



South Central Railway Lex Info – e Magazine

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SDGM**

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Have you any case law/case study to be shared with other railwaymen?

Articles/write-ups on legal issues relevant to railways' working are invited from officers/staff including from other zonal railways/production units;

Please mail them to:

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



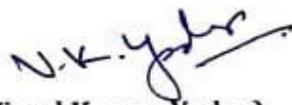
GM's Message

It gives me immense pleasure to know that the Law Branch of South Central Railway is bringing out a monthly news magazine titled "Lex Info - e-Magazine" from December 2018 onwards. Creating legal awareness among staff, especially those dealing with Court cases, D&AR cases, Establishment issues etc. will, I am sure, bring in faster and efficient disposal of Court cases / Staff grievances. It is also laudable that this is a "green initiative" in tune with the Railway Board's instructions, since it is published in e-mode. This will also open up an avenue for legal minds of S.C.R to show up their talent by contributing to the magazine.

I heartily congratulate Law Officers and Chief Law Assistants for their appreciable efforts.

Wishing the endeavour all success,

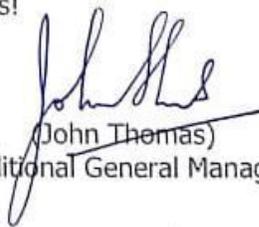
Secunderabad
19.12.2018


(Vinod Kumar Yadav)
General Manager



AGM's Message

The fact that the Law Branch of South Central Railway is launching "Lex Info e-Magazine" is indeed heartening. Needless to say that the legal awareness will certainly help Officers / Staff to take timely and informed decisions on issues pertaining to court cases and thus help expeditious disposal of court cases in favour of Railways. Seen in this back drop, the effort in bringing out an e-Magazine, attains paramount importance. I am sure that the gap in legal awareness will be bridged to a greater extent through this venture. I urge all the staff to make optimum use of the e-Magazine, which will be uploaded in the official website of SCR, to sharpen their skills while dealing with court cases and staff grievances. I place on record my appreciation for all the law officers and CLAs who have made painstaking efforts to realize this need. I wish the initiative, commencing from December 2018, a grand success!


(John Thomas)
Additional General Manager



PCPO's MESSAGE

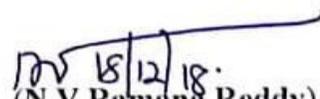
I am extremely happy to note that the Law Branch of South Central Railway is bringing out a monthly e-magazine titled "Lex Info – e Magazine" from December 2018 onwards.

It is given to understand that many legal aspects pertaining to railway working, viz. recent Judgements and legal terminology/knowledge required for day to day handling of various court matters are discussed in this magazine.

It is a very bold initiative by the Law Branch and I am sure this will go a long way in improving the efficiency of our officers/staff in dealing various court cases.

I congratulate the editorial team for conceptualizing such a noble endeavour and I wish that the magazine will be brought out regularly every month for the benefit of all railwaymen.

I wish the venture a very best of luck and grand success.


(N V Ramana Reddy)

Principal Chief Personnel Officer

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From Editor's Desk

Dear readers, on behalf of the editorial board, I am happy to introduce the first issue of our "Lex Info e-Magazine" on legal matters relevant to Railway working. This Magazine will be published every month with gist of cases decided by various courts in a capsule form so that the latest developments in the field of law related to the matters of Arbitration, Contracts, Service, Consumer and other matters will be quickly grasped by the officials, which may help them in discharging their day to day functions without any quarrel with Law.

Every issue of this news letter contains 8 pages of information. In addition to gist of the important judgements, regular features like "ABC of Acts" [One statute per month], "Difference between...", Legal terminology, Frequently Asked Questions [FAQ] are included. A running topic exclusively on Arbitration and Conciliation Act, 1996 will be published in every issue since Arbitration is a very important one for resolution of disputes on the Railways and in the recent past many changes have taken place in the Act and also in the GCC and IRS conditions. The Editorial Board also welcomes interesting articles on legal matters which are relevant to Railways working. I hope that this e-Magazine will serve the purpose for which this is being introduced and be received with all enthusiasm from the Railway fraternity.

N. Murali Krishna, Sr.LO/HQ

Adducing Additional evidence - Court cannot pass judgement on merits without affording opportunity to affected party to rebut additional evidence:

In a dispute related to a land measuring about 3600 sq.ft.in Chennai, plaintiffs (respondents herein) filed four Civil Suits against the Corporation of Madras. The Trial Court, by a common judgment/decree dismissed all the four suits with costs. Aggrieved, the plaintiffs filed first appeals and sought permission to adduce additional evidence in support of their case. The first appellate court permitted the plaintiffs to file the additional evidence and placing reliance on said additional evidence tendered by plaintiffs for the first time at the appellate stage, allowed the appeals, set aside the judgment and decree of the Trial Court and decreed all the four civil suits. Second appeals have been filed by the Corporation of Madras but were dismissed by High Court. Against which the Corporation filed appeal before the Supreme Court.

Allowing the appeal, the Supreme Court held that the first appellate court took into consideration the additional evidence while deciding the appeals on merits without affording any opportunity to the appellants herein(Corporation of Madras) to file any rebuttal evidence to counter the additional evidence adduced by the respondents (appellants before the first Appellate Court). This caused prejudice to the appellants herein because they suffered the adverse order from the Appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. Also held that the appellate court ought to have remanded either the entire case to trial court or to remand the case for the limited purpose of adducing evidence on specific issues keeping the main case with it. On both counts the appellate court fails. Hence, the Supreme Court allowed the appeal and remanded the case to trial court with liberty to all the parties to lead any additional and rebuttal evidence. [Corpn. of Madras v. M. Parthasarathy, (2018) 9 SCC 445]

IVVRP Prasad, LO/Hqrs.

Courts cannot interfere in matters of policy such as train timings, new trains etc.

Writ Petition by way of PIL was filed before Uttaranchal High Court praying to issue a direction to reschedule the departure time of train No. 4319 and to introduce a train between Kathgodam to Varanasi via Sultanpur/Badlipur or to start train No. 136 Passenger starting from Bareilly be started from Kathgodam instead of Bareilly and train No. 135 Varanasi-Bareilly Passenger to run up to Kathgodam. Under compelling circumstances, an affidavit was filed by the Railway to the effect that necessary orders would be issued to change the timings of the said trains and also steps would be taken to provide the new service to get the PIL closed. However, since it being a policy matter, an SLP had been filed before the Supreme Court challenging the said order.

Referring to the judgements in UOI & Ors. v. Nagesh & Anr., (2002) 7 SCC 603 and UOI & Ors. v. J.D. Suryavanshi, (2011) 13 SCC 167 Hon'ble Supreme Court allowed the SLP holding that matters of train timings and providing new train connectivity between two locations are essentially matters of policy, to be decided by the competent authority on a consideration of host of relevant facts and circumstances and further that such matters are not appropriate for adjudication in a P.I.L.

Holding that the High Court has exceeded its jurisdiction in the matter, the Supreme Court set aside the order of the High Court, however, with liberty to the Railways to do so in the event the Railways consider it feasible, necessary and expedient to make any change in timings or providing new connectivity, as the case may be. [CA No. 8852/2011 Union of India& ors. Vs. High Court bar association of Uttaranchal, DOJ 04.12.2018]

K.Phaniraj, ACM/M&D

ABC of Acts

ADMINISTRATIVE TRIBUNALS ACT, 1985 (w.e.f 1.7.1985)

AT Act, 1985 was enacted under Article 323A of the Constitution of India for adjudication of service disputes and complaints related to the affairs of Union / State / Local or other authority.

Applicability: This Act is NOT applicable to (a) Naval, military, air force or armed forces personnel; (b) Officer/servant of SC/HC/Subordinate courts & (c) Secretarial staff of Parliament, State/UT Legislature. [S.2]

CAT exercises jurisdiction, powers and authority related to recruitment and service matters of All India Service (AIS)/ Civil service of the Union or civil posts under the Union / Defence & State Government employees at the service of Central Government. [S.14] Service Matter includes remuneration, pension, seniority, promotion, confirmation, retirement, leave, disciplinary matters and other matters. [S.3(q)]

Who can approach Tribunal? Any person who is aggrieved by any order pertaining to any service matter may make an application (Original Application i.e., OA, in common parlance). eg: employees, retired employees, aggrieved legal heirs of a deceased employee, a person who is being denied appointment under CG or from open market recruitment etc., can thus approach CAT.

Is exhausting of alternate remedy mandatory? An applicant cannot approach CAT directly and need to avail of all departmental remedies before approaching CAT. However, in exceptional cases of emergency a Tribunal may admit an application overlooking the above requirements. An applicant is deemed to have availed all the remedies if a final order has been made by the Govt. / authority / officer / competent person, rejecting any appeal / representation preferred by him or if a period of six months expired from the date of appeal / representation. [S.20] However, the alternative remedy has been consistently held by the Hon'ble Apex Court not to operate as a bar in at

least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

Limitation: OA to be filed—(i) Within one year from the date of final order; or (ii) Within one year after the expiry of six months from the date of preferring appeal / representation, when the said appeal / representation was not disposed of. Delay is condonable for sufficient cause. [S.21]

Procedure by Tribunal: CAT not bound by CPC but by Principles of Natural Justice. CAT has power to regulate its own procedure. OA to be decided by perusal of documents/written representations and after oral arguments. CAT has Civil Court powers for summoning/enforcing attendance of witness, production of documents, receiving evidence on affidavits, reviewing its decisions, dismissing OA for default/deciding it ex-parte, restoration of dismissed OA etc. [S.22]

Grant of stay by Tribunal: Before granting interim order, OA copy to be served on the respondents and hear them. However, to avoid loss to the applicant, interim order may be passed without fulfilling the above conditions; but stay will expire on completion of 14 days unless above conditions are fulfilled and CAT granted extension of stay. [S.24]

Is it possible to file OA before any bench of Tribunal? An employee may file OA before CAT within whose jurisdiction the applicant is posted or where the cause of action, wholly or in part, has arisen. [Rule 6(1) of CAT (Procedure) Rules, 1987]. However, retired, dismissed or terminated employee may file OA before the CAT within whose jurisdiction he is ordinarily residing. [Rule 6(2)]

Contempt powers: CAT has same power as High Court's while dealing with Contempt Cases. [S.17]

S.Venkateswarlu, CLA

CG Appointee to take care of family members:

Respondent No.4 was offered appointment on compassionate grounds on the death of his father, who happens to be the son of the first wife of deceased employee, who was employed as a Class-IV employee with the State of UP. A Writ Petition has been filed for appointment on Compassionate grounds by step mother of R.4 wherein High Court passed interim orders for reply and also directed the R.4 to continue to transfer adequate amount from his salary for the maintenance of his step mother and step brother as per undertaking given before the Competent Authority and in the event R.4 does not comply with the undertaking given before the Competent Authority it will be open for the petitioner to approach this Court by filing appropriate application.

Meanwhile, an application has been filed by the petitioners that R.4 failed to adhere to his commitment to take care of the family members. Disposing the WP, the High Court observed that R-4 being the son of deceased employee, was entitled to be appointed on compassionate basis. Hence, order passed by the authorities approving his appointment, suffers from no illegality. However, High Court observed that compassionate appointment is offered only with an intent to enable the dependents of the deceased government servant to tide over the sudden difficulty caused due to death of the government servant in harness. In this regard, Rule 7 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 states that if more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof."

The High Court, therefore, held that said rules cast a positive obligation upon the person, who is appointed to support other family members also. In case the authority finds that the respondent has not discharged his obligation, as per the law, it would be open for him to withdraw the benefit already extended or to impose such other conditions, as may be found expedient, considering the facts and circumstances of the present case, as also the

provision of law. The High Court therefore directed the authorities to consider the application of petitioners and to take necessary action within 3 months. [Yashoda Devi v. State of U.P., WRIT - A No. - 65104 of 2013 order dated 26-11-2018, High Court of U.P]

V. Appa Rao, CLA

Court order copy downloaded from official website suffices requirement of certified copy:

Office of the Appellate Court had refused to act upon the downloaded copy of order of the Hon'ble High Court, Nagpur Bench when the appellant approached it to pay the cost of Rs.5,000/- to condone the delay, as ordered by the High Court, Nagpur Bench. Instead it insisted for official copy of the order. By the time the official copy from the Court reached the office of Court below, the period of four weeks granted by the High court had expired. Hence, the appellant filed application for extension of time to deposit costs.

The High Court condemned the said insistence and observed that it was uncalled for and the appellant ought to have been permitted to deposit costs on the order copy obtained from official website of the High Court. It relied on the Aurangabad Bench's order dated 2.2.2018 in MCA No.244/2017 (Shital Krushna Dhake v. Krushna Dagdu Dhake) wherein it was held: I am of the view that this apprehension is misplaced since the print out of the orders of this Court from the official website has sanctity and the trial Courts are expected to consider the said orders, if they are cited after taking a print out from the official website. The said orders are also available before the trial Court from the official website and there can be a counter verification to find out whether such an order is actually uploaded to the official website or not. In this backdrop, there is no harm if such a print out from the official website is placed before this Court."

Toeing the above line, the High Court, Nagpur Bench thus, allowed extension of time. [Ibrahim Sk. Rasool Vs. Mohommad Zahir Mohammad Sharif and Ors.; CA.No. 411/2018 in SA.157 of 2017 DOJ: 19.03.2018, 2018(5) MHLJ 455].

N.Murali Krishna, Sr. LO, HQ

FAQ

What is an Affidavit?

An affidavit is a sworn statement of facts by a person (deponent) who knows that such facts and circumstances have taken place. It is a written document signed by the deponent, confirming that the contents of the affidavit are true and correct to his knowledge and he has concealed nothing material there from. It is duly attested/affirmed by the Notary or Oath Commissioner. Order 19 of Civil Procedure Code, 1908 deals with affidavits.

Affidavit must be paragraphed, numbered and signed at the bottom of each page in the presence of an authorized person. Further, the affidavit must contain the full name, address, occupation, date, place and signature of the deponent. The affidavit must contain facts and circumstances known to a person and must not set out the opinions and beliefs of the deponent. Further, one should avoid referring to facts that are based on information received from others (known as “hearsay evidence”).

A verification clause has to be incorporated at the end of an affidavit confirming the correctness of the contents. Supreme Court in A.K.K.Nambiar Vs. UOI (AIR 1970 SC 652) held that the importance of ‘verification’ is to test the genuineness and authenticity of statement and also to make the deponent responsible for statements and such an affidavit is inadmissible as evidence.

Filing of affidavit on one’s own statement, in one’s own favour, cannot be regarded as sufficient evidence by courts or tribunals. [Range Forest officer Vs. Hadimani; AIR 2002 SC 1147 & Ayub Khan Noor khan Vs. State of Maharastra dated 08.11.2012]. Hence, the same has to be proved before a court of law.

Making a false affidavit in one’s pleadings or filing false affidavit or false document in evidence before court of law or in any quasi-judicial, is an offence. It attracts imprisonment upto 7 years or fine and upto 3 years or fine for judicial proceeding and other proceedings respectively.

K.Gopinath, CLA

DIFFERENCE BETWEEN:

Judgment & Decree:

Judgment means the statement given by the judge on the grounds of a Decree or Order. The decree is a conclusive determination of rights of parties to the litigation. The Court, after the case has been heard, shall pronounce judgment and on such judgment a decree shall follow. The judgment contemplates a stage prior to passing of a decree or order. To enforce a right, a decree shall be drawn. A Decree is enforceable on filing of an Execution Petition. The limitation starts with Decree but not with the judgment. Section 2(9) of Civil Procedure Code, 1908 defines judgment. Rules 1 to 5 of Order-2 deals with Judgment. Section 2(2) defines ‘Decree’. Rules 6 to 20 of Order 20 deal with Decree.

K.Gopinath, CLA

Legal Terms & Maxims

Ab initio - From the beginning.

Ad hoc - For this purpose.

Ad Valorem – According to value; Based on value. eg:- Taxation based on value of the property.

Alibi - At another place, elsewhere. eg:- A plea normally taken to establish that somebody was at a place other than crime scene, so as to prove his innocence.

Amicus curiae - A friend of the Court, normally appointed by the Court to help in its proceedings.

Audi alteram partem - Hear the other side. One of the two important Principles of Natural Justice. This ensures that nobody is condemned unheard.

K.Gopinath, CLA.

Termination of arbitral proceedings – Arbitrator to give notice prior to termination

Appellant contractor was awarded certain construction work in the year 2006 extended upto 2010 and final payment have been made in the year 2011. As contractor has raised certain disputes in the year 2013, respondent appointed Superintendent Engineer as an arbitrator in terms of the agreement. Claimant contractor sought many adjournments on the ground that he challenges said appointment before High Court, and did not submit his claim statement. Even after hearings, as claim statement was not submitted, the arbitrator terminated the arbitration proceedings on 06.08.2013 under S.25(a) of A&C Act, 1996.

Aggrieved, claimant filed an application for appointment of arbitrator under S.11(6) of the Act before the High Court, which was dismissed on the ground that appointment of arbitrator cannot be made since same was done as per terms of agreement between parties. Against this judgement, the appellant filed appeal before the Supreme Court on the ground that the appointment of departmental arbitrator is impermissible in view of amendment of 2015 under S.12(5) of the Act and also the arbitrator was appointed by designation but not by name and hence it was not an appointment of arbitrator.

Having gone through the agreement, the Supreme Court held that perusal of arbitration clause (Cl.65) makes it apparently clear that it was permissible to appoint a person by designation and this is evident from the sentence “the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Chief Engineer is to appoint another person....”. If appointments were only to be made by name and not by designation there could be no question of further appointment on the Arbitrator vacating his office. The SC further held that if the appellant has any grievance that the appointment of the arbitrator is by ‘post’ and not by ‘person’, the appellant ought to have raised the challenge before the arbitrator in the first instance.

Rejecting the contention that appointment of departmental person is impermissible under S.12(5) after amendment, the SC held that as per S.26 of the Act, the provisions of the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the Amendment Act, 2015 (w.e.f. 23.10.2015). Also the provisions of Amendment Act, 2015 cannot have retrospective operation in the arbitral proceedings already commenced unless the parties otherwise agree. In the present case, arbitration proceedings commenced way back in 2013, much prior to coming into force of the amended Act. Hence, held that provisions of the Amended Act cannot be invoked.

However, despite granting adjournments directing both parties to come prepared for the next date of hearing, arbitrator terminated the proceedings on the next date since appellant did not file claims statement. Hence, Supreme Court held that the arbitrator could have issued a notice warning the appellant that no adjournment would be granted under any circumstances. Since, no such warning was given, the order of termination of arbitration proceedings is set aside. In the interest of justice an opportunity is to be afforded to the appellant to go before the departmental arbitrator (as agreed by the parties in clause (65) of the general conditions of contract). [S.P.Singla Constructions Pvt. Ltd. vs. State of Himachal Pradesh and another. CA Nos. 11824-11825 of 2018, DOJ: 04.12.2018]

S.Amjad Ali, OS/Law/SCR.

What is the difference between a good lawyer and a great lawyer?

A good lawyer knows the law. A great lawyer knows the Judge.

What do you call a priest that becomes a lawyer?

A father in law

Yours legally

Whether wrongly granted benefit to a person be base for another's claim?

It often confuses when a person airs his grievance about not extending some benefit on par with another person, though the said person was actually not entitled to such a benefit. The question involved on such occasions is whether an undeserving / erroneous benefit extended to a person can constitute a valid claim for another person? The Hon'ble Supreme Court has clarified this issue in Civil Appeal No.4732/2007 [M/s Vishal Properties Pvt. Ltd. Vs. State of UP & Ors.] on 09.10.2007 as follows:

“12. Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, we are not bound to direct any Authority to repeat the wrong action done by it earlier. In *Sushanta Tagore & Ors. Vs. Union of India & Ors.*, (2005 (3) SCC 16), this Court rejected such a contention as sought to be advanced in the present case by observing:-

Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.....

15. In *Jalandhar Improvement Trust Vs. Sampuran Singh*, (AIR 1999 SC 1347) and *Union of India & Ors. Vs. Rakesh Kumar* (AIR 2001 SC 1877), this Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.....

17. Recently in *State of Kerala Vs. K. Prasad & Anr.* (JT 2007 (9) SC 140), it was inter alia held as follows:
14. Dealing with such pleas at some length, this Court in *Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr.* has held that if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his

case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose. This position in law is well settled by a catena of decisions of this Court..... It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.”

Hon'ble Apex Court subsequently in Civil Appeal No. 5440/2000 [*Hari Ram & Another Vs. The State of Haryana & Others*] with CA Nos.5441-5446 & 5449 of 2000 reiterated its earlier conclusions as follows:

“16. In the case of *Vishal Properties (P) Limited*, this Court reiterated the legal position that: (i) Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality; (ii) Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship; (iii) Any action/order contrary to law does not confer any right upon any person for similar treatment and; (iv) An order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.”

Shaji.M.K, CLA

Know our Constitution:

- ✓ Indian Constitution has 395 Articles, 12 Schedules & 102 Amendments.
- ✓ Article 298 empowers Union / State to enter into contracts.
- ✓ Article 299 states that all the contracts to be executed in the name of President/ Governor. However, they are personally not liable.

TREATISE ON ARBITRATION & CONCILIATION ACT, 1996

What is Arbitration?

Arbitration is a form of Alternative Dispute Resolution (ADR) mechanism and hence is a way to resolve disputes outside the courts. Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Disputes are decided by one or more persons called as "arbitrators", "arbiters" or "arbitral tribunal", mostly on previously agreed terms/qualifications, which renders the "arbitration award". An arbitration Award is legally binding on both sides and enforceable in the courts.

Arbitration can be either voluntary or mandatory. Mandatory arbitration arises from a Statute or a contract between two parties. A Statutory arbitration is a kind of forced arbitration forcing the disputing parties to arbitration to resolve the disputes. eg: Telegraphic Act, Electricity Act, etc. On the other hand, Section 89 of the Code of Civil Procedure, 1908 gives the Court the power to refer the dispute for settlement or conciliation with a purpose of amicable, peaceful and mutual settlement between parties without intervention of the court.

Arbitration has many advantages over the adversary form of litigation, i.e process of normal courts, which are very cumbersome, procedurally archaic, delays, parties in dark and not knowing what is happening as to their disputes except through their advocates and many times costly. Arbitration has the advantage of choosing the judge, i.e., arbitrator, by parties. This is more advantageous in highly technical subject matters, since the expertise of arbitrator in the concerned field is made use of. It is faster and generally non-public, thus can maintain confidentiality, if need be. Arbitration proceedings are neither mired in procedural intricacies of Code of Civil Procedure nor bound by Evidence Act etc and the parties are free to decide on the procedure to be followed. Arbitration is cost effective. The issues attain finality at the earliest, and will have an amicable settlement between parties. Since the forum, the procedure and the judge (arbitrator) to resolve the dispute are decided by them, there is not much scope to challenge the arbitral Award in higher courts.

Disputes, that cannot be referred to arbitration:

Despite the many advantages, not all disputes can be resolved by arbitration. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication [S.2(3) of A&C Act, 1996].

It was held in *Neeraj Munjal & Others Versus Atul Grover (Minor) & Another*, 2005(3) CLT 30 that the courts could not deprive the parties from a remedy, which is otherwise available to them in law. It has been further held that a court of law has no jurisdiction to direct a matter to be governed by one statute when provisions of another statute are available. Order of Hon'ble SC in *Fair Air Engineers Pvt. Ltd. & Anr. Versus N.K.Modi, III* (1996) CPJ 1 (SC) & (1996) 6 SCC 385 also deals with the same point. In *re Emaar MGF Vs. Aftab Singh* [Review Petition no.2629-2630 of 2018 in CA Ns.23512-23513 of 2017] Hon'ble Apex Court held that notwithstanding S.8(1) of A&C Act 1996, the Consumer courts need not refer the parties before it to arbitration.

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 unsuitable for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to sub-ordinate rights in personam arising from rights in rem have always been considered to be arbitrable. [A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals.]

However, adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora.

To be continued in next issue....

Shaji.M.K, CLA