹ M/s Kandla Port v. OCI (2018) 4 LW 204, Simplex Infrastructure Ltd. v. Union of India (2019) 2 SCC 455, Emkay Global Financial Services Ltd. v. Girdhar Sondhi (2018) 9 SCC 49, State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti (2018) 9 SCC 472, Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Ors., (2017) 7 SCC 678, Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131.

Day 2

17th April 2022

Session 3

Theme:

Joint Venture Agreements: Definition, Disputes & Resolution

Panel: Justice Rajeev Ranjan Prasad & Mr. Lalit Kumar

Referring the case of *New Horizons Ltd. s Union of India (1995) 1 SC 478*, the expression joint venture (hereinafter JV) was explained. It was stated that JV connotes a legal entity in the nature of partnership engaged in a joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. The types of JV viz. equity joint ventures and non-equity collaborative arrangements were explained. It was pointed out that in equity joint ventures two or more than two persons/parties come together to form a business entity and the same is owned jointly and in non-equity collaboration, alliances do not involve direct profit or equity sharing, it does not require creation of a separate entity either. Forms of JV viz. incorporated and unincorporated was explained. Important concepts & common terminologies under JV such as transferability of shares, deadlock, representations and warranties, indemnity etc were also explained in the session.

Deliberating on common legal issues in JV, it was elaborated that in most of the cases it has been seen that a participant of the joint venture who has been contributing towards goods, services, capital or technology to a joint venture will have a *conflict of interest* to a greater or a lesser extent, insofar as the contributing party will naturally seek to protect its legal and commercial interests *viz-a-viz* the JVC.

The other parties to the joint venture will seek to ensure an appropriate term for the benefit of the JVC.

Brief reference to some of the case laws was made in which the collaboration agreements were examined

by the Supreme Court, the High Court, the Company Law Board, the NCLT and the Commercial Court to find out as to whether the collaboration agreement is in the nature of a JV.²

On issue of disputes among the shareholders *inter-se* and resolution thereof, it was explained that in a joint venture sometimes a dispute arises between the two participants or among the more than two participants. It has been noticed that in some of the cases while the shareholders agreement contains an arbitration clause but the same is not incorporated in the article of association of the Joint Venture or it may be a case where arbitration clause is duly incorporated in the article of association but one of the shareholder file petition before a forum other than an Arbitral Tribunal.

² Bunga Denial Babu Vs. Vasudeva Construction and others (2016) 8 SCC 429; Faquir Chand Gulati vs. UPPAL Agencies (P) Ltd. (2008) 10 SCC 345; New Horizon Ltd anr. v. Union of and India and Others (1995) 1 SCC 478.

Session 4

Theme: IPR Disputes under Commercial Courts

Panel: Justice C.V. Karthikeyan & Mr. Somasekhar Sunderasan

Pre-mediation efforts in resolving IPR commercial disputes was emphasized upon. Scope of interim relief and issue of injunctions to protect the rights of the aggrieved person by the district judiciary was discussed. The legal governance structure of IPR dispute was elaborated upon. It was iterated that Intellectual property rights includes trademark, copyright, trademark, design etc. Parameters and other nuances of the commercial disputes in reference to the infringement of IPR rights was discussed. Quick, fair and speedy resolution of IPR commercial disputes is the need of contemporary times. It was suggested that timelines need to be strictly followed while adjudicating a commercial dispute. Pre institution mediation between the parties, Pre-litigation mediation was deliberated upon. The conflicting views of the High for pre institution mediation to be as a mandatory or discretionary process was dwelt upon. It was stated that the Madras High Court has observed that infringement of trade mark /copyright is a statutory right and there should not be another forum to decide the case, whereas the Calcutta High Court observed that case should go for pre-mediation process. It was opined that pre-mediation process should be looked into case-to-case basis. It was emphasized that in a commercial dispute when temporary injunction is sought, it requires immediate attention and judicial discretion is very important during that process. It was highlighted that disposing of interim application be disposed of expeditiously. Any suit or injunction on intellectual property right revolves around the grant or non-grant of interim injunction. The intricacies and parameters of Order 39 CPC for awarding temporary injunction was deliberated upon. With reference to the awarding of cost the Supreme Court judgment of *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 was referred and deliberated upon. Order 11 of the CPC and its amendments was emphasized upon. Specific time line for the inspection of the documents and submission of the written statement was discussed. The nuances on the admission of the documents and adverse inference on non-production of the evidence in the light of The Indian Evidence Act, 1872 was emphasized upon. The concept of temporary and perpetual injunction under Section 36 and section 37 of the Specific Relief Act, 1963 was deliberated upon.

Test of admissibility of the documents as evidence was discussed that includes relevancy and genuineness of the document. In reference to IPR dispute and admissibility of electronic documents the requirement of section 65 B certificate of the Information Technology Act, 2000 and the law laid down by the Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1 was discussed. It was suggested that a judge should make their schedule with respect to case management, proceeding with the case and delivering of the judgment which may be within 90 days from conclusion of arguments. It was stated that judgments should not be reserved for long and should be pronounced as early as possible. Pecuniary and territorial jurisdiction in reference to the IPR commercial dispute was elaborated upon. The session concluded with Q&A and discussion.

*****X*****X*****