Lex Info

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

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Legal Maxim

Nemo Potest esse tenens et dominus – Nobody can be both a landlord and a tenant of the same property.

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

ABC OF ACTS

The Legal Services Authority Act,1987

(Contd. .from last issue…)

Powers of Lok Adalat - To summon and enforce the attendance of any witness and examining him on oath, to discover and produce any document, the reception of evidence on affidavits, the requisitioning of any public record or document or copy of such record or document from any court or office and Lok adalat shall have requisite power to specify its own procedure for the determination of any dispute coming before it.

Lok Adalat are meant for conciliated settlement of disputes outside court which is what most of our people like if the matter allows for this kind of settlement. There is a fear among a large number of people about taking disputes to court, not just about delay in getting justice but also for financial reasons. In fact, one of the reasons for the formation of Lok Adalat or people's court is to provide fair and uncomplicated justice to the financially deprived section of our society. Though government provides legal aids to poor, there is a fear of monetary loss during the time period which is why most people prefer Lok Adalat.

Family disputes like property acquisition and matrimonial issues are far better and faster solved by these Lok Adalats in comparison to courts. Though there are family courts for these matters, people would always prefer settlement outside court and in a fair and just manner which is delivered well by Lok Adalat. It saves time and expenses and also is easier for parties to make their claims which is not the case when the matter is in court and witnesses are afraid of getting involved into legal matters.

The number of cases that require jurisdiction is increasing at an alarming rate and let's face it – we have far inadequate number of courts and judges in our country than we require which leads to unnecessary delay even in smaller cases. If more and more people could understand the significance of Lok Adalat and resort to them for easy litigations, there would be lesser pending cases in the files gathering dust since years in courts.

Lok Adalat can be a decent supplement to the work of courts and could contribute to justice in a good way only if awareness is increased and people are encouraged to opt for them. For illiterates and poor there are even more advantages of taking matters to Lok Adalat. Proceedings are conducted faster and in simple arrangements and even in local languages.

There is no absolute need of advocates by the victim and the convict, who can either prefer to have their cases pleaded by the lawyer or simply talk to the judge about the matter directly. This is not a possibility in courts where a third person pleads the case and the people involved only get a say when their turn comes.

Even if the case is filed in court, the expenses are refunded to the party when the case is solved by Lok Adalat which is another reason why people should be made more aware of this litigation system where there is no fee involved.

The following are some case-laws where the powers of disposal of certain cases by the Lok Adalat are challenged.

In Appeal(Civil) No.4718/2004 arising out of SLP(C) No.17738/2003 between the State of Punjab and Ors. (Appellant) Vs. Phulan Rani (Respondent), the Hon'ble Supreme Court held that the case at hand did not involve compromise or settlement and could not have been disposed of by Lok Adalat. If no compromise or settlement is or could be arrived at as provided u/s.20(3)&(5), no order can be passed by the Lok Adalat. Therefore, the disposal of the Writ Petition filed by the Respondent is set aside and directed the High Court to dispose of the Writ Petition.

Similarly in Appeal(Civil) No.522/2008 arising out of SLP(C) No.3847/2005 between the State of Punjab & Anr. Vs. Jalour Singh & Ors., the Apex Court held that " ...the order of the Lok Adalat was not passed by the consent of parties, is evident from its observation that if the parties object to the proposed order they may move the High Court within 2 months from the disposal of the appeal on merits according to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of law and it held that the Lok Adalat exercised a power/ jurisdiction not vested in it and allowed the appeal and quashed the order of the Lok Adalat and set aside the order of the High Court and directed the High Court to dispose of the appeal expeditiously".

V. Appa Rao, CLA, GM/O/SCR

RTI Series

More Orders on 8 (1) (j) :

Directory of officers and employees to be revealed:

The residential address of one Inspector [File No. CIC/WB/A/2007/001547] and one Sub-Inspector [File No. CIC/WB/A/2007/001610] were sought for in two different RTIA requests. The question before the commission was that in providing the directory of employees and information regarding their remuneration, was the public authority required to include information regarding personal residence particularly if that personal residence is not a government accommodation. It is to be kept in view that even if a government employee does not reside in accommodation provided by the Government his rent is subsidised by government allowance in the form of HRA. Moreover, every govt. official is required to provide a residential address to the office in which he/she is working. The issue, therefore, is, can disclosure of this information amount to invasion of privacy which would lead to exemption under sub Section (j) of Section 8 (1).

The commission stated that each Government official up to the level of President has an official residence which is official because it is occupied by him in the capacity of the official position which he/she holds. It is quite possible that an official does not actually occupy his or her official residence, but retains the same only for official purposes. The official residence will be that which has been notified by the official to his or her department which is in any case required to be done and necessary for a Dept in providing a directory of its officials on its website. A public authority is, therefore, required not only to publish the address and contact information including telephone numbers of an official serving in that public authority but also the residential address of his/her official residence together with telephone numbers, all of which are paid for through the public exchequer.

In this matter it is clear that even if an official opts to retain his private residence as his official residence, he is entitled to a house rent allowance to cover the cost of the rent of that accommodation. Hence, the CIC did not agree that disclosure of the residential address of an official holding public office is private information exempt from disclosure under sub-Section (j) of Section 8 (1) of the RTI Act 2005. This information merits uploading as part of a directory of officials on the website of every public authority as mandated under sub-Section (ix) of Section 4 (1) (b). There can be an exception to this Rule if the position held by the official concerned or the work on which he/she is engaged is of so sensitive a nature that any such disclosure could lead to apprehension of danger to the life of physical safety of the person, in which case it will merit exemption from disclosure of information. However, a conscious decision of this nature will have to be taken with regard to each such official failing which this exemption cannot be claimed in a general manner. [Appeal Nos. CIC/WB/A/2007/001547 and CIC/WB/A/2007/001610. Shri R.K. Arya Vs. Deputy Commissioners Police (DCP), Economic Offences Wing (EOW)].

Not entitled: Pensionary benefits entitlement of a third person and details of nominations thereof:

An RTI applicant asked for details of settlement regarding pensionary benefits and details of nominations in respect of a third person due for superannuation. The PIO rejected the request under Section 8(1) (g) and 8(1)(j) of the RTI Act. The CIC exempted the disclosure of information pertaining to the details of pension and nominations of a third person as its disclosure could lead to some danger to the safety of a person and could also be considered an intrusion of his privacy. The appeal was accordingly dismissed. [V. Renuka Devi Vs. Southern Railways (Decision No. CIC/SG/A/2009/000500/3131,dated 08.05.2009)].

Clarity on S. 8 (1)(j):

Delhi High Court in W.P. (C) 1243/2011 & C.M. No. 2618/2011 decided on 13.07.2012 [UPSC Vs. R.K. Jain] held the following :

"36. In light of the above discussion, the following principles emerge for the exemption under Section 8 (1)(j) to apply:

The information sought must relate to "Personal information" as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply;

(ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND

(a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not; OR

(b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure."

Scope of proviso to Section 8(1)(j) of RTI Act 2005:

This proviso is extracted below: "Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person." The problem with this proviso is that there are no instructions or rules or guidelines based on which a PIO can decide if the information sought for can or cannot be denied to the State legislature or Parliament. In LPA No. 900/2010 decided on 23.03.2012 [Bharat Sanchar Nigam Ltd. Vs. Chander Sekhar] Delhi High Court noticed that a Division Bench of the Bombay High Court in Surupsingh Hrya Naik Vs. State of Maharashtra MANU/MH/0170/2007 : AIR 2007 Bom 121 has held that the proviso has been placed after Section 8(1)(j) and would have to be so interpreted in that context and the proviso applies only to Section 8(1)(j) and not to other sub-sections.

M.K. Shaji, CLA/RWF

Breach of Principles of Natural Justice: Is it always fatal?

Contd… from last issue...

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

The Supreme Court, in the present case, laid down the following:

Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

The Supreme Court upheld the order of the Allahabad High Court on the ground that natural justice has indeed been breached in the facts of the present case, not being a case of admitted facts leading to the grant of a futile writ, and that prejudice has indeed been caused to Respondent No.1. [State of U.P Vs. Sudhir Kumar Singh & Ors Civil Appeal No. 3498/2020 decided on 16.10.2020 along with connected CA Nos. 3499/2020 & 3500/2020]

M.K. Shaji, CLA/RWF

KNOW OUR CONSTITUTION

Article 35: Legislation to give effect to the provisions of this Part Notwithstanding anything in this Constitution,

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws (i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and (ii) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub clause (ii) of that clause shall, subject to the terms there of and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament Explanation In this article, the expression law in force has the same meaning as in Article 372 Part IV Directive Principles of State Policy.

Difference between Stamp Duty and Registration Fee

Stamp Duty:

Tax levied on certain legal documents by the Government is called Stamp Duty. This duty is collected under the Indian Stamp Act, 1899. The document can be a sale deed, conveyance deed, gift deed, mortgage deed or any of the other documents, as defined under the Act. Basically, these documents are used to create rights and liabilities of the parties involved in the transaction. The stamp duty and registration charges are used to establish ownership and acts as evidence against sale or purchase of a property in a court of law. The possession of the legal ownership is as important as the possession of the house. To create legal ownership, it is important to get the property registered in your name and this process requires the payment of stamp duty.

Stamp Duty is collected according to the value of the property. As per the current norm stamp duty is generally paid on the circle rate defined by the State Government. Stamp duty also differs from state to state as well as property to property and even between urban and rural areas. Stamp duty is payable at the time of registration of the property. Stamp paper can be purchased in the name of either of the parties entering into the agreement. There are 3 ways to pay stamp duty: 1) Non-judicial stamp paper (physical stamp paper), 2) E-stamping (computer based application for paying stamp duty) & 3) Franking (duty is paid through a franking agency or an authorized bank)

Registration Fee:

When a property is purchased, the process of recording the ownership of the property in Government records is known as 'Registration of Document'. Once the stamp duty is done, the sale deed is registered under Registration Act, 1908. This registration process is carried out under the appropriate sub-registrar having territorial jurisdiction of the property. Registration fee is payable in order to get the registration done and it differs from state to state. Registration of documents involves a detailed procedure and requires thorough documentation. A written instrument namely a sale deed, duly stamped and signed by the parties, along with identity proofs, is required to be submitted to the registration office. Furthermore, in addition to the parties entering into the contract, two witnesses are also required. A few other requirements, as applicable, need to be fulfilled to complete the procedure.

K. Gopinath, CLA, GM/O/SCR

FAQ Can a suit be dismissed for non-appearance of parties

Under the provisions of the Code of Civil Procedure, 1908 relating dismissal of a suit for non-appearance of parties, Order IX of the Code of Civil Procedure deals with the appearance of parties and consequences of non-appearance.

Order IX Rule 1 of the Code of Civil Procedure provides that on the date fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the court.

Dismissal of Suit ; The court may dismiss the suit on the date fixed for hearing if-

(a) the summons is not served upon the defendant in consequence of failure of the plaintiff to pay the court fee or postal charges, if any, chargeable for such service or to present copies of the plaint or concise statement as required by Rule 9 of Order VII of the Code of Civil Procedure (Order IX Rule 2 C.P.C.)

(b) neither party appears when the suit is called for hearing (Order IX Rule 3 C.P.C.)

(c) After a summons has been issued to the defendant or to one of several defendants, and returned unserved, the plaintiff fails for a period of one month from the date of the return, to apply for the issue of a fresh summons unless the plaintiff has within the said period satisfied the court that -

(i) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(ii) such defendant is avoiding of process or

(iii) there is any sufficient cause for extending the time (Order IX Rule 5 C.P.C.)

(d) The defendant appears and the plaintiff does not appear when the suit is called out for hearing unless the defendant admits the claim or part thereof (Order IX Rule 8 C.P.C.).

K. Gopinath, CLA, GM/O/SCR

Know the Labour Law Reforms:

The Code on Wages, 2019

(contd…from last issue)

- **Limitation:** Limitation period has been raised to 3 years uniformly for filing claims for minimum wages, bonus, equal remuneration etc. as against existing varying period between 6 months to 2 years. This protects the interest of the workers.

- **Gender discrimination:** The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.

- **Advisory boards:** The Central and State Governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers (ii) employees (in equal number as employers) (iii) independent persons & (iv) five representatives of State Governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the Central and State Boards will be women. The Boards will advise the respective Governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.

- **Inspection:** Web based randomised computerised inspection scheme, jurisdiction-free inspections, calling of information electronically for inspection etc. will be conducive for enforcement of labour laws with transparency and accountability.

- **Authorities:** Appropriate Govt. to appoint one or more authorities of Gazetted rank to her and determine the claims under the Code. Payment of compensation up to ten times the claim and endeavour shall be made to settle the claims within 3 months. If the employer fails to pay the claim amount / compensation, the authority will issue a certificate of recovery to the Collector or District Magistrate to recover the claim amount / compensation as arrears of land revenue and remit the same to the authority for disbursal to the employee concerned. Claims to be preferred by the employee concerned, or registered Trade Union or the Inspector cum Facilitator. Appeal against the order of the authority to be preferred within 90 days and the delay, if any, is condonable by the Appellate Authority. Appellate authority to make endeavour to dispose of the appeal within 3 months.

- **Offences:** The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees. Metropolitan Magistrate or First Class Judicial Magistrate to try the offences.

- **Burden of proof:** The onus lies on the employer to prove payment of wages, bonus etc.

M.K.Shaji,CLA/RWF

Legal Update

Use Of A4 Size Paper Permitted By Allahabad High Court Across All Courts/ Tribunals In UP.

The Allahabad High Court has permitted the use of A4 size paper for all Judicial and Administrative purposes in the High Court and all other Courts, Tribunals and District Courts subordinate to it. Vide communication dated November 23, 2020, the Registrar (J)(Inspection) informed that the High Court's Administrative Committee has resolved to permit the use of A4-size paper for all judicial and administrative filings before all the judicial forums in Uttar Pradesh.

The matter has been placed before the Rules Committee for necessary amendments in the Allahabad High Court Rules, 1952, General Rules (Civil), 1957 and General Rules (Criminal), 1977. It is pertinent to point out that the communication is silent as to printing on both the sides of the paper and it was addressed to the Petitioners and Advocates in the PIL titled Saumitra Anand & Ors. v. Registrar General, HC & Ors., PIL No. 665/2020, wherein a direction was sought to implement the use of A4 Sheets with double-sided printing, instead of legal-size paper with one side printing, for filings in all the courts across the state. However, the plea was disposed of with the observation that the matter requires serious consideration on administrative side. The Petitioners were directed to make a representation before the Registrar General of the High Court. Pursuant thereof, the Petitioners served a Demand Notice dated 28/07/2020 and subsequently, a Reminder Notice dated 15/10/2020 upon the High Court Registry. In response, the Registry said, "The Hon'ble Administrative Committee has considered the said Demand Notice and resolved to accept the Demand Notice to the extent of use of A4 size paper for all Judicial and Administrative purposes in the High Court, Allahabad and all other Courts, Tribunals and District Courts subordinate to High Court of Judicature at Allahabad, and further resolved to place the matter before Hon'ble Rules Committee for necessary amendments in the Allahabad High Court Rules, 1952, General Rules (Civil), 1957 and General Rules (Criminal). 1977. The matter is scheduled to be considered by Hon'ble Rules Committee in the next meeting of the Committee." The Petitioners namely Saumitra Anand, Sagar, Shubham Mishra, Anup Shukla and Vidit Jaiswal, are law students of the Faculty of Law, University of Allahabad had moved the High Court through Advocates Shashwat Anand and Ankur Azad. Upon receiving no intimation in the said behalf, they had recently filed a fresh PIL in the High Court on 19/11/2020, re-contesting the issue. According to the filing Advocates, the said communication is silent on the issue of printing on both sides of the paper and "A4 size paper with printing on both sides –if has not been allowed, there will be serious and devastating repercussions for the environment, resulting in great damage to the flora and fauna, resulting from the incessant chopping of trees and sheer wastage of water. This will end up doing more harm than good, if printing on both sides is not allowed. Significantly, the regime of using A4 size paper with printing on both sides has been adopted and put in place in the Supreme Court of India and several other High Courts, being Kerala High Court, Karnataka High Court, Tripura High Court, etc., and the colonial era practice of printing on Legal/Foolscap size paper with single side printing has been junked and done away with.

YOURS LEGALLY

In absence of pleadings any amount of evidence will not help the party in a civil suit.

Pleading: Order 6 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') defines pleadings as "plaint or written statement". Plaint is the document submitted by the plaintiff, i.e. the aggrieved party who states the material facts, reasons for filing the suit and what remedy or relief the aggrieved person is claiming through the legal proceedings. On the other hand, a written statement is a reply to the plaint wherein the defendant, i.e. the opposing party against whom claim is being made by the plaintiff.

Any ground or fact not mentioned in the pleadings cannot be used or relied upon by the parties. Pleadings serve an important function of providing notice to the defendant that a lawsuit has been instituted against him. It also provides notice to the plaintiff of the defendant's intention in regards to the suit. Pleading should state facts and not law. The facts stated should be material facts. Pleading should not state the evidence and the facts should state in a concise form. Every pleading must be signed by the party or by one of the parties or by his pleader. Pleadings form the foundation for any case in the court of law. Sometimes the plaintiff, having filed his plaint, may, with the leave of the court, file a statement or the court may require him to file a written statement. In such cases, the written statement forms part of the plaintiff's pleadings. The plaintiff's written statement and the defendant's additional written statement are termed supplemental pleadings.

Replication: The term replication does not find its place in CPC, however, through various judgements it is observed that in certain cases with the leave of the Court, Plaintiff has been permitted to file a rejoinder to the written statement filled by the defendant, such a rejoinder filled by the Plaintiff is termed as "replication". Citations:- Sunil and Vasanth Architects and Consulting Engineers and Anr Vs Tata Ceramics Ltd. (AIR 1999 Ker 88); Veerasekhara Varmarayar Vs Amirthavalliammal & Ors. (AIR 1975 Mad51) & M.L. Gupta Vs Kripal Singh [98(2002) DLT683.

Amendment of pleadings: Order VI Rule 17 bestows the power on Courts to permit parties to alter, modify or amend their respective pleadings at any stage of the proceedings, this would however be permissible only in cases where the amendment is necessary to resolve the dispute between the parties.

Importance of Pleadings: The Supreme Court in Gajanan Krishnaji Bapat & Anr. v. Dattaji Raghobaji Meghe & Ors., AIR 1995 SC 2284 held that the court cannot consider any fact which is beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality the result of the election has been materially affected. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that as a rule relief not founded on the pleadings should not be granted.; Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho, (1898) 25 Ind. App. 195; M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar, AIR 1953 SC 235; Raruha Singh v. Achal Singh & Ors.; AIR 1961 SC 1097; Om Prakash Gupta v. Ranbir B. Goyal, AIR 2002 SC 665; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. Hindustan Construction Co.Ltd.,(2010) 4 SCC 518)

The Apex Court in Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors., AIR 1987 SC 1242 held as under: "…It is well settled that in the absence of pleading, evidence produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet..... In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question."

The Apex Court in Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103, held that **"**The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.

The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue..... **Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief."**

M.N. Vijitha, CLA(Gaz), PCPO/O/SCR

TREATISE ON

Arbitration & Conciliation Act, 1996

Determination of rules of procedure for conducting Arbitration proceedings.

Section 19 of the A&C Act, 1996 deals with rules for conducting Arbitration proceedings. Said Section stipulates that the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. Failing any agreement, the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate. However, the power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. Section 19 of the 1996 Act is based on Article 19 of the UNCITRAL Model Arbitration Law.

As already observed that Arbitration and Conciliation Act, 1996 has given primacy to party autonomy where parties are kings and they can choose their own procedure as to how the dispute between has to be resolved. The Supreme Court held that an arbitrator cannot be equated with the Court of law. Whereas the Court has an inherent power, an arbitrator does not have. It is a tribunal of limited jurisdiction. Its jurisdiction is circumscribed by the terms of reference. [MD, Army Welfare Housing Organization v. Sumangal Services (P) Ltd. (2004) 9 SCC 619].

The Arbitration Act is governed by the principle of freedom of the parties and Section 19 thereof expressly provides that the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings. A party, after having expressly agreed to a particular state of affairs, cannot raise the argument of forum non conveniens, which is available only in case of concurrent jurisdiction. [***Dr. Bina Modi v. Lalit Modi & Ors.*** [*CS (OS) 84/2020, Del HC, March 3, 2020]*

Section 19 categorically provides that the Arbitral Tribunal shall neither be subject to the CPC, 1908 nor Evidence Act, 1872. It has to conduct its proceedings within the parameters of the procedure agreed by the parties and also Principles of Natural Justice. Further, Section 19(4) provides that the power of the Arbitral Tribunal in the proceedings is confined to determining the admissibility, relevance and materiality of a document. Therefore, if documents are already on the record of the Tribunal, it can rule as per Section 19(4), making the condition of the documents to be on record mandatory.

Section 19 of the Act partly corresponds to Sections 110 and 311 of the Evidence Act, 1872 which provides inter alia that the said Act does not apply to proceedings before an Arbitrator and 'Court', shall not include Arbitrators. Further, an Arbitral Tribunal does not have the power to compel the attendance of a witness or call for documents by itself. For recording any fresh evidence, it has to request the Court, either by an application on its own motion or on the request by one of the parties. [Satinder Narayan Singh v. Indian Labour Co-operative Society Ltd. 2008 (1) Arb LR 355 (Del)]

The rules of procedure provided under the CPC and the rules of evidence enumerated in the Indian Evidence Act are statutory safeguards to ensure adherence to the principles of natural justice. The provisions therein envisage a process of presenting and proving a case which is fair and gives equal opportunity to both sides. Accordingly, although the provisions are not binding in arbitration, the settled principles of procedure and evidence would definitely be applicable. These principles apply both to pleadings, as also evidence produced by the parties during the course of arbitration. [*https://www.thelawpoint.com/post/rules-of-procedure-and-evidence-in-arbitration-proceedings*]

The Supreme Court in Srei Infrastructure Finance ... vs Tuff Drilling Private Limited on 20 September, 2017, CA No.15036 OF 2017 held that Section 19 provides that arbitral tribunal shall not be bound by the rules of procedure as contained in Civil Procedure Code. Section 19 cannot be read to mean that arbitral tribunal is incapacitated in drawing sustenance from any provisions of Code of Civil Procedure. In Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation, (2009) 8 SCC 646. In Paragraph 98(n), following was stated:-

"(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. "Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice." (See Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd.)"

It is also worth mentioning that Section 19 (2) of the Act permits the parties to agree on the procedure to be followed by the arbitral tribunal. The parties may, while so laying down the procedure, provide for the remedy of review/revival of arbitral proceedings and which agreement would be binding on the arbitral tribunal.

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