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FROM THE DESK OF CHIEF EDITOR

THE MALADY OF ADJOURNMENTS

The case *Arjun Gopal vs Union of India* was being argued before the bench of Justice M.R.Shah in the Supreme Court on April 19, 2022. This matter pertained to ban of firecrackers. The bench felt that one of the reasons for pendency of cases was the frequent adjournment requests made by lawyers. It was reported that Justice Shah was alleged to have said: *If we don't grant time we aren't liked, but we are least concerned whether we are liked, we don't want to work according to certificate of others, as per our conscience we should work*. It was further added that every day 5-6 adjournment letters are filed on the ground of personal difficulty. We cannot ask, as to what is the personal difficulty. It is apparent that these observations of the Hon'ble Judge were prompted by his serious concern regarding frequent adjournments and heavy pendency.

This is indeed a matter of concern both for the Bar and the Bench. The Bar and the Bench are the two wheels. Both wheels must move in coordination and cooperation. Without this, the smooth operation of the justice delivery system is interrupted and dented. Therefore, this matter demands thoughtful consideration. It is a matter of common knowledge that some courts grant adjournments easily and liberally. Equally, there are some courts which do not grant adjournments so easily. I would like to share my own experience at the Bar in this context. Lawyers normally (exceptions apart) do not make requests for adjournments in those courts in which they know that the adjournment will not be granted. Consequently, the lawyers come prepared to argue the cases. It is true that the lawyers take the liberty of making the requests for adjournments rather frequently in those courts where they feel that they would be accommodated. This should not happen. Though it does happen.

It is a matter of common concern that the environment in the court should be such where in the lawyers should be able to give their very best. At the same time, the judges should also be able to extract the maximum from the lawyers. The court craft is two way traffic. There must be smooth flow of traffic on both sides. No traffic jams or hurdles. There must be a clear understanding on the part of the members of the Bar that adjournments should not be asked, for the asking. A request for an adjournment does halt the adjudication process. It is time consuming. It is also judicial time wasting. It must be avoided under all circumstances. I am conscience of the fact that adjournments are asked to delay the judicial process. This is unhealthy practice. It must be realized that if today you are making a request for adjournment, tomorrow in some other matter the opposite counsel may make a request for adjournment. Thus, the entire lawyer fraternity must realize the consequences of such practices. Such practices are denting the justice delivery system.

It should also be equally the concern of the Bench. The request for adjournment should be considered most sparingly. More so, no adjournments on the same day. The normal flow of judicial work must continue. What is genuinely bothering my mind is the observation of the Hon'ble Judge: We are least concerned, whether we are liked or not. We do not work on the basis of certificate of others. This kind of feeling should never generate with the Bar and the Bench. If some Hon'ble Members of the Bench feel this, it would certainly be counterproductive. This would disturb the atmosphere within the court. Neither the lawyer would be able to assist the court meaningfully and in a wholesome manner. Nor the judge would be comfortable. So that he could apply his judicial mind judiciously with utmost neutrality. If the judge has a feeling that he is not liked, will this feeling not shake the objectivity of his mind? Should such a feeling be allowed to creep in? Will this not disturb the balance between the Bar and the Bench? The members of the Bar would feel that they are not welcome in this court. The judges would feel that it is not their concern whether they are liked or not. This feeling itself is disturbing. It is the right of the judge to say firmly 'No' to an adjournment. This is the end of the matter. Why should the judge feel that he is not liked. More so, when the judge is uniform in declining the request. Believe me, many lawyers themselves do not like seeking adjournment. Equally, they hate when such requests are made by other lawyers. This is a disease. It is infection which spreads. In fact, some lawyers join hands together. In this case, please do not oppose my request for adjournment. I promise, I will not oppose your request for adjournment. This is most unhealthy practice. Judges must curb such practices. They, in fact, would be liked. This approach of judges must be uniform. The lawyers will go very well prepared with the case knowing well that it will not be adjourned. No one should ever entertain a feeling that they are not liked either by the Bar

or by the Bench. This would bring in positivity on both sides. This is the foundation of justice delivery system. Positive minds are most productive. Neutral minds shift negative elements of the case from positive aspects. Better quality of justice becomes possible. The goal of the lawyer is to effectively assist the court.

There is still another aspect to it. The senior counsel is busy in another court. Accordingly, a request is made to pass over or to adjourn the matter. The junior counsel making the request is asked to start with the case and the senior would join after finishing the arguments in another court. Invariably, the junior lawyer is not prepared with the case. He would say, I have no instructions to argue the matter. This again is an unfortunate situation. The junior counsel seldom gets the opportunity to argue the matter. In this process, even when he gets an opportunity, he is not prepared to avail the same. This is double jeopardy. I strongly feel that each senior counsel owes a responsibility to nurture a team of young lawyers. Once the senior allots a case to a particular lawyer of his team, it becomes his responsibility. The senior needs to ensure that the instructing counsel must be thoroughly prepared with the case. He should be so well prepared that in case, he is required to argue the matter, he must be in a position to argue the same. Normally, the instructing counsel do not work on the case because they feel that they will not get the opportunity to argue the matter. This is a negative approach. Even if the case is not to be argued by the junior counsel, still full effort must be put in. This effort is not a wasteful exercise. Firstly, if the counsel is thorough with the case, he would be able to assist the senior counsel effectively as it ought to be. Secondly, the office of the senior is a laboratory for the junior counsel. Right from the initial stage of taking the factual canvas from the client to the conference with the senior and preparing the petition becomes the duty of the junior counsel. The junior counsel even prepares the case note for the senior. Thus, the junior counsel is to be mentally prepared to argue the case in case the senior is held up in some other court. Thus, each case is a practical training for the junior counsel. The junior counsel is to work as if he is the future senior. It is a learning experience. Gradually, each case prepares you to get maturer and maturer. Many junior counsel have a different approach. They do not prepare. Also they are not thorough with the case because they believe that they are not to argue the matter. This approach is damaging. Even years and sometimes decade or decades will not result in maturing and handling the cases independently by the lawyer. Judges always encourage the young lawyers. They give them the opportunity to argue. No one is a born lawyer. The best of lawyers never missed the opportunity. Having got the opportunity, they made the best use of it. The life journeys of Nani Palkhivala, Kanhaiya Lal Misra, Ram Jethmalani and Fali S.Nariman are demonstrative of this. The young lawyers need to change their mind set. There is no substitute for diligence. In

turn, the junior counsel would not be making only requests for adjournments. They, in fact, would help the system in curbing the malady of adjournments. Even the client when he sees that the junior performed so well, he would not mind in future if the junior could assist the court. Only in such situations where the senior was in actual difficulty. I would like to add a caveat. The judges in such cases would show one indulgence. If they are allowing the petition in favour, the credit would go to the junior. Additionally, it would inspire the junior counsel to strive still harder. On the other hand, in case, the petition is to be dismissed, the opportunity may be given to the senior to address the court only on the issue on which the court is not in agreement with the junior counsel. In fact, this kind of limited opportunity is already being given by the judges to the senior counsel. Such indulgence would go a long way. It would encourage the senior to depend upon the junior in case of difficulty. It would also help the junior to perform and to undertake such opportunity seriously more often. This practice would be healthy. It would also reduce the frequency of adjournments. At the end of the day, the lawyers must do their very best for their clients. At the same time, the lawyers need to realize that they owe responsibility to assist the court effectively. If the case is still lost, it is not lost because the lawyer did not perform. The clients would also realize that their lawyer had done their very best. If this be so, the lawyers would not be losing their clients. A lawyer who has never lost the case is yet to born. In any case, if one lawyer wins, it is obvious that the other lawyer loses. Not because, the lawyer was negligent but because the case could not be allowed in his favour on merits.

Judges are humans. In case of sudden illness or death or emergency, the lawyers are always accommodated. Many a time, a request is made for adjournment on the ground of '*personal difficulty'*. Personal difficulty is both vague and wide. Therefore, adjournment on this ground should be avoided. If the senior is busy in some other court, it would be appropriate if an alternative arrangement in advance is made. In case, an adjournment is being sought well in advance and the opposite counsel has no objection, in such case/cases the adjournment may be granted. If it opposed, alternative arrangements be made.

It's time to develop best practices to curb the malady of adjournments. Frequent adjournments have impacted our justice delivery system. Not to delay justice should be part of rule of law. Therefore, healthy jurisprudence of adjournments needs to be developed and nurtured. Both the Bench and the Bar have to get together. They both must work in unison since the goal is common.

Balram K. Gupta

LATEST CASES: CIVIL

"*Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a court of equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy*."

- *M.M. Sundresh, J. in Union of India v. N. Murugesan, (2022) 2 SCC 25, para 22*

Azgar Barid v. Mazambi:2022 SCC OnLine SC 212: Can step-children claim property right in mother's mehar after her death? Does a registered mehar deed become unenforceable for being nominal?-HELD- upheld the impugned judgment of the High Court wherein the High Court had granted property rights to the step children of the deceased in her mehar property by declaring the mehar deed as unenforceable for being nominal.

The High Court found that the voluminous documents of evidence; namely birth certificates of plaintiffs 4 to 8, the transfer certificates issued by the Government Higher Primary School established that plaintiffs 4 to 8 were the children born to Mohiyuddin Pasha through Mazambi. With regard to Mehar Deed, the High Court opined that it was a nominal one and was not acted upon as in an earlier suit for partition i.e. O.S. No.514 of 1961, the deceased Mohiyuddin himself had pleaded that the first son of Noorbi and Mohiyuddin Pasha, namely Rahaman Barid, was demanding separate share in the properties and was residing separately and it was to avoid any share in the suit schedule properties the Mehar Deed was created in favour of his first wife Noorbi.

Hence, the High Court reversed the findings of the Appellate Court that plaintiff 3 was not married to Mohiyuddin Pasha for being erroneous in law, the High Court had relied on the oral as well as the documentary evidence specifically the evidence of Noorbi' brother who had admitted existence of second marriage. Consequently, the High Court vide held that all the suit schedule properties were required to be divided amongst appellant and plaintiffs 3 to 8. However, it was held that plaintiffs 1 and 2 were not entitled for any share in the suit schedule properties as Rehaman Barid, husband of plaintiff 1 and father of plaintiff 2 predeceased the propositus i.e., Mohiyuddin Pasha.

In the light of the above and considering the records available and reasoning behind the impugned judgment of the High Court, the Bench opined that the High Court had rightly interfered with the findings as recorded by the First Appellate Court, inasmuch as the First Appellate Court was not justified in reversing the findings of the Trial Court in that regard which were based on proper appreciation of evidence.

Punjab National Bank v. Union of India: 2022 SCC OnLine SC 227: Whether confiscation by Custom & Excise Authority forfeits the claim of Secured Creditor over such property? Whether the dues of Excise department create a First Charge? - HELD- quashed the confiscation order of Customs and Central Excise Commission confiscating land, building, plant and machinery of Rathi Ispat Ltd. for lacking statutory backing. The Bench observed that the existing law only permit confiscation of goods and no land, building can be confiscated under the Central Excise Rules, 2017.

In *UTI Bank Ltd. v. Commissioner Central Excise,* 2006 SCC Online Madras 1182, it had been held that since there is no specific

provision claiming "first charge" in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor, viz., the petitioner Bank. Similarly, in *Union of India v. SICOM Ltd.,* (2009) 2 SCC 121, it was observed that prior to insertion of Section 11E in the Central Excise Act, 1944 w.e.f. 08-04-2011, there was no provision in the Act inter alia, providing for First Charge on the property of the assessee or any person under the Act of 1944.

Further, section 35 of the SARFAESI Act, 2002 *inter alia*, provides that the provisions of the SARFAESI Act shall have overriding effect on all other laws. Therefore, the provisions of Section 11E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002. Therefore, the Bench held that the Secured Creditor-Bank would have a First Charge on the Secured Assets.In the light of above, the Bench concluded that the Commissioner of Customs and Central Excise could not have invoked the powers under Rule 173Q(2) of the Central Excise Rules, 1944 on 26-03-2007 and 29-03-2007 for confiscation of land, buildings etc., when on such date, the said Rule 173Q(2) was not in the Statute books, having been omitted by a notification dated 12-05-2000. Secondly, the dues of the secured creditor, i.e. the bank, would have priority over the dues of the Central Excise Department. Accordingly, the appeal was allowed and the confiscation orders were quashed.

Pattali Makal Katchi v. A. Mayilerumperumal: 2022 SCC OnLine SC 386: Caste can be the starting point for providing internal reservation but not the sole basis-HELD- that while caste can be the starting point for providing internal reservation, it is incumbent on the State Government to justify the reasonableness of the decision and demonstrate that caste is not the sole basis.

- The 105th Amendment Act being prospective in operation, it is the 102nd Amendment Act which held the field at the time of enactment of the 2021 Act.

- As the 2021 Act dealt with sub-classification and apportionment of certain percentage of reservation for the purpose of determining the extent of reservation of communities within the MBCs and DNCs, it is a permissible exercise of power by the State Government under Article 342-A of the Constitution. Prior to the 105th Amendment Act, what was prohibited for the State to carry out under Article 342-A is the identification of SEBCs, by inclusion or exclusion of communities in the Presidential list of SEBCs. It is clear that the exercise of identification of MBCs and DNCs had been completed by the State pursuant to the 1994 Act.

- There is no bar to the sub-classification amongst backward classes. The State's competence in the present case to enact the 2021 Act is not taken away on this ground as, admittedly, the Presidential list of SEBCs is yet to be published, making the question of tinkering with such list redundant.

- Detailing the extent of reservation for communities already identified as MBCs and DNCs, which is the thrust of the 2021 Act, cannot be said to be in conflict with the 1994 Act, as determination of extent of reservation for various communities was not the subject matter of the 1994 Act.

- To differentiate a particular class / category from others, there should be a substantial distinction which clearly demarcates that class / category. In the instant case, there was no justification for how the Vanniakula Kshatriyas can be treated as a different class and meted out preferential treatment, being one amongst the 116 communities, who have all been considered on the same footing till the enactment of the 2021 Act and were, therefore, eligible to claim the benefit of undivided 20 per cent reservation.

- Population has been made the sole basis for recommending internal reservation for the Vanniakula Kshatriyas, which is directly in the teeth of the law laid down by this Court.

Special Land Acquisition Officer v. N. Savitha: 2022 SCC OnLine SC 339: Consent award cannot be the basis to determine compensation in other acquisition, especially, when there are other evidences on record-HELD- held that a consent award cannot be the basis to award and/or determine the compensation in other acquisition, more particularly, when there are other evidences on record.

The Court was dealing with a case relating to a land acquired for improvement of Ranganathittu Bird Sanctuary. The Land Acquisition Officer passed an award fixing the market value of the acquired land @ Rs.21,488/- per guntha. The Reference Court enhanced the amount of compensation to Rs.30,49,200/- per acre, i.e., Rs.76,230/- per guntha. The original claimant preferred first appeal before the Karnataka High Court seeking enhancement of the amount of compensation. Relying on a consent award and thereafter on "guesswork", by the impugned judgment and order the High Court enhanced the amount of compensation to Rs.40 lakhs per acre with all consequential statutory benefits.

The Supreme Court noticed that the consent award relied upon by the High Court was in respect of the property acquired in the year 2011 and which was acquired for a different purpose, namely, for formation of double line railway broad gauge between Bengaluru and Mysore City. However, in the present case, Section 4 notification was issued in the year 2008, i.e., three years before the land acquired in the consent award in question.

Hence, it was held that the High Court ought not to have relied upon the same while determining the market price of the land acquired in 2008 considering the market price determined for the lands acquired in the year 2011 and on the basis of some "guesswork".

Even otherwise, the Court held that the consent award ought not to have been relied upon and/or considered for the purpose of determining the compensation in case of another acquisition.

"In case of a consent award, one is required to consider the circumstances under which the consent award was passed and the parties agreed to accept the compensation at a particular rate. In a given case, due to urgent requirement, the acquiring body and/or the beneficiary of the acquisition may agree to give a particular compensation."

Deputy Commissioner of Income Tax v. M. R. Shah Logistics Pvt. Ltd.: 2022 SCC OnLine SC 365: Declaration under the Income Declaration Scheme cannot lead to non-declarant's immunity from taxation-HELD- held that the declaration under the Income Declaration Scheme (IDS) cannot lead to immunity from taxation in the hands of a non-declarant.

The Court explained that the objective of Income Declaration Scheme (IDS), introduced by Chapter IX of the Finance Act, 2016, was to enable an assessee to declare her (or his) suppressed undisclosed income or properties acquired through such income. It is based on voluntary disclosure of untaxed income and the assessee's acknowledging income tax liability. This disclosure is through a declaration (Section 183 of the Income Tax Act) to the Principal Commissioner of Income Tax within a time period, and deposit the prescribed amount towards income tax and other stipulated amounts, including penalty.

Facially, Section 192 of the Income Tax Act affords immunity to the declarant: *"…nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty…"* Therefore, the protection given,

is to the declarant, and for a limited purpose.

The assessee, in the case at hand, is a private limited company and had filed return of income for the AY 2010-11 on 25.9.2010. The return was accepted under section 143(1) of the Act without scrutiny.

The assessment was re-opened after search proceedings conducted in the case of one Shirish Chandrakant Shah, an accommodation entry provider in Mumbai, it was observed that huge amounts of unaccounted moneys of promoters/directors were introduced in closely held companies of the assessee's group.

Further, the reasons to believe also stated that the chairman of M.R. Shah Group, during the statement- recorded under Section 132(4), disclosed that Garg Logistics Pvt. Ltd. had declared ₹ 6.36 crores as undisclosed cash utilized for investment in the share capital of the assessee, M.R. Shah Logistics Pvt. Ltd. through various companies. The assessee company's chairman voluntarily disclosed the statements made by Garg Logistics under Section 132 of the Act, about the declaration by Garg Logistics P Ltd, under the Income Declaration Scheme (IDS).

It can be seen that in the present case, the declarant was Garg Logistic Pvt Ltd and not the assessee. The Court, hence, held that the assessee could not claim immunity in the present case.

State of Gujarat v. RJ Pathan, CIVIL APPEAL NO. 1951 OF 2022 decided on 24.03.2022: Can employees appointed for fixed period in temporary unit be absorbed/regularised by creating supernumerary posts?-HELD- that no such direction can be issued by the High Court for absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts. The Court, hence, observed that when the respondents were appointed on a fixed term and on a fixed salary in a temporary unit which was created for a particular project, no such direction could have been issued by the Division Bench of the High Court to absorb them in Government service and to regularise their services, by creating supernumerary posts. It was held that such a direction is wholly without jurisdiction.

What has weighed with the High Court was that the respondents were continued in service for a long time, i.e., seventeen years. However, out of seventeen years, the respondents continued in service for ten years pursuant to the interim order passed by the High Court. In such circumstances as well, the Court noticed that the High Court totally missed out on the aspect that the period for which the employees have continued in service pursuant to the interim order is to be excluded and not to be counted.

Not only this but though not required, the State, instead of putting an end to the services of the respondents, graciously placed the respondents in the Indian Red Cross Society, which the respondents did not accept.

"No duty was cast upon the State to transfer them to another establishment in a case where it is found that the employees are appointed in a temporary unit and on a temporary contractual basis and on a fixed term salary and on closure of the temporary unit, their services are not required."

Considering all the aforementioned aspects, the Court set aside the decision of the High Court.

Mahima Tuli
Research Fellow

LATEST CASES: CRIMINAL

"*DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality, as the right to privacy has been declared a constitutionally protected right in India. The court should therefore examine the proportionality of the legitimate aims being pursued i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA test*."

- *Hrishikesh Roy, J. in Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20, para 15*

Imran Vs. Mr. Mohammed Bhava & Anr.: 2022 SCC OnLine SC 496-Basic principles for grant of bail?-HELD- Hearing a Criminal Appeal against the judgment and order allowing the anticipatory bail application and bail application in the FIR registered under sections 143, 147, 148, 341, 307, 302, 395 read with section 149 of Indian Penal Code, the Hon'ble Supreme Court noted certain basic principles which must be borne in mind when deciding upon an application for grant of bail enumerated in ***Vipan Kumar Dhir Vs. State of Punjab and Anr., 2021 SCC OnLine SC 854***, ***Ram Govind Upadhyay Vs. Sudarshan Singh and Others, (2002) 3 SCC 598***, ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr., (2010) 14 SCC 496*** and **Neeru Yadav Vs. State of U.P. & Anr., (2016) 15 SCC 422.**

Jafarudheen & Ors. Vs. State of Kerala: 2022 SCC OnLine SC 495-Scope of Appeal filed against the Acquittal: Delay in sending the (FIR) First Information Report to the Magistrate: Delay in Recording the Statement under Section 161 Cr.PC: Recovery under Section 27 of the Evidence Act?-HELD-Hearing a Criminal Appeal against the judgment confirming conviction and reversing acquittal in the case of the offences punishable under Sections 120-B, 143, 147, 148, 427, 460, 302 read with 149 IPC and Sections 3 and 5 of the Explosives Substances Act, the Hon'ble Supreme Court held that the presumption of innocence in favour of the accused strengthened by acquittal has to be disturbed only by thorough scrutiny on the accepted legal parameters noted in ***Mohan @Srinivas @Seena @Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233]***, ***Anwar Ali v. State of Himanchal Pradesh, (2020) 10 SCC 166*** and ***N. Vijayakumar v. State of T.N., (2021) 3 SCC 687***.

The Hon'ble Supreme Court further held that a mere delay in the First Information Report not reaching the jurisdictional Magistrate at the earliest point of time by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. It is for the Court concerned to take a call after considering the relevant materials, after noting the law laid down in ***Shivlal v. State of Chhattisgarh, [(2011) 9 SCC 561]***.

The Hon'ble Supreme Court further held that an inordinate and unexplained delay in not examining a witness at an appropriate time may be fatal to the prosecution's case but only to be considered by the Court, on the facts of each case, after noting the law laid down

in ***Shahid Khan v. State of Rajasthan, [(2016) 4 SCC 96].***

The Hon'ble Supreme Court further held that the Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act, after noting the law laid down in ***Kusal Toppo v. State of Jharkhand, [(2019) 13 SCC 676].***

Mohd. Firoz Vs. State of Madhya Pradesh: 2022 SCC OnLine SC 480- Principles of law with regard to the appreciation of evidence when the case of the prosecution hinges on the circumstantial evidence?-HELD- Hearing a Criminal Appeal against the judgment dismissing the Criminal Appeal filed by the accused and confirming the death sentence awarded to him in the case for the offence under section 366, 376(2)(i), 376(2)(m) of IPC and under sections 5(i)r/w 6 & 5(m) r/w 6 of POCSO Act, the Hon'ble Supreme Court noted the five golden principles laid down in the case of ***Sharad Birdhichand Sarda vs. State of Mahashtra, 1984 (4) SCC 116.***

Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & Anr.: 2022 SCC OnLine SC 453-Victim's right to be heard at the time of granting bail: Relevant considerations for granting bail?-HELD- Hearing a Criminal Appeal against the an order enlarging accused on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120B of the Indian Penal Code, 1860 as well as Sections 3, 25 and 30 of the Arms Act, 1959, the Hon'ble Supreme Court has held that victim has to be given a fair and effective hearing at the time of granting bail.

The Hon'ble Supreme Court further held that the High Court or the Sessions Court must grant bail after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner, reiterating the law laid down in ***Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180***, ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., (2010) 14 SCC 496***, ***Neeru Yadav v. State of U.P. & Anr., (2014) 16 SCC 508***, ***Anil Kumar Yadav v. State (NCT of Delhi) & Anr., (2018) 12 SCC 129*** and ***Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118.***

Kamatchi Vs. Lakshmi Narayanan: 2022 SCC OnLine SC 446 -Limitation period to file proceeding under DV Act?-HELD-Hearing a Criminal Appeal against the judgment and order quashing the proceedings arising out of an application preferred under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on the ground of limitation that the application ought to have filed within a period of one year from the date of the incident, the Hon'ble Supreme Court held that the matter stands on a different footing and the dictum in ***Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338***, would not get attracted at a stage when a notice is issued under Section 12 of the Act.

State of Rajasthan Vs. Banwari Lal and Anr.: 2022 SCC OnLine SC 428 - Principle governing the imposition of punishment?-HELD-Hearing a Criminal Appeal aggrieved from the judgment and order partly allowing the appeal and while maintaining the conviction for the offence under Section 307 IPC, has reduced the sentence from three years rigorous

imprisonment to the period already undergone in confinement (44 days), the Hon'ble Supreme Court, noting the law laid down in ***State of Rajasthan v. Mohan Lal, (2018) 18 SCC 535; Soman v. State of Kerala, (2013) 11 SCC 382; Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 ; State of Madhya Pradesh v. Udham, (2019) 10 SCC 300 and Satish Kumar Jayanti Lal Dabgar v. State of Gujarat, (2015) 7 SCC 359,*** has held that merely because a long period has lapsed by the time the appeal is decided cannot be a ground to award the punishment which is disproportionate and inadequate without assigning any further reasons and without adverting to the relevant factors which are required to be considered while imposing appropriate punishment/sentence.

State of Uttar Pradesh Vs. Subhash @ Pappu: 2022 SCC OnLine SC 395 - Whether dying declaration recorded at a time when there was no emergency should be discarded as a whole? Whether mere non-framing of a charge under Section 149 would vitiate the conviction?-HELD-Hearing a Criminal Appeal aggrieved from the judgment and order acquitting the respondent for the offences under Section 302 and 148 of Indian Penal Code, the Hon'ble Supreme Court, answering in negative, noting the law laid down in ***Laxman Vs. State of Maharashtra, (2002) 6 SCC 710***, has held that there is no absolute proposition of law laid down that, in a case when at the time when the dying declaration was recorded, there was no emergency and/or any danger to the life, the dying declaration should be discarded as a whole.

The Hon'ble Supreme Court, reiterating the law laid down in ***Fainul Khan Vs. State of Jharkhand, (2019) 9 SCC 549 and Annareddy Sambasiva Reddy Vs. State of Andhra Pradesh, (2009) 12 SCC 546*** has further held that mere non-framing of a charge under Section 149 on face of charges framed would not vitiate the conviction in the absence of any prejudice caused and that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby.

Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors.: 2022 SCC OnLine SC 344 -Distinction between mere breach of contract and cheating?-HELD-Hearing a Criminal Appeal aggrieved from the judgment and order dismissing the prayer for quashing of the proceedings, the Hon'ble Supreme Court, noting the law laid down in ***Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr., (2000) 4 SCC 168 and Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors., (2015) 8 SCC 293*** has held that the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: ARBITRATION AND CONCILLIATION ACT

"*Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a court of equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*"

— M.M. Sundresh, J. in Union of India v. N. Murugesan, (2022) 2 SCC 25, para 22

Evergreen Land Mark Pvt. Ltd. Versus John Tinson & Company Pvt. Ltd. & Anr.-- Arbitral Tribunal Can't Direct Interim Deposit Of Amount In Dispute When Liability To Pay Is Seriously Disputed-HELD-that the Arbitral Tribunal cannot pass an order by way of interim measure under Section 17 of the Arbitration and Conciliation Act, 1996 to deposit the amount involved in the dispute, in a case where the liability to pay such an amount is seriously disputed and the same is yet to be adjudicated upon by the Tribunal. The Court noted that though the argument of *Force Majeure* was raised before the Tribunal, no opinion in this regard was provided by it. It opined that since the applicability of *Force Majeure*, which is the sheet anchor of the dispute, was yet to be considered by the Tribunal, it could not have passed an order to deposit the rent amount by way of an interim arrangement.

"Therefore, no order could have been passed by the Tribunal by way of interim measure on the applications filed u nder Section 17 of the Arbitration Act in a case where there is a serious dispute with respect to the liability of the rental amounts to be paid, which is yet to be adjudicated upon and/or considered by the Arbitral Tribunal. Thus, no such order for deposit by way of an interim measure on applications under Section 17 of the Arbitration Act could have been passed by the Tribunal."

But, the Court stated that the appellant was required to deposit the rental for the period other than when the premises was completely closed due to lockdown. The deposit of the rental for the period when there was complete closure would be subject to the outcome of the final adjudication.

"…it is directed that the appellant to deposit the entire rental amount for the period other than the period during which there was complete lockdown i.e., 22.03.2020 to 09.09.2020 and for the period between 19.04.2021 to 28.06.2021."

The appellant was directed to deposit the balance amount and the Tribunal was directed to conclude the proceedings within a period of nine months, subject to co-operation of the parties.

Parsvnath Developers Ltd. v. Future Retail Ltd.: 2022 SCC OnLine Del 1017—Whether the petition for the appointment of an arbitrator required to be rejected on the ground that the main agreement is insufficiently stamped?-HELD- The Delhi High Court observed that, an arbitration agreement, even though embodied in a main agreement, is a separate agreement and invalidation of the main agreement does not necessarily invalidate the arbitration agreement. **An arbitration agreement is not required to be compulsorily registered.**Hence, the doctrine of severability, denying the benefit of an arbitration agreement to a party on the ground of any deficiency in the main agreement, may not be apposite.

By virtue of Section 11(6A) of the A&C Act, the scope of examination under Section 11 of the A&C Act is confined to

the existence of an arbitration agreement.

The Bench observed that, in cases where there is no vestige of doubt that the claims are not arbitrable or the agreement is invalid, the Courts may decline to refer the parties to arbitration but not in any other case.Supreme Court's decision in *NCC Ltd. v. Indian Oil Corpn. Ltd.,* 2019 SCC OnLine Del 6964, was also referred.

High Court opined that it would be apposite for this Court to adjudicate the issue of whether PDL's claims were barred by limitation, the same shall be decided by an Arbitral Tribunal.

PDL had nominated Mr S.C. Jain, Additional District Judge (Retired) as its nominated Arbitrator. Accordingly, Mr Laxmi Kant Gaur, District Judge (Retired), is appointed as FRL's nominated Arbitrator. Further, it was stated that both the arbitrators shall appoint the third arbitrator for the constitution of the Arbitral Tribunal.

Foomill (P) Ltd. v. Affle (India) Ltd.: 2022 SCC OnLine Del 843-Mere use of the word 'Arbitration' in the heading of an Agreement would mean existence of an arbitration agreement?-HELD- that mere use of word 'Arbitration' in the heading of an Agreement would not mean the existence of an arbitration agreement. The said issue was dealt with by this Court in *Avant Garde Clean Room & Engg. Solutions (P) Ltd. v. Ind Swift Ltd.,* (2014) 210 DLT 714. High Court, in view of the above decision, held that, **Mere use of the word 'Arbitration' in the heading in Clause 11 of the Agreement between the parties would not lead to inference that there exists an agreement between the parties seeking resolution of disputes through arbitration."**

Therefore, in view of the above, no ground to appoint an arbitrator was found.

Satyen Construction v. State of West Bengal: A.P No. 78 Of 2021, decided on 08-04-2022-Scope of S. 9 of A&C Act cannot be extended to enforcement of award or granting fruits of award to award holder as an interim measure –HELD-The Court explained that *true object and intention behind Section 9 of the Act is to provide for interim or provisional measures to a party before or during or any time after making an award which are protective in nature. The orders contemplated under Section 9 inter-alia pertain to preservation, interim custody or sale of goods which are the subject matter of the arbitration agreement, securing the amount in dispute in the arbitration, detention, preservation or inspection of any property or thing which is the subject matter of the arbitration, interim injunction or appointment of a Receiver or such other interim measures of protection which may appear to be just and convenient* relying on the decision in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.,* (2007) 7 SCC 125.

The Court was of the view that the scope of Section 9 of the Act cannot be extended to enforcement of the award or granting the fruits of the award to the award holder as an interim measure. The Court also acknowledged that there have been a number of decisions passed by the Supreme Court wherein the petitioner has been permitted to withdraw the amount deposited. However, none of the decisions have been passed in applications arising under Section 9 of the Act.

Vijay Kumar Munjal v. Pawan Munjal: 2022 SCC OnLine Del 499, decided on 17-2-2022-Whether Hero Electric will have the exclusive rights to use the 'Hero' brand name for electric vehicles? -HELD- Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that an arbitrator appointed on behalf of the respondents to adjudicate the disputes that arose between the parties in relation to the Family Settlement Agreement and Trade Marks and Name Agreement. In terms of

Section 11(6) of the A&C Act, the scope of examination is confined to the existence of an arbitration agreement. **Whether the disputes are arbitrable?** It was apparent that the disputes, essentially, concern the rights of the F1 Family Group under the FSA and TMNA.

Bench noted that the claim of the petitioners that the respondents cannot use the trademark "Hero" in respect of Electric Vehicles is premised on the inter se agreement between the four Family Groups.

Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration.

The dispute in the present matter did not affect the rights of any third party. The petitioners were not seeking grant of registration of any trademark they also did not seek rectification of the Register of Trademarks.

High Court stated that in view of the doctrine of *kompetenzkompetenz* all issues including those regarding arbitrability of the disputes as well as regarding the jurisdiction of the Arbitral Tribunal, are required to be addressed by the Arbitral Tribunal in the first instance.

Further, the Court added that it not required to finally adjudicate controversies regarding the arbitrability of the disputes.

Whether the disputes sought to be raised by the petitioners are barred by limitation?

Court opined that the issue of limitation was a contentious one. Bench observed that, issuing advertisement or showcasing a vehicle under the trademark, which includes the word mark "Hero" would amount to using the said trademark.

Prima facie, the above would not extinguish the cause of action arising from a commercial launch of vehicles under the said trademark. Hence, Court must refrain from adjudicating such issues as it is clearly beyond the standards of examination under Section 11 of the A&C Act.

Bench noted that the standards of examination under Section 11 of the A&C Act are limited and as explained by the Supreme Court, it is only in cases where there is not even a vestige of doubt that the claims are barred by limitation, that the Court could decline to refer the disputes to arbitration.

Whether showcasing of an Electric Scooter at an auto exhibition extinguishes the petitioners remedy to object to commercial exploitation of the trademarks in connection with Electric Vehicles, is a question that requires adjudication.

High Court opined that prima facie respondent 2 and 3 were required to be joined in the arbitral proceedings as parties, even though, they may not be signatories to the FSA or TMNA.

Bench stated that there is no agreement between the parties accepting that the arbitration must be conducted under the rules of any arbitration institution or specialized body. The parties had agreed that in terms of Clause 5.6 of the TMNA and Clause 19.5 of the FSA, the Facilitator would act as a mediator and on failure of the mediation process, the Family Groups would submit to arbitration. The arbitration would be conducted by Mr Satish Bansal (the named Facilitator) as the Presiding Arbitrator and two other arbitrators to be appointed by the four patriarchs.

High Court held that, Justice (Retired) Dipak Mishra, former Chief Justice of India; Justice (Retired) Indermeet Kaur, a former Judge of this Court; and Justice (Retired) Indu Malhotra, former Judge of the Supreme Court be appointed as the Arbitrators to constitute the Arbitral Tribunal to adjudicate the disputes in terms of the Arbitration Agreements under the FSA and TMNA.

Mahima Tuli
Research Fellow

NOTIFICATION

Application for allotment of DPIN not to be made by more than five individuals in Form FiLLiP vide Limited Liability Partnership (Second Amendment) Rules, 2022: On March 04, 2022, the Ministry of Corporate Affairs (MCA) has notified Limited Liability Partnership (Second Amendment) Rules, 2022 to amend Limited Liability Partnership Rules, 2009, which shall come into force on the date of its publication in the Official Gazette.

Key Amendments:

- Rules 11 (1) Proviso has been modified to increase the number of individuals from 2 to 5 for filing the application for allotment of DPIN in Form FiLLiP.

Provided further that the application for allotment of DPIN shall not be made by more than five individuals in Form FiLLiP.

- Rule 11 (3) has been modified to include Permanent Account Number and Tax Deduction Account Number issued by the Income Tax Department in the Certificate of Incorporation of limited liability partnership.
- Rule 19(4) has been modified to take down the requirement of attaching the authority under which such person is making an application.
- Rule 24(6) has been modified in order to include cases where CIRP has been initiated against an LLP, in such cases the Statement of Account and Solvency may be signed by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator.
- Rule 25(2) has been modified to insert a Proviso:

Provided that where the Corporate Insolvency Resolution Process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 or the Limited Liability Partnership Act, 2008 (06 of 2009) having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees has come under liquidation under the said Code, 2016 or the said Act, 2008, the said annual return may be signed on behalf of the limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator and no certification by a designated partner shall be required.[1]

[1] https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/notifications.html#

EVENTS OF THE MONTH

- Ms.Harshali Chowdhary, Additional District & Sessions Judge-cum-Faculty Member, Chandigarh Judicial Academy gave a Webinar on “Introduction to Case Information System” on April 9, 2022 to the Court Staff of Punjab, Haryana and UT Chandigarh. The Webinar was live broadcast on Youtube and the viewership was more than 20,000.
- Chandigarh Judicial Academy organized online one day workshop on the Modified Claims Tribunal Agreed Procedure on April 23, 2022. Dr.Balram K Gupta, Director (Academics), CJA, gave the opening remarks. He also gave the overview of the MACT Act. The architect of this workshop was Justice J.R.Midha, former Judge, Delhi High Court. In fact, Justice Midha had authored the judgment in *Rajesh Tyagi and ors vs Jaibir Singh and ors., 2021 SCC Online Del 4046* decided on January 8, 2021. The Central Government notified Central Motor Vehicles (Fifth Amendment), Rules, 2022 on February 25, 2022 which came into force w.e.f. April 1, 2022. The new procedure under the Rules is based upon the scheme framed in the case of *Rajesh Tyagi.* Justice Midha piloted and monitored the workshop which was divided into five sessions. The first session was taken by Justice Midha himself. In this session, Justice Midha focused on the New Scheme for settlement of Motor Accident Claims. The New Scheme envisages to settle the claims within a period of six months to one year. The second session was taken by Mr.Vikas Pahwa, Senior Advocate which covered the Duties of Police in the New Scheme. Even this aspect of investigation is correlated with settling the claims expeditiously within the time space provided in this regard. Mr.Pahwa was also associated in the case of *Rajesh Tyagi.* The third session was devoted to the Role of Insurance Companies in the New Scheme. This session was taken by Mr.S.P.Jain, Advocate. Mr.Jain has been a Panel Lawyer for the Nationalized and Private Insurance Companies. The fourth session covered the Role of State Legal Services Authority in the New Scheme. Accordingly, Mr.Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority dealt with this topic based upon his experience. The last session related to the Procedure to be followed by Claims Tribunals in the New Scheme. This session was taken by Mr.Amrinder Singh Shergill, ADJ-cum-Faculty Member, CJA. This session covered the entire spectrum of procedure under the new scheme. The workshop concluded with the expression of gratitude given by Dr.Balram K Gupta, Director (Academics), CJA to Justice J.R.Midha in particular and all the other four Resource Persons of this workshop.