Lex Info

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(from Law Branch, South Central Railway)

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Legal Maxim

Impossibilium nulla obligatio est: Means nobody is bound to do what is impossible. It can be relevant when considering the performance of a contract. If it becomes impossible to perform due to unforeseen circumstances, this maxim may provide a defense against breach of contract.

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:

Sr. Law Officer,
Law Branch, SCR,
3rd Floor, Rail Nilayam,
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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

Contd….from last issue

According to the Section-23 of the Act, every Securitization Company, asset Reconstruction Company, or secured creditor must file the particulars of their transactions with the Central Registrar. The how and when are neatly specified within thirty days from the date of the transaction or creation of security.

Section 24 provides for Modification of security interest registered under this Act-

When any change occurs in the terms, conditions, extent, or operation of a security interest that has already been registered under the SARFAESI Act, it becomes the duty of the Asset Reconstruction Company (ARC) or the secured creditor to inform the Central Registrar about this modification. They must submit the particulars of such modification. The rules and procedures for initial registration of the security interest will also apply to the modification.

Section 25 imposes a statutory duty on secured creditors to act promptly and responsibly in enforcing security interests, and grants RBI the power to oversee and guide this process.

Section 26 of the Act deals with the obligation of securitisation companies and reconstruction companies to submit statements and information to the Reserve Bank of India (RBI).

Section 27 deals with the RBI's power to call for information and issue directions to securitisation companies and reconstruction companies.

Section 28 deals with the power of the Reserve Bank of India (RBI) to inspect records and books of securitisation and asset reconstruction companies.

Section 29 deals with the penalty for non-compliance with RBI directives by securitisation companies and reconstruction companies.

Section 30 deals with the penalty for contravention of the Act or rules made under it.

Section 31 specifies certain types of assets and cases that are exempted from the application of the Act.

According to Section 32 of the Act, no suit, prosecution or other legal proceedings shall lie against [1][the Reserve Bank or the Central Registry or any secured creditor or any of its officers] for anything done or omitted to be done in good faith under this Act.

Section 33 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) states that no injunction shall be granted by any court or authority in respect of actions taken by secured creditors under the Act.

Section 34 provides that Civil court not to have jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Section 35 provides for the provisions of this Act to override other laws

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Section 36 provides for Limitation - No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

Section 37 provides for Application of other laws not barred - The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

(to be contd…)

The Railway Servants Discipline & Appeal Rules 1968

Contd… from previous issue.

Suspension - Review within 90 days is mandatory after amendment to rules w.e.f 24.6.2004: The respondent working as a Civilian Motor Driver was suspended pending inquiry on 10th August, 2002. However, since no action was made to review his suspension, he filed OA in July 2004 for a declaration that the suspension order became invalid on the expiry of 90 days. He contended that rules of suspension have been amended w.e.f 24.6.2004 vide Sub-rules (6) and (7) of Rule 10 of CCS (CCA) rules (Rule 5 of D&A Rules, 1968) and accordingly suspension has to be reviewed within 90 days. He claimed that the suspension order must be deemed to have lapsed since Review Committee was not constituted as per amended rules came into force to extend the suspension.

The Tribunal allowed the OA and quashed the suspension order. In this, Appeal was filed before High Court on ground that since the matter sub judice before CAT, no action was taken. The High Court held that since there was no interim stay, in the OA, there was nothing to prevent the petitioners from reviewing the suspension within 90 days. Holding so the High Court, dismissed the writ petition. It is against this order present SLP has been filed.

It was not denied that the case of the suspended employee was reviewed on 20th October, 2004, beyond the period envisaged under Sub-rule (6) thereof. It was submitted that since the proceedings were pending before the Tribunal, the department had no option but to stay its hands in regard to the proceedings against the respondent. It was also submitted that on 20th October, 2004, the Reviewing Committee extended the period of suspension, which was again extended thereafter by order dated 8th April, 2005.

The Supreme Court held that having regard to the amended provisions of Rule 10 (6) & (7), the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

In this case, since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension. *[Union of India (UOI) and Ors. Vs. Dipak Mali, AIR 2010 SC 336 (2010) 2 SCC 222]*

Charge sheet: A Charge sheet is a written document of specific allegations against an employee which is/are not acceptable as per the code of conduct. The object being to give the employee the exact idea of the misconduct committed by him so that he may submit his explanation in his defence. The charge-sheet should take care to mention the particulars of time, place of occurrence and the manner in which the allegation said to have taken place to avoid vagueness. The Principles of natural justice require that the person charged should have full and true disclosure of the facts sought to be used against him. He must know the nature of the misconduct alleged against him so that he may be able to explain his say about it and prove innocence in the matter. Departmental proceedings start with the issue of charge sheet and unless a charge sheet is issued, departmental inquiry cannot be said to be pending. *[B. P. Sharma Vs. UOI 1984(2) SLR MP 323], [UOI Vs. K. V. Janakiraman; AIR 1991 SC 2010].*

Issue of charge sheet is mandatory: The purpose of charge sheet is to inform the employee of the charges against him so that he can make a reply and defend himself. If the employee is not informed of the charges, the circumstances leading to it, and the documentary and oral evidence in the possession of the disciplinary authority to substantiate the charges, the employee shall be seriously handicapped in putting forth his defence. *[UP Warehousing Corporation Vs. V.N.Vajpayee, AIR 1980 SC 840]*

A charge sheet must contain particulars of allegations and all the supporting evidence in the form of relied upon documents and witnesses, if any. Charged employee must not only be told of the charges levelled against him but also allegations on which they are based. He must be informed of the evidence on which the charges are sought to be established so that he can put forward his defence. *[Khem chand Vs UOI; AIR 1958 SC 300]*

Who can issue Charge sheet: A charge sheet should normally be issued by the disciplinary authority who is competent to impose penalty on the employee. In Railways, as far as non-gazetted employees are concerned, an authority who can impose any one of the major penalties can issue a major penalty charge sheet. With regard to gazetted officers, any authority who can inflict a minor penalty can issue a major penalty charge sheet as well. Rule 8 of RS (D&A) Rules, 1968 deal with authority to institute proceedings.

(Contd….)

Once Adoption is Registered, It is Presumed Valid: Punjab & Haryana High Court

The Hon'ble Punjab & Haryana High Court in the case of Union of India & another vs. Sukhpreet Kaur and another, has held that once an adoption is legally recognized, all associated rights, including employment benefits, cannot be denied on technicalities. The ruling establishes an important precedent, ensuring that government departments cannot arbitrarily reject claims based on procedural objections over adoption formalities.

Briefly the case is that when Sukhpreet Kaur applied for a job in the Railways on compassionate grounds, following the death of her adoptive father, Vijay Kumar, who was a serving railway employee, her request was rejected on the grounds that her adoption was not legally valid, as the adoption deed was registered on June 2, 2017, when she was already over 20 years old.

Aggrieved by this, Ms. Sukhpreet Kaur filed OA before the Hon'ble CAT/Chandigarh. The contentions the Railways that the adoption deed was executed late, raising doubts about whether the adoption was genuine, her 10th-grade school certificate did not reflect Vijay Kumar's name as her father, suggesting that her biological parents continued to be recognized as her legal guardians, under the Hindu Adoptions and Maintenance Act, 1956 (HAMA), adoption of a major is not permissible, and since the deed was registered after she turned 20, it could not be considered valid, were rejected by the Central Administrative Tribunal/Chandigarh and the Hon'ble CAT/Chandigarh directed the Railways to consider her case for compassionate appointment. The Railways challenged the order before the Hon'ble High Court of Punjab & Haryana at Chandigarh, seeking to set it aside.

The Hon'ble High Court dismissed the Railways' petition, upholding the CAT order and reinforcing that once an adoption deed is duly registered, it carries a legal presumption of validity under Section 16 of HAMA. The burden of disproving it lies on the person challenging the adoption, not on the adopted child.

The Hon'ble High Court clarified that the date of registration does not determine the validity of the adoption. Instead, it observed that: "The adoption took place on January 12, 2010, but was formally registered later. The timing of registration does not negate the fact that the adoption itself had already been performed. Legal formalities may be completed later, but that does not mean the adoption did not occur." The Court also rejected the argument that the school certificate should have reflected Vijay Kumar's name as her father, noting that educational institutions often continue to record biological parents' names, even in cases of valid adoption.

The High Court relied on the Supreme Court's ruling in Prema Gopal v. Central Adoption Resource Authority (SLP No. 14886/2024), where it was held that a registered adoption deed "relates back" to the date of actual adoption, not the date of its formal execution. The Apex Court ruled that legal adoption remains valid even if the formal paperwork is completed years later, provided that the adoption itself had been carried out in accordance with customary and legal procedures. Applying this principle, the High Court held that the delay in registering the adoption deed did not affect its legal validity and that Sukhpreet Kaur remained entitled to all rights flowing from adoption, including consideration for compassionate appointment.

The Hon'ble Court opined that "the rejection of the applicant's claim on purely procedural grounds defeats the very purpose of compassionate appointment. The policy exists to support the dependent family of a deceased employee, and bureaucratic formalities cannot override its intent."

The Hon'ble High Court ultimately dismissed the Railways' writ petition and upheld the CAT order, directing the authorities to process Sukhpreet Kaur's claim within three months. [**CWP No. 28074 of 2024 Union of India & Anr. Vs. Sukhpreet Kaur & Anr. (DOJ: 13.02.2025)**]

KNOW OUR CONSTITUTION

(Continued from previous issue…)

Article 95 - Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as Speaker.

(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

(to be contd..)

Difference between Mistake of Fact" and "Mistake of Law" in Contract Law.

Mistakes are of the most common characteristics in ordinary life but may also influence legal situations. The law classifies mistakes into two basic types viz. Mistake of Fact and Mistake of Law.

The crucial distinction between a mistake of fact and a mistake of law lies in what the party is mistaken about. It's important to understand that one refers to the material facts that exist in the world, while the other refers to the legal rules that govern those facts.

A mistake of fact is a misunderstanding or incorrect belief about a fact that occurs when a party to a contract leading to legal consequences, is mistaken about a factual matter that is material to the transaction. A mistake of law is an ignorance or misinterpretation of the law that occurs when a party not knowing that a certain act is illegal or having an incorrect understanding of a legal rule.

A mistake of fact is wrongly identifying an object, believing something to be true when it is false. Someone buying a painting believing it to be an original masterpiece, when in reality, it's a high-quality reproduction. This is a mistake of fact about the authenticity of the artwork. A mistake of law is misunderstanding a statute, not knowing an action is illegal. A business enters into a contract believing that a certain clause is legally enforceable, when in reality, it is prohibited by law.

A mistake of fact (especially mutual) regarding a material element of a contract can render the contract voidable. This means that either party can choose to rescind the contract. A unilateral mistake is much harder to use as a defence, requiring proof that the other party knew or should have known of the mistake. A mistake of law usually does not excuse a party from their contractual obligations. However, some exceptions exist, particularly in cases involving reliance on official interpretations.

Remedies:
Rescission - Cancelling the contract and returning the parties to their original positions.
Reformation - Rewriting the contract to reflect the true intentions of the parties.
Damages - Compensation for losses incurred as a result of the mistake (less common).

Thus, the doctrines Ignorantia Facti Excusat and Ignorantia Juris Non Excusat provide a legal defence for individuals who commit acts in good faith and under the belief that they are acting in accordance with the law. While mistake of fact is generally a valid defence, mistake of law is not considered to be a defence in India.

FAQ Who is Principal Employer under the Contract Labour (Regulation and Abolition) Act, 1970

In the context of labor laws, particularly the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is the entity that ultimately benefits from the work performed by contract laborers. This is usually the owner or occupier of a factory, or the head of a government or local authority department. Essentially, it's the entity that engages contract labor through a contractor to perform work for them.

In a Factory, The owner or occupier of the factory is considered the principal employer. If a manager is appointed under the Factories Act, 1948, that manager also holds the principal employer designation.

In Government or Local Authority Offices, The head of the department or office is typically the principal employer. Alternatively, the government or local authority can specify another officer to be the principal employer. In other Establishments, the person responsible for the supervision and control of the establishment is considered the principal employer.

Key responsibilities of the Principal Employer include the following:-

Registration:

Establishments employing 20 or more contract laborers must register with the relevant authorities. If the principal employer engages the contractors' workmen without registration of his establishment, he is liable for action under section 23 of the Act.

Compliance:

The principal employer is responsible for ensuring the contractor complies with labor laws, including wage payments, working conditions, and providing required benefits (like PF and ESI).

Welfare:

They are also responsible for ensuring the welfare of contract laborers, including providing amenities like canteens, restrooms, and first aid if the contractor fails to do so.

A restrictive covenant in clause of the appointment letter does not amount to restraint of trade nor is it opposed to public policy : Supreme Court

Vijaya Bank has challenged judgment of the High Court quashing clause 11(k) of the appointment letter whereby the respondent-employee was required to pay liquidated damages of Rs. 2 lakhs in the event of leaving employment of the first appellant-bank prior to three years and consequentially the appellant-bank was directed to refund the said sum to the respondent.

In 2006, appellant-bank issued a recruitment notification for appointment of officers. Clause 9 (w) of the recruitment notification reads that "Selected candidates are required to execute an indemnity bond of Rs.2.00 Lakh indemnifying that they will pay an amount of Rs.2.00 lakh to the Bank if they leave the service before completion of 3 years"

Cognizant of the said condition, respondent applied to the post of Senior Manager-Cost Accountant and was selected for the said post. Clause 11(k) of the said letter Offer of appointment states that "You are required to serve the Bank for a minimum period of 3 years from the date of joining the bank and should execute an indemnity bond for Rs.2.00 lakhs. The said amount has to be paid by you in case you resign from the services of the bank before completion of stipulated minimum period of 3 years."

The respondent joined the post by executing an indemnity bond. However, before completion of three years from his date of joining, respondent tendered resignation. His resignation was accepted and under protest respondent paid the sum of Rs.2 lakhs to the appellant-bank. Thereafter, he filed a writ petition before the High Court for quashing of clause 9 (w) of the recruitment notification and clause 11 (k) of the appointment letter alleging the same were in violation of Articles 14 and 19(1)(g) of the Constitution of India and S 23 and S 27 of the Indian Contract Act, 1872. The writ petition was allowed and appeal thereon was also dismissed by the Division Bench.

The issue which falls for decision is whether clause 11 (k) of the appointment letter amounts to :-

(i) restraint of trade under Section 27 of the Contract Act and/or

(ii) opposed to public policy and thereby contrary to Section 23 of the Contract Act and violative of Articles 14 and 19 of the Constitution.

A plain reading of clause 11 (k) shows restraint was imposed on the respondent to work for a minimum term i.e. three years and in default to pay liquidated damages of Rs. 2 Lakhs. The clause sought to impose a restriction on the respondent's option to resign and thereby perpetuated the employment contract for a specified term. The object of the restrictive covenant was in furtherance of the employment contract and not to restrain future employment. Hence, it cannot be said to be violative of S 27 of the Contract Act.

The second argument was that the clause is part of a standard form contract and his client was compelled to sign on dotted lines. If he did not do so, he would have to forsake career advancement. The terms of the contract were imposed on him through an unequal bargaining mechanism. Clause 11 (k) being an unreasonable, onerous and ex-proportionate measure resulting in unjust enrichment for the appellant-bank is opposed to public policy.

The Supreme Court held that the onus to prove that a restrictive covenant in an employment contract is not in restraint of lawful employment or is not opposed to public policy, is on the employer and not on the employee. From the prism of employer-employee relationship, technological advancements impacting nature and character of work, re-skilling and preservation of scarce specialized workforce in a free market are emerging heads in the public policy domain which need to be factored when terms of an employment contract is tested on the anvil of public policy.

The appellant-bank incorporated a minimum service tenure for employees, to reduce attrition and improve efficiency. Viewed from this perspective, the restrictive covenant prescribing a minimum term cannot be said to be unconscionable, unfair or unreasonable and thereby in contravention of public policy. The other aspect involves imposition of liquidated damages to the tune of Rs.2 Lakhs in the event of pre-mature resignation. The apex court did not concur with this submission that the quantum is disproportionate and causes unjust enrichment to the employer. The appellant-bank has clarified the financial hardship which it would suffer due to untimely recruitment drives owing to pre-mature resignations. The stance of the appellant-bank is neither unjust nor unreasonable. The appellant-bank is a public sector undertaking and cannot resort to private or ad-hoc appointments through private contracts. An untimely resignation would result in a prolix and expensive recruitment process involving open advertisement, fair competitive procedure lest the appointment falls foul of the constitutional mandate under Articles. Keeping these exigencies in mind, the appellant-bank had incorporated the liquidated damage clause in the appointment contract.

Therefore the Supreme Court held that the restrictive covenant in clause 11(k) of the appointment letter does not amount to restraint of trade nor is it opposed to public policy. **[Vijaya Bank & Anr. Vs Prashant B Narnaware, CA No.11708 of 2016, Date of Decision: May 14, 2025]**

YOURS LEGALLY

Right to Information Act cannot be used to intrude into the personal life of individuals- CIC reiterates.

What is personal information, which is exempt from disclosure: *Supreme Court held that "personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information".*

In the present case, the Appellant filed an RTI application dated 26.02.2024 seeking information as to a*ll the detail like joining report, SRO, selection list, category certificate, promotion list, transfer order etc. if any on the basis of which they have got the service in Police /Home Department of two Police Officers mentioned in the application.*

Dissatisfied with the non-receipt of information received from the CPIO, the Appellant filed a First Appeal dated 08.04.2024. The FAA vide order dated 2.05.2024 replied that *"after corroborations of record available in the concerned file and counter statement of PIO and the points put forth by PIO and appellate during the appeal, is fully convinced and that the PIO has acted in accordance with the provisions of RTI Act, 2005. The applicant should have approached the PIO and FAA at Police Headquarters, J&K. Therefore, the appeal is accordingly disposed off, with the directions to PIO, Home Department to provide copy of communication dated 03.04.2024 to applicant, vide which the RTI application was transferred to the PIO in the office of Director General of Police, J&K."*

Aggrieved and dissatisfied with, the Appellant approached the Commission with the instant Second Appeal. PIO has furnished reply that *reply received from Dy. SP (Personnel) PHQ J&K reveals, "that information sought by the applicant falls within ambit of Section 8(1) (j) of the RTI Act as it is personal in nature, having no relation to any public activity and thus exempted from disclosure. As such, the information cannot be provided…"* CPIO also reiterated the aforementioned facts and held that *the information sought by the applicant falls within ambit of section 8(1)(j) of the RTI Act as it is personal in nature, having no relation to any public activity and thus exempted from disclosure. As such, the information cannot be provided.*

Decision of CIC:

Commission has gone through the case records and on the basis of proceedings during hearing observes that appellant has sought information which qualifies as personal information of third-party and same is exempted from disclosure as per Section 8(1)(j) of the RTI Act, 2005. Further no larger public interest has been invoked by the Appellant. In view of this, Commission finds it pivotal to highlight a landmark judgement of the Hon'ble Supreme Court, wherein aspect of "personal information" has been explained in a highly structured manner. In this regard, ratio laid down in the matter of ***Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010.*** The relevant portion of the said judgment is as under:

"…59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that ***personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information.*** *Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive…"*

[Emphasis Supplied]

The Hon'ble Supreme Court in the aforementioned case has categorized a variety of aspects that comes under the purview of "personal information" which are exempt from disclosure under Section 8(1)(j) of the RTI Act. Commission taking into account the facts of the referred case deny the request of Appellant for disclosure of the information and upholds the submission of the PIO. No further action lies. The appeal is disposed off accordingly. ***[Shri KULDEEP RAJ Vs PIO, Home Department, UT of Jammu and Kashmir, Central Information Commission, Second Appeal No. CIC/UTOJK/A/2024/116027, Date of Decision: 03.07.2025]***

TREATISE ON

S.33 Continued from pre issue:

As per Section 33(1), within 30 days from the date of receipt of the arbitral award, a party with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award. Further, if the parties agree, a party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. The period of 30 days contemplated under sub Section (1) may stand extended to another period of time if agreed upon by the parties.

Therefore, ordinarily the time limit for correction of errors or for interpretation of a specific point or part of the award is 30 days from the date of receipt of the arbitral award. However, the limitation of 30 days can be waived for another period of time, if agreed upon by the parties. Question for consideration is what would be the contours of the expression unless another period of time has been agreed upon by the parties, as appearing in Section 33(1).

Section 33(7) clarifies that correction or interpretation of arbitral award or passing of additional arbitral award would attract Section 31 of the 1996 Act. Therefore, the language of Section 33(1) makes it abundantly clear that the period of 30 days as provided in Section 33(1) is not an inflexible period. If the parties agree, the said period can be extended.

In the present case, Arbitrator passed the award on 16.12.1997. After adjusting the claims and counter claims, Arbitrator granted principal amount and on the question of interest, Arbitrator awarded simple interest @ 18% per annum on the award amount from 01.04.1990 i.e. the date of cause of action to the date of actual payment except on one claim.

In the execution proceeding before the Single Judge, Single Judge framed an issue for consideration as to whether post-award interest under Section 31(7) of the 1996 Act would be calculated on the principal amount adjudged or on the principal amount plus interest on the principal amount which has accrued from the date of cause of action to the date of passing of the award as under the 1996 Act, award is to be enforced as a decree of the court. According to the Single Judge, it was an important issue affecting a large volume of litigation. Therefore, to avoid proliferation of litigation and unnecessary appeals, Single Judge was of the view that the aforesaid question should be decided by a Division Bench.

Respondent then made a submission before Division Bench that he may be permitted to approach the Arbitral Tribunal for a clarification on this issue. Division Bench granted permission to the respondent to approach the Arbitral Tribunal for clarification. In terms of the permission granted, respondent filed an application before the Arbitrator seeking clarification of the interest awarded by the Arbitrator qua Section 31(7) of the 1996 Act.

The appellant had also participated in the clarificatory proceeding before the Arbitrator taking the stand that no clarification as sought for was required on merit. Also, appellant did not challenge the clarification dated 15.03.2005 under Section 34 of the 1996 Act; instead appellant questioned the same in the execution proceeding before the Single Judge. Thus, as can be seen, the impugned order is a consent order. Therefore, it is not open to the appellant to assail the said order.

The Apex Court held that this is a case where court had permitted the respondent to seek clarification from the learned Arbitrator beyond the initial period of 30 days whereafter the appellant fully participated in the clarificatory proceeding. In the circumstances, contention of the appellant that the learned Arbitrator had become functus officio and therefore lacked jurisdiction to issue the clarification cannot be accepted and is thus rejected.

Legal Implications of the Judgement:

This decision of the Supreme Court throws significant legal implications in arbitration proceedings in India

1. Court has the power to permit Post-award Clarifications from the Arbitrator. Parties to seek clarification from the Arbitral tribunal even after the expiry of the 30-day period under Section 33 of the 1996 Act. Thus, Section 33 does not limit judicial authority to direct arbitrators for necessary clarifications.

2. The 30- day limitation under Section 33 may be overridden by the court's explicit permission. Though, under Section 33 of the Act, an arbitrator is empowered to issue clarifications and corrections within 30 days, Clarifications beyond this period require court approval—mutual consent of the parties alone is insufficient to extend the arbitrator's jurisdiction.

3. Mutual Agreement of Parties: This case further emphasises on the party autonomy. Parties by mutual agreement than adversarial dispute resolution through Courts.

4. Once an Arbitral Award is upheld at all the appellate levels, it cannot be challenge again during execution. ***[NORTH DELHI MUNICIPAL CORPORATION VERSUS M/S. S.A. BUILDERS LTD., CA No. 1878 of 2024 (@ SPECIAL LEAVE PETITION (CIVIL) NO. 3421 OF 2024, DOJ: 17.12.2024]***