# Lex Info

*A Quarterly E-Magazine*

(from Law Branch, South Central Railway)



**Do you have any case law/case study to be shared with other railway men?**

**Articles/write-ups on legal issues relevant to railway's working are invited from officers/staff including from other railways / production units:**


**Please mail them to:**

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**Vol -VII Issue - 2 April-June 2024**




## *Legal Maxim*

**De Minimis Non Curat Lex** means the law does not bother with the smallest things. The court does not want to bother with small, trivial things. A case must have importance for the court to hear it.

**Note: This is only a news capsule. For information and understanding to cite the case, please go through the original judgement.**

## ABC OF ACTS

# The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, was enacted in 2002 and it came into effect from12.06.2002. This Act empowers lenders, which includes banks and other financial institutions, to recover bad loans efficiently.

The primary objective of the SARFAESI Act is to empower banks and financial institutions to take proactive measures for recovering their dues from defaulting borrowers. By providing a legal framework for the enforcement of security interests, the act aims to streamline the debt recovery process and protect the interests of lenders.

The Narasimham Committee–I (Committee on the Financial System) observed that borrowers obtain stay orders from ordinary courts, so banks and financial institutions face difficulty while recovering Non-Performing Assets (NPAs). In order to strengthen this process, Debt Recovery Tribunals were set up in 1993, and the loan recovery process was made beyond the jurisdiction of ordinary courts. In 1998, Narasimham Committee–II (Committee on Banking Sector Reforms) observed that Debt Recovery Tribunals (DRTs) need to be strengthened with a law, accordingly the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was enacted in the 2002.

The main objectives of the SARFAESI Act are to provide a mechanism for banks and other financial institutions to recover secured assets. This is done in a more efficient and effective manner; to reduce the time and cost of recovery of secured assets; to protect the interests of borrowers and depositors; and to promote financial stability.

This Act contains 42 Sections distributed in VI Chapters as under:

**Chapter-I (Section 1 & 2)** provides for short title, extent and commencement; and definitions.

**Chapter-II (Section 3 to 12)** provides for Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions

**Chapter-III (Section 13 to 19)** provides for Enforcement of Security Interest.

**Chapter-IV (Section 20 to 26A)** provides for Central Registry.

**Chapter-IV-A (Section 26B to 26E)** provides for Registration by Secured Creditors and Other Creditors.

**Chapter-V (Section 27 to 30D)** provides for Offences and Penalties.

**Chapter-VI (Section 31 to 42)** provides for Miscellaneous provisions viz. Provisions of this Act not to apply in certain cases, Power to exempt a class or classes of banks or financial institutions, Protection of action taken in good faith, Offences by companies, Civil court not to have jurisdiction, the provisions of this Act to override other laws, Limitation & Application of other laws not barred, etc.

The latest amendment to the SARFAESI Act, the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, was introduced in 2016 to further strengthen the provisions of the Act and address some of the concerns that had been raised about its implementation.

Key Amendments include:

⇒ Banks and Asset Reconstruction Companies (ARCs) are now empowered to transfer any part of the debt of the defaulting company into equity thereby improving the chances of recovery for the lender and also giving the company a fresh start.

⇒ The SARFAESI Act now applies to NBFCs with an asset size of Rs. 100 crores or more.

⇒ The time period for completion of the SARFAESI process has been reduced from 180 days to 90 days.

⇒ The Act introduces a number of measures to facilitate the asset reconstruction process. These measures include the establishment of a Special Tribunal for Asset Reconstruction and the simplification of the process for the transfer of assets to ARCs.

(…..to be contd..)

## The Railway Servants Discipline & Appeal Rules 1968

In this issue, the actions that do not fall within the realm of "misconduct" are brought out. Let us now examine what is not misconduct:

**What is not misconduct:**

Acts that normally do not come under misconduct are negligence, carelessness, unskillfulness, error of judgment etc. Ultimately what should be regarded as misconduct will have to be decided by the government keeping in view of the nature of master and servant relationship between them. What is misconduct will depend upon the circumstances of each case. *[Agnani V. Badridas 1963 (1) LIJ 684 (SC)]*

When a public servant having discretion to act and his action gave adverse results, then such act can be termed as an error of judgment. A single act or omission or error of judgment would ordinarily not constitute misconduct. However, if such error or omission results in serious or atrocious consequences, the same may amount to misconduct *[P.H. Kalyani vs Air France AIR 1963 SC 1756]*

There are many facets of misconduct of a railway servant, during service, outside the office, prior to entering into service etc. Each one has to be dealt separately as they are distinct in their nature.

**Misconduct in private life:**

Government expects every govt. servant to observe certain standards of decency and morality in his private life. For example, second marriage during the life time of first wife, to have alcoholic drinks during official functions, violation of restrictions on acquisition of immovable property etc. Such things become improper or unbecoming of railway servant.

A govt. servant at all times whether in office or outside, does nothing which is improper or inappropriate or unsuited to his position as a govt. servant. He is to keep within bounds of administrative decency. What is becoming and what is unbecoming can always be ascertained having regard to the entirety of the conduct. *[Khaza Khan vs PMG. Andhra 1978 (2) SLR 512]*.

The misconduct alleged against the employee was that he entered the service against reserved post meant for the SC/ST on the basis of a false caste certificate. The action has been taken not for any misconduct during his tenure as civil servant but on the finding that he does not belong to the SC/ST as claimed by him before his appointment. SC held that where an appointment to a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution of India is not attracted at all. *[Vishwanatha Pillai Vs State of Kerala; AIR 2004 SC 1469]*

**Misconduct for non-official functions:**

It is not necessary that the alleged act or omission which forms the basis of disciplinary proceedings should have been committed in the discharge of his duties as a servant of government. If the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him though there was no actual master and servant relationship. The test is whether the act or omission has reasonable connection with nature of conditions of his service or whether the act or omission has cast a reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant. *[S Govinda Meenon Vs UPO AIR 1967 SC 1274]*

Employees of Railways who are also directors of Employees Cooperative society committed certain irregularities. As the directors of the Society are employees of Railways but not society, there is no provision under the Multi State Cooperative Societies Act to take action against them by Registrar of Societies. If the contention is accepted, there would not be any control over them. Further, the applicants being railway servants are liable for disciplinary action under Railway Servants Conduct Rules in respect of any acts or omissions committed by them which reflect on their integrity or devotion to duty or good faith. The acts or omissions attributed to these employees constitute irregularity amounting to serious misconduct in discharge of their duties connected with the affairs of Society as Directors [*OA No.1374/2003; N. Babu Rao & Ors. Vs GM/SCR]*

**Charge under Prevention of Corruption Act is also misconduct:**

A grave misconduct does not cease to be misconduct because it is not included under conduct rules as misconduct. Charge under PC Act is a graver offence than the routine misconduct under disciplinary rules. *[Principle Secretary to Govt. of AP Vs Adinarayana 2004 (6) SLR 432]*

**Assaulting Superior:**

Assaulting a superior at work place amounts to an act of gross indiscipline. Even under grave provocation, one is not expected to abuse the head of the institution in a filthy language and assault him. In such cases, punishment of dismissal is not disproportionate. *[Hombe Gowda Education Trust Vs State of Karnataka; 2006 SCC (L&S) 133]*. Assaulting officers, colleagues and causing injuries to them is a grave misconduct. Such misconduct undermining discipline of organization called for stringent punishment *[Muriadih Colliery of BCCL Vs BCKU; 2005 SCC(L&S) 412]*.

…..to be contd.

**Railway not liable where initial burden of bona fide passenger is not proved by claimant - Delhi High Court**

In a case, wherein an appeal was filed under Section 23 of the Railway Claims Tribunal Act, 1987 (Act) against the Order passed by the Railway Claims Tribunal (Tribunal), the Hon'ble Delhi High Court held that the appellants failed to prove that the ticket was purchased by the deceased and therefore, it cannot be said that the deceased was a bona fide passenger.

In the instant case, the deceased purchased the journey ticket from Allahabad Railway Station to travel to New Delhi and boarded the train. When the train was about to arrive at the New Delhi Railway Station, the deceased standing near the compartment gate fell from the train due to sudden and heavy jerk. The deceased was moved to the hospital where he died. The appellants (parents of the deceased) filed a claim petition for compensation before the Railway Claims Tribunal, where it was held that the deceased was not a bona fide passenger as he did not have the ticket on him and hence, the petition was dismissed.

The Counsel for the appellants submitted that while passing the impugned order though the Tribunal had held that the incident was an untoward incident, however, it erred in arriving at a conclusion that the deceased was not a bona fide passenger as no ticket was found from his body. While relying on Union of India v. Rina Devi, (2019) 3 SCC 572 (Rina Devi case), it was submitted that the appellants were able to discharge their initial burden by filing an affidavit along with the claim application wherein it was stated that the deceased had undertaken the journey after purchasing the ticket.

The Counsel for the respondent also placed reliance on Rina Devi case and submitted that the Tribunal rightly concluded that the deceased was not a bona fide passenger as there was no witness to the deceased buying the ticket and no ticket was found on him on search.

The Hon'ble High Court observed that during the search, no ticket was found with the deceased person and in support of claim, only Appellant 1 (father of the deceased) was examined. The father of the deceased stated that he had not accompanied the deceased to the railway station therefore, ticket was not purchased in his presence. During cross-examination, it was stated by the mother of the deceased that she had accompanied the deceased to the railway station and gave him money for purchasing the ticket.

The Court relied on Rina Devi, where it was held that "mere presence of a body on the railway premises would not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased would not negate the claim that he was a bona fide passenger. The initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts and burden would then shift on the Railways and the issue could be decided on the facts shown or the attending circumstances. This would have to be dealt with from case to case based on facts found."

The Court noted that in case the journey ticket was lost, the initial burden could be discharged by placing evidence by way of an affidavit thereby stating the circumstances under which the ticket was purchased, and the train journey was undertaken. But in the present case, neither in the claim application nor in an affidavit these facts were stated by the appellants. Thus, the Court opined that the appellants have failed to discharge the burden that was upon them. Therefore, the Court dismissed the appeal and upheld the impugned order that was passed by the Tribunal. [***Raj Kumar v. Union of India, 2022 SCC Online Del 3825, decided on 15-11-2022]***

**KNOW OUR CONSTITUTION**

**Article 87 - Special address by the President**

(1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons

(2) Provision shall be made by rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

**Article 88 - Rights of Ministers and Attorney General in respects Houses**

Every Minister and the Attorney General of India shall have the right to speak in, and otherwise to take part in the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote Officers of Parliament.

## Difference betwen Ejusdem generis & Noscitur a sociis

### "Ejusdem generis"

"Ejusdem generis" is a latin maxim which means that where there is a list of words i.e. specific words in a statute followed by some general words, the general words are limited to the same sort of items as are mentioned in the specific things set out in the list.

This principle is applied when a provision or clause includes a list of specific words followed by a more general or ambiguous term. Ejusdem generis suggests that the general term should be interpreted to be of the same kind or nature as the specific words listed. The primary focus of ejusdem generis is on limiting or narrowing the scope of the general term to match the specific terms provided.

For example, in a clause stating, No vehicles, including cars, trucks and other vehicles, are allowed in this area, ejusdem generis would limit the meaning of other vehicles to those of the same kind as cars and trucks, such as motorcycles or bicycles.

### "Noscitur a sociis"

This Latin phrase translates to it is known by its associates. The purpose of noscitur a sociis is to understand the meaning of a particular word or phrase by considering the context provided by other words or phrases in the same legal provision.

It is applied when two or more words within a legal text are susceptible to similar or related meanings because they are used together. It advises that these words should be interpreted in the context of their association with one another. It aims to prevent ambiguity by considering the context created by the surrounding words.

For example, in a provision saying, 'The employee must attend meetings, conferences and other related events', noscitur a sociis would help interpret other related events by considering the context of meetings and conferences, restricting it to similar work-related gatherings.

These principles are used for interpreting ambiguous terms in legal documents. Ejusdem generis specifically deals with the relationship between specific and general terms within a list, while noscitur a sociis applies more broadly to any words or phrases that appear together and may share related meanings, emphasising the context provided by surrounding words .

## FAQ What is 'Quid Pro Quo'?

Quid pro quo is a Latin maxim literally meaning giving something of value for another. It refers to some valuable consideration in contract law and forms an essential element of a valid contract.

Quid pro quo describes an agreement between two or more parties in which there is a reciprocal exchange of goods or services. Courts may render a business contract void if it appears unfair or one-sided, and so a quid pro quo consideration is often warranted.

Quid pro quo is often used to describe situations where there's an exchange that could potentially be seen as unfair or unethical, such as in cases of bribery or corruption. It's particularly relevant in contract law, employment law, and criminal law, where the exchange of something of value may have legal implications.

Common law suggests that contractual liability exists based on the commitment made between parties. In any quid pro quo contract, the central area of concern is often the issue of reciprocity. Finding the balance between the value of "consideration" offered and the "consideration" received can be a daunting task at times.

A consideration, which may take the form of a product , service, capital, or financial instrument, is the key to a quid pro quo business agreement. These considerations are tantamount to a contract where something is given and something of equal value is returned in exchange. Without these considerations a court may find a null or non-binding contract. However, if the arrangement appears unilateral, courts can find the contract null and void. So Every person, company or other organization should be aware of what is required of both parties to conclude a contract.

Quid pro quo means something offered or earned for something else. There is nothing inherently wrong about giving or obtaining something in return for something else. Quid pro quo defines an arrangement between two or more parties in which the goods or services are exchange and Quid pro quo deals are permissible in politics so long as they do not suggest bribery or any other misappropriation.

In legal contexts, quid pro quo signifies an exchange or reciprocal relationship between parties, often with legal implications depending on the circumstances.

**Management having filed counter in MACT proceedings defending its driver does not preclude it from initiating disciplinary proceedings against him: Full Bench of Madras High Court**

A Full Bench of Madras Court ruled that the Management could initiate disciplinary action against its employee for rash and negligent driving, despite defending its driver before the Motor Accident Claims Tribunal that the accident was not their driver's fault.

Facts leading to this Writ are that when the driver/petitioner in the course of his employment was driving Tamil Nadu State Transport Corporation bus collided with a goods van resulting to the death of five persons and injuries to five others, including the petitioner. When the victims of the accident approached the MACT for compensation, Corporation have filed its counter against claim stating that 'the driver/petitioner had driven the bus in a slow and careful manner with strict compliance of traffic rules and accident had occurred solely due to the negligence of the opposite van driver' therefore the corporation was not entitled to pay any compensation to the claimants. And in contrast after the accident, a charge memo had been issued to the driver/petitioner, for which he gave an explanation. Based on the report of the domestic enquiry where the petitioner was found guilty, he was terminated from service by the Disciplinary Authority.

This disciplinary action by the employer Corporation was challenged before the Labour Court contending that the Management is precluded from initiating any disciplinary proceedings on the basis of the counter filed before MACT in which it has contended that there was no mistake on the part of the writ petitioner/driver. This plea was rejected by Labour Court.

An appeal by way of WP filed by the Driver before a Single Judge of the High Court, citing a judgment of a Division Bench in *Tamil Nadu State Transport Corporation and Another vs. S.Karuppusamy, (2008) 3 LW 90*, argued that the management is estopped from acting otherwise than view taken before the MACT. Doubting whether the said judgment of the Division Bench lays down the correct position of law, the Single Judge had referred the matter to a larger bench.

The Larger Bench as to applicability of 'Estoppel', by referring the judgment in the case of *Chhaganlal Keshavlal Mehta Vs. Patel Naranda Haribhai, (1982) 1SCC 223* held that:

"14. In order to apply estoppel, it requires a representation by one person to another and that representation must have been relied upon by the other party. On the basis of that reliance, the latter should have altered his position to his prejudice or his detriment. In order to get the benefit of estoppel, the person should prove that he was not aware of the truth or the real state of affairs. When once such facts are shown to exist, then the former is estopped from acting otherwise. Therefore, we have to see whether there has been a representation by the Management, which was acted upon by the writ petitioner resulting in a change in position to his detriment."

As such the court pointed out that:

Firstly, without a representation, which is *sine qua non*, for applying the rule of estoppel, the said principle cannot be made applicable. Being a respondent in the MACT proceedings where the driver is not made as a party, counter filed as a defence by the Management is based on the statement that was given by the driver as to what transpired at the time of the accident. This shows that there is no representation from the side of the Management to the employer/driver. Hence the principle cannot be made applicable here.

Secondly, the person who knows the truth cannot plead estoppel. In this case if the truth has to be stated, it has to be stated by the driver/petitioner who has been given responsibility of driving the vehicle and it is his stand which is captured in the counter.

Finally, the legal defence do not operate as estoppel. The legal defence that has been taken by one party cannot be treated as an estoppel by a stranger to the said proceedings. A party is entitled to take contradictory pleas even in the same proceedings, which he is defending. A party filing a counter is taking positions that avoid the legal liability that might be fastened on it. In such a proceeding, the party is entitled to take all the defences that are available in order to defeat the claim that has been made against it.

Accordingly, the Full Bench ruled: "a proceeding before the MACT is only for the purpose of avoiding its liability as the tort feaser. The proceedings between an employer and employee are initiated in terms of the Standing Orders or the Rules which govern the relationship between them. When such proceedings are initiated, by no stretch of imagination, the nature of defence taken in the MACT can be telescoped into the other. If an employer is satisfied that the conditions for initiation of disciplinary proceedings are available, it is always free to do so."***[V.Syril Sundararaj Vs.The presiding officer & others, WP No.39563 of 2004, Larger Bench of MAS High Court,*** **Judgment dated 01-04-2024***]*

## YOURS LEGALLY

**PoSH Act, 2013 - Directions issued by Supreme Court for proper implementation of the Act - Summarised.**

On a complaint of harassment under PoSH Act against the appellant, Goa University constituted a Committee under the Act. The Committee in its report recommended termination of the services of the appellant. Having lost Departmental appeal, appeal before the High Court, the appellant approached the Supreme Court on the grounds of deliberate breach of the rules of natural justice by denying him a fair hearing before issuing the termination order, not following the prescribed procedure, at no stage was he (the appellant) informed by the Committee that the proceeding being conducted by it were disciplinary proceedings and therefore, the report submitted by the said Committee could not have been treated by the respondents as an Inquiry Report under CCS (CCA) Rules.

The Supreme Court held that the Committee did not adhere strictly to the CCS (CCA) Rules', though the appellant received copies of complaints, complainants' depositions, and relevant material and the appellant provided a detailed defence and a list of witnesses, indicating his awareness of the allegations. Hence, the non-framing of charges was deemed non-detrimental. However, the Apex Court observed that there were procedural lapses occurred when the Committee rushed through 12 consecutive hearings, pressuring the appellant to respond to new depositions within a week without considering appellant's medical concerns and the denial of legal representation, the Committee failed to allow sufficient preparation time, compromising the process's fairness by completing the entire process within 39 days. The Committee's anxiety to be fair to the victims resulted in greater harm by compromising the fairness of the inquiry. Consequently, the Apex Court set aside the decision of EC to terminate the appellant's services with a few directions such as allowing the appellant a sufficient chance to defend himself and finishing the proceedings within three months of the committee's initial scheduled hearing. The Apex court issued the following directions to the Central and State governments to effectively implement the PoSH Act.

(i) The UOI, all State Governments & Union Territories are directed to undertake a time bound exercise to verify as to whether all the concerned Ministries, Depts, Govt. organizations, authorities, PSUs, institutions, bodies, etc. have constituted ICCs/LCs/ICs & that the composition of the said Committees are strictly as per the PoSH Act.

(ii) It shall be ensured that necessary information regarding constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs & contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations & internal policies are kept on the website of the concerned Authority/Functionary/ Organisation/ Institution/ Body. The information shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level & the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres & educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate & effective steps shall be taken by the authorities / managements / employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees & women's groups about the provisions of the Act, the Rules and regulations.

(vi) The National Legal Services Authority & the State Legal Services Authorities shall develop modules to conduct workshops & organize awareness programmes to sensitize authorities/ managements/employers, employees & adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy & the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act.

(viii) A copy of the judgment shall be transmitted to the Secretaries of all the Ministries, Govt. of India who shall ensure implementation of the directions by all the concerned Depts, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Depts. It shall be the responsibility of the Secretaries of the Ministries, Govt. of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued. ***[AURELIANO FERNANDES Vs STATE OF GOA AND OTHERS, CIVIL APPEAL NO. 2482 of 2014, DOJ: 12.5.2023]***

**TREATISE ON**

**Arbitration and Conciliation Act, 1996**

**Costs of Arbitration:**

**Section 31(8) states that the costs of arbitration shall be fixed by the arbitral tribunal in accordance with S 31(A).**

S 31(A) provides for Regime for costs. With regard to costs in Arbitration proceedings, the observation of the Hon'ble Supreme Court in the case of Union of India v. Singh Builders Syndicate [2009 (4) SCC 523] are to be noted. The Apex Court observed that:

"When the arbitration is by a Tribunal consisting of serving officers, the cost of arbitration is very low. On the other hand, the cost of arbitration can be high if the Arbitral Tribunal consists of retired Judge/s. When a retired Judge is appointed as Arbitrator in place of serving officers, the government is forced to bear the high cost of Arbitration by way of private arbitrator's fee even though it had not consented for the appointment of such non-technical non-serving persons as Arbitrator/s.

There is no doubt a prevalent opinion that the cost of arbitration becomes very high in many cases where retired Judge/s are Arbitrators. The large number of sittings and charging of very high fees per sitting, with several add-ons, without any ceiling, have many a time resulted in the cost of arbitration approaching or even exceeding the amount involved in the dispute or the amount of the award.

When an arbitrator is appointed by a court without indicating fees, either both parties or at least one party is at a disadvantage. Firstly, the parties feel constrained to agree to whatever fees is suggested by the Arbitrator, even if it is high or beyond their capacity. Secondly, if a high fee is claimed by the Arbitrator and one party agrees to pay such fee, the other party, who is unable to afford such fee or reluctant to pay such high fee, is put to an embarrassing position. He will not be in a position to express his reservation or objection to the high fee, owing to an apprehension that refusal by him to agree for the fee suggested by the arbitrator, may prejudice his case or create a bias in favour of the other party who readily agreed to pay the high fee.

It is necessary to find an urgent solution for this problem to save arbitration from the arbitration cost. Institutional arbitration has provided a solution as the Arbitrators' fees is not fixed by the Arbitrators themselves on case to case basis, but is governed by a uniform rate prescribed by the institution under whose aegis the Arbitration is held. Another solution is for the court to fix the fees at the time of appointing the arbitrator, with the consent of parties, if necessary in consultation with the arbitrator concerned. Third is for the retired Judges offering to serve as Arbitrators, to indicate their fee structure to the Registry of the respective High Court so that the parties will have the choice of selecting an Arbitrator whose fees are in their `range' having regard to the stakes involved.

What is found to be objectionable is parties being forced to go to an arbitrator appointed by the court and then being forced to agree for a fee fixed by such Arbitrator. It is unfortunate that delays, high cost, frequent and sometimes unwarranted judicial interruptions at different stages are seriously hampering the growth of arbitration as an effective dispute resolution process. Delay and high cost are two areas where the Arbitrators by self-regulation can bring about marked improvement".

The Supreme Court in the case of Sanjeev Kumar Jain vs Raghubir Saran Charitable Trust & Ors [DOJ: 12 October, 2011] observed as follows:

"There is a general feeling among consumers of arbitration (parties settling disputes by arbitration) that ad-hoc arbitrations in India - either international or domestic, are time consuming and disproportionately expensive. Frequent complaints are made about two sessions in a day being treated as two hearings for purpose of charging fee; or about a sessions for two hours being treated as full sessions for purposes of fee; or about non-productive sittings being treated as fully chargeable hearings. It is pointed out that if there is an arbitral tribunal with three arbitrators and if the arbitrators are from different cities and the arbitrations are to be held and the Arbitrators are accommodated in five star hotels, the cost per hearing, (Arbitrator's fee, lawyer's fee, cost of travel, cost of accommodation etc.) may easily run into Rupees One Million to One and half Million per sitting".

"The remedy for healthy development of arbitration in India is to disclose the fees structure before the appointment of Arbitrators so that any party who is unwilling to bear such expenses can express his unwillingness. Another remedy is Institutional Arbitration where the Arbitrator's fee is pre-fixed. The third is for each High Court to have a scale of Arbitrator's fee suitably calibrated with reference to the amount involved in the dispute. This will also avoid different designates prescribing different fee structures. By these methods, there may be a reasonable check on the fees and the cost of arbitration, thereby making arbitration, both national and international, attractive to the litigant public. Reasonableness and certainty about total costs are the key to the development of arbitration".

To be continued…